

# BRUSSELS MONITOR

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

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## ***I. WTO Watch***

### **Russia committed to WTO membership but still undecided over how to join**

Russian President Dmitri Medvedev stated that Russia remains committed to WTO membership. His comments, however, cast fresh doubt on the perspective of early conclusion of the WTO negotiations since he said Russia has still not decided whether it wants to join the WTO as a separate country or together with Kazakhstan and Belarus, its partners in a three-way customs union. Mr. Medvedev, who spoke during a news conference after the Russia-EU Summit held in Stockholm on 18 November 2009, suggested that both ways are still possible.

This may mark yet another turn in Russia's strategy for WTO negotiations. The talks were halted briefly in June 2009, following 16 years of negotiations, when Russian Prime Minister Vladimir Putin officially announced that Russia would only join the trade body in partnership with Belarus and Kazakhstan. Russia planned to start the WTO accession talks afresh on the basis of a customs union agreement with two former Soviet States. In October 2009, however, Russia, Kazakhstan and Belarus said they would pursue their candidacies as separate states.

The wish to join "in tandem" has been highly criticised by the EU, not least because it has delayed the accession negotiations. No other WTO Member States have negotiated entry together with other countries. Moreover, internal disputes within the proposed customs union have also complicated the matter. For instance, in June 2009 Russia extended its ban on dairy products exported from Belarus, which had a 4% share of the Russian milk market in 2008.

Prior to the EU-Russia Summit in Stockholm, Sweden's Foreign Minister Carl Bildt, whose country currently holds the EU's rotating presidency, confirmed that the 27-nation bloc needs to know whether Russia is still keen to join the WTO. It is to be noted that Russia's accession to the WTO could simplify work to finalise a new EU-Russia partnership agreement, since the old one expired two years ago but is temporarily maintained in force.

Today, Russia may seek to join the WTO on its own after having coordinated positions with Belarus and Kazakhstan. Each of these ways seems to be possible for the Russian President who, nevertheless, added that "the most important is the speed; whichever way is shorter, we will take".

## ***II. European Union: Trade***

### **Parliament roundtable discusses alternative fuels**

The EU has pledged to reduce carbon emissions by 20% by 2020. In order to achieve this reduction, the Commission and European Parliament have agreed that substantial decreases in emissions from road transport will need to be realized. While electric vehicles would go a long way towards reducing transport emissions, the widespread uptake of electric vehicles is seen by many as being too remote a solution to meet the 2020 goal.

At a European Parliament roundtable discussion on carbon emissions from road transport held on 18 November, several MEPs told policy-makers and car-industry representatives that, while a move towards electric or hydrogen vehicles was a long term necessity, an increase in the availability and use of existing alternative fuel technology would be necessary to meet carbon emission goals over the next ten years.

In particular, MEP Vittorio Prodi stated that “[t]he increased presence of immediately available gaseous fuels such as LPG and natural gas can play an important role in this process, helping to cut CO<sub>2</sub> and pollutant emissions today, and forming a bridge towards other technologies that will emerge in the future”. Samuele Furfari, a representative of the Commission’s directorate general for transport and energy added that “[f]or too long we have been searching for a miracle solution while perhaps overlooking alternatives with the capacity to deliver immediate results”.

For its part, industry representatives present at the meeting welcomed the statements on alternative fuels, but stressed that legislators would need to take steps before increased use of alternative fuels could become an economically viable strategy. Several industry representatives indicated that they would only be willing to spend money developing alternative fuel platforms if the EU could implement a long-term strategy to ensure that the fuels would continue to be available and be given favourable tax treatment.

While the development of electric vehicles has been given the lion’s share of attention and funding in the EU in recent years, there is starting to be a recognition that policies may need to be shifted towards promoting alternative fuel vehicles.

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

#### **EC hints at possible conditions for transatlantic air carrier alliance approval**

In 2008, British Airways, Iberia and American Airlines signed a cooperation agreement which would see the three carriers coordinating their pricing and scheduling, among other things. Because such an agreement between competitors could be deemed to infringe Article 81(1) EC, which prohibits anti-competitive agreements, the three carriers announced their plan to the European Commission, and asked that the Commission give its opinion on the agreement’s legality.

The Commission responded by opening an investigation into the competitive effects of the agreement, and sent the carriers a formal statement of objections related to the cooperation agreement in October 2009. The statement of objections indicated that, after a preliminary investigation, the Commission was concerned that the agreement could appreciably restrict competition. While a statement of objections only represents a preliminary document in a Commission investigation, and does not prejudice the Commission’s final position on whether or not an agreement is in violation of Article 81 EC, it does indicate that the Commission is very likely to adopt an infringement decision absent an offer from the parties to agree to take steps to remedy the Commission’s concerns.

This view was recently strengthened, as the Commission has now reportedly indicated to the three carriers that, for approval of the plans for the strengthened cooperation between the carriers, remedies including the transfer of take-off and landing slots will likely have to be proposed. In this particular case, it appears that the Commission’s concerns focus on the carriers’ strong combined position on certain trans-Atlantic routes, including routes between London and Dallas, Boston, Miami and Chicago as well as routes between Madrid and Miami and Chicago. Thus, it is quite likely that the carriers will be expected to relinquish slots at these airports to other carriers in order to avoid an infringement decision.

While the decision as to whether or not to offer such remedies would normally be difficult enough, a new layer of complexity has been added by the fact that, on 12 November 2009, Iberia and British

Airways agreed, in principle, to merge their operations under a single holding company. While the two brands will continue to exist under the merger plan, the BA and Iberia would likely reorganise their European operations in order to lower redundancies. BA and Iberia will need to take these future changes, which have not yet been fully mapped-out, into account when determining what, if any, slots they would be willing to surrender in order to obtain permission for cooperation with American Airlines.

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

##### **A. Products related to energy-use fall within scope of new ecodesign Directive**

On 31 October 2009, the EU's Official Journal published a new law which is intended to change the way "energy-related" products will be designed, to make them more environmentally friendly. New Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products replaces the current energy-using products Directive (2005/32/EC – the EuP Directive), which has been in force since 2005.

Businesses in the electrical appliances industry will likely have become only too familiar with the provisions of the EuP Directive, as – emanating from it – several implementing measures have been adopted, all thus far relating to certain categories of energy-using products such as televisions, lighting and refrigerators. Efforts are likewise underway to put into place measures concerning imaging equipment (such as photocopiers and multifunctional devices), computers and dishwashers, among others.

Although it is clear from the subject matter and scope of the new ecodesign Directive's Article 1 that all energy-related products are potentially covered within its scope, the actual products that fall within its scope will be spelt out by means of the European Commission's future implementing measures. Such products would continue to include energy-using products (e.g., different types of electrical appliances) but could, potentially, also cover shower heads and other bathroom fittings, insulation materials, double-glazing, and other products that are related to the using of energy, which, in effect, have a significant potential for saving it, if designed in an eco-friendly manner.

Businesses may obtain a clearer idea of the types of products that will be covered by future implementing measures, by examining the definition, in Article 2, of "*energy-related product*". Such product is defined as "*any good that has an impact on energy consumption during use which is placed on the market and/or put into service, and includes parts intended to be incorporated into energy-related products covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently.*"

Businesses who expect that their products may, in the future, fall within the sphere of an implementing measure should also note that any such products will have to not only comply with those measures, but also bear the CE marking. In this regard, a declaration of conformity with the measures will likewise have to be issued by the manufacturer or his authorised representative in the EU (as explained in the new Directive's Article 5). Before placing the product on the Community market, the manufacturer or his authorised representative will also need to carry out a conformity assessment procedure, which has to ensure the product's conformity, according to one of the systems mentioned in Annexes IV or V of the new Directive (Article 8). Once CE-marked, the products can be placed anywhere on the Community market (Article 9).

Furthermore, in accordance with the future implementing measures for various products, the manufacturer will be obliged to provide information to consumers (Article 14). Such information includes the ecological profile of the product (essentially, a description of the inputs and outputs – such as materials, emissions and waste – associated with the product throughout its life cycle), and the benefits of ecodesign, as well as on the role that consumers can play in the sustainable use of the product.

Importers' responsibilities have also been specifically addressed (by the Directive's Article 4). It states here that, where the manufacturer is not established in the Community, and in the absence of an authorised representative, the importer will bear the obligations of (a) ensuring that the product placed on the market complies with all the requirements applicable to it, and (b) of keeping, and making available (on request) the EC declaration of conformity and the technical documentation.

As for the implementing measures themselves, these are to be brought about where a product meets the criteria specified in Article 15(2) of the new ecodesign Directive. The criteria are, in effect, that the product represents a significant volume of sales and trade – more than 200,000 units a year – within the Community; the product (given the quantities placed on the market) has a significant environmental impact; and the product represents significant potential for improvement in terms of its environmental impact, without entailing excessive costs.

The new Directive requires that the Commission establish a working plan, no later than 21 October 2011, which will set out for the ensuing three years an indicative list of product groups which are priorities for the adoption of implementing measures. The new Directive also foresees (in Article 17) that voluntary agreements, or other self-regulation measures, can be presented as alternatives to implementing (i.e., binding) measures.

The Member States have until 20 November 2010 to implement the provisions of the new ecodesign Directive (Article 23). However, businesses should be aware that the provisions of the new Directive will not apply directly to them, but will have to, rather, be taken into account in the context of the future implementing measures (or voluntary agreements).

The new ecodesign Directive will (pursuant to its Article 24) repeal the existing EuP Directive; it states that references to the repealed Directive shall be construed as references to the new Directive. The latter enters into force on the twentieth day following its publication, thus on 20 November 2009.

The new ecodesign Directive, 2009/125/EC, can be accessed at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:285:0010:0035:EN:PDF>.

## **B. WEEE and RoHS debate creates division among senior legislators: controversy set to delay adoption of new recast Directives**

At the Environment Ministers' Council meeting held in Luxembourg on 21 October 2009, the Member States' Ministers held a policy debate on the proposed recast of the RoHS and WEEE Directives. Sellers of electronic and electrical goods such as home appliances and office equipment may be interested to know that sharp divisions were created over what is seen as fundamental to the functioning of the two Directives, namely, their scope. Ministers were invited, during the Council meeting of 21 October, to discuss the scope of both Directives.

A majority of national delegations opposed the idea of harmonising the scope of the two Directives and would rather have separate texts with different objectives and legal bases. They argued that harmonising the scope of the WEEE Directive would actually *limit* its scope. Currently based on Article 175 of the EC Treaty, which covers the EU's powers to legislate for the environment, the WEEE Directive provides only an indicative list of product categories and allows Member States to widen the list of products concerned. Shifting its scope to RoHS under Article 95 of the EC Treaty, which requires full harmonisation, would make the list binding and require frequent cumbersome legislative procedures to update it, as new products are being invented and brought to the market.

However, EU Environment Commissioner Stavros Dimas, speaking on behalf of the European Commission, disagreed with this, stressing that harmonising the scope of the Directives across the EU would improve their implementation and provide businesses with increased legal certainty. This makes sense, as with an indicative or "open" list, Member States can, in principle, individually decide whether to add new products to their national law's scope. This in turn would lead to uncertainty in respect of compliance, for businesses selling their goods on different Member States' markets.

The current Swedish Presidency of the Council has, in trying to arrive at a compromise, proposed separate scopes for WEEE and RoHS. The Presidency's proposal puts the WEEE annexes back to their current location and suggests an open scope for RoHS instead. This would, in reality – and surely much to the dismay of electronics producers selling on the EU market – allow Member States to apply RoHS to *more* products than currently required. In other words, with such an open scope, all EEE would be included unless it is explicitly excluded.

A majority of delegations were reportedly supportive of the idea that the two Directives could have separate scopes that take account of their different legal (Treaty) bases and objectives.

In addition, there was said to be broad support for widening the scope of the RoHS directive to include all EEE, unless explicitly excluded. It is not clear whether such broad support comprised a majority however, as some delegations did not agree and pointed out that the costs of this option for producers were unclear and would need to be the subject of an impact assessment. As impact assessments take time to complete, needless to say this would delay the adoption of the recast Directive, which – if there were no delays – could occur as early as Spring next year.

Concerning the scope of the WEEE Directive, some ministers wished to continue defining its scope through a minimum list of covered equipment as in the existing legislation. Others were supportive of an open scope that would in principle include all electric and electronic equipment, as would be the case for RoHS, pointing out that this would increase environmental protection (but would be less predictable for producers).

It was announced that Member States' views will guide further work on the two proposals in the months to come. Given the conflicting views, it seems that the institutional debate on recasting the WEEE and RoHS Directives is only just beginning.

## V. *European Union: Institutions*

### **European leaders appoint politicians with limited foreign policy experience for top EU jobs**

The Lisbon Treaty, which will come into force on 1 December 2009, has created two new posts at the top of the EU political ladder: the EU President and the EU High Representative for Foreign Affairs. The EU President's role is to chair EU summits, drive forward the work of the EU's Council of Ministers, facilitate cohesion and consensus, and represent the EU on the world stage.

On 19 November 2009, leaders of the 27 EU Member States unanimously appointed Herman van Rompuy, currently Belgium's Prime Minister, as the President of the European Council, and they also appointed Baroness Catherine Ashton, currently EU Commissioner for Trade, as the EU High Representative for Foreign Affairs.

Both persons are seen as politicians with limited foreign policy experience. This gave rise to criticism on the two elects' low international profile, while giving them credit for being able to create consensus in difficult areas. Mr Van Rompuy said he saw climate change and Europe's high unemployment as key concerns in the years ahead. Insiders commenting on Baroness Ashton's election as foreign security chief have noted that her gender counted in her favour – after several leaders have called for a woman to be chosen for one of the EU's two new top jobs – as did the fact that she was already in Brussels and regarded by José Manuel Barroso, the President of the European Commission, as performing well as EU Commissioner for Trade.

The appointment of Baroness Ashton, who was earlier seen as one of the possible candidates to be EU Commissioner for Trade for the next five years, has intensified speculation about how a slew of other top European Commission jobs, including the portfolio of EU Commissioner for Trade, would be distributed. Baroness Ashton's appointment means that the UK will not receive one of the Commission's top financial posts, while Nicolas Sarkozy, French President, has already signalled that his country expects to nominate a European commissioner with "important responsibilities".

## **VI. *Dumping Watch***

There are no developments to report.

## **VII. *The Week Ahead***

### **A. Council**

- 26-27 November 2009: Education, Youth and Culture Council (Brussels)

### **B. Parliament**

- 23-26 November 2009: European Parliament plenary session (Strasbourg)

### **C. OECD**

- 22-23 November 2009: Business Forum and Women Business Leaders Summit, and Governance Forum on 22/11, open to the media, followed by ministerial conference of Middle East North Africa (MENA) regions on 23/11 with news conference at 9h45. Organised by the MENA-OECD Initiative, with participation of the Secretary-General. Marrakech, Morocco.
- 23 November 2009: OECD statistics news releases: Quarterly National Accounts/GDP.

- 24 November 2009: Business and Industry Advisory Committee (BIAC) consultation with OECD Liaison Committee. Participation of the Secretary-General.
- 24 November 2009: Publication of Revenue Statistics, 2009 edition.
- 24 November 2009: Development Assistance Committee (DAC) peer review of Italy.
- 24-25 November 2009: Connecting Cities, Building Successes, conference organised by URBACT, with participation of the OECD. Stockholm, Sweden.
- 25-27 November 2009: Global Forum on Public Debt Management and Emerging Government Securities Markets, organised by the Directorate for Financial and Enterprise Affairs.

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