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The Interface Between Climate Change and Trade Regimes Through the Eyes of Brazil

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THE INTERFACE BETWEEN CLIMATE CHANGE AND TRADE REGIMES THROUGH THE EYES OF BRAZIL

*Nicole de Paula Domingos**

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INTRODUCTION

The Fifteenth Conference of the Parties (COP15) to the United Nations Framework Convention on Climate Change (UNFCCC), held in Copenhagen in December 2009, made clear that international climate governance is in turmoil. Given its weak outcome, as reflected in the Copenhagen Accord,¹ alternatives to a “global deal” based on a top-down approach are starting to regain legitimacy.² In the absence of a

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1. Climate Change Conference of the Parties, Copenhagen, Den., Dec. 7-19, 2009, *Copenhagen Accord*, art. 6, U.N. Doc. FCCC/CP/2009/L.7 (Dec. 18, 2009) [hereinafter *Copenhagen Accord*], available at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf#page=4.pdf>.

2. Robert Faulkner, Hannes Stephan & John Vogler, *International Climate Policy after Copenhagen: Towards a 'Building Blocks' Approach*, GLOBAL POLICY 252 (2010), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1758-5899.2010.00045.x/pdf>; (“From a review of the history of the “global deal” strategy from Rio (1992) to Kyoto (1997) and beyond we conclude that this approach has been producing diminishing returns for some time, and that it is time to consider an alternative path—if not goal—for climate policy. The alternative that, in our view, is most likely to move the world closer towards a

global climate treaty, concerns with the unequal costs of emission reductions remain an extra obstacle to advancing negotiations within the UNFCCC framework.

In particular, proposals from the United States (U.S.) and the European Union (EU) relating to carbon taxes before Copenhagen increased tensions between developed and developing countries. Considering potential conflicts between trade and climate regimes, emerging countries (so called BICS or BASIC) have been highly skeptical of integrating trade dimensions into the post-Kyoto agreement, with China taking the lead in contesting any attempt to link these issues. As a key member of the BASIC countries and a traditional defender of multilateralism, Brazil's visions are less documented and merit further consideration. What are Brazil's perceived threats and opportunities regarding the interface between trade and climate regime? Through this question, this paper addresses how these preferences could affect the emerging trade and climate governance challenges.

Based on sixteen (16) interviews,³ direct observation,⁴ and the analysis of relevant literature,⁵ this paper determines that countries have made only minimal progress in addressing possible governance gaps between climate and trade rules. As a traditional proponent of an international order based on respect for the rule of law,⁶ Brazil may

working international climate regime is a 'building blocks' approach, which develops different elements of climate governance in an incremental fashion and embeds them in an international political framework. This alternative . . . is already emerging in international politics.⁴)

3. See *infra* Annex: List of Interviews. Most of the interviews were held in Geneva, but some were conducted by telephone with stakeholders based in Washington, London, Brasilia, São Paulo and Paris.

4. As a delegate at the 15th Conference of the Parties to the UNFCCC, the author was able to get impressions of the general dynamics of the negotiations, collect useful documents, and establish contacts with key negotiators involved in the climate dynamics.

5. Moreover, the author's analysis was complemented by the conclusions of a closed meeting organized at Sciences-Po by the Centre for European Studies in the presence of WTO-Director General Pascal Lamy and the Head of DG environment of European Commission, Karl Falkenberg entitled: "*How Actors Behave in Trade and Climate Change Negotiations?*" Paris, July 2010.

6. Maria Regina Soares de Lima, *Emergence on Global Stage leaves Brazilians Divided*, SPIEGEL ONLINE INTERNATIONAL, Oct. 8, 2008, <http://www.soigel.de/international/world/0,1518,582861,00.html> (Recognizing that Brazil's foreign policy has two important legacies. The first is the primacy of development over political and military goals in the shaping of foreign policy, while the second is a strong attachment to multilateralism. In this case, multilateral arenas were prioritized because of the country's limited capacity, but also because of Brazil's support for a series of normative principles closely associated with multilateralism, namely self-determination, nonintervention, and respect for international law).

become a normative force capable of impacting the debate on the climate and trade interface despite not being an economic global superpower. Brazil's attempt to play a "cooperative role" and shape international rules in a systematic manner, are two central reasons for this conclusion. Part I of this paper provides an overview of the main issues involved in the climate and trade regimes. Part II discusses the nature of Brazil's concerns and how its delegation in Copenhagen tried to address this topic. Part III concludes that the climate and trade interface could impose significant political limits on the BASIC countries as a coalition.

I. AN OVERVIEW OF THE CLIMATE CHANGE AND TRADE INTERFACE

Analysis suggesting that the actual state of the global climate regime, mainly represented by the Kyoto Protocol, may be on a "collision course"⁷ with the global trade policy regime, giving rise to a new set of concerns among policy-makers and analysts of global governance issues. The central reason for preoccupation is under the climate regime, there are no specific trade measures; nonetheless, some of the measures that are taken to implement the protocol could overlap with WTO rules.⁸ The points that are the most relevant in this regard include: a) how trade measures aimed at non-parties to the protocol will occur; b) how to deal with trade measures taken by parties to the protocol to achieve its aims, but which are not specified in the text and; c) which body of dispute settlement body should prevail between the WTO and the UNFCCC?⁹

More specifically, the trade and climate debate gained momentum between the 13th (COP13) and the 15th Conference of the Parties (COP15) when certain factors drew the attention of policy-makers and industrial representatives for the risks of trade distortion. Proposals from the European Commission¹⁰, Australia, and most importantly,

7. Jeffrey Frankel, *Global Environmental Policy and Global Trade Policy*, (HARV. KENNEDY SCH. & NAT'L BUREAU OF ECON.RESEARCH, Working Paper No. 08-14, 2008) [hereinafter Frankel], available at <http://belfercenter.ksg.harvard.edu/files/Frankel2Web2.pdf>.

8. *Climate Change, Competitiveness and Trade*, Chatham House Rep. (Royal House of Int'l Affairs) (June 2007), [hereinafter *Climate Change*] available at [www.iisd.org/ydf/2007/climate trade competitive.pdf](http://www.iisd.org/ydf/2007/climate%20trade%20competitive.pdf).

9. *Id.*

10. John Lichfield, *Can He Fix It? Sarkozy's Carbon-Tax Plan Derided by Environmentalists*, THE INDEPENDENT, Sep. 11, 2009, <http://www.independent.co.uk/news/world/europe/can-he-fix-it-sarkozy-s-carbontax-plan-derided-by-environmentalists-1785452.html>. (Announcing Nicolas Sarkozy's intention for France to apply a carbon tax: "President Sarkozy insisted, however, that the carbon tax or "climate contribution" would put France

several bills pending in the U.S. Congress regarding the design of their domestic climate policies were key examples.¹¹

One of the main concerns has been carbon leakage, “whereby emission reduction efforts in one country would be offset by emission reduction efforts in non-carbon constrained regions.”¹² In addition, “[c]ountries with higher carbon prices may seek to impose additional border taxes on imports from countries with lower carbon prices . . . to offset the competitiveness disadvantage to their firms and the ‘leakage’ of carbon emissions in the form of increased production in countries with lower carbon prices.”¹³

One of the most adequate methods to address competitiveness concerns is to achieve international agreement on an approach to combating climate change, promote broad participation in any international regime, and ensure that different modes of national implementation do not unfairly tilt the playing field in anyone’s favor.¹⁴ This is easier said than done. Even if there are several possible interactions between climate and trade, the institutional relation of the UNFCCC with the WTO has received little attention.¹⁵ It was not until 2003 that the UNFCCC Secretariat considered the state of the negotiations in the WTO as relevant for the climate regime.¹⁶ In fact, one commentator has noted that “mutual ignorance” and “hostility”

on track to fulfill its promise to reduce its carbon dioxide emissions to a quarter of their present levels in the next 40 years. In theory, the taxes will grow steeper in the years ahead but the proposals are already contested by two-thirds of French voters and by many politicians on the left and within the President’s own centre-right party. Mr. Sarkozy wants, in the first stage, to impose a tax of _17 (£15) per ton of carbon dioxide on all forms of energy, except electricity”).

11. See generally, *Leveling the Carbon Playing Field, International Competition and US Climate Policy Design*, Peterson Inst. for Int’l Econ. (World Resources Ints.) (May 2008), [hereinafter, *Leveling the Carbon Playing Field*], available at http://pdf.wri.org/leveling_the_carbon_playing_field.pdf.

12. *Trade, Competitiveness and Carbon Leakage: Challenges and Opportunities*, Energy, Environment and Development Programme Paper, (Chatham House) (Jan. 2009), available at http://www.chathamhouse.org.uk/files/13251_0109reinaud.pdf.

13. AadityaMattoo et al., *Reconciling Climate and Trade Policy*, (Peterson Inst. for Int’l Econ. Working Paper No. 09-15, 2009) [hereinafter *Reconciling Climate*]; available at <http://www.iie.com/publications/wp/wp09-15.pdf>. A detailed analysis of the impacts of asymmetrical climate mitigation policies and legal compatibility of the UNFCCC and the WTO is beyond the scope of this paper. (alteration in original).

14. *Climate Change*, *supra* note 8.

15. Harro van Asselt, *Dealing with the Fragmentation of Global Climate Governance: Legal and Political Approaches in Interplay Management*, (The Global Governance Project, Working Paper, Paper No. 30, 2007), available at <http://www.glogov.org/images/doc/WP30.pdf>.

16. *Id.*

have been characterizing the relationship between the trade and climate communities.¹⁷

According to Ghosh, from the viewpoint of developing countries, the inevitable linkage between climate change and trade offers both attracts and threatens at the same time. There are four critical concerns regarding the legality and the governance of trade measures to combat climate change. The first is disguised protectionism. Second, labeling requirements and standards, which are outside of the WTO's regulatory scope, are also important. In this case, he gives the example of private business, which is excluded from the WTO's Technical Barriers to Trade (TBT) Agreement.¹⁸ Third, asymmetrical and disproportionate relaxation of trade barriers could benefit developed countries at the expense of developing countries. Lastly, developing countries generally link their emissions reductions to technology transfer.¹⁹

In order to improve trade policy monitoring in the context of carbon leakage, industrial competitiveness and market access, all of which are key fundamental fears, Ghosh also suggests five points: a) recognize capacity challenges for monitoring trade measures; b) strengthen WTO Monitoring of Protectionism Measures; c) define categories for environmental goods and services clearly; d) overcome measurement challenges of embodied carbon across the supply chain; and e) build developing countries' capacity to monitor emissions. Equally, another necessary reform would be to strengthen the notification process by requiring countries to notify the WTO of climate-related measures prior to implementing them. As Ghosh states: "It will be impossible to address many of these concerns unless transparent, effective, and fair monitoring systems are put into place."²⁰ Despite the relevance of these recommendations, the reality is that little progress has been made on any of these points. In recognition of the potential legal conflicts, the WTO and UNEP joined forces and decided to release a report entitled: "Trade and Climate Change." One key argument in this report is that "border adjustment measures" (or border

17. Patrick Messerlin, *Climate Change and Trade Policy: From Mutual Destruction to Mutual Support*, (The Grouped'EconomieMondiale à Sciences Po., Working Paper, 2010), available at <http://www.gem.sciences-po.fr/content/publications/pdf/Messerlin-ClimateTrade042010.pdf>.

18. Arunabha Ghosh, *Enforcing Climate Rules with Trade Measures - Five recommendations for Trade Policy Monitoring* in, CLIMATE FINANCE: REGULATORY AND FUNDING STRATEGIES FOR CLIMATE CHANGE AND GLOBAL DEVELOPMENT 272-280 (Stewart, Kingsbury & Rudyk, ed., NYU Press 2009).

19. *Id.*

20. *Id.*

taxes) might be consistent with the WTO law if several conditions under the General Agreement on Tariffs and Trade (GATT) are met. Regardless of aiming at better institutional cooperation, this study reveals that this initiative between the WTO and the United Nations Environment Programme (UNEP) provoked political discord among developing countries, particularly expressed by China and India. According to a member of the WTO Secretariat: “[T]he report was very badly received. China even declared that the people responsible for that at the WTO should not even get their paychecks!”²¹

These vehement declarations suggest that even with little empirical evidence of carbon leakage,²² this issue is very sensitive and politically controversial as it relates to economic competitiveness. Here, governments are concerned about exposing their industries in highly energy intensive sectors to unfair competition with industries in non-regulated regions. In the end, several interviewees indicated that the WTO privately recognized that the report was released at an inappropriate time. However, the fact that parties are falling short on delivering an ambitious and legally binding climate regime largely explains why fears of trade retaliation against climate laggards is now increasing.

Since the WTO is a member-driven organization, the Secretariat is often in a precarious position. While the Secretariat is expected to act quickly in case of members' complaints, the controversy involving carbon taxes has been a difficult one. As one commentator from the Secretariat noted: “Carbon taxes are not being seriously discussed by anybody at the moment, with the exception of few Nordic countries which are concerned with the problem of carbon leakage.”²³

An important inquiry is to determine to what extent trade measures can be used for climate mitigation purposes? In this sense, the free-rider problem is accompanied by concerns about competitiveness and the methods that governments choose to implement their Kyoto commitments.²⁴ The design of these trade measures is more appropri-

21. Interview with Member, Secretariat, World Trade Organization, in Geneva (July 2010) (alteration in original).

22. See, e.g., *Leveling the Carbon Playing Field*, *supra* note 11 and *Reconciling Climate*, *supra* note 13 (indicating that empirical evidence of carbon leakage is not prominent and, therefore, administrative complexity would probably not pay off border adjustments benefits.) But see, e.g., Frankel *supra* note 7 (emphasizing that the OECD has estimated larger estimates of leakage in the context of the EU, since it is the only region applying carbon taxes domestically through the European Emissions trade scheme (ETS)).

23. Interview with Member, Secretariat, World Trade Organization, in Geneva (July 2010).

24. *Climate Change*, *supra* note 8.

ate to be addressed than the question of legal compatibility.²⁵ Thus, the real challenge for policy makers is to take care when choosing among the options and maintain a stable relationship between the UNFCCC and the WTO process. Nevertheless, given the strong disinterest from both developed and developing countries, gaps in the trade and climate governance might get wider. Here, another interview at the WTO Secretariat is highly illustrative of the state of this issue in the trade arena: “[T]he debate is indeed happening, but in the corridors. No one wants to make it official on the current agenda.”²⁶

II. BRAZIL’S VIEWS ON CLIMATE AND TRADE: THREAT OR OPPORTUNITY?

During COP15, more general concerns with trade gained force among the BASIC countries.

“Emerging economies do not want to take firm commitments on cutting emissions if they are not reassured on the way their exports to the developed countries will be treated in the future. Developed countries do not want to take firm commitments on cutting emissions if they are not reassured on the way their imports from developing countries could be treated in the future.”²⁷

As indicated in the previous section, the central message of the WTO-UNEP report indicates that border measures to address asymmetric mitigation does not necessarily violate the WTO law. However, for the Permanent Brazilian delegation to the WTO and industrial representatives at the Brazilian delegation in Copenhagen, there is great concern.²⁸ The climate and trade interface gained force from COP13 onwards and should follow three axes, two directly related to the UNFCCC negotiations and one linked to the Doha Round. The one related to the Doha Round is controversial and makes reference to the debate on the liberalization of environmental goods and services (EGS). Paralyzed by definitional challenges, this negotiation process is often perceived by Brazilian diplomats as a “cynic discussion”.

Clean technology transfer and the use of subsidies and trade measures in order to address competitiveness disadvantages from

25. *Id.*

26. Interview with Member, Secretariat, World Trade Organization, in Geneva (July 2010) (alteration in original).

27. See Messerlin, *supra* note 17.

28. Interview with Brazilian diplomat, Member, Permanent Mission of Brazil to the WTO, in Geneva (July 2010) (noting “[T]he Brazilian official position understands the interface of the climate and trade regimes as a problem with the dispute settlement mechanism to the WTO and gives high importance to that.”)

large energy intensive industries are a focus of the discussion among the UNFCCC parties. The issue of technology transfer is not new and is highly permeated by the intellectual property rights discussion.²⁹ More recently the debates concerning the use of domestic subsidies, free emissions allowances and technological subsidies are three examples of trade measures as potential methods to distort trade and undermine developing countries' development.³⁰

Three proposals were on the table in Copenhagen.³¹ The first, derived from the United States and supported by the EU, confirmed the United States' resistance to address trade aspects in the climate regime. This proposal, which simply replicated the approach involved in GATT Article XX, did not address developing countries' concerns regarding "green protectionism." The second proposal was from India, which forbids any type of unilateral trade border measures, whether tariff related or not. Supported by China, the Indian proposal was classified as discriminatory because it suggested a clear distinction between developed and developing countries, which harms the "most favoured Nation" principle from the WTO.³² Moreover, the Indian text intended to use the term "emission linkage," which Brazil considered controversial due to difficulties in measurement and lack of empirical evidence.

In Brazil's view, both proposals were inadequate. As a representative of an industrial coalition explained: "[T]he Indian proposal was considered too radical, principally for Brazil which has an advanced and rigid environmental legislation that the private sector already pays highly for it."³³ In this sense, the U.S. border taxes could represent a comparative advantage against China and India, since the

29. Diego Z. Bonomo, Carolina Lembo & Antonio Meirelles Neto, *Clima e comércio apos o encontro de Copenhague*, Valor Economico, May 28, 2010, available at <http://www.valoronline.com.br/imprensa/opiniaio/98/119452/clima-e-comercio-apos-o-encontro-de-copenhague>.

30. *Id.*

31. *Id.*

32. World Trade Organization, Principles of the Trading System, http://www.wto.org/english/thewtoe/whatis_e/tif_e/fact2_e.htm ("MOST-FAVORED-NATION (MFN): TREATING OTHER PEOPLE EQUALLY. Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members. This principle is known as most-favoured-nation (MFN) treatment. It is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.")

33. Interview with a representative from industry. August, 2010.

trade barriers would only be applied for those who do not have “comparable measures” in their territories. So Brazil in Copenhagen was in limbo: it did not know it should feel threatened or ambitious.

The third proposal was drafted by Brazil in an attempt to balance the two previous visions. Described as the “most balanced” of the proposals, the proposal seeks to implement the Convention while considering existent obligations under the WTO. In this sense, the objective was to send a “political signal” to the WTO regarding the need to address possible conflicts between trade and climate rules. In practice, Brazil tried to complement Article 3.5 of the Convention by formulating the following paragraph:

“Taking into account the relevant provisions of the Convention and further recognizing the principle enshrined in Article 3, paragraph 5, agrees that Parties in the pursuit of the objective and implementation of the Convention, shall not resort to any measures, in particular unilateral fiscal or non-fiscal measures applied on the border, against goods and services imported from Parties, that constitute a means of arbitrary or unjustified discrimination or a disguised restriction on international trade.”³⁴

For Brazil, the relevant aspect was to incorporate a clause that could highlight the risks of border measures for developing countries. Aiming at opening a legal precedent in the climate regime, Brazil considered the importance of providing guidance to the appellate body at the WTO in case of future disputes in the WTO. In this case, border taxes were judged by Brazil as the most “alarming” issue at that specific time. At the same time, one relevant explanatory factor for this concern is the substantial presence of representatives of the private sector in the Brazilian delegation in Copenhagen. With almost 800 members, this country had the largest delegation at COP15.

Overall, there are signs that Brazil’s proposals in Copenhagen are in concert with its perceptions of opportunities and costs related to biofuels. Being so complex and permeated by heavy political connotation, “[a]griculture, which is one of the sectors most vulnerable to climate change, is also a key sector for international trade through subsidies to bad fertilizers, bad feedstock for animals, subsidies to dedicated energy crops to replace fossil fuel use, improved energy efficiency, etc.”³⁵

34. UNFCCC, Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention, *available at* http://unfccc.int/meetings/ad_hoc_working_groups/lca/items/4381.php.

35. Gabrielle Marceau, *The WTO and Climate Finance: Overview of the Key Issues* in *CLIMATE FINANCE: REGULATORY AND FUNDING STRATEGIES FOR CLIMATE CHANGE AND GLOBAL DEVELOPMENT* 247-253 (Stewart, Kingsbury & Rudyk, ed., NYU Press 2009).

In this context, the Brazilian sugarcane industry association (UNICA) is a central stakeholder not only in Brazil, but also internationally. In their view, ethanol should be part of the flexible mechanisms such as carbon emissions trading under the climate change negotiations. As Nelson explains:

“[I]t was not part of the discussion in Kyoto because the only country that produced ethanol in significant quantities was Brazil. Because it was not part of the discussion, there are no carbon credits for ethanol. Brazil does receive credits from bioelectricity, which is ethanol and other biofuels converted into electricity to power a small battery. Those bioelectricity credits represent twenty percent of the credits Brazil receives today.”³⁶

To illustrate, on the occasion of a visit of WTO-Director General Pascal Lamy in Brazil, UNICA's President (Mr. Jank) declared that it made “no sense for countries to adopt ambitious policies to reduce greenhouse gas emissions, while continuing to apply high tariffs on clean technologies that can be instrumental to achieve reduction goals and allowing fossil fuels to be traded freely.”³⁷

This declaration shows that Brazil is not only promoting ethanol in the climate change negotiations, but also is equally determined to include ethanol into the context of the negotiations of EGS in the context of the Doha Round. For Brazil, biofuels are an efficient manner to advance “green growth” and evolve into low-carbon economy. However, the EGS negotiations have had little success as they have been paralyzed by definitional problems. Brazil perceives this negotiation negatively by believing that only EGS items of developed countries are part of this negotiation agenda.

III. TRADE AND CLIMATE: A SHIFT IN VALUES?

In Bali at COP13, trade ministers informally discussed trade and climate issues in the context of the UNFCCC for the first time. By exploring the dynamics of the meeting through interviews, two interesting points are worth noting. The first is a normative shift between trade and climate values and the second is a partial explanation for such discontentment among developing countries regarding the EGS list. Organized as an informal meeting, the debate was dominated by the proposal from the EU and the U.S. for all WTO Members to liber-

36. ANA JANAINA NELSON, CLIMATE CHANGE AND BIOFUELS 3, Brazil Institute Special Report, Wildrow Wilson International Center for Scholars, (2009) (alteration in original).

37. *Ethanol: To Tariff or Not to Tariff?* Trade & Environment – Bridges at 23 (Feb. – Apr. 2010), available at <http://ictsd.org/downloads/bridges/bridges14-2.pdf>.

alize forty-three (43) products identified by the World Bank as climate-friendly goods. As mentioned, Brazil's reaction was to vehemently criticize the EU-US list for not including ethanol.³⁸

As explained by one of the interviewees, when Pascal Lamy opened the meeting he declared that the WTO was ready to cooperate with the UNFCCC. This declaration in itself was judged as a fundamental change in paradigm given the traditional lack of cooperation with the UNFCCC. Interestingly, interviews revealed that, at that occasion, the EGS list was the main contribution from the trade community to the climate change negotiations. As someone present at the meeting tells, the reaction of Brazil was very negative but had a significant impact:

Celso Amorim (the Brazilian Foreign Minister) took the floor and criticized the document arguing that: a) Brazil did not recognize the list and did not know from where it came from; b) since it did not include ethanol, Brazil could not accept such proposition. Finally, Amorim's third point was interesting for surprising all delegates. In articulation with the Pakistani ambassador and in a very 'improvised way', Brazil declared that would not be interesting in negotiat[ing] an agreement on climate change that would not include a review of the TRIPS agreement. His declaration put a 'chill in the room since it was the first time that an idea like that was put on the table. Everyone was shocked because to require the revision of TRIPS is huge, particularly on that context. I think, Brazil's position at this meeting reflected the immaturity of the debate and how the Brazilian foreign ministry was probably trying to get time. However, what was interesting was that, on the next day, the meeting 'turned' on the other way around. Instead of contributing actively, it was agreed that the WTO should support the UNFCCC and stay aside. The clear message was that countries need to decide what they are going to do under the UNFCCC, while the WTO 'wait and see'.³⁹

This quotation indicates a normative shift in perspective on hierarchy between trade and climate. This means that, unlike the past, it is widely recognized that trade should not be above climate on a scale of values. If some analysts suggested that the unsatisfactory outcomes from Copenhagen resulted from difficulties at concluding the Doha Round, today it is possible to affirm that the climate regime precedes the trade one in terms of legal precedent. In other words: "[G]iven that few proposals regarding climate mitigation, particularly in the U.S., says that 'comparability of efforts' is a central challenge to determine

38. *Id.*

39. Interview with Member, Secretariat, World Trade Organization, in Geneva (July 2010) (alteration in original).

who pays or not for the border taxes, in case of conflict, the peace clause will probably be the climate regime and its understandings of “common but differentiated responsibilities.”⁴⁰

In addition, interviews revealed why and how developing countries became highly skeptical about the EGS list. As my research shows, in reality, what became the official proposal of the U.S. and of the EU during the trade and climate meeting in Bali corresponded to an existing sub-list of the OECD, which was revised by the World Bank and published later as a report. The problem was that such list had already been rejected by the developing countries. Since the Copenhagen Accord does not address the links between trade and climate and the EGS negotiations are relatively paralyzed, the debate remains unresolved.

Brazilian foreign policy has traditionally been perceived as conciliatory. In this sense, one remarkable goal of Brazil’s policies is to be perceived as a political “bridge” in the eyes of the international community. As a former non-Brazilian diplomat noted:

“The Brazilian negotiation capacity in multilateral negotiations is very high. So the real question that we need to pose is to know who has, in the end, the ability to cause a real impact. It seems to me that India and Egypt, while also very supportive of multilateralism, don’t have the same capacity of Brazil. In my view, Brazil’s strength relies on its aptitude to constantly have a systemic and global view. That is its real asset.”⁴¹

The importance of Brazil at the WTO is a relevant aspect. Brazil was even cited as a “superpower” during interviews. Three major reasons emerged to explain Brazil’s rise at this organization. First, the victories in winning relevant panels against hegemonic players at the WTO (*i.e.*, the cotton case against the U.S.) gave significant legitimacy to Brazil’s legal and political capacity. Secondly, Brazil’s leadership during the creation of the agriculture G-20 allowed a significant rupture with a clear cut North-South division at this organization. Consequently, Brazil is today recognized as an important player and even a technical reference to least developed countries.⁴² Third, “[B]razil has been a very responsible player and it is even behaving as a superpower in the WTO. Everyone listens to it and it is a leader here.

40. Interview with Brazilian diplomat, Member, Permanent Mission of Brazil to the WTO, in Geneva (July 2010) (alteration in original).

41. Interview with Member, ICSTD, in Geneva (July 2010).

42. As indicated by another member of the WTO Secretariat, “I have observed several times Brazil giving advice and assisting least developed countries.”

It is also being very helpful and ready to compromise (in reference to the Ministerial meeting in 2008).⁴³

Despite these positive views regarding Brazil's assertiveness and diplomatic capacity, this country is largely dependent on coalition building as a way of guaranteeing its interests. A crucial example is the leading role of Brazil on the creation of the G20 before the WTO Ministerial meeting in Cancun (2003) in order to increase its leverage in this organization. However, "the ministerial meeting on trade in 2008 showed that Brazil does not go anywhere alone."⁴⁴ Here, the clash with India over the special safeguard mechanism (SSM) is illustrative.⁴⁵ While at the WTO this country is perceived as a coalition leader, this is not true in the climate arena, which is dominated by China's views. In this context, this section highlights one key aspect often neglected by the analysts; the degree of coherence among the great emerging countries themselves. As one diplomat declared:

The inevitable rise of the great emerging countries, in reality, brought a great confusion, because the South lost conceptual coherence in relation to their normative visions of how the global order should look like. . . Obviously, these countries must allocate their best resources to deal with the most pressing issues and the G77, for example, were left aside. Copenhagen illustrated how some radical countries could challenge the climate negotiations. If the Copenhagen accord was negotiated at closed doors, is also because no agreement would come out with the G-77 on board.⁴⁶

At the Copenhagen summit, Brazil's trade proposals were supported by South Africa, which had a negotiator previously serving at the WTO. A Brazilian delegate involved in the negotiations noted, "China also supported us, but it refused in the end because the Brazilian proposal neither had a clear North-South division nor mentioned the articles related to the obligation of developed countries to transfer technology to developing countries."⁴⁷ Further, the content of the Copenhagen Accord annexes display the discrepancy between Brazil and China's actual commitments. While Brazil provided ambitious mitigation figures and targets, in line with Intergovernmental Panel on

43. Interview with Member, Secretariat, World Trade Organization, in Geneva (July 2010) (alteration in original).

44. Interview with Member, Secretariat, World Trade Organization, in Geneva (July 2010).

45. WTO News, http://www.wto.org/english/news_e/news08_e/meet08_summary_30_july_e.htm#ssm. [last visited Sep.10, 2010].

46. Interview with Brazilian diplomat, Member, Permanent Mission of Brazil to the WTO, in Geneva (July 2010).

47. *Id.*

Climate Change (IPCC) suggestions, China adhered to its national objectives with no comparable metrics with IPCC suggestions. Hence, internal tensions among BASIC members seem to be looming on both areas of negotiations.

With respect to the trade and climate change nexus, China is relentlessly vocal, threatening to sue at the WTO any Annex I country taxing imports on climate change grounds. Brazil adopted a less aggressive stance by recalling the need not to depart from the GATT objectives to liberalize trade and avert discrimination, as shown above. The marginal difference between the two stances can be explained by the export structures of the two countries. China is mostly hurt by EU or U.S. carbon tariffs on carbon intensive products such as steel, iron and cement. Brazil's and China's exports could become more substitutable in the near future, along with the transformation (and shift toward value added products) of the export structures of these countries. The current peace clause between Brazil, China, and India on trade issues rests on the complementary pattern of trade, whereby Brazil specializes on agricultural exports, China on manufacture, and India on services. Recent dissent between Brazil and China on the unfair trade advantage grabbed by China, thanks to its undervalued Yuan, suggests that export structures are evolving toward less and less complementarities.

Further analysis is required to better assess how the great emerging countries are impacting global governance and to what extent their discourses could be applied in practice.⁴⁸ Contrary to enthusiasts of the South-South cooperation approach, some argue that Brazilian contemporary politics is proof of an "illusion and a great *naïveté*."⁴⁹ The main reason for this assertion is the erroneous perception that, because of similar challenges, emerging countries would automatically and mutually reinforce each other. In particular, this paper suggests that what the interface of trade and climate regimes may expose is the fragility of the political arrangements among the great emerging countries. In this case, despite Brazil's relative success at the WTO, it is now being overshadowed by the Chinese. Recently incorporated as a member of the WTO, China is efficiently "playing the

48. AMANCIO JORGE NUNES DE OLIVEIRA & JANINA ONUKI & EMANUEL DE OLIVEIRA. COALIZOES SUL-SUL e multilateralismo: países intermediários e o caso IBAS. [South-South coalitions and multilateralism: intermediate countries and the cases of IBAS] In Brasil, Índia e África do Sul –Desafios e oportunidades para novas parcerias. [Brazil, India and South Africa-Challenge and opportunities for new partnerships]. Maria Regina Soares de Lima e Monica Hirst (Org.) Publisher *Paz e Terra* (2009).

49. Interview with Brazilian diplomat, Member, Permanent Mission of Brazil to the WTO, in Geneva (July 2010).

game.” It is now clear that this country has (paradoxically) fully integrated itself into the system by increasing exponentially its knowledge of WTO law and procedures. For some, the difference between Brazil and China is that Brazil probably “overplays its role.”

CONCLUSION

The temptation to use trade measures to offset competitiveness losses will grow as parties consider more stringent targets under future commitment periods or successors to the Kyoto Protocol. Given the impasse over the future climate regime, the interface between trade and climate, paradoxically, lost momentum. For some analysts, economic downturn (and consequently reduced greenhouse gas emissions), accompanied by the setback of the North American bills slowed the urgency of this debate. However, this paper maintains that, in the long term, trade and climate regimes could lead to counterproductive measures.

As a traditional player in the contemporary trade negotiations and on environmental governance, Brazil’s diplomatic tradition tends to advocate against economic asymmetries and political inequality. In this context, concerns with new forms of protectionism, such as illegal subsidies and non-technical barriers, continue to be at the core of Brazil’s concerns. In its view, the biggest risk is to undermine well consolidated multilateral trade rules, especially in the tariffs area, through illegal border adjustments. This threat is particularly evident in light of the degree of uncertainty regarding the evolving nature of both regimes and the deadlock of the UNFCCC process and the Doha Round.

Brazil’s normative preferences were relevant for alerting and trying to address possible future gaps between the UNFCCC and WTO during the Copenhagen Summit. Even if less vocal than China and India, Brazil’s tactics have been coherent with its traditional attachment to a rule-based international system and to the relevance of the Dispute Settlement mechanism of the WTO to Brazil’s trade policies.

The WTO is often perceived in Brazil either as an organization that limits domestic public policy making or as a forum to reduce international asymmetries. Despite a general continuity in Brazil’s foreign policy, President Lula had a tendency to personify Brazilian diplomacy and promote “autonomy” as a principle. In this case, this government tried to affirm Brazil’s national interests in an assertive manner, undertake collective action with other countries from the South, and work towards a better international status by forming regional power poles

as a manner to create balance and democratize international order.⁵⁰ With a new President to take office in 2011, it remains to be seen how Brazil will be perceived by the international community and how it intends to build political alliances. What the analysis of the climate and trade interface shows is how the alliance of the BASIC countries as a political coalition is more fragile than usual. In this regard, there are reasons to believe that the climate and trade interface could put into evidence significant political limits around the BASIC countries as a coalition. The paradoxical term “competitive cooperation” illustrates the current state of multilateral negotiations on climate change, in which diffused leadership and new power relations have become an extra hurdle.

50. MARIA REGINA SOARES DE LIMA, EMERGENCE ON GLOBAL STAGE LEAVES BRAZILIANS DIVIDED (2009), <http://www.spiegel.de/international/world/0,1518,582861,00.html>.

ANNEX: LIST OF INTERVIEWS

Name	Position	Organization
Dooa Abdel Motaal	Counsellor in the Office of the Director-General of the WTO	WTO
Victor Do Prado	Deputy Chief of Staff to the Director-General of the WTO	WTO
Pablo Bentes	Legal Advisor, Appellate Body	WTO
Gabrielle Marceau	Counsellor, Legal Affairs Division, World Trade Organization; Associate Professor of Law at Geneva University	WTO/Geneva University
Ahmed Abel Latif	Intellectual Property and Technology Programme Manager	International Centre for Trade and Sustainable Development (ICTSD)
Ana Maria Kleymeyer	Senior Climate Change Advisor	International Centre for Trade and Sustainable Development (ICTSD)
Ricardo Meléndez-Ortiz	Executive Director	International Centre for Trade and Sustainable Development (ICTSD)
Haroldo de Macedo Ribeiro	Diplomat, Counsellor	Permanent mission of Brazil to the WTO
Flavio Damico	Diplomat, Minister	Permanent mission of Brazil to the WTO
Bruno Leao	Diplomat, First Secretary	Permanent mission of Brazil to the WTO
Marco Antonio Fujihara	Responsible for the preparation of the business committee to Copenhagen (COP15)	Federação das Industrias de Sao Paulo (FIESP)
Diego Bonomo	Executive Director	Brazil Industries Coalition, Washington
Antonio Josino Meirelles	Analyst with the International Negotiations Unit	CNI- Confederação Nacional das Industrias
Rafael Tiago Benke	Senior Executive Corporate Affairs & Sustainability	Vale International SA - Switzerland
Marcelo Varella	Programme director	Secretary to strategic issues, Brazilian Presidency
Sheila Page	Senior Fellow	Overseas Development Institute
