
Newsletter, September/October 2012

EU Law News

A bi-monthly review of EU legal developments affecting business in Europe

European Commission investigates alleged Chinese dumping of Solar Panels in Europe

The European Commission has launched an investigation into alleged dumping of solar panels and key components for their manufacture on the European market by companies based in China. The case was opened on the request of EU Pro Sun, an industry association representing 20 European companies producing solar panels. For the Commission to act, such a request must come from a group representing at least 25% of the collective output of European manufacturers and those opposing the request must not represent more European production than those proposing the investigation. The investigation will take 15 months to complete, and anti-dumping duties can be implemented within 9 months if there is prima facie evidence of dumping.

In terms of import value affected, this is the most significant complaint the Commission has received to date. China is the world's largest producer of solar panels, accounting for 65% of the world's production, with the EU being its main export market accounting for 80% of export sales. This action follows a similar one against Chinese producers in the United States in May. The move was quickly condemned by Chinese manufacturers who warned of a looming trade war over the issue.

LIBOR manipulations provoke EU regulatory change

The European Commission has responded on two fronts to the recent revelations over alleged manipulations of the LIBOR interest rate index by certain European banks. On 25 July, Internal Markets and Services Commissioner Michel Barnier introduced amendments to existing proposals for a Regulation and Directive on insider dealing and market manipulation, which - if approved by Parliament and Member State governments - will make the manipulation of benchmarks such as LIBOR and EURIBOR, the wholesale rate indexes at which banks borrow money from

each other in London and the Eurozone respectively, a criminal offence.

A public consultation covering all benchmarks was then launched on 5 September to investigate whether wider legislative action should be taken. Both actions are independent of the Commission's ongoing anti-trust investigations of LIBOR and EURIBOR to examine whether there has been collusion amongst member banks to rig rates. Such action would constitute a restriction of competition under Article 101 of the Treaty on the Functioning of the European Union.

EU Justice Commissioner Viviane Reding responded to the issue by restating the need for "fully rigorous and independent supervision at European level", prefiguring wider EU proposals for the establishment of a European Banking Union. On 12 September, the Commission committed to establish a single supervisory mechanism (SSM) for banks in the euro area by January 2013. In this mechanism, ultimate responsibility for specific supervisory tasks related to the financial stability of all euro area banks would lie with the European Central Bank (ECB).

European Commission targets a "Federation of Nation States"

On 12 September, Jose Manuel Barroso, President of the European Commission, gave his annual State of the Union address in the European Parliament. The address traditionally sets the vision for the EU in the year to come, with a significant part of this year's speech dedicated to the Commission's proposals towards the next steps in EU political integration.

Barroso revealed that before the 2014 European Parliament elections, the Commission will issue a proposal for moving towards a "Federation of Nation States", leaving the door open for

a new treaty to be negotiated thereafter. This will be preceded by several other legislative items:

- The Banking Union package, released alongside the State of the Union address.
- Continuing financial reform, specifically on interbank indices, consumer rights, and the structure of banking activities
- A proposal for a European Single Market Act II, to be published in the next few months
- A blueprint for completion of the Economic and Monetary Union to be presented by Autumn 2012

Agreement to foster EU-US transatlantic SME cooperation

Within the framework of the EU-US Transatlantic Economic Council (TEC), stakeholders and government representatives agreed on 12 July to jointly facilitate Small and Medium Enterprise (SME) presence across both continents. Their planned collaboration will focus on the three areas set out in an earlier letter of intent between European Commission Vice President Antonio Tajani and US Deputy Secretary Rebecca Blank :

- Exploring mutual ability to enter third country markets
- Reviewing specific cooperative measures for SMEs, such as joint promotion activities and support for innovation
- Mentoring and support measures for boosting entrepreneurship

Both sides also supported the development of a framework for cooperation between the US International Trade Administration and European Enterprise Network.

The agreement prioritises the future internationalisation of European and American SMEs. Although EU SMEs create 85% of all jobs across the region, only 13% export outside the EU single market. Obstacles identified within the TEC included difficulties in getting economic resources and adequate know-how and information about potential partners and foreign markets; both of which will be targeted in future work.

European Commission opens anti-trust case against Gazprom

On 4 September, the European Commission opened anti-trust proceedings against Gazprom, the Russian producer and supplier of natural gas, in order to investigate whether its operations in Central and Eastern European gas markets constitute an abuse of its dominant market position. The Commission has identified three suspected anti-competitive practices that would be in breach of Article 102 of the Treaty on the Functioning of the European Union:

- Dividing European gas markets by hindering the free flow of gas across Member States
- Preventing diversification of gas supply
- Imposing unfair prices on consumers by linking the price of gas to oil prices

The accompanying press release states that “such behavior, if established, may constitute a restriction of competition and lead to higher prices and deterioration of security of supply. Ultimately, such behavior would harm EU consumers”.

The Commission's approach has raised hackles in Russia, with Gazprom accusing the anti-trust regulator of trying to push down gas prices in the EU at their expense. On 11 September, Russian President Vladimir Putin signed a decree mandating that “strategic companies” operating abroad must seek clearance from Moscow before passing information to foreign regulators or changing contracts. This will likely have a direct impact on the Commission's investigations, which will look directly into state-owned Gazprom's long-term energy contracts and may request amendments if anti-competitive practices are found.

This publication has been carefully prepared but is intended for general guidance only. On any specific matter, reference should be made to the appropriate adviser.

Luther, EU Law Center
Avenue Louise 240, B-1050 Brussels
Phone +32 2 6277 760, Fax +32 2 6277 761
helmut.janssen@luther-lawfirm.com

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