



# Bridges Trade BioRes

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

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## SUSTAINABLE ENERGY

### US, China Renewable Energy Trade Row Heats Up

In the latest salvo in the ongoing US-China spat over renewable energy trade policies, Beijing announced on 25 November that it would be launching an investigation into Washington's support of its renewable energy sector. Meanwhile, leaders from China's biggest solar companies have publicly rejected a US trade complaint accusing China of dumping solar panels into the US market (see Bridges Trade BioRes, [17 October 2011](http://www.bridges-biores.org/2011/10/17/)).

Beijing's probe would cover wind energy, solar, and hydro technology products. The investigation is expected to end by 25 May 2012.

The investigation was sparked by a filing from businesses in the renewable energy industry in China. The Ministry of Commerce also stated that if violations of WTO laws were found, the government could potentially file a case at the WTO dispute settlement body.

Beijing's investigation comes quickly on the heels of Washington's own announcement in early November that it would be launching an investigation into Chinese solar subsidies and trade practices, in response to a petition filed by seven US solar manufacturers in October.

### ITC rules against China

On 9 November, the US Department of Commerce had announced that it would be moving forward with its investigation into whether China's solar subsidy practices have

allowed Beijing to dump solar panels into the US market. Last Friday, the US International Trade Commission (ITC) released a preliminary ruling against China. The panel's decision – which reported that China had an “inclination towards protectionism” – will allow the investigation to move forward.

The Commerce Department's action has already prompted a strong response from Chinese government officials; the Chinese Ministry of Commerce said in statements earlier this month that it is “greatly concerned” by the case, cautioning that it could hurt US-China energy co-operation and lead to a “lose-lose” situation.

Criticism over Beijing's extensive support to its clean energy producers has ramped up in recent years, with Washington critics alleging that the subsidies put foreign competitors at a disadvantage.

In October, US Trade Representative (USTR) Ron Kirk took aim at many of China's clean energy subsidies in a submission to the WTO. In the [submission](#), Kirk identified nearly 200 subsidy programmes that Beijing has not notified to the global trade body, including Chinese policies and practices that Washington claims affected trade and investment in green technologies.

Whether Kirk's action would be followed by a dispute filing at the WTO was not made clear at the time.

Earlier this year, Beijing ended a controversial public fund for wind power manufacturing that had been the subject of a formal WTO dispute between the two countries. The US had alleged that the subsidies were prohibited for being contingent on the use of local input. While Washington hailed the Beijing decision as a victory, China argued that the subsidies had been removed because they were no longer necessary (see Bridges Trade BioRes, [13 June 2011](#)).

## Chinese solar producers push back

On 29 November, Chinese solar panel makers took a strong public stance against Washington's pursuit of the solar case, cautioning that it risked “seriously hindering the development of green energy.”

Wang Guiqing, vice president of the China Chamber of Commerce, told reporters on behalf of Chinese companies that the “photovoltaic industry based in China has formed a united front to counter the US investigation.”

He argued that Beijing subsidy practices were not the reason for the Chinese solar industry's success - adding that China's government support for the solar industry is lower than the support that the US and EU provide their own industries. Rather, “the competitive advantages of Chinese photovoltaic companies are due primarily to the concentration of the industrial chain inside China.”

Wang's arguments were supported by the chairmen of some of China's largest solar companies; Shi Zhengrong of Suntech Power Holdings Co. told reporters yesterday that, “if you ask whether the solar industry in China has received special treatment or special support, the answer is no.”

The US solar industry has struggled in recent months, with the high-profile collapse of US solar panel maker Solyndra in September dominating news headlines. Until filing for bankruptcy earlier this fall, the California-based company had been lauded in the US as an example of clean energy's potential, receiving over US\$500 million in a government guarantee that it may now be unable to repay.

Quickly falling prices as a result of Chinese solar panel imports have been blamed for Solyndra's bankruptcy filing, along with the similar collapses of US companies Evergreen Solar and SpectraWatt.

The solar issue has particularly captured the attention of some US lawmakers, a few of which have already called upon the administration of US President Barack Obama to protect the solar industry and take a strong stance against so-called “unfair trade,” especially in the wake of the Solyndra incident.

### **Sino-US talks see progress on another clean energy front**

Meanwhile, the US-China Joint Commission on Commerce and Trade (JCCT), which closed talks on 21 November in Chengdu, China, saw officials from both countries make headway on another clean energy front.

The US Commerce Department, in a [statement](#) after the joint event, outlined a plan by Chinese officials to invest US\$1.5 trillion over the next five years in energy-saving, alternative energy, and other emerging technologies.

After the meeting of the joint commission, which was established in 1983 as an arena for discussing Sino-US trade and investment issues, US Commerce Secretary John Bryson noted that Beijing has pledged a “level playing field” for US and other suppliers in these industries.

Beijing would be providing foreign technology suppliers with equal access to the Chinese clean energy industry, Bryson added.

After the China-US high-level meeting, the Office of the US Trade Representative (USTR) also [announced](#) that China intends to manufacture one million new energy vehicles annually by 2015 and five million annually by 2020. Furthermore, the USTR noted, Beijing has pledged that it will not - nor does it currently - maintain measures mandating the transfer of technology for these vehicles.

Foreign producers of new energy vehicles will also be “eligible on an equal basis for subsidies or other preferential policies for

[new energy vehicles] with Chinese enterprises, and that these subsidies and preference programmes will be implemented in a manner consistent with WTO rules,” the USTR’s office explained.

ICTSD Reporting; “China solar industry rejects US anti-dumping probe,” AFP, 29 November 2011; “Chinese solar companies reject US trade complaint,” ASSOCIATED PRESS, 29 November 2011; “US envoy: China promises clean energy access,” ASSOCIATED PRESS, 22 November 2011; “China to probe US clean energy subsidies,” FINANCIAL TIMES, 25 November 2011; “Now China to probe US renewable energy support,” REUTERS, 25 November 2011.

## **LABELLING**

### **Canada, Mexico Defeat US Country of Origin Label at WTO**

The US’ country-of-origin labelling (COOL) requirements for livestock and meat exports have been deemed WTO illegal, according to a ruling issued on 18 November ([DS384, 386](#)). The three-member panel found that the label, which was challenged by both Canada and Mexico at the global trade body in 2008, was too trade restrictive, in addition to discriminating on the basis of nationality.

The panel, however, did not dismiss the right to label the origin of food; the experts only found fault with this particular US practice. Origin labels thus continue to be a lawful policy instrument under WTO rules.

The ruling marks the third time this year that a panel has dismissed the US implementation of a consumer protection policy, with all rulings calling for stronger protection and/or more consumer information.

In all three cases, the dispute panels recognised the US' right to pursue the objective behind these policies. The problem was instead with the US' implementation of these measures, either for not reaching far enough, thereby being misleading or unable to achieve the objective, and/or by being discriminatory.

Beef and pork producers in Canada and Mexico and the meat processing industry in the US applauded the ruling, hoping that it would ease the economic situation of the highly integrated North American meat market.

The decision was equally welcomed by the Canadian government, with Agriculture Minister Gerry Ritz calling it "a clear win for our industry." A [statement](#) from the Mexican Economy Ministry similarly called the ruling an "important victory."

The US, on the other hand, has already indicated an interest in an appeal.

"Although the panel disagreed with the specifics of how the United States designed those [labelling] requirements, we remain committed to providing consumers with accurate and relevant information with respect to the origin of meat products that they buy at the retail level," said Andrea Mead, Press Secretary for the Office of the US Trade Representative (USTR).

"In that regard we are considering all options, including appealing the panel's decision," she added. Under WTO rules, parties to a dispute have a 60-day window for filing an appeal.

### Lost in translation

COOL - consisting of a number of different instruments enacted as part of the 2002 US Farm Bill and substantially revised in 2009 - requires that consumers be informed of the country of origin of meat via a label on the sales package. It provides for a total of five

different categories of country of origin label, each divided into up to three sub-categories.

To receive an "A" label, cattle must be born, raised, and slaughtered in the US. Meat from cattle with a mixed life - for example, born abroad but raised and slaughtered in the US - must have a label indicating that mix.

In cases where meat (including live feedstock) with different eligibility gets mingled, the final label needs to be determined on the basis of a complex formula. For instance, the mixing of A and B meat results in a B or C label for the final product, depending on when and where the mixing occurred. Moreover, mixing A and C meat can result in a B label. On the final labels, B and C origin indications are difficult to distinguish: "product of the US, Country X" stands for label B while "product of Country X, the US" stands for label C.

Notably, the complainants did not challenge the right to label the origin of food per se. However, Canada and Mexico argued that this labelling practice "in reality required a constant segregation of feedstock [even where different herds are raised by the same farmers] which substantially decreased the competitiveness of foreign products."

They also argued that the label was simply misleading and confusing, thereby being an unnecessary trade restriction.

"The US did not take into account Mexico's special needs as a developing country when preparing and applying the COOL measure," Mexico had added to its claims.

### Measure found to be "discriminatory, misleading and confusing"

As the labelling requirements apply to imported as well as domestic products, Washington had consistently argued that the measure was not discriminatory. Also, the US pointed out that segregation (though necessary) was not legally demanded. "To the extent that market players are segregating or

demanding less foreign livestock, this results from their independent decision, and is not attributable to the United States.”

The panel, however, sided with Canada and Mexico.

“The competitive opportunities of imported livestock are reduced as the additional costs of compliance with the COOL measure are incurred,” the panel noted in its final finding. This marks a *de facto* discrimination on the basis of nationality, which is illegal under WTO law.

Washington also failed to justify the measure as “pursuing a legitimate objective.” Though the panel recognised that consumer information was indeed a legitimate objective, and that this also included labels on the country of origin, it found that the COOL measure was not able to achieve that goal.

The reason, according to the panel, was that the information submitted through the COOL labels was misleading and not understandable for consumers – an argument made by both Mexico and Canada.

### Multiple US losses on product labelling

This ruling marks the second time in just over two months that a WTO panel has found a US product label for consumer information illegal, on the grounds that the labels are misleading. The other similarly high-profile case centred on the US’ “dolphin safe” labelling practice for tuna products (see related story, this issue).

Just weeks prior to the tuna ruling, another dispute panel ruled that a US trade ban for flavoured cigarettes, including clove cigarettes which are exclusively produced in Indonesia, was illegal under the global trade body’s rules (see Bridges Weekly, [7 September 2011](#)).

The clove cigarette ban was part of a legislation geared at preventing minors from smoking, under the grounds that minors are often introduced to tobacco through

flavoured products. Menthol cigarettes, which are produced only in the US, were not included in the ban despite evidence that minors are equally attracted to these as to other flavoured tobacco products.

All three WTO rulings - tuna, clove cigarettes, and COOL - have come under fire by US consumer protection groups. These organisations have defended Washington’s objectives – environmental protection, public health, or providing consumer information, respectively – in using such measures.

ICTSD Reporting.

## BIOFUEL

### Brussels Launches Probe into US Bioethanol Imports

On 25 November, the European Commission announced that it had begun anti-dumping and countervailing duty proceedings for US bioethanol imports. The Commission’s investigations - informed by applicable WTO agreements - follow a formal complaint that was filed by the EU bioethanol industry association, ePure, last month.

“The EU has initiated anti-subsidy and anti-dumping investigations into imports of bioethanol from the USA to establish if US imports of bioethanol have an adverse effect on the European bioethanol industry,” EU trade spokesman John Clancy said in a statement.

According to sources in Brussels, the case has been in the works for a long time. Most analysts there believe that sufficient evidence will be found to justify the imposition of countervailing duties.

In its original [complaint](#), ePure - also known as the European Producers Union of Renewable Energy Association - alleged that



US tax credits allowed American exporters to cut their EU selling price by about 40 percent, thereby illegally dumping into the EU market.

The industry association also claimed that this led to a 500 percent rise in US exports to the EU between 2008 and 2010. ePure expects that these imports will, in 2011 alone, have doubled from their 2010 levels.

“This impressive trend is the direct result of US federal and sub federal subsidies, which allow US operators to adopt aggressive pricing practices on the European market,” the industry group argued.

While the ethanol aid is set to expire at the end of this year, US import share is expected to rise even further as the 27-member EU bloc faces higher production costs and production shortfalls.

ePure, whose members produce 80 percent of Europe’s bioethanol, explained in their statement that the subsidisation policy has allowed the US to become the world’s largest ethanol producer. The unfairly low prices that the producers can adopt as a consequence have had a direct and negative impact on the EU industry, the association argued.

### **US industry group strikes back**

The ePure claims led to a strong rejection from its US counterpart, the US Renewable Fuels Association (RFA). “RFA has neither discovered nor been provided any evidence by the EU that such ethanol trades are occurring,” the group said in a 2 November [statement](#).

The US group further argued that the EU complaint was misguided, since “domestic ethanol producers are not eligible for the tax incentive referenced by the Europeans.”

RFA added that the “tax incentive is specifically made available to gasoline blenders, marketers and other end users. Therefore, US ethanol producers cannot nor should be the focus of any European action.”

Nonetheless, the US industry group responded to the EU ethanol investigation by guaranteeing co-operation between US producers and the EU – an important requirement under the WTO anti-dumping agreement.

This requirement means to ensure that responding exporters - in this case, US manufacturers - cannot keep investigations hostage by refusing to submit relevant information for the investigations. Otherwise, the investigating authorities may have to rely on incomplete information, which could work to the disadvantage of the exporters.

Brazil, a main ethanol producer and exporter, is expected to welcome the move, sources told Bridges. Lately the South American country has lost much of its EU market-share to the powerful US industry.

The European Commission’s announcement comes at a time where the EU has repeatedly found itself under fire for its biofuels import policy. The EU Renewable Energy Directive, in particular the incorporated sustainability standards, are considered discriminatory and unfair by a number of biofuel-producing countries.

These standards qualify which biofuels may be considered “sustainable,” taking into account greenhouse gas emission savings and biodiversity conservation achievements. Only the sustainable fuels are considered renewable energy, making them eligible for certain financial support by EU member states.

Countries’ individual threshold commitments for the overall share of renewable energy that has to come from renewable sources- the highest being 49 percent in Sweden - also provide a strong incentive to only use sustainable biofuels. Moreover, for some biofuels imported from outside the EU, the Commission has not provided a default value, putting them at a disadvantage with EU produced like-products.

## Next steps

The European Commission now has 15 months to address the complaint of “material injury” to European producers. Provisional findings are due by 24 August 2012.

According to WTO rules, after a preliminary determination deems that the imports are causing an injury and that countermeasures would be necessary to prevent further damage during the course of the investigations, provisional anti-dumping and countervailing duties can be applied for six and four months, respectively.

The investigation could result in the imposition of five-year taxes on US bioethanol producers. Back in 2008, the EU imposed five-year duties on imports of biodiesel from the US; in the following year, Brussels extended these duties to Canada.

## More information

Further analysis of the EU Renewable Energy Directive is available in this 2010 ICTSD [information](#) note. ICTSD is the publisher of Bridges Weekly.

ICTSD Reporting; “EU Opens Dumping, Anti-Subsidy Probes into U.S. Bioethanol,” BUSINESSWEEK, 29 November 2011; “EU opens investigation into U.S. bioethanol subsidies,” REUTERS, 25 November 2011.

## FISHERIES

### Appeal of WTO Tuna-Dolphin Ruling Likely

The long-running dispute between the US and Mexico over Washington’s “dolphin safe” labelling practice for tuna products is likely to see a WTO appeal, after the two parties together asked for an extension of the appeals deadline. Meanwhile, animal welfare and consumer advocacy groups in Washington are

urging the US to look into options outside the global trade body for resolving the trade row.

At its last meeting on 11 November, the WTO Dispute Settlement Body (DSB) [decided](#) to extend the deadline for submitting an appeal on the latest Tuna-Dolphin ([DS381](#)) ruling issued in September (see Bridges Trade BioRes [19 September 2011](#)).

In light of the Appellate Body’s substantial workload, the US and Mexico had jointly requested an extension of the normally sixty-day period, which otherwise would have expired on 15 November. In accordance with the agreed extension, an appeal will have to be submitted no later than 20 January.

Requests of this kind have been used frequently throughout 2011, as the WTO’s appeal judges struggle to resolve the technicalities of the Airbus/Boeing spat and generally face a large caseload. While most members support this form of collaborative action, Japan has continuously warned that the practice must remain an exception in order to maintain a high level of fairness and efficiency in the dispute settlement system.

The requested extension can be interpreted as a sign that the parties intend to appeal the decision. In almost all instances where members requested a deadline extension, appeals were subsequently filed.

Already in an initial response in September, the United States Trade Representative’s (USTR) office said it was carefully examining the possibility of an appeal.

Washington had partially lost its claim in this high-stakes dispute over the US “dolphin safe” label for tuna products when a panel ruled the US practice unnecessarily trade restrictive (for further analysis on the tuna-dolphin case, see Bridges Trade BioRes Review, [November 2011](#)).

## **Animal welfare, consumer advocacy groups push back**

The global trade body's September decision has come under heavy fire from animal welfare groups and consumer protection advocates in the US, to the point where some are now pushing Washington to explore options outside the WTO.

"[The decision] puts at risk one of the most successful environmental consumer education programs in history, which has helped to reduce dolphin deaths in tuna nets from an estimated 80,000 to 100,000," six animal welfare groups warned in an open [letter](#) to US President Barack Obama and US Vice President Joe Biden on 4 November.

"Failure to reach a timely resolution of this dispute ... threatens the integrity of the US Dolphin Safe label and the rights of US consumers to unbiased information about the safety of dolphins," Earth Island Institute and its co-signatories cautioned in the letter.

WTO appeal is not the only avenue for action in this particular matter, however. Earth Island Institute and its fellow advocacy groups are lobbying for Obama to take the dispute to the presidential level and to address the matter under the North American Free Trade Agreement (NAFTA).

"We urge you to take diplomatic steps with the Government of Mexico to ensure it meets its responsibilities under NAFTA with respect to the US Dolphin Safe tuna label dispute," they said.

The NAFTA dispute between the US and Mexico has been running in parallel to the WTO's proceedings since 2009.

Washington contends that Mexico's decision to pursue the case at the WTO violates a NAFTA clause that allows the US, as the target of a case concerning matters addressed by both WTO and NAFTA rules on the protection of human or animal life or the

environment, to choose to have the dispute considered solely under NAFTA procedures (NAFTA Article 2005) (see Bridges Trade BioRes [11 October 2010](#)).

In 2010, the USTR requested that a NAFTA panel be established to rule on this claim. Unlike the WTO dispute, however, the NAFTA disagreement - at this stage - only concerns the appropriate choice of forum and not the substance of the trade spat.

The NAFTA process has stalled since the panel establishment in 2010, however.

Under NAFTA rules, panel composition can be blocked if no panel roster - which provides for a list of panellists that can be chosen from should parties be unable to agree on a panel - is in place. The last roster expired after three years; lately, Mexico has refused to nominate new candidates, thereby effectively blocking the panel composition.

As a result, Washington has been left without any options under NAFTA. In previous situations, the US had made use of the very same procedural loophole to block disputes brought by Mexico.

"The resolution of this case is important in ensuring the integrity of the NAFTA choice-of-forum provisions and to preventing a dangerous precedent being set for future co-operation with the Government of Mexico in trade disputes," Earth Island Institute and its partner signatories stated in their letter.

As NAFTA continues to be blocked on the matter, however, an appeal at the WTO seems much more likely than any decision from the trilateral trade pact. This might also be in the interest of the global trade body, giving it the opportunity to address the matter of whether decisions by regional trade courts can bar a WTO member from making use of the adjudicative options provided at the WTO.

**New Appellate Body members to be named at next DSB meeting**



In other appeals-related news, the DSB is expected to appoint two new Appellate Body members at its upcoming meeting on 18 November.

Following the receipt of nominations from the US, India, and Pakistan this summer, the selection committee and interested country delegations have been conducting meetings with nominees. The selection committee shared its decision with member states on 7 November.

The decision now awaits confirmation from the DSB.

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### **Mixed Response on New Protection for Atlantic Tuna, Other Species**

The next year will see new protections in place for several endangered fish species in the Atlantic and Mediterranean, including bluefin and yellowfin tuna, swordfish, and silky sharks. However, environmental groups criticised the protections as mere “half-measures,” saying that the International Commission for the Conservation of Atlantic Tunas (ICCAT) failed to adopt tough enough rules to protect these and other species.

ICCAT members delayed taking action on one of the most controversial topics of the meeting. Earlier this month, BBC reported that illegal, unreported, and unregulated (IUU) fishing had surged in Libyan waters, especially during the Libyan crisis (see Bridges Trade BioRes, [14 November 2011](#)). WWF called for a ban on fishing in Libyan waters, but ICCAT avoided any specific action this year to monitor the situation in 2012.

#### **Gaining compliance**

ICCAT took some notable steps this year to improve monitoring and compliance. In order

to better track the bluefin catch, it adopted an electronic Bluefin Catch Document (BCD) scheme that allows real-time monitoring through digital logs. Many observers say the system is far superior to the old paper-based scheme.

“ICCAT’s new bluefin tuna electronic catch documentation scheme is an important and positive leap forwards in the monitoring of the fishery and protection of the species,” said Sergi Tudela, head of fisheries at WWF Mediterranean.

The Commission also instituted a “no-data-no-fish” policy whereby any member that does not submit data will lose the right to fish the following year.

WWF reported that members agreed to improve ICCAT’s scientific methods, allowing external experts to assess fish stocks as well as peer reviews for scientific reports. The focus on better information will improve ICCAT’s ability to raise future compliance issues among member states.

#### **New species protections**

Several individual species got attention at this year’s meeting. The silky shark, recently ranked by WWF as the most vulnerable of Atlantic shark species, was given ICCAT protection for the first time. The shark is banned from fishing boats and is now subject to immediate release. The silky shark is a frequent victim of accidental snaring.

For tropical tunas, ICCAT reduced the total allowable catch (TAC) sizes, reducing the TACs for bigeyes and yellowfins to 85,000 and 110,000 tonnes.

The TAC for south Atlantic albacore was reduced, and ICCAT improved its management plan for billfish.

The use of fish aggregating devices (FAD) was restricted, according to the BBC. FADs attract tuna and swordfish but also other

species and juveniles that are bystanders of the catch.

The Commission also took steps to protect bystander species such as albatrosses, which are caught in longline fishing as the birds are attracted to fish bait. According to the BBC, fishers are required to take new steps such as night fishing, deep lures, or scarecrow streamers that will deter the birds from hitting the lines.

With regard to swordfish, the minimum catch size was raised to 90 centimeters, but efforts in the next few years will center mostly on information-gathering. Member states will be required to provide complete data on catches and fleet size as well as scientific information on the species.

“Good fisheries management requires accurate and comprehensive data, as well as sound science – and the measures adopted by ICCAT members in Istanbul should help provide this,” said Susana Sainz-Trápaga, Fisheries Advocacy Officer at WWF Mediterranean. “WWF will be keeping an extremely close watch now to ensure countries comply with this fundamental new obligation of swordfish data provision.”

The information will be used to set up a new conservation and management plan in 2013 aimed at achieving maximal sustainable yields for the swordfish fishery. WWF notes that such a plan could include fleet reduction similar to that in place for bluefin tuna today.

### **Stiff reaction from WWF**

Despite its support for these protections, WWF released a statement expressing its disappointment with this year’s “half-measures.” The environmental group slammed ICCAT for making insufficient improvements on the traceability of bluefins tuna farms and for failing to adopt a comprehensive plan on swordfish.

During the meeting, WWF called for full traceability in tuna farms or, barring that, a ban on tuna farming altogether. WWF praised the eBCD monitoring system, but noted that “without an improvement in the provision and accuracy of data on tuna being transferred into the many fish farms that line the Mediterranean – processing the majority of tuna caught in this sea – the measure falls far short of what is required.”

Some green groups have accused tuna farms of “laundering” large numbers of IUU bluefin tuna.

Similarly, WWF said the measures on swordfish were “weak and insufficient.” The new minimum catch size of 90 centimeters was insufficient to reduce the overfishing of juvenile fish and the overall plan did not do enough to protect the species, according to the group.

ICCAT members failed to adopt new protections for the porbeagle shark, a vulnerable species on the international Red List. Several of the issues on the table this year will remain there until ICCAT’s annual meeting next year.

ICTSD Reporting; “Protection boosted for tuna, sharks and swordfish,” BBC NEWS, 19 November 2011.

**BRIDGES DURBAN UPDATE #2****Uncertainty Lingers on Big-Ticket Items as Durban Prepares for Ministers' Arrival**

This is the most difficult UNFCCC Conference of the Parties to get a read on in recent memory. That seems to be the only thing that delegates and observers will say with absolute certainty as COP 17 wraps up its first week in Durban. The fluidity of the discussions thus far, combined with the quick turn-around seen last year in Cancun once ministers took the helm, has most people close to the talks issuing the caveat that “anything can happen.”

Much of the mystery clouding week one is due to the high number of closed-door contact groups, informal sessions, and “indabas” – Zulu-inspired informal discussions encouraged by COP President Maite Nkoana-Mashabane – that are taking place on a wide range of issues. Both the media and delegates have said it has been difficult to keep track of the many discussions, let alone get a read on how the talks are progressing.

Informally, several delegates have expressed concern that while there has been movement on many unresolved details pushed forward from Panama, macro issues – most notably the future of the Kyoto Protocol – are advancing too slowly to be resolved before the talks come to a close on Friday.

**Kyoto remains foggy at best**

Last week's discussions on a second commitment period of the Kyoto Protocol under the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) were intense, KP Chair Adrian Macey of New Zealand noted during Saturday's plenary, with some core issues having “crystallised.” While the talks to date have shown a “considerable

amount of common ground” regarding the Protocol's continuity, commitments, and future certainty, Macey also acknowledged that divergence among the Parties still remains “significant.”

Macey thanked Parties on Saturday for discussing issues that were “outside their comfort zone.” However, he cautioned the Parties against locking in a deal with low ambitions, urging instead that any second commitment period – should there even be one – be for a period of time that is worthwhile.

What is crucial for moving forward on Kyoto, he added, is that the Protocol be part of a whole Durban package – a package that will undoubtedly need to include a deal on mobilising the Green Climate Fund.

**Green Climate Fund talks look positive**

Despite complaints from critics that Washington was blocking the process on establishing a deal on the Green Climate Fund – agreed to at COP 15 in Copenhagen – talks in Durban have made some forward movement. Key Parties – including the US, Australia, and the EU – have indicated that the “middle ground” report that Fund Transitional Committee Co-Chair Trevor Manuel of South Africa introduced on Wednesday could be agreed to, as long as it is a part of a more balanced package.

The Transitional Committee had hoped to conclude talks on the Fund's structure – such as establishing the 24-member board, deciding on a host country, and setting up regular meetings – in October. However, the matter was pushed back to Durban after hitting roadblocks on a range of outstanding issues.

A key sticking point for the US continues to be restrictions on who can contribute to the fund. Washington says it is crucial for the private sector to be able to contribute to the fund, while some developing countries are concerned about an overreliance on the

private sector. The US also said on Friday that the Fund's governing instrument should be approved in Durban.

The Fund was discussed in contact groups and informal consultations on Saturday, with several countries voicing concerns over the legal framework that will govern the Fund and its formal relationship to the COP. Developing countries are looking for reassurance that there will be some safety mechanism in place, should Annex I countries be unable to live up to their commitments. Meanwhile, Japan suggested that this tricky issue could be addressed later by the Board, rather than having to establish the relationship beforehand.

The EU wrapped up the discussion on Saturday, saying that they were confident they could agree on the draft instrument and that the Board should start work as soon as possible.

### **IP on back burner**

While the past week's negotiations have devoted some attention to the issue of technology transfer, intellectual property issues related to a range of climate change issues have been largely ignored. Even the discussions on technology transfer have failed to make much headway, with disagreements emerging on multiple fronts.

Last year's Cancun Agreements established a Technology Mechanism intended "to facilitate the implementation of enhanced action on technology development and transfer in order to support action on mitigation and adaptation to climate change." To date, however, the relationship between the two elements of the mechanism – the Technology Executive Committee (TEC) and the Climate Technology Centre and Network (CTCN) – remains unclear. The hope for Durban was that this issue would be resolved, but talks are moving too slowly to tell.

This week, developing countries, the G77 and China, and others expressed a desire to have a clear mention of the link between the TEC and the CTCN in a decision currently being drafted at a COP contact group on the TEC. The United States, however, expectedly proposed that the CTCN not be mentioned.

This decision – based on a report presented by TEC Chair Gabriel Blanco – will also combine inputs from the COP's subsidiary bodies, the Subsidiary Body for Implementation (SBI) and the Subsidiary Body for Scientific and Technological Advice (SBSTA), as well as the AWG-LCA contact group on technology development and transfer.

Regardless of how the relationship between the TEC and CTCN is ultimately defined, neither of these elements will be fully operational until the financing issue is resolved. Talks on financing, which are largely dependent upon the Green Climate Fund, are still unripe at the moment.

While intellectual property concerns are linked to most key items on the Durban agenda, some observers say tackling these details on top of the array of contentious issues already on the agenda may be overwhelming.

### **Response measures**

Several of the past week's meetings in Durban have focused on response measures – the domestic measures taken by countries to respond to climate change. During a workshop held early last week, several countries showcased their proposals for the establishment of a forum on response measures. While some – mostly developed – countries said they only want an informal forum to be a means of exchanging information on how to address climate change, others – mostly developing countries – argued that they would like to see the establishment of a permanent forum that offers a way of addressing substantial issues,

such as the potential trade impacts of response measures.

Meanwhile, another forum was held on the impact of the implementation of response measures under both the SBI and the SBSTA. Several informal group meetings also took place, in which members drafted and considered a text on the response measures forum.

While no consensus was reached on the issue, it is worth following closely. Even if purely procedural in nature, many developing countries say the issue is key for them in moving the wider negotiations moving forward.

### **Politics more sensitive than usual**

How the rest of Durban will unfold remains largely contingent on the US and China. Washington has been panned in recent years for its slowly diminishing commitment to climate change, especially given President Barack Obama's post-election pledge to "engage vigorously" in the UN talks. Contrary to that promise, however, the Obama Administration's presence has instead been markedly cautious.

"Some countries want to stipulate up-front that [post-2020 initiatives] should be in the form of a legally-binding agreement," said Jonathan Pershing, US Deputy Special Envoy for Climate Change on Monday. "We want to know more about the content of such an agreement before we commit to a particular legal form. One thing I would underscore about any post-2020 accord is that the only way it could be effective – and garner broad support – is if it applies fully to all significant players."

Washington's presence at this year's talks has been conspicuously small, with not a single member of Congress – or any other major political figures – in attendance for the first time in years.

The role of the BRICS (Brazil, Russia, India, China, and South Africa) countries has also painted much of the speculation regarding Durban's ultimate outcome. In particular, the future of Kyoto appears to hinge upon major developing country emitters signing on to some form of binding commitment to reduce emissions.

Some crack have already emerged over the first week among traditional political groupings, with rumours that poor countries that are particularly vulnerable to climate change were becoming frustrated with their fellow G77 and China members who were blocking movement on contentious issues that could help move Kyoto forward.

Speaking to reporters on Friday, Su Wei, China's lead negotiator, surprised many by saying that Beijing may agree to binding emissions cuts.

"We do not rule out the possibility of legally binding," he said in English. "It is possible for us, but it depends on the negotiations."

It is unclear whether the move is a reaction to pressure from fellow G77 and China members or, simply, an attempt to elicit a response from Washington. Climate watchers will certainly be waiting to see how this move by China colours the discussions in week two as senior ministers arrive.

ICTSD Reporting.



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**IN BRIEF**

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**FAO: Land, Water Scarcity Pose Growing Danger to Food Security**

Agricultural production will need to increase by 70 percent by the year 2050 in order to cope with the pressures of climate change, a growing world population, and limited resources, according to the first-ever UN report on land, water scarcity, and food.

The report, released by the UN Food and Agriculture Organisation (FAO) on 28 November, found that many of the countries that will need to produce food for feeding this population are, consequently, the countries facing the most land degradation.

About 40 percent of degraded lands lie in regions with high poverty rates, where small-scale farmers must pay the price for unsuitable land. “The distribution of land and water resources does not favour those countries that need to produce more in the future,” the report states.

The report also warns that many agricultural systems face “the risk of progressive breakdown of their productive capacity under a combination of excessive demographic pressure and unsustainable agriculture use and practices.”

These pressures have already led to the beginnings of a degradation process – with the report estimating that 25 percent of the earth’s lands are degraded; 1.6 billion hectares of land are currently used to grow crops. With these lands suffering a large toll, governments and organisations will have to find ways to incentivise sustainable agricultural procedures, the UN agency noted.

Some farming practices may have contributed to processes of erosion, nutrient loss, topsoil compaction, salinisation and pollution. Although governments have tried to help farmers produce in a “greener” fashion, the

report argues that many of these policies benefit large-scale farmers who have unfair access to resources.

This leaves many small-scale farmers to suffer from resource degradation, despite the fact that many come from the growing nations that will need to produce more in the future.

Almost one billion people are undernourished, mostly in Asia and Sub-Saharan Africa, meaning that global production of food will need to rise faster than population growth to reverse the consequences of poor food policy. However, the report states that much of the farming land already in use will have to sustain future production in coming years.

Since 1960, the expansion in area of land use for crop cultivation has been only 12 percent, while world agricultural activity has increased between 150 and 200 percent - illustrating the intensified pressure on the same land to increasingly produce more.

Upon the report’s publication, FAO Director-General Jacques Diouf stressed that steps to address these stresses facing agricultural production systems must be taken immediately. “The consequences in terms of hunger and poverty are unacceptable,” he said.

Increased efficiency of water use and innovative farming practices will be key to providing sustainable crop production for the coming years. Hubert George, Technical Officer for Land and Environment Information Systems at the FAO, commented in an [interview](#) that building awareness and making green initiatives profitable for farmers – through easier access to technology and carbon trading, and payments for environmental services – were possible strategies for tackling the major issues.

The report also highlighted the need for an improved and more transparent trade policy that would, in turn, encourage sustainable

agriculture by offering incentives to those who do not harmfully exploit land.

Policies must also focus on securing market access for small scale farmers and those using “green” farming practices, the FAO noted.

ICTSD Reporting; “Land, water scarcity threaten food security - UN,” REUTERS, 28 November 2011.

## EVENTS AND RESOURCES

### Events

#### Coming up in the next two weeks (5 December – 19 December)

If you would like to see your event listed here or are interested in finding out more about publicising your event through ICTSD, write to [biores@ictsd.ch](mailto:biores@ictsd.ch). For a more comprehensive list of events for the trade and environment community visit the [BioRes online calendar](#).

5-6 December, Durban, South Africa. THE DURBAN TRADE AND CLIMATE CHANGE SYMPOSIUM AT COP 17 / CMP 7. This symposium, jointly organised by ICTSD, the WTO and the Department of Trade and Industry (DTI) of the Republic of South Africa, aims to generate proposals for fostering strong multilateral regimes on trade and climate change and help promote the transition to a low-carbon economy and a sustainable energy future. The event, which will take place on the sidelines of the UNFCCC’s 17th Conference of the Parties and the 7th Meeting of the Parties to the Kyoto Protocol, will feature ten sessions hosted by organisers and 12 partner institutions covering an array of issues linked to the trade and climate change nexus. More information can be found on [www.ictsdclimate.org](http://www.ictsdclimate.org). For further information, contact [Adriana Verdier](#).

7 December, Brussels, Belgium. CAP REFORM PROPOSALS: IMPLICATIONS FOR TRADE, DEVELOPMENT AND THE ENVIRONMENT. This event, jointly organised by the Centre for European Policy Studies (CEPS) and ICTSD, will bring together panellists from a range of backgrounds to discuss the implications and issues surrounding the EU’s Common Agricultural Policy (CAP). The European Commission has recently unveiled legislative proposals for a post-2013 CAP. These proposals are currently under review by the European Parliament and national governments. This sort of legislation is sure to have an effect not only on European farming practices, but also on areas such as environmental protection, trade policy, and relations with developing nations. For more information, please visit the CEPS [website](#).

7-9 December, Bergen, Norway. CBD JOINT EXPERT MEETING ON ADDRESSING BIODIVERSITY CONCERNS IN SUSTAINABLE FISHERIES. This expert meeting, organised by the Convention on Biological Diversity (CBD), will act as a follow-up to urgent requests at the CBD’s Tenth Conference of the Parties to review the impacts of destructive fishing practices and illegal, unreported and unregulated (IUU) fishing on marine and coastal biodiversity and habitats. The meeting will review how existing assessments address biodiversity concerns, how fisheries impact marine and coastal biodiversity, and propose options for sustainable fisheries management. More information is available from the [CBD Secretariat](#).

15-16 December (tentative), New York, US. SECOND INTERSESSIONAL MEETING FOR UNCSD. This meeting will be the second of three intersessional meetings to be convened in preparation for the UNCSD event, Rio+20. The aim of the second meeting is to hold focused and substantive discussions to advance the subject matter of

the Conference. Details are available via the [official website](#).

15-17 December, Geneva, Switzerland. EIGHTH WTO MINISTERIAL CONFERENCE. As agreed by the General Council at its meeting in October 2010, the WTO's Eighth Session of the Ministerial Conference will be held in Geneva from 15-17 December 2011. Like the December 2009 Ministerial, the 2011 conference will take place at the International Conference Centre Geneva (CICG), which is located near the Palais de Nations (UN). ICTSD will, of course, be providing multilingual daily updates from the event through [Bridges Daily Updates](#). For more information on the event, visit the [WTO website](#).

15-17 December, Geneva, Switzerland. GENEVA TRADE AND DEVELOPMENT SYMPOSIUM. This symposium, organised by ICTSD, will take place over two days in parallel to the Eighth Ministerial Conference of the World Trade Organization. Having taken place at prior ministerial conferences in Cancun (2003), Hong Kong (2005), and in Geneva (2009), these symposia have proven to be a valuable forum for policy makers, trade negotiators and representatives of inter-governmental and non-governmental organisations, academics, business people and others, to engage in substantive discussions in a non-negotiating context. For more information and to register, visit [ICTSD's website](#).

### Other Upcoming Events

2-3 February, London, UK. 7TH INTERNATIONAL FORUM ON ILLEGAL, UNREPORTED AND UNREGULATED FISHING. The 7th International Forum will focus this year on the latest developments in IUU fishing in the Mediterranean and West Africa, especially after the conclusion of the ICCAT meeting in Istanbul in November. It will also cover catch document schemes, port state measures, and

organised crime in the fishing sector. The annual gathering brings together leading policymakers, researchers, industry representatives, and civil society groups from around the world to discuss the latest initiatives, regulations, and research in the area of fisheries governance and trade in illegal fish products. For more information or to register, please contact Estelle Rouhaud at [erouhaud@chathamhouse.org](mailto:erouhaud@chathamhouse.org).

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## 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 to the [editor](#).

OVERCOMING THE IMPASSE ON INTELLECTUAL PROPERTY AND CLIMATE CHANGE AT THE UNFCCC. Published by ICTSD (November 2011). As the UNFCCC Conference in Durban moves forward, this policy brief addresses the impasse on one of the most contentious issues in today's climate change debate: intellectual property rights and technology transfer. The policy brief focuses on three of the most important aspects of the IPR issue in allowing developing countries access to mitigation and adaptation technologies: the parallels and non-parallels between these technologies and access to medicines, the dual role of IPR in providing an incentive to innovate and a means for technology transfer, and the lessons of empirical evidence. The authors note that, despite the Technology Mechanism adopted in Cancun, no agreement has yet been reached and few parameters exist to allow for constructive discussion. They offer several principles and parameters that will allow just such a discussion to move forward at Durban. The policy brief is available [online](#).

BENEFITS OF THE CLEAN DEVELOPMENT MECHANISM 2011. Published by UNFCCC (2011). The UNFCCC has put out an informative report in time for the climate talks in Durban detailing the multiple benefits of the CDM to host countries. The report attempts to show how the CDM has created tangible benefits in terms of job creation, improved energy efficiency in households, and increased investment levels. This, the first in a series of three reports, focuses on sustainable development, technology transfer, and investment spurred by the CDM. The full report is available on the UNFCCC [website](#).

OPTIONS FOR PROMOTING HIGH-BIODIVERSITY REDD+. Published by the International Institute for Environment and Development (IIED) (November 2011). This briefing offers a range of national and international policy options that will promote high-biodiversity REDD+ and reinforce the Cancun safeguards developed in 2010. It targets the difficult policy middle-ground that both aims to build effective REDD+ mechanisms and to effectively preserve biodiversity. The briefing develops synergies between these goals and explores how climate negotiations at the UNFCCC and CDB can incorporate the lessons of high-biodiversity REDD+. The briefing is available on the IIED [website](#).

A FUTURE FOR INTERNATIONAL CLIMATE POLITICS - DURBAN AND BEYOND. Published by the Heinrich Böll Foundation (November 2011). This compilation of papers addresses the strategy discussions held at the June 2011 meeting of the UN Framework Committee on Climate Change (UNFCCC) subsidiary bodies in Bonn. The papers cover a wide range of topics, including refocusing civil society advocacy efforts to mobilise global and local environmental movements, addressing the state of play in the UNFCCC negotiations, and analysing the rationales, interests, and key

actors driving new alliances in climate talks. The document is available [here](#).