

# BRIDGES WEEKLY

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## DISPUTES

# WTO Panel Finds US Revisions to "Dolphin-Safe" Tuna Labels in Conflict With Trade Rules

A WTO panel has released its highly-anticipated report on the US' compliance in its dispute with Mexico over "dolphin-safe" tuna labelling, finding that Washington has not made enough revisions to the previous labelling measure to bring it in line with global trade rules.

Despite this finding, the report issued on Tuesday did sustain Washington's right to ban tuna that has been caught through "setting" on dolphins – in other words, purposely encircling them to reach the tuna that swim below – from being eligible for the "dolphin-safe" label.

Back in 2012, the WTO Appellate Body had found that the US' original dolphin-safe labelling scheme violated core trade rules and discriminated unfairly against Mexican tuna products. (See Bridges Weekly, [16 May 2012](#))

In particular, the Appellate Body said that by excluding most Mexican tuna products from using the "dolphin-safe" label while allowing it for most tuna from the US and elsewhere, the measure modified competition conditions in the US market to the detriment of Mexican tuna products.

The 2012 Appellate Body ruling also found that, while the US measure fully addresses the adverse effects on dolphins – both observed and unobserved – resulting from setting on dolphins in the Eastern Tropical Pacific (ETP) area, it does not address mortality arising from other fishing methods in other areas of the ocean.

Therefore, the WTO's highest court said, the US measure was not even-handed and the detrimental impact on Mexican tuna products did not stem exclusively from a legitimate regulatory distinction.

The US subsequently introduced changes to the original labelling scheme in 2013, claiming that it had fully complied with the Appellate Body's rulings.

Mexico disagreed, asking that a compliance panel be established to review the WTO consistency of the revised labelling scheme.

### **Amended measure**

Pursuant to the 2013 "Final Rule," which introduced changes to the substantive labelling measure, tuna could only enter the US as "dolphin-safe" on the condition that it was accompanied by a certification that no nets were intentionally set on dolphins in catching the tuna, and that no dolphins were killed or seriously injured in the sets in which the tuna was caught.

Whereas the original measure applied the disqualification only inside the ETP, the "Final Rule" applied the eligibility requirement regardless of where the tuna was caught, i.e. inside and outside the Eastern Tropical Pacific (ETP), and the nationality of the fishing vessel.

However, other documentation and tracking and verification requirements essentially remained the same and continued to vary depending on where the tuna was caught, i.e. either inside or outside ETP. Mexican fishermen predominantly fish for tuna inside the ETP.

### **Mexico's claims**

Mexico challenged what in its view were discriminatory elements of the labelling scheme, namely the disqualification of tuna caught by setting on dolphins, and the different observer certification and tracking and verification requirements.

Mexico argued that the different observer certification and tracking and verification requirements which were unchanged under the "Final Rule" continued to discriminate against Mexican tuna and tuna products since these requirements were not similarly applied inside and outside the ETP.

In this week's report, the compliance panel notably decided to review the overall regulatory scheme – both old and new elements, taken as a whole – given that the 2013 Final Rule is an integral part of the labelling measure and interacts with the other allegedly unchanged elements of the policy.

### **Eligibility for label**

In the original dispute, the Appellate Body had said that the disqualification of tuna caught by setting on dolphins from the label fully addresses risks to dolphins, and that requiring the US to remove that ban would undermine the country's achievement of its desired level of protection.

The compliance panel therefore emphasised that the WTO-inconsistency of the original measure was due to a failure in addressing harm to dolphins caused by other methods of fishing in an even-handed manner.

The compliance panel affirmed that the US is entitled to disqualify tuna caught by setting on dolphins and was not persuaded that Mexico has raised any useful new evidence on the harm to the animal caused by alternative fishing methods that would require overturning this position.

### **Certification, tracking requirements**

The panel acknowledged that the substantive certification requirements included in the 2013 Final Rule works toward US compliance with the Appellate Body ruling.

However, regarding Mexico's concerns over the differences in certification, tracking, and verification requirements depending on where the tuna was caught, the panel said that these indeed subjected Mexican tuna to regulatory burdens unlike those faced by tuna from other countries.

In turn, this made it more difficult for Mexico's product to compete on the US market.

Regarding differences in certification requirements – namely the use of independent observers in addition to requiring captains' certification inside the ETP – the panel said that the US may legitimately draw distinctions based on the more systemic setting on dolphin inside the ETP compared to outside.

However, the panel noted, among other concerns, that in the absence of observers outside the ETP, the United States was not able to convince it that captains necessarily have the skills to certify whether dolphins have been killed or seriously injured. As a result, this made it difficult for the different certification requirements to be considered even-handed.

The panel was also unconvinced by the US' arguments for imposing different tracking and verification requirements, finding that the resulting detrimental impact to Mexican tuna did not stem exclusively from a legitimate regulatory distinction, as required by Article 2.1 of the WTO's Technical Barriers to Trade (TBT) Agreement.

That TBT provision requires members to ensure that technical regulations do not prevent imports from any country to receive less favourable treatment than their domestic counterparts or imports sourced elsewhere.

### **GATT questions**

The panel ruled that the amended tuna measure violated Articles I:1 and III:4 of the WTO's General Agreement on Tariffs and Trade (GATT) 1994, since the policy accorded less favourable treatment to Mexican tuna than their US equivalent, or those from other countries.

The differences in requirements for obtaining this "dolphin-safe" label in the revised tuna measure hurt Mexico's competitiveness on the US tuna market, the panel said, therefore putting Washington in violation of these same articles.

However, the US had also argued that, to the extent the amended tuna measure was inconsistent with the GATT, it was still justified under Article XX(b) and Article XX(g) of the same agreement.

The GATT Article XX exceptions outline a set of justifications under which WTO members may enact measures that would otherwise be illegal under international trade rules so long as these are used to fulfil greater public policy objectives. These include, among others, policies deemed necessary to protect human, animal, or plant life or health, as outlined under paragraph (b), or for natural resource conservation, under paragraph (g).

The panel sustained that the ban on applying the dolphin-safe label to tuna caught by setting on dolphins was justified under Article XX(g), since it related to the goal of conserving dolphins and was applied together with restrictions on domestic tuna production. The panel likewise ruled that this aspect of the amended tuna measure was applied by the US in a manner that did not violate WTO rules, and was therefore consistent with the chapeau of Article XX.

Separately, the panel ruled that both the different certification and tracking and verification requirements of the amended tuna measure were also justified under Article XX(g). However, since the measure was applied in an arbitrary and discriminatory manner, it did not meet the overall requirements needed for an Article XX exception and was therefore in breach of trade rules.

Citing judicial economy, the panel did not consider it necessary to rule on the US' defence under Article XX(b) on human, animal, or plant life or health.

### **Next steps**

Under a bilateral understanding between the two countries, either side may ask that the Dispute Settlement Body (DSB) adopt the compliance panel's report at a DSB meeting held at least 20 days after the report's circulation, unless an appeal is filed by one or both of the parties.

Should the report be appealed, the parties have agreed to work with the Appellate Body in an effort to have a final report within 90 days of the appeal.

ICTSD reporting.

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## CLIMATE CHANGE

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# EU Parliament Committee Signs Off on Deal Capping Crop-Based Biofuels

Members of the European Parliament's Environment Committee have signed off on the terms of a compromise deal to cap the use of food-based biofuels in the transport sector, moving the process into the final stages of completion.

The legislation, which is the result of negotiations with the Council of Ministers, would require that EU member states limit the use of "first generation" biofuels – those derived from crops grown on farmland – in transport to seven percent by the year 2020.

This percentage cap has been one of the main points of contention in the long-running biofuels reform talks. The same parliamentary committee had previously backed a six percent cap this past February. EU energy ministers, for their part, had earlier set their sights last year on a seven percent cap. (See Bridges Weekly, [5 March 2015](#))

Both suggested numbers are still less stringent than the five percent limit that the European Commission suggested in its original 2012 proposal to review EU biofuels policy.

Tuesday's parliamentary committee vote counted 51 members in favour, 12 against, and one abstention. Despite the margin of victory EU lawmakers noted that strong divisions still remain among member states, particularly on the approach to advanced biofuels.

"It was a very challenging file and we didn't achieve all we wanted to achieve," said EU parliamentarian Nils Torvalds, who is responsible for the biofuels dossier.

Emissions resulting from transport are [estimated](#) to account for nearly a quarter of the EU's greenhouse gas emissions – second only to energy – and have proved one of the most difficult types of emissions to reduce. Under current EU law renewables must account for at least 10 percent of each member state's energy consumption in transport by 2020.

### National targets for advanced biofuels

Under the deal's terms, the legislation must be enacted by EU member states by 2017. Within 18 months of the directive's entry into force, EU member states must set national targets for so-called advanced biofuels, which are derived from alternative sources such as seaweed and some forms of waste and residues.

While the legislation sets an "indicative" 0.5 percent target for the share of energy produced from "advanced" sources as part of the overall percentage of energy derived from renewables in transport, EU members can set lower targets under certain conditions.

These include, for instance, climatic constraints or showing proof that national policies are in place that provide equivalent funding to energy efficiency and electric transport initiatives. The same parliamentary committee in February had backed a 1.25 percent goal.

The shift away from crop-based biofuels and toward alternative sources has largely been driven by concerns among some stakeholders, particularly conservation and poverty reduction advocates, that using crop-based biofuels can exacerbate climate change while increasing pressure on food prices.

Although some of those fears have abated after the drop in food and agricultural prices since their 2011 peak, questions persist over whether the expansion of farmland and resulting deforestation needed to produce these crop-based biofuels can actually increase greenhouse gas emissions. This process is known as indirect land use change (ILUC).

However, some experts say that policies such as trade-distorting subsidies and market access barriers that affect fossil-based transport fuels should first be revised as ways to slash emissions. (See Bridges Weekly, [5 March 2015](#))

Given the questions over the impact of ILUC, biofuel suppliers will be required to report estimated emissions resulting from freeing up land to grow food crops after the land has been repurposed for crop-based biofuel production. This data will be sent to the Commission and EU members, with the Commission tasked to both report and publish it.

The EU executive will then need to report back to both parliamentarians and the Council on the potential to work in ILUC emissions factors into current sustainability criteria.

### **Mixed welcome**

Various EU-based conservation and poverty groups have already spoken in praise of the committee's vote, highlighting both some of the specific provisions of the new measure itself, as well as approving the apparent shift in future policy direction.

"The European Parliament and governments have finally decided to tone down a harmful biofuels policy that has only contributed to deprive poor people of food and accelerate the climate change it claims to fight," [said](#) Marc-Olivier Herman, a biofuels expert for Oxfam's EU branch.

Some industry groups such as the European Renewable Ethanol Association (ePURE), have also welcomed the result for providing policy certainty in the biofuels sector given the prolonged nature of the talks, despite calling some of the deal's terms "disappointing."

"While the proposed compromise contains some positive aspects, including a proposed 7 percent cap on conventional biofuels, the recognition of low-ILUC biofuels, and opens the door to the promotion of sustainable biofuels beyond 2020, ePURE believes that the process to close this file has fundamentally lost sight of its overall objective: to promote the best-performing biofuels," the group said in a press [statement](#).

According to some industry representatives, the distinction between low-ILUC and high-ILUC biofuels could be important for some exporters, who fear the new legislation could discriminate against their products.

Meanwhile, Brazilian sugarcane association UNICA raised questions over the outcome, with head of international affairs Geraldine Kutas telling Bridges that the group "regrets that the hard work done by MEPs in reaching an agreement on the 6.5 percent sub-target was not met with member states' approval."

"Against scientific and factual evidence, member states were regrettably concerned about the implications of a widespread use of higher bioethanol blends," Kutas added, saying that biofuels are still "the most viable solution" in decarbonising transport.

### **Next steps**

The next major date on the calendar for the biofuels deal will be a vote by the entire Parliament on 29 April. The text will then need approval from the EU Council of Ministers.

ICTSD reporting; "Lawmakers agree to limit food-based biofuels," EURACTIV, 14 April 2015; "EU imposes diet on food-for-fuel quotas," REUTERS, 14 April 2015.

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## GLOBAL ECONOMY

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# New Global Trade, Economy Stats Show Limited Growth in 2015, 2016

World merchandise trade is expected to increase in volume to 3.3 percent this year and 4.0 percent in 2016, according to new predictions released by WTO economists on Tuesday. The new figures show only slight increases from previous levels, with trade growth hitting 2.8 percent last year.

"Looking forward we expect trade to continue its slow recovery but with economic growth still fragile and continued geopolitical tensions, this trend could easily be undermined," WTO Director-General Roberto Azevêdo said in a statement announcing the new estimates.

The latest figures remain below the average of 5.1 percent trade growth since 1990 and pre-crisis average of 6.0 percent, the WTO said.

Among the factors keeping trade growth at modest levels last year and early this year are slowing GDP growth in emerging economies and an uneven recovery in advanced ones, the global trade body explained.

Geopolitical tensions have also played a role in dampening trade growth, such as the Ukraine crisis and resulting strained ties between Russia and various Western trading partners, along with the devastating Ebola crisis in West Africa.

Trade growth has traditionally held a two-to-one relationship with GDP growth. However, in the years since the global financial crisis, this has ceased to be the case, and WTO economists have noted that the two are now almost on par, making it increasingly difficult to forecast future figures.

Regarding the actual value of merchandise trade, those numbers paint a slightly different picture. The WTO says that the dollar value of this trade actually stagnated last year, with exports increasing by 0.7 percent to US\$18.9 trillion.

In his remarks on Tuesday, Azevêdo urged the withdrawal of protectionist measures and improvements in market access, along with calling for governments to "agree reforms to global trade rules."

The world is "not powerless in the face of this gloomy picture," the global trade chief said, highlighting the potential of trade in boosting economic growth and advancing development.

### IMF growth predictions unchanged

A separate report issued by the IMF the same day also indicated that the overall picture for the global economy shows uneven growth prospects, with advanced economies set to see stronger growth this year, while emerging and developing economies are expected to see weaker increases.

The international finance institution's predictions for global growth as a whole remain unchanged, with 3.5 percent estimated for 2015 and 3.8 percent in 2016.

These findings, included in the latest World Economic Outlook, suggested that advanced economies are set to see stronger growth this year than last, while the opposite holds for emerging market and developing economies.

IMF Managing Director Christine Lagarde cautioned last week during a [speech](#) in Washington that the “new mediocre” that she had warned about six months ago now risks becoming the “new reality,” calling for “all policy space and levers” for boosting growth.

Falling oil prices and exchange rate movements have also been cited by IMF officials, including Olivier Blanchard, the organisation's Economic Counselor and Director of Research, as having the potential for major impact on global prospects, though the effect will vary depending on a country's circumstances.

“Large movements in relative prices, whether exchange rates or the price of oil, creates winners and losers,” Blanchard [said](#) on Tuesday.

In this context, the new WEO has called for decisive output-focused policies to be implemented “urgently.” This includes, in the case of many advanced economies, accommodative monetary policy, as well as boosting infrastructure investment and enacting structural reforms.

For emerging market and developing economies, the WEO similarly raised the importance of structural reforms, such as easing trade and investment barriers or improving business conditions, depending on the need of the country involved. The report also highlighted the opportunity raised by the recent fall in oil prices to cut energy subsidies in lieu of “better-targeted” programmes.

“The proper menu differs by country. Given the short-term political costs associated with many of these reforms, the challenge will be to choose carefully among them,” Blanchard said.

### **IMF, World Bank Spring Meetings**

The new figures came just as the IMF and World Bank Spring Meetings prepare to kick off in Washington, which are slated to last from 17-19 April.

Along with discussing the prospects for the global economy, the event, which brings together the IMF's policy-setting International Monetary and Financial Committee and the joint World Bank/IMF Development Committee, is also expected to feature continued discussions on the World Bank's goal of ending extreme poverty by 2030, as pledged two years ago. (See Bridges Weekly, [25 April 2013](#))

World Bank President Jim Yong Kim [announced](#) last week a broad strategy aimed at reaching this objective, highlighting the importance of processes ranging from the elaboration of the Sustainable Development Goals (SDGs), the July Financing for Development (FfD3) conference in Addis Ababa, Ethiopia, and the UN climate talks in Paris this December as key opportunities for advancing global development.

“The decisions we make this year, and the alliances we form with other institutions in the years ahead, will help determine whether we have a chance to reach our goal of ending extreme poverty in just 15 years,” Kim said at the Center for Strategic and International Studies (CSIS) in Washington.

ICTSD reporting.



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## CLIMATE CHANGE

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# Ontario to Join North American Carbon Market

The Canadian province of Ontario unveiled plans on Monday to join California and Quebec's cap-and-trade system under the so-called Western Climate Initiative, in a bid to curb climate warming greenhouse gas (GHG) emissions.

Further details around permit prices and implementation timing will be finalised in the coming months, according to media reports.

"Climate change needs to be fought around the globe, and it needs to be fought here in Canada and Ontario," said Kathleen Wynne, Ontario's premier, in a [press release](#). Wynne added that the move would also help to secure a more competitive economy.

Cap-and-trade programmes work by setting a limit on emissions and issuing permits to covered industries in line with this mitigation target. Companies can then buy and sell these permits according to their relative mitigation efforts. In theory, this will lead to cost-effective emissions reductions, as firms with relatively low abatement costs will reduce emissions and sell surplus permits to firms with higher reduction costs.

The Western Climate Initiative (WCI) is a collaborative sub-national effort between seven US states and four Canadian provinces to implement emissions-reduction measures. The group has a regional GHG target of 15 percent below 2005 levels by 2020 and aims to achieve many of these reductions through its cap-and-trade programme.

With the addition of Ontario, Canada's second largest provincial GHG emitter, WCI's carbon market would cover some 61 million people.

California and Quebec linked their emissions trading schemes last year, in a world first, and the inclusion of the transport sector in this scheme from January makes it the world's third largest carbon market.

### Debated market tool

Ontario said that it planned to reinvest the funds raised through the cap-and-trade system back into further mitigation efforts. These could include, for example, projects related to household energy efficiency, increased public transport, and industrial abatement.

California, which is also part of the WCI, has estimated that it will raise US\$2 billion or more over the next two years through the market-based tool. However, a study by the University of California, Berkeley suggests that the system is not without some costs, estimating that it will add around 2.6 cents per litre to the price of gasoline.

The use of market-based mechanisms to tackle climate change and set a price on carbon have been a much-debated tool at regional, national, and international levels and the debate differs according to the context. (See Bridges Weekly, [19 February 2015](#))

Nevertheless, as of February, there are 17 emissions trading schemes [in place](#) on four continents, covering 35 countries, 12 states or provinces, and seven cities. Together these jurisdictions account for around 40 percent of global GDP.

In addition, many more jurisdictions are planning or considering the introduction of cap-and-trade schemes, including China where a move to a national emissions trading scheme is scheduled for 2016. With an expected coverage of three to four billion tonnes of carbon dioxide by 2020, China would form the world's largest carbon market. (See Bridges Weekly, [27 November 2014](#))

In a national climate action plan recently submitted to the UN climate talks, Mexico said that it could raise the level of its post-2020 mitigation ambition if countries set an international price on carbon and ensured fully functional bilateral, regional, and international market mechanisms. (See BioRes, [13 April 2015](#))

Countries have agreed that individual national plans will form the basis of a new multilateral emissions-cutting deal due to come into effect at the end of the decade.

### **Sub-national action**

Following hot on the heels of Ontario's announcement, representatives from Canadian provinces and territories gathered in Quebec City on Tuesday reaffirmed a commitment to fight climate change, but did not make mention of specific goals in their joint declaration.

The premiers agreed on the need to price carbon and transition to a lower-carbon economy through appropriate initiatives, signalling a lack of consensus between provinces over which tools to deploy to tackle climate change, according to some reports.

Cities and regions are increasingly engaging in climate policy and action. In countries such as Canada and the US, for example, the WCI is touted by some experts as a response to the political hurdles around creating national carbon markets.

National governments are primarily held responsible for climate mitigation efforts at the international level. Increasingly, however, subnational as well as non-state actors have become involved in supporting the UN multilateral talks.

Last Thursday, for example, 100 city mayors from around the world adopted a sustainable cities' [declaration](#) that includes a pledge to curb urban greenhouse gas emissions.

In January, UN Secretary General Ban Ki-moon, as well as the outgoing and incoming presidents of the UN Framework Convention on Climate Change (UNFCCC)'s annual meet, in January released a [joint declaration](#) pledging to support such action.

The incoming French presidency has also reportedly expressed an interest in providing space to recognise subnational and non-state action at the pivotal December UNFCCC meet, due to be held in Paris, where countries are slated to agree to the new global climate deal.

ICTSD reporting; "Ontario joins cap-and-trade programme," THE FINANCIAL TIMES, 13 April 2015; "Ontario confirms it will join Quebec, California in carbon market," REUTERS, 13 April 2015; "Quebec Climate Summit: Premiers Urge Feds to Take More Action," THE HUFFINGTON POST, 14 April 2015; "100 mayors adopt 'Seoul Declaration' on climate change," RTCC, 11 April 2015.

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## CLIMATE CHANGE

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# Australia Finishes China Solar Dumping Probe, Decides Against Duties

Australia's Anti-Dumping Commission has published the results of its probe into the alleged dumping by Chinese companies of crystalline silicon photovoltaic (PV) solar panels and modules onto the domestic market, following a nearly year-long investigation.

The regulator found that PV modules or panels exported from China between during the period 1 July 2012 to 31 December 2013 were sold in Australia at dumped prices – in other words, sold abroad at prices below their normal value. The report identified four primary Chinese companies involved, including Trina Solar and ET Solar.

The Commission also found, however, that injury to Australian industry from these actions was negligible and therefore has decided not to pursue further action. The decision implies that the anti-dumping probe will now be wound up without the imposition of any duties on the Chinese goods in question.

### No domestic injury

The investigation, launched last May, was prompted by a complaint filed by Tindo Manufacturing Party Ltd., a manufacturer of crystalline silicon photovoltaic modules and panels. (See Bridges Weekly, [22 May 2014](#))

The wafers and cells used in these modules and panels; portable solar chargers consisting of less than six cells that are used to charge batteries or provide electricity to devices; and PV products that are permanently integrated into electrical goods not used for power generation were all excluded from the Australian probe.

The South Australia-based company said last year that the alleged dumping of certain PV modules and panels had caused material injury, through the loss of sales revenue, price depression and suppression, loss of profit, and reduced profitability.

The Commission said its decision not to pursue these duties had been influenced by the small size of the dumping margins and the fact that Tindo's primary products were alternating current (AC) PV modules or panels, while the imports from China were found to be predominantly direct current (DC) PV modules.

The Commission's investigations also found that AC modules were a premium product and commanded a higher price than the imported DC modules.

Companies have 20 days to respond to the report before the case is closed. Speaking with journalists, Tindo Managing Director Adrian Ferraretto said that the company was evaluating the report and is considering its next move.

Over two-thirds of Australia's solar module imports come from China, according to some analysts, who had cautioned against imposing the duties in order to avoid costs for downstream users.

Meanwhile, investment in Australian renewable energy more generally plummeted last year, falling from US\$2.1 billion in 2013 to US\$330 million. Some industry representatives

told the Financial Times earlier this month that the figures reflected uncertainty around the future of the country's renewable energy target (RET).

### **Booming Chinese solar market, trade spats**

Elsewhere, global investment in renewable power [reportedly](#) surged in 2014, hitting US\$270.2 billion, nearly 17 percent higher than the previous year. According to the UN-sponsored data, this clean energy investment boom was driven partly by significant solar installations in China and Japan.

Investment in China's solar sector reached record levels last year totalling up to almost US\$40 billion, up by 45 percent on the previous year. Utility-scale solar projects – with more than one megawatt (MW) capacity – made up around three quarters of this investment.

The recent Australian probe, however, follows a series of trade spats in recent years centred on China's booming renewables sector.

The US has imposed hefty duties on Chinese and Taiwanese solar product manufacturers after an investigation concluded last December found evidence of unfair trade practices. (See BioRes, [29 January 2015](#))

Last month, Canada imposed [preliminary duties](#) ranging from 9.14-286.1 percent on certain photovoltaic modules and laminates exported by Chinese companies after finding evidence of alleged dumping and unfair subsidisation. The final decision on these duties will be made by the Canadian International Trade Tribunal in the next four months.

The EU, which in 2013 reached a "price undertaking" arrangement with Beijing on alleged dumping and subsidisation of Chinese-made solar panels, in January re-opened another anti-dumping investigation into imports of Chinese solar glass. Solar glass is used primarily to make solar panels, though it can also be used in furniture and for horticultural purposes.

Although the solar glass market is considerably smaller than that for solar panels, some clean energy experts have suggested that the move could reignite tensions between the EU and China, while others warn that a hike in duties would increase costs for European solar manufacturers. (See Bridges Weekly, [15 January 2015](#))

ICTSD reporting; "Solar panel imports from China not harming Australian industry-regulator," REUTERS, 9 April 2015; "Canada Imposes Tariff on Imported Chinese Solar Equipment," BLOOMBERG BUSINESS, 6 March 2015.

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## DISPUTES

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# China Files WTO Challenge Against EU on Poultry Imports

China filed a formal WTO complaint against the EU last week, challenging the measures that resulted from the 28-nation bloc's move in 2006 and again in 2009 to negotiate changes to the tariff concessions listed in its goods schedule involving certain poultry products.

Under WTO rules, members are allowed to negotiate modifications to their existing goods schedules, subject to certain requirements that are outlined in Article XXVIII of the General Agreement on Tariffs and Trade (GATT).

For instance, these talks must be conducted with any other WTO member that was involved in negotiating the initial concession, along with any other member determined to have "a principal supplying interest," and be subject to consultation with any member deemed to have a "substantial interest."

The EU ultimately negotiated and reached deals with Brazil and Thailand on both occasions, with the first agreements reached with the countries involved in 2006 and the second time in 2012. The latter changes took effect in March 2013.

Brasilia and Bangkok had both been considered to have "a principal or substantial supplying interest" in the products that would be affected by the changes in Brussels' schedule.

As Beijing was not deemed to have a "principal or substantial supplying interest" in the goods under negotiation – given that the "reference period" involved covered the time in which the EU restricted imports of poultry from China due to concerns over avian flu – it was not involved in the negotiation or consultation process, which is among the several criticisms listed in the Asian country's request for consultations.

China also says that the resulting deals the EU reached in both 2006 and 2012 did not maintain a "general level of reciprocal and mutually advantageous concessions no less favourable to trade" than those existing prior to the changes, as required by Article XXVIII, according to a copy of the consultations request seen by Bridges.

### **Resulting quotas discriminatory, China says**

Along with criticising the negotiating and consultation procedure itself, China has also challenged the outcome of the EU's talks with Brazil and Thailand, which it claims led to Brussels assigning tariff-rate quotas that are "almost entirely or even entirely reserved" for Brasilia and Bangkok, as well as out-of-quota rates "significantly" above the bound rates prior to the changes.

Specifically, Beijing has cited a serious of provisions under the GATT's Article XIII, which deals with the non-discriminatory administration of quantitative restrictions. For example, China says that the country-specific tariff-rate quotas that the EU agreed with Brazil and Thailand give the latter two countries an advantage in market access that discriminates against fellow WTO members.

Furthermore, China claims, the level of quota given to Brazil and Thailand violates the WTO provision that requires aiming for a "distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions."

Chen Fuli, Deputy Director of the Department of Treaty and Law in China's Ministry of Commerce (MOFCOM), told CCTV that the Asian country's products "make up over 25 percent of the EU's imports," arguing that it is "unfair" that China is allocated only four percent of the quota.

Under WTO rules, the two sides must now hold consultations for a minimum period of 60 days in an effort to reach a mutually agreed solution. Should these talks fail to produce such an outcome, China can then ask the global trade body to establish a panel to hear the complaint.

ICTSD reporting; "China sues EU at WTO over poultry tariffs," CCTV, 9 April 2015.

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## WTO Appellate Body Grants US Victory in Vietnam Shrimp Duties Appeal

The WTO's highest court has rejected Vietnam's claims in its appeal over how the US implements adverse rulings by the global trade body in the area of trade remedies. The issue had been raised in the context of a previous panel ruling concerning US anti-dumping measures on certain frozen warmwater shrimp from the Asian country.

The Appellate Body's report was issued on 7 April, over three years after WTO dispute settlement proceedings first began in February 2012. In its original consultations request, Vietnam had challenged the determination and practices of the US Commerce Department in imposing these anti-dumping measures, which are meant to counter instances where goods are sold abroad at prices below their normal value.

### Mixed panel ruling

The original case ([DS429](#)) had brought back to the fore the often controversial US practice of zeroing, which has been the subject of numerous WTO disputes that Washington has repeatedly lost. Zeroing is a method of calculating anti-dumping duties, which involves ignoring certain data when calculating them. Specifically, it "zeroes out," or ignores, instances where the good in question is actually being sold at a higher price in the US than in its home market.

Along with challenging the use of zeroing in this case, another issue raised in Hanoi's original 2012 complaint included Washington's decision to assign a rate to an "NME-wide entity" comprised of producers/exporters that do not demonstrate sufficient independence from government control. NME refers to non-market economies.

The panel granted Vietnam a mixed victory in both of those aspects last November, which the country did not appeal.

However, Hanoi did challenge the panel's finding regarding a specific element of US law, namely Section 129(c)(1) of the Uruguay Round Agreements Act (URAA), which establishes a mechanism regarding the implementation of adverse recommendations and rulings by the WTO's Dispute Settlement Body (DSB) concerning trade remedies, such as anti-dumping duty actions.

The panel had found that this US law was not inconsistent with global trade rules, which Hanoi then asked the Appellate Body to reconsider.

### WTO compliance

The provision of the US law at issue addresses the question of when revised trade remedy determinations – meant to comply with WTO dispute panel or Appellate Body findings – take effect. The law provides that Section 129 determinations apply to imports recorded on or after the date when the US Trade Representative (USTR) directs the Commerce Department to take compliance actions.

Vietnam had claimed before the panel that this law was inconsistent "as such" with the WTO's Antidumping Agreement, since it precluded US authorities from implementing DSB recommendations with respect to "prior unliquidated entries" – in other words, those imports made prior to the revised determinations that remained unliquidated.

Washington operates a retrospective system for assessing anti-dumping duties. Following findings of dumping and domestic injury, importers are requested to put aside cash deposits at rates equal to the calculated dumping margins for future imports.

On an annual basis, interested parties may request US authorities to conduct an administrative review of their imports at the end of that particular year. In these reviews, the Commerce Department recalculates import dumping margins. These new margins are based on actual imports during the 12-month period reviewed and become the "final" duty rate for those imports.

At the time of the panel proceedings, the US agency had completed seven administrative reviews in which it had calculated the total amount of duties owed for imports during each review period. Vietnam argued that some of these entries remained unliquidated.

The US had argued that Section 129 is not the only way of implementing DSB recommendations and that Washington has in the past assessed and liquidated prior unliquidated entries in a manner consistent with WTO rules by using other mechanisms.

The panel found that Vietnam had failed to establish that Section 129(c)(1) precluded extending the benefits of implementation to prior unliquidated entries, and therefore Vietnam had not established that this law was inconsistent "as such" with WTO rules.

### **Objective assessment**

The Appellate Body rejected Vietnam's claim that the panel acted inconsistently with Article 11 of the DSU, which provides that a dispute panel should make an objective assessment of the matter at hand.

Hanoi had taken issue with the panel's finding that Vietnam had failed to establish that Section 129(c)(1) precludes "extending the benefits of implementation" to prior unliquidated entries, and therefore deeming that Hanoi had not established the law's inconsistency "as such" with WTO anti-dumping rules.

According to Vietnam, the panel applied an "incorrect analytical framework" on this subject by requiring it to demonstrate that the above-mentioned problem is seen in all circumstances.

The Appellate Body said that the legal standard involves reviewing whether Vietnam had shown that this provision of US law necessarily operates, at least in certain circumstances, to preclude implementation of DSB recommendations and rulings.

Given the evidence examined by the panel, including alternative mechanisms available for "prior liquidated entries" raised by the US, the Appellate Body found that the panel should not be faulted over how it assessed the evidence in making its conclusions.

Vietnam also claimed, under the same DSU provision, that the panel failed to conduct a holistic assessment in ascertaining the meaning of Section 129(c)(1). However, the Appellate Body deemed that the panel had properly considered the relevant elements of the US domestic legal system presented by the parties.

Within the scope of Vietnam's appeal, the Appellate Body did not find the US had acted inconsistently with its WTO obligations and therefore did not make any new recommendations to the DSB. Washington will, however, need to bring those measures that were found to be WTO-illegal by the panel last November into compliance with global trade rules.

ICTSD reporting.



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## Guatemala Lodges Appeal in Peru Agricultural Duties Case

Guatemala formally submitted a notice of appeal earlier this month in its WTO case against Peru's additional duties on certain agricultural imports ([DS457](#)), raising questions over a series of legal findings in last December's dispute panel ruling. The move came within days of Lima's submission of its own appeal on the subject.

At issue in the dispute is Peru's Price Range System, or PRS, which determines duties based on a series of factors. These include a reference price that reflects international market prices for a good, as well as a range involving a price ceiling and floor, which is established by international prices over the last 60 months. The duties primarily affect rice, sugar, maize, milk, and certain dairy products.

The panel had largely ruled in Guatemala's favour late last year by finding that those duties constituted "variable import levies" in violation of global trade rules, particularly those outlined under Article 4.2 of the Agreement of Agriculture. (See Bridges Weekly, [4 December 2014](#))

The panel had also ruled against Peru's claims regarding Guatemala's alleged violation of its "good faith" obligations by launching a WTO dispute. While the two trading partners had negotiated an FTA that permitted the system of duties used by Peru, that deal is not currently in force.

The case has thus drawn wide attention in the trade community, given the growing questions over how obligations taken by WTO members under free trade deals interact with their existing commitments at the global trade body. While these issues were raised in Peru's appeal notice, the FTA dimension of the dispute is not discussed in Guatemala's submission. (See Bridges Weekly, [2 April 2015](#))

### Minimum import price

Despite disagreeing with Lima on the above-mentioned points, the panel had also denied Guatemala City's claim that the additional duties under the PRS constituted a "minimum import price" or a border measure "similar to a minimum import price" within the meaning of the same legal provision – a finding which Guatemala is now challenging in its appeal.

First, Guatemala has challenged the legal standard that the panel applied in defining measures that constitute a "minimum import price," deeming this standard "excessively narrow" as it only includes measures applied with respect to the actual transaction value of each shipment of imports.

Furthermore, Guatemala says, the panel did not consider that the PRS' design, structure, and operation entail an implicit minimum threshold that affords a specific type of protection, one that is not provided by ordinary specific duties.

Guatemala also argues that the panel erred in its analysis of whether the measure at issue was "similar to a "minimum import price," given that the panel applied the same legal standard for both concepts.

Based on that interpretation, the panel had found that the measure at issue was not “similar” to a minimum import price, given that the duties system did not prevent imports from entering the Peruvian market at prices under a certain threshold.

However, Guatemala holds that the PRS’ setup and operation demonstrates the existence of an “explicit threshold,” namely the floor price itself, as well as an “implicit threshold,” which consists of the lowest transaction of the previous fortnight plus the additional duties generated by the PRS.

Under WTO rules, the Appellate Body now has 90 days from the date of appeal to issue its report. While it can review aspects of law – such as legal interpretation – it generally will not interfere with factual findings.

ICTSD reporting.

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## EVENTS & RESOURCES

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# Events

### Coming Soon

13-17 April, New York, US. 48<sup>TH</sup> SESSION OF THE COMMITTEE ON POPULATION AND DEVELOPMENT. The UN Department of Economic and Social Affairs will organise the 48<sup>th</sup> Session of the Committee on Population and Development (CPD 48), which will convene on the theme "realising the future we want: integrating population issues into sustainable development, including the post-2015 development agenda." The conference seeks to address population-related issues and their role in the post-2015 agenda, and will review potential efforts to further implement the Programme of Action of the International Conference on Population and Development (ICPD), a sustainable development policy last reviewed in 2012. For more information, please visit the event [website](#).

16 April, Washington, US. SCALING UP FINANCE FOR CLIMATE ACTION: A PUBLIC-PRIVATE DIALOGUE. The World Bank will host this event at its Washington headquarters to provide professionals from the government, international financial institutions, civil society, and the private sector an opportunity to discuss how to close the climate finance gap and allocate financing towards creating a low-carbon, sustainable economy. The dialogue aims to foster new ideas and policy suggestions in preparation for the 21<sup>st</sup> session of the Conference of Parties (COP 21) to the UN Framework Convention on Climate Change (UNFCCC) in Paris later on this year. For more information about this event, please visit this [website](#).

16 April, Washington, US. ALIGNING THE FINANCIAL SYSTEM WITH SUSTAINABLE DEVELOPMENT. This event, co-hosted by the World Bank Group and the United Nations Environment Programme (UNEP) Inquiry into the Design of a Sustainable Financial System, will draw from the findings of the UNEP Inquiry to examine how innovative practices can be used to create a financial system in line with sustainable development. A panel of experts will discuss recent innovations from leading central banks and international financial institutions and analyse how these innovations can contribute to the financing of sustainable development efforts. For more information, please visit the event [website](#).

17 April, Geneva, Switzerland. THE EVOLVING LANDSCAPE OF CLEAN ENERGY GOVERNANCE: IMPLICATIONS FOR INTERNATIONAL TRADE. This event, organised jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the Energy Charter Secretariat, will discuss the changing energy governance landscape, particularly in light of the expected adoption of the International Energy Charter in May and the discussions among a set of WTO members for an Environmental Goods Agreement (EGA). To learn more about this policy dialogue, which will be webcast, please visit the ICTSD [website](#).

17-19 April, Washington, US. 2015 SPRING MEETINGS OF THE WORLD BANK GROUP AND INTERNATIONAL MONETARY FUND (IMF). This annual event brings together the IMF's International Monetary and Financial Committee and the joint World Bank-IMF Development Committee for a series of discussions reviewing the progress on the work of the two international finance institutions. Along with those two committees, the meeting is also attended by thousands of government officials, reporters, civil society representatives, and members of academia and the private sector. For more information about this event, please visit this [website](#).

19-20 April, Washington, US. MAJOR ECONOMIES FORUM ON ENERGY AND CLIMATE (MEF). The Forum, implemented by US President Barack Obama in 2009, convenes multiple times a year to facilitate discussion among major developed and developing countries with regards to furthering efforts against climate change. There are currently 17 major participating economies including: Australia, Brazil, Canada, China, the EU, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russian Federation, South Africa, the UK and the US. The MEF plans to meet four times in 2015 to continue evaluating ways to transition to cleaner energy and a green economy. For more information, please visit this [website](#).

20 April, online. SUSTAINABLE URBAN MOBILITY IN DEVELOPING COUNTRIES 2015. This twelve-week online course will be held by the United Nations Institute for Training and Research (UNITAR) in partnership with the German Agency for International Cooperation (GIZ) and is geared towards urban and transportation planners, local policymakers, and international organisation leaders involved in the transport sector. The objective of the course is to enable decision makers and urban and transportation planners to design and implement policies that advance sustainability in urban transport in developing countries. For more information about the course, please visit this [website](#).

20-21 April, New York, US. ECOSOC SPECIAL HIGH-LEVEL MEETING WITH THE WORLD BANK, IMF, WTO AND UNCTAD. Representatives from the Economic and Social Council (ECOSOC), the World Trade Organization (WTO), and the UN Conference on Trade and Development (UNCTAD) will convene at this high-level meeting to discuss issues related to the theme "Coherence, coordination and cooperation in the context of financing for sustainable development and the post-2015 development agenda." This forum will allow stakeholders the opportunity to review the objectives of the upcoming Third International Conference on Financing for Development (FfD3) in Addis Ababa, Ethiopia and the subsequent Post-2015 Summit in New York. For more information regarding this event, please visit this [website](#).

22-23 April, Dubai, United Arab Emirates. WORLD GREEN ECONOMY SUMMIT 2015. The World Green Economy Summit 2015 (WGES 2015), hosted by the Dubai Supreme Council of Energy (DSCE), will direct discussion towards the theme 'The Global Green Economy'. The summit aims to establish Dubai as the 'capital of the green economy' and the WGES as the primary international platform for green economy action. The conference also looks to follow up on the commitments made at WGES 2014 set out in the Dubai Declaration while building strong linkages to the UN Climate Agreement 2015 through the Road to Paris agenda launched in 2013 and the 2015 Sustainable Development Goals (SDGs). For more information about this event, please visit this [website](#).

23 April, Geneva, Switzerland. SEMINAR ON TRADE POLICIES, VALUE CHAINS AND DEVELOPMENT. This event, which will be held at the World Trade Organization, is co-organised by the International Centre for Trade and Sustainable Development (ICTSD) and the Organization for Economic Co-operation and Development (OECD). The seminar will draw from recent empirical work concerning global and regional value chains (GVCs and RVCs) to gain a better understanding of their current role in the marketplace and their potential role in advancing sustainable development. Speakers will look specifically at using trade-related policies to promote GVC and RVC participation in a way that contributes to sustainable development. For more information about this event, please visit this [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.

21 + 23 April: Trade Policy Review Body – Australia

21 April: Committee on Import Licensing

22 April: Dispute Settlement Body

### **Other Upcoming Events**

28 April, Geneva, Switzerland. TRADE AND GREEN ECONOMY HIGH-LEVEL PANEL AND HANDBOOK LAUNCH. This event will mark the launch of the Trade and Green Economy Handbook, a joint publication of the United Nations Environment Programme (UNEP) and the International Institute for Sustainable Development (IISD). At the meeting, a high-level panel will address emerging issues at the nexus of international trade and the environment while looking at how these issues will play out in the post-2015 development agenda. The Handbook identifies linkages between green economy and trade by defining the concept of the green economy, analysing recent trade agreements, and evaluating global value chains and international trade dynamics. For more information on this event, please visit this [website](#).

28-29 April, Bangkok, Thailand. WIPO/ESCAP REGIONAL FORUM 'TOWARDS SUSTAINABLE DEVELOPMENT: PARTNERSHIPS FOR INNOVATION AND TECHNOLOGICAL CAPACITY BUILDING IN THE LEAST DEVELOPED COUNTRIES OF ASIA AND THE PACIFIC REGION'. Organised by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) in conjunction with the World Intellectual Property Organization (WIPO), this event will explore ways to enhance the capacity of Least Developed Countries (LDCs) in areas of science, innovation, and technology within the context of sustainable development objectives. The forum will consider a proposed multi-year LDC-UNESCAP-WIPO cooperation framework for partnership in capacity building efforts in line with contributing to sustainable development in LDCs. For more information on this event, please visit this [website](#).

8-9 May, Martinique. ISLAND ENERGY TRANSITIONS: PATHWAYS FOR ACCELERATED UPTAKE OF RENEWABLES. The International Renewable Energy Agency (IRENA) and the French government, in cooperation with the regional government of Martinique, have organised a meeting on advancing the usage of renewables on islands. The forum will focus on topics such as investment potential for renewable resources, the reduction of electricity costs using waste-to-energy systems, and the implementation of renewable-based desalination, which transforms sea water into fresh, usable water. The meeting will also look at the challenges, including high installation costs and small market size, faced by islands in their efforts to transition to renewable energy. For more information about this event, please visit this [website](#).

20-21 May, The Hague, The Netherlands. INTERNATIONAL ENERGY CHARTER MINISTERIAL. During this two-day event, those delegations that are authorised to approve/sign the International Energy Charter will do so during this ministerial conference. This document serves as a declaration of political intent, with the goal of improving energy cooperation among those who have signed it. The charter was negotiated among approximately 80 states throughout 2014. To learn more about this event, please visit the International Energy Charter's [website](#).

30 June – 2 July, Geneva, Switzerland. FIFTH GLOBAL REVIEW OF AID FOR TRADE: REDUCING TRADE COSTS FOR INCLUSIVE, SUSTAINABLE GROWTH. This event, hosted at WTO headquarters, will focus on the various actions underway to reduce trade costs, at levels ranging from the national, bilateral, regional, and multilateral, as well as the private sector and non-governmental. Participants will be asked to consider which actors are

involved in what; how the issue of trade costs is being addressed by national governments and regional organisations in their planning; and whether sufficient progress has been made, and if not, how to improve it. To learn more, visit the WTO [website](#).

24-28 August, The Hague, Netherlands. SUMMER PROGRAMME ON INTERNATIONAL AND EUROPEAN ENVIRONMENTAL LAW. Organised by the T.M.C. Asser Instituut in cooperation with the European Environmental Law (EEL) Network and The Hague Environmental Law Facility (HELF), the second Summer Programme on International and European Environmental Law consists of a five-day programme of interactive lectures and a study visit to the International Court of Justice. This year's programme aims to enhance practical knowledge about climate change in the context of the legal aspects regarding sustainable energy, the current state of sustainable finance, the role of trade agreements in promoting sustainability, and other related topics. For more information about the programme, please visit this [website](#).

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## Resources

PROMOTING CLIMATE-RESILIENT PEACEBUILDING IN FRAGILE STATES. Published by the International Institute for Sustainable Development (IISD) (April 2015). According to this paper, fragile states are often most affected by climate-induced conflicts due to their high economic reliance on climate-dependent sectors, such as rain-fed agriculture, as well as their histories of political instability, conflict, and poverty. This report intends to provide guidance into how to achieve climate-resilient peacebuilding and conflict-sensitive climate change interventions in order to further the sustainable development of fragile states. The authors draw from desk-based research, practitioner surveys and interviews, as well as practitioner dialogue from a workshop held in Nairobi in January to examine the challenges associated with fragile states and offer insight into how to overcome them. The full paper can be accessed [here](#).

WORLD ECONOMIC OUTLOOK 'UNEVEN GROWTH: SHORT- AND LONG-TERM FACTORS. Published by the International Monetary Fund (IMF) (April 2015). The biannual IMF report finds that potential output growth has declined in recent years for advanced and emerging market economies as a consequence of the global financial crisis. While the publication suggests that growth in advanced economies will increase in the coming years, it projects that growth in emerging economies growth will decline due to weak investment, lower productivity growth, and an aging population. The report looks closely at investment, specifically private fixed investment in advanced economies, and recommends that countries address the weaknesses in their economic activity in order to revive growth in private investment. The full report is available [here](#).

AGRICULTURAL TRADE AND DEVELOPMENT: A VALUE CHAIN PERSPECTIVE. Prepared by the World Trade Organization (WTO) (April 2015). This working paper identifies the recent changes in global agricultural and food trade and analyses their important implications for economic development. The publication recognises major changes such as rapid growth and structural modification of agri-food trade, higher consolidation and vertical coordination in food supply chains, increased and volatile food prices, and higher public and private food standards. The authors examine how these changes affect developing countries, both in terms of their engagement in global agricultural trade as well as their economic development progress in rural areas. The full report can be accessed [here](#).

ESTABLISHING A WORKABLE FOLLOW-UP AND REVIEW PROCESS FOR THE SUSTAINABLE DEVELOPMENT GOALS. Published by the Overseas Development Institute (ODI) (April 2015). According to this report, a key criticism of the Millennium Development Goals (MDGs) was its allegedly weak follow-up and review system. The authors look to improve on such a review framework for the proposed Sustainable Development Goals, which are to be adopted at a United Nations summit later this year following intensive negotiations. The publication advises that review processes should involve all stakeholders and incorporate existing global, regional, and national measures. The report also stresses the need for universal endorsement and cooperation in applying the SDGs to all peoples using what the authors refer to as "differentiated applications" of sustainable development targets. The full report can be accessed [here](#).

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International Centre for Trade  
and Sustainable Development  
Chemin de Balexert 7-9  
1219 Geneva, Switzerland  
+41-22-917-8492  
[www.ictsd.org](http://www.ictsd.org)

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Contributors to this issue are Sofia Alicia Baliño,  
Kimberley Botwright, Yaxuan Chen, Stephanie  
Lind, and Adriana Motta. This edition of Bridges  
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Alicia Baliño.

The Publisher and Director is Ricardo Meléndez-  
Ortiz. The Editor in Chief is Andrew Crosby.  
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