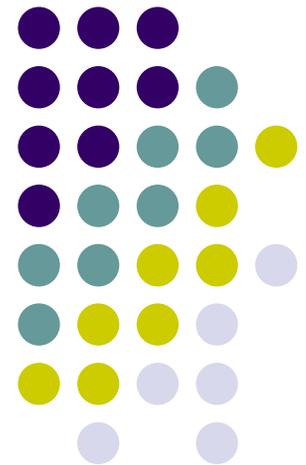


The WTO and Climate Change: What Are the Options?

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PIIE/WRI Event on
Climate Change and Trade Policy
September 14, 2009



UNFCCC Approach to Trade Issues

- **The climate regime itself could act multilaterally to create norms on trade and climate – but hard norms seem unlikely.**
 - The post-Kyoto regime may establish nonbinding principles for the use of trade measures for climate change.
 - Principles agreed to under the United Nations Framework Convention on Climate Change (UNFCCC) could be considered by a WTO panel when a dispute arises (e.g, the Rio Declaration on Environment and Development in the *United States–Shrimp* case).
 - At the AWG-LCA meeting, India proposed a paragraph in the negotiating text to bar unilateral measures against imports from developing countries on the ground of climate protection and stabilization. The US disagreed.
- **Given the huge divide between countries, it is unlikely that parties to the post-Kyoto accord will adopt binding rules that define a trade framework. Current compliance mechanisms within the UNFCCC and Kyoto Protocol are not designed to deal with trade issues.**

Case-by-Case Approach

- **A straightforward way to determine whether disputed trade measures are compatible with WTO agreements is to let the WTO dispute settlement process run its course.**
- **Issues that need clarification include:**
 - Non-discrimination: can “like” products be defined based on their carbon footprint?
 - Justification for border measures: carbon leakage or carbon leverage?
 - How to assess effectiveness of measures in meeting GHG goals?
 - Standards and labeling requirements based on PPMs?
 - Free allocations, offsets, exemptions: are they subsidies?
 - What deference for principles agreed under the UNFCCC?
 - How to measure the trade impacts of disputed measures?
 - What constitutes good faith efforts to negotiate with other countries?
 - How to interpret the chapeau of Article XX?

Article XX (general exceptions)

- **Article XX (general exceptions) may provide a “safe harbor” for trade measures. However, the measures must conform to the demanding chapeau of the Article. The chapeau of GATT Article XX reads:**

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures..."

Case-by-Case Approach (cont'd)

- **It could take a long time before clear guidelines become apparent.**
 - A big WTO case can easily take three years to run the full course -- from consultations, to a panel decision, and finally an AB ruling.
 - As trade battles are fought, some countries may become more devoted to winning legal cases than to fighting the common enemy, climate change.
- **If the AB is too lenient on trade-related climate measures, it could open doors to opportunistic protectionism and rent-seeking behavior.**
- **If the AB is too strict, countries may ask why the WTO is injecting itself as an opponent of GHG controls designed to save the planet.**

Code Approach

- **“Like minded” countries might negotiate a new code as a plurilateral agreement under Annex 4 of the WTO agreement, or a code adopted outside of the WTO.**
 - The Code would define the policy space for climate measures that are consistent with core WTO principles even when a technical violation occurs.
 - The Code would not apply to countries that did not subscribe it.
- **To maximize its effectiveness, the code should include the major emitting countries: US, EU, Japan, China, India and Brazil. This is not an easy task.**
 - A code that emphasized sector standards and implicit carbon pricing might start out with very limited membership, perhaps just US, EU, Japan.
 - Developing countries might write their own code for climate and trade measures with emphasis on historical record and per-capita levels of emissions as criteria for imposing trade restraints. The result of two conflicting codes could be a huge split between WTO members.

Amendment or Waiver

- **GATT articles and other parts of the WTO legal text might be amended to accommodate environmental controls.**
 - This requires a consensus of members.
- **Another approach is to ask WTO members to approve a waiver to WTO obligations for trade commitments written in a climate agreement.**
 - This requires approval from at least three-quarters of members.
 - Examples: the waiver for the Kimberly process, the 1955 agricultural waiver to the United States.
 - The likelihood of this approach largely depends on the extent of overlap between signatories to the climate agreement and the WTO membership.

Stick to Your Knitting: Doha Mandate

- **Rather than embark on a major modification of WTO rules, the members might decide to stick to the environmental topics flagged in the Doha mandate.**
- **Trade barriers are a big impediment to the dissemination of low-carbon energy technologies and associated services worldwide.**
 - No internationally agreed definitions for environmental goods and services exists. Among issues: PPM based classification, dual use products.
 - The lists proposed by OECD, APEC, World Bank and UNFCCC could be a starting point.
- **Strong protection of intellectual property rights (IPRs) has the potential to stimulate technology innovation but can also hinder technology transfer.**
 - Developing countries have asked for easier access to patented clean energy technologies and have proposed compulsory licensing regimes.

Peace Clause

- **Key WTO members might adopt time-limited “peace clauses” in their national climate legislation.**
 - The “peace clauses” would suspend the application of border measures on imports, and other extra-territorial controls, for a defined period of time while UNFCCC and WTO negotiations are underway.
 - It can buy time!
- **There are disadvantages.**
 - As the WTO itself experienced with respect to the peace clause over agricultural subsidies adopted in the Doha Round, negotiations might not move with energy or speed.
 - During the peace clause period, the urgency of limiting GHG emissions might be diluted. Some developed countries might go easy on their own GHG controls, out of competitive concerns. Some developing countries might feel less pressure to flatten their GHG trajectories.