



UNFCCC IN THE INTERNATIONAL CONTEXT: CAPABILITIES AND COOPERATION THE CASE OF THE WTO

Informal Dialogue on Response Measures, Bangkok, September 1, 2018



OBJECTIVES

- What aspects of the work of the WTO are relevant to the Forum?
- How does the capacity and mandate break down between the two bodies; where is there synergy and where is there potential overlap?

WTO CORE MANDATED FUNCTIONS

1. Institutional home for WTO body of law – the Agreements
2. Forum for negotiations
3. Administer dispute settlement
4. Administer review of trade policies (TPRM)
5. Cooperate with IMF and World Bank Group - coherence

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Any trade-related response measure is covered under WTO law

Negotiations can change WTO law with respect to response measures

Response measures are subject to dispute settlement under WTO law

Response measures as trade policies are subject to review in Trade Policy Review mechanism

Response measures, relevant trade law, can be discussed in WTO Committees

LEGAL COVERAGE, DISPUTE SETTLEMENT

- **GATT:** Non-discrimination between like products (e.g., high-carbon steel and low-carbon steel). Can be avoided by recourse to Article XX exceptions, but not easily. (relevant to border carbon adjustment)
- **TRIMS:** Trade-related investment measures can't have an advantage conditioned on local content requirements (relevant to FITs).
- **SCM:** Subsidies can't be conditioned on local content requirements (relevant to FITs)
- **TBT:** Standards and labelling requirements have to follow good practice (proper notice, opportunity to comment), are preferably treated if based on international standards. (relevant to carbon footprint labelling)

NEGOTIATIONS

“It is not in the WTO that a deal on climate change can be struck, but rather in an environmental forum, such as the United Nations Framework Convention on Climate Change. Such an agreement must then send the WTO an appropriate signal on how its rules ... should be employed in the fight against climate change.”

- Pascal Lamy, (former) WTO Director-General, speech delivered at Trade Ministerial at COP13, Dec. 2007

NEGOTIATIONS

It's not likely the WTO rules will change to suit climate change objectives any time soon:

- UNFCCC would need to request specific rule changes – in effect deciding what policies and measures should *not* be employed at national level. Historically has not been done (though the Forum may at some point conceivably come close to it).
- The WTO negotiation process is stalled over the breakdown of the Doha Round. No obvious way around it.

REVIEW OF MEASURES

- Trade Policy Review Mechanism: regular review of national trade and trade-impacting policies, member by member. Purpose: contribute to improved adherence to trade rules. Trade-related response measures would be covered.
- Committee on Technical Barriers to Trade (TBT): members notify draft regulations, others ask questions of clarification, request changes in light of negative trade impacts.

COMMITTEE WORK

- Committee on Trade and Environment: reports to the General Council. Mandate includes the relationship between environmental measures and the provisions of the multilateral trading system.
- Functions as a forum for discussing issues at the interface of trade and environment. When negotiations are ongoing there is a Special Session of the Committee devoted to negotiating issues.

COMMITTEE WORK: AGENDA OF THE 2017 CTE MEETING (PARTIAL)

- Presentation from New Zealand on fossil fuel subsidy reform and the WTO
- Presentation from the Secretariat on the updated MEA matrix (lists all MEA trade-related measures)
- Presentation from the Secretariat on the updated Environmental Database (lists all environment-related trade measures notified to the WTO or discussed in TPRs)
- Presentation by Canada outlining its NDC
- Presentation by New Zealand on the Global Research Alliance on Agricultural Greenhouse Gases
- Update on the negotiations of the Environmental Goods Agreement

POTENTIAL SYNERGY AND OVERLAP

- Ideally clear complementary roles for Forum and WTO, no overlap, coherence
- Difficult to say where there is potential at this point; Forum's final shape not yet agreed. But possible to speculate, based on most recent Chairs' informal note.

POTENTIAL SYNERGY AND OVERLAP

- Little if any potential overlap. Only potential: if Forum decides to pass judgement on legality of response measures. Highly unlikely.
- It may be that the Forum in some way judges best practice, or otherwise judges response measures based on impacts. This in fact is a potential *synergy*.

POTENTIAL SYNERGY AND OVERLAP

Potential synergies:

- Forum uses WTO's existing environmental database and MEA matrix in its assessment of response measures
- Briefings within the CTE on the Forum's ongoing work programme;
- Joint contributions to the UNFCCC section of the MEAs Matrix;
- Joint work to assess the impacts of the implementation of response measures;
- Forum contributions to the TPRM process, focused on the implementation of response measures;
- Forum contributions to future WTO negotiations, e.g. offering knowledge on best practice in the formulation and implementation of climate-related environmental measures.

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