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The European Commission publishes the *Operating Guidelines* for complaints on market access and sustainability commitments: Towards enhanced utilisation?

On 19 January 2024, the European Commission's Directorate-General for Trade published the *Operating Guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements*, (hereinafter, Guidelines), which "*aim to help interested stakeholders understand the operation of the Single Entry Point complaint system*" by explaining "*how the European Commission's International Trade department's Single Entry Point for complaints about trade barriers or non-compliance with sustainability commitments in third countries operates and provides guidance on how to launch such complaints*". This article breaks down the procedural requirements and processes involved in lodging complaints on trade barriers or non-compliance with commitments on trade and sustainable development (hereinafter, TSD) in the EU's preferential trade agreements (hereinafter, PTAs) or unilateral trade arrangements, underscores the significance of the Guidelines for EU businesses and stakeholders, and provides insights on how to ensure an admissible complaint.

The EU's increasing focus on implementation and enforcement

Over the past twenty years, the EU has concluded an increasing number of preferential trade agreements. Following their conclusion, the European Commission (hereinafter, Commission) has been placing increased focus on their implementation and enforcement. On 16 November 2020, the Commission launched the Single Entry Point (hereinafter, SEP) complaint mechanism, which is available via the Commission's Access2Markets website and is now further explained in the *Guidelines*. The SEP forms part of the EU's trade enforcement toolbox and enables EU businesses and stakeholders to take a proactive role in the pursuit of the enforcement of EU trade agreements and arrangements, thereby contributing to maintain a rules-based multilateral trading environment by flagging trade frictions and triggering investigations by the Commission with regard to market access, as well as violations by third countries of their TSD commitments under the EU's PTAs and commitments under the EU's

Generalised Scheme of Preferences (hereinafter, GSP) (see *Trade Perspectives*, Issue No. 22 of 27 November 2020).

Market access barriers can be '*border measures*', which directly affect EU exports to third countries, such as sanitary and phytosanitary measures, tariffs and quantitative restrictions, administrative procedures and import licensing, but also '*behind-the-border*' measures, which affect products after importation, including restrictions related to unjustified technical barriers to trade and related to the provision of services. Violations of TSD commitments can relate to commitments under International Labour Organization (ILO) conventions and Multilateral Environmental Agreements (see *Trade Perspectives*, Issue No. 15 of 1 August 2022 and violations of GSP commitments relate, in general terms, to serious and systematic violation of principles laid down in international conventions on fundamental human rights and labour rights, as well as, under the GSP+, to the ineffective implementation of 27 international conventions on human rights, labour rights, environmental and climate protection, and good governance (see *Trade Perspectives*, Issue No. 10 of 23 May 2022).

New helpful Guidelines from the Commission

The SEP *Guidelines* provide detailed information covering the complaint process, from pre-submission to follow-up, and include two Annexes, namely "*Annex 1: Practical guide to filling out the market access complaint form*" and "*Annex 2: Practical Guide to filling out the TSD/GSP complaint form*". According to the *Guidelines*, complaints relating to market access issues are admissible if they are made by: 1) An EU Member State; 2) An entity having its registered office, central administration or principal place of business within the EU; 3) An industry association of EU companies; 4) An association of EU employers; or 5) A trade union or trade union association formed in accordance to the laws of any EU Member State. Complaints regarding alleged breaches of TSD or GSP commitments may also be submitted by citizens of any EU Member State, as well as by a Non-Governmental Organisation (NGO) established in accordance with the laws of any EU Member State. The complainant must explicitly state if it is acting solely on its own behalf or also representing additional interests, such as "*similar entities or organisations located in the partner country*". In simple terms, the complainant must have a vested interest the matter.

In order to ease the Commission's assessment of "*the strength and importance of a potential case*", as well as the Commission's decision on "*the subsequent course of action*", the complainant should endeavour to make a well-substantiated formal complaint, covering: 1) The identity of the complainant and contact details; 2) Information about the trade barrier; 3) The Economic/Systemic Impact; and 4) Information on any actions taken by any authority/company/industry association/other body seeking "*redress from the measure through the national authorities (including domestic courts) of the country imposing the measure*". The information on the trade barrier should contain factual and legal information regarding the issue, such as the legal text of the measure, the category of the alleged trade barrier and the sector it impacts, as well as the products or services affected by the barrier, including the Customs codes for goods or the official classification for services. According to the *Guidelines*, it is imperative that the description be "*as precise as possible and not simply refer to broad product or service categories*". Engaging expert guidance in this process would assist to ensure the complaint's precision and comprehensiveness, thereby maximising the potential for a successful resolution.

Substantiating TSD or GSP violations: Challenges ahead?

The factual and legal description of TSD or GSP violations may be even more complex. The complaint could relate to legislation or administrative practices infringing on the commitments, while the latter tend to be difficult to prove and, consequently, to address. In that regard, the *Guidelines* note that the legal basis for TSD or GSP violations would normally originate from the non-compliance with international conventions, the adoption of violating domestic legislation, or the improper implementation of domestic measures. When explaining the violation and the legal basis for the complaint, the complaint should "*indicate the provision/s in*

FTAs (for TSD complaints) or in the GSP Regulation (for GSP complaints) allegedly violated by the third country", as well as "*the legal provision/s or practice/s of the third country violating the provision/s identified in the first question*". For TSD or GSP complaints linked to administrative practices in a third country, the complainant must ascertain that the violation is a widespread practice and not an isolated case of non-compliance. The *Guidelines* note that information on the impact and seriousness of the alleged breach of TSD or GSP commitments can be substantiated by showing "*for example damage caused to the environment or to workers in the trading partner, as well as, if available, the estimated economic impact for EU operators trading with or investing in the trading partner*". Information on the economic impact of market access barriers can concern the impact on the exports, losses, production, sales, or additional costs to comply with the barrier.

Compared to market access barriers, complaints on TSD or GSP commitments require detailed and comprehensive information on prior actions taken by any company/industry association/other body against the violation, including the specific actions taken, the authorities involved, the outcomes, an explanation of why the complainant considers the outcome insufficient or improperly implemented, if the violation was "*already analysed by competent international monitoring or supervisory bodies and if any action has been taken*" and "*how the relevant monitoring or supervisory bodies of international conventions (e.g. International Labour Organization, United Nations, Multilateral Environmental Agreements) deal with and act upon the alleged violations*".

Assessing and addressing the complaint

After a stakeholder submits a complaint, the Commission shall conduct a preliminary assessment to establish "*the completeness of the submitted information and the strength of the evidence provided*" and might engage with the complainant in order to gather additional information and evidence. Following the assessment, the complainant is informed as to whether the complaint will lead to an enforcement action, accompanied by an enforcement action plan to address the issue. In this context, the *Guidelines* note that "*the Commission's response may vary from diplomatic means to international monitoring/supervision or formal dispute settlement (at the WTO, or bilaterally) or to unilateral measures*".

For example, the Commission's 2023 *Report on Implementation and Enforcement of EU Trade Policy* discusses EU enforcement action following a complaint lodged via the SEP in March 2022 regarding a measure in Egypt. The complaint concerned "*the mandatory use of a letter of credit*", which refers to a contractual commitment by the foreign buyer's bank to make a payment once the exporter ships the goods and presents the required documentation, "*as a prior payment condition for imports into Egypt of a wide range of goods*", which "*enabled the Central Bank of Egypt to control the supply of foreign currency for imports by delaying the issuing of the letters of credit*". The measure caused delays and increased costs for EU businesses and "*de facto limited import volumes given the limited foreign currency made available to importers*". The Commission's assessment concluded that the measure was incompatible with the World Trade Organizations' General Agreement on Trade and Tariff of 1994 and the *EU-Egypt Association Agreement*. To address the measure, the Commission "*engaged directly with the Egyptian government at various levels (e.g. WTO forums and bilateral contacts under the Association Agreement) to ensure the barrier's swift removal*". Consequently, in January 2023, Egypt removed the measure.

In order to obtain swift results and to ensure the most efficient use of the complaint mechanism, the *Guidelines* note that complaints are prioritised based on: "*(1) the likelihood of resolving the issue, (2) the legal basis, and (3) the economic/systemic impact for market access barriers or the seriousness of the violation for TSD/GSP obligations".* Before lodging a complaint, the complainant has the option of seeking assistance from the SEP through the "*pre-notification*" process to, *inter alia*, better understand the extent of the information to be submitted. While there is no timeframe for the Commission to respond to or to address complaints, the indicative timeframe to assess a TSD complaint is 120 working days from its receipt.

Reaping the benefits of successful complaints

Trade barriers can have significant financial impacts for EU businesses, leading to increased costs and affecting competitiveness and market access opportunities for EU products and services in third countries. Given the complexity and precision required in preparing a well-substantiated formal complaint, it is highly recommended that affected or interested stakeholders seek expert assistance to ensure the accuracy and comprehensiveness of the information provided, thereby enhancing the likelihood of a favourable outcome against the trade barrier or the violation of TSD or GSP commitments by third countries. This will not only streamline the process, but also significantly increase the chances of redress regarding the measure.

Improving consumer information? Singapore's actions regarding '*greenwashing*' and similar approaches around the world

The issue of '*greenwashing*', a marketing technique used by companies to make their products and/or services appear more environmentally friendly than they are, has become a growing concern around the world, including in Singapore. In November 2023, the *Centre for Governance and Sustainability* of the National University of Singapore Business School published a study on *Promoting best practices in online marketing*, which found that "*unsubstantiated*" claims on the sustainability of consumer products were the most common form of '*greenwashing*' in Singapore. In light of this finding, the *Competition and Consumer Commission of Singapore* (hereinafter, CCCS) announced in November 2023 that it is developing guidelines to clarify the environmental claims that could be considered as unfair practices under Singapore's *Consumer Protection (Fair Trading) Act*. Also in November 2023, the *Advertising Standards Authority of Singapore* adopted its first decision against an advertisement in view of '*greenwashing*'. This article provides an overview of the practice of '*greenwashing*', the relevant developments in Singapore, and similar developments in other jurisdictions, such as the EU, the UK, and the US.

Singapore's legal framework addressing 'greenwashing' practices

Singapore does not have specific legislation dedicated to combating '*greenwashing*', but there are laws and regulations related to advertising standards and consumer protection that can be used to address misleading environmental claims. Singapore's Consumer *Protection (Fair Trading) Act*, which entered into force on 15 April 2009, sets out the rules to protect consumers against "*unfair practices*". Under the Act, "*unfair practices*" encompass several actions, including: 1) Saying or doing something that could potentially deceive or mislead a consumer; 2) Making false or misleading claims; and 3) Claiming that goods or services meet a specific standard, quality, grade or capacity, when in fact they do not.

The *Singapore Code of Advertising Practice* (hereinafter, SCAP), which was issued by the *Advertising Standards Authority of Singapore* (*i.e.*, a self-regulatory body of Singapore's advertising industry) in 2008, provides a set of guiding principles that are intended to "*promote a high standard of ethics in advertising*". The basic rule of the *SCAP* is that all advertisements be "*legal, decent, honest and truthful*". Appendix L of the SCAP details the standards relating to environmental claims, noting, *inter alia*, that: 1) The basis of any claim should be "*explained clearly and qualified where necessary*"; 2) Claims and comparisons such as the term '*greener*' should be substantiated; and 3) The use of extravagant language "*should be avoided*". If an infringement of the *SCAP* is found, the *Advertising Standards Authority of Singapore* can issue non-binding decisions, requesting the concerned company to either modify or withdraw the relevant advertisement.

'*Greenwashing' in Singapore*

The rise of '*greenwashing*' appears to coincide with an increase in consumer demand for sustainable products. A survey conducted by a consulting firm in 2023 found that consumers globally were willing to pay "*a premium of 12% on average for minimized environmental impact, and the most concerned consumers will pay significantly more depending on the product*".

In light of the proliferation of online shopping in Singapore, in November 2023, the *Centre for Governance and Sustainability* of the National University of Singapore Business School conducted a study to "*elucidate the state of greenwashing among e-commerce merchants in Singapore*". The study assessed the '*green*' claims of more than 1,000 products available on the 100 most visited e-commerce sites by Singapore residents in October 2022 and concluded that 51% of the sampled products contained elements of unsubstantiated claims. For instance, the study found that several products described as "*certified eco-friendly*" or that claimed to use "*certified materials*" actually did not have the relevant ecolabel certifications. Additionally, "*technical jargon*", which refers to a claim containing language or complex scientific jargon that makes it difficult for people to understand and verify, was identified as the next common form of '*greenwashing*'. The examples referenced in the study include the use of technical terms for specific types of petroleum-based plastics such as "*ABS*" and "*ethylenevinyl acetate*" and labelling them as environmentally friendly without further elaboration.

Forthcoming official guidelines on environmental claims

In response to the findings of the study by the National University of Singapore Business School, the *Competition and Consumer Commission of Singapore* announced in November 2023 that it is developing a set of guidelines to offer businesses and other stakeholders more clarity on environmental claims that could be considered as "*unfair*" under the *Consumer Protection (Fair Trading) Act*. In the meantime, the *Competition and Consumer Commission of Singapore* advised businesses, particularly suppliers, when making specific environmental claims, to provide credible evidence alongside these claims, to use language that can be easily understood, and to not overstate their environmental credentials. Reportedly, the *Competition and Consumer Commission of Singapore* will hold a public consultation sometime during the course of 2024 once the draft has been finalised.

Singapore's first decision against 'greenwashing'

In December 2023, the *Advertising Standards Authority of Singapore* issued a decision against an advertisement that carried misleading or unsubstantiated environmental claims, constituting Singapore's first '*greenwashing*' case. A Singaporean company that sells smart air conditioners, monitors, and 4K Smart TVs, had posted an advertisement for one of its air-conditioners, claiming that the product was the "*best tip*" to "*save the Earth*". The *Advertising Standards Authority of Singapore* found that the advertisement was in breach of the *SCAP* provisions, which state that advertisements should not mislead by "*inaccuracy, ambiguity, exaggeration, omission or otherwise*" and should not "*misrepresent any matter likely to influence consumers' attitude to any product, advertiser, or promoter*". The *Advertising Standards Authority of Singapore* further noted that any claims regarding energy savings "*should be substantiated by tests conducted by independent parties in conditions that apply to the local context*". The company then complied with the decision by removing the advertisement from social media.

UK and US Guidance on 'green' claims

With the rise of '*greenwashing*', many countries are stepping up efforts to protect consumers and ensure transparent business practices. In 2021, the UK's *Competition and Markets Authority* published a *Green Claims Code* to assist businesses in complying with responsibilities under the *Consumer Protection Law*, when making environmental claims. The *Green Claims Code* applies to any product, service, and advertising, by any commercial entity that is "*aimed at/supplied to a UK consumer*". The *Green Claims Code* sets out, *inter alia*, to ensure that the environmental claims are "*genuinely green*", notably that the claims be truthful

and accurate; consider the full life cycle of the product; and be substantiated, which means that businesses must be able to prove their claims through credible data evidence.

In the US, the US *Federal Trade Commission*, an independent agency of the US Government, whose principal mission is the enforcement of civil antitrust law and the promotion of consumer protection, issued a *Green Guide*, which serves as a guide for environmental marketing claims. The *Green Guide* provides, *inter alia,* general principles for using environmental marketing claims and how marketers can prove their claims to avoid deceiving consumers. The *Green Guide* was first issued in 1992 and last updated in 2012. In December 2022, a review was launched to revise the 2012 *Green Guide*.

The EU is also developing its own stronger rules on '*green*' or environmental claims. In recent times, the European Commission has published two legislative proposals to address '*greenwashing*', namely the *Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)*, which was published on 22 March 2023, and the *Proposal for a Directive as regards empowering consumers for the green transition through better protection against unfair practices and better information*, which was published on 30 March 2022 (see *Trade Perspectives*, Issue No. 7 of 10 April 2023). On 20 February 2024, the Council of the EU adopted the *Directive as Regards Empowering Consumers for the Green Transition* and EU Member States will have 24 months to transpose the Directive into national law.

Both Directives aims at *addressing* unfair commercial practices by, *inter alia*, mandating clearer labelling of products and prohibiting the use of general environmental claims, such as "*environmentally friendly*" and "*natural*" without accompanying and substantiated proof to such claims.

Towards stricter rules to substantiate 'green' claims?

Concerning the substantiation of environmental claims, Singapore's *SCAP* generally stipulates that environmental claims should not be used without qualification, unless advertisers can provide "*convincing evidence that their product will cause no environmental damage*". The UK's *Green Claims Code* provides a similar approach by requiring businesses to substantiate their claims with adequate evidence, which could be through certification or scientific analyses by independent parties. In contrast, the US's *Green Guide* provides more general requirements by requiring businesses to have a "*reasonable basis*" for the claims that they make, which could be proven through certification by competent authorities or by relying on scientific evidence. This may vary depending on the type of the product and claims. The EU's forthcoming *Green Claims Directive* shall likely provide for much more detailed rules to substantiate '*green*' claims. Businesses will need to: 1) Weigh the positive environmental impact against any negative impact; 2) Have their claims verified by a recognised third party; and 3) Revise the substantiation according to scientific developments.

In terms of enforceability, the *SCAP*, the UK's *Green Claims Code,* and the US's *Green Guide* are not "*laws*" and are not directly enforceable. These codes and guidelines merely serve as guidance for the relevant competent authorities' interpretation when enforcing misleading advertisements related to environmental claims under their respective advertisement and consumer protection laws, or within self-regulatory bodies and related rules. In contrast, the provisions of the two EU directives, once transposed into the respective national laws of each EU Member State, will be enforceable by EU Member States' authorities.

What new legislation governing 'greenwashing' means for businesses

Due to the increasing number of regulations, guidelines, or codes addressing '*greenwashing*', including in Singapore, businesses will have to become more responsible and transparent, and will be held increasingly accountable for their environmental claims. When exporting their products to foreign markets, globally active businesses should be aware of potentially more stringent rules on the use of environmental claims, such as in the EU under the forthcoming

Green Claims Directive. Businesses will have to be able to substantiate claims with reliable data and ensure that there is sufficient supporting evidence to back up any environmental claim. Companies could also consider partnering with verified certifying bodies to validate their claims, which would increase their credibility and, consequently, build consumer's trust. Governments have a crucial role to play in providing clear rules or clear guidance on the proper interpretation of general consumer protection rules and with respect to the implementation and enforcement of the relevant legislation, to the benefit of consumers and, ultimately, of the environment.

The European Commission proposes to ban Bisphenol A in food contact materials and launches a public consultation

On 8 February 2024, the European Commission (hereinafter, Commission) published a *Proposal for a Commission Regulation on the use of bisphenol A (BPA) and other bisphenols and their derivatives with harmonised classification for specific hazardous properties in certain materials and articles intended to come into contact with food, amending Regulation (EU) No 10/2011, amending Regulation (EC) No 1895/2005 and repealing Regulation (EU) 2018/213*. The proposed comprehensive prohibition on the use of Bisphenol A (hereinafter, BPA) in food contact materials, including plastic and coated packaging, as well as other types of products, such as food processing equipment, follows a scientific assessment by the *European Food Safety Authority* (hereinafter, EFSA), which had been published on 19 April 2023. This article provides an overview of the EFSA's assessment and the proposal by the Commission, discussing the implications of the prohibition of BPA in food contact materials for the food industry and the need for transitional periods.

The uses of Bisphenol A (BPA)

The substance *4,4'-isopropylidenediphenol* (CAS number 80-05-7), commonly known as Bisphenol A (BPA), is used in the manufacture of certain food contact materials and food contact articles. Primarily, BPA is used in the manufacture of epoxy resins that form the basis of varnishes and coatings, including those applied to the internal and external surfaces of metal food packaging, such as cans, tins, and jar lids, as well as in certain types of plastic, including polycarbonate and polysulfone food storage and processing equipment. Due to its diverse chemical properties, BPA may also be used in other materials, such as printing inks, adhesives, and ion-exchange resins and rubbers that form part of finished food contact articles. BPA can migrate into food from the material or article with which it is in contact, resulting in exposure to BPA for consumers of those foods.

The EFSA's assessments

Prior to the scientific assessment published on 19 April 2023, in 2015, the EFSA had established a temporary tolerable daily intake (hereinafter, TDI), which refers to the amount of a substance in food deemed safe for people, for BPA of 4 nanograms per kilogram (µg/kg) body weight (bw) per day. In 2016, the Commission mandated the EFSA to re-evaluate the risks to public health from the presence of BPA in foodstuffs, to establish a TDI, and to take into account the results of new studies and scientific data to address remaining uncertainties, including the output from a study from the US' National Toxicology Program. In its 2023 assessment, the EFSA concluded that "*there are health concerns associated with current exposure levels to BPA, notably on the immune system, for consumers across all age groups*". The EFSA set a TDI at 0.2 ng/kg of body weight, which is 20,000 times lower than the provisional TDI of 4 µg/kg (or 4,000 ng/kg) of body weight that had been recommended in its previous opinion in 2015.

No scientific consensus in EU agencies on BPA's safety: EFSA vs. EMA

While BPA has been considered a chemical of special concern for a long time, there appears to be no scientific consensus on its safety. BPA has been identified by the *European Chemicals Agency* (ECHA) as an endocrine disruptor and a substance of very high concern. However, in response to the EFSA's publication of its scientific opinion on 19 April 2023, the *European Medicines Agency* (hereinafter, EMA) published a *Report on divergent opinion between EFSA and EMA*, highlighting disagreement with the EFSA's conclusions on the revision of the TDI, as "*the agencies make use of different assessment tools*". The EMA is responsible for evaluating benefits and risks of medicines and medicine-device combinations. BPA may be present in primary packaging material and manufacturing equipment used in the manufacturing process of medicines, in medicine containers, medicine/device combinations, and in parenteral nutrition bags.

BPA's current authorisation for use as a monomer in plastic food contact materials

BPA is currently authorised for use as a monomer in plastic food contact materials, in accordance with *Commission Regulation (EU) No 10/2011/EU on plastic materials and articles intended to come into contact with foodstuffs*. In 2002, the former specific migration limit (SML) of 3 mg/kg was reduced to 0.6 mg/kg and then further reduced to 0.05 mg/kg by *Commission Regulation (EU) 2018/213*, following the EFSA's 2015 opinion. In addition, *Commission Implementing Regulation (EU) No 321/2011* (see *Trade Perspectives*, Issue No. 22 of 3 December 2010) and *Commission Regulation (EU) 2018/213* place restrictions on the use of BPA, in the manufacture of polycarbonate infant feeding bottles and in varnishes and coatings intended to come into contact with food, respectively, amending *Regulation (EU) No 10/2011 as regards the use of BPA in plastic food contact materials*. Furthermore, on 2 January 2020, the restrictions on the placement on the market of thermal receipt paper containing BPA entered into force under *Commission Regulation (EU) 2016/2235 of 12 December 2016 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards bisphenol A*.

The Proposal – "*a shift away from conventional chemistry*"

The proposed prohibition of BPA in food contact materials would "*apply in particular to food and drink cans but also to kitchenware, tableware and food contact articles used in professional food production*". According to the Commission, the "*prohibition on the use of BPA presents a significant shift away from conventional chemistry, on which business operators have relied for many decades to manufacture food contact materials and articles for many different applications and that are currently widely used on the Union market*". The Commission notes in its Proposal that, "*in light of the TDI established by the Authority in its 2023 opinion, even very small amounts of BPA that migrate from food contact materials and articles several-fold below the current SML could lead to exposure above that TDI*" and that, "*in order to minimise its presence and migration into food and subsequent consumers' dietary exposure as far as possible, its use in the manufacture of those food contact materials and articles in which it may be used, including plastics, varnishes and coatings, printing inks, adhesives, ion-exchange resins and rubbers should be prohibited*". Finally, the Commission considered that, in addition to the new rules laid out in the Proposal, "*Regulation (EU) No 10/2011 should be amended to remove BPA from the list of substances authorised for the use in the manufacture of plastic food contact materials and articles*".

For certain food contact materials and food contact articles, where "*currently no alternatives exist that are technically feasible at commercial scale*", the Commission's Proposal grants a derogation from the prohibition of the use of BPA in their manufacture, namely for the synthesis of *Bisphenol-A diglycidyl ether* ('*BADGE*') for heavy-duty varnishes and coatings, as well as for *polysulfone* resins for use in filtration membranes.

As there is a lack of information on the levels of BPA in recycled paper and board food contact materials and articles, the Proposal foresees monitoring by business operators and reporting to EU Member States of the unintentional presence of BPA in recycled paper and board food

contact materials and articles. Mandatory monitoring and reporting to EU Member States is also foreseen for food contact materials and articles for which a derogation from the prohibition of the use of BPA in their manufacture is granted. Importantly, "*certain transitional periods will apply after the ban enters into force, to give industry time to adapt*". The length of these transitional periods will depend on the product. Final (*i.e.*, finished) food contact articles, such as films, bottles, trays, or whatever is made out of the food contact material, which comply with the existing rules, as applicable before the date of the entry into force of the draft Regulation, are proposed to be allowed for placement on the EU market for the first time for a transition period of 18 months after the entry into force of the proposed Regulation. For some specific materials and articles, such as final food contact articles using varnishes and coatings manufactured with BPA specifically for the packaging of highly acidic foods, such as processed fruit, vegetables, and processed fish products, the Commission argues that a transition period of 18 months is insufficient, since business operators require additional time to identify and ensure the technical feasibility of alternatives at scale for the whole of the EU market and, therefore, the Proposal foresees a 36-month transition period.

Public consultation: An opportunity to provide feedback on transition periods

In 2011, the EU had prohibited the use of BPA in polycarbonate baby bottles and, in 2016, in thermal receipt paper. In 2018, the EU prohibited the use of BPA in drinking bottles and containers for food intended for babies and children, as well as in paints and coatings. Several EU Member States, namely Belgium, Denmark, France (see *Trade Perspectives*, Issue No. 19 of 21 October 2011), and Sweden, have introduced further restrictions on BPA earlier than the EU.

The comprehensive prohibition on the use of BPA in food contact materials proposed by the Commission is accompanied by a public consultation regarding the "*restrictions on bisphenol A (BPA) and other bisphenols in food contact materials*", including plastic and coated packaging, as well as other types of products, such as food processing equipment. Citizens, businesses, NGOs, and related stakeholders are invited to provide feedback on the Proposal until 8 March 2024. The public consultation is an opportunity for stakeholders to provide feedback, especially regarding products where alternatives to BPA are not readily available.

Following the public consultation and the positive opinion by EU Member States in the EU's Standing Committee on Plants, Animals, Food and Feed, and the adoption by the Commission, "*certain transitional periods will apply after the ban enters into force, to give industry time to adapt*". Stakeholders should assess the current Proposal, the products covered and, in particular, whether the proposed transition periods provide sufficient time for the transition to BPA-free products.

Recently adopted EU legislation

Trade Law

- *Council Decision (EU) 2024/578 of 29 January 2024 on the signing, on behalf of the Union, of the Protocol amending the Agreement between the European Union and Japan for an Economic Partnership*

- *Commission Implementing Regulation (EU) 2024/399 of 29 January 2024 amending Annex III to Implementing Regulation (EU) 2020/2235 and Annex II to Implementing Regulation (EU) 2021/403 as regards model certificates for the entry into the Union of consignments of certain products of animal origin and certain categories of animals*

- *Council Decision (EU) 2024/571 of 23 January 2024 establishing the position to be taken on behalf of the European Union in the World Trade Organization's 13th Ministerial Conference on the accession of the Union of the Comoros to the WTO*

- *Council Decision (EU) 2024/582 of 21 November 2023 authorising the opening of negotiations with the Republic of Colombia for a Partnership and Cooperation Agreement*

- *Commission Implementing Regulation (EU) 2024/567 of 14 February 2024 amending Implementing Regulation (EU) 2020/761 with regard to the use of digital proof of origin for products originating from Brazil and the management of tariff quotas*

- *Commission Implementing Regulation (EU) 2024/591 of 20 February 2024 amending Implementing Regulation (EU) 2022/2389 concerning the establishment of frequency rates for identity checks and physical checks on consignments of plants, plant products and other objects entering the Union*

Trade Remedies

- *Commission Implementing Decision (EU) 2024/462 of 8 February 2024 concerning the implementation of the judgment of the Court of Justice of the European Union C-461/18 P and the judgment of the General Court of the European Union T-442/12 in relation to Council Implementing Regulation (EU) No 626/2012 amending Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China*

- *Commission Implementing Regulation (EU) 2024/493 of 12 February 2024 imposing a definitive anti-dumping duty on imports of ceramic tiles 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

- *Decision No 1/2023 of the Joint Committee of the Regional Convention on pan-Euro-Mediterranean Preferential Rules of Origin of 7 December 2023 on the amendment of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin [2024/390]*

- *Commission Delegated Regulation (EU) 2024/634 of 14 December 2023 amending Delegated Regulation (EU) 2015/2446 as regards the proof of the customs status of Union goods and the customs formalities relating to electronic cargo sensor devices*

- *Commission Implementing Regulation (EU) 2024/635 of 2 February 2024 amending Implementing Regulation (EU) 2015/2447 as regards the means of proof of the customs status of Union goods and certain provisions relating to Union transit procedures*

Food Law

- *Commission Delegated Regulation (EU) 2024/585 of 8 December 2023 supplementing Regulation (EU) No 251/2014 of the European Parliament and of the Council as regards specific rules for the indication and designation of ingredients for aromatised wine products*

- *Commission Implementing Regulation (EU) 2024/601 of 14 December 2023 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the certification of hops and hop products and related controls*

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