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WORLD TRADE ORGANIZATION

Time to "Change Gears" on Doha, Lamy Urges WTO Members

The first half of this year has seen "meagre progress" in moving the Doha talks forward, WTO Director-General Pascal Lamy [told](#) delegates on Wednesday, reiterating his earlier call that 2012 "not be a wasted year." During today's meeting, WTO members also formally signed off on revised accession guidelines for least developed countries (LDCs), and welcomed the announcement that Vanuatu will become the organisation's 157th member in August.

"Paralysis" still a risk, trade chief warns

Speaking to the General Council – the WTO's highest decision-making body outside of the ministerial conference – on Wednesday 25 July, Lamy stressed to delegates that the second half of the year should be focused on operationalising the instructions given by ministers at last December's ministerial regarding the Doha negotiations, adding that "we have to recognize that prolonged and dogmatic discussions about whether or not to deliver on everything or a few things or nothing at all have not and will not take us very far."

"The only thing we know is that an 'all' or 'nothing' does not work. A 'my way or the highway' is the best way to ensure paralysis," Lamy cautioned. "I believe that after the summer break, we need to change gears at various levels so as to ensure that we use our time in the most efficient manner possible."

"Those of you who believe that, as time passes, inexorably, the Round might lose all its remaining steam may be right, whether we like it or not," the Director-General warned. "Credibility lies in the capacity to produce results, not statements. We should all face up to this reality and accept that there is no individual clever escape from this collective responsibility."

Delegates speaking to Bridges before the event noted that the mood headed toward this year's July General Council was markedly different from previous years, when July was often set as a goal date for concluding proposed breakthroughs in the Doha negotiations.

"This is the first month of July where there is no window of opportunity, or no one claims there is one," one developed country official remarked to Bridges prior to Wednesday's meeting.



International Centre for Trade
and Sustainable Development

"Normally we're asked to stay here to the end of July in order to do whatever is necessary for a side deal," the official added, noting that this year it was already clear from the beginning of July that this would not be "a breakthrough month."

"2012 is clearly a transition year, with many leadership transitions around the world," one delegate said, noting that members are avoiding putting any deadlines or targets on a particular topic. "However, 2013 is another year, and we might be living in another world, depending on the [leadership] changes."

Trade facilitation as a Doha deliverable?

In light of the current impasse of the nearly eleven-year Doha negotiations, discussions among members since last December's ministerial conference have largely centred on whether or not an agreement on trade facilitation could be an early deliverable from the Round.

Debates as of late have focused broadly on the question of whether trade facilitation can indeed be a "self-balancing pillar," or whether it should be paired with another Doha deliverable so that developing countries are not just "giving away the issue for free," as one delegate commented ahead of the General Council meeting.

The trade facilitation subject took centre stage at Wednesday's gathering, with Lamy noting that various delegations had told him during informal meetings that "any paragraph 47 outcomes, whether it be trade facilitation or something else... does not imply the end of the Round."

The trade chief also noted that the principle of the single undertaking – where nothing is agreed until everything is agreed – "remains the guarantee that all mandated issues need to be addressed."

This comment was reportedly picked up by many developing countries in their interventions, including the African Group, Mauritius on behalf of the Africa, Caribbean, and Pacific (ACP) country group, Brazil, Chile, India, Nigeria, Pakistan, and South Africa, among others, who largely voiced their concerns regarding treating trade facilitation as a stand-alone outcome of the Round, arguing instead that other developing country issues on the table must also be addressed and that the single undertaking principle should not be forgotten.

Speaking to Bridges ahead of the meeting, some developing country delegates raised similar worries. "There needs to be a clear understanding that trade facilitation is something that benefits everyone, and not just a few members," one developing country official commented ahead of Wednesday's gathering.

"This isn't just an area of interest for developing countries, which do have a lot to gain," the official said, noting that areas such as special and differential treatment need to be clarified in order for countries to have the capacity to take on commitments. "If this is understood, and if there are clear commitments, I think there is the possibility for us to conclude a deal."

"We are convinced that a trade facilitation agreement will bring benefits," a delegate from a large developing country commented. "Some have said that from here to [the next ministerial] it would be good to have a deliverable, but those are mainly hopes right now. I don't think that anyone will want to put too much pressure on a deadline, though, in case it doesn't work out."

Within the actual trade facilitation negotiations, discussions have been ongoing both informally and formally throughout the year, with facilitators at the most recent negotiating cluster – held from 9-13 July – reporting limited progress in their work.

Sources note that at this latest meeting, facilitators described that discussions as of late have focused on topics such as special and differential treatment of developing countries, customs brokers, pre- and post-shipment inspection, and freedom of transit, with a few members submitting new proposals in some of these areas.

Given the few changes that have been reported by facilitators, the chair of the trade facilitation talks – Ambassador Eduardo Ernesto Sperisen-Yurt of Guatemala – has suggested that the next revision of the negotiating text be issued at the upcoming group meeting in October.

Other negotiating topics

Meanwhile, other Doha topics are seeing limited progress, with the contentious areas of agriculture and non-agricultural market access (NAMA) seeing little movement forward. In the agriculture talks, there is yet to be any consensus on what topics might serve for an early harvest, Lamy told members at an informal [meeting](#) of heads of delegation last week.

The lack of progress in the agriculture talks was raised at today's General Council meeting, with Australia, speaking on behalf of the Cairns Group of developed and developing country net agricultural exporters saying that it was "deeply disappointed" over the lack of engagement on the subject. ASEAN made a similar point during its intervention, stressing that agriculture is one of the core issues at the heart of the negotiations.

In NAMA, there is "no activity to report," Lamy told delegates last week during an informal meeting; outgoing chair Luzius Wasescha of Switzerland, also speaking to the NAMA negotiating group last week, has said that he has seen little enthusiasm among members to pursue a reform agenda, and urged members to keep an open mind in exploring new negotiating approaches.

LDC accession guidelines

While the future of a possible "early harvest" for trade facilitation still remains unclear, members at Wednesday's General Council gathering did formally sign off on a non-Doha outcome, specifically revised accession guidelines for the world's poorest countries.

Least developed countries have long complained that their trading partners routinely ask them to take on commitments beyond what they are capable of during their bidding process to join the WTO, as seen in the cases of the five most recent LDCs to accede, despite the existing LDC accession guidelines from 2002. These commitments, they argue, were also well beyond those that were required from LDCs that had previously joined the Geneva-based trade body.

With that in mind, ministers at the December ministerial conference had directed members to "further strengthen, streamline, and operationalise the 2002 LDC accession guidelines," with the inclusion of benchmarks, particularly in the area of goods. Members were also urged to explore benchmarks in the area of services, with July's General Council meeting set as the deadline for finalising the new guidelines.

Late last month, WTO members in the LDC Sub-committee provisionally agreed on a set of recommendations, including quantitative benchmarks in goods, and qualitative ones in services. The revised guidelines also include provisions regarding transparency and technical assistance. (See Bridges Weekly, [4 July 2012](#))

While the difficulty of the LDC guidelines discussions had raised questions in some quarters over whether concluding the talks ahead of the July General Council deadline would be doable – and the possibility of a delay was suggested by some – "July was always the goal," one developing country official commented to Bridges.

"At least for our part... we always believed it would be possible, although I can't deny that there were difficult moments in the talks – and this was something that we had to accomplish, not just for LDCs, but also for the credibility of the WTO."

Others noted that, had members been unable to reach agreement ahead of today's meeting, the result would have cast a pall over the 25 July gathering, given the potential questions that would have been raised over the virtues of the system.

Vanuatu to become 157th member

The 25 July meeting also saw Vanuatu notify the WTO that it had ratified its accession protocol, setting the stage for the small Pacific island country to become the 157th member of the global trade body on 24 August, two days after Russia's membership takes effect. (For more on Russia's accession, see related article in this issue.)

While Vanuatu had been formally invited to join the global trade body last October, the Pacific island nation was unable to ratify the accession accord domestically ahead of its 31 December 2011 deadline, due to domestic difficulties.

"[Vanuatu's] WTO membership will facilitate Vanuatu's integration in the global economy," Lamy said. "This is crucial for a least-developed country such as Vanuatu, since trade can be an engine for growth and poverty reduction."

Bali expected to be site of next ministerial

Throughout the last several months, General Council chair Elin Johansen of Norway has been consulting with members regarding Indonesia's offer to host the WTO's ninth ministerial conference (MC9), which is slated to be held at the end of 2013.

Though the agenda item regarding the venue and dates for the ministerial had not yet been discussed during the General Council meeting as Bridges went to press, it is widely expected that members will formally accept Indonesia's offer to hold MC9 in Bali before the end of this week's meeting.

ICTSD reporting.

RUSSIA

Russia Clears Last Hurdle in Road to WTO Accession

Russian President Vladimir Putin has signed legislation approving Russia's accession to the WTO, the Kremlin announced on Saturday, marking the last step in a process that began in 1993. Back in Washington, the push to repeal Cold War-era trade restrictions on Russia received a new shot of energy last week, following the announcement of a deal in the House Ways and Means Committee to move Moscow-focused trade legislation forward.

Russian President's signature seals WTO deal

With Putin's signature, Moscow's long-awaited membership in the global trade body is now set to take effect on 22 August, in accordance with the 30-day period after ratification outlined in WTO rules. Putin's approval comes after the accession accord was ratified by the country's Parliament, with the lower house – the State Duma – voting in the deal's favour by a close margin earlier this month, and the upper house, or Federation Council, following suit just days later. (See Bridges Weekly, [11 July 2012](#) and [18 July 2012](#), respectively)

"It has been a long road to reach this destination but today, Russia has cleared the final hurdle and on 22 August it will take its rightful place at the table with the family of trading nations, becoming the WTO's 156th member. I look forward to Russia joining us next month," WTO Director-General Pascal Lamy said upon news of Putin's signature.

Putin's approval followed a nearly two-decade long process that included protracted negotiations with existing members of the Geneva-based trade body that ended only late last year. (See Bridges Daily Update #3, [17 December 2011](#)) Under the terms of the accession accord – which, at well over 700 pages, is one of the most complex that the WTO has seen to date – Moscow took on 30 bilateral agreements on market access for services and 57 on market access for goods.

The country is also undertaking a series of commitments and obligations designed to make its trade regime more transparent and predictable for trade and foreign investment, which are widely expected to improve confidence in the Russian business environment.

In addition, Moscow intends to join the WTO Government Procurement Agreement (GPA), a plurilateral pact that currently includes 42 countries; a revised version of the deal was finalized last December at the WTO Ministerial Conference (See Bridges Daily Update #2, [16 December 2011](#)). Russia will become an observer to the GPA once its WTO membership takes effect; Moscow has then agreed to initiate negotiations for GPA membership within four years of its WTO accession.

As part of its accession, Moscow also committed to join the Information Technology Agreement (ITA), another plurilateral pact under the aegis of the WTO, as well as provide duty-free treatment to all products covered by the ITA. However, sources note that at an informal meeting of ITA members earlier this month – which does not include the entire WTO membership – various delegations expressed concern over Russia's delay in submitting its schedules to accede to the agreement. Moscow has said that it will begin its notification process shortly.

The last two members to join the Geneva-based organisation were Samoa and Montenegro, whose memberships were formalised on 29 April and 10 May of this year, respectively. (See Bridges Weekly, [2 May 2012](#)) All three countries were officially invited by WTO members to join the global trade body at last December's ministerial conference.

Jackson-Vanik process heats up following House committee agreement

The past week also saw a [deal](#) emerge from the Ways and Means Committee – the US House of Representatives panel tasked with tax and trade matters – to move forward legislation that would establish permanent normal trade relations (PNTR) with Russia and repeal the 1974 Jackson-Vanik amendment, which denies most-favoured nation (MFN) status to countries with limited freedom of emigration.

The bipartisan deal – announced by four of the committee's top lawmakers last Thursday – is expected to go through the mark-up process tomorrow. The House legislation mirrors the bill that successfully made it out of the Senate Finance Committee – that chamber's counterpart to House Ways and Means – last week.

Though the US has granted annual waivers to the Jackson-Vanik legislation since the early 1990s, the prospect of Russia becoming part of the 155-member WTO had prompted US lawmakers and the Obama administration to review whether or not to permanently remove the trade restrictions.

Without repealing Jackson-Vanik, some fear that US exporters could be placed at a serious disadvantage compared to their foreign competitors, who unlike the US would immediately enjoy the benefits of Moscow's WTO membership.

Human rights language likely to be included in final trade bill

The Jackson-Vanik repeal process has been complicated by concerns in Washington regarding human rights protections in Russia, as well as Moscow's relationship with the embattled regime of Syrian President Bashar-al-Assad.

Lawmakers have spent the last several weeks debating whether PNTR should be established with Moscow at all and, if so, whether the removal of the Jackson-Vanik restrictions should be linked to the Sergei Magnitsky Rule of Law Accountability Act, a proposed law that would sanction Russian officials for alleged human rights violations.

Though House Republicans and the White House had pushed for a clean trade bill – without the human rights legislation – the prospect of the Jackson-Vanik repeal being tied to the proposed Magnitsky Act is looking increasingly likely, with the Senate Finance Committee having already added the human rights language to its version of the trade legislation.

Lawmakers in the House Ways and Means Committee were unable to include the human rights language in their version of the trade bill, given that the Magnitsky legislation does not fall under their panel's jurisdiction. However, the Magnitsky bill has already been approved by another House panel – the Committee on Foreign Affairs – and Washington insiders expect the two pieces of legislation to be combined in the House Rules Committee before the vote in the full House, according to Congressional newspaper The Hill.

Legislators like Senate Finance Committee Chairman Max Baucus, a Democrat who has largely spearheaded the Jackson-Vanik repeal process in his chamber, have expressed optimism that the process can be concluded before Congress breaks for its annual August recess. Some analysts, however, have been more reserved in their expectations, noting the few legislative days left before lawmakers leave Washington for their home districts, and the possible difficulties posed by election year dynamics and opposition by some House Republicans to tying the trade legislation to human rights sanctions.

Proposed Magnitsky bill sparks strong reaction in Russia

Russian officials, meanwhile, have sharply criticised the proposed Magnitsky law, promising that any Moscow-focused human rights legislation will spark retaliation against the US.

In an [op-ed piece](#) published on Monday in The Hill, Russian ambassador to the US Sergey Kilysak urged US lawmakers to avoid reverting to "Cold War thinking," stressing that the death of anti-corruption lawyer Sergei Magnitsky in a Moscow jail in 2009 – after whom the human rights legislation is named – has already been extensively investigated in Russia.

"The Magnitsky bill, if approved, will certainly create new irritants," Kilysak said, calling the proposed legislation "a very disappointing sign of the quality of relations between our two countries 20 years after the end of the Cold War."

"The most regrettable conclusion is that American legislators may prove to be not yet ready to build normalcy in our relations even as they vote for Permanent Normal Trade status," the ambassador added.

ICTSD reporting; "Putin signs Russia into World Trade Organization," AFP, 22 July 2012; "Deal struck in House on Russia trade bill," THE HILL, 19 July 2012.

INTELLECTUAL PROPERTY

Visually Impaired Instrument Sees Progress at WIPO Copyright Ctte

Following ten days of intense negotiations, members of the World Intellectual Property Organization (WIPO) agreed to further advance discussions on a new legal instrument for copyright exceptions and limitations for the visually impaired and reading disabled. The WIPO copyright body also considered various proposals for a new instrument on exceptions and limitations for education and research, and adopted a working document containing proposals and comments towards an instrument on exceptions and limitations for libraries and archives.

The twenty-fourth [session](#) of the [Standing Committee on Copyright and Related Rights](#) (SCCR) met from 16-25 July in Geneva, Switzerland. The final conclusions of the meeting were not available as Bridges went to press Wednesday evening.

Talks on scope, definitions for visually impaired instrument

Text-based discussions for an international instrument on exceptions and limitations for visually-impaired persons and persons with other reading disabilities took centre stage during the ten-day talks, with countries once again butting heads over whether the instrument should be a binding one, like a treaty, or a soft law instrument in the form of guidelines or recommendations.

At the meeting, several developing countries called for a binding treaty, with the African Group in particular saying that such an outcome would allow "visually impaired persons,

and people with physical disabilities, in Africa and indeed all over the world...to fully exercise the right of access to information, education and knowledge."

Venezuela, for its part, said that a treaty is "the only way [WIPO] can be considered more human, more social, and inclusive."

The call for a treaty was echoed also by Australia, yet many other developed countries conspicuously left the word "treaty" out of their respective statements.

The EU said that it considers "that the way to make further progress on this file is to continue working on a solid text that enhances the availability of works in accessible format to visually impaired persons, while being mindful of the need to have effective protection of the rights of creators."

In that regard, David Hammerstein, the senior advisor on intellectual property for the Transatlantic Consumer Dialogue in Brussels, said putting roadblocks for a treaty would "be a democratic travesty" for the EU, given that the European Parliament had expressed its [support](#) for the conclusion of a binding agreement in February.

During the discussions, differences also emerged over the definition of the term "work," which is necessary to ascertain what would fall under the instrument's scope.

Most members agreed to use the definition provided in the Berne Convention for the Protection of Literary and Artistic Works, which includes books but also other forms of literary, scientific, and artistic expression such as painting, architecture, and sculpture.

Some delegations – notably Argentina and the US – expressed support for a more limited reference to works "in the form of text, notation and/or related illustrations" on the premise that not everything in the Berne Convention "would actually ever be the target of efforts to make accessible format copies."

India, however, said that it did not understand why countries wished to restrict the definition.

"It means Article Two of the Berne Convention is not applicable to the blind. Are they not able to access those works mentioned there?"

Members also disagreed over the term "authorized entity," which defines who will be allowed to make, obtain, and supply accessible format copies of works. The EU proposed that an authorized entity be a governmental agency or non-profit organization that has "as one of its primary missions or activities to assist beneficiary persons by providing them with services relating to education, training, adaptive reading, or information access needs."

Developing countries said that a reference to primary missions "would exclude many existing institutions that can effectively assist beneficiary persons to have access to works."

Nigeria, Iran, and India proposed a more flexible definition referring to "a governmental or non-governmental entity, an organization, educational or teaching institution, including organizations enabled by governments that address the needs of persons with visual impairments/print disabilities."

Tuesday's draft conclusions said that discussions on the issue will continue "in the 25th session of the SCCR with a view to making a recommendation to the WIPO General Assembly in an extraordinary session for the convening of a Diplomatic Conference in 2013 to adopt an international instrument on limitations and exceptions for visually

impaired persons/persons with print disabilities." However, this issue was also not yet decided upon as Bridges went to press.

Civil society groups, such as Knowledge Ecology International, [note](#) that this move appears to be geared at delaying a decision on a treaty until after the US presidential elections take place in November.

In a [video](#) earlier this week, Chris Friend from the World Blind Union urged US President Barack Obama to "use the influence of his office" to take a decisive stand on the issue.

"If we wait another year, another million books will be produced that will not be accessible to us," Friend added.

Exceptions and limitations for education and research

The SCCR also discussed a compilation of different text [proposals](#) for a new instrument on exceptions and limitations for educational, teaching, and research institutions. The document included a previous proposal from the African Group and two new proposals – one from Brazil and the other from Ecuador, Peru, and Uruguay.

Developed countries voiced a preference for a more flexible regime, leaving members free to decide which exceptions and limitations to use, as is already the case in the EU.

In EU law, "all exceptions have an optional character and allow for a degree of flexibility which is particularly important in view of the different legal systems and traditions of the 27 member states," explained the EU delegation.

Such a "patchwork system" in which some member states have certain limitations and exceptions, while others do not, "means that for purposes of education and research, those of us who are teachers like myself are never quite sure what we can access, what we cannot access," Nigerian delegate and copyright academic Ruth Okediji said.

"It is important to have a harmonized minimum mandatory approach," Okediji concluded.

Broadcasting organisations, libraries and archives

The SCCR also continued discussions on the protection of broadcasting organisations on a "signal-based approach," in which the instrument would only target the unauthorised interception and redistribution of broadcast signals. At stake is whether a recommendation will be made to the WIPO General Assembly to possibly convene a diplomatic conference.

Several developing countries and NGOs are concerned that extra protection for broadcasting organisations would add another layer of rights in addition to copyright protection and would go beyond a signal-based approach to include webcasting.

During informal negotiations, the SCCR chair prepared a single document showing all proposals on the table, which was adopted by members as a working document that incorporated all country comments.

WIPO members also formally adopted a working [document](#) – based on a proposal by the African Group – containing comments and textual suggestions towards an instrument on exceptions and limitations for libraries and archives. Substantive discussions on the topic have been postponed to the next session of the SCCR.

The WIPO General Assembly will meet on 1-9 October, while the next SCCR session is slated for November.

ICTSD reporting; "EU stalls treaty talks to allow copyright waiver for print disabilities," THE HINDU, 24 July 2012.

DISPUTES

Disputes Roundup: Australian Plain Packaging Faces Third Challenge; Rare Earths Panel Established

The debate over balancing public policy objectives with multilateral trade rules ratcheted up another notch last week, after the Dominican Republic became the latest WTO member to formally challenge an Australian law intended to make cigarette packaging less appealing to consumers. Meanwhile, the ongoing row over China's export restrictions on rare earths has now progressed to the next stage in the dispute settlement process, with the WTO establishing a panel to hear the case earlier this week.

Dominican Republic enters the fray over Australian cigarette packaging law

The Dominican Republic filed a request for consultations over Australia's Plain Packaging Act last Wednesday, becoming the third country to formally challenge the controversial legislation that Canberra officials have defended as necessary for protecting public health.

The other countries that have challenged the law at the WTO – Ukraine and Honduras – filed their requests for consultations in March and April of this year, respectively. (See Bridges Weekly, [21 March 2012](#).) The three countries are contesting Australia's requirement that all tobacco products be sold in standardised single-colour, logo-free packaging – a rule that will enter into force this December.

Developing country tobacco producers have long argued that the Australian law will have a negative impact on their domestic industries, with Santo Domingo being one of the law's most vocal opponents.

"Tobacco is our main export product, representing close to half a billion US dollars in external revenues and a significant number of jobs," Luis Manuel Piantini, the Dominican Republic's Ambassador to the WTO, told Reuters.

"The Dominican Republic has repeatedly expressed its concerns to the Australian government within the WTO and now feels compelled to request consultations to protect this important economic sector," he added, ostensibly referring to the numerous discussions that have taken place in the WTO's TRIPS Council on the subject.

The ambassador also noted that, while Santo Domingo shares Canberra's health concerns, it remains "unconvinced that [plain packaging] will have any positive effect."

In their request for consultations, the Dominican Republic claims that the law is more trade restrictive than necessary and violates the WTO's Agreement on the Trade-Related Aspects of International Property Rights (TRIPS) and Agreement on Technical Barriers to Trade (TBT).

Challenges in various forums

The Dominican Republic's move escalates an ongoing debate over the Plain Packaging Act, with challenges coming from both WTO members and the private sector. In addition to the complaints from Ukraine and Honduras, a number of major tobacco companies have filed suits in Australian domestic courts challenging the constitutionality of the law.

The plain packaging law is also being reviewed by an investor-state arbitration panel under the Bilateral Investment Treaty between Hong Kong and Australia. In that case, tobacco giant Philip Morris is arguing that its property was expropriated through the effective 'banning' of its trademarks and that its legitimate expectations were breached due to Australia's alleged violation of WTO law.

The last claim directly links the investor-state dispute back to the WTO proceedings, making trade lawyers eager for the results of the three parallel forums. The fear is that the three courts could come out with conflicting findings, which could result in a power struggle regarding which forum has jurisdiction over the matter. Importantly, while the WTO agreements allow for measures necessary to protect public health even where they would violate certain WTO provisions, the Australia-Hong Kong BIT is silent on any public policy considerations.

The Dominican Republic and Australia will now have 60 days to conduct consultations. If no resolution is reached in that period, the Dominican Republic will then be able to request that a WTO panel be established to hear the complaint.

Panel established in rare earths spat

The high-profile row over China's export restrictions on rare earths has now reached the panel stage, after the complaining parties – the EU, US, and Japan – made a second panel request at Monday's meeting of the WTO Dispute Settlement Body ([DS431](#), [DS432](#), and [DS433](#)). While an initial panel request had been rejected by Beijing earlier this month, this second request automatically establishes a panel, in line with WTO rules. (See Bridges Weekly, [11 July 2012](#).) The panel requests came after formal consultations earlier this year failed to reach a resolution.

The 17 rare earth elements in the dispute are essential in the production of high-tech and green energy products. The complainants argue that China's export restrictions on these rare earth elements, plus tungsten and molybdenum, raise domestic production costs and hurt foreign manufacturers who use these raw materials.

China, the producer of over 90 percent of the global supply of rare earths, maintains that the measures are necessary to limit environmental damage and conserve natural resources.

"Some countries with rich rare earth resources have not mined their own land for environment protection or other reasons, but made groundless accusations against China and repeatedly ignored the widely-known pollution caused by rare earth exploitation in the country," Zhu Hongren, chief engineer of the Chinese Ministry of Industry and Information Technology, told reporters earlier today.

"In any case, the Chinese government will surely provide reasonable protection for rare earth resources and ensure environmental protection and sustainable development while making use of the resources," Zhu said, while noting that Beijing will work within the WTO framework to solve its disputes with other countries on the subject.

Experts expect a ruling from the panel by late summer 2013 at the earliest.

ICTSD reporting; "The Dominican Republic requests WTO consultations with Australia concerning plain packaging for tobacco products," REUTERS, 18 July 2012; China to continue rare earth protection: official," XINHUA, 25 July 2012.

China "Market Economy" Debate in the Spotlight following European Court Ruling

Chinese firms landed a major victory last week, as the European Court of Justice (ECJ) upheld a lower court ruling that a Chinese chemical manufacturer was free from state interference in its business activities, despite the country's government being a minority shareholder. The ruling – which was made in the context of anti-dumping proceedings – could strengthen Beijing's argument for wanting market economy treatment from its trading partners, analysts say.

The EU currently does not grant market economy treatment to Chinese companies, effectively allowing Brussels to impose higher anti-dumping and countervailing duties on Chinese imports suspected of being dumped or unfairly subsidised. Beijing has long fought against claims regarding its alleged interference in the private sector, arguing that Brussels' refusal to recognise China as a market economy is undeserved.

In its ruling, the ECJ found that excluding companies in which the state is a shareholder from market economy treatment "would not be consistent with economic reality."

Battles on multiple fronts

A similar debate has been going on in Washington, where the US International Trade Court is reviewing the legality of legislation passed earlier this year that preserves Congress' authority to impose countervailing duties on non-market economies (NMEs), such as China. (See Bridges Weekly, [7 March 2012](#)) The bipartisan legislation is intended to combat subsidy effects in countries in which the government offers unfair assistance to private sector industries. The legislation contradicts a 2011 federal court ruling that found that the imposition of countervailing duties on imports from NMEs – a practice started in 2007 – violated US law.

Procedural issues surrounding trade remedy investigations have long been a point of contention in the China-US trade debate. Officials in Washington have argued that Beijing's investigations and trade remedy actions have been retaliatory and not based on actual evidence. Chinese officials, for their part, have criticised Washington for its classification of China as an NME and for allegedly unfair methods for calculating trade remedies. For instance, Beijing has accused Washington of applying "double remedies" – imposing anti-dumping and countervailing duties on the same product – for one violation, a process which the above-mentioned US trade legislation seeks to address.

The US-China debate over trade remedies is expected to remain in the spotlight over the coming months, following Beijing's announcement last week that it would be investigating the alleged dumping of US and Korean solar-grade polysilicon, which is used to produce solar panels. The probe will also look into tax exemptions, land grants, and job training grants given to US solar product manufacturers.

The investigation has been described by some industry insiders as a response to the US' decision in May to impose anti-dumping duties on Chinese solar cell manufacturers, a decision that Beijing officials decried as "unfair." (See Bridges Weekly, [23 May 2012](#))

ICTSD reporting; "EU court ruling offers improved China trade ties," REUTERS, 19 July 2012; "EU's highest court hands Chinese firm victory in landmark case," GLOBAL TIMES, 20 July 2012; "China launches US solar dumping probe," AFP, 20 July 2012; "China launches anti-dumping probe against US," FINANCIAL TIMES, 20 July 2012.

PREFERENTIAL AGREEMENTS

Brussels Seeks to Launch Japan Trade Talks

The European Commission has requested approval from the bloc's 27 member states to start negotiations with Japan for a free trade deal, as part of a broader effort to boost growth and jobs in the struggling eurozone.

"Let's be clear: We need these jobs, and we need this growth in the current economic climate," [said](#) EU Trade Commissioner Karel de Gucht in presenting the proposal. "If growth in the next 20 years is likely to come from Asia, then overlooking Japan would be a serious mistake in our trade strategy."

The EU trade chief said that such a deal could increase the bloc's GDP by one percentage point and create up to 400,000 additional jobs across the EU's 27 member states.

The proposal comes after a year of discussions between EU and Japanese officials over what such a deal might involve, with the two sides concluding their "scoping exercise" this past May. The discussions have already led the two sides to agree on certain 'roadmaps' during the proposed negotiations for the removal of non-tariff barriers, as well as the opening of public procurement for Tokyo's railways and urban transport market.

The member states' decision is expected as early as this autumn, and trade talks will begin only if there is unanimous approval.

Trade as a recovery strategy

Brussels has increasingly been exploring the possibility of clinching bilateral trade deals as a way to prop up economic recovery in the eurozone, particularly given the continued impasse in the WTO's Doha round of trade talks.

The EU is in the final stages of ratifying a free trade agreement with Colombia and Peru, and is negotiating trade deals with various countries and regional groupings, such as India, ASEAN, Canada, and Mercosur. In addition, EU and US officials have been jointly reviewing the possibility of launching negotiations for a comprehensive trade and investment pact, with a working group set to provide recommendations to Brussels and Washington leaders later this year. (See Bridges Weekly, [27 June 2012](#))

Should the EU conclude all of its ongoing and proposed trade negotiations, the result could increase the bloc's GDP by two percent in the long term, or €250 billion – the equivalent of adding on an economy the size of Austria or Denmark. This could also lead to the creation of more than 2 million jobs, the European Commission [says](#).

Of these gains, one-third would come from deals with the ASEAN countries, Canada, India, and Mercosur, according to EU estimates. The remaining two-thirds would come from establishing deals with Japan and the US.

Mixed response from industry

The prospect of a Brussels-Tokyo pact has already been met with some opposition within the EU, most notably from the struggling automobile industry, which has cited concerns over the impact such a deal might have on its export competitiveness. Opponents have pointed to the rapid increase in car imports from South Korea following the EU's FTA with that country as a reason not to pursue a similar pact with Japan.

In response, de Gucht acknowledged carmakers' concern about the potential asymmetry of the Japan deal and promised – with specific reference to the automobile sector – that the Commission will only liberalise tariffs if Tokyo dismantles non-tariff barriers inhibiting Europe's market access to Japan.

"I have made it very clear to my colleagues today that after one year of starting the negotiations, we will take stock on the progress Japan has made on dismantling the non-tariff barriers as set out in the roadmap we have agreed together," he said. "If the implementation has not been satisfactory, I will stop the negotiations."

However, the proposed deal has been welcomed in other sectors, with the EU agri-food and drink, pharmaceuticals, chemicals, and information and communication technology industries among those backing the plan.

Agri-food and drink industry groups FoodDrinkEurope, Copa-Cogeca, and the European Liaison Committee for Agricultural and Agri-food Trade highlighted in a [joint statement](#) the growth opportunities that liberalising trade with Japan could bring.

"A comprehensive FTA with Japan is an optimal solution to bring the existing and extensive bilateral cooperation with Japan to its full potential," they said.

ICTSD reporting; "Brussels Calls for EU-Japan Free Trade Negotiations," 18 July 2012, AFP; "Brussels to push for Japan trade deal," FINANCIAL TIMES, 17 July 2012.

GOVERNMENT PROCUREMENT

China to Table New Govt Procurement Agreement Offer by Year's End

China is set to submit a new offer by the end of this year as part of its efforts to join the 42-country Government Procurement Agreement (GPA), it announced at last week's meeting of the WTO committee tasked with administering the plurilateral pact.

At the 18 July gathering, Beijing told parties that it would soon be making its third revised offer to accede to the agreement, which would take into account all the requests made by existing (GPA) parties after it submitted its previous offer last November.

The Government Procurement Agreement – which was revised in December, following a decade of difficult negotiations – aims to tackle cronyism and corruption in government contracts. An earlier version of the agreement took effect in 1996, and was negotiated during the Uruguay Round of trade talks that ended in 1994.

The agreement commits members to certain core disciplines regarding transparency, competition, and good governance, covering the procurement of goods, services, and capital infrastructure by public authorities.

The revised GPA is set to liberalise US\$100 billion in public contracts, in addition to the US\$500 billion already covered by the original pact. Having the BRICS countries – Brazil, China, India, Russia, and South Africa – would, by itself, add between US\$233 to US\$595 billion annually to the value of market access agreements under the pact, according to a WTO [working paper](#).

Of these, China is the only one actively negotiating to join the plurilateral pact, having agreed to join the GPA in its 2001 WTO accession protocol, though subject to special negotiations. Russia has also committed, as part of its own WTO accession protocol, to begin negotiations to join the GPA within four years of its WTO membership becoming formalised.

Parties outline requests for new offer

Beijing's November offer – which included sub-central entities, as well as agencies under the central government, in several of China's most economically advanced regions – had drawn a cool response from some countries, who argued that it did not go far enough. These concerns were reportedly reiterated at last week's Government Procurement Committee meeting by various parties, including the US, Switzerland, the EU, Norway, Japan, Singapore, Korea, and Hong Kong.

Among other requests, trade sources say that parties have asked Beijing to include more entities, state-owned enterprises, and public utilities in its offer, and also that it lower the thresholds for triggering international competition for its public contracts.

US Under Secretary of the Treasury for International Affairs Lael Brainard, in a [speech](#) in Washington last Wednesday, stressed that the US will continue to seek further coverage from China in its GPA offer, particularly regarding improved access to its central and sub-central procurement markets.

"China's vast procurement market has also been outside the international system for too long, despite its repeated promises to join the [GPA]," Brainard said. "But we are no longer idly sitting by. The United States has been clear that access to much of our government procurement would depend on commensurate access under the terms of an accession agreement by China to the GPA."

While talks are said to be moving forward, sources note that large differences still remain in positions between current parties and China.

Other accessions, new chair

Of the nine countries currently trying to join the plurilateral pact, Jordan, China, and Ukraine have the most active accession processes. However, at last week's meeting members cited concern over the limited progress in Jordan's accession negotiations over the last two years.

Ukraine, meanwhile, is working on a draft first offer, and promised that it would soon be tabling a package of legislation for parties to review.

Last week's committee meeting also marked the last under the chairmanship of senior Swiss trade diplomat Nicholas Niggli; Canada's Bruce Christie has been elected to take over the post.

ICTSD reporting.

EVENTS & RESOURCES

Events

Coming soon

26-27 July, Heredia, Costa Rica. DIALOGO SOBRE "LAS OPORTUNIDADES DE LOS PAÍSES DE AMÉRICA LATINA EN UNA TRANSICIÓN HACIA LA ECONOMÍA VERDE." In partnership with the UN Environment Programme (UNEP) and the International Trade Centre (ITC) and with support from the Centro Internacional de Política Económica para el Desarrollo Sostenible (International Centre on Economic Policy for Sustainable Development, or CINPE), ICTSD will host a regional dialogue for Latin America on the prospects for trade and sustainable development in the wake of the Rio+20 Conference. The meeting will provide a forum for stakeholders from academia, the private sector, and IGOs to interact with environment and trade policymakers and negotiators from Latin America. The discussion will focus on the trade challenges and opportunities associated with the transition to a green economy, specifically within the following sectors: biodiversity-based products and services; agriculture and biofuels; green innovation; and fisheries. Discussions will be conducted in Spanish, with English interpretation. For more information, please click [here](#).

27 July, Washington, US. US-PRC TRADE WEBS: TPP VS. CHINA-JAPAN-KOREA FTA—IMPLICATIONS FOR TAIWAN. This event, hosted by the Stimson Center, will examine the dynamic involved in the parallel processes of the Trans-Pacific Partnership (TPP) Agreement negotiations and the proposed China-Japan-Korea (CJK) FTA, and the

implications of this dynamic for Taiwan's participation in free trade agreements, drawing not only on economic factors but also on Taiwan's domestic politics. For more information, please click [here](#).

27 July, London, UK. STABILITY AND ECONOMIC PROSPERITY IN WEST AFRICA: CÔTE D'IVOIRE'S CONTRIBUTION. At this Chatham House event, Côte d'Ivoire's president, Alassane Ouattara – Chairman of West Africa's regional bloc, ECOWAS – will discuss change in Côte d'Ivoire, trends in West Africa, and his country's role in stabilising and developing the region. Côte d'Ivoire, re-emerging as a major political and economic power in West Africa, is the world's largest producer and exporter of cocoa beans and a significant exporter of coffee, palm oil, gold, and oil. For more information, please click [here](#).

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.

25-26 July: General Council

Other Upcoming Events

6 August, Beijing, China. SUSTAINABLE ENERGY TRADE DIALOGUE. The goal of this workshop, held jointly by ICTSD and China's Ministry of Commerce (MOFCOM) is to discuss with experts from MOFCOM and other relevant Chinese stakeholders on the relevance and technical aspects of trade in sustainable energy technologies, goods and services. The workshop will touch upon current obstacles to scaling up production and provision of sustainable energy goods and services and the governance gaps preventing countries from effectively addressing these barriers. Moreover, this workshop aims to offer a platform for an exchange of views on opportunities for harnessing trade policy to global and national objectives of energy access, security, and low carbon pathways. For more information, please visit the event [website](#).

10 September – 30 November, online. UNCTAD VIRTUAL INSTITUTE ONLINE COURSE ON TRADE AND POVERTY. The online course, organised by the UNCTAD Virtual Institute (Vi), is designed for researchers and university lecturers from developing and transition countries. The objective is to provide participants with the empirical tools needed to assess the impact of trade and trade-related policies on poverty and income distribution. This is a hands-on technical course with an emphasis on the manipulation of data and the use of econometric tools. Applicants are required to have knowledge of STATA and trade theory and policy, in addition to a Master's degree in Economics. For more information, please click [here](#).

17-21 September, The Hague, Netherlands. ADVANCED WTO TRAINING PROGRAMME ON 'RECENT TRENDS AND EMERGING ISSUES'. This training programme, hosted by the T.M.C. Asser Instituut, is designed for diplomats and trade lawyers. Through this event, organisers aim to provide participants with the knowledge, insights, and practical skills that will enable them to implement WTO rules and to engage in its dispute settlement procedures. For information on the programme and to register, please visit the event [website](#).

24-26 September, Geneva, Switzerland. WTO PUBLIC FORUM 2012. Convening under the theme "Is multilateralism in crisis?", the Public Forum is the WTO's largest annual outreach event. It aims to provide a platform for participants to discuss the latest

developments in world trade and to propose ways of enhancing the multilateral trading system. The event regularly attracts over 1,500 representatives from civil society, academia, business, the media, governments, parliamentarians, and intergovernmental organisations. Event organisers are currently inviting submissions of short articles of no more than 1,000 words on the themes of the Forum, along with views on the articles submitted by others. Articles should be sent to publicforum2012@wto.org, indicating discussion forum on the subject line. For more details about this event, visit the WTO's [website](#).

5-6 November, New Delhi, India. SEVENTH IZA/WORLD BANK CONFERENCE: EMPLOYMENT AND DEVELOPMENT. Since 2006, the annual conference on Employment and Development has aimed to provide a platform for researchers and policy experts to discuss new findings and identify areas where further work is needed. The Institute for the Study of Labor (IZA) and the World Bank will organise this year's conference in partnership with the Indian Council for Research and International Economic Relations (ICRIER) and the Delhi School of Economics. In addition to the regular sessions in all fields of labour economics, special sessions on Youth Employment and Entrepreneurship - the theme of the AfDB-OECD-UNDP-UNECA 2012 *African Economic Outlook* - will be featured. More information is available on the IZA [website](#).

Resources

THE FUTURE AND THE WTO: CONFRONTING THE CHALLENGES. Published by ICTSD and edited by Ricardo Meléndez-Ortiz, Christophe Bellmann, and Miguel Rodriguez Mendoza (July 2012). More than a decade following the launch of the WTO's Doha Round, this collection of short essays aims to help in the search for consensus by providing analysis on the most pressing issues in today's global trade environment. The e-Book features contributions from academics, policymakers, and practitioners working in the field of international trade policy on a range of topics, including the core functions of the WTO, the role of emerging economies, the influence of regional agreements, and institutional challenges. To access the e-book, please click [here](#).

TRADE IN GOODS (SECOND EDITION). By Petros Mavroidis (July 2012). This new edition of *Trade in Goods* aims to provide a comprehensive and detailed analysis of every WTO agreement dealing with trade in goods. The book focuses on the reasoning behind the various WTO agreements and their provisions, and the manner in which they have been understood in practice. It introduces both the historic as well as the economic rationale for the emergence of the multilateral trading system, before dealing with WTO practice in all areas involving trade in goods. It contests the claim that the international trade agreements themselves represent 'incomplete contracts', realized through interpretation by the WTO and other judicial bodies. The book analyses WTO case law and argues that a more rigorous theoretical approach is needed to ensure a greater coherence in the interpretation of the core provisions regulating trade in goods. For more information, please click [here](#).

THE YEAR IN TRADE 2011: OPERATION OF THE TRADE AGREEMENTS PROGRAM. Published by the US International Trade Commission (USITC) (July 2012). This report, prepared annually by the USITC, provides Congress with factual information on trade policy and its administration for the 2011 calendar year. The report offers a detailed analysis of key US trade metrics and an overview of major developments from 2011. To access the report, please click [here](#).

FOOD PRICES SPECIAL: US MAIZE HARVEST IN TROUBLE. By Steve Wiggins and Sharada Keats for the Overseas Development Institute (July 2012). This report analyses the price and export effect of the drought in the mid-Western US – the country's worst since 1956 – on maize and wheat crops. The report examines recent price trends in maize and wheat and the potential consequences of the drought, including the impact on developing countries that import large amounts of agricultural goods. To access the report, please click [here](#).

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