



# Bridges Weekly Trade News Digest

*Weekly trade news from a sustainable development perspective*

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## LEAD STORIES

### Delhi Meeting 'Breaks Impasse' in Doha Talks

First politics, then substance, seems to be the order of the day for the WTO's Doha Round of global trade talks. A meeting of trade ministers from more than 30 countries held in New Delhi, India last week produced a 'unanimous' resolve to push ahead in the negotiations, but the officials shied away from discussing the technicalities of the talks, where the real work remains to be done.

The meeting, held on 3 and 4 September, was meant to inject momentum into the talks ahead of a G20 heads of state summit to be hosted by the US in Pittsburgh on 24 and 25 September. Trade ministers said the negotiations will have to maintain some of the momentum they picked up at the Delhi meeting if negotiators are to finalise a global trade deal before the end of 2010, the goal set by G8+G5 heads of state at a summit in Italy in July (see Bridges Weekly, 15 July 2009, <http://ictsd.net/i/news/bridgesweekly/50639/>).

The Delhi meeting marked the most important Doha Round gathering of trade ministers since the collapse of high-level talks at WTO headquarters in Geneva in July 2008. Since then, the Doha Round's cast of characters has shifted: former trade ministers Peter Mandelson of the EU, Kamal Nath of India and Susan Schwab of the US have moved on and been replaced; now Catherine Ashton, Anand Sharma, and Ron Kirk occupy their spots respectively. The new personalities appear to have breathed some fresh air into the negotiations, which have stumbled many times since their launch in 2001.

The technicalities of the talks were officially off the agenda at the Delhi meeting; the ministers instead focused on overcoming political hurdles to progress toward a deal. Judging from the officials'

public pronouncements, at least, that objective seems to have been achieved.

"The impasse has been broken and it has been agreed by all, and backed by strong consensus, to work toward the successful completion of the Doha round," Anand Sharma, India's minister for commerce and industry, told reporters after the meeting. "The chief negotiators will meet in Geneva in the week beginning September 14 to restart and re-engage the Doha round of talks," Sharma added.

Other ministers were equally optimistic. EU Trade Commissioner Catherine Ashton called the 2010 deadline "absolutely achievable."

"There is still real strong political will to finish, and we have to keep going with this initiative and move to try to resolve it," she said.

And WTO Director-General Pascal Lamy, who attended the Delhi gathering, said that he hoped the meeting could be "the beginning of the endgame of the Doha Round."

The talks that kick off in Geneva next week will be based on the draft texts on trade in agriculture and industrial goods that were released in December. US Trade Representative Ron Kirk – who has said that Washington will need greater clarity on market access outcomes if a deal is to win favour in the United States – stressed in a news conference that, while past work should not be lost, the existing draft texts were not perfect.

"There are some countries that believe that the 2008 text are inviolate, but the reality is they're called drafts for a reason," Kirk said.

But whether any progress will be made in the talks depends on whether political support for a deal can be sustained, and how easily trade ministers can sell a potential agreement back home.

"At this point of the game, we all have empty pockets, notably after the outset of the world economic crisis," said Brazil's foreign minister, Celso Amorim, as reported in The New York Times. "Many of us — and frankly I see no exception — have difficulties to live up to the

efforts and reforms that the new commitments will require."

Kirk was similarly frank about the political hurdles a deal faces in the United States, noting that Americans want to see a deal that creates jobs and expands access to foreign markets, while ensuring the protection of the environment and workers' rights. "There are very few people in America, either in Congress or the traditional constituencies, that support free trade agreements, that believe that Doha currently meets those objectives," Kirk told a press conference after the meeting. "But we think it can be constructed so that it would."

While the downturn in the global economy could make it more difficult for ministers to sell an agreement at home, some observers argue that it also makes a deal that much more imperative.

A recent study from the Peterson Institute for International Economics, a Washington-based think-tank, found that a global trade agreement could boost world exports by between US\$180 billion and US\$520 billion annually, depending on the deal's level of ambition, and inject between US\$300 billion and US\$500 billion into the global economy. The authors conclude that the gains from a Doha deal would not require any increase in taxes or government debt and would be "well balanced between developed and developing countries."

ICTSD reporting; "Trade talks resume, but divides remain," THE NEW YORK TIMES, 4 September 2009; "Trade chiefs agree to resume talks, breaking 14-month impasse," BLOOMBERG, 4 September 2009.

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## Trade Issues Come to the Fore in Climate Talks

Questions about how a global climate deal might impact the world economy – and specifically cross-border trade – got a new emphasis at informal, high-level climate talks in Bonn, Germany last month.

Officials met from 10-14 August in an effort to inject momentum into the climate talks, which are quickly approaching a major deadline: in just three months' time, climate negotiators from around the world will gather in Copenhagen to negotiate a potential successor pact to the Kyoto Protocol.

Discussions at the five-day meeting were divided into a number of subject-specific meetings, each of which was led by an appointed facilitator whose role was to manage, but not guide, discussions. The trade implications of climate change arose implicitly in some groups and explicitly in a number of others – including in the talks on mitigation, technology transfer, and even on countries' 'shared vision' of climate change goals.

But while some trade issues got a boost in popularity at the talks, the overall pace of the negotiations was slow. Yvo de Boer, chairman of the UN Framework Convention on Climate Change, seemed frustrated at the pace. "We seem to be afloat on a sea of brackets," he said, referring to the punctuation marks used in the draft text to signal points on which negotiators have failed to find agreement. "The speed of the negotiations must be considerably accelerated at the [next] meeting in Bangkok," he added, according to a report from Greenwire.

### North-South divide apparent in mitigation discussions

The discussions on the 'economic and social consequences of response measures' to climate change saw heated debate on trade-related issues. The talks took a surprising turn when India proposed that the following language be inserted in the negotiating text:

*"Developed country Parties shall not resort to any form of unilateral measures including countervailing border measures, against goods and services imported from developing countries on grounds of protection and stabilisation of the climate. Such measures would violate the principles and provisions of the Convention, including, in particular, those related to the principle of common but differentiated responsibilities (Article 3, paragraph 1), to trade and climate change (Article 3, paragraph 5), and to the relationship between mitigation actions of developing countries and the provision of financial resources and*

*technology by developed country Parties (Article 4, paragraphs 3 and 7)."*

The suggestion received support from dozens of developing countries but was opposed by the US, Japan, and the EU. Notably, the language referencing the UNFCCC agreement is clearly meant to cover Boarder Tax Adjustments – measures like the 'carbon tariffs' that are included the climate bill that is now working its way through the US Congress - even if such measures are WTO compatible.

The group's discussion of 'sectoral approaches' to reducing carbon emissions is a continuation of a debate over whether negotiators should consider setting sector-specific targets that would apply to all countries. This position is opposed by developing countries, who fear that such measures would generate significant trade conflicts and consequences, especially as it relates to competitiveness.

Instead, developing countries have suggested that negotiators work toward voluntary sectoral approaches for the implementation of Article 4, which covers financing and the development and transfer of technology. Thus, they say, funds and technology could be channelled directly to specific sectors, instead of into a general pool. Sectoral efforts by developing countries are being considered as one option for nationally appropriate mitigation actions, or NAMAs.

On guiding principles, the current text already contains the following statement:

*"The implementation of cooperative sectoral approaches should not replace the national targets of developed country Parties [or lead to [new commitments for developing country Parties, [trans-national or national emissions reduction targets,]] arbitrary or unjustifiable discrimination or disguised restriction on international trade [, or the application of global uniform and equal standards for Parties]]."*

A lively discussion in the subgroup covering approaches to reducing carbon emissions highlighted the keen appetite for a global carbon market among many developed countries, especially in Europe. Such a cap-and-trade system would have immediate impacts on global

commerce insofar as the creation of an enormous market would have a profound effect on the commodities and activities upon which it is based. Some observers say the carbon market could generate trillions of dollars and possibly surpass the global real estate market.

### **Technology development and transfer - much ado about IPRs**

The current negotiating text has nearly two full pages on issues relating to intellectual property rights (IPRs), a fact that has led many countries to call for a focused discussion on this issue in particular. The US initially stated in plenary that they considered IPRs to be a critical part of the discussions and wished to explore the issue further. But later, when intervening in the technology discussion group, officials from Washington said the US would not accept a text that in any way hindered or otherwise affected other IPR agreements. Nevertheless, a number of developing countries continue to raise the issue, in particular as it relates to compulsory licensing and patenting. The question of IPRs will certainly stay in the debate.

### **Moving forward on the shared vision**

The discussions on developing a 'shared vision' for climate change goals also sparked debate on trade issues. A number of developing countries asserted that such a statement should respect countries' right to development and show an acceptance of an open economic system.

While the issue of agriculture did not get special treatment at the Bonn meeting, there were many reports that a small group of like-minded countries may be planning a side meeting - possibly during the next round of informal climate talks, to be held in Bangkok beginning 28 September - on agricultural issues.

Discussions on financing went more swiftly than in other groups. Notably, outside the negotiation forum, the G20 members present met to discuss the upcoming heads of state meeting, scheduled for later this month, and its focus on climate financing. A number of countries were surprised by the sideline gathering of representatives of major economies, and expressed concern about

what this grouping dynamic might mean for the negotiations.

In an interview following the negotiations, UNFCCC Chair de Boer laid out "four essential" questions he hoped Copenhagen would be able to answer: the emissions cuts industrialised countries would be willing to commit to, the actions major developed countries would be willing to take, the sources of financing to support necessary financing and technology transfer in developing countries, and the means for managing that financing.

These questions will certainly receive attention in Copenhagen, but striking a balance among the widely varying national circumstances and interests will require delicate negotiating. It is not simply so much what developed countries will do as how they will do it. The financing sources and management questions are political ones that are not limited to 'where' and 'how', but need to be accompanied by a 'how much'. The financing issues will only be resolved through demonstrated actions by developed countries on their own mitigation, and through the delivery of past commitments on technology and financial support.

ICTSD reporting; "Gloomy negotiators end Bonn climate talks," GREENWIRE, 14 August 2009.

## **OTHER NEWS**

### **WTO Panel Allows Brazil to Cross-Retaliates on IP, Services in US Cotton Row**

A WTO panel has cleared the way for Brazil to impose trade sanctions worth US\$294.7 million – and possibly including cross-retaliation in services and intellectual property – to retaliate against the US' failure to comply with previous WTO rulings on Washington's cotton subsidies. The award was significantly lower than the US\$4 billion in sanctions that Brasilia had sought, but still marked the second-largest level of retaliation that has ever been authorised by the WTO, according to one measure.

Observers say that the panel reports, which set clear conditions for cross-retaliation and specifically outlines how the level of sanctions should be calculated, may set a precedent for how cross-retaliation is to be exercised in practice.

The WTO had already ruled in the seven-year-old case that trade-distorting US cotton subsidies worth US\$3 billion annually violated the WTO's Agreement on Subsidies and Countervailing Measures (SCM). The US has since continued its controversial subsidies, arguing that subsequent reforms had brought the programmes into compliance with the ruling.

Using 2006 figures as a reference, the arbitrators found that Brazil was entitled to impose annual sanctions worth US\$147.4 million in the case of prohibited subsidies and US\$147.3 million for actionable subsidies unless the US puts an end to the subsidies faulted in the ruling.

Though the sanctions constitute only 10 percent of the US\$2.2 billion in sanctions that Brazil had sought, the retaliation is still much higher than the US' claim that no more than US\$22.8 million per year in sanctions would be appropriate.

"While we remain disappointed with the outcome of this dispute, we are pleased that the arbitrators awarded Brazil far below the amount of countermeasures it asked for," said Carol Guthrie, spokeswoman for US Trade Representative Ron Kirk.

Interestingly, the panel found the retaliation amount for illegal export subsidies to be a variable figure that should change from year to year depending on the level of the payments actually distributed. Roberto Azevedo, Brazilian Ambassador to the WTO, says that the current payments are much higher than they were in 2006, the year that the dispute panel used to make its calculations. Using the methodology developed by the arbitrators, he said, Brazil would be entitled to US\$800 million in sanctions for 2009.

Pedro Carneiro de Mendonca of Brazil's Foreign Affairs Ministry alleged that the panel had used outdated numbers to calculate the fine and that spending on illegal subsidies has increased

significantly since 2006. Azevedo later specified that credit guarantees under the US' DSM-102 programme – which the WTO found to violate the SCM -- ballooned from US\$1.36 billion in 2006 to a preliminary estimate of US\$4.62 billion for the first 10 months of the 2009 fiscal year.

US cotton and other farm groups balked at these statements. The US Congress changed the GSM-102 program significantly in the 2008 US farm bill, they argued, ensuring that the programme would comply with Washington's obligation to guarantee that premiums received under the programme cover its operating costs and losses.

"The US cotton programme and export credit guarantee programmes have changed considerably since 2005," said Jay Hardwick, Chairman of the National Cotton Council, in a statement. "Today's programmes cannot possibly be determined to be causing injury in the world market."

Despite the continued – albeit altered – subsidies, US cotton production has shrunk by 46 percent and cotton exports have fallen by 25 percent since 2005, Hardwick noted.

Seven US farming groups called upon the US government to "request a new compliance panel to update this ruling to reflect the changes in the program made by congress and the USDA since 2005."

### **Cross-retaliation in TRIPS: a powerful tool**

A second major issue in the recent Article 22.6 proceedings was Brazil's request that the WTO authorise the country to 'cross-retaliate' against the US under the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). That request was based on the assumption that retaliation in goods alone would harm the Brazilian economy and thus would not be an effective countermeasure.

The panel granted that request, with one condition: Brazil may retaliate in IP and services but only after a threshold of US\$410 million worth of sanctions has already been reached.

By lifting patent and trademark protection on pharmaceutical products and software – rather than simply raising tariffs on imported goods – Brazil could spur US domestic interests to pressure Washington to comply with the original ruling.

Cross-retaliation under TRIPS can be a very powerful tool, especially for developing countries, as it does not trigger some of the adverse effects such as increased consumer prices caused by higher tariffs or greater costs for domestic producers who may be obliged to switch to other suppliers. Such retaliatory measures allow smaller WTO member states to create pressure against economically powerful trading partners that would most likely be unharmed by the suspension of concessions in goods alone. Brazil constitutes a relatively small market for the US, accounting for less than three percent of total US exports.

Based on the recent reports, Brazil might set a precedent for the suspension of IPRs. Cross-retaliation under TRIPS has been authorised in only two previous cases: Ecuador was granted permission to do so in a dispute with the EU over banana tariffs, and Antigua was allowed to do the same in a dispute with the US over its internet gambling laws. However the developing country complainants in both instances have not imposed such retaliation measures, despite strong urging from some of their domestic interests. Thus, the current case could be a crucial test of how cross-retaliation in IP could work in practice.

And this latest ruling has a slightly different slant from the previous cross-retaliation cases, says Frederick Abbott, a law professor at Florida State University.

“From a purely legal standpoint, I would say this represents a ‘step backward’ from the Ecuador and Antigua panel decisions that were more sensitive to development concerns,” Abbott said in an email message. “Having said that, it was to a certain extent foreseeable because Brazil is not Ecuador or Antigua, and has a lot more trade flow to play with in terms of withdrawal of concessions,” he added.

According to a Brazilian newspaper the government has already prepared a “provisional

measure” - a presidential decree that takes immediate effect, although it must later be ratified by Congress - to allow Brazilian pharmaceuticals companies to produce medicines protected by US patents.

However the ruling allows cross-retaliation in TRIPS only if Brazil’s amount of total annual sanctions exceeds US\$ 409.7 million. Because of the complexities of calculating that total subsidy figure, it is difficult to know at this point whether that threshold has been reached.

But the Brazilian government has already launched an in-depth examination to determine the concrete amounts based on the panel’s methodology, and claims that it is entitled to around US\$ 340 million in cross-retaliation under GATS and TRIPS annually.

### **Brazil busy preparing its sanction list**

Brazil’s Foreign Minister Celso Amorim said that Brazil would carefully examine how to impose the maximum leverage with its sanctions. “We’ll be having meetings all along next week and hopefully in ten, 15 days we can have a list,” he told Reuters.

“We are going to choose the sectors that least affect us and most affect the US,” Amorim added, according to the Estado news agency.

On Tuesday, Brazil said it wanted to enter into negotiations with the US before starting retaliation.

Even if a new deal on cotton in the Doha Round is not connected to the actual case, Roberto Azevedo has said that a Doha deal that leads to a substantial cut in US subsidies would automatically solve the trade dispute and end the need for sanctions.

Brazil will have to request final authorisation for retaliation and cross-retaliation with the WTO’s Dispute Settlement Body. However, the request could only be refused if all WTO members in attendance (including Brazil) were to reject the arbitrators’ ruling.



ICTSD reporting; “EXCLUSIVE – Brazil readies list of US goods to sanction,” REUTERS, 3 September 2009.

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## WTO Rules against Chinese Restrictions on Foreign Books, Movies, Music

Newspapers are billing it as Hollywood versus China. A WTO dispute panel in August sided with a complaint by the US, ruling against Beijing’s restrictions on the importation and distribution of foreign books, music, and movies.

China requires copyrighted publications and audiovisual products – books, journals, video games, music, DVDs and the like – to be imported and distributed via a handful of state-approved or state-run middlemen. US producers of such products have complained that these restrictions – along with rampant piracy – severely hamper their ability to make money in the world’s fastest-growing major market.

The panel ruling, which was made available public on 12 August, concluded that the restrictions violated commitments China had made when it joined the WTO in 2001. The restrictions also violated ‘national treatment’ requirements in WTO rules under which countries cannot privilege domestic goods and services over imported ones, it found.

Ron Kirk, the US trade representative, called the decision “a significant victory” for America’s creative industries. “This decision promises to level the playing field for American companies working to distribute high-quality entertainment products in China, so that legitimate American products can get to market and beat out the pirates,” he said. “To me, that is a clear win.”

China’s commerce ministry expressed regret about the decision, according to the China Daily newspaper. The state-owned paper suggested that Beijing might appeal, although it quoted a trade lawyer as saying that such a move would have little chance of success.

Notably, the panel ruling met with a favourable response in some quarters in China. The president of Huayi Brothers, the country’s biggest privately owned media company, welcomed the ruling, calling it “good news for private companies.”

Unsurprisingly, Hollywood, too, was happy with the ruling. Dan Glickman, president of the Motion Picture Association of America, called it “a major victory in [the MPAA’s] years-long battle to open the Chinese movie market.”

Richard Gelfond, chief executive of IMAX Corporation, told The Wall Street Journal that the decision would enhance the ability of Hollywood studios to distribute their films more freely in China.

The MPAA noted that the ruling did not affect a quota that allows no more than 20 foreign films to be released in Chinese cinemas every year, one of a handful of issues on which the panel either declined to rule or disagreed with a US claim.

### ‘Trading rights’ at centre of case

So-called ‘trading rights’ were at the heart of the dispute. Although not part of the original WTO agreements, China and other countries that joined the WTO after its founding in 1995 had to accept disciplines on the right to import and export as part of the price of accession – existing Members didn’t want the market access concessions they had won to be watered down by restrictions on who could import.

The panel found that China’s accession commitments required it to ensure that “all enterprises in China,” including partially or wholly foreign-owned companies, would have the right to import and export “all goods” throughout China (subject to reservations outlined in its accession protocol).

China had countered the US allegations by pointing out that its accession commitments subjugated trading rights obligations to its “right to regulate trade in a manner consistent with the WTO agreement.” Invoking a provision in WTO rules that allows countries to deviate from normal trade obligations if doing so is “necessary to protect public morals” (GATT Article XX(a)),

Beijing argued that it regulated trade in “imported cultural goods, because they are vectors of different cultural values, [and] may collide with standards of right and wrong which are specific to China.”

### Panel sidesteps censorship issue

Under China’s existing practices, ‘content review’ - in other words, censorship - is tied to the importation and distribution of publications and audiovisual products. The state-approved companies can review the material they import, and decide what to reject.

But the panel did not delve into whether China’s policy was justifiable on the grounds of protecting public morals, focusing solely on whether the measures met the necessity test that is part of the GATT Article XX exception, noted Simon Lester, founder of WorldTradeLaw.net, a website devoted to WTO law. “Do the measures fall within the policy purpose of protecting public morals? The panel sidesteps this,” he explained. The panel assumed for the sake of argument that they fell within the purpose of protecting public morals, and then evaluated the measures on the basis of their trade-restrictiveness and their contribution to their purported goals. Less restrictive measures could have achieved the same goal, such as simply applying the domestic censorship regime to imported cultural products - a point the US made in its arguments before the panel.

According to an analysis by Brendan McGivern, a partner at White & Case LLP in Geneva, the panel also found in favour of US claims that several Chinese policies violated ‘national treatment’ obligations under WTO rules for goods (GATT) and services (GATS), thus “adversely modifying the conditions of competition.” These included a Chinese law “that had the ‘effect of prohibiting foreign service suppliers from wholesaling imported reading materials, while like Chinese suppliers are permitted to do so’.” Also at fault were policies requiring imported reading material to be distributed through a subscription regime, while domestically produced reading material faces no similar strictures.

Although China’s censorship laws were only a subtext in the current case, the panel’s findings

about national treatment could have ramifications for Beijing’s internet censorship policies, said Gilbert Kaplan, a partner at King & Spalding in Washington. Kaplan represents the California First Amendment Coalition, a freedom of expression advocacy group that has petitioned the US trade representative’s office to initiate WTO dispute proceedings with China over Beijing’s attempts to restrict Chinese residents’ access to information on the internet. The so-called ‘great firewall’, Kaplan said, makes it “almost impossible” for foreign internet companies like the online auction site eBay to do business in China, to the benefit of their Chinese competitors. “The censorship rules are a market access barrier,” Kaplan said.

Kaplan told Bridges that the US trade representative’s office is currently considering the California First Amendment Coalition’s petition. The panel called for China to bring its policies into conformity with its WTO obligations. If Beijing fails to do so, the US could ultimately be allowed to impose trade sanctions on Chinese goods and services to offset its resulting commercial losses.

This case marks the second of two challenges to China’s treatment of copyrighted books, music, and films that the US launched in 2007. White & Case’s McGivern said that the verdict in the first, which challenged the adequacy of China’s intellectual property laws, “fell far short of US expectations” (see BRIDGES Weekly, 25 March 2009, <http://ictsd.net/i/news/bridgesweekly/43815/>).

ICTSD reporting; “Long shackled in China’s market, Hollywood now sees opening, CHRISTIAN SCIENCE MONITOR, 14 August 2009; “Hollywood Upstages Beijing,” WALL STREET JOURNAL, 13 August 2009; “WTO Rules Against China’s Limits on Imports,” NEW YORK TIMES, 13 August 2009; “Mixed reaction to WTO ruling,” CHINA DAILY, 14 August 2009; “China expresses regret over WTO ruling,” CCTV.com, 14 August 2009.



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**IN BRIEF**

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**India Signs Trade Deals with South Korea, ASEAN**

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India expanded its trade on two fronts by signing trade agreements with South Korea and the 10-member Association of Southeast Asian Nations (ASEAN) in August.

After more than three years of negotiations, India and South Korea signed a Comprehensive Economic Partnership Agreement covering trade in goods, services and investment, and international property rights. Both countries agreed to gradually lower tariffs over a 10-year period, once the South Korean National Assembly ratifies the agreement.

Indian and South Korean officials applauded the pact, which represents Seoul's first such deal with an emerging economy and India's first with a major developed country. "We will be able to have access to one-sixth of the global market," South Korean Trade Minister Kim Jong-hoon said at a joint press conference with India's Minister of Commerce and Industry Anand Sharma.

According to a statement from Kim, South Korea not only expects to increase exports and diversify investment, but also to pave the way for future agreements with other South Asian nations. India, a more service-driven country, will benefit from the possibility of greater human resource exchange, including allowing Indian software experts and engineers easier access to the South Korean market. Trade between the two countries has been growing: it reached US\$15.6 billion in 2008, and should grow by another US\$3.3 billion in 2010 after the deal is signed.

Six days after signing the trade deal with South Korea, India inked a similar agreement with ASEAN at a meeting hosted by the Commerce Minister of Thailand, Porntiva Nakasai, current chairwoman of the regional bloc. The deal has been called a milestone after 6 years of discussions.

"The agreement comes at an appropriate time taking into account the current world economic crisis," Nakasai said in a statement. The regional bloc has been creating trade deals with major neighbouring economies in an effort to forge through the global economic crisis.

The Trade in Goods Agreement between India and ASEAN cut tariffs by 80 percent as of 1 January 2010. The agreement has added flexibility to protect more sensitive domestic goods and will allow the use of safeguards for up to four years if liberalisation hurts domestic industry, according to Sharma's statement.

ASEAN is one of New Delhi's most important trading partners; the bloc accounts for 10 percent of India's global trade, according to a statement from Sharma.

India's agreement with South Korea also allows for protection of vulnerable industries, such as farming and forestry, which both countries have conceded to establish a lower level of market opening.

ICTSD reporting; "South Korea, India sign free trade agreement," AP, 7 August 2009; "South Korea, India to sign bilateral trade agreement," THE ECONOMIC TIMES, 6 August 2009; "ASEAN, India sign free trade deal: officials," AFP, 13 August 2009.

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**EU Inks Interim EPA with 4 African Nations**

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The European Union signed an interim Economic Partnership Agreement (EPA) with Mauritius, Seychelles, Zimbabwe, and Madagascar, all of which are members of the Eastern and Southern African (ESA) regional grouping, in Grand Baie, Mauritius on 29 August. Zambia and Comoros, other members of the bloc, have postponed signing to a later date, according to an EU statement.

The agreement provides immediate and full access to EU markets -- with transition periods for rice and sugar -- and improved rules of origin to signing ESA countries. In exchange, ESA

countries will open their markets to European imports gradually over the next 15 years.

European officials cheered the deal. "Trade plays a significant role in promoting growth and development, not least in a region with such potential as Eastern and Southern Africa," said Swedish deputy trade minister Gunnar Wieslander, representing the Swedish Presidency of the EU. EU Trade Commissioner Catherine Ashton added that the EU now has "the foundation to build a more comprehensive trade partnership that will support the ESA region's work to build diverse and sustainable economies."

But the agreement has stirred up controversy in some signing countries. In Mauritius, a socio-political movement called "Rezistans ek Alternativ" spoke out against the pact, claiming that it could trigger a drop in valuable customs revenue and threaten the security of thousands of jobs. The agreement would generate more benefits for European companies and a few select local interests, the group said.

But the EU Trade Commission maintains that the agreement includes "a number of important exceptions reflecting [the ESA countries'] development needs." Commissioner Ashton met and discussed with ministers from ESA states, covering key issues such as protection for infant industries and export duties, the EU said.

The EU is engaging in the EPA negotiations with the ESA countries -- as well as with other regional groupings within the African, Caribbean, and Pacific (ACP) Group of states -- in an effort to create a series of reciprocal, WTO-compatible trade arrangements. The resulting EPA deals are intended to replace an old system of unilateral trading preferences that were not in line with international rules.

Like Zambia and Comoros, not all ACP countries have signed interim EPAs. Many of these nations are considered Least Developed Countries (LDCs), which are already granted access to European markets on a duty free access arrangement under the EU's Everything But Arms trade arrangement. Thus, they already benefit from duty-free, quota-free imports to the EU.

ICTSD reporting; "Mauritian body contests EPA pact," AFRIQUE EN LIGNE, 28 August 2009; "Mutati refuses to sign EPA with EU," THE POST (LUSAKA), 31 August 2009; "EU signs trade pact with southeast African nations," AP, 29 August 2009.

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## WTO IN BRIEF

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### US Appoints New Ambassador to WTO

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Michael Punke, a Clinton-era trade official, will be the US' new Ambassador and Permanent Representative to the WTO, US President Barack Obama announced last week. Pending his approval by the Senate, Punke's new position will make him Washington's highest-ranking trade representative at WTO headquarters in Geneva.

US Trade Representative Ron Kirk cheered the announcement. "Michael Punke is uniquely suited to lead USTR's team at the WTO, particularly at this critical time in the Doha Development Round of trade negotiations," said Kirk. "His breadth of experience and considerable leadership skills will ensure that the American people have their interests well represented in Geneva as we seek a balanced and ambitious conclusion to the Doha round that will provide new economic opportunities for all."

Punke has worked in international trade law and policy for 20 years, having served as Senior Policy Advisor to the USTR and Director of International Economic Affairs at the White House during the Clinton administration. He was also International Trade Counsel to Democratic Senator Max Baucus, who at the time chaired the Senate Finance Committee's International Trade Subcommittee. More recently, he has consulted on international trade in both the public and private sectors, while working as an adjunct professor of the University of Montana and writing novels.

Punke's nomination follows the departure of Ambassador Peter Allgeier after four years as WTO Ambassador and almost three decades of service in the USTR's office. Allgeier joined C&M

International, Ltd, an international trade and investment firm, as their president on 8 September. "Peter brings unrivalled experience and skill on every trade topic and in every geographic region. In the current global economic climate, his vast experience will help clients navigate the international trade arena with insight and authority," said Chairman and CEO of C&M International, Doral Cooper.

In replacing Allgeier, Punke will be taking on a key role in the WTO's Doha Round of trade talks, which have encountered a number of setbacks in the eight years since their launch in the Qatari capital. The US was a key player in the most recent major setback – the collapse of high-level talks in Geneva in July 2008 – and many countries insist that a renewed commitment from Washington is vital to the future of the talks. A number of world leaders and trade ministers have called for a conclusion of the round in 2010, but some observers doubt whether such a goal is feasible.

ICTSD reporting; "Obama picks Punke to be U.S. ambassador to WTO," REUTERS, 3 September 2009; "U.S. Ambassador to World Trade Organization Peter Allgeier Joins C&M International," US NEWswire, 17 August 2009; "US Ambassador to WTO Allgeier to leave government," REUTERS, 14 August 2009.

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## Brazil Contests US Surcharges on Orange Juice

Brazil has launched a complaint against the US' method of determining the extent of trade violations, the country's Ministry of Foreign Affairs announced last month.

Brasilia's complaint centres on how Washington calculates the level of anti-dumping tariffs that it imposes on imports of Brazilian orange juice. The South American country insists that the retaliatory tariffs are unfairly high.

At a meeting of the Dispute Settlement Body on 31 August, Brazil requested the establishment of panel to hear its complaint. The country requested

consultations with the US on the matter in November of last year, but subsequent bilateral talks failed to produce a resolution.

Central to the case is Washington's use of 'zeroing', a controversial method of determining whether and by how much trading partners are 'dumping' (exporting at artificially low prices) their goods in the US market. Under this calculation, US trade authorities ignore, or 'zero out', instances in which goods command higher prices in US markets than abroad.

The WTO allows countries that receive dumped goods to strike back with anti-dumping tariffs against the exporting country. But critics argue that zeroing inflates the apparent margin by which goods are dumped and results in inappropriately high levels of retaliatory duties on competing imports.

"The 'zeroing' practice, in addition to being inconsistent with multilateral trade rules, causes great uncertainty and serious damage to the affected exporting companies," Brasilia said in a statement.

The WTO's Dispute Settlement Body has consistently ruled that zeroing violates the global trade forum's Anti-Dumping Agreement, which requires the "fair comparison" of export prices and domestic prices in dumping calculations. Canada, Ecuador, the EU, Japan and Thailand have all challenged Washington's continued use of zeroing. Under pressure following a dispute with the EU, the US shifted its methods in 2007, eliminating zeroing in all new antidumping investigations from then on. However, it continued to use zeroing in investigations that were ongoing at the time.

"This is a situation in which the US is knowingly not fulfilling obligations," said Roberto Azevedo, Brazilian ambassador to the WTO.

A recent ruling in an anti-dumping case brought by Japan seems to strengthen Brazil's claim. In a decision released on 18 August, the trade body's highest court rejected an appeal from Washington that defended the use of zeroing, effectively giving Tokyo a green light to impose trade sanctions on

the US. The Appellate Body found against the US on every count.

ICTSD reporting; translated and adapted from Pontes Quinzenal, Vol. 4, No. 14.

## EVENTS & RESOURCES

### Events

#### Coming up: 9-16 September

8-10 September, Rome, Italy. **SECOND WORLD SEED CONFERENCE.** Agriculture in a changing world needs to provide food security and economic development in the context of global challenges, such as climate change and evolving human needs by responding at the local, national and regional level. This event is aimed at policy makers, government officials, plant breeders, seed specialists, researchers, farmers' organisations and consumer organisations. Registration is required (cost € 125). In order to participate, please register on-line at [www.worldseedconference.org](http://www.worldseedconference.org)

9-11 September, Manila, Philippines. **THE INTERNATIONAL CONFERENCE ON GREEN INDUSTRY IN ASIA: MANAGING THE TRANSITION TO RESOURCE-EFFICIENT AND LOW-CARBON INDUSTRIES.** Over the past decades, rapid economic growth in the Asia and Pacific region has lifted millions of people out of poverty. But with rising population, rapid urbanisation, motorisation and industrialisation, it has also led to increased consumption of resources and generation of waste almost beyond the limits of the region's ecological carrying capacity. The United Nations Industrial Development Organization (UNIDO), the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) and United Nations Environment Programme (UNEP) are jointly organising an International Conference on Green Industry in Asia, which will focus on how industries in the region can effectively manage the transition to resource efficient and low carbon industry, and in the process sustain rapid economic growth and trade competitiveness.

Please register on-line at <http://wqis.emb.gov.ph/unido/Register.aspx>

15 September, Stockholm, Sweden. **SWEDEN'S NATIONAL BOARD OF TRADE (KOMMERSKOLLEGIUM) - TRADE AND CLIMATE.** International trade has enormous potential to foster or frustrate sustainable development. How economic globalisation and its governing institutions affect human welfare and the environment - locally, nationally, and globally - has been a subject of heated debate. For more information, contact Erika Svensson at [erika.svensson@ivl.se](mailto:erika.svensson@ivl.se)

#### WTO Events

An updated list of forthcoming WTO meetings is posted at [http://www.wto.org/english/nes\\_e/meets.pdf](http://www.wto.org/english/nes_e/meets.pdf). Please bear in mind that dates and times of WTO meetings are often changed, and that the WTO does not always announce the important informal meetings of the different bodies. Unless otherwise indicated, all WTO meetings are held at the WTO, Centre William Rappard, rue de Lausanne 154, 1211 Geneva, Switzerland, and are open to WTO Members and accredited observers only.

10-11 September: **JEUNE GENEVOIS** (WTO non-working day)

14-15 September: **COMMITTEE ON TRADE AND DEVELOPMENT - DEDICATED SESSION ON RTAS**

15-16 September: **COMMITTEE ON REGIONAL TRADE AGREEMENTS**

#### Other upcoming events

18 September, Paris, France. **OECD CONFERENCE ON THE ECONOMICS OF CLIMATE CHANGE.** The purpose of the conference is to bring together high-level experts, government decision-makers and representatives from civil society to discuss how climate change mitigation and adaptation can best be tackled in an economically efficient manner, including by ensuring sufficient incentives for participation by all. Attendance is limited and registration takes place via OECD Member States delegations. For

more information, visit  
[http://www.oecd.org/document/41/0,3343,en\\_2649\\_34361\\_43298281\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/41/0,3343,en_2649_34361_43298281_1_1_1_1,00.html)

28-30 September, Geneva, Switzerland. WTO PUBLIC FORUM 2009. Under the heading “Global problems, global solutions: towards better global governance,” the World Trade Organization (WTO) Public Forum 2009 will gather civil society representatives, governments and international organisations to discuss the role of the multilateral trading system and the Doha Round of negotiations within the context of the current global economic crisis. For more information, send an email to [publicforum2009@wto.org](mailto:publicforum2009@wto.org), or see the event’s website [http://www.wto.org/english/forums\\_e/ngo\\_e/forum09\\_background\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/forum09_background_e.htm)

29 September, Geneva, Switzerland. TRADE AND CLIMATE CHANGE CODE WITH GARY HUFBAUER. As climate change policy shifts into high gear ahead of the end-of-year Copenhagen Summit, there is an increased need to better manage and perhaps remodel the interface between trade and climate change policies and agreements. There is a need for new and improved tools to organise convergence (and manage likely divergences) at the trade-climate change interface, and to explore the scope for – and consequences of – changing current trade disciplines and the assumptions that underlie them. One of the most interesting proposals made to date in this regard is that of a “Trade and Climate Code” advanced by Gary Hufbauer, Steve Charnovitz and Jusun Kim in their recent book *Global Warming and the World Trading System*. At this event, co-hosted by ICTSD and WTI Advisors, Gary C. Hufbauer of the Washington-based Peterson Institute for International Economics, Washington, will present his proposal to a Geneva audience. His presentation will be followed by comments from Gary Horlick, of The Law Offices of Gary Horlick, Washington D.C., and Hannes Schloemann, WTI Advisors, Geneva. For more information, please email Cecile de Gardelle, [cdegardelle@ictsd.ch](mailto:cdegardelle@ictsd.ch)

29 September, Geneva, Switzerland. GLOBAL NETWORKING TO INCREASE MEMBER-STATE CAPACITY WITHIN THE DISPUTE

SETTLEMENT PROCESS. While the DSU is intergovernmental in nature, WTO Dispute Settlement would not be possible without the involvement of a wider network of stakeholders. Private firms, legal counsel, and non-governmental organisations all provide invaluable assistance to Member-states hoping to overcome disagreement via the mechanism. This point has particular salience with respect to overcoming the unfortunate underrepresentation of developing country Member-states in WTO Dispute Settlement. This panel event, hosted by ICTSD at the WTO Public Forum, will address the role of non-state actors in WTO disputes and will consider how they are now used – and how they might be used further – to help increase the capacity of Member-states to engage in the process. For more information, please email Cecile de Gardelle, [cdegardelle@ictsd.ch](mailto:cdegardelle@ictsd.ch)

30 September, Geneva, Switzerland. NEW LABOUR AND ENVIRONMENTAL PROVISIONS IN REGIONAL TRADE AGREEMENTS AND HOW SUCH PROVISIONS RELATE TO THE MULTILATERAL TRADING SYSTEM. The number of RTAs notified to the WTO is growing. The EU and the US are placing their efforts in negotiating and implementing a new generation of regional and bilateral trade agreements. Examples are recent cooperation agreements with Central America, CARIFORUM and Andean countries. Moreover India is currently negotiating RTAs with the EU and ASEAN. One of the main reasons for the increasing number of such agreements is that they allow WTO members to achieve progress toward trade liberalisation that they cannot attain in the multilateral system. In the package of issues being covered by RTAs, especially in those between developed and developing countries, new issues are brought to the agenda. At the systemic level: MFN clauses, the relation with Article XXIV and the non execution clause have important implications for developing countries engaging in RTAs. Also regulatory aspects on the relationship between environment and labour standards are starting to arise. While developing countries tend to look at these issues with some level of distrust, consumer and market preferences are reshaping these perceptions. This panel event, organised by ICTSD for the WTO Public Forum, will explore these issues and their implications.



For more information, please email Cecile de Gardelle, [cdegardelle@ictsd.ch](mailto:cdegardelle@ictsd.ch)

30 September, Geneva, Switzerland. **STRENGTHENING MULTILATERALISM IN TRADE FOR SUSTAINABLE DEVELOPMENT: REFORMING THE WTO FOR THE FUTURE.** This session, which will be co-hosted by ICTSD and the Global Economic Governance Programme of the University of Oxford, will address the challenge of strengthening the multilateral trading system for trade and sustainable development. The starting point for discussion will be that the WTO is a vital and valuable institution, but that changes need to be made to ensure the multilateral trading system addresses the changing times, the new political and economic realities of the trading system, and the pressing challenges of sustainable development. The event will be held during the WTO Public Forum. For more information, please email Cecile de Gardelle, [cdegardelle@ictsd.ch](mailto:cdegardelle@ictsd.ch)

22-23 October, Washington DC, USA. **DIALOGUE ON FORESTS, GOVERNANCE, AND CLIMATE CHANGE.** Jointly organised by Chatham House, the Rights and Resources Initiative and the World Resources Institute, this is the second in a series of meetings aiming to promote learning and frank discussion on the key issues facing forests and forest communities as the world scales up efforts to mitigate and adapt to climate change. The meeting will focus on the international implications of the Waxman-Markey bill now working its way through the US Congress, as well as the preliminary steps by the UN-REDD and FCPF to establish REDD Readiness in developing countries to date. The meeting is open to all, and there is no charge for admission. However, pre-registration is essential, and you must register by the end of Friday 15 October to be guaranteed admission. To register, please send your name and affiliation to Lucy Ellinas at [climate-forest.registration@chathamhouse.org.uk](mailto:climate-forest.registration@chathamhouse.org.uk)

26-28 October, Geneva, Switzerland. **THE 2009 BRIDGES CHINA DIALOGUE. CHINA AND GLOBAL SUSTAINABLE RECOVERY: TRADE, ENERGY CONSERVATION AND LOW-CARBON INITIATIVES.** Against the

backdrop of the current recession, China's economic and political landscape is of paramount importance in facilitating a speedy global recovery. The 2009 Bridges China Dialogue will bring together experts from government, business, academia and civil society organisations for an in-depth discussion and examination of China's market dynamics and policy implications with regards to a global sustainable recovery. For information on panels, speakers and attendance, please visit the meeting's website: [www.bridges-china.com](http://www.bridges-china.com)

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## Resources

**THE BIOFUEL DELUSION: THE FALLACY OF LARGE SCALE AGRO-BIOFUELS PRODUCTION.** By Mario Giampietro and Kozo Mayumi (Earthscan, August 2009). Faced with the twin threats of peak oil and climate change, many governments have turned to biofuels for an answer. Yet, increasingly, the progressive implementation of this solution demonstrates that the promise of biofuels as a replacement to fossil fuels risks leaving us short of power, short of food and doing as much damage to the climate as ever - let alone the consequent impact on biodiversity due to additional loss of habitat for agricultural production and on rural development due to the additional stress on traditional farming systems. In this exposé, Mario Giampietro and Kozo Mayumi present a theoretical framework and exhaustive evidence for the case against large-scale biofuel production from agricultural crops. Additional information on this book can be found at: <http://www.earthscan.co.uk/?tabid=74734>

**TRADE POLICY FLEXIBILITY AND ENFORCEMENT IN THE WTO: A LAW AND ECONOMICS ANALYSIS.** By Simon A. B. Schropp. Cambridge University Press, September 2009. The World Trade Organization (WTO) is an incomplete contract among sovereign countries. Trade policy flexibility mechanisms are designed to deal with contractual gaps, which are the inevitable consequence of this contractual incompleteness. Trade policy flexibility mechanisms are backed up by enforcement instruments which allow for punishment of illegal

extra-contractual conduct. This book offers a legal and economic analysis of contractual escape and punishment in the WTO. It assesses the interrelation between contractual incompleteness, trade policy flexibility mechanisms, contract enforcement, and WTO Members' willingness to co-operate and to commit to trade liberalisation. It contributes to the body of WTO scholarship by providing a systematic assessment of the weaknesses of the current regime of escape and punishment in the WTO, and the systemic implications that these weaknesses have for the international trading system, before offering a reform agenda that is concrete, politically realistic, and systemically viable. For more information please refer to:  
[http://www.amazon.com/reader/0521761204?encoding=UTF8&ref=sib\\_books\\_pg&qid=1250521024&query=simon%20schropp#reader](http://www.amazon.com/reader/0521761204?encoding=UTF8&ref=sib_books_pg&qid=1250521024&query=simon%20schropp#reader)

**ENERGY TECHNOLOGY: TRANSITIONS FOR INDUSTRY.** By the International Energy Agency, September 2009. Industry accounts for one-third of global energy use and almost 40 percent of worldwide CO<sub>2</sub> emissions. Achieving substantial emissions reduction in the future will require urgent action from industry. What are the likely future trends in energy use and CO<sub>2</sub> emissions from industry? What impact could the application of best available technologies have on these trends? Which new technologies are needed if these sectors are to fully play their role in a more secure and sustainable energy future? Energy Technology Transitions for Industry addresses these questions through detailed sectoral and regional analyses, building on the insights of IEA findings. It contains new indicators and methodologies as well as scenario results for the following sectors: iron and steel, cement, chemicals, pulp and paper and aluminium sectors. The report discusses the prospects for new low-carbon technologies and outlines potential technology transition paths for the most important industrial sectors. This publication is one of three new end-use studies, together with transport and buildings, which look at the role of technologies in transforming the way energy is used in these sectors. For more information, please refer to:  
<http://www.iea.org/w/bookshop/forthcoming.htm>