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THREE CORE ISSUES

THOMAS COTTIER*

Man-made causes of climate change today are evidenced by the work and reports of the United Nations Intergovernmental Panel on Climate Change (IPCC) – perhaps the most elaborate interaction of natural science and policy makers in history. When looking at the recent 5th report published in 2014, trade policy does not yet figure prominently. This is explained by the fact that IPCC reports only include peer-reviewed materials and some grey literature, but do not provide a forum for new ideas. This is the task of journals like *Trade, Law and Development*. The initiative to dedicate an issue to pressing problems of climate change and trade are, thus, most welcome. The two are inherently linked. Decarbonizing and restructuring the economy largely depends on trade tools and investment. Three core areas may be identified.

First, domestic measures relating to decarbonisation cannot be implemented without appropriate flanking policies on imports seeking to provide overall fair conditions of competition. Border tax adjustment thus has been at the heart of the debate for quite some time. Secondly, and more important, trade tools will amount to the prime incentives to create a global system and to overcome one of the most serious collective action problems of humankind. Unilateral measures may target products made in a highly polluting manner and thus create incentives for clean technology abroad, commensurate with state of the art standards of sustainable modes of production. These tools are inherently linked to the issue of process and production standards (PPMs) and to what extent these can be taken into account under existing WTO law. PPMs and the dimension of extraterritorial application of domestic rules of importing countries are the true heart of the debate. Thirdly, while WTO law allows for such measures, including carbon tariffs based upon PPMs, the prime issue is technology transfer. Greening the economy is linked to substantial research efforts supported by research grants in developed economies,

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for example in the field of fuel efficiency or renewable energies. The process risks increasing the technological gap between industrialised and developing countries. Many of these countries do not yet have funding and research institutions available. The increasing gap in return creates resistance against PPM based tools as they tend to reduce existing comparative advantages and market access. Technology transfer and cooperation thus is the third element at the heart of the matter – yet hardly developed and conceptualised as of today. Governments may pledge transfer of technology, but cannot dispose of what is owned by companies. Incentives will mainly lie in the field of tax breaks and avoidance of double taxation. These tools urgently need to be developed under the guiding principle of shared but differentiated responsibility.

There are many more issues. Contemporary problems mainly have arisen in relation to trade remedies. This may be of a passing nature, due to excessive production and subsidization. Other issues relate to local content requirements and the scope of subsidization, both of research and production. Finally, climate change policies will largely depend on the reduction and elimination of fossil fuel subsidies in developing countries, replacing them by appropriate welfare policies.

We do not have the time to wait. The matter is pressing. Climate change and trade law will develop in case law, but will also depend upon future negotiations and suitable fora need to be identified. We are badly prepared for this and much conceptual work lies ahead. The Articles and Notes published here will offer an important contribution to the effort. It is hoped that the next IPCC report will be more substantial on trade and climate change.