

BRUSSELS MONITOR

A Weekly Review of EU Trade Policy Developments Affecting Japan

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IN THIS ISSUE

- I. *WTO Watch***
Europe and Latin America draw nearer to a deal on bananas
- II. *European Union: Trade***
High-ranking Commission official warns against green border tax on goods imported into the EU
- III. *EC Competition***
 - A. Commission confirms sending Statement of Objections to Standard & Poor's**
 - B. Commission opens formal proceedings against Thomson Reuters concerning use of Reuters Instrument Codes**
 - C. Commission closes proceedings against Qualcomm**
- IV. *European Union: Regulatory***
New energy-labelling rules win approval of EU legislators
- V. *Dumping Watch***
Notice of initiation of a partial interim review – polyester staple fibres
- VI. *The Week Ahead***
 - A. Council**
 - B. WTO**
 - C. OECD**

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I. WTO Watch

Europe and Latin America draw nearer to a deal on bananas

On 25 November 2009, it was reported that an agreement over the banana tariffs imposed by the EU on imports into the trading bloc should not be expected in advance of forthcoming WTO talks in Switzerland. Nonetheless, it appears that an end to the “banana wars” is in sight. Sources confirmed that “we are very close to a deal. All the parameters are in place (but) we are still finalising the elements”.

The “banana wars” is one of the world’s longest-running trade disputes and dates back to 1993, when the EU granted favourable trade terms to farmers growing bananas in former British and French colonies in the Africa, Caribbean and Pacific (ACP) Region. In contrast, the EU imposed import tariffs on bananas coming from everywhere else.

In 1994, the US filed a complaint against the EU before the WTO on the grounds that the EU was giving to its former colonies a preferential access to the European banana market. Although the US does not export bananas to Europe, large US companies such as Chiquita effectively control the Latin American banana trade.

The WTO agreed that the EU’s banana regime broke its rules and concluded that ACP farmers had to compete on a “level playing field” with other banana producers. However, it has taken many years for a final agreement to be reached, as ACP banana-producing countries argued that many thousands of livelihoods would face a serious threat if they lost their special access to the European market. Proposals currently on the table would lower the import tariffs Europe charges on Latin American bananas, from €176 a tonne to €148, and then gradually to €14 over the following seven years. This would almost eliminate the special “preferences” the EU currently gives to banana producers in the ACP region.

Banana imports into Europe from the ACP countries could decline by up to 14% over the next seven years. With that in mind, ACP countries will receive €190 million of aid from Europe in so-called “banana-accompanying measures” over four years to help them cope with the progressive tariff change.

II. European Union: Trade

High-ranking Commission official warns against green border tax on goods imported into the EU

Exporters of goods bound for the EU may be aware that French President Nicolas Sarkozy, among others, has consistently supported the idea of a carbon dioxide border tax for goods imported from countries that do not have a carbon emissions scheme comparable to that of the EU. His suggestion has found support among some EU Member States, whose governments are concerned about a loss of their domestic industries’ competitiveness in the face of imported goods that have lower costs of production because of a lack of levies on emissions. Given the size of the EU market, implementation of such a border tax would have significant consequences, although an examination of the European debate over this matter suggests that the issue is far from resolved.

On 13 November 2009, the second most-senior ranking official in DG Trade, David O'Sullivan, made a speech warning against Sarkozy's suggested green border tax because such a measure would have "negative" and "unintended consequences" for global trade. His statements reveal the Commission's concern over the possible complex and multiple trade disputes that could arise from such a border tax. Moreover, implementation of a border tax would make it less likely that the most affected nations would be amenable to undertaking significant commitments within the framework of a global climate change agreement to reduce their emissions.

Businesses should be aware that this latest statement by David O'Sullivan is not the final word on carbon border taxes in the EU. Instead, it is part of the ongoing debate between Member States and the European Commission on what stance the EU will adopt at the forthcoming UN Climate Change Conference on 7 December 2009. Both the proponents and the critics of the border tax in the EU are united in their belief that "developing" countries must contribute more to climate change efforts than they have in the past.

For example, under the Kyoto Protocol, China was expected to commit to cutting emissions in proportion to its own historical emissions, which meant that its obligations under the Kyoto Protocol were less compared to those of more developed countries (such as the EU's Member States). Many believe that China's rapid economic development since the Kyoto Protocol was signed disqualifies it from being permitted to undertake as few commitments as poorer countries.

In line with this belief, countries such as France are using the threat of a border tax as a negotiating tool, hoping that it will prompt China into charging its own industries for the emissions they create. While the Commission's DG Trade has not adopted the same threatening tone as France, it also hopes that China will institute its own emissions schemes. Indeed, in the speech cited above, David O'Sullivan also called for a Chinese carbon tax for manufactured and retail goods. He emphasised that the tax should not be on raw material exports, which is unsurprising given the EU's dependence on such raw materials.

Exporters to the EU should be assured that there are strong reasons against the implementation of such a border tax on consumer and retail products. First, it remains to be tested under WTO rules, and the uncertainty of whether such a measure would be WTO-compatible has not escaped the attention of DG Trade. Second, the political costs of inciting such a challenge would considerably slow the conclusion of an effective international climate change agreement.

Whether such a border tax will succeed at EU level depends largely on the outcome of the Climate Change Conference in Copenhagen, internal consensus within the EU and any support that the EU may get from countries such as the US, whose Congress has discussed implementing a provision in national legislation that would institute a border tax at the US border.

III. EC Competition

A. Commission confirms sending Statement of Objections to Standard & Poor's

On 19 November 2009, the Commission confirmed that on 16 November 2009 it sent a Statement of Objections to Standard & Poor's ("S&P") for an alleged violation of Article 82 EC. According to the Commission's press release, S&P is the sole-appointed National Numbering Agency ("NNA") for ISIN numbers regarding US securities. ISIN numbers are the global identifiers for securities and are alleged to be indispensable for a number of operations that financial institutions carry out.

The Commission alleges that S&P is abusing its monopoly position by charging licensing fees for use of US ISINs by banks and other financial service providers in the EEA and information service providers in the EEA. The Commission bases its allegation on a comparison of S&P's charging policy with other NNAs who do not charge any fee or, alternatively, charge fees only on the basis of distribution costs (as opposed to usage costs, the model chosen by S&P). The Commission's preliminary view is that S&P does not incur any costs for the distribution of US ISINs to financial service providers because the latter receive ISINs from information service providers (such as Thomson Reuters and Bloomberg) and not S&P.

The move follows an announcement earlier this year that the Commission had opened an investigation into these issues.

B. Commission opens formal proceedings against Thomson Reuters concerning use of Reuters Instrument Codes

On 10 November 2009, the Commission announced that it is opening formal antitrust proceedings against Thomson Reuters regarding its practices in the area of real-time market data feeds. In particular, the Commission will investigate whether customers or competitors are prevented from translating Reuters Instrument Codes (RICs) to alternative identification codes of other data feed suppliers. The Commission is concerned that customers may be locked into Thomson Reuters because it can allegedly be a long and costly procedure for them to replace RICs by reconfiguring or rewriting their software applications.

C. Commission closes proceedings against Qualcomm

On 24 November 2009, the Commission announced its decision to close its proceedings against Qualcomm Incorporated concerning an alleged breach of Article 82 EC. The investigation was opened on 1 October 2007.

Although the Commission noted that the Qualcomm case raised important issues about the pricing of technology after its adoption as part of an industry standard, it noted that it has not yet reached formal conclusions into whether the royalties that Qualcomm has been charging since its patented technology became part of Europe's 3G standard are unreasonably high. The Commission also noted that all complainants have now withdrawn or indicated their intention to withdraw their complaints, and that it does not consider it appropriate to invest further resources in this case.

IV. European Union: Regulatory

New energy-labelling rules win approval of EU legislators

On 17 November 2009, after months of political wrangling, the European Commission, Parliament and Council arrived at a happy compromise on the energy-labelling of appliances, which has been in deadlock for months. Sellers of, among others, fridges, washing machines and ovens will have hitherto become familiar with existing Directive 92/75/EEC on energy labelling, which is undergoing a recast.

The EU institutions, in a bid to toughen up the Directive, and also ensure that it applies to a wider range of products (energy-consuming goods other than just white goods, as well as *energy-related* ones) finally decided on the way forward in a “trilogue” agreement (i.e., a compromise agreement arrived at by the three EU Institutions).

Until now, the labelling – which is essentially a valuable tool for consumers to be able to judge the energy consumption and in turn the energy efficiency of electrical appliances that they buy – has consisted of a range of letters from A to G, with G indicating lowest efficiency. The trilogue agreement has made significant additions to this traditional form of labelling. Once the recast legislation is in place, there will be three additional A categories, i.e., A+, A++ and A+++. The latter would be reserved for the best-performing models.

Moreover, any publicity, whether online or in magazines, brochures or fliers, which promotes energy- or price-related information on specific models will be required to reveal product energy consumption by reference to its energy class. Initially, there were no proposals for including such information in advertising, but this was agreed upon pursuant to the European Parliament’s insistence that information in advertising would help consumers to make more informed choices based on the energy savings potential of the products they wish to buy. Technical promotional literature (manuals, manufacturers’ brochures) would also need to indicate the product’s energy consumption or energy efficiency class.

Although up to three additional classes may be added to the existing A to G scale, the new label would not show more than seven energy classes in the three agreed-upon scenarios. Thus:

- If the most energy-efficient product is classified as “A+”, then the least energy efficient class would be “F”;
- If the most energy-efficient product is classified as “A++”, then the least energy efficient class would be “E”; and
- If the most energy-efficient product is classified as “A+++”, then the least energy efficient class would be “D”.

The labelling colour scheme, from dark green for the most energy-efficient products to red for the least efficient ones, will be adjusted in accordance with the above, in order that the highest energy efficiency class will always remain dark green and the lowest will always be red. Examples of the new layout of the label can be accessed via this link:

http://www.europarl.europa.eu/eplive/expert/multimedia/20091118MLT64740/media_20091118MLT64740.pdf.

Businesses should be alerted to the fact that the trilogue agreement goes further than the existing Directive as to scope, in that the recast will apply to a wider range of products than is currently the case. Under the future legislation, the label will also be attached to energy-consuming products such as display cabinets or vending machines, as also to *energy-related* products, including those in the construction sector, and others such as window and door frames and double-glazing. The latter group comprises products which do not themselves consume energy but “have a significant direct or indirect impact” on energy savings. The details of the future legislation, including (importantly) the energy classes of specific products, will be determined by a Commission working group.

The new legislative text has to be formally adopted, which is likely to occur in early 2010. Once published in the Official Journal, Member States will have to implement the new legislation within 12 months. Once implemented, producers will be required to comply with the new labelling provisions.

V. *Dumping Watch*

Notice of initiation of a partial interim review – polyester staple fibres

On 25 November 2009, the Official Journal published a notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of polyester staple fibres originating in the Republic of Korea.

The product concerned is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in the Republic of Korea, currently classifiable within CN code 5503 20 00.

It is recalled that the measures currently in force are a definitive anti-dumping duty imposed by Council Regulation 2852/2000 on imports of polyester staple fibres originating, *inter alia*, in the Republic of Korea, as last amended by Council Regulation 428/2005 and by Council Regulation 412/2009.

The request was lodged by Woongjin Chemicals Co., Ltd (“the applicant”), an exporting producer from the Republic of Korea. The review is limited in scope to the examination of dumping as far as the applicant is concerned.

The request is based on the *prima facie* evidence, provided by the applicant, that the circumstances on the basis of which measures were established have changed and that these changes are of lasting nature. In particular, the applicant alleges that there have been significant changes in the production facilities of the company which have led to a substantially lower dumping margin since the imposition of the existing measures.

The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping. A comparison of the applicant’s domestic prices and its export prices to the Community indicates that the dumping margin appears to be substantially lower than the current level of the measure. Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of a partial interim review, the Commission has initiated a review.

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 37 days of the date of publication of the notice in the Official Journal, unless otherwise specified. All interested parties may also apply to be heard by the Commission within the same 37-day time limit.

The investigation shall be concluded within 15 months of the date of the publication of the notice in the Official Journal.

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

- 30 November – 1 December 2009: Justice and Home Affairs Council (Brussels)
- 30 November – 1 December 2009: Employment, Social Policy, Health and Consumer Affairs Council (Brussels)

B. WTO

- 30 November – 2 December 2009: Seventh WTO Ministerial Conference

C. OECD

- 30 November – 2 December 2009: World Trade Organization ministerial conference: “The WTO, the Multilateral Trading System and the Current Global Economic Environment”. Geneva, Switzerland.
- 30 November – 1 December 2009: Presentation of the OECD Latin American Economic Outlook 2010: Migration and Development in Latin America and the Caribbean, organised by the Development Centre, at the Ibero-American Summit. Participation of the Secretary-General. Estoril, Portugal.
- 1-2 December 2009: Senior Budget Officials network on performance and results, meeting organised by the Directorate for Public Governance and Territorial Development.
- 1-3 December 2009: Routes out of the Crisis: Strategies for Local Employment Recovery and Skills Development in Asia, meeting organised by the ILO and OECD. Malang, Indonesia.
- 3 December 2009: Global Economic Prospects and the Indian Economy, high-level symposium organised in co-operation with the Indian Council for Research on International Economic Relations. Participation of the Secretary-General. New Delhi, India.
- 3-4 December 2009: Market Distorting Factors in the Shipbuilding Sector, workshop organised by the Directorate for Science, Technology and Industry.
- 4 December 2009: Launch of the OECD Investment Policy Review of India.
- 6-8 December 2009: Higher Education Spaces and Places: for Learning, Innovation and Knowledge Exchange, conference organised by the Directorate for Education and the Centre for Effective Learning Environments. Riga, Latvia.

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