

BRUSSELS MONITOR

A Weekly Review of EU Trade Policy Developments Affecting Japan

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I. WTO Watch

Russia and US fail to resolve dispute over US poultry imports

On 19 January 2010, the US and Russia began bilateral talks concerning US poultry imports into the Russian Federation.

Following the entry into force of its new sanitary regulation on 1 January 2010, Russia has imposed a ban on chlorine-treated US poultry imports. The regulation restricts the use of chlorine and moisture content in the poultry processing. The new requirements, applicable to both imports into Russia as well as meat processed in Russia, state that the amount of chlorine in the solution used in the poultry meat processing should not exceed the level set for the drinking water, meaning 0.3-0.5 milligrams per litre. Moreover, the new sanitary measures limit the amount of fluid that separates when defrosting the meat to 4% of the total weight of the bird.

According to Washington, the newly adopted legislation will have “a devastating impact” on the US poultry industry and trade, as American farmers have been using chlorine as their primary anti-microbial treatment for a quarter of a century.

US poultry imports into Russia began in 1990, when a trade agreement was signed between the last Soviet Union President, Michael Gorbachev, and then-US President George Bush Sr. US poultry shipments peaked in 2001 and then began to decline, as the Russian government began cutting import quotas. The figures stood at 800 million metric tonnes in 2008 and dropped to 750 million metric tonnes in 2009. In 2010, the quota has been further reduced to 600 million metric tonnes and is expected to reach 409 million metric tonnes in 2012. Notwithstanding this continuous decline, the statistics show that in 2009 almost four-fifths of all imported poultry on the Russian market came from the US.

On 14 January 2010, the Russian Prime Minister, Vladimir Putin, argued that Russia would find other poultry suppliers if the US producers “don’t want or can’t meet Russian healthy requirements.” He further added that “it’s not something exclusively Russian. These are standards adopted in the European Union. We simply took them for use in our own country”. Indeed, in 1997, the EU banned US poultry treated with chlorides. This issue is currently being examined by the WTO.

Alexander Shokin, the president of Russia’s Union of Industrialists and Entrepreneurs, has, however, expressed doubts concerning Russia’s ability to find new suppliers, although he suggested that domestic producers would be able to increase their poultry production. According to Mr Shokin, the US-Russia talks “may last through the year, or may be over in a month. But [Russia] would not like to waste a year”.

In any event, on 21 January 2010, the first round of the US-Russia talks ended without any commitment from the Russian side to reopen its poultry market to US exports. Both sides intend nevertheless to renew negotiations in the near future.

II. European Union: Trade

Origin marking debate gathers pace in wake of footwear duty extension

On 30 December 2009, Council Regulation 1294/2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, was published in the Official Journal. This followed a controversial vote on 17 December 2009 in which three Member States were persuaded to abstain, allowing the proposal to pass.

It has been suggested that the abstentions were given on the understanding that no further extension of the measures would be sought. Thus Member States may well be starting to look to alternative means to protect their markets: the crescendo in the origin labelling debate arrives at an opportune moment.

The final vote of 17 December 2009 saw 12 Member States vote in favour, notably from the southern EU countries including Italy, Spain and Portugal. While the remaining Member States followed a more liberal line and voted against the measures, abstentions from Germany, Austria and Malta secured a fifteen month extension to the duties.

The case has been seen as a measure of how open the EU is to free trade during the current economic climate and has provoked angry reactions from China and Vietnam. A spokesman for the Chinese Commerce Ministry has stated that the extension to the duties would be challenged before the World Trade Organization. The matter has also drawn criticism from within the EU, with former Trade Commissioner and current UK Business Secretary, Lord Mandelson stating that “the Commission should not have brought about this extension of anti-dumping duties. It’s not good for the longer-term growth of European trade and investment relations with China and Vietnam”.

With assurances understood to have been made to the abstaining Member States that no further push to extend the measures will be made, measures should now expire in April 2011. However, Member States keen to protect vulnerable markets are now pushing the debate on “made in” labelling to the fore.

At present, the EU does not have any harmonised provisions or uniform practices on origin marking. Thus, “made in” labels on goods produced outside the EU are currently optional. A Commission proposal on origin marking was first put forward in December 2005 but was then blocked by more liberal Member States. The matter has now been raised again, with the European Parliament backing a Resolution to reopen the legislative procedure over a proposal for a Regulation on the indication of the country of origin of certain products imported from outside the EU.

When presenting the Commission’s proposal to the European Parliament in mid-November 2009, Baroness Ashton suggested that it would “address [...] the concerns globalisation generates not just for consumers, but also, and perhaps particularly, for small enterprises”.

The Commission has suggested that only those goods that consumers find in retail stores should be included in its proposal and that the scheme be launched on a pilot project basis.

Advocates of the label hope that mandatory origin labelling will lead to consumers electing to buy EU-made goods. However, the matter will not proceed without opposition from within the EU. The British Chambers of Commerce has joined forces with some of its European counterparts to warn against protectionist measures in the current economic climate. In a letter to the Council, the business associations have opposed the origin marking proposal. Concerns exist that new requirements are

simply “creeping protectionist policies” and will raise financial and administrative burdens for importers, leading to backlashes abroad for EU products.

Since the adoption of the Parliamentary Resolution on 25 November 2009, EU Member States and the Commission are understood to have agreed to the setting up of a joint technical committee to assess the impact of the measures. The committee is set to meet for the first time this month. The debate has also been ongoing between Member States, both in expert meetings and in the Council’s Trade Policy Committee (formerly known as the Article 133 Committee). The Commission is hoping that the work of the joint technical committee, together with the debate, will clear the way for a compromise solution.

Meanwhile, the Commission is encouraging the European Parliament to use its increased authority on legislative measures in the field of trade policy, granted in accordance with the new Lisbon Treaty, to address the proposed “made in” Regulation. It is not yet clear what position the new Trade Commissioner will take on this issue, nor whether the EU’s new Spanish Presidency will be prioritising the matter.

III. EU Competition

General Court reduces fines in appeal of readopted soda ash decision

The General Court (GC) (formerly the Court of First Instance) recently issued its judgments on appeals brought by Solvay against two European Commission decisions finding that it had infringed Articles 101 and 102 TFEU (formerly Articles 81 and 82 EC) for its participation in a cartel affecting the market for soda ash and the abuse of its dominant position on the same market.

The case stems from two Commission decisions originally adopted in December 1990 finding that Solvay had participated in an illegal market-sharing agreement with competing soda ash supplier CFK in violation of Article 101 TFEU and had abused its dominant position on the soda ash market in violation of Article 102 TFEU. The Commission fined Solvay a total of €23 million for the two infringements.

Solvay successfully appealed against the two infringement decisions before the Court of First Instance (“CFI”) (now the General Court) on procedural grounds, and the European Court of Justice (“ECJ”) upheld the CFI’s judgment in 2000. Following the ECJ’s judgment, the Commission readopted the two decisions in December 2000, which were again the subject of appeals by Solvay.

In its recent judgments, the GC upheld two principal aspects of Solvay’s appeal. First, in relation to the appeal against the Article 101 decision, the GC agreed with Solvay’s claim that the Commission had not correctly assessed the duration of the market-sharing agreement with CFK. In its decision, the Commission found that the agreement had operated between 1987 and the end of 1990. However, the GC upheld Solvay’s claim that there was no evidence on file to show the continuation of the agreement beyond the end of 1989 and annulled the Commission’s decision insofar it found the agreement had continued to the end of 1990. The GC accordingly reduced the fine imposed in the readopted Article 101 decision by 25% from €3 million to €2.25 million.

Second, in relation to the appeal against the Article 102 decision, the GC accepted Solvay’s argument that the Commission had been incorrect to take previous cartel infringements committed by Solvay into account when calculating the fine. In its readopted decision, the Commission had, when

determining the gravity of the Article 102 infringement, taken into account the fact that Solvay had in the past been fined for participation in cartel infringements in the PVC, polypropylene and peroxygen markets. The GC held that the Commission had been wrong to treat these past infringements as “similar infringements” within the meaning of its then-applicable Fining Guidelines when setting the fine imposed on Solvay and accordingly reduced the fine imposed on Solvay by 5% from €20 million to €19 million.

The other grounds of appeal raised by Solvay against the two decisions were dismissed.

IV. European Union: Regulatory

Switzerland to ban inefficient electric light bulbs

Sellers of electrical commodities and especially light bulbs may like to be apprised of the phasing out of certain light bulbs by the Swiss authorities. For the prohibition of the two least efficient categories of light bulbs Switzerland was quicker than the EU. In contrast, the phasing-out of light bulbs that the EU introduced in September 2009 will start in Switzerland with a delay of one year, namely in September 2010.

In January 2009, Switzerland prohibited the placing on the market of line-powered electric household lamps and compact fluorescent lamps which do not at least satisfy the energy efficiency class E. In accordance with the EU provisions with regard to energy labelling of household lamps, category A corresponds to the best and G to the worst energy efficiency. The Swiss prohibition of F- and G-class bulbs which will be applicable until 31 August 2010 is subject to a number of exceptions for which the phasing out will not apply. These are for example:

- Lamps with a luminous flux of more than 6500 lumens;
- Lamps with an output of less than 4 W;
- Reflector lamps;
- Lamps which are mainly marketed for use with other energy sources, such as batteries;
- Lamps which do not mainly produce visible light;
- Lamps which are marketed as part of a device which is not mainly used for producing light;
- Decorative lamps satisfying certain criteria.

In the EU, the prohibition of lamps of the category F and G was only introduced in September 2009 under the EU’s framework ecodesign of energy-using products (EuP) Directive 2005/32/EC and the implementing measure, Commission Regulation 244/2009.

According to the Swiss Energy Decree, as amended on 24 June 2009, Switzerland will take over the EU provisions regarding light bulbs as of 1 September 2010.

In practice, applying the EU provisions with respect to light bulbs will mean that as of 1 September 2010 the placing on the market of the following lamps will generally be forbidden in Switzerland:

- All non-transparent light bulbs, unless they are in the energy efficiency class A or unless they belong to a group of certain lamps where correction factors apply, allowing them to be B-class.
- Lamps with an output of 75 W or more which do not at least satisfy energy efficiency class C.

- Lamps which do not at least satisfy energy efficiency class E (as already provided by the Swiss provision applicable as of 1 January 2009).

The prohibition to place on the market most non-transparent light bulbs will have significant effects in Switzerland, as many Swiss consumers prefer this kind of light bulb.

It will be interesting for businesses to know that the late introduction of the EU provisions in Switzerland will *de facto* mean that until 31 August 2010 it will still be possible to place on the Swiss market some bulbs which can no longer be marketed in the EU. Namely, bulbs with an output of 100 W or more which fall in the energy efficiency class D or E and non-transparent bulbs which fall in the energy efficiency class D or E can still be legally marketed in Switzerland until 31 August 2010.

It is, however, necessary to take into consideration that the Swiss interpretation of “placing on the market” is different from the one applied in the EU. In Switzerland this generally means that the products can no longer be sold, i.e., they can neither be sold to wholesalers nor to consumers.

However, a competent official at the Swiss Federal Office of Energy has indicated that lamps which are manufactured in Switzerland or imported into Switzerland by 31 August 2010 and which fall under the prohibition applicable as of 1 September 2010 can still legally be sold in Switzerland until 31 December 2010. This transitional period of 4 months shall allow businesses to adapt to the new legal situation without allowing them to build up a significant stock of bulbs not complying with the provisions applicable as of 1 September 2010.

V. *Dumping Watch*

A. **Definitive anti-dumping duty – ethanolamine**

On 22 January 2009, the Official Journal published Council Regulation 54/2010 imposing a definitive anti-dumping duty on imports of ethanolamine originating in the US.

The product concerned is ethanolamine, currently falling within CN codes ex 2922 11 00, ex 2922 12 00 and 2922 13 10, originating in the US.

It is recalled that in February 1994, the Council imposed, by Regulation 229/94, definitive anti-dumping duties on imports of ethanolamine originating in the US. Following a request of the Conseil européen des fédérations de l'industrie chimique (CEFIC), an expiry review was initiated in July 2005. By Regulation 1583/2006 the Council concluded that review and imposed definitive anti-dumping measures on imports of ethanolamine originating in the US.

Following the publication in March 2008 of a notice of impending expiry of the anti-dumping measures applicable to imports of ethanolamine originating in the US, the Commission received on 25 July 2008 a request for a review. The request was lodged by BASF SE/AG, INEOS Oxide Ltd, Sasol Germany GmbH and Akzo Nobel Functional Chemicals AB on behalf of producers representing a major proportion, in this case more than 50%, of the total EU production of ethanolamine.

Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation. The investigation

regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2007 to 30 September 2008.

Following the anti-dumping investigation, it was concluded by the Commission that in the event that the measures were repealed, there was a strong likelihood of a significant increase of dumped US imports to the EU that could have led only to a recurrence of injury. The Council decided that the anti-dumping measures applicable to imports of ethanolamine originating in the US imposed by Regulation 1583/2006 should be maintained.

The rate of the definitive anti-dumping duty applicable to the product concerned is 59.25% for The Dow Chemical Corporation, 69.4% for INEOS Americas LLC, 111.25% for Huntsman Chemical Corporation and 111.25% for all other companies.

Council Regulation 54/2010 entered into force on 23 January 2010 and will remain in force for a period of two years.

B. Notice of impending expiry of anti-dumping measures – furfuraldehyde

On 22 January 2009, the Official Journal published a notice of the impending expiry of certain anti-dumping measures.

The notice concerns the expiry of anti-dumping measures on furfuraldehyde originating in the People's Republic of China.

The product concerned is furfuraldehyde originating in the People's Republic of China, falling within CN code 2932 12 00. Furfuraldehyde is also known as 2-furaldehyde or furfural.

It is recalled that the current measure in force is an anti-dumping duty imposed by Council Regulation 639/2005. The measure is due to expire on 29 April 2010.

Community producers may lodge a written request for a review at any time from the date of the publication of the notice but no later than three months before the date of expiry. This request must contain sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Should the Commission decide to review the measures concerned, importers, exporters, representatives of the exporting country and Community producers will then be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request.

VI. *The Week Ahead*

A. Council

- 25-26 January 2010: General Affairs and External Relations Council (Brussels)

B. WTO

- 25-27 January 2010: WTO: Trade Policy Review Body — Malaysia
- 27-31 January 2010: World Economic Forum Annual Meeting - Davos, Switzerland

C. OECD

- 25 January 2010: Economic Forum on Latin America and the Caribbean, meeting organised by the OECD Development Centre, the IADB and the French government. Participation of the OECD Secretary-General. Bercy, Paris.
- 26-27 January 2010: Nanotechnology/Manufactured Nanomaterials workshop for the Africa region: one in a series of regional workshops on Awareness-Raising for Developing and Transition Countries, organised by UNITAR, the Inter-Organisation Programme for the Sound Management of Chemicals (IOMC), and OECD Environment Directorate. Abidjan, Ivory Coast.
- 26-29 January 2010: Regional Senior Budgetary Officials Network for Latin America, meeting organised by the Directorate for Public Governance and Territorial Development. Santiago, Chile.
- 27-28 January 2010: Strengthening Developing Countries through Taxation, roundtable 27/01 on Tax and Development, organised by the OECD's Committee on Fiscal Affairs, OECD's Development Assistance Committee and the OECD Development Centre. Followed by the Global Forum on Development on 28/01.
- 27-29 January 2010: Innovative Financial Mechanisms, workshop organised by the UN Environment Programme, with participation of the OECD Environment Directorate and Development Co-operation Directorate. Bonn, Germany.
- 27-31 January 2010: World Economic Forum, with participation of OECD Secretary-General. Davos, Switzerland.
- 28 January 2010: Domestic Resource Mobilisation (DRM) for Development: The Taxation Challenge, global forum on development organised by the OECD Centre for Tax and Policy Administration, the Development Centre and the Development Co-operation Directorate.
- 29 January 2010: Regulation: Political Economy, Measurement and Effects on Performance, conference organised by the OECD Economics Department and the University of Munich. Munich, Germany.

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