



Bridges Weekly Trade News Digest

Weekly trade news from a sustainable development perspective

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LEAD STORIES

WTO Appellate Body: China Raw Material Export Restrictions Illegal

In a high-profile dispute over access to natural resources, the WTO's Appellate Body on Monday confirmed that China violated WTO law and its accession protocol by restricting the exportation of nine raw materials ([DS394](#), [395](#), [398](#)).

In appealing a panel ruling from July 2011 (see Bridges Weekly, [6 July 2011](#)), China had challenged the panel's finding that Beijing's export restrictions could not be justified as resource conservation or environmental protection measures, or as a way to manage critical supply shortages.

While a victory for the US, EU, and Mexico as co-complainants had largely been expected, the ruling provides some clarifications that could have landmark value in future cases.

Beijing has established a system of export duties and quotas for a number of raw materials, including coke, zinc, and bauxite, as well as some that are only available in China. The resulting high export prices and limited supply impact foreign steel, aluminium, and chemical industries, and their downstream clients.

The EU [estimates](#) Chinese export prices are between 50 and 100 percent higher than domestic prices, affecting four percent of the EU's industrial activity and approximately 500,000 jobs.

"This final ruling is a great success in our efforts to ensure fair access to the much needed raw materials for EU industry," EU Trade Commissioner Karel de Gucht said in a [statement](#). "It sends a clear signal that such measures cannot be used as a protectionist tool to boost domestic

industry at the expense of foreign competition,” he added.

US Trade Representative (USTR) Ron Kirk similarly welcomed the ruling as a “tremendous victory.”

“Today’s decision ensures that core manufacturing industries in this country can get the material they need to produce and compete on a level playing field,” he said.

Resource depletion is not critical; no justification

While the complainants portrayed the restrictions as protectionist measures, China had maintained that they were necessary to conserve the finite resources and to ensure domestic supply, as some of the resources face depletion in the near future. The Appellate Body confirmed the panel ruling when rejecting these justifications.

In times where resource-rich developing countries are increasingly eager to maintain their resources for domestic production, the EU, US, and other WTO members had anxiously sought clarification from the global trade arbiter on the issue.

In evaluating this concern, the WTO’s highest court, for the first time ever, addressed WTO rules on export restrictions taken with the aim of managing critical shortages of essential products.

Article XI 2(a) of the WTO’s General Agreement on Tariffs and Trade (GATT) provides that the general prohibition of quantitative restrictions, including bans and quotas, shall not apply where they are taken temporarily to prevent or relieve a critical shortage of foodstuff or other essential products.

This provision’s relationship with another section of the GATT, Article XX – which establishes a number of justifications for otherwise illegal measures, on the basis of greater public policy objectives, such as public health or resource conservation – was particularly controversial, as China argued that the foreseeable depletion of finite resources was indeed a critical shortage.

Unlike Article XX(g) on resource conservation measures, Article XI 2(a) does not require that external measures be linked with restrictions on domestic production and consumption.

During the proceedings, China had argued that the Article XI 2(a) exception should also apply to long-term preventive measures. The Appellate Body disagreed, however, deeming that Article XI 2(a) only “applies in the interim, to provide relief in extraordinary conditions in order to bridge a passing need.”

It further noted that “if a measure were imposed to address a limited reserve of an exhaustible natural resource, such measure would be imposed until the point when the resource is fully depleted.” This scenario would make it impossible for an export restriction to relieve or prevent a shortage, the judges explained.

The finding that general resource conservation efforts do not permit export restrictions through Article XI 2(a) is likely to shape global trading patterns in essential raw materials in the coming decade. This is particularly true for trade in the highly precious rare earths materials – another subject that has lately generated heated debate between China and its trading partners.

De Gucht has already called upon China “to bring its overall export regime – including for rare earths – in line with WTO rules.”

Article XX no fall-back option

Another matter before the Appellate Body was the applicability of Article XX to claims based on paragraph 11.3 of China’s accession protocol, which obliges China to eliminate all its export duties. The dispute panel had denied the article’s applicability, a ruling which the Appellate Body now confirmed.

The Appellate Body ruled that, since Article XX was not specifically addressed in the paragraph in question, there was no basis for the article to apply. “Had there been a common intention to provide access to Article XX, language to that effect would have been included in paragraph 11.3 or elsewhere in China’s accession protocol,” the judges noted.

Whether Article XX is available as a justification for claims brought under agreements other than GATT has long been a subject of debate among trade observers.

Many have argued in favour of using Article XX as a general “fall-back option” in order to resolve questions at the intersection of environment and trade on those grounds, rather than in a fragmented way under individual WTO law provisions. This is an issue of particular relevance to recently acceded countries that have agreed to “WTO+” commitments in their accession protocols.

While the Appellate Body was careful in limiting its analysis to the dispute in question, rather than generally ruling on the applicability of Article XX, the ruling is an important indication for future cases. This is particularly true for the ongoing dispute over the Canadian province of Ontario’s feed-in tariff for renewable energy and its consistency with the WTO subsidy agreement.

For acceding countries, the ruling means that they will have to carefully ensure that Article XX is referenced in all those provisions that they want covered by the article’s justifications for measures taken in the interest of the environment, resource conservation, human health, or public morality – a monumental task.

The alternative would be to incorporate Article XX as an umbrella clause in the accession protocols – an issue that could be very difficult to negotiate.

Referring to these difficulties, Beijing released the following statement on Monday: “China takes the view that the WTO rules, at the time of liberalising trade, allow a member to take necessary means to realise its policy objectives, such as protection of the exhaustible resources and the environment. A solution should be found by balancing different policy objectives.”

Next steps

The panel and Appellate Body reports will go before the Dispute Settlement Body for formal adoption within thirty days. China will then have

to bring its measures into compliance within a reasonable period of time.

ICTSD reporting.

OTHER NEWS

African Union Aims for Continental Free Trade Area by 2017

Plans to establish a pan-African trade pact are well underway, as part of a broader effort to increase intra-regional trade within the continent. However, these plans also hit an early roadblock during a week-long meeting of African leaders in Addis Ababa, Ethiopia, after various participants questioned such an agreement’s feasibility.

Leaders at the African Union Summit, which took place from 23 to 30 January 2012 under the theme ‘boosting intra-African trade’, endorsed a plan to set up a Continental Free Trade Area (CFTA) by 2017. The proposed CFTA would be a key component of the AU’s strategy to boost trade within the region by at least 25-30 percent in the next decade.

The “Declaration on boosting intra-African trade and the establishment of a continental free trade area” calls on member states, regional economic communities (RECs), and development partners to adopt the necessary measures toward the effective implementation of an Action Plan – a document produced during the AU trade ministers’ meeting in December 2011 detailing priority action clusters to address obstacles to increasing intra-African trade.

Intra-African trade currently stands at 12 percent of total trade, compared to 60 percent for Europe, 40 percent for North America, and 30 percent for ASEAN, according to statistics cited by the WTO.

Enhancing this trade – such as through a large continent-wide trade deal – and deepening market integration “can contribute significantly to sustainable economic growth, employment generation, poverty reduction, inflow of foreign direct investment, industrial development, and

better integration of the continent into the global economy,” the AU declaration said.

Despite leaders’ endorsement of the declaration, however, several representatives from various regional groupings insisted that it was premature to think of establishing a CFTA by 2017, given that another plan to consolidate three existing free trade areas into a smaller, 26-nation “Tripartite FTA,” is still facing challenges of its own.

Continental trade pact would build on proposed Egypt-to-South Africa agreement

The CFTA would evolve from the proposed 26-country Tripartite FTA and other regional FTA processes, upon their expected completion in 2014. These regional processes would be consolidated into the CFTA between 2015 and 2016, with the pan-African pact launching in 2017, according to an earlier roadmap released in December at the AU trade ministers’ meeting.

The smaller “Tripartite FTA,” if finalised, would span three existing regional economic communities – namely the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Southern Africa Development Community (SADC) – or 26 countries in total.

At a June 2011 meeting of African leaders, South African trade minister Rob Davies announced a three-year time period for developing the Tripartite FTA, also known as the Grand Free Trade Area – though other African leaders, including South African President Jacob Zuma, predicted at the time that this process would likely meet substantial challenges along the way, including the “uneven and unequal development” between countries and regions, along with infrastructure limitations (see Bridges Weekly, 15 June 2011).

Lack of consensus among discussants

The difficulties of pursuing a pan-African trade deal prompted substantial debate at the weeklong meet, with participants divided over whether such an idea could actually be put into practice by the 2017 deadline and whether other goals might be more appropriate.

At the high-level gathering, the Intergovernmental Authority on Development (IGAD) – an eight-country regional development organisation in East Africa – argued that, instead of the CFTA, African countries should concentrate their efforts and investments on infrastructure development.

Countries could also push for the removal of non-tariff barriers and trade facilitation while also addressing the challenges of food security, the organisation added.

There are “many deadlines that have been set and surpassed,” IGAD told fellow participants at the meet, referring to the current state of play of other proposed trade pacts in Africa.

Rather than continue to push for a continent-wide trade agreement, the focus should shift to “what can be done to promote trade and the creation of inter-industry linkages rather than inactionable action plans,” they continued.

Even if such a pan-African deal did manage to come together, there would be very little scope for deepened trade since there are many other issues that would still need to be addressed, the organisation added.

Along similar lines, Nigerian President Goodluck Jonathan said on Sunday that the 2017 target date for launching the proposed Continental Free Trade Area was unrealistic. “There are no quick-fixes to integration,” he said.

Meanwhile, WTO Director-General Pascal Lamy supported the initiative, stating that “there is absolutely no contradiction between accelerating regional integration and deepening the multilateral trading system” and encouraging leaders to “operationalise” intra-African trade.

“Creating a platform premised on a continental area free of restrictive trade barriers can create an environment receptive to the growth of these regional and global supply networks in Africa,” Lamy added.

For its part, COMESA stressed that pursuing the CFTA was indeed appropriate; however, the regional grouping emphasised that negotiations for the proposed COMESA-EAC-SADC

Tripartite FTA must be concluded first, as doing so could provide useful guidelines and experience for later establishing the CFTA.

The heads of state of the AU agreed to schedule the next summit for July 2012 in Lilongwe, Malawi, where proposals for a detailed action plan on how to improve infrastructure and institutional arrangements to support the creation of the CFTA are expected to be reviewed.

ICTSD reporting; “African Union left in limbo following vote impasse,” THE GUARDIAN, 30 January 2012.

UN Sustainability Panel Provides Input to Rio+20 Process

On 30 January, the UN Secretary-General’s High-level Panel on Global Sustainability delivered its long-awaited report, entitled ‘Resilient People, Resilient Planet: A Future Worth Choosing’. The report was released at a key juncture in the preparations for Rio+20, for which informal negotiations took place in New York from 25-27 January.

The Rio+20 Conference marks the twentieth anniversary of the 1992 United Nations Conference on Environment and Development (UNCED). The conference’s objective is to secure renewed commitment to sustainable development and to meet new and emerging challenges by focusing on the following themes: the green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development.

Report provides blueprint for sustainable development, low-carbon prosperity

The two co-chairs of the High-level Panel on Global Sustainability (GSP) – Finnish President Tarja Halonen and South Africa’s Jacob Zuma – presented the report to UN Secretary-General Ban Ki-moon at a meeting of the African Union in Addis Ababa.

The report arrived 25 years after the release of the Brundtland report, which coined the concept of sustainable development. According to the new report, “Today we see with increasing clarity that economic growth, environmental protection, and social equity are one and the same agenda: the sustainable development agenda. We cannot make lasting progress in one without progress on all.”

“With the possibility of the world slipping further into recession, policymakers are hungry for ideas that can help them to navigate these difficult times,” said Zuma. “Our report makes clear that sustainable development is more important than ever given the multiple crises now enveloping the world.”

The report focuses on a range of issues, such as modalities for including social and environmental issues into economies; ways of measuring progress beyond gross domestic product; developing sustainable development indicators, as well as sustainable development goals; and strengthening the role of science in the political process. The report contains 56 specific recommendations, including calling for a periodic sustainable development outlook report.

A new set of SDGs

The sustainable development goals, or SDGs, that were included in the report echo similar discussions taking place in the lead-up to Rio+20. The deadline for implementing the current Millennium Development Goals is approaching in 2015, and the report notes that the world now faces a wider set of sustainable development challenges.

Therefore, the authors support “a set of key universal sustainable development goals [that] could help to galvanize action, drawing on the experience of the Millennium Development Goals and building on their successful aspects.” These should be defined in a way that complements the Millennium Development Goals while allowing for a post-2015 successor framework, they added.

In receiving the report, Secretary-General Ban Ki-moon noted several recommendations for further action on his part, including task forces to develop indicators to measure progress towards sustainable

development and to define new Sustainable Development Goals for the post-2015 period. He stressed that sustainable development lies at the core of his second term in office.

Reactions

A number of non-governmental organisations active in the field of sustainable development, such as WWF and Oxfam, welcomed the report, while saying that it did not call for enough immediate and concrete action.

Greenpeace agreed with the report that “it’s time to end the perversity of taxpayers paying for fossil fuels which destroy our future and to admit that ‘tinkering at the edges will not do the job’ of achieving a sustainable future for all.” However, Greenpeace said that it would have preferred immediate targets, rather than SDGs with targets stretching out to 2030 in terms of their implementation.

On the other side, the Times of India reports that government officials there had taken a more cautious approach to some of the GSP recommendations, specifically with regards to Sustainable Development Goals. In their view, agreeing on a set of universal SDGs would go against the principle of common but differentiated responsibilities, eliminating the ‘firewall’ between obligations on developing and developed countries – a statement that seems contrary to common interpretation of last December’s outcomes at Durban’s UN climate conference.

Initial discussions on Rio+20 Outcome Document

Meanwhile, diplomats and interested stakeholders met in New York late last week for initial discussions on the Outcome Document for Rio+20. The zero draft of the Outcome Document was released on 10 January (see Bridges Weekly, [11 January 2012](#)).

During the talks, participants first provided general comments, then moving on specifically to the two first sections of the zero draft, which focus on commitments to sustainable development and progress so far, as well as implementation gaps.

Among the topics receiving strong support among delegates were the SDGs. However, at this point in time, different actors view them in a myriad of ways. The road ahead towards concrete and workable definitions remains long.

For example, in their intervention, the African group said the SDG’s negotiation must not lead to the MDGs being left aside. The group also called for higher ambition overall in the zero draft, and stressed the importance of sustainable land management and responding to desertification as an African issue. The group also noted the continent’s particular vulnerability to climate change.

The EU said they strongly believe that, in Rio, countries should agree to accelerate and broaden the worldwide transition towards a green economy.

The G-77 group of developing countries emphasised the need to fulfil obligations and goals undertaken at Rio twenty years ago, as well as other major conferences on sustainable development. The group also underscored the need to secure new and additional financing, as well as technology transfer.

India, in its statement, noted regarding SDGs that these should be understood as voluntary and aspirational, should not distract from the MDGs, and should respect the principles of common but differentiated responsibilities.

In an informal meeting convened by Colombia’s delegation, as a co-proponent with Guatemala, broad support was voiced for the initiative of establishing SDGs, whether at Rio or in a process initiated then. Civil society and various government representatives took the floor to endorse SDGs as a visionary idea that could speed up efforts towards sustainable development.

Next steps

A new round of “informal-informal” negotiations on the zero draft will follow on 19-23 March, and the next inter-sessional meeting of the Preparatory Committee for Rio+20 will be held on 25-27 March.

The last Preparatory Committee meeting is scheduled for 13-15 June, only days before Rio+20 itself, which takes place from 20-22 June.

ICTSD reporting; "India opposes UN panel's 'back door' for green caps," THE TIMES OF INDIA, 31 January 2012.

Bilateral Trade Deals, Doha in the Spotlight at Davos

The annual meeting of the World Economic Forum, held in the Swiss ski resort of Davos, came to a close on Saturday 28 January, with many policymakers making a push for bilateral and regional trade pacts – including an EU-US agreement – in the absence of progress in the Doha Round. WTO members are also set to explore other negotiating approaches this year, in the hopes of eventually moving the ten-year trade talks forward.

Trade ministers meet on sidelines

Ministers from about 20 WTO members, hosted by Swiss economy minister Johann Schneider-Ammann, gathered on Saturday to discuss priorities for the global trade body in 2012.

These meetings have become a regular feature of Davos summits, serving as an opportunity for trade ministers to gather informally and assess the progress of the Doha Round of trade talks, and make plans for the negotiations' next steps. Last year's Davos forum saw trade ministers make a concerted push for finishing the Doha talks in 2011 – a goal that, like previous breakthrough efforts in 2006 and 2008, failed to bear fruit.

Going into Saturday's meeting, few expected anything to have changed in the weeks since December's WTO Ministerial Conference, where the Doha Round was declared at an impasse and members were urged to explore new negotiating approaches.

"It's after Davos, perhaps, that things will move in a more significant way to establish some sort of work on some sort of process in the WTO," one

developing country official predicted prior to the informal gathering.

After Saturday's discussion, US Trade Representative (USTR) Ron Kirk told reporters that there "wasn't any backtracking from the decision that we reached at our ministerial in Geneva, that we really do need to turn the page and explore new ways of moving forward."

South African trade minister Rob Davies added that "the idea that we're going to make some massive breakthrough in a major [Doha] deal is remote, but we can work on some issues and those issues are worth working on."

Doha: Political energy in 'short supply', says Lamy

Despite the impasse in the negotiations, "Doha is not dead," Australian Trade Minister Craig Emerson told the audience at a panel discussion on the last day of the summit. Though the talks are "alive and unwell," he continued, "I think there's enough life in the Doha Round to persist with it," so long as new approaches are pursued.

One option, Emerson stressed, would be to break the negotiations up into "more manageable parts" as a way to "build confidence" in the Round's ability to deliver results.

Along similar lines, WTO Director-General Pascal Lamy commented that "you need a lot of political energy to do things multilaterally, and it's just not available."

"It's in short supply, just as it is in climate change and currency arrangements," Lamy told the audience.

In spite of this, the trade chief continued, "I'm quite convinced after having heard everybody – including ministers today [at the informal side meeting] – that if we leave aside the big battle, the big prize for the moment...there are areas where progress, in a multilateral context, can take place, and this is what we have to test in the coming months."

However, he cautioned, “please do not expect trumpets and drums in the present macroeconomic circumstances.”

Cameron: “Let’s get some bilateral deals done”

In the absence of movement on the Doha talks, many participants at the high-level forum urged countries to continue pursuing bilateral deals in the meantime.

British Prime Minister David Cameron, in his speech at this year’s event, made a particularly strong push for countries to look beyond the WTO negotiations, which in his view seemed to show little hope – a year after insisting that concluding the talks was “a matter of urgency” and having called on countries to put more on the table to do so.

“Last year, at this very forum, world leaders called for an all out effort to conclude the Doha Round in 2011,” Cameron told the audience at this year’s forum. “We said it was the make or break year. It was. And we have to be frank about it. It didn’t work.”

While pushing for countries to pursue bilateral options, Cameron stressed that the importance of the WTO not be forgotten. “Far from turning our back on multilateralism, we need the continued work of the WTO to prevent any collapse back to protectionism, to ensure we take account of the interests of the poorest countries, and to ensure the WTO framework is fit for 21st century trade,” he said.

He added that this would mean moving forward, “perhaps with a coalition of the willing, so countries who want to...can forge ahead with more ambitious deals of their own, consistent with the WTO framework.”

EU-US deal urged by Cameron, Merkel

Along with urging the EU to finalise negotiations for free trade pacts with Canada, India, and Singapore by the year’s end, Cameron also referred to the possibility of an EU-US agreement.

Talks on possibly launching negotiations for an EU-US deal have been in works since November, when leaders from both sides agreed to explore options for increased co-operation between the two trading partners (see Bridges Weekly, 30 November 2011).

The possibility of a Brussels-Washington pact was also referred to by German Chancellor Angel Merkel and USTR Kirk, both of whom made arguments for countries to pursue bilateral deals during the lull in multilateral negotiations.

ICTSD reporting; “Ministers cautiously optimistic about future trade deals despite Doha deadlock,” ASSOCIATED PRESS, 28 January 2012.

EU Inks Anti-Counterfeiting Pact as Cyber Piracy Debate Ramps Up

In an official ceremony held in Tokyo last week, representatives from the European Union and 22 of its member states signed the Anti-Counterfeiting Trade Agreement (ACTA), joining the eight other countries – including the US – that had signed the intellectual property trade pact late last year.

The agreement aims to strengthen the enforcement of intellectual property rights (IPRs) against rights infringement; some of these new standards go beyond the minimum requirements in the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The EU follows Australia, Canada, Japan, South Korea, Morocco, New Zealand, Singapore, and the United States in signing onto the pact (see Bridges Weekly, 5 October 2011).

Of the negotiating parties, Switzerland and Mexico have yet to sign the agreement. In the case of the latter, it is still unclear whether Mexico City will do so, given that the Mexican Congress approved a resolution last year asking President Felipe Calderón not to sign the pact (see Bridges Weekly, 29 June 2011).

Countries have until 1 May 2013 to sign the pact. ACTA will become legally binding only after Japan – the depositary of the agreement – receives six ratification instruments from the negotiating parties.

Since the start of formal negotiations in 2008, several civil society groups have raised concerns about the lack of transparency in the ACTA negotiation process and regarding the possible effects of the pact's "TRIPS-plus" provisions on access to medicines and on the exercise of fundamental freedoms in the digital environment.

At an October 2011 meeting of the WTO's TRIPS Council, some developing countries also raised concerns about the impact that ACTA may have on their public policy goals and the international intellectual property regime as a whole (see Bridges Weekly, [2 November 2011](#)). Specifically, they feared that ACTA's "TRIPS-plus" measures could undermine access to essential medicines and affect non-signatory countries.

'ACTA is not SOPA,' says Commission

The timing of the EU signature comes at a moment of growing opposition by Internet users and major online platforms against potentially restrictive national legislations that may narrow digital freedoms.

The online piracy debate came to a head in recent weeks, after two controversial bills in the US Congress – the Stop Online Piracy Act (SOPA) in the US House of Representatives, and its Senate counterpart, the Protect IP Act (PIPA) – prompted high-profile protests from Wikipedia and other major sites, along with drawing White House reservations (see Bridges Weekly, [18 January 2012](#)). The US legislation has since been shelved, for the time being.

In light of this, the European Directorate-General for Trade last week published a [document](#) aimed at dispelling "myths" about ACTA, emphasising that it "will not limit people's rights on the internet nor will it shut down websites, unlike the proposals discussed in the US."

The European Commission has particularly stressed that ACTA is not SOPA: while SOPA would change US legislation, ACTA does not require any modifications to EU law. However, last January a group of European academics drafted a [legal opinion](#) pointing to a number of ACTA provisions that were not, in their view, entirely compatible with EU law and would directly or indirectly require additional action on the EU level – an opinion that was later rebuffed in a European Commission Services [working paper](#).

EU signature sparks protests

In response to the EU's signature, Kader Arif – a French Member of the European Parliament – resigned last Thursday from his function as ACTA rapporteur to the European Parliament Committee on International Trade, citing serious concerns over the process that led to the pact's signing.

In his [statement](#), Arif also underscored that ACTA raises concerns in terms of "its impact on civil liberties, the way it makes Internet access providers liable, its consequences on generic drugs manufacturing, and how little protection it gives to our geographical indications."

Following Arif's resignation, a spokesman for the European Commission told the BBC that ACTA "simply levels the playing field so that other countries match our standards. There is no threat to internet freedom or privacy."

"Everything you can do legally today in the EU, you would be legally able to do if ACTA is ratified," the spokesman added.

Meanwhile, the pact's possible effects on Internet freedoms stirred controversy in Poland, where public demonstrations led Polish Foreign Minister Radek Sikorski to defend his government's position in a TV interview on 25 January. Following Poland's signature the next day, more protesters rallied to express their opposition to the agreement.

Next steps

The European Parliament has to give its ‘consent’ to ACTA, and the national ratification processes in EU member states must be completed, before the European Council can adopt a final decision to conclude the agreement. Once this decision is notified to other ACTA signatories, the agreement will enter into force in the EU. However, past votes show that ACTA supporters only have a narrow majority in the European Parliament.

The Parliament’s International Trade Committee is scheduled to vote on ACTA in either April or May; following the committee vote, the European Parliament is expected to vote on the agreement in June.

ICTSD reporting; “Poland signs copyright treaty that drew protests,” ASSOCIATED PRESS, 26 January 2012; “European Parliament rapporteur quits in Acta protest,” BBC NEWS, 27 January 2012.

IN BRIEF

WHO Talks on ‘Counterfeit’ Medicines, Reform Move Forward

Intellectual property concerns came to the fore at last week’s meeting of the World Health Organization’s Executive Board (EB), with discussions taking place on medical products deemed to be ineffective, falsely labelled, or counterfeit. The Board also examined an organisational reform plan that had originally been launched at the World Health Assembly in May, and nominated the organisation’s current Director-General for a second term.

IP discussions

In her opening address at the 16-23 January meeting, WHO Director-General Margaret Chan highlighted the organisation’s ability to “reach agreement on global governance instruments that provide collective protection against shared threats...Like the need to manage intellectual

property rights in fair ways, for industry, but most especially for public health.”

In this regard, the EB adopted a resolution establishing a “new Member State mechanism for international collaboration among Member States, from a public health perspective, excluding trade and intellectual property considerations” regarding ‘substandard/spurious/falsely-labelled/falsified/counterfeit medical products’. The mechanism is to be reviewed after three years of operation and its modalities will be decided on at the next Assembly in May.

Sources note that trade and intellectual property had been explicitly left out of the resolution, due to developing country fears that efforts to combat “counterfeit” medicines could affect trade in genuine and effective generic medicines.

Other concerns raised during discussions on this issue were about definitions – ‘substandard/spurious/falsely-labelled/falsified/counterfeit (SSFFC) medical products’ is the terminology used in the resolution to assuage tensions over how best to refer to these products – and about the WHO’s connection to the International Medical Products Anti-Counterfeiting Taskforce (IMPACT), a controversial partnership supported by the pharmaceutical industry that has created unease among civil society groups in terms of its involvement with what they consider IP enforcement-related matters.

The Executive Board meeting also examined other issues related to intellectual property, such as R&D financing and preparedness for pandemic influenza, among others. The Board considered a report from the advisory group tasked with monitoring and evaluating the implementation of the “Pandemic Influenza Preparedness Framework” adopted at the previous World Health Assembly (see Bridges Weekly 4 May 2011).

Chan nominated for second term as WHO chief

At the meeting, the Executive Board also nominated Chan for a second term as Director-

General of the organisation. Chan was the only candidate proposed for the position.

This nomination is likely to be approved at the Sixty-fifth World Health Assembly, scheduled to meet in Geneva in May. If confirmed, Chan's new term will begin on 1 July 2012 and continue until 30 June 2017.

Institutional reform discussions make progress

Earlier in the year, Chan had opened talks on WHO reform – the “largest in [the WHO’s] 63 year history” – to make the organisation more effective, transparent, and accountable in its activities. Discussions on the subject had originally been launched in May 2011 (see [Bridges Weekly 25 May 2011](#)).

Last week, the Executive Board approved a Chair’s Summary that outlines the timeline and necessary preparations for reform-related discussions during the next World Health Assembly.

The Board’s talks on reform were structured around three broad themes: managerial reforms – including the issue of financing – programmes and priority setting, and governance.

The topic of engagement with other stakeholders – such as public interest NGOs and business groups – was one of the most controversial, as some countries worried that these groups’ own agendas would unduly influence the WHO’s decision-making.

Another hotly debated issue was that of voluntary versus assessed contributions in terms of organisational financing. Chan expressed hope that a “predictable financing mechanism” would ensure transparency in the organisation’s programme and activities.

The reform debate is set to continue during the World Health Assembly and the subsequent Executive Board meeting in May 2012; the provisional agenda for the 65th World Health Assembly can be found [here](#).

ICTSD reporting; “WHO Board Plan For Fake Medicines Mechanism Excludes Trade and IP,” IP WATCH 28 January 2012; “WHO Reform debate to continue, February fixed for member-driven priority setting,” TWN INFO, 27 January 2012.

EU, India Trade Talks Make Progress Ahead of February Summit

Trade talks between Brussels and New Delhi, which were launched in 2007, are reportedly moving forward in advance of the upcoming India-EU Summit, scheduled for 10 February in New Delhi. While the pact is unlikely to be ready for signature by the February meet, both sides have confirmed that steady progress is being made toward concluding negotiations, possibly by year’s end.

At last week’s World Economic Forum in Davos, Switzerland, EU Trade Commissioner Karel De Gucht expressed confidence in the two sides soon reaching an agreement; however, he also indicated that there are still a “number of problems that have to be resolved.”

The pact was also backed at the Davos summit by British Prime Minister David Cameron, who made a [push](#) for concluding the EU-India agreement before the end of the year (for more on Davos, see related story, this issue).

“Completing the free trade agreements with India, Canada, and Singapore could add €90 billion to Europe’s GDP,” he said.

Indian Commerce and Industry Minister Anand Sharma agreed that the deal is a complex one and that progress is being made.

“We are moving forward. Negotiations are being meaningfully engaged. It will have positive spin-offs, not only for the EU and India, but for others also, as it would help in keeping the economy robust,” he said during a panel discussion at Davos.

The proposed pact would slash duties on over 90 percent of bilateral trade between the EU bloc and India, along with an opening of mutual markets

for investments and services. Both sides have increasingly service-based economies, with 57 percent of India's gross domestic product coming from services.

"The Indian economy has enormously to gain from interaction with the European economy. We are looking forward to both countries competing in services. It has to be an ambitious agreement; it cannot be a simple tariff on goods agreement," EU Ambassador to India João Cravinho said in an interview with the Business Standard earlier this week.

EU-India trade has more than doubled, from €28.6 billion in 2003 to over €67.9 billion in 2010, according to European Trade Commission official [data](#). Trade in commercial services has tripled from €5.2 billion in 2002 to €17.9 billion in 2010.

European Trade Commission estimates indicate that India would gain €5 billion and the EU over €1 billion in the short run alone, should the pact be finalised.

Tariffs on EU automobiles cause stir

With the India-EU summit fast approaching, concerns among European industry leaders have again been raised with regards to India's tariff and non-tariff barriers. Indian tariffs on wine and automobiles have long been an area of disagreement between the two trading partners.

The EU car industry, which is led by Germany's powerful VDA carmakers' association, says the agreement would grant Indian-built cars immediate duty-free access to the EU but would only reduce the tariff barrier to European automobile exports from 60 to 30 percent.

As it stands, they say, the FTA is not a "real free-trade deal."

An update on the India-EU summit will be featured in the 15 February issue of Bridges.

ICTSD reporting: "India-EU FTA Talks Have Gone On Longer Than We Thought: Joao Cravinho," BUSINESS STANDARD, 1 February 2012; "India, EU Say Making Good Progress on Trade Pact," ECONOMIC TIMES INDIA, 29

January 2012; "Europe's Carmakers Hit Out at India Trade Deal," FINANCIAL TIMES, 29 January 2012.

EVENTS & RESOURCES

Events

Coming soon

2-3 February, London, UK. SEVENTH INTERNATIONAL FORUM ON ILLEGAL, UNREPORTED AND UNREGULATED FISHING. Held at the Chatham House in London, this annual international forum will bring together over 100 policymakers, researchers, civil society groups, and industry delegates from across the world to discuss the latest initiatives and research in the subject of fisheries governance and trade in illegal fish products. This year the forum will focus on the latest developments in Europe and in West Africa and will also address various document schemes, port state measures, and organised crime in the fishing sector. For more information and contact information regarding this forum, please visit the event's [website](#).

2-4 February, Stanford, US. RIO +20: BRIDGING CONNECTION TECHNOLOGIES AND SUSTAINABLE DEVELOPMENT. Hosted by the US Department of State and representing the US government's premier event in advance of the United Nations Conference on Sustainable Development (UNCSD, or Rio +20), this event will focus on the use of connection technologies to advance sustainable development solutions in the fields of health, environment, agriculture, and sustainable economic growth. It will explore existing and proposed technologies, the opportunities and attributes of the innovation culture, and the role of governments and civil society in fostering broader innovation. Participants will be asked to define "innovation challenges" for how connection technologies can help advance solutions to cross-cutting sustainable development problems, with outcomes to be presented at the UNCSD. Please note that an invitation is required for this event. For more information, please visit the event's [website](#).

2-4 February, Delhi, India. DELHI SUSTAINABLE DEVELOPMENT SUMMIT (DSDS) 2012. Organised annually by The Energy and Resources Institute (TERI) since 2001, this conference seeks to provide a platform for the exchange of knowledge on all aspects of sustainable development. This year's theme will be "Protecting the Global Commons: 20 Years Post Rio," and will bring together heads of state, academics, and policymakers to deliberate over environmental issues. The debates at this DSDS will revolve around the global commons and take stock of developments since the Rio summit of 1992. The conference also has the objective of evaluating the existing climate change situation and charting a roadmap for the future. The summit aims to serve as an important milestone in the context of global negotiations regarding sustainable development. For more information, please visit the event's [website](#).

8 February, Geneva, Switzerland. TALKING DISPUTES, VOL. 4: CHINA-RAW MATERIALS. Organised by ICTSD and WTI Advisors, this event aims to introduce the recent WTO appellate decision on Chinese export restrictions applied to raw materials, and will address topics such as the implications of the ruling for resource conservation in the mining sector, and the availability of the GATT's Article XX to non-GATT claims. This event marks the fourth in a new series. 'Talking Disputes' is designed to allow for the discussion of WTO dispute cases, one at a time, in a round of interested experts, delegates and others in Geneva. For more information, including on how to register, visit the [website](#).

8 February, London, UK. THE GLOBAL ECONOMIC, FINANCIAL AND POLITICAL OUTLOOK FOR 2012. Held at the Chatham House in London, this event aims to provide analysis into the global economic, financial, and political outlook for this year. Speaker Roger Altman, Founder and Chairman of Evercore Partners and former US Deputy Secretary of the Treasury (1993-95) will discuss the global outlook for 2012 in the context of the continuing rise of emerging economies, the political and financial trends in Europe, and a relatively weak US economy. He will explore the US presidential

election landscape and the opportunities available for resolving the US fiscal standstill. To register for this presentation or for more information, please visit the event's [website](#).

WTO Events

An updated list of forthcoming WTO meetings is posted [here](#). Please bear in mind that dates and times of WTO meetings are often changed, and that the WTO does not always announce the important informal meetings of the different bodies. Unless otherwise indicated, all WTO meetings are held at the WTO, Centre William Rappard, rue de Lausanne 154, 1211 Geneva, Switzerland, and are open to WTO Members and accredited observers only.

7-9 February: Trade Policy Review Body – Kuwait

14-15 February: General Council

Other Upcoming Events

21-22 February, Basel, Switzerland. GLOBAL ENERGY BASEL (GEB) SUMMIT: THE SECOND SUSTAINABLE INFRASTRUCTURE FINANCING SUMMIT. The GEB founders and their network partners, which includes ICTSD, believe that sustainable infrastructure is key to answering four of the major challenges of the 21st century: climate change, resource scarcity, population growth, and urbanisation. This two-day conference will bring together high-profile representatives from governments, the private sector, and civil society to address the financing of sustainable urban infrastructure. The goal of the conference is to enable investment in modern cities, while proposing solutions to urban ecological challenges, including resource scarcity, energy security, and global warming. GEB also provides international organisations and industry representatives with a forum to discuss innovative financing of sustainable urban infrastructure projects. To register for the Summit or for more information, please visit the event's [website](#).

28 February, London, UK. AN INTERNATIONAL CLIMATE TREATY: IS IT WORTH FIGHTING FOR? In recent years, there has been an increasing sentiment expressed

that an international legally-binding treaty on climate is unlikely to be agreed to and is therefore perhaps not worth fighting for. Held at Chatham House in London, this presentation will evaluate the need for such a treaty. Speaker Yvo Boer, Special Global Advisor on Climate Change and Sustainability, KPMG and former Chief of the United Nations Framework Convention on Climate Change (2006-2010) will discuss the advantages of an international treaty in light of global forces such as climate change, energy security, natural resource scarcity, and population growth. To register for this event or for more information, please click [here](#).

21-23 February, Rome, Italy. SECOND GLOBAL MINOR USE SUMMIT. Coming five years after the first Global Minor Use conference, GMUS-2 will continue the progress on highlighting the many issues and obstacles that growers of minor or specialty crops face. Held at the UN Food and Agriculture Organization headquarters in Italy, this event will focus on global agreements for pesticide policy, procedure, and methodology to help deal with minor use issues while providing growers with access to safe tools to grow their crops and to promote free and fair trade. The purpose of the summit is to provide a forum for the international exchange of information on current activities that address minor use issues and to identify future opportunities and challenges. The conference is expected to attract nearly 300 participants from more than 60 countries, including government pesticide regulators and FAO/WTO members, agricultural producers, pesticide industry representatives, and environmental group members. For more information, please visit the event's [website](#).

2-3 April, Brasilia, Brazil. THE CLIMATE INVESTMENT FUNDS (CIF) FOREST INVESTMENT PROGRAM (FIP) PILOT COUNTRIES MEETING. The Forest Investment Program is a targeted programme of the Strategic Climate Fund (SCF). It supports developing countries' efforts to reduce deforestation and forest degradation (REDD) and promotes sustainable forest management that leads to emission reductions and the protection of carbon reservoirs. This meeting aims to evaluate progress and work ahead in reaching the FIP's

objective of reducing deforestation and forest degradation (REDD) and promoting sustainable forest management (SFM). Pilot countries participating in the Forest Investment Program are: Brazil, Burkina Faso, Democratic Republic of Congo, Ghana, Indonesia, Laos, Mexico, and Peru. For more details about the FIP or this event, please click [here](#).

21-26 April, Doha, Qatar. THIRTEENTH SESSION OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD XIII) AND CIVIL SOCIETY FORUM. This Conference will convene under the theme "Development-centred globalization: Towards inclusive and sustainable growth and development." The Conference's aim is to enhance the understanding of specific trade and development issues, especially after the fallout of the economic crisis. In parallel with the Conference, UNCTAD has also partnered with the United Nations Non-Government Liaison Service and the Qatari National Human Rights Committee to organise a Civil Society Forum, where representatives from the private sector and civil society will explore different ways to strengthen partnerships with UNCTAD to boost the effectiveness of trade and development efforts. The Civil Society Forum will begin its work on 17 April. For more information on the UNCTAD XIII Conference and the Civil Society Forum, please visit the UNCTAD XIII [website](#).

29-31 May, Tucson, US. ADAPTATION FUTURES: THE 2012 INTERNATIONAL CONFERENCE ON CLIMATE ADAPTATION. This conference, the second in a planned bi-annual series, is co-hosted by the UN Environment Programme's (UNEP) Programme of Research on Climate Change Vulnerability, Impacts and Adaptation (PROVIA) and the University of Arizona. It will focus on adaptation to climate variability and change and will bring together researchers, policymakers, and practitioners from developed and developing countries to share insights into the challenges and opportunities that adaptation presents. It will showcase cutting-edge research from around the world, focusing on themes of equity and risk, learning, capacity building, methodology, adaptation finance and investment, and ecosystem-based adaptation approaches. It will

also explore practical adaptation policies and approaches, and share strategies for decision-making from the international to the local scale. As a special reminder, the deadline to submit abstracts of related papers to the conference has been extended until 15 February. For more details, please visit the event's [website](#).

Resources

SUSTAINING CHINA'S ECONOMIC GROWTH AFTER THE GLOBAL FINANCIAL CRISIS. By Nicholas R. Lardy for the Peterson Institute for International Economics (January 2012). The global financial crisis raises the question of whether the previous growth model of low consumption, high saving countries such as China is obsolete. This book examines Beijing's strong response to the global financial crisis and ensuing economic downturn, while investigating the prospects for altering its model of economic growth that dominated the first decade of the 21st century. It focuses on the strengths and weaknesses of China's stimulus programme, the origins of the imbalances in China's economy, and various policy options for transitioning to consumption-driven growth. The author also evaluates the implications for the United States and the global economy of successful Chinese rebalancing. For more details about this book, please click [here](#).

CARBON MARKETS OR CLIMATE FINANCE? Edited by Axel Michaelowa (January 2012). This book assesses the challenges of climate finance in the context of post-Copenhagen negotiations and compares financing based on market mechanisms to public finance vehicles. These assessments are based on the evaluation of experiences with the Clean Development Mechanism (CDM) and the Adaptation Fund, as well as development assistance. The book aims to provide a long-term outlook of how climate finance in developing countries could develop, such as dedicated bonds or levies on novel technologies. Topics in the work include the Clean Development Mechanism gold rush, development co-operation and climate change, new market mechanisms for mitigations, the Adaptation Fund

and more. For more information about this book, please click [here](#).

TRADE AND INNOVATION: SYNTHESIS REPORT. By Nobuo Kiriya for the Organisation for Economic Co-operation and Development (OECD) (January 2012). This is the latest publication in the OECD's Trade Policy Working Papers series. The author finds trade to be one of the framework conditions that can strengthen innovation in the business sector. The paper broadly sets out three channels through which trade affects innovation. These channels include (1) imports and foreign direct investment (FDI), as well as trade in technology, as channels for technology diffusion; (2) imports, FDI, and technology licensing as contributors to intensified competition, which can affect incentives for innovation; and (3) exports as contributors to innovation through providing learning opportunities and innovative activities. The author also investigates how multilateral trade liberalisation, including tariff and non-tariff liberalisation as well as protection of intellectual property, helps ensure the link between trade and innovation. To access this paper, please click [here](#).

SUSTAINABLE ENERGY POLICY AND PRACTICE: A KNOWLEDGEBASE TRACKING INTERNATIONAL SUSTAINABLE ENERGY POLICY AND ACTIVITIES. Launched and managed by the International Institute for Sustainable Development (IISD) Reporting Services (January 2012). Published by the International Institute for Sustainable Development and the International Renewable Energy Agency (IRENA), and funded by the United Arab Emirates Ministry of Foreign Affairs, this resource is a knowledge management project tracking intergovernmental and other international activities on sustainable energy development. Features of this website include: a knowledge base of summaries of activities by a range of actors; an archive of all posts on the site; a clickable world map that allows access to the latest sustainable energy policy news by region; a calendar of upcoming international events related to sustainable energy policy; and more. All of the news articles held on this website are researched and produced by IISD's team of thematic experts. To access this new website, please click [here](#).

THE COMING RESOLUTION OF THE EUROPEAN CRISIS. By C. Fred Bergsten and Jacob Funk Kirkegaard for the Peterson Institute for International Economics (January 2012). This policy brief addresses the economic and financial problems in the euro area, focusing on the status and survival prospects of the euro. The authors provide two alternatives to this crisis: Europe can either jettison the monetary union or it can adopt a complementary economic union. The authors believe that Europe's overriding political imperative to preserve the integration project will surely drive its leaders to ultimately secure the euro and restore the economic health of the continent. This policy brief explores each critical stage of the euro crisis to determine what will happen next. The authors predict that Europe's key political actors in Berlin, Frankfurt, Paris, Rome, Athens, and elsewhere will rationally exhaust all alternative options in searching for the best possible solution to this problem. The policy brief investigates these possible solutions as well as the route Europe will take to complete a true economic and monetary union and emerge from the crisis. To view the policy brief in its entirety, please click [here](#).

THE LEAST DEVELOPED COUNTRIES REPORT 2011: THE POTENTIAL ROLE OF SOUTH-SOUTH COOPERATION FOR INCLUSIVE AND SUSTAINABLE DEVELOPMENT. Published by the United Nations Conference on Trade and Development (UNCTAD) (December 2011). This report argues that the least developed countries (LDCs) need to go beyond business as usual in order to promote inclusive and sustainable development and suggests how South-South co-operation supports such a transformational agenda. The report shows that despite strong economic growth during the last decade, the benefits of growth were neither inclusive nor sustainable, mainly because growth was not complemented by structural transformation and employment creation. The study also explores how the potential of South-South co-operation can be turned into a reality that promotes the development of productive capacities, structural transformation, and decent employment in the LDCs. For more details about this report, please visit UNCTAD's [website](#).