

# 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***  
EU and US business groups pressure emerging economies over Doha; negotiations progress over industrial goods
- II. *European Union: Trade***  
Business leaders urge Brazil and EU to move forward with trade talks
- III. *EU Competition***  
European Commission fines animal feed phosphate producers €175 million for price-fixing and market-sharing cartel in second settlement case
- IV. *European Union: Regulatory***  
Commission publishes annual report on sales of counterfeit goods
- V. *Dumping Watch***
  - A.** Notice of initiation of expiry review – hand pallet trucks
  - B.** Notice of initiation of anti-dumping proceeding – tris(2-chloro-1-methylethyl)phosphate
- VI. *The Week Ahead***
  - A.** WTO

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## *I. WTO Watch*

### **EU and US business groups pressure emerging economies over Doha; negotiations progress over industrial goods**

July 2010 has seen significant activity concerning the Doha negotiations. First, official negotiators met in Geneva during the week of 14 July and discussed the so-called “horizontal mechanism”, as well as the proposed development of international standards. The following week, large business groups from Europe and the US sent a letter to their respective trade negotiators, urging them to encourage China, Brazil and India to eliminate deadlocks in the negotiating process.

Official negotiators in Geneva have been focusing their discussions on Non-Tariff Barriers to Trade (“NTB”) over the past year and two key issues relating to this item were discussed at the latest meeting in Geneva: the so-called “horizontal mechanism” for dispute resolution and the proposed adoption of international standards in certain industrial sectors. Regarding the former, Colombia, Hong Kong, Singapore and Thailand have proposed the creation of an optional horizontal mechanism to mediate NTB-related trade blockages. The purported advantage of this horizontal mechanism is that it would be less expensive and faster than the WTO’s formal dispute settlement procedure. Though the proposal is favoured by a number of countries, the US has been critical of it and prefers that issues be decided by the WTO’s “regular” committees. In response, the four countries have proposed a compromise whereby disputes over NTB-related issues would be lodged simultaneously with the horizontal mechanism and the “regular” committee. At the meeting in Geneva, the US did not provide substantive comments on this proposal, although the Swiss WTO Ambassador urged the four countries to continue work on it.

The negotiators also discussed the role of international standards and how they affect industrial sectors such as automotive products, electronics and chemicals. The EU’s position is that WTO members should harmonise their national regulations with international standards. The approach of the US is different – it focuses on transparency, stating that the way in which standards are developed should be made public. Most WTO members present at the negotiations agreed that the first step is the development of international standards, which could be based on the principles set out by the WTO’s Committee on Technical Barriers to Trade in 2000. However, at the conclusion of the negotiations, various issues were left unresolved, including whether efforts should be directed only toward ensuring that international standards meet these principles, or whether the WTO should go further and formally recognise standard-setting bodies. This will likely be discussed at the next NAMA discussions, which are due to take place during 27-30 September 2010.

While NAMA negotiations over NTBs have been progressing slowly, the main obstacle in these talks is whether large developing markets like India, Brazil and China will voluntarily decrease tariffs across industrial sectors. Their refusal to do so has been blamed for the delay in the Doha discussions. In response to this, on 21 July 2010, the US and European business communities, represented by Business Europe, the Business Roundtable, the Coalition of Service Industries, the European Services Forum, the National Association of Manufacturers and the US Chamber of Commerce, sent a letter to US Trade Representative Ron Kirk and EU Trade Commissioner Karel De Gucht, urging aggressive action to break the deadlock. The trans-Atlantic business community believes it will take the combined negotiating strength of the EU and the US to convince emerging economies to reduce tariffs on industrial sectors and services. This letter would appear to be a sign that there is still interest and hope that the Doha round will be concluded.

## *II. European Union: Trade*

### **Business leaders urge Brazil and EU to move forward with trade talks**

On 15 July 2010, during the 4<sup>th</sup> EU-Brazil Business Summit, Brazilian and European business leaders urged their respective governments to accelerate talks on an “ambitious and balanced” trade agreement, despite the continuing euro-zone crisis and opposition from European farmers. At the close of the Summit, which was attended by executives of large companies and industry associations, a joint statement was issued to Brazilian President Lula da Silva, President of the European Commission Jose Manuel Durao Barroso, and President of the European Council Herman van Rompuy, in which business leaders expressed their concerns about recent developments in the global economy, and called for multilateralism in negotiations and coordination among the world’s leading economies.

The EU and the Mercosur group of countries (namely, Brazil, Argentina, Paraguay and Uruguay) re-launched talks on 17 May 2010 aimed at creating the world’s largest free-trade zone, encompassing 750 million people and goods valued at 65 billion euros a year. These talks had previously been on hold for six years due to differences between the two trading blocs over agriculture and the move to re-open the talks faces strong opposition from farmers, environmentalists and lawmakers in Europe.

In particular, farm lobbies in France and elsewhere in Europe have criticised a possible trade agreement, claiming that cheaper imports such as Brazilian ethanol or meat do not meet environmental or health standards and could wipe out local producers. “The most difficult part as always is agriculture,” said Pierre-Alain De Smedt of the Belgian Business Federation. “We want an ambitious accord. It’s important the politicians keep this in mind as they come under political pressure,” he added.

Some industry leaders highlighted the potential positive impact of a free trade deal for European businesses struggling with the euro-zone crisis. “At a moment of crisis in Europe, it’s important to be able to count on fast growth in countries like Brazil. We will do everything we can to push authorities on both sides,” said Jorge Rocha de Matos, head of the Portuguese Industry Association. European Commission President José Manuel Barroso acknowledged negotiations would not be easy. “We’re 27 countries, we need to gather support on many fronts, in many sectors,” Barroso said.

European Council president Herman Van Rompuy underlined the EU’s strengths including the stability of the euro-zone, its purchasing power and the “strong will of European political leaders to work together” in the face of economic difficulty. “It is the highest priority for the EU to safeguard and strengthen global economic recovery and structural economic growth,” insisted Van Rompuy. “According to some doomsayers, the Euro and European banks were on the brink of collapse earlier this year, and European economies rapidly shrinking, but economic data and strong measures taken in most member states and in the Union are not confirming this pessimism,” he added.

Lula da Silva, the Brazilian President, agreed, adding that Brazil was “strongly committed” to pushing ahead with the reform of financial markets and the global financial governance system as indicated by the recent resolutions from the G-20 summit in Toronto.

### *III. EU Competition*

#### **European Commission fines animal feed phosphate producers €175 million for price-fixing and market-sharing cartel in second settlement case**

On 20 July 2010, the European Commission imposed fines totalling €175.6 million on five undertakings for their participation in a long-standing price-fixing and market-sharing cartel in the European animal feed phosphates sector. A sixth undertaking was granted full immunity from fines under the Commission's leniency regime.

Following an investigation triggered by an immunity application by Kemira, the Commission found that the cartel had operated from as early as 1969 until February 2004, although not all undertakings were involved for the whole duration. The cartel members were found to have coordinated prices and sales conditions and to have allocated market shares, quotas and customers among themselves. The cartel operated through frequent contacts between the undertakings involved and included various monitoring mechanisms both at European and national level. Kemira was awarded immunity from fines as the first undertaking to disclose the existence of the cartel to the Commission. A number of the other undertakings were also granted reductions in fines on account of their cooperation with the Commission under the 2002 Leniency Notice.

The case is the second in which the Commission has used its settlement procedure, following its recent decision in the DRAM case, and the first involving a so-called "hybrid scenario", i.e., a situation where the Commission pursues the settlement procedure with some defendants and the regular procedure with others. In this case, all but one of the defendants settled with the Commission. Defendant Timab withdrew from the settlement procedure and the Commission disposed of the case against it under the regular procedure. As a result, the Commission adopted two decisions in this case, a streamlined "settled" decision against the settling defendants and a standard decision against Timab. In accordance with the Settlement Notice, the settling defendants were granted a 10% reduction in the fine that would otherwise have been imposed on them.

### *IV. European Union: Regulatory*

#### **Commission publishes annual report on sales of counterfeit goods**

On 22 July 2010, the European Commission published a report finding that Internet sales of counterfeit and pirated goods to European consumers are frustrating attempts to stem illegal trade.

The Commission considers that the protection of intellectual property rights ("IPR") is key in promoting research, innovation and job creation in Europe. The Commission has also stated that effective IPR enforcement is "an essential part of protecting the health and safety of EU citizens, because certain counterfeited products...which are produced in an unregulated environment can pose a serious threat".

One of the main findings of the Commission's latest report is that three quarters of illegal shipments stopped by EU customs officials in 2009 were shipped by post or air, suggesting that Internet sales of illegal items have increased. The figures highlight that counterfeiters are concentrating increasingly on sales to individuals rather than dispatching bulk shipments to intermediaries that are expensive to send and could more easily be tracked.

Other main findings of the report show an upward trend in the number of goods suspected of violating IPR. In 2009, over 43,500 cases of such goods were stopped by customs, totalling 118 million articles. The report notes that, while in the past luxury goods were the most hit by IPR infringements, more and more items used by citizens in their daily lives are now affected, including cigarettes (19%), other tobacco products (16%), labels (13%) and medicines (10%). China continued to be the main source of IPR infringing products, totalling 64% of the total of IPR infringing articles, while other countries such as United Arab Emirates and Egypt accounted for the majority in certain product categories. More than 77% of all detained products were destroyed or a court case was initiated to determine the infringement.

A number of actions are being carried out by the Commission with the aim of strengthening the ability of EU customs authorities to combat trade in counterfeit and pirate goods. Among others, the Commission is working towards a proposal to improve the current legislation on customs actions against IPR-infringing goods and simplify current procedures. The European Council endorsed a customs action plan in March, but talks on a new anti-counterfeiting accord have stalled over disagreement on the protection of European fashion brands and food names. The European Commission has indicated that it intends to propose legislation on IPR by the end of the year.

The full report may be viewed online at:

[http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm).

## **V. *Dumping Watch***

### **A. Notice of initiation of expiry review – hand pallet trucks**

On 20 July 2010, the Official Journal published a notice of initiation of an expiry review of the anti-dumping measures applicable to imports of hand pallet trucks and their essential parts originating in the People's Republic of China.

The product concerned is hand pallet trucks and their essential parts, i.e., chassis and hydraulics, currently falling within CN code ex 842790 00 and ex 8431 20 00.

It is recalled that the measures currently in force are a definitive anti-dumping duty imposed by Council Regulation 1174/2005 as amended by Council Regulation 684/2008. The request for a review was lodged on 21 April 2010 by two Union producers, BT Products AB and Lifter Srl., representing 90% of total Union production. According to the applicants, the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

The Commission has decided to initiate the review. In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling. The Commission will send questionnaires to the known producers of the like or directly competitive products in the Union, to the known exporters/producers and importers of the product concerned. All interested parties must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 37 days of the date of publication of the notice in the Official Journal. All interested parties may also apply to be heard by the Commission within the same 37-day time limit.

The investigation will be concluded within 15 months of the date of the publication of the notice in the Official Journal.

#### **B. Notice of initiation of anti-dumping proceeding – tris(2-chloro-1-methylethyl)phosphate**

On 23 July 2010, the Official Journal published a notice of initiation of an anti-dumping proceeding concerning imports of wireless tris(2-chloro-1-methylethyl)phosphate originating in the People's Republic of China.

The product concerned is tris(2-chloro-1-methylethyl)phosphate, currently falling within Customs and Statistics (CUS) number 0024577-2. It is also called TCPP and is also known under the following synonyms: 2-Propanol, 1-chloro, phosphate (3:1); tris(monochloroisopropyl)phosphate (TMCP); tris(2-chloroisopropyl)phosphate (TCIP); phosphoric acid, tris (2-chloro-1-methylethyl)ester; tris(beta-chloroisopropyl)phosphate; and, 1-chloro-2-propanol phosphate (3:1). It falls under CN code ex 2919 90 00.

It is recalled that the complaint was lodged on 9 June 2010 by the European Chemical Industry Council (CEFIC), on behalf of producers representing a major proportion (in this case, more than 25%), of total Union production of TCPP. According to the Commission, 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, the level of the prices charged and the market share held by the Union industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the Union industry.

Therefore the Commission has initiated the investigation. The Commission intends to base normal value 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.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporting producers, all unrelated importers and Union producers must contact the Commission no later than 15 days after the publication of the notice in the Official Journal. Parties that make themselves known may provide the Commission with information on whether the imposition of measures would not be against the Union interest within 37 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 9 months from the publication of the notice in the Official Journal.

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

#### **A. WTO**

- 26-28 July 2010: Trade Policy Review Body – The Gambia
- 29-30 July 2010: General Council

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