

# BRIDGES WEEKLY

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## PREFERENTIAL AGREEMENTS

# In Asia Trip, Obama Makes Push for Trans-Pacific Trade Pact

US President Barack Obama's trip to Asia came to a close on Tuesday, following several days of meetings with regional leaders on the planned Trans-Pacific Partnership (TPP) Agreement. Though the trip ended without a Japan deal on agriculture and automobile trade – prompting many to question the likelihood of concluding the overall TPP negotiations in the near-term – leaders on both sides say that they now have a “path forward” to potentially address their bilateral issues.

Along with visiting Japan, the tour also included stops in Malaysia, South Korea, and the Philippines, where the US President made a strong push for increased trade ties. Obama has made the goal of cementing the US' “pivot to Asia” a key part of his presidential legacy, despite scepticism from some quarters of how committed Washington actually is to that process, given the difficulty seen in closing a TPP deal.

During the trip, Obama also suggested that the Philippines and South Korea could potentially be welcomed into the TPP once a deal is concluded, if they show a willingness to take on the agreement's level of ambition. TPP participants say that they hope the deal can serve as a template for a broader trade pact for all 21 members of the Asia-Pacific Economic Cooperation regional group.

Along with the US and Japan, the TPP also includes Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. The proposed deal would cover 40 percent of the world economy, and along with eliminating or reducing tariffs on thousands of product lines would also feature chapters on disciplines ranging from intellectual property, digital commerce, the environment, and state-owned enterprises, among others.

The potential [gains](#) from the pact have been estimated by some analysts at US\$223 billion a year in additional global income.

### “Path forward” found in US-Japan talks

The disagreements between the US and Japan – the two largest economies in the talks – have been the main focus of trade watchers over the past several months, though some analysts and officials have warned that even if these bilateral disagreements are resolved, much work remains to address the outstanding issues that exist across various TPP chapters.

The two sides have been at odds over the US' insistence of substantially greater access to the Japanese agricultural market, pushing for tariff elimination in this area. Washington has also been calling for a reduction in Tokyo's non-tariff barriers for automobiles. Japan, meanwhile, wants lower tariffs for automobiles it exports to the US.

The sensitivities of Japan's farm sector – particularly with regards to beef, dairy, rice, pork, and sugar – have been one of the biggest difficulties for negotiators to resolve. Agriculture has been historically subjected to heavy protections in the Asian island economy, and domestic producers also receive substantial government support. (See Bridges Weekly, [10 April 2014](#))

Though Japanese government officials have acknowledged that some reforms to the sector will be needed – even if these are unpopular – the country's Diet recently passed a resolution insisting that the Prime Minister maintain protections for select farm categories.

"On the part of our country, there is this resolution adopted by the Diet," Abe acknowledged at a joint press conference with Obama, promising to heed domestic legislators' requests. However, he continued, "we also hope to conclude the talks in a favourable way."

Tokyo is the newest member in the talks, having joined in last July. Shortly before it signed onto the deal, it agreed to hold separate bilateral talks with Washington on how to treat non-tariff measures, particularly regarding automobiles, with the results to later be incorporated in the overall TPP framework. (See Bridges Weekly, [25 July 2013](#) and [18 April 2013](#))

In a joint [statement](#) released after their meeting last week, Obama and Japanese Prime Minister Shinzo Abe said they were "committed to taking the bold steps necessary to complete a high-standard, ambitious, comprehensive Trans-Pacific Partnership agreement."

"Today we have identified a path forward on important bilateral TPP issues," they added. "This marks a key milestone in the TPP negotiations and will inject fresh momentum into the broader talks."

Details on what this path forward involves were scarce, with some officials noting afterward that while advances have been made in how to deal with these difficult topics, they may not be in a position to announce them yet.

The weeks preceding the Obama-Abe meet had been full of sessions in both Washington and Tokyo between top-level negotiators in an effort to bridge the existing gaps, given that an agreement between them is seen as key to advancing the trans-Pacific talks as a whole. However, the two leaders warned last week that much work lies ahead for all 12 members, calling for the entire group "to move as soon as possible to take the necessary steps to conclude the agreement."

Liberalising trade, such as through the TPP, is part of the "third arrow" of the Japanese Prime Minister's three-pronged "Abenomics" strategy, aimed at boosting the country's economic recovery. A new report from the International Monetary Fund has indicated that, for Abenomics to truly yield increased growth, Tokyo must implement structural reforms – and quickly. (For more on the IMF report, see related story, this issue)

"Prime Minister Abe, I think courageously, has recognised that although Japan continues to be one of the most powerful economies in the world, that over the last two decades its pace of growth and innovation had stalled and that if, in fact, Japan wanted to push forward in this new century then reforms were going to have to take place," Obama [told reporters](#) following his meetings with Abe. "TPP is consistent with these reforms."

However, he added, "there are always political sensitivities in any kind of trade discussions. Prime Minister Abe has got to deal with his politics; I've got to deal with mine."

### **TPP talks defended in Malaysia**

Days later in Malaysia, Obama defended the US' involvement in the pact from some critics who have said that Washington is exerting undue pressure on some smaller members of the trade talks to extract tough concessions.

"You shouldn't be surprised if there are going to be objections, rumours, conspiracy theories, political aggravation around a trade deal," Obama [told reporters](#). "That's true in Malaysia; it's true in Tokyo; it's true in Seoul; it's true in the United States of America – and it's true in the Democratic Party."

Malaysian officials concurred, with Prime Minister Najib Razak insisting that "we were not bullied into it."

"Emphatically, in no uncertain terms, we went to the TPP on our own accord," he added. "We are working around the sensitivities and challenges, which I alluded to in my discussions with President Obama. He fully understands our domestic sensitivities, and we will sit down and try to iron this out with the intention of trying to work out a deal in the near future."

### **New members?**

The possibility of bringing new members into the TPP after the negotiations are concluded was also raised last week, with Obama and his counterparts in Seoul and Manila both suggesting that the pact could eventually be expanded to include these countries.

Following his meetings with South Korean President Park Geun-hye, Obama [highlighted](#) the need to ensure that Washington's existing deal with Seoul – which entered into force in early 2012 – is fully put in place, in order to set the stage for Seoul to potentially meet TPP's standards. Though officials have welcomed the results of the US-Korea pact so far – despite the criticisms of some advocacy groups that have noted the US' worsening trade deficit with the Asian country – they have also noted areas where implementation could be improved.

### **Eyes on Vietnam, APEC meetings**

Chief negotiators from TPP member countries are slated to meet later this month in Vietnam, a few weeks ahead of a meeting of APEC trade ministers, which like in years past is expected to feature a side meeting of TPP ministers.

The last two TPP ministerial-level meetings, both held in Singapore, touted progress but no deal, and whether the next one will lead to an agreement – or timeframe for one – is unclear. (See Bridges Weekly, [27 February 2014](#)) Though US officials have said in recent months that they hope for a deal in 2014, TPP members have not formally announced a new target date for wrapping up the talks, having missed earlier goals for end-2013 and end-2012.

ICTSD reporting; "Japan, U.S. offer different takes on progress in TPP negotiations," THE ASAHI SHIMBUN, 26 April 2014; "IMF warns failure to reform threatens Japan's growth," FINANCIAL TIMES, 28 April 2014; "Ending Asia Trip, Obama Defends His Foreign Policy," THE NEW YORK TIMES, 29 April 2014.

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## SERVICES

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# TISA Talks Making Strong Progress, Officials Say

Participants of the plurilateral talks on liberalising services trade continue to make good progress, officials involved in the process confirmed yesterday, just a year after formal negotiations kicked off. The group involved in the Trade in Services Agreement, or TISA, is in the middle of its sixth negotiating round, which is due to end later this week.

The comments came during a meeting hosted in Geneva on Wednesday evening, in the first information session on TISA that has been opened to the general public. The event, which generated both an informative and substantive discussion on the proposed trade pact, drew a broad audience, including WTO ambassadors, staff from the global trade body's secretariat, trade policy officials, private sector representatives from the Global Services Coalition, NGOs, and members of the press.

*[Editor's note: Wednesday's public information session was hosted by ICTSD, the publisher of Bridges. A full [video recording](#) of the event is available on the ICTSD website.]*

"We're well on track to meet our objectives for the TISA. We have really fast-tracked those, that's why we've made so much progress in the past twelve months," said Australian WTO Ambassador Hamish McCormick.

Negotiations for a plurilateral services deal began in early 2013, after several months of exploratory discussions among a subset of WTO members.

The group of participants involved – which includes both developed and developing economies – has grown from the original 16 to the current 23, which together account for approximately 70 percent of global services trade. The 23 participants are actually 50 countries, with the 28-nation EU counted as one participant.

This latest round of TISA negotiations is being hosted by Australia, and is set to conclude on Friday. A full update on the results of this week's talks will be available in next week's edition of Bridges.

### Doha context

The TISA initiative, participants reiterated on Wednesday, came in response to the direction given by ministers at the WTO's Eighth Ministerial Conference (MC8) in 2011, where the global trade body's members were directed to explore new negotiating approaches in light of the stalemate in the Doha talks.

The Doha Round negotiations kicked off in 2001, with WTO members hoping to conclude the wide-ranging talks within four years. Several years and setbacks later, the negotiations were formally declared at an impasse during the 2011 ministerial. Members today are now looking at ways to reinvigorate the Doha talks, particularly after having achieved a smaller deal at their 2013 ministerial in Bali, Indonesia on some select subjects – most notably trade facilitation.

"It turns out that MC8 was a very significant moment for the WTO, because what we decided there was that we needed to think of things in a new and open-minded way, and

to consider new approaches," said Michael Punke, the US' WTO Ambassador, referring to the 2011 ministerial instructions.

The Doha services talks were "not sufficiently ambitious," he noted, adding that TISA participants are aiming for something that is both Doha-plus and builds on what participants have developed in their best FTAs.

In the months since the TISA discussions began, some WTO members not involved in these talks have questioned whether the plurilateral initiative could detract from efforts to advance multilateral negotiations at the global trade body, a notion that TISA participants have worked to dispel.

"We are committed to the multilateral process," Colombian Ambassador Gabriel Duque said, adding that TISA participants see the latter as an independent process "that may contribute to the discussions at the WTO." Duque is also the chair of the WTO special session on services – which deals with the services negotiations in the context of the Doha Round – a role he took on earlier this year.

Participants of the trade talks have regularly reported back to their fellow WTO members on their progress at meetings of the organisation's Council for Trade in Services.

Since the TISA talks were launched last year, the discussions have proceeded rapidly, with participants noting a "spirit of problem-solving" in the group.

"That doesn't mean that there aren't difficult issues, that there aren't arguments and debates, but it's all done in a very constructive way," Punke said, emphasising the common willingness of the participants to achieve outcomes.

The fact that this is a standalone services agreement – unlike the Doha talks, which involve balancing across a range of trade areas – was highlighted by participants on Wednesday, with EU chief negotiator Ignacio Iruarrizaga Díez noting that this "is the first time for most of us that we are negotiating an agreement that is only a services agreement."

As a result, "we have to find balance within the group" and within the area of services, he noted, making it notably different from the Doha Round talks. "We cannot seek balance somewhere else" in the case of TISA.

### **Market access offers**

At the last round of negotiations in February, the group held a first review of market access offers, which were tabled by 21 of the 23 TISA participants – in itself a feat, giving the difficulty seen in the WTO services talks to get a significant portion of the membership to submit offers. (See Bridges Weekly, [27 February 2014](#))

Officials confirmed that no new offers have been submitted from the two TISA members – reportedly Pakistan and Paraguay – who had not sent in their offers ahead of the February session. The US, however, has submitted a revised offer that addresses financial services, which negotiators say is meant to reflect what has been achieved at a "best FTA" level.

The TISA offers to date have not been made public, which has prompted questions from some trade observers on transparency in the process. Officials on Wednesday noted, however, that it is up to each participating government to decide whether or not to make its offer public.

While some – though not all – of the first offers in the WTO services talks were made public, officials noted, this was also done at members' own discretion. Furthermore, making offers public is not common practice in negotiations for regional trade pacts.

## **New disciplines**

The proposed TISA deal aims to use the core structure of the WTO's General Agreement on Trade in Services (GATS), such as definitions, scope, market access, national treatment, and general and security exceptions. However, it will also incorporate a series of new disciplines in areas where there have been notable developments since the Uruguay Round Agreements that established the WTO were signed in the mid-1990s, along with enhancing some of the existing disciplines.

Fourteen areas are being discussed in this rules area, with air transport, road transport, delivery services, energy services, telecommunications, e-commerce, financial services, maritime services, professional services, and mode 4 – which involves services provided by foreign nationals abroad – among those being reviewed at this week's negotiating session.

McCormick noted, for instance, that Australia has tabled a proposal to improve commitments on professional services, with the goal of enabling professionals – such as lawyers, architects, or engineers – to work overseas more easily. The proposal, he says, aims to allow these professionals to provide their services abroad without having to be residents of that country, among other provisions.

Turkish WTO Ambassador Mehmet Haluk Ilıcak added that his country is the proponent of a proposal on mode 4 – building on the GATS disciplines in this area – that has also become a negotiating paper for the group. Turkey is also backing a separate proposal involving the regulation of road transport, he noted, given the need to improve the efficiency of this area.

## **Widening the membership?**

The 23 current TISA participants are Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Turkey, and the US.

China and Uruguay have both expressed interest in joining the talks, with Beijing recently receiving the support of the EU in its bid. China's interest has been watched closely by trade observers, both because of its earlier reservations regarding these types of plurilateral initiatives, and also because of the size of its services sector. (See Bridges Weekly, [3 April 2014](#))

For both Beijing and Montevideo, a few TISA participants are still in discussions with these two countries over their "like-mindedness" with the current group. A US official said that those TISA members who continue to have reservations about these countries' entry are still waiting for assurances in this area.

"We are looking to see what can be achieved," the official said, noting that participants "are extremely mindful of the experience we had... in the Doha negotiations."

TISA members say that they hope to someday multilateralise the deal – thus extending the benefits from this group's concessions to the whole WTO membership – once they reach a critical mass of participants. When this might be, and what level might qualify as "critical mass" in order to make the possibility of free riders acceptable, remains to be determined.

"We're hopeful that other WTO members will see the progress that has been made and will want to join the TISA negotiations," Australian Ambassador McCormick said, while highlighting that new participants must demonstrate that they share the group's objectives and levels of ambition.

ICTSD reporting.

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## POST-2015 DEVELOPMENT AGENDA

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# UN Group Sharpens List of Possible Sustainable Development Goals

The blueprint for a set of sustainable development goals (SDGs) moved closer into focus on 17 April as the co-chairs of the UN group drafting a proposal released a revised list of focus areas for delegates to consider at their next meeting on 5-9 May.

The [new document](#) includes 16 focus areas and 140 targets. Endnotes indicate which UN members support each target, together with potential indicators. An earlier version in February had outlined 19 focus areas, with over 300 targets for consideration. (See Bridges Weekly, [27 February 2014](#))

Notable changes include the merging of "promoting equality" with the first, largely consensual, focus area "poverty eradication." "Infrastructure" and "employment and decent work for all" have also been grouped together with "economic growth."

Although it may be too early to tell the significance of these combinations, given the working nature of the document, the scrubbing out of these separate headline targets does not imply their retreat from the document.

Inequality, employment, and infrastructure issues are each addressed within the targets under their new focus areas, as well as featuring in other sections. For example, the target "full and productive employment for all" appears in the poverty eradication headline. The move is also in line with the internationally agreed-upon objective that the SDGs would address the world's multifaceted development challenges in a synergistic manner.

Last week's release also included a separate document compiling the [goals and targets](#) put forward by countries at the group's latest meeting in early April. In a letter addressed to all UN member states, the co-chairs said "it is our hope that the two documents will serve as a solid basis for advancing our work."

### Building on Rio

The move to marry development with social and environmental concerns was a notable outcome of the UN Conference on Sustainable Development (Rio+20) held in June 2012. The eventual SDGs will replace the current Millennium Development Goals (MDGs), set to expire next year.

For its part, the Open Working Group on Sustainable Development Goals – as the UN group is formally known – has been meeting for the past 14 months in a bid to outline a draft proposal to forward to the General Assembly this coming autumn. To facilitate the talks, member states chose to use a constituency-based system of representation for the working group, comprised of 30 delegations from five UN regional groups.

Since March of this year, discussions have intensified as delegates seek to identify and build consensus around issues deemed worthy of inclusion, among a myriad of options. At the April session, Colombia – who along with Guatemala initiated the proposal to develop SDGs – repeated earlier entreaties for delegates to narrow down the list of topics to create a concise, integrated agenda.

Delegates are also facing the challenge of how to address fresh development issues that have emerged since the MDGs were formulated almost fifteen years ago, such as climate change, cities, and ecosystems, as well as governance and inequality.

"For us to remain credible, we cannot turn our backs on these issues," said Macharia Kamau, Kenya's Permanent Representative and the working group's co-chair.

### **Means of implementation**

Among the more controversial issues in the group's April session was the means to achieve each goal, with members divided over whether to include relevant measures under each focus area, as a separate category, or both.

The latest document makes a bid for the latter option, with the phrase "appropriate means of implementation" penned under each section. The concept also features in the fifteenth focus area, alongside the aspiration to strengthen global partnership for development, which recalls the function of MDG8.

Development measures listed under this section include trade, technology transfer and technological capabilities, financing and debt sustainability, capacity building, and strengthened global partnership for sustainable development.

The trade section identifies three targets. The first would be to promote an open, rules-based multilateral trading and financial system, including complying with the agricultural mandate of the WTO's Doha Round negotiations. Suggested indicators in relation to the WTO's farm trade talks include "eliminating all forms of agricultural export subsidies," and "substantially reducing domestic support and substantially improving market access for developing countries."

As a result of last December's ministerial meet, WTO members have been given until the end of this year to develop a work programme for concluding the Doha Round. Issues surrounding agriculture have proved particularly contentious in the multilateral trade negotiations, along with non-agricultural market access and services. Members generally agree that these three issues must be addressed in any work programme. Early consultations to date suggest that the level of ambition on agriculture will likely determine that of the Round as a whole. (See Bridges Weekly, [10 April 2014](#))

The second trade target identified by the working document is the provision of greater duty-free and quota-free (DFQF) market access for the world's poorest countries in the context of WTO framework, referring to another one of the [decisions](#) taken at the December ministerial. The decision urged developed countries to continue efforts towards granting DFQF access for at least 97 percent of products originating from least developed countries (LDCs), with developing countries in the position to do so also augmenting such market access.

Discussions around this topic at the global trade arbiter had struggled to make progress since a 2005 ministerial decision to implement DFQF market access for goods from LDCs. Members have wrestled with various hurdles in trying to achieve a concrete outcome, with divisions also opening up among poor countries over the possibility of "preference erosion." (See Bridges Weekly, [28 November 2013](#))

Improving market access for agricultural and industrial exports of developing countries, especially for the poorest countries, is posited as the third trade target, together with at least doubling the percentage of LDC exports as a share of the global total by 2020. Suggested indicators for the former include tariffs and non-tariff barriers on industrial products of importance to developing countries.

Separately, the need to address other harmful subsidies relating to fossil fuels and fisheries are also referred to in the document, under the energy and ocean conservation focus areas respectively.

### **Next steps**

The pressure to stitch together a coherent proposal will ramp up over the coming months, with just 15 days now left on the working group's calendar.

During the closing moments of the April meet, Co-Chair Kamau indicated that the group's next sessions would continue as an iterative process, rather than a negotiating one, with a modified focus areas document being produced at each stage. He suggested that more concrete draft goals and targets would be inked by the June gathering and confirmed that the final document would be adopted by consensus.

ICTSD reporting; "Summary of the Tenth Session of the UN General Assembly Open Working Group on Sustainable Development Goals," ENB, IISD Reporting Services, 7 April 2014.

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## DISPUTES

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# China Lodges WTO Appeal in Rare Earths Dispute

China has asked the WTO's highest court to review a series of substantive findings in a dispute panel ruling that found Beijing's restrictions on rare earths exports to be in violation of international trade rules. The move, confirmed last week, marks the latest chapter of a case that has highlighted the nuances of balancing natural resource management policies with global trade commitments.

Last month, a dispute panel had found that China's use of export duties and quotas on various rare earth elements, along with tungsten and molybdenum, went against both international trade rules and its WTO accession commitments. (See Bridges Weekly, [27 March 2014](#))

These rare earths are used in the manufacturing of various high-tech and green energy products, such as wind turbines and engines for electric and hybrid vehicles. China is responsible for nearly all rare earths production – 90 percent, according to the US Geological Survey – and is the home of a quarter of the world's supply.

A few weeks ago, the US had filed a conditional appeal of its own, in advance of a potential appeal from China. Unlike Beijing's filing, Washington has focused primarily on a series of procedural concerns with the dispute panel's review of evidence, rather than on questions regarding the substance of the ruling. The other two complainants in the case – the EU and Japan – had not filed appeals at the time Bridges went to press on Thursday. (See Bridges Weekly, [17 April 2014](#))

### Accession protocol

In March, the panel said that there was "no basis" in China's accession protocol – in other words, the specific terms Beijing agreed to when joining the global trade body in 2001 – for justifying the use of export duties under Article XX of the General Agreement on Tariffs and Trade (GATT). The result recalled an earlier Appellate Body finding in a separate dispute involving China's export restrictions on raw materials. (See Bridges Weekly, [1 February 2012](#))

This particular GATT article establishes various justifications for measures that would otherwise be WTO-illegal, on the grounds that such measures are necessary for fulfilling greater public policy objectives.

Under Paragraph 11.3 of China's accession terms, the country was required to eliminate all export duties. According to Appellate Body ruling in the *Raw Materials* case, that paragraph – by not making specific reference to the GATT Article XX exceptions – does not provide any basis for justifying the use of such duties.

The panel in the rare earths case found that Beijing had not brought a sufficiently new argument to depart from the Appellate Body's previous finding. As a result, Beijing is now asking the Appellate Body to consider how exactly its accession protocol does tie in to the WTO Agreements – not just the overall Marrakesh Agreement establishing the global trade body, but also the various subject-specific texts that the organisation's 159 members are bound to, such as the GATT.

In its appeal, China says that the panel “failed to give effective meaning” to the Marrakesh Agreement provision that says that new members “may not pick and choose among the various covered agreements but have to accept the WTO legal framework as a single undertaking.”

Furthermore, Beijing argues, “the panel unduly found that the words ‘shall be an integral part of the WTO Agreement’ in the second sentence of paragraph 1.2 of China’s accession protocol leads to the conclusion that China’s accession protocol is thereby made an integral part of the Marrakesh Agreement excluding the multilateral trade agreements annexed thereto.”

### **Natural resources conservation**

In its March ruling, the panel had also found that China’s use of export quotas did not appear to be as related to conservation goals – as Beijing had claimed – as it was to industrial objectives. The Asian economy had argued that these export quotas were critical given the environmental damage caused by the rare earths extraction process, and the limited nature of these resources.

Under Article XX (g) of the GATT, WTO members are permitted to take measures related to the conservation of exhaustible natural resources, “if such measures are made effective in conjunction with restrictions on domestic production or consumption.”

The Article XX General Exceptions also require that such measures are not applied in a way that creates “arbitrary or unjustifiable discrimination” or that otherwise serves as a “disguised restriction on international trade.”

In its appeal, China has asked that the Appellate Body reverse the panel’s findings that the rare earths export quotas were not sufficiently linked to conservation. Beijing claims that the panel’s interpretation was flawed, as it focused on how these export quotas were designed, rather than on how these were implemented in tandem with other measures in China’s conservation policy.

Furthermore, the Asian economy says, the panel’s review of whether these export quotas were “made effective in conjunction with” domestic restrictions was also incorrect, as the panel focused more on the how the country’s regulatory system of conservation measures was structured, rather than on what effects this system actually has on the marketplace.

China has also questioned the panel’s objectivity and legal reasoning in its review of those measures that Beijing submitted as evidence of domestic restrictions on rare earths.

The panel, China says, relied on “inconsistent reasoning as well as a double standard of proof in comparing the relative burden of China’s restrictions on foreign and domestic users.” In its ruling, the panel had found that export quotas were indeed restrictions, even though these quotas were not filled in 2012. However, the panel was reluctant to accept that Beijing’s domestic measures – such as production and extraction quotas – also qualified as restrictive.

### **Next steps**

Under WTO rules, the Appellate Body can review certain aspects of law and legal interpretation in the original panel ruling, but will generally not interfere with any factual findings. A report is likely to be issued within three months from the close of the appeal period.

ICTSD reporting.

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## WTO Panel to Hear Dispute over Australia Tobacco Packaging Law

The long-running dispute over Australia's plain packaging law for tobacco products has advanced to the panel stage, over two years since the first complaint was filed. The case has brought front and centre questions on the extent to which flexibilities exist to advance public health objectives in WTO rules.

The policy at issue is Canberra's Plain Packaging Act, which requires all tobacco products sold in Australia to be packaged with only one colour and shape, with a significant portion of the packaging covered in health warnings. The bill was approved in December 2011, though it allowed tobacco companies until December 2012 to make the required changes in their production. (See Bridges Weekly, [21 March 2012](#))

Australian officials have defended the controversial measure as necessary for stemming increases in cancer levels and other health problems caused by smoking, and have said that the policy is already beginning to show benefits in reducing public smoking levels.

Furthermore, Australia has noted, estimates from the World Health Organization place global deaths from tobacco use at 10 million in the year 2030 – up from the 3 million seen in 1990 and the 6 million annually today. Of these, the majority will be in developing economies.

In the months following the Australian bill's approval, legal complaints – both at the WTO and elsewhere – came swiftly. The five WTO members that have challenged the policy – Cuba, the Dominican Republic, Honduras, Indonesia, and Ukraine – have claimed that the measure is unnecessarily trade-restrictive. By undermining protections provided to trademarks and geographical indications, they say, it is difficult for their premium products to stand out in the marketplace, making fair competition impossible.

Complainants have generally cited various provisions in the General Agreement on Tariffs and Trade (GATT), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Technical Barriers to Trade (TBT) Agreement in their consultations and panel requests.

Many of these countries have also questioned whether the policy is actually leading to the public health benefits that Australia seeks, while saying that they do share the country's public health concerns.

Elsewhere, the policy has already been subject to review by Australia's highest court, which ultimately upheld the plain packaging law. Major tobacco companies, such as Philip Morris, have also filed challenges under some of the country's bilateral investment treaties. (See Bridges Weekly, [12 September 2012](#))

### Australia criticises delay

The first of the WTO complaints was lodged by Ukraine in March 2012, with Honduras following weeks after. The Dominican Republic filed its consultations request in July of that year, while both Cuba's and Indonesia's complaints were filed in 2013.

The unusually prolonged nature of this period led Australia to raise concerns in March over the potential precedent that this could set for other cases. For instance, the lag between

the Dominican Republic submitting its first panel request – which was rejected in December 2012 – and its second this April was 16 months. A ten-month delay was seen between Honduras' first and second panel requests.

In an effort to speed up the proceedings, Canberra took the rare step in the cases of both Indonesia and Cuba in agreeing to their first requests for a dispute panel, in March and April, respectively. Under international trade rules, respondents to a WTO dispute can reject a complainant's first panel request, which they do in the vast majority of instances. However, if a second request is filed a panel must automatically be established.

At last week's meeting of the Dispute Settlement Body (DSB), sources say that Australia repeated the questions it had raised in March over the long delay in advancing the dispute process, particularly since some of the complainants involved had urged fellow WTO members to await the results of the dispute before issuing similar tobacco packaging policies of their own.

The UK, New Zealand, and Ireland have nonetheless been moving forward in drafting their own plain packaging rules in the interim. In the UK, for instance, government officials have said that such legislation could be tabled ahead of the country's general election in May of next year.

#### **Panel composition set for May**

Under the terms agreed to by both Australia and the five complainants, one single panel is set to hear all of the disputes jointly. The WTO Director-General is set to confirm the panellists by 5 May. To date, 28 WTO members have requested third party rights in the dispute.

While global trade rules dictate that a panel, once formed, should issue a ruling within six months, in practice the process takes far longer, given the heavy workload that the WTO dispute settlement system currently faces.

ICTSD reporting; "U.K. Inches Toward Graphic Cigarette Packs," WALL STREET JOURNAL, 3 April 2014.

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## WTO Panel to Examine EU Duties on Argentine Biodiesel

The dispute ([DS473](#)) between Argentina and the EU over the latter's imposition of anti-dumping duties on biodiesel imports from the South American economy has advanced to the panel stage, after Buenos Aires presented its second panel request to the WTO's Dispute Settlement Body last Friday.

The duties in question were confirmed by the 28-member bloc last November, following a European Commission investigation into claims that Argentina and Indonesia – the world's top exporters of biofuels – were selling their energy product to EU member states below its normal value, a practice known as "dumping" in trade parlance. (See Bridges Weekly, [24 October 2013](#))

Notably, third parties expressing interest in the WTO case do not currently include Indonesia, on whom Brussels has also imposed biodiesel anti-dumping duties.

Friday's development came within days of Argentine President Cristina Fernández de Kirchner forwarding a request to Congress to eliminate certain domestic taxes paid by biodiesel manufacturers, slated as an effort to support the country's industry in the face of the EU measures. The proposal suggested the tax concessions would run as long as the duties remained in place. "We are in a trade war," she said when outlining the policy shift last week.

Argentina and Indonesia together make up 90 percent of the EU's biodiesel imports and capture over one-fifth of the bloc's market share. Brussels alleges that the duties – which see Argentine biodiesel producers having to pay between €217 and €246 per metric tonne, according to local media reports from last autumn – are necessary to level the playing field for its own domestic producers.

In its complaint, Buenos Aires contends that Brussels incorrectly calculated the final duties by failing to take into account records kept by the exporters or producers under investigation; did not determine production costs in the country of origin; and also included costs not associated with the production of the goods in question.

In addition, Argentina claims that the EU failed to conduct an objective examination of the elements – such as volume and price effect of the allegedly dumped imports – in its determination of injury to European domestic industry. Argentina has also questioned the objectivity of the EU's examination of the causal relationship between the alleged dumping and injury.

For its part, the EU has stressed that its measures are in keeping with international trade law and it will seek to defend them. In the lead up to the panel establishment, Argentina has fired shots at the trading bloc suggesting that the European biofuels industry is too large, and does not have sufficiently adequate raw materials capacity or vertical integration to be competitive. (See Bridges Weekly, [16 January 2014](#))

### A troubled history

The dispute joins a growing list of trade irritants between the South American country and the EU over biodiesel policies in the last two years.

For its part, Argentina has lodged two separate cases before the global trade arbiter. In a case ([DS443](#)) put forward in 2012, Buenos Aires objected to Spain's decision to implement a part of the EU's Renewable Energy Directive by favouring biofuels produced within the trading bloc.

Although Argentina opted to put that dispute on hold following Spain's modification of the rules involved, another hit came in May 2013, when the country filed a separate complaint ([DS459](#)) in relation to EU support schemes offered to the domestic biodiesel sector. (See Bridges Weekly, [30 May 2013](#))

The bitter biofuels confrontations come even as the EU and South American customs union Mercosur – of which Argentina is a member – are engaged in a long-running struggle to negotiate a comprehensive trade deal. Although currently going through a turbulent period, the troubled Argentine economy remains one of the largest in South America, making the country a critical player in the embattled talks.

ICTSD reporting; "Argentina moves to eliminate taxes paid by biodiesel producers," REUTERS, 21 April 2014.

## ASIA

## IMF: Structural Reforms Needed to Maintain Japan Economic Recovery

Japan needs to speed up the pace of implementing structural reforms if its economic recovery is to continue, the International Monetary Fund (IMF) has warned in a recent regional review.

While the [report](#) predicts sustained upward growth for the Asian region, the Washington-based institution has also called for a restructuring of Japan's "Abenomics" policies in order to prevent a slowdown in economic growth and negative spillovers for Tokyo's trading partners.

Launched by Japan's Prime Minister Shinzo Abe in late 2012, Abenomics refers to a series of economic policies based on three "arrows" – monetary stimulus, fiscal stimulus, and structural reform. In line with this approach, the Japanese central bank has been pursuing an aggressive quantitative easing programme in order to combat over a decade's worth of deflation and hit a two percent inflation rate.

According to the IMF report, the central bank's efforts have been largely successful, while short-term fiscal stimulus packages have met with similar moderate success.

The report warns, however, that Abenomics could be less effective than initial estimates assumed, unless changes are made. "Without additional reforms Japan risks falling back into lower growth and deflation, a further deterioration in the fiscal situation, and an overreliance on monetary stimulus with negative consequences for the region," the report notes.

It ultimately called for a continuation of current monetary policy, but has suggested emphasising less the expected deadline for a two percent inflation rate within the initially predicted two years.

The Fund report has further proposed a continuation of consumption tax increases complemented by pension and healthcare reforms, as well as significant supply-side reforms such as market deregulation and changes in corporate governance.

To date, Tokyo has given priority to its monetary stimulus efforts in the hope that these will jump-start growth, but analysts have emphasised that this must be only one component of a larger programme.

Initial IMF reviews suggested that a successful implementation of all three arrows of Abenomics would result in moderate positive spillovers to other countries. However, if negative real wage growth persists it could have adverse effects for Japan's trading partners in the form of yen appreciation and reduced demand for foreign imports.

The report comes just after US President Barack Obama completed his high-profile Asia trip, which included a visit to Japan. His meeting with Abe failed to yield a bilateral agreement on agriculture and automobile trade, in the broader context of the 12-country Trans-Pacific Partnership negotiations, though both sides have said that they now have a "path forward" in this area. (For more on TPP, see related story, this issue)

Trade liberalisation, such as through bilateral or regional deals, are part of the "third arrow" of Abenomics that deals with structural reform, an area particularly highlighted by the IMF report as being in need of more rigorous implementation.

This is not the first time that Japan has been urged to focus more heavily on developing and implementing structural forms to its economy. A WTO secretariat report in February 2013 also issued a similar call in this area, highlighting the particular need for Tokyo to address regulatory barriers to trade – specifically in terms of its high agricultural tariffs, sanitary and phytosanitary (SPS) measures, and reluctance to open itself to inward foreign direct investment. (See Bridges Weekly, [20 February 2013](#))

ICTSD reporting.

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## EVENTS & RESOURCES

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# Events

### Coming Soon

1 May, online. ENCOURAGING A MANUFACTURING RENAISSANCE THROUGH TRANSATLANTIC TRADE AND INVESTMENT. The live webcast, co-hosted by the Peterson Institute for International Economics and the Embassy of Italy from 11 AM-2 PM EDT, will discuss how a Transatlantic Trade and Investment Partnership (TTIP) might affect companies' offshoring and outsourcing strategies and whether such a deal might strengthen manufacturing for both the US and EU. Speakers will include Carlo Calenda, Italy's deputy minister for economic development; Emma Marcegaglia, president of BUSINESSEUROPE; and Caroline Freund and Jeffrey Schott for the Peterson Institute. For more information, visit the Peterson Institute's [website](#).

8 May, Washington, US. CHINA'S OIL FUTURE: BALANCING ECONOMIC, GEOPOLITICAL AND ENVIRONMENTAL CONCERNS. This panel, hosted by the Carnegie Endowment for International Peace, will address China's energy future in the context of its oil production and consumption. Speakers will address future opportunities and challenges, making specific reference to Beijing's sustainability agenda. More information can be found at the event [website](#).

7-8 May, London, UK. GLOBAL CLIMATE POLICY CONFERENCE 2014. This conference, hosted by the Overseas Development Institute (ODI), will examine the issues involved ahead of next year's UN Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) in Paris, with the aim of proposing possible ways forward. Topics to be addressed include: sustainable development, green growth, mitigation and adaptation, trade, and finance. More information can be found at the event [website](#).

### WTO Events

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

5-9 May: Geneva Week (Non-resident Members and Observers)

6 May: Committee on Trade in Financial Services

7 May: Working Party on GATS Rules

7 May: Working Party on Domestic Regulation

7 May: Committee on Specific Commitments

8 May: Council for Trade in Services

12 May: Committee on Customs Valuation

12-13 May: General Council

### Other Upcoming Events

12-13 May, Seoul, South Korea. CLEAN ENERGY MINISTERIAL. This fifth edition of the Clean Energy Ministerial aims to identify avenues to accelerate the transition to a global clean energy economy, with a specific focus on identifying smart policies, programmes, and strategies to improve energy efficiency, clean energy deployment, and energy access. For more information, visit the event [website](#).

12-16 May, Fortaleza, Brazil. ADAPTATION FUTURES 2014: THIRD INTERNATIONAL CLIMATE CHANGE ADAPTATION CONFERENCE. This event, co-hosted by the Earth System Science Centre of the National Institute for Space Studies in Brazil (CCST-INPE) and the United Nations Environment Programme (UNEP), aims to review the leading research on climate impacts and adaptation options. Participants will also explore the contribution of adaptation science to policymaking, and evaluate new tools and methodologies for adaptation finance monitoring and evaluation. For more information, visit the event [website](#).

23-24 May, Cusco, Peru. WORLD MOUNTAIN FORUM 2014: MOVING MOUNTAINS TOWARD GLOBAL SUSTAINABLE DEVELOPMENT. This conference will discuss local, regional, and global experiences in mountain development, as well as seek to identify possible opportunities and challenges for the future of sustainable mountain development. The following topics will be discussed: family farming, water and food security, climate change, mountain cities, and mountain communities. More information can be found at the event [website](#).

4-6 June, New York, US. SUSTAINABLE ENERGY FOR ALL FORUM. This United Nations event will mark the two years since Rio+20, and will also serve to launch the UN Decade of Sustainable Energy for All 2014-2024. The Forum will also kick-start a global campaign focusing on energy and women's health, while also working to build momentum towards the UN Climate Summit in September. Organisers also hope the event can contribute to the ongoing discussions on energy and the Sustainable Development Goals for the post-2015 development agenda. More information can be found at the event [website](#).

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## Resources

GLOBAL INVESTMENT TRENDS MONITOR. Published by the United Nations Conference on Trade and Development (UNCTAD) (April 2014). This report discusses outward investments by transnational corporations (TNCs) in 2013 and prospects for 2014-15. Its findings conclude that investment by South TNCs reached a record level, acquiring developed country foreign affiliates located in the developing world. The report also warns that while TNC investment is slated to increase in 2014-2015, TNCs remain cautious as a result of the fragility of some emerging markets, and because of the risks related to policy uncertainties and regional conflicts. The full report can be found [here](#).

SUPPORT TO AGRICULTURE IN INDIA IN 1995-2013 AND THE RULES OF THE WTO. By Lars Brink for the International Agricultural Trade Research Consortium (April 2014). This working paper reviews India's WTO notifications and summarises the related discussion in the Committee on Agriculture on issues involving international trade rules on domestic agricultural support. The author also provides an analysis of Aggregate Measurements of Support (AMS) and discusses India's administered pricing scheme in the context of the deal reached at the WTO's latest ministerial conference in Bali, Indonesia. The paper can be found [here](#).

OECD JOURNAL: FINANCIAL MARKET TRENDS 2013. Published by the Organisation for Economic Co-operation and Development (OECD) (April 2014). This biennial journal on financial markets features articles on macro-prudential policy, capital controls on inflows, bank business models, institutional investors, ownership engagement, and small and medium-sized enterprises (SMEs) and the credit crunch. The full report can be found [here](#).

CLEAN ENERGY FINANCE THROUGH THE BOND MARKET: A NEW OPTION FOR PROGRESS. By L. Milford, D. Saha, M. Muro, R. Sanders, and T. Rittner for the Brookings Institution (April 2014). This paper proposes that US state and local infrastructure finance agencies holding public finance bonds may be willing to fund clean energy projects with these bonds. The brief argues that state and local bonding authorities should establish partnerships between development finance experts and clean energy officials; expand bond-financed clean energy projects; improve the availability of data and standardised documentation; and create a pipeline of rated and private placement deals. The brief can be found [here](#).

AFRICA IN CHINA'S FOREIGN POLICY. By Yun Sun for the Brookings Institution (April 2014). This paper analyses Africa-China relations in light of Beijing's increased involvement in African affairs. It suggests that a simplistic perception of Africa as China's supplier of raw materials inevitably neglects other key aspects of the region within Beijing's global strategy. The author notes that even as the Asian economy's goals and policies have become more diversified, not enough effort has been spent examining its internal processes that determine Africa-related policy. The paper can be found [here](#).

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