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### **The new US Trade Policy Agenda: renewing EU-US trade relations?**

In recent weeks, a number of developments finally appear to show an improvement of EU-US trade relations. On 8 March 2021, the European Commission (hereinafter, Commission) [announced](#) that the EU and the US had concluded negotiations to adjust the EU’s World Trade Organization (hereinafter, WTO) agricultural quotas, following the UK’s withdrawal from the EU in 2020. On 5 March 2021, the EU and the US [announced](#) that they had agreed to suspend, for four months, the additional import tariffs imposed in the context of the WTO *Boeing* and *Airbus* disputes, respectively. These developments follow the publication of the US Administration’s [2021 Trade Policy Agenda](#) earlier this month, shortly after the Biden Administration took office in January. While the [2021 Trade Policy Agenda](#) does not appear to drastically alter US trade policy priorities, these recent developments do indicate a positive change of US attitude towards international trade and trade relations.

#### ***EU-US trade relations during the previous US Administration***

Between 2016 and 2020, EU-US trade relations were greatly affected by tensions and a ‘*tit-for-tat*’ of retaliatory tariff impositions rather than a spirit of dialogue and cooperation. In particular, since January 2017, trade relations between the EU and the US had deteriorated primarily due to a series of measures and actions taken by the then US Administration. In March 2018, the US had introduced a 25% import tariff on steel and a 10% import tariff on aluminium based on an investigation under Section 232 of the US Trade Expansion Act 1962 (see [Trade Perspectives, No. 5 of 9 March 2018](#)). Efforts were made in July 2018 to address a number of specific trade issues, when both sides agreed to “*launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and slash costs*” (see [Trade Perspectives, Issue No. 15 of 27 July 2018](#)). However, despite these efforts, tensions continued to increase between the EU and the US.

#### ***The 2021 Trade Policy Agenda of the new US Administration***

On 1 March 2021, the US Administration published its [2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program](#) (hereinafter, Trade Policy Agenda), which provides the overview of “*a comprehensive trade policy in support of the Administration’s effort to help the U.S. recover from the COVID-19 pandemic and build back better*”. The *Build Back Better* agenda refers to US President Joseph

R. Biden's jobs and economic recovery plan for working families, which represents an important element of the US Trade Policy Agenda. The US Trade Policy Agenda sets nine trade priorities for the US Administration for the coming four years: 1) *"Tackling the COVID-19 Pandemic and Restoring the Economy"*; 2) *"A worker centric trade policy"*, 3) *"Putting the World on a sustainable environment and climate path"*; 4) *"Advancing racial equity and supporting underserved communities"*; 5) *"Addressing China's coercive and unfair economic trade practices"*; 6) *"Partnering with Trade and allies"*; 7) *"Standing up for American farmers, ranchers, food manufacturers and fishers"*; 8) *"Promoting equitable and economic growth around the world"*; and 9) *"Making the rules count"*.

While the US Trade Policy Agenda does not yet provide many details regarding international trade policies and the specific actions or instruments that the US would apply, it does provide an idea about the approach to trade policy that will likely be pursued by the current US Administration.

With respect to China, the Trade Policy Agenda states that the US recognises that China's coercive and unfair trade practices harm US workers and businesses and notes that the US is conducting a comprehensive review of its trade policy vis-à-vis China as part of its overall China strategy. The US intends to use *"all available tools"* to address China's unfair trade practices and it would also *"coordinate with friends and allies to pressure the Chinese Government to end its unfair trade practices and to hold China accountable"*, including on human rights issues.

The Trade Policy Agenda further entails a clear change of direction regarding environmental sustainability and the trade-related policies to fight global climate change, as well as a new approach regarding the WTO. The US recognises the climate crisis and commits to work with other countries, both bilaterally and at the multilateral level, towards environmental sustainability and to negotiate and implement *"strong environmental standards"*. The US intends to address greenhouse gas emissions in the global trading system and to consider, like the EU (see *Trade Perspectives, Issue No. 17 of 18 September 2020*), the establishment of a carbon border adjustment mechanism. An important step demonstrating the US' renewed commitment to multilateralism was the rather swift agreement regarding the appointment of Dr. Ngozi Okonjo-Iweala as the new Director-General of the WTO, which the previous US Administration had refused. In its Trade Policy Agenda, the US commits to engage with like-minded trading partners *"to implement necessary reforms to the WTO's substantive rules and procedures to address the challenges facing the global trading system, including growing inequality, digital transformation, and impediments to small business trade"*.

### ***A more positive tone, but no drastic changes***

Despite the overall positive tone and more constructive approach, it appears clear that the US will not drastically change course regarding international trade, certainly not *'overnight'*. For instance, the Trade Policy Agenda refers to the US policy not to support the filling of vacancies in the WTO Appellate Body and there is no indication that the US would contribute to restoring the functionality of the WTO Appellate Body anytime soon. The Trade Policy Agenda underlines that strong trade enforcement is *"essential"* to ensure that trading partners *"live up to their commitments"*. Although the US Administration intends to seek to work with *"friends and allies on trade enforcement"*, the Trade Policy Agenda states that unilateral action might be necessary in some instances.

It is also clear that the current US Administration will focus on the restoration of the US economy. An example on this is the recent Executive Order on *'Ensuring the Future Is Made in All of America by All of America's Workers'*. This Executive Order aims at strengthening manufacturing in the US and states that the US Federal Government should *"use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States"*. Supporting domestic businesses is one thing, but granting preferential treatment to domestic companies to the detriment of businesses in third countries, for instance through selective local

content requirements, might constitute discrimination and lead to inconsistencies with the US' WTO obligations. Businesses around the world should be vigilant and seek legal assistance in case of any perceived discriminatory decisions or practices.

### ***A solution to the longstanding Airbus and Boeing disputes?***

Despite the vagueness of the Trade Policy Agenda, recent developments show positive signs for improved EU-US trade relations. On 5 March 2021, the EU and the US announced that they had mutually agreed to suspend, for a period of four months, the additional import tariffs imposed in the context of the WTO *Boeing* and *Airbus* disputes. The suspension of the tariffs entered into force on 9 March 2021. The Commission stated that the suspension of tariffs would allow both parties to focus on resolving these long-standing disputes, which have been ongoing for nearly 20 years (see *Trade Perspectives*, Issue No. 18 of 4 October 2019 and Issue No. 19 of 18 October 2019).

The President of the Commission *Ursula von der Leyen* stated that this agreement was “*excellent news for businesses and industries on both sides of the Atlantic, and a very positive signal for our economic cooperation in the years to come*”. Both parties aim at setting jointly agreed rules on permissible aircraft subsidies. The Office of the United States Trade Representative (hereinafter, USTR) stated that a settlement was needed also to confront new challenges posed by China’s aircraft industry. The USTR further stated that limits on future subsidies, as well as dedicated monitoring and enforcement mechanisms, would be part on the envisaged agreement.

Trade associations on both sides of the Atlantic welcomed the news. *SpiritEurope*, a trade organisation representing the EU’s spirits industry, stated that the suspension was a “*positive development and a crucial step towards a final and permanent resolution*”, while the *Distilled Spirits Council of the United States* stated that the decision was a promising signal for a possible breakthrough.

### ***Agreement on WTO agricultural quotas***

On 8 March 2021, the Commission announced that the EU and the US had concluded negotiations to adjust the EU’s WTO agricultural quotas following the UK’s withdrawal from the EU. The Commission stated that this agreement was the result of two years of negotiations in which EU quotas were divided with part of the volume remaining with the remaining 27 EU Member States and the other part being attributed to the UK. The Commission stated that “*the agreement covers dozens of quotas and billions of euros of trade including for beef, poultry, rice, dairy products, fruits and vegetables and wines*”. The European Commissioner for Agriculture *Janusz Wojciechowski* stated that the agreement “*gives certainty and stability to agricultural trade and our markets*”.

### ***A renewed EU-US trade relationship***

The US Trade Policy Agenda of the new US Administration do not immediately break away from the trade priorities of the former US Administration, but the change in tone and approach is more than welcome on both sides of the Atlantic. Stakeholders should take note and monitor these developments, seeking, when necessary, legal support in order to navigate the different legislative and regulatory files that have an impact on international trade.

### **To fight plastic waste and pollution, regulators around the world increasingly take action on plastics and certain plastic products**

On 3 July 2021, the deadline for EU Member States to transpose *Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment* (hereinafter, Single-Use Plastics Directive) into

national law will lapse. Some EU Member States have already started implementing national laws transposing the aforementioned Directive, while many others have yet to do so. Regulating, prohibiting and limiting the use of certain plastic products, notably single-use plastics, in view of fighting plastic pollution and working towards a more circular economy, has become a global concern. While addressing an important global environmental concern, these initiatives, especially if uncoordinated and not harmonised, look poised to establish significant burdens for compliance for manufacturers, and might have important implications for international trade and even for the free movement of goods on the EU's internal market.

### ***Plastic pollution: the issue in a nutshell***

Over the last decades, plastics and their use have become ingrained in the world's daily life, also contributing to endless technological advances and to improving many aspects of our lives. However, as the EU points out in Recital 1 of the Single-Use Plastics Directive, "*while plastic plays a useful role in the economy and provides essential applications in many sectors, its growing use in short-lived applications, which are not designed for re-use or cost-effective recycling, means that related production and consumption patterns have become increasingly inefficient and linear*".

Data from the *United Nations Environment Programme* (hereinafter, UNEP) shows that around 60% of the over 8.3 billion metric tonnes of plastic produced since the early 1950s has ended up in landfills or directly in the natural environment. Plastics and fragments thereof, known as microplastics, may end up in drains and, ultimately, enter rivers and oceans. The problem of the world's oceans becoming increasingly polluted with plastics has been recognised as a global concern.

In 2017, the United Nations (hereinafter, UN) Resolution *Our Ocean, our future: call for action* underlined that there is a need to intensify efforts in fighting the pollution of the marine environment through, *inter alia*, addressing the use of plastics and microplastics. In February 2021, UN Members at the 5<sup>th</sup> session of the United Nations Environment Assembly (hereinafter, UNEA) discussed the possibility to begin negotiations for a global plastic treaty. Such treaty is supposed to address, *inter alia*, "*the power to ban certain single-use plastic products, and putting restrictions on new plastic production*".

### ***The EU's efforts to mitigate plastic pollution***

The 2018 Communication from the European Commission (hereinafter, Commission) on '*A European Strategy for Plastics in a Circular Economy*' (hereinafter, EU Plastics Strategy) provides "*key commitments for action at EU level*". The overall objective of the EU Plastics Strategy is to lay the "*foundations to a new plastics economy, where the design and production of plastics and plastic products fully respect reuse, repair and recycling needs and more sustainable materials are developed and promoted*". To achieve this objective, Annex I to the EU Plastics Strategy provides a '*List of future EU measures to implement the Strategy*', divided into four categories: 1) Measures to improve the economics and quality of plastics recycling, for instance new eco-design measures; 2) Measures to curb plastic waste and littering, for instance measures that would reduce single-use plastic products; 3) Measures to drive investment and innovation towards circular solutions; and 4) Measures to harness global action.

### ***A recent priority: Prohibiting certain single-use plastic products***

A key area of recent regulatory activity concerns the global efforts to reduce the use of certain single-use plastics.

In 2015, *Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags* required EU Member States to adopt measures that would reduce the consumption of plastic bags. In 2019, the EU adopted the Single-Use Plastics Directive, which

appears to be the most significant measure that the EU has adopted so far (see *Trade Perspectives, Issue No. 7 of 5 April 2019*). The broad objective of the Single-Use Plastics Directive is to “prevent and reduce the impact of certain plastic products on the environment, in particular the aquatic environment, and on human health, as well as to promote the transition to a circular economy”.

Under the Single-Use Plastics Directive, all EU Member States are required to prohibit, from 3 July 2021, the placing on the EU market of certain single-use plastic products, namely cotton bud sticks, cutlery, plates, straws, stirrers, sticks for balloons, as well as cups, food and beverage containers made of expanded polystyrene, and all products made of oxo-degradable plastic (*i.e.*, plastic that degrades due to oxidative and cell-mediated phenomena). For products without straight-forward alternatives, such as cups for beverages, including their cover and lids, and food containers, the focus is on limiting their use through a reduction in consumption, design enhancements, such as tethered caps for plastic beverage bottles, and marking requirements. With particular regard to marking requirements, EU Member States must ensure that certain single-use plastic products, namely sanitary towels, tampons and tampon applicators, wet wipes (*i.e.*, pre-wetted personal care and domestic wipes), tobacco products with filters and filters marketed for use in combination with tobacco products, as well as cups for beverages, bear a conspicuous, clearly legible and indelible marking on its packaging or on the product itself.

Importantly, given the legal instrument of an EU Directive, EU Member States may go beyond the rules set by the EU legislator. For instance, Sweden introduced an additional levy on portion snus (*i.e.*, moist powder smokeless tobacco product marketed in small teabag-like sachets). Already in January 2019, Spain’s Balearic Islands region had prohibited the placing on the market of plastic “drinking straws, sticks for the ears and sticks for candies”, only allowing their placing on the market when they are made of compostable materials, as well as the placing on the market of “disposable capsules of coffee, infusions, broths and others used in coffee makers”, unless “manufactured using compostable materials or easily recyclable, organically or mechanically”. It remains to be seen how other EU Member States will transpose and implement the new EU rules by early July of this year.

In England, a ban on the supply of certain single-use plastic products, such as plastic straws, stirrers, and cotton buds, entered into force on 1 October 2020. In South Australia, a ban on the supply of single-use plastic straws, stirrers and cutlery became effective on 1 March 2021 and there are plans to progressively extend the list of items subject to the prohibition. In the US, *inter alia*, the State of California had already banned the supply of single-use plastic bags back in November 2016.

### ***Increasing the use of recycled plastic***

In addition to addressing single-use plastics, efforts are being undertaken to increase the use of recycled components, for instance in beverage bottles. Beverage bottles are manufactured from polyethylene terephthalate (hereinafter, PET) as their major component. In recent times, measures have been introduced in various markets to mandate the use of recycled polyethylene terephthalate, often referred to as ‘rPET’.

In the EU, the Single-Use Plastics Directive requires EU Member States to ensure that, from 2025, plastic beverage bottles contain at least 25% recycled plastic, a minimum amount that will increase to 30% from 2030. In the UK, the *UK Plastics Pact*, which links businesses from across the entire plastics value chain, the UK Governments, as well as non-governmental organisations, also aims at addressing plastic waste and the promotion of a circular economy. According to the pact, by 2025, plastic packaging is to have a recycled content of an average of 30% throughout the UK. Furthermore, a potential new tax on plastic packaging is currently being discussed in the UK, which would apply, from 1 April 2022, to packaging containing less than 30% recycled plastic. In California, from 1 January 2022, plastic bottles will be required to have a minimum of 15% recycled plastic content, which will progressively increase to 50% by 2030.

## **Complex new realities for businesses around the world?**

Given the multitude of initiatives around the world and the diverging approaches being taken by Governments, these regulatory requirements already appear to place a considerable burden on manufacturers and traders. As regulators continue to develop and implement measures to address plastic waste and pollution, interested stakeholders should closely monitor any further development and their compliance obligations. In the EU, the transposition deadline for the Single-Use Plastics Directive is fast approaching and the way each EU Member State will implement the various measures indicated in the Directive will be of great relevance to various industries. On a more global scale, efforts should be considered to harmonise initiatives and standards, so as to streamline approaches and facilitate trade.

## **After Spain and Italy, a growing number of EU Member States, including Denmark, consider permitting the use of the term '*probiotic*' on food and food supplements**

At the end of January 2021, Denmark's Minister for Food, Agriculture and Fisheries, *Rasmus Prehn* expressed his Administration's intention to work towards the acceptance of the term '*probiotic*' on the labels of food products marketed in the country. Minister *Prehn* announced that his Ministry would contact Spain's and other EU Member States' authorities in the coming months, aiming at changing the regulation at the EU level. Spain had recently permitted the term '*probiotic*', backed by the principle of mutual recognition, which states that goods legally marketed in one EU Member State may be marketed and sold in any other. In February 2021, a market survey by a consultancy found that the number of EU Member States' food safety authorities permitting the use of the term '*probiotic*' is growing. Another matter discussed in this article is the possibility to recognise '*probiotic*' as a '*generic descriptor*', which has traditionally been used to indicate the peculiarity of a class of foods and which could imply an effect on health.

### ***Safety of probiotics and their use in food***

The term '*probiotic*' refers to the probiotic bacteria, which are live microorganisms, such as *Lactobacillus helveticus* or *Lactobacillus rhamnosus*, that may provide health benefits in humans, generally by improving or restoring the gut flora. Probiotics in food products, such as in yoghurt and other dairy products, infant formula, and food supplements, are considered generally safe to consume. However, there appears to be little evidence that probiotics deliver the health benefits that are often claimed. In 2010, the European Food Safety Authority (hereinafter, EFSA) considered in its *Scientific Opinion on the substantiation of health claims related to various food(s)/food constituents(s) and increasing numbers of gastro-intestinal microorganisms, and decreasing potentially pathogenic gastro-intestinal microorganisms* that the probiotic effect is not sufficiently substantiated and, therefore, concluded that it could not be deemed a health benefit, since the gut microbiome is too complex to conclude that enhanced lactic acid bacterial counts are beneficial.

Since there is no specific legislation on probiotics, their use in food is subject to the general safety requirement laid down in Article 14 of *Regulation (EC) No 178/2002 laying down the general principles and requirements of food law*, which sets out that unsafe foods are not to be placed on the market. In the absence of a list of microorganisms authorised at EU level, the EFSA has established a '*qualified presumption of safety*' list for microorganisms, which is regularly reviewed, and which can be used as a reference for safe food use.

### ***Advertising and labelling of probiotics in the EU***

In the EU, advertising and labelling of food products using the term '*probiotic*' is a complex matter. Under Article 19(1)(d) of *Regulation (EU) No 1169/2011 of the European Parliament*

and of the Council of 25 October 2011 on the provision of food information to consumers (hereinafter, FIR), the name of the specific microorganism culture(s) that a product contains is not required to be displayed in the list of ingredients. In the case of, for example, fermented milk and cream products, the only ingredients required to be listed are ingredients other than the lactic products, enzymes, and microorganism cultures essential to their manufacture. However, manufacturers can choose to provide this information voluntarily.

Regarding the use of the term '*probiotic*', there is no EU legal framework defining it as a food category or establishing the conditions for a microorganism strain to be considered as '*probiotic*'. However, the general view by most EU and EU Member State authorities is that the term '*probiotic*' is an implicit, non-authorised health claim and, therefore, the very use of the name is not authorised in most EU Member States. According to the definition of health claim in Article 2(2)(5) of Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods (hereinafter, NHCR), "*any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health*" can be considered to be a health claim. According to the European Commission's (hereinafter, Commission) [Guidance on the implementation of Regulation 1924/2006 on nutrition and health claims made on foods](#) of 14 December 2007, stating '*contains probiotic*' (or similar) on a product is not the same as saying '*contains ingredient X*'. It is more than merely mentioning that the product contains bacteria, implying that the product contains a substance that may be beneficial for health.

In order to be entitled to communicate the beneficial health effects of their products on the product label or in advertising, food business operators are required to obtain a pre-market authorisation under the NHCR from the Commission. According to the [EU Register of health claims](#), numerous applications for '*probiotic*' health claims were not authorised. Many other applications for probiotic health claims were withdrawn, due to the uncertainty of the outcome of the EFSA's assessment. The most common reason for rejection was the insufficient characterisation for a scientific assessment of the claimed effect, but, in some cases, applications on well-characterised microorganisms were also rejected. There is, however, a health claim authorised under Article 13(1) of the NHCR for individual bacteria strains, the yoghurt microorganisms.

### ***Surveying EU, national, and regional competent food safety authorities on probiotics***

In February 2021, the consultancy *Sandwalk BioVentures* published a survey of 46 EU, national, and regional competent food safety authorities, which were asked about their view on the term '*probiotic*'. Non-EU Member States like Norway, Switzerland or the UK were excluded from the survey. According to the survey, the Commission and the EFSA maintain their view on probiotics and consider, like most EU Member State authorities, that the term '*probiotic*' is an implicit, non-authorised health claim and that, therefore, the very use of the name is not authorised. The survey found that countries that do not allow the term probiotic on food labels include Austria, Belgium, Croatia, Denmark (which may, however, soon change its stance), Estonia, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Portugal, Slovak Republic, and Sweden. Countries that do allow the term probiotic on labels include Bulgaria, the Czech Republic, Greece, Italy, Malta, Poland, and Spain. In Italy, products with probiotics may claim that probiotic "*favours the equilibrium of the intestinal flora*". In fact, the Italian Ministry of Health's [Guidelines on Probiotics and Prebiotics](#) of March 2018 provide comprehensive guidelines for probiotics in food and food supplements, allowing the use of the term '*probiotic*' if specific conditions are met.

### ***Spain permits the use of the term 'probiotic' - The principle of mutual recognition***

On 27 October 2020, the Spanish Agency for Food Safety and Nutrition (*Agencia Española de Seguridad Alimentaria y Nutrición*, hereinafter, AESAN) published a [guidance document on probiotics in food](#), permitting the use of the term '*probiotic*' on labels of food and food supplements. The AESAN acknowledged that a significant number of probiotic products are present on the Spanish market and are marketed as containing different live microorganisms.

The presence of these live microorganisms is indicated on the product label in the ingredients list (see [Trade Perspectives, Issue No. 21 of 13 November 2020](#)). The AESAN notes that these products come from different EU Member States, where they are allowed to be marketed under this name and may, therefore, not be prevented from being marketed in Spain, in application of the principle of mutual recognition. This principle stems from Articles 34 to 36 of the Treaty of the European Union and is further defined in [Regulation \(EU\) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State](#), which outlines rules and procedures on the application of the mutual recognition principle in individual cases.

Until there is a uniform criterion on the part of the EU Member States for the use of the term '*probiotic*', the AESAN considers it acceptable that the term '*probiotic/s*' appears on the label of products, both manufactured in Spain and imported to Spain from other EU Member States. The AESAN concludes that "*in all cases, these products must meet the safety requirement. However, it should be noted that the use of this term cannot be accompanied by any health claim, unless expressly authorised*".

### **'Probiotic' as a generic descriptor**

Article 1(4) of the NHCR exempts from the application of that Regulation specific generic descriptors (denominations), which have traditionally been used to indicate the peculiarity of a class of foods or beverages and which, like the '*digestive*' and '*cough drops*' examples given in Recital 5 of the NHCR, could imply an effect on health. Food business operators must apply for the approval of generic descriptors. The requirements for such applications are detailed in [Commission Regulation \(EU\) No 907/2013 of 20 September 2013 setting the rules for applications concerning the use of generic descriptors \(denominations\)](#). In particular, generic descriptors should correspond to a period of at least 20 years of proven usage within the EU Member State(s) prior to the date of entry into force of Regulation 907/2013 and should not be false, ambiguous, or misleading in relation to its effects on health. So far, a number of EU Member States' variants of '*cough drops*', '*tonic*' beverages and '*biscotto salute*' (i.e., Italian healthy biscuits) have been listed in the Annex to [Commission Regulation \(EU\) 2019/343 of 28 February 2019 providing derogations from Article 1\(3\) of Regulation \(EC\) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on food for the use of certain generic descriptors](#).

Already in 2014, the Italian Ministry of Health forwarded an [application](#) under Regulation (EU) 907/2013 by the Italian dairy association *ASSOLATE* and the Italian food supplements association *AIIIPA*, together with *YLFA International*, the Yoghurt and Live Fermented Milks Association, to the Commission, proposing the word '*probiotic*' as a generic descriptor. After receiving a valid application from an EU Member State, and eventual opinions from other EU Member States, the Commission may, within a reasonable time, initiate the procedure of approval of the generic descriptor pursuant to Article 1(4) of the NHCR. However, the Commission does not appear to have reached a decision. The information required, in particular the need to show consumers' understanding and perception of the implied health effects, as well as evidence that consumers link given generic descriptors to a particular class of foods or beverages, appears to be a major stumbling block in the authorisation procedure for generic descriptors, which some have seen as a "*softer*" version of the strict health claims approval procedure under the NHCR.

### **Outlook for the term '*probiotic*'**

Further to the possibility of using the term '*probiotic*' on product labels, on the basis of the mutual recognition principle, the approval of the term '*probiotic*' as generic descriptor, with strict requirements for its use, appears to be an interesting and '*harmonised*' option. Interested food business operators and their legal advisers should pursue the mutual recognition of probiotics in other EU Member States or consider filing a new application for a '*generic descriptor*', as long as there is no harmonised approach on the marketing of probiotics at the EU level.



## Recently Adopted EU Legislation

### Trade Law

- *Commission Implementing Regulation (EU) 2021/425 of 9 March 2021 suspending commercial policy measures concerning certain products from the United States of America imposed by Implementing Regulation (EU) 2020/1646 following the adjudication of a trade dispute under the Dispute Settlement Understanding of the World Trade Organization*

### Trade Remedies

- *Commission Implementing Regulation (EU) 2021/441 of 11 March 2021 imposing a definitive anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

### Customs Law

- *Commission Implementing Regulation (EU) 2021/442 of 11 March 2021 making the exportation of certain products subject to the production of an export authorisation*

### Food Law

- *Commission Implementing Regulation (EU) 2021/426 of 10 March 2021 correcting Implementing Regulation (EU) No 1263/2011 as regards the authorisation of *Lactococcus lactis* (NCIMB 30160) as a feed additive for all animal species (Text with EEA relevance)*
- *Commission Implementing Regulation (EU) 2021/428 of 10 March 2021 adopting standard data formats for the submission of applications for the approval or the amendment to the conditions of approval of active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council (Text with EEA relevance)*
- *Commission Regulation (EU) 2021/418 of 9 March 2021 amending Directive 2002/46/EC of the European Parliament and of the Council as regards nicotinamide riboside chloride and magnesium citrate malate used in the manufacture of food supplements and as regards the units of measurement used for copper (Text with EEA relevance)*

### Other

- *Decision (EU) 2021/429 of the European Parliament of 20 January 2021 extending the term of office of the Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to the protection of animals during transport within and outside the Union*

- *Decision No 2/EC/2020 of 11 February 2021 of the Joint Committee set up under the Agreement on Mutual Recognition between the European Community and Japan related to the registration of a conformity assessment body under the Sectoral Annex on Telecommunications Terminal Equipment and Radio Equipment [2021/433]*
- *Decision No 3/EC/2020 of 11 February 2020 of the Joint Committee set up under the Agreement on Mutual Recognition between the European Community and Japan related to the registration of a conformity assessment body under the Sectoral Annex on Telecommunications Terminal Equipment and Radio Equipment [2021/434]*

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