

Global Trade means Global Warming

As the urgency of action on climate change becomes increasingly apparent, attention must be given to the interlinkages between global warming and global trade, which plays a significant role in the production of greenhouse gases. In countries such as Australia, global trade accounts for up to 40% of greenhouse gas emissions. (i) Moreover, increasing trade liberalization, promoted by institutions such as the World Trade Organisation and the World Bank has meant that trade-related transport emissions are growing faster than emissions from any other sector. (ii)

At the same time, governments' efforts to combat global warming are increasingly restricted by a raft of multilateral trade rules and free trade agreements which constrain their ability to introduce the policies and technologies necessary to effectively reduce emissions.

This conflict between the increasing push to liberalise and expand global trade, and the need to drastically reduce emissions must be clearly addressed if runaway climate change is to be avoided. There is a pressing need for the Bali Meeting of Parties to develop a platform of coherence to ensure international trade laws and agreements don't act as constraints on urgently needed action to reduce greenhouse gas emissions.

How does the WTO relate to Kyoto ?

The World Trade Organisation (WTO) and its predecessor the GATT has long been criticised by civil society organisations for its lack of concern for the environmentally and socially destructive consequences of the free trade agenda it promotes. In so far as the objective of the WTO is to expand the 'production of and trade in goods and services', the carbon-intensive nature of global trade means there is an inherent conflict between the aspirations of the Kyoto protocol and those of the WTO.

Beyond this broader inconsistency however, a key problem is the lack of clarity as to the relationship between the Protocol and the international trade architecture. The UNFCCC stipulates that any measures taken 'should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade'. Beyond this it isn't clear what trade measures can legally be adopted in implementing the Protocol, particularly in regards to countries

which are not parties to the Protocol. To address this issue, the WTO Committee for Trade and Environment has recommended that future agreements stipulate that all trade disputes relating to emissions reduction should be settled under the provisions of the Post-2012 agreement which should take precedence over any WTO rules.

As the Kyoto Protocol currently lacks a dispute resolution mechanism on trade issues, any conflicts emerging between countries as a result of efforts to implement the protocol through trade measures would be dealt with through the WTO. Under WTO rules, only in exceptional circumstances (literally as an 'environmental exception' under GATT Article XX) can non-trade concerns such as the environment justify measure which may impede trade.

Moreover, within the WTO the burden of proof lies with those countries which implement environmental protection policies to demonstrate the absence of any other less trade restrictive options. In the past, environmental regulations that are deemed to have affected trade flows have invariably been found to contravene WTO rules. Barring thorough-going reform of the WTO, this confines policy-making on climate change to market-based mechanisms, such as emissions trading. Whether or not market-based solutions are effective or equitable, governments are more likely to use them as against more direct mechanisms such as subsidies, quotas, levies, regulations and sanctions that may be in breach of trade rules. (iii)

'Bunker Fuels': trade emissions let off scott free

One concerning aspects of the Kyoto Protocol is its failure to address emissions from aviation and shipping (termed 'bunker fuels'). Bunker fuels represent about 10-15% of total transport related emissions, and in some countries it accounts for up to 60% of their oil use.(viii) The IPCC has estimated that the aviation sector alone is responsible for around 3.5% of climate change to date and emissions from the global transport sector are the fastest growing source of emissions. The exclusion of emissions from bunker fuels used in international trade in the first round of the Kyoto Protocol is an issue which must be redressed at the Bali MOP. The European Environmental Agency has concluded that there are no unsolvable technical barriers to calculating and including emissions produced through bunker fuels through the Protocol; it is merely a matter of political will. (ix)

FTAs: Trading away our climate

With the current Doha Round of WTO trade talks on the brink of collapse there has been a proliferation of negotiations on bilateral free trade agreements (FTAs) which will have far reaching impacts on efforts to combat Climate change. While all FTA's are unique, most are designed to be "WTO plus" requiring liberalisation beyond that already enforced through WTO rules.

Many bilateral agreements also include specific industries and chapters beyond those covered by the WTO. US-modelled FTAs for instance specify that there be no barriers to inward investment flows, making it very difficult for governments to control and regulate the minerals extraction and energy services sectors. Government regulations are contestable not just by the US Government, but also by aggrieved corporations and investors, under 'investor-state' dispute settlement procedures. It therefore becomes much harder for the government to legislate to reduce the GHG emissions of its energy sector for instance through efforts to conserve resources.

More generally, under FTAs any environmental regulation of the energy sector could be defined as trade distorting, exceeding government powers of intervention and potentially in violation of the agreement. FTAs often contain explicit requirements that environmental regulations, where necessary, must be 'least trade restrictive', but ignore almost all issues relating to the environment as not pertaining to the negotiation brief. In addition, trade agreements increasingly incorporate side-agreements on issues of energy supply: the clearest example of this is NAFTA's requirement for 'proportional sharing' of Canadian energy supplies, locking Canada into exporting a specified proportion of its energy supplies.

Trade liberalisation: Constraining Climate action

In both the WTO and regional trade agreements there is considerable ambiguity around the consequences of countries adopting unilateral trade measures to address climate change. This uncertainty in how a

government's actions will be judged by trade adjudicating bodies is likely to lead countries to avoid taking measures to reduce emissions for fear of generating trade repercussions. Key areas of concern in this regard are the following:

Subsidies for Renewables – With conventional energy being sourced from dirty industries like coal and nuclear there is a need to promote the accessibility and development of renewable technologies. Governments looking to support a growing domestic renewables sector would find that in most cases that the use of subsidies like tax credits, loan guarantees or direct payments would run counter to their WTO commitments. Under the WTO Subsidies Agreement, subsidies are not allowed that are for export industries or specific to a sector. M. K. Gueye argues that "most subsidies in support of renewable energies tend to be industry or sector specific, therefore actionable." (iv) This includes such actions as providing subsidies for the preference of low carbon emitting domestic products over high carbon emitting foreign 'like products', subsidising certain enterprises, or one time subsidies for adjusting to new environmental regulation. Whilst an exemption clause exists under WTO rules on the grounds of environmental protection there is uncertainty about the extent to which such subsidies could apply in regards to climate change. One proposed solution to this issue would be for the WTO to revive the expired exception to the Subsidies Agreement that specifically allowed subsidisation for environmental purposes. (v)

Adoption of Climate Friendly Technologies – The current international regulations regarding the transfer of technologies and intellectual property could become a barrier to the trade of environmentally friendly technologies. Under current schemes copyrights and patents act as a barrier preventing poorer countries from accessing much needed clean technologies by entrenching monopolistic ownership in the hands of northern companies.

CASE STUDY: India's attempts to go CFC free

By signing onto the Montreal Protocol, India pledged to phase out its use of chlorofluorocarbons (CFCs) and other ozone damaging substances. Despite this commitment India struggled to meet its obligations due to a lack of access to ozone friendly technology, held largely through patent rights by companies in the global north. Despite a willingness by Indian companies to pay above market prices for the technology, the holders of the patent refused to license the product unless they were paid nearly ten times the market price or granted a majority stake in the companies. The promotion of intellectual property rights through the WTO and FTAs restricts the availability of climate friendly technologies to a small selection of companies in the global north with devastating consequences for the planet. (vi)

Carbon Taxes – A country looking to discourage the use of carbon intensive industries through taxation may find that such action is counter to WTO commitments. Taxes applied to goods or services made using carbon intensive measures could be seen as unnecessarily trade distorting, providing an unfair advantage to domestic producers. The same applies to the importation of energy. Efforts to tax energy produced by coal fired power stations and not energy produced by wind power, would be likely to breach WTO commitments as the WTO has little provision for differentiating between the import of ‘like goods’ produced by different means. (vii)

Eco Labelling and Energy Standards – The labelling of goods or services in order to highlight their respective impacts on global warming is seen by many as an important step in allowing consumers to take action on climate change. Whilst there are many issues concerning the logistics of implementing and regulating labelling standards a key barrier is that they would

likely be challenged under WTO rules as a ‘Technical barrier to Trade (TBT). Eco labels and standards could be seen to favour domestic producers as other countries may not have the technical or financial capacity to adapt to the criteria set. Indeed eco labelling was listed as a potential barrier by India, the Republic of Korea, Morocco and Egypt, during negotiations on the Kyoto Protocol. (x)

Government Procurement – The purchasing of goods and services by governments is an enormous industry that accounts for up to 25% of countries GDP. (xi) The incorporation of criteria based on carbon emissions in the tendering process could be deemed to breach trade commitments. Policies designed to reduce transport emissions by purchasing local goods for instance, could be seen as unfairly favouring domestic producers, thus leaving the government liable to countervailing action from other governments or corporations.



CASE STUDY: A “Zero Tax” on Green Goods?

A prominent solution being aired by the WTO is the role that a zero tax on ‘green goods’ could have on addressing climate change. (xii) The liberalisation of environmental goods and services is being promoted as part of the current Doha Round of negotiations, and is being partially used as covert means to push for conclusion of the round. Whilst there is merit in ensuring that goods and services that benefit the environment are promoted, removing taxes and tariffs on so called ‘green goods’ is fraught with problems. In the first place, once taxes and tariffs are reduced, it is impossible to increase them again. In the short term this may mean that tariffs on natural gas technologies are reduced to zero because gas is viewed as a relatively ‘cleaner’ energy source than other fossil fuels. In the long term, however, this may make it very difficult to provide any special trade advantages to cleaner technologies such as wind and solar as the tariff rate on natural gas could not be increased. The reliance on the market alone to promote green goods is likely to be too little too late as a response to dangerous climate change.

Bali & Beyond: What needs to happen?

Immediate and far reaching reforms of the global trading system are urgently required to successfully address the climate crisis. The current conflict between the push for trade expansion and liberalization, and the need to reduce global emissions must be overcome by developing a platform of coherence in which the need to prevent runaway global warming is given central priority.

- The Bali Mandate should stress that the need to combat climate change must take priority over commitments made under trade agreements, and provide the legal space for governments to use trade mechanisms where necessary to implement emissions reductions. The post-2012 agreement should stipulate that all trade disputes relating to emissions reduction be settled under the provisions of the agreement which should take precedence over any FTAs or WTO rules.
- Intellectual property rights must not form a barrier to the rapid adoption of clean technologies, particularly renewable energy sources, by all countries. The post-2012 agreement should guarantee the rights of all countries, especially those from the global south, to access climate friendly technology at affordable prices. This is essential both to allow southern countries to reduce emissions as well as to prevent them being unfairly disadvantaged by necessary environmental standards on production methods for traded goods.

- Any Post-2012 agreement must include the impact of, and mechanisms to reduce emissions from international shipping and aviation ('bunker fuels'). The complete impacts from global trade on the environment must be recognised and meaningfully addressed.

All countries and peoples have the right to develop sustainably. Aid and trade regimes must reflect this ceasing the imposition of unfair trade rules and unsustainable development models, and enabling countries and communities to determine their own development futures.

Genuine emergency action on climate change is urgently needed. The undemocratic nature of the WTO and the process of negotiating FTAs must not be allowed to prevent urgent action to address global warming. In the face of catastrophic climate change the legal and policy space must be made available for people and governments to drastically reduce emissions and determine their own futures outside the constraints of an international trading system that prioritises markets and profit over the planet and its people.

AID/WATCH is an independent watchdog on Aid, Trade and Debt. This issues paper was prepared by Flint Duxfield in collaboration with Adam Wolfenden from the Australian Fair Trade and Investment Network (AFTINET). The views expressed are entirely those of the authors, and not necessarily those of AID/WATCH or AFTINET.

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