



Bridges Weekly Trade News Digest

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LEAD STORIES

European Court Opinion Suggests Inclusion of Aviation in Emission Trading Scheme Lawful

The EU's plan to extend its emission trading scheme (ETS) to aviation is fully compatible with international law, an official opinion of the trading bloc's highest court found last week, dismissing a high profile challenge by American airlines.

In the opinion released on 6 October, the European Court of Justice's (ECJ) Advocate General Juliane Kokott suggested that the EU's plan to extend the ETS to aviation does not interfere with the sovereignty of third countries and complies with all relevant aviation agreements.

The measure is "fully compatible with the provisions and principles of public international law," including the International Convention on Civil Aviation (Chicago Convention), the Bilateral EU-US Open Skies Agreement, the Kyoto Protocol, and customary international law, Kokott concluded. The opinion does not discuss WTO law, where the WTO's dispute settlement system has exclusive authority.

The Advocate General's opinion has sparked strong reactions from international airlines. While an Advocate General's opinion is non-binding, the ECJ has followed them in approximately 90 percent of all cases.

The Air Transport Association of America (ATA) – a claimant in the dispute – quickly spoke out against Kokott's decision. "Our view that the extension of this unilateral, regional scheme to aviation violates international law is supported by more than 20 countries," ATA stressed in a [press release](#).

The International Air Transport Association (IATA) also expressed their dissatisfaction with the opinion. “While the Advocate General believes that Europe is within its rights to move forward with this extra-territorial measure, that opinion is not shared in the international community,” Tony Tyler, Director General of IATA said. It remains “an infringement of sovereignty and the Chicago Convention,” he added.

Though the opinion was in its favour, even the EU reacted only cautiously to the announcement. European Climate Action Commissioner Connie Hedegaard welcomed the Advocate General’s opinion and reaffirmed the EU’s “wish to engage constructively with third countries during the implementation.”

However, after Hedegaard met the EU’s Environment Ministers on Monday to discuss the objections of some EU member states and airlines, one source told Bridges that the ministers had also discussed the option of postponing the EU ETS’ extension to aviation. A number of countries continue to oppose the plan, as they see their competitiveness as airfreight hubs threatened.

“The aviation industry should be tackling climate change with engineers, not lawyers,” Bill Hemmings, programme manager of environmental lobby group Transport & Environment, commented in that regard.

After the Monday meeting, Dutch State Secretary of Infrastructure and the Environment Joop Atsma suggested in an interview with Dow Jones Newswire that the EU ETS “could still be altered after implementation to ensure that the new system doesn’t impact international competition”.

No breach of sovereignty

In 2008, the EU decided to bring aviation into the EU ETS, effective January 2012. The EU Directive mandates the inclusion of all flights to and from the EU, including those flight parts that take place outside EU airspace. Foreign airlines fear that this could hamper their competitiveness by making their flights prohibitively more costly.

In 2009, the US Air Transport Association (ATA), together with US airlines Continental and United, filed a complaint against these plans with the UK Supreme Court, which subsequently referred the issue to the ECJ.

ATA and others insist that the inclusion of air routes outside the EU’s territory creates an effect beyond the EU’s territory that they claim is in breach of the international law principles of sovereignty and the freedom of the high seas.

Kokott could find no such “extraterritorial effect,” but instead acknowledged that the approach pursued by the EU “reflects the nature as well as the spirit and purpose of environmental protection and climate change measures.”

“It is well known that air pollution knows no boundaries and that greenhouse gases contribute towards climate change worldwide irrespective of where they are emitted; they can have effects on the environment and climate in every State and association of States, including the European Union,” the opinion reads.

Discrimination argument also falls short, opinion finds

The claimants had further argued that the measure discriminated on the basis of nationality, which was again dismissed by Kokott.

Interestingly, Kokott reviewed a related argument that has been made continuously by numerous countries. In these countries’ opinion, even if no distinction is made on the basis of nationality per se, the mechanism is nonetheless discriminatory, to the extent that it treats developed and developing countries alike despite the principle of common but differential responsibility recognised in the Kyoto Protocol.

Kokott turned this argument against the airlines, finding that the objectives pursued by the Kyoto Protocol and the United Nations Framework Convention on Climate Change (UNFCCC) – namely global climate protection – could only be achieved when all countries were treated equally.

She also found that the alternatives – the exclusion of foreign airlines or flights from a

third-country – would actually result in considerable advantages for foreign airlines and long-haul flights, giving rise to unjustified discrimination.

EU may go its own way

Finally, ATA and the US airlines contend that the EU was under the obligation to refrain from undertaking unilateral acts, as per the terms of the Chicago Convention and the Kyoto Protocol.

The Kyoto Protocol calls upon states to engage in respective discussions under the International Civil Aviation Organisation (ICAO). Discussions at the ICAO have been ongoing for many years, with the EU pushing actively for a multilateral solution. Frustrated about the slow movement in ICAO, the EU eventually decided to move ahead on its own.

Kokott approved of that decision, citing the protocol's currently vague wording on the subject. "If the parties to the Kyoto Protocol had wished the ICAO to have exclusive competence they could have been expected to express this with the requisite degree of clarity," she said.

Which laws apply?

Above all, Kokott dismissed all of the North American airlines' claims on the basis that many of the agreements cited were no acceptable basis for examining the EU law's validity.

Although the EU is bound by the international agreements it has signed onto, not all agreements can be invoked by individuals. The only ones that can be invoked by individuals are those that are both binding upon the EU as an entity and also sufficiently precise and unconditional.

While the Chicago Convention is not binding upon the EU, despite all EU member states individually having signed onto the agreement, the Kyoto Protocol and most of the Open Skies Agreement – which the EU is bound by as an entity – failed to meet the latter requirement, Kokott found.

Finally, she stressed that even if these agreements were applicable, they still would not prevent the EU from including aviation in its ETS.

Quo Vadis? WTO?

Though WTO law is never addressed before the ECJ, the ruling might nonetheless have great implications for events at the WTO. The same goes for other sectors that the EU could consider for inclusion in the scheme; first and foremost is the maritime shipping sector, for which some EU members have already suggested a global ETS without success at the International Maritime Organisation (IMO).

Inclusion of this sector in the EU ETS could raise similar questions to those from the current aviation case, particularly in terms of extraterritoriality and discriminatory unilateral action.

Thus far, opposing countries have refrained from bringing a dispute against the EU under the WTO's dispute settlement mechanism. In particular, the US has been mindful of not creating any precedent ruling that could impede its own possible future emissions control scheme, which might itself include unilateral measures.

However, since ATA has seemingly lost its bid at the European court, they could choose to intensify their lobbying efforts in Washington to achieve a formal WTO complaint. The US would then need to decide whether to support American airlines that suffer substantially from both high fuel costs and recession impacts or stand by US climate objectives.

ICTSD reporting, "EU Climate Commissioner to Discuss ETS Airlines Plan with ICAO – Official," WALL STREET JOURNAL, 10 October 2011.

OTHER NEWS

US FTAs with Korea, Colombia, Panama Face Long-Awaited Congressional Vote

After four years of political limbo, the US free trade agreements with South Korea, Colombia, and Panama are scheduled for votes in both chambers of the US Congress later today. The free trade agreements are largely expected to clear both the Senate and the House; a vote in the House on a controversial worker aid programme blamed for slowing down the pacts' passage this summer is also expected shortly.

Negotiated and signed under the administration of previous US President George W. Bush, the FTAs have since struggled through the legislative process. Proponents of these three FTAs have lauded their potential for job creation and export increases; however, critics have been quick to warn of possible outsourcing of jobs and concerns regarding labour rights and tax law.

The last several weeks have seen a series of votes in both chambers designed to ensure the passage of these FTAs and the 2009 extensions to Trade Adjustment Assistance; President Barack Obama had made the latter a precondition to his sending the FTAs to Congress (see Bridges Weekly 28 September 2011).

The 2009 TAA extensions had expanded the programme's benefits to services workers; the worker aid programme as a whole is designed to assist those workers displaced by foreign competition.

The passage of the FTAs also coincides with a visit from President Lee Myung-bak of South Korea, which begins on 13 October. Lee has been invited by Speaker of the House John Boehner, a Republican, to address a joint meeting of Congress on that day.

Korean ratification of US-Korea FTA could still face hurdles

With the FTAs set to become law on the US side, attention is now turning to South Korea – the largest of the three trade pacts – which also needs to ratify the US-Korea agreement for it to come into force. The legislation has not been sent to the Korean legislature for debate, which could send it back to the negotiating table.

In an interview with the Washington Post, South Korean trade minister Kim Jong-hoon said that Korea would likely attach a worker aid programme, similar to the US TAA, to the Korean version of the trade legislation in order to contend with FTA opposition from the Democratic Party.

In a blog post for US Congressional newspaper The Hill, Chun Jung-bae, a member of the National Assembly in Korea, labelled the deal as “lose-lose” and likely to “have a negative impact on the middle class in the US and Korea.”

Chun's concerns were echoed in a 7 October letter that members of the Korean National Assembly sent to the US House of Representatives, in which they expressed their displeasure with the FTA. The letter's signatories claim that the agreement is “biased in favour of narrow interests of multinational corporations.”

Advocacy groups speak out against Colombia, Panama pacts

Labour rights in Colombia also have critics speaking out against the implementation of the US-Colombia FTA. In a statement released in April, the US Labour Education in the Americas Project (USLEAP) – a Chicago-based advocacy groups focused on Latin American labour rights – complained that the FTA does not go far enough to “[require] a reduction of violence as a precondition” for approval.

Criticisms included arguments that there was no mechanism to require implementation of labour laws and no requirements to reduce violence against trade unions, among other problems.

Meanwhile, the Office of the US Trade Representative recently outlined labour rights

advances that have been seen in Colombia, some of which stem from the Action Plan Related to Labor Rights agreed upon by the two countries, in response to these concerns.

Panama's reputation as a safe haven for tax evasion has also drawn opposition in the case of the US-Panama deal. Despite a tax agreement, ratified in April, advocacy groups, such as the Citizens Trade Campaign, have argued that there are still many loopholes which allow US companies to set up subsidiaries and avoid US taxes.

FTA partners' agreements with other countries adding to the pressure

The potential economic benefits of these FTAs have also been a source of contention. In a recent letter to Congress, the US Chamber of Commerce – a business federation representing companies, business associations, and state and local chambers in the US – praised the agreements and their ability to shrink America's disadvantage gap in world trade.

The EU-South Korea FTA, which entered into force on 1 July, has increased the pressure for passing the US FTA with Korea. Wednesday's meeting of the newly-formed EU-South Korea Trade Committee highlighted the success of the “groundbreaking free trade deal” and presaged future progress with further implementation.

Ninety percent of EU goods now enter South Korea duty free, the US Chamber of Commerce noted – creating difficulty for US exports; due to Colombia's ties to South American customs union Mercosur, the US has already lost US\$1 billion in export sales in that case as well. A Chamber of Commerce study suggested that further delays could cost 380,000 jobs and US\$40 billion in export sales, whereas its passage could create 250,000 jobs in the first few years.

A report on benefits of the EU-South Korea FTA highlighted some of the lowered barriers as the “most ambitious tariff elimination achieved in any of the EU's bilateral trade agreements” – notably the €380 million that EU agricultural exporters will save annually.

Tami Overby, President of the US-Korea Business Council and Vice President on Asia at the US Chamber of Commerce, told Bridges that “[American] companies are at a significant disadvantage” compared to EU companies until the US-Korea FTA is ratified and enters into force. “Anything that we can do to create jobs,” needs to be first priority, she noted, adding that “export-related jobs tend to be higher paying jobs.”

Conflicting estimates

Estimates from the US International Trade Commission have illustrated the potential economic impacts of these FTAs, particularly the projected increases in goods exports of approximately US\$12 billion. The ITC estimates also suggest that every US\$1 billion increase in goods exports and services exports can support more than 6000 and 4500 jobs, respectively.

However, the validity of these estimates has also been questioned. Robert Scott, an economist at the Economic Policy Institute, told Bridges that the US is “likely to see growing trade deficits that displace an additional 214,000 jobs” due to these FTAs.

Scott also pointed out that “the consequences will be equally bad, if not worse, for workers in, especially, Colombia,” but Korea and Panama as well. By opening up foreign investment flows, “these agreements are designed to benefit multinational companies... [which] hurts workers in all participating countries; globalisation and the growing power of multinational firms is driving wages to the floor around the world.”

ICTSD reporting; “Trade a litmus test for US leadership,” REUTERS, 9 October 2011; “Canada travellers to face US surcharge from US-Colombia trade pact,” WALL STREET JOURNAL, 5 October 2011; “S. Korea aims to ratify US trade deal soon,” WASHINGTON POST, 9 October 2011.

Panama Climate Meet Sets Stage for Outcomes in Durban

UN climate negotiators trudged forward on a range of issues at a major meeting last week in Panama City, but slow progress on trade issues and the questions over the future of the Kyoto Protocol bode poorly for chances of finalising a robust package this year.

The chairs of the Ad-hoc Working Groups for Long-term Cooperative Action (AWG-LCA) and for the Kyoto Protocol (AWG-KP) asked the designated facilitators of dozens of negotiating sub-groups to produce text by the end of the 1-7 October meeting. The texts will provide the basis for final negotiations at the UN Framework Convention on Climate Change's (UNFCCC) end-of-year meeting this December in Durban, South Africa.

The AWG-KP discussions focused primarily on the second commitment period under the Kyoto Protocol, as the first commitment period expires at the end of 2012. While the decision countries will take in Durban as to the future of the Protocol still remains uncertain, negotiations nevertheless continued to advance on details of a possible second commitment period.

Parties worked on further clarifying the options concerning mitigation targets, the possible nature and content of rules for a second commitment period, and the role of a possible second commitment period within a balanced outcome in Durban. The group's chair's revised proposal summarises the current picture.

Talks on trade see little progress

Regarding trade issues, the discussions on so-called "response measures"—national policies or programmes aimed at reducing carbon emissions, such as implementing emissions trading schemes or regulating international transport—continued under various negotiation tracks but none with any real substantive progress.

The differences of position between developed and developing countries are marked; observers note that neither group appears willing to budge

until perhaps the final hour in Durban, when deals are made. The forum on response measures that is scheduled to resume in Durban, having begun in Bonn this past June, will be telling (see Bridges Weekly, 22 June 2011).

Under the AWG-LCA, countries heatedly debated procedural issues, including whether last year's Cancun Agreement (Decision 1/CP.16) or the broader Bali Action Plan – the agreement from 2007 that launched the LCA negotiations – should define the scope of this year's negotiation. Negotiators at last December's Cancun COP were only able to advance certain pieces of the Bali Action Plan, and some countries are pushing hard for Durban to pull in the rest. A balanced package requires agreement on all elements, they say.

Parties in Panama negotiated in an all-encompassing "contact group," along with spin-off informal groups on adaptation, finance, technology, capacity building, shared vision, review of the global long-term goal, legal options, and diverse issues related to mitigation such as sectoral issues and response measures.

Nearly all of the informal groups produced text forwarded to Durban as a basis for further discussions. Parties also agreed to work inter-sessionally through email, submissions, and bilateral meetings to further streamline the process. For the most part, a huge amount of work still remains for Durban, especially balancing of issues. Undoubtedly, countries are carefully strategising and weighing their positions for how to play their cards in the Durban decision-making game.

On agriculture, discussions revolved around how to identify points of convergence around aspects of food security, trade, economic development, and poverty eradication. The facilitator provided a paper attempting to consolidate ideas into one text, and parties decided to eventually work on this basis while leaving room for additional input from submissions and from the Bonn facilitator's note.

Developed countries welcomed the progress made by the International Maritime Organization (IMO) on international aviation and shipping at the 62nd session of the Marine Environment Protection

Committee. Developing countries showed scepticism over the ability of the IMO to apply measures globally due to the majority rather than consensus decision. As for the text to serve as a basis for negotiation in Durban, the group finally agreed to compile the facilitator's note with the set of country submissions that would serve as a guide, but not as negotiating text, per se.

Remaining issues for Durban

Resolving the issue of the Kyoto Protocol remains the most pressing question as Durban approaches. Increasingly, the future of the Protocol hinges on the possibility of the establishment of a future legally-binding agreement through the AWG-LCA negotiations, a position strongly promoted by the developing country Group of 77 and China. The issue, however, is entangled in a heated debate over the legal options for the extension, renewal, and/or carrying through of existing instruments.

Another key issue being tracked closely by observers is the kind of financial mechanism that Durban will produce and whether it will be accompanied by financial commitments and clearer indications of future financing sources. Developing countries repeatedly underline developed countries' failure to fulfil their past commitments and climate financing obligations.

Although advances are apparent under the Transitional Committee – set up this year to define the institutional structure and function of the new Green Climate Fund agreed to in Cancun – in negotiations, the tension between developed and developing countries is mounting especially on the question of short-term and long-term financing. Developed countries, who are bound under the UN convention to support developing country mitigation and adaptation with finance and technology support and who agreed at the Copenhagen COP to both short and long-term funding, are showing reticence on the long-term commitments. The ongoing global financial crisis continues to complicate this particular debate.

Ambition gap

Parties to the UNFCCC will also be looking to bridge the growing “ambition gap,” brought on by the stagnant status of current negotiations. Some

observers note increasing doubts as to whether the multilateral regime can keep temperature increases below 2 degrees Celsius – a goal that is dependent upon a range of crosscutting processes and instruments involved in current negotiations. Numerous parties and observers continue to emphasise that the pledges made by developed and developing countries as part of the Copenhagen Accord are insufficient in themselves to protect the 2 degree maximum increase and that more recent statements among developed nations are, in fact, further weakening from this mark.

Other issues in the spotlight for Durban are the negotiations centring on developed country mitigation targets, the process of International Consultation and Analysis – which would serve as a watered down approach to encourage compliance, and the process to review commitments in the future in light of new science and information. These issues, however, are unlikely to see resolve. The US continues to indicate that they will not up their ante unless the major developing countries – and especially China – promise to do the same.

How to resolve the question of equitably incorporating developing countries into the game in a “comparable” fashion while still upholding the Convention's sacred principle of “common but differentiated responsibilities” – a principle that sets a firm distinction between the mitigation requirements for developed and developing countries – still eludes negotiators. Many observers claim it is a political question that countries need to clarify at the highest level for this multilateral process to truly advance.

Last week's Panama meetings were a continuation of negotiations that took place in Bonn, Germany over the summer (see Bridges Weekly, [22 June 2011](#)).

More information

All texts now forwarded to Durban are available [here](#).

ICTSD reporting.

EU Farm Policy: Commission Reform Proposals Spark Mixed Response

[Plans](#) to reform the EU's multi-billion euro Common Agricultural Policy met with a mixed response from parliamentarians, farm groups, and civil society organisations on Wednesday 12 October, as the European Commission formally unveiled its proposals for agriculture in the post-2013 period – one month after drafts were leaked online (see Bridges Weekly, [14 September 2011](#)).

Agriculture Commissioner Dacian Cioloş told the European Parliament's committee on Agriculture and Rural Development that the bloc's new farm policy needed to be simplified so it could deliver on a range of policy objectives. These include making agriculture more competitive, protecting the environment, and supporting 'harmonious' rural development across EU territory.

"The European Commission is proposing a new partnership between Europe and its farmers in order to meet the challenges of food security, sustainable use of natural resources and growth," Cioloş said in a [statement](#). "The next decades will be crucial for laying the foundations of a strong agricultural sector that can cope with climate change and international competition while meeting the expectations of the citizen."

Over the years, the EU Common Agricultural Policy has been widely criticised by taxpayers, consumer groups, aid agencies, and environmentalists, who argue that it wastes scarce resources, harms developing country farmers, and damages the natural environment. The criticisms prompted a series of reforms that have slashed 'coupled' subsidies linked to farm output in favour of 'decoupled' income support, in the form of direct payments. The latter type of payment is considered to be less trade-distorting.

A [report](#) released in Brussels last week by the Organisation for Economic Co-operation and Development (OECD) noted that, over the 2008-10 period, farmers earned only 22 percent of their total annual receipts from government support – down from 39 percent annually in the 1986-88

period. The EU now had a unique opportunity to reform farm support, the OECD argued.

The Commission has said it now wants to ensure that these decoupled payments are more closely tied to the delivery of 'public goods' that the market alone will not provide – such as protecting high-value ecosystems, improving soil conservation, or safeguarding against climate change.

Europe's farm policy suffered from "a lack of credibility," Cioloş told parliamentarians on the committee. "I seriously doubt that airports or golf clubs need any support under the CAP," he added, pointing to some of the more egregious cases of poorly-targeted payments that might be avoided under new rules limiting support to 'active farmers'.

Parliamentarians: wary response

Parliamentarian Albert Dess, representing the centre-right European People's Party, told the committee that his group was concerned that the new proposals would introduce more red tape and bureaucracy for farmers to deal with, without necessarily delivering environmental improvements. He nonetheless welcomed the emphasis on agricultural innovation in the Commission's proposals.

Meanwhile, Socialist parliamentarian Luis Capoulas Santos said he welcomed the focus on the environment, while arguing that this needed to be matched with an "adequate" budget. Noting that the Queen of England continued to receive large sums of money under current CAP arrangements, he argued that "we need to make sure that we get the eligibility criteria absolutely right."

A more critical response came from Liberal parliamentarian George Lyon, who told the committee that the proposals were "nothing more than greenwash." He argued that a more comprehensive, more sustainable agricultural policy was needed to tackle new challenges such as climate change, but that on these grounds the Commission's proposed package "falls dreadfully short."

Green MEP Martin Häusling said that the proposals were a step in the right direction, but needed to go further. He argued that the Commission had missed an opportunity for more far-reaching reforms that would have tied agriculture more closely to environmental goals.

Responding to parliamentarians' comments about bureaucracy, Ciolos cautioned that the Commission would not be able to justify providing farm subsidies without any criteria. However, he stressed that new proposals sought to simplify the paperwork and red tape farmers will have to deal with.

Farm groups, civil society, criticise Commission plans

The plans have elicited a strong response from both farm groups and civil society organisations, on a range of topics.

COPA-COGECA, the EU's main farm union body, criticised the plans in a [statement](#). "We are concerned that the Commission's proposals, which propose further mandatory environmental constraints on farmers, will not achieve this and will just add more costly burdens onto EU farmers," said COPA President Gerd Sonnleitner.

A forthcoming [study](#) by Alan Matthews of Trinity College Dublin finds that greening measures in the Commission's proposals could lower the bloc's agricultural production potential by raising farm input costs by €5 billion, or around 2 percent. The study was commissioned by ICTSD, the publisher of Bridges Weekly.

Environmental groups have also expressed disappointment with the Commission's proposals. Ariel Brunner, head of EU policy at BirdLife Europe, [argued](#) that the proposal includes "a few glimmers of light," such as protection of grasslands and introduction of farm level environmental focus areas. However, he said that these are "overshadowed by continuation of production subsidies for harmful production, and the possibility for Member States to shift money away from targeted environmental spending toward blunt income support."

Development agencies were also sceptical of the plans. Olivier Consolo, Director of CONCORD, the European confederation of development NGOs, [observed](#) that "until now in the debates on the reform process, all EU institutions have made reference to take into account the principle that the CAP must seek to reduce its overseas impact through greater Policy Coherence for Development. Yet the Commission has not translated this into concrete measures in its proposals."

Jack Thurston, co-founder of transparency campaign Farmsubsidy.org, told Bridges that the proposals were "a missed opportunity." The Commission's plans would leave EU agricultural policy as "principally a subsidy system for those that own farm land," Thurston argued, "rather than the modern, flexible policy for sustainable land management and food production that Europe desperately needs."

ICTSD reporting.

WIPO Assemblies Call for Diplomatic Conference on Audiovisual Performances

Last week, the World Intellectual Property Organization's (WIPO) 184 member states brought their annual [Assemblies meeting](#) to a close with a landmark decision to hold a diplomatic conference in 2012 for a treaty on the international protection of audiovisual performances, as proposed by the Standing Committee on Copyright and Related Rights (SCCR) in June of this year.

Other notable results of the Assemblies included the renewal of the mandate of the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions (IGC), the endorsement of the work of WIPO's patent and enforcement bodies, and the approval of the organisation's programme and budget for 2012-2013.

Chair Ambassador Uglješa Zvekić (Serbia) congratulated the Assemblies for their progress. "We unblocked the work of one committee, and

renewed the mandate of another...the common thread is that innovation is a common vehicle for progress,” he stated.

Diplomatic conference on AV treaty on track for 2012

The diplomatic conference for a treaty for the protection of audiovisual performances comes more than a decade after disagreements on the subject stalled negotiations at a 2000 diplomatic conference.

At the time, the US and EU clashed on the issue of transfer rights from performers to producers: the US insisted that automatic transfer of rights to audiovisual producers would simplify distribution and licensing, while the EU argued that the transfer of rights could and should happen only with a performer’s explicit consent.

In order to move forward with the diplomatic conference – the highest level of negotiations at WIPO – member states agreed last week to add “statements of interpretation” to the three articles in the treaty that will be discussed prior to the conference. The US called this agreement a “carefully balanced package,” while other countries stated that they looked forward to the completion of the diplomatic conference.

A representative from the International Federation of Actors said that this “landmark agreement would resolve discrimination that has existed since the 1960s... performers will finally achieve rights holder status and achieve the level of recognition they so deserve”.

In praising the decision, WIPO Director General Gurry stressed that, while some countries already have national legislation granting rights to performers of audiovisual works, “there is a legal vacuum at the international level...Performers have not had control over how and when their performances are used abroad, nor any legal right to payment.”

China, Mexico, and Morocco have all offered to host the diplomatic conference, which is expected to take place in June or July of next year.

Instrument for visually-impaired sees support, but no diplomatic conference yet

Some countries, however, expressed their frustration that a diplomatic conference would be convened for a treaty for audiovisual performances but not for an instrument for exceptions and limitations to copyright for the visually impaired and reading-disabled. This latter issue was also on the table at the previous SCCR (see Bridges Weekly, [29 June 2011](#)).

Last week, Ecuador called for a diplomatic conference to negotiate a treaty for the reading-disabled, a proposal that was supported by a number of developing countries. The last SCCR saw a cross-regional group of countries – which included the United States, Argentina, Brazil, and the EU – submit a joint ‘consensus text’ to advance talks on an instrument for the reading-disabled (see Bridges Weekly, [29 June 2011](#)).

Whether the instrument would be a “soft law” recommendation or a treaty was an issue that has not been formally decided upon. Nevertheless, a representative of the World Blind Union urged member states at the Assemblies not to forget that “treaties carry weight while soft laws do not” and supported Ecuador’s call for a diplomatic conference for a treaty.

Ecuador also proposed that the two diplomatic conferences be held at the same time, thereby saving resources and time. In a letter to the United States Patent and Trademark Office, US Senators Tom Harkin, a Democrat, and Bernie Sanders, an Independent, similarly requested that “the agenda of the June 2012 diplomatic conference be expanded to include the topic of a new treaty on copyright exceptions for persons who are blind or have other disabilities.”

In a statement to the Assembly, the US reiterated its commitment “to find[ing] meaningful mechanisms to improve substantially the access persons with print disabilities have to educational, cultural and information material while maintaining the integrity of the international copyright system.”

Whether the agenda of the 2012 diplomatic conference is expanded to include a treaty for the

reading-disabled remains to be seen, and may be decided during the next session of the SCCR, which is set for 21 November-2 December 2011.

Assemblies approve moving work forward on TK, GRs, TCEs

The Assemblies also renewed the mandate of the IGC for the 2012-2013 biennium; the mandate requests the IGC to “expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.” The mandate was set to expire this year (see Bridges Weekly, [28 July 2011](#)).

The mandate also calls upon the 2012 GA to “decide on convening a diplomatic conference.”

Some countries expressed a desire to see texts for international legal instruments on traditional knowledge (TK), genetic resources (GRs), and traditional cultural expressions (TCEs) ready by the next General Assembly, thus paving the way for decisions to be made on convening a diplomatic conference.

However, a number of developing countries stressed that text-based negotiations on GRs are moving too slowly for this goal to be realistic. Countries are currently grappling with the issue of mandatory disclosure requirements, which would require inventors to disclose the use of any genetically codified information and associated traditional knowledge in biological sources when applying for a patent.

South Africa, on behalf of the African Group, noted that “even though the mandate of the committee states that norm setting must be advanced equally on all three substantive issues, the negotiations have focused significantly on TK and TCEs, with GRs lagging behind.”

“The African Group is concerned about the lack of political commitment in the negotiations on genetic resources. In our view, any further procrastination on the negotiations on mandatory disclosure requirement is undermining the letter and spirit of the mandate of the IGC,” they added.

“All three issues should be accorded equal treatment,” continued the South African delegate.

Work on patents, development, enforcement discussed

Member states also reviewed a [progress report](#) on the work of the Standing Committee on the Law of Patents (SCP), which also provided an outlook for the SCP’s future. Since October 2010, member states at the SCP have narrowed their focus and only dealt with the following issues: exceptions and limitations to patents, patent quality, patents and health, client-patent advisor privileges, and technology transfer.

Many delegations also highlighted the importance of the [WIPO Development Agenda](#) and reiterated their commitment to its effective implementation. Similarly, member states also discussed the work of the Advisory Committee on Enforcement (ACE), paying special attention to its research on counterfeiting, piracy, and the motivations for intellectual property infringement.

Speaking at the closing of the Assemblies, Director General Gurry credited the Assemblies’ success to the “extremely constructive engagement of all member states.” This engagement, he added, was instrumental in moving the organisation’s agenda forward.

ICTSD reporting.

Pressure on China Currency, Subsidies Builds in Washington

Tensions are ramping up between Beijing and Washington on trade and currency issues, with the US Senate passing legislation on Tuesday 11 October that effectively targets China’s valuation of its currency. The vote comes just days after US Trade Representative Ron Kirk announced that Washington had submitted information to the WTO detailing over 200 subsidy programmes that the US claims China failed to notify the global trade body.

Tuesday’s Senate vote on the currency legislation received bipartisan support, passing 63 to 35. The

bill was already expected to pass that chamber, despite calls from Republican leadership and Chinese officials over the last couple of weeks against pursuing this move (see Bridges Weekly, [5 October 2011](#)).

While the bill succeeded in the Senate, whether or not the bill will make it to the floor of Congress' other chamber, the US House of Representatives, or receive presidential approval is unclear. Speaker of the House John Boehner, a Republican, has already spoken out against the legislation, labelling such a move as "dangerous."

House Majority Leader Eric Cantor, a Republican, recently told [reporters](#) that the House will not move until receiving a clearer indication from the White House on their stance. "I would like to hear from those who are on the frontline of this relationship with China what the concerns are. It would seem to me that it's a big deal when you're talking about a trading partner like China, if you do this without the input of the White House."

To date, the Obama Administration has mostly been reticent to voice a strong stance on the Chinese currency issue. President Barack Obama told a news conference last week that currency manipulation was one example of China "gaming the trading system to its advantage and to the disadvantage of other countries, particularly the United States." However, he refrained from openly supporting or condemning the legislation, citing the possibility of a WTO challenge as reason to avoid passing such laws too hastily.

The reluctance of Republican leadership in the House of Representatives to pursue the currency bill drew a harsh rebuke on Tuesday from House Minority Leader Nancy Pelosi, a Democrat.

"Last year, the Democratic House passed similar legislation with a broad bipartisan vote, and today it enjoys the support of a majority of House members. The Republican leadership is thwarting the will of the House by blocking a vote on this jobs bill," Pelosi said in a [statement](#) after the Senate vote.

Critics of China's currency policy in the US have long argued that China's strict control of the yuan has led to it being undervalued, creating, in effect,

an export subsidy that makes Chinese exports cheaper relative to their foreign counterparts and puts US jobs at risk. Opponents of currency legislation, however, argue that taking on China will only lead to these jobs moving to the next low-cost location, such as Bangladesh or Vietnam, rather than bringing the jobs back to the US.

China reiterates possibility of trade war

Meanwhile, Chinese officials have continued their vocal opposition to the legislation, with Vice Foreign Minister Cui Tiankai telling reporters that the bill "in no way represents the reality of the economic and trade relationship between China and the United States, and it might have an adverse impact on the development of the relations between the two countries."

Cui, who heads the China delegation for the Group of 20 negotiations, cautioned that, should the bill become law, the only result would be a US-China trade war that would be damaging to both sides.

"China calls on the US government, its congress, and various communities to oppose the pressure put on the [yuan] exchange rate by domestic legislation and to tackle trade protectionism," Chinese Foreign Ministry spokesman Ma Zhaoxu added in a written [statement](#) on Wednesday, following the Tuesday US Senate vote.

Meanwhile, the yuan saw its biggest one-day appreciation in years on Monday, rising 0.6 percent against the dollar. This change is the largest since July 2005 – back when China switched from a formal peg to a tightly managed floating exchange rate.

Since the 2005 peg ended, the yuan has risen 30 percent against the dollar – a rise that critics say is still insufficient.

US presidential election tackles currency issue

The currency issue has also featured in the run-up to the 2012 US presidential election, with Republican presidential hopefuls sparring amongst themselves on whether to tackle China on this issue.

At Tuesday's Republican presidential debate, former Governors Mitt Romney and Jon Huntsman heatedly exchanged views on the China subject, with Romney promising to label China a "currency manipulator" and insisting that he would pursue a WTO case on the matter if elected president.

Romney added that I "don't want a trade war with anybody, and we're not going to have a trade war, but we can't have a trade surrender either."

Huntsman, who was previously the US ambassador to China, replied that imposing penalties on China based on countervailing duties would only elicit the same response in return. He explained that China could potentially justify a trade war response by saying "because of quantitative easing part one and part two, you're [the US] doing a similar thing to your currency."

Currency issue in the WTO context

The potential linkages between currency exchange rates and trade have also featured regularly in media headlines over the last few weeks outside of the US-China context. Last month, Brazil submitted a proposal to a WTO working group asking for the examination of possible trade tools for responding to currency fluctuations (see Bridges Weekly, 28 September 2011).

A Brazilian trade official speaking to Bridges after the proposal's submission noted that the proposal's aim is to further a debate on the relationship between currency and trade, a discussion that the official noted was not taking place anywhere else.

The proposal comes after a prolonged import surge in Brazil, which has been partially blamed on the appreciation of its currency, the real, in relation to the dollar. Brazilian Finance Minister Guido Mantega has repeatedly cautioned that, if the US continues to pursue policies of quantitative easing, this could lead to a "currency war" between the two nations.

Currency performances in connection with trade also featured in a recent speech by WTO Director-General Pascal Lamy, in which he cautioned against unilateral solutions to the

financial crisis – particularly in terms of monetary policy. Speaking at the Deutsche Bank in Berlin on 6 October, Lamy called for an "international monetary system which facilitates international trade, cross border investment, and a better allocation of capital across nations."

"It is clear that WTO rules will not be able to solve macroeconomic issues at the heart of the performance of currencies worldwide... in the current volatile environment we need to make sure that the WTO system does not crumble under the weight of excessive expectations," he added, pushing instead for co-operation on a broad macroeconomic level, starting with the G-20.

US targets China subsidies at global trade body

In another trade-related move aimed at China, last Thursday's announcement by USTR Ron Kirk detailed over 200 subsidies that Washington claims Beijing failed to notify the WTO.

"The situation was simply intolerable," Kirk said in his announcement. "The lack of transparency severely constrains the ability of WTO Members to ensure that each government is playing by the rules. The United States would have preferred to avoid today's filings but we have done so to hold China and India accountable and to enforce the rules that all WTO Members must follow."

The US submission also focused on 50 subsidy programmes that Washington claims India has not notified the global trade body.

The China subsidies in question include measures affecting trade and investment in green technologies. The US has struggled in recent years competing with Chinese competitors in solar and wind power, with three major solar power companies filing for bankruptcy in the month of August.

According to the New York Times, citing an unnamed Chinese government adviser on trade policy, Beijing officials are currently working on providing an updated notification of subsidies to the WTO.

Whether or not the US will pursue the China subsidy issue further at the WTO to a filing at the WTO Dispute Settlement Body was not made clear at the time of the USTR announcement.

Procedurally WTO members are expected to notify the global trade body of their subsidies on a regular basis in order for other WTO members to then assess these subsidy policies. Not notifying of these subsidies could lead another country to initiate a WTO dispute.

ICTSD reporting; “China engineers renminbi jump,” FINANCIAL TIMES, 10 October 2011; “200 Chinese Subsidies Violate Rules, U.S. Says,” NEW YORK TIMES, 6 October 2011; “Obama hits China on trade; cautious on currency bill,” REUTERS, 7 October 2011; “U.S. accuses China, India of hiding subsidy programs,” REUTERS, 6 October 2011; “UPDATE 2-China: Currency law would hurt U.S. jobs growth,” REUTERS, 10 October 2011; “UPDATE 2-China urges Obama, Congress to stymie FX bill,” REUTERS, 12 October 2011; “House Majority Leader: Awaits Administration’s Views on China Currency Bill,” WALL STREET JOURNAL, 3 October 2011; “Lawmakers Pass Bill Targeting China Yuan Policy,” WALL STREET JOURNAL, 12 October 2011; “China calls for firm opposition to U.S. domestic legislation pressuring RMB exchange rate,” XINHUA, 12 October 2011.

Disputes Roundup: US Finds Trade Success both on Home Front, WTO

Trade found its way onto the agenda of both the US’ and EU’s highest courts this week, with the European Court of Justice releasing a legal opinion on aviation levies – see related article, this issue – and the US Supreme Court ruling on the Department of Commerce’s anti-dumping calculation method. Meanwhile, a WTO panel established to hear a US complaint over Chinese restrictions on electronic payment services issued a preliminary decision on 30 September that rejected Beijing’s claim that Washington’s complaint was unlawful.

Zeroing at the US Supreme Court

After having already been the subject of several WTO dispute panel and Appellate Body rulings, the issue of zeroing has now triggered a decision by the US’ highest court. The court sided with the US Department of Commerce when ruling that current domestic law – namely the US Tariff Act of 1930 – did not mandate the practice of zeroing.

Under the practice of zeroing, the US ignores certain data when calculating antidumping duties. Specifically, it “zeroes out”, or ignores, instances where the good in question is actually being sold at a higher price in the US than in its home market (see Bridges Weekly, [19 January 2011](#)).

Following numerous negative rulings at the WTO, in 2007 the US decided to change parts of its antidumping law, limiting the use of zeroing to certain review procedures. Shortly thereafter, US steel company Nucor and the US Steel Corporation filed suit against this new practice in the US Court of International Trade (CIT), arguing that Commerce could not under US law calculate anti-dumping duties without using zeroing.

In a first appeal, CIT and the Federal Circuit Court both sided with Commerce in the suit, ruling that the law was too imprecise “to compel a finding that Congress expressly intended to require zeroing.”

Last week’s Supreme Court ruling now dismissed appeals by Nucor and Steel Corp, upholding the lower courts’ rulings.

The crux of the matter was that Commerce itself had argued at the WTO for a long time that the “unambiguous terms of the Act compelled zeroing.” Only in response to the series of negative WTO findings did Commerce finally revise the practice, arguing then that, while zeroing was indeed not mandated by law, the act did permit both methodologies.

Though the ruling has no direct consequences for WTO affairs, it is an important indication as to where the US is heading with their zeroing practice. In addition, the US’ negotiation position at the WTO - which is aimed toward explicitly

including zeroing in any future Doha round outcome - may be weakened by the ruling, as the argument that the US Tariff Act mandates zeroing has now been formally denied by the country's highest court.

Electronic payment services in China

The second victory of last week goes to the address of the United States Trade Representative (USTR). China had requested a preliminary ruling by the WTO on whether the US's request for the Dispute Settlement Body to hear a complaint on Beijing's regulatory system for electronic payment services was actually lawful. The panel found no fault with the US and accepted the case to move forward as scheduled.

Beijing had argued that the panel request submitted by the USTR failed to meet requirements of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, more commonly referred to as the Dispute Settlement Understanding (DSU). More precisely, Beijing found that the request did not identify the legal basis in an appropriate manner and failed to "present the problem clearly."

"Without additional information and explanations the panel request leaves us to speculate about the claims that are being made," Beijing had complained during the proceedings. The delegation argued that the "little information provided" prevented the country from drafting a sound argument.

Indeed, respondents face a great disadvantage when a case commences, as they cannot influence nor foresee when another country decides to launch a dispute. Their preparation starts when a case is formally initiated while the complaining party, at that stage, has already finalised major parts of its legal argument. The panel request, outlining the legal frameworks invoked, is thus an important indication for the responding country seeking to construct its rebuttal.

The three-member panel established to hear the case on China's electronic payment system, however, found no fault with the US. The requirement to present the problem clearly "does not amount to a requirement for allowing the

defendant to fully develop its defence on the sole basis of the complainant's panel request. Such an interpretation would wipe out any distinction between claims and arguments," the experts argued – a stance that was in line with previous decisions.

The "United States' panel request does not leave China to speculate about the claims that are being made," the panel further concluded. "In particular it gives China adequate notice as to the case it has to answer and allows it to begin preparing its defence."

With that ruling the case will now proceed as scheduled, with the panel being able to properly examine the actual dispute at hand – electronic payment services under the General Agreement on Trade in Services (GATS) (see Bridges Weekly, 18 February 2011).

The regulation of electronic payment systems in China has long been a sore point between the two trading powers. China's electronic payment industry has skyrocketed over the last few years, with transactions through online payment companies amounting to US\$156 billion in 2010; these numbers are expected to triple again in 2013.

Credit and debit cards currently account to roughly 35 percent of all retail spending in China. However, foreign card companies remain excluded from the market, with only China UnionPay being authorised to execute transactions in China's currency, the renminbi – also known as the yuan. Foreign companies can only execute payments in foreign currencies, a requirement that creates considerable disadvantages – particularly in times of devalued currencies.

In the present WTO dispute, the US claims that this policy violates China's accession commitment to open its electronic payment market, in particular the GATS national treatment rule.

However, competition for market access is not limited to the lucrative East Asian country. As China's e-commerce companies grow in the home market, they also gain power abroad. UnionPay's overseas activities are increasingly targeting Chinese customers abroad, as well as the clients of

its foreign competitors, including American Express, Mastercard, and others.

Foreign warehouse chains frequented by Chinese customers abroad, including Harrods in London, have already installed devices able to read UnionPay cards, according to recent reports.

The WTO dispute, though only concerned with a fraction of this much larger trading conflict, will now proceed as originally scheduled with the first written submissions.

ICTSD reporting; “US Supreme Court rebuffs steel’s zeroing appeals,” METALBULLETIN, 5 October 2011; “Insight: China’s e-payment booms, foreigners get the boot,” REUTERS, 28 September 2011.

Proposed Sustainable Energy Trade Agreement Gets Traction at Copenhagen Meet

The first gathering of the Global Green Growth Forum (3GF) announced the launch on Wednesday 12 October of a number of public-private collaborative initiatives, including the pursuit of an international agreement aimed at ensuring policy frameworks that enable trade in sustainable energy goods and services.

Initiated and hosted by the Danish government, the gathering brought together government representatives, over 50 global corporate leaders, and leading civil society organisations.

The event was opened by the Prime Minister of Denmark and attended by the Prime Ministers of Ethiopia and Kenya, the Environment Ministers of Korea and Mexico, the Minister of Finance of Turkey, the UN Secretary General and heads of the Organisation for Economic Co-operation and Development (OECD), the United Nations Industrial Development Organization (UNIDO), the UN Environment Programme (UNEP), the United Nations Framework Convention on Climate Change (UNFCCC), as well as ministers for trade, development co-operation, climate, and business from the host country, among other personalities.

A Sustainable Energy Trade Agreement (SETA) aimed at enabling the rapid scale up in innovation, diffusion, and use of goods, services, and technologies in the non-fossil fuel energy sector, was proposed by three leading think tanks: the Global Green Growth Institute (3GI), the International Centre for Trade and Sustainable Development (ICTSD – the publisher of Bridges Weekly) and the Washington-based Peterson Institute for International Economics.

The initiative was launched as part of a package of other proposals on sustainable biofuels and civil aviation, global green public procurement, and energy efficiency, which are to be “progressed in international policy processes going forward, including those leading to the next Clean Energy Ministerial (CEM) in April 2012.”

“Denmark, Mexico and Korea will feed these initiatives into high-level intergovernmental processes, negotiations and forums. As upcoming EU president, Denmark will take recommendations from 3GF to Rio+20 and the EU’s green growth agenda. Korea and Mexico will help link outcomes to the G20. The Forum will present and promote key recommendations at the Climate Summit in Durban in late 2011,” a 3GF press release [announced](#) after the event.

Initiative draws support

At a panel chaired by Ricardo Meléndez-Ortiz, Chief Executive of ICTSD, support for the initiative was announced by Pia Olsen-Dyhr, Danish Minister of Trade and Investment. The initiative was also explicitly endorsed by South Africa’s Deputy Minister for Trade and Industry, Ms. Thandi Tobias-Pokolo, as a way forward “out of the mud” and “in response to the need to act on the imperatives of climate change and in face of stalemate in other processes.”

Ditlev Engel, President and CEO of Danish wind turbine producer Vestas, “fully endorsed” the undertaking. Meanwhile, Gary Hufbauer of the Peterson Institute made the case for a plurilateral approach “that may be started by a few and follow the path of WTO’s successful Information Technologies Agreement (ITA) or stand alone.” Several event participants also highlighted the

pressing need to ensure that policy frameworks on trade support the enormous scale up in renewable energies.

SETA evolved out of an initiative led by Michael Liebreich, Chief Executive of Bloomberg New Energy Finance, and the Renewable Energy Global Agenda Council of the World Economic Forum's (WEF) Global Redesign Initiative in October 2009. It was then taken as a recommendation by the Forum to the Korea G-20 Summit in 2010.

Since then, ICTSD – in co-operation with several partners – has developed the analytical case for it, with consultations being held with governments and other stakeholders in settings including the WTO, UNFCCC, and WEF.

Greenhouse gas emissions context

Globally, as the Intergovernmental Panel on Climate Change (IPCC) has noted, energy supply is the largest single source of greenhouse gas emissions. The challenge to de-carbonise production and economic activity comes at a time of rapid expansion in energy demand, and in a context in which half of the world's population currently has no access to modern forms of energy.

Energy supply and use is responsible for 75 percent of global greenhouse gas emissions (GHG); estimates from the International Energy Agency (IEA) placed such emissions at a record high of 30.6 Gigatonnes (Gt.) in 2010 alone, making the targets set by the international community to limit climate temperature rise to a maximum of 2 percent extremely difficult to meet.

Indeed, for the “pathway to be achieved, global energy-related emissions in 2020 must not be greater than 32 Gt. This means that over the next ten years, emissions must rise less in total than they did between 2009 and 2010,” the IEA [notes](#).

Non-clean energy sources – i.e. fossil fuels – currently account for about 80 percent of emissions worldwide, and existing infrastructure and projects in construction are estimated to already lock-in to 2020 approximately 20 percent of those emissions.

The geographical distribution of GHG emissions is highly heterogeneous, as is energy consumption. While they only host a fifth of the world's population, 40 percent of emissions continue to be generated in OECD countries, and 40 percent of energy demand is located there.

Meanwhile, 75 percent of the growth in emissions in 2010 came from an energy-deficient developing world that is experiencing long-term economic growth trends. In this context, as stated by UN Secretary General Ban Ki-moon at the World Energy Summit in January 2011, “Our challenge is transformation. We need a global clean energy revolution – a revolution that makes energy available and affordable for all.”

UN push for energy efficiency, sustainable energy access

The UN has declared 2012 as the International Year of Sustainable Energy for All, and its Advisory Group on Energy and Climate Change – composed of major energy companies and UN agencies – has recommended universal access and a 40 percent increase in energy efficiency in the next 20 years. If these recommendations are implemented, this could reduce global energy intensity by 2.5 per cent per year, approximately double the historical rate.

Cutting energy-related emissions in half by 2050 would require deep de-carbonisation of the power sector. This reduction in fossil fuel use would need to be offset by sustainable energy; the largest increase, according to the World Bank's [2010 World Development Report](#), would have to come from renewables.

To increase the share of low-carbon energy from 13 percent as of present to 30-40 percent by 2050 would imply an effort of enormous magnitude, the World Bank report shows. Over the next 40 years, it would imply deploying annually an additional 17,000 wind-turbines (producing 4 megawatts [MW] each), 215 million square meters of solar photovoltaic panels, 80 concentrated solar power plants (producing 250 MW each), and 32 nuclear plants (producing 1000 MW each).

ICTSD studies estimate that even though most

countries in the world, developed and developing, are significantly engaged one way or another in innovation and the manufacturing and/or assembly of components needed for renewable energy, these markets are heavily distorted by tariff and non-tariff trade barriers.

A number of other trade-related policies, including subsidies, can be supportive or perverse in constructing the robust and efficient markets needed for such a rapid scale up in renewable energies. Green technologies generate significant local jobs both in the installation phase and during the long-term lifetime (20 years for some technologies such as wind power) service and maintenance phase. Local manufacturing also benefits, as the backward linkages in these production chains use components from local sources, including the services and transportation sectors.

Experts see investments in renewables as a primary way for non-fossil fuel producing countries to increase foreign direct investment and savings in foreign exchange. Renewable technologies by definition make use of free sources such as solar, wind or geothermal.

A determined effort, specific to the clean energy sector, is necessary to address barriers to scale, and to equip the world with the governance and policy mechanisms it urgently requires in the transition to a low-carbon economy, proponents of the initiative argue.

ICTSD reporting.

IN BRIEF

Australia Paves Way for Carbon Tax: Lower House Votes in Favour of Clean Energy Bill

Australia's controversial carbon tax bill took another step closer toward becoming reality, with the country's lower legislative house narrowly passing the Clean Energy Bill in a vote on Wednesday, 12 October. While beleaguered Prime

Minister Julia Gillard celebrated this victory, the opposition party is already planning the repeal of the tax.

The Clean Energy Bill has successfully overcome its biggest challenge in a narrow vote of the Parliament's lower house. With 74 votes in favour of the bill and 72 against it, Australia now appears to be on its way towards pricing carbon emissions. The next and final step will be the mid-November vote of Australia's upper house, the Senate. But with the government and Green senators appearing to have the requisite numbers to ensure a vote in favour of the scheme, the bill seems likely to become law next month.

Observers note that Gillard is putting her minority government's future at risk by breaking her electoral promise and going ahead with one of the most drastic economic reforms Australia has seen in over a decade. The plan to price emissions faces strong opposition from the country's coal industry, retailers, and the general public (see Bridges Weekly, [7 September 2011](#)).

Opponents say the scheme will lead to coal mine closures, job losses, and increased costs of living. Australia's export competitiveness is also a point of concern, with costs for the mining sector predicted to reach A\$25 billion (or US\$25.48 billion, at today's exchange rate) by 2020, according to the [Minerals Council of Australia](#).

Protests did not come to an end after the lower house took its decision. Carbon-tax opponents disrupted Gillard's question time after the vote, shouting "democracy is dead" and "no mandate" from the public galleries. Nearly 70 demonstrators were expelled from the House of Representatives.

Opposition leader Tony Abbott of the Liberal Party, who opinion polls predict will win elections in two years, pledged he would scrap the carbon tax. "We can repeal the tax, we will repeal the tax, we must repeal the tax," Abbott said. "This is a pledge in blood. This tax will go."

Government, environmental groups laud the vote outcome

Despite strong protests, the government and environmental groups celebrate the outcome of

the vote as a success. "Today's vote is historic for the millions of Australians who, in the face of well-funded scare campaigns, have tirelessly urged successive Australian governments to take action on climate change," Australian Foundation chief executive Don Henry told reporters.

Australia is the world's biggest coal exporter, and while it is only responsible for 1.5 percent of global emissions, its strong dependence on coal for electricity generation makes it the developed world's biggest per capita polluter. Gillard expects 160 million tonnes of carbon to be cut by 2020 under scheme. The carbon tax is therefore central to the government's plan to curb carbon emissions by 5 percent of 2000 levels by 2020.

"Today is a significant day for Australians and the Australians of the future who want to see a better environment," Gillard said before the Parliament's vote.

Supporters also hope that the carbon tax will help in reaching a global emission reduction agreement at climate talks in Durban, South Africa, in December.

Australia's five hundred biggest polluters will see a carbon tax of A\$23 per tonne imposed on their emissions from 1 July 2012. The carbon price will then increase by 2.5 percent a year in real terms for the following three years before turning into an emissions trading scheme with a floating price in 2015. The country will be joining the European Union and New Zealand who already have national emission trading schemes in place; the EU has already publicly backed the Australian scheme (see Bridges Weekly, [7 September 2011](#)).

Several measures will accompany the Clean Energy Bill to compensate the worst-affected industries and households. Billions of dollars will be used to provide export-exposed industries with free emission allowances, to encourage investment in clean and renewable energy, and to help the struggling steel industry. The bill will also provide compensation for households through tax cuts and increased government pension payments.

ICTSD reporting; "Anti-carbon tax protesters interrupt Julia Gillard during question time," THE AUSTRALIAN, 12 October 2011; "Tony Abbott

makes a 'blood pledge' to repeal carbon tax after it passes lower house," THE AUSTRALIAN, 12 October 2011; "Australia parliament passes divisive carbon tax," BBC NEWS, 12 October 2011; "Australia's carbon tax plan passes biggest hurdle," REUTERS, 12 October 2011; "Australia's Carbon Tax Closer After Key Vote," WALL STREET JOURNAL, 12 October 2011.

UN Hunger Estimate under Review

The annual State of Food Insecurity (SOFI) [report](#), which was published on Monday 10 October, did not release its anticipated figures on undernourishment in 2010 due to an ongoing methodological review. The report's estimates are among the most commonly cited to assess the scale of hunger around the world.

The report, produced collaboratively for the first time by the UN Food and Agriculture Organization (FAO), the World Food Programme, and the International Fund for Agricultural Development, analysed the effect of more costly and erratic food prices in recent years. The report particularly focused on farmers with smaller plots who are among the worst affected.

Another assessment, the International Food Policy Research Institute's (IFPRI) [Global Hunger Index](#), was also released on Monday. This report warned that the worst incidence of hunger is concentrated in Sub-Saharan Africa and South Asia, describing 26 countries as having alarming or extremely alarming figures.

Leading experts on the undernourishment figures, such as Peter Svedberg of Stockholm University, have openly [chastised](#) the SOFI for inaccurately reporting the number of hungry people in years past. UN officials close to the report, speaking to Bridges on condition of anonymity, have also criticised the one billion hungry statistic, reached in 2009, as being insufficiently rigorous.

The methodology employed by the FAO until last year's report used estimates of the amount of food needed in a given country and the food's actual availability to calculate the number of hungry. Critics such as Svedberg have argued for an

anthropometric approach, or one that uses physical measurements, such as of weight and height, to arrive at the figure.

A Rome-based UN official told Bridges that the FAO's review of the methodology was intended to capture food insecurity in all its dimensions. He added that SOFI will, in upcoming years, capture more than just the caloric deficit that leads to hunger and will distinguish between acute and chronic indicators. The new approach will blend caloric availability measures, data on micro-nutrients and anthropometrics.

This year's SOFI uses FAO estimates to project figures up to 2006-08. Due to data availability, the 2009 and 2010 issues of the reports made projections with figures provided by the US Department of Agriculture and IFPRI.

ICTSD reporting.

Mercosur-EU Trade Talks Need to Move Forward: Official

The slow-moving trade talks between the EU and South American customs union Mercosur must move forward in order to create economic growth, a top EU trade official said at a joint EU-Brazil summit in Brussels last week. European Trade Commissioner Karel De Gucht's call for renewed EU-Mercosur co-operation came shortly after the release of a European Commission agricultural impact assessment that suggested EU farmers might lose between €1-3 billion as a result of an EU-Mercosur agreement.

The Fifth EU-Brazil Business Summit, which was held on 4 October, was attended by government officials from both the 27-member EU bloc and Brazil – including Brazilian President Dilma Rousseff and European Commissioner President José Manuel Barroso – along with various business representatives.

Along with addressing the subject of the EU-Mercosur talks, attendees also focused on the eurozone debt crisis and Brazil's possible role in helping Europe's recovery; the continued strengthening of the Brazil-EU relationship; the

promotion of sustainable development; and other topics. The Joint Action Plan that resulted from the event will have a three-year lifespan and will be revised ahead of the EU-Brazil Summit in 2014.

Push to achieve progress in EU-Mercosur talks

At the event, De Gucht urged business representatives to give their “active and vocal support” to bring the proposed EU-Mercosur Association Agreement to fruition. Brazil is one of Mercosur's full members, along with Argentina, Paraguay, and Uruguay.

He also urged that parties avoid resorting to protectionist measures in negotiating the agreement. “If one side takes restrictive measures during the negotiations, this is against the free trade agreement spirit,” he said.

De Gucht added that trade could be a “motor for growth,” and, when “fuelled in particular by the dynamism in South America – can provide new export and investment opportunities” for both Brazil and the eurozone.

The talks, which were launched in 1999, have faced repeated setbacks over the years, largely over disagreements regarding agriculture and intellectual property. The talks were suspended in 2004 and were re-launched last year, with the latest round of negotiations held in July.

The contentious agriculture aspect of the Mercosur negotiations took another turn last week, with reports emerging over the findings of a European Commission paper evaluating the potential agricultural impact of an agreement.

The Commission's impact report found that an EU-Mercosur trade pact could have stark implications for EU farmers, according to MercoPress, a South and Central America-focused news agency. The Commission report places losses to EU farmers at between €1-3 billion, though farm lobbies and cooperatives put that figure at €25 billion.

The Commission report itself is not yet in the public domain, but has been distributed to EU member countries.

Belgium, France, Ireland, and Poland are four of the EU nations that have traditionally exhibited reluctance in accepting any trade concessions in certain agricultural sectors when it comes to the proposed EU-Mercosur pact (see Bridges Weekly, 13 July 2011). One of these sectors is beef, where Mercosur is the largest global exporter. The impact report finds that EU beef production would indeed be one of the most exposed in an EU-Mercosur trade pact, according to MercoPress reports.

Adrian Van den Hoven, the Director of International Relations for EU business lobby BUSINESSEUROPE, responded to the agriculture concerns at the joint summit. “Mercosur won’t destroy European agriculture,” he said.

He also urged the EU to recognise the agreement as “an opportunity not only for making business but also to participate in the development of Brazilian agriculture, co-operate in the chemical industry, in infrastructure and in the food industry.”

The next round of EU-Mercosur negotiations are scheduled for 7 to 11 November in Montevideo, Uruguay, with a subsequent round to be held in the first quarter of 2012 in Brussels.

Doha for development

At the summit, Brazil and the EU also reaffirmed their commitment to the struggling Doha round of trade talks at the WTO. In their joint statement, they emphasized their intention to continue working toward “an ambitious, comprehensive and balanced conclusion of the Round that fulfils the development objectives of the mandate.”

The two parties also urged that the final Doha agreement “significantly foster trade flows in agriculture and fisheries, industrial goods and services among and between developed and developing countries, as well as promote effective trade rules.”

ICTSD reporting; “Brazil offers to help crisis-hit Europe,” AFP, 5 October 2011; “EU farm losses from trade deal with Mercosur ‘would range 1 to 3 billion Euros’,” MERCOPRESS, 4 October 2011; “‘Mercosur won’t destroy European agriculture’, says EU business lobby,” MERCOPRESS, 6 October 2011.

EVENTS & RESOURCES

Events

13 October, Geneva, Switzerland. TRADE, INVESTMENT AND CLIMATE CHANGE: SEARCHING FOR PROGRESS ON KEY ISSUES. This conference, which is being convened by the International Institute for Sustainable Development (IISD), will examine how unilateral action on climate change fits into the international trade and investment law regime. In particular, it will address the validity of green industrial policies and preventative measures for competitiveness loss and leakage, and explore the role of the trade community in securing international co-operation and solutions. More information is available at the event [website](#).

17 October, Singapore. ASIA PACIFIC: SUSTAINABILITY LEADERSHIP FORUM. Sustainability has emerged one of the key trends in the world economy. Issues such as natural resource competition and scarcity, climate change, food safety, industrial pollution, and the globalisation of workforces and supply chains have all highlighted the importance of sustainability on a global level. Companies around the world are also beginning to place strategic bets on innovation in energy efficiency, renewable power, and resource productivity – to the point where many businesses now realise that sustainability is key for long-term competitiveness. This conference hopes to bring together private and public sector leaders for discussions on co-operation in the clean technology and sustainability sectors, cost-effective solutions for going green, and developing new business models to sustain innovation. For more information, please visit the event [website](#).

17-22 October, Rome, Italy. THIRTY-SEVENTH COMMITTEE ON WORLD FOOD SECURITY. This United Nations forum is being held to review and follow up on policies concerning world food security. With the recent rise of food prices in 2007-2008, there is a heightened awareness of hunger issues and poverty around the world. The international community is mobilising to face this situation and end world hunger. The proposed agenda of this forum includes sessions on food price volatility, food security and nutrition actions, governance of natural resources, and the implementation of the Committee on World Food Security (CFS) Reform. Additional information and session documents are available [here](#).

18-20 October, Montreal, Canada. ICAO AVIATION AND SUSTAINABLE ALTERNATIVE FUELS WORKSHOP. This workshop, hosted by the International Civil Aviation Organization (ICAO), aims to provide a forum for discussions on sustainable alternative fuels for aviation. The event will bring together representatives from states, financial institutions, fuel producers, and operators for a dialogue on access to financing for sustainable alternative fuels projects. Other topics include legal and regulatory frameworks to ensure the availability of these sustainable fuel supplies, along with the state of the global harmonisation of life cycle analysis methodologies. These discussions will hopefully help prepare for the upcoming United Nations Conference on Sustainable Development (UNCSD, or Rio+20), which will also address the role of sustainable alternative fuels as part of the measures available for reducing carbon emissions. For more information, or to register, please visit the event [website](#).

19 October 2011, Addis Ababa, Ethiopia. TRADE & THE GREEN ECONOMY. The United Nations Economic Commission for Africa (UNECA), International Centre for Trade and Sustainable Development (ICTSD), and the United Nations Environment Programme (UNEP) are jointly hosting a side event in the context of the Rio+20 Regional Preparatory Meeting for Africa, to discuss what a transition to a Green Economy means for trade in Africa, identify key trade opportunities and challenges for Africa, and contribute to the Rio+20 discussions

in the African region. The side event will bring together governments, regional organizations, civil society groups, intergovernmental organisations, and other stakeholders in the region, to exchange perspectives on some of the key issues surrounding trade and the Green Economy. A series of presentations on various aspects of trade and Green Economy will be followed by an open discussion on the theme. For more information, and to RSVP, please contact [Natalia Cubilla](#) by 16 October.

19 October 2011, Addis Ababa, Ethiopia. OPPORTUNITIES FOR AFRICA FROM TRADE IN GOODS AND SERVICES: SUPPORTING THE TRANSITION TO A LOW CARBON FUTURE. This event, jointly organised by ICTSD and the United Nations Economic Commission for Africa (UNECA) will focus on opportunities for Africa in trade in environmental goods and services (EGS) in advance of the United Nations Conference on Sustainable Development (UNSD) Regional Preparatory Meeting for the Africa Region. This dialogue will focus on EGS trade in African nations and the potential impact that a transition to renewable energy sources could have on reducing environmental degradation, improving public health, and supporting sustainable socio-economic development. Specific questions will delve into EGS export and import opportunities; effective participation in the Doha EGS talks at the World Trade Organization; and strengthening Africa's negotiating capacity through trade and environment ministries. For more information, including registration details, please visit the event [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.

14 October: Committee on Market Access

14 October: Committee on Import Licensing

17 October: Workshop – Sanitary and Phytosanitary Measures

19-20 October: Committee on Sanitary and Phytosanitary Measures

19+21 October: Trade Policy Review Body – Zimbabwe

Other Upcoming Events

21-22 October, Shanghai, China. CHINA'S TECHNOLOGICAL RISE: MYTHS, REALITIES AND LESSONS FOR GLOBAL DEBATES ON INNOVATION, TECHNOLOGY TRANSFER AND INTELLECTUAL PROPERTY. China's technological and scientific development in recent years, particularly in the areas of space exploration, super-computing, and renewable energies, has spurred much debate. Outsiders have wondered what the role of government policies has been and questioned the extent of these advances in such a short period. This dialogue, co-organised by ICTSD, the Shanghai Institute of Foreign Trade (SIFT), and the China IP Society, will bring together officials, experts, academics and private sector representatives to discuss the expansion of China's technological capabilities in recent years, its implications, and the lessons to be drawn for global debates on innovation, technology transfer, and intellectual property. For more information, please visit the event [webpage](#).

24 October-18 November. E-LEARNING COURSE: NEGOTIATING CLIMATE CHANGE FINANCE. This online course, provided by the Multilateral Diplomacy Programme (MDP) at the United Nations Institute for Training and Research (UNITAR) in co-operation with Germanwatch, aims to provide the skills and knowledge necessary for participation in multilateral negotiations, particularly in the context of the United Nations Framework Convention on Climate Change (UNFCCC). The course hopes to build knowledge of diplomatic engagement and focuses on key objectives and instruments of international climate finance and the multilateral policy framework, and

key negotiations issues crucial to a post-2012 agreement at the upcoming UNFCCC climate talks in Durban later this year. There are still spots available; for more information or to register please visit the [website](#).

8-10 November, Geneva, Switzerland. AD-HOC EXPERT MEETING ON THE GREEN ECONOMY: TRADE AND SUSTAINABLE DEVELOPMENT IMPLICATIONS. Hosted by the United Nations Conference on Trade and Development (UNCTAD), in collaboration with UN Department of Economic and Social Affairs (UN DESA) and the UN Environment Programme (UNEP), this event will focus on the conditions needed for making the transition to a green economy. Key topics for discussion will include political and economic feasibility of this transition, technology and finance, investment in global supply chains, and more. Event organisers hope that these discussions will serve to elaborate recommendations for contribution to the United Nations Conference on Sustainable Development (UNCSD, or Rio+20) in June of next year. For more information, please visit the event [website](#).

23 November, Geneva, Switzerland. TEN YEARS AFTER THE DOHA DECLARATION: THE FUTURE AGENDA AT THE INTERFACE OF PUBLIC HEALTH, INNOVATION AND TRADE – AN OUTLOOK ON THE NEXT TEN YEARS. The annual high-level symposium of the Global Health Programme explores critical issues and new developments in global health with particular relevance to the intersection of health, foreign policy and trade. Ten years have passed since the Doha Declaration on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and Public Health, which was a paradigm shift towards a greater focus on issues related to intellectual property and public health. Significant achievements have been made to better recognise public health values in framing the intellectual property and international trading system; at the same time, major challenges remain. This symposium aims to review achievements and challenges in promoting access and innovation, to foster policy coherence between different international organisations, as well as other key stakeholders, and to discuss the remaining challenges and their future impact on a comprehensive work agenda. For more information, please visit the [symposium website](#).

5 December, Durban, South Africa. **DURBAN GLOBAL BUSINESS DAY.** This event, organised by the World Business Council for Sustainable Development (WBCSD) and the International Chamber of Commerce (ICC) in partnership with the National Business Initiative (NBI), will be held during the United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties 17. This year's global business day will highlight how business leaders can work with governments to find mutually beneficial solutions to the challenges of climate change. The event will also highlight the global business commitment to low-carbon growth. For more information and to register, please visit the event [website](#).

5-6 December, Durban, South Africa. **THE DURBAN TRADE AND CLIMATE CHANGE SYMPOSIUM.** This symposium, co-organised by ICTSD, the WTO, and the Department of Trade and Industry (DTI) of the Republic of South Africa, will cover various topics within the trade and climate change sectors. By bringing together climate delegates, academics, policy analysts, and representatives from IGOs and NGOs, these discussions will analyse current issues in climate change and development, as well as consider the future of the linkages between the multilateral trade and climate change regimes. This will be held in parallel with the UNFCCC Conference of the Parties (COP). For more information, please visit the event [website](#).

Resources

RIGHTS AND RENTS: WHY CANADA MUST HARNESS ITS INTELLECTUAL PROPERTY RESOURCES. By Karen Mazurkewich for the Canadian International Council (October 2011). A nation that has prospered from its endowment of natural resources must now harness the most important resource of all: its intellectual property, the author argues in this Canadian International Council report. To compete globally, Canada urgently needs to take a new approach to intellectual property by devising a strategy that is anchored by a robust innovation framework and embedded both in the country's domestic policy

and in its international trade agenda. For more information, or to download the paper, please visit the [website](#).

COMPARATIVE ADVANTAGE AND TRADE PERFORMANCE: POLICY IMPLICATIONS. By Przemyslaw Kowalski for the Organisation for Economic Co-operation and Development (OECD) (5 October 2011). Focusing on 55 OECD and selected emerging market economies and 44 manufacturing sectors covering the entirety of merchandise trade, this paper shows that comparative advantage is still an important determinant of trade, despite having evolved over time as a result of changing policies and institutions. The paper also finds that comparative advantage has become increasingly important for North-South and South-South trade. Physical and human capital, financial development, the business climate, and labour markets, all are factors that determine comparative advantage today, the author finds. Overall, the author suggests that nations should avoid trying to influence comparative advantage. Instead, the author argues, nations should use a more comprehensive strategy when drafting economic development policies, while trying to achieve consistency between trade and other policy objectives. For more information or to view the report, click [here](#).

ABUSE OF SUSTAINABILITY STANDARDS: AN ATTACK ON FREE TRADE, COMPETITION AND ECONOMIC GROWTH. By World Growth (September 2011). Trade barriers, constraints on competition, and slower economic growth, are all being justified in the name of meeting sustainability standards, the authors argue. The paper argues that the European Commission and others have urged developing countries to meet their sustainability standards or face fewer export opportunities, and suggests that the subject be examined further. This report assesses these and related developments, with the goal of proving whether these standards are consistent with general principles of open and competitive global markets. For a copy of this report, click [here](#).

NEW MARKET-BASED MECHANISMS POST-2012: INSTITUTIONAL OPTIONS AND GOVERNANCE CHALLENGES WHEN

ESTABLISHING A SECTORAL CREDITING MECHANISM. By Joëlle de Sépibus of the World Trade Institute and Andreas Tuerk of Joanneum Research (30 September 2011). The Cancun Agreements in December 2010 have set the basis for the continuing availability of market mechanisms to assist developed countries in meeting their mitigation commitments in a post-2010 climate regime. These Agreements provide that the introduction of new market-based mechanisms (NMM) will be examined at the next United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties in Durban, South Africa. There is yet to be a consensus on how NMMs should be governed and to what extent the UN should play a role. This paper provides an overview of various country positions on the subject, the pros and cons of differing accounting and governance frameworks for NMMs, and examines how the Clean Development Mechanism (CDM) could be used as a suitable model for centrally governed sectoral crediting mechanisms. The paper concludes that, whether the approach is decentralised or centralised, what may be most important is that minimum requirements be agreed upon under the UN to ensure the mechanism's environmental integrity. For a digital version of the paper, please click [here](#).