AN INTERNATIONAL TRADE LAW PERSPECTIVE ON CLIMATE CHANGE

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ABSTRACT

Law pertaining to trade worldwide and climate change are two distinct domains that inexorably and frequently cross paths. A new significant issue about the connection between climate change and global trade was about to emerge. Due to the fact that the production and distribution of traded products and services are directly or indirectly responsible for 25% of the world's carbon dioxide emissions, trade policies may significantly aid in promoting climate change mitigation and adaptation. Coherence between policies and systems is crucial when discussing the global trading system. Global trade has an impact on emissions in a globalizing world. Trade regulations are crucial for the spread of eco-friendly technologies. While some contend that environmental conservation and trade liberalization are mutually exclusive objectives, others assert the opposite. This publication's major goal is to make the requirements of international trade law in connection to climate change policy clear and transparent. This will allow negotiators to judge the legitimacy of the WTO threat strategy. The article is broken up into four parts in this context. The preambles of all multilateral and other agreements concerning free trade and environmental harm that have been adopted by United Nations members states are included in Part I. Carbon Limits (BCA) in Part II; To balance variations in the rigor of climate regulations among trading partners, a trade-related policy tool will be created. The new WTO regulations on subsidies for fossil fuels are discussed in Part III. The article ends with an analysis and final remarks.

Keywords: trade, climate, environment, treaty, carbon emission, fossil fuel.

I. INTRODUCTION

In terms of technical dissemination and unilateral solutions to the failure of multilateral negotiations, international economic law has a significant role to play in regulating climate change. The impasse at the multilateral level in the issue of international trade law was caused by political responses at the unilateral, bilateral, and regional levels. Climate change agreements must adhere to international economic law and paradigms of global economic governance, or they will alter. The ability of national and regional governments to regulate climate change mitigation is constrained by current international economic law. Countries must primarily create climate change policies and regulations within current legal, economic, and financial frameworks because multilateral accords are currently difficult. Countries must set emission reduction goals and carry out climate control measures within the regulatory framework provided by climate change legislation, particularly the United Nations Framework Convention on Climate Change and the Paris Agreement, in order to achieve the global goal of limiting the increase in global average temperatures. Under this legal framework, nations are free to select the strategies they use to achieve their goals. Nevertheless, even if the goal of the action is largely to combat climate change, international trade law, particularly WTO rules and principles, governs when and how countries can take policies that can impair trade. Business methods that address climate change have a significant potential to reduce greenhouse gas emissions and are increasingly being employed.

Industrialized nations and those undergoing economic transition are required by the United Nations Framework Convention on Climate Change to "adopt national policies and take appropriate measures to mitigate climate change by limiting their anthropogenic greenhouse gas emissions and protecting and improving sinks and stocks of greenhouse gases." Although the Kyoto Protocol itself set national emission reduction targets, it was up to each nation to select what precise steps they would take to accomplish the Protocol's objectives. "Parties must protect the climate system on the basis of equality and in accordance with their common but distinct responsibilities and capacities for the benefit of the present and future generations of humanity." Adoption of clean energy and climate-friendly technology agendas that include trade actions has become more common in nationally defined positions.

The UN's 2030 Agenda for the Sustainable Development of Nations recognizes trade resources as a vital tool for facilitating the achievement of several of the seventeen Goals for Sustainable Development and promote the shift to a sustainable, greener economy. According to the IPCC, "regulations and standards, taxes and fees, tradable permits, financial incentives... [are] policies and instruments that can create incentives for mitigation." Efforts by nations to "accelerate the development, spread and diffusion of technologies and the adoption of policies for the transition to low-emission energy systems, including rapidly increasing the adoption of clean electricity generation and energy efficiency measures..." can be assisted by trade-related initiatives. WTO-compliant climate change trade efforts are made possible by multilateral trade arrangements that identify environmental preservation and sustainability as overarching objectives. NTMs cover a wide range of trade control tools, including permits, quotas, price controls, financial controls, and technical rules. Technical NTMs are frequently employed for environmental protection since they may control product attributes, production procedures, and import requirements (UNCTAD, 2022). The IPCC also asserted the magnitude of environmental protection and the widespread deployment of NTMs, underscoring the significance of technical regulations in mitigation efforts in areas like conservation of energy, consumer information (labeling), fuel standards, and low-emission industrial materials. They therefore has the potential to be

utilized to encourage household adoption of energy-saving technologies and low-carbon product usage. To ease the transition to a low-carbon economy and prevent trade barriers, the WTO recently highlighted the significance of universally acknowledged international standards (WTO, 2022b).

The Agreement on Technical Barriers to Trade specifies the requirements for approved organizations that develop standards. International standards for measuring energy efficiency, such as those developed by ISO to calculate the thermal properties of building materials or the measurement standards of the International Electrotechnical Commission (IEC), are examples of international standards that are compatible with national technical regulations in relation to climate change. International standards are another source of guidance for estimating and reporting carbon dioxide emissions. Examples of the standards include ISO 14067:2018 for figuring out a product's carbon footprint and ISO 14064-1:2018 for figuring out greenhouse gas emissions and sequestration at the organizational level. Sector-specific standards, such as those developed by ISO for solar energy, hydrogen and wind technologies, as well as solid and liquid biofuels, are another set of international standards that are essential for the execution of technical requirements.

Potential conflicts between the trade system and climate action have arisen as a result of an increase in WTO disputes over domestic subsidies and renewable energy programs in recent years. Due to the ad hoc character of WTO disputes, there is little structural legal guidance for the implementation of NDCs under the Paris A group that largely regulates the global trade system is in charge of reaching agreements and resolving climate-related disputes. Given that multilateral decisions and initiatives that create space for policy and action on climate change have their own difficulties and challenges, especially due to the large number of WTO members (currently 164), promoting climate change goals among a smaller group of like-minded people is a strategy that is worth exploring. Regional trade agreements also offer opportunities for policy experience, but they also present their own set of challenges. Furthermore, regional trade agreements are ideally suited to handle a number of activities at the nexus of trade and climate change, including the transfer of low-carbon technology, emissions trading, BCA, and fossil fuel subsidies. By unifying standards and regulations, regional trade agreements can further assist in establishing uniform guidelines for trade-related climate action. Last but not least, later on, multidimensional climate action can be agreed upon at the regional level. A sustainable energy trade agreement has been suggested by the International Center for Trade and Sustainable Development, which would also liberalize trade in commodities and services that are beneficial to the environment.

II. BORDER CARBON ADJUSTMENTS AND STRATEGIC CLIMATE POLICY

Border carbon adjustments are trade-related policy tools used to make up for trade partners' varied levels of strictness in enforcing climate change regulations. Imports are subject to carbon-based tariffs or other regulatory measures in order to achieve this, while exports may also be free from domestic carbon limitations. When climate action in one region alters the predominance of emissions in another, this is known as emissions leakage. BCAs have also been suggested as a way to push developing nations to embrace more aggressive climate policies. BCAs, however, have an impact on commerce and are viewed as posing a danger of breaking WTO regulations since they distinguish between items based on their carbon footprint. Some consider them to be a sort of environmental protectionism. Proponents say such measures would reduce carbon emissions, protect domestic companies from unfair competition and provide incentives for carbon-intensive exporters to clean up their act and sign a multilateral climate agreement. A BCA can provide incentives for exporters to adopt stricter climate policies, incentives that a tariff does not provide. The impact of the BCA on exporters' incentives is twofold. The first is to change the terms of trade of the exporter. This alone leads the exporter to adopt a weaker climate policy and is the only component when the border measure is customs. The second component involves the potential climate policy benefits of a fundamental difference between a tariff and BCA: BCA drives a wedge into domestic and foreign consumer prices that is a function of emissions taxes, i.e., the size of emissions. BCA calculates the exporter's emission tax. However, these climate policy benefits can encourage the exporter to adopt a stronger climate policy only if the exporter's climate policy is weak. This suggests that a necessary condition for a BCA to force an exporter to implement stricter climate policies is that the exporter is concerned about climate damages. It might be better to introduce a BCA/tariff to target the exporter's climate policy and global emissions. This would highlight the design of the BCA, which identifies the climate policy measures of the exporter. Without this feature, BCA may not distinguish the impact of the tariff on the incentives of the exporter's climate regulators.

III. FOSSIL FUEL SUBSIDIES

Massive government subsidies for the development and use of fossil fuels are having negative repercussions on the environment, the economy, and society that are becoming more and more obvious. These subsidies' scale places a heavy financial strain on the state budget. Even the most modest forecasts from several international agencies are substantial. For instance, the Organization for Economic Cooperation and Development estimates quite conservatively that fossil fuel subsidies totaled $373 billion in 2015. These subsidies for fossil fuels also take money away from other, frequently more urgent development goals like healthcare and education. Further, they foster the combustible process of fossil fuels and aid in the long-term stabilization of carbon-intensive energy sources, both of factors help accelerate climate change. Importantly, subsidies can affect commerce and investment by influencing the cost of fossil fuels. As WTO members make little headway in discussions to produce new laws for developing new regulations for another ecologically detrimental subsidy, fishing, a number of remedies have been put out that may also be addressed through WTO fossil fuel subsidies. very same The IPCC also emphasized the significance of technical regulations in mitigation efforts in fields like energy conservation, consumer information (labeling), fuel standards, and low-emission industrial materials, while reiterating the magnitude of environmental protection and the widespread deployment of NTMs. This is because it can be difficult to prove that subsidies for fossil fuels have a negative impact on trade because they are typically not "specific" as required by the WTO Agreement on Subsidies and Countervailing Measures. Perhaps as a result, no complaints involving subsidizing fossil fuels have yet been brought up in a WTO case.

Last but not least, it is critical to keep in mind that WTO members have already taken steps to address fossil fuel subsidies, including increasing transparency, calling attention to fossil fuel reform in WTO trade policy evaluations, and publishing policy statements. These decisions can be seen as the WTO's first shot at addressing fossil fuel subsidies. Such action can be carried out by small groups of WTO members working together, including, but not limited to, those who want to change fossil fuel subsidies. Such action does not need action by the full WTO member. Other approaches include progressively getting enough support to eliminate fossil fuel subsidies through international trade agreements, such as future policy statements, as well as new steps by small groups of WTO members, including adopting a pledge and review method. Given the obstacles to legislative reform inside the WTO system, strategies that focus on institutions and behaviours associated with trade and climate seem to be more politically feasible. For instance, including technical knowledge on climate-related issues into WTO dispute settlement speeds up the dispute resolution process and clarifies the technical details of the climate policies being considered. Even while the Appellate Body cannot presently choose judges, there may not be insurmountable political hurdles to adopting this option soon, given that the legal potential to add climate-related scientific expertise to dispute panels already exists. Restructuring procedures may lead to more effective use of the present WTO and UNFCCC platforms. This might encourage the application of laws, their interpretation, and the incorporation of environmental concerns into corporate operations, improving legal certainty. Voluntary reporting may be possible shortly, even if mandating the inclusion of climate-related impact assessments in the WTO trade policy review system may not be practicable anytime soon. This is especially true given the absence of a legal basis for WTO law.

IV. ANALYSIS AND CONCLUSION

Promoting climate change goals among a smaller group of like-minded individuals through global or regional trade agreements is a strategy that needs to be further studied. The international talks for the Environmental Goods Agreement have made some early headway, but they have been put on pause since December 2016. By promoting the adoption of climate-friendly goods and technology, the EGA still has a decent opportunity of advancing the climate action agenda. However, much will depend on how the underlying issues with drafting definitions are overcome as negotiations proceed. The EU has been a leader in employing this method when it comes to regional trade agreements. It has even recently resisted signing trade agreements with nations that have not accepted the Paris Agreement. The inclusion of climate-related terms in future or current regional trade agreements is likely to differ by country/region, while other nations may choose to follow the EU's example. Even while it will probably be challenging to include mandatory climate provisions in future regional agreements, the chances would be improved if the requirements were voluntary. The implementation of revised and renegotiated climate agreements is expected to be politically more challenging in the short run. Cross-border carbon adjustments are subject to many of the same factors that apply to broader changes to the international trading system. It would actually be more challenging to implement measures that call for the consent or support of all or the majority of WTO members due to their contentious nature.

Numerous academic studies have also shown that BCAs may be legally enforceable under existing WTO legislation after implementation, depending on their primary purpose and the intricacies of design. Further actions such as WTO rule revisions, exemptions, or authoritative interpretation may temporarily increase legal clarity but may also show that BCAs are invalid absent such adjustments, reducing the flexibility of the WTO. dependent on the participants in the current legal system. Overall, the impasse in international trade talks indicates that any significant developments in BCAs as a tool for climate policy are likely to occur at the regional level, where a coalition of supporters will band together to push the concept. Such collaboration may eventually serve as a catalyst for more extensive and international action. However, the chances of coordinating BCAs in the multilateral trading system in the near future are slim. Finally, a climate of international trust is necessary for the success of international cooperation on climate change policy. Its goal is to better integrate climate change policy across various ministries, and it establishes a foundation for future international cooperation agreements for the coordination of climate policy measures, such as the mutual recognition of internationally developed energy sector performance standards. But now, even before precise details of proposed measures have been revealed, the trade and economic ministries of developed nations are raising concerns about whether the WTO is compatible with other nations' climate change policies. Several case studies on the environment and global competitiveness have well-documented the dampening effect of such influences on domestic legislative procedures.

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