

# BRIDGES WEEKLY

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## WASHINGTON

### US Senate Trade Debate Approaches Critical Vote

The past week has marked a hectic period in Washington political circles, with US Senate lawmakers putting forward a flurry of amendments to proposed trade legislation ahead of a key vote expected later this week.

Senate Majority Leader Mitch McConnell announced on Tuesday evening that he would be moving to limit debate on the trade bill, setting the stage for a Thursday cloture vote. Once [cloture](#) is invoked, the Senate will have up to 30 additional hours to continue debate on the bill. Cloture requires meeting a 60-vote threshold, out of the 100 lawmakers that make up the Senate.

Though the Senate is due to go into recess on 22 May, McConnell has warned that he could keep that chamber in session longer if necessary in order to ensure a vote to pass the trade legislation itself, known as Trade Promotion Authority (TPA).

"The Senate will finish its work on trade this week, and we will remain in session as long as it takes to do so," McConnell said on Monday in [outlining](#) that chamber's plans for the week.

The Republican senator from Kentucky also criticised the "Far Left's strategy of wasting time on trade for its own sake," particularly after the delays seen last week in formally opening debate on the legislation. (See Bridges Weekly, [13 May 2015](#))

The TPA legislation under consideration sets out US principal negotiating objectives in trade deals, and allows for completed agreements to be submitted to Congress for a straight up-or-down vote, without the possibility of amendment. The previous version of TPA was enacted in 2002 and expired in 2007.

#### Amendment process

Since senators voted last week to begin debate on TPA, over [150 amendments](#) have been tabled by lawmakers on a broad series of topics.

At press time, votes had been held on a handful of these amendments. These involved an amendment aimed at striking Trade Adjustment Assistance (TAA) – a programme aimed at providing support to domestic workers displaced by trade – from the TPA legislation, as well as an amendment including religious freedom as an overall negotiating objective. The former failed, while the latter was approved.

How many of the various other amendments put forward will come to a vote has been put in question by the planned Thursday cloture vote on the overall TPA bill, with discussions on process still ongoing at the time of this writing.

"While I will be filing cloture on the bill this evening, that's not the end of the story: the bill managers will continue working together to get more amendments available for a vote before the cloture vote," McConnell affirmed on Tuesday.

One of the amendments stoking controversy is a proposal to reauthorize the Export-Import Bank – the US' official federal credit agency for exports, whose mandate expires at the end of June. The amendment's backers – Maria Cantwell, a Democrat from Washington state, and Lindsey Graham, a Republican from South Carolina – have refused to back a cloture vote without assurances that the bank's reauthorization will face a vote.

McConnell, despite having said he is opposed to renewing the bank's mandate, has pledged that the Export-Import Bank topic will see both floor debate and a vote in his chamber, but not as an amendment to TPA. However, Senate Minority Leader Harry Reid has countered that doing so would be "meaningless" given that a separate vote on the bank would likely need to originate in the House.

### **Currency provisions?**

Another contentious issue is a proposed currency manipulation amendment to TPA, which was introduced by senators Rob Portman, a Republican of Ohio, and Debbie Stabenow, a Democrat of Michigan.

The amendment, known as [SA 1299](#), would making it a principal negotiating objective for the US to include in international trade deals "strong and enforceable rules against exchange rate manipulation that are subject to the same dispute settlement procedures and remedies as other enforceable obligations under the agreement."

This provision, they said, should not be construed "to restrict the exercise of domestic monetary policy."

Subsequently, US Treasury Secretary Jack Lew sent a letter to Senate Finance Committee leaders Orrin Hatch and Ron Wyden – the chairperson and ranking member of that panel, respectively – warning that he would recommend to the President to veto legislation that includes a currency amendment, specifically naming SA 1299.

"Enacting a TPA currency discipline that requires an enforceable negotiating objective would likely derail our efforts to complete the [Trans-Pacific Partnership, or TPP, negotiations] and cause us to lose ground on holding countries accountable on currency," he said, according to [a copy of the letter](#) released by the Treasury.

Furthermore, in an apparent response to the claim that the amendment will not impact US policy, he added that such provisions "could put at risk our ability to take steps needed to protect the US economy in the future," while noting that it could give trading partners the grounds to challenge Washington's own monetary measures.

An alternative amendment has been offered by Orrin Hatch and Ron Wyden, the Republican chairperson and Democratic ranking member of the Senate Finance Committee, respectively. This proposal would maintain currency as a principal negotiating objective, as in the original TPA draft, but would instead aim at establishing accountability through "enforceable rules, transparency, reporting, monitoring, cooperative mechanisms, or other means."

This language, Hatch [said](#) on Wednesday, would not hurt the 12-country TPP talks.

"If we insert an absolute requirement for enforceable currency rules and required sanctions into the ongoing TPP negotiations, many if not all of our negotiating partners will almost certainly walk away. The Hatch-Wyden Amendment would pose no threat to the TPP negotiations or any other trade deals," Hatch said.

Whether such amendments will make it to a vote in the Senate was unclear at the time of this writing, depending largely on Thursday's cloture vote and related procedures.

### **Enforcement legislation**

Part of the deal struck last week by Senate leadership to allow debate on TPA to begin was giving senators the opportunity to first vote on customs legislation with trade enforcement provisions, including one involving currency manipulation. That bill passed last week and now requires House approval, though whether the currency terms and other enforcement aspects would remain is uncertain.

Hatch and Wyden released a joint statement on Monday with House Ways and Means Committee Chairman Paul Ryan pledging to move the enforcement bill forward quickly.

"In consultation with Speaker [of the House John Boehner] and Leader McConnell, we have agreed to move to reconcile the differences between the two chambers immediately after the House passes its enforcement bill, with the goal of sending legislation to the president by the end of June," they [said](#).

Shortly thereafter, US President Barack Obama released his own statement welcoming the bill and outlining his hopes for the next steps.

"I am pleased that Chairman Hatch, Senator Wyden, and Chairman Ryan have agreed to swift consideration of the bipartisan Trade Facilitation and Trade Enforcement Act by the end of June. Many of these new tools – such as Super 301, elements of the ENFORCE Act and the Level the Playing Field Act, and constructive tools to address unfair currency practices – would strengthen our ability to both facilitate trade and improve enforcement of the rules," he [said](#).

The US president also expressed his interest in working with both chambers of Congress to improve "certain provisions" of the bill, without giving further details.

### **Prospects in the House**

Even if the TPA legislation does secure approval in the Senate, it must still undergo House legislative procedures – including the possibility of tacking on amendments to that chamber's version – and a vote as well.

While that chamber, like the Senate, is also controlled by Republicans, the road ahead is also expected to be rocky, given the deep-seated opposition in the 435-member chamber to the trade legislation – either in principle or in this bill's approach – by many Democrats.

However, Paul Ryan, who chairs the House Ways and Means Committee, told CNN earlier this week that the trade movement has been gaining momentum in his chamber.

"We will have the votes. We're doing very well," he said on Sunday.

ICTSD reporting; "Paul Ryan: Fast-track 'gaining steam'," THE HILL, 17 May 2015; "McConnell moves to end debate on trade bill," THE HILL, 19 May 2015; "McConnell Sets Trade Promotion Authority Endgame in Motion," ROLL CALL, 19 May 2015; "UPDATE 1-U.S. senators threaten to block trade debate over Ex-Im renewal," REUTERS, 19 May 2015; "Reid: Obama 'loves' the Export-Import Bank," THE HILL, 19 May 2015.

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## US Senate Signs Off on 10-Year AGOA Renewal

The US Senate passed legislation on 14 May to extend duty-free access to the US for Sub-Saharan African countries through the African Growth and Opportunity Act (AGOA) for another decade.

"I am very glad that we have found a way to get them to this point," [said](#) US Senate Finance Committee Chairman Orrin Hatch following last week's vote.

AGOA expands upon the US Generalized System of Preferences (GSP), a set of formal exceptions from the WTO's most-favoured nation (MFN) principle that allows Washington to offer developing countries preferential treatment on specific goods. The current version of AGOA is due to expire on 30 September, unless re-authorised beforehand.

The bill, passed last week by a margin of 97 votes to 1, includes the renewal of several trade preference programmes: the GSP, expired since July 2013, will now be renewed through 31 December 2017; AGOA, including the third-country fabric (TCF) provision and preferential duty treatment programme for Haiti, will be extended until 30 September 2025. (See Bridges Weekly, [30 April 2015](#))

The legislation will still require approval by the House of Representatives and President Barack Obama before it can become law.

### New features

The general rule of origin under the new AGOA retains a value-added requirement of 35 percent.

This provision entails that products may integrate materials sourced from outside countries – in other words, non-AGOA-beneficiaries – provided that the "direct costs of processing" undertaken in one or more designated AGOA-beneficiary countries equal at least 35 percent of the product's appraised value.

While those lawmakers who crafted the legislation argue that such a provision is likely to increase the utilisation rate of the scheme and promote greater regional integration, some experts contend that such a requirement is still likely to be difficult for small developing countries to meet.

Generally, preference-receiving LDCs in the context of AGOA have shown a relatively high utilisation rate only in a few sectors – particularly in textile and clothing – and have therefore pushed for a revision of the US rule of origin in the context of AGOA. (See Bridges Weekly, [6 November 2014](#))

The new version also includes language on the promotion of the role of women in social and economic development in Sub-Saharan Africa as part of the eligibility criteria of the scheme.

The bill gives the US President the authority to designate "certain cotton articles" as eligible articles for least developed countries under the GSP programme. A Senate Finance Committee [report](#) associated with the legislation links this undertaking to the WTO

implementation commitments on duty-free quota-free (DFQF) treatment for certain cotton products originating from LDCs.

Under the new text, beneficiary countries will be expected to develop biennial AGOA utilisation strategies in order to "more effectively and strategically utilise benefits available under AGOA," the bill says, which additionally cites the possibility for Regional Economic Communities to be involved in this exercise.

Such strategies would mainly review opportunities and challenges around exports under AGOA, obstacles to regional integration, and establish a plan to increase the utilisation of benefits under the Act.

### **Focus on "good faith progress"**

"I share many of my colleagues' belief that benefits under AGOA should go to countries making good faith progress towards meeting the programme's eligibility criteria," said Hatch last week, before explicitly raising concerns over recent policy changes in South Africa which, he argued, contradict specific AGOA's provisions.

Hatch added that the creation of a mechanism under the AGOA programme that would allow for benefits to be "scaled back" in case a country is found to not be making "good faith progress" on certain issues was "important."

The AGOA provides now greater flexibility to the White House to withdraw, suspend, or limit benefits under the scheme if it determines that such action would be more effective than termination. For example, the bill requires the President to notify and explain to Congress his intention to terminate a country's designation as a beneficiary at least 60 days before the decision takes effect.

The new AGOA will also allow the US President to conduct out-of-cycle reviews of any beneficiary country to determine whether it is making continued progress towards meeting the scheme's eligibility criteria.

### **South Africa subject to "out of cycle" review**

Although South Africa remains eligible for AGOA under the new legislation, the bill specifies that some concerns have been raised about the country's compliance with certain provisions of the Act. An "out-of-cycle" review of South Africa will therefore be undertaken 30 days after AGOA's enactment.

In the context of this review, if the President determines that South Africa does not meet certain requirements, the country's eligibility could either be withdrawn, suspended, or limited.

Earlier talks over AGOA's renewal had move slowly due to a dispute between Pretoria and Washington on poultry trade, following South Africa's decision to impose anti-dumping duties on certain imported US poultry products. (See Bridges Weekly, [29 January 2015](#))

Additionally, according to a report by the US Senate Finance Committee, South Africa recently indicated its intention to renegotiate its commitments under the WTO's General Agreement on Trade in Services (GATS) requiring foreign-owned companies to relinquish 51 percent ownership to South Africans.

The country has also developed proposals for policy changes with regard to intellectual property rights legislation that could result in several "shortcomings." These issues will be taken into account during the review of South Africa's eligibility, the report says.

ICTSD reporting.

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## DISPUTES

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# WTO Appellate Body Finds Revised US COOL Measure Violates Trade Rules

The WTO's highest court said on Monday that the amended version of the US' country-of-origin labelling (COOL) regime continues to discriminate against livestock and meat imported from Canada and Mexico, confirming the bulk of an earlier compliance panel's findings.

Nonetheless, citing a lack of sufficient undisputed facts on the panel record, the Appellate Body was unable to properly compare alternative measures proposed by Canada and Mexico with the US policy, and ultimately did not make a definitive conclusion of whether the amended COOL measure is an unnecessary international trade barrier.

### Case history

Under the original COOL policy, which was actually a series of instruments enacted under the 2002 US Farm Bill and then revised in 2009, producers were required to inform US consumers of meat's country of origin via a label on the sale package. The label could fall under five different categories, each divided into three sub-categories. The measure established, among others, that the consumer information regarding muscle cuts should be in the format of "product of" a specific country or multiple specific countries.

The measure was challenged at the WTO by Ottawa and Mexico City, with the Appellate Body finding in 2012 that Washington's original COOL policy violated non-discrimination requirements under international trade rules, confirming a previous panel ruling from 2011. (See Bridges Weekly, [4 July 2012](#))

More specifically, the Appellate Body found that the level of information conveyed on the labels to consumers was far less detailed and accurate than the information required to be tracked and transmitted by upstream livestock producers and processors. The Appellate Body also explained that it was those same recordkeeping and verification requirements that made segregation necessary and, as a result, created an incentive for US producers to process domestic livestock over their imported equivalent.

In 2013, Washington revised the 2009 COOL statute, imposing new point of production requirements to "enhance" the labels' accuracy. As a result, animals slaughtered in the US fall under three possible labelling categories of muscle cuts: US origin, US and other countries mixed origins, and imported for immediate slaughter. These labels would indicate where each production step – birth, raising, and slaughtering – occurred.

For animals slaughtered abroad, including specific location information related to the various production steps under the "foreign origin" label of muscle cuts is voluntary, provided that records to substantiate these claims are maintained.

The labelling requirements for the ground meat are maintained in the amended measure – all countries of origin of the meat contained must be listed based on the 60 day "inventory allowance." According to this rule, when a raw material from a specific origin has not been in a processor's inventory for more than 60 days, that country shall no longer be included as a country of origin on the label.

Upon the requests of Canada and Mexico, a compliance panel consisting of the original dispute panellists was called to examine WTO consistency of the amended COOL measure. The panel ruled against the US last October, after which all parties respectively appealed various legal and factual aspects of the findings. (See Bridges Weekly, [23 October 2014](#))

### **Continued disproportionate burden**

In Monday's ruling, the Appellate Body rejected Washington's arguments and agreed with the panel that the amended COOL measure's recordkeeping and verification requirements continue to impose a disproportionate burden on livestock producers and processors.

Furthermore, they said, this burden cannot be explained by the need to provide consumers with information regarding where livestock are born, raised and slaughtered. Accordingly, the detrimental impact on imported livestock arising from these same requirements does not stem exclusively from "legitimate regulatory distinctions."

The Appellate Body confirmed that, compared with the original policy, the point-of-production labelling requirement increases the number of distinct labels for certain scenarios of muscles cuts with different foreign origins that were ultimately slaughtered in the US, thus resulting in more segregation.

In this regard, the Appellate Body rejected the US' arguments that the panel conclusions were based on "incorrect hypothetical" scenarios, rather than actual trade situations.

The Appellate Body also observed that under the amended COOL measures, the provision of specific information of production steps for certain foreign muscle cuts derived from US-slaughtered animals, which was voluntary under the original COOL policy, is now mandatory. This, they said, means livestock and meat producers must keep more records to substantiate the origin claims.

### **Possible label inaccuracy**

On the consumer information side, the WTO judges also maintained the panel's conclusions regarding the potential for labelling inaccuracy under the amended COOL measure.

For instance, in the scenario where "animals are born and raised in another country and subsequently further raised in the United States, only the raising that occurs in the United States needs to be declared on the label," the raising information is inaccurate given the evidence that feeder cattle exported to the US may spend up to 68 percent of their lifespan in their country of birth, yet the resulting meat products could still be labelled as raised only in the US.

In this regard, the panel had noted that between 57.7 and 66.7 percent of beef and between 83.5 and 84.1 percent of pork muscle cuts consumed in the US convey no consumer information on origin, despite imposing an upstream recordkeeping burden on producers and processors that hurts competitive opportunities for imported livestock.

For the Appellate Body, these exemptions incorporated into the COOL measure's coverage – as part of the policy's overall architecture – also supports a conclusion that its detrimental impact on imported livestock does not stem exclusively from legitimate regulatory distinctions.

### **COOL versus alternative measures**

The Appellate Body clarified that the task of a panel under Article 2.2 of the WTO's Agreement on Technical Barriers to Trade (TBT) is "determine whether the technical

regulation at issue restricts international trade beyond what is necessary for that technical regulation to achieve the degree of contribution that it makes to the achievement of a legitimate objective."

A technical regulation should, in principle, be reviewed in its entirety in order to assess its degree of contribution to its objective, the WTO judges said. The Appellate Body thus found that the panel incorrectly excluded two types of COOL labels from consideration when reaching its conclusion that the amended COOL measure makes a "considerable but necessarily partial" contribution to its objective of providing consumer information on origin.

The Appellate Body recalled that an assessment of whether a proposed alternative measure achieves an equivalent degree of contribution to the relevant legitimate objective is essential in determining whether a technical regulation restricts international trade beyond what is necessary to help reach the degree of contribution that it makes to the achievement of a legitimate objective, under Article 2.2 of the TBT Agreement.

However, this does not mean that complainants "must demonstrate that its proposed alternative measure achieves a degree of contribution *identical* to that achieved by the challenged technical regulation," the Appellate Body said.

For this dispute, the Appellate Body rejected the US' arguments, agreeing with the panel that an alternative measure providing less information – or less accurate information – but having significantly wider product coverage could qualify as making a degree of contribution "equivalent" to that of the amended COOL measure.

### **Risks of non-fulfilment**

Article 2.2 also says that the risks from not fulfilling an objective must be taken into account in analysing a technical regulation. The Appellate Body says that this requires a panel to first identify the nature of the risks and the gravity of the consequences that would arise from non-fulfilment.

In the earlier panel proceedings, the experts said the risk associated with non-fulfilment is that "consumers would be misinformed." Nonetheless, they were unable to determine the extent of consumer interest in either general country of origin information or such information according to point of production, based on the evidence on the record.

For the panel, this meant that it could not ascertain the gravity of not fulfilling the amended COOL measures' objective and consequently, it could not take such risks into account in the overall weighing and balancing under Article 2.2. The Appellate Body disagreed with this quantitative approach.

"In such contexts, it may be more appropriate to conduct a conjunctive analysis of both the nature of the risks and the gravity of the consequences of non-fulfilment" in qualitative terms, the Appellate Body said. The difficulties or imprecision that arise in assessing "the risks non-fulfilment would create" should not relieve a panel from its duty to assess this factor.

### **Analysis of alternatives**

The Appellate Body reversed the panel's conclusion that Canada and Mexico failed to make a case that the amended COOL measure violated Article 2.2 of the TBT Agreement, citing the panel's error in assessing "the risks non-fulfilment" factor.

In particular, the Appellate Body found that this error effectively meant that the panel did not fulfil its duty to account for "the risks non-fulfilment would create" in assessing



whether two proposed alternative measures would make an equivalent contribution to the amended COOL measure's objective, compared to the US measure itself.

The Appellate Body added, however, that it was not in a position to assess whether the two proposed alternatives are less trade restrictive than the amended COOL measure; reasonably available to the United States; and make an equivalent degree of contribution to the objective, due to lack of sufficient facts on the panel record.

With respect to two other proposed alternatives, the Appellate Body found the panel mistakenly allocated too heavy a burden for the complainants to prove those alternatives are "reasonably available" and reversed the panel's findings accordingly.

Ultimately, the Appellate Body made no finding as to whether the amended COOL measure is inconsistent with Article 2.2.

### **Next steps**

The WTO's Appellate Body is the court of last resort for international trade disputes. According to agreements the US reached with Canada and Mexico, respectively, in June 2013, should Washington lose in the compliance proceedings, the complainants may request authorisation to suspend the application of concessions or other obligations under the covered WTO agreements, as allowed under trade rules.

This option will be available even after the usual 30-day time period outlined in WTO rules, under the terms of these agreements. This is without prejudice to the US' right to challenge the level of countermeasures by referring the matter to arbitration.

Back in Washington, domestic legislative efforts to repeal the amended COOL measure are already underway, with the House Committee on Agriculture passing a bill to that effect on Wednesday.

The legislation must still be approved by the full House, and an equivalent measure would need to be approved in the Senate at both the committee and floor levels, along with requiring the US President's signature.

House Agriculture Committee Chairman Mike Conaway, who backed the bill, [publicly called](#) on Wednesday for the US to comply with the Appellate Body findings.

"[The Appellate Body ruling] follows on the latest in a series of economic analysis from the [US Department of Agriculture] demonstrating that this failed marketing program adds extraordinary costs with no – I repeat no quantifiable benefits," he said, calling for swift action to avoid the possibility of retaliation from Canada and Mexico.

ICTSD reporting.

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## INTELLECTUAL PROPERTY

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# Ebola Response in Focus as World Health Assembly Gets Underway

The World Health Organization's (WHO) annual assembly kicked off on Monday, with the two-week meeting set to tackle issues ranging from improving the global health body's response to emergencies in the wake of the Ebola crisis to the potential renewal of the organisation's strategy on intellectual property (IP) and public health.

The World Health Assembly (WHA), as this event is formally known, is being held from 18-26 May at the WHO's Geneva headquarters. The WHA is the global health organisation's top decision-making body, with members charged with the task of supervising the WHO's financial policies, reviewing programmatic goals, and determining organisational practises.

### Learning from Ebola

This year's Assembly comes as the spread of the Ebola virus disease appears to be slowing down significantly. The WHO formally [declared](#) an end to the outbreak in Liberia just last week, though cases are still being reported in Guinea and Sierra Leone – the three West African countries hardest-hit.

The disease has been blamed for over 11,000 deaths in these countries, out of over 26,000 confirmed, probable, and suspected cases, according to WHO [data](#) released on 18 May. It has also dealt a heavy economic blow to the region, with World Bank figures setting the estimated GDP [losses](#) for these three countries at US\$2.2 billion in 2015 alone. (See Bridges Weekly, [23 April 2015](#))

The difficulties seen in responding to such a widespread outbreak have put the WHO in the spotlight, with an [interim report](#) issued by an independent expert group calling for various improvements to the way the global health body responds to crises, while raising questions over the causes and implications behind the WHO only declaring a "Public Health Emergency of International Concern" in August 2014, despite the outbreak beginning in 2013.

"I do not ever again want to see this Organization faced with a situation it is not prepared, staffed, funded, or administratively set up to manage," WHO Director-General Margaret Chan said on Monday in her [opening speech](#).

The global health chief has outlined a series of five changes she aims to put in place by year's end, including the creation of a unified WHO programme for health emergencies; the establishment of clear performance metrics for such a scheme; the set-up of a global health emergency workforce; the development of new business procedures to help in the response process; and options for a proposed contingency fund.

The plan for a contingency fund for health emergencies was already approved by the Executive Board in February. The fund would have US\$ 100 million behind it, with financing provided via flexible voluntary contributions. The plan would empower the WHO to answer more quickly to international health crises, such as through improved preparedness, surveillance, and response work. (See Bridges Weekly, [29 January 2015](#))

German Chancellor Angela Merkel, who opened this year's Assembly, similarly made a public call for a new strategy to deal with health-related catastrophes such as the Ebola crisis.

"The struggle is only won if there are no new [Ebola] cases and if we have learned the lessons from this crisis: we should have reacted earlier," Merkel said on Monday, in comments reported by the Associated Press.

The WHO also held a meeting earlier this month on research and development (R&D) relating to Ebola, which Chan said was able to use lessons learned from the crisis toward establishing a model for speeding up the development, testing, and approval of a medical product needed to deal with infectious disease-related emergencies.

### **Global Strategy on IP, Public Health**

Also on the docket during the WHA is the potential approval of an extension for the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (GSPA-PHI). The WHO's Executive Board recommended in February that the scheme – initially set-up in 2008 as a medium-term policy – be extended through 2022. (See Bridges Weekly, [5 February 2015](#))

The GSPA-PHI proposes that the WHO play a central role in public health innovation, particularly in promoting needs-driven research to target diseases that disproportionately affect people in developing countries.

The strategy is made up of eight elements, with 108 associated actions. The elements [include](#) prioritising research and development needs; promoting research and development; building and improving innovative capacity; technology transfer; application and management of IP to contribute to both innovation and public health; improved delivery and access; promoting sustainable financing mechanisms; and establishing systems for monitoring and reporting.

During its February meeting, the Executive Board also recommended that the GSPA-PHI review – originally scheduled for this year – be extended until 2018. At the Board's request, a [report](#) issued by the WHO Secretariat in advance of this week's meeting outlines options for conducting a comprehensive evaluation and overall programme review.

The paper poses options that would involve combining the evaluation and programme review, while undertaking these separately, in a staggered manner. The document also provides suggestions for the establishment of an evaluation management group that would support the evaluation process.

The WHA is expected to evaluate these options and make a decision by the end of its meetings. The extension of the GSPA-PHI also requires WHA sign-off to take effect.

### **Neglected diseases**

The two-week event will also address the issue of financing research and development for neglected diseases, specifically in relationship to the Consultative Expert Working Group on Research and Development's (CEWG) work on the subject.

The CEWG was established by the WHA in 2010 in the context of the implementation of the GSPA-PHI, with the mandate of examining options and proposals for current and proposed financing of R&D focused on diseases that disproportionately impact poor countries, along with diseases that occur in both developed and developing countries.

The group then issued a report in April 2012 which suggested that all countries should aim to achieve specified levels of public funding for health R&D relevant to the needs of

developing countries, and that a financing system be established under a convention based on contributions by governments. (See Bridges Weekly, [9 May 2012](#))

In November of that same year, WHO member states signed off on a strategic work plan on R&D for such diseases. While they agreed to set up a Global Health R&D Observatory within the WHO that would "monitor and analyse relevant information on health R&D... with a view to contributing to the identification of gaps and opportunities[as well as] to support coordinated actions," they did not set up the binding convention recommended by the report. (See Bridges Weekly, [5 December 2012](#))

This year's WHA is expected to discuss the possibility of establishing a pooled fund for voluntary contributions to fund research and development for these diseases, with priority projects identified by the Global Health R&D Observatory and a future coordination mechanism. This is discussed in further detail in a [document](#) issued by the Director-General as follow-up to the CEWG report.

### **Air pollution**

Another issue on the WHA's packed agenda is a draft resolution addressing indoor and outdoor air pollution, as well as trans-boundary air pollution. This form of pollution is one of the leading causes of death worldwide, with WHO statistics setting the yearly toll at eight million deaths annually, with indoor pollution one of the leading causes of death for children under the age of five.

A Secretariat [report](#) on the subject, as well as a finalised version of the draft resolution discussed by the Executive Board earlier this year, are both set to be reviewed during the meeting.

ICTSD reporting; "Merkel calls for WHO plan to fight global epidemics," ASSOCIATED PRESS, 18 May 2015; "World Health Assembly Opens: Time Of Change At WHO; G-7 Involved," IP WATCH, 18 May 2015.

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## DEVELOPMENT FINANCING

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# UN Development Financing Negotiators Review Revised Outcome Draft

Delegates tasked with hammering out an outcome document for a UN conference on development finance reviewed a revised draft during an informal session held last week in New York, completing a paragraph-by-paragraph review of the proposed text.

On Friday the co-facilitators of the talks – George Talbot, Permanent Representative of Guyana to the UN and Geir Pedersen, Permanent Representative of Norway to the UN – said that they would shortly release a compilation text containing proposed modifications made throughout the week.

The co-facilitators also confirmed that while no further revised outcome document draft would be released at this stage, they would develop proposals on how to bridge differences over certain paragraphs, where this seemed appropriate to do so.

Additional informal sessions have been scheduled for the end of May and early June, with a view to advancing work on the draft outcome before a formal negotiation session in mid-June.

The Third Conference on Financing for Development (FfD3) is due to be held in mid-July in Addis Ababa, Ethiopia. The co-facilitators had released the revised outcome draft in early May based on views and comments on a first iteration of the document – a zero draft – aired during talks held last month.

On that occasion a joint session held with the UN talks geared towards crafting a post-2015 development agenda saw delegates diverge on how best to stitch together the outcomes of both processes. (See BioRes, [29 April 2015](#))

World leaders are due to meet in late September in New York to adopt a post-2015 development agenda, including a set of Sustainable Development Goals (SDGs) designed to replace the current Millennium Development Goals (MDGs). Delegates from the post-2015 track are meeting this week at UN headquarters to discuss commitments on follow-up and review for the eventual agenda.

### **Revised outcome draft**

The revised outcome draft as released on 7 May is organised into three sections: an introductory narrative, an action agenda, and a now separate section on data, monitoring, and follow-up.

A trade section is included in the seven areas targeted under the action agenda. Other references to trade-related policy are also scattered throughout some of the other areas. A number of these areas complement trade references found in a list of 17 proposed SDGs and 169 targets – put forward by a UN working group last July – but in some instances also go beyond these.

The updated trade section retains references found in the zero draft to the importance of a universal, rules-based, and non-discriminatory multilateral trading system; a commitment to conclude the WTO's Doha Round of trade negotiations; and a call to implement a

package of decisions reached at the global trade body's last ministerial held December 2013 in Bali, Indonesia.

Language has also been kept around implementing duty-free and quota-free (DFQF) market access for products originating from least developed countries (LDCs) in accordance with past WTO decisions, ensuring simple and transparent rules of origin (RoO) applicable to imports from LDCs, the principle of special and differential treatment (S&DT) for developing countries, and raising poor countries' participation in world trade. A specific reference to the Bali decision on operationalising a previously-agreed waiver granting preferential treatment to LDC services and services suppliers has been added.

The revised document also firmly acknowledges the links between trade policy and domestic policy in promoting sustainable development. "With appropriate supporting policies, infrastructure, and an educated workforce, trade can help promote employment, decent work and women's empowerment, reduce inequality, and contribute to the realisation of the SDGs," the current text runs.

Reference is also made to integrating sustainable development into trade policy at all levels, including sustainable development provisions in both trade and investment agreements, as well as pledging sustainability impact assessments for trade agreements.

A specific mention of conducting a proper review of investor-state dispute settlement (ISDS) clauses has been dropped, however, replaced by language around strengthening safeguards in investment treaties.

The revised draft now includes several references to the importance of trade to land-locked developing countries (LLDCs), small island developing states (SIDS), and women – groups for whom participation in trade could be particularly important, experts suggest.

The document commits to building coherence between bilateral and regional trade and investment agreements and the multilateral system, adding to the recognition in the earlier draft of the significant potential of regional economic integration to promote growth and sustainable development.

Language in earlier outlines of the FfD3 outcome document released in January, which suggested that regional trade agreements (RTAs) may not always foster positive economic, social, and environmental aims, had received pushback from some countries. (See Bridges Weekly, [5 February 2015](#))

### **New environment, trade language**

The trade section in the revised draft makes specific and separate references to the reform of both agricultural and fisheries subsidies. The zero draft had bundled the latter in along with a broader call for WTO members to correct distortions in both fisheries and agriculture markets.

Language recognising the challenge posed by illegal wildlife trade, including fishing and logging, as well as illegal mining has been inserted into the trade section. The draft would urge support for enhanced global efforts to tackle the poaching and trafficking of protected species, dumping of hazardous waste, and illegal trade in minerals. This is placed within the context of increasing the capacity of local communities to pursue sustainable livelihood opportunities.

Within the same paragraph, the revised draft adds text on boosting the monitoring, control, and surveillance of fishing vessels in order to effectively prevent, deter, and eliminate illegal, unreported, and unregulated (IUU) fishing.

The draft also now welcomes the plurilateral talks between a group of 17 WTO members to liberalise trade in environmental goods. The FfD3 text also refers to environmental services in this context, although reports on the Environmental Goods Agreement (EGA) talks suggest participants diverge on where best to tackle these. (See BioRes, [25 March 2015](#))

The revised draft keeps a reference to supporting WTO members in taking advantage of the flexibilities in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to further the public interest in sectors critical for sustainable development, including public health. This broader language appears to also cover responses to climate change, the specific references to which in the TRIPS context have been scrubbed.

### **Reactions to revised draft**

The trade section was relatively well-received at the FfD3 session last week, sources say, although some textual suggestions were made and discussion prompted on certain key topics.

On global value chains, the EU proposed to insert language on sound, enabled domestic environments providing the key to integration in such chains. Elsewhere, the G77/China called for deleting text on implementing sound domestic policies and reforms conducive to realising the potential of trade for sustainable development, perhaps suggesting a divergence on how to go about promoting participation in GVCs.

The EU also suggested adding a call for upper-middle income countries to provide DFQF access for LDCs' products.

References to TRIPS flexibilities were panned by both Switzerland and Japan while the G77/China proposed an additional paragraph in this area.

The EU and the US proposed shifting the focus of the reference to the WTO's Trade Facilitation Agreement from LLDCs to LDCs, while the G77/China are said to have supported keeping the LLDC text.

Japan and the EU proposed deleting references to numerical targets for the WTO's Aid for Trade initiative, and Japan also proposed deleting references to increasing this type of support and the Enhanced Integrated Framework for Trade-Related Technical Assistance to the LDCs, suggesting that this would be decided within the context of the WTO.

Last week's consultations also saw some discussion on the relationship between climate and development, with developed and developing countries disagreeing on whether to include language separating climate finance from Official Development Assistance (ODA).

In the context of the domestic public resources section of the document, some delegates also commented on overlaps between the draft and work ongoing under the UN Framework Convention on Climate Change (UNFCCC). Saudi Arabia reportedly suggested that carbon pricing was being examined in the context of the UN climate talks.

The revised zero draft includes several paragraphs in the international public finance section on climate change and climate finance, recognising the UNFCCC as the primary intergovernmental forum for tackling this issue, reaffirming the importance of meeting existing commitments in this area, and welcoming pledges made to the Green Climate Fund – an international finance body geared towards helping developing countries mainstream green growth into their development strategies.

ICTSD reporting; "Briefing Note on the First Additional Session for the Preparatory Process for the Third International Conference on Financing for Development: 12-15 May 2015," IISD REPORTING SERVICES, 19 May 2015.

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## EVENTS & RESOURCES

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# Events

### Coming Soon

22 May, Paris, France. A CLUB OF CARBON MARKETS: TRADE IMPLICATIONS AND SYNERGIES. This event, hosted by the International Centre for Trade and Sustainable Development (ICTSD) and the Organisation for Economic Co-operation and Development (OECD), will be held during Climate Week in Paris. The meeting will bring together experts, business representatives, and policymakers to explore the case for a carbon market "club" against the background of a bottom-up climate governance framework, together with the potential implications for and synergies with the multilateral trading system. The event will be webcast live. More information is available [here](#).

28 May, Geneva, Switzerland. MINING, INNOVATION, AND INDUSTRIAL PROPERTY. This event, organised by the Permanent Mission of Chile to the WTO, WIPO, UNCTAD, and ITC, as well as the World Intellectual Property Organization (WIPO) and the National Institute of Industrial Property (INAPI) Chile, aims to highlight the role of intellectual property in promoting and protecting innovation, while addressing the phenomenon of innovation and transfer of technology within the context of mining. The seminar will also involve an overview of the Chilean mining industry, as well as that of other countries, while aiming to provide an opportunity for public and private operators to share experiences. To learn more, contact the Chilean [mission](#).

28 May, London, UK. THE ASIAN INFRASTRUCTURE INVESTMENT BANK: ECONOMIC AND POLITICAL IMPLICATION. This Chatham House event will examine the economic and political implications of Asian Infrastructure Investment Bank, particularly in relationship to the World Bank and the International Monetary Fund. Discussions will touch upon issues such as the implications of the UK, Germany, France, Italy, and others to apply to join the bank as founding members, along with the governance questions that have been raised over the planned institution. This event is by invitation only and will be held under the Chatham House Rule. More information is available at the Chatham House [website](#).

28 May, Washington, US. THE DIGITAL SINGLE MARKET: IMPLICATIONS FOR THE TRANSATLANTIC RELATIONSHIP. This event is being hosted by the Brookings Institution's Global Economy and Development Program and Center for Technology Innovation. The meeting, which will feature European Commission Vice President Andrus Ansip, who oversees the EU's Digital Single Market, will focus on the impact of this single market on bilateral trade and investment between the EU and US, particularly given the ongoing negotiations for a Transatlantic Trade and Investment Partnership. To learn more, visit the Brookings [website](#).

29 May, Tokyo, Japan. SEMINAR BY AXEL MANGELSDORF AND NAOHIKO IJIRI: THE ROLE OF STANDARDS FOR INTERNATIONAL TRADE IN ASIAN ECONOMIES. This seminar, hosted by the Asian Development Bank Institute (ADBI), aims to address the role of technical standards for international trade in Asian economies. Participants will review theoretical arguments on standards' potential to foster international trade or represent non-tariff measures (NTMs) to trade, as well as how empirical studies try to quantify standards' effects. The event will include the release of the first empirical results on the role of standards for the proposed trade deal between the EU and Japan. To learn more, visit the ADBI [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.

1 June: Committee on Market Access

2 + 4 June: Trade Policy Review Body – India

3 June: Committee on Government Procurement

4-5 June: Committee on Agriculture

## Other Upcoming Events

2-3 June, Paris, France. OECD FORUM 2015. With the theme "Investing in the Future: People, Planet, Prosperity" this forum will discuss the role of investment in sustainable growth paths; transitions to low-carbon economies; financing the planned Sustainable Development Goals; the role of inequality on trust in government, markets, and businesses; new climate technology and business models; and solutions to issues of health, food security, climate change, and aging. Held by the Organisation for Economic Co-operation and Development (OECD), this annual public event is expected to bring together heads of state and government, top CEOs, leaders of NGOs and trade unions, and members of academia and media. For more information, please visit this [website](#).

3 June, Brussels, Belgium. THE ENVIRONMENTAL GOODS AGREEMENT – PROMOTING EU ENVIRONMENTAL OBJECTIVES THROUGH TRADE. Hosted by the European Commission in the context of the [European Green Week](#), this stakeholder event will focus on the ongoing negotiations between 17 WTO members for an Environmental Goods Agreement (EGA). The objective of this event, convened by EU Trade Commissioner Cecilia Malmström, is to engage policy makers, European industry, NGOs, and other stakeholders in a discussion about how trade can positively contribute to environmental protection and climate action. The event will focus on how to best shape the EGA negotiations to facilitate trade in environmental goods and services internationally. Other speakers include Miguel Arias Cañete, EU Commissioner for Climate Action and Energy, Karl Falkenberg, Director General of DG Environment, and Matthias Fekl, French Minister for Foreign Trade. More information is available [here](#).

5 June, Geneva, Switzerland. FAO SYMPOSIUM ON TRADE & FOOD SECURITY. This event, held by the UN Food and Agriculture Organization (FAO), will share initial findings from expert consultations on the issue of trade and food security, as a way to test ideas and gather inputs ahead of the publication of the 2015 version of the FAO's State of Agricultural Commodity Markets. The event will feature opening remarks by senior WTO and FAO representations, a presentation of the consultations' main findings, and two panel discussions. To learn more, click [here](#).

10 June, Bonn, Germany. TECHNOLOGY IN THE 2015 PARIS AGREEMENT. This event, hosted by ICTSD and the European Patent Office, will be convened on the sidelines of the UN Framework Convention on Climate Change's (UNFCCC) annual mid-year meetings in Bonn. The discussions will feature presentations of research mapping out different positions and proposals on technology, as well as possible options for achieving progress, within the context of the preparations for the UNFCCC's 21st Conference of the Parties in Paris this December. More information on the event is available at the ICTSD [website](#).

30 June, London, UK. INVESTING IN INFRASTRUCTURE: BRIDGING THE GAP. This Chatham House event will consider the widening gap between current infrastructure investment and that needed for meeting future needs. Panellists will focus on the discrepancy between available investment capital and the lack of attractive project opportunities, giving recommendations for addressing this gap. The event will be followed by a reception. For more details, visit the Chatham House [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](#).

30 September – 2 October, Geneva, Switzerland. WTO PUBLIC FORUM: TRADE WORKS. This year's WTO Public Forum comes as the global trade body celebrates its 20th anniversary. The theme of "Trade Works" will focus on the contribution that global trade cooperation over the past two decades has made to the world economy. Participants interested in organising an event at the Forum are asked to submit their proposals by 1 June. More information on the event is available at the WTO [website](#).

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## Resources

INVESTOR-STATE DISPUTE SETTLEMENT: REVIEW OF DEVELOPMENTS IN 2014, No. 2. Published by the UN Conference on Trade and Development (May 2015). This new UNCTAD issues note provides an update on the latest developments involving investor-state dispute settlement, providing statistical information and reviewing recent arbitral decisions with the goal of helping inform and facilitate debate. The report can be downloaded [here](#).

ISSUES IN AGRICULTURAL TRADE POLICY: PROCEEDINGS OF THE 2014 OECD GLOBAL FORUM ON AGRICULTURE. Published by the Organisation for Economic Co-operation and Development (OECD) (May 2015). This book features a compilation of papers prepared for the Global Forum on Agriculture that took place at the OECD late last year. The authors review the latest available knowledge regarding both agricultural and agricultural trade policy settings, examining whether such knowledge is still pertinent given the changes seen in the global agro-food sector. The document is available [here](#).

FOSTERING GREEN GROWTH IN AGRICULTURE: THE ROLE OF TRAINING, ADVISORY SERVICES, AND EXTENSION INITIATIVES. Published by the OECD (May 2015). This new report examines the role, performance and impact of farm advisory services, training and extension initiatives in the OECD area to foster green growth in agriculture, through several case studies. The authors review the merits of different types of providers will suggesting best practices in the field of sustainable agricultural management. The paper can be accessed [here](#).

VALUING SERVICES IN TRADE: A TOOLKIT FOR COMPETITIVENESS DIAGNOSTICS, VOLUME 1. Published by the World Bank (2015). This toolkit is part of a larger agenda relating to trade competitiveness within the World Bank's International Trade Unit. The toolkit aims to provide a framework, guidelines, and practical tools for analysing services trade competitiveness. More information about the toolkit is available at the World Bank [website](#).

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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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please contact Andrew Crosby, Managing  
Director at +41-22-917-8335.

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Kimberley Botwright, Yaxuan Chen, and Kiranne  
Guddoy. This edition of Bridges Weekly Trade  
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