

# BRUSSELS MONITOR

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

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## *I. WTO Watch*

### **WTO establishes single dispute panel to hear complaints against China lodged by EU, US and Mexico**

At its meeting of 21 December 2009, the Dispute Settlement Body (DSB) of the WTO established a single panel to hear complaints lodged by the US, the EU and Mexico concerning restraints imposed by China on exports from China of various forms of raw materials. It may be recalled that the complainants had previously requested the establishment of a panel, but the request had been blocked by China at a meeting of 19 November 2009. At that time, China had expressed the opinion that consultations between the parties had been constructive and should continue. As a result, the DSB deferred the establishment of a panel.

The nearly identical complaints lodged by the US, the EU and Mexico allege that China imposed certain restrictions on the export of various raw materials, that these restrictions caused hardship for non-Chinese companies dependent on these raw materials, and that the restrictions provided an artificial cost advantage to downstream industries within China. The complaints cite 32 specific measures imposed by China, and note that there appear to be additional informal restrictive measures in place. As a result of these restrictions, the complainants allege that China is in violation of Articles VII, X, and XI of GATT 1994 as well as numerous provisions of the Protocol on the Accession of the People's Republic of China to the WTO.

The US and the EU lodged their complaints on 23 June 2009 and requested consultations with China over the matter. Between 2 and 6 July, numerous other parties, including Mexico, requested to join the consultation, after which Mexico filed its own individual request for consultation on 21 August 2009. The complaining parties requested the establishment of a panel, the next step in resolving disputes before the DSB, on 4 November 2009.

While the parties lodged nearly identical complaints, the EU went somewhat beyond the allegations expressed by the US and Mexico in stating that the problematic restraints were not a new phenomenon, but rather have been a problem since the time of China's accession to the WTO.

In addition to the EU, the US and Mexico, the following countries have reserved the right to participate as third parties in the panel: Argentina, Brazil, Canada, Chile, Colombia, Ecuador, India, Japan, Korea, Norway, Chinese Taipei and Turkey.

## *II. European Union: Trade*

### **Award of Ecolabel criteria extended for 12 major product groups, including light bulbs, computers and cosmetics**

On 4 December 2009, the EU's Official Journal published Commission Decision 2009/888/EC, revising the Ecolabel criteria for a variety of products, including light bulbs, computers, washing detergents and certain cosmetics (soaps, shampoos and hair conditioners). Sellers who deal with the products concerned and are keen to explore use of the Ecolabel scheme with a view to both helping the environment and improving their image with the EU's consumers are likely to be interested in these revisions.

The Ecolabel scheme, which began in 1992, and was revised in 2000 and 2009, establishes a system for the award of the Ecolabel to products which have a reduced environmental impact (in other words,

are more environmentally friendly). The scheme, the parameters of which are provided for in framework 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 before an Ecolabel is awarded to products from one of the groups concerned. Product groups include cleaning products, appliances, paper products, textile, home and garden products, lubricants and certain services, with further groups being regularly added.

The EU Ecolabel is part of a broader action plan on Sustainable Consumption and Production and Sustainable Industrial Policy adopted by the Commission on 16 July 2008. As such, its use is being encouraged, with the idea that producers who utilise the scheme will be put at a competitive advantage.

The criteria requirements for each product type are not covered by Regulation 1980/2000 itself but dealt with in separate Commission Decisions. Decision 2009/888/EC published on 4 December 2009, prolongs the validity of the award of the Ecolabel to 12 different product groups, including the following:

*Light bulbs - Decision 2002/747/EC*

The Ecolabel criteria in relation to light bulbs apply to “single-ended light bulbs” (i.e., all light bulbs which provide general purpose lighting and have single-ended, bayonet, screw or pin fittings) and “double-ended light bulbs” (i.e., all light bulbs which provide general purpose lighting and have fittings at both ends. This includes, principally, all linear fluorescent tubes). The criteria that a light bulb producer seeking to benefit from the award of the Ecolabel must satisfy fall into four main categories, being: (i) energy efficiency, (ii) lifetime, (iii) lumen maintenance, and (iv) mercury content.

The ecological criteria for the product group “light bulbs” were due to expire on 30 April 2010 and have been extended until 31 December 2010.

*Laundry detergents - Decision 2003/200/EC*

The product group “laundry detergents” comprises all laundry detergents, in powder, liquid or any other form, for the washing of textiles, and which are intended to be used principally in household machines, but not excluding the use in launderettes and common laundries.

The Ecolabel criteria aim in particular at promoting:

- savings of transport and energy by favouring compact laundry detergents;
- reduction of water pollution by reducing the volume of total chemicals used in the products and by limiting the use of potentially hazardous ingredients; and
- the minimisation of waste production by reducing the amount of primary packaging.

The ecological criteria for the product group “laundry detergents” were due to expire on 28 February 2010 and have been extended until 31 December 2010.

*Personal computers – Decision 2005/341/EC*

The Ecolabel on personal computers is an indication to consumers that the product:

- consumes less energy during use and standby;
- contains less substances that are dangerous for health and the environment, e.g. metals;
- can be taken back free of charge by the manufacturer after use;

- can be easily dismantled and recycled; and
- durability is increased through up-grades.

The ecological criteria for the product group “personal computers” were due to expire on 31 May 2010 but have been extended until 31 December 2010.

Hand dishwashing detergents - Decision 2005/342/EC

The Ecolabel on hand dishwashing detergents shows that the product:

- has a reduced impact on the aquatic environment;
- does not contain certain dangerous substances;
- has a limited effect on the growth of algae in water;
- is largely biodegradable;
- uses less packaging;
- contains information for correct environmental use; and
- is guaranteed to perform at least as effectively as conventional products.

The ecological criteria for the product group “hand dishwashing detergents” were due to expire on 31 December 2010 but shall now be valid until 30 June 2011.

Portable computers - Decision 2005/343/EC

The Ecolabel on portable computers indicates that the computer:

- consumes less energy during use and standby;
- contains less substances that are dangerous for health and the environment, e.g. metals;
- can be taken back free of charge by the manufacturer after use;
- can be easily dismantled and recycled;
- has increased product durability through upgrades; and
- uses less polluting batteries.

The ecological criteria for the product group “portable computers” were due to expire on 31 May 2010 but shall now be valid until 31 December 2010.

Soaps, shampoos and hair conditioners - Decision 2007/506/EC

The product group “soaps, shampoos and hair-conditioners” comprises any rinse-off substance and preparation intended to be placed in contact with the epidermis and the hair system with a view exclusively or mainly to cleaning them. That product group shall also comprise any rinse-off substance and preparation intended to be placed in contact with the hair system with a view to improving the condition of the hair (hair conditioners).

The Ecolabel criteria aim in particular at promoting:

- the reduction of water pollution both by limiting the quantity of potentially harmful ingredients and the total toxic load of the product;
- the minimisation of waste production by reducing the amount of packaging; and
- the reduction or prevention of potential risks for the environment related to the use of hazardous substances.

Additionally, the criteria aim to enhance the consumers’ environmental awareness. The criteria are set at levels that promote the labelling of soaps and shampoos that have a lower environmental load than the market average.

The ecological criteria for the product group “soaps, shampoos and hair conditioners” were due to expire on 21 June 2010 but shall now be valid until 31 December 2011.

Decision 2009/888/EC can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:318:0043:0045:EN:PDF> while the Ecolabel product categories can be found at:

[http://ec.europa.eu/environment/ecolabel/ecolabelled\\_products/product\\_categories\\_en.htm](http://ec.europa.eu/environment/ecolabel/ecolabelled_products/product_categories_en.htm).

### **III. EU Competition**

#### **A. Commission launches public consultation on the review of the competition rules for the motor vehicle sector**

On 21 December 2009, the European Commission launched a public consultation on its review of the competition rules for the motor vehicle sector. In particular, the European Commission published a draft sector-specific block exemption and notice concerning the sale of new motor vehicles, spare parts and aftermarket repairs.

The draft sector-specific block exemption provides that the current Motor Vehicle Block Exemption Regulation will apply for a further three years to agreements concerning the purchase, sale or resale of new motor vehicles and that the general Vertical Agreements Block Exemption Regulation will only apply to such agreements as of 1 June 2013.

In contrast, the draft sector-specific block exemption provides that the general Vertical Agreements Block Exemption Regulation will apply already as of 1 June 2010 to vertical agreements for the distribution of spare parts and for repair and maintenance services. The draft block exemption imposes sector-specific hardcore restrictions regarding spare parts markets (which are similar to the hardcore restrictions in the existing Regulation 1400/2002 concerning spare parts) to supplement the generally applicable rules.

The Commission has also circulated a draft sector-specific notice to accompany the draft sector-specific block exemption, which covers issues relating to multi-branding and the adoption of selective distribution systems, including access to technical information and the misuse of warranty restrictions. Interested parties have until 10 February 2010 to submit their comments.

#### **B. Potential damage claimant is given access to Statement of Objections**

On 7 December 2009, the Dutch Competition Authority (“NMa”) announced that a potential damage claimant had been given access to a Statement of Objections issued in the course of a cartel investigation in the sodium hypochlorite market which ultimately led to a €3.1 million fine imposed on chemicals companies on 18 November 2009.

The potential damage claimant had submitted a request to access these documents pursuant to the Dutch Government Information Act (“Wet openbaarheid van bestuur, Wob”) in order to gather information to substantiate the damage claim it intends to lodge against these chemical companies. Access to documents such as these are seen as being essential to parties who claim to have been harmed by competition infringements and are seeking to bring private damages claims in civil court, largely because statements of objection and un-redacted versions of NMa decisions will frequently

provide far more detailed information as to the scope of the infringement than a private party would be able to otherwise obtain quickly.

According to the NMa, the names of the individuals involved will be redacted on the basis of Article 10 (1) (d) and Article 10 (2) (e) of the Dutch Government Information Act in order to protect personal privacy. On the other hand, without any further explanation, the NMa mentioned that it will not treat as confidential business data of the companies involved, whereas such could be the case under Article 10 (1) (c) of the Government Information Act. The NMa granted access only a few weeks after the final decision in the cartel case had been adopted. Both the scope of the accessible version of the statement of objections and the speed in providing this document to the potential claimant are remarkable.

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

##### **Proposed consumer rights law gets broad support from Member States**

A Council debate held in Brussels on 4 December 2009 has resulted in EU Member States largely agreeing with an October 2008 Commission proposal on enhanced consumer rights. Pursuant to being adopted, the new law will have to be implemented across all 27 Member States.

Sellers of consumer goods will be affected by this proposal and may recall that on 8 October 2008 the Commission launched its proposal for the new Directive. The proposal aims, amongst other matters, to give EU buyers more confidence in shopping over the internet as well as in the more traditional brick-and-mortar shops. It was formulated due to what was perceived as a fragmented regulatory framework of consumer protection rules operating in the EU, and a need for greater harmonisation.

While some Member States are still not entirely comfortable with the consequences of fully harmonising consumer rights across the board (given that any *more* stringent national rules will have to be watered down to the EU requirements), several others appear to be happy with maximum harmonisation, believing that the Commission's draft will satisfy that aim.

The proposal aims to revise Directive 85/577/EEC on contracts negotiated away from business premises, Directive 93/13/EEC on unfair terms in consumer contracts, Directive 97/7/EC on distance contracts, and Directive 99/44/EC on consumer guarantees. The proposal moves away from the minimum harmonisation approach of the aforementioned four Directives, in order to embrace full harmonisation. In consequence, Member States will not be allowed to maintain or adopt provisions which diverge from, or are more stringent than, the provisions of the proposed Directive, in order to ensure a harmonised and non-fragmented body of consumer protection law.

The scope of the proposed Directive comprises contracts concluded between a trader and a consumer. There is a general information requirement, which must be respected prior to the conclusion of a contract (if not already apparent from the context). This includes furnishing the consumer with information on the main characteristics of the product, details of the trader, the price, delivery arrangements, existence of the right to withdraw where applicable, and details of any after-sales services or commercial warranties where applicable.

The proposed Directive contains new provisions on (a) consumer information and withdrawal rights for distance and off-premises contracts, and (b) other consumer rights specific to sales contracts. In

the latter category, there are provisions on, among others, delivery, passing of risk, and conformity with the contract. The principles of conformity reflect, to a large extent, those of the 1999 Directive (99/44/EC) on consumer guarantees. Thus, for example, the trader shall deliver goods in conformity with the sales contract.

The remedies for lack of conformity are likewise, similar: where the goods do not conform, the consumer is entitled to repair or replacement, a reduction in the price or to have the contract rescinded. The trader shall remedy the lack of conformity by either repair or replacement. Where these are not possible or disproportionate for the trader, the consumer may choose to have the price reduced or the contract rescinded (he can have the contract rescinded only where the lack of conformity is not minor).

There are also situations where the consumer may resort to any of the remedies to which he is entitled. These are: where the trader has refused to remedy the lack of conformity; he has failed to remedy it in a reasonable time; the attempt to remedy has caused significant inconvenience to the consumer; or the same defect has appeared more than once within a short period of time.

The consumer will be entitled to have the lack of conformity remedied free of any cost, and he may claim damages for any loss not remedied as specified above.

As for time limits, the trader will be held liable for any lack of conformity if this becomes apparent within two years. Where the trader has remedied the lack of conformity with replacement, he will be held liable where the lack of conformity becomes apparent within two years from the time of possession by the consumer (or a third party indicated by the consumer) of the replaced goods. In general, this two year time limit is important, as currently some Member States have in place *longer* periods during which consumers can make a claim – periods which will have to be uniformly cut down to only two years under the new Directive.

Commenting on the draft, BusinessEurope, which represents the EU's business lobby, is concerned by the prospect of installing even more administrative burdens and rules with which traders must comply. The deputy director of BusinessEurope has also asked for a consumer duty to be added, i.e., the duty to react diligently. The consumer rights organisation, BEUC, has on the other hand criticised the draft law: it wants to see a law in place which has an acceptable and very high level of protection; the draft law, as worded, does not (according to the BEUC director general ) do this.

The proposed text continues to be studied and debated among Member States and in the Parliament. An indicative date of 22 November 2010 has been provided for the vote in plenary at the European Parliament.

## V. *Dumping Watch*

### A. **Review of anti-dumping duty - polyethylene terephthalate**

On 6 January 2010, the Official Journal published Council Regulation 6/2010 initiating a review of Regulations 1292/2007 and 367/2006 imposing definitive anti-dumping and countervailing duties on imports of polyethylene terephthalate ("PET") film originating in India, and extending those duties to imports of that product consigned from, *inter alia*, Israel, for the purposes of determining the possibility of granting an exemption from those measures to one Israeli exporter.

The Council has initiated the review based on a request for the exemption lodged by SZP Plastic Packaging Products Ltd, a producer in Israel. It is recalled that by Regulation 2597/1999, the Council imposed definitive anti-dumping and countervailing duties on imports of PET film originating in India. These duties were extended to imports from, *inter alia*, Israel pursuant to Regulations 1976/2004 and 1976/2004. Following an expiry review, the Council, by Regulation 1292/2007, renewed these measures at their current level.

A request for a new exporter review was lodged by Joint Stock Company Acron (the “applicant”), an exporting producer in Russia. The request was limited in scope to dumping as far as the applicant is concerned. The applicant alleged that it did not export UAN to the EU during the period of investigation on which the anti-dumping measures were based, that is, the period from 1 June 1998 to 31 May 1999 and that it is not related to any of the exporting producers of UAN which are subject to the abovementioned anti-dumping measures. The applicant further alleged that it began exporting UAN to the EU after the end of the original investigation period.

All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

If, following the review, an exemption is granted to the applicant, imports from the applicant will become subject to registration.

## **B. Initiation of expiry review - tungsten carbide**

On 30 December 2009, the Commission published a notice of initiation of an expiry review of the anti-dumping measures applicable to imports of tungsten carbide and fused tungsten carbide originating in the People’s Republic of China.

Following the publication of a notice of impending expiry of the anti-dumping measures in force on such imports on 20 May 2009, the Commission received a request for review pursuant to Article 11(2) of the basic Regulation, i.e., the request for an expiry review.

The product under review is tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People’s Republic of China, currently falling within CN codes 2849 90 30 and ex 3824 30 00. The request for an expiry review was lodged on 30 September 2009 by the European Association of Metals (Eurometaux), on behalf of producers representing a major proportion, in this case more than 50%, of the total Community production of the product concerned.

The request is based on the grounds that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry. The applicant alleges that the exports from the country concerned to the Community are likely to be made at substantial dumping margins should the measures expire.

All interested parties who did not cooperate in the investigation leading to the measures subject to the present review should request a questionnaire or other claim forms as soon as possible, but not later than 15 days after the publication of the notice in the Official Journal. 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.

### **C. Definitive anti-dumping duty – leather footwear**

On 30 December 2009, the Official Journal published Council Regulation 1294/2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam or the People's Republic of China, as extended to imports of said footwear consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review.

It is recalled that the measures currently in force are definitive anti-dumping measures on imports of certain footwear with uppers of leather originating in the People's Republic of China ("China") or Vietnam, imposed by Council Regulation 1472/2006, and the extension of these definitive duties to imports of certain footwear with uppers of leather originating in China to imports consigned from the Macao SAR, imposed by Council Regulation 388/2008.

Following the publication of a notice of impending expiry of the anti-dumping measures applicable to the products concerned, the Commission received a request for a review. The request was lodged by the European Confederation of the Footwear Industry ("CEC" or the "applicant") on behalf of producers representing a major proportion, in this case more than 35%, of the total EU production of certain footwear with uppers of leather. 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 a continuation of dumping has taken place in respect of the product concerned originating in China and Vietnam and that the anti-dumping measures applicable to the product concerned should be maintained for an additional period of 15 months.

The rate of the definitive anti-dumping duty applicable for certain footwear with uppers of leather is 9.7% for one company in China, 16.5% for all other companies in China and 10% for all imports originating in Vietnam.

Council Regulation 1294/2009 entered into force on 31 December 2009 and will expire 15 months from that date.

### **D. Repeal of anti-dumping duty – ferro-silicon**

On 30 December 2009, the Official Journal published Commission Regulation 1297/2009 repealing the anti-dumping duty imposed by Regulation 172/2008 on imports of ferro-silicon originating in the Former Yugoslav Republic of Macedonia ("FYROM").

The product concerned is a ferro-alloy containing by weight more than 8% and less than 96% silicon and at least 4% iron, currently classifiable within CN codes 7202 21 00, 7202 29 10, and 7202 29 90.

It is recalled that by Regulation 172/2008 the Council imposed a definitive anti-dumping duty of 5.4% on imports of the product concerned originating in FYROM. The Commission received a request for a partial interim review of Regulation 172/2008 pursuant to Article 11(3) of the basic

Regulation lodged by an exporting producer from FYROM, Silmak Doel Export Import, who is the only known exporting producer of the product concerned in FYROM.

An investigation showed that circumstances had changed and there no longer exists any dumping of the product concerned, and that these changed circumstances may be considered to be lasting changes. Thus, the present Regulation repeals Regulation 172/2008 and terminates the definitive anti-dumping duty on the product concerned.

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

### **A. OECD**

- 11 January 2010: Signing of the international agreement between Chile and the OECD, in the presence of President Bachelet and Secretary-General Gurría. Santiago de Chile, Chile.
- 12 January 2010: OECD statistics news releases: Harmonised Unemployment Rates.
- 13 January 2010: *Managing Labour Migration Beyond the Economic Crisis*, presentation by OECD analyst Jonathan Chaloff at the OECD Tokyo Centre. Tokyo, Japan.
- 13 January 2010: Africa Partnership Forum meets in Ethiopia.

### **B. Council**

- 11 January 2010: Agriculture and Fisheries Council (Brussels)
- 14-17 January 2010: Informal Energy and Environment Council (Sevilla)

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