

The WTO and the Paris Agreement: A Dialogue on Climate Change Mitigation

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Abstract

The present paper intends to highlight the work of the WTO Committee on Trade and Environment (CTE) as well as its latest mandate on climate change issues. The aim is to show that there is a possible and desired non-conflict interaction that is been going on in the last years between the International Trade and the Climate Change regimes. Such interaction has a multi-faceted feature that works shaped by relational administrative, operational and conceptual interactions, which have been promoted by a dialogue of sources prior to the construction of the rules. In order to demonstrate such interaction, the Paris Agreement trade-related instruments and national-determined contributions are taken into consideration. In the end, this essay presents real elements of an interaction that bridges gaps between trade and climate change.

Keywords

Paris Agreement, Climate Change, WTO and Environment, Trade and Environment, Trade and Climate Change, Regimes Interaction

1. Introduction

In the WTO Committee on Trade and Environment (CTE) much has been discussed on potential conflicts between trade and climate change. However, the work of the CTE itself has been driven towards a conciliation between Paris and Geneva, which refers to the Paris Agreement on Climate Change (2015) and the WTO multilateral trade system and its partner institutions based in Geneva. Instead of looking at trade as potential catalyzer of climate change, trade can be understood as an instrument to mitigate climate change.

The Paris Agreement on Climate Change entered into force at the end of 2016 and has been a very important tool for policy planning in its so far short exist-

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tence, incorporating the spirit of the Sustainable Development Goals (SDGs).

On the other hand, the work developed in Geneva (World Trade Organization headquarters—WTO) has been moved towards the only frame that is acceptable for development in the 21st century: sustainable development. Despite the WTO does not have a specific agreement on Trade and Environment, most of the WTO multilateral trade agreements have highlighted the importance of sustainable development within their preambles and some specific clauses. In one of the meetings of the WTO Committee on Trade and Environment, in June 2017 (WTO, CTE, 2017), this conciliation between the trade and climate change regimes moved the discussions forward, so that potential topics, such as climate mitigation, emissions reduction, renewable energies and environmental goods became core trade issues.

The present paper intends to highlight the work of the WTO's CTE as well as its latest mandates on climate change issues together with its partner institutions. Therefore, this study will point out a possible and desired non-conflict interaction between the WTO and the Climate Change regimes, which has occurred out of the dispute settlement proceedings, taking into consideration what has been termed a relational interaction. As such, it intends to introduce the theory of dialogue of sources and confirm its application to the proposed relational interaction that is on-going in the CTE. The thematic discussions of the Paris Agreement trade-related instruments and national-determined contributions will be brought to light to exemplify this kind of interaction that aims at constructing the rule and bridging the gaps between trade and climate change far from dispute settlement proceedings.

2. Trade and Climate Change: A Possible Interaction

International Trade and Climate Change are different regimes in International Law. According to Krasner, “regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actor's expectations converge in a given area of international relations” (Krasner, 1983). In general, they are branches of International Law, which have their own individualized structure and features. As separate International Regimes, one could say that the conflict between their structures and principles is enormous and very difficult to be reconciled (Koskenniemi, 2005).

On the one hand, International Trade is a much older regime, whose origins go back to the 1947 Bretton Woods system, and it has been administered mainly in the headquarters of the WTO in Geneva, having the WTO multilateral and plurilateral treaties and Dispute Settlement Body as its rules-oriented basis (WTO, 2018). On the other hand, climate change has evolved as a regime since the United Nations Conference held in Rio de Janeiro in 1992, and it has been developed mainly based on the United Nations Climate Change Conference (UNFCCC—Conference of the Parties/COP) held every year since the first COP 1 in 1995 (UN Conference on Climate Change, 2018). However, climate change is not a centralized regime as much as trade is and it does not have a single and

specific dispute settlement body that could gather together a climate jurisprudence.

Nevertheless, in this study, evidence is brought to light to show that reconciliation of these two different regimes has occurred through the frame of the concept of sustainable development (Vieira, 2017; Wooders & Verkuyl, 2017). In this sense, sustainable development has become a new language of the contemporary world scenario that has provided common grounds for regimes such as climate change and trade. Such a reconciliation is not a naïve one, but instead, it has been realized as a survival strategy, in which trade has had to adapt to this contemporary global feature of incorporation of environmental principles into business, while climate change is a reality that no one can deny.

There are no impediments for a sustainable interaction between these two regimes. An impediment for the interaction between two regimes might happen ever since: 1st) there are attempts to limit or reduce the role of a regime in face of another with understandings that a regime is only important within its specific area; 2nd) there is lack of political coordination on domestic level; or 3rd) there is no transparency and overture for a given regime (Young, 2012: p. 85).

Moreover, a study of interaction between two or more regimes “must be undertaken in parallel with an understanding of the general principles and overall system of international law” (Young, 2012: p. 85). In the present object of study, sustainable development has been a key element for this interdependency as it will be demonstrated in the sequence of this article.

Many studies have been published on a conflict interaction between trade and environment or, in a more specific way, between trade and climate change within international dispute settlement mechanisms (Wooders & Verkuyl, 2017; Low, Marceau, & Reinaud, 2012; Pawelyn, 2007; Marceau, 1999; Vranes, 2009; Wiers, 2001). Quite a good amount of cases discussed this conflict interaction in dispute settlement proceedings in the WTO¹.

Instead, this article intends to concentrate efforts on the kind of regime interaction so termed a relational one, which has been much less addressed in the field of trade and climate change under international law.

An interaction between different regimes may occur out of the dispute settlement organisms or out of conflict issues (Young, 2012: p. 85; Dunnof, 2012: p. 136). Contemporarily, an interaction that is envisaged only when there are disputes or possibility of disputes is, in fact, a palliative one. Palliatives are often necessary but preventive measures have more sustainability in international relations.

¹See Appellate Body Report, Brazil—Measures Affecting Imports of Retreated Tyres, WT/DS332/AB/R (3 December 2007); Appellate Body Report, United States—Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS 58/AB/R (12 October 1998); Appellate Body Report, United States—Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R (29 April 1996); Appellate Body Report, European Communities—Measures Affecting Asbestos and Products Containing Asbestos, WT/DS135/AB/R (12 March 2001); GATT Panel Report, United States—Restrictions on Imports of Tuna (Tuna Dolphin I), DS21/R—39S/155 (3 September 1991); and GATT Panel Report, United States—Restrictions on Imports of Tuna (Tuna Dolphin II), DS29/R—39S/155 (16 June 1994).

An interaction that occurs in a moment of construction of the rule or its implementation, but prior to the dispute, might be considerably more sustainable. “A theory of regime interaction that concentrates solely on the paradigmatic case of conflicting norms before a tribunal is underinclusive” (Young, 2012: p. 91).

Interaction between different subjects of law should also occur pending the procedures of creating, implementing and enforcing International Law. Studies on fragmentation of International Law have concentrated on solutions to conflicting rules within dispute settlement mechanisms, after the publication of the conflicting rule or after it has become an international custom. “The deeper conceptual problem is that scholarly inquiries that foreground judicial efforts to address regime interaction mislead because they presuppose a partial and hence inaccurate model of regime interaction” (Dunnof, 2012: p. 136).

Most interactions between different areas of International Law occur in daily relationships between their actors and institutions, far from tribunals. Such kind of interaction has been termed a “relational interaction” (Dunnof, 2012: p. 136), and scholars have presented some models of relational interaction, such as regulatory and administrative interaction, operational interaction and conceptual interaction (Dunnof, 2012: p. 136).

As for regulatory and administrative interaction, treaties are the main international rules, but not the only ones. There are many regulatory works, within or in-between the administrative scope of the diverse institutions, which are engaged in the rule-making procedures and standards. Such an activity has been termed “global administrative law” or “international administrative law” (Kingsbury, 2005).

A second kind of interaction has been termed “operational interaction”. A good example of operational interaction is the creation of the Global Environment Facility (GEF), which is formed out of joint efforts from the World Bank, the UNEP and the UNDP (Kingsbury, 2005: p. 355). FAO and other international agencies have joined them in an operational effort in order to promote environmental protection measures.

A third kind of relational interaction is the “conceptual interaction”. By conceptual interaction, it is meant the kind of regime interaction that can create knowledge and concepts. “Regimes are understood as conceptual frameworks for understanding parts of our social world” (Kingsbury, 2005: p. 355). Whenever international actors, within a specific regime, create rules or get involved with operational activities, at the same time they participate in the creationist process of concepts and knowledge. The definitions of sustainable development, a human right to water, environmental services, environmental goods, international protection of refugees, globalization, global governance and so many others were created in this manner.

Relational interaction between different regimes has taken place within the WTO CTE. For instance, there are expectations that these interactions come up with consolidated definitions of “environmental services” and “environmental goods” and that they are able to incorporate the language of climate change in

international trade fora.

The present paper analyses some specific ways of relational interaction that is on-going in the corridors of the WTO, in Geneva, in order to implement a sustainable development language and a mandate on Trade and Climate Change.

At the WTO, the main instrument used to promote such a relational interaction is the WTO CTE, which has undertaken a broad mandate of bringing into the WTO environmental issues and inviting other organizations, such as the OECD, to a dialogue between trade and environment.

In order to promote such a role, the CTE has adopted a “conciliatory” method between trade and environment, wholly shaped by the concept of sustainable development. By a “conciliatory method”, the present study intends to point out all the relational interaction that is on-going in the CTE, mainly the interaction that is contemporarily related to climate change mitigation and that has promoted “dialogues of sources” and “dialogues of regimes”, as there will be introduced in the next subchapter.

3. The WTO CTE Promotes a Dialogue of Sources and of Regimes

The 1994 Marrakesh Agreement, which brought to life the WTO, sets out in its preamble a commandment that supports the current 17 Sustainable Development Goals (UN, 2015). In its wording,

The Parties to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources *in accordance with the objective of sustainable development*, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development (...) (emphasis added)

In order to promote this sustainable development objective, the CTE came to life with a task of taking into account concerns related to the different asymmetries of the WTO Members. In certain way, the language adopted in the CTE is a trade vocabulary reshaped by an environmental spirit, just as it can be seen in a study of its creation and purpose.

4. Creation and Purpose of the CTE

The WTO Committee on Trade and Environment (CTE) came into existence in 1995 to deal specifically with environmental and co-related concerns, and it has been understood as a “standing forum dedicated to dialogue between governments on the impact of trade policies on the environment, and of environment

policies on trade” (WTO CTE, 2017), having had ever since a comprehensive work programme. The CTE has had a broad-based mandate, ‘consisting of identifying the relationship between trade measures and environmental measures in order to promote sustainable development, and making appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required’ (WTO CTE, 2017).

The CTE is composed of all WTO Members, having also many observers from inter-governmental organizations, such as ITC, OECD and UNCTAD, and it reports to the WTO’s General Council. This feature of the CTE of working together with other international organizations reflects a contemporary tendency of international law that has been reshaped by global governance, which means different subjects and actors joining together to better consolidate a specific legal protection.

Since 1996, the CTE has met three times a year, and it has held quite often information sessions with Multilateral Environmental Agreements (MEAs) secretariats in order to deepen its members’ understanding on the relationship between MEAs and WTO rules (WTO CTE, 2017).

It can be noted in the language of the WTO Marrakesh Agreement that it highlights, mainly in its preamble, principles that are core concerns by the end of the 20th and the beginning of the 21st centuries. Some of these main principles are protection and preservation of the environment within a general frame of economic development that considers the world asymmetries.

In all WTO multilateral agreements either general or specific language related to environmental protection is included. One such example is Article XX of the General Agreement on Tariffs and Trade (GATT) whose letters “b” and “g” are connected to measures that are necessary for the protection of human, animal and plant life or health and measures that are related to the conservation of exhaustible natural resources. A spell of GATT Article XX is also in the General Agreement on Trade in Services (GATS), which does much the same in Article XIV. The other WTO agreements set out a concern on sustainable development both in their preambles as well as in specific clauses within their texts (Vieira & Thorstensen, 2016)².

At the Doha Ministerial Conference, in 2001, the CTE agreed to launch negotiations on certain issues related to trade and environment, which would be discussed in special sessions (Committee on Trade and Environment Special Session—CTESS). In these special sessions of the CTE, Members have negotiated links between the WTO multilateral treaties and treaties that belong to other regimes as well as market access for environmental goods and services. Some special sessions have been held on trade and climate change and they have spelled what has been so termed a dialogue of sources or dialogue of regimes.

²See The Technical Barriers to Trade Agreement (TBT), the Agreement on Sanitary and Phytosanitary Measures (SPS), the Agreement on Agriculture (AoA), the Agreement on Subsidies and Countervailing Measures (ASCM)s, the Agreement on Trade Related Intellectual Property Rights (TRIPS), the Agreement on Trade Investment Measures (TRIMs) and others.

5. The Theory of the Dialogue of Sources Applied to a Sustainable Dialogue between International Trade and Climate Change

The term “dialogue of sources” was first adopted, in 1995, in the Private International Law Course from the Hague Academy (Jayme, 1995: p. 251). Some scholars have adapted and developed it as a way of applying the dialogue of sources to International Public Law, based on a conflict interaction for regimes and sources of law (Amaral Jr, 2008: p. 212).

In general, the theory of the dialogue of sources as it was first envisaged works with antinomies. An antinomy is a real or apparent mutual conflict between two or more laws (Grier, 2006). The traditional criteria of settlements for antinomies seek exclusion of the conflicting rule, either by the hierarchy method or by the specificity method or by the chronological method (Jayme, 1995: p. 251). There is, however, the possibility of seeking harmony between the conflicting rules, given the enshrined pluralism of many international law contemporary terms. Such harmony would be brought about by an attempt of rules coordination. Therefore, a dialogue of sources would be the simultaneous, coherent, harmonious and coordinated coexistence of legal sources (Jayme, 1995: p. 251).

Scholars have identified three kinds of dialogues of sources – a dialogue of coherence, a dialogue of coordination and adaptation and a dialogue of complementary (Amaral Jr, 2008: p. 212).

A dialogue of coherence occurs ever since a general treaty or other kinds of general international rules complement, with basic terms, other specific treaties that belong to different regimes (Amaral Jr, 2008: p. 212). In general, ever since the Vienna Convention on the Law of Treaties (VCLT) is invoked for treaty interpretation, there is a dialogue of coherence, according to Article 31³. Thus, application of the VCLT to the Paris Agreement on Climate Change for its interpretation would be a systematic dialogue of coherence.

The dialogue of coordination and adaptation is verified when treaties and regimes relate to each other, bringing about a mutual comprehension and coordination of their contents (Amaral Jr, 2008: p. 212). The CTE is a body dedicated to a dialogue of coordination between the representatives of the many Members related to the impact of trade policies on the environment and of the impact of environmental policies on international trade. Previous consultation of the negotiation of a treaty in the CTE might be interpreted as *prima facie* evidence of compatibility with Article XX of GATT, apparently giving the environmental

³VCLT, Article 31. (...). 2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3) There shall be taken into account, together with the context: a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; c) Any relevant rules of international law applicable in the relations between the parties. 4) A special meaning shall be given to a term if it is established that the parties so intended.

treaty a kind of legitimation under WTO law, which is, in practice, a dialogue of coordination.

The dialogue of complementarity occurs ever since it is possible to apply rules and principles that complement each other from different regimes (Amaral Jr, 2011: p. 135). In fact, it means that one should identify what values are on the foundation of the system and apply them through an interpretative method.

For instance, the WTO Marrakesh Agreement declares, in the preamble, a broad acknowledgment of sustainable development, recognizing that the WTO's relationship in the domains of trade should be oriented by an approach of better conditions of life, optimizing the use of the planet's natural resources. Moreover, many of the rules incorporated in the WTO treaties have highlighted environmental protection. GATT, Article XX, letters "b" and "g" and its equivalents in other WTO treaties have pointed out to a dialogue of complementarity between trade and environmental protection.

Despite the theory of dialogue of sources was developed mainly for a conflict interaction, it might also be applied to the moment of creation, implementation and enforcement of rules; that is, it might be applied to a relational interaction (Vieira, 2014). In this way, this study presents the joint-work of the WTO CTE and the Paris Agreement secretariat as a possible dialogue of sources: a regime relational interaction that comprehends a dialogue of coordination, complementarity and coherence that reflect a world scenario of global governance on climate change mitigation.

One of the main tasks of the CTE has been an understanding of the different domestic approaches towards trade-related policies that mitigate climate change (Dellink et al., 2017). As a mandate from the Doha Development Agenda, the CTE has had the task of looking at the effects of environmental measures on market access, the intellectual property agreement and biodiversity, and labelling for environmental purposes (WTO CTE, 2017).

In 2018, the UN Environment and the WTO/CTE announced that they would endeavour into an operational interaction, thus joining forces to launch a new dialogue on "promoting innovative ways of using trade to generate greater opportunities to strengthen our economies and our environments at the same time" (WTO CTE, 2018).

In order to promote this 2018 operational interaction, the WTO and the UN Environment aim at providing a platform for stakeholders from different sectors "to exchange ideas, showcase successful experiences and improve understanding of how trade can more effectively help bring about inclusive and sustainable development" (WTO CTE, 2018). Thus, this operational interaction is intended to "serve as a springboard for stakeholders around the world to seize the trade, investment and job opportunities resulting from the emerging shift towards more sustainable modes of production and consumption" (WTO CTE, 2018).

Since 2015, the CTE has received the task of incorporating the Paris Agreement mandate into its own mandate and it has worked closely with the 17 Sustainable Development Goals and the Agenda 2030 (UN SDGs, 2015). Next, this

study will present the Paris Agreement and its trade-related instruments, whose multilateral, regional and domestic implementations have become some of the main subjects of discussions in the meetings of the CTE.

6. The Paris Agreement, Trade-Related Instruments and National Determined Contributions (NDCS)

Climate change is a transboundary and global issue and it has become the biggest sustainable development challenge that the international trade community has had to face. One of the challenges on climate change is that an international agreement on this issue must consider a variety of economic and social concerns as well as their complexity (Streck, 2012: p. 137). Since the Kyoto Protocol, scholars, public sector and private practitioners alike were pleading for an international agreement that would address a more adequate action on climate change in the context of the United Nations Framework Convention on Climate Change—UNFCCC (Streck, 2012: p. 137).

The Paris Agreement adopted as a landmark at the 21st Conference of the Parties (COP 21) to the UNFCCC is a spell of deep global tensions, which were condensed and camouflaged in the very language of the treaty, wherein the mandate to negotiators was to work on ‘mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity building’ and the target outcome, potentially consisting of a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties (Dupuy & Vinuales, 2016: p. 147).

Article 2 of the Paris Agreement reads in the chapeau and paragraph 1 that:

This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

- 1) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
- 2) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
- 3) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

The chapeau of Article 2 plays an important dialogue of coherence, in as much as it expressly confirms that it enhances the implementation of the UNFCCC. Thus, an interpretation of the Paris Agreement must be undertaken under the umbrella of the 1992 Convention.

In this sense, having a closer look at Article 2, letter “a”, some scholars have suggested that a 1.5°C target might be incompatible with democracy to the ex-

tent that it would require such a large-scale and intrusive intervention that it could strain democratic decision-making processes (Dupuy & Viñuales, 2016: p. 147). Nevertheless, limiting negotiations to a 2°C target could entail loss and damage for quite a good amount of countries (Viñuales et al., 2016: p. 8). These major tensions would lie beneath the very expressions “well below” and “pursue efforts” in Article 2(1)(a), which might illustrate how tensions have been deeply camouflaged in the text of the Paris Agreement (Viñuales et al., 2016: p. 8).

Nonetheless, most of the signatories of the Paris Agreement are WTO Members and many of them have shared experiences on national determined contributions (NDCs) on climate change mitigation policies, such as deforestation/reforestation, renewables, green labelling, carbon footprint and access to markets for environmental goods (Klein et al., 2017).

In order to achieve the goals established in Article 2, the Paris Agreement requires all Parties to put forward their best efforts through “nationally determined contributions” (NDCs). The wording of the provisions of Article 4 reads as follows:

- 1) In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
- 2) Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.
- 3) Each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Therefore, NDCs have been a language of regime interaction, bridging any trade-related gap that might exist in the Agreement and, in practice, making a clear dialogue of coordination and adaptation between trade rules and climate change mitigation.

What economic instruments can be used in order to accommodate this trade and climate dialogue enshrined in the Paris Agreement? At the meeting of the CTE in June 2017 (WTO, CTE, 2017), under the perspective of a regulatory and conceptual interaction, discussions have raised distinct instruments.

Overall, about 45% of NDCs are trade related (GDI, 2017). In general, instruments that have been listed as trade-related instruments that promote mitigation

of climate changes are related to SDG 13 (UN SDGs, 2015). SDG 13 reads “Take urgent action to combat climate change and its impacts”. In the Agenda 2030, the SDG 13 targets are established as such:

- 13.1. Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries;
- 13.2. Integrate climate change measures into national policies, strategies and planning;
- 13.3. Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning;
- 13.a. Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible;
- 13.b. Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities.

The CTE invited some of its partners in order to measure up the most used instruments to promote these targets. Having participated of a workshop organized by the CTE in 2017, the German Development Institute (GDI) listed the following ten measures that could count as NDCs: 1) Reduction of trade tariffs related to SDG 13; 2) Trade regulation based on climate change mitigation policies; 3) Regulation of timber trade; 4) Private standards and Eco-labelling; 5) Border Tax Adjustments; 6) Fossil Fuels subsidies reform; 7) Renewable Energy; 8) Transfer of Technology; 9) International market mechanisms; 10) Co-benefits policies (GDI, 2017).

According to the GDI, policies related to renewables have been one of the main policies adopted by 50% of nations (GDI, 2017). The other instruments above listed have been adopted on a basis of 6% - 11% by countries (GDI, 2017). The GDI concludes that market instruments have had large contributions for the policies enshrined in the Paris Agreement (GDI, 2017). A further move would be to increase participation of trade instruments as climate friendly policies, enlarging general awareness and making use of synergies.

At the same time that lowering tariffs on environmental goods may serve as a carrot to promote dissemination of cleaner technologies (Cottier, Nartova, & Shingal, 2014), tariff deconsolidation might be a legitimate stick to encourage polluting countries to move towards an international climate agreement (GDI, 2017). Thus, a partial equilibrium would suggest that plurilateral action would be more effective than countries pursuing tariff policy in isolation, with the former leading to an average 1.4% net reduction in carbon-intensive imports from

a 5% increase in their tariffs (GDI, 2017).

Besides, there is qualitative and quantitative evidence that fossil fuel subsidies can inhibit sustainable development by: 1) fostering a burden on government budgets and diminishing resources that could be put to more efficient use within the economy; 2) raising inequality and undermining access to affordable energy thus benefiting the rich rather than the grass root of society; 3) diminishing the competitiveness of specific industries and including low-carbon businesses by not encouraging investment in renewable energy and energy efficiency; 4) raising the risk of stranded assets by encouraging exploration for and production of unburnable carbon; 5) putting in risk energy security; 6) increasing air pollution and damaging public health; and 7) negating carbon price signals (Whitley & Burg, 2015).

At first glance, adaptation to a greener and climate-friendly economy might contribute to decrease in competitiveness for some countries, since their adapted products would have higher prices in the world market once they incorporate the costs of these adaptation policies. The adapted greener industry would need support to carry on its climate-friendly business. At the same time, at first, some countries might benefit from decrease in competitiveness from others since their non-climate friendly products would gain market due to their lower prices. The work of the CTE and multilateral institutions, such as the WTO, combined with the work of the Paris Agreement's commandment might be used to level the playing field, since multilateral actions taken together diminish a decrease in competitiveness as a whole, allowing countries that intend to implement climate-friendly policies to put their products into world market without losing competitiveness.

For countries, such as Nigeria and Venezuela (Mercure et al., 2018: p. 588), whose economies are highly dependent on fossil fuels, alternatives are very difficult to be found in a short period. For these countries and others with similar dependency, multilateral action towards support for national determined contributions combined with multilateral negotiations on trade rules is one of the best ways to deal with lack of competitiveness.

Climate warming also has a direct impact on the price of agriculture products. Floods and longer dry periods come with a cost, a very high cost of adaptation and mitigation of climate change. Most developing and least developed countries have less capacity to adapt than do their developed partners (Cline, 2008: p. 23; Pollit & Mercure, 2017). For the poorest countries that are deeply dependent on agriculture imports, if multilateral measures on climate change are undertaken, prices would decline and there would be a win-win effect for all.

In the CTE, measures related to a move from fossil fuels to renewables are measures in accordance with the sustainable development objective of the Marrakesh Agreement and one could never deny it by saying that the CTE is pushing the WTO into a thematic discussion that is not a legitimate and original goal of the institution. As a matter of fact, a move from fossil fuels to renewables has

had major impacts on industry and on trade policies in all WTO countries, and it has been common discussions related to subsidies, intellectual property, trade in goods, agriculture, investments and trade in services. On a regional level, discussions have also spelled this conciliatory dialogue of trade and climate change; e.g. discussions at the European Union (Asselt, 2017) but results are more limited in general since the regional policies might also become regulatory barriers to trade with a disguised face of environmental protection (Vieira & Thorsensen, 2016).

Thus, most international economic organizations have realized the absolute necessity of taking climate change discussions into multilateral trade negotiations. In so doing, they are consolidating an understanding on trade and climate change mitigation policies that might avoid disputes between their members. In a preventive way, a relational interaction between organizations and institutes takes into account dialogues of sources and of policies to promote core issues such as sustainable development.

7. Conclusion

One of the main tasks of the CTE has been an understanding of the different domestic approaches towards trade-related policies that mitigate climate change. As a mandate from the Doha Development Agenda, the CTE's role is to look at the effects of environmental measures on market access as well as on trade rules and their environmental impacts.

In this study, it has been affirmed the importance of the application of the theory of dialogue of sources in the coordination work that has been developed by the CTE. In all the kinds of interactions that occurred in the CTE, different dialogues of sources are pointed out—since a dialogue of coherence and complementarity to a dialogue of coordination and adaptation, aiming at applying harmony to the negotiations. This study presents also these dialogues of sources expressed in the wording of the Paris Agreement, highlighting a coordination of this agreement with trade rules and other umbrella treaties.

Whenever the CTE and the Paris Agreement secretariat dialogue for coordination of their regimes, a regulatory and administrative interaction happens in order to facilitate the outcomes of climate change mitigation through trade instruments. Whenever the CTE organizes joint-workshops that point to joint-ventures to mitigate climate change and benefit trade relations at the same time, an operational interaction is used as a tool to reach SDG 13.

A dialogue of coordination and adaptation has been applied in the negotiations of the Paris Agreement. Most of the signatories of the Paris Agreement are WTO Members and many of them have shared experiences on National Determined Contributions (NDCs) on climate change mitigation policies, such as deforestation/reforestation, renewables, green labelling, carbon footprint and access to markets for environmental goods. The Paris Agreement has achieved a difficult task: the one of combining economic and environmental instruments

and having a social concern in order to promote more adequate actions of climate change mitigation; and, for such purpose, it incorporated a dialogue of coherence, coordination and complementarity with other treaties and rules that is evidenced in its Article 2 and other provisions of its wording.

In general, instruments that have been listed as trade-related instruments that promote climate change mitigation are related to SDG 13 and a list of them could include reduction of trade tariffs, trade regulation based on climate change mitigation policies, regulation of timber trade, private standards and eco-labelling, border tax adjustments, fossil fuels subsidies reform, renewable energy and transfer of technology. The use of such trade instruments as promoters of climate change mitigation is a tool of regulatory, operational and conceptual interactions between regimes and the efficiency of such interactions is something to be measured in the future, together with the hope that the market is not playing only fashion tendency.

Not to be undermined are the difficulties that developing countries face to implement adaption and mitigation of climate change policies, since, mainly for these countries, these changes can mean loss of competitiveness. For many of them, their dependency on fossil fuels is enormous and the costs for adaptation and mitigation are huge. The work of the CTE combined with the work of the Paris Agreement's rules might be used to level the playing field, since multilateral actions taken together diminish a decrease in competitiveness as a whole, allowing countries that intend to implement climate-friendly policies to put their products into world market without losing competitiveness.

In this way, this study presents a possible and real interaction that is on-going between Paris and Geneva, whose international law regimes have dialogued in a coherent, coordinated and complementary manner to achieve climate change mitigation. The positiveness of the study herein presented does not intend to be a biased one, but instead it is a way of confirming that trade instruments might not be an end in themselves but might further be tools to achieve supreme and desired objectives, such as promotion of a sustainable development.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Amaral Jr, A. (2008). *A Solução de Controvérsias na OMC*. São Paulo: Atlas.
- Amaral Jr, A. (2011). *Comércio Internacional e Meio Ambiente*. São Paulo: Atlas.
- Asselt, H. (2017). *Climate Change and Trade Policy Interaction: Implications of Regionalism*.
http://www.oecd-ilibrary.org/environment/climate-change-and-trade-policy-interactions_c1bb521e-en
- Cline, W. R. (2008). *Global Warming and Agriculture, Finance and Development*, 23-27 March 2008.

- Cottier, T., Nartova, O., & Shingal, A. (2014). *The Potential of Tariff Policy for Climate Change Mitigation: Legal and Economic Analysis*. UNCTAD.
http://unctad.org/meetings/en/Contribution/ditc_ted_03042014Cottier_Shingal_Nartova.pdf
- Dellink, R., Hwang, H., Lanzi, E., & Chateau, J. (2017). *International Trade Consequences of Climate Change*.
http://www.oecd-ilibrary.org/trade/international-trade-consequences-of-climate-change_9f446180-enjsessionid=1x4lz2mkgutm.x-oecd-live-02
- Dunnof, J. L. (2012). A New Approach to Regime Interaction. In M. Young (Ed.), *Regime Interaction in International Law* (p. 136). Cambridge: Cambridge University Press.
- Dupuy, P. M., & Vinuales, J. E. (2016). *International Environmental Law*. Cambridge: Cambridge University Press.
- GDI, German Development Institute (2017). <https://www.die-gdi.de/en>
- Grier, M. (2006). *The Logic of Illusion and the Antinomies* (pp. 192-207). Oxford: Blackwell. <https://doi.org/10.1002/9780470996287.ch14>
- Jayne, E. (1995). *Identité culturelle et intégration: Le droit international privé postmoderne* (p. 251). Leiden: Recueil des Cours.
- Kingsbury, B. (2005). The Emergence of Global Administrative Law. *Law and Contemporary Problems*, 68, 355. <https://doi.org/10.2139/ssrn.692628>
- Klein, D., Carazo, M. P., Doelle, M., Bulmer, J., & Higham, A. (2017). *The Paris Agreement on Climate Change: Analysis and Commentary*. Oxford: Oxford University Press.
- Koskenniemi, M. (2005). *From Apology to Utopia. The Structure of International Legal Argument*. Cambridge: Cambridge University Press.
<https://doi.org/10.1017/CBO9780511493713>
- Krasner, S. D. (1983). Structural Causes and Regime Consequences: Regimes as Intervening Variables. In S. D. Krasner (Ed.), *International Regimes* (p. 2). Ithaca, NY: Cornell University Press. <https://doi.org/10.1017/S0020818300018920>
- Low, P., Marceau, G., & Reinaud, J. (2012). The Interface between the Trade and Climate Change Regimes: Scoping the Issues. *Journal of World Trade*, 46, 485-544.
<https://doi.org/10.2139/ssrn.1742803>
- Marceau, G. (1999). A Call for Coherence in International Law: Praises for the Prohibition against Clinical Isolation in WTO Dispute Settlement—Issues and Proposals in Trade and Environment Disputes. *Journal of World Trade*, 33, 87.
- Mercure, J. F. et al. (2018). Macroeconomic Impact of Stranded Fossil Fuel Assets. *Nature Climate Change*, 8, 588-593. <https://doi.org/10.1038/s41558-018-0182-1>
- Pawelyn, J. (2007). *U.S. Federal Climate Change Policy and Competitiveness Concerns: The Limits and Options of International Trade Law*. Duke: Nicholas Institute for Environmental Policy Solutions, Duke University (April), NI WP 07-02.
<https://doi.org/10.2139/ssrn.1669336>
- Pollit, H., & Mercure, J. F. (2017). The Role of Money and the Financial Sector in Energy-Economy Models Used for Assessing Climate and Energy Policy. *Climate Policy*, 18, 1-14. <http://www.tandfonline.com/doi/full/10.1080/14693062.2016.1277685>
<https://doi.org/10.1080/14693062.2016.1277685>
- Streck, C. (2012). Innovativeness and Paralysis in International Climate Policy. *Transnational Environmental Law*, 1, 137-152. <https://doi.org/10.1017/S2047102511000112>
- United Nations (2015). *Sustainable Development Goals*.
<http://www.un.org/sustainabledevelopment/sustainable-development-goals>

- United Nations (2018). *Conference on Climate Change*. <https://unfccc.int>
- Vieira, A. C. (2014). *O diálogo sustentável entre o direito do comércio internacional e o direito à água*. PhD Thesis, São Paulo: University of São Paulo.
- Vieira, A. C. (2017). Inclusive Trade towards Sustainable Development. In A. C. Vieira (Ed.), *International Economic Law and the Environment: Promoting Sustainable Development on Local, Regional, National and Global Contexts* (p. 13). São Paulo: Leopoldianum.
- Vieira, A. C., & Thorstensen, V. (2016). *Regulatory Barriers to Trade: TBT, SPS and Sustainability Standards, VT, São Paulo*.
- Viñuales, J. E., Depledge, J., Reiner, D. M., & Lees, E. (2016). Climate Policy after the Paris 2015 Climate Conference. *Climate Policy*, 1-8.
<http://www.tandfonline.com/doi/full/10.1080/14693062.2016.1242060>
<https://doi.org/10.1080/14693062.2016.1242060>
- Vranes, E. (2009). Climate Change and the WTO: EU Emission Trading and the WTO Disciplines on Trade in Goods, Services and Investment Protection. *Journal of World Trade*, 43, 707-735.
- Whitley, S., & Burg, L. (2015). *Fossil Fuel Subsidy Reform: From Rhetoric to Reality*. The New Climate Economy, The Global Commission on Economy and Climate, Working Paper.
- Wiers, J. (2001). WTO Rules and Environmental Production and Processing Methods (PPMs). *ERA Forum*, 2, 101-111. <https://doi.org/10.1007/BF02817544>
- Wooders, P., & Verkuijl, C. (2017). *Making the International Trade System Work for Climate Change: Five Ways to Address Fossil Fuel Subsidies through the WTO and International Trade Agreements*.
<https://www.iisd.org/gsi/news/making-international-trade-system-work-climate-change-five-ways-address-fossil-fuel-subsidies>
- World Trade Organization Committee on Trade and Environment WTO CTE (2017). https://www.wto.org/english/news_e/news17_e/envir_20jun17_e.htm
- WTO (World Trade Organization) (2018). *WTO in Brief*.
https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm
- WTO CTE (World Trade Organization, WTO Committee on Trade and Environment) (2018). https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm
- Young, M. (2012). Regime Interaction in Creating, Implementing and Enforcing International Law. In *Regime Interaction in International Law* (p. 85). Cambridge: Cambridge University Press.