

CLIMATE CHANGE AND TRADE

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A few weeks from Copenhagen, I am grateful for the opportunity to share with you some thoughts related to Climate Change and trade, and in particular WTO rules.

I would like to address three points.

The **first** one is more political and strategic in nature. I belong to the group of persons – which I believe represent a majority view - who feel strongly that it is the role of the UNFCCC to establish a new international regime on Climate Change, and not the WTO.

Wisdom advises us to wait for the results of Copenhagen, and to refrain from opening a parallel negotiating track regarding the trade impact of climate change in the WTO, as requested by some.

We should concentrate our efforts in the WTO to finish the Doha Round in line with its original mandate, and not open the negotiating agenda to new issues such as climate change, biofuels and energy.

While the Doha Development Agenda does not address Climate Change, it contains a number of environmental aspects which are relevant and whose examination and negotiation should be continued. I refer in particular to: a) trade liberalization in environmental goods and services; b) reduction or elimination of fisheries subsidies and c) closer coordination and clarification of the relationship between the Multilateral Environmental Agreements (MEAs) and the WTO.

Obviously, further liberalization and reform in agriculture in the Doha Round, through the reduction and elimination of barriers to trade and trade distorting measures such as export subsidies and domestic support would also lead to more sustainable production patterns. An open trading system is perhaps the best guarantee against severe disruptions to economic activity as a result of climate change.

This being said, and while not supporting immediate negotiations on the subject, we are very conscious that climate change will have trade implications that will need to be addressed by the WTO.

In this regard, we must acknowledge that there are currently considerable uncertainties with regards to some important aspects:

Firstly, it is difficult to predict the results of Copenhagen, or the broadness of a new international climate change regime, and to what an extent it will cover and affect trade, and in particular agricultural trade.

Secondly, there are a number of emerging domestic climate change instruments and policies, as well as legislation under active consideration in the United States and other developed countries, which already point to potential areas of conflict with existing trade rules and which stand a good chance of being challenged in the WTO. We do not

feel it is desirable that the Dispute Settlement Mechanism of the WTO, either Panels or the Appellate Body, should deal with these concepts without previous in depth analysis and involvement by the WTO Members themselves.

Given these uncertainties, it is therefore advisable for the WTO to focus attention on this subject and to engage in the consideration of how international trade rules can be coherent with actions to address climate change.

We should avoid that climate change policies lead to additional agricultural trade distortions. On the other hand, if current trade rules present genuine obstacles to the adoption of climate change policies we should be willing to re-visit them. The objective should be how to ensure coherence and coordination in the two sets of policies and that the right supporting policies are put in place.

This may require the WTO membership to establish from now, **a process** which can monitor the implementation of climate change related measures and policies and their impact on trade. As to the process itself, I would like to come back to this point at the end of this presentation

So, the first message I would like to leave with you is that while we do not favour the opening of a parallel negotiating track on climate change in the WTO, we cannot remain indifferent to what is happening. We cannot wait for others to come back with the answer. It may be too late by then. We do not want either that the Dispute Settlement Mechanism determines what needs to be done. So WTO members need to engage in the analysis of the subject from a trade angle and ascertain whether existing rules are sufficient or whether they will need to be clarified, adjusted or amended.

The **second** point I would like to address is which agricultural trade rules may merit a re-examination in the context of climate change. At this stage it is already apparent that a number of areas may need attention, consideration, clarification and possibly negotiation.

Subsidies seem to me, to be one of the most likely areas of conflict with WTO rules. Policies directed to decrease green house emissions, climate mitigation or to incentivize and encourage the adoption of best agricultural production and management practices such as: minimum conservation tillage; decreasing water pollution; increasing biodiversity or planting trees, are likely to rest to a large extent on subsidies.

In WTO, agricultural subsidies are governed by two Agreements: The Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures. I was going to address this issue, but since Tim Josling has now joined our Panel and has analysed in-depth and written substantially on this subject, I will leave this presentation to him.

A second area of potential conflict has to do with trade restrictions. Article XX of the GATT, incorporates a General Exception clause that allows governments considerable scope to impose trade restrictions to support domestic objectives such as the protection of human, animal or plant life or relating to the conservation of exhaustible natural resources . It remains to be seen whether these provisions are sufficient to encompass an increasing number of climate change related measures?

Under possible Border Measure that could be applied for environmental objectives and to address competitiveness concerns, we should ascertain whether they constitute unnecessary barriers to trade.

Among them, a previous panel has already referred to Carbon Tax adjustments on agricultural products which are relatively more carbon intensive. This requires the identification of goods according to the use of energy in production and processing, with the aim of favouring those that have a smaller carbon emission history. Are these measures compatible with WTO?

Under Non-tariff barriers we should look at the Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS).

The legitimacy of standards and other measures such as labelling that are common elements in climate change legislation fall within the TBT Agreement. This may lead to trade conflicts when unverifiable technical requirements are imposed on imports. The TBT Agreement does not allow for differential treatment of like products and it may well be that standards will be applied according to product characteristics, in particular through the notion of production and processing methods (PPM), leading to alternative products.

Are there any prospects for developing multilateral standards for climate change? How will private sector standards related to climate change impact producers and trade?

Another area to be analysed is that of cap and trade schemes. Here the objective is to establish emission limits rather than imposing taxes. The way in which countries opt to include such schemes into national legislation may require some international disciplines.

I will not go into technical details that could prove too long and boring, but the second message that I would like to convey to you is that the trade rules most likely to require re-examination, clarification or amendment are those related to : Subsidies, Article XX, TBT and in particular standards, and SPS.

The **third** point I would like to tackle is that of the process that could be envisaged and the measures that could be put in place to deal with these aspects in WTO. The understanding being, that we will not open a parallel negotiating track to that of the UNFCCC on climate change, but that we should engage in the examination of the trade impact of climate change policies and measures.

This aspect has been the subject of long debates as well as divergent positions.

As already mentioned some members have argued that the best way to achieve movement in the Doha Round of negotiations would be by opening the agenda to new subjects such as climate change. Others have proposed the negotiation of a Code of Good WTO Practices on Greenhouse Gas Emissions. Another proposal that has circulated is that of establishing a “Peace Clause” into member’s climate change legislation that would suspend border measures while WTO negotiations are underway. A related proposal, suggest to establish “Due Restraint Commitments” that would limit the type of WTO challenge for a certain period. Others argue for the establishment of

“Policy Space” by which countries would limit their GHG emissions without sacrificing the comparative advantage in their own industries. Others have argued for the need to engage in Plurilateral Negotiations. There is another proposal suggesting the establishment of a joint task force between UNFCCC and WTO to deal with trade and climate change. Finally, it has been suggested that climate change should become a prominent subject in the discussions of Aid for Trade.

It is not my intention to enter into an analysis on the merits or legitimacy of these various proposals. My position, based on my experience of more than 30 years of multilateral negotiations and personal knowledge of how the GATT/WTO process really works, lead me to believe that they are not the best approach, at the current moment, to set the ball rolling in the direction mentioned above, namely to start in the WTO an analysis and monitoring of climate trade related issues and their impact on trade.

All these proposals would require the negotiation of a new WTO mandate and the definition of terms of reference among members that would raise all type of suspicious, divergences, tensions regarding some basic questions such as :Why? Who would participate? How? When?....as well as the relation of this process to the Doha Round. This would take considerable time, divert efforts from some more worthwhile objectives and would probably lead to stalemate and become a recipe for disaster.

My strong conviction is that we do not need to negotiate a new mandate or to establish an institutional framework to deal with the subject. We already have both. The Doha Ministerial Declaration already instructs the Committee on Trade and Environment, within its current Programme of work, to pay particular attention to the effect of environmental measures on market access. It further stipulates that it should examine the situation in which a reduction or elimination of trade restrictions and distortions would benefit trade, the environment and development. It requests it to look at the labelling requirements for environmental purposes and to examine the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

It clearly points out that work on these issues should include the identification of any need to clarify relevant WTO rules and make recommendations with respect to future action, including the desirability of negotiations.

So we can and should proceed within the WTO structure and in accordance with its given mandate. Moreover, we feel that with the Doha negotiations in a phase of “hibernation”, the time is ripe for moving forward as soon as possible in the Committee on Trade and Environment in engaging in a process of examining the range of issues that arise in the climate change/trade context. This undertaking should lead to increasing member’s understanding of these issues, a possible clarification of WTO rules or even preparation for future negotiations. The Committee on Trade and Environment should also request the General Council to give instructions to other WTO Committees such as the Committee on Agriculture, the TBT and the SPS, to begin a similar process of consideration of these matters.

This will find WTO members better informed and prepared when the time comes, and able to make a contribution in ensuring coherence and coordination between policies on trade and climate change.

