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Trade and Climate Change:
Harnessing European Multilateralism for Africa's Development

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Abstract

Climate and trade issues lie at the intersection of two of the world's most contested multilateral negotiations – the United Nations Framework Convention on Climate Change and the World Trade Organisation's Doha Round. With their complex inter-linkages, there is still no clarity about the rules governing trade and and climate change. Within the context of shifting global competitiveness from North to South and West to East, African countries are concerned about the rise of "green protectionism" and the possibility of unilateral punitive trade measures to support domestic climate action in Europe. This paper explores some of these concerns by focusing on the potential trade impact of EU climate policies on Africa, specifically border tax adjustments on commodities and carbon standards and labelling for consumer goods. The paper provides tentative ideas on how European multilateralism in the UNFCCC could address Africa's concerns, promote transparency, confidence and trust among the parties, and support the continent's development.

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Introduction

Climate and trade issues lie at the intersection of two of the world's most contested multilateral negotiations – the United Nations Framework Convention on Climate Change (UNFCCC) and the World Trade Organisation (WTO)'s Doha Round, in which both Africa and the European Union (EU-27) have been vociferous participants. Although the climate and trade agendas have evolved independently of each other through the years, they share the same objective of sustainable development. Given the complex intersections of trade and climate change (see UNEP/WTO 2009) and their real impact on societies, it is imperative to establish mutual coherence between these two global regimes, particularly as they apply to Africa, the world's poorest region.

Just as the Preamble to the WTO Agreement recognises the importance of seeking to "protect and preserve the environment" (WTO 1995), so Article 3.5 of the UNFCCC states that: "measures taken to combat climate change… should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade" (UN 1992).[1] The Doha Ministerial Declaration (DMD), now over a decade old, states specifically that "the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and promotion of sustainable development can and must be mutually supportive" (WTO 2001). Although the Doha Round has been effectively deadlocked since July 2008, its stated aims are certain to inform any revival of the Round, or any future global trade round.

However, African negotiators in the UNFCCC have raised concerns about the likely proliferation of climate measures that will adversely impact on the continent's production and trade (AGN 2011b). As African countries seek to industrialise and diversify their commodity-dependent economies to capture greater gains from global trade[2], they confront the spectre of "green protectionism" in their main trading partners in the North. These climate measures range from emission trading schemes and border tax adjustments, to subsidies and non-tariff barriers (NTBs), both public and private.[3] For Africa, it is important to situate the rise of "green protectionism" in the appropriate structural context, namely the relative shift in global growth and competitiveness from North to South and

[1] This language draws from the text of the chapeau of Article XX of the General Agreement on Tariffs and Trade (GATT).
[2] The gains of global trade growth, measured by trade in sophisticated, high-value and high technology content, still accrues largely to the North.
[3] For example, technical regulations, standards, eco-labeling schemes and carbon footprints for African products exported abroad.

West to East. While the post-2008 global crisis and recession have left most developed regions with high levels of debt and weakened competitiveness, the rising economies of the South have emerged stronger from the crisis with stable and sustainable debt levels, and increased competitive positions.

This steady, inexorable rise in the economic strength of emerging economies has elicited a protectionist response from the major industrialised countries that experience intensified competition and a gradual loss of global market share. The strength of competition from Brazil in agriculture, India in services and China in manufacturing (ranging from high-tech to basic products) poses unprecedented challenges to the traditional leaders of the world economy, including the EU. As competition intensifies, protectionist sentiment in major developed countries has become more evident across multiple multilateral engagements. In the WTO's Doha Round, developed countries, led by the United States (US), have demanded further market opening from advanced developing countries in the areas of industrial tariffs and services, whilst refusing to make reciprocal concessions in agriculture (Narlikar and Vickers 2010). Similar dynamics are at play in the climate change negotiations, where developed countries insist that emerging economies carry greater responsibilities for mitigation. These demands have steadily eroded the developmental principles underpinning the WTO and UNFCCC negotiations.[4]

The UNFCCC negotiations appear to offer two interrelated ways for industrialised economies, led by the US and EU, to reclaim and/or preserve their leadership of the global economy. First, measures to address climate change may be designed in a protectionist manner, thereby transferring the burden of adjustment onto poorer countries, including those in Africa. Second, climate change measures may be designed to provide a new basis for developed countries to retain their competitive leadership in the transition to the green economy. Within the context of shifting global competitiveness from North to South, there is the risk that these regulatory and policy measures to mitigate climate change – so-called "response measures" in the UNFCCC – may be implemented unilaterally or in a protectionist manner by industrialised countries, thereby distorting production and trade in the South. Developing countries, specifically ones located in Africa, may be adversely affected and trade constrained; unable to provide comparable support or subsidies to their industries; unable to meet new standards or introduce their own; and with little real access to technology and finance.

[4] The Doha Ministerial Declaration had promised to place the needs and interests of developing countries at the heart of the Doha Work Programme. It was also agreed that the negotiations would be framed by the principles of Special and Differential Treatment (SDT) and Less-Than-Full-Reciprocity in terms of trade liberalisation obligations for developing countries, to provide policy space for development. In the UNFCCC, developing country obligations are framed by the principles of Equity and Common But Differentiated Responsibilities and Respective Capabilities.

This paper explores the multilateral dimensions of the trade and climate regimes from the perspective of African countries in their relationship with Europe. It aims to identify some of the potential challenges posed by EU climate policies for the continent's economic diversification and trade growth, especially Africa's exports of processed value-added products to Europe. The paper proceeds in three steps. The first section explores the positions of Africa and Europe in relation to the multiateral nexus of trade and climate change. The second section briefly discusses the potential trade impact of EU climate policies on Africa. Two case studies are offered: the role of border taxes in relation to commodities and carbon standards and labelling to regulate consumer products, especially food. The paper concludes with key observations on the way forward, to ensure that European multilateralism in the trade and climate regimes supports Africa's development.

Africa, the EU and the Multilateral Nexus of Trade and Climate Change

Africa and the EU both place considerable store of faith in the benefits of a mutlilateral response to planetary warming and its related challenges. Although Africa has contributed the least to the increasing concentration of greenhouse gases (GHG) in the atmosphere, the continent is most vulnerable to the impacts of climate change. Africa also has the least capacity to adapt, as has been documented and supported by scientific findings, including those of the Intergovernmental Panel on Climate Change (IPCC) and other reports. Without effective climate action, most parts of the African continent are expected to experience reduced average annual rainfall and increased aridity and droughts. Present and future impacts of climate change are clearly hampering Africa's efforts to attain its development goals, including the Millennium Development Goals (MDGs). Hence African climate negotiatiors have stressed that any climate outcome in the UNFCCC should respect fully the principles of Equity and Common But Differentiated Responsibilities and Respective Capabilities.

The EU has long been a driving force in international negotiations that led to agreement on the two United Nations climate treaties, the UNFCCC in 1992 and the Kyoto Protocol in 1997. The Kyoto Protocol requires the 15 countries that were EU members at the time (EU-15) to reduce their collective emissions in the 2008-2012 period to 8% below 1990 levels. In 2007, EU leaders endorsed an integrated approach to climate and energy policy and committed themselves to transforming Europe into a highly energy-efficient, low carbon economy. They made a unilateral commitment to cut emissions by 20% of 1990 levels by 2020 through legislation. This includes the launch in 2005 of an Emissions Trading Scheme (ETS), which has become the cornerstone of a market-based approach to combating climate change and reducing industrial GHG emissions in Europe. The EU has since also offered to increase its emissions reduction to 30% by 2020,

provided that other developed country emitters commit themselves to comparable emission reductions and developing countries contribute adequately according to their responsibilities and respective capabilities under a future global climate agreement.

There are still some areas of divergence between Africa and Europe in the climate change regime, including how best to treat the issue of trade. Trenchant disagreement over this matter has elicited strict "distributive bargaining" from both developed and developing countries in the negotiations,[5] providing little comfort to Africa. There are also noteworthy differences within the main developing country coalition within the UNFCCC, the Group of 77 (G77) and China, on how to address trade and trade-related issues within the Convention. Hence it is not surprising that trade per se is not formally part of the UNFCCC negotiations (although there is some discussion on sectoral approaches for agriculture and aviation and maritime bunker fuels).[6] Nor are the trade and climate change linkages being addressed specifically in the WTO.[7] Given this lacunae of rules,[8] African countries are legitimately concerned about the possible use of punitive trade measures to support domestic climate action in Europe, especially in the wake of the recent financial crisis and competitiveness pressures from emerging economies. The European Commission (EC) admits that:

> Since the EU took its historic decisions on combating climate change in 2008, the economic crisis has brought some fundamental changes to the political and economic landscape of the EU's climate policy. The pressure on the EU economy is intense. The EU, however, remains deeply committed to action on climate change (EC 2010b: 13).

With stringent opposition from the developed countries, including the EU, to any direct trade discussion in the climate negotiations, developing countries have had to raise indirectly their concerns in the context of response measures; that is, where measures and actions to mitigate climate change may imply changes in conditions for trade.

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[5] Negotiation strategies vary across a spectrum, ranging from distributive (i.e. value-claiming) to integrative (i.e. value-creating). Distributive strategies include tactics such as refusing to make any concessions, threatening to hold others' issues hostage, issuing threats and penalties or worsening the other party's best alternative to negotiated agreement (BATNA). Integrative strategies comprise attempts to widen the issue space and explore common solutions, i.e. strategies designed to expand rather than split the pie (Odell 2000).

[6] Ahead of the 17th Conference of the Parties to the UNFCCC (COP17) and 7th Conference of the Parties to the Kyoto Protocol (CMP7) in South Africa in December 2011, India had proposed that unilateral trade measures (UTMs) be included on the conference agenda.

[7] The issue of climate change per se is not part of the WTO's ongoing work programme and there are no WTO rules specific to climate change. Moreover, the WTO has no specific mandate to discuss or negotiate the linkages between trade and climate change. There had been an expectation that trade-related environmental issues would be discussed in the WTO, but the Doha Round negotiations have stalled and these issues will not be addressed there. The WTO Secretariat has stated that the relationship between international trade, the WTO and climate change would be best defined by a consensual international accord on climate change.

[8] Only Articles XX(b) and (g) of the GATT allow exceptions to the general rule where measures are necessary to protect human, animal or plant life or health, or when the issues relate to conservation of exhaustible natural resources. In all cases though, WTO members must avoid unjustifiable or arbitrary discrimination among countries and must not use these exceptions as disguised restrictions on trade.

Under the UNFCCC, it is upheld that: “Parties shall take into full consideration, in the implementation of the commitments of the Convention, the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures.” Furthermore, the Kyoto Protocol states that Parties should “strive to implement policies and measures... in such as way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties.” The issue of response measures was originally introduced by Saudi Arabia and other oil-producing countries, which remain concerned about potential lost revenues and the need to diversify economically as the world transitions to a less carbon-intensive economic path. But this has led to a narrow conception of the challenge. Response measures by developed countries may indeed impact on all developing countries, not only countries dependent on income generated from the production, processing and export of fossil fuels.

Within the UNFCCC negotiations, the African Group has supported the establishment of a new and permanent forum as a means for Parties to report and evaluate impacts and consequences of policies and measures taken by developed countries in response to climate change (including trade-related measures).[9] This would offer a common space where Parties may provide information on their specific needs and concerns relating to such consequences, and identify ways to minimise the negative consequences of the policies and measures adopted by developed countries on developing countries (AGN 2011a: 16). While the EU has made a substantial contribution to conceptualising the modalities and work programme for a possible forum on response measures, Brussels has remained lukewarm towards the idea of an additional structure under the UNFCCC and prefers to consolidate the current multiple discussions on response measures under a single work stream.[10]

[9] The Cancun Agreement provided for a Forum on the Impact of the Implementation of Response Measures and called on Parties to elaborate their views on the modalities for the operationalisation of the forum and the work programme on response measures (Decision 1/CP.16, paragraph 93).

[10] The economic, social and environmental consequences of response measures are discussed in both the UNFCCC (i.e. the Convention’s subsidiary bodies as well as the Ad-hoc Working Group on Long-Term Cooperative Action) and the Kyoto Protocol. Many developing countries oppose consolidation of the discussions for political purposes, in order to maintain the distinction between the two tracks, i.e. the Convention and the Protocol.

The Potential Trade Impact of EU Climate Policies

Through a range of "trade for development" partnerships, including with the EU-27 as the continent's largest trading partner (followed by the growing trade shares of China and India),[11] the states of Africa aim broadly to improve the terms of the continent's integration into the global economy, promote sustainable development and reduce poverty. The EU aims to support these objectives through the Cotonou Partnership Agreement, currently being replaced by reciprocal Economic Partnership Agreements, and other preferential trade arrangements, such as Everything-But-Arms (EBA) for least-developed countries (LDCs). However, concerns have been raised within and without the continent about the mercantilist overtones – arguably even "aggressive multilateralism" (Fioramonti 2011) – of the Interim Economic Partnership Agreements (EPAs) (see Oxfam 2006; African Union 2007; Bilal and Stevens 2009).

The EC sees a clear role for trade policies as a mechanism to address climate change. The Commisison notes that: "Trade policy should continue to support green growth and climate change objectives, in particular reduced carbon emissions" (EC 2010a: 8). More specifically in multilateral and bilateral negotiations: "Trade policy's support for action against climate change should be pursued through the elimination of barriers to trade in environmental goods and services" (EC 2010a: 8). The reduction of these tariff and non-tariff barriers could indeed facilitate access to cheaper climate-friendly goods and services, contributing to climate chanage abatement (ICTSD, no date). However, this effort has proved challenging. WTO members have yet to agree on a definition of "climate-friendly" that both contributes to climate policy objectives and generates a balanced distribution of trade benefits among members. Two particular areas of controversy involve "dual use" technologies that may be used to reduce emissions as well as to meet other consumer needs, and agricultural products, which became mired in a very contentious part of the embattled Doha negotiations.

Moreover, many developing countries aim to use a sequenced transition to the green economy to stimulate local industrialisation, attract investment in manufacturing and solicit technology transfer. Lesotho, an African LDC with few development opportunities, is a case in point. Tariff protection was an important consideration in the decision of electronics company Philips to establish a joint venture in Lesotho to produce and supply Southern Africa with energy saving compact fluorescent

[11] During 2010, the EU-27 represented 34% of Africa's overall trade. The EU was followed by China (12.5%), the US (11.4%), India (5%) and Japan (2.5%). Available online: http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc_147190.pdf, accessed 10 January 2012.

lamp light bulbs.[12] The liberalisation of environmental goods outside of an industrial policy framework would jeopardise such green opportunities.

African countries are also concerned about the possible use of punitive trade measures to support domestic climate action in Europe. The potential for unilateral restrictions on developing countries' exports of commodities through border carbon taxes and consumer products, especially food, through carbon standards and labelling are briefly discussed below.

The EU Emissions Trading System and Border Taxes

Introduced in 2005 and based on the "cap and trade" principle,[13] the EU's ETS is the world's largest and most advanced international scheme for the trading of GHG emission allowances, covering 11,000 industrial installations and power plants across the EU-27, including Iceland, Liechtenstein and Norway. The sectors covered by the ETS include power and heat generation, iron and steel, oil refining, pulp and paper, cement and other building materials industries. The first trading period of the EU ETS ended in 2007, lasting three years. The second trading period runs from 2008 to 2012 and thereby overlaps with the commitment period of the Kyoto Protocol. The EU is currently preparing the ETS for its third phase, to be implemented from 2013.[14]

Lobby groups in Europe have criticised the ETS for threatening the competitiveness of European industry and generating "carbon leakage". As the EC notes:

> This concerns the risk that in the absence of sufficient global effort, domestic action leads to a shift in market share towards less efficient installations elsewhere, thereby resulting in increased emissions globally. There are, of course, many reasons for competitive advantages and disadvantages other than the costs of carbon, but the more competitor countries sign up to comparable levels of effort to cut emissions, the less the risk of carbon leakage (EC 2010b: 11).

More significantly, carbon leakage may reduce the overall environmental efficiency of a climate policy, since it may cause an increase in GHG emissions in non-European countries.

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[12] The plant, which opened in March 2009, is a joint venture between Philips, the Central Energy Fund and Karebo Systems, and was developed as a result of the United Nations Conference on Trade and Developments mission to seek new business activities to fuel economic growth in the region. This was further supported by Philips' ongoing investment into the Southern African region and the company's drive to increase the uptake of energy-efficient light bulbs (Engineering News online 2010).

[13] This means there is a "cap", or limit, on the total amount of certain greenhouse gases that can be emitted by the factories, power plants and other installations in the system. Within this cap, companies receive emission allowances which they can sell to or buy from one another as needed. The limit on the total number of allowances available ensures that they have a value.

[14] The ETS provides for the free allocation of emissions allowances to sectors that are exposed to a signicant risk of carbon leakage, in order to slowly introduce the burden imposed by the system.

Carbon leakage and competitiveness distortions are the main motivations for border tax proposals in the US[15] and EU, i.e. a trade measure designed to level the playing field between domestic producers facing costly climate policy and foreign producers with little or no constraint on their GHG emissions. Although the EC recommended against the use of border taxes in the third phase of the EU ETS from 2013 onwards, this trade measure remains an option going forward. In particular, France and Italy are pushing strongly for the adoption of border taxes within the Community (Cosbey and Wooders 2011).

As the largest and most industrialised economy in the continent, South Africa is especially vulnerable to the impact of a border tax, with potential adverse repercussions given the country's high ratio of trade in goods and services to gross domestic product (GDP) at approximately 60%. South Africa is one of the world's most carbon-intensive economies and a bigger emitter of carbon dioxide (CO_2) than all other Sub-Saharan African countries combined. Around 40% of South Africa's emissions are due to trade (i.e. the export of carbon-intensive goods) rather than domestic consumption (du Plooy and Jooste 2011). Nigeria significantly trails South Africa as the continent's second highest emitter.

Of all the African countries, South Africa and Egypt are the most vulnerable to EU proposals for a border tax on embodied carbon. By one estimate, 28.1% of South Africa's exports to the EU may attract taxation under such a scheme, which is significant since the EU represents approximately 30% of South Africa's overall exports. The sensitive sectors most at risk – and which coincide with the country's industrial development priorities (see DTI 2010) – are mining and resource-based products (e.g. gold, iron, steel, platinum and aluminium) as well as manufacturing (e.g. paper and chemicals).[16] For Egypt the stakes are much higher, with an estimated 31.2% (US $3,122 million) of taxable exports under a possible future border scheme. Like South Africa, the EU is an important export market for Egypt, absorbing 32% of that country's exports (ICTSD 2011). Both countries also enjoy preferential access to the EU market under the Generalised System of Preferences (GSP) and bilateral Free Trade Agreements (FTAs). A trade barrier resulting from a carbon cost imposed by a border tax will therefore be relatively higher for South African and Egyptian products than for products from countries not enjoying similar FTA-preferences (ICTSD 2011).

The aspirations of smaller African countries to benefit more from the commodities boom and improved terms of trade by processing their own minerals and commodities may also place the

[15] Border tax adjustments have featured in every climate bill to come before the US Congress in the last three years and feature as part of the America Clean Energy and Security Act (ACESA), also known as the Waxman-Markey Bill, passed in 2009 (Cosbey and Wooders 2011).
[16] By another estimate, the potential combined cost of EU/US border tax adjustments for South African exporters could rise to over US$720 million per annum, based on current exports (Cosbey and Wooders 2011).

exports of these countries at the risk of border taxation (mining and minerals processing are capital-intensive industries that utilise considerable amounts of energy). Even if the imposed carbon cost is low, the administrative costs can be large and thus affect these countries' exports (Persson 2010). It may thus be prudent to exempt all LDCs from any future European border tax scheme.

From 1 January 2012, the EU has also extended the ETS to unilaterally include aviation, which is opposed by many developed and developing countries, including those of Africa. There are serious concerns about the cost-raising effect of the ETS, not only for long-haul tourism to Africa, which is a dynamic growth sector with considerable poverty reduction potential, but also international trade. Perishables exported to EU countries will suffer from additional transport charges levied through this scheme. It is still unclear how these environmental levies will be used to finance environmental mitigation or adaptation, with poorer African countries subsidising domestic climate action in Europe. The Africa Airline Association has warned about a damaging trade war as countries around the world introduce similar schemes to counter the EU's ETS (*The Standard*, 15 January 2012). In February 2012, four African countries, Cameroon, Seychelles, South Africa and Uganda, joined nineteen other countries (including the major developed economies) in opposing the inclusion of non-EU airlines into the EU ETS. These countries have proposed a range of counter-measures that could include barring national airlines from taking part in the scheme, invoking legal procedures at the International Civil Aviation Organisation (ICAO) or taking retaliatory action against European carriers or aerospace manufacturers (greenaironline.com).

Carbon Standards and Labelling

Product carbon footprint (PCF) standards focus on the amount of embodied carbon in a traded product. The term "embodied carbon" refers to carbon dioxide emitted at all stages of a good's manufacturing process, i.e. from the mining of raw materials through the distribution process, to the final product provided to the consumer (Jiang et al 2008). Unlike border tax regimes that cover commodites, PCF standards focus on predominantly food items and other consumer goods, as companies (particularly retailers in developed countries) seek to green their supply-chains. Based on market trends, key sectors likely to be affected would be food and textiles. The value of trade estimated to be at risk of loss as a result of private carbon labels is US $63.3 billion, with the overwhelming majority of that being in lost sales of food products in the EU (Cosbey and Wooders 2011: 1; see MacGregor 2010).

Shifts in consumer preferences away from the purchasing of carbon-intensive products are therefore a major concern for the agricultural sector, which is the lifeblood for many African

countries. Africa has a strong actual and potential comparative advantage in agriculture and agro-processed products, which could provide the first step towards industrialisation. But the majority of Africa's agricultural exports are destined for the more environmentally sensitive EU and US consumer markets, which require long distance shipping or air freight. This requirement for long distance air freight has been used as a crude (and often inaccurate) indicator for certain consumers of the relative carbon footprint associated with products. This situation has in turn helped promote consumer support for "buying local" in the United Kingdom and Europe, with obvious prejudice against imported goods, including from Africa. Many agricultural products, such as vegetables, fruit and wine, have a direct consumer interface and are a key export commodity for the continent's agricultural sector.

A key risk factor in this sector, i.e. food miles, involves the "embodied carbon" in a traded good as a result of its transportation. The reasoning behind this concept is that the further a good travels, the more it contributes to climate change. The partial nature of this approach has been called into question by studies arguing that on a "life-cycle basis", embodied carbon can actually be lower in goods imported from very distant countries than it is in locally produced goods. What matters more is how the goods were produced, transport being only one of a long chain of activities necessary to bring a good to the consumer (Jiang et al 2008). Table 1, for example, illustrates how the carbon footprint of Kenyan cut flowers (one of Africa's success stories of economic diversification into horti-culture) compares to that of cut flowers cultivated in the Netherlands and shipped to the United Kingdom market. Contrary to popular wisdom, Kenyan-produced roses, which are air-freighted to and sold in Europe, exhibit considerably lower carbon emissions than roses produced in the Netherlands.

Table 1: GHG Emissions Comparison – Cut Flowers from Kenya and the Netherlands

Supply chain sector	*Kenya*	*Netherlands*
Production	300	36900
Packaging	110	160
Transport to airport	18	0
Transport to distribution centre	5600	0
Transport to distribution centre from airport	5.9	50
Total (kg of CO2 equivalents)	6034	37110

Note: Emissions are shown as Global Warming Potential (GWP) expressed in kg of CO_2 equivalents using the IPCC (2001) conversion factors. GWP and CO_2 emissions from Kenya include the IPCC altitude factor.
Source: Keane et al (2009).

The growth of private industry standards are also apparent in the packaging industry. For example, South Africa's exports of glass packaged wine have been adversely affected by pressures in the United Kingdom to increase the importation of bulk wine, ostensibly to reduce transport emissions associated with New World wine imported to Britain and to encourage the manufacture of standard green bottles. These private standards may provide effective protection to the United Kingdom's packaging industries, since transportation represents only 5% of the overall carbon footprint of glass. Bulk exports of South African wine have increased from 32% in 2005 to a projected 45.2% in 2011, a rise of 65.3 million litres. Industry estimates are that for every 10 million litres of wine shipped in bulk, about 107 jobs are lost (not including household impacts). The shift in exports from packaged to bulk containers has also negatively impacted on local packaging and upstream industries in the Western Cape, which are projected to lose R400 million by May 2012 (Bisseker 2011; also personal correspondence with industry).

The case studies above, specifically border tax adjustments on commodities and carbon standards and labelling for consumer goods, highlights the potential vulnerability of many African countries to response measures undertaken by the EU to combate climate change, but which may distort production and trade. Developing countries, specifically Africa, may be adversely affected and trade constrained by these measures; unable to provide comparable support or subsidies to their industries; unable to meet new standards or introduce their own; with little real access to technology and finance. We therefore conclude with the need for greater clarity about the rules governing trade and climate change, as well as enhanced institutional cooperation between developed and developing countries to address the adverse social and economic effects of response measures.

Conclusion

There are still differences between developed and developing countries over the locus for a discussion (an ultimately rule-making) on trade and climate change. The EU in particular has been looking for a way to bring this issue onto the WTO work programme.[17] By contrast, Africa supports the key emerging market countries in asserting that the UNFCCC is the correct forum to debate these issues, as it would be premature to bring these matters into the WTO when there is no clear framework about what any eventual UNFCCC agreement might entail. African negotiators argue that it is not for members of the WTO to pre-empt the outcome of the UNFCCC negotiations or interpret how the mandates and principles under the UNFCCC bodies should be operationalised.

[17] The paragraph 31 negotiations in the WTO's Trade and Environment negotiating group has been used as a justification by members to bring in climate issues. Sub-paragraph iii of this mandate aims to liberalise environmental goods and services. The mandate under sub-paragraph 31 ii directs members to work out the relationship between WTO rules and specific trade obligations in multilateral environmental agreements (MEAs). The UNFCC is one such MEA. However, these negotiations have stalled, under the overall Doha Development mandate.

The Africa Group has cautioned that the lacunae in WTO rules as they relate to the impact on trade of climate change measures is likely to proliferate a series of WTO disputes, where WTO arbitrators will be called to rule on what national measures are permissible (AGN 2011b). In other words, there is growing concern of a pending clash between climate change measures and the rules in the WTO.[18] For this reason, African countries have supported the establishment of a permanent forum within the UNFCCC architecture, inter alia to discuss this challenge:

> Parties and Member States should begin to think about these risks in a more systematic and coherent manner to avoid a situation where UNFCCC outcomes increasingly clash with trade rules. Through a dedicated forum to discuss these issues, we could begin to identify the range of measures that are relevant in this regard and to think about how they should be designed to minimise risks to trade, while addressing our objectives under the Convention. We should not prejudge the discussion but allow an open, exploratory engagement based on the principle that the climate change and trade regimes should be made mutually supportive (AGN 2011b).

However, the EU (and most developed countries, including the US) have been averse to establishing additional bodies under the UNFCCC or for any discussion whatsoever on trade within the Convention. They have expressed their preference for consolidating current multiple discussions on response measures under a single work stream and strengthening existing reporting mechanisms that are largely unaccounatble (e.g. National Communications). Clearly, there is need for more "integrative bargaining", where Parties should commit to a non-binding discussion about both *positive and negative* impacts of response measures. Good candidates for this exercise would be the EU's unilateral inclusion of aviation into its ETS post-2012, the potential trade distortions created by carbon labelling schemes, methodologies for calculating embodied carbon, or sharing of experiences with economic diversification to transition to lower-carbon growth paths. The establishment of this forum would also allow African and European countries to engage in a direct open exchange on the actual and potential socio-economic impact of envisaged climate measures with trade-related consequences. This process would promote transparency among the Parties, build trust and confidence, and assist European policy-makers to better evaluate the externalities of their climate policies, especially on poorer nations.

The Durban Decision of December 2011 to indeed establish a forum and work programme on response measures, and to consolidate all progressive discussions on response measures under the Convention, signals some integrative bargaining, albeit reluctant on the EU's part. The forum will meet twice a year to implement the work programme and to provide a platform allowing Parties

[18] Of the last seven WTO disputes, two have involved challenges to "environmental" measures that impact on trade (i.e. Japan's challenge to Ontario's feed-in-tariff subsidies; and the US challenge to China's export subsidies for wind power equipment).

to share information, experiences, case studies, best practices and views on response measures. There is also scope for the EU to assist African countries with access to finance, technology and capacity-building, as enjoined by the UNFCCC. For Africa, the key to avoiding loss of market share from border taxes or private labels is to reduce energy consumption and improve energy efficiency in the process of mining, value-addition of minerals, metals and ores, and manufacturing. All of the above points to some salutary scope to harness European multilateralism to support Africa's development.

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