

BRIDGES WEEKLY

Global trade news from a sustainable development perspective

VOLUME 18, ISSUE 22, 19 JUNE 2014

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FISHERIES

Obama Announces Executive Actions to Tackle Illegal Fishing

US President Barack Obama announced on Tuesday that he would be taking executive action aimed at tackling the problem of illegal fishing, in the latest environmentally-focused move by his Administration. In a related measure, Obama also confirmed the establishment of the world's largest marine sanctuary, banning commercial fishing and mining in US waters in a large area of the Pacific Ocean.

"We've already shown that when we work together, we can protect our oceans for future generations," Obama [said](#) on Tuesday. "Let's make sure that years from now we can look our children in the eye and tell them that, yes, we did our part, we took action."

Faced with an increasingly fractious domestic political climate, the US President has lately focused on using executive actions – those that do not require Congressional approval – to advance policy in certain areas, particularly those involving the environment.

Other such actions have included new federal rules aimed at reducing greenhouse gas emissions, such as those that would require existing power plants to cut their carbon pollution levels by 30 percent from their 2005 levels by 2030. (See Bridges Weekly, [5 June 2014](#))

News of these executive actions came during the US State Department's "Our Ocean" conference, an event that brought together heads of state, foreign ministers, policymakers, environmentalists, and other stakeholders from nearly 90 countries.

The new steps by the Administration received a warm welcome from a number of US environmental groups, with [Oceana](#) calling the decision "a huge victory for our wallets, our health, and our oceans."

"US fishermen suffer when illegally caught fish enter our markets from other countries," [said](#) Karen Sack, head of The Pew Charitable Trusts' international oceans programme.

According to the UN Food and Agriculture Organization's (FAO) annual report on the state of world fisheries and aquaculture, the US is the world's second largest market for fish products, just behind Japan.

Presidential task force

Illegal, unreported, and unregulated (IUU) fishing has been increasingly recognised by the international community as a significant challenge, threatening the sustainability of already-fragile fish stocks, as well as food security, and livelihoods around the world. The global costs from black market fishing are estimated at between US\$10-23 billion annually.

According to a new [study](#) published in the journal Marine Policy, up to 32 percent of imported wild shrimp, crab, salmon, Pollock, tuna, and other fish catch imported into the US is illegally poached.

In a [presidential memorandum](#) issued on Tuesday, Obama pledged that it would be the policy of his administration to combat IUU fishing and seafood fraud, as well as to promote legally-caught, sustainable seafood that is accurately labelled, at the domestic and international levels.

Key in meeting this goal will be the establishment of a Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud. The new group will be chaired by Secretary of State John Kerry and Secretary of Commerce Penny Pritzker.

"I'm very appreciative for the President's announcement about the effort to deal with illegal fish that come to the marketplace," Kerry [said](#) following the news. "We can all do more, and if there's no market, we have an ability to really be able to begin to diminish the impact of illegal and undocumented, unwarranted fishing."

The task force will include senior-level representatives from a broad swath of government agencies and departments, including the Departments of Defense, Justice, Interior, Agriculture, Commerce, Health and Human Services, Homeland Security, the Council on Environmental Quality, and the Office of the US Trade Representative, among others.

Over the course of the next six months, the task force will be required to put together a set of recommendations for implementing a "comprehensive framework" of programmes aimed at combatting IUU fishing and seafood fraud, the White House said. The group will be asked to look at various possible strategies, both involving existing programmes and possible new ones, for improving seafood tracking and traceability.

Such recommendations will not be limited only to domestic approaches. Rather, the Obama Administration is also tasking the group with examining international options as well – either bilaterally through capacity-building and technical assistance, or regionally through work with fisheries management organisations.

The Obama Administration has also [said](#) that it will be pushing to advance congressional approval of the Port State Measures (PSM) Agreement, an international treaty designed to tackle illegal fishing at landing point.

Under the terms of the treaty, which countries negotiated through the FAO, foreign vessels will provide advance notice and request permission for port entry, with countries undertaking regular inspections to control for illicit goods.

The Agreement, however, will only take effect once successfully ratified by 25 countries, with the EU and nine other countries having done so thus far. On 3 April, the US Senate also [ratified](#) the PSM Agreement; however, Congress must now pass implementing legislation to ensure the treaty's entry into force.

Fisheries rules in TPP, TTIP

The Obama Administration is also aiming to include a series of environmental commitments in two major trade initiatives – the Trans-Pacific Partnership Agreement (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) – that are currently under negotiation.

The proposed TPP has 12 members, including the US, from various Pacific Rim countries. The group is aiming to put together a “21st century” trade pact, one that would go beyond eliminating tariffs to address areas such as intellectual property rights, sustainable development, and state-owned enterprises.

The TPP negotiations have been underway for several years, with participants hoping to soon reach a deal. However, the talks have snagged on disagreements regarding market access, particularly between the US and Japan. TPP chief negotiators are next set to meet in the Canadian city of Vancouver in early July, in an effort to ramp up the trade talks.

TTIP, for its part, is a more recent initiative, with the US and EU launching those negotiations just a year ago. Those talks, while also seeking to eliminate tariffs between the two sides, are particularly aimed at harmonising regulations and standards.

Improved disciplines on fisheries are among Washington's environmental policy objectives in these trade pacts, officials say, especially given that the US imports [over 90 percent](#) of its seafood.

“Keeping our oceans healthy requires to use every tool we have available and trade policy is a powerful tool,” US Trade Representative Michael Froman [said on Tuesday](#) at the conference, highlighting the role that both of these proposed trade deals could play in advancing this goal.

For instance, proposals that the US is pushing for in the TPP include those involving sustainable fisheries management and the prohibition of fisheries subsidies that contribute to overfishing, he said, telling conference attendees that “while the details of proposals are not yet fully agreed upon, they are gaining momentum.”

“When completed, the TPP will include the most advanced environment chapter of any trade agreement ever negotiated, and it will be fully enforceable and subject to the same strong dispute settlement mechanism that applies to other obligations in the agreement,” the US trade chief pledged.

Froman also indicated that the TTIP, for its part, could be an opportunity to make progress bilaterally on harmful fisheries subsidies, given years of limited progress at the multilateral level.

“In TPP, we're seeing a breakthrough, of sorts, and we are hoping that in TTIP the European Union will join us in taking on these subsidies,” Froman said.

WTO members have tried to address the problem of harmful fisheries subsidies in the Doha Round talks, specifically in the Negotiating Group on Rules. A deadlock in the overall multilateral trade talks in recent years has meant, however, that these discussions have been largely put on the backburner.

At the most recent ministerial meeting of the global trade body in Bali, Indonesia, however, a group of members – not including the EU – reaffirmed their [commitment](#) not to introduce any new subsidies that contribute to overfishing or the overcapacity of fishing fleets. Following instructions from the Bali December meet, the global trade body is now in the process of determining by year's end a work programme aimed at resolving the

various outstanding topics in the Doha Round talks. It remains to be seen how fisheries will be addressed in this new agenda.

Marine sanctuary expanded

Obama also confirmed on Tuesday his plans to expand the [Pacific Remote Islands Marine National Monument](#), which was established by his predecessor – George W. Bush – just weeks before Obama took office in January 2009.

In its current form, the monument covers approximately 86,888 square miles in the south-central Pacific, covering seven atolls and islands under US control. Media reports indicate that this coverage could double the area of the world's oceans receiving such protection.

"These tropical coral reefs and associated marine ecosystems are also among the most vulnerable areas to the impacts of climate change and ocean acidification," the White House explained in a [fact sheet](#), noting that the monument has some of the world's "most pristine" tropical marine environments.

The proposal is slated to take effect towards the end of the year following a comment period.

ICTSD reporting; "Obama proposes vast expansion of Pacific Ocean sanctuaries for marine life," THE WASHINGTON POST, 17 June 2014; "Obama to expand marine reserves and crack down on seafood black market," THE GUARDIAN, 17 June 2014

CLIMATE CHANGE

UN Climate Talks Shift to Negotiating Mode Toward 2015 Deal

The latest round of UN climate talks saw countries move into negotiating mode on some of the substantive details that will need to be hammered out over the next 18 months in order to successfully deliver a global climate deal by end-2015.

Meeting from 4-15 June in Bonn, Germany for their annual mid-year session, delegates to the UN Framework Convention on Climate Change (UNFCCC) made progress on defining the scope of national contributions, which would serve as the building blocks of a new multilateral agreement on climate change.

The idea of national contributions, or "intended nationally determined contributions" (INDCs), emerged after a protracted 38-hour negotiating session at the end of last year's annual Conference of the Parties (COP) held in Warsaw, Poland. (See BioRes, [24 November 2013](#))

Sources say that the exchanges seen during these past two weeks in Bonn demonstrated a decided shift towards more formal negotiations on the scope, content, and timing of countries' 2020 contributions, as well as on other draft elements of the new climate agreement. A number of parties also provided written [submissions](#) outlining their views before and during the meeting.

At the 2011 COP in Durban, South Africa, parties to the UN climate convention agreed to negotiate international climate rules aimed at keeping the world below a two degree Celsius temperature rise from pre-industrial levels by the December 2015 COP, due to be held in Paris, France.

Countries have decided that the new deal will scale up ambition on tackling climate change over the coming years, as well as define action beyond 2020, with the latter serving as a replacement to the current Kyoto Protocol. Kyoto, signed in 1997 and implemented from 2005, commits only industrialised nations to various reductions in greenhouse gas (GHG) emissions.

The division of responsibility between developed and developing countries has since proved to be a highly sensitive issue in the talks, often setting big players such as the US and China at loggerheads with one another. In Durban, parties agreed that the new deal would have legal force under the UNFCCC and be applicable to all parties, thus engaging developing countries in mitigation efforts. Even so, the extent to which the latter will be required to contribute remains a contentious issue.

The latest talks in Bonn, however, received a much-needed boost following the Obama Administration's release of plans to slash emissions by 30 percent from 2005 from all existing American power plants. Hints also emerged around the same time of willingness from Beijing to limit China's absolute zero emissions in the future. (See BioRes, [9 June 2014](#)).

Getting to text

The fortnight of meetings began with the co-chairs of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) – the primary negotiating track for the 2015

deal – issuing a [draft text](#) on the information parties will be required to include in their post-2020 plans for national contributions.

The draft text move initially proved controversial, with some countries questioning whether the co-chairs had the mandate to put forward such a document. Others viewed it as a useful facilitator of discussion. The co-chairs repeatedly stated during the sessions that they wished to maintain a party-driven process.

Some observers suggested that the draft text nevertheless facilitated a shift towards more detailed discussions. For example, among the thornier debates in this round of talks was what to concretely include in countries' INDCs. Some parties would like to see a focus on both adaptation and mitigation, while others argue that the former could be more difficult to incorporate. The question of whether financial commitments would be offered up in the INDCs was also raised.

Another heavily discussed topic was whether or not to review the national contributions. Certain countries have called for a review process prior to the Paris COP, which would give some room for improving contributions that fall short, while also providing parties the opportunity to call out any free-riders. Others are less enthusiastic about a strong pre-deal assessment, with the rationale for reluctance varying between different parties.

Timing, finance

Closely tied to the review question is the timeline for the coming months. In Warsaw, parties decided that countries in a position to do so would file their INDCs by the first quarter of 2015 and that an initial draft text of the overall 2015 deal would be tabled by December 2014. In Bonn, key players such as the US and the EU indicated they would meet the March 2015 contribution deadline, while China said it would do so by June. Other countries have indicated they need more time.

Regarding efforts to scale up pre-2020 climate ambition, a number of parties said that this was necessary to generate trust and confidence for sealing a new deal. Developing countries have also warned that finance will be a game changer.

At the 2009 climate meet, developed countries agreed to provide US\$100 billion per year by 2020 to help poor countries cope with climate change. Observers have suggested that the level of finance received by the recently operationalised Green Climate Fund (GCF) in the coming months will colour the tone of negotiations at this December's COP in Lima, Peru. (See BioRes, [21 May 2014](#))

To prepare for that meeting, ADP Co-Chairs Kishan Kumarsingh and Artur Runge-Metzger indicated that they will produce a "non-paper" containing a summary of parties' current views on the draft deal, as well as new draft proposals on INDCs and pre-2020 ambition. This document will be ready by July, and will be considered at a resumed session of the ADP from 20-25 October in Bonn.

In a press statement released on Sunday, the Least Developed Countries (LDC) Group said that the progress in Bonn was welcome, but more work was needed on the road ahead.

"We hope that we will advance on elements for a draft negotiating text to be agreed in the major climate change meeting later this year in Lima, Peru. This means that the coming months of climate change talks are critical," said LDC group chair Prakash Mathema. "We must put our heads together and start drafting the new agreement," he continued.

Review of response measures forum concluded

At this month's meeting, negotiators also advanced their work across a range of other issues – including some relevant to the trade community – in the context of the Subsidiary

Body for Scientific and Technological Advice (SBSTA) and Subsidiary Body for Implementation (SBI).

Towards the end of the second week, a joint SBSTA-SBI contact group on response measures reached conclusions welcoming its previous work, while leaving the door open for further discussion on how to take the subject forward in the climate talks.

At the Durban COP, parties had established a forum and work programme on the "Impact of Implementation of Response Measures" with a two-year mandate. These would serve to address the impacts of measures that countries take to mitigate climate change. Among the issues that have been touched upon in the forum is the concern that export opportunities will be hampered by "unilateral action" to mitigate climate change.

Although the most recent COP in Warsaw saw parties agree on the usefulness of discussion in this area, divisions emerged on an appropriate format for next steps. A final text was ultimately rejected by the G77 and China, which called for the mention of a "mechanism." Developed countries remained opposed to that idea, arguing that the forum would be flexible enough to address concerns raised by developing countries.

The Bonn [text](#), secured after some drawn-out haggling between parties and a brokered compromise on problematic language, includes an annex with submissions from the EU, the G77 and China, and the US reviewing the work of the forum. A second annex lists separate proposals from the EU and the G77 and China on the structure of future work.

With two draft proposals now on the table, work will continue in Lima towards reaching an agreement on the best way to address the subject in the climate negotiations. The UNFCCC Secretariat will prepare a technical paper on areas of convergence, as well as a synthesis paper of all documents prepared in the course of the forum's work these past two years. An invitation has been extended to both parties and observers to submit their views by 22 September on options to strengthen cooperation related to response measures.

Progress on technology, agriculture

Negotiators in Bonn also successfully [adopted](#) the joint annual report of the Technology Executive Committee (TEC) and the Climate Technology Centre and Network (CTCN) for 2013, which are the policy and implementation arms of the UNFCCC's Technology Mechanism, respectively. A synthesis [report](#) on technology needs assessments was also adopted.

The 2013 joint annual report was originally scheduled to be wrapped up in Warsaw, but some problematic language around intellectual property in the report's conclusions scuppered a positive outcome at the time.

The transfer of clean energy technologies has been deemed an important part in helping developing countries reduce their emissions, but certain aspects in this area – such as intellectual property rights (IPRs) – have emerged as particularly contentious in the climate talks.

On the agriculture front, after some wrangling between the EU and the G77 and China, parties [decided](#) on the scope of the work in this area for the next two years.

This includes four more workshops to be held at SBSTA sessions in June 2015 and 2016. These will focus on the development of early warning systems and contingency plans in relation to extreme weather events; assessment on the risks posed to agriculture from various climate change scenarios; the identification of adaptation measures; and the identification and assessment of farm practices and technology to enhance sustainable farming with regard to food security.

Although climate threats to food systems are an increasingly discussed topic, the issue is not yet a formal part of the UNFCCC negotiations. Moving ahead, questions remain as to whether agriculture will be part of the 2015 agreement, and if so, whether it will be addressed as a separate issue or in a land use cluster.

High-level summit ahead

While delegates left Bonn with a cautious sense of optimism, given the reportedly constructive nature of the talks, the next major pit stop on the road to Paris will be UN Secretary-General Ban Ki-moon's high-level climate summit scheduled for 23 September in New York. The summit aims to allow heads of state to provide a boost to the climate talks in the form of capitalising the GCF or commitments on INDC submissions.

"Though the progress here in Bonn by negotiators was heartening, there's not enough on the table," said Martin Kaiser, Head of International Climate Politics at Greenpeace. "Heads of Governments need to get involved to make the tough choices negotiators can't," he continued.

Corridor conversations in Bonn also frequently referred to the ongoing negotiations towards a proposal for a set of sustainable development goals (SDGs), another UN process. The latter began its penultimate session this week, also in New York. A "zero draft" put forward in late May includes two alternatives for a stand-alone climate goal, with reports indicating this area has proven to be one of the trickier topics in the discussions. A proposal on the SDGs is expected by mid-July, in time for consideration by the UN General Assembly in September. (See BioRes, [9 June 2014](#))

ICTSD reporting.

BIOTECHNOLOGY

EU Environment Ministers Agree to National GMO Bans

EU environment ministers last Friday gave the green light to a legislative proposal that would allow member states to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory, even if the crop was authorised at the EU level.

Under the current rules, member states may invoke national "safeguard" bans based on assessed risks to human health or the environment, supported by scientific evidence. These are temporary measures, however, and must be perpetually renewed.

The new draft proposal – passed by 26 out of the EU's 28 member states – would amend this arrangement to provide countries with the legal basis to implement prohibitions for additional reasons, including socioeconomic concerns, land use and town planning, agricultural policy objectives and public policy issues.

"I am happy to say that the Council has ended the deadlock on GMO cultivation with a political agreement," said Tonio Borg, EU Commissioner for Health. "It offers a new judicial basis allowing member states to restrict or ban GMOs within their borders," he continued.

The move comes after nearly four years of drawn-out debate by ministers on the amendment, originally put forward by the European Commission in July 2010. Just this past March, ministers agreed to re-visit the subject on the basis of a draft text put forward by the then-incoming Hellenic EU Council presidency. (See BioRes [13 March 2014](#)).

Four years later

GM crops have been a source of bitter division within the 28 member state bloc. A number of consumer and environmental groups have also consistently rallied against GM use, citing potential negative health and biodiversity impacts.

These dynamics have often resulted in a political deadlock surrounding the approval of GM crops in Brussels. To date, just two strains have been cleared for use within the trade bloc, compared to more than 90 GM varieties authorised in the US, and 30 in Brazil. Both EU crops – a maize variety known as MON810 and a potato dubbed Amflora – are licensed by Monsanto, a large biotech company, and have continued to be the subject of controversy since their approval.

In a bid to break the authorisation gridlock, 13 member states asked the Commission to put forward a national GM cultivation ban proposal in June 2009, which the EU executive did 11 months later. Following two years of deliberation, however, ministers [failed](#) to reach political agreement around a compromise text.

Some member states reportedly expressed concern around the legal compatibility of certain aspects of the ban vis-à-vis WTO law, as well as the EU's own internal market rules.

WTO concerns

The use of the existing national safeguard ban – currently employed by seven EU member states – has also proven to be a source of controversy at the WTO. Over the years, the

Commission has repeatedly come under pressure from some of the global trade body's other members to lift these prohibitions.

In 2006, a WTO panel weighed in on a case brought by the US, Argentina, and Canada challenging the EU's failure to approve a number of specific biotech products, as well as the use of national moratoriums on the marketing and import of such products already approved at the EU-wide level. The panel rejected Brussels' defence that the latter were precautionary measures, asserting that insufficient scientific evidence existed for carrying out an adequate risk assessment. (See BioRes [1 November 2006](#))

Two of the complainants in that case – Argentina and Canada – ultimately reached a "mutually agreed solution" with Brussels on the matter, while the US requested authorisation to retaliate. While the EU challenged the latter, Washington and Brussels shortly thereafter requested a suspension on arbitration proceedings, which has been in place since 18 February 2008.

Observers across the Atlantic will likely have taken note of Friday's decision. Food commodities commerce – including the regulation of GM crops – has lately been one of the more contentious issues in the ongoing discussions towards an EU-US trade deal, known formally as the Transatlantic Trade and Investment Partnership (TTIP).

US Agriculture Secretary Tom Vilsack, who has been travelling in Europe this week, highlighted on Tuesday the trans-Atlantic GMO controversy, urging his EU counterparts to do away with "non-scientific barriers" that slow the approval of these strains from the US.

Currently, it takes four years for such GM strains to become available in European markets after being approved by EU safety officials – over double the time it takes for such strains to access the US market.

Controversy ahead?

Paris, which has repeatedly led the charge for greater national flexibility in authorising GM crops, expressed great satisfaction with last week's result.

"This response to the legitimate expectations of European citizens and member states to have a more flexible framework on issues regarding the cultivation of GMOs has been welcomed by the European Union," read a joint statement by Ségolène Royal, French Minister for Ecology, Sustainable Development and Energy, and Stéphane Le Foll, French Minister for Agriculture.

"It should facilitate dialogue between the Council and the European Parliament with the goal of adopting a new directive," they continued.

France has nevertheless faced its own domestic battle in recent months around securing the national GM crop ban, with the country's upper house of parliament blocking the prohibition in February.

Some environmental groups nevertheless reacted critically to Friday's decision, arguing that large biotech companies might leverage their position in countries supportive of GM crop use – such as Spain and the UK – to put pressure on other member states. Concerns have also been raised that the criteria for refusing GM crop authorisation remain too high and that governments will be forced to back down.

Meanwhile, a spokesperson for Monsanto also blackballed the environment ministers' move, albeit for different reasons.

"This decision wouldn't be so tragic-comic if it didn't send such a bad signal to the rest of the world that it's okay to ignore science and ban things for populist purposes," Brandon

Mitchener, a Brussels-based spokesman for Monsanto, told Bloomberg Businessweek in an email. The proposal makes clear that the EU's objections to GM crops are political rather than scientific," he continued.

The draft proposal will now be put forward for formal adoption by a full European Council meeting at first reading. Under the EU's co-legislative procedures, the incoming Italian presidency of the Council will then start negotiations with the newly-elected European Parliament this coming autumn.

Agreeing to a final text for the national GM ban amendment with the Parliament may prove challenging. For their part, the pan-European legislative body voted in January against introducing a modified GM maize known as Pioneer 1507. Joint developers Dupont and Dow Chemical have taken the Commission to court over lengthy delays in the crop's authorisation process, first put forward 12 years ago. The changed political allegiances in the incoming Parliament, however, may alter these dynamics.

ICTSD reporting; "France wins greater control over GMOs, but comes under fire from Greens," EURACTIV, 13 June 2014; "GM floodgate to open? EU ministers back deal to let nations decide fate of crops," RT, 12 April 2014; "U.S. says science should settle farm debates in trade deal with EU," REUTERS, 17 June 2014.

DISPUTES

Clove Cigarettes: EU Challenges Indonesia at WTO over Compliance, Arbitration Proceedings

The EU filed a formal complaint (DS481) against Indonesia at the WTO last week, questioning the Southeast Asian country's approach in its dispute with the US over a clove cigarettes import ban (DS406). The new case, filed on Friday, highlights long-running questions over the adjudication of disputes – particularly with regard to retaliation and third party participation – at the global trade arbiter.

In its submission last week – a copy of which has been seen by Bridges – the EU is challenging Indonesia's decision to request WTO-authorised retaliation against the US without resorting first to a compliance panel, which would judge whether Washington had indeed brought its measures in line with international trade rules.

Brussels also says that it has been “unlawfully” excluded by Jakarta in the ongoing compliance and arbitration panel process, despite having been a third party in the earlier stages.

2012 ruling

Over two years ago, the Appellate Body confirmed that the US' Family Smoking Prevention and Tobacco Control Act of 2009 was discriminatory against imports of Indonesian clove cigarettes, with the US being given until late July of that year to comply with the ruling. The Appellate Body is the WTO's highest court, with its decisions being final. (See Bridges Weekly, [11 April 2012](#))

Indonesia asked the WTO's Dispute Settlement Body (DSB) to authorise retaliatory measures against the US in August 2013. Responding to a US request, the DSB then agreed to refer those matters to arbitration, in line with Article 22.6 of the Dispute Settlement Understanding (DSU), which is the WTO agreement dealing with the settlement of disputes.

The same panelists who were involved in the original dispute panel proceedings – the stage before the WTO appeals process – were asked to serve as arbitrators in the case.

Last September, Brussels asked arbitrators to include appropriate provisions in their working procedures and timetable that would facilitate the EU's use of its third party rights in the dispute. However, the arbitrators subsequently informed the European Union that, given the views expressed by Indonesia, the 28-nation bloc would not be accorded third party rights in the arbitration proceedings.

EU eligibility to bring the dispute

Brussels claims that, while it was only a third party in the original panel and appeal proceedings, it is eligible to challenge Indonesia under the DSU for the matters at issue, since those rules do not require a complainant to demonstrate any special interest over and above the fact of a WTO inconsistency.

The European Union is itself involved in the production, trade, and regulation of cigarettes, the EU noted in its complaint. Therefore, it says, the EU has "a close interest in these compliance/arbitration panel proceedings," and has a systemic interest in the correct and consistent interpretation and application of the covered agreements, particularly with respect to any suspension of concessions and its potential effects.

"Sequencing" issue

In its request for consultations, the European Union took issue with Indonesia's decision to seek recourse to retaliation from the DSB without first initiating and pursuing compliance proceedings, as outlined in Article 21.5 of the DSU. In the EU's view, Indonesia should suspend the arbitration proceedings on the level of retaliation, pending the outcome of a compliance panel review.

"Sequencing" between compliance panel proceedings and retaliation has long been a contentious issue, due to the apparent ambiguity in the language of the DSU as to the order of these processes.

Furthermore, the EU says, there has yet to be a multilateral determination on the question of compliance, which given Article 21.5 and 22 of the DSU, should be the basis of Indonesia's request for retaliation. Brussels also argues that Indonesia failed to act consistently with dispute settlement rules by proceeding in a "unilateral" manner.

Proposals to clarify the "sequencing" issue have been tabled in WTO negotiations to update the DSU for many years. While no authoritative interpretation of the DSU has been formally agreed among members, parties to disputes have often concluded *ad hoc* procedural agreements to solve the sequencing problem in practice.

Brussels has taken this same position in several past disputes, favouring the use of a "compliance panel" as a pre-condition for retaliation proceedings. The United States, for its part, has generally opposed any idea of sequencing and favours immediate retaliation.

EU participation rights in arbitration proceedings

Although it is the prerogative of arbitrators to reject the European Union's participation as a third party, Brussels considers that its exclusion is attributable to Indonesia.

Brussels claims that Jakarta's request to exclude the EU from "the compliance/arbitration panel proceedings" was "a genuine and substantial cause" of the European Union's interests not being fully taken into account in the arbitration proceedings. Furthermore, it says, the EU will not have opportunity to be heard, nor to make or receive any submissions, during the arbitration proceedings.

Under WTO rules, parties to a dispute can prevent the involvement of third parties at the consultations stage. However, while the DSU generally does not prevent third parties from participating in panel proceedings, it does not have clear and specific language on third parties' involvement in the arbitration process. Moreover, there has been no consistent practice in this regard in past arbitration proceedings.

Next steps

The request for consultations is the first step in the WTO dispute settlement process. Should the parties to a dispute be unable to reach a resolution after 60 days of talks, the complainant may request the establishment of a panel to hear the case.

ICTSD reporting.

AGRICULTURE

EU Energy Ministers Agree to Limit Production of Food-based Biofuels

EU energy ministers agreed last week to a seven percent cap on crop-based biofuels for use in transport, an increase from the five percent originally recommended by the European Commission.

The political agreement aims to address long-standing concerns over the impact of crop-based biofuels on the environment and food prices. The cap itself is part of a package of measures aimed at minimising the greenhouse gas emissions that result from indirect land use change (ILUC), namely through deforestation to plant more crops.

The cap is also part of a broader effort by the 28-nation bloc to source at least 10 percent of its transport fuel from renewables by 2020. The agreement also includes a 0.5 percent national target for advanced biofuels, which come from non-food sources such as agricultural residues and algae that are generally viewed as being less harmful.

The latter target is non-binding, and member states can individually set lower ones, as long as they provide an "objective" justification for doing so.

Given last year's impasse on the subject, EU officials have acknowledged that the proposal is, at best, a compromise. "We think this proposal is much better than nothing," European Energy Commissioner Guenther Oettinger acknowledged.

Not all member states were enthusiastic with the result. A joint statement tabled by the Czech Republic, Estonia France, Hungary, Poland, Romania, Slovakia, and Spain reportedly said that the seven percent cap was the "lowest acceptable level."

The UK, the Netherlands, Belgium, and Ireland have said that they support a lower limit on food-based fuel sources.

The proposal must next be approved by the European Parliament, which will hold a "second reading" in September. EU parliamentarians voted for a six percent cap on the use of biofuels last year. (See Bridges Weekly, [19 September 2013](#))

Biofuel debate continues

Despite the European Council deal, the debate between the biofuels industry, environmental groups, and development agencies appears far from over.

The agreement was largely welcomed by the biofuels industry, with Rob Vierhout, secretary general of renewable energy group ePure, saying it could "pave the way towards a stable policy framework that will restore investor confidence in the sustainable biofuels market."

European farmers and agricultural cooperatives, such as those represented by Copa-Cogeca, have opposed the proposed crop-based biofuels cap.

The group has warned that slashing support for "first generation" crop-based biofuels will actually create greater obstacles for the commercial development of advanced biofuels, given that the production of the latter is partially driven by the former.

UNICA, a Brazilian sugarcane growers association, similarly cautioned that the deal could actually hurt the development of advanced biofuels. Brazil is the world's second-largest ethanol producer.

"This deal doesn't lead to a better framework for investments in the biofuels sector, especially in advanced biofuels, and further discussions with the European Parliament do not... envisage any positive developments," said Geraldine Kutas, the group's head of international affairs, in a [blog post](#).

Development agencies such as Oxfam are also sceptical of the use of biofuels, though for different reasons. The use of these resources, they say, increases "land grabbing" and leads to food price inflation. "Today's deal on biofuels is a brazen assault on common sense," [said](#) Oxfam biofuel expert Marc-Olivier Herman.

ICTSD reporting; "EU agrees plan to cap use of food-based biofuels," REUTERS, 13 June 2014; "Biofuels debate continues, despite EU agreement," EURACTIV, 17 June 2014.

INTELLECTUAL PROPERTY

TRIPS Council: US Tables Proposal to Lift “Moratorium” on Non-Violation Complaints

The US has proposed lifting a long-standing moratorium on “[non-violation](#)” complaints involving the WTO’s intellectual property rights agreement, in what would mark a significant shift for the global trade body if agreed.

The new proposal was one of several issues addressed during an 11 June meeting of the TRIPS Council, which is tasked with administering the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

Also on the docket was an Ecuadorian proposal on the contribution of intellectual property to facilitating the transfer of environmentally sound technologies, which has already been raised in past meetings.

US proposal on non-violation complaints

The moratorium on TRIPS non-violation complaints prevents WTO members from suing one other over damage arising from alleged violations of the spirit – but not the letter – of the organisation’s intellectual property rules.

Non-violation complaints, which are permitted in the areas of goods and services, are meant to help address equity-related concerns in international trade relations. Under these complaints, it is considered valid for one member to challenge another member’s domestic measure at the WTO, in the case that such policy deprives the former of a legitimately expected benefit.

Even though these complaints are available in other trade areas, whether such a remedy can be applied to intellectual property rights was heavily debated during the Uruguay Round negotiations that established the WTO.

As a result, the TRIPS Agreement established that non-violation complaints would not apply for a period of five years from the date of entry into force of the overall WTO Agreement – in other words, not until the year 2000.

During this period, the TRIPS Council was instructed to make recommendations to the WTO’s ministerial conferences – the highest level of meetings at the global trade body – regarding the scope and modalities for non-violations complaints under TRIPS.

The moratorium has instead been extended several times, including at last December’s ministerial meeting in the Indonesian island province of Bali. The extension is now considered a standing item on ministerial conference agendas.

Some members fear that lifting the moratorium could lead to disputes targeting controlled prices of pharmaceutical products, undermining market expectations of foreign patent holders. Furthermore, they argue, governments could also be challenged in their use of TRIPS flexibilities, such as in cases of compulsory licensing, packaging, and labelling requirements.

The US proposal aims to “advance the Council's intensified examination on non-violation complaints under the TRIPS Agreement.” Citing WTO case law, the US document concludes that this remedy is “fully appropriate in the context of intellectual property rights and have long been part of the WTO and the GATT.”

“Non-violation complaints serve an interest all WTO members share, which is to assist members in protecting against measures that nullified or impaired concessions,” the US said, noting that such complaints were part of the “balance of rights and obligations” in the TRIPS Agreement.

Switzerland spoke in support of the US proposal last week, sources confirmed to Bridges. Various others, such as the EU and Japan, reportedly requested more time to review the document, while objecting in principle to the idea of non-violation cases in intellectual property.

Discussions on the subject are expected to continue at the TRIPS Council's October meeting.

Ecuador to revise green technology transfer proposal

Over a year ago, Ecuador presented a proposal aimed at making environmental sound technologies more accessible, and highlighting the potential for intellectual property to contribute in this area.

The proposal suggests that members review Article 31 of the TRIPS Agreement, which addresses the considerations involved in instances when a government or authorised third party uses a patent without the permission of the rights holder – a practice known in IP jargon as compulsory licensing.

The proposed review, Ecuador says, could help limit the exercise of exclusive private rights by patent holders, in order to provide a much-needed public good – such as the use of these technologies to mitigate climate change's harmful effects.

In addition, Ecuador has raised the possibility of reducing the duration of patents for environmental technologies, in order to make it easier to disseminate the latter.

The document also calls for TRIPS Council discussions on mechanisms for such technology transfer, given that intellectual property rights can – in some cases – hinder this type of transfer, especially for developing countries.

As in previous Council meetings, Ecuador's proposal received the support of several developing countries. Some developed countries, for their part, argued that appropriate intellectual property protections can actually provide an important incentive for the transfer of technology, and noted that lack of resources and steep investment costs are often bigger hurdles.

Ecuador will be submitting a revised proposal on the subject in time for the October TRIPS Council meeting, building upon this feedback and on consultations it is holding with other members.

ICTSD reporting.

PREFERENTIAL AGREEMENTS

Merkel Calls for Advances in EU-Mercosur Trade Talks

German Chancellor Angela Merkel declared her commitment to a successful EU-Mercosur trade deal in Brasilia this past Sunday, saying that Germany and Brazil – the two largest economies in Europe and Latin America, respectively – had much to gain from more trade and investment.

"We have a lot of interest in reaching a free trade agreement between Mercosur and the European Union," said Merkel, pledging to "do what is possible" to help the long-running negotiations come to a close.

Talks for a trade deal between the 28-nation EU and Mercosur – the South American customs union comprised of Argentina, Brazil, Paraguay, Uruguay, and most recently Venezuela – began in 1999 but were suspended in 2004 when the two sides were unable to reach an agreement regarding agricultural trade liberalisation.

Negotiations were restarted in May 2010 but were subsequently delayed by political controversies among Mercosur members, opposition from European agricultural interests, and hesitation to open Mercosur industries to competition from the EU. (See Bridges Weekly, [19 May 2010](#) and [31 October 2012](#)).

The statement followed a meeting between Merkel and Brazilian President Dilma Rousseff where the two discussed a range of shared goals, including increased levels of cooperation in the energy sector and joint ventures to improve investment flows.

If agreed, officials say that the EU-Mercosur deal would create one of the largest free trade areas in the world, covering some 750 million people, and would inject a total of US\$4.5 billion into the participants' economies annually.

The EU and Mercosur were due to exchange proposals outlining their tariff offers by the end of last year, but the deadline has been repeatedly extended. This is now unexpected to occur before the end of the World Cup and the BRICS summit, both being held in Brazil.

ICTSD reporting; "Merkel Wants Hurdles Removed to EU-Mercosur Free Trade Pact," REUTERS, 15 June 2014; "Merkel Pushes EU-Mercosur Free-Trade Pact," TAIPEI TIMES, 17 June 2014.

EVENTS & RESOURCES

Events

Coming Soon

23 June, Geneva, Switzerland. TALKING DISPUTES NO.9: THE EC – SEAL PRODUCTS DISPUTES. This event is being organised by the International Centre for Trade and Sustainable Development (ICTSD) and WTI Advisors, and will be hosted by the Graduate Institute's Centre for Trade and Economic Integration (CTEI). The event will focus on the recent WTO Appellate Body decision on *EC-Seal Products*, with experts introducing key aspects of this landmark ruling, followed by a targeted discussion. Hannes Schloemann of WTI Advisors will serve as the moderator, with the Graduate Institute of International and Development Studies' Joost Pauwelyn, White & Case LLP's Brendan McGivern, and WTI Advisors' Marie Wilke serving as the discussants. The event will be held at Auditorium 2, Petal 2, Maison de la Paix, Chemin Eugène Rigot 2. To learn more, please visit the [ICTSD website](#).

19-23 June, Geneva, Switzerland. CLIMATE, FOOD, TRADE NEXUS: LINKING EAST AFRICAN ISSUES TO THE GLOBAL CONTEXT. This international conference, hosted by CUTS International, will focus on lessons learned from a three-year project in East Africa titled "Promoting Agriculture-Trade-Climate Linkages in the East African Community" (PACT EAC), and address how these can be integrated into global discussions. The project examined the policy linkages between climate change, food security, and trade. Key topics for discussion include why these three policy areas matter to Africa; the food security agenda in the context of last year's WTO Bali Ministerial Conference; and the role of trade policies in the EAC in ensuring food security. For more information, visit the event [website](#).

23 June, London, UK. BACK TO GROWTH: ECONOMIC COMPETITIVENESS AND OTHER CHALLENGES FOR THE EUROZONE. This workshop, hosted by Chatham House and Centro Europa Ricerche (CER) with the support of eni, will discuss economic growth prospects in the eurozone with a particular focus on the Italian economy. The workshop will assess the state of the banking system in Italy following recent reforms, which include the establishment of the first leg of the banking union, the Single Supervisory Mechanism (SSM), and the results of the 2014 Asset Quality Review of major eurozone banks. For more information, visit the event [website](#).

25 June, London, UK. THE UK BALANCE OF COMPETENCES REVIEW ON ECONOMIC AND MONETARY POLICY: THE UK'S POSITION. At this Chatham House event, participants will examine the EU's competence in the area of economic and monetary policy and the related implications for the UK. The roundtable will discuss the key challenges the UK faces in consideration of anticipated future developments in economic and monetary policy at the EU level and how further integration with the EU could affect London. For more information, visit 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.

20 June: 21st Round of the Director General's Consultative Framework Mechanism on Cotton – Cotton Development Assistance

20 June: Council for Trade in Services

20 June: Committee on Trade-Related Investment Measures

20 June: Dedicated Discussion of the Relevant Trade-Related Developments on Cotton

23 June: 30th WTO Introduction Day

23-24: Committee on Regional Trade Agreements

25 June: Committee on Government Procurement (followed by Inf.)

26 June: Committee of Participants on the Expansion of Trade in Information Technology Products

Other Upcoming Events

27 June, London, UK. GLOBAL MACROECONOMIC LEADERSHIP: CREATING AN ERA OF GLOBAL GROWTH. At this Chatham House event, Oxford University Professor David Vines will outline how to create a period of global economic growth and decreased macroeconomic volatility wherein global economic imbalances could be corrected, such as the period of 'great moderation' which began in the mid-1980s. Vines will argue that to achieve such a result will require significant international adjustment, both within Europe – between northern Europe and the European periphery – and internationally, between developed countries and emerging markets. Vines will discuss the sort of management by international institutions and global financial leadership required. For more information, visit the event [website](#).

30 June, London, UK. THE 2014 CHATHAM HOUSE ANNUAL COMPETITION POLICY CONFERENCE: COMPETITION POLICY IN REGULATED MARKETS. This year's edition of Chatham House's Annual Competition Policy conference will assess the role of competition policy in regulated markets, with a particular focus on financial, mobile telephony, and electricity. Speakers will also discuss what effects today's intellectual property system has on innovation, and whether economic theory must be adapted to global antitrust practice, among other questions. For more information, visit the event [website](#).

4 July, London, UK. ASIA'S EMERGING DEVELOPMENT CHALLENGES. At this Chatham House event, President of Asian Development Bank (ADB) Takehiko Nakao will discuss the development challenges facing the Asia-Pacific region, including inequality, environmental stress, and the challenges related to the region's increasing number of middle-income countries. He will also outline the Bank's vision for enhancing the region's financial capacity, leveraging more private sector resources, and promoting innovative development solutions. For more information, visit the event [website](#).

Resources

ACHIEVING SUSTAINABLE DEVELOPMENT GOALS (SDGs) THROUGH TRANSFORMATIVE GOVERNANCE PRACTICES AND VERTICAL ALIGNMENT AT THE NATIONAL AND SUBNATIONAL LEVELS IN AFRICA. Published by the International Institute for Sustainable Development (June 2014). This paper is a synopsis of discussions held at the SDplanNet-Africa regional workshop series that took place in Nairobi in early March. SDplanNet is a sustainable development planning network that aims to help national and subnational government professionals and regional organisations share best practices and build capacity for the purposes of implementing Sustainable Development Goals (SDGs) that are currently being elaborated in the UN context. The full document can be accessed [here](#).

COMMISSION DOES NOT FORESEE WASTE PREVENTION TARGETS, ASSURES DIRECTOR-GENERAL FOR ENVIRONMENT. Published by viEUws (June 2014). In this video interview, Karl Falkenberg – the Director General for the Environment at the European Commission – discusses the European Union's waste prevention plans with environmental journalist Sonja van Renssen. Falkenberg argues that much can be done to reduce landfills despite the lack of an EU-level regulatory policy, especially with the help of the private sector. Falkenberg also emphasises the importance of stopping food waste across the entire value chain in Europe. The video interview can be seen [here](#).

THOUGHTS ON HOW TRADE, AND WTO RULES, CAN CONTRIBUTE TO THE POST-2015 DEVELOPMENT AGENDA. By Michael Roberts for the WTO (June 2014). In this paper, the author asks how trade and WTO rules can play a part in elaborating and implementing the post-2015 development agenda. Roberts outlines 10 contributions, organised around three headings: trade rules as part of the enabling environment for achieving this agenda; the role that trade policy can play in meeting specific goals, including the Sustainable Development Goals (SDGs); and the contribution that can be made by the Aid for Trade initiative. To learn more, or to read the paper, visit the WTO [website](#).

UNCTAD INVESTMENT POLICY HUB AND IIA DATABASE. Released by the United Nations Conference on Trade and Development (UNCTAD) (June 2014). This online platform for investment policies aims to provide a consolidated overview of national and international investment matters. The hub also includes an International Investment Agreements (IIA) online database with information on over 2000 bilateral investment treaties (BITs) and 300 other IIAs. UNCTAD's Investment Policy Hub and IIA Database can be accessed [here](#).

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PUBLISHED BY



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Bridges Weekly Trade News is made possible
through generous contributions of donors and
partners including

DFID - UK Department for
International Development

SIDA - Swedish International
Development Agency

DGIS - Ministry of Foreign Affairs
Netherlands

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News Digest is edited by Sofia Alicia Baliño.

The Publisher and Director is Ricardo Meléndez-
Ortiz. The Editor in Chief is Andrew Crosby.
Comments and suggestions are welcomed and
should be directed to the [editor](#) or the [director](#).

Price: €10.00

ISSN 1563-0

