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UNITED STATES

Trump Calls for Free, "Fair Trade," Highlights Job Losses in Addressing US Congress

US President Donald Trump called for a bipartisan approach in efforts to increase American economic competitiveness [during his first address](#) to both chambers of the country's Congress on Tuesday 28 February, in a speech that called for free, "fair trade" but otherwise offered few trade-related policy details.

Taking place just over a month since Trump's inauguration, the speech marked the first such address to lawmakers and was being watched closely for references to upcoming policy priorities, indications of his legislative agenda, and its political tone. Traditionally, US presidents in their first year of office do not give a formal "State of the Union" address, but do address Congress in this type of forum.

While trade was among the more contentious topics on the campaign trail before Trump was elected last November – with multi-country agreements like the North American Free Trade Agreement (NAFTA) and the Trans-Pacific Partnership (TPP) drawing particular fire – the topic was referred to only briefly in the speech, largely to illustrate a mercantilist perspective that emphasise trade deficits as cause of job losses and competitiveness.

"We've lost more than one-fourth of our manufacturing jobs since NAFTA was approved, and we've lost 60,000 factories since China joined the World Trade Organization in 2001. Our trade deficit in goods with the world last year was nearly US\$800 billion dollars," the US leader claimed on Tuesday evening.

Trump also referred to some of the steps his administration has taken to date on trade, such as formally instructing the Office of the US Trade Representative (USTR) last month to withdraw the US from the Trans-Pacific Partnership (TPP) Agreement, of which it was the largest economy. The remaining signatories to the accord have spent the last several weeks discussing in different forums how to proceed, with a full summit planned for mid-March in Viña del Mar, Chile.

While referring to the TPP deal as “job-killing,” Trump otherwise gave no further detail on the accord. He did, however, repeat past rhetoric over American workers not benefitting sufficiently from past trade policy.

“I believe strongly in free trade but it also has to be fair trade. It’s been a long time since we had fair trade. The first Republican President, Abraham Lincoln, warned that the ‘abandonment of the protective policy by the American government... will produce want and ruin among our people’,” said Trump.

“Currently, when we ship products out of America, many other countries make us pay very high tariffs and taxes. But when foreign companies ship their products into America, we charge them nothing, or almost nothing,” he continued.

While Trump also instructed the USTR’s office last month to prioritise bilateral deals in future US trade policymaking, the speech did not refer to any planned deals by name, despite signals that the US and UK would be interested in inking a bilateral deal once the latter exits the European Union. (See Bridges Weekly, [2 February 2017](#))

USTR trade strategy draws scrutiny

Meanwhile, the Office of the US Trade Representative (USTR) sent to Congress on Wednesday 1 March its [annual policy document](#) outlining the planned “presidential trade agenda” for the coming year, as required under the Trade Act of 1974.

A draft version of the document already began making the rounds earlier this week, being reported by multiple news outlets.

The draft text, according to a [version posted online](#) by the Financial Times, acknowledges that the lack of a Senate-confirmed USTR means that the office will only be able to circulate a more detailed text further down the road, a point that was reaffirmed in the final text released Wednesday.

Trump has nominated Robert Lighthizer to serve as the US Trade Representative, an international trade lawyer who previously served as a deputy USTR under the administration of Ronald Reagan. The timing for Lighthizer’s confirmation is not yet clear, given that he will need to first obtain a waiver by the Senate in light of previous lobbying work done for China and Brazil several years ago.

Within that context, the draft USTR trade policy text published by the Financial Times states that every trade-related action under the administration “will be designed to increase our economic growth, promote job creation in the United States, promote reciprocity with our trading partners, strengthen our manufacturing base and our ability to defend ourselves, and expand our agricultural or other exports.”

The text in the final document remains essentially the same in this area, replacing the terms “and other exports” with “services industry exports.”

The draft document also says that it will not put at risk US competitiveness for the sake of advancing “geopolitical” interests abroad, and reaffirms the commitment of the new administration to “focusing on bilateral negotiations rather than multilateral negotiations – and by renegotiating and revising trade deals when our goals are not being met.”

The [final version](#) maintains that the administration “reject[s] the notion that the United States should, for putative geopolitical advantage, turn a blind eye to unfair trade practices that disadvantage American workers, farmers, ranchers, and businesses in global markets.”

It also keeps in place the language regarding prioritising bilateral over multilateral trade talks, as well as on the renegotiation of existing agreements.

Key objectives

The draft version of the USTR document later outlines a series of “key objectives” that address topics such as levelling the playing field domestically and abroad for US products, along with “breaking down unfair trade barriers”; ensuring the protection of US intellectual property; being strong on trade enforcement; “resisting efforts” by countries or international bodies to increase US obligations or weaken US rights under trade deals; and taking steps to ensure that trade agreements keep pace with recent developments.

While the draft language about “resisting efforts” by others “to weaken the rights and benefits of, or increase the obligations under, the various trade agreements to which the United States is a party,” the final version is slightly modified.

Specifically, the final text inserts the words “to advance interpretations” before the reference to weakening rights and benefits of the US under trade agreements.

The draft and final document are both split into four “major priorities” relating to the protection of “US national sovereignty over trade policy,” as well as trade enforcement; pushing trading partners to lower barriers to US imports; and the negotiation of future trade agreements.

The first “priority” has particularly captured headlines since the draft was circulated by the Financial Times, in light of its language relating to the US’ compliance with WTO dispute settlement rulings.

The draft text notes that the WTO Agreement does grant complaining countries in a trade dispute to “have the right to be automatically authorised to retaliate by imposing trade sanctions on the losing country” should the latter not bring measures found to be illegal in line with global trade rules. The final version removes the word “automatically” but otherwise keeps this line the same.

However, the draft and final text both state later on that WTO dispute settlement rules make clear that actual legal rulings by the global trade arbiter “could not ‘add to or diminish the rights or obligations’” of its members.

Citing the “history” of the American debate on the issue prior to US lawmakers approving the Uruguay Round Agreements Act (URAA) that brought the WTO’s Marrakech Agreement into domestic law, the draft document states that “the American people were assured that, by the express terms of the [Dispute Settlement Understanding] itself, this dispute settlement process would not alter the terms of what the United States had agreed to, and what Congress thereafter expressly approved when it passed the Uruguay Round Agreements Act.”

The final version maintains this section, adding a specific reference to the World Trade Organization after the part on “the terms of what the United States had agreed to.”

Later in the both the draft and final texts, the presidential trade agenda then argues that WTO dispute settlement reports are “not binding or self-executing,” after which it states that any adverse panel or Appellate Body rulings for the US “does not automatically lead to a change in US law or practice.”

“Ever since the United States won its independence, it has been a basic principle of our country that American citizens are subject only to laws and regulations made by the US government – not rulings made by foreign governments or international bodies,” the draft text continues. However, this particular paragraph is not included in the final version.

The language suggesting that WTO rulings may not be treated as binding has drawn particular notice in the trade community. The WTO’s dispute settlement function has long

been considered a landmark development in international law, especially given the [established understanding](#) that its reports, once adopted by the Dispute Settlement Body (DSB), are binding in that dispute on the relevant parties.

Furthermore, the WTO's Marrakech Agreement says that "each member shall ensure the conformity of its laws, regulations, and administrative procedures with its obligations as provided in the annexed Agreements."

In addition to the above-mentioned language on WTO law, the draft and final documents repeatedly suggests throughout that, given that "large portions of the global economy do not reflect market forces" and with many allegedly taking part in currency manipulation or other "unfair practices," the Trump administration "will not tolerate" such practices.

It also advocates an "aggressive approach" to opening up foreign markets. The language in this area is slightly modified from the earlier draft, which pledged that the new administration "will use all possible leverage – including, if necessary, applying the principle of reciprocity to countries that refuse to open their markets – to encourage other countries to give US producers fair access to their markets."

The final version says instead that the Trump Administration "will use all possible leverage to encourage other countries to give US producers fair, reciprocal access to their markets," dropping the earlier reference to "applying the principle of reciprocity" for those who do not.

Despite the tone taken throughout the text on trade law, enforcement, negotiation, and other topics, a footnote in the both the draft and final versions also specifies that the Trump administration for the moment "is not proposing legislation with respect to the objectives of priorities outlined in this statement."

ICTSD reporting; "Trump Trade Nominee Lighthizer Needs Waiver Over Work for China and Brazil," BLOOMBERG, 15 February 2017; "Trump has WTO rulings in sights, leaked report shows," FINANCIAL TIMES, 28 February 2017; "Is the WTO one of Trump's 'big quagmire deals'? Here's what's at stake," THE WASHINGTON POST, 28 February 2017; "Trump may ignore World Trade Organization in major shift of U.S. trade policy," THE WASHINGTON POST, 1 March 2017.

WORLD TRADE ORGANIZATION

WTO Director-General Roberto Azevêdo Gears Up for Second Term

WTO members formally reappointed Director-General Roberto Azevêdo for a second term on Tuesday 28 February, with the global trade chief outlining to members the day before his vision for the organisation's next four years.

Speaking to members at Monday's General Council, Azevêdo described both the achievements seen during his first term, as well as his plans and possible challenges going forward. Azevêdo ran unopposed for this upcoming term.

Azevêdo took office in September 2013, transitioning from Brazil's WTO ambassador to serving as the head of the Geneva-based organisation. At the time, members were heading into their ninth ministerial conference (MC9) in Bali, Indonesia, where they ultimately concluded negotiations for a global Trade Facilitation Agreement (TFA). That new multilateral deal entered into force just last week. (See Bridges Weekly, [23 February 2017](#))

"There was a tangible sense of crisis back then – and it was very real. We had not delivered any major multilaterally negotiated outcomes since 1995," the WTO chief recalled of the pre-Bali context, referring to that ministerial's outcome as "historic."

Since then, other developments that have been seen at the WTO include the expansion of the Information Technology Agreement (ITA), an agreement among a group of WTO members to slash tariffs on select information and communication technology goods. (See Bridges Daily Update, [16 December 2015](#))

Trade ministers gathering at the WTO's tenth ministerial conference (MC10) in Nairobi, Kenya, also agreed on new disciplines regarding the elimination of agricultural export subsidies, among other decisions. However, that same conference also saw members unable to bridge divisions over whether to reaffirm the mandate of the Doha Round of trade talks, which have been underway since 2001 and have repeatedly struggled to advance over the years. (See Bridges Daily Update, [19 December 2015](#))

At the time, ministers ultimately agreed to disagree on the Doha Round framework, while agreeing to continue work on its issues. While the topic of whether to begin negotiating on so-called "new issues" was also hotly debated, WTO members decided that any formal negotiations on those subjects within the global trade body would require consensus among the membership.

"Members were talking to each other and putting forward new ideas on many of the key issues. We tried every approach we could think of – particularly during 2015... We did all that, but still we could not bridge the gaps between members' positions," said Azevêdo.

Other aspects of his first term that Azevêdo raised during his speech on Monday were the improvements made internally at the secretariat to help address the heavy caseload being faced by dispute settlement lawyers – even with budget and human resources constraints – while at the same time noting that "the system has no spare capacity to respond to any future rise in cases."

He also referred to the value of the WTO's regular bodies, including in tracking members' commitments being put into practice. Throughout the speech, he also highlighted the value

of technical assistance and capacity building in helping all WTO members make the most of the system.

"Progress can only happen with full engagement by members. But the ability to engage is bound up with the question of capacity. I want to do more to empower members so that they feel ownership of the system – this applies to the smallest and least developed members the most," he said.

Next stop: Buenos Aires

Azevêdo's second term will formally begin on 1 September 2017, just months before trade ministers head to Buenos Aires, Argentina, for their eleventh ministerial conference (MC11).

In the 14 months since the Nairobi ministerial in December 2015, WTO members have undertaken a process of "reflection" on where to take the organisation's negotiating arm. From that process, many WTO members have expressed interest in seeing concrete negotiating outcomes in Buenos Aires on the famously difficult issue of domestic agricultural support.

Debates are also underway on disciplining harmful fisheries subsidies and potentially making some headway on the issue of e-commerce, which despite being the subject of a WTO work programme has been discussed relatively little in a formal context within the organisation until recently. Services facilitation and domestic regulation have also been raised by some members.

At Monday's General Council, Azevêdo reiterated the value of negotiated results for supporting the current trading system. However, last week he had additionally warned members at an [informal meeting](#) that much work remains if they wish to deliver "concrete outcomes" in time for the 11-14 December meetings in the Argentine capital.

"My honest assessment is that in all areas we still have a long way to go – and a huge amount of work ahead if we are to arrive at concrete outcomes," he said last week, noting that effectively WTO members have eight working months left to prepare for the Buenos Aires ministerial.

He also encouraged members at the time to put forward any proposals they have in mind promptly, in order to help ensure that they can advance into more specific discussions by this summer.

Learning from history

Along with describing the changes that the WTO has seen since he took office, the multilateral trade chief also referred to the various major developments seen on the geopolitical stage in recent years and their potentially profound ramifications for the organisation.

While not referring to these specifically by name, some of these developments have included the June 2016 referendum in the United Kingdom, which saw voters endorse by a narrow margin the idea of exiting the European Union. UK Prime Minister Theresa May has said that she hopes to invoke the formal procedures to kick off those talks by the end of March, with the process due to affect the UK's and EU's schedules within the WTO among a host of other trade issues. (See Bridges Weekly, [23 February 2017](#))

Across the Atlantic, the November 2016 elections in the United States saw the election of a new president after one of the most bitterly contested presidential campaigns in recent memory that often focused on trade. (For more on the US, see related story, this edition)

In practical terms, while Robert Lighthizer has been nominated to serve as new US Trade Representative, he has yet to be confirmed by the Senate. Meanwhile, a replacement for the previous Deputy USTR and US Ambassador to the WTO, Michael Punke, has not yet been nominated.

Elections underway this year across Europe are similarly expected to bring public tensions on trade, migration, and the broader concept of globalisation to the fore. (See Bridges Weekly, [9 February 2017](#))

The WTO chief alluded broadly to the global context in his speech to members this week, arguing that "the value of mutually-agreed global rules is evident" in this type of situation, while noting that the current system emerged in "direct response to the bloody lessons of history."

"Global economic growth is low. Trade growth is low. The threat of protectionism cannot be ignored. Multilateralism faces momentous hardships. And we struggle with the persistent challenges of poverty, inequality, and under-development," said Azevêdo in describing today's trade context.

He also called upon governments to develop policies that would invoke trade's potential as "part of the solution" toward achieving "sustainable social and economic development," along with working together on the global stage.

"We must all work to defend the system. We all have a role to play to safeguard this key element of global economic governance. The role of members is vital here – so too is the role of each individual: ambassadors, permanent representatives, WTO staff... everyone – myself included," said Azevêdo.

ICTSD reporting.

CARBON MARKETS

EU Environment Ministers Agree Position for Carbon Market Reform Talks

Environment ministers from the European Union's 28 member states met on Tuesday 28 February to discuss reforming the bloc's flagship carbon market for the post-2020 period, agreeing on a "general approach" to upcoming negotiations just a few short weeks after the European Parliament approved its own position.

The day-long meeting in Brussels, Belgium, saw ministers under the EU's Environment Council continue their debate well past their scheduled closing time in a bid to reach a compromise approach as they head into "trilogue" negotiations with the European Parliament and the European Commission.

In a sign of the difficulty of the talks, the final "general approach" reportedly had nine EU member states vote against it, according to the Reuters news agency and other media outlets.

The efforts to reform the EU's Emissions Trading System (EU ETS) for its upcoming "phase 4" from 2021-2030 have been underway for nearly two years, with the European Commission putting forward its legislative proposal on the subject in July 2015, after which EU parliamentarians debated the reforms and ultimately approved their own set of draft plans in February 2017. (See Bridges Weekly, [16 February 2017](#) and [23 July 2015](#))

The EU ETS has been in place since 2005 and is currently the largest carbon market in operation. The scheme covers emissions across a range of industries, and applies to all 28 EU member states as well as Iceland, Liechtenstein, and Norway.

In the wake of the financial crisis, however, the system has struggled with a massive oversupply of permits that has been driving down permit prices to levels below what experts say is essential for stimulating low-carbon investments. This development, along with the EU's agreed commitments under the UN's Paris Agreement on climate change, has fuelled efforts toward upgrading the cap-and-trade scheme.

"This is important for us, for our planet and for future generations. The Paris Agreement was a landmark achievement, but we need to put words into action," [said](#) José Herrera, Maltese Environment Minister. Malta currently holds the rotating Council presidency.

Market stability reserve, funding mechanisms

"The agreement reached today by ministers keeps the overall architecture of the European Commission proposal, while making important changes on a triangle of key issues," [said](#) Miguel Arias Cañete, who serves as the European Commissioner for Climate Action and Energy, in comments to reporters after the meeting.

Ministers have reportedly agreed on a proposal to increase the availability of carbon permits for industry "if needed" in order to limit the possibility of "carbon leakage," which involves cases where businesses relocate their production to countries with less stringent emissions policies. Specifically, this would reportedly involve giving out an additional two percent of permits freely rather than auctioning them.

According to Arias Cañete, ministers have also proposed “doubling the speed with which the surplus of allowances on the market will enter the market stability reserve,” referring specifically to the system approved in 2015 that will aim to tackle the glut of permits in the EU’s carbon market.

This doubling would increase the rate of removing excess permits from the MSR to 24 percent for its first five years in operation, as opposed to 12 percent. Ministers also reportedly agreed on the idea of cancelling some permits in the reserve should they exceed a certain level from the year 2024 onward. The market stability reserve (MSR) is due to open in January 2019. (See Bridges Weekly, [9 July 2015](#))

Furthermore, the Environment Council has also signed off on “simple and transparent rules” to support the financial schemes that aim to help less affluent EU member states upgrade their energy systems in favour of lower-carbon alternatives, according to Arias Cañete.

While the overall agreement on a “general approach” to negotiations was welcomed by many environmental groups, there were also calls for greater ambition in the “trilogue” talks ahead.

“By comparison to where we started the reform process, today’s decision is a small step in the right direction. By comparison to where we should be to stop the climate crisis, this decision is a wasted opportunity,” [said](#) Wendel Trio, Director of Climate Action Network (CAN) Europe.

Other climate watchers, such as WWF Europe, also [questioned](#) the move toward giving industries free permits as opposed to auctioning them off, suggesting that the latter option could provide useful financing toward supporting other climate-directed measures.

“The upcoming negotiations between the European Parliament and member states must be used to correct these mistakes to make the EU carbon market fit for purpose,” said Imke Lübbecke, WWF European Policy Office’s Head of Climate and Energy.

Meanwhile, the International Emissions Trading Association (IETA), a non-profit business group favouring emissions trading, praised the increases proposed in the MSR’s “intake rate” and additional industry safeguards.

“Yesterday’s decision is a big step towards finalising work on market reform that aims to strengthen the system for years to come,” [said](#) Julia Michalak, who serves as the organisation’s EU Policy Director.

ICTSD reporting; “UPDATE 1-EU nations thrash out deal on carbon market reform,” REUTERS, 1 March 2017; “Reform of EU carbon trading scheme agreed,” THE GUARDIAN, 28 February 2017; “EU ministers reach compromise on carbon market reform,” EURACTIV, 1 March 2017.

EUROPEAN UNION

EU's Malmström Makes Global Investment Court Pitch to Stakeholders

EU Trade Commissioner Cecilia Malmström reiterated calls for a multilateral investment court earlier this week, holding a meeting with stakeholders in Brussels on Monday on the subject. A public consultation on the court is currently underway, having been launched in [December 2016](#), and is due to close on 15 March.

The multilateral investment court that is the topic of these consultations would aim to reform the past models of investor-state dispute settlement (ISDS) mechanisms, proponents say. The EU trade chief first announced her goal of developing such a court in May 2015. (See Bridges Weekly, [7 May 2015](#))

The proposed model would aim to ensure that investors can count on their rights being protected and on operating conditions that guarantee them fair treatment, while also ensuring that domestic public policies relating to areas such as health and environment are not encroached upon.

While the investor-state dispute system has long drawn scrutiny for its application and structure, another debate raised by some trade observers over the years is the use of special tribunals for foreign investors versus relying on national court systems and laws – and concerns over a potential asymmetry of treatment under these special tribunals between foreign investors and host country stakeholders.

Speaking to stakeholders from trade unions, business organisations, legal experts, academia, and consumer groups, Malmström urged participants to provide inputs on scoping a possible multilateral investment court to replace the existing ISDS system.

The ISDS system, based around ad hoc tribunals, can be found in over 3,000 investment agreements currently in force around the world and has been in practice for more than four decades. In her remarks on Tuesday, Malmström termed the system "old-fashioned" and "far from perfect," raising "questions about fairness and impartiality" in balancing investor and state interests.

The [consultation](#) period, which will focus on assessing the impact of a new multilateral system on areas such as small business and developing countries, will continue for two more weeks, at which point the results will be channelled into the Commission's impact assessment report on options for multilateral reform, which has been ongoing since August 2016.

The consultation [follows talks](#) held in Davos, Switzerland, in January between 30 trade ministers to explore options and gauge the interest for a multilateral investment court at a political level, organised by the Canadian government and the European Commission. An [expert-level meeting](#) featuring officials from over 60 countries and several international agencies was also held in Geneva this past December.

System overhaul

"The system is in clear need of an overhaul," the Commissioner said on Monday, citing a need to evaluate whether ad hoc arbitration is out of touch with the current public policy

landscape, particularly given the “high-profile” uses of ISDS mechanisms in cases that have implications for social and environmental issues.

She also called for an upgrade to ensure that investment dispute settlement is held to high standards of accountability, including by making the proposed future court significantly more transparent than previous ISDS iterations, including through suggesting the inclusion of public hearings and the publishing of case-related documents online.

“It’s not enough for justice to be done; it must also be seen in order to be done,” she added when identifying key principles that would need to be embodied in a replacement system, including transparency, effectiveness, and adherence to cornerstone EU values and standards.

“Having multiple, potentially inconsistent, courts or panels is costly and complex and it undermines, potentially, the credibility and predictability investors and governments rely on,” she elaborated.

The proposed multilateral investment court would represent a permanent body open to all interested countries to join. Officials say that it would safeguard the right to regulate in the public interest and health, safety, and environmental concerns, responding to popular concerns that the ISDS system did not provide sufficient protections for these.

“In an era when many are sceptical about the benefits of globalisation, this is a chance to ensure trade is not at the expense of values; rather supporting them. A chance to show that we can reform so trade and investment continue to boost our economy but also to work for everyone, and for the public interest, and do so in a way perceived as legitimate and trustworthy,” said the EU trade chief.

The idea for the multilateral court has been credited by EU Commission officials as one of the main innovations inspired from an earlier public consultation held in 2014 about the ISDS system in the EU-US negotiations for a Transatlantic Trade and Investment Partnership (TTIP). The TTIP talks are currently on hold pending further clarity from the new US administration on the direction of Washington’s trade policy priorities regarding the EU.

The multilateral court would build on the investment court system already enshrined in two EU deals, including the EU-Canada Comprehensive Economic and Trade Agreement (CETA), approved by the European Parliament last week, and in the Vietnam-EU free trade agreement. Both agreements contain a reference nodding to a potential future multilateral system. (See Bridges Weekly, [16 February 2017](#))

Malmström outlined on Monday the Commission’s intention to include the system in all future trade negotiations, listing planned or ongoing talks with Australia, Chile, China, Indonesia, Myanmar, New Zealand, the Philippines, and Tunisia as examples.

The investment court system has already met some early questions and represented a hurdle in the run-up to the signing of CETA, where opponents in the Belgian region of Wallonia cited concerns that the mechanism could risk making governments vulnerable to big business, despite assurances to the contrary. The issue was ultimately addressed after a joint EU-Canada “[interpretive instrument](#)” was released clarifying that and other points.

CETA’s [mixed agreement status](#) requires that issues of shared or member state competence, including investment protection, be subject to ratification at the member-state level. This means that these will not apply when the agreement enters into force provisionally, but will require the sign-off of national – and in some cases regional – legislatures to take effect.

ICTSD reporting; “European Parliament Passes CETA After Debate Over Whether It’s A Good Or Bad Deal,” IP-WATCH, 15 March 2017; “A global investment court for a changing era of trade,” FINANCIAL TIMES, 24 January 2017.

DISPUTES

WTO's Highest Court Rules in EU-Russia Pork Dispute

The WTO's Appellate Body ruled last week that Russia's import bans on live pigs, pork, and other pig products from the European Union were imposed in violation of global trade rules. This finding upholds the bulk of an earlier panel's conclusions published last August.

The trade row ([DS475](#)) was triggered by Russia's alleged rejection of certain pig and pork product imports from the entire bloc following the detection of African swine fever (ASF) in four individual member states – Lithuania, Estonia, Latvia, and Poland. ASF is a highly contagious, lethal haemorrhagic disease affecting pigs.

The EU claimed that it had acted quickly, as had its member states, to contain the spread of disease and address it where present. Russia, however, refused to recognise those actions, keeping the import ban in force even for products from non-affected areas, according to the bloc. In contrast, the EU said, Russia allowed live pigs and pork products to be imported from Ukraine and Belarus, despite some ASF cases in both countries.

The 28-nation bloc subsequently requested consultations with Russia in April 2014, challenging both the EU-wide ban and the individual member state bans, with a dispute panel established later that year to hear the case. (See Bridges Weekly, [10 April 2014](#))

In its report published last August, the panel found that aside from banning imports from these four EU member states, Russia had indeed imposed a bloc-wide ban. The panel also deemed that most aspects of these bans went against the regionalisation requirement of the WTO's Sanitary and Phytosanitary Measures (SPS) Agreement. The panel also said that Russia's measures had resulted in arbitrary and unjustifiable discrimination in violation of SPS rules.

Moscow and Brussels both filed appeals last November on certain legal aspects of the panel report. The Appellate Body circulated its report last Thursday with the majority of the panel's ultimate findings upheld.

EU-wide ban, Russia's accession terms

During earlier proceedings, the original dispute panel reviewed letters and instructions from Russian authorities submitted by the EU, ultimately determining that Moscow's move to block EU exports was tantamount to a bloc-wide ban, attributable to Russia.

The Appellate Body agreed with the panel and clarified that the measure challenged is Russia's refusal to accept EU imports, not the condition of the EU overall being free of African swine fever for three years as set forth by bilaterally agreed veterinary certificates between the EU and Russia. Russia had said it was rejecting imports because the latter condition was not met and Russia cannot recognise the EU-issued certificates.

Furthermore, the Appellate Body said that this condition is part of Russia's broader import regulatory framework, and the import ban was given effect by Russia's enforcement of such conditions.

Russia also referred to the part of its accession commitment relating to the bilateral veterinary certificate, seeking justification for the import ban. The Appellate Body disagreed with Russia's reading of its accession documents.

WTO members must adjust SPS measures as needed to account for regional developments, with the Appellate Body deeming that Russia's accession terms still meant that the country needed to "act in good faith" to update the relevant certificates to ensure the WTO-consistency of its measures.

"Regionalisation" requirements

Article 6 of the SPS Agreement requires WTO members to ensure that any SPS measures are adapted to regional characteristics, in what is known as a "regionalisation" requirement, along with outlining what both importing and exporting countries must do in this area. Russia and the EU appealed various findings of the panel under this provision.

The Appellate Body upheld the panel's finding that, excepting Latvia, the EU had provided the necessary evidence for an "objective demonstration" to Russia that there were areas within the EU and affected member states that were and would continue to be ASF-free.

The Appellate Body also said, among other findings, that Russia failed to adjust its import ban on Latvia in light of regional SPS characteristics in Russia – thus violating this "regionalisation" rule.

That same article also outlines requirements on recognising concepts of low or zero disease/pest areas. The Appellate Body disagreed with the earlier panel's finding that importing members only need to abstractly recognise this regionalisation concept, instead agreeing with the EU that this requires them to "render operational the concepts."

The Appellate Body was, however, not able to complete its analysis regarding whether Russia had complied with the recognition obligation.

Trade ties, sanction context

The Putin administration had also [banned](#) the imports of most products under review in this case in August 2014 in response to EU [sanctions](#) imposed in the wake of the Ukrainian crisis.

Bilateral EU-Russia trade dropped by approximately 36 percent during the years 2013-15. According to EU [statistics](#), the 28-nation bloc made up about 40 percent of Russia's total exports in 2015, Russia-bound goods made up a far smaller share of the EU's overall exports.

Within the WTO, the two parties have been involved in eight disputes in the five years since Russia joined the global trade body. Responding to the Appellate Body ruling, the European Commission in a press release [stressed](#) that "Russia should withdraw its unjustified measures and allow EU companies to resume normal business with their Russian partners."

The release referred to the ban as "politically motivated," noting that the bulk of the goods involved are still subject to trade prohibitions and affirming that the EU will "continue to use WTO procedures to ensure that international trade rules are effectively respected."

Next steps

Under WTO dispute settlement practices, if immediate compliance cannot be achieved, the parties can seek a mutual agreement on the reasonable period of time for bringing the relevant measures in line with global trade rules. Should these joint efforts fail, parties can then resort to arbitration.

ICTSD reporting.

TRADE AGREEMENTS

Indonesia, Australia Eye Trade Deal Conclusion Within the Year

Indonesia and Australia are aiming to conclude negotiations for a comprehensive bilateral trade deal before year's end, according to Indonesian President Joko Widodo and Australian Prime Minister Malcolm Turnbull, who met in Sydney this weekend for talks on trade and other issues.

"We are very committed to concluding a high-quality bilateral free trade agreement, the Indonesia-Australia Comprehensive Economic Partnership by the end of this year," said the Australian leader on 26 February.

The two leaders also reported that significant developments were made in tariff reduction, infrastructure investment, building cooperation in the beef and cattle industry, and mutual embrace of culture, arts, and creative industry.

Officials stress untapped trade potential

As the two largest economies in the Oceanic region, Australia and Indonesia entered the weekend keen to strengthen their trade ties through the Indonesian-Australia Comprehensive Economic Partnership Agreement (IA-CEPA).

The bilateral talks first kicked off in 2010, and were re-booted just last year. (See Bridges Weekly, [15 December 2016](#))

"Identifying opportunities for expanding our economic, investment, and commercial relationship will be a focus of our discussions, including our commitment to concluding a high-quality Comprehensive Economic Partnership Agreement later this year. This Agreement will benefit Indonesians and Australians alike, generating jobs, promoting business and boosting investment," said Turnbull in a [statement](#) days before the scheduled meeting.

Despite the two nations' close proximity and fast growing economies, Indonesia [ranks](#) as Australia's 13th largest trading partner in goods and services, behind China, the United States, Japan, South Korea, the United Kingdom, New Zealand, Singapore, Thailand, Germany, Malaysia, and Hong Kong.

The Australian Department of Foreign Affairs and Trade [reports](#) two-way investment at A\$9.8 billion (US\$7.5 billion) and bilateral goods trade at A\$15.3 billion (US\$11.7 billion) between Australia and Indonesia in 2015. This compared with Australia's largest trading partner, China, whose bilateral goods and services trade with Australia was [reported](#) at A\$150 billion (US\$115 billion) in 2015.

Both sides say that the proposed trade deal could help invigorate their economic partnership, with officials issuing a joint [statement](#) last weekend confirming steady negotiating progress.

Over the weekend, Turnbull also confirmed in joint [remarks](#) with Widodo that they have agreed for Indonesia to lower its sugar tariff on Australia to five percent and in turn Australia will eliminate tariffs of pesticides and herbicides on Indonesia. These advancements came

from the sixth and most recent round of negotiations, which occurred just last week. The next negotiating round is set for this coming May.

"The potential for us to expand our economic relationship is very clear," said Turnbull just before recommitting to concluding IA-CEPA within the year.

Along with affirming his own interest in seeing the trade talks conclude by the end of 2017, Widodo noted that a key issue for his side would be removing barriers to trade such as tariffs and non-tariff measures for Indonesian products like paper and palm oil.

The two sides currently have a trade deal in place under the larger agreement between the 10-country Association of Southeast Asian Nations (ASEAN), Australia, and New Zealand, which [has been in force](#) for all parties since 2012. Indeed, Australia and the ASEAN members are due to hold a "special summit" in Australia next year.

Both countries are among the 16 involved in negotiating a Regional Comprehensive Economic Partnership (RCEP), which began its seventeenth round of negotiations this week in Kobe, Japan. Australia has been a lead country in the Trans-Pacific Partnership (TPP) Agreement, while Indonesia is not a member.

ICTSD reporting: "Free Trade Push: Australia, Indonesia Eye Deal," THE DIPLOMAT, 27 February 2017.

TRADE AGREEMENTS

Latvia Becomes First EU Member State to Approve CETA

The Latvian parliament [ratified](#) the EU-Canada Comprehensive Economic and Trade Agreement (CETA) last week, making the Baltic country the first of the EU's member states to do so on an individual basis.

The move was welcomed by Canadian officials, with Minister of International Trade François-Philippe Champagne stating in a [news release](#) that his country "commends Latvia's leadership on being the first to ratify this ground-breaking trade agreement."

"The successful passing of CETA in Latvia is an important step on the road to full ratification of an agreement that will bring prosperity to the middle class and those working hard to join it across Europe and Canada," he added.

The head of the Saeima Foreign Affairs Commission, Ojārs Ēriks Kalniņš, described CETA as "one of the most progressive and modern agreements that has been drawn up," [according](#) to Latvia's public broadcaster. Saeima is the name of the Latvian parliament.

CETA was approved by the European Parliament in mid-February, when it received the endorsement of the 751-member legislative body by a large majority. The approval will enable the two sides to apply the accord on a provisional level after Canada completes its own legislative processes. (See Bridges Weekly, [16 February 2017](#))

On goods-related trade, the accord is due to eliminate duties on over 99 percent of industrial products for both sides. Proponents say this could particularly facilitate the entry of Canadian exports to the Baltic EU country, especially in areas such as information and communication technologies, electrical products, and machinery and equipment.

Latvian officials have similarly [noted](#) the potential gains from slashing tariffs, as well as from liberalising services trade further, with a press release from the Saeima flagging the sectors of finance, telecommunications, marine transport, and environment. The Latvian parliament also referred to CETA's improvements in public procurement market access.

Goods exports from Canada to Latvia reached C\$224.1 million (US\$168 million) in 2016, according to Canadian government figures, while Canadian-bound imports from Latvia last year were C\$36.6 million (US\$27.4 million).

What's next

With Latvia's sign-off now secured, the agreement will still need to face ratification by the remaining EU national – and in some cases regional – legislatures for full entry into force.

For its part, Canada is making progress with CETA approval domestically, so that it may be provisionally applied as soon as possible. The House of Commons has [approved](#) Bill C-30, the CETA Implementation Act, and the bill has been introduced in the Senate, which completed its second "reading" on the subject this week.

ICTSD reporting; "Latvia becomes 1st EU country to sign on to Canada's trade deal," CBC NEWS, 23 February 2017; "Latvia first to ratify Canada-EU trade deal," PUBLIC BROADCASTING OF LATVIA, 23 February 2017.

EVENTS & RESOURCES

Events

Coming Soon

6 March, Brussels, Belgium. **MARKETS IN ARTICLE 6 OF THE PARIS AGREEMENT.** This meeting is being organised by the International Centre for Trade and Sustainable Development (ICTSD) and the European Roundtable on Climate and Sustainable Transition (ERCST). There will be presentations on topics such as carbon market developments in relation to the United Nations Framework Convention on Climate Change (UNFCCC) negotiations. These will be followed by a moderated roundtable discussion. This meeting is intended to brief the Brussels community on EU climate change policy and its potential implications. For more information on this event, please visit the ICTSD [website](#).

8 March, London, UK. **IMPLICATIONS OF CHANGING INTERNATIONAL TRADE: THE VIEW FROM SOUTH AFRICA.** This Chatham house event will feature South African Minister of Trade and Industry Rob Davies, who will speak on the effects of international trade both at the domestic and continental levels. To learn more and to register, please visit the Chatham House [website](#).

8 March, Washington, US. **THE GEOPOLITICAL IMPACT OF CHINA'S ECONOMIC DIPLOMACY.** This public forum is organised by the Centre for East Asia Policy Studies at the Brookings Institution and will feature a panel of Japanese and American experts to discuss the geopolitical implications of China's new economic diplomacy strategy. Director of the Centre for East Asia Policy Studies Richard Bush will moderate the panel, which will be followed by a Q&A segment. To learn more and to register, please visit the Brookings [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.

3 March: Committee on Rules of Origin

6 March: Dispute Settlement Body

8 + 10 March Trade Policy Review Body – Japan

9 March: Informal Committee on Market Access

Other Upcoming Events

21 + 23 March, Jeju, South Korea. **WORKSHOP: GREEN ENERGY, TRANSPORTATION AND GREEN CITIES.** This workshop is organised by the United Nations Institute for Training and Research (UNITAR) and the Asian Development Bank Institute (ADBI) and is designed to provide knowledge on green energy and transportation policy through course-based training. The aim of this workshop is to foster a better understanding of green infrastructure for development as well as green transport and energy infrastructure in developing

countries. Please note that attendance at this workshop is by invitation only. For more information on this workshop, please visit the ADB [website](#).

22 March, London, UK. ECONOMIC TRANSFORMATION: A NEW APPROACH TO INCLUSIVE GROWTH. This event is being organised by the Overseas Development Institute (ODI). This event will feature a panel of speakers from academia, government, and civil society for a discussion on economic transformation and its implications, along with what actions can be undertaken to support such a transition. This event is open to the public and will be streamed online. To learn more and register, or watch online, visit the ODI [website](#).

27-29 March, Mumbai, India. SIXTH GLOBAL ECONOMIC SUMMIT ON WOMEN'S EMPOWERMENT. This event is being organised by World Trade Centre (WTC) Mumbai, with the stated objective of bringing women together from an array of backgrounds for discussions around increasing women's participation in trade and other related topics, including institutional support for women, as well as education and leadership. To learn more, visit the World Trade Centers Association [website](#).

28 March, Geneva, Switzerland. REGULATORY COHERENCE AND THE MULTILATERAL TRADE SYSTEM: LESSONS FROM THE RTAs AND OPTIONS TO PROMOTE CONVERGENCE. This dialogue is being organised by the International Centre for Trade and Sustainable Development (ICTSD) and the Inter-American Development Bank (IDB). The objective is to help support trade policymaking in the area of regulatory coherence, particularly given the developments underway with regional trade agreements and the multilateral trading system. Please note that attendance at this event is by invitation only. For more information, please visit the ICTSD [website](#).

28 March, Brussels, Belgium. EFFORT SHARING REGULATION: WHAT DEAL CAN WE EXPECT? This meeting is being organised by the International Centre for Trade and Sustainable Development (ICTSD) and the European Roundtable on Climate and Sustainable Transition (ERCST). Taking place at the European Parliament with the participation of Gerben-Jan Gerbrandy, Member of the European Parliament representing the Netherlands and part of the Alliance of Liberals and Democrats of Europe, this meeting aims to facilitate policy discussions regarding the development of the new Effort Sharing Regulation. For more information, please visit the ICTSD [website](#).

Resources

TRADE, PUBLIC HEALTH, AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT. By Xavier Seuba for the International Centre for Trade and Sustainable Development (ICTSD) (February 2017). This think piece focuses on two broad public health objectives that would benefit from action in the area of trade policy and trade rules as a contribution to health-related targets of the 2030 Agenda. These two objectives are health innovation and access to health products of assured quality. The full document is available for download at the ICTSD [website](#).

THE ECONOMIC EFFECTS OF LABOUR IMMIGRATION IN DEVELOPING COUNTRIES. Published by the Organisation for Economic Co-operation and Development (OECD) Development Centre (1 February 2017). This new paper discusses the effects of immigration in developing countries, including its potential implications for areas ranging from the labour market to economic growth and trade. The authors also distinguish between the implications between lower and middle-income countries in their analysis. The full paper is available for download at the OECDLibrary [website](#).

CLIMATE CHANGE: REASONS TO BE CHEERFUL? INTERVIEW WITH TIM FLANNERY, SERGE FOUNDATION DISTINGUISHED VISITING PROFESSOR. By the Graduate Institute of International and Development Studies (20 February 2017). Australian visiting Fellow of the Centre of International Environmental Studies Tim Flannery discusses his recent book "Atmosphere of Hope: Solutions to the Climate Crisis," and related studies and teaching on climate change and the transition to cleaner, low-carbon energy sources. The interview is available to view on the Graduate Institute's [website](#).

WHAT IS NAFTA, AND WHAT WOULD HAPPEN TO US TRADE WITHOUT IT? By Chad P. Bown for the Peterson Institute for International Economics (PIIE) (February 2017). This op-ed isolates five "key things" to know about the North American Free Trade Agreement (NAFTA). Bown speculates about what could happen should the US withdraw from the agreement, like it did the Trans Pacific Partnership (TPP), while noting that the US initiative to renegotiate the decades-old deal creates significant uncertainty for all parties involved. This op-ed is available to view on the PIIE [website](#).

SUSTAINABLE DEVELOPMENT INTERACTIVE TOOL. Published by the International Institute for Sustainable Development (IISD) (February 2017). This continually updated tool organises IISD research products into regions of the world and Sustainable Development Goals (SDGs) adopted in late 2015. By clicking on one of the 17 SDGs set by the UN for 2030, users can find publications relating to that goal and refine their search by clicking on a region of the world. This tool can be accessed on IISD [website](#).

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