



## **DS EURONEWS**

### **Business law news from Brussels**

2010 promises to be a very important year of changes for the European Union: new institutional rules, new European Commission, international political stakes in the field of economy and geopolitic, high hopes from citizens and companies...

Our new version of DS Euronews is in line with this context.

The DS European Hub provides you with a selection of information relevant European business life; free circulation of goods, of capitals, of persons, of services, access to market, European companies law, trade protection instruments, markets, arrangement, coalition, network sectors, distribution contracts, environment law, external relations of the Union...so many important topics to have a better understanding of business law stakes in Europe.

DS European Hub, through its permanent presence in Brussels, will provide you every month with a selection of few european themes. Besides we will send you « DS Euronews alerts » to inform you on relevant business law issues in Europe.

DS European Hub and the whole DS team of our 200 lawyers in 15 offices all over the world remain at your disposal to assist you in all your projects in Europe.

## 1.A definitely significant year for the EU 2010; new treaty and new Commission; great hopes and important challenges



Barely had the Lisbon treaty entered into force at the very beginning of December 2009, the new Commission, Barroso II, became the obsession of the media and of the European political class.

After two months of intensive negotiations, the new Commission was confirmed by the Parliament on February the 9th.

This new Commission will be quite different from the last one since a climate action department and an independent energy department will be created, moreover the former Justice, Liberty and Security department will be divided in two ones ; Justice, fundamental rights and citizenship department and Internal affairs department.

Here is the list of some chosen commissioners:

- Trade: Karel de Gucht, Belgium.

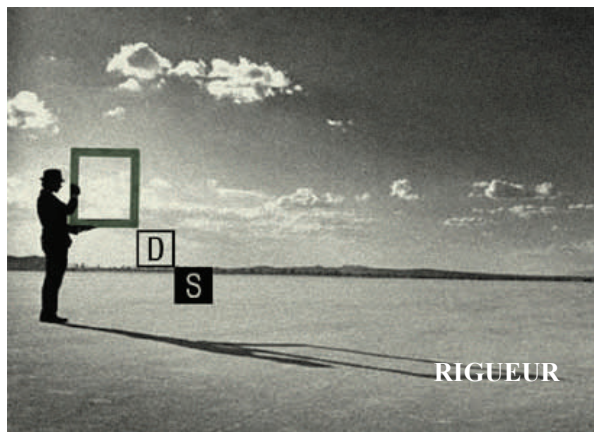
Here is one of the key portfolio because of the financial crisis context and the tautly relationship with the USA and China. Besides he will have to represent a common position including all the member states in front of the WTO.

- Climate Action: Connie Hedegaard, Danish.

She will have to deal with future international agreements post-Kyoto and bring the UE towards an economy restrained in carbon.

- Competition: Joaquin Almunia, Spanish.

The President of the commission chose Mr Almunia, to incarnate the strict refusal of interventionism.



- Transport: Siim Kallas, Estonian.
- Economic and Monetary Affairs: Olli Rehn, Finn.
- Internal Market and Services: Michel Barnier, French.
- Industry and Entrepreneurship: Antonio Tajani, Italian.
- Development: Andris Piebalgs, Latvian.
- Taxation and Customs Union, Audit and Anti-Fraud: Algirdas Semeta, Lithuanien.
- Health and Consumer Policies: John Dalli, Maltese.
- Budget and Financial Program: Janusz Lewandowski, Polish.
- Environnement: Janez Potocnik, Slovenian.

Michel Barnier, who was appointed to the Internal Market and Services portfolio, has already announced his priorities; crisis exit, relaunching of the single market and construction of economy « based on awareness ».

The rotating Spanish Presidency of the Council of Ministers, started on the 1st January 2010, is not only the first one under the Lisbon treaty application but also the first one to test the new system of a multi-headed Europe. Spain has detailed major goals of its 6 months presidency which are: the economic and employment upturn, increasing of economic policies coordination and promoting innovation and public-private partnership.

Nevertheless Spain has already been

confronted to its first disappointment concerning the eurosummit, which should have taken place in Madrid. Barack Obama has indeed announced that he will not be attending the yearly EU-USA summit. One of the main said reasons is the non-understandable new European institutional organization. Lisbon treaty seems to derange more than simplifying the already complex European scheme.

## **2. Environment; which challenges for the environmental law after Copenhagen summit?**

Quickly after the Copenhagen summit critics came from all sides: deception, skeletal agreement, lack of ambition....

One of the principal reasons of critics is that the Copenhagen Agreement was not formally adopted by the conference. That means that it does not bind on the parties and there is no deadline concerning an international climate change. Moreover the question of financial aid for developing countries to adapt to climate change and to develop sustainable growth plans has not been resolved.

Even though 55 developed and developing countries submitted emission reduction plans, there is no mean to force them. Thus, China planed to reduce its carbon intensity by 40 to 45 percent by 2020, India from 20 to 25%, European Union engaged its member states to reduce emissions by 20 to 30 percent, the USA planed to cut emissions « *in the range of 17% per 2020* » but Congress will have to enact legislation first. Two major nations had still not submitted plans: Mexico and Russia.

The question to know if the Copenhagen summit is a failure may be not the most important point. Copenhagen can be indeed compared to a drop in the ocean. But a drop which encourages to act; the European union has already



announced the creation of an EU agency for rubbish, given the rise in illegal waste shipments and the poor quality of waste management infrastructure. This agency should not be operational before 2011.

The negative point of the environmental issue is the lack of effectiveness from national governments due to unclear international rules framework and a too much complex interdependence between local and global stakes.

Despite all these obstacles environmental law remains fascinating on a technical view as well as essential for economical reasons.

## **3. World Trade Organization: 2009 report: the institutional aim of international trade.**

The 2009 report mainly concerns « *the commitments in the field of trade policies and the subsidiary measures* ». These measures provide to governments a kind of pressure valve in their trade commitments framework. They indeed allow to be used in the case of unexpected situations. They tend to establish a balance between commitment and flexibility. And that is exactly what this report means to do. Its main goal is to determine if WTO's clauses respect as well the imperatives of flexibility for national governments which have to deal with economical matters and the temptation of protectionism.

Thus, the report focuses on subsidiary measures that member states may apply in the importation and exportation of goods, such as custom duties. At the end of 2008, even though developing countries agreed to apply dispositions of the WTO agreement regarding customs valuation, most of them do not have change national legislations yet. That tends to ensure a fair, uniform and neutral system for the valuation of goods and would avoid arbitrary or fictitious customs values. India defended the idea of a binding agreement which would force duties administrations to exchange information on customs valuation. However, some states raised the protection of confidentiality issue and the existence of similar mechanism.

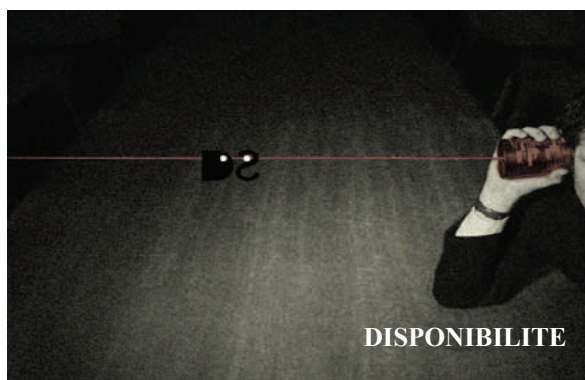


For more information :  
<http://www.wto.org/index.htm>

#### **4-Trade defence measures: A beginning of year marked by protectionism.**

The antidumping procedures represent one of the most useful means to fight against unfair trade of goods. Being part of the WTO law, antidumping clauses protect companies.

Several antidumping cases has already tacked place on the beginning of the year. The USA, China and The EU are the



main actors concerned by antidumping procedures.

#### **European Union vs Chinese-made shoes**

The EU has indeed extended antidumping duties on Chinese-made shoes for 15 months more. Following this, China decided to refer the WTO about this decision judged as « *violating various obligations under the WTO, and consequently caused damage to the legitimate rights and interests of Chinese exporters* » (The New York Times, February 5th 2010). If this complaint will not be resolving in a limit of 60 days, the WTO will have to give a ruling.

Vietnam recently declared that it follows closely China's complaint and does not reject the possibility to join it.

#### **Critics over the USA's antidumping duties**

China and the EU have both complained about the USA's antidumping duties.

The EU asks the WTO to approve monetary sanctions on US concerning their antidumping duties calculations. China announced at the beginning of February its decision to apply some temporary measures against products based on chicken imported from the US. This decision arises following an inquiry showing that American producers applied dumping prices.

Finally, the US introduced new antidumping tariffs on steel tube bound to petroleum industries; the US Government declared that it was the largest antidumping action ever sat out. China made, since a few months, several declarations attacking the US about their protectionism tendency, especially since the financial crisis.

### Critics over China's antidumping duties

The US denounces China's practices as well. The American government has indeed announced that it will impose antidumping duties on electric blanket products from China.

Besides, China has also decided to reduce its exportations of certain raw materials; the US and the EU have both refer the WTO to determine whether this decision is against free competition principle.

At the beginning of January, China and 6 Asian countries (Thailand, Indonesia, Brunei, Philippines, Singapore and Malaysia) signed an agreement abolishing custom duties on 7000 products and services, representing 90% of their trade. This agreement is a windfall for China, which could compensate the fall of its exportations towards the US and the EU.

### **5- Competition: New regulatory framework of electronic communications.**

The EP has recently adopted a framework directive on electronic communications. This one forms a part of the "telecom pack", launched 2 years ago and was the subject of intensive negotiations between the EC and the Council of the European union.

Thus, the new regulatory framework of

electronic communications is composed of:

- \* Directive 2009/140/CE amending directive 2002/21//CE relative of a common regulatory framework for networks and electronic communication services, directive 2002/19/CE relative to electronic communication services access, associated resources, and their interconnection, and directive 2002/20/CE relative to authorization of networks and electronic communication services.
- \* Directive 2009/136/CE amending directive of 2002/22/CE relative to universal service and user rights concerning electronic communication services and networks, directive 2002/58/CE relative to data processing with personal character and protection of private life in electronic communication sector and the regulation 2006/2004 (CE) relative to cooperation between national authorities in charge of watching legislation in terms of consumers protection.
- \* Regulation 1211/2009 (CE) setting up the Agency of European regulators of electronic communication.

The mentioned directives have to be transposed into national law before 25th may 2011.

The first new directive was voted on the last 25th November whereas the second one and the regulation had been adopted since May 2009.

These directives tend to especially guarantee: right for consumers to keep their mobile phone number when they change of mobile operators and the fact that the internet could not be limited or interrupted before a « just and



impartial » procedure and only if it has been judged as « necessary and proportional ». However the text does not detailed in which case users could be considered as illegal. Thus each member will have to statute to define the conditions of suppression of the Internet.

#### **6- Transports: opening the international railway transport of passengers market competition**

From January 2010, the international railway transport market has been opened to transport of passengers within the European union; this change is in line with a whole modification of the international railway transport.

Since 2000, the European Council and Parliament have adopted what they called « *railway pack* » which allowed competition in the international railway transport market of goods and the development of a transeuropean transport system. The second step was in 2002 with the creation of an integrated European railway complex. The third step in 2008 was the opening of the international railway transport market to passengers and to strengthen international passenger rights. Security of these passengers will be providing by the European Railway Agency, in charge since 2002 of security and interoperability of a future common railway complex.

Germany is one of the countries where competition on the transport market of passengers had already been opened. Thus, in 2008 there were 78 railway operators. For example, whereas foreign railway companies can use the German lines (that is the case of Veolia Transport indeed), the contrary was still not possible since SNCF was the only operator, until now.

However, regarding the other means of transportation, SNCF can be peaceful;

transport services will be opened to competition in 15 years for buses, in 20 years for tramways and in 30 years for subways.

#### **7- Union for the Mediterranean: accomplishment of the project.**

The union for the Mediterranean is composed of 27 state members of the UE and 16 partners located in the south of the Mediterranean Sea and in the Middle East.

Recently, January 25th, Ahmad Massa'deh, a Jordanian diplomat and lawyer, has been confirmed as general secretary of the Union. The general secretariat desk is located in Barcelona and will be composed of Israelian, Palestinian, Turkish and from Arab League deputies.

This Union is mainly important for the EU trade; it represents indeed 67€ billion of exportations and 60€ billion of importations. Total trade with the EU was



Map of the Union for the Mediterranean

€127 billion in 2007 which means 5% of total EU external trade.

sources: Sciences Academy of China, SAC.

**Last but not least: the point of the month :**

The Chinese economy could have a 10% rise of GNP in 2010; foreign exchange market should increase of 17.6% with a rise of 16.6% in exportations and 18.9% of importations.

**ANNEXE**

Please find below Legislation, Notices and Information which are published in the Official Journal of the European Union are listed below in chronological order.

|       | <b>Product</b>                             | <b>Countries concerned</b> | <b>Publication</b> | <b>Subject</b>  |
|-------|--|----------------------------|--------------------|---|
| R314a | Antibiotics                                | India                      | 28 January 2010    | Notice of the impending expiry of certain counter-vailing measures (2010/C 21/11)   |
| R473  | Ironing boards                             | People's Republic of China | 28 January 2010    | Council implementing regulation (EU) No 77/2010 of 19 January 2010 amending Regulation (EC) No 452/2007   |
| R318  | Furfuraldehyde                             | People's Republic of China | 22 January 2010    | Notice of the impending expiry of certain anti-dumping measures (2010/C 16/14)  |
| R460  | Ethanolamines                              | United States of America   | 22 January 2010    | Council implementing regulation (EU) No 54/2010 of 19 January 2010 imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America. |
| R494  | Polyethylene terephthalate film (PET film) | India                      | 14 January 2010    | Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of polyethylene terephthalate (PET) film originating in India                   |

|       |  |                            |                 |   |
|-------|--|----------------------------|-----------------|---|
| R495  | Polyethylene terephthalate film (PET film) | India                      | 14 January 2010 | Notice of initiation of a partial interim review of the countervailing measures applicable to imports of polyethylene of polyethylene terephthalate (PET) film originating in India |
| AD540 | Molybdenum wires (certains)                | People's Republic of China | 08 January 2010 | Corrigendum only in the Greek and Swedish versions (Regulation (EC) Nr. 1247/2009 - OJ L 336 of 18.12.2009)   |
| AD540 | Molybdenum wires (certains)                | People's Republic of China | 08 January 2010 | Corrigendum only for the Greek and Swedish versions (Regulation (EC) Nr. 1247/2009 - OJ L336 of 18/12/2009)   |
| R492  | Polyethylene terephthalate film (PET film) | Israel                     | 06 January 2010 | Commission regulation (EU) No 6/2010 of 5 January 2010 initiating a review of Council Regulations (EC) No 1292/2007 and (EC) No 367/2006  |

Please find below investigations, since January 2010 that are pending a decision of the European Commission or the Council of the European Union.

For further information, please contact The DS European Hub.

| Case | Product                                    | Countries | Type  | Initiation      |
|------|--|-----------|---|-----------------|
| R494 | Polyethylene terephthalate film (PET film) | India     | Partial interim review, Article 11(3) part. | 14 January 2010 |
| R495 | Polyethylene terephthalate film (PET film) | India     | Partial interim review, Article 19partial   | 14 January 2010 |
| R492 | Polyethylene terephthalate film (PET film) | Israel    | New Exporter Review, Article 11(4)          | 05 January 2010 |

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