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NOTE TO SUBSCRIBERS

Dear Friends and Readers of Trade Perspectives©,

Please note that Trade Perspectives© will take an editorial break during the WTO's August recess and will resume its fortnightly publication schedule on 6 September 2019. We thank you for your continued interest in Trade Perspectives© and look forward to starting again with renewed energy and enthusiasm our dialogues on international trade and food law as of this Autumn.

The Trade Perspectives© Team

The EU requested a Panel of Experts under the EU-Korea Free Trade Agreement to address its long-standing concerns on certain labour standards in Korea

On 4 July 2019, the EU requested the establishment of a Panel of Experts with the Republic of Korea (hereinafter, Korea) pursuant to Article 13.15 of the Free Trade Agreement between the EU and its Member States and the Republic of Korea (hereinafter, EU-Korea FTA) concerning certain measures that appear to be inconsistent with Korea's obligations related to multilateral labour standards and agreements under the EU-Korea FTA. This is the first time that the EU is requesting the establishment of a panel in the context of an FTA Chapter on Trade and Sustainable Development, which contains the relevant references to social and labour conventions. While the experts will be tasked to make recommendations, the EU might consider further actions in order to attain compliance by Korea.

In its request, the EU refers to four measures of Korea's labour law, two of which relate to the definition of '*worker*', while the other two relate to trade unions: 1) Article 2(1) of the Korean Trade Union Act defines '*worker*' as a person, who lives on wages, salary, or other equivalent form of income earned in pursuit of any type of job. This definition, as interpreted by the Korean courts, excludes some categories of self-employed persons, such as heavy goods vehicle drivers, as well as dismissed and unemployed persons, from the scope of the freedom of association; 2) Article 2(4)(d) of the Korean Trade Union Act states that an organisation is not to be considered as a trade union in cases where persons, who do not fall under the definition

of '*worker*', are allowed to join the organisation; 3) Article 23(1) of the Korean Trade Union Act states that trade union officials may only be elected from among the members of the trade union; and 4) Article 12(1) to (3) of the Korean Trade Union Act, in connection with Article 2(4) and Article 10, provides for a discretionary certification procedure for the establishment of trade unions.

The EU refers to the respective commitments in the EU-Korea FTA, noting that Korea had "*committed, in accordance with the obligations deriving from membership of the International Labour Organisation (ILO) and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, to respecting, promoting and realising, in its laws and practices, the principles concerning the fundamental rights, including the freedom of association and the effective recognition of the right to collective bargaining*".

The EU then provides further details on its concerns, noting that the restrictive definition and interpretation of the term '*worker*' were inconsistent with the principle of freedom of association. Similarly, the EU notes that also the discretionary certification procedure for the establishment of trade unions is inconsistent with the principle of freedom of association. All four measures would, therefore, be inconsistent with Article 13.4(3) of the EU-Korea FTA (on Multilateral Labour Standards and Agreements), which provides, in relevant part, that the Parties commit "*to respecting, promoting and realising, in their laws and practices, the principles concerning the fundamental rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining*".

Additionally, the EU refers to the fact that the last sentence of Article 13.4(3) of the EU-Korea FTA provides that the Parties would "*make continued and sustained efforts towards ratifying the fundamental ILO Conventions*". In this regard, the EU states that, eight years after the beginning of provisional application of the EU-Korea FTA in 2011, Korea has not yet ratified four of those ILO Conventions, namely: 1) The 1948 Freedom of Association and Protection of the Right to Organise Convention; 2) The 1949 Right to Organise and Collective Bargaining Convention; 3) The 1930 Forced Labour Convention; and 4) The 1957 Abolition of Forced Labour Convention.

Importantly, in view of the different type of commitments, disputes under the Chapter on Trade and Sustainable Development are excluded from the general State-to-State dispute settlement mechanism laid out in Chapter 14 of the EU-Korea FTA. Rather, in line with EU practice, the Chapter on Trade and Sustainable Development provides for its own two-tiered mechanism to deal with disputes. At a first stage, on the basis of Article 13.14, the Parties may request Government Consultations "*regarding any matter of mutual interest arising under this Chapter*". At a second stage, on the basis of Article 13.15, the Parties may "*request that a Panel of Experts be convened to examine the matter that has not been satisfactorily addressed through government consultations*".

On 17 December 2018, the EU had requested consultations with Korea on the basis of Article 13.14 of the EU-Korea FTA. The request listed six measures of concern for the EU, only four of which are now subject to the request for the Panel of Experts. In its request for the Panel of Experts, the EU only notes that the consultations had taken place on 21 January 2019, but that "*unfortunately, the consultations did not lead to the matters being satisfactorily addressed and thus failed to settle all the issues raised by the EU*". With respect to the Panel of Experts, Article 13.15(3) of the EU-Korea FTA provides that the Parties were to agree on a list of at least 15 persons with expertise on the issues covered by the Chapter on Trade and Sustainable Development, of whom at least five are to be non-nationals of either Party, who would serve as chair of the Panel of Experts. Additionally, the experts are to be independent of, and not be affiliated with or take instructions from, either Party or organisations represented in the Domestic Advisory Group(s) on sustainable development (environment and labour), which are tasked with advising on the implementation of the Chapter. This list of experts was established by *Decision No 2/2012 of the EU-Korea Committee on Trade and Sustainable Development of 27 June 2012 on the establishment of a Panel of Experts referred to in Article*

13.15 of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part.

In case of a dispute, Article 13.15(3) of the EU-Korea FTA provides that each Party is to select one expert from the list of experts, within 30 days of the receipt of the request for the establishment of a Panel of Experts. If a Party fails to select its expert within such period, the other Party is allowed to select from the list of experts a national of the Party that has failed to select an expert. The two selected experts are then required to decide on the Chair, who may not be a national of either Party. This process should allow the panel to be composed rather swiftly and, on the basis of Article 13.15(1) of the EU-Korea FTA, the panel is to be convened within two months of a Party's request. According to Article 13.15(2) of the EU-Korea FTA, and unless the Parties agree otherwise, the Panel of Experts is required to present to the Parties a report within 90 days of the last expert being selected. Therefore, it can be expected that a report still be submitted before the end of this year.

With respect to the four ILO Conventions yet to be ratified, Korea is reportedly pursuing ratification. In fact, in June 2019, the Government of Korea announced that it would be submitting motions for ratification regarding three of the four conventions (excluding the 1957 Abolition of Forced Labour Convention) to the National Assembly. However, as a favourable vote in Korea's National Assembly is reportedly uncertain, the EU's request for the establishment of a Panel of Experts could be considered as a way to place additional pressure on the Members of Korea's National Assembly to agree on the ratification. While it is not expected that the Panel of Experts would recommend any economic sanctions or measures, Korean commentators note that the EU might very well pursue additional measures that would affect trade between the two Parties. However, unless authorised by dispute settlement decisions under the State-to-State dispute settlement mechanism, the EU remains bound to its own commitments under the bilateral trade agreement.

This request of 4 July 2019 follows a request by the EU, on 20 June 2019, "*for the establishment of an arbitration panel pursuant to Article 306 of the Association Agreement of 21 March 2014 between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part*" (hereinafter, EU-Ukraine Association Agreement) concerning export restrictions of timber and unsawn wood of certain species, as well as on unprocessed timber of all species from Ukraine (see *Trade Perspectives*, Issue No. 14 of 12 July 2019). The main significance of these developments relies in the fact that the EU is increasingly opting to resolve its disputes with trading partners through the mechanisms contained in its bilateral trade agreements. In the case of Ukraine, the relevant disciplines mirror those contained in the General Agreement on Tariffs and Trade (GATT) and the EU could also have opted to pursue the matter through dispute settlement of the World Trade Organization (WTO). This is not the case for the rules on multilateral labour conventions contained in the Chapters on Trade and Sustainable Development that the EU has been pursuing with trading partners as part of its trade agreements. It becomes increasingly apparent that the EU is taking advantage of the available options under this new generation of trade agreements in order to ensure their enforcement and implementation. This approach will likely intensify under the term of the upcoming Commission, which takes office in November of this year. In fact, the President-elect of the Commission Ursula von der Leyen already announced that she intends to appoint a *Chief Trade Enforcement Officer* in order to improve and ensure compliance and enforcement of the EU's trade agreements.

While the procedures for the Panel of Experts are clear, Article 13.15(2) the EU-Korea FTA only notes that the report of the Panel of Experts is to be made available to the Domestic Advisory Group(s) of the Parties, but does not require publication of the report. Stakeholders and all interested parties should closely follow the proceedings in this case and engage with their Governments to contribute to this issue. In more general terms, the increased focus on the enforcement of trade agreement appears to be a key element of EU trade policy in the coming five years and one that could provide many opportunities to protect commercial interests and better guarantee the full and correct implementation of preferential trade agreements.

Is the EU's hazard-based approach restricting trade? WTO Members express concerns about the EU's maximum residue level for *imazalil* in bananas

From 18 to 19 July 2019, the most recent meeting of the World Trade Organization's (hereinafter, WTO) Committee on Sanitary and Phytosanitary (hereinafter, SPS) Measures was held in Geneva. At the meeting, a number of WTO Members, most notably Colombia and Ecuador, raised the issue of the EU's maximum residue levels (hereinafter, MRLs) for pesticides, in particular the MRL for *imazalil*, which is a fungicide typically used in banana production. EU trading partners noted that the EU's MRLS were "*not supported by science and unduly restrict trade*". Already on 4 July 2019, the WTO published a statement submitted by a multitude of WTO Members and EU trading partners regarding the '*Implementation of Non-Tariff Barriers on Agricultural Products*' to the WTO's *Council for Trade in Goods* of the WTO, which also, *inter alia*, referred to the issue of MRLs. Criticism with respect to the EU's setting of MRLs revives once again the discussion among WTO Members on the EU's *hazard-based* approach to regulation.

In the EU, MRLs refer to "*the upper legal level of a concentration for a pesticide residue in or on food or feed set in accordance with Regulation (EC) No 396/2005, based on good agricultural practice and the lowest consumer exposure necessary to protect vulnerable consumers*". In the past, EU Member States maintained and managed their own MRLs for residues of pesticides in food. Because this frequently led to trade issues between EU Member States, in the 1970s, the EU began harmonising MRLs. Four EU Directives on MRLs in and on fruit and vegetables, cereals, foodstuffs of animal origin, and certain products of plant origin, were adopted for transposition and implementation in EU Member States. In 2005, the European Parliament and the Council then adopted *Regulation (EC) No 396/2005 of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC*, which is directly applicable and no longer needed to be implemented nationally by EU Member States. This regulation repealed all previous EU Directives on MRLs for pesticides. The EU's MRLs for pesticides are constantly being monitored and adjusted in Regulation (EC) No 396/2005, as considered necessary and appropriate (see *Trade Perspectives*, Issue No. 3 of 8 February 2019).

In 2018, the European Commission's (hereinafter, Commission) Directorate-General for Health and Food Safety (hereinafter, DG SANTE) proposed *Commission Regulation amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for imazalil in or on certain products*, which was submitted to the EU's Standing Committee on Plants, Animals, Food and Feed (PAFF Committee) Section '*Phytopharmaceuticals – Pesticide residues'* on 28 November 2018. *Imazalil* is a fungicide widely used in agriculture, particularly in the growing of citrus fruits. Additionally, *imazalil* is also used by banana farmers, as a key post-harvest tool to keep the product free from mould and fungus during storage and transport. On 5 April 2019, the Commission submitted a notification to the WTO regarding the envisaged amendment of certain MRLs for *imazalil* under *Regulation (EC) No. 396/2005*. In the description of the notification, the EU stated that lower MRLs were set "*after updating the limits of determination and/or deleting old uses which are not authorised any more in the European Union or for which a human health concern may not be excluded*". WTO Members had until 4 June 2019 to submit comments to the Commission, while the EU set September 2019 as the proposed date of adoption of the measure. In June 2019, the Commission's proposal received a favourable opinion from the Commission's PAFF Committee, Section *'Phytopharmaceuticals – Pesticide residues*', where only Spain voted against the proposal and representatives from three other EU Member States abstained.

The Commission's proposal would amend the MRLs for *imazalil* for certain foodstuffs, including fruit, nuts, and vegetables, as well as products of animal origin. Depending on the product, the amendment would increase or decrease the applicable MRLs. With respect to oranges and

grapefruit, the MRL would be decreased from 5 mg/kg to 4 mg/kg. At the same time, the MRL for *imazalil* in blackberries and raspberries (red and yellow) would increase from 0.05 mg/kg to 2 mg/kg. Most notably though, the MRL for *imazalil* in bananas would decrease from 2 mg/kg to 0.01mg/kg, which is the so-called Limit of Analytical Determination (LOD) and which would effectively ban products for which *imazalil* has been used during production.

On 4 July 2019, a group of WTO Members, namely Australia, Brazil, Canada, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Malaysia, Nicaragua, Panama, Paraguay, Peru, the US, and Uruguay, submitted a statement to the WTO *Council for Trade in Goods* regarding the EU's '*Implementation of Non-Tariff Barriers on Agricultural Products*'. While the statement does not make any reference to a specific pesticide, it refers to EU measures that "*effectively prohibit the use of a number of substances that are required for safe and sustainable agricultural production and have been assessed and authorized for use by many WTO Members*".

At the most recent meeting of the WTO's SPS Committee, many WTO Members, notably Colombia, Costa Rica, the Dominican Republic, and Ecuador, raised concerns regarding the Commission's proposal on MRLs for *imazalil*. In a joint statement, Colombia and Ecuador pointed out that the fungicide was particularly used by banana farmers "*for preserving product quality and safety and keeping the product free from mould and fungus during storage and transport and the period when it is available for sale before reaching consumers on the European market*". These two WTO Members also noted that, currently, there are no phytosanitary alternatives available on the market, which could be used during banana production. According to Colombia and Ecuador, without the use of *imazalil* to preserve banana crops, it would be impossible for banana producers to respond to market demand. For both countries, banana production and, importantly, banana exports to the EU account for an important share of their respective economies. In Colombia, 50,000 hectares are dedicated to the production of bananas for the EU market and, in 2016, a total of 1,700,000 metric tonnes were produced for the EU, which accounted for 90% of Colombia's total domestic banana production. Banana exports from Colombia to the EU account for 80% of all of its agricultural exports. Its main destinations are Belgium, Germany, the Netherlands, and Spain. Ecuador is the world's most important banana exporter and bananas are Ecuador's main export item to the EU, accounting for 30% of total exports.

At the SPS Committee meeting, WTO Members reportedly argued that the EU's proposed amendment of the MRLs for *imazalil* is not supported by science and unduly restricts trade. In their statement, Colombia and Ecuador underlined that the "*amendment of the MRL for imazalil deviates unjustifiably from the Codex Alimentarius standard and lacks any scientific basis*". The EU's envisaged MRL for *imazalil* in bananas would conflict with the MRL under *Codex Alimentarius*, which sets an MRL for *imazalil* for bananas at 2 mg/kg, and with the 2018 Joint Meeting on Pesticide Residues of the Food and Agriculture Organization (FAO) of the United Nations and the World Health Organization (WHO), which favoured an increase of the MRL for bananas from 2.0 to 3.0 mg/kg. Reportedly, the EU responded that the safety of *imazalil* had not yet been conclusively demonstrated and that its decision to reduce the MRL for *imazalil* took into account a *Review of the existing maximum residue levels for imazalil according to Article 12 of Regulation (EC) No 396/2005*, which was published by the European Food Safety Authority (EFSA) in 2017. Furthermore, the EU stated that its decision to reduce the MRL for *imazalil* "*was warranted to protect EU consumers*". In that regard, Colombia and Ecuador noted that the amendments were not based "*on the identification of a risk to consumers, but rather on the lack of the necessary studies that would allow certain risks to be dismissed*". The EU stressed that, if data supporting the safety of *imazalil* were available to other WTO Members, they were encouraged to submit the data to the Commission.

The arguments by the EU and the statements by other WTO Members at the SPS Committee meeting revive the discussion on the EU's overall *hazard-based approach* on regulation vis-à-vis a more *risk-based approach* to regulation, which is used by other countries as a basis for their regulatory activities. The issue has already been raised in previous meetings of the WTO SPS Committee, as well as in the WTO's Committee on Technical Barriers to Trade

(hereinafter, TBT). WTO Members argue that the EU's *hazard-based approach* and the corresponding precautionary principle are contrary to the idea that measures be scientifically and technically justified, be based on risk assessment and not constitute unjustified barriers to trade. In the past, WTO Members have stated that a '*hazard-based*' approach could restrict imports and exports without actually increasing safety for consumers (see *Trade Perspectives*, Issue No. 12 of 17 June 2016). Under Article 2.2 of the WTO SPS Agreement, WTO Members are to "*ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence*". In addition, Article 5.6 of the WTO SPS Agreement states that, "*when establishing or maintaining sanitary or phytosanitary measures*", WTO Members are to "*ensure that such measures are not more trade-restrictive than required*". Despite the repeated calls from other WTO Members noting that the EU's hazard-based approach is more trade restrictive than necessary to fulfil legitimate objectives of protecting human health, animal health and the environment, it does not appear that the EU would reconsider its position, neither for the issue of the proposed amendments to its MRLs, nor in general.

The *Commission Regulation amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for imazalil in or on certain products* is expected to be adopted by the Commission in October 2019 and would then take effect six months later, likely in April 2020. The Commission argued that this time is supposed to allow producers and exporters to prepare for the changes. All relevant stakeholders in the EU and in banana producing countries should closely monitor the evolution of the discussions at the WTO and the likely forthcoming adoption of the Commission's proposal regarding the MRLs for *imazalil* in bananas and other foodstuffs.

A new study on aspartame, as well as '*aspartame-free*' labels on food products, fuel the negative perception towards the sweetener – what is true and what is legal?

In a new study entitled *EFSA's toxicological assessment of aspartame: was it even-handedly trying to identify possible unreliable positives and unreliable negatives?,* published in *Archives of Public Health*, Professor Erik Millstone and Dr Elisabeth Dawson of the University of Sussex claim that the European Food Safety Authority's (hereinafter, EFSA) 2013 review of the sweetener aspartame, in the course of its re-evaluation, was seriously flawed and had disregarded 73 studies that may have indicated that the sweetener could be harmful to health. At the same time '*aspartame-free*' claims are being made on, for example, chewing gum containing different sweeteners than aspartame, with the implied message that whatever is used instead of aspartame is safer and healthier.

Aspartame is a sweetener authorised in the EU as a food additive (E 951) under *Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives* to be used in foodstuffs such as drinks, desserts, sweets, dairy, chewing gums, energy-reducing and weight control products and as a table-top sweetener. Aspartame was previously evaluated by the Joint FAO/WHO Expert Committee on Food Additives (JECFA), the latest in 1981, the EU Scientific Committee for Food (SCF), the latest in 2002, and the EFSA, the latest in 2011. Both JECFA and SCF established an ADI (acceptable daily intake) of 40 mg/kg body weight (bw)/day. Article 32 of *Regulation (EC) No 1333/2008* requires that food additives be subject to a safety evaluation by the EFSA before they are permitted for use in the EU. A programme for the re-evaluation of food additives that were already permitted in the EU before 20 January 2009 has been set up under *Commission Regulation (EU) No 257/2010 setting up a program for the re-evaluation of approved food additives in accordance with Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives*. In the course of the re-evaluation of aspartame, the Panel on Food Additives and Nutrient Sources added to Food (ANS) of the EFSA was asked to deliver a scientific opinion on aspartame as a food additive.

In its Scientific Opinion of 28 November 2013 on the re-evaluation of aspartame as a food additive, the ANS Panel noted, *inter alia*, that there was no epidemiological evidence for possible associations of aspartame with various cancers in the human population. The ANS Panel concluded that aspartame was not a safety concern at the current aspartame exposure estimates or at the ADI of 40 mg/kg bw/day. There was no reason to revise the ADI of aspartame as current exposures to aspartame, and its degradation product DKP, were below their respective ADIs. The ADI is not applicable to Phenylketonuria (PKU) patients. In fact, Article 23(3)(b) of *Regulation (EC) No 1333/2008* states that the labelling of a table-top sweetener aspartame and/or aspartame-acesulfame salt shall bear the following warnings: "*contains a source of phenylalanine*". Annex III 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) specifies in point 2.3 that the wording "*contains aspartame (a source of phenylalanine)*" must appear on the label on foods containing aspartame in cases where aspartame is designated in the list of ingredients only by reference to the E number and that "*contains a source of phenylalanine*" must appear on the label in cases where aspartame is designated in the list of ingredients by its specific name.

The new study by Millstone and Dawson stresses that, since 1974, research has linked aspartame consumption with heightened risk of brain damage, liver and lung cancer, brain lesions and neuroendocrine disorders. It notes that, after aspartame had been approved, consumers reported acute adverse effects, the most common symptoms being neurological problems including severe headaches and blurred vision, as well as rare reports of epileptic-type seizures. Given the alleged shortcomings of EFSA's risk assessment of aspartame, and the shortcomings of previous official toxicological risk assessments of aspartame, the study argues that it would be premature to conclude that aspartame is acceptably safe. Millstone and Dawson demand that a "*fresh review of all the data from all the studies, as well as all other relevant scientific and policy documents, should be conducted. None of the members of that review panel should have any relevant conflicts of interest. Its conduct should be fully transparent and demonstrably compliant with all EFSA Guidance documents*". Reportedly, Professor Millstone is calling for the authorisation to market or use aspartame in the EU to be suspended, pending an independent re-examination of the relevant evidence in order to review the safety and acceptability of aspartame.

Also other experts are calling for more and new research on aspartame. The professor of genetic epidemiology at King's College London, Tim Spector, reportedly argues that more needs to be known about the long-term effects on humans of substances likely to be consumed every day for life and that "*No one has adequately explored the role of aspartame in altering the gut microbiome, which wasn't considered in 2013 and is now known to be key for our health*". Tim Lang, professor of food policy at the City University of London, reportedly called the new research on aspartame "*important and timely, especially at a time when a growing number of manufacturers were reformulating products to contain less sugar, maintaining the sweetness by substituting sugar with artificial sweeteners*".

In an answer given on behalf of the European Commission (hereinafter, Commission) to the European Parliament on 29 August 2016, relating to other '*controversial*' food additives (*i.e.*, monosodium glutamate (MSG or E621) and butylated hydroxyanisole (E320)), the EU Commissioner for Health and Food Safety Vytenis Andriukaitis noted that "*the permitted food additives and all other additives that are on the Union list of permitted additives, have been favourably assessed for their safety by the Scientific Committee for Food and/or the European Food Safety Authority (EFSA) prior to their authorisation. Moreover, permitted additives are kept under continuous observation and the Commission will consider taking appropriate measures, when needed, in the light of new scientific information*".

The EFSA reportedly rejected the suggestion that its evaluation failed to consider all the evidence fairly and insisted that its conclusions were the result of intensive scrutiny. An EFSA spokesperson is quoted stating that "*EFSA's opinion represents one of the most comprehensive risk assessments of aspartame ever undertaken. After a review of all available*

scientific data and consumption information, EFSA concluded that aspartame and its breakdown products are safe for human consumption at current levels of exposure". Therefore, if new scientific evidence were to emerge in relation to the safety of a food additive, the Commission announced that it would consider taking measures on any food additive, be it aspartame or MSG, in line with the rules laid down by *Regulation (EC) No 1333/2008* on food additives.

On 22 July 2019, the *International Sweeteners Association* (hereinafter, ISA), the trade association representing the sweeteners sector with the aim of promoting the introduction, growth and development of safe, calorie-free or low-calorie sweeteners, as well as their use in food, beverages and table-top sweeteners, issued a statement in response to the new study by Millstone and Dawson. The ISA points to scientific opinions from food safety authorities around the world which, in line with the overwhelming body of scientific evidence available, have consistently confirmed that aspartame is safe. The ISA adds that, as for all low-calorie sweeteners, and prior to being approved for use on the market, aspartame has been subject to extensive safety assessments. Additionally, the ISA refers to a recent UK Government-funded study "*Aspartame Sensitivity? A Double Blind Randomised Crossover Study*" on self-reported aspartame sensitivity, which concluded that "*there was no evidence of any acute adverse responses to aspartame*". ISA concludes that, when used in foods, in beverages and in table-top sweeteners, low calorie sweeteners such as aspartame could provide people with a wide choice of sweet-tasting options with low or no calories, and thus can be a useful tool, when used in place of sugar and as part of a balanced diet, in helping reduce overall sugar and calorie intake, as well as in managing blood glucose levels. Low calorie sweeteners are also non-cariogenic, which means that they do not contribute to tooth decay.

The negative perception towards aspartame is, however, also fuelled by '*aspartame-free*' claims, which have been gaining popularity in the US for some time and are now also being made in Europe on, for example, chewing gum containing a different sweetener than aspartame. It is one of those cases (*i.e.*, MSG-free, and palm oil-free), where negative claims are used on competing products with an implied message that whatever is used instead of the often '*demonised*' substance is safer, healthier or greener. The question is whether such voluntary '*negative claims*', aimed at denigrating competing products and/or promoting other products, by implying that whatever is used as an alternative ingredient or nutrient is better, healthier or environmentally greener than what is not used, are legal.

Arguably, '*aspartame-free*' claims are misleading and deceptive under Article 7(1)(a) of the FIR and *Directive 2006/114/EC concerning misleading and comparative advertising*, as such allegation, made in a nutritional context, appears to be an unsubstantiated and misleading generalisation because aspartame is an approved food additive under *Regulation (EC) No 1333/2008* and its consumption is not unhealthy, as scrutinised in EFSA's November 2013 opinion and in the re-evaluation of aspartame in the EU.

There is also a second legal argument. According to the legal concept of '*self-evident and misleading*' advertising, established in Article 7(1)(c) of the FIR, consumers must not be given the impression that something '*special*' is advertised when, in fact, all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients. Products that bear '*aspartame-free*' claims (*e.g.*, chewing gum containing the sweetener E 967 (xylitol) and mandatorily indicating it in the list of ingredients) are promoted as something '*special*'. However, compared to similar foods that possess the same characteristics (*i.e.*, products containing xylitol, which is indicated by law in the labelling's ingredient list - but without an '*aspartame-free*' label), these '*aspartame-free*' products are in no way '*special*'. Therefore, as the sweetener used must be declared, '*aspartame-free*' claims are arguably obvious, unnecessary, redundant, and illegal according to Article 7(1)(c) of the FIR (as '*self-evident misleading*').

'*Aspartame-free*' claims are misleading because they give consumers the impression that products bearing such claims have special properties that other similar products do not have. The Court of Justice of the EU acknowledges that average consumers, who are reasonably

well informed and reasonably observant and circumspect, whose purchasing decisions depend on the composition of the products in question, will first read the list of ingredients. The possible argument that consumers may not look at the lists of ingredients, which are often printed in small font, is also not valid since, according to Article 13(2) of the FIR, mandatory particulars (such as the list of ingredients) must be printed on the package or on the label in such a way as to ensure clear legibility (*i.e.*, in larger fonts than it was usually done before).

Interested stakeholders should monitor eventual developments in relation to aspartame. If new scientific evidence emerges in relation to the safety of a food additive, the Commission announced that it will consider taking measures on any food additive, in line with the rules laid down by *Regulation (EC) No 1333/2008* on food additives. At the same time, affected stakeholders should act against arguably misleading '*aspartame-free*' claims. Legal avenues against misleading advertising and misleading food product labelling are available and should be considered to ensure that consumers are not deceived.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Decision (EU) 2019/1203 of 12 July 2019 determining that a temporary suspension of the preferential customs duty is not appropriate for imports of bananas originating in Guatemala*

Trade Remedies

- *Commission Implementing Regulation (EU) 2019/1259 of 24 July 2019 imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China and Thailand, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2019/1250 of 22 July 2019 making certain imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India subject to registration following the re-opening of the investigation in order to implement the judgments of 10 April 2019, in cases T-300/16 and T-301/16, with regard to Implementing Regulations (EU) 2016/387 and (EU) 2016/388 imposing a definitive countervailing duty and a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India*

- *Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) No 2016/1036*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2019/1249 of 22 July 2019 amending Annex I to Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin*

- *Commission Implementing Regulation (EU) 2019/1248 of 22 July 2019 establishing measures to alleviate a serious threat to the conservation of the eastern Baltic cod (Gadus morhua) stock*

- *Information on the entry into force of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, the Implementation Protocol thereto and the exchange of letters accompanying the Agreement*

Other

- *Information concerning the date of entry into force of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part*
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- *Council Decision (EU) 2019/1261 of 15 July 2019 on the position to be taken on behalf of the European Union within the Joint Committee established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part, as regards the adoption of decisions on the rules of procedure of the Joint Committee and on the terms of reference of the specialised subcommittees*

- *Council Decision (EU) 2019/1260 of 15 July 2019 on the position to be taken on behalf of the European Union within the Trade Committee established by the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, as regards the amendment of Appendices 2-C-2 and 2-C-3 of Annex 2-C of the Agreement*

- *Council Decision (EU) 2019/1251 of 15 July 2019 on the position to be taken, on behalf of the European Union, within the International Sugar Council as regards the extension of the International Sugar Agreement 1992*

- *Notice concerning the provisional application of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part*

- *Decision No 1/2018 of the EU-Ukraine Association Council of 2 July 2018 supplementing Annex I-A to Chapter 1 of Title IV of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part*

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