



FONDATION POUR LES ÉTUDES ET RECHERCHES
SUR LE DÉVELOPPEMENT INTERNATIONAL

Climate Change Policies and the WTO: Greening the GATT, Revisited

Panel

"Can National Policies and INDCs alone lead to a Workable and
Effective Climate Regime?" December 8, at 11:30 - 13:00, blue
zone Room 4

Jaime de Melo

FERDI

The WTO now

WTO is a negative Integration Contract
(resembles negative goods vs positive goods on QR lists)

- GATT,GATS: individual countries can choose their own environmental policies (so long as they don't discriminate).
- Only restrictions on behavior is to prevent members from renegeing on exchange of market access
- What members can do (BTA) and cannot do (environmental subsidies) ([here](#))
- What is unclear for members: labelling ([here](#))—but case law can be overturned and likeness not left to consumers to decide but become a matter of policy in the case of TBTs

WTO in progress

Environmental Goods Agreement Negotiations (EGA) ([here](#))

- (EGA) negotiations—Low expectations (ESs and NTBs excluded), very little on the table except China and Korea.
- ...and depends on case law interpretation of ‘likeness’ under tariff negotiations. So far case law only allows discrimination for objective categories (e.g. LDC category). Could change under EGA
- ...but issue-oriented Plurilateral Agreement (PA) that can pave the way for later multilateralization

Attractiveness of PAs

- EGA could be leader for sector agreements (HFCs and other SLCP, cement, aluminium « building bloc/ experimental governance»)-
- PAs are a complement to WTO multilateral approach.
- A multilateralized PA satisfies 3 criteria (that eluded KP): (i) full participation; (ii) Comply; (iii) change behavior substantially

Greening the WTO

Move to a positive contract

- Climate clubs are no curb to multilateralism and can help solve the free-rider problem ([here](#))
- Obligation to address environmental damage. This involves harmonizing customs classification via WCO
- Allow for ‘green’ subsidies (re-instate art. 31 SCM). Potential abuse, but would ease transition to green ppms.
- Fossil fuels. Compulsory monitoring of subsidies for fossil fuels. This would be equivalent of currently compulsory TPRM. (currently the supply of similar information is disincentivizing).
- Legalize environmental labelling (now uncertain under case law - via recourse to ISO standards. Using an ISO std. guarantees immunization from challenges at the WTO.

References

Barrett, Scott, Carlo Carraro, Jaime de Melo eds. *Towards a Workable and Effective Climate Regime* CEPR and FERDI <http://www.ferdi.fr/en/publication/ouv-towards-workable-and-effective-climate-regime>

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Mavroidis, Petros and Jaime de Melo « Climate Change Policies and the WTO: Greening the GATT, Revisited », in Barrett et al. eds.

Melo, Jaime and Mariana Vijil (2015) «The critical mass approach to achieve a deal on green goods and services: what is on the table? How much should we expect?», *Environment and Development Economics*

Nordhaus, W. (2015) « Climate Clubs: Overcoming Free riding in international Climate Policy », *American Economic Review*, 105(4), 1339-70

Stewart,R, M. Oppenheimer, B. Rudyck «A Building Blocks Strategy for Global Climate Change», in Barrett et al. eds

Extra Slides

What Members can and cannot do

- **Can do:** Apply a tax at the border: Border Tax Adjustment (BTA)

Why BTA? Carbon prices are far from converging and leakage rates can be cut in half by BTA (from 30% to 15%)

Example: Apply a border tax of 10% on carbon content of cement clinkers (CC) to compensate for a domestic CO₂ tax of 10%.

⇒ If Foreign invokes article III.2 and shows that measure protects DCS by applying the likeness test (decided by consumers!), Home will fail and be found to discriminate

⇒ ...but home can still invoke art. XX(g) of GATT (and apply it even-handedly). Then burden of proof is on home (and it will win easily).

- **Cannot do:** apply an environmental subsidy. These are now actionable as art. 31 SCM making them non actionable for a 5 year period was not renewed in 2000)

EGA under negotiation

- EGA Issue-based Plurilateral negotiations on reductions in customs duties on a fluctuating (54→411?) list of environmental goods
- How? Ex-outs (rather than introduce a new national tariff classification that could be more easily contested)

- Why EGA outcome is very limited

- Political economy: tariff low on EGs since as intermediaries they face opposition from users+ tariff peaks excluded from EG lists.
- Scope is limited: only 2 members [China (4.8%) and Korea(6.1%)] have any substantial “offer” on the table. Davos group: 6/14 have $t=0$ and $TRI=3.4\%$.
- Simulations: 50% tariff reduction \Rightarrow imports $\uparrow \approx 2-8\%$ from WTO list
- ESs (complementary to EGs) [with tariffs 2-3 times higher than for EGs] are excluded as well as NTBs.
- Only substantive outcome is if plurilateral agreement is extended to all members (i.e. ‘critical mass’) and no objection by WTO members

Announce deal is close in Nairobi in December \Rightarrow save (!) Doha Round

Environment Labels

Background: IPPC: 38% of reductions from CO2 emissions to come from use of energy-efficient (EE) products—both in consumption and in a performance-based sense.

Example: Home sets a ceiling on CO2 emissions of cement clinkers (CC-HS252-321). The TBT applies to this labelling scheme

- The test of ‘likeness’ is no longer HS classification (as under a tariff) because it is a domestic instrument
 - Foreign complains: the label is unnecessary and discriminatory
 - AB report on US-Tuna II (Mexico) has interpreted « necessary » as least costly (easy to argue) so it is TBT-consistent.
 - But is it discriminatory? Case law leaves it up to consumer who will choose the (cheaper) dirty (!) clinker.
- ⇒ Do not leave it to adjudicators (and hence consumers). Change the case law as likeness should be a question of policy

Climate Clubs

- Combine a critical mass and PA. Example: single out cement production ($\approx 5\%$ Co₂). Signatories agree to staged reductions perhaps after agreeing that say 80% of emitters participate.
- Punishment for non-participation not envisioned. Nordhaus sees a club with punishment for non-membership as a means to avoid free-riding

“explicitly allow for uniform tariffs on non-participants within the confines of a climate treaty... [and] prohibit retaliation against countries who will invoke the mechanism” (p.1339)

-Relatively well-targeted penalty that is incentive-compatible (for tariffs in 5-20% range punisher gains and defectors lose the huge benefits from WTO membership)

- Under current negative contract, countries cannot be told to adopt climate-mitigation policies.
- A club of countries cannot raise their bound tariffs –even in non-discriminatory manner—against non-members (under PTAs you cannot raise tariffs against non-members).
- Alternative would be to push participation via domestic taxes that are unbound than via tariff differentiation