



**International Workshop on  
Post-2012 Climate and Trade Policies**

**Geneva, 8-9 September 2008**

**Workshop Summary**



## Background

The *International Workshop on Post-2012 Climate and Trade Policies* was organized by the EU-funded ADAM project (“Adaptation and Mitigation Strategies: Supporting European Climate Policy”) and the UNEP Economics and Trade Branch (ETB) on 8-9 September 2008 in Geneva, Switzerland. Over 90 experts from international organizations, research institutes, academia, political institutions and civil society organizations participated in the two-day discussion.

The objective of the meeting was to provide a platform for participants to discuss trade and climate strategies in a post-2012 world and the future interplay between the UN climate regime and the World Trade Organization (WTO).

The workshop was opened by Frank Biermann, Head of the Department of Environmental Policy Analysis, IVM-Vrije Universiteit Amsterdam, and Hussein Abaza, Chief of the UNEP Economics and Trade Branch. In his opening remarks, Mr. Biermann highlighted the scope of the climate change challenge and noted that urgent action is needed, which will likely have significant implications for international trade. Given this, he stressed the need to ensure international trade governance supports climate change mitigation and adaptation and the importance of exploring possible synergies between climate and trade negotiations.

Likewise, Mr. Abaza called for closer cooperation between the trade and climate change regimes to ensure they do not work at cross-purposes. In furtherance of this objective, he noted that the workshop discussions were organized around the following three broad topic areas:

- The Climate Regime: Reflecting Trade-related Measures In A Post-2012 Agreement;
- The Trade Regime: Addressing Climate Change In A Post-2012 World; and
- Overlaps Between The WTO Doha Round And Post-2012 Climate Negotiations.

On the second day, concurrent break-out groups addressed the same three themes, identified possible ways forward and needs for further research and discussion.

The following summary is organized according to these topic areas and provides an overview of the presentations and discussions taking place in the plenary and break-out sessions for each of the topics. As such, the summary does not attempt to provide a verbatim account of the discussions. All speakers and attendees of the workshop participated in their personal capacities.

## Summary of the Discussion

### 1. The Climate Regime: Reflecting Trade-Related Measures in a Post-2012 Agreement

Participants generally agreed that trade is a topic that cannot be avoided within the climate regime and that trade-related measures are likely to be part of any post-2012 climate policy, either at the multilateral or national level. There are a number of ways that the climate regime may reflect trade-related measures in a post-2012 climate agreement. Workshop discussions focused on two key interlinkages within this relationship – the role of the post-2012 flexibility mechanisms and incentive mechanisms for climate-friendly technologies.

#### Optimising the Role of Trade-Related Measures in a Post-2012 Agreement

**Jacob Werksman**, Programme Director, Institutions and Governance, World Resources Institute, provided an introductory presentation that focused on border adjustment measures and carbon market measures. On border adjustment measures, Mr. Werksman noted that they are intensely debated in the US and are likely to be part of a future US climate policy. These measures are meant to address competitiveness concerns for products imported from countries that have not taken “comparable” action to reduce emissions. This raises the question of what can be considered comparable and how the concept of common but differentiated responsibilities might be reflected. A post-2012 climate agreement could play a significant role in clarifying this issue, addressing concerns that such measures might be used as a protectionist tool against developing countries.

Mr. Werksman noted that the creation of carbon markets (i.e. setting a price for carbon through domestic or international emissions trading schemes) would greatly influence international trade flows, which could lead to trade-related tensions. Countries might also put in place restrictions on “imports” of offsets and allowances from other trading schemes if there are questions related to their environmental or regulatory quality. Mr. Werksman, nonetheless, noted that it is unclear whether such measures would be governed by international trade law given that allowances/offsets are neither goods nor services. Rather, the allowances/offsets should be seen as a regulatory instrument and the objective should be to ensure mutual recognition of these. Therefore, multilateral agreement on harmonizing carbon markets and some disciplines concerning fairness and mutual recognition are highly desirable. While the trade and the climate regime have much in common in terms of a preference for multilateralism, pushing for transparency and predictability, promoting non-discrimination, and acknowledging differentiation, he cautioned that these approaches should be developed within the climate regime, rather than the trade regime.

In her role as a discussant, **Jennifer Haverkamp**, Senior Counsel, Environmental Defense Fund, agreed with Mr. Werksman that competitiveness is the overriding concern in the current US congressional debates on climate change, which makes the inclusion of border adjustment measures in future US climate legislation likely. On the Kyoto flexibility mechanisms, she criticized the current framework for not being able to guarantee global reductions in emissions.

As such, she found these mechanisms inappropriate if the overall objective is to limit global warming to 2°C. Future flexibility mechanisms should provide for participation of all major emitters and be designed to ensure absolute emissions reductions.

In terms of a possible sectoral approach, she noted that this approach should include a clear end date, maximize the coverage of sectors to avoid leakage, and reflect individual countries' situations. She identified international air or maritime transport as possible areas of application for a sectoral approach. Finally, Ms. Haverkamp suggested that for future US participation in the climate regime it might be necessary to set up a system where parties to a post-2012 agreement can engage in bilateral emissions trading with non-parties. This could also create positive incentives for some developing countries to generate credits that they could trade in the global carbon market.

In the **plenary discussion**, participants argued that the design of carbon trading is not a major climate-trade issue, but that the question of border adjustment measures is at the heart of the debate. It was also noted, however, that depending on the future design of the EU emissions trading system, tensions could arise with the WTO Agreement on Trade in Services (GATS). For instance, if certain investors were no longer allowed to provide services for the supply of offsets to the European market, this might be considered discriminatory.

## **Incentive Mechanisms and Climate-Friendly Technologies**

**Muthukumara Mani**, Senior Environmental Economist, World Bank, presented on incentive mechanisms for encouraging the transfer of climate-friendly technologies. He presented recent findings from a World Bank study suggesting that the removal of trade barriers on climate-friendly technologies could significantly increase trade volumes and thus lead to a faster diffusion of clean technologies. For instance, for wind power, a removal of tariffs would increase trade volume by 12.6%; if additionally non-tariff barriers were removed, the increase would be as high as 22.6%. He cautioned, however, that liberalizing trade in climate-friendly technologies has to be part of an agreement that is acceptable to all countries and should include provisions on: (a) special and differential treatment for developing countries; (b) technical and financial assistance; and (c) strengthening developing countries' export opportunities. Such an agreement could be reached via the WTO and its ongoing negotiations on environmental goods and services (EGS), or if progress within the WTO is unlikely, in a separate agreement.

Mr. Mani highlighted that technology transfer necessitates the mobilization of significant resources, the creation of enabling environments and the development of endogenous capacities. Trade liberalization in climate-friendly technologies should thus be seen as a first step in a broader package to enhance technology transfer, which should also include: (a) official development assistance; (b) a framework encouraging investment in low-carbon technologies and sectors, including specific mechanisms in bilateral and regional trade and investment agreements; (c) international efforts to pool and coordinate resources for research, development and deployment (RD&D); (d) a mix of measures to overcome intellectual property rights issues, including patent buy-outs, licensing schemes, and transfers to the public domain; and (e) the creation of functioning carbon markets, including the removal of subsidies on fossil fuels and other perverse incentives.

In his role as a discussant, **Richard Bradley**, Head, Energy Efficiency and Environment Division, International Energy Agency, further reflected upon the role of investment. For the period 2006-2030, the IEA expects cumulative investments of around \$22 trillion in energy-supply infrastructure. Mr. Bradley identified capital stock inertia as an inherent challenge, i.e. investments are long-term and capital turnover is slow. It is therefore crucial to create strong incentives for the right investments now. The key sectors are those where emissions profiles risk being locked-in over a long time, e.g. buildings. While the need for a price on carbon was stressed, it will not be sufficient because of market failures. Mr. Bradley noted that a range of ambitious and predictable policies is also needed, including more research and development (R&D). New models of R&D and more extensive international cooperation are required to reverse the current trend of declining R&D expenditures in the energy sector. He suggested uniting the 15-20 major emitting countries in a cooperative R&D agenda as they will likely continue to account for 80% of world emissions. He concluded by noting that the IEA has developed technology roadmaps that identify R&D challenges as well as barriers to diffusion for individual technologies.

During the **discussion**, participants highlighted the importance of a broad approach to addressing international and domestic barriers to technology transfer and diffusion. Concerning the liberalization of trade in climate-friendly goods and services, the need for special treatment for developing countries was generally acknowledged. Some participants were, however, of the opinion that differentiation within the group of developing countries would be necessary to ensure sufficient participation by developed countries.

### **Box 1 – Break-out session on “The Climate Regime: Reflecting Trade-related Measures in a Post-2012 Agreement”**

During the break-out session, the importance of reaching an ambitious climate agreement including all major emitters for the post-2012 period was stressed. Some participants expressed their concern that the issue of competitiveness was currently exaggerated and that the debate on competitiveness was counterproductive to reaching a global post-2012 agreement. A number of areas that merit further research and discussion were identified, including:

- *Understanding competitiveness risks*
  - Is there a real problem in terms of competitiveness? If so, in which sectors? More detailed analysis is needed, particularly in North America.
  - Are current measures contemplated to address competitiveness concerns going to be effective; if not, are there more effective mechanisms?
  - Are national caps or key sector caps more promising to address the competitiveness issue?
- *Devising an effective post-2012 climate regime*
  - Which elements should be “rescued” from the current Kyoto Protocol that could be used in a future climate regime?
  - What is meant by comparability of efforts for developed countries in the Bali Action Plan?
  - What is meant by nationally appropriate mitigation actions by developing countries?
    - How can countries commit themselves to action, without losing their status as developing countries?
    - How much of what developing countries have already decided to do domestically might lend itself to international commitments? What do

- countries need to convert the domestic measures to an international commitment?
- How can differentiation be ensured when assessing what nationally appropriate mitigation actions mean?
  - Is focusing on differentiation among developing countries useful?
  - Can sectoral approaches be a way forward? What is actually meant by sectoral negotiations? What are potential sectors for such agreements, e.g. aviation?
  - What economic incentives are needed in a post-2012 agreement?
    - How can the market be used to generate funding for developing countries? For instance, would Reducing Emissions from Deforestation and Degradation (REDD) be able to provide this market?
    - With regard to the CDM, is there a possibility to go beyond project-based mechanisms and look at the broader sectoral level?
    - Is it possible to allow a voluntary mechanism for developing countries to create a cap before a mandatory mechanism is required?
    - How can various national emissions trading regimes be linked while ensuring they meet the objectives of the UNFCCC?
  - *Exploring linkages with the world trade regime*
    - Can free allocations of carbon allowances become a WTO subsidy problem?
    - Is there a potential for a “big package” on energy in the WTO?
    - If disputes arise before the WTO over trade measures, developed countries might argue that action by developing countries is not comparable. How can the principle of common but differentiated responsibility be respected? Would developing countries only have to prove what they do is measurable, reportable and verifiable? Who defines this?
    - What lessons can be learned from the multilateral trading system that could be applied to the climate regime; for instance, with regard to special and differential treatment, i.e. commitments across the board with exclusions (grace periods, longer implementation schedules, etc.)?

## 2. The Trade Regime: Addressing Climate Change in a Post-2012 World

The second session considered how trade measures at the unilateral, multilateral and bilateral/regional level could contribute to climate change mitigation and adaptation.

### Carrots and Sticks: Unilateral Trade Measures in Post-2012 Scenarios

Possible *unilateral measures* were discussed first, with a focus on border adjustment measures. **Roland Ismer**, Research Associate at the University of Munich, noted that unilateral border measures are being considered as a means of addressing economic concerns about competitiveness and environmental concerns about carbon leakage. Competitiveness and leakage problems are expected to arise with regard to energy-intensive industries if differences in emission reduction commitments lead to large differences in the price of energy and/or carbon. This problem might become particularly acute if no global agreement or sectoral agreements including all major countries are reached for the post-2012 period.

Border adjustment measures could take the form of taxes or the obligation for importers to purchase carbon allowances based on the imported product's carbon footprint. According to Mr. Ismer, such measures are likely to face multiple challenges. From a legal perspective, he noted that border adjustment measures would likely be WTO-consistent if they fulfil two conditions: (a) the obligation to purchase emission allowances is deemed to be essentially the same as a tax; and (b) foreign producers are not treated any less favourably than national producers (WTO principle of national treatment). Moreover, to ensure border measures do not run afoul of WTO most-favoured nation (MFN) principle, border adjustment measures would have to be applied consistently across the board (i.e. to parties and non-parties of a post-2012 climate agreement alike).

The second challenge posed by the use of border measures is an information challenge and refers to the difficulty in calculating a product's embedded carbon content. Mr. Ismer noted that this challenge could be overcome by taking the average embodied carbon of a particular product as a baseline and allowing producers to individually prove that the product's carbon content is less. Alternatively, the baseline could be determined by assuming a given product was produced with the best available technology. Such a system would ensure that the producer pays for no more than could possibly have been emitted.

Mr. Ismer also noted a practicality challenge arguing that border adjustments across the board may not be necessary given that there are only a few sectors likely to be threatened by carbon leakage (e.g. cement, iron/steel, refined petroleum, fertilizers/nitrogen, and aluminium). Finally, he pointed out that border adjustment measures have been discussed almost exclusively in the context of unilateral trade measures, but that it may be useful to think of ways of disciplining their use at the international level.

As the discussant, **Jochem Wiers**, Counsellor, Netherlands Embassy Paris, examined whether border adjustment measures might be applied by the European Union. He noted that the European Commission proposal on emissions trading mentions the possibility of introducing border adjustment measures as an alternative to free allocation of allowances. Mr. Wiers was, however, sceptical about the environmental effectiveness and economic efficiency of border measures and the implication such measures might have for successfully reaching multilateral agreement on climate action. Moreover, he questioned whether border measures, as described in a draft EC proposal, would be consistent with WTO provisions. He noted that border measures applied only to countries not taking action to reduce emissions comparable to that of the EU would contravene the WTO MFN principle. The measure would thus have to be justified according to the GATT Article XX exceptions, which according to Mr. Wiers, would be unlikely because the EC proposal does not allow foreign producers to prove that their product's carbon footprint is lower than presumed.

The **plenary discussion** included a vigorous debate on whether border adjustment measures would be WTO-consistent. Although there was no agreement on this point by the participants, there was an implicit recognition that consistency with the WTO provisions would likely depend on the exact nature of how the border measure was applied. It was questioned whether the considerable administrative burden of border adjustment measures was justified given that only a small number of sectors face serious competitiveness and leakage problems. Moreover, some participants feared that border adjustment measures might lead to the opposite of the anticipated effect if exports are re-directed to third countries. Finally, a number of participants cautioned that at a time where many developing countries wait for major developed countries to



move before taking action themselves, border adjustment measures would clearly give the wrong signal, and potentially frustrate multilateral action on climate change. They should thus be viewed as a “second best option.”

## **Achieving Consensus: Multilateral Trade Measures in Post-2012 Scenarios**

The second part of this session focused on the potential contributions to climate change mitigation from *multilateral trade measures*. **Aaron Cosby**, Associate and Senior Project Advisor, International Institute for Sustainable Development, gave a presentation on several scenarios for introducing climate-related trade measures in the context of the WTO or a future climate agreement. He first identified the ongoing negotiations on the liberalization of trade in environmental goods and services, but cautioned that defining which goods and services are environmentally-friendly may be placing the WTO in the *de facto* position of creating an environmental standard. As the WTO is neither an environmental nor a standard-setting organization, Mr. Cosby argued that this task should either be conferred to an internationally recognized body which has the relevant expertise, or that the WTO should seek the assistance of such a body. Furthermore, he queried whether a successful conclusion of the environmental goods and services negotiations would have a significant impact in terms of emission reductions. He also discussed other potential areas for action by the WTO, including the elimination or reduction of fossil fuel subsidies, increased protection under the Agreement on Subsidies and Countervailing Measures for climate-friendly subsidies, such as research and development for renewable energies, and possible reform of the TRIPS agreement to facilitate the transfer of clean technologies. On this last point, however, he noted that initial evidence suggests that intellectual property rights may not be as problematic in the climate technology context as they are for pharmaceuticals.

At the WTO, some agreement could also be sought defining under which conditions unilateral measures, such as border carbon adjustments, are acceptable. Mr. Cosby highlighted, however, that the prospects for such an agreement are low, as unilateral climate measures are seen as protectionist and strongly opposed by developing country delegations.

Finally, Mr. Cosby discussed whether the Montreal Protocol experience, which successfully used trade measures to support its implementation, might offer some lessons for the climate regime. He noted that the Montreal Protocol phase-out required a closed system of consumption and production that would not allow trade in ozone depleting substances (ODS) with non-parties in order to work; this was the rationale for the ban on trade with non-parties. He argued the fundamental difference is that the UNFCCC is already a closed system that includes almost all countries, while assigning them different levels of obligations. The issue is therefore how to treat different types of parties, not how to treat non-parties. Moreover, the scope of economic activities affected by the climate regime is several orders of magnitude larger than the activities covered by the ozone regime. The experience of the Montreal Protocol can thus not easily be transplanted into the climate context. According to Mr. Cosby, two conclusions from the Montreal Protocol experience can however be drawn. First, accurately calculating the embodied content of carbon is too difficult (the Montreal Protocol rejected calculating embedded ODS). Second, the Montreal Protocol Multilateral Fund, a financial mechanism to help developing country parties pay for the incremental costs associated with adopting new technologies, was critical to its success. To address climate change, a similar approach will be crucial, but not



enough, as the incremental costs are much higher. It will therefore be indispensable, he argued, to mobilize massive investment in the climate sector and to remove barriers that currently inhibit such investment.

**ZhongXiang Zhang**, Senior Fellow, East West Center, in his role as a discussant, also considered lessons to be drawn from the Montreal Protocol. His analysis was that the trade-related measures of the Montreal Protocol work effectively because they are supplemented by the financial transfer mechanism of the Multilateral Fund, which ensures that no developing country is worse off as a party to the Montreal Protocol than as a non-party. Mr. Zhang noted that, in contrast, under the UNFCCC and the Kyoto Protocol the pledged and estimated future funds are too small (only about one percent of the amount needed for developing country adaptation to climate change) for developing country parties to agree to the inclusion of trade-related measures in a post-2012 climate regime. He argued, however, that as part of the evolving climate regime, trade-related measures should, at the very least, be contemplated for a set of industrialized countries (Annex I or II countries). It should be specified how these measures will apply to non-complying parties within this group and specify when and how to use unilateral trade measures against countries outside the group. In order to encourage developing countries to do more to combat climate change, developed countries should clearly focus on “carrots” (demonstrate serious reductions of their own emissions, provide funding, facilitate technology transfer). He argued that “sticks” (border adjustment and similar trade-related measures) can be incorporated, but only if they are credible and realistic and serve as a useful supplement to push developing countries to take actions or adopt policies and measures earlier than would otherwise have been the case. At a time when the world community is starting to negotiate a post-Kyoto climate regime, unrealistic border adjustment measures proposed by several developed countries are counter-productive. Finally, Mr. Zhang suggested that a plurilateral agreement on liberalizing trade in climate-friendly goods and services could be a second best solution if EGS negotiations under the WTO Doha mandate do not advance.

During the **discussion**, several participants stressed the importance of reducing or eliminating fossil fuel subsidies. Others participants cautioned that the WTO may not be the right forum for addressing fossil fuel subsidies as the aim would be eliminating trade distortions rather than reducing emissions. Moreover, it was noted that the WTO rules would likely target producer subsidies while consumer subsidies are comparably larger. Nevertheless, an important role might fall to the WTO in establishing a framework to improve reporting and transparency of fossil fuel subsidies, thereby providing enabling conditions for subsidies reform. It was also noted that RD&D should be facilitated by introducing flexibilities to subsidize cleaner technologies. The issue of standards and labelling was identified as a further area where the WTO could contribute to the climate change agenda.

### **Less is More? Bilateral and Regional Trade Agreements in Post-2012 Scenarios**

The third part of this session examined *regional and bilateral trade agreements* and their potential for addressing climate change. **Thomas Brewer**, Professor, Georgetown University, focused his presentation on how these agreements might promote technology transfer. In so doing, he presented four different paradigms that may help in identifying impediments to technology transfer: (a) North-South transfer and financing; (b) global trade and investment; (c)

international public-private cooperation for RD&D; and (d) intellectual property rights, mergers and acquisitions, and a firm's tendency to "internalize" knowledge. These paradigms underline the need for a variety of international responses, including in trade fora, such as efforts to lower barriers to trade and investment in clean technologies on a regional or bilateral basis.

As for the regional level, Mr. Brewer discussed the Asia-Pacific Partnership on Clean Development and Climate (APP), a US initiative which now includes seven partner countries. The APP provides for action in eight sectors where barriers to trade and investment will be addressed and technology transfer will be intensified. The impact of this regional initiative is likely to be positive, with the potential drawback that technology development and transfer will remain limited to the seven partner countries.

As a discussant, **Joy A. Kim**, OECD Environment Directorate, elaborated on how regional trade agreements might help to address climate change. She based her comments on OECD research that reviewed environmental provisions in regional trade agreements and noted that environmental provisions found in these agreements often go beyond what is currently politically feasible in multilateral trade negotiations. Ms. Kim argued that promotion of environmental cooperation on such issues as technology transfer and capacity building offers the most significant opportunity for addressing climate issues through regional trade agreements. Moreover, the lowering of tariffs on climate-friendly goods and services and the harmonization of environmental standards could be further contributions of these agreements.

During the **discussion**, participants noted that directing investment flows to critical areas will be important as simply liberalizing tariffs on climate-friendly goods may not create the required incentives to increase the flow of these goods. There is little evidence to show increased foreign direct investment goes to clean technologies rather than conventional technologies.

It was also noted that benefits from regional agreements are generally limited to the participants of the particular agreement, and thus, the diffusion of benefits may be relatively small. Some participants did caution that this might not be a real downside in the climate change context if several large emitters are part of "the club." It was concluded that regional trade agreements could indeed be a platform for cooperation on climate change issues. Some participants suggested formally linking sectoral or regional agreements addressing climate change to the UNFCCC through notifications or a reporting mechanism.

## **Box 2 – Break-out session on “The Trade Regime: Addressing Climate Change in a Post-2012 World”**

During the break-out session, participants further discussed the issue of competitiveness and carbon leakage and explored the potential role of multilateral, regional and bilateral trade measures to address climate change. Some of the issues raised that may justify further analysis include:

- *Developing rational ways to deal with carbon leakage*
  - Assessing and responding to the carbon leakage challenge
    - There is no conclusive evidence of significant carbon leakage to date, but leakage might become a more serious problem as regulation becomes stricter.
    - A sector-specific assessment of the scope of the problem is needed, taking into account that many factors influence relocation decisions.

- Policies meant to address leakage should be flexible and adaptive, making it possible to react to new empirical findings.
    - Practical challenges and trade-offs of border adjustment measures
      - Can the actual carbon embodied in goods be calculated or should default values be applied with the possibility for importers to challenge them?
      - Should indirect carbon cost, i.e. higher electricity prices, be taken into account?
      - The choice of an instrument should be based on a serious assessment of its effectiveness in dealing with leakage.
      - Different sectors might require different policy answers. For instance, border adjustment measures might only be a viable option for those sectors most at risk (e.g. cement and steel).
      - Others options to address leakage include free allocation of allowances; subsidies, including through the recycling of auctioning revenues; and sectoral agreements.
    - Disciplining border adjustment measures with a multilateral agreement
      - Specify when and how border adjustment measures can be used in general.
      - Specify default values, or at least provide for information sharing, transparency and expert guidance on setting values.
- *Exploring multilateral trade measures to combat climate change*
  - Liberalizing trade in climate-friendly goods and services
    - There are potential negative consequences associated with trade liberalization, such as impeding the development of domestic clean industries.
    - Lack of reasonable criteria for defining EGS is a problem. Standard setting organizations such as ISO could help.
    - Are EGS negotiations worth the effort, given that progress is slow and potential benefits small as applied tariffs are often not very high?
  - Considering the impact of intellectual property rights
    - More research is needed to explore whether intellectual property rights constitute a barrier to the transfer of clean technology.
    - Article 67 of the TRIPS Agreement obliges developed country members to assist developing country members in implementing the agreement. More stringent reporting requirements on this, with a special focus on clean technologies, could be useful.
  - Reforming subsidies
    - This could aim at reducing fossil fuel subsidies and/or allowing more policy space for subsidies that support the transformation to a low-carbon economy.
- *Exploring the potential of bilateral or regional agreements to address climate change*
  - Focusing on cooperation, capacity-building, and consultative mechanisms.

### 3. Overlaps Between the Doha Round and Post-2012 Negotiations

In this part of the discussion, possible synergies and tensions between the trade and climate regimes were explored. It was noted that both regimes embrace the principles of sustainable development and economic growth, acknowledge the special situation of developing countries and support an open economic system. There are, however, important differences between the two regimes.

#### Understanding the Interplay between the Doha Round and Post-2012 Negotiations

**Robyn Eckersley**, Professor, University of Melbourne, gave an introductory presentation on the interplay between the two regimes. She suggested looking not only at the concrete rules, but also at underlying principles and discourses when considering the relationship between the two regimes. There are some key tensions between the trade and the climate regime, namely the fact that the climate regime embraces the precautionary principle, while the WTO's environmental exemptions are narrower in scope. The climate regime also requires developed countries to play a leading role given their historic responsibility and larger capacities (principle of common but differentiated responsibilities), while the WTO is built on the principles of non-discrimination and reciprocity. She argued that this tension becomes most obvious with respect to potential unilateral border adjustment measures. Border adjustment measures could be consistent with the UNFCCC principle of common but differentiated responsibility if they were limited to non-participating or non-complying *industrialized* countries, but Ms. Eckersley noted that this would be inconsistent with the WTO principle of non-discrimination.

Ms. Eckersley also presented two discourses on the relationship between the trade regime and climate change. The first discourse, which she referred to as "neoliberal environmentalism" is built on the assumption that international trade leads to growth and innovation, which are prerequisites to combating climate change. It selectively highlights win-win opportunities, such as the liberalization of environmental goods and services. The second "counter-discourse" highlights the inherent contradiction between growth in trade and GDP on the one hand and the reduction of greenhouse gas emissions on the other.

She argued that when the climate regime emerged in 1992, negotiators chose to adopt neoliberal environmentalism and pointed to the failure to reflect the polluter-pays principle in the text of the UNFCCC as evidence of this decision. Therefore, she does not see the WTO rules as "undermining" the climate regime, but rather the prevailing neoliberal environmental discourse as contributing to a "chilling effect" that has eliminated the possibility of considering trade-related rules in the climate regime. As a result of this "self-censorship," the climate regime is not able to deal with inherent contradictions between growing deregulated trade and climate change mitigation.

During the **general discussion**, some participants cautioned against viewing trade measures as a viable solution to the climate change challenge. It was noted that international trade is neither a

main emitter of greenhouse gases compared to other sectors, nor is transport a major contributor to the carbon footprint for most products. Measures aimed at restricting international trade would thus not achieve much toward the ultimate goal of climate change mitigation. Others highlighted, however, that guidance could be drawn from both regimes. While the trade regime requires guidance from the climate regime in terms of how new trade rules could support climate change mitigation and adaptation, WTO rules can also provide guidance to ensure climate-related measures are transparent and non-discriminatory.

Some participants shared their observation that the trade community has not yet fully understood the urgency of combating climate change. They also warned against bringing the climate issue into the WTO through an agreement or a dispute as the climate regime was seen as the more appropriate forum. . It was also cautioned against drawing broad conclusions from previous WTO disputes involving environmental issues, such as the *Shrimp-Turtle* case, given the uniqueness of climate change issues.

### **Exploiting Synergies between the Climate and Trade Negotiations**

**Moustapha Kamal Gueye**, Senior Programme Manager, International Centre for Trade and Sustainable Development, presented some possibilities for synergies between the climate and trade negotiations with a focus on issues that have remained less explored but are important to least-developed countries and small island developing states, such as agriculture, forestry, and tourism. He noted that agriculture is a critical sector in terms of both climate change mitigation and adaptation. In the agricultural sector, adaptation to climate change means enhancing resilience, by, for instance, protecting small farmers and their methods. In terms of adaptation, the trade regime could help protect small farmers by ensuring there is capacity for defensive trade tools (e.g. more flexible treatment of “special products”). By reforming agricultural subsidies, the trade regime could also provide incentives for organic agriculture, which contributes to climate change mitigation. Finally, market access could be enhanced for agricultural products providing climate benefits, such as organic products or sustainably produced biofuels.

**Fariborz Zelli**, Senior Research Associate, Tyndall Centre for Climate Research, presented some perspectives from the ADAM research project on options for strategic issue-linking between the WTO and the UN climate regime. International climate governance is highly fragmented, which has advantages but also disadvantages such as coordination gaps. To deal with this problem, he recommended that negotiators should align their strategies on related issues. By enlarging the scope of discussion, issue-linking increases the probability of a balanced outcome that reflects the interests of all parties and creates an atmosphere more conducive to cooperation. However, it also has some drawbacks, especially the danger of overloading and over-complicating negotiations. If issues are to be linked, the question of the most appropriate forum is critical, especially as the WTO is often regarded as ill-suited to address environmental issues.

Concerning contributions of the trade regime to combating climate change, Mr. Zelli explored two concrete possibilities for issue-linking. First, he suggested issue-linking across debates on a relaxation of certain WTO rules linked to the climate agenda, including creating exceptions for specific trade obligations of MEAs and relaxing intellectual property rules for plant genetic

resources and technology transfer. Second, he argued that there might be issue-linking opportunities within the WTO discussions on biofuels, such as negotiations on agriculture subsidies and environmental goods and services.

During the **general discussion**, there was a call for the subject of subsidies to be reconsidered, including the reduction of environmentally harmful subsidies and the expansion of subsidies to promote environmental protection. It was noted that there is currently no chapter on trade and investment included in the IPCC reports on mitigation measures. In this context, it was noted that the trade, finance and industry ministries must be involved in the climate-related discussions by means of an informal cross-ministerial process. The caveats and potential dangers of issue-linking were also reiterated. The question how far issue-linking should go needs to be carefully examined.

Concerning possible linkages between the regimes, it was mentioned that both regimes could also learn from each other in institutional and organizational terms. For instance, many developed countries are now calling for more differentiation among developing countries in the climate regime. There might be lessons to be drawn from the WTO which has a flexible system of organizing its membership into various negotiating groups.

### **Box 3 – Break-out session on “Overlaps between the Doha Round and Post-2012 Negotiations”**

During the break-out session, participants explored in greater detail the overlaps between the Doha Round and post-2012 negotiations. They noted the strong sensitivities in both regimes and the risk of exacerbating current tensions in the North-South relationship. They also noted concern over the current deadlock of Doha Round discussions on WTO-MEA interlinkages and on trade liberalization for environmental goods. In order to better address the interplay of both regimes, participants suggested the following areas for further exploration:

- *Enhancing the dialogue on climate-trade overlaps*
  - Overall importance of deeper mutual understanding and confidence-building across climate and trade communities.
  - At the domestic level, governments should further enhance cross-ministerial dialogue and co-ordination.
  - Several multilateral options are available:
    - Initiating an informal dialogue among representatives of environment, trade and development ministries, held simultaneously with COPs.
    - Exploring the potential of other forums to address overlaps, e.g. regional agreements like the APP or sectoral agreements.
    - Developing best practice guidelines as a feasible second-best solution.
    - Broadening the WTO agenda, e.g. including debates on standards, but avoid overburdening.
  - Explore opportunities for issue-linking as country strategies across debates are not always fully coherent.
- *Enhancing the expertise on climate-trade overlaps*
  - Expanding the IPCC's work on climate-trade overlaps with regard to both adaptation and mitigation, e.g. by means of a separate chapter in the Fifth Assessment Report that focuses on issues like investment, subsidies, border adjustment measures, intellectual property rights and technology transfer.
  - Further opening the WTO for input from UNFCCC Secretariat and other climate expertise:

- Facilitating regular scientific advice to the WTO Committee on Trade and Environment.
- Creating a standing scientific advisory body similar to the IPCC.
- Considering Technology Needs Assessments which developing countries submit to the UNFCCC Secretariat when defining the scope of EGS liberalization and, possibly, TRIPS flexibilities.
- Considering carbon life-cycle analyses and research on sustainability criteria when defining areas for faster trade barrier removal.
- Cross-institutional learning
  - Differentiation of developing country groups in WTO might serve as a model for UNFCCC negotiations.
- Developing domestic climate change adjustment assistance systems (modelled after existing trade adjustment assistance).
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- *Exploring prospects for multilateral agreements on energy and investment:*
  - Current institutional gap has turned Kyoto Protocol into a proxy arena to discuss energy issues.
  - A multilateral agreement on energy, e.g. based on the Energy Charter or plans for a World Energy Forum, could help establish consensual classification of renewable energies.
  - WTO-UNFCCC collaboration could target improvement of investment conditions in developing countries for the development and deployment of low-emission technologies.

## Conclusion

In his closing remarks, Mr. Biermann stressed the significant degree of uncertainty that still exists on the interlinkages between the trade and climate regimes, including: (a) legal uncertainty about the WTO-compatibility of certain measures; (b) economic uncertainty about the impact of climate measures on competitiveness; (c) environmental uncertainty about the suitability of policies to tackle carbon leakage; and (d) normative uncertainty about the appropriateness and direction of global climate governance, which is still in its early stages.

In light of these open questions, he underscored the need for further research on the complex intersection of climate and trade policies with specific focus on the three topic areas of this workshop: (1) key elements of a future climate regime that have implications for the international trading system; (2) approaches through which the world trade regime can address or otherwise affect climate change in a post-2012 world; and (3) opportunities for synergistic interplay between the negotiating agendas of both regimes.

He concluded by noting that both the ADAM project and UNEP share the view that there should be continued efforts to convene expert workshops focused on promoting collaborative action at the interface of trade, climate change and development.

All documents related to the workshop, including this summary, the agenda, the participants' list, presentations and background notes, are available at: [http://www.unep.ch/etb/events/2008\\_Post-2012ClimateTradePoliciesSept08\\_09.php](http://www.unep.ch/etb/events/2008_Post-2012ClimateTradePoliciesSept08_09.php)