

## Referee Report

"Climate Policy Options and the World Trade Organization" (MS 303)

by

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This paper provides a short but excellent summary of the potential points of conflict between national climate change regimes and WTO rules. Most of the discussion of this interface refrains from strong interpretive conclusions, which is entirely appropriate given uncertainties surrounding ways that panels and the Appellate Body might rule. Where judgements are made about consistency there would be room for disagreement, but since the paper is not dealing with matters of fact but rather possible interpretations, there would be little point in putting forward alternative views about legal consistency in a referee's report. The analysis points out clearly where the "rubs" are likely to be, and the comprehensive (albeit brief) treatment given to this in the paper make it a useful point of reference.

The paper then goes on to review proposed solutions to the tension that will inevitably occur between differentiated climate change policies with varying cost and competitiveness implications among trading partners and the maintenance of open markets. These solutions range from carbon passports to emission allowances, output subsidies, *ex post* climate safeguard measures, and to a whole range of hybrid arrangements. True to the declared objective of the paper, these proposals are not analyzed in economic terms, but only in relation to questions of consistency with established trade norms under the WTO. Of course, much could be said about the degree of economic literacy and welfare implications of such proposals, but this is not to be expected in a paper with the stated purpose of this one.

The paper concludes with a recommendation for a negotiated departure from WTO dispute settlement challenges for a range of cost- or competitiveness-related practices that might be adopted by a subset of countries most implicated in the climate change discussion. Such an agreement could be negotiated inside or outside the WTO, but it could only be insulated from WTO challenge if it did not raise trade difficulties for WTO parties outside the climate change policy agreement. This is recognized in the proposal. Perhaps the weakest point in the paper is its failure to specify what kind of measures might be included in the agreement, bearing in mind that such measures would affect the conditions of competition in markets and would probably constitute WTO violations. The practicality of the proposal is hard to judge in the absence of specifics about what would pass as mutually acceptable practices that could be agreed, thereby forestalling disruptive legal skirmishes over trade.

This referee would be inclined to propose acceptance of the paper as it is, considering its utility in bringing together a lot of analysis about a subject on which limited literature exists so far. However, if there is a revision and resubmit decision arising from other referee reports, I would suggest the addition of details on the kinds of measures that might be agreed under a Code of Good Practice on GHG Emission Controls.