

Can the WTO be a model for global carbon market governance? Potential and Limits

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Outline

- Why the World Trade Organisation (WTO) as a Model ?
 - Similarities between Trade of Goods and Trade of Carbon
- The WTO
- Essential Features of a “Linking Agreement”
- Potential and Limits of the WTO Model
- Conclusions

Why the WTO as a Model ?

- Evolution of trade in goods ‘similar’ to pathways to a Global Carbon Market:
 - 1st phase: Ad-hoc arrangements for trade between nations
 - 2nd phase: Plurilateral trade agreements
 - 3rd phase: Liberalization of international trade of goods under a multilateral agreement (GATT 1948)
 - 4th phase: Comprehensive liberalization regime for international trade in goods, services and trade related aspects of intellectual property rights under an overarching institutional framework (WTO)

The WTO

- ‘Package’ of agreements:
 - Agreement establishing the World Trade Organisation
 - Agreements on trade in goods (incl. GATT), services (GATS) and trade-related aspects of intellectual property (TRIPS)
- Goal:
 - Raise standards of living, expansion of trade of goods and services in accordance with sustainable development and the protection of the environment

Institutional framework

- International organisation with legal personality
- 153 Members
- Accession of new Members:
 - Open to any State or customs territory
 - Observer status of potential new Members before joining the organisation
 - Submission of a request for accesssion
 - Review of trade policy of the future Member
 - Approval by Members

Decision-making

- ‘Member-driven’ organisation:
 - Decisions taken in principle by **consensus**
- Modus operandi:
 - Initially forum for tariff negotiations based on a process of claims and responses
 - Trade rounds based on the logic of multilateralising tariff reductions under the most favoured nation principle (MFN)
 - Increasingly emphasis on non-tariff resulting from domestic law
- The Director-General and the Secretariat
 - Supportive role, no decision-making powers

Dispute Settlement

- Quasi-judicial two-tier dispute settlement with reversed consent:
 - Preliminary consultations and informal settlement of disputes
 - Right of a Member to initiate a dispute settlement case against another Member
 - Locus standi based on the impairment of benefits accruing to a Member under the WTO
 - Grant of retaliatory actions

OECD-wide Carbon Market

- European Commission:
 - Creation of a linked OECD carbon market by 2015
 - Creation of a carbon market including all major emerging economies by 2020

Essential Features of a « Linking Agreement »

- Determination of essential design features of linked schemes, i.e.:
 - Outline minimum standards for monitoring, reporting and verification
 - Guarantee an external review of the scheme
- Provisions guaranteeing the environmental effectiveness over time

Essential features of a « Linking agreement »

- Provisions setting out the conditions for the accession of new Parties
- A procedure for amendments of the Agreement
- A procedure dealing with a serious breach of the Agreement by a Party

The WTO model

- Decision-making based on consensus
 - Pro:
 - Gives a veto right to each Member in case of amendments of the agreement
 - Contra:
 - Ineffective for oversight procedures
 - Ineffective for tackling urgent problems

The WTO model

- A Director-General and Secretariat without decision-making powers
 - Pro:
 - Institutional memory
 - Coordination of meetings
 - Collection and circulation of information
 - General logistical functions
 - Contra:
 - Has no oversight function
 - Has no right to submit motions on its own

The WTO model

- The Accession Procedure:
 - Pro:
 - Observer status allows potential countries interested in joining the system to get acquainted with its functioning
 - Review of new schemes by existing Parties
 - Approval of any new scheme by existing Parties
 - Contra:
 - Lengthy process

The WTO model

- The dispute settlement:
 - Pro:
 - High compliance
 - Preliminary consultations and informal dispute settlement
 - Contra:
 - A dispute settlement system based on the impairment of benefits accruing to its Members is inadequate
 - The grant of retaliatory action is problematic

Conclusions

- Principal limits of the WTO-model:
 - A purely Member ‘driven’, consensus-based system might lead to paralysis
 - The dispute settlement system based on the impairment of benefits and retaliatory action is inadequate
 - No procedure dealing with a serious breach of the Agreement by a Party

End

Work in progress....

Thank you for your attention!