

A close-up photograph of a red, textured ribbon with the acronym 'UNFCCC' printed in white, set against a dark, blurred background.

Briefing Paper

WTO and UNFCCC: More Collaborative Agendas and Rules Needed to Sustainably Tackle Climate Change?

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Summary

This briefing paper aims to draw the attention on the critical linkages between trade and climate change negotiations. First, it presents and analyses the state of play and framework of the World Trade Organisation (WTO) and the United Nations Frameworkd Convention on Climate Change (UNFCCC). Then it discusses the challenges to overcome when linking climate change and trade agendas. Finally it gives recommendations for a coherent interlinked agenda

Introduction: Linkages between Trade and Climate Change Negotiations

The interlinkages between climate change and trade have been demonstrated by many different organizations and cannot be questioned anymore. Climate change has a physical effect on trade in terms of patterns and volume. Trade directly affects climate in three ways: scale, composition, and technique.¹ Depending on which of the three effects dominates, the net effect can be positive or negative. Indirectly, trade affects climate change by creating the right conditions that enable promotion of priorities and orientations towards low-carbon growth.²

As climate and trade are interlinked, policies taken to regulate both climate change and trade issues can impact, positively and negatively, the other domain. On one side, climate change policies can affect trade. Examples of such policies include carbon taxes, border carbon adjustments and the regulation of bunker fuels. On the other side, trade policies can be implemented as mechanisms to address climate change and promote low-carbon growth. The removal of trade barriers for climate-friendly goods and services, for instance, can increase their availability, lower their cost and stimulate their diffusion.³

The main organizations dealing with trade and climate change issues at the multilateral level are the World Trade Organization (WTO) and the United Nations Framework Convention on Climate Change (UNFCCC). The WTO is a forum providing a framework of disciplines and trade rules that facilitate trade opening, negotiations, and dispute settlements.⁴ The UNFCCC was adopted by the Earth Summit in 1992, and allows governments to negotiate, collaborate and tackle the challenges posed by climate change. This includes gathering and sharing information on Green House Gas (GHG) emissions, national policies, and best

practices.

The purpose of this paper is twofold; (i) to assess the efforts and challenges faced by the organizations in linking their trade and climate change agendas, and (ii) to propose recommendations on how the challenges can be overcome to produce more collaborative and coherent strategies.

WTO and UNFCCC State of Play and Framework Analysis

In relation to climate change, the WTO's founding document, the Marrakesh Agreement, recognizes that "trade should be conducted with the objective of raising standards of living and allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development."⁵ Since then, the WTO has set up a committee specifically to address the linkages between trade and environment issues.

The WTO's Committee on Trade and Environment (CTE) was created in 1994 and is open to the entire WTO membership. It serves as catalyst for ideas to advance the negotiations on trade and environment. The CTE mandate has made progress in identifying and understanding the linkages between trade and environment in order to promote sustainable development.⁶

Another important forum within the WTO is the Technical Barriers to Trade (TBT) Committee. The TBT Committee was set up to discuss technical regulations adopted by governments. These regulations in the recent years have been sometimes dealing with issues related to climate change adaptation and mitigation. Examples of such regulations discussed so far are fuel economy standards for cars, eco design requirements or energy-using products, and emission limit values for diesel

¹ www.voxeu.org/article/what-does-trade-have-do-climate-change

² Manuel A. J. Teehankee, Ingrid Jegou, Rafael Jacques Rodrigues (2012), Multilateral Negotiations at the Intersection of Trade and Climate Change - An overview of Developing Countries' Priorities in UNCSD, UNFCCC and WTO Processes, ICTSD.

³ Ibid.

⁴ https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.html

⁵ https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm

⁶ https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm, last accessed on May 20, 2015.

engines.

As previously stated, the main facilitator in the global effort to address climate change is the UNFCCC. In relation to trade issues, the UNFCCC's climate change agreements contain no measures specific to trade laws; in a sense that they do not restrict trade in any good or service. However, a lot of UNFCCC measures and agreements are more or less directly related to trade issues.

Firstly, the Kyoto Protocol to the UNFCCC, that promotes the goal of "stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system"⁷, illustrates the inevitable linkage between environmental and trade objectives.⁸ On one hand, the Kyoto Protocol's emissions obligations represent the first time an environmental organization has created a framework for an elaborate global market in emissions trading.⁹ On another hand, articles 3.5 of the UNFCCC and 2.3 of the Kyoto Protocol recognize that climate change measures should not be a means of discrimination or disguised restriction on international trade.

Secondly, UNFCCC parties also operate under the principle of "Common but Differentiated Responsibility" (CBDR) which recognizes that although all countries have a responsibility to address climate change, not all have been equal contributors to causing the problem, nor are they all equally equipped to addressing it.¹⁰ Consequences of the principle mean that negotiations lead to environmental standards that impose different obligations on states. Accordingly, the Kyoto Protocol created legally binding emission obligations for all carbon emitters except for developing and low income countries. The emission obligations require developed countries to put a limit on their GHG

emissions; keeping it to an average of 5.2 percent below their 1990 emissions.¹¹ On that basis, the UNFCCC Kyoto Protocol established three trade-linked / market-based mechanisms to allow countries to meet their emission targets; (i) International Emission Trading, (ii) Joint Implementation, and (iii) Clean Development Mechanism (CDM)¹². The first two apply to developed countries exclusively while CDM could be applied to both developed and developing countries.¹³

The Kyoto Protocol was supposed to expire in 2012, but was extended till 2020 to allow Parties to negotiate and implement the new agreement. Post-Kyoto negotiations still focus on reducing emissions of industrialized countries through trade-linked mechanisms, while supporting developing countries to mitigate and adapt to climate change.¹⁴ Concretely, the importance of limiting global emissions by imposing emissions trade laws was reiterated in the recent December 2014 *Lima Call for Climate Action*. The conference's draft negotiated text contained references to ensure the world has a net-zero emission level by 2050.¹⁵

Neither Lima, Geneva nor Bonn conferences advanced the draft text of negotiations, but did not resolve countries' key disagreements with climate change measures linked with trade ahead of the coming Paris Conference.¹⁶ However, climate change is likely to appear on many international meetings' agendas before the deadline of the Paris Conference, including on trade-related agendas.¹⁷

It is now clear that mitigation of, and adaptation to climate change and trade liberalization are managed under the UNFCCC and the WTO separately.¹⁸ However, the intersection between trade and climate change is inevitable, and hence it is necessary to ensure that international trade and climate change measures are coherent, effective, and mutually supportive.¹⁹

⁷ <http://www.preservearticles.com/2012032028080/what-is-the-significance-of-kyoto-protocol.html>

⁸ Jacob Werksman, *Greenhouse Gas Emissions Trading and the WTO*, 8 Rev. EUR. CMTY. & INT'L ENVTL. L. 251,252 (1999)

⁹ Jacob Werksman, *Greenhouse Gas Emissions Trading and the WTO*

¹⁰ UNFCCC, Articles 3.1, 3.2. For an additional elaboration of this principle, see Rio Declaration on Environment and Development (1992), Principle 7.

¹¹ Ibid.

¹² <http://www.preservearticles.com/2012032028080/what-is-the-significance-of-kyoto-protocol.html>

¹³ Ibid.

¹⁴ WTO-UNEP, "Trade in Climate Change"

¹⁵ <http://www.carbonbrief.org/blog/2014/12/briefing-lima-call-for-climate-action-lays-out-policy-options-for-new-global-deal/>

¹⁶ Ibid.

¹⁷ <http://newsroom.unfccc.int/lima/lima-call-for-climate-action-puts-world-on-track-to-paris-2015/>

¹⁸ <http://www.ictsd.org/themes/climate-and-energy/research/linking-trade-climate-change-and-energy>

¹⁹ Ibid.

Cooperation between the WTO and the UNFCCC can be seen in their respective participation in meetings of the WTO CTE and UNFCCC Conference of Parties.²⁰ Other current ways trade and climate are linked within both organizations are; through the regulation of climate change measures by the WTO's TBT Committee, emission trading schemes from the Kyoto Protocol, and the general articles in each organization that address climate change, trade and to some extent sustainable development. Despite these linkages, there are challenges that need to be overcome if there is to be a collaborative and fully efficient agreement in the upcoming COP 21 Paris Conference and WTO 10th Ministerial Conference in Nairobi.

Linking Climate Change and Trade Agendas: Challenges to Overcome

Although the linkages between trade and climate change issues are clearly understood and emphasized by multilateral organizations, there is still an unfortunate divide between their respective undertakings and agendas.²¹ The main impediments to developing more coherent and streamlined strategies are; (a) limited skills and knowledge of climate and trade negotiators on the existing interlinkages between their respective areas of concern, (b) diverging interests of negotiating parties within both organizations, and (c) absence of a joint disagreement resolution mechanism related to climate and trade.

Limited skills and knowledge of climate and trade negotiators on the existing interlinkages between their areas of concern

The WTO and UNFCCC limited competencies to address climate change mean that their current efforts are simply not enough to ensure the implementation of fully efficient and coherent strategies.²² According to the

former Director General of the WTO, Pascal Lamy, "What is sorely lacking in the current WTO context is a constructive and forward-looking discussion among members on the rapidly expanding trade and energy interface."²³ Similarly, the UNFCCC negotiators do not have an extensive knowledge on trade issues. As a result, they face challenges when climate change discussions involve aspects relating to trade law or trade policies.²⁴

In the activities implemented by CUTS International, Geneva within its project "Promoting Agriculture-Climate-Trade linkages in the East African Community (PACT EAC), it has often been highlighted by EAC WTO delegates and EAC UNFCCC negotiators that they lack knowledge and skills on climate and trade issues respectively. They have often regretted to not have the necessary knowledge and tools to take into consideration the linkages between climate and trade in their everyday work. Those negotiating agents have often a full agenda and are specialized in a domain related specifically to trade (for WTO) and to environment (for UNFCCC).

Diverging interests of negotiating parties within both organizations

The varying concerns of the parties involved lead to disagreements that delay the collaboration process and implementation of efficient climate change –trade linked measures. Currently, the climate-trade regime is held back by the complete divide between developed and developing countries regarding their respective responsibilities. A major concern of negotiators is the disagreement over climate change related trade laws and policies. The main cause of many disagreements is the inequality between countries in terms of their economic structures, vulnerability to policies, contribution to emissions, and external pressure to take mitigation action.²⁵

Another major concern / diverging interest that makes it difficult for some countries to collaborate and move

²⁰ Ibid.

²¹ C. Johan Westberg, "The Multilateral Link – UNFCCC and Doha", 2012, available at <http://www.tradeandenvironmentnexus.com/the-multilateral-link-unfccc-and-doha>, last accessed on May 29th, 2015.

²² WTO 2007

²³ https://www.wto.org/english/news_e/sppl_e/sppl_e.htm

²⁴ Ibid.

²⁵ Teehankee, Manuel A. J., Ingrid Jegou, and Rafael Jacques Rodrigues. Multilateral Negotiations at the Intersection of Trade and Climate Change. pdf, ICTSD Programme on Global Economic Policy and Institutions, 2012.

ahead with effective, domestic carbon mitigation measures is the fear that these policies may be discriminatory.²⁶ Carbon taxes and emissions trading schemes may affect the competitiveness of firms on a domestic and international scale, and thus lead to carbon leakage. Furthermore, such measures could risk losing investment from firms who relocate to countries with less strict mitigation policies to maintain their market shares through trade.²⁷ Despite the significance of these concerns in preventing effective mitigation action by some of the biggest carbon emitters, the UNFCCC has not provided a space for their inspection and discussion.

Absence of a joint disagreement resolution mechanism related to climate and trade

Generating long term solutions to trade-environment conflicts will require trade and environmental policymakers to cooperate, especially when resolving disagreements. However, the current absence of an appropriate centralized environmental dispute settlement forum effectively means that many trade-environment disputes are presented to the WTO Dispute Settlement Body.²⁸ The issue with this is that the WTO Dispute Settlement Framework does not address some climate change trade linked issues. For example, there is no WTO Agreement explicitly addressing trade in emissions allowances. In cases like these, and in many other trade-environment disputes, only the WTO members have the legal competence to determine, through established procedures, whether the issues would be subject to WTO Agreements. Hence, analysis in this area is speculative; potentially impeding the process of getting disputes swiftly and proficiently resolved.²⁹

Way Forward: Recommendations for a Coherent Interlinked Agenda

Based on the presented challenges, there are many ways the UNFCCC and the WTO (negotiators, agendas, and agreements) can be further linked. For example; (a) contribution/communication mechanisms may be implemented/enhanced, and (b) some policies / agreements of both organizations may be revised to allow more coherent actions.

Communication Mechanisms

WTO and UNFCCC negotiators can learn from each other and use rules already agreed upon in the respective organizations to help them adopt more coherent positions/actions.

An example of where the UNFCCC knowledge and skills can be of use to the WTO is in the trade linked climate change issue of liberalization of environmental goods and services. Market access to these goods is very limited as internationally agreed upon definitions for these types of goods do not exist.³⁰ The WTO's CTE has tried to create a list but has not reached any agreements as of yet. Despite the WTO not having a definition of environmental goods, the UNFCCC has drawn up its own lists which can serve as a useful source for the WTO for studying the consequences of trade liberalization. It may be the answer to improving market access to environmental goods and services.³¹

Collaborative issues between the two organizations usually arise when climate change measures intersect with trade, and vice & versa. The WTO rules should leave policy space to accommodate the use of certain trade measures aiming to mitigate climate change in a non-discriminatory manner.³² As they are supposed to

²⁶ International Centre for Trade and Sustainable Development Views on options and ways for further increasing the level of ambition

²⁷ International Centre for Trade and Sustainable Development Views on options and ways for further increasing the level of ambition

²⁸ http://www.researchgate.net/publication/228240506_The_Kyoto_Protocol_the_WTO_Reconciling_Tensions_between_Free_Trade_Environmental_Objectives

²⁹ The Kyoto Protocol And The WTO: Integrating Greenhouse Gas Emissions Allowance Trading Into The Global Marketplace Annie Petsonk, Duke

Environmental Law & Policy Forum [Vol. 10:185]

³⁰ For the lists of the OECD and APEC, see Steenblik (2005); and for the World Bank list, see World Bank (2007). The UNFCCC (2009) summarized information by about 70 non-Annex I parties in their technology needs assessments (TNAs) and national communications (NCs), and identified mitigation technologies that those non-Annex I parties want the most.

³¹ Ibid.

³² Ibid.

ensure predictability, transparency, and fairness in implementing trade measures, the framework of WTO rules can help guide UNFCCC and other environmental organizations in their policies.³³ Broadly speaking, a number of WTO rules may be relevant to measures aimed at mitigating climate change.³⁴ These include; disciplines on tariffs, prohibition against border quotas, non-discrimination principle, rules on subsidies, and more.³⁵

Better Aligning WTO and UNFCCC Processes

UNFCCC and WTO should adopt more coherent negotiating agendas that would allow more coherent and collaborative decisions and actions. There is a desirable sequencing to be put in place to develop efficient climate-trade agendas where climate change agreements should come before climate - trade measures negotiated in the WTO.³⁶

Adopting new climate and trade frameworks should be done in full coherence to be sustainable. At the release event for the WTO-UNEP report, former Director-General of the WTO, Pascal Lamy, said that “WTO members want trade addressed as part of an overall post-Kyoto treaty, and they do not want a separate Geneva-based WTO negotiation on permissible trade-related climate measures.”³⁷

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³³ Ibid.

³⁴ The Multilateral Trading System And Climate Change Part Iv. Climate Change And The Potential Relevance Of Wto Rules
https://www.wto.org/english/tratop_e/envir_e/climate_change_e.pdf

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid