

BRUSSELS MONITOR

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I. WTO Watch

EU signs agreement with US aimed at ending banana dispute

On 8 June 2010, the EU and the US signed an agreement that aims to bring an end to the long-running dispute over the EU's tariffs on banana imports. The pact formalises the deal reached between the two on 15 December 2009 and complements the agreement signed on 31 May 2010 between the EU and 11 Latin American banana-supplying countries, namely, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, and Venezuela.

Latin American countries have long complained to the WTO that the EU's tariff regime regarding banana imports is discriminatory. In particular, since the 1990s, Latin American countries have argued that bananas from the ACP (African, Caribbean and Pacific) countries – many of which are former European colonies – enter the EU market duty-free, while bananas from Latin American countries are hit with import tariffs. The US agreed with the Latin American countries and filed a separate complaint before the WTO. Although the US is not a major exporter of bananas, several large banana companies, including Chiquita, Del Monte and Dole, operate in Latin America while having their headquarters in the US.

Under the new agreement signed on 8 June 2010, the EU has agreed to implement a non-discriminatory, tariff-only regime for all banana imports. This agreement complements the EU-Latin America agreement concluded on 31 May 2010, which brought about the first of the agreed cuts in the EU's import tariffs on bananas originating in Latin America and other "most favoured nation" ("MFN") suppliers. Since 1 June 2010, tariffs imposed on MFN suppliers have fallen from €176 per metric tonne to €148 per metric tonne, with retroactive effect for shipments arriving in Europe after 15 December 2009. The agreement signed on 31 May 2010 allows the EU to maintain duty-free access for bananas imported from the ACP but obliges the EU to eventually reduce its tariffs by more than 35% as the price for maintaining preferences.

On 8 June 2010, US Representative Ron Kirk stated that he was "pleased that we [the US], together with the Latin American banana producing countries, have taken one more significant step towards ensuring that the EU's bananas import regime is consistent with its WTO obligations". He added the following: "All the parties still have some distance to travel before we finally and conclusively settle the bananas dispute. However, we are closer now than we have ever been and I am hopeful that we will be able to finally lay this longstanding dispute to rest in the near future." In fact, all legal suits against the EU's banana tariff regime will be dropped only once the EU implements the provisions of the deals it has concluded with the US and the Latin American countries.

II. European Union: Trade

New Communication sets out options for 30% emission reductions by 2020 and evaluates impact on trade

The EU's current climate and energy package, agreed in December 2008, sets out the means by which the bloc will meet its goal to reduce emissions from 1990 levels by 20% by the year 2020. However, as international talks carry on with a view to agreeing a new climate treaty to replace the Kyoto Protocol (which expires in 2012), the EU has pledged to increase its emissions reduction target to 30% if other countries make comparable commitments. In March 2010, the Commission presented

its strategy to reinvigorate global negotiations after Copenhagen, promising to present an analysis of how the EU might move to a 30% reduction target.

In accordance with the March 2010 promise, on 26 May 2010, EU Climate Action Commissioner Connie Hedegaard presented a European Commission Communication. The document analyses the EU's options concerning a move beyond 20% greenhouse gas emissions reductions to 30% below 1990 levels by 2020, and assesses the risk of carbon leakage (i.e., EU industries relocating to non-EU countries where they will be subject to less stringent carbon taxation/emission reduction measures).

The scenarios set out in the report are likely to be of interest to non-EU businesses, as they indicate the EU's approach to global issues which could directly or indirectly impact on trade. Notably, the Communication considers whether or not the EU should take a unilateral decision to move towards a goal of 30% emission reductions. The realisation of such a goal would necessarily lead to the imposition of ever more environmental measures on commonly traded goods.

Businesses may be relieved to note that while the Commission's Communication states that a 30% reduction in emissions is possible, it is not advisable at the current time unless some form of international agreement is reached. However, the possible scenarios (described below) remain on the table, and could gain the EU's favour over time.

The scenarios put forward in the Communication are extremely noteworthy as efforts towards reaching an international agreement at the climate change talks will continue in Mexico later this year, together with discussions on a 30% emissions cut. The Communication provides an advance indication of areas which might be subject to further environmental measures which the EU may consider, to redress the balance between EU industry and imports from industries located in countries with environmental legislation which is perceived by the EU to be less stringent (notably, India and China).

Overall, the Communication suggests that additional emission reductions that are needed to meet a 30% target could come from:

- A stricter application of the EU's Emissions Trading Scheme (EU-ETS).
- The introduction of a minimum carbon tax for consumers, and for those industries not currently regulated by the EU-ETS (CO₂ taxation).
- The possible extension of the EU-ETS to imports of products from outside the EU, which would constitute a sort of "carbon tariff" (or border measures).
- Encouraging energy efficiency.
- Encouraging "green" investment.

With regard to CO₂ taxation, the suggestion is that the EU tax system could be adjusted to reflect the CO₂ component of fuels or products. CO₂ taxation could potentially make production more expensive in the EU, in particular where significant energy is required in the manufacturing process. More relevantly, any intra-EU CO₂ tax could raise calls for the introduction of border measures.

The Communication does not rule out taxing imports (via border measures) from non-EU countries that have not taken measures to reduce their emissions. Any such measures could see a tariff imposed on goods imported into the EU. Accordingly, additional tariffs may raise the prices of overseas goods on the EU market, and in turn lead EU marketers to reconsider their sourcing choices.

Energy efficiency and “green investment” are seen to be key to the EU’s ongoing emission reductions, with the Commission stating that there is already widespread consensus that the development of resource-efficient and green technologies will be a major driver of growth. The Communication and accompanying documents highlight the framework ecodesign Directive (2009/125/EC) as a means by which to set efficiency requirements for a wide range of products. The Commission has been encouraging further regulation in this area. For example, businesses may well be aware that the scope of the ecodesign Directive was only last year enlarged to encompass energy-related goods and not just energy-using goods as was previously the case.

More specific areas considered in the Communication include electricity generation, with the Communication suggesting that this sector holds the greatest potential for further emission reductions. Sector-specific emission reductions targeting this area could potentially raise power prices. Subsequently, such measures could raise production prices for EU manufacturers of all types of goods, making them less competitive.

Another sector singled out for particular attention is that of maritime transport. Indeed, the EU considers that this sector has scope for cost-effective emission reductions. This is significant as any emission reduction scheme involving maritime transport could potentially add to the cost of importing goods by sea into the EU from overseas. Non-EU businesses should be aware that, while further overall emission cuts may be put on the back burner for the time being, the EU has suggested that it may take unilateral steps to include international maritime transport emissions in the EU’s emission reduction commitment if no international agreement is reached by 31 December 2011, with the aim of any proposed act entering into force by 2013.

For further information, a copy of the Communication and the accompanying Staff Working documents can be accessed at:

<http://ec.europa.eu/environment/climat/pdf/2010-05-26communication.pdf> and
http://ec.europa.eu/environment/climat/future_action_com.htm.

III. EU Competition

Commission approves Eurostar Channel Tunnel joint venture

On 18 June 2010, the European Commission announced that it has granted conditional approval to French rail operator SNCF and UK state-owned London & Continental Railways (LCR) to establish the Eurostar train company as a full-function joint venture.

When the Channel Tunnel opened in 1994, Eurostar was formed as a cooperative joint venture between LCR, SNCF and Belgian national rail operator SNCB in order to provide passenger rail services between London, Paris and Brussels. While the three operators cooperated, each owned its own share of the necessary assets and was responsible for the operation of the service on its territory. SNCF and LCR subsequently proposed to make Eurostar a fully stand-alone joint venture with its own assets and full control over its operations. SNCB would continue to be a non-controlling stakeholder in the venture.

However, the Commission’s investigation into the proposed transaction, as initially notified by the parties, found that the deal raised competition concerns, as it could have made it more difficult for potential competitors to enter the market, thereby strengthening Eurostar’s existing dominant position on train services between London and the two continental destinations. These concerns were all the

more important to the Commission following the liberalisation of international passenger rail services as from 1 January 2010, which the Commission hopes will lead to an increase in new services and more competitive pricing.

Thus, with the Commission considering whether to open an in-depth investigation into the transaction, LCR and SNCB decided to offer a package of commitments intended to remedy the Commission's competition concerns. In particular, LCR and SNCF have agreed to facilitate new entry on the London-Brussels and London-Paris routes by ensuring that new entrants have effective access to station services (such as ticket counters, passenger information and security-controlled station areas) at major stations in London, Paris and Brussels (among others).

Additionally, the parties have agreed to release a number of time slots for use of the necessary rail lines to potential new entrants if these entrants are not able to obtain such slots through the normal allocation procedure carried out by the infrastructure managers.

After seeking stakeholder comments on the proposed commitments, the Commission announced that it had concluded that the transaction, as modified by the commitments, was unlikely to significantly impede competition. Indeed, it would appear that the commitments may result in substantially lower barriers to new entrants on these markets than would have existed prior to the creation of the new joint venture.

IV. European Union: Regulatory

Parliament committee votes for more hard-hitting amendments to EU's RoHS law

On 2 June 2010, the European Parliament's ENVI Committee finally voted on amendments to the Commission's proposal for a recast of the RoHS Directive. The ENVI Committee's vote has been long in coming, due to the divisiveness being generated by this important legislative dossier.

The RoHS Directive was originally adopted in 2002, and sets out restrictions on the use of hazardous substances in electrical and electronic equipment (EEE). On 3 December 2008, the Commission issued a proposal to recast the RoHS Directive, tightening up some of its provisions so as to have a lower impact on the environment and human health.

Several members of the European Parliament (MEPs) have been clamouring for more widespread bans on the substances found in EEE, while other MEPs are keener on a compromise approach, at the very least so as to carry out full impact assessments of the substances concerned, and give manufacturers and importers more time to make adjustments.

The amendments that were finally approved by the Committee are intended to change the scope of the Directive and create a list of approximately 40 chemicals to be studied and considered for a future ban. The amendments which would have added the new chemicals to the list of substances to be banned immediately on implementation of the new Directive in the Member States, were finally rejected. Under the Commission's December 2008 proposal for a recast RoHS Directive, no new substances had been added to the current ban of six hazardous materials in EEE (lead, mercury, cadmium, hexavalent chromium, PBB and PBDE). According to the Commission, this is because there is not enough data on the availability of substitutes for other potentially hazardous substances.

However, the Commission's proposal stirred immediate controversy in the European Parliament when the rapporteur (i.e., an MEP who takes the lead on a particular legislative dossier) assigned to the RoHS recast Directive, Jill Evans, stated in November 2009 that her intention was to go further than the European Commission's proposal. In particular, she indicated that she would seek to add provisions calling for a phasing-out of brominated and chlorinated flame retardants (BFRs and CFRs) as well as PVC and its hazardous additives.

Despite Evans' efforts, she could not obtain overall support for such a ban, and instead was forced to accept a set of compromise amendments which, instead of banning BFRs, CFRs and PVC, will add these chemicals, along with various phthalates and medium-chain chlorinated paraffins (MCCPs) to a new list of chemicals to be studied and considered for possible bans in the future.

Such studies would be carried out by the Commission, and any resulting bans could be adopted under the so-called "delegated acts" procedure, which would allow the bans to be adopted and put into effect without the need for a long-winded legislative procedure.

In addition to the list of substances to be studied in the future, the Committee has adopted an amendment which would result in the scope of the Directive applying to all EEE, unless expressly named and exempted. Businesses will recall that the current RoHS Directive only applies to the EEE listed in an annex to the WEEE Directive. While the Commission remains opposed to an open-ended scope, it appears that the European Parliament as a whole is in favour of the change, and there is only limited opposition from the Member States.

Additionally, the amendments explicitly expand the scope of the recast RoHS Directive to include cables and accessories. Until now, the RoHS legal provision detailing the substance ban did not expressly provide for such inclusion but only generally applied to EEE.

Additionally, the Committee has adopted an amendment which would ban the use of certain carbon nanotubes and nanosilver. These substances are commonly used as antimicrobial agents, though there have been studies questioning their safety. Furthermore, the Committee adopted an amendment which would require economic operators to notify the Commission of the use of other nanomaterials in products, and provide the Commission with environmental and health safety data. Finally, the amendments would require economic operators to label all products that contain nanomaterials.

The Committee also adopted an amendment expressly exempting equipment used for renewable energy generation. This will be welcome news for renewable energy equipment suppliers selling on the EU market. Items such as windmills and solar panels would be exempted, subject to a review in 2014. This amendment was particularly controversial, with some MEPs pointing out that solar panels frequently contain cadmium, which can be hazardous, while other MEPs pointed out that the Directive is intended to apply primarily to household goods rather than equipment for the generation of electricity.

While the European Parliament as a whole was scheduled to vote on the amendments approved by the ENVI Committee at a plenary session in July, the vote has now been rescheduled for September this year. The vote was delayed in order to give the Council of Member States' Ministers time to review the Commission's proposal and reach an informal agreement with the European Parliament on amendments before the latter holds its vote.

Many of the amendments approved by the ENVI Committee are likely to be viewed as controversial by the Council of Member States' Ministers, and thus it is entirely possible that a first-reading agreement between the European Parliament and the Council will not be reached. This, in turn, would mean that the eventual adoption of the recast Directive could be delayed well into 2011.

V. *Dumping Watch*

A. **Definitive anti-dumping duty - cargo scanning systems**

On 16 June 2010, the Official Journal published Council Implementing Regulation 510/2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cargo scanning systems originating in the People's Republic of China.

The product concerned is systems for the scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90.

It is recalled that the Commission, by Regulation 1242/2009, imposed a provisional anti-dumping duty on imports of the product concerned. The proceeding was initiated as a result of a complaint lodged on 2 February 2009 by Smiths Detection Group Limited on behalf of a producer representing more than 80% of the total Union production of certain cargo scanning systems.

The Commission's investigation of dumping and injury covered the period from 1 July 2007 to 31 December 2008 ('IP'). The Commission's examination of trends relevant for the assessment of injury covered the period from 1 January 2004 to the end of the IP. The Commission found that the market share of the dumped imports increased by 140% during this period, whilst the Union's industry market share decreased by 32%. These negative changes for the Union industry occurred against the backdrop of the EU consumption that increased by 11% between 2004 and the IP.

Therefore, the Council agreed with the Commission's provisional finding that the material injury to the Union industry was caused by the dumped imports and imposed a definitive anti-dumping duty. Moreover, the Council decided that the amounts secured by way of the provisional anti-dumping duty should be definitively collected at the rate of the definitive duty imposed and that the amounts secured in excess of the rate of the definitive anti-dumping duty should be released. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, is 34%.

Council Implementing Regulation 510/2010 entered into force on 17 June 2010.

B. **Definitive anti-dumping duty - molybdenum wires**

On 16 June 2010, the Official Journal published Council Implementing Regulation 511/2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain molybdenum wires originating in the People's Republic of China ("PRC").

The product concerned is molybdenum wire, containing by weight at least 99.95% of molybdenum, of which the maximum cross-sectional dimension exceeds 1.35 mm but does not exceed 4.0 mm, currently falling within CN code ex 8102 96 00.

It is recalled that the Commission, by Regulation 1247/2009, imposed a provisional anti-dumping duty on imports of the product concerned. The proceeding was initiated following a complaint lodged by the European Association of Metals (EUROMETAUX) on behalf of a producer representing a major proportion, in this case more than 25%, of the total Union production of molybdenum wires. The Commission's investigation of dumping and injury covered the period from 1 April 2008 to 31 March 2009 ('IP'). The Commission's examination of the trends for the assessment of injury covered the period from March 2005 to the end of the IP.

The Commission found that the deterioration in the economic situation of the Union industry coincided with the surge of the dumped imports from the PRC and that the Union industry was facing price pressure by the Chinese exporters on a continued basis in order to remain competitive on the Union market. Therefore, the Council agreed with the Commission's provisional finding that the material injury to the Union industry was caused by the dumped imports and imposed a definitive anti-dumping duty. Moreover, the Council decided that the amounts secured by way of the provisional anti-dumping duty should be definitively collected. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, is 64.3%.

Council Implementing Regulation 511/2010 entered into force on 17 June 2010.

C. Definitive anti-dumping duty - ammonium nitrate

On 16 June 2010, the Official Journal published Council Implementing Regulation 512/2010 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review.

The product concerned is solid fertilisers with an ammonium nitrate content exceeding 80% by weight, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91.

It is recalled that on 22 January 2001, the Council imposed, by Regulation 132/2001, a definitive anti-dumping duty of EUR 33.25 per tonne on imports of ammonium nitrate ("AN") originating, *inter alia*, in Ukraine. On 17 May 2004, following a partial interim review, by Regulation 993/2004, the Council exempted from this anti-dumping duty imports to the Union of AN produced by companies from which undertakings were accepted by Commission Regulation 1001/2004, as last amended by Commission Regulation 1996/2004. On 22 January 2009, a request for an expiry review by the European Fertilizer Manufacturers Association (EFMA) on behalf of producers representing a major proportion, in this case more than 50%, of the total Union production of AN. The applicant alleged that there was a likelihood of recurrence of dumping and injury to the Union industry with regard to imports of AN originating in Ukraine.

The Commission initiated its investigation. The investigation of continuation or recurrence of dumping covered the period from 1 April 2008 to 31 March 2009 ("RIP"). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 2005 to the end of the RIP. Following its investigation, the Commission found that taking into account the existing spare capacity in Ukraine and the attractiveness of the Union market, Ukrainian exporting producers would likely increase their exports to the Union market and shift AN exports from other third country markets to the Union market at dumped prices. Hence, the

Commission concluded that there was a likelihood of continuation of dumping in the Union market in case the current anti-dumping measures were removed.

Therefore, the Council imposed a definitive anti-dumping duty on imports of the product concerned from Ukraine. The rate of this anti-dumping duty is 33.25 euro per tonne for the products falling within CN codes 3102 30 90, 3102 40 90, 3102 29 00, 3102 60 00, 3102 90 00 and 3105 10 00, is 32.25 euro per tonne for the products falling within CN codes 3105 10 00, 3105 20 10, 3105 51 00, 3105 59 00 and 3105 90 91, is 31.25 euro per tonne for the products falling within CN codes 3105 10 00, 3105 20 10, 3105 51 00, 3105 59 00 and 3105 90 91, is 30.26 euro per tonne for the products falling within CN codes 3105 10 00, 3105 20 10, 3105 51 00, 3105 59 00 and 3105 90 91, is 29.26 euro per tonne for the products falling within CN codes 3105 10 00, 3105 20 10 and 3105 90 91 and is 29.79 euro per tonne for the products falling within CN codes 3105 51 00 and 3105 59 00.

Moreover the Council decided that imports of the product concerned which are invoiced by the exporting producer from which undertaking was accepted by the Commission shall be exempt from the anti-dumping duty, on condition that these imports are manufactured, shipped and invoiced directly by the exporting producer to the first independent customer in the Union and are accompanied by an undertaking invoice, and the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

Council Implementing Regulation 512/2010 entered into force on 17 June 2010 and shall remain in force for a period of two years.

VI. *The Week Ahead*

A. Council

- 21 June 2010: Environment Council (Luxembourg)

B. WTO

- 21-23 June 2010: Trade Policy Review Body - Honduras
- 26-27 June 2010: G20 Summit – Toronto, Canada

C. OECD

- 21 June 2010: Measuring Unemployment and Exclusion from the Labour Market, workshop organised by the OECD Local Economic and Employment Development (LEED) Programme.
- 21 June 2010: The Evolution of News Delivery: Opportunities and Challenges, conference organised by the OECD Directorate for Science, Technology and Industry. London, UK.
- 21 June 2010: Challenges and Opportunities for Social Services in Europe, 2010 European Social Services conference, with participation of the Secretary-General. Barcelona, Spain.
- 21-22 June 2010: Financing Early Childhood Education and Care (ECEC) Services, meeting of the OECD Network on ECEC.

- 22 June 2010: Les Ateliers de l'OCDE media briefing, on invitation and in French, on the OECD and the major emerging economies: an overview of OECD relations with these countries and our views regarding their economic prospects. Organised by the OECD and the AJEF as part of a monthly series.
- 23-24 June 2010: Corporate Governance of State-Owned Enterprises (SOEs) in the Middle East and North Africa. Task force meeting with the participation of OECD Deputy Secretary-General Mr. Richard Boucher. Cairo, Egypt.
- 25 June 2010: Administrative Change: the Impact of the Global Crisis on Public Employment, conference organised by the Public Governance and Territorial Development Directorate with the Greek authorities. Athens, Greece.
- 25-27 June 2010: G8 and G-20 Leaders Summit, with participation of Deputy Secretary-General Pier Carlo Padoan. Toronto, Canada.

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