



Bridges Weekly Trade News Digest

Weekly trade news from a sustainable development perspective

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LEAD STORIES

Industrial Goods Talks Examine Non-Tariff Barriers

Tariffs are far from the only obstacle keeping goods out of potential export markets. A country's various technical regulations, health and safety standards, and certification and labelling requirements, can all make it harder for companies elsewhere to get their wares into its market.

Although these policies are often intended to promote legitimate objectives like consumer protection, they can be more trade-restricting than strictly necessary. The way governments introduce new measures can also make life difficult for would-be exporters. Existing WTO agreements – on sanitary and phytosanitary measures, technical barriers to trade, and import licensing procedures, to name a few – set out some rules for such regulations, to ensure that they do not become a vehicle for disguised protectionism. And the mandate for the negotiations on non-agricultural market access (NAMA) in the Doha Round trade talks calls for the reduction of 'non-tariff barriers' (NTBs, in negotiators' parlance), particularly on products of export interest to developing countries.

For much of the NAMA negotiations, NTBs have taken a low profile, with centre stage occupied by deep divisions on the parameters determining tariff cuts by developed and developing countries, and the extent to which the latter would be able to shield some products from liberalisation.

But with little movement in the past year on what is now the main difference in the NAMA talks – whether large developing markets like China, Brazil, and India choose to participate in voluntary initiatives to cut deeply or even eliminate tariffs across entire industrial sectors – officials have been turning their attention to NTBs.

The bulk of discussions during a week of NAMA talks from 2-6 November focused on some of the proposals for how to deal with problems arising from NTBs. Officials met in a range of formats, from bilateral and in groups to the multilateral plenary.

One of the newer submissions discussed was a paper from India and the EU that outlined a framework for addressing industry-specific NTB proposals. The document remains classified, but sources told Bridges that it works from the premise that many NTB proposals are similar, whether they deal with toys, automobiles, or electronics. For example, several proposals call for members, when adopting a new regulation for a product, to consider the costs of compliance to would-be exporters, discuss prospective regulations with trading partners, and respect international standards when possible. The EU-India proposal suggests that rules for transparency regarding different non-tariff measures could be identical for different sectors, and accompanied by sector-specific disciplines.

Cuba, which has been the target of a US trade embargo for 50 years, reiterated its call for the elimination of 'unilateral economic or trade measures', arguing that they constitute a non-tariff barrier that violates the spirit of the WTO agreements. According to its proposal (TN/MA/W/94/Rev.2), a country's ability to invoke national security exceptions to justify trade barriers that might otherwise be WTO-inconsistent should be made contingent on "agreement at the international level about the situation" concerned. The US embargo on Cuba lacks such agreement: in a non-binding vote at the United Nations last month, governments condemned it by a 187-to-3 margin (with two abstentions), as they have in previous years. Sources report that while countries including Argentina and Brazil now support Cuba's initiative, the US insisted that "it does not believe that this proposal can gain consensus."

Another proposal, this one from Japan, Switzerland, and the US, urged liberalising trade in 'remanufactured goods' (TN/MA/W/18/Add.16/Rev.3). Pointing to the raw materials saved when goods are refurbished

and used again, the proposal called for countries to review their non-tariff measures so that re-manufactured goods are subject to the same rules as new ones. During the recent meeting, Cuba, Indonesia, and India expressed reservations about the proposal. One concern is the proposal's lack of a clear definition for exactly what constitutes a re-manufactured good. Some manufacturers from developing countries fear that opening up trade in re-manufactured products would expose them to a wave of cut-rate, second-hand goods from the industrialised world.

Two papers from the EU – one that sets out potential rules for standards, technical regulations, and conformity assessment procedures for the automotive sector (TN/MA/W/118), and another that does the same for electronics (TN/MA/W/119) – were criticised by both developed and developing countries as complicated and overly prescriptive.

Both proposals said that unnecessary duplication in national standards raised costs for industry. Both called for regulations to converge with relevant international standards and for members to adopt common conformity assessment procedures. And both said that transparency procedures – such as consulting with interested parties before introducing new regulations that differ from global benchmarks – should be required, and that regulations should be made public in a clear format.

The auto proposal provided for mutual recognition of domestic technical regulations. The electronics proposal, which was co-sponsored with Switzerland, stipulated that countries should not "prevent or unduly delay" the entry to market of products incorporating new technologies unless they could scientifically demonstrate safety or other risks.

The US has tabled proposals on the same two topics (TN/MA/W/120 and TN/MA/W/105/Rev.2). While similar to the EU proposals in terms of international standards and conformity assessment procedures, the US papers set out more detailed transparency requirements. For instance, countries proposing to adopt new technical regulations or conformity assessment procedures must give interested parties a

minimum time period – “which normally shall not be less than 60 days” – to comment in writing on the potential measures, and take any comments into account.

A proposal that seems to have more widespread acceptance is one concerning labelling requirements for textiles, clothing, and footwear (TN/MA/W/93/Rev.1), sponsored by the EU, the US, Mauritius, and Sri Lanka. In addition to rules about consulting with trading partners about regulation, the proposal would forbid countries to have rules prohibiting labels in non-official languages, or for including information beyond the minimum required by domestic regulations.

At the end of the week, the chair of the NAMA negotiating group, Swiss Ambassador Luzius Wasescha, said that while the overall Doha negotiations might be 80 percent done – an assessment made by WTO Director-General Pascal Lamy – the talks on NTBs were further behind. He said that he would continue consulting with members, including senior officials, in the last week of November.

Another week of NAMA talks is likely to be held in December.

ICTSD reporting; “US Embargo on Cuba Again Finds Scant Support at UN,” NEW YORK TIMES, 28 October 2009.

OTHER NEWS

Climate Talks Drift Slowly from Barcelona to Copenhagen

Another round of climate change negotiations concluded on Friday, 6 November, with minimal advances. The week-long meeting in Barcelona, Spain marked the final week of a three-week session begun in Bangkok, Thailand in October. The Barcelona meetings were also the final round of negotiations prior to the UN climate convention's Conference of the Parties (COP), which will take place in Copenhagen, Denmark from 7-18 December.

With the COP drawing near, negotiators were tasked with trimming down long texts and making some headway on issues that would lay the foundations for smoother negotiations in Copenhagen. But less than a week before the Barcelona meeting kicked off, the Danish Prime Minister declared that he did “not think it will be possible” for a legally binding regime to be negotiated in Copenhagen. Thus, with expectations lowered, the Barcelona meeting left port with barely any wind in its sails (see Bridges Trade BioRes, 30 October 2009, <http://ictsd.org/i/news/biores/58320/>).

The objective of the meeting was to continue refining draft texts in two negotiating groups: one that focuses on the Kyoto Protocol, and another that looks at other means of achieving long-term cooperative action (LCA) to address climate change.

Both the Kyoto Protocol and LCA negotiating groups attempted to close gaps on many divisive issues by reducing options, removing brackets, and seeking clarity on details. But little progress was made in the week-long talks, and the lack of movement on many topics cast a haze over what may lay on the horizon for the climate negotiations. Perhaps more importantly, many negotiators left Barcelona with a sense that, although climate change is a global problem, the nations of the world are not all in this boat together.

Africa Group walks out

One of the most contentious issues – which triggered the Africa Group to walk out and effectively shut down the Kyoto Protocol (KP) negotiations for a day and a half – was the debate over how much rich ‘Annex I’ countries should be required to reduce their emissions of greenhouse gases (GHGs). The Africa Group, which counts more than 50 countries as members, refused to continue discussions on any issue under the KP until the rich country commitments were firmed up. Developing countries repeatedly stressed that the pledges made thus far by Annex I parties would not go far enough to achieve the scientifically established emissions levels that would be required to stabilise the climate.

Developing countries are pushing for rich nations to cut their emissions to at least 40 percent of 1990 levels by 2020, while developed countries are offering cuts between 15 percent and at the highest 30 percent. China and the members of the G77 coalition of developing nations supported the African position and pressed the chair of the meeting, John Ashe of Antigua and Barbuda, to push developed countries for stronger targets. The Africa Group rejoined the talks after Ashe promised to devote 60 percent of the remaining time to the discussion on numbers.

The numbers issue is closely tied to the question of whether the Kyoto Protocol should survive beyond its first commitment period, which will expire at the end of 2012. Many developed countries have argued that the Protocol should be retired after its first period runs out. But developing countries fervently stress that the Protocol should be kept alive for further commitment periods. The argument for the latter is, principally, that the Protocol, despite its shortcomings, is all there is to assure emissions reductions from a large number of the world's major emitters. But some developed countries maintain that the Protocol does not go far enough, since the US and major emerging economies like China and India are not bound by it.

The EU seems to have gotten the message from developing countries. In the closing plenary, the EU emphasised that it "stands firmly behind the Protocol and its implementation." In a press conference at the end of the week, a representative from the European Commission said that Brussels is hearing the developing countries and understands that without a Kyoto Protocol, there will be no Copenhagen agreement.

Indeed, the possibility that no legally binding agreement will be struck at the December meeting seems increasingly likely. But some observers suggest that there could be an alternative outcome. This might take the form of a series of COP decisions, some say, while others suggest that the Copenhagen meeting could close with the announcement of a broad political declaration that would leave many details to be decided in subsequent negotiations. The latter would require a new mandate for continued negotiations, which

could lead to a legally binding decision at a future date.

Keeping tabs on trade & competitiveness

A number of trade- and competitiveness-related questions arose at the Barcelona meeting, but overall these issues saw little movement.

The "shared vision" portion of the text underwent some odd metamorphoses. From the multi-page document, a short page-and-a-half long summary of key areas, looking suspiciously like a broad political declaration, was circulated among parties. After significant debate, the week ended with parties compiling this paper and the previous non-paper into one new non-paper. Notably, the section on trade measures such as 'border carbon taxes' (see related story, this issue) was included in the final document. In broad brush strokes, developed countries stressed that the shared vision should be concise yet inclusive, and encompass actions by all countries, while developing countries stressed that it should be comprehensive and aim at the implementation of the UN climate convention.

Discussion on cooperative sectoral approaches and sector-specific actions evolved slightly. Many parties expressed their concern that these topics might raise questions related to international trade and warned of potential risks. Two topics are under discussion on this front: bunker fuels and agriculture. On bunker fuels – dirty fuels used in air and marine shipping – the debate focused principally on whether the topic should be limited to the Kyoto Protocol negotiations and whether the proper forum for decision-making should remain the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). On agriculture, developing countries opposed the setting of global standards while stressing the need to include consideration of food security in the text.

Financing discussions addressed institutional arrangements and where funding should come from. On the latter question, the greatest attention was given to the role of public versus private finance and whether developing countries (except least developed countries) will also be asked to contribute. The role that a cap-and-trade carbon

market could play in generating funds was also considered, as were various proposals on 'innovative sources' of funding. Discussion will continue on all of the above in Copenhagen.

Discussions on technology development and transfer continued to refine options for institutionalisation, leveraging, cooperation, financing, information-sharing, capacity-building, and addressing barriers. But overall, the talks resulted in little change to the text.

Despite some 'thinning' of the text at the Barcelona meeting, there were no surprises or breakthroughs on the two tide-turning issues in the talks: mitigation levels and financing. Whether agreement can be reached on such pernicious areas of disagreement may ultimately hinge on political manoeuvrings at the highest levels. So far, many world leaders have not taken a strong stance on the climate talks, at least in public. But perhaps the next four weeks will bring a much-needed change in the winds.

ICTSD reporting.

G20 Finance Ministers Fall Short on Climate Finance, Subsidies: NGOs

Finance ministers from the Group of 20 rich and emerging economies achieved broad consensus on economic stimulus plans at their meeting on 6-7 November in St Andrews, Scotland. But, to the dismay of many in civil society, the ministers fell short of conclusive agreements on how they plan to cut fossil fuel subsidies and finance the global fight against climate change.

Common concerns over unemployment and uneven growth rates led the ministers to vow "to maintain support for the recovery" until the health of global economic and financial systems can be assured.

"This is a new approach to economic co-operation and a major step. We have agreed to take dramatic action to ensure we have growth in the future," said Alistair Darling, British Chancellor of the Exchequer, who hosted the meeting.

The final communiqué released after the meeting makes no mention of the WTO's Doha Round of trade talks, which have struggled to produce much forward movement this year.

Focus on fossil fuel subsidies, climate finance

After a strong push for action from the G20 leaders in September, expectations were high for the ministers to strike agreements on climate financing and the phasing out of subsidies for fossil fuels. But the ministers took no concrete action on either front.

Leading up to the finance ministers meeting, a group of NGOs calling itself The Green Economy Coalition urged the ministers in a letter to remove fossil-fuel subsidies as soon as possible. These subsidies "contribute directly to climate change, cost hundreds of billions of dollars each year, and create artificial barriers to sustainable development," the group said.

The ministers discussed the proposed subsidy cuts, but put off making any major decisions on the matter.

"We will prepare ... implementation strategies and timeframes, based on our national circumstances, for rationalising and phasing out inefficient fossil fuel subsidies that encourage wasteful consumption, and for providing targeted assistance programmes," the ministers said in their final communiqué. The statement also calls on the International Energy Agency, OPEC, the OECD and the World Bank to produce a joint report on the subsidies, which the ministers pledged to consider at their next meeting.

The meeting had a similar outcome on climate change finance. The ministers said in their communiqué that they are working toward an "ambitious international agreement" on the financial aspects of climate change, but little was decided at the St Andrews meeting. Despite previous assurances, the ministers did not put any new money on the table to help developing countries deal with climate change.

"We discussed a range of options and, recognising that finance will play an important role in the delivery of the outcome at Copenhagen, we

commit to take forward further work on climate change finance, to define financing options and institutional arrangements,” the leaders said in their communiqué.

Green group WWF was not impressed with the outcome. Richard Dixon, director of WWF Scotland called the ministers meeting “a mostly irrelevant sideshow” on the road to major climate talks in Copenhagen next month. “This is a group that can throw money at collapsing banks but cannot find adequate figures for the far worse challenge to the global economy of a collapsing climate system,” he added.

The G20 includes the European Union and 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, and the United States. Taken together, the G20 economies account for roughly 90 percent of world output.

More information

The letter from The Green Economy Coalition is available <http://ictsd.org/downloads/2009/11/letter-from-the-green-economy-coalition-to-g20-finance-ministers.pdf>.

ICTSD reporting; “G20 finance ministers agree to maintain fiscal support,” TELEGRAPH, 8 November 2009; “G-20 finance officials commit to economic stimulus measures until recovery takes hold; UK retreats from “Tobin tax” proposal,” FINFACTS, 9 November 2009.

COPENHAGEN COUNTDOWN

Special Section: Border Carbon Adjustment

Each week leading up to the UNFCCC's 15th Conference of the Parties, Bridges Weekly will be providing readers with background and analysis on key issues facing negotiators as they prepare for December's meeting in Copenhagen. This week's article highlights the ongoing

debate over the use of unilateral trade measures in the name of climate protection.

Should countries be allowed to apply a penalty – in the form of a tariff or an obligation to purchase carbon credits – on imports from other countries that use less stringent emissions practices?

Opinions vary widely on this question, both within and outside the countries intending to apply such measures. But opinions are especially split within the global climate change negotiations, in which 192 nations are striving to find consensus on an international deal that is both effective and equitable. With four weeks left until the Copenhagen meeting, and a draft text that is evolving at a snail's pace, this issue promises to be particularly contentious in the final stretch.

Known variably as border carbon adjustments (BCAs), border tax adjustments (BTAs), or border tax measures, (BTMs), it all boils down to the same thing: unilateral measures that a state imposes when a good is imported from an industry or firm in a country that has not ‘comparably offset’ the greenhouse gas emissions associated with the good's production. The BCA could be a flat tariff, a tax, or a requirement for the importer to purchase carbon credits that would compensate the country with more stringent regulations for the loss of competitiveness that it incurs because of its emissions standards.

Advocates of BCAs claim that the measures are intended to address three factors. First, competitiveness concerns where some industries in developed countries consider that a BCA will protect their global competitiveness vis-a-vis industries in countries that do not apply the same requirements. The second argument for BCAs is ‘carbon leakage’ – the notion that emissions might move to countries where rules are less stringent. A third argument, of the highest political relevance, has to do with ‘leveraging’ the participation of developing countries in binding mitigation schemes or to adopt comparable measures to offset emissions by their own industries.

Indeed, from a political perspective, both experts and politicians argue that it may be impossible for

some countries, notably the US, to take strong climate action in the absence of BCAs.

BCAs could, in theory, be applicable to any importing country. In practice, however, they would initially be directed at developing countries, and would be primarily aimed at exports of those industries that exceed a certain threshold of global emissions, or that account for more than a certain percentage of the BCA-imposing country's imports of the good in question.

The United Nations Framework Convention on Climate Change (UNFCCC) differentiates between the global responsibilities of developed and developing countries regarding mitigation. Currently, the Kyoto Protocol only binds developed countries to emissions reduction targets. A future global agreement will also most likely differentiate between developed and developing countries on the basis of their "common but differentiated responsibilities and respective capabilities," as laid out in the UNFCCC, taking into consideration the historic responsibility of developed countries whose industrial development precipitated the current climate crisis.

Developing countries oppose the measures

Proponents also argue that BCAs would motivate developing countries to increase their mitigation action. However, from a developing country perspective, at least three arguments run counter to that idea: 1) that the use of BCAs is a *prima facie* violation of the spirit and letter of multilateral trade principles and norms that require equal treatment among equal goods; 2) that BCAs are a disguised form of protectionism; and 3) that BCAs undermine in practice the principle of common but differentiated responsibilities.

The issue has sparked heated discussions in the context of the global climate negotiations and will likely be a point of contention through negotiations at the Conference of the Parties (COP) in Copenhagen this December. The issue arises in two sections of the current draft negotiation text for a new climate deal. At a negotiating session in June, India and China, supported by dozens of developing countries, introduced language in two areas of the draft text

to prevent the use of such measures. The current text reads as follows:

"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 stabilization of the climate. Such unilateral 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); trade and climate change (Article 3 paragraph 5); and the relationship between mitigation actions of developing countries and provision of financial resources and technology by developed country Parties (Article 4, Paragraphs 3 and 7)."

The BCA paragraph has received most discussion under the informal group on 'economic and social consequences of response measures' – one of six mitigation sub-categories under the Bali Action Plan. This sub-section is intended to consider and include provisions that would abate the impacts arising from actions taken by countries to mitigate climate change. The BCA paragraph was also introduced into the draft section on 'a shared vision,' which is the introductory section of the draft text. This section contains principles and goals for the new agreement and reflects the tone and approach of the entire text. Since initial discussions at the introduction of the paragraphs, they have not been altered or received substantial further discussion, thus leaving their consideration to Copenhagen.

BCAs in US climate legislation

Language on BCAs – both in favour and opposed – appeared in the global climate negotiating text shortly after the US House of Representatives approved draft climate legislation in June (see Bridges Trade BioRes, 26 June 2009, <http://ictsd.org/i/news/biores/49571/>). Despite some internal controversy, the issue has survived into the Senate version of the proposed legislation, known colloquially as the Boxer-Kerry Bill, where it is currently under consideration. If passed in the Senate and approved by the president, the bill will become law and the details on institutions and implementation of the BCAs

will be hammered out in an internal Senate Committee.

Despite some uncertainty as to whether the US legislation will successfully run its course, the bill now on the table has significant bipartisan backing. In a recent New York Times op-ed by Democratic Senator John Kerry and Republican Senator Lindsey Graham, the two lawmakers expressed their confidence that the legislation will pass. Notably, the senators also said that the climate legislation will have to include a BCA provision if it is to win lawmakers' approval.^[i]

"We cannot sacrifice another job to competitors overseas," the senators wrote. "China and India are among the many countries investing heavily in clean-energy technologies that will produce millions of jobs. There is no reason we should surrender our marketplace to countries that do not accept environmental standards. For this reason, we should consider a border tax on items produced in countries that avoid these standards. This is consistent with our obligations under the World Trade Organization and creates strong incentives for other countries to adopt tough environmental protections."

But US President Barack Obama has on numerous occasions criticised the use of BCA. "At a time when the economy worldwide is still deep in recession and we've seen a significant drop in global trade, I think we have to be very careful about sending any protectionist signals out there," Obama said in Washington in June. He has also noted that the draft legislation already included various other kinds of transitional assistance for energy-intensive industries even before the border tax adjustment provisions were reinserted, and he has underlined the importance of maintaining a level playing field internationally.

In Europe, France's President Nicolas Sarkozy has been promoting BCAs since France crafted its own draft legislation last September. Yet, despite strong criticism from European Union's Environment Commissioner, Stavros Dimas, members of the French delegation at the climate meetings claim the country is currently working to extend the legislation to the entire European Union with some success. A number of EU

member states have reportedly indicated that they would look on such an option favourably.

Apart from being a controversial issue for political reasons, analysts have long expressed doubts both regarding the efficacy of such measures with regards to leakage concerns and their compatibility with WTO-rules. Moreover, the administrative exercise that would be necessary in order to calculate carbon contents is considered to be near to insurmountable. On top of this are the political costs: trying to impose environmental considerations on countries through tariffs risk creating bad will in the negotiations on climate change, in the trade negotiations of the DDA and in the multilateral trading system. As stated by Chinese Commerce Minister Chen Deming in response to the language approved in June in the House, it will likely trigger retaliatory action, in the worst case leading to a trade war. Costs could be considerable both in terms of economics and environment

The issue of BCAs will likely remain on the table until late in the negotiations in Copenhagen. Yet the clear conflict with US forthcoming legislation casts a shadow of doubt over whether it will appear, as formulated, in the final agreement. Considering the complexity and political sensitivity of the issue, there may be need to craft some place-holding language for Copenhagen and continue negotiations on the topic into the future – a fate that is likely to be shared by many issues that cannot be readily solved in Denmark this December.

ICTSD reporting.

[i] "It is the sense of the Senate that this Act will contain a trade title that will include a border measure that is consistent with our international obligations and designed to work in conjunction with provisions that allocate allowances to energy-intensive and trade-exposed industries." Clean Energy Jobs and American Power Act, Draft introduced by Senators John Kerry and Barbara Boxer, September 20, 2009, Sec. 756. International Trade.

IN BRIEF

US Wants More Access to South Korean Auto Market: USTR

Washington's top trade official insisted last week that the United States is "not standing still" on a free trade pact with South Korea that has sat unratified in the US Senate for over two years. But the White House wants Seoul to further open its market to US auto imports before lawmakers vote on the deal, the US trade representative added.

"Our market is open to Korean autos. All we are asking for is our own auto companies to be able to compete on a level playing field in the Korean market," USTR Ron Kirk said in a speech to the US-Korea Business Council in Washington on 5 November. "As all of you know, the American auto industry is working through a period of difficult transition," he added.

As it now stands, the deal would immediately cut South Korea's eight percent tariffs on imports of US cars, while the US would be allowed three years to gradually reduce its 2.5 percent duty on South Korean auto imports. Washington would also be required to phase out a 25 percent tariff on imports of pick-up trucks over the next ten years. US automakers are not happy with this arrangement.

"The FTA does not allow for free trade in autos and leaves in place a complex array and culture of non-tariff measures that block our access to this important market," the Ford Motor Company said in a statement submitted to the USTR's office in September.

Kirk said that Washington is also uncertain about the sections of the FTA concerning beef exports and non-tariff barriers to trade.

Observers say that if the deal is not approved by June of next year, mid-term elections the following November would likely push the trade agreement off of Congress' agenda until at least 2011. And if the auto issue is addressed, some say, trade officials would most likely create a side

agreement to the existing text, instead of re-opening the deal that has already been negotiated. But if it gets through, the deal would be a boon for US exporters. A 2007 report from the US International Trade Commission concluded that the pact could boost US exports by more than US\$ 10 billion annually. South Korea is the US' seventh-largest trading partner, and bilateral trade in goods and services totalled roughly US\$ 83 billion last year.

US President Barack Obama will meet with Korean President Lee Myung-Bak on a stop in South Korea during a 10-day tour through Asia later this month. The two heads of state will also meet in Singapore for the Asia-Pacific Economic Cooperation summit. The bilateral FTA is expected to be a focal point of their exchanges.

Washington and Seoul wrapped up negotiations in April 2007 (see Bridges Weekly, 4 April 2007, <http://ictsd.net/i/news/bridgesweekly/7581/>) and the two countries' heads of state signed the deal three months later. But the pact has languished in Congress ever since, largely thanks to the concerns of the auto industry.

But pressure for Washington to enact the deal has mounted since the European Union signed its own free trade pact with South Korea last month (see Bridges Weekly, 21 October 2009, <http://ictsd.net/i/news/bridgesweekly/57424/>).

More information

The full text of Kirk's speech is available here: <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2009/november/remarks-ambassador-ron-kirk-us-korea-busine>

ICTSD reporting; "USTR Kirk says Skouras trade pact needs new auto deal," REUTERS, 5 November 2009.

NGOs Cry Foul as ACTA Talks Continue

The sixth round of negotiations toward an Anti-Counterfeiting Trade Agreement (ACTA) took place in Seoul, Korea last week, but detailed content of the talks has yet to be disclosed, save for a short press release by the Office of the United States Trade Representative (USTR). According to the statement, the discussions focused on rights enforcement in digital media and criminal enforcement. The proposed goal for signing the agreement has been set for “as soon as possible in 2010.”

The negotiations, which so far have been kept secret, have met with mixed reviews from civil society. Some non-governmental groups have criticised the lack of transparency in the talks, noting their concerns that the agreement could make it more difficult for people in poor countries to access medicines, or that it could criminalise non-commercial file-sharing, (see Bridges Weekly, 08 April 2009, <http://ictsd.org/i/news/bridgesweekly/44809/>).

“We urge you to insist that the administration ... provide the public with the actual text of the ACTA proposals so that all stakeholders, including the public, can have productive and informed discussions on substantive issues,” the US organisations Knowledge Ecology International and Public Knowledge wrote in a letter to several members of the US Congress this week.

But the US Chamber of Commerce – a lobby group that represents business interests – is a strong supporter of the deal. Defending the secrecy of the negotiations, Mark Esper, Executive Vice President of the Chamber’s Global Intellectual Property Center, argued in the organisation’s blog that “the negotiation process requires the need for USTR and our trading partners to effectively exchange views and bounce ideas of one another in private.”

Public apprehension over the deal spiked after a section of the negotiating text, dated 30 September, was leaked recently. The draft text includes requirements for signatories to ensure

third-party liability, which would mean that internet service providers could be held responsible for actions taken by their users. Also, the text would require that countries impose “adequate civil and criminal remedies” for the infringement of technological protection measures.

One particularly controversial measure proposed in the leaked documents was the “three-strike test” to determine if and when subscribers should be denied access by internet service providers. The test would allow for legal action to be taken after the third accusation of improper activity. It has been rejected by the European Parliament and several negotiating countries, but Washington reportedly backs the provision.

“US negotiators are seeking policies that will harm the US technology industry and citizens across the globe,” wrote Gwen Hinze of the Electronic Frontier Foundation, a California-based NGO.

The US Trade Representative has claimed that stakeholders on both sides of the issue will be consulted, and some people were even given access to negotiating texts under a non-disclosure agreement. In the past week, however, organisations including Knowledge Ecology International, Public Knowledge, and the Electronic Frontier Foundation have sent two letters to Congress calling for more transparency. Their main concern seems to be that the deal aims to benefit certain industry groups at the general public’s expense.

“[...] it would seem that the ACTA negotiators have identified certain parts of the [WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights] most favourable to particular groups of intellectual property holders, including certain publishers, media conglomerates, and pharmaceutical companies. Left out of the ACTA text are the elements most favourable to consumers, including those intended to curb anticompetitive practices, and to protect innovation,” read a letter from the three groups dated 9 November.

More information

The leaked ACTA document is available here: <http://ictsd.org/downloads/2009/11/eu-acta-document.pdf>

ICTSD reporting.

WIPO Enforcement Committee Gives Development Concerns Centre Stage

The World Intellectual Property Organization's Advisory Committee on Enforcement met from 2 to 4 November to discuss the involvement of right holders in enforcement and how the organisation can promote an environment of respect for intellectual property rights. The talks were driven by a consideration of Recommendation 45 of the WIPO Development Agenda, which states that intellectual property enforcement should be approached "in the context of broader societal interests and especially development-oriented concerns."

The Committee's discussions centred on eight expert papers and three concept papers put forward by Brazil, Pakistan and the group of developed countries.

A study from Carsten Fink, currently WIPO Chief's Economist, provided insight on available piracy figures and proposed a new methodology for the analysis of IP enforcement costs and benefits. The paper was published by ICTSD before Fink had taken up his current position (ICTSD also publishes Bridges Weekly). Another study by Sisule Musungu, head of the Geneva-based NGO IQsensato coincided with Fink's paper, stating that providing more accurate data to institutions and countries would allow for improved policies.

Pakistan's paper, "Creating an Enabling Environment to Build Respect for IP," highlighted that stronger laws do not always lead to better enforcement. The paper suggested that intellectual property rights can gain respect if developing countries are allowed improved access to protected materials. Brazil's paper stressed the importance of customised IP programmes for

individual countries based on their economic and social needs and capacities.

These papers reflect the growing demand for balanced discussions at the multilateral level to address IP enforcement alongside a broader range of public policy concerns, including economic and social development.

Such insights led the committee's discussion of its future agenda. The meeting concluded with a strong sense among delegates that the analysis of intellectual property enforcement should be re-evaluated, in terms of both methodology and data. The committee specifically agreed to consider, at its next session, an elaboration of several issues raised in Fink's study, including a literature review of methodologies and gaps in the existing studies and the identification of different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development. Along similar lines, the committee also agreed to work to develop analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy.

Participants left encouraged by the talks and said they thought the meeting had a positive outcome. This upbeat spirit is significant as other initiatives on enforcement outside the realm of the multilateral system are running into increased controversy in relation to their public policy implications.

The WIPO Development Agenda (DA), which was established in October 2007, consists of a list of 45 recommendations on how the organisation can better integrate development concerns into its activities.

ICTSD reporting; "IP enforcement work at WIPO gets boost from developing nations," IP-WATCH, 6 November 2009; "Positive outcome reached at WIPO Advisory Committee on Enforcement while ACTA looms in the East," KEI, 2 November 2009.

WTO IN BRIEF

**Banana Deal Expected Next Week
with Promise of Aid for ACP**

Trade officials have been meeting intensively for the last two weeks in an ongoing effort to finalise a deal to conclude a long-running dispute over banana tariffs at the WTO. Officials say they hope to conclude the talks ahead of the WTO's ministerial conference, which is set to begin on 30 November, and an announcement outlining the framework of the potential deal is expected next week.

EU banana import policies have been the subject of a decade-long row at the WTO, pitting Brussels against several Latin American banana producers and the US. At issue is the EU's current import regime: a €176 per tonne tariff on bananas from most-favoured nation (MFN) suppliers, alongside a 775,000 tonne duty-free import quota reserved for African, Caribbean, and Pacific (ACP) states, many of which are former European colonies.

An official participating in the talks suggested that a deal was unlikely to emerge in time for Tuesday's meeting of the WTO's General Council. Rather, negotiators are hoping to make an announcement about the compromises reached by the "middle of next week."

The deal now on the horizon – nominally titled the Geneva Agreement on Trade in Bananas – is expected to resemble the package that was provisionally tabled when trade ministers met in Geneva in July 2008 in an attempt to bring the Doha Round to a close. At that point, the EU offered to reduce its MFN tariff to €114 per tonne from the current €176 per tonne over eight years if a Doha Round deal were struck. The agreement would have allowed the EU to continue to give preferential duty-free access to countries from the ACP group. As a down payment to Latin American exporters, the EU would reduce MFN tariffs by €28 at the start of the implementation period.

The agreement now on the table would mandate that bananas receive 'stand-alone' treatment and

be excluded from the Tropical Products list, or products that will receive the 'fullest liberalisation', settle all pending disputes with Latin American exporters, and provide a 'credit clause' to mark the lowered MFN tariff as the EU's final market access commitment in the Doha Round.

Officials have been tight lipped about the specifics of a deal. The EU is in a delicate position, as it must strike a balance between the competing interests of efficient Latin American exporters and ACP countries that largely rely on preferences to maintain their banana exports. According to an EU communication obtained by Bridges, the Commission will provide a substantial amount of aid, through 'Banana Accompanying Measures' (BAMs), to the ACP as part of a deal that would reduce MFN tariffs on bananas. The aid, which would be provided between 2010 and 2013, will be aimed at "improving competitiveness, economic diversification and mitigating the social consequences of adjustment." To ease the transition, the EU will provide €190 million for ACP countries beyond the support offered through the European Development Fund.

Any potential deal on bananas will be presented to WTO members at a meeting of the General Council. Delegates will then have 90 days to raise objections before the new MFN tariff is certified. In case any objections arise, the EU will "no longer consider itself bound by the commitment to follow through on a new support programme," according to the leaked EU communication.

ICTSD reporting.

**Members Approve Ministerial
Wording on 'TRIPS Non-Violation',
E-Commerce**

With less than three weeks remaining before trade ministers descend on Geneva for the WTO's seventh ministerial conference, trade delegates at the organisation's headquarters are preparing wording for a ministerial decision to be issued at the meeting's close.

The delegates found agreement on wording on two issues – 'TRIPS non-violation complaints'

and electronic commerce – at a 6 November meeting of the TRIPS Council (the Council of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights).

The first issue, 'non-violation complaints' under the TRIPS Agreement, concerns whether countries should be allowed to bring WTO dispute cases on the grounds that the spirit, but not the letter, of the TRIPS Agreement has been violated. The WTO allows such non-violation complaints for trade in goods and services, but there has been a moratorium on IP-related cases since the organisation's founding in 1995. The prohibition was meant to last five years, but it has been extended at ministerial conferences ever since.

The United States and Switzerland, two countries that are home to industries that stand to benefit from robust intellectual property protections, have long insisted that the moratorium should be lifted. They argue that the continuation of the 'non-violation' ban leaves open the possibility that countries could use 'creative legislative activity' to infringe on intellectual property rights that are nominally protected by the TRIPS Agreement.

But supporters of the moratorium argue that the notion of a non-violation complaint is questionable under TRIPS. The agreement does not grant members any market access rights, the detractors say, and non-violation complaints should be limited to cases where a member is deprived of such access.

But the difference of opinion has been settled, at least for the time being. Members agreed on Friday to recommend that ministers should extend the moratorium on 'TRIPS non-violation complaints'. Delegates also suggested that ministers recommend that the matter be taken up at the WTO's next ministerial conference, which is planned for 2011.

"It is agreed that, in the meantime, members will not initiate such complaints under the TRIPS Agreement," the statement says.

The discussions on TRIPS non-violation occurred hand-in-hand with negotiations on ministerial wording on electronic commerce, a subject that is

usually taken up by the WTO's General Council. On e-commerce, delegates also agreed to recommend an extension of the current moratorium on import tariffs on goods bought and sold online. A ban on the measures has been in place since the WTO's second ministerial conference in 1998, when WTO members agreed to refrain from "imposing customs duties on electronic transmissions."

ICTSD reporting.

EVENTS & RESOURCES

Events

Coming up this week: 11-17 November

11-13 November, New Delhi, India. A BETTER FUTURE FOR HUMANITY IN THE 21ST CENTURY - INTELLECTUAL PROPERTY (IP) IN A CHANGING WORLD: NEW CHALLENGES AND OPPORTUNITIES. The event is organised by The World Intellectual Property Organization (WIPO), in cooperation with the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry of the Government of India and with the assistance of the Federation of Indian Chamber of Commerce and Industry (FICCI). The forum will provide an opportunity for a range of stakeholders engaged in promoting innovation, including high-level economic and technology policy-makers, heads of intellectual property (IP) offices, academics and the private sector to exchange experiences and ideas on topical IP issues. Emphasis will also be placed on examining ways to harness the potential benefits of using IP strategically to create opportunities for improved business competitiveness, market expansion and economic development. The forum is open to WIPO Member States and WIPO-accredited international organisations engaged in innovation promotion. IP professionals and representatives of the private sector and the research and academic communities are also invited to participate. Contact Sheetal Chopra at sheetal.chopra@ficci.com for registration information.

WTO Events

An updated list of forthcoming WTO meetings is posted at

http://www.wto.org/meets_public/meets_e.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.

11-12 November: WORKING PARTY ON DOMESTIC REGULATION

11 and 13 November: TRADE POLICY REVIEW BODY - SENEGAL AND NIGER

12 November: WORKING GROUP ON TRADE AND TRANSFER OF TECHNOLOGY

12 November: COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION

13 November: COUNCIL FOR TRADE IN SERVICES - SPECIAL SESSION

Other Upcoming Events

17 November, London, United Kingdom. GLOBAL TRADE CONTROLS. Through relevant debates and information sharing, this high-level conference, sponsored by the Washington International Trade Association, will provide attendees with a thorough update and practical tools to carve out essential business opportunities. The two-day conference will mainly comprise plenary and panel sessions to encourage feedback and interaction with the audience, together with streamed sessions on both days to allow further in depth discussion. During the conference there will be a review of developments in global trade controls to ensure best practice, an update of the latest issues and the practical impact on everyday work, and debates on current contentious topics. For more information, please visit

<http://www.wita.org/ht/display/EventDetails/i/36584/pid/33238>

19 November, Washington, DC, USA. THE DOHA ROUND: CAN WE GET TO YES? Throughout eight years of on-again, off-again, sometimes painful negotiations, a familiar refrain has been heard from trade ministers worldwide—that they “remain committed to the Doha Round.” How much has been accomplished thus far, and how did we get where we are today? Beyond the political rhetoric, what concrete steps could negotiators take to reach an agreement by the end of 2010? How has the political landscape influenced negotiations? If an agreement cannot be reached, what would that mean for the WTO and its member nations, particularly the least developed countries that this round was supposed to help? A panel of critics and former negotiators will ponder the future of the Doha Round of Negotiations. Registration is open until 18 November 2009. The event is organised by the Washington International Trade Association. For more information, visit <http://www.wita.org/ht/display/EventDetails/i/38066/pid/317>.

19-20 November, Paris, France. 7TH WORLD FORUM OF SUSTAINABLE DEVELOPMENT: THE CRISIS, THE ECOLOGICAL ORDER, AND THE CLIMATE. The global crisis is multidimensional. It is a financial, economic, social, environmental and political crisis. Beyond the debates on its effects, its contagion, its duration or intensity, it raises the question of the restructuration of the production and energy systems, of a new international architecture and a new ecological world order. The United Nations Conference on Climate Change in Copenhagen in December 2009 will be at the heart of after-Kyoto climate negotiations and in the background of debates on new modes of production and consumption, new technologies, public policies and incentives on the part of policymakers or strategies for the reconversion of private companies. Strategies of resilience, adjustment and mitigation relate to a plurality of public and private actors. The forum will discuss: Negotiations on the Climate: From Kyoto to Copenhagen, The Context of the Global Crisis and the Ecological World Order, Resilience and Mitigation: The Role of the Actors' Strategies,

and The Mediterranean Area, the Middle East and the Climate. For more information, visit http://www.fmdd.fr/paris_2009.html

24-25 November, Berlin, Germany. 4TH INTERNATIONAL RENEWABLE ENERGY STORAGE CONFERENCE. The IRES 2009 presents new perspectives, the state of technology and especially the resulting energy storage applications that open up ground breaking opportunities for the dynamic exploitation of electricity and heat from renewable sources. Besides the technological and scientific questions regarding an integrated regenerative energy system IRES will also highlight the necessary political framework for the market penetration of renewable energy and the support schemes for energy storage technologies. The IRES conference series brings together stakeholders from the regenerative and conventional energy industries, from research and development, and politics. It acts as a stimulus for their strategies to enhance the entry of renewable energy. The conference programme is available online at http://www.eurosolar.de/en/index.php?option=com_content&task=view&id=362&Itemid=105

24-25 November, Geneva, Switzerland. INTERNATIONAL CONFERENCE ON RISK ASSESSMENT AND MANAGEMENT. Risk permeates all aspects of life. A professional management of uncertainty is essential for the resilience and effectiveness of all organisations, be they governmental or business. The conference is organised to promote an exchange of experience on the use of risk assessment and management techniques in: technical regulations; standards; conformity assessment; accreditation; metrology; and market surveillance. The conference will benefit from input from academia, governmental authorities, international standards organisations, conformity assessment bodies and business associations. For more details, please visit http://www.unece.org/trade/wp6/documents/2009/2009_ConferenceRisk.htm

30 November - 2 December, Geneva, Switzerland. SEVENTH WTO MINISTERIAL CONFERENCE. This three-day meeting will be a regular gathering of ministers to engage in a broad evaluation of the functioning of the multilateral trading system. It is not intended to serve as a

Doha Round negotiating session. The general theme for the discussions will be 'The WTO, the Multilateral Trading System and the Current Global Economic Environment'. For more information, please visit http://www.wto.org/english/thewto_e/minist_e/min09_e/min09_e.htm

30 November – 2 December, Geneva, Switzerland. GLOBAL TRADE AND DEVELOPMENT SYMPOSIUM. ICTSD is organising the Geneva Trade and Development Symposium (GTDS), to take place over 3 days in parallel to the Seventh Ministerial Conference of the World Trade Organisation. The three broad topics for the GTDS will respond to the three principal types of challenges currently facing the multilateral trading system: institutional challenges, perspectives on the Doha Round, and new issues and challenges such as climate change. The symposium will be held at the World Meteorological Organisation (WMO) and will be open to all who wish to participate (however, registration is required). For more information, please see <http://www.ictsdsymposium.org/>.

Resources

FREE TRADE UNDER FIRE, 3RD EDITION. By Douglas A. Irwin. Princeton University Books, October, 2009. Growing international trade has helped lift living standards around the world, and yet free trade is always under attack. Critics complain that trade forces painful economic adjustments, such as plant closings and layoffs of workers, and charge that the World Trade Organization serves the interests of corporations, undercuts domestic environmental regulations, and erodes the US' sovereignty. Why has global trade become so controversial? Does free trade deserve its bad reputation? In *Free Trade under Fire*, Douglas Irwin sweeps aside the misconceptions that litter the debate over trade and gives the reader a clear understanding of the issues involved. This third edition has been thoroughly updated to include the latest developments in world trade--including the practice of off-shoring services, the impact of trade on wages, and the implications of trade with China-based on the latest research. To purchase a

copy, please visit
<http://press.princeton.edu/titles/9027.html>

WORLD TRADE REPORT 2009: TRADE POLICY COMMITMENTS AND CONTINGENCY MEASURES. World Trade Organization, 2009. The report examines the range of contingency measures available in trade agreements and the role that these measures play. These measures allow governments a certain degree of flexibility within their trade commitments and can be used to address circumstances that could not have been foreseen when a trade commitment was made. Too much flexibility may undermine the value of commitments, but too little may render the rules unsustainable. The tension between credible commitments and flexibility is often close to the surface during trade negotiations. One of the main objectives of this report is to analyse whether WTO provisions provide a balance between supplying governments with necessary flexibility to face difficult economic situations and adequately defining them in a way that limits their use for protectionist purposes. The report also discusses alternative policy options, including the renegotiation of tariff commitments, the use of export taxes, and increases in tariffs up to their legal maximum ceiling or binding. To access this report, please visit http://www.wto.org/english/res_e/publications_e/wtr09_e.htm

JUSTICE DENIED: DISPUTE SETTLEMENT IN LATIN AMERICA'S TRADE AND INVESTMENT AGREEMENTS. By Michael Mortimore, Leonardo Stanley. The Global Development and Environment Institute, October 2009. This report analyses the arbitration schemes under investor-state dispute provisions in Latin America's numerous trade and investment agreements. The authors find that such provisions are biased toward international investors. Such a bias can skew legal systems in the region and threaten the ability of foreign investment to spur much-needed economic development in the Americas. The report can be downloaded here <http://ase.tufts.edu/gdae/Pubs/rp/DP27MortimoreStanleyOct09.pdf>.