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A Better Transatlantic Agenda on Trade and Environment

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Climate change from greenhouse gas (GHG) emissions presents an ongoing challenge to the world economy and global environment (Hufbauer, Kim & Charnovitz 2009). This Policy Brief seeks to make two contributions to the intellectual debate on how the transatlantic political community can promote more effective global climate policy and global trade policy.

First, the transatlantic political community should avoid the trap of seeking to re-assign unsolved environmental problems to the World Trade Organization (WTO) based on the supposition that the WTO can fix them. Over the past decade, the WTO has suffered from so many dysfunctions that no one could rationally expect the WTO to be the first-best regime to solve any environmental problem.

Second, transatlantic economic and political cooperation between the United States (US) and the European Union (EU) was marginalized from 2016-2021 and began to be revived in mid-2021 in the Presidency of Joe Biden. This suboptimal pursuit of a stronger US-EU relationship was unfortunate because there has always been untapped potential for deeper harmonization on transatlantic challenges (Atlantic Council 2002). In addition, ambitious coordination among major transatlantic economies can promote more constructive outcomes within multilateral regimes. Among the key regimes relevant for this Policy Brief are the United Nations (UN) Environment Programme (UNEP), the UN Framework Convention on Climate Change (UNFCCC), the World Health Organization (WHO), and the WTO.

Environmental Mission Creep at the WTO

The WTO is the central institution of world trade governance with distinct dual legislative and judicial functions. The legislative function is to use multilateral negotiations to lower trade barriers and to establish rules to govern trade and domestic policies affecting imports and exports. The WTO's judicial function is to settle disputes between WTO member governments based on the rule of WTO law. Both of the legislative and judicial functions will regularly encounter environmental issues (Charnovitz 1993).

The WTO also has important executive functions carried out by the Director-General (DG) who is elected by the WTO's member governments. For six months in 2020-21, the WTO lacked a Director-General. But that gap was remedied in March 2021 when Ngozi Okonjo-Iweala began a four-year term as DG. Her distinguished career made her an exceptional candidate for the DG post and during her first nine months, she has helped restore the WTO's reputation and breathed new life into ongoing negotiations in the runup to the forthcoming WTO Ministerial Conference.

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Currently, both of the WTO's dual functions, the legislative and the judicial, are failing to operate effectively (Ungphakorn & Wolfe 2021). The multilateral negotiations launched by the WTO in 2001 (called the Doha Round) sputtered into stalemate several years ago. Then in 2019, the membership in the seven-judge WTO Appellate Body fell below the minimum number needed to carry out any further adjudication. The vacant seats in the tribunal occurred because the Donald Trump Administration exercised what was, in effect, a US veto over any reappointments of the seven appellators whose fixed terms had expired. This US veto is still being championed by the Biden Administration.

The 2001 Doha Round agenda contains several environmental items the most important of which are: (1) improving market access for environmental goods and services (Wolff 2020c) and (2) clarifying and improving WTO rules on fisheries subsidies. The WTO has devoted 20 years to these negotiations which so far have failed to produce any agreements. Draft language on fisheries subsidies has been circulated and may be finalized in the 12th WTO Ministerial (MC12) Conference (WTO 2021a). While I hope that this WTO subsidies negotiation is successful, such disciplines are just one element of a successful program for regenerative fisheries stocks.

In recent years, proposals have emerged, both from within and outside the WTO, to expand the WTO's environmental agenda beyond the two issues above to include: (3) disciplining fossil fuel subsidies (Wolff 2020a), (4) taxing the GHG embedded content of goods traded internationally (Wolff 2021; Xu et al 2021), and (5) reducing the use of plastics and regulating international trade in plastics (Birbeck 2020; Wolff 2020b). Such proposals have both positive and negative features. On the positive side, everyone agrees that undertaking effective global action on climate change, fisheries, and plastics are all worthy goals for global governance. On the negative side, one can doubt realistically that the WTO will be able to make a material contribution.

In my view, there is little evidence supporting the optimistic view that reassigning new environmental topics to the WTO will succeed. More likely, such allocation of jurisdiction to the WTO would prove counterproductive. Given the WTO's disappointing track record over the past 26 years,³ all the evidence points to the sad conclusion that the WTO should not be perceived as an institution capable of solving important *non-trade* problems. Indeed, the question of whether the WTO is capable of solving *trade* problems remains to be answered. But the trade problems of unilateralism, protectionism, isolationism, and discrimination (UPID) are problems that notionally are amenable to international control. And such control will occur, if at all, only through the WTO, its rules, and its dispute settlement system. In my view, the WTO should stick to its constitutional mission to effectuate the goals of an open and rule-based trading system.

Letting the WTO do its own job is not only a good idea for the world economy, but is also a good idea for the global environment. That's because environmental mission creep for the WTO will cause serious indirect damage to the productivity of environmental regimes that have the jurisdictional and technical competence to formulate solutions. An environmental regime gains

³ The disappointing track record I refer to is that while the pre-WTO General Agreement on Tariffs and Trade (GATT) carried out three successful multilateral trade liberalization rounds, including the Uruguay Round that founded the WTO, the WTO itself has not concluded any multilateral trade liberalization rounds. But the WTO has had some legislative achievements including the Information Technology Agreement (1996), the Telecommunications Reference Paper (1996), the 2005 amendment to the Agreement on Trade-Related Intellectual Property Rights (TRIPS), the Trade Facilitation Agreement (2013), and 36 Accession agreements admitting new Member governments into the WTO.

legitimacy from the effectiveness of its normative rulemaking. Over decades, we have seen that expert environmental regimes can formulate and effectuate norms that do work (e.g., the Vienna Convention on Ozone). Given that contrast in results, why relocate important environmental problems to a non-performing regime with no technical expertise to solve those problems?

Thus, for issues such as 2, 3, 4 and 5 above, the optimal place to solve an environmental problem is in the specific environment regime set up to address that particular problem. Thus, for fisheries, the solutions should be sought in the regional or global regimes that address fisheries management and illegal, unreported or unregulated (IUU) fishing. Oversubsidization is surely one piece of the challenge of addressing government failure, but it is only one part of the interconnected market and government failures in poor fisheries conservation. For climate change, the optimal solutions should come from the UNFCCC. Ideally, the regulatory approach of the Paris Climate Agreement would have included some normative rule to allocate responsibility for GHG emissions occurring from imported products (Charnovitz 2020). Unfortunately, however, traded products is one of many lacunae in the Paris Agreement. For plastics, the ideal venue for solutions would be the transborder regimes for waste (for example the Basel Convention). While it may be true that the existing global regimes governing plastics are inadequate, the solution for that is to reform those regimes, not to outsource to the WTO.

In addition to this basic issue of jurisdiction, there are two additional reasons to prefer the environment regimes over the WTO as a venue for solving environmental problems. First, the DNA of environment regimes is transparency and stakeholder participation, two important features that are almost completely absent in so called government-Member-driven WTO. Second, giving the WTO new jobs to do will reduce the likelihood that the WTO will be successful in its real job which is promoting trade liberalization and managing trade relations. These are important objectives for all countries, and especially for developing countries. Not only is the WTO's job important, but the WTO is the only international agency that can do the WTO's work. In the runup to WTO MC12, the WTO already teeters on the precipice of failure. Given that predicament, why should anyone seek to give the WTO a broader mandate on which to fail, or hand the WTO new excuses for failure?

In summary, the well-intentioned proposals for WTO disintermediation will likely fail both ecologically and economically.

Improving the Transatlantic Trade and Environment Agenda

Transatlantic policy cooperation has an untapped potential for promoting positive outcomes on not only bilateral and regional issues, but also multilateral ones. By transatlantic, I mean broad cooperation among at least the US, Canada, the United Kingdom (UK), and the EU. By policy cooperation, I mean all policies and especially policies relating to international trade, the environment, and public health.

Transatlantic cooperation on both environmental and trade issues should be stepped up. Many problems of market failure or government failure are amenable to solutions adopted in transatlantic law and its existing or new transatlantic institutions. The transatlantic arena has seen successes in EU-Canada Comprehensive Economic and Trade Agreement (CETA) and in the North American Free Trade Agreement/US-Mexico-Canada Agreement (USMCA). CETA and USMCA feature many cutting-edge norms, but these bodies of Atlantic law could be improved, for example, by

incorporating lessons from Pacific regional practice in the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Besides the potential for smarter transgovernmentalism in the regional communities of the Atlantic, there is also a possibility that transatlantic countries could form a new coalition for progress within the leading multilateral regimes that have the greatest impact on the transatlantic "ecolonomy".⁴ As noted above, the WTO has its work cut out for managing UPID national trade policies. All four of these anti-global policies were front and center in the US during the Trump Administration. Although many observers had hoped that the Biden Administration would cast aside the stupid policies of the Trump Administration, so far, in my view, many of the UPID pathologies exhibited by Trump have not yet been exorcised by the US.

In late October, the US and EU agreed that the unilateral, protectionist steel tariffs that the US was imposing on Europe would be replaced by a tariff rate quota (Beattie 2021) that would still be protectionist (in keeping a standby tariff) and discriminatory (in favoring European steel over UK steel). The US and the EU also appear to be cooperating in a new tariffs-for-green-steel initiative which is in tension with the WTO's rule-based system.

The apparent interest by the US and the EU for broader coordination opens the door to new regional or bilateral deals to address longtime frictions on issues such as food safety, customs enforcement, investment barriers, services regulation, competition policy, pandemic control, and the digital economy. Such arrangements should be pursued using best practices for multistakeholder participation rather than just leaving the thinking to bureaucrats and politicians (Bignami & Charnovitz 2001; European Commission 2021).

Building on thicker regional cooperation on regional issues, there is also space for stronger alliances among the US, the EU, the UK, and Canada to present common positions at key multilateral regimes such as the WTO, the UNFCCC, UNEP, and the WHO. While each of these regimes has its unique method for negotiations and decisionmaking, the upside potential from the role of joint initiatives could be high and could help boost the effectiveness of all the regimes. To be sure, for each regime there are many other important power centers beyond transatlantic governments (e.g., China, India, Japan) and so one should not overestimate the challenges of success. Still, if the transatlantic economies could agree on joint constructive initiatives, then better results from the WTO, the Paris Agreement, UNEP, the WHO might be enabled 10-20 years from now as compared to intergovernmental business-as-usual scenarios. One new challenge the WTO could take on is writing rules against subsidies and investment barriers affecting forestry products (especially wood).

Conclusion

In summary, this Policy Brief seeks to inject two ideas into the debate: First, retrofitting the WTO into becoming an environmental agency is a wrong turn for both trade and environment. Second, enhancing transatlantic political and economic coordination is potentially very fruitful and long overdue.

⁴ For a discussion of the neologism "ecolonomy," see Charnovitz (1996).

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