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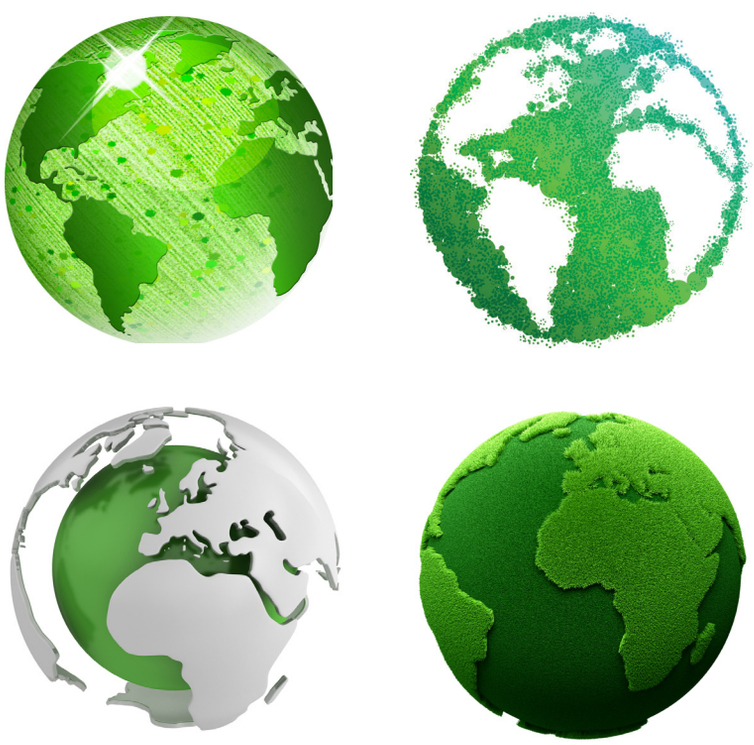
From Collision to Vision: Climate Change and World Trade

A Discussion Paper



Ad Hoc Working Group on Trade and Climate Change

World Economic Forum
November 2010

The views expressed herein represent a collation of various viewpoints emerging from a series of discussions among **the participants of the Working Group on Trade and Climate Change**. Although the observations and proposals in this document enjoy support, they do not necessarily reflect the individual institutional viewpoints of any of the companies or institutions that took part, or of the World Economic Forum.

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REF: 251110

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Preface

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The World Economic Forum is pleased to release this discussion paper, *From Collision to Vision: Climate Change and World Trade*, developed by an ad hoc Working Group of members of the Forum's Global Agenda Councils.

In recent years, as countries have begun to grapple with the challenge of global warming, fears have arisen that some national and international actions under consideration may conflict with the body of international trade law that has evolved since World War II and been enshrined in the World Trade Organization.

The Working Group deconstructs this important question, providing an overview of the relevant legal landscape and making a number of practical suggestions that governments could undertake to pre-empt a clash between environmental and trade objectives. Indeed, the paper goes further and offers ideas that would help to ensure that these two important agendas are mutually reinforcing.

This discussion paper illustrates the role of the Global Agenda Council community as a platform for interdisciplinary thought and collaboration. We salute and thank the Working Group members, who are drawn principally from the Forum's Trade and Climate Change Councils, for having taken this important initiative.

Special thanks are due to the Chairman of the Working Group, James Bacchus, for his inspired leadership in framing and drafting the initial version of the paper. We are also grateful for the support provided by a number of colleagues at the Forum, in particular Associate Director Lara Birkes as well as Environment Initiatives team member Brindusa Fidanza and fellow, Jan Schierkolk. Their tireless efforts ensured that the process delivered.

We hope that this discussion paper will stimulate an earlier and more informed debate among policy-makers and others about how the international climate change and trade regimes should be designed to complement rather than conflict with each other.

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Avoiding a Collision between Trade and Climate Change

- The first best solution is an early conclusion of an effective and comprehensive global climate change treaty
- Important to avoid protectionist border measures in national laws and regulations
- Need to minimize likelihood of divisive WTO disputes
- Need for WTO members to negotiate "green space" to allow for enactment of national measures to combat climate change

Greening the WTO to Help Address Climate Change

- Eliminate tariffs on environmental goods and services
- Harmonize standards and technical regulations to enhance energy efficiency and promote sustainability
- Balance innovation and access to speed the transfer of new clean technologies
- Green government purchases of goods and services
- Prohibit subsidies for fossil fuel
- Legalize environmental subsidies that encourage the development of green technologies
- Use the evolution of GATT and WTO as a model for building effective global architecture to combat climate change

Summary of Conclusions

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Scientists tell us that 2010 is likely to tie 1998 as the hottest year on record. The ice is melting. The seas are rising. The weather is behaving everywhere in new and ominous ways.

Climate change continues, and worldwide efforts to confront climate change continue as well. One among many urgent questions raised by these continuing efforts is how best to avoid a collision between advancing trade and combating climate change. Such a clash seems increasingly likely, given the gridlock in global talks and the growing fears that competition will suffer if sweeping regulatory reforms are implemented during these hard economic times.

There is no way of avoiding linkage between trade and climate change. Economically, environmentally and, not least, politically these two significant areas of global concern are linked inextricably. Given this link, the world must somehow find a way to continue to lower barriers to trade while also combating climate change. The alternative is what some foresee as a "train wreck" – a rapidly approaching collision between the international rules that govern world trade and the national and international means being constructed and employed to confront climate change.

A collision between trade and climate change would be disastrous for both.

To help prevent such a collision, the Working Group on Trade and Climate Change was convened at the initiative and under the auspices of the World Economic Forum. Members of the working group come from all parts of the world. Members number those with experience and expertise in trade, climate change and all aspects of global governance.

Members are united by their common commitment to sustaining and strengthening the rule-based multilateral trading system of the World Trade Organization. They are united also by their shared conviction that climate change is real, and that it is the most urgent of all the many urgent issues facing humanity.

Together, members have spent much time in recent months examining at some length many of the complexities of this urgent question. Intentionally, members have not addressed the economic and environmental dimensions of the interrelationship between trade and climate change, which are thoroughly addressed elsewhere. Rather, they have focused instead on the legal and structural dimensions of the linkage between trade and climate change – because that is where they see a collision between trade and climate change as most likely to occur.

In this report, the working group offers a summary of its common conclusions for global consideration going forward. A report on this question could easily, and justifiably, be lengthy. They have chosen instead to make the report shorter rather than longer – in hope that it may be more widely read, and that it may be more useful to negotiators and other international decision-makers as they continue to address the global challenge of climate change.

In brief, the conclusions are:

1. As with other aspects of climate change, the ideal solution for preventing a collision between trade and climate change is the early conclusion of an effective and comprehensive global climate change treaty.

2. If there is no early conclusion of an effective and comprehensive global climate treaty on climate change, national efforts to confront climate change are likely to proliferate. These efforts must not include protectionist provisions, as resort to protectionism would lead to mutually destructive conflicts over trade.

3. In the working group's strong view, the members of the WTO should begin immediately to negotiate agreements to resolve the issues likely to arise from the enactment of national measures on climate change rather than leave those issues to eventual resolution in WTO dispute settlement.

4. WTO rules should not be viewed solely as constraints on efforts to address climate change. WTO rules can and should be used affirmatively to help fight climate change.

5. The WTO can be a model for how the world structures the international effort to address climate change, evolution of the GATT and the move towards the needed conclusion of global agreement on a comprehensive climate treaty.

1. Conclusion One

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In what follows, the working group examines, briefly, each of these conclusions in turn.

1. ***As with many other aspects of climate change, the ideal solution to avoid a collision between trade and climate change is the early conclusion of an effective and comprehensive global climate change treaty.***

As economists would say, a global treaty on climate change is the "first-best" solution to what is the ultimate global issue. This working group agrees. An international price must be set on the carbon emissions that are causing the many calamities of climate change. A global approach is needed to address what is an inherently a global issue. Not only would this be by far the best solution in dealing with climate change, it would also be by far the best result for trade and for the trading system. But, under any circumstances, it is crucial that like products not be treated differently in international trade. Millions worldwide had hoped the world would conclude a global treaty in Copenhagen last December. Millions hope that the world will continue to make progress towards concluding one in Cancun this December.

When the world succeeds in concluding a comprehensive global climate treaty, the WTO-based trading system will need to agree on how best to address the trade concerns that will arise from the global regulation of carbon emissions. This will be especially needed if the new climate treaty includes the possibility of trade restrictions or trade sanctions as a means of ensuring compliance with climate commitments.

In such an event, the best option would be for the members of the WTO, using existing WTO rules, to adopt a decision stating that certain carefully defined measures restricting trade that were taken by WTO members and that were consistent with the global climate treaty would be deemed also to be consistent with WTO obligations for purposes of WTO dispute settlement.

If a legal mechanism were established under the global climate treaty for judging treaty compliance in the event of a dispute, then such a judgment should be binding in the WTO. If not, then WTO panellists and, ultimately, the WTO Appellate Body would need to judge whether a WTO member had complied with the climate treaty before they would be able to conclude whether that member was excused from compliance with what would otherwise be WTO obligations. Current WTO rules permitting WTO panellists to seek information and technical advice could be used to provide them with any additional needed environmental expertise in WTO dispute settlement.

In this way, a collision between trade and climate change in WTO dispute settlement could be avoided. The world could continue to lower barriers to trade while also combating climate change. And it could do so within the framework of the international rule of law. The working group underscores its very strong conviction that the surest way the world has to avoid any collision between furthering trade and halting climate change is to conclude a global climate treaty the sooner the better.

2. Conclusion Two

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2. If there is no early conclusion of an effective and comprehensive global treaty on climate change, national efforts to confront climate change are likely to proliferate. These efforts must not include protectionist provisions, as resort to protectionism would lead to mutually destructive conflicts over trade.

In the absence of a global climate treaty, the nations of the world will be left with the "second-best" solution of something less than comprehensive global action on climate change. They will take unilateral measures, and many of these unilateral measures will affect trade in ways that will fall within the scope of the various "covered agreements" that comprise the WTO treaty.

Especially worrisome from a trade perspective is the ever-growing thicket of sub-national and corporate measures that are being taken increasingly in various parts of the world in the name of addressing climate change. Many of these measures are indeed helpful in combating climate change. The extent to which national governments are accountable as WTO members for some of these measures is open to debate. The ability of national governments to discipline many of these actions that could affect trade is doubtful.

Of particular concern, too, in the absence of a global agreement, is the possibility of the proliferation of national border measures intended to address domestic fears of "carbon leakage".

In every country in the world, one of the major obstacles to impose mandatory limits on harmful greenhouse gas emissions through national legislation is the potential impact of such limits on the international competitiveness of local firms. This is particularly so in those energy-intensive industries – such as steel, glass, cement, aluminium, paper, pulp, chemicals and others – that necessarily depend on carbon emissions in the process of producing their products. It is especially so during this time of continuing worldwide economic distress. These and other domestic producers in every WTO member do not want to face emission limits or other carbon restrictions that their foreign competitors do not.

Equally, throughout the world, environmentalists and others who ardently favour such restrictions fear that merely imposing restrictions on domestic producers will do nothing to reduce overall emissions because "greener" domestic products will simply be supplanted in the domestic marketplace by "dirty" foreign products. The air we breathe knows no borders.

The common domestic fear is that if we act nationally, and not internationally, to address climate change, domestic producers may ship jobs to another country where emission rules are more lax, and domestic consumers may buy imported products that are cheaper because the emission rules in another country are more lax.

There is widespread and increasing apprehension about the possibility of such carbon leakage. Economists disagree about the likely extent of carbon leakage, but hard economic times have only enhanced this apprehension. This concern is inspiring many countries to consider border measures aimed at restricting trade in less climate friendly products as part of pending national measures to address climate change.

The danger is that border measures by one country could lead to counter-measures by other countries, and that the battle against climate change could descend into the mutual self-defeat of tit-for-tat "trade wars". The danger, too, is that enactment of border measures could lead as well to highly contentious litigation in the WTO that – whatever its outcome – could undermine the strength and the sustainability of the multilateral trading system.

Restricting trade in carbon-intensive products poses immense practical difficulties. In practice, for example, it would prove exceedingly difficult to calculate the carbon content of various products made in various countries by various means and involving various pricing methods under various regulatory regimes. The bureaucratic burdens and administrative costs would be unprecedented. In the working group's view, the considerable difficulties in calculating anti-dumping duties or countervailing duties to subsidies in applying trade remedies in cases of unfair trade practices pale in comparison.

Conceivably, a national measure could be enacted to address climate change that might assuage domestic concerns about carbon leakage in a manner consistent with existing WTO obligations. Depending on how it was framed and applied, this could, in concept, be true of a carbon tax on products if such a tax took the form of a permitted border tax adjustment under existing WTO rules.

The purpose in this report is not to delve too deeply into the remoter recesses of WTO rules. That task is left to others. On this legal issue, it suffices to say here: WTO rules permit a charge as a border tax adjustment on imported products; likewise, WTO rules permit a remission as a border tax adjustment on exported products. Only indirect taxes on products (such as sales taxes) may be adjusted at the border; direct taxes on producers (such as income taxes) may not be.

There is no WTO case law that clarifies whether an energy tax, such as a carbon tax, is a direct tax or an indirect tax. Nor is there any WTO case law that tells us whether a tax on inputs – such as fossil fuels – that are not physically incorporated into a final product is a tax that can be adjusted at the border under WTO rules. Depending on how these questions are answered by the members of the WTO, or by jurists in WTO dispute settlement, it could be possible to craft a carbon tax in a way that would make offsetting border tax adjustments consistent with WTO rules.

Direct regulation is another possible policy outcome. A national regulatory measure could require industries, farmers and consumers could be required to use particular technologies and practices – such as wind and solar energy – to reduce carbon emissions. Realistically, a mix of emission trading and regulation could emerge. In the end, every nation will make a different regulatory choice because every government has different domestic interests and differing domestic relationships between local interests and government.

Still another possible policy outcome is the creation of “cap and trade” regimes through national legislation as a way of using market forces to address climate change. To ease local fears of carbon leakage, restrictions on trade in “dirty” imported products are widely envisaged as part of “cap and trade” and other national efforts to address climate change.

Such restrictions open the door to widespread trade retaliation. If one WTO member is free to apply such border restrictions to products imported from other WTO members, then similar restrictions can be applied to its own exports by those other members. There is not one set of rules for “us” and another for “them.” There is one book of WTO rules for all WTO members.

Moreover, the application of domestic measures aimed at minimizing carbon leakage by imposing restrictive border measures on imports of carbon-intensive products would pose numerous potential problems under the General Agreement on Tariffs and Trade (the GATT) that is part of the WTO treaty. The GATT violations in border measures could be legion.

For example:

Applying customs duties or any other duties or charges of any kind on imported products at levels above those that are bound by a WTO member in its WTO “schedule of concessions” is inconsistent with GATT obligations.

Applying an import ban, a quota, or any other prohibition or restriction on the import of a product from another WTO member – other than duties, taxes or other charges – is inconsistent with GATT obligations.

Applying a measure that accords an advantage to some foreign products over other like imported foreign products is inconsistent with the obligation of “most-favoured nation treatment” in the GATT that is one of the fundamental rules of non-discrimination at the heart of the multilateral trading system.

And applying a measure that treats imported products less favourably than like domestic products is inconsistent with the obligation of “national treatment” in the GATT that is the other basic rule of non-discrimination. Under any circumstances, it is crucial that a system not treat like products differently.

Some have suggested that such discriminatory measures will satisfy GATT and other WTO rules if they are not applied immediately, but are applied only prospectively, conditionally and as a matter of discretion – at some distant time in the future if other countries refuse between now and then to adopt comparable limits on their carbon emissions. A reading of WTO case law suggests otherwise. Even a contingent measure could modify the "conditions of competition" in the domestic marketplace to the detriment of an imported product here and now. If it did, it would be inconsistent with GATT obligations.

Some have suggested, too, that such discriminatory measures could be justified because "green" products and "dirty" products are not "like" products, and that therefore these GATT obligations would not apply to trade in them. WTO case law has established that the "process and production methods" (PPMs) that enter into making a product can indeed have a significance under WTO rules. But, in the event of WTO dispute settlement, PPMs are much more likely to be considered in determining whether there is a defence that excuses a violation than whether there is a violation in need of a defence.

Potentially, a defence exists in the GATT to a distinction based on the differing PPMs between carbon-intensive and climate friendly products. Practically speaking, though, it would be exceedingly difficult for a WTO member to prove entitlement to this defence in WTO dispute settlement. Measures taken to ensure continued competitiveness in the marketplace are not environmental measures eligible for the GATT defence. And, even environmental measures that are potentially entitled to the defence will not be upheld if they discriminate against foreign products in an arbitrary or unjustifiable way or if they are disguised restrictions on international trade.

Furthermore, similar issues of inconsistencies with obligations to accord "national treatment" and "most-favoured nation treatment" would be raised by restrictive border measures that take the form of "technical regulations" under the WTO Agreement on Technical Barriers to Trade. Such measures could become imposing obstacles especially to small firms and small countries as they strive to develop "green" technologies. In particular, there is a real likelihood that "labelling" requirements for "green" products could be used as pretexts for protectionism.

In addition, substantial concerns are raised by many suggested national measures of consistency with obligations in the WTO Agreement on Subsidies and Countervailing Measures – grants, loans, tax breaks, sector-specific concessions on regulatory requirements, free carbon emissions allowances. All of these are being considered as ways to encourage the reduction of greenhouse and gas emissions in national legislation, and all could raise issues of compatibility with WTO rules on subsidies.

In particular, subsidies issues could be raised by national cap and trade regimes. For example, if a government made some producers pay for carbon emissions allowances but gave other, favoured producers emissions allowances for free, this could create a subsidy that could be inconsistent with WTO rules. Although there is no definitive case law on this issue, there are compelling policy reasons for treating emissions allowances as subsidies covered by WTO rules. For, if such allowances are not treated as subsidies, governments will be free to circumvent the existing disciplines on subsidies in WTO rules by using tradable emissions allowances to confer aid on favoured industries or agricultural producers.

The imposing list of questions about WTO rules that would have to be answered by jurists in the event of WTO dispute settlement arising from national border measures is long indeed. Could subsidies granted in the form of free emissions allowances – if they exist – be successfully defended and justified under WTO rules even if they are inconsistent with those rules? To what extent do WTO rules assure developing countries of "special and differential treatment" on climate matters? How does the concept of "special and differential treatment" for developing countries under WTO rules relate to the concept of "common but differentiated responsibilities" for developing countries under internationally agreed environmental rules?

Inevitably, these and other difficult questions would arise in international disputes over national border measures. To date, none of these questions have been answered in WTO dispute settlement. Nor have numerous other similarly far-reaching questions that would arise as well.

Our view is that they should not be.

3. Conclusion Three

3. In the working group's strong view, the members of the WTO should begin immediately to negotiate agreements to resolve the issues likely to arise from the enactment of national measures on climate change rather than leave those issues for eventual resolution in WTO dispute settlement.

The members of the WTO could simply let events take their natural course, and hope to resolve the international disputes that will surely arise from the enactment and the application of restrictive national border measures within WTO dispute settlement.

The world has every reason to have confidence in WTO dispute settlement. WTO jurists are more than capable of addressing these issues if need be. When judging international trade disputes, WTO jurists have shown clear and due regard, where appropriate, for environmental and other non-trade concerns.

But WTO jurists should not be asked how to discern the legal line between the competing claims of trade and climate change with the all too scant guidance they have been given thus far by the members of the WTO. They should not be expected to clarify existing WTO obligations based on a few terse words of treaty text illuminated only by decades-old rulings of GATT working parties that certainly did not foresee a global environmental challenge of the magnitude of climate change.

Nor does the world have time to await judgments in disputes between trade and climate change on a case-by-case basis. The political sensitivity on this issue in every part of the world is such that leaving WTO jurists to judge such disputes on a case-by-case basis may result in a perilous political overload of the WTO dispute settlement system.

The members of the WTO should address the issue of the nexus between trade and climate change through negotiations now, so that the likelihood of politically controversial litigation can be minimized later. The working group realizes that WTO members also have the vital, immediate and imposing task of successfully concluding the long-delayed Doha Development Round of multilateral trade negotiations. The working group prioritizes this first and foremost. All the same, it thinks that it is imperative that the members of the WTO address the issue of trade and climate change without delay.

There are a number of specific actions they could take.

They could "green" the GATT and other WTO agreements by rewriting long-standing WTO rules to take climate change and other environmental considerations more fully into account. Agreeing on such a revision of existing WTO rules would require a consensus of all WTO members.

Or a "coalition of the willing" forming a subset of WTO members could commit to a set of rules on climate change that would be binding solely on them and would be enforceable in WTO dispute settlement. Ideally, such a coalition would include developed and developing countries alike. Other members could agree to these new rules later if they chose. This could take the form of a plurilateral agreement under current WTO rules. A consensus of all WTO members would be required to add it formally to the WTO treaty.

Or WTO members could approve a "waiver" to WTO obligations for certain specified actions to deal with the threat of climate change. This would require approval of at least three-fourths of WTO members.

Or WTO members could approve a "peace clause" to the WTO treaty that would prohibit any challenges to WTO dispute settlement to certain national actions taken to address climate change while the world continues to work towards conclusion of a global climate treaty. This could be done by adoption of a decision by WTO members interpreting the WTO treaty, which would require the support of three-fourths of the members.

The working group expresses no view at this time on which of these choices would be best. Instead, it observes that these choices can be made within the current structure of the WTO through the ongoing work of the WTO's Committee on Trade and Environment. Through that Committee, a group of like-minded WTO members could emerge to examine these and other alternatives, and to draft possible approaches for early consideration by all the members of the WTO.

This should be done immediately, for, as we see it, there is compelling need for serious negotiation immediately on finding an effective way to create a "green space" that will allow the members of the WTO to proceed on the essential work of addressing climate change without running afoul of WTO rules. The alternative is a collision between the competing goals of trade and climate change in WTO litigation – with unforeseeable results for trade and climate change alike.

4. Conclusion Four

4. WTO rules should not be viewed solely as constraints on efforts to address climate change. WTO rules can and should be used affirmatively to fight climate change.

Trade can be green, and world trade rules can be tools to make it so. Those looking for ways to speed global action to combat climate change should look in part to the WTO, as WTO rules can be used to hasten the spread of green technologies worldwide.

To date, most of the all-too-little attention paid thus far to the connection between trade and climate change has focused on how trade rules constrain national actions that would restrict international trade in products based on the excessive carbon emissions in their production. As the working group has explained, in the absence of a global climate treaty, or possibly of an even-handed national carbon tax, such tempting defensive border measures could be inconsistent with WTO rules.

But WTO rules offer opportunities as well as constraints in the struggle to slow climate change, and these opportunities are currently being missed. The global effort to confront climate change must proceed in many forums and on many fronts. The World Trade Organization can and should be one of them.

Global implementation of climate friendly technologies is a key to the success of global efforts to confront climate change. Access to green technologies by developing countries is central to this task. In particular, it is vital to increase energy efficiency in developing countries, which are only one-third as energy efficient as developed countries.

Trade negotiators have been trying to address this need for some time in the Doha Development Round. On the WTO agenda in the trade round are efforts to reduce or eliminate tariff and non-tariff barriers to trade in dozens of environmental goods and services, including everything from wind turbines to solar water heaters to the thermostats and the generators needed to operate renewable energy plants.

Eliminating the barriers to trade in green goods and services would help diffuse them worldwide at the lowest possible cost by reducing their prices. In addition, it would provide incentives and expertise needed to enable developing countries to expand their production, use and export of climate friendly technologies.

Ideally, barriers to trade in green goods and services should be eliminated as part of an early and successful conclusion of the Doha Development Round. But, in our view, if such a conclusion does not seem imminent by March 2011, the option of an “early harvest” should be pursued – either on a plurilateral or multilateral basis. For example, the Forum’s Global Agenda Council on Sustainable Energy proposed as part of the Forum’s Global Redesign Initiative the creation of a plurilateral, sustainable energy free trade area (SEFTA.)

There is much more that ought to be on the global trade negotiating agenda to further the cause of fighting climate change.

New green technologies are everywhere subject to mandatory technical regulations and to voluntary standards of all kinds. They are submitted to “conformity assessment procedures” used to determine whether technical requirements have been fulfilled. They can be affected by labelling schemes, by bans and by other prohibitions.

All of this falls under WTO rules. Those rules encourage the international harmonization of standards and technical regulations. Such harmonization would spur the distribution of green technologies worldwide, enhance energy efficiency and promote sustainability. Harmonization should not be merely encouraged by WTO rules; it should be a specific goal of the WTO agenda.

In the past decade, more than 200,000 patents were registered worldwide for solar, biomass, fuel cell, ocean, wind, geothermal and other new green technologies. These innovations would not exist without the legal assurance that intellectual property rights will be protected. Appropriate protection of intellectual property rights is vital to the future of developed and developing countries alike.

WTO rules protect patents and other intellectual property rights worldwide. WTO rules also aspire to an appropriate balance between encouraging innovation and allowing reasonable access to innovation through the transfer and dissemination of new technologies. Striking the best balance between innovation and access to the new green technologies needed in every part of the world to address climate change should likewise be a specific goal of WTO negotiations.

Significant opportunities for spreading clean technologies and reducing carbon emissions exist worldwide in untold billions of dollars of government procurement. Government purchases must favour climate friendly goods and services. Toward this end, we should "green" the WTO's Government Procurement Agreement.

Lastly, there are opportunities for "greening" trade in the WTO rules on subsidies. The subsidies rules ensure that international trade is not distorted unfairly by governmental support, which is conditioned on exports or on the use of domestic instead of imported goods, or which is targeted to favoured domestic industries.

Governmental subsidies lower costs for local producers and thus let them sell their products for lower prices. This can reduce access to local markets for competing foreign producers, and it can give local producers an unfair advantage in exporting to other markets.

At the same time, and unquestionably, grants, tax breaks and other governmental subsidies can help accelerate success in the struggle against climate change by inspiring innovation and by jump-starting the development and deployment of clean technologies.

Every year between US$ 700 and US$ 800 billion is spent on fossil fuel subsidies by countries worldwide. Widespread public subsidies that encourage continued high-carbon consumption should be curtailed nationally. Domestic subsidies for carbon-emitting fossil fuel consumption should be notified to the WTO and included in the WTO's trade policy reviews of the trade policies and practices of WTO members. They should be measured by the WTO in cooperation with the Organisation for Economic Co-operation and Development. Fossil fuel subsidies should be made subject to countervailing duties under WTO subsidies rules.

In contrast, subsidies that ease the necessary transition to low-carbon economies should be encouraged internationally. We must continue to be careful not to distort trade through subsidies. At the same time, we should encourage climate friendly subsidies that are not facades for protectionism and that support governments in redoubling their use of national policy instruments to address legitimate climate concerns.

This is not a new idea. As agreed in the Uruguay Round of trade negotiations that established the WTO 15 years ago, subsidies rules allowed "assistance to promote adaptation of existing facilities to new environmental requirements," and provided that no trade actions could be taken against such assistance. Regrettably, this enlightened WTO permission slip for environmental subsidies expired after five years, in 2000.

Today, the challenge of climate change, to say the least, justifies the restoration of space under WTO rules to meet "new environmental requirements." An exemption for environmental subsidies that further the fight against climate change should be created anew by the members of the WTO. Such an exemption is especially needed to avert the increasing likelihood of mutually self-defeating disputes among WTO members over subsidies intended to spur the domestic development of new "green" technologies. This issue, too, should not be left to WTO dispute settlement.

In the long term, new alternative sources of energy will be cheaper and more sustainable then carbon-emitting oil and coal. In the short term, however, they are not. In the short term, new sources of energy will find success in the marketplace, only if they are subsidized in some way by governments. WTO rules should permit and facilitate this essential transition.

5. Conclusion Five

5. The WTO can be a model for how the world structures the international effort to address climate change, evolution of the GATT and the and move forward towards the needed conclusion of global agreement on a comprehensive climate treaty.

Copenhagen was indeed a disappointment to all who fervently hoped for a comprehensive global treaty on climate change. The Copenhagen Accord is not a binding legal agreement. It includes no binding commitment to reduce greenhouse gas emissions, and no binding agreement by any country to any specific emissions target. It includes no timetable for concluding such a binding agreement. Even so, the three short pages of the Copenhagen Accord can point the way forward on climate change.

Contrary to many pessimistic predictions in the immediate aftermath of the Copenhagen Conference, China, India and dozens of other countries met the 31 January deadline set out in the accord for listing their voluntary targets for limits on carbon emissions in an international registry. Buoyed by these national commitments, international attention has increasingly turned since to determining how developing countries will pay for meeting these targets.

Under the accord, the United States and other developed countries agreed to provide an additional US$ 30 billion during 2010-2012 to support “mitigation” and “adaptation” activities to contain climate change in developing countries. If meaningful actions are taken by developing countries, with transparent results, the developed countries have committed further to a goal of jointly mobilizing US$ 100 billion annually by 2020. The accord calls for the establishment of a Copenhagen Green Climate Fund and a high-level panel to examine ways of meeting this ambitious financing goal.

To be sure, many uncertainties remain about whether and how the spare prose of the Copenhagen Accord can become the basis for an emerging global architecture to address climate change. Nevertheless, in Bonn, Paris, Oslo, Tianjin and elsewhere, efforts to identify and secure this needed financing are continuing even as pessimism prevails about the prospects for early conclusion of a comprehensive climate treaty.

Few expect the conclusion of such a treaty through the UN process in Cancun. As a practical political matter, few believe that a multilateral progress will be possible unless and until the United States takes national action to limit its carbon emissions. Unfortunately, such action by the United States does not, at this time, seem at all imminent.

As we see it, the urgency of addressing climate change does not allow the world to wait on action by any one country. Those in the world who are willing must work together to find the way forward. Moreover, in the working group’s view, the world will be much more likely to find the way forward internationally on climate change by learning from the international experience, over long decades, of building the multilateral trading system.

Members of the working group all hope for practical reform of the United Nations process so that the UN can be a more effective forum for concluding a global climate treaty. The working group expects to see evidence of progress towards such reform in Cancun. The UN process will continue to be central to climate negotiations. But, in the working group’s view, the UN process can, and must, be supplemented worldwide.

At least initially, the best way forward on climate change is most likely to be through separate agreements on some but not all climate issues among some but not all countries. In the aftermath of the Copenhagen Conference, a series of partial agreements on key aspects of climate change is most realistic as a strategic approach towards the ultimate goal of concluding a truly global climate treaty. Given the urgency of climate change, “coalitions of the willing” among the world’s countries should go forward even if all countries cannot yet find the needed consensus to go forward globally.

The gradual historical evolution of the General Agreement on Tariffs and Trade – with just 23 original “contracting parties” in 1948 – into today’s World Trade Organization – with 153 member countries and other customs territories, and counting – may be a worthy model in many respects for the emerging international legal architecture for climate change.

Climate change is the ultimate environmental issue. Yet, the key to combating climate change successfully is to understand that it is fundamentally an issue requiring international economic cooperation. So the lessons learned through the decades in international economic diplomacy are highly relevant to addressing climate change.

Over time, the nations of the world have been able to build a successful world trading system because the trading system has been constructed to provide ongoing incentives for international cooperation. Countries have received benefits in exchange for participating in the system. Cooperation within the system has created more national benefits. These additional national benefits have in turn inspired more international cooperation.

The same can be done in addressing climate change. As has been done during the decades with trade, an effective global approach to climate change can be constructed by proceeding, issue by issue, country by country and case by case, towards the shared end of global agreement on a comprehensive and effective international system that will bind and serve all. This can be done by providing national benefits in exchange for participating, and if more national benefits are created as a result of further and ongoing cooperation. At the same time, national policies to reduce greenhouse gas emissions vary widely in their efficacy, transparency and GATT-consistency; WTO Members and other countries are encouraged to use policy instruments that do not unfairly burden trade.

A plural approach seems to be contemplated in the Copenhagen Accord. Language in the three pages establishes the basis to address important climate-related issues such as deforestation, mitigation funding and technology transfer through separate mechanisms among “coalitions of the willing.” These could function side by side with an emissions agreement and with a more focused, more limited UN process in a plural approach towards attaining a shared global end. These plural agreements could later be incorporated by reference into an eventual comprehensive climate treaty.

One good place to start could be the forests. Between 15 and 20% of all greenhouse gases worldwide result from deforestation. Eighty thousand acres of tropical rainforest are lost every day. An area the size of Costa Rica is lost to deforestation every year.

There was near consensus in Copenhagen on the need to move forward immediately with an agreement to halt deforestation – without waiting on the conclusion of an overarching global agreement on climate change. Since then, additional early funding has been promised by the United States and others to save the forests. Investors around the world are eagerly awaiting a concrete forest plan with the financing to support it.

The REDD effort – on reduced emissions from forest degradation and deforestation – seeks to save the forests by encouraging flows of financial assistance from developed to developing countries that agree to preserve their existing forests. There is opportunity for moving forward now with REDD as what the WTO would call a “plurilateral agreement.”

Another good place could be the 17-member Major Economies Forum on Energy and Climate Change (MEF), consisting of major emitting countries, perhaps reporting to the G20 group of industrial countries. Conceivably, the MEF could become a “coalition of the willing” that could fashion a plurilateral emissions agreement including most of the global sources of carbon emissions. To succeed, such an agreement would need to take fully into account the legitimate concerns of both developed and developing countries.

At least one world leader seems to think that, at least to some extent, the trading system can be a model for a global structure to confront climate change. In Copenhagen, the United States and others highlighted the fact that the accord calls for “provisions for international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected.” When asked what form the “international consultations and analysis” will take, President Barack Obama gave as an example: “What takes place when the WTO is examining progress or lack of progress that countries are making on various commitments.”

Evidently, President Obama of the United States was referring to the “trade policy review mechanism” of the WTO, which involves periodic reviews and recommendations relating to compliance by WTO members with their WTO obligations. In our view, the trade policy review mechanism (TPRM) of the WTO has delivered more in theory than in practice; it could be significantly improved as it relates to trade. To make a mechanism like the TPRM effective for use in monitoring climate change compliance, incentives must be created so that all involved recognize the value of investing in the success of a policy review mechanism modelled on the TPRM. In trade, the TPRM and the WTO’s enforcement system did not appear spontaneously; instead, they arose in tandem with core members making demanding commitments and recognizing that the benefits they expected from cooperation required a more effective system for monitoring and enforcement. Nevertheless, the WTO practice of trade policy reviews, if improved on, may well be a useful model for efforts to address climate change.

One of the most important lessons from the history of the GATT's evolution into the WTO is that serious and successful international cooperation can begin with small groups focused on generating benefits for the members who choose to belong to the "club". As those members gain confidence in the benefits they receive from cooperation, the club obligations can be expanded over time to include more obligations and more members. This is how the GATT became, over time, the WTO.

A mechanism that reviewed climate promises country by country could create transparency around those promises and around their national fulfilment. It could create the expectation that national promises would be kept. It could create mutually reinforcing pressures among nations for keeping national promises that would make it much more likely that those promises would in fact be kept. For the most part, this was the cumulative experience over several decades of the countries that were "contracting parties" to the GATT.

But, in time, the "contracting parties" of the GATT concluded that they needed the binding and enforceable judgements about national compliance with trade obligations that they have now as members of the WTO. And, as the trade negotiators eventually did, climate negotiators will have to consider, sooner or later, how to make binding and enforceable judgments about whether climate promises have been kept by individual countries.

In looking to the trade experience as a model, climate negotiators will need to consider the consequences if the conclusion of a review is that a country is acting inconsistently with a climate commitment. The aim is for "measurable, reportable and verifiable" commitments. But what if a climate promise is broken? Penalties will be needed. Dispute resolution will be needed. The world will need an effective dispute settlement mechanism for climate change. The experience and structure of the trading system should prove useful as an example to climate negotiators.

The gradual evolution of the world trading system over more than half a century should give confidence that the world can work together to build the needed global architecture for confronting climate change. But it should also give pause. The world does not have half a century to address climate change. The world must address it now. The common counsel to all those everywhere who are making decisions about addressing climate change is thus – start now.

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COMMITTED TO IMPROVING THE STATE OF THE WORLD

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