



Bridges Weekly Trade News Digest

Weekly trade news from a sustainable development perspective

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LEAD STORIES

Note to Subscribers..... 1

WTO: Mixed Expectations as Delegations Arrive
for Eighth Ministerial Conference..... 1

OTHER NEWS

Russia to Take Final Accession Steps at WTO
Ministerial 5

Sparring Continues at WIPO Ctte on Patents,
Public Health..... 7

SPECIAL SECTION

Eleventh Hour Deal Emerges from Protracted
Durban Climate Meet 8

IN BRIEF

Australia, New Zealand Plan to Link Emissions
Trading Schemes 12

Lack of Clarity on Aviation Emissions Persists as
ETS Deadline Looms 13

WTO IN BRIEF

EU, US Tensions Reignite over Aircraft Subsidies
..... 14

EVENTS & RESOURCES

Events..... 15

Resources 16

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Your support to BRIDGES and the BRIDGES series of publications is most welcome; if interested, please contact [Andrew Crosby](#), Managing Director at (+41) 22 917 8335.

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LEAD STORIES

Note to Subscribers

Starting tomorrow, 15 December, Bridges will be reporting daily from the WTO's eighth ministerial conference in Geneva. The updates will be distributed by email and posted online at <http://ictsd.org/news/ministerial/geneva2011/>.

Translated updates will also be available in Chinese, French, Portuguese, Russian, and Spanish.

Please note that Bridges Weekly will then go on its annual winter holiday, with the next issue – Volume 16, Number 1 – scheduled for 11 January 2012.

We would like to take this opportunity to thank our subscribers for their continued support and regular feedback and our donors for their support. Of course, we always welcome comments on how we can improve our publication.

- *The Bridges Weekly Team*

WTO: Mixed Expectations as Delegations Arrive for Eighth Ministerial Conference

Trade ministers from around the world are gathering in Geneva this week for their eighth biennial ministerial conference (MC8), during which they will review the WTO's activities and welcome Russia, Samoa, and Montenegro as new members. While the three-day event is widely expected to be devoid of any significant negotiating outcome, a plethora of bilateral and small-group meetings are being planned in the margins of the conference that could set the tone for the high-level gathering.

Over ninety ministers are expected to attend the event. Trade sources told Bridges that all the major

trading powers would be represented by their ministers. Some had feared that few would attend an occasion characterised both as eventful, as it marks the entrance to the WTO of the only large economy pending – Russia – and low-ambition, given the acknowledged impossibility to finalise the current round of negotiations this year.

The main consensus text due to emerge from the conference has already been agreed by members. This [document](#), entitled ‘elements for political guidance’, sets out instructions that ministers are due to provide the global trade body at the conference. Agreed two weeks ago at the WTO’s General Council, it will form the first part of a ‘chair’s summary’ to be issued at the conclusion of the meeting by the conference chair, Nigerian finance minister Olusegun Olutoyin Aganga.

A second part of the summary is due to reflect issues raised in ministers’ statements during plenary discussions, as well as topics discussed in three parallel working sessions – one on the importance of the multilateral trading system and the WTO; another on trade and development; and a third on the ongoing Doha round of trade talks.

A series of draft decisions, including on least developed country (LDC) accessions and an LDC services waiver, have also been forwarded to trade ministers for approval in the coming days.

Draft decisions

Delegates expect separate decisions to be reached on a range of outstanding trade issues. Last month’s agreement to grant Russia membership of the global trade body is due to top the list of decisions to be approved, alongside Samoa’s and Montenegro’s respective bids to join the organisation.

Other draft decisions include a small collection of LDC deliverables, including a waiver that would allow members to grant preferential treatment to services and service suppliers of LDCs, rather than being bound by their most-favoured nation obligation under WTO rules.

Ministers are also expected to agree to extend the deadline for LDCs to comply with their obligations under the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The current deadline is expected to end in mid-2013.

The original deadline for LDCs to comply with the TRIPS Agreement was set for 2005, but was extended in that same year so that countries could identify their priorities for financial and technical assistance in IP protection. To date, only six have submitted their priority needs – prompting the request for another extension.

A draft decision on LDC accessions to the global trade body has also been forwarded to ministers: the decision would have the LDC subcommittee “develop recommendations to further strengthen, streamline, and operationalise” the 2002 LDC accession guidelines by including commitment benchmarks in the area of goods, and potentially services.

Meanwhile, two familiar decision items from past ministerial conferences have also returned to this year’s agenda: TRIPS non-violation complaints and e-commerce tariffs.

In the case of TRIPS non-violation, members would extend to the next ministerial conference a moratorium on bringing disputes to the WTO on the grounds that the organisation’s intellectual property rules have been breached, rather than just the letter of the TRIPS agreement. Meanwhile, the decision on e-commerce would have members continue to refrain from imposing tariffs on music, books, and other items downloaded online.

Split over Doha’s future

Negotiating groups and coalitions are planning to hold separate meetings ahead of the main event. Draft ministerial declarations seen by Bridges suggest that WTO members are likely to take divergent positions over the future of the Doha Round – an issue that increasingly appears likely to be a key point of contention between countries at the ministerial.

Two developing country groups were due to meet today: the G-20, which favours reforming developed country agriculture, and the G-33, which supports granting developing countries greater agricultural market access flexibilities. The Cairns Group of developed and developing country net agricultural exporters is slated to meet tomorrow, as are the group of small, vulnerable economies (SVEs) and the G-90, a development-focused group that brings together LDCs, other former Africa, Caribbean and

Pacific colonies of European countries, and SVEs, all supported by Brazil, India, and China.

According to the draft statements, the G-90 is likely to underscore that the WTO would suffer a damaging blow if it is unable to complete the Doha Round, which the sponsors argue would damage the organisation's credibility and undermine its future work. Signatories are expected to categorically reject the adoption of a plurilateral approach to concluding the Round or parts of it – an approach that some actors have suggested could represent a way out for the ten-year talks.

Washington in particular has [argued](#) that the Doha Round cannot be completed on the basis of the current draft text, unless large developing countries such as China and India agree to grant greater market access for US industrial goods and agricultural products.

However, one African delegate observed that many developing countries believe that Doha must be concluded before the WTO moves on to other work.

Single undertaking: cherry picking?

Similar to other developing country groups, the G-90 is expected to argue that the single undertaking, the development mandate, and inclusive, transparent decision-making are critical aspects of the Doha talks that cannot be abandoned.

Some observers, including WTO Director-General Pascal Lamy, have mooted the possibility that members could clinch deals on areas where consensus already exists as a down-payment on the full Doha package – an option foreseen as a possibility under the Doha Declaration.

While some members are reportedly willing to consider this type of approach, it remains to be seen whether it could work in practice. One difficulty will be to reach agreement on which issues should be prioritised if members adopt such a 'cherry-picking' approach.

"Which of the cherries can we pick?", one trade source asked wryly.

The G-90 are likely to argue that any such 'early harvest' must give priority to issues of importance to least-developed countries (LDCs) - such as duty-free,

quota-free market access for their exports and new disciplines on trade-distorting support for cotton.

Cotton: US announces new measures

With no consensus on their proposals for the reform of Washington's trade-distorting cotton subsidies, African cotton-producing countries have accepted that the 'political guidance' text for inclusion in the chair's summary will simply reiterate the mandate from the WTO's 2005 Hong Kong ministerial declaration, to address cotton "ambitiously, expeditiously and specifically."

No mention was made of a 'standstill' [proposal](#) that would freeze cotton subsidies at their current, historically-low level, tabled recently by the C-4 group of West African cotton producers (Benin, Burkina Faso, Chad, and Mali).

An announcement from the US today outlined a package of measures that Washington said was aimed at helping LDCs. They included renewing a technical assistance program for West African cotton-producing countries, expanding duty free, quota free (DFQF) treatment for certain cotton grown in LDCs, and additional help for countries seeking to make maximum use of existing US trade preference programmes.

"We look forward to pursuing new trade initiatives in close cooperation with our LDC partners at the WTO Ministerial Meeting this week and in the future," said US Trade Representative Ron Kirk said in a [statement](#).

However, critics claimed that, as the US is a net cotton exporter, the measures would do little to address the concerns expressed by West African cotton producers.

Competitiveness of C4 cotton is affected by low prices in world markets caused by subsidies. The biggest importer of cotton today is China, which buys both from the US and the African producers. "The main problem has never been US cotton market access, but US cotton subsidies and dumping," observed Romain Benicchio, policy advisor for Oxfam.

Ministerial follows months of negotiating setbacks

The biennial ministerial conference comes against the backdrop of the continuing global economic slowdown, and recent reports suggesting the rise of protectionist measures among the Group of 20 economic powers.

The past months have also seen members struggle to make headway in Doha or in establishing agreed-upon elements for this week's conference. Efforts to conclude the trade round by the end of 2011 were abandoned earlier this year, followed by a similarly unsuccessful attempt to agree on the early harvest of an LDC-focused mini-package.

After the latter effort fell through in July, DG Lamy made clear that "what we are seeing today is the paralysis in the negotiating function of the WTO."

The process of determining the agenda for this year's ministerial also faced various setbacks, with members struggling to achieve consensus either on draft decisions or items of political guidance to forward to ministers.

One of the few areas where members have been able to reach consensus, it seems, is that this year's event is not to be a Doha Round negotiating ministerial. "There is no climate for any surprises, to be honest," one delegate told Bridges.

Another official suggested that the fact that this is a "pre-cooked ministerial" could actually allow for more open discussions than at previous gatherings. "The fact that we have already taken care of determining the outcome of the ministerial... means that the atmosphere won't be one of tension," the source added. "People will be articulating their views frankly and openly, as it won't lead to a negotiating outcome."

There is hope that such an atmosphere will allow ministers to actually engage in providing political guidance and content to the WTO beyond Doha.

"WTO ministerial conferences are a golden opportunity for countries to review the functioning of the WTO, as well as developments in the broader international trade system, including the proliferation and trends in plurilateral and preferential agreements" remarked Ricardo Meléndez-Ortiz,

Chief Executive of the International Centre for Trade and Sustainable Development (ICTSD).

Indeed, ICTSD, with the support of the government of the Netherlands, launched today a process of expert meetings and analytical work to explore ways of strengthening the global trade system. "We expect to contribute to re-energizing the non-Doha functions of the WTO, and to finding ways of realizing the WTO's potential as an essential and primary economic governance device."

ICTSD is the publisher of Bridges Weekly and the Bridges Daily Update.

Government Procurement Agreement

The first day of the ministerial is also expected to see an announcement regarding whether or not a deal has been reached among 42 WTO members that would liberalise billions of dollars in public contracts.

A ministerial-level meeting of the committee tasked with the negotiations is scheduled for Thursday morning, after several days of parties "negotiating very intensely," trade sources told Bridges. Countries have mainly been working on "tying up a lot of loose ends," the source continued.

The key question that remains, however, is whether the EU has managed to resolve its differences with the US and Japan on the range of government purchases subject to the rules of the agreement. Disagreements on this issue between these three trading powers have mainly been faulted for slowing down negotiations.

China's continued efforts to accede to the agreement have also drawn attention in recent months. Last week, Beijing submitted a long-awaited "robust, revised offer" outlining which Chinese government agencies would be covered under the agreement, what thresholds would apply, and other related details.

The deal seeks to establish international rules for the non-discriminatory purchasing of goods and services by governments, with due consideration for countries' differing levels of economic development. The agreement promotes efficiency and transparency in the use of public funds.

An earlier version of the agreement took effect in 1996, and was finalised during the Uruguay Round of trade talks. The current talks seek to renegotiate the 1996 GPA, along with bringing in new potential parties.

Activists gather in protest over food security, financial crisis

Despite the low expectations for deliverables on Doha, civil society groups have also gathered in Geneva to protest against the global trade body, though demonstrations to date have been quieter than in years past.

An 'Occupy WTO' tent, in the vein of similar 'Occupy' movements cropping up around the globe, has been set up by local Geneva activists outside the ministerial conference centre. Joining the protesters will be activists from Our World Is Not For Sale, a coalition of farmers, labour, and social movements, and the International Trade Union Confederation (ITUC).

"The existence of the WTO has done nothing to prevent trade imbalances growing to unsustainable levels accompanied by dangerously widening income inequality," [said](#) Sharan Burrow of the ITUC in a statement.

Trade and Development Symposium

Friday and Saturday will also see ministers and trade experts gather for discussions at a major civil society symposium, being held at the WTO headquarters. The two-day gathering will address a range of issues, including the future of the multilateral trading system.

The event is being organised by ICTSD. For further details, visit <http://www.ictsdSYMPOSIUM.org>.

ICTSD reporting.

OTHER NEWS

Russia to Take Final Accession Steps at WTO Ministerial

After an 18-year accession process, Russia is now set to join the WTO on Friday 16 December at the global trade body's ministerial conference. The approval of Moscow's bid is largely anticipated to be one of the highlights of the three-day gathering, which is otherwise expected to see little in negotiating outcomes.

Russia first applied to join the global trade body in 1993, under the former GATT system – however, it took 18 years for GATT/WTO members and Russia to complete a series of bilateral negotiations on goods and services and agree on systemic obligations.

The nearly two-decade long talks were marred with disagreements with various trading partners, with Moscow having particular difficulty in attaining backing from the EU, US, and Georgia.

Russia's particularly tense relations with its neighbour, Georgia, were the source of repeated setbacks during the stop-and-go talks, with formal meetings of the accession Working Party having been put on hold in 2006 as a result. The 10 November meeting that clinched Russia's accession package was the first such formal meeting since the 2006 falling-out.

Transparency measures expected to improve business climate

As with all acceding countries, Moscow needed to bring its trade regime into conformity with WTO law. The accession is the most complex that the WTO has seen to date, with the final accord running at well over 700 pages, not including the goods and services schedules.

The accession package sets out a series of commitments and obligations designed to make Russia's trade regime more transparent and predictable for trade and foreign investment. Russia is the largest economy still outside the global trade body, with accession

expected to smooth the way for its full integration into the rules-based world trading system.

The accession accord's strict transparency provisions are widely expected to improve confidence in the Russian business environment. These requirements include, among others, that all legislation affecting trade in goods, services and intellectual property rights must be published promptly, consistent with WTO requirements.

However, Organisation for Economic Co-operation and Development (OECD) Secretary-General Ángel Gurría, speaking in Moscow on 12 November, stressed that Russia's WTO accession – while a “welcome step” – is just one of many actions needed for improving Russia's business climate.

“Russia's business environment compares very poorly with OECD benchmarks,” he added. “State involvement in the economy is pervasive, and the country's foreign trade and investment regimes are relatively restrictive.”

With WTO and OECD accession, however, that situation could change. Russian President Dmitry Medvedev has called OECD participation “a strategic target for Russia,” stressing that it is one of a series of efforts that Moscow is making to improve the business investment climate.

Range of other commitments and obligations

As part of its accession, Russia concluded 30 bilateral agreements on market access for services and 57 on market access for goods.

Export duties have also been bound for over 700 tariff lines, including certain products in sectors of fish and crustaceans, mineral fuels and oils, raw hides and skins, wood, pulp and paper, and base metals.

Russia has also made specific commitments on 11 services sectors and on 116 sub-sectors, most notably in the areas of telecommunications, insurance, banking, transportation, and distribution services.

Russia also intends to join the WTO Government Procurement Agreement (GPA), a plurilateral pact

that currently includes 42 countries and would liberalise billions of dollars in public contracts once finalised. Russia would become an observer to the GPA upon becoming a WTO member; Moscow would then initiate negotiations for GPA membership within four years of its WTO accession.

Russia also undertook a series of obligations in many of the traditionally sticky areas of international trade, in order to bring Moscow more in line with WTO rules. These included obligations with regards to their various domestic subsidy programmes, sanitary and phytosanitary measures, technical barriers to trade, trade-related investment measures, and protection of intellectual property rights.

Jackson-Vanik still on the books in the US

Despite Washington having been a vocal backer of Russian accession as part of a larger “reset” in relations with Moscow, the US still lacks permanent normal trade relations with Russia. This is thanks to a Cold War-era provision allowing the US to deny most-favoured nation (MFN) status to nations with limited freedom of emigration.

The legislation, known as the Jackson-Vanik amendment, must be repealed by the US Congress in order for Washington to establish permanent normal trade relations with Moscow.

House Ways and Means Committee Chair Kevin Brady, a Republican, told the Washington International Trade Association last week that the repeal of Jackson-Vanik is likely to be a “hard lift,” with many of his colleagues still sceptical about Russia joining the global trade body.

Despite these concerns, US Ambassador to Moscow John Berle stressed to Russian press last month that President Barack Obama “has made it clear that [repealing Jackson-Vanik] will be a priority for us in 2012.”

Although the accession is expected to be approved by trade ministers at this week's ministerial conference, the Russian Parliament will still need to ratify its accession package. Moscow will have until 15 June 2012 to do so, with the

membership becoming official 30 days after ratification.

ICTSD reporting; “Jackson-Vanik’s End in 2012,” THE MOSCOW TIMES, 29 November 2011; “Russia trade vote will be ‘hard lift’: US lawmaker,” REUTERS, 13 December; “Russian President Dmitry Medvedev: OECD participation is Russia’s strategic goal,” RIA NOVOSTI, 25 April 2011.

Sparring Continues at WIPO Ctte on Patents, Public Health

The relationship between patents and public health once again took centre stage at last week’s meeting of the World Intellectual Property Organization’s (WIPO) patent body, with developed and developing countries butting heads with one another over the issue. Meanwhile, less contentious discussions also continued on a range of subjects, including patent quality, technology transfer, and exceptions and limitations to patents.

The WIPO Standing Committee on the Law of Patents (SCP) met from 5-9 December in Geneva, Switzerland and was chaired by Albert Trampusch of the United States Patent and Trademark Office.

The issue of a work programme on patents and public health quickly became the most controversial of the week, in light of a proposal presented at the previous SCP by the Development Agenda Group and the African Group.

The proposal is based on the view that “the patent system should be consistent with fundamental public policy priorities, and in particular the promotion and protection of public health.”

It also affirms that trade agreements should not restrict the use of the flexibilities inherent in the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to protect public health (see Bridges Weekly 30 May 2011).

While developing countries welcomed the proposal, some developed countries warned of duplicating work and did not support its adoption.

The United States noted that “it is clear that other factors external to patent protection are at play in limiting availability of ... medicines... [Instead] of continuing to place blame on the patent system for contributing to the lack of access to medicines the focus should shift to studying the more relevant factors hindering access in the appropriate fora.”

The US followed by presenting a proposal of its own on patents and health for studies on “the positive impact of patent systems in providing lifesaving medicines to developing countries,” along with factors unrelated to the patent system that have an impact on medicine availability.

Many developing countries expressed their disagreement, with Zimbabwe in particular noting that this proposal “deviates attention” and “in no way complements the proposal currently on the table.”

In a statement to the SCP, NGO Médecins sans Frontières added that “the role of WIPO is extremely crucial to introduce and maintain a balanced patent system which essentially takes into account the developmental and humanitarian consequences of a patent regime. In its advice and technical assistance to member states, WIPO should proactively refer to exceptions and flexibilities allowed under different international treaties.”

“Intellectual property, and specifically patents, affect prices and availability of desperately needed medicines,” the MSF representative urged.

Member states agreed to continue discussions on both proposals during the next session of the SCP.

Technology transfer, E&Ls draw further discussion

As a response to the heated debate during the previous SCP over the technology transfer issue (see Bridges Weekly 30 May 2011), the morning session of the first day featured a special seminar on “The Economics of Intellectual Property.”

Technology transfer issues addressed at the seminar included the incentives and obstacles to technology transfer; practical experiences regarding the role of patents; and the need for data to evaluate the performance of the patent system in this area.

During the May session of the SCP, developing countries had argued that a WIPO study on technology transfer had not addressed the possibility of patents being a barrier to technology transfer to developing countries and was therefore “not neutral.”

In last week’s session, the Committee agreed to have the WIPO Secretariat prepare a document listing WIPO’s activities in the area of technology transfer.

Exceptions and limitations to patent rights also received attention during the week-long meet, particularly with regards to a questionnaire member states were asked to complete on their national and regional practices. The chair’s summary noted that the answers received will be posted on the SCP electronic forum; discussions are set to continue at the next session of the SCP.

The committee also discussed three proposals on patent quality – one from the UK and Canada, a second from Denmark and another from the United States. The various proposals attempted to address long-standing questions on how best to achieve high-quality patents.

The ongoing patent quality debate has largely centred on the tension between speeding up the granting of patents and ensuring that the inventions protected advance the state of the art and do not stifle innovation. The proposals brought up at the SCP meeting did not lead to any decisions, however.

The 18th session of the SCP is expected to take place in May or June 2012.

ICTSD reporting.

SPECIAL SECTION

Eleventh Hour Deal Emerges from Protracted Durban Climate Meet

Editor’s note: The below article is the final Bridges Durban update. Originally published on Monday 12 December in the Bridges Trade BioRes Review, this update on the outcome of the two-week negotiations is included below for your reference.

Despite finding themselves near the brink of collapse in the early hours of Sunday morning, negotiators at the UNFCCC’s 17th Conference of the Parties managed to find enough common ground to strike a deal. The decision puts the world on a path to negotiating a legal climate agreement - one that involves all major emitters including the US, India and China - that would enter into force in 2015.

The “Durban Platform for Enhanced Action” also commits parties to a second commitment for the Kyoto Protocol and provides a plan to advance implementation of the Cancun Agreement on financing, through the Global Climate Fund (GCF); technology; response measures; and reduced emissions from avoided deforestation. It falls short of expectations on the inclusion of agriculture in any long-range action, as well as on taxation or carbon-curbing from maritime and air transport.

Importantly, the agreement reaffirms the goal of capping global warming at a maximum of 2°C. However, it also notes with “grave concern” that current commitments will not meet that goal and launches a work plan that will help improve ambition on the issue.

In their statements, virtually all delegates conceded that the new platform is not perfect. Much of the firm and less ambiguous language that many parties were aiming for has been weakened and several sticking points agreed upon by using vague references.

“None of us likes everything in it,” US climate envoy Todd Stern said of the deal. “Believe me,

there is plenty the United States is not thrilled about.”

But South African Minister and COP president Maite Nkoana-Mashabane reminded parties that while perfection is the goal, it is not a requirement.

“I think we all realise [the texts] are not perfect,” she said. “But we should not let the perfect become the enemy of the good and the possible.”

Coming into Durban two weeks ago, the EU had been pushing for a new legally binding treaty by 2015 that would cover all major emitters. For that, the 27-member bloc said it would agree to sign up to a second period of emissions cuts under the Kyoto Protocol.

In the end, the UK’s climate change secretary, Chris Huhne, hailed the deal, calling it a “significant step forward” that sends a strong message to business and investors about the need to move to a low-carbon economy.

UN Secretary-General Ban Ki-moon similarly welcomed the agreement, saying that the deal reached by the 194 parties to the UN Climate Convention was a significant step forward.

“The decision to launch a protocol or legal instrument applicable to all parties under the UNFCCC is essential for stimulating greater action and for raising the level of ambition and the mobilisation of resources to respond to the challenges of climate change,” Ban said in a statement.

He also stressed that the agreement to establish a second commitment period of the Kyoto Protocol “will increase certainty for the carbon market and provides additional incentives for new investments in technology and the infrastructure necessary to fight climate change.”

Kyoto Protocol?

There is no question that the biggest issue at play going into the Durban talks was the future of the Kyoto Protocol, which was signed in 1997. The first implementation period - or “commitment period,” in climate parlance - of the Protocol began in 2008 and is set to end next year. With

2012 fast approaching, developing countries had been pushing all parties to agree to a second commitment period of the Protocol to ensure that developed countries would continue to be held to their binding commitments.

With Canada, Japan, and Russia insisting prior to the meet that they would not sign on to another commitment period - and the US not having ratified the deal - moving the Protocol forward was left primarily to the EU. In the end, the Kyoto issue proved to be the bargaining chip that launched the new path to the future.

Connie Hedegaard, the EU’s climate change commissioner, said she was prepared to offer developing countries what they were after only if they would agree to be “legally bound” to a new agreement by 2020.

“We need clarity...we need to commit,” she said in the final hours of the Durban meeting. “The EU has shown patience for many years. We are almost ready to be alone in a second commitment period. We don’t ask too much of the world that after this second period all countries will be legally bound.”

There was resistance up until the very end, with Indian negotiator Jayanthi Natarajan making an emotional plea to not be asked to “sign away the rights of 1.2 billion people and many other people in the developing world” by agreeing to something that could limit their ability to grow their economy.

In the end, following a “huddle” requested by the COP president, the EU and India came to agreement on the issue by changing the phrase “legal outcome” in the earlier Durban Platform draft to “an agreed outcome with legal force under the convention applicable to all parties.” This weaker language was enough to satisfy India, which is hesitant to sign up for a deal that could impede its development.

The deal is indeed a breakthrough, but some environmental groups are questioning the value of a second Kyoto deal - dubbed by some KP2 - that does not include the US, Canada, Japan, and Russia. Shortly after the Durban meet, Canada announced its decision to pull out of the current

Kyoto Protocol, a move that quickly attracted international attention and criticism.

The text is also somewhat ambiguous on whether the Protocol will be extended to either 2017 or 2020, punting a final decision on the issue down the road to COP 18, which will take place next year in Doha, Qatar.

Green Climate Fund

Durban also saw movement on the other major expected outcome of the meet, with progress made on the Green Climate Fund. As expected, the text approves the governing instrument which will establish a 24 member board, composed of an equal number of developed and developing country members.

Members of the board - and their alternates - will be selected by their respective constituency or regional group within a constituency. The text also requires members to have the necessary finance and climate change skills and expertise and notes that gender balance should also be considered.

Importantly, it was agreed that the World Bank will serve as the interim trustee of the Fund for the first three years after its operationalisation. Washington had been pushing for the Bank to be designated as the trustee, insisting that the Fund must be managed by an international organisation with experience in managing funds globally.

Progress on response measures

The Seventeenth Conference of the Parties also made advances on the issue of response measures, one heading that can encompass some of the major trade issues in climate change negotiations. The agreed text establishes a forum that will enact a work programme on the impact of the implementation of response measures - actions taken by countries to combat climate change - and consolidates all discussions on the response measures issue under the UN Climate Convention.

Traditionally associated with the potential impacts that a decrease in the use of fossil fuels will have on petroleum-producing countries, the impacts of response measures has become a hot issue for

many developing countries, who argue that social and economic consequences would be faced through other sectors or economy-wide too.

This response measures issue was bitterly fought out in a small negotiating group under the Subsidiary Body for Scientific and Technical Advice (SBSTA), with sessions stretching late into the Saturday night. With ministers tied up in the informal discussions or “indabas” - for which COP 17 will be remembered - negotiators from a handful of countries commented that they could no longer move the issue forward.

While there was a clear split between developed and developing countries, the most notable divide was between the US and the G77 and China. Some observers speculated that the response measures issue was being dragged out on purpose by some parties so it could be used as a bargaining chip in other discussions. At one point, the SBSTA chair expressed his frustration at a US request to discuss the issue with colleagues working under the LCA, reminding the delegate that the response measures issue was not being negotiated under an ad hoc working group.

The final decision on the issue adopts a work programme and calls for the establishment of a forum on the impact of response measures to be convened by the chairs of both subsidiary bodies - STA and Implementation (SBI). It asks the subsidiary bodies to review the work of the forum this year and advance their findings in 2013 at COP 19.

While other trade issues - including agriculture and bunker fuels, dirty fuel used in shipping and aviation - failed to gain any meaningful traction in Durban, there was movement on technology, with the Green Climate Fund tasked with ensuring adequate development and transfer.

Technology transfer

Negotiators in Durban were also able to move forward the process of operationalising the Technology Mechanism, which had been established at last year's climate talks in Cancun.

The talk surrounding the Technology Mechanism touched upon a variety of issues, including the

undefined relationship between Mechanism's two main bodies - the Technology Executive Committee (TEC) and Climate Technology Centre and Network (CTCN).

This issue has now been settled, with negotiators establishing a system of joint reporting by the TEC and CTCN to the COP. While developing countries wanted the TEC to provide guidance and oversight to the CTCN, this was not retained in the final language regarding the Mechanism.

Durban also witnessed the adoption of the terms of reference of the CTCN; these addressed the issue of governance through the establishment of an advisory body that reports to the COP.

Although intellectual property was raised several times in the context of the technology discussions, particularly by developing countries, apparently it did not feature in the final text.

A monumental deal?

So soon after the close of South Africa's climate meeting, it is hard to tell how this COP will be remembered in hindsight. While many attendees noted that the logistics of the event were an incomparable improvement on Cancun, there were still several shortcomings.

The closing plenaries saw constant praise from the floor for the COP president's tireless work and insistence that parties engage in a spirit of compromise and "Ubuntu." However, some delegates were critical of some of the tactics employed by the president.

The meet will most certainly be remembered for its use of South African tribal-inspired "indabas" to generate high-level discussion on major issues. However, while the indaba process was useful for ironing out "big picture" issues, one delegate told Bridges, it also tied up ministers' valuable time when they could be helping to move individual texts forward. Another negotiator said this was the reason the meeting stretched so long into overtime.

There was also a profound sense of confusion that clouded much of the two weeks of negotiations, with little information emerging from the talks as

they unfolded. This atmosphere only intensified on Thursday, Friday, and Saturday, with reporters and other observers caught in a holding pattern, perpetually asking each other if they've heard *anything*.

The deafening silence from the COP only deepened late on Friday, with reporters, observers, and many delegates leaving the venue shortly before midnight unsure of what to expect on Saturday.

Despite these drawbacks, the process was guided to completion with South Africa at the helm. The COP will certainly be remembered for the exhaustion of those in attendance, but that is insignificant in historical terms. What is significant is the multilateral passion, emotion, and spirit of compromise seen from all delegates.

After three sleepless nights of hard work, the UNFCCC has proven that the multilateral process is still alive and capable of making collective progress. Indeed, what seemed impossible only three weeks back - namely an extension of the Kyoto Protocol and a plan to legally bind all emitters, traditional and emerging - was ultimately made possible through hard work and skilful diplomacy. A long and winding road has been drawn in Durban. But for climate change to be addressed effectively, this path will need to be travelled well and to actual reductions in global warming before success can truly be declared. Only then will we be able to declare more than "this past weekend, countries simply avoided to fail."

All of the decisions adopted by COP 17 and CMP 7 can be accessed [here](#).

ICTSD reporting.

IN BRIEF

Australia, New Zealand Plan to Link Emissions Trading Schemes

While discussions at this year's UN climate negotiations in Durban, South Africa were still underway, some countries also made moves outside of the multilateral setting in an attempt to strengthen international climate change co-operation. Australia and New Zealand revealed plans last week to link their emissions trading systems as soon as 2015, once Australia has moved from a fixed carbon tax to a flexible price mechanism.

Australia's Clean Energy Bill overcame its final hurdle last month, with the Senate passing the law to introduce a carbon tax in July 2012 (see Bridges Weekly, [9 November 2011](#)). The controversial tax targets five hundred of Australia's most polluting producers, and has come under fire from a variety of fronts, particularly the coal industry – Australia's largest export industry.

The Australian plan will create the largest emissions trading scheme outside of the EU when the fixed tax develops into a market-based trading system in 2015.

Earlier this fall, when the future of the Australian carbon tax was still unclear, the domestically controversial scheme received strong backing from the EU. Along with providing public support, Brussels also indicated that it would be holding discussions with Canberra on a possible linkage of the two carbon trading systems (see Bridges Weekly, [7 September 2011](#)).

Now that the Australian plan has been passed into law, the EU and Australia have been exploring ways of linking their carbon markets.

Australia is now planning the same with its neighbour New Zealand, which has had its own trading scheme since July 2011. On the sidelines of the global climate summit in Durban, Australian Climate Change Minister Greg Combet and his New Zealand counterpart Tim Groser

expressed their intention to link their respective emissions trading schemes as soon as possible.

“Markets are the way to cut our emissions at least cost. That is why Australia is working with New Zealand to develop them domestically and internationally,” the Ministers stressed in their joint [statement](#).

Officials from both countries have already identified areas for linkage as well as a possible start date, currently planned for 1 July 2015.

In Australia's case, linking its carbon market with other countries could have the additional advantage of locking in the scheme, making its removal – as planned by the conservative opposition in case of victory in the country's 2013 elections – more difficult.

The outcome of the two-week Durban climate talks also sparked a renewed attack of Australia's carbon tax law by Australian opposition leader Tony Abbott. “That Durban has broken up without any significant outcomes just proves that this is going to be a do-nothing decade for global action on climate change,” he said. “It demonstrates that Australia's carbon tax is an international orphan.”

The new global climate deal, which was eventually hammered out one day and a half after the planned end to the Durban talks, involves a plan among the 194-party conference to begin negotiations on a legal climate agreement involving all major emitters – including the US, India and China. This agreement would be concluded in 2015 at the latest. For more on the conclusion of the Durban talks, see our Special Section of this issue.

ICTSD reporting; “Climate conference approves landmark deal,” ASSOCIATED PRESS, 11 December 2011; “Coalition, Greens attack Durban climate pact,” THE AUSTRALIAN, 12 December 2011; “Australia, New Zealand could link carbon trade schemes in 2015,” REUTERS, 5 December 2011.

Lack of Clarity on Aviation Emissions Persists as ETS Deadline Looms

With the 1 January 2012 implementation date for the EU's controversial plan to charge airlines for their emissions drawing near, many questions on the details of the plan remain unresolved. The scheme – which will charge all airlines landing or taking-off from EU airports for their expended emissions, regardless of their country origin – has faced much criticism and is the subject of a trans-Atlantic legal battle.

Still undecided as the 2012 start-date approaches, the European Court of Justice (ECJ) is now expected to deliver its ruling on the legality of including aviation in the EU ETS on 21 December – earlier than anticipated. The decision is expected to follow the ECJ Advocate General's non-binding opinion, which deemed that the inclusion of aviation in the EU ETS is fully compatible with international law (see Bridges Weekly, [12 October 2011](#)).

Further complicating the issue, the US House of Representatives in October passed a bill that would make it illegal for US airlines to comply with the controversial EU scheme. The House-backed measure, which garnered broad support, would prohibit US passenger and cargo airlines flying to and from Europe from participating in the EU ETS should the scheme be unilaterally imposed (see Bridges Weekly, [2 November 2011](#)).

The bill was introduced to US Senate on 7 December. If approved, the law would allow the US Department of Transportation to “take necessary action to ensure that America's aviation operators are not penalised by any tax unilaterally imposed by the EU.”

For its part, the European Commission has estimated that any increase in cost under the ETS will be “modest at most,” ranging between US\$1.40-US\$8.60 per ticket per flight at current CO2 prices. The EU has repeatedly reiterated that its preferred choice is a global solution but says the lack of global action has forced it to proceed with the scheme.

But controlling emissions on a global scale is a monumental task, as seen in the negotiations which took place last week during UN climate talks in Durban, South Africa (see related story, this issue). While parties were able to make modest progress on key climate change challenges, they were unable to reach an agreement on a global sectoral approach for transport emissions.

The protracted negotiations on aviation were complicated by issues relating to aspects of how the principle of Common but Differentiated Responsibility – whereby developed countries are expected to take on more responsibility due to their historical carbon contributions – factors into the aviation sector. There is also disagreement on which UN body is better equipped to manage the issue: the Framework Convention on Climate Change (UNFCCC) or the Montreal-based International Civil Aviation Organization (ICAO).

While in Durban, Paul Steele, a spokesman for the International Air Transport Association's (IATA), an international trade group of airlines insisted that the ICAO was the most appropriate venue.

The only “real way to solve this is for governments to get back around the table at ICAO,” Steele told reporters.

ICTSD reporting; “Senate bill would shield US airlines from EU law,” REUTERS, 8 December 2011; “Court to decide on EU aviation emissions trading case before Christmas,” BUSINESSGREEN, 7 December 2011; “Airlines for America (A4A) Commends Senate Opposition to EU ETS,” SACRAMENTO BEE, 7 December 2011; “COP17 Outcome – An Aviation Perspective,” AIR TRANSPORT ACTION GROUP, 11 December 2011; “IATA warns EU ETS could trigger trade war,” AIR TRANSPORT WORLD, 9 December 2011; “No agreement on aviation emissions at COP17,” AIR TRANSPORT WORLD, 13 December 2011; China, Japan Clash with EU over Aviation CO2 curbs at summit,” BLOOMBERG, 30 November 2011.

WTO IN BRIEF

EU, US Tensions Reignite over Aircraft Subsidies

The ongoing battle between Washington and Brussels over aircraft subsidies took another turn on Friday 9 December, with the US rejecting the EU's claim of having eliminated subsidies to civil aircraft manufacturer Airbus that had been deemed WTO illegal.

In its announcement, the US requested that the EU enter into consultations regarding its compliance notification. Washington is also seeking authorisation from the WTO Dispute Settlement Body to impose annual countermeasures in the range of US\$7 to 10 billion.

These requests come barely a week after Brussels' submission of its compliance report, which outlined a list of thirty-six measures being taken by EU member states to comply with the 2011 Appellate Body ruling on the Airbus case (see Bridges Weekly, [7 December 2011](#)).

According to the Office of the USTR, Washington's review of the EU compliance report suggested that Brussels had not withdrawn the subsidies in question. The US also claims that the EU has granted new subsidies to Airbus' development and production.

"The US cannot accept anything less than the end of this subsidised financing," US Trade Representative Ron Kirk said in a [statement](#).

"The US remains prepared to engage in any meaningful efforts, through formal consultations and otherwise, that will lead to the goal of ending subsidised financing at the earliest possible date," Kirk added.

The USTR announcement is the latest in a high-profile spat between Washington and Brussels over domestic support to the airplane industry. The EU is also challenging the US on the latter's subsidies to Airbus competitor Boeing; that case is currently at the appeals stage. The Appellate

Body's report on the Boeing case is expected at the beginning of next year.

Meanwhile, EU Trade Spokesman John Clancy called the US' threat of countermeasures "premature and not in line with the appropriate sequence of events in WTO disputes."

"We will nevertheless review the requests carefully and consider next steps," he said.

Washington's announcement also provoked a swift reaction from both the US and EU aircraft industries in question. US-based Boeing stressed that it was disappointed with Airbus' and the EU's supposed failure to comply with the ruling. "This illegal subsidisation of Airbus products – plane after plane – is unsustainable and must stop now."

In response, Airbus spokesman Stefan Schaffrath insisted that "Boeing has made a lot of claims and requests since the beginning of this dispute, and none of them proved to be true. It is time for the WTO to review and assess the implementation presented by the EU."

Next steps

According to WTO dispute settlement rules, the US can request the original dispute panel for a ruling on the EU's compliance. In addition, countermeasures are available in the event that panel recommendations and rulings are not implemented within a reasonable period of time. These, however, need to be authorised by the WTO's Dispute Settlement Body.

Under existing rules it is unclear whether the complainant can retaliate before or after the compliance panel determines that the respondent has in fact failed to comply with the ruling. In the past, members agreed on a respective way forward in bilateral deals.

In this regard, Kirk assured that, while countermeasures will preserve US rights, no actual imposition of such measures would occur until after further WTO proceedings.

Since 1995, retaliation threats have been authorised in a few WTO disputes. The level of

retaliation authorised usually depends on the amount of trade at stake.

The dispute at hand is the world's largest trade spat and affects jobs in an airplane market worth more than US\$2 trillion.

ICTSD reporting; "EU Fails to Withdraw Airbus Aid After WTO Ruling, US Says," BLOOMBERG, 9 December 2011; "US threatens sanctions in Airbus battle with EU," REUTERS, 9 December 2011.

EVENTS & RESOURCES

Events

Coming soon

15-16 December, New York, US. 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](#).

16-17 December, Geneva, Switzerland. THE TRADE AND DEVELOPMENT SYMPOSIUM. Held in conjunction with the

Eighth Ministerial Conference of the WTO, this ICTSD-organised event will provide a forum for discussion on current challenges facing the multilateral trading system. Discussion will cover a range of topics, including protectionism, regional trade pacts, environmental protection, food security, sustainable energy use and production, and trade imbalances. The symposium aims to provide a forum for multi-stakeholder discussion outside the formal negotiation arena and to initiate discussions on the future of the multilateral trading system outside the Doha Round. ICTSD has held similar symposia during previous WTO Ministerial Conferences in Cancun, Hong Kong, and Geneva. For a list of partners, a programme agenda, and more information, 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.

15 December: Ministerial-level meeting of the Committee on Government Procurement

15-17 December: Eighth Ministerial Conference

19 December: Dispute Settlement Body

Other Upcoming Events

1 January 2012, worldwide. INTERNATIONAL YEAR FOR SUSTAINABLE ENERGY FOR ALL. In December 2010, the UN General Assembly adopted a resolution proclaiming 2012 as the "International Year for Sustainable Energy for All." According to the Resolution, this will help foster "an enabling environment for the promotion and use of new and renewable energy technologies, including measures to improve access to such technologies." The year will be aimed at raising awareness of access to affordable energy, energy efficiency, and sustainability. As

part of this initiative, the UN has launched a global Energy Access Practitioner Network, a group of representatives from the private and civil society sectors who will work on bringing energy services and solutions to related to electrification in a range of developing country contexts, in the hopes of achieving universal energy access by 2030. For more information on related events and activities, please visit the UN website for this [initiative](#).

25-29 January 2012, Davos, Switzerland. WORLD ECONOMIC FORUM ANNUAL MEETING 2012. Under the theme of “The Great Transformation: Shaping New Models,” this annual forum will address the rebalancing and deleveraging that is reshaping the global economy. In the short term, this transformation is being seen in the context of how developed countries will deleverage without falling back into recession and how emerging countries will curb inflation and avoid future economic bubbles. The panels and discussions at the event will focus on the importance of future shifts in social values, resource needs, and technological advances – all of which will factor into dealing with an ever-growing economy and interconnected population. For more information on the programme, please visit the WEF [website](#).

Resources

THE DOMESTIC POLITICS OF NEGOTIATING INTERNATIONAL TRADE: INTELLECTUAL PROPERTY RIGHTS IN US-COLOMBIA AND US-PERU FREE TRADE AGREEMENTS. By Johanna von Braun (12 December 2011). This book examines in detail the intellectual property negotiations that formed part of the US-Peru and US-Colombia Free Trade Agreements. The author analyses the extent to which public health authorities and other parties affected by increased intellectual property protection were integrated into the negotiation process. The book then juxtaposes these findings with an analysis of the domestic origins of US negotiation objectives in the field of intellectual property, paying particular attention to the role of the private sector in the development of these

objectives. The book is based on a substantial amount of empirical research, including approximately 100 interviews with negotiators, capital based policy-makers, private sector representatives, and civil society organisations in Lima, Bogotá, and Washington. For more information, please visit the publisher’s [website](#).

AGRICULTURAL COMMODITY PRICE VOLATILITY: AN OVERVIEW. By Marilyne Huchet-Bourdon, for the Organisation for Economic Co-operation and Development (OECD) (6 December 2011). Commodity prices have been shifting rapidly in recent years, with large increases prior to the economic crisis, followed by sharp declines and now a substantial increase. This report looks at whether commodity price volatility has actually changed in recent years. Analysis of the price volatility for selected agricultural commodities is brought into focus, emphasising the relationship with crude oil, fertiliser, and the euro-dollar exchange rates. The author concludes that, although commodity price volatility has been high in recent years (2006-2010), the analysis does not provide evidence that there has been a general increase in the volatility over the past 50 years. Caution must be taken when interpreting these results given the changes in the international scene, the author notes, and suggestions are made to examine the relationship between price volatility and food security in future research. To view this report, please visit the OECD [website](#).

A CHINA ROUND OF MULTILATERAL TRADE NEGOTIATIONS. Aaditya Mattoo and Arvind Subramanian for the Peterson Institute for International Economics (December 2011). The WTO’s latest round of negotiations, the Doha Development Agenda, is currently at an impasse. This report suggests that the WTO has only been effective in the past, when the global trade body adapted to shifts in economic realities. The Doha Agenda, therefore, needs to be redefined to reflect one of the biggest shifts in the international economic and trading system: the rise of China. Such an initiative would have two pillars: first, a new negotiating agenda that would include the major issues of interest to China (export restrictions on foodstuffs, investment rules, and green protectionism) and its trading partners (exchange rates and state capitalism). This, the

authors argue, would unleash the reciprocal liberalisation mechanism that has driven the WTO process to previous successes. Secondly, such an initiative must include new restraints on bilateralism and regionalism that would help preserve incentives for maintaining the current broad non-discriminatory trading order. The report is available through the Peterson Institute [website](#).

OPERATIONALISING MRV OF SUPPORT – ANALYSIS OF FINANCE, TECHNOLOGY AND CAPACITY BUILDING SUPPORT. By Koji Fukuda, Makoto Kato, and Yoshihiro Mizutani for the Institute for Global Environmental Strategies (IGES) (November 2011). In the negotiations for the future climate change regime, the establishment of a measurement, reporting, and verification (MRV) structure aiming to secure transparency of the parties' reduction goals and reduction activities for greenhouse gas emissions is positioned as one of the major negotiation agendas. Development in negotiations for the establishment of a MRV structure has been seen mainly in the area of mitigation, and modalities for MRV of support have not been established as of yet. his paper focuses on MRV of support in terms of funding support, capacity building, and technology development/transfer. This analysis can be used to help support developing countries, see a broad overview of the development of negotiations, and examine how the modalities of the MRV structure should be. For more information, and to view this paper, visit the IGES [website](#).