



Bridges Trade BioRes

News, events and resources at the intersection of trade and biodiversity

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Climate & Sustainable Energy

ALL ONBOARD: BALI MEETING STAKES OUT PATH TO GLOBAL CLIMATE AGREEMENT

A global meeting has agreed a roadmap for negotiations on a new agreement to tackle climate change, bringing all countries onboard.

Close to 11,000 people convened in Bali, Indonesia, from 3-15 December, at the largest climate meeting to date. In addition to the official negotiations under the UN Framework Convention on Climate Change (UNFCCC), numerous side events showcased innovative approaches to climate change mitigation and adaptation and presented a multitude of perspectives and experiences with climate change. Global media kept close watch over the meeting, and expectations for a substantial outcome were high.

On 15 December, after UN Secretary-General and the President of Indonesia joined in a last-minute effort to strike a deal, representatives of 187 countries adopted the "Bali Action Plan" after drawn-out and often tense negotiations, setting the stage for a two-year negotiating process leading to a new legally-binding instrument to replace the Kyoto Protocol after 2012. They also agreed to step up technology transfer, funding for climate adaptation in developing countries, and to compensate developing countries for protecting their forests.

Hard targets, hot topics

While countries previously were fragmented in their approach to climate change - with the US in a league of its own after pulling out of the Kyoto Protocol in 2001 - all now signed onto a common approach to climate mitigation. At the close of the meeting, Indonesian foreign minister Hassan Wirajuda stressed that "Here in Bali we reached a

consensus, global consensus for all countries. No single country was excluded, in a very inclusive process...we hope it will provide not only a good basis but also the momentum in the coming years."

However, the negotiators removed specific targets from the text during the course of the negotiations, and watering down the outcome document. Previous negotiating drafts had specified that developed countries should cut emissions between 25-40 percent by 2020 from their 1990 levels. The target was linked to the goal of curbing greenhouse gas emissions enough to allow global average temperatures to stabilise at no more than 2 degrees Celsius above pre-industrial levels, which many scientists and policy-makers say is necessary to avoid irreversible climate change. Supported by the EU but opposed by the US, the target was eventually dropped from the final document. However, the Bali Action Plan commits all developed country parties to "Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives."

Negotiators also disagreed on the actions that developing countries, and especially large emerging economies such as China and India, should take on. The Group of 77 developing countries plus China rejected an earlier draft calling for measurable, reportable and verifiable nationally appropriate mitigation commitments or actions by developing countries. In the end, the Bali Action Plan was amended by the developing-country grouping to say that emerging economies should make "nationally appropriate mitigation actions... in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner." This language, which developing countries claimed was necessary to ensure that they would be able to maintain space for development policy and obtain the technological and financial backing they need, took the conference into a dramatic process. The US preferred the earlier formulation. Many developing country delegations made strong statements calling upon the US to accept the text after the EU had agreed. Several representatives of African and small-island Pacific countries, already

affected by the impact of climate change, spoke out in favour of global consensus. In an unusual intervention, a delegate from Papua New Guinea challenged the US to "either lead, follow or get out of the way." In the end, the US did join in the consensus, meaning the overall deal could be struck. From euphoria to scepticism

Following the extremely tense and high-profile negotiations, most negotiators were pleased and relieved to have delivered on the mandate of the negotiations. UN Secretary-General Ban Ki-moon told Reuters after the meeting that "All the 188 countries have recognised that this is the defining agenda for all humanity, for all planet Earth."

The US called many parts of the deal "quite positive." However, White House spokesperson Dana Perino said she "does have serious concerns about other aspects of the decision as we begin the negotiations," referring specifically to the US stance that emerging developing countries should take on strong commitments.

Many commentators from civil society were cautiously welcoming. Elliot Diringer, Director of International Strategies Pew Center on Global Climate Change in the US said the deal "It puts no one on the hook right now for emission reductions. What's important, though, is that it lets no one off the hook either. It challenges all governments to confront the tough issues ahead and opens the way for the first time to a comprehensive negotiation of post-2012 commitments."

Sunita Narain, who heads the Centre for Science and Trade Environment in New Delhi, India, was more pessimistic. She said "As an environmentalist, I am not satisfied. I think what we have seen at Bali is what we saw at (previous meetings in) Rio and Berlin. I see this as a replay... I don't see the world growing up. It's obvious the US is not learning to be alive to world opinion."

Looking to the future

2007 was an exceptional year, placing climate change squarely in the public eye. Over the next two years, climate bureaucrats have a heavy agenda with a number of meetings set for

hammering out compromises and agreeing on an effective, fair and strong agreement to replace the Kyoto Protocol in 2012. Four meetings have already been set for 2008, and negotiations are scheduled to be completed in Copenhagen in December 2009.

Failing to deliver on climate change was not an option at Bali. On the road to Copenhagen, countries can either strengthen or water down the promise they made in the Bali Action Plan. Many are banking on the change in US leadership following presidential elections in November 2008 to improve the prospects for a strong next step in the climate regime.

Additional resources

To access the Bali Action Plan, visit http://unfccc.int/files/meetings/cop_13/application/pdf/cp_bali_action.pdf

For daily updates and a summary of the meeting, see IISD's Earth Negotiations Bulletin at <http://www.iisd.ca/climate/cop13/>

ICTSD reporting; "UN Breakthrough on climate change reached in Bali," UNFCCC RELEASE, 15 December 2007; "Climate Plan Looks Beyond Bush's Tenure," NYT, 16 December 2007; "Bali climate talks a huge step forward: R K Pachauri," TIMES OF INDIA, 16 December 2007.

TRADE MINISTERS DISCUSS LINKS BETWEEN COMMERCE AND CLIMATE CHANGE IN BALI

International cooperation and a multilateral framework to address greenhouse gas emissions are a prerequisite for effective global economic governance, trade ministers from several major economies said during a weekend meeting on the margins of the UN climate change conference in Bali (see related story, this issue).

They stressed that policies to combat climate change must be structured in ways that minimise adverse social and economic impacts. Many said that the current lack of clarity about emissions rules limits the ability of the WTO to contribute to global efforts to tackle climate change.

Ministers and senior trade officials from the US, Brazil, Japan, the EU, China, India and several other Asian and European countries — but none from Africa — participated at the 8-9 December informal gathering at the invitation of Mari Pangestu, Indonesia's trade minister. It marked the first ever meeting at that level to discuss links between the international trade and climate policy regimes. Representatives from intergovernmental organisations and invited civil society observers also attended the meeting.

Pangestu stressed from the outset that the informal gathering was not meant to be a negotiation. It was simply to provide a platform for an informal exchange among trade ministers. "The intention is to start a dialogue. This is the first time that trade ministers are meeting to discuss these issues," she said.

Participants concurred that like trade, climate change requires multilateral solutions, and cautioned against unilateral approaches to either issue. They agreed that policymakers must consider how trade could be part of a response to climate change and its potentially profound socioeconomic implications. Although they widely shared the view that the trade and climate regimes could buttress each other in several areas, they noted that tension between the two could arise, especially in the context of negotiations towards post-Kyoto commitments.

That said, they noted that several measures addressed in WTO rules could be useful in dealing with climate change, such as standards, subsidies, taxes and intellectual property rules. Ministers reiterated that using these tools for climate purposes would be best guided by a clearly defined multilateral environmental framework. WTO Director-General Pascal Lamy, who attended the meeting, said that relevant trade rules "can certainly be leveraged in the fight against climate change, and adapted if governments perceive this to be necessary to better achieve their goals."

Cooperation, competitiveness, and development

Despite their desire for an international agreement on climate change, all participants made it clear

that the issue has to be tackled primarily in environmental for a. WTO chief Lamy, for example, emphasised that "it is not in the WTO that a deal on climate change can be struck, but rather in an environmental forum, such as the United Nations Framework Convention on Climate Change."

David O'Sullivan, a top trade official at the European Commission, warned that failure to reach a global deal on climate change could complicate international trade relations: policymakers could find themselves having to consider the use of trade policy tools, including controversial border tax adjustments on certain imports, in order to achieve climate change objectives.

Even an agreement on climate change, if it fails to include all major economies, could give rise to trade tensions, as governments try to counteract competitiveness concerns vis-à-vis countries that are not striving to meet emissions targets. Indeed, some political leaders, particularly in Europe, have called for tariff adjustments on imports from countries that do not sign on to climate measures. This would, they claim, both level the playing field for their goods and encourage countries to join global efforts to mitigate climate change.

Most participants cautioned against the use of trade restrictions, either to compel others to action on climate change or to address competitiveness. US Trade Representative Susan Schwab emphasised that "WTO Members should be cautious to avoid a rush to restricting trade in the name of climate change action."

"Trade has a role in making economic growth and development 'climate-friendly', but should not be seen as the answer to all climate change mitigation concerns," said Schwab. She stressed that "approaches should emphasise multiple aspects of sustainable development, including economic growth, environmental effectiveness and energy security."

Given the developing world's need to develop, China said that that future action on climate change must abide by the notion of common but differentiated responsibility for poor nations, not least because of industrialised countries' historical

responsibility for greenhouse gas concentrations in the atmosphere.

Common but differentiated responsibility was but one of several multilateral principles in the climate change and international trade regimes that participants said must be reflected in cooperative action on both issues. Others were non-discrimination, transparency, science- and rules-based policymaking, and special and differential treatment for developing countries.

Ministers were in agreement that steps to address climate change must leave developing countries enough room in which to develop. However, they expressed concern about "the lack of adequate studies or empirical evidence" on the links between trade, climate change, and poverty eradication, according to a statement from the Indonesian trade ministry. They called for further research in the area, which would enable governments to take more informed decisions.

Countries like China and India have complained that strict curbs on their emissions could constrain growth prospects. Argentina and Mexico said that the right to development must be preserved.

Environmental goods and services liberalisation

Participants discussed the potential climate benefits of liberalising trade in low-carbon goods such as renewable energy technologies and pollution control equipment.

Lamy pointed to the ongoing Doha Round negotiations on liberalising trade in environmental goods and services, suggesting they could "deliver a double-win for some of our members. A win for the environment and a win for trade." However, he stressed that market opening must take place within the right environmental framework - a framework that governments need to set up.

Participants discussed a proposal by the EU and the US for all WTO Members to liberalise trade in some 43 products identified by the World Bank as providing direct climate change benefits, from wind turbines to stoves, cookers, and hydrogen fuel cells (see related story, this issue).

The sponsors of the paper described it as an immediate trade deliverable for global efforts to tackle climate change. Japan, which also praised the paper, noted that it would do even more for climate change point if it included hybrid cars (in which it is a world leader).

Echoing criticisms made by his country's delegation at the WTO in Geneva, Brazilian Foreign Minister Celso Amorim said that the EU and the US list had failed to include the "single product whose effect on climate change is already demonstrated — which is ethanol." He argued that ethanol use in Brazil had avoided the production of 670 million tonnes of climate-warming carbon dioxide over the past 30 years. Brazil is a major producer of ethanol, which is heavily protected and simultaneously subsidised in both the US and the EU.

Amorim pointed to an anomaly in tariff classification for different biofuels: ethanol is classified as an agricultural product (which makes it easier for rich countries to shield it from tariff cuts) while biodiesel is considered to be an industrial good. He said that there was no rationale for the discrepancy, and called for it to be corrected. The Brazilian minister stressed that liberalising trade in the ethanol market would also help other developing countries with conditions similar to Brazil.

Brazil's call for ethanol tariff cuts met favourable reactions from Sweden and Japan, the latter saying that biofuels should be considered in the context of energy security. The EU conceded that there might be problems with the way biofuels are classified in the trading system, but noted that reclassification procedures would be complex, though it did not rule out the idea entirely.

USTR Schwab rejected complaints that the EU-US list consisted of products of export interest to industrialised countries. She said that the US was in fact a net importer of the 43 products in 2006, with US\$18 billion in imports surpassing exports by US\$3 billion. The US' top two sources for those products were developing countries Mexico and China, she added.

Ministers at the meeting called for a successful conclusion to the Doha Round negotiations, including the environment mandate.

The carbon footprint of international trade

Emissions resulting from international trade - shipping, road, and air freight - also featured in the discussions. Participants cautioned against simplistically invoking carbon benchmarks to call for restrictions on global commerce. They noted that international trade accounts for less than two percent of greenhouse gas emissions, and that erecting barriers to trade could heavily penalise the poorer countries that have least contributed to the problem of climate change.

Instead of looking at transportation in isolation, speakers said that the broader carbon cycle from a good's production to consumption should be considered. Pascal Lamy referred to studies showing that a Kenyan flower air-freighted to Europe is still responsible for a third of the carbon dioxide emissions of a flower grown in the Netherlands.

"It is misleading to single out energy used in transporting goods without considering how trade contributes to productivity and efficiency — and poverty reduction," said Schwab.

Technological cooperation

Technological cooperation will be an essential part of the post-Kyoto climate regime. Officials from both China and India raised concerns about barriers to accessing foreign technology during the trade ministers' meeting. Notably, India referred to intellectual property protections as a potential obstacle, and called for a consideration of revisiting WTO intellectual property rules so as to ensure that they adequately respond to Members' pursuit of technology transfer objectives.

Several delegations warned that weakening the intellectual property regime could undermine innovation, and thus ultimately be counterproductive. The EU called for exploring innovative approaches to technology that would support the rapid diffusion of climate-friendly technologies without compromising the integrity of intellectual property protection. Brazil noted

that it had expanded the scope of HIV/AIDS treatment programmes by using provisions in WTO intellectual property rules to suspend patents on medicines to allow for the production of cheap generic drugs; it suggested that the same 'compulsory licensing' flexibilities could be used to diffuse clean technologies more widely if required.

The head of the UN Conference on Trade and Development (UNCTAD), Supachai Panitchpakdi, talked about the potential of using the Clean Development Mechanism, an arrangement under the Kyoto Protocol that allows industrialised countries to invest in emissions-reducing projects in developing countries as a cheaper alternative to cutting emissions at home, to enhance technology transfer to developing countries. He also highlighted the importance of promoting investment in developing countries.

Environmental NGOs worried of interference in climate process

Environmental organisations cautioned that trade policymakers might harm the climate negotiations process. Just before the trade ministers meeting, groups including Friends of the Earth warned against using climate change to promote business interests that only benefit rich countries. They issued a statement arguing that "the liberalisation of energy markets, through multilateral or bilateral negotiations to deregulate the energy sector is increasing our dependency on fossil fuels and delaying efforts to move towards low-carbon economies." Others said that trade discussions might distract attention from the talks on launching negotiations on a future climate regime.

The ministers called for further high-level interaction on the links between international trade and climate change, possibly holding further discussions under the auspices of the WTO or UNCTAD. They also urged future hosts of UNFCCC conferences to organise similar meetings of trade ministers, and to consider holding a joint session with finance and development officials.

Additional resources

Lamy's speech at the informal trade ministers' meeting in Bali is available at http://www.wto.org/english/news_e/sppl_e/spp183_e.htm

ICTSD reporting.

EU, US CALL FOR ELIMINATING TRADE BARRIERS TO CLIMATE-FRIENDLY GOODS AND SERVICES

Just prior to the UN climate change conference in Bali, the EU and US submitted a joint proposal at the WTO calling for trade liberalisation in climate-friendly goods and services.

The proposal called for the elimination of trade barriers facing goods and services directly related to mitigating climate change as part of the Doha Round negotiations on environmental goods and services. Trade liberalisation could lower costs, for instance for clean energy technologies, thus promoting increased use around the world.

US Trade Representative Susan Schwab said that "WTO Members have an unprecedented opportunity to address in a concrete and meaningful way the global environmental challenge of climate change."

Initial responses from developing countries were mixed, with suggestions that the EU and the US were invoking climate change technology to dress up their continuing demands for liberalisation in a wide range of other goods and services.

The EU-US proposal on 'climate-friendly' goods and services

The EU and US tabled their joint informal proposal at the WTO on 30 November. "Trade liberalisation can and should support the fight against climate change," it said, "notably by contributing to the necessary deployment of climate and energy friendly goods and technologies as well as services, thereby complementing and supporting the objectives of... the UN Framework Convention on Climate Change (UNFCCC)." The proposal also served as a contribution to the meeting of trade ministers at

the sidelines of the UNFCCC meeting in Bali from 8-9 December (see related story, this issue).

Climate-friendly goods

The proposal set out a two-tier approach to environmental goods and services liberalisation. The first tier was reserved for goods and services directly related to climate change mitigation; the second, for a broader list of environmental goods and services.

The first tier would be for goods "directly linked to addressing climate change" as well as "other relevant goods that enjoy consensus on the basis of their clear environmental benefit." These would include some 43 products identified as "climate-friendly" by a recent World Bank report, covering a wide variety of products such as solar collectors and system controllers, wind-turbine parts and components, stoves, grates and cookers and hydrogen fuel cells. The same report concluded that removing tariffs and non-tariff barriers to key clean energy technologies could boost trade by 7-14 percent annually, and encourage greater investment in cutting-edge technology.

"Building on the analysis by the World Bank," the EU and the US called on Members to "commit to eliminate tariffs on these [climate-friendly] products with the entry into force of the Doha Development Agenda."

The proposal called on all WTO Members - industrialised, developing, small economies, and least-developed countries - to eliminate such barriers. It said that special and differential treatment for developing countries such as longer phase-in periods could be discussed, but that the "ultimate objective should be a zero tariff world for climate friendly goods in the near future and no later than 2013."

The proposal did not, however, mention several developing country concerns cited in the same World Bank report, ranging from potential damage to domestic industry to the need for technology transfer.

...and services

Also in the first tier would be services that "could contribute to [Members'] efforts to address climate change." The proposal suggested that Members could further their climate change objectives by removing obstacles to foreign competition in sectors such as "environmental services (e.g. air pollution and climate control services; technical testing and analysis; energy-related services (e.g. engineering and maintenance services to optimise the environmental performance of energy facilities); and services for the design and construction of energy-efficient buildings and facilities."

The proposal stressed the importance of liberalising environmental goods and services in parallel. Building more energy-efficient buildings would require, for instance, consulting, design and construction services in addition to, say, solar panels for heating.

Second tier: other EGS

Tier two of the liberalisation process envisioned by the EU and the US involved the negotiation of an "Environmental Goods and Services Agreement." This would include at least all developed countries and the 30-odd larger developing countries slated to apply the standard tariff reduction formula in the industrial goods talks. Unlike the first tier, least-developed and other particularly disadvantaged countries would be exempt from making commitments.

The wider range of environmental goods slated for liberalisation under this agreement would be based on a consolidated list of 153 products compiled by the 'friends of environmental goods', a group of mostly developed countries that has been pushing for Members to agree on a list of products for expedited liberalisation. For these products, the proposal called on participating countries to "eliminate tariffs and take appropriate actions to identify and address specific non-tariff barriers." It did not set any specific deadlines.

Services in this second tier could include a broad set of environmental and climate-related services, including environmental, energy, construction, architectural, engineering and integrated

engineering services. The proposal's objective would be for Members participating in the initiative to bind existing levels of market access and national treatment commitments, and undertake new liberalisation to remove market access barriers.

Developing country reactions Developing country reactions to the proposal were mixed at a 30 November meeting of the Committee on Trade and Environment Special Session.

Egypt, among others, noted the importance of climate change and welcomed the short list of goods in tier one. Developing countries asked for more clarification regarding the scope of the products and services within tier two.

Many developing countries have consistently expressed concern about using a list of environmental goods slated for expedited liberalisation, noting that many products on the 'friends of environmental goods and services' group's list are primarily of export interest to industrialised countries. The issue of 'dual use' - the fact that many goods that Members want included on an environmental goods list also have non-environmental uses - has been another sticking point.

At the meeting on 30 November, many developing countries voiced concerns, without questioning the relevance of environmental goods and services to mitigating climate change. They questioned how the goods had been selected, and said the dual use problem had not been fully resolved even for the short list of 43 goods in tier one, although they did acknowledge that the list specified the intended end-use for a number of the products. For instance, clutches and universal joints were included as specifically for wind turbines.

Brazil and others pointed out that the submission contained no products of export interest to developing countries, compromising its development dimension. Brazil would, for example, have liked to see the list include biofuels and biofuel manufacturing equipment, of which it is a major producer, as well as consideration of a broader category of agricultural environmental

goods. The list also lacked a technical assistance and technology transfer dimension, it said.

Some countries criticised the concept of a 'one-size fits all' environmental goods and services agreement that would be mandatory for some Members, saying the objective of the proposal appeared to be market opening rather than environmental protection. Brazil suggested that its 'request-offer' approach took into account developing country interests more adequately than the common list put forward the EU-US submission (see Bridges Trade BioRes, 16 November 2007, <http://www.ictsd.org/biores/07-11-16/story3.htm>). According to sources, the US clarified that the proposal was not inconsistent with Brazil's 'request-offer' approach. Hong Kong asked why a new agreement was needed, given that countries could make commitments within existing goods and services schedules.

Criticism continues

More criticism of the proposal followed after the WTO meeting, with Indian Ambassador Ujal Singh Bhatia saying that the EU-US proposal was "a disguised effort at getting market access through other means and does not satisfy the mandate for environment." Reuters reported that he said that India could agree to liberalise trade in goods such as solar panels and windmills, whose sole use would be to combat climate change, but could not accept the possibility that the list would extend over time to include products like cars and refrigerators.

Roberto Azevedo, a senior Brazilian negotiator, was especially critical of the list's failure to include biofuels, upon which the US and the EU levy steep duties to protect heavily subsidised domestic producers. "We find the proposal modest, we find it biased, and we find it protectionist," he said. "Anything that they don't produce is not on the list." At the trade minister's meeting on the sidelines of the Bali climate change conference, Brazilian Foreign Minister Celso Amorim stated that "This list is incomplete, it won't do much for climate change, it's not proven what effects that these goods will have on climate change."

ICTSD reporting; "Nations bicker in Bali over 'green' goods trade," REUTERS, 10 Dec 2007.

Fisheries Subsidies

FISHERIES SUBSIDIES TEXT PROVIDES A GOOD STARTING POINT, DELEGATES SAY

At a WTO meeting on fisheries subsidies last week, Members provided their initial reactions to a new draft text for trade rules in this area. While not all Members agreed on the specific details of each provision, the majority of delegates were content with the draft text - at least as a starting point for further negotiations.

The Chair of the negotiations on fisheries subsidies, Ambassador Guillermo Valles Games' (Uruguay), released the draft consolidated text on 30 November (see Bridges Trade BioRes, 30 November 2007, <http://www.ictsd.org/biores/07-11-30/story3.htm>). The text was phrased in the form of potential future articles of WTO rules governing anti-dumping and countervailing measures, including the text specific to fisheries subsidies. Under the Doha Mandate, Members are instructed to "clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries... with a view to enhancing the mutual supportiveness of trade and environment."

WTO Members offered their initial comments on the new text during meetings of the Negotiating Group on Rules on 12 and 14 December.

Subsidies checklist

In his text, Valles Games bans several types of fisheries subsidy payments, especially those that boost fishing capacity or create other incentives to fish. In this way, the text attempts to bridge the principal cleavage in the negotiations between the numerous advocates of a 'top-down' blanket ban on fisheries subsidy payments (with negotiated exceptions), and countries that want a 'bottom-up' ban only on specific kinds of subsidies, most vocally Japan, Chinese Taipei, and Korea.

Among those slated to be banned, for instance, are subsidies covering the construction, operating and fuel costs of fisheries vessels. Other types of support for the fishing industry - such as for port infrastructure "exclusively or predominantly for activities related to marine wild capture" fishing, including storage and processing facilities - are also prohibited in the text. The objective is to curb overfishing, conserve global fisheries resources, and encourage fisheries management, as reiterated throughout the draft document.

Some subsidies would be permissible for all countries, provided that they maintained an international-standard fisheries management system. These include payments aimed at improving fishing vessel safety without increasing fishing capacity; reducing the environmental impact of fishing; and re-training fisheries sector workers into unrelated occupations. Governments would also retain the ability to grant limited fishing access to certain individuals and groups, so long as this did not affect migratory fish stocks or other countries' "identifiable fishing interests." "Small fish in a big pond"

Over recent months, special and differential treatment (S&DT) provisions for developing countries has been a contentious topic dominating discussions, with negotiators expressing befuddlement over how the Chair would try to address this issue.

Under the S&DT rules set out in the text, least-developed countries (LDCs) would be fully exempt from any disciplines prohibiting subsidies. Non-LDC developing countries would be allowed to provide otherwise-banned subsidies, including those that boost capacity, to small-scale fisheries characterised by non-mechanised fishing, family- or association-based fishing operations, catches consumed largely by fishing families, and the absence of a "major employer-employee relationship." The subsidised activities would have to be confined to their territorial waters.

So long as functional fishery management systems that aim to conserve fish stocks are in place, developing countries would be able to subsidise port infrastructure, and provide income and price supports. These management schemes are

supposed to follow practices described in various international agreements, such as UN accords on migratory fish stocks and a UN Food and Agriculture Organisation (FAO) code of conduct on responsible fisheries. Construction subsidies would be allowed for harvesting verifiably sustainable levels of fish stocks within countries' exclusive economic zones.

'Access fees'- that is, the payments that a government offers a coastal state in exchange for the right to fish in that nation's waters - have been another crucial issue for some developing countries, particularly small and vulnerable coastal countries. The African, Caribbean, and Pacific (ACP) group of states has consistently advocated for access fees to be excluded from the scope of the disciplines, arguing that such payments are critical sources of government revenue. In the Chair's text, government-to-government subsidies are not considered subsidies and are thus non-actionable. However, payments made from one government to another and then transferred to an external, third party - such as industry - are treated as subsidies and are prohibited, unless certain conditions are in place that would lessen the risk of overcapacity fishing.

Reactions from the room

Upon the release of the text, WTO Director-General Pascal Lamy commented that it was "ambitious and balanced," and that it would "enable negotiators to work in a more intensive manner in the coming weeks."

Many negotiators echoed this sentiment during negotiations on 12 and 14 December. Members generally lauded the Chair for skilfully treating issues that in previous months seemed ambiguous and roughly defined. They also supported his efforts to bring together all sides in a way that reflected not only economic concerns, but sustainable development interests as well. "The Chair's text goes far to show that the WTO can, in fact, deliver and contribute to a 'win-win-win' for the environment, trade and sustainable development," said US Ambassador Peter F. Allgeier in a statement on the text.

Despite the positive feelings, criticism was not absent from last week's discussions. Several

delegates raised concerns about possible loopholes that would permit circumvention, confusing conditionalities, questions of notification and transparency, and unclear language applied in the text. Members generally concurred that these imprecise technicalities needed further explication.

Article 1.2 of the text, for instance, prohibits all Members except for least developed countries from supporting the harvesting of "unequivocally overfished" stocks. Some delegates called this provision "vague and obscure," noting that developing countries are finding this particular discipline "hard to swallow."

Many delegates recognised the special and differential treatment provisions included in the text as a solid starting point from which discussions could advance. Least developed countries, represented by Lesotho, expressed satisfaction with the group's exemption from prohibited subsidies. The ACP countries, small and vulnerable economies, and Pacific Island members likewise echoed support for the Chair's treatment of S&DT and access fees in particular.

India, China, and Brazil, among others, did not share the same enthusiasm, expressing discontent for S&DT as outlined in the text. India questioned the conditionalities imposed for a country to qualify for S&DT, while China and Brazil described the text as both too rigid and overly burdensome.

Looking to extend special treatment for small-scale fishermen beyond developing and least developed countries, Japan, Korea, and Chinese Taipei shared their discontent with the absence of such a provision in the Chair's draft. This same group of countries also expressed unhappiness with the text overall. Notably problematic for Japan, Korea, and Chinese Taipei was the prohibition of subsidies for port infrastructure, operating costs, and near-port fish processing, which Japan argued has little effect on overcapacity fishing. Korea described the text as taking a disguised "top down" approach.

While Japan, Korea, and Chinese Taipei voiced mutual discontent, New Zealand, Australia, and the US, among others, expressed collective satisfaction with the text. The draft, the US said,

contained a strong level of ambition and marked a promising start for defining future negotiations and provisions. Australia and New Zealand stressed the positive environmental outcomes that could result from these negotiations.

Advocates approve

Marine advocates and environmental activists were among those demonstrating support for Chair Valles Games' treatment of fisheries subsidies. The WWF released a statement calling the draft "a serious and constructive text" and "a solid basis for negotiations to proceed." While they recognised that further discussions were necessary to guarantee that provisions were enforceable and effective, they also applauded the Chair for embracing key subsidies principles and for striking a strong balance. The draft, they added, "should require only adjustments and not wholesale revisions to achieve success."

Oceana, a Washington D.C.-based marine advocacy organisation that has been heavily advocating for broad ban prohibitions in the WTO fisheries subsidies negotiations, likewise welcomed the draft text. "We are pleased to see that the chair's text on fisheries subsidies contains a strong prohibition on subsidies that increase overcapacity and overfishing," said Courtney Sakai, campaign director with the organisation. "Furthermore, the text reflects the importance of sustainability and fisheries management criteria for any exceptions to the broad prohibition."

The next lap

To where the negotiations will advance, no one is quite sure. Even the Chair himself has acknowledged his uncertainty about how the discussions will structurally move forward. What is evident, however, is that delegates now have a text that they believe constitutes a strong foundation from which they can productively discuss, define, and outline fisheries subsidies. Members are expected to continue to reflect on their positions and the Chair's text through the new year. The next meeting of the rules group on fisheries subsidies is tentatively scheduled for the last week in January.

ICTSD reporting.

Intellectual Property

LINKS BETWEEN PATENT RULES AND ACCESS TO GREEN TECHNOLOGY COME UNDER SCRUTINY

On the eve of the international conference on climate change in Bali, the European Parliament called for examining the impact of intellectual property protections on the spread of environmentally sound technologies, suggesting that WTO rules might be impeding their diffusion.

Wider use of energy-saving technology would help curb greenhouse gas emissions. However, the extent to which patent protections play a major role in raising the cost of using such technology remains uncertain.

In a resolution adopted on 29 November, the European Parliament pointed to the "urgent need to develop production, consumption and trade patterns that mitigate climate change and its economic impact." It said that the Clean Development Mechanism, the Kyoto Protocol's principal system for technology transfer, "is not yet sufficient to significantly shift investment patterns in those sectors that have the greatest impact on climate change, such as power generation, transport and industrial energy use."

Given this insufficiency, the parliament urged the European Commission, which negotiates trade agreements on behalf of EU members, to push for removing tariff and non-tariff barriers that "prevent or slow the dissemination of low carbon technologies." To this end, it also recommended "launching a study on possible amendments to the WTO Agreement on Trade-related Aspects of Intellectual Property Rights in order to allow for the compulsory licensing of environmentally necessary technologies, within the framework of clear and stringent rules for the protection of intellectual property." Compulsory licensing effectively suspends patents on a technology, allowing for the production of generic copies against the payment of a royalty to the patent-holder.

The EU could help promote the development of global-scale 'climate-friendly' industries by

working to lower barriers to 'green' trade through measures such as "removing tariffs on 'green' goods at the WTO level" and "reshaping the rules on intellectual property rights," the parliament noted.

The resolution pointed to the EU's status as a key player in alternative energy technologies, particularly in the wind and solar sector. "The EU should become a market leader in the worldwide export of environmental goods and services," it said.

Chinese officials have increasingly been arguing that intellectual property protections are putting energy-saving technologies out of the reach of developing countries. "I think we have to resolve a lot of barriers on the so-called intellectual property rights issues," Zhou Dadi of China's Energy Research Institute said, reports Reuters. "That means if you really want to help China to speed up the technology transfer process, we have to really think about how to help China cover the high costs. Most of them are not based on material, they're based on intellectual property rights," he added.

However, some studies reveal that the key barriers encountered by developing countries may not be related to intellectual property protection, but to trade barriers and other issues related to market structures.

John Barton, an emeritus professor of law at Stanford University and a leading authority on technology transfer, has demonstrated that there is a difference between the renewable energy sector (solar, photo-voltaic, biofuels, and wind) and the pharmaceutical sector, the classic example of how compulsory licences have been used to create dramatically cheaper drugs and expand access to medicine. In the pharmaceutical sector, patents and the associated monopoly rights often have a substantial upward impact on price, as there may be no substitutes for a new medicine, he wrote this month in Bridges Trade BioRes Review (see <http://www.ictsd.org/biores/BioResReview/pdf/BioRes1-2.pdf>). In contrast, in the renewable energy sector, patent protections have long expired on the basic technologies used. Thus, only specific improvements or features tend to be patented. As a result, several competing patented

products exist - and the competition usually brings prices down compared what might be charged under a monopoly.

"Any judgment about the [European] Parliament's proposal about compulsory licensing needs to be made only after we know better whether there is a problem," Barton told Bridges. He succinctly summarised the dilemma of a compulsory licensing policy for green technologies: "The risks of not granting a compulsory license readily enough are that technology will be monopolised and priced too high; the risks of granting such a license too readily are that incentives for private research will be decreased."

Barton said that in the cases he had studied, intellectual property-related obstacles to technology transfer were relatively smaller. In these sectors, intellectual property was generally accessible either through competitively priced products, or through modest royalty fees. However, he said that other sectors, notably the automobile industry, merited further study. He suspected that the real problem in some instances might lie more in the realm of anti-competitive practices than that of intellectual property.

That said, Barton noted that the development and transfer of green technologies transfer "is absolutely crucial to the world's future." He suggested that developed countries could try to promote innovation through means other than patent protection, for instance by committing a portion of technology development funding to the needs of developing countries, and working with developing country firms on such research.

Additional resources

The European Parliament's resolution on trade and climate change is available online at <http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0576&language=EN>

ICTSD reporting; "Patenting and access to clean energy technologies in developing countries," BRIDGES TRADE BIORES REVIEW, 3 December 2007; "China says rethink of IPR needed for energy saving," REUTERS, 28 November 2007.

In Brief

US GROUPS WANT CURBS ON AIRPLANE EMISSIONS

A coalition of states and environmental groups has asked the US Environmental Protection Agency (EPA) to regulate greenhouse gas emissions stemming from aircraft.

The petition, which would cover both foreign and domestic aircraft entering US airports, followed an earlier petition focused on greenhouse gas emissions from marine vessels in US territory (see Bridges Trade BioRes, 5 October 2007, <http://www.ictsd.org/biores/07-10-05/story2.htm>).

Environmental groups Earthjustice, Oceana, Friends of the Earth and the Center for Biological Diversity said greenhouse gas emissions from aircraft could be reduced through measures such as using lightweight composite materials and winglets; adopting advanced contra-rotating propellers; minimising engine idling; and flying at optimal cruise altitudes

The Attorney Generals of five US states, two cities, and a California government agency filed a simultaneous petition. "Aviation is a large and rapidly growing source of greenhouse gases and the EPA should have taken action by now to curb these emissions. Not to do so, ignores the tremendous opportunity for technological innovations that can increase efficiency and reduce emissions," commented California Attorney General Brown.

The EU already has plans to include aviation in its emissions trading scheme, and the US and EU recently clashed over this policy at the tri-annual International Civil Aviation Organisation Assembly (see Bridges Trade BioRes, 5 October 2007, <http://www.ictsd.org/biores/07-10-05/story1.htm>).

Reaction to the petitions, the US Air Transport Association, which represents major airline companies, opposed any new measures saying that "the commercial airlines already are driven to be

as fuel efficient and environmentally conscious as possible."

While the bulk of internationally traded goods are transported by water, roads and rail, aviation also plays an important role. The aviation sector contributes around two percent of global carbon dioxide emissions. However, when indirect effects from other pollutants as well as cloud formation are added, aviation contributes up to nine percent of global warming effect. Aviation is also one of the fastest-growing sectors. Emissions have doubled since 1990 and are projected to further grow by 3.5 percent annually, tripling at the global level by 2050. Half of global aviation emissions stem from the US today.

Additional resources

To access the petition filed by several environmental groups, see http://oceana.org/fileadmin/oceana/uploads/Climate_Change/FINAL_Aircraft_GHG_Petition_PR_FINAL.pdf

To access the petition filed by US states and cities, see http://oceana.org/fileadmin/oceana/uploads/Climate_Change/FINAL_States_Aircraft_Petition_FINAL.pdf

ICTSD reporting; "5 states seek curbs on aircraft greenhouse gases- EPA accused of 'very passive and unimaginative approach'," AP, 5 December 2007; "States, Groups Demand Aircraft Climate Emission Limits," ENS, 6 December 2007.

WTO APPELLATE BODY REINFORCES RULING AGAINST BRAZIL TYRE IMPORT BAN

The WTO's highest court on 3 December confirmed an earlier ruling that Brazil's import ban on used and retreaded tyres violated multilateral trade rules because it was applied in a discriminatory manner.

Notably, the Appellate Body set a substantially higher bar for Brazil to make its import ban WTO-compliant, by reversing some aspects of the original panel's ruling.

In its dispute with the EU, Brazil had argued that retreaded tyres — used tyres reprocessed for a second and final use — had a shorter life span than new ones and therefore contributed to a faster accumulation of waste tyres. Growing piles of waste tyres in turn provide fertile breeding grounds for disease-carrying mosquitoes, Brazil said, and their sheer volume exceeds the country's capacity for environmentally responsible disposal.

Brussels had charged that the import limitations were motivated by a desire to protect local tyre makers rather than to pursue genuine public health objectives, pointing in particular to repeated court injunctions that allowed Brazil's retreaded tyre industry to import millions of otherwise-banned used tyres between 2000 and 2005. It also noted that Brazil had continued to import relatively small numbers of retreaded tyres from its Mercosur partners Argentina, Paraguay, and Uruguay.

The earlier panel had accepted that the import ban could be necessary on health grounds, but said that its application was discriminatory: the Brazilian retreaded tyre sector was benefiting at the expense of its EU counterpart. Furthermore, it noted that the imports of waste tyres under court injunction undermined Brasilia's own rationale for the prohibition (see Bridges Weekly, 20 June 2007, <http://www.ictsd.org/weekly/07-06-20/story3.htm>).

The Appellate Body agreed that Brazil's import ban could be justified for public health reasons. However, it was stricter in assessing the extent to which the ban was "being applied in a manner that constitutes unjustifiable discrimination." For instance, it deemed the Mercosur exemption to have caused the import ban to be applied "in a manner that constitutes arbitrary or unjustifiable discrimination." It also reversed the panel's finding that the Mercosur exemption as well as the injunction-sanctioned imports would only be discriminatory if they resulted in tyre import volumes high enough to threaten the objective of the import ban.

The relatively low bar the initial panel set for Brazil to bring the ban into WTO compliance put Brussels in the unusual position of appealing a ruling that it had nominally won.

Environmental groups such as the Centre for International Environmental Law and WWF had welcomed the initial panel ruling, and criticised the EU's appeal (see Bridges Trade BioRes, 7 September 2007, <http://www.ictsd.org/biores/07-09-07/story1.htm>).

The Brazilian government has been working to convince the Supreme Court to stop the injunctions.

ICTSD reporting.

US-PERU TRADE DEAL APPROVED

A trade pact between the US and Peru has now been formally approved in the US, and implementation - including of new and strong provisions on illegal logging - can go ahead after final legislative adjustments are made.

The US House of Representatives voted through the deal on 8 November (see Bridges Weekly, 14 November 2007, <http://www.ictsd.org/weekly/07-11-14/story3.htm>). The US Senate approved it on 8 December, with US President Bush signing the deal into law on 14 December.

After Democrats took control of the US Congress, the US-Peru FTA was amended through the inclusion of new and significantly strengthened provisions on environment, as well as through the addition of a new annex on forest sector governance to combat illegal logging (see Bridges Trade BioRes, 6 July 2007, <http://www.ictsd.org/biores/07-07-06/story3.htm>).

Senator Charles Grassley, Chair of the Senate Finance Committee, said the deal "represents a first step toward increased prosperity, transparency, and stability for the Latin American region as a whole." He said that changes had been made to accommodate human rights and environmental concerns, and that the deal now represented "exactly what many of us in Congress and in the labour and environmental movements have been seeking to include in trade agreements for decades."

“Congress passes US-Peru free trade pact in win for Bush,” AFP, 4 December 2007; “Bush Signs US-Peru Trade Pact,” AP, 14 December 2007; “Congress Passes US-Peru Free Trade Agreement,” FORBES, 4 December 2007.

Events & Resources

EVENTS

For a more comprehensive list of events in trade and sustainable development, please refer to ICTSD's web calendar, <http://www.trade-environment.org/page/calendar.htm>.

18-19 December, Geneva, Switzerland: WTO GENERAL COUNCIL. For further information, contact the WTO Information and Media Relations Division, Geneva; tel: +41 22 739 5007; fax: +41 22 739-5458; email: enquiries@wto.org.

21-25 January, Geneva, Switzerland: SIXTH MEETING OF THE CBD OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING. The meeting will address compliance, and traditional knowledge and genetic resources, capacity-building and the nature, scope and objectives of an international regime on access and benefit-sharing. Internet: <http://www.cbd.int/doc/meeting.aspx?mtg=ABS WG-06>

22-24 January, Beijing, China: BEIJING INTERNATIONAL CONFERENCE ON COMBATING DESERTIFICATION. The State Forestry Administration of the People's Republic of China (SFA) and the UN Department of Economic and Social Affairs (UN-DESA) will organise this conference, which will bring together senior government decision-makers, representatives of local authorities, officials from the UN system, researchers and experts, as well as practitioners, to share lessons learned and best practices in combating desertification. It will be convened as an intersessional event in contribution to the 16th session of the Commission on Sustainable Development (CSD). Internet: http://www.un.org/esa/sustdev/calendar/desertification_beijing2008.htm

23-27 January, Davos, Switzerland: WORLD ECONOMIC FORUM ANNUAL MEETING 2008. The World Economic Forum will highlight ‘The Power of Collaborative Innovation’ as the principal theme for the Annual Meeting 2008 in Davos. Internet: <http://www.weforum.org/en/events/AnnualMeeting2008/index.htm>

30-31 January, Tokyo, Japan: A CHANGE IN CLIMATE FOR WHALES: IS THERE A COMMON WAY FORWARD? - SECOND PEW-SPONSORED WHALE SYMPOSIUM. This meeting follows the first Pew Whale Symposium held in New York in April 2007 and will precede a special meeting of the International Whaling Commission (IWC) on the future of the whale conservation regime at the end of February, as decided at the last annual meeting of the IWC. Internet: <http://www.pewwhales.org/tokyosymposium/>

13-16 April, Ooty, India: GRADUATE COURSE IN INTELLECTUAL PROPERTY RIGHTS AND TECHNOLOGY TRANSFER. The Society for Technology Management (STEM), Asia's premier technology management association, will be hosting its flagship international program, the Graduate Course in IPR and Technology Transfer. The intensive four-day program will examine the role of Intellectual Property (IP) as a strategic technology transfer tool using case studies, best practices, and interactive discussions. The faculty for the program comprises of senior IP practitioners, decision makers, academicians, drawn from prominent public research institutions and global international organizations involved in IP Management. This program is aimed at technology transfer officers, IP managers, technology managers and senior policy makers engaged in IP policy development from India and abroad. Participants will be able to learn current best practices in IPRs, in innovation management, and apply these principles and practices in their respective institutional and business environment. The program details, including program agenda and registration forms, are available online at <http://www.stemglobal.org/events2008.html>. Contact Akshat Medakker; aksh...@sathguru.com, or Prabhu Ram; prab...@sathguru.com, for further details.

RESOURCES

If you have a relevant resource (books, papers, bulletins, etc.) you would like to see announced in this section, please forward a copy for review by the Bridges staff to Malena Sell at msell@ictsd.ch.

TRADE-RELATED MEASURES AND MULTILATERAL ENVIRONMENTAL AGREEMENTS. UNEP, 2007. This paper contributes to ongoing negotiations at the WTO by analysing MEA trade-related measures in the context of their overall objectives. In particular, the paper provides a detailed review of the main provisions and specific trade-related measures found in six MEAs. The paper also explores the linkage between trade and environment and the role the trade-related measures incorporated in MEAs play in responding to this relationship. The paper concludes that a classification of trade-related measures should be developed in a manner that takes into account the particular context of each MEA, and the paper recommends a framework for considering trade-related measures in reference to the functions they perform. To access the paper visit http://www.unep.ch/etb/areas/pdf/MEA%20Papers/TradeRelated_MeasuresPaper.pdf

A PRELIMINARY ANALYSIS OF MEA EXPERIENCES IN IDENTIFYING AND FACILITATING THE TRANSFER OF TECHNOLOGY - WHAT INSIGHTS CAN BE DRAWN FOR THE WTO EGS NEGOTIATIONS? UNEP and UNCTAD, 2007. MEA Secretariats and their Parties have been engaged for a number of years in identifying relevant technology and promoting technology transfer as a step towards achieving MEA objectives. This paper examines this experience with a view to enriching WTO negotiations on the liberalisation of trade in environmental goods and services. The paper provides a summary of provisions related to technology found in five MEAs and an overview of the activities undertaken by the respective MEA Secretariats and their Parties in identifying technology and facilitating its transfer. The paper finds that MEAs and their Parties generally adopt a dynamic mechanism for technology identification; designed to respond to the changing nature of environmental challenges, scientific discoveries,

technological development, as well as changing economic, social and cultural circumstances. The paper also notes that MEA Secretariats and Parties often adopt a "package" approach to technology and technology transfer, where the transfer of the technology is complemented by capacity building, technical assistance, training of personnel, sharing of know-how, and exchange of information. To access the paper visit http://www.unep.ch/etb/areas/pdf/MEA%20Papers/MEA_EGS%20Paper.pdf

FAO-BIOTECHNEWS-AR. The Food and Agriculture Organisation of the UN (FAO) has launched an e-mail newsletter providing updates of news and event items in Arabic that are relevant to applications of biotechnology in food and agriculture in developing countries. The main focus of its news and event items is on the activities of FAO, of other UN agencies/bodies and of the 15 research centres supported by the Consultative Group on International Agricultural Research (CGIAR). For more detail see <http://www.fao.org/biotech/welar.pdf> (in Arabic). To subscribe, send an e-mail to mail...@mailserv.fao.org with the subject blank and the following one-line text message: subscribe FAO-BiotechNews-Ar-L. All items will also be posted on the web, at <http://www.fao.org/biotech/index.asp?lang=ar>.