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EUROPEAN UNION

UK Economic Chief Outlines Proposed EU Reforms Amid Questions Over Trade Ramifications

The UK's Chancellor of the Exchequer has outlined some of the areas where his country would like to see changes in its relationship with the EU, as London attempts to lay the groundwork for treaty renegotiation ahead of an impending referendum regarding its continued membership in the 28-nation bloc. The prospects of a potential "Brexit" have raised questions over what this could mean in economic terms, including with regards to international trade agreements.

[Speaking in Berlin](#) to Germany's BDI industry body on Tuesday, George Osborne highlighted trade, investment, business, friendship, and shared values between the UK and Germany as he made his pitch – while making it clear that the British people “do not want to be part of a closer union.”

“We want Britain to remain in a reformed European Union. But it needs to be a European Union that works better for all the citizens of Europe – and works better for Britain too. It needs to be a Europe where we are not part of that ever closer union you are more comfortable with,” he continued.

The UK and Germany are the largest economies in the EU, making up two-thirds of the 28-nation bloc's economic growth. Receiving approval from Berlin on any potential reforms is considered a key step in winning over the support of other economies in the bloc.

While referring to various issues, such as freedom of movement and the role of national parliaments, the UK official placed specific focus on two key reforms: addressing the current body of EU regulation, given the strains of “bureaucracy” on the bloc's agenda and competitiveness, as well as improving the relationship between those member states in the eurozone versus those outside.

Regarding the latter, Osborne argued that the EU in its current form lacks the “strong legal and constitutional basis” to make the euro a sufficiently strong currency, suggesting that some treaties “will have to be changed to support the financial and economic union required for a permanently stronger euro – the stronger euro we want you to build.”

The UK's top economic official also said that the bloc's current setup is "not suitable" for non-eurozone nations, and that any reforms must address the governance framework "to put euro area integration on a sound legal basis, and guarantee fairness for those EU countries inside the single market, but outside the single currency."

Osborne clarified, however, that the UK is not angling either for veto power on eurozone decisions nor another opt-out for his country on the subject, calling instead for clearer principles to be integrated into EU law, including the recognition of the multiple currencies within the bloc.

German Chancellor Angela Merkel, for her part, tentatively lent some support this week to the UK's push for changes, while noting that the two sides "won't be in agreement on everything."

"We can say that where there are justified concerns – whether competitiveness or better functioning of the EU – the British concerns are our concerns," she said, in comments reported by the Financial Times.

More details on other reforms that the UK is seeking are expected next week, when UK Prime Minister David Cameron will outline them to Donald Tusk, the President of the European Council.

Trade in focus

The potential fall-out of a "Brexit" on trade has been a key question since UK Prime Minister David Cameron first announced his plans to hold a referendum on his country's EU membership by end-2017, following the negotiation of reforms with the bloc's other member states. (See Bridges Weekly, [16 May 2013](#))

For instance, whether the UK would have to renegotiate trade terms with the various countries that the EU currently has agreements with – or is currently in the process of negotiating – has drawn much speculation over the past several years, and particularly so in recent weeks in anticipation of Osborne's speech.

The importance of trade deals was highlighted by Osborne in his remarks to BDI, given the EU's extensive work in this area.

He then went on to note the benefits expected from the EU's existing trade deal with South Korea, noting that there are still other key deals in the pipeline – including the EU's trade negotiations with Japan, the Transatlantic Trade and Investment Partnership (TTIP) talks with the US, and the planned investment treaty with China.

"Let Britain and Germany, whose cities were once at the heart of the great Hanseatic League, now meet in alliance to overcome the forces of protection – and make Europe the centre of a global network of free trade agreements," Osborne added, noting in particular both countries' efforts to increase ties with Asian economies.

The need to also boost intra-EU trade was raised by the UK official, with Osborne referring specifically to last week's [release](#) by the European Commission of a new "Single Market Strategy" to improve the functioning of the bloc's internal market. The EU executive is planning to take a series of measures next year in this regard that could – among other benefits – facilitate trade in goods and services within the bloc.

"I welcome the Internal Market Strategy the commission published last week. It reflects much of what Britain said it should. But now let's turn a strategy document into reality," the Chancellor said.

US weighs in

Some officials from key trading partners have, however, cautioned that a UK exit from the European Union could prove damaging in ongoing integration efforts.

Speaking to the Reuters news agency last week, US Trade Representative Michael Froman warned that his country would likely not be interested in a separate trade deal with just the UK should it leave the union.

"I think it's absolutely clear that Britain has a greater voice at the trade table being part of the EU, being part of a larger economic entity," the US trade chief said, adding that the US is "not particularly in the market for FTAs with individual countries."

The TTIP negotiations completed their eleventh round last month, with American officials saying that they hope to clinch a deal before US President Barack Obama leaves office in early 2017. (See Bridges Weekly, [29 October 2015](#))

The 28-nation EU is currently involved in a series of trade negotiations, with officials citing the need to deepen and expand trading relationships further given that 90 percent of global economic growth is likely to be outside the bloc.

The loss of the UK's economic and negotiating clout could potentially complicate some of these efforts, should the island country decide to end its EU membership.

Also on the horizon on trade, according to a European Commission strategy [document](#) released last month are various different initiatives ranging from negotiating an upgraded version of the EU's trade deals with Mexico and Chile, as well as pursuing talks with Australia and New Zealand, to name a few. (See Bridges Weekly, [15 October 2015](#))

ICTSD reporting; "Exclusive: U.S. trade czar says Britain would lose on trade outside the EU," REUTERS, 28 October 2015; "Merkel gives qualified backing to Osborne's EU proposals," FINANCIAL TIMES, 3 November 2015; "George Osborne sets out UK's economic demands for EU reforms," BBC NEWS, 3 November 2015.

CLIMATE CHANGE

UN Report Reviews National Climate Pledges Ahead of Key Paris Meet

The collective ambition of the national climate action plans outlined by over 140 countries has been evaluated by the UN Framework Convention on Climate Change (UNFCCC) secretariat as governments gear up for a fortnight of pivotal negotiations on a new, universal emissions-cutting deal due to be held this December in Paris, France.

The much-anticipated 66-page synthesis [report](#) released on 30 October concludes that if the national greenhouse gas (GHG) emissions cuts outlined in the domestic pledges are fulfilled, global emissions growth will slow through 2030.

According to the document, this does not imply an absolute reduction by that time. Aggregate emissions would remain 11-22 percent higher in 2030 compared to 2010 levels, although the relative growth in emissions in the 2010-2030 period is expected to be 10-57 percent lower than over the period 1990-2010.

While the report was welcomed by several climate groups and stakeholders as evidence of mitigation progress, some lamented apparent continued shortcomings. Still other analysts suggested that the UNFCCC's press release was poorly framed and could be misread as giving a signal on what these action plans – known as intended nationally determined contributions (INDCs) – might achieve in the long term, given that many of these only indicate domestic efforts through to 2030.

These INDCs will form the building blocks of a post-2020 climate regime to be agreed upon by parties to the UNFCCC in Paris, France at the end of this year.

Certain paragraphs of the synthesis report do attempt to address this challenge. The report cautions that meeting an internationally agreed goal of keeping the planet below a two degree Celsius rise from pre-industrial levels will depend on long-term changes in key economic drivers induced both by the implementation of the current INDCs and parties' determination to scale these up over time.

The majority of the science community has agreed that the two degree threshold will be important in order to stave off the worst consequences of climate change, which could include floods, droughts, and heat waves, among other impacts.

"Temperature levels by the end of the century strongly depend on assumptions on socioeconomic drivers, technology development, and action undertaken by parties beyond the time frames stated in their INDCs (e.g. beyond 2025 and 2030)," the document reads, which also includes a section on information in the INDCs that might indicate the possibility of enhanced action in the future.

However, the report also implies that the level of ambition in the current pledges will require substantially higher annual emissions reduction rates after 2025 and 2030 in order to keep within the two degree threshold, and these will likely come at a much higher cost.

Engagement in the process

The report analyses the aggregate effect of [119](#) national climate pledges – with the 28 member states of the EU represented as one – submitted to the UN on or before an

informal deadline of 1 October. This includes all industrialised countries and three-quarters of developing countries covering 86 percent of global emissions. (See BioRes, [16 October 2015](#))

Christiana Figueres, UNFCCC Executive Secretary, said last week that the sheer number of INDCs signalled broad participation in the multilateral process. The assessed INDCs cover 79.8 percent of emissions at 2010 levels, 86.6 percent of the world's population, and 94 percent of GDP in the same year, according to the report.

A [handful](#) of INDCs, including the first submissions from the Gulf States, trickled in past the informal October deadline and are not included in the synthesis report.

However, countries have yet to finalise the precise shape of the supportive regime that will underpin the national pledges, with key details on issues relating to compliance, transparency, and review cycles to be hammered out during the Paris meet from 30 November-11 December. (See BioRes, [28 October 2015](#))

Emissions reductions

The report does not go into each INDC in detail, but instead captures the overall impact of countries' mitigation efforts by harmonising the types of emissions reductions, baselines, and sectors covered. While each plan contains at least a mitigation goal based on the mandate provided at last year's annual UNFCCC meet, the report also found that a total of 100 parties, or 84 percent of the INDCs, included an adaptation component.

Out of the 146 mitigation targets assessed, 127 offered quantified goals to reduce emissions. Nearly 60 countries, the majority being developing countries, adopted targets based on business as usual (BAU) emissions, while approximately 31 nations set absolute emissions reduction goals. An additional eight countries, including India, pledged to reduce emissions intensity, and a few parties including China offered peak emissions years. Beijing also offered an emissions intensity reduction target alongside its trajectory indication.

These current plans would result in emissions rising to an average of 56.7 billion tonnes of carbon dioxide equivalent (CO₂e) by 2030, with a range of 53.1 to 58.6 billion tonnes, finds the report. This represents some four billion tonnes less than total emissions increases without the pledges.

In order to implement their INDCs, at least half of the parties outline renewable energy, energy efficiency improvements, and low-carbon transport as key priorities to obtain emissions reductions, according to the UNFCCC's synthesis report.

Over half of all of the INDCs also include a long-term perspective on transitioning towards economic growth based on "low-emission, high resilience development," a welcome sign for many observers looking for assurances of climate action beyond 2030.

Two-degree goal gap

While the report does not include global temperature increase scenarios, the UNFCCC [press release](#) refers to previous analysis completed by several independent organisations. For example, the International Energy Administration (IEA) conducted a similar aggregate analysis of the INDCs and [found](#) that current pledges would allow global temperatures to rise by 2.7 degrees Celsius by 2100.

"The INDCs have the capability of limiting the forecast temperature rise to around 2.7°C by 2100, by no means enough, but a lot lower than the estimated four, five, or more degrees of warming projected by many prior to the INDCs," said Figueres, commenting on the apparent "emissions gap."

Increasing ambition, implementation

Countries' willingness to increase climate action ambition over time within the context of the Paris deal is a key area of concern for some players and observers alike given the emissions shortfall.

Many experts have also stressed the need to include a review mechanism in the multilateral climate regime in order to systematically and transparently raise the level of domestic emissions cuts. Parties are considering, among other things, five-year review cycles and establishing a compliance mechanism.

"For the INDCs to succeed they must be adjusted before 2020 and reviewed in five year cycles from 2020 to ensure national actions quickly and rapidly progress, or we all face a grim and uncertain future," said Giza Gaspar-Martins, the Angolan diplomat who chairs the Least Developed Country (LDC) group, one of the coalitions in the climate talks.

In a related development on Monday, China and France issued a [joint statement](#) on climate change, which includes support for a review of the INDCs every five years in order to assess progress made towards reaching long-term goals. The two nations also suggested convening a dialogue in 2017/18 to take stock of progress made in accelerating climate action before the end of the decade and eventually exploring further efforts.

Outside of the formal UN process, some members of the private sector have also supported a systematic increase of emissions reductions over time in order to better align low-carbon investments with national policies.

"Strong national plans provide the kind of vital market signals required from policy makers if investors are to curb the risk of stranded assets in the fossil fuel sector and to make the huge investments in low-carbon technologies," said Stephanie Pfeifer, chief executive of the International Investors Group on Climate Change.

Financial risks

Consensus is building, meanwhile, among a range of experts that delaying action in the present and ignoring the risks of climate change will result in large financial losses in the coming decades.

For example, a [report](#) released by the Bank of England in September warns that there could be significant shocks to the financial system if relevant players do not evaluate climate risks in their decision making processes.

In addition, officials from the International Monetary Fund (IMF) last week reportedly indicated that the organisation plans on integrating climate risk into its macroeconomic models, starting next year. The Fund has not yet confirmed whether this is indeed its plan, according to Climate Home, which first reported the news.

However, should this change be made, it means that the organisation's semi-annual "World Economic Outlook" could shed light on how actions to tackle climate change affect economic growth in high-emitting or fossil fuel exporting countries.

ICTSD reporting; "World's climate pledges not yet enough to avoid dangerous warming-UN," THE GUARDIAN, 30 October 2015, "UN Report: Climate pledges fall short of cheapest route to 2C limit," CARBON BRIEF, 30 October 2015; "UN says countries must do more to combat climate change," FINANCIAL TIMES, 30 October 2015, "IMF to factor climate risk into world economic forecasts," CLIMATE HOME, 27 October 2015; "Misleading U.N. Report Confuses Media on Paris Climate Talks," CLIMATE PROGRESS, 3 November 2015.

TransCanada Asks Washington to Suspend Keystone Pipeline Review

The Canadian company petitioning for the construction of the Keystone XL pipeline – a transboundary project which would bring crude oil and bitumen from the Athabasca tar sands in Canada's western province of Alberta to US refineries – has asked Washington to put on hold its review of the project's permit application.

The TransCanada Corporation, based in Calgary, said in its [2 November letter](#) to US Secretary of State John Kerry that they would prefer that the review be put on hold until the Nebraska Public Service Commission decides whether to grant its approval of the preferred route that the pipeline would take through that particular state.

The State Department has been tasked with the permit application, given that the pipeline would cross the US-Canada border. A decision had been reportedly expected this week, though whether this will proceed on schedule was unclear at the time of this writing.

A State Department spokesperson told the Financial Times that the agency is still reviewing the letter. The US agency does not need to approve the suspension request and can continue with its process if it chooses.

The White House, for its part, has indicated that US President Barack Obama still aims to take action on the pipeline before he leaves office in early 2017, hinting that the suspension request could be denied.

"Given how long it's taken, it seems unusual to me to suggest that somehow it should be paused yet again," said White House Press Secretary Josh Earnest on Tuesday, referring to the State Department's review of the pipeline permit. "There's reason to suspect there may be politics at play" in the suspension request, he said.

Legal uncertainty

The reasoning behind the suggested delay, TransCanada explained on Tuesday, was the legal uncertainty in Nebraska over whether a proposed alternative route through that state can go forward.

"We note that when the status of the route in Nebraska was challenged last year, the [State] Department found it appropriate to suspend its review pending resolution of that challenge," said Kristine Delkus, TransCanada's Executive Vice President, Stakeholder Relations and General Counsel, in the letter.

"We submit that, in the current circumstances, a similar suspension of the review process would be appropriate," Delkus continued.

TransCanada had applied with the [Nebraska Public Service Commission](#) in early October for sign-off on the route. While the revised route put forward in 2013 had received approval from Nebraska Governor Dave Heineman, questions were later raised over whether the law giving the governor that authority was in line with the state's Constitution, prompting the change in strategy.

The Nebraska Public Service Commission regulates major oil pipelines, natural gas jurisdictional utilities, telecommunications carriers, and various other utilities in the

Midwestern US state. The route that the pipeline would take through Nebraska has become especially sensitive given some of the environmentally sensitive regions in the state, with the revisions proposed by TransCanada in 2012 purportedly aiming to avoid them.

"After careful review, we believe that going through the [Public Service Commission] process is the clearest path to achieving route certainty for the Keystone XL Project in Nebraska," [said](#) Russ Girling, TransCanada's president and chief executive officer in late September in announcing the move. "It ultimately saves time, reduces conflict with those who oppose the project and sets clear rules for approval of the route."

If and when the Keystone pipeline is constructed, it would transport 830,000 barrels of crude oil a day from Western Canada to Nebraska, crossing through other US states in the process. Some of the oil it would transport could also come from the US, specifically from North Dakota. Once in Nebraska, the pipeline would then connect with existing pipelines to bring the oil to the Gulf Coast.

While supporters of the project argue that it could increase jobs and provide safe, reliable access to oil, detractors have warned against the massive carbon footprint from the extraction and refining of Canadian sands oil, among other concerns, while questioning how many jobs would actually be created in the long-term.

Environmental groups have welcomed the TransCanada request to suspend the review, while highlighting still the need for a final rejection from the Obama administration of the pipeline project.

"It's one of the great victories for this movement in decades," said Bill McKibben, the founder of environmental NGO 350.org. "In defeat, TransCanada is asking for extra time from the referees, and clearly hoping they'll get a new head official after the election. It's time for the current umpire, President Obama, to reject this project once and for all, and go to Paris as the first world leader to stop a major project because of its effect on the climate."

Years-long saga

Earlier this year, Obama vetoed legislation which would have required the construction and approval of the pipeline, arguing that Congress was interfering with "established executive branch procedures." (See Bridges Weekly, [26 February 2015](#))

The move was yet another development in a saga that now dates back seven years and has been cast by many environmental groups as an indicator of the US President's overall approach to climate change.

Two years ago, Obama made headlines when he declared that the pipeline would only be approved by the State Department if it was clear that it would not increase net carbon emissions. Meanwhile, the US President has continued his work to shore up his administration's climate legacy in other ways, which has already included executive actions and regulations aimed at slashing carbon emissions from power plants, as well as methane emissions from the oil and gas sector, among others. (See Bridges Weekly, [27 June 2013](#) and [22 January 2015](#))

The TransCanada request also comes just weeks ahead of the UN Framework Convention on Climate Change's (UNFCCC) annual Conference of the Parties in Paris, France. Countries are aiming to ink a new, universal climate deal in Paris that would take effect from 2020 onward, replacing the current Kyoto Protocol when it expires. The US' stance on domestic and global climate issues both at and ahead of the meet is therefore being watched closely by international observers.

According to the TransCanada letter, the approval process by the Nebraskan agency should take approximately seven to twelve months to complete. Effectively, that would mean that, should the State Department agree to suspend or delay the review – which the White House has strongly suggested is unlikely – a final US decision could come during the final months of the general election process.

Any decision on Keystone, however, is expected to also play a role in presidential election politics, with that process already well underway in the US. The general election is scheduled for November 2016, with the primaries for the Democratic and Republican nominations set for earlier that same year.

The two leading candidates in the Democratic presidential nominating contest, Vermont Senator Bernie Sanders and former Secretary of State Hillary Clinton, have both publicly come out against the pipeline.

"I think it is imperative that we look at the Keystone pipeline as what I believe it is – a distraction from important work we have to do on climate change," Clinton said in September in announcing her opposition to the project.

The pipeline has generally received a more sympathetic response from Republican Party candidates, however. Candidates currently at the front of the pack for that party's nomination have generally indicated that they support Keystone, in a rare instance of agreement in an otherwise heated contest.

Across the Northern border, new Canadian Prime Minister Justin Trudeau is in his first weeks in office. The new premier has said in the past that he backs the pipeline, though analysts have questioned whether this position is indeed in line with some of Trudeau's climate priorities, as well as his interest in strengthening ties with the US.

ICTSD reporting; "TransCanada asks US to suspend Keystone XL application," FINANCIAL TIMES, 3 November 2015; "Is the Keystone pipeline dead?" ASSOCIATED PRESS, 3 November 2015; "New Canadian PM Justin Trudeau brings same support for Keystone XL pipeline," WASHINGTON POST, 20 October 2015; "TransCanada Requests Suspension of U.S. Permit for Keystone XL Pipeline," THE WALL STREET JOURNAL, 2 November 2015; "Keystone XL Developer Drops Lawsuits," THE NEW YORK TIMES, 29 September 2015; "Obama Won't Yield to Company's Bid to Delay Keystone Pipeline," THE NEW YORK TIMES, 3 November 2015.

DATA PRIVACY

EU, US Officials Weigh Options in Wake of Safe Harbour Ruling

The fallout from a ruling by the EU's highest court invalidating a 15-year data transfer agreement between the EU and US continues to build, with officials now eyeing a mid-November meeting in Washington as a potential opportunity to advance talks for a new framework that would take its place.

The EU and the US have been involved in negotiations to update the so-called Safe Harbour framework over the past three years. The current framework involves a set of principles between Washington and Brussels regarding the protection of personal data.

The framework was established as a way to resolve differences between the two sides in this area, given the EU's adoption in 1998 of its Directive on Data Protection, which prohibits data transfers from the EU to non-EU countries should the latter not meet an "adequate" standard of protection.

The onus to wrap up the negotiations on this revised framework, which would set new rules governing the protection of personal data being transferred between companies across the Atlantic, comes following an October ruling by the European Court of Justice (ECJ) which found that a European Commission decision adopting the current "Safe Harbour" framework to be invalid. (See Bridges Weekly, [8 October 2015](#))

The ruling came following a complaint by Max Schrems, an Austrian citizen who had filed a claim with Ireland's Data Protection Commissioner arguing that US laws and practices do not appropriately protect data transferred from the EU to the US against surveillance by public authorities.

The case made its way through Irish and EU courts before arriving at the ECJ, which determined that national data protection authorities do have the power to investigate complaints over the levels of data protection provided by another country, contrary to what had been previously understood. The court also deemed that Safe Harbour – in its current form – is problematic for various other reasons, such as the inability of individuals to seek redress in order to access their own personal data, or to erase or correct it.

The push for a new Safe Harbour agreement also received renewed political backing from leaders on both sides on Tuesday 3 November, with US Vice President Joe Biden and European Commission President Jean-Claude Juncker both having "underscored the importance of rapidly concluding a replacement to the Safe Harbour framework, which is vital to both the US and European economies," according to a [White House readout](#) of their phone conversation.

Policy uncertainty

The ECJ ruling – while welcomed by some as reaffirming EU citizens' right to protection of personal data – has threatened to impact the way that thousands of technology companies do business, with analysts and officials alike warning of the economic ramifications that this policy uncertainty could cause.

The Article 29 Working Party, an independent advisory body on data protection and privacy made up of representatives from the national data protection authorities of EU

member states, the European Commission, and the European Protection Supervisor, [has stressed](#) that "it is absolutely essential to have a robust, collective, and common position on the implementation of the judgement."

Citing the need for intergovernmental negotiations for a deal that gives EU data subjects additional guarantees in this area, including possibly through a new Safe Harbour framework, the Working Party advised that in the interim companies can still rely on standard contractual clauses and binding corporate rules.

"The Working Party is urgently calling on the member states and the European institutions to open discussions with US authorities in order to find political, legal, and technical solutions enabling data transfers to the territory of the United States that respect fundamental rights," the group said in a 16 October statement.

US officials, for their part, have also called for wrapping up the Safe Harbour revisions soon, while sharply criticising the ECJ ruling.

"The European Court of Justice decision brought great uncertainty to businesses on both sides of the Atlantic," said US Commerce Secretary Penny Pritzker [during a speech](#) in Frankfurt, Germany, late last week. "The decision does not give due credit to the steps we, in the United States, have taken at both the executive and legislative levels to protect privacy."

The US commerce chief called upon the EU to provide, until a long-term solution is reached, additional guidance regarding trans-Atlantic data transfers, given the economic certainty caused by the ruling – for instance, in increased costs and legal fees.

"Put simply, on both sides of the Atlantic, this is an urgent problem, with a sensible solution in the improved Safe Harbour framework we have negotiated with our European partners," she said.

November meeting

Pritzker noted that she is set to meet with her EU counterpart on this subject – Věra Jourová, who serves as the EU Commissioner for Justice, Consumers, and Gender Equality – in Washington in mid-November.

According to the US official, Jourová would like the visit to Washington to serve "as a milestone in the adoption of the new framework," with Pritzker expressing her own hopes that this indeed is the case.

Jourová [said](#) at a separate event in Amsterdam on the same day that the ECJ ruling "reaffirms once more that personal data protection is a fundamental right and that it applies also when personal data is transferred to third countries."

Regarding the Safe Harbour negotiations, the EU official said that the talks "are now in the final stages, and I [am] confident that a final result will be reached by the end of this year."

Agreeing a "Safe Harbour 2.0" by year's end has also been highlighted by European data protection authorities, with the Article 29 Working Party saying that "if by the end of January 2016, no appropriate solution is found with the US authorities and depending on the assessment of the transfer tools by the Working Party, EU data protection authorities are committed to take all necessary and appropriate actions, which may include coordinated enforcement actions."

Jourová added the new rules under negotiation aim to improve the protection of people's rights and freedom; simplify the legal environment in which businesses operate; and give

European data protection authorities “more power to uphold the fundamental right to data protection.”

There will also be a two-year transition period once the revised framework is adopted, Jourová said, pledging that the Commission will work with data protection authorities to help ensure that the rules are both interpreted and applied in a “harmonised” way.

Furthermore, she said, under the new framework “any organisation involved in personal data protection will be entitled to take legal action on behalf of people.”

While the talks are already pretty far advanced, with Jourová referring to the [13 recommendations](#) that the Commission identified in 2013 following the revelations made by US whistleblower Edward Snowden, the EU official noted that any new framework will now also have to meet the standard set by the ECJ ruling.

In this context, she said, “we need more clarifications from our US counterparts on a number of points, in particular to show that there is a substantially equivalent level of protection.” Jourová also called for the development of a “mutual understanding’ between the two sides of their “respective privacy cultures.”

ICTSD reporting; “Special report: Confusion reigns in wake of safe harbor ruling,” POLITICO, 1 November 2015; “EU’s Safe Harbor decision reveals rift between US economic, privacy issues,” CHRISTIAN SCIENCE MONITOR, 3 November 2015.

WORLD TRADE ORGANIZATION

WTO Farm Talks Chair: Export Competition Possible Deliverable for Nairobi, Though Time Running Short

Talks among WTO members on the potential for an export competition outcome to be delivered at the upcoming ministerial conference in Nairobi, Kenya, continue to move forward, sources say, though officials warn that various key gaps still remain before a solution can be confirmed.

The global trade body is set to hold its Tenth Ministerial Conference from 15-18 December of this year, leaving just a few weeks remaining to finalise the possible terms of a "Nairobi package" for the event.

The planned deliverables for the meeting are expected to be substantially more limited than what was envisaged earlier in the year, when members were still in talks for a Doha Round work programme to address the core areas of agriculture, non-agricultural market access, and services.

A 31 July deadline to reach such a programme ultimately went unmet, with the discussion then shifting to what outcomes could be reached in order to have a "successful" ministerial – and how to address the future of the Doha Round after it.

WTO Director-General Roberto Azevêdo had indicated earlier this autumn that a possible Nairobi package could include export competition in agriculture, some transparency outcomes in anti-dumping and fisheries, and some issues relating to development and least developed countries (LDCs). (For more on the transparency issues, see related article, this edition)

Time constraints

At a 30 October informal meeting of the Committee on Agriculture in Special Session (CoASS), which is tasked with the WTO's farm trade talks, New Zealand Ambassador Vangelis Vitalis warned members that while export competition appears to have been identified as a potential Nairobi deliverable, there is still much to do and very little time.

Vitalis is the current chair of the agriculture negotiations at the WTO, having been confirmed in the post in September. (See Bridges Weekly, [9 September 2015](#))

Noting that Azevêdo had urged members at a "Room W" meeting just a day prior to show more flexibility in the overall negotiations heading into the Nairobi conference, calling upon them to focus more on substance in the negotiating groups and reconsider their so-called red lines, the farm talks chair stressed the "collective responsibility" required to reach any agriculture result in time for the December meet.

"While we may have a (rather unfortunate) increasing clarity on the issues (or even pillars) that may not be part of the MC10 deliverables, the situation with what actually would be deliverable for Nairobi needs to be clarified urgently," Vitalis said on Friday.

"The export competition pillar is currently in a somewhat unique position in the agriculture negotiation. As I said, it has been identified – without prejudice to positions we

may take on other issues and indeed on the post-Nairobi context – as a possible deliverable on agriculture for Nairobi," he confirmed.

However, he noted, it is also clear that "some significant outstanding issues" remain within that pillar.

The chair therefore encouraged members "to seek to stay as close as possible to the existing Rev. 4 text on export competition," referring to the 2008 draft text in the agriculture talks. Any changes, he added, should be "as limited as possible and only to the extent necessary."

Vitalis also urged any members who have potential concerns with the export competition part of that text to identify where in Rev. 4 that concern lies, to explain the nature of the issue, and to provide written amendments on how to address it.

The chair outlined his assessment on the elements treated under the area of export competition in the Rev. 4 text, namely export subsidies and finance; food aid; and state trading enterprises.

For example, the chair suggested adding seven years to the various target dates in the Rev. 4 draft text for the elimination of export subsidies. This would mean that developed country members would have until the end of 2020; developing countries until the end of 2023; and that article 9.4 flexibility for developing countries should be terminated by end-2028.

While the Rev.4 text on state trade enterprises has not yet sparked any concerns, the chair noted, various developing country members have called for disciplines in the area of food aid to avoid its use to distort markets and negatively impact domestic industries.

Discussions at the 30 October meeting on export finance reportedly saw the US raise previous concerns regarding the Rev. 4 requirement of six months' repayment in export financing programmes, with Washington currently allowing 24 months in this area.

The US has also suggested the inclusion of a "Safe Harbour" provision that would allow for protection from legal challenges under WTO subsidy rules in this area. That suggestion has reportedly drawn the opposition of some other members, including Australia, Canada, and Norway.

Recent proposals

Another key, overarching question that has come up in different iterations in Vitalis' consultations include the issue of balance, should an export competition outcome be reached.

"Those of you who will need to make policy-related adjustments if an outcome on export competition is operationalised also reminded me how difficult it will be to agree to an outcome on export competition as a 'stand-alone element', given the lack of any 'external balance' across the wider negotiation," he noted.

Sources say that India reiterated its existing stance against cherry-picking any one pillar the three that make up the farm trade talks, with the other two being domestic support and market access. China, for its part, said that it was not in favour of members dropping any issue off the table.

The other two pillars, various members reportedly suggested, should still feature in the farm trade talks after the upcoming ministerial.

Achieving internal balance across the various areas in Rev. 4 relating to export competition has also been raised by several members, according to the chair.

In recent weeks, proposals had been put forward by three separate developing country groups on the subject of agriculture, with one of these raising the possibility of linking an export competition outcome with a special safeguard mechanism. Under this special safeguard mechanism (SSM), developing countries would be able to raise tariffs temporarily in the event of a sudden surge in import volumes or a price depression. (See Bridges Weekly, [29 October 2015](#))

That submission, from the G-33 group of developing countries with sizeable populations of smallholder farmers, specifically involves a proposal that would include new elements of flexibility which the group says could make it easier to reach an agreement on the SSM, such as limits on the number of times a country could apply safeguard duties consecutively and a possible time-bound limit on the number of products eligible for enhanced protection under the mechanism, among others.

Sources say that the G-33 proposal received the backing of the African Group and the African, Caribbean and Pacific countries (ACP) Group.

However, the Cairns Group of major agricultural exporters reportedly raised concerns with the potential export competition-SSM linkage at the 30 October meeting, arguing that using such a mechanism without also including tariff cuts would be meaningless; that including it would yield an unbalanced outcome in Nairobi, given that developing countries would already see benefits from export competition itself; and that an SSM would go contrary to farm trade reform given that it would involve tariff increases.

Consultations on the SSM proposal's technical aspects are set to be held this upcoming Friday, the chair said.

Other areas, such as a proposal from Benin, Burkina Faso, Chad, and Mali – a group collectively referred to as the Cotton-4 (C-4) countries – on cotton, was also raised at the meeting, as well as discussions on reaching a permanent solution on public stockholding for food security, which is formally on a separate track from the CoASS talks but has an aspirational end-2015 target date.

While on the former, some members have requested additional detail on certain elements on the proposal, the latter has not seen “any fundamental change in members’ well known positions.”

Coming up

The New Zealand ambassador told members that they should be prepared for many meetings in the weeks ahead in an effort to reach a successful outcome.

“Finally, while it is clear that we are still some way away from that *Thalassa Thalassa* moment I hoped we might be approaching when I took on this responsibility as Chair of these negotiations, for my part I remain hopeful that we are inching forward and towards that happy moment,” Vitalis said.

“Thalassa Thalassa” refers to the exclamation made by a battle-weary contingent of soldiers upon arriving at the Black Sea (“thalassa” in Greek) after a long, arduous journey over land, as told by Xenophon of Athens, a Greek historian from 5th century BC. The farm talks chair had previously cautioned members upon his appointment in September that reaching this type of victory moment in the negotiations was still far off. (See Bridges Weekly, [9 September 2015](#))

ICTSD reporting.

New Texts in WTO Rules Talks Released as Nairobi Preparations Continue

Several new texts have been circulated in recent weeks in the WTO's Rules Negotiating Group, even as members of the global trade body tussle over the broader package of possible outcomes for its Tenth Ministerial Conference (MC10) due to be held in just over a month in Nairobi, Kenya.

The new inputs build on a relative resurgence of energy within the rules talks ahead of the 31 July 2015 deadline for WTO members to negotiate a "post-Bali work programme," so called after the organisation's 2013 ministerial conference held on the Indonesian archipelago, which was meant to chart a path forward for completing the long-running Doha Round.

The work programme deadline ultimately passed without an outcome, leaving WTO members with little time to determine what sort of outcome they aim to see for the Nairobi meet.

Within the context of the WTO Doha Round, the rules negotiations covers efforts at improving global trade disciplines relating to anti-dumping duties and procedures; subsidies and countervailing measures; provisions applying to regional trade agreements (RTAs); and the establishment of disciplines on fisheries subsidies.

Australia and Peru on 2 November and 20 October respectively released draft ministerial decisions on fisheries subsidies. Last month also saw the 28-nation EU put forward a technical paper following up on a proposal made in July for improvements in transparency across the four rules negotiating areas. A communication from Japan, meanwhile, was circulated on 22 October following up on a co-sponsored paper by 11 other WTO members published in June focused on boosting transparency and due process in anti-dumping investigation proceedings.

In addition to the aforementioned documents, a communication from a group of six countries also in June had outlined elements for effective disciplines on fisheries subsidies to be included in the post-Bali work programme and for an outcome at MC10, followed by a technical paper issued by New Zealand in July. (See BioRes, [8 July 2015](#))

Earlier this year the African, Caribbean, and Pacific (ACP) Group of countries tabled a series of elements for the work programme talks, specifying the need to reach agreement on a fisheries package in time for the December ministerial meet. (See BioRes, [26 March 2015](#)) The ACP Group has tabled a new proposal this week which builds on these elements, specifically for fisheries subsidies disciplines.

With WTO members now in the process of evaluating what sort of package may be delivered in time for December, sources say that the ongoing rules talks specifically are complicated by the lack of clarity with regard to the overall Nairobi outcomes and consequently how negotiations in the group should move forward in this context.

Fisheries subsidies draft decisions

Peru's draft decision on fisheries subsidies was reportedly raised last Thursday during an informal rules negotiating group meeting, alongside conceptual discussion on some other topics, including around anti-dumping rules and transparency across the four rules areas.

Recalling a [mandate](#) agreed at a 2005 WTO ministerial meet held in Hong Kong, Peru's proposal would see ministers decide to establish, within a predefined period, prohibitions on subsidies to fishing activities affecting overfished stocks and those provided to any vessel engaged in illegal, unreported, and unregulated (IUU) fishing. Experts note that the proposal appears to underline the prohibitions' application with respect to vessel construction and fuel subsidies, in so far as they contribute to the two activities identified.

The proposal would also see WTO members provide information in key areas such as fuel subsidies where these may have an impact on fisheries; the status of fish stocks in the fishery for which the subsidy is provided; and total imports/exports per species.

Lima's draft specifies consideration of appropriate and effective special and differential treatment (S&DT) of artisanal fisheries as a crucial issue for food security, local community development, and poverty reduction worldwide.

The Australian draft decision, meanwhile, recalls the UN's recently adopted 2030 Agenda for Sustainable Development and its call for action on fisheries subsidies that contribute to overcapacity and overfishing. (See Bridges Weekly, [1 October 2015](#))

With due regard also to the WTO's 2005 Hong Kong outcome, Canberra proposes enhanced transparency and improved monitoring in relation to notifications around subsidies relating to the fisheries sector, within the meaning of Articles 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and in so far as these are "specific" to a particular enterprise or industry as stipulated in Article 2.

The proposal would also commit members to notifying to the WTO information on fisheries subsidies on top of that required in Article 25 of the SCM Agreement, including the programme name, its legal authority, level of assistance provided and purpose, fisheries affected by the programme, whether or not it relates to exports, fish stocks status, and any relevant conservation or management measures in place.

The WTO's Committee on Subsidies and Countervailing Measures would then review this additional information. The proposal notes that the sharing of information would not prejudice a subsidy's legal status under the General Agreement on Tariffs and Trade (GATT) or the SCM Agreement.

Challenging, complex topic

Three key elements are common to several proposals tabled so far this year: the prohibition of subsidies provided to vessels engaged in IUU fishing; the prohibition of subsidies to fishing that targets overfished fish stocks; and improved transparency around fisheries subsidies.

While the various submissions underscore a willingness to act on fisheries subsidies in the WTO context, the different approaches also reflect some of the divergences between members on the issue.

The Australian proposal does not, for example, include language on prohibitions nor on S&DT. For some members, a Nairobi outcome on transparency measures alone will not be enough, and additional prohibitions or disciplines would be important.

At least two of the proposals tabled indicate that S&DT should not be applied to the limited prohibitions. S&DT has long remained a tricky area to navigate in the fisheries subsidies talks. Fisheries provide a key source of income and nutrition in some of the world's poorest communities and the 2005 Hong Kong mandate calls for particular attention to S&DT.

However, some members are hesitant to apply wide carve-outs from eventual fisheries subsidies disciplines for all developing countries, given that some large developing countries are among the world's biggest fishers. "Developed" and "developing" country status is self-designated in the WTO context.

Meanwhile, according to other sources reflecting on recent meetings, certain members have expressed concern that the additional WTO notification requirements could be too burdensome for developing economies. Some members last Thursday also reportedly said that more details on the S&DT language put forward by Peru would be needed.

Beyond the question of prohibitions on subsidies to IUU fishing and activities targeting overfished stocks, as well as improved transparency, questions have also arisen with respect to how other harmful subsidies should be addressed at the WTO.

Submissions by several members refer to limits on fuel and construction subsidies. Experts have argued that removing fuel subsidies that benefit fishing would be important in order to help address issues such as IUU or overfishing by aligning incentives in the right direction.

However, some delegates have also warned that addressing fuel subsidies in the WTO might be difficult, in light of divisions on the topic during discussion of the rules [chair's text](#) tabled in talks back in 2007 and the fact that comparing fuel subsidy levels is technically challenging.

EU transparency options

The EU's follow-up paper on transparency broadly addresses the four rules negotiating areas and clarifies its various proposals outlined in July. On fisheries subsidies, the bloc suggests ideas improving existing WTO subsidies notifications, including by drawing on proposals made by other members.

Additional elements for notification might be categories of subsidies by nature, management measures associated with the subsidies, fleet information, specifications on whether the subsidy might contribute to increasing fishing fleet capacity, or information on mechanisms in place to avoid subsidising vessels engaged in IUU fishing.

In relation to concerns around notification burden, meanwhile, the EU suggests adopting a "threshold" approach where only major fishing nations would be required to respect additional subsidies notifications requirements. Major fishing nations might, for example, be defined by those responsible for most marine fish capture. Alternatively, the EU suggests using a monetary threshold, and requiring notifications for subsidies that exceed this.

Other aspects of the EU paper include a proposal for improving general subsidies notifications and data by having WTO members that report on countervailing duty actions taken first check whether the subsidy measures at issue have been notified and, if not, provide "supplementary" notification information. "Countervailing," in trade jargon, relates to the retaliatory duties a WTO member may apply if another member's subsidised imports are hurting domestic producers.

The EU's proposal also suggests taking up discussions on improving transparency related to members' anti-dumping practices and on transparency related to RTAs based on two chair's 2011 texts that reflected progress in the talks up to that point.

Anti-dumping reform

Japan's communication elaborates on, but is also without prejudice to, an earlier co-sponsored proposal for improving transparency and due process in relation to anti-dumping disciplines.

The paper includes a series of reform proposals to the WTO's existing Anti-Dumping (AD) Agreement rules covering, among other areas, semi-annual reports; anti-dumping policy review mechanisms, disclosure and public notices, accountability, publication of legal instruments, access to non-confidential information, and calculation methodologies.

Anti-dumping investigations are used to determine if an exporter is selling products abroad at lower prices than at home or below the cost of production. Trade measures may be imposed if a link between dumping and material injury to the investigating authority's domestic producers is found, among other conditions.

Russia also circulated a paper on 16 October on transparency in anti-dumping and countervailing duty proceedings, focused on the non-confidential presentation of information by interested parties to investigating authorities, seeking to provide similar standards around the interpretation of certain relevant articles within the AD and SCM Agreements.

Some members reportedly resisted the AD proposals last Thursday, arguing that these would require changes to existing WTO legal texts, which would be hard to secure before December. Other members expressed concern that the AD proposals do not cover aspects of improving WTO rules in this area that had previously been discussed in this context and that they would not support a cherry-picking of issues.

Meanwhile, certain members also remarked on the different nature of the proposals on AD and fisheries subsidies on the table, given that the former cover textual reform and the latter are proposed as ministerial declarations.

ICTSD reporting.

BIOTECHNOLOGY

European Parliament Rejects Proposed National Bans for GMO Products

Members of the European Parliament during a plenary session on Wednesday 28 October voted 577 to 75 against a proposed draft EU law that would allow the individual member states to restrict or prohibit the use of genetically modified organisms (GMOs) found in food or feed, even after these have been broadly approved for the bloc as a whole.

"Today's vote gave a clear signal to the European Commission. This proposal could [reverse] what has been achieved with the single market and the customs union," said Giovanni La Via, the parliamentarian charged with the dossier, in a [press release](#).

"I believe that this proposal could have negative consequences for agriculture in the EU, which is heavily dependent on protein supplies for GMO sources. It could also have indirect negative effects on imports. Finally, there are concerns over whether this proposal could even be implemented, because there are no border controls in the EU," La Via continued, adding that parliamentarians had also expressed concern around the absence of an impact assessment to accompany the proposal.

In 2013 the EU required around 36 million tonnes of equivalent soybean to feed its livestock, with only around 1.4 million tonnes of this derived from non-GMO sources and produced in the EU, suggesting a high dependence on GM feed imports.

Ahead of the vote, EU Health Commissioner Vytenis Andriukaitis had [said](#) that the bloc was in a "very paradoxical" situation given that on the one hand a number of citizens remain sceptical on GMOs, while on the other hand EU livestock producers rely on these types of imports.

The outcome was nevertheless largely expected by observers of the process after the parliament's environment committee squarely rejected the European Commission's proposal earlier last month on similar grounds. (See BioRes, [13 October 2015](#))

Under EU law, the European Commission has the sole power to introduce legislative proposals, while in the majority of cases these are then agreed in a co-decision procedure between the European Parliament and member states in the EU Council.

Regulatory, trade clash?

Following the Parliament's rejection last week, the European Commission reportedly indicated that it would not immediately withdraw its proposal, which still needs to be reviewed in a first reading by member states.

According to existing EU rules in this area, an application for authorising a GMO for food or feed uses must be submitted by a company to a national authority, which then sends this on to the European Food Safety Agency (EFSA) for a risk assessment.

Once completed, the European Commission makes a proposal to all member states in the Standing Committee on Plants, Animals, Food and Feed on whether to grant or reject the authorisation. National representatives then vote in the committee based on a "qualified majority system." Such a majority requires 55 percent of EU member states representing at least 65 percent of the EU population.

EU law, moreover, requires companies to label an authorised product if GMOs account for at least 0.9 percent of the food or feed.

However, the EU executive put forward the proposal last April after this approval process system ground to a halt, in the face of strong opposition in some member states to crop biotechnology. (See BioRes, [29 April 2015](#))

The use of GMOs has long been a sensitive subject in some countries such as France and Germany, among others, where many civil society groups argue that artificially modified crops or products could wreak a range of ills, ranging from local ecosystem destruction to severe health impacts.

Brussels had hoped that its GMO food and feed proposal would mirror the success of a separate legislative process designed to reform the authorisation procedures around the cultivation of GM crops in the bloc. EU institutions signed off on new rules last March allowing member states to apply national GM crop cultivation bans for specific reasons. (See BioRes, [4 March 2015](#))

However, EU parliamentarians last week stressed that substantive differences exist between the two GM issues, which require separate approaches. Whereas crop cultivation bans in the context of appropriate cross-border contamination safeguards might be feasible, GM food and feed bans target traded products, and a ban would therefore be difficult to enforce in the context of the bloc's cherished single market where goods circulate relatively freely.

The reaction reflects a wider challenge of balancing the removal of trade barriers with regulatory preferences in different jurisdictions.

The parliamentarians' position is, moreover, interesting given that the body has voiced strong concerns that international trade deals such as a proposed Transatlantic Trade and Investment Partnership (TTIP) with the US might force the bloc to lower its standards on GMO-free agriculture.

However, European Trade Commissioner Cecilia Malmström has [repeatedly said](#) that TTIP will not change the bloc's regime with regards to genetically modified food, noting that regulation in this area between the two trading giants is just "too different."

For its part, Washington has criticised the Commission's GM food and feed reform proposal, suggesting that it would allow its member states to ignore scientific and environmental evaluations and is "not constructive" given that the TTIP talks are still ongoing. (See Bridges Weekly, [30 April 2015](#))

The TTIP talks are now in their third year and are aiming to pick up the pace, with the goal of inking a deal before US President Barack Obama leaves office in early 2017. Talks to date have largely addressed technical issues, with major political decisions on the more contentious areas of the bilateral trading relationship still forthcoming. (See Bridges Weekly, [29 October 2015](#))

The differences between the EU parliamentarians' position regarding the single market and broader international cooperation may be explained by the principles behind the integrative effort pursued by member states, which stretch well beyond those found in a trade or investment deal, according to some experts.

ICTSD reporting; "EU lawmakers reject national bans on GM food, feed imports," EURACTIV, 29 October 2015.

SERVICES

LDCs Review Content, Economic Value of WTO Services Waiver Notifications

Earlier this week, the WTO's poorest members – known as the Least Developed Countries (LDC) Group – reviewed the notifications of preferential measures in support of LDC services and services suppliers during a dedicated session of the WTO's Council on Trade in Services (CTS).

According to sources familiar with the 2 November meeting, the efforts made to date by members to make their pledges into reality were praised by Shameem Ahsan, Bangladesh's WTO Ambassador who spoke on behalf of the LDC Group.

Referring to the notifications of preferences received by the CTS so far, he explained that there is now "ample evidence on the table" demonstrating a commitment of WTO members to advance services supplied by LDCs.

The LDC services waiver decision stems from the outcome from a previous WTO Ministerial Conference held in Geneva, Switzerland, in 2011. However, in the years that followed, no preferences had been requested by LDCs or granted to them, prompting WTO members to reconsider ways to move this decision forward.

In July 2014 the group submitted a collective request regarding the preferential treatment it wanted to see for LDC services exports.

At a high-level meeting in February, 22 WTO members responded to the collective request made by the LDC Group for preferential treatment in the services sector by indicating sectors and modes where they were considering providing preferences as well as support for projects on technical cooperation. (See Bridges Weekly, [12 February 2015](#))

Since then, the LDC Group has been encouraging WTO members to formally notify the CTS of their actual preferences, including detailed information regarding the sectors or sub-sectors concerned and the period of time during which the member plans to maintain those preferences.

The assessment report of the notifications presented during this week's meeting - a copy of which has been seen by Bridges – put clear emphasis on the importance of these notifications as the only means to trigger the effect of the services waiver.

A developed country delegate mentioned that going forward additional technical assistance and supply-side capacity building was also essential in order to take further advantage of any opportunities in that area.

Assessment of the preferences

Since pledges were made by WTO members earlier this year, the LDC Group has been working on an assessment report in order to evaluate the commercial value of the preferences on the table and the ensuing need for capacity building in the LDCs concerned.

To date, out of the 22 indications of preferences made by WTO members at the February high-level meeting, 16 have been notified to the CTS specifying these preferences, which the Group welcomes as an "impressive" achievement.

"About 54 percent of the Collective Request appears to be considered," states the report.

Sources indicated that, in general, the group agreed that a number of sectors and modes of supply where they sought preferential treatment were strongly reflected in the notifications submitted so far. Furthermore, the group reported that all modes of supply had been variously featured without any restriction in modes 1, 2, and 3.

In recent months, LDCs have also been exploring ways of extending the waiver beyond market access, sources say. Though there is a provision in the waiver decision to allow such an extension, notifications so far – with a few exceptions – have mainly covered Article 16 of the General Agreement on Trade in Services (GATS), which deals with market access.

Non-market access measures are not automatically covered, but can be authorised by the WTO CTS.

The WTO CTS reportedly approved the notifications submitted earlier this year by China, Iceland, India, Norway, Switzerland, and Turkey, which featured preferences that go beyond market access commitments.

Some sources indicate that, for example, Iceland, Norway, and Switzerland have included national treatment as part of their notifications and that in the same vein, the elimination of visa fees by India, authorised destination status by China, and waived work permits by Turkey have also been notified.

Among the remaining issues to be considered, the LDC Group pointed to the need to have clarity on the preferences offered. For example, they suggested that it would be important to have clarity on the nature and operability of the derogation, the extent to which non-LDCs would not receive similar treatment unless under other preferential arrangements.

A country-by-country assessment was conducted during the meeting on the basis of the notifications which have been submitted. Some members who have already submitted their notifications declared that they were prepared to engage into bilateral discussion on any issue that could arise over the offers.

Further notifications underway

To date, Canada, Australia, Norway, Korea, China, Hong Kong, Chinese Taipei, Singapore, New Zealand, Switzerland, Japan, Mexico, Turkey, the United States, India, Chile, and Iceland have notified their preferences to the CTS.

Other notifications from Brazil, the EU, and South Africa are said to be underway and should be submitted soon.

Some developed country members reportedly expressed satisfaction about the preferences notified so far, explaining that it will provide an "extra boost" to LDC exports, but they also emphasised the need for LDCs to address their supply-side constraints in order to enhance their capacity in service exports.

Duration of the waiver under scrutiny

The timing of the operationalisation of the waiver has often been referred to as crucial in past discussions and has received more attention lately ahead of the upcoming WTO ministerial conference, which will be held in Nairobi, Kenya, this December. (See Bridges Weekly, [15 October 2015](#))

In recent consultations, the LDC group is reported to have sought a modification of the duration of the services waiver – including potentially through a ministerial decision in

Nairobi – so that notified preferences can apply for 15 years from the date that a member submits its notification, a source said.

Some LDC delegates are of the view that the waiver has a shelf life of 15 years, which is the set duration of the waiver since its adoption in 2011, but that of these 15 years almost four years have passed with no notification of commitments from members.

ICTSD reporting.

DISPUTES

Disputes Roundup: Panama Financial Services Appeal, Ukraine-Russia Row in Focus

The past few weeks have seen a flurry of activity at the global trade arbiter, with the establishment of a WTO panel in Vietnam's complaint against Indonesian safeguard measures on iron and steel; an appeal filed by Panama in its financial services dispute with Argentina; and the filing of a complaint by Ukraine against Russia on import measures regarding railway equipment.

Another area that has continued to spark discussion among WTO members over the past few weeks is how to improve the functioning of the dispute settlement system, which has been facing repeated delays in the process due to the growing caseload and complexity of cases.

Panama appeals financial services ruling

On 30 October, Panama circulated a notice of appeal in its dispute with Argentina over various financial services-related measures taken by the latter, in a case that dealt largely with complaints under the WTO's General Agreement on Trade in Services (GATS) ([DS453](#)).

While a panel had ruled mostly in Panama's favour in the case in late September, the country is citing certain "errors of law" in the panel's report which it would like to see the Appellate Body address. (See Bridges Weekly, [8 October 2015](#))

These included, for example, questions regarding the panel's interpretation and application of the term "treatment no less favourable" with regards to GATS Articles II:1 and XVII, which deal with most-favoured nation treatment and national treatment, respectively.

Another issue raised by Panama was how the panel applied the terms "necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this agreement" under GATS Article XIV(c).

That provision deals with the "general exception" that does not prohibit members from taking actions necessary to "secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement," subject to certain conditions such as these not be disguised restrictions on trade.

According to Panama, the panel both failed to "apply properly the relevant legal standard," while also focusing its analysis on whether the measures ensured compliance with the above-mentioned laws' objectives, rather than with their specific provisions.

Panama has also questioned the panel's interpretation of the paragraph on domestic regulation under the GATS Annex on Financial Services, arguing that the panel "failed to give effect to the term 'domestic regulation' in the title of the prudential exception, which determines the scope of this exception."

The prudential exception allows WTO members to take certain measures for reasons such as protecting investors or ensuring the integrity and stability of the financial system, regardless of other GATS provisions.

"The panel incorrectly concluded that the prudential exception covers all types of measures affecting the supply of financial services and not only those measures that can be characterised as 'domestic regulations'," Panama said.

At press time an appeal had not yet been filed by Argentina.

Ukraine, Russia to square off on railway equipment

Separately, a fight is brewing between Ukraine and Russia over whether certain import measures taken by Moscow on railway rolling stock, railroad switches, and other railroad equipment and parts have violated WTO rules.

According to the consultations request filed by Kiev in late October, the measures have essentially led to a ban on exports from Ukraine to its Eastern neighbour of these railway products.

The measures at issue involve a decision taken in July 2011 by the Commission of the Customs Union of Belarus, Kazakhstan, and Russia that established various technical and safety requirements that railway equipment would need to meet before these could be adopted, with such regulations to take force in August 2014.

Under the same decision, these products would need to pass "conformity assessments," with the related certificates to be registered with the appropriate officials. Subsequent changes were made to this decision, such as a transitional period of application of these certificates – specifically to August 2016 – among others.

Kiev claims that in late 2013, Russian authorities began suspending conformity assessment certificates that had already been registered, on grounds such as "technical issues" – allegedly without "reasonable explanations."

Similar difficulties in receiving such certificates are not seen in Belarus and Kazakhstan, Ukraine argues, with the former two countries being part of the same customs union as Russia. However, Moscow allegedly does not recognise the certificates granted by Minsk and Astana.

Ukraine claims that these measures and others violate both the WTO's General Agreement on Tariffs and Trade (GATT) as well as the Technical Barriers to Trade (TBT) Agreement. Kiev has cited, along with various other concerns, questions regarding national treatment and most-favoured nation treatment under both of those agreement, to name a few.

"These violations appear to nullify or impair benefits accruing to Ukraine directly or indirectly under the covered agreements within the meaning of Article XXIII:1 of the GATT 1994," Ukraine said in its consultations request.

Kiev argues that since the imposition of such measures, Ukrainian railway exports have plummeted. In 2013, for example, such exports hit US\$1.7 billion, while a year later those amounted to US\$60 million.

Under WTO rules, the two sides must hold consultations for a minimum of 60 days in an effort to find a mutually agreed solution. Should such talks fail to yield this result, Kiev will then have the option of requesting that a dispute panel hear the case.

Panel to hear Vietnam-Indonesia safeguard case

At last week's meeting of the WTO Dispute Settlement Body (DSB), a panel was established to hear Vietnam's dispute ([DS496](#)) with Indonesia over the latter's safeguard measures on iron and steel products, following a second request from Hanoi.

A previous request had been blocked by Jakarta in September. At the time, a panel was established in a related dispute tabled by Chinese Taipei ([DS490](#)), also against Indonesia. The same panel will hear both complaints.

The concerns raised by both complainants regarding the safeguards fell under the GATT as well as the Agreement on Safeguards.

Among other issues raised by Vietnam, Indonesia did not provide “reasoned and adequate findings and conclusions regarding the alleged unforeseen developments and the effect of GATT obligations that led to the threat of serious injury (or threat thereof)” that were the reasoning behind the safeguard measures – which have been in place since mid-2014.

Hanoi has also questioned whether Jakarta has been able to properly explain the causal link between the increase in imports and alleged “serious injury (or threat thereof)” as well as whether the findings of such injury or threat have been properly substantiated.

Speaking to the DSB last week, Indonesia reportedly expressed its disappointment with the renewal of Vietnam’s panel request, citing the various efforts that Hanoi has made to clarify how the measures do indeed comply with WTO rules, according to sources familiar with the meeting.

Azevêdo weighs in on system delays

Director-General Roberto Azevêdo was on hand at last week’s DSB meeting to discuss possible ways to improve the functioning of the dispute settlement system, after Korea and various other members raised concerns over delays during an August DSB meeting. (See Bridges Weekly, [9 September 2015](#))

“Our dispute settlement system is highly efficient – and remains faster than other international adjudicatory systems the world over. Nevertheless, we can do better,” Azevêdo said.

The WTO is approaching a significant milestone in its history, being just one case short of the 500-dispute mark. According to the Director-General, 2015 has been “the busiest period on record,” with an average of 30 panels being active any given month.

Along with outlining a series of actions that he has implemented since the August DSB meeting – such as recruitment and reallocating posts and resources from other parts of the WTO secretariat to dispute settlement within the bounds of the “zero nominal budgetary growth principles,” limits on headcount, and caps on how much can be spent on personnel – Azevêdo also promised various additional improvements relating to transparency, such as more information on waiting times and caseload.

“Of course, what I can do is only part of the picture,” Azevêdo said. “You can do much more than I can to make the system work more expeditiously and more efficiently,” he said, welcoming comments on the moves taken so far and ideas on the way ahead.

The WTO chief also confirmed that he has appointed Deputy Director-General Karl Brauner to begin consultations on ways to continue addressing these concerns, “bearing in mind the budgetary constraints and headcount limitation imposed by members.”

Sources say that the measures outlined by Azevêdo were welcomed by members, who also pledged to contribute suggestions on how to address the delays and other difficulties facing the system in order to ensure its continued credibility.

ICTSD reporting.

TRADE AGREEMENTS

EU, New Zealand Begin Setting Stage for Trade Talks

Preparations for potential trade talks between the EU and New Zealand are set to gear up, officials announced on 29 October, following a meeting between EU Commission President Jean-Claude Juncker, Council President Donald Tusk, and New Zealand Prime Minister John Key.

"The European Union and New Zealand are longstanding and close partners," the three leaders [said](#) afterward. "Today we committed to start the process for negotiations to achieve swiftly a deep and comprehensive high-quality Free Trade Agreement."

The talks are not set to launch straight away, however, with various other steps – such as a feasibility study – expected so that the two sides can better determine the scope of what they aim to cover in a free trade deal.

The EU and New Zealand have an existing bilateral mutual recognition agreement, [signed in 1999](#), that aims to facilitate trade in industrial goods by reducing technical barriers. The pact mainly covers goods such as medical products and devices, telecommunications, pressure, and low voltage equipment, as well as machinery, according to the European Commission.

The EU, which ranked as New Zealand's second largest trading partner after Australia last year, largely exports manufactured goods to the Pacific country, while importing primarily agricultural products. The total trade in goods between the EU and New Zealand amounted to €7.9 billion in 2014.

This planned FTA was referred to as a Commission goal in its new trade and investment strategy document released in mid-October, as part of its broader effort to strengthen its trade relations with economies in the Asia-Pacific region. The European Commission is also seeking a mandate from the European Council to start trade talks with Australia, among other countries. (See Bridges Weekly, [15 October 2015](#))

In a separate statement, New Zealand Prime Minister John Key [called](#) the proposed negotiations "a part of the government's wider plan to diversify the economy by building strong trade, investment, and economic ties around the world." This announcement follows New Zealand's recent success in concluding a trade deal with 11 other Pacific Rim countries, known as the Trans-Pacific Partnership (TPP) Agreement, as well negotiating an FTA with South Korea. (See Bridges Weekly, [8 October 2015](#))

The new agreement is expected to provide New Zealand "greater access to European market" and facilitate trade transactions between the two parties, Key indicated.

New Zealand Winegrowers, the national organisation for the country's grape and wine industry containing approximately 850 grower members and 700 winery members, welcomed the new proposed agreement. The EU market is the country's largest wine market, accounting for an excess of 30 percent of the total wine exports and amounting to over NZ\$460 million (€278.7 million at today's exchange rate).

The "secure and competitive access" to the EU market is essential for New Zealand's wine industry to achieve its desired growth, the Winegrowers' CEO Philip Gegan [stated](#). The

country's wine exports currently value approximately at NZ\$1.47 billion (€890 million), and the industry has set a goal of reaching NZ\$2 billion (€1.2 billion) by the year 2020.

How agriculture will be treated in the deal is a key question. While the Commission's new trade strategy refers to the importance of protecting the EU's agricultural sensitivities in a trade deal with Wellington, farm trade has traditionally been a key issue area for New Zealand in other such negotiations, including the TPP, where dairy played a key role in the end-stage of the talks.

New Zealand-based dairy multinational Fonterra has said, however, that it views the move to launch EU trade talks as a positive step forward, with group director of co-operative affairs Miles Hurrell telling Radio New Zealand that the group is "certain there will be a positive outcome in the long term."

"Dairy for us in Europe at this point in time is not that significant. We have free trade agreements - those in play or in place now - with most of our trading partners around the world with the exception of Europe so we are very positive about the announcement overnight," he said.

ICTSD reporting; "New Zealand and Europe inch towards free trade negotiations," STUFF NATION, 30 October 2015; "EU Agrees to advance FTA talks with New Zealand," NBR NEWS, 30 October 2015; "Fonterra positive on European trade talks," RADIO NEW ZEALAND NEWS, 30 October 2015.

China, Japan, South Korea "Restore" Relations at Trilateral Meet

China, Japan, and South Korea have agreed to resume regular trilateral meetings – and ramp up discussions for a trade pact between them – after the countries' leaders held their first summit in more than three years in Seoul on Sunday.

"The trilateral cooperation mechanism is back on track," Japanese Prime Minister Shinzo Abe announced at the summit with Chinese Premier Li Keqiang and South Korean President Park Geun-hye. The three leaders reportedly agreed to move forward on trade negotiations, expand exchange programmes, and resume multi-party talks on North Korea's nuclear activities.

The three Asian economic giants have been involved in various heated territorial and historical disputes in recent years, which have imposed a significant strain on diplomatic ties and threatened possible efforts for increased economic cooperation.

In their remarks to reporters, the leaders did not address whether they had made any advances in some of the thornier issues between the three countries, such as the China-Japan dispute over the control of a group of uninhabited islands in the East China Sea, or South Korea and China's charge about Japan attempting to cover up atrocities from the Second World War. (See Bridges Weekly, [17 October 2012](#))

Parallel negotiations

At the summit, the three leaders agreed to make "further efforts towards the acceleration of the trilateral FTA negotiations," which had been launched in 2012 but had seen slow progress since as regional tensions worsened. (See Bridges Weekly, [16 May 2012](#))

South Korean and Chinese leaders also pledged last Saturday to push for the ratification of the China-South Korea free trade deal – reached a year ago and signed this June – so that the pact can be put into effect by the end of the year. The deal will lead to Seoul eliminating tariffs on 79 percent of imported Chinese products, while Beijing will remove tariffs on 71 percent of South Korean goods during its first decade in force. These numbers will rise to 92 and 91 percent, respectively, two decades in. (See Bridges Weekly, [26 February 2015](#))

The potential ratification of the China-South Korea deal will likely be an incentive to speed up trilateral talks including Japan, analysts say. The three countries combined make up one-fifth of global GDP.

The relationship between these trade initiatives and other regional deals recently concluded or under negotiation is another key question, including how these will affect trade advantages and flows. Japan is part of the 12-country Trans-Pacific Partnership (TPP) deal, with negotiations on that pact having concluded last month and now heading toward the signing and ratification stages. (See Bridges Weekly, [8 October 2015](#))

Neither South Korea nor China are TPP participants, though Seoul has indicated that it may pursue membership in the pact, pledging closer cooperation with the US in this regard. South Korea has bilateral free trade agreements with all except two of the TPP parties. (See Bridges Weekly, [22 October 2015](#))

Meanwhile, all three countries are involved in the 16-member Regional Comprehensive Economic Partnership (RCEP), which also includes the ten members of the Association of Southeast Asian Nations (ASEAN), as well as India, Australia, and New Zealand.

The latest round of RCEP talks, meanwhile, took place in Busan, South Korea last month to discuss market access on goods and services. At the Seoul summit, Park told reporters that Japan, Seoul, and Beijing "agreed to work together for the conclusion of the RCEP."

ICTSD reporting; "China, Japan and South Korea relations 'completely restored' after summit," CNN, 3 November 2015; "S Korea, Japan, and China agree to restore trade ties," AL JAZEERA, 1 November 2015; "China, Japan, South Korea Skirt Sensitive Subjects," WALL STREET JOURNAL, 1 November 2015; "Spotlight: China, Japan, South Korea embracing fresh opportunities to promote FTA process," XINHUANET, 28 October 2015; "South Korea frets as TPP erodes trade advantage over Japan," FINANCIAL TIMES, October 6 2015; "China-backed trade pact playing catch-up after U.S.-led TPP deal," REUTERS, 10 October 2015.

EVENTS & RESOURCES

Events

Coming Soon

8-12 November, Daegu, South Korea. SOLAR WORLD CONGRESS 2015. Hosted by the Korean Solar Energy Society, this year's International Solar Energy Society (ISES) Solar World Congress will feature keynote addresses by international experts in this field, as well as technical presentations on new advances in renewable energy and various other events. The meeting will focus on themes such as renewable energy technologies, off-grid and rural energy access, and clean transportation technologies, among others. More information is available at the SWC event [website](#).

9 November, Geneva, Switzerland. AGRICULTURAL TRADE OUTCOMES AT THE NAIROBI MINISTERIAL AND BEYOND. This event, hosted jointly by the International Centre for Trade and Sustainable Development (ICTSD), the UN Food and Agriculture Organization (FAO), and the International Food Policy Research Institute (IFPRI), will discuss how the various evolving trends affecting food security and rural development could have in determining possible outcomes for the upcoming WTO ministerial conference in Nairobi, Kenya, and thereafter. Participants will discuss, among other topics, the influence that domestic political constraints are having on international negotiations, in turn affecting both potential Nairobi outcomes and beyond. More details can be found at the ICTSD [website](#).

10 November, Beijing, China. ADDRESSING CONSUMPTION-BASED EMISSIONS: A CHINESE PERSPECTIVE. This event is being organised by Climate Strategies and the Carbon-CAP, a research project which includes ICTSD and is funded by the European Commission. The meeting will bring together Chinese stakeholders across various sectors to discuss both the opportunities and challenges involved in consumption-based accounting and policies, particularly given the increase some countries have seen in emissions at the consumption level via imports of carbon embedded in internationally traded products and services. Other topics for discussion include the international drivers that affect carbon emissions, as well as ways to address emissions on the demand-side. Please note that this event is by invitation only. More information about the event is available [here](#).

12-13 November, Brisbane, Australia. LEVERAGING SERVICES POTENTIAL FOR INCLUSIVE AND SUSTAINABLE ECONOMIC GROWTH. This two-day meeting, organised by ICTSD, will bring together policymakers, experts, and private sector representatives to discuss the potential in developing services trade further in both least developed countries (LDCs) and Low Income Countries (LICs), and what this could mean for reducing poverty and improving welfare, among other outcomes. The discussions are meant to lead to a set of services sectors which would hold the most potential for inclusive, sustained economic growth and structural transformation at the regional level, as a step toward developing supportive policies in this area. To learn more, visit the ICTSD [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.

4 + 6 November: Trade Policy Review Body – Southern African Customs Union (SACU)

17 + 19 November: Trade Policy Review Body – Jordan

Other Upcoming Events

15-16 November, Antalya, Turkey. G20 LEADERS' SUMMIT. The annual summit of leader from the G20 coalition of major advanced and emerging economies will be hosted this year by Turkey. This year's event, officials say, will be focused on reaching practical outcomes across areas ranging from development, climate change, climate finance, trade, growth, and, jobs. More information about the leaders' meeting and other related events can be found at the official G20 [website](#).

23-26 November, Khartoum, Sudan. 17TH AFRICA OIL, GAS AND MINES TRADE AND FINANCE CONFERENCE AND EXHIBITION. This conference will be held under the theme "Extractive industries and sustainable job creation," with a view to examining possible ways to boost the contribution that the natural resources sectors makes to the economic and social development of resource-rich countries and, more broadly, the African continent. The event is being organised jointly by the UN Conference for Trade and Development (UNCTAD) and the Government of Sudan in partnership with Cubic Globe Ltd. Participants will include public and private sector representatives from the energy and mining industry, as well as financial and legal experts, academics, and civil society. More information can be found at the conference [website](#).

3-4 December, Berlin, Germany. IP SUMMIT 2015. This conference, which is being hosted by Premier Cercle™, is expected to bring together over 100 speakers from the field of intellectual property, as well as over 500 delegates from the private sector, institutions, and academia. The meeting, known also as the Pan-European Intellectual Property Summit, will focus on a range of intellectual property-related developments and challenges, such as ongoing reforms in the EU; improvements in European intellectual property rights' systems, and more. Additional information can be found [here](#).

14-17 December, Nairobi, Kenya. TRADE AND DEVELOPMENT SYMPOSIUM. This biennial event, organised jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the government of Kenya, will be held in parallel with the WTO's Tenth Ministerial Conference. The four-day event will include various high-level plenaries, press events, and private roundtables, among other features. Further details can be found on the official event [website](#).

15-18 December, Nairobi, Kenya. WORLD TRADE ORGANIZATION – TENTH MINISTERIAL CONFERENCE. The World Trade Organization will be holding its Tenth Ministerial Conference (MC10) at year's end, with Kenya serving as this year's host. These ministerial gatherings are the highest-level meeting of the global trade body, with members able to take decisions on any matters relating to any of the multilateral trade agreements. These meetings are usually held biennially. More information will be made available through both the WTO [website](#), as well as the Kenyan government's dedicated MC10 [website](#).

Resources

FOURTEENTH UNCTAD-OECD REPORT ON G-20 INVESTMENT MEASURES. Published by the UN Conference on Trade and Development (UNCTAD) and the Organisation for Economic Co-operation and Development (OECD) (October 2015). This latest report finds that members of the G-20 coalition of major advanced and emerging economies have refrained from introducing new investment barriers during the mid-May 2015 to mid-October 2015 period, in line with past commitments. The authors note that the bulk of the investment policy changes during that time have promoted greater openness in the international investment environment. To learn more about the report, please click [here](#).

ECONOMIC GOVERNANCE STRUCTURES IN THE UNITED STATES. By Jacob Funk Kirkegaard of the Peterson Institute for International Economics (October 2015). This briefing paper was prepared at the request of the European Parliament's Economic and Monetary Affairs Committee, with a view to providing insights into US governance structures that the EU could potentially use as a model for integration. The report takes a look at US fiscal actors at various levels, analyses government revenues and expenditures, reviews debt issuance policies, and discusses the Federal Reserve System and other financial regulatory agencies. The paper is available [here](#).

INVESTMENT POLICY MONITOR No. 14 – OCTOBER 2015. Published by the UN Conference on Trade and Development (October 2015). This report, which focuses on the June-September 2015 period, reviews investment policy measures taken in 25 selected countries. Among other findings, the report notes the expansion of the international investment agreement (IIA) field, noting as an example the recent conclusion of the Trans-Pacific Partnership (TPP) Agreement. The authors review provisions in new IIAs regarding the right to regulate for sustainable development, and refers to the increased interest in a systemic reform of the IIA regime. The publication is available [here](#).

NEWS ON LDC ISSUES FOR NAIROBI – NEWSLETTER No. 13. Published by IDEAS Centre Geneva (30 October 2015). This latest edition of the IDEAS Centre newsletter discusses the preparations for the WTO's Tenth Ministerial Conference in Nairobi, Kenya, specifically with regards to the possible outcomes relating to development and least developed countries, and provides recommendations in that context. The newsletter is available in both English and French and can be accessed [here](#).

INTEGRATING SMES INTO GLOBAL VALUE CHAINS: CHALLENGES AND POLICY ACTIONS IN ASIA. Published by the Asian Development Bank Institute (ADBI) (October 2015). This report discusses the opportunities which small and medium-sized enterprises (SMEs) have within global value chains, including by learning from larger firms and the process of surviving in the global market place. This participation, the authors argue, can provide a boost in both jobs and inclusive growth in Asia. Along with reviewing such benefits, the report also offers potential policy solutions to some of the challenges that come with this process. To learn more, visit the ADBI [website](#).

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