

# BRIDGES WEEKLY

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## DISPUTES

# WTO Panel Rules in Favour of EU, Japan in Canada Renewable Energy Dispute

A WTO panel has sided with the EU and Japan in their challenge of renewable energy support provided by the Canadian province of Ontario, the global trade arbiter announced earlier today. Brussels and Tokyo had argued that the feed-in-tariff (FIT) system – put in place in 2009 – violates WTO rules because it requires participating electricity generators to source up to 60 percent of their equipment in Ontario.

The case ([DS412](#) and [DS426](#)) has been widely portrayed as an environmental dispute, dealing with the extent to which government authorities can favour domestic producers and suppliers in promoting green energy. At panel hearings earlier this year, however, the arguments from the parties principally focused on the investment aspects of the FIT provisions.

The report now confirms the view that the scheme's "local content requirement" violates the WTO's non-discrimination principle enshrined in the General Agreement on Tariffs and Trade (GATT) and the WTO Agreement on Trade-Related Investment Measures (TRIMS). The panellists further demand that Canada brings its measures into conformity. Unless appealed, this would in effect mean that the FIT programme itself may stay in place in its current form, but that the local content requirement must be withdrawn.

Ontario officials have argued that the scheme's design is meant to encourage clean energy production, specifically by providing incentives to energy producers to use electricity from renewable sources. Provisions of the programme, however, also require that to be eligible for such incentives, renewable energy projects include a minimum quota of goods and services deriving from Ontario – in the case of wind, 25 percent, and for solar projects, 60 percent.

Such a "discriminatory measure," said Japan in its statement before the panel in March this year, "is designed to promote the production of renewable energy generation equipment in Ontario rather than to promote the generation of renewable energy." (See Bridges Weekly, [28 March 2012](#))

## No subsidy as EU and Japan fail to show benefit

Assertions by Brussels and Tokyo that the programme also amounted to illegal



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subsidies – dependent on the use of locally produced equipment – on the other hand, have been rejected. The three-member panel found that the scheme payments constituted a financial contribution in the form of governmental purchase (the first criterion of a subsidy), but that Japan and the EU had failed to show that the payments also conferred a benefit (the second criterion of a subsidy). The critical point, in this context, was to determine the appropriate benchmark of comparison for 'benefit'.

"The outcome [of the approach suggested by the EU and Japan] would fail to reflect the reality of modern electricity systems, which by their very nature need to draw electricity from a range of diverse generation technologies that play different roles and have different costs of production and environmental impacts," the panellists criticise in the ruling, showing a sensibility towards balancing the different governmental needs associated with electricity generation.

While this finding only remotely changes the overall outcome of the dispute, it may have major ramifications for other ongoing cases. In particular, earlier this winter China had requested consultations with the EU over FIT programmes in Italy and Greece, advancing similar subsidy claims as those brought forward by Japan and the EU in the present proceedings. ([DS452](#))

### **Government procurement yes, but for commercial resale**

Canada, on behalf of Ontario, had countered Japan's and the EU's claims by portraying the measure as government procurement necessary to facilitate a move toward green energy production.

As such, the programme would be shielded from both GATT national treatment requirements and the TRIMS Agreement provisions being cited in the case, provided that the procurement does not occur with the view of commercial resale. Government procurement is also exempt from the WTO subsidies agreement, provided that it is not conferring a benefit.

In the report, however, the panellists come to the conclusion that the programme constitutes government procurement with a view of commercial resale as it results in a profit for the state of Ontario.

"In 2010, Hydro One [a government-owned holding agency that sells the electricity to consumers] paid CAD 28 million dividends to its shareholder, the Province of Ontario," the panellists note. "Therefore, although the Ontario Power Authority does not profit from the resale of electricity through Hydro One [...], it is evident that the Government of Ontario and Ontario's municipal governments will profit from these operations."

### **Next steps**

Both parties will have sixty days to appeal the panel's decision.

ICTSD reporting.

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## RENEWABLE ENERGY

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# US Commerce Department Announces Final Duties on Wind Tower Imports from China, Vietnam

The US Commerce Department has determined final anti-dumping and countervailing duties on wind tower imports from China, as well as anti-dumping duties for the same products from Vietnam, the government agency announced on Tuesday. The news is the latest development in a long-running series of spats between Beijing and Washington over their policies regarding their respective renewable energy policies.

The investigation comes as a result of a petition filed almost a year ago by the Wind Tower Trade Coalition, a group comprised of four companies based in the US states of Nebraska, North Dakota, Texas, and Wisconsin. The coalition had argued that Chinese and Vietnamese practices had made it difficult for US wind tower producers to remain competitive, and that such duties were therefore necessary to level the playing field.

"Five major US producers, two of whom were petitioners in this investigation, have shut down tower operations and left the industry," Paul Smith, president of Broadwind Towers, told the US International Trade Commission last week ahead of the Commerce announcement. "Others have been forced to curtail production, shutter facilities, and lay off workers, all as the result of the surge of dumped and subsidised imports."

The specific products at issue in this investigation were utility scale wind towers, which are the steel towers that support the nacelle – an enclosure for an engine. Also under review were rotor blades for use in wind turbines that have electrical power generation capacities in excess of 100 kilowatts. The Commerce investigation did not include nacelles and rotor blades, regardless of whether they are attached to the wind tower; nor did the US agency include in its review any internal or external components not attached to the towers.

Commerce had announced preliminary countervailing – or anti-subsidy – duties on the products in May; preliminary anti-dumping duties were determined in late July. (See Bridges Weekly, [6 June 2012](#))

In its final determination announced on Tuesday, Commerce found that imports from China and Vietnam were being dumped at margins of 44.99 percent to 70.63 percent and 51.50 percent to 58.49 percent, respectively. Meanwhile, the US agency ultimately determined that producers/exporters from China have received countervailable subsidies of 21.86 percent to 34.81 percent.

Dumping involves the practice of companies selling their products abroad at prices below normal market values, causing harm to the domestic industry of the importing country. The difference between the price – or cost – in the foreign market and the price in the importing domestic market is known as a "dumping margin."

According to Commerce, the China anti-dumping rates will be adjusted to account for the export subsidies found in the countervailing duty investigations. The cash deposits collected to account for the determined dumping will therefore be reduced by the relevant export subsidy rates.

In other words, while the dumping margins for China were between 44.99 percent to 70.64 percent, US customs officials will only collect cash deposits of between 34.33 percent to 60.02 percent, in order to account for the effect of the export subsidies that were found in the countervailing duty investigation – and thus not charge twice for the same violation.

The US International Trade Commission (ITC) will vote by 31 January on whether or not to approve these duties, Commerce said. If the ITC finds that imports of utility scale wind towers from China and/or Vietnam do indeed “materially injure, or threaten material injury to” US domestic industry, the US Commerce Department will issue AD and CVD orders. However, if ITC does not find such injury, the investigation will be terminated.

Imports of utility scale wind towers from China were valued at an estimated US\$222 million in 2011, according to US data. Vietnam imports of these products to the US were valued at US\$79 million in the same year.

### **Long-standing disagreements over renewable energy**

Washington and Beijing have often found themselves at odds over their renewable energy support policies, with disagreements on the subject arising repeatedly between the two trading partners over the past year. The news of Commerce’s final determinations comes quick on the heels of another high-profile case reviewed by the US agency, which had involved allegations of dumping of and illegal subsidies for imports of Chinese solar cells. (See Bridges Weekly, [10 October 2012](#))

In that case as well, Commerce had also deemed that the Chinese producers under review had dumped their products onto the US market and/or benefitted from unfair subsidies – a finding that was contested by Beijing.

China, meanwhile, has conducted its own investigations of the US’ support for domestic renewable energy programmes, finding in May after an internal investigation that such government assistance violates WTO rules that prohibit unfair subsidies and favourable national treatment for domestic producers over foreign ones. (See Bridges Weekly, [30 May 2012](#))

While a response from Beijing officials regarding Commerce’s final wind tower duties had not been released as Bridges went to press, China has long maintained that these probes go against the mutual interests of both trading partners regarding cooperation in new energy.

The wind tower duty investigation “is also not in line with the trend of international cooperation in coping with the global climate change and energy security challenges,” the Ministry of Commerce’s (MOFCOM) Bureau of Fair Trade said in January, shortly after the launch of the probe. (See Bridges Weekly, [15 February 2012](#))

When the preliminary countervailing duties were announced earlier this year, Chinese government officials lambasted these as protectionist, and had cautioned that these may harm trade and economic cooperation between Beijing and Washington. (See Bridges Weekly, [6 June 2012](#))

ICTSD reporting; “US wind tower producers plead for duties on China, Vietnam,” REUTERS, 16 December 2012.

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## WORLD TRADE ORGANIZATION

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# US Trade Policy in the Spotlight as Global Economic Uncertainty Looms

Concerns over the impending US fiscal cliff, questions over the future of US agricultural policy, and what level of engagement Washington will have in multilateral trade negotiations were among the various topics raised yesterday as WTO members began their two-day biennial review of US trade policies.

Under WTO rules, the global trade body conducts a review of the four largest traders – currently the US, EU, Japan, and China – every two years. Smaller traders are reviewed on a less regular basis. In addition to a report issued by the WTO secretariat, the document also includes a report provided by the trader being discussed.

The WTO's previous review of Washington's trade policies was held in 2010, and had praised the US for keeping its trade and investment policies open in spite of the ongoing global economic downturn. At the time, the report had also urged Washington to demonstrate more leadership regarding multilateral liberalisation efforts. (See Bridges Weekly, [7 October 2010](#))

This year's review, which began on Tuesday, is set to continue this Thursday.

### **Fiscal cliff fears play in the background**

The WTO report issued on 18 December noted improvements in the state of the US economy since the 2010 review. Specifically, merchandise and services trade figures have rebounded, surpassing previous 2008 peak levels.

However, the merchandise trade deficit worsened over that time, given that import growth outpaced export growth – with imports reaching US\$2.236 trillion in 2011, compared to the US\$1.497 trillion of exports. Services trade, meanwhile, showed a notable surplus in recent years, which the WTO report predicts will increase further.

Despite the US showing overall some signs of recovery, "it will take more time [for the US] to emerge from the downturn and to return to growth and confidence levels seen prior to the crisis," the report added. The housing market and unemployment levels are areas where the US economy remains weak, the WTO noted, and the impact of the EU's own economic struggles on third country markets took a toll on growth in 2012.

In light of the US recovery's fragile nature, the possibility of the US going off the so-called fiscal cliff – and what such a result might mean both for the US' growth prospects, and for its trading partners – was raised by various delegations during the first day of the two-part trade policy review.

The "fiscal cliff" is a series of pencilled-in tax hikes and spending cuts that are set to go into effect on 1 January unless legislators in Washington reach a deal beforehand. Over the past several weeks, the two chambers of the US Congress and the White House have been holding negotiations to clinch a package that would avert the impending measures. However, long-standing differences of opinion between Republicans and Democrats regarding tax policy have slowed down the talks.

Should these differences not be resolved by the end of this year, various WTO members warned on Tuesday, the effects could be damaging not just to the US alone, but the global economic recovery as a whole.

New rounds of quantitative easing instituted by the US Federal Reserve – with the goal of lowering unemployment figures – have also been watched closely by Washington's trading partners over the past few months, given the fear that such monetary policies could have damaging spillover effects on emerging markets. The impact of the resulting currency movements on trade was raised by some delegations, including Brazil and Argentina, in their interventions during the review this week.

### **Agriculture**

The ongoing negotiations in Washington over how to resolve the fiscal cliff dilemma have also left the future of the next Farm Bill – the omnibus legislation that determines the level and composition of US federal agriculture spending – in limbo.

While Congress spent much of the past year wrangling over what the 2012 Farm Bill would ultimately look like, the process is currently stalled. The existing Farm Bill of 2008, meanwhile, expired on 30 September.

Observers note that the fiscal cliff negotiations, however, could potentially change the game entirely for the new US farm legislation, particularly if it is worked into the wider package of spending cuts.

Many delegations that spoke on Tuesday noted that, given the US' role as the world's largest agricultural exporter and the resulting impact of US farm policy on its competitors, they would be watching the Farm Bill process closely.

Some asked for additional information on the next steps of the process, while others raised concerns over the US' current levels of domestic agricultural support – particularly as the secretariat report found no major changes to US agricultural policy since the last report two years ago – as well as the proposals raised in draft versions of the new US legislation.

"On agricultural policy, we would like to register our concerns on instruments currently envisaged in the future Farm Bill, as they would seem to lead to an increase of US trade-distorting support," EU Ambassador to the WTO Angelos Pangratis [commented](#) – a worry that was also expressed by other members.

### **Tariff peaks, trade remedies, and rules of origin under scrutiny**

The familiar topics of tariff peaks and trade remedies resurfaced in this week's review, which have been longstanding points of contention between the US and some of its trading partners.

The secretariat report found significant tariff peaks in sectors such as footwear, leather, textiles, and clothing, and in agriculture, where there are many non-ad valorem tariffs, while finding that US tariffs were on average relatively low. Some of the members that spoke on Tuesday noted that these particular tariff peaks can have negative implications for the US' trading partners, notably developing countries.

Regarding the use of trade remedy investigations – a topic that has also drawn attention in earlier reviews – the WTO secretariat report found that the initiation of anti-dumping investigations rose from three to 15 cases in 2011, following just a few initiations the previous year. Both countervailing – or anti-subsidy – duty investigations and anti-dumping duty investigations launched over the past five years, the WTO report found, primarily involved imports from Asian countries, particularly China.

The report also mentioned the US law enacted in March of this year to preserve Washington's ability to apply countervailing duties to non-market economies (NMEs) – a piece of legislation that has prompted China to lodge a complaint against the US at the WTO. (See related article, this issue)

The complexity of the US' rules of origin was another topic addressed in the review, with the WTO report noting that the "proliferation of differing rules of origin, their complexity, and lack of transparency continues to be of concern for some" – an issue that was also raised in several interventions.

### **Bilateral and regional versus multilateral engagement**

The increased involvement of the US in bilateral and regional processes – such as finalising the ratification of trade deals with Colombia, Panama, and South Korea, along with its focus on the negotiations for the proposed Trans-Pacific Partnership Agreement – had some members questioning whether the US is devoting less attention to multilateral talks and more to other efforts.

"Regional and bilateral initiatives obviously have prioritised over multilateral initiatives," Yi Xiaozhun, China's WTO Ambassador, said in his remarks. However, he also welcomed "the encouraging statements of the US recently on their willingness to play a leading role for credible deliverables by [the WTO's next ministerial conference, in December 2013] and on their fair commitment to continue to work for the conclusion of the whole [Doha Round] afterwards."

Others similarly noted that US leadership will be essential in bringing the long-running Doha Round of trade negotiations to a successful conclusion, and encouraged it to continue its efforts to date in this area.

The US, for its part, said in its report to the Trade Policy Review Body that the WTO remains "the multilateral bedrock of US trade policy."

US Ambassador Michael Punke, in his [comments](#) on Tuesday, further stressed that point, noting that Washington "is committed to preserving and enhancing the WTO's role as the primary forum for liberalising multilateral trade, developing and enforcing global trade rules, and serving as a bulwark against protectionism."

The US ambassador noted, however, that the global trade body is "an institution at a crossroads," particularly regarding its negotiating function. The past year, therefore, has been useful for learning from prior Doha-related mistakes and creating new opportunities in the process, Punke said, while also providing a "useful reminder" of the non-Doha aspects of the WTO.

"As we noted at the [Trade Negotiations Committee] meeting two weeks ago, Bali is not a deadline [for the Doha talks], but it will be a milestone. The test will be deeds, rather than words," he added.

### **More information**

The full report (WT/TPR/S/275) is available at <http://docsonline.wto.org/>.

ICTSD reporting.



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## PREFERENTIAL AGREEMENTS

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# EU, Singapore Clinch Trade Pact Aimed at Boosting "Green Growth"

The EU and Singapore have completed final negotiations for a bilateral trade deal, which includes language aimed at promoting "green growth," the two sides announced on 16 December. The draft agreement is the EU's first to include such a clause, which is part of the bloc's "2020 strategy" for boosting the economy and reducing unemployment.

Accounting for some €74 billion in goods and services trade between the two parties, Singapore is Europe's largest trading partner in Southeast Asia. The EU is the top destination for Singapore's exports.

The deal is "a stepping stone to greater engagement across South-East Asia," the EU has said. More than 8,000 European companies dealing in a range of goods and services – including green technologies – are already present in Singapore.

"Singapore is a dynamic market for EU companies and is a vital hub for doing business across Southeast Asia," said Karel De Gucht, the EU's trade commissioner. "This agreement is key to unlocking the gateway to the region and can be a catalyst for growth for EU exporters."

The green growth aspect of the FTA aims to remove trade and investment barriers pertaining to renewable energy generation. The deal also contains commitments to liberalise environmental services trade and new rules on green tendering. Provisions on cooperation for addressing issues related to illegal fishing and timber are also reported to be in the deal.

The EU-Singapore deal includes a commitment to the principles of sustainable development to "ensure that trade supports environmental protection and social development, and does not come at the expense of the environment or of labour rights." Each party will be required to establish a Board on Trade and Sustainable Development and be open to the involvement of civil society.

According to Singapore's trade ministry, the EU will remove tariffs on all imports from Singapore over five years, with 80 percent of tariff lines being covered upon entry into force. Singapore, however, will immediately allow duty-free access for all imports from the EU.

A key sticking point in the negotiations, which have been ongoing since March 2010, was protection of the numerous "geographic indications" held by European producers. The exclusive right to use distinctive place names – such as Champagne, Parma ham, and Roquefort cheese – to identify the origin of certain products was seen as a crucial issue for Brussels due to "considerable competition" by third country producers.

While Singapore traditionally holds its strongest protections for trademark holders, rather than geographical indications, the city state agreed to offer "a high level of protection" for the most valuable examples on the market.

According to Brussels, the draft agreement should be signed by spring 2013, once both sides have received approval from their respective parliaments.



### Region-to-region deal?

While the pact is Brussels' first with a member of the ten-country Association of Southeast Asian Nations (ASEAN), both De Gucht and Singapore's Minister for Trade and Industry Lim Hng Kiang say the deal could be the first step in forging a trade liberalising deal between their two respective regional blocs.

"There are numerous opportunities and benefits that EU and Singaporean companies can look forward to, once the agreement enters into force," said Singapore's Minister for Trade and Industry Lim Hng Kiang. "Singapore is confident that the EUSFTA will further enhance our bilateral economic relations, and pave the way for a region-to-region trade deal between the EU and ASEAN."

"After our agreement with South Korea, sealing this deal with Singapore clearly puts the EU on the map in Asia. But we do not intend to stop here – I hope it will open the doors for FTAs with other countries in the ASEAN region," De Gucht added. The trade chief has, in earlier [speeches](#), noted that the strong economic growth expected in both the ASEAN countries, and Asia as a whole, can help serve as a solution to the EU's ongoing economic challenges.

The EU is currently negotiating trade deals with two other members of ASEAN – Malaysia and Vietnam. Outside of ASEAN, the European Commission is also in the midst of negotiations for a trade deal with India, and recently received a mandate to begin formal trade talks with Japan. (See Bridges Weekly, [5 December 2012](#))

The ten members of ASEAN are Brunei Darussalam, Burma/Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

ICTSD reporting; "EU, Singapore Agree on FTA," WALL STREET JOURNAL, 16 December 2012; "EUSFTA is the first bilateral free trade agreement concluded by the EU with an Asean country," BUSINESS TIMES, 17 December 2012.

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## DISPUTES

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# Disputes Roundup: Mexico Withdraws Panel Request against Argentina as Panama Brings Fresh Claim; China-US Row Escalates

Mexico has dropped its dispute panel request from its WTO complaint against Argentine import policies, after the two countries resolved a separate spat over automobile trade. Buenos Aires is set to face a new WTO challenge, however, after Panama decided to file its own case against Argentina at the global trade arbiter.

Meanwhile, Beijing has been granted a panel to hear its claims in its WTO dispute with Washington over duties on imported Chinese products.

### **Renegotiation of Argentina-Mexico auto trade pact leads to withdrawal of WTO panel request**

Ahead of Monday's meeting of the WTO Dispute Settlement Body (DSB), Mexico asked to drop from the DSB agenda the panel request it announced in late November in a case challenging Argentina's import policies. The decision came after the two countries finalised an auto trade deal, signalling an end to their ongoing disagreement over Mexico's renegotiation earlier this year of its version of a Mexico-Mercosur auto accord with Brazil.

The 2002 automotive trade pact, also known as ACE-55, was suspended by Buenos Aires in June after the Mexican government renegotiated its version of the same accord with Brasilia. According to Argentina, the process was a breach of prescribed procedures involving the Mexico-Mercosur pact. (See Bridges Weekly, [11 July 2012](#)) At the time, Mexico had refused to enter into a similar renegotiation with Argentina, prompting Buenos Aires' decision to withdraw from the deal.

Under the newly completed auto [agreement](#), both sides will gradually increase the duty-free imports of light vehicles from the other country with the goal of reaching free trade in this area in March of 2015. The new deal, explained Argentine Minister of Industry Débora Giorgi, "should restart the flow of trade between the two countries." As part of the agreement, Argentina has confirmed it will be repealing its suspension of the Economic Complementation Agreement.

Giorgi praised Mexico's decision to withdraw its panel request ahead of Monday's meeting. "We have exchanged tribunals and legal cases for work, more production, and the well-being of our people," the Argentine minister said.

The WTO case, brought by Mexico in August ([DS446](#)), is similar to challenges also tabled by the EU, US, and Japan to various Argentine import controls. These measures, the complainants argue, unfairly discriminate between imported and domestic goods.

The other parties, however, are proceeding with their claims ([DS438](#), [DS444](#), and [DS445](#)), confirming at Monday's DSB meeting that they are seeking a panel to hear the case. (See Bridges Weekly, [12 December 2012](#))

The Argentine rules at issue include a requirement – in force since February – that government approval be secured before importers may bring goods into Argentina. Other measures at issue include, among others, the requirement that import licences be obtained for certain goods entering the country, and that Argentine importers balance imports with exports. Critics report that import licences are frequently refused by Argentine agencies, and that approval is often delayed well beyond the 60-day timetable applied by WTO rules on the issue of non-automatic import licences.

Buenos Aires rejected all the three panel requests, arguing that both the pre-approval requirement and non-automatic licenses are in line with WTO rules. In its statement, Argentina also pointed to the increase in its bilateral trade with each of the complainants, and its growth in total imports during the 2003-2011 period – arguing that, with such clear increases, the South American country “cannot be singled out as [one] that restricts trade.”

Should the requests be made a second time by the complainants, however, a panel will automatically be established to hear the three cases.

Meanwhile, Argentina's own panel requests in cases against the EU regarding its member state Spain's biodiesel policies, and against the US regarding restrictions of beef and lemon imports, were also rejected at the DSB meeting ([DS443](#), [DS447](#), and [DS448](#)). Should Argentina table second panel requests in these three challenges, separate panels will automatically be established to hear those cases.

### **Panama lodges challenge against Argentina**

In a separate development, Panama confirmed last week that it would be launching its own WTO challenge to Argentina's policies regarding goods and services trade. Details of the claim were unavailable as Bridges went to press on Wednesday evening.

Argentina and Panama will now have 60 days to resolve matters through consultations, after which time Panama can ask for a WTO panel to be established to hear the case.

### **Panel established in US-China spat over anti-dumping and anti-subsidy duties**

China is also moving forward with its challenge to countervailing – also known as “anti-subsidy” – measures and anti-dumping duties applied by US authorities to Chinese imports ([DS449](#)), after tabling its second request for a WTO panel to hear the case.

Reiterating its concerns before the DSB, Beijing representatives explained that Washington had launched over 30 countervailing duty investigations against Chinese products since 2006, affecting more than US\$7.3 billion worth of products. (See Bridges Weekly, [19 September 2012](#))

China's claim focuses on underlying US legislation which forms the basis for the disputed US trade remedy investigations. In particular, Beijing cites a law passed by the US Congress back in March which preserved the Commerce Department's authority to impose countervailing duties on subsidised goods from non-market economies (NMEs). (See Bridges Weekly, [7 March 2012](#)) The law had become necessary after the US Court of Appeals for the Federal Circuit had denied Commerce the ability to impose countervailing duties against NMEs.

Beijing argues that the US law, which allows for the retrospective application of anti-subsidy duties on products from NMEs, does not properly guard against the prospect of “double remedies” – the application of anti-dumping and countervailing duties on the same products for essentially a single violation. This, Beijing says, goes against WTO rules on transparency and due process. The law is also facing a constitutional challenge back in the US.

"The Government of China and Chinese exporters have consistently maintained that these investigations were unlawful because the US countervailing duties do not apply to countries that the United States designates as non-market economies," China said in a statement to the DSB.

The US, for its part, [defended](#) the measure as "within [its] rights under the WTO Agreement to levy countervailing duties to offset injurious subsidies bestowed by another member on the manufacture, production, or export of goods."

ICTSD reporting; "Mexico to drop WTO suit after auto pact with Argentina," REUTERS, 14 December 2012; "Ministra argentina anuncia retiro de demanda por parte de México," UPI ESPAÑOL, 14 December 2012.

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## INTELLECTUAL PROPERTY

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# Negotiations for Visually Impaired Treaty Get Green Light at WIPO

In a high-profile decision on Tuesday, members of the World Intellectual Property Organization (WIPO) agreed to convene a diplomatic conference to negotiate a treaty aimed at improving access to copyrighted material for the visually impaired and print disabled.

The decision to convene the diplomatic conference – the highest level of negotiations at WIPO – was taken at the 17-18 December [extraordinary session](#) of the organisation's General Assembly.

According to the World Blind Union (WBU), there are 285 million blind and partially sighted people worldwide – 90 percent of which live in developing countries and least developed countries (LDCs). However, they note, only one to seven percent of the world's published books are ever available in formats that blind and partially sighted people can read.

The treaty would allow visually impaired readers access to works that would be normally unavailable to them under national copyright laws or cross-border regulations. It would also mark the first time WIPO members adopt a legal instrument on limitations and exceptions to copyright in recent years.

Morocco has offered to host the conference, which will be held in June 2013.

### Consensus on diplomatic conference

The decision to finalise the treaty comes after four years of controversial negotiations at WIPO's copyright body, the Standing Committee on Copyright and Related Rights (SCCR). Member states at the SCCR had previously butted heads on whether such a legal instrument should be a legally binding treaty or if it would take the form of a softer option, such as a joint recommendation. (See Bridges Weekly [24 October 2012](#))

"It's time for us to get down to action, to work constructively in order to produce a positive outcome," Benin said on behalf of the LDCs. "In a wish to promote justice and

equity and fairness, we must ensure that access to knowledge is shared by all and access to education is available to all."

"After so many years, there is hardly any reason for any Member State to say no to June 2013," Brazil added on behalf of the Development Agenda Group – a coalition of WIPO like-minded countries supporting a development-oriented perspective on IP issues.

The US – who had previously been lukewarm to launching negotiations for a treaty – also expressed in broad terms its support for the decision.

"We are pleased to join the consensus today in calling for a Diplomatic Conference in June 2013 to complete this work and produce a legally-binding agreement to establish international norms for copyright exceptions for persons with print disabilities," the US [stated](#).

On this point, the WBU commented that "though [we] would prefer to hear the word 'treaty' [in the US' statement], we note that a treaty is a 'legally binding agreement' and trust that the USA will work to agree a treaty in 2013."

### **Treaty negotiations: End stages of "marathon"**

In their opening statements, some delegates raised their concerns on the draft text's level of maturity, as the current document still contains bracketed text and alternatives on which WIPO members have yet to reach consensus.

The EU, for one, "considers that it is necessary to find an agreement on some remaining key issues before a successful diplomatic conference takes place." The EU specifically highlighted the lack of consensus on provisions concerning technological protection measures and cross border exchange of accessible format copies as topics that should be resolved ahead of the June conference.

The US backed the EU's position, supporting "a final review to ensure that in our assessment we are all in a position for a successful diplomatic conference next summer."

On the other hand, many delegations – including developed countries such as Switzerland – argued that no conditions should be put on the convening of the conference, despite the outstanding nature of some issues.

"We are in the last ten minutes of a marathon here," Morocco said, pressing members to move forward with a sense of urgency in the months ahead. "We can show that we can be flexible and that we're not going to tie the convening of this conference to conditionalities."

Rightsholder organisations groups similarly welcomed the decision to hold the June conference. "It is a very good decision that took surprisingly long time to elaborate," Carlo Scollo Lavizzari of the International Association of Scientific, Technical & Medical Publishers (STM) [said](#). "But [the slow process] reflects the fact that some work is needed to get this into shape and it will still be an intense period between now and June."

The SCCR will meet in a five-day extraordinary session in February to clear up some of the areas of disagreement in the current draft text. The Assembly also agreed to set up a preparatory committee to settle the modalities of the diplomatic conference and establish whether more work is needed to ensure the conference's success.

ICTSD reporting.

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## WORLD TRADE ORGANIZATION

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# WTO: Nominees Begin to Trickle in for Race to Replace Lamy

The race to replace WTO Director-General Pascal Lamy when he steps down next August is now well underway, with three candidates having been formally presented to the global trade body in the past week. Additional nominations are expected by the end of the one-month nominating period, which closes on 31 December.

As Bridges went to press on Wednesday evening, the candidacies of former Ghanaian Trade and Industry Minister Alan John Kwadwo Kyerematen and current Costa Rican Foreign Trade Minister Anabel González had both been officially submitted to the WTO.

Former Indonesian Trade Minister Dr. Mari Elki Pangestu has also been submitted as a nominee, according to Reuters, though an official WTO announcement had not been made at the time of this writing. Indonesia is slated to host the organisation's upcoming Ninth Ministerial Conference in December 2013. Dr. Pangestu's nomination makes her the second woman to enter the 2013 Director-General contest, along with Minister González; to date, all past WTO chiefs have been male.

Indeed, in addition to the French and former EU Trade Commissioner Pascal Lamy, the WTO has been led since its inception by five Director-Generals: the current Secretary General of UNCTAD, Dr. Supachai Panitchpakdi from Thailand; Mr. Mike Moore, former Prime Minister of New Zealand; Italian former Trade Minister Renato Ruggiero; and Irishman and former EU Commissioner Peter Sutherland, who handled the conclusion of the Uruguay Round and the transition of the institution from the General Agreement on Tariffs and Trade (GATT) into the WTO in 1994-95. The GATT, in its 47 years of existence, had three Director-Generals: the inaugural British diplomat Sir Wyndham Whyte who served for 20 years, followed by Swiss diplomats Olivier Long and Arthur Dunkel.

In addition to the three officially announced candidates, recent media reports have also indicated that the nomination of Ahmad Thougan Al Hindawi, Jordan's former Trade and Industry Minister, is likely to be formally presented in the coming days. Other expected candidates include Tim Groser, New Zealand's current Minister of Trade, Minister for Climate Change Issues and Associate Minister of Foreign Affairs, who has already expressed interest in the post. Rumours around delegations in Geneva and related high-level conferences have also raised the possibility of other African candidates, including former Kenyan Ambassador Amina Mohamed and current Trade Minister of South Africa Rob Davies.

The names of heavyweights Lord Mandelson – former European Commissioner for Trade – and of global governance activist and former President of Mexico, Dr. Ernesto Zedillo, have also been tossed around in the past few months as options that, if realised, would change the nature of the game.

Who will feature in the final line-up for the race is being closely watched in the policy community, given that current Director-General Pascal Lamy – who has held the position for two four-year terms – ran unopposed in 2009 when re-elected. (See Bridges Weekly, [6 May 2009](#))

Unlike the World Bank and International Monetary Fund, which traditionally have appointed a US national and a European for their respective top posts under an existing

gentleman's agreement between members, the WTO process does not involve such arrangements - leaving many observers to question whether the next trade chief could be from a developing country. A claim has already been made at recent WTO debates on the matter.

"In order to ensure that the best possible candidate is selected to head the WTO at any given time, candidatures representing the diversity of members across all regions shall be invited in the nominations process," WTO selection procedures state. "Where members are faced in the final selection with equally meritorious candidates, they shall take into consideration as one of the factors the desirability of reflecting the diversity of the WTO's membership in successive appointments to the post of Director-General."

Members have a one-month period – in this case, from 1 December to 31 December – to submit their nominations for the post. Nominated candidates will then have the first three months of 2013 to make themselves known to members – including a formal presentation to the membership at a special General Council session on 29 January – and to engage in talks on "pertinent issues facing the Organization," according to WTO procedures.

The two months following that period will be devoted toward the selection and appointment of the new trade chief, with the goal of choosing him or her by consensus. The successor to Pascal Lamy is expected to be announced by May 2013.

The process is being coordinated by the chair of the General Council – currently Ambassador Elin Johansen of Norway – with the assistance of the chairs of the Dispute Settlement Body, presently Ambassador Shahid Bashir of Pakistan (whom, following tradition, is likely to chair in 2013 the General Council), and of the Chairman of the WTO's Trade Policy Review Body, in 2012 Colombia's Ambassador Eduardo Muñoz Gómez.

Bridges will provide a full rundown of the final list of candidates when it returns to press in January.

ICTSD reporting; "La costarricense Anabel González, candidata a dirigir la OMC," EL PAÍS, 18 December 2012; "Dubai consultant in running for WTO director general post," THE NATIONAL, 19 December 2012; "Indonesian technocrat Pangestu enters race to lead WTO," REUTERS, 19 December 2012; "David Cameron to back Mandelson as trade supremo," THE GUARDIAN, 20 May 2011.

*Editor's note: This article has been updated to reflect the third nominee to enter the Director-General's Race.*



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## INTELLECTUAL PROPERTY

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# WIPO Industrial Design Talks Highlight Technical Assistance, Capacity Building

Members of the World Intellectual Property Organization (WIPO) made some progress last week on the draft text of a treaty on industrial design formalities. However, developed and developing country members of the WIPO trademark body found themselves at odds over proposals concerning technical assistance and capacity building under the potential treaty.

According to WIPO's definition, an industrial design refers to the aesthetic aspects of an item, such as its shape and colour. Industrial designs are applied to a large array of products, ranging from medical instruments to watches and smartphones. Discussions on possible areas of convergence between industrial design law and practice have been underway at WIPO since 2009.

The twenty-eighth [session](#) of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) – which met from 10-14 December – was entirely devoted to industrial designs, following a WIPO General Assembly [decision](#) last October to expedite the committee's work "to advance substantially the basic proposals for a Design Law Treaty." (See Bridges Weekly, [10 October 2012](#))

At the previous SCT session, members had been unable to reach consensus on convening a diplomatic conference – the highest level of negotiations at WIPO – to finalise an agreement that would harmonise industrial design registration formalities at the international level, leaving the decision to future meetings. (See Bridges Weekly, [26 September 2012](#))

"We look forward to engaging constructively towards the conclusion of a final treaty that will benefit all users, including those in developing countries and [least developed countries, or LDCs]," Belgium said on behalf of Group B, a coalition of developed countries, last week.

However, developing countries at last week's meeting took a more cautious approach, warning that "this negotiation exercise has been based mostly on the law and practise of a few developed countries."

"It is necessary that the realities and priorities of other countries be also reflected in the working documents," Brazil added on behalf of the Development Agenda Group (DAG), a coalition of WIPO like-minded countries supporting a development-oriented perspective on IP issues.

### **Members butt heads over technical assistance, special and differential treatment**

At the WIPO General Assembly in October, the SCT was mandated to consider including "appropriate provisions regarding technical assistance and capacity building for developing countries and LDCs in the [future treaty's] implementation." During last week's discussions, however, WIPO members could not agree on the binding nature of technical assistance provisions, while also debating two different proposals on the nature of technical assistance work under the potential treaty.

The African Group, for one, submitted a proposal with four draft articles on technical assistance and capacity building to be integrated in the future treaty. The proposal asks that WIPO provide "all the appropriate equipment and technology [...] and appropriate training to the staff" of requesting countries "for operating such equipment or technology."

The proposal also requests that WIPO and its developed member states provide financial assistance to implement the treaty for at least five years from its date of entry into force. Additionally, LDCs would receive full financial support for as long as they are considered LDCs under United Nations guidelines.

In addition to technical assistance, the African Group proposal requests that in cases when fees are charged, "applicants from developing countries shall benefit from a fee reduction of at least fifty percent," with LDCs benefiting from a fee waiver.

However, Group B said in response that "the issue of fee reduction is not relevant or appropriate for formalities treaties, which do not operate a scheme which requires fees."

The EU for its part tabled a proposal for a supplementary resolution that would be associated with – but not part of – the treaty on industrial design law and practice. The proposed resolution requests that the treaty's contracting parties and WIPO "shall seek to provide technical assistance and capacity building, as requested, by developing countries and LDCs who have signed or ratified the treaty" while also accounting for such countries' levels of technological and economic development.

The EU said that a draft resolution tracks with standing precedents for this kind of treaty, while some provisions of the African Group proposal "go beyond the existing practice and precedents, by setting up a compulsory system of technical assistance not fully in line with demand-driven technical assistance" as outlined by the Development Agenda. The DA, which aims to mainstream development into the organisation's work, establishes that WIPO technical assistance should be "development-oriented, demand-driven and transparent," taking into account the priorities and special needs of developing countries – particularly LDCs – as well as member states' varying levels of development.

At the end of the meeting, SCT chair Imre Gonda – Deputy Head of the Hungarian Intellectual Property Office – stated that the committee had made good progress on the text and that all comments made will be reflected in a revised working document for consideration by the SCT at its next session, tentatively scheduled for next May.

ICTSD reporting; "WIPO Committee Actively Drafting Treaty On Designs; Technical Assistance Up Next," IP WATCH, 12 December 2012; Technical Assistance Shows North/South Divide In Design Treaty Talks At WIPO," IP WATCH, 13 December 2012.

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## FISHERIES

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# NGOs Welcome Progress in EU Fishery Reform

The fisheries committee of the European Parliament approved on 18 December a package of measures set to reform the Common Fishery Policy (CFP). Environmental organisations welcomed the move, which they said would steer the CFP towards sustainability, both in terms of fish stocks and the livelihoods of the fishers that depend on them. In particular, the reform package would make sure that fishing quotas are set based on scientific evidence rather than political deals.

"In the face of massive lobbying from destructive fishing interests, Members of the European Parliament have found the courage to stand up for our marine environment and give a future to both fish and fishermen," commented Ariel Brunner, head of EU policy at Birdlife Europe.

Currently, European fisheries are under significant strain. As much as eighty percent of Mediterranean stocks and 47 percent of Atlantic stocks are overfished. EU catches have declined by close to 40 percent over the last 15 years.

The current EU CFP, considered by many to be a failure, has been in place since 2002. The new CFP is set to take effect at the beginning of 2014.

Under the reform measures approved on 18 December, the discard of non-target species or fish of the wrong size will be banned. Twenty-five percent of the current fish catch is discarded at sea.

Funding will also be earmarked to help equip fishers better, for example with nets that minimise by-catch. Another key part of the package relates to attaining maximum sustainable yield (MSY) for all fisheries by 2020. In the long term, this will allow for a larger overall catch and sustainable livelihoods for European fishers.

Under the reform package, the CFP will establish multi-annual fish stock management plans. Currently, nations haggle around quotas on an annual basis. The multi-year plans will lead to greater predictability and facilitate planning. Other reforms include a new emphasis on regional cooperation by all stakeholders around shared fisheries resources, as well as sustainable fishing in third countries. In non-EU waters, European operators will only be allowed to fish surplus stocks. In addition, the EU will continue its work to combat illegal, unregulated and unreported (IUU) fishing.

### Next steps

The European Parliament is set to vote on the reforms in plenary during the first quarter of 2013. After this, the European Council – consisting of the fisheries ministers from each country – will have their say. The new CFP is expected to take effect at the beginning of 2014.

"The Fisheries Committee has shown through this milestone vote that the European Parliament is listening to scientific advice and wants fish stocks to recover," Roberto Ferrigno, Common Fisheries Policy Project Coordinator of environmental group WWF said. "WWF now calls on the rest of MEPs in the parliament to champion this position in the

plenary vote in early 2013 and hold the line ahead of even more challenging negotiations with fisheries ministers at council level next year."

"The vote today marks a turning point after decades of complacency for overfishing," Greenpeace EU fisheries policy director Saskia Richartz said. "The European Parliament has injected some much-needed ambition in the reform of EU fishing rules and challenged European governments to follow suit."

ICTSD reporting; "Fisheries reforms: MEPs back plan to protect stocks," BBC, 19 December 2012; "European Members of Parliament back extensive reform of EU fisheries policy," FISHUPDATE.COM, 18 December 2012.

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## EVENTS & RESOURCES

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# Vacancy

The Multilateral Diplomacy Programme (MDP) of the **United Nations Institute for Training and Research (UNITAR)** is seeking students interested in gaining professional experience in a multicultural environment and enhancing their understanding of the United Nations system. The duration of the internship is at least four months with the indicative start date in either January or February. Candidates should have an undergraduate degree in a relevant field and be enrolled in a post-graduate programme at the time of application and during the internship. For more information, visit the [UNITAR website](#).

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# Events

## Coming soon

17-19 January, Colombo, Sri Lanka. SUB-REGIONAL WORKSHOP ON MILLENNIUM DEVELOPMENT GOALS AND THE POST-2015 DEVELOPMENT AGENDA FOR SOUTH ASIA. The Asian Development Bank (ADB), UN Economic and Social Commission for Asia (ESCAP), and the UN Development Programme's (UNDP) regional partnership on the Millennium Development Goals (MDGs) is organising a series of regional and sub-regional workshops and consultations on the post-2015 development agenda and the post-Rio+20 process, which will lead to the publication and launch of the next Regional MDG Report (2012/13) - The Post 2015 Development Agenda in Asia and the Pacific: Regional Perspectives. These consultations will seek the views of stakeholders in the Asia and Pacific region on their development priorities for the report, and aims to bring together government, civil society, think tank representatives, and development partners. For more information, visit the event [website](#).

7 February, Geneva, Switzerland. DIRECTOR GENERAL'S MEETING WITH NGOS. The Director General of the World Intellectual Property Organisation (WIPO) is inviting

accredited non-governmental organisations together for this bi-annual meeting, which aims to serve as a forum for exchanging views on the international intellectual property system generally and the work of WIPO specifically. The meeting will offer an opportunity for a direct dialogue with the Director General on the priorities and objectives of WIPO in 2013, as well as a reflection on the achievements of 2012. For more information, visit the event [website](#).

8 February, Washington DC, US. 2013 CONGRESSIONAL TRADE AGENDA. This off-the-record discussion hosted by the Washington International Trade Association will feature several congressional trade leaders, who will share their perspectives on the incoming 113<sup>th</sup> Congress' trade agenda. Featured guests include Angela Ellard, House Ways and Means Committee Chief Trade Counsel (Majority), Trade Subcommittee Staff Director; Jason Kearns, Chief International Trade Counsel (Democratic Staff), House Ways and Means Committee; Amber Cottle, Chief International Trade Counsel (Majority), Senate Finance Committee; and Everett Eissenstat, Chief International Trade Counsel (Republican Staff), Senate Finance Committee. For more information, visit the event [website](#).

6-8 March, Incheon, South Korea. EXPERT CONSULTATION ON KNOWLEDGE AND CAPACITY NEEDS FOR SUSTAINABLE DEVELOPMENT IN POST-RIO +20 ERA. The UN Office for Sustainable Development (UNOSD) is organising an expert consultation aimed at providing an initial mapping of sustainability knowledge assets, activities, and actors, allowing a definition of needs and priorities in policy-making knowledge and capacity, particularly in the post-Rio+20 context. The consultation will specifically explore what technical and policy knowledge and capacities are needed to foster a transition toward sustainability, with a particular focus on the themes of food security, energy poverty and dependency on fossil fuels, and access to safe drinking water. The event will bring together senior policymaking experts, representing both governments and various organisations. For more information, visit the event [website](#).

18-22 March, Montreal, Canada. AIR TRANSPORT CONFERENCE: SUSTAINABILITY OF AIR TRANSPORT. The objectives of this conference, held at the headquarters of the International Civil Aviation Organization (ICAO) are to develop guidelines and an action plan for a global regulatory framework. This will be developed in areas such as air carrier ownership and control, market access, consumer protection, and taxation, while focusing on the best means of implementation with the aim to build a more sustainable international air transport system. For more information, visit the event [website](#).

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## Resources

CAPITALIZING ON THE CHINA CYCLE: TIME IS RUNNING OUT FOR LATIN AMERICA. By Kevin P. Gallagher for the Global Development and Environment Institute at Tufts University. (December 2012). This policy brief reviews the prospects for economic growth in Latin America in the event of a slowdown in Chinese demand for primary commodities. The brief argues that, in the long run, China's appetite for Latin American commodities will decline, as will prices. Yet, a China "super-cycle" is still likely, according to the author, which should in turn benefit Latin America for the foreseeable future. The author notes that Latin America's challenge will be to seize this opportunity while it can and use the benefits from China trade to generate long-run sustainable development. The brief can be accessed [here](#).

COORDINATING CLIMATE AND TRADE POLICIES: PARETO EFFICIENCY AND THE ROLE OF BORDER TAX ADJUSTMENTS. By Michael Keen and Christos Kotsogiannis for the

International Monetary Fund. (December 2012). This working paper explores the role of trade instruments in globally efficient climate policies, focusing on the central issue of whether some form of border tax adjustment (BTA) is warranted when carbon prices differ internationally. The authors find that tariff policy has a role in easing cross-country distributional concerns that can make non-uniform carbon pricing efficient and, more particularly, that Pareto-efficiency requires a form of BTA when carbon taxes in some countries are constrained, a special case being identified in which this has the simple structure envisaged in practical policy discussions. It also argues that the efficiency case for BTA depends critically on whether climate policies are pursued by carbon taxation or by cap-and-trade. This paper can be accessed [here](#).

THE RE-EMERGENCE OF EUROPE. By Klaus Schwab for the World Economic Forum (December 2012). This e-book examines the events that have led to Europe's current challenging political and financial climate. By looking at potential solutions through social, political, and economic lenses, the book suggests likely outcomes to what Europe will look like in the future. The author also examines the possible long-term implications that global trends and challenges may have on the region. The author asks, for instance, how Europe might remain true to its social democratic traditions while also returning to the top of global competitiveness, and how the 27-member bloc might best make use of its human capital to become a leader again in innovation and sustainability. This e-book can be found [here](#).

OECD STATISTICS ON INTERNATIONAL TRADE IN SERVICES, VOLUME 2012 ISSUE 1. Published by the Organisation for Economic Co-operation and Development (OECD) (2012). This publication includes statistics by category of service on international trade in services for the 34 OECD countries, the European Union, and the Euro Area as well as analysis, definitions, and country notes. The report is available [here](#).

ISSUES IN BRIEF NO. 26 – THE IMF'S NEW VIEW ON FINANCIAL GLOBALIZATION: A CRITICAL ASSESSMENT. By Kevin P. Gallagher for Boston University's Frederick S. Pardee Center for the Study of the Longer-Range Future (December 2012). In this brief, the author analyses the IMF's new policy on managing capital flows and draws out his assessment of the move's implications for future policy, particularly trade and investment treaties. The full brief can be found [here](#).

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