

# BRIDGES WEEKLY

Global trade news from a sustainable development perspective

VOLUME 20, ISSUE 26, 14 JULY 2016

## GLOBAL ECONOMY

G-20 Trade Ministers Pledge  
"Political Leadership" to Boost  
Growth, Prosperity .....1

## DISPUTES

Investor-State Tribunal  
Dismisses Philip Morris Case  
Against Uruguay Cigarette  
Packaging.....5

## DIGITAL ECONOMY

EU Commission Adopts Data  
Privacy Shield .....8

## BILATERAL TIES

EU, China Leaders Agree to  
Establish Steel "Platform".....10

## WILDLIFE TRADE

Ivory Trade in Focus Ahead of  
CITES Conference .....12

## INVESTMENT

TransCanada Takes Next Step  
in NAFTA Case on Keystone  
Pipeline .....14

## AGRICULTURE

OECD, FAO: Period of High  
Food Prices "Likely Over" .....17

## AGRICULTURE

US Congress Passes New Food  
Security Bill .....19

## EVENTS & RESOURCES

Events .....20  
Resources .....22

## GLOBAL ECONOMY

### G-20 Trade Ministers Pledge "Political Leadership" to Boost Growth, Prosperity

Trade ministers from the G-20 coalition of major advanced and emerging economies concluded a two-day meeting in Shanghai, China, on Sunday, calling for increased efforts to tackle sluggish trade and economic growth, while providing political signals on specific topics such as industrial overcapacity and environmental goods.

The 9-10 July meeting comes just months before leaders from the group are set to meet for their annual summit, being hosted this year by China in the city of Hangzhou. The Chinese presidency [has set](#) the theme of the upcoming summit as "Towards an Innovative, Invigorated, Interconnected, and Inclusive World Economy," calling for steps to shore up the global economy and ensure stronger growth in both the medium and long term.

#### Strategy for growth

Nearly two years ago, G-20 leaders presented national plans aimed at boosting the group's collective GDP by over two percent above planned trajectories by 2018. The plans featured over 1000 combined measures, both existing and new, which they said could inject US\$2 trillion into the global economy. (See Bridges Weekly, [20 November 2014](#))

Last weekend, ministers said in their [joint statement](#) that "we need to do more to achieve our common objectives for global growth, stability, and shared prosperity." They pledged to give the necessary "political leadership" to promote trade and investment policies geared toward these ends, particularly in light of the Brisbane outcomes.

The promises came amid warnings of increasing trade restrictions by members of the group, despite repeated commitments to ensure a "standstill" against any new measures of this kind, along with "rolling back" existing ones. WTO officials warn that the growing "stockpile" of these restrictions could have a chilling effect on trade flows. (See Bridges Weekly, [23 June 2016](#))

"Speaking frankly, global trade is not in good shape today," [said](#) WTO Director-General Roberto Azevêdo at the Shanghai meeting.

The Geneva-based organisation has predicted that growth in world trade by volume will hit 2.8 percent this year, on par with last year but still slow relative to historical averages. (See Bridges Weekly, [14 April 2016](#))

Given this worrisome context, ministers reiterated their past "standstill and rollback" pledges, while also signing off on a "G-20 Strategy for Global Trade Growth," under which they agreed to "lead by example" in areas such as policy coherence, e-commerce, and slashing trade costs.

"We recognise that these activities, by promoting trade opening and integration and supporting measures for economic diversification and industrial upgrading will contribute to global prosperity and sustainable development," they said.

Notably, ministers in Shanghai also endorsed the "G-20 Principles for Global Investment Policymaking," which they explained were geared toward improving coherence both domestically and internationally in this area. These non-binding principles include calls against protectionism, stress the right to regulate "for legitimate public policy purposes," urge effective and efficient policies for investment promotion, and highlight the need for approaches that ensure legal certainty and non-discriminatory, open, transparent, predictable investment conditions.

"Global investment is an engine of economic growth and sustainable development," they said, highlighting the value it can have for job creation, boosting ties between countries through global value chains, and help foster improved trade growth in the future.

"Today, however, global investment flows remain well below pre-crisis peak levels. Policy attention and cooperation is required to put investment growth back on track," they urged.

Meanwhile, the trade ministers' statement makes no direct mention of UK citizens' vote last month to leave the European Union, which many international agencies have suggested could have consequences for growth, both in the short and long-term. (See Bridges Weekly, [30 June 2016](#))

Indeed, the Organisation for Economic Co-operation and Development (OECD) [said](#) on 11 July that it would be delaying the release of its "Composite Leading Indicators" (CLIs) – a tool it uses to predict developments in the economic arena – until September to better understand what the vote itself has done to the long-term prospects for the global economy.

"The CLIs cannot... account for significant unforeseen or unexpected events," the Paris-based agency said on Monday. The Brexit vote qualifies as among those "unexpected events," meaning that the organisation will need more time to accumulate the necessary data and make more accurate projections.

### **TFA, WTO post-Nairobi strategy**

Trade ministers in Shanghai did devote several paragraphs of their eight-page statement to current and future trade deals, both within the aegis of the WTO and outside it.

"We affirm the central role of the WTO in today's global economy," they said, noting the importance of the organisation's rulebook and dispute settlement function, among others.

Moving forward, one of the main objectives touted by officials would be bringing the WTO's Trade Facilitation Agreement (TFA) into force, citing the lowered trade costs that could come from the deal. The TFA was adopted in Bali, Indonesia, in December 2013, with a view

to easing customs procedures and cutting transit times for goods. (See Bridges Daily Update, [7 December 2013](#))

G-20 ministers have pledged to ratify the accord by year's end, while pressing other countries to do the same. To date, 85 WTO members have ratified the TFA, meaning that just over 20 more members must do so for the accord to enter into force.

Along with implementing other outcomes agreed in Bali in 2013 and in Nairobi last December, G-20 members called for advancing future talks in order to ensure that the WTO's Eleventh Ministerial Conference (MC11) in 2017 will be a success.

"We agree to work with all WTO members to set the direction together towards positive outcomes at MC11 and beyond in a balanced, inclusive, and transparent way with a sense of urgency and solidarity," they said.

Ministers also reaffirmed language in the Nairobi ministerial document aimed at advancing negotiations in certain areas of the Doha Development Agenda, while stating that some newer topics emerging in regional trade deals and business sector discussions may be "legitimate" for raising in the ambit of the WTO, "without prejudice to respective positions relating to possible negotiations in the future."

### **EGA timing?**

The timing for concluding talks on the plurilateral Environmental Goods Agreement (EGA) was also raised during the Shanghai meeting, with ministers confirming that they hope to reach a "landing zone" at the leaders' summit in September.

An EGA "ministerial" would then be planned before year's end to conclude the talks, they added. The news suggests a slight shift in timing, given earlier expectations that a deal might be ready in time for the leaders' event in Hangzhou.

However, G-20 officials involved in the EGA talks generally characterised the talks as fruitful, without going into specifics.

"Most notably, ministers from countries participating in the environmental goods negotiation provided important political momentum for completing the Environmental Goods Agreement this year and identified a clear path to do so," [said](#) US Trade Representative Michael Froman after the meeting.

The environmental goods initiative was formally launched two years ago, with the 17 participating WTO members aiming to clinch a deal that would cut tariffs on a set of mutually-agreed products. The most recent round was held in Geneva, Switzerland, last month, with participants still negotiating on which goods to include, along with institutional issues and other related topics. (See Bridges Weekly, [30 June 2016](#))

### **Industrial overcapacity**

Another hot-button topic raised in Shanghai was the ongoing crisis across the steel sector, which has escalated tensions between China – the top producer of the metal – and various other major players, including the EU and the US.

The debate has particularly drawn attention toward how much responsibility China has in addressing the problem, and the nature of the root causes of the global overcapacity in steel, along with aluminium and other industrial goods. Ultimately, the language agreed at the G-20 gathering does not specifically refer to Beijing, and particularly highlights the importance of cooperation and coordination going forward.

"We recognise that excess capacity in steel and other industries is a global issue which requires collective responses," said the trade ministers' statement. The document also referred to the potential of state aid to cause market distortions, adding that the issue does "require attention." Ministers also pledged to increase their discussions in this field and pursue "effective steps," without saying what those steps might be.

The statement also raises the possibility of a "Global Steel Forum" among major steel-producing countries, which had already been floated following a bilateral meeting between the US and China in early June. (See Bridges Weekly, [9 June 2016](#))

If created, this forum would provide an additional space – aside from the existing Steel Committee under the Organisation for Economic Co-operation and Development (OECD) – for participants to discuss issues relating to industrial overcapacity, ministers said.

**Editor's note:** This story has been updated to include additional details on the investment aspect of the discussions in Shanghai.

ICTSD reporting.

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## DISPUTES

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# Investor-State Tribunal Dismisses Philip Morris Case Against Uruguay Cigarette Packaging

An investor-state arbitration tribunal last Friday [dismissed](#) the claims of Philip Morris, the tobacco giant, against Uruguay's packaging regulations for cigarettes. The case was filed nearly six years ago under a 1988 bilateral investment treaty (BIT) between Switzerland and the South American country.

In addition to dismissing the company's claims, the tribunal has also asked Philip Morris to reimburse Uruguay for its legal expenses.

### Uruguay policy context

Citing the health risk and economic impact of smoking, Uruguay has adopted several strict regulatory measures for tobacco control in recent years, such as advertising restrictions, higher taxes, and mandatory health warnings.

Among these policies was a 2008 decision banning tobacco manufacturers from marketing "more than one variant of cigarettes per brand family" – referred as the "Single Presentation Requirement (SPR)," along with requiring health warnings to be prominently displayed on tobacco packaging.

Uruguay subsequently increased the required size of this health warning from 50 to 80 percent, with only one-fifth of the package left for displaying trademarks and related information. The SPR and the increased health warning size requirements were contested by Philip Morris in the investor-state dispute.

Uruguay has been a party to the Framework Convention on Tobacco Control (FCTC) at the World Health Organization (WHO) since 2004. Switzerland is a signatory but not a party to the FCTC.

The FCTC provides "a framework for tobacco control measures to be implemented by the parties at the national, regional, and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke." It also contains provisions on packaging and labelling of tobacco products.

The framework also established in 2008 "evidence-based" guidelines for implementing its provisions, such as calling on countries to consider enlarging health warnings above 50 percent to the maximum size possible, and urging countries to "prevent packaging and labelling that is misleading or deceptive and to adopt plain packing or restrict as many packing design features as possible."

Last week, the tribunal noted that the share of smokers in Uruguay's overall population has dropped between the years 2008 to 2015, citing other figures also indicating decreases in smoking.

After the SPR, Philip Morris in Uruguay eliminated seven of its thirteen variants, which accounted for roughly 20 percent of its domestic sales in the country. Its market share was 13.5 percent in 2008, rose to 20.4 percent and then fell back to 13.9 percent in 2013.

The tribunal noted that estimate illicit trade rose from 17 percent of total sales prior to 2008 to almost 23 percent in 2010, and then ranged from 17 to 25 percent in 2011 and 2012.

### **Philip Morris' legal actions**

After the 2008 changes, Philip Morris' Uruguayan subsidiary filed challenges to the country's policies in domestic courts, without success. The claim under the Swiss-Uruguay BIT came two years later, and was tabled by two Swiss subsidiaries of Philip Morris, together with an Uruguay subsidiary fully-owned by one of the company's Swiss subsidiaries.

The proceedings were conducted according to the legal instruments of the International Centre for Settlement of Investment Disputes (ICSID), and ended this past May, with the tribunal issuing its decision to the parties last week.

Philip Morris claimed that Uruguay's tobacco control measures – the SPR and the increased health warning size requirement – “effectively banned” seven of the company's thirteen variants and “substantially diminished” the value of those that remained on the market. The company claimed that this was tantamount to an expropriation of its brand assets, “including the intellectual property and goodwill associated with each of its brand variants.”

Traditionally, international investment agreements protect foreign investors from uncompensated direct or indirect expropriations.

The tribunal reviewed whether Uruguay's measures amounted to “indirect expropriation,” as the tobacco company “remained the registered owner or licensee of the relevant trademarks and continued to be entitled to protect them by an action for infringement.”

This “indirect expropriation” under this specific BIT would need to have an “equivalent” effect to nationalisation or expropriation, and its interference with the investor's rights must have “a major adverse impact” on the relevant investments, according to the tribunal.

Regarding the nature of trademarks, the tribunal explained that Uruguayan law and international conventions do not give the holder an “absolute right of use, free of regulation,” but rather gives a right to exclude third parties from the market “so that only the trademark holder has the possibility to use the trademark in commerce, subject to the State's regulatory power.”

Nonetheless, “trademarks being property, their use by the registered owner is protected,” said the tribunal. This meant that the tobacco company had “property rights regarding their trademarks capable of being expropriated.”

Observing that Philip Morris' brand and “other distinctive elements” continued to appear on cigarette packs and were recognisable, and that the company's overall business in Uruguay has grown more profitable since 2011, the tribunal ultimately did not find expropriation in this case.

Furthermore, the tribunal concluded that “the challenged measures were a valid exercise by Uruguay of its police powers for the protection of public health” and are therefore not the equivalent of expropriation.

### **Fair and equitable treatment**

Philip Morris also claimed that the measures violated the BIT's requirement of “fair and equitable treatment” of investments made by foreign actors.

The tribunal clarified that a breach of this nature involves state conduct that is “arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional and racial prejudice.”

The tribunal took into account Uruguay’s active participation in the FCTC negotiations and implementation, its domestic scientific and technical research on tobacco control, the legitimate aim of the measures, and the relatively minor impact on the company’s business. The majority of the tribunal’s members concluded that the measures were reasonable and adopted in good faith.

The tribunal also said that Philip Morris “had no legitimate expectations that such or similar measures would not be adopted and further considering that their effect had not been such as to modify the stability of the Uruguayan legal framework.”

Furthermore, Philip Morris raised its legal history in front of Uruguay’s domestic courts, claiming that those courts made mistakes amounting to denial of justice and thus violating the BIT’s “fair and equitable treatment” obligation.

Although one member dissented, the tribunal pointed out that its role is not that of an appeals court, arguing that under international law, the issue of denied justice is a much more difficult standard to meet – and that while the allegedly inconsistent decisions or procedural issues resulting from Uruguay’s domestic courts may be unusual or problematic, that is insufficient for fulfilling such a standard.

The tribunal also dismissed the claims of Philip Morris relating to “impairment of use and enjoyment of investment” and “observance of commitments” under the BIT.

### **International developments**

This is not the first legal setback for Philip Morris at the international level regarding tobacco control measures. Another tribunal announced in May that it was declining jurisdiction over the company’s claims under a BIT between Australia and Hong Kong against Canberra’s plain packaging laws, deeming the company was “abusing” the investor-state arbitration process. (See Bridges Weekly, [25 May 2016](#))

Philip Morris and other multinational tobacco companies previously lost out in the legal fight against the tobacco control laws at the domestic level in Australia. (See Bridges Weekly, [12 September 2012](#))

Meanwhile, a series of WTO disputes were tabled between 2012 and 2013 by Cuba, the Dominican Republic, Honduras, Indonesia, and Ukraine, citing alleged violations of the WTO’s rules on intellectual property rights and other areas. Among these concerns, they claimed that the Australian policy is unnecessarily “trade-restrictive” and makes it difficult for them to compete fairly. (See Bridges Weekly, [1 May 2014](#))

While Ukraine subsequently chose to pursue a mutually agreed solution with Australia, a panel is reviewing the remaining four complaints jointly, with a decision slated for this year. That result could later face appeal, should the parties wish to challenge legal-related elements of the ruling. (See Bridges Weekly, [11 June 2015](#))

Meanwhile, other countries such as the UK and Norway have taken steps to implement their own plain packaging measures, among other tobacco control policies. In addition, various countries are also trying to make it more difficult for tobacco companies to use investment and trade deals to bring more legal challenges – such as the recent “carve-out” for tobacco control measures from investment arbitration under the recently-signed Trans-Pacific Partnership (TPP) Agreement. (See Bridges Weekly, [12 November 2015](#))

ICTSD reporting.

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## DIGITAL ECONOMY

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# EU Commission Adopts Data Privacy Shield

The European Commission has adopted an "adequacy decision" which enacts the final version of a planned EU-US "Data Privacy Shield." The new accord aims to help govern data transfers between the two sides following the invalidation last year of the "Safe Harbour Framework."

The decision announced on Tuesday brings to a close long-running negotiations to update the previous system, a set of principles known as the "Safe Harbour Framework" which took effect in 2000. The pressure to conclude a new system had rapidly escalated after the European Court of Justice ruled in October that the European Commission decision adopting the earlier framework was invalid.

The October ruling had created significant legal uncertainty for thousands of technology companies that had signed onto the original Safe Harbour Framework, given that they relied on the original Safe Harbour Framework in establishing their terms of service and operating policies. (See Bridges Weekly, [8 October 2015](#))

Officials on Tuesday said that the new Data Privacy Shield will now provide that legal certainty, along with addressing issues raised in the October ruling.

"The EU-US Privacy Shield is a robust new system to protect the personal data of Europeans and ensure legal certainty for businesses," said Věra Jourová, the EU Commissioner for Justice, Consumers, and Gender Equality.

The EU official also pledged that the accord "will restore the trust of consumers when their data is transferred across the Atlantic," a sentiment that was echoed by US Secretary of Commerce Penny Pritzker, who was also present for the announcement in Brussels.

"The approval of the Privacy Shield is a milestone for privacy at a time when the sharing of data is driving growth in every sector, from advanced manufacturing to advertising," Pritzker told reporters.

EU member states had already [signed off](#) on the deal last week, setting the stage for the Commission's announcement on Tuesday. The accord is now active, with US companies able to sign onto it from the beginning of August.

### Features of the deal

Under the new framework, US officials have signed onto a series of new requirements aimed at ensuring that companies are both complying with its rules, along with pledging that national security and law enforcement officials will face both restrictions and oversight systems should they seek to access EU data.

Among the Data Privacy Shield's provisions is the inclusion of various options for individuals should they have concerns over how their data is being used. For example, those individuals can take these concerns either to the company itself, or through so-called "Alternative Dispute Resolution" which the company must provide free of charge.

Other options include raising concerns with their country's authorities in this area, and even binding arbitration.



As announced in February, the US is also set to create the post of Ombudsperson, a role which would be independent from the country's national security offices and would instead be housed within the Department of State. This person would be tasked with addressing questions from EU citizens relating to whether data accessed under national security grounds has been done lawfully.

Furthermore, the Data Privacy Shield requires the US and EU to hold annual reviews on how well the system is working, including on "the operation of the national security and law enforcement exceptions to the Principles." Such "principles" are the terms that US companies must agree to in joining the framework.

The deal foresees the possibility of suspending the Privacy Shield, should the EU find that this new framework is no longer providing an "adequate level of protection" or that actions by US public officials in the areas of national security or law enforcement "do not ensure the required level of protection."

This would not be immediate, however. Rather, the European Commission would first need to give the US Department of Commerce time to potentially address such issues; should these efforts fail, the EU can then move ahead with suspending or repealing the Data Privacy Shield.

### **Negotiations**

The past several months have seen negotiators race to ink a final deal that can provide legal certainty to both smaller enterprises and big tech giants that engage heavily in digital trade. A political accord between Brussels and Washington was struck in early February, with a draft version of the Data Privacy Shield released shortly thereafter. (See Bridges Weekly, [4 February 2016](#))

In the months since, the two sides have been revising certain aspects of the deal, incorporating feedback from the so-called Article 29 Working Party, as well as attempting to address issues raised by EU lawmakers over whether the new accord would both be able to withstand legal scrutiny while ensuring that European data is indeed safe from indiscriminate mass surveillance and privacy risks when crossing over to the US.

The Article 29 Working Party is a group including representatives from the EU's national data protection authorities, as well as the European Commission and the European Protection Supervisor. The group's focus is on data protection and privacy issues.

[Back in April](#), the working party highlighted a series of areas where the EU executive arm should clarify the terms of the Data Privacy Shield before moving forward.

"These concern elements such as safeguards regarding automated processing, further restrictions on access by public authorities, and effective independent redress," the group explained.

The working party has withheld its assessment of the final accord, while noting that it intends to review whether the concerns it raised in April have indeed been addressed.

"Once the Commission has adopted the adequacy decision, the Working Party will be in a position to conduct a coordinated analysis of the documents and publish a statement as soon as possible," [said](#) the group earlier this month.

ICTSD reporting.

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## BILATERAL TIES

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# EU, China Leaders Agree to Establish Steel "Platform"

Leaders from the EU and China have agreed to set up a platform for discussing ways to address steel overcapacity – an issue that has been hotly debated in recent months, in light of the sector's ongoing struggles.

The two-day talks were held from 12-13 July in the Chinese capital city of Beijing. Notably, the meeting comes just weeks following the adoption of a new EU strategy document for the bloc's relationship with China over the next five years. (See Bridges Weekly, [30 June 2016](#))

The annual EU-China summit has become a key fixture on the international calendar, bringing together leaders from two of the world's largest traders for talks on a wide-ranging agenda that often includes topics such as climate change, investment, trade, and human rights.

This year's gathering included Chinese Premier Li Keqiang, European Council President Donald Tusk, and European Commission President Jean-Claude Juncker, among other top officials. Talks were also scheduled with Chinese President Xi Jinping.

### Market economy status, steel "platform"

The ongoing struggles of the global steel sector featured prominently in the two-day discussions, with Juncker [characterising the overcapacity issue](#) as a "very serious problem for Europe," a message he said he conveyed to his counterparts in Beijing.

The EU has already undertaken a series of steps aimed at supporting its domestic sector, which is [responsible](#) for 328,000 direct jobs across the bloc, along with 1.3 percent of its GDP. These steps include trade remedy probes into alleged "dumping" and calling upon China to improve its subsidy notifications to the WTO in this area, among others. (See Bridges Weekly, [17 March 2016](#))

The role of China in the global steel sector has been raised repeatedly by the EU, with the 28-nation claiming that the Asian economy has been responsible for a surge in low-priced imports of the metal, with prices dropping steeply as a result.

China, for its part, maintains that the problem is global in nature, and that there are also limits to the steps it can take at the governmental level.

"This is a difficult subject for us, this is a difficult subject for the Chinese partners, and we agreed this morning to establish a common working group... between China and the European Union to keep alive the debates and the discussions we have related to the steel overproduction," said Juncker on Wednesday.

The group would be tasked with looking at options for addressing the steel crisis, along with addressing verification and monitoring of steel being shipped abroad. Juncker also [expressed](#) an interest in more exact data from all sides regarding the current state of steel trade.

The Chinese premier, for his part, reportedly reiterated Beijing's own commitment to tackle the issue, saying that his country "want[s] trade between China and Europe to grow on a stable platform."

Indeed, the issue of industrial overcapacity has now become a regular feature at major international summits, including during this past weekend's gathering of G-20 trade ministers. (For more on the G-20 discussions, see related story, this edition)

EU officials also confirmed on Wednesday that they have not yet taken a decision on whether to propose changing their anti-dumping regulation to grant China with "market economy status," despite earlier speculation from trade observers that they might do so at this stage.

Juncker told reporters that the EU's executive arm is still conducting an impact assessment on the subject, and that for the time being the Commission "has not made up its mind." Earlier communications from Brussels have indicated plans to announce a decision in the second half of this year. (See Bridges Weekly, [30 June 2016](#))

The EU's executive arm will have an "orientation debate" on the subject on 20 July, with Juncker pledging that the bloc would "stick to our international obligations," in an apparent reference to China's WTO accession protocol. He added, however, that the issue is "very difficult" for Brussels, and said that after the impact assessment is completed the EU's executive arm will then weigh its options.

"I don't want to dramatise this issue, although it could easily be dramatised, but for us there is a clear link between the steel overcapacity of China and the market economy status of China," he [said](#), adding that this position reflects the "general mood" in the EU bloc.

He also reiterated that the EU will continue to take all necessary measures to defend its steel sector as necessary.

ICTSD reporting; "China vows to curb overcapacity in steel," DEUTSCHE WELLE, 13 July 2016; "China agrees EU deal to assuage steel dumping concerns," FINANCIAL TIMES, 13 July 2016.

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## WILDLIFE TRADE

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# Ivory Trade in Focus Ahead of CITES Conference

Preparations are well underway for the upcoming Conference of the Parties (COP) to the Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES), scheduled for late September in Johannesburg, South Africa. In the run-up to the meet, one of the hot items on the agenda is again expected to be ivory trade.

CITES has been in force since 1975, and was designed to protect endangered species by regulating their international trade. The accord does so by allotting the endangered species into one of three Appendices, depending on their risk and need for protection. Any trade in those species also requires approval through a licensing system.

The initial ban on international elephant ivory trade was put in place in 1989 by CITES, with proponents crediting the move for helping [eliminate](#) major ivory markets and lower illegal elephant killing, leading to localised recovery of some elephant populations.

However, in 2008 the ban on ivory trade was [lifted temporarily](#) to allow a one-off sale of the 108 tonnes of ivory stockpiled in countries within Africa, with the proceeds to go to elephant conservation activities. According to [detractors](#) of the decision, the singular lift of the ban led to a sharp increase in poaching almost immediately. The ban was also previously lifted briefly on other occasions. (See BioRes, [31 October 2008](#))

### Proposals

Ahead of the 24 September – 5 October meet, a series of proposals and position papers have been tabled relating to the ivory trade subject, among the various other topics also on the agenda.

Among the positions confirmed to date is a push by the so-called African Elephant Coalition (AEC) for an Appendix I listing of all African elephants, which would [outlaw](#) all international trade for commercial purposes, in order to prevent extinction.

The 29-country group includes Benin, Burkina Faso, Burundi, Cameroon, the Central African Republic, Chad, Congo, Côte d'Ivoire, the Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Sudan, Togo, and Uganda.

Various members of this group have already tabled a [formal proposal](#) on the subject to CITES, according to the COP website. While some African elephant populations are [already in Appendix I](#), this document calls for including the populations from Botswana, Namibia, South Africa, and Zimbabwe as well. This would therefore put all African elephants under this listing.

The proposal was put forward by Benin, Burkina Faso, Central African Republic, Chad, Ethiopia, Kenya, Liberia, Mali, Niger, Nigeria, Senegal, Sri Lanka, and Uganda.

Another proposal has also been backed by Angola, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Ethiopia, Gabon, Kenya, Niger, and Senegal that calls for all CITES parties and non-parties to "adopt all necessary legislative, regulatory, and enforcement

measures as a matter of urgency to close their domestic markets for commercial trade in raw or worked ivory."

Meanwhile, other African countries such as Botswana, [Namibia](#), South Africa, and Zimbabwe are [pushing](#) to revive a previous proposal from earlier COPs that would involve a decision-making mechanism regarding future ivory trade.

For its part, the European Commission released a draft [position paper](#) on 1 July calling for clarifications over the scope of a proposed closure of domestic markets to ivory. The EU represents the biggest voting block at CITES, with Brussels set to conduct internal discussions on its final position before the CITES Conference in September.

"The call for a general closure of domestic ivory markets does not seem justified but the EU could show openness to initiatives aiming to restrict domestic ivory trade, provided that the measures are proportionate," the document says, suggesting instead that countries with growing elephant numbers should be encouraged to "sustainably manage" their populations.

On the proposals relating to Appendix classifications, the European Commission's proposed position for the Council questions whether to transfer the elephant populations from Botswana, Namibia, South Africa, and Zimbabwe to Appendix I.

"These four national populations have an increasing population trend [to be confirmed for Zimbabwe] and do not meet the criteria for transfer to Appendix I," the paper says, suggesting those countries continue their efforts to address poaching and "sustainably manage their elephant population."

Elephant species are still at risk, with some [data](#) indicating a 61 percent population drop of African elephants between 1980 and 2013, mostly due to illegal poaching. Despite the measures taken, illegal wildlife trade is believed to have increased in East Africa, with over 25,000 elephants being killed illegally each year. The increase in poaching has become even more devastating within recent years. [From 2010 to 2012](#) alone, over 100,000 elephants were killed illegally.

Some experts predict that this trend could lead to the extinction of elephants in Africa within 15 years (See [ICTSD Opinion](#), 21 June 2016, and [Bridges Africa](#), 10 March 2016).

A recent [report](#) by WildAid suggests that demand for illegal ivory is being fuelled partly by legal markets. Deficient regulatory systems allow ivory traders to replenish legal stocks with illegal ivory from poached African elephants. Rampant corruption also plays a role in encouraging illegal activity. Furthermore, illegal ivory trade is often used to fund conflict in unstable regions in Sub-Saharan Africa.

ICTSD reporting; "African wildlife officials appalled as EU opposes a total ban on free trade," THE GUARDIAN, 6 July 2016; "On the frontline of Africa's wildlife wars," THE GUARDIAN, 8 May 2016; "Kenya to burn biggest ever stockpile of ivory," THE GUARDIAN, 29 April 2016; "African Conservation Group With Unusual Mission: Enforcement," THE NEW YORK TIMES, 12 October 2015; "100,000 Elephants Killed by Poachers in Just Three Years, Landmark Analysis Finds," NATIONAL GEOGRAPHIC, 18 August 2014; "How World's Largest Legal Ivory Market Fuels Demand for Illegal Ivory," NATIONAL GEOGRAPHIC, 22 October 2015; "China given green light to buy African ivory stockpile," THE GUARDIAN, 15 July 2008.

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## INVESTMENT

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# TransCanada Takes Next Step in NAFTA Case on Keystone Pipeline

Canadian energy giant TransCanada has now filed a request for investor-state arbitration in connection with the US government's rejection last year of its application to build the cross-border Keystone XL oil pipeline.

The Canadian company has claimed that the decision violates provisions of the North American Free Trade Agreement (NAFTA), which includes the US, Canada, and Mexico as members. TransCanada also refers to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), along with related legal instruments to support this move.

The request follows a notice of intent that TransCanada filed in January 2016. The parties to the dispute also held consultations in which they failed to reach an amicable settlement. (See Bridges Weekly, [14 January 2016](#))

### Long-running saga

Last November, US Secretary of State John Kerry confirmed that Washington was denying a Presidential Permit for building the pipeline, citing, among other findings, that the project would have negligible domestic economy and energy security benefits; would not lead to lower domestic gas prices; and would facilitate the transportation of a "dirty" source of fuel.

The critical component, he noted at the time, was that "moving forward with this project would significantly undermine our ability to continue leading the world in combatting climate change."

The Keystone XL saga began in 2008, when TransCanada submitted its initial application for the pipeline. The State Department denied Keystone's initial application in 2012 after Congress enacted legislation forcing a decision, with the agency stressing that it needed more time to assess whether the project was in the national interest. Its 2015 decision was based on a new application which Keystone submitted in 2012.

The pipeline was to extend between Alberta, Canada, and the US state of Nebraska, where it would connect with a broader pipeline network. TransCanada projected that Keystone XL would transport up to nearly 900,000 barrels per day of crude oil, and supporters of the project touted its potential contributions to job creation and energy security.

The pipeline has acted as a political lightning rod, provoking intense public scrutiny, lobbying efforts, and protests. It became a focal point for numerous environmental organisations, who mobilised to encourage opposition to the pipeline both at the grassroots level along its intended route and among lawmakers in Washington.

The project has also at times strained Canada-US relations, and factored into election campaigns on both sides of the border. Canada held its elections last year, while the US is in the midst of its own national election process, which culminates in November.

In the lead-up to this year's US presidential election, there is a clear divide between Democrats, whose 1 July [draft policy platform](#) supports the Obama Administration's

Keystone XL rejection, and Republican presidential candidate Donald Trump who [has stated](#) that he would ask TransCanada to renew its permit application for the pipeline.

TransCanada's arbitration request is also fuelling debate over the inclusion and nature of investor-state dispute settlement (ISDS) provisions in the 12-country Trans-Pacific Partnership (TPP), which has been signed but not yet been ratified.

Some high-profile TPP opponents have criticised TransCanada's attempt to file a claim under NAFTA, including US Senator Elizabeth Warren of the Democratic Party, [who has presented it](#) as an example of the alleged "dangers of ISDS."

### **TransCanada: State Department delay "unjustified"**

According to TransCanada, the State Department's delay in reaching a decision was "unjustified" because the reasons it provided, such as the need for additional information and analysis, were immaterial to the final decision.

The company adds that the State Department delayed its decision in the knowledge that TransCanada was investing in the pipeline under the "legitimate but ultimately false belief" that the application would be decided on its merits.

Instead, TransCanada asserts, the lengthy timeline allowed the pipeline to become a political symbol that fuelled controversy surrounding the project, ultimately contributing to a decision that "opportunistically seized on the symbolism of the pipeline as a basis to deny the application, all in an effort to bolster the Administration's environmental credentials."

TransCanada also claims that the denial failed to rely on objective factors rooted in policy direction and past practice, which had informed the company's expectations of the application process. It argues, for example, that while the State Department concluded on multiple occasions that the pipeline did not raise any significant environmental concerns, a factor applied in previous pipeline decisions, the decision instead cited factors that had never before contributed to a decision.

TransCanada adds that because the US previously approved other pipeline applications, including those of US and Mexican investors, in a significantly shorter timeframe and based on factors that TransCanada argues would equally have allowed for the Keystone XL permit, the State Department's denial was discriminatory and damaging to the company.

### **Requesting US\$15 billion**

TransCanada is invoking NAFTA provisions that permit investors to submit claims to arbitration under ICSID Convention. In its request, TransCanada states that it meets relevant jurisdictional rules under both NAFTA and the ICSID Convention, including investor nationality and the existence of an investment, as well as requirements related to consultations, timing, and ICSID membership.

TransCanada claims that the US breached provisions under NAFTA's Chapter 11 on investments, citing obligations related to non-discrimination, minimum standard of treatment, and expropriation and compensation.

In relation to these alleged breaches, TransCanada is seeking more than US\$15 billion in costs and damages, claiming that it lost revenue as a result of the delayed decision, and invested significantly in preparatory work carried out while waiting for confirmation of the State Department's review.

**Next steps**

As a next step, the Secretary-General of ICSID must determine, on the basis of the information contained in TransCanada's request, whether the request should be registered or if the dispute is "manifestly" outside of its jurisdiction – a process that should be completed this month.

After the registration, an arbitration tribunal will be set up to hear the case.

ICTSD reporting; "TransCanada Files \$15B NAFTA Claim on Keystone XL Rejection," BLOOMBERG, 25 June 2016.



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## AGRICULTURE

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# OECD, FAO: Period of High Food Prices “Likely Over”

Agriculture commodity prices are expected to stay primarily consistent over the next decade, according to a [new report](#) released last week by the Organisation for Economic Co-operation and Development (OECD) and the UN Food and Agriculture Organization (FAO).

The Agricultural Outlook 2016-2025, launched on 4 July, projects the state of global agriculture over the coming ten years, with this edition including an in-depth study on sub-Saharan Africa.

The report also incorporates some of the major policy developments seen last year in trade and sustainable development, such as the agreement on the WTO's "Nairobi Package," along with the UN adoption of the universal Paris climate agreement and the 2030 Agenda for Sustainable Development.

The report finds that the recent period of high agricultural commodity prices appears to have passed, but suggests that farm prices will continue to be volatile because of potential changes in weather patterns for crops and long production cycles for livestock.

Angel Gurría, the Secretary-General of the OECD, [noted](#) at the launch of the report in Rome that despite a decrease in agricultural prices, markets are fluid and the possibility of price volatility remains high.

"Although we are now witnessing a period of lower agricultural prices, we need to remain alert as changes in markets can take place rapidly," he said, calling for policies that will ensure improved, sustainable productivity growth.

### **Climate change, agricultural productivity**

The report predicts that agricultural productivity will increase in the coming years, largely due to intensification and efficiency improvements. Better yields are expected to account for 80 percent of increased crop output over the next decade.

However, the report also warns that this need for efficiency comes primarily due to various risk factors affecting the availability of essential resources such as land and water, made worse as a result of climate change.

The OECD-FAO publication refers to the Paris Agreement on climate change inked last year, stressing the role agriculture can play in helping tackle this global issue, while also noting the value of both the accord and the nationally determined contributions (NDCs) by UN member states for meeting food production needs.

In Rome, José Graziano da Silva, the Director-General of the FAO, [called](#) for a focus on sustainable production growth and productivity gains, noting that "significant production growth is needed to meet the expanding demand for food, feed, and raw products for industrial uses, and all of these have to be done in a sustainable way."

**Trade, SDGs**

The report projects that global agricultural trade by volume is likely to grow by 1.8 percent annually, but will expand at half the rate from the previous decade due to slowing growth rates in developing countries and protectionist policies.

The report also discussed the importance of trade for food security, especially for resource constrained countries and regions that rely heavily on imports for basic commodities, like the Middle East and Northern Africa region, where countries import over half of their main staple foods, including wheat.

Agricultural exports are expected to remain concentrated among just a few suppliers, and by 2025, at least 70 percent of total agricultural commodity exports will be from five countries, creating the potential for significant market impacts from production shocks or policy changes within those countries.

The outlook's analysis takes into account recent trade agreements, including the export competition deal and other agricultural outcomes reached in December during the Tenth WTO Ministerial Conference in Nairobi, Kenya.

It also places a strong emphasis on the UN Sustainable Development Goals (SDGs) adopted last September alongside the 2030 Agenda for Sustainable Development, replacing the now-expired Millennium Development Goals. The report reviews how the 17 new goals relate to agriculture, stressing that the most important among these is the goal dedicated to ending hunger and improving nutrition.

ICTSD reporting.

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## AGRICULTURE

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# US Congress Passes New Food Security Bill

The US Congress passed the [Global Food Security Act](#) last week, authorising US\$7.3 billion between 2017 and 2021 in support for hunger and food security initiatives.

The new legislation will institutionalise on a permanent basis US President Barack Obama's flagship "Feed the Future" initiative, which is designed to reach millions of farmers in 19 select "focus countries." The scheme works to support the growth of small-scale producers' income and improve food security, and nutrition, through country-led development and investment plans.

"This game-changing development initiative has helped increase economic growth and stem the tide of global hunger, poverty and malnutrition over the span of just a few years," [said](#) Obama.

The US president must next sign the legislation in order for it to become law. At press time, the bill was still listed under "[pending legislation](#)" on the White House website.

The bill will also expand US humanitarian resources for disaster assistance, including emergency food support in cases of natural and manmade disasters. The Congressional Budget Office [estimated](#) in June that the bill will cost US\$5.5 billion between 2017 and 2021 for humanitarian assistance and US\$1.8 billion in 2017 and 2018 for food security initiatives.

### Food aid reform

The bill comes after the WTO's Nairobi ministerial conference last December, where members established new disciplines to address food aid problems, requiring countries to ensure that international food aid does not unduly impact established commercial markets of agricultural commodities, while making sure that such support is still available in humanitarian emergencies. (See Bridges Daily Update #5, [19 December 2015](#))

WTO members also agreed that they would refrain from issuing "in-kind" food aid should this type of support negatively impact local production of similar goods.

"The Global Food Security Act won't have any impact on existing in-kind food aid from the United States," said Eric Muñoz, senior policy advisor at Oxfam America, in comments to Bridges. He noted that the bill exempts from its provisions some existing in-kind initiatives, such as Food for Peace.

Along with in-kind support, Food for Peace also can provide cash transfers or vouchers in emergencies such as disasters and conflicts. The programme also aims to address the root causes of hunger in its work.

The legislation's disaster assistance mandate focuses primarily on the provision of food aid in emergency situations. In section 7, the bill revises the Foreign Assistance Act of 1961, the law that integrated existing foreign assistance programmes and created the US Agency for International Development (USAID). The changes expand the government agency's Emergency Food Security Program to US\$2.8 billion annually in emergency food assistance for the years 2017 and 2018.

ICTSD reporting.

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## EVENTS & RESOURCES

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# Events

### Coming Soon

17-22 July, Nairobi, Kenya. FOURTEENTH SESSION OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD). This high-level event will place a particular focus on the role which UNCTAD can play in advancing the implementation of the 2030 Agenda for Sustainable Development. Expected participants include government officials, private sector and civil society representatives, academics, and media. Among the various meetings scheduled in tandem with the conference are the World Investment Forum and Civil Society Forum. More information is available at the UNCTAD [website](#).

18 July, London, UK. CHATHAM HOUSE PRIMER: BREXIT. This Chatham House event will feature Oxford University professor Sionaidh Douglas-Scott, who will discuss the legal procedures that the UK will need to undertake should it proceed with an exit from the European Union. Douglas-Scott will also raise issues relating to the single market, the relationship between the UK and EU legal systems, and other related topics. More information can be found [here](#).

19 July, New York, US. THE SDG BUSINESS FORUM. This event is being held alongside the ministerial-level portion of the High Level Political Forum (HLPF), which is running from 11-20 July to examine the progress to date in advancing the 2030 Agenda for Sustainable Development. This meeting focuses on how the private sector can support this agenda. The gathering is being hosted jointly by the International Chamber of Commerce (ICC), the UN Department of Economic and Social Affairs (UN-DESA), the UN Global Compact, and the Global Business Alliance (GBA) for 2030. 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.

19 + 21 July: Trade Policy Review Body – China

22 July: Dispute Settlement Body

26 + 28 July: Trade Policy Review Body – Singapore

27-28 July: General Council

### Other Upcoming Events

1 August, Beijing, China. ICTSD WORKSHOP ON G-20 TRADE AND INVESTMENT OUTCOMES. This event is being organised by the International Centre for Trade and Sustainable Development (ICTSD), with discussions addressing the outcomes from the G-20 Trade and Investment Working Group and Trade Ministers' Meeting. The objective is to then provide feedback that can be transmitted to G-20 leaders for when they meet in Hangzhou, China, in September. Additional details are available [here](#).

1-10 September, Honolulu, US. 2016 IUCN WORLD CONSERVATION CONGRESS. This quadrennial event is being hosted by the International Union for Conservation of Nature (IUCN), with this edition's theme being "Planet at the crossroads." The event aims to examine the opportunities from partnerships across a range of sectors, in order to ensure the success of the 2030 Agenda for Sustainable Development and related Sustainable Development Goals (SDGs). More information about the event, including an official programme and speakers' list, is available [here](#).

5-9 September, Jeju Island, South Korea. GLOBAL GREEN GROWTH WEEK 2016. This event is being hosted by the Global Green Growth Institute (GGGI), bringing together leaders from the public and private sector from over 30 countries for discussions on green growth trends, finance, technology, and more. The gathering will feature over 60 discussion sessions. To learn more, visit the event [website](#).

27-29 September, Geneva, Switzerland. WTO PUBLIC FORUM 2016: INCLUSIVE TRADE. This year's edition of the WTO's annual outreach event will focus on better integrating a broader range of actors into the global trading system, particularly for women and small and medium-sized enterprises. Registration is now open, with additional details to be provided as the event draws nearer. More information can be found [here](#).

28-30 September, Geneva, Switzerland. TRADE FOR SUSTAINABLE DEVELOPMENT FORUM 2016. This annual gathering is organised by the International Trade Centre (ITC), with this year's edition having as its theme "Sustainable Value Chains: Open Data Makes a Difference." The discussions will aim to support the ongoing efforts for implementing the 2030 Agenda for Sustainable Development and the related Sustainable Development Goals (SDGs). More details, including a provisional programme, can be found [here](#).

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## Resources

WORLD TRADE OUTLOOK INDICATOR. Published by the World Trade Organization (July 2016). This new tool has been established in order to give "real time" information relating to international trade developments, with the indicator to be updated every quarter. The tool, along with projections for the third quarter of 2016, can be accessed [here](#).

OECD BUSINESS AND FINANCE OUTLOOK 2016. Published by the Organisation for Economic Co-operation and Development (June 2016). This publication reviews the implications for productivity growth and efficiency in a context where legal, policy, and industry frameworks show significant inconsistencies. The topics addressed within this analysis include the impact of investment agreements on business; how this "fragmentation" can affect financial support for clean energy; and what fiscal incentives may be available for research and development. The report can be accessed [here](#).

TODAY'S TRADE POLICY AND TRADE RESEARCH. By Chad P. Bown and Meredith Crowley for the Peterson Institute for International Economics (June 2016). This article, which was also featured on VOX CEPR's Policy Portal, reviews various databases in order to examine possible trends in several economies. The authors discuss whether some countries have a greater tendency toward trade liberalisation, along with which domestic industries tend to be the most protected. The article is available [here](#).

SUPPLY CHAIN FINANCE AND SMES: EVIDENCE FROM INTERNATIONAL FACTORING DATA. By Marc Auboin, Harry Smythe, and Robert Teh for the World Trade Organization (July 2016). This working paper reviews the current financing landscape for small and medium-sized companies, particularly developing and emerging economies. The authors also address the ramifications the global financial crisis has had in this context. The paper is available [here](#).

LEAVING NO ONE BEHIND: A CRITICAL PATH FOR THE FIRST 1,000 DAYS OF THE SUSTAINABLE DEVELOPMENT GOALS. Published by the Overseas Development Institute (July 2016). This new report aims to chart a path for setting the implementation of the Sustainable Development Goals (SDGs) into action during their initial years, in order to ensure long-term success. The report, along with a summary document, is available [here](#).

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PUBLISHED BY



**International Centre for Trade  
and Sustainable Development**

Chemin de Balexert 7-9  
1219 Geneva, Switzerland  
+41-22-917-8492  
[www.ictsd.org](http://www.ictsd.org)

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**

**DGIS - Ministry of Foreign Affairs  
Netherlands**

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

Contributors to this issue are Sofia Alicia Baliño,  
Yaxuan Chen, Angel Ibañez, Victoria  
Mastrobuono, Shaina Nanavati, and Ariane  
Vincent. This edition of 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

