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## TRADE AGREEMENTS

### NAFTA Parties Pursue "Accelerated" Timeframe, Gear Up for Third Round of Talks

Officials are gearing up for another negotiating round in the efforts to modernise the North American Free Trade Agreement (NAFTA), with the next set of talks due for 23-27 September. The gathering will mark their third round in just over one month as part of an "accelerated" timeframe planned by ministers.

The first round of talks was held on 16-20 August in Washington, followed shortly thereafter by a second round from 1-5 September in Mexico City. The third round will be held in the Canadian capital city of Ottawa, with the site of subsequent talks to rotate between the three NAFTA parties.

While future dates have not been formally announced, ministers said last week that they are committed to "an accelerated and comprehensive negotiation, with the shared goal of concluding the process towards the end of this year."

The trilateral trade accord in question has been in place for over two decades, with the countries involved responsible for approximately one-quarter of the world's gross domestic product.

#### Early stages

According to a [trilateral statement](#) issued by Canada, Mexico, and the US following the second round, the three NAFTA parties have made "important progress... in many disciplines," without elaborating on which ones.

They did note, however, that in some areas they have been able to put together consolidated texts from the proposals tabled so far, which can help facilitate the discussions going forward. US Trade Representative Robert Lighthizer said in his [closing statement](#) on 5 September that efforts are advancing at "record pace," with proposals being put forward in over 24 chapters.

The NAFTA parties "wholeheartedly share the goal of reaching a mutually beneficial agreement," [said](#) Canadian Foreign Minister Chrystia Freeland after the second round.

"This second round in Mexico City has continued the constructive preparatory work that took place in Washington a couple of weeks ago," she added.

Mexican Economy Secretary Ildefonso Guajardo Villareal, who hosted the latest round of talks, said for his part the Mexico is "definitely committed to a process in which we can accommodate each country's interests and at the end of the day we can end up with an agreement that will be definitely a victory for the three nations involved."

He further touted the importance of a final NAFTA deal creating new, well-paying jobs across their countries, along with improving "basic principles."

The Mexican official, in comments to Imagen Radio previewing the third round, suggested that the upcoming talks will likely focus on "less complex" chapters, while noting that in some tougher areas proposals have not yet been made.

What a revamped NAFTA might look like still remains unclear. The three sides have detailed their respective negotiating objectives in recent months, and within those statements some key differences have already begun to emerge, including on whether and how to keep dispute settlement provisions involving trade remedies and how to address rules of origin requirements. (See Bridges Weekly, [20 July 2017](#))

Another question is how much of the Trans-Pacific Partnership's (TPP) terms will carry over into the NAFTA process, or at least inform it. All three NAFTA parties were involved in the TPP negotiating process, though the US pulled out of the signed, completed deal earlier this year.

How the three parties deal with investment-related disputes is also expected to be a hot topic, given developments seen in this area within other negotiating contexts. Freeland said last month that Canada would aim to see changes to the investor-state dispute settlement (ISDS) mechanism included in the current NAFTA. An updated version of ISDS would "ensure that governments have an unassailable right to regulate in the public interest," she said.

While Freeland did not elaborate on what changes Canada is seeking on ISDS, the North American nation is one of the proponents of a future multilateral investment court, along with the European Union. Canada and the EU have already agreed to an "investment court system" that they say would facilitate such an effort under their Comprehensive Economic and Trade Agreement (CETA).

The foreign minister confirmed earlier in the speech that CETA would serve as a model for Canada's approach to the NAFTA modernisation talks.

US officials have also suggested that NAFTA could help set a new bar in other trade areas, such as provisions on currency. Meanwhile, Freeland [said](#) last month that Canada would be pushing to include chapters in a modernised NAFTA on gender rights and indigenous peoples.

### **Political climate, forthcoming elections**

The political climate for the NAFTA modernisation effort is already expected to be a difficult one. The accord was raised repeatedly by then-candidate Donald Trump during the US electoral campaign last year as a deal in need of repair or termination.

As president, Trump has again raised the issue of NAFTA on Twitter, [repeating](#) on 27 August past claims that the accord is the "worst trade deal ever made."

"Both being very difficult, may have to terminate?" Trump said at the time, referring specifically to Mexico and Canada. While the US leader has earlier hinted at termination,

this statement came following the first round of talks, and within days of the second round starting.

In recent weeks, US officials have clarified that termination remains a possibility, though that it will depend on how the talks proceed.

"The president has made clear if they don't work, he's going to pull out. So that shouldn't be a shock to anyone. And really, that's the right thing. We need fixes to this deal. It has not worked the way that it was intended to," said US Commerce Secretary Wilbur Ross at an event last week hosted by the Washington Post.

The US commerce chief suggested, furthermore, that other NAFTA parties would also benefit from fixes to the deal, citing Mexico in particular. He added that negotiators are planning to address the "easier" issues in the early stages to build a good pace before tackling thornier areas, without giving much specifics as to what these might be.

He also suggested that upcoming political dates in each country's respective calendars – including federal elections in Mexico and congressional midterms in the US next year – mean that progress will have to happen quickly, while indicating that it is "too early to tell" what the negotiating dynamics between the North American nations will be.

"As you get closer to all of those political dates, the ability to get anything done will go down. So there's no fine-line magic date, but more or less around the end of the year is probably where we're going to need to know where we are," said Ross.

Aside from the US, Canada and Mexico have suggested that they are focused on the renegotiation, while preparing for other scenarios should they arise. Furthermore, officials from those countries have already noted that they too possess the ability to take a step back if necessary.

"In all these discussions, we will come to the table with goodwill, and Canada's characteristic ability and willingness to seek compromise and find win-win solutions. But we are committed to a good deal, not just any deal. That will be our bottom line," said Freeland last month, noting in the same speech instances where Canada has previously walked away from trade negotiating efforts.

Mexican Foreign Secretary Luis Videgaray Caso also told the Reuters news agency in late August that his country would step away from the talks if the Trump administration begins the process of pulling out of NAFTA.

ICTSD reporting; "Transcript: The Daily 202 Live with James Hohmann and Secretary Wilbur Ross," THE WASHINGTON POST, 8 September 2017; "En tercera ronda del TLCAN se discutirán los temas de menor complejidad: Guajardo," IMAGEN RADIO, 6 September 2017; "Mexico minister sees risk of U.S. NAFTA exit, urges plan B," BNN, 29 August 2017; "If Trump pulls trigger on NAFTA withdrawal, Mexico will walk away," REUTERS, 30 August 2017.

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## EUROPEAN UNION

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# EU Commission President Outlines Vision for Bloc's Integration Future, Trade Agenda

European Commission President Jean-Claude Juncker announced a series of proposed initiatives and priority areas for the EU's executive arm to take on through the end of 2018, while making unity, efficiency, strength, and economic growth among the key themes of his annual "State of the European Union" speech on Wednesday 13 September.

"The vision of a more united, stronger and more democratic Europe I am outlining today combines elements from all of the scenarios I set out in March. But our future cannot remain a scenario. We have to prepare the Union of tomorrow, today," said Juncker to the bloc's parliamentarians.

The [speech](#), given at the European Parliament's Strasbourg headquarters, was being closely watched to see how the chief of the EU's executive arm would address his vision for the bloc's future – particularly as Brexit negotiations get well underway.

Along with the speech, the Commission concurrently released a "[letter of intent](#)" from Juncker to European Parliament President Antonio Tajani and Estonian Prime Minister Jüri Ratas. Estonia currently holds the rotating presidency of the Council of the EU.

"2016 was in many ways an 'annus horribilis' for the European project. From the Brexit referendum, to the terrorist attacks, to slow growth and continued high unemployment in several of our member states, to the ongoing migration crisis, Europe was challenged in many ways," said Juncker in the letter.

However, he suggested that the bloc has managed to make progress already on a "positive agenda," with promising signs of economic recovery that could help fuel advances on a series of initiatives, either through the end of next year or even further down the road to 2025. These are also outlined on a "[roadmap](#)" from now through the June 2019 European Parliament elections.

### Trade deals: Australia, New Zealand talks, investment court

Juncker's speech included a series of items on trade and investment, including proposals for formal negotiating processes, as well as a pitch for greater transparency in those processes.

"I want us to strengthen our European trade agenda. Yes, Europe is open for business. But there must be reciprocity. We have to get what we give," said Juncker.

Talks with Oceanic nations Australia and New Zealand are also expected to begin over the coming months, pending the completion of each sides' internal processes, with Juncker proposing in his speech that both negotiations be launched. The countries involved have already been undertaking preparatory work towards that end. (See Bridges Weekly, [7 September 2016](#))

Furthermore, Juncker referred to a timeframe for such negotiations, calling for them to be wrapped up "by the end of this mandate."

While not mentioned directly in his speech, Juncker's letter to Tajani and Ratas called for a draft mandate for a "Multilateral Investment Court System," along with draft mandates for

the above-mentioned trade talks. The multilateral investment court is an idea that has already been touted by Commission officials in recent years, and the EU's planned trade accords with Canada and Vietnam already have included a new investment court system that could be a precursor to such an initiative. (See Bridges Weekly, [2 March 2017](#))

The EU leader also pledged to take additional steps on transparency, in a bid to better inform the public on how trade deals are progressing, and thus help build buy-in. In this vein, he said that the EU's executive arm will make public "draft negotiating mandates" that it submits to the Council for approval, and urging the latter body to do the same once those mandates are confirmed.

"Citizens have the right to know what the Commission is proposing. Gone are the days of no transparency. Gone are the days of rumours, of incessantly questioning the Commission's motives," said Juncker.

The bloc already has a busy trade agenda underway, with the stated goal of concluding negotiations with South American customs bloc Mercosur and the modernisation of an existing trade deal with Mexico later this year – targets that Juncker reaffirmed on Wednesday. (See Bridges Weekly, [13 July 2017](#) and [27 July 2017](#), respectively)

The EU is also aiming to finalise its trade negotiations with Asian economic heavyweight Japan, having announced an "agreement in principle" at the political level earlier this year. That accord, which was publicly lauded as proof that both sides were holding strong in their commitment to "free trade," still needs to see resolution on issues such as investment dispute settlement. (See Bridges Weekly, [6 July 2017](#))

Meanwhile, the EU's trade accord with Canada will be provisionally applied as of next week, with full application pending the ratification by the bloc's individual member state legislatures. (See Bridges Weekly, [13 July 2017](#))

### **Priority areas, preparing for a post-Brexit Union**

Beyond trade, Juncker also made a series of other pledges, including a promise to release a proposal on slashing transport-related carbon emissions; opening the Schengen zone to include Bulgaria, Romania, and eventually Croatia; expanding the euro area and the Banking Union to cover the entire EU, and providing the support to do so; and combining the Council and Commission presidencies into one role.

He also called for changing some decision-making processes in the EU from full consensus to a so-called "qualified majority," such as with issues relating to the bloc's single market or certain foreign policy topics.

Underlying all of these proposals, and various others, were again the objectives of unity and strength, along with promoting greater equality among and within member states, as well as freedom and rule of law.

"Our values are our compass. For me, Europe is more than just a single market. More than money, more than the euro. It was always about values," he told parliamentarians. He also suggested that for the moment, Turkey's accession to the EU is not an option, citing issues with rule of law and freedom of expression.

The proposal to merge the Council and Commission presidencies would also help the bloc "function better," adding that it would also "reflect the true nature of our European Union as both a Union of States and a Union of citizens."

While Juncker's speech was relatively light on Brexit references, the impending exit of the UK from the European Union loomed over this year's event, having already prompted a series of summits, reflection papers, and debates on how the bloc will show its continued

unity; convince the public of its long-term potential; and address questions and concerns over future integration approaches.

Brexit negotiators are slated to begin their fourth round of plenary negotiations in late September, ahead of an EU Council summit in October. The latter event is expected to see leaders evaluate the talks' progress to see whether and when the process can move from the first phase, focusing on exit issues such as the UK's "Brexit bill," to a second phase involving the details of the future UK-EU relationship.

The UK's exit is due to take effect from 29 March 2019, shortly ahead of European Parliament elections. Juncker's term as Commission chief is due to end later that year, and the former Luxembourgish prime minister has previously indicated that he does not plan to stand for a second five-year stint.

"My hope is that on 30 March 2019, Europeans will wake up to a Union where we all stand by our values," he said, suggesting that a "special summit" be organised by the Council leadership on that occasion.

ICTSD reporting; "Juncker will not seek second term as European Commission President," EURACTIV, 11 February 2017.

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## GLOBAL ECONOMY

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# BRICS Leaders Stress Economic, Development Cooperation at Xiamen Summit

Leaders from Brazil, Russia, India, China, and South Africa concluded their ninth “BRICS” Summit last week, signing off on a declaration which covered topics such as economic cooperation and development, trade and investment, and other international concerns.

“BRICS cooperation has now reached a crucial stage of development,” [said](#) Chinese President Xi Jinping at the opening ceremony of the BRICS Business Forum, which was held on the first day of the 3-5 September BRICS Leaders’ Summit in Xiamen, China.

“Despite different national conditions, we BRICS countries are at a similar development stage and share the same development goals,” he added.

Addressing the plenary session participants, Xi also talked about the increasing role of developing countries in international governance and cooperation.

“We need to advance the reform of global economic governance, increase the representation and voice of emerging market and developing countries, and inject new impetus into the efforts to address the development gap between the North and South and boost global growth,” Xi [remarked](#).

BRICS is an acronym for five countries – Brazil, Russia, India, China, and South Africa. This bloc of major emerging economies originally included four members, with South Africa joining in 2010. Since 2009, leaders from the BRICS nations have met annually for summits, with the group also holding a comprehensive array of ministerial and other meetings throughout the year.

With the tenth anniversary of BRICS summits next year, the group is weighing how to use the forum in the coming years. Despite their large size and notable economic similarities, some analysts say that the BRICS structure has yet to tap its full potential. For example, currently only 5.7 percent of the bloc’s outbound investment and less than five percent of total trade takes place among the five partners.

“We must redouble our efforts to comprehensively deepen BRICS partnership and usher in the second ‘Golden Decade’ of BRICS cooperation,” commented Xi on the future of the bloc.

### Xiamen declaration

At the meeting’s close, leaders signed off on the [Xiamen Declaration](#), containing joint language on issues of practical economic cooperation, global economic governance, international peace and stability, and people-to-people exchanges.

“We need to stay focused on promoting results-oriented economic cooperation, and expand converging interests in trade and investment, currency and finance, connectivity, sustainable development, innovation, and industrial cooperation,” Xi said in relation to future work.

Regarding trade, the Xiamen Declaration has a paragraph dedicated specifically to supporting the multilateral trading system, along with language on addressing protectionism.

"We remain firmly committed to a rules-based, transparent, non-discriminatory, open and inclusive multilateral trading system as embodied in the WTO," the declaration [reads](#).

Xi also [addressed](#) the issue of the multilateral trading system in one of his high-level speeches delivered during the three-day event.

"We need to strengthen coordination on positions, work toward a positive outcome at the upcoming Eleventh WTO Ministerial Conference, make progress on the remaining items of the Doha Development Round, and provide direction to the multilateral trading regime," he said.

The WTO ministerial meet is scheduled for December in Buenos Aires, Argentina, with members working to determine which areas may see outcomes at the high-level event.

In addition, the BRICS leaders' document mentions countries' "firm" opposition to protectionism, affirming that the group "recommit[s] to our existing pledge for both standstill and rollback of protectionist measures" and encouraging others to do the same.

Aside from trade, the Xiamen declaration also touches on a host of other issues, including climate change, sustainable development, lower-carbon economic pathways, industrial cooperation, and more.

For example, the Xiamen declaration includes a commitment to enhance BRICS countries' climate action efforts, and calls upon the countries to fully implement the UN's Paris Agreement on climate change. After the US' withdrawal from the climate accord, countries from across the development spectrum have continued to provide their support to the agreement, as have many sub-national actors. (See Bridges Weekly, [8 June 2017](#))

### **New Development Bank**

In his [speech](#) to fellow BRICS leaders, Xi also highlighted recent advances in areas such as the New Development Bank and Contingent Reserve Arrangement, as well as in e-commerce, trade and investment facilitation, trade in services, scientific and technological innovation, industrial cooperation, and public-private partnerships.

The New Development Bank was launched by the BRICS countries in 2014, with a focus on infrastructure projects. It has also recently outlined its objectives to accelerate "green" growth and finance projects for environmental protection and renewable energy sources.

The multilateral development has agreed to "support public or private projects through loans, guarantees, equity participation and other financial instruments," according to its [articles of agreement](#). (See Bridges Weekly, [17 July 2014](#))

The Contingent Reserve Arrangement is a framework meant to protect against liquidity pressures and other financial difficulties.

Leaders last week welcomed the launch of the African Regional Centre of the New Development Bank, and the progress made on the Contingent Reserve Arrangements, noting that these mechanisms are designed to support infrastructure building and sustainable development.

### **Working with additional partners**

In his speech to business leaders on 3 September, Xi also referred to the importance of branching out BRICS' work to include other partners on the international stage.



"We should promote the 'BRICS Plus' cooperation approach and build an open and diversified network of development partnerships to get more emerging market and developing countries involved in our concerted endeavours for cooperation and mutual benefits," said Xi.

In this vein, the bloc's leaders also met on 5 September with those of Egypt, Guinea, Mexico, Tajikistan, and Thailand within the context of the "BRICS Dialogue of Emerging Market and Developing Countries."

The event reportedly [touched](#) upon issues of South-South cooperation, implementing the 2030 Agenda for Sustainable Development, the Belt and Road Initiative, and global governance.

"Leaders of all countries exchanged in-depth views on implementing the Agenda for Sustainable Development and building extensive development partnerships, and jointly discussed the major plans for international development cooperation and South-South cooperation, reaching important consensus," [says](#) the official press release.

ICTSD reporting.

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## TRADE AGREEMENTS

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# Eyeing November Leaders' Meeting, RCEP Ministers Pledge to "Maximise Progress"

Economic ministers from the Regional Comprehensive Economic Partnership (RCEP) countries pledged to ramp up their negotiating efforts on an extensive regional free trade deal, following a meeting in Pasay City, Philippines, last weekend.

"All countries are hard at work to resolve the key outstanding issues in the negotiations," said Ramon Lopez, Trade and Industry Secretary of the Philippines, in a [press briefing](#) following the 10 September meeting.

The joint [media statement](#) from RCEP ministers notes that they "reaffirmed their commitment to further intensify efforts in a cooperative manner for the swift conclusion of the RCEP negotiations in line with the leaders' mandate."

Highlighting the major outcomes of RCEP's fifth ministerial meeting, Lopez noted that ministers have signed off on a "key elements paper" which is designed to help the talks reach "significant outcomes and give momentum towards substantial conclusions in future negotiations."

The title of the section on RCEP negotiation outcomes in Lopez's official report reads "Pragmatic Recalibration," with the content of that section emphasising members' continued commitment to push the pact forward.

Regional discussions, according to Ceferino Rodolfo, Trade Undersecretary of the Philippines, are a "crucial juncture" giving the wider global economic and geopolitical context. "It is important for RCEP to step up and set the example for the pursuit of freer trade," Rodolfo [said](#).

"RCEP is the only game in town given the current negotiations of the Trans-Pacific Partnership," he added. The Trans-Pacific Partnership (TPP) is a comprehensive trade accord that was originally signed by 12 countries, some of which are also members of RCEP. Negotiators from that group are working to determine how to advance with the trade deal since the US withdrew earlier this year. (For more on the TPP, see related story, this edition)

RCEP is currently under negotiation among the 10 countries of the Association of Southeast Asian Nations (ASEAN), and that group's six free trade agreement partners, all located in the Asia-Pacific region. These countries include Australia, China, Japan, Korea, India, and New Zealand.

The mega trade pact aims to cover goods, services, investment, competition policy, and intellectual property rights, among other issues. The most recent round of negotiation was held in Hyderabad, India, in late July. (See Bridges Weekly, [3 August 2017](#))

The next negotiating round for RCEP is scheduled for mid-October in Korea, in the run-up to the leaders' meeting in November.

### Market access, rules

Various officials and trade watchers have noted that the scope of the negotiations and the diversity of the membership have complicated past efforts to finalise the talks. Negotiations

for RCEP started in 2012, with the deadlines for conclusion repeatedly rescheduled to later dates.

This time, officials say the push to achieve “substantial” deliverables is fuelled partly by the 50<sup>th</sup> anniversary of ASEAN. Ministers referred to this upcoming date in their joint media statement, stating that “the substantial conclusion of the RCEP had been identified as a priority deliverable for ASEAN’s milestone year.”

“Ministers also recognised the scale of the remaining work and called on all [RCEP participating countries] to focus both efforts and resources to maximise progress towards significant outcomes,” they said.

In their joint statement, RCEP ministers referred to market access offers and “trade-facilitating rules” as areas where they hope to see continued progress going forward, while noting that a final “landing zone” would need to be “mutually agreeable to and doable.”

Regarding market access, officials say that they need to advance their work on setting the coverage and the timeframe for tariff cuts. According to [comments](#) by Lopez to Chinese media outlet Xinhua, the elements include “more realistic ambitions when it comes to percentage products for inclusion, the phase-in or the timing of each inclusion, will it be in the next 10 years, 15 years.”

The two main focal points of the above-mentioned “key elements paper” are market access and rules, according to comments by Ceferino Rodolfo, Trade Undersecretary of the Philippines, to the Manila Shimbun [news agency](#). For example, Rodolfo said that on rules, negotiators hope to have a better sense of individual participants’ perspectives.

The elements would “guide negotiations towards significant outcomes,” says the [statement](#) released by the Department of Trade and Industry of the Philippines. “We can ensure that commitments from each party would have a more concrete impact on the negotiation process, veering away from the plain talks on modalities,” it adds.

### **ASEAN economic agenda**

The RCEP high-level negotiation was a part of a broader regional agenda within the 49<sup>th</sup> ASEAN Economic Ministers’ meeting.

The latter also included consultations with ASEAN’s dialogue partners, such as Australia, Canada, China, Hong Kong, India, Japan, Korea, New Zealand, Russia, and the United States. There were also meetings devoted to ASEAN’s internal agenda, including the free trade and investment area.

In his speech to ministers for the ASEAN meeting’s opening ceremony, Lopez urged the bloc’s ministers to expedite the RCEP talks.

“The substantial conclusion of RCEP remains high on ASEAN’s overall economic agenda, and is priority deliverable for the Philippines chairmanship of ASEAN 2017 and in time for the 50<sup>th</sup> anniversary of ASEAN,” he said.

Lopez’s [official statement](#) also stressed ASEAN’s centrality in the negotiation process, stating that ministers aim to make “RCEP truly ASEAN-led and ASEAN-centric.”

The efforts to clinch an RCEP deal come as the 10 ASEAN countries are also working to meet the goals set out in their ASEAN Economic Community (AEC) Blueprint. Planned for completion by 2025, AEC will represent a high-level regional integration structure.

The 49<sup>th</sup> ASEAN ministerial meeting also addressed topics such as the coalition's economic performance, as well as other priority economic deliverables under the Philippines' chairmanship, along with the implementation of AEC.

ICTSD reporting; "Realistic targets" being finalized in RCEP negotiations: Philippine official," MANILA SHIMBUN, 11 September 2017; "RCEP ministers agree on 'key elements' to speed up talks on 'mega trade pact,' XINHUA, 11 September 2017.

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## DISPUTES

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### Disputes Roundup: Rulings Issued in Brazil Tax Incentives, Boeing Cases; AB Impasse Continues

The past month has seen a series of dispute-related developments at WTO headquarters, with rulings circulated in a case on Brazilian tax incentives ([DS472](#), [497](#)) and a separate dispute over US aircraft subsidies to manufacturer Boeing ([DS487](#)), along with panels being requested in other cases.

Meanwhile, WTO members remain at odds over how to proceed with filling three slots on the organisation's highest court, the Appellate Body. An informal meeting of the Dispute Settlement Body (DSB) is slated for Friday 15 September on the subject, according to a Geneva trade official.

#### WTO panel rules on Brazil tax incentive programmes

A dispute panel ruled in late August on cases filed by the EU and Japan, respectively, regarding Brazil's long-running tax incentive programmes for two major industrial sectors – information and communications technology (ICT) and automobiles. (See Bridges Weekly, [1 October 2015](#))

The EU and Japan had challenged Brazilian requirements that certain parts of a good's manufacturing process take place domestically in order for that company to receive tax cuts or benefits. The panel found that those steps cover the key "value-adding" sections in a manufacturing chain, such as converting raw materials into components, along with integrating components into final products.

The panel noted that Brazil has also imposed such requirements for making some of the components that are sourced for producing the final versions of a good, which has already faced similar requirements along its overall value chain.

The type of tax incentive provided depended on the programme, with the EU and Japan citing seven programmes in their respective complaints.

After reviewing different aspects of the production and sourcing process, from raw material inputs to the final product, the panel deemed that Brazil's requirements were in effect prioritising the sourcing of domestic components over foreign ones, in violation of WTO rules. Brazil had raised other points in its defence, which were ultimately rejected by the panel.

All parties have the option of appealing the panel's findings, and must do so within a 60-day window from when the ruling was circulated.

#### Boeing update: WTO Appellate Body reverses panel finding

Earlier this month, the WTO's Appellate Body also circulated a ruling ([DS487](#)) deeming that tax benefits provided by Washington state to Boeing, the airplane manufacturer, did not violate global trade rules – overturning the findings of an earlier panel.

The case is separate from an ongoing US-EU dispute on Boeing subsidies ([DS353](#)). The EU and the US have spent over a decade embroiled in duelling disputes regarding their support schemes for their respective aerospace industries, with the US pursuing its own case on EU

subsidies to Airbus ([DS316](#)). In both of those disputes, the WTO's Appellate Body found trade rule violations.

Under DS487, the measures involved are more recent, dating back only four years. They were considered separately from the other case involving Boeing, where WTO adjudicators are assessing questions over whether the US has made sufficient changes to comply with past rulings.

The panel report in this newer case was circulated last year, and was subsequently appealed by both sides. (See Bridges Weekly, [1 December 2016](#))

The WTO Appellate Body had examined the requirement that an aircraft manufacturer make its plane and wings within Washington state itself in order to benefit from a lower tax rate. The panel had found that this requirement is indeed about the origin of the wings used in making commercial planes, and meant that in practice these subsidies were conditional on that.

The WTO's subsidy rules do not allow financial aid by governments that are contingent on using domestic goods over imported ones. However, the Appellate Body said that the "contingency" prohibited by WTO rules is not based on "whether a condition for eligibility under a subsidy may result in the use of more domestic and fewer imported goods."

For those subsidies that cause harm to imports and that do not qualify as prohibited subsidies, the Appellate Body noted that these could be examined under other parts of WTO subsidy rules.

The Appellate Body found that the Washington state programmes do not make the lower tax rates conditional on using locally-produced goods versus their foreign counterparts. It therefore overturned this panel finding, which was the only area where the panel had said the US was in violation of WTO rules.

### **Panel requests made in China TRQs, Canada-Brazil Bombardier cases**

During a meeting of the DSB on 31 August, the US also made a first request for a panel to examine whether China's administration of tariff rate quotas (TRQs) on certain agricultural products are in line with global trade rules ([DS517](#)). The US and China held consultations on the subject earlier this year, which failed to yield a resolution.

Tariff-rate quotas mean that imports up to a certain threshold will face lower duties than they would otherwise – with often significant differences. The US has raised concerns over whether China's administration of these TRQs for wheat, corn, and rice imports have gone against global trade rules, with the North American nation citing in its panel request WTO provisions relating to transparency, general elimination of quantitative restrictions, and non-discriminatory administration of quantitative restrictions. (See Bridges Weekly, [19 January 2017](#))

China blocked the first panel request at the 31 August meeting. However, the US has already tabled the request a second time, which will be heard at a 22 September DSB meeting – meaning that a panel will automatically be established to hear the case.

Meanwhile, Brazil has asked that a panel hear its complaint ([DS522](#)) against Canada on allegedly illegal subsidies to Bombardier, the aircraft manufacturer. This particular case was filed in February, though the two parties have also been involved in airplane-related cases at the WTO in the past ([DS46](#), [DS70](#)).

Brazil has taken issue with state aid provided by Canada's federal and provincial governments in support of Bombardier's commercial aircraft programme. The South American country argues that this support appears to violate WTO rules by being linked

either to export performance or to prioritising local over foreign-made products. Brasilia also alleges that this support has made it harder for its own aircraft manufacturers to remain competitive.

In a press release, Brazil's Ministry of Foreign Affairs [said](#) that "it hopes that the dispute will allow for the fast rebalancing of the conditions of international competitiveness in the aeronautical sector, which has been artificially affected by Canadian subsidies."

While Canada blocked the panel request in August, Brazilian officials [say](#) that they plan to table the request again for a 29 September meeting of the DSB, at which point the panel will automatically be established.

### **Appellate Body vacancies**

WTO members are slated to meet informally tomorrow regarding how to fill a series of vacant seats on the Appellate Body, Geneva trade officials confirmed.

The seven-member court will have three open seats by year's end unless a selection process begins, with two seats already vacant due to the departures of Ricardo Ramírez-Hernández in late June and Hyun Chong Kim at the beginning of August. Peter Van den Bossche's term is set to end in December.

While the EU has proposed launching a selection process for all three slots at once, a group of Latin American countries has instead proposed starting with the post left open by Ramírez-Hernández. The latter group includes Argentina, Brazil, Colombia, Chile, Guatemala, Mexico, and Peru.

However, at the 31 August DSB meeting, the US said it could not support either option, raising concerns instead over certain "systemic" issues, such as the continued participation of these former Appellate Body members in ongoing cases. The global trade court's working procedures do allow for this scenario, subject to certain conditions.

In its [statement](#), the US said that under WTO dispute settlement rules, "the DSB has a responsibility to decide whether a person whose term of appointment has expired should continue serving, as if a member of the Appellate Body, on any pending appeals. We consider the DSB should also discuss this issue so it can take appropriate decisions."

The statement drew questions from various WTO members, according to a Geneva trade official, particularly in light of the heavy workload facing the Appellate Body and the additional burden on the dispute settlement system should these vacancies remain unfilled for a prolonged period.

ICTSD reporting.

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## TRADE AGREEMENTS

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### TPP-11 Negotiators Review Trade Deal Options Ahead of November Meet

Senior officials from the 11 Trans-Pacific Partnership (TPP) nations are gearing up for another set of meetings in Japan later this month, aiming to build on their discussions in Australia in late August on how to proceed with the trade pact.

The TPP-11 group, as they are now known, are looking at whether and how much to revise the substance of the comprehensive trade pact since the US withdrew earlier this year. The coalition has given itself until November to come up with a slate of options for leaders to consider when they meet on the sidelines of the Asia-Pacific Economic Cooperation (APEC) Leaders' Meeting in Hanoi, Vietnam.

The most recent negotiators' meeting was held in Sydney, Australia, from 28-30 August. The group had previously met in Hakone, Japan, in mid-July. (See Bridges Weekly, [20 July 2017](#))

"There is a broad desire among the 11 countries to reach a good agreement," [said](#) Australian Trade Minister Steven Ciobo ahead of the Sydney meeting.

The TPP-11 countries are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

#### **Weighing possible revisions, NAFTA dynamic**

At the Sydney meeting, reports indicated that negotiators were continuing to weigh how much to revise the substance of the trade deal. Officials from Australia, Japan, and New Zealand had publicly indicated beforehand that they wished to limit the changes to the accord, while Vietnam and Malaysia were among those reportedly calling for revisions.

"What we are now looking at doing is seeing how far we've got to peel that back, in order to keep all 11 countries at the table," said Ciobo on 10 September in an interview with CNBC Asia, according to a [transcript](#) provided by his office.

"We know the US withdrawal, although it wasn't unexpected, it was disappointing, but also changed some of the metrics, especially around some of the market access stuff. So we've just got to wait and see and we've got to all work together," he added.

The Australian official also alluded to the differing opinions among TPP-11 members over how much to renegotiate the trade deal's substance, noting that Singapore is also among those hoping to keep the accord's content largely intact.

He further noted that other negotiating processes involving TPP-11 participants may have implications for the group's efforts. For example, the work to move the TPP accord forward comes as Mexico and Canada continue their negotiations with the US for a "modernisation" of the North American Free Trade Agreement (NAFTA).

Those talks are due to enter their third round later this month. How much the TPP outcomes will influence those discussions – and vice versa – remains to be seen. (For more on the NAFTA talks, see related story, this edition)



"We've just got to make sure and understand that there are some implications for some of the other discussions that are happening, whether that's the re-negotiation of NAFTA between Mexico, Canada, and the [United States] – given obviously that Mexico and Canada are still in the TPP-11," said Ciobo.

Among the items that were reportedly major topics in Sydney included how to treat TPP provisions in areas such as government procurement and intellectual property rights for pharmaceutical products.

The latter topic had proven especially contentious in the final phase of the original TPP negotiations, when the US was still a member, particularly involving data exclusivity rules for biologic drugs. Washington had pushed strongly for longer data exclusivity periods for such pharmaceuticals, which are derived from a biological background. These drugs include vaccines and gene therapies, among others. (See Bridges Weekly, [11 February 2016](#) and [8 October 2015](#))

While some reports suggest that the current TPP's provisions on data exclusivity may be revised, that has not been formally confirmed at this stage. Other substantive issues relating to intellectual property rights and investment were reportedly raised and are expected to be the subject of future discussions.

Other officials indicated that the Sydney talks had been fruitful, with Kazuyoshi Umemoto, chief negotiator for the Japanese delegation, telling Kyodo News that "common understanding between their various countries had progressed."

Washington officials affirm that they have no current plans to re-enter the TPP deal, though some TPP-11 officials maintain that the US may potentially have the option of returning – and that limiting changes to the trade accord would make it easier for the North American country to do so.

Ministers have previously suggested that they would also look at the option of bringing on new partners, so long as they are willing to sign on to the same level of TPP "ambition." (See Bridges Weekly, [24 May 2017](#))

ICTSD reporting; "TPP talks in Sydney end with further negotiation set for Sept," BANGKOK POST, 30 August 2017; "'TPP 11' to freeze drug data protection demanded by US," NIKKEI, 31 August 2017; "Trump officials have given Australia tacit approval on TPP, Obama economist says," THE GUARDIAN, 30 August 2017.

## EVENTS &amp; RESOURCES

## Events

### Coming Soon

18 September, Geneva, Switzerland. KNOWLEDGE-SHARING SEMINAR ON FISHERIES SUBSIDIES. This event is being organised by the International Centre for Trade and Sustainable Development (ICTSD) with the objective of building greater understanding of the various fisheries subsidies proposals that have been tabled in the WTO negotiating context. A speakers' list and programme are available online. To learn more and to register, please visit the ICTSD [website](#).

18-19 September, London, UK. ANGLO-JAPANESE COOPERATION IN AN ERA OF GROWING NATIONALISM AND WEAKENING GLOBALIZATION. This Chatham House event will address the current political and economic context for both Europe and Asia, particularly given the changeover in US leadership earlier this year. A draft agenda for the event is available online. To learn more, please visit the Chatham House [website](#).

19 September, Geneva, Switzerland. TALKING DISPUTES | THE GUATEMALA-US LABOUR ENFORCEMENT DISPUTE UNDER CAFTA-DR. This event is being organised by the International Centre for Trade and Sustainable Development (ICTSD) and WTI Advisors, with a focus on the recent ruling involving a labour rights case between Guatemala and the United States under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The meeting will address both the panel's findings, along with what its outcomes could mean in practice – including for ongoing free trade agreement (FTA) negotiations. Please note that the meeting will also be streamed live on the event website, with interested participants able to submit questions for the panel online. More information is available at the ICTSD [website](#).

21 September, New York, US. UNGA SIDE EVENT: MIGRATION AND THE 2030 AGENDA. This event is being co-hosted by the Overseas Development Institute (ODI) and the Permanent Mission of Ireland to the United Nations. The meeting is being held on the sidelines of the UN General Assembly, and will focus on the relationship between migration and sustainable development, along with including the launch of various related ODI publications. The findings of these publications aim to provide national governments with options in this area. More information is available at the ODI [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.

15 September: Informal Open-ended Committee on Agriculture – Special Session

15 September: Trade Policy Review Body – Jamaica

20 September: Committee on Regional Trade Agreements

20 + 22 September: Trade Policy Review Body – Paraguay

21 September: Committee on Budget, Finance, and Administration

### Other Upcoming Events

22 September, New York, US. DISCIPLINING FOSSIL FUEL SUBSIDIES FOR CLIMATE MITIGATION AND SDGS: A JOB FOR THE TRADE SYSTEM? This event is being jointly organised by the International Centre for Trade and Sustainable Development (ICTSD), the Guarini Center, and the Institute of International Law and Justice (IJIL) of the New York University (NYU) School of Law. It will look at the relationship between fossil fuel subsidies, climate change, and the international trading system, examining the potential role of the WTO in disciplining such subsidies. To learn more and to register, please visit the [ICTSD website](#).

25-27 September, Geneva, Switzerland. TRADE FOR SUSTAINABLE DEVELOPMENT FORUM 2017. This annual event by the International Trade Centre (ITC) will examine the topics of voluntary sustainability standards and sustainable value chains, looking specifically at partnerships and other collaboration in this field. To learn more and to register, visit the [ITC website](#).

26-28 September, Geneva, Switzerland. WTO PUBLIC FORUM 2017: "TRADE: BEHIND THE HEADLINES." This year's edition of the WTO's outreach event will have as its theme "Trade: Behind the Headlines." The meeting will aim to look at the real-life implications of trade, as opposed to rhetoric, and will also look at how trade can support the 2030 Agenda for Sustainable Development and related issues. To learn more, visit the [WTO website](#).

29 September, Geneva, Switzerland. DISCIPLINING FOSSIL FUEL SUBSIDIES - TRADE POLICY OPTIONS TO CLIMATE MITIGATION AND TO SDGS. This workshop is being organised by the International Centre for Trade and Sustainable Development (ICTSD) and implemented in cooperation with the World Economic Forum (WEF). It will look at different possibilities for disciplining fossil fuel subsidies, specifically via the WTO, including options for the upcoming WTO ministerial conference this December. Please note that attendance is by invitation only. To learn more, please visit the [ICTSD website](#).

9-11 October, Geneva, Switzerland. UNCTAD ANNUAL HIGH-LEVEL IIA CONFERENCE - PHASE 2 OF IIA REFORM. This event is being organised by the UN Conference on Trade and Sustainable Development (UNCTAD). It will feature both plenary and working sessions, with the former being streamed live online. It will focus specifically the efforts being made to reform international investment agreements (IIAs), in line with UNCTAD's Road Map for IIA Reform. Background documents are available online and registration is open. To learn more, please visit UNCTAD's event [website](#).

Present-15 October, online. TSDS BRIDGES WRITING COMPETITION. The International Centre for Trade and Sustainable Development (ICTSD) is holding its second Bridges Writing Competition, as part of its Trade and Sustainable Development Symposium (TSDS) this December in Buenos Aires, Argentina. The competition is open to all current university students, with the essay topic focusing on the trade and sustainable development agenda. Please note that the submission deadline is 15 October 2017. To learn more about specific topic requirements, submission procedures, prizes, and eligibility, visit the [TSDS website](#).

25-26 October, Budapest, Hungary, 17th WORLD EXPORT DEVELOPMENT FORUM (WEDF). The International Trade Centre's (ITC) flagship event will have as this year's theme "Trade - A force for good: include, innovate, integrate." The forum will explore how trade can generate positive change at a time when global challenges – economic, social, and environmental – are changing how trade works. WEDF will be co-hosted by the Hungarian Ministry of Foreign Affairs and Trade and will gather business leaders, policymakers, and representatives of international organisations and trade and investment support institutions for interactive sessions and facilitated business-to-business meetings. Registration is now

open at <https://wedf-registration.org/> For more information on the event, please visit the WEDF 2017 [website](#).

2 November, Geneva, Switzerland. THE FUTURE OF WORK. This panel discussion is being organised by the Graduate Institute of International and Development Studies in collaboration with The Economist news magazine. The event will be moderated by Ryan Avent, Senior Editor and Economics Columnist at the same publication, looking at what continued technological evolution means for skills and job prospects. A final list of panellists is forthcoming. To learn more and to register, please visit the Graduate Institute [website](#).

27-28 November, London, UK. A SUSTAINABLE FOOD FUTURE. This Chatham House event will look at both the current state of play and future prospects for food security and a sustainable food system, examining topics ranging from fisheries and aquaculture to nutrition and health. Additional details such as an agenda, speakers list, and pricing information are available online. To learn more, please visit the event [website](#).

11-13 December, Buenos Aires, Argentina. TRADE AND SUSTAINABLE DEVELOPMENT SYMPOSIUM (TSDS). This biennial event is being organised by the International Centre for Trade and Sustainable Development (ICTSD) in collaboration with select strategic partners, in parallel with the WTO's Eleventh Ministerial Conference. A dedicated website to the TSDS is now live, with information on how to register; the event's format; and other relevant details. Additional information will be made available closer to the date. To learn more, visit the TSDS [website](#).

Present-14 December, online. CALL FOR PAPERS: THE FORUM ON MIGRATION, TRADE, AND THE GLOBAL ECONOMY. The International Centre for Trade and Sustainable Development (ICTSD) and the Fundación Foro del Sur will be holding the Forum on Migration, Trade, and the Global Economy in Buenos Aires, Argentina, on 14 December 2017. As part of the event, they have now launched a "call for papers." An announcement regarding selected abstracts will be made by 25 September 2017, with the deadline for paper submissions being 23 October 2017. Papers will be distributed and discussed at the forum itself in December. To learn more about submission requirements, key dates in the process, and the forum itself, please visit the ICTSD [website](#).

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## Resources

CURRENT ALLIANCES IN INTERNATIONAL INTELLECTUAL PROPERTY LAWMAKING: THE EMERGENCE AND IMPACT OF MEGA-REGIONALS. By Pedro Roffe and Xavier Seuba for the International Centre for Trade and Sustainable Development (ICTSD) and the Centre for International Intellectual Property Studies (CEIPI) (August 2017). This paper is part of a joint publication series by CEIPI and ICTSD on "Global Perspectives and Challenges for the Intellectual Property System." This latest publication looks at the relationship between plurilateralism, particularly when it involves trade agreements, and the world of intellectual property law. The paper is available for download [here](#).

THREE-DIMENSIONAL CLIMATE CLUBS: IMPLICATIONS FOR CLIMATE COOPERATION AND THE G20. By David Victor for the International Centre for Trade and Sustainable Development (ICTSD) (August 2017). This paper examines the topic of climate "clubs," looking at how such cooperation frameworks can be made "three-dimensional" through the inclusion of actors within, across, and outside national government frameworks. It also looks at the potential role for the G20 and other forums in such initiatives. The publication is available for download [here](#).

PRIVATE STANDARDS, TRADE, AND SUSTAINABLE DEVELOPMENT: POLICY OPTIONS FOR COLLECTIVE ACTION. By Fabrizio Meliado for the International Centre for Trade and Sustainable Development (August 2017). This paper takes a close look at private standard schemes, examining their function within the context of global value chains. It also provides options aimed at supporting the trade-creating potential of such schemes, among other recommendations. The paper is available for download [here](#).

BRIDGING DISTANCE FOR DEVELOPMENT: REGULATORY COOPERATION APPLIED TO CONSUMER RIGHTS, PARCEL DELIVERY AND SALES TAX. By Hanne Melin for the RTA Exchange (August 2017). The RTA Exchange is jointly implemented by the International Centre for Trade and Sustainable Development (ICTSD) and the Inter-American Development Bank (IDB). This paper is part of a series published by the RTA Exchange, with this one focusing specifically on how to support greater participation of smaller companies in international markets. The author links this issue to the Sustainable Development Goals (SDGs), regulatory cooperation, and internet-enabled trade, among other topics. The paper is available for download [here](#).

INVESTMENT DISPUTE SETTLEMENT NAVIGATOR. Published by the UN Conference for Trade and Development (UNCTAD) (September 2017). This latest version of UNCTAD's Investment Dispute Settlement Navigator has been brought up to date through 31 July, examining new cases under investor-state dispute settlement (ISDS) mechanisms, along with updating information regarding ongoing cases. The navigator is available online [here](#).

IMPROVING ENERGY EFFICIENCY IN THE AGRO-FOOD CHAIN. Published by the Organisation for Economic Co-operation and Development (OECD) (August 2017). This new publication evaluates the role of different energy sources used in throughout the food supply chain, looking at what this means for greenhouse gas emissions and energy efficiency. The report is available for download at the OECD [iLibrary](#).

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