

# BRUSSELS MONITOR

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

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## IN THIS ISSUE

- I. *WTO Watch***  
**World leaders drop Doha target in order to prioritise bilateral and regional deals**
- II. *European Union: Trade***  
**EEB emphasises that green taxes could be good for business**
- III. *EU Competition***  
**General Court dismisses appeals against Ryanair/Aer Lingus decision**
- IV. *European Union: Regulatory***  
**ECHA expands its “danger list” of substances by nearly a third**
- V. *Dumping Watch***  
No developments to report.
- VI. *The Week Ahead***
  - A. Council**
  - B. OECD**

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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: [brussels@vanbaelbellis.com](mailto:brussels@vanbaelbellis.com)*

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## *I. WTO Watch*

### **World leaders drop Doha target in order to prioritise bilateral and regional deals**

During the G20 Summit which took place in Toronto on 25-27 June 2010, world leaders agreed to drop their previous commitment to finalise the Doha round of talks before the end 2010. At the same time, the leaders of the G8 countries (who also met during this period) affirmed their intention to complete the talks without, however, setting any target date.

The Doha talks were launched in 2001 and are intended to liberalise world trade by extending the advantages of globalisation to developing countries. Previous G8 and G20 summits in Italy and Pittsburgh had set the end of 2010 as the deadline for completion of the Doha negotiations. According to experts, however, the removal of this deadline following the latest summit is a clear indication that the Doha talks are going nowhere. Although trade ministers unanimously agree that a multilateral WTO trade deal would be extremely beneficial for the global economy, the Doha talks have been dogged by differences among certain trade powers that are on the one hand seeking more access to one another's markets while at the same time rejecting any lowering of their own trade barriers. As a result, the various deadlines fixed during the course of the Doha negotiations have been missed on more than one previous occasion.

At the recent summit in Toronto, world leaders decided to prioritise bilateral and regional trade talks until the global Doha deal is done. The Canadian Prime Minister Stephen Harper stated as follows: "Canada and many other governments are committed to more aggressively pursuing bilateral and regional trade deals as a way of kick-starting the process while we see the Doha talks remaining stalled." For its part, the EU is currently negotiating several free trade agreements with strategically important trade partners, such as India, Canada and South Korea. Likewise, US President Barack Obama, after meeting with South Korean President Lee Myung-Bak, declared that the US "planned to methodically move forward in resolving long-standing issues stalling completion of a trade pact with Seoul".

According to certain experts, "the failure to advance the Doha Round would expose the WTO to ridicule and could signal its decline and eventual death". Paul Blustein, a Brookings Institution fellow, believes that "the WTO's centrality to the global trading system has been weakened by a proliferation of bilateral and regional agreements in recent years". Accordingly, the head of the WTO, Pascal Lamy, has urged G20 leaders to make "the kind of concessions needed to kick-start the long-delayed Doha negotiations". According to Mr Lamy, "although 80% of the job [on Doha] is done, negotiators are considering the remaining 20%, staring at each other waiting for the other side to move first". He added that "the G20 bore a special responsibility to get Doha to the finishing line".

## *II. European Union: Trade*

### **EEB emphasises that green taxes could be good for business**

During a 10 June 2010 workshop at the European Parliament on "Environmental aspects of the EU 2020 strategy", John Hontelez, Secretary General of the European Environmental Bureau (EEB) delivered a clear message to industry - that green taxes could be good for business.

He emphasised that more effort should be directed towards making green taxes work, and that industry fears over green taxes are “unfounded”. Hontelez noted that the discussion on green taxes had not progressed very far in the past 15 years and that while some would suffer, others would gain.

Hontelez cited Sweden and Denmark as examples of Member States where incentives to reduce energy use have been supported by investments. He went on to comment that green taxes in Germany have even created jobs aligned with the social agenda, and further noted that in general, the environmental industry employs more people than, for example, the car industry.

Hontelez emphasised that consumption patterns at an individual and national level have an impact globally, and pointed out that the World Business Council for Sustainable Development was pushing for more dynamic change. He said that their message on green taxes was that “incremental change won’t do the trick, we need much more dynamic change and it is a shame that this message is not heard”.

In contrast to the EEB’s position, Oliver Bank, Chair of the business confederation BusinessEurope’s Industrial Policy Task Force articulated concerns with green taxes. He said that “we fear green tax is something on top of what we already have. What we have we are not convinced is something we’d go for”.

John Hontelez’s formal remarks at the European Parliament may be accessed at:  
<http://www.eeb.org/EEB/index.cfm?LinkServID=22733284-0F81-DCF9-2873EEEEBF74138AB&showMeta=0>.

### *III. EU Competition*

#### **General Court dismisses appeals against Ryanair/Aer Lingus decision**

On 6 July 2010, the General Court of the EU (“GC”), dismissed an appeal brought by Ryanair against the European Commission’s decision to prohibit its attempted takeover of Aer Lingus. The General Court also dismissed an appeal by Aer Lingus against the Commission’s refusal to order Ryanair to divest its minority stake in Aer Lingus.

In 2006, Ryanair acquired a shareholding of 19.16% in the newly privatised Aer Lingus, and launched a public bid for the remaining share capital, notifying the Commission of the proposed takeover in order to obtain approval under the EU’s Merger Regulation. Throughout the Commission’s investigation of the proposed transaction, Ryanair continued to increase its shareholding in Aer Lingus and held a stake of approximately 30% in June 2007, when the Commission prohibited the transaction because it would harm competition on at least 35 routes into and out of Ireland.

Following the prohibition decision, Aer Lingus requested that the Commission order Ryanair to divest itself of its 30% stake, but the Commission refused the request on the grounds that the Merger Regulation did not prohibit Ryanair’s acquisition of a non-controlling stake in Aer Lingus. Both parties appealed to the GC.

In dismissing Ryanair’s appeal and confirming the Commission’s prohibition decision, the GC noted that none of Ryanair’s arguments were capable of calling into question the Commission’s finding that the implementation of the proposed merger would significantly impede competition as a result of the

creation of a dominant position on several routes to and from airports in Dublin, Cork and Shannon. The GC noted further that there was very little doubt that these dominant positions would have arisen following the merger, since the two airlines would have combined to have had complete or nearly complete monopolies on at least several routes. Additionally, the GC dismissed Ryanair's arguments related to the commitments it proposed during the Commission's investigation in order to remedy the Commission's concerns about the effects of the transaction. The GC found that, despite Ryanair's arguments, the Commission was correct to conclude that the commitments were insufficient to remedy the barriers to competition which would have resulted from the merger.

As regards Aer Lingus' appeal of the Commission's refusal to order Ryanair to divest its 30% shareholding, the GC simply noted that the Commission only has authority under the Merger Regulation to review acquisitions which result in a change in control of an undertaking. Since Ryanair's shareholding could not be deemed to give Ryanair either legal or practical control over Aer Lingus, the Commission had no jurisdiction to order a divestiture. Accordingly, the GC concluded that the Commission's refusal of Aer Lingus' request was sufficiently reasoned and appropriate.

Both Ryanair and Aer Lingus will now have two months and ten days in which to lodge appeals against the GC's judgments before the Court of Justice. If either party chooses not to lodge such an appeal, the relevant Commission decision will then become final.

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

##### **ECHA expands its "danger list" of substances by nearly a third**

On 18 June 2010, the European Chemicals Agency (ECHA) added eight chemical substances to its Candidate list of Substances of Very High Concern (SVHCs) for authorisation, following a unanimous vote of the Member State Committee.

This brings the tally of SVHCs up to 38 substances, which is still well below the several hundred that non-governmental organisations and MEPs claim pose serious health and safety risks.

Nonetheless, increasing the list by nearly a third is a significant step for ECHA. The eight carcinogenic, mutagenic or reprotoxic (CMR) substances added to the list include:

- **Trichloroethylene:** Mainly used as an intermediate in manufacturing chlorinated and fluorinated organic compounds, but may also be used for cleaning and degreasing metal parts, or as solvent in adhesives.
- **Boric acid:** Widely used as a component of detergents and cleaners, adhesives, toys, industrial fluids, brake fluids, glass, ceramics, flame retardants, paints, disinfectants, cosmetics, food additives, fertilisers, insecticides and other products.
- **Disodium tetraborate, anhydrous:** Used in a multitude of applications such as in detergents and cleaners, in glass and glass fibres, ceramics, industrial fluids, metallurgy, adhesives, flame retardants, personal care products, biocides, fertilisers.
- **Tetraboron disodium heptaoxide, hydrate:** Similar uses as disodium tetraborate, anhydrous.
- **Sodium chromate:** Primarily used as an intermediate manufacturing other chromium compounds as well as a laboratory analytical agent.
- **Potassium chromate:** Used as a corrosion inhibitor for treating and coating of metals, for manufacturing of reagents, chemicals and textiles, as a colouring agent in ceramics, for manufacturing of pigments/inks and in the laboratory as an analytical agent.

- **Ammonium dichromate:** Mainly used as an oxidising agent, but also used in manufacturing photosensitive screens and as mordant in manufacturing textiles.
- **Potassium dichromate:** Used for chrome metal manufacturing and as a corrosion inhibitor for treatment and coating of metals and also used as textile mordant, as a laboratory analytical agent, for cleaning of laboratory glassware, in the manufacture of other reagents and as an oxidising agent in photolithography.

As foreseen under the REACH Regulation, a specific procedure will be followed to decide whether the substances should also be included in the authorisation list (i.e., of substances whose placing on the market and use in the EU will be generally forbidden, unless expressly authorised in case of individual applications).

Furthermore, once an SVHC is included on the candidate list for authorisation, then under Article 33 of the REACH regulation, all producers, importers and suppliers of articles containing that SVHC in a concentration greater than 0.1% are required to provide certain information on the substance automatically to downstream users in the EU. Information regarding the SVHC must also be provided to consumers upon request.

The full SVHC list may be accessed 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).

An overview of the authorisation process for these substances may be accessed at:

[http://echa.europa.eu/chem\\_data/authorisation\\_process\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process_en.asp).

## V. *Dumping Watch*

No developments to report.

## VI. *The Week Ahead*

### A. Council

- 12 July 2010: Agriculture and Fisheries Council (Brussels)
- 12-13 July 2010: Informal Environment Council (Gent)
- 13 July 2010: Ecofin Council (Brussels)
- 14-16 July 2010: Informal Competitiveness, Research and Industry Council (Louvain-la-Neuve)
- 15-16 July 2010: Informal Justice and Home Affairs Council (Brussels)

### B. OECD

- 12 July 2010: Launch of International Migration Outlook: SOPEMI 2010, with the Secretary-General. Brussels, Belgium.

- 12 July 2010: Leveraging Partnerships for Sustainable Economies, biennial of the Americas Round Table on Trade. Participation of the OECD. Denver, Colorado, USA.
- 12 July 2010: OECD statistics news releases: OECD Harmonised Unemployment Rates.

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