

# BRIDGES WEEKLY

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## ASIA-PACIFIC

# Trade, Economic Ties in Focus as US, ASEAN Leaders Meet

Regional trade and economic ties were high on the agenda during a two-day summit of US and Southeast Asian leaders in the California resort of Sunnylands, held from 15-16 February.

The high-level meeting, which brought together US President Barack Obama and the leaders of the Association of Southeast Asian Nations (ASEAN), comes in the final year of the Obama presidency, during which time the American leader is expected to make a concerted push to fulfil his remaining legislative and foreign policy priorities, including with trade.

Deeper ties with the Asia-Pacific region, including with ASEAN, have long been an objective of the Obama Administration. The 10 members of ASEAN established an [Economic Community](#) late last year, releasing a [blueprint](#) through 2025 that includes developing a "highly integrated and cohesive economy," with various trade-related elements in this strategy.

Together, ASEAN members have a combined GDP of US\$2.4 trillion, according to [White House statistics](#), making up the world's seventh-largest economy. When counted jointly, the group's members make up the United States' fourth-largest trading partner, with goods trade hitting US\$225 billion last year.

Notably, the Sunnylands meeting marked the first such summit hosted by the US, and was co-chaired by Obama and Laotian President Choummaly Sayasone. The US already participates in the East Asia Summit, having joined the annual gathering for the first time in 2011.

"As President, I've insisted that even as the United States confronts urgent threats around the world, our foreign policy also has to seize on new opportunities," said Obama in his opening remarks on Monday. "Few regions present more opportunity to the 21<sup>st</sup> century than the Asia Pacific."

### TPP expansion?

Four of ASEAN's members are part of the Trans-Pacific Partnership (TPP) Agreement, a sweeping 12-country deal that was signed in Auckland, New Zealand, earlier this month. Those four countries are Brunei, Malaysia, Singapore, and Vietnam. (See Bridges Weekly, [11 February 2016](#))

That agreement, which also includes among its signatories the US, Australia, Canada, Chile, Japan, Mexico, New Zealand, and Peru, has 30 chapters that cover a host of both traditional and "new" trade topics, ranging from state-owned enterprises to telecommunications and electronic commerce. The signatory countries together make up 40 percent of global GDP.

Trade ministers from these 12 countries said in Auckland that they would be turning their attention to finalising their domestic procedures for bringing TPP into force, even as one signatory – Canada – has not yet confirmed its endorsement of the deal, given its recent change in government. (See Bridges Weekly, [11 February 2016](#))

The formal [Sunnylands Declaration](#) did not feature an explicit mention of the TPP, referring instead to "the importance of shared prosperity, sustainable, inclusive economic growth and development."

Leaders also noted the "mutual recognition of the importance of pursuing policies that lead to dynamic, open, and competitive economies that foster economic growth, job creation, innovation, entrepreneurship and connectivity, and that support SMEs and narrow the development gap."

However, given the stated interest of TPP signatories to bring in new members, particularly from the Asia-Pacific region, Obama announced on Tuesday that the US will be taking concrete steps to help inform ASEAN countries on what the trade pact entails and what would be required to join.

"The Trans-Pacific Partnership – which includes four ASEAN members – can advance economic integration across ASEAN and set strong rules for trade throughout the Asia-Pacific," he said at the [joint press](#) conference following the summit.

Indeed, some of the non-TPP ASEAN economies – such as Indonesia, Thailand, and the Philippines – have already expressed interest in the past to potentially join the agreement.

### RCEP in parallel

Concurrently, all ten ASEAN economies are taking part in a separate regional trade negotiation, known as the Regional Comprehensive Economic Partnership (RCEP), a 16-country process that also includes Australia, China, India, Japan, South Korea, and New Zealand.

Effectively, this means that seven countries – Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam – are involved in both the TPP and RCEP.

Given this membership overlap, and the fact that the US is part of the TPP while China is in RCEP, the two initiatives have sparked questions as to whether they can successfully co-exist and even complement one another as part of a long-term effort to develop a Free Trade Area of the Asia-Pacific – or whether they will instead be in conflict, both jockeying for influence in the region.

[In a speech](#) on Tuesday in California, US Trade Representative Michael Froman listed RCEP among various other regional initiatives currently in the pipeline by different trading partners, adding that "this is not a zero-sum competition."

"All of these arrangements can co-exist, but it is very much in the interest of the United States and other countries that share our interests and our values that we continue to engage, take the field, and lead a race to the top," said the US trade chief, who also attended the Sunnylands summit.

RCEP members are currently in the middle of holding their eleventh negotiating round in Brunei, running from 15-19 February. Reports indicate that the meeting is slated to discuss both their tariff offers for goods, as well as the negotiations relating to services and investment.

The RCEP talks were launched in 2012, with the formal negotiations beginning the following year. The news came following that year's East Asia Summit, with leaders pledging to reach a "modern, comprehensive, high-quality, and mutually beneficial economic partnership agreement establishing an open trade and investment environment in the region." (See Bridges Weekly, [21 November 2012](#))

At the time, they said that they hoped to conclude the RCEP talks by the end of 2015, a deadline that was ultimately missed. The 16 participants are now reportedly aiming to clinch a deal by the end of this year.

ICTSD reporting; "India, RCEP members to discuss trade pact in Brunei starting February 15," BUSINESS STANDARD, 11 February 2016; "Obama, Southeast Asia leaders eye China and trade at California summit," REUTERS, 16 February 2016; "Obama, ASEAN discuss South China Sea tensions, but no joint mention of China," REUTERS, 16 February 2016.

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## TRADE REMEDIES

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# EU Launches Anti-Dumping Probes into Chinese Steel Products

The European Commission has [launched investigations](#) into whether various types of Chinese-made steel are being sold at prices below their normal value – a practice known as “dumping” – on the European market.

The probe, announced on Friday 12 February, comes after months of growing tension as steelmakers in various EU member states – such as the UK, France, and Germany – claim that unfairly low-priced imports from the Asian giant are making it increasingly difficult to compete. Government ministers from key steel-producing member states have similarly warned in recent weeks that the sector could soon face “collapse.”

“We cannot allow unfair competition from artificially cheap imports to threaten our industry,” said EU Trade Commissioner Cecilia Malmström in [announcing](#) the probes last week.

“I am determined to use all means possible to ensure that our trading partners play by the rules. We have so far put in place trade defence measures for more than 30 types of steel products, and we will continue to effectively address legitimate concerns of our industry,” the EU trade chief continued.

Chinese officials, for their part, issued a statement expressing concern over the investigation. “China hopes that the European Commission will strictly abide by WTO rules, demonstrate prudence and restraint, and use trade remedy tools according to law,” [said an official](#) from the Ministry of Commerce’s (MOFCOM) trade remedy investigations bureau, according to an informal translation of their remarks.

The Chinese government agency called for dialogue and cooperation on the matter, while noting that overcapacity is a problem affecting the steel industry at a global scale.

The goods specifically at issue in the probes are seamless pipes, heavy plates, and hot-rolled flat steel, respectively. Two of the investigations – those into [hot-rolled flat steel](#) and into [heavy plates](#) – came following complaints filed in early January by The European Steel Association, otherwise known as EUROFER.

In the case of the former, the investigation has been launched due to a “threat of injury,” rather than as a result of evidence suggesting that industry has already suffered from these practices.

“This is an early preventive action which is in itself an exceptional step in trade defence proceedings. The European Commission decided to activate this instrument since the complaint presented by the industry contained sufficient evidence to meet the legal demands,” said the EU executive.

Meanwhile, the probe into [seamless pipes](#) was in response to a complaint from the Defence Committee of the EU’s seamless steel tubes industry, representing companies that make up over a quarter of the 28-nation bloc’s production of such goods.

All three probes are due to conclude within 15 months – in other words, in mid-2017.

### **Provisional duties on Chinese, Russian steel**

While Chinese exporting producers are being investigated for all three products, the European Commission is also examining whether cold-rolled flat steel from China and Russia is being sold below normal value, and began [imposing provisional duties](#) on the good last week.

Cold-rolled flat steel is primarily used in manufacturing, for instance in automobile production, construction, and packaging.

Chinese-made cold-rolled steel is set to face duties between 13.8 and 16 percent, while Russian exporting producers will be charged duties of 19.8 to 26.2 percent, the European Commission said. The investigation into these goods was launched in May 2015.

"A causal link was provisionally established between the injury suffered by the Union producers and the dumped imports from the countries concerned," said EU investigating authorities in the notice announcing the steel duties.

They noted also that they had concluded, at this point in the probe, that EU industry has suffered "material injury" as a result of the allegedly dumped imports, and that imposing duties would be in the best interest of European producers – which are spread out across 17 member states and employ over 20,000 people.

While EUROFER welcomed in principle the provisional duties, [it claimed](#) that those levied on Chinese producers were "extremely low" – and that these may therefore not be enough to slow down the influx of cold-rolled flat steel from the Asian economy.

### **Public consultation on EU anti-dumping legislation**

The news of the new anti-dumping probe comes as the EU continues reviewing whether to start classifying China as a non-market economy for its trade remedy investigations, with the decision expected in the second half of this year.

When China joined the WTO in December 2001, the terms of its accession protocol featured provisions on how to address price comparability when determining subsidies and dumping.

Outlined in Section 15 of the document, this part of the protocol allows for WTO members to treat China as a non-market economy in anti-dumping and countervailing duty probes; however, certain elements of that section are set to expire in December 2016, when Beijing marks its 15-year anniversary as a member of the global trade body.

The impending deadline is expected to prompt a major debate among WTO members, particularly those that frequently conduct trade investigations into Chinese exporting producers, over whether this then means that Beijing will be granted market economy status automatically.

On the EU side, its [legislation](#) describes how to treat non-market economy imports, specifically in determining normal value through the use of an analogue third country, unless producers can make "properly substantiated claims" that market economy conditions exist in their case.

Should Brussels deem that Beijing does qualify as a market economy, analysts say that the results could have significant ramifications for trade remedy probes. Given what may be at stake, the European Commission opened a public online consultation last week on the subject, which the EU executive plans to follow with a stakeholder conference next month on what consequences a change may have, in both social and economic terms.

In its preface to the public consultation questionnaire, the Commission notes that once the relevant provisions of China's WTO accession protocol expires, the EU will be left with three options: leaving current laws unchanged; revising the bloc's anti-dumping methodology, but not implement any "additional measures"; or to make changes to both the anti-dumping methodology as well as implement a series of new measures that could potentially mitigate any adverse impacts.

"This open public consultation will help the Commission identify the main concerns of stakeholders with regard to the economic consequences of the different policy options and find the most effective ways to lessen any negative impact," the document read.

The 15-page questionnaire is divided into three sections, specifically on the respondent's professional background, geographic location, and other related information; views on trade defence instruments and a potential legislative change; and feedback on the possible "additional measures" referred to above.

Meanwhile, various EU industry groups have already spoken out against treating China as a market economy in trade defence investigations, including EUROFER and EU ProSun. The latter group has been the proponent of trade remedy investigations into allegedly unfair trade practices by China in the solar sector. (For more on solar, see related story, this edition)

"If China were to be granted Market Economy Status (MES) by the EU, this would further undermine the effectiveness of the EU's Trade Defence Instruments. Thousands of steel workers and their employers are accordingly marching on Brussels on Monday 15 February to call for fair trade and to put off the granting of MES to China until the country meets the EU's criteria to be considered a market economy," [said](#) Axel Eggert, Director General of EUROFER.

Milan Nitzschke, President of EU ProSun, has similarly argued that China still does not qualify as a market economy.

"Following its Five-Year Plans, the Chinese Government subsidises massive production overcapacities, finances dumping and shuts imports out of its own domestic market," [said](#) Nitzschke, arguing that these practices make it impossible for European companies of all sizes to compete successfully without the full support of EU trade defence instruments.

ICTSD reporting; "UPDATE 2-EU hits Chinese steel with duties as industry demands action," REUTERS, 12 February 2016; "Thousands protest Chinese steel dumping, urge EU to act," EU OBSERVER, 15 February 2016; "EU governments call on Brussels to tackle China over steel," FINANCIAL TIMES, 6 February 2016.

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## WORLD TRADE ORGANIZATION

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# WTO Members Eye New Negotiating Landscape

The head of the WTO told ambassadors last week that they need to "acknowledge their differences," during the first informal meeting of top Geneva-based negotiators since the global trade body's ministerial conference last December.

"The fact is that members don't see eye-to-eye on some issues – and this is not likely to change in the short term," WTO Director-General Roberto Azevêdo [told](#) officials.

The Director-General said that ministers had nonetheless delivered some "specific guidance" on trade talks when they met in the Kenyan capital of Nairobi two months ago.

For the first time since the Doha Round of trade talks was launched in 2001, ministers agreed to disagree on whether to reaffirm the negotiating mandate – with the US particularly adamant that a different approach is needed if negotiations are to deliver a successful outcome. (See Bridges Daily Update, [19 December 2015](#))

At the same time, the Nairobi ministerial declaration [reaffirmed](#) the strong commitment of "all members to advance negotiations on the remaining Doha issues" – including the domestic support, market access, and export competition components of agriculture, as well as manufactured goods, services, development, intellectual property, and rules.

Trade negotiators acknowledged that they were still struggling to find their bearings in this new negotiating landscape.

"I don't have a sense of where we are," said one official, in comments to Bridges.

Meetings of the full WTO membership on the overall Doha negotiations have in the past been held under the Trade Negotiations Committee, or TNC. The fact that the 10 February meeting was called at the level of informal heads of delegation – and was not clearly dubbed a TNC – was remarked upon by some trade watchers as an indicator of the uncertainty surrounding the negotiating landscape.

### **An inclusive process?**

Trade sources said that several officials at last week's meeting had expressed disappointment that the negotiating process in Nairobi was not more inclusive.

Negotiators told Bridges that African countries in particular felt that the final stage of talks had been dominated by five major trading powers – Brazil, China, India, the EU, and the US.

But governments also needed to become better at closing gaps in the negotiations before ministers became involved, one African official said.

"If you realise it's very difficult, brief your minister," the source said.

Another negotiator said that the importance in world trade of the five major players meant that it was inevitable that their agreement was needed before any deal could be clinched.

### **Farm trade talks: four interconnecting circles**

In a related development, the chair of the WTO's farm trade talks told officials that he had begun consulting governments on possible ways forward.

Speaking at a meeting for around a dozen coordinators of negotiating groups and coalitions last week, Vangelis Vitalis – the New Zealand ambassador chairing the negotiations – said he will structure his consultations around four interrelated areas.

The first of these areas responded to clear instructions in two of the Nairobi ministerial decisions. These mandate further talks on a new "special safeguard mechanism" that developing countries would be able to use to raise tariffs temporarily in order to protect domestic producers from sudden import surges or price depressions. They also instruct negotiators to agree on a "permanent solution" to the problems that some developing countries face under WTO farm subsidy rules when buying food at government-set prices as part of their public stockholding programmes for food security purposes.

As the ministerial declaration also specifically instructs negotiators to move ahead on the remaining Doha farm trade issues, Vitalis also plans consultations on domestic support, market access, and export competition, sources said.

A third area of attention is the continuation of the reform process initiated under the Uruguay Round. Article 20 of the organisation's Agreement on Agriculture commits members to continue talks in this area.

Finally, Vitalis was expected to look into other "new issues" that some countries have said they want to address. The Nairobi declaration says that while some of the organisation's members wish to identify and discuss these issues, others do not, and that any decision to launch multilateral talks on these topics will require the sign-off of the full membership.

Brazil was among those countries interested in looking into these issues, sources said, having recently expressed concern about the impact on trade of sanitary and phytosanitary requirements, which are those that affect food safety and plant and animal health.

### **Prioritising domestic support?**

Sources told Bridges that unresolved issues on agricultural domestic support and market access were likely to remain high on the WTO agenda. Meanwhile, the progress at Nairobi on export competition could mean that this topic receives less attention in the months ahead.

Some negotiators suggested that an outcome on domestic support should be a target for the organisation's next ministerial conference, scheduled to be held in late 2017.

But others remained sceptical about how feasible this might be, with a number of officials suggesting that the US presidential elections in November 2016 could limit how much progress could be achieved in the short term.

"It's very hard to move forward this year," one source told Bridges.

Negotiators said that the US remains unlikely to accept any cap on its own farm subsidies unless China did so too, while Beijing has been unwilling to accept more onerous commitments than those outlined in the 2008 draft Doha deal.

Domestic policy reforms could see China and India reshape their own support schemes more closely around the type of crop and revenue insurance model adopted in 2014 by the US under the latest Farm Bill. (See Bridges Weekly, [21 January 2016](#) and [4 February 2016](#)).



### **A rich dialogue**

Despite the continued uncertainty, negotiators told Bridges that they were hopeful the organisation's members could chart a path ahead.

"Most of the members are looking for a pragmatic way to move forward," an official from one large developing country said.

The WTO's General Council – the highest decision-making body outside of the ministerial conference – is set to hold its first meeting of the year on 24-25 February. Furthermore, Vitalis is reported to have already scheduled an informal meeting for all WTO members on 8 March, back-to-back with the regular meeting of the trade body's committee on agriculture.

Azevêdo told last week's meeting that "a rich dialogue" was needed in months ahead about how the organisation can best move forward.

"Faced with this situation, the worst thing we could do would be to allow these differences to seize-up WTO negotiations — and push activity towards other forums," he said.

A proliferation of regional and bilateral deals has already seen major trading powers increasingly push for market opening and regulatory coherence in talks outside the multilateral system.

However, the conclusion of the Nairobi package has raised some negotiators' hopes for further progress in the WTO.

"We managed to have 'a something'," one African negotiator observed.

ICTSD reporting.

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## DISPUTES

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# NAFTA Wind Energy Dispute Ramps Up

The three-year dispute between the US-based Windstream Energy company and the Canadian government ramped up this week, as representatives from both sides gathered in Toronto to make their case before an investor-state arbitration tribunal under the North American Free Trade Agreement (NAFTA).

The case concerns a moratorium imposed in 2011 by the Canadian province of Ontario on offshore wind energy generation projects, and the subsequent consequences for Windstream and the company's alleged investment in Ontario, including its freshwater offshore wind farm project under an earlier signed power purchase agreement with the Ontario Power Authority (OPA).

The dispute started in October 2012 with a Notice of Intent filed by Windstream, followed by a Notice of Arbitration in January 2013. Windstream claimed that the Government of Ontario acted in an expropriatory, arbitrary, and discriminatory manner when it deferred offshore wind development, resulting in between US\$357.5 to US\$568.5 million, without interest, in damages.

Following an exchange of pleadings, the hearing is scheduled to last for two weeks so that the tribunal can hear issues relating to jurisdictions, merits, and damages.

### Feed-in tariff programme

Since 2003, the Government of Ontario has undertaken several initiatives to spur the creation of new electricity supply and capacity, including the potential use of alternative and renewable electricity sources, such as solar, wind, biomass, biogas, and hydro-electric.

Part of this effort included establishing the Ontario Power Authority under the 2004 Electricity Restructuring Act, for the "procurement of electricity supply and capacity."

In 2009, as part of Canada's largest renewable electricity initiative, the Ontario government directed the OPA to develop a feed-in-tariff (FIT) programme, a renewable energy procurement scheme with standardised rules, contract prices designed to reflect energy generation costs, and economic incentives for renewable energy producers.

That same year, Windstream through its Canadian subsidiary, Windstream Wolfe Island Shoals (WWIS), applied to build a 300-megawatt, 130-turbine offshore wind project in Lake Ontario, off Wolfe Island, near Kingston. The company signed the FIT contract with the OPA in August 2010, agreeing on fixed-pricing for power generated over a 20-year period so long as the WWIS brought the project into commercial operation by May 2015.

The standard FIT contract contains a "force majeure" clause that can excuse the electricity supplier from performing contractual obligations, including on time frames, because of factors outside their control. The clause also allows the supplier to terminate the contract after certain period of "force majeure" status. FIT contract holders must include a minimum level of domestically-sourced content when building their projects.

Citing public concerns and scientific uncertainties about the health, safety, and environmental effects of offshore wind projects, the Ontario government decided in February 2011 to defer offshore wind development to conduct further scientific research

and establish an “adequately informed policy framework.” The WWIS project has been on hold ever since.

Following this deferral, the OPA entered into negotiations with Windstream on issues involving the FIT contract’s status, the project’s progress, and the OPA’s right to terminate the contract given the delay.

### **NAFTA obligations**

The 22-year old NAFTA trade and investment pact between the US, Canada, and Mexico sets out under its investment chapter, Chapter 11, a framework of rules and disciplines that aim to provide investors from participating countries with a predictable, rules-based investment climate.

The chapter also outlines how dispute settlement procedures should work between investors and a NAFTA party government.

At the outset, in responding to Windstream’s NAFTA claims, Canada argued that the challenged investment measures – the deferral, along with the failure to lift it in time for Windstream to meet its FIT contract timelines, and failure to insulate Windstream from the deferral’s effects – are those of the Government of Ontario, not the OPA. Canada therefore claims that it is irrelevant for the Tribunal to consider whether the OPA’s actions can be attributed to Ottawa for the purposes of Chapter 11.

Moreover, Canada pointed out that the OPA is a state enterprise and was not acting in the exercise of delegated governmental authority, nor has Windstream successfully proven otherwise. According to Ottawa, the tribunal should reject the Windstream arguments regarding the attribution of the OPA’s actions to Canada, meaning that these actions would essentially lie outside the arbitration tribunal’s jurisdiction.

Regarding Windstream’s allegation under NAFTA’s most-favoured nation (MFN) and national treatment provisions, Canada challenged whether these apply, arguing that the investment measures involve procurement exempted by the trilateral pact.

The NAFTA investment chapter requires treatment no less favourable to investors/investments of another party relative to a domestic counterpart, in like circumstances, both when establishing an investment and afterward. Chapter 11 also requires such treatment for investors/investments of another NAFTA party relative to a counterpart from any other country.

The chapter also outlines reservations and exceptions to these obligations, one of which exempts the NAFTA party’s non-discrimination obligations for procurement by a party or a state enterprise.

Windstream cited Ontario’s treatment of TransCanada – a Canadian energy infrastructure company, who had a gas generation plant project in contract with the OPA, which was later cancelled by Ontario – that kept the latter whole and gave it a new contract, a new project and reimbursed its costs, claiming that the provincial government chose two drastically different solutions to identical problems, while Windstream received no compensation.

Canada claims that Windstream inappropriately compared the treatment accorded in its case after the offshore wind project’s deferral to that accorded to TransCanada. According to Ottawa, TransCanada is not an investor in “like circumstances,” as it did not participate in the FIT programme, and operated a gas-fired plant under a regulatory regime that was different to that applicable to renewable energy projects.

Windstream also claimed that Canada violated its NAFTA obligation by expropriating its investments, with the moratorium rendering worthless the company’s investments in the

offshore wind project, the WWIS, and the FIT contract. In response, Canada claimed that the FIT contract's revenue stream is not an investment capable of being expropriated, and that the decision to defer offshore wind development was a non-discriminatory measure of general application, taken to meet a legitimate public welfare objective and therefore not an expropriation.

Windstream also argued that Canada failed to give its investments "fair and equitable treatment" – a charge which Ottawa disagreed with, arguing that in particular the energy company failed to prove that customary international law protects against treatment breaching the investor's legitimate expectations, is "arbitrary or grossly unfair," or is "discriminatory."

Canada also argued that Windstream was well aware that the regulatory framework for the approval of offshore wind projects was unfinished when it signed the FIT contract; therefore, the alleged expectations at the time that the company could process through the regulatory framework for offshore wind was baseless. For Canada, Windstream alone bore the project's development risks.

Canada also requested the tribunal to deny the Windstream's claim of damages, arguing that the company did not suffer losses, as the project has no material value on the marketplace.

### **WTO history**

The NAFTA case is not the first time that elements of Ontario's renewable energy initiatives have fallen under international legal scrutiny, with the FIT scheme also the subject of high-profile WTO cases lodged by the EU and Japan five years ago.

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

In reaching these findings, the Appellate Body considered whether the FIT measures constitute government procurement activities purchasing the domestic product in a competitive relationship with the foreign product, and might therefore be exempted from GATT national treatment obligations. Ultimately, the WTO judges deemed that the exemption was not applicable, given that the government was procuring electricity, but discriminating against electricity generation equipment due to origin.

Regarding subsidies, the Appellate Body upheld a previous panel's finding that the government made a financial contribution to electricity suppliers in the FIT programme through "purchase of goods" – specifically by the combined actions of the OPA and two other public bodies, demonstrating that the Ontario government purchases electricity.

The Appellate Body however was not able to complete the analysis as to whether the FIT programme and related contracts confer a benefit within the meaning of Article 1.1(b) of the Subsidies and Countervailing Measures (SCM) Agreement and whether the measure constituted subsidies that are provided contingent upon the use of domestic over imported goods, which are prohibited under WTO subsidy rules.

The following year, Canada declared that it had complied with the rulings and recommendations by removing the domestic content requirements for large renewable electricity procurements and significantly lowering the domestic content requirements for small and micro-FIT wind and solar energy procurement.

ICTSD reporting.

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## FISHERIES

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# US to Ratify Port State Measures Agreement, Proposes Fish Traceability Rule

On 10 February, US President Barack Obama [approved](#) the ratification of the [Port State Measures Agreement](#) (PSMA), a key international accord designed to prevent catch from illegal, unreported or unregulated (IUU) fishing from being landed and entering national and global markets.

Illegal and unreported fishing is [estimated](#) to be worth between US\$10 billion and US\$23.5 billion every year. By ratifying and implementing the PSMA, governments aim to gradually reduce the number of "ports of convenience" available for illegal fishers to bring their catch to market, increasing the costs of illegal activity and making it less profitable.

The US action will bring the number of [Parties](#) to the agreement to 20, with 25 required for its entry into force. The accord was [adopted](#) by the UN Food and Agriculture Organization (FAO) Conference in late 2009.

The Port State Measures Agreement requires port authorities to restrict access to ports for foreign vessels that have engaged in IUU fishing, such as those that are listed as IUU vessels by Regional Fisheries Management Authorities.

These authorities will also be required to inspect foreign fishing vessels for illegal catch once they are in port. Because non-US-flagged fishing vessels are already prohibited from landing catch at most US ports, the direct impact of Washington's ratification, [according to authorities](#), will likely be to prevent IUU-listed transport and support vessels from entering US ports.

The move is one of a series of steps set out last year in an [action plan](#) of a US Presidential Task Force on Combating IUU Fishing and Seafood Fraud, designed to prevent IUU catch from accessing the world's third largest market for fish products. (See Bridges Weekly, [19 March 2015](#))

### Fish traceability rule proposal

Earlier this month, US authorities published a proposed [rule](#) establishing the basis of a traceability requirement for fish and fish product imports into the North American country.

Released on 4 February by the National Oceanic and Atmospheric Administration (NOAA), the proposed rule would require harvest, landing, and chain of custody information to be provided for species at risk of IUU fishing. The proposal is now open for public comment through early April.

"This proposed rule is a critical first step in our efforts to create a comprehensive traceability programme designed to prevent products from illegal and fraudulent fishing entering US commerce," [said](#) Catherine Novelli, under secretary of state for economic growth, energy, and the environment.

"Starting with our discrete list of priority seafood species, we will create an effective programme to protect against practices that undermine the sustainability of our shared ocean resources," she added.

A distinct EU fishery product catch certificate and sanctions [scheme](#) to combat IUU fishing has been in place since 2010.

While the two systems appear to have very different designs, comments invited on the proposed US rule specifically include “how some of the elements inherent in the EU’s IUU regulations may be adapted to this rule as a means of facilitating compliance and reducing burden for exporters, either through the design of the traceability process itself or as part of a trusted trader programme.”

ICTSD reporting.

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## RENEWABLE ENERGY

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# EU Commission Extends China Solar Duties to Taiwan, Malaysia

The European Commission confirmed this week that it would be attempting to tackle "circumvention" by some Chinese solar producers of existing anti-dumping and countervailing duties, specifically by imposing duties on solar modules and cells being imported into the 28-nation bloc from Taiwan and Malaysia.

According to the EU executive, the measures were necessary to address so-called transshipment of Chinese-made solar modules and cells via Taiwan and Malaysia, which Brussels claims was an attempt to evade anti-dumping and countervailing duties. Those Taiwanese and Malaysian companies that are indeed "genuine" producers will not, however, face these fees.

Anti-dumping duties aim to tackle instances where products are sold abroad at prices below their normal value – a practice known in trade jargon as "dumping." Countervailing duties serve a different purpose, namely to address instances where an exporting producer is receiving unfair state aid.

### Reviewing 2013 deal

The duties at issue were imposed in 2013, following a heated row between Brussels and Beijing on solar energy trade that escalated sharply upon the news that the Commission had found evidence of Chinese solar panels and their components being "dumped" on the European market. (See Bridges Weekly, [6 June 2013](#))

At the time, the EU was importing €21 billion annually in these products from China, while facing significant difficulties in protecting its domestic solar industry and the 25,000 jobs it claimed were being affected by lower-priced imports.

The two sides ultimately reached a "price undertaking" agreement that same year with various Chinese exporters of solar cells and panels, exempting participating companies from otherwise paying hefty anti-dumping and countervailing duties. In turn, those companies agreed to sell these products abroad at prices above a set threshold. (See Bridges Weekly, [5 September 2013](#))

While the price undertaking deal was hailed at the time for improving relations between two major trading partners, particularly at a time when both were trying to build their respective renewable energy industries, the years since have seen a renewal of tensions as questions emerged over whether the deal was being respected.

Along with the circumvention allegations, other problems have also emerged. For instance, various Chinese exporting producers have been removed from the price undertaking over the past several months, [including](#) most recently Trina Solar in late January, which the latter voluntarily requested.

While companies have the option of ending their involvement in the price undertaking, some other producers have been removed directly by the European Commission on the grounds that they were allegedly not complying with the undertaking's terms.

### **Year ahead**

The coming year could see a series of developments with the potential to affect solar energy trade – and broader economic relations – between the two sides.

For example, the European Commission is in the midst of conducting a series of “reviews” on different China-related solar issues, including an investigation of whether to revise the “minimum import price” used in the price undertaking deal, as well as an expiry review on whether the 2013 anti-dumping and countervailing duties should be extended or removed.

The results of the expiry reviews – which began in December 2015 for both anti-dumping and countervailing duties – are expected later this year. In the meantime, the price undertaking deal will remain in place for cooperating producers.

ICTSD reporting.



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## ENERGY

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# US, Canada, Mexico Eye Increased Collaboration in Clean Energy

The US, Canada, and Mexico have agreed to take a series of steps aimed at boosting North American climate and energy cooperation – an announcement that was hailed as a potential step toward a future joint energy strategy between the trading partners.

The memorandum of understanding, inked last week by the countries' respective energy ministers, focuses mainly on sharing data across various areas, ranging from energy efficiency to renewable energy technologies.

"This memorandum takes the important strides we've made in recent years towards a continental approach to energy and expands our relationship in support of an even more ambitious clean-energy environmental agreement," [said](#) Canadian Natural Resources Minister Jim Carr.

Along with this draft framework, the three countries – which are already partners across a host of other forums, including a clean energy working group as well the North American Free Trade Agreement (NAFTA) – have also launched a web-based platform that demarcates all of their energy infrastructure.

"This is significant because it allows us to think about continental energy integration in a new light," said the Canadian official.

"The trilateral relationship certainly is not missing a beat. If anything, I think it is accelerating even more with the very strong Canadian commitment in the areas of energy, environment, and innovation," said US Energy Secretary Ernest Moritz, according to comments reported by the Financial Post.

### Building on Paris

This framework on clean energy development comes hot on the heels of the recently-concluded Paris climate accord, adopted multilaterally during the UN Framework Convention on Climate Change's (UNFCCC) Twenty-first Conference of the Parties last December. (See BioRes, [13 December 2015](#))

In addition, the three countries were among 20 that clinched a [Mission Innovation agreement](#) this past November at the start of the Paris conference, eyeing a scale-up in clean energy innovation to improve its affordability, including through measures such as information sharing and increased government investment.

Environmental groups have lauded the North American development as significant for various reasons, particularly in the wake of both the Paris accord as well as the US' recent rejection of the Keystone XL pipeline.

"It's the fact we are recognising that our energy relationship is more than just oil, and there is more to the Canada-US relationship than the Keystone pipeline," said Keith Stewart, head of Greenpeace Canada's climate and energy campaign.

The Keystone project had been proposed by TransCanada, with the goal of transporting crude oil and bitumen from the Canadian province of Alberta to US refineries. After years of

heated debate and multiple delays, it was ultimately rejected by US President Barack Obama in November 2015 on environmental and economic grounds. (See Bridges Weekly, [12 November 2015](#))

ICTSD reporting; "Clean-energy deal signed Friday in 1st step to green NAFTA," CBC NEWS, 12 February 2016; "North American energy ministers sign agreement to share data on clean energy in 'revived relationship'," FINANCIAL POST, 12 February 2016; "Canada, U.S. Mexico Sign Clean-Energy Agreement," NASDAQ, 12 February 2016; "US, Canada and Mexico sign clean energy pact," PHYS ORG, 12 February 2016.

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## EVENTS & RESOURCES

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# Events

### Coming Soon

22 February, London, UK. THE EU-UKRAINE DEEP AND COMPREHENSIVE FREE TRADE AGREEMENT: HOW TO MAKE IT A SUCCESS? This Chatham House event will include a discussion of Ukrainian economic relations with the EU following the Deep and Comprehensive Free Trade Agreement (DCFTA). The DCFTA between the EU and Ukraine entered into force in January 2016 in order to establish a more reciprocal trading pattern between the two markets, and to help establish a more modern economy in Ukraine. This event will feature key speakers including Ostop Semerak, a member of the Ukrainian Parliament and the First Deputy Chair of the European Integration Committee. Attendance to this event is by invitation only, however more information can be found [here](#).

23-24 February, Dubai, United Arab Emirates. GLOBAL WOMEN'S FORUM DUBAI 2016. This event, organised by the Dubai Women's Establishment and the Women's Forum for the Economy & Society, will bring together both men and women in leadership roles from across the globe. It is the first Women's Forum event to be hosted in the Middle East and North Africa region. The goals of this event include considering new perspectives for the future, establishing an international network to boost the influence of women globally, creating comprehensive action plans to increase women's contribution to society, and to foster diversity in the business world. Further information can be found [here](#).

23-26 February, Geneva, Switzerland. COLLABORATIVE LEADERS AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT. This event is a workshop hosted by the United Nations Institute for Training and Research (UNITAR). Topics discussed will include the ways in which effective collaboration can be reached in order to achieve sustainable development goals in the coming years. This workshop has the goal of helping leaders and decision-makers who work with the United Nations understand when collaboration will be effective, and how to overcome challenges in order to improve their collaboration. More information, including the application to the workshop, can be found [here](#).

23-25 February, Dar es Salaam, Tanzania, and online. VIRTUAL INSTITUTE WORKSHOP ON STRUCTURAL TRANSFORMATION AND INDUSTRIAL POLICY. This virtual workshop is part of the United Nations Conference on Trade and Development (UNCTAD) Virtual Institute's programme to improve research capacities in developing economies. Organisers aim to show participants the process of structural transformation and examine its connection to future development. To receive more information on this event, email [vi@unctad.org](mailto:vi@unctad.org) or view this [page](#).

24 February, Washington, US. GLOBAL DEVELOPMENT IN A DIGITAL WORLD. This event, hosted by the Brookings Institution, will focus on the changing relationship between digital technology and global development. The relevant details of the World Bank's 2016 World Development Report will be presented by Deepak Mishra, a co-director of this report. A panel discussion will then be held on the ways in which international development is being shaped by evolutions in digital technology. For more information on the panellists and registration details, visit the Brookings Institution [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.

23 + 25 February: Trade Policy Review Body – Fiji

24-25 February: General Council

### **Other Upcoming Events**

1 March, Washington, US. 2016 CONGRESSIONAL TRADE AGENDA. This event, hosted by the Washington International Trade Association (WITA), will feature various US congressional trade leaders as guest speakers. This discussion will include the off-the-record insights of these leaders on key trade topics that could be addressed by the US legislature in 2016. Additional information, including details on attending the event, can be found [here](#).

2-3 March, Brussels, Belgium. ELEVENTH SOLAR MARKET WORKSHOP. This annual event, held by SolarPower Europe, will examine key trends and drivers seen over the past year in the international solar market, while also reviewing the European experience in this sector and what future may lie ahead for the international solar sector. The two-day event will include presentations, interactive debates, and various networking opportunities. More information, including a preliminary agenda, is available [here](#).

11-13 May, Kigali, Rwanda. WORLD ECONOMIC FORUM ON AFRICA. The 26<sup>th</sup> World Economic Forum on Africa will bring together regional and global leaders from business, government, and civil society to discuss the economic outlook for the region. Current economic themes, such as the digital economy, low commodity prices, currency devaluations, debt sustainability considerations, and geo-security threats, will be discussed in the context of future growth through economic diversification. More information on the event can be found on the World Economic Forum [website](#).

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## Resources

**INVESTMENT FACILITATION: AN ACTION MENU.** Published by the UN Conference on Trade and Development (UNCTAD) (January 2016). This preliminary draft action menu is built on the UN agency's Investment Policy Framework, and outlines various "action lines" that provide potential investment policy options for national and international implementation. These include, for example, options that can be used in international investment deals, as well as policies that can be adopted unilaterally. The action menu is open to comments during this peer review period. For more information, or to submit feedback, please click [here](#).

**AGRICULTURAL COMMODITY SUPPLY CHAINS: TRADE, CONSUMPTION AND DEFORESTATION.** By Duncan Brack, Laura Wellesley, and Adelaide Glover for Chatham House (January 2016). This research paper analyses the relationship between agricultural production and international trade flows, and the environmental effects that this relationship yields. Specifically focusing on production of agricultural goods such as palm oil and soy beans, this paper looks into the ways in which increased global agricultural commodity use has led to an increase in deforestation. This paper also identifies the main factors which have led to the increase in production and consumption of palm oil, soy, and beef, and how these factors will continue to shape the future of the industry. The document is available for download [here](#).

**ASSESSING THE TRANS-PACIFIC PARTNERSHIP, VOLUME 1: MARKET ACCESS AND SECTORAL ISSUES.** Published by the Peterson Institute for International Economics (February 2016). This volume is the first in a series of publications on the Trans-Pacific Partnership (TPP) Agreement, reviewing the economic benefits the accord could yield for its signatories. The volume analyses the TPP both in terms of market access and other issues, noting both the potential benefits and shortcomings. The publication is available [here](#).

**TRADING DOWN: UNEMPLOYMENT, INEQUALITY AND OTHER RISKS OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT.** Published by Tufts University's Global Development And Environment Institute (January 2016). This working paper uses an alternative model to analyses the potential implications of the Trans-Pacific Partnership (TPP), highlighting mainly the deal's potential implications for jobs and inequality. The working paper, as well as the executive summary, are both available for download [here](#).

**SOUTH AFRICA'S EXPORTS PERFORMANCE: ANY ROLE FOR STRUCTURAL FACTORS?** Prepared for the International Monetary Fund (IMF) by Rahul Anand, Roberto Perrelli, and Boyang Zhang (February 2016). This IMF Working Paper examines South Africa's export performance alongside the significant exchange rate depreciation that South Africa has seen. The authors specifically focus on the role of structural factors in this relationship, identifying electricity bottlenecks, limited product market competition, and labour market constraints as key issues in the lack of export development. The full paper can be found [here](#).

**FINANCING RURAL STRUCTURAL TRANSFORMATION IN THE LEAST DEVELOPED COUNTRIES.** Published by the United Nations Conference on Trade and Development (February 2016). This report examines the recently-adopted Sustainable Development Goals, with a specific focus on what changes least developed countries (LDCs) must undertake in order to meet them, such as structural transformation, a diversification of rural economic activities, and upgrading agriculture. The authors examine which obstacles exist, as well as suggesting potential options for improving the breadth and depth of financing for such rural activities. The full policy brief can be accessed [here](#).

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