

BRUSSELS MONITOR

A Weekly Review of EU Trade Policy Developments Affecting Japan

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I. WTO Watch

EU suspends Sri Lanka's preferential trade status under GSP+

On 5 February 2010, a European diplomat confirmed that European ambassadors have decided to suspend Sri Lanka's GSP+ status "because of the country's poor human rights record". He explained that a recent European Commission investigation "showed that Sri Lanka has not demonstrated that it has taken steps that would allow it to retain or regain the GSP+ status". European Finance Ministers are expected to endorse this decision when they meet in Brussels on 16 February 2010.

Sri Lanka is a current beneficiary of the GSP+, along with 15 other developing countries. "GSP+" is the "special incentive arrangement for sustainable development and good governance", which is one of three non-reciprocal, preferential import regimes for developing countries under the European General System of Preferences (GSP). GSP+ confers on particularly vulnerable developing countries additional preferences that go beyond the standard GSP treatment, provided the countries in question have ratified and implemented a variety of international conventions in the field of human and labour rights, sustainable development and good governance.

Sri Lanka voluntarily applied for GSP+ status and committed to respecting all the associated conditions. However, an investigation launched by the European Commission on 14 October 2008 revealed that Sri Lanka had failed to implement three UN human rights conventions, even though the enforcement of these instruments was one of the substantive qualifying criteria for the GSP+ privilege. As a result, the Commission proposed to suspend Sri Lanka's benefits under the GSP+. EU Member State governments have now approved the Commission's proposal.

Additional tariff concessions granted to Sri Lanka under GSP+ mainly concern imports of T-shirts and other clothing items as well as imports of fisheries products originating in Sri Lanka. Although the GSP+ benefited Sri Lanka to the tune of approximately \$150 million annually, the Chairman of Sri Lanka Board of Investment Dammika Perera has declared that the loss of the GSP+ privilege will "not have a huge impact to the country." He further added as follows: "If Sri Lanka loses GSP+ status, the country will fall under GSP General Arrangement. (...) all what we should do is to look for an alternative market in addition to EU."

In any event, the suspension of the GSP+ status will only come into effect in six months' time, giving businesses time to adjust to the new rules. In the meantime, the Sri Lankan government may be able to persuade the EU to reverse its decision. Indeed, a European diplomat has confirmed that the EU "will look to work with Sri Lanka to identify concerted steps and actions which could help us to plot the course together that would enable Sri Lanka to regain GSP+".

II. European Union: Trade

Head of European Parliament's Korean Peninsula Delegation speaks in favour of FTA

Discussions within the European Parliament on the EU-Korea FTA are heating up as Members of the European Parliament (MEPs) started to examine, on 10 February 2010, the controversial EU-South Korea Free Trade Agreement (FTA). The European Parliament's Delegation for Relations with the Korean Peninsula (DKOR) is, as a result, also in the spotlight. Its chief, Christian Ehler (EPP, Germany) stated in an interview that he was confident that the deal will be supported by the European Parliament despite the intense pressure applied by European car makers. Also on the topic

of the FTA, it was reported that Seoul has announced that the FTA will be signed in April, signalling a year-end entry into force of the trade accord. However, this timeline is rather ambitious.

In describing the role of the Delegation for Relations with the Korean Peninsula (DKOR) within the European Parliament, Ehler stated that its goal is to promote parliamentary dialogue with South Korea (and also North Korea). It holds regular meetings in Brussels and Strasbourg to examine matters, such as the current economic and political situation in the peninsula, humanitarian and human rights issues, regional security issues, as well as negotiations between the EU and Seoul on the FTA. In fact, as new head of the Delegation, Ehler's top priority this year will be the successful ratification of the FTA and a general enhancement of bilateral economic relations.

On being questioned about certain industry sectors' (mainly the automotive sector's) opposition to the FTA, he commented that their concerns have been taken seriously throughout the negotiations. Considering the agreement as a whole, his view is that the FTA should still be beneficial for both sides. He is convinced that the FTA, once ratified, will send a positive and important signal. Particularly in times of economic crisis the avoidance of protectionism should receive high priority – this position is being promoted by economists all over the world. Facing the crisis, politics has to foster free trade as this is one of the key instruments to stabilise national and international economies. The FTA constitutes an important element in combating the economic downturn and should therefore be seen as the right step at the right time. He noted that the European Parliament will certainly examine the FTA carefully, and a lively but responsible debate can be expected. The FTA is an ambitious and comprehensive one but he claimed to be sure that the majority of the MEPs will vote in favour of the agreement.

On the matter of ratification and entry into force, it is reported that Seoul has announced that the EU and South Korea will sign the FTA in April, paving the way for its entry into force by the end of the year. "Both sides agreed to sign the free trade accord in April, and reaffirmed that the free trade agreement will take effect this year," the South Korean Ministry of Foreign Affairs and Trade said in a statement.

The announcement made in Seoul indicates that the Council will have to formally approve the deal by April. "We expect to present the proposal to the Member States in March," a Commission official reportedly stated. The Council has already given its informal support to the agreement negotiated by the Commission. After several months of sensitive internal consultations last year, no Member States opposed the final agreement presented in October, despite concerns regarding the automotive sector. While the Commission hopes for a smooth passage in the Council, some analysts do not rule out the risk of further discussions with the Member States. "The only question mark left is what is Italy going to do," said a representative from BusinessEurope. While Berlin and Paris have eventually backed down, Rome remains concerned by the impact of the liberalisation of the car sector and could ask for further compensation.

Time is not on the side of the Commission as it also needs to secure the support of the European Parliament quickly enough to ensure the entry into force of the FTA before the end of 2010. Several clauses within the agreement require the entry into force of the text within the year, a Commission source has reportedly stated. This factor increases pressure on the EU's new Trade Commissioner, Karel De Gucht, who therefore has only a little time to reach a deal with MEPs.

III. EU Competition

European Commission considers new clarification on online distribution restrictions

It has been reported that the European Commission is considering changing a clause in the draft Vertical Agreements Block Exemption Regulation (VABER) in order to prevent manufacturers from discriminating between online sales platforms which may be used by their distributors.

The current VABER, as with any block exemption regulation, provides companies with guidelines as to the types of provisions they may include in their contracts while still remaining within the bounds of competition law. The VABER describes the types of restrictions which manufacturers or other companies may employ in agreements with others in a vertical relationship to them (e.g., distributors or retailers). For instance, the VABER describes situations in which a manufacturer may impose certain exclusivity or non-compete obligations on its distributors.

The current VABER has been undergoing a drawn-out process of revision in order to clarify several sections and to update the VABER's provisions to better take account of the specific problems and concerns faced by e-commerce. Throughout the revision process, restrictions related to sales online and, in particular, to sales over internet auction sites such as Ebay have been very hotly debated.

It now seems that the Commission is preparing to include language in the draft VABER which would prevent brand owners from discriminating between sales through a distributor's own website and sales through a third party platform such as Amazon.com or Ebay, so long as the third party platform meets criteria agreed between the parties. The text proposed for inclusion in the VABER reads as follows: "Similarly, under the block exemption, a supplier may require that its distributors do not sell through third-party platform or auction sites, if the latter cannot ensure an online sales environment fulfilling the standards agreed between the supplier and its distributors for the use of the internet to sell the contractual products."

While the provision may seem of relatively minor importance, it could substantially affect the ability of major e-commerce platforms to attract distributors, as it would force brand owners to choose between an outright prohibition on sales over the internet and allowing for the possibility of sales through third party platforms.

Parties which have read the revised draft VABER have complained that, while the provision is a start, it does not provide precise enough guidance. Of particular concern is whether brand owners would be able to set criteria based on websites' aesthetics along with technical criteria.

IV. European Union: Regulatory

Attention on unsafe products as EU guidelines published

On 26 January 2010, the Official Journal published Commission Decision 2010/15/EU, laying down guidelines for the management of the Community's Rapid Information System, or "RAPEX" as it is more commonly known. Businesses will likely have already heard of RAPEX, which is a central notification system alerting competent authorities all around the EU to dangerous products that have been placed on the market and are subjected to restrictions due to the serious risks they represent. The RAPEX notification system was established pursuant to Directive 2001/95/EC on general product safety.

According to the Commission, both RAPEX and notifications made under Directive 2001/95/EC have proven to be reliable systems that are recognised worldwide. In the sixth year since the last set of RAPEX guidelines, the total number of submitted notifications (1993) has more than quadrupled, and continues to grow.

As regards the notifications system, which then feeds into RAPEX, Directive 2001/95/EC requires that, where a Member State takes measures which restrict the placing on the market of products — or require their withdrawal or recall — the Member State needs to inform the Commission of the measures; the information is then circulated to the other national competent authorities by means of the RAPEX centralised procedure.

The new RAPEX guidelines specify that the notifications sent to the Commission through RAPEX include the following types of data:

- Information enabling the notified product to be identified, i.e., product category, product name, brand, model and/or type number, barcode, batch or serial number, customs code, description of the product and its packaging, accompanied by pictures showing the product, its packaging and labels.
- Information establishing the product's country of origin, name, address and contact details, such as telephone number and e-mail address, of a manufacturer and exporters. The following documents also are to be attached to the form where available: copies of orders, sales contracts, invoices, shipping documents, customs declarations, etc.
- Information on the safety requirements applicable to the notified product, including the reference number and name of the applicable legislation and standards.
- Information on the supply chains of the notified product in the Member States, and, in particular, information on the countries of destination, plus information on importers, and also, if available, on distributors of the notified product.
- Information on measures taken, in particular, the type (obligatory or voluntary), category (e.g., withdrawal from the market, recall from consumers), scope (e.g., country-wide, local), date of entry into force and duration (e.g. unlimited, temporary).

The new RAPEX guidelines can be accessed at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:022:0001:0064:EN:PDF>.

The weekly RAPEX report updates, listing dangerous product notifications by the Member States, can be accessed at: http://ec.europa.eu/consumers/dyna/rapex/rapex_archives_en.cfm.

V. *EU Institutions*

A. European Parliament approves new Commission

On 9 February 2010, the European Parliament elected the new European Commission by 488 votes in favour, 137 against and 72 abstentions in its Strasbourg plenary. The vote was a single vote on the whole College of Commissioners, consisting of one Commissioner from each of the 27 EU Member

States. The European Council, following approval by the European Parliament, has appointed the new European Commission for the period 10 February 2010 to 31 October 2014.

As MEPs voted, José Manuel Barroso said his new team is “ready to take up the challenges which lie before us”. The Commission President said his team of 27 Commissioners-designate had the necessary “new ideas and experience” to tackle key economic and social problems. With major challenges such as the economic crisis, climate change and energy security, Barroso said that “business as usual” was not an option for the EU and called for a “radical shift from the status quo”.

The European Parliament also approved on 9 February a set of key principles to be implemented in the cooperation agreement governing relations between the European Parliament and the Commission. Commission President Barroso endorsed MEPs’ demands, reflecting the new position of Parliament under the Lisbon Treaty. The Parliament and the Commission are currently revising the Framework Agreement that defines relations between the two institutions, including their political responsibilities, the flow of information and legislative coordination. The negotiators of the two institutions agreed on a set of key principles in late January 2010. Parliament approved these principles on 9 February 2010 by a show of hands.

MEPs in Strasbourg were also debating on 9 February 2010 the difficult monetary, economic and social situation of euro-zone countries in the wake of the financial crisis. MEPs are debating the way forward with the Council and the Commission.

B. Exchange of views at European Parliament on impact of Lisbon Treaty on Committee on International Trade

It was reported on 9 February that an “Exchange of views” has been held with former and acting Members of the European Parliament concerning the impact of the Lisbon Treaty on the Committee on International Trade (INTA). Under the Lisbon Treaty, the Committee will receive a number of new powers, and it was argued that, in practical terms, all areas of EU trade policy now fell under the competence of the European Parliament in one way or another.

The Chairman of the Committee explained that the Treaty of Lisbon had resulted in a number of new powers for the Committee in terms of the co-decision and assent procedures, and consequently added to the legitimacy of the EU in these policy areas. In practical terms, it was argued that essentially all areas of EU trade policy now fell within the competence of the European Parliament.

The consequence of this was that the Council and Commission were now aware that they needed to be in closer dialogue with the Parliament on key issues. MEPs discussed how, ultimately, the Parliament was in a position to say *no* to trade deals, but they believed the Parliament still had to be aware of the division of powers when it came to the formulation of trade agreements, and that, essentially, they would be present at the beginning and at the end, though informed and consulted throughout the process. In truth what was now needed was new cooperation within the Parliament’s committees to ensure the development of proper trade policy.

Concerns were raised that the new Commission might not support the Parliament’s role as it should. MEPs were also concerned that the Parliament’s resources were not sufficient to deal with these new responsibilities arising from the Treaty of Lisbon. Other MEPs want to see emphasis placed on the preservation of values when dealing with trade policy. One MEP was concerned that the Committee did not meet often enough to keep up with the pace of trade negotiations, and felt something would

have to be put in place to deal with this. The MEP also suggested that the Parliament should avoid getting involved in the detail of negotiations, and concentrate on broader political oversight.

VI. *Dumping Watch*

No developments to report.

VII. *The Week Ahead*

A. Council

- 15-16 February 2010: Education, Youth and Culture Council (Brussels)
- 16 February 2010: EcoFin Council (Brussels)

B. WTO

- 18-19 February 2010: OECD, 9th Global Forum on Competition

C. OECD

- 17 February 2010: Economics and Security Committee of the NATO Parliamentary Assembly, annual meeting with the OECD.
- 16-17 February 2010: Forum on Partnerships and Local Governance, meeting of the OECD LEED Programme (Local Economic and Employment Development). Vienna, Austria.
- 17-18 February 2010: New Partnerships in International Development Finance, conference organised by the Russian Ministry of Finance with participation of the OECD Development Assistance Committee. Moscow, Russian Federation.
- 18 February 2010: Sustaining a Global Recovery, high-level parliamentary seminar, organised by the OECD Public Affairs division.
- 18-19 February 2010: Global Forum on Competition, organised by the Directorate for Financial and Enterprise Affairs.

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