

Drivers of deforestation and WTO rules

Conflicts and Solutions

The Global Canopy Programme calls for negotiators to consider the following proposed text within UNFCCC negotiations on the drivers of deforestation and degradation. This draft text is derived from the analysis in this policy brief and on previous work by Parties and civil society groups:

Draft COP decision

- **Requests** all Parties to assess laws, policies and investment strategies in their own countries which contribute to deforestation and forest degradation, identify any gaps and undertake actions needed to amend those policies, laws and investment strategies to ensure they support the REDD+ goal of slowing, halting, and reversing forest cover and carbon loss and to report in biennial reports/biennial update reports on actions and results;
- **Encourages** identification, assessment, and action on drivers during all REDD+ phases and related actions, including: during development of national strategies and action plans, in land use planning and implementation, and as part of countries' low emissions development strategies;
- **Invites** Observers, the private sector, and other stakeholders to support activities under paragraph 1, above, including through partnerships to facilitate learning and experience sharing;

SBSTA Conclusions

- **Requests** the Secretariat to prepare by COP 19 a summary of key drivers and the scientific and technical methodologies to address them, including Party and Observer submissions prepared in anticipation of the SBSTA 36 and relevant reports;
- **Agrees** to mandate a SBSTA 39 recommendation for a Decision at COP 19 on scientific and technical methodologies for all parties to address the drivers of deforestation and degradation.

To reduce emissions from deforestation and degradation the strong market incentives for unsustainably produced forest commodities that drive tropical forest conversion need to be addressed. In Cancun, Parties to the UNFCCC agreed 'to reduce human pressure on forests that result in greenhouse gas emissions, including actions to address the drivers of deforestation'. However, some Parties have argued that the UNFCCC is an inappropriate body for these discussions, and have expressed concern that attempts to tackle the drivers of deforestation within the climate change negotiations will inevitably lead to conflict with WTO rules regarding commodity trade.

The legal and economic implications of the interaction between environmental and trade policies have been much debated over the last twenty or more years, in particular since the creation of the World Trade Organisation (WTO) in 1995. Experience in the control of international trade as a vital part of multilateral environmental agreements (MEAs), e.g. the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), has definitively demonstrated that environmental policies that affect trade can be developed without triggering WTO disputes.

A variety of policy options, including several existing measures aimed at excluding illegal or unsustainable timber from consumer markets, may be adaptable to tackling the unsustainable production of other forest commodities, and could present opportunities to tackle the drivers of deforestation through REDD+. This short summary paper presents key findings from the Global Canopy Programme's forthcoming report, '*Controlling Imports of Palm Oil: Interaction with WTO Rules*', and demonstrates that governments have considerable latitude to introduce such measures, but should also be aware of the constraints on their efforts posed by WTO principles.

1. Decision 1/CP.16, 'The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention', Report of the Conference of the Parties to the UNFCCC on

its sixteenth session, held in Cancun from 29 November to 10 December 2010, Addendum (FCCC/CP/2010/7/Add.1), para 68.

World Trade Organisation - Key Principles

The WTO agreements set out broad principles, rather than directives, to ensure the liberalisation of international trade. WTO challenges and disputes revolve around the evolving interpretation of these key principles, which include:

- WTO members are not permitted to discriminate between traded 'like products' produced by other WTO members, or between domestic and international 'like products'²
- Restrictions other than duties, taxes or other charges on imports from and exports to other WTO members are forbidden³

It is also recognised that some circumstances justify exceptions to this general approach, permitting governments to impose unilateral trade restrictions in specified circumstances⁴. These include 'measures necessary to protect human, animal or plant life or health'; and 'measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'. These two exceptions have been cited in several WTO dispute cases concerned with trade measures taken in pursuit of environmental protection.

What can policy makers do?

In designing environmental policies with trade impacts, it is important to be aware that the more the measure diverges from the core WTO principle of non-discrimination in trade, and the more trade-disruptive the proposed intervention is, the more vulnerable it could be to challenge. Within these constraints, however, governments do have flexibility to adopt measures which affect trade. The evidence presented in the full report demonstrates that the UNFCCC can play a role in reducing human pressure on forests and addressing the drivers of deforestation.

Based on an analysis of the WTO principles and allowable exclusions the following **rules based measures** could potentially be adopted by Parties seeking to implement actions to address the drivers of deforestation:

1. Establish public procurement policies for sustainable forest commodities at national and provincial/state level.
2. Establish bilateral or multilateral agreements to restrict trade between those countries to an agreed definition of a 'sustainable' product.
3. Design and implement differential import tariffs for sustainable and unsustainable commodities.
4. Design and implement trade measures that differentiate between sustainable and unsustainable forest commodities.

These measures are compared and contrasted in the table overleaf.

As WTO rules apply only to national governments, private enterprises have full freedom in controlling their own supply chains. Parties can play a crucial role in encouraging and supporting these initiatives. These **non-rules based** domestic actions promote the production and consumption of sustainable forest commodities with no WTO implications. Parties can:

1. Work directly with producer countries and private sector companies and industry organisations to reduce the barriers to and costs of producing sustainable forest commodities, to develop and publicise examples of best practice, and to support certification initiatives.
2. Make development funding available, or seek funding from donor countries to support: technical studies aiming to improve understanding of production models for sustainable products; advertising campaigns to reduce the barriers to and costs of producing sustainable products; the development and dissemination of examples of best practices, such as certification initiatives.
3. Provide financial and/or technical support to develop new, and encourage existing private sector and industry voluntary commitments that reduce deforestation. For example, Nestle, Unilever and Walmart's (among others) time bound targets to source 100% certified sustainable palm oil, and the Consumer Goods Forum's goal of zero net deforestation by 2020.

2. General Agreement on Tariffs and Trade (GATT) Articles I and III

3. GATT Article XI

4. These exceptions are set out in full in GATT Article XX (b) and XX (g).

Option	Precedent	WTO Implications	Remaining considerations
<p>1 Establish public procurement policies for sustainable forest commodities at national and provincial/state level.</p>	<p>In 2012 the UK government adopted a target of 100% sourcing of credibly certified sustainable palm oil in food and catering supplies by the end of 2015.</p> <p>13 countries, including the UK, Germany, Japan, Mexico and Norway, have procurement policies which specify that all timber products bought by government must be legally and/or sustainably produced.</p>	<p>Public procurement policies are unlikely to attract a WTO challenge, and for EU member states they are also in line with EU procurement rules.</p>	<p>None. Public procurement policies related to food products offer significant opportunities to leverage public/private sector collaboration and support existing voluntary commitments.</p>
<p>2 Establish bilateral or multilateral agreements to restrict trade between those countries to an agreed definition of a ‘sustainable’ product.</p>	<p>The Voluntary Partnership Agreements within the EU’s Forest Law Enforcement, Governance and Trade (FLEGT) mechanism are one example of bilateral measures designed to combat illegal logging and the trade in illegal timber.</p>	<p>Bilateral or multilateral agreements are unlikely to attract a WTO challenge.</p>	<p>New innovative incentives (financial, institutional etc.) may be needed to encourage major forest commodity producing countries to participate in such agreements.</p>
<p>3 Design and implement differential import tariffs for sustainable and unsustainable commodities.</p>	<p>Preferential EU tariffs for imports from certain developing countries already exist. There is evidence to suggest such measures could also be valuable in other large forest commodity importing markets (e.g. China and India).</p>	<p>Differential import tariffs are unlikely to attract a WTO challenge.</p>	<p>Trade preferences for sustainable palm oil may be needed to be extended to all sustainable vegetable oils.</p> <p>Other constraints may be practical (tariffs may already be low, e.g. palm oil tariffs in EU) or political (could other products be included?).</p>
<p>4 Design and implement trade measures that differentiate between sustainable and unsustainable forest commodities.</p>	<p>Recent WTO dispute cases suggest that trade measures that differentiate between ‘like’ products, e.g. sustainable/unsustainable palm oil based on their production processes and production methods (PPMs) may be acceptable.</p>	<p>The permissibility of measures that differentiate between like products based on PPM factors remains unclear.</p>	<p>There may be a need to determine the ‘likeness’ of palm oil and other vegetable oils. Preferences given to sustainable palm oil may have to be afforded also to other vegetable oils produced sustainably. ‘Sustainability’ also needs to be defined in a non-discriminatory way (i.e. by criteria rather than by membership of a particular scheme or standard).</p>

Citation

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Source

This policy brief is based on and adapted from research presented in a forthcoming report 'Controlling Imports of Palm Oil: Interaction with WTO rules' carried out by Duncan Brack for the Global Canopy Programme.

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The GCP is a tropical forest think-tank, working to demonstrate the scientific, political and business case for safeguarding forests as natural capital that underpins water, food, energy, health and climate security for all. We work through our international networks – of forest communities, science pioneers, policymakers and corporate leaders – to gather evidence, spark insight, and catalyse action to halt forest loss and improve human livelihoods dependent on forests.