

BACKGROUND NOTE TRADE AND ENVIRONMENT IN THE WTO

Current WTO rules provide significant scope to protect the environment and tackle climate change while maintaining trade open

In the preamble to the Marrakech Agreement that established the WTO, sustainable development, and the protection and preservation of the environment are recognised as fundamental goals of the organization. The WTO promotes more open trade with a view to achieving sustainable development. It provides WTO members with the flexibility they need to pursue environmental and health objectives. A distinction should be made between trade measures with a genuine environmental goal, and measures that are intended as disguised restrictions and are applied in an unjustifiable, arbitrary or discriminatory manner.

Allowing trade restrictions for environmental reasons ... only under certain specific conditions

The WTO is not an environment agency. The main objective of the WTO is to foster international trade and open markets but WTO rules permit members to take trade restricting measures to protect their environment under specific conditions. Two fundamental principles govern international trade: national treatment and the most favoured nation (MFN).

National treatment means any policy measure taken by a member should apply in the same way whether the good is imported and produced domestically. Provided they are similar products imports should not be treated less favourably than domestic goods.

The *MFN principle* means that any trade measure taken by a member should be applied in a non-discriminatory manner across to all countries.

What are similar products? WTO case law refined the term 'similar' using four criteria: the products' physical properties - the products' end-use should be similar - if consumers perceive the products are exchangeable and used for the same purpose - the products' tariff classification.

The WTO rule book permits governments to restrict trade when the objective is protecting the environment. The legality of such restrictive measures depends on a number of conditions including whether they constitute justifiable discrimination. These measures should not constitute disguised protectionism.

In the preamble of the Marrakech Agreement, which established the WTO, sustainable development, the protection and preservation of the environment are recognised as fundamental goals of the WTO. Article XX of the GATT (General Agreement on Trade and Tariffs) lists exceptions to open trade, among them the protection of the environment. WTO jurisprudence has regularly reaffirmed members' right to determine their own environmental objectives. While there may be conflicts between international trade and the protection of the environment, WTO agreements permit exceptions to trade principles. Every member is free to determine its appropriate level of the protection but must do so in a coherent manner. If a country bans the importation of asbestos from another, for example, it must ban asbestos imports from all countries, as well as banning domestic sales.

Countries may also use technical environmental standards or sanitary and phytosanitary measures when pursuing their environmental objectives, They may, for instance, impose strict labelling requirements on a certain category of products.

These technical standards could constitute an unfair obstacle to trade if they are applied in a manner which is discriminatory or if they create unnecessary obstacles to trade. The WTO encourages governments to apply international standards where they exist. It is essential for WTO members to be informed of changes in national policies and to examine whether they are justified. Any draft technical or sanitary standard should be notified to the WTO.

There is a wider range of WTO rules relevant to climate change. Rules on subsidies may apply as countries are currently financing the development of environmental friendly technologies and renewable energy. Intellectual property rules could also be relevant in the context of the development and transfer of climate-friendly technologies and know-how.

What are the trade implications of climate change?

There are no rules in the WTO specific to climate change. However, the WTO “tool box” of rules (see section above) can apply. The WTO provides a legal framework ensuring predictability, transparency and the fair implementation of such measures.

Climate change has an impact on various sectors of the economy. Agriculture, forestry, fisheries and tourism are affected by climate change through temperature increases, droughts, water scarcity, coastal degradation, and changes in snow cover. These are key sectors in international trade especially for developing countries which have a comparative advantage on the international trading scene. Extreme weather can also affect ports, roads, airports and railways. Climate change can disturb supply and distribution chains, potentially raising the cost of international trade.

Trade itself can also have an impact, positive or negative, on CO₂ emissions. Economic development linked to trade opening could imply a greater use of energy leading to higher levels of CO₂ emissions. However, trade opening has much to contribute to the fight against climate change by improving production methods, making environmentally friendly products more accessible at lower costs, allowing for a more efficient allocation of resources, raising standards of living leading populations to demand a cleaner environment and by spreading environmentally friendly technologies.

In addition, about 90% of trade is carried out through maritime transport, which is the lowest contributor to CO₂ emissions. It represents less than 12% of the transport sector's contribution to CO₂ emissions, while road transport represents about 73%. Trade can help countries to adapt to climate change. When countries are faced with food shortages brought about by climate change, trade can play the role of a transmission belt between supply and demand.

In the last decade, countries have designed new policies to address climate change. They range from standards to subsidies, from tradable permits to taxes. In doing so, governments have to find the right balance between designing a policy that would impose minimal costs for the economy while effectively addressing climate change. The industrial sector's growing concern is to remain competitive while climate mitigation efforts proceed.

Today, many governments are considering the use of trade measures in the fight against climate change. Border measures are a hotly debated policy tool that may be applied to imported products based on their carbon footprint. The details of how that footprint would be calculated in an increasingly globalised market, where products are manufactured in a number of different countries, has itself been part of the debate.

The conclusion of a global climate change agreement, that determines what each country must do to reduce emissions based on the well-known environmental principle of "common but differentiated responsibility" – which means taking into account different level of responsibility in emissions - could alleviate some of the concerns that are linked to trade.

What happens after the Doha round?

Greater market openings for environmental goods and services Enhanced coherence between trade and environment

As part of the Doha mandate, the WTO members agreed to negotiate greater market opening in environmental goods and services, the relationship between WTO rules and trade obligations set out in multilateral environmental agreements (MEAs) and on the exchange of information between those institutions. Agreement in these areas would undoubtedly help address climate change.

- *A more open market for environmental goods and services.*

The elimination or reduction of barriers to trade in this area will benefit the environment by improving countries' ability to obtain high quality environmental goods. It will facilitate access to these types of goods and foster a better dissemination of environmental technologies at lower costs. This negotiation will also have a positive impact on climate change by improving access to goods and technologies that can contribute to climate change mitigation. According to a recent World Bank study on trade and climate change, elimination of both tariffs and non-tariff barriers to clean technologies could result in a 14% increase in trade in these products.

The goods discussed so far fall within a broad range of environmental categories, such as air pollution control, renewable energy, waste management and water and wastewater treatment. Some of these products are also relevant to climate change mitigation. They include products generating renewable energy such as wind and hydropower turbines, solar water heaters.

Following the Work Programme set out in July 2008, members are in the process of identifying environmental goods of interest to them. Members are engaged in a broad discussion on the universe of environmental goods that may be subject to liberalization.

Members have been invited in the context of this work programme to make proposals on other aspects of the mandate including non-tariff barriers, and development-related issues (transfer of technology, special and differential treatment). Further work will be required in the coming months on these important aspects of the negotiations.

- *More coherence between trade and environment rules*

To bring more coherence between trade and environment rules, members have made a number of proposals highlighting the importance of national coordination between trade and environment experts, particularly in the context of the negotiation and implementation of MEAs. Proposals have also underscored the value of national experience-sharing in this area, which can enhance the mutually supportive relationship of the trade and environment regimes.

- *Better cooperation between the WTO and MEAs*

There is a strong support for consolidating some practices and mechanisms for cooperation between the WTO and the MEAs. Concrete suggestions have been made regarding information exchange sessions with MEAs possibly through annual sessions, document exchange and future collaboration in the context of technical assistance and capacity-building activities. The proposals set out criteria that could guide WTO committees in their consideration of requests for observer status by MEAs. On the last two issues, discussions are well advanced and members are heading towards text based negotiations, which will draw from the proposals currently on the table. At this stage, while there are some points of convergence there still remain some issues that will need to be further discussed.

- *Fisheries subsidies*

Reducing fisheries subsidies is also part of the Doha mandate and could significantly reduce overfishing which fosters species preservation. Members agreed to eliminate subsidies that distort trade and seriously undermine the sustainable exploitation of fish stocks. Members are currently discussing how this reduction could be defined and applied. An agreement, would constitute a triple-win for trade, environment and development which is at the centre of this negotiation.

What about Copenhagen? What are the implications for the WTO and trade?

There are clear links between the WTO and environmental issues. Global problems like climate change require global solutions. If trade measures are to be considered as a means of combating climate change, there is no doubt a multilateral agreement on the conditions for use of such measures is essential. It could alleviate many of the concerns that are linked to trade.

During the Copenhagen conference, several delegations specifically raised the issue of border measures as a means of encouraging compliance with emissions targets. This is an issue which has not been thoroughly discussed in the WTO. Most of the measures under consideration today tend to focus on the most trade-exposed, energy-intensive sectors of the economy, such as iron and steel and aluminium. The more countries move toward a multilateral framework on border measures, the more unilateral measures will be difficult to justify.