



## THE MAGGI BAN – HAS THE INDIAN GOVERNMENT DONE ENOUGH TO CONTROL THE DAMAGE?

On June 5, 2015, the Food Safety and Standards Authority of India (the “**FSSAI**”) issued an order against Nestle India Limited (“**Nestle**”) imposing restrictions on the manufacture, sale and distribution of nine (9) variants of Nestle’s product, Maggi instant noodles with tastemaker (collectively “**Maggi Noodles**”).

The main reasons for the ban were:

- the alleged presence of lead content in Maggi Noodles in excess of the permissible levels of 2.5 parts-per million (ppm);
- misleading labeling information on the Maggi Noodles packets that there was no added monosodium glutamate (MSG); and
- the release of a non-standardized product in the market, , “Maggi oats masala noodles with tastemaker”,

which, according to the FSSAI violated Section 26 of the Food Safety and Standards Act, 2006 (the “**Food Safety Act**”), that lists the responsibilities of a food business operator.

Subsequent to the FSSAI ban, Nestle filed a writ petition in the High Court of Judicature at Bombay (the “**Bombay High Court**”) seeking an order to set aside the nationwide ban imposed by the FSSAI and the Maharashtra Food and Drug Administration. On August 13, 2015, the Bombay High Court set aside the ban on the manufacture, sale and distribution of the nine (9) variants of Maggi Noodles on the premise that the order passed by the FSSAI was contrary to the principles of natural justice, because, neither was Nestle provided with a *show cause* notice before the ban was imposed, nor was Nestle given cogent reasons for the ban.

After the FSSAI imposed the ban, food regulators in the United Kingdom, the United States of America, Canada, Australia and Singapore cleared and certified Maggi Noodles as edible and did not report any health concerns. It also came out that the FSSAI had conducted tests only on three (3) out of the nine (9) variants of Maggi Noodles prior to imposing the ban. This raised questions on the FSSAI’s testing standards and its arbitrary conduct. In a bid to explain the inconsistencies and justify its stand against global food regulators, the FSSAI pointed out that Nestle exported Maggi Noodles manufactured in India to various countries, including the United Kingdom, Canada, Singapore and Australia, and that the tests conducted by the regulators in those countries were of the samples taken from batches that were exported and not from batches that were intended for sale in India. On the other hand, Nestle stated that there was no difference in the quality of products which were meant for the purpose of exports and those being sold in India.

During the pendency of the petition filed by Nestle before the Bombay High Court, the Ministry of Consumer Affairs filed a class action suit in the National Consumer Disputes Redressal Commission seeking damages of approximately INR6,400,000,000 (approximately US\$95,522,388) for false labeling, misleading advertisements, bringing defective and hazardous products to India and the sale of Maggi



oats noodles to the public without the FSSAI's approval. Despite the ruling of the Bombay High Court on this issue on August 13, 2015, the class action suit filed by the Ministry of Consumer Affairs has not been withdrawn.

Besides this, recently, in another matter emanating from the FSSAI's notification issued sometime in 2013 (which mandated manufacturers to obtain approvals even for existing products launched in the market), the Supreme Court of India revoked this notification. This is a positive development and will provide a fillip to the food industry. Further, even the controversial chief of the FSSAI who, allegedly, was instrumental in imposing the ban on Maggie Noodles was recently transferred.

### ***Our Comments***

Arbitrary orders such as the one passed by the FSSAI against Nestle, as well as the class action complaint, have caused uncertainty in the minds of foreign investors and are affecting sentiment. While it is necessary for the FSSAI to be an effective regulator, this should not result in an arbitrary use of power. The FSSAI should assess carefully whether a particular product needs to be checked and should not randomly pick on reputable companies. Likewise, the FSSAI must introspect whether the testing standards used by it are on par with those followed globally.

On the other hand, the food industry in India must ensure that their manufacturing processes are foolproof, and any shortcomings are identified and tended to forthwith. The Indian consumer is now fairly aware and will not tolerate substandard products.

The "Make in India" initiative of the Modi government hopes to attract foreign direct investment in various sectors, including the food industry. All said, the government is concerned about the manner in which the Maggi Noodles ban was enforced and handled, and has cracked the whip on the FSSAI chief, thereby seeking to bring in better governance in the system.

To push the "Make in India" movement and to regain and retain the confidence of foreign investors from a long-term perspective, it is important for policy makers and stakeholders in the food sector to push for effective reforms to the existing food safety standards and regulations in India to ensure that there is greater clarity and uniformity, thereby making compliance and operating of business easier.