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# BUSINESS REPORT

## INTERNATIONAL

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# Trojan horse deals are test for WTO boss

■ Developing countries get wise to dubious trade tribunals

## INVESTOR POWER

Lori Wallach  
and Ben Beachy

**R**OBERTO Azevêdo, the new World Trade Organisation (WTO) director-general, has earned praise for avoiding the implosion that has characterised many past WTO meetings.

The Bali deal indicates that, while attempts to expand the scope of the WTO do not enjoy support from most members, Azevêdo may find more support in heading calls to alter existing WTO rules.

His home country has proven successful in challenging old globalisation agendas and crafting its own trade policy. Brazil was one of the few countries that refused to subject its financial services sector to the WTO's broad deregulation rules. Unlike those countries that did, Brazil weathered the 2007/8 global financial crisis with limited impact.

Another example of Brazil's savvy is its refusal to accept an obscure-sounding provision that is usually buried in the trade and investment agreements and pushed onto other countries by the US and the EU. Known as "investor-state"

dispute resolution (ISDR), this mechanism empowers foreign corporations to bypass the domestic legal systems of the countries in which they operate. Instead, it allows them to drag sovereign governments before extrajudicial tribunals with a stunning demand – compensate corporations for health or environmental policies (or other government actions) that investors find inconvenient.

These tribunals consist of three private sector attorneys, unaccountable to any electorate. And yet, they are empowered to decide whether an important public interest policy should be deemed a violation of expansive, but vague, foreign investor privileges.

For example, a Peruvian anti-toxics policy is being attacked by a US corporation, as is Canada's medicine patent policy. And US tobacco giant Philip Morris has launched cases against progressive anti-smoking laws in Uruguay and Australia, after failing to sink the laws in domestic courts.

To outsiders, this may sound like a conspiracy theory. If only. In the name of investment promotion, US trade negotiators over the past two decades have quietly inserted these far-reaching provisions into a panoply of "free trade" agreements (FTAs) signed with 17 mainly developing countries, from Mexico to Morocco.

European countries have inked nearly 1 000 bilateral investment treaties (BITs) containing

## the Globalist

the same mechanism with developing countries in Latin America, Africa and Asia.

As a result, US and EU oil, pharmaceutical and other corporations are now launching an unprecedented wave of these investor-state cases. The UN reports that the cumulative number of investor-state cases has jumped tenfold since 2000.

Corporations are using this tool to go up against consumer safeguards, environmental laws, financial regulations and other policies that they claim inhibit their "expected future profits". These tribunals have already ordered governments to pay billions to foreign corporations, while billions more in claims remain pending.

So why would any country want to sign on to such a one-sided system? Most likely, it is deceptive advertising. Sweeping investor privileges, it was reasoned, were required to lure a steady flow of investment into developing countries. Investor-state clauses were originally presented as promoting investments. In reality, they have turned into a Trojan horse.

If the agreements had worked as advertised, Brazil – which has steadfastly refused to accede to these tribunals –

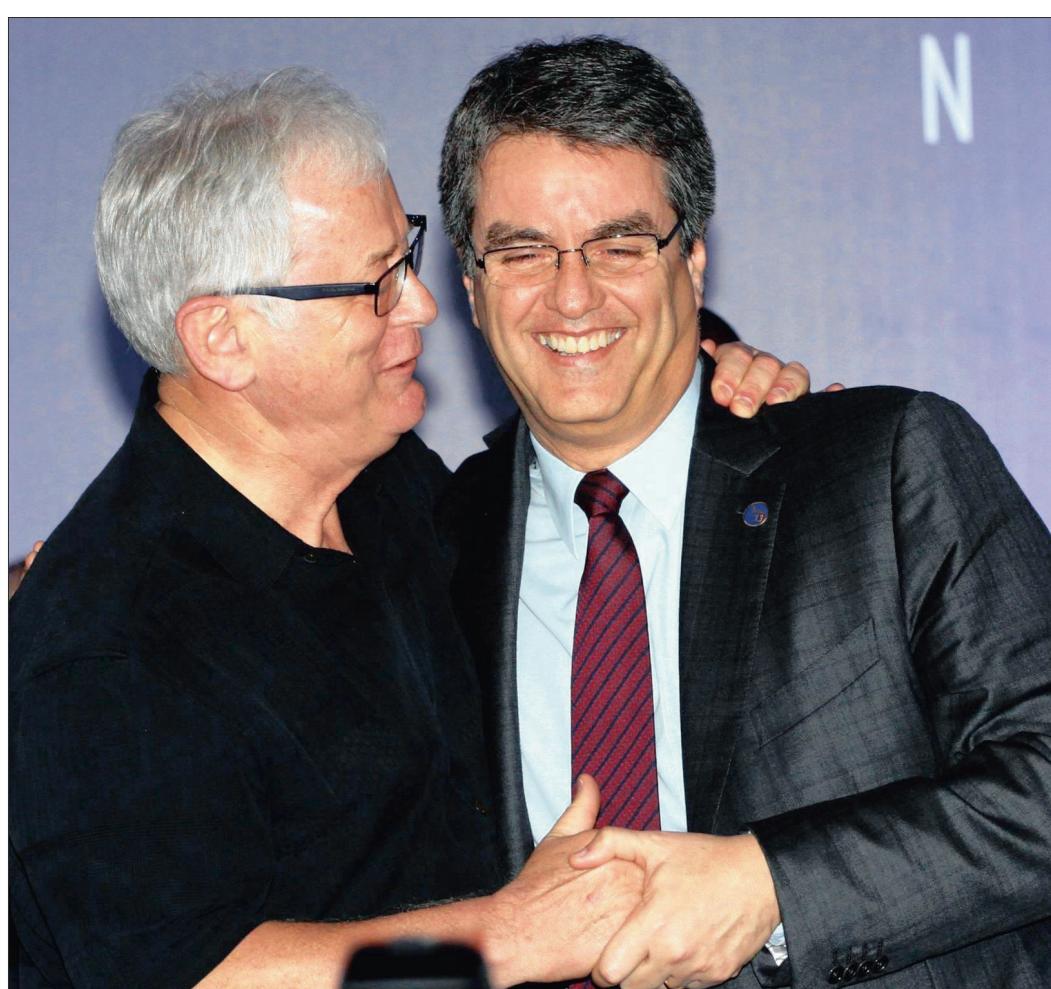
should be hurting for investment after rebuffing BITs and US FTAs that enshrine the ISDR system. And Peru, having ratified nearly two-dozen investment treaties and signed onto an ISDR-embodying FTA with the US, should be a darling of foreign investors.

The reality is the opposite. The UN reports that in 2012 Brazil was the fourth most popular destination for foreign investment, only outdone by the US, Hong Kong and China.

In contrast, Peru ranked as one of Latin America's lowest foreign investment recipients. Indeed, study after study has found zero correlation between a country's submission of its public policies to the whims of investor-state tribunals and its ability to attract investment.

No wonder then that South Africa is in the process of terminating its BITs with investor-state enforcement, as is Ecuador. Countries such as Bolivia and Venezuela have withdrawn from the World Bank forum where most investor-state cases are tried.

The opposition to these dubious tribunals has also reached the Global North. After a multi-year review under the past conservative government, Australia concluded that the investor-state regime was not in its national interest. It refuses to be subjected to the US-proposed expansion of the investor-state system through the Trans-Pacific Partnership, a sweeping



Australian Minister for Trade and Investment Andrew Robb, left, congratulates WTO director-general Roberto Azevêdo during the WTO ministerial conference in Bali, Indonesia, this month.

FTA that is currently under negotiation.

Given Brazil's proven success in refusing such costly schemes and engaging in the global economy on more pragmatic terms, will Azevêdo take a cue from his home country, learn from the recent

backpedalling in the Bali deal and bring a new perspective to the WTO?

The odds may be long, but the world can only hope so.

Editor's note: Lori Wallach is director and Ben Beachy is research director of Public Citizen's Global Trade

Watch. This article is part of Ford Foundation's "Reforming Global Finance Governance" project. It is published with permission from theGlobalist.com, an online newspaper covering developments shaping the global economy, politics and culture. Follow theGlobalist on Twitter: @theGlobalist

## Food issues to threaten US-EU free trade deal

GENETICALLY modified crops, chlorine-washed chicken, beef quotas and a fight over who can call Greek-style cheese "feta" all block the way towards the largest free trade deal.

US and EU negotiators will determine a list of sticking points this week in Washington during their third round of talks, and food issues are expected to be chief among them.

At a time of low economic growth on both sides of the Atlantic, EU-US free-trade negotiations seek to integrate two markets representing almost half the world's economy in a sophisticated agreement going far beyond lowering tariffs.

But food is different and the old issues that have bedevilled many trade talks around the world are likely to complicate the ambitious Transatlantic Trade and Investment Partnership between Brussels and Washington.

The recently agreed EU-Canada free-trade talks dragged on for months before Brussels agreed to let in some 45 000 more tons a year of Canadian beef and 75 000 tons of pork free of tariffs. Even if just a fraction of the EU's output of 7.7 million tons of beef and 20 million tons of pork, the imports will be high-value hams and hind cuts of beef, a lot for Irish and French farmers to swallow. A US deal would let it more.

Meanwhile, Europe takes a precautionary approach to food safety, making it difficult and time-consuming to clear new practices and to see products reach the mouths of consumers. – Reuters

## REQUEST FOR TENDER

The Wholesale and Retail SETA (W&RSETA) hereby invites all suitably qualified and experienced service providers to express interest to participate in the W&RSETA's projects

### Retail Management Development Programme (RMDP) III

The objective of this tender is to appoint an accredited HET Institution to implement the NQF Level 6 Retail Management Development Programme (RMDP) and to offer project management services.

#### Scope of the Project

- To have an approved pre-existing NQF Level 6 RMDP Programme, consisting broadly of the modules listed below, that is customised to include Wholesale and Retail specific case studies, core to the developmental methodology;
- To develop and implement a learner selection criteria in partnership with the W&RSETA;

The following fields of study should be broadly covered in approximately 9 modules:

- Module 1: Retailing in the global and South African context
- Module 2: Operations and Supply Chain Management (Retail business)
- Module 3: Marketing
- Module 4: Retail Technology and Retail Information Management
- Module 5: Human Resource Management
- Module 6: Strategy Development and Implementation
- Module 7: Financial Management and Accounting
- Module 8: Retail Leadership, including transformation
- Module 9: Basic Research and Product Development
- Business Driven Action Learning - on either one of the fields of study covered
- Study tour – local Wholesale and Retail businesses
- To deliver learning to RMDP delegates nationwide depending on the participation of stakeholders within provinces
- To have at least 90% of the registered learners certified
- To prepare a close out report in the prescribed format
- To conduct a certification (graduation) ceremony in conjunction with the W&RSETA
- The delivery of the programme is scheduled for a period of 24 months.

#### Disability Project

The objective of this tender is to appoint a Service Provider to implement this project nationally in accordance with the terms of reference of this tender

#### Scope of the Project

- Service Provider must have proven record of previous experience in similar training intervention
- Training Provider must be W&RSETA accredited or have the relevant extension of scope
- To deliver training to 500 (100 18.1 and 400 18.2) learners with disabilities nationally
  - Recruitment and selection must be in conjunction with prospective employers
  - Pre-assessment
  - Assessment
  - Internal Moderation
  - Coaching and Mentoring
- Identify and secure host employers for the duration of the programme
- Placement of 70% of successful learner completion of the programme
- The duration of the project is 24 months including the two week introduction learners into the W&R sector
- No replacement of learner dropouts
- Two month grace period for the recruit, select and enroll 400 unemployed learners with disabilities who have successfully completed a W&RSETA NQF Level 2 Retail Operations Qualification nationally
- Identify, recruit, select and enroll 100 employed learners with disabilities who have successfully completed a W&RSETA NQF Level 2 Retail Operations Qualification nationally
- Identify W&R employers to host learners for the duration of the project
- Deliver the training programme nationally

#### Legal Services

The W&RSETA hereby seeks to create a pool of preferred service providers to provide legal services to the W&RSETA on an ad hoc basis. Suitable firms of legal practitioners are hereby required to submit their intent for participation on the preferred database.

#### Scope of Work

- The successful firms will be required to render legal services to the W&RSETA in the following areas:
  - Provision of regulatory support and legal advice relating to either or collectively with regard to emphasis to Skills Development, Labour Relations, Employment Relations, Public Finance Management Act, Public Preferential Procurement Framework Act, Treasury Regulations and any other legislative prescripts
  - Litigation and litigation support relating to areas as identified above including any other courts of law, statutory tribunals and other bodies
  - Providing legal opinion on the interpretation of high risk and complex contracts

## W&RSETA

Skills Development for Economic Growth

to be concluded by the W&RSETA and third parties taking into account all respective legislation. In addition reviewing of any other related contract matters

- Recovery of litigation costs
- Defending or instituting civil actions instituted by or against the W&RSETA in any court

#### Courier Services

The objective of this tender is to appoint a service provider to assist the W&RSETA with courier services for a period of two years. This will include documentation and/or parcels to and from:

- W&RSETA Head Office and Regional Office
- W&RSETA Board Members
- Customer destination

**Scope of Work**

The scope of the assignment includes but not limited to:

- To provide a courier service nationally and abroad on an ad hoc basis to accommodate door-to-door collection and delivery of documents, parcels or other materials
- To assist with overnight services where required or applicable
- To ensure competitive industry rates
- To provide a tracking system for all courier services and to provide assistance thereof via a 24 hour call centre
- Service Providers are encouraged to expand on their service offerings where they believe that these will enhance the service delivery of the W&RSETA

#### Travel Services

The objective of the tender is to enter into a contract with a Travel Management Company to manage all travel, accommodation, car hire, and conferencing / event management services. Therefore the service provider is required to understand the business of the W&RSETA in order to provide the most cost effective manner and efficient service.

#### Scope of Work

The scope of the project includes but not limited to:

- On Call support to travellers 24 hours per day, 7 days per week
- Efficiency with bookings that is:
  - Air Travel i.e. Domestic and International
  - Accommodation i.e. Domestic and International
  - Car/ shuttle hire
  - Conference/ Workshop bookings
  - Group travel bookings
  - Visa applications
  - Passport applications
  - Emergency travel arrangements
  - Travel insurance
  - Arrange Forex for travel
  - Tracking of e-tickets (used/ unused/ non-refundable)
- Monthly Reconciliation reports
- Automated Travel System (GDS- Live System)
- Price beat (competitive quote approval prior confirmation of bookings)
- Pending Agreements with airlines etc.

#### Accommodation Lease

The W&RSETA is calling on prospective parties to submit proposals to provide accommodation to lease for the respective regional office location.

#### Submission Requirements:

- These tenders is subject to the prescripts of the 90/10 system as per the PPPFA and a detailed analysis of the scoring can be found in the bid documentation
- The bid documentation, including the Terms of Reference will be available on the W&RSETA website ([www.wrseta.org.za](http://www.wrseta.org.za)) as from the 13 December 2013
- The tenders must be in the prescribed format as available on the W&RSETA website
- 2 copies of the tender must reach the W&RSETA Head Office as indicated in the bid documentation
- All queries with regard to these tenders must be in writing and addressed to [tenders@wrseta.org.za](mailto:tenders@wrseta.org.za)

**NO LATE SUBMISSIONS WILL BE ACCEPTED**

## JPMorgan Chase to ban use of dealer chat rooms

Reuters  
London

JPMORGAN Chase, the biggest US bank by assets, was banning the use of multi-dealer online chat rooms and the use of such chat rooms among staff for social purposes, a person familiar with the matter said yesterday.

Chat rooms have been a

focus for regulators probing manipulation of benchmark interest rates and possible rigging in the \$5.3 trillion (R55 trillion) a day foreign exchange market.

Chat communications featured prominently in a five-year probe into the rigging of the London interbank offered rate, which has already cost banks billions of dollars in settlements.

The source said JPMorgan's decision was unrelated to the foreign exchange probes which first surfaced in June, noting this had been under review at the bank since early this year.

"This has always been about more than foreign exchange," the source said, adding that the casual nature of online chat rooms increased the potential for "inappropriate" remarks to

be made. The ban will come into force later this week. Bilateral online chats between JP Morgan traders and traders at other financial institutions were under review, while external chats between JP Morgan staff and clients would still be permitted, the source said.

JPMorgan declined to comment because the plans have yet to be finalised.

## Nigerians sell shares while they're ahead

Chijioke Oluocha  
Lagos

AFTER a bumper year for Nigerian stocks, investors are selling riskier assets and moving money into short-term debt because of uncertainty over government spending and the future leadership at the central bank.

Nigeria has been growing as an investment destination. Foreign bond holdings swelled fivefold in the past year to an estimated \$5.4 billion (R55.6bn), thanks to its inclusion in the JPMorgan index and a stable naira.

Central bank governor Lamido Sanusi, who is due to stand down in June next year, has been the driving force behind currency stability and in pushing inflation down to a five-year low of 7.8 percent in October. Inflation inched up to 7.9 percent last month.

Investors worry that Sanusi's successor may not follow his tight monetary policy stance, while an expected spike in government spending before elections in 2015 adds to currency risks, prompting a wait-and-see approach by many investors.

"The uncertain transition at the central bank and the pre-electoral climate in 2014 will weigh on sentiment," said Samir Gadio, the emerging market strategist at Standard Bank.

Domestic pension funds and asset managers are cutting exposure to stocks and moving into treasury bills to preserve gains in the main share index, which is up 41 percent this year.

The stock index eased off a five-year high in June and has been largely flat for a month after hitting a resistance level around 39 000 points.

The shortest-term three-year bond was sold last week at 12.9 percent,

higher than the 12.55 percent it sold for last month. The one-year treasury bill, yielding 11.66 percent, has been attracting the most demand.

"We have switched to the short end of the [yield] curve," said Adeniyi Falade, the managing director of Crusader Sterling Pension, which in the past three months has increased the weight of bonds and short-term debt in its portfolio from 60 percent to 70 percent and cut exposure to stocks.

"We're trying to match asset maturity with uncertainties around the exit of the central bank governor and forthcoming elections,"