

# *IISD Food Security and Climate Change Initiative*

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*Agriculture and Trade in the Climate Change Negotiations*

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### **IISD Food Security and Climate Change Initiative** *Agriculture and Trade in the Climate Change Negotiations*

November 2011

Written by Aaron Cosbey

## *Preface*

A critical challenge facing the world is how to feed an expected population of around nine billion by 2050 while simultaneously reducing and responding to climate change. The agricultural sector plays a critical role in food security, poverty reduction and economic growth—especially in developing countries, where 2.5 billion people live in households that derive their livelihoods from agricultural production. The sector is a large emitter of greenhouse gases, responsible for around 14 percent of global emissions, and has the potential to sequester carbon. Agricultural systems are also very sensitive to changes in climatic conditions, and will have to adapt if they are to ensure provision of adequate food for an increasing population. Including agriculture in an international climate change agreement could be an important way to encourage actions that reduce greenhouse gas emissions while improving food security and strengthening adaptive capacity—the triple dividend.

This paper is one of a series of five outputs produced under the Food Security and Climate Change Initiative of the International Institute for Sustainable Development (IISD). IISD's policy research aims to help developing countries ensure that any agriculture and climate change agreement under the United Nations Framework Convention on Climate Change encourages agricultural activities that promote a triple win: emissions reductions, increased food security and improved adaptive capacity.

The five policy reports are as follows:

1. Agriculture in an International Climate Change Agreement
2. Encouraging a Triple Dividend: Reduced Emissions, Increased Food Security and Improved Adaptive Capacity
3. Integrating Mitigation and Adaptation in the Agricultural Sector
4. Addressing Financing for Agriculture: Ensuring a Triple Dividend for Smallholders
5. Agriculture and Trade

The papers are written by a team of researchers from IISD's Climate Change and Energy Team. We extend thanks to our Expert Advisory Group—comprised of Mohammed Asaduzzaman, Marcelo Theoto Rocha, Brian Mantlana, Isabel Proulx, Alexandra Conliffe and Marie Boehm—whose input and direction improved the papers. The opinions and ideas expressed in these papers are those of the authors alone and do not necessarily reflect the views of those consulted.

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## 1.0 Introduction

This paper surveys the key trade issues in the ongoing negotiations addressing agriculture as a sectoral approach to mitigation in the international climate change regime. While there is widespread agreement on the potential benefits of bringing agriculture into the regime, a number of important sticking points need resolution before such a step will be possible. Trade-related issues are some of the most significant.

This paper starts by briefly laying out the background, noting the rationale and negotiating history to date. It then surveys the state of play, unpacking and analyzing the key issues. It finishes by considering where we might go from here.

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## 2.0 Background

Although many Parties agree that it is important to address agriculture in any future climate change regime, the details of the situation, formulation and even basic objectives of agriculture as a negotiating issue remain contentious. The Bali Action Plan, adopted in 2007, marked the launch under the UNFCCC of the Ad-Hoc Working Group on Long-Term Cooperative Action, one of the two negotiating tracks through which discussions around a future climate change regime are taking place.<sup>1</sup> The mandate to discuss agriculture comes from the Action Plan's agenda item "cooperative sectoral approaches and sector-specific actions," referring to Article 4(c) of the Convention, which stipulates:

4. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: ...
  - c) promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;

The Bali Action Plan mandate was given in paragraph 1(b) of the Plan, which launched a process to enable "the full, effective and sustained implementation of the Convention" by addressing, among other things:

- (b) Enhanced national/international action on mitigation of climate change, including, inter alia, consideration of: ...
  - (iv) Cooperative sectoral approaches and sector-specific actions, in order to enhance implementation of Article 4, paragraph 1(c), of the Convention;

Although talks over the past several years have allowed for enhanced common understanding of Parties' views on agriculture, negotiations have also revealed considerable rifts among developed and developing country Parties, concerning, for example, effects on trade and other potential economic impacts. Because the Parties were unable to find common ground, the Cancun Agreements adopted at COP 16 in Cancun (December 2010) did not include

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<sup>1</sup> See Paper 1 in the IISD series *Agriculture in an International Climate Change Agreement* for a discussion of the negotiating history and the current state of play in the negotiations.

language on agriculture.<sup>2</sup> However, the issue received renewed impetus during the 2011 spring inter-sessional meetings of the Working Group in Bangkok (April 2011) and Bonn (June 2011), where agriculture was a prominent element in disagreements over the negotiating agenda.

At these inter-sessional meetings, certain developed countries—primarily Canada, New Zealand and Switzerland—pushed for agriculture to be included under the agenda item “additional matters” rather than under sectoral approaches. One of the motives for this was that, while those countries are comfortable with the principle of common but differentiated responsibility with respect to agriculture, they have not agreed to extend the principle to the treatment of other sectors referred to in Article 4.1(c) (bunker fuels being one of the most contentious). So the desire for separate treatment is in part a reaction to the proposals by the G-77/China for a framing paragraph (i.e. covering all sectors) that invokes common but differentiated responsibility as a principle. Those trying to separate agriculture as an issue also argue that the sector’s significant adaptation potential makes it unsuitable to address under a part of the BAP dealing only with mitigation. The G-77/China, however, are opposed to removing agriculture from the sectoral approaches agenda item of the Working Group, concerned that doing so would take agriculture outside the Bali Action Plan mandate and leave the remaining Article 4.1(c) sectors in a legal negotiating limbo, and so they blocked this move during the Bonn meeting. The G-77/China also blocked the proposal by developed countries to proceed with a broad work program on agriculture under the Subsidiary Body for Scientific and Technological Advice, arguing that unresolved political issues, such as trade, should be discussed outside that technical body.

While disagreements over the agenda consumed much of the negotiating time, the Parties were able to produce draft negotiating text on agriculture during the Bonn inter-sessional, drawing on draft language developed prior to Cancun. The heavily bracketed text that emerged from Bonn reflected increasing negotiating difficulties on this issue, with a good deal of controversy centering on the trade implications of addressing agriculture in the negotiations. In particular, new language put forth by Brazil, India, Bolivia and Saudi Arabia—backed by other developing countries—stressed that sector-specific actions in agriculture should not limit the economic and poverty-eradication goals of developing countries, nor should they impose technical regulations, sanitary and phytosanitary measures, or market-based mechanisms that may have a negative effect on trade in agricultural products from developing countries (UNFCCC, 2011). The new text introduced in Bonn further stressed that specific actions in the agricultural sector should not limit the economic and poverty-eradication goals of developing countries, nor should it lead to increases in prices of agricultural products.

Looking toward COP 17 in Durban (December 2011), hopes are high that meaningful progress can be achieved on agriculture, with many countries—including South Africa, Canada, New Zealand and several African countries—expressing ambition for a deliverable on agriculture at the meetings. Considerable momentum has been building to launch a process on agriculture, including the September 2011 *Johannesburg Communiqué as Agreed at the African Ministerial Conference on Climate-Smart Agriculture*, which called for COP 17 to establish a program of work on agriculture that covers adaptation and mitigation.

Movement on the issue at Durban could also be helped by an initiative spearheaded by Kofi Annan. The executive director of the UNFCCC noted in Panama in October 2011 that the Parties were interested in moving forward on agriculture in Durban, and that Kofi Annan would work to include agriculture, with the aim of leaving Durban with an agreement to develop a work program in 2012. While hopes are high, key sticking points on agriculture, including but not limited to trade, render fulfilment of these ambitions a tall order.

<sup>2</sup> The lack of consensus was in part trade-related. There was no agreement on a general framework for sectoral approaches, or on wording that would apply to all sectors, including agriculture. This disagreement crowded out meaningful discussions specific to agriculture and left unresolved issues such as the trade concerns surveyed in this paper.

## 3.0 State of Play

A number of key issues need to be resolved before agriculture can be successfully addressed in the climate negotiations. Trade is primary among them, but is at the same time part of a complex interplay of related issues. An overview of trade-related issues follows.

### 3.1 The potential that a sectoral approach could lead to trade barriers

One of the most serious controversies in the negotiations is whether and, if so, in what form, to include wording covering trade in the text on agriculture. As noted above, several G-77 members have proposed text that specifies, in various formulations, that the sectoral approach to agriculture should not lead to, or sanction, unilateral trade measures to deal with climate change.

The concern here is this: at some point, any sectoral approach to agriculture will have to define what constitutes good practice in agriculture from a climate change perspective. This may come as a description of good practices (such as no-till cultivation), or as a benchmark GHG intensity per unit of production, or any other number of conceivable definitions. It may even be a context-specific definition, applying different standards to countries in different circumstances. But one way or another, the final result is inescapable: negotiators will eventually have to define good practice. Once that definition is settled, it will constitute a sort of internationally agreed standard. The concern is that this standard might someday be used by an importing nation, quite outside the regime established under the Convention (that is, as a unilateral measure) to restrict agricultural products that do not measure up. Such a restriction might be in the form of a ban, a higher tariff rate, an eco-label or some other type of measure that distinguishes among products to the detriment of those that do not meet the standard.

There is a history behind these concerns. As the WTO—and the GATT before it—has successfully lowered tariff rates in internationally traded goods over the years, developing countries have complained that they face a rising wall of non-tariff barriers erected to protect domestic producers against their imported competition. Agricultural goods in particular have faced a tough battle to gain market access to developed country markets, remaining carved out of global trade rules until the Uruguay Round of trade talks wrapped up in 1995 (the GATT was formed in 1947). Even now, agriculture is one of the toughest negotiating areas, and is arguably the single most critical area responsible for the impasse in the Doha Round of trade talks.

While those talks focus in large part on subsidies as an obstacle to trade, the day-to-day frustration for many exporters remains standards, for example in the form of sanitary and phytosanitary requirements.<sup>3</sup> While these are seen by their proponents as necessary for the protection of human, plant and animal health, developing country exporters see them as overly trade restrictive and as tools that effectively (and often, they claim, deliberately) exclude them from market access.

In the context of climate change measures, other forms of standards have become irritants, though there is no evidence that they have yet become significant market barriers. A number of large private retailers (Carrefour and Tesco, for example) have developed carbon labels that aim to give consumers a snapshot of the embodied carbon contained in products, primarily agricultural and agri-food products. The most troubling of these, “food miles” standards, are

<sup>3</sup> These are standards designed to prevent the spread of infectious diseases and pests through agricultural trade, as well as aiming to control substances harmful to human health (such as pesticide residues or other harmful toxins).

methodologically questionable, with an unjustifiably narrow scope of life-cycle analysis.<sup>4</sup> The UNFCCC-derived standards of good practice might be used by the private sector in similarly inappropriate ways to develop new labels (though multilaterally derived standards would probably be an improvement over most private schemes), and that possibility is one of the key concerns of developing countries.

Trade law, while it would ideally allay those concerns, is not particularly helpful. The WTO contains a legal grey area as to whether the laws that govern standard-setting apply to private actors within the member states. To date there is no agreement among legal scholars or WTO members that they do. They certainly apply to any *governmental* standards, however, and in so doing they require that any measure setting out mandatory product characteristics ideally be based on existing “relevant international standards.”<sup>5</sup> When government standards meet this requirement, they are presumed to comply with the demand of the WTO’s Technical Barriers to Trade Agreement: that they not create “unnecessary obstacles” to international trade. If they do not, then governments face a more onerous task of justifying the measures as legal. This would seem to give developing country exporters some protection in the face of moves by governments into climate-related standard-setting. The EU, for example, is currently working on developing a harmonized methodology to calculate the environmental footprint of products, with a view to using the results in an EU-wide voluntary labelling scheme.<sup>6</sup> As well, in July 2011 France launched the pilot phase of a plan for labelling products for carbon content and other environmental characteristics—a plan that applies to imports as well as domestic goods.<sup>7</sup>

The problem with enforcing this requirement is that the relevant WTO law, the Technical Barriers to Trade Agreement, only vaguely defines what constitutes a relevant international standard. More specifically, it does not adequately define what constitutes a standard-setting body. It seems possible to argue that the UNFCCC Conference of the Parties is such a body, which would give significant legal protection to any national standards that were based on the benchmarks created in a sectoral approach to agriculture. This is one of the reasons that developing countries have insisted on text that explicitly renounces any unilateral use of measures to restrict trade. Such text would pre-empt any legal argument that national standards based on COP-negotiated benchmarks would be considered “relevant international standards” for the purpose of interpretation under the Technical Barriers to Trade Agreement.

There is some history to support the concern that voluntary standards developed for one reason might be used as mandatory standards in another context. Green government-procurement schemes almost always make reference to voluntary standards developed elsewhere, making those standards something not quite voluntary and not quite mandatory. The *EU’s Action Plan on Forest Law Enforcement, Governance and Trade* (which aims to prevent the import of illegally logged timber and wood products) will almost certainly end up using standards developed outside the regime to certify compliance with source-country logging laws. The idea of using existing standards is highly attractive: for example, a senior EU trade official in a meeting on border carbon adjustment, when pressed on the methodological

<sup>4</sup> The problem here is that transport of a good is only a small part of the overall life cycle. To illustrate the point, it has been calculated that cut flowers from Colombia actually had a lower overall life-cycle greenhouse gas footprint after delivery in the Netherlands than did flowers grown locally in heated greenhouses (Verbruggen, Kuik & Bennis, 1995).

<sup>5</sup> Technical Barriers to Trade Agreement, Article 2.5. Such mandatory measures are referred to in trade law as *technical regulations*, as distinct from *standards*, which are voluntary. In the present document we will use the terms *voluntary standard* and *mandatory standard*. The WTO’s dispute-settlement body has recently ruled that pretty much any government standards or labels (including “voluntary” eco-labels) are considered mandatory and are covered by the Technical Barriers to Trade Agreement as technical regulations. See WTO (2011).

<sup>6</sup> This work is based originally on a mandate from the Council found in the 2008 *Sustainable Consumption and Production Industrial Policy Action Plan* (16904/08, Dec. 5, 2008). For a description of the nature and history of this process, see European Commission (2011).

<sup>7</sup> Details on the progress of this work can be found at Ministry of Ecology, Sustainable Development, Transportation and Housing (2011). The initiative was mandated as part of France’s revised general environmental law, the Grenelle 2, passed in June 2010.



difficulty of setting benchmarks under such a regime, quickly suggested using the sectoral benchmarks that had been developed in the EU for free allocation to vulnerable sectors in the third phase of the Emissions Trading Scheme—standards developed for an entirely different purpose.

Some of the text inserted by developing countries into the negotiating text on agriculture seems to be influenced by issues that run more broadly than unilateral agricultural standards, and it echoes debates occurring elsewhere in the climate negotiations. For example, proposed text from the June 2011 Bonn negotiations reads (with brackets):

...developed country Parties shall not impose unilaterally any technical regulations, sanitary and phytosanitary measures or market-based mechanisms on any grounds related to climate change, including stabilization of greenhouse gas concentrations, emissions leakage and/or the cost of environment compliance, that will have a negative effect on trade in agriculture from developing country Parties.

The reference to emissions leakage is telling, since leakage is not an issue in the agricultural talks,<sup>8</sup> but is an issue elsewhere. In 2009 the U.S. House of Representatives passed a climate change bill that contained a mechanism touted as addressing leakage and loss of competitiveness, which would have forced importers of certain energy-intensive goods to purchase greenhouse gas emission allowances just as if the foreign producers were part of the proposed domestic cap-and-trade scheme.<sup>9</sup> In effect, the measure aimed to levy charges on imported goods that were produced in a more greenhouse gas-intensive manner than if they had been produced in the equivalent U.S. sectors. While the bill did not become law (the Senate refused to pass a similar version), it is widely acknowledged that any successful U.S. climate bill will have to contain similar provisions. The United States is not alone in such proposals: the French government has been pushing hard for years to have the Emissions Trading Scheme include importers in a similar manner. And the EU's inclusion of aviation in the third phase of the scheme—a move that covers almost all flights originating from or arriving into EU airspace—is essentially border carbon adjustment on air-transport services.

All of this has sparked strong criticism from developing countries that might be targeted by such measures. They argue that, among other things, such measures do not respect the sacrosanct UNFCCC principle of common but differentiated responsibility; the measures are, rather, about levelling the playing field for foreign and domestic producers. Proponents argue in response that these measures are a necessary complement to any strong unilateral climate-related legislation, both to protect jobs (making the regulations politically viable) and to make the regulations environmentally effective.

But the point is that the concern in the sectoral discussions is fuelled strongly by concerns in other areas of the negotiations. It is no coincidence that language on trade in the “shared vision” portion of the text negotiated by the Ad-Hoc Working Group on Long-Term Cooperative Action only showed up in November 2009, at the first Working Group negotiating session following the June 2009 approval of the Waxman-Markey bill in the U.S. House of Representatives.<sup>10</sup> The trade language in the text on sectoral approaches appeared well before that, but developments outside the discussions on sectoral approaches have clearly made reaching agreement much more challenging.

<sup>8</sup> *Leakage* is defined as the ratio of increased emissions *outside* a regulating jurisdiction (due to climate regulations in that jurisdiction) to decreased emissions *within* the jurisdiction. It can be caused by industries relocating, or new investment being diverted, to non-regulating jurisdictions. Technically, it can also be caused by lowered demand for fossil fuels in regulating jurisdictions, which lowers the price and increases consumption in non-regulating jurisdictions—though this isn't the type of leakage being addressed by proposed trade measures.

<sup>9</sup> HR 2454, also known as the Waxman-Markey Bill.

<sup>10</sup> See Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention (2009), “Content of non-paper no. 33,” para. 12.

## 3.2 Food security

Paragraph 3 of the June 2011 Working Group text (bracketed) reads that the Conference of the Parties:

Decides that cooperative sectoral approaches and sector-specific actions in agriculture shall not lead to increases in the prices of agriculture products, and shall not threaten food security in any way.

This is a concern of the net-food-importing developing countries. The fear is that any new low-carbon modes of production might be more costly than traditional modes, and that global food prices might rise accordingly. This concern rises against a backdrop of food price increases that have reached critical levels in many countries and pushed millions of people into poverty (World Bank, 2011). The UN Food and Agriculture Organization food-price index for the entirety of 2011 so far has remained higher than the peaks it reached during the 2008 crisis, or any time since.

While this concern is founded in a legitimate crisis of development, it may be overblown in the present context. At this early stage in the negotiations, it is impossible to say what the final shape of any sectoral effort will look like, but it is hard to imagine developing country negotiators signing on to any deal that would force their producers to bear the costs of national efforts at agricultural mitigation. Much more likely would be a regime that involved win-win initiatives (e.g., labour-intensive, high-productivity organic production), marketable credits or relatively cost-neutral shifts in practice. In any case, staple-crop producers tend to be price-takers; it's unlikely that a subgroup of global producers (in countries voluntarily subscribing to a sectoral approach) could sustain price increases.

## 3.3 Opposition to market-based approaches

A small group of developing countries (led by the ALBA group<sup>11</sup>) are fiercely opposed to market-based approaches to climate change mitigation (such as the existing Clean Development Mechanism or any new market mechanisms that might be created under the Ad-Hoc Working Group on Long-Term Cooperative Action), and are responsible for the following text in the June 2001 Working Group draft:

Recognizing that adaptation for developing country Parties is the outmost priority and that market-based mechanisms, particularly offsets, for mitigation in the agriculture sector will not achieve the necessary emission reductions due to, inter alia, non-permanence, additionality and leakage, ...

One of the conceivable outcomes to any work on a sectoral approach to agriculture might be a regime that produces tradable credits for developing country mitigation (akin to a Nationally Appropriate Mitigation Action arrangement, and similar to the idea of credited REDD). While such a regime has not been proposed to date, the text quoted above serves as a marker; if there is any move toward market-based outcomes in this sector, it will be strongly opposed.

There is not, however, unanimity among the G-77/China on this position, and some among the developing countries are the biggest demanders for, and beneficiaries of, carbon markets under the international climate regime.

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<sup>11</sup> ALBA is the Bolivarian Alliance for the Peoples of Our America. Membership consists of Antigua and Barbuda, Bolivia, Cuba, Dominica, Ecuador, Nicaragua, Saint Vincent and the Grenadines, and Venezuela.

## 4.0 Policy options

The fact that the Parties have not even been able to agree to a program of work under this agenda item testifies to a generous measure of mutual mistrust, and perhaps misunderstanding. Developing countries, for their part, mistrust the intent of Annex I Parties, asking why, if those Parties don't intend to use unilateral trade measures in agriculture, they cannot countenance restrictive language on trade. Annex I Parties protest that such language is redundant, being already expressed in Article 3.5 of the Convention, and cannot understand why there is opposition to further exploring agriculture and climate change in a program of work without prejudice to final outcomes.

There are other issues as well, including the question of whether developed and developing countries will have the same ability to use agriculture as a source of mitigation under the international regime, whether benchmarks for developing countries will be differentiated, and the more fundamental question of whether the main thrust of the approach should be geared toward technology transfer and development (as per paragraph 4(c) of the Convention), or mitigation (as per para. 1(b) of the Bali Action Plan).<sup>12</sup> But these seem soluble in negotiations, and could be addressed in the context of any program of work for the Subsidiary Body for Scientific and Technological Advice. Addressing the trade issues would help make such substantive discussions possible. Perhaps more difficult is the question of whether to fast-track agriculture among the sectoral issues, but that discussion too would undoubtedly benefit from resolution of the trade-related concerns.

To tackle the two more straightforward issues first, it does not appear that the draft language on food security or market-based approaches would unduly limit future options for regime design. As noted above, it is highly unlikely that any final approach would raise food prices anyway. And the opposition to market-based instruments, as expressed in the current language, is not a binding refusal to countenance possible crediting, from which some developing countries would probably benefit. That said, however, it is not likely that either of these texts could simply be waved through as harmless. Some Parties will be sensitive to the implications for REDD—a mechanism for reducing emissions from deforestation and forest degradation in developing countries—of any agreed language on markets. Others may be reluctant to allow language on food-security implications, even if they firmly believe there are none. That said, the Parties will have to compromise here if they are to make progress, and they may judge the potential downside of unpopular language to be worth the more tangible benefits of progress on agriculture.

The language on trade measures is a more difficult proposition. The overbroad language in the June draft that includes reference to sanitary and phytosanitary measures and leakage seems out of place; leakage belongs elsewhere in the negotiations (under response measures), and sanitary and phytosanitary measures are simply not an issue, as any conceivable trade measures based on climate change objectives would not fit the definition of such measures. But in the end, developed country negotiators are going to have to give some sort of assurance that will build the trust that is currently in such short supply. While it is beyond the scope of this paper to offer specific recommendations on text moving forward, it would seem that language referring to Article 3.5 of the Convention is probably the most viable compromise text. Article 3.5, which forms the basis of a number of draft submissions, and which is derived directly from the General Exceptions of the WTO's General Agreement on Tariffs and Trade (Article XX), reads in part:

Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

<sup>12</sup> In the end, this is probably a false dichotomy, but the tension it expresses plays out in a number of aspects of regime design.

While it may seem redundant to make reference to text already in force, from a legal perspective there is a point to such a reference: it makes clear the drafters' intentions. Therefore, the reference could be used as evidence of that intent in any potential WTO dispute-settlement proceedings<sup>13</sup>. So it is probably not a question of whether to include text on trade, but rather a question of how explicit that text should be.

In the end, compromise along the lines suggested here seems urgently necessary, considering the critical importance of agriculture to mitigation, adaptation and sustainable development more generally.

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<sup>13</sup> The WTO dispute panels have established the propriety of looking beyond the WTO to other bodies of international law for help in interpreting WTO obligations.

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