

BRUSSELS MONITOR

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I. WTO Watch

US to request WTO panel on EU restrictions on poultry imports

On 8 October 2009, the Office of the United States Trade Representative (“USTR”) announced that the US has asked the WTO to establish a dispute settlement panel regarding EU restrictions on imports of US poultry. More particularly, the US has asked the panel to review whether the EU’s ban on the import and marketing of poultry meat and poultry meat products processed with pathogen reduction treatments is consistent with the EU’s WTO obligations.

In 1997, the EU prohibited processing poultry with cleansing techniques known as pathogen reduction treatments (PRTs), a procedure routinely used in the US. This resulted in stopping the shipment of virtually all US poultry to the EU.

In its press release, the USTR notes that, in 2002, the US formally requested EU approval of four PRTs: chlorine dioxide, acidified sodium chlorite, trisodium phosphate, and peroxyacids. The USTR press release highlights the fact that EU agencies have previously issued scientific reports relating to the processing of poultry with these four PRTs. The cumulative conclusion of these reports is that the importation and consumption of such poultry poses no risk to human health. In addition, trisodium phosphate is approved for use as a food additive in the EU. Despite this, on 2 June 2008, a committee comprised of the chief veterinary officers of the EU Member States rejected a Commission proposal to approve the four PRTs. On 18 December 2008, the EU Agricultural and Fisheries Council, which is comprised of the agriculture ministers of the EU Member States, voted against the same proposal. Neither body provided a scientific basis for their respective rejections of the Commission proposal.

The US is now challenging the EU rules on hygiene and marketing of poultry under which slaughterhouses can use only water or other approved substances to rinse meat products, in order to diminish their bacterial contamination (“antimicrobial treatment”, or AMT). This rule applies to all meat products sold in the EC, irrespective of whether they are produced in the EC or they are imported. Products that meet EU standards can enter the EU market. This rule is part of wider EU legislation ensuring a high level of safety throughout the food chain.

The WTO Dispute Settlement Body will consider the request of the US for the establishment of a panel at its next meeting, which is scheduled to take place on 23 October 2009.

II. European Union: Trade

Electrical goods laws, RoHS and WEEE, subjected to further revision

On 3 September 2009, the Council of the EU’s secretariat presented Member State delegations with compromise texts for new RoHS and WEEE Directives. Manufacturers of electrical appliances will likely already know that on 3 December last year, the European Commission made proposals for new (recast) RoHS and WEEE Directives, with a view to toughening up the existing laws, increasing producer responsibility, and intensifying market surveillance in the EU-27.

The recast of the RoHS Directive: One important change brought by the Council’s Presidency is that the draft compromise text covers all electrical and electronic equipment (EEE), unless specifically excluded. Annexes I and II of the original proposed text (respectively, the EEE categories, and products falling within their scope) have been deleted from the text. It follows that the exclusions

from the scope will need to be further refined, and the Presidency has asked delegations for their considerations on this matter (e.g., any suggestions on the nature of such exclusions).

The draft text already excludes defence (military) equipment, equipment which is part of other equipment that does not fall within the scope of the RoHS law, and equipment which is not intended to be sold as a single functional or commercial unit. Newly added to these exclusions are large-scale stationery industrial tools and musical pipe organs.

The main crux of the RoHS law is the prohibition of specific hazardous substances in EEE. Draft Article 4 stipulates that “EEE, including spare parts for its repair or its reuse placed on the market”, must not contain the substances listed in Annex IV. The Annex IV substances are those which are already currently banned under the existing RoHS Directive, namely, lead, mercury, cadmium, hexavalent chromium, PBB and PBDE. No new ones are listed. However, draft Article 4 stipulates that the Commission shall work according to a methodology for adding new substances to Annex IV, which are to be prohibited in EEE.

The draft RoHS text already contains a range of obligations on manufacturers, importers and distributors. Businesses should note, for example, that before placing EEE on the EU market, their importers will have to ensure that the appropriate conformity assessment procedure has been carried out by the producer. Importers will also need to indicate their name, trade name or trade mark, and address, for contact purposes, on the EEE, or if this is not possible then on the packaging or in a document accompanying the EEE.

The recast of the WEEE Directive: Although the Council’s Presidency has put together a draft compromise text of the future law, it acknowledges that difficulties exist on both WEEE collection and recovery targets, particularly as regards the proposed achievement of a 65% collection rate in the year 2016. Therefore, further discussion on the WEEE categories of EEE to be collected is felt to be necessary.

The revised draft text re-inserts Annexes IA and IB (categories of EEE and indicative list of products within their scope). Draft Article 2(4) now specifically adds that WEEE from EEE that is used by both private households and other than private households shall be considered as WEEE from private households. This makes clear that, for example, photocopiers, even if primarily used by businesses, would be considered WEEE from private households if it were reasonable that private persons purchased and used them too.

The new draft also makes clear that “placing on the market” means market of a Member State, rather than the Community. This is important to, e.g., registration obligations, where EEE producers (including importers) would need to register in each national territory in which they place their products on the market.

The draft WEEE law sets out the WEEE collection and recovery targets to be achieved, and also the financing requirements in respect of WEEE. It also stipulates that Member States shall encourage producers to finance all the costs occurring for collection facilities for WEEE from private households. The Council’s latest draft text adds that where Member States impose such requirement on producers (i.e., to finance collection facilities’ costs), they must ensure that the WEEE deposited at collection facilities as well as WEEE collected through other channels are handed over to producers free of charge or, for the purposes of preparing for re-use, to appropriate establishments or undertakings.

While the new draft texts will be debated in Council probably later this year, the European Parliament is expected to vote on the WEEE and RoHS draft Directives in April 2010. It is possible that both new Directives could be adopted immediately thereafter. Their implementation in the EU-27 should then occur 18 months after the date of publication in the EU's Official Journal.

Businesses interested in reviewing the draft texts handed to the Member State delegations can visit the following web pages:

- For the RoHS text: <http://register.consilium.europa.eu/pdf/en/09/st12/st12847.en09.pdf>
- For the WEEE text: <http://register.consilium.europa.eu/pdf/en/09/st12/st12848.en09.pdf>

III. EC Competition

Commission nears deal with Microsoft to end Internet Explorer investigation

On 7 October 2009, the Commission issued a press release announcing that it would be conducting further market tests of remedies proposed by Microsoft intended to settle Commission claims that the operating systems manufacturer had possibly infringed EC rules on abuses of dominant positions by tying its web browser (Internet Explorer) to its client PC operating system.

It may be recalled that, on 15 January 2009, the Commission sent Microsoft a Statement of Objection outlining the Commission's preliminary view that Microsoft may have infringed Article 82 EC. The Commission took the view that the bundling of Internet Explorer with Microsoft Windows operating systems (present on more than 90% of PCs worldwide) distorted competition between web browsers by providing Internet Explorer with an artificial distribution advantage. Additionally, the Statement of Objections alleged that this situation was detrimental to the pace of product innovation in the web browser market and created artificial incentives for software developers and content providers to design their products or websites specifically for Internet Explorer rather than any competing browser.

Subsequently, in July 2009, Microsoft proposed a set of remedies to answer the Commission's competition concerns and has now submitted an amended version of these remedies, following discussions with the Commission. Under the amended proposal, Microsoft would ship new retail versions of Windows operating systems (including the new Windows 7, due to be released to the market on 22 October) that would prompt users, on installation, to choose between different web browsers. OEMs would be left free to decide which browser(s) to install on new Windows PCs. Additionally, current Windows XP and Windows Vista users would be sent an automatic update giving them the opportunity to choose to download a non-Microsoft browser and the option of disabling Internet Explorer. The proposed remedies would only apply to Windows products distributed and/or used within the EU.

The Commission has now published a notice in the EU's Official Journal summarising these proposed remedies and inviting interested parties to submit comments by 9 November 2009. The notice, along with instructions for submitting comments, can be accessed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:242:0020:0021:EN:PDF>.

While the Commission must await stakeholder comments prior to formally accepting Microsoft's proposed remedies, it has indicated that it believes the remedies may be sufficient to settle its concerns. Following the stakeholder comments period, the Commission may choose to adopt a

decision making Microsoft's proposed remedies binding on the company in exchange for closing the ongoing investigation without finding that Microsoft infringed EC law or imposing any fine.

IV. European Union: Regulatory

Member States need to take more action to fight spammers, protect online privacy

On 8 October 2009, the European Commission emphasised that EU countries had to do more to tackle online privacy threats to the public. A Commission-funded study published on that day found that although in recent years several EU countries have taken some measures to enforce Europe's ban on spam, including fines for spammers, the number of prosecuted cases and sanctions imposed on lawbreakers vary considerably. The study confirms the need for the legislative improvements proposed under the reform of the EU's telecoms rules: clearer and more consistent enforcement rules and dissuasive sanctions, better cross-border cooperation, and adequate resources for national authorities in charge of protecting citizens' online privacy.

Although, since 2002, European law has prohibited spam and spyware, on average 65% of EU citizens are still affected by spam on a regular basis. The EU needs to step up our fight against spammers and make sure that it adopts legislation that provides for strong civil and criminal sanctions against spammers. The Commission has called on Member States to reinforce their national efforts to fight on-line privacy threats such as spam, spyware and malicious software.

The main findings of the study indicate that:

- Almost all EU countries now have one or more websites where citizens can find information or make a complaint if they become a victim of spam, spyware or malicious software;
- An analysis of more than 140 enforcement cases from 22 Member States shows considerable differences between the number of cases per country and the fines imposed. The highest numbers of cases were reported in Spain (39), Slovakia (39) and Romania (20). The highest fines were imposed in the Netherlands (€1,000,000), Italy (€70,000) and Spain (€30,000). However, spammers in countries such as Romania, Ireland, and Latvia received modest fines ranging from hundreds to several thousand euros.
- A successful approach to fighting online threats requires a combination of prevention, enforcement and raising public awareness. Public authorities (such as telecoms regulators, data protection and consumer agencies and law enforcement bodies) must have clear responsibilities and cooperation procedures between themselves; while public and private sector must also work together.

The reform of the EU's telecoms rules proposed by the Commission (and currently being finalised by the European Parliament and the Council) would provide conditions for a better enforcement of privacy rules. A new provision in the EU telecoms rules requires that penalties for breaking national laws on online privacy should be effective, proportionate and dissuasive. It further obliges EU countries to allocate the necessary resources to national enforcement authorities.

V. Dumping Watch

A. Initiation of expiry review of anti-dumping measures – synthetic fibre ropes

On 7 October 2009, the Official Journal published a notice of initiation of an expiry review of the anti-dumping measures applicable to imports of synthetic fibre ropes originating in India.

The product under review is twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics, of polyethylene or polypropylene, other than binder and baler twine, measuring more than 50 000 decitex (5 g/m), as well as of other synthetic fibres of nylon or other polyamides or of polyesters, measuring more than 50 000 decitex (5 g/m), originating in India, currently falling within CN codes 5607 49 11, 5607 49 19, 5607 50 11 and 5607 50 19.

It may be recalled that the measures currently in force are a definitive anti-dumping duty imposed by Council Regulation 1736/2004 on imports of synthetic fibre ropes originating in India.

The request was lodged on 4 May 2009 by Eurocord on behalf of producers representing a major proportion, in this case more than 50%, of the total Community production of synthetic fibre ropes. The request is based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of the notice in the Official Journal. All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

The Commission may decide to apply sampling. All interested parties wishing to submit any relevant information regarding the selection of the sample must make themselves known by contacting the Commission and providing the information on their company or companies as specified by the notice. Certain information relevant for the selection of the sample should reach the Commission within 15 days of the date of publication of the notice in the Official Journal and all other information must reach the Commission within a period of 21 days of the date of publication.

The investigation will be concluded within 15 months of the date of the publication of the notice.

B. Definitive anti-dumping duty – aluminium foil

On 6 October 2009, the Official Journal published Council Regulation 925/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China ("PRC").

The product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg and currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10).

It is recalled that the Commission initiated an anti-dumping proceeding following a complaint lodged by Eurométaux on behalf of producers representing a major proportion, in this case more than 25%, of the total Community production of aluminium foil. By Regulation 287/2009 the Commission

imposed a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the PRC.

Following the anti-dumping investigation, it was concluded that the Community industry had suffered material injury. It was considered that the pressure exerted by the dumped imports, played a determining role in the injury suffered by the Community industry. It was therefore decided that a definitive anti-dumping duty should be imposed.

The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty on product concerned originating in the PRC is 6.4% for Alcoa (Shanghai) Aluminium Products Co., Ltd and Alcoa (Bohai) Aluminium Industries Co., Ltd, 20.3% for Shandong Loftan Aluminium Foil Co., Ltd and 24.2% Zhenjiang Dingsheng Aluminium Co., Ltd and 30.0% for “all other companies”. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty is 13.4% on product concerned originating in Armenia and 17.6 % on product concerned originating in Brazil.

Council Regulation 925/2009 entered into force on 7 October 2009.

C. Definitive anti-dumping duty – seamless pipes and tubes of iron or steel

On 6 October 2009, the Official Journal published Council Regulation 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People’s Republic of China (“PRC”).

The product concerned is seamless pipes and tubes, of iron or steel, of circular cross section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis, currently falling within CN codes ex 7304 19 10, ex 7304 19 30, ex 7304 23 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 20, ex 7304 31 80, ex 7304 39 10, ex 7304 39 52, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 81, ex 7304 51 89, ex 7304 59 10, ex 7304 59 92 and ex 7304 59 93 (TARIC codes 7304 19 10 20, 7304 19 30 20, 7304 23 00 20, 7304 29 10 20, 7304 29 30 20, 7304 31 20 20, 7304 31 80 30, 7304 39 10 10, 7304 39 52 20, 7304 39 58 30, 7304 39 92 30, 7304 39 93 20, 7304 51 81 20, 7304 51 89 30, 7304 59 10 10, 7304 59 92 30 and 7304 59 93 20).

It is recalled that the Commission initiated an anti-dumping proceeding following a complaint lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union on behalf of producers representing a major proportion, in this case more than 50%, of the total Community production of certain seamless pipes and tubes of iron or steel. By Regulation 289/2009 the Commission imposed a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the PRC.

Following the anti-dumping investigation, it was concluded that the Community industry had suffered material injury. It was considered that the pressure exerted by the dumped imports, played a determining role in the injury suffered by the Community industry. It was therefore decided that a definitive anti-dumping duty should be imposed.

The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty is 17.7% for Shandong Luxing Steel Pipe Co., Ltd is, 27.2% for “other cooperating companies” listed in the Annex to the Regulation is and 39.2% for “all other companies”.

Council Regulation 926/2009 entered into force on 7 October 2009.

VI. *The Week Ahead*

A. Council

- 14-16 October 2009: Informal Competitiveness Council (internal market, industry an research) (Umea)

B. OECD

- 12-13 October 2009: What Works on Quality Teaching in Higher Education, conference organised by the OECD’s Programme for Institutional Management in Higher Education (IMHE) and hosted by the Istanbul Technical University. Istanbul, Turkey.
- 13-15 October 2009: Developing Rural Policies to Meet the Needs of a Changing World, annual rural development conference organised by the Directorate for Public Governance and Territorial Development with the Canadian authorities. Québec, Canada.
- 13-15 October 2009: World Knowledge Forum 2009. Participation of OECD. Seoul, Korea.
- 14-15 October 2009: Meeting at ministerial level of the International Energy Agency.
- 14-15 October 2009: Global Forum on Finance organised by the OECD/International Organisation of Pension Supervisors (IOPS), followed by Global Forum on Private Pensions. Rio de Janeiro, Brazil.

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