

Cool Heads in a Warming World: How Trade Policy Can Help Fight Climate Change

Introduction

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World leaders came together in 2015 to adopt the Paris Agreement on climate change, as well as 17 Sustainable Development Goals (SDGs), several of which further reinforce the global commitment to action on climate change and movement toward a clean energy future. The agreement to address the build-up of greenhouse gases in the atmosphere in a more comprehensive and serious way represents an important international policy breakthrough, particularly given the contentious history of climate change negotiations and the limited impact of prior agreements, beginning with the 1992 UN Framework Convention on Climate Change. Strong leadership from many quarters – including Pope Francis, UN Secretary General Ban Ki-moon, Presidents Barack Obama of the United States and Xi Jinping of China, Paris Mayor Anne Hidalgo, and hundreds of other mayors, governors, premiers, and business leaders from across the world – made the Paris outcome possible and the promise of real action on climate change palpable for the first time in decades. Between the Paris Agreement and the SDGs, action on climate change, as well as sustainability more generally, have emerged as worldwide policy imperatives.

Almost 200 nations (“Parties”) have signed onto the 2015 Paris Agreement, reflecting a broad-based and long-term commitment to address greenhouse gas emissions and the threat they pose in relation to human health, sea level rise, ocean acidification, extreme weather events, drought, food security, and more. Among other aspects, the Agreement sets forth a goal of limiting the global average temperature increase to “well below” 2 degrees Celsius and advances

several means to promote its achievement. A key element is that Parties are to submit regularly “nationally determined contributions” (NDCs) to mitigate climate change and to update these NDCs after each global review of collective progress toward the Agreement’s objectives. In light of the over-arching threat that climate change presents, Parties are expected to enhance their mitigation efforts over time.

Success in achieving the global temperature goal of the Paris Agreement is by no means assured. Indeed, even if the emissions controls to which various countries have committed are achieved, it is not certain that the risks of climate change will be averted. In fact, the Intergovernmental Panel on Climate Change (IPCC), building on the research and analysis of a network of more than 2000 scientists across the world, issued a special report in 2018 suggesting that average warming of even 1.5 degrees Celsius could lead to serious impacts and called for a strengthened “global response.”^{vi} In addition to the commitments made by national governments – with backing from cities, states, provinces, and regions as well – a successful response to climate change will require a range of international institutions to support the objectives of the Paris Agreement and climate change action more generally. Many have already taken steps to do so.

As Johanna Lorenzo explains in her paper, international financial institutions, such as the World Bank and several regional development banks, have made climate change progress a focus of their work. Likewise, the International Civil Aviation Organization launched a global market-based climate change strategy in 2016 that aims to offset CO₂ emissions from international aviation. In the same year, the Parties to the Montreal Protocol, which focuses on avoiding depletion of the ozone layer, adopted an amendment to address hydrofluorocarbons, a substitute for ozone-depleting substances that had emerged as a major greenhouse gas. A year

later, the International Maritime Organization (IMO) set forth a framework for addressing greenhouse gases from ships.

These institutions have demonstrated their commitment not only to the success of the Paris Agreement but, more generally, to the 2015 UN Sustainable Development Goals. They have sent a clear signal that global-scale cooperation, including the future programs and efforts of international organizations, needs to be underpinned by *sustainability* as a core value. In confirming their commitment to the “sustainability imperative,” they have moved to carry out their work in a manner that reinforces – and does not undermine – the world community’s climate change agenda.ⁱⁱ

With the emergence of the Paris Agreement and the rallying of a number of international organizations to support the climate change cause, the rules, procedures, and performance of other international bodies are now under scrutiny. It is thus a good time to take a fresh look at the international trade regime’s response to the world community’s identification of climate change action as a global priority. This discussion paper series takes up these questions, focusing on three aspects of the trading system in particular:

- potential impediments to climate change action posed by the existing rules and procedures of the World Trade Organization (WTO), as well as ideas for better alignment of the trade regime with the global climate change commitment;
- potential affirmative uses of the trading system to promote climate change action, including not only the WTO but also regional trade agreements and other strategies such as “carbon clubs”; and
- measures to address activities related to trade and investment that may increase greenhouse gas emissions.

The WTO has a mixed history when it comes to environmental concerns. From the 1940s to the 1980s, the international trading system – as framed by the General Agreement on Tariffs and Trade (GATT) – operated with little focus on environmental concerns.ⁱⁱⁱ In the 1990s, after a series of high-profile “trade and environment” cases and controversies – including the *tuna dolphin* and *shrimp turtle* disputes – policymakers came to understand that the trade and environmental realms were inescapably intertwined.^{iv} Thus, it became clearer that initiatives to open markets and remove trade barriers in support of economic growth and gains in material wellbeing could not be pursued without attention to the implications for other global policy goals such as environmental protection.^v

In recent years, moreover, the WTO has adopted *sustainability* as a foundational principle.^{vi} Indeed, the 1994 Marrakesh Agreement that brought to a close the Uruguay Round of trade negotiations and established the WTO makes *sustainable development* a fundamental objective of the trading system.^{vii} The decision to embed a commitment to sustainability into the framework of the trade regime responded to the call at the 1992 Rio Earth Summit to make trade and environmental policies “mutually supportive, with a view to achieving sustainable development.”^{viii} It also paid homage to intensified global consciousness about the environment, including efforts specifically directed at climate change, most notably the Framework Convention on Climate Change adopted in Rio in 1992.^{ix}

This explicit mention in the WTO’s founding document of “sustainable development” as an objective led to serious discussion among the members about how to integrate environmental concerns into the WTO’s work – and thus an ongoing re-interpretation of the norms of the trade regime.^x Indeed, WTO members in their debates and dispute panels in their deliberations began to read the GATT rules in light of the changes (coming from outside the trading system) that

made the concept of sustainable development a matter of urgent concern for international law and policy. Likewise, the framework for the “Doha Round” of negotiations launched in 2001 reaffirmed the commitment to “the objective of sustainable development” and to making environmental protection and trade promotion “mutually supportive.”^{xi}

In addition, the WTO set up in the 1990s a “Trade and Environment Committee” that meets regularly and has worked to bring a sharper focus on sustainability into trade policy discussions and WTO outcomes.^{xii} The Committee tackled a range of issues including: (1) environmental measures affecting market access; (2) environmental effects of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); and (3) the use of eco-labels.^{xiii} While critics have suggested that this agenda failed to get at critical trade-environment tensions, WTO Director-General Pascal Lamy argued (most succinctly in a 2007 speech at Yale University) that environmental concerns had become part and parcel of WTO rules, dispute settlement cases, and day-to-day operations.^{xiv} Lamy went on to note that with regard to the WTO’s green agenda perhaps the most critical issue where “work remains to be done” centered on the need to ensure that the trading system respects international environmental agreements.^{xv} A decade later, this agenda item has now emerged front and center in the context of the 2015 Paris Agreement.

As the essays that follow make clear, despite the express recognition of sustainability as a core value, the trading system remains subject to criticism because of its insufficient inattention to the effects of trade liberalization on efforts to advance global environmental commitments. Thus, while the WTO has absorbed sustainability as a global norm – most prominently and significantly through the evolving interpretation of GATT rules and decisions of the organization’s dispute settlement system – there remain gaps in how this commitment translates

into support for the Paris Agreement and climate change action at the national level across the world.^{xvi} A careful rethinking of WTO rules and practices in this broader context would ensure that the trading system gives wider leeway for policy interventions aimed at climate change mitigation and adaptation efforts.

The push for greater WTO alignment with global sustainability principles and climate change commitments comes at a difficult moment for the trading system. Support for trade liberalization and economic integration has collapsed in many nations, not the least of which is the United States, where President Trump has been an ardent critic of trade agreements and open markets. He and others have advanced specific concerns about who wins and who loses from trade liberalization and globalization more generally.^{xvii} Particular criticism has been leveled at the WTO and at parallel efforts to advance new regional trade agreements (such as the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership) with political opponents suggesting that the benefits of trade in recent decades have been concentrated on a few nations (notably China and India) and within a small subset of people and industries in many societies.^{xviii}

The concern about trade exacerbating inequality has been reinforced by recent empirical studies. For instance, Branko Milanovic's sweeping 2011 book *The Haves and Have-Nots* provided evidence that a globalizing economy had lifted up people in most countries in the world but that the lower income brackets in the most developed nations had not seen income gains.^{xix} Perhaps more significantly, these criticisms have put into higher profile the longstanding concern that trade liberalization provides material gains but may ignore other values such as environmental protection.

The central recommendation of *Cool Heads in a Warming World*, introduced in Part 1 and reiterated in each of the remaining parts of the series – that the trading system re-gear its rules and procedures to ensure that the incentives embedded in trade policies and the results of international trade in practice build on the principle of sustainability and reinforce the global community’s commitment to greenhouse gas emissions control – might help to address not only climate change but also the trade regime’s broader legitimacy crisis. At the heart of the attack on the WTO lies the claim that trade liberalization has advanced some values and interests (material advances and the needs of the business community) over other concerns and constituencies. Thus, concerted efforts within the trading system to promote sustainability as well as eliminate poverty, reduce income inequality, protect workers, and advance public health might well help to rebuild confidence in trade as a pathway to a better future.

It would be implausible to imagine, at least in the near term, that the WTO would simply stand aside and make way for the Paris Agreement. And from a substantive point of view, it may not even be reasonable – or desirable – to expect full accommodation of every climate change-related action that any nation chooses to undertake. For example, as noted, the Paris Agreement relies on climate change policies and programs that are “nationally determined” by each Party, rather than negotiated or otherwise internationally agreed. But, as discussed below, there are specific corrective actions that could be adopted to reinforce the global community’s commitment to greenhouse gas emissions control – and these reforms should be pursued.

We note that efforts to better integrate the climate change and trade regimes should not end with the WTO.^{xx} Beyond the WTO’s current challenges, much of the action in the international trade sphere has in fact moved to non-WTO agreements, both bilateral and regional. As this trend continues, it will be important to look at these agreements, both historically (for

inspiration and lessons learned) and prospectively (for what might be adopted more broadly). So-called “carbon clubs” are another non-WTO path that might be worthy of serious consideration, particularly as the 2018 Nobel Prize winner in Economics, Professor William Nordhaus, has articulated the case for this mechanism to promote carbon pricing, encourage international cooperation, and discourage “free riding” on the climate change efforts of others. Part 2 of this series details the many ways in which non-WTO agreements can remove obstacles to, and affirmatively promote, climate change actions.

Any examination of the link between climate and trade must also include consideration of activities related to trade and investment that themselves result in substantial greenhouse gas emissions. These include various modes of transportation as well as foreign investment. Therefore, Part 3 of this series focuses in particular on black carbon emissions from the shipping industry and the potential climate change implications of China’s Belt and Road Initiative.

As Part 4 makes clear, adjusting the trading system for success in the 21st Century will not be easy, especially given the questions being raised about globalization in general and the structure of trade agreements in particular. The existing trade rules, norms, policies, and practices will need to be re-considered, refined, and, in some cases, reformed to ensure alignment with sustainability principles and the global climate change agenda. But there is no alternative – either for the trade world in the face of its current legitimacy crisis or for the Earth in the shadow of the threat of climate change.

Notes

ⁱ Intergovernmental Panel on Climate Change, *Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the*

threat of climate change, sustainable development, and efforts to eradicate poverty (Geneva: World Meteorological Organization (WMO) and United Nations Environment Programme (UNEP), 2018).

ⁱⁱ David Lubin and Daniel Esty, “The Sustainability Imperative,” *Harvard Business Review* 88, no. 5 (May 2010).

ⁱⁱⁱ Daniel C. Esty, *Greening the GATT: Trade, Environment, and the Future* (Washington, D.C: Institute for International Economics, 1994).

^{iv} Daniel C. Esty, “Bridging the Trade-Environment Divide,” *Journal of Economic Perspectives* 15, no. 3 (2001): 113-130; Steve Charnovitz, “Environment and Health Under WTO Dispute Settlement,” *The International Lawyer* 32, no. 3 (1998): 912, 916; Robert Howse and Michael Trebilcock, “The Fair Trade-Free Trade Debate: Trade, Labor, and the Environment,” *International Review of Law and Economics* 16, no. 1 (1996): 73-74.

^v Esty, *Greening the GATT*, 39, 56.

^{vi} Emily Barrett Lydgate, “Sustainable development in the WTO: from mutual supportiveness to balancing,” *World Trade Review* 11, no. 4 (2012): 623-24.

^{vii} World Trade Organization, “Marrakesh Agreement Establishing the World Trade Organization,” 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994): Preamble; See also: Christina Voigt, *Sustainable Development As a Principle of International Law: Resolving Conflicts between Climate Measures and WTO Law*, (Leiden: Koninklijke Brill NV, 2009), 127-130.

^{viii} United Nations Conference on Environment and Development, “Agenda 21, The Rio Declaration on Environment and Development (1992)” (New York: United Nations, 1992), Chap. 2, para. 2.10(d).

^{ix} Halina Ward, “Common but Differentiated Debates: Environment, Labour and the World Trade Organization,” *International and Comparative Law Quarterly* 45, no. 3 (1996): 592, <https://doi.org/10.1017/S0020589300059376>.

^x See e.g. World Trade Organization, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Appellate Body Report Doc., WT/DS58/AB/R, Adopted November 6, 1998. [“exhaustible natural resources” read in light of the objective of sustainable development]

^{xi} World Trade Organization, “Ministerial Declaration,” WT/MIN(01)/DEC/1, adopted on November 14, 2001, para. 6.

^{xii} World Trade Organization Secretariat, “Existing Forms of Cooperation and Information Exchange Between UNEP/MEAs and the WTO,” TN/TE/S/2/Rev.2, January 16, 2007, para. 18.

^{xiii} World Trade Organization, “Ministerial Declaration,” para. 32.

^{xiv} Pascal Lamy, “The WTO and its Agenda for Sustainable Development,” (speech, Yale University, New Haven, CT, October 24, 2007), https://www.wto.org/english/news_e/sppl_e/sppl79_e.htm.

^{xv} Lamy, “The WTO and its Agenda for Sustainable Development.”

^{xvi} Virginie Barral, “Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm,” *European Journal of International Law* 23, no. 2 (2012): 124.

^{xvii} Diane Desierto, “Economic Nationalism in a New Age for International Economic Law: Recalling Warnings of Ludwig von Mises and the Austrian School,” *EJIL: Talk!*, January 30, 2017, <https://www.ejiltalk.org/economic-nationalism-in-a-new-age-for-international-economic-law-recalling-warnings-of-ludwig-von-mises-and-the-austrian-school/>.

^{xviii} Luc Cohen, “WTO losing trade focus, too easy on some developing nations: U.S.,” *Reuters*, December 11, 2017, <https://www.reuters.com/article/us-trade-wto/wto-losing-trade-focus-too-easy-on-some-developing-nations-u-s-idUSKBN1E51MG/>; Richard Higgott and Richard Stubbs, “The Trans-Pacific Partnership: For, Against and Prospects,” *E-International Relations*, April 13, 2016, <http://www.e-ir.info/2016/04/13/the-trans-pacific-partnership-for-against-and-prospects/>; CBC News, “TPP ‘worst trade deal ever,’ says Nobel-winning economist Joseph Stiglitz,” March 31, 2016, last updated April 2, 2016, <http://www.cbc.ca/news/business/joseph-stiglitz-tpp-1.3515452>; Stuart Jeffries, “What is TTIP and why should we be angry about it?,” *The Guardian*, August 3, 2015, <https://www.theguardian.com/business/2015/aug/03/ttip-what-why-angry-transatlantic-trade-investment-partnership-guide>; Eva Heims, “Why critics are wrong about the outcomes of TTIP but right to protest against it,” *LSE Department of Government (blog), London School of Economics*, March 3, 2016, <http://blogs.lse.ac.uk/government/2016/03/03/why-critics-are-wrong-about-the-outcomes-of-ttip-but-right-to-protest-against-it/>; James McBride, “What’s Next for the WTO?,” *Backgrounder – Council on Foreign Relations*, March 23, 2018, <https://www.cfr.org/backgrounder/whats-next-wto>; Dani Rodrik, “The WTO Has Become Dysfunctional,” *Financial Times*, August 5, 2018, www.ft.com/content/c2beedfe-964d-11e8-95f8-8640db9060a7.

^{xix} The United States, for example, is one of the most unequal developed countries. U.S. inequality reached its lowest point in the late 1970s and has been rising since then. See Branko Milanovic, *The Haves and the Have-Nots: a Brief and Idiosyncratic History of Global Inequality*, (New York: Basic Books, 2011), 30-31.

^{xx} Daniel C. Esty and James Salzman, “Rethinking NAFTA: Deepening the Commitment to Sustainable Development,” In *A Path Forward for NAFTA*, edited by Fred Bergsten and Monica de Bolle, 125-139, Peterson Institute for International Economics, 2017; Daniel C. Esty, “Toward a Sustainable Global Economy: An Initiative for G20 Leadership,” *Journal of Self-Governance and Management Economics* 5, no 2 (2017): 46-60.