



Level 3, Suite 3B, 110 Kippax St
Surry Hills, NSW, 2010
Phone: 02 9212 7242
Fax: 02 9211 1407
Email: campaign@aftinet.org.au
ACN 097 603 131
ABN 83 659 681 462
www.aftinet.org.au

The trade strings that bind Poznan

Adam Wolfenden

As ministers and negotiators meet in Poland to discuss a global response to climate change, the shadow of market-based trade policy hangs over their head.

The collapse of the World Trade Organisation (WTO) talks in July this year was heralded by many commentators and politicians as the death knell for climate change negotiations. If governments couldn't agree on negotiations that would "benefit" them, then what chance would discussions that involved extra "costs" stand?

For the majority of the world, rejecting a terrible trade deal was a no-brainer. In the midst of a food crisis, India and China were being asked to accept a trade agreement that would undermine the ability of countries to protect their food security. Not surprisingly this didn't go down well with India, China, or more than 100 other WTO members from the global South.

The difference between the global trade talks and global climate talks is the beneficiaries. The trade talks were rejected by the vast majority of the WTO because it wasn't in their interest; it was only the rich countries that stood to gain. An agreement to prevent the worst impacts of climate change is, ultimately, in everyone's interest. You can't trade crops if you can no longer grow them.

Global trade is playing a key role in exacerbating the impacts of climate change. Any conclusion of a WTO agreement would see more goods travelling the world on the high seas. John Vidal revealed earlier this year that the global shipping of goods accounts for about 4.5 per cent of global emissions, a figure not only excluded in the Kyoto Protocol, but three times higher than the Intergovernmental Panel on Climate Change (IPCC) predicted.

Not only does the international trade in goods produce emissions through their production and transport, they're also exporting the costs of climate change. The demand for consumption in rich countries of products made in the global South is assigning more and more emissions to the countries of production. Not only do these goods-producing countries have to deal with the volatility of an export based economy, but they also have to pay the environmental costs of consumption habits of the global North.

While international trade may impact climate change by its nature, it's trade law that appears to have the biggest potential impact on the climate. Commitments in trade agreements such as the WTO, come with many legally-binding strings attached. The premise of this is that countries make commitments to open up trade, and unless they're bound to those, investors may not have the certainty needed to invest. This means that diverting from previous commitments or introducing new regulations to

protect public interests may in fact be challenged by another government at an international dispute panel.

The WTO currently has exception clauses for governments to take actions that violate WTO law if they are “necessary to protect human, animal or plant life or health” or “relating to the conservation of exhaustible natural resources”. While this sounds like a wonderfully broad approach unfortunately there is an elaborate set of requirements to be met in order to qualify for the exception. Of the 11 times this general exception has been used to defend a domestic law, it’s only been upheld twice. Not the sort of odds I’d want to count on in taking climate change action that might breach WTO law.

So as countries begin to refine and develop their responses to the climate crisis, many are being influenced by the advice coming from their trade departments.

Australia’s proposed Carbon Pollution Reduction Scheme is a good example. The controversy over the free allocation of permits to heavy trade-exposed polluters is a simple solution to a trade unfriendly question. Free permits mean that our polluters don’t lose their competitive advantage from having greater costs of production. It also provides an incentive for those producers to stay in the country as opposed to chasing lower production costs by heading somewhere that doesn’t have such a scheme.

The other option would be to make importers buy into the scheme, or apply a border tax, on those sectors that don’t have a similar emissions scheme. This would retain the competitive advantage of domestic industries and not provide a disincentive to keep producing in Australia. The problem with either of these approaches however, is that they leave themselves open to challenge from other governments. Under WTO law, this could be seen as imposing higher costs or quantity restriction on foreign products than are applied to domestically made goods. The US has already referred to possible WTO violations to pressure the EU to drop provisions in its scheme that would require importers to buy into its scheme.

In this case it’s easier to hand out free permits than it is to defend a law “relating to the conservation of exhaustible natural resources”, such as the atmosphere.

This is not the only example. Attempts to get existing industries to become greener have been proposed with a range of financial benefits. This would normally come in the form of subsidies or other similar incentives. A now expired WTO clause in the subsidies agreement allowed for a one-off support for companies to adapt to changes in environmental regulation. This clause would have covered some adaptation measures. Before the election, Rudd pledged \$75 million over four years for manufacturers to adapt to emissions reducing technologies. If this is seen to impact on import or export market share, we can expect it to be heard before the WTO disputes panel.

The WTO is pushing hard for the response to climate change to be one that sees the increased liberalisation of trade in environmental goods and services. Indeed there was a big push for expanded trade in these “green” products on the table at the July WTO talks. In their logic if we get rid of the trade barriers on these then they’ll be able to run free, cleaning and greening the world over. This is problematic in the way

that it reduces policy space for governments to encourage increasingly greener technologies with tax policy. It also puts way too much faith in the market ideology that has delivered us into this mess. Let the free market do its thing? I think I heard the same argument in the financial sector ...

If governments are serious about acting on climate change then they need to put the market theories behind them. Priority needs to be given to action taken in the interests of the climate, not held hostage to business interests through trade policy and bodies like the WTO. As we head towards a new climate framework, there is a crucial need to have built into it a legal priority over trade law.