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GLOBAL ECONOMY

EU, US Negotiators Push for 2016 Deal, Though "TTIP Light" Not an Option

Negotiators for an EU-US trade and investment deal concluded their thirteenth round of talks on Friday, with both sides reiterating their wishes to conclude an agreement this year, so long as it does not force a compromise on substance.

Meanwhile, public debate has escalated over the deal's potential content, particularly in the wake of a "leak" of alleged trade deal texts by an environmental NGO this week.

The latest round of Transatlantic Trade and Investment Partnership (TTIP) negotiations was held in New York from 25-29 April, coming on the heels of high-level meetings between US President Barack Obama and various EU national leaders, including UK Prime Minister David Cameron and German Chancellor Angela Merkel. (See Bridges Weekly, [28 April 2016](#))

Those meetings came with a strong political push to advance the trade talks as much as possible in the coming year, before Obama leaves office, with a view to reaching a completed deal if possible. Ratification, however, is not expected in 2016, even if an agreement is concluded.

Tariff phase-outs

At the level of market access, the two sides are aiming to make progress in TTIP under three main pillars: goods, services, and government procurement.

On goods, the US and EU exchanged second offers on tariffs last October, which they noted at the time had put them on "comparable" levels in terms of tariff line coverage. (See Bridges Weekly, [29 October 2015](#))

Discussions on tariffs continued during this round, officials said, specifically on the 97 percent of tariff lines covered in the latest offers.

"We had agreed earlier to eliminate tariffs on 97 percent of tariff lines, and at this round, we worked to increase the number of those tariff lines that would be zeroed out upon entry into force of the agreement," said US chief negotiator Dan Mullaney at the [closing press conference](#).

He added that the two sides will work in the coming months on the elimination of those tariffs not included in those offers, along with speeding up the phase-out times for those already covered.

EU chief negotiator Ignacio García Bercero confirmed that the three percent of tariff lines not covered in each side's offer – the "most sensitive" – were not discussed during the New York meeting.

Regarding public procurement, the EU official suggested that there is a disparity in how far along the text on that subject is, versus the market access offers that were exchanged earlier this year. (See Bridges Weekly, [3 March 2016](#))

"For us, it is clear that we need to reach a similar level of progress in market access procurement as we have already done in tariffs and services in order to move the negotiations towards the end game," he told reporters.

A "bridging round"

Besides market access, one of the main goals this week was on consolidating texts in as many areas as possible, building on the efforts of the last three years of talks.

"The round was a bridging round, between the huge amount of technical work that we have already done, and the task we now face in creating joint texts and finding compromises where necessary, in particular in the regulatory and rules pillars of these negotiations," said García Bercero.

Officials noted that the TTIP chapters regarding small- and medium-sized enterprises, as well as those relating to customs, trade facilitation, and competition, are "very advanced" at this stage, while other areas such as good regulatory practices having made "good progress."

Among the texts that are now "consolidated" – in other words, that incorporate "joint text" agreed in whichever areas possible – are the chapters on good regulatory practices and regulatory cooperation.

At the sectoral level, officials reported advances in the areas of automobiles, pharmaceuticals, medical devices, and cosmetics, with a view to having "text on the table" for the majority of sectors by the time they meet again in July. On pharmaceuticals, the EU has said that its proposal on this area will soon be released to the public.

Controversy builds in wake of Greenpeace "leaks"

Just days after the conclusion of the round, the Netherlands branch of the Greenpeace environmental group [released a series of documents](#) which it claims are "leaked" versions of TTIP consolidated texts, dated prior to this latest negotiating round. The release has fuelled a media frenzy in its wake.

The advocacy organisation claimed that the leak was meant to spur debate and prompt officials to release the latest negotiating texts. Greenpeace also made a series of allegations based on its analysis of the texts, arguing that the documents they have seen appear to indicate EU compromises on areas such as the "precautionary principle" and a lack of explicit mentions on climate protection.

In response, EU Trade Commissioner Cecilia Malmström [released a statement](#) the same day which, she said, was needed to respond to some of the “misconceptions” that appear to exist about these “supposed leaks” being reported in media outlets.

“First of all, and contrary to what many seem to believe, so-called ‘consolidated texts’ in a trade negotiation are not the same thing as an outcome. They reflect each side’s negotiating position, nothing else,” she said, adding that it is normal for the two trading partners to have different views on some issues.

She also noted that it is not unusual for each side to be pushing hard for their respective negotiating priorities, and that doing so does not mean that the other side will make concessions or that some middle ground will necessarily be reached.

For example, she referred to the EU’s [proposal](#) under TTIP on regulatory coherence, which she noted has references to the precautionary principle.

“In areas where we are too far apart in a negotiation, we simply will not agree. In that sense, many of today’s alarmist headlines are a storm in a teacup,” the EU trade chief said.

She also pledged that the EU will never sign on to a trade deal that would require changes to laws on genetically modified organisms (GMOs) or force less stringent environmental protections, nor would they limit the 28-nation bloc in making rules aimed at protecting consumers and the environment.

“I am simply not in the business of lowering standards,” said Malmström.

However, in the wake of the leak, French President François Hollande said that, at this stage of the negotiations, TTIP would be unacceptable for his country.

“We will never accept questioning essential principles for our agriculture, our culture, and for the reciprocity of access to public [procurement] markets,” he said on Tuesday. What this might mean for the trade deal’s next steps is not yet clear, with French Trade Minister Matthias Fekl suggesting the same day that a likely option could be putting the talks on hold.

Time running short?

With Obama due to leave office on 20 January 2017, the pressure to reach a deal before a new administration enters the White House is on, given the likely transition period once a new president takes office, as well as the uncertainty of what stance the next US leader will have on the TTIP talks.

“From the European Union point of view, we are ready to work hard to try to conclude these negotiations in 2016, but of course, only if the substance of the deal is right,” said Garcia Bercero to reporters on Friday.

“TTIP light, as has been said very clearly by Dan [Mullaney], is not workable either for the US or for the European Union,” he added.

Another negotiating round is tentatively slated for July, prior to the summer break. The focus, according to the EU official, will be to continue consolidating texts as much as possible in all areas, leaving only politically difficult issues to be resolved later down the road.

By the time of that next round, the results of the upcoming “Brexit” referendum in the UK should be known, with British voters set to go to the polls on 23 June, adding another dimension to the TTIP talks.

In separate remarks to a Geneva audience on Monday, EU Trade Commissioner Cecilia Malmström responded to a question on the "Brexit" situation by saying that "I really hope that the Brits will choose to stay."

However, she noted, "should the Brits choose to leave, it is then up to the Brexit camp to formulate what relationship they want with the European Union," adding that the UK would not be part of current or future EU trade talks if it leaves the 28-nation bloc.

The pace of progress in the talks has provoked frustration in some quarters, with French Trade Minister Matthias Fekl reportedly suggesting that the negotiations be put aside if they continue to move slowly, according to comments in Reuters last week.

ICTSD reporting; "U.S., European trade negotiators battle political headwinds," REUTERS, 29 April 2016; "François Hollande: 'No' to TTIP at this stage," POLITICO, 3 May 2016.

CLIMATE CHANGE

Australia Climate Policy Fight Escalates Ahead of July Election

Australia's main political parties are ratcheting up their debate over how best to tackle the challenges of climate change mitigation, ahead of a 2 July election that was confirmed this week.

Last week, Australia's Labor Party, which is currently in the opposition, released a climate policy plan that outlined a series of goals and measures it would work toward if it wins power in the July polls. The policies have already been panned by Liberal Party leaders, who have warned of their potential costs to enact.

The 41-page [policy paper](#) sets out a six-pronged approach to climate policy under a Labor government, which would be headed by Bill Shorten. This plan, the paper said, has been put together in a way meant to "minimise impacts on households and industry."

"It is profoundly in Australia's national economic interest to ensure there is action on climate change," the policy paper says.

The six elements include making Australia a world leader in renewable energy; upgrading and diversifying the country's electricity generation so it uses cleaner power; creating "green" jobs; enacting emissions trading schemes; boosting efforts for carbon capture on land, particularly in agriculture; and improving energy productivity and automobile emissions standards.

ETS proposal sparks debate

The prospect of an emissions trading scheme has fuelled fears among some quarters that this could lead to a return of a national carbon tax.

Australia had a carbon tax in place from 2012 until 2014, enacted under the Labor Party government of former Prime Minister Julia Gillard, only to be repealed under the Liberal Party government of Tony Abbott. The carbon tax had originally been set to evolve into an emissions trading scheme, before it was repealed. (See Bridges Weekly, [17 July 2014](#))

The Labor plan would involve both a domestic emissions trading scheme (ETS), together with a separate "electricity-generation" ETS.

The two schemes will "sit alongside" one another, according to Labor. The goal of setting up an ETS would be to boost investment in renewables and cleaner technologies, while also keeping pace with other countries making moves on carbon pricing initiatives.

Referring to the 2014 carbon tax repeal, the Labor plan argues that Australia is now falling behind other major economies – including the EU and China – that either have in place or are preparing to implement emissions trading schemes on the national level. The EU has had an ETS in place since 2005, while China has said it will introduce a national ETS next year. (See Bridges Weekly, [9 September 2015](#))

The proposed Australian ETS would have two phases. The first would be from July 2018 to June 2020, covering the last commitment period of the Kyoto Protocol and taking the form

of a “cap and offsets” scheme, essentially setting a ceiling for carbon emissions from “liable entities,” with producers exceeding those limits then required to buy carbon offsets.

The agriculture, road transport, and refrigerant industries would be among those exempt from this phase, which will then be reviewed ahead of Phase Two.

Under Phase Two, Labor would set a carbon pollution cap that it would regularly revise downward from 2020 to 2030, built around the principles of net zero pollution by 2050; economic efficiency; transparency; fairness and flexibility; meeting energy needs; and competitiveness. The ETS would also have “access to international offsets,” specifically those approved under the Clean Development Mechanism.

The possibility is also raised of linking to other emissions trading schemes abroad. The prior carbon tax enacted under Gillard envisioned an eventual linkage with schemes in New Zealand and the EU, upon shifting to an emissions trading scheme. (See Bridges Weekly, [12 September 2012](#) and [14 December 2011](#))

Regarding the electricity generation ETS, this would begin in 2018 and be a “separate and closed scheme,” designed in a way that would not have a “significant effect” on consumer prices.

“Under Labor, electricity generation will be covered by a ‘cap’ on carbon pollution that reflects a proportional share of the overall emissions reduction task set for the broader Emissions Trading Scheme. Each generator will be allocated a baseline that is calculated according to a sector-wide emissions intensity baseline,” the plan explains.

Opposition leader Bill Shorten has also stressed repeatedly that these emissions trading schemes will not involve a carbon tax, despite competing [claims](#) from Liberal Party leaders that this would indeed be the case.

2030 emissions target

Furthermore, the plan also includes a commitment by Labor to slash the country's emissions by 45 percent from 2005 levels from 2030 – almost doubling the pledge Australia made under its [“intended nationally determined contribution”](#) submitted last August in the lead-up to the UN climate talks in Paris.

These nationally determined contributions (NDCs), as they are now known, are the building blocks of the universal climate accord struck in the French capital city last December. Under the Paris Agreement, each country will present from 2020 onwards updated versions of their NDCs every five years. (See BioRes, [13 December 2015](#))

“A target of 26 to 28 percent (on 2005 levels) – as proposed by the Abbott/Turnbull Government – would see Australia fall well short of the commitments made by the United States, United Kingdom, Germany, Canada, and other European nations,” the Labor policy plan notes, citing a September 2015 research brief published by the Climate Institute.

By comparison, the paper says, a 45 percent goal would both ensure that the “next generation of Australians” is not forced to bear an even greater burden in trying to meet a two degree Celsius target, along with giving the country “room in its carbon budget” after 2030.

The Labor plan also includes a proposal to source half of Australia's power from renewable energy sources by 2030.

Prime Minister Malcolm Turnbull has openly lambasted Labor's proposal, warning that the costs of such an emissions target could be devastating for the Australian economy.

"In order to deliver a near doubling of our emissions target, they will have to very significantly increase the cost of energy, the cost of electricity, and all other power," he said last week [in a radio interview](#) with Adelaide ABC 891.

Warning that such a move would be another "economic handbrake" on the economy, he argued that doing so unilaterally – with no similar increases in climate action from other nations – will "unilaterally double the burden on Australians."

"I take climate change very seriously. I take global warming very seriously. I take the challenge that the world faces to reduce emissions very seriously and that is why in Paris we committed, I committed to Australia reducing its emissions by 2030 by 26 to 28 percent," said Turnbull, adding that the number is high given the country's rapidly growing population.

Upcoming polls

As the climate debate rages on, the country is now preparing itself for a 2 July election, which the Prime Minister confirmed on Wednesday.

While Turnbull's approval ratings have dropped since their initial high after he took over from Tony Abbott last year, whether he will be able to retain power against Bill Shorten remains an open question, as current polls remain neck-and-neck between the two parties. (See Bridges Weekly, [17 September 2015](#))

Some polls have indicated, however, that over 57 percent of votes are in favour of Labor's climate proposals, with the climate issue overall being pegged as a key issue for the electoral campaign.

ICTSD reporting; "Malcolm Turnbull reprises elements of Tony Abbott's scare campaign to fight Labor plan," THE SYDNEY MORNING HERALD, 28 April 2016; "Shorten echoes Gillard's carbon vow as power brawl erupts," THE AUSTRALIAN, 28 April 2016; "Turnbull Government handed July 2 double dissolution trigger as Senate rejects ABCC bill," ABC NEWS, 18 April 2016; "Shorten urges caution on polls bounce," SKY NEWS, 5 April 2016; "Poll shows 57 percent of Australians back carbon market proposal," CARBON PULSE, 3 May 2016; "Australia PM Turnbull confirms will call election for July 2," REUTERS, 3 May 2016.

EUROPEAN UNION

EU Trade Chief Calls for Building on Nairobi Momentum in Geneva

The results from last December's WTO ministerial conference went well beyond expectations, EU Trade Commissioner Cecilia Malmström said in Geneva on 2 May, reiterating recent calls for the organisation's members to draw on this momentum and begin charting a clearer path toward the next ministerial and beyond.

Speaking at the Graduate Institute on Monday to a packed room of academics, ambassadors, and other trade watchers, the EU official highlighted the opportunities that may now be available in the wake of last year's ministerial meet, while explaining that the 28-nation bloc is still considering its own position on many areas.

Last year's ministerial conference, held in Nairobi, Kenya, saw WTO members agree on a series of deliverables ranging from agricultural export competition to several issues of relevance to least developed countries. At the December meet, WTO members also agreed to disagree on whether to reaffirm the Doha Round negotiating mandate, instead noting opposing views on the matter. (See Bridges Daily Update, [19 December 2015](#))

While some members reiterated their "full commitment to conclude the [Doha Round] on that basis," various others pushed for taking on new approaches for reaching meaningful results.

Furthermore, the declaration says that "while we concur that officials should prioritise work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision to launch negotiations multilaterally on such issues would need to be agreed by all members."

The result has prompted questions and speculation as to the next steps for the WTO's negotiating arm, particularly given that the next ministerial is slated for the end of 2017.

"Trade for All" as inspiration

In a speech to civil society a week ago, the EU trade chief outlined a series of areas that, in her view, could be fruitful areas for WTO members to begin their post-Nairobi discussions. While stressing that the EU's preference is for multilateral deals whenever possible, she also indicated that a next-best option would be plurilateral pacts on a most-favoured nation basis. (See Bridges Weekly, [28 April 2016](#))

"[The EU] wants to draw inspiration from *Trade for All* for our approach to the World Trade Organization," she said on Monday in Geneva, referring to the EU's vision document for trade policy which it released late last year. (See Bridges Weekly, [15 October 2015](#)) "That brings me to a final European value that has always been at the heart of EU trade policy: multilateralism."

Noting that the *Trade for All* document came a few months before the Nairobi ministerial – a time where prospects for an agreed outcome were mixed at best – she indicated that back then "we could only be hopeful" for what the event might accomplish.

"The results surpassed our expectations – on export competition in agriculture and information technology, but also by giving us the first chance in 15 years to adapt the WTO's agenda of negotiations," she said.

"That means we need to think about how to apply the principles of our trade strategy to the post-Nairobi work that has begun here in Geneva," she added.

Relevance, inclusiveness

During her earlier speech to civil society a week ago, the EU trade chief put forward a series of areas for possible discussion at the multilateral or plurilateral level, including agricultural domestic support; digital trade; investment; fisheries subsidies; food security and public stockholding; domestic regulation in services; export restrictions on energy and raw materials; local content requirements; and state-owned enterprises.

She also flagged sectoral deals on market access and trade facilitation as areas where a plurilateral approach would likely be the only option, given the apparent lack of consensus among the WTO membership.

In Geneva on Monday, Malmström referred specifically to some of these issues, such as digital trade, investment, state involvement in the economy, and energy and raw materials.

These were referred to in the context of increased policy relevance, as ways to help bring the WTO rulebook "in line with 21st century realities of global trade."

Calling also for making trade policy more inclusive, including for smaller firms, she suggested that domestic regulation of services and more work on regulatory and technical barriers affecting manufactured goods could be helpful areas to begin on.

Ultimately, though, she stressed that "multilateralism in itself is a value," reiterating her point from last week's speech that any new ideas discussed at the WTO should begin with a search for multilateral solutions.

"If the multilateral path doesn't work then we can look at other approaches. And logically, that starts with plurilateral agreements, based on the most favoured nation principle, open to all, and subject to the WTO dispute settlement system," said Malmström.

Moving forward, she indicated that the European Commission will both be refining its own approach on where next to proceed, including with planned discussions with trade ministers from EU member states, while also gauging the interest levels and positions of fellow WTO members.

"We haven't landed yet. Multilateralism is a priority," she said in response to questions on the subject. If multilateralism does not work for an issue, plurilaterals will be considered, "but it's too early to say when, or where or with whom," welcoming any input.

Broader trade context

The question-and-answer component of the Trade Commissioner's visit covered a range of topics, with some trade watchers picking up on the WTO-related elements, while others raised questions on different areas involving EU trade policy, including the implications of the upcoming "Brexit" referendum in the UK this June, as well as the ongoing negotiations with the US for a Transatlantic Trade and Investment Partnership (TTIP).

Regarding the public debate on trade deals, including TTIP, the EU official noted that having a public debate on such topics is useful in making the process more inclusive, adding that people "are also concerned about trade in general."

She added that the EU is aiming to address some of these concerns – such as on environmental and labour issues – through its *Trade for All* strategy, in order to make sure “that what we do in trade is consistent with our core values, which are also universal values,” such as democracy and transparency.

“There will be no lowering of our social and environmental protections,” she added.

In response to the EU's approach in pushing for both multilateral progress while also pursuing bilateral and regional pacts, she told the audience that, “in trade, multilateralism makes sense,” given the value of having an outcome backed by over 160 members.

Regional and bilateral deals, however, can also prove very useful as “policy laboratories,” while again noting that the momentum from Nairobi could be powerful in pushing for new multilateral outcomes and regaining public trust on trade.

ICTSD reporting.

CURRENCY

US Treasury Report Sets Up "Monitoring List" of Five Major Trading Partners

Five of the US' top trading partners have now been put on a "monitoring list," according to a recent [report](#) by the US Treasury Department on exchange rate policies. However, these countries fell short of meeting the necessary criteria for "enhanced analysis" under Washington's new trade enforcement laws.

The 29 April report specifically flagged China, Japan, Korea, Taiwan, and Germany for this "monitoring list," claiming that these five countries all meet two out of the three criteria specified under US law for additional analysis.

The framework setting these criteria was provided by the Trade Facilitation and Trade Enforcement Act of 2015, which was signed into law earlier this year. The legislation had been one of a suite of trade-related bills put forward in 2015, with the others all becoming law last year. (See Bridges Weekly, [25 February 2016](#))

The new US law requires, among other things, that the Department of the Treasury report to Congress every six months on the macroeconomic and currency exchange rate policies of top trading partners. This builds on the existing reporting requirement in earlier US legislation, specifically the Omnibus Trade and Competitiveness Act of 1988.

Monitoring list criteria

The criteria outlined under Washington's new trade enforcement legislation specifically involves having a significant bilateral trade surplus with the US; a material current account surplus; and ongoing "one-sided intervention" in the foreign exchange market.

Specifically, a significant bilateral trade surplus is defined by the report as being over US\$20 billion, while a material account surplus is defined as being larger than three percent of that economy's gross domestic product (GDP).

The definition that Treasury has used for "persistent, one-sided intervention" would require that a country have conducted multiple net purchases of foreign currency over the past year which add up to over two percent of that same country's GDP.

"While no economy met all three of the criteria, this result is a reflection, in part, of the dynamics of the global economy during the past year, in which capital outflows from emerging markets have led a number of economies to engage in foreign exchange intervention to resist further depreciation of their currency (rather than appreciation)," the report explained.

Furthermore, it noted, "the extent of these flows was unusually high by historical standards, which underscores the possibility that more economies may trigger these thresholds going forward."

Should any country meet all three criteria, Treasury would be required under US law to begin "enhanced bilateral engagement" with that economy. Should the trading partner involved not put in place "appropriate policies to correct its undervaluation and external surpluses" within one year, this would then require a response from the US' executive branch.

This response could take at least one of the following forms. For example, Washington could stop access to development financing under the Overseas Private Investment Corporation (OPIC) or bar that country from US public procurement. Other options include requesting the International Monetary Fund to undertake increased surveillance of that economy, or requiring US trade negotiators “to take into account” the decision to not make such policy changes when determine whether to get involved in trade negotiations with that country.

Furthermore, under the 1988 law Treasury is also required to determine “whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade.”

None of the countries examined met this standard either, the report said.

Five countries in focus

While the research conducted for this report examined data taken over 15 years across several economies, the publication focuses in particular on these five countries’ policies. These are assessed over the second half of 2015 and first quarter of 2016.

China had a significant bilateral trade surplus with the US and a material current account surplus, according to Treasury. Beijing has also “supported” the renminbi, the report claims, while noting the context of such a move – specifically, following the August changes to the country’s exchange rate policy, which led to a sharp devaluation that roiled markets.

“Such a depreciation would have had negative consequences for the Chinese and global economies,” the report cautions, calling for Beijing to give additional clarity over the objectives of its policies in this area, and assurances that devaluation will not be used as a form of growth stimulus.

Chinese currency policies have long been an area of scrutiny for both the US and other partners, as the Asian economic giant continues to enact reforms to these policies and others. However, last year China made headlines after the International Monetary Fund deemed the renminbi to no longer be “undervalued.” (See Bridges Weekly, [28 May 2015](#))

Later in the year, the US Treasury Department revised its stance on China’s currency, stating that it “remains below its appropriate medium-term valuation” – a change from earlier descriptions of it being “significantly undervalued.” (See Bridges Weekly, [22 October 2015](#))

Korea also had both a significant bilateral trade surplus and material current account surplus with the US. Additionally, Korea allegedly intervened in the foreign exchange market to prevent depreciation of its currency, with the US government agency calling for appreciation of the “won” and suggesting that Seoul only intervene in its currency in cases of “disorderly market conditions.”

While meeting the same two criteria as China and Korea, the report notes that Japan has not intervened in foreign exchange markets in recent years. Germany is in a similar situation with its bilateral trade surplus and material current account surplus, which “accounted for the bulk of the euro area’s surplus.” Like Japan, though, the European Central Bank has not intervened in foreign exchange markets since 2011.

Taiwan has a material current account surplus and has intervened in foreign exchange markets throughout the past year. The report highlights that this development as “concerning,” while acknowledging that Taiwan has an insignificant bilateral trade surplus with the US at less than US\$15 billion.

ICTSD reporting, “US Chides Five Economic Powers Over Policies,” THE WALL STREET JOURNAL, 30 April 2016.

GLOBAL ECONOMY

EU, Japan Leaders Call for Trade Talks to Conclude in 2016

The European Union and Japan should aim to conclude their negotiations for a sweeping free trade deal this year, leaders from both sides said on Tuesday, following high-level meetings in Brussels.

The 3 May leaders' meeting, which brought together Japanese Prime Minister Shinzo Abe, European Council President Donald Tusk, and European Commission President Jean-Claude Juncker, comes three years into the bilateral talks. (See Bridges Weekly, [27 May 2013](#))

The gathering also came just weeks before Japan is slated to host the next meeting of [G-7 leaders](#), scheduled for 26-27 May in Ise-Shima, with the state of the global economy one of the key items on the docket. Both Juncker and Tusk will be there on the EU's behalf.

Highlighting the state of the global economy, Juncker [stressed](#) that inking a deal with the Asian trading giant would be a boon to ongoing recovery efforts.

"We face a number of risks – including slower growth in emerging economies – and therefore we need to combine our forces to promote growth and investment," said the Commission chief. "This is why our Free Trade Agreement with Japan is so important."

Expressing "confidence" that this can be reached by year's end, Juncker indicated that the deal could help generate growth and jobs, along with giving a "positive signal" globally.

Indeed, the state of the global economy has continued to worry officials and analysts alike, dominating major gatherings including the Spring Meetings of the International Monetary Fund (IMF) and the World Bank. (See Bridges Weekly, [21 April 2016](#))

"Our negotiations have progressed but now we must finish the job," said Juncker on Tuesday, with Abe and Tusk expressing similar hopes for bringing the talks to a rapid close.

Tusk: "Political will" key

Prior to the meet, Tusk had [indicated](#) that the leaders' discussions in Brussels would aim to give trade negotiators "clear political steer" in moving forward, stressing also that these talks are occurring in parallel with efforts to forge a "strategic partnership agreement" with Tokyo.

"For this to happen both sides need to demonstrate political will," he said.

The EU and Japan combined make up one-third of global GDP, and are major trade partners for one another. While the talks date back to 2013, preparations for such a trade deal began well beforehand, with the two sides agreeing in 2011 to begin exploring the possibility.

Indeed, for EU ministers to even agree to the launch, Japan first needed to remove a series of non-tariff barriers before the negotiations began, and the Commission was required to assess progress in the removal of non-tariff barriers, railways, and urban roadmaps one year into the talks to determine whether these should continue. (See Bridges Weekly, [5 December 2012](#))

The two sides have already missed earlier targets for clinching a deal, having aimed to conclude the negotiations by the end of 2015. (See Bridges Weekly, [4 June 2015](#))

At the time, Abe said that he hoped to have a deal that year, while EU officials cautioned that the talks could go into 2016 if necessary. Among the areas which the two sides highlighted as key for the deal were goods, services, and investment market access; government procurement, including railways; non-tariff measures; and intellectual property issues.

Coming up

Along with the G-7 leaders' meet later this month, another negotiating round between the two trading powers is scheduled for September 2016 in Brussels.

Meanwhile, the two sides are pursuing various other trade initiatives with other partners or groups of partners, with some overlap in membership. Indeed, how these efforts and others will change the overall global trading architecture as different overlapping groups adopt their own sets of rules has been a topic of growing debate among analysts.

For example, the EU is currently in talks with a Transatlantic Trade and Investment Partnership (TTIP) deal with the US. (For more on TTIP, see related story in this edition)

Washington is also one of the 12 economies involved in the Trans-Pacific Partnership (TPP) Agreement, which among its signatories includes Tokyo. This latter agreement is now in the ratification stage, with debates in the Japanese parliament, known as the Diet, already underway. Some officials have suggested that a Diet vote on the TPP could come later this year.

ICTSD reporting; "Japan, EU leaders agree to accelerate free trade talks," KYODO, 4 May 2016; "Oshima: Diet seen voting on TPP in fall," THE JAPAN NEWS, 1 May 2016; "Japan Diet panel resumes debate on TPP," JIJI PRESS, 18 April 2016.

INVESTMENT

NAFTA Tribunal Issues Ruling in Mesa Power-Canada Case

An investor-state arbitration tribunal under the North American Free Trade Agreement (NAFTA) recently released its [decisions](#) in a dispute brought by a US corporation, Mesa Power Group LLC. At issue in the case, which dates back to 2011, was the awarding of power purchase agreements under the Canadian province of Ontario's feed-in-tariff programme (FIT programme) for renewable energy.

Mesa challenged Canada under NAFTA's investment chapter, which sets out a framework of rules and disciplines that aims to provide investors from participating countries – Canada, Mexico, and the US – with a predictable, rules-based investment climate, along with describing how such investor-state disputes should proceed.

The company claimed that Canada adopted discriminatory measures, imposed minimum domestic content requirements (DCRs), and failed to provide the company with a minimum standard of treatment, in violation of NAFTA's investment provisions. Furthermore, the US company said, these violations resulted in losses and damages for Mesa.

A three-member tribunal was set up in July 2012 to hear the case, with the Permanent Court of Arbitration (PCA) acting as the administering institution. The tribunal closed the proceedings in late March of this year. With a dissenting opinion from one member, the tribunal dismissed Mesa's claims and found that Canada was in line with its NAFTA obligations.

The tribunal also decided that Mesa should bear all the costs of the arbitration as well as a portion of Canada's legal defence costs, worth nearly C\$3 million.

The FIT programme

In 2004, the Government of Ontario created the Ontario Power Authority (OPA), which was tasked with promoting the diversification of the province's electricity supply with a particular focus on renewable energy, among other objectives.

Five years later, the Ontarian government directed the agency to develop and implement a feed-in tariff programme focused on boosting renewable energy generation and consumption.

Under the FIT programme, projects generating electricity exclusively from one or more sources of renewable energy can apply for a fixed, long-term power purchase agreement (FIT contract) with a guaranteed price for electricity delivered into the Ontario system. These would also need to meet certain domestic content requirements.

Applications after 30 November 2009 were ranked solely on the basis of their timing, with those received beforehand able to advance their ranking on the basis of their "shovel-readiness." Projects with the highest rankings would be awarded contracts, provided that there was sufficient transmission capacity to connect the project to the grid.

Mesa's applications

Through unlimited liability corporations incorporated in Canada and owned by Mesa, the company filed two applications on 25 November 2009, and four others in May 2010, all based in the Bruce region of Ontario.

Between April 2010 and July 2011, the Ontario agency offered FIT contracts through three rounds. In the first two rounds, due to transmission constraints, no contracts were awarded to projects located in the Bruce region, including those by Mesa. Those constraints required the building of a new high-voltage transmission line out of Bruce.

Meanwhile, in light of the rapid changes being seen in the electricity market, as well as the quick advances being made towards its renewable energy targets, Ontario deemed it necessary to slow down the pace of its procurement.

In the third round, Ontario allocated 750 megawatts (MW) to the Bruce region for the awarding of FIT contracts. Each application was to be given an opportunity, within five days stating on 6 June 2011, to select its connection point outside Bruce and build transmission lines from their generation facility to the connection point.

One month later, the OPA offered 14 FIT contracts, none of which went to Mesa projects.

In January 2010, Ontario and the Korea Electric Power Corporation entered into the Green Energy Investment Agreement (GEIA), which gave the Korean company guaranteed priority access to 2,500 MW of transmission capacity in Ontario. Accordingly, the OPA was directed in September 2010 to reserve 500 MW of transmission capacity in the Bruce region.

Previous FIT related disputes

This is not the first time that elements of Ontario's renewable energy initiatives have fallen under international legal scrutiny.

In cases filed by the EU and Japan, the WTO's Appellate Body ultimately found in 2013 that the domestic content requirements prescribed under the FIT programme and related contracts were in violation of Canada's national treatment obligations under the Trade-Related Investment Measures (TRIMs) Agreement and the General Agreement on Tariffs and Trade (GATT) 1994. (See Bridges Weekly, [8 May 2013](#))

Another ongoing NAFTA investment dispute also has FIT elements. Specifically, that case concerns Ontario's deferral of offshore wind development because of public concerns and scientific uncertainties about the health, safety, and environmental effects of offshore wind projects, and the alleged negative effect of the deferral on the operation of Windstream's FIT contract.

In this case, issues such as whether acts of OPA are attributable to Canada, and whether the investment measures qualify for procurement exemption under NAFTA, are under debate between the disputing parties. (See Bridges Weekly, [18 February 2016](#))

Jurisdiction question

NAFTA's investment chapter features various requirements for submitting a claim to arbitration, including by limiting a tribunal's jurisdiction to disputed measures that are "relating to" investors or their investments.

The Mesa tribunal agreed with Canada's claim that an investor cannot challenge pre-existing measures, and said that since the domestic content requirements were part of the FIT programme before Mesa's projects were incorporated, the arbitrators did not have jurisdiction over them.

Canada agreed that acts of the Government of Ontario are attributable to it, however, not those of OPA and two other entities of Ontario electricity system – therefore do not fall into the tribunal's jurisdiction.

Mesa referred, among other things, to the WTO judges' 2013 finding that the OPA is a "public body," and argued that the OPA is an organ of Canada. The tribunal disagreed, saying that the WTO findings was made in a different context, specifically in relation to the global trade body's Agreement on Subsidies and Countervailing Measures (SCM Agreement).

While finding that the OPA is not an organ of Canada, the tribunal ultimately deemed that it is a state enterprise, and that its acts are nonetheless attributable to Canada, "since they were all done in exercising of regulatory, administrative or other governmental authority."

Procurement exception

Under the NAFTA investment chapter, if a measure constitutes procurement by a party or a state enterprise, a number of obligations do not apply, including national treatment, most favoured nation treatment, and a ban on using domestic content requirements.

The tribunal noted that this exception was designed to ensure that NAFTA parties kept the ability to exercise nationality-based preference in cases of procurement, and rejected Mesa's claims, deeming that the term "procurement" does not require the acquisition to be for the government's own use.

Mesa also argued that Canada cannot rely on the procurement exception since it has not demonstrated that there is a link between the FIT contract and the challenged measures under the NAFTA investment chapter's non-discrimination provisions.

The tribunal said that Mesa's claim appears to arise from arguments raised in a WTO dispute on the feed-in tariff's local content requirements, and said that these are of limited use in the present case.

In the WTO case, the government procurement exemption under the General Agreement on Tariffs and Trade (GATT) was found not to apply, given that Ontario was procuring electricity, but discriminating against electricity generation equipment due to its origin.

For the NAFTA tribunal, the existence of such a link is "irrelevant" given that the investment provision under the trilateral pact is broader than the GATT provision examined in the WTO case. Furthermore, the arbitrators said that Mesa's non-discrimination claim involves the acts of the Ontario government and the OPA, and thus it has a "direct nexus" with the FIT programme.

The majority of the tribunal's members concluded that the FIT programme is indeed procurement, and is implemented by the Ontarian government through the OPA state enterprise; therefore, the provincial government's actions cannot be challenged under the NAFTA investment chapter's non-discrimination provisions.

Minimum standard of treatment

Under NAFTA, hosting countries must treat foreign investors' investments in line with international law, "including fair and equitable treatment and full protection and security."

The tribunal reviewed the various components which make up this standard, such as arbitrariness and gross unfairness, while noting the high threshold for a breach of the "minimum standard treatment" obligation. The arbitrators deemed that there was not enough evidence to establish that the OPA's implementation of the FIT programme involved collusion or unfair preference.

The tribunal also disagreed with Mesa's claim that the Green Energy Investment Agreement allowed Ontario to "unjustifiably" provide an advantage to the Korean investors "at the expense" of FIT applications.

Furthermore, the arbitrators dismissed the company's objections over Ontario's process in allocating transmission capacity in the Bruce region. In particular, the tribunal said that the allocation process adopted in the third round for the area was based on "rational considerations," given the context at that time.

Ultimately, the majority of the arbitrators concluded that Canada's conduct did not violate NAFTA's minimum standard of treatment requirement.

Responses

The Canadian government [welcomed](#) the outcome, while the Mesa Power Group issued a [statement](#) saying "while we respect the tribunal and its process, we do think they got this one wrong," and "we are reviewing the decision, and the dissenting opinion, and will be evaluating our options."

There are around 700 known treaty-based investor-state arbitrations recorded on the UN Conference on Trade and Development's (UNCTAD) [investment policy hub](#), with an increasing tendency of foreign investors to resort to investor-state dispute settlement (ISDS). The actual total number can be higher, as under most international investment agreements (IIAs), arbitrations can be conducted confidentially in full.

Investor-state disputes are coming under increasing scrutiny, particularly in the context of trade agreements. Last year's [UNCTAD World Investment Report](#) called for reforming this type of dispute settlement, and explained that, among other issues, the current ISDS system runs the risk of causing a "regulatory chill on legitimate government policy making."

While some countries or country groups, such as the EU, have backed the creation of a multilateral investment court and other reforms to help address some of the current concerns about the ISDS system, this idea is still in the early stages. (See Bridges Weekly, [3 March 2016](#))

ICTSD reporting.

AGRICULTURE

Russia's Trade-Distorting Farm Support Falls, New Figures Suggest

Russia's trade-distorting agricultural support in 2014 fell to US\$5 billion – ₹190 billion – new [figures](#) from the government suggest.

The report, released by the WTO last Thursday, shows that the country's farm subsidies have continued to fall steadily, with Moscow reporting a drop of around 30 percent from 2013 levels. (See Bridges Weekly, [18 June 2015](#))

The fall in trade-distorting payments mean that Russia is well below the 2014 ceiling of US\$8.1 billion to which negotiators agreed when the country joined the global trade body in 2012. (See Bridges Weekly, [25 July 2012](#))

As in 2013, 99 percent of Moscow's trade-distorting farm payments were exempt from this ceiling as they were classified as "de minimis" spending – meaning that they fell below a threshold of five percent of the value of farm production.

Around a quarter of the drop in trade-distorting support appears to result from a fall in fodder subsidies, which dropped from US\$533 million in 2013 to US\$13 million in 2014. Fodder involves dried hay or straw for livestock consumption.

Pests and diseases

Another US\$2.9 billion (₹110 billion) was classified as causing no more than minimal trade distortion, known as "green box" support at the WTO. Spending in this category remained essentially unchanged from the previous year, the new figures suggest.

However, within this category Russia reported an almost eight-fold increase in spending on pest and disease control, which amounted to US\$620 million in 2014.

The report also suggests that spending on environmental programmes, which is also classified as green box, increased sharply from US\$5 million to US\$45 million.

Rouble crash

Russia's future farm subsidy notifications are likely to be affected by the collapse in the value of the rouble, which fell sharply towards the end of 2014. (See Bridges Weekly, [19 February 2015](#))

Moscow's WTO commitments are made in US dollars, meaning that even if trade-distorting support remains constant in rouble terms, the level of subsidies is likely to drop when calculated as a dollar equivalent.

Russia's farm subsidies appear to be significantly below those reported by some other major economies, according to the most recent reports countries have submitted to the WTO. Trade-distorting support in China amounted to US\$18 billion (¥123 billion) in 2010, Beijing has said, while Japan has reported it provided ¥1140 billion (US\$14 billion) in 2012, and data from the US indicates it provided US\$12 billion in 2012. (See Bridges Weekly, [13 May 2015](#), [10 April 2014](#), and [16 January 2015](#))

The most recent domestic support notification from the EU, for the 2012-2013 marketing year, has said trade-distorting farm subsidies amounted to €6 billion (US\$7.7 billion), while India has indicated it provided just US\$2 billion in 2010-11. (See Bridges Weekly, [12 November 2015](#) and [18 September 2014](#))

However, delays in reporting agricultural subsidies to the WTO mean that countries' current farm spending levels are hard to determine.

Russia's complete domestic support notification (G/AG/N/RUS/13) is online [here](#).

ICTSD reporting.

EVENTS & RESOURCES

Events

Coming Soon

6 May, Washington, US. BREXIT- IN OR OUT? IMPLICATIONS OF THE UNITED KINGDOM'S REFERENDUM ON EU MEMBERSHIP. This panel discussion, hosted by the Brookings Institution in cooperation with the Heinrich Böll Stiftung America, King's College London, and Wilton Park USA, will focus on the potential implications from a UK exit from the European Union. The talk will aim to address both the ramifications for the UK itself, but also for the EU bloc and for international ties. The panel discussion will be followed by a question-and-answer session. These ideas, among others, will be discussed by the panel, and audience questions will follow. For more information about this event, including how to register, click [here](#).

9-13 May, Rome, Italy. FAO REGIONAL CONFERENCE FOR THE NEAR EAST, This conference is being hosted by the Food and Agriculture Organization of the United Nations (FAO). Topics of focus will include food security in the Near East and North Africa, the implementation of the Blue Growth Initiative, and the inclusion and empowerment of regional small-scale farmers and women. The event will include meetings among government-designated senior officers, as well as regional agriculture ministers and other high-level officials. To learn more about the event, see the [website](#).

9-13 May, Washington, US. THE 13TH OVERVIEW COURSE ON FINANCIAL ISSUES: PROMOTING STABLE AND INCLUSIVE FINANCIAL SYSTEMS. This event, hosted by the World Bank, is a training course that aims to educate participants on key issue areas in the financial sector. The course's theme is "Promoting Stable and Inclusive Financial Systems," with discussions being held in the context of the Great Recession and Euro Debt Crisis, the course will analyse challenges that the financial sector has faced in recent years and potential ways forward. More information on the event can be found [here](#).

11-13 May, Kigali, Rwanda. WORLD ECONOMIC FORUM ON AFRICA. This event, hosted by the World Economic Forum, will focus on current economic trends in African countries. Specific topics of interest include low commodity prices, currency devaluations, and geosecurity threats that pose potential challenges to long-term, inclusive economic growth. The event's theme is "Connecting Africa's Resources through Digital Transformation." Global and regional leaders from civil society, business, and government will be among the participants at the conference. More information on the event can be accessed [here](#).

WTO Events

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

9 May: Dispute Settlement Body – Special Session

9 May: Informal Heads of Delegation

9-10 May: Informal Open-ended Committee on Agriculture – Special Session

10 May: Working Party on State Trading Enterprises

11+13 May: Trade Policy Review Body – Albania

12 May: General Council

Other Upcoming Events

18 May, London, UK. BANKING ON ASIA: THE UNITED STATES, JAPAN, AND ASIA'S MULTILATERAL DEVELOPMENT BANKS. This event, organised by Chatham House, will feature Dr. Robert M. Orr, the US Ambassador to the Asian Development Bank. He will discuss the emergence of the Asian Infrastructure Investment Bank (AIIB), and how it contributes to an evolving international financial order. Dr. Orr will also look at the effects that the AIIB could have on Asian economic development. To find out more about the event, click [here](#).

23-27 May, Lusaka, Zambia. 2016 AfDB ANNUAL MEETINGS TO FOCUS ON ENERGY AND CLIMATE CHANGE. This meeting, held by the African Development Bank, will focus on energy and climate change in Africa. An area of focus will be on how to bring more power and energy resources to the African continent in a way that is in line with the Paris Agreement reached at the UN climate talks last December, as well as with the 2030 Sustainable Development Agenda and the Sustainable Development Goals. To find out more about the event, click [here](#).

1-2 June, Cairo, Egypt. THE 3RD ARAB FORUM FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY (ARFREE): TOWARDS COMPETITIVE SUSTAINABLE ENERGY MARKET. This event, organised by the League of Arab States (LAS) and the Economic and Social Commission of Western Africa (ESCWA), among others, will focus on ways in which Arab states can focus on developing more competitive energy markets, addressing issues such as energy diversification and de-risking investments. Multiple leaders from governmental and business positions will attend. The event will also feature a session on the joint study underway between ESCWA and the International Renewable Energy Agency (IRENA) on the "Potential of Manufacturing Renewable Energy Equipment in the Arab Region." To learn more about the event, see the [website](#).

Resources

GLOBAL INVESTMENT TRENDS MONITOR. Published by the UN Conference on Trade and Development (UNCTAD) (May 2016). This latest edition of UNCTAD's investment monitor notes a drop in investment flows through offshore financial hubs, which qualifying that these overall continue high. The publication notes recent developments in investment flow volatility involving such hubs, as well as calling for greater coherence globally on tax and investment policies. The report is available [here](#).

CARBON CAP POLICY BRIEF 2: ACCEPTANCE OF CONSUMPTION-BASED CLIMATE POLICY INSTRUMENTS AND IMPLEMENTATION CHANGES. By Doug Crawford-Brown, Michael Grubb, Sonja Hawkins, Alejandro Villanueva, Simone Salotti, Stephen K. Scott, Eleonora Arcese, and Germana Canzi (14 April 2016). This policy brief outlines some of the main findings from the ongoing Carbon-CAP project (Carbon emission mitigation by Consumption-based Accounting and Policy), which examines consumption-based carbon accounting and policies in order to help foster a more effective climate policy mix. The brief is available [here](#).

WORLD DEVELOPMENT INDICATORS 2016. Published by the World Bank (April 2016). Comprising of over 1,400 indicators for over 200 economies, the World Development Indicators (WDI) include cross-country comparable statistics about development and standard of living. The report has been adapted to focus on the implementation of the Sustainable Development Goals (SDGs) agreed last year, building on earlier work tracking the Millennium Development Goals (SDGs). The report can be accessed [here](#).

ECONOMIC GROWTH AND SUSTAINABLE DEVELOPMENT by Peter N. Hess for Routledge (April 2016). The second edition of this book builds on the earlier discussion relating to income distribution, social capital, and the perspective that behavioral economics can provide with regards to climate change mitigation. The author draws on empirical evidence, history, and policy in reviewing a range of issues at the nexus of economic growth and sustainable development. Additional information is available [here](#).

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**International Centre for Trade
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Chemin de Balexert 7-9
1219 Geneva, Switzerland
+41-22-917-8492
www.ictsd.org

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Director at +41-22-917-8335.

Contributors to this issue are Sofia Alicia Baliño,
Yaxuan Chen, Anan Hossain, Angel Ibañez, and
Megan Semeraro. This edition of Bridges Weekly
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