



Bridges Weekly Trade News Digest

Weekly trade news from a sustainable development perspective

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LEAD STORIES

US Congress Takes Aim at Beijing, Preserves Anti-Subsidy Tariffs

Washington lawmakers in both chambers of Congress passed legislation this week that will allow the US Department of Commerce to continue applying countervailing, or anti-subsidy, duties to imports from non-market economies such as China. The legislation – which was quickly lambasted by Chinese officials – overrides a 2011 ruling by a federal court that held that US law did not permit such a practice.

In a rare display of bipartisanship, lawmakers from both parties backed the bill, which passed easily in the Senate on Monday and in the House of Representatives on Tuesday.

“This legislation preserves our ability to fight unfair subsidies granted by countries like China that injure our industries, cost US jobs, and distort the market,” said Dave Camp, the Republican Chairman of the Ways and Means Committee.

“With this bill we are making clear that the Federal Circuit’s decision was wrong and it cannot stand,” added Sandy Levin, the top Democrat in the same committee.

The bill next goes to US President Barack Obama, whose administration helped craft the legislation.

“Congress has taken a clear stand against the unfair trade practices that have put countless American jobs in jeopardy,” said Vice President Joe Biden on Tuesday, foreshadowing White House approval.

Obama had not yet signed the bill as Bridges went to press.

China in the spotlight

The House and Senate votes drew a quick rebuke from Chinese officials. Speaking to reporters in Beijing, Chen Deming, China's Minister of Commerce, referred to the US law as "pointing fingers" and coloured it as out-of-line with WTO rules.

"Let me be clear: there are no prohibitive subsidies handed down by the Chinese central government," he said.

"We follow the rules of the WTO, but we have no obligation to follow domestic laws or regulations in any specific country that go beyond international rules," Chen said at a Wednesday news conference.

Chen also argued that the US is responsible for closing its own trade deficit; the US trade deficit with China reached US\$295.5 billion in 2011, according to [data](#) released last month by the US government.

Legislation overrides federal court ruling

For a long time, the US Department of Commerce did not impose countervailing duties on non-market economies. However, the administration of former US President George W. Bush began imposing these duties in 2007.

In December 2011, the US Court of Appeals for the Federal Circuit struck down the Bush-era policy and [found](#) that, since "the notion of a subsidy is, by definition, a market phenomenon," government payments cannot be characterised as subsidies in a non-market context.

Without the new legislation, the federal court ruling would have made illegal 23 countervailing duty orders – worth approximately US\$4 billion in trade – that the Department of Commerce currently has against products from mostly China, along with Vietnam, both of which the US classifies as non-market economies.

The court's decision had also put in jeopardy ongoing anti-subsidy investigations involving solar panels from China and wind turbine towers from

both China and Vietnam (see Bridges Weekly, [6 February 2012](#) and [16 February 2012](#)).

WTO context

Beijing and Washington have previously sparred over countervailing duties at the global trade body, with the WTO's highest court deeming in 2011 that the US had over-penalised Chinese imports in four sets of anti-dumping and countervailing duty investigations ([DS379](#)).

WTO rules allow for treating goods from non-market economies differently for the purpose of calculating anti-dumping duties, which punish the practice of selling goods in foreign markets below cost. The US uses a surrogate country to determine what constitutes a 'normal' market price for the goods in question, on the grounds that Chinese prices are distorted by government involvement in the market.

However, certain calculation methodologies for anti-dumping duties can result in a "double remedy" situation in cases where both anti-dumping and countervailing duties are being applied on a product, if the subsidies being targeted by the latter duties are also responsible in part for the dumping.

Beijing had argued that applying two penalties – or "double remedies" – for essentially one violation meant the US was violating WTO rules. The Appellate Body ultimately backed Beijing in this regard, finding that the US could not simultaneously impose both countervailing duties and anti-dumping duties without having assessed whether the extra duties amounted to double remedies. (See Bridges Weekly, [16 March 2011](#))

The court deemed that Washington's use of the 'non-market economy' methodology for calculating such trade remedies "without having assessed whether double remedies arose from such concurrent duties" meant the US had acted inconsistently with its WTO obligations.

[According](#) to the Ways and Means Committee, the US law seeks to avoid the double remedy problem raised in the WTO case, specifically by requiring that the price margins used for calculating an anti-

dumping duty be adjusted in cases where a subsidy is partially causing the low price of the import.

ICTSD reporting; "US 'Pointing Fingers' With Trade Bill: China," BLOOMBERG, 6 March 2012; "US duty violates international rules – minister," CHINA DAILY, 7 March 2012; "US Congress plans to override court on tariffs," FINANCIAL TIMES, 29 February, 2012; "Congress acts to overturn court ruling that disallowed punitive tariffs against China," CHICAGO TRIBUNE, 6 March 2012; "Senate Oks bill aimed at China subsidies," REUTERS, 5 March 2012; "UPDATE 1-US House passes China subsidy bill, sends to Obama," REUTERS, 6 March 2012; "Bill targeting Chinese subsidies goes to Obama," REUTERS, 6 March 2012; "China lambasts U.S. trade bill, won't adjust yuan," REUTERS, 7 March 2012.

OTHER NEWS

Brazil Sounds New Warning of 'Currency War'

Over a year after Brazilian Finance Minister Guido Mantega first warned of an "international currency war," tensions are once again rising among the world's major economies over currency values and their impacts on export competitiveness, with Brazilian officials announcing a series of new policies last week to protect domestic industries.

The fast appreciation of the real, Brazil's currency, in the first months of 2012 has led Brazilian officials to criticise leading industrial nations for their monetary policies, with President Dilma Rousseff calling it a "tsunami" of cheap money.

"We have a currency war that is based on an expansionary monetary policy that creates unequal conditions for competition," Rousseff said in a speech on Monday.

The real has been one of the currencies to appreciate the most in 2012, with some estimates placing the surge at 9 percent against the dollar this year.

Rousseff, who took office in January 2011, has been intent on protecting domestic manufacturers who have been losing market share to foreign competition as a result of the appreciation of her country's currency.

"We'll take all measures necessary to protect ourselves," Rousseff said this week during a trip to Germany, without specifying further details.

The Brazilian President has also promised to take action to stop developed countries' policies from causing the "cannibalisation" of emerging markets.

Recent efforts by European countries, among others, to stimulate their struggling economies via low-interest loans are tantamount to "artificial forms of protectionism," Rousseff said, arguing that these measures have caused the real to surge compared with the dollar and the euro.

German Chancellor Angela Merkel, who met with Rousseff this week, acknowledged that emerging economies are facing challenges as a result of cheap money from developed countries.

"On the other hand, we see there are protectionist and one-sided measures," Merkel commented, referring to trade barriers being implemented in some emerging countries.

Brasilia takes action

In an effort to slow the real's appreciation, Brazilian officials last week extended an existing six percent financial transactions tax on overseas loans maturing in up to three years. Previously, the tax was applied to loans with maturities of under two years.

Brasilia will also be imposing a six percent tax on trade financing loans for those with maturities of over a year; only importers will be able to take out such loans.

"When the real appreciates, it reduces our competitiveness," Finance Minister Mantega – who made headlines in 2010 for introducing the term "currency war" – said after the changes were announced.

“Exports are more expensive, imports are cheaper and it creates unfair competition for businesses in Brazil.”

Currency issue to be raised at the WTO

The linkages between currency and trade are soon to be discussed in the WTO context, with a workshop being scheduled at the global trade body later this month.

The growing preoccupation over exchange rates’ potential trade impacts had led Brazil to submit proposals to the WTO last year asking for the examination of possible trade tools for responding to currency fluctuations – a discussion that, one Brazilian official commented at the time, was “not taking place anywhere.” (See Bridges Weekly, 28 September 2011).

The proposal led to the establishment of the upcoming currency workshop. “There is a lot of expectation about this seminar,” a trade official involved in planning the event said.

China currency could come under fire at WTO meeting

The impact of exchange rates on trade has also come up repeatedly between the US and China, an issue that House Ways and Means Committee Chairman Dave Camp and Senate Finance Committee Chairman Max Baucus have both argued should be raised at the WTO meeting.

US Trade Representative Ron Kirk and US Treasury Secretary Timothy Geithner, in a recent letter regarding the meeting, stated that the US “intends to underscore the importance of flexible exchange rates in promoting more balanced global trade and faster and more efficient global adjustment of external balances.”

Washington has long argued that Beijing’s strict manipulation of its currency, the renminbi, has led to it being undervalued. This, critics argue, has made Chinese exports cheaper than their foreign counterparts, in effect acting as an export subsidy.

The topic has long been a hot-button issue between the trading partners, with several US

lawmakers making repeated attempts to pass legislation that would label China as a currency manipulator and US presidential candidates regularly criticising Beijing’s policies on the campaign trail.

The possibility of Beijing being pushed at the WTO meeting to reform its currency policies prompted a sharp response from Chinese officials.

Earlier today, Chinese Commerce Minister Den Deming told reporters that Beijing has no plans to allow its currency to appreciate sharply, arguing that China’s currency is already close to its fair trading value.

“I have noticed that the US Trade Representative and Treasury Secretary have noted to the Congress that they would use [the WTO meeting] as well as other events, to push forward [renminbi] reform,” he said.

“When I heard about this, I thought I heard wrong. They should push the US dollar reform since the US trade deficit is about 4.8 percent [of GDP],” he continued.

The WTO currency workshop is currently scheduled for 27 and 28 March, and is expected to inform future discussions on the subject at the global trade body’s Working Group on Trade, Debt and Finance.

ICTSD reporting; “Rousseff in Germany Eyes Measures to Shield Brazil From ‘Monetary Tsunami,’” BLOOMBERG, 5 March 2012; “Brazil declares new ‘currency war,’” FINANCIAL TIMES, 1 March 2012; “Brazil claims rich countries’ ‘tsunami’ of cheap money triggers ‘currency war,’” MERCOPRESS, 2 March 2012; “China lambasts U.S. trade bill, won’t adjust yuan,” REUTERS, 7 March 2012; “US to use ‘all available tools’ on China trade-USTR,” REUTERS, 1 March 2012; “Brazil slams rich countries over currency war,” REUTERS, 1 March 2012; “Merkel expresses concern for Brazil currency woes,” REUTERS, 5 March 2012; “Brazil Confirms Trade Financing Loan Tax To Contain Real’s Gains,” WALL STREET JOURNAL, 2 March 2012.

Services Openings Eyed by Some WTO Members

A subgroup of WTO members is currently holding "exploratory talks" on the possibility of a services liberalisation agreement, sources close to the talks have confirmed. The subgroup currently includes 16 of the organisation's members, including the US, Australia, and the EU.

The countries discussing a possible services agreement are part of a group called the "Real Good Friends" of services (RGF), one official explained.

"Everything" is on the table, as far as the possible industries that might be included in a services pact, US Ambassador to the WTO Michael Punke told reporters on Friday.

The discussions are still at an early stage, a developed country official involved in the RGF talks confirmed to Bridges. There is absolutely no clarity yet on what timeframe the talks might take, the official added, as members are still trying to define the initiative and its parameters.

While the discussion is taking place in context of the RGF group, the talks are open to countries outside the group, the official said.

Participation

With regards to whether emerging economies might join in the RGF initiative, Punke told reporters last week that "there is no question that I think everyone's preference is for the emerging economies to be part of all the discussions we have in Geneva because those are the markets that everybody is most interested in."

"You need the emerging economies" in any sort of initiative in this area, one developing country official commented.

The possibility of a services pact had already been hinted at earlier this year, with Assistant US Trade Representative Carol Guthrie telling Reuters in February that "there is a broad and growing interest in this concept" among some developed

and developing country members (see Bridges Weekly, [15 February 2012](#)).

"Not very warm" reception by some members

The discussion regarding a services pact "is a change, if you wish, in this year's conversations," said an official from a country not part of the 16-member group.

The reception to the initiative was "not very warm" among some countries, the official added. "Essentially the preoccupation is a systemic preoccupation about the plurilateral nature of initiative."

"Several countries have expressed this concern because this would represent a departure from the multilateral approach adopted so far in the talks," the official said. "We'll have to see it."

Responding to the possibility that some members might be concerned about the change from the multilateral approach, Punke told reporters that "there's a lot of hypocrisy built into that suggestion [of undermining Doha by going plurilateral] because of course what virtually every member of the WTO is engaged in is negotiations outside of the multilateral 'single undertaking' context."

Talking about the RGF initiative as a plurilateral pact "should be avoided," another developing country official said. "Should something come out of these discussions, it would need to be multilateral."

The objective of this RGF initiative, rather, is to establish a "stepping stone," with the objective of eventually reaching a multilateral agreement, the official continued.

"The good news is that at least countries are showing interest in sitting down at the table and seeing what options are available," the delegate commented.

'Enchilada' talks scheduled

Discussions regarding services liberalisation are set to be held among a broader group of members on 20 March in what is known as an "enchilada"

format – which the chair of the Special Session of the Council on Trade in Services, Ambassador Fernando de Mateo of Mexico, has frequently used in the past to bring together a range of countries.

The objective of this month's 'enchilada' talks is to discuss how to make progress on services based on what ministers agreed at December's Ministerial Conference (MC8) regarding new negotiating approaches focused on advancing the Doha talks in areas where progress might be possible.

Over 30 countries have been invited to the 'enchilada' talks, a developing country official confirmed.

ICTSD reporting; "WTO Members Seek Services Accord as Doha Stalls, U.S. Says," BLOOMBERG, 2 March 2012; "US steps up push for WTO services trade talks," REUTERS, 2 March 2012.

WTO Members at Odds Over Anti-Counterfeiting Pact

The ongoing debate over the Anti-Counterfeiting Trade Agreement (ACTA) has once again found itself in the spotlight at the WTO, with developed and developing countries sparring last week over the deal's possible effects on non-signatories, internet freedoms, and access to medicines.

ACTA is a plurilateral trade pact that strengthens global standards for the enforcement of intellectual property rights beyond the minimum standards set by the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), with the aim of combating counterfeiting and piracy more effectively.

While the pact has been signed by nine of its eleven negotiating parties – namely Australia, Canada, Japan, South Korea, Morocco, New Zealand, Singapore, the US, and the EU – it will only become legally binding after six of these parties have ratified the deal.

In the EU's case, the pact must be signed and ratified both by the EU as a bloc, as well as by the EU's 27 member states individually.

ACTA proponents try to "clear the air" at TRIPS Council

Debates over ACTA are not new at the WTO, having featured at the October 2011 meeting of the WTO's TRIPS Council (see Bridges Weekly, [2 November 2011](#)).

At the 28-29 February TRIPS Council meeting, ACTA proponents wished to once more dispel "misleading information" about the pact among WTO members, particularly with regard to ACTA's impact on digital freedoms and trade flows of legitimate products, as well as the alleged lack of transparency in the negotiations.

The EU [stated](#) that ACTA establishes a nucleus of countries committed to high standards of intellectual property rights enforcement and predicted that this "nucleus will grow."

"The countries who have joined us in this agreement will soon begin to see the benefits of good enforcement, in terms of investment and in terms of innovation," the EU added.

In the past, developing countries have criticised certain ACTA provisions for opening the possibility of abuse by rights holders.

At last week's meeting, a number of countries, including Egypt, Brazil, and China, pointed to what they consider a narrow approach in the agreement focused on "policing and repression," rather than addressing intellectual property rights (IPR) enforcement from a broader perspective.

For its part, Ecuador [underlined](#) that ACTA measures could lead people "to be more cautious in conducting legitimate activities because of the risk of infringing the incredibly high legal standards in this instrument." It also called ACTA "inconsistent with Articles 7 and 8 of the TRIPS Agreement which guarantee a balance between rights and obligations of creators and consumers of intellectual property."

India, EU debate impact on generic medicines trade

Border enforcement measures also came under fire during the meeting, with India expressing [concern](#) over whether the pact expands border measures “far beyond ‘counterfeit trademark or pirated copyright goods’” and could, as a result, authorise the seizures of “suspected ‘confusingly similar’ trademarks.

The EU has previously seized legal generic drugs from India in transit through European ports on the basis of a supposed trademark violation.

In its [intervention](#), the US stated that ACTA only seeks to address gaps in the TRIPS Agreement by providing enforcement authorities the appropriate legal tools to combat the rapidly changing and improving distribution networks in counterfeit products.

The pact’s proponents rejected that ACTA could have potentially restrictive effects on the trade of generic medicines, noting that the final text of the agreement expressly refers to the 2001 Doha Declaration on intellectual property and public health, which emphasises that the TRIPS Agreement does not and should not prevent WTO members from acting to protect public health.

The US highlighted that many WTO members that have not participated in ACTA negotiations have already adopted ACTA-like provisions in their domestic laws. It pointed specifically to India’s notifications on border measures and customs, whose scope of IPR infringement includes copyright, trademark, designs, and patents.

“We look forward to responses from these countries as to why these provisions are acceptable in their domestic law, but not in ACTA,” the US added.

Controversy escalating in the EU

The ACTA discussion at the TRIPS Council meeting follows weeks of growing tension over the pact, particularly in EU member states (see Bridges Weekly, [15 February 2012](#)). Just last week,

European activists presented the European Parliament with a petition signed by over 2.5 million people against the controversial agreement.

In response to the growing protests across the European continent, the European Commission - the EU’s executive branch - has decided to refer the treaty to the European Court of Justice (ECJ) in order to assess the pact’s compatibility with the EU’s fundamental rights and freedoms (see Bridges Weekly, [22 February 2012](#)).

Meanwhile, the International Trade Committee (INTA) of the European Parliament (EP) - which will make a formal recommendation to the EP on whether or not to approve ACTA - has begun holding discussions of its own on the pact and has invited a number of experts to give their views. Many committee members have particularly [asked](#) for more clarity on how the deal would be enforced.

ACTA rapporteur to the Parliament David Martin, who will be drafting the committee’s recommendation, has asked INTA to support his plan to refer ACTA to the ECJ on the European Parliament’s own behalf and with its own set of questions, rather than having Parliament simply associate itself with the European Commission’s referral of ACTA.

ICTSD reporting; “ACTA Debated At WTO; Petitions And Letters Fly In Brussels,” IP WATCH, 29 February 2012.

London Meeting Struggles to Make Headway on Shipping Emissions

The International Maritime Organization (IMO) could soon find itself butting heads with Brussels over how best to tackle emissions from international shipping, analysts say, after the UN shipping body was unable to make “tangible progress” in this area at last week’s major meeting.

The London-based IMO has been struggling for years to agree upon market-based measures for curbing emissions, such as a levy on carbon emissions or a cap-and-trade scheme. With the

organisation's 170 members unable to make much progress on this issue last week – and with the next meeting of the organisation's Marine Environment Protection Committee (MEPC) not scheduled until October – it is unclear when such measures will ultimately be agreed upon.

Meanwhile, the European Commission has announced that it will take measures into its own hands if the IMO is unable to implement an effective strategy. With international shipping responsible for some three percent of greenhouse gas production, Brussels views the sector as an important area for reaching its climate change reduction goals. EC officials maintain, however, that they would prefer an international solution if possible.

“While we have a clear preference for global action on measures to reduce emissions from shipping, we don't see the IMO on track to deliver reductions consistent with the globally accepted maximum two degrees Celsius objective,” a Commission spokesman told Reuters.

The European Commission has launched a public consultation on possible measures for curbing maritime emissions, including a compensation fund, an emissions trading system, a fuel or carbon tax, and a mandatory emission reduction per ship. Consultations remain open until 12 April.

The Commission aims to conduct an impact assessment based on the consultation between April and June of this year, with a final proposal set to be released before the end of the year, according to Isaac Valero-Ladrón, an EC spokesman.

Aviation setting a precedent?

As the EC moves through its consultation and decision-making process over 2012, many observers are watching closely for similarities between its treatment of the maritime and aviation sectors. The inclusion of aviation under the Brussels' Emissions Trading System (ETS), which went into effect earlier this year, has led to much speculation as to what the full trade implications of the measure are and whether it is WTO compatible.

The inclusion of aviation under the EU ETS has already triggered much criticism from trading partners – including the US, China, and Russia – and has led many to consider implementing countermeasures against the bloc (see Bridges Trade BioRes, 23 February 2012).

The Commission had originally maintained that it preferred that the UN's International Civil Aviation Organization (ICAO) be the body responsible for regulating aviation emissions. However, the EU lost patience and included aviation in its emissions trading system (EU ETS) after it deemed the UN body's progress to be too slow (see Bridges Trade BioRes, 23 January 2012) – a situation that appears to be repeating itself in the shipping context.

But while aviation is responsible for 40 percent of the value of internationally traded freight, 90 percent of the world's traded goods are transported by ocean-going vessels - making the trade implications of a unilateral EC move far wider in scope.

Other priorities

Moving forward on market-based measures in the IMO forum has also been complicated by the so-called “round table” of leading shipping associations, which says it would like to see the issue postponed until mandatory energy efficiency design standards can be implemented.

The organisation last July agreed to adopt a mandatory energy efficiency design index for all new ships and a voluntary energy efficiency management plan for all ships (see Bridges Trade BioRes, 25 July 2011).

“The [round table] is of the view that market based measures are not justified at this particular time,” reads a joint statement from shipping giants BIMCO, INTERCARGO, INTERTANKO, and the International Chamber of Shipping issued before the meeting.

Last week's talks were reportedly held up on the efficiency standards issue, with debate over technical co-operation and technology transfer

monopolising much of the time, according to delegates.

While the group has not come out in favour of a particular market-based measure, it has said it is strongly opposed to the possibility of an emissions trading scheme.

“The very complexity of international seaborne trade renders the concept of ETS unworkable for the shipping industry,” the statement reads. With ocean-going vessels flagged in a multitude of countries and carrying goods often between countries that bear no relation to a ship’s home port, establishing responsibility can be difficult.

ICTSD reporting; “IMO set to collide with EU over vessel CO2 emissions,” REUTERS, 3 March 2012; “IMO To Discuss CO2 Curbs For Ships, Industry Frets,” REUTERS, 23 February 2012; “Market-based measures for greenhouse gases from ships on agenda as IMO Marine Environment Protection Committee meets,” IMO, 22 February 2012.

Debate on Australian Cigarette Packaging Reignites at TRIPS Council

An Australian law intended to make the packaging of cigarettes less appealing to consumers again came under fire at the WTO last week, with developing country tobacco producers arguing that the measure could curtail competitiveness in the tobacco market and is inconsistent with multilateral trade rules.

The 28-29 February meeting of the WTO’s Council on Trade-Related Aspects of Intellectual Property Rights (TRIPS) also saw a handful of developed country members reaffirm their commitment to using the existing flexibilities within the TRIPS Agreement to protect public health, in the face of mounting opposition from the tobacco industry.

The Australian law will require that all cigarettes sold in Australia be packaged with only one colour and shape, and that a significant portion of the whole packaging be used for health warnings.

The [Plain Packaging Bill](#) was approved last December, but due to delays in the Australian Senate’s vote, tobacco companies have until 1 December 2012 to make the necessary changes in their production. (See Bridges Weekly [2 November 2011](#)) Australian Trade Minister Craig Emerson has publicly defended the bill, saying it is “not anti-trade, it’s anti-cancer.”

Law could harm developing country producers, some members argue

At the TRIPS Council meeting, some developing country members – in particular tobacco producers such as the Dominican Republic, Cuba, El Salvador, and Ukraine – reiterated arguments made in October’s Council meeting that such a measure violates provisions in the TRIPS agreement and could have large negative implications on local industries. (See Bridges Weekly, [2 November 2011](#))

The Dominican Republic – which said at the meeting that 100,000 families in that country make a living on tobacco products, generating important public income in taxes – had previously indicated that the new law could be inconsistent with Australia’s obligations under TRIPS Article 20 on special requirements and Article 10bis of the Paris Convention for the Protection of Intellectual Property.

Article 20 of the TRIPS Agreement forbids trademark usage from being “unjustifiably” held back by special requirements, which pertain to “use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.”

At last week’s meeting, the Dominican Republic also argued that the Australian measure could be in violation of TRIPS Article 24 on the protection of geographical indications (GIs). A GI is a marker used to designate a product that possesses certain qualities due specifically to its geographical origin.

The country highlighted the successful development of the first local GI for cigars, which in their view would lose value considerably as a result of the plain packaging bill. Canberra has

said that it will seek to garner approval for similar regulations on other tobacco products, such as cigars, within the coming weeks.

Tobacco industry fights back

While many developing countries seemed opposed to the Australian legislation, exceptions to this pattern were Brazil and Uruguay, who voiced clear support for the Australian measures.

Tobacco giant Philip Morris has sued Uruguay over a similar cigarette packaging law at the World Bank's International Center for Settlement of Investment Disputes (ICSID), launching a case in February 2010. The company was forced to shut down its operations in Uruguay last October, saying it was no longer viable under new "fiscal and regulatory measures" (See Bridges Weekly [2 November 2011](#)).

Uruguay has recently argued that ICSID does not have jurisdiction over these types of claims; both parties are awaiting a final ruling on the issue.

Meanwhile, the Australian law is also facing legal challenges by major tobacco companies, including Philip Morris International, Japan Tobacco, British American Tobacco, and Imperial Tobacco. These companies claim that the plain packaging legislation is unconstitutional; Australia's high court is set to hear the cases in April.

Phillip Morris is also challenging the law under the 1993 Bilateral Investment Treaty (BIT) between Australia and Hong Kong.

However, former Australian health minister and current Attorney-General Nicola Roxon has recently alleged that Philip Morris deliberately moved ownership of its parent company to Hong Kong in order to be able to launch proceedings under the BIT; the company has argued that the transfer was due to legitimate business reasons.

WTO dispute rumours

Recent reports indicate that the Australian measure might soon face another legal challenge, this time at the WTO dispute level. Bloomberg, citing unnamed sources familiar with the case, reported on Monday that at least three

governments may lodge a complaint at the global trade arbiter. No dispute had been announced, however, by the time Bridges went to press on Wednesday evening.

ICTSD reporting; "Big Tobacco prepares for packaging switch," FINANCIAL TIMES, 14 February 2012; "Plain cigarette packaging labelled unlawful," FINANCIAL TIMES, 14 February 2012; "Australia Said to Face WTO Complaint Over Tobacco Packaging, Ban on Logos," BLOOMBERG, 5 March 2012 ; "Gobierno confía en su defensa y aguarda definición de primera parte del arbitraje," PRESS RELEASE PRESIDENCY OF URUGUAY, 2 March 2012.

IN BRIEF

India Bans Cotton Exports; Ministers to Reconsider

India [announced](#) the immediate prohibition of cotton exports on Monday. The move from the world's second largest cotton exporter caused a stir in market prices and surprised political officials. A group of the country's ministers is expected to [review](#) the decision later this week.

Agriculture minister Sharad Pawar told reporters that he had been "kept in the dark" on the issue and that cotton farmers would not be able to handle lower prices. He called for an [end](#) to the ban, which was instituted by the Directorate General of Foreign Trade.

In an emailed statement, the International Cotton Association said that the ban would "undermine India as a reliable trading partner" and "have serious consequences and a major, detrimental impact on world cotton trade."

Dismayed, the trade association noted that the ban came without prior "communication" and that similar actions in 2010 lead to a surge in the number of cases brought to it for arbitration of contracts that were not honoured, a function of the organisation. Notably, the government recently indicated that it may reverse course and [allow](#) existing contracts to be fulfilled.

High prices in recent years have stimulated cotton production, even as increases in consumption have remained modest. Some critics of the export ban have therefore [questioned](#) the necessity for a market intervention on behalf of domestic textile producers.

A ban of Indian cotton exports in 2010 preceded a price spike - peaking at US\$2.27 a pound - more than twice its current value. Farmers around the world responded by planting more cotton.

Armelle Gruere of the International Cotton Advisory Committee told Bridges that increased production has led to expectations of a global surplus, with total production for the 2011/12 season projected at 27.2 million tonnes and consumption at 23.4 million tonnes. Global stocks of the commodity are up 40 percent, Gruere added.

She warned that the effect of the Indian ban will depend on how long it lasts.

Similarly, the Australian Bureau of Agriculture and Resource Economics and Science [predicts](#) a 10 percent drop in cotton prices over the course of 2012 and 2013 due to increased output.

An official from a leading cotton exporter, speaking on condition of anonymity, told Bridges that the recent Indian measure was “not good for predictability” and that it would lead to uncertainty in other parts of the cotton supply chain.

However, he added that the recipients of state aid may argue for payments “related to price volatility” through crop insurance schemes, since target prices qualifying farmers for support payments are politically unpalatable in the US given record farm incomes.

There might be a silver lining for other exporters in India’s ban. Australian Agriculture Minister Joe Ludwig [told](#) a Canberra audience on Tuesday that the Indian measure was an opportunity for farmers from his country to “build on overseas markets.”

“Cotton Soars After India Bans Exports,” ASSOCIATED PRESS, 5 March 2012; “Cotton Exports Ban: Gujarat Chief Minister Narendra Modi Seeks Explanation from Centre,” BUSINESS TODAY, 6 March 2012; “Cotton Prices Jump as India Bans Exports,” FINANCIAL TIMES, 6 March 2012; “Manmohan directs GoM to urgently review ban on cotton exports,” THE HINDU, 7 March 2012; “Sharad Pawar Challenges Cotton Export Ban,” REUTERS, 6 March 2012.

WTO IN BRIEF

Indian Ban on Imports of US Poultry Sparks WTO Dispute

Washington announced yesterday that it has initiated consultations with New Delhi at the WTO over India’s prohibition on imports of US poultry, chicken eggs, and other agricultural products – the first stage in the global trade body’s dispute settlement process.

India has banned US poultry and other farm goods for the last five years, supposedly to prevent avian influenza outbreaks in the country, said the US Trade Representative’s office. However, Washington argues that there is no scientific evidence to justify the ban.

“India’s ban on U.S. poultry is clearly a case of disguising trade restrictions by invoking unjustified animal health concerns,” US Trade Representative Ron Kirk said in a statement. “We are confident that the WTO will confirm that India’s ban is unjustified.”

A separate [statement](#) from US Agriculture Secretary Tom Vilsack claimed that the United States had repeatedly sought scientific evidence for the import restrictions.

Vilsack said that the announcement that the US is seeking consultations under the WTO’s dispute settlement process “demonstrates that the United States will help ensure that all of our trading partners play by the rules and uphold their WTO obligations.”

In recent weeks, the US has repeatedly announced that it plans tough action in response to what it says are unfair practices among its trading partners. Last week, US President Barack Obama signed an executive order for the creation of a new agency for that purpose, in keeping with an earlier announcement made in his January State of the Union address (see Bridges Weekly, [29 February 2012](#)).

There was no immediate reaction from the Indian government to the WTO complaint, sources told Bridges.

However, US industry groups welcomed the move. USA Poultry & Egg Export Council President, Jim Sumner, said in a [statement](#) that “India’s posture is thinly guised protectionism.”

A scientific basis for restricting trade?

In the past India has expressed concern that low pathogenic avian influenza could mutate into highly pathogenic strains, and argued that it is allowed to prohibit trade in poultry under the [Terrestrial Animal Health Code](#) of the World Organisation for Animal Health (known by its historical acronym, OIE).

The US disputes this assessment, arguing that international standards for avian influenza control only support the imposition of import bans in outbreaks of high pathogenic strains. Washington therefore claims that there is no basis for imposing an import ban, as only low pathogenic strains of avian influenza have been detected in the US since 2004.

“Countries have the right to impose certain restrictions,” said Alex Thiermann, President of the OIE Code Commission. However, he added that “the code very clearly says that low pathogenic influenza allows for trade.”

Thiermann told Bridges that, because low pathogenic forms of the virus can mutate into highly pathogenic forms, “you have to wait a certain number of days” before importing poultry meat from a flock of birds that has had a low pathogenic strain of avian influenza.

This is because low pathogenic avian influenza is “a weak virus that disappears after a short period of time,” he said.

The two sides will now have 60 days to reach an agreement; otherwise, the US can request a WTO panel to review the dispute.

ICTSD reporting.

EVENTS & RESOURCES

Vacancy

The Commonwealth Secretariat is seeking candidates to fill two temporary assignment positions at the Office of the Chief Trade Adviser (OCTA): Economic Trade Adviser and Legal Trade Adviser. Both positions are two-year assignments located in Port Vila, Vanuatu and are open only to nationals from Commonwealth member countries. Both positions will work on an OCTA project entitled “Strengthening the Office of the Chief Trade Adviser (OCTA) to support and build the capacity of Pacific Forum Island Countries in PACER+ negotiations.” Interested candidates should have a background in economic research on international trade and policy issues on regional integration and at least seven years experience working at progressively senior levels on economic issues related to trade. Interested candidates should contact James Lek, Human Resources, Commonwealth Secretariat at j.lek@commonwealth.int. The closing date to apply is 16 March 2012.

Events

Coming soon

9 March, New York, US. ECONOMIC GROWTH AND STRUCTURAL CHANGE: PRIORITIES FOR THE LEAST DEVELOPED COUNTRIES. The recent financial, food, and energy crises have demonstrated the urgent need to improve the resilience of least developed countries (LDCs). The purpose of this roundtable

seminar is to provide policy recommendations – based on new research at the World Bank and other institutions – on how LDCs can overcome economic vulnerabilities and better manage risks in order to achieve sustained, equitable, and inclusive economic growth. As economic growth is one of the principal objectives of the Istanbul Programme of Action for the Least Developed Countries (IPoA), the roundtable aims to identify strategies on how the actions agreed upon in the IPoA can be implemented. This event is jointly sponsored by the World Bank, Development Research Group, International Trade and Integration Unit, UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Developing States (UN-OHRLS), and Columbia University, Asia Pacific Economic Cooperation (APEC) Study Centre. For more details about this event, please click [here](#).

12-13 March, Bangkok, Thailand. SECOND ASIA-PACIFIC CLIMATE CHANGE ADAPTATION FORUM. This event is organised by the Regional Climate Change Adaptation Knowledge Platform for Asia and the Asia Pacific Adaptation Network. The forum aims to provide an opportunity for participants to share frontline findings and innovations, opportunities, and challenges in mainstreaming climate change adaptation into development. The forum will focus on “Adaptation in Action,” signifying a shift from deliberations to decisions, plans to policies, and policies to practices. The event aims to bring together adaptation practitioners at global, regional, national, and sub-national levels. Sessions will be facilitated by climate scientists, adaptation experts, and development planners from the region. The forum will include a diverse range of plenary and keynote sessions, panel discussions, roundtables, thematic side events, and more. For additional details, please click [here](#).

12-17 March, Marseille, France. SIXTH WORLD WATER FORUM 2012. Known as the world’s largest meeting around water, the Forum aims to mobilise creativity, innovation, competence, and know-how in favour of water. Focusing on the theme “Solutions for Water,” the World Water Forum 2012 seeks to tackle the challenges the world is facing and to raise the profile of water high on all political agendas. The event organisers

have developed twelve priorities to work on, as well as three conditions of success to reaching this goal. The regional process commission has also defined priorities and targets for Africa, the Americas, Asia-Pacific, Europe, and two cross-continental regions. Over 180 countries will be represented, with 25,000 participants expected to attend. For more details on this event, please visit its official [website](#).

13 March, Geneva, Switzerland. THE FIFTH ANNUAL UPDATE ON WTO DISPUTE SETTLEMENT. Organised by the Graduate Institute’s Centre for Trade and Economic Integration, this event includes a presentation and debate on cases and developments in WTO dispute settlement during 2011. The presentation will include an annual update on WTO dispute settlement; presentations by chairs of the WTO’s Dispute Settlement Body, Appellate Body, and the Negotiating Group on the Dispute Settlement Understanding (DSU) Review will be followed by a roundtable discussion of the most important cases and developments of the past year. The roundtable is composed of representatives from academia, the trade law bar, press, and NGOs. To view the programme, register for the event, or for more information, please visit the event’s [website](#).

14 March, online. EARTH DEBATE: GREEN CITIES IN A GREEN ECONOMY – HOW TO PIONEER A SUSTAINABLE TRANSITION? Organised by the UK’s Natural History Museum, in partnership with the Stakeholder Forum for a Sustainable Future and the British Council, this event will feature a panel of leading experts who, chaired by BBC environment correspondent Richard Black, will debate key issues at the heart of the green economy agenda of the UN Conference on Sustainable Development (UNCSD, or Rio +20). The debates will be webcast live from the Museum. Noting that cities will be the powerhouse for future development and growth, and that planning their future could make or break a green economy, this debate will focus on two questions: (1) how can the historic human infrastructure of cities be transformed to a green infrastructure by learning from the lessons of nature and (2) how will they provide for the health and well-being of people, as well as the environment? For more information, please visit

the event's [website](#).

14-16 March, Vancouver, Canada. TWELFTH ANNUAL GLOBE CONFERENCE 2012. Hosted by the GLOBE Foundation in collaboration with the United Nations Environment Programme Finance Initiative (UNEP FI), this event offers platforms for thinking, dialogue, and action by the worldwide financial services and investment community in preparation for the United Nations Conference on Sustainable Development (UNCSD, or Rio +20). GLOBE 2012 aims to bring together leaders from government, the private sector, and civil society to discuss current trends and to showcase innovative technology solutions for the world's environmental problems. Event organisers also seek to provide opportunities for discussing a roadmap to a financially sustainable economy. Conference session topics will include developing sustainability initiatives through social media, efficient water use for corporations, and more. For more information about GLOBE 2012, 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 March: Trade Policy Review Body – Trinidad and Tobago

8 March: Working Party on the Accession of Tajikistan

13+15 March: Trade Policy Review Body – Nepal

13 March: Committee on Budget, Finance and Administration

Other Upcoming Events

15 March, Washington, US. GENDER AND TRADE: CATALYZING WOMEN'S ECONOMIC EMPOWERMENT GLOBALLY. Women control over US\$15 trillion dollars of global spending, yet women also make up nearly 70 percent of the world's poor. Organised by the Washington International Trade Association, this event hosts a panel of experts who will discuss the challenges and opportunities of empowering women economically. Questions that will be explored at the event will include: the role of trade; how to use capacity building in addressing the economic challenges facing women; and how the private sector can more closely collaborate with the public sector to accelerate economic gains for women. Please note that the registration deadline for this event is 14 March. For more details, please visit WITA's [website](#) for this event.

15 March, Geneva, Switzerland. DE-FRAGMENTING AFRICA: DEEPENING REGIONAL TRADE INTEGRATION IN GOODS AND SERVICES. Held at the WTO, this event will present the findings of a new World Bank report that focuses on regional trade integration in Africa. The report shows how African countries are losing out on billions of dollars in potential trade earnings every year because of high trade barriers with neighbouring countries, and that it is easier for Africa to trade with the rest of the world than with itself. The report argues that three issues need to be addressed by African leaders to overcome the existing fragmentation and generate much-needed jobs and growth: improving cross-border trade; removing a range of non-tariff barriers to trade; and reforming regulations and immigration rules that limit the potential for trade in services. For more information, please visit the World Bank's [website](#).

26-28 March, Geneva, Switzerland. POLICY DIALOGUE: REDEFINING THE ROLE OF THE GOVERNMENT IN TOMORROW'S INTERNATIONAL TRADE. Classified as a UNCTAD XIII Pre-Event, this policy dialogue will be held at the United Nations. This three-day event brings together trade policymakers, business representatives, civil society, leading scholars and opinion leaders to clarify the role of the government in achieving inclusive development through trade in the face of "new realities" in

international trade. Key issues for discussion include redefining the role of trade policy for inclusive growth in the 21st century, the government and business sector in trade policymaking, the 21st century international trade agenda, and partnership for inclusive development through trade. These issues will be divided into four sessions, each consisting of panel discussions, followed by interactive debate among all participants. For more information about this event, please click [here](#).

29 March, Washington, US. IMPROVING GOVERNANCE: MANAGING THE RISK OF EXTREME EVENTS AND DISASTERS TO ADVANCE CLIMATE CHANGE ADAPTATION. Presented in the context of natural disasters, risk management, and climate change adaptation, this event is one in a series of “hemispheric dialogues” on sustainable development themes intended to generate recommendations on institutions and governance for sustainable development for both the Congress and the UN Conference on Sustainable Development (UNCSD, or Rio +20). Conducted by the Organization of American States (OAS), this dialogue is the eighth in the series and will seek to generate recommendations on improving governance in risk management and emergency legislation. This event is co-sponsored by the International Federation of Red Cross and Red Crescent Societies (IFRC). Future dialogues will address biodiversity and improving the environmental performance of the private sector. For more information on 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](#).

23 April, Doha, Qatar. HIGH-LEVEL EVENT ON WOMEN IN DEVELOPMENT. Gender inequalities persist in all countries and take the form of labour segregation, gender wage gaps, and gaps in asset ownership and in access to technology and information, and huge differences in responsibility for house and care works. As a main event occurring during the UNCTAD XIII Conference, this event aims to promote policies that empower women to be full participants in economic and political life. Its purpose is threefold: to take the gender issue to a new level of political prominence; to yield new insights into the relationship between macro-economic policies, development, and gender; and to launch a number of institutional initiatives to further the above objectives. The event will feature a high-profile, interactive roundtable and will be organised into four thematic sessions, bringing together policy leaders, UN agencies, academia, the private sector, and civil society. For more information, please visit the event’s [website](#).

24-26 September, Geneva, Switzerland. WORLD TRADE ORGANIZATION PUBLIC FORUM 2012. Convening under the theme “Is multilateralism in crisis?”, the Public Forum is the WTO’s largest annual outreach event. It aims to provide a platform for participants to discuss the latest developments in world trade and to propose ways of enhancing the multilateral trading system. The event regularly attracts over 1,500 representatives from civil society, academia, business, the media, governments, parliamentarians, and intergovernmental organizations. For more details about this event, please visit the WTO’s [website](#).

Resources

CENTER FOR INTERNATIONAL FORESTRY RESEARCH (CIFOR) NEWSLETTER: LAND GRABS, FOREST CARBON CO-BENEFITS AND PROSPECTS FOR RIO+20. Released by the Center for International Forestry Research (CIFOR) (February 2012). This February issue of CIFOR's newsletter summarises recent CIFOR publications and blog postings on biodiversity, sustainable development, and climate change in the context of CIFOR's activities. These publications include a post on the UN Conference on Sustainable Development (UNCSD, or Rio +20), comments on REDD+ (Reducing Emissions from Deforestation and Forest Degradation), and a science dispatch that includes recent CIFOR studies. The newsletter also includes several other publications and blogs. To view the newsletter, please click [here](#).

FROM CONFRONTATION TO COLLABORATION? CBDR AND THE EU ETS AVIATION DISPUTE WITH DEVELOPING COUNTRIES. By Benito Müller for the Oxford Institute for Energy Studies (March 2012). This Oxford Energy and Environment Brief is the first of two papers by this author on the theme of 'Equity and the Durban Platform' as recently presented at the Centre for Policy Research in New Delhi. The brief focuses on the question of how to operationalise the principle of "common but differentiated responsibilities" and respective capabilities as enshrined in Article 3.1 of the UN Framework Convention on Climate Change, or UNFCCC. In order to do this, the author looks at the controversy regarding the introduction of international aviation in the EU Emission Trading System as a case study and uses the proposed operationalisation to suggest options for compromise in that debate. This publication is available [here](#).

AGRICULTURAL POLICIES FOR POVERTY REDUCTION. Published by the Organisation for Economic Co-operation and Development (OECD) (March 2012). This new OECD book sets out a strategy for raising rural incomes that

emphasises the creation of diversified rural economies with opportunities within and outside agriculture. It also suggests that countries establish effective social protection systems for rural households. This publication proposes a three-pronged approach to strengthening rural incomes and reducing poverty: improving productivity and competitiveness in the agricultural sector; helping households diversify their sources of income; and facilitating the movement of labour from the agricultural sector to better-paid non-farm jobs. The authors also argue that agricultural policies should be integrated within an overall mix of policies and institutional reforms that facilitate, rather than impede, structural change. For more information regarding this report, please click [here](#).

MONITORING THE IMPACTS ON DEVELOPING COUNTRIES OF THE EU'S COMMON AGRICULTURAL POLICY (CAP): AN OVERVIEW OF STAKEHOLDERS' PROPOSALS. Published by the Library of the European Parliament (January 2012). This library briefing summarises a range of proposals drafted from a number of stakeholders regarding the upcoming reform of the EU's CAP. These stakeholders wish to propose the setting up of mechanisms through which parties in developing countries negatively affected by the CAP would report on their situation, and obtain remedies. Among the proposals is the implementation of a single complaint mechanism that could be supported by a 'CAP high-level group' or a 'CAP observatory' involving farmers' organisations from developing countries. The briefing also includes information on the current food security situation, among other topics. To access this resource, please click [here](#).