

# BRUSSELS MONITOR

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*A Weekly Review of EU Trade Policy Developments Affecting Japan*

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## *I. WTO Watch*

### **Recent talks expected to ease tensions in US–China bilateral trade relations**

Following high-level talks between Chinese and US trade officials in preparation for President Obama's visit to China in November 2009, China pledged on 29 October 2009 to lift its ban on US pork, and the US in turn took steps towards easing restrictions on chicken imports.

US–China trade relations have been strained since President Obama imposed a 35% safeguard duty on imports of Chinese-made tyres, which represented the first time that the US had invoked a safeguard clause for China. The latter immediately challenged the action at the WTO and said it would launch an anti-dumping and countervailing-duty investigation against US poultry and automobiles to offset unfair pricing and government subsidies.

Speaking after the bilateral meetings, officials from both countries tried to keep the focus on areas of agreement. Chinese Agriculture Minister Sun Zhengcai and his US counterpart, Tom Vilsack, revealed that China would soon allow imports of US pork, after a ban following the outbreak of the H1N1 flu virus, cautioning, however, that he also hoped the US would “follow Chinese requirements to credibly ensure the quality, safety and health of pork exports to China”. The US Congress has already dropped its ban on US agencies certifying Chinese cooked poultry for US sales and China had restored cooked pork products imports.

China has also agreed to treat products of US-China joint ventures as local products in government procurement tenders and will submit a revised offer to join the WTO's government procurement agreement by 2010. China will also remove its local content requirement in tenders for wind power equipment. The US failed to get China to retreat on regulations over online music distribution, but officials said they were pleased with Chinese pledges to combat and punish Internet piracy.

Chinese Commerce Minister Chen Deming indicated that the US has agreed to establish a working group to examine Beijing's long-standing demand that Washington formally regard it as a market economy, a status that would make it harder to impose trade penalties on China. As part of its WTO agreement, China gets that status automatically in 2016, but is pushing for earlier recognition in light of its market reforms.

However, in a sign that tensions between the US and China still remain, on 28 October, China initiated anti-dumping and anti-subsidy investigations into automobile imports from the US. While it is widely believed that the investigation would not greatly impact US automobile exports, a Chinese Ministry of Commerce official, who declined to be named, said that “launching the investigation on such an occasion, during the two countries' trade negotiations and before the US president's visit, is undoubtedly a kind of pressure tactic by our government, which is hoping that the US will not frequently investigate other trade matters in the future”.

## *II. European Union: Trade*

### **EU in favour of further enlargement with FYROM and Balkan states**

Businesses may well be interested in the progress report on enlargement published by the European Commission on 14 October 2009, in which it sets out the status and plans for the future enlargement of the EU. The document also includes a summary of the progress made over the last twelve months

by each candidate and potential candidate country. As well as indicating which markets are opening up to the EU, in particular with regard to allowing the free movement of goods and services, this information will be interesting to businesses who will benefit from harmonised rules and procedures which are being instituted in these emerging markets.

While the European Commission has found that the enlargement countries and therefore enlargement projects have been impacted by the global economic recession, financing has been provided by the EU to help alleviate the impact of the crisis.

In the report, the European Commission backs opening EU accession negotiations with the Former Yugoslav Republic of Macedonia (“FYROM”) which has been an applicant for EU membership since December 2005. In the progress report, the Commission states that the country meets the five so-called “Copenhagen criteria”. The criteria require that a state have the institutions to preserve democratic governance and human rights, have a functioning market economy, and accept the obligations and intent of the EU. It therefore recommends that negotiations move forward. Accordingly, FYROM’s status has changed from a “potential candidate country” to a “candidate country” for EU accession purposes. Although accession is likely to take some years, this country’s prospects of becoming an EU member have visibly increased.

The progress report also provides a useful update on the other candidates, i.e., Croatia and Turkey, and potential candidates for EU membership, namely, Albania, Bosnia & Herzegovina, Montenegro, Serbia, Kosovo and Iceland.

EU accession negotiations began with Croatia on 3 October 2005 and are considered to be progressing well. Croatia is deemed to be a functioning market economy which should be able to cope with competitive pressures and market forces within the EU, despite having been hit by the global crisis. The Commission considers that if Croatia meets all outstanding conditions, the accession negotiations could be concluded in 2010, after which it could rapidly become the EU’s newest member.

EU accession negotiations with Turkey began on 3 October 2005 and have moved forward, albeit more slowly than with other candidate countries. The Commission has stated that it is now for Turkey to step up its efforts in meeting the conditions for accession, notably in relation to ironing out its political difficulties with Cyprus.

Albania signed a Stabilisation and Association Agreement (“SAA”) with the EU in June 2006, which entered into force in 2009. A potential candidate country for EU membership, Albania’s SAA is a first step towards membership – opening up access to some or all EU markets or to financial or technical assistance in exchange for commitments to political, economic, trade, or human rights reform. Progress on political commitments is seen to be strong and Albania officially applied to be a candidate country in April 2009. However, full candidate status is still not imminent, as the country needs to make political progress and to strengthen its market to ensure it can cope with the competitive pressure and market forces which are at play within the EU. Businesses may be interested to note that Albania is already aligning its legislation, policies and capacity with European standards. However, the Commission has noted that these laws and policies are not necessarily being implemented as yet.

Bosnia & Herzegovina are deemed to have made little progress toward converting their “potential candidate” status for EU membership to “candidate” status: with the Commission expressing

particular concerns with regard to the country's political climate. However, some progress has been made in the field of customs.

As for Montenegro, the overall picture of EU-Montenegro relations is positive. Montenegro applied for membership in December 2008 and is a potential candidate country. In April 2009, the Council invited the Commission to submit its Opinion on Montenegro's application. The Opinion is set to be released in autumn 2010. With regard to its market status – one of the benchmarks which will interest businesses – Montenegro is viewed as having made progress towards establishing a functioning market economy and in aligning its legislation with European standards.

According to the progress report, Serbia has also made good progress towards converting its status to a “candidate country”, achieving relative political stability. However, a damaged economy and concerns regarding Serbia's failure to recognise Kosovo may potentially delay its recognition as a full “candidate” for EU accession. Kosovo itself is seen as having made little progress towards establishing a functioning market economy. Substantial reforms and major investments are considered necessary to enable Kosovo's economy to cope over the long term with competitive pressure and market forces within the EU, and to ensure that the political situation remains stable.

Following the impact of the financial crisis, Iceland officially applied for membership of the EU in July 2009. Already a member of the European Economic Area, Iceland is expected to quickly fulfil the criteria to become a full candidate country.

The progress report is an important tool for future planning on emerging markets for businesses, while setting out clearly how closely aligned the legislation and markets in potential candidate and candidate countries are with EU Member States. The full report on the EU's 2009 enlargement strategy can be accessed at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/strategy\\_paper\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/strategy_paper_2009_en.pdf).

### ***III. EC Competition***

#### **GM's sale of European subsidiaries hampered by State aid concerns**

GM's planned sale of its Opel and Vauxhall subsidiaries have given rise to considerable controversy, not least those involving the German government and the European Commission. Even after months of negotiations with multiple bidders and involving numerous Member State governments, there still remain problems to be solved, primarily concerning Commission allegations that Germany's offer of €4.5 billion in subsidised loans and loan guarantees fall afoul of the Community rules on State aid.

Prior to entering bankruptcy proceedings in the US earlier this year, GM spun-off its Opel and Vauxhall subsidiaries, placing 65% of the shares in these subsidiaries in a trust owned by the German government and labour unions, and retaining the remaining 35% of the shares. It was announced that, following a transitional period, GM and the trust would negotiate the sale of the brands. Throughout the summer, a bidding war raged between Beijing Automotive, Fiat, investment firm RHJ International and a consortium of Magna, a Canadian parts supplier, and Sberbank, the largest bank in Russia. By August, it had become clear that only the Magna consortium and RHJ were serious contenders. It appeared that GM favoured a sale to RHJ, because it would be able to retain some influence in the management of Opel and might be able to repurchase Opel in several years' time. However, the German government and labour unions aligned behind Magna, believing that Magna's plans for Opel and Vauxhall involved fewer job cuts.

Both Magna and RHJ made their bids conditional upon receiving massive sums of state funding from EU governments to assist in restructuring the two brands, with each State in which the brands had manufacturing operations presumably offering a portion of the funding. While this State aid would have been required to be reviewed under Community State aid rules, it likely would not have been deemed problematic.

However, in September, in order to simplify the negotiations and allow for a speedier resolution of the deal, the German government offered to front the entire €4.5 billion in State funding requested by the Magna consortium, and to negotiate contributions from other Member States at some point in the future. Because this deal was not also explicitly offered to RHJ, and because Magna's bid favoured keeping German manufacturing jobs over jobs in other Member States, the Commission became quite suspicious that the offer would violate State aid principles, which prohibit aid having the effect of distorting trade along geographic lines.

After GM's Board of Directors reluctantly voted to support the Magna consortium's bid in September (reportedly under substantial pressure from the German government), Member State governments and the Commission loudly voiced their protest to the proposed deal. Member States with Opel and Vauxhall plants (notably, the UK, Spain, Belgium and Poland) complained that, although their plants were at least as efficient and profitable as plants in Germany, Magna intended to cut a disproportionate number of their workers. The Commission warned that it intended to look very closely at the conditions set by the German government on the €4.5 billion aid package, to ensure that the aid did not hinge on favouring German interests over other Member States.

Finally, in mid-October, Neelie Kroes, the EU's competition chief, wrote to Karl-Theodor zu Guttenberg, Germany's economics minister, saying that Berlin's aid offer appeared to be conditional on the Magna consortium winning its bid. If so, this would violate EU internal market and State aid rules. In response to Ms Kroes's concerns, Mr Guttenberg wrote to GM and the Opel Trust, which is overseeing the operations of the US carmakers European business, saying that the offer of financial aid by Germany was open to all bidders.

Now, both the German government and GM's Board of Directors have announced that they will delay signing a deal with Magna to give them time to revisit their options and determine whether the deal might, in fact, violate State aid rules. However, while this review may yield a slight change in the distribution of job cuts and plant closures and may delay the deal further, experts believe that the negotiations with Magna are too far along for the concerns over State aid to fully scupper the deal or force a completely new bidding process.

#### ***IV. European Union: Regulatory***

##### **Electronic producers told to toughen up on pledges for ecodesign of imaging equipment or face binding measures**

On 12 October 2009, a Consultation Forum was held in the framework of Directive 2005/32/EC on ecodesign requirements for energy-using products (the "EuP Directive"). At the 12 October meeting, the Commission, Member States and industry discussed the future of ecodesign of imaging equipment, and whether a voluntary agreement in relation to such equipment, proposed by the industry, was acceptable or not.

Businesses will be familiar with the “big names” that comprise, in large part, the major manufacturer-suppliers of this kind of equipment, and who have collectively drafted the voluntary agreement. The names include Canon, Dell, HP, Brother, Toshiba, Panasonic, Xerox, Samsung, Sharp, Fujitsu and Kodak. The products that would fall within the voluntary agreement’s scope are standard size format products from the following product categories: copiers, multifunction devices, printers and faxes.

The draft as presented to the Forum spelt out that signatories would commit to ensuring that, as of 1 January 2011, 50% of their imaging equipment would comply with the requirements and efficiencies set out in the proposed agreement’s text. These include energy savings (Energy Star V1.1 requirements), and various resource efficiencies, including the encouragement of environmentally friendly paper (such as eco-labelled paper, recycled paper, etc.). On other aspects, the draft stated that toner and ink modules/containers must be so designed as to ensure their channelling to reuse or recycling. Information requirements included informing customers about the environmental performance of the products concerned.

According to the Commission, the proposed voluntary agreement as presented was not acceptable, as several stakeholders had reservations over its key elements. Perhaps as a planned response to such opposition, which was probably expected, industry representatives made clear that the draft was not a final proposal for a voluntary agreement, but more of a discussion paper.

With regard to the eco-efficiency compliance standard, the industry was informed that it had to come back by the end of this year with a finalised proposal that would have more ambitious targets. While the draft proposed a compliance rate of 50% of a signatory’s equipment that is placed on the market as of 1 January 2011, the Commission felt that this was “more or less business as usual – not enough and not credible”, reflecting concerns raised by environmentalists.

The Commission declared that it could accept compliance by a later date, but wished to see a much higher level of compliance. One possibility would be that 90% of products meet the standards by 2012.

Other environmental requirements on ink cartridge recycling and reduced paper consumption must, it was declared, be further elaborated, with more details being needed on resource efficiency.

Businesses should be aware that, at this stage of the procedure, if the finalised proposal from industry is not ambitious enough, the Commission will work according to the legislative process, and propose a binding implementing measure for all imaging equipment. As the framework EuP Directive works on the basis that acceptable voluntary agreements from industry may be preferable to binding legislation, Commission officials – and no doubt the industry itself – are hopeful that a tightened up and workable draft can be presented for approval by the end of this year.

## **V. *Dumping Watch***

No developments to report.

## **VI. *The Week Ahead***

### **A. WTO**

- 4-6 November 2009: WTO: Trade Policy Review Body — Southern African Customs Union (SACU)

**B. OECD**

- 2-3 November 2009: Why Responsible Business Conduct Matters, regional conference organised by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) and OECD. Bangkok, Thailand.
- 4 November 2009: Launch of the Economic Survey of Ireland with participation of the Secretary-General. Dublin, Ireland.
- 4-5 November 2009: Global Forum on Eco-Innovation, organised by the Environment Directorate.
- 7-8 November 2009: Global Forum on Fighting Corruption and Safeguarding Integrity, sponsored by International Organising Committee (including OECD, UNODC, Transparency International, several national governments), with OECD participation. Doha, Qatar.

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