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International Centre for Trade
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FORESTRY

4 **Assessing the New York Declaration on Forests from a trade perspective**

Lars H. Gulbrandsen and Ole Kristian Fauchald

FORESTRY

8 **Tackling illegal logging in the tropics: From good intentions to smart policies**

Paolo Omar Cerutti, Louis Putzel, Pablo Pacheco, and Joan Baxter

ENERGY

12 **What role for the Energy Charter in the future of clean energy governance?**

Urban Rusnák

BIORES INTERVIEW

16 **Can markets be better equipped to boost low carbon technologies?**

WTO

20 **WTO members debate way forward on "rules" talks**

FISHERIES

22 **EU warns Thailand on illegal fishing**

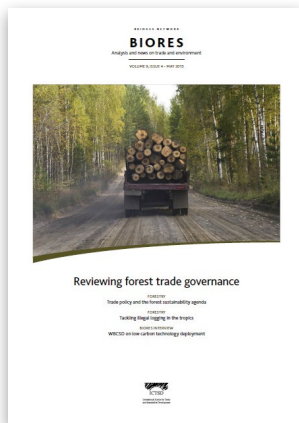
EMISSIONS TRADING SCHEMES

23 **EU strikes draft deal on 2019 launch of carbon market reserve**

24 **The newsroom**

26 **Publications and resources**

Reviewing forest trade governance



Across the globe, forests and forestry secure livelihoods, ecosystems, and help to tackle climate change – as recognised by the inclusion of forest targets in the post-2015 development agenda's sustainable development goals (SDGs).

Trade plays an important role in the forest economy with forest product exports hitting some US\$246 billion in 2013, more than tripling in value since 1980, according to the UN Food and Agriculture Organization (FAO).

However, while the global rate of deforestation has slowed in the last decade, it remains high in some areas and a Millennium Development Goal (MDG) indicator on world forest cover does not suggest overall improvement. Meanwhile demand for goods and services from forests continues to grow.

Against this backdrop, the eleventh session of the UN Forum on Forests (UNFF11) is convening from 4-15 May at UN headquarters in New York. The UNFF is a subsidiary body of the UN Economic and Social Council (ECOSOC) with the mandate to implement various forest-related agreements and build co-operation on sustainable forest management.

While trade-related issues are not directly on the table at UNFF11, delegates will discuss a variety of issues on the future of forest governance, which eventually feeds back into the market.

In this issue of BioRes, we take a look at some emerging trends in forest sustainability governance, particularly where these intersect with trade policy. Lars H. Gulbrandsen and Ole Kristian Fauchald from Norway's Fridtjof Nansen Institute (FNI) assess trade-related action pledges made in the New York Declaration on Forests, unveiled by public and private actors at last September's UN climate summit. These include boosting sustainable forest public procurement efforts and sustainability labelling initiatives.

How might the pledges interact with WTO rules? Sustainable resource governance efforts in the context of forests may well serve as a helpful frame for further examining the global trade arbiter's treatment of green procurement, private standards, and labelling.

This issue also includes an article on a new political declaration on energy co-operation via the Energy Charter Process. The International Energy Charter is due to be adopted in late May during a ministerial conference in The Hague, The Netherlands. A systemic shift towards clean energy is required to ensure global sustainable development. Are the various rules related to global energy trade and investment up to scratch to help facilitate this transition?

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The BioRes Team

FORESTRY

Assessing the New York Declaration on Forests from a trade perspective

Lars H. Gulbrandsen and Ole Kristian Fauchald

Stemming forest loss is slated as a part of tackling global climate change. What role for green public procurement and private certification schemes in addressing deforestation?

Concerned by continued high rates of deforestation and forest degradation, a group of governments, companies, indigenous groups, and non-governmental organisations adopted the New York Declaration on Forests at a high-level UN summit on climate change last September. The document is a political declaration endorsing a target to cut natural forest loss in half by 2020, and striving to end it by 2030. It also calls for restoring 150 million hectares of degraded forests and croplands by 2020 and at least an additional 200 million hectares by 2030. Signatories to the declaration claim that meeting these goals could save between 4.5 and 8.8 billion tonnes of carbon dioxide (CO₂) emissions per year by 2030, in other words, the equivalent of the current annual emissions of the United States. A voluntary "Action Agenda" attached to the declaration recommends a number of steps governments, companies, and organisations can take to help achieve these goals, including trade-related measures. But all this activity raises important questions. Can the proposed trade-related measures really be effective in limiting forest loss and forest degradation? And how might these measures interact with trade rules?

Forest loss and trade trends

The value of global forest product exports more than tripled from 1980 to 2013, weighing in at US\$246 billion by the latter, according to data gathered by the UN Food and Agriculture Organization (FAO). Meanwhile, the FAO's latest Global Forest Resources Assessment suggests that around 13 million hectares of forests were lost each year in the 2000s, compared to 16 million hectares per year in the 1990s.

South America, Africa, and many countries in South and Southeast Asia continue to have the largest forest net loss. FAO estimates suggest that industrial roundwood mainly accounted for wood removals valued at just over US\$100 billion annually between 2003 to 2007. This commodity, however, is just one part of the deforestation problem. A major driver of deforestation is the legal and illegal conversion of tropical forests to agricultural land. The precise causes nevertheless vary by region. In South America soybean cultivation in the Amazon and land clearing for the cattle industry are leading factors, while timber, paper, and palm oil production is more prevalent in Southeast Asia.

Tropical deforestation used to be attributed primarily to subsistence farming and local consumption but the economic forces of globalisation are now recognised as important. Global trade in timber, paper, soy, palm oil, beef, and other commodities associated with deforestation continues to destroy entire swaths of forest around the world. Although the majority of crops and livestock products associated with deforestation in the countries of origin are still consumed at local or regional levels, 33 percent of crops and eight percent of livestock products associated with deforestation are traded internationally, according to EU data. International capital investments are increasingly flowing into commercial agriculture, timber enterprises, and large-scale production facilities in a number of developing countries to supply industries facing growing demand in developed countries, as well as from the new middle classes in China, India, Brazil, and other emerging economies.

Changes within global commodity chains are also piling pressure on tropical forests in the global South. Over the past few decades, the timber industry has been gradually shifting

from the forests of North America and Europe, to tropical forests and plantations in Asia, Africa, and Latin America as well as boreal forests in Russia. China continues to increase in importance as an importer, consumer, and exporter of forest products. The Asian giant is now the world's largest importer of industrial roundwood and by far the largest producer and consumer of paper and wood-based panels. China is also at the centre of the vast traffic in illegally logged timber from the Asia Pacific, Russia, and Africa. Factoring in illegal timber trade, China is estimated to buy at least one-third of all the timber sold, according to some environmental crime monitoring groups.

Developments in global commodity chains and markets show, however, that responsible production and consumption can make a difference. Over the past two decades, many governments have adopted public procurement policies with strong links to private sector certification schemes, to promote the use of legal and sustainable timber. Similarly, a number of non-governmental sustainability certification and labelling schemes have emerged, designed to encourage responsible forest management and discourage the sourcing of commodities associated with forest degradation and deforestation. Examples include forest, soy, and palm oil responsible sourcing schemes. Some of the world's largest retailers have demanded supplier certification, and have also adopted tools such as chain-of-custody tracking, ecological footprint and life cycle analysis, green procurement, and sustainability reporting.

Public procurement policies

A handful of European countries – namely the UK, Germany and Norway, with the possible addition of France and the Netherlands – made a joint statement on public procurement under the New York Declaration indicating their intention “to work on new procurement policies to limit the consumption of commodities associated with deforestation.” Such policies would expand public procurement policies from timber to a wider range of agricultural products associated with forest loss and forest degradation.

Experiences with timber procurement policies can shed light on the prospect and limits of this type of trade tool. While some governments have developed legality and sustainability criteria for their timber procurement policies, others have decided that timber certified under a credible certification scheme can be accepted. In practice all governments with timber procurement policies accept certification under the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) – the two major existing forest certification schemes – as evidence of legality and sustainability. FSC and PEFC – both non-governmental, international, and multi-stakeholder outfits – are advanced schemes that require compliance with environmental, social, and economic forest management criteria, including compliance with national laws, third-party auditing of forestry practices, and product tracing through the supply chain. A major difference between the two schemes is that, whereas the FSC has developed a global set of prescriptive principles and criteria that apply to all certified operations, PEFC is an umbrella scheme for a number of national certification programs with wide variation in criteria and requirements. Several governments also accept a number of simpler legality verification schemes that have emerged as a result of public and private sector demand for legal timber.

As there are no official statistics on public sector timber consumption it is difficult to estimate how much of the total timber demand is covered by procurement policies. According to one estimate by the International Tropical Timber Organization (ITTO), public procurement policies could range between 3-20 percent of total timber consumption, depending on the importing country and market segment. Although such estimates are uncertain, there is little doubt among stakeholders that public procurement initiatives have facilitated the uptake of certified forest products, particularly in the European market.

The links established by governments between non-governmental certification schemes and their public procurement rules and policies are, however, not unproblematic from the perspective of international trade law. The 43 WTO members that are parties to the

GPA Agreement

The Agreement on Government Procurement (GPA) is a plurilateral deal within the framework of the WTO, which means that not all WTO member are parties to agreement. At present the GPA has 15 parties comprising 43 WTO members. The deal covers procurement activity as listed in parties' annexed market access schedules of commitments. A revised GPA text was adopted in March 2012.

revised plurilateral Agreement on Government Procurement (GPA) – including all the countries that have signed the New York Declaration – are subject to rules limiting their policy options for procurement entities as listed in each member's schedule annexed to the GPA. Article IV regarding non-discrimination implies that benefits extended to some products, producers, or companies must be equally available to comparable products, producers, or companies regardless of their origin. Whether a product, producer, or company is certified is probably not in itself a justifiable basis for differential treatment.

GPA Article X limits the range of technical product specifications that can be set out in tendering documents. The product specifications shall not be prepared, adopted, or applied in a manner that creates unnecessary obstacles to international trade. It could be argued that procurement policies based on labelling schemes as well as on the origin of products or their production processes might represent a trade obstacle. Article X also states that, where appropriate, technical specifications shall be set out in terms of performance and functional requirements of the products rather than design or descriptive characteristics. This rule suggests a preference against technical specifications that are based on production processes, for example, whether the timber originates from virgin or old growth forests.

The extent to which these rules would prevent countries from using government procurement policies to promote forestry and agricultural practices in accordance with the declaration also depends on the interpretation and application of Article X:6, namely, procuring entities "may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment." This new provision clearly indicates that procurement entities will enjoy some flexibility when setting out technical specifications in tendering documents.

GPA Articles VIII and IX limit the possibilities of public authorities to restrict the range of potential suppliers. Conditions for participation shall be limited to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement. In addition, qualification procedures shall not be adopted with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of other members. While these rules may open for exclusion of suppliers that have previously submitted false declarations, perhaps regarding the origin of timber products, they would probably not allow countries to restrict participation to suppliers that only trade in certified products.

Countries may possibly enjoy some flexibility under GPA Article III if technical specifications or qualification requirements are necessary to protect human, animal, or plant life or health. A Work Programme on Sustainable Procurement has also been initiated by the GPA Committee. Among the topics to be explored are the ways in which sustainable procurement can be practiced in a manner consistent with the principle of "best value for money," and the ways in which sustainable procurement can be practiced in a manner consistent with members' international trade obligations. However, while the programme may signal a willingness to enhance sustainable government procurement, it does not currently indicate any aim of facilitating sustainable procurement beyond what is allowed under the existing rules of the GPA.

Private sector initiatives

The New York Declaration recommends a range of measures and announces dozens of initiatives to phase out products associated with deforestation and forest degradation from global supply chains. More specifically, many private sector signatories have committed to a goal of eliminating deforestation linked to the production of agricultural products such as palm oil, soy, paper, and beef no later than by the end of the decade. Certification and timber legality verification schemes could help companies achieve these targets. Indeed, a number of private actors are already using forest certification to demonstrate partial compliance with obligations to exercise "due diligence," as required by the 2010 EU Timber Regulation geared towards minimising the risk of placing illegal timber on the EU market.

Data on the supply of certified timber shows that in 2014 about 30 percent or 524 million m³ of global roundwood production – 1.7 billion m³ – originated from certified forests. The proportion of global forest area certified under either FSC or PEFC was 10.7 percent or around 433 million hectares. The distribution of certified forestland between the northern and southern hemispheres is, however, extremely uneven. In 2013-2014 North America and Europe combined produced more than 95 percent of certified roundwood supply. Meanwhile, the share of certified tropical forests is only around two percent, raising questions about the need for certification frameworks and tools that are more effective in southern countries.

Voluntary initiatives by private parties are not restricted in international trade law. In order for the WTO disciplines to apply, the activities of private parties must be attributable to governments. Rules regarding members' responsibility in this regard are set out in the WTO Agreement on Technical Barriers to Trade (TBT). Article 4 requires countries to "take such reasonable measures as may be available to them" to ensure that non-governmental standardising bodies do not adopt or apply standards that are discriminatory or constitute unnecessary obstacles to international trade.

Exactly what constitutes a non-governmental standardising body remains unclear. However, given the market power of business and industry associations or consumer associations, it is not unlikely that Article 4 applies to certification and verification set up by such groups to be implemented by their members. Countries shall also refrain from taking measures that, directly or indirectly, encourage such standardising bodies to act inconsistently with the requirements of the TBT Agreement. In accordance with Article 8, the same rules apply to procedures for conformity assessments geared towards checking compliance with technical regulations, carried out by non-governmental bodies.

To the extent that market actors qualify as *de facto* or *de jure* monopolies, their activities may be subject to Article XVII of General Agreement on Tariffs and Trade (GATT 1994). This may, for example, be the case for state-owned enterprises that hold a dominant position in the forest products market. Countries have an obligation to ensure that such actors follow rules on non-discrimination and that they make their purchases or sales solely in accordance with commercial considerations. The freedom to apply measures to limit deforestation and promote sustainable forestry may be more limited for such actors.

Conclusions

While soft law instruments such as the New York Declaration on Forests can play a role in realising a more sustainable commodity chain, hard law measures also seem necessary. For example, the limited uptake of forest certification in the southern hemisphere combined with WTO rules to avoid discrimination and unnecessary trade restrictions, suggest that market-based instruments alone cannot be the solution to the global problem of deforestation and forest degradation. More clarity is required regarding the possible limitations of WTO rules for countries and market actors in this area. Perhaps the new GPA Committee Work Programme on Sustainable Procurement can be used as a basis for discussing such issues and finding ways to provide procuring entities sufficient flexibility to implement the declaration.

A nuanced analysis of the prospects and limits of trade-related measures and retail power to achieve sustainable global forest governance must take into account the fact that the public and private sector initiatives described in the New York Declaration largely stem from the northern hemisphere, they must comply with WTO rules, and they have so far had rather limited impacts on global commodity chains.

Indeed voluntary initiatives have to date not been nearly enough to offset the broader effects of big corporations as engines of consumption and drivers of deforestation and forest degradation. However, the growing power of big retailers to act as responsible sustainability leaders within global commodity chains could make a significant difference, particularly if such retail power could be extended to China, India, and other emerging economies.



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FORESTRY

Tackling illegal logging in the tropics: From good intentions to smart policies

Paolo Omar Cerutti, Louis Putzel, Pablo Pacheco, and Joan Baxter

The EU's Action Plan on Forest Law Enforcement, Governance and Trade – or FLEGT – aims to combat the import of illegal timber onto its market. But does the implementation process take into account local needs in producer countries?

There is no doubt at all that the EU's Action Plan on Forest Law Enforcement, Governance, and Trade (FLEGT), launched in 2003 to combat illegal logging and promote legally sourced timber from tropical countries, is based on the best of intentions. FLEGT is also an attempt to tackle broader problems, such as poverty, unsustainable harvesting, and corrupt practices in timber-producing countries. It aims to accomplish this by improving standards of practice in the forestry sector in key regions and ensuring that importers into the EU source their wood only from producers that adhere to those standards.

The realisation of these good intentions depends on the success of two policy instruments through which FLEGT operates. The first is the European Union Timber Regulation (EUTR), which came into force in March 2013 and requires EU importers to exert due diligence in their sourcing of timber from abroad to exclude illegal supplies. The second is through bilateral trade agreements with the EU, known as a Voluntary Partnership Agreement (VPAs), which prescribe the system a producing country will have to follow to document the legality of timber they produce. The VPAs amount to a licensing scheme to verify the legality of the timber exported to the EU. VPAs have been signed with six tropical timber-producing countries to date, namely Ghana, the Republic of Congo, Cameroon, Central African Republic, Indonesia, and Liberia. These countries are currently in the process of developing the required systems under the terms of each trade pact.

The EU's FLEGT process is not the only one out there. The US and Australia have also passed legislation aimed at preventing illegal timber imports and their associated negative social, environmental, and economic impacts. And a few other big timber-importing countries including Japan and China, though still far from implementing a comparable degree of legislative reform, have taken steps to raise the issue on national and international political agendas.

Fine intentions all round. But the specific focus on international trade that all these processes have – and notably trade between producers in the tropics and consumers in more temperate regions – risks neglecting at best, or negatively impacting at worst, an important group of stakeholders in the forest sector in tropical timber-producing countries. These are the hundreds of thousands of small-scale or "artisanal" loggers and smallholders that manage, harvest, process, and sell timber on domestic and regional markets.

Many tropical countries are developing quickly, which is increasing domestic demand for wood to build homes, hospitals, schools, and roads. While most of this wood is used locally, a portion of it finds its way to the shores of the EU, the US, or China. For this reason, it might make sense for the FLEGT VPAs to require that timber-exporting countries use the same timber legality assurance system (TLAS) for all timber produced in the country, including where it is intended to be consumed locally. Five out of six of the VPAs signed to date contain just such a requirement. And while this could reduce the problem of undocumented timber produced for domestic use reaching the export market, some major problems come with this part of the EU's timber trade policy, according to our recently published research.

Forest employment

According to the UN Food and Agriculture Organisation (FAO), some 13 million people earn a living from the formal forestry sector, while informal employment counts for at least 41 million.

By rolling the whole national forest governance system into an international trade regime, the EU FLEGT VPAs risks becoming an instrument that threatens the livelihoods of smallholders, artisanal loggers, and their families. For this reason at the Center for International Forestry Research (CIFOR) we are urging approaches to VPA implementation that put the protection of the interests of local people – and especially economically vulnerable populations who access, use, and sell forest resources – at the heart of future policy and legal reforms.

Vibrant but informal domestic markets

Between 2007 and 2015, as part of several research projects aimed at better understanding the dynamics of timber production and trade in a number of tropical countries, we examined domestic timber sectors in Cameroon, the Central African Republic, the Republic of Congo, the Democratic Republic of Congo (DRC), Ecuador, Gabon, Indonesia, and Côte d'Ivoire. We found that in most of these countries there is a large and economically vibrant – but largely informal and unrecognised – domestic timber sector.

Yet despite being a thriving informal economy, with related impacts on employment, poverty, and the environment, the sector is mostly overlooked by current legal frameworks and therefore remains largely invisible to policymakers. In some countries laws have even been enacted that have from one day to the next rendered artisanal logging operations “illegal” and their operators “criminals.”

Not only does this mean that the sector is beyond the reach of formal taxation, but our research shows that this also opens up the small-scale operators supplying domestic and regional markets to extortion by the authorities. While this varies across cases, it definitely opens up the sector itself to widespread corruption.

In 2015, the year of the sustainable development goals (SDGs), it is no longer acceptable for local people in developing countries to be marginalised or excluded from the economic sector on which they rely for their livelihoods. Small-scale forestry operators and timber traders supplying domestic and regional markets are now demanding and also deserve recognition. This includes the granting of rights and definition of responsibilities, such as the right to pay official taxes at prescribed rates, rather than having to bribe to state officials who do nothing to promote best practices in the sector and continue to undermine good governance by encouraging corruption. In short there is a case to be made for formalisation of the informal sector.

However, there are many risks associated with such a process, especially if it is implemented from the top down. When formal rights are granted, including around rights to land, resources, and to market products, less powerful and poorer people as well as smaller companies often lose out. Timing is also crucial. Ideally there would need to be a process in place to protect the legitimate rights of smallholders and small-scale loggers and traders before any changes are implemented.

For example, seeking blanket compliance with the VPAs for FLEGT without giving proper consideration to the differences between large- and small-scale forest enterprises could be the basis for a new wave of exclusion and criminalisation of the poorest and least powerful actors in the forestry sector, with many potentially negative consequences on their livelihoods. While current frameworks will have to be overhauled dramatically if they are to be structured to promote and sustain a healthy, small-scale domestic timber market, a scalar approach to enforcement might be advisable. That would involve granting a grace period of learning for the “weakest” parts of the sector, notably current informal operators, before any new rules are fully implemented and enforced.

In addition, if such processes of reform are undertaken, they should help clarify the rights of customary owners to forests and involve special fiscal regimes—royalty rates, processing, transport, and marketing levies—for the domestic timber sector. Lastly such reform processes should create incentives for these actors to comply with the new laws. In order for these improvements to be implemented, smallholders, small-scale forest

managers, informal loggers, and other informal operators would need to be consulted and included in the reform process.

As legislators prepare to implement the VPAs, national legal frameworks governing logging and the timber trade are in the spotlight again. This is a crucial time for forest stakeholders in VPA partner countries. Our hope is that recognition of the importance of the informal timber sector will lead to open, transparent, and inclusive dialogues in those countries. More broadly, in both VPA and also non-VPA countries we believe it is time to have a serious look at the important economic, social, and ecological role that artisanal logging plays in development at both national and regional levels, and how its positive contributions can be promoted while minimalising negative impacts.

Lessons from research on land tenure and natural resources

To implement the VPAs, most of the signatory countries are going to have to reform national rules and processes that govern access to forestland and resources, as well as the transport and sale of timber. This kind of reform has happened countless times before all around the world and in every natural resource sector from mining to fishing. However, challenges related to ownership and land access are pervasive, and insufficient tenure rights for local people is almost always a sticking point. From our investigations of these underlying issues across geographies and natural resource sectors a picture emerges that, although complicated, can offer some clear lessons.

Key among these is that changing laws from above, without taking into account the needs and interests of local landowners and operators, is likely to be ineffective. If people lose rights from one day to the next, and even for a long time after that, compliance is difficult to enforce. The new rules have no local legitimacy and could result in a "race to the resource," for fear of losing it, which is often damaging to the environment. For example, in a recent study in Amazonia, Christine Padoch and her associates describe how changing land tenure regimes have spurred Peruvian urban dwellers to travel out to areas they once inhabited as small farmers to take as much timber as they can. Since they no longer live in the area and cannot manage the forest sustainably as they once did – and because logging companies will take the timber if they do not – these folk have little incentive to protect the environment in lands to which they no longer have a strong claim.²

When legal reforms are implemented, "elite capture" may occur, in which more powerful groups—local and national elites or even outsiders and foreigners—move in and take control of lands and natural resources. New forms of corruption can appear as these savvy and powerful players find ways to manipulate and bypass new systems of resource access and governance. Some years ago, for example, when Cameroon was in the process of privatising its national rubber plantations, there was a provision to return a portion of land to local villages. When the time came to do so however, the government put the land up for auction through a public tender, and the land was taken over by government officials and company managers.³

These are only a few of the examples of the types of problems that can – and often do – arise when governments try to change the rules governing access to and trade in resources. But they are not inevitable.

A 2008 study led by human geographer Tor Benjaminsen argues that timing is very important in determining who benefits from laws reassigning ownership.⁴ For example, if farmers demand land titles and a process is established to ensure they receive these, formalisation of ownership is more likely to benefit the poor.

Rules are also more likely to work if they are helpful to the people who are governed by them. In Ecuador, for example, the government has enacted relatively simple regulations to facilitate small-scale logging operations undertaken by smallholders in their lands. This involved introducing an online system for those seeking to obtain permits from remote locations. This system, together with a pilot scheme to make controls by the administration easier, has the potential to allow smallholders to benefit from legal timber

harvesting and sales. There is still a long way to go, but the case of Ecuador shows that a bottom-up approach to understand local people's needs and interests, is more promising than a top-down one.

Finding the right mix of incentives and regulations

Faced with growing pressure to root out illegal – including “informal” and “artisanal” – timber from international trade, some tropical timber-producing countries have a choice. It is obvious that at least in some cases, the informal timber sector contributes to deforestation and degradation of forest resources, something that the operators themselves are also too often aware. However, if the sector remains invisible and criminalised, how can solutions be found and improvements made to make it less destructive and more sustainable? The EU VPA process is an opportunity to reform access to forest resources, as well as domestic and regional timber trade, but how and when this is done is very important.

On one hand, VPA partners can adopt and enforce a legality verification system that instantly covers their entire timber sector, from large-scale industrial logging for export markets to small-scale artisanal operators serving the domestic market. On the other hand they could also start small and ramp up enforcement slowly. As several countries in Latin America have done they could establish rules of the game that are different for smallholders from those for large-scale industrial companies. The path taken could have broad and profound implications for the short term success and long term sustainability of the trade-based initiative.

Now that the scale and problems of the informal sector are better known, we believe that testing and refining policy options should be the next step in research on the formalisation of small-scale artisanal operators and enterprises engaged in the domestic timber markets, together with assessing the economic impacts on the supply chain.

Obviously, for a formal system to work, increased taxes on smallholders and artisanal operators will have to be compensated by the removal of the heavy costs of bribes they now have to pay. And concurrently, we will also need to determine if there is a domestic or regional market for more expensive, legal timber.

None of the above detracts from the larger aims of FLEGT, which remain valid. Representatives from Europe and tropical countries, however, now face the delicate task of rekindling interest among small-scale loggers and traders through incentives to engage in the process. These could include better tenure rights for those on the legal path.

It is crucial that this process does not engender implementation talks that turn into a catchall debate on forest policy, which, if poorly managed could push the whole process back ten years. If handled correctly, however, we believe that this could lead the way to long overdue and crucial reforms that can benefit small-scale producers, consumers, and tropical forests themselves, all of which are at the heart of the good intentions that led to the EU to wield its market and trade policy for sustainability objectives in the first place.

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ENERGY

What role for the Energy Charter in the future of clean energy governance?

Urban Rusnák

A ministerial conference geared towards adopting a new International Energy Charter is set to be held mid-May in The Hague, The Netherlands.

The discussion around global energy markets is progressing very rapidly. Sometimes this is a consequence of economic development while at other times it is because of political reasons. The introduction of new technologies for production and extraction of fossil fuels, the increased use of alternative sources of energy, and the entry into the market of new actors have made the energy picture more complex than ever before.

But have the rules for global energy trade and investment kept pace with this shifting energy landscape? Is there a need for a new instrument on the global energy governance? Or should existing rules be amended to reflect energy market developments? To answer these questions it is helpful to examine available instruments. One of those is the Energy Charter.

Existing energy trade rules

The origins of the Energy Charter date back to the early 1990s. The fall of the Berlin Wall and the subsequent dissolution of the Soviet Union brought a fundamental change in European and world politics. It was a time of multilateralism as countries began to move away from the Cold War. The WTO also came into being around this time.

The Energy Charter Process started with the signing of the European Energy Charter – a political declaration – in The Hague, Netherlands in December 1991. This represented a political commitment to co-operate in the energy sector between the countries of the then European Community and those of the former Soviet Union.

The Energy Charter Process was further developed with the negotiation of the Energy Charter Treaty (ECT), concluded in 1994, and effective from 1998. The ECT is the only existing legally binding treaty in the energy sector, comprising a set of rules on energy trade, investment, transit and energy efficiency.

The inspiration for the rules of the Energy Charter Treaty came from the standards for trade developed in the General Agreement on Tariffs and Trade (GATT-1974), incorporated into the WTO as the GATT-1994, following the outcome of the Uruguay Round of multilateral trade negotiations. The ECT's trade regime therefore intersects with the spirit of WTO provisions and rules.

Moreover, while the WTO itself does not have specific rules for the energy sector, its legal framework does include a number of rules that are also applicable to the trade in energy-related products and equipment. The ECT incorporates by reference those WTO rules, which are related to trade in energy materials and products, and energy-related equipment.

However, because the energy sector is very complex, the ECT is more detailed by comparison to the WTO. The difficulty in distinguishing between energy goods and services is just one of these complexities. Therefore, the ECT focuses on the different fields of energy and contains several additional elements to WTO-relevant rules on energy.

EGA trade deal

Since launching last July, the Environmental Goods Agreement (EGA) trade liberalisation talks between a group of 17 WTO members have held several rounds of negotiations focused on the scope of the deal.

Additional elements

One of those elements is the extension of geographical scope of the applicability of WTO rules in the energy sector. In other words, for those ECT contracting parties who are not yet in the WTO – for example, Belarus, Turkmenistan, Kazakhstan, and Uzbekistan – the ECT trade regime effectively extends the benefits and the obligations of WTO membership to these countries' energy sector. In practice this extension means that trade in the energy sector between WTO and non-WTO members who are parties to the ECT, and also among those same non-WTO members party to the ECT, is treated as if all were members of the WTO. In this way the ECT serves as a stepping-stone to WTO accession.

The ECT can be considered as having a so-called "WTO-plus" effect. That is because Article 7 of the ECT on transit, as compared with GATT Article V, takes into consideration the specifics of transit in energy. Article 7 includes energy transport facilities such as gas pipelines and electricity transmission grids as a means of transport. The ECT transit provisions do build upon the non-discrimination principle of Article V of GATT. The important additional element contained in the ECT, however, is the explicit coverage of grid-bound energy transport and the enforceability of its provisions. Therefore a number of countries that had previously not participated in any international transit arrangement now have, through the ECT, access to a set of multilaterally accepted rules that can be used to protect their interests. The aim of the ECT provisions is to provide for a balance between the sovereign interests of states and the need for security and stability of transit.

Another complementary effect of the Energy Charter trade regime is the mandate that ECT contracting parties allow for the negotiation of a plurilateral agreement on customs tariffs. However, in order not to add unnecessary duplication, the Energy Charter decided to support the ongoing Environmental Goods Agreement (EGA) tariff liberalising negotiations between a group of now 17 participating WTO members. To this end Energy Charter has raised awareness among its constituency on the negotiations. The Energy Charter also organised a workshop for EGA participants on useful energy efficiency products that might benefit from lowered tariffs under the planned deal.

By promoting the facilitation of trade in environmental goods, and by extending the ECT trade regime to energy equipment, the Energy Charter promotes the export and transfer of technology from developed countries to energy producing emerging economies in need of such technology. A move from fossil energy sources towards low-carbon renewables is one of the best means to reduce carbon emissions and facilitate much-needed sustainable growth to help tackle continued global poverty.

However, while renewable sources such as energy from wind or sun is free of charge, their exploitation is expensive and requires complex technology and expertise and enormous investments. The ECT does have investment and dispute settlement provisions to help in this area. The investment provisions may be invoked either by states in case of state-to-state arbitration procedures, or by investors in case of investor-state arbitration.

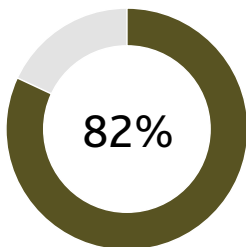
As a result, while on one hand the Energy Charter's trade regime is linked to the WTO, on the other hand the ECT is also an investment protection mechanism quite distinct from the WTO. The WTO's dispute settlement mechanism deals only with cases between states and not with private sector representation.

Incoming International Energy Charter

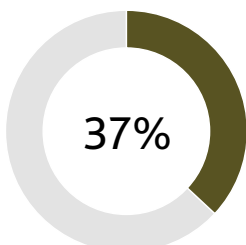
Now coming back to the question about sufficiency of existing energy trade rules, there are two issues that need to be looked at. On the one hand the various existing rules may be sufficient to govern trade in energy and are broad enough to cover all the fields of energy. Yet from another perspective, current rules might also need to be adapted to the changing conditions and the evolving priorities and strategies of countries, in order to cope with the future demands of sustainable development.

For instance, only 30 years ago, no one thought about climate change and environmental protection. Today the energy strategies of almost every country take into consideration

Global energy figures



Percentage of fossil fuels in world primary energy supply in 2011, according to the International Energy Agency (IEA).



Global energy demand growth prediction by 2040 according to the IEA's 2014 central scenario.

energy efficiency, environmental factors, and other green issues. Consequently the Conference of the Energy Charter, which meets annually, decided in 2012 to start a process geared towards adjusting the body's existing legal framework to meet present day and projected future energy market conditions. This was to be done by updating the 1991 European Energy Charter declaration.

Four rounds of negotiations were subsequently held last year in Brussels to come up with a new political declaration within the framework of the Energy Charter. Delegations from over 80 countries were involved. Members of the existing European Energy Charter were joined by representatives of a total of 28 observer and outreach countries. By engaging non-members in negotiations on a basic document on energy co-operation, existing members demonstrated their openness to reach out to new partners on all continents, and to promote the existing principles of the treaty. China, which was not involved in the 1991 negotiations, was represented and actively participated in last year's talks.

In late October agreement was reached on the text of what is to become known as the 2015 International Energy Charter (IEC), which is a new political declaration. The text of the 2015 International Energy Charter sets out agreed principles on international energy cooperation. The text identifies current and future energy challenges. Fresh elements have also been incorporated mostly by potential new members such as China, Iran, and Morocco. The IEC is due to be formally adopted and signed by negotiating parties at a Ministerial Conference scheduled to be held in The Hague, The Netherlands, 20-21 May.

The key new points of emphasis include the importance of access to energy and the importance of renewable energy. In the part on trade, the IEC calls for stable and transparent trade in energy; promotes open and competitive markets for energy products, materials, equipment and services; aims at providing transparency for all segments of international energy markets (production/export, transit, consumption/import); as well as the removal of technical, administrative, and other barriers to trade in energy and associated equipment, technologies, and energy-related services.

The new IEC states that development of trade in energy should, where applicable, be consistent with major relevant multilateral agreements such as WTO rules and its related instruments. The IEC recognises that the transit of energy products through a country's territory is essential for the liberalisation of trade in energy products.

By giving life to the International Energy Charter, the Energy Charter constituency has acknowledged a changing energy landscape, and the need to revise the charter process. Nevertheless, it is perhaps too early to judge the extent of this revision, as this is just a step towards the modernisation of the Energy Charter Process.

Relationship with the WTO?

As regards the WTO it is doubtful as to whether the global trade rules should or could be expanded to cover energy in a more comprehensive way. WTO rules, which apply to multilateral trade more generally, may not be able cover all the particularities of energy markets. This may also be among the reasons why from the very beginning an energy component in GATT negotiations was left off the table.

Perhaps it is better to extend the applicability of the Energy Charter Treaty to new countries rather than to adopt specific WTO rules to energy. The Energy Charter Secretariat has been working on the geographical scope of the Energy Charter organisation. To date, there are more than 50 Contracting Parties to the Energy Charter Treaty, including each of member states of the EU, countries of the former Soviet Union, and also other nations including Australia, Japan, Norway, Switzerland, and Turkey.

Historically, signing the European Energy Charter political declaration was a necessary first step towards accession of the ECT. The adoption of a new political declaration in the form of the IEC is anticipated to attract new countries to the Energy Charter Process.

Meeting future energy trade trends

Global energy markets are in flux and change is afoot across a multitude of domains. Among these include technological shifts and the development of new sources of energy. Until recently the main driving factor for the development of new energy sources was price. Shale gas or renewables, for example, are on the market now in part only due to the very high price of conventional energy sources. Even today, in some cases, the cost of exploitation of unconventional fuels is much greater than the price of fossil fuels. In other instances, however, renewables are on cost parity with traditional energy sources.

The volatility of the energy markets brings both opportunities and challenges particularly for developing countries. For countries with the geological potential to develop unconventional resources, high energy prices are a window of opportunity. Unconventional sources, such as shale gas or solar, are more globally abundant than fossil fuels and offer nations a more durable growth path. For other countries, perhaps relying on high levels of fossil fuel imports, high energy prices present significant social and economic challenges.

Overall, the global economy will need to transition to more sustainable energy sources, but a cost efficient ratio has to be found – so that the cost of green energy and technologies is comparable to traditional energy generated by fossil fuels.

As technological development brings down the price of the green energy, many developing nations will be afforded better opportunities for energy access. Some examples exist already, solar photovoltaic (PV) batteries and panels are widely used in Mongolia, a country with a low population density. Clean energy technologies can bring new opportunities to people who previously had no energy access due to the frequent failures and gaps in traditional energy infrastructure in reaching the world's poorest.

Energy, energy products, and related services trade will only become more important in the future. Ninety percent of future global growth is projected to happen outside Europe's borders. Therefore a multilateral, rather than a bilateral, system for trade should be considered. The Energy Charter Process could help to fill a need in this area.

The Energy Charter Treaty is part of international law. The ECT can facilitate international energy co-operation if it is properly utilised. For that to happen, however, more political will is required. The Energy Charter Process can only function effectively when the political will is there to use it and to make it relevant. Hopefully, political effort will be manifested to ensure support and engagement with the International Energy Charter of 2015, the latest chapter in the history of the Energy Charter.

This article draws on an event organised by ICTSD and the Energy Charter Secretariat on The Evolving Landscape of Clean Energy Governance: Implications for International Trade held on 17 April 2015.



Dr. Urban Rusnák
Secretary General, Energy
Charter Secretariat

BIORES INTERVIEW

Can markets be better equipped to boost low carbon technologies?



Maria Mendiluce
 Director of the World Business Council for Sustainable Development (WBCSD)'s climate and energy programme. WBCSD is a CEO-led organisation of companies geared towards galvanising the global business community to create a sustainable future for business, society, and the environment.

The New Climate Economy report released last September by leading economic thinkers argues that the next 15 years will mark a critical phase in world development. Fundamental systemic shifts could see up to US\$90 trillion invested in urban, land use, and energy systems infrastructure during the period. The direction of these investments will likely determine the long term health of the global economy. The UN Framework Convention on Climate Change (UNFCCC) has recognised the need to close a “financing gap” for low carbon technologies across all nations. Developing countries in particular, however, are projected to require in the order of an additional US\$105-402 billion per year until 2030 for climate mitigation technologies alone. In mid-April BioRes spoke with Maria Mendiluce, Director of the World Business Council for Sustainable Development (WBCSD)'s climate and energy programme, on public private partnerships to boost low carbon technologies, the role of trade and investment, as well as key market enablers and barriers to the scale up of existing technologies.

Can you tell me a bit more about the Low Carbon Technology Partnerships Initiative [LCTPi] and what its key deliverables will be? What are some of the technologies included in this initiative?

[Maria Mendiluce] Through the LCTPi we are aiming to deliver powerful low carbon business solutions that support the global climate action agenda and the UN climate talks. The market is changing and many clean technologies are becoming increasingly competitive. But we believe that a lot more can be done.

This is why we are calling for companies to actively participate in large scale partnerships that can accelerate the implementation of transformational technology solutions. At the Twenty-First Conference of the Parties [COP21] to the UNFCCC in December in Paris, France the LCTPi will announce the launch of several technology public private partnerships.

The LCTPi is unique, however, in adopting a beyond business as usual approach. On the one hand, the initiative aims to scale up the development and diffusion of low carbon technologies. On the other hand, it also aims to encourage further research, development, and administration of potentially game-changing low carbon technologies.

The LCTPi is currently targeting partnerships in areas such as renewables, carbon capture and storage [CCS], advanced biofuels, chemicals, energy efficiency in buildings, cement, forests, and agriculture. We are also scoping new areas of work, including freight transport, smart grids, chemicals, and digitisation.

How do you plan to take this work forward after the UN Framework Convention on Climate Change [UNFCCC] meeting in Paris, France at the end of this year?

[MM] We see the LCTPi as being part of WBCSD's Action2020 business agenda that extends beyond Paris. COP21 is an important milestone around which a lot of momentum is being generated to showcase action and leadership. Our activities will benefit from this

but also extend beyond Paris. Some of the partnerships generated in the run up to the COP will live within WBCSD and others will find a home in other institutions.

What do you see as the key market barriers to the diffusion of existing low carbon technologies?

[MM] I think the most significant barrier is the higher cost of low carbon technologies vis-à-vis fossil fuel alternatives. This is particularly the case in the absence of a robust and meaningful carbon price.

Another important barrier is the lack of long term financing options for transformation towards a low carbon future. Social acceptance on both production and consumption sides is important. Often, despite the available technologies, consumers are unwilling to change their habits.

Technological and regulatory skills shortages also constitute a barrier in both developing and developed countries. Regulations often have been created for incumbent technologies but require adaptation to accommodate new technologies. This is relevant in the case of renewables given their remarkable differences compared to other types of electricity production. Markets need to adjust with a view to incorporating these new technologies that have different characteristics from traditional energy sources.

What role could an Environmental Goods Agreement between the current 17 WTO members play in boosting clean energy technology diffusion?

[MM] By reducing tariffs on low carbon goods, such an agreement would allow these technologies to become more competitive in global markets. The demand for the technology will increase thus helping to build economies of scale that will lead to further cost reductions. In other words, lower tariffs would facilitate the process of a positive feedback loop.

By comparison, support provided in the renewable energy sector decreases costs, resulting in increased demand, which in turn has brought additional cost reductions. The same pattern could apply with the reduction of tariffs on relevant clean energy products.

What are the key overall enablers for investment in and sales of low-carbon technologies in developing countries?

[MM] Population growth and increased prosperity are generating massive demand for energy, food, water, and materials in developing countries. These countries will eventually need to take advantage of technology advances and lessons learned in order to reduce their carbon footprint.

While technology “leapfrogging” can help, there are still a number of other important changes that need to happen. Developing countries will have to put in place mechanisms that integrate higher shares of renewables in the grid. They should work towards the decarbonisation of transport through the use of advanced biofuels and electric mobility. CCS should be integrated into all fossil fuel plans in power plants and industry.

Such efforts would allow for the creation of new cities and systems that incorporate state-of-the-art technologies. However, in order to do so, developing countries need to put in place stable and predictable policy frameworks for a low carbon economy. Other measures could be the inclusion of carbon pricing mechanisms to redirect investments towards low carbon options, penalising greenhouse gas emissions intensive products, and the elimination of fossil fuel subsidies.

What is the business case for investing on low carbon technologies in developing economies?

[MM] The business case for investing in low carbon technologies in developing economies is largely a matter of scale. Compared to a stagnant European economy, developing countries offer great potential for investment. There is the possibility of introducing

UN climate deal

Governments from nearly 200 nations are hoping to sign a new climate deal at a UNFCCC meeting in Paris, France in December. The agreement will be made up of individual national climate action contributions. Nine of these have already been made available.

new consumption patterns. Many developing countries also have a wide range of energy resources to tap into ranging from solar to hydro.

What sort of public private opportunities do you envisage under the LCTPi? Can you tell me a bit more about what might be launched in Paris?

[MM] For the time being we are working on defining the partnerships to be announced in December. A key objective of the LCTPi is to develop shared action plans between different public and private stakeholders.

We expect the private sector to support policymakers in creating and adapting the required regulatory framework for the deployment of low carbon solutions. This could include, for example, new mechanisms that facilitate the integration of high volumes of intermittent renewable energy in the grid.

We also envisage the public sector taking specific actions directed at improving the financing of low carbon projects, though new market mechanisms, standardisation of projects, and de-risking instruments.

Do you have any comments on how to bridge the financing gap for mitigation and adaptation technologies in developing countries?

[MM] I often hear that the capital is available but there is a lack of bankable projects. Uncertainty around regulatory frameworks can render investments too risky. Consequently, in the area of renewables, we are going to provide specific recommendations to reduce the risk of investments in developing countries. We will explain how technological advances and new business models are changing the market. These technologies are becoming increasingly competitive and reliable thus minimising risks for investments.

We will also connect with some of the national climate pledges made in order to support government efforts. For example, India is aiming to have 100 gigawatts [GW] of renewable energy by 2022.

We will support these efforts by reassuring countries and governments that the technologies exist, that we are behind them, and that we can deploy these, but that there are certain regulations that will need to be put in place.

Technology transfer could be described as a hot button issue in both the UNFCCC process as well as in other intergovernmental forums. Will the LCTPi engage with the work of the Technology Mechanism as the lead UNFCCC body that works on this topic?

[MM] WBCSD has been involved in the UNFCCC Technology Mechanism for many years. We will continue to provide support and insight.

We are also participating in the UNFCCC Technology Expert Meetings (TEMs). We will contribute to these meetings with the expertise of the LCTPi. Furthermore, in the last two months, we have focused our efforts in acquiring buy in from the private sector for the LCTPi in the context of UNFCCC arena.

We are also currently focusing our efforts on defining ambition among the various partnership proposals and drafting action plans. Once these action plans have been developed, which is expected to happen by September, it will be a good time to connect with other international institutions dealing with technology and investment to talk about concrete steps.

Supportive of this partnership, the French presidency of COP21 is very keen to see us contribute to other regional technology debates. For example, we are looking into ways of collaborating, participating, or providing feedback on the Clean Energy Ministerial in Mexico at the end of May. We are also working closely with the Japanese government that is organising an important technology event in October.

How does the work of the LCTPi relate to the other major international talks ongoing this year, namely, the post-2015 development agenda and its proposed sustainable development goals [SDGs]?

[MM] As you know, tackling climate change is a prerequisite for achieving sustainable development and poverty eradication. WBCSD is designing a toolkit for business to help demonstrate how they can contribute to the realisation of the SDGs while showing business that there is a solid case for aligning with these new goals and targets. Businesses cannot succeed in societies that fail.

Through the LCTPi businesses are presented with an opportunity to act as a solution-provider to help achieve the SDGs. The initiative could also provide inspiration and direction for more effective partnerships.

We are seeking to achieve two objectives through the LCTPi in the context of the post-2015 development agenda; to accelerate the diffusion of low carbon technologies, and develop public private partnerships that are instrumental to the achievement of SDGs numbers seven and 17 on energy and partnerships respectively.

How does the LCTPi relate to WBCSD's other engagement in the UN climate talks, for example, the Business and Climate Summit in Paris in May and the President of the UN General Assembly's high level event in June?

[MM] We are a partner of the Business and Climate Summit [BCS] and we are bringing lessons learned from the LCTPi to that forum. We are organising an LCTPi meeting back-to-back with the BCS.

We are also developing a series of regional engagements. We are planning to go to South Africa, India, and Brazil in September; Japan, China, and the US in October. We will be at COP21 in Paris.

Through these regional engagements we are trying to prompt discussion in several areas. In the first instance, what is the climate reality of each country? What is the business perspective on each nation's intended nationally determined contribution?

We will also discuss relevant aspects of the LCTPi in order to incorporate country specific circumstances into the global programme. The regional dialogues will feed back into the overall LCTPi agenda and action plans. Local dialogue will strengthen each action plan.

How do you see business engagement in the lead up to Paris and in the country-led multilateral talks?

[MM] Business is already doing a lot of things. Many companies are committed to zero deforestation, renewable energy procurement, and are trying to manage their emissions. But we believe that the private sector can do more. The LCTPi is an instrument for channelling this urgency for additional effort and providing concrete action plans.

And to link it to governmental processes?

[MM] In some ways business is here to reassure governments that they can commit to an ambitious climate agreement in Paris. It is inevitable, there is a sense of urgency, and all businesses know that something needs to be done. We must do something. The earlier the better.

I think private sector engagement in the climate talks has become more positive and constructive. The conversation is now around opportunities, it is about showing what business can do.

Things have changed a lot since the climate talks back in 2009 in Copenhagen, Denmark. We used to talk about enabling frameworks for technology diffusion in general, but now we are talking about concrete solutions and actions, and this is an important change.

WTO

WTO members debate way forward on “rules” talks

WTO members continue to work towards a July deadline for crafting a Doha Round work programme.

WTO members remain divided over what role the organisation’s talks on “rules” should play in the broader effort to develop a Doha Round work programme, trade sources say, despite their approaching July deadline.

The Rules Negotiating Group covers talks on improving WTO disciplines around anti-dumping duties and procedures; subsidies and countervailing measures; and provisions applying to regional trade agreements. The subsidies talks include negotiations relating to fisheries subsidies.

The group met on Monday 4 May for an open-ended session, following an information briefing held the same day by the WTO secretariat as a “refresher” for members. According to trade sources, several members expressed interest in including rules issues within the scope of the work programme, although some major players such as Brazil, Canada, and India said that rules should not advance ahead of the Doha Round’s “core” negotiating subjects of agriculture, non-agricultural market access (NAMA), and services.

The US also reportedly raised questions over what might be “doable” in rules given the slow pace in those three major areas, and therefore whether active talks would even be possible.

The pace of these core negotiating areas – and how this might affect the rest of the Doha Round issues – has led some delegations to raise concerns in other settings over what this could mean for developing a specific, modalities-like work programme in time for the July deadline. Some have warned that, if this de facto sequencing of negotiations is indeed taking place, it could prove detrimental to advancing the Doha Round as a whole.

At the close of Monday 4 May’s session, Jamaica’s Ambassador Wayne McCook, who chairs the rules negotiations, said he would continue to consult with different configurations of members on how to move forward.

Transparency, due process

During the open-ended discussions, the EU reportedly discussed an option for a horizontal approach that would see negotiations focus on aspects of transparency and due process in each of the four rules areas.

While the proposal did not specify further exactly what elements of the rules talks would qualify in this approach, the 28-nation bloc indicated to other members that it may come forward with a paper that would further clarify its position. Some sources suggest that on anti-dumping rules, for example, this might involve focusing on investigative authorities and procedures.

During Monday 4 May’s meeting, Japan on behalf of the Friends of Anti-dumping Negotiations (FANs), an informal group of WTO members supportive of a strong outcome in the anti-dumping talks, said that the coalition was ready to kick off discussions on what is “doable” within the current negotiating timeframe. The FANs reportedly supported the EU’s horizontal approach, so long as it does not come at the cost to other important areas.

Anti-dumping recalibration

A few weeks prior to Monday 4 May’s meeting, the FANs had circulated a communication suggesting members “recalibrate” their positions on anti-dumping in the context of

delivering a July work programme. The members who signed on to the FANs paper included Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Norway, Singapore, Switzerland, Chinese Taipei, and Thailand.

To do so, the FANs have proposed starting discussions on a number of elements of the unbracketed parts of the latest rules draft text, issued in April 2011 (TN/RL/W/254), with a focus on due process and transparency. Other issues, including bracketed issues in the 2011 text or emerging issues, might also be considered as appropriate.

Under the WTO's Anti-Dumping Agreement, members can apply duties if an imported product has been "dumped" – in other words, sold abroad at prices below their normal value. Furthermore, these dumped goods must be shown to have caused material injury to a domestic industry producing a similar good.

The use of these types of trade remedies have been deployed in the clean energy sector in recent years, including in some high-profile trade spats around solar products. (See BioRes, [13 April 2015](#))

Fisheries subsidies

A short statement was also made on Monday 4 May on behalf of Friends of Fish, an informal coalition of WTO members advocating for reductions in fisheries subsidies. The coalition said they had been actively reflecting on how to address fisheries subsidies in the July work programme, adding that they were conscious of exploring new and creative approaches with other members, and would continue consultations to this end.

The 2001 Doha mandate includes language related to the disciplining of fisheries subsidies. In 2005 trade ministers further stipulated that the Doha negotiations should seek to include a prohibition on certain subsidies that contribute to overcapacity and overfishing. The subject has since proved challenging to navigate over the past decade.

In March, the African, Caribbean and Pacific (ACP) Group tabled a paper outlining a series of elements that it says should define a potential work programme on the Doha Round talks, including tackling fisheries subsidies that contribute to overcapacity and overfishing. Among various other proposals, the ACP document called for enhanced transparency and notification requirements on fisheries subsidies, along with limiting and progressively phasing out subsidies to vessels engaged in practices that damage the marine ecosystem, those provided to illegal, unreported, or unregulated fishing, and those that contribute to overfishing. (See BioRes, [26 March 2015](#))

Some members on Monday 4 May reportedly spoke in favour of including fisheries subsidies in the work programme, together with appropriate provisions on special and differential treatment (S&DT) for developing countries. Coalitions that spoke on these lines included the ACP Group; the Small, Vulnerable Economies (SVEs) Group; the Least Developed Country (LDC) Group; the Pacific Group; and Egypt, Jordan, Morocco, and Tunisia.

The EU, as part of its suggested "horizontal" approach to the rules talks, said that the fisheries negotiations should focus on subsidies that contribute to overcapacity, as well as developing stronger and more effective transparency options.

Next steps

McCook told members on Monday 4 May that he plans to continue consulting members on possible ways forward, including the possibility of exploratory work and discussing recalibrated proposals. Regarding the overall Doha Round talks, WTO Director-General Roberto Azevêdo has lately urged members to redouble their efforts to make substantive advances in the various negotiating groups, particularly in order to set the stage for future discussions on horizontal trade-offs across negotiating areas. (See Bridges Weekly, [7 May 2015](#)) [*Editor's note, Bridges Weekly is ICTSD's flagship publication on international trade news*]

FISHERIES

EU warns Thailand on illegal fishing

The EU is using its market weight to tackle illegal fishing activity.

The European Commission in April put Thailand on formal notice for not taking sufficient measures to tackle illegal, unreported, and unregulated (IUU) fishing. The move comes as part of the EU's effort to wipe out illicitly caught fish from its fish imports. The EU is the world's largest fish importer.

Brussels said last month that it had engaged in a series of discussions with Thai authorities but that the Asian country continued to fall short on fisheries monitoring, control, and sanctioning systems. A "yellow card" handed out by the Commission represents a first step in a process that could eventually result in a fisheries import ban if Thailand fails to clean up its act. The move kicks off a formal process where Brussels will enter into dialogue with Bangkok on steps needed to address its IUU challenge. Thailand will be given six months to implement a tailor-made action plan.

Fish and fish products from Thailand added up to about three percent of the 28-nation's bloc overall fish imports in 2013. Thailand's global fish exports weighed in at around US\$6.2 billion in 2009, the world's third largest exporter by value, equal to seven percent of the global total value exported.

The April announcement also saw the Commission grant a reprieve to Korea and the Philippines, which the EU executive deemed to have implemented appropriate reforms to their legal systems, equipping them to tackle illegal marine activity.

"By using our market weight the EU is getting important players on board. Both Korea and the Philippines have taken responsible action, amended their legal systems, and switched to a proactive approach against illegal fishing," said Karmenu Vella, EU Commissioner for Environment, Maritime Affairs, and Fisheries.

The EU has in the past banned fish imports from Belize, Guinea, and Cambodia, and Sri Lanka for failing to take action on IUU. Imports from Belize are, however, now allowed again after reform efforts.

Trade tools to tackle illegal fishing

The EU's IUU regulation entered into force in 2010, putting in place a system to identify countries where illegal marine activity is rife, with the ability to resort to trade bans to prevent illegally caught products from entering its market. The regulation also put in place a system of catch certification whereby fish imports are accompanied by a document indicating that it was caught in accordance with applicable laws, regulations, and international measures.

While estimates vary, black market fishing activity is valued at between US\$9-21 billion per year, according to EU data. This adds up to between 11 and 26 million tonnes of fish or at least 15 percent of the global catch. IUU fishing is broadly recognised by experts as a key driver of global overfishing, a threat to marine ecosystems, and food security. Illegal fishing activity involves boats operating in violation of the laws of the fishery and international obligations.

The US in March released an action plan to tackle IUU fishing. Steps identified for the coming two years include addressing the challenge at landing point in ports, including relevant provisions in international trade agreements, and improving traceability across the supply chain. (See BioRes, [18 March 2014](#))

EMISSIONS TRADING SCHEMES

EU strikes draft deal on 2019 launch of carbon market reserve

The EU has reached a draft compromise on a market stability mechanism to help prop up prices on its carbon market.

EU negotiators have struck a draft compromise on the launch date and operation of the 28-nation bloc's planned "carbon market stability reserve" (MSR) mechanism, which is now set to take effect from 1 January 2019. The "agreement in principle" was reached in early May after difficult negotiations between representatives from the EU institutions, capping a process that began early last year when the Commission put forward its proposal for such a mechanism.

More stable prices?

The planned MSR aims to prop up the EU's struggling carbon market, which is the backbone of its Emissions Trading System (ETS). The mechanism would effectively act as a price buffer, removing excess emissions allowances from the EU carbon market based on set "trigger" thresholds and then putting these into a reserve. Those allowances could later be fed back into the system if the number of allowances on the market is too low. The goal of this measure would be to stabilise carbon allowance prices, which have struggled to stay at levels high enough to encourage low-carbon technology investments and spur improvements in energy efficiency.

A few final procedural steps remain before the 5 May deal can be enacted. One is that the consolidated text of the agreement must receive the approval of the Committee of Permanent Representatives (COREPER), which is responsible for preparing the Council of the EU's work. The deal will then need to be formally adopted by the Council. On the Parliament side, votes will be needed by both the Environment Committee and full plenary, which are expected in late May and early July, respectively.

Czech move breaks blocking minority

One of the main sticking points in the negotiations had been when exactly to launch the MSR, with previous suggested start dates ranging from end-2018 to 2021. The former had been backed by EU lawmakers in the Parliament's environment committee, while the latter had been signed off on by the European Commission and EU member states. The final 2019 date was proposed by Latvia, which holds the rotating presidency of the Council of the EU, after the Czech Republic reportedly left a "blocking minority" in the Council that was pushing for a later date. This minority had been led by Poland, which is heavily reliant on coal.

Along with setting the start date, the deal also says that the 900 million allowances that were "backloaded" from the 2014-2016 period to 2019-2020 would be placed on this market reserve. Any unallocated allowances will be put directly in the market reserve in 2020. How these allowances are dealt with will be one of the elements under consideration during a planned ETS review. Furthermore, the upcoming EU ETS and market stability reserve review will need to take into account issues such as carbon leakage – where production is moved abroad to countries with lower environmental standards – and competitiveness aspects.

In elaborating their post-2020 climate and energy framework, EU heads of state and government had agreed last October that a "well-functioning, reformed" ETS with a market stabilising instrument would play a role in helping the bloc meet its emissions reduction targets for 2030. (See BioRes, 3 November 2014)

The newsroom

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China to overtake US as leader of global warming

According to recent data estimates, China's cumulative carbon dioxide emissions since 1990 are projected to surpass those of the US by 2015 or 2016, making the Asian giant the leading driver of man-made global warming.

Using slightly different data, Washington-based think tank the World Resources Institute (WRI) estimates that China's total greenhouse gas emissions from 1990-2016 will total 151 billion tonnes, exceeding the US' cumulative total of 147 billion already by next year.

The rise in emissions raises questions of accountability and responsibility within the context of the UN climate talks. Poor nations argue that they should bear less emissions-cutting burden, due to a later start in burning climate warming fossil fuels, compared to developed nations. A number of countries and experts now argue that all countries should share responsibility in tackling the global climate problem and the subject remains a hotly debated topic in the multilateral climate talks.

IWC rejects Japan whale hunting proposal

The International Whaling Commission (IWC) in April said that Japan has failed to provide enough information on an updated whaling programme and, as such, the body could not determine whether lethal hunts would be justifiable.

Last April, the International Court of Justice (ICJ) ruled against Japan's whale hunt, which Tokyo argued was a part of research efforts. This year, Japan put forward a new whaling plan to the IWC, proposing to take 333 minke whales in the Antarctic annually over the next 12 years, or a total of 3,996 by 2028. By comparison, by last year Japan had killed an estimated 13,000 whales since the IWC ban on commercial whaling and trade became effective in 1986/7.

Under the international whaling moratorium, some lethal research programmes are permitted, and the meat from this can be sold locally. Scientists from nations such as Australia, New Zealand, Britain, and the US have argued that non-lethal research can be just as informative.

Food chain unveils zero deforestation policy

In April, Yum! Brands, the company that owns KFC, Pizza Hut, and Taco Bell, unveiled a zero deforestation policy for all of its restaurants by the end of 2017 in relation to palm oil sourcing. The company owns over 40,000 restaurants in 125 countries around the world. According to the standards set out in the new policy, the company will only source from suppliers who prohibit palm oil plantation development in high conservation areas such as rain forests and peatlands; have dispute resolution mechanisms in place; are transparent in their operations; and do not condone forced or underage labour.

While some environmental groups welcomed Yum! Brand's policy as a useful effort to help tackle forest loss, others said they wanted to see the company extend the commitment to its other goods and increase transparency through the release of progress reports. Concern over forest destruction induced by global demand for palm oil has driven other international buyers to enact similar zero deforestation policies in recent years.

Governments call for fossil fuel subsidy cuts

A coalition of nine countries last month unveiled a joint communiqué calling on governments to phase out harmful fossil fuel subsidies in the context of tackling climate change. Arguing that such support encourages wasteful consumption, stacks the market against clean energy, and depresses investment in energy efficiency, the communiqué urges governments to implement international pledges to cut such support.

According to the document, this could be done by better communicating fossil fuel subsidy reform timelines, ensuring ambition in the scope and timeframe for implementing reforms, and implementing the cuts in a manner that safeguards the world's poorest.

The coalition – including Costa Rica, Denmark, Ethiopia, Finland, New Zealand, Norway, Sweden, Switzerland, and France – presented the communiqué at the Spring Meetings of the International Monetary Fund (IMF) and World Bank Group held mid-April in Washington.

China confirms end to rare earths export tax

China's Ministry of Finance confirmed in April that it will be ending its export tax on rare earths, starting on 1 May. The policy, along with its past use of export quotas on these minerals, had been the subject of a high-profile WTO dispute that Beijing lost last year.

The tax and quotas had been challenged at the WTO by the EU, US, and Japan, with the organisation's Appellate Body ruling in August 2014 that China's export restrictions on various rare earths, as well as tungsten and molybdenum, are largely inconsistent with trade rules.

Beijing had argued that the policies were needed in order to help limit the domestic environmental consequences resulting from the extraction and production of rare earths. The complainants, however, had suggested that the restrictions were actually aimed to prop up prices of the minerals, giving Chinese producers an unfair competitive edge. China is the world's leading producer of rare earths minerals, accounting for approximately 90 percent of global production despite only holding a quarter of rare earths global supply. These minerals are primarily used in manufacturing high-tech and clean energy products.

Arctic Council nations pledge climate action

The eight nations part of the Arctic Council at the end of April pledged to do more to tackle climate change. Scientists have warned that the frigid region is currently melting at twice the rate of other regions. A number of environmental groups have suggested that changes put indigenous communities in jeopardy. The northern melt also raises the possibility of new shipping routes.

Meeting in Iqaluit, Canada, 300 km south of the Arctic Circle, Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the US agreed to a voluntary framework to help cut methane and black carbon – both potent pollutants with significant climate warming effects.

The eight nations will provide inventories of their black carbon emissions starting this year and work towards adopting an ambitious collective reduction goal by 2017.

Arctic Council member states and observers – including China, India, and Germany – are responsible for at least 60 percent of the world's black carbon emissions. The US, which will take on the rotating chairmanship for the next two years, has pledged to continue to work in this area.

European Parliament votes on conflict minerals

Members of the European Parliament's International Trade Committee in April voted on a draft law laying down conditions for EU recognition of industry self-certification and labels for tin, tantalum, and tungsten, their ores, as well as gold from conflict regions.

EU lawmakers amended the legislation to stipulate that these metals and minerals imported by EU smelters and refiners would have to be certified as responsibly sourced. The EU has jurisdiction over some five percent of smelters and refiners operating in the sector worldwide. The Committee stopped short, however, on voting for mandatory certification of all "downstream" operators, namely those that buy, process, and use the minerals and metals in the EU to make various high-tech goods. The Committee also rejected a proposal to extend the scope of the regulation to include other minerals and metals.

The amendments are based on a proposal put forward by the European Commission last year. A binding system is currently in place in other markets, such as the US through the Dodd-Frank act, which obliges American companies to provide detailed certifications for their materials.

EU Parliament supports biofuels compromise

The European Parliament at the end of April signed off on a draft compromise law geared towards capping crop-derived biofuel production, clearing the way for the new rules to come into effect. Under the deal struck between EU institutions, "first generation" biofuels should account for no more than seven percent of transport energy consumption by the end of the decade, and fuel suppliers must report to EU countries and the Commission the estimated level of greenhouse gas emissions caused by indirect land-use change (ILUC). Member states must also set a national target, no later than 18 months after the new rules enter into force, designed to boost the share of advanced biofuels in total transport consumption. These derive from certain sources of waste as well as seaweed.

The 28-nation bloc has a target of using renewables for 10 percent of each member states' transport energy consumption by 2020. Concerns around the use of farmland to produce biofuel crops reducing land available for food crops, and related issues such as deforestation, triggered a near seven-year political debate on EU reforms. While some environmental groups welcomed the move, others called for more rigid accounting.

Publications and resources



WTO Dispute Settlement: One-Page Case Summaries – WTO – April 2015

This new publication from the WTO provides a summary of the key findings of every dispute panel report up to the end of 2014 and, where applicable, the subsequent Appellate Body report. Each summary includes the core facts, key findings and other matters of significance. The disputes are presented in chronological order. The publication can be accessed at <http://bit.ly/1GLH0ds>



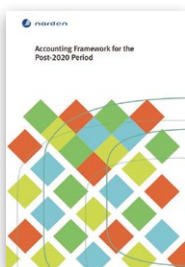
Green Growth in Fisheries and Aquaculture – OECD – April 2015

This report by the Organisation for Economic Co-operation and Development (OECD) concludes that many parts of the fisheries and aquaculture sectors do not reach their full potential. However, the report also presents policies that could ensure future sustained growth, in the context of the organisation's Green Growth Strategy. A science-based approach to stock management, combined with a reactive policy development cycle, will be needed to ensure fisheries deliver maximum possible benefits. The report adds that improved regulation to deal with environmental externalities and space competition will be important in the aquaculture sector. The publication can be accessed at <http://bit.ly/1A8s4Ba>



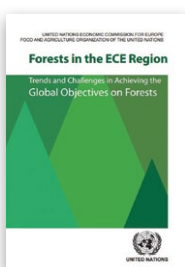
Reviving the Ocean Economy: The Case for Action - 2015 – WWF – April 2015

This report argues that, while the value of the ocean's riches rival the size of the world's leading economies, its resources are rapidly eroding due to overfishing, mangrove deforestation, as well as disappearing corals and seagrass. The authors estimate the ocean provides an annual value of goods and services of around US\$2.5 trillion. In order to reverse the negative trends, the report presents an eight-point action plan to restore ocean resources to their full potential. The report can be accessed at <http://bit.ly/1DWok6m>



Accounting Framework for the Post-2020 Period – Nordic Council of Ministers – March 2015

The report, published by the Nordic Council of Ministers, explores the components needed to create a robust greenhouse gas mitigation accounting framework in the context of the planned universal climate agreement set to be concluded this year and come into effect at the end of the decade. The authors offer some key considerations for accounting for the national commitments that will form the building block of the new deal. The full report can be accessed at <http://bit.ly/1Ciplzk>



Forests in the ECE Region: Trends and Challenges in Achieving the Global Objectives on Forests – UNECE, FAO – March 2015

This report, released by the UN Economic Commission for Europe (UNECE) and the UN Food and Agriculture Organisation (FAO), looks at the region's progress towards achieving the Global Objectives on Forests as well as existing challenges for forests and the forest sector. The report serves as input for the upcoming session of the United Nations Forum on Forests in May. The report can be accessed at <http://bit.ly/1aFIRWg>



Subsidies to Key Commodities Driving Forest Loss: Implications for Private Climate Finance – ODI – March 2015

This paper, published by the Overseas Development Institute (ODI), examines how the subsidising of certain commodities shapes a country's investment climate and can have adverse environmental consequences, specifically deforestation. The authors suggest that certain subsidies, such as those to palm oil, beef, soy, and timber, can drive forest loss. The paper supports the use of Reducing Emissions from Deforestation and Forest Degradation (REDD+) programme financing in order to promote subsidy reforms.

The paper can be accessed at <http://bit.ly/1FbkUTz>



Key Elements of a Successful Addis Ababa Accord on Financing for Sustainable Development – SDSN – March 2015

This working paper, prepared by the Sustainable Development Solutions Network (SDSN), defines the key elements required for a successful outcome from the Third International Conference on Financing for Development (FfD3). According to the authors, the FfD3 outcome should align financing for development principles with the new sustainable development goals (SDGs) with clear implementation timelines; increase the volume and quality of private and public financing; commit to effective pooled financing mechanisms to support the SDGs; and ensure that national and global rules for investment, finance, and trade are consistent with the post-2015 development agenda.

The working paper can be accessed at <http://bit.ly/1lrRUBl>



Global Trends in Renewable Energy Investment 2015 – UNEP – March 2015

This United Nations Environment Programme (UNEP) report, prepared by the Frankfurt School-UNEP Collaborating Centre for Climate & Sustainable Energy Finance and Bloomberg New Energy Finance, showcases the recent progress made clean energy finance, as global investment in renewable energy rebounded by 17 percent on the previous year. The report looks at some of the key elements in this growth as well as the continuing challenges, the role of clean power in the climate debate, and the trends in costs of generation.

An executive summary can be accessed at <http://bit.ly/1IJPpxB>



Implementing Deforestation-Free Supply Chains – Certification and Beyond – SNV REDD+ Energy and Agriculture Programme – March 2015

This study examines the role deforestation-free certification schemes may have on limiting deforestation, supporting sustainable supply chains, and delinking agricultural production from deforestation. It concludes that current certification processes may not be sufficient and argues for a transparent traceability system to be put in place that demonstrate where the end product comes from. A further limitation on certification schemes is the lack of incentives and support for smallholders to meet certain standards.

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



Supply Change – Forest Trends – March 2015

This project by environment group Forest Trends offers a resource for businesses, investors, governments, and civil society organisations by providing real-time information on commitments to reduce environmental degradation from commodity sources and monitor progress towards these pledges. For example, the tool would allow one company to compare its procurement policies against competitors, in the context of commitments to source deforestation free.

The project can be accessed at <http://bit.ly/1HXSpS0>

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