



## STRENGTHENING THE GLOBAL TRADE SYSTEM



### **Addressing Climate Change: A WTO Exception to Incorporate Climate Clubs**

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May 2015

E15 Expert Group on  
Measures to Address Climate Change and the Trade System

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**Think Piece**

Co-convened with



# ACKNOWLEDGMENTS

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## Published by

International Centre for Trade and Sustainable Development (ICTSD)  
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Tel: +41 22 917 8492 – E-mail: [ictsd@ictsd.ch](mailto:ictsd@ictsd.ch) – Website: [www.ictsd.org](http://www.ictsd.org)  
Publisher and Chief Executive: Ricardo Meléndez-Ortiz

World Economic Forum  
91-93 route de la Capite, 1223 Cologny/Geneva, Switzerland  
Tel: +41 22 869 1212 – E-mail: [contact@weforum.org](mailto:contact@weforum.org) – Website: [www.weforum.org](http://www.weforum.org)  
Co-Publisher and Managing Director: Richard Samans

## Acknowledgments

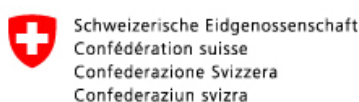
This paper has been produced under the E15 Initiative (E15). Implemented jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15 convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global trade system.

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The Expert Group on Measures to Address Climate Change and the Trade System is co-convened with Climate Strategies. [www.climatestrategies.org/](http://www.climatestrategies.org/)

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## With the support of:



And ICTSD's Core and Thematic Donors:



**Citation:** Leycegui, Beatriz and Imanol Ramírez. *Addressing Climate Change: A WTO Exception to Incorporate Climate Clubs*. E15 Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. [www.e15initiative.org/](http://www.e15initiative.org/)

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ISSN 2313-3805

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# ABSTRACT

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Despite diverse efforts in the past two decades, countries have not been able to create an international climate change regime that effectively addresses the challenges at stake. Meanwhile, the Arctic Ocean keeps melting, an area the size of Costa Rica is lost to deforestation every year, and low-lying islands could disappear by 2050 due to a rise in sea level. There are several other huge challenges posed by climate change, which urgently call for serious international action.

While a multilateral environmental agreement would be so much desired, year-by-year the realization that a broad agreement on this matter is not likely to be achieved becomes more apparent. The United Nations Framework Convention for Climate Change (UNFCCC) multilateral conferences are gradually wearing off and the December meeting in Paris might just turn into a wake-up call to look for alternative approaches. If this is the case, countries should not let the best be the enemy of the good and should be ready to take recourse to a practical plan B. For a challenge of this size, we should build on previous experiences, such as the evolution of the multilateral trading system. This regime is perhaps the world's greatest achievement in terms of human organization and has proven to be successful in many ways. Yet, it was not built through a single understanding, but over time by small and constant agreements among a limited number of countries, who round-by-round created a legitimate international institution.

As opposed to the General Agreement on Tariffs and Trade, fortunately, this time we are not realizing the need to address an issue after a catastrophe, such as a world war. Climate change is already causing havoc and governments and institutions should not wait for a major environmental accident to occur before addressing it. Due to the strong linkage between trade and environmental measures, the multilateral trading system and the World Trade Organization (WTO) could and should become a relevant tool to advance on this matter.

A general and permanent exception to the most-favored nation (MFN) principle under the WTO that permits trade benefits under climate clubs might be a policy option worth exploring by Members. This exception could constitute an incentives-based system that serves as a first step for countries to address climate change. Moreover, it could represent a practical approach, since it is unlikely that the several initiatives proposed are going to be explored or negotiated at once.

Exceptions in the WTO regime, such as GATT Article XXIV and the Enabling Clause, could be a model to design a climate club exception in the WTO. Both constitute an acknowledgment from WTO Members of the necessity to address other legitimate objectives within the organization while departing from certain established principles. Further, each establishes specific criteria that justify the deviation from WTO obligations, including MFN treatment. However, the history of such exceptions show that they have come only after a momentum was achieved and through the combination of many pressing issues.

The need to address climate change is widely recognized. Nevertheless, a lack of incentives to make countries commit on this matter is evident. A window of opportunity could be sought within current WTO negotiations, mainly due to an impasse in the organization. By addressing climate change and completing a negotiation that helps to overcome such an impasse, the negotiation of a WTO exception to climate clubs could thus accomplish two goals.

While the negotiation occurs, a perhaps more feasible and complementary alternative in the short term to tackle the stalemate is trading partners negotiating climate change binding commitments within their existing or future free trade agreements or custom unions negotiated under GATT Article XXIV. Through their disciplines, such as market access, subsidies, antidumping, technical standards, government procurement, and services, important contributions could be made to the climate change agenda. The more "mega" the resulting agreements in terms of ambition and inclusion of countries, the more "mega" their contribution will be to the world's cause.

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# LIST OF ABBREVIATIONS

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COP	Conferences of the Parties
DSS	Dispute Settlement System
EGA	Environmental Goods Agreement
EU	European Union
FTAs	free trade agreements
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
MFN	most-favored nation
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNFCCC	United Nations Framework Convention for Climate Change
US	United States
WTO	World Trade Organization
WTO Agreement	Agreement Establishing the World Trade Organization
UK	United Kingdom

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# INTRODUCTION

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Although the world faces increasing environmental challenges, the signing of a comprehensive multilateral environmental agreement with binding carbon emission reduction commitments is unlikely to occur in the near future. Despite diverse efforts in the past two decades, countries have not been able to create an international climate change regime that effectively addresses the challenges at stake. Meanwhile, the Arctic Ocean keeps melting (Melillo 2014), an area the size of Costa Rica is lost to deforestation every year (World Economic Forum 2010), and low-lying islands such as the Marshall Islands and the Maldives could disappear by 2050 due to a rise in sea level (Barnet 2001). There are several other huge challenges posed by climate change, which urgently call for serious international action.

The most emblematic multilateral effort on this came with the signing of the United Nations Framework Convention for Climate Change (UNFCCC) in 1992, and the Kyoto Protocol in 1997. As worthy as they may be, these agreements have not yielded the expected results.

The Conferences of the Parties (COP) under the auspices of the UNFCCC have made little progress, producing non-binding documents, such as the Bali Action Plan, the Cancun Agreements, and the Warsaw International Mechanism for Loss and Damage. More recently, the COP 20 produced the Lima Call for Climate Action inviting countries to communicate their voluntary “intended nationally determined contribution,” although there is no indication of the ways to measure, compare, or enforce these contributions.

Expectations that a new multilateral environmental framework will be signed in the COP 21 to be held in Paris (30 November–11 December 2015) have grown, mainly due to the negotiating text agreed on by the Ad Hoc Working Group on the Durban Platform (UNFCCC 2015). Nonetheless, challenges remain because of the costs of implementation and its perceived effect on competitiveness. It is unlikely that any country will accept binding commitments unless other countries follow its lead.

Thus, alternatives to the multilateral conferences must be sought. In the short term, it is probable that these alternatives will come in the form of partial and limited agreements subscribed to by small groups of common-minded countries or “climate clubs.” Through climate clubs, environmental measures could be agreed on and enforced, establishing a regime of trade preferences or incentives for members and trade restrictions or sanctions for third parties. This could trigger a series of potential violations to World Trade Organization (WTO) rules, which could have systemic implications in the multilateral trading system.

For these reasons and the protection of the environment, WTO Members need to adapt their commitments and take action within the organization to create conditions for the adoption of the right policies, thus preventing a collision between the trade regime and climate actions. Various alternatives have been proposed, including free trade of green products; mutual recognition and harmonization of standards and technical regulations applied to green technologies; environment-friendly government procurement; clarification of environment-related WTO provisions; fostering transfer of green technologies by improving WTO intellectual property rules; and encouraging green subsidies.

Nonetheless, it is unlikely that WTO Members will agree on modifying numerous WTO legal texts or issuing several decisions in the short term. Consequently, this think piece explores the possibility of Members undertaking a one-time effort to establish a general permanent exception that allows preferential arrangements among climate clubs within the WTO. Such exception is inspired in existing WTO provisions such as Article XXIV of the General Agreement on Tariffs and Trade (GATT) and the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (the Enabling Clause). An exception in this direction could unleash the right incentives for countries to acquire serious commitments on climate change, and at the same time promote the stability of the multilateral trading system.

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## ADAPTING TRADE COMMITMENTS TO ADDRESS CLIMATE CHANGE

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### MULTIPLE OPPORTUNITIES FOR USING TRADE POLICY TO ADDRESS CLIMATE CHANGE

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Trade and climate change have an inextricable and intimate relationship—development of policies in one field will in many cases directly affect the other. Thus, equilibrium must be sought between further trade liberalization and combating climate change. This uneasy task is increasingly gaining attention among policymakers all over the world since climate change is becoming a priority in national politics and international trade is a crucial issue on national agendas. The pressure of non-state actors, political parties, and civil society pushes governments to direct trade measures towards helping the fight on climate change. Approaching this tremendous challenge in new ways is

essential, and it could help if international trade law is re-imagined to serve as a tool to address it.

Adapting trade commitments to positive climate change mitigation efforts is essential. It is not only necessary to reduce potential conflicts between international trade law and environmental measures, but also to encourage the protection of the environment through the trade regime. This is a part of the sustainable development objectives of the WTO—trade aims to encourage commerce while “seeking both to protect and preserve the environment and to enhance the means for doing so” (WTO Agreement 1999). Failure to do so could have a negative systemic impact on the international trade architecture; that is, it could release a series of trade disputes, to the extent that could undermine the efficiency of the WTO Dispute Settlement System (DSS).

As mentioned, diverse actors have put forth alternatives on different subject matters, such as free trade of goods and services, subsidies, government procurement, harmonization of technical regulations, intellectual property, border tax adjustments, and the reform of WTO rules governing anti-dumping and anti-subsidy measures to achieve better compatibility with anti-trust regulations and dispute settlement. The WTO Environmental Goods Agreement (EGA) is perhaps the most relevant proposal under consideration, covering tariff reductions or elimination for 54 goods of initially 14 WTO Members, including the European Union (EU). Such Members intend to extend the benefits on a most-favored nation (MFN) basis to all other WTO Members.

## BUT ADJUSTING RULES UNDER THE WTO IS A COMPLEX PROCEDURE

Attempting to adopt the measures proposed under the WTO is quite complicated, not only because of the nature of the negotiations, but also because of the decision-making processes in the WTO. As a general rule, “The WTO shall continue the practice of decision-making by consensus ... where a decision cannot be arrived at by consensus, the matter at issue will be decided by voting.” Majority voting is provided on a “one country, one vote” basis.<sup>1</sup> In the case of authoritative interpretations and waivers, there are special procedures for decision-making, as provided in Article IX of the Agreement Establishing the World Trade Organization (the WTO Agreement). Interpretations and waivers, if a consensus cannot be reached, can be adopted by a three-fourths majority of the Members.<sup>2</sup> However, in practice, WTO Members have decided waivers by consensus (WTO 2012). The waivers are granted under exceptional circumstances and for a limited period of time. They are reviewed annually until they elapse.

The process for amending WTO legal texts is more complex because an initial approval by consensus of the Ministerial Conference is required to submit an amendment to Members

for their acceptance. Exceptionally, it can be approved by a qualified majority (two-thirds), to be submitted to Members for their acceptance (Article X:1 of the WTO Agreement). Article X provides different procedures to obtain the acceptance of Members, depending on the Agreement affected by the amendment.

- If the amendment relates to Article IX or X of the WTO Agreement, Articles I and II of GATT 1994; Article II:1 of GATS [General Agreement on Trade in Services], or Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), it requires the acceptance of all Members (Article X:2 of the WTO Agreement).
- If the amendment relates to a provision of the WTO Agreement, or to a Multilateral Trade Agreement contained in Annexes 1A and 1C, and changes the nature of the rights and obligations of Members, it has a different procedure. It must be accepted by a two-thirds majority of the Members and shall be binding for those that voted in favor; subsequently, it will become binding for other Members upon acceptance. It is of such importance that the Ministerial Conference may decide that, if not accepted within a specified time frame, the Member shall decide to withdraw from the WTO or to remain with the consent of the Ministerial Conference (Article X:3 of the WTO Agreement).
- If the amendment relates to a provision of the WTO Agreement, or to a Multilateral Trade Agreement contained in Annexes 1A and 1C, but it does not change the nature of the rights and obligations of Members, it will take effect for all Members upon approval of a two-thirds majority (Article X:4 of the WTO Agreement).
- If the amendment relates to Parts I, II and III of GATS and respective annexes, it must be accepted by a two-thirds majority of the Members and shall be binding for those that voted in favor; subsequently, it will become binding for other Members upon acceptance. The Ministerial Conference may decide that, if not accepted within a specified time frame, the Member shall decide to withdraw from the WTO or to remain with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and respective annexes shall take effect for all Members upon acceptance by two-thirds majority (Articles X:5 and X:10 of the WTO Agreement).
- Finally, the Ministerial Conference can approve any amendment to the TRIPS Agreement taken under its

1 | Article IX.1 of the WTO Agreement. “Consensus is understood if on a matter submitted for its consideration, [...] no member, present at the meeting when the decision is taken, formally objects to the proposed decision.”

2 | As of 31 December 2013, 47 waiver decisions had been approved by the WTO.

Article 71:2 without further procedure. Amendments to a Plurilateral Agreement shall be governed by its own provisions (Article X:6 of the WTO Agreement).

Members accepting an amendment shall deposit an instrument of acceptance with the Director-General of the WTO, in accordance with the domestic law of each Member (Article X:7 of the WTO Agreement).

This amendment process shows the complexity of the process, and the uncertainty caused by the “binding-upon-acceptance” procedure. For instance, amending the decision-making and MFN provisions (Article I of the GATT 1994) referred to above would de facto require a unanimous decision since it has to be accepted by all Members’ constituencies. The only amendment decision in the WTO was passed in 2005, which modified the TRIPS Agreement on compulsory licenses for the production of certain medicines. In ten years, the decision has been accepted in only 53 local legislatures of the total 160 WTO Members.

In this context, attempting to waive, interpret, or amend several WTO obligations and provisions seems impractical. Therefore, Members need to pick their battles wisely, being a pragmatic approach the suggested alternative to address climate change.

## A WTO EXCEPTION TO CLIMATE CLUBS

### CLIMATE CLUBS AS A PLAUSIBLE SOLUTION

Considering that only 12 to 15 countries contribute to 75 percent of world emissions (Victor 2015), climate clubs comprising some of these countries could have an impact on climate change. Clubs could build compromises that otherwise would be impossible in multilateral forums where almost 200 countries with diverse interests participate. They could constitute an alternative to the process of multilateral conferences and be a stepping stone to major environmental achievements.

In principle, environmental regulations are often perceived as being burdensome for industries and capable of negatively affecting their competitiveness. Thus, a country entering into an environmental agreement might damage the competitiveness of some of its domestic industry while not reaping full environmental benefits at home, especially when its competitors do not have similar commitments. Trade benefits in climate clubs could compensate for this burden through increased preferences granted exclusively

among countries that have the same or similar compromises. For example, club members could agree on bilateral tariff reductions in exchange of specific environmental obligations. Or more complex mechanisms could be created such as anti-subsidies procedures establishing higher thresholds for green products, which, in turn, could promote green subsidies among club members.

Having the possibility of obtaining additional benefits from environmental commitments could encourage countries to subscribe to them. It would permit governments to address their national agendas on climate change while having something to offer to their industries. Once the benefits of climate clubs are perceived, other countries could be interested in joining them, extending environmental protection. To increase the participation of countries, a climate club should be construed as a system of incentives, as opposed to sanctions or restrictions.

### BUILDING A LEGAL SPACE FOR CLIMATE CLUBS

In the WTO regime, Members are bound by the MFN principle (Article I, GATT 1994), which prohibits discrimination among trading partners, including the granting of any special advantage, favor, privilege, or immunity. That is, the treatment given to any of the Members must be available to all the Members. Hence, exclusive trade benefits within climate clubs would constitute a potential violation of the non-discrimination obligations provided in the GATT 1994 and other WTO Agreements.

In this sense, WTO Members could explore the possibility of establishing a general permanent exception to the MFN principle that permits exclusive trade benefits among climate clubs and other international climate change agreements entered into by WTO Members. Such exception might entice countries to address global warming while promoting further trade liberalization. Moreover, it could be inspired in existing WTO provisions such as GATT Article XXIV or the Enabling Clause. A permanent exception in these terms could create a win-win situation for club members.

A WTO exception to climate clubs would have to be subject to strict conditions to justify the deviation from the MFN principle. Some of the conditions that could be established to determine whether a club measure is in accordance with WTO law could be the following.

- A minimum standard of environmental contribution must be achieved. However, to ensure enforcement, WTO Members will have to first adopt a definition of “contribution” and the methods to measure and compare it. Effective enforcement would be essential to avoid abuses, contradictions, and a weakening of the multilateral trading system.



- Agreements reached in climate clubs cannot impose additional trade restrictive measures on non-club WTO Members. This is essential to generate a system of incentives and to avoid setbacks on trade liberalization.
- With regard to trade measures to be applied among club members, provisions similar to those of the chapeau of GATT Article XX should be established to avoid protectionism through arbitrary, unjustified, or disguised restrictions on international trade.
- Measures adopted in climate clubs relating to trade should fall under the authority of the WTO DSS. The panels and the Appellate Body could review if a measure contested is enacted and applied in accordance to the conditions established for the exception. A special and expeditious dispute settlement procedure for these measures could be established to avoid abuses from the length of WTO litigation procedures.

These conditions should draw the legal line between permissible environmental measures affecting trade pursuant to climate clubs and those that are not. This could serve as a way to clarify various WTO provisions, and also provide the legal certainty needed in WTO dispute settlement.

Another advantage of a WTO exception to climate clubs is that it would only take a one-time effort to achieve it as opposed to various attempts to modify several legal texts. Where historically the formal and legal basis of GATT and WTO decisions has lacked consistency, there may be two possible scenarios for passing an exception on the terms proposed.

- The exception formally amends WTO legal texts that affect the MFN principle;<sup>3</sup> or
- Despite not formally amending WTO provisions (that is, the exception is enacted as a new legal text), it is considered to have amended WTO provisions that affect the MFN principle in terms of Article X of the WTO Agreement.

In both cases, the proposed exception would have to be accepted by the constituencies of all Members, as established under Article X: 2 of the WTO Agreement. Hence, a unanimous decision would be required to become valid. While this is complicated, any other effort undertaken on this matter will also be difficult. Even more, specific negotiations on substantive issues (for example, the intended contributions, the measures to achieve them, and the trade benefits granted in exchange) would be carried out bilaterally or within a small group of countries. The latter will reduce the complexity of negotiations processes.

Moreover, subject to the conditions established, countries would have flexibility to decide how far they want to go on environmental protection on each subject. Trade benefits would be an important incentive for it. For instance, a country

could acquire specific commitments under its antidumping policy, while another elaborates on border tax benefits to green goods, each in different sectors. This flexibility will contribute to sustainable development as each country will be able to select what is less sensible or more convenient to their national and international agendas. Once environmental obligations are tied to trade concessions, it will be difficult for governments to back out.

This exception could be a pragmatic approach to the challenge before us and could lead countries to the desired results. Moreover, as opposed to waivers, the terms and conditions of the exception will not be subject to an annual review by WTO Members. Members could have legal certainty on their obligations and trade benefits under climate clubs.

## DRAWING ON PREVIOUS EXPERIENCES

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The exception for climate clubs could build on previous experiences under the international trade regime where some general exceptions to the non-discrimination principle exist. On the one hand, GATT Article XXIV allows Members to create free trade zones and customs unions under specific conditions, deviating from non-discrimination obligations. On the other hand, Paragraph 2, (c) of the Enabling Clause provides that differential treatment could be accorded in regional or global arrangements among developing countries for the mutual reduction or elimination of tariffs and non-tariff measures on products imported from each other.

Both exceptions acknowledge the need to depart from the MFN principle to contribute to other legitimate objectives such as further trade liberalization and economic development. The historical context in which these exceptions were negotiated and accepted, and their rationales, can shed some light on the feasibility of a WTO exception for climate clubs.

### GATT Article XXIV

The post-war scenario demanded actions to boost economic development and the establishment of economic institutions that would prevent choking international trade again. The conventional view maintains that during the negotiations for the creation of the International Trade Organization (ITO) and subsequently the GATT 1947, the United States (US) rejected preferential trade and strongly supported a multilateral approach. The MFN principle was the cornerstone of the trade agreement. However, the US had to compromise this principle to successfully conclude the negotiations because it would have contravened some of its partners' interests. The United Kingdom's (UK) preferential tariffs in the British Commonwealth impeded its full acceptance of the principle, and it would have been an obstacle for the European integration project.

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3 | Amendments relating to Article IX and X of the WTO Agreement; GATT Articles I and III; GATS Article II: 1; and Article 4 of the TRIPS Agreement.

Thus, GATT Article XXIV was created in response to certain conditions that prevailed at the time of negotiations. It became an escape valve to the MFN principle and one of its most notable exceptions. Formally, it expresses the intention of Members to facilitate and increase freedom of trade through customs unions and free trade areas, while complying with certain criteria. For free trade agreements (FTAs) to fall under this exception, the relevant conditions to meet are the following.

- Duties and other trade regulations maintained by WTO Members and applicable to the rest of the Members at the formation of an FTA should not be higher or more restrictive than those existing prior to the formation of the area;
- The elimination of duties and other restrictive trade regulations among Members parties to FTAs must be on substantially all trade;
- The WTO Member willing to enter into an FTA must notify all other Members, and surrender information on the proposed area and elaborate comments and recommendations if necessary;
- If a proposal does not fully comply with the aforementioned elements, it can still be approved through a two-thirds majority vote, given that it leads to the formation of an FTA in the sense of GATT Article XXIV.

To date, 238 FTAs and customs unions have been duly notified under Article XXIV (for example, the North American Free Trade Agreement, and the EU notified as a Customs Union and an Economic Integration Agreement) (WTO 2015). Yet, a long debate has followed the application of this provision. Some argue that it has led to a weakening of the multilateral rules due to a lack of enforcement (Lawrence 1996); others have mentioned that it is vague and ambiguous (Haight 1972). Punctual enforcement would be fundamental for an exception to climate clubs in the WTO.

### The Enabling Clause

After the conclusion of the GATT 1947, various concerns were raised by developing countries. Some included agricultural protectionism, fluctuations on commodity prices, and the inability of their exports to keep pace with imports. At the time, a panel of experts confirmed that earnings derived from exports were not enough to meet the development goals of developing countries, trade barriers imposed by developed countries being a major problem (Keck 2004).

This, combined with a greater number of independent countries in Africa, Asia, and the Caribbean, the Cold War, and the creation of the United Nations Conference on Trade and Development (UNCTAD), permitted developing countries to successfully place special and differential treatment at the centre of the GATT. The developing world was able to take a common position in the negotiations. As a result,

in 1965, Part IV of the GATT was included, which relates to trade and development. However, it did not go beyond a mere declaration of best endeavour undertakings. It is relevant nonetheless to mention the non-reciprocity principle established in GATT Article XXXVI:8. Through it, developing countries were expected to make contributions consistent with their individual needs, this becoming a stepping stone to the Enabling Clause.

During the Tokyo Round (1973–79), developing countries sought to limit the scope of non-tariff measures, while highlighting the importance of the non-reciprocity principle. The outcome meant the following achievements for them— (1) limited acceptance of market access commitments as well as few tariff compromises; (2) the adoption of the code approach on new non-tariff commitments, by which only signatory countries were bound; and (3) most importantly, the conclusion of the Enabling Clause.

The Enabling Clause is the recognition from the GATT 1947 Contracting Parties that, although uniform obligations are much needed for international trade, not all countries can abide by the rules without seriously impairing or compromising their development and growth. Departing from the MFN principle, the Enabling Clause establishes the possibility and rules for granting preferential and differential treatment to developing countries on

- Tariffs under the Generalized System of Preferences;
- Non-tariff measures covered by the multilateral agreements negotiated under the auspices of the GATT;
- Agreements entered into by developing countries to mutually reduce or eliminate tariffs; and
- Special treatment for least-developed countries under measures in favour of developing countries (para 1 and 2, Enabling Clause).

However, special and differential treatment must be granted according to certain criteria. It must (1) aim to facilitate and promote trade of developing countries; (2) not raise barriers or create undue difficulties to trade of other Members; (3) not constitute obstacles for tariff reduction and elimination and other trade restrictions; and (4) respond positively to the development, financial, and trade needs of developing countries (para 3, Enabling Clause).

Finally, in the Enabling Clause, developed countries recognized the deviation from the reciprocity principle, since they do not expect that developing countries will make contributions that are inconsistent with their individual needs (Para 5, Enabling Clause). To date, 37 agreements have been notified and are in force under the Enabling Clause (for example, the Latin American Integration Association and the Economic Community of West African States) (WTO 2015).

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# CONCLUSION AND RECOMMENDATION

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While a multilateral environmental agreement would be so much desired, year-by-year the realization that a broad agreement on this matter is not likely to be achieved becomes more apparent. The UNFCCC multilateral conferences are gradually wearing off and the December meeting in Paris might just turn into a wake-up call to look for alternative approaches. If this is the case, countries, as it is said, should not let the best be the enemy of the good and should be ready to take recourse to a practical plan B. For a challenge of this size, we should build on previous experiences, such as the evolution of the multilateral trading system. This regime is perhaps the world's greatest achievement in terms of human organization and has proven to be successful in many ways. Yet, it was not built through a single understanding, but over time by small and constant agreements among a limited number of countries, who round-by-round created a legitimate international institution.

As opposed to the GATT, fortunately, this time we are not realizing the need to address an issue after a catastrophe, such as a world war. Climate change is already causing havoc and governments and institutions should not wait for a major environmental accident to occur before addressing it. Due to the strong linkage between trade and environmental measures, the multilateral trading system and the WTO could and should become a relevant tool to advance on this matter.

A general and permanent exception to the MFN principle under the WTO that permits trade benefits under climate clubs might be a policy option worth exploring by Members. This exception could constitute an incentives-based system that serves as a first step for countries to address climate change. Moreover, it could represent a practical approach, since it is unlikely that the several initiatives proposed are going to be explored or negotiated at once.

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While the negotiation occurs, a perhaps more feasible and complementary alternative in the short term to tackle the stalemate is trading partners negotiating climate change binding commitments within their existing or future FTAs or custom unions negotiated under GATT Article XXIV. Through their disciplines such as market access, subsidies, antidumping, technical standards, government procurement, and services important contributions could be made to the climate change agenda. The more "mega" the resulting agreements in terms of ambition and inclusion of countries, the more "mega" their contribution will be to the world's cause.

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