

BRIDGES WEEKLY

Global trade news from a sustainable development perspective

VOLUME 20, ISSUE 19, 26 MAY 2016

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TRADE AGREEMENTS

Obama "Confident" of TPP Passage, Touting Trade Benefits During Asia Trip

US President Barack Obama said on Monday that he is "confident" that his country's Congress will be able to ratify a sweeping 12-country trade deal, even as election politics and public debate continue to pose questions for the agreement's actual prospects going forward.

"The reason I'm confident is because it's the right thing to do. It's good for the country. It's good for America. It's good for the region. It's good for the world," he told reporters in Vietnam on Monday.

Later in the week, Obama affirmed that not only does he expect the deal will be approved, but that the objective remains to secure congressional sign-off in 2016, his final full year in office. Obama has touted the deal as being a key component of Washington's "pivot to Asia," as well as being an essential step to ensuring that the US remains at the forefront of global trade rule-making.

Whether the 2016 ratification goal is indeed realistic, however, has increasingly come into question during the first half of this year, as leading presidential candidates from both major political parties have outright rejected the deal in its current form. (See Bridges Weekly, [12 May 2016](#))

Congressional lawmakers have similarly cautioned that it will be exceedingly difficult to hold a vote on the TPP before the November polls, both due to the current political climate as well as to concerns raised on certain substantive elements of the pact, such as the time periods for data protection regarding biological drugs – known otherwise as "biologics."

"I've spent enough time in the Senate to know that every trade deal is painful, because folks are always seeing if they can get an even better deal," said Obama in response to reporters' questions in Hanoi. Given that it is also an election year, he added, it is not unexpected that certain people will "try to score political points off it."

"The politics of it will be noisy. That was true when I, for example, inherited the Korea Free Trade Agreement, or the Colombia and Panamanian Free Trade Agreements when I came into office. But we got them done," he continued.

The trade deal, known as the Trans-Pacific Partnership, counts among its signatories Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam. Together, the group makes up nearly 40 percent of global GDP.

Labour, environmental provisions

While visiting the Southeast Asian country, both Obama and his Vietnamese counterpart, President Tran Dai Quang, made the case for why each side would benefit from the TPP, including the increased bilateral cooperation that the deal's implementation will require.

Among the deal's selling points, the leaders said, are commitments involving both labour and environmental concerns. Along with specific chapters on these subjects, the TPP includes bilateral "consistency plans" that the US has reached with Vietnam, Malaysia, and Brunei in relation to improving those countries' labour rights regimes.

Should Vietnam not uphold the specific provisions on establishing independent labour unions within a set period following the TPP's entry into force, the US can then examine compliance with the consistency plan. A finding of non-compliance would give Washington the option of suspending certain tariff concessions. (See Bridges Weekly, [12 November 2015](#))

Ahead of Obama's visit, groups such as [Human Rights Watch](#) called for the US leader to openly push Vietnam officials to undertake additional reforms to labour and human rights, and urged Washington to ensure that the terms of the bilateral consistency plan under TPP are indeed enforced.

"The threat of enforcement is not the same thing as enforcement," the letter read, arguing that a future US leader may choose not to suspend tariff concessions in the event of Vietnam's non-compliance with the consistency plan.

During this week's meetings, Obama and Quang both emphasised in their remarks to reporters and in a [separate joint statement](#) that they remained committed to early ratification and implementation of the TPP, including its labour rights provisions.

US ITC report: TPP to have positive, limited impact

The debate in Washington over the TPP's merits ratcheted up a notch last week, however, when the US International Trade Commission (US ITC) released its highly-anticipated report on the potential gains and losses to the United States from the 12-country pact.

According to the [document](#), which numbers nearly 800 pages, the deal would yield "positive effects, albeit small as a percentage of the overall size of the US economy." Specifically, the US ITC said that within 15 years, US annual real incomes would increase by 0.23 percent relative to a baseline level, while the country's GDP would be 0.15 percent higher than without the trade deal.

Breaking the gains and losses down by sector, the report suggested gains for agriculture, food, and services, while predicting possible losses in manufacturing and energy outputs, among others.

The numbers were quickly seized on by opponents of the deal as proof that the TPP has been oversold in the US, with groups such as Washington-based Public Citizen [arguing](#) that the pact would be "damaging" for American jobs and incomes across several sectors, including manufacturing.

American trade officials, however, have cast the report in a vastly different light, with US Trade Representative Michael Froman suggesting that the report's findings are further proof that the TPP should be ratified by congressional lawmakers in 2016.

"[The report] is part of a growing body of evidence that shows that TPP will benefit our economy at home and allow the US to help set the rules of the road for trade in the Asia Pacific," he [said](#).

The US trade chief also suggested that the report "took a more narrow approach in their projections," comparing it to other studies conducted by Washington-based think tanks, namely the Peterson Institute for International Economics.

Froman suggested that the latter studies have shown evidence of even greater TPP benefits, given that they incorporated the gains that could come from the deal's intellectual property rights protections and other rules.

"What cannot be quantified in this study or any other is the cost to American leadership if we fail to pass TPP and allow China to carve up the Asia-Pacific through their own trade agreement," said Froman, referring indirectly to the Regional Comprehensive Economic Partnership (RCEP).

The RCEP has 16 members, including China. It also has a significant overlap in membership with the TPP, but does not include the US among its participants.

After missing an end-2015 deadline, RCEP officials [now say](#) that they plan to conclude a deal later this year [which would include](#) goods and services trade, investment, intellectual property and e-commerce, competition, dispute settlement, and economic and technical cooperation. (See Bridges Weekly, [12 May 2016](#))

While these chapters may have some overlap in certain TPP topics, other areas such as labour and environmental issues and treatment of state-owned enterprises were not included under the deal's initial guiding principles, though that foundational document does allow for the consideration of other issues covered by different trade deals involving RCEP members.

In Vietnam on Monday, Obama did not make a concrete reference to the US ITC report or to the other competing estimates of the TPP's potential benefits or costs. However, he did tell reporters that he has "not yet seen a credible argument that once we get TPP in place we're going to be worse off."

"We are demonstrably better off. American workers and American businesses are better off if we get this deal passed. And I'm confident we will get it passed," he continued.

Ratification updates at APEC

Trade ministers from the TPP's 12 economies also met last week in Arequipa, Peru, on the sidelines of an Asia-Pacific Economic Cooperation (APEC) ministerial gathering. (For more on APEC, see related story, this edition)

The event was meant to give the officials the chance to discuss jointly their respective efforts to advance TPP ratification in their home countries, following the February signing ceremony for the deal that was held in Auckland, New Zealand. (See Bridges Weekly, [11 February 2016](#))

"The ministers underlined that they share the goal of strengthening and broadening the mutually-beneficial linkages between member economies; enhancing regional and global competitiveness; supporting the creation of jobs and new economic opportunities;

promoting economic growth and development; supporting innovation and helping to alleviate poverty; and ensuring the greatest benefits for our people," they [said](#) after the gathering, touting the TPP's potential benefits in meeting these objectives.

The statement also referred to the potential interest from other countries in joining the Pacific Rim deal, noting that ministers are working with those nations to ensure they fully understand what changes they would need to make to become TPP members.

Any new countries would have to accede after the TPP enters into force. The timing of that will depend primarily on the pace of ratification, as well as which signatories ratify when. The February signing ceremony kicked off a two-year period for all 12 countries to complete their respective domestic processes.

However, if not all 12 have ratified by that stage, then the TPP would only enter into force upon ratification by at least six economies that together make up 85 percent of the group's GDP. Meeting that threshold will require, at a minimum, that the US and Japanese legislatures have approved the pact.

ICTSD reporting; "Obama Reasserts Hope for TPP Passage This Year," THE WALL STREET JOURNAL, 25 May 2016; "TPP's slow roll in Japan," POLITICO, 23 May 2016.

DISPUTES

Australia-Hong Kong Investment Ruling Released in Plain Packaging Case

An investor-state investment dispute tribunal has published a redacted version of its decision in the high-profile case between Australia and the Asian subsidiary of Philip Morris, the tobacco giant, concerning the ramifications of Canberra's plain packaging laws on the company's Australian investments.

While the tribunal's decision was made last December, it was only made public this month.

Under Australian law, tobacco goods cannot use logos, brand imagery, or promotional text, and must be sold in packaging that is uniform in size, colour, and format, among other rules.

In the dispute, Philip Morris (PM) Asia claimed that the policy went against the 1993 Australia-Hong Kong Bilateral Investment Treaty (BIT), unlawfully expropriating the company's investment by effectively "banning" its trademarks and failing to provide that investment with fair and equitable treatment, full protection, and security.

A bilateral investment treaty (BIT) is usually signed by two countries for supporting and protecting investments made across country lines, and also features rules for adjudicating disputes between a foreign investor and a home state.

PM Asia also asked the tribunal to order Australia not to apply the plain packaging policy to its company's cigarettes, and argued in favour of at least US\$4.16 billion in compensation.

In the decision published last week, the tribunal deemed that PM Asia was "abusing" the investor-state arbitration process in the plain packaging case, and therefore rejected the company's claims and declined to exercise jurisdiction over the dispute.

Australian legislation

Whether to institute plain packaging legislation was a debate in Australia that dated back decades, to the early 1990s. Between 2008 and 2009, Canberra undertook research and impact studies to determine what policy options may be available to address the growing problem of smoking, with a national taskforce recommending in June 2009 that plain packaging could be an important preventative health measure.

Australia's parliament approved [plain packaging legislation](#) in 2011, with the changes taking effect from late 2012, in an effort to allow companies the necessary time to revise their manufacturing and sales processes.

This tobacco control measure aims to reduce Australia's smoking rates, and has been touted as a key policy for fighting cancer and other tobacco-related diseases.

According to figures from the country's [Department of Health](#), smoking is responsible for the deaths of approximately 15,000 Australians annually. The economic ramifications, the agency says, add up to A\$31 billion in annual costs.

In recent years, however, tobacco sales in the country have fallen to their lowest ever, with some health surveys showing a drop in smoking rates for key age demographics.

Philip Morris Asia in the picture

Philip Morris International Inc. (PMI) is among the leading sellers of cigarettes, with subsidiaries and affiliates spread out across various parts of the world.

In September 2010, PMI restructured the ownership and functions of several international affiliates. The following year, PM Australia was acquired by Philip Morris Asia Limited (PM Asia), a limited liability company incorporated under Hong Kong laws.

Under the Australia-Hong Kong BIT, Philip Morris Asia filed an investor-state suit against Australia in 2011, with the case being adjudicated under the Arbitration Rules of the United Nations Commission on International Trade Law as revised in 2010 (the UNCITRAL Rules).

A three-member tribunal was set up in May 2012 to hear the case, with the Permanent Court of Arbitration (PCA) acting as the registry in the arbitration. Two years later, the tribunal decided to split the process into two sections, first dealing with issues of jurisdiction and admissibility before dealing with substantive concerns.

The award

In the 2015 December award, the tribunal found, among other issues, that prior to the 2011 restructuring, all significant strategic and budgetary decisions of PM's Australia subsidiary were taken by or subject to approval by PMI, rather than PM Asia.

Therefore, the tribunal said, PM Asia failed to prove that before its 2011 acquisition of PM Australia, it already held "control" with a "substantial interest" over the Australian investments within the meaning of the BIT. However, the three-member panel confirmed that PM Asia has Australia-based investments subject to BIT protection through restructuring undertaken in 2011, and that this occurred before the plain packaging policy became law.

Nevertheless, the tribunal considered that the main and determinative reason for the 2011 restructuring was in order for the tobacco giant to bring a legal claim under the BIT Treaty, using a Hong Kong-based entity.

The tribunal concluded that "the commencement of treaty-based investor-State arbitration constitutes an abuse of right (or abuse of process) when an investor has changed its corporate structure to gain the protection of an investment treaty at a point of time where a dispute was foreseeable."

To reach this conclusion, the tribunal referred to records about the company restructuring process, including legal advice on how the tobacco company could protect its investments through international treaties, specifically in the context of plain packaging.

In rejecting Philip Morris' argument that plain packaging was not "reasonably foreseeable" before the 2011 restructuring, the tribunal said that the timeframe of the legislative process in Canberra for introducing the plain packaging policy is normal for democratic states and therefore not decisive in determining whether the measure could be "foreseen."

The Australian government has been consistent in its support of plain packaging, with the tribunal affirming that "what became uncertain was not whether the Government intended to introduce plain packaging, but whether the Government could maintain a majority or would be replaced."

The tribunal therefore dismissed Philip Morris' claims and ended the dispute proceedings, with the exception of a pending decision regarding the costs of arbitration.

Other legal fights, global policy context

This is not the first time that Australia's plain packing legislation has faced legal action. For example, the law already faced a constitutional challenge domestically, brought by British American Tobacco and Japan Tobacco International. The challenge failed, with Australia's High Court upholding the law. (See Bridges Weekly, [12 September 2012](#))

The issue has also been raised at the WTO, with Cuba, the Dominican Republic, Honduras, Indonesia, and Ukraine all filing complaints with the global trade body in 2012 and 2013, citing concerns that the policy is unnecessarily trade restrictive. By undermining protections provided to trademarks and geographical indications, they say, it is difficult for their premium products to stand out in the marketplace, thus affecting their ability to compete on a level playing field. (See Bridges Weekly, [1 May 2014](#))

While Ukraine later dropped dispute settlement proceedings, opting to seek a mutually agreed solution with Australia, a panel has been set up to hear the other cases together, with its report expected this year. (See Bridges Weekly, [11 June 2015](#))

Despite the pending WTO ruling, other countries have advanced in adopting their own versions of plain packaging legislation, particularly given the provisions of the World Health Organization's (WHO) Framework Convention on Tobacco Control, [a global treaty](#) that has been in force since 2005.

The Geneva-based health agency [estimates](#) that tobacco is responsible for at least six million deaths annually, with nearly 80 percent of the world's estimated 1 billion smokers based in countries on the lower to middle end of the income spectrum. The costs of tobacco deaths and illness, according to the UN health agency, are manifold, and can pose a significant hindrance for economic development.

Some of the recent policies being adopted domestically to tackle tobacco through plain packaging have prompted legal challenges, often backed by major tobacco companies.

For example, the UK's plain packaging policy, approved by lawmakers last year, has faced multiple complaints from several tobacco companies in front of the High Court in London, with the suits struck down earlier this month. (See Bridges Weekly, [19 March 2015](#))

Separately, the European Court of Justice also confirmed this month that the 28-nation bloc has the legal right to adopt its own packaging legislation, among other tobacco control measures.

Additionally, the recently-signed Trans-Pacific Partnership (TPP) Agreement contains a "carve-out" for tobacco control measures from investment arbitration. In other words, a party to the trade pact can choose not to permit investor-state dispute settlement for tobacco control-related claims. (See Bridges Weekly, [12 November 2015](#))

That agreement, while signed, is now in the ratification stages for the 12 current signatories. (For more on the TPP, see related story, this edition)

ICTSD reporting; "U.K. Court Strikes Down Tobacco Industry Challenge to Plain Packaging," WALL STREET JOURNAL, 19 May 2016; "European Court of Justice Upholds Strict Rules on Tobacco," THE NEW YORK TIMES, 4 May 2016.

DISPUTES

Disputes Roundup: Mexico Requests Compliance Consultations in Tuna Case

Mexico has requested consultations with the US over the latter's compliance with global trade rules in a long-running dispute over "dolphin-safe" tuna labels, just weeks after Washington itself requested a compliance panel be established to determine whether recent changes to the policy are in line with WTO rules.

In other dispute-related news, a debate broke out during Monday's meeting of the WTO's Dispute Settlement Body (DSB) over the US move to block the re-appointment of an Appellate Body member, in a move that was criticised by various other delegations as having potentially serious ramifications for the independence of that body.

Mexico requests consultations with the US in tuna case

Mexico's request for compliance consultations in the tuna dispute ([DS381](#)) regarding the US' latest changes on "dolphin-safe" tuna labelling, comes shortly after the DSB established a compliance panel on the same issue, following two requests by the US.

The parallel compliance panel processes, while themselves unusual on a procedural level, also come at a time when arbitration proceedings are already underway to determine the level of concessions that Mexico may suspend on a list of goods worth US\$472.3 million annually against the US, following an earlier finding of WTO non-compliance. (See Bridges Weekly, [12 May 2016](#) and [28 April 2016](#))

The new interim rule [issued](#) by the US National Oceanic and Atmospheric Administration (NOAA) last March revised certain regulations implementing the Dolphin Protection Consumer Information Act (DPCIA), amending, among other provisions, the certification standards for "dolphin-safe" tuna labelling. (See Bridges Weekly, [24 March 2016](#))

Mexico refers in its consultations request to several policies which, in its view, constitute the "2016 Tuna Measure" and are allegedly inconsistent with the WTO agreements. According to Mexico, the US' recent changes have not brought about any amendment to either the DPCIA or a related court ruling, both of which "remain an integral part" of the 2016 Tuna Measure. This makes the whole 2016 Tuna Measure inconsistent with world trade rules, Mexico claims.

In its consultations request, Mexico refers to the most-favoured-nation (MFN) treatment and national treatment provisions of the Agreement on Technical Barriers to Trade (TBT Agreement) and the General Agreement on Tariffs and Trade (GATT).

Mexico claims that, despite Washington's latest changes, the measures continue to confer to tuna and tuna products from Mexico treatment which is less favourable than that conferred to similar products originating elsewhere, including those from the US itself.

The trade spat between the two countries dates back to 2008, with the Appellate Body confirming in 2012 that US' original "dolphin-safe" labelling scheme discriminated against imported tuna and tuna products from Mexico and thus violated WTO rules. (See Bridges Weekly, [16 May 2012](#))

The US revised its policy in 2013, however a compliance panel found that the revision did not bring Washington's policy in line with its WTO obligations. This finding was ultimately confirmed by the Appellate Body late last year. (See Bridges Weekly, [1 December 2015](#))

AB appointments in focus

The 24 May meeting of the DSB was focused mainly on appointments to the Appellate Body, which is the WTO's highest court, trade sources said.

Specifically, WTO members sparred over both whether to re-appoint Seung Wha Chang of Korea, whose term is due to expire on 31 May, along with who to appoint to replace Yue Jiao Zhang of China when her final term expires, also at the end of this month.

The question over whether to re-appoint Chang was reportedly one of the main focuses of debate, given the US' decision to oppose his re-appointment. In its [intervention](#), the US argued that it does "not consider that his service reflects the role assigned to the Appellate Body by WTO members in the WTO agreements."

Washington claimed that reports which Chang has been involved in "do not accord with the role of the Appellate Body," claiming that in some cases the Appellate Body has gone beyond its mandate.

The statement by the US drew strong pushback from several fellow WTO members, including Korea, which argued that the move raised "serious systemic concerns."

Korea also stressed that no one Appellate Body member should be "singled out" for critique over reports by the court, referring also to a letter co-signed by six current Appellate Body members to Ambassador Xavier Carim of South Africa, the current DSB chair, which also made that argument.

The WTO's Dispute Settlement Understanding (DSU), which outlines the rules and procedures governing the settlement of disputes, says that the Appellate Body shall be composed of seven persons, three of whom shall serve on any one case.

Korea further claimed that should the US succeed in blocking Chang, the move would have serious ramifications for the Appellate Body's "independence and integrity," essentially using re-appointment as a way to sanction individual Appellate Body members for their decisions as adjudicators.

Various other WTO members also intervened in the discussions, with all of them criticising the blocking of Chang and calling for further discussions to avoid such problems in the future. The EU, among others, called the US move "unprecedented" and warned that "the damage has already been done," according to a copy of its statement seen by Bridges.

Regarding the other appointment issue, specifically to replace Yue Jiao Zhang of China, sources confirmed that the Selection Committee has not yet found a candidate that would have approval of all WTO members, with consultations set to continue.

The appointment and reappointment of an Appellate Body member is subject to decision by the DSB. The DSU provides that "where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus."

ICTSD reporting.

ASIA-PACIFIC

In Uncertain Economic Climate, APEC Trade Ministers Eye Areas for Growth

Trade ministers from 21 Asia-Pacific economies meeting in Arequipa, Peru, last week [called](#) for progress in a series of areas, with a view to "regain economic momentum" in light of worrisome growth prospects at both the regional and global levels.

The 17-18 May [meeting](#) of the regional alliance, chaired by Peruvian trade and tourism minister Magali Silva Velarde-Álvarez, addressed a broad spectrum of issues, ranging from strengthening regional economic integration and technical cooperation to how to promote the participation of smaller businesses in trade.

"The period of transition unfolding in the world economy and demographics is giving rise to questions about the future of globalisation. The shifting landscape does not undermine globalisation's enduring relevance but rather speaks to the need to update the approaches we take," [said](#) Dr. Allan Bollard, Executive Director of the APEC Secretariat, in a statement ahead of the meet.

Economic and trade liberalisation and facilitation have been touted as ways to create more jobs and boost living standards in a region with a combined population of approximately 2.8 billion people. The 21 APEC economies make up nearly half of world trade and 57 percent of global GDP.

The group includes as its members Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, the US, and Vietnam.

APEC: Growth constraints worrying

Growth in APEC economies has slowed, and is expected to reach only 2.7 percent in 2016, with a similar forecast for the two coming years. Although this is similar to the 2015 growth rate of 2.7 percent, it is marginally below the global GDP growth estimated for this three-year period and also below the dynamic growth rates achieved historically by the group.

"Economies continue to expand around the world, but at a relatively moderate pace and unevenly," said trade ministers in a [joint statement](#).

Recent studies have indicated that growth prospects remain worrisome, but could still be improved. "The region's growth over the coming years will fall short of the high levels of the past based on current trends but there is room for a course correction," [said](#) Dr. Denis Hew, Director of the APEC Policy Support Unit, ahead of the gathering, suggesting that cutting the costs of cross-border business could be one step in this direction.

Services potential

The APEC economies have particularly prioritised services as a way to support production and supply chains while fostering greater participation of small and medium-sized enterprises (SMEs) in trade. Last November in Manila, APEC leaders adopted the APEC Services Cooperation Framework (ASCF), with a view to raising the profile of regional services work and noting the potential this has for inclusive growth.

Among the ASCF's objectives is the development of an APEC Services Competitiveness Roadmap that will include an agreed set of both qualitative and quantitative indicators and targets to be met by the year 2025. The Roadmap should be completed for the APEC Leaders' Meeting this November in Lima, Peru.

A public-private dialogue was also held on the sidelines of the trade ministers' meet, with a specific focus on regional services competitiveness. Among the speakers was Dr. Sherry Stephenson, ICTSD Senior Fellow, who raised the importance of having less restrictive and more appropriate services regulation as a way to promote competition with both international services suppliers and among domestic services suppliers. *[Editor's note: ICTSD is the publisher of Bridges Weekly]*

Working on green growth

Boosting green growth was also on the agenda at the Arequipa gathering, particularly given that the 21 APEC economies include the world's largest energy producers and consumers. Moreover, the expansion of the middle class in emerging economies in the region has resulted in an increase in energy consumption, with a 35 percent jump expected across APEC economies by 2040.

In this scenario, APEC economies are already working on diversifying their energy mix and improving efficiency standards. The group [aims](#) to double the production of renewable energy by 2030 and reduce energy intensity by 45 percent by 2035.

Earlier this year, APEC launched a multi-year Environmental Services Action Plan focused on lowering associated regulatory and trade policy barriers with the objective of unlocking trade and investment in services needed to improve environmental protection.

Part of the initiative involves the previous APEC commitment to slash tariffs to five percent or less by 2015 on environmentally-friendly goods contained under 54 product categories. The group released a series of documents in early 2016 which, they said, demonstrated the progress made to date in meeting this objective. (See Bridges Weekly, [4 February 2016](#))

"We congratulate those economies that have fulfilled Leaders' ground-breaking commitment to reduce applied tariffs on the APEC Environmental Goods List to five percent or less, and strongly urge those economies that have yet to fulfil this commitment to do so as soon as possible," said trade ministers last week.

The group is also [looking](#) toward better understanding services regulation and how it affects trade and investment in this sector, considering measures affecting cross-border supply as well as others affecting other modes of supply such as commercial ownership, licensing, movement of people, and regimes under preferential trade agreements.

As a result of this plan, the total market for environmental goods and services could increase up to US\$2 trillion within five years, proponents say. [APEC experts](#) argue that the gains from such growth could help address the growing incidence of natural disasters in the region, particularly those that may be the result of climate change. Some [estimates](#) suggest that natural disasters have led to losses worth US\$100 billion per year in the region.

SME participation

SMEs account for 97 percent of all APEC businesses, with GDP shares ranging from 20 to 50 percent in the majority of these economies. However, analysts warn that there is still a gap in terms of their participation in trade, which makes up less than 35 percent of direct exports.

APEC is focusing its efforts on increasing SME capacity both to boost direct and indirect exports and to facilitate these companies' participation in GVCs, particularly given that 80 percent of global trade is conducted by multinationals.

"We are modernising trade and economic policy needed to lift the small businesses and labour forces who are the fundamental drivers of prosperity in the region," said Ambassador Luis Quesada, 2016 Chair of the APEC Senior Officials, following a senior officials' gathering held ahead of the trade ministers' meeting.

"Our goal is to level the playing field in our economies and establish conditions that boost employment and social mobility for groups who have benefited less from globalisation in the past," he explained.

Addressing the digital divide

APEC economies have also focused in recent years on ways to bridge the gap in accessing and using digital technologies to facilitate SMEs' participation in trade and increase productivity gains.

Earlier this month, Dang Huy Dong, Vietnam's Vice Minister of Planning and Investment, [indicated](#) that the regional alliance is currently focusing on "making it easier and faster to start and develop a business through the application of emerging technologies and data flows."

Potential [policy actions](#) that are being considered in this arena include easing market access and trade restrictions, together with industry regulation based on international best practices, an expansion of the APEC cross-border privacy rules system, secure data flows, and a wider availability of skills training.

ICTSD reporting.

FISHERIES

UN Pact Targeting Illegal Fishing to Enter into Force

An international treaty geared toward preventing fish caught through illegal, unreported, and unregulated (IUU) activities from reaching global markets is set to enter into force next month following ratification by 29 countries and the European Union.

The Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA), as it is officially known, will be the world's first-ever binding multilateral effort directly targeting the issue.

IUU fishing is responsible for annual catches of up to 26 million tonnes, with a landed value estimated at US\$23 billion, according to the UN Food and Agriculture Organization (FAO) through which the new treaty was negotiated.

This illegal activity is charged with undermining efforts to manage fisheries sustainably, while also threatening livelihoods and augmenting food insecurity.

In recognition of these challenges, the PSMA was approved by FAO members in November 2009, outlining specific, internationally agreed standards for ports to apply to foreign vessels in order to detect illegal fishing activities and prevent entry into supply chains. The PSMA builds on and extends the UN agency's 2001 voluntary International Plan of Action to Prevent, Deter and Eliminate IUU Fishing.

"This is the dawn of a new era in the effort to combat illegal fishing. By denying unscrupulous fishers safe haven and access to markets, the PSMA will drive the seafood industry toward greater sustainability and have significant ripple effects throughout the entire fisheries supply chain," said FAO Director-General José Graziano da Silva in a [press release](#) last week.

"Let no port state be known and targeted by IUU fishing operators as a shelter for non-compliance," he added, urging more countries to ratify the treaty.

The PSMA is also expected to help contribute to a call in the UN's new 2030 Agenda for Sustainable Development to end IUU fishing by 2020, as part of its ocean conservation Sustainable Development Goal (SDG). (See Bridges Weekly, [1 October 2015](#))

No safe harbour

The parties that have ratified the agreement include Australia, Barbados, Chile, Costa Rica, Cuba, Dominica, the 28-nation EU as one, Gabon, Guinea Bissau, Guyana, Iceland, Mauritius, Mozambique, Myanmar, New Zealand, Norway, Oman, Palau, the Republic of Korea, Saint Kitts and Nevis, Seychelles, Somalia, South Africa, Sri Lanka, Sudan, Thailand, Tonga, the US, Uruguay, and Vanuatu.

These parties account for more than 62 percent of worldwide fish imports and 49 percent of fish exports, which were US\$133 billion and US\$139 billion respectively, in 2013. Some studies have suggested that between 20 percent and 32 percent of the fish [imported](#) into the US may be from illegal and unreported fishing, while around nine percent of [imports](#) into the EU may be from illegal fishing.

For the developing countries involved in the PSMA, Article 21 of the [accord](#) requires that other parties provide support – either directly or through the relevant UN and international

agencies – for improving these nations' legal capacity and giving the necessary technical assistance for putting national and international port state measures in place.

This includes the establishment of “funding mechanisms” to support developing country implementation, among other provisions.

Under the PSMA, the signatories will need to ensure that their ports comply with the standards set out in the accord. All foreign fishing vessels wishing to enter port will need to request permission ahead of time and may be subject to inspection. This will include reviews of ship papers, surveys of fishing gear, catch examination, and checks on ship log books. Vessels implicated in IUU activity will be detained and sanctioned, with the country whose flag the vessel is flying required to take certain actions. Ports will also have the discretion to deny certain services such as re-fuelling to vessels suspected of illegal marine activity.

The PSMA should facilitate information sharing on black market fishing activities, thereby making it more difficult for offenders to slip through and reducing the economic incentives for participating in such activities.

“By mandating that captains provide advance notice of their arrival in port and by empowering port officials to turn away suspect catch, the treaty could keep many tonnes of illegally caught seafood from entering national or international markets each year,” [said](#) fisheries expert Tony Long on behalf of The Pew Charitable Trusts, a non-profit group.

Long added, however, that it would be critical to expand coverage with further ratifications and for countries to incorporate PSMA requirements into domestic legislation.

ICTSD reporting.

DISPUTES

EU, US Spar Over Aircraft Subsidies at WTO Hearing

The global trade arbiter organised a public screening last week of dispute panel hearings between the EU and the US regarding whether tax incentives provided by Washington state to American aerospace giant Boeing are in violation of WTO rules.

Brussels claims that Washington state unfairly subsidises Boeing, with that state aid conditional on local content requirements which are prohibited by the WTO rules. This support is estimated to be worth nearly US\$9 billion, making it the largest-ever subsidy for the civil aerospace industry.

The EU filed its request for consultations ([DS487](#)) – the first stage in WTO dispute settlement proceedings – in December 2014. A panel was then established in February 2015.

The public screening last week featured two substantive meetings between the panel and the parties that were held this past February and April. During these meetings, representatives from both sides presented their arguments and counterarguments, answered the panel's questions on legal and factual issues, and joined in some sessions by members participating as third parties.

Previous disputes

The two big international trade players have already sparred publicly at the WTO over domestic government support for the aerospace industry.

In late 2004, the US challenged the EU's support of civil aircraft manufacturer Airbus ([DS316](#)); the following year, Brussels tabled its own WTO complaint over Washington's federal, state, and local-level support of Boeing ([DS353](#)).

Those two disputes, which both involved claims of illegal subsidies, saw the WTO Appellate Body deem that the US and EU had each violated certain WTO subsidy rules. In those respective cases, compliance panels are now reviewing whether the US and EU have made the necessary changes to bring their policies in line with global trade rules.

The new dispute screened last week focused on a 2013 Washington state law known as Substitute Senate Bill 5952, together with its relevant amendments and implementing measures, in the form of seven tax incentives.

According to the EU, the legislation is meant to give Boeing an incentive to manufacture its new 777X model of large civil aircraft in that same US state. The tax breaks are now in place through end-2040, having originally been set to expire in 2024.

Brussels [claims](#) that the legislation extended and amended the state-level tax incentives which the WTO Appellate Body had already deemed to be illegal in [DS353](#), and had earlier asked that the same DS353 compliance panel review the bill. The request was rejected for procedural reasons, which prompted the EU to launch these new proceedings ([DS487](#)).

Financial contribution, benefit

Under the WTO's Subsidies and Countervailing Measures (SCM) Agreement, subsidies are defined as a financial contribution by a government or public body which confers a benefit.

The US told the panel that, among other issues, the EU's claims involve revenue that would be lost in the future, specifically during the 2024-2040 period. The US argued that for a measure to qualify as a subsidy, the benefit "must actually exist as of the present time – and cannot merely be a speculative possibility at some point in the future."

The EU, in turn, emphasised that "when a government confers upon a taxpayer an entitlement to a tax reduction, it forgoes its own entitlement to raise a part of the revenue that would otherwise be due from the taxpayer under the normative benchmark" adding that such a move does not necessarily have to happen after the revenue becomes available.

The EU also cited examples of tax exemptions under the legislation which Boeing could currently use, arguing that in this case revenue has already been foregone. Furthermore, the EU noted, the allegedly "prohibited" subsidy programme will remain in place through the year 2040.

For Brussels, these tax breaks are tantamount to a multi-billion dollar gift from Washington state to Boeing, thus providing a benefit. The US, in turn, argued that even if an "abstract entitlement" exists, it is not in use, and that the EU has therefore not proven that there is such a benefit.

Domestic content requirements

The SCM Agreement Article 3.1(b) prohibits subsidies that require recipients to use domestic goods instead of their imported equivalent.

According to Brussels, under the US state law, government aid will not be granted unless a new commercial airplane programme using domestically-made fuselages and wings is set up in Washington state.

In addition, the law would "serve to remove a large portion of one of the most valuable tax incentives in the package if Boeing were to use any foreign-made wings in manufacturing the 777X in Washington state," said the EU.

The US, in its oral statements, argued that this WTO provision does not prohibit production subsidies. Even if the challenged measures were proven to be "subsidies," they would essentially be production subsidies provided to "ensure that a significant manufacturing programme was sited in Washington state, in order to maintain and grow Washington's aerospace industry workforce," said the US.

Much of the ensuing debate involved questions and disagreements over terminology, relating specifically to the understanding each side has of certain WTO definitions, as well as their implications for actual manufacturing processes. The US also argued that – as the 777X programme demonstrates – a manufacturer does not need to assemble completed fuselages and wings before putting together a completed airplane. Therefore, the US said, this does not involve the "use" of wings and fuselages as "goods" within the meaning of Article 3.1 (b).

Furthermore, the US argued that the EU failed even to show that the US legislation requires that fuselages and wings be produced as goods that are then used as inputs in the production of finished airplanes.

The EU countered that the US' argument runs contrary to the past examples of Boeing's purchase of complete fuselages for other airliners, and also noted that the US legislation

itself refers to fuselage and wings as “products” – a synonym of the term “goods” under Article 3.1(b).

Moreover, according to the EU, the term “use” is broad enough to also encompass situations where the input is “used” in such a way that it has not been consumed and where it remains a discrete, identifiable part of the whole.

For Brussels, it is not questioning whether Boeing may import components of wings and fuselages under the US law, but is instead challenging that imported wings and fuselages themselves may not be used in order to receive the government support.

The EU also argued that the 777X production process is irrelevant to whether the US law violates the SCM Agreement.

The parties also debated whether the US law also effectively requires using domestic goods over imported ones, among other topics.

Next steps

The panel's communication in September 2015 indicated that the beginning of the panel's work had been delayed due to a lack of available staff in the secretariat to work on the case. The panel estimated that it will issue its report by September 2016.

ICTSD reporting.

AGENDA 2030 FOR SUSTAINABLE DEVELOPMENT

UN Members Consider Draft SDG Follow-up and Review Framework

Deliberations are underway at UN headquarters in New York to identify a global follow-up and review framework for the 2030 Agenda for Sustainable Development, with delegates this week discussing a revised [draft resolution](#) issued on 18 May by the co-facilitators of the process, Lois M. Young, Permanent Representative of Belize and Ib Petersen, Permanent Representative of Denmark.

UN members agreed to a new, ambitious sustainable development roadmap last September for the next 15 years. A list of 17 Sustainable Development Goals (SDGs), with an accompanying 169 targets to help benchmark progress, replaced the eight Millennium Development Goals (MDGs) following their expiry at the end of last year.

The [2030 Agenda](#) assigns a central role to a High Level Political Forum (HLPF) under the auspices of the UN Economic and Social Council (ECOSOC) for overseeing follow-up and review at the global level. The document specifies that the process will be informed by various reports, facilitate the sharing of experiences, carry out regular voluntary reviews, and hold thematic reviews under the HLPF. Every four years the high-level body should also provide political guidance on the agenda and its implementation. (See BioRes, [30 September 2015](#))

A set of 230 global indicators agreed to by the UN Statistical Commission in March will be used to help measure progress towards the goals and targets and will likely inform various reporting efforts. (See BioRes, [18 March 2016](#))

Draft resolution

The draft resolution on follow-up and review, issued following a series of meetings over the past few months, would see the UN General Assembly (UNGA) agree that the HLPF will discuss a selection of SDGs and their interlinkages over a four-year cycle. SDG17, which focuses on systemic means to achieve the goals as a whole and includes several references to the role of trade and investment, would be discussed annually.

Trade and investment also feature in other goals focused on food security, ocean sustainability, sustainable consumption and production, ending illegal wildlife trade, promoting investment in energy infrastructure and clean energy technologies, and adopting investment promotion regimes for least developed countries (LDCs).

In some instances, the references in the SDGs are objectives in their own right, such as prohibiting certain forms of fisheries subsidies which contribute to overcapacity and overfishing and eliminating subsidies to illegal, unreported, and unregulated fishing by 2020. Others, meanwhile, are designated as a means to achieve the goal. This includes, for example, rationalising fossil-fuel subsidies as a way of ensuring sustainable consumption and production patterns.

May's draft resolution also proposes using an annual theme to inform the review of the selected SDGs. Food security is listed as a theme for the 2017 HLPF, sustainable cities and building productive capacities for 2018, and empowering people and ensuring inclusiveness in 2019.

The document additionally suggests learning and building on the experience from the 22 voluntary national reviews due to take place at this year's HLPF in New York from 11-20 July. It encourages member states to involve non-state actors, including civil society and the private sector, in national voluntary reviews.

A request is made for UN Secretary General Ban Ki-moon to update, as appropriate, voluntary country reporting guidelines provided in an annex to a [report](#) published by his office in January on critical milestones for a coherent, efficient, and inclusive global follow-up and review process.

The meetings of the HLPF should devote adequate time to challenges facing specific groups of developing countries, such as LDCs, small island developing states, and landlocked developing countries.

All inputs to the HLPF will be made available and easily accessible in a user-friendly format, including expanding existing web-based platforms, where appropriate.

ICTSD reporting; "Co-Facilitators Revise 2030 Agenda Follow-up Text," IISD REPORTING, 18 May 2016.

EVENTS & RESOURCES

Events

Coming Soon

30-31 May, Tokyo, Japan. ENABLING AGRO-FOOD VALUE CHAINS: A CAPACITY-BUILDING WORKSHOP. This workshop, organised by the Asian Development Bank Institute (ADBI), aims to address the development of agriculture value chains, with participants set to examine which factors can support this process, along with potential problems that may arise. The meeting is being held in cooperation with the Asian Development Bank (ADB). More information can be found at the ADBI [website](#).

31 May, online. ONLINE Q&A ON US-INDIA RELATIONS. This event, organised by the Carnegie Endowment for International Peace, will aim to provide a preview of Indian Prime Minister Narendra Modi's upcoming visit to Washington in early June. The discussion will focus on recent trends in the bilateral US-India relationship, with the Q&A featuring as its main speakers C. Raja Mohan, director of Carnegie India, and Milan Vaishnav, senior associate in Carnegie's South Asia programme. More information is available [here](#).

31 May – 1 June, Paris, France. OECD FORUM 2016. This event, organised by the Organisation for Economic Co-operation and Development (OECD), will feature leaders from government, business, and civil society to debate today's top economic and social issues. The forum will feature various types of interactive sessions, as well as a "Civil Society Day" and the OECD Ministerial Meeting. More information is available [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.

26 May: Joint WTO/World Bank Group Trade and Poverty Forum

31 May: Working Group on Trade, Debt, and Finance

Other Upcoming Events

3 June, Geneva, Switzerland. SHAPING THE CONTRIBUTION OF THE TRADE SYSTEM TO THE 2030 AGENDA. This event, organised jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the International Institute for Sustainable Development (IISD), is the first in a series of planned policy dialogues examining the potential contribution that trade can make in advancing the 2030 Agenda for Sustainable Development. For more information about the event, visit the ICTSD [website](#).

3 June, Geneva, Switzerland. 'LIKE-MINDEDNESS' AND INTERNATIONAL TRADE. This workshop is being co-organised by Thomas Burri, Assistant Professor, International Law and European Law at the University of St. Gallen, and Malcolm MacLaren, Privatdozent, Institute for Public International and Comparative Constitutional Law at the University of Zurich. The event will examine the topic of international trade cooperation based on "like-mindedness," addressing a series of questions in this regard. More information is available [here](#).

7 June, Washington, US. CLIMATE, AIR POLLUTION, AND PUBLIC HEALTH – REVISITING THE ENERGY INNOVATION AGENDA. This event is being organised by the Carnegie Endowment for International Peace and will address the interlinkages between air quality concerns and climate change impacts, and how understanding this subject better could have positive implications for future energy-related policymaking. More information about the event, including a list of speakers, can be found [here](#).

8 June, Geneva, Switzerland. 2016 T20 TRADE AND INVESTMENT CONFERENCE. This event is being organised by the International Centre for Trade and Sustainable Development (ICTSD), IDEAS Centre, the Institute of World Economics and Politics at Chinese Academy of Social Sciences (IWEPP, CASS), Shanghai Institute for International Studies (SIIS), Chongyang Institute for Financial Studies at Renmin University of China (RDCY), and the WTO. The conference, held under the theme "Global Trade and Investment Cooperation – Openness, Inclusiveness and Growth," will address topics such as global trade governance and growth, regional trade agreements, and inclusive global value chains, among others. More information is available [here](#).

8-9 June, Washington, US. THE STATE OF ECONOMICS, THE STATE OF THE WORLD. This World Bank conference aims to give participants the opportunity to review recent trends in economic thinking, along with examining possible changes and challenges to come. The event will place a particular focus on development. More information about the event, including an agenda and speakers' list, is available at the World Bank [website](#).

13-24 June, Geneva, Switzerland. WIPO-WTO COLLOQUIUM FOR TEACHERS OF INTELLECTUAL PROPERTY. This two-week colloquium is being jointly organised by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). The event is designed specifically for educators from developing countries and those with economies in transition. More information, including a provisional programme for the event, is available [here](#).

Resources

MUTUAL RECOGNITION AGREEMENT ON CONFORMITY ASSESSMENT: A DELIVERABLE ON NON-TARIFF MEASURES FOR THE EGA? By Mahesh Sugathan for the International Centre for Trade and Sustainable Development (ICTSD) (May 2016). This publication reviews the ongoing negotiations for an Environmental Goods Agreement (EGA) that would slash tariffs on a list of environmental goods. In this context, the paper puts forward a suggestion for a "plurilateral mutual recognition on conformity frameworks," which the author suggests could be framed under the planned trade agreement. The publication is available [here](#).

GVCS, JOBS AND ROUTINE CONTENT OF OCCUPATIONS. Published by the Organisation for Economic Co-operation and Development (OECD) (May 2016). This new policy paper examines whether and how offshoring can affect employment levels, looking at areas such as global value chains (GVCs), innovation, and workforce skills in the process. The paper uses information from 2000-2011, with a focus on 28 OECD member economies. The trade policy paper is available [here](#).

THE TRADE EFFECT OF REGULATORY DIFFERENCES. Published by the Organisation for Economic Co-operation and Development (OECD) (May 2016). In this paper, the authors examine the impact of trade deals with provisions tackling "behind the border" barriers to trade, investment, and regulatory cooperation. The publication suggests ways to examine the possible effects of regulatory cooperation, among other topics. The publication is available [here](#).

BRUSSELS BRIEFING ON TRADE – ALL YOU NEED TO KNOW FOR 17-31 MAY 2016. Published by viEUws (May 2016). This new video by viEUws' EU Trade Insights presents a series of key topics that will be addressed in European trade policy circles over the coming fortnight, including bilateral negotiations with the Philippines on a future FTA, new transparency tools for trade defence instruments, and more. The video can be watched [here](#).

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PUBLISHED BY



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and Sustainable Development**

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Bridges Weekly Trade News is made possible
through generous contributions of donors and
partners including

**DFID - UK Department for
International Development**

**SIDA - Swedish International
Development Agency**

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of publications is most welcome; if interested,
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Contributors to this issue are Sofia Alicia Baliño,
Kimberley Botwright, Yaxuan Chen, Jimena
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Bridges Weekly Trade News Digest is edited by
Sofia Alicia Baliño.

The Publisher and Director is Ricardo Meléndez-
Ortiz. The Editor in Chief is Andrew Crosby.
Comments and suggestions are welcomed and
should be directed to the [editor](#) or the [director](#).

Price: €10.00

ISSN 1563-0

