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Analysis and news on trade and environment

VOLUME 9, ISSUE 8 – OCTOBER 2015



Tracking sustainability across global value chains

WTO

Reviewing labelling and global trade rules

CLIMATE CHANGE

Carbon labelling initiatives at the WTO

FISHERIES

Exploring options for seafood traceability



International Centre for Trade
and Sustainable Development

BIORES

VOLUME 9, ISSUE 8 – OCTOBER 2015

BRIDGES TRADE BIORES

The leading authority on news and analysis emerging from the trade and environment nexus.

PUBLISHED BY

ICTSD

International Centre for Trade and Sustainable Development

Geneva, Switzerland

www.ictsd.org

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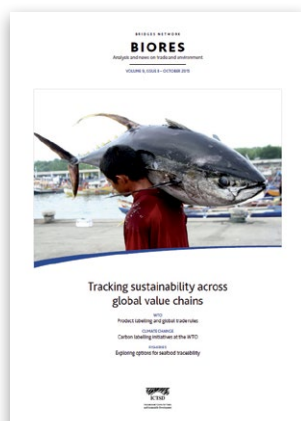
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Tracking sustainability across global value chains



Following the adoption of the UN “2030 Agenda for Sustainable Development” governments, international institutions, and stakeholders the world over are now turning their attention to implementation. Achieving the ambitious to-do list outlined in the new Sustainable Development Goals (SDGs) will require careful reflection on the right policies and investments, as well as a rigorous monitoring system, in order to benchmark progress.

With “sustainability” firmly in vogue, consumers too will be looking to play their role. But purchasing goods today in a world of long and complex global – and regional – value chains (GVCs), can make it difficult to determine environmental or social credentials.

A variety of existing regulatory and non-governmental initiatives are seeking to address this issue and many more are likely to come. These efforts raise a variety of “behind the border” questions relevant to the trade community through the WTO Agreement on Technical Barriers to Trade (TBT) that aims to ensure that domestic technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade.

A technical regulation might be an ecolabel required in order to gain market access, for example, a ban on certain products, or required standards to meet in order to achieve a legitimate public policy goal. Certain TBT disciplines equally apply to voluntary standards, although, the extent to which WTO Members can be held responsible for private sector initiatives could well surface again in future cases brought to the global trade arbiter.

The lead articles in this BioRes edition take stock of recent TBT case law and examine various implications from a sustainable development perspective. Arthur E. Appleton looks at whether a spate of WTO rulings related to product labelling in the last three years provide enough flexibility for members achieve various non-trade policy objectives. Gracia Marin Duran explores the extent to which carbon labelling initiatives are covered by, and could run afoul of, TBT disciplines. Furthermore, as the interest in sourcing sustainable seafood grows in the face of persistent overfishing and illegal marine activity, two other articles examine possible trade tools and traceability requirements designed to address this issue.

Looking ahead, the positive news is that the international community has pledged to set itself on a sustainable development path through the 2030 Agenda, although there is now much work needed ahead. Trade rules and policies can help encourage positive steps in the right direction if formulated in a targeted manner.

What do you think? Be sure to follow our social networking streams on [Twitter](#) and [Facebook](#) to keep up with our regular trade and environment news updates. And if you are interested in contributing material to future issues of BioRes, please do [write to us](#). We appreciate both your time and your feedback.

The BioRes Team

WTO

Product labelling: What has the Appellate Body wrought?

Arthur E. Appleton

Do the recent WTO rulings related to product labelling provide enough flexibility for Members to achieve various non-trade policy objectives?

WTO Members and consumers have largely ignored the implications for product labelling emanating from the Appellate Body's decisions in *US-Tuna II* and *US-COOL*, giving proof to Aldous Huxley's maxim in *Brave New World* that, "Most human beings have an almost infinite capacity for taking things for granted."¹ These two cases could have a profound effect on how WTO Members regulate product labelling and on how manufacturers use labels to influence consumer behaviour, including for environmental and other social purposes.

US-Tuna II

In 2012 the Appellate Body found that a US "dolphin safe" labelling programme designed to prevent dolphin deaths arising from tuna fishing practices in the Eastern Tropical Pacific (ETP) violated the non-discrimination obligation found in Article 2.1 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement). The decision is noteworthy as the Appellate Body found nothing wrong with a WTO Member applying its law to regulate the labelling of how a product is manufactured outside its jurisdiction but sold within. Instead, the US trade measure was struck down under Article 2.1 on the grounds that it was discriminatory; it only applied to tuna caught in the ETP, where Mexico primarily fished, but not in other waters where dolphin mortality faces a comparable risk. Many WTO Members, as well as the environmental community, appear to have underestimated the significance of *US-Tuna II*. This decision implicitly authorises Members to regulate "labelling requirements as they apply to a product, process or production method" even if a product's manufacture or production takes place outside the Member's territory, provided that the labelling is not discriminatory within the meaning of Article 2.1. The measure must also be necessary within the meaning of Article 2.2 TBT, but the Trilogy Cases mentioned below, demonstrate that this test is now relatively easy to meet.

US-Tuna II provides support, under the correct legal circumstances, for product labelling for environmental and conservation purposes, provided that any discrimination that results is based on a legitimate regulatory distinction (LRD). If products can be labelled to reflect dolphin safety and other domestically defined norms, there is no reason why labels cannot be applied to reflect whether the manufacture of a product complies with human rights norms, international labour agreements, or other norms derived from public international law. The separate issue as to whether a Member can ban imports based on "product characteristics or their related processes and production methods" – in other words, in the absence of labelling requirements – remains to be resolved by the Appellate Body.²

US-COOL

If *US-Tuna II* opens the floodgates to the labelling of qualities associated with the manufacture of products in trade – what trade lawyers refer to as the processes and production methods – *US-COOL* acts to hold back some of the more dangerous floodwaters by further clarifying the meaning of an LRD. As the TBT Agreement lacks the explicit rule/exception relationship of GATT Article XX, the Appellate Body was forced in the Trilogy Cases to craft a means to permit a Member to apply technical regulations that fulfilled a legitimate regulatory objective such as protection of the environment, protection of human health, and prevention of deceptive practices, even if a technical regulation results in *de facto* discrimination.

¹ The Trilogy Cases accept that Article 2 TBT, which regulates technical regulations, may

TBT Article 2.1

Article 2.1 of the WTO's Technical Barriers to Trade (TBT) Agreement states that "Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country."



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permit discrimination provided that it is even-handed and stems exclusively from an LRD. In determining whether a labelling scheme stems *exclusively* from an LRD, adjudicators should examine the "design, architecture, revealing structure, operation, and application" of the scheme. In *US-COOL*, the US government-labelling scheme at issue established origin labelling rules reflecting where livestock from Mexico, the United States and Canada were born, raised, and slaughtered. In 2012 the Appellate Body found that the US labelling scheme resulted in *de facto* discrimination against certain Mexican and Canadian meat products due in part to increased recordkeeping and other costs associated with the need to segregate cattle and hogs during the production process. In short, the labelling scheme resulted in a detrimental impact on the sale of Canadian and Mexican meat products – they became more expensive – and the Appellate Body determined that this negative impact did not stem exclusively from an LRD promoting consumer information.

Exclusively from a legitimate regulatory distinctions?

The *US-Tuna II* and *US-COOL* rulings developed a strict non-discrimination standard. To pass muster, the detrimental impact from a labelling scheme must stem exclusively from a legitimate regulatory distinction. However, in instances when *de facto* discrimination is at issue, it may be difficult to craft a measure that satisfies Article 2.1. *US-COOL* offers a case in point. Most cattle at issue were born, raised, and slaughtered in the US and the slaughterhouses had to schedule separate processing runs for Mexican and Canadian beef in order to correctly label the meat products. Any labelling scheme that disproportionately increases the cost for foreign beef, such as requiring segregation until the day that Mexican or Canadian beef is processed as well as additional paperwork, is likely to have a detrimental impact on price. Even if information in the form of notifying consumers of criteria related to the origin of the beef is a legitimate objective, it will be difficult as long as the economics favour US beef, to argue that Washington's measure stems exclusively from a legitimate regulatory distinction.

Shades of grey

As applied by the Appellate Body, upon first reading the "stems exclusively" standard seems to be flat and reasonable as a means to assure that technical regulations, including labelling schemes are not applied for protectionist purposes. As with the individual subparagraphs in Article XX of the General Agreement on Tariffs and Trade (GATT-1994), the LRD allows a Member to regulate to achieve a policy objective that may violate the non-discrimination obligation, and the "stems exclusively" standard may be a means of policing arbitrary and unjustifiable discrimination. However, when one looks closer, one sees that problems may arise in cases involving *de facto* discrimination. Trade law is seldom black or white – there are various shades of grey involved in the law-making process and parliamentary majorities often reflect a variety of motives and views. It is not uncommon for a regulation that furthers a legitimate policy goal, such as environmental protection or consumer information, to also have a detrimental effect on certain producers be they foreign or domestic. The "stems exclusively" standard, which owes its origins to the Appellate Body and not to WTO Members, may be too inflexible to manage expectations and to give Members the regulatory autonomy they need in cases where a regulation – including labelling schemes – while origin neutral, ends up favouring one or more domestic or foreign producers.

① Appellate Body Report, *United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R (adopted 13 June 2012), Appellate Body Reports, *United States - Certain Country of Origin Labelling (COOL) Requirements* (WT/DS384,386/AB/R, (adopted 23 July 2012; Article 21.5 adopted report 29 May 2015).

② The quoted language is from Annex 1.1 of the TBT Agreement.

③ Article 2.1 discrimination is now the most important element when a panel or the Appellate Body determines the TBT-legality of a technical regulation, including a label-related regulation. The Appellate Body decided all three of the "Trilogy Cases" based on this provision. The Trilogy cases are *US – Tuna II*, *US – COOL* (cited above) and *US – Clove Cigarettes*, Appellate Body Report, *United States - Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, (adopted 24 April 2012).

CLIMATE CHANGE

Carbon labelling schemes at the WTO: Real or imagined conflict?

Gracia Marin Duran

Would carbon labelling initiatives be covered by the WTO's Agreement on Technical Barriers to Trade?

It is broadly recognised, including in the WTO, that climate change is possibly the greatest sustainable development challenge presently facing the global community. The 1992 UN Framework Convention on Climate Change (UNFCCC), with its near-universal membership, represents the international response to this challenge with the ultimate objective of stabilising "greenhouse gas emissions concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." To this end, the Intergovernmental Panel on Climate Change (IPCC) has estimated that global greenhouse gas (GHG) emissions would need to be reduced to close to zero during the second half of this century in order to achieve the internationally-agreed target of limiting average temperature increase to below two degrees Celsius from pre-industrial times. And yet, the critical question remains which policies and specific measures are most appropriate and effective to mitigate climate change, a matter the UNFCCC largely leaves its parties to decide.

In this context, "carbon labelling" schemes for various products have emerged and proliferated since 2007 as one possible means to reduce GHG emissions, even though not as prominently as other market-based information instruments – such as energy-efficiency labelling schemes – or more direct forms of climate mitigation regulation – minimum energy-efficiency requirements – and support – renewable energy subsidies.^① These, mainly private, carbon labelling initiatives are nevertheless seen as *potentially* problematic from a WTO law perspective, as evidenced by the discussions on the possible trade impacts of carbon labels that have taken place in the WTO Committee on Trade and Environment (CTE). (WT/CTE/M/49) Of most significance among the various WTO legal texts is the Agreement on Technical Barriers to Trade (TBT), which deals specifically with labelling requirements, and whose core provisions have been decisively clarified by the Appellate Body in four recent disputes: *US-Clove Cigarettes*; *US-COOL*; *US-Tuna II*, and *EC-Seal Products*. This article seeks to appraise the key implications of the latest TBT case law for carbon labels. In doing so, it will challenge some common (mis)perceptions regarding the WTO-compatibility of measures based on so-called "non-product-related" processes and production methods (PPMs), while unfolding the central issues that remain to be addressed.

Main features of carbon labels

As a backdrop to our subsequent discussion, it seems first useful to briefly outline the main features of carbon labels. In terms of objectives, carbon labels are basically intended to provide consumers with a visible representation of the GHG emissions that can be attributed to a specific product, and thereby enable them to differentiate between high-carbon and low-carbon products in their purchasing decisions. In addition to this consumer information objective, carbon labels further seek to effect changes in consumer choice towards less emission-intensive consumption and production patterns, and thereby contribute to climate change mitigation. With regard to operating entities, carbon labels were originally introduced by UK supermarket chains Tesco and Marks&Spencer in 2007, and since then have proliferated mainly as private sector standards.^② Nonetheless, a few carbon labelling schemes have been adopted by governments, or developed with significant governmental involvement. At present, the largest such scheme is the "Carbon Reduction Label," operated by the UK Carbon Trust – a government-funded non-for-profit

organisation – in association with the British Standards Institute and the Department for Environment, Food and Rural Affairs, followed by Japan's "Carbon Footprint of Products System" and France's carbon footprint pilot programme. Currently these are all voluntary schemes.^③

It is also important to distinguish between two types of carbon labelling schemes; the so-called "food miles" used by commercial companies, which strictly focuses on GHG emissions released during a product's transportation and is based on the single criterion of the distance travelled by air freighted products to reach the consumer; and the "product carbon footprint" (PCA) that instead seeks to account for the total amount of GHG emissions generated during the entire life cycle of a product from "cradle-to-grave," through all stages of their production, processing, transportation, sale, consumer use and disposal or recycling. All governmental, and some private, carbon labelling schemes follow this life cycle analysis (LCA), but even so each employs a specific calculation methodology. As a result there is presently no generally accepted method for determining the carbon value of a product. (WT/CTE/M/49/Add.1)

Are carbon labels subject to TBT disciplines?

It has been the subject of much debate whether the TBT Agreement applies to carbon labels mainly because these are inherently based on non-product-related or unincorporated process and production methods.^④ In other words, the amount of GHG emissions generated during a product's transportation or/and production does not affect in any evident manner the physical characteristics of the final product. The application of the TBT Agreement to measures specifying non-product-related PPMs was one of the most knotty controversies during its negotiation process, resulting in rather ambiguous provisions (Annex 1) that have not yet been fully clarified by the WTO dispute settlement organs.^⑤ Nonetheless, the text of Annex 1 TBT Agreement omits the term "related" when referring to labelling requirements, and thus an argument can be made that the product-related/non-product-related distinction is largely irrelevant in determining the agreement's coverage of labelling schemes. Further, this proposition finds support in the recent TBT rulings, which seem to indicate that all labelling requirements are covered by the TBT Agreement irrespective of the PPM being addressed by the label.^⑥ The most obvious example is the US dolphin-safe labelling scheme at issue in *US-Tuna II*, which was scrutinised against TBT disciplines even though it was clearly based on non-product-related PPMs, namely fishing methods for catching tuna. The discussions in the CTE Committee, moreover, reveal that the PPM issue is actually not the crux of disagreement among WTO Members over the application of the TBT Agreement to carbon labelling schemes. It is, rather, the fact that these schemes are predominantly private sector initiatives. (WT/CTE/M/49, paras. 7-20)

While the TBT Agreement is quite unique in explicitly addressing voluntary standards adopted by "non-governmental" bodies, the extent that it is applicable to private sector standards is a complex and unsettled question, which will among other things depend on what is meant by a "recognised body."^⑦ However, what does seem clear is that carbon labelling schemes are subject to TBT disciplines if adopted and applied by governmental bodies of WTO Members, or otherwise with significant governmental involvement.^⑧ Which TBT disciplines apply to such governmental carbon labels will, in turn, depend on whether they qualify as a mandatory technical regulation (Article 2 TBT) or a voluntary standard (Article 4 and Annex 3 TBT), but these are broadly similar for the core non-discrimination and necessity obligations discussed next.

Would carbon labels be compatible with TBT disciplines?

The TBT Agreement explicitly recognises that WTO Members have a right to adopt technical regulations and standards necessary to fulfil certain legitimate policy objectives, which certainly encompass consumer information and climate change mitigation carbon labelling schemes (TBT Agreement, Preamble, sixth recital; AB Report in *US-COOL*, paras. 445 and 453). However, as reaffirmed by the Appellate Body in *US-Clove Cigarettes*, this right to regulate is not unbound but subject to the condition that such measures are not used as a means of "arbitrary or unjustifiable discrimination" or otherwise create an

TBT disputes

May 2012, Tuna II WTO

Appellate Body report circulated on a complaint filed by Mexico against the US on its "dolphin safe" labelling measures concerning the import, marketing, and sale of tuna and tuna products. Compliance proceedings ongoing.

April 2012, Clove Cigarettes

WTO Appellate Body report circulated on a complaint filed by Indonesia with respect to a US ban on clove cigarettes. After resort to compliance proceedings, the two nations notified the DSB in October 2014 that they had reached a mutually acceptable solution.

June 2012, COOL WTO

Appellate Body report circulated on complaint by Canada and Mexico on certain mandatory country of origin labelling (COOL) provisions imposed by the US Farm Bill. The matter has been referred to arbitration and authorisation to retaliate requested.

May 2014, Seals WTO Appellate

Body report circulated on complaint by Norway and Canada regarding the EU's prohibition of the importation and marketing of seal products. The EU has informed the DSB it intends to implement the global trade arbiter's recommendations to bring its measure in line with WTO obligations. Parties have agreed that a reasonable period of time for doing so will expire on 18 October 2015.

"unnecessary obstacle" to international trade. (AB Report in *US-Clove Cigarettes*, paras. 92-95) A pertinent question is, therefore, whether carbon labels can be designed and applied in a manner that meets these requirements.

A means of arbitrary or unjustifiable discrimination?

As is well-known, non-discrimination is one of the basic principles in WTO law, formulated in Article 2.1 for technical regulations and Annex 3.D for standards of the TBT Agreement, and requiring WTO Members to accord "treatment no less favourable" to imported products than that accorded to "like products" of domestic origin – national treatment obligation – or originating in any other country – most-favoured-nation (MFN) obligation. It is often claimed that carbon labelling schemes are in tension with these non-discrimination obligations because they are likely to have a detrimental impact on the competitive opportunities for imported high-carbon products from one country vis-à-vis low-carbon products of domestic origin or/and originating from other countries.⁹ This perception, however, needs to be refined. To begin with, whether or not high-carbon and low-carbon products are "like products" can only be assessed on a case-by-case basis, depending on "the nature and extent of [their] competitive relationship" in a given market. (AB Report in *US-Clove Cigarettes*, para. 120)

Likeness between products in WTO law has been traditionally determined on the basis of four criteria – the products' physical characteristics, their end-uses, consumers' tastes and habits, and tariff classification – which do not include PPMs *per se*. However, there is no reason why unincorporated PPMs cannot be considered through these likeness criteria, as these PPMs can affect consumer preferences and demand. Thus, there is a possibility that the competitive relationship between high-carbon and low-carbon products in a given market is too weak, so these are deemed "unlike" in that particular market. However, it seems improbable that this type of situation will often arise in practice because if high-carbon and low-carbon products are not, or only weakly, competing on the market, why introducing a carbon labelling scheme in the first place?

But even if high-carbon and low-carbon products are found to be "like", this does not necessarily mean that they cannot be treated differently, or that any detrimental impact on the competitive opportunities for high-carbon products is prohibited. For origin-neutral measures, detrimental impact is only prohibited in cases where it does not stem exclusively from a legitimate regulatory distinction. (AB Report in *US-Clove Cigarettes*, paras. 173-175 and 182)

To better illustrate this subtle point, in *US-Tuna II*, the Appellate Body did not condemn the US dolphin-safe labelling scheme just because it differentiated between tuna products on the basis of how the tuna had been caught, an unincorporated PPM. It did so because this regulatory distinction causing detrimental impact on Mexican tuna products was not "calibrated to the risks to dolphins arising from different fishing methods in different areas of the ocean." (AB Report in *US-Tuna II*, para. 297) In other words, labelling schemes based on unincorporated PPMs are not *per se* inconsistent with the TBT non-discrimination obligations. But they need to be designed and applied in an even-handed manner so that differences in the treatment of like products are fully explained or justified by a legitimate policy objective.

Applying this to carbon labels, food miles appear most problematic as they differentiate between high-carbon and low-carbon products on the basis of a single criterion of how far the product has travelled. This mileage-based criterion has an in-built bias against imports of long-distance food products and the *de facto* discrimination cannot be fully justified by the objectives of informing consumers or mitigating climate change. Quite the contrary, studies have shown that food miles do not generally provide a reliable indication of the carbon value and climate change impact of food products, as most GHG emissions are generated during the production phases – about 80 percent – rather than during transportation.¹⁰ This could lead to the arbitrary and misleading result that a product is presented to consumers as "low-carbon" while more GHG emissions were, in fact, generated during its entire life cycle when compared to a locally produced like product.

From this angle, carbon footprint labels are expectedly more even-handed given the broader range of factors included in the life cycle analysis, but concerns have been equally raised regarding the selectivity of the accounting criteria – for example, by ignoring GHG emissions from domestic transportation or associated with capital plant – and the lack of impartiality in its application – for instance, by relying on secondary data or default values, particularly for developing countries where accurate data may be more difficult to obtain.¹¹

Unnecessary obstacle to trade?

In addition to the non-discrimination obligations just seen, the TBT Agreement sets forth an independent requirement that technical regulations (Article 2.2 TBT Agreement) and standards (Annex 3.E TBT Agreement) are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade. The full potential of this necessity requirement in challenging the WTO-consistency of product regulations and standards, even non-discriminatory, is still to be unveiled by the *Australia-Tobacco Plain Packaging* dispute presently before several [WTO panels](#).

Nevertheless, the Appellate Body clarified in *US-Tuna II* that this necessity test involves a weighing and balancing process of a number of factors, namely: (i) the degree of contribution made by the measure to the legitimate objective at issue; (ii) the trade-restrictiveness of the measure; and in most cases (iii) whether a less trade-restrictive alternative measure is reasonably available that would make an equivalent contribution to the relevant legitimate objective, taking into account the risks non-fulfilment would create. (AB Report in *US-Tuna II*, paras. 318-322)

The second and third of these elements are arguably not so problematic for carbon labelling schemes, given that labels are generally viewed as one of the least trade-restrictive instruments available to pursue environmental protection objectives, when compared to other forms of government regulation.¹²

It may, however, be more difficult to meet the first condition and establish that carbon labels make at least some contribution to climate change mitigation. (AB Report in *US-Tuna II*, para. 317; AB Report in *US-COOL*, para. 476) This is because there appears to be little evidence that consumers are actually responding to carbon labels, with their impact on purchasing decisions and thus on GHG emissions reduction still unclear.¹³ It is also noteworthy that carbon labelling does not figure among the key mitigation policy proposals contained in the UNFCCC negotiating text for a post-2020 climate change agreement. If carbon labels are not being perceived as effective or necessary from a climate change perspective, it would logically be more onerous to demonstrate they are nonetheless a necessary obstacle to international trade before WTO adjudicators.

Real or imagined tension?

This article has sought to debunk a number of contentions concerning the implications of the TBT Agreement for carbon labels. First, the fact that carbon labelling schemes are based on non-product-related PPMs does not *per se* exclude these measures from scrutiny under the TBT Agreement. The threshold question for applying the TBT Agreement to carbon labels is, instead, whether they are developed and implemented by governmental bodies of WTO Members, or otherwise with significant government involvement. Given the presently limited governmental practice in relation to carbon labels, and their apparent low-profile in the ongoing UNFCCC negotiations, it is quite possible that any perceived tensions with TBT disciplines are more imagined than real. A separate question is whether, and to what extent, WTO Members should also be held responsible under WTO law for private sector carbon labels, but this is an entirely different matter from the often unhelpful incorporated or unincorporated PPM dichotomy.¹⁴

But even if carbon labelling schemes were to be adopted by more WTO Members in the future, it is a misperception that these schemes are typically inconsistent with TBT non-discrimination disciplines *solely* because they distinguish between products on the basis of non-product-related PPM criteria. A conclusive legal assessment cannot be made in

the abstract, as it will depend on the specific design and application of individual carbon labels, and in particular whether the carbon calculation method employed is even-handed or impartial in light of the climate change mitigation objective. That being said, however, the most critical question remains whether carbon labels are an effective tool for addressing climate change in the first place. However, this is not a concern primarily from a WTO law perspective – the necessity requirement – but from a climate change law and policy standpoint. Put differently, if the *potential* of carbon labels in reducing GHG emissions is uncertain or marginal, why should governments bother introducing them?

In this sense, this author shares the view that there is perhaps too much anxiety over the potential WTO-illegality of yet currently non-existent or non-prominent climate change measures.¹⁵ A more constructive “trade and climate change” debate should, instead, focus on identifying first which measures are proving most effective from a climate change mitigation viewpoint and then whether WTO law imposes duly or unduly any constraints on such measures. Tackling climate change is simply too urgent to waste time and resources on abstract conflict scenarios with WTO law.

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FISHERIES

Seafood traceability and labelling: Lessons from WTO Tuna disputes

Mark Robertson

How to track fish from sea to fork to ensure positive environmental outcomes?

In the latest chapter of what is generally agreed to be the longest running international trade and environment dispute, last April a WTO compliance panel ruled in favour of Mexico's claims that the US continues to unfairly discriminate against tuna products from its southern neighbour, particularly around the application of certification, tracking, and verification processes linked to a "dolphin-safe" label. The April verdict by the global trade arbiter came in response to claims brought by Mexico under Article 21.5 of the Dispute Settlement Understanding (DSU) alleging that the US failed to comply with 2012 recommendations from the WTO's highest court on the matter. Both the US and Mexico have appealed the compliance panel ruling and a hearing was held before the Appellate Body on those appeals on 21-22 September.

The measure in question relates to the US' "Dolphin Protection Consumer Information Act" (DPCIA), implementing regulations, and a ruling by a US federal appeals court relating to the application of the DPCIA. The measure identifies the conditions under which a tuna product can be labelled dolphin-safe – in other words, that dolphins were not killed in the process of fishing the tuna – and these varied according to area where the harvesting took place. In particular tuna caught by "setting on" dolphins, which involves circling pods with a net in order to catch the tuna that swim below, are barred from using the US' dolphin-safe label. The measure in question does not make the use of the dolphin-safe label obligatory for the import or sale of tuna products on the US market. Mexico's primary tuna fishing method, however, involves setting on dolphins in the Eastern Tropical Pacific (ETP) and so for more than a decade has challenged the US' approach as discriminatory.

Compliance proceedings, a new chapter

In May 2012 the Appellate Body found that the US had violated Article 2.1 of the WTO's Technical Barriers to Trade (TBT) Agreement, on the basis that the dolphin-safe labelling requirements for tuna products from the US and countries were more liberal than for Mexico, and did not address mortality arising from fishing methods in other areas of ocean. The US measure was therefore not even-handed and had a detrimental impact on Mexican tuna products that did not stem from a legitimate regulatory distinction. The US and Mexico agreed that a reasonable period of time for compliance would be 13 months for the former to bring its dolphin-safe labelling measures into conformity with WTO rules. The US was not required to allow Mexican tuna products to be labelled dolphin-safe but it could not allow tuna products of other countries to have the label without comparable qualification requirements.

The US subsequently issued an amended rule in July 2013 establishing additional requirements for certification as well as tracking and verification of dolphin-safe tuna captured outside of the ETP. Accordingly, regardless of their origin, imports of tuna and tuna products claiming the dolphin-safe label had to be accompanied by certification that no nets were intentionally set on dolphins during the tuna harvest and that no dolphins were killed or seriously injured in the process. Other certification and tracking and verification processes, however, continued to differ based on region. Tuna caught in the ETP needed both a captain and an independent observer to certify the fish was caught without causing harm to dolphins, while other fisheries only required a captain's

States bound by the AIDCP

States and Regional Economic Integration Organizations that have ratified or acceded to the Agreement on the International Dolphin Conservation Programme (AIDCP) include Belize, Colombia, Costa Rica, Ecuador, El Salvador, European Union, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, United States, and Venezuela. Bolivia and Vanuatu are applying the Agreement provisionally.

self-certification. In filing its claims for the non-compliance case Mexico sharply disagreed with the US that the amended rule brought it into line with the WTO's 2012 ruling.

The main focus of the deliberations by the WTO compliance panel was on the divergent requirements between tuna caught in and outside of the ETP for verification of dolphin-safe status and traceability from capture to commercialisation. The compliance panel in April found that, while the US can disqualify from its dolphin-safe label tuna caught by setting on dolphins, different certification, tracking, and verification requirements imposed on ETP fisheries as compared with others were not linked to a legitimate regulatory distinction and were not even-handed.

The history of dolphin-tuna regulation

The ETP, where Mexico catches its tuna, is considered by many as among the most highly transparent and well-managed tuna fisheries in the world today. In 2005 the UN Food and Agriculture Organization (FAO) recognised an Agreement on the International Dolphin Conservation Program (AIDCP) in force in the region with its Margarita Lizarraga Award for its extraordinary application of the principles of the Code of Conduct for Responsible Fisheries. Under the AIDCP, there are very specific, stringent, and costly mandates on the fleets for crew training, specialised nets and gear, operational restrictions and procedures, tracking and verification of product from the moment it comes out of the water through loading, unloading, storage and processing and, most important, all under the watchful eyes of on-board independent scientific observer coverage at sea and government regulators on shore.

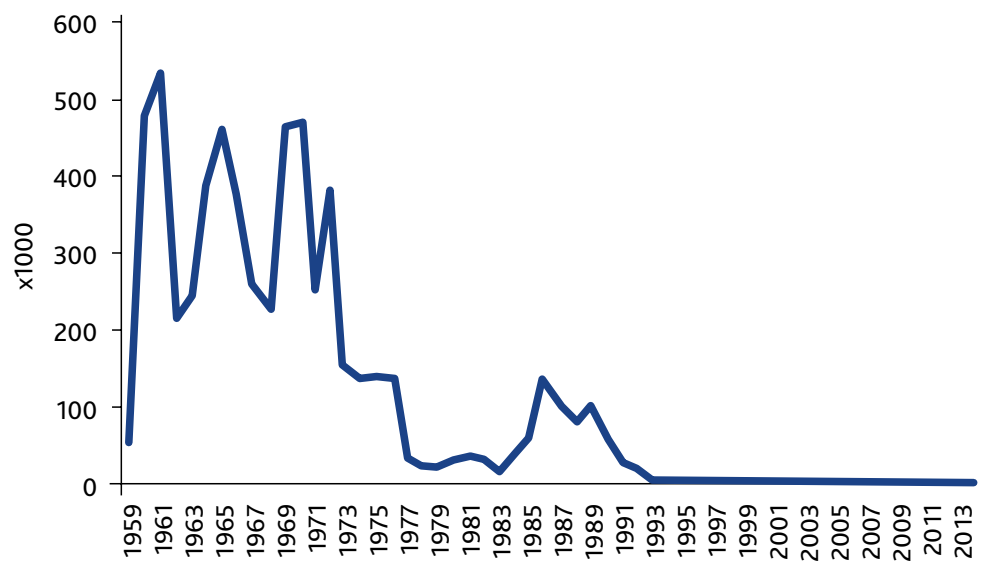
ETP dolphin mortalities in the 1980s required a collaborative and concerted response in order to be effectively addressed. Mexico and the US took the lead in providing that response. The US joined Mexico in a series of multilateral initiatives in which the 14 member nations of the Inter-American Tropical Tuna Commission (IATTC) sought to transform the way tuna was caught in association with dolphins. Regional efforts carried out in the 1990s through the La Jolla Agreement, the Panama Declaration, and eventually the AIDCP improved fishing gear and techniques, with independent observers and comprehensive monitoring to ensure the changes were being implemented. These efforts brought about a 99.5 percent reduction in dolphin-mortality to a biologically and statistically insignificant level. Importantly this reduction first occurred in 1993, the first year of the La Jolla Agreement, and has been maintained every year since.

As a result the administrations of President Bill Clinton and President George W. Bush sought to recognise the AIDCP dolphin-safe label and permit Mexican tuna products access to the US market. However, at the insistence of certain members of Congress, the US has instead since pursued a unilateral course by enacting and maintaining its own dolphin-safe labelling scheme promulgated by private economic interests in the US market. This label is effectively unregulated, is essentially unverifiable in its claims of no harm to dolphins and, as such, is deceptive to consumers. Moreover, from its base in the US this false dolphin-safe labelling scheme has been exported internationally by some environmental groups, effectively closing those markets to Mexico's tuna products as well.

Certification, traceability, verification problems

In finding that the US had failed to comply with the earlier rulings, the WTO compliance panel determined that it had not subjected other fishing methods and fisheries to comparable standards, particularly in light of the fact the US has continued since 1991 to assert the dolphin-safe labelling measure "assures consumers" that no dolphins were harmed in the capture of tuna bearing the label. Throughout the WTO dispute, Mexico submitted a host of scientific evidence from the US itself and respected conservation groups that those other methods and non-ETP fisheries were causing tens of thousands of dolphin mortalities in the capture of tuna supplying the American market, including those covered by so-called dolphin-safe labelled products.

Figure 1: Total dolphin mortality (1959 - 2014)



Source: InterAmerican Tropical Tuna Commission

The US has acknowledged that the presence of independent observers increases the accuracy of a dolphin-safe certification. There are observer requirements for non-ETP area fisheries but only under certain conditions. The US does not effectively require observers for its own vessels fishing in the western and central Pacific fishery for purposes of certifying no harm to dolphins. It is therefore much more likely that tuna caught outside the ETP in unobserved fisheries will be inaccurately labelled as dolphin-safe. The compliance panel was convinced that the task of certifying that dolphins were not killed or injured was a complex one that captains were not necessarily qualified to handle. Without the necessary skills to certify whether dolphins had been seriously injured or killed it was difficult for the different certification requirements to be considered even-handed. The compliance panel identified several criteria for evaluating tracking and verification systems, namely, "depth, accuracy, and degree of government oversight." Interestingly, the panel found that the US has effectively allowed industry and private interests to develop the tracking and verification system behind the US dolphin-safe labelling scheme, which it does not itself find inherently problematic. But the result is a compliance system that is much less demanding than the system Mexico must comply with inside the ETP. The compliance panel said that this architecture appeared to create, based on the evidence Mexico presented, "major gaps in coverage" in the tracking and verification system applied to non-ETP tuna fisheries.

Citing a study published last year in the ocean policy journal *Marine Policy* (MP) detailing estimates of illegal and unreported fish in seafood imports to the US, the compliance panel found that a significant amount of fish are imported into the US by first passing through one or more intermediary countries for post-harvest processing and subsequent re-export.❶ The panel said, "The United States has not provided any evidence explaining how canneries are able to ensure that captains' certifications remain with the tuna batches they identify throughout this process." It also said, "The US authorities are not, it seems, able to ensure that they receive information that would enable them to track the movement and dolphin safe status of tuna from the time of catch up to the point of delivery to a US cannery."

Black market tuna

According to data cited in the MP study from US federal agency the National Oceanic Atmospheric Administration (NOAA), Thailand alone accounted for 55 percent of the canned tuna imports into the US in 2011, followed by 13 percent from the Philippines, 10.5 percent from Vietnam, 5 percent from Indonesia, and 4 percent from China. Thailand imports more than 85 percent of the tuna that it processes and subsequently exports. According to the study, "Foreign interests own the large tuna trading companies that

supply the Thai canneries, and tracking the routing of seafood products through these companies remains a challenge for chain of custody and traceability issues." Finally, the study found that "Thailand is the major port of landing for tuna fished in the Indian Ocean, where at least 50 percent of the tuna fishery is subsistence or small scale. Tuna vessels operating in small-scale fisheries in the developing world generate significant bycatch of sea turtles and marine mammals, where such tuna catches are also beset with under-reporting problems, according to studies from FAO and the environmental group WWF.

The MP study also found illegal tuna fishing in the Indian and Pacific Oceans is facilitated by the lack of seafood traceability when supplies are consolidated during transshipment at sea. It said, "This appears to be the case for tuna processed in Thailand, the hub of tuna seafood processing in Southeast Asia. Illegal activity by small and medium scale longliners and falsification of tuna documentation is also a concern." The MP study points out that of the 85 percent of tuna imported by Thai processors, only 30 percent meets the relatively strict traceability requirements of the EU, and almost all of that raw material is used to supply tuna products to the 28-nation bloc. Much of the untraceable balance is what finds its way into the comparatively lax US market.

The demonstrated inability of US authorities to reconcile a lack of capacity to trace and verify not only the source of tuna entering the market, but also its dolphin-safe status, is further highlighted and acknowledged by the fact that the country entered into a settlement agreement late last year on a lawsuit brought by several environmental groups before the US Court of International Trade.² That lawsuit charged that, for all fisheries other than the ETP, the US has failed to implement mandates under its Marine Mammal Protection Act (MMPA) requiring traceability and proof that marine mammals were not harmed in the capture of fishery products entering the domestic market. The US Department of Commerce has since published proposed rules to implement this settlement agreement and finally address mandates under the MMPA. However, the draft rules suggest adding yet another five years to the compliance deadline, and also lack clarity in terms of ensuring traceability of tuna products as well as true verifiability of dolphin-safe claims for imported tuna. The result of the US dolphin-safe labelling system architecture is that, while every step of the catch and canning process is traceable and verifiable for tuna caught in the ETP, tuna caught outside the ETP supplying now virtually all of the dolphin-safe tuna in the US market cannot be traced back to its point and circumstances of capture. The US has failed to either put into place a system with appropriate monitoring and tracking or to modify the content and meaning of the current label.

The Obama Administration announced an action plan this past March, meanwhile, aimed at implementing recommendations put forward by a Presidential Task Force to tackle illegal, unreported, and unregulated (IUU) fishing. As part of these efforts, a process is underway to identify the types of information and operational standards needed for a seafood traceability programme, focused initially on species particularly at risk from IUU fishing. The National Ocean Council Committee (NOC Committee), now steering the regulatory process to establish the traceability programme, has sought input on the principles determining "at risk" species, as well as a draft list of species. In these documents the NOC notes that major tuna harvesting and processing nations are engaged in significant law-breaking that is defrauding the American consumer. For example, the action plan reads, "There has been a history of fisheries violations in certain tuna fisheries and in certain regions. Further, harvesting, transshipment, and trade patterns for tunas can be complex, in particular for certain value-added products. While there are multilateral management and reporting measures in place for many stocks within the tuna species group, these management and reporting mechanisms vary in terms of information standards and requirements and do not all provide a complete catch documentation scheme. Tunas are also subject to complicated processing that includes comingling of species and transshipment." In order to address the problem of transshipment and non-traceability of tuna the traceability programme would have to impose a comprehensive catch documentation scheme on major producers like Thailand.

Article XX

In the original case, a 2011 WTO panel had invoked the doctrine of “judicial economy” and declined to rule on Mexico’s claim under the global trade body’s General Agreement on Tariffs and Trade (GATT-1994) Articles I:1 and III:4. The Appellate Body expressed disapproval of the panel’s approach, so in April the compliance panel ruled on those claims as well the TBT arguments. In response the US raised an Article XX defence – general exceptions to the multilateral trade rules – arguing that its discrimination against Mexican tuna products was justifiable as necessary to protect human, animal or plant life, as well as the conservation of exhaustible natural resources. Although the analysis under GATT Articles I:1, III:4 and XX is not completely identical to that under Article 2.1 of the TBT Agreement, the legal standards are closely similar, and the compliance therefore found violations of Articles I:1 and III:4 that could not be excused under Article XX. The panel said that the US could deny tuna caught by setting on dolphins from the dolphin-safe label as a measure justified under XX(g) but that the different certification, tracking, and verification requirements continued to be problematic.

Cooperation, market access, responsibility

Only concerted efforts by nations working together can protect the global commons. Individual countries, making different choices and pursuing policies however well-intended, cannot produce the positive progress that is urgently needed to ensure the sustainability of our resources for the generations to come. The AIDCP is one example of an initiative by a group of countries in the area of international fisheries management. As Mexico has stated, the unilateral actions of the US on the dolphin safe labelling issue are not only inconsistent with that agreement’s objectives, they are also undermining its effectiveness.

All the US has accomplished during the past six years of litigation at the WTO since the Mexico filed its second complaint on the subject, is to deny its consumers a meaningful and credible dolphin-safe label for canned tuna products, while providing a market incentive for the use of potentially destructive fishing practices – including fish aggregating devices (FADs) – in the fisheries that supply virtually all of the canned tuna products to the US. Mexico has made it clear that it will continue to resist the US’ efforts to force Mexico to shift to using FADs, which have been repeatedly and roundly condemned by environmental groups because of irreparable harm caused to tuna stocks, sharks, turtles, dolphins, and other marine species through wasteful bycatch and discards. Over the past 25 years, the US has effectively either banned or restricted the access of Mexican tuna to its domestic market, denying Mexico’s tuna producers the opportunity to effectively trade its product. It has falsely stigmatised Mexican tuna before consumers by generating or allowing others to generate incorrect negative perceptions concerning the true level of protection afforded to dolphins under the AIDCP, on the one hand, and falsely positive perceptions of the true level of dolphin protection for all tuna caught outside of the ETP.

Nonetheless, the end of this process is near, as Mexico will now certainly consider petitioning the WTO for the right to impose penalties against other products entering Mexico from the United States. Mexico has made it clear that it will see this matter through to its conclusion. At stake are the principles of multilateral cooperation in the resolution of international environmental challenges and sustainable fisheries management; the responsibility of parties to international agreements to live up to their obligations; and the critical importance of nations to ensure that eco-labelling schemes are devised and regulated in a manner that ensures they are not used to deceive consumers and distort trade. A continued failure by the US to truly comply with this series of WTO rulings will severely undermine all of these important principles.



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① Pramod, Ganapathiraju, et al. “Estimates of illegal and unreported fish in seafood imports to the USA.” *Marine Policy* 48 (2014): 102-113.

② US Court of International Trade, Center for Biological Diversity et al v Penny Pritzker, Jacob Lew, Jeh Johnson. Case 1:14-cv-00157-MAB.

FISHERIES

Using trade tools to address illegal, unreported, and unregulated fishing

Margaret A. Young

What trade tools are being deployed to tackle black market fishing activities? How can these be used more effectively?

Illegal, unreported, and unregulated (IUU) fishing is a major problem with worldwide social, environmental, and economic impacts. As well as being a major contributor to the global ecological crisis of overfishing and biodiversity depletion, IUU fishing harms legitimate fishing activities and livelihoods, jeopardises food security, consolidates transnational crime, distorts markets, and undermines ongoing efforts to implement sustainable fisheries policies. Effective regulatory oversight and implementation of measures to address these activities is essential to avoid major adverse implications for present and future livelihoods that extend beyond fisheries to ecological balance itself. In order to solve these problems, measures that impose stringent import documentation, certification, or traceability requirements, regulate transshipment, or prohibit the trade in relevant fish products are very important. As with every major regulatory policy, such measures are likely to affect the existing conditions of trade between countries, many of whom are WTO members.

The challenge of IUU fishing

Attempts to combat IUU fishing have long occupied states and their affected constituents, particularly within the UN Food and Agriculture Organization (FAO), and other forums such as the UN General Assembly. Drawing on the definition adopted by the FAO, IUU fishing is "illegal" when it contravenes the laws and regulations governing waters that are part of a coastal state's jurisdiction, or that are part of areas beyond national jurisdiction known as the high seas, or when it violates conservation and management measures required by relevant fisheries management organisations or international conventions. It is "unreported" when not fulfilling relevant reporting procedures, including the compilation and monitoring of regional and international fisheries data and quotas. It is "unregulated" when it is conducted by vessels without nationality or by those flying the flag of a state that is not a party to a relevant regional fisheries management organisation (RFMO). IUU fishing is addressed by a range of legal and management mechanisms at the international, regional and domestic levels. These centre on monitoring, control and surveillance, the regulation of landings within port states – including through the FAO Agreement on Port State Measures – the obligations of states that authorise or "flag" fishing vessels, and the allocation of fishing rights.

Traded IUU fish

The global losses attributed to IUU fishing products could be worth between US\$10–23 billion annually, representing between 11 and 26 million tonnes.^① Recent estimates suggest that IUU fishing makes up between 13 and 31 percent of reported catches and more than 50 percent in some regions. Targeted fish from the high seas include tunas, billfish, and sharks, as well as deep-water species such as roughy, toothfish, and squid. Important regions of origin for IUU fish products are the Southeast Atlantic, Eastern Central Pacific, and the Southeast Pacific. The products of IUU fishing are often traded and transported across multiple jurisdictions, and the supply chain that links producers, processors, retailers and final consumers can be very long. One of the most important destinations for IUU fishing is the US. It is estimated that between 20 and 32 percent worth US\$1.3–2.1 billion of wild-caught seafood US imports are illegal, facilitated by opaque supply chains such as Chinese reprocessing, and illicit sources of fish from

countries such as Thailand.² In the 28-nation EU, meanwhile, IUU fishing imports are estimated to be 10 percent of the total value of fish and fish product imports.

Catch documentation

Prominent among trade measures to address IUU fishing are catch documentation schemes. The EU Regulation on IUU Fishing uses a catch certification scheme to ensure the effectiveness of its prohibition on the import of fishery products obtained from IUU fishing into the EU. The catch certificate contains information such as vessel name, fishing licence number, flag state, description, date of catch, and estimated weight for all landings, transshipments, and imports of fish products into the EU. It also requires competent authorities of the flag state relevant vessels to certify that the catches concerned have been made in accordance with the applicable laws, regulations, and international conservation and management measures.

At the multilateral level, customs requirements similar to catch documentation schemes have been agreed by states party to CITES, as a means of implementing their agreement to restrict the trade in listed threatened species. In the context of fisheries, CITES parties are increasingly seeking to include marine species as threatened, despite opposition from commercial fishing groups in some countries. Although CITES does not specifically address IUU fishing, its parties may agree that particular commercially exploited species be listed under one of the annexes of the Convention, after which any trade or take from the sea will be subject to a strict permit and certificate authorisation system.

The WTO requires Members to ensure that trade measures are non-discriminatory. For example, the EU regulation must be implemented in an even-handed with respect to EU and non-EU countries. Moreover, if catch documentation schemes amount to "technical regulations" under the WTO Agreement on Technical Barriers to Trade (TBT Agreement), they must not be prepared with a view to creating unnecessary obstacles to trade and must not be more trade restrictive than necessary to fulfil a legitimate objective. There are a range of legitimate objectives listed in the TBT Agreement that align to the purpose of catch documentation schemes, including "national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment." In addition, technical regulations that are based on international standards attract a rebuttable presumption that they are not an unnecessary obstacle to international trade. To this end, it is worth noting that the FAO is currently working on the development of best-practice guidelines for catch documentation schemes.

Traceability requirements

With their reliance on disclosure of information, traceability requirements such as those developed to address food safety are similar to catch documentation schemes. Traceability is facilitated by electronic storage of data as well as scientific and technological developments relating to the genetic identification of products. The EU Regulation on IUU Fishing, for example, "seeks to ensure full traceability" of marine fishery products traded with the EU through its catch documentation scheme. In the US, a Presidential Taskforce on Combating IUU Fishing and Seafood Fraud proposes to increase the information available on seafood products through additional traceability requirements. Moreover, while the US Food and Drug Administration (FDA) currently collects information on the identity of imported seafood products, the proposals aim to coordinate efforts across many agencies relevant to fisheries and trade. It will initially apply to "at risk" species, and also aim to make available certain types of captured information – such as species, geographic origin, means of production, and gear type – to the end consumer.

If the different conditions in various fisheries and regions leads to an uneven application of traceability requirements this must, however, be accounted for. Under the General Agreement on Tariffs and Trade (GATT-1994), for example, such treatment could be justified as necessary to protect public morals, to protect animal or plant life or health, or to secure compliance with relevant domestic laws, or even because it relates to the conservation of exhaustible natural resources. Moreover, as with catch documentation schemes, traceability requirements might be considered to be "technical regulations"

Port state measures

The FAO Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing was adopted by the members in 2009. The Agreement will enter into force thirty days after ratification by 25 members and, as of August, 13 players had done so.

under the TBT Agreement. If so care must be taken to ensure that the requirements do not create unjustifiable technical barriers to trade. Greater attention is also needed on the question of how public measures ensuring traceability sit alongside private standardisation, certification, and labelling schemes.

Vessel lists and the prohibition on imports

Schemes to identify products from IUU fishing rely heavily on vessel lists. Negative lists, or "blacklists," operate to identify violating vessels. Positive lists, or "white lists," on the other hand, oblige participant states to only allow vessels deemed to be of "good standing" to land or tranship catches. According to the EU Regulation on IUU Fishing, trade in fish products from IUU fishing should be prohibited. This is made effective with a catch certification scheme applying to all traded fish products described above as well as through a negative list. The European Commission works with EU member states, third states, and other bodies to identify fishing vessels suspected of carrying out IUU fishing. If these inquiries lead to a finding that a fishing vessel is engaged in IUU fishing and that the competent flag state has not taken effective action, the Commission places the vessel on a special IUU vessel list. This process is based on a risk-management approach that is intended to systemically identify risk and regularly monitor and review outcomes. The procedure for listing IUU vessels includes hearing rights for the vessel owners or operators. If relevant flag, port, coastal, or market states fail to take appropriate measures to ensure compliance by the vessels, the EU may adopt trade measures, which include the prohibition of fish imports and the non-acceptance of accompanying catch certificates.

Following these procedures, in March 2014, the EU decided to restrict the import of fish products from Belize, Cambodia, and Guinea. Fiji, Vanuatu, and Togo, which had been identified as possible violators, were not addressed by the ban because they were deemed to have made progress against IUU fishing. In October 2014, the ban on Belize was lifted while a new ban on Sri Lanka was imposed. This last April, Thailand was put on formal notice, and inquiries into Ghana and Curacao are continuing. Bilaterally, too, reference to IUU vessel lists appear in agreements by states seeking access to another state's exclusive economic zone (EEZ). The fisheries partnership agreement between the EU and Morocco, which provides EU vessels access to Moroccan waters in exchange for financial contributions, lays down cooperative procedures and licensing provisions that prohibit vessels that have been legally listed as IUU vessels. The US approach allows for the unilateral prohibition of fish imported from countries engaged in IUU fishing in certain circumstances. The relevant legislation requires the secretary of commerce to identify, in a biennial report to Congress, those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two years, in IUU fishing. The US then consults with the identified countries, and if these fail to demonstrate that they have adequately addressed the relevant violations, they may be subjected to trade bans or a denial of port privileges by the US.

It is important to note that vessel lists are increasingly compiled through cooperation between relevant agencies. This accords with trade law requirements that emphasise the need for clear, transparent procedures in order to ensure that there is no arbitrary or unjustifiable discrimination, or disguised restrictions on international trade. Moreover, the measures to compile vessel lists and restrict the import of illegal fishery products are consistent with the FAO's International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing, under which states have agreed to "take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing being traded or imported into their territories" (para 66). Such trade measures may be used in "exceptional circumstances" (para 66) where other measures have proven unsuccessful. Practice demonstrates that a graduated set of trade measures normally applies before the most trade-restrictive measure is imposed.

In addition to the current or proposed use of catch documentation, traceability, and market denial measures, there are a range of other mechanisms to address IUU fishing that have a trade dimension, including domestic prosecutions of importers for trade

violations, reform of subsidy rules, and marine protected areas. Private initiatives are also increasingly important, for example, industry groups have sought to remove IUU fishing products from the supply chain through voluntary arrangements. The European Fish Processors and Export/Import Association (AIPCE) purchase control document introduced for white fish from the Barents Sea in 2006 is now replicated in other private and RFMO schemes. Voluntary programmes exist for the certification of sustainable fisheries.

Recommendations

Bearing in mind that approaches to address IUU fishing must be developed in accordance with international law, this article concludes with the following recommendations. The unilateral trade measures identified, such as the EU catch documentation and import prohibition scheme, appear to have been designed to ensure that they are fair, transparent, and non-discriminatory. The aim to combat IUU fishing conforms to legitimate objectives expressly recognised in trade law, such as national security requirements, the prevention of deceptive practices, and the protection of human health or safety, animal or plant life or health, or the environment. The implementation of these measures will need to continue in this way, and it is important to note that the import prohibitions are preceded by the use of less trade-restrictive measures, so that more restrictive measures are only used in case of need.

Second, while the prohibition of imports and other trade measures are currently most often developed on a unilateral basis, the effectiveness of these approaches would be strengthened by a more collective or regional approach, so that the products of IUU fishing are not merely traded in other markets. While some efforts have already been made by RFMOs, such as CCAMLR, this could be extended. This would involve cooperation by states, the FAO and/or RFMOs, and possibly even private bodies, in the following: compilation and sharing of lists of IUU vessels; the harmonisation of catch documentation schemes and traceability requirements; and the prohibition of fish products being imported, landed, or transhipped by states who have failed to take appropriate measures to ensure compliance by their vessels. The current work of the FAO in elaborating voluntary guidelines on catch documentation schemes is of particular relevance.

Third, current negotiations on regional trade agreements (RTAs) are important avenues for trade-related IUU measures to be developed through consultation. There is scope, for example, for the inclusion of IUU obligations in the agreements or associated side-agreements and environmental chapters. Some RTAs, such as the Trans-Pacific Partnership (TPP) still under negotiation, involve multiple and significant fish producing and consuming nations and include a significant proportion of global trade. Fourth, the cooperation on the use of trade-related measures should be open and transparent whether the relevant trade measures are principally state based – such as a joint import ban – or whether they involve private initiatives – such as purchase control documentation within a supply chain. Industry groups and other private actors should maintain good practices in designing and implementing their initiatives, including in consulting with affected stakeholders and proceeding with transparency, openness and impartiality. As far as possible, there should be mutual supportiveness of the trade, environment, and law of the sea regimes as well as policy coordination within states.

Analysis on the WTO-compatibility of the trade measures outlined in this article can be found in the longer research piece published by the E15Initiative: Trade-related measures to address illegal, unreported and unregulated fishing. Implemented jointly by ICTSD and the World Economic Forum, the E15Initiative convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business, and civil society geared towards strengthening the global trade and investment system for sustainable development.



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① Agnew, David J., et al. "Estimating the worldwide extent of illegal fishing." *PLoS one* 4.2. 2009.

② Pramod, Ganapathiraju, et al. "Estimates of illegal and unreported fish in seafood imports to the USA." *Marine Policy* 48: 102-113. 2014.

NATURAL RESOURCES

Responsible natural resources trade through supply chain due diligence

Marie Wilke

How to ensure socially-responsible trade in the face of long and complex global value chains?

Supply-chain due diligence is increasingly becoming a business reality and a regulatory requirement. The most recent example for mandatory regulation is a [proposal](#) by the European Parliament to translate the Organisation for Economic Co-operation and Development's [Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#) into law. The draft rule sheds light on a number of trade regulatory mechanics of supply chain due diligence.

Risk-based due diligence has been enshrined in a number of national and regional laws ever since the UN confirmed the corporate obligation to respect human rights in its [Guiding Principles on Business and Human Rights](#) endorsed in 2011. Principles 13 and 17 specifically say that the corporate responsibility to protect also extends to adverse human rights impacts "directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts." To fulfil this objective, the UN Guiding Principles demand the establishment and use of due diligence processes, defined as an "on-going management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances to meet its responsibility [...]." Today the responsibility to systematically track and address human rights risks along the entire supply chain is reflected in a number of national and regional laws. On the one hand, these laws and the principles are based on the understanding that downstream companies, those closest to the consumer, possess the greatest leverage to generate change in the producing upstream industry where most human rights violations occur. On the other hand, they reflect the understanding that human rights assessments must be risk-based, in order to ensure targeted action that is context-specific.

Upstream, downstream responsibilities

Some adverse human rights implications are understood to be paramount in certain sectors that the different actors along the supply chain would benefit from further detailed guidance. The OECD has been working towards tools to address specific risks within five selected sectors, namely the extractives and financial sectors, as well as agricultural, textile and garment, and minerals supply chains. The nearly 160-page OECD Due Diligence Guidance is by far the most developed among these. At its core is a "Five-Step Framework for Risk-Based Supply Chain Due Diligence in the Mineral Supply Chain," compelling for both its simplicity and comprehensiveness. According to the framework, downstream and upstream companies are expected to establish strong company management systems; identify and assess risks in the supply chain; design and implement a strategy to respond to the identified risks; and publicly report on their supply chain policies and practices. Companies operating at a point in the supply chain identified as a "point of transformation and traceability," also need to carry out independent third-party audits and make these available to their business partners.

In the minerals sector smelters and refiners have these characteristics and responsibilities. Each mineral needs to pass through a smelter or refiner along its lifecycle, of which only a limited number operate globally, and these are usually the last point in the supply chain where the origin of a mineral and/or metal can be determined. Risks in the supply chain upstream to the smelters and refiners are thus primarily addressed and managed by these entities whereas companies further downstream can identify and address their risks by

ensuring that they buy from smelters and refiners that act responsibly. This approach ensures coherence and coordination in the upstream sector and avoids double auditing. Audited companies are thus the pivotal point that connects the upstream with the downstream, effectively interlocking the downstream sector's leverage over its supplying smelters and refiners, with the latter implementing power over the upstream sector. It is important to note that this process is not static but, instead, is envisioned to be evolving. Lack of transparency and missing audits do not automatically result in a "blacklisting" of upstream companies. Instead, downstream and upstream companies are expected to jointly work towards responsible purchasing, and the audits play an important role.

Due diligence vs. certification

As a result due diligence fundamentally differs from other approaches. Whereas certificates, labels, and trade bans seek to generate full guarantees for individual products, due diligence is enforced at a company level, and on the basis of minimum standards for mitigation efforts. The difference is clear when comparing the OECD Due Diligence Guidance with the "blood diamond" Kimberley Process Certification Scheme (KPCS).

The supply chains covered by the two systems are quite similar in some respects. They both relate to extractive industries. Artisanal miners and the informal economy play an important role in each. Crucial points of transformation and traceability can be identified. All covered supply chains have a well-documented history of financing armed conflicts in some of the poorest regions of the world. Breaking the link between trade in the concerned resources and the financing of conflict is the main objective. But, on the other hand, these two systems designed to address risk derived from a natural resource trade could not be more different. The Kimberley Process is essentially a state-to-state system, whereby states guarantee by means of a certificate that their rough diamonds were not financing rebel movements and agree to trade only with other participating countries that meet the same minimum requirements. In addition, the Kimberley Process is limited to trade in "rough diamonds used by rebel movements to finance wars against legitimate governments," whereas the OECD Due Diligence Guidance concerns trade in minerals "associated with serious human rights abuses, direct or indirect support to non-state armed groups or public and private security forces, bribery and fraud, money laundering, [and irregularities in] payment of tax fees and royalties due to governments."

This state-centred focus has not only kept the 81 participating countries representing approximately 99.8 percent of the global rough diamond production from updating the Kimberley Process (KP) mandate – for example, to also include situations of armed conflict and serious human rights violations – but has also often paralysed the organisation in cases of non-compliance. For instance, due to its limited focus on the financing of rebel movements the Kimberley Process allows for trade in diamonds from the Zimbabwean Marange diamond fields, despite the meticulous documentation of serious human rights violations by government forces in the region.^①

Events in the Central African Republic (CAR) offer another recent example of the Kimberley Process' inability to properly address the problem of blood diamonds. In May 2014, a shipment of 6634 carats of falsely certified diamonds was seized in Antwerp, Belgium with the Kimberley Process Working Group of Diamond Experts noting that it was highly probable that the diamonds had originated in CAR. Since its suspension from the process in May 2013, 140,000 diamond carats, worth around US\$24 million US, are estimated to have been smuggled out of CAR.^② The incident is by no means an isolated case and the industry is conscious of the risks associated with KP certificates. At the same time, the continuous high regard for the system in the international community has resulted in a situation where the downstream industry is largely discharged of its responsibility, with certificates cleaning a diamond's status rather than certifying its clean status.

In contrast, supply chain due diligence places the responsibility to identify and mitigate risk on individual companies, demanding corporate action not only but especially where inter-state systems fail. In the case of conflict minerals, this effectively means that downstream companies are under an obligation to identify the risk of buying minerals

Addressing human rights risks

The California Transparency in Supply Chains Act, the UK Modern Slavery Act, the France National Assembly's Legislative Bill Relating to the Duty and Vigilance of Parent and Subcontracting Companies and section 1502 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act offer some examples of various national and regional regulatory efforts to track and address human rights risks along the supply chain.

or metals produced by smelters and refiners who do not conduct due diligence and who source irresponsibly, in particular from conflict-affected and high-risk areas. Smelters and refiners, on the other hand, may be operating with existing certificates, including those from inter-state systems and industry schemes, but are nonetheless under an obligation to conduct their own due diligence investigations into local realities.

Translating due diligence requirements into trade regulation

Translating the Kimberley Process Certification Scheme into a trade regulation was fairly straightforward as it prohibits trade in non-certified rough diamonds. The WTO granted a multi-year waiver for the scheme in February 2003 and this has been renewed numerous times since. A first, though only partial, example of translating the OECD Due Diligence Guidance into law is section 1502 of the US Dodd Frank Act. Under the Act and subsequent rulings by the Securities and Exchange Commission (SEC), US listed companies are under an obligation to report on their mineral due diligence processes and to disclose the status of their products as "DRC conflict-free" or "Not DRC conflict-free," although the origin-disclosure requirement is currently postponed and subject to a pending legal challenge. If upheld, the law goes beyond international standards, as it would require companies to trace the origin of the minerals used in individual product lines and to label the latter accordingly. As a consequence of this feature companies interpreting the law often ignore one of the most important features of risk-based due diligence, namely, the recognition that risk mitigation should be evolving and gradual. For other issues the law stays behind international standards.

The EU has over the last year been engaged in a similar process of translating a risk-based due diligence standard for mineral supply chains into law. In March 2014 the EU Commission's Directorate General for Trade proposed a first draft outlining a voluntary opt-in scheme under which approximately 21 European smelters and refiners could have chosen to voluntarily self-certify to be complying with the OECD Due Diligence Guidance. There was no provision for downstream companies. Instead the aim was to exclusively build on the notion of 'crucial points of transformation and traceability'. After a lengthy process in the European Parliament, which culminated in a strong proposal by the plenary calling for a mandatory approach applying to the entire supply chain in accordance with the OECD Due Diligence Guidance, the draft law will soon be subject to final dialogue negotiations between the Commission, the Parliament, and the European Council.

During discussions in Parliament a number of alternative options were tabled with some aimed at finding a middle ground. These included one proposal to adopt the Commission's approach on a mandatory basis and to complement it with a voluntary labelling component for manufacturing companies. Under that hybrid system, all raw materials entering the EU would have been captured by the due diligence obligations except those produced within the 28-nation bloc, while minerals entering as components of part or final products would have flown under the radar. Besides these potentially discriminatory and inefficiency aspects, there were great concerns that the system would create the opposite of a level playing field by singling out the 21 European smelters and refiners importing raw materials out of 450 globally, creating further incentives for European manufacturers to source from the non-European metals industry and to outsource their practices to import part-products instead. There was also a concern of subjecting human rights abuses as grave as those associated with armed conflict to a consumer-choice label.

By turning this the other way around and imposing obligations on all supply chain actors, the current Parliamentary proposal is expected to create a multiplier effect, whereby the non-European parts of the supply chain will be affected due to market pressure within the EU, giving security to both producers and consumers. The final Parliament outcome, however, is not particularly detailed regarding the obligations for downstream companies. Yet the text suggests that it is meant to apply to all European and non-European companies that first place products containing the covered minerals –for the moment tin, tantalum, tungsten, and gold – on the market, irrespective of their form. The draft law expects that these downstream companies would conduct due diligence by establishing an internal management system, identifying and mitigating the risk to be sourcing metals

from a non-responsible smelter or refiner which may be done collectively through industry schemes. Finally, the Parliament's proposal includes an obligation for public disclosure on company websites and in management reports, where available. All of these obligations would come in different degrees of strength to be "appropriate for a company's individual circumstance, including its size, role and position in the supply chain."

The system does not, however, foresee product tracking, labelling, or a certification mechanism for downstream companies under which companies are shown to be compliant. Enforcement relies instead on public disclosure and on ordinary non-compliance sanctions available under national civil and criminal law. This includes, in particular, sanctions for cases of fraudulent reporting or omissions and negligence in due diligence as they apply to other due diligence systems such as those on anti-money laundering in the finance sector. In accordance with practice under other EU regulations, for instance in the areas of food and health standards, EU member states would be free to request domestic companies to register with local chambers of commerce or local authorities for the purpose of being included in a general register of qualifying entities. On the other hand, foreign importers who fall within the scope of such regulation could register with the customs authorities, thereby declaring that they fall within the scope and will comply with the due diligence and public reporting requirements. No further action by the customs authority, however, would be expected as there is no product and hence import-component in the law.

Lessons for other sectors

Public discussions in Parliament indicate that two main convictions informed the outcome. First, the notion that each economic actor should not only be required, but should be able to participate and that such holistic action requires common but differentiated responsibilities tailored to a company's size. There was a clear fear that a voluntary system would create inefficiencies working in favour of large companies subject to stronger market pressure, while small-and-medium sized enterprises would be excluded for cost reasons. The key word is now "burden sharing." Second, the concept that a system must be about addressing risks and generating change, but should not be blacklisting certain regions or industries or expecting full guarantees. The aim is to incentivise more responsible trade and not to ban trade that risks being irresponsible. Especially in the context of trade from conflict-affected and high-risk areas and in industries relying on artisanal miners, this is crucial, as international regulation should incentivise responsible purchasing that helps rebuild local economies. The aim should not be to "de-risk," and have industries pull out from the region to purchase elsewhere, thereby destroying legitimate income opportunities. Risk-based due diligence can generate such change in supply chains by making a more responsible standard the norm, while avoiding shock situations that are usually created by trade bans. In order to achieve this, it is crucial that the gradual and evolving nature of due diligence is fully understood, and that it is not turned into a black-and-white labelling or certification system inserted.

Similar, if not identical, convictions should drive efforts in other areas and for other risks. Risk-based due diligence has the potential to properly address labour rights, environmental protection, carbon footprints, and many other challenges as it is based on the idea of addressing the most frequent risks and doing so in a joint, harmonised way while keeping the responsibility within individual companies. This holds true for the ongoing process of developing guidance for the apparel industry on the basis of the five-step due diligence framework, as well as for ongoing discussions to develop a specific supplement to the OECD Due Diligence Guidance regarding precious stones.

The views expressed in this article are those of the author alone.



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① See the Zimbabwe [Campaign of Global Witness](#). In response to the KPSC's reaction to the Marange human rights violations, Global Witness resigned as one of the two formal Civil Society Observers to the KPSC in 2011.

② Bloomberg, "Smugglers Defy Conflict-Diamonds Ban in Central African Republic", March 23 2015.

BIOTECHNOLOGY

GMO trade in a world of fragmented consumer preferences and needs

Colin A. Carter and K. Aleks Schaefer

This article looks at how to keep genetically modified and conventional agricultural products separate from farm to market to ensure a wide array of trade opportunities, with a particular focus on developing countries.

The global cultivation of genetically modified (GM) crops has expanded dramatically over the last two decades from 4.2 million acres in 1996 to approximately 45 million acres today. Complementing the rapid uptake of GM technology in farming, the characteristics of agricultural biotechnology are changing. Non-food, field crops like maize, soybeans, canola, and cotton have historically been the focus of genetic engineering research programs, but while these commodities remain prominent, an increasing number of alternative GM plants and animals are undergoing development with transgenic traits. The array of modifications has also expanded from traditional producer-oriented improvements, such as herbicide tolerance and insect resistance, to include disease resistance and consumer-oriented improvements, including cosmetic and nutritional alterations.

Given the rapid increase in the production of genetically modified organisms (GMOs) and the ever-expanding capabilities of biotechnology applied to food production, it is surprising that only 29 countries currently produce GM products. In sub-Saharan Africa—the poorest region in the world with the lowest agricultural productivity—only three countries produce GMOs including South Africa, Burkina Faso, and Sudan.^① In fact, many countries have instituted outright bans on imported food containing GM products. One of the most high profile examples was Zambia's ban on GM food imports, including famine relief shipments in the face of millions suffering from starvation, in 2002. Countries across Africa and Asia cite the risk of future export losses as a rationale for rejecting GM technology because supermarket chains in major markets like the EU and Japan have instituted private standards to avoid GM ingredients in the products they sell.^②

A comprehensive regulatory framework for coexistence

In this article we define “contamination” as the unwanted introduction of GM material in the non-GM supply with negative market consequences. The food, feed, and environmental safety issues associated with GM crops are not being questioned here. In truth, the threat of commercial risk associated with the production and sale of GM products may be greatly exaggerated. Coexistence mechanisms that allow for the simultaneous cultivation and sale of GM, organic, and conventional agricultural commodities exist in many countries. When these strategies are successfully employed, farmers can choose between realising the benefits of biotechnology or receiving the price premiums linked to non-GM and organic products. In instances where price premiums for organic and conventional products and the risks of contamination are high, many private companies have instituted voluntary standards, known as identity preservation (IP) systems, to preserve the purity of highly valued product traits. These systems create stringent handling processes that require strict separation to be maintained from germplasm or breeding stock to the processed product on the retail shelf. These “closed loop” channels reduce the need for additional testing and auditing and provide assurances to buyers in foreign markets.

However, maintaining effective coexistence is not always a simple task, even when IP systems are in place. The risks of mis-labelling and consumer fraud increase under IP systems because sellers know more about the final attributes of marketed products than buyers. Multiple market failures throughout the supply chain associated with coexistence highlight the need for government intervention. A country seeking to successfully

segregate organic and conventional products from GMOs must establish the rules and protocols for coexistence. Some countries allow producers to voluntarily identify their products as GMO free even in the presence of "adventitious" material, as long as the "adventitious" material is less than some tolerance threshold. More controversially, some countries require producers to label their products as containing GMOs if the percentage GMO content exceeds a predefined threshold level. A comprehensive regulatory framework for coexistence begins with a pre-market food, feed, and environmental biosafety approval process, extends into and out of the farm gate, continues through downstream production, and stretches even beyond the end-consumer with the establishment of ex post civil laws, which assign liability in the event of commingling. In countries with poor legal the costs of implementing these schemes may exceed the benefits of adopting biotechnological innovations.

Key steps

Before a GMO event is approved for commercial production, it usually undergoes a biosafety assessment and various field trials, like those being conducted for bioengineered late-blight resistant potatoes in Bangladesh, India, and Indonesia. A biosafety regulatory framework typically includes laws and regulations to assess, manage, and communicate the biosafety profiles of GM technologies. The regulatory standards, however, to establish biosafety vary dramatically among countries. At one end of the spectrum, some countries prohibit the authorisation of GMO events until they are proven benign in virtually all respects. This approach weighs only the risks of introducing a GMO, and ignores the potential benefits.^③ At the other end of the spectrum, countries that approve GMO events as long as they are sufficiently similar to existing products ignore the potential market effects for producers of organic and conventional agricultural products. Although countries have the sovereignty to weigh the potential benefits and risks of GM technology, inconsistent standards may also conflict in the international trade policy arena. In 2006, for example, the WTO ruled that the EU's application of the precautionary principle constituted a *de facto* ban on over 20 GM products from the US, Canada, and Argentina. Potential changes to the 28-nation EU's GM food regulatory approval process continue to attract attention and cause trade tensions.

Cross-fertilisation due to pollen flow between neighbouring fields of organic or conventional crops by GMOs is a threat to successful coexistence. Policymakers have proposed three alternative mechanisms by which to manage this risk: zoning restrictions, isolation distances, and pollen barriers. Zoning restrictions, which are the least efficient of the proposed policies, permit the production of GMOs in only some regions. Isolation distances, on the other hand, allow farmers to grow GMOs in any region, but require that GMO crops be planted at a minimum distance from non-GM crops. Pollen barriers are similar to isolation distances with the exception that, rather than mandating a minimum distance, they require a buffer crop to be planted between GM and non-GM fields. The pollen barrier reduces the extent of cross-fertilisation much more effectively than an isolation perimeter of bare ground of the same width.^④

Some risks do persist. In 2007 organic alfalfa producers in the US were concerned that the introduction of GM alfalfa would lead to the contamination of organic and conventional alfalfa grown in nearby fields and result in decreased access to domestic and foreign markets for non-adopters. The Supreme Court in *Monsanto Co. v. Geertson Seed Farms* (2010) granted the Department of Agriculture (USDA) the authority to institute conditional deregulations with coexistence measures, like isolation distances and pollen barriers, to prevent this type of cross-fertilisation. Ultimately, however, the USDA chose to unconditionally deregulate GM alfalfa. China, which has not approved GM alfalfa, responded in 2014 by testing US hay imports and rejecting all shipments containing GM material, resulting in a drop in US hay prices. The threat of contamination does not end on the farm. In the absence of effective stewardship, GM and non-GM crops may become commingled downstream during loading and unloading, storage, and transportation.^⑤ Regulatory bodies and private companies have designed segregation mechanisms to try and ensure that GM and non-GM crops are kept separate beyond the farm gate and that the products can be traced at all stages of the supply chain. These systems allow

regulators to manage liabilities that arise through the production and processing of commodities and, if necessary, to identify the source of any contaminations and withdraw non-conforming products from the market.

Infamous commingling incidents in the US

The stewardship of coexisting GM and non-GM crops has been far from flawless even in countries with advanced regulatory systems such as the US. Instances of approved and unapproved GM grains commingled with other products have occurred for multiple commodities and throughout the value chain. For example, field trials for GM Liberty Link long-grain rice were conducted by Louisiana State University from 1999 to 2001, but this rice variety never completed USDA deregulation before the illegal rice was found throughout the supply chain. Five years after these field trials, in August 2006, Liberty Link rice was detected in a cargo of rice shipped to the EU. In response, the EU implemented emergency measures, which remained in place until May 2010 and greatly reduced imports from the US. In total, this contamination cost US rice farmers at least US\$1.2 billion, and American rice farmers have failed to regain the EU market some nine years after the Liberty Link rice incident.⁶

Another incident of commingling in the US arose from ineffective segregation of an approved GM maize variety. In 1998, the US Environmental Protection Agency (EPA) approved StarLink Corn for commercial production of animal feed, but not for human consumption. In late 2000, StarLink material was found in products intended for human consumption across the US, Japan, South Korea, and Canada. In total, this commingling event resulted in a loss of roughly US\$500 million to non-StarLink US corn growers. The recent commingling of Syngenta's *Agrisure Viptera* corn seed in shipments bound for China resulted in a reported loss of at least US\$1 billion for US farmers and exporters. Additionally, the USDA authorised the cultivation and commercialisation of *Agrisure Viptera* corn in 2010, but Syngenta did not obtain import approval from China. China subsequently banned imports of maize from the US from November 2013 after finding *Agrisure Viptera* traits in corn shipments. Syngenta is currently facing a consolidated lawsuit brought by Cargill, Archer Daniels Midland, and thousands of US farmers in a US District Court for the episode.⁷

Towards coexistence and effective stewardship in the developing world

Incidents of accidental co-mingling in countries with well-functioning legal and regulatory systems like the US should not be viewed as omens that coexistence strategies in the developing world are destined for failure. These events instead lower future implementation costs for developing countries by demonstrating system weaknesses. Many developing countries already employ successful coexistence strategies. China and India both successfully produce and export both GM and non-GM cotton.⁸ South Africa has produced GM crops for more than 10 years and also has a functional biosafety system to manage the risk related to the use of GM products. South Africa successfully trades both GM and non-GM crops using an IP system despite sharing borders with several countries that have banned GM products.⁹

The two greatest hurdles to coexistence in developing countries will likely be governance efforts to prevent and discourage fraud against consumers willing to pay a premium for organic or conventional products and the legal capacity to address liability issues. Any system that allows producers to market a credence good of lower perceived quality alongside a higher quality product that is sold at a premium creates the incentive for low quality producers to falsely claim they are selling the high quality good. Effectively discouraging the marketing of products that contain GM ingredients as non-GM will not be easy. Similar fraud is already rampant throughout the food system in many developing countries. In 2013, for example, many Chinese retailers were punished for mislabelling rat and fox meat as beef and lamb. These and other food safety issues have led to a substantial increase in the demand for products labelled as organic in China in recent years. The Chinese organic industry is now, however, subjected to controversy for widespread mislabelling. In South Africa, products containing five percent or more of GMOs must be

labelled.¹⁰ The country also allows voluntary labelling based on private standards, but many products with non-GM claims have been found to contain GM ingredients.¹¹

Ex post liability schemes for commingling events and consumer fraud require clear rules defining a priori the duty of care for all actors in the supply chain, the conduct that constitutes breach, and a rubric for calculating damages. Some scholars have proposed additional provisions that require the purchase of insurance instruments, require the return of property to its pre-damage state, or mandate liability adjudication by specific quasi-governmental bodies. Alternatively, Common Law countries like the US, Canada, New Zealand, and the UK hold that GM crops do not represent any unique or special risk and traditional tort concepts like negligence and product liability are sufficient to govern the issue.¹² Regardless of the standards chosen, a country must have the capacity to enforce any and all judgements to ensure compliance, though this risk is also not unique to GMOs.

The final challenge for coexistence may have little to do with legal and regulatory capacity. Political factors, including the influence of anti-GMO groups in the policymaking arena, explain much of the relatively low uptake in agricultural biotechnology in the developing world. The 2010 de-commercialisation of Bt eggplant in India is one of the most indicative examples of this phenomenon.¹³ The coexistence of GM and non-GM crops is critical to the future of global agriculture despite the political and regulatory barriers to implementation. In light of current UN predictions about population growth and climate change, we must expand our food production amidst increasingly extreme weather conditions and alternative demands on our natural resources, land, and water. We cannot hope to achieve international food security without biotechnology. Moreover, as incomes in the developing world rise, consumer demand for specialised agricultural products, like organics, will undoubtedly grow. Agriculture markets may be unable to meet this demand unless we can effectively manage conventional agriculture products alongside GMOs.



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CLIMATE CHANGE

UN officials outline draft text for December climate deal

A new informal document with proposed text for a post-2020 climate deal might help advance multilateral climate talks.

The co-chairs of a multilateral group charged with hammering out a new, universal emissions-cutting deal have released a 20-page "non-paper" containing proposed content for a draft "climate package" to be agreed at the Twenty-first Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC COP21) scheduled to be held in Paris, France in early December.

The much-anticipated non-paper outlines both a draft agreement and an accompanying draft decision for a post-2020 climate regime, according to a mandate provided by UNFCCC parties at the conclusion of a negotiating session held in early September, wherein the co-chairs were instructed to slim down and present "manageable options" for the December outcome. A proposed decision on scaling up climate action before the end of the decade is also presented in the non-paper. The various sections of the agreement tend to include language related to principles, commitments, and direction setting, while many parts of the decision set up the modalities for turning the Paris climate architecture into a reality in the coming years.

The informal document will be the basis of discussion among parties during their next and final negotiating round before Paris, due to be held in Bonn, Germany from 19-23 October. The non-paper is considerably shorter and cuts various elements compared to the GNT – agreed in February in the Swiss city after which it is named – and a July "tool" also put forward by ADP Co-Chairs Ahmed Djoghah of Algeria and Daniel Reifsnyder of the US. (See BioRes, [28 July 2015](#))

What's in?

The draft Paris agreement contains 26 articles covering various climate-related efforts and institutional arrangements including, among others, mitigation, adaptation, finance, technology development and transfer, and capacity-building. On mitigation, several bracketed options are provided in the draft agreement for a long-term decarbonisation target, ranging from a peaking of global greenhouse gas (GHG) emissions to "climate neutrality," without suggesting an implementation date nor at what level these might plateau or be reduced. The draft agreement would anchor parties' "intended nationally determined contributions" (INDCs) as the key building blocks of the deal. In preparation for Paris, initial INDC offerings have been put forward by nearly 150 nations to date, outlining at minimum a domestic mitigation pledge.

Looking forward, one proposal would invite parties to communicate their nationally determined mitigation contributions or commitments every five years, while another paragraph suggests parties could also outline their respective longer-term low-emissions development strategies. Rules and guidance for GHG emissions accounting, along with further work, are addressed more closely in the draft decision.

On adaptation, the draft agreement outlines areas for further cooperation, with developing countries specifically singled out as requiring support in this area. It also suggests that parties submit adaptation communications for record in a public registry and that a regular high-level session on adaptation be held. The draft decision, meanwhile, outlines steps for developing modalities for these proposals.

The draft agreement lists an option for scaling up climate finance – among the most heated sources of division – up from the current goal of US\$100 billion per year by 2020. Furthermore, a list of “appropriate steps,” in this area are suggested, including among others prioritising the provision of grant-based and concessional finance to the poorest and most vulnerable; integrating climate considerations into international development assistance; and reducing international support for high-emissions investments.

Options for transparency and review

Given the self-determined nature of the INDCs, many analysts in recent months have highlighted the importance of defining some sort of review mechanism for the Paris deal, in order to scale up commitments over time and hold the line on planetary warming below a two degree Celsius rise from pre-industrial levels. The draft agreement includes three relevant articles along these lines. In the first instance, it would establish a transparency system to provide understanding of how each party’s submission is contributing to aggregate emissions reductions, as well as provide clarity on progress in this area.

Secondly, the draft agreement also envisages a global stocktaking process, on the basis of modalities that would be developed once the Paris package is inked. The decision provides further information, suggesting that the stocktaking would be designed to consider parties’ individual and aggregate implementation efforts. It also provides several instructions for the eventual modalities, specifying these should outline operational processes and procedures, alongside the form and nature of the stocktaking outcomes.

Finally, the draft agreement would establish a process or mechanism to facilitate implementation and possibly improve compliance. The proposal, however, leaves further definition of the mechanism’s functioning to be clarified after Paris.

What’s unclear?

The topical trade-related question of managing the impact of implementation of “response measures” – in other words, the actions parties take in response to climate change, which might have either positive or negative effects on another country in the context of a global economy – is mentioned in the mitigation section of the draft agreement. Bracketed language is also provided, referring to possible institutional arrangements as outlined in the draft decision. The latter, meanwhile, lists only a placeholder for “provision on response measures.” The topic has already proved difficult to navigate in technical UNFCCC discussions for the current period. (See BioRes, [15 June 2015](#))

Mention of the international transfer of mitigation units as an option to tackle climate change has largely been dropped compared with earlier documents. Parties had made a variety of proposals in the GNT on managing the topic to avoid double counting and ensure sound climate outcomes; however, no consensus has yet been reached on the issue. (See BioRes, [18 September 2015](#))

The draft agreement would nevertheless allow countries to “cooperate in the implementation of mitigation activities,” which some experts suggest might leave space for international carbon trading or carbon market linkage further down the line. A veiled reference to establishing a global carbon market is also made in the draft decision through a “mechanism to support sustainable development” that could build, among other things, on the UN’s carbon-offset Clean Development Mechanism (CDM). The mechanism would be further explored and defined after Paris. Another section of the draft decision on rules and guidance for accounting would seek to ensure that internationally transferred mitigation outcomes used by any party to meet domestic targets are supplemental to action within its borders.

Among the other notable trade-relevant issues absent from the co-chairs’ proposed texts are international transport emissions. Some parties had proposed mandating the relevant UN civil aviation and maritime bodies to develop global sectoral emissions reduction targets in their respect areas.

REGIONAL TRADE AGREEMENTS

Trans-Pacific Partnership pact clinched, fisheries subsidies cuts targeted

A new mega-regional trade deal addresses a range of new “21st century” regulatory areas including, among others, environment and conservation issues.

Ministers from 12 Pacific Rim countries concluded a sweeping trade and investment pact on Monday 5 October, following several days of frenzied negotiations and sleepless nights in the US city of Atlanta to bring the agreement across the finish line. With the talks on the Trans-Pacific Partnership (TPP) now complete, participating countries are gearing up to face their next big challenge: building public support and ratifying the pact's terms in their domestic legislatures.

The Atlanta ministerial meeting, originally set for 30 September through 1 October following several days of chief negotiators' discussions, was extended repeatedly as officials worked to reach the long-awaited deal, with the talks finally closing in the early morning hours. “After more than five years of intensive negotiations, we have come to an agreement that will support jobs, drive sustainable growth, foster inclusive development, and promote innovation across the Asia-Pacific region,” ministers for the TPP countries said in a press release announcing the deal's conclusion.

The officials affirmed that the final agreement is one that is “ambitious, comprehensive, high standard, and balanced,” arguing that the terms will be a boon to their countries' respective citizens, which in total number nearly 800 million people. The 12 countries involved – Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam – constitute nearly 40 percent of the global economy, making the sheer size of the pact the largest of its kind outside the WTO.

The TPP will also set new rules for these 12 participants in areas ranging from environmental and labour protections to the treatment of state-owned enterprises and e-commerce. It will equally provide significant market access openings, eliminating or reducing tariffs on approximately 18,000 tariff lines.

While much of the details of the outcome are now coming to light, the full terms of the agreement are not yet public, given that the document now must undergo a legal review, verification, and translation. Officials say that they hope to release the text in the near future, noting that the agreement will have to be public for several weeks or months – depending on the domestic requirements of different participating economies – before being considered for ratification.

Environment chapter in detail

Among the 30 chapters covering trade and trade-related issues, the deal includes an environment chapter designed to cement parties “strong commitment to protecting and conserving” natural resources, according to a US Trade Representative (USTR) summary. The environment chapter will provide opportunities for the 12 TPP parties to cooperate on certain key challenges with international scope and those relevant to trade flows.

TPP participants recommit in the environment chapter to fulfilling obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in order to boost efforts to tackle illegal trade in wild animals and plants. Many experts have said that demand for ivory and rhino horn in several East-Asian markets, including some TPP parties such as Vietnam, has driven a voracious poaching of Africa's iconic mega-fauna in recent years.

Efforts will also reportedly be made under the deal to promote the conservation of important marine species and to prohibit harmful fisheries subsidies that lead to overfishing as well as illegal, unreported, and unregulated (IUU) fishing. In addition, participants reportedly agree on protecting the marine environment from ship pollution.

TPP participants account for eight of the world's top 20 fishing nations. Some experts have speculated that disciplines on fisheries subsidies in the new regional agreement might help to unlock talks in this area at the multilateral level. Within the context of the WTO's Doha Round, a "Rules Negotiating Group" is tasked with improving global trade disciplines in key areas, including the possible establishment of these for fisheries subsidies.

While several proposals have been put forward in this area in recent months – with some stakeholders suggesting this represents a significant reinvigoration of momentum in an area that had previously stalled along with the rest of the Doha Development Agenda – uncertainty nevertheless remains on how the issue fits into the broader level of ambition for the talks. (See BioRes, [8 July 2015](#))

Alongside reaffirming commitments to implement multilateral environment agreements (MEAs) they have joined, and other pledges to provide transparency related to environmental decision-making, participants will also seek public input on the implementation of the TPP's environment chapter. An Environment Committee will be established to oversee this process.

The TPP has been famously controversial since the negotiations began, drawing the scepticism – and, in some cases, ire – of several green groups who question whether the terms of the deal are sufficient. As expected, news of the TPP's completion met a varied reception among the environment community. The US-based Sierra Club suggested the deal's conservation provisions might end up proving rather shallow, while the World Wildlife Fund (WWF) welcomed the environment chapter as being one of the most forward-thinking seen in trade deals to date.

Some lobby groups such as 350.org said that final deal will reportedly limit USTR's ability to pursue climate measures through trade agreements, however, and labelled the development a "disaster for climate change." Green campaigner Naomi Klein also hit out against the agreement, suggesting that it harked back to a purported de-prioritisation of the environment in the North American Free Trade Agreement (NAFTA) signed in 1994, a regional deal many trade watchers at that time estimated was a game changer for international economic relations.

The environment chapter will be subject to a dispute settlement procedure as outlined in the dispute settlement chapter. The latter proved among the most publically-contentious issues during the negotiations, with some groups fearing the TPP would allow investors and multinationals power to challenge domestic environmental protection legislation. According to the provisions outlined in the dispute settlement chapter, TPP dispute proceedings and reports will be open to the public, and written views from non-governmental entities located in the territory of disputing party will be considered.

International trade implications

The TPP deal has been dubbed by many of its proponents – as well as some of its detractors – as being "transformational" not just for the Asia-Pacific region, but also for the global economy. Australian Trade Minister Andrew Robb is among those who have said that the deal is the "most significant" since the Uruguay Round talks that established the WTO were finalised 20 years ago. So-called mega-regional deals like the TPP have nonetheless also sparked the question over whether these agreements sap away energy needed for multilateral negotiations and potentially create overlapping, confusing systems of rules – or if these processes can instead be complementary to one another.

A more-detailed analysis of the TPP is available in ICTSD's flagship publication, Bridges Weekly, focused on regular international trade news and sustainable development.

The newroom

Be sure to visit ictsd.org/news/biores regularly for breaking trade and environment news

US and Chile pledge to protect oceans

The US and Chile in early October announced the creation of new marine sanctuaries to help protect the world's oceans. According to a study by WWF and the Zoological Society of London published a few weeks prior to the announcement, the most efficient measure to curb the loss of biodiversity in oceans is the creation of protected areas.

Among the US efforts, two marine sanctuaries will be created in Maryland and in Lake Michigan, with US President Barack Obama signalling an intention to look for other sites. The US also committed to taking steps to combat illegal fishing, including unveiling "Sea Scout," a global effort to coordinate the identification and prosecution of illegal or unregulated fishing networks.

Chile said it would build the world's largest marine conservation park around Easter Island where settlers have been calling for increased action to help protect fish stocks and combat overfishing. A separate park will protect other island chains, including the Juan Fernandez archipelago.

China and US agree on ivory ban

Chinese President Xi Jinping and US President Barack Obama pledged during a meeting in Washington in September to take "significant and timely steps" to end their respective domestic commercial ivory trades.

The two countries, home to the largest black markets for illegal ivory, said they would enact nearly complete bans on ivory import and export, including significant restrictions on the import of ivory as hunted trophies. Both nations will further cooperate on joint training, technical exchanges, and information sharing in a bid to boost law enforcement and awareness around the challenge.

While the decision was hailed by WWF as "a major step forward in the international response to tackling the illegal ivory trade and ending Africa's elephant poaching crisis," some experts have cautioned that bans alone will likely not be sufficient to stop illegal ivory trade, and that continued efforts from the international community will be required to stem the onslaught on elephant populations in recent years.

EU member states opt out of GMO farming

Fifteen out of the EU's member states, including Germany and France, have indicated plans to prevent GMO crop farming within their territory. The move comes after EU institutions agreed last March to allow individual countries to "opt out" of GMO crops approved for cultivation in the bloc as a whole.

Austria, Bulgaria, Croatia, Cyprus, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands and Poland are also on the list, according to sources close to the Commission. The UK is seeking a ban for Scotland, Wales, and Northern Ireland, with only England willing to grow GMO crops.

To date, Brussels has only approved two strains of GMOs for cultivation, compared to more than 90 varieties given the green light in the US and 30 in Brazil. The Commission had hoped that the GMO cultivation opt-out proposal might unlock an EU-wide GMO approval process, the result of different public opinion in member states.

India submits UN climate pledge

National climate action pledges came pouring into the UN before the end of the day on 1 October, an informal deadline for individual mitigation contributions agreed to by governments, sending a strong signal of near universal participation in a process that is due to hammer out the parameters of a post-2020 climate regime.

Some 150 pledges, counting the EU 28 member bloc as one, have been submitted covering around 86 percent of global terrestrial greenhouse gas (GHG) emissions.

India, the world's third top GHG emitter, submitted its highly anticipated national climate pledge just hours before the deadline. In a 38-page submission Delhi said it would reduce the nation's emissions intensity, the amount of carbon per unit of GDP, by 33 to 35 percent by 2030 relative to 2005 levels. This carbon-intensity goal will allow India's emissions to grow as its economy expands, but at a rate lower than current levels.

WTO panel to hear Japan-Korea import ban dispute

A dispute panel is set to hear Japan's complaint (DS495) against Korea's import ban and certification and testing requirements on certain imported foods, following a second panel request from Tokyo.

The panel was established during the latest meeting of the WTO's Dispute Settlement Body (DSB), held on Monday 28 September. An earlier request had been made in August, which was blocked at the time by Seoul.

The dispute concerns sanitary and phytosanitary (SPS) measures introduced by Korea following the Fukushima Daiichi nuclear accident in 2011. Japan claims in its panel request that the import bans and additional testing and certification requirements introduced by Korea violate global trade rules, citing concerns regarding transparency, discrimination, and the trade restrictiveness of these policies.

Seoul has argued that the measures are justifiable and in line with WTO rules, given the potential risks from radioactive contamination to human, animal, and plant life and health.

Trade negotiators focus on refining list for EGA

Delegates from 17 WTO members hoping to secure a deal liberalising environmental goods trade examined a list of 450 possible tariff lines for inclusion, covering over 1000 products, during a negotiation round held in Geneva, Switzerland from 16-22 September.

The meeting reportedly saw participants identify interests and sensitivities with regard to the list, as well as focus on clarifying and streamlining "ex-outs."

The list at hand was outlined in mid-August by the chair of the Environmental Goods Agreement (EGA) talks. It is based on some 650 tariff line nominations put forward by participants, and reflects the chair's understanding of products that have gained most consensus during the negotiation rounds held since the initiative's launch in July 2014, alongside some with strong environmental credibility.

Based on September's discussions the chair will shortly circulate among participants a revised list reflecting the latest progress made on ex-outs. The new list will likely not specifically remove items.

EU, South Korea increase climate cooperation

Leaders from the EU and South Korea reaffirmed their intentions to advocate for an "ambitious" and "effective" UN climate agreement at the end of this year during a bilateral summit held in Seoul, Republic of Korea on 15 September. The parties discussed cooperation on climate change in addition to a number of other bilateral and global issues including multilateral trade, energy, biodiversity, climate finance, and the post-2015 development agenda, according to a joint statement released after the meet.

In a bid to further increase climate efforts, the leaders confirmed the launch of an initiative next year to increase technical cooperation on their emissions trading schemes. This collaboration will be funded through an "EU Partnership Instrument," designed to advance the bloc's strategic international aims, and some experts have begun to speculate that this could potentially lay the foundation towards an eventual linkage between the two carbon markets.

The two economic powers are also linked by a Framework Agreement signed in 2010 as well as a Free Trade Agreement (FTA) inked in 2011.

Coral reefs under threat from climate change

Canada's apex court ruled in early September that the Ecuadorian victims of a Chevron oil pollution scandal can proceed to use an Ontario-based court to seek payment for damages equivalent to US\$9.5 billion.

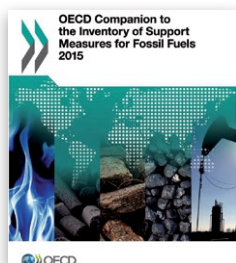
The ruling comes after several years of dispute over whether Canada was the appropriate jurisdiction for the plaintiffs to seek compensation. Chevron had argued that its assets in the North American country belonged to a subsidiary "Chevron Canada Ltd." not involved in the original incident.

The decision does not imply that the plaintiffs can seize Chevron's Canadian assets, but accepts that a legal battle can take place in the country over a 2011 Ecuadorean court ruling that initially awarded the damages.

Chevron acquired Texaco in 2001 and has subsequently become the target of the lawsuit claims pursued by indigenous Ecuadorean residents from the Lago Agrio region. Along with severe environmental impacts, higher than average rates of cancer also occurred in areas where Texaco operated in Ecuador.

Publications and resources

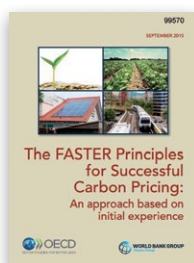
Suggested publications and resources do not necessarily reflect the views of ICTSD



OECD Companion to the Inventory of Support Measures for Fossil Fuels 2015 – OECD – September 2015

This publication is concerned with all policies that directly support the production or consumption of fossil fuels in members of the Organisation for Economic Co-operation and Development (OECD) and in a selection of partner countries. The report and its database identify and document almost 800 individual policies, highlighting the need for governments to review budgets and tax codes in light of evolving economic, environmental, and social priorities.

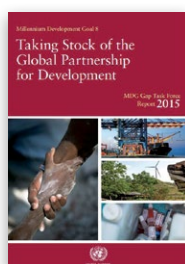
The report can be accessed at <http://bit.ly/1j9p5GF>



The FASTER Principles for Successful Carbon Pricing: An Approach Based on Initial Experience – OECD, World Bank Group – September 2015

This report from outlines principles for successful carbon pricing based on economic principles and experience of what is already working around the world to tackle greenhouse gas emissions. It is intended to provide a foundation for designing efficient and cost-effective carbon pricing instruments including through carbon taxes or emissions trading systems at the national and sub-national level.

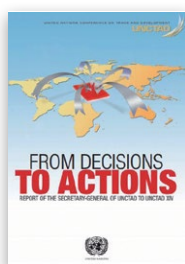
The report can be accessed at <http://bit.ly/1V5yK26>



MDG Gap Task Force Report 2015: Taking Stock of the Global Partnership for Development – UN – September 2015

A report prepared by the UN Secretary-General's MDG Gap Task Force offers the final instalment in a series that takes stock of recent achievements and gaps in the implementation of Millennium Development Goal (MDG) 8, the commitment to develop a "global partnership for development." This report monitors the five core domains of the Global Partnership for Development, namely, official development assistance (ODA), market access (trade), debt sustainability, access to affordable essential medicines and access to new technologies.

The report can be accessed at <http://bit.ly/1Lmsl7g>



From Decisions to Actions: Report of the Secretary-General of UNCTAD to UNCTAD XIV – UNCTAD – September 2015

This report from Mukhisa Kituyi, Secretary-General of the UN Conference on Trade and Development (UNCTAD), presents four "action lines" or policy areas needed to implement the new post-2015 development agenda. These include building productive capacity to transform economies; more effective states and more efficient markets; tackling vulnerabilities, building resilience; and strengthening multilateralism, finding common solutions. The report contends that these should form the basis for UNCTAD's mandate and role within the international trade community.

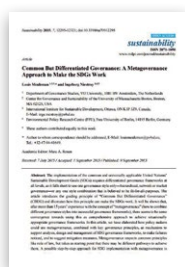
The report can be accessed at <http://bit.ly/1ijbbl2>



An Overview of the UN Technology Initiatives – UN – July 2015

This paper provides a brief summary of technology-related initiatives that are currently in place in different institutional settings in the UN based on two UN surveys in 2015 by the Inter-agency Working Group on a Technology Facilitation Mechanism (IATT). It also examines the institutional arrangements, coverage, functions, and the inter-linkages and coordination between these initiatives.

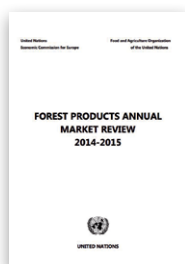
The report can be accessed at <http://bit.ly/1JxSdMN>



Common But Differentiated Governance: A Metagovernance Approach to Make the SDGs Work – Sustainability – September 2015

The article published in academic journal Sustainability presents a new principle of "Common But Differentiated Governance" (CBDG) and illustrates how this could be used to help implement the Sustainable Development Goals (SDGs). The article suggests how policymakers could use metagovernance – combining different governance styles into successful governance frameworks – combined with key governance principles, to support analysis, design and management of SDG governance frameworks, to make failures noticed, and to suggest mitigation measures.

The report can be accessed at <http://bit.ly/1iwerCV>



Forest Products Annual Market Review, 2014-2015 – UNECE, FAO – September 2015

The Forest Products Annual Market Review, 2014-2015 published by the UN Economic Commission for Europe (UNECE) and the UN Food and Agriculture Organization (FAO) provides general and statistical information on forest products markets in 2014 and early 2015 for the European region (North America, Europe, the CIS), as well as market influences from beyond these economies.

The report can be accessed at <http://bit.ly/1OBFLDl>



Making Partnerships Effective Coalitions for Action – OECD – September 2015

The report from the Organisation for Economic Co-operation and Development (OECD) explores the potential of networks and partnerships to create incentives for responsible action, and options for coordinating the activities of diverse stakeholders. The report looks at a number of existing partnerships across a range of sectors, countries, and regions, in order to provide practical guidance and outline ten success factors for partnerships in the context of the post-2015 development agenda.

The report can be accessed at <http://bit.ly/1OBFS24>



Has Joint Implementation reduced GHG emissions? Lessons Learned for the Design of Carbon Market Mechanisms – SEI – August 2015

This study published by the Stockholm Environment Institute (SEI) systematically evaluates the environmental integrity of Joint Implementation (JI) in the first commitment period of the UN Framework Convention on Climate Change (UNFCCC)'s Kyoto Protocol, suggesting that the use of JI offsets may have enabled global greenhouse gas emissions to be about 600 million tonnes of carbon dioxide equivalent higher than they would have been if countries had met their emissions domestically. The paper makes recommendations for the ongoing review of the JI Guidelines, for carbon markets generally, and for a new climate agreement to govern the post-2020 period.

The report can be accessed at <http://bit.ly/1WR5Xwz>



Power, People, Planet: Seizing Africa's Energy and Climate Opportunities – Africa Progress Panel – August 2015

Drawing on research and analysis on Africa, the Africa Progress Panel's latest report makes policy recommendations for African political leaders and civil society on the mechanics of transitioning to an inclusive low carbon economy. The report also highlights critical steps that must be taken by leaders in the international public and private sector. It explores the links between energy, poverty and climate change, documenting the risks that would come if a business-as-usual approach were pursued over the coming years.

The report can be accessed at <http://bit.ly/1NLUEla>

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Price: €10.00
ISSN 1996-9198

