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GLOBAL ECONOMY

EU, North American Officials Push Trade Deals Ahead of Key Meeting

Trade officials from the EU, Canada, and the United States have been pushing two major international accords over the past week, aiming to make a compelling case in time for a key meeting of European trade ministers beginning later today.

The informal meeting of the EU's Foreign Affairs Council (Trade) will kick off during the evening of 22 September, concluding the following afternoon. Being held at the Bratislava Castle under the Slovak Presidency, the meeting is being watched closely for any new indications of the political dynamic among EU member states – along with what this may mean in practice for advancing the bloc's trade agenda.

Specifically, trade ministers from the EU's 28 member states will discuss the prospects for the Transatlantic Trade and Investment Partnership (TTIP); the EU-Canada Comprehensive Economic and Trade Agreement (CETA); and the modernisation of the EU's trade defence instruments (TDIs).

The two-day gathering will also feature a debate among ministers about the expiry of those provisions of China's WTO accession terms involving how anti-dumping probes of Chinese producers are conducted, according to a draft programme for the meeting.

The talks come amid a growing international debate at both public and political levels about the merits and pitfalls of globalisation, including as it relates to trade deals – which has in turn raised questions over how well trade policy delivers expected public benefits.

Meanwhile, public protests were held earlier this week across various European cities – including in Germany and Belgium – to make their concerns known about both CETA and TTIP, with media reports placing the number of participants well in the thousands.

Malmström, Freeland make case for CETA

One of the key items on the docket will be the future of the bilateral EU-Canada trade pact. Negotiations for the CETA began in 2009 and were concluded in 2014, with some additional changes made in early 2016 to the investor protections part of the agreement. (See Bridges Weekly, [3 March 2016](#))

While proponents argue that the pact is progressive and could yield significant benefits in growth and jobs, the final outcome has struggled to gain traction with parts of the European public. The political landscape for ratifying the deal ultimately led to the European Commission announcing in July that it would be submitting CETA as a “mixed agreement” for approval, while aiming to implement it on a provisional basis upon receiving Council approval.

A “mixed agreement” means that the accord addresses subjects that fall under national-level competence, and not solely under the EU's competence. While the European Commission said at the time that its legal opinion was that the deal is not “mixed,” it would still be submitting it as such in recognition of the political dynamic. (See Bridges Weekly, [7 July 2016](#))

As a mixed agreement, full implementation of the CETA will not just need the approval of the Council and European Parliament, but also at the national level within the EU.

This past Sunday, EU Trade Commissioner Cecilia Malmström and Canadian Minister of International Trade Chrystia Freeland released a [statement](#) pledging to answer the questions raised so far, along with reiterating that the CETA is so progressive that it will “raise the standard” of trade agreements.

“We understand that some concerns remain that need to be clarified. Where formal clarifications are needed to allay concerns we are committed to providing these, including confirming our shared views on the delivery of public services, labour rights, and environmental protection,” said the two trade officials.

They argued, however, that the bilateral trade pact is by far “the most forward-looking free trade agreement” that either side has ever reached, calling for the accord to be evaluated based on its actual contents and benefits.

Whether these high-level overtures will be sufficient to allow for both sides to complete the signing process during an EU-Canada summit next month remains to be seen. Even so, building support at both the broader EU level as well as at the national and sub-national levels is widely expected to be an uphill battle.

Ahead of the Bratislava talks, Malmström has visited a series of European cities, making the case both for CETA along with touting the potential benefits in advancing the EU's wider trade agenda.

She also warned against conflating CETA and TTIP, urging Belgian parliamentarians this week to remember that “Canada is not the United States. Just because they are next to each other on a map does not make them the same.”

Calling upon lawmakers to review the deal based on its own merits, she pledged that the CETA will yield clear market access gains in goods, services, and public procurement; will be progressive and transparent, including in its protection of public services and its affirmation of the right to regulate in the public interest; and includes landmark advances in how to address the legal claims of foreign investors.

"I believe that this is an excellent agreement that has real potential to break new ground for EU trade policy, both in terms of economic opportunity and in terms of integrating European values into trade agreements," said Malmström.

TTIP: Next round confirmed

Malmström also met with her American counterpart, US Trade Representative Michael Froman, on 15 September in order to discuss the state of play in the TTIP talks.

Those negotiations, now in their fourth year, are also facing difficulty in both winning over broader public support, along with resolving substantive issues in the negotiations, such as the levels of market access each side is willing to provide in goods, services, and public procurement. (See Bridges Weekly, [7 September 2016](#) and [21 July 2016](#))

Following their meeting in Brussels, the two trade chiefs characterised their discussions as being positive and forward-looking.

"We had a good meeting where we reviewed the substantial progress being made and discussed next steps for moving forward," they said in a joint statement. The two trade officials also confirmed that the next TTIP negotiating round will be held during the first full week of October in New York.

Separately, however, the EU trade chief told the Belgian Parliament on Tuesday that how much progress can be achieved in the few months remaining before US President Barack Obama leaves office will depend largely on the level of concessions that Washington is willing to make.

"Progress will depend on whether the US is able to work with us on our priorities. The EU does not believe in signing just any agreement. We want a good agreement for the EU and for us all," she [said](#).

Malmström also suggested that the EU's goal is to "make as much progress as possible with the outgoing US Administration." The remarks seemed to reaffirm an earlier comment the EU trade chief made to German newspaper Bild on Saturday, which appeared to suggest that European negotiators are no longer expecting the talks to conclude during Obama's term – despite earlier hopes to the contrary.

ICTSD reporting; "'TTIP threatens our way of life,' say Berlin protesters," DEUTSCHE WELLE, 20 September 2016; "Thousands protest in Brussels against US, Canada trade deal," EURACTIV, 20 September 2016; "EU Trade Commissioner Cecilia Malmström: The TTIP negotiations are transparent," BILD, 17 September 2016.

DISPUTES

WTO Appellate Body Rules Against Use of Domestic Content Requirements in US-India Solar Case

The WTO's highest court has released its final report in the US dispute against India's use of domestic content requirements in the Jawaharlal Nehru National Solar Mission (NSM), disagreeing with the points raised in New Delhi's appeal of an earlier panel ruling.

The 16 September ruling by the Appellate Body comes over three years after the US initially requested consultations with India on the subject. (See Bridges Weekly, [13 February 2013](#))

The original dispute panel had released its findings the past February, deeming that these domestic content requirements violated the WTO's "national treatment" requirement under both the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Investment Measures (TRIMs). (See Bridges Weekly, [3 March 2016](#))

Energy, development objectives

India launched its National Solar Mission six years ago, pledging to scale up its grid-connected solar power capacity to reach 20,000 megawatts by 2022. This objective was later [revised upward](#) to 100,000 megawatts.

Since its inception, the mission has been rolled out in various phases, with the solar power developers participating in the NSM during the years 2010-2014 required to use domestically-produced modules and cells – though some exceptions for foreign inputs were made in the earlier stages.

However, the NSM did not extend domestic content requirements to the entire spectrum of planned project capacity. In the second phase of the Mission (2013-17), for example, only 50 percent of 750 MW was designated for the domestic content requirement category.

Under the NSM, the Indian government would enter into purchase agreements with these producers, buying electricity at a guaranteed rate. These deals would be in place for 25-year periods. From there, the government would then sell the power to distributors, who ultimately sell to consumers.

"The objective of the National Solar Mission is to establish India as a global leader in solar energy, by creating the policy conditions for its diffusion across the country as quickly as possible," [said](#) the Indian Ministry of New and Renewable Energy when the scheme was launched.

Along with its benefits on an international scale, the country's officials also noted the domestic gains that such a scheme could entail. Manmohan Singh, who served as India's prime minister at the time, [touted](#) the NSM's value for the country's rural population. Not only would they gain access to energy, he said, but this same energy could help power essential lighting and water systems for these communities.

"Already, in its decentralised and distributed applications, solar energy is beginning to light the lives of tens of millions of India's energy-poor citizens," he said at the time.

Narendra Modi, who succeeded Singh in office, has similarly made the deployment of solar energy a policy priority, particularly for those areas currently lacking access to electricity. More recently, India and France [announced](#) at last year's UN climate talks in Paris that they were launching an International Solar Energy Alliance, with the goal of helping developing countries scale up their solar energy capabilities. (See Bridges Weekly, [22 May 2014](#))

US officials have repeatedly stated since the dispute began that they welcome New Delhi's efforts to build their renewable energy sector, and that their issue is mainly about the policy's design and how it allegedly prioritised domestic content manufacturers over their foreign equivalents.

"We strongly support the rapid deployment of solar energy worldwide, including in India," [said](#) US Trade Representative Michael Froman following the release of the report.

The US trade chief reiterated that Washington's complaint was specific to the use of domestic content requirements – both in terms of their legality, along with concerns over whether these might make the process of scaling up the use of clean energy sources more difficult, given that such measures would prioritise equipment that is more costly and less efficient.

Government procurement

Both the original dispute panel and the Appellate Body focused their analysis on the policy's design and whether it gave national producers an illegal edge over their foreign counterparts, and did not question the legitimacy of the claimed policy goal.

One of the two overarching issues reviewed by the Appellate Body was whether the exemption on government procurement under GATT Article III:8(a) can be extended to cover discrimination relating to inputs and production processes used in products procured by the government – in this case, electricity.

The Appellate Body said that the products under this "government procurement derogation" must be in competition with the foreign product actually being discriminated against. In other words, the WTO judges said that the electricity being purchased by the Indian government is not in direct competition with foreign-made solar cells and modules – meaning that it does not qualify for the exemption.

Among other issues, India had also argued in its appeal that the previous panel should have found that purchasing the electricity produced by solar modules and cells was tantamount to government procurement of the modules and cells themselves. The Appellate Body agreed with the panel on this subject, however.

Supply scarcity, fulfilling other legal obligations

The other main issue appealed by India was with whether two of the exceptions included in GATT Article XX would also justify the use of these domestic content requirements.

GATT Article XX allows WTO members to use measures that would otherwise violate international trade laws, in order to meet certain public policy objectives. However, these measures must not be "disguised" trade restrictions or cause "arbitrary or unjustifiable discrimination" between members.

This article cites a range of possible public policy objectives that could fall under this category, such as those policies aimed at the conservation of natural resources or for protecting public morals.

The two Article XX defences cited by India in its appeal were Articles XX(d) and (j). The former allows for using measures needed to fulfil other laws or regulations, so long as these

are not in violation of GATT provisions. The latter permits measures essential for either acquiring or distributing products facing supply scarcity, under certain conditions.

In its appeal, India argued that it does not have the manufacturing capacity to produce the level of solar modules and cells needed to meet demand, and that it is currently facing a supply shortage in these products. However, the Appellate Body said that whether the availability of a particular product is enough to meet demand cannot be determined just by looking at local sources. It would also need to consider other relevant factors, including both domestic and international supply.

Citing Article XX(d), India had also argued that its obligations under various domestic and international laws or instruments necessitated the use of these domestic content requirements.

On the domestic side, India named its National Electricity Policy, National Electricity Plan, and the National Action Plan on climate change. However, the Appellate Body agreed with the panel that the language in all three of these examples is "hortatory, aspirational, declaratory, and at times solely descriptive" – meaning that these appear to be non-binding, and lack a "sufficient degree of normativity and specificity" to qualify as "laws and regulations" under Article XX(d).

The Appellate Body added that even the language within the Electricity Act requiring authorities to put together the other two national instruments does not clearly give those other instruments a more normative nature. Ultimately, the WTO judges said that it was not clear how these domestic instruments, either read separately or jointly, could be interpreted as establishing actual, binding rules aimed at tackling problems of energy security while ensuring "ecologically sustainable growth," as India had argued.

On the international side, India identified the preamble of the WTO Agreement, which includes a specific reference to the need for using resources in a way that best meets the "objective of sustainable development." India also cited the UN Framework Convention on Climate Change (UNFCCC), the 1992 Rio Declaration on Environment and Development, as well as the Rio+20 document on "The Future We Want" issued in 2012.

Agreeing with the original panel, the WTO's Appellate Body said that India ultimately did not prove that these international policies meet the standard of "laws or regulations" set out in Article XX(d). More specifically, the Appellate Body noted that India would need to take steps that incorporate these international instruments into its domestic legal system – therefore those international obligations do not have "direct effect" in India.

Adapting to the outcome

Under WTO rules, if India is unable to immediately bring the relevant measures into compliance, a reasonable period of time will be set for doing so.

Should Washington and New Delhi disagree afterward as to whether these changes are sufficient to bring the measures in line with global trade rules, they can then ask for India's compliance to be assessed by a panel – and, if necessary, the Appellate Body.

Some Indian power developers have told local press outlets that the Appellate Body's findings were largely expected, and that they have already been making the necessary preparations to adjust for a change in government policy.

For example, some producers suggest that the Indian government could instead procure solar cells and modules directly from local producers – rather than buying the electricity generated from these inputs. Doing so, IndoSolar Managing Director H.R. Gupta told the Economic Times, could be a way to address the issues at hand.

Since India is not a party to the WTO's Government Procurement Agreement (GPA), the plurilateral accord which governs public contracts, some experts suggest this could help shield direct Indian government procurement of solar cells and modules, whether under federal or state schemes for installations such as the railway and defence establishments, from additional challenges.

Welcoming the Appellate Body decision, one Indian private sector source told Bridges that developers were always looking for the best quality product at the lowest prices – and that domestic manufacturers could likely meet this supply in the long term, should the country manage to build its own manufacturing capacity to the necessary standard.

However, the source noted that achieving this goal would require addressing the related constraints, which would require time – therefore imports would inevitably be needed over the next several years to meet the Indian government's ambitious solar targets. He stated that while the Appellate Body decision was positive, Indian solar power developers have not been significantly impacted by the domestic content requirements given its limited scope under [the NSM](#).

The Appellate Body's ruling was more significant, he suggested, in upholding the principle that domestic content requirements, however limited in scope, are a well-recognised non-tariff barrier that is clearly WTO-inconsistent.

Some industry watchers also suggest that these domestic content requirements may be more impactful in the government procurement market, where they would not face any project caps and could be better shielded from WTO challenges. However, they caution that this would also depend on the extent to which domestic manufacturing capacity grows. With a likely view to cornering a piece of this lucrative future market, India has lately seen an increasing number of small and large firms – including foreign ones – entering or considering joining the solar manufacturing space.

According to many experts, domestic content requirements could be counter-productive to speedy attainment of climate objectives if these lead to increased costs of equipment used as inputs in clean energy expansion.

In this regard, they note that the Appellate Body ruling was in no way a judgement against the host of other climate policy measures that could be pursued under the Paris Agreement on climate change, including incentives for clean power generation that do not create obstacles to global diffusion of clean energy.

ICTSD reporting; "Solar manufacturers at ease over WTO ruling upholding US complaint against India," THE ECONOMIC TIMES, 19 September 2016; "India's \$100 billion solar push draws foreign firms as locals take backseat," REUTERS, 2 July 2015; "WTO rules against India's domestic content requirements in solar power," DOWNTOEARTH, 2 September 2016.

FISHERIES

Group of WTO Members Announces Talks to Ban Harmful Fisheries Subsidies

A group of 13 WTO members announced plans last week to begin preparations for negotiations to ban harmful fisheries subsidies, aiming to reach an international agreement under the Geneva-based organisation. According to a [joint statement](#), these talks would aim to tackle subsidies that contribute to overfishing and overcapacity, along with those linked to illegal, unreported, and unregulated (IUU) fishing.

Participants include Argentina, Australia, Canada, Chile, Colombia, New Zealand, Norway, Papua New Guinea, Peru, Singapore, Switzerland, Uruguay, and the United States. Along with addressing subsidies themselves, the group also aims to improve reporting and transparency on such state aid.

The participants also aim to strengthen the capacity of developing countries to implement these planned subsidies disciplines. Discussions are now underway on exactly how to conduct the talks as well as next steps.

"We believe this initiative will result in significant trade, economic, development, and environmental benefits, and help put us on track towards achieving target 14.6 of the UN Sustainable Development Goals," the joint statement reads, referring to a universal goal of sustainably using and conserving the world's oceans, adopted last year as part of a broader UN 2030 Agenda for Sustainable Development. (See Bridges Weekly, [1 October 2015](#))

Specifically SDG 14.6 calls for the prohibition of fisheries subsidies that contribute to overcapacity and overfishing, and the elimination of those related to IUU fishing activities, by 2020. Some subsidies can augment fishing capacity and effort, thereby exacerbating pressure on stocks, while IUU fishing undermines marine management and conservation efforts.

The UN Food and Agriculture Organization (FAO) [estimates](#) that approximately 31.4 percent of commercial fish stocks are overfished. This includes familiar species such as the Atlantic cod, chub mackerel, and certain types of tuna. Meanwhile, some studies suggest that IUU fishing makes up between 13 and 31 percent of reported catches, climbing to as much as 50 percent in certain regions.

Fish are also among the world's most traded food commodities, with developing countries claiming a growing share over the last few decades, providing an important source of foreign currency earnings. They also generate employment for 56.6 million people, and play a critical role in ensuring food security and nutrition.

The joint statement was issued on the eve of the third Our Ocean Conference, a major US-led gathering on international ocean conservation, held on 15-16 September in Washington. The event also saw the unveiling of over 136 [new initiatives](#) on marine conservation, the promotion of sustainable fisheries, and the reduction of marine pollution, to the tune of US\$5.24 billion.

Among the wave of efforts, US President Barack Obama announced last Thursday the creation of the first US marine reserve in the Atlantic, as well as extending coverage of the Papahānaumokuākea marine national monument off the coast of Hawaii to create the

world's largest marine protected area. Other milestones included the establishment of Cambodia's first marine protected area.

Finding a path forward

According to the joint statement, participants in this fisheries initiative will work with other like-minded WTO members to conclude an ambitious, high standard agreement, while simultaneously supporting ongoing efforts to make progress on a wider multilateral deal.

According to some sources, the move represents a bid to find ways forward in the face of blockages in multilateral talks on fisheries subsidies, particularly within the WTO "rules negotiating group" charged with tackling the subject. However, this new initiative would not preclude endorsing a multilateral solution if one can be found, sources said.

"There's no net loss in discussing the issue in multiple avenues in order to move ahead," one trade watcher told Bridges.

The initiative resembles other efforts to conclude trade agreements at the WTO among a select group of members, also known as a "plurilateral," with examples to date covering information technology products, government procurement, and environmental goods, among others.

These, however, have largely dealt with market access whereas the fisheries subsidies initiative would relate to domestic rules.

Some commentators cautioned that the joint statement was missing some major fisheries producers and subsidisers such as China, the EU, Korea, Japan, and Russia, which would be critical for making a difference on the issue.

The group does, however, include three of the top ten global producers – the US, Peru, and Norway – as well as four of the top ten global exporters – Norway, the US, Chile, and Canada.

Several sources also said they expected additional participants to join further down the line.

Ongoing multilateral efforts

Multilateral talks on fisheries subsidies disciplines have been ongoing in the WTO for the last 15 years under the auspices of wider global trade talks launched in Doha, Qatar, in 2001. Trade ministers subsequently agreed at a 2005 Hong Kong ministerial to work towards a prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing, taking into account appropriate special and differential treatment (S&DT) for developing and least developed members as an integral element.

Despite initial advances in technical discussions, the talks eventually stalled. Last year saw a comparative uptick of activity around fisheries subsidies, however, in the run up to the WTO's Tenth Ministerial Conference (MC10) held in December in Nairobi, Kenya. Several proposals for multilateral disciplines or related talks were released, with the African, Caribbean, and Pacific (ACP) Group of developing countries joining the list of proponents.

An attempt to reach a fisheries subsidies outcome eventually floundered at the ministerial, although a group of 28 WTO members did [release](#) a ministerial statement pledging to reinvigorate the organisation's work in order to achieve ambitious and effective disciplines on fisheries subsidies.

On the broader agenda, WTO members ultimately agreed to disagree on the merits of the Doha negotiating structure, while simultaneously issuing a strong commitment to continue to address its substantive issues. (See Bridges Weekly, [19 December 2015](#))

Trade negotiators in Geneva, Switzerland, have since been reflecting on the best way forward for multilateral trade talks and what key items to address for the WTO's next conference, which is due to be held in late 2017. Multiple sources have said that fisheries subsidies disciplines are on the docket as a potential outcome, with the SDG 14.6 deadline looming large.

Some sources indicated that multilateral discussions are being held on some key questions around fisheries subsidies rules – for example, looking at what type of support countries currently provide, along with what changes would need to take place.

Proposals for multilateral disciplines are also expected within the next month, including a potential contribution from the ACP Group and another from Peru, although sources said they did not yet know what the exact nature of these submissions would be. Many supporters of a fisheries outcome expressed hope that WTO members would move to textual negotiations well ahead of the next ministerial conference (MC11).

These talks will likely need to address previous calls to resolve other issues also assigned to the rules negotiating group, such as clarifications to rules on anti-dumping duties, although the status of WTO talks in general is unclear following the Nairobi outcome.

TPP harvest?

Several trade watchers last week suggested that the group's joint statement on fisheries subsidies could help to translate ground-breaking fisheries subsidies rules found in the regional Trans-Pacific Partnership (TPP) deal between 12 Pacific Rim countries into a wider setting and potentially go beyond these.

The TPP negotiations, concluded in October 2015, included the first fisheries subsidies disciplines found in any trade agreement. The deal would prohibit subsidies for fishing that negatively affect overfished stocks as well as those provided to any vessel engaged in IUU fishing activity. TPP participants would also be required to notify fisheries subsidies more generally.

While the TPP has since been signed, it is now facing a tough battle for ratification in the US Congress as well as in the legislatures of other participating nations. (See Bridges Weekly, [15 September 2016](#))

One source suggested that if TPP fails to secure the necessary support, efforts such as those envisaged in last week's joint fisheries subsidies statement could be a way of harvesting some of its gains.

TPP signatories include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, the United States, Vietnam, Singapore, and New Zealand. These [represent](#) approximately 36 percent of the global marine catch and include four of the top ten global producers.

ICTSD reporting.

PUBLIC HEALTH

UNSG High-Level Panel Releases Report on Improving Access to Medicines

A new report by a panel convened by the UN Secretary-General on improving access to medicines and health technologies has drawn significant interest in the week since it was released, along with questions about next steps in this field.

The [publication](#), known formally as "The High-Level Panel on Access to Medicines Report: Promoting Innovation and Access to Health Technologies," was formally released on 14 September, bringing to a close a nearly year-long process launched by UN Secretary-General Ban Ki-moon in [November 2015](#).

The report was commissioned as part of a broader recognition of the strong relationship between health and development, which is also referred to in the UN Sustainable Development Goals (SDGs) adopted in September 2015. The third SDG is focused specifically on good health and well-being, and outlines a series of related targets to meet this goal.

Addressing policy incoherence

The goal of the report was to attempt to reconcile "the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules, and public health in the context of health technologies," according to the panel's [terms of reference](#).

This same policy incoherence, the panel noted, has limited "access and the right to health" to a large portion of the world's population.

The publication elaborates on policy recommendations to improve access to medicines for communicable and non-communicable diseases, both in developed and developing countries. The analysis covers the interlinkages – and potential gaps or inconsistencies – in the relevant human rights, trade, intellectual property rights, and public health frameworks and policies.

Overarching messages

The report calls upon all stakeholders, especially governments, to take concrete steps aimed at filling the gap when the necessary market incentives are lacking. Specifically, the report suggests taking steps that would "delink" research and development (R&D) costs from prices, arguing that such actions are essential when trying to develop, for example, innovative approaches to emerging infectious diseases, such as the Ebola and Zika viruses.

"No one expected either virus to leave its endemic borders or spread so rapidly. Consequently, no vaccines were developed," the report says. In turn, the lack of prior funding for developing Ebola therapies and point-of-care diagnostics proved devastating when the disease outbreak was at its full force in 2014, with the virus ultimately killing over 11,000 people.

The report also calls for government action in fostering additional health-related investment, such as in medical R&D. This investment could be structured in a similar fashion to foreign aid commitments, where a percentage of national GDP is committed annually.

Another recommendation suggests requiring more transparency from the pharmaceutical industry. This could involve having manufacturers and distributors disclose their R&D costs, as well as those incurred in production, marketing, and distribution.

The report suggests taking advantage of the flexibilities offered by the TRIPS Agreement, as reinforced by the 2001 Doha Declaration. Article 27 of the [TRIPS Agreement](#), which deals with patentable subject matter, is also cited as a relevant consideration, given the importance of ensuring that patentability is only possible when innovation is indeed genuine.

The report also addresses another area of the TRIPS Agreement, specifically the terms regarding compulsory licenses under Article 31 of TRIPS. The panel states that some governments might not be currently exercising this right, in an attempt to avoid industry backlash.

Any government or industry action that is tantamount to undermining TRIPS-provided flexibilities must therefore be avoided, according to the panel. Ways to address this could include reporting any “undue political or commercial pressure” during one of the WTO's trade policy review exercises.

The report also addresses how intellectual property rights are dealt with in free trade agreements negotiated among countries – and warns against including “TRIPS-plus” provisions in such accords. “These provisions may impede access to health technologies, including those requiring governments to ease standards of patentability, drug regulatory authorities to link marketing approval to the absence of any claimed patent, and the requiring of test data exclusivity instead of test data protection, to list a few,” the report says.

The publication therefore stresses that any trade deal must avoid including terms that could hinder policies “that guarantee the right to health for all.”

According to Professor Frederick Abbott, member of the Expert Advisory Group that provided assistance to the High Level Panel, the report can be broken down in three key messages.

Firstly, Abbott told Bridges, “new models of innovation that do not rely on funding through high market prices of medicines are needed.” The second and third key points, he continued, involved how to tackle market distortions and some of the challenges in the current intellectual property framework.

“In order to address distortions in the market for medicines, all governments must maintain the flexibility to use the measures they find appropriate to overcome them, and should not bargain away or be forced to leave these flexibilities unused. Objection by a minority of HLP members regarding interpretation provides ongoing evidence that the TRIPS Agreement can and does remain an obstacle to addressing critical access to medicines issues,” he said in summarising these last two points.

Initial reactions

The much-anticipated release of the report drew swift reactions from media outlets and stakeholders alike, with some welcoming the report's efforts and objectives, while others raised questions as to its focus and scope.

On the industry side, some pharmaceutical companies have already expressed concerns over the focus of the report, with some representatives telling the [Financial Times](#) that the panel should have directed its work toward the lack of proper infrastructure. They cited examples such as the need for temperature-controlled vehicles and warehouses, which

could improve the storage and transport of medicines in order to guarantee effective distribution.

The US Chamber of Commerce issued its own [reactions](#) upon the report's release, similarly questioning the focus of the UN panel report. According to the US business federation, the publication did not cover the "real culprits that stand between patients and care" – specifically, tariffs and taxes levied on imported medicines, along with weak healthcare infrastructure that impedes effective distribution.

"The irony is that by singling out patents, this report has attacked the innovative systems that have actually produced thousands of cures and saved millions of lives," said the US Chamber of Commerce, warning that the report's recommendations could hurt the private sector's ability to develop ground-breaking new treatments.

Meanwhile, some civil society groups have argued that the report should have gone even further in its recommendations, rather than focusing so much on market failures. One suggestion raised by some NGOs would be to put forward some solutions that they say would be relatively quick to implement, such as automatic compulsory licensing on essential medicines.

"We applaud the Panel's most proactive recommendation, which calls for the negotiation of a binding international medical research and development convention that would increase and coordinate governments' investments in R&D and delink the costs of R&D from end prices," said Health GAP in a statement.

The group disagreed, however, with some of the other points in the report, such as the suggestion that TRIPS flexibilities provided a sufficient framework for resolving the access to medicines issue.

Nevertheless, many stakeholders have also acknowledged the report's relevance in bringing to the fore various sensitive issues – such as access to affordable medicines, transparency of R&D costs and prices, and public return on R&D commissioned by the public sector – and encouraging more discussion and action.

ICTSD reporting; "Poorer countries need rapid access to generic drugs, UN says," FINANCIAL TIMES, 14 September 2016.

EUROPEAN UNION

Leaders of "EU 27" Call for Unity, Confidence at Bratislava Summit

An informal meeting of the EU's 27 national leaders was held on Friday, 16 September in Bratislava, Slovakia, representing a crucial summit to map out the future of the bloc in the wake of the UK vote to leave.

The leaders had met informally once before on 29 June, immediately after the Brexit vote, to discuss the implications of the outcome and initiate the debate about what to prioritise ahead. (See Bridges Weekly, [30 June 2016](#))

Back in June, leaders [recognised](#) that the "outcome of the UK referendum created a new situation for the EU" and acknowledged the emergence of a popular sentiment across Europe characterised by "dissatisfaction with the current state of affairs."

Months later, the Bratislava summit was scheduled as an attempt to begin the process of "relaunch[ing] the European project," as French President François Hollande described it. Notably, this informal gathering did not include the UK, though the country's prime minister was briefed beforehand.

Questions of cohesion

At stake for the EU now, analysts and officials say, is the need to restore a sense of unity and stability in a climate of rising Euro-sceptic attitudes and growing support for populist political parties, for which upcoming elections in France and Germany in 2017 will serve as decisive indicators.

Going into last week's meeting, leaders had already made clear following discussions with European Council President Donald Tusk that they wished to discuss concerns over security, migration, and the bloc's economic future, as the EU continues to battle vestiges of the crippling financial crisis – including high unemployment, inequality, and public debt.

Tusk, who chaired last Friday's meeting, [expressed](#) afterward his "hope that the Bratislava Summit will lead to the renewing of trust and confidence in the European Union."

Along with focusing on the bloc as a whole, another challenge is balancing the individual needs of member states of varying economic weights and interests.

"Europe is a cord of many strands – it only works when we are all pulling in the same direction: EU institutions, national governments, and national Parliaments alike," said European Commission President Jean-Claude Juncker in his [State of the European Union](#) speech before the European Parliament on 14 September.

Indeed, how to balance national and regional priorities has been a long-standing issue for the bloc, including with the EU's relationship with London.

Prior to the UK referendum, former Prime Minister David Cameron was already taking steps to revise his country's relationship with Brussels, negotiating a series of reforms with fellow EU leaders aimed at assuaging the British public and dodging the "Brexit" blow. While that deal was abandoned following the 23 June referendum in the UK, the questions raised in the

process over the optimal level of European integration continue to persist. (See Bridges Weekly, [25 February 2016](#)).

Roadmap endorsed

During their meeting in the Slovak capital, leaders strived to define areas for cooperation across the EU in a bid for unity and confidence-building, resulting in the [Bratislava Declaration and Roadmap](#).

"In the aftermath of the wars and deep divisions on our continent, the EU secured peace, democracy, and enabled our countries to prosper," said the declaration, adding that their success in that regard is the dream of many other countries. "The EU is not perfect but it is the best instrument we have for addressing the new challenges that we are facing."

While the declaration highlights the various ways where the EU remains "indispensable" for its remaining members, the associated roadmap then proposes a set of concrete measures for action. Concerning security, the document called for increasing information exchanges between the security services of member states, as well as more stringent checks on those crossing the EU's external borders and the establishment of a Travel Information and Authorisation System.

Pledges have been issued to avoid returning to the chaotic and uncontrolled influx of migrants seen in 2015. Several member states have already committed to send support to Bulgaria's border with Turkey, with Juncker [promising](#) the delivery of 200 extra border guards and 50 additional vehicles on site by October.

Finally, the meeting explored options for economic and social development, in order to "create a promising economic future for all, safeguard our way of life, and provide better opportunities for youth."

This includes strengthening the single market and increasing investments, along with discussing at an upcoming Council meeting in October on "how to ensure a robust trade policy that reaps the benefits of open markets while taking into account concerns of citizens."

In his State of the European Union address, Juncker proposed doubling both the timespan and financial capacity of the European Fund for Strategic Investments, with the aim of providing upwards of €500 billion of investments by 2020. In addition, an Investment Plan for Africa and the Neighbourhood was launched as a complement to development aid and possibly address one of the causes of economic migration.

What's next?

Following the meeting in Bratislava, regular European Council meetings, which will include UK Prime Minister Theresa May, are planned for October and December this year in order to check in on progress and move forward with the initiatives begun at last week's meeting.

The leaders of the "EU 27" will reconvene informally in Valletta, Malta, in January 2017 and finally in March 2017, on the occasion of 60th anniversary of the Rome Treaties, to conclude the process of reflection started at the summit in Bratislava.

ICTSD reporting; "EU Bratislava summit: European Union ready to start Brexit negotiations immediately," ABC NEWS, 15 September 2016; "Paris and Berlin push for tighter defence co-operation," FINANCIAL TIMES, 12 September 2016.

EVENTS & RESOURCES

Events

Coming Soon

22-26 September, Washington, US. 15TH AGOA FORUM. This latest edition of the annual African Growth and Opportunity Act (AGOA) Forum will have as its theme "Maximizing US-Africa Trade and Investment: AGOA and Beyond." The meeting will include panel discussions, ministerial-level gatherings with labour and trade officials and industry representatives; a civil society forum; a ministerial breakfast on women and AGOA; and various related sessions. More information, including a draft agenda, can be found [here](#).

24 September – 5 October, Johannesburg, South Africa. CITES COP17. The 17th Conference of the Parties (COP17) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) will address a series of issues relating to wildlife trade, including the closure of domestic markets for elephant ivory and how to deal with ivory stockpiles, among various others. A provisional agenda along with working documents for the meeting can be found [here](#).

26 September, Manila, Philippines. CURRENT ECONOMIC ISSUES IN ASIA. This policy dialogue is being hosted by the Asian Development Bank Institute (ADBI) and will focus on how economies in the region are responding to developments in the monetary environment, including the ramifications on income inequality. The meeting's attendees are expected to include government officials from Asian developing economies, as well as ADBI Advisory Council members. More information can be found at the event [website](#).

26-27 September, Geneva, Switzerland. ADVANCED SEMINAR ON THE PATENT COOPERATION TREATY. This two-day seminar is being hosted by the World Intellectual Property Organization (WIPO) and is designed for patent administrators and other users of the Patent Cooperation Treaty (PCT) System, examining issues such as best practices in filing applications to the system; online filing; recent and expected developments in the field; and more. Additional information is available [here](#).

26-30 September, Rome, Italy. FAO COMMITTEE ON AGRICULTURE, 25TH SESSION. The UN Food and Agriculture Organization (FAO) will focus this session of the Committee on Agriculture on 14 "priority themes," including the agency's climate strategy, implementing the 2030 Agenda for Sustainable Development and related Sustainable Development Goals (SDGs), and various other topics. The full agenda for the meeting is available [here](#).

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](#).

27 September – 7 October, Montreal, Canada. 39TH SESSION OF THE ICAO ASSEMBLY. The International Civil Aviation Organization (ICAO), which is the UN body tasked with issues relating to civil aviation, will be holding its triennial assembly to review the organisation's work programme across a range of fields. One of the key issues on the meeting agenda is a possible global market-based mechanism on tackling emissions from the sector. To learn more, click [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](#).

28-29 September, Washington, US. 2016 WITA-GWU INTENSIVE TRADE SEMINAR. This seminar is being organised jointly by the Washington International Trade Association (WITA) and George Washington University (GWU) and will feature a series of panels and presentations relating to how trade policy is developed and pursued in Washington. Topics for discussion include dispute settlement, trade agreements, and how different branches of government are involved in the policy process, among others. More information is available [here](#).

29 September, Brussels, Belgium. EUROPE LEADING ON SOLAR ENERGY: CELEBRATING 100 GW OF SOLARPOWER. SolarPower Europe is holding this event to mark Europe's recent solar milestone: the installation of 100 gigawatts of grid-connected photovoltaic power. The event aims to show the advances made in the solar sector across the 28-nation bloc in recent years. To learn more, visit SolarPower Europe's [website](#).

WTO Events

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

26 September: Dispute Settlement Body

26 September: Informal Committee of Participants on the Expansion of Trade in Information Technology Products

26 September: Dispute Settlement Body – Dedicated Session

26 September: Informal Committee on Market Access

27-29 September: WTO Public Forum

27-28 September: Committee on Regional Trade Agreements

28 + 30 September: Trade Policy Review Body – Russian Federation

Other Upcoming Events

8-14 October, Kigali, Rwanda. 28TH MEETING OF THE PARTIES TO THE MONTREAL PROTOCOL. This meeting of the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer will examine a series of topics related to the implementation of the international treaty, including the possible adoption of an amendment on phasing down the use of hydrofluorocarbons (HFCs). Additional information, including pre-session documents, can be found [here](#).

11 October, Brussels, Belgium. POLICY ROADMAP FOR IMPLEMENTING CONSUMPTION-BASED CLIMATE POLICIES. This event marks the final workshop of the Carbon-CAP Project, a three-year endeavour which has sought to examine ways that EU policy may facilitate a move toward reduced carbon consumption patterns. The project's participants include

academics, private sector and government representatives, and consumer groups. The International Centre for Trade and Sustainable Development (ICTSD), the publisher of Bridges, is part of the Carbon-CAP's project team. More information is available [here](#).

18 October, Accra, Ghana. ACHIEVING A NUTRITION REVOLUTION: THE ROAD TO HEALTHIER DIETS AND OPTIMAL NUTRITION. This conference is being organised by the International Food Policy Research Institute (IFPRI) and the African Union Commission (AUC) to examine the progress made to date in implementing the Comprehensive Africa Agriculture Development Programme (CAADP), a continental policy framework focused on agriculture, food security, and nutrition. Expected participants include private sector and government representatives, academics, and civil society and farmer groups, among others. More information is available [here](#).

25-27 October, Dubai, United Arab Emirates. 2016 UNEP FI GLOBAL ROUNDTABLE AND ANNUAL GENERAL MEETING. The UN Environment Programme's (UNEP) Finance Initiative (FI) will aim to use this year's global roundtable to follow up on the advances seen as a result of the adoption of the Sustainable Development Goals (SDGs) and the Paris Agreement on climate change, and examine on how the finance sector can help drive sustainable development. The meeting is being hosted by the Ministry of Climate Change and Environment of the United Arab Emirates with support from the UAE Central Bank. More information can be found [here](#).

7-18 November, Marrakech, Morocco. UNFCCC COP22. The 22nd Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) will focus on preparations aimed at bringing the Paris Agreement on climate change into force. The UN negotiations are being held this year under the presidency of Morocco, and will be the first under new UNFCCC Executive Secretary Patricia Espinosa. To learn more, visit the COP22 [website](#).

Resources

INDUSTRIAL POLICY AND THE WTO RULES-BASED SYSTEM. By Harsha V. Singh and Rashmi Jose for the E15 Initiative (September 2016). This paper was prepared under the E15 Initiative, implemented jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum. The authors provide a comprehensive review of new industrial policies and the WTO's legal framework, examining then what policy space remains for countries. Along with their analysis, the authors then provide a series of recommendations for policymakers going forward. The publication is available [here](#).

ASSESSING TRADE AGENDAS IN THE US PRESIDENTIAL CAMPAIGN. By Marcus Noland, Gary Clyde Hufbauer, Tyler Moran, and Sherman Robinson for the Peterson Institute for International Economics (September 2016). This new briefing provides an analysis of the trade policies being promoted by the Republican and Democratic Party presidential candidates in this current election cycle. The authors' analysis was conducted both at empirical and legal levels. The publication is available [here](#).

GLOBAL ACTION MENU FOR INVESTMENT FACILITATION: VOLUME 4. Published by the UN Conference on Trade and Development (UNCTAD) (September 2016). This latest update of the Global Action Menu includes stakeholder feedback and other key inputs received during UNCTAD XIV and the World Investment Forum earlier this year. The authors consider, in particular, how facilitating investment could have benefits for advancing sustainable development objectives. The publication is available [here](#).

INVESTMENT DISPUTE SETTLEMENT NAVIGATOR (UPDATED). Published by the UN Conference on Trade and Development (UNCTAD) (September 2016). This latest set up updates of UNCTAD's navigator includes information up to August 2016, examining both the number and type of investor claims raised under international agreements. The navigator data suggests that the total number of publicly known arbitrations by investors against host countries has reached 739 cases. The resource can be accessed [here](#).

INCENTIVISING PULSES PRODUCTION THROUGH MINIMUM SUPPORT PRICE (MSP) AND RELATED POLICIES. Prepared by Arvind Subramanian, Chief Economic Advisor, Ministry of Finance, Government of India (September 2016). The following paper is the report of a committee, headed by Subramanian, to examine ways that minimum support prices can support the cultivation of pulses, which are part of the legume family. The publication is available [here](#).

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