



Note

Trade and Climate: Are there Interlinkages Taken into Account in the WTO and UNFCCC Systems?

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Summary

Evidence as to how trade and climate change affect one another has been well-documented in recent years, pointing to the need for sound policy synergies in these areas. In this regard, the role of international trade and climate negotiations in framing the required policy space should not be overlooked. In particular, coherence should be ensured between related provisions in negotiating fora such as the World Trade Organization (WTO) and the United Nations Framework Convention on Climate Change (UNFCCC). This paper reviews such provisions by analysing climate issues discussed at the WTO as well as trade elements in multilateral climate talks, making a case for taking their linkages into account across multilateral fora.

Introduction

A lot of research and discussions suggest that the concept of interlinkages between climate change and trade is no longer doubted, but rather considered as a fact. The linkages between climate change and trade are portrayed as effects of one to another. In other words, climate change does impose severe impacts on trade, and trade also affects climate change tremendously. Moreover, respective climate and trade policies resulting from multilateral negotiations and discussions do affect each other. To begin, the paper gives a brief overview of trade and climate linkages in an attempt to prove how one affects the other. The consideration of climate change and trade at United Nations Framework Convention on Climate Change (UNFCCC) and the World Trade Organization (WTO) level showcases how the two are strongly interrelated and the importance of taking such linkages into account in discussions within the multilateral agenda.

The effects of climate change on trade can be categorized into two domains. The first targets the **country's comparative advantages in producing and trading a specific good or service**, and the second targets the infrastructure as a whole used in the processes of production. The effects of climate change on the productive capacity of a country are crucial, as for instance certain climate scenarios affect agriculture and fisheries, hampering the **country's trade patterns and export specializations**.¹ This can be clearly seen in regions where dependencies on sectors important to trade and

export, such as agriculture, are subject to extreme climate conditions. Furthermore, with the increase in the intensity and frequency of extreme weather events (such as floods and droughts) resulting from the effects of climate change, a serious threat is posed to the infrastructure needed in the normal trade process.² For example, floods and increased sea levels sometimes destroy ports which are considered as main sites in the overall trading picture. It is also important to point out the critical impacts that trade has on climate and how it contributes to the phenomenon of climate change. The effects can be either direct or indirect. A direct and major trade contributor to climate change is transportation, which is considered as one of the main drivers of human-induced climate change.³ International transportation used in trade is responsible in contributing an immense amount of greenhouse gas (GHG) emissions. In addition, the economic growth associated with trade can also be considered as an indirect contributor in the increase of GHG emissions.⁴

To better understand the impact of trade on climate change, it is essential to look at trade policies to see how climate change is affected. There are three main contexts in which trade policies affect climate change: scale, composition, and technique. Trade policies, such as the decline in trade barriers, can lead to positive outcomes if implemented on climate-friendly goods and services by lowering their prices which allows for the more affordable trade of climate-friendly technologies.⁵ However, the decline in trade barriers in general is argued to boost the scale of economic activity which will

¹ International Centre for Trade and Sustainable Development SUBMISSION: Views on options and ways for further increasing the level of ambition. Mandate: COP 17 Decision regarding the "Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action"

² Teehankee M, J Ingrid and R Rafael (2012), "Multilateral Negotiations at the Intersection of Trade and Climate Change:

An overview of Developing Countries' Priorities in UNCSD, UNFCCC and WTO Processes"

³ *ibid*

⁴ *supra* note 1

⁵ *supra* note 1

consequently lead to higher levels of GHG emissions.⁶ The scale effect therefore constitutes one of the negative impacts on climate change, where the more goods and services are produced, the more GHG are emitted.⁷ Moreover, trade liberalization policies also play a role in the climate change phenomenon, as they can influence the composition of economic activity.⁸ However, the impact is not determinate, meaning that it could have either a positive or negative effect. There is likely to be a positive impact when the country has comparative advantage in low GHG-intensive production, meaning that more environmentally-friendly products would be produced. In contrast, the impact would be negative when comparative advantage is in GHG-intensive production. The technique effect is thought to have a positive effect when it refers to improvements in the process of production by introducing newer and cleaner technologies which help in the mitigation of climate change by reducing GHG emissions.⁹ The fact that foreign competition is tough also urges domestic firms to boost their efficiencies in order to perform better, pushing them to adopt more energy efficient techniques which emit fewer GHGs.¹⁰

Similarly, a set of climate change policies can affect trade. Carbon taxes, emission trading schemes, border carbon adjustments, government support for low GHG emitting technologies and clean energy (like in subsidies and standards as well as regulation of bunker fuels)¹¹ are all policies created with the aim of addressing climate change, yet they also affect trade. In instances when carbon taxes and emission trading schemes are applied, what is called “carbon leakages”¹² can be witnessed, whereby firms seek

regions with less strict climate measures as they are unable to produce as freely within their own country. This in turn contributes to greater GHG emissions for that firm’s production, as they are able to produce according to more lenient climate measures in the host country than they would be able otherwise. However, this can also have a positive impact on trade in the sense of expansion. When these firms go abroad and seek host countries with less strict climate measures, they widen their scope of investments in different regions with less costs which helps in generating profits for them and boosts trade in an indirect way. Climate change policies can also affect trade even more positively and sustainably when they aim at supporting the development of a “green economy”.

Trade in the UNFCCC Framework

The UNFCCC by itself does not impose any specific policy or measure upon which parties must act, however the UNFCCC attempts to set goals and target commitments for its Member States. Commitments are adopted through each Member States’ policy framework. While one may consider trade concerns and trade policies to fall within the sole jurisdiction of the WTO, this is not the case as trade concerns are increasingly discussed within the UNFCCC forum. Many negotiations between parties on the language of trade and unilateral trade measures have been made within the UNFCCC.¹³ This is, for instance, reflected in Article 3.5 of the UNFCCC, stating that: “[...] Measures taken to combat climate change, including unilateral ones,

⁶ supra note 2

⁷ Trade and Climate Change: A report by the United Nations Environment Programme and the World Trade Organization.

⁸ supra note 2

⁹ supra note 2

¹⁰ supra note 7

¹¹ supra note 2

¹² supra note 1

¹³ supra note 2

should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”¹⁴

It was in COP13, held in Bali in 2007, where the topics of trade and climate change began to merge, as trade ministers discussed possible linkages between the two.¹⁵ Following discussions at COP13, understanding emerged that actions taken to limit and counter the effects of climate change could negatively affect trade, thereby hindering economic growth and development. It was therefore recognized that response measures like carbon standards and labels can have tremendous effects on trade. For instance, climate change measures can sometimes take the form of trade measures like border carbon measures.¹⁶

The Kyoto Protocol is the only outcome of the UNFCCC that is considered legally binding, with the introduction of particular measures affecting trade. The Kyoto Protocol does not contain any trade obligations, but does include trade measures such as: “subsidies for renewable energy or research and development, carbon taxes, climate friendly standards, labels for goods and services, regulatory quotas on renewable energy use, and government regulations that favour products and processes that are environmentally preferable”.¹⁷ Moreover, the Kyoto Protocol clearly takes trade into consideration, such as within Article 2.3, which states that “all parties shall strive to implement policies and measures with the attempt to reduce the adverse effects of climate change and simultaneously

minimize effects on international trade”.¹⁸

The Paris Agreement and Trade: Considerations and Impacts

In general, the Paris Agreement does not specify any policy or measure regarding trade, and does not oblige parties to take specific adaptation or mitigation efforts. However, the Paris Agreement compels parties to develop “Nationally Determined Contributions” (NDCs) in an attempt to boost efforts towards achieving established objectives.¹⁹ While the Paris Agreement does not address trade directly, it is clear that the Agreement does have implications for trade which cannot be overlooked.

The principle of Common but Differentiated Responsibility (CBDR), acted upon by UNFCCC parties, states that all countries have the responsibility in addressing climate change²⁰; however, not all countries contributed equally to climate change or are equally equipped to address it. This in turn means that different obligations are imposed on states where the Kyoto Protocol’s emission obligations do not include developing and low-income countries. The Protocol in this context provides three flexibility mechanisms, namely: International Emission Trading, Joint Implementation, and Clean Development Mechanism (CDM). The first two apply to developed countries exclusively while CDM is a mechanism between developed and developing countries.²¹

The 2015 COP21 Summit in Paris considered

¹⁴ Cosbey A, A Scoping Paper produced for the Trade Ministers’ Dialogue on Climate Change Issues. Held in conjunction with UNFCCC COP 13, Kyoto Protocol MOP 3 Bali, Indonesia, December 8-9, 2007

¹⁵ supra note 2

¹⁶ supra note 2

¹⁷ Sell M, S Yulia, W Paul, S Mahesh, G Mustapha Kamal, C Shuaihua, T Ted, S Matthew, R Erwin, Z Simonetta, D Jean-

Philippe, E Jane, J Francis, C Sachin, C Suani and G Jose (2006), ‘Linking Trade, Climate Change and Energy’

¹⁸ supra note 2

¹⁹ <http://bigpicture.unfccc.int/#content-the-paris-agreement>

²⁰ <https://unfccc.int/resource/docs/convkp/conveng.pdf>

²¹ <http://www.preservearticles.com/2012032028080/what-is-the-significance-of-kyoto-protocol.html>

reducing GHG emissions in an attempt to fight climate change. Similar to COP13, such discussions and agreements introduced possible implications for trade. For example, the Paris Agreement takes into account the concerns of the economies most affected by these response measures, especially developing countries. These restrictive response measures function to target climate-adverse activities as well as pose growing conflicts in trade in poorer regions, particularly for developing countries and LDCs which experience the most adverse effects of climate change. Arising difficulties from such measures faced by these countries include hardships for their exports. These hardships are mainly seen as increased costs and restrictions on exporting certain “non-green products”, as well as certain restrictions in the context of transporting these exports’ products when transportation is viewed as a main contributor to climate change. Hampered access to external markets can therefore result from such measures, which also limits these countries’ abilities for taking climate action in the future.²² Therefore, the Paris Agreement might affect trade indirectly.

However, other major trade impacts of this Agreement might occur in the implementation of the various NDCs. Both the Paris Agreement and NDCs, if fully implemented, present opportunities for new or expanded trade flows, fuelling a global green economy. The global economy would hence undergo a major transformation not witnessed since the Industrial Revolution, particularly if the scale of action remains aligned with the Agreement’s objective of two degrees Celsius. Effectively, the emergence of a strong green economy would result in a boost in investments, trade, and technological

development in various fields.²³

Climate Issues at the WTO

The issue of climate change is addressed to some extent within the framework of the WTO system. Considerations of climate change and the environment fall under the Committee on Trade and Environment. Moreover, the WTO has several agreements that potentially have climate implications, like the Agreement on Agriculture and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Article XX of GATT 1994 and which reflects principle 12 of the Rio Declaration is pertinent to the aims of the WTO in the field of climate and environment, as it emphasizes the need to take domestic environmental measures into consideration within liberal trade policy obligations, and also not use environmental policy measures as a tool for trade protectionism.²⁴ The importance of the provisions of Article XX lies in that, along with the 1994 preamble and the Ministerial decision creating the Committee on Trade and Environment (CTE), it initiated the road towards incorporating both international trade and environmental commitments in the context of the WTO.²⁵ The Committee’s role is to discuss grounds for sustainable development and environmental preservation objectives within the trading system.²⁶ Therefore, the CTE provides coordination between policies in both domains of trade and environment by exploring the interaction between the measures of both and proposing modifications to a State

²²<http://www19.iadb.org/intal/conexionintal/2015/12/21/acuerdo-sobre-el-cambio-climatico-impacto-sobre-el-comercio/?lang=en>

²³ Cosby A, ‘The Trade Implications of the Paris COP21 Agreement’. The Common Wealth: ISSN 2413-3175 2016/17.

²⁴ supra note 2

²⁵ supra note 2

²⁶ supra note 2

Member's rules which may negatively affect one or more Members.²⁷

In addition to the CTE, the Committee on Technical Barriers to Trade (TBT) constitutes another forum within the WTO which is responsible for discussions on the regulations on climate change mitigation adopted by State Member governments.²⁸ The TBT Agreement mainly imposes rules to avoid the introduction of obstacles to trade, and also requires transparency from its Members to share national regulations which might affect trade.²⁹

WTO Negotiations and Climate: Considerations and Impacts

Since the establishment of the WTO dating back to the 1994 Marrakesh Agreement, the link between trade and sustainable development was established by Member States with the goal of benefitting the environment. These goals continued to be addressed through negotiations under the Doha Rounds.³⁰

The Doha Development Agenda (DDA), launched in 2001, comprised elements of trade and environment. One of the many goals of the DDA was to enhance the relationships and coordination between environmental necessities and trade measures, and to boost the market access for goods and services which are environmentally friendly.³¹ The DDA negotiations gave the opportunity to shed light on multilateral trade measures and rules which support climate change policy,³² with the goal of establishing common grounds and agreements that sustain both aims.

Ongoing negotiations within the WTO that touch

on climate change mainly revolve around eliminating trade barriers in goods and services which are eco-friendly and can benefit the environment.³³ This in general should help boost the efficiency of energy and reduce GHG emissions, which positively affects the environment and climate. The aim of reductions of tariff and non-tariff barriers on such goods and services in theory would reduce prices, resulting in higher demand. Such effects would increase competition and foster technological innovation as a result.³⁴

It can be noted that there is no mention of “environment” or “climate change” in the 11th WTO Ministerial Declaration and in the Nairobi Package.

Recommendations

Presently, the trade interests of developing and LDCs remain at the centre of current discussions in ensuing climate decisions. Several critical actions can be taken at present at local, national, regional, and multilateral levels, especially under COP22 scheduled to take place in Marrakesh in November 2016. The aim is to ensure both climate-oriented and environmental policies do not infringe on the functioning or sustainability of trade policies, and vice versa.

COP22 and Beyond

In consideration of trade as well as the development and sustainability of economies, it is impossible to limit commercial expansion. However, it is possible to target major trade contributors responsible for pollution and emissions causing climate change, in

²⁷ supra note 2

²⁸https://www.wto.org/english/tratop_e/envir_e/climate_challeng_e_e.htm

²⁹ supra note 28

³⁰ supra note 28

³¹ supra note 2

³² supra note 17

³³ supra note 28

³⁴ supra note 28

ensuring a trade expansion that is environmentally-friendly and economically sustainable. Nationally, countries should send technical expert representatives to engage in international and regional discussions to share knowledge and experiences, as well as to determine innovative ways to achieve climate-related measures that do not pose an obstacle to trade. Therefore, negotiations should be more practice-oriented and attainable actions should be brought into force. Experts from the developed world can also perform a critical role in transferring technologies to developing countries and LDCs of eco-friendlier alternatives, particularly for transportation and production-related activities. However, it is imperative that developed countries also adopt new alternative technologies and practices and encourage the use of environmentally-friendly techniques. Regional efforts play an important role as well, as countries in the same regions often face similar circumstances such as the East African Community, for example. Therefore, such collaborations should be encouraged to participate in and lead discussions on the facilitation of trade and environmental measures, both in the UNFCCC and WTO fora. This in turn would facilitate and guide multilateral discussions and

conferences such as the upcoming COP22. With the delineation and expected declaration of more trade- and environment-related measures, involved partners should allocate special units created within their governments whose responsibility would include the audit and follow up on the implementation of decisions and measures taken.

What Can the WTO Do Post-MC10?

With the 11th Ministerial Conference of the WTO (MC11) soon approaching, greater emphasis should be placed on climate issues as there is much potential for positive change, as trade and the environment are closely interrelated. This can be achieved through MC11 by shedding more light on this issue, especially as the WTO is presently re-evaluating its role and future. Furthermore, with collaborative issues resulting from colliding measures between trade and climate change, MC11 should try to provide a common ground for collaboration between the UNFCCC and the WTO agendas in general.

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