

# BRIDGES WEEKLY

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## PREFERENTIAL AGREEMENTS

### TTIP "Fresh Start" Efforts Continue as New EU Council Chief Takes Office

New European Council President Donald Tusk, who took office on 1 December, has highlighted the EU-US partnership as being "the backbone of our community of democracies," while suggesting that strengthening bilateral ties across the Atlantic, such as through trade, will be one of four main indicators of the 28-nation bloc's future success.

"Both we and the Americans are responsible for the future of our relations. The year ahead will be crucial," he said during Monday's [handover ceremony](#), where he formally took over from outgoing Council chief Herman Van Rompuy.

The former Polish premier had a phone call the same day with US President Barack Obama in which the two leaders discussed the coming work needed to advance negotiations toward a finalised Transatlantic Trade and Investment Partnership (TTIP), among other priorities.

"The TTIP is not just about free trade; it is an expression of our geopolitical partnership," Tusk [said](#) after receiving the call. "We agreed to step up our efforts towards reaching agreement."

On the White House's side, a [readout](#) of the call stated that President Barack Obama "underscored the importance of continued US-EU cooperation and noted the need for policy action to strengthen European economic growth," while both sides affirmed their "determination to achieve an ambitious and comprehensive" agreement.

Other topics that came up during the call, the White House said, included the ongoing crisis in Ukraine and continued deterioration of ties with Russia – both of which have been touted as additional reasons for Brussels and Washington to strengthen their own partnership through a trade deal.

#### Transitions

The handover to Tusk brings to a close the various leadership changes that have been seen across the EU institutions in recent months, including the election of a new European Parliament and the appointment – and approval – of a new College of Commissioners.

The European Council President holds a 2.5 year initial term with the possibility of a one-time renewal, and is responsible for chairing the Council and driving its work forward. The role also involves cooperation with the Commission and regular reports to the Parliament on Council meetings.

The Council itself is tasked with setting the 28-nation bloc's political direction and priorities, and consists of EU heads of state and government, together with the Council and Commission Presidents. This direction includes, for instance, agreeing on mandates for EU trade talks.

Whether the completion of such transitions – and the conclusion of the US midterm elections last month – will be enough to provide the trade talks with renewed political momentum remains to be seen, as observers question whether the negotiations are already slowing significantly after barely over a year.

The make-up of the new European Parliament has been one source of concern, given the number of seats won by eurosceptic parties earlier this year. The May polls saw approximately a quarter of the 751 seats go to these groups, in a massive shift in the EU legislative body. (See Bridges Weekly, [28 May 2014](#))

In outlining his priorities on Monday, Tusk noted that the EU is currently facing a series of threats against the Union, both from the inside and outside, though not explicitly referring to the potential effects on the TTIP negotiations.

"Today, not only are eurosceptics questioning the EU's value, the Union even has enemies. Politics has returned to Europe, history is back, and such times need leadership and political unity," he said.

He also called for "ruthless determination" to resolve the economic crisis at long last, and to increase the Union's strength abroad, not just at home.

When the TTIP talks were launched in June 2013, officials had indicated that they hoped to see a deal completed by the end of 2014. Yet despite seven rounds of talks, most of the advances seen in recent months have appeared to be of technical nature, with thornier topics likely requiring major political decisions still unresolved. (See Bridges Weekly, [20 June 2013](#))

Officials are now saying that the "window of opportunity" for clinching a deal will likely be late 2015 or early 2016, before the US general election kicks into high gear. Voters will be choosing a new President to the White House – the first in eight years – in November 2016, in what is expected to be a hotly-contested election.

### **Malmström outlines "fresh start," transparency initiatives to EU Parliament**

Some new EU parliamentarians of the eurosceptic groups have said in recent months that they intend to push back against the TTIP effort, and many lawmakers across various parties have asked for the Commission to undertake further efforts regarding transparency in the talks.

On Wednesday, new European Commissioner for Trade Cecilia Malmström – who took over from Karel De Gucht in early November – testified to the European Parliament's International Trade Committee (INTA), with the goal of both answering questions about this planned TTIP "fresh start," and outlining a series of new transparency-related efforts being undertaken by the EU executive branch. (See Bridges Weekly, [27 November 2014](#))

These measures, which were recently approved by the College of Commissioners, include allowing all EU parliamentarians access to TTIP texts, rather than just INTA members. The

Commission also plans to make public more of the EU's negotiating texts that it is already sharing with parliamentarians and member states.

Furthermore, the EU executive branch will also make public on a regular basis a list of TTIP documents being shared with the other EU institutions.

This "fresh start" will include more transparency, the EU trade chief [said](#), in order to better demonstrate to European citizens "what's in there for them" in a TTIP deal. While some lawmakers reportedly welcomed the new efforts, others raised the question of whether more could be done, particularly given that the publication of some documents would depend on obtaining US approval.

Malmström reportedly told lawmakers on Wednesday that the Commission is already publishing those documents it promised to make public online, and will make these "user friendly," according to updates on the INTA debate published by the committee's press service on Twitter.

### **ISDS consultation results due this month**

The results of the public consultation held earlier this year on the controversial investor-state dispute settlement (ISDS) mechanism will also be published before the end of 2014, with the EU trade chief confirming on Wednesday that this would occur "a few weeks before Christmas."

The Commission will subsequently discuss the results with both EU parliamentarians and the Council in order to figure out a common approach in this area by next spring, though whether this may involve the resumption of the investor protection component of the TTIP talks – suspended since early 2014 – was not made clear.

The 3 December meeting was Malmström's first since assuming her new role, though the Swedish politician previously testified in front of INTA as part of her confirmation hearing in September. (See Bridges Weekly, [2 October 2014](#))

### **Next week: trade chiefs to meet in Washington**

As part of this effort to re-energise the talks, the new EU trade chief is set to hold a second meeting on TTIP with her American counterpart, US Trade Representative (USTR) Michael Froman, next week in Washington.

What will be on the agenda for their 9 December meeting is not yet clear. However, Malmström and Froman had already met in November for an initial discussion on the state of the talks, with the officials afterward pledging a "fresh start" on the negotiations. (See Bridges Weekly, [27 November 2014](#))

The next TTIP negotiating round will not be until early February. This one will be held in Brussels, officials say.

ICTSD reporting; "MEPs debate TTIP transparency," DEMOCRACY LIVE, 3 December 2014.

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## CLIMATE CHANGE

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# UN Climate Talks Under Pressure to Secure Draft Texts

This year's annual UN climate talks kicked off in Lima, Peru on Monday with exhortations from the meeting's leaders for delegates to move forward on efforts to secure a draft version of a global emissions-cutting deal for the post-2020 period.

Negotiators from over 190 nations have gathered for the Twentieth Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC), being held from 1-12 December.

Governments have set themselves until next year's meet in Paris, France to hammer out a new globally binding climate pact to replace the Kyoto Protocol when it expires at the end of the decade, with the Lima COP seen as a significant stepping stone toward this goal.

A non-paper on elements of parties' views and proposals on elements for a draft negotiating text was released in October by the co-chairs of a working group geared towards sealing the new climate agreement.

Parties are also considering a revised draft text outlining the type of information that should be included in national contributions to the multilateral deal and how to ramp up climate mitigation under the current regime.

"We want this to be the COP that provides a clear and solid foundation for the new global climate Agreement, through a text that incorporates basic elements that strike a balance between climate action and sustainable development," said Manuel Pulgar-Vidal, Peruvian environment minister and president of the Lima meet.

The opening COP session also saw Dr. Rachendra Pachauri, chairman of the Intergovernmental Panel on Climate Change (IPCC), warn that the window for efficiently acting on climate-warming emissions would soon close.

The IPCC has issued three reports in the last 18 months warning of the far-ranging consequences of climate change and calling for near zero emissions by the end of the century.

Negotiations are now well underway this week on various elements of the 2015 deal following Tuesday's formal opening of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), which is tasked specifically with elaborating the new deal.

Opening statements in the ADP saw some parties emphasise the importance of balancing the work on the post-2020 deal with efforts around climate ambition for the current decade.

Others commented on the need to include areas such as adaptation in the "intended nationally determined contributions" (INDCs), which would be the deal's building blocks.

Disagreement around the shape of the INDCs had already begun to emerge at preparatory ADP talks in Bonn, Germany in October and is among the hot topics in Lima. Climate watchers have said it will be critical to reach agreement on the national contributions at the meet in order to facilitate submissions from parties in a position to do so by March.

## **Climate finance**

Climate finance was a key buzz word in the early days of the meet this week. Some parties have called for more focus on resources for adaptation to negative climate impacts, with suggestions floated to have an adaptation finance goal in the 2015 deal, among others.

While the capitalisation of the Green Climate Fund at the end of last month with nearly US\$10 billion lifted spirits heading into Lima, both Brazil and China on the eve of the meet said the amount was insufficient, according to media reports.

Negotiators from both countries have deemed insufficient the amount pledged to the fund so far, which is geared towards helping developing countries shift to greener economic pathways. They pointed towards pledges made by developing nations at the 2009 Copenhagen meet to provide US\$100 billion a year by 2020 for climate action.

However, a report released last week by international charity Oxfam said that countries such as Brazil should also make contributions to poor countries based on calculations on income distribution, poverty levels, and greenhouse gas emissions since 1990.

A ministerial-level dialogue on climate finance is on the agenda for next Tuesday.

## **Trade at climate talks**

Work on a range of technical issues in the UNFCCC's working bodies, the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI), also kicked off this week.

Topics covered by these groups include two areas of interest for the trade community, namely, the impact of the implementation of response measures and international carbon markets.

Negotiators started work on Tuesday toward finding an agreed path forward for a forum on the impact of the implementation of response measures, after the previous two-year mandate expired last year.

Opening statements revealed continued differences on the subject, with the G77/China calling for the establishment of a mechanism to take action on such measures. The US has suggested continuing information sharing through a conference-style format.

Parties have been meeting for an hour a day in an effort to resolve this divide by week's end, while also holding regular informal consultations.

Meanwhile, efforts to agree on a framework for various approaches (FVA) – in other words, an instrument for coordinating market and non-market based mitigation actions that have an international dimension – also hit a snag on Tuesday when some parties questioned the purpose of SBSTA work in this area before a post-2020 deal was secured.

Brazil said that it seemed curious to develop a FVA, given the absence of a legally binding rules-based system, and suggested work be delayed in this area until next year.

In theory, a FVA could also include a new market-based mechanism (NMM) as a way to enhance cost-effective mitigation. A number of outstanding questions, however, remain in this area such as how it would work in practice, its scope, and the relationship with existing UNFCCC market mechanisms.

Tuesday also saw the co-facilitators of the working group tasked with addressing the FVA and NMM release draft texts of decisions to recommend to the COP.

These draft texts would see SBSTA elaborate the possible scope of the framework and to focus on a mechanism for crediting greenhouse gas emission reductions achieved at the level of projects, programmes, and broad segments of the economy.

Formal and informal work in both areas is on the docket until the end of the week.

In remarks addressed to observers on Wednesday, SBI and SBSTA chairs said that they were pushing parties to work in a timely manner to reach decisions on both issues.

However, in the event of a continued lack of agreement, the chairs would be forced to put these issues off until after the 2015 Paris meet due to a need to focus on sealing that particular deal.

ICTSD reporting; "China and Brazil rebuke rich world over climate cash pledge," THE FINANCIAL TIMES, 1 December 2014.

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## DISPUTES

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# US Appeals WTO Compliance Panel Report on COOL Policy

The US filed a notice of appeal last week in the WTO dispute over its country-of-origin labelling (COOL) requirements for livestock and meat imports, challenging a previous compliance panel's ruling that Washington had failed to make sufficient changes to the policy in order to bring it in line with trade rules.

Washington announced the appeal at a special meeting of the WTO's Dispute Settlement Body (DSB) last Friday, sources confirmed to Bridges, saying it would be challenging some of the panel's findings and conclusions regarding whether the revised version of the COOL requirements still grant less favourable treatment to imported livestock.

Sources say that the move led to the suspension of the meeting, which was originally [held](#) in order to adopt the compliance panel's report. As the meeting was suspended, rather than cancelled, it can be reconvened at a later date.

The US move guarantees that the case will return to the Appellate Body, which generally reviews questions relating to facts of law or legal interpretation in panel rulings. Canada and Mexico, who were the complainants, can also file their own appeals, though neither had done so by the time Bridges went to press.

### Six years in

The dispute ([DS384](#), [DS386](#)) is now finishing its sixth year at the global trade body, with the original complaints being filed by Mexico and Canada in 2008. The US lost the case at both the panel and appeals stages at the WTO, with the global trade arbiter finding that the policy put foreign products at a disadvantage by making the processing of imported livestock prohibitively costly. (See Bridges Weekly, [4 July 2012](#))

At the same time, the Appellate Body upheld the US' argument that the COOL policy was not more trade-restrictive than necessary to meet the legitimate objective of providing consumer information. As a result, Washington regulators have since been juggling to find a balance between meeting this approved domestic objective, while not putting Canadian and Mexican livestock and meat products at an unfair disadvantage.

The original policy involved a series of instruments put in place under the 2002 version of the Farm Bill, the omnibus legislation governing US agricultural spending. COOL was then revised in 2009. Under the terms of the policy, producers were required to inform consumers of meat's country of origin via a label on the sale package, a complex process involving five categories, each with three sub-categories.

A year after the 2012 Appellate Body ruling, Washington revised the policy once more, imposing new point-of-production labelling requirements, presumably to answer the conclusions raised by the WTO's highest court.

However, a compliance panel had subsequently found in October that the US' revised COOL policy was still in violation of the WTO's non-discrimination requirement.

Even so, the panel also found that the alternatives that Canada and Mexico had suggested in place of the COOL revisions were insufficient to meet the US' objective of providing

consumer information – while finding that Washington's own policy is itself not fully accurate in this regard. (See Bridges Weekly, [23 October 2014](#))

### **US challenges discrimination claim**

The US notice of appeal specifically challenges the panel's conclusions that the revised policy is discriminatory, citing alleged errors in certain findings that led to this conclusion.

For instance, the US has challenged the panel's conclusion that the detrimental impact that Mexican and Canadian producers have suffered is not just the consequence that naturally comes from Washington trying to meet a legitimate regulatory objective.

The compliance panel had explained in October that "the increase in the number of distinct labels and in segregation [of livestock] logically entails a higher recordkeeping burden" in practice, even if the recordkeeping and verification provisions in the old and new COOL policies appeared on paper to be identical.

Regarding the same overall conclusion that COOL discriminates against imported products, the compliance panel had also cited other reasons for a detrimental impact not being solely the result of legitimate regulatory distinctions. These included the potential for label inaccuracy under the new COOL system, and the fact that the measure continues to exempt a large proportion of muscle cuts. Washington has also asked that issues of law and legal interpretation stemming from these findings be reviewed by the Appellate Body.

### **National treatment: which standard to use?**

Notably, the US has asked that the Appellate Body review the panel's "failure to address" certain elements of the relationship between Article 2.1 of the Technical Barriers to Trade (TBT) Agreement and Article III:4 of the General Agreement on Tariffs and Trade (GATT).

In that vein, Washington is also challenging the panel's finding that it was indeed in violation of the above-mentioned GATT article.

These select articles of the TBT and GATT legal texts both deal with the question of national treatment – the former "specifically, and in detail" regarding technical barriers to trade in goods, and the latter, the basic WTO agreement governing trade in goods. Their potential relationship, therefore, has been a long-standing question in trade law and policy circles, given the potential ambiguity involved in applying one or both sets of standards.

The US has questioned in its appeal notice whether it would have had the option of asking for a GATT Article XX exemption for COOL with respect to its claim under Article III:4 of the GATT 1994, in the situation of a COOL measure that causes a detrimental impact on imports yet is still consistent with Article 2.1 of the TBT Agreement.

These specific GATT exemptions allow the use of otherwise WTO-illegal measures so long as these are used to fulfil greater public policy objective, under certain conditions.

For instance, under a separate dispute regarding the EU's ban on imported seal products, the Appellate Body recently found that the legal standard for the non-discrimination obligations under Article 2.1 of the TBT Agreement does not apply equally to claims under Article I:1 and III:4 of the GATT 1994. (See Bridges Weekly, [28 May 2014](#))

In the seals case, the Appellate Body found that – unlike Article 2.1 of the TBT Agreement – neither Article I:1 nor Article III:4 of GATT 1994 requires an assessment of whether a measure's detrimental impact on competitive opportunities for like imports stems exclusively from a legitimate regulatory distinction.



Washington had already cited the findings from the seals case, which came late in the COOL panel process, as “extraordinary” grounds for asking for such a review. However, given that the US was not actually asking to use the GATT’s Article XX exemptions in its defence, both Canada and Mexico had questioned in the interim review stage of compliance panel proceedings whether it would be appropriate to make any findings over the hypothetical availability of such an option.

The US has also cited two other panel conclusions as worthy of review, though these are conditional upon whether Canada or Mexico file their own appeals.

### **Need for new US laws?**

The case has been one of a series of WTO disputes that has brought to the fore the difficulty of designing domestic policies aimed at achieving certain public policy objectives, such as providing consumer information or ensuring public health, while at the same time not running afoul of global trade rules.

Two others – one on “dolphin-safe” tuna labels, another involving a clove cigarette import ban – have also been levied against the US in recent years, with Washington losing those as well. While the US settled the clove cigarette case with Indonesia, compliance proceedings are still ongoing in its tuna labelling dispute with Mexico. (See Bridges Weekly, [9 October 2014](#))

However, US Agriculture Secretary Tom Vilsack said earlier this month that, given existing domestic laws, Washington has little room for manoeuvre in revising the COOL policy.

“There is no apparent regulatory solution available that could make this rule compliant with the WTO’s recent decision and also uphold the law Congress passed,” the US agriculture chief said in a statement, according to the Associated Press.

### **Canada, Mexico slam move**

The US’ decision to appeal the compliance panel’s report received harsh criticism from Canadian and Mexican officials, who argued that it prolongs an already lengthy process, while keeping in place a policy that continues to hurt foreign producers.

“With this delay, the United States is yet again preventing both of our countries from enjoying the benefits of freer and more open trade and is hurting farmers, ranchers, and workers in the United States and Canada,” said Canadian trade minister Ed Fast and agriculture minister Gerry Ritz in a [joint statement](#) on Friday.

The Mexican Secretariat of the Economy [similarly lambasted](#) the move, and both complainants raised the prospect of potentially seeking retaliation, should the WTO Appellate Body agree that the US’s amended COOL measure is in violation of trade rules.

### **Next steps**

According to the agreed procedures (DS385/25) among parties, the three countries shall cooperate to enable the Appellate Body to circulate its report to the members within 90 days from the date of notification of the appeal to the DSB. However, sources familiar with last Friday’s DSB meeting noted that the US, Canada, and Mexico are still working out an agreed schedule for the appeal, given the hefty workload that the Appellate Body faces.

Should the Appellate Body indeed agree with the conclusions of the compliance panel, Ottawa and Mexico City can then ask for the authorisation of countermeasures.

ICTSD reporting; “COOL regulations face uncertain future south of border,” ASSOCIATED PRESS, 21 November 2014.

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## WTO Panel Rules Against Peruvian Agriculture Duties

A WTO dispute panel has granted a victory to Guatemala in its complaint against Peru's duties on certain agricultural imports, in a case that has also highlighted the question of whether and how bilateral trade deals can interact with obligations taken on at the global trade body (DS457).

At the heart of the case were the additional duties imposed by Peru on imports of certain agricultural products – such as milk, maize, rice and sugar – through its Price Range System, or PRS.

The panel structured its analysis by reviewing first Peru's own claim that Guatemala did not act in good faith by taking on this dispute in the first place, and secondly Guatemala's various substantive claims.

### **FTA, WTO balance questions**

Under a Free Trade Agreement (FTA) signed between Peru and Guatemala in December 2011, Guatemala had agreed that Peru could maintain its PRS. Lima had therefore argued that, by initiating a WTO case against the scheme, Guatemala was violating its obligation of acting in good faith in dispute proceedings.

A provision of the WTO's Dispute Settlement Understanding (DSU) requires WTO members to exercise judgement over whether filing a dispute would be fruitful, before lodging the complaint itself.

In the report, the panel said that nothing in the DSU provision, WTO case law, or the present case's circumstances supported the suggestion that Guatemala did not duly exercise its judgement.

On the good faith question, the panel also recalled that the Appellate Body, the WTO's highest court, has previously found that "irrespective of the type of proceeding, if a WTO member has not clearly stated that it would not take legal action with respect to a certain measure, it cannot be regarded as failing to act in good faith if it challenges that measure."

For the panel, Peru had not put forward any argument or evidence on whether Guatemala, before engaging in this dispute, had expressly waived the right to bring a WTO case with respect to the PRS or recognised the consistency of that measure with the global trade body's rules.

The panel also rejected Peru's argument that according to Article 18 of Vienna Convention on the Law of Treaties, Guatemala is obliged not to defeat the object and purpose of the FTA and that by initiating a dispute on PRS, Guatemala rendered the provisions of the treaty meaningless. The panel considered that, among other findings, making a determination on an unenforced FTA's object and purpose would go beyond the panel's terms of reference.

Regarding the relationship between the FTA and WTO agreements, Peru also argued that, by means of the bilateral deal, the parties had modified their reciprocal WTO rights and

obligations. Accordingly, Lima said, the bilateral agreement allowing the use of the PRS should prevail.

The panel found that, because the FTA has not entered into force, its provisions were not binding on the parties at the time of the panel report. As a result, it was unnecessary for the panel to express any opinion on whether the parties may, by means of a free trade pact, modify between themselves their rights and obligations under the WTO covered agreements.

### **Agriculture, GATT rules**

The PRS mechanism determines duties based on a range constituted by a floor price and a ceiling price, reflecting international prices over the last 60 months. The system also uses a reference price published biweekly, reflecting each product's average international market price.

An additional duty is applied if the reference price of the affected product is below the floor price. However, if the reference price exceeds the ceiling price, the applicable tariff is reduced. These reductions are rare in practice, given Peru's zero percent applied tariff for most of these products.

In its complaint, Guatemala had said that the duties resulting from the PRS constitute variable import levies and minimum import prices, or similar measures, and as a result violate Article 4.2 of the Agreement on Agriculture.

This provision prohibits the use of agriculture-specific non-tariff measures, unless these are consistent with other WTO rules applying to goods trade.

The panel found that the PRS-related duties are border measures similar to a variable import levy, while lacking in transparency and predictability and having the potential to affect import prices. Thus by maintaining such measures, the panel said, Lima was violating the WTO's agriculture rules.

Guatemala also claimed that the duties resulting from the PRS qualify as an "other duty or charge" that were not featured in Peru's original Schedule of Concessions at the WTO, therefore putting Lima in violation of GATT Article II:1 (b).

This provision essentially prohibits new import duties either not in place when the GATT entered into force or that were not expected due to the domestic legislation at place at that time. The panel ultimately agreed with Guatemala's claim.

### **Next steps**

Both sides have 60 days from when the report was circulated to appeal the panel's findings. Under WTO rules, the Appellate Body can review aspects of law, such as legal interpretation, but generally will not interfere with the factual findings of the original panel.

ICTSD reporting.

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## AGRICULTURE

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# India to Review Farm Support by mid-January, Report Says

New Delhi plans to quantify all subsidies and farm support falling under the WTO's Agreement on Agriculture by January 2015, according to a letter from the prime minister's office to other senior officials cited by the Indian Express.

The news follows an agreement last Thursday at the WTO, which clarified that a prior commitment not to challenge developing country public food stockholding schemes under the trade body's farm subsidy rules would not expire in 2017.

Last week's deal also reaffirmed that countries benefitting from this "peace clause" would share data and information on their agricultural subsidies. Meanwhile, WTO members will ramp up efforts to negotiate a "permanent solution" to developing countries' concerns in this area, with a new target date of end-2015 for such an outcome. (See Bridges Weekly, [27 November 2014](#))

As part of a move spearheaded by India, developing countries in the G-33 coalition have complained that price inflation over the last two decades has eroded their ability under WTO rules to buy food at government-set prices as part of public stockholding schemes.

### Quantification a first step

Quantifying farm support is "a first step in understanding the extent of support that this sector needs," an official in the Prime Minister's office reportedly told other senior policymakers in the letter, according to the Indian Express.

The newspaper cites a letter from the Principal Secretary in the prime minister's office, Nripendra Misra, addressed to the Secretaries of the departments of Commerce, Agriculture, Food and Public Distribution, Fertilizers, and Expenditure.

"It would be useful if this exercise is completed in two months' time, i.e. by 15.1.2015," Misra reportedly writes.

The letter adds that the review should "study the existing support measures for agriculture, examine the possibilities that are there under the Agreement on Agriculture for promoting agriculture, classify all the ongoing support activities in the context of the various permissible and regulated activities under the WTO, and suggest possible changes and improvements that may be needed in future."

### Clearing the data backlog

The government's decision to review farm support spending could presage a move to update farm subsidy notifications at the global trade body, in order to help clear a multi-year backlog in subsidy data. In September, New Delhi reported farm support for a seven-year period up to 2010-11, although more recent data is still missing. (See Bridges Weekly, [18 September 2014](#))

The September report indicated that trade-distorting support fell consistently below WTO ceilings for the seven-year period up to 2010-11. However, the government has warned that plans to expand subsidies to poor consumers under its new Food Security Act could

mean that ceilings on farm support for rice might be breached if the food continues to be procured at administered prices.

The official figures presented in September revealed that just below US\$14 billion of government spending was allocated for public stockholding for food security purposes – more than doubling support levels seven years previously.

“Maybe they’re responding to the pressure they’re getting on transparency,” speculated one African delegate who spoke to Bridges, who added that the data would nonetheless be “helpful.” The US has been among those repeatedly emphasising that countries should ensure their farm subsidy notifications to the WTO are up to date, to improve transparency and compliance.

ICTSD reporting; “PMO sets January 15 deadline for quantifying India’s farm subsidies,” INDIAN EXPRESS, 28 November 2014.

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## PREFERENTIAL AGREEMENTS

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# Germany Changes Tack on ISDS in EU-Canada Trade Deal

Just weeks after threatening to block the ratification of the EU's planned free trade deal with Canada (CETA) over its investor-state dispute settlement (ISDS) provisions, German Economy Minister Sigmar Gabriel has now said he is ready to back the agreement. (See Bridges Weekly, [23 October 2014](#))

Speaking before the Bundestag last Thursday, Gabriel told German parliamentarians that CETA is generally a "good agreement," and that his country's legislature should vote to approve it, despite its ISDS mechanism.

The move is expected to irk Gabriel's own Social Democratic Party (SPD) and touch off further debate on ISDS in European free trade agreements.

Some EU political parties, including the SPD, oppose ISDS in both CETA and the Transatlantic Trade and Investment Partnership (TTIP) which is currently being negotiated with the US. The EU and Canada signed CETA in late September, after five years of talks. (See Bridges Weekly, [2 October 2014](#))

### Change in tone

Until last week, Gabriel had been one of the loudest voices against ISDS. "It is completely clear that [Germany] reject[s] these investment protection agreements," the Economy Minister told a European Parliament debate this September.

But following a 10 November meeting with new EU Trade Commissioner Cecilia Malmström, Gabriel said that "it will not be possible to have the arbitration procedure taken out of CETA."

Since then, the SPD party chief has tiptoed between downplaying his previous concerns while playing up CETA's importance and the need for European cohesion.

Suggesting that hundreds of thousands of jobs are at risk and that "the rest of Europe wants [CETA]," Gabriel said last Thursday that cancelling the agreement over ISDS would be "a mid-sized catastrophe" for his country. "If we do this wrong, our children will curse us," he added.

### ISDS

The European Commission has noted in the past, as have others, that the EU's 28 member states combined have over 1400 bilateral investment treaties and nearly all feature ISDS.

But while proponents of ISDS argue that arbitration ensures unbiased adjudication and increases investor confidence in the business environment, among other benefits, critics argue that it is opaque, inadequate to defend the public interest, and unnecessary in countries with strong rule of law.

In the context of CETA, some ISDS detractors are particularly concerned that US companies with "substantial business interests" in Canada could be allowed to bring suits against EU member states.

"CETA will be a Trojan horse for US-based multinationals," predicted Cecile Toubeau, a sustainable trade policy officer at NGO watchdog Transport & Environment.

Responding to these criticisms, Canada's Ambassador to the EU, David Plunkett, emphasised that ISDS provisions are common in EU treaties and that "letter-box" companies would not qualify as investors under CETA.

## **TTIP**

Despite Gabriel's revised stance on CETA, ISDS will likely remain a contentious issue if and when the EU and US resume negotiations on the investor protection components of TTIP. That section of the talks was put on hold at the beginning of this year, in order for the European Commission to hold a public consultation on the subject. (See Bridges Weekly, [23 January 2014](#))

While the US is insistent on the inclusion of an ISDS provision, French officials have been among those indicating their opposition to ISDS in TTIP. "France did not want the ISDS to be included in the negotiation mandate," France's Secretary of State for Foreign Trade Matthias Fekl told the French Senate last month.

However, Italian Vice-Minister for Economic Development Carlo Calenda recently warned that dropping ISDS from TTIP would involve changing the European Council's mandate for the talks – and making any changes to the mandate "would be the end of the negotiation." (See Bridges Weekly, [27 November 2014](#))

ICTSD reporting; "Germany wants investment clause scrapped in EU-Canada trade deal," EURACTIV, 25 September 2014; Malmström: Only minor adjustments to ISDS in trade deal with Canada," 10 November 2014; "Germany's Gabriel says sees Berlin backing EU-Canada trade deal," REUTERS, 29 November 2014; "Euro protests trip up TTIP trade pact with US," REUTERS, 26 November 2014; "US multinationals could sue EU governments through CETA," EURACTIV, 20 November 2014; "French government will not sign TTIP agreement in 2015," EURACTIV, 17 November 2014.

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## BIOTECHNOLOGY

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# Foreign Companies Mull Options for Adapting to China GMO Import Policies

The world's largest seed-making firms, Syngenta AG and Dow AgroSciences, are reportedly putting in place tighter controls on US biotech seed sales as a result of Chinese import barriers around some of the genetically engineered crops in question. The sales will now come with strict planting and use instructions, the multinationals both said at the end of November.

The move comes as the latest step in an international trade saga on China's hesitation towards letting certain types of genetically modified corn enter its market. While imports of GMO crops are not banned outright in the Asian giant, they are subject to a strict approval process by Beijing.

US global food processing company Archer Daniels Midland (ADM) at the end of November filed a lawsuit against Swiss-based agribusiness firm Syngenta for losses resulting from the latter's sale of genetically engineered corn in the US, which has not yet won regulatory approval in China.

According to media reports, ADM has claimed that Syngenta's actions have resulted in "substantial economic losses and damages," after some US corn shipments were later turned away by Chinese customs following the detection of unapproved modified strains late last year.

ADM's suit suggests that the losses were a result of Syngenta's failure to properly manage and separate the modified corn in question from other varieties – a charge that a Syngenta spokesman has said is "without merit." The Swiss company added it strongly upholds "the right of growers to have access to approved new technologies."

The corn in question, dubbed Viptera, is geared towards preventing crop losses from certain pests. The biotech product represents around 30 percent of Syngenta's North American corn-seed sales.

The lawsuit is being increasingly watched by experts given its potential implications for the biotechnology debate and international trade policy, and is one of several cases filed in over 10 US states alleging losses of more than US\$1 billion for American farmers, due to China's reluctance in buying US corn following the discovery of the unapproved Viptera strain.

US corn exports to China fell by around 87 percent in the first nine months of 2014 compared with the previous year, according to US agriculture department data, though how much of that was due to the Viptera issue is unclear. China accounted for around 12 percent of the US total corn exports in 2012.

### Chinese public opinion

Chinese authorities have in the last several years wrestled with public concerns around genetically modified organisms while balancing a desire to tap into biotechnology to meet certain food security concerns. The Asian giant has not yet domestically cultivated any GM crops despite having invested billions of yuan in research on development in this area.



Regulatory processes for new types of foreign biotech have reportedly been slow. Earlier this year, Beijing suspended the import approval process for a genetically modified soybean saying that the public acceptance of GM crops was low.

In late September, the government unveiled a media campaign geared towards boosting support for GM crops in the hope of addressing public fears over the technology.

China's vice-minister of agriculture Yu Xinrong also [recently announced](#) his support towards removing a decade-old domestic ban on foreign investment into GMO research, following a move by the National Development and Reform Commission to include such research in an updated version of a draft catalogue of industries where international investments would be allowed.

This would, however, keep in place current restrictions on the actual development and growth of crops. The draft catalogue is now under consultation, which was due to end this Wednesday.

ICTSD reporting; "In the wake of China rejections, GMO seed makers limit US launches," REUTERS, 26 November 2014, "ADM Sues Syngenta Over Genetically Engineered Corn," THE WALL STREET JOURNAL, 19 November 2014, "China launches media campaign to back genetically modified crops," REUTERS, 1 October 2014.

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## AGRICULTURE

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# China Announces 2014-2015 Corn Stockpiling Scheme

China has revived its annual corn stockpiling programme for 2014-2015, now in its seventh consecutive year. The government will continue to purchase corn from farmers until at least April 2015, the State Administration for Grain [said](#) last week.

The move comes after analysts noted an apparent shift away from stockpiling earlier this year, with the introduction of a new policy for cotton.

### Annual stockpiling programme for corn

Beijing will offer farmers 2220-2260 yuan (US\$362-368) per tonne for farmers in its northeast provinces - the same price offered by last year's scheme - in an effort to support domestic prices and lift rural incomes.

China Grain Reserves Corp, also known as Sinograin, along with two other state-owned enterprises will join the stockpiling scheme.

Government officials have said that China is facing shortages in grain storage following abundant harvests over the last decade.

"There is serious shortage of storage space particularly in the northeast, where a large volume of grain has been stored in the open air," said Gen Shuhai, an official at the National Development and Reform Commission (NDRC), in comments reported by Reuters.

According to the State Administration for Grain, Beijing will also offer subsidies for constructing temporary grain storage facilities.

### A shift away from stockpiling?

Policymakers and analysts will likely be keeping a keen eye on China's agricultural purchases, particularly given the indications earlier this year that Beijing seemed to be moving away from stockpiling programmes.

Such schemes were notably absent from China's "No. 1 Central Document" at the beginning of 2014, which is the annual official document that outlines the country's agricultural policy. (See Bridges Weekly, [23 January 2014](#))

The Chinese government had decided to pilot a target price programme for cotton in place of stockholding. Nevertheless, rural development policy remains a complex political issue in China, home to almost 700 million farmers.

Beijing's push for state-owned enterprises to join the corn stockpiling schemes and subsidisation of storage facilities may be seen as running opposite to this trend.

With the release of next year's agricultural policy expected in January, stakeholders are expected to continue watching these developments closely moving into 2015.

ICTSD reporting; "China launches 2014/15 corn stockpiling scheme, prices unchanged" REUTERS, 26 November 2014.

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## EVENTS & RESOURCES

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# Events

### Coming Soon

5 December, London, UK. PROMOTING A CULTURE OF DEVELOPMENT AND INVESTMENT: LESSONS FROM THE POST-WAR ERA. This event, organised by Chatham House, will discuss the rise of the culture of world development, looking at the various post-war reconstruction and development projects of the 1940s through to the 1960s. The speaker – Giovanni Farese, an Assistant Professor of Economic History at the European University of Rome – will suggest that these projects hold valuable lessons that can still be applied to today's economic environment. To read the full agenda, please check Chatham House' [website](#).

8-9 December, Geneva, Switzerland. MULTI-YEAR EXPERT MEETING ON ENHANCING THE ENABLING ECONOMIC ENVIRONMENT AT ALL LEVELS IN SUPPORT OF INCLUSIVE AND SUSTAINABLE DEVELOPMENT, SECOND SESSION. The goal of this multi-year expert meeting session, which is being hosted by the UN Conference on Trade and Development (UNCTAD) is to exchange views and lessons learned on policies aimed at increasing the multilateral trading system's (MTS) contribution in fostering inclusive and sustainable development. This event, coming in the middle of UN efforts to elaborate a post-2015 development agenda and associated Sustainable Development Goals (SDGs) will address issues such as promoting an increased understanding of the MTS' role in this area, including its past contributions to the Millennium Development Goals (MDGs). More information can be accessed [here](#).

10-12 December, Geneva, Switzerland. TRADE AND DEVELOPMENT BOARD, SIXTIETH EXECUTIVE SESSION (LEAST DEVELOPED COUNTRIES). This UN Conference on Trade and Development meeting will discuss growth and structural transformation of least developed countries (LDCs) in the context of the planned post-2015 development agenda. The meeting will include an analysis of a recent report regarding the "least developed countries paradox" – in other words, the combination of strong economic growth seen in some of these countries over the past 14 years with slow poverty reduction and limited progress towards achieving the Millennium Development Goals. To learn more, please visit UNCTAD's [webpage](#).

11 December, Lima, Peru. TRADE AND CLIMATE CHANGE: EXPLORING A NEW AGENDA. This event, hosted jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the Economic Commission for Latin America and the Caribbean (ECLAC), will be held on the sidelines of the UN Framework Convention on Climate Change's annual Conference of the Parties in Lima, Peru. This particular session will focus on the recently launched Environmental Goods Agreement (EGA) negotiations – launched among a subset of the WTO's membership earlier this year – and the associated opportunities this may provide in enhanced technology diffusion and reduced trade barriers in this field. More information is available [here](#).

### 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.

8 -12 December: Geneva Week (Non-resident Members and Observers)

8 December: Trade Policy Review Body – Overview of Developments in the International Trading Environment

10 -11 December: General Council

### **Other Upcoming Events**

15 December, Washington, US and online. THE LONG RUN OUTLOOK FOR THE FEDERAL BUDGET: DO WE KNOW ENOUGH TO WORRY? The Hutchins Center on Fiscal and Monetary Policy at the Brookings Institution will hold a panel discussion focusing on the implications of budget uncertainty for fiscal policy. Questions to be covered include whether projections over a decade or longer provide unwarranted precision, and how much uncertainty might be involved. Building on this concept, discussants will ask how policies should be adapted to account for these uncertainties. This event will be webcast live. To register, please click [here](#).

16 December, Geneva, Switzerland. THE INTERNATIONAL MONETARY SYSTEM. This event, hosted by the Graduate Institute of International and Development Studies, will feature Atish Rex Ghosh, Assistant Director of the International Monetary Fund's (IMF) Research Department, as the main speaker. The meeting will focus on the development of the international monetary system, from the 1944 Bretton Woods Conference onward, and highlight potential future opportunities and solutions for today's challenges. A full event description, as well as a biography of the main speaker, can be accessed [here](#).

18 December, Beijing, China. BEIJING ANNUAL CONFERENCE ON THE WTO AND CHINA. This event is being jointly organised by the International Centre for Trade and Sustainable Development's China office, the University of International Business and Economics, and the China Society of WTO Studies. The conference – the thirteenth in a series – aims to provide a platform for experts, together with Chinese officials, to share their insights on what role Beijing can play in completing the Doha Round trade talks at the WTO, along with analysing the various FTA initiatives the Asian giant is involved in. To learn more, please visit ICTSD's [website](#).

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## Resources

**THE ACTA AND THE PLURILATERAL ENFORCEMENT AGENDA: GENESIS AND AFTERMATH.** Published by the Cambridge University Press, and edited by Pedro Roffe of the International Centre for Trade and Sustainable Development and Xavier Seuba of the Université de Strasbourg (Forthcoming for December 2014). This new book discusses the Anti-Counterfeiting Trade Agreement (ACTA), an effort that was undertaken with the goal of establishing a plurilateral legal framework for the enforcement of intellectual property rights. This book analyses both the context and the content of the proposed agreement, and features input from a broad range of experts who address different perspectives on the necessary balance between intellectual property enforcement and other economic and social interests. To learn more, please visit the publisher's [website](#).

**IMPACT OF DEMOGRAPHIC CHANGES ON INFLATION AND THE MACROECONOMY.** Published by Jong-Won Yoon, Jinill Kim and Junjin Lee for the International Monetary Fund (IMF) (November 2014). This working paper discusses how ongoing demographic changes are expected to alter the population's size and age composition, which will in turn affect the overall global economy. The authors also demonstrate changes in demographic variables over time and analyse how these can affect areas such as economic growth, inflation, and fiscal balances. The paper can be accessed via the IMF's [website](#).

**THE RELATIONSHIP BETWEEN SERVICES TRADE AND GOVERNMENT PROCUREMENT COMMITMENTS: INSIGHTS FROM RELEVANT WTO AGREEMENTS AND RECENT RTAs.** Published by Robert D. Anderson, Claudia Locatelli, Anna Caroline Müller, and Philippe Pelletier for the World Trade Organization (October 2014) Notwithstanding the existence of the WTO's plurilateral Government Procurement Agreement, the authors of this paper note that public procurement still remains effectively carved out of the global trade body's main multilateral rules. This paper investigates what this exclusion can mean, both on a systemic level and otherwise, from economic and legal perspectives. To read the full working paper, please click this [link](#).

**BRUSSELS BRIEFING ON TRADE: ALL YOU NEED TO KNOW FOR NOVEMBER 24-DECEMBER 8.** Published by viEUws (November 2014). This video by the EU policy broadcaster reviews a series of current international trade topics, including new efforts at increasing transparency surrounding the Transatlantic Trade and Investment Partnership (TTIP) talks, the recent WTO breakthrough on the implementation of the Bali package, and the ongoing negotiations to reach a Trade in Services Agreement (TISA) among a group of WTO members. The full video clip can be viewed [here](#).

**OECD ECONOMICS SURVEYS INDIA.** Published by the Organisation for Economic Co-operation and Development (November 2014). This new publication examines recent economic developments in India, policies and prospects, focusing on challenges and opportunities faced by the Asian country. Topics addressed range from labour market performance, quality of infrastructure, health, the manufacturing sector, and economic participation of women. For more information or a digital copy of the publication, please visit the OECD's [website](#).

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