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TRADE AGREEMENTS

TPP Debate Ramps Up Following Public Release of Trade Deal Text

The text of the 12-country Trans-Pacific Partnership (TPP) Agreement was publicly released late last week, prompting intense scrutiny as stakeholders attempt to understand the deal's implications, both for TPP countries themselves as well as for the global economy.

The TPP negotiations were concluded last month in the US city of Atlanta; however, the text then needed to undergo a legal scrub before it could be released to the public. The chapters all include headings noting that these are still subject to legal review and authentication in the three official TPP languages – English, Spanish, and French. (See Bridges Weekly, [8 October 2015](#))

The deal's membership currently makes up 40 percent of global GDP, and should the deal enter into force would be a game-changer for international trade, with proponents such as US President Barack Obama [referring](#) to it as last week as the "highest standard trade agreement in history."

The agreement has also drawn significant criticism and controversy from other quarters, however, given that it covers many areas that are not traditionally included in trade deals – setting the stage for heated debate in the months ahead.

The text released last week includes 30 chapters, as well as various annexes, schedules, and hundreds of "side letters" signed bilaterally by the parties, altogether numbering thousands of pages.

The chapters cover a broad range of issues, including but not limited to national treatment and market access; rules of origin and origin procedures; textiles and apparel; sanitary and phytosanitary (SPS) measures; technical barriers to trade (TBT); investment; cross-border trade in services; financial services; temporary entry for business persons; telecommunications; e-commerce; government procurement; competition; state-owned enterprises; intellectual property; labour; environment; and dispute settlement.

Unpacking and understanding the complex agreement is widely expected to be an immensely difficult task; however, some of the chapters already drawing much scrutiny and commentary include those on labour, investment, exceptions, and environment, along with some of the bilateral deals reached among parties and a

separate joint declaration on currency. (Editor's note: A detailed analysis of the TPP environment chapter can be found under the [BioRes publication](#), also by ICTSD.)

Labour provisions, consistency plans

The TPP's [19th chapter](#) focuses specifically on labour protections, in which parties agree to adopt and maintain in their respective statutes, regulations, and practices the rights to "freedom of association and effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation," as stated under the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up.

These commitments are outlined under Article 19.3.1 of that chapter. The following article, 19.3.2, requires parties to also adopt, both in law and practice, "governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

Parties have also committed not to use labour standards as disguised trade protectionism, as well as agreeing that they will "not waiver or otherwise derogate from, or offer to waiver or otherwise derogate from" any laws involving the implementation of labour rights under article 19.3.1 in a way "affecting trade or investment" between them. Additional commitments in this regard are made for export processing zones, referring to both Article 19.3.1 and 19.3.2.

The chapter also features commitments against importing goods produced by forced labour from TPP and non-TPP countries, as well as transparency obligations, a cooperation mechanism, and a labour dialogue mechanism.

Along with this specific labour chapter, the US has also inked "consistency plans" with [Vietnam](#), [Malaysia](#), and [Brunei](#), which will all enter into force when TPP takes effect.

For example, the implementation plan with Vietnam commits the country to modify domestic law in order to allow workers to establish unions of their own, rather than being affiliated with the trade union confederation linked to Hanoi's government.

"A grassroots labour union registered with the competent government body shall have the right autonomously to elect its representatives, adopt its constitution and rules, organise its administration, including managing its finances and assets, bargain collectively, and organise and lead strikes and other collective actions related to the occupational and socio-economic interests of the workers at its enterprise," the implementation plan says.

Furthermore, it notes, such grassroots unions will have at least as many rights – both in law and in effect – as those unions under the government-linked Vietnam General Confederation of Labour (VGCL). The plan also includes various provisions regarding labour union autonomy, worker representation in non-unionised workplaces, the selection of union officials, interference in organisational activities, consistency of other legislation, scope of strikes, and forced labour, among others.

The implementation plans are subject to dispute settlement under TPP, which proponents say will be a strong incentive for compliance. Furthermore, should Vietnam not uphold its commitments under Article II.A.2 – which requires Hanoi to allow grassroots labour unions to join or form worker organisations, "including across enterprises and at the levels above the enterprise, including the sectoral or regional level" – within five years, the US will have the option to assess compliance with that requirement. If non-compliance is found within a two-year period, Washington may then suspend any scheduled tariff reductions set to come into force in the future. Hanoi may then challenge that finding under the state-to-state dispute settlement provisions under Chapter 28.

Critics such as Human Rights Watch, however, have questioned whether such commitments – such as for Vietnam – will indeed be enforceable in practice.

“Our concern is that Vietnam may make legal reforms on paper that allow the agreement to come into force with respect to Vietnam, and then Vietnam will turn around and not actually allow unions to be created,” said John Sifton, the Asia Advocacy Director for Human Rights Watch, in an interview with the US-based National Public Radio (NPR).

While acknowledging that the plan is subject to dispute settlement, Sifton suggested that a future US administration with lesser sympathies to such labour concerns may not choose to pursue a case under the trade pact.

ISDS implications?

Another hot-button topic among trade observers throughout the TPP negotiations had been how investment protections and investor-state dispute settlement (ISDS) would ultimately be addressed in the TPP deal.

These provisions are outlined in TPP's [ninth chapter](#), which focuses on investment. The chapter text is divided into two sections: Section A, focusing on investment itself, and Section B, specific to ISDS.

Among the various elements of this chapter, including what activities constitute a covered investment under the trade pact and what is defined by expropriation, TPP parties have agreed to provide national treatment and most-favoured nation treatment as well as a minimum-standard of treatment for investment, as defined under customary international law.

They have also outlined the conditions under which a TPP country may expropriate an investment and, among other provisions, prohibited specific “performance requirements,” including local content and technology transfer requirements.

These and other core obligations have been undertaken on a “negative list” basis, with any measures that parties have agreed to exempt from such obligations then outlined in TPP's Annex I on Non-Conforming Measures. Those latter measures would, however, be subject to both standstill and ratchet clauses, though measures excepted under Annex II on Non-Conforming Measures would not.

Under a negative list, obligations undertaken by a party apply to all sectors and activities, unless otherwise negotiated and explicitly specified.

In addition, according to Article 9.15, “nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, or other regulatory objectives.”

Regarding ISDS itself, the chapter outlines the timetables and conditions for such arbitration to occur, including provisions that require arbitration hearings and related documents to be made public, with the exception of protected information or any information that would fall under the national security exception or disclosure of information exception outlined in TPP Article 29.2 and 29.6, respectively.

Other elements in the ISDS section include a provision allowing interested stakeholders to file *amicus curiae* – in other words, “friend of the court – legal briefs; allowing panels to conduct an expedited review of “frivolous claims,” including the award of lawyer fees and costs to the country facing an ISDS charge; allowing parties to see and comment on

interim arbitral awards before these are issued, as well as being able to challenge the final award; setting time limits on when an investor can submit a claim following an "alleged breach"; and the selection of arbitrators and conduct of proceedings.

While there is the option of challenging the final award, there is no formal appellate mechanism in the TPP ISDS system. However, Article 9.22.11 notes that should such a mechanism for reviewing awards by ISDS tribunals later be developed "under other institutional arrangements," TPP parties can then review whether such awards should fall under that appellate mechanism.

Furthermore, that paragraph notes, "the parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 9.23" regarding TPP arbitral proceedings.

According to a chapter summary published by the US, these innovations and others included in that chapter are designed to go "beyond previous US Free Trade Agreements (FTAs) to address new and emerging investment issues."

One key question going forward is whether the US will seek to replicate this model in its ongoing negotiations with the EU for a Transatlantic Trade and Investment Partnership (TTIP), where Brussels has made clear that it hopes to negotiate with Washington a TTIP court and appellate mechanism that could eventually serve as a model for a global system. (See Bridges Weekly, [17 September 2015](#))

US Trade Representative Michael Froman, speaking to the Reuters news agency last month, gave a lukewarm response to the EU suggestion, which has not yet been tabled as a formal proposal in the context of the TTIP talks.

"Because of the high standards and safeguards in our agreements, there have been very few cases against the US, and to date, the government has never lost," he said. "It's not obvious to me why you would want to give companies a second bite of the apple."

Currency declaration

Macroeconomic authorities from the 12 TPP countries published their own [joint declaration](#) last Thursday, concurrent with the release of trade deal's text, though the declaration itself is a separate agreement. It will enter into force immediately once the TPP deal does. However, whether its provisions will be enough for those observers who demanded enforceable currency provisions under the trade deal itself remains to be seen.

"Acknowledging the importance of macroeconomic stability to the success of the TPP, we have decided to strengthen our cooperation on macroeconomic and exchange rate policies," the authorities said in a [statement](#) announcing the declaration.

"In promoting macroeconomic cooperation, we recognise the diversity of economies in the TPP region and the differences in their levels of development," they continued.

The declaration includes a recognition of the importance of using fiscal and monetary policy with a view to meeting domestic objectives. Furthermore, it recognises the benefits of allowing real exchange rates "to adjust in line with economic fundamentals," including the promotion of "strong, sustainable, and balanced global growth."

The purpose of the declaration, the policy authorities said, is to "promote, through transparency and dialogue, market-determined and transparent exchange rate regimes that allow real exchange rates to adjust to reflect underlying economic fundamentals."

"Each Authority confirms that its country is bound under the Articles of Agreement of the International Monetary Fund (IMF) to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage," the declaration says.

Furthermore, each TPP country "will refrain from competitive devaluation and will not target its country's exchange rate for competitive purposes" and commits to taking policy actions aimed at ensuring that the exchange rate system "reflects underlying economic fundamentals, and avoid persistent exchange rate misalignments."

The declaration then outlines a series of commitments regarding transparency and reporting, such as timetables for the release of each country's respective IMF Article IV Staff Report and exchange rate assessment; disclosure of quarterly imports and exports; and more.

Also covered under the transparency requirements are the public disclosure of data regarding foreign reserves and foreign-exchange intervention, which according to a US Treasury Department [fact sheet](#) will be a first for some TPP participants.

TPP countries will also set up a "Group of TPP Macroeconomic Officials," with each country represented by a senior official. The Group would meet annually in order to review each country's macroeconomic and exchange rate policies and their effects on fellow TPP members, along with any difficulties that arise under the transparency and reporting requirements and any policy responses "which address imbalances."

These group meetings, which will lead to the publication of communiqués or other documents reflecting their shared views, do not prevent TPP countries from meeting bilaterally on such issues, nor vice versa. The IMF and others, "as appropriate," may also be invited to give independent input for such meetings.

The endnotes of the declaration outline various steps relating to disclosure that are specific only to four of the TPP's members: Brunei, Malaysia, Singapore, and Vietnam. Any country that wishes to sign on to TPP in the future will also need to subscribe to this declaration, along with possibly having to agree to additional terms and conditions.

Tobacco carve-out, GATT XX, and other exceptions

The TPP text also includes [a chapter](#) devoted to various "exceptions and general provisions," specifically clarifying those areas where all parties have agreed to exceptions from the deal for the sake of public interest regulation, national security, and other reasons.

These include, for example, incorporating the Article XX exceptions under the WTO's General Agreement on Tariffs and Trade (GATT) for the TPP provisions relating to goods trade, as well as the general exceptions outlined under the WTO's General Agreement on Trade in Services (GATS) Article XIV for those TPP provisions relating to services trade.

Article 29.5 then outlines the so-called "carve-out" of tobacco control measures from arbitration under TPP's investment chapter. Specifically, a TPP party can choose to deny ISDS for claims relating to tobacco control, either before such claims go to arbitration or during the proceedings themselves.

Tobacco control, in the TPP context, is defined as those involving "the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements."

Measures involving tobacco leaf outside a tobacco product manufacturer's possession or not part of the final tobacco product do not, however, qualify for this exception.

A footnote clarifies that this article does "not prejudice" a party's rights under state-to-state dispute settlement, as described under [chapter 28](#), nor does it prejudice the operation of Article 9.14 in the [investment chapter](#), which addresses the conditions under which a TPP party may "deny the benefits" of that same chapter.

Other exceptions outlined in this chapter include articles on national security, taxation measures, and New Zealand's [Treaty of Waitangi](#) from 1840 between the British Crown and the Māori. There is also an article permitting temporary safeguards in the event of "serious balance of payments and external financial difficulties or threats thereof," along with restrictions regarding payments or transfers "relating to the movement of capital," with both of those subject to certain conditions.

Later in this chapter in the section entitled "general provisions," TPP parties have included an article on disclosure of information, specifying that these member countries are under no obligation to provide information that, if released, could go against public interest, prejudice "legitimate commercial interests of particular enterprises, public or private," or go contrary to domestic law and law enforcement.

Traditional knowledge and traditional cultural expressions are then addressed in the final article of this chapter, permitting TPP parties to "establish appropriate measures to respect, preserve, and promote" both of these, as long as these are in line with that party's international commitments.

Entry into force, accession

The [30th TPP chapter](#), known as the "final provisions," outlines a series of terms regarding the accession of new members, the entry into force for current participants, how to withdraw from the agreement, who the depositary of the agreement will be, and the official languages of the deal's text.

Regarding entry into force, the chapter outlines three different scenarios under which TPP would take effect, depending on the timing of ratification by the original signatories, as well as the combined domestic GDP of those that have ratified by a certain point.

The original TPP signatories will have a two-year window from the date of the signing of the agreement to finish their domestic approval, legislative, and ratification processes.

Should all original signatories have done so at that stage, the deal will enter into force 60 days following their notifications. However, should some of the original signatories not finish their processes in that timeframe, the agreement then outlines an alternative approach. Under this second approach, the TPP will come into force 60 days after this two-year period expires, so long as at least six of the signatories have notified that they have completed their domestic legal procedures, and if those same six make up at least 85 percent of the group's combined GDP, under 2013 figures.

If this scenario does not occur, a third approach is available, under which the deal would enter into force 60 days after at least six TPP countries have notified that they have completed their domestic legal procedures. The same 85 percent GDP requirement would apply.

Should either the second or third option be invoked, other TPP countries which do not notify at that time would still be able to do so at a later date.

Notably, if one of the original 12 TPP signatories approves the deal after it has already entered into force for other signatories – i.e. under the second or third option – the TPP

"Commission," a group which according to [Chapter 27](#), would be made up of ministers or senior officials as mutually agreed by the parties, would be tasked with determining within a 30-day period whether the Agreement will indeed enter into force for that country.

Should the TPP Commission and the signatory country involved both agree, the TPP would then enter into force 30 days after the Commission's determination is made. However, if either disagrees, the TPP would not be in force for that country.

Regarding the accession of new members – in other words, those not part of the original group of 12 – these will need to be ready to both comply with the TPP's obligations, along with any other terms and conditions agreed by the acceding member and current parties.

Once an accession request is filed, the TPP Commission will set up a working group to negotiate accession terms, with any interested TPP party able to participate in this forum. The article then outlines the various other steps in that process that will be taken by both the working group and the Commission, as well as by the candidate country, in order for an accession to be successful.

Subject to the above-mentioned processes and requirements, along with any others included in Article 30.4 on accession, the deal is open to any state or customs territory that is already member of the Asia-Pacific Economic Cooperation (APEC) regional coalition. This 21-country grouping notably includes China, which is not yet part of the TPP, as well as all 12 current TPP countries.

Any other state or customs territory is permitted to join, as long as current parties agree and subject to the other accession processes outlined in that same article.

Responses, ratification

Since the text was released last week, key lawmakers in the US – the biggest economy in the talks – have begun making their own positions known, in some cases setting the stage for a legislative showdown. While some lawmakers were more cautious, noting the time it will take to go through a document of this size and scope, others have come out more strongly, with some even calling for renegotiation of the deal's terms.

In the US, for example, Obama [notified](#) Congress of his intent to sign the TPP last Thursday, kicking off a 90-day period mandated by domestic law before he can sign the document. Ratification, therefore, is not expected until next year at the earliest – right in the middle of the US election cycle.

"The TPP means that America will write the rules of the road in the 21st century. When it comes to Asia, one of the world's fastest-growing regions, the rulebook is up for grabs," Obama said last week upon releasing the text of the trade deal.

"And if we don't pass this agreement – if America doesn't write those rules – then countries like China will. And that would only threaten American jobs and workers and undermine American leadership around the world," he continued.

Winning over lawmakers in Washington, however, is expected to be an uphill battle in the months ahead. Orrin Hatch, a Republican senator from Utah who chairs the Senate Finance Committee, has been one of the more vocal critics in Washington of the intellectual property rights (IPRs) provisions in TPP, despite having earlier been one of the key architects and proponents of the Trade Promotion Authority (TPA) legislation passed earlier this year. (See Bridges Weekly, [2 July 2015](#))

"While I understand that parties have deemed the negotiations closed, the agreement cannot enter into force if Congress doesn't agree to it. At the end of the day, [the US Trade Representative] may need to go back to the negotiating table and try again," said Hatch [in](#)

[a speech](#) at the US Chamber of Commerce last Friday, warning that not renegotiating could lead to TPP failing in Congress.

Last month, US Trade Representative (USTR) Michael Froman indicated that renegotiation of TPP provisions would likely be implausible, given the various trade-offs that were already made across issues and member countries to reach a deal. (See Bridges Weekly, [22 October 2015](#))

Caroline Atkinson, the US's deputy national security adviser for international economics, affirmed on Tuesday that "renegotiation is not an option," during a call hosted by the Atlantic Council earlier this week. Japanese Economy Minister Akira Amari affirmed that sentiment while talking to reporters this week, according to the Reuters news agency.

ICTSD reporting; "U.S. wary of EU proposal for investment court in trade pact," REUTERS, 29 October 2015; "Japan, White House official rule out re-opening Pacific trade pact," REUTERS, 10 November 2015; "Trans-Pacific Partnership Text Released, Waving Green Flag for Debate," NEW YORK TIMES, 5 November 2015; "Release Of Trade Agreement Text Stokes Debate Over TPP," NPR, 6 November 2015.

WORLD TRADE ORGANIZATION

WTO Negotiators Start to Stake Out Shape of Nairobi Declaration

Negotiators have tabled a flurry of proposals on the text of the WTO's ministerial declaration, ahead of the organisation's ministerial conference in the Kenyan capital city of Nairobi being held in less than five weeks' time.

With controversy over the fate of the trade body's long-running Doha Round continuing to loom over the talks, officials have agreed to divide the declaration into three parts: the first looking at the WTO's achievements to date, the second containing Nairobi outcomes, and the third setting out how negotiating issues would be addressed in the future.

This structure was agreed following consultations held by three facilitators appointed by the Director-General: Ambassador Gabriel Duque of Colombia, Ambassador Harald Neple of Norway, and Ambassador Stephen Karau of Kenya.

Some major traders such as the US are believed to oppose the continuation of the Doha agenda under its current framework after the Nairobi conference, whereas many developing countries favour continuing talks so as to address the unresolved Doha issues.

"It will be impossible to mention whether we can continue Doha or not," speculated one negotiator in comments to Bridges.

Ambassadors from all WTO member countries were invited to attend a meeting on Tuesday to discuss part 1, on the trade body's achievements to date, as well as a similar consultation on Wednesday to discuss part 3, on the way forward after Nairobi.

Trade officials told Bridges that the content of part 2 would only be finalised at the ministerial itself.

Nine proposals

Negotiating coalitions and individual countries have tabled nearly a dozen new proposals since last Friday, ranging in length from one paragraph to a six-page document.

The submissions mostly lay out proposed text for parts 1 and 3 of the draft declaration, although one also identifies a list of proposed declarations or decisions for adoption in Nairobi under part 2.

Ten farm exporting countries, including both developed and developing nations, also submitted a short proposal on the text of part 1 of the draft declaration.

The group includes around half of the membership of the Cairns Group of agricultural exporters, as well as one non-member, Rwanda. The co-sponsors propose that part 1 of the declaration recall that fundamental reform of farm trade is an integral part of the WTO's Agreement on Agriculture under its Article 20, one that was reaffirmed in the Doha Declaration.

A separate short proposal from Brazil would have the third part of the declaration reaffirm the need for regional trade agreements to remain complementary to the multilateral trading system, rather than substitute for it. Brazil proposes that the WTO Committee on

Regional Trade Agreements should map the systemic implications of these accords and their coherence with WTO rules.

The most detailed proposal is from the group of African, Caribbean, and Pacific (ACP) countries, which along with outlining issues for post-Nairobi discussions, also envisages the adoption of declarations or decisions on export competition and cotton, as well as on various "development and [least developed country, or LDC] issues" such as duty-free, quota-free market access for LDCs and fisheries subsidies.

Another shorter submission from the African Group mirrors many of the ACP concerns.

Large developing countries

China, India, Indonesia, and South Africa joined forces with Ecuador and Venezuela to submit a proposal with detailed text on parts 1 and 3 of the draft declaration, which would see WTO members reaffirm the declarations and decisions adopted at Doha as well as all subsequent ones.

Meanwhile, proposals from the group of small, vulnerable economies (SVEs) and the group of recently-acceded members (RAMs) each sought to maintain flexibilities that had been negotiated to date by their members in future talks at the WTO.

In negotiations this year, the US in particular has questioned whether China, a RAMs group member, should be able to benefit from additional flexibility on agricultural domestic support that was granted to this group under the draft Doha negotiating text that was tabled in 2008. Beijing has argued that any effort to cap its current farm subsidy entitlements would amount to breaching one of its "red lines" in the negotiations. (See Bridges Weekly, [25 June 2015](#))

South Korea also tabled a text-based proposal as Bridges went to press, with another reportedly expected from the Arab Group. A joint communication by Colombia, New Zealand, and Pakistan regarding fisheries subsidies was also released at the time of this writing, referring to the WTO's "central role" in improving disciplines on fisheries subsidies, and proposing a commitment to continue work in clarifying and developing better disciplines.

Agriculture negotiations

Vangelis Vitalis, the New Zealand ambassador who chairs the WTO agriculture talks, held small group consultations on public food stockholding last Friday, trade sources told Bridges.

However, the consultation did not reveal any common ground between members on the controversial issue. The G-33 group of developing countries continues to argue that WTO members should agree to a "permanent solution" that would allow them more flexibility to buy food at government-set prices under WTO subsidy rules, while farm exporting countries insist that governments should not be allowed to include market price support under the trade body's "green box" – designed for payments that cause no more than minimal trade distortion.

Agriculture negotiators were reportedly having a little more success in addressing export competition, although the US was said to be reluctant to accept proposed disciplines on export credits and on food aid that had been included in the 2008 draft Doha deal. (See Bridges Weekly, [5 November 2015](#))

Trade sources told Bridges that the US was reportedly preparing a proposal that would set out their concerns.

The chair was reported to be planning another small group consultation on the question of the special safeguard mechanism this coming Friday. G-33 members have recently proposed that the Nairobi ministerial agree to an “accessible and effective” mechanism that would allow them to raise tariffs temporarily in the event of a sudden import surge or price depression. (See Bridges Weekly, [29 October 2015](#))

“We need more time to discuss,” one negotiator told Bridges.

ICTSD reporting.

ENVIRONMENTAL GOODS

Negotiators Prepare to Review Draft Final List for Environmental Goods Agreement

A “draft final list” of potential products slated for tariff cuts as part of negotiations for an Environmental Goods Agreement (EGA) will soon be circulated to participating WTO members on behalf of the talks' chair, officials confirmed following the latest negotiating round.

The draft list will reflect the latest areas of convergence among the 17-member group – which counts the 28-nation EU as one – around various product nominations. It will also build on the work on goods classifications within tariff lines that was undertaken during talks held from 29 October-4 November in Geneva, Switzerland, sources say.

The document will be reviewed at the next negotiating round scheduled from 30 November-4 December, although it could also be subject to some revisions intersessionally, based on participants' comments.

Since the EGA plurilateral talks launched in July 2014, participants have been discussing the types of products that might be included, followed by product nominations put forward by most players last April equal to around 650 tariff lines.

This collection was subsequently streamlined by the chair in August into a list of 450 possible tariff lines covering over 1000 products, and related to areas such as clean energy, energy efficiency, air pollution control, and environmental monitoring and analysis, among others.

Some sources said that while the talks are not aiming for a specific number of tariff lines, participants had agreed to build on a [list](#) of 54 environmental goods set for tariff reductions to five percent or less by the end of the year by the 21-nation Asia-Pacific Economic Cooperation (APEC) alliance, and that the EGA should therefore seek to go beyond this figure.

The latest round of talks served to focus attention on particular sensitivities and areas of agreement regarding the proposed EGA list coverage, several sources confirmed, adding that some of these sensitivities were discussed during bilateral meetings.

In addition, several days were dedicated to technical talks among customs officials, designed particularly to clarify over 100 or so “ex-out” product nominations that had proved tricky to navigate at the negotiator level. Several sources confirmed that the results of this work would help the EGA chair, Andrew Martin from the Australian mission to the WTO, put together the draft final list.

Other sources, however, noted that more work in this area between customs officials would be needed again in the next round.

Ex-outs in trade jargon refer to the description of a particular product not specifically captured by the World Customs Organization Harmonised System (HS) tariff classifications. These are expressed in terms of chapters (two-digit code), headings (four-digit code), or subheadings (six-digit code).

In some instances, EGA participants have nominated ex-outs within a six-digit code without intending to liberalise the entire subheading, or are only detailed by national tariff codes that may vary by country. In addition, customs officials during the latest round also dealt with instances where multiple and different ex-outs had been nominated by participants under the same HS six-digit subheading.

Target dates?

The next round will take place just ahead of the WTO's Tenth Ministerial Conference (MC10) scheduled for mid-December in Nairobi, Kenya, and will also coincide with the first week of the annual UN climate talks that are hoping to secure a new climate regime.

Several EGA participants have commented on the "unique convergence" of events in the international community's agenda relevant to these talks. Although the scope of the EGA goes beyond products relevant to climate action, some nominations have been made in these areas.

Moreover, a number of participants have signalled MC10 as a preferred date for delivering a list of products, with some time and space reportedly already set aside at the conference for talks at technical and eventually ministerial level to finalise outstanding issues if required after the December round.

In recent months, however, not all participants have backed this target date and some have suggested that negotiations in Nairobi will depend on how much progress is made in the December round.

Other possible dates that have been floated by some participants include potential delivery at the World Economic Forum's annual meeting in Davos, Switzerland in January 2016, or even later next year at the G-20 trade ministers' meeting in China.

All participants have nevertheless indicated that this plurilateral is not intended to distract from the ongoing multilateral talks on possible deliverables for Nairobi, as well as the systemic question of how to deal with the Doha Round of trade negotiations after that meet, but should instead serve as a complement to updating global trade rules. The EGA is being negotiated as an "open plurilateral," meaning that the eventual tariff cuts will apply to all WTO members on a most-favoured nation (MFN) basis.

Heads of delegation from WTO members participating in the EGA held a meeting with the global trade body's Director-General Roberto Azevêdo on Tuesday 27 October to discuss the talks' progress. The trade chief reportedly voiced support for the negotiations and expressed hope that these would be able to deliver something in time for Nairobi.

The meeting with Azevêdo was also designed to maintain a link between the talks and the broader WTO framework, particularly given the Director-General's involvement in the expansion negotiations for the Information Technology Agreement (ITA), according to some participants.

Key weeks ahead

Several sources, however, cautioned that some uphill work would be needed to smooth out tricky areas in order to be able to deliver in the near-term. Outstanding areas to address include some tariff lines as well as the scale of planned tariff cuts.

In addition, while the latest round reportedly saw China supporting several others' product nominations, the Asian giant is also said to have indicated some significant sensitivity around the goods covered by the APEC tariff lines.

Beijing has also reportedly raised concerns that the APEC list was negotiated on the basis of applied tariff cuts to five percent, rather than full liberalisation of tariffs to zero as envisioned by many other EGA members. Applied tariffs represent the actual customs duty levied while bound tariffs signify the maximum duty ceiling that WTO members could potentially apply.

Several commentators have voiced concern that in this crucial stage the EGA talks will hit the same roadblocks as efforts to revise the scope of the WTO's ITA, which stalled multiple times before participants in the expansion initiative – a subset of the full membership of the original ITA plurilateral – were able to announce a final product list this past July.

With the product list for the ITA expansion completed, participants are currently working to finalise the staging – in other words, the length of tariff phase-outs – for the various products covered under the new list, aiming to sign off on the completed outcome in Nairobi. (See Bridges Weekly, [23 July 2015](#))

Other trade watchers are hoping that EGA negotiators will be able to avoid ITA-like crises that could see these talks stall for lengthy periods of time.

Some sources say the use of staging might be a way to get around some of the more sensitive areas in the EGA, although this has only been discussed at a general level to date.

Some participants have reportedly pointed towards the modalities for ITA-II, as the expanded deal is known, as a model for the EGA liberalisation. Under the draft [declaration](#) released in July together with the product list, items included under the ITA-II would see a default tariff elimination over three years through a series of four annual reductions, unless otherwise agreed.

Negotiations since have seen participants also discussing the potential for some five-year or seven-year extensions for agreed products. Which products would see the three, five, or seven-year extensions are still being fleshed out among ITA-II participants.

Next steps

With pressure mounting ahead of the December round, EGA participants remain flexible on the working mode for that session, which could see further bilateral talks held over the more difficult products.

Details such as staging, meanwhile, could be included in an eventual decision for adopting the EGA. The EU in July distributed a draft ministerial declaration to that effect, although that document did not envision any staging. (See BioRes, [3 August 2015](#))

Brussels presented a revised version of the declaration during the final day of the latest round with some revisions to reflect other participants' comments. The EU's draft declaration reportedly pares back commitments around environmental services liberalisation following resistance by other countries.

The draft text continues to include institutional provisions such as, for example, a review mechanism to examine the deal's scope in future years. Whether participants will be able to deliver a text alongside a final list, or instead complete it afterward, remains an open question.

Agreement on the final list may eventually see other WTO members come on board accepting the deal in its completed form, a move that some experts say would help to boost the deployment of environmentally-friendly goods.

ICTSD reporting.

TRADE AGREEMENTS

EU Commission Releases TTIP Sustainable Development Proposal

The European Commission publicly released last week its [proposal](#) for a chapter on sustainable development within a trade and investment agreement currently being negotiated with the US, calling for a series of provisions on labour and the environment.

The EU executive also released a comprehensive report on Friday 6 November on the latest round of these Transatlantic Trade and Investment Partnership (TTIP) negotiations, which were held in the US city of Miami last month. (See Bridges Weekly, [29 October 2015](#))

The report on the Miami round indicated that the two sides reviewed the sustainable development proposal over three days, with that time dedicated to explaining the EU proposal in further detail, reviewing areas of interest to either side, and discussing subsequent steps in the negotiation.

"Trade agreements are primarily designed to create new economic opportunities for employers and for people all over the world. But the new generation of EU trade agreements is also about promoting responsibility, as set out in our new trade strategy recently," [said](#) EU Trade Commissioner Cecilia Malmström on Friday upon the release of the sustainable development proposal.

The trade and investment strategy referred to by the EU official aims to set the direction in this area of policymaking over the next five years, and is known as "Trade for All." It is now under discussion among officials from different EU institutions. (See Bridges Weekly, [15 October 2015](#))

According to Malmström, including "ambitious, innovative, and enforceable" provisions in a TTIP sustainable development chapter are key for ensuring that current high standards by both trading partners are preserved and improved; to promote at an international level their shared labour standards; and to use trade in a way that addresses environmental challenges.

The proposal is divided into four sections: overarching principles, labour aspects, environmental aspects, and cross-cutting issues.

Objectives, right to regulate

Under the proposal's overarching principles section, the European Commission has tabled various objectives which this chapter aims to attain, including TTIP's contribution to sustainable development; more mutually supporting labour, environmental, trade, and investment policies; and the establishment of policies that contribute to achieving the Sustainable Development Goals announced this past September, among others. (See Bridges Weekly, [1 October 2015](#))

The third article of that section then addresses the "right to regulate," as well as levels of protection, in this area for both sides. Regarding the former, it outlines a recognition on behalf of each party of the other's right "to determine its sustainable development policies and priorities, to set and regulate its levels of domestic labour and environmental protection, and to adopt or modify relevant policies and laws accordingly."

Such a right, it notes, must not go contrary to the international labour standards and agreements, as well as the multilateral environmental agreements, referred to in the proposed chapter.

Furthermore, the article would commit the US and EU to make sure that domestic laws "provide for and encourage high levels of protection in the labour and environmental areas," with a view to improving both the laws themselves as well as the intended protection.

Labour

The 17-page textual proposal includes a formal backing of the International Labour Organization's (ILO) Decent Work Agenda, as well as the ILO's core labour standards, such as prohibiting employment- or occupation-based discrimination and committing to end forced and child labour.

The document also would commit TTIP parties to continue efforts toward ratifying ILO Conventions and their Protocols, along with updating each other on such processes.

The proposal also enshrines the protection of ILO standards relating to health and safety at work, along with suggesting ways to improve dialogue between the parties on labour issues and a commitment to promote at the international level the elimination of child labour, as well as forced and compulsory labour.

Environment

The third section, devoted to the environment, has articles devoted to multilateral environmental agreements (MEAs); the protection and sustainable management of biological diversity; wildlife trade; forest trade; fisheries and aquaculture; chemicals and waste; and collaboration on "trade-related aspects of environmental policies" to meet TTIP goals.

For example, the wildlife and forest articles both include a proposed commitment to take domestic measures toward combatting trade in illegal wildlife and logging, along with enhancing cooperation in this regard. Improved cooperation is also envisioned to prevent illegal, unreported, and unregulated fishing (IUU), along with taking "effective measures" to combat such fishing.

The proposal would also commit parties to "formulate effective policies and take effective measures to prevent or minimise adverse effects on human health and the environment related to chemicals and waste," along with cooperating and taking steps to combat illegal shipments of such waste on an international scale, among other provisions.

Other areas for potential TTIP cooperation on environment issues include biological diversity; desertification and land degradation; environmental goods, technology, and services trade; sustainable consumption and production; and marine issues, among others.

The horizontal commitments outlined in the proposal include a recognition by parties that they should not reduce domestic labour or environmental protections for the sake of promoting trade or investment, nor should they waiver or derogate from such laws for that purpose.

Other articles in that section fall under the headings of transparency and public participation; the review of sustainability impacts; corporate social responsibility and business conduct; and voluntary sustainability assurance schemes.

Implementation, enforcement

While EU officials affirm that they plan to see all elements in this planned chapter both implemented and enforced, details on how exactly they propose to do so will come further on in the negotiations.

Brussels is planning to submit a separate proposal that will cover institutions, procedures, enforcement, and how to involve civil society, the EU executive confirmed last week.

ICTSD reporting.

INTELLECTUAL PROPERTY

WTO Members Approve 17-Year Extension of Pharmaceuticals Transition Period for LDCs

WTO members agreed last Friday to extend for 17 years the transitional period for least developed countries (LDCs) for enforcing global trade rules protecting pharmaceutical patents and clinical data, with the new expiration date set for 1 January 2033.

The decision was signed off on during a 6 November meeting of the WTO's Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) and does not prevent LDCs from seeking subsequent extensions under Article 66.1 of that Agreement.

The TRIPS Council has also forwarded a proposal for a decision by the General Council – the organisation's highest decision-making body outside of the ministerial conference – recommending the extension of a waiver for two other articles of the TRIPS Agreement relating to patent protection and exclusive marketing rights for pharmaceutical and agricultural chemical products.

"This decision represents a clear and unambiguous signal that WTO members are committed to addressing the needs of the organization's poorest members," said Director-General Roberto Azevêdo upon news of the extension.

The announcement came following weeks of high-level negotiations, after the 15-16 October session of the TRIPS Council was suspended in a bid to give members more time to reach consensus on the length of the extension.

Deadline in the background

Whether to extend this transition period for the WTO's poorest members had lately taken on a particular urgency, given that the existing version was set to expire on 1 January 2016. Two years ago, WTO members agreed to extend a separate transition period for LDCs to apply the provisions of the full TRIPS Agreement until July 2021. (See Bridges Weekly, [13 June 2013](#))

The request for an extension was first tabled this past February by Bangladesh on behalf of the LDC Group, seeking to prolong the transition period regarding the implementation and enforcement of intellectual property rights on pharmaceutical products for as long as an LDC remains a least developed country. (See Bridges Weekly, [5 March 2015](#))

"It would be unconscionable for WTO Members to grant LDCs – the most vulnerable segment of countries – a time-limited transition period, requiring them to repeatedly seek extensions," [said](#) the LDC Group upon submitting that proposal, highlighting the particular health challenges that least developed countries face.

While the proposal was received positively by the majority of the WTO membership, including the EU, it had drawn opposition from the US, which instead suggested a 10-year extension. (See Bridges Africa, [18 September 2015](#))

Content of the decision

According to the TRIPS Council's decision, "LDC members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS agreement or to enforce rights under these sections until 1 January 2033, or until such a date on which they cease to be a LDC member, whichever date is earlier."

These sections of the TRIPS Agreement deal, respectively, with patents and protection of undisclosed information.

In addition, the TRIPS Council has recommended that the General Council waive the obligations of LDCs under [paragraphs 8 and 9](#) of Article 70 of the TRIPS agreement until 2033 or the date when a country ceases to be an LDC, whichever comes earlier.

These are the provisions of the WTO's intellectual property rights agreement which deal with the protection of existing subject matter for pharmaceutical and agricultural chemical products.

Article 70.8, the "mailbox provision" permits inventors to submit applications for patents even in cases where there is no patent protection, essentially storing such applications. The provision also describes how to apply criteria for patentability in such cases, as well as addressing how patent protection would be given once granted.

Article 70.9 refers to those products covered under 70.8, granting exclusive marketing rights for five years after one of these products has obtained marketing approval or until a product patent is granted or rejected in a member territory, whichever period is shorter. This is subject to certain conditions.

Reactions

Despite the earlier disagreement over how long to extend the transitional period, the final outcome has generally drawn praise from officials and trade watchers. Ambassador Shameem Ahsan of Bangladesh, coordinator of the LDC group in the WTO, lauded the decision as "historic."

The extension "will assure the LDCs the necessary legal certainty to procure or to produce generic medicines for those who need it most but do not have any access," Ahsan [said](#).

The EU, which had backed the LDC request for an extension lasting as long as an LDC remains a least developed country, also welcomed the move, while noting that it was indeed a compromise.

"Even if this waiver is not quite as far-reaching as we would have hoped, it is very good news that there is a consensus in favour of a very long waiver period," [said](#) EU Trade Commissioner Cecilia Malmström. "This should provide the legal certainty and policy space needed by the least developed countries to ensure better access to medicines."

In a [joint statement](#), various NGOs – including Public Citizen, Knowledge Ecology International, and the MSF Access Campaign, among others – encouraged the WTO's poorest members to "actively use the created policy space this renewed transition period provides," while also noting that their preferred outcome would have been extending both the transition period and waiver for as long as an LDC remains a least developed country.

ICTSD reporting.

MONTREAL PROTOCOL

Countries Eye HFC Amendment to the Montreal Protocol

Parties to the Montreal Protocol put an end to years of arduous debate during a meet held from 1-5 November in Dubai, United Arab Emirates, by agreeing to a "Dubai Pathway" for negotiations on an amendment to phase down global climate-warming hydrofluorocarbon (HFC) emissions.

"After seven years of efforts, we have at last agreed to amend the Montreal Protocol next year to phase down HFCs," said Jeem Lippwe, a negotiator for Micronesia, told reporters upon the conclusion of the talks.

During the gathering, formally dubbed the 27th Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (MOP27), countries [adopted](#) a number of other substantive and procedural decisions. However, HFCs remained the "major topic" of concern for parties throughout the week, according to media reports.

Challenges first, amendment to follow

A decision for parties to work towards an HFC amendment under the Montreal Protocol was agreed to in the very early morning hours following the last day of negotiations, as countries worked to overcome some of the mistrust built up between developed and developing nations around other phase-out programmes mandated by the pact.

The adopted decision states that parties will begin to work within the Montreal Protocol towards an HFC amendment in 2016 through a series of additional meetings. Ahead of the Dubai meeting, some countries were calling for more substantive details, a motion opposed by India and a handful of other Gulf States.

The Dubai decision also records a series of challenges around HFC phase out discussed during MOP27, alongside other relevant areas that will need to be addressed to secure a successful outcome.

According to Earth Negotiations Bulletin (ENB), talks on the subject initially became bogged down, with some countries exhaustively airing issues experienced with other phase out programmes, finance, and capacity. This dynamic appeared to shift, however, as the week went on with the decision agreeing to generate solutions to these challenges as a critical part of the work on the eventual amendment.

Key areas that will be further explored next year include, among others, additional financing for HFC management if obligations are agreed to; flexibility for developing countries to phase out HFCs based on "their specific needs and national circumstances;" fair treatment of companies that have already converted to HFCs in order to meet the Montreal Protocol's other aims; capacity building support for finding alternatives to HFCs in servicing, manufacturing, and production sectors; and technology transfer.

One of the added meetings in 2016 will be an "extraordinary" MOP, a significant signal of countries' ambition to reach an HFC amendment agreement as only [two](#) previous extraordinary meetings have been initiated since the Protocol was adopted nearly 30 years ago.

Furthermore, countries agreed that all discussions on the amendment would be structured within a newly formed "contact group." This much-anticipated contact group is mandated to manage the feasibility and structure of the global HFC phase-down under the Protocol.

Action under Montreal

The Montreal Protocol is widely accepted in the international community to be one of the most successful treaties of its kind, having achieved its main objective of helping repair a hole in the ozone layer above the Antarctic by reducing the production and consumption of global ozone-depleting substances (ODSs). Ozone absorbs ultraviolet radiation and overexposure can lead to chronic health effects.

Since entering into force in 1989 the Protocol has adopted four amendments to cover some 96 ODSs, including chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), some of the main chemicals used as coolants in refrigerators and air conditioners. It is nevertheless widely accepted that an increased use of HFCs has resulted from the phasing out of HCFCs, as the former appeared to provide a suitable substitute.

Given that HFCs are a potent short-lived greenhouse gas (GHGs) rather than an ODS, they therefore do not pose a direct threat to the ozone layer, but instead have an atmospheric warming potential well up to 10,000 times greater than carbon dioxide.

Throughout much of the world, HFCs are the fastest-growing climate-warming gases, increasing at a rate of approximately 10-15 percent per year, according to recent [reports](#), which argue that this rise of HFC emissions poses a substantial threat to countries' efforts to tackle climate change.

"Hydrofluorocarbons may not cause direct ozone damage, like the chlorofluorocarbons they replace, but many of them contribute to greenhouse emissions," said UN Environment Programme Executive Director Achim Steiner in a [press release](#) after the MOP27. "If we don't get this genie back into the bottle quickly then, by 2050, we could be looking at as big a problem as the one we have just solved."

Countries have nevertheless disagreed over which platform to use to facilitate international cooperation on this particular threat posed to the global commons. Some players had argued that as a climate-warming gas, HFCs should be addressed under the UN Framework Convention on Climate Change, while others think it is appropriate to act under the Montreal Protocol given that HFC uptake may have been spurred on by its strictures.

The establishment of a contact group under the Montreal Protocol for the management of HFCs was nevertheless hailed by many observers as a good step toward tackling the challenge, after parties had repeatedly failed to agree on the issue both last year and in July. (See BioRes, [12 November 2014](#) and [31 July 2015](#))

A consensus for the establishment for the newly-minted contact group was reached during the 29-30 October working group immediately preceding the MOP27.

Broad consensus, details needed

While the Dubai pathway outlines a general consensus on a number of critical issues that need resolution, the lack of detail in the draft decision has left some observers concerned about the pace of future talks.

Four HFC amendment proposals have already been tabled in the last year and the contact group will likely need to find a way to bring these various positions toward consensus.

The current proposals represent over 40 nations, with one from a coalition of North American countries, another from India, a third from the 28 member states of the European Union, and the fourth put forward by several island nations.

While all of the proposed amendments address in some way most of the issues targeted in the draft decision, they differ significantly with regard to the starting year for HFC phase out, the level of ambition between developed and developing countries, and funding arrangements for implementation, among other factors.

For example, the more climate-vulnerable island nations are calling for the quickest phasedown, followed by the EU bloc, and then the North American option. India's proposal does not require developing country compliance for HFC reductions until 2050. (See BioRes, [24 April 2015](#))

Exemption concession

The Dubai pathway also includes an element outlining the need for a possible exemption for high ambient temperature countries, a provision that has received mixed reviews from interested observers.

Some experts are viewing the inclusion of this possible exemption as a clear concession in order to reach consensus with countries like Pakistan, which have long advocated that currently available substitutes for HFCs do not properly address the unique challenges faced by countries located in warmer climates.

However, recent technical studies have [found](#) that the majority of the most potent HFCs can be replaced by currently available substances with low or moderate global warming potential (GWP) without compromising efficiency, even under high temperatures.

While accepting the need for further discussion in this area, many developed countries reportedly called for additional clarity on what constitutes a "high ambient temperature country," which sectors would be included, and the length of the proposed exemption.

Economic and climate benefits

Acting to reduce short-term climate pollutants such as HFCs in the near future would have a great benefit for the climate at low economic costs, according to a growing consensus among scientists, economists, and international organisations.

For example, a [working paper](#) published by the Institute for Governance and Sustainable Development (IGSD) found that replacing HFCs with greener alternatives has low upfront costs and can improve energy efficiency by 10 to 50 percent or more.

In addition, the paper found that a swift phase out of HFCs by 2020 could prevent half a degree Celsius of warming by 2100, significantly contributing to the internationally agreed goal of limiting global temperature rise to no more than two degrees Celsius above pre-industrial levels.

Nonetheless, some developing nations have said that they have already made heavy investments to shift away from CFCs and HCFCs, and caution that they cannot undertake further economic and technology transitions without assistance from the international community.

The potential adoption of an amendment to the Montreal Protocol for HFCs in 2016, meanwhile, served to lift the spirits of some officials ahead of a pivotal UNFCCC meet to craft a new climate regime set to kick off in just under three weeks in Paris, France.

"The progress in Dubai indicates that the world is ready for a new chapter in the fight against climate change. In agreeing to address HFCs together, we have laid the groundwork for even greater cooperation toward a successful outcome in Paris – and the entire planet will be better off for it," [said](#) John Kerry, US Secretary of State, in a statement on the MOP outcome.

Outside of multilateral negotiations, several countries have already taken significant unilateral actions to regulate HFCs in collaboration with the private sector. For example, US President Barack Obama announced in October a sweeping number of [commitments](#) to reduce HFC emissions with more than a dozen companies, including Dow Chemical, Target, and Coca-Cola.

ICTSD reporting; "HFC phase-out in sight as 2016 deadline set," CLIMATE CHANGE NEWS, 11 November 2015; "Countries near deal to phase out super warming HFCs," CLIMATE CHANGE NEWS, 3 November 2015, "Resumed OEWG 36 Highlights: 29-30 October 2015," IISD REPORTING SERVICES, 1 November 2015; "Summary of the 27th Meeting of the Parties to the Montreal Protocol: 1-5 November 2015," IISD REPORTING SERVICES, 8 November 2015.

UNITED STATES

Eyeing Climate Legacy, Obama Rejects Pipeline Project

US President Barack Obama announced on 6 November that the State Department would not be approving the Keystone XL pipeline project, a controversial proposal which had become symbolic – rightly or wrongly – for the White House's broader stance on climate issues.

In a speech focused on clean energy and climate change, the US executive said that approving the transboundary project – which aimed to bring crude oil and bitumen from the Athabasca tar sands in Canada's western province of Alberta to US refineries – would "not serve the national interest of the United States," given the State Department's assessment.

The State Department decision, Obama said, was the result of the following three findings: that the long-term economic benefits of Keystone would be negligible; that the pipeline would not lead to reduced gas prices; and that "shipping dirtier crude oil" into the US would not yield benefits for domestic energy security.

The US President then flagged the various achievements under his administration in transitioning toward a clean energy economy, noting also the international ramifications of taking strong climate change-focused actions at home.

"As long as I'm President of the United States, America is going to hold ourselves to the same high standards to which we hold the rest of the world," Obama said, noting that rejecting the pipeline was yet another way to lead by example. "And three weeks from now, I look forward to joining my fellow world leaders in Paris, where we've got to come together around an ambitious framework to protect the one planet that we've got while we still can."

Obama was referring to the upcoming Conference of the Parties (COP) being held under the auspices of the UN Framework Convention on Climate Change (UNFCCC), where countries are aiming to clinch a new, global emissions-cutting deal that would take effect from the end of the decade, upon the expiry of the current Kyoto Protocol. (See Bridges Weekly, [29 October 2015](#))

In a [related statement](#), Secretary of State John Kerry explained that the final Keystone decision also was due to findings relating to the impact the pipeline would likely have on local communities, heritage sites, and water supplies, as well as those mentioned in Obama's remarks.

However, Kerry noted, "the critical factor in my determination was this: moving forward with this project would significantly undermine our ability to continue leading the world in combatting climate change."

"The reality is that this decision could not be made solely on the numbers – jobs that would be created, dirty fuel that would be transported here, or carbon pollution that would ultimately be unleashed," said the US' top diplomat.

Question of rhetoric

The years of debate sparked by the Keystone approval process – and the heated nature of such discussions – have drawn criticism from both sides for being overblown, given the substance of the proposal at hand.

"Now, for years, the Keystone pipeline has occupied what I, frankly, consider an overinflated role in our political discourse," the US President said. "It became a symbol too often used as a campaign cudgel by both parties rather than a serious policy matter. And all of this obscured the fact that this pipeline would neither be a silver bullet for the economy, as was promised by some, nor the express lane to climate disaster proclaimed by others."

Though the State Department had found that the pipeline would create far fewer jobs than previously anticipated, only a handful of which would be long-term, some US lawmakers insisted that the move was a lost opportunity for the country's economy.

"This decision isn't surprising, but it is sickening. By rejecting this pipeline, the president is rejecting tens of thousands of good-paying jobs," [said](#) Speaker of the House Paul Ryan, a Republican from the US state of Wisconsin, claiming that the Obama decision was actually aimed at catering toward special interests.

Harry Reid, the Nevada official who serves as Senate Democratic Leader, [countered](#) that the decision was the right one, in which Obama and Kerry "are further cementing their environmental legacy." Reid also referred to special interests in his remarks, claiming that the project would be only a favour to such groups.

TransCanada, the corporation behind the pipeline proposal, lambasted the President's decision, also claiming that the debate itself was focused less on substance than on politics.

"Today, misplaced symbolism was chosen over merit and science – rhetoric won out over reason," said TransCanada President and Chief Executive Officer Russ Girling. "Today's decision cannot be reconciled with the conclusions of the State Department's comprehensive seven-year review of the project."

TransCanada had recently asked for a suspension of the State Department review, citing the need for clarity regarding whether a proposed preferred route through the US state of Nebraska could indeed go forward. (See Bridges Weekly, [5 November 2015](#))

The path forward for proponents of the pipeline remains unclear, with some US lawmakers raising the prospect of trying to override Obama's decision. TransCanada [has also said](#) it will now review its options.

According to Obama, while new Canadian Prime Minister Justin Trudeau was "disappointed" in the decision, "we both agreed that our close friendship on a whole range of issues, including energy and climate change, should provide the basis for even closer coordination between our countries going forward."

ICTSD reporting; "Obama Rejects Keystone Pipeline," ROLL CALL, 6 November 2015.

TRADE AGREEMENTS

Australian Senate Approves China Trade Deal

The Australian Senate approved on Monday 9 November the implementing legislation for the China-Australia Free Trade Agreement (ChAFTA), overcoming the last barrier in Canberra for the deal's ratification.

The decade-long negotiations for the trade deal were concluded last November, with the agreement then signed by both sides this past June. (See Bridges Weekly, [20 November 2014](#) and [25 June 2015](#))

The two pieces of legislation passed by the Senate early this week were the Customs Amendment (China-Australia Free Trade Agreement) Bill and Customs Tariff Amendment (China-Australia Free Trade Agreement) Bill, both already approved by the House of Representatives last month.

The bills will allow goods satisfying the trade deal's rules of origin to enter Australia at preferential rates of customs duty, along with setting out the island country's tariff commitments under the pact.

The news comes after months of controversy around the bilateral trade agreement, particularly over whether additional labour market protections were needed for domestic workers in either the trade pact itself or in Australian law.

The two main political parties in Australia – the Liberal Party, which is in power, and the opposition Labor Party – ultimately brokered a deal in October that amended or clarified the country's migration policies to address some of these concerns, while not changing the FTA itself. (See Bridges Weekly, [9 September 2015](#) and [22 October 2015](#))

According to Australian Trade Minister Andrew Robb, those amendments agreed with Labor will soon go to the Executive Council for their sign-off.

Moving forward, the ChAFTA trade deal has "the potential to underpin Australia's future prosperity," said Peter Varghese, Secretary of the Department of Foreign Affairs and Trade, adding that it "is a remarkably good deal for Australia and the best deal that China has done with any partner to date."

China is Australia's largest export market for both goods and services, with [bilateral trade](#) hitting nearly A\$160 billion in 2013-14. Varghese said competition for Chinese business will keep intensifying even with slower growth of the Chinese economy, noting the boon that an FTA with the Asian giant has already been to New Zealand.

"If we are to take full advantage of the changes underway in China, we must do all we can now to further integrate our economies and foster growth in two-way trade and investment," he said [in a speech](#) at the Committee for Economic Development of Australia. Other Australian officials, such as Cabinet Secretary Arthur Sinodinos, say that ChAFTA is a "comprehensive agreement between two highly complementary economies."

Among its various provisions, ChAFTA will result in the elimination or reduction of a number of tariffs, such as those on Australian beef and dairy products exported to China, along with those on Australian manufactured goods such as pharmaceuticals, as well as various energy products. China has also agreed to grant improved market access for

various services sectors, with Australian officials noting that this is the best market access Beijing has ever agreed to in an FTA.

Next steps

The FTA [will take effect](#) 30 days after both countries finalise their domestic ratification processes, unless otherwise agreed. "Entry into force this year will see an immediate round of tariff cuts, followed by a second round of cuts on 1 January 2016, allowing the benefits of the agreement with China to flow quickly through to Australian exporters and consumers," [said](#) Robb on Monday.

Robb said that along with Australia's recent free trade agreements with China, Japan, and South Korea, which a [report](#) by The Centre for International Economics suggests could together add A\$24.4 billion to Australia's GDP between 2016 and 2035, the 12-country Trans-Pacific Partnership (TPP) – concluded just over a month ago – would also "contribute substantially" to Australia's post-mining boom economy. (See Bridges Weekly, [8 October 2015](#))

ICTSD reporting; "China FTA passes Senate," AUSTRALIAN DAIRYFARMER, 10 November 2015; "China-Australia free trade deal passes Senate," SKY NEWS, 10 November 2015; "Australia gives nod to China trade deal," SHANGHAI DAILY, 10 November 2015; "Labor and Coalition reach agreement on China-Australia free trade deal," THE GUARDIAN, 21 October 2015.

AGRICULTURE

Trade-distorting Farm Support Continues to Fall Steadily, EU Says

New figures notified by the European Union to the WTO indicate that the bloc's agricultural trade-distorting domestic support in marketing year 2012-2013 continued to fall to low levels.

The most heavily trade-distorting support – dubbed “amber box” support at the WTO – fell gradually to just under €6 billion, around €1 billion less than in the previous marketing year that was notified. (See Bridges Weekly, [30 October 2014](#))

However, successive policy reforms mean this figure has approximately halved since 2006-7, as the EU has sought to move away from production-linked payments and towards decoupled income support.

Brussels also reported that it provided around €1.7 billion in trade-distorting payments that were classed as “de minimis,” under a WTO clause that allows the bloc to provide this support up to a ceiling of 5 percent of the value of production.

According to the data, the EU also provided €71 billion in “green box” payments – which under WTO rules must not cause more than minimal trade distortion. Of this, decoupled income support continues to represent the lion's share at €33 billion. The EU also reported significant green box spending on investment aid and on environmental programmes, which accounted for €6.6 billion and €8.9 billion, respectively.

The EU also reported that it provided less than €3 billion in production-limiting blue box payments, which are allowed without limits under current WTO rules.

The latest figures suggest that the bloc's overall trade distorting support – the sum of amber box, blue box, and de minimis – amounts to €10 billion.

The EU continues to provide relatively high levels of support to specific products such as skimmed milk powder at €1.1 billion and butter at €2.7 billion.

The full notification (G/AG/N/EU/26) is available online here: <https://docs.wto.org>.

ICTSD reporting.

EVENTS & RESOURCES

Events

Coming Soon

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](#).

16 November, Washington, US. THE FUTURE OF U.S.-EU DATA TRANSFER ARRANGEMENTS. This event, hosted by the Center for Technology Innovation at the Brookings Institution, will feature as its guest speaker the European Commissioner for Justice, Consumers, and Gender Equality, Věra Jourová. The EU official will discuss the current bilateral negotiations toward a new Safe Harbour framework for data transfer between the two sides. The event will also include a question-and-answer session. More information on the event, which will also be webcast live, can be found [here](#).

19 November, Geneva, Switzerland. INDICATORS FOR SUSTAINABLE WILD TRADE. This event, organised by the International Centre for Trade and Sustainable Development (ICTSD) and Earthmind, aims to bring together experts who work in the fields of trade, conservation, and sustainability, with a view to both examine existing indicators of the sustainability of trade in wildlife and ecosystem services, as well as brainstorm additional indicators. The meeting will address both indicators for wild trade as well as the 2030 Agenda for development agreed this past September, along with indicators for voluntary standards in this area. More information can be found at the event [website](#).

WTO Events

An updated list of forthcoming WTO meetings is posted [here](#). Please bear in mind that dates and times of WTO meetings are often changed, and that the WTO does not always announce the important informal meetings of the different bodies. Unless otherwise indicated, all WTO meetings are held at the WTO, Centre William Rappard, rue de Lausanne 154, 1211 Geneva, Switzerland, and are open to WTO members and accredited observers only.

17 + 19 November: Trade Policy Review Body – Jordan

Other Upcoming Events

26 November, London, UK. JAPAN AND GEO-ECONOMICS IN ASIA: THE RISE OF THE TPP AND AIIB. This seminar, organised by Chatham House, will review both Japan's involvement in the Trans-Pacific Partnership as well as its non-commitment to the Asian Infrastructure Investment Bank (AIIB), with a view to better understanding the implications for the broader Asia-Pacific region. The meeting will be held on the record; more information can be found on the Chatham House [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

HOW GREEN PUBLIC PROCUREMENT CONTRIBUTES TO SUSTAINABLE DEVELOPMENT IN CHINA. By Jason Dion, David Uzsoki, Benjamin Denjean, Lei Huo, Tilmann Liebert, and Hu Bo for the International Institute for Sustainable Development (IISD) and the MAVA Fondation pour la Nature (October 2015). This paper provides 13 recommendations for improving Green Public Procurement (GPP) in China. The authors argue for green procurement through analysing five product categories – air conditioners, lighting, cars, paper, and cement – along with calling for use of this model at different government levels, among other findings. The paper is available [here](#).

TRADE AND POVERTY ALLEVIATION IN AFRICA: THE ROLE OF INCLUSIVE STRUCTURAL TRANSFORMATION. By Patrick N. Osakwe and Miriam Poretti for the United Nations Conference on Trade and Development (UNCTAD) (October 2015). In this paper, the authors call for the implementation of inclusive structural transformation measures throughout the Africa continent, with a view for using trade as a tool for combatting poverty. Such measures must allow for vulnerable groups to take a greater role in the process, with the paper also calling for the mainstreaming of both employment and development in this agenda. This publication is available [here](#).

INTELLECTUAL PROPERTY: HOW MUCH ROOM IS LEFT FOR INDUSTRIAL POLICY? By Carlos M. Correa for the United Nations Conference on Trade and Development (UNCTAD) (October 2015). This discussion paper reviews the history of the intellectual property regime, with the author noting the difficult balance between promoting innovation and ensuring that developing countries can put in place industrial policies. This paper provides recommendations for such countries in this regard, including through patentability standards and compulsory licensing. The publication is available in PDF form [here](#).

OECD ENVIRONMENTAL PERFORMANCE REVIEWS: BRAZIL 2015. Published by the Organisation for Economic Co-operation and Development (OECD) (November 2015). This report is the first OECD review of Brazil's environmental performance, with the authors reviewing the progress to date in the areas of sustainable development and green growth. The analysis builds on both economic and environmental data, along with featuring recommendations for the South American country. The report is available online [here](#).

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**International Centre for Trade
and Sustainable Development**

Chemin de Balexert 7-9
1219 Geneva, Switzerland
+41-22-917-8492
www.ictsd.org

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of publications is most welcome; if interested,
please contact Andrew Crosby, Managing
Director at +41-22-917-8335.

Contributors to this issue are Sofia Alicia Baliño,
Kimberley Botwright, Preeti Dasari, Varun Eknath,
Chiara Hartmann, Jonathan Hepburn, Jessica
McDonald, and Tanvi Sinha. This edition of
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Sofia Alicia Baliño.

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