



Bridges Weekly Trade News Digest

Weekly trade news from a sustainable development perspective

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LEAD STORIES

Anti-Counterfeiting Trade Pact ‘99 Percent’ Complete

Talks on a controversial “Anti-Counterfeiting Trade Agreement” are very nearly complete, following what participating nations described as the “final” round of negotiations in Tokyo last week.

A draft text of the agreement as it stood at the end of those talks, dated 2 October, was publicly released Wednesday, and placed on the websites of many of the participating governments. It showed that the close to 40 mostly developed country participants had managed to resolve their disagreements on all but a small handful of issues. An EU official close to the negotiations said that the text was over 99 percent agreed, and that officials would be able to iron out remaining differences “through e-mail contact” in the weeks to come. No more rounds of negotiations would be needed, the official said, describing the process as “really at the final stage, about to cross the finishing line.”

“This work represents a significant victory for those who care about protecting and enforcing intellectual property rights,” said US Trade Representative Ron Kirk, in a statement. He called for a quick conclusion of the negotiations.

The ACTA talks have been contentious since their launch in 2007. Even some supporters of the prospective treaty’s goals were perturbed by the near-total secrecy that surrounded the negotiations at first – a secrecy that stood in sharp contrast to other inter-governmental negotiations. Snippets that periodically leaked from the discussions caused critics to worry that participants were going well beyond what was necessary to target counterfeiting and piracy and risked creating new intellectual property protections that would

undermine multilateral institutions like the WTO and WIPO, threaten internet freedom, impede access to technology, and jeopardise shipments of affordable medicines between poor countries.

Many – though not all – of these fears have been alleviated to a significant extent, as countries watered down provisions in order to reach a compromise (see BRIDGES Weekly, 8 September 2010). According to Michael Geist, a law professor at the University of Ottawa who is an expert on ACTA, US negotiators have been willing to agree to “almost anything” in order to conclude a deal before November’s Congressional elections. On internet piracy and digital lock issues, the US has gone from seeking harsh new rules to settling for what Geist now calls “ACTA Ultra-Lite.”

Safe harbours smaller, penalties steeper than under TRIPS

But the current text’s provisions for public interest safeguards are still weaker than those in WTO intellectual property rules and the domestic laws of many countries, said James Love, of Knowledge Ecology International. Meanwhile, penalties are more stringent, since there are fewer curbs on rights-holders’ ability to seek redress. “They’ve shrunk the safe harbours and jacked up the damages,” Love told Bridges.

For example, he said that the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) had broad safeguards that could potentially protect the cross-border transfer of copyrighted works in made accessible to the blind without the consent of the rights-holder. However, the ACTA draft had no comparable provisions pertaining to the exhaustion of intellectual property rights (TRIPS Article 6) or anti-competitive practices (TRIPS Article 40).

In the case of injunctions, Love said, while US law provides cases where damages are zero or limited for certain kinds of infringers – surgeons and generic drug makers in cases when the rights-holders have failed to disclose all of the patents necessary to make a particular product – the ACTA text contains no such exceptions. (Notably, the US would like to see patents excluded from the chapter on ‘Civil Enforcement’; this difference

on the scope of that chapter is one of the unresolved issues in the text).

While the TRIPS agreement provides for intellectual property right infringers to be ordered by judicial authorities to compensate rights-holders for the injury and legal costs, the ACTA draft gives rights-holders a say in determining the amount of damages, with one possible baseline the “suggested retail price,” not just the going market rate.

Patents excluded from border measures

One major change in the text should go some way to easing fears that international shipments of legal generic drugs might be seized when in transit through ACTA parties where the drugs are patent-protected: patents have been excluded from the ACTA draft’s chapter on border measures. This means the patent-holder of a drug under patent in the EU but not India would have no recourse under ACTA to petition Dutch customs authorities to seize generic versions en route from India to Brazil.

However, Sean Flynn, associate director of the programme on information justice and intellectual property at American University’s Washington College of Law, warned that this did not mean that generic drug shipments were entirely safe from ACTA. Border measures still apply to copyrights and trademarks. Last year, German customs officials seized a shipment of amoxicillin, a generic antibiotic, on its way to Vanuatu, on suspicion of a trademark violation. They did not release until nearly a month later, when GlaxoSmithKline, maker of the Amoxil brand of the antibiotic, confirmed that there had in fact been no trademark violation (see BRIDGES Weekly, 10 June 2009).

Compromises enabled speedy conclusion

In the early days of the ACTA negotiations, many observers feared that it would result in new requirements making internet service providers liable for copyright infringements carried out by subscribers. Some raised the spectre of an agreement that would require border guards to search iPods and laptops for illicit music or movies.

The current draft would do neither. Parties “may” require internet service providers to tell right-holders about subscribers suspected of infringement – but they are not required to do so. Similarly, they have the right to exclude non-commercial quantities of goods in travellers’ personal luggage from the scope of border measures.

Governments might still choose to implement ‘three strikes and you’re out’ laws for internet service providers, or introduce draconian border controls, but it would not be because of ACTA.

Professor Geist wrote on his blog that the new draft’s provisions aimed at preventing the circumvention of digital locks afford parties considerable flexibility in how to implement them. These provisions, he said, were a far cry from the US’s original goal of replicating its own strict digital copyright laws at the international level.

Participants also managed to converge very substantially on the scope of the agreement – something on which they disagreed as recently as August. The US, with support from countries including Canada, New Zealand, and Mexico, had wanted the accord to focus on copyright and trademarks. But it will now cover all types of intellectual property, including patents and geographical indications, as sought by the EU, backed by Switzerland and Japan.

The text provides for parties to create an ‘ACTA Committee’ upon the conclusion of negotiations. The committee would make decisions by consensus, and be responsible for overseeing the implementation and functioning of the agreement. The text does not provide for an independent dispute settlement mechanism; an earlier proposal had called for one, prompting concerns about marginalising multilateral fora. The ACTA Committee is empowered to determine terms of accession for each country that applies to join in the future. Once the negotiations are concluded, there will be a two-year window for participating countries to sign the agreement. The agreement is to enter force either based on an agreement among countries that have ratified, or 30 days after the deposit of the sixth instrument of ratification.

Governments participating in the ACTA negotiations (including EU member states) are Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Morocco, the Netherlands, New Zealand, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United States, and the European Union.

ICTSD reporting.

Medicines Patent Pool Receives License, Backing from US Government

The US government’s health research agency has shared intellectual property for an HIV/AIDS drug with the Medicines Patent Pool, becoming the first patent-holder to participate in the new UN-backed initiative to reduce drug costs and promote innovation.

The National Institutes of Health (NIH), whose annual budget of over \$30 billion makes it the US’s biggest funder of medical research, announced last Thursday that it would give the Pool a royalty-free license for its patent relating to darunavir, which belongs to the protease inhibitor class of medicines used to treat drug-resistant HIV infection.

Public health campaigners welcomed the move, but stressed that the Pool’s effectiveness will hinge on participation by private pharmaceutical companies, which hold the patents on several key HIV/AIDS drugs.

The NIH decision does not pave the way for the widespread generic production of darunavir across the developing world: other patents related to the drug are held by Tibotec, a subsidiary of US firm Johnson & Johnson, and are not covered by the license.

Nevertheless, it represents a significant milestone for the Medicines Patent Pool, which was set up in July by UNITAID, the international drug purchasing facility funded by a levy on airline

tickets. The theory behind the Pool's creation suggests that it would need to include intellectual property covering several different drugs to best meet its goals of slashing the sharply rising costs of state-of-the-art HIV/AIDS medication, and responding to unmet treatment needs in the developing world. The NIH decision marks the first step in that direction.

"The Medicines Patent Pool is now up and running," said Charles Clift, chair of the Medicines Patent Pool Board, following the NIH's announcement. "We look forward to further agreements with patent holders in the coming months, so we can begin to make a real difference to the lives of people living with HIV."

Clift commended the NIH for its "commitment to making the fruits of its research globally available," calling it "the first step in what we expect to be a productive collaboration with the NIH and other patent holders to come, that will help us improve access to medicines in developing countries."

Philippe Douste-Blazy, chair of the UNITAID's executive board urged other patent holders to follow the NIH's lead.

NIH Director Francis Collins said that the agency was discussing the possibility of licensing other useful patents to the Pool.

A patent pool is a sort of commons that brings together ("pools") multiple patents belonging to different owners, and makes them available to third parties against the payment of a royalty. UNITAID believes that pooling patents for key HIV/AIDS drugs would make it simpler, and cheaper, for researchers and generics manufacturers to access crucial intellectual property. Competing manufacturers would be able to pay the royalty and manufacture generics that would vie with each other for market share, driving down sales prices in developing countries. In addition, the 'one-stop shop' for intellectual property would enable innovation, since it would ease researchers' access to the different patents needed to create new fixed-dose combinations, included badly needed ones for children. UNITAID attributes much of the 99 percent drop

in the cost of 'first-generation' HIV/AIDS drugs to competition among Indian generics companies; those older – but now increasingly ineffective – medicines predate India's obligations under WTO law to provide patent protections to pharmaceutical products.

Notably, the NIH license covers all low- and middle-income countries, as defined by the World Bank. UNITAID says that limiting coverage to the poorest countries would not just exclude large numbers of patients in middle-income countries, it may create a market for generics too small to yield sufficient price reductions.

Many pharmaceutical companies are reluctant to grant licenses in middle-income countries, fearing foregone revenue in fast-growing markets such as Brazil and India, where a wealthy minority might be able to afford higher prices. They instead point to their own company-specific schemes to offer cut-price drugs, and in some cases intellectual property, to several poor countries.

These schemes, however, do not offer the cross-fertilisation across different patents promised by patent pool proponents.

The White House praised the NIH, and its co-patent owner the University of Illinois at Chicago, saying that their contribution to the Medicines Patent Pool "embodies" the Obama administration's goal of "leverag[ing] innovation to solve long-standing development challenges."

The congratulations for the NIH were echoed by wide range of public health campaigners, consumer advocates, and patients' groups from around the world, as well as by the World Health Organization.

Médecins Sans Frontières (MSF), the international medical humanitarian group, said the NIH license "demonstrates serious political backing for the Medicines Patent Pool to benefit all developing countries."

But Tido von Schoen-Angerer, director of MSF's Campaign for Access to Essential Medicines, underscored the fact that the NIH license alone was not enough for the production of low-cost generic darunavir. "We need to build on this," he said. "The onus is on the drug companies that

own patents on this and other key AIDS medicines to put their patents in the Pool.”

Von Schoen-Angerer added that if drug companies did not move to voluntarily license the patents on newer HIV/AIDS drugs, governments “should also consider compulsory license measures, as is their right under international law.” WTO rules allow governments to effectively override patents by issuing “compulsory licenses” that authorise the production of generic copies of a patented drug without the consent of the rights-holder, against the payment of a royalty.

James Love, of Knowledge Ecology International, praised the Obama administration for sending a “welcome political statement” that it “recognizes the importance of a competitive supply of low cost generic medicines in the struggle to make AIDS treatment sustainable.” He said that the involvement of the NIH’s leadership “provides a signal to other patent owners that the time is now to embrace a policy of open licensing of patents to the Medicines Patent Pool.” Heralding “the beginning of a campaign to obtain licenses voluntarily,” Love warned that if voluntary measures prove unsuccessful, the choice will be between issuing compulsory licenses and cutting off treatment to patients.

Talks are ongoing between pharmaceutical companies and the Medicines Patent Pool, though it is too soon to tell how they might conclude. “Tibotec and Johnson & Johnson have shown an interest in the patent pool” and are discussing potential cooperation on darunavir, said Ellen ‘t Hoen, who will become the Pool’s Executive Director in November.

The WHO indicated this week that any newly developed fixed-dose combinations arising from the Medicines Patent Pool would get an expedited quality assessment under a WHO/United Nations “prequalification programme” for drug procurements. This would make it easier for the new medicine to be quickly introduced by the funding agencies and national governments delivering treatment programmes.

According to the WHO and UNAIDS, at least 14.6 million people were in need of antiretroviral therapy in 2009. As of the end of that year, only

5.25 million people had access to antiretroviral therapy in low- and middle-income countries.

ICTSD reporting.

Russia Resolves Key Issues with US over WTO Accession

Russia and the United States have reached bilateral resolutions on several trade issues, removing another set of hurdles facing the entry to the WTO of the world’s largest economy that is not already a member of the global trade body.

On October 1, Russian Finance Minister Alexei Kudrin announced in Yalta that Russia had resolved its bilateral negotiations with the US over WTO accession, and would now move to conclude its multilateral negotiations in Geneva. US Trade Representative Ron Kirk welcomed “bilateral agreement on key issues related to the accession process,” adding that Moscow would now be free to devote more attention to remaining barriers at the multilateral level.

According to a statement from Kirk’s office, Washington and Moscow have reached agreements in principle on issues such as intellectual property rights, government procurement, and transparency in the decision-making process on trade-related issues. The bilaterally-agreed solutions reflect what the US would like to see in Russia’s eventual WTO commitments; the compromises will now be considered by other countries in the WTO Working Party on Russia’s accession.

The breakthrough in bilateral negotiations marks the latest development in the long and convoluted history of Russia’s WTO accession process. Russia applied to join the GATT in 1993, shortly after the break-up of the Soviet Union -- two years before the WTO even came into existence. For most countries, accession takes seven to eight years to negotiate. Russia has surpassed even China’s 15-year-long process.

Russia’s accession has never been a diplomatic certainty. Indeed, Russia’s desire to join the global trade body has at times seemed unclear. Just last

year, for example, Russia threw a wrench into its accession negotiations by announcing that Belarus and Kazakhstan, two former Soviet republics, would join the WTO together with it as a single negotiating bloc and customs union. However, Russia later backed down on this demand, consenting to negotiate separately so long as all three countries synchronised their concessions.

Since at least the 2008 financial crisis, Russia's former president and now prime Minister, Vladimir Putin, has displayed ambivalent feelings on the subject of WTO accession. Putin has stressed the importance of rebuilding Russia's industrial capacity, particularly in manufacturing sectors such as motors, and WTO strictures could interfere with experiments in industrial policy. Putin has said that Russia will not implement any of its WTO concessions until its membership takes effect, arguing that to do otherwise would put Russian industry at a disadvantage. Similarly, Putin has downplayed expectations that Russia would meet its January 2011 goal for admission.

Despite Putin's reluctance, other Russian leaders have expressed stronger support for WTO membership. For example, Kudrin, the finance minister who made last Friday's announcement, is seen by analysts as a more enthusiastic supporter.

Shortly after Kudrin's announcement, US President Barack Obama phoned Russian President Dmitry Medvedev and praised his government's progress towards WTO accession. The encouragement from Obama comes as part of the United States' initiative to "reset" bilateral relations; Washington is courting Russian cooperation on a myriad of issues, especially nuclear proliferation. The US president hopes Russia will ratify a new START treaty to reduce nuclear arms, and implement tougher sanctions on Iran for its nuclear programme.

Obama also praised Russia for the concessions it made on intellectual property rights. Indeed, newly-passed Russian legislation on intellectual property rights seems to be a major cause for the bilateral accession breakthrough. The new laws toughen the Russian intellectual property regimes for pharmaceutical drugs, CDs and DVDs to accord with US and EU demands. A Russian presidential decree also toughened enforcement

rules concerning pirated copyrighted material. Now, as in the US and the EU, the mere use of pirated copyright material can involve a fine for users. Before, the pirated material had to be intended for "public distribution" to incur a fine.

Still, it may still be some time before Russia's accession process finishes. WTO accession usually occurs in a phased process, where the country seeking accession first negotiates bilateral market access concessions with the other WTO member countries, and then seeks approval in the multilateral and consensus-based working group. For example, though the US concluded a market access agreement with Russia in 2006, other outstanding issues took years more to resolve. Other WTO members are still likely to make new demands on Russia in the multilateral phase. The European Union, for instance, is still seeking Russian concessions on timber export taxes, agricultural subsidies, and meat import quotas. The duties on timber exports are particularly contentious, as export taxes are not prohibited by the WTO (unlike export subsidies for non-agricultural products).

More seriously, Georgia has threatened to veto Russia's accession unless Russia ends its occupation of the Georgian borders of South Ossetia and Abkhazia, both areas that Georgia claims as sovereign territory. Georgia lost control of this territory in its brief war with Russia in 2008. Georgia also disputes Russian import bans on Georgian wine and mineral water. Russia claims the bans are in the interest of public health.

Even though Georgia could theoretically reject Russian accession unilaterally, given the consensus-based nature of most WTO decisions, it is unclear whether Tbilisi will follow through on this claim. Traditionally, no small member has ever attempted to unilaterally stop the accession of a much bigger economy. Georgian President Mikheil Saakashvili claims that his country is not alone in its opposition to Russian membership, though he avoided naming other countries. Nevertheless, if Georgia is in fact alone, some analysts speculate that other big economies in the WTO, such as the United States, might pressure it into assenting to Russia's accession.

Despite the recent accords, Russia may yet find obstacles to its WTO in Washington. If Russia were to join the WTO, the US Congress would have to modify Cold War-era legislation known as the Jackson-Vanik amendment, which denies Russia Permanent Normal Trade Relations (PNTR) status. Under this amendment, the US does not have to grant trade concessions to Russia which the Washington has already granted to other countries. The amendment is one of the few foreign policy instruments Congress can wield against Russia, independent of the policy taken by the US president. The November Congressional elections may produce a Congress that is less willing to follow the president's lead on Russia.

The next session of the WTO Working Party on Russia's accession is scheduled for 25 October. It will meet again on 6 December. The short amount of time remaining means that Russia is unlikely to finish its accession this year.

ICTSD reporting; "Russia, US conclude WTO talks: Russian government," AFP, 2 October 2010; "Russia and US reach agreement on WTO accession," RT, 3 October 2010; "Analysis: Putin's industry plans cloud Russian WTO drive," REUTERS, 22 September 2010; "Exclusive: Russian WTO bid picks up momentum," REUTERS, 21 September 2010; "USTR Kirk Welcomes Bilateral Resolution of Key WTO Issues With Russia," OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, October 2010; "Russia agrees to WTO agriculture package," FEEDSTUFFS, 29 September 2010; "Russia to cut farm subsidies to meet WTO requirements," XINHUA, 28 September 2010; "Russia ready to restrict itself only upon its admission to WTO: Putin," XINHUA, 30 September 2010; "Georgia not only block on Russia WTO entry-Saakashvili," REUTERS, 22 September 2010; "After 17 Years, Russia Resolves U.S. Objections for Entry Into W.T.O.," NEW YORK TIMES, 1 October 2010; "Russia and U.S. Reach WTO Agreement," WALL STREET JOURNAL, 1 October 2010; "Russia, US agreed on Russia joining WTO," VOICE OF RUSSIA, 2 October 2010; "Russia wages war against users of pirated materials," RT, 6 October 2010; "Georgia Position on Russia WTO Membership 'Unchanged'," CIVIL GEORGIA, 5 October 2010; "Russia to keep

some export duties when it joins WTO," RIA NOVOSTI, 5 October 2010; "Obama says Russia moving closer to joining WTO," REUTERS, 1 October 2010; Russia to present amendments on WTO accession by year end," RIA NOVOSTI, 30 September 2010.

OTHER NEWS

Trade Policy Review Praises US for Openness, Appeals for Leadership

A new WTO secretariat report praised the United States' trade and investment policies for remaining among the world's most open through the global economic downturn, but urged Washington to show greater leadership on multilateral liberalization efforts.

The report ([WT/TPR/S/235](#)), a review of US trade policies, institutions, and macroeconomic conditions, was discussed by WTO members last week as part of the US's Trade Policy Review.

While praising the US for its restraint through the recession, the report did call attention to Washington's use of trade remedies and safeguards against imports, notably from China.

Even though the number of anti-dumping and countervailing duty orders in place at the end of 2009 was higher than at the end of 2007, the figures remained well within historical levels. And not only did the US's average applied MFN tariff remain at 4.8 percent through the recession, the US abolished import quotas for some Chinese textiles and clothing at the end of December 2008.

The relative openness did little to prevent US trade volumes from falling during the recession, as demand dropped for both exports and imports, the report noted. Between the third quarter of 2008 and the second quarter of 2009, US goods imports fell by almost 3 percent, with consumer durables and capital goods particularly affected. Exports fell less slowly, enabling a narrowing of the US current account deficit by 2009 (this narrowing has in recent months reversed again, exacerbating trade tensions with China).

Where the report became more critical was on the subject of policies the US had introduced as part of different anti-recession initiatives. Some of those initiatives, the report noted, “included provisions that favoured domestic suppliers of goods and services.” Measures included sizeable support to the financial and automotive sectors. Domestic preferences also featured into the US’s early 2009 fiscal stimulus package. The \$787 billion spending spree came with strings attached in the shape of domestic preferences aimed at ensuring that only US-made iron, steel, and other manufactured goods could be used as construction materials in public projects funded with stimulus money.

Some new security and safety concerns also had trade implications, the report said, citing new information requirements for cargo and safety requirements for toys. On US farm subsidy policy, the report said that though government support for US agriculture remains low compared to levels in other rich countries, “the large size of the [US] agriculture sector means that the absolute amount of support is considerable, varies from one year to another depending on prices, and can affect world markets.”

As in all such reviews, the secretariat made some suggestions for future US trade policy. It called for the US to complement export promotion – President Barack Obama has pledged to double US exports in five years – with the reduction of its own tariff peaks and barriers to services trade and investment.

The report, which pointed to the slowdown in the number of bilateral trade agreements concluded by the US, said that pursuing liberalization on an MFN basis could help the US reduce future protectionist risks and reaffirm in a system in which it has always been a leader. (The Doha Round would result in MFN liberalisation; bilateral and regional deals would not.)

Other countries respond

Several delegations commented on the report. While they saluted the US’s prompt action in late 2008 and 2009 to ease the credit crunch and stimulate domestic demand, many criticised ‘Buy

American’ procurement requirements, and expressed the hope that they would be temporary.

Traditional bugbears about US trade policy were also the object of comments: tariff peaks in sectors of interest to developing countries such as footwear, leather, textiles, and clothing were highlighted, as were farm subsidies linked to price an production, and Washington’s use of the controversial ‘zeroing’ methodology when calculating anti-dumping duties. Also mentioned were visa restrictions for temporary overseas workers (‘Mode 4’ in WTO services parlance) and longstanding US restrictions requiring the maritime transport of goods between US ports to occur exclusively on US-flagged ships made in the United States, owned by Americans, and crewed by US citizens or permanent residents (the ‘Jones Act’ of 1920).

Some delegations wondered about the trade implications of more intensive border inspections of traded goods, as well as and increased information requirements, and urged the US to keep the trade transaction costs of legitimate security measures to a minimum.

Another subject of concern voiced by many delegations was the US’s failure to fully implement dispute rulings.

China made a hard-hitting statement critical of a wide range of US policies, from Washington’s stance in the Doha Round negotiations to the US’s massive monetary expansion and growing debt, particularly in the wake of the recession, and state bailouts of the automotive, steel, and financial sectors. Chinese Ambassador Sun Zhenyu wondered “about how the US would take practical and responsible measures to prevent the dollar glut and maintain the stability of the currency.”

“Many Members have taken note that, in the Doha Round negotiations, particularly over the past two years, the US seems to have stepped back from its due leadership role,” the Chinese ambassador said during the 29 September meeting of the Trade Policy Review Body. “The US highlights more on its own export interests than showing the political will to conclude the negotiations in order to maintain credibility and

relevance of the organization.”

Sun warned that the US’s requests for increased market access through bilateral and multilateral channels threatened to “unravel” what progress had been achieved in the Doha Round thus far. He urged Washington to “adopt a more pragmatic and realistic approach.”

In his response on 1 October, US Ambassador Michael Punke defended US monetary and fiscal policy as appropriate to the national and global circumstances. While saying that the WTO was not “the forum to discuss monetary policy,” he countered the Chinese ambassador’s comments by noting that “greater exchange rate flexibility in China would give China greater scope to determine its own monetary policy.”

Punke sought to justify the sectoral bailouts to the financial and automotive industries, arguing “it is important to consider the economic context in which they were taken and the likely consequences had we failed to act.” He stressed that the measures would be temporary.

On the government procurement provisions, the US ambassador stressed that the Obama administration had worked with Congress to ensure that policies were compliant with the US’s “international obligations.” The US is a party to a plurilateral WTO accord on government procurement, obliging it not to discriminate against other signatories for covered types of public procurement. “We would hope that this renewed interest in government procurement will be reflected in broader interest among members in participation in the Agreement on Government Procurement,” Punke added, in a not-so-subtle dig at China and other countries that chose never to sign on to the plurilateral deal.

Punke also defended the US’s position in the Doha Round negotiations, arguing that “all key players” needed to show “leadership” – in other words, that large developing countries need to offer up the greater market access that Washington is seeking.

The US delegation will respond to over a thousand questions asked by other members by the end of this month, said Turkish Ambassador

Bozkurt Aran, TPRB chair, in his closing remarks.

As per WTO rules, the US’s trade policies undergo a review every two years, as do those of the three other largest traders (the EU, Japan, and China). There is a longer lag between reviews of lesser traders.

ICTSD reporting.

IN BRIEF

US House Passes Currency Manipulation Bill Targeting China

In a 348-to-79 vote last Wednesday, the US House of Representatives voted to empower the Obama administration with new authority to impose tariffs on Chinese imports if Beijing does not revalue the yuan, its currency, against the dollar.

Specifically, the bill prescribes a formula by which the US Department of Commerce can label a country a “currency manipulator.” It would treat currency undervaluation as a subsidy, and enable the administration to impose countervailing duties on imports from the offending country.

Although the bill does not name China specifically, the House debate over the bill made clear that the world’s second-largest economy was the target.

Supporters of the bill charge that China keeps its currency artificially undervalued, in turn displacing American jobs.

Unusually, the bill found substantial support from both major US political parties. The bill, sponsored by Republican Tim Murphy and Democrat Tim Ryan, won over 99 Republican votes in addition to 249 from Democrats.

The vote may reflect a wider souring against trade in the United States. Last week, a NBC/Wall Street Journal poll showed that 53 percent of US residents say free trade hurts their country. An overwhelming majority of the people surveyed cited outsourcing to lower-wage countries as the primary cause of the US’s economic woes. In this

climate, it is clear that most lawmakers in the House would not have enhanced their political fortunes this November by opposing the currency bill.

Nevertheless, the bill is unlikely to become law soon, with potential duties even further in the future. The Senate leadership has already indicated it would not put the bill to a vote before the November Congressional elections, and possibly not until new members take their seats in January. The president would be able to veto the bill. Even if the bill eventually became law, US procedures to investigate and impose countervailing duties last several months.

Chinese Foreign Ministry spokeswoman Jiang Yu said that Beijing firmly opposes the legislation, reports Xinhua. She said that China urged US lawmakers to resist protectionism. The Chinese government has consistently argued that the US's yawning trade deficit with China is the result of changes in the international division of labour, and the US's own domestic policies – and not a consequence of the value of the yuan.

It is unclear whether the law, if it passed, would be deemed consistent with the US's obligations at the World Trade Organization.

ICTSD reporting; "Eye on China, House Votes for Greater Tariff Powers," NEW YORK TIMES, 29 September 2010; "Congress Likely to Urge China to Raise Its Currency," NEW YORK TIMES, 28 September 2010; "Pelosi Urges Action on China Currency as Panel Considers Measure," BLOOMBERG, 23 September 2010; "Reaction subdued as U.S. House passes currency manipulation bill," NATIONAL POST, 30 September 2010; "Americans Sour on Trade," WALL STREET JOURNAL, 4 October 2010; "China firmly opposes U.S. bill on foreign currency reform: Foreign Ministry," XINHUA, 30 September 2010; "Don't kidnap yuan exchange rate for political show," XINHUA, 30 September 2010.

EU and Malaysia Kick Off FTA Talks

The EU and Malaysia have launched negotiations on a comprehensive free trade agreement, covering tariffs, non-tariff barriers and other issues such as public procurement, competition, and labour and environmental standards.

Malaysian Prime Minister Najib Razak and European Commission President Jose Manuel Barroso formally opened the negotiations on Tuesday, at a gathering on the sidelines of this week's Asia-Europe Meeting in Brussels.

The EU started FTA talks with the entire Association of Southeast Asian Nations (Asean) bloc in 2007. However, those talks stagnated, and in late 2009, EU member states authorised the European Commission to seek deals with individual Asean members. Malaysia is the EU's second-largest trading partner in the ten-nation bloc, after Singapore.

EU Trade Commissioner Karel De Gucht welcomed the launch of the FTA negotiations, saying that he expected that an agreement would "provide Malaysia with quality investment from Europe and open up new market opportunities for Malaysian and European businesses."

The EU feels pressure to sign agreements in order to maintain competitive terms of access to markets in the fast-growing region. China and Asean recently signed an FTA.

Several major issues will need to be resolved over the course of the negotiations between the EU and Malaysia. These will include issues such as intellectual property rights, government procurement, and sustainable development. Malaysia is also worried that opening its market too fast to competitive European goods would hurt local small and medium-sized businesses.

Malaysia's affirmative action policies for ethnic Malay *bumiputras* may prove contentious in negotiations on investment. Another potentially sticky issue will be the EU's Renewable Energy Directive, which establishes sustainability criteria for biofuels. Malaysia is currently the world's second largest exporter of palm oil. While palm oil exports to the EU would still be allowed, shipments found to not meet the sustainability criteria would not receive the incentives and

subsidies necessary to make biofuels competitive with fossil fuels. (There is speculation that Malaysia could file a WTO suit against the EU over this issue.)

ICTSD reporting; “PM to kick off EU-Malaysia FTA talks at Asem,” THE MALAYSIAN INSIDER, 3 October 2010; “The EU-Malaysia FTA: an overdue assignment,” NEW EUROPE, 29 August 2010; “Malaysia Europe Ties Achieve Significant Milestone With Launch of Two Major Initiatives,” BERNAMA, 6 October 2010.

WTO IN BRIEF

US, EU Join Japan in Row over Canadian Green Energy Incentives

The US and EU have joined Japan in its fight against Canada at the WTO over provincial incentives to boost green energy. The three countries say that strict local content requirements in the province of Ontario’s Feed-in Tariff (FIT) programme unfairly pressure clean energy producers to buy hardware from local manufacturers, in contravention of WTO rules.

Japan initiated dispute settlement proceedings on 13 September, arguing that the local content requirements for green energy producers to qualify for a generous guaranteed purchase price violate WTO national treatment obligations, breach the Agreement on Trade-Related Investment Measures (TRIMs), and constitute a prohibited subsidy (see Bridges Weekly, [15 September 2010](#)).

The three countries are key players in the green energy industry, and the prospect of losing revenue and setting a precedent in an increasingly competitive industry likely influenced Brussels and Washington to fall in line with Tokyo. Several European and US-based green energy equipment manufacturers have already taken notice of the favourable conditions in Ontario, and said they plan to open local plants to take advantage of the buying binge expected to result from the FIT programme.

“The renewable energy generation sector is of key interest for the EU importers, exporters and investors,” the EU request for consultations reads. The communication also states that Brussels has a “systemic interest in the correct implementation” of GATT, TRIMs, and the Agreement on Subsidies and Countervailing Measures.

The US complaint is more direct in its concern for protecting its budding industry and trade relationship with its top trading partner. “The United States is a major innovator of renewable energy and related technologies and is a primary source of Canadian imports of products used in the production of renewable energy, including solar and wind energy,” the document reads.

But Canada insists that the province’s plan to drastically cut its reliance on coal-fired power generation – Ontario has pledged to phase out coal power completely by 2014 – is in line with its trade commitments.

“Our position is that Ontario’s Green Energy Act is consistent with Canada’s international trade obligations under the WTO,” Energy Minister Brad Duguid told The Globe and Mail newspaper. Peter Van Loan, Canada’s trade minister, echoed his support for that position, the newspaper said.

There has been speculation by some experts that Japan may have singled Ontario out after a US\$7 billion contract to build four manufacturing plants in exchange for major incentives was given to Korean competitor Samsung. The western province of British Columbia has introduced similar incentives to those seen in Ontario, but has thus far avoided any trade complaints.

ICTSD Reporting; “U.S., EU join fight over Ontario’s green energy plan,” THE GLOBE AND MAIL, 1 October 2010.

WTO Panel Backs China in Poultry Dispute with US

A WTO panel has handed victory to China in a dispute over access to the US poultry market. The

panel's ruling, made public on 30 September, determined that a clause in a 2009 US budget bill that effectively blocked Chinese access to the US poultry market contravened Washington's WTO obligations.

The clause was in a bill that provided funding to several federal agencies. It prohibited the US Department of Agriculture's food safety service from using funds allocated by the bill to create a rule that would allow the importation of poultry from China. This in effect prevented US food safety inspectors even from examining whether Chinese poultry inspection standards were on par with US requirements – a prerequisite for allowing imports.

The US and China had stopped trading poultry in 2004 due to fears of avian flu. However, China removed its ban after the scare ended, while the US did not. After President Barack Obama signed the budget bill into law in March 2009, China sought consultations with the US on the issue (see Bridges Weekly, [22 April 2009](#)). But the two sides were unable to resolve their differences, and a panel was created to adjudicate the case.

The US had argued that the measure was justified under the WTO's Agreement on Sanitary and Phytosanitary Measures (SPS), which allows countries to establish safety requirements based on scientific evidence. China countered that the measure was purely protectionist, pointing out that the EU, Japan, and Switzerland all allowed the imports of Chinese poultry, and that the US law did not allow for risk assessment.

The dispute panel found that the budgetary clause violated the SPS agreement since it was not based on a risk assessment. It also found that the law, which was specifically aimed at Chinese imports, violated the WTO's fundamental most-favoured nation principle (GATT Article I). As an SPS measure that breached the requirements of the SPS agreement, the panel found that the clause could not be justified under the general exceptions in GATT Article XX, which spells out the circumstances under which WTO members can deviate from standard obligations in order to protect "human, animal or plant life or health."

US-China trade relations have taken a hit recently, between tensions over the yuan-dollar exchange rate and a raft of trade spats. Poultry trade alone has been the source of multiple irritants: China is currently levying anti-dumping duties on several US poultry imports, a step seen in China as a sort of reparation for the harm to the Chinese poultry market caused by the US's import ban.

The panel did not make any recommendations as the disputed US restrictions have since expired.

ICTSD reporting; "WTO rules China win over US imports dispute," CHINA DAILY, 9 September 2010; "Chinese Tariffs on U.S. Chicken Meat and Feet," TRUTH ABOUT TRADE AND TECHNOLOGY, 30 September 2010.

CTE Looks at Carbon Footprinting

As retailers seek to appeal to climate-conscious consumers, there has been a proliferation of labels providing information about products' impact on the atmosphere.

Initial attempts were clumsy: focusing solely on whether produce had been air-freighted, or transported across a large distance, was unfair to exporters (especially those in developing countries) whose production processes were in fact highly carbon-efficient. These simplistic approaches have been giving way to the consideration of a good's entire carbon footprint.

With the carbon footprint of products a growing factor in shaping export opportunities, WTO members have taken an interest in how these footprints are assessed, and have started to discuss them in the global trade body's Committee on Trade and Environment. At a 29 September meeting of the committee, they discussed a variety of initiatives for measuring carbon footprints.

Members discussed their experiences with different schemes. Some made factual presentations about the way their schemes work. New Zealand, which has argued that the low carbon-intensity of its agricultural products more than offsets the long distances that separate them from export markets, presented its national greenhouse gas footprinting strategy, which covers

a product's entire supply chain. Chile, another country that is far away from the principal customers for its exports, presented different approaches to measure and reduce the carbon footprint of its wine, farm, and mining sectors.

The existence of many different methodologies for calculating carbon footprints has given rise to fears that they could be manipulated to serve as trade barriers. Several members called for greater transparency and more work towards harmonisation.

Eco-labels can be problematic for small producers in developing countries who may lack the technical or financial wherewithal to prove that they meet the label's requirements. Carbon footprints were first discussed in the CTE early this year, at the behest of several countries.

The meeting, which was in the CTE's 'regular', non-negotiating, mode, also saw a presentation on the UN climate negotiations by an official from the by a representative from the UN Framework Convention on Climate Change. The official said that trade was not likely to figure prominently at the climate summit in Cancun later this year, sources say. On the other hand, he suggested that agreements were possible on formalising mitigations targets and creating a financing fund for mitigation and adaptation projects.

The next CTE regular session is scheduled for 9 November.

ICTSD reporting.

CTD Approves Transparency Mechanism for Trade Preference Schemes

WTO members this week agreed in principle on establishing a transparency mechanism for trade preference schemes.

The mechanism was approved on 4 October by the Committee on Trade and Development. It will now be sent to the General Council, the WTO's top permanent decision-making body, for adoption.

Based on a proposal by Brazil, China, India and the US, the mechanism would require countries to submit detailed information about their preference schemes. Alongside this, the WTO secretariat would prepare a factual presentation about the preference scheme. The two would then be considered together in the CTD.

The transparency mechanism is similar to one regarding bilateral and regional trade agreements approved by WTO members in 2006 – one of few agreements to emerge thus far from the beleaguered Doha Round negotiations. When approving that mechanism in December 2006, the General Council asked the CTD to consider transparency in unilateral trade preference schemes.

The CTD meeting also saw Brazil, China, and India report on their own schemes to provide duty- and quota-free market access to exports from least-developed countries. Brazil said that its scheme would ultimately cover all tariff lines. China said that it has granted unrestricted access to products covering thousands of tariff lines from 33 LDCs since July. India said that some 18 LDCs now benefit from its own LDC market access programme.

The so-called 'enabling clause' enables WTO members to grant trade preferences to developing and least-developed countries – but not rich countries – without running afoul of core WTO rules on non-discrimination.

ICTSD reporting.

EVENTS & RESOURCES

Events

Coming up this week

7-8 October, Geneva, Switzerland. UNCTAD AD HOC EXPERT MEETING ON THE GREEN ECONOMY: TRADE AND SUSTAINABLE DEVELOPMENT IMPLICATIONS. This ad hoc meeting is being organized in close collaboration with the United Nations Department of Economic and Social Affairs and

the United Nations Environment Programme. It aims to explore ways in which the green economy, through trade-led growth, could become a pro-development income-generating instrument that will directly contribute to meeting the sustainable development imperative universally adopted in Rio de Janeiro in 1992. For more information, please refer to the UNCTAD website at <http://www.unctad.org/Templates/meeting.asp?intItemID=2068&lang=1&m=20265>

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 October: Committee on Market Access

18 October: Working Party on the Accession of Azerbaijan

18 + 22 October: Workshop – Sanitary and Phytosanitary Measures – Transparency

Other upcoming events

9-11 October, Washington D.C., United States of America. 2010 ANNUAL MEETING OF THE INTERNATIONAL MONETARY FUND AND THE WORLD BANK GROUP. The annual meeting each year of the World Bank Group and the International Monetary Fund (IMF) brings together central bankers, ministers of finance and development, and academics to discuss issues of global concern, including the world economic outlook, poverty eradication, economic development, and aid effectiveness. For more information, please refer to the IMF's website at <http://www.imf.org/external/am/2010/index.htm>

11-14 October, Geneva, Switzerland. TIMBER COMMITTEE OF THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE). The UNECE Timber Committee of the United Nations Economic Commission for Europe meets again this year at the Palais des Nations, Geneva, to review the latest international developments affecting the forest sector. For the first time, the Timber Committee Market Discussions and Policy Forum will be held jointly with the international Society of Wood Science and Technology. The theme of the week is "Innovative wood products are the future". The meetings will take place on 11-14 October 2010 (see detailed programme and related official documents). All sessions have simultaneous interpretation in English, French and Russian. For more information, please refer to the UNECE's website at <http://timber.unece.org/index.php?id=302>

11-15 October, Manila, Philippines. WATER: CRISIS AND CHOICES – ADB AND PARTNERS CONFERENCE 2010. This conference hosted by the Asian Development Bank (ADB) aims to increase awareness of water issues and especially solutions to water issues in Asia and the Pacific region. It will focus on building stronger networks and increasing regional cooperation. The goal of this conference is for countries to rethink and uplift their water priorities resulting in more demand for solutions. For more information about this conference, please visit the ADB's website at <http://www.adb.org/waterconference2010/about.asp>

12 October, Geneva, Switzerland. CORPORATE GOVERNANCE IN THE WAKE OF THE FINANCIAL CRISIS: LINKING GOVERNANCE, STRATEGY AND SUSTAINABILITY. This conference hosted by UNCTAD will look at what role the accounting profession plays in the rulemaking of corporate governance, and what links are shared – if any. The conference will address three main questions: What lessons have been learned from the financial crisis? What corporate governance reforms should be developed on a global level? Whom should the accounting profession partner with to achieve the previously stated goals? For more information, please visit UNCTAD's website at

<http://www.unctad.org/Templates/meeting.asp?intItemID=2068&lang=1&m=18836>

Resources

PARADIGM LOST: THE EURO IN CRISIS. By Uri Dadush (Carnegie Endowment for International Peace, 2 June 2010). This report was prepared to explore the causes and consequences of the Euro crisis, the biggest risk to global recovery at present according to the report. Several articles in this collection appear in print for the first time with others being prepared over the last three months. The report looks at what it claims are the three main risks to stability today: high and rising public debts, fragile banks, and a huge liquidity overhang. While Europe only has two of these risks present according to the report, it claims that the world economy has become more exposed to all three because of Europe. To access this report, please refer to the Carnegie Endowment's website at http://www.carnegieendowment.org/files/Paradigm_Lost2.pdf

GREEN PROTECTIONISM: THE NEW TOOL AGAINST FORESTRY IN DEVELOPING COUNTRIES. (World Growth, June 2010). This report looks at the ongoing lobbying campaign by both industry and environmental campaigners to restrict imports of forest products from developing countries. The article looks at how trade controls under modern international law make this harder, and how both groups – who are pursuing the issue for different reasons – are attempting to get around or change current law. The article looks especially at the EU and the US, with particular interest given to the EU's "Due Diligence" directive over the legality of imported timber products. To access this article, please refer to World Growth's website at http://www.worldgrowth.org/assets/files/WG_RED_Clarification_Green_Paper_8_10.pdf

THE IMPACT OF THE GLOBAL ECONOMIC CRISIS ON INDUSTRIAL DEVELOPMENT OF LEAST DEVELOPED COUNTRIES. By the South Centre. May 2010. This paper examines the impact of the external shocks from the global economic crisis on industrial development of Least Developed

Countries (LDCs). These countries are heavily exposed to external shocks because of their extensive trade with the rest of the world. Yet, they are marginalized in terms of their share in international trade and output. They suffer from structural weaknesses and chronic balance-of-payments and fiscal deficits. They are heavily dependent on commodity exports and external financing. The commodity boom of 2003-08 allowed many of them to accelerate growth of their GDP and manufacturing value-added (MVA), but most of these benefits have been lost during the subsequent "bust" due to declines in export earnings, workers' remittances and external sources of finance. They have seen significant declines in their GDP, MVA and investment in production capacity and sharp increases in unemployment due to closure of a number of factories. To access this report, please refer to http://www.southcentre.org/index.php?option=com_docman&task=doc_download&gid=1841&Itemid=313&lang=en

WHY DOESN'T MICROFINANCE WORK? THE DESTRUCTIVE RISE OF LOCAL NEOLIBERALISM. By Milford Bateman (Zed Books Ltd, June 2010). In this analysis, Milford Bateman claims that microfinance does not work. That, in fact, the case for it has largely been built on a desire to advance a particular free market ideology, on hype and egregious half-truths, and - latterly - on the Wall Street-style greed, deception and individual self-interest of those promoting and working in microfinance. Using case studies from across the globe he claims to expose why many of its most fundamental building blocks are largely myths. In doing so, he tries to demonstrate that microfinance actually constitutes a major barrier to sustainable economic and social development, and thus also to sustainable poverty reduction. To access this report, please refer to <http://zedbooks.co.uk/book.asp?bookdetail=4343>
