UNFCCC

Taking stock and working towards coherence: Perspectives of a trade-climate negotiator

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A new climate regime calls for further cooperation between the trade and climate communities in order to build a more sustainable future.

The Paris Agreement concluded at the Twenty-First Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC COP21) in December in Paris, France is significant on a number of counts. It sent a clear and strong signal that countries were strengthening the multilateral system to address the global climate challenge. This is significant as risks of unilateral actions are high without a robust multilateral system. It demonstrated that multilateral environmental agreements based on international consensus are the best way of coordinating policy action to tackle global environmental problems such as climate change.

Paris is also a boost for multilateralism. Notably, success on the climate front was mentioned at the global trade body's Tenth Ministerial Conference (MC10) held the same month in Nairobi, Kenya. At the opening plenary session, WTO Director-General Roberto Azevêdo said, "responding to climate change has long been one of the most intractable problems facing the international community. And after many years of efforts, we now have a deal. We have seen the power of the world acting as one. We should be inspired by that breakthrough here in Nairobi." In light of Paris, WTO members had to deliver some outcomes at MC10, and they did.

Paris is crucial for our collective efforts in combatting climate change. In Paris, parties locked in a goal to keep average global temperature below a two degree Celsius rise from pre-industrial levels, and went further by agreeing to pursue efforts to limit planetary warming to 1.5 degrees Celsius. Linked to this long-term goal, parties agreed to a global stocktake to assess collective progress towards these objectives, which should take place every five years starting in 2023.

Paris is the first comprehensive climate agreement encompassing contributions from all countries. No-one contemplated the submission of so many nationally determined contributions (NDCs) – as the domestic climate action plans that form the basis of the new climate regime are formally known – before COP21. Emissions mitigation efforts are now firmly grounded in domestic action. The process has shifted from the current Kyoto Protocol-type top down commitments to one with a bottom-up approach based on national undertakings.

However, as UNFCCC Executive Secretary Christina Figueres said recently at the World Economic Forum's annual alpine gathering in Davos, Switzerland"...everyone has agreed on the direction of travel so that the next battle is to speed up along that direction of travel. The strength of Paris is that it builds a broad highway and allows countries to choose their lane of choice."

Therefore, as much as it was a momentous event, COP21 was but the start of a process. The intergovernmental process established in Paris for fleshing out key details of the new regime – the Ad Hoc Working Group on the Paris Agreement (APA) – has its work cut out for it. The APA has to oversee the development of modalities and rules for various platforms and mechanisms, get new processes off the ground or shifted into a higher gear, and put the transparency and compliance mechanisms in place.

Paris Agreement

The Paris Agreement is the world's first universal climate change deal and, under its auspices, all nations should contribute to emissions-cutting efforts. The deal also covers multilateral cooperation in areas such as adaptation, climate finance, technology development and transfer, among others.

Complementary role of trade policy

Trade policy has, and must continue to, complement countries' efforts to combat climate change. UNFCCC parties must proactively foster a supportive and open international economic system. As envisioned in the 1992 UNFCCC founding document and in various WTO agreements, such a system will lead to sustainable economic growth and development in all nations, particularly developing countries, by enabling them to better address the climate problem.

This is all the more important in the context of today's globalised trade networks. A supportive and open international economic system will facilitate both North-South and South-South trade opportunities and development in areas that are relevant to addressing climate change such as clean energy. This can only be achieved if countries do not raise barriers to international trade, steer clear of unilateral measures to coerce further climate action, and avoid passing the burden of climate action onto other parties, particularly developing countries.

In parallel, WTO members participating in the Environmental Goods Agreement (EGA) negotiations must work to expeditiously conclude an ambitious deal, which will eliminate tariffs on a range of environmentally-friendly and climate-relevant goods. As non-tariff measures (NTMs) can undermine benefits from tariff liberalisation, EGA participants must also fully respect the spirit and letter of the various WTO agreements relating to these. For example, if the NTM relates to standards, there should be no deviation from the WTO's Agreement on Technical Barriers to Trade (TBT). And an agreement is good only if it continues to remain relevant. The EGA must not be static. It must dynamically cater to contemporary environmental protection needs. The eventual deal must be able to keep up with technological developments. The EGA must have a robust review process to expand the environmental product list so that new innovations can be included.

As a next step, EGA participants can look at complementing the EGA with services, such as those related to energy and environmental concerns. This effort need not start from scratch. EGA participants could look at leveraging work undertaken as part of the plurilateral request and offer process since the WTO's 2005 Hong Kong Ministerial Conference. Ministers decided on that occasion that in addition to traditional bilateral talks, request-offer negotiations should also be pursued on a plurilateral basis, and the results extended on a most favoured nation (MFN) basis. Further to services market access, EGA participants must also address NTMs in services, otherwise known as domestic regulations. A 2009 WTO draft text should serve as a point of reference for disciplines on domestic regulations in services. This draft seeks to strike a delicate balance between export interests, regulatory considerations, and development dimensions.[1]

Trade, climate, development priorities

There are, and will be, interactions between trade and climate "response measures." These will become increasingly pronounced as UNFCCC parties boost their pre-2020 climate actions and implement post-2020 INDCs. Parties' climate response measures tool-box includes trade-relevant policies such as a carbon tax, emissions cap-and-trade, energy efficiency standards, energy labelling, and subsidies for the development of renewable energy. All of these measures will have trade effects and possibly modify competition conditions in various sectors. Moreover, depending on design and application, these measures can be incompatible with the WTO rules. This is illustrated by the number of WTO disputes relating to the trade and energy-climate interface.

Relatedly, beyond the WTO, other international economic institutions are engaged in efforts to complement UNFCCC climate protection priorities. One example is the International Organization for Standardization (ISO)'s work relating to the development of global carbon footprint standards. While international standards are generally preferred to fragmented national and regional initiatives, it is important that these global benchmarks take account of parties' circumstances, in keeping with the spirit of the Paris outcomes. For example, because of their very small size and lack of natural geographical endowments – no mountains, no rivers, no access to the open seas – some countries do not have access

to renewable energy options, including hydro, wind, geothermal, and tidal power. Such nations, by virtue of their national circumstances, have to rely on fossil fuels in their energy mix. These countries are known as "Alternative Energy Dis-advantaged" (AED) in the UNFCCC. While energy efficiency measures taken by AEDs would reduce their carbon footprint, these will likely still remain greater than those of countries with abundant access to renewable energy. The ISO and other relevant international organisations should take this reality into account. This is important as the WTO encourages the use of international standards through Articles 2.4 and 2.5 of its TBT Agreement.

COP21 demonstrated that, if there is political will and good stewardship, outcomes to complex multi-issue negotiating processes can be secured.

Working towards coherence

As envisioned in the 1994 WTO Ministerial Decision on Trade and Environment, there should be no policy contradiction between environmental protection, and promotion of sustainable development and upholding the WTO's open and non-discriminatory system. This policy coherence, however, is not going to happen by luck. Proactive policy coordination and cooperation between members at the multilateral level at WTO's Committee on Trade and Environment (CTE), and between trade and environment officials at the national level, is needed in order to facilitate coherence and mutually supportive climate response measures as well as prevent possible legal inconsistencies from arising. The Intergovernmental Panel on Climate Change (IPCC)'s Fifth Assessment Report (AR5) has also highlighted that "there are numerous and diverse explored opportunities for greater international cooperation in trade-climate interactions. While mutually destructive conflicts between the two systems have thus far been largely avoided, pre-emptive cooperation could protect against such developments in the future."

An important outcome from COP21 is the mandate in paragraph 34 of the decisions giving effect to the Paris Agreement for parties to establish the "modalities, work programme and function" of the Forum on the Impact of the Implementation of response measures to address potential effects that might arise under the new climate regime. These negotiations will be undertaken through the UNFCCC subsidiary bodies. The forum will provide a space for Parties to exchange information, experiences, and best practices in order to raise their resilience to these impacts.

With expert inputs from independent research, and from the WTO secretariat on the interactions of response measures with global trade rules, discussions in the forum can help to inform parties of the effects of climate response measures – positive and negative – on third countries, including compatibility with trade rules. Drawing on these discussions, parties should address the adverse effects of their response measures and where applicable, bring measures in line with the WTO. The role of the forum will become more important as parties implement domestic climate actions to meet the objectives of the Paris Agreement. By harnessing the respective competencies of the WTO and UNFCCC, moreover, the forum could complement efforts to ensure coherence between the trade and climate regimes and help meet sustainable development objectives.❷

This article is based on presentations by the author made at side-events at both COP21 and MC10. These are his personal views.



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❶ For more information on the plurilateral request-and-offer process, and on domestic regulations, see "Negotiations on Trade in Services, Report by the Chairman to the Trade Negotiations Committee" – TN/S/36 dated 21 April 2011

❷ Beyond trade, the forum is envisaged to discuss issues such as economic diversification and transformation; and just transition of the work force, and the creation of decent work and quality jobs, see – FCCC/SB/2015/L.2