

BRUSSELS MONITOR

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*

I. WTO Watch

Developing countries sign South-South trade agreement

On 2 December 2009, during the seventh session of the Geneva Ministerial Conference, 22 developing countries agreed to cut tariffs by at least 20% on at least 70% of their industrial goods. End of September 2010 was set as a deadline for negotiating the precise level of tariff reductions and the products concerned.

The countries agreeing to the South-South preferences deal are all parties to the General System of Trade Preferences (GSTP) talks, which began in Sao Paolo in 2004. The 22 GSTP participants include WTO members, such as Argentina, Brazil, Chile, Cuba, Egypt, India, Indonesia, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Paraguay, South Korea, Sri Lanka, Thailand, Uruguay, Vietnam and Zimbabwe, and also non-WTO members, such as Algeria, North Korea and Iran. Trade heavyweights like China and South-Africa have not signed the South-South agreement.

Although WTO members are supposed to offer each other the same trading conditions without discriminating in favour of particular groups, the rules allow members to give developing countries preferential treatment, known as “preferences”.

The South-South preferences agreement is expected to increase trade between its signatories by USD 8 billion. Brazilian foreign minister, Celso Amorim, stated that “this will be an important cut of real significance that will create trade immediately among countries of a similar level of development”.

According to Jorge Taiana, the foreign minister of Argentina who chaired the GSTP meeting, “this is a clear demonstration that the developing countries are willing to continue working on strengthening South-South trade and (are) in a process of liberalisation compatible with development”. In fact, certain analysts consider that the South-South agreement is a clear signal of developing countries’ disapproval for the currently stalled Doha negotiations, launched eight years ago. Since that time, China, Brazil and India have become significant emerging economies who believe that the Doha round must aim at helping developing countries, while the US and other rich countries demand more market opening.

Finally, it should be noted that, during the seventh Geneva Ministerial, Brazil has separately expressed its intention to open its markets to duty-free quota-free access on 80% of goods from the least developed countries from mid-2010, rising to 100% in four years. Moreover, trade officials from India, Mercosur and the SACU customs union are currently considering a potential regional trade agreement between them.

II. European Union: Trade

Agreement on new revisions to Ecolabel scheme extends scope and visibility

On 26 October 2009, the EU Council of Ministers adopted a new Regulation which revises the existing Ecolabelling scheme. Businesses should take note of this new development, as the scheme which has so far covered textiles, footwear and electrical appliances, will now be expanded to other product areas, opening up new possibilities for businesses to exploit.

The Ecolabel scheme, which commenced in 1992 and was revised in 2000, establishes a system for the award of the Ecolabel to products which have a reduced environmental impact. The scheme, the parameters of which have thus far been provided for in Regulation 1980/2000, is voluntary and aims not to discriminate between EU-made and foreign-made products. The Regulation sets out product groups with certain ecological criteria to be fulfilled (such as impact on climate change, energy and resource consumption, and waste generation) before an Ecolabel is awarded to products from one of the groups concerned. The criteria are set by experts and stakeholders at an EU level and vary from product group to product group, but the aim is for only those products and services with the lowest environmental impact over their life span to qualify for the Ecolabel.

Products and services which are awarded the Ecolabel carry a flower-shaped logo allowing consumers to identify them easily. The label has so far been awarded to over 3,000 products. Including textile products (such as clothing, bed linen and indoor textiles), footwear, white goods (such as dishwashers, refrigerators and washing machines), light bulbs, vacuum cleaners, furniture, televisions, soaps, shampoos, detergents and paper. If interested in the scheme, businesses should note the product groups for which the criteria are currently being revised. These include personal computers, dishwasher detergents and hand dishwashing detergents.

Businesses whose products fall into the Ecolabel scheme's product scope can take advantage of this voluntary scheme, benefiting from customer recognition of their products as eco-friendly, which moreover provides customers with a strong incentive to purchase in an ever more environmentally aware and environmentally competitive market place.

The aim of introducing the changes to the 1992 Regulation by means of the revised Regulation is to enhance the Ecolabel's effectiveness and market impact. This is to be done by increasing the range of eligible product groups and the number of Ecolabelled goods and services available to consumers, and by setting up a quicker process for developing and assessing the criteria which must be met in order to be awarded the label. The revised Regulation will also lead to a reduction in annual fees, a simplification of the assessment procedure for businesses who wish to display the label, and a focus on the most significant environmental impact of products.

In developing Ecolabel criteria, the Commission will have to take into account not only environmental performances (climate impact, consumption of energy and resources, etc.), but also the environmental impact throughout the life-cycle of the product and requirements for the reduction of animal testing. Other changes under the revised Regulation include recommendations regarding linking the Ecolabel to other sustainable production and consumption actions, such as developing criteria for the award of the label as part of eco-design projects (under the ecodesign Directive 2005/32/EC, as amended) and/or as a guide for future standards. Thus, businesses may well be compelled to meet Ecolabel standards under complimentary legislation and may therefore be interested in following the development process for the award of the criteria.

The revised Regulation has the goal of educating consumers to purchase more environmentally sustainable goods and encouraging manufacturers to go beyond mandatory product standards. The scheme has been widened with the aim of covering 40 to 50 product groups by 2015 and ensuring that more EU Ecolabel products are put on the shelves. In addition, processed food and feed products may be added to the Ecolabel product list. Originally, food and feed were expected to be excluded, but it has been decided that the Commission will conduct studies on the feasibility of setting reliable eco-criteria, prior to setting the standards for the award of the label. Furthermore, food products will be assessed in accordance with a life-cycle approach which, businesses may be interested to hear,

will encompass all stages, including the impact of transporting the food. The Commission is also to consider whether it will only award the Ecolabel to organic food.

Products which are excluded from the scope of the revised Regulation are medical and veterinary products and those which contain substances that are toxic, mutagenic or otherwise hazardous to the environment.

The Regulation has yet to be published in the Official Journal; however, a draft of the Regulation can be accessed at:

http://ec.europa.eu/environment/ecolabel/about_ecolabel/pdf/ep_proposal.pdf.

Companies interested in applying for the Ecolabel can access information at: http://ec.europa.eu/environment/ecolabel/ecolabelled_products/application_procedure_en.htm.

III. EC Competition

Oracle defends acquisition of Sun at Commission hearing

During an oral hearing held on 10-11 December 2009, Oracle, one of the world's largest business software undertakings, criticised the Commission's approach to investigating Oracle's proposed acquisition of Sun Microsystems, stating that the Commission had failed to understand the markets at issue and misrepresented customer comments gathered during the investigation.

The Commission has been investigating the proposed acquisition since July 2009, when Oracle submitted a notification for merger control clearance. Despite the fact that the US and several other jurisdictions had already granted merger control approval for the deal, the Commission, in September, opened an in-depth investigation into the transaction, stating that such an investigation was required in order to determine whether the deal would hamper competition. After consulting extensively with Oracle's customers and competitors, the Commission sent a Statement of Objections ("SO") to Oracle in early November, outlining the Commission's preliminary view that the acquisition would diminish competition in an already concentrated market.

The product with which the Commission is most concerned is relational database management software (RDBMS). RDBMS organises massive amounts of data stored by businesses and allows users (whether employees using the data in-house, such as an accountant, or customers accessing the data externally, such as a consumer on an e-commerce website) to retrieve relevant data based on search parameters. Complex database software can categorise and retrieve data records based on thousands of inter-related variables. Thus, for instance, when a consumer enters a search term on an e-commerce website, he is presented with a list of all products within categories related to that search term. The consumer may then narrow the list by price, colour, size, or any other number of variables. When the consumer chooses one product, he may also be presented with lists of products which are logically linked, according to still other variables, with his choice.

Sun Microsystems' RDBMS product is known as MySQL (SQL is an acronym for "structured query language") and was originally developed as an open-source software programme, whose source code was available for free to the entire software development community. When MySQL's original development company began marketing the product, it did not shed this open-source licensing policy entirely, but rather implemented a dual-licensing scheme whereby it offered open-source licences free to any user, provided that their use fell within certain categories, and also offered proprietary

licences combined with implementation and customisation services to other users. This dual-licensing strategy has worked relatively well, with MySQL gaining substantial market share amongst small and medium sized businesses, particularly as part of a software package that facilitates website design and operation. However, it is only in recent years that MySQL has gained any foothold amongst larger enterprise customers, and is still a relatively small player in this area.

Oracle's RDBMS products, on the other hand, are marketed as closed-source, proprietary software, and have long held a prominent share in the enterprise customers market, alongside products from IBM and Microsoft.

There are two basic issues being debated between Oracle and the Commission at the current oral hearing. First, Oracle and the Commission differ as to the extent to which MySQL and Oracle's products are really in competition with one another. Second, Oracle claims that the open-source nature of MySQL means that, even if it tried to eliminate MySQL from the market after the acquisition, it would not be able to.

First, because of the difference in the typical customer base of the two programmes, Oracle contends that the two products belong to different markets and are not in competition with one another to any substantial extent. Any small overlap between the two in the small to medium sized business or enterprise markets is truly negligible, and thus would not give rise to competition concerns. The Commission, apparently, is willing to concede that these two separate markets do exist, but argues that MySQL's presence in the enterprise customers market is far more important than Oracle will admit. The Commission notes that, because MySQL is open-source and far less expensive than Oracle's products, MySQL exerts a substantial constraining force on the market notwithstanding its small market share.

Second, Oracle has asserted that, even if MySQL is an important player in the enterprise customer market, this will not change after the acquisition because MySQL is an open-source product. According to Oracle, MySQL licensing terms require all of the software's code, and any revisions or additions made by developers, to be made freely available. Thus, if Oracle were to try to run MySQL into the ground to prevent it from cannibalising its proprietary software customers, the large community of programmers and users who currently run and update MySQL would continue to do so on their own. The Commission is very sceptical of this explanation of licensing and development of open-source software, and is concerned that Oracle is only interested in MySQL in order to remove it from competition.

In addition to the above theoretical arguments from each side, both Oracle and the Commission are pointing to the statements of customers and competitors to back up their claims. The Commission's SO is reportedly replete with quotations from customers who fear that the acquisition will reduce choice and drive up prices. Oracle, on the other hand, is arguing that the Commission has misrepresented customers' and competitors' opinions by ignoring large numbers of statements and taking other quotations out of context. Several of the customers and competitors at issue will be attending the current hearing, with Microsoft and SAP (a German business software developer) siding with the Commission and IBM and numerous large customers siding with Oracle. It remains to be seen whether this show of support for Oracle will sway the Commission's opinion.

A final approval or prohibition decision in the case is due by 27 January (which may be extended if Oracle submits proposed remedies or conditions to help ease the Commission's concerns).

IV. European Union: Regulatory

A. REACH: Number of expected substances to be registered in 2010

By the end of the deadline for the pre-registration of substances on 1 December 2008, there were 2.75 million pre-registrations by 65,000 companies covering 146,000 substances.

The European Chemical Agency (ECHA)'s estimate of the number of registrations for 2010 do not differ much from original estimates (9,200 versus 8,700). The head of the Guidance and Helpdesk unit at ECHA, Pilar Rodriguez Iglesias, stated on 17 November at a REACH conference in Brussels that the total number of registrations remains, nonetheless, uncertain. Monitoring of this was carried out by getting feedback from chemical associations.

Iglesias added that ECHA's remit was not to delay the deadline for registration in 2010, which is 30 November in that year, for, among others, importers and manufacturers of substances over 1000 tonnes per year. The ECHA official informed those at the conference that there was intensive preparation for the first registration deadline of 30 November 2010, with recruitment and training of staff and co-operation with Member States and the Commission.

Other priorities this year and next year were further development of the REACH-IT and other IT tools for industry – including a new chemical safety assessment/chemical safety reference tool. Also there would be additional guidance or further updates of guidance documents and a time-limited phone service close to the 2010 deadline.

It should furthermore be noted that ECHA will use the Christmas break to perform a major upgrade of the REACH-IT submission system which will therefore be closed from lunchtime of 14 December 2009 to 3 January 2010 inclusive. The Helpdesk and ECHA's offices will be closed from 24 December to 3 January inclusive. By lunchtime of 4 January 2010, REACH-IT will re-open and be available for submissions 24 hours a day during the working week – from 8.00 Monday until 19.00 Friday.

ECHA has announced that dossier submission via REACH-IT needs to be temporarily suspended over the Christmas break to allow ECHA to migrate to a new version of the REACH-IT software. This new version is said to be essential to enhance the performance of the software to sustain the extraordinary volume of registrations expected in 2010. The changes will also pave the way for further releases of REACH-IT during Q1 2010, which will provide new industry functionalities, including the classification and labelling bulk notification submission module.

Businesses wishing to make use of the ECHA IT tool should note that REACH-IT has continued to be available until 18 December for companies to sign-up, search, view and retrieve information on pre-registrations and registrations and to claim the registration numbers for "new" substances they notified before 1 June 2008 under previous legislation.

B. MEPs express concerns regarding restriction of use of eco-innovation measures to limit CO₂ emissions

Several Members of the European Parliament (MEPs) have accused the European Commission of planning to restrict the use of controversial "co-innovation" measures by car manufacturers in meeting future EU limits on carbon dioxide emissions from new vehicles. Under an EU law on car

emissions, manufacturers can claim a credit of up to seven grams per kilometre (g/km) towards their targets until 2014 by introducing eco-innovations such as LED lights. The commission's environment department is drafting implementing rules on their use.

In a debate in the Parliament's industry committee on 3 December 2009, German centre-right MEP Werner Langen criticised the department, saying it was planning to limit the credit carmakers could claim for each measure to 1g/km. Two other centre-right MEPs also criticised the move. Commission official Philip Owen told MEPs the rules on eco-innovation were "still in the planning phase", but acknowledged a credit limit for individual innovations was "being debated". Many Member States are open to a 1g/km limit, he added. The rules will be published in the course of next year.

The Commission is also busy drafting implementing rules on the monitoring and reporting of car emission data by Member States, and on derogations from the EU limit for small and niche manufacturers. These are expected to be finalised by February 2010.

V. *Dumping Watch*

Definitive anti-dumping duty – furfuryl alcohol

On 10 December 2009, the Official Journal published Council Regulation 1202/2009 imposing a definitive anti-dumping duty on imports of furfuryl alcohol originating in the People's Republic of China following an expiry review.

The product concerned is furfuryl alcohol, currently falling within CN code ex 2932 13 00, originating in the People's Republic of China.

It is recalled that the measures currently in force are definitive anti-dumping measures in the form of a specific duty on imports of furfuryl alcohol originating in the People's Republic of China ("China"), imposed by Council Regulation 1905/2003.

Following the publication of a notice of impending expiry of the anti-dumping measures applicable to imports of furfuryl alcohol originating in China, the Commission received a request for a review. The request was lodged by International Furan Chemicals BV (the "applicant") on behalf of the sole producer in the EU, representing 100 % of the EU production of furfuryl alcohol. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the EU industry.

The investigation showed that in case measures were repealed, there is a short-term likelihood of a significant increase of dumped imports from China to the EU with downward pressure on prices as a consequence and a recurrence of injury to the EU industry. It was therefore decided that the anti-dumping measures applicable to imports of furfuryl alcohol from China, imposed by Regulation 1905/2003, should be maintained for an additional period of two years.

The rate of the definitive anti-dumping duty applicable for furfuryl alcohol is 160 EUR per ton for Gaoping Chemical Industry Co. Ltd, 84 EUR per ton for Linzi Organic Chemical Inc., 97 EUR per ton for Zhucheng Taisheng Chemical Co. Ltd., 156 EUR per ton for Henan Huilong Chemical Industry Co. Ltd. And 250 EUR per ton for all other companies.

Council Regulation 1202/2009 entered into force on 11 December 2009. and will expire on 10 December 2011.

VI. *The Week Ahead*

A. Council

- 14-15 December 2009: Agriculture and Fisheries Council (Brussels)
- 17-18 December 2009: Transport, Telecom and Energy Council – Transport and Telecom parts (Brussels)

B. Parliament

- 14-17 December 2009: European Parliament plenary session (Strasbourg)

C. WTO

- 16-18 December 2009: Trade Policy Review Body - Croatia
- 17-18 December 2009: WTO General Council

D. OECD

- 14 December 2009: OECD statistics news releases: Harmonised Unemployment Rates.
- 15-16 December 2009: International Network on Financial Education (INFE), meeting organised by the Directorate for Financial and Enterprise Affairs. Rio de Janeiro, Brazil.

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