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## “GLOBAL WARMING AND THE WORLD TRADING SYSTEM”

**WASHINGTON**—Climate bills now being considered by the US Congress contain both import restrictions and export subsidies. These measures stand a fair chance of being challenged in the World Trade Organization (WTO). Like other national systems that contemplate import bans, border taxes, and comparability mechanisms as a means of reducing greenhouse gas (GHG) emissions, US measures could cause drawn-out trade battles, according to a new study by the Peterson Institute for International Economics.

*Global Warming and the World Trading System*, coauthored by Gary Clyde Hufbauer, Steve Charnovitz, and Jisun Kim, examines the interaction between national measures designed to limit GHG emissions and the operation of the world trading system. In their study, the authors examine core principles of the world trading system as set forth in the text of the General Agreement on Tariffs and Trade (GATT), the WTO, and the decisions of the GATT panels and WTO Appellate Body. Existing WTO jurisprudence leaves ample room for conflicting interpretation of the core rules. To avoid trade conflicts, the authors recommend changes that would simultaneously seek two goals: (1) create “policy space” for countries to limit GHG emissions without sacrificing the competitive advantage of their own industries, and (2) preserve an open trading system free of unnecessary discrimination and opportunistic protection. Toward this end, the authors recommend a new Code of Good WTO Practice on greenhouse gas emission controls.

A stumbling block for the United States in enacting mandatory emission targets has been the apprehension that high costs would lead to “leakage” of production and jobs to foreign firms located in countries that do not equivalently limit their carbon emissions, such as China and India. Not surprisingly, the severe economic downturn has intensified these fears. A related concern is that US legislation would miss an opportunity if it does not create maximum “leverage,” so that large but reluctant emitting nations take action to reduce their own emissions. To address these leakage and leverage concerns, US legislators have drafted special provisions in their greenhouse gas control bills, such as free allocation of allowances, special exemptions, border adjustments, and comparability requirements. Other countries have done the same in binding legislation (the European Union) or in draft proposals (e.g., Australia and Canada).

While the WTO allows member countries great flexibility in adopting environmental standards within their territories, the same discretion does not apply in their trading relations with other countries. Potential disputes over trade-restrictive measures could therefore arise under several core WTO provisions: GATT Article I (most-favored-nation treatment),

Article II (tariff schedules), Article III (national treatment), Article XI (quantitative restrictions), and Article XX (general exceptions); and the Agreement on Subsidies and Countervailing Measures (ASCM). If the United States enacts its own unique brand of import bans, border taxes, and comparability mechanisms—hoping that measures that flaunt GATT Articles I, III, and XI will be saved by the exceptions of GATT Article XX—the probable consequence will be drawn-out trade battles. During these conflicts, some countries will concentrate on winning legal cases rather than fighting the common enemy, climate change.

The post-Kyoto negotiations, to be held in Copenhagen in December 2009, will probably result in new and ambitious targets for reducing GHG emissions, and will commit both developing and developed countries to take action. But national governments will likely insist on designing their own methods for meeting agreed targets. Under this scenario, conflicts due to differences in climate-change policies are all but certain. Some disputes will land on the doorstep of the WTO. One way to determine whether disputed trade measures in support of GHG emission controls are compatible with WTO agreements is simply to let the WTO judicial process run its course. The Peterson Institute for International Economics authors, however, contend that crucial decisions should not, in the first instance, be consigned to the WTO judicial system. Instead, key WTO members should attempt to write a new Code of Good WTO Practice with respect to controls on GHG emissions. The purpose is to define more sharply the policy space for climate control measures that are consistent with core WTO principles, even when a technical violation of WTO rules might occur. To encourage WTO negotiating efforts along these lines, the authors recommend that the United States and other important emitting countries should adopt time-limited “peace clauses” in their climate legislation. The peace clause would suspend the application of border measures or other extraterritorial controls for a defined period of time while WTO negotiations are underway.

*Global Warming and the World Trading System*

by Gary Clyde Hufbauer, Steve Charnovitz, and Jisun Kim

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