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The WTO seal products ruling and beyond

WTO

Understanding the implications of the seal products case

ENVIRONMENTAL GOODS

The road ahead in the EGA talks

POST-2015 DEVELOPMENT AGENDA

Trade policy in the sustainable development goals

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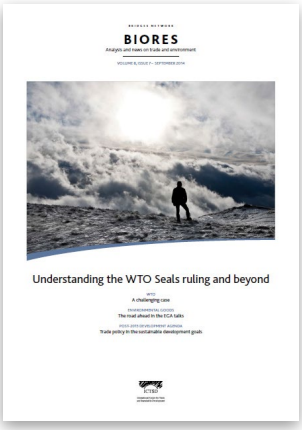
The WTO seal products ruling and beyond



In May the WTO's highest court released its decision on a case brought by complainants Canada and Norway involving seal products, public morality, as well as Inuit and other indigenous communities.

The Appellate Body found that the EU's ban on imports of seal products could be justified under international trade rules on the grounds that it was protecting public morals, namely in connection with animal welfare. WTO judges then said, however, that the ban was discriminatory in its application and accordingly needed to be amended.

The move partly upheld an original panel ruling – handed out by the global trade body last November – but ultimately went further in confirming that certain exceptions built into the EU ban disqualified the permitted public morality justification.

These exceptions included an allowance for products derived from indigenous hunts to continue to be sold across the 28-member state bloc. The Appellate Body said that the EU had failed to show how the special treatment of seal products from indigenous hunts – versus commercial hunts – could be squared away with its objective of addressing public moral concerns.

The judgement came after years of bitter and emotional debate on the matter. Some commentators also claimed the 208-page seal products ruling to be among the most complex ever-issued by the global trade arbiter.

The two lead articles in this issue of BioRes offer a path through some of the technical aspects of the ruling and consider the way forward. Pieter Leenknegt reflects on what the EU's next move might be, while Marie Wilke reviews the possible implications of the ruling for WTO jurisprudence and its treatment of non-trade concerns where these intersect with commerce.

Tackling such concerns is necessarily an uncomfortable task for the global trade body. Has the seal products case demonstrated that international trade rules are up to the task?

This issue of BioRes also features two other articles looking at the road ahead in relation to trade and other environmental policy concerns, including an update on the latest developments in the "green goods" trade talks between 14 WTO members – counting the 28 member states of the EU as one – and an analysis of the trade tools put forward in the proposed sustainable development goals framework.

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The BioRes Team

WTO

What will the EU do with Seals?

Pieter Leenknegt

The EU has been instructed by WTO judges to bring its Seal Regime in line with certain aspects of international trade law. This article reflects on what Brussels' next move might be.

The WTO Appellate Body in May upheld an earlier dispute settlement panel verdict that the EU's import ban on seal products on the grounds of public morals related to animal welfare concerns could be justified under Article XX(a) of the WTO's General Agreement on Tariffs and Trade (GATT 1994); in other words as necessary to protect public morals.

The WTO's highest court also said that, under the "chapeau" of the same article, the EU Seal Regime was applied in a way that effectively constituted arbitrary or unjustifiable discrimination between countries where the same conditions existed and therefore struck down the ban, sending Brussels away to do its homework.

This was particularly the result of a series of carve-outs built into the regulation and one granted to Inuit or other indigenous communities (IC exception) proved especially problematic. The Appellate Body explained that Brussels had failed to demonstrate how alternative treatment for seal products stemming from IC hunts – versus those harvested by "commercial hunts" – could be reconciled with the 28-nation bloc's moral objection. WTO judges endorsed the panel's findings that comparable animal welfare conditions exist in both cases.

Furthermore, doubts were aired over the ambiguity around certain aspects of the IC exception, which could result in seal products reaching the market that had in fact come from a hunt more properly characterised as "commercial." The EU was also panned for not making "comparable efforts" to ease access to its market in the same way as for the Greenlandic Inuit. In July Brussels informed the global trade body it would address these concerns but that it would require a reasonable period of time do so.

Floodgates open?

Contrary to the clamouring of some anti-sealing environmental groups after both the original panel ruling last year and the recent Appellate Body conclusion, it would be a bold claim indeed to state that the WTO is now in the business of protecting seals, animal welfare, or public morals. For either statement to be true a genuine and duly multilaterally rubberstamped WTO agreement on these issues would be necessary. Given the almost entirely contingent nature of what constitutes "public morality" across individual WTO members, such a WTO-wide trade and public morals agreement will remain hypothetical for the foreseeable future.

At the same time, however, it is difficult to underestimate the importance of the *Seals* rulings. The core disciplines of non-discrimination and the prohibition of quantitative restrictions were legitimately set aside in the multilateral trade arena to make way for the moral concerns of the public in an importing market.

However, while the *Seals* rulings as a whole surprised many a world trade watcher, hardly any of the elements involved in the conclusions are necessarily ground breaking. In the 2005 *US-Gambling* decision the Appellate Body had made it sufficiently clear under the WTO's General Agreement on Trade in Services (GATS)' mirroring provision to GATT Article XX(a) that countries are given a substantial degree of leeway in the specific choice of restricted or banned matter under the heading of public morals.

Neither was the nodding to a distinction established between products purely based on processes or production methods (PPM) a novelty as such in the WTO legal system. In the *US-Shrimp* dispute, for example, the Appellate Body allowed for import bans under GATT Article XX(g) based on specific harvesting methods that allegedly resulted in the killing of a large number of turtles. The authorisation in principle of a measure based on public moral concern for animal welfare, the new element in the *Seals* decision, should now send doubting minds home as such concerns will likely almost always involving PPMs.

Consequently, the *Seals* ruling in its acceptance of a PPM-based distinction seems to pave the way for those WTO members eager to restrict or condition trade upon such parameters as respect for core labour standards or low greenhouse gas emissions levels involved in the production of certain goods and services. Especially in the former case, the analogy that can be thrashed out is striking; one could indeed argue that respect for humans in the production process should be considered at least as important as respect for animals in terms of morality claims. Such a defence is going to be even easier since there is clearer universal consensus on what rules precisely constitute core labour standards than on readily acceptable standards for animal welfare, and if so, for which species by way of preferential and urgent action.

It is difficult to underestimate the importance of the Seals rulings. The core disciplines of non-discrimination and the prohibition of quantitative restrictions were legitimately set aside in the multilateral trade arena to make way for the moral concerns of the public in an importing market.

Most of the scholarly discussion since the issuing of the *Seals* ruling seems, however, to have focused on a more narrowly scoped question. Does the decision open jurisprudential floodgates to a plethora of domestic trade bans based on a host of animal welfare concerns involving both wild and farm animals – think *foie gras* – that may or may not be legitimate and could therefore create legal uncertainty in terms of WTO compatibility? As a rebuttal some scholars argue that the WTO judges made it abundantly clear that it is the exceptional, highly unpredictable, and uncontrollable polar environment of the arctic ice flows that pose various a risks to seal welfare in the hunting process. More controlled or clement harvesting contexts might not as readily justify measures to protect public morals.

It is indeed interesting how closely the original panel and the Appellate Body followed the reasoning developed in the preliminary considerations of the 2009 EU Seal Regime text itself. Based on conclusions of the European Food Safety Authority it was held there that "compliance with animal welfare requirements is not feasible in practice or, at least, is very difficult to achieve in an effective way," very much regardless of the hunting instrument being used – whether the Norwegian-fashioned *hakapik*, a club, or a gun. Broadly speaking the WTO judgment dealt a blow to the central tenet of the Canadian defence that humane sealing, whether traditional or modern, is at all possible.

Exceptions and the EU consistency issue

The EU-wide Seal Regime and the ensuing 2010 implementation instrument was not a revolutionary step for the bloc. Public outcry around images of clubbed baby seals and campaigns by celebrities such as Brigitte Bardot in the 1970s saw the EU adopt in 1983 of the so-called "Brigitte Bardot" Directive. This focused solely on the pups and did not curb trade in products from the Inuit population. In the years following this regulation, various member states sought to put in place their own pieces of domestic regulation, extending wider seal product bans.

Seals at the WTO

September 2009: EU adopts Seal Regime

November 2009: Canada and Norway request consultations with the EU concerning a seal products import ban

March/April 2011: The WTO Dispute Settlement Body (DBS) establishes a panel to rule on Canada and Norway's complaints. It is agreed that a single panel will rule on both cases.

November 2013: A panel report is circulated to WTO members

January 2014: Canada, Norway, and the EU all appeal various aspects of the panel's findings.

March 2014: The Chair of the WTO's Appellate Body informs members that it will not be able to circulate a report within normal time frames due to the size and complexity of the appeals.

May 2014: Appellate Body report circulated to WTO members

June 2014: The DSB adopts Apellate Body and panel reports.

July 2014: The EU informs DSB that it will implement the rulings in a reasonable period of time.

Notably both Belgium and the Netherlands had been previously challenged, by the very same WTO members Canada and Norway that later took on the EU Seal Regime, on their own recently adopted Seals Acts – panel case DS369, now discontinued. Meanwhile, other EU member states prepared seal product legislative action along the same lines, and none of these domestic instruments looked fully identical. The Dutch and Slovenian bans only concerned themselves with harp and hooded seals, the Belgian ban was unique in also including a transit ban – triggering the separate challenge under Article GATT Article V – while Italy worked on a crisp and clear ban with no exceptions. Germany felt the Inuit-exception in most other member states' bills was too ethnocentric a carve-out and preferred an exemption for seals hunted according to traditional methods *such as practiced by* the Inuit while Slovenia worked along the same lines but added an exception for imports "for non-commercial purposes."

It is important to realise that the subsequent initiative by the European Commission to work out a regulation on trade in seal products had to bring some uniformity to this myriad of member state preferences and shore-up the internal market against numerous geographically compartmentalised mini-regimes. Not to mention the fact that the now 28-member state bloc contains a number sealing nations. Denmark, serving its Inuit populations in Greenland wondered why the Commission went to such great lengths to defend the Dutch and Belgian bans vis-à-vis challenging nations at the WTO, and Scandinavian siblings Sweden and Finland equally questioned the fuss around sealing.

The eventual Seal Regime approved by the European Parliament and the Council of Ministers was therefore as much a compromise outcome between all these conflicting interests as a genuine effort to address the issue of the inherent cruelty of seal hunting practices. A blanket-ban on seal products was put forward with trade allowed in three exceptional circumstances; products derived "from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence" – along German lines, and without defining "subsistence" – products from hunts conducted for the sustainable management of marine resources – upon the insistence of Sweden and Finland who apparently see their own sealers as guardians of marine biodiversity – and products purchased by tourists in an alleged attempt to "avoid a witch hunt" according to a British Member of the European Parliament.

Needless to say, these derogations with their utter lack of connection to the moral justification invoked for the overall ban – animal welfare – were going to be problematic for both the panel and the Appellate Body under the chapeau of GATT Article XX. Indeed, in its original complaint, Norway argued just that.

The IC exception was arguably a candid misunderstanding on behalf of some combined with a more conscious attempt to stealthily get away with a handy carve-out by others. In fact, in the initial Dutch national ban, the reference to Inuit populations had been included for the same reasons the legislators in the Netherlands had limited the import ban to products from harp and hooded seals only; a slavish copy/paste operation from earlier pieces of legislation in the eighties and more specifically Council Directive 83/129/EEC on harp and hooded seal pups. Since conservation of two threatened seal species was at stake then and Inuits as custodians of their traditional marine environment were deemed not to kill baby seals, such an exemption made eminent sense. The same logic can be found in the US Marine Mammals Protection Act of 1972, which again aimed mainly at the conservation of about a dozen of mostly endangered species including sea lions, dugongs and whales. The rapporteur in the Environment Committee of the European Parliament proudly but mistakenly used it as a "model" for the IC exemption that eventually carried the day in the 2009 Seal Regime.

The IC exception did not, however, seem to satisfy stakeholders on any side. Not Canada, whose indigenous hunters had long abandoned their traditional hunting styles for more lucrative, industrial sealing procedures, and suspected delaying tactics in the implementation of the regulation that would give a competitive edge to Greenland Inuits in getting the required certification to benefit from the exemption. Not Norway, attacking

an EU regulation that as an European Economic Area member it was required to transpose into its own domestic legal order.

Even Denmark, deemed to have fought the most for a generous exemption because of pressure from its impoverished Inuit communities in Greenland who keep hunting in a traditional and artisanal manner mostly for lack of alternatives, abstained from voting on the regulation in the Council of Ministers. Several Danish trade diplomats explained later on that the overarching ban was making the demand for seal products in the EU dry up to the extent that distributors could no longer profitably do business selling the IC products alone. Critics also levelled the ethical truism that a moral imperative – the hunting of seals is inhumane – does not allow for exceptions.

The problem with certification procedures for exempted seal products as elaborated in the implementing Seal Regime regulation is therefore not, as certain commentators hinted, that they seem to cast a doubt over the necessity of the ban implying that less trade-restrictive procedures such as labelling would after all be available as a feasible alternative. The problem is instead that what is certified is not the humane character of the hunt involved in the exempted goods, but rather their originating within a traditionally community, which bears no logical link with the former parameter.

Given the final ruling could result in even more trade restrictive solution it is hard to see how a faithful implementation of the *Seals* decision could lead to anything else but an amended, more consistent ban. Overall Ottawa and Oslo may have landed a pyrrhic victory.

The "gestation process" of the EU Seal Regime was so intricate that it made many observers in anticipation of a likely finding of WTO incompatibility wonder whether an amendment to the approved text would ever be within reach.

A total ban with a limited IC exception was also what a sizeable number of EU member states proposed when faced with the Commissions' initial proposals riddled with derogations. How limited could and should that exception be? The animal rights group Human Society International defined it as a narrow window for the use of seal products in non-commercial cultural exchanges among traditional indigenous communities. This begs the question as to whether such an exception needs to be mentioned in a trade measure at all since ceremonial and educational use on the spot does not involve international trade at all. The same goes for a further articulation of the "subsistence" notion.

The way forward: QMV mathematics

The "gestation process" of the EU Seal Regime was so intricate that it made many observers in anticipation of a likely finding of WTO incompatibility wonder whether an amendment to the approved text would ever be within reach. No less than three diametrically opposed opinions of the relevant European Parliament committees – Environment, Internal Market and Consumer Protection, and International Trade – had to be reconciled in the legislative process. Not to mention the balancing act between different member state positions.

Yet the actual voting outcome in both Parliament and Council was so overwhelmingly in favour of the eventual text that one wonders whether all the internal compromising was perhaps superfluous. Out of 640 MEPs no less than 550 voted for the Regulation, with 49 votes against, and 41 abstentions. In the Council an even starker result was obtained, with 314 votes in favour, none against, and 31 abstentions – the latter representing the weighted votes of Romania, Denmark, and Austria.

For an amendment to make it through the Council in the present a Qualified Majority Vote (QMV) – the voting regime used now to determine a majority of EU member states decisions – would require only 255 votes in favour and 14 member states represented in the "yes" camp. Given the fact that the only country that vehemently worked in favour of a generous IC exception – Denmark – already abstained, that those lobbying for the "marine resources management derogation" – Sweden and Finland – only represent 17 votes, and that the travellers' derogation was more of an afterthought for virtually all around the negotiation table, a revised ban without exceptions and derogations would still likely muster enough votes to surpass the QMV threshold.

The assumption here is that a straight ban would move only Finland and Sweden into the camp of the abstentions or the opposing votes. Even under the hypothesis that the seal processing industries of Scotland would push the UK to join that minority, and that a few Baltic states would follow suit in solidarity with their Scandinavian neighbours, a qualified majority in favour of the ban should still be within reach. Croatia, which has joined EU ranks since the time of adoption of the seal products regulation and prompted a slight reshuffling of the weighted votes in Council, would very likely join its Mediterranean neighbours in support of a strict prohibition.

As for the newly installed European Parliament, while it may be a little more difficult to predict exactly what the effect of a "WTO prescription" on its voting behaviour would be, it is likely that a similarly comfortable majority could be found there. Compare this relative ease, for instance, to the complexities the US Congress faces in bringing home the outcomes of the 2012 *COOL* and *Clove Cigarettes cases*…

An amended exception-less ban, crafted much along the lines of the existing 2007 EU ban on cat and dog fur, would almost certainly get the approval of a WTO implementation panel if that route is chosen to settle the dispute, and therefore transform a temporary setback for the use of the public morals exception into a resounding victory. Canada, Norway, Greenland, and the remaining sealing nations would have to increase their focus on trading seal products among themselves and to non-European markets, although with small hope of expanding or maintaining demand figures, as nations outside Europe are not that welcoming either. Indigenous populations might have to focus on other hunts, or revert to the truly traditional subsistence hunts involving small-scale bartering of pelts rather than targeting the more lucrative international outlets.

An initial loss from the viewpoint of the anti-sealing lobby would be transformed, as the different stages in the dispute and especially the final hurdle, would come to illustrate that the more WTO compatible scheme in this area is the more restrictive one.

The author was a Belgian WTO delegate in inter alia the Dispute Settlement Body between 2007 and 2011. He writes this article on his own behalf, none of the views reflected therein should be attributed to the Belgian Federal Public Service Foreign Affairs, External Trade and Development Cooperation. The author thanks Joost Pauwelyn for his insightful comments.

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WTO

The litmus test: Non-trade interests and WTO law after Seals

Marie Wilke

Some experts argue the seal products import ban case not only revealed the limits of the WTO's GATT general exceptions clause but was also a missed opportunity for introducing greater legal coherence.

The connection between international economic law and the rights of indigenous peoples, historically disadvantaged groups, ethnic minorities, and other non-dominant groups – hereafter minority rights – is by no means new or unknown. Investment arbitrators and regional human rights courts, for example, have often been confronted with conflicts at this intersection.

On the other hand, the relationship between minority rights and WTO law received considerably less attention; a fact now altered by the recent WTO dispute over the EU's import ban on seal products, initiated by Canada and Norway.

While the case involved a ban allegedly geared towards addressing concerns around animal welfare from the 28-member state bloc, much of the legal argumentation focused on one of its three exceptions, that is for "hunts traditionally conducted by Inuit and other indigenous communities [that] contribute to their subsistence." The exception allows for the importation and marketing of seal products produced by Inuit communities specifically identified in the EU Seal Regime irrespective of the animal welfare standards observed during the hunts. Its underlying rationale is the recognition of the hunts' importance for the communities' subsistence and cultural heritage.

Under the Inuit communities' (IC) exception a large number of products from Greenland – a territory associated with the EU member state Denmark – are eligible for importation while the vast majority of products from Canada and virtually all products from Norway cannot qualify. This unequal distribution is the consequence of the hunters' ethnicity in the three countries. While nearly 80 percent of the Greenlandic population is indigenous, including a vast majority of all hunters, only a minority of Canadian and no Norwegian hunters are Inuit.

At the same time, many non-indigenous hunters in Canada are as dependent on the seal hunt for their subsistence as Canadian Inuit communities. Moreover, some of the Greenlandic hunt has been criticised for its commercial large-scale nature lacking characteristics of traditional hunts. As a consequence, the most important question of the dispute was whether the IC exception resulted in a *de facto*, in other words in effect, discrimination against Norwegian and Canadian products on the basis of their nationality.

A human focus in the first ever WTO animal welfare dispute

Despite this somewhat surprising focus on humans in what may be considered the first ever WTO dispute around animal welfare, there was little focus on human *rights*, not to mention the term "indigenous rights." Instead the parties assessed "community *interests*."

Even more importantly, rather than focusing on the legality and legitimacy of protecting the communities' interests, the question was whether their protection could be reconciled with the EU's interest to protect its public's moral concerns regarding seal welfare. The EU had advanced the seal welfare arguments as a primary defence for the ban under Article XX(a) of the WTO's General Agreement on Trade and Tariffs (GATT 1994).

In its final report the Appellate Body agreed with the original panel that the ban as such was justified under GATT Article XX(a) – as necessary to protect public morals – or more precisely as a means "to address the moral concerns of the EU public with regard to the welfare of seals, specifically, reducing incidences of inhumane killing of seals and, EU citizens' individual and collective participation as consumers in, and exposure to the economic activity which sustains the market for seal products derived from inhumane hunts."

But the WTO judges also went on to say that the Seal Regime violated global trade rules because it was applied in a discriminatory manner particularly as relates to the IC exception. Importantly, they held that the IC exception could "not be reconciled with, or [was] related to the policy objective of addressing the EU public moral concerns regarding seal welfare." At the same time the Appellate Body refrained from any statement that could be read as to suggest that the protection of indigenous peoples' interests was not legitimate per se. Instead the exception was ruled illegal due to the fact that it contradicted the primary aim of the Seal Regime.

Some observers have called the approach and outcome both clever and sensible as it allowed the Appellate Body to dismiss the exception as being discriminatory while not suggesting that trade concerns trumped indigenous communities' legitimate interests. But the *Seals* ruling is arguably only sensible from a short-term perspective.

A closer reading and an assessment of the legal arguments advanced by the Appellate Body ... reveals a rather incoherent approach that might present numerous future challenges vis-à-vis the global trade arbiter's treatment of non-trade concerns and, in particular, minority rights.

Many trade law experts have often argued that the relationship of human rights and WTO law should not be over assessed as the GATT's general exceptions clause would be able to capture potential conflicts or clashes if they were to arise. On that basis, past concerns over the apparent contradiction of strong multilateral environmental agreements or human rights instruments and WTO law were dismissed as academic constructs.

A closer reading and an assessment of the legal arguments advanced by the Appellate Body, however, reveals a rather incoherent approach that might present numerous future challenges vis-à-vis the global trade arbiter's treatment of non-trade concerns and, in particular, minority rights.

Minority rights at the WTO: Three types of conflict

Potential conflicts of minority rights and trade law may be sorted into three distinct categories. First the protection of rights and interests including, for example, minimum sourcing requirements and exclusive trading rights.

Since 1992 the Convention on Biological Diversity (CBD) has recognised countries' exclusive rights to their genetic resources and to a fair and equitable share in the benefits of the utilisation of such resources. The imminent entry into force of the Nagoya Protocol will now hopefully turn this objective into practice. Where the resources are associated with traditional knowledge of indigenous peoples or local communities the rights are extended to them. As royalties and other shares usually make up only a very small amount of actual benefits, interest in establishing local value chains, have increased over the past few years.

GATT Article XX

The WTO's General Agreement on Trade and Tariffs (GATT 1994) includes a "general exceptions" clause designed to provide policy space for a list of non-trade measures. The "chapeau" of the article stipulates the requirement, however, that these must not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail.

One option of enforcement in so called "user countries," namely those importing the resources, is to establish minimum sourcing requirements as currently under consideration in some countries. Taking the example of argan, a species that is endemic to the Zous area in Morocco and used to produce nourishing oil on the basis of traditional Berber knowledge, one could imagine regulation in a user country requiring that argan oil products use a minimum of Moroccan Berber argan oil while limiting the use of argan oil from non-indigenous producers in second-grower countries.

A second category is that of non-interference with customary practices by allowing for "lower" or different standards. This scenario well describes the EU Seal Regime or some local hunting laws that have already found their way to investment arbitration panels.

The third category is that of promotion, for example, typical positive discrimination as in the in the case of the South African Broad-Based Black Economic Empowerment. While the actual discrimination only applies to government procurement, the effects are felt across the entire economy, including by foreign investors and traders. For that very reason many international investment agreements (IIAs) already include reservations and carve-outs for pre-establishment national and most-favoured nation (MFN) treatment commitments regarding indigenous peoples' and minority preferences.

No scope for legitimate regulatory distinctions

Indigenous peoples, local communities, historically disadvantaged groups, and other non-dominant groups are spread unevenly across the world and in individual countries. As a consequence, in the context of WTO law that operates at the level of nation states, most of the instances described above would very likely be considered as cases of *de facto* discrimination.

This is particularly true as the Appellate Body has now confirmed in *Seals* that "[t]he fundamental purpose of [the most-favoured nation treatment clause is] to preserve the equality of competitive opportunities for like imported products from all Members" and that "[the National treatment provision] does not require identical treatment [...] but the equality of competitive conditions [...]."

During the seal products dispute the EU argued that the GATT exhibits elements similar to those that had identified the recent crop of cases examined through the WTO's Agreement on Technical Barriers to Trade (TBT). These include *US-Country of Origin Labelling (COOL)*, *US-Tuna II*, and *US-Clove Cigarettes* all dealt a verdict by the Appellate Body in 2012. In these three disputes the Appellate Body introduced the notion that it should be demonstrated that a detrimental impact of a measure did not stem exclusively from a legitimate regulatory distinction. Interestingly, the EU was not alone in its position, with other third parties agreeing on its stance. Many delegates and experts therefore eagerly awaited the *Seals* verdict to clarify the relationship of the TBT and GATT Agreements.

Essentially the question was whether the GATT also permitted for an assessment of legitimate regulatory distinctions as part of the *de facto* discrimination analysis. Alternatively, any non-competitiveness considerations could only be considered under a potential Article XX defence.

While the EU's arguments before the Appellate Body naturally took a very legalistic character, the underlying rationale for the position seemed to be the following. Recognising that GATT Article XX was always meant to be a general exceptions clause but not the only place to consider non-trade related regulatory aspects, especially where *de facto* discrimination is concerned, would allow for greater harmonisation among different WTO agreements as well as among WTO law and other international law.

More precisely, in its oral and written submissions the EU referred to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization (ILO) Convention 169 as a means of confirming the "legitimacy of protecting the Inuit and indigenous communities' interest" and the distinction's non-discriminatory

character as a consequence of "different factual situations" that merited differential regulatory treatment.

The Appellate Body, however, sustained the panel's finding that the *de facto* discrimination assessment was only concerned with the competitive opportunities, leaving no space for regulatory considerations unlike in the context of the TBT.

As a consequence WTO judges have cast the net for *de facto* discriminations very widely. With arguably very few domestic regulations that do not in some way or another impact competitive opportunities, many more cases are thus likely to end up within the realm of GATT Article XX. Meanwhile the case has revealed some considerable shortcomings in that provision.

In the seal products dispute, GATT Article XX's inability to address dual or ancillary objectives resulted in a situation where the Appellate Body had to assess the grounds of the IC exception through the lens of public concerns regarding seal welfare, namely the primary objective.

Minority rights as a matter of public morals?

In the seal products dispute, GATT Article XX's inability to address dual or ancillary objectives resulted in a situation where the Appellate Body had to assess the grounds of the IC exception through the lens of public concerns regarding seal welfare, namely the primary objective. This led to the conclusion that the IC exception could not be reconciled with the objective of animal welfare.

Even as they came to this conclusion WTO judges did not seem too comfortable with the seeming hierarchy of rights. The result is a few paragraphs added to the legal analysis where the Appellate Body discussed other features that could indicate the discriminatory character of the IC exception. Ambiguity regarding the exceptions scope and application was cited along with a lack of comparable effort from the EU regarding facilitating the use of the exception by indigenous communities in Greenland and Canada.

From that passage, however, it is not clear whether the IC exception will always result in the regime's discriminatory character or whether the alterations suggested by the Appellate Body would be sufficient to make the EU Seal Regime WTO compliant. It is very likely that this ambiguity will be raised during the implementation phase if EU institutions cannot agree to abolish the IC exception in its entirety. Either way the example emphasises the limited scope of WTO law as it now stands to account for dual objectives advanced by domestic regulators.

Various experts have also articulated discomfort with the Appellate Body's handling of public morality, criticising the hands-off approach regarding determining the exact standard of morality, coupled with a very wide scope. The fear is that the door has now been opened for "just about anything."

A word of caution, however, is appropriate. While the Appellate Body refrained from establishing benchmarks and instead used a hands-off approach, the members went about the task very carefully and underlined that the findings were very context specific. The in-depth assessments of the animal welfare risks associated with the seal hunt are evidence of steps taken, among others. The doors may have been opened but not in an uncontrollable way. Moving forward, the more important question will be whether it is

appropriate to walk through the door, especially where sensitive issues such as minority rights are concerned.

During the proceedings Norway and Canada had argued that the establishment of an existing public morality required evidence that the public's majority supported the cause. While this qualitative argument was rejected, the original panel nonetheless extensively assessed public opinion polls. The EU's argument that even issues little known by the public but supported and introduced by the regulator with the aim of honouring broader public policy considerations, especially those deriving from international obligations, could qualify as public morality, was equally rejected.

As a consequence, no matter how carefully the issue may be looked at, it will be looked at through the lens of the public's moral, often the majority. And nothing could be more inappropriate than subjecting minority rights, especially those of historically disadvantaged groups, to the general public's morals. This is not only a point of semantics. It may have real effects, particularly where cases are tested for their trade restrictive effects under the GATT, because the standard will be assessed on the basis of the established public moral, and not on the basis of international standards. While these may be used as evidence for an existing public moral, the overall risk of a widening gap between WTO law and other international law remains, even where individual cases result in sensible outcomes.

A missed opportunity for more coherence

After the three recent TBT cases many trade watchers had hoped that the rather unique and unexpected approach to TBT Article 2.1 – the non-discrimination article in that WTO Agreement – would mean a departure from past GATT jurisprudence in an attempt to recognise that most domestic regulation comes with dual objectives.

Indeed, following the approach suggested by the EU would have meant harmonising both WTO law internal approaches, and external clashes. The EU specifically pointed out that GATT Article XX came with limitations while the notion of legitimate regulatory distinctions did not. Moreover, the latter assessment would require less inquiry into the effects of a measure towards its aim and on the availability of alternative less-trade restrictive measures, which would honour other international agreements more appropriately, while not limiting the possibility of taking into account actual discriminations under Article XX.

It is often – correctly – said that the WTO is not the body to look into non-trade related matters or to even enforce them. But, perversely, under the current approach future cases will likely have to look even more into the substance of non-trade related issues and the Appellate Body will have to come to value judgments on them. The last Tuna dispute and the 80 pages of scientific discussion by the panel gave us a taste of how this may turn out.

It is unfortunate that the opportunity for introducing greater coherence was not used, in particular as it does not do justice to the relation of the different GATT provisions, and overemphasises the importance of Article XX.

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ENVIRONMENTAL GOODS

The road ahead for the Environmental Goods Agreement talks

Mahesh Sugathan

The next round of talks towards clinching an Environmental Goods Agreement is scheduled for mid-September. This paper maps the landscape in which the negotiations are taking place and offers a preview of the road ahead.

A group of 14 WTO members – counting the 28 member states of the EU as one – in July formally launched negotiations geared towards hammering out a new agreement aimed at liberalising trade in environmental goods. "The challenges we face, including environmental protection and climate change, require urgent action," the participants said in a joint statement on the occasion.

The negotiations will be conducted as a plurilateral initiative outside the formal WTO Doha Development Agenda (DDA) mandate. Subsequent discussions during the first round of talks on 9-10 July largely focussed on the approach to be taken in terms of setting the stage for negotiations.

July's news was much-anticipated following an announcement made by the group in January at an annual World Economic Forum event in Davos, Switzerland, which signalled plans to pursue "global free trade" in environmental goods. The Davos press release also suggested that the new initiative could be a "significant contribution" to participants' efforts in other international negotiations with a specific reference to the ongoing UN climate talks.

The Davos announcement was itself preceded by signals from Washington last year that trade could be used to tackle climate change when US President Barack Obama unveiled his climate action plan outlining a series of measures including the possible liberalisation of environmental goods and services at the WTO.

Back in January the group said that the talks would build on a list of environmental goods developed to support a 2012 Asia Pacific Economic Cooperation (APEC) group commitment to reduce applied tariff rates to five percent or less by the end of 2015. More recently, delegates and experts gathered in Beijing, China in August as part a two-week APEC Senior Officials' meet focused on building technical capacity among the 21-member alliance in order to implement the commitment on time.

The APEC initiative being voluntary also means that only the prevailing applied tariffs would be reduced and not bound tariffs. Applied tariffs are the actual customs duty levied while bound tariffs signify the maximum duty ceiling levels that WTO members could potentially levy.

The Environmental Goods Agreement (EGA) talks, while using the APEC goods list as a starting point, seeks to go further given that participating countries have committed to global free trade in environmental goods. Commentators suggest this would likely envisage a reduction of all bound tariffs on any eventual list of environmental goods to zero. A number of APEC economies are also participants in the EGA while the non-APEC participants include the EU, Norway, Switzerland, and Costa Rica.

Any agreement will become operational once a critical mass of members – in terms of a certain percentage of trade in the agreed upon goods – has been reached. The benefits of the outcome would then be extended to all 160 WTO members on a most-favoured

nation (MFN) basis. Following this arrangement, the eventual agreement would be classed as an open as opposed to a closed plurilateral agreement such as the WTO's Government Procurement Agreement, where benefits are extended only to members that participate in negotiations. While no threshold has been set for what such a critical mass might constitute, some trade-watchers have speculated that it could be 90 percent, following the figure chosen in the WTO Information Technology Agreement (ITA) that was also negotiated on a plurilateral basis.

Under the shadow of Doha?

The EGA group has sought to portray their effort as independent from the Doha Round. The DDA mandate under Paragraph 31 (iii) calls for "…the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."

Multilateral negotiations on this front have stalled over the last decade, hamstrung by contention among WTO members as to what constitutes an environmental good, how such goods should be liberalised, and the general lack of momentum in the Doha Round as a whole. In the face of multilateral stagnation, WTO members appear to be increasingly turning to plurilateral initiatives as a possible avenue for advancing trade liberalisation – and potentially contributing to breaking the Doha deadlock – in line with instructions given by trade ministers at the 2011 ministerial conference to pursue new, more flexible negotiating approaches.

However, although a smaller group of countries implies that progress on reaching a plurilateral agreement may be smoother, negotiators will still have their work cut out for them. Discussions during the course of the voluntary APEC effort led to many goods eventually being dropped before the final 54 "Harmonised System" (HS) sub-categories were arrived at from an original starting list of around 300.

The HS-codes refers to the World Customs Organization's framework used for identifying goods at the border. The HS customs classification used means that environmental goods under these 54 HS-6 digit subheadings are lumped together with other industrial products which may not have an environmental relevance. APEC economies can choose to liberalise tariffs on the entire HS 6-digit category or deploy an "ex-out" approach where only part of a subheading is deemed as an environmental good. Most of the goods in the APEC list, as well as the categories under which they have been classified, can be traced back to the various lists that WTO members submitted during the course of Doha Round talks on environmental goods.

Some observers have raised questions around how the process would be coordinated with the existing multilateral mandate on environmental goods – which sits under the special session of the Committee on Trade and Environment (CTE) where there has been no movement – and how any eventual outcome would be accommodated under the WTO. For instance, will the deal be administered by the CTE, or as a stand-alone agreement similar to the Information Technology Agreement (ITA)? The actual negotiations for the plurilateral agreement, however, will take place outside the WTO's purview but largely within its physical locale. The talks are in principle open to other WTO members to join.

Assessing the goods

The goods in the APEC list are broadly relevant to a number of environmental product categories such as air-pollution control, waste-water treatment, solid and hazardous-waste management, and renewable energy. This list also contains a number of products relevant to environmental monitoring, analysis, and assessment and one example of an environmentally-preferable product, multi-layered bamboo flooring panels.[1] According to experts, however, only one subheading – HS 850231 for wind-powered generating sets – exclusively covers environmental goods. One study argues that 46 of the 54 HS subheadings of the APEC list cover products that are not used primarily for environmental purposes.[2] Other researchers have made similar comments. At the same time it is important to take into account that the APEC list only includes part of today's internationally-traded environmental goods.

Current EGA participants

Australia, Canada, China, Costa Rica, Chinese Taipei, the European Union, Hong Kong (China), Japan, Korea, New Zealand, Norway, Switzerland, Singapore, United States

It may be desirable for EGA participants to consider adding products that could be clearly identifiable and relevant to attainment of major environmental goals, for example, climate change mitigation. Adopting a supply chain perspective would also be useful. Other considerations are goods deemed particularly important from a trade-perspective, including for developing countries, as well as products relevant for the delivery of environmental services.

Another potential hurdle to address will be how any future EGA will continue to be relevant to changes in technology. While it will not be possible to raise tariffs once bound at zero, in a rapidly-changing world, products agreed-upon for tariff liberalisation might quickly become outdated. Some newly emerging technology may be eligible to be classified under a specific tariff line or broader HS-subheading already benefitting from the EGA reduction in place. In other cases EGA participants may need to agree on a mechanism for continuous review of the list on a periodic basis so that newly emerging technologies that are not automatically captured can be added, in other words, there may be a need for a "living list" that is constantly updated.

Trade flows and tariff profiles

At the broad HS-6 digit level covering all 54 subheadings – and therefore inevitably including a number of non-environmental goods – the "G14," as the current group has been dubbed by trade watchers, accounted for 86 percent of global trade in 2012 according to COMTRADE data.

The G14 group thus makes up a dominant share of trade in all of the 54 product subheadings. China, the EU, and the United States were, at the same time, the largest importers and exporters in 2011-12. Tariffs are already fairly low among current EGA participants. More than half of the HS subheadings and national or regional tariff lines of all the G14 combined are duty-free on an MFN basis. Similarly, more than half of the G14 group's imports in value terms in the subheadings of the APEC list are duty-free. Again in value terms, 56 percent of all imports by G14 member of product groups in the APEC list are duty-free.

Imports into Hong Kong, Norway, and Singapore from the 54 subheadings are entirely duty-free while imports into Canada, Costa Rica, and Japan are almost entirely duty-free. In China and Korea, however, less than 30 percent of imports in value terms from the APEC-list are duty-free. The largest importers of dutiable goods are China, the European Union, the United States, and Korea. The average bound tariff for all 54 subheadings on the APEC list is 5.9 percent, excluding subheadings with unbound or only partially bound tariffs. Such averages are highest in Costa Rica, New Zealand and Korea.[3]

Despite the overall low-level of applied tariffs, their removal as "nuisance tariffs" could lead to a lowering of implementation costs at the border. The reduction of MFN bound tariffs on products to zero would also lead to greater certainty and predictability for the private sector. In addition the inclusion of new environmental products beyond the APEC list with higher tariff barriers could raise average tariffs faced by EGA participants. Ultimately non-tariff measures (NTMs) such as standards and certification would eventually need to be addressed in order to truly smooth trade. These will not, however, be the immediate focus of negotiators. EGA officials explained at the launch in July that the negotiations will initially focus on tariff issues related to environmental goods.

What will September bring?

At the first round of talks in July, some EGA participants expressed willingness to nominate products in September based on categories, in order to ensure the agreement's environmental credibility. According to a trade delegate, to start with, EGA participants would be free to put forward for discussion in mid-September products of interest falling under two categories namely, air-pollution control, and solid and hazardous waste management.

For this purpose participants who wish to put forward products might use a spreadsheet with column headings useful for facilitating discussions – such as the relevant HS-6 digit code under which the product and/or products would be nominated – a descriptive column, and additional columns providing for additional product specifications or ex-outs. The HS version used for the EGA would be HS 2012 whereas the one used for the APEC negotiations was a mixture of HS 2002, 2007, and some 2012. While all categories have not yet been decided, participants could draw on categories that were been put forward during earlier APEC negotiations, as well as at the WTO. These include, for example, waste-water treatment, heat and energy management, renewable energy products, and noise and vibration abatement.

A trade delegate recently noted that while some participants may not yet be ready to nominate products for September there would be initial discussions on the categories and products that were nominated. According to another EGA-participant delegate the group will proceed with nominations on agreed categories in parallel with finalising a list of the latter. Another delegate suggested it might be useful to get a clearer picture of the categories to be discussed before entering into product nominations in order to safeguard the agreement's environmental credibility. A rush to nominate products could jeopardise the talks in this respect, the delegate said, but also acknowledged that other participants might have differing views. The process would also be facilitated by inviting technical experts in the relevant categories to share their expertise and provide inputs during the week of discussions. The next round of discussions in November would go through a similar exercise on additional product categories.

According to one delegate, the objective at the end of these discussion rounds would be to consolidate sometime towards July/August 2015 the product compilations received after which actual negotiations would begin to retain, add, or drop products in the list, also taking into account various factors such as participants' interests, concerns, and sensitivities, as well as seeking to strike a balance among the various categories. Another delegate was of the view, however, that it would be better not to set concrete timelines at such an early stage of the negotiations.

Most delegates contacted seemed to agree that while the objective was to reflect all the products agreed-upon in the APEC list, participants would be free to nominate additional products, and that these could be proposed at the HS-6 digit level or at the level of ex-outs indicating the relevant HS-6 digit code.

One trade source reflected on the possibility of the EGA participants agreeing on goods under the APEC list as part of a possible early harvest approach although it was not clear whether all participants would agree to such an approach. Criteria such as a systems-approach and relevance to supply-chains and environmental services could all be used by participants to nominate products. In that regard at least some degree of co-ordination by certain EGA participant negotiators with their TISA (Trade in Services Agreement) counterparts would be expected.

The EGA participants have stated that negotiations would remain open to any and all interested WTO members to join. Indeed it is anticipated that Israel would likely be the newest member to join the group for the third round of discussions slated for November. It should be noted that some of the current EGA participants might need to fulfil domestic consultation procedures every time a new participant intends to join. In particular, on the occasion of the EGA's launch in July, China's WTO Ambassador to the WTO Yu Jianhua said that the group would like to see more developing members join the process.

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❶ Sugathan M., (2013), Lists of Environmental Goods: An Overview, ICTSD

❷ Reinvang, 2014, The APEC list of Environmental Goods: An Analysis of Content and Precision Level, Vista Analysis AS

❸ Vossenaar, R., (2014, forthcoming), Identifying products with Climate and Development Benefits for an Environmental Goods Agreement, ICTSD

POST-2015 DEVELOPMENT AGENDA

Harnessing trade policy in the sustainable development goals

Alice Tipping

Trade-related issues have been included across the proposed SDGs. This article focuses on key places where the integrated framework brings trade or economic tools to bear on environmental challenges.

A UN working group tasked with developing a recommended list of sustainable development goals (SDGs) in July released an outcome document setting out 17 proposed goals supported by over 160 targets. The new goals will be geared towards replacing the Millennium Development Goals (MDGs) when they expire next year. In addition to integrating and balancing the social, economic, and environmental dimensions of sustainable development, the SDGs are meant to build on a vast array of existing international commitments, including elements of the MDGs that have not yet been achieved. The debate around the new framework is important for a number of reasons. The final set of SDGs, as a list of universal targets endorsed by UN member states, will be an important signal of policy priorities for the global community. If they follow the pattern established by the MDGs, political attention and funding is likely to gravitate towards at least some of them.[1] The overriding objective is that the goals and targets will shape national sustainable economic development plans and the subsequent actions of governments, international organisations, and civil society pursuant to these.

Designing an integrated, universal agenda of priority goals and targets has been far from easy. Despite efforts by the co-chairs of the Open Working Group on Sustainable Development Goals (OWG) – as the UN body is formally known – participants were not able to agree to shorten the list below the current proposed 17 goals, compared to just eight MDGs. With such a comprehensive mandate, delegations have been particularly concerned to ensure the goals and targets chosen are coherent with existing international commitments, while not pre-judging the outcomes of ongoing international processes. One of these is the WTO's Doha Development Agenda (DDA) negotiations a number of elements of which overlap with trade-related targets discussed in the OWG.

Trade-related targets in the SDG framework

Trade-related issues appear across July's outcome document. Several systemic trade-related targets are included under proposed goal 17 as cross-cutting "means of implementation" (MoI) for the entire framework of goals. Trade-related targets are also linked to specific goals, usually but not always as MoI, which suggests recognition that carefully designed trade policy, as part of a broader policy framework, can make a contribution to many aspects of sustainable development.

The trade-related targets under proposed goal 17 reflect, with some updating and expansion, several of the targets and indicators included under MDG 8 on developing a global partnership for development. The first proposed target refers to the promotion of a "universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO," including the conclusion of the DDA. The focus on the global trade body sends a strong message about the centrality of that institution and the Doha Round to sustainable development. However, it also arguably narrows the scope of the proposed target to just one part of the international trade system, leaving out new trade rules increasingly being developed in bilateral, regional, and plurilateral trade agreements. The second proposed target refers to increasing exports of developing countries, including doubling least developed countries' (LDCs) share of global exports by 2020.

The third proposed target refers to implementing duty-free quota-free (DFQF) market access for LDC exports, consistent with WTO decisions. Recent WTO decisions encourage both developed countries, and developing countries declaring themselves in a position to do so, to provide or improve DFQF treatment to imports from LDCs. Several developing country WTO members – China, India, the Republic of Korea, Chinese Taipei and Turkey –already provide some DFQF access to LDC exports.[2] The proposed target also includes ensuring that rules of origin (RoO) are transparent and simple to facilitate LDCs' use of their preferential market access. Rules of origin dictate how much processing must take place on a particular good or product before it can be considered to originate from a given country. Restrictive and complex RoO – which a country must comply with in order to take advantage of an intended trade preference – can make it difficult for poor countries to use such preferences.[3] At a ministerial meet last December, WTO members adopted a set of non-binding guidelines for preferential RoO for LDCs, also with the objective of making them simpler and more transparent.

More specific trade-related MoI and targets are integrated across the framework. For example, the correction and prevention of restrictions and distortions in global agricultural markets, including elimination of agricultural export subsidies and export measures with equivalent effect through the DDA, is identified as a means of implementation that would support the proposed goal 2 on ending hunger and supporting sustainable agriculture. More Aid for Trade support – including through the WTO-coordinated Enhanced Integrated Framework that mainstreams trade into LDC development plans – is one of only two MoI put forward under proposed goal 8 on sustainable economic growth. The specific MoI and targets that deserve most attention from a trade and environment perspective, however, are those that bring trade or economic tools to bear on environmental challenges.

Fossil fuel subsidies

Finding language for a universal target on fossil fuel subsidy reform did not prove easy in the New York process and a separate contact group was established in the last week of the OWG's meetings in July to try and find compromise text. Previous drafts of the SDG framework included relatively straight-forward language around phasing out fossil fuel consumption and production subsidies, with the need to ensure access to energy for the poorest, as a target under the proposed sustainable energy goal.

The final goal-specific MoI under the sustainable production and consumption goal broadly reflects, with some revisions and new caveats, the language agreed in the outcome document from the UN sustainable development conference held in June 2012 in Rio de Janeiro, Brazil that launched the SDG process. Paragraph 225 of *The Future We Want* reaffirms the commitment by some countries – namely G20 and APEC economies – to *phase* out inefficient and harmful fossil fuel subsidies. It then invites other countries to consider rationalising their own subsidies by removing various market distortions, including those created by taxation systems, and subsidies where they exist. The MoI target in the proposed SDGs framework draws on the invitation element of this language, focusing on *rationalising* inefficient fossil fuel subsidies that encourage wasteful consumption through the removal of market distortions, in accordance with national circumstances. As in paragraph 225, the removal of distortions can include restructuring taxation systems and reforming harmful subsidies, where they exist, to reflect their environmental impacts.

Returning to previously agreed language is a common solution for negotiators short on time, but if the language were to be revisited in the UN General Assembly (UNGA), a couple of points are worth noting. The broader language around removal of market distortions probably widens the scope of the target so it is relevant to many national situations, but the inclusion of caveats like "in accordance with national circumstances" also provides countries with more flexibility around how they address the issue. In addition to identifying the implications of the final proposed language coming out of the OWG in this area, commentators around fossil fuel subsidies have also pointed out that the target should be linked to the sustainable energy goal.

Next steps

September 2014: High-level stock taking event on post-2015 development agenda and UN General Assembly to consider draft SDGs

October 2014: UN Secretary General to release synthesis report on post-2015 development agenda

September 2015: High-level summit to adopt post-2015 sustainable development agenda

Fisheries subsidies

The fisheries subsidies target under the proposed oceans goal also proved controversial, as OWG participants grappled with its scope and how to ensure it was consistent with the slow-moving DDA negotiations, which include disciplines on fisheries subsidies. The target is one of the only trade-related targets not classified as a means of implementation. The proposed target's language is a negotiated outcome and not completely clear, but it appears to set a date of 2020 for the achievement of three things: the prohibition of certain fisheries subsidies that contribute to overcapacity and overfishing; the elimination of subsidies that contribute to illegal, unreported, and unregulated (IUU) fishing; and a standstill on new such subsidies. According to a footnote these three elements should be achieved while taking into account the ongoing WTO negotiations and the integral nature of special and differential treatment for developing countries in those negotiations.

This language raises a number of questions. The first, more general, issue is that it is not clear from the drafting how the target and its various elements should relate to the WTO negotiations on fisheries subsidies. For instance, the Doha Round is mandated to develop a prohibition on certain subsidies that contribute to overcapacity and overfishing. Establishing a prohibition as part of an SDG could make achievement of this target – by a certain date – dependent on the outcome of a negotiation in another forum. A similar question around the feasibility of this approach came up during OWG discussion in connection with the climate change targets and their relationship to the UN Framework Convention on Climate Change (UNFCCC) process. Tying the scope of the target too closely to the WTO negotiations could also limit the reform activity, and corresponding financial support, that could otherwise be covered by the target.

One way of clarifying the relationship could be to set a broad target of the elimination of fisheries subsidies that contribute to overcapacity and overfishing, including through the completion of the DDA mandate on fisheries subsidies. This wider formulation would enable countries to establish their own nationally-appropriate subsidy reform targets, and implement them in parallel with the WTO negotiations, ideally with the support that inclusion in the SDGs could bring. This structure would mirror a similar target around the elimination of subsidies that contribute to IUU fishing and over-capacity under para 31.f of the Johannesburg Plan of Implementation, the outcome document of the World Summit on Sustainable Development held in 2002 in South Africa. A broader target could be supplemented with what appear to be the other two priority issues identified in the current proposed fisheries subsidy target. A standstill together with the elimination of IUU fishing subsides, by 2020, would signal the urgency of required action. Similar ideas have received high-level political attention. The Global Ocean Commission, for example, has called for the capping of fuel subsidies to high seas fishing and their phase-out within five years.

A further option that could fill a gap in the framework would be to reflect the need to address *trade* in illegally harvested fish products. In 2009 UN Food and Agriculture Organization (FAO) members concluded an Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing designed, among other things, to stop IUU fish products from being accepted at fishing ports and then entering trade. This element could be reflected in target 14.4 on IUU fishing or under target 15.7 under the proposed terrestrial ecosystems and biodiversity goal, which highlights the need for urgent action to end illegal trade in protected species of plants and animals.

Environmentally sound technologies

Several targets in the outcome document refer to increased international cooperation to improve diffusion of, and access to, technologies that would help to address environmental challenges. One of the specific MoI identified under proposed goal 6 on water and sanitation is the expansion of "international cooperation and capacity-building support to developing countries" around water and sanitation activities and technology. Similarly, proposed goal 7 on access to sustainable energy includes an MoI around enhanced "international cooperation to facilitate access to clean energy research and technologies." Several of the cross-cutting means of implementation under proposed

goal 17 also relate to technology, including promoting the transfer, dissemination, and diffusion of environmentally sound technologies to developing countries on favourable terms, as mutually agreed. Most of the rather general wording on these issues replicates language already agreed-upon at Rio+20 and does not go further into specifics. Options for a UN technology facilitation mechanism are also under discussion elsewhere as part of the follow-up to the Rio+20 outcome document.

Trade in environmental goods

One possible aspect of improving access to technology is through increasing the diffusion of environmental goods and services. Removing trade barriers to access such goods could be one aspect of the international cooperation referenced in the targets described above. There are already several trade-related processes underway designed to reduce the trade barriers that affect particular environmental goods and thus increase their accessibility. The WTO Doha Round includes negotiations on the liberalisation of environmental goods and services, but in the absence of progress in Geneva, economies are also using other forums to move ahead. In 2012, the 21 member economies of Asia Pacific Economic Cooperation (APEC) endorsed a list of 54 environmental goods on which they committed to lower their tariffs to five percent by 2015, with the explicit objective of improving their accessibility for domestic businesses and consumers. This past July, a group of 14 WTO Members – counting the 28 member states of the EU as one – launched formal negotiations towards "global free trade" in environmental goods, using the same APEC list of goods as a starting point for their talks. [*Editor's note, see related article in this BioRes edition*]

The fact that trade-related cooperation around environmental technologies is already underway, with different combinations of participants and goods, and across a number of forums, suggests that coherence may be best achieved not by explicit reference in the final proposed SDG text but by allowing national governments to refer to the priorities established in the framework when they pursue their cooperative trade initiatives. While reducing trade barriers to access environmental goods can contribute to technology diffusion many other flanking policies, including enabling environments, are also required to ensure such diffusion takes place and is used in support of sustainable development.

The road ahead

Trade-related targets have been deployed across the proposed sustainable development goals framework. In various different ways, they arguably reflect recognition that carefully designed trade policy, within coherent policy frameworks, can play a role in integrating economic and environmental objectives and supporting sustainable development. Some observers expect that the UNGA, scheduled to pick up negotiation of the SDGs as part of its work towards the post-2015 development agenda, will aim to reduce the number of goals and perhaps also some of the targets. While there will almost certainly be further jostling around language in the months ahead, keeping trade-related targets within the SDGs would help to ensure the overall framework makes good use of available tools, in order to effectively support the environmental, social, and economic dimensions of sustainable development in the coming decades.

❶ The Power of Numbers project synthesis report notes that the effect of different Millennium Development Goals on policy prioritisation and funding varied considerably. See: Sakiko Fukuda-Parr, Alicia Ely Yamin and Joshua Greenstein (2013), Synthesis Paper - The Power of Numbers: A Critical Review of MDG Targets for Human Development and Human Rights, FXB Centre for Health & Human Rights Working Paper Series, Harvard University, Boston.

❷ World Trade Organization (2013), Market Access for Products and Services of Export Interest to Least-Developed Countries, Note by the Secretariat, WT/COMTD/LDC/W/58, World Trade Organization, Geneva.

❸ Work by the Overseas Development Institute has discussed links between trade and the SDGs debate, including around regional trade agreements, and the importance of simplified rules of origin. See for example: Dan Gay, Jodie Keane and Yurendra Basnett (2014), From the Millennium Development Goals to the Sustainable Development Goals: Learning the lessons from the trade diagnostic studies in the Pacific, Overseas Development Institute, London.

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NATURAL RESOURCES

WTO Appellate Body confirms China rare earths export restrictions illegal

WTO judges have found that China's rare earths export restrictions cannot be justified as conservation measures.

The WTO's highest court confirmed in August that China's export restrictions on various rare earths, as well as tungsten and molybdenum, are largely inconsistent with international trade rules. The decision upheld the main findings of a previous dispute panel ruling, released in March.

China is the leading producer of rare earths, which are primarily used for manufacturing high-tech products, such as wind turbines, energy-efficient lighting, hybrid and conventional vehicles, and medical equipment. However, despite accounting for over 90 percent of production of these minerals, it holds less than 25 percent of the estimated global supply.

In recent years, the Asian economy has imposed various measures to limit the exports of such rare earths. These decisions prompted the US, EU, and Japan to file nearly identical complaints at the WTO in 2012, questioning whether the measures were unfairly propping up global prices of these minerals and giving Chinese producers an unfair competitive advantage.

China, in turn, argued that the measures were geared toward protecting these natural resources, along with limiting the severe environmental damage that comes as a result of their extraction.

The case has drawn particular notice in the trade and environment community, as it brought to the fore the question of how to design natural resource conservation measures while adhering to global trade rules.

How the Appellate Body would rule on the relationship between China's accession protocol and the WTO Agreements also piqued the interest trade law observers, particularly given the country's loss in a separate case involving restrictions on raw materials exports.

"By upholding rules on fair access to raw materials, this decision is a win not only for the United States, but also for every nation that respects the principles of openness and fairness," said US Trade Representative Michael Froman.

Accession protocol

One of the key questions ahead of the Appellate Body had been how it would interpret the relationship between China's accession protocol – in other words, the terms under which the country joined the global trade body in 2001 – and the WTO's founding Marrakesh Agreement.

Under China's accession protocol, the country was required to eliminate all export duties, and the dispute panel had ruled in March that there was "no basis" in the protocol for justifying the use of such duties under Article XX of the General Agreement on Tariffs and Trade (GATT).

That particular article establishes a set of justifications under which WTO members may enact measures that would otherwise be illegal under international trade rules so long

as these are used to fulfil greater public policy objectives. This includes, for instance, the conservation of exhaustible natural resources.

In its appeal, China argued that Article XII:1 of the Marrakesh Agreement and paragraph 1.2 of the China's accession protocol, when read together, indicate that specific protocol provisions are to be treated as integral parts of either the Marrakesh Agreement or one of the Multilateral Trade Agreements, depending on the subject matter to which they "intrinsically relate."

China had argued that the panel did not "give effective meaning" to the second sentence of Article XII:1 of the Marrakesh Agreement, which governs the WTO accession process. This article stipulates that new members to the global trade body must accept its legal framework as a "single undertaking" rather than cherry-picking select agreements. According to China, therefore, specific terms of accession must "intrinsically relate" to either the Marrakesh Agreement or one of the annexed Multilateral Trade Agreements.

The Appellate Body rejected China's argument, indicating that Article XII:1 only provides the general rule for WTO accessions. They explained that Article XII:1 does not define the nature of the substantive relationship between the "terms" of accession, on the one hand, and the Marrakesh Agreement and the annexed Multilateral Trade Agreements.

Beijing also claimed that the term "WTO Agreement" of paragraph 1.2 of its accession protocol should also cover agreements other than Marrakesh Agreement. Therefore, the requirement under paragraph 1.2 that the accession documents "shall be an integral part of the WTO Agreement" means that the protocol's individual provisions are also "integral parts" of the global trade body's other specific agreements. The panel, China said, had erred in saying that these latter Multilateral Trade Agreements were excluded. (See BioRes, 13 May 2014)

The Appellate Body considered it of limited value to determine the scope of the term "WTO Agreement" under paragraph 1.2 in deciding the specific relationship between individual provisions of China's accession protocol and the individual provisions of the Marrakesh Agreement and other Multilateral Trade Agreements.

Overall, the Appellate Body rejected the view that an inquiry into this relationship must start from the premise that such a provision is "intrinsically related" to some of the others. For the Appellate Body, the specific relationship between the two must be ascertained through a thorough analysis of the relevant provisions, on the basis of customary rules of treaty interpretation and the circumstances of each dispute.

Export quotas, domestic conservation

China had also challenged the panel's finding that the rare earths export quotas were not actually measures that relate to conservation, given that these were not "made effective in conjunction with restrictions on domestic production or consumption."

Under GATT Article XX(g), any trade measures that a country would like to exempt from WTO rules, on the grounds of their importance for natural resource conservation, must also be paired with domestic production or consumption constraints.

Beijing had argued that the panel had incorrectly limited itself by looking only at the structure and design of the export quotas, without also considering what actual effect these had on the marketplace.

The complainants, however, had posited that the panel did indeed review the evidence that China provided on market effects, and "still found that China had failed to show how its export quotas, in their design and structure, relate to conservation."

The Appellate Body ultimately agreed with the panel, and the complainants, on this particular point.

Even-handedness?
In April, Beijing appealed and alleged that the panel had mistakenly found that Article XX(g) imposed an additional requirement of "even-handedness" – splitting the burden of resource conservation evenly between foreign and domestic consumers and producers.

The Appellate Body clarified that Article XX(g) does not impose this as a separate requirement in addition to the conditions expressly set out in this provision. According to last week's ruling, for GATT-inconsistent measures to be justified under Article XX(g), effective restrictions – namely "real restrictions – must be imposed on the domestic side.

Ultimately, however, it also found that since the dispute panel did not use this "even-handedness" evaluation in reaching its findings the overall panel ruling that the export quotas were unjustified would remain unchanged.

In a statement, the Chinese Ministry of Commerce noted that this finding regarding how to interpret Article XX(g) "contributed to clarify, to the benefit of the WTO membership as a whole, the requirements for a WTO member to invoke an exception for conservation purposes."

US conditional appeal
The Appellate Body did not rule on whether the panel's decision to exclude certain evidence from its consideration – namely, a series of ten exhibits submitted by the three complainants – was inconsistent with the WTO's Dispute Settlement Understanding, which outlines the terms that govern dispute proceedings at the global trade body.

The US had argued in its appeal that the panel was incorrect in deeming that these exhibits had been submitted too late, and would have therefore created "due process" concerns for China, given that the latter country would not have had enough time to respond adequately. The panel also found that the exhibits "did not supplement" other evidence that had already been accepted.

However, the US had made its appeal conditional, saying that it would not push the Appellate Body to rule on its concerns if China did not file its own appeal, or if the Appellate Body did not modify the panel's legal findings or conclusions. (See BioRes, 17 April 2014)

Since the Appellate Body did not reverse or modify any of the panel's findings or conclusions, it confirmed that it did not need to rule on the US appeal.

Next steps?
Under WTO dispute settlement practices, if China cannot immediately bring the cited measures into compliance, the parties can seek a mutual agreement on the reasonable period of time. The latter should occur within 45 days following the adoption of the Appellate Body report by the WTO's Dispute Settlement Body.

Should there be no mutual agreement the parties can resort to arbitration under Article 21.3 of the Dispute Settlement Understanding.

ICTSD reporting

CLIMATE CHANGE

US weighs international climate action options

The international community is gearing up for several key climate meets in the coming months.

The Obama Administration is reportedly looking at a number of alternative options to a legally binding international climate treaty. According to media sources, Washington may choose to go down the path of a "politically binding" arrangement that would combine existing commitments under the UN Framework Convention on Climate Change (UNFCCC) – home to the global climate talks – with new voluntary pledges.

Framed in this way, the new deal might not require ratification by US Congress, which must approve by a two-thirds majority any legally binding international treaty entered into by the US executive branch.

Getting a binding climate deal through the current Congress could be unrealistic, some commentators have said, meaning that alternative arrangements might prove the best way forward at the international level.

"If you want a deal that includes all the major emitters, including the US, you cannot realistically pursue a legally binding treaty at this time," said Paul Bledsoe, a former climate change official in the Clinton administration, speaking with the New York Times.

The latest strategy, if pursued, would mirror Obama's handling of the climate subject at the domestic level. Faced with a fractious environment on Capitol Hill, the US President last June unveiled a Climate Action plan.

This constitutes a series of primarily executive actions – including tackling carbon emissions from power plants and kick-starting green goods trade talks – that therefore do not require congressional approval. (See Bridges Weekly, 27 June 2013)

The Climate Action plan has since been used by Obama's political opponents as a beating stick arguing that the US President has abused his executive powers. The latest international climate move would likely also receive cold welcome from some US political camps.

Clinching a climate deal

The strategy could also be ill-received by some of the US' international partners. A number of poor countries and low-lying island nations are seeking a strong binding climate agreement in order to limit future damage climate change will have on their territories and secure sufficient finance to deal with foreseen impacts.

"Without an international agreement that binds us, it's impossible for us to address the threats of climate change," said Richard Muyungi, a climate negotiator for Tanzania. "We are not as capable as the US of facing this problem, and historically we don't have as much responsibility," he continued.

At a 2010 climate meet held in Durban, South Africa, governments agreed to draw up a new, universal, legal agreement to tackle climate change – capable of keeping world temperatures below a two degree Celsius temperature rise compared with pre-industrial levels – by the end of next year.

According to the Durban mandate the new climate deal should be a protocol, another legal instrument, or an agreed outcome with legal force.

Countries also said that the resulting package should also scale up ambition on tackling climate change to the end of the decade. The new deal will at that point replace the current international climate regime, governed by the Kyoto Protocol, itself signed in 1997 but only implemented from 2005. This commits industrialised nations to a series of greenhouse gas emissions cuts, although notably the US signed but did not ratify the instrument.

More recently the UN said that only 11 countries to date have implemented the second commitment period of the Kyoto Protocol, otherwise known as the "Doha Amendment," and urged remaining parties to speedup domestic ratifications.

"For this international legal framework to enter into force, governments need to complete their ratification process as soon as possible," said Christiana Figueres, UNFCCC Executive Secretariat. "This will provide an important positive political signal of the ambition of nations to step up crucial climate action," she stressed.

Agreed to during a climate conference held in the Qatari capital in 2012, the amendment extends participating countries binding reduction pledges for the years 2013-2020, and covers around 15 percent of global emissions. Rich countries are required to make emissions cuts of 18 percent below 1990 levels by 2020.

The stand-off between more and less industrialised countries over respective levels of action has long-been a feature of the UN climate talks.

An attempt to secure a binding, international treaty during a heads of state summit in Copenhagen, Denmark in 2009 failed in part due to disagreement over whether to continue to distinguish between these groups when formulating future climate action pledges. (See BioRes, 20 December 2009)

In the current talks, countries have agreed to each put forward "intended nationally determined contributions," (INDCs) which will serve as the building blocks for the 2015 climate agreement. At their latest meeting, climate negotiators began to circle around the thorny issue of what details countries should include in their INDCs. (See BioRes, 17 June 2014)

In order to meet next year's deadline a draft deal will need to be reached by the Conference of the Parties (COP) scheduled to be held this December in Lima, Peru.

At a ministerial meet in August, the BASIC group of countries – comprising Brazil, India, South Africa, and China – adopted a joint statement urging ambition on finalising the elements of the draft negotiating text in time for the Lima meet.

Ministers from this group would see the six core elements of the new climate deal comprised of mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity building.

Draft report sounds alarm

The efforts to secure a climate deal are set against a backdrop of increasingly stark warnings from climate scientists around the impacts of climate change. A leaked UN draft report at the end of August cautioned that mankind was in danger of causing irreversible damage to the planet unless it ramped up action on tackling emissions.

The draft pulls together and distils the findings of three studies released over the last year by the Intergovernmental Panel on Climate Change (IPCC) that have in turn looked at the physical science of global warming, its impacts, and how to address these. (See BioRes, 14 April 2014)

Some 800 experts have been involved in the research and writing of these three studies. The trilogy represents the most comprehensive analysis of climate science since 2007 and is intended to help guide policy formulation. The latest leaked document is slated to be reviewed in capitals before being finalised at an international meet in November.

Climate week next

As the summer draws to a close the climate world's attention is starting to shift to the next big event on the calendar, namely, a high-level climate summit convened by UN Secretary General Ban Ki-moon.

Early August saw Ban's office release a programme for the event scheduled for 23 September in New York, US. The morning will feature three parallel plenary sessions reserved for announcements by attending heads of state and government on national action and ambition.

Some commentators have expressed hope that these announcements might also include climate finance pledges, with capitalisation of the now-operational Green Climate Fund – a mechanism designed to help poor countries scale-up low-carbon growth – viewed as one litmus test for the relative success of international climate talks in the months ahead.

ICTSD reporting; "Obama Pursuing Climate Accord in Lieu of Treaty," NEW YORK TIMES, 26 August 2014; "Irreversible Damage Seen From Climate Change in UN Leak," 27 August 2014.

ICTSD reporting

The newsroom

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EU lifts fish sanctions on Faroe Islands

The EU confirmed in August that it had repealed sanctions adopted against the Faroe Islands in relation to a row over fish stock quotas and sustainable marine management. The move closed a dispute brought to the WTO in relation to the restrictions. On imposing the sanctions in August of last year, EU officials said these were necessary in order to protect the viability of fish stocks in the region, noting that Faroese fishers had already caught over 100,000 tonnes of herring in 2013.

Under the terms of the arrangement the Faroes have committed to respect a 40,000 tonne herring catch limit this year. In return the 28-nation bloc will lift its ban on the archipelago's herring imports and prohibition on the entry into European ports of Faroese fishing vessels.

North Atlantic herring are among the fish stocks jointly managed by the EU, the Faroe Islands, Iceland, Norway, and Russia. Fish quota allocations between the five nations have been a source of bitter disagreement in recent years.

South Africa to transfer Kruger rhinos

South Africa recently approved a transfer of up to 500 rhinos currently inhabiting its flagship Kruger National Park to "secret sites" within its borders as well as to nearby Botswana and Zambia in response to a surge in poaching-related deaths. The task could cost more than US$1500 per rhino. Rhinos have been moved in the past but the current crisis suggests the latest re-homing will likely be the largest to date. South Africa is home to the majority of the world's rhino population, estimated at around 18,000 white rhinos and 3,000 black rhinos. Last year saw poaching figures triple from 2010 levels. 630 rhinos have been poached this year including 408 from Kruger.

Rhino horns are valued at approximately $65,000 a kilogram on the black market, prized for medicinal purposes and as status symbols, according to conservationists. Johannesburg is looking at a range of tools to stem the killings, including the possibility of controlled farming and markets. Elsewhere across the continent other animals are also falling victim to black market demand.

APEC talks environmental goods trade

The 21-member Asia Pacific Economic Cooperation (APEC) forum confirmed in August that work is moving forward on the implementation of its landmark agreement to boost trade in over 50 environmental goods categories.

Delegates and experts gathered in Beijing, China as part of a two-week forum reportedly focused on building technical capacity among member economies in order to meet a deadline on reducing tariffs in the sector.

At a state leaders' meeting in Vladivostok, Russia, in late 2012 APEC economies agreed to reduce tariffs on a list of 54 green goods – including wind turbines and solar panels – to five percent or less by the end of 2015, following up on a commitment they made in 2011. The decision was welcomed as a positive regional step forward where multilateral talks in the same area had stalled. More recently in July a group of 14 WTO members launched plurilateral talks on green goods trade. The group have said they will use the APEC list as a starting point.

European Commission cuts country fish quotas

The European Commission in August announced deductions from 2014 fish quotas for Belgium, Denmark, Greece, Spain, France, Ireland, the Netherlands, Poland, Portugal, and the UK as a penalty for exceeding last year's allowances. The quota deductions apply specifically to the stocks that were overfished, affecting 45 fish stocks, and impacting species such as haddock, mackerel, and herring. This year's cuts are, however, are 22 percent lower than those made in 2013. The Commission imposes the deductions on member states annual quotas as part of an ongoing effort to renew the EU's dwindling fish stocks.

Officials in Brussels have suggested that improved adherence to scientific recommendations around sustainable fishing levels witnessed in member states could see EU stocks boosted by up to 15 million tonnes by the end of the decade. The 28-member state grouping ranks as the fifth largest fisheries and aquaculture producer worldwide, although it is also one of the largest importers of fish and fishery products.

US-Africa leaders' summit pledges energy financing

US President Barack Obama in August announced new financial commitments worth US$12 billion to the US' "Power Africa" initiative from the private sector and partners including the World Bank and the government of Sweden. Power Africa has a goal of doubling the number of people with access to electricity in sub-Saharan Africa, and scaling up commercial energy solutions by tapping into the continent's wind, solar, hydropower, natural gas, and geothermal potential.

Approximately 600 million people currently lack access to power in sub-Saharan countries. According to the International Energy Agency, achieving universal electricity access in the region by 2030 will require over US$300 billion in foreign direct investment.

The programme's cumulative funding commitments and investment guarantees now sit at over US$26 billion. The pledges came at the first-ever US-Africa leaders' summit, convened in Washington D.C., US. The landmark three-day gathering, attended by more than 50 African heads of state and government, was slated as a bid to boost US ties to the region by expanding trade and investment flows.

WTO trade facilitation deal in limbo

The 31 July midnight deadline for adopting the Protocol of Amendment for the WTO's Trade Facilitation Agreement (TFA) passed without a resolution, as members were unable to bridge a divide that had emerged in the run-up to the date over whether to link the protocol with progress toward a "permanent solution" on public food stockholding.

India previously indicated that it would not approve the TFA protocol – which would annex the newly-minted agreement to the global trade body's overall legal document – unless it saw visible signs that its concerns, namely regarding public food stockholding, were being addressed.

The demand had received a cold welcome from many of India's trading partners, coming so close to the 31 July deadline for adopting the TFA Protocol. Without the protocol, the TF pact would not be part of the WTO's legal framework, and is a necessary pre-condition for countries to ratify the deal in their domestic legislatures.

Many members, such as the US, have openly warned that a failure of the Bali deal, of which the TFA is a part, could be catastrophic for the WTO, particularly for the efforts to develop a post-Bali roadmap for the Doha Round.

EU Commission targets 30 percent energy efficiency

The European Commission has proposed a 30 percent EU-wide energy savings target for 2030, officials confirmed in July. The proposal is the third and final component of the draft 2030 climate and energy framework, which the bloc's leaders are aiming to finalise this coming October.

EU Energy Commissioner Günther Oettinger highlighted viability as a critical factor in support of the new target, suggesting that the result was a compromise measure designed to get a range of different actors on board. Officials have confirmed that the 30 percent target goes beyond the 25 percent energy savings that would be needed to meet the Commission's proposed goal of a 40 percent reduction of greenhouse gas emissions by 2030, compared to 1990 levels.

The target appeared to be for the EU as a whole, and does not currently refer to member state-specific reduction commitments. The target proposal appeared not to be legally binding. The Commission also presented its review on the progress made to date on the bloc's 20 percent energy efficiency target for 2020. Under current forecasts, the energy savings are likely to be 18-19 percent.

Nagoya Protocol to enter into force in October

An international instrument geared towards helping countries regulate the utilisation of genetic resources – such as plants used for medicinal or consumption purposes – is set to enter into force on 12 October 2014, after surpassing the required number of ratifications in July.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (CBD), as the protocol is formally known, will provide a legally binding global framework to determine how genetic resources are accessed and ensure that benefits arising from their utilisation for research and development are distributed in a fair and equitable manner.

The Protocol, signed in 2010, was designed to implement one of the three main objectives of the CBD, itself one of three international conventions agreed to at the landmark 1992 Rio Earth Summit. The passing of the 50th Nagoya ratification threshold comes just in time for the 12th Conference of the Parties (COP) to the CBD, scheduled for 6-17 October in Pyeongchang, South Korea, meaning participating countries will hold the Nagoya Protocol's first formal meeting on that occasion.

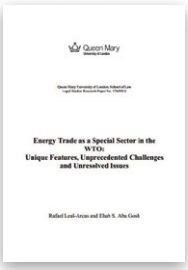
Publications and resources

From the Millennium Development Goals to the Sustainable Development Goals: Learning the Lessons from the Trade Diagnostic Studies in the Pacific – ODI – June 2014

This paper by the Overseas Development Institute (ODI) argues that Pacific island countries (PICs) have much to gain from a set of sustainable development goals that contribute to trade development. The paper discusses the various trade-relevant issues in the current SDG debate, ranging from fisheries to structural transformation, as well as assessing the impact of regional trade agreements.
The paper can be accessed at http://bit.ly/1sjJY04

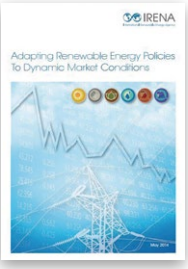
Renewables 2014 Global Status Report – REN 21 – June 2014

A new report from REN21, a multi-stakeholder global renewable energy policy network, provides policymakers, industry, investors, and civil society with up-to-date information on renewable energy market, industry, investment, and policy developments worldwide. Drawing on an international network of more than 500 contributors, the report offers data and information about recent developments and key trends in the renewable energy industry including new technologies, investment, and global and domestic policies.
The report can be accessed at http://bit.ly/1rfc6Sj



Energy Trade as a Special Sector in the WTO: Unique Features, Unprecedented Challenges and Unresolved Issues – Indian Journal of Economic Law – June 2014

This paper highlights the features that distinguish energy trade from other trade sectors and argues that the WTO should continue to treat it as a special case. The paper discusses the importance of energy, the unique nature of the commodity, the challenges related to global energy industries and trade, and unresolved legal debates regarding the intersection of WTO law and energy trade.
The paper can be accessed at http://bit.ly/1m3oGDG



Adapting Renewable Energy Policies to Dynamic Market Conditions – IRENA – June 2014

This report by the International Renewable Energy Agency (IRENA) provides an overview of the challenges facing policymakers as renewables increasingly become part of the energy supply mix. The report includes an analytical framework that locates energy policies being implemented by various countries. The report seeks to help policymakers assess the types of policies best suited to specific circumstances.
The report can be accessed at http://bit.ly/1nXahIO

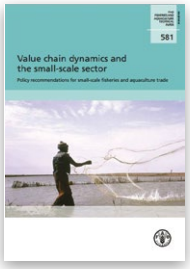
Indicators and a Monitoring Framework for Sustainable Development Goals – SDSN – July 2014

This revised draft report aligns the indicator framework developed by the Sustainable Development Solutions Network (SDSN) with the recommended sustainable development goals (SDGs) recently put forward by the Open Working Group on the SDGs. The draft report seeks to help inform discussion on an indicator framework, outlines principles for effective SDG monitoring, and identifies the gaps that need to be filled by 2016 in order to effectively implement the SDGs.
The report can be accessed at http://bit.ly/1l6g5Ck

Improving Productivity and Environmental Performance of Aquaculture – WRI– June 2014

This report published by the World Resources Institute (WRI) presents the findings of a recent study analysing scenarios of aquaculture's growth and environmental impacts forecast for 2050. The study discusses sustainability challenges and suggests various approaches for sustainable aquaculture production, including investment in technology innovation and transfer, leveraging information technology to support global-level planning and monitoring, spatial planning, and incentives.

The report can be accessed at http://bit.ly/UUx7ax



Value Chain Dynamics and the Small-Scale Sector: Policy Recommendations for Small-scale Fisheries and Aquaculture Trade – FAO – July 2014

This technical paper by the Food and Agriculture Organization of the United Nations (FAO) focuses primarily on price transmissions in small-scale and large-scale fishery and aquaculture value chains in 14 developed and developing countries. The paper reviews the importance of fisheries and aquaculture to livelihoods, food security, and trade.

The technical paper can be accessed at http://bit.ly/1pts50H

Making Change Happen: What Can Governments do to Strengthen Forest Producer Organizations? – IIED – July 2014

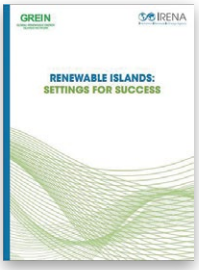
This paper by the Institute for Environment and Development (IIED) explores the scope, strategies, and impacts of public measures that could be deployed to improve the institutional enabling environment for forest producer organisations (FPOs), an emerging means by which small and marginalised forest producers can improve their access to, and use of, investments, technology, inputs, and markets. The paper highlights the role FPOs can play in encouraging stable markets and linking with international processes such as FLEGT and REDD+.

The paper can be accessed at http://bit.ly/1kDQ2St

Towards Investment in Sustainable Fisheries: A Framework for Financing the Transition – EDF, ISU, 50in10 – July 2014

Developed in collaboration with the Environmental Defense Fund (EDF), the Prince of Wale's International Sustainability Unit (ISU), and 50in10, this discussion document provides a framework for scaling up investment in the transition to sustainable fisheries. The framework also outlines how fishermen and project developers can design and promote fishery transition plans to attract investors who seek financial returns as well as social and environmental benefits.

The handbook can be accessed at http://bit.ly/1l6mfSW



Renewable Islands: Settings for Success – IRENA – July 2014

This report by the International Renewable Energy Agency (IRENA) demonstrates how deployment of renewable energy on islands can attract investment, reduce fossil-fuel import dependence, and create business and employment opportunities. Based on a series of case studies, the report identifies four key factors that can attract investment: political will, technical planning, market frameworks, and the development of human capacities.

The report can be accessed at http://bit.ly/YQqxU6

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