Global Public Affairs

HOT ISSUES

Burson-Marsteller

Welcome

This is the first edition of "Hot Issues" from Burson-Marsteller's Global Public Affairs Practice. Every month, "Hot Issues" will focus on 10 new forthcoming legislative or policy issues that will impact business from around our global network of 130+ offices in Latin America, Asia-Pacific, Europe, Middle East, Africa and North America.

The public policy dynamics in each country, let alone a particular region can be very different, demonstrated by the different experts we utilize in the countries where we operate. Conversely, there are similarities and you can see this in some of the issues we have picked out: labour/union policy in the US and China; gambling legislation for the EU and Japan; and environmental law in Brazil and China.

Hot Issues are designed to give you a flavor of our global perspective and should any of the items raise particular interest with you please contact the designated person listed with that issue.

China's upcoming Five-Year Plan may include landmark environmental tax

Government advisors say a new environmental tax policy is currently under review which – if it becomes law – would levy fees on discharges of sulphur dioxide, sewage and other contaminants, and increase resource taxes. The new environmental tax policy is also expected to include a regional or sectoral-level carbon trading system.

If approved, the tax is expected to impact both Chinese and multinational businesses, but some observers believe that foreign firms should expect harsher monitoring and enforcement than domestic companies. Emissions-intensive industries are expected to be hit most heavily, impacting companies in steel, chemicals, cement, and other heavy manufacturing industries.

The new regulations are intended to serve as a disincentive against environmental abuses by companies in "polluting industries," many of whom are seen to be taking advantage of current weak regulations.

Vice Premier Li Keqiang and other Chinese officials have confirmed that the new environmental taxes are expected to be introduced as part of China's twelfth Five-Year Plan, due to be announced later this month at the next session of the National People's Congress.

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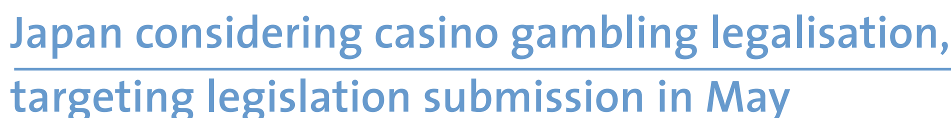

Japan considering casino gambling legalisation, targeting legislation submission in May

A non-partisan parliamentary group composed of more than 100 Japanese lawmakers plans to submit draft legislation this year calling for the legalisation of casino gambling. The proposal could potentially be adopted by the new Government Revitalisation Unit as a means to kick-start the Japanese economy with the tax windfall that is expected if casino gambling is legalised.

If passed, legalisation will present an opportunity for tourism and hospitality companies and foreign casino groups like Las Vegas Sands, who have already expressed interest in establishing casinos in Japan, to play a significant role in developing the country's casino industry.

Opposition to casino legalisation, and to gambling generally in Japan, remains entrenched. Many local authorities, two political parties, and many NGOs and activist groups are opposing the new casino proposals. Gambling carries a heavy negative stigma in Japan, and is banned under the criminal code with the exception of horse racing, pachinko, and some motor sports. Recent high-profile sports-betting

scandals involving baseball, sumo wrestling, and yakuza mobs are further inflaming public anger against gambling.

However, casino legalisation is also drawing increasing support and public endorsements from prominent governors and other officials who see it as an effective means to revitalise Japan's static economy. Proponents argue that legalisation would contribute significantly to tax revenues and job creation, while also attracting higher levels of tourism and investment. Casino gambling legislation is expected to be submitted as early as May this year.

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Indonesian government may approve legislation to improve business climate for multinational pharmaceutical companies

Proposed revisions to Health Minister decree "SK NO 245/1990" regarding "Requirements and Procedures for Pharmaceutical Industry Business Licenses" indicate that the Indonesian government may soon be ready to approve legislation expected to dramatically improve the business climate for multinational pharmaceutical companies.

If the 29-member International Pharmaceutical Manufacturers Group (IPMG) has its way, the proposed regulatory revisions will eliminate a requirement in the current regulation – which has not yet been officially circulated to the industry or the public – which mandates that foreign firms must have production facilities in Indonesia in order to register the sale of imported drugs with the Indonesian Food and Drug Monitoring Agency (BPOM). The current requirement is intended as a basic precondition for pharmaceutical registration, and is designed to require foreign pharmaceutical companies to increase their contributions to industrial investment and job creation in Indonesia. It does not propose that the drugs approved for registration and sale must actually be produced in Indonesian manufacturing facilities, but the companies manufacturing those drugs must be producing some pharmaceutical products in the country.

IPMG argues that the existing requirement would cause serious problems for foreign companies if implemented, and given the high costs that would be involved in the construction of the required pharmaceutical plants, may push some of them to withdraw from the Indonesian market. Twelve IPMG members do not currently have the necessary production facilities to meet the requirement, and the Group is pushing for the new revisions to be approved.

A final determination on the revisions was originally targeted for January 2011, but the issue has not yet been resolved. Many Indonesian officials remain determined that the proposed regulation should not be changed and that foreign pharmaceutical companies should be required to operate in Indonesia as manufacturers contributing to the country's industrial base.

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Australian government discusses carbon price legislation this year

Representatives from the Australian Green party – which will hold the balance of power in Australia's upper-house Senate from July 1 – and other lawmakers on the Multi-Party Climate Change Committee headed by Prime Minister Julia Gillard, are pressing for more aggressive pollution tax measures as the government struggles to form a climate policy.

Leading Australian companies like Qantas, BHP Billiton, and Woolworths agreed in theory to a carbon price at the government's Business Roundtable on Climate Change earlier this month. But strong concern remains over the tax's expected business impacts and companies are requesting additional government meetings to clarify the

potential consequences of carbon price legislation.

A crucial concern for emissions-heavy industries – especially electricity, mining, gas and steel – is the potential elimination of hundreds of millions of subsidy dollars as part of the pollution legislation. Green activists and legislators argue the inclusion of subsidies to polluting industries alongside taxes designed to curb pollution sends unacceptable mixed messages, and are pushing for the subsidies to be eliminated.

Current negotiations are centered on a hybrid carbon pricing model that includes an initial carbon tax which will eventually lead to a full carbon trading scheme. The government plans to submit legislation this year, but the Multi-Party Climate Change Committee has so far failed to agree on a carbon price model and says a decision is still months away. Assistance subsidy packages to industries remain a key obstacle.

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Green Paper on the modernisation of EU public procurement policy: towards a more efficient European procurement market

On 27 January 2011, the European Commission issued a Green Paper on the modernisation of EU public procurement. Public procurement accounts for 17% of the EU's GDP, which indicates that a wide range of businesses are selling goods and services to public authorities across the EU and may be impacted by the policy changes that are now being considered.

A green paper usually presents a range of ideas and is meant to invite interested individuals or organisations to contribute views and information early on in the policy development process. As such, it represents a good opportunity for interested stakeholders to understand the direction the European Commission is moving on an issue of interest to them – and to share their views through the consultation process.

The green paper raises a wide range of specific issues on which it seeks input. They focus, for example, on ideas to reduce red tape and make procurement more transparent and non-discriminatory, to give more access to small and medium size enterprises, and to ensure safeguards against favouritism, corruption and conflict of interest.

It will also raise the more controversial issues around so called "green public procurement," and whether procurement rules should be used to promote innovation or certain environmental or social considerations. This might include rules establishing obligations to buy only products respecting certain environmental conditions or to set aside a certain percentage of the budget for innovative goods and services. Consequently, the conclusions reached could have significant impact on companies that are currently taking part in public procurement tenders but are not carrying eco-labels or cannot take part in green public procurement procedures.

The deadline to submit comment on the consultation is 18 April 2011. A legislative proposal based on the comments is expected in 2012.

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Gambling in the EU: an end to barriers for gaming services?

Games of chance are an increasingly important part of the service economy in the EU. However, national rules on gambling and lotteries, and varying levels of concern about the economic and social impact of gambling, mean that this sector is regulated in different ways in the EU's 27 member states.

Now, for the first time, the European Commission is preparing to act in order to regulate this highly sensitive market, which is worth around €80bn a year in Europe, following pressure from gaming companies (and players) to put an end to the inconsistent approach to this sector.

Since 2005 the European Commission has refrained from putting in place harmonised rules for gambling at EU level – but has brought a series of infringement proceedings against a significant number of member states (such as Greece, France, Sweden, Germany and Italy) as a result of many complaints from private operators, players and the media. These proceedings challenge national administrations for maintaining unjustified restrictions to the cross-border provision of gambling services, principally through the internet. Some of these member states (like France, Greece and Italy) have consequently amended their legislation in an attempt to comply with the internal market acquis.

Despite previous reluctance to propose legislation, the Commission´s approach to EU gaming policy has now seen a major shift. During a debate in February 2010 at the European Parliament, the Commissioner for Internal Market and Services, Michel Barnier, announced that in addition to the case-by-case analysis of problems arising in each member state, the Commission intended to organise a broad consultation on the complex issues arising from the development of online gambling.

The consultation, which will be launched in March, 2011 in the shape of a Green Paper, will look at a variety of issues, such as fraud prevention, gambling problems and the protection of minors. The need for action at EU level – and its possible shape - will then be assessed following the completion of this consultation.

The fundamental question is how far that harmonisation will go, especially given the political sensitivities – and the resulting impact on the free movement of services, national economic and social traditions, and consumers and society.

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Argentina: Non-automatic licenses

The Argentinean Government's decision to apply non-automatic licenses to over 200 products is an industry-protective measure that is likely to have a broader impact on business than perhaps initially intentioned. Since the listed products include auto parts, motor accessories, machines and electrical components, many manufacturing companies whose businesses are not specifically mentioned by the move, will still have the maintenance of their production line delayed due to lack of specific parts that are not produced locally.

Non-automatic licenses are a protective measure used to administer trade restrictions such as quantitative restrictions which are justified within the World Trade Organization (WTO) legal framework. They are meant to be applied on a temporary basis. However, last week President Cristina Kirchner presented her Strategic Industrial Plan 2020, which aims to decrease imports by 45%, to protect local manufacturing and employment. In this context, the Argentine Government is expected to introduce more of these types of measures.

The regulation (Ministry of Industry Res. 45/2011) has introduced a special mechanism to address the issue through Exception Certificates. The National Industry Office will evaluate each individual situation prior to extending the Certificate, which will be valid for a period of 60 to 180 days. Although there is no formal position, the Government is likely to assess the company's contribution in terms of investments, exports and employment creation when defining the exception.

Companies, including those not directly involved, should monitor this situation and review their maintenance plans as well as work closely with the Ministry of Industry to avoid manufacturing lines delays.

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Brazil: National Solid Waste Policy

In December 2010, President Lula approved the National Solid Waste Policy (PNRS, in the Portuguese abbreviation), after being debated by the Brazilian Congress for the past 20 years. The PNRS addresses one of the most serious problems in the country: the absence of regulations for waste handling. Estimated to be implemented in second half of 2011, the PNRS will affect a host of Brazilian industries and impose new requirements on certain manufacturing sectors to minimize and manage the wastes associated with their products and operations.

Consistent with a recent trend in Latin America and elsewhere, the PNRS imposes some form of extended producer responsibility (EPR) for a number of end-of-life products. The PNRS denotes its most comprehensive EPR requirements with the term "reverse logistics", which implies that the commercial distribution network for a given product is to be used in reverse as a conduit for producer "take-back" of post-consumption wastes. The reverse logistics system will bring intensive waste management obligations for manufacturers, importers, distributors and merchants.

In addition to the application of reverse logistics to packaging that constitutes a hazardous waste, the PNRS imposes broad requirements on packaging in general by requiring that packaging be:

1. Restricted to no more than the volume and weight required to protect and sell the product contained.
2. Designed for reuse, to the extent that reusable packaging is technically viable and compatible with the product.
3. Recycled in the event that reuse is not possible.

The PNRS has a special impact on certain product categories for special waste management:

- Pesticides and their packaging, and other packaging that constitutes a hazardous waste
- Batteries
- Cosmetics
- Tires
- Lubricants
- Fluorescent bulbs, sodium and mercury vapor bulbs, and mixed-light bulbs;
- IT and electronic products and components.

This new law will affect many companies and will require a coordinated approach to communications to help educate community leaders, key opinion leaders, government and regulatory authorities about their sustainability and packages return practices.

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U.S. Federal Government Budget Cuts

The federal budget battle shaping up between the Obama Administration and the new Republican majority in the House of Representatives may be at heart a philosophical tug-of-war over government's rightful role, but the practical implications are significant for a number of industries.

Subsidies for rail and regional air transportation, family planning, public broadcasting, sugar, and beach replenishment in coastal states are all threatened. Support for international organizations ranging from OECD to the U.N. Panel on Climate Change is also at-risk. While the administration increases the foreign aid budget by a percent, the House version slashes proposed funding for U.S. Agency for International Development, jeopardizing programs ranging from healthcare to energy throughout the world. And of course, the future of President Obama's plan for expanding health care is at the center of Republicans' budget-cutting target.

The budget battle creates an urgent need for long term programs to educate not only federal government, but also states and local governments on the need for these industries to continue to rely on federal funding to survive or succeed.

House Republicans' budget proposal is summarized here:
http://rsc.jordan.house.gov/News/DocumentSingle.aspx?DocumentID=220713

Click here for details on President Obama's budget:
http://www.whitehouse.gov/omb/budget

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U.S. Labour Turmoil

Economic and political developments are making the historically troubled waters of labour-management relations in the United States even more tumultuous, forcing companies to reevaluate their workforce communications and employee-engagement strategies.

Research reveals that company actions during the recent recession – layoffs, pay and benefit reductions, hiring freezes and the like – have severely weakened employees' confidence in the business community, requiring companies to redesign and redouble programs to regain employee' trust for future growth.

Meanwhile, labour unions are exercising their considerable political pressure to tighten rules on employer communication and dialogue, despite the fact that union membership in private industry continues to fall – now less than seven percent of the workforce. For example, the National Labor Relations Board recently ruled against a company for firing an employee because of disparaging remarks on her personal Facebook page, and the agency similarly ruled against a hospital for firing a nurse over her contentious bedside manner – both actions against stated corporate policy – and the number and variety of such cases are expanding rapidly. A proposed rule currently under debate would force senior corporate executives to personally read adverse agency rulings aloud to employees to further humble and embarrass companies when mistakes are made.

Recognizing the need to increase its dwindling membership, and now encouraged by a sympathetic political environment, labour unions are capitalizing on enforcement enthusiasm and corporate mistrust by expanding membership-organizing and contract-negotiating programmes. Increasingly, American labour unions have been teaming with international counterparts to force companies into International Labour Agreements to create greater pressure on target companies among investors, government leaders, customers and other stakeholders.

Progressive companies are redesigning their workplace communications programmes with new messaging research and outreach strategies to rebuild the employee engagement necessary to navigate today's challenging economic straits.

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