

BRUSSELS MONITOR

A Weekly Review of EU Trade Policy Developments Affecting Japan

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I. WTO Watch

EU-South Korea free trade agreement initialled

On 15 October 2009, EU Trade Commissioner Catherine Ashton and Korean Trade Minister Kim Jong-hoon initialled the EU-South Korea Free Trade Agreement (“FTA”), which is considered by some to be the most important free trade agreement ever negotiated between the EU and a third country.

According to a Commission press release, the FTA will create substantial new trade in goods and services (up to €19 billion for EU exporters, according to one study). The Commission has announced that the FTA will remove virtually all tariff barriers to trade between the two economies, as well as many non-tariff barriers, including regulations and standards in the automotive, pharmaceutical and consumer electronics industries, and create new market access in services and investment. The deal also makes major advances in areas such as intellectual property, procurement, competition policy and trade and sustainable development. More specifically, the Commission claims that the FTA’s entry into force will result in the elimination, or phasing out, of tariffs on 99.4% of EU goods shipped to Korea and 95.8% of Korean goods exported to the European trade bloc, all within a three-year period.

The initialling of the FTA signifies the closing of the negotiations. However, before the FTA can come into force, it will likely require ratification and approval from the European Parliament, the Council, the Korean National Assembly and all 27 EU Member States’ national parliaments. This implies that the FTA is still subject to last minute challenges. The most discussed complication concerning the EU ratification process is that Members of the European Parliament (MEPs) will have the right to veto (and therefore reject the entire FTA), if the Lisbon Treaty comes into force next year. As it stands, it is quite likely that the Treaty will indeed come into force. Political analysts have claimed that an outright veto by MEPs is unlikely because there are large political and economic implications at stake. However, it is quite possible that there will be a few political objections by certain MEPs, which would delay the ratification process. The political approval of the Council may also raise some legal questions because of the complexity of the agreement. Therefore, while the entry into force of the agreement is currently expected in the second half of 2010, political realities on the EU side alone suggest that the EU ratification process may delay this process significantly.

Indeed, industry associations have already started their lobbying campaign to derail the ratification process. According to ACEA, the European carmakers’ association, the FTA goes against the interests of the major manufacturing industries in Europe (e.g., the automotive sector), and their millions of employees. DigitalEurope, the association representing the ICT industry in Europe, has also raised concerns about the FTA’s impact, arguing that lowering or removing tariffs would put European and other non-Korean electronics companies at a competitive disadvantage.

The FTA’s implications go well beyond EU-Korea bilateral relationships. The US and Korea signed a similar free trade agreement more than two years ago. But US concerns over beef and auto trade has blocked the approval of the agreement. US President Barack Obama may now come under increasing pressure to win approval for the deal. The EU-Korea FTA also paves way for similar free trade agreements with India and ASEAN.

II. European Union: Trade

Delays faced in EU transparency reform for trade defence proceedings

Businesses may already be aware that the Commission's Directorate General for Trade ("DG Trade") has launched a reform of its trade defence procedures, so as to improve transparency in the EU's trade defence investigations. However, it has come to light that the reform process is suffering delay, as DG Trade has failed to meet self-imposed deadlines set for September 2009.

Businesses may recall that the Commission had previously faced pressure from Member States, the legal community and EU industry to reform its decision-making process in the context of trade defence proceedings. In response to this pressure, earlier this year, DG Trade indicated that it would institute a series of changes. The planned changes that appear to be of particular interest include:

- (1) improved access to the files for inspection by interested parties in trade defence investigations;
- (2) an improvement in the quality of the disclosure of the Commission's findings at the provisional and definitive stage of trade defence investigations, which would allow interested parties to exercise their rights of defence;
- (3) an overhaul of the current Trade Defence Instruments website so that it includes alert notifications of the initiation of investigations, case timetables, lists of up-to-date and expired measures in force, and also a restricted area whereby interested parties in an investigation can access anti-dumping questionnaires and files for inspection in each investigation;
- (4) enhancing the role of the Hearing Officer in the determination of what information in submissions should be deemed confidential, while still maintaining the quality of files available for inspection by interested parties;
- (5) shortening the length and complexity of anti-dumping questionnaires; and,
- (6) introducing a dedicated help-desk for small and medium sized companies that wish to or that are required to participate in trade defence investigations.

DG Trade had stated that they would launch the new website (see point 3 above) and the help-desk (see point 6 above) by September 2009. Citing technical difficulties, DG Trade now claims that the website will be launched by mid-October 2009. Businesses may like to note that these deadlines are self-imposed and non-mandatory, and therefore DG Trade faces no real consequences for any delays. However, Member States and the legal community have been growing impatient especially because previously available key data (e.g., timetables on DG Trade's existing website) has been withdrawn pending the changes. Businesses can appreciate how inconvenient any such delays are, especially given the recent spike in EU trade defence measures during this economic downturn.

To date, some reforms have already been partially implemented, such as the circulation of non-confidential files in digital format rather than in paper form in certain anti-dumping proceedings. Some of the other above-mentioned reforms, when implemented, will be welcomed by potential interested parties. For example, businesses would likely be interested in improvements to the quality of the disclosure (which in many cases, especially for companies without Market Economy Treatment, can be quite limited); the will to increase the ten-day deadline for comments on the

definitive disclosure; and improved access to the files for inspection in *all* trade defence investigations.

Of course, it still remains to be seen how these reforms will eventually work in practice, and whether all interested parties will benefit in an equal and non-discriminatory fashion from such reforms.

III. EC Competition

Commission seeks views on opportunities and challenges for digital cinema

On 16 October 2009, the European Commission launched a public consultation of professionals from the EU's audiovisual industry on how to best seize the opportunities and address the challenges of the "digital revolution" in the EU film sector.

Digital cinema can make distribution of films cheaper and more flexible, enabling more European films to travel. According to figures published by the European Commission, distributing a digital film copy can be up to 10 times cheaper than a traditional 35 mm print; digital cinema could therefore make it easier for European films to be seen by global audiences. However, digital screening equipment can cost too much for many of Europe's cinemas; roughly 31% of European cinemas are single-screen cinemas and only 10% of cinemas are multiplexes.

The US currently leads the way in digital cinema. A digital master is already available for 90% of all US new films whereas in France (the EU's biggest film producer) less than half of new films are available on digital. In addition, the US developed the VPF ("Virtual Print Fee") model, where third parties collect part of the money saved by film distributors which can then be used to finance digital equipment. In Europe, only 2,428 screens have so far been converted for digital projection. National governments are considering subsidising the transition to digital cinema. Italy has already notified a state aid scheme for which a public consultation is currently underway. Other countries (including, France, Germany and Norway) are planning or finalising their national support schemes, but most art-house theatres (i.e., those that screen European independent films) at the moment have neither public nor private financing to help them go digital.

In launching the consultation, the European Commission wants to find out how digital cinema could impact on the European film sector and, in particular, Europe's 30,000 cinema screens. It invites EU film exhibitors, distributors, national film agencies, and public and private film organisations to share their views. Feedback from cinema and audiovisual professionals as well as national film agencies and other interested parties during the two-month consultation opened by the Commission will feed into a Communication early next year setting out the Commission's policy on digital cinema.

EU Competition Commissioner Neelie Kroes commented: "A public debate on the impact of digital cinema in Europe is long overdue. Significant investment will be necessary and state subsidies may play a role in support of digitisation. Therefore we need a careful understanding of the dynamics of the sector, in order to ensure that transition to digital will be to the benefit of the operators of the cinema sector and ultimately of the consumers."

IV. European Union: Regulatory

All energy-related products to fall within purview of newly adopted ecodesign Directive

On 24 September 2009, the Council of the EU formally adopted a new ecodesign Directive (recast), following a first-reading agreement, in April 2009, with the European Parliament. Businesses may by now be aware that the new Directive will extend the scope of the existing Directive 2005/32/EC on the ecodesign of energy-using products (EuP) to cover, in principle, all energy-related products. It is intended to improve the energy and resource efficiency of a much wider scope of products than the EuP Directive, and reduce demand on natural resources. The Directive is expected to significantly work towards the achievement of greenhouse gas emission targets in the EU.

The current eco-design rules cover only energy-using products. Manufacturers, especially of electrical appliances, will already know that several implementing measures have already been adopted, covering televisions, lighting, stand-by functions in electronic goods, industrial motors, etc., while others are very much in the pipeline and will cover, among others, computers and their monitors, imaging equipment and sound and visual equipment.

However, in the future, products such as windows, insulation materials or water-using products such as shower heads, or taps, will also be covered (these are only a few examples provided at present). The reasoning behind the new law is that while a redesigning of energy-using products (e.g., televisions) could directly bring about reductions in energy consumption, the greening of energy-related products such as, e.g., bathroom fixtures would reduce the amount of water needed, in turn requiring less energy to heat the water.

As for a product list under the new Directive, there is no such list available. The Commission has not come up with any list, with officials insisting that one must look at the definition of the type of products that would fall within the scope of future implementing measures, to get an idea.

Thus, for the purposes of the new Directive, “energy-related product” means any product having an impact on energy consumption during use which is placed on the market and/or put into service in the EU. This definition includes parts intended to be incorporated into energy related products covered by the Directive, that are placed on the market and/or put into service as individual parts for end-users, and for which the environmental performance can be assessed independently.

Manufacturers should bear in mind that the Directive does not itself lay down implementing measures. The Commission will still need to create working groups to study possible design requirements for various product groups and to present concrete draft implementing measures to the Ecodesign Regulatory Committee (made up of Member State experts) and to the Parliament, for final scrutiny and approval.

The final text of the new Directive is still to be published in the EU’s Official Journal. Nonetheless, its substantive provisions were already published on the European Parliament’s website on 24 April 2009, and can be accessed via the following link:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0319>.

It may be of interest to note that the Commission and several parliamentary members had pushed in 2008 to include items such as clothing, footwear, furniture and cleaning products within the scope of the now-adopted Directive, on the basis of the potential for ecodesign requirements to minimise the environmental impact of the production and/or disposal of such items. The potential for a future extension of the Directive to include such products will be discussed again during a review of the Directive’s effectiveness, but this will only likely begin in 2012.

V. *Dumping Watch*

No developments to report.

VI. *The Week Ahead***A. Council**

- 19-20 October 2009: Agriculture and Fisheries Council (Luxembourg)
- 20 October 2009: Ecofin Council (Luxembourg)
- 23 October 2009: Environment Council (Luxembourg)
- 23 October 2009: Justice and Home Affairs Council (Luxembourg)

B. Parliament

- 19-22 October 2009: European Parliament plenary session (Strasbourg)

C. WTO

- 20-21 October 2009: WTO General Council

D. OECD

- 19-21 October 2009: Fisheries committee meeting, organised by the OECD Trade and Agriculture Directorate. Istanbul, Turkey.
- 21-23 October 2009: Science, Technology, Engineering and Mathematics Enterprise: Measures for Innovation & Competitiveness, workshop organised by George Washington University, with participation of the OECD. Washington, DC, USA.
- 22 October 2009: Launch of publication, "Government at a Glance".
- 22-24 October 2009: European Development Days.

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