



# Bridges Weekly Trade News Digest

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## LEAD STORIES

### Trade Pacts, China Currency Legislation Could All be on the Table as US Congress Returns

Major movement could be on the horizon for Washington's trade agenda as Congress returns from its August recess, with one trade-related bill – the renewal of the lapsed Generalized System of Preferences – tentatively scheduled for a vote in the US House of Representatives later today. The renewal is expected to be the first step in a complicated legislative process to pass three major US FTAs, along with a worker aid programme, by early October.

The ratification of the US' FTAs with South Korea, Colombia, and Panama, which had appeared poised for swift passage earlier this summer, has faced repeated setbacks over the last few months, with Republicans sparring with both Democrats and the White House over the renewal of extensions to the controversial Trade Adjustment Assistance (TAA) programme.

The TAA programme provides help to workers displaced by foreign competition and is particularly unpopular among Republicans. President Barack Obama has insisted that the extensions to TAA, which expired earlier this year, must be passed if these FTAs are to move forward.

Many Republicans are against TAA on principle, citing concerns both over the additional spending it requires in a tough economic climate, along with their disagreement with the concept of singling out workers adversely affected by foreign competition from those affected by domestic competition. As Republicans hold a majority in the House, Obama wants assurances that the worker aid programme will indeed pass in that chamber.

Washington-based trade lawyer Scott Lincicome, speaking to Bridges, noted that “[Speaker of the House John] Boehner has promised a vote, and a clean bill, but he has not promised passage, and that makes things tricky.” While House Ways and Means Chairman Dave Camp, a Republican, has come out in support of TAA, not many other Republicans have publicly expressed support of the programme.

The trade deals, which the US International Trade Commission estimates would bring between US\$12 to 13 billion in export revenue, were originally signed in 2007.

During the August recess, the ongoing tensions between Obama and the Republican Party over the trade pacts played out widely in the media, with both sides blaming the other for the continued delay in passing the three free trade bills. Obama recently stated that “the only thing preventing us from passing these bills is the refusal by some in Congress to put country ahead of party.”

Senate Minority Leader Mitch McConnell, a Republican, yesterday published an op-ed in the Washington Post responding to White House suggestions that Republicans were causing the trade deal holdup. “These delays have put America at a major economic disadvantage, costing jobs and opportunities,” he said, highlighting the job issue that has dominated headlines in recent weeks. Obama is also set to announce a new jobs plan to a joint session of Congress tomorrow, 8 September.

“As the President has been holding out over the demands of labour union leaders, other countries are benefiting from free-trade deals of their own,” McConnell added, referring to the FTAs that Korea has with the EU and that Colombia has with Canada, both of which entered into force over the last two months.

### **Complicated legislative process suggested for ensuring passage of TAA, FTAs**

A possible compromise on the worker aid-FTA standoff had been alluded to shortly before the August recess, with details on the compromise

emerging within recent weeks (see Bridges Weekly, 28 July 2011).

House Majority Leader Eric Cantor, a Republican, announced last Friday that the House would consider the renewal of the US Generalized System of Preferences (GSP) – a programme that provides preferential duty-free access for up to 4800 products from 129 designated beneficiary countries and territories – today, 7 September. At the time of this writing, no changes had been announced to that schedule.

The likely legislative process for the FTAs and TAA involves a complicated series of votes in both houses of Congress. The current plan has been outlined as follows: if approved by the House this evening, the GSP would then be sent to the Senate, where senators will, in theory, add TAA to the bill and put a combined GSP-TAA package to a vote.

Doing so would allow TAA to be voted on by the Senate first, instead of the House; if TAA were introduced alone, the initial vote would have to be in the House, which is the rule for all revenue-related legislation. The combined package would return to the House for a vote, where – given the widespread support for the GSP – the bill would have a better chance of passage. The package would then go back to the Senate once more for a unanimous consent vote – a process known in Washington as “ping-ponging.” Once this is complete, the three FTAs would then go to a vote in both chambers.

While starting such a process indicates that there might be sufficient votes for all these bills to pass, Lincicome cautioned that there are “lots of balls in the air, and the idea that this is a slam dunk, done deal is a bit premature.” He added that, should TAA fail, the decision will come down to “whether the President values FTAs, or TAA, more.”

### **Controversy over Chinese currency could hold back FTAs, some fear**

Last month, US government data was released that showed that the US trade gap with China grew almost 12 percent during the first half of this year, according to Reuters. However, China’s

currency, the renminbi, did experience a sharp appreciation in early August, prompting speculation that Beijing might be taking a new approach to its currency. This change does not seem to have quelled US critics that blame China's strict control of its currency for the growing trade gap.

As a result, some Democrats – both in the House and in the Senate – are calling for a renewed push for legislation that would give the Obama administration the authority to impose tariffs on Chinese imports if Beijing does not raise the renminbi further against the dollar.

Senator Sherrod Brown, a Democrat from the US state of Ohio, is looking to attach his currency legislation, which is co-sponsored by Republican Olympia Snowe of Maine, to the streamlined version of the TAA bill that House Ways and Means and Senate Finance Committee Chairs agreed upon with the White House earlier this summer.

In a statement on 4 August, Brown insisted that passing a TAA extension was only one step in addressing the need for job creation, and that a move on the currency issue could “prevent job loss by ensuring a level playing field for American manufacturers facing a flood of cheap Chinese imports.”

Similar statements have also come from Democrats in the House: former House Speaker and current Minority Leader Nancy Pelosi recently told the United Steelworkers – a major industry lobbying group – that it was time for Congress to act on the Chinese currency issue. “If you want to bring those trade agreements to the floor of Congress you better be prepared first to let us bring our bill on China's manipulation of its currency, which is unfair of America's workers,” she affirmed.

Lincicome noted that, should Brown indeed offer the amendment, there is a “real concern” that such an amendment could hit the required 60 votes to be attached to the TAA bill (or combined GSP-TAA package, if that particular process goes forward). Should Brown push this legislation forward, “the likelihood of [the combined GSP-TAA bill with currency legislation attached]

passing both the House and the Senate are very low.”

While acknowledging that the growing US-China trade gap is a major motivator behind moves to pass currency-related legislation, he added that “the real key here is that the actual economics of all this is a secondary issue. The issue is politically powerful. It resonates widely with voters and is poll-tested.”

A similar attempt last year to pass a bill deeming China to be a “currency manipulator” passed easily in the House with bipartisan support, but failed to make much headway in the Senate. (See Bridges Weekly, 7 October 2010).

ICTSD reporting; “Camp Says Canada-Colombia Free Trade Puts U.S. at Disadvantage,” BLOOMBERG, 15 August 2011; “U.S. House to Consider Trade Preferences Renewal on Sept. 7,” BLOOMBERG, 2 September 2011; “Renminbi's rise fuels talk of China policy shift,” FINANCIAL TIMES, 11 August 2011; “China currency bill could delay passage of free trade deals,” THE HILL, 20 August 2011; “Distrust between White House, GOP leaves free trade bills in limbo,” THE HILL, 27 August 2011; “First trade bill could hit House floor on Wednesday,” THE HILL, 2 September 2011; “House looks to move trade agenda in first week back,” THE HILL, 1 September 2011; “White House pushes Congress to prioritize passing free trade deals,” THE HILL, 14 August 2011; “Wider trade gap could propel China currency bill,” REUTERS, 11 August 2011.

## OTHER NEWS

### Major Green Disputes Move Ahead at WTO

With an appeal by China in the *China-Raw Materials* (DS394, 395, 398) case and a new consultation request by the EU regarding the Canadian province of Ontario's controversial feed-in tariff programme for renewable energy (DS426), two high-stakes – and high-profile – environmental

disputes recently moved forward at the global trade body.

### **No surprises as China appeals WTO raw materials decision**

In a widely anticipated move, China has appealed a July WTO dispute settlement panel decision that found Beijing's export control measures on raw materials essential for producing electronics, medicine, and steel to be in violation of WTO law.

In the landmark dispute (DS394, 395, 398), the US, EU, and Mexico – all highly dependent on these exports – had argued that the quota system imposed by China had reduced global supply and could, in the future, result in considerably higher world market prices.

The panel found that China's export restriction regime violated both the prohibition of all quantitative restrictions, as mandated by the WTO's General Agreement on Tariffs and Trade (GATT), along with China's additional vow to eliminate all export tariffs.

China continues to argue with the EU, US, Japan, and many more countries over export quotas concerning rare earths – another group of raw materials that are essential for the production of high-tech electronics; these materials are extracted almost exclusively in China. The July ruling was quickly interpreted as not only rejecting the raw material restrictions that were the subject of the dispute, but also as a rejection of Beijing's policy regarding rare earths. An appeal by China, which had lost almost all arguments subject to the dispute, therefore came as no surprise.

While many observers see only a moderate possibility of a successful appeal, Chinese industry representatives welcomed the move.

"It could take as long as two years for the WTO to review the appeals and make a final decision," Sang Baichuan of Beijing's University of International Business and Economics told China Daily. "That period leaves enough time for China's industries and companies to make industrial adjustments and restructuring."

China perceives the ruling as a threat not only because of these great economic ramifications, but also due to certain specific panel findings on China's environmental objectives that had allegedly informed the policy. These findings could have far reaching consequences if confirmed by the Appellate Body; the decision to appeal the report thus seems to be informed by more than just economic considerations.

### **Landmark ruling with systemic implications**

Beijing had tried to justify its export control regime on conservation grounds, arguing that the limitation of exports resulted in a reduction of domestic extraction that helped conserve these finite resources. The policy reform had become necessary as some of the resources faced depletion within four to fifteen years time, Beijing said during the proceedings.

Furthermore, China noted that for some resources this scarcity would inevitably lead to a critical shortage of materials that are essential for Chinese industry.

"The restrictions are thus also justified as measures 'temporarily applied to prevent or relieve critical shortages of essential products' as provided for by WTO law," China asserted.

The panel dismissed these arguments on several grounds. First, it noted that there was "no clear link between the way the duty and the quota are set and any conservation objective." In fact, the panel disagreed that export restrictions could ever support conservation efforts, as greater domestic supply could increase domestic demand over time and stimulate increased extraction as a result.

The panellists also found that the situation did not concern a "critical shortage" nor "temporarily applied measures." In the words of the panel, a "critical shortage" by nature has to be a "temporary shortage" that could be relieved or prevented through the application of measures on a "temporary" basis. It was the first time that a WTO dispute settlement panel was ever confronted with this exception.

**Article XX not applicable: Panel**

Finally, China noted that the extraction of certain materials was harmful for the environment and health.

“The control of the export of high-energy-consumption, high pollution and resource-based products was utterly necessary for the [...] reduction of environmental pollution, freeing the economic development from the limitation by resource and alleviating the tense relations among coal, electricity, and oil,” China asserted.

While WTO law with Article XX GATT provides for sensitive exceptions to allow measures necessary to protect the environment and public health, the panel nonetheless disagreed with Beijing’s position once more.

“Neither the measures implementing the export restrictions, nor the contemporaneous laws and regulations, convey in their texts that the export restrictions are contributing to, or form part of a comprehensive programme for the fulfilment of the stated environmental objective,” the panellists said.

More striking in this regard, however, was the panel’s finding that for those WTO law violations that rested on China’s accession protocol rather than on one of the WTO agreements, Article XX GATT was not applicable. This decision, if upheld by the Appellate Body, would effectively place many of China’s WTO obligations outside the scope of GATT’s general exceptions, including those for public health, the environment, or resource conservation.

If upheld by the Appellate Body, this ruling could have major ramifications not only for China, but potentially for the WTO system at large. It would effectively place many accession protocols outside the scope of the GATT general exceptions, thus weakening the protection of legitimate public policy concerns. “Against this background, the Appellate Body would be well advised to overrule this finding,” various trade experts suggested during a recent expert meeting that was part of the Dialogue Series “Talking Disputes,” held in Geneva in July. This event was organised by the International Centre for Trade and Sustainable

Development (the publisher of Bridges) and WTI Advisors.

China has appealed, among other things, the panel’s findings regarding the applicability of Article XX to its accession protocol, the panel’s interpretation of the term “critical shortage,” and their rejection of China’s natural resource conservation justification. Officially, an appeal may take up to three months to reach a conclusion; in practice, however, rulings can take up to twice that long before they are issued. Experts say the ruling will be available for the public in early 2012.

**EU joins Japan in rejecting Ontario renewable energy plan**

The Canadian province of Ontario’s feed-in tariff (FIT) programme for renewable energy, which is already the subject of a trade row with Japan, came under fire again last month after the EU officially requested its own WTO consultations on the matter. The EU’s request, issued on 11 August, comes on the heels of the global trade body establishing a dispute panel to hear Japan’s complaints against Canada regarding the same programme (see Bridges Weekly, 20 July 2011).

In their August announcement, the EU noted that, while they welcomed the commitment of Ontario to encourage the use of renewable energy, the Canadian province’s current programme is not in line with Ottawa’s WTO obligations.

The EU alleges that this “Buy Ontario” clause violates the national treatment provisions of three WTO accords: the General Agreement on Tariffs and Trade (GATT), the Agreement on Trade-Related Investment Measures (TRIMS), and is a “prohibited” subsidy under the Subsidies and Countervailing Measures (SCM) Agreement.

The FIT mechanism acts as a purchasing guarantee for producers of renewable energy by ensuring access to power grids, providing long-term contracts, and guaranteeing electricity purchase prices. However, the controversy over the Ontario FIT stems not from the overall programme itself, but from a local contract provision that requires energy producers to source

up to 60 percent of their inputs from within the province.

The EU, Japan, and the US are all major players in the green energy industry, which likely sparked their shared interest in the original case. In the EU's recent request for its own consultations, Brussels emphasised its role as a "significant" exporter to Canada of wind power and photovoltaic power generation equipment. The EU noted that exports ranged from €300-€600 million from 2007-2009, adding that "these figures could be higher should the local content requirements be removed from the legislation in question."

EU member states maintain their own FIT programmes, including, for instance, a general renewable electricity purchase obligation for electricity network operators in Germany and a UK FIT programme supporting small-scale generation and on-site supply. These programmes, however, have refrained from introducing local content provisions, as a recent ICTSD [study](#) outlines. Also, Germany's FIT programme is the only measure that was subject to international court proceedings before Ontario found itself at the WTO. In 2001 the European Court of Justice ruled that the German FIT programme was legal.

ICTSD reporting; "Europe Lodges WTO Complaint Against Canada Over Renewable Energy," BLOOMBERG, 11 August 2011; "EU targets Ontario's green energy subsidies in WTO complaint," THE GLOBE AND MAIL, 11 August 2011; "EU challenges Canadian green power rules at WTO," REUTERS, 11 August 2011; "Ontario's green energy policies break trade rules, EU says," TORONTO STAR, 11 August 2011.

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### **Australia Carbon Tax Plan Receives Strong EU Backing, Despite Domestic Unpopularity**

Australia's controversial carbon tax plan has received a public pledge of support from Europe, though the measure continues to face substantial opposition at home. In a 5 September bilateral meeting between European Commission

President José Manuel Barroso and Australian Prime Minister Julia Gillard, the two also announced the start of talks for the eventual linkage of their carbon trading schemes.

Gillard, who is struggling in the Australian opinion polls, unveiled a plan on 10 July to attack Australia's most polluting producers that has elicited a strong reaction from the Australian public and industry groups (see Bridges Weekly, [13 July 2011](#)). The plan, known as the Clean Energy Agreement, was put together by the Multi-Party Climate Change Committee, a group comprised of leaders from the governing Labor Party, the Green Party, and two Independents. The goal of the plan is to reduce carbon pollution by five percent below 2000 levels by 2020 and by 80 percent below 2000 levels by 2050.

Once implemented, the Clean Energy Agreement could be the largest emissions trading scheme (ETS) in the world, outside of the European Union Emissions Trading Scheme. The EU scheme aims to reduce emissions by 21 percent below 2005 levels by 2020.

Speaking at a [joint press conference](#) in Canberra on Monday, Barroso praised Gillard's initiative. "Australia's decision to put a price on carbon emissions is, in our view, an important step, both environmentally and economically, because it is in our European experience the most cost-efficient way to reduce emissions and also a great, green business opportunity," he noted.

Barroso and Gillard intend to establish Senior Officials Talks to exchange their countries' experiences on design and implementation of these schemes, along with addressing co-operation on economy-to-economy measures, including the linkage of the two ETSs, which would be the largest such programmes in the world.

Gillard also received backing from European Commissioner for Climate Action Connie Hedegaard, who visited Australia over the past week, meeting with her Australian counterpart Greg Combet, the country's Climate Minister. In a statement released on 3 September, Hedegaard pointed to Europe as an example of how emissions trading schemes can work: "Europe has adopted a mix of climate and energy measures

similar to those in Australia's plan, and they are proving their worth."

The EU has had an emissions trading scheme (ETS) in place since 2005; if the Australia carbon tax does become law later this year, it would come into force from 1 July 2012 onward. The carbon tax would then be replaced by an emissions trading scheme in 2015.

The carbon tax would target five hundred of Australia's most polluting producers, which would be required to purchase a permit for every metric tonne of carbon pollution that they emit. Permits would be priced at A\$23 (US\$24.41 at today's exchange rate) per tonne for the first year, increasing to A\$24.14 (US\$25.62) the following year and A\$25.40 (US\$26.96) in the final year before switching to the ETS, according to the most recent version of the agreement.

### **Coal industry, retailers, public continue to express their frustration**

Australia's coal industry – which is the country's largest export industry – is expected to be one of the hardest affected industries as a result of the Clean Energy Agreement. The industry, which earned A\$46 billion (US\$48.8 billion) in export earnings last year, is also responsible for 37 percent of the nation's emissions. Australia is also the world's largest coal exporter.

While the Gillard government has offered a A\$1.3 billion (US\$1.38 billion) compensation package to help the most polluting coal mines adapt to the new policies, among other types of support, these assurances have not mitigated the coal industry's fears.

In a [statement](#) on 22 August, the Australian Coal Association reprimanded the Gillard government for what the industry group claims was poor treatment during the development of the plan. The association's Executive Director, Ralph Hillman, insisted that the government process of reaching the agreement lacked "due consideration of the very real damage the carbon tax will do to Australia's trade exposed industries."

Hillman also cautioned that this carbon tax plan would put the Australian coal industry at a

disadvantage relative to its foreign competitors: "It should not be forgotten that no other country in the world taxes coal mining in this way and our competitors will be ready and waiting to move into our markets." He added that the measure would cause the loss of Australian jobs, without having the intended impact on global greenhouse emissions.

Coal is not the only industry group speaking out against the measure. Australian National Retailers Association (ANRA) CEO Margy Osmond told Sydney reporters on Sunday that "we really think the Productivity Commission needs to look at the impact the carbon tax is having on consumers and potentially will have on the retailer as well." She added that the main issue was the potential rise in cost along the supply chain, which would cause Australian retailers to face "overseas retailers marketing into Australia who will not be paying the GST [Goods and Services Tax] or carrying costs related to the carbon price."

The public outcry over the plan recently took the form of organised protests: on 16 August, thousands of people gathered in the Australian capital of Canberra, expressing their anger over Gillard's turnaround from her election promise a year earlier not to introduce a carbon tax.

### **Despite protests, government officials say plan likely to pass in Parliament**

The carbon tax bill will be introduced in the Australian Parliament on Tuesday 13 September, according to Anthony Albanese, Labor Party member and the Leader of the House of Representatives, which is the lower house of the bicameral Australian Parliament. However, a vote in the House will likely be put off until October, according to The West Australian newspaper, in order that Labor ministers away on official duties will be present to contribute their votes. Earlier statements had suggested that a vote would be held this month.

Notwithstanding the mixed reaction over the proposed plan, Labor Party officials have expressed optimism over the plan's swift passage in Parliament. Australian Treasurer Wayne Swan told Sky News last week that the agreement "will go to the parliament, it will be debated, and it will



pass... We've had a particularly difficult political debate surrounding all that but the record speaks for itself."

### More information

The full text of the Multi-Party Climate Change Committee Clean Energy Agreement, also just known as the Clean Energy Agreement, can be read [here](#).

A\$1 = US\$1.05746

ICTSD reporting; "Euro chief backs Gillard over carbon price," ABC SYDNEY, 5 September 2011; "Carbon tax could hurt struggling retailers," THE AUSTRALIAN, 4 September 2011; "Treasurer Wayne Swan says carbon tax will pass parliament despite difficult debate," THE AUSTRALIAN, 28 August 2011; "WA accuses PM of lying about carbon tax," THE AUSTRALIAN, 21 August 2011; "Australia carbon tax protest targets Julia Gillard," BBC, 16 August 2011; "RPT-Coal miners say Australia carbon tax treatment unfair," REUTERS, 10 July 2011; "Australia, Europe to start ETS link talks," SYDNEY MORNING HERALD, 5 September 2011; "Australian Cabinet to vote on carbon tax," UPI, 17 August 2011; "Carbon tax bill set for parliament," THE WEST AUSTRALIAN, 6 September 2011.

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## WTO Disputes Roundup: Rulings Issued on Spirits, Tobacco

Public health concerns over cigarettes and protectionism fears over spirits tariffs featured in some of the WTO Dispute Settlement Body's (DSB) work over the August recess, with the DSB releasing two new panel reports over the last few weeks. These reports concerned a Philippine excise tax for foreign spirits (DS396,403) and a US ban of clove cigarettes (DS406), with the Philippines and the US being at the losing end, respectively.

### Panel rejects Philippine spirit taxes – Manila likely to appeal

A [panel report](#) circulated in mid-August has sided with the EU and US in a dispute over Filipino

excise taxes on foreign distilled spirits (DS396,403). The archipelago applies different tax rates for spirits distilled from domestic resources such as sugar, palm, and coconut, along with spirits based on other feedstock, including wheat and potato. In reality, this measure results in considerably higher taxes for foreign products; as a result, the panel found that these taxes violated the WTO's non-discrimination principle.

Global brands, including Jack Daniels and Jim Beam, have long argued that these excise taxes prevent them from making full use of the market potential in the island-state (see Bridges Weekly, [31 March 2010](#)). The Filipino spirit market is controlled by three large local distilleries in a "rather oligopolistic" manner, the EU had complained during the WTO hearings.

"From 2004 to 2007, EU exports of spirits to the Philippines had more than halved (from around €37 million to €18 million) due to the Excise Tax Regime," the EU reported in a [press release](#) on the ruling.

EU Trade Spokesman John Clancy thus welcomed the report as a "confirmation of what is a clear case of tax discrimination which has been and still is an important obstacle to imports into the Philippines."

US Trade Representative Ron Kirk likewise appreciated the ruling and "urge[d] the Philippine government to comply swiftly with the Panel's recommendations and rulings, and level the playing field for our exports immediately," according to a [statement](#).

Signs, however, seem to point to a second round in this trade battle, with Filipino news sources reporting that the government is ready to appeal the decision. Trade and Industry Secretary George Domingo recently announced that Manila is currently reviewing the panel report and consulting with the industry to prepare a strong appeal case, according to reports in the Philippine Star.

The Philippines had maintained that the tax system was nonetheless fair, as different products required different treatment. According to Manila, the products could not be considered 'like'; WTO



law mandates non-discriminatory treatment only for like products.

Sugar and palm are frequently used to produce non-traditional spirits such as brandy, whiskey, tequila, and gin. As these drinks are advertised accordingly, the EU and US had argued that foreign spirits with the same name, even if produced from different feed-stock, were in direct competition with their local counterparts – making them ‘like’ in the eyes of WTO law.

The panel agreed with this reasoning and dismissed the Filipino excise taxes as discriminatory. The Philippines have 60 days to appeal the ruling. No formal appeal has been submitted at this stage.

### **US ban of flavoured cigarettes not strict enough to be justified on public health grounds**

Discriminatory treatment was also confirmed by a panel review of a US ban of clove flavoured cigarettes after Indonesia had initiated proceedings on the matter (DS406). While the panel acknowledged that the tobacco ban could generally be justified on public health grounds, it dismissed the current legislation as illegal for targeting primarily foreign products. Indonesia welcomed the decision and called for prompt compliance from the US.

In 2009 America banned cigarettes with fruit, confectionery, or clove flavours, arguing that these encouraged young people to smoke. While flavours such as toffee and strawberry were banned, menthol flavoured cigarettes remained on the market.

Indonesia – accounting for nearly 100 percent of the US clove cigarette market – argued that this partial ban discriminated against its products *vis a vis* like-products as “virtually all menthol cigarettes sold in the US are produced domestically.” All other flavoured cigarettes are also produced abroad.

Menthol cigarettes account for roughly 40 percent of tobacco consumption of American minors and more than a quarter of all cigarette consumption in the US overall. Some domestic firms, including

Lorillard, generate up to 90 percent of their revenue from menthol cigarettes.

The credit rating agency Moody’s projected earlier this year that the overall cigarette sales volumes in the US would fall by eight to ten per cent if the ban was extended to menthol cigarettes, according to March reports by the Financial Times.

During the course of the litigation, the US argued that menthol cigarettes had not been included in the 2009 Family Smoking Prevention and Tobacco Control Act, due to insufficient information on the effects of a prohibition. In particular, the US expressed fear that a black market might develop in response to such a ban that would include the smuggling of menthol cigarettes; this sort of black market could eventually be more harmful than keeping menthol flavoured tobacco products in sale, it argued.

Indeed, discussions in the US continue on whether to ban menthol cigarettes, with various agencies investigating the issue. In March, the US Food and Drug Administration (FDA) released a report arguing in favour of a ban. Public consultations continue with the tobacco industry, which insists that flavoured cigarettes are no more dangerous than conventional tobacco.

The WTO panel, however, noted that this fear of a black market that the US alluded to was not a legitimate reason to exclude menthol flavoured cigarettes from the ban, which meant that the US was indeed discriminating against foreign like-products that are in direct competition – namely clove cigarettes from Indonesia.

“These reasons which the United States has presented as constituting a legitimate objective by themselves, appear to us as relating in one way or another to the costs that might be incurred by the United States were it to ban menthol cigarettes”.

”Indeed, the United States [continues to allow the sale of] menthol cigarettes not because it is not a type of cigarette with a characterizing flavour that appeals to youth, but rather because of the costs that might be incurred as a result of such a ban,” the panel concluded.

If the US stands true to its 2009 Family Smoking Prevention Act, it will have to widen the ban to also include menthol flavoured cigarettes. The ruling could thus turn out to be a welcome argument in favour of the stricter legislation proposed by FDA.

The US has not yet responded to the ruling. It could also decide to appeal the ruling (within 60 days after panel report release) which would result in an Appellate Body decision, presumably in the first quarter of 2012.

### Other dispute developments

In a 2 September meeting, the Dispute Settlement Body also adopted the panel report in US-Shrimp from Vietnam (DS404), which had once again ruled the US practice of zeroing in anti-dumping impositions (see Bridges Weekly, 20 July 2011). The Appellate Body furthermore released a final judgment on US safeguard measures against Chinese tyre imports (DS399), agreeing with a previous panel that had found these measures lawful. Meanwhile, tensions between Australia and New Zealand over Kiwi apple imports into Australia continued, as Tasmania vowed to maintain a ninety-year old import ban that had been rejected by the WTO a year ago (DS367).

ICTSD reporting; “Tasmanian attempt to ban New Zealand apples,” AFN FOOD FOR THOUGHT, 19 August 2011; “US panel backs menthol cigarette ban,” FINANCIAL TIMES, 18 March 2011; “WTO Torpedoes US Ban on Importation of Kretek,” JAKARTA GLOBE, 4 September 2011; “Phl to appeal WTO ruling on excise tax on imported liquors,” PHILIPPINE STAR, 17 August 2011.

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## Farm Subsidies: Ballooning US Food Aid Pushes Total Support to New High

Domestic food aid payments in the US have doubled between 2002 and 2009, new figures show – pushing total farm subsidy levels to a record high of US\$114 billion. The data, from Washington's official report to the WTO on 2009 spending levels, classes nine-tenths of recent US

farm support as green box payments.

Spending on domestic food aid has grown in recent years, analysts say, as the economic downturn has pushed thousands more US citizens into poverty. However, wrangling over budget cuts in Washington has raised questions over the future of these programs – which are amongst the least controversial of US domestic support payments (see Bridges Weekly, 8 June 2011).

Green box payments are exempt from the global trade body's spending limits, on the basis that they cause no more than minimal distortion of trade or production. At US\$78 billion, domestic food aid accounts for three-quarters of all US green box spending, the figures indicate, with food stamps provided under the Supplemental Nutrition Assistance Program accounting for 70 percent of these payments.

Other programmes for vulnerable groups, such as the US\$15 billion Child Nutrition Program, fall in the same category. The latest figures also indicate that the government spent around US\$6 billion on income support payments that are 'decoupled' from production, and around US\$4 billion on environmental programmes.

Meanwhile, trade-distorting farm subsidies – classed in the WTO's amber box – fell to an all-time low of just over US\$4 billion in 2009, the data shows.

However, the US also reported another US\$7 billion of trade-distorting support under the global trade body's de minimis rules: these payments are exempt from counting towards WTO spending limits because they amount to less than five percent of the value of farm output.

Trade-distorting payments were concentrated on just a few products, according to the US government, with dairy (US\$3 billion) and sugar (US\$1.2 billion) benefiting the most.

The US continued not to report any spending on production-limiting blue box programmes, which, although trade-distorting, are exempt from an upper ceiling under current WTO rules. Total trade-distorting support in 2009 was therefore around US\$11.5 billion, the report shows.

This figure is significantly lower than the US\$14.5 billion ceiling that US officials have proposed in the Doha Round of trade talks as a cap on 'overall trade-distorting support,' or OTDS – the sum of amber, blue and de minimis domestic support. However, because some US subsidies increase when prices fall, and decrease again when they rise, support levels can fluctuate from year to year. US OTDS was as high as US\$19 billion in 2005.

Trade sources also noted that new rules proposed under the Doha round of trade talks would limit the amount of support that can be concentrated on any given product, and halve the current ceiling for 'de minimis' payments.

### **Japan: trade-distorting support nudges upwards**

The Japanese government also reported that it had increased trade-distorting support to agriculture by one-third from 2007 to 2009, according to a separate subsidy notification to the WTO.

Japan's combined amber, blue and 'de minimis' support grew from 564 billion yen in 2007 to 760 billion yen in 2009, the new figures show. A new crop insurance stabilisation scheme contributed to a sharp increase in the level of 'de minimis' support reported by the Japanese government.

The same trend was reflected in the country's total support levels, which crept up to 2608 billion yen in 2009 – after having dropped to an all-time low of 2446 billion yen in 2007.

Meanwhile, blue box spending has dwindled to 22 billion yen, after reaching a peak of 93 billion yen a decade ago.

Product specific payments remain concentrated on half a dozen products, of which beef and pork are most important.

However, as in the US, green box spending continued to dominate the country's domestic support, accounting for 1848 billion yen, or around 70 percent of total farm subsidies.

At 1216 billion yen, the 'general services' category of green box support remains the most important, representing two-thirds of all green box support.

While general services payments cover everything from research to controlling pests and diseases, half of all such payments are devoted to infrastructural services for agricultural and rural areas – such as the construction of irrigation and drainage facilities, rural roads, and land consolidation.

Geneva-based trade delegates told Bridges that the new figures on US and Japanese subsidies are likely to be discussed in upcoming meetings of the WTO Committee on Agriculture, along with a recent notification from India (see Bridges Weekly, [15 June 2011](#)).

While welcoming the move away from the most trade-distorting forms of domestic support, some WTO members have questioned whether the subsidies now notified as 'green box' all conform to the requirement of not causing more than minimal trade distortion.

### **Delays**

WTO members have frequently been criticised for the lateness with which they submit official notifications of support to the global trade body. The EU – which provides the most subsidies out of all WTO members – submitted its notification for marketing year 2007/08 in January of this year (see Bridges Weekly, [26 January 2011](#)).

However, the stalemate in the troubled Doha round of global trade talks could now allow members to devote more attention to reporting and discussing farm support levels.

### **More information**

The notifications of the US (G/AG/N/USA/80) and Japan (G/AG/N/JPN/167) can be seen [here](#).

Note: in 2007, 1 US\$ = 117.79 yen, on average. In 2009, 1 US\$ = 93.57 yen, on average.

ICTSD reporting; "Food Stamps: The Struggle to Eat," THE ECONOMIST, 14 July 2011.

## IN BRIEF

### Contentious US Budget Debate Spurs Cotton Lobby to Act

The US fiscal deficit is pushing legislators to consider cuts in areas previously held sacred, including agriculture subsidies. In recognition of changes in the [amount of money available](#) to agriculture, the National Cotton Council - the US lobbying group for the cotton industry - recently [conceded](#) that direct payments and counter cyclical payments may be cut and is now seeking a programme of revenue based crop insurance.

The summer debt limit debate that riled Washington ended with a compromise that a "Super Committee" of six US congressional Democrats and six Republicans would agree to budget cuts or face automatic cuts across the board, with some exceptions. In agricultural spending, food stamps and conservation are [expected](#) to exempted from automatic cuts. The congressional committee is set to have its first meeting tomorrow, 8 September.

The National Cotton Council statement comes at time of major debate within the farm policy community. Speaking to Bridges, Bruce Babcock, a professor at Iowa State University, observed that "direct payments are impossible to defend when we're cutting off aid for health care, education." Babcock expects a 30 percent reduction in direct payments, or a \$1.5 billion cut.

Some US farmer organisations, such as the Iowa Farm Bureau, have [already](#) endorsed a move away from direct payments towards the more politically palatable crop insurance. Cotton is not a major crop in Iowa and the state's farm bureau position may reflect this.

Direct payments to cotton average US\$53 an acre, versus US\$22 an acre for corn, a popular crop in Iowa; the Cotton Council's position is therefore a notable change. According to Babcock and others, support for rice, the [largest](#) recipient of direct payments per acre, may also need to consider a move towards crop insurance.

### Proposal language unclear, experts say

The National Cotton Council's statement makes reference to "revenue based crop insurance" or a "revenue based crop insurance safety net," language that has baffled some experts, considering that the good already benefits from crop insurance. Representatives of the Council had not responded to requests for clarification at press time.

Dan Sumner, an agricultural economist at the University of California-Davis, told Bridges that the proposal was "free revenue insurance" and called the resulting amalgam an "even more distorting programme."

In an interview with [Agritalk](#), a US radio show, Mark Lange, CEO of the National Cotton Council, explained that the lobby was not looking to change existing crop insurance but to create a programme that would "ride on top" of existing support. According to Lange, the programme would make up for losses at the county rather than individual level, providing a safety net that the group was able to "[generate for cotton from the direct and counter cyclical programs](#)." He noted that area or county wide programmes were cheaper than ones that target individual farmers.

Sumner explained that cotton growers were unwilling to "to pay any significant share of the cost of insurance." Babcock surmised that the group wanted to receive support under Title I of the US Farm Bill, programmes where farmers contribute little money of their own. Lange's description included the possibility that a producer could choose not to "buy" the programme.

Pressing for compliance with the framework agreement reached between the US and Brazil in the *US-Upland Cotton* case, in which the global trade body deemed that various US cotton subsidy programmes were either prohibited or actionable, the Council said the industry "must work with Congress and the Administration." Experts and the Council are expecting reductions in direct and counter cyclical payments. This may leave the Marketing Loan Program as the main area of contention for dispute compliance; Sumner suggested that the programme might just "go away."

The *US-Upland Cotton case* was a long-running trade dispute that was recently settled between the US and Brazil. The US agreed to annual payments of \$147.3 million, among other benefits, to the newly-established Brazilian Cotton Institute - a technical fund for Brazilian farmers - until US policy could be brought into compliance with the WTO's findings.

In defiance of the agreement between the two countries, the US House of Representatives passed a [bill](#) in June that prevented the US Department of Agriculture from making such payments (see Bridges Weekly, [22 June 2011](#)). The bill would need to be passed by the both chambers of Congress and signed by the President to become law, an unlikely possibility according to experts such as Sumner.

A Geneva trade official well-versed in the issue noted the National Cotton Council was well "attuned to the political scenario" in Washington and observed that the manner in which the reforms affected specific commodities and the role that the US played in a given market mattered more than dollar figure changes. He cautioned that changes could "generate serious prejudice," the threshold set for violation of the dispute settlement, if support exceeded "certain levels."

Farm policy reform, or least a debate on the subject, seems to be underway in Washington, according experts that spoke to Bridges. Still, some believe that Congress will be unable to enact broad changes for fiscal year 2012, mainly due to time constraints, and will instead continue the policies of the previous fiscal year.

ICTSD reporting.

## EVENTS & RESOURCES

### Events

8-9 September, Mexico City, Mexico. LEGAL PREPAREDNESS FOR CLIMATE CHANGE: PROMOTING CARBON MARKETS AND SUSTAINABLE ADAPTATION IN MEXICO AND LATIN AMERICA. This legal symposium

will take place at the Instituto Tecnológico Autónomo de México (ITAM) in Mexico City, and seeks to encourage dialogue and reflection among key decision makers, representatives of states, experts, members of the business community, academics, and students. The event aims to generate practical legal analysis, increased legal capacity, and realistic recommendations that will position Mexico and Latin America as examples of green development and share legal models for proposing and implementing solutions to climate change. The event will also be webcast through multiple websites, in order to foster greater international participation and impact. For more information, including registration details and a list of event organisers, please visit the [event website](#).

11-13 September, Geneva, Switzerland. THIRTEENTH ANNUAL BIOECON CONFERENCE. The topic of this year's Annual BIOECON Conference is "Resource Economics, Biodiversity Conservation and Development." The event will include sessions on: plant genetic resources and food security issues, deforestation and development, fisheries and institutional adaptation, development and conservation, international trade and regulation, and a variety of other related topics. The conference will also include a policy forum focusing on the creation of international mechanisms for financing biological diversity conservation. A call for papers and further information is available on the [event website](#).

12-13 September, London, UK. The B4E Summit 2011, London (B4E London), is a two day international conference focusing on the theme "Reaching for Zero: Innovation, growth and the clean industrial revolution." The World Business Council for Sustainable Development (WBCSD) is both a partner and supporter of this event. The summit will gather international leaders from business, NGOs, agencies, and governments to share innovations and strategies for zero-based targets and transformative business solutions. Discussions will explore new technologies and business models that leading companies have established, as well as the necessary support and infrastructure needed to accelerate solutions towards the vision of a zero footprint future. The B4E London event aims to deliver a clear message

from global business leaders with proposals for climate action ahead of the United Nations Climate Change Conference (COP 17) that will be held in Durban, South Africa in November 2011. For more information, please visit the event's [website](#).

## WTO Events

An updated list of forthcoming WTO meetings is posted [here](#). 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.

8 September: JEUNE GENEVOIS (WTO non-working day)

9 September: WTO Non-Working Day

14 + 16 September: Trade Policy Review Body - India

## Other Upcoming Events

19-21 September, Geneva, Switzerland. WTO PUBLIC FORUM. The 2011 Public Forum will provide an opportunity for the public at large to identify the principal trade challenges that impact the multilateral trading system and consider solutions to ensure that the WTO effectively adapts and responds to our quickly changing world. The discussion will encompass four core themes: food security; trade in natural resources; made in the world and value-added trade; and what lies in store for the trading system. These themes will structure the discussion around the future of the multilateral trading system and how the WTO can promote coherence at the international level to better address world problems and contribute towards improved global governance. More information can be found on the event [website](#).

22 September, Geneva, Switzerland. SYMPOSIUM ON TRADE IN PRIMARY PRODUCTS AND COMPETITION POLICY.

This symposium, hosted and organised by CUTS International with the support of the Centre for Economic Policy Research (CEPR) and the Agence Française Développement (AFD), aims to enhance understanding about the existing challenges in the functioning of primary product markets. Learning more about these challenges will enable the development of a comprehensive economic governance regime to address anti-competitive behaviour and other related concerns. The following issues will be covered in different thematic sessions: understanding how primary (agricultural and mineral) product markets work; anti-competitive practices and market structures in primary product markets; governance of primary product markets and its impact on developing countries; and systemic issues and policy options for the future. The event will follow the annual WTO Public Forum; papers presented at the event will be published in the form of an e-book by CEPR, while the proceedings will be published by CUTS. For more information, or to see the programme agenda, please visit the organisation's [website](#).

27-28 September, Geneva, Switzerland. GOING GLOBAL: IS CHINA INC. SUSTAINABLE? This Bridges China dialogue, jointly organized by ICTSD, the Swiss Chinese Chamber of Commerce, Business Europe, and China Entrepreneurs Magazine, will discuss a series of major questions regarding China's future, particularly with regards to sustainable development and global growth. These questions include how to interpret China's 12th Five Year Plan and Going Global Strategy; how China and Europe can work together to overcome the ongoing crisis; what are the key opportunities and challenges for China's rising Outward Direct Investment (ODI); and what business opportunities are available for European companies and Chinese investors. The Bridges China Dialogue is an international forum committed to improving China's integration into the world economy in a sustainable manner. More details are available at the event [website](#).

27-28 October, Mexico City, Mexico. EL DERECHO ECONÓMICO INTERNACIONAL: DESAFÍOS DEL MEDIO AMBIENTE (INTERNATIONAL ECONOMIC LAW: ENVIRONMENTAL



CHALLENGES). This joint conference of the WTO Chairs of Chile and Mexico will bring together regional experts to discuss the challenges that the multilateral trading system is facing. The conference will examine the relationship between international economic law and the environment. The aim of the conference is to determine the most important lessons for the region regarding investment, services, subsidies, intellectual property, dispute settlement, and the creation of policies and agreements. The conference will serve to generate original Spanish-language research that will be published in the *Revista de Derecho Económico Internacional* (Journal of International Economic Law). For more information visit the Centro de Derecho Económico Internacional [website](#).

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## Resources

GLOBAL FOOD STAMPS: AN IDEA WORTH CONSIDERING? By Tim Josling for the International Centre for Trade and Sustainable Development (ICTSD). This paper, commissioned by ICTSD, analyses whether an international scheme for targeted consumer food subsidies could represent a practical contribution to overcoming growing food insecurity in developing countries. The paper argues that, given this period of price volatility, having a scheme that could mitigate hardship among vulnerable groups in these developing countries might be one more way to respond to the difficulties that these price increases generally impose on the poor. However, the author cautions, the success of such a scheme will largely depend on how thoroughly the details are considered and thought out. For more information, or to download the paper, please visit the [website](#).

MAKING GLOBAL TRADE GOVERNANCE WORK FOR DEVELOPMENT: PERSPECTIVES AND PRIORITIES FROM DEVELOPING COUNTRIES. Edited by Carolyn Deere, University of Oxford, Global Economic Governance Programme (August 2011). This book gathers a diversity of developing country views on how to improve the governance of global trade and the WTO to better advance sustainable development and respond to the needs of developing countries. With contributions by

senior scholars, commentators, and practitioners, the essays combine new, empirically-grounded research with practical insights about the trade policy-making process. The various authors consider the specific governance issues of interest to developing countries and acknowledge the changing dynamics in the global economy and in trade decision-making. The book also showcases the broad range of issues, assumptions, and approaches regarding trade governance and institutional reform, going beyond debates on reform of the WTO's decision-making/negotiation process to consider broader proposals and priorities for reform. For more information, or to purchase the book, please visit the publisher's [website](#).

EMISSIONS EMBODIED IN TRADE (EET) AND LAND USE IN TROPICAL FOREST MARGINS. By the Alternatives to Slash and Burn Partnership for the Tropical Forest Margins (ASB) (July 2011). This policy brief explores the role of commodities for export emerging from deforestation, forest degradation and agriculture. The brief argues that discussions on REDD+ (reducing emissions from deforestation and forest degradation in developing countries, as well as conservation, sustainable management of forests, and enhancement of carbon stock) have not effectively considered the implications of emissions embodied in trade. It describes how emission reductions objectives may lead to displacement of land use practices, how market demand can shape land use behaviours, and the policy implications from emissions embodied in trade. The paper calls for improved transparency in land-use planning and implementation, joint development of comparable standards for carbon footprints, and consideration of emissions embodied in trade within the UN Framework Convention on Climate Change (UNFCCC) and the WTO. ASB is a member of the Consultative Group on International Agricultural Research (CGIAR). The publication is available [here](#).

FDI FROM BRICS TO LICS: EMERGING GROWTH DRIVER? By Montfort Mlachila and Misa Takebe for the International Monetary Fund (IMF). Despite the rapid increase in foreign direct investment (FDI) flows to low income countries (LICs), there have been relatively few studies that have specifically examined these flows. This paper

attempts to partially fill that void by shedding light on one particularly dynamic aspect of global FDI – flows from Brazil, Russia, India and China (BRICs). The authors find that official data sources underestimate the volume and scope of FDI flows, as many small and medium-sized enterprises (SMEs) do not always register their investment. As a result, while it is difficult to estimate accurately the growth impact of BRIC FDI, there is case study evidence that the impact is increasingly significant. In addition, while initial investment, mostly by state-owned companies, has often been destined for natural resource industries, over time, investment has been spreading to agriculture, manufacturing, and service industries. FDI from BRICs also flows into many non resource-rich countries in LICs, playing a significant role in growth in those countries. To learn more, or to read the publication in full, please click [here](#).