

Regional Trade Agreements as Laboratories for New Trade Disciplines to Tackle Climate Change: Why and How?

Tsung-Sheng Liao*

The interaction between GATT/WTO and legal regimes to combat climate change has experienced four important stages. First, both were created independently as two self-contained legal regimes. Second, these regimes may potentially conflict with each other because climate change measures may violate the GATT/WTO rules. Third, if policies and measures are tailored well, the GATT/WTO and climate change legal regimes could be implemented simultaneously. Last, a shift to low carbon economy presses for close cooperation and mutual supportiveness between these two legal regimes. However, the multinational nature of these two legal regimes often delay or hamper global consensus on agenda for cooperation. This article argues that trade agreements as a regional approach have merits and advantages of pursuing harmonization and cooperation under the GATT/WTO framework. Regional trade agreements can provide opportunities for a group of countries with concrete commitments and rules to cope with climate change beyond the possibility of the multilateral arena.

Keywords: GATT, WTO, Regional Trade Agreement, UNFCCC, Climate Change

*Do we then nullify the Law through faith?
May it never be! On the contrary, we establish the Law.
Romans 3:31*

* Associate Professor of International Law at National Chung Cheng University, Taiwan. LL.M./S.J.D. (U. Wisconsin-Madison). ORCID: <http://orcid.org/0000-0002-8009-5227>. The author may be contacted at: lawtsl@ccu.edu.tw / Address: Department of Law, National Chung Cheng University, #168, University Rd., Min-Hsiung Township, Chiayi County, Taiwan 62102.

1. Introduction

The General Agreement on Tariffs and Trade of 1947 (“GATT”) aimed only at promoting free trade. Together with the Rio Declaration on Environment and Development whose main goal is sustainable development,¹ the World Trade Organization (“WTO”) has been trying to ensure environmental and social considerations for international trade with human face.²

In this course, the interplay between the trade and climate change rules is shifting to a new era of focus on low carbon economy. At first, both were originally created independently as two self-contained legal regimes. Between the 1990s and early 2000s, climate change rules and policies were thought to contradict the GATT/WTO. From the mid-2000s, the GATT/WTO rules finally began harmonizing with climate change treaties based on good faith. Now, it is evident that both regimes should cooperate and support each other in order to produce synergistic effects.

Nonetheless, to adopt global consensus on an agenda rooted in cooperation is likely to be delayed due to the multinational structure of both regimes. This research tries to answer a practical issue which may arise here: How to we make mutual supportiveness work efficiently? This paper is composed of five parts including a short Introduction and Conclusion. Part two will explore the interaction between the GATT/WTO and climate change rules. Part three will explain regional trade agreements under the GATT/WTO that have been carried out with different characteristics from historical, normative and demand-based perspectives. This part will also show that regional trade agreements are well prepared disciplines to combat climate change. Part four will lay out how new regional trade agreements can be used to abate climate change under the Trans-Pacific Partnership (“TPP”).

2. The Linkages between the GATT/WTO and Climate Change Rules

A. Free Trade, the Environment and Climate Change

Since the 1999 WTO Ministerial Conferences, environmental activists have