



Climate Change Policies & WTO Trade Rules: Conflict or Coherence?

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REPORT

SYNOPSIS

As the climate negotiations progress and the 2009 WTO Ministerial approaches, the nexus between climate-related measures and trade rules becomes even more significant. This presents challenges and opportunities for both the climate and trade regimes.

With the launch of its publication, *Is World Trade Law a Barrier to Saving Our Climate?* the Center for International Environmental Law (CIEL) and Friends of the Earth Europe (FOEE) explored the intersection between climate-related measures and international trade rules. Panelists addressed both the relationship between multilateral climate change rules and WTO rules; as well as the relationship between WTO rules and domestic climate-related measures, including labels and standards, fuel efficiency schemes, green climate subsidies, and border carbon adjustments.

PART I: SUMMARY OF THE MAIN POINTS

The discussion was introduced and moderated by **Marcos Orellana**, Director of the Trade and Sustainable Development Program at the Center for International Environmental Law (CIEL). The panel discussion was structured in two parts: first, panelists discussed the specific issues covered in the report; and second, panelists addressed two general questions regarding the significance of the trade and climate change debate for both the United Nations Framework Convention on Climate Change (UNFCCC) and the WTO.

Discussants included:

- Clive George, Senior Research Fellow at the Institute for Development Policy and Management, School of Environment and Development, University of Manchester;
- Hannes Schloemann, Director, WTI Advisors Ltd. (Oxford/Geneva);
- Benjamin Simmons, Legal Officer, Economics and Trade Branch, United Nations Environment Programme (UNEP); and
- Peter Wooders, Senior Economist for Climate Change, Energy and Trade, International Institute of Sustainable Development (IISD).

Orellana provided a brief introduction to the report – *Is World Trade Law a Barrier to Saving Our Climate?* – published by CIEL and FOEE. The issues addressed in the report, and discussed in the first part of the panel, are clustered as follows: labeling and standards, including fuel efficiency; green climate subsidies; and border carbon adjustments. The report concludes that WTO law provides ample flexibility for measures designed to adopt effective measures to address climate change. Orellana then asked the panelists to discuss whether they believe world trade law is a barrier to saving our climate, noting that we are often faced with the argument that WTO rules are an obstacle to enforcing climate change measures.

1. **Labeling and Standards** - Should consumers receive information about the fuel efficiency of how products are made, that is, the carbon footprint and/or production methods? How does this relate to setting fuel efficiency standards?

Clive George discussed the impact of agricultural trade. He noted that when he was European Trade Commissioner, before the Seattle Ministerial Conference of 1999, WTO Director General Pascal Lamy implemented sustainability impact assessments of trade agreements, including with respect to agriculture. George mentioned that agricultural trade, including biofuels, poses a risk of increasing already high levels of greenhouse gas (GHG) emissions. The best possible solution he suggested is labeling, standards and certification schemes, but only if they are augmented by international agreements.

George posed his concern about countries, like Brazil, that contain lots of available land, which are not used for agriculture and deforestation. George asserted that preventing deforestation is not easy to do under WTO law, as there needs to be international agreements and precise

standards that leave no doubt under Article XX of GATT. If this were achieved, there would be no problem with compatibility under WTO law.

George also mentioned his concerns over international enforcement, as well as the impact of standards on small farmers. George concluded that under WTO law labeling, standards and certification schemes can be allowed, but in practice it is unlikely that they will make much of an impact on GHGs.

Hannes Schloemann continued the discussion on labeling and standards by discussing the problems raised by its selective nature. He agreed with the conclusion of the CIEL-FOEE study. The problem, he asserted, is that labeling and standards are too selective. Schloemann viewed the role of the WTO as mainly positive.

He mentioned the importance of having labels and standards comply with the Technical Barriers to Trade (TBT) Agreement, noting that problems could arise with Article 3 of the TBT Agreement. Article 3 discusses whether one can discriminate based on the mode of production (a key for climate standards), which can then eventually lead to an analysis under Article XX of GATT. According to Schloemann, the main focus should be the need to make sure the idea of non-discrimination is upheld. GATT and the TBT Agreement apply at the same time, unless there is a conflict, in which case the TBT Agreement wins. The main purpose of TBT is to push WTO members towards harmonization, which is an important point that often gets overlooked, and related to Article 5. The TBT properly applied can make sure that standards be applied in a fair and equitable manner.

Addressing the question regarding whether we need standards to regulate GHG emissions, **Peter Wooders** commented that labeling and standards are critical and legitimate for public policy, and are needed to reduce GHGs. He noted that under an Environmental Goods and Services (EGS) agreement, a 0.1-0.9 percent reduction in global GHG emissions is achievable, if the agreement was fully implemented. These standards tend to be product standards, so they avoid the difficulties of non-product related Process and Production Method (npr PPM) standards. However, labeling and standards would reduce GHGs more than an EGS agreement. The TBT Agreement can help us through harmonization rules, as standards and regulations would have a bigger impact with more harmonized rules.

- 2. Green Climate Subsidies for certain production methods** – How do these subsidies fare against WTO rules? Are green subsidies the most accurate response? There are subsidies for renewable energy production and for purchase of energy efficient products.

Benjamin Simmons responded to the question regarding how green subsidies fare against WTO rules, asserting that WTO compliance depends on the measure enacted by Member States. These issues go beyond WTO compatibility. But, Simmons questioned whether, even if the subsidies are WTO compatible, they ought to be implemented. He mentioned that UNEP supports green subsidies. For example, there is \$400 billion in green stimulus globally, but there is a broad definition of green. Regarding the question of whether it is WTO compatible, countries think it is or else it would not support these efforts. But, regarding the WTO rules, it is not clear, whether there is a level playing field with these subsidies.

Peter Wooders addressed the question whether green subsidies are the most accurate response by noting that subsidies began for good reasons, which could be the same for green subsidies. He asserted that investment support is not the only thing we can do. We can create more enabling environments for clean energy investments. For example, in Egypt, 0.7% of their energy is wind, despite being very windy. A key barrier for the growth of Egypt's wind energy sector is the low cost of natural gas for electricity generation due to subsidies. Wooders suggested removing distortions before giving out green subsidies. He noted that the G20 announcement to remove fossil fuel subsidies. He emphasized the need to quantify amount of and impact of fossil fuel subsidies and then use that evidence create reform strategies.

Clive George discussed the geopolitical considerations that play into subsidies. He is not personally in favor of green subsidies, except in the short-term to act as stimulus. Regarding biofuels, he noted that while Brazilian biofuels are more efficient under most life-cycle analyses, the increased production of cellulosic ethanol is pushing soy and beef production into the Amazon, and producing even more GHGs than they are saving. George mentioned that energy security is still a major concern, which is where geopolitics comes into play and adds to the difficulty of addressing subsidies. Countries think about their energy policy in geopolitical terms.

3. Border Carbon Adjustments – What are the issues regarding leakage, competitiveness, comparative advantage, the free rider problem, and how countries can engage and adopt effective measures to climate change?

Peter Wooders stressed that there is little doubt that leakage and competitiveness concerns are a problem, although there is no empirical evidence that leakage and competitive issues are occurring. But, he noted that there is a great deal of uncertainty due to large number of relevant factors, which complicates the analysis. Policymakers are concerned that competitiveness will lead to job loss in the short-term, as seen in the auto industry in certain geographical locations. Although industry has the ability to protect itself and can do more things to become more competitive, there are still questions of uncertainty. In order to have an effective system, Wooders stated that one would need to have a life-cycle analysis for each product, which is very expensive. Moreover, he stated that in order to be effective, one also needs the best technologies to be in place. Thus, Wooders concluded that the combination of these two elements of an effective BCA system is less likely to be WTO compliant.

Posing a question to the audience, Wooders inquired whether it is appropriate to look at BCAs as an instrument of industrial policy. He noted that policymakers are worried about the short-term job losses, as well as the long-term geographic relocation of industries. He stressed that the trade and environment community is not the place to have a discussion on industry. Although a multilateral solution is preferable over a unilateral one, it is unlikely that a multilateral solution will be decided during the UNFCCC conference in Copenhagen. He asserted that it would be unlikely to hold a BCA discussion in the WTO, and thus concluded that in researching this question, IISD advocates the possibility of bringing countries together under the G-20 or a similar independent initiative. For example, a forum could be established within the G-20, as countries do not want the WTO to do it.

Benjamin Simmons warned of frustrating the UNFCCC negotiations by placing trade issues, such as border carbon adjustments, at the forefront. He also noted the frustrated by countries of using unilateral measures if a multilateral agreement is achieved at COP-15. India, for example, proposed to include language in COP-15 for countries not to utilize unilateral measures.

Hannes Schloemann commented on whether dispute settlement is an option. He affirmed that dispute settlement is an option, but it should be plan B, as an agreement is a better option. He explained that WTO rules are reasonably well-developed, including Article XX on environmental measures, unless an act is over-reaching or discriminatory. One way forward would be not to be afraid of dispute settlement, but to allow time to play its course as to reach an agreement on a moratorium of trade measures. For example, in regards to a moratorium on border measures, the WTO Dispute Settlement Body can possibly play a role.

PART II: BROADER QUESTIONS

The moderator posed the following two questions to the discussants:

- 1. What does the Trade & Climate Change debate mean for the Climate Change Regime and the UNFCCC?**
- 2. What does the Trade & Climate Change debate mean for the WTO?**

Clive George addressed the first question, asserting that in regard to COP-15 and the follow-up, international environmental law cannot leave any room for doubt in WTO law. In regard to the second question on the WTO, it is more difficult to answer. George cited the opening address of the WTO Ministerial, which was "Addressing new challenges with old ideas." George argued that the WTO was created in a unipolar world, but as it is no longer a unipolar world, the WTO is an old tool. He asserted that there needs to be a fundamental rethink of the WTO, pondering the possibility of moving the WTO to the IMF.

Benjamin Simmons responded that the climate regime would not address trade issues like fossil fuel subsidies, as there is no flexibility. He affirmed that it would be too much to ask the UNFCCC to address all trade issues. However, should the WTO address these issues? He noted that under today's rules, countries can address trade and climate change issues on their own. For example, there is a massive amount of underreporting of subsidies and countervailing measures, and emphasized the huge potential for countries to address climate change through fossil fuel subsidies. However, he commented that if the Doha Round does not conclude, then there will be even more climate-related trade issues to tackle.

In responding to the question if COP-15 fails, would the WTO pick up the pieces, **Hannes Schloemann** stressed that the WTO is a small piece of the puzzle of climate change, and if COP-15 fails, the WTO would not pick up the pieces of the puzzle. The WTO would be stranded with some of the pieces, like border carbon adjustments, and dispute settlement could be an option. He

mentioned that the CDR under the UNFCCC is well suited to be inserted into WTO Article XX.

Regarding the role of the WTO and UNFCCC, **Peter Wooders** noted that each country set its own goal of what it can do, and that we cannot expect much out of COP-15 that can be useful for WTO. COP-15 has other issues to deal with, including structure, before getting to trade issues. Perhaps, the better question to ask is what the WTO can do for the UNFCCC, as the UNFCCC can use all the help it can get. As to the potential role of WTO, question is what can the WTO do to advance sustainable development and therefore to advance trade rules. He believes there should be a WTO sustainable development road map. For example, Wooders asserted that negotiations are a key way to make the WTO transparent, and suggested the creation of a panel that provides information modelled after the Intergovernmental Panel on Climate Change as basis for WTO negotiations.

PART III: QUESTIONS & ANSWERS (Q&A)

The Questions & Answers (Q&A) part of the workshop began with a question by Ron Steenblick of OECD. Mr. Steenblick asked panelists whether voluntary standards have an effect on consumers. In responding to the question, Clive George stated that there was some effect, but not a large effect. He discussed the possibility of having standards morph into a regulation. Product A for biofuels versus cosmetics might have two different values from LCA, and the cosmetic manufacturer might want the biofuel number.

The Q&A continued with a question involving whether the code of conduct on border measures outside the WTO was easier, and whether intellectual property rights were a barrier. George responded that Japan, the United States, and the Netherlands developed via being slow to adopt patents. Addressing the question on intellectual property rights, Schloemann mentioned that global technological development has been driven by pharmaceutical development in the United States, which is hampered by excessive patenting. He pointed out that competitive fear is what is behind hesitance in certain UNFCCC and WTO terms.

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