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Bilateral and Regional Trade Agreements in Post-2012 Scenarios

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1. Purposes and scope

This note and the presentation at the workshop are intended to be responsive to the stated purposes of the workshop, as follows:

- Examine potential elements of the future climate regime with implications for the trading system
- Discuss approaches through which the trade regime can address/affect climate change
- Explore synergistic interplays between the climate and trade negotiating agendas

I have further specified the scope of the note and presentation is so that ‘trade’ is defined broadly, as it often is, to include investment and technology transfer, and ‘bilateral and regional’ agreements are defined to include sectoral agreements. The paper highlights selected issues from a broad range of possibilities; among them are the trade provisions of existing climate change arrangements.

Section 2 outlines the basic elements that are likely to be included in the post-2012 climate regime, with a focus on international technology transfer, and sectoral agreements. Section 3 uses four paradigms of international technology transfers for climate change mitigation, identifies impediments to them and discusses how they can be addressed in trade and climate change institutional settings. Section 4 focuses on *regional* sectoral agreements, including the Asia Pacific Partnership (APP), which includes provisions concerning international trade and investment barriers. Section 5 discusses *bilateral* sectoral agreements, including aviation in particular. The conclusions are presented in section 6.

2. Elements of the post-2012 climate regime

It is likely that the post-2012 international climate regime will include at least the following elements:

- Emissions targets and timetables
- Emissions trading and/or offset projects
- International technology transfer
- Sectoral agreement(s)

The third and fourth are particularly relevant to my topic, and they are addressed in the following sections.

3. Technology transfer for climate change mitigation: how to overcome impediments

It is useful to identify the following four analytic paradigms of international technology transfer for climate change mitigation:

- I. North-South transfer and financing
- II. Global trade and investment
- III. International public-private RD&D cooperation
- IV. Firms' IPRs, 'internalization' and M&As

Each is based on assumptions about the nature of international technology transfers, including their origins, forms, the nature of the impediments to them, and the implications for policy. The emphasis thus far in the institutional settings of international climate change discussions has been on North-South transfers and financing, as in Paradigm I. Although these are appropriate and potentially useful emphases, they reflect an inappropriately narrow conceptualization of international technology transfers.

The other three paradigms can therefore expand the dialogue and policymaking in efforts to increase international technology transfers for climate change mitigation. Furthermore, all three of them have implications for the intersections of trade and climate change issues, and all three are thus relevant to the purposes of this workshop.

Paradigm II emphasizes the roles of the international trade and foreign direct investments (FDI) of multinational firms as channels of technology transfer. A policy implication is that one way to increase technology transfers is to reduce government barriers to trade and FDI - barriers that exist in virtually all countries, including the developed countries of the North as well as the developing countries of the South.

Paradigm III emphasizes the market failures in research, development and diffusion (RD&D), particularly in technologies that require large capital investments and are not likely to become commercially viable for many years, if at all. These are features of several of the climate change mitigating technologies of widespread interest, such as carbon capture and storage (CCS). A potential way to overcome this impediment to international technology transfer is to arrange international public-private cooperation agreements such as the Asia Pacific Partnership (APP), which includes provisions for international trade and investment as well as technology transfer among its seven participating countries.

Paradigm IV focuses on a different set of impediments, namely the intellectual property rights of firms, the tendency of firms to 'internalize' of technologies as a basis of their competitive advantage (i.e. keep technology to themselves and avoid externalizing it in markets), and the use of mergers and acquisitions for anti-competitive purposes. The actual extent of these as impediments to international technology transfers and what to do about them are a topic in current climate change discussions, as they have been more generally for many years in international trade venues.

These paradigms suggest the need for a variety of efforts in trade *fora* to address such impediments including: reduction of trade and investment barriers in regional and bilateral agreements as well as multilateral agreements; and monitoring of IPRs, FDI and M&As.

4. Regional sectoral agreements: Asia Pacific Partnership

The Asia Pacific Partnership (APP) was a US government ‘initiative’ of the Bush administration - perhaps intended in part to undermine the emerging multilateral climate regime centered in the FCCC - but regardless of US intentions, the Japanese government and industry have taken leadership roles in actively promoting a wide range of projects in seven sectors such as aluminum, cement, and coal-fired electricity generation. The agenda includes the reduction of barriers to trade and investment and technology transfers among the participating countries. However, there are concerns that the creation of a ‘club good’ rather than a global public good will limit technology diffusion.

5. Bilateral sectoral agreements: aviation

The prospect of including aviation in the EU greenhouse gas emissions trading scheme (ETS) has been met with much hostility by the US government and industry. The specific issue is the proposed inclusion of international flights into and out of EU airports by non-EU airlines. This is thus a trade issue as well as a climate change issue, and it has spilled over into the phase 2 negotiations of the EU-US ‘Open Skies’ agreements. Because the Chicago Convention of the 1940s created an arrangement for a series of bilateral aviation agreements and because the international institutional setting for aviation has been the International Civil Aviation Organization (ICAO), international trade issues for the aviation industry have been addressed outside the multilateral trade system centered in the WTO. Further, international aviation (and shipping) have thus far been specifically excluded from the multilateral climate change regime. However, under the leadership of the EU and Norway, there are efforts under way to include aviation and shipping in the post-2012 climate regime. Meanwhile, climate change issues have been receiving some attention in the ICAO - and in the International Maritime Organization (IMO). However, the slowness with which these international institutions have responded to climate change and related trade issues raises concerns about the potential of these agencies of being used by industry for ‘regulatory capture’ purposes.

6. Conclusions: potential for synergistic interplays?

The workshop agenda, as noted at the outset of this note, includes a consideration of the potential for synergistic interplays in climate and trade negotiations. The brief analysis of this note suggests three different conclusions in this regard: (1) As for agreements that would increase international transfers of climate-friendly technologies and agreements that would increase trade and investment, *yes*, there is the possibility of win-win outcomes. (2) As for the APP as a regional agreement, there *could be* win-win outcomes, but they could well be limited to the regional ‘club’ and not more generally available outside the club. (3) As for aviation, it seems *unlikely* that there will be significant win-win outcomes from the current combination of a large number of bilateral trade agreements and the traditional placement of international regulatory issues in the ICAO, in combination with the reluctance until recently in the UNFCCC process to address international aviation issues. On the other hand, there is the potential for such outcomes if European national governments and EU institutions persist in their efforts to bring aviation - and shipping - fully into the climate regime. A plurilateral-sectoral transportation agreement, including aviation and shipping, could be a promising path. But that would be a topic for another note and presentation.

References for further information

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