

Contents

The multilateral energy regime at a cross-roads: responding to the climate change and sustainable energy agendas	1
<i>BioRes</i> interview: energy, trade rules & sustainability	3
The effects of climate change policies on international trade and competitiveness	4
Border measures to address climate change-related competitiveness concerns: EU and US interests	6
Greening European agriculture: options at the EU and WTO	8
Sustainable land management - How can trade help, not hinder?	9
Desertification convention faces uncertain future: what role for trade?	10
Compliance is a hard nut to crack in the biotech dispute	11
How best to conserve farm animal diversity?	13
US calls on Peru to improve forest management under revised trade deal	14
ICTSD Update	15
Upcoming events & resources	16

The multilateral energy regime at a cross-roads: responding to the climate change and sustainable energy agendas

Today, tackling climate change and ensuring energy security have emerged as central policy agendas at the global and national levels. Increasingly, the global trade system is being called upon to be part of the solution.

Energy and energy products are central elements of world trade. Presently, such trade is largely dominated by exports and imports of oil and gas. Further advancements in renewable technologies and a global expansion in the production and trade of biofuels are expected to spawn new dimensions in energy trade at the multilateral level.

At the same time, energy-related emissions account for more than 80 percent of global carbon dioxide (CO₂) emissions responsible for climate change. The International Energy Agency (World Energy Outlook, 2006) projects that under a business-as-usual scenario, the world will use 53 percent more energy in 2030 than at present, while producing 55 percent more CO₂ emissions. However, under the IEA. Alternative Policy Scenario, which assumes the implementation of policies and measures that governments are currently considering to mitigate CO₂ emissions, energy-related carbon-dioxide emissions are cut by 6.3 Gt, or 16 percent, in 2030 relative to the Reference Scenario. Policies that

encourage more efficient production and use of energy could contribute 78 percent of avoided CO₂ emissions in 2030. Another 12 percent reduction could come from renewables, and ten percent from additional nuclear power.

This makes energy efficiency and the development of renewable energy key aspects of climate change mitigation. The Kyoto Protocol (Art 2.1) also expressly encourages parties to take measures to achieve energy efficiency enhancements and to develop and increase the proportion of new and renewable forms of energy.

WTO rules framing policy

A number of different WTO rules and agreements apply at the intersection of policies and measures to address climate change and sustainable energy. WTO rules and disciplines on subsidies, standards and labelling, taxes, border measures and market access represent opportunities and challenges for advancing policy objectives on climate change and sustainable energy.



The relationship between trade, energy and climate change has moved from being an obscure debate of interest to a narrow group of specialists and academics into the spotlight on the international policy arena. Politicians are speaking about the interdependence of these issues; a growing number of conferences and workshops are shedding more light on them. However, unbundling the complex relationships is no easy task.

This launch issue of the *Bridges Trade BioRes Review* takes a close look at trade, energy and climate linkages. Key concerns relate to the ability of WTO rules to help, not hinder sustainable energy and climate policy development. Olga Nartova suggests that an overhaul of the rules, or the crafting of a specific agreement on energy within the WTO context, is warranted.

The implementation of climate policies in a limited number of countries only has given rise to competitiveness concerns with regard to international trade. Research by Muthukumara Mani shows, however, that the concerns may be exaggerated, and that countries already are (over)compensating a narrow group of industries perceived as being hard-hit by carbon taxes. Meanwhile, Thomas Brewer gives an update of the ongoing policy debate and future trends related to climate policy, competitiveness and trade, looking at both sides of the Atlantic.

Agriculture is key to the Doha round of trade negotiations at the WTO. Among issues at stake is the review of Green Box subsidies - subsidies that do not distort trade, including environmental subsidies - and their ability to provide environmental benefits. Ariel Brunner and Harry Huyton have looked carefully at how the Green Box works in the EU, and draw lessons both for EU-wide agricultural policy and Green Box reform at the WTO.

Agriculture on marginal lands poses critical sustainability concerns, and international agriculture trade contributes to shaping land management strategies in such areas. Parties to the UN Convention to Combat Desertification recently adopted an action plan for the next ten years that includes trade as a tool to meet some of its objectives and recognises that sustainable land management needs to be considered in forums like the WTO, which deal with agriculture trade. This issue of the *BioRes review* provides an update on these developments.

Meanwhile, biotechnology continues to divide people. In one of the most high-profile cases to be adjudicated within the WTO dispute settlement system, the panel ruled in favour of the US, which claimed its biotech products were being illegally shut out of the EU market. Alessandra Arcuri looks at the options the European Commission has to ensure compliance with the ruling.

We hope the policy challenges at the intersection of trade, environment and natural resources discussed in the articles in this first issue of the *BioRes Review* have captured your interest. Stay tuned for the next issue, due out for the Bali climate change conference in December!

Do climate change and energy security raise fundamental questions about the core principles of the multilateral trade system, such as non-discrimination and national treatment for like products?

As interest in the development of renewable energy is growing, a debate has emerged as to whether a different set of rules and trade disciplines should apply to renewables such as solar, wind and bioenergy. This debate revolves around the issue of "like products" and has critical implications for renewable energy and climate change policies. The most favoured nation (MFN) principle of the (GATT) applies to trade in energy and implies that "like" energy products and materials cannot be discriminated against on the basis of their origin (imports) or destination (exports). Such banned discrimination could take the form of customs duties and charges, as well as taxation. The national treatment requirement applies to internal taxes and charges, laws and regulations. Internal taxes on imported energy material and products should be no higher than for "like" energy material and products of domestic origin.

In implementing their climate change policies and in promoting the development of cleaner sources of energy, a large number of countries have put in place measures that depart from these principles. While the WTO Agreement on Subsidies and Countervailing Measures expressly prohibits subsidies directed at particular industries or sectors, a number of WTO Members provide direct producer and consumer subsidies in the energy sector. In addition, policies such as renewable portfolio standards, feed-in-laws and other similar initiatives - aimed at assisting with high initial costs - result in indirect support to specific firms and sectors. In this context, questions arise as to whether the same treatment should apply to all sources of energy. For many, public support to clean sources of energy are justified on the basis of their social and environmental benefits, which are considered to be "public goods" that benefit society at large.

Performance standards and the WTO

In order to promote the use of more energy-efficient products, several countries have adopted energy performance standards and requirements. Certain countries are also considering complete bans on products such as energy-inefficient light bulbs, which brings about questions regarding the WTO Agreement on Technical Barriers to Trade.

WTO jurisprudence, in cases such as United States - Auto Taxes, supports differentiation between products on the basis of their performance. The panel ruled that fuel-inefficient imported cars were not "like" fuel efficient domestic cars and therefore could be treated less favourably.

Tensions between energy sources on the rise

As clean energy technologies develop and trade in renewable energies expands, the energy regime will increasingly come across tensions between fossil fuels and cleaner energy sources with regard to rules and disciplines that should apply. With climate change and energy security concerns gaining political momentum, their influence on the trade system is likely to increase and would require a realignment of the energy regime in ways that would more adequately consider the interconnections of these various agendas. Formalising such a process would allow the creation of a more transparent and predictable framework, which would benefit both energy exporters and importers.

BioRes interview: energy, trade rules and sustainability

BioRes Review talked to Olga Nartova, Research Fellow at the World Trade Institute in Bern, Switzerland.

BioRes: What are the key problems related to international energy trade, and how could they be addressed?

ON: When it comes to energy, the key problems relate to security of supply, efficiency, climate change, and transit issues. I think creating a multilateral agreement on energy within the framework of the WTO would be the best way to address international energy trade. Energy is now covered under a range of WTO agreements. This is not good enough, as the General Agreement on Trade in Services (GATS), the Agreement on Technical Barriers to Trade (TBT) and other agreements work at a general level and cannot be satisfactorily applied to energy.

BioRes: Should the WTO play a more active role in regulating energy trade? If so, what would this role look like?

ON: Historically, energy was presumed to fall outside the remit of WTO negotiations. The WTO does regulate energy trade - we would, however, be better off with a sectorial agreement to tackle issues specific to energy. For example, the GATS seems at first glance to cover energy services, but actually looking into the agreement one realises that we do not even have a definition of energy services. Third party access is considered one of the key issues, but it is not covered in the GATS. So there is a lot to be done in the area of energy services, starting from classification. Major gaps were recognised with regard to telecoms, and a reference paper and an annex on telecoms were created.

BioRes: Should energy derived from renewable sources be treated differently from conventional energy?

ON: This is a good question! From a climate change perspective, it is definitely better to treat energy differently based on the source, but I don't see how this could be practically done at present. This is mainly because what seems environmentally friendly now will not necessarily be perceived as such next year or in five years. If we create a separate list for cleaner technology and energy sources, it has to be constantly reviewed and updated. We would need a group of experts to assess energy and technology. If we remove tariffs for natural gas because it now seems a cleaner option, and at later date, other, even cleaner energy sources are developed and become economically feasible - how can we promote these? We cannot put back tariffs that already have been removed, so what can be done to promote the newer

sources? If we start differentiating between energy derived from different sources, issues of likeness and the "clean" vs. "cleaner" debate have to be addressed.

BioRes: Are current rules and disciplines applying to the energy sector adequate in supporting policies and measures aimed at climate change mitigation?

ON: No, they are not. Right now I don't see any mechanism at the WTO system targeting climate change specifically. Yes, there is the Doha mandate for liberalising environmental goods and services (EGS), but negotiations have not achieved much progress. The mandate covers EGS generally, not just climate change, and most developing countries are more concerned with issues related to sanitation, wastewater treatment and water access, which does not have much to do with climate. I think that for the negotiations on EGS, as they are stacked now, it would be better to rethink the mandate and target specific problem areas; air pollution and climate change particularly. Also, I think that goods and services should be negotiated as a package. At the very least, more substantial coordination between the negotiations on goods and on services is needed.

BioRes: If countries choose stringent policies to deal with climate change, and these policies effect the competitiveness of their internationally traded products due to higher energy prices, should the countries be allowed to offset competitiveness losses through the use of measures such as border tax adjustments?

ON: I think it is time to introduce environmental cost as part of the final product price. This is not a purely political approach, it makes sense from an economic point of view. For a long time we took the environment for granted, and this attitude has to change in order for us to deal with climate change. My main point is that there is an economic basis for full cost pricing, it is not a payment you levy because you want to differentiate between suppliers, but merely the inclusion of the environmental impact in the final price.



The effects of climate change policies on international trade and competitiveness

Muthukumara Mani

Efforts to reduce emissions to meet Kyoto and future climate targets have raised competitiveness concerns in countries implementing these policies, as well as fears that carbon-intensive industries will relocate to non-implementing countries.

This article examines the implications of climate change policies on competitiveness across industries, as well as issues related to leakage, if any, of carbon-intensive industries to developing countries.

Competitiveness

There is a widespread concern regarding the international competitiveness of major industries, especially in the energy-intensive sector, among countries that have undertaken measures to reduce (GHG) emissions. They especially worry that higher energy costs not only burden them domestically, but also give competitors in countries without such measures (especially the US and China) an unfair advantage.

To test the hypothesis, we looked at the impacts of OECD measures to reduce GHG emissions on export competitiveness of energy-intensive sectors. The focus was on two types of instruments: (1) carbon taxes as a fiscal measure, and (2) energy efficiency standards as a regulatory measure. The reason for choosing these was that both have existed for quite some time in many countries, and hence their impacts on competitiveness are much more traceable than those of more recent emissions trading and voluntary regimes. While both carbon taxes and energy efficiency standards aim at reducing energy consumption, they use very different mechanisms to do so.

In a country that imposes a carbon tax (or a similar energy input tax), one would expect energy-intensive industries to suffer significant increases in production costs compared to those of their trading partners. Consequently, these industries would

either become less competitive internationally and lose some of their market share or, in order to avoid this loss, migrate to countries with no such taxes. In each case, exports of energy-intensive commodities hit with the carbon tax would decrease, while their imports would be expected to increase. Conversely, a carbon tax levied by an importing country would increase exports of the exporting country, thereby making it more competitive.

Similarly, the cost and time needed to comply with different energy efficiency programme requirements could add to the cost of internationally traded products. However, since such regulations in principle could be applied equally to imports and locally manufactured products, effects on trade in countries with higher energy efficiency standards could be nullified to some extent. On the other hand, it could adversely impact trade from countries with lower or no standards to countries that have higher efficiency standards.

Our results using an econometric modelling exercise show that when a carbon tax is imposed only by the importing countries, it adversely affects the competitiveness of exporting countries. This could be due to the offsetting measures applied by importing countries to mitigate and nullify the impact of such taxes on domestic industries. On the other hand, when a carbon tax is imposed by exporting countries, or by both importing and exporting countries, then the overall trade between countries increases. This suggests that subsidies and other exemptions for the energy-intensive industries may be overcompensating for the disadvantages arising from the imposition of the carbon tax. When we look at the effects of energy efficiency standards we find strong

Table: Impact of Carbon Taxes and Energy Efficiency Standards on Export Competitiveness

Measures	Carbon Tax (imposed by country)			Energy Efficiency Standards (imposed by country)		
	EXP	IMP	EXP and IMP	EXP	IMP	EXP and IMP
Carbon tax only		Marginally Significant (-)				
Energy Efficiency Standards only				Highly Significant (-)	Highly Significant (-)	Highly Significant (-)
Carbon Taxes and Energy Efficiency Standards		Marginally Significant (-)		Highly Significant (-)	Highly Significant (-)	Highly Significant (-)
Energy-Intensive Industries	Highly Significant (+)	Highly Significant (-)	Highly Significant (+)			
Industries Subject to Energy Efficiency Standards				Highly Significant (-)	Highly Significant (-)	Highly Significant (-)

negative effects on export competitiveness – irrespective of whether the standard is imposed by exporting countries, importing countries, or both.

When we examine how these policies affect specific industries that use energy intensively, the results suggest that the net effect varies considerably across industries. Trade competitiveness is adversely impacted by a carbon tax in the case of the cement industry, but the paper and steel industries actually benefit from a carbon tax. Similarly, energy efficiency standards mainly impact transport equipment and metal products industries.

The results emerging from our analysis suggest that carbon taxation policies do not impact on the competitiveness of energy-intensive industries. This suggests that complementary policies (implicit subsidies, exemptions etc.)—which are used in conjunction with carbon taxation policies levied by these countries, particularly on energy-intensive industries—could be negating any impact of carbon taxation. A more detailed study of this issue is warranted, as it will yield a greater understanding of the implicit subsidies/costs that are associated with each industry. The importance of this finding cannot be understated, as trade measures are justified based on perceptions of higher costs and associated loss of competitiveness on account of these costs on energy-intensive industries in developed countries.

Carbon Leakage

Many industrialised countries are concerned about the potential impact that mandatory carbon reduction targets would have on their economies. Among these concerns is the one that any plan that exempts developing countries from emissions limits would be ineffective because carbon-intensive industries would simply shift their operations to one of the exempt countries. A “leakage” would not only undercut the environmental benefits of the Kyoto Protocol or successor agreement; in addition, the competitiveness of industrialised-country industries could suffer.

Most emissions in industrialised countries result from inherently domestic activities such as transportation, heating, cooling and lighting, where leakage is either difficult or impossible. On the other hand, for energy-intensive industries such as cement, chemicals, and others, international competitiveness is an important concern. This leads to a debate somewhat akin to the “pollution havens” debate that dominated the environment literature in the 1990s.

Is such leakage really happening? We examined the evidence for any relocation of carbon-intensive industries due to more stringent climate policies, mostly in the OECD countries. We identified industries that would be most impacted by carbon reduction targets. These were energy-intensive industries—pulp and paper, industrial chemicals, iron and steel, nonmetallic mineral products, and nonferrous metals—that would have an incentive to relocate to avoid more stringent energy/carbon pricing policies.

When the actual data is examined on imports and exports across various income groups and regions since the 1990s, this provides some interesting results. The import-export ratio of energy-intensive production in high-income OECD countries shows an increasing trend (probably reflecting an increase in imports and decrease in exports). When the same ratio is examined for low- and middle-income developing economies, there is almost a mirror image of the OECD graph (Figure 1). This could be a reflection of some relocation of energy-intensive industries to developing economies, that did not impose any additional constraints on these industries on account of climate change.

Among the developing country regions we find an indication of some industrial relocation from the US, mainly to East Asia, and especially to China.

Our analysis suggests a gradual increase in the import-export ratio of energy-intensive industries in developed countries, and a gradual decline in the ratio in some developing regions. There is some evidence—although it is not very pronounced—of leakage of carbon/energy-intensive industries to developing economies that could be attributed to more stringent climate change policies and energy efficiency standards.

Implications

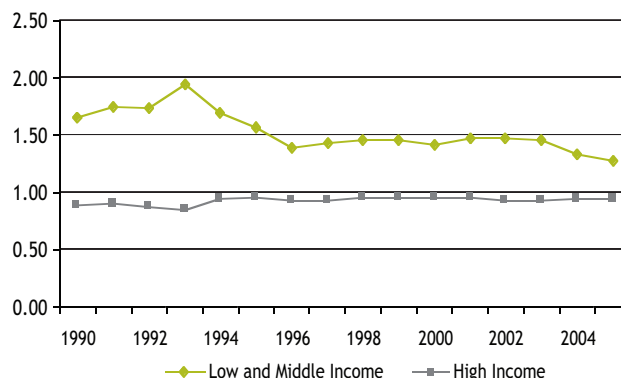
There is no conclusive evidence to suggest a loss in competitiveness from climate change measures adopted in OECD countries or of leakage or an exodus of carbon/energy intensive industries to developing countries. Developed countries have implemented various policies and measures to achieve their targets and showed some progress in mitigating climate change. However, in a number of cases economic considerations far outweighed climate considerations. Many of the incentives, especially for energy-intensive industries to reduce their emissions, have been nullified through special tax concessions, rebates, exemptions, and other such measures.

However, in the medium-to-long run, the increasingly stringent climate policies in some industrial countries and increased economic growth in some developing countries could accentuate the existing trends. The increased concentration of energy-intensive sectors in some developing countries, such as China and India, could signal not only for their greater future involvement in any global post-Kyoto scheme, but could also subject them to punitive trade sanctions for not participating in global efforts to address climate change.

While the implementation of the Kyoto Protocol may have brought to light some inherent conflicts between economic growth and environmental protection, the objectives of Kyoto also provide an opportunity for aligning development and energy policies in such a way that they could stimulate production, trade, and investment in cleaner technology options. Similarly, the WTO negotiations on environmental goods and services could potentially be used as a vehicle for broadening trade in cleaner technology options and thereby help developing countries to reduce their greenhouse gas emissions and adapt to climate change.

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Figure 1. Import-Export Ratio of Energy-Intensive Products in High-Income OECD Countries and Low- and Middle-Income Economies



Border measures to address climate change-related competitiveness concerns: EU and US interests

Thomas L. Brewer

This article describes developments in the EU and US concerning border measures, which could be imposed on imports from countries with policies that are considered insufficiently responsive to the need for climate change mitigation.

Abstractly, the underlying problem - in the terminology of political economy - is that there can be "free riders" on international agreements, including, as in this case, multilateral climate change agreements. The problem, in short, is that any given country can benefit from such an agreement without incurring the costs of participating in it. In particular, countries, industries and firms may fear that their international competitive position would be undermined by lower energy prices in non-participating countries. In the EU, these issues have arisen from time to time during the past several years with regard to US non-participation in the Kyoto Protocol. In the US, they have become salient during the past year with regard to emerging economy countries (especially Brazil, China and India).

This article considers these issues in three sections: activities in the EU, activities in the US, and scenarios for the future.

European Union

The European Parliament has passed resolutions calling upon the European Commission to consider the possibility of imposing offsetting tariffs on imports from countries that are not parties to the Kyoto Protocol - i.e. in effect, the US and Australia.

The Commission's reaction has been to oppose such measures on the grounds that they risked exacerbating tensions in trade relations with the US, particularly at a time when trade relations were already strained and trans-Atlantic relations more generally were unusually conflicted over a broad range of issues. In addition, there were concerns that such measures would undermine support in the US for increased EU-US cooperation on climate change issues. Finally, there were concerns that such a tariff might be challenged in a WTO dispute settlement case, and the outcome of such a case would inevitably be uncertain.

However, before leaving office in 2007, French President Chirac and Prime Minister deVillepin suggested again that such measures be undertaken. European Trade Commissioner Mandelson responded, however, that this would not be helpful. For now, the issue is quiescent at least in public. However, since it is of continuing concern to the European cement industry and other greenhouse gas-intensive industries, the issue is not likely to go away.

United States

Similar issues appeared in 2007 on the agenda in the US in the context of the introduction of climate change bills in the Congress. As in the EU, it is a combination of international competitiveness and climate change free-rider concerns that have put the issue on the active agenda in the US Congress.

As of the beginning of September 2007, the prospects for the many climate bills under consideration in the House and Senate were uncertain. However, whatever the outcome of votes in the two houses on these bills and any Presidential action that might ensue, it is clear that there is much political support for some kind of border measure provision in climate legislation that includes a mandatory cap-and-trade system.

There is a key difference in the form of the measure that is on the agenda in the US, as compared with the tariff proposal in Europe. In particular, the proposal in the US is to require US importers in some circumstances to purchase GHG emission allowances. Such a measure could be less vulnerable than a tariff to challenge in the WTO, because it could more clearly be considered an environmental measure that would qualify as an exception under GATT Article XX(g), which allows measures "relating to the conservation of exhaustible natural resources."¹

One US legislative proposal of special interest that was under consideration in September 2007 was Senate bill

S. 1766, which is commonly known as the Bingaman bill or Bingaman-Specter bill after its sponsors. It includes Title V, "Periodic Review and International Leadership," which requires reviews every five years of "whether each of the five largest trading partners"² of the US has taken "comparable action" to limit GHG emissions (section 501(2)(B)(i)). "Comparable action" is defined as "greenhouse gas regulatory programs, requirements, and other measures adopted by a foreign country that are determined by the President to be, in combination, comparable in effect to the action taken by the United States to limit greenhouse gas emissions pursuant to this Act, after taking into account the level of economic development of the foreign country" (section 502(a)(2)). US importers of "covered" GHG-intensive goods from countries that have been found not to have taken comparable actions must purchase "international reserve allowances" (i.e. GHG emission credits) to be issued by the US government. A "covered good" is one "that the President identifies, by rule, as a greenhouse gas intensive good that is closely related to goods, the cost of production of which in the United States is affected by this Act" (section 502(a)(5)).³

These and many other technicalities of the bill are of course subject to revision in Congressional deliberations and in any negotiations that may occur between members of Congress and the President. However, it is significant that quite specific and extensive language already has been formulated and is under active consideration in the Congress. It is also noteworthy that there would be much flexibility in how the provisions of the bill would be applied to particular circumstances. Further, the bill would require negotiations with countries before the import measures were implemented.

Perhaps more important than the legal technicalities or procedural issues at this point, is the political support already expressed for the concept of border measures on imports from countries deemed by the US government to be deficient in terms of actions to mitigate climate change in the future. Indeed, the proposal was first vetted jointly by one of the country's largest electricity producers, American Electric Power, and one of the largest labor unions, The International Brotherhood of Electrical Workers. It has subsequently been endorsed by other major business and labour organisations. In short, the issue is now a significant item on the climate policy agenda in the US, and with much domestic political appeal.

Scenarios for the Future

As this article was being finalised in early September 2007, the US Congress was returning from a late summer recess, with a widespread expectation that at least some of the proposed climate legislation would progress to votes by the end of the year. Though not entirely out of

question, the prospects were not promising for passage of such measures and acceptance by the President by the end of 2007. A more likely scenario is that there will be such legislation passed, signed and entering into effect in 2009 or 2010.

It is also likely that pressures to put in place some kind of import measures in the EU will grow as the debate and legislative process in the US progress. Ironically, the debate in the US will tend to legitimise any similar measures by the EU. Furthermore, the international competitiveness concerns in the EU are more advanced than in the US because the EU's Emission Trading Scheme is already in operation, while any US national cap-and-trade system is still years from being operational. The precise form that such a measure would take in the EU, however, is uncertain. On the one hand, as noted above, there has already been movement towards the establishment of offsetting tariffs; on the other hand, certain features of the possible US measures, particularly in regard to challenges in the WTO, may make it more appealing to require GHG allowance purchases rather than to impose a tariff.

A third possibility that could emerge from present circumstances is that the EU and US would join together in an effort to develop border-measure provisions to be included in the post-2012 climate regime. Now that the concept has become part of the climate change dialogue in Washington as well as in Brussels, it would be natural for a trans-Atlantic dialogue, whether explicitly and officially endorsed or not, to expand as ideas for the post-2012 agenda become increasingly tangible and detailed.

Finally, the emergence of these issues makes abundantly clear that climate change issues and international trade issues have intersected. They will have to be addressed in a variety of climate and trade forums. One hopes they would be addressed in a way that is constructive for both climate change mitigation and international trade relations.

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¹ There are a variety of technical legal issues, which are beyond the scope of this short article, but which have been the subject of extensive analysis.

² In 2006, the top five US trade partners, *as measured by total trade (imports plus exports) of goods*, were: Canada, China, Mexico, Japan and Germany ("US Foreign Trade Statistics" of the US Census Bureau, accessed at www.census.gov/foreign-trade/statistics/highlights/top/top0706.html on 31 August 2007). In its present form, the bill provides for the first such review to be completed by January 1, 2016, from an inter-agency group to be established by January 1, 2013, by which time the trade partner rankings may obviously be different.

³ A second Senate bill, the Lieberman-Warner "America's Climate Security Act" - as described by an "Annotated Table of Contents" released by the Senators on August 2, 2007 - was also expected to contain a border measure that would require US importers to purchase GHG allowances in some circumstances. However, because the bill had not yet been formally introduced as this article was being written, the details of the proposal were not yet known.

Greening European agriculture: options at the EU and WTO

Ariel Brunner & Harry Huyton

The EU Common Agricultural Policy (CAP) significantly impacts both world trade and the environment. With the disbursement of over €58bn in agricultural subsidies each year, the CAP has become a key determinant of farmers' incomes, and thus of their land-use decisions, with a resounding impact on wildlife and the environment in rural areas. The subsidies are also distorting world trade to the detriment of developing country farmers, and have become one of the principal stumbling blocks in the Doha round of trade negotiations.

The CAP underwent significant reform in 2003, with the main change comprising a shift from traditional market and product support measures to "decoupled" income support, which is compliant with WTO "Green Box" criteria. Farmers must now fulfil minimum environmental standards (cross-compliance). The "rural development" component of the CAP, which includes environmental schemes (agri-environment) has also been strengthened. These trends are likely to continue through future reforms; indeed, environmental and landscape concerns are now widely used to justify continued farm support in the EU.

Our analysis shows that the current system has several flaws that prevent effective environmental delivery, whilst allowing for a "shadow area" where trade-distorting production subsidies sometimes can be disguised within the Green Box. We believe that, in order to ensure sustainable land management in Europe while avoiding unnecessary trade distortion, significant changes would be needed to the CAP, and also to the current definition of the Green Box.

Agriculture has shaped the European landscape for millennia and much of Europe's biodiversity intimately depends on traditional farming. This means that abandonment of traditional agriculture is as much of a threat to biodiversity as is intensification.

The vast majority of CAP Green Box-compliant payments are currently made as income support, which has no clear environmental objective and is heavily distorted in favour of the most intensive farms. Cross-compliance rules vary hugely between EU Member States, and are often weak and riddled with loopholes.

Rural development, also known as the second pillar of the CAP, has much better delivery potential for the environment. In particular, agri-environment payments have been shown to be extremely effective, but only when they are well targeted and monitored, science based, and stakeholders are involved in design and implementation. Unfortunately, this best practice is often not followed.

Our analysis suggests that within the limits of current the Green Box definition, there is great scope for making the CAP more environmentally friendly. Beyond the obvious need to phase out environmentally harmful subsidies, much could be done to ensure that the subsidies actually deliver for the

environment in general and biodiversity in particular. We suggest this would require:

- Shifting funds from untargeted subsidies to environmentally-targeted schemes with a much greater focus on outcomes such as biodiversity conservation.
- Better design and implementation of agri-environment and other rural development schemes.
- Effective coherence of environmental schemes with socio-economic schemes

The WTO Green Box definition as it stands limits the potential for CAP reform to deliver environmental objectives. This is particularly true for the support of so called "high natural value" farming systems. Traditional extensive land management, which is ecologically critical but economically marginal, is not captured under the current Green Box definition of environmental payments, which requires payments to be based on an income-forgone and cost-incurred formula. The Green Box definition should therefore be amended to allow for payments based on the value of environmental benefits and services as well as on any income foregone.

We suggest that:

- Green Box payments are required, beyond being minimally trade distorting, to be targeted specifically at delivering environmental and social benefits that are not delivered by the market.
- All payments notified as Green Box are reviewed by an independent authority that has competence in both environmental and trade issues .
- Environmental programmes are allowed to be based on a combination of income foregone and the value of the social and environmental benefits they deliver.
- Countries are required to make the details of their agricultural spending publicly available. This increases the accountability of governments toward their own citizens, as well as towards their trading partners.

Green Box reform should also better shelter developing countries from subsidy regimes that unfairly disadvantage them, as well as address their specific socio-economic and environmental needs. However, whilst developed countries have funding available for environmental and social schemes, their potential use is restricted in developing countries. A funding mechanism that requires developed countries to contribute a percentage of their total Green Box payments to similar schemes in lower-income countries should therefore be established. This would allow global concerns over land use, deforestation and unsustainable commodity production to be addressed and would provide more equity in Green Box spending.

Ariel Brunner is EU Agriculture Officer with Birdlife International, and Harry Huyton is Agricultural Policy Officer at the Royal Society for the Protection of Birds.

Sustainable land management - How can trade help, not hinder?

The role trade can play in helping address unsustainable practices in drylands is coming increasingly to the fore through its inclusion in a new ten-year plan of action under the UN Convention to Combat Desertification. Meanwhile, experts are still struggling to fully grasp the linkages between trade and desertification in order to craft policies that help – and certainly do not hinder – sustainable management of drylands.

Dryland agriculture and globally traded commodities take centre stage in this regard. The Doha Round offers some hope for addressing current distortions of agriculture trade, which also affect drylands negatively. As the effects of climate change start to aggravate dryland conditions, understanding these linkages becomes all the more pertinent

Dryland regions are characterised by fragile ecosystems that tend to exacerbate the challenges of sustainable agriculture. Not only is dryland agriculture a dominant economic sector in developing countries, with significant contribution to GDP (gross domestic product), it is also a primary source of employment and an essential element of livelihoods. International trade in dryland products represents a major source of export earnings, including for less advanced developing countries such as Mali or Burkina Faso, and as such, is a potential engine for economic growth and poverty alleviation. Addressing land degradation and ensuring that land can be cultivated in ways that minimise adverse impacts on fragile ecosystems is of critical importance. A holistic approach to sustainable development in the context of drylands requires a broader understanding of the socio-economic importance of agriculture in these regions.

Indeed, advancing the objectives of sustainable land management would require sustaining ecosystems and ecosystem services in drylands and even reversing the trend of degradation. At the same time, it would require ensuring that livelihoods that depend on agriculture are sustained and improved, including through improvements in the productivity of traditional crops such as maize, sorghum, millet, groundnuts and cotton, which represent primary sources of food intake, employment, income generation and export earnings. Such an approach to agriculture and sustainable land management – centred around securing livelihoods – could form the basis for the development of emerging markets for medicinal plants, gum arabic and other crops that could contribute to the diversification and expansion of economic opportunities in dryland regions.

Trade, especially at the international level, can play an important role in that context by securing and expanding income generation for people living in drylands. However, the concentration of exports in a few commodities such as cotton and groundnuts, combined with distortions in international markets and price volatility, have locked many dryland countries into a downward trend of more intensive forms of agriculture coupled with declining export revenues.

In order for trade in agricultural goods to support, rather than undermine, sustainable land management principles,

it would be necessary to set in place a coherent public policy framework at the global, regional, national and local levels. Such a framework should take into account the immense distortions in agricultural trade that prevail at the global level, and the economic, social and ecological repercussions of these distortions at both the macro and micro scale. In this regard, the ongoing reform process at the WTO through the Doha Round, which is set to address distortions such as those created by production and export subsidies, could contribute to enhancing opportunities for dryland countries.

Crucial to the development of a new, coherent framework is the involvement of a wide range of stakeholders. Truly sustainable solutions to the problem of land degradation can only be developed through the active and sustained involvement of a diverse set of interest groups. Indeed, the significant distortions that currently characterise the global agricultural trading system arguably result in large part from the disproportionate influence of a narrow set of stakeholders. Groups that would receive only diffuse gains from policy reform now need to be included as part of a wider dialogue on a trade, which should focus on win-win solutions for both developed and developing countries rather than the narrow pursuit of short-term gains in particular sub-sectors or geographic regions. In order for this to be effective, there is a need for increased co-operation and dialogue between a number of intergovernmental organisations, between different government ministries at the national level, and with a range of civil society stakeholders.

However, agricultural trade policy is a highly politicised issue, and progress on a public policy framework that effectively addresses trade and sustainable land management objectives cannot succeed without political commitment at the highest level. Trade negotiations are periodically held hostage to controversy over agriculture subsidies and market access in advance of national elections.

Only a concerted effort to tackle the systemic causes of agricultural trade-related land degradation can result in sustainable solutions to poverty and environmental destruction in dryland areas. The problem of land degradation in dryland areas needs to be accorded a political priority proportional to the damage it causes to rural and urban communities in both developed and developing countries.

For more information see http://www.trade-environment.org/page/ictsd/projects/trade_slm_drylands_Final_Sept%2007.pdf

Desertification convention faces uncertain future: what role for trade?

Parties to the UN Convention to Combat Desertification (UNCCD) have adopted a ten-year strategic plan, which refers to trade as a tool to help realise some of its objectives, and also points to the need to consider issues related to sustainable land management in other forums, such as those dedicated to agriculture trade.

The UNCCD has frequently faced significant challenges both in terms of direction and political priority among its parties. The eighth session of the UNCCD Conference of the Parties (COP-8), held from 3-14 September in Madrid, concluded a ten-year strategic plan considered by many as solid. Decisions on the structure, role and responsibilities of the various UNCCD institutions, including the Committee on Science and Technology (CST), the Committee for the Review of the Implementation of the Convention (CRIC) and the Global Mechanism (GM), were seen as providing new guidance and opportunities for the convention to achieve its objectives.

However, the fact that the parties were unable to adopt the budget in the closing plenary left participants uncertain about how the reform package agreed in Madrid would be implemented. The budget has now been passed on to an extraordinary COP meeting in New York during the UN General Assembly.

The UNCCD recognises the physical, biological and socioeconomic aspects of desertification and the participation of local communities in combating desertification and land degradation.

Strategic plan seeks to enhance implementation

UNCCD implementation is supported by international cooperation and partnership arrangements. The track record over the past decade has pointed to several challenges however, including insufficient financial resources, a weak scientific basis, institutional weaknesses and difficulties in reaching consensus among parties.

Adopted in Madrid, the ten-year strategic plan and framework to enhance the implementation of the convention provides "a global framework to support the development and implementation of national and regional policies, programmes and measures to prevent, control and reverse desertification/land degradation and mitigate the effects of drought through scientific and technological excellence, raising public awareness, standard setting, advocacy and resource mobilisation, thereby contributing to poverty reduction."

The strategic plan aims to provide a common and focused vision for the convention and to address operational inefficiencies within its institutions. It links the work programmes of the convention's institutions to this common vision, clarifies their mandates and methods of

work, and institutionalises a results-based management approach. Speaking at COP-8, several ministers and senior officials emphasised that the ten-year strategic plan needs concrete and preferably quantitative goals, which must be accompanied by an implementation framework and a substantial budget. Others pointed out that the plan should emphasise enhanced capacity at the local level with regard to climate change adaptation, and called for increased support to developing countries to combat desertification and for the adoption of better regional and global integrated strategies.

While discussions at COP-8 focused on issues related to the implementation framework, i.e. the roles and responsibilities of the various UNCCD institutions, partners and stakeholders in meeting the strategic and operational objectives of the strategic plan, the next steps in the process will involve the formulation of an action plan with measurable targets, quantitative indicators and a timeline by COP-9.

In Madrid, the participants also emphasised the close relationship between desertification and climate change, an issue that has risen higher on the political agenda, particularly over the last year.

Trade - a tool to support implementation

The strategic objectives of the ten-year plan involve improving the living conditions of affected populations and ecosystems, generating global benefits through effective implementation of the UNCCD, and mobilising resources to support the implementation of the convention. As such, effective partnerships between national and international actors will need to be built. The text considers trade as a tool to achieve different operational objectives, which will guide the action of all UNCCD stakeholders and partners in achieving the overarching strategic objectives. More specifically, the document acknowledges the need for desertification/land degradation to be addressed in relevant international forums such as those pertaining to agricultural trade. It also notes that innovative sources of finance and financing mechanisms to combat land degradation should be identified, including private sector financing, market-based mechanisms, trade, and other financing mechanisms related to biodiversity conservation and sustainable use.

Work in the intersessional period leading up to COP-9 will need to focus on how to concretise and help operationalise the strategic objectives spelled out in the ten-year plan. In this regard, there is significant scope to flesh out the role that trade can play to help - and certainly not hinder - sustainable land management.

Compliance is a hard nut to crack in the biotech dispute

Alessandra Arcuri

With the 21 November deadline rapidly approaching for the implementation of WTO rulings in the biotechnology dispute, the European Union has few options for full compliance with the panel's findings.

Difficulties arise both from the ambiguities left in the September 2006 panel reports, as well as the complex European legal structure governing the approval of genetically modified organisms (GMOs). As is well known, three groups of measures were challenged and found in violation of WTO law: (i) the EU's so-called *de facto* general moratorium on GMO approvals; (ii) some 'product-specific measures', i.e. the EU's failure to approve several specific GMOs; and (iii) a number of EU member states' safeguard measures.

When it comes to implementation, the first two sets of measures do not present major problems. With respect to the part of the rulings concerning the 'general' moratorium, despite some doubts voiced by the US,¹ it seems clear that full implementation has been achieved both because the moratorium has been judged 'applicable to *all* applications for approval' and because the EU resumed GMO approvals in May 2004. In relation to the EU-wide product-specific measures, it suffices to note that by the beginning of 2007, most of the contested products had already been either approved by European authorities or withdrawn by the applicants.²

Of course, it does not follow that the rulings related to the general moratorium will have no influence on future European politics regarding GMOs. While Commission spokesman for trade issues Peter Power stated that the impact of the judgement was entirely 'of historical interest', its political relevance should not be underestimated. The importance of decisions about past issues is well-captured by George Orwell's idea that those who control the past, control the future. The current activism of the Commission in approving (*de facto* unilaterally) several new GMOs lends support to this observation.

Where the trouble begins

While compliance with the general moratorium and product-specific ban rulings looks assured, individual EU member states' national approval bans do indeed present major problems of implementation. In this respect, the European Commission does not have many viable options, and the few that exist are unlikely to be found satisfactory by the complainants (i.e. the US, Canada and Argentina).

Background on the GMO case at the WTO

In 2003, the US, with Argentina and Canada, filed a case against the EU with regard to its practices in the area of genetically modified organisms.

The complainants challenged the EU on three accounts, namely (i) the EU's alleged general moratorium on biotech approvals, (ii) its failure to approve a number of specific biotech products (referred to as 'product-specific measures'), and (iii) national-level bans in several EU member states on the marketing and import of specific biotech products that had already been approved at the EU-wide level.

The highly charged case pitted a notoriously GMO-sceptical European audience against countries with high stakes in the biotech industry and farm exports. Non-governmental organisations actively campaigned against any "force-feeding" of GM products to consumers, and the case was seen as having ripple effects, influencing country policies beyond those in the parties to the dispute.

The dispute settlement panel's final report - over 2000 pages long - was made public on 29 September 2006. Broadly speaking, the panel sided with the US, Argentina and Canada on all three counts. It concluded that the general and product-specific moratoria had led to an 'undue delay' in the completion of the EU's approval procedures for biotech products, thus breaching Brussels' obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). The panel also rejected the EU's defence of the national-level bans as precautionary measures and called on the EU to bring the measures in conformity with WTO rules.

The solution most likely to satisfy the complainants would be the withdrawal of the safeguard measures maintained by six member states at the time of the ruling. To date, only Italy has done so, but the other five show no signs of following suit. Given that this solution is unlikely to emerge spontaneously, the Commission could go in two directions to implement the rulings. The first would be taking further action to force the member states to lift their bans. Alternatively, the Commission could argue that something has changed and that the existing safeguard measures are now in compliance with the rulings.

Forcing withdrawal

The Commission could ask member states to drop their national safeguard measures by submitting a draft decision requesting them to lift the bans. Indeed, the Commission already tried this back in 2005: a decision was first submitted to the Regulatory Committee in accordance with the so-called comitology procedure and, after the Committee failed to reach a decision, was forwarded to the Council on 24 June 2005. The latter rejected the Commission's proposal in its entirety, reaching - for the first time ever - a qualified majority on issues concerning GMOs approval!

At this point, the Commission could have re-submitted a decision to the Council. Such a strategy was in fact pursued in the case of Austria, but the Council rejected the proposal on 18 December 2006. On 20 February 2007, the Council once again reached a qualified majority to reject the Commission's draft decision, this time calling upon Hungary to lift its bans (not part of the measures contested in the WTO dispute). Based on these precedents, there is little hope that the Council will change its position in the near future.

One might still argue that the Commission could challenge the member states' measures by bringing an infringement action before the European Court of Justice (ECJ).³ Even if this option is legally conceivable, in practice it would be highly controversial. In substantive terms, the Commission might argue that the measures are violating EU law, but the ECJ's acceptance of such an argument would render the comitology procedure established by the law almost meaningless. Another argument that the Commission could present to the court would be the direct effect of WTO law. This, however, is a much contested doctrine, and the politically charged atmosphere surrounding GMOs does not provide the best of opportunities for trying to apply it.⁴

If the question is legally intricate at best, politically it would be highly inappropriate for the Commission to initiate litigation at the ECJ. Thus, it seems that the Commission cannot do much more than what it has already unsuccessfully attempted in order to force the member states to revoke their bans.

Arguing for compliance

The main reasoning of the panel for finding the national bans in violation of the WTO Agreement on Sanitary

and Phytosanitary (SPS) Measures was two-fold: the documents relied upon by the member states did not qualify as a risk assessment as defined in Article 5.1 and Annex A(4) of the SPS Agreement. Furthermore, Article 5.7, which allows countries to take provisional measures when available scientific evidence is insufficient to determine a product's safety, was not applicable since a proper risk assessment had already been conducted both by the EU's scientific committees and by the national competent authorities. This interpretation has been criticised on various grounds; the main problem, in my view, is that WTO Members could easily pre-empt the rights of others to invoke Article 5.7 by conducting a risk assessment first. In other words, under the panel's interpretation there is a serious risk that Article 5.7 will be *de facto* inapplicable.

Under this scenario the only way to achieve compliance is for the member states to conduct a new risk assessment that meets the requirements of Article 5.1. At present, this is not likely to happen. However, Article 5.7 may be somewhat resuscitated if one re-reads the rulings in light of the panel's annexed letter (annex K of the reports), opening up another road to compliance.

A possible way out?

It has been argued that the panel's letter has somewhat relaxed the straight-jacket interpretation given in its original reports.⁵ In particular, the part of the letter stating that the panel's findings "leave room for the possibility that even if at a given point in time relevant scientific evidence is sufficient to perform a risk assessment, a situation might subsequently arise where the relevant scientific evidence could be considered insufficient to perform a risk assessment [...] It is conceivable [...] that relevant new scientific evidence would negate the validity of the scientific evidence on which an existing risk assessment relied, without, however, being sufficient, in quantitative and qualitative terms, to allow the performance of a new risk assessment." Accordingly, one could argue that, should a new risk assessment be conducted by the countries imposing the bans, and should this prove that the relevant scientific evidence is no longer sufficient, Article 5.7 might still be invoked (provided that its other conditions are fulfilled). It remains to be seen how such a scenario would play out in practice.

While this approach seems more consistent with the overall European approach (for one, because of the importance for the EU of keeping alive the essence of the precautionary principle, embodied by Article 5.7), it is undeniable that it rests on a far-fetched interpretation of the reports where the panel's letter assumes a surprisingly central role. Moreover, it is likely that such a course of action would leave the complainants unsatisfied and spur new controversies.

These notes have attempted to shed light on why the EU member states' national GMO approval bans are expected to raise serious implementation problems. It

follows that the establishment of a compliance panel pursuant to Article 21.5 of the Dispute Settlement Understanding is the most likely next step. Notably, the original dispute focused on specific measures adopted in relation to the approval of GMOs, not European legal framework as such. Ironically, compliance in this case may be at odds with some features of the EU's current GMO approval regime itself.⁶

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¹ On 21 November 2006, US Ambassador Peter F. Allgeier stated at the WTO Dispute Settlement Body "[a]lthough the EC has approved a handful of biotech applications following the initiation of the dispute in 2003, the EC has yet to lift the moratorium in its entirety."

² Poli, S. 2007. 'The EC's Implementation of the WTO Ruling in the Biotech Dispute' in 32 *European Law Review*, pp. 705-26.

³ See Shaffer, G. and Pollack. 2007. *Regulating Risk in the Global Economy: The Law and Politics of Genetically Modified Foods*, Chapter 6. Oxford University Press.

⁴ For an overview see Cottier, T. and Schefer, K. 1998. 'The Relationship Between World Trade Organization Law, National Law and Regional Law' 1 *Journal of International Economic Law*, pp. 83-122; see also Antoniadis, A. 2007. 'The European Union and WTO: a Nexus of Reactive, Coactive and Proactive Approaches' in 6. *World Trade Review*, pp. 45-87.

⁵ For a brilliant analysis of this issue see Poli, *op. cit.*, pp. 721-23.

⁶ I believe that the implementation problems are in great part related to the fact that both European law concerning GMOs and WTO law simultaneously endorse two contrasting regulatory philosophies: on the one hand, an eminently technocratic approach where risk is conceived as something that can be fully understood by science and thereby rationally managed; on the other hand, a deliberative approach where understanding risk involves scientific knowledge but also culture, psychology and politics. This issue is further analysed in Arcuri, A. *Interpreting the Concepts of 'Risk Assessment' and 'Insufficiency of Scientific Evidence': Juggling Between the Logics of Different Epistemic Communities?* Paper presented at the Seventh Annual WTO Conference, BIICL, May 2000, London.

How best to conserve farm animal diversity?

With global human populations, as well as their appetites for meat, egg and dairy products, growing at rapid rates, a narrow range of farm animal species are becoming more popular – at the expense of traditional breeds. However, the hardy traditional farm animals are often well-adapted to harsh conditions in developing countries. Also, in a world increasingly seeing the effects of climate change, having access to a wide range of animal genetic material would serve as an insurance regime. The world is, however, currently losing one traditional livestock breed per month.

In order to halt this trend, and safeguard farm animal genetic resources, governments adopted a global Plan of Action as the culmination of the first International Technical Conference on Animal Genetic Resources for Food and Agriculture in Interlaken, Switzerland, in early September. The Plan of Action for Animal Genetic Resources represents the first internationally agreed framework to halt the erosion of livestock diversity and to support the sustainable use, development and conservation of animal genetic resources. The negotiating process has taken place under the auspices of the UN Food and Agriculture Organisation, which also prepared a comprehensive background report on the current state of the world's animal genetic resources.

Ahmed Djoghlaif, executive secretary of the Convention on Biological Diversity (CBD) pointed to ongoing work under the CBD on access and benefit sharing, the role of indigenous peoples and traditional knowledge as areas of mutual interest.

The global Plan of Action focuses on four strategic priority areas: characterisation, inventory and monitoring of trends and risks; sustainable use and development; conservation; and policies, institutions and capacity building. It calls for the provision of technical and financial assistance, especially to developing countries and countries with economies in transition, to help them implement its provisions.

Private or collective rights?

Meeting in parallel in Wilderswil, a number of organisations of pastoralists, indigenous peoples, smallholder farmers and NGOs discussed problems related to industrial livestock production, which they identified as the fundamental cause of the current crises leading to the erosion of farm animal genetic diversity. With a few breeding companies from the North dominating the markets, the life-styles and livelihoods of vulnerable small farmers have been put at risk. In a declaration of their own, the civil society organisations said they "want livestock keeping that is on a human scale. We defend a way of life that is linked deeply with our cultures and spirituality and not just aimed at production."

The civil society groups supported the concept of collective rights as a solution. In the Wilderswil Declaration, they stressed that "Ownership, knowledge and innovation at the community level are often of a collective nature. Therefore local knowledge and biodiversity can only be protected and promoted through collective rights. Collective knowledge is intimately linked to cultural diversity, particular ecosystems, and biodiversity and cannot be dissociated from any of these three aspects. Any definition and implementation of the rights of livestock keepers should take this fully into account."

Regarding modern intellectual property rights systems, the Declaration stressed that "[I]t is clear that the rights of livestock keepers are not compatible with intellectual property rights systems because these systems enable exclusive and private monopoly control. There must be no patents or other forms of intellectual property rights on biodiversity and the knowledge related to it".

US calls on Peru to improve forest management under revised trade deal

Last May, Congressional Democratic leaders broke new ground for combating illegal logging in bilateral US trade agreements when they reached a compromise deal on US trade policy with the White House.

The deal they struck set out specific requirements relating to the environment, as well as to labour and intellectual property, for pending US trade deals with Colombia, Panama, Peru and South Korea. In the case of Peru, however, the Democrats demanded an extra set of environmental requirements; specifically, they asked that the FTA require Lima to better manage the country's forest resources, especially its stocks of broad-leaf mahogany, one of the world's most commercially valuable timber species. Prior to the May deal, environmental groups had expressed concern that an agreement to lower trade barriers between the two countries might encourage the illegal export of mahogany from Peru to the US.

The so-called 'forest annex' of the Peru FTA requires the Peruvian government to enact a number of specific provisions to combat both illegal logging and illegal wildlife trade. Under one of the mandatory measures, Peru must track the harvesting, transport, processing and export of tree species that are protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Moreover, the Andean nation is obliged to fully investigate violations of the agreement's law and regulations.

Calling attention to a contentious issue that has caught the public eye in the past, the Democrats demanded that Peru step up its efforts to combat illegal trade in mahogany.

Calling attention to a contentious issue that has caught the public eye in the past, the Democrats demanded that Peru step up its efforts to combat illegal trade in mahogany. The forest annex gives Lima 18 months to comply with its current obligations under the

endangered species convention; to craft, adopt and fund a strategic plan of action on broad-leaf mahogany; and to set an annual export quota for the species. Peru is the world's largest exporter of the precious wood; the US is the largest importer.

More than demanding reforms, however, the revised trade deal sets forth explicit terms of enforcement, including a groundbreaking provision that makes all of the environmental requirements, including those in the forest annex, subject to the dispute settlement terms that govern the rest of the agreement. This requirement marks a true step forward in environmental enforcement, as past agreements have made the dispute settlement

process available only when a signatory country has failed to enforce its domestic environmental laws. Other enforcement provisions allow the US to detain questionable shipments at the border and permit the Peruvian government to take action against traders who fail to comply with the agreement's provisions.

The true impact of the new provisions is in many ways limited by Peru's capacity to implement them, however. The new terms will likely require Lima to make significant changes to its domestic legislation, including its penal code. To facilitate this process, the US has promised to help fund Lima's efforts to strengthen its forest governance capacity, as it has done under previous Environmental Cooperation Agreements. In the past, similar promises have not always been backed up with adequate funding; thus, both the actual level of support and the ultimate effectiveness of the aid delivered remain to be seen.

When the trade compromise was reached in May, many observers concluded that the passage of the Peru FTA, as well as the trade deal with Panama, was virtually guaranteed. Although some Democrats expressed reservations about the deal over the summer, Senate Finance Committee Chair Max Baucus, Democrat of Montana, recently indicated that the pact has wide support in Congress and that lawmakers should put the matter to vote this fall, perhaps as early as October. "I expect it to pass without too much difficulty," Baucus told reporters in September. "We're going to move expeditiously."

For its part, Peru has indicated its willingness to follow through on the trade deal in its amended form. On 28 June, the Peruvian legislature approved the new FTA text with 70 votes in favour, 38 against and one abstention.

From a US perspective, the very specific requirements of the new trade compromise mark a bold step forward by the legislative branch in the negotiation of international trade deals. Some observers have questioned whether the intimate intervention of Congress into the specifics of pending US trade deals will effectively nullify the President's fast-track trade promotion authority, which is meant to minimise, if not outright eliminate, non-Executive meddling in trade negotiations. That question is especially relevant given that the recent compromise is meant to serve as a template for future US bilateral trade deals.

Paige McClanahan is a graduate student at Duke University.

ICTSD in China: Partnerships in pursuit of sustainable development

China is a key determinant of the global trade dynamic, and also of the future fate of the global environment. ICTSD is working with a wide range of experts and other players in China and elsewhere to address key challenges, taking a multi-stakeholder approach to find new and innovative solutions.

Dialogue raises issues related to climate policy, competitiveness

At the end of September, ICTSD organised an international dialogue in Shanghai on the topic of "Trade, Climate Change and Global Competitiveness: Opportunities and Challenges for Sustainable Development in China." The meeting was held in collaboration with the Chinese Energy Research Institute of the National Development and Reform Commission, the Policy Research Centre of the State Administration of Environmental Protection, and the British Consulate General in Shanghai. It was also co-organised with a media partner, the "Global Business," the flagship financial journal of Tom Co.

The meeting covered climate change policies, technological development and China's likely role in a future climate change regime (post-Kyoto). Participants considered the possible relocation of energy-intensive industries from OECD countries to China, and the potential for "carbon leakage." They asked whether global climate change policies were driving positive developments in global competitiveness and looked at the impact of energy efficiency standards on China's export industry.

Finally, the meeting considered the role of technological development and technology transfer, asking whether intellectual property rights regimes have created barriers to the diffusion and access to clean energy technologies in China. They discussed the merit of IPR flexibilities to facilitate access to clean energy technologies.

The discussion will continue at an event in Geneva on 4 October - co-organised by ICTSD, UNEP and the World Bank - which will cover trade, climate change and competitiveness issues, including perspectives from China.

Identifying environmental goods and services

At the end of September, ICTSD partnered with the Policy Research Center for Environment and Economy of the Chinese State Environmental Protection Administration to organise a national workshop on environmental goods and services (EGS). The purpose of the workshop was to support the identification of EGS of specific interest to China, based on its sustainable development needs and priorities. The workshop took place in Dalian city.

Coming up: Geneva-based dialogue on China and global trade governance

Coming up shortly is a Geneva-based dialogue on the role of China in global trade governance, focusing on opportunities and challenges for sustainable development. The dialogue will take place at the end of October, close to the sixth anniversary of China's WTO membership. The objectives of the ICTSD high-level dialogue are threefold: First, it will review the evolution of the global trade landscape, including the development of production trends and south-south trade over the past two decades, and China's growth and trade performance vis-à-vis challenges and opportunities posed by sustainable development.

Second, the meeting will bring together top policy researchers and practitioners from China and its trade partners, allowing a meeting of the minds around issues related to China's impact on the global trade landscape. Third, the dialogue will seek to generate ideas for a supportive role that China can play in crafting global trade governance for a common future centred around sustainable development.

For further information, visit <http://www.ictsd.org/dlogue/2007-09-25/2005-09-25-desc.htm>, <http://www.ictsd.org/dlogue/2007-10-29/2007-10-29-desc.htm>, and http://www.trade-environment.org/page/ictsd/projects/egs_desc.htm.

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UPCOMING EVENTS

OCTOBER

- 4-5 WTO PUBLIC FORUM 2007: "HOW CAN THE WTO HELP HARNESS GLOBALISATION?" Geneva, Switzerland.
www.wto.org
- 4-5 TECHNICAL WORKSHOP ON EMISSIONS FROM AVIATION AND MARITIME TRANSPORT. Oslo, Norway.
www.eionet.europa.eu/training/bunkerfuel/emissions
- 9 WTO GENERAL COUNCIL. Geneva, Switzerland.
www.wto.org
- 8-12 FIFTH MEETING OF THE CBD AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING. Montreal, Canada.
www.cbd.int/doc/meeting.aspx?mtg=ABSWG-05
- 18-19 WTO COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES. Geneva, Switzerland.
www.wto.org
- 22-23 LESSONS FROM NAFTA: BUILDING A NEW FREE TRADE AGENDA. Minneapolis, Minnesota.
<http://events.iatp.org/index.php?q=node/4>
- 23-24 WTO TRIPS COUNCIL. Geneva, Switzerland.
www.wto.org
- 29 - 18TH CONSUMERS INTERNATIONAL WORLD CONGRESS. Sydney, Australia.
1 Nov. www.consumersinternational.org/
- 29- SECOND SESSION OF THE ITPGR GOVERNING BODY. 2007.
2 Nov. Rome, Italy.
http://www.planttreaty.org/gbnex_en.htm

NOVEMBER

- 5-10 43RD SESSION OF THE INTERNATIONAL TROPICAL TIMBER COUNCIL AND ASSOCIATED COMMITTEES. Yokohama, Japan.
www.itto.or.jp
- 12-16 27TH SESSION OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE. Valencia, Spain.
www.ipcc.ch
- 15-16 INTERNATIONAL CONFERENCE ON OIL PALM AND ENVIRONMENT 2007. Nusa Dua Bali, Indonesia.
www.insinyur-kimia.com/v2/index.php?modul=detail&catID=39&key=2222
- 20 WTO GENERAL COUNCIL. Geneva, Switzerland.
www.wto.org
- 20-22 FIFTH ROUNDTABLE MEETING ON SUSTAINABLE PALM: PROMOTING THE GROWTH, TRADE IN AND USE OF SUSTAINABLE PALM OIL. Kuala Lumpur, Malaysia.
[www.rspo.org/5th_Roundtable_Meeting_\(RT5\)_on_Sustainable_Palm_Oil.aspx](http://www.rspo.org/5th_Roundtable_Meeting_(RT5)_on_Sustainable_Palm_Oil.aspx)

DECEMBER

- 3-14 THIRTEENTH CONFERENCE OF THE PARTIES TO THE UNFCCC AND THIRD MEETING OF THE PARTIES TO THE KYOTO PROTOCOL. Bali, Indonesia. www.unfccc.int.
- 19-20 WTO GENERAL COUNCIL. Geneva, Switzerland.
www.wto.org

ICTSD RESOURCES

TRADE AND ENVIRONMENT: A RESOURCE BOOK. Edited by Adil Najam, Mark Halle, and Ricardo Meléndez-Ortiz (ICTSD and IISD, June 2007). This book provides relevant information and analysis on a broad set of trade and environment policy discussions.
www.trade-environment.org/page/southernagenda/RB_description.htm

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