



# Bridges Weekly Trade News Digest

*Weekly trade news from a sustainable development perspective*

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## LEAD STORIES

### Outline of December Ministerial Begins Taking Shape

With barely two weeks left until the WTO Ministerial Conference, potential outcomes for the three-day event are now beginning to emerge. Delegates have spent the past week engaged in intense consultations in advance of today's formal meeting of the General Council, with members seemingly ready to forward draft decisions and elements for political guidance to trade ministers for the December gathering.

The formal meeting of the General Council, which is the WTO's highest decision-making body outside of the ministerial conference, was still going on as Bridges went to press on Wednesday 30 November. An update with the final results of the meeting will be available in next week's issue of Bridges.

Today's discussions were expected to go late into the night, with one delegate calling it the "climax" of the pre-ministerial process.

Another delegate noted that, at yesterday's informal meeting of the General Council, many members had complained about the consultative process, citing a lack of transparency and inclusiveness. Therefore, the delegate noted, he did "not exclude the possibility" that members might introduce new elements during tonight's talks.

### Draft decisions

The past two weeks of negotiations have seen a series of agreed recommendations emerge that will be forwarded to trade ministers at the December gathering, including some specific to the needs of least developed countries (LDCs).

The draft decisions expected to move forward for December include a continuation and extension of the work programme on small economies established in Hong Kong; an extension of the prohibitions on TRIPS non-violation complaints and e-commerce tariffs; LDC accessions; an LDC services waiver; the outcome of the Trade Policy Review Mechanism Fourth Appraisal; and an extension of the mid-2013 deadline for LDCs to comply with the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement.

Both the TRIPS non-violation and e-commerce decisions have already featured regularly at previous ministerial gatherings.

In the case of the former, TRIPS non-violation complaints concern whether countries should be allowed to bring trade disputes on the grounds that the spirit of the WTO's TRIPS Agreement has been breached, rather than just the letter of the organisation's intellectual property rules.

A five-year prohibition on such complaints was put in place at the WTO's founding in 1995, and has been extended repeatedly at ministerial conferences ever since.

At the last ministerial in 2009, ministers had also agreed to extend the latter moratorium on e-commerce tariffs, which deals with tariffs on goods sold for online download, such as songs or films. A ban on such tariffs has been in place since the 1998 ministerial conference.

The inclusion of agreed recommendations on LDCs drew praise from some members at yesterday's informal meeting, with Mauritius, Bangladesh, and Kenya among those voicing support.

The push to prepare some LDC deliverables for the eighth ministerial conference has been a recurring theme over the past several months of negotiations, both in discussions regarding the Doha Round talks and the WTO's non-Doha work.

Talks earlier this summer under the Trade Negotiations Committee – the body tasked with the Doha Round – for an LDC-focused mini-package fell through largely because members

could not agree on either the LDC or the non-LDC issues to include in such a package (see Bridges Weekly, [28 July 2011](#)).

One trade source commented to Bridges that “the fact that we do have some agreed elements is not bad, given the background of the negotiations.”

### Three track approach

While the above-mentioned draft decisions and the reports from the WTO general bodies both appear set for the ministerial gathering, the third part of the chair's consultation process – elements for political guidance – was the subject of prolonged discussion at yesterday's informal meeting of the General Council, with talks expected to continue during today's formal gathering.

These elements for political guidance have themselves been organised around three tracks: the importance of the multilateral trading system in the WTO; trade and development; and the Doha Round.

### Outcome document

In acknowledgement of the immense difficulties members have seen in reaching consensus – or even convergence – regarding these elements, General Council Chair Yonov Frederick Agah of Nigeria told members on 24 November that there is now a general understanding that the ministerial is “not to be a negotiating meeting.”

To that end, the December gathering, rather than attempting a full-fledged ministerial declaration, will instead focus on having a chair's statement as the outcome document, taken on the ministerial chair's own responsibility.

The first part of the document is expected to include those elements in which ministers have reached a consensus; the contents of this section are the subject of today's General Council meeting, and are expected to be finalised within the coming hours.

The second part of the document will be determined at the ministerial itself, featuring a

summary of those items that trade ministers decide to bring up at the actual event.

### **Elements for political guidance stir debate**

General Council Chair Agah told delegates at the 24 November meeting that, while the elements for political guidance that had garnered convergence during consultations “are rather general in nature and I am sure many of you would like to make them more specific... my consultations have shown that convergence becomes more elusive the higher the level of specificity.”

The difficulties in even reaching convergence were clearly apparent in recent discussions, sources told Bridges. For instance, the current language being tabled regarding protectionism – under the importance of the multilateral trading system track – had prompted significant debate over recent days, with members questioning what would fall under the definition of protectionism.

Recent talks among delegates have centred around language in the G-20 communiqué from this month's summit in Cannes, France, specifically regarding a commitment made by those countries to continue a standstill on protectionist measures (see Bridges Weekly, [9 November 2011](#)).

While some countries have argued that similar language should be taken on in the WTO framework, others have argued that the G-20 is more of a political forum and that such language does not necessarily have a place at the global trade body.

One delegate noted that the current language on the table reflects a “delicate balance” between members' commitments not to take protectionist measures, while at the same time “not requiring any member to renounce policy space within their current commitments.”

### **Development**

One of the elements of political guidance that had achieved convergence in consultations, the General Council chair noted in the past week's informal gatherings, was an affirmation of development as a core part of the global trade body's work.

The development-focused language tabled at yesterday's informal meeting included, among other items a call for such work to take place in the Committee on Trade and Development (CTD), and would have ministers direct the organisation's membership to fully operationalise the mandate of the CTD in this area.

The language would also have ministers commit to ensuring that the interests of LDCs be given priority in the organisation's work.

Mauritius, speaking on behalf of the African, Caribbean and Pacific country group at yesterday's informal meeting, was among those that welcomed the language on making the CTD more operational, adding that development is at the heart of the multilateral trading system.

### **Members vent frustration over process**

The consultation process over the past few weeks has drawn sharp criticism from some members, who question whether the proposed elements of political guidance for the chair's summary truly reflect consensus among the WTO's membership.

At yesterday's informal General Council, Honduras told members that they had not been invited to participate in some of the consultations, and therefore still had questions regarding some of the issues being tabled.

Venezuela and Cuba also raised questions about the actual inclusiveness of the consultative process, with both countries suggesting that the document under discussion at the General Council lacked the consensus necessary to move forward.

### **Doha impasse acknowledged**

The third track of elements for political guidance involves the Doha Round of trade talks, which are finishing their tenth year without any conclusion in sight.

At yesterday's informal General Council meeting, language was discussed that would acknowledge the Round's current impasse, and would have

members commit to advancing the trade talks in those areas where progress might be possible.

However, sources told Bridges, some members were particularly concerned that the language tabled did not provide a clear path for the future of the Round – a clarity that many members have called for in recent weeks.

Despite the frustration among some members, one delegate commented to Bridges, the language does reflect for the first time a “real deadlock” in the Doha talks, rather than just “throwing things under the carpet.”

ICTSD reporting.

## OTHER NEWS

### US, China Renewable Energy Trade Row Heats Up

In the latest salvo in the ongoing US-China spat over renewable energy trade policies, Beijing announced on Friday 25 November that it would be launching an investigation into Washington's support of its renewable energy sector. Meanwhile, leaders from China's biggest solar companies have publicly rejected a US trade complaint accusing China of dumping solar panels into the US market (see Bridges Weekly, 19 October 2011).

Beijing's probe would cover wind energy, solar, and hydro technology products. The investigation is expected to end by 25 May 2012.

The investigation was sparked by a filing from businesses in the renewable energy industry in China. The Ministry of Commerce also stated that if violations of WTO laws were found, the government could potentially file a case at the WTO dispute settlement body.

Beijing's investigation comes quickly on the heels of Washington's own announcement in early November that it would be launching an investigation into Chinese solar subsidies and

trade practices, in response to a petition filed by seven US solar manufacturers in October.

### Announcement regarding US-launched solar investigation expected Friday

On 9 November, the US Department of Commerce had announced that it would be moving forward with its investigation into whether China's solar subsidy practices have allowed Beijing to dump solar panels into the US market. The case is now awaiting the approval of the US International Trade Commission (ITC) in order to continue; a vote from the ITC investigation panel is expected this Friday, 2 December (see Bridges Weekly, 9 November 2011).

The Commerce Department's action has already prompted a strong response from Chinese government officials; the Chinese Ministry of Commerce said in statements earlier this month that it is “greatly concerned” by the case, cautioning that it could hurt US-China energy co-operation and lead to a “lose-lose” situation.

Criticism over Beijing's extensive support to its clean energy producers has ramped up in recent years, with Washington critics alleging that the subsidies put foreign competitors at a disadvantage.

In October, US Trade Representative (USTR) Ron Kirk took aim at many of China's clean energy subsidies in a submission to the WTO. In the submission, Kirk identified nearly 200 subsidy programmes that Beijing has not notified to the global trade body, including Chinese policies and practices that Washington claims affected trade and investment in green technologies.

Whether Kirk's action would be followed by a dispute filing at the WTO was not made clear at the time.

Earlier this year, Beijing ended a controversial public fund for wind power manufacturing that had been the subject of a formal WTO dispute between the two countries. The US had alleged that the subsidies were prohibited for being contingent on the use of local input. While Washington hailed the Beijing decision as a

victory, China argued that the subsidies had been removed because they were no longer necessary (see Bridges Weekly, [8 June 2011](#)).

### Chinese solar producers push back

On Tuesday 29 November, Chinese solar panel makers took a strong public stance against Washington's pursuit of the solar case, cautioning that it risked "seriously hindering the development of green energy."

Wang Guiqing, vice president of the China Chamber of Commerce, told reporters on behalf of Chinese companies that the "photovoltaic industry based in China has formed a united front to counter the US investigation."

He argued that Beijing subsidy practices were not the reason for the Chinese solar industry's success – adding that China's government support for the solar industry is lower than the support that the US and EU provide their own industries. Rather, "the competitive advantages of Chinese photovoltaic companies are due primarily to the concentration of the industrial chain inside China."

Wang's arguments were supported by the chairmen of some of China's largest solar companies; Shi Zhengrong of Suntech Power Holdings Co. told reporters yesterday that, "if you ask whether the solar industry in China has received special treatment or special support, the answer is no."

The US solar industry has struggled in recent months, with the high-profile collapse of US solar panel maker Solyndra in September dominating news headlines. Until filing for bankruptcy earlier this fall, the California-based company had been lauded in the US as an example of clean energy's potential, receiving over US\$500 million in a government guarantee that it may now be unable to repay.

Quickly falling prices as a result of Chinese solar panel imports have been blamed for Solyndra's bankruptcy filing, along with the similar collapses of US companies Evergreen Solar and SpectraWatt.

The solar issue has particularly captured the attention of some US lawmakers, a few of which have already called upon the administration of US President Barack Obama to protect the solar industry and take a strong stance against so-called "unfair trade," especially in the wake of the Solyndra incident (see Bridges Weekly, [19 October 2011](#)).

### Sino-US talks see progress on another clean energy front

Meanwhile, the US-China Joint Commission on Commerce and Trade (JCCT), which closed talks on 21 November in Chengdu, China, saw officials from both countries make headway on another clean energy front.

The US Commerce Department, in a [statement](#) after the joint event, outlined a plan by Chinese officials to invest US\$1.5 trillion over the next five years in energy-saving, alternative energy, and other emerging technologies.

After the meeting of the joint commission, which was established in 1983 as an arena for discussing Sino-US trade and investment issues, US Commerce Secretary John Bryson noted that Beijing has pledged a "level playing field" for US and other suppliers in these industries.

Beijing would be providing foreign technology suppliers with equal access to the Chinese clean energy industry, Bryson added.

After the China-US high-level meeting, the Office of the US Trade Representative (USTR) also [announced](#) that China intends to manufacture one million new energy vehicles annually by 2015 and five million annually by 2020. Furthermore, the USTR noted, Beijing has pledged that it will not – nor does it currently – maintain measures mandating the transfer of technology for these vehicles.

Foreign producers of new energy vehicles will also be "eligible on an equal basis for subsidies or other preferential policies for [new energy vehicles] with Chinese enterprises, and that these subsidies and preference programmes will be implemented in a manner consistent with WTO rules," the USTR's office explained.



ICTSD reporting; “China solar industry rejects US anti-dumping probe,” AFP, 29 November 2011; “Chinese solar companies reject US trade complaint,” ASSOCIATED PRESS, 29 November 2011; “US envoy: China promises clean energy access,” ASSOCIATED PRESS, 22 November 2011; “China to probe US clean energy subsidies,” FINANCIAL TIMES, 25 November 2011; “Now China to probe US renewable energy support,” REUTERS, 25 November 2011.

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## Food Security: WTO Deadline Prompts Scramble for Consensus

Consultations on food security, export restrictions, and other unresolved issues continued at the WTO’s formal General Council meeting on Wednesday 30 November, as members sought out consensus ahead of the global trade body’s ministerial meeting in two week’s time.

Several proposals were amended in a last-minute bid to find wording that all members could accept, trade officials said. In order to take on trade partners’ concerns, the coalition of net-food importing developing countries (NFIDCs) also modified its draft decision on a work programme on food security challenges that both NFIDCs and least developed countries (LDCs) face, sources said (see Bridges Weekly, [2 November 2011](#)).

“Everything has been watered down from our starting point,” one developing country negotiator observed.

Meanwhile, West African cotton producing countries had been obliged substantially to modify another [proposal](#) for a freeze on cotton subsidy spending at current, historically-low levels. Instead of debating the cotton producers’ earlier proposal, trade ministers were now expected only to reiterate the commitment to address cotton “ambitiously, expeditiously and specifically” that members agreed at the WTO’s Hong Kong ministerial conference in 2005, trade sources said.

The US has resisted moves to impose restrictions on their domestic support for cotton in the

absence of other measures targeting payments for producers in large developing countries, such as China and India, trade sources said.

“There isn’t very much progress in this regard,” admitted one negotiator who was familiar with the issue.

## Food aid: export restrictions

A separate proposal on humanitarian food aid was also slated for discussion at the Wednesday meeting: tabled by the EU and a group of both developed and developing countries, the draft decision would exempt humanitarian food aid purchases by the UN’s World Food Programme from export restrictions imposed by WTO members (see Bridges Weekly, [2 November 2011](#)).

The text would have all WTO members adopt the language of an agreement reached by G-20 agriculture ministers at their Paris summit in June, which was reaffirmed at the beginning of November by heads of state in Cannes. However, not all G-20 countries co-sponsored the EU proposal at the WTO, in a sign of underlying divergences amongst the countries’ trade ministries.

In comments to Bridges, some smaller countries also expressed concern that they had been dissuaded from making further changes to the language agreed amongst the G-20. “They were not willing to change a comma,” one source claimed.

## Food deficit countries: work programme?

The group of NFIDCs, and their African and Arab Group co-sponsors, had further modified a proposal for a work programme on the challenges that NFIDCs and LDCs face, sources said. A revised version of the text omitted the previous mention of the need to ensure that NFIDCs and LDCs can access adequate supplies of basic foodstuffs, and modified two other elements of the draft that had sparked comment from other countries.

Under the new proposal, trade ministers would agree to “direct the General Council to develop a comprehensive, fact-based, result-oriented and

time-bound work program” to examine how to mitigate the impact of food price volatility on LDCs and NFIDCs.

According to a draft seen by Bridges, the elements of the work programme would be agreed by members, but could include developing new rules that would ensure that LDC and NFIDC government-authorised food purchases would be exempted from quantitative export restrictions imposed under the General Agreement on Tariffs and Trade (GATT) Article XI.2(a) by major agricultural exporters.

The text also proposes that the work programme could explore, “in co-ordination with competent institutions,” concessional financing mechanisms to address short-term difficulties in financing food imports. A number of countries had objected to a clause in a previous proposal anticipating that a revolving fund could be set up to do so at the WTO, arguing instead that other international institutions were better suited to provide this support than the global trade body.

In an attempt to accommodate the concerns of other countries which argued that they faced similar challenges, despite not belonging to the NFIDC or LDC groups, the revised proposal anticipates that the work programme will also address those challenges encountered by other vulnerable developing countries facing critical situations of food insecurity. The work programme would be pursued under the auspices of the WTO Committee on Agriculture, sources said.

### Political guidance

Issues that have not been included on the General Council’s agenda, or in the draft ‘political guidance’ that ministers will provide to the WTO, could still be reflected in stand-alone decisions or declarations, trade sources said. (For more on the political guidance elements, see the lead story in this issue.)

As Bridges went to press, delegates were working toward reaching agreement on a draft political guidance document for ministers to approve, and which is expected to form one part of a ‘chair’s

summary’ alongside other issues that are raised in the discussions among ministers.

While members have been scrambling to reach consensus on outstanding issues, “the political guidance text isn’t the be-all and end-all,” one negotiator pointed out.

However, members now have only a few days left to finalise agreement before ministers arrive in Geneva in a fortnight’s time.

ICTSD reporting.

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## Brussels Launches Probe into US Bioethanol Imports

On Friday 25 November, the European Commission announced that it had begun anti-dumping and countervailing duty proceedings for US bioethanol imports. The Commission’s investigations – informed by applicable WTO agreements – follow a formal complaint that was filed by the EU bioethanol industry association, ePure, last month.

“The EU has initiated anti-subsidy and anti-dumping investigations into imports of bioethanol from the USA to establish if US imports of bioethanol have an adverse effect on the European bioethanol industry,” EU trade spokesman John Clancy said in a statement.

According to sources in Brussels, the case has been in the works for a long time. Most analysts there believe that sufficient evidence will be found to justify the imposition of countervailing duties.

In its original [complaint](#), ePure – also known as the European Producers Union of Renewable Energy Association – alleged that US tax credits allowed American exporters to cut their EU selling price by about 40 percent, thereby illegally dumping into the EU market.

The industry association also claimed that this led to a 500 percent rise in US exports to the EU between 2008 and 2010. ePure expects that these imports will, in 2011 alone, have doubled from their 2010 levels.

“This impressive trend is the direct result of US federal and sub federal subsidies, which allow US operators to adopt aggressive pricing practices on the European market,” the industry group argued. While the ethanol aid is set to expire at the end of this year, US import share is expected to rise even further as the 27-member EU bloc faces higher production costs and production shortfalls.

ePure, whose members produce 80 percent of Europe’s bioethanol, explained in their statement that the subsidisation policy has allowed the US to become the world’s largest ethanol producer. The unfairly low prices that the producers can adopt as a consequence have had a direct and negative impact on the EU industry, the association argued.

### US industry group strikes back

The ePure claims led to a strong rejection from its US counterpart, the US Renewable Fuels Association (RFA). “RFA has neither discovered nor been provided any evidence by the EU that such ethanol trades are occurring,” the group said in a 2 November [statement](#).

The US group further argued that the EU complaint was misguided, since “domestic ethanol producers are not eligible for the tax incentive referenced by the Europeans.”

RFA added that the “tax incentive is specifically made available to gasoline blenders, marketers and other end users. Therefore, US ethanol producers cannot nor should be the focus of any European action.”

Nonetheless, the US industry group responded to the EU ethanol investigation by guaranteeing co-operation between US producers and the EU – an important requirement under the WTO anti-dumping agreement.

This requirement means to ensure that responding exporters – in this case, US manufacturers – cannot keep investigations hostage by refusing to submit relevant information for the investigations. Otherwise, the investigating authorities may have to rely on incomplete information, which could work to the disadvantage of the exporters.

Brazil, a main ethanol producer and exporter, is expected to welcome the move, sources told Bridges. Lately the South American country has lost much of its EU market-share to the powerful US industry.

The European Commission’s announcement comes at a time where the EU has repeatedly found itself under fire for its biofuels import policy. The EU Renewable Energy Directive, in particular the incorporated sustainability standards, are considered discriminatory and unfair by a number of biofuel-producing countries.

These standards qualify which biofuels may be considered “sustainable,” taking into account greenhouse gas emission savings and biodiversity conservation achievements. Only the sustainable fuels are considered renewable energy, making them eligible for certain financial support by EU member states.

Countries’ individual threshold commitments for the overall share of renewable energy that has to come from renewable sources– the highest being 49 percent in Sweden – also provide a strong incentive to only use sustainable biofuels. Moreover, for some biofuels imported from outside the EU, the Commission has not provided a default value, putting them at a disadvantage with EU produced like-products.

Further analysis of the EU Renewable Energy Directive is available in this 2010 ICTSD [information](#) note. ICTSD is the publisher of Bridges Weekly.

### Next steps

The European Commission now has 15 months to address the complaint of “material injury” to European producers. Provisional findings are due by 24 August 2012.

According to WTO rules, after a preliminary determination deems that the imports are causing an injury and that countermeasures would be necessary to prevent further damage during the course of the investigations, provisional anti-dumping and countervailing duties can be applied for six and four months, respectively.



The investigation could result in the imposition of five-year taxes on US bioethanol producers. Back in 2008, the EU imposed five-year duties on imports of biodiesel from the US; in the following year, Brussels extended these duties to Canada.

ICTSD reporting; “EU Opens Dumping, Anti-Subsidy Probes into U.S. Bioethanol,” *BUSINESSWEEK*, 29 November 2011; “EU opens investigation into U.S. bioethanol subsidies,” *REUTERS*, 25 November 2011.

## SPECIAL SECTION

### Trade Issues in the Spotlight as COP 17 Kicks Off

*Editor's note: The below article is the first of three Bridges Durban updates. Originally published on Sunday 27 November in the Bridges Trade BioRes Review under the headline “Trade Issues in the Spotlight on the Eve of COP 17,” this “curtain raiser” piece is included below for your reference.*

One word can sum up the outlook for the Durban Conference of the Parties (COP) this year: uncertainty. But that may not be all bad. Last year's meeting in Cancun, Mexico showed us all that sometimes low expectations may be the best way to get results at climate negotiations. Jump back a year further to 2009, when many observers said that parties meeting in Copenhagen, Denmark, were poised to deliver a new binding treaty for climate change cooperation. Instead, great expectations resulted in a mighty flop.

Disappointment in Copenhagen cost many global leaders a good deal of political capital – leaving them unwilling to make such a gamble the following year. But whether pre-COP doldrums prove to be a magic formula for lifting the fog at United Nations Framework Convention on Climate Change (UNFCCC) COPs remains to be seen. The show bill for this year includes several overview agendas and an array of unfinished texts, making it impossible to tell how this year's climate spectacle will unfold.

### Future of Kyoto up in the air

By all accounts, the headliner at this year's COP is the Kyoto Protocol. Signed in 1997, the Protocol's first and, to date, only period of implementation – “commitment period” in climate parlance – began in 2008 and will end in 2012. The Protocol envisages a second commitment period, and countries have spent over a decade negotiating the finer details of what the future of the Protocol would be. An array of influencing elements has derailed progress on the next term's negotiations, and only a handful of redeeming qualities may keep the agreement alive.

One glaring shortcoming of Kyoto is the failure of the United States to ratify, despite having negotiated and signed the agreement alongside all other signatories. The US is the largest historical emitter and held the record for highest annual emissions until 2009, when it was surpassed by China. Its absence from the game is a major imbalance in the equity of the multilateral climate system, to say the least. But more importantly, considering the US' contribution to the problem, its absence from full participation in Kyoto – or any other multilateral climate agreement, for that matter – will ensure that the problem remains inadequately addressed.

Solving the global problem, according to scientists and economists, requires the participation of all major players. The US has adamantly and clearly refused to join the Kyoto Protocol, and therefore the new round of negotiations launched at Bali in 2007 were intended, in part, as an “on-ramp” for its participation.

In addition, the new round, known as the negotiation on Long-term Cooperative Action (LCA) was a way to a substantially increase the role of the other big players: the major economies among the developing countries – which have no commitments under the Protocol – are now at the top of the list of carbon emitters. However, the LCA process has sent Kyoto into a tail spin, because many developed countries would now like to shelve the old agreement and replace it with something based on new rules and principles.

The developing countries, negotiating primarily as the G77 and China, hold tight to the overarching

framework of the UNFCCC and insist on a new commitment period for Kyoto. One reason is because Kyoto is premised on principles and rules that developing countries consider to be fair and equitable, such as developed countries taking the lead in carbon emissions reductions and the respect for the former's overriding development concerns.

The sum of these two components specifically translates in the Convention to financial and economic support for developing countries' climate change mitigation and adaptation activities. For developing countries, the LCA would be a complementary agreement to the Kyoto Protocol, rather than a replacement.

That said, Japan and Russia indicated this past year that they do not intend to sign on to a second period for Kyoto. However, a special voting rule and a handful of tools created within the Protocol may still lead to the survival of the agreement.

These tools include the "flexibility mechanisms" – such as the Clean Development Mechanism, Joint Implementation, and the Emissions Trading Schemes – that were created to help developed countries to meet their mitigation commitments; perhaps more importantly, these tools are the primary platform upon which the current global carbon market is based.

An end to the Protocol could, in theory, topple the multi-billion dollar market. But a little-talked-about voting rule – which provides that in the absence of full agreement a three quarter majority vote could suffice to trigger a second commitment period – may just prove to be enough to hold Kyoto together for now.

The fact of the matter is that, while the LCA has generated a number of key agreements on certain aspects of its mandate, it has not concluded talks on emissions reductions, which is at the heart of solving the climate problem. Until it does, the Kyoto Protocol is the only concrete agreement on emissions reductions.

### **Trade issues loom ever larger on the horizon**

Recent years of negotiation have seen a steady rise in discussions on the potential role of trade

measures on the impacts of and responses to climate change. In particular, Durban will host the second part of a special "forum" on the impacts of domestic measures taken to combat climate change upon other countries.

"Response measures," as they are known in the negotiations, have been discussed in different ways for years, but have primarily been associated with the possible harm to oil-producing economies that may arise from a potential global decrease in oil consumption. A rise in domestic protectionist measures and debates on designing policies and measures with global trade implications, nonetheless, have pushed the issue closer to the top of the negotiating agenda for several countries.

The response measures forum began in Bonn at the mid-year negotiation sessions in June and is scheduled to conclude in Durban. Its mandate is to put together a work programme to address the issue and consider the possible establishment of a permanent forum. Considering the fact that no venue currently exists for countries to present information, exchange views, and consider solutions to potential challenges that result from the implementation of burgeoning climate measures, the proposition of a permanent forum is a particularly interesting prospect.

The WTO has its dispute settlement body to consider instances where such measures might violate trade rules. But affected countries can only exercise this option after the measure has been adopted, rather than provide a potential instance for conflict avoidance. In addition, the WTO only addresses the violation of international trade rules and would not consider the broad spectrum of potential consequences to economic development, impacts to the environment – including evaluation of the actual mitigation benefits – or impacts on society.

These sustainable development dimensions are protected under the UNFCCC, and such a forum would provide a concrete process for reducing negative and maximising positive impacts. The response measure forum takes place under the auspices of the Subsidiary Body for Implementation, one of the two principle negotiating bodies of the Convention.

## LCA track weighed down by trade concerns

Meanwhile, under the Ad-hoc Working Group on Long-term Cooperative Action, several trade-related discussions continue. The first is related to the question of competitiveness, where some countries fear that action to reduce climate emissions will negatively impact their companies' and industrial sectors' competitiveness in international markets. In essence, many developed countries say they will be at a disadvantage if some countries with competing industries are required to do less than others to mitigate emissions at a global level. For their part, developing countries have concerns about the potential use of trade measures by developed countries attempting to "level the playing field."

Poor countries argue that such measures could impact their economic and sustainable development. To pre-empt the use of such measures, they are insisting that language prohibiting the use of unilateral measures to address climate change be included in the new agreement. Similar language is included in a draft text on response measures under the LCA. These discussions are taking place under a sub-category known as the "shared vision," where parties also discuss the composite emission cuts for the world and how the total agreement balances out.

In a separate sub-group on "sectoral approaches" to mitigation, the topics of agriculture and bunker fuels – dirty fuel used in shipping and aviation – are back on the table in a similar form to what was considered and then dropped in Cancun. The trade implications remain an obvious concern under both of these topics and are reflected in references in the draft texts.

The agriculture text proposes the creation of a work programme on both mitigation and adaptation in the agriculture sector. Meanwhile, the bunkers discussion is oriented more toward whether to advance discussions on climate change issues related to global transport under the UNFCCC, rather than under the International Maritime Organization (IMO) and International Civil Aviation Organization (ICAO), as is currently the case.

Finally, while the role of intellectual property rights in the deployment and transfer of technologies for climate change remains a concern for many countries, the issue is far from resolved. There is little indication from inter-sessional negotiations or meetings that Durban is poised to make any decisions on this topic, which is among the most contentious subjects under the technology negotiations. It may, nevertheless, get some traction.

## Potential advances

While the Kyoto issue will be hogging the spotlight in Durban, there will still be many other decisions taken in an array of negotiating branches. For example, forward movement is expected as the Green Climate Fund is operationalised and as it gears up for disbursement. With this issue resolved, the new Technology Mechanism will then have access to financing for its work on assessments, capacity building, and other substantive topics. Progress is also expected on the adaptation front, with the new strategy agreed to in Cancun taking greater shape. This strategy is also poised to receive financing for initiatives such as National Adaptation Plans.

Discussions on mitigation in the search for a new agreement are unlikely to produce any major results. However, some progress could take place on the measuring, reporting, and verification of national actions, as well as on International Consultation and Analysis – the two developing issues that would constitute some form of compliance for a future regime. Currently, movement on both these topics is slow, almost to the point of being imperceptible – a fact that is frustrating to many countries and observers in light of the conspicuous gravity of the global climate situation.

Whether success in Cancun was reaped by the low expectations, the brilliant diplomacy by the COP president, or, simply, the tranquil atmosphere brought on by warm breezes and palm trees – then Durban is as prepared as any host could be. If one can take anything from the Cancun experience, it is not to be swayed by early reports of a deadlock. These two weeks set aside for tedious negotiations can easily change at any time,

for either better or worse; the real answer will only be found after the dust settles on 10 December.

## IN BRIEF

### US, EU Consider Launching Bilateral Trade Talks

Bilateral trade talks between the US and EU could soon be on the horizon, with leaders from both sides agreeing on 28 November to establish a joint working group to examine this and other options for promoting growth in their respective economies.

US President Barack Obama, European Commission President José Manuel Barroso, and EU Council President Herman Van Rompuy, after meeting in Washington on Monday, affirmed their commitment to “making the US-EU trade and investment relationship – already the largest and most integrated in the world – stronger.”

The leaders directed the Transatlantic Economic Council (TEC) – a political body established in 2007 to advance economic integration and government co-operation between the EU and the US – to form a joint working group whose goal would be to “identify and assess options for strengthening the US-EU economic relationship, especially those that have the highest potential to support jobs and growth.”

The working group has been asked to address issues that are of a common concern for both parties and suggest strategies to enhance co-operation. Barriers to trade, including tariffs and tariff-rate quotas, and ‘behind the border’ non-tariff barriers, will all be examined during the course of the group’s work.

Likewise, both parties will be looking for opportunities to formulate compatible regulations and streamline standards. Instructions also request the working group to recommend specific policy implementation strategies, initiatives, or more advanced bilateral agreements.

The spectre of the WTO’s Doha round of trade talks also hovered in the background of the high-level meet, with leaders repeating the G-20’s call earlier this month for “fresh, credible approaches” toward finalising the ten-year negotiations. The US and EU have reportedly avoided pursuing bilateral free trade talks with one another in the past, in part due to not wishing to detract from the Doha process.

Karel De Gucht, the EU Trade Commissioner, confirmed that both sides were looking at negotiations that could cover a variety of measures, such as tariff eliminations on manufactured goods and agriculture, as well as liberalisation of the services sector.

The High Level Working Group on Jobs and Growth would be chaired jointly by the US Trade Representative and the European Commissioner for Trade. An interim report from the working group is scheduled for June 2012; recommendations and conclusions will be due to US and EU leaders by the end of that same year.

### Cargo security legislation could hamper US-EU trade

The European Commission for Trade estimates that EU and US economies account for nearly a third of world trade flows. Bilateral trade between the two, which is already at over US\$500 billion annually, had increased by 15 percent during the first nine months of this year in spite of the eurozone’s struggles, Reuters noted.

However, legislation signed by the US Congress in 2007 could threaten to cut off billions of dollars in transatlantic trade between the two parties by requiring all ocean-borne cargo to the US to be screened for potential security threats starting in mid-2012. The legislation has come under fire from the EU and other US trading partners, on cost and efficiency grounds. Critics also argue that the law is not the best way to reach the intended objective.

A 29 November press release from the European Commission announced the “EU and the US [agreement] to mutually recognise each others’ ‘secure traders’ programmes,” as one of the outcomes of the TEC meeting. The

announcement is expected to help US Homeland Security Secretary Janet Napolitano in convincing Congress to delay implementation of the cargo security pact.

ICTSD reporting; “US and EU agree to begin talks on a trans-Atlantic economic and trade pact,” MERCOPRESS, 29 November 2011; “Business leaders urge U.S., EU consider trade pact,” REUTERS, 22 November 2011; “EU expects secure trade deal with U.S. – De Gucht,” REUTERS, 29 November 2011; “U.S., EU consider trade talks to foster growth,” REUTERS, 28 November 2011; “U.S., EU mull free trade talks, sign secure trade pact,” REUTERS, 30 November 2011.

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## WTO, WHO, WIPO Chiefs Laud Public Health Achievements Ten Years after Doha Declaration

Access to medicines has seen major improvements in the ten years since the WTO’s adoption of a declaration on intellectual property (IP) rights and public health, according to the heads of the WTO, the World Health Organization, and the World Intellectual Property Organization. However, more work remains if the international community is to find the necessary balance between IP and public health concerns.

The ten-year anniversary of the Doha Ministerial Declaration on TRIPS (Trade-Related Aspects of Intellectual Property Rights) and Public Health was the key focus of a 23 November symposium held in Geneva, Switzerland.

The event drew together the heads of the WTO, the World Health Organization (WHO), and the World Intellectual Property Organization (WIPO), along with representatives from national governments, academia, and civil society.

The Doha Declaration was a political turning point in the way public health is governed globally, WTO Director-General Pascal Lamy said at the event’s outset.

Since the declaration’s adoption, the perception that intellectual property rights and public health

were contradictory objectives has changed, he added.

WHO Director-General Margaret Chan echoed Lamy’s sentiment, remarking that the “Doha Declaration was a major milestone.”

“Access to medicines has improved tremendously in the first decade of this century,” she stated.

WIPO Director General Francis Gurry urged that next steps should focus on enhancing the capacity of multi-stakeholder action, including a full spectrum of private and public actors.

Other speakers were more reserved in their assessments of the past decade’s achievements. In this context, Tido von Schoen-Angerer, executive director of advocacy group Medecins Sans Frontières’ Campaign for Access to Essential Medicines, cautioned that “the tenth anniversary is a sober moment, and not a moment to celebrate.”

Overall, participants underlined that the Doha Declaration represented a paradigm shift in the relationship between intellectual property and public health. While challenges remain, significant achievements have been made to better acknowledge public health values in framing the intellectual property and multilateral trade regimes.

### From compatibility to coherence

One major result of the Doha Declaration has been a shift in focus from the “compatibility” of trade, intellectual property, and public health to objectives the more dynamic and constructive “coherence” between these fields, Lamy said.

This shift has allowed for a partnership to develop between the WTO, WHO, and WIPO, he explained. The three organisations are jointly preparing a study on access to medicines and innovation. The study, scheduled for release in early 2012, will deal specifically with the intersection between public health, intellectual property, and trade.

Lamy added that the main responsibility for ensuring this coherence lies with national governments, such as with the way intellectual

property is handled in bilateral or regional free trade agreements.

If governments accept tougher standards for intellectual property protection than required in the TRIPS Agreement – also known as “TRIPS-plus” provisions – then those governments are accountable to their critics, and not to the WTO, Lamy explained.

### Background

The Doha Declaration on TRIPS and Public Health, adopted by trade ministers in 2001, aimed at ensuring that countries could use health-related flexibilities in the TRIPS Agreement, such as compulsory licensing, to ensure greater access to medicines.

The 2001 declaration affirms that “that the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all.”

It also recognised that countries with insufficient or no manufacturing capacity in the pharmaceutical sector have difficulty in making effective use of compulsory licensing; to that end, the declaration directed the WTO’s TRIPS Council to recommend a solution to this question.

The TRIPS Council solution took the form of an August 2003 decision, introducing an amendment to the WTO TRIPS Agreement. The amendment, however, has yet to be ratified, and has only been used once.

ICTSD reporting.

## FAO: Land, Water Scarcity Pose Growing Danger to Food Security

Agricultural production will need to increase by 70 percent by the year 2050 in order to cope with the pressures of climate change, a growing world population, and limited resources, according to the first-ever UN report on land, water scarcity, and food.

The report, released by the UN Food and Agriculture Organisation (FAO) on 28 November, found that many of the countries that will need to produce food for feeding this population are, consequently, the countries facing the most land degradation.

About 40 percent of degraded lands lie in regions with high poverty rates, where small-scale farmers must pay the price for unsuitable land. “The distribution of land and water resources does not favour those countries that need to produce more in the future,” the report states.

The report also warns that many agricultural systems face “the risk of progressive breakdown of their productive capacity under a combination of excessive demographic pressure and unsustainable agriculture use and practices.”

These pressures have already led to the beginnings of a degradation process – with the report estimating that 25 percent of the earth’s lands are degraded; 1.6 billion hectares of land are currently used to grow crops. With these lands suffering a large toll, governments and organisations will have to find ways to incentivise sustainable agricultural procedures, the UN agency noted.

### Resource degradation could increase inequality

Some farming practices may have contributed to processes of erosion, nutrient loss, topsoil compaction, salinisation and pollution. Although governments have tried to help farmers produce in a ‘greener’ fashion, the report argues that many of these policies benefit large-scale farmers who have unfair access to resources.



This leaves many small-scale farmers to suffer from resource degradation, despite the fact that many of these farmers come from the growing nations that will need to produce more in the future.

Almost one billion people are undernourished, mostly in Asia and Sub-Saharan Africa, meaning that global production of food will need to rise faster than population growth to reverse the consequences of poor food policy. However, the report states that much of the farming land already in use will have to sustain future production in coming years.

Since 1960, the expansion in area of land use for crop cultivation has been only 12 percent, while world agricultural activity has increased between 150 and 200 percent – illustrating the intensified pressure on the same land to increasingly produce more.

Upon the report's publication, FAO Director-General Jacques Diouf stressed that steps to address these stresses facing agricultural production systems must be taken immediately. "The consequences in terms of hunger and poverty are unacceptable," he said.

### Recommendations

Increased efficiency of water use and innovative farming practices will be key to providing sustainable crop production for the coming years. Hubert George, Technical Officer for Land and Environment Information Systems at the FAO, commented in an [interview](#) that building awareness and making green initiatives profitable for farmers – through easier access to technology and carbon trading, and payments for environmental services – were possible strategies for tackling the major issues.

The report also highlighted the need for an improved and more transparent trade policy that would, in turn, encourage sustainable agriculture by offering incentives to those who do not harmfully exploit land.

Policies must also focus on securing market access for small scale farmers and those using 'green' farming practices, the FAO noted.

ICTSD reporting; "Land, water scarcity threaten food security - UN," REUTERS, 28 November 2011.

## EVENTS & RESOURCES

### Events

#### Coming soon

28 November – 9 December, Durban, South Africa. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) CONFERENCE OF THE PARTIES (COP) 17. Gathering heads of governments and representatives from international organisations and civil society, this United Nations Climate Change Conference, hosted by the Government of South Africa, will lead discussions that focus on goals and progresses concerning global climate change. The Conference of Parties meetings will address strategies of Kyoto Protocol implementation as well as the Bali Action Plan agreed at COP 13 in 2007, and the Cancun Agreements from COP 16 last December. For more information on the agenda, side events, and workshops, please visit the UNFCCC [website](#).

2 December, Geneva, Switzerland. TRADE AND THE GREEN ECONOMY. This gathering, hosted jointly by ICTSD, the United Nations Economic Commission for Europe (UNECE), UN Environment Programme (UNEP) and the Food and Agriculture Organization (FAO), will serve as a side event for the UN Economic Commission for Europe (ECE) Regional Preparatory Meeting for Rio+20. Discussions will focus on what transitioning to a green economy means for trade in the Economic Commission for Europe (ECE) region. Event organisers hope that input from governments, regional organisations, civil society, and intergovernmental organisations will help identify trade opportunities and potential challenges for the region from such a transition, in order to inform the upcoming Rio+20 talks. Panellists will present on topics such as timber trade, organic agriculture exports in Eastern Europe, the Caucasus, and Central Asia, and the future of the green services sector. For more

information about the UNECE Regional Preparatory Meeting, including this and other side events, please visit the [website](#).

3-4 December, Durban, South Africa. **WORLD CLIMATE SUMMIT 2011**. This event, held during the UN Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) 17, will bring together stakeholders from business, finance, and government with the goal of providing an arena for interaction, aimed at creating new strategies for climate change and facilitating global green growth. Planned sessions will cover: IT and smart energy; valuing natural capital; green growth in Africa; agriculture; and climate finance. The summit will also play host to the second annual Gigaton Awards, honoring those who have made substantial gains in measurable carbon reductions. For information on the programme specifics, please check the WCS [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. A high-level session at the symposium will include speakers from UNEP, UNIDO, the ministry of trade and industry for South Africa, the WTO, and the World Bank. This event will be held in parallel to the UN Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP). For access to the updated agenda, a full list of event partners, or to register, please click [here](#).

7 December, Brussels, Belgium. **CAP REFORM PROPOSALS: IMPLICATIONS FOR TRADE, DEVELOPMENT AND THE ENVIRONMENT**. This event, jointly organised by the Centre for European Policy Studies (CEPS) and ICTSD, will bring together panellists from a range of backgrounds to discuss the implications

and issues surrounding the EU's Common Agricultural Policy (CAP). The European Commission has recently unveiled legislative proposals for a post-2013 CAP. These proposals are currently under review by the European Parliament and national governments. This sort of legislation is sure to have an effect not only on European farming practices, but also on areas such as environmental protection, trade policy, and relations with developing nations. For more information, please visit the CEPS [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.

1 December: General Council

5 December: Trade Policy Review Body – Overview of Developments in the International Trading Environment

## Other Upcoming Events

12-15 December, Abu Dhabi, United Arab Emirates. **EYE ON EARTH SUMMIT**. Co-organised by the UN Environment Programme (UNEP), Environment Agency Abu Dhabi, the European Environment Agency, and others, and funded by the United Arab Emirates, this event will host the launch of a global environmental information network (EIN) strengthening initiative and address major policy and technical issues. The summit plans to produce a final statement on strategies to strengthen existing initiatives and fill gaps toward informed policymaking on sustainability. With UNCSO 2012 coming up quickly, this gathering will act as a way to look back over 20 years of collective efforts of making the best environmental information available to support decision-making, with the goals of achieving sustainable development, reducing poverty, and transforming

the global economy. For more information or an agenda, please visit the event [website](#).

15-16 December, New York City, USA. SECOND INTERSESSIONAL MEETING FOR UNCSD. This intersessional meeting of the UN Conference on Sustainable Development (UNCSD) is one of three that were called for by the first preparatory committee in the lead up to the June 2012 Rio+20. Planning for this event has centred around the following themes: the green economy as it pertains to sustainable development and poverty eradication, and setting up an institutional framework for this green economy. To register, please visit the event [website](#).

15-17 December, Geneva, Switzerland. WTO EIGHTH MINISTERIAL CONFERENCE. This biennial event will bring together the trade ministers from the WTO's entire membership to address current issues of relevance to the multilateral trade system. As the highest decision making body of the global trade body, the ministerial gathering will address the current Doha Round of trade talks, along with non-Doha issues and the accession of new members. Decisions on all matters under any of the WTO's multilateral trade agreements can be taken up by ministers at the three-day event. For more information, please visit the WTO [website](#).

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## Resources

A FUTURE FOR INTERNATIONAL CLIMATE POLITICS – DURBAN AND BEYOND. By Lili Fuhr, Barbara Unmüßig, Farhana Yamin, and Hans Verolme for the Heinrich Böll Foundation (November 2011). This compilation of papers addresses the strategy discussions held at the June 2011 meeting of the UN Framework Committee on Climate Change (UNFCCC) subsidiary bodies in Bonn. The papers cover a wide range of topics, including: refocusing civil society advocacy efforts to mobilise global and local movements in reclaiming the environment; addressing the state of play of UNFCCC negotiations; and analysing the rationales, interests, and key actors driving new alliances in the climate talks. After the June

discussions, edits were made from feedback and comments, as well as new developments. The compilation document can be viewed [here](#).

REVIEW OF MARITIME TRANSPORT 2011. By Regina Asariotis, Hassiba Benamara, Hannes Finkenbrink, Jan Hoffman, Jennifer Lavelle, Maria Misovicova, and Vincent Valentine for the United Nations Conference on Trade and Development (23 November 2011). In this annual publication by UNCTAD focused on developments in global seaborne trade, this issue looks specifically at the participation of developing countries in maritime business. Eighty percent of international trade in goods is done by sea, with an even higher percentage of developing country trade carried in ships. Among various other topics, the report also highlights discussions at the International Maritime Organization regarding the scope and content of a possible international regime to control greenhouse gas emissions from international shipping. For more information and to view the report, please visit the UNCTAD [website](#).

TRADE STILL MATTERS. Video interview by the Organisation for Economic Co-operation and Development (OECD) of Jagdish Bhagwati (November 2011). In this interview with the OECD, Bhagwati argues that countries, in such a time of economic crisis, must not revert to protectionist policies but must instead attempt to construct a multilateral trading regime, with the WTO as a global leader. Bhagwati, while citing the growing importance of trade during the past four decades, addresses concerns that trade is the reason for job losses. He claims that the decrease in manufacturing jobs, typically blamed on outsourcing, is actually a global trend along with the rise in the service sector, reminiscent of when the agricultural industry was declining and manufacturing was on the rise. In his conclusion, he urges the WTO to take a global leadership position in ensuring countries do not dismantle what economic gains have already been made. The video can be viewed [here](#).

STRENGTHENING ACCOUNTABILITY IN AID FOR TRADE. By the Organisation for Economic Co-operation and Development (OECD) (2011). With budgets becoming tighter and governments coming under scrutiny, the

authors of this report argue that it is necessary to create accountability mechanisms for aid for trade. Pinpointing measurement difficulties as a substantial problem, the authors provide context to help interpret past results and how future improvements can be made. The report outlines what the trade and development community needs to know about aid-for-trade results, what past evaluations of programmes and projects reveal about trade outcomes and impacts, and how the trade and development community could improve the performance of aid for trade interventions. For more information on the report, please visit the OECD [website](#).