

# BRUSSELS MONITOR

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*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](mailto:ybb@vanbaelbellis.be)*

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## *I. WTO Watch*

### **China and Costa Rica reach agreement on preliminary free trade accord**

On 10 February 2010, after six rounds of talks, China and Costa Rica reached agreement on a preliminary free trade accord. According to the Costa Rican Foreign Trade Minister Marco Vinicio Ruiz, his country “is linking [itself] with the world’s most dynamic economy”. He further stated as follows: “We have strengthened our involvement in the Asian continent. There is no doubt that the United States and Europe are fundamental for our economy, but obviously it is also fundamental to have a presence in Asia.”

China has already concluded trade agreements with two other Latin American countries, namely, Chile and Peru. For their part, China and Costa Rica began trade negotiations in June 2007, when Costa Rica ended its decades-old relationship with Taiwan by formally declaring that it no longer recognised the Taiwanese government. Since then, the relationship between China and Costa Rica has gone from strength to strength. Indeed, China’s imprint in Costa Rica is already considerable. It granted aid worth \$20 million to Costa Rica in 2007 and is currently building an \$80 million soccer stadium in Costa Rica as a gift.

The new agreement is intended to open up trade between China and Costa Rica. Some 99.6% of Costa Rican goods will have immediate, duty-free access to the Chinese market, while tariffs on 58% of Chinese products imported into Costa Rica will be immediately eliminated. Furthermore, Costa Rica has agreed to eliminate tariffs on more than 94% of Chinese goods within 10 years, and China will eliminate tariffs on 90% of Costa Rican products in the same time period. The deal is expected to boost exports of several Costa Rican agricultural products, including fruit juice, decorative plants, leather, pork, beef and coffee. In addition, certain experts predict that technology exports to China will surge. On the other hand, China has refused to eliminate tariffs on Costa Rican sugar, while Costa Rica for its part has refused to eliminate tariffs on Chinese tyres.

However, the deal with China has not been unanimously welcomed in Costa Rica. Certain key Costa Rican figures, including the President of the Chamber of Industries and the General Manager of the Food Industry Chamber, consider that the scope of the free trade agreement is too broad. They fear that the agreement will flood the local market with the Chinese low-quality imports and will negatively affect investments in the industrial sector.

The accord still needs to be approved by the Costa Rican congress before it can enter into force. Both parties hope that the Costa Rican President Oscar Arias will sign it before he leaves office on 8 May 2010 and that lawmakers will approve it before 2011.

## *II. European Union: Trade*

### **Support for fair trade and sustainability labels could increase burdens on exporters to the EU**

On 20 January 2010, the European Economic and Social Committee (which performs an advisory function to the EU institutions) adopted an Opinion on Fair Trade and other sustainability labels for consumer goods, as a positive direction which the EU should be taking in the realm of international trade.

The EESC is encouraging the EU to increase the regulations and the resources for labelling programmes in order to strengthen the impact of the Fair Trade and other consumer labelling schemes, and increase transparency and credibility for consumers. Exporters to the EU should be alerted to the EESC's Opinion, which could pave the way for the EU to legislate on consumer labelling schemes, to promote a common framework for types of certification and their identification.

The concern raised by the Commission and reinforced by the EESC is that, with the spread of various labelling schemes, the consumer will become confused as to the schemes' different factors and, thus, find that labelling loses its credibility. The term "fair" or "fair trade" is not legally controlled, and therefore the fear is that the terms could be used in ways that could debase the reputation of the well-recognised Fair Trade label. However, fortunately, it is the current practice that other non-governmental trade-related sustainability assurance schemes avoid using these terms so as to not confuse it with the "Fair Trade" label.

"Fair Trade", the most recognisable of the sustainability labels, is a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalised producers and workers. These types of product marking schemes promote standards for international labour, environmentalism and social policy.

The EESC and the Commission also expressed concern for the variety of sustainability labels. "Fair Trade" is the most well known, but is not the only sustainability label. Thus, the EESC is suggesting that the EU support efforts to harmonise approaches on setting standards for consumer labels and ensure that the traits that distinguish the different labelling schemes are communicated in a transparent way to consumers. Exporters to the EU may have to align their current practices one day, depending on the actions taken by the EU to harmonise trade-related sustainability assurance initiatives.

To be clear, the EU is not interested in making Fair Trade or any other consumer labelling scheme mandatory, and thinks any such government control would cut away at the benefits of voluntary, consumer-choice programmes. Rather, it would like to support the non-governmental nature of the schemes by encouraging a common understanding between the labels and promote consumer awareness. The EU would be interested to see the development of a common framework of standards where there is a clear overlap between the schemes, although at this time the Commission is choosing not to set the standards itself. Rather, it is passively acting by supporting a major study into comparative differences and benefits of the main schemes. With this in the works, exporters should be anticipating future standardisation steps within the EU.

These will likely lead to more consumer demand for products certified with sustainability labels, and thus manufacturers could serve their business interests well to follow the coming initiatives, if any, from the EU on labelling schemes. Exporters to the EU have a lot to gain by participating in the sustainability schemes in Europe. Fair Trade and similar programmes have become so popular in the last several years that leading international processors and manufacturers have converted whole brands and categories of products; in turn, retailers are carrying many more product lines bearing such certifications.

Fair trade stimulates practical consumer action on purchasing sustainable goods by giving consumers the choice to buy products bearing the certification of Fair Trade or other sustainable labels.

Businesses can also make the choice to participate in the certification programmes and reap the benefits alongside consumers.

### **III. EU Competition**

#### **French Competition Authority dismisses allegation of abuse against Sanofi-Aventis**

In a recently published decision, the French Competition Authority dismissed allegations made by the French Minister for the Economy against Sanofi-Aventis (“Sanofi”), concerning the latter’s pricing practices on the market for the supply of low-molecular-weight heparins (“LMWHs”) to hospitals.

LMWHs are anticoagulants used to treat and prevent thrombosis. On 7 July 2006, the Minister for the Economy alleged that Sanofi’s free supplies of LMWHs to hospitals for use in preventing thrombosis constituted an abuse of its dominant position on the market for preventive LMWHs. In the Minister’s view, that practice (i) had the effect of increasing its market share in the hospital distribution channel, and (ii) had foreclosure effects in the neighbouring pharmacies distribution channel. The French Competition Authority has now dismissed these allegations.

The French Competition Authority distinguished two distribution channels for LMWHs used in preventive care: sales through hospitals and sales through pharmacies. The Authority found that the hospitals and pharmacies channels constituted distinct relevant markets because, among other differences, while the price of LMWHs supplied in pharmacies is highly regulated and fixed by the public authorities, the price of the same products supplied in hospitals is freely determined by the manufacturer.

The French Competition Authority then found that Sanofi held a dominant position in the pharmacies channel between 2000 and 2006. In contrast, it refused to view Sanofi’s market share (above 50%) in the neighbouring hospitals channel as sufficient evidence of dominance. The French Competition Authority cited various indicators pointing to a lack of dominance in the hospitals channel, including the presence of a “maverick” competitor on the market which had been able to drive down prices, the fact that Sanofi’s market share in value had significantly fallen between 1998 and 2004, and the fact that hospitals were found to have significant countervailing buying power. Therefore, the French Competition Authority considered that Sanofi was not able to act independently of its competitors in the hospitals channel.

The Minister argued that the nexus between the non-dominated hospitals channel and the neighbouring dominated pharmacies channel resided in the so-called “*effet source*” – very common in the pharmaceuticals sector – whereby the brands used in hospitals strongly influence the prescribing practices for sales to pharmacies. Because of this “*effet source*”, sales to hospitals would systematically entail “follow on” sales to pharmacies. As a result, Sanofi’s alleged attempt to increase its market share in the hospitals channel would have strengthened its dominant position in the pharmacies channel. Following a careful analysis of the development of the prices and market conditions in both channels, the French Competition Authority concluded that there was no parallelism whatsoever between the evolution of the market players’ market positions in the hospital channel and pharmacies channels. The French Competition Authority also found that, whatever the exact impact of this “*effet source*”, competitors like Léo Pharma still had the ability to develop their market positions in the pharmacies channel, independently of the hospital channel.

These findings led the Competition Authority to reject allegations that Sanofi's free supplies of preventive LMWHs to hospitals had either an anti-competitive object or effect.

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

##### **More substances added to high-concern list under REACH**

On 13 January 2010, the European Chemicals Agency (ECHA) added 14 substances to the Candidate List of Substances of Very High Concern (SVHC). Once a substance is added to the Candidate List, companies manufacturing or importing them need to check how they may be affected. Importantly, suppliers in the EU of articles which contain any such substances above concentrations of 0.1% immediately become subject to specific provision-of-information requirements, and as from June 2011, become subject to a notification requirement.

On 7 December 2009, ECHA's Member State Committee identified 15 new chemical substances for the Candidate List of SVHCs. Following this development, ECHA proceeded, on 13 January 2010, to insert 14 of them onto the Candidate List. The fifteenth substance, namely acrylamide, has not been included in the Candidate List of SVHCs yet, as a court ruling is apparently pending in this respect.

After such inclusion, companies supplying articles, containing any of those substances in concentrations above 0.1%, to the EU market have to provide downstream customers and consumers (*always* to downstream customers; *on request* to consumers) with sufficient information on the substance to enable safe use of the article. These obligations are triggered as soon as inclusion on the Candidate List takes place, without exception, and without a specific volume of substances or articles being imported having to be met.

Added to that, as from 1 June 2011, EU manufacturers and importers of articles will, in principle, be required to submit a notification to ECHA (a notification entails the delivery of certain information on the substance, and, luckily for articles suppliers, is by no means as burdensome as a substance registration under REACH). The obligation of notification can be avoided only under certain circumstances, one of which is when it is proved that humans and the environment are not exposed to the dangerous substance during the article's use and disposal; another, where the substance has already been registered for that use.

The SVHC substances newly added to the candidate list include the following:

*Tris(2-chloroethyl)phosphate*: is mainly used as an additive plasticiser and viscosity regulator with flame-retarding properties for acrylic resins, polyurethane, polyvinyl chloride and other polymers. Other fields of application are adhesives, coatings, flame resistant paints and varnishes. The main industrial branches for TCEP are the furniture, the textile and the building industry.

*Anthracene oil*: is mainly used for the manufacture of other substances, as well as for impregnating, sealing and corrosion protection.

*Aluminosilicate refractory ceramic fibres*: is used for high-temperature insulation and in fire protection.

*Diisobutyl phthalate*: is used as a plasticiser and in combination with other plasticisers which are widely used for plastics, lacquers, adhesives, explosive material and nail polish.

Lead chromate: is used for manufacturing pigments and dyes, among others.

Lead chromate molybdate sulphate red (C.I. Pigment Red 104): is used as a colouring, painting and coating agent in sectors such as the rubber, plastic and paints, coatings and varnishes industries.

Lead sulfochromate yellow (C.I. Pigment Yellow 34): is used as a colouring, painting and coating agent in sectors such as the rubber, plastic and paints, coatings and varnishes industries.

The list of 14 substances newly placed on the Candidate List can be viewed at:

[http://echa.europa.eu/doc/press/pr\\_10\\_01\\_candidate\\_list\\_20100113.pdf](http://echa.europa.eu/doc/press/pr_10_01_candidate_list_20100113.pdf).

The full updated Candidate List as it currently stands can be viewed at:

[http://echa.europa.eu/chem\\_data/authorisation\\_process/candidate\\_list\\_table\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp).

## V. *Dumping Watch*

### A. **Extension of suspension of definitive anti-dumping duty – glyphosate**

On 13 February 2010, the Official Journal published Council implementing Regulation 126/2010 extending the suspension of the definitive anti-dumping duty imposed by Regulation 1683/2004 on imports of glyphosate originating in the People's Republic of China.

The product concerned is glyphosate, originating in the People's Republic of China, currently falling within CN codes ex 2931 00 99 and ex 3808 93 27.

It is recalled that following a review investigation, the Council, by Regulation 1683/2004, imposed a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China. By Decision 2009/383/EC (the 'suspension Decision'), the Commission suspended the definitive anti-dumping duty for a period of 9 months, with effect from 16 May 2009. On 29 September 2009 an expiry review of the measure was initiated, further to a request lodged by the Union industry.

Following its investigation, the Commission has reached the conclusion that, notwithstanding the indications given by the Union industry on increased production capacity in the People's Republic of China, current statistics do not show evidence of increased imports in the EU. The Commission has decided that even though Chinese production capacity is likely to continue to increase in the next years, the worldwide demand is also expected to grow. Moreover, according to the Commission, no indications had been found as to why the prolongation of the suspension would not be in the Union interest.

The Commission has thus decided to extend the suspension of the definitive anti-dumping duty imposed on glyphosate originating in the People's Republic of China for a period of 1 year.

Council Regulation 126/2010 has entered into force on 14 February 2010.

### B. **Initiation of anti-dumping proceedings – zeolite A powder**

On 17 February 2010, the Official Journal published a notice of initiation of an anti-dumping proceeding concerning imports of zeolite A powder originating in Bosnia and Herzegovina.

The product under investigation is zeolite A powder, also referred to as zeolite NaA powder or zeolite 4A powder, originating in Bosnia and Herzegovina, currently falling within CN code ex 2842 10 00.

It is recalled that the complaint was lodged on 4 January 2010 by Industrias Químicas del Ebro, SA; MAL Magyar Aluminium, PQ Silicas B.V., Silkem d.o.o. and zeolite Mira Srl Unipersonale representing a major proportion, in this case more than 25%, of the total EU production of zeolite A powder. According to the Commission, the complainants have provided evidence that imports of the product under investigation from the country concerned have increased overall in absolute terms and in terms of market share. The Commission has therefore decided that the *prima facie* evidence provided by the complainants shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold, the level of prices charged and the market share held by the EU industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the EU industry.

All exporting producers and associations of exporting producers have been invited to contact the Commission no later than 15 days after the publication of the notice in the Official Journal in order to make themselves known and to request a questionnaire. Exporting producers must submit the completed questionnaire within 37 days of the date of publication of the notice in the Official Journal.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, and all EU producers or representatives acting on their behalf, have been requested to make themselves known to the Commission within 15 days of the date of publication of the notice in the Official Journal. All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within 21 days of the publication of the notice in the Official Journal. All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of the notice in the Official Journal.

The investigation will be concluded within 15 months of the date of the publication of the notice in the Official Journal. Provisional measures may be imposed no later than nine months from the publication of this notice in the Official Journal.

### **C. Initiation of anti-dumping proceedings – melamine**

On 17 February 2010, the Official Journal published a notice of initiation of an anti-dumping proceeding concerning imports of melamine originating in the People's Republic of China.

The products under investigation is melamine, originating in the People's Republic of China, currently falling within CN code 2933 61 00.

It is recalled that the complaint was lodged on 4 January 2010 by Borealis Agrolinz Melamine GmbH, DSM Melamine B.V. and Zakłady Azotowe Pulawy representing a major proportion, in this case more than 50%, of the total EU production of melamine. According to the Commission, the complainant has provided evidence that imports of the product under investigation from the People's

Republic of China have increased overall in absolute terms and in terms of market share. The Commission has therefore decided that the *prima facie* evidence provided by the complainants shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the level of prices charged by the EU industry, resulting in substantial adverse effects on the financial situation of the EU industry.

It is to be noted that since the People's Republic of China is considered by the Commission as a non-market economy country, the complainant established normal value for the imports from the People's Republic of China on the basis of the price in a market economy third country, namely the US. Interested parties have been invited to comment on the appropriateness of this choice within 10 days of the date of publication of the notice in the Official Journal.

All exporting producers and associations of exporting producers have been invited to make themselves known to the Commission within 15 days of the date of publication of the notice in the Official Journal. In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, and all EU producers, or representatives acting on their behalf, have been requested to make themselves known to the Commission within 15 days of the date of publication of the notice in the Official Journal. All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of the notice in the Official Journal.

The investigation will be concluded within 15 months of the date of the publication of the notice in the Official Journal. Provisional measures may be imposed no later than nine months from the publication of the notice in the Official Journal.

#### **D. Initiation of anti-dumping proceedings – coated fine paper**

On 18 February 2010, the Official Journal published a notice of initiation of an anti-dumping proceeding concerning imports of coated fine paper originating in the People's Republic of China.

The products under investigation is coated fine paper, which is paper or paperboard coated on one or both sides (excluding kraft paper or kraft paperboard), in either sheets or rolls, and with a weight of 70 g/m<sup>2</sup> or more but not exceeding 400 g/m<sup>2</sup> and brightness of more than 84, originating in the People's Republic of China, currently falling within CN codes ex 4810 13 20, ex 4810 13 80, ex 4810 14 20, ex 4810 14 80, ex 4810 19 10, ex 4810 19 90, ex 4810 22 10, ex 4810 22 90, ex 4810 29 30, ex 4810 29 80, ex 4810 92 10, ex 4810 92 30, ex 4810 92 90, ex 4810 99 10, ex 4810 99 30 and ex 4810 99 90.

It is recalled that the complaint was lodged on 4 January 2010 by CEPIFINE, the European association of fine paper manufacturers, on behalf of producers representing a major proportion, in this case more than 25%, of the total EU production of coated fine paper. According to the Commission, the complainant has provided evidence that imports of the product under investigation from the People's Republic of China have increased overall in absolute terms and in terms of market share. The Commission has decided that the *prima facie* evidence provided by the complainant shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold and market share held by the EU industry,

resulting in substantial adverse effects on the overall performance and the employment situation of the EI industry.

It is to be noted that since the People's Republic of China is considered by the Commission as a non-market economy country, normal value will be determined on the basis of the price or constructed value in a market economy third country. For this purpose, the Commission has provisionally chosen the US. Interested parties have been invited to comment on the appropriateness of this choice within 10 days of the date of publication of the notice in the Official Journal.

All exporting producers, or representatives acting on their behalf, have been requested to make themselves known to the Commission within 15 days of the date of publication of the notice in the Official Journal. In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, and all Union producers, or representatives acting on their behalf, have been requested to make themselves known to the Commission within 15 days of the date of publication of the notice in the Official Journal, unless otherwise specified. All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of the notice in the Official Journal.

The investigation will be concluded within 15 months of the date of the publication of the notice in the Official Journal. Provisional measures may be imposed no later than nine months from the publication of the notice in the Official Journal.

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

### **A. Council**

- 22-23 February 2010: General Affairs and External Relations Council (Brussels)
- 22-23 February 2010: Agriculture and Fisheries Council (Brussels)
- 25-26 February 2010: Justice and Home Affairs Council (Brussels)

### **B. Parliament**

- 24-25 February 2010: European Parliament plenary session

### **C. WTO**

- 22-23 February 2010: WTO General Council

### **D. OECD**

- 22-23 February 2010: Official visit of the OECD Secretary-General to Spain, in the context of the Spanish EU presidency. Madrid, Spain.

- 22-23 February 2010: Capital Market Reform in Asia, Tokyo Roundtable on Capital Market Reform in Asia, organised by the Directorate of Financial and Enterprise Affairs and the Asian Development Bank Institute. Tokyo, Japan.
- 22-24 February 2010: 1-to-1 Computing in Education: Current Practices, International Comparative Research Evidence and Policy Implications, conference hosted by the Austrian Ministry of Education and jointly organised by the Inter-American Development Bank (IDB), the OECD Centre for Educational Research and Innovation (CERI), and the World Bank (WB). Vienna, Austria.
- 24 February 2010: Round Table on Sustainable Development discusses how to balance the role of livestock agriculture in meeting global food demand with the need to reduce the sector's impact on climate change.
- 25-26 February 2010: Ministerial meeting on agriculture, organised by the Directorate for Trade and Agriculture.
- 26 February 2010: “Changing Landscape of Global Economic Co-operation”, Bretton Woods Committee annual meeting 2010, with participation of OECD. Washington D.C., USA.

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