Searching for Docking Points: Prospects for Issue-Linking between the WTO and the UN Climate Regime
Perspectives from the ADAM Project

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Fariborz Zelli, Tyndall Centre for Climate Change Research, Norwich, UK

In this note, I present research conducted in the EU-funded ADAM project ('Adaptation and Mitigation Strategies: Supporting European Climate Policy). The ADAM Project is a research consortium of 26 leading research institutions in the field of climate policy mainly in the European Union. More than 100 researchers are involved in the various work packages. ADAM's core mission is the development of novel policy options for a global climate governance architecture post 2012.[1]

I concentrate on research from a particular ADAM work package (no. P3a on "Options for Post-2012 Climate Governance"). Our findings point to an increasing institutional diversity regarding climate change, and clearly suggest the need for further coordination across institutions (sections 1). One strategy to tackle this coordination gap is issue-linking across debates, in terms of more integrated strategies or even package deals. After presenting the rationale for issue-linking (section 2), I present some suggestions for docking points across issues and debates concerning the overlap among the UN climate regime and the WTO (section 3). I conclude with a list of questions for discussion at the workshop (section 4).

1. Fragmentation of International Climate Governance

One of the major research themes of ADAM Work Package P3a is the increasing "fragmentation of international law" (Hafner 2004; Koskenniemi and Leino 2002) and its impacts on international climate politics. We do not understand the term 'fragmentation' as value-laden, let alone genuinely negative; we define it as: the multitude of international norms and institutions - with different legal status, constituencies, spatial scopes or predominant subject matters – which overlap in their mandates and functions for addressing global climate change.

As for public or inter-governmental institutions, one can distinguish no less than four different spheres of fragmentation in international climate politics. These spheres can be

[1] For further information, please see the attached flyer and www.adamproject.eu .

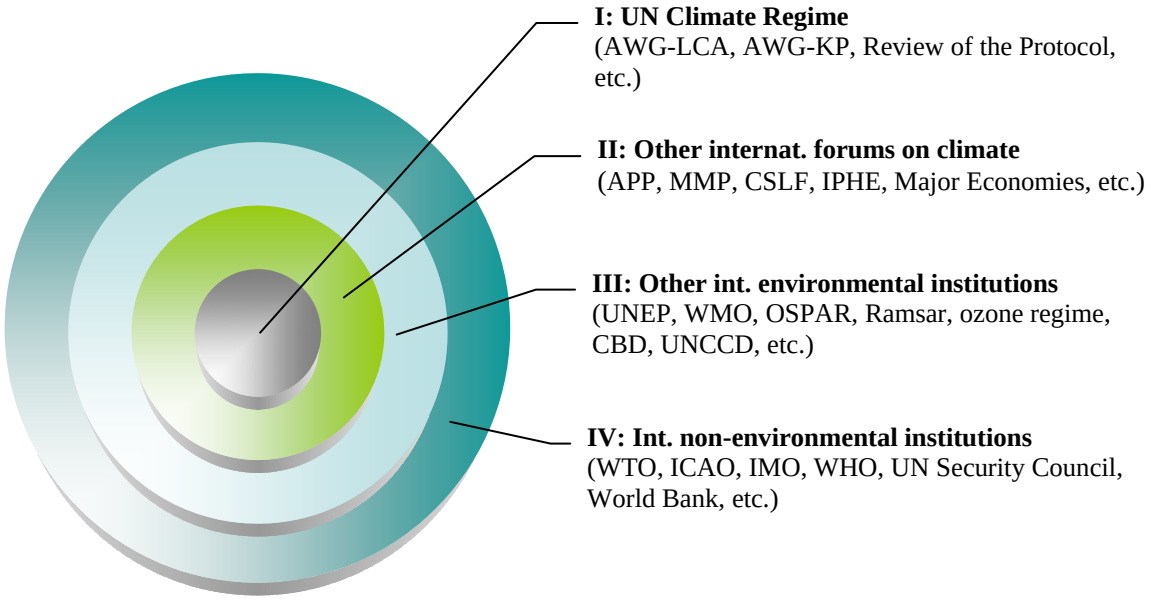

Figure 1: Four Spheres of Institutional Diversity in International Climate Politics

arranged concentrically, i.e. from "purely" climate-specific institutions towards regimes and organisations with universal or cross-issue portfolios (see Figure 1).[2]

In the project, we have researched the pros and cons of this institutional diversity with regard to the environmental, economic and social effectiveness of international climate policy-making. While this diversity has several benefits, disadvantages can, for instance, arise from coordination gaps (for more details on our methods and findings, see Biermann et al. 2007; Boeters et al. 2007; Hof et. al. 2007).

2. Addressing Fragmentation: The Rationale for Issue-linking across the UN Climate Regime and the WTO

Based on this analysis, we have been exploring various policy options to enhance cross-institutional coordination on climate change. With regard to the relationship between the UN Climate Regime and the WTO, our major suggestion is that delegates in both institutions should further explore opportunities for issue-linking – more than this has so far been the case.

To be more precise, issue-linking does not necessarily insinuate an *institutional* merger of debates, which might be neither feasible nor desirable. Rather it implies that countries or country coalitions consider aspects from related debates in their strategies. This can result in proposals for coordination, side-payments or even induce package deals.

[2] Note that Figure 1 only refers to intergovernmental institutions; when taking the various private and public-private initiatives into account, the global climate architecture forms an even more complex and fragmented picture.

What sounds utopian at first glance has been regular practice in international politics in general and international trade in particular (ultimately in the form of the WTO which links a wide range of issues) – and has even found its way into recommendations of IPCC reports (cf. IPCC 2001: 624-627). The most noteworthy example of a constructed link among climate and trade interests is the Russian ratification of the Kyoto Protocol in early November 2004 – which secured the Protocol's entry into force 90 days later.[3]

The underlying intuition of 'tactical issue linkage' (Cesar and De Zeeuw 1996; Folmer et al. 1993; Haas 1980) – or even package deals – is that they can solve asymmetries among countries, each country gaining on a different issue, thereby making the agreement profitable to all participants (IPCC 2001: 626f.). In terms of game theory, such tactical issue-linkage can connect two separate bargaining situations, creating a new pay-off matrix with altered preferences, i.e. an overall constellation which is more conducive to cooperation. Combining climate and trade issues in an overall deal might hence produce new bargaining chips and provide new leverage to deadlocked negotiations (Zürn 1990: 166-73).

This notwithstanding, package deals are far from being a panacea. While the potential number of tactical issue-linkages between climate and trade issues is infinite, most of these linkages are neither feasible nor sensible. Caveats one needs to consider include:

1. *Country Positions (1)*
   Both post-2012 and Doha negotiations are already overburdened with agenda items, slowing down or hampering progress (the latest example being the collapse of a high-profile summit to reinvigorate the Doha Round in July 2008 – in spite of convergence on 18 of 20 items) (ICTSD 2008). Simply bringing in additional topics could hence easily make matters worse. *The choice of topics hence needs to guarantee (balanced) benefits for all parties.*

2. *Country Positions (2)*
   In the Doha Round, trade topics tend to be of higher importance for parties than climate concerns (although, depending on the framing (e.g. as 'energy security'), climate concerns can quickly rise on a country's agenda). *This imbalance of preferences needs to be taken into account.* For instance, climate or energy-related topics might not provide full-fledged bargaining chips, but they might help tipping the balance for negotiations which are on the edge / close to agreement (such as recent July 2008 Doha talks).

3. *Nature of Issues*
   As climate negotiations provide a public good, i.a. a good with non-excludable benefits (here: avoiding dangerous climate change), there is a high incentive for free riding. In order to reduce this incentive, issue-linking is only sensible with negotiations on issues with excludable benefits, e.g. deals on technology transfer.

[3] With this step, Russian President Putin followed recurring requests by EU member countries which had made their support for Russia's WTO accession contingent upon Moscow's ratification of the Kyoto Protocol (Henry and Sundstrom 2007; Kotov 2004: 158ff.).

4. *Forum*
   Linking issues raises delicate questions about institutional mandates and jurisdictional clouts. Carefully put, not everyone might consider the CTE or other WTO bodies as the appropriate forums to discussing further climate-related issues. *The choice of forum where such linkages are first discussed needs to accommodate such concerns. Third "neutral" forums with fewer participants might be most suitable.*

Bearing these caveats in mind, there are nonetheless good reasons for considering further docking points among debates, as there various overlaps: material interlinkages (climate change and climate policy affecting trade; trade and trade liberalization affecting climate change) as well as institutional interlinkages (i.e. overlapping mandates, e.g. regarding domestic policies and measures or climate-friendly goods, services and technologies) (see, for instance, Asselt and Biermann 2007; Biermann and Brohm 2005; Brewer 2004).

3. Suggestions for Issue-linking

Given the various overlapping topics among the UN climate change regime and the WTO, there are several links whose bargaining potential have not been explored entirely.

Two possibilities which we have explored in the ADAM project are:

1. ***Dovetailing country strategies on the transfer of climate-friendly technologies, intellectual property rights, plant genetic resources and specific trade obligations of MEAs***. The following aspects insinuate the possibility for such a closer connection:
   a. First of all, most of these discussions are anyway linked through the nature of the Doha Declaration (DDA) as a "single undertaking". Delegations cannot cherry-pick on certain issues but have to yield outcomes on all items.
   b. In the CTE Special Session discussion under DDA para. 31(i), the EU and Switzerland have made several proposals for further legal concessions under the WTO in favour of specific trade obligations under MEAs (for instance, an interpretative statement / extension of general exceptions under GATT Art. XX). The US, Australia and the bulk of developing countries have been opposed to any such efforts.
   c. Yet on the other hand, in a different debate (at the TRIPS Council), many developing countries (e.g. Brazil, India and the African Group) have proposed amending the TRIPS Agreement to reflect requirements of the Convention on Biological Diversity, in particular regarding the access and benefit-sharing of plant genetic resources. Such an amendment could, for instance, require the disclosure of the origin of genetic material. This idea has in part been

supported by the EU. This notwithstanding, the EU, along with the US, has pursued a further endorsement of the TRIPS approach on genetic resources, by means of stricter bilateral 'TRIPS plus' accords with various countries.

d. Likewise, some developing countries such as India and Pakistan have called for a relaxation of intellectual property standards for all climate-related technology. Saudi Arabia has even suggested allowing compulsory licences for such technologies, most recently in April 2008 in CTE Special Session discussions on environmental goods and services (EGS) under DDA para. 31(iii).

In summary, there are three more or less stalled negotiation tracks, while country positions are not 100 % consistent across these debates. There are docking points that signal potential for more integrated strategies, e.g. an agreement on extended exceptions under WTO law for MEAs which includes exceptions under the TRIPS agreement (cf. Palmer and Tarasofsky 2007: 43-44).

2. ***Further linking strategies or discussions on farm subsidies, biofuels and transfer of climate-friendly goods and services***

a. Again, some of these debates are connected by the DDA as a "single undertaking". Progress on the 'trade and environment' mandate of the Doha Round depends on the success of talks on other Doha items, especially on tariff and subsidy cuts in the industrial goods and agriculture negotiations.

b. In EGS discussions, the US and EU favour a 'list approach', asking developing countries to liberalize their trade policies to allow more transfers of the listed goods.

c. In the larger debate on farm subsidies however, developing countries have been demandeurs themselves, proposing that the US and EU liberalize their agricultural trade policies to allow more imports from developing countries.

d. The question on biofuels directly relates to both discussions, as the topic falls into both agriculture and climate policy fields.

i. For instance, Brazil and other countries have criticized that lists – presented by the EU and the US – of goods and services for trade liberalization do not include biofuels. Moreover, Brazil has included US subsidies of biofuels in a dispute it filed in the WTO in 2007 (Brewer 2008: 24).

ii. The lack of internationally agreed criteria for sustainable biofuels production and the uncertainty on the legal status of biofuels equally concern the farm subsidies debate. Thus far, fuels made from crops, such as ethanol, are classified as agricultural goods (by the World Customs Organisation), while biodiesel is considered to be an

industrial product (cf. Motaal 2008). Subsequently, biofuels are discussed at different ends of the Doha debate on farm subsidies and non-agricultural goods.

In summary, Northern and Southern camps both act as demandeurs for trade liberalization in different parts of the Doha debate (Brewer 2006: 12). No doubt discussions on farm subsidies are more important to the bulk of involved countries than the EGS debate. This notwithstanding, a better coordination of positions, e.g. in terms of concessions from one camp on the question of EGS or biofuels (e.g. an 'extended list approach'), might help trigger overall farm subsidy talks or at least partly bridge the remaining gap.

Interestingly, participants in EGS discussions see this connection, however so far mostly in one direction. Some delegates explicitly stressed that chances for a breakthrough on para. 31(iii) would be greater, if a deal on tariff and subsidy cuts were reached in the industrial goods and agriculture negotiations (ICTSD 2008a).

4. Questions for Discussion

The aforementioned 'docking points' are certainly not the only possibilities for issue-linking in the realm of climate-trade overlaps.

First of all, some of their elements might be combined in different ways.[4]

Second, integrated country strategies are not the only way to link issues. Experts have come up with varied suggestions with different levels of abstraction, ambition, and institutional setting:

- Early and very ambitious proposals, for instance, considered linking climate change strategies to debates on international debt (Mohr 1995) and R&D cooperation (Carraro and Siniscalco 1997).
- At a UNEP symposium in February 2008, participants considered joint meetings between Ministers of Environment and Trade, clarification of the legal relationship between the climate change and trade regimes, and an increase in aid to developing nations for climate change mitigation and adaptation.
- Regarding institutional design on a deal on climate-friendly goods and services, a study by the World Bank (2008: 92) has recently suggested either a comprehensive single undertaking or a plurilateral agreement "independent of the conclusion of the Doha negotiations".

[4] Palmer and Tarasofsky make such a suggestion with regard to the aforementioned debate on exemptions for MEAs under WTO law (para. 31(i)): "Were the EC to agree to concession on agriculture, it might therefore seek to exact, as a price, concessions from others on 31(i). The EC's latest submission on WTO-MEAs may signal its willingness to accept a procedurally-based outcome on the issue, rather than a more fundamental normative shift" (Palmer and Tarasofsky 2007: 42).

- Likewise, Brewer (2008: 27-28) has suggested that sectoral agreements may offer opportunities to coordinate climate and trade policies, "or perhaps even to integrate them institutionally".

In light of these various ideas, potential questions for discussion at the workshop are:

- To what extent can similar debates in both institutions be linked in a meaningful way, thereby creating additional tradeoffs? In other words: which topics are suitable for 'docking'?
- As for the level of ambition, what form should such linkages take? For instance,
    - Integrated country strategies and side-payments
    - Informal meetings, e.g. of representatives from different ministries
    - Formal meetings and outcomes, e.g. side-agreements
- What are the caveats and barriers for such approaches, e.g. regarding country positions and institutional mandates?
- What are the North-South implications of such cross-cutting approaches: additional tradeoffs or further deadlocks?

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