

# BRUSSELS MONITOR

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

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*Brussels Monitor is a product of the Japan Fair Trade Center in cooperation with the international trade practice of the Belgium law firm of Van Bael & Bellis. All questions concerning its content should be addressed to:*

*Van Bael & Bellis  
Avenue Louise 165  
B-1050 Brussels, Belgium  
TEL: 32-2-647-7350  
FAX: 32-2-640-6499  
E-MAIL: [ybb@vanbaelbellis.be](mailto:ybb@vanbaelbellis.be)*

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## *I. WTO Watch*

### **US, EU and Mexico request WTO panel on Chinese export restrictions**

On 4 November 2009 the US, the EU and Mexico requested the establishment of a WTO dispute settlement panel on Chinese export restrictions on a number of key raw materials, such as yellow phosphorous, bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide and zinc, of which China is a leading extractor.

The request to the WTO claims that China's restrictions on exports of the raw materials in question, which are used to make steel, aluminium and some chemicals, is driving up the price of end-products, thus giving Chinese companies an unfair advantage, as downstream industries in China have access to cheaper materials than their competitors outside China. The chemical, steel and non-ferrous metal industries, as well as their downstream clients, are the main sectors concerned.

China requires exporters of these raw materials to pay fees and meet minimum export prices and subjects domestic companies and foreign-invested business to different criteria. It also makes the right to export contingent on prior exports. The EU and the US argue that the export restrictions go beyond the scope of products for which China was authorised to keep export taxes and charges when it joined the WTO in 2001.

Catherine Ashton, the EU's trade commissioner, commented that "China's restrictions on raw materials continue to distort competition and increase global prices, making conditions for our companies even more difficult in this economic climate". The US said the raw materials case had an impact on billions of dollars of global trade. "Working together with the European Union and Mexico, we tried to resolve this issue through consultations, but did not succeed," said Debbie Mesloh, a spokeswoman for the office of the US Trade Representative.

A Chinese commerce ministry statement said: "The regulations conform to the needs of China's own development, while also advancing China's efforts towards the sustainable development of the global economy." It also said that the products being disputed actually formed a very small percentage of Chinese trade with EU and the US, and that the overseas demand for those products had been shrinking.

The request for the establishment of a panel came more than four months after the US and the EU filed a request for consultations, setting off discussions with China. According to the US Trade Representative's office, the WTO dispute settlement body will consider the request at a meeting on 19 November 2009.

## *II. European Union: Trade*

### **Commission proposes Regulation on light commercial vehicles' emissions**

On 28 October 2009, the Commission proposed a new Regulation limiting the average CO2 emissions of all light commercial vehicles sold in the EU to 175 grams per kilometre by 2016 and 135 grams per kilometre from 2020. The proposed Regulation follows a similar proposal from 2008 regarding passenger car emissions, and will now be sent to the European Parliament and Council for their approval or amendment.

In February 2007, the Commission adopted a comprehensive strategy to reduce carbon dioxide emissions from new cars and vans sold in the EU, with the long-term objective of limiting average CO<sub>2</sub> emissions to 120 grams per kilometre. In 2008, the Commission proposed a Regulation aimed at limiting passenger car emissions and there are ongoing legislative efforts regarding the efficiency of various vehicle components (such as tyres and air conditioning systems).

The proposed Regulation aims to reduce the average CO<sub>2</sub> emissions of light commercial vehicles (LCVs) sold in the EU to 175 grams per kilometre by 2016 and 135 grams per kilometre by 2020. The format and functioning of the legislation closely follows that utilised in the Regulation on passenger vehicle emissions proposed by the Commission in 2008.

The proposed Regulation establishes a limit curve which assigns acceptable levels of CO<sub>2</sub> emissions to LCVs based on the vehicle's weight. Thus, for instance, a vehicle with a total weight of 2000 kilograms would be assigned an expected emissions value of 157 grams per kilometre. Each manufacturer selling LCVs in the EU will need to ensure that, on average, their LCV fleet's emissions are below the emissions value established by the limit curve.

It should be noted that only a manufacturer's fleet average would be regulated, so each individual model need not fall below the expected emissions value established by the limit curve.

The proposed Regulation would be phased in starting from 2014, when a manufacturer's average emissions would need to be less than its assigned limit when 75% of its vehicles are taken into account. This would rise to 80% of vehicles in 2015, and 100% of vehicles in 2016.

The proposed Regulation has now been sent to the European Parliament and Council for their approval and/or amendments. The proposed Regulation will also be made available to the public in the coming days after translation into all EU languages has been completed.

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

#### **OFT study flags concerns regarding rising antitrust fines**

In the wake of ever-increasing fines on companies found to have committed antitrust infringements (including a fine of more than €1 billion imposed on Intel earlier this year by the European Commission), the UK Office of Fair Trading has issued a report which finds that authorities may need to rethink their belief in large fines as the best solution to antitrust concerns. The study, which was commissioned by the OFT, but carried out by consultancy firm London Economics, has concluded that higher fines do result in fewer and less costly infringements, but that an optimum antitrust enforcement regime, particularly in the area of cartel enforcement, should combine both fines and non-monetary penalties.

The report begins by stressing that antitrust infringements are very costly to an economy, stating that such abuses cost more than €25 billion per year. However, the report goes on to indicate that economic literature suggests that the current, very high levels of fines are not, by themselves, sufficient to achieve an optimal level of deterrence. "Whilst raising fines can increase the level of deterrence it is not necessarily the only way nor is it without associated costs", the report states. In particular, the report highlights three problems with increasing fines: the cost of inadvertent errors is increased, the higher fines may lead to insolvency, and the higher costs may not deter individual managers who face different risk/reward scenarios than the companies for which they work.

In addition to reasonably calculated fines, the report therefore suggests that an optimal enforcement regime should involve well-designed whistle-blower schemes, settlement options, leniency policies, individual sanctions and private actions.

Finally, the report addresses arguments that a company's financial hardship should warrant more lenient treatment when it comes to imposing fines. On the one hand, the report finds that excessive fines levied on a company in temporary financial trouble are, indeed, bad for the economy as a whole. Thus, antitrust authorities should carefully consider a firm's real economic position when imposing a fine. However, the report indicates that authorities should avoid putting too large an amount of weight on financial hardship, as this often has the effect of encouraging firms to manipulate their balance sheets to obtain more lenient treatment.

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

##### **Czech Republic signs Lisbon Treaty**

On 3 November 2009, after receiving the green light from the Czech Constitutional Court, Vaclav Klaus, the Czech president, signed the Lisbon Treaty. Eurosceptic Klaus was defiant to the end, however, alleging that the Treaty's entry into force would mean the end of his country's national sovereignty, with too much power being vested in Brussels. Be that as it may, the Lisbon Treaty is now set to enter into force on 1 December 2009.

While EU politicians were holding their breath over whether the Lisbon Treaty would be found acceptable by the Czech Constitutional Court, now they can breathe easily, with the Court's go-ahead to the voluminous document, and the Czech president's hesitant signature. The president, Vaclav Klaus, nonetheless commented that "I fundamentally disagree with [the court ruling's] content and justification", although also stating that "I respect it". He dramatically added that "once the Lisbon Treaty comes into force, the Czech Republic – contrary to the political opinion of the Constitutional Court – will cease to be a sovereign state".

Klaus, who represented the last obstacle to the ratification of the Treaty, could not hold out any longer after he received both the derogation from the Charter of Fundamental Rights he had requested at the end of last month, concerning land issues, and the Constitutional Court's ruling of yesterday. The Treaty can enter into force on the first day of the month following deposit of the instruments of ratification in Rome, i.e., on 1 December. As the top posts will now need to be filled quickly, the Swedish Presidency of the EU may decide to convene an extraordinary European summit around 12 November. This would allow election by the EU-27 of the permanent president of the European Council, and the high representative of foreign policy. The Commission president will then set up his team immediately thereafter.

One important ramification is that the new Commission can now be chosen. On the prospective list of Commissioners, seven Member States still need to name their candidates. The European Parliament has claimed that it can hold hearings for the prospective Commissioners from 25 November, over an eight day period. This could be followed by a parliamentary vote during the 14-17 December session. The timeline nonetheless appears rather too ambitious according to some parliamentary sources. It is probably more realistic that the hearings will take place in December, and then the vote in January.

## V. *Dumping Watch*

No developments to report.

## VI. *The Week Ahead*

### A. Council

- 10 November 2009: Ecofin Council (Brussels)

### B. Parliament

- 11-12 November 2009: European Parliament plenary session (Brussels)

### C. WTO

- 11-13 November 2009: WTO: Trade Policy Review Body — Senegal and Niger

### D. OECD

- 9 November 2009: Opening speech by the Secretary-General at the Toronto Forum for Global Cities. Toronto, Canada.
- 9-10 November 2009: Innovation for Social Challenges, conference organised by the Directorate for Science, Technology and Industry.
- 9-14 November 2009: UN Convention against Corruption, Conference of the State Parties, with OECD participation. Doha, Qatar.
- 10 November 2009: Launch of the IEA World Energy Outlook 2009. London, UK.
- 10-11 November 2009: Protection and Use of Transboundary Watercourse and International Lakes - the Water Convention, Meeting of the Parties to the UNECE Convention, with OECD participation. Geneva, Switzerland.
- 11-12 November 2009: Africa Investment Initiative, two meetings organised by NEPAD-OECD. Ministerial meeting on Mobilising Resources for Trade and Investment, on 11/11, and high-level meeting of the Initiative: Boosting Private Investment in African Energy Infrastructure, on 12/11. Johannesburg, South Africa.
- 12-13 November 2009: New models of innovation for economic growth and sustainability, ConnectResearch 09, conference organised jointly by the OECD Directorate for Science, Technology and Industry, the UK Department for Business, Innovation and Skills, and Cranfield University.
- 13 November 2009: OECD statistics news releases: Quarterly Unit Labour Cost Indexes.

- 14 November 2009: Global ICT Services Sourcing post-Crisis: Trends and Development, workshop organised by the Directorate for Science, Technology and Industry. Sharm El Sheikh, Egypt.
- 14-15 November 2009: APEC Economic Leaders' Meeting.

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