



Bridges Trade BioRes

Biweekly news, events and resources at the intersection of trade and environment

Volume 10 · Number 20, 8 November 2010

Climate Change

Fallout from US Election Highlights Uncertain
Future for Global Climate Pact..... 1

Biodiversity

CBD Clinches ABS Protocol in Nagoya 3

Natural Resources

China Quells Immediate Concerns over
Rare Earth Supply, but Future Uncertain..... 5

Analysis

Patents and Clean Energy: Bridging the Gap
between Evidence and Policy..... 7

In Brief

European Court Decision Reinstates
EU Seal Ban 10

Ministers Reject EC Proposal to Halve
Bluefin Tuna Quotas..... 10

Coalition of NGOs Criticises EU
Biofuels Plan 11

European Agricultural Economists Call for
Ambitious CAP Reform..... 12

Events and Resources

Events..... 13

Resources 15

Bridges Trade BioRes© is published by the International Centre for Trade and Sustainable Development (ICTSD), an independent, not-for-profit organisation based at International Environment House II, Chemin de Balexert 7, 1219 Geneva, Switzerland, tel: (+41) 22-917-8492; fax: (+41) 22-917-8093.

Bridges Trade BioRes is made possible through the generous support of the Government of the United Kingdom (DFID) and ICTSD's core donors including the governments of Australia, Finland, Denmark, the Netherlands and Sweden. Your financial or in-kind support to BRIDGES and the BRIDGES series of publications is a direct and visible commitment to advancing sustainable development in global policymaking. For more details contact Andrew Crosby, Managing Director at acrosby@ictsd.ch or +41 (0)22 917 8335. To subscribe to Bridges Trade BioRes or access back issues, visit www.ictsd.net/news/biores/. Excerpts from Bridges Trade BioRes may be used in other publications with appropriate citation. Comments and suggestions are welcomed and should be directed to the Editor or the Director.

This edition of Bridges Trade BioRes was edited by Andrew Aziz, aaziz@ictsd.ch. Contributors to this issue were Andrew Aziz, Matthew Herbst, Joe Lubar, Malena Sell, and Marie Wilke. The Director is Ricardo Meléndez-Ortiz.

ISSN 1682-0843

CLIMATE CHANGE

Fallout from US Election Highlights Uncertain Future for Global Climate Pact

Big losses for Democrats in last week's congressional vote in the US have snuffed out all likelihood of Washington establishing any meaningful national climate change legislation over the next two years. Republicans have fiercely opposed past initiatives by US President Barack Obama's administration on climate change and with the balance of power now shifted, Democrats will now have to win the approval of their rivals before passing legislation.

The election comes at a key time as countries are currently preparing to meet at the UN Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) in Cancun, Mexico at the end of the month. But with most countries insisting that a strong US position on tackling climate change is crucial to reaching a global climate pact, hopes for such a deal have been scuppered for now.

US benchmark on climate remains key

"The election in the US was a setback for everyone who would like to see an ambitious climate-change agreement and a nationwide cap-and-trade system in the United States," Norwegian Prime Minister Jens Stoltenberg, who co-chairs a high-level UN climate financing group, told Reuters in an interview last Friday. "On the other hand we cannot give up our efforts to try to reach an agreement on how to reduce emissions of greenhouse gases."

At 5833 million metric tons of CO₂, the US produces just a hair below twenty percent of the world's carbon emissions. The country's ability to

reduce its emissions and the path it will take to do so are of utmost important to countries around the world, many whose livelihoods are threatened by imminent climate impacts.

After signing but then failing to ratify the Kyoto Protocol, the US negotiators in the climate negotiations are firm that they will not agree to anything that the US congress will not approve. The world's hopes have focused on the passage of a law that would set the framework for the US international position. At the same time, many countries set their climate benchmark to the US position, unwilling to sacrifice more effort or make greater investment than the world's economic superpower, and showing that ultimately the climate puzzle is as much an economic issue as an environmental one.

Obama to focus on “bite sized” approach to climate

Earlier this year, the loss of a Democrat seat after the death of Massachusetts senator Ted Kennedy posed a new hurdle for the Obama administration's plans to introduce climate legislation that included a national cap-and-trade regime (see Bridges Trade BioRes, [22 January 2010](#)). Democrats were eventually forced to put an indefinite hold on cap-and-trade plans (see Bridges Trade BioRes, [23 July 2010](#)), and the US administration is now grasping for a new approach.

“Cap-and-trade was just one way of skinning the cat. It was a means, not an end,” Obama said at a White House news conference following the election. “I’m going to be looking for other means to address this problem.”

In a recent interview with The National Journal, the president indicated that this may have to be a “bite-sized” approach to energy policy, which might not generate the necessary scale, yet could be the only way to move the country forward politically. Economic growth is at the top of the US agenda and trumps, in many cases, proposals for carbon reduction.

Obama says he will be focus on initiatives that are both good for the economy and will reduce US

dependency on fossil fuels. Thus, a given congressman's stance on climate change will be a moot point if the economic initiative is sound.

Low expectations for Cancun

Unlike last year's UNFCCC COP in Copenhagen, there is no expectation that the Cancun meeting will result in consensus on a legally binding deal. Yet one critical question countries will have to agree on is what to do once the initial phase of the Kyoto Protocol ends in 2012, since there is no agreement on a next phase or on a new broader deal.

Many, including key countries such as China, believe the global deal will have to wait until next year at COP 17 in South Africa. But with the Obama administration virtually hamstrung on the issue, at least until presidential elections take place in 2012, an outcome for South Africa remains uncertain.

Still, some feel that Washington's commitments to the non-binding Copenhagen Accord – agreed to last year at COP 15 – has begun some positive momentum in the US in terms of emission reduction.

"It's discouraging, but at the same time we're taking a five or 10 year view," British economist and climate change expert Nicholas Stern said following the election. "The US has indicated its position in the Copenhagen Accord, and I see no reason why it will backtrack from the accord."

Some signs for optimism

It was not all bad news for climate change in last week's US election. At the state level, voters in California came out strong to support emissions reductions in the state. Voters rejected Proposition 23 to suspend implementation of governor Arnold Schwarzenegger's aggressive Global Warming Solutions Act - also known as AB 32 - which aims to reduce the state's emissions levels to 1990 levels by 2020.

Progressive approaches such as AB 32 and the Regional Greenhouse Gas Initiative (RGGI) – a cap-and-trade program covering electricity

generation in 10 northeastern and mid-Atlantic states – show that there may be opportunities for the US to reduce overall carbon emissions even in absence of a national regime.

More information

A complete transcript of Obama's interview with the National Journal can be accessed [here](#).

ICTSD Reporting; "Obama Moves Away From 'Cap and Trade,' Seeks New Tools," REUTERS, 4 November 2010; "Obama's climate pessimism dims U.N., G20 outlook," REUTERS 4 November, 2010; "Clinton Facing Heat on Oil Sands Pipeline," THE NEW YORK TIMES, 1 November 2010; "Defeat Of Prop. 23 Preserves California's Climate-Change Law," SOLAR INDUSTRY, 4 November 2010; "U.S. vote was "setback" for climate action: Norway," REUTERS, 5 November 2010

BIODIVERSITY

CBD Clinches ABS Protocol in Nagoya

The Tenth Conference of the Parties to the Convention on Biological Diversity (CBD COP 10) was gavelled to a close in the wee hours of the morning on 30 September. Thousands of participants rose to their feet in Nagoya, Japan to applaud, despite some misgivings about the agreement that had just been reached.

After twelve days of up and down discussions, delegates agreed to a protocol on access and benefit sharing (ABS) regarding genetic resources used in inventions, as well as accords on financing and a strategic plan for the organisation's work.

For much of the conference, which started on 18 October, it had seemed as though the CBD talks would join multilateral negotiations on trade and climate change in discord and deadlock (see Bridges Trade BioRes, [25 October 2010](#)). The outcome remained uncertain even hours before the final plenary as countries seemed to be unable

to agree on a number of contentious issues regarding the ABS protocol. Only a compromise text formally introduced by Japan, the host of the meeting, managed to bridge the diverging positions help governments avert a collapse.

A number of developing countries lead by the G77-China bloc had repeatedly stated that they would not settle for an agreement on financing and the strategic plan alone. "Brazil and others could not accept the adoption of a strategic plan and a financial resource mobilization strategy if no [ABS] protocol is put into place. We are not bluffing. We are very clear on this", Brazil had warned during a press conference earlier that week.

They were true to their word. Once formal agreement on the ABS protocol was reached, a package consisting of the three main decisions was quickly sealed and adopted, accompanied by almost 50 specialised room documents. Delegates applauded COP 10 as a historic success.

Protocol just a starting point

Caution, however, mingled with the celebration and relief. "The ABS Protocol is only a starting point. Whether it will result in the viable regime against bio-piracy now depends on the implementation," one delegate told Bridges.

The African Group formally made a similar point in the closing plenary, stating for the record that the protocol was simply a first step for moving towards the implementation of the Convention's third objective, which is the "fair and equitable sharing of the benefits arising out of the utilization of genetic resources." Other countries called the protocol "imperfect" and "incomplete," though nonetheless an "important step" and "milestone achievement".

"It was momentum we had to make use of. Not agreeing was not an option. It would have squashed whatever we had achieved by now," a government official explained.

A masterpiece of ambiguity

While a certain degree of creative ambiguity is a hallmark of international accords, the text of the ABS protocol has left experts puzzled about what exactly has been agreed on for many critical issues, including the substantive and temporal scope of the agreement, giving rise to a range of partially conflicting interpretations.

While finalising the text, some disputed provisions were simply deleted. Other disagreements were resolved by replacing clauses with general statements that leave considerable room for interpretation.

Some crucial examples of ambiguity relate to the inclusion or exclusion of “derivatives,” the protocol’s temporal scope, the regulation of publicly available traditional knowledge and the compliance mechanism.

According to experts, some 90 percent of all biopiracy is related to derivatives - “naturally occurring biochemical compounds resulting from the genetic expression of metabolism of biological or genetic resources” - rather than the actual genetic resources capable of reproduction. The inclusion of derivatives was thus a main demand by a large number of developing countries.

The ABS protocol’s treatment of derivatives is far from straightforward. Article 2 of the accord, which covers terms used in the text, includes far-reaching definitions of “derivatives” and the “utilization of genetic resources.” Article 3, which sets out the scope of the accord, on the other hand, makes no explicit mention of derivatives. Instead, it refers to “genetic resources within the scope of Article 15 of the Convention” and “the benefits arising from the utilization of such resources”. However, whether Article 15 of the CBD covers derivatives is the subject of disagreement between developing and developed countries. On the other hand, “benefits arising from the utilisation” of genetic resources could be interpreted to cover derivatives. “Utilisation” is also mentioned in Article 4, which covers fair and equitable benefit-sharing.

Also unclear was the status of genetic resources that had been taken out of their place of origin prior to the entry into force of the ABS protocol. Some parties to the CBD feared that a large number of cases could fall outside the Protocol’s scope without some sort of retroactive protection.

The finally agreed Article 3 remains silent on the temporal scope of the ABS protocol, thus sidestepping any clear decision on the matter. The Japanese compromise text introduces a new provision, Article 7bis, calling upon parties to “consider a global multilateral benefit-sharing mechanism” to address “transboundary situations” and “situations for which it is not possible to grant or obtain prior informed consent.” This could in theory apply to the use of genetic resources obtained ‘*ex situ*’ (outside of their place of origin), or in a manner not compliant with the CBD. It would, however, depend on future negotiations. Public international law set out in the Vienna Convention on the Law of Treaties prohibits retrospective effect unless parties to a treaty agree otherwise. However, it does allow new agreements to apply to certain types of existing situations -as it is the case of Article 70 of the TRIPS Agreement un-, which could potentially cover situations in which resources had been accessed or were being used when the treaty entered into effect.

No compulsory disclosure requirement in patent applications

Other vague provisions leave much to be addressed by domestic processes. This is particularly true for compliance mechanisms. For years, many governments and experts have demanded a so-called “disclosure requirement” in patent applications - a requirement for patent applicants to disclose the use of any traditional knowledge or genetic resources used in their invention (several countries, including some developed ones, now support a similar requirement in talks at the World Trade Organization).

The demand for a disclosure requirement, as well as other issues relating to compliance, are now covered by an obligation to “take appropriate, effective and proportionate measures to address

situations of non-compliance” and to “establish one or more effective checkpoints having functions relevant to the utilization of genetic resources” that “would collect or receive as appropriate, relevant information.” However, what constitutes “appropriate, effective, and proportionate” is left to national authorities to decide. Therefore, the international regime alone will not provide legal certainty; its success will hinge on national implementation efforts.

Other international organisations and ongoing practices

Similar language also underpinned a compromise on how to deal with emergency situations that threaten human, animal or plant health. Novel language now states that “parties may take into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits, including access to affordable treatments by those in need, especially in developing countries.” This provision would be directly relevant to ongoing negotiations at the World Health Organization, where governments are debating whether countries should be obliged to share genetic material relating to human pathogens (such as the avian flu), and whether they can fairly expect to receive benefits for doing so.

Also ambiguous is the relationship between the new ABS protocol and talks on traditional knowledge at the World Intellectual Property Organization (WIPO). Following an explicit request from the European Union, the COP decision adopting the ABS protocol mentions a review process “in the light of developments in other international organizations, *inter alia*, WIPO” (in accordance with Article 25). The protocol also refers to “ongoing works and practices” which could be used to argue that the regulation of publicly available traditional knowledge should be handled at WIPO. Again, the agreement-facilitating silence on the specific relationship between the ABS protocol and WIPO created uncertainty that could make some aspects of the protocol subject to procedures outside the CBD.

Ways forward

All in all, however, papering over differences seems to be the only way in which governments could have found a compromise on the ABS protocol. Observers have argued that this would have not changed in the coming years, since differences seemed simply too stark on various core issues. In that light, they argue, the adoption of the Protocol, whatever its shortcomings, can be welcomed - so long as policymakers (and those who hold them accountable) bear in mind that much depends on the eventual domestic implementation, future review processes and in some cases other negotiating fora. Given that the US is not a party to the CBD, the importance given to other institutions, such as the WTO, could enhance the effectiveness of some of the ABS protocol’s provisions.

The protocol will be open for signature from 2 February 2011 to 1 February 2012 and is to take effect 90 days after the fiftieth party has ratified it. The first meeting of the Intergovernmental Committee of the Protocol is to take place in June 2011.

More information

To access a copy of the ABS Protocol, [click here](#).

ICTSD reporting.

NATURAL RESOURCES

China Quells Immediate Concerns over Rare Earth Supply, but Future Uncertain

Recent rumblings from China suggesting the country is looking to slash its exports of rare earth metals (REMs) has many importing countries looking for new sources and questioning whether the trade restrictions would be WTO compliant.

The issue exploded last month when several news outlets reported that China had cut off REM exports to Japan on 21 September and exports to

the US and EU on 18 October. Concerns in the US, Japan, and EU over possible shortages of these essential elements peaked when China Daily – China’s state-run news outlet – claimed that the country planned to further reduce 2011 export quotas of by 30 percent.

Rare earth metals are important in the production of many everyday technological products as well as a host of green technologies including hybrid cars, solar panels, and windmills. High-technology industries rely heavily on the availability of these 17 elements – such as scandium, yttrium, and cerium – but combination of low cost high tech products and rapid technological advances has led to an explosion of demand over the past two decades. China produces some 97 percent of the worldwide supply of rare earths.

Following widespread unease in importing countries over the decision to cut exports, Chinese officials announced Friday that the country will continue production at current levels over 2011. However, Trade Minister Chen Deming cautioned that other countries will have begin sharing the environmental burden of mining the metals in the future. "We are currently in talks with rare earth consuming countries and countries with rich rare resources on how to produce rare earth in a more environmentally friendly way," Chen said. "We also need to find new rare earth resources."

Although China possesses 36 percent of worldwide REM deposits, rare earth metals are relatively abundant throughout the Earth’s crust, including within countries such as the US, Canada, Australia, and Brazil. In fact, the US was the world’s leading producer of REMs until China undercut world prices through lax environmental policy and cheap labour in the 1990s. Many importing nations are now in the process of reopening shutdown mines to combat possible shortages; though some estimate it could be several years before REMs are actually extracted.

Sign of Chinese environmental policy shift?

Although the US, EU, Japan, and other REM importers have concerns over the export quotas, China’s environmental defence may make the restrictions WTO compatible. To extract REMs,

miners use sulphates, ammonia, and other chemicals, which can enter the soil and pollute the surrounding water supply. In fact, the Mountain Pass REM mine in California – once the largest producer of REMs in the world – was shutdown in 2002, in part due to radioactive waste spilling into the surrounding ecosystem.

Such problems are amplified when such mining is conducted illegally – an issue China has been grappling with for years. In May of this year, China announced a major five month crackdown on illegal mining and has since shutdown a number of illicit operations that fail to conform to environmental regulations. In addition, the government plans to cut the number of rare earth firms from 90 to 20 by 2015, according to Chinese media.

"[M]ass exploitation of rare earths will cause great damage to the environment, that’s why China has tightened controls over rare earth production, exploitation and trade," said China’s Commerce Minister, Chen Deming. "China has no choice but to take such measures."

The Chinese argue that the REM industry is unsustainable and is rife with environmental externalities that ultimately take a toll on the public. They maintain that export quotas are in place to reflect the true price of REMs and their ecological costs, while protecting the environment from overexploitation and illegal mining operations.

But rising prices have been a cause for concern in importing nations, which have become reliant on affordable REMs from China. The recent controversy over China’s clampdown has prompted prices such as cerium oxide to climb by 700 percent in less than a year. In light of China’s virtual monopoly of the REM market, critics have argued that the country is simply flexing its economic muscle.

WTO case would be complex

In the meantime, the US, EU, and Japan are calling on China to clarify its REM export policies amid fears of future rare earth shortages. Germany has been especially concerned in regards to

Chinese control of rare earth metals, calling upon the US and EU to take the case to the WTO.

“Raw materials have become a geopolitical issue,” said Hans Keitel, president of the Federation of German Industry. “We need raw materials like we need air to breathe.”

But the US has been reluctant to cause a stir with China in the past, worried about harming their economic ties and causing China to retaliate. An ongoing issue between the two countries involves the United Steelworkers union, who filed a petition with the United States Trade Representative charging that Chinese clean energy subsidies are unfair (see Bridges Trade BioRes, [15 September 2010](#)). The USTR accepted the petition on 15 October and has opened the case to public comments up to 15 November.

“It would be best if we could agree at the World Trade Organization on rules to ensure a minimum of competition to secure the worldwide rare earths markets,” said German Economy Minister Rainer Bruederle.

Despite these concerns, WTO General Director Pascal Lamy pointed to the complexities in making a case against China. “When raw materials are highly concentrated in some countries the border between trade and certain domestic policies is often blurred,” he said.

“The resulting gap between domestic prices and world prices constitutes implicit assistance to domestic downstream processors of the targeted products and thus provides them a competitive advantage,” the WTO secretariat said in China’s biennial trade policy review.

Article XI of the 1994 General Agreement on Tariffs and Trade (GATT) prohibits the restriction of trade except under certain circumstances. Under Article XX (9) export restrictions are acceptable as long as they are in place to protect exhaustible natural resources and are made effective in conjunction with restrictions on domestic production or consumption.

But China’s environmental defence has drawn criticism from some importing nations, which claim that China is unfairly protecting its domestic

market. Such critics point out that China’s domestic consumption of rare earths is greater than the rest of the world’s combined and that their consumption is on the rise.

The US and EU have both expressed plans to discuss Chinese rare earth export policy with China at the upcoming G20 summit on 11 November in Seoul.

ICTSD Reporting; “China says to maintain rare earth exports in 2011,” REUTERS, 5 November 2010; “China to reduce rare earth export quotas,” CHINA DAILY, 19 October 2010. “EU, US Grapple With Crunch In Rare Earth Supplies,” REUTERS, 27 October 2010. “After China’s Rare Earth Embargo, a New Calculus,” NEW YORK TIMES, 29 October 2010. “Rare-earth limits not aimed at foreign market,” GLOBAL TIMES, 24 October 2010. “China Says No Significant Cut for Rare Earth Quotas,” REUTERS, 1 November 2010.

ANALYSIS

Patents and Clean Energy: Bridging the Gap between Evidence and Policy

By the United Nations Environment Programme (UNEP), the European Patent Office (EPO), and the International Centre for Trade and Sustainable Development (ICTSD)

Technology development and its rapid diffusion are considered crucial for tackling the climate change challenge. In particular, enhancing technology transfer towards developing countries has been an integral part of the global climate change regime since the inception of the United Nations Framework Convention on Climate Change (UNFCCC). The Bali Action Plan reaffirmed its centrality, and the Copenhagen final documents call among other things for the establishment of a mechanism to accelerate technology development and transfer.

The role of intellectual property rights (IPRs) in the transfer of climate change technologies has emerged as a particularly contentious issue in the past two years. Against this background, the United Nations Environment Programme (UNEP), the European Patent Office (EPO) and the International Centre for Trade and Sustainable Development (ICTSD) joined forces to undertake an empirical study on the role of patents in the transfer of clean energy technologies (CETs).

The project consisted of three main parts: a technology-mapping study of key CETs, a patent landscape based on the identified CETs and a survey of licensing practices. For the purposes of this study, CETs are energy generation technologies which have the potential for reducing greenhouse gas emissions.

The patent landscape

Based on the technology mapping study, a new taxonomy for CETs was established in order to derive the patent data. A statistical analysis was then carried out with this data. According to this analysis, patenting rates (patent applications and granted patents) in the selected CETs have increased at roughly 20 percent per annum since 1997. In that period, patenting in CETs has outpaced the traditional energy sources of fossil fuels and nuclear energy. The surge of patenting activity in CETs coincided with the adoption of the Kyoto Protocol in 1997, which provides a strong signal that political decisions setting adequate frameworks are important for stimulating the development of CETs. The fields experiencing the most intensive growth include solar PV, wind, carbon capture, hydro/marine and biofuels.

Patenting in the selected CET fields is currently dominated by OECD countries. However, a number of emerging economies are showing specialisation in individual sectors, providing further competition in the field and potentially changing the future of the CET patent landscape.

The leading six countries with actors innovating and patenting CETs are Japan, the United States, Germany, the Republic of Korea, the United Kingdom and France. Concentration of patenting

activity in these countries reflects patenting trends in other technology sectors. Aside from geothermal, concentration in all CETs is relatively high. Notably, the top six countries account for almost 80 percent of all patent applications in the CETs reviewed, each showing leadership in different sectors.

However, a number of other countries emerge as significant actors in selected fields when CET patent data is benchmarked against total patenting activity (all technology sectors) in a given country. For instance, such an analysis reveals that India features within the top five countries for solar PV, while Brazil and Mexico share the top two positions in hydro/marine.

In terms of patent filing trends between countries (structure of patent families), unsurprisingly, the majority of activity is currently taking place in the patent offices of the top six patenting countries. However, China is the next most important filing destination for actors in the top six countries. Finally, the patent landscape also identified which technologies, including their sub-groups, have peaked in maturity and where future activity might be concentrated.

The licensing survey

Structured in three parts, the licensing survey first addressed different elements of the respondents' licensing practices and activities. Second, it addressed participation in collaborative intellectual property (IP) mechanisms and R&D activities. Third, it looked at licensing practices in CETs in relation to developing countries (non-OECD countries). The survey was carried out with the assistance of industry and business associations representing technology owners. The response rate amounted to 30 percent of the organisations which were approached (160 key organisations responded).

Whereas overall there is little CET out-licensing activity towards developing countries among the survey participants, the general level of such activity is no lower than in other industries. Moreover, findings from other industries indicate that there are a number of hurdles to overcome in out-licensing due to factors such as the transaction

costs involved, identifying a suitable partner and the right licensing conditions (i.e., pricing and the geographical or exclusive scope of the agreement). Indeed, the willingness to out-license is often much higher than the actual level of licensing. As the results of the present survey show, this trend seems to be even greater for CETs.

This overall difficulty with markets for licensing may create particular challenges in the case of CETs, where rapid diffusion is needed. Thus, there is a need for improving market conditions and encouraging licensing in the context of efforts to enhance technology transfer to developing countries. For the time being, where licensing agreements have been entered into, the main beneficiaries are actors in China, India, Brazil, and Russia.

The survey results also provide some useful insights as to the perceptions of technology holders in undertaking out-licensing activity. Generally, IP protection in the country of the licensee was an important consideration when determining whether to enter into a licensing agreement. However, IP protection in the recipient country was not found to be the only significant factor for licensing agreements in developing countries. Overall, respondents attached slightly more weight to factors such as scientific infrastructure, human capital, favourable market conditions, and investment climates. However, licensing-intensive respondents attached somewhat greater importance to IP protection than to these other factors.

At the same time, 70 percent of respondents said they were prepared to offer more flexible terms when licensing to developing countries with limited financial capacity. Notably, academic institutions and public bodies were slightly more willing than private enterprises to provide accommodating licensing terms to developing-country recipients. Small and medium-sized enterprises were slightly more likely than multinationals to offer more flexible terms. Another useful finding was that the majority of organisations favoured collaborative R&D activities, patent out-licensing and joint ventures over mechanisms such as patent pooling and cross-licensing.

Looking forward: A new patent classification for climate change mitigation technologies, and challenges ahead

In the context of establishing the patent landscape, the EPO developed and launched a new classification scheme for patents in climate change mitigation technologies, starting with CETs, which is now available on the EPO's public patent information service esp@cenet. The new scheme will provide continuous, accurate and user-friendly patent information and thus help to improve the transparency of the patent system in this critical technology sector.

While the report's findings are groundbreaking in many respects, there is a need to explore further areas of research in order to guide future action at the international level. In this respect, one area where more information is needed is the demand side of the debate. Most studies, including this report, have focused on the supply-side perspective. A survey capturing the views of entities in the developing world seeking access to CETs is considered essential for a broader understanding of the issues at stake.

Future work and refinements should also be done on landscapes which identify patented inventions that have been commercialised in the marketplace. This would give a better idea of which technologies are working and inducing technological change. Further, a study of patenting by publicly funded institutions and universities would be important in helping to understand the source of new technologies and the role of government funding in their development.

Finally, this report concludes by identifying lessons learned which could help bridge the gap between evidence and policy-making, the *raison d'être* of this project. In this context, the report focuses on three main lessons: policy processes and signals do matter; accurate and publicly available information is urgently needed on existing and emerging CETs, including IP and licensing; and finally, options to facilitate licensing of CETs to developing countries should be considered.

For further information, the full UNEP-EPO-ICTSD study can be accessed in English, French, and Spanish on [ICTSD's website](#).

IN BRIEF

European Court Decision Reinstates EU Seal Ban

A moratorium on the EU's controversial seal products ban has been lifted, allowing the bloc to move ahead with its decision to prohibit imports. Canadian Inuit groups and commercial sealers strongly criticised the ruling and announced a plan to appeal the EU's decision.

"I am disappointed and angered that the suspension of the ban has been lifted," Mary Simon, president of Canada's national Inuit organisation. "We plan to appeal the ruling as we believe the original seal ban was based on colonial perceptions of our sealing practices, and this week's ruling is a perfect illustration of this."

Last year, Brussels adopted a regulation banning imports of seal products to the EU. The ban quickly prompted an outcry from Inuit groups and the Canadian federal government (see Bridges Trade BioRes, [7 August 2009](#)). The ban took effect on 20 August 2010, but the Inuit Tapiriit Kanatami (ITK) – Canada's national Inuit group – along with 15 seal meat and pelt traders were granted with a temporary exemption until further ruling by the European Court of Justice (see Bridges Trade BioRes, [10 September 2010](#)).

The court ruled on 25 October to lift the temporary suspension on the ban of seal products, but still allowed goods deriving from traditional hunts to be traded. Despite the exemption, the indigenous groups are nonetheless opposed to the decision, claiming that it will cause the market for seal products to collapse. In fact, since the legislation was proposed, pelt prices have fallen by 64 percent from 2007 levels.

Inuit groups also fear that an exemption will not always be recognised. Judge Marc Jaeger dismissed

these claims, writing that "[t]he plaintiffs presented no concrete indication that would justify their fears in this regards, "making the ban official. The next step for ITK will be a formal appeal of the court's decision.

In November 2009, Canada and Norway launched a WTO complaint over ban saying that it is discriminatory and goes against WTO trade rules (see Bridges Trade BioRes, [13 November 2009](#)). Last month, the two countries requested an additional period of consultations and have thus far stopped short of bringing the case to the WTO's Dispute Settlement Body. They say they will make a decision on the matter before the end of the year.

ICTSD Reporting, "Canadian seal hunters lose bid to lift EU import ban," AFP, 28 October 2010. "Inuit to appeal EU seals ruling," AFP, 30 October 2010; "EU seal fur ban 'sends message' to those profiting from trade," THEECOLOGIST.ORG, 29 October 2010.

Ministers Reject EC Proposal to Halve Bluefin Tuna Quotas

EU fisheries ministers rejected a European Commission (EC) proposal to reduce bluefin tuna quotas by 50 percent for 2011 at a 26 October meeting of the European Fisheries Council in Luxembourg. While 2010 quotas sit at 13,500 tonnes (down from 22,000 in 2009), the EC proposed cutting the quota to 6,000 tonnes per year. Such a move would be in line with recommendations from environmentalists who say that such levels are required to maintain a sustainable bluefin population.

"I do understand that [the 6,000 tonne quota] would be very tough on our industry and that's not what I propose," said EU Commissioner for Maritime Affairs and Fisheries Maria Damanaki. However, she did recommend sticking to scientific advice and taking all necessary action to rescue bluefin tuna.

Earlier this year, the EC was forced to close the month-long bluefin tuna fishing season for purse

seiners prematurely when quotas were met in only a week. At the time, green groups argued that the early closure demonstrated the overcapacity of the European fishing fleet (see Bridges Trade BioRes, [11 June 2010](#)).

The EU is legally obligated to establish measures aimed at achieving recovery of fish stocks to sustainable levels by 2020 under the Marine Strategy Framework Directive, which came into force in 2008. Sweden and the UK were the only two countries to support Damanaki's call to reduce bluefin tuna quotas, a particularly high demand species for Japanese consumers. Japan consumes of the vast majority of the world's bluefin catch.

Environmentalists fear that failure to reduce next year's export quotas will thwart the EU's goals of reaching sustainable levels. Groups such as WWF are calling for the EU to come up with a plan at the upcoming meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The WWF has been highly critical of ICCAT in the past, claiming that they ignore scientific data that suggest lower quotas are necessary. They point to a recent ICAAT study, which concludes that the bluefin tuna stock size is only one-third of sustainable levels.

Many environmental groups had hoped that a proposal by Monaco to have the environmentally sensitive fish added to Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) would have taken the management decision out of the hands of ICCAT. However, the initiative was quashed at the organisation's conference of the parties in March of this year (see Bridges Trade BioRes, [19 March 2010](#)).

France, which has a large Mediterranean fishing fleet, has argued for the quota to remain at its current 13,500 tonne per year level, referring to an EU Standing Committee on Research and Statistics (SCRS) study, which determined that the current level "will likely allow the stock to increase" to an acceptable level by 2022. However, these studies are generally seen as unreliable due to uncertainty about the number of undocumented catches from illegal, unreported,

and unregulated (IUU) fishing. Results of a recent independent investigation suggest there is a complex international black market in East Atlantic bluefin tuna worth an estimated US\$4 billion.

The ICCAT meeting is set to take place in Paris from 17-27 November.

ICTSD Reporting; "European nations sink bluefin tuna quota reduction," AFP, 26 October 2010. "Europe firm on bluefin tuna quota cut despite row," AFP, 27 October 2010. "EU ministers refuse to cut bluefin quota," [WORLD FISHING.NET](#), 2 November 2010. "WWF welcomes EU Commissioner's call for big cut in Mediterranean bluefin catches," [WWF.ORG](#), 20 October 2010.

Coalition of NGOs Criticises EU Biofuels Plan

The EU plan to significantly increase the use of biofuels in transport will lead to greenhouse gas emissions that far exceed those produced by petrol and threaten food security in poor countries, according to a new report sponsored by a coalition of major European civil society organisations.

Groups including the European Environment Bureau, Friends of the Earth, Action Aid and six other NGOs say the extra biofuels that Europe will use over the next decade will be on average 81 to 167 percent worse for the climate than fossil fuels.

This is largely due to indirect land-use changes, claim the groups, which have looked at this issue in particular, and scrutinised the renewable energy plans of EU member states individually and in aggregate. Indirect land-use changes are difficult to quantify, but relate to the fact that as more land is used to grow biofuel feedstock, food production is bound to move elsewhere. These new areas include land that currently is forested or holds significant carbon stocks that will be released to the atmosphere. With the EU sourcing biofuels abroad and cropping patterns changing

worldwide, the phenomenon has global repercussions.

"The scale of the damage that European countries will cause with their biofuels plans is now clear – forests and nature will be destroyed on a shocking scale to fuel our cars, said Adrian Bebb from Friends of the Earth Europe. "The resulting release of climate-damaging greenhouse gases will make biofuels a worse polluter than fossil fuels."

The EU Renewable Energy Directive (RED), under which EU countries are to derive 20 percent of their energy from renewable sources by 2020, and 10 percent of their transport fuels from renewable sources by the same time, has increasingly come under fire from environmental and development groups over the last year.

The RED seeks to ensure that European biofuels are sustainable by setting criteria for greenhouse gas savings, as well as to ensure that biofuel feedstocks are not grown on cleared land that formerly was highly biodiverse, such as certain forests, grasslands and wetlands. However, indirect land-use changes have been a difficult stepping stone, and the Commission is set to report on how to deal with the issue by the end of this year.

Meanwhile, the RED is set to enter into force on 5 December. Not all EU members have transposed the legislation into national law yet, and certified biofuels from the 2010 stock will be difficult to come by, according to those in the industry. Producers that have implemented self-certification schemes have yet to be approved by the Commission, and the guidelines for certifiers were released only in June this year (see Bridges Trade BioRes, [11 June 2010](#)).

The civil society groups are also highlighting the threats the EU plans and the indirect land-use changes they lead to pose in terms of food security globally.

"The EU plans effectively give companies a blank cheque to continue grabbing land from the world's poor to grow biofuels to fill our tanks rather than food to fill their stomachs," said Laura Sullivan of ActionAid. "Europe's energy policies

are putting millions of people in danger, threatening Africa's fragile food security."

More information

The report by the NGO coalition, 'Anticipated Indirect Land Use Change Associated with Expanded Use of Biofuels in the EU' can be accessed [here](#).

ICTSD reporting.

European Agricultural Economists Call for Ambitious CAP Reform

A group of leading European agricultural economists has urged EU policymakers to reform farm subsidy programmes to promote environmental objectives, animal welfare, and competitiveness at home while minimising harm to farmers abroad, criticising current proposals for post-2013 farm spending as inadequate.

In a new declaration, "For an Ambitious Reform of the Common Agricultural Policy," the experts argue that the EU's existing farm subsidy scheme "fails to adequately fulfill important social objectives: to enhance biodiversity and climate protection, improve water quality, preserve scenic landscapes, increase animal welfare, promote innovative, efficient farming and fair competition in the internal market, and avoid harming farmers abroad."

They contend that remodelling large sections of the CAP for its next budgetary period, starting in 2013, would be beneficial for Europe and the world.

According to the declaration, "decision-makers in agricultural policy appear unwilling to seize the opportunity for substantive reform," despite considerable consensus on data about the potential positive effects of far-reaching CAP reform. Existing proposals, such as a leaked reform proposal prepared by the European Commission's Directorate-General for Agriculture and Rural Development, "intend to maintain the

status quo to a large extent.” (See Bridges Trade BioRes, [25 October 2010](#))

The declaration calls on policymakers to “pay less attention to special interests,” and recommends a set of guiding principles for reforming the CAP. Subsidies should be closely targeted to the provision of public goods, it argues; those that do not vary based on the public goods yielded, such as the “single farm payment,” should be phased out. “The alleviation of rural poverty should be a function of social and not agricultural policy,” the authors argue. The declaration calls for sustainable land use to be “the key objective” of the CAP, and stresses that subsidies should interfere with markets to the minimum extent possible (with export subsidies abolished). CAP funding structures should be re-examined to see where individual member states could share part of the burden with the EU. The declaration also urges greater public research and development to enhance productivity and global food security.

More information

The complete declaration can be accessed [here](#).

ICTSD reporting.

EVENTS AND RESOURCES

Events

For a more comprehensive list of events for the trade and environment community visit the [BioRes online calendar](#).

Coming up in the next two weeks (5-19 November)

7-8 November, Copenhagen, Denmark. GLOBAL GREEN GROWTH 2010 CONFERENCE. This Conference is organised and hosted by Climate Consortium Denmark and is supported by the Danish Government. Participants are to discuss the political framework, the role of businesses, and financing in connection with the transition to green growth. The conference aims to put forward ideas that can

contribute to creating growth and new jobs based on green solutions at the global level. For more information visit the conference [website](#).

7-11 November, Nanning, China. 11TH ASIAN MAIZE CONFERENCE. The 11th Asian Maize Conference will be sponsored by the Government of Guangxi Zhuang Minority Autonomous Region, P.R. China, the Chinese Academy of Agricultural Sciences (CAAS), and the International Maize and Wheat Improvement Center (CIMMYT), a member of the Consultative Group on International Agricultural Research (CGIAR). The theme of the meeting will be addressing climate change effects and meeting maize demand for Asia. Scientists and maize production specialists of all disciplines, governmental and non-governmental organisations, and seed industries are invited to participate. For more information visit the event [website](#).

8-11 November, Jakarta, Indonesia. EIGHTH ANNUAL ROUNDTABLE MEETING ON SUSTAINABLE PALM OIL (RSPO). The 8th annual meeting of RSPO - RT8 - will be held in conjunction with the 7th Annual General Assembly of RSPO members. The theme for the 2010 meeting is “RSPO is also for Smallholders” and the aim is to come out of the 2010 meeting with a certification for smallholder sustainable palm oil production. The RT8 hopes begin the process of promoting and rewarding smallholder sustainable palm oil production. The meeting will include open interactive sessions, plenary sessions by experts in the field and updates on the progress and activities in RSPO. For more information or to register visit the [RSPO website](#).

9-10 November, London, UK. CLIMATE FINANCE 2010 & THE TENTH ANNUAL CARBON FINANCE 2010 CONFERENCE. This event aims to showcase innovative tools being developed to encourage funding for global low-carbon development. Carbon markets as well as other approaches to deliver public and private sector finance on a large scale will be addressed. The proposed agenda will include topics such as leveraging public sector funding, climate change and the bond market, climate finance and green stimulus packages, voluntary carbon markets

among other topics. For more information or to register visit the [conference website](#).

8-11 November, Anchorage, United States. ECOSYSTEMS 2010: GLOBAL PROGRESS ON ECOSYSTEM-BASED FISHERIES MANAGEMENT SYMPOSIUM. This symposium will bring together international fishery scientists, managers, and stakeholders to share insights into the current status and future prospects on ecosystem-based fisheries management (EBFM). After achieving general international consensus on the need for EBFM in the 1990s, to what extent is it being successfully implemented? This symposium builds on the 16th Lowell Wakefield Fisheries Symposium, "Ecosystem Approaches for Fisheries Management," held in 1998, as well as international symposia held in France, Iceland, and Norway in the last decade. The goals of Ecosystems 2010 are to evaluate global progress toward ecosystem-based fisheries management, by reviewing regional case studies, development of new analytical tools and practical approaches toward future progress, and to offer explicit, practical advice for progress in EBFM implementation. For more information visit the event [website](#).

11-12 November, Seoul, South Korea. G20 SUMMIT IN SEOUL. Building on past achievements and close cooperation among members, the G20 will double its efforts in 2010 to help the world make a successful transition from global recovery to stronger, more sustainable and balanced growth. Among the issues to be addressed at the Seoul summit will be the completion of the International Monetary Fund's quota reform. In addition to financial regulatory reform and policy coordination, South Korean President Lee-Myung-bak vowed to promote an outreach program for countries that are not represented at the G-20. Building global financial safety nets that can mitigate the destructive effects of liquidity crises and a plan to host a business summit to coincide with the G-20 Summit in November will also be key issues. For more information visit the G20 [website](#).

Other Upcoming Events

17-27 November, Paris, France. 17TH MEETING OF THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT). The annual meeting of ICCAT is closely linked to the management of bluefin tuna stocks, which has significant financial implications for the European tuna fishing fleets and tuna fattening farms. For more information visit the ICCAT [website](#).

24-26 November, Tokyo, Japan. ADBI-OECD ROUNDTABLE ON INNOVATION FOR BALANCED AND SUSTAINABLE GROWTH. This roundtable is co-organised by the Asian Development Bank (ADB) Institute and the Organisation for Economic Co-operation and Development (OECD). It will deal with the following issues relating to innovation: innovation today; innovation for balanced and sustainable growth; making innovation work for development; seizing the benefits of the global value chain at the local level; green growth, innovation and technological transfer; and international cooperation for innovation. For more information visit the event [website](#).

5 December, Cancun, Mexico. FOREST DAY 4. Forest Day is one of the world's leading global platforms for anyone with an interest in forests and climate change to come together with others and exchange their views. This event will be held alongside the 16th session of the Conference of the Parties to the UNFCCC and will be organised by a number of organisations, including the Center for International Forestry Research (CIFOR), a member of the Consultative Group on International Agricultural Research (CGIAR). For more information visit the event [website](#).

14 December, Paris, France. 26TH OECD MINISTERIAL ROUNDTABLE ON SUSTAINABLE DEVELOPMENT – GREEN GROWTH. This roundtable of the Organisation for Economic Co-operation and Development (OECD) will bring ministers together with business and policy experts. Former political leaders will also be invited to explain what policy advice is needed to turn an idea like green growth into practical and politically realistic policy

solutions. For more information visit the event [website](#).

13-14 January, Panama City, Panama. CSD INTERSESSIONAL MEETING ON SUSTAINABLE CONSUMPTION AND PRODUCTION. The UN Commission on Sustainable Development (CSD) will provide a non-negotiating space for Member States, Major Groups and UN Agencies to discuss potential programs to be included in the 10-Year Framework of Programs on SCP (10YFP) to support regional and national initiatives, the structure the 10YFP could take, and the possible visions and objectives it could serve. For more information visit the event [website](#).

Resources

THE ECONOMICS OF ECOSYSTEMS AND BIODIVERSITY: ECOLOGICAL AND ECONOMIC FOUNDATIONS. Edited by Pushpam Kumar. October 2010. The TEEB study is underpinned by an assessment of state-of-the-art science and economics. The goal is to provide the conceptual foundation to link economics and ecology and to posit a paradigm of the relationship between biodiversity and ecosystem services. This aspect of the study tackles the challenges of valuing ecosystem services, as well as issues related to economic discounting. It aims to quantify the costs of inaction and examine the macroeconomic dimension of ecosystem services loss. This information will focus on improving our understanding of the economic costs of biodiversity loss and ecosystem degradation. This book can be purchased at the [Earthscan website](#).

TRADING FOOD: FOOD SECURITY POLICIES IN LATIN AMERICA, SOUTHEAST ASIA AND SOUTHERN AFRICA AND THEIR IMPLICATIONS FOR TRADE AND REGIONAL INTERGREATION. By Pedro da Motta Veiga. October 2010. This synthesis report draws on three regional policy reports prepared for the Trade Knowledge Network's project on Food Security and Trade, which describe and analyse the policy responses adopted by countries and (less often) regional organisations to deal with the

2006–2008 food prices crisis. These policy responses are assessed in terms of their economic sustainability and their impacts on trade and regional integration. Included in this publication are assessments on food security policies, climate change and food security, trade and food security, regional integration and food security, and more. This paper can be accessed [here](#).

CONSERVING AND VALUING ECOSYSTEM SERVICES AND BIODIVERSITY. Edited by K. N. Ninan. October 2010. This book comprehensively addresses the economic, social and institutional difficulties in conserving biodiversity and the ecosystem services that it provides. It covers a wide range of issues such as biodiversity, ecosystem services, and valuation in the context of diverse ecosystems such as tropical forests, marine areas, wetlands and agricultural landscapes, non-timber forest products, incentives and institutions, payments for ecosystem services, governance, intellectual property rights and the protection of traditional knowledge, management of protected areas, and climate change and biodiversity. This book can be purchased [online](#).

IS THE HUMAN SPECIES SPECIAL? WHY HUMAN-INDUCED GLOBAL WARMING COULD BE IN THE INTERESTS OF LIFE. By Neil Paul Cummins. October 2010. In this book, philosophical and theological themes are sympathetically interwoven with themes relating to the environmental crisis. In the first part of the book the author presents a view of the world in which the human species is special (humans are not just another species of animal). In the second part of the book he urges humanity to take very seriously the danger that we face from global warming. Despite this immense danger he suggests that human-induced global warming is part of what makes the human species special. Following this, the author explains how the issues of individual human purpose, beauty, and our connections to the other life-forms on the planet, are related to the specialness of the human species. The main conclusion that the author reaches is that the human species needs to take radical action, of a most unexpected kind, if it is to minimise the suffering caused by global warming. The book can be purchased [online](#).