

G2 HACKATHON CHALLENGE

How to Make the WTO
Fit for Future Trade



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ECONOMIC LAW
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Geneva Trade
Platform

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2021 Hackathon Submission

Trade and Climate Change

Team GC

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Question #1

Define the substantive issue that your team is addressing, why it's a problem, and why your team believes the WTO is the right forum to address it.

Climate change is a global crisis. Focusing on climate change can be particularly challenging at a time when another global crisis - COVID-19 - sweeps the world, threatening lives and livelihoods at an alarming pace. Coronavirus is killing us directly and immediately while climate change is only indirect and not immediate. And yet, there is reason to believe that climate change would cause even greater suffering and harm than the current pandemic. As Bill Gates put it: "If you want to understand the kind of damage that climate change will inflict, look at COVID-19 and spread the pain out over a much longer period of time." [World Trade Organization, no date]. However, many people still believe that COVID-19 has helped the world to significantly improve the environment because it has made us stop a lot of activities, but that thought is only half true. Pollution has actually returned stronger after hitting a low in April 2020. Global emissions have exploded again as many countries are trying to revive their economies for a post-pandemic world. Moreover, you can isolate yourself to protect yourself from COVID-19 in several different ways but you cannot isolate yourself from the rage of nature. So there is real urgency here.

Therefore, a deep problem in climate change that needs to be addressed is the "FREE-RIDING IN CLIMATE CHANGE". That's where countries try to get a free ride off the hard work of other countries in curtailing emissions, knowing that reductions in one place benefit people globally. With each nation hoping the others will bear the burden of emissions cuts, the planet keeps heating up [Peter Coy, 2021]. This substantive issue is highly likely to cause unfair competition between countries whose emissions reduction policies are disproportionate, which leads to shifts in investment and production and also makes climate change policies become ineffective.

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As mentioned in the background, climate change is the biggest sustainable development challenge to the community that transcends borders and requires solutions at the international level. The policy of curtailing emissions from manufacturing enterprises affects trade greatly, and definitely, the link between trade and environmental protection is by no means new. The WTO defines sustainable development, protection and preservation of the environment as fundamental goals, which is one part of the architecture of multilateral cooperation providing a framework of disciplines to facilitate global trade and serving as a forum to negotiate further trade openness. Hence, its framework will have a considerable influence on the fight against climate change. Broadly speaking, the WTO framework is relevant to the examination of climate change measures because national measures mitigating and adapting to climate change may have an impact on international trade, which may modify conditions of competition between signatories. As a result, WTO rules offer a framework for ensuring predictability, transparency and the fair implementation of such measures [World Trade Organization, no date]. The above reasons are exactly why our team believes that the WTO is the right forum to address the mentioned issue.

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Question #2

Propose a specific treaty text, or more informal commitment/declaration text, that addresses either the concern or a particular, detailed aspect of it.

A PLURILATERAL AGREEMENT binding members' commitment to curtail emissions in production and business activities with a border carbon adjustment is an effective solution to deal with climate change as well as free-riding instead of unilateral action from individual countries because joint action can take into account the spillover effects among the participants. This Agreement approach is a top-down approach, the regime is optimized to attract large numbers of participants and attain high levels of abatement, then countries decide whether or not to join, which is different from the bottom-up approach of regional trade agreements. As follows, willing signatories take collective action and put economic pressure on others to join them by imposing strictly the same frontier duty on products imported from nonparticipants regardless of the emission levels of these products. Moreover, the Plurilateral Agreement will amend trade rules so that a penalty tariff conforms with international trade law and retaliation by nonparticipants is prohibited [William Nordhaus, 2015]. If countries around the world cooperate to take action tackling climate change, the globe will have the potential to invest in the programme which develops vaccines into climate, green and low-carbon technologies like the success in rapidly developing vaccines against Covid-19 [Peter Coy, 2021].

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Question #3

Suggest a legal/technical or institutional way to implement your textual proposal within the broader WTO framework (500 words)

Three significant challenges need to be addressed to implement the Plurilateral Agreement within the broader WTO framework:

1. Legally implementing within and outside the WTO framework

- Damage from emissions is a global problem, which requires the cooperation of all countries in the world. While this new Plurilateral Agreement covers new areas and raises legitimate concerns over fragmentation and diversion of attention away from the WTO, it may also be planting the seeds for future changes and additions to the WTO agreements [Meredith Kolsky Lewis, 2013].

- Legal basis: Article II, III, IV, X:9 and Annex 4 of the Marrakesh Agreement; Appendix I of the DSU; GATT 1994.

2. Creating rights and obligations among all WTO Members

- Legal basis: Art I:1 of GATT 1994 (MFN Treatment)

- Signatories have the common benefit of sharing the costs of public activities. When a nation entering into the agreement pays for the costs of abatement, the benefits are global and independent of where emissions take place. An additional complication is that the abatement costs are paid today while most of the benefits of abatement come in the distant future.

Therefore, these obligations must be performed:

+ First, a reasonable carbon tax should be imposed within borders among signatories, which would discourage emissions of carbon dioxide and create incentives for investment in clean technologies.

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+ Second, any nation that doesn't make the commitment and live up to it should be subject to a penalty tariff on products that it sells to members. The tariff wouldn't be much of an inducement to join if only a few small countries were in the club but would become more and more effective as more countries joined.

- The carbon tax could be applied in a way that does not violate the obligations of members under the WTO Agreements, provided such a tax is carefully designed, keeping in mind the basic requirements of the WTO not to discriminate in favour of domestic producers or to favour imports from certain countries over others. The key is to structure any accompanying border measure as a straightforward extension of the domestic climate policy to imports to ensure the measure's consistency with the WTO rules. Even if the defences within the WTO system were somehow to fail, adjustments on some aspect of its carbon tax system are made. Therefore, the threat of WTO challenges should not deter policymakers from could adopting a carbon tax system that creates non-discrimination tax enacted in good faith to address climate change [Jennifer Hillman, 2013].

3. Ensuring compliance

- With the aim of legally binding relevant parties, this agreement would be managed by the Committee of Trade and Environment. If conflict occurs, the WTO dispute settlement system would apply to this agreement provided a decision which falls within Dispute Settlement Understanding is reached by consensus among signatories.

To sum up, this agreement approach could retaliate against countries that benefit from the climate policies of other countries and promote the emergence of long-term and stable climate change benefit-sharing alliances [William Nordhaus, 2015].