

SYNTHESIS OF THE POLICY OPTIONS

No. 

**GLOBAL RULES FOR MUTUALLY
SUPPORTIVE AND REINFORCING
TRADE AND CLIMATE REGIMES**

Global Rules for Mutually Supportive and Reinforcing Trade and Climate Regimes

Synthesis of the Policy Options*

January 2016

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NOTE

The policy options presented in this synthesis are the result of a collective process involving all members of the E15 Expert Group on Measures to Address Climate Change and the Trade System. It draws on the active engagement of these eminent experts in discussions over multiple meetings as well as input provided by two surveys and think pieces commissioned by the E15Initiative and authored by group members. James Bacchus led the Expert Group and provided intellectual guidance. Thomas L. Brewer, Henry Derwent, and Ingrid Jegou formed the core team and contributed significantly to the process and final paper. The policy options offered for consideration should not be taken to represent full consensus on any or all of the offered options. The list of group members and E15 papers are referenced.

The full volume of policy options papers covering all topics examined by the E15Initiative, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting at Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade.

E15 INITIATIVE

Jointly implemented by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15Initiative was established to convene world-class experts and institutions to generate a credible and comprehensive set of policy options for the evolution of the global trade and investment system to 2025. In collaboration with 16 knowledge partners, the E15Initiative brought together more than 375 leading international experts in over 80 interactive dialogues grouped into 18 themes between 2012–2015. Over 130 overview papers and think pieces were commissioned and published in the process. In a fast-changing international environment in which the ability of the global trade and investment system to respond to new dynamics and emerging challenges is being tested, the E15Initiative was designed to stimulate a fresh and strategic look at the opportunities to improve its effectiveness and advance sustainable development. The second phase of the E15Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

For more information on the E15Initiative:
www.e15initiative.org

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7 Chemin de Balexert, 1219 Geneva, Switzerland

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91-93 route de la Capite, 1223 Cologny/Geneva, Switzerland

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The E15Initiative is managed by Marie Chamay, E15 Senior Manager at ICTSD, in collaboration with Sean Doherty, Head, International Trade & Investment at the World Economic Forum. The E15 Editor is Fabrice Lehmann.

OBJECTIVES AND OUTPUT

The E15 Expert Group on Measures to Address Climate Change and the Trade System had four objectives

- Examine the challenges and opportunities to support climate action (mitigation and adaptation) through trade.
- Identify constraints posed by the current global trading system to provide a supportive framework for climate action and identify possibilities for improvement.
- Explore the role of trade in Multilateral Environmental Agreements (MEAs) and other regimes outside the global trading system (e.g. International Maritime Organization, emissions trading schemes) in support of climate action.
- Propose options where trade positively contributes to both adaptation and mitigation.

Overarching questions and issues the Expert Group was tasked to consider

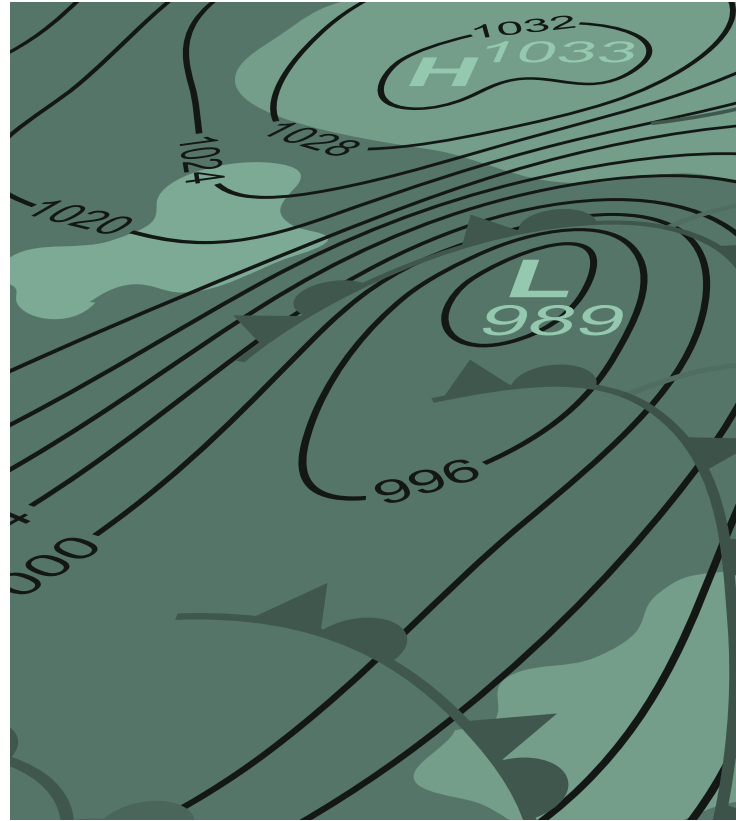
- Assess the possible trade implications and trade policy responses from the emerging regime complex on climate change.
- Review the effectiveness of existing or proposed measures and policies to address carbon leakage (e.g. free allowances, border measures).
- Consider how trade-related measures and policies can be used to promote production in low carbon locations, address adaptation, and enhance resilience.
- Explore the possible affirmative uses of the WTO to support climate action.
- Examine the trade policy implications of assessing carbon emissions at the consumption level.

Expert Group analysis and policy proposals were submitted in two forms

1. Critical issues studied through think pieces commissioned for the E15 Initiative. These papers are referenced on page 16 and can be accessed at <http://e15initiative.org/publications/>.
2. Policy options presented in this synthesis and compiled in the summary table. The options are grouped under six categories:
 - Maximizing the contribution of trade and minimizing conflicts between regimes
 - Recognizing embedded carbon in trade
 - Enabling the formation of climate clubs and coalitions
 - Reaching a framework for emissions trading, carbon taxes, and border measures
 - Making use of subsidies, standards, procurement, and intellectual property
 - Fostering sectoral approaches

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FOREWORD

“Unless we take action on climate change, future generations will be roasted, toasted, fried and grilled.” This powerful quote by Christine Lagarde, head of the International Monetary Fund, points to the magnitude of the threat we are facing. Climate change has also been described as “the greatest market failure that the world has seen” by Sir Nicholas Stern, thereby underlining the imperative for collaboration on a global scale. In parallel with the work of the United Nations Framework Convention on Climate Change (UNFCCC), climate change is specifically addressed in the 13th of the 17 Sustainable Development Goals adopted by the United Nations in 2015 as part of the 2030 Agenda (“Take urgent action to combat climate change and its impacts”).

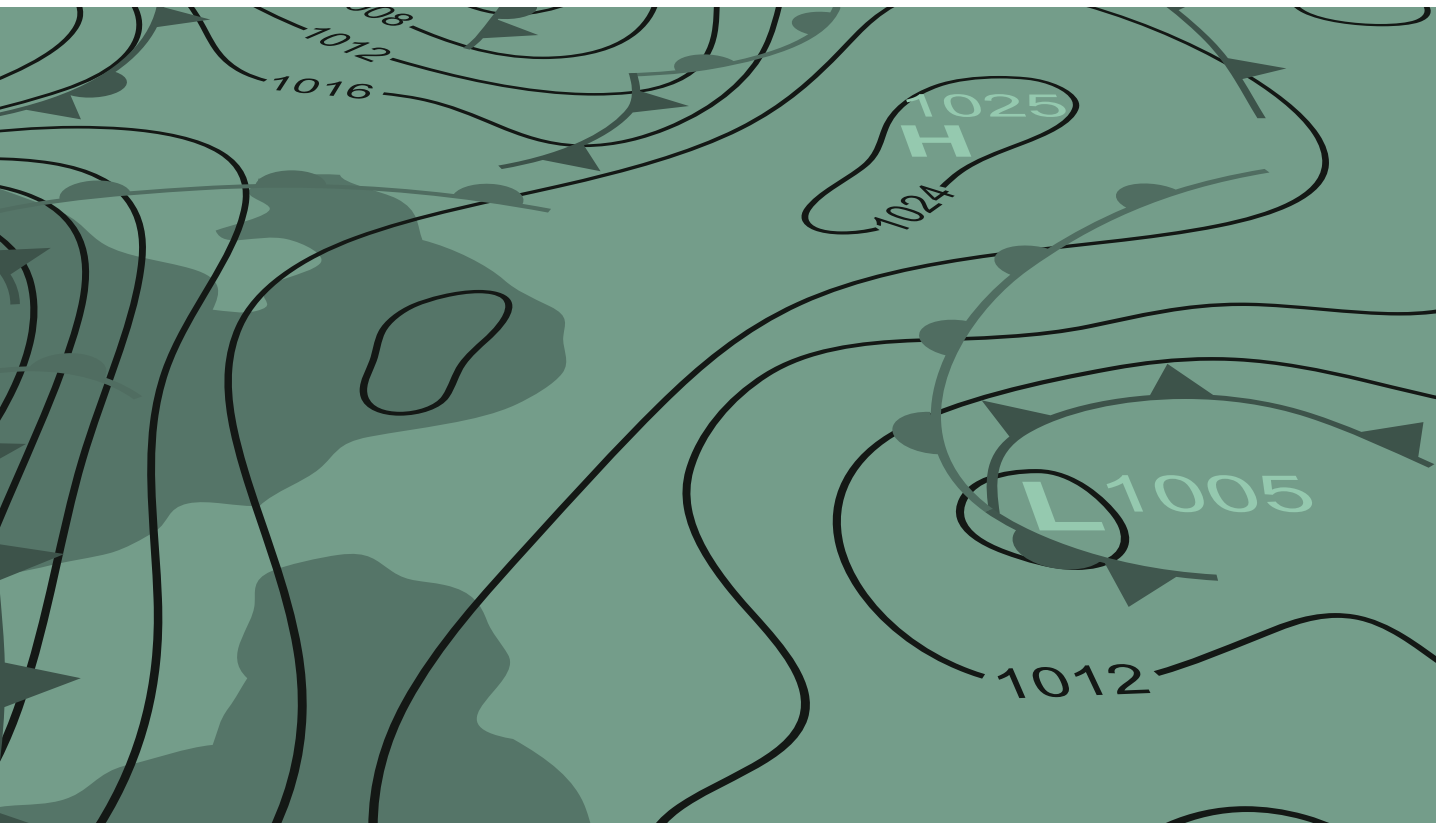
The intersections between trade and climate change are complex and inevitable. However, international debate around them has often been reduced to fears of green protectionism, or calls for border adjustment measures that pay little heed to the multilateral trade regime. The positive role trade can play in addressing climate change is now beginning to be acknowledged, thanks to recent trade initiatives like the Asia Pacific Economic Cooperation list on environmental goods and the plurilateral Environmental Goods Agreement. Yet it is fair to say that experts and academia are bolder when it comes

to recognizing the interlinkages than policy-makers or the intergovernmental organizations governing the issues, such as the UNFCCC and the WTO. In the latter, there has often been a tendency to believe that the matter belongs elsewhere.

The policy options seek to offer concrete avenues for consideration on how the global trade and investment system can better acknowledge and respond to these interlinkages. The WTO is of course an important actor, but it is also necessary to highlight the role of other institutions, including the UNFCCC, the International Maritime Organization, and the International Civil Aviation Organization.

During the work of the Expert Group, important gaps in the area of governance were identified that may lead to trade tensions. These would revert difficult issues to the WTO system for dispute settlement, which, in turn, would need to act without specific guidance from its membership, as climate change is currently not explicitly reflected in the WTO framework.

Group discussions also highlighted the emergence of bottom-up solutions like the formation of climate clubs, plurilateral arrangements, or involvement by non-state actors, and explored how the trade system should be equipped to best support these initiatives. Indeed, as bottom-up action is growing in



significance, largely as a consequence of the UN process and its move towards national action under the “intended nationally determined contributions,” the frameworks that govern them are increasingly important to ensure that priorities are aligned, that adverse effects are being minimized, and that there is no double-accounting of emission reductions.

The E15 Expert Group on Measures to Address Climate Change and the Trade System was jointly convened by ICTSD, the World Economic Forum, and Climate Strategies, a not-for-profit organization that provides independent policy and economic research input to European and international climate policy. The Group was led by James Bacchus, a former member of the US House of Representatives and former chairman of the Appellate Body of the WTO, with a long track record as a thought leader on the trade-climate interface. The Group consisted of world-class experts drawn from both the trade and climate communities.

As co-conveners of the E15 Expert Group, we are convinced of the need to provide organized and structured input into the policy and governance debates at the intersection between trade and climate change. The policy options that have resulted from this thought and dialogue process are offered to policy-makers and stakeholders alike, in the hope

that they provide paths to effectively respond to policy imperatives of societies the world over. In a second phase of the E15 Initiative, we intend to engage policy-makers in advancing these options.

Ricardo Meléndez-Ortiz
Chief Executive, ICTSD

Richard Samans
Managing Director and Member of the Managing Board,
World Economic Forum

Henry Derwent
Senior Advisor, Climate Strategies

GLOBAL RULES FOR MUTUALLY SUPPORTIVE AND REINFORCING TRADE AND CLIMATE REGIMES

TRADE RULES AND CLIMATE REALITIES ARE RAPIDLY APPROACHING A CROSSROADS. AS THE WORLD RIGHTLY INTENSIFIES ITS SEARCH FOR GLOBAL SOLUTIONS FOR CLIMATE CHANGE, A VAST NUMBER OF CLIMATE-RELATED CONCERNS ARE ALREADY CONSUMING CLIMATE NEGOTIATORS. TO THIS NUMBER MUST BE ADDED THE RELATIONSHIP BETWEEN TRADE AND CLIMATE CHANGE. FAR TOO LITTLE ATTENTION HAS BEEN PAID IN GLOBAL POLICY-MAKING TO THE NEXUS BETWEEN CLIMATE CHANGE AND TRADE.

In particular, important opportunities for the trade system to contribute to addressing climate change have been largely overlooked. The E15 Expert Group on Measures to Address Climate Change and the Trade System, jointly convened by ICTSD and the World Economic Forum in partnership with Climate Strategies, has sought to bridge this gap.

Economically, environmentally, and in every other way, the linkage between trade and climate change in global governance is unavoidable and inescapable. Climate actions—which, in the current expectation, are to be nationally determined—will necessarily affect terms of trade. On the other hand, trade has a direct impact on emissions, positive and negative, through transport and also through the use of resources. Trade can also play an important role in mitigation as well as adaptation by fostering access to goods such as food, and also by speeding the spread of clean new technologies.

Our overriding message to trade negotiators and to climate negotiators alike about how best to meet the global challenge of reconciling our goals for trade and for climate change is that they must begin by acknowledging the inseparability of the two issues. Based on this mutual acknowledgment, they must each acknowledge, too, the essential legitimacy of the goals of the other, and they must begin now, belatedly, to communicate. This communication must aim at framing global rules on trade and on climate that are mutually consistent, mutually supportive, and mutually reinforcing.

DIVERGING TRADE AND CLIMATE REGIMES

MUTUAL MISUNDERSTANDING

Neither the goals of the long-established global trade regime nor those of the newly-emerging global climate regime can be accomplished unless the two worlds of trade and climate endeavour can come together to work as one. In the absence, so far, of any structured communication between the climate and trade worlds, there is a prevailing air of mutual apprehension. Climate advocates fear that trade rules will keep us from fighting climate change. Trade advocates fear that making allowances for fighting climate change in trade rules

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will lead to an endless procession of other causes seeking such special allowances, which could undermine a global trading system more than half a century in the making. There is also a prevailing mutual procrastination. Each of the climate and the trade worlds is waiting for the other to act first on the issues that concern them both. Against this backdrop, the Expert Group has scrutinized at length opportunities for the trade system to contribute to climate action, and also for the trade system to inform climate action.

ATTAINING A UNIVERSAL AND COMPREHENSIVE CLIMATE TREATY

For reasons perfectly understandable within the challenging context of the UNFCCC climate negotiations, it is no longer anticipated that a future climate agreement will include general obligations for national cuts in greenhouse gas emissions. Instead of binding commitments on cutting carbon emissions, the Paris Agreement includes only voluntary “[intended] nationally determined contributions.” Having reached an agreement, these contributions will no longer be referred to as “intended” but simply as nationally determined contributions (NDCs). Every country will agree to make some such a voluntary national “contribution”—a vital advance from the Kyoto Protocol where only a list of developed countries committed to emission reductions. It is not expected that there will be any real disciplines in the agreement relating to the making or the meeting of these commitments on “contributions.” Moreover, there will most likely not be any effective mechanism in the climate agreement for settling disputes about these “contributions.”

What may be most important for purposes of international trade law is that, to date, there has been virtually no discussion by either climate negotiators or delegates to the WTO of the specific kinds of national measures that could be seen as “climate measures” taken to fulfil these voluntary “contributions,” or of how those national measures could be reconciled with WTO law if they restricted or otherwise affected trade in goods or services and, thus, fell within the scope of the WTO treaty. Therefore, it can already be anticipated that there will, in the aftermath of the conclusion of the Paris Agreement, be no agreed way of judging whether a national “measure” should be exempt or not from what would otherwise be WTO trade obligations. This omission from the climate debate is critical, and it affects in a variety of ways many of the Expert Group’s policy options.

DEALING UNIQUELY WITH CLIMATE CHANGE IN THE GLOBAL TRADE SYSTEM

To keep from opening a Pandora’s box of global protectionism, the unique issue of climate change must be addressed by the members of the WTO in ways that are likewise unique. In

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framing our policy options for dealing with this issue within the global trade system, our focus is on the interface between national and international measures taken to address climate change and the global rules of the WTO-based multilateral trading system.

Our very strong view is that global climate rules and global trade rules must be consistent in both conception and in application. They must likewise be consistent in enforcement. Where proposed climate rules are concerned, our main focus is on possible approaches that may have trade implications or that may otherwise be affected by the rules or rulings of the WTO. Where current or proposed trade rules are concerned, our focus in these policy options is equally on the many affirmative ways that trade and trade rules can be used to advance climate actions, and on suggesting ways to avoid the potential collisions that may occur with the current trade regime when taking climate actions.

The policy options are arranged in six subcategories between which there are a number of overlaps. There is no hierarchy of the offered options, and no suggested sequencing. Each of the policy options that follow garnered broad support within the Expert Group. However, it is safe to say that none of us agrees on all of them. We have not sought to achieve a consensus on our list of policy options. We have instead chosen to identify and to offer as broad a selection of options as possible for due consideration by all of those entrusted with decision-making on the interrelationships between trade and climate change. In a number of instances, we offer one particular approach as a policy option. In others, we offer several possible approaches for consideration by global decision-makers.

Our very strong view is that global climate rules and global trade rules must be consistent in both conception and in application. They must likewise be consistent in enforcement.

POLICY OPTIONS FOR MUTUALLY SUPPORTIVE REGIMES

MAXIMIZE THE WAYS TRADE CAN ADDRESS CLIMATE CHANGE WHILE MINIMIZING CONFLICTS BETWEEN THE TRADE AND CLIMATE REGIMES

Most of the opportunities trade offers in the common struggle against climate change are currently being missed. The effort to address climate change must occur not only within the UNFCCC; it must also occur within the global trade system. There are a whole array of ways the WTO and other trade arrangements can be used affirmatively to maximize trade as a positive force in fighting and forestalling climate change. At the same time, it is necessary to anticipate potential conflicts and to prevent legal collisions between WTO rules and national and international measures taken to address climate change. The seven options offered in this subcategory deal with what can be anticipated as a legal overlap between the existing WTO-based trade regime and the various combinations of newly constructed climate regimes that may emerge.

POLICY OPTION 1

Enhance the mutual understanding between the trade and climate regimes through recognizing the legitimacy of each regime and through a greater use of existing fora, such as the Committee on Trade and Environment and the Trade Policy Review Mechanism of the WTO as well as the Subsidiary on Body Scientific and Technological Advice of the UNFCCC, for assessing the implications of one regime for the other.

POLICY OPTION 2

Strengthen the WTO Trade Policy Review Mechanism to include a required assessment of the impact of relevant domestic measures on climate change, and also on efforts to address climate change.

POLICY OPTION 3

Continue to explore the role for a formal and mandatory climate dispute settlement mechanism in the UNFCCC and in other international climate agreements.

POLICY OPTION 4

In the UNFCCC, include an agreed means for measuring, reporting, and verifying measures taken to implement Intended Nationally Determined Contributions (INDCs) as well as a definition that can be used for purposes of identifying “climate measures” in trade and other dispute settlement.

POLICY OPTION 5

Have the WTO agree that it will be bound for purposes of WTO dispute settlement by the judgments in any climate dispute settlement mechanism relating to climate compliance under those agreements. Provide that:

- A national measure taken by WTO members which is found to be in furtherance of a national climate “contribution” in a climate agreement will be respected in WTO dispute settlement, and that such a measure will be exempt from what would otherwise be that WTO member’s WTO obligations;
- Trade sanctions taken by one WTO member against goods or services of another WTO member pursuant to the terms of a climate agreement to which both those WTO members are parties will be considered to be in compliance with WTO obligations.

POLICY OPTION 6

Through a decision or some other legal action by the members of the WTO, create a legal breathing space by establishing a “peace clause” for climate action. Such a “peace clause” could require WTO members to wait at least three years before challenging national climate measures or countermeasures that restrict trade or otherwise have trade effects in WTO dispute settlement.

POLICY OPTION 7

Through a common action by the UNFCCC and the WTO, clarify the differences, if any, between the concept of “common but differentiated treatment” in the climate regime and the concept of “special and differential treatment” in the trade regime, and, further, clarify the ways and the extent to which these forms of treatment should be acknowledged in dispute settlement involving trade-related climate measures.

RECOGNIZE EMBEDDED CARBON IN TRADE AND REVISIT THE CONCEPT OF “LIKE” PRODUCTS

The concept of “like” products is part of the foundation of the trade system. The determination of “likeness,” which has been the subject of endless jurisprudence, has not been made on the basis of how products are made or what goes into making them. A legal determination in WTO dispute settlement that two products are not “like” based on the amount of carbon

It is necessary to anticipate potential conflicts and to prevent legal collisions between WTO rules and national and international measures taken to address climate change.

used in making them would be unprecedented. In our view, the uniqueness of the existential global challenge of climate change fully justifies carving out some kind of a limited exception for distinctions between and among traded products on the basis of carbon use and carbon emissions. At the same time, we are mindful of the legitimate fear in the trade regime that doing so as part of a “likeness” determination could open the door to other distinctions that could threaten the overall trading system. We offer an approach consisting of two linked policy options that seem to us to combine the most benefit for the climate at the least risk to trade.

POLICY OPTION 8

Initiate a joint effort by the WTO, the UNFCCC, and other relevant international institutions to establish an agreed common international standard for calculating the amount of carbon used in the making of traded products; and,

POLICY OPTION 9

Agree on a “waiver” from WTO obligations for all trade restrictive “climate measures” that are based on the amount of carbon used in making a product and that are taken in furtherance of and in compliance with a UNFCCC climate agreement or with a plurilateral “climate club.”

Here we emphasize two things: first, the importance of a carefully drawn “waiver” that will clearly define the limits of such permitted measures; and second, the imperative that the climate regime itself defines what precisely is a “climate measure.” Otherwise, jurists for the trade regime will do so in the context of discrete disputes in WTO dispute settlement.

FOSTER CLIMATE ACTION THROUGH ENABLING THE FORMATION OF CLIMATE CLUBS AND COALITIONS

In the absence of a universal and comprehensive approach to climate change we are anticipating the continued conclusion of various partial and limited climate-related agreements by clubs of some countries, and perhaps including in certain instances subnational and/or non-state political actors. Given the strong potential of such arrangements to complement multilateral action, it is, in our view, imperative that the trade and climate regimes be mutually supportive of plurilateral climate action, and able to respond positively to this development. We offer four options, mindful that this must be done with due consideration for the WTO core principle of non-discrimination, and that there may be potential for framing climate-related clubs as plurilateral agreements within the WTO and as part of free trade agreements permissible under the WTO treaty.

The uniqueness of the existential global challenge of climate change fully justifies carving out some kind of a limited exception for distinctions between and among traded products on the basis of carbon use and carbon emissions.

POLICY OPTION 10

Members of the WTO should affirm by a decision that climate measures taken pursuant to a climate agreement of the UNFCCC are measures falling within the scope of Article XX of the GATT and of Article XIV of the GATS, and will be entitled to the benefit of those general exceptions to the obligations in the WTO treaty, provided they comply in their application with the conditions to those exceptions reiterated in Article 3.5 of the UNFCCC.

POLICY OPTION 11

Members of the WTO should agree on a set of circumstances in which there would be a presumption in favour of granting a waiver for a climate-related “club” organized outside the framework of the WTO to become a “plurilateral” agreement under the WTO treaty. Members of the plurilateral could commit to a set of rules on climate change that would be binding solely on them and would be fully enforceable in WTO dispute settlement.

POLICY OPTION 12

Through a decision by the members of the WTO:

- Affirm that an agreement by a climate “club” to provide “WTO-plus” trade benefits over and above those due under the WTO treaty to WTO members that are members of that “club,” and not to those WTO members that are not “club” members, is permissible under WTO rules;
- Provide that trade sanctions taken by a WTO member pursuant to a plurilateral “climate club” or some other plurilateral climate agreement to which that WTO is a party against another WTO member that is not a party to that plurilateral climate agreement will be in compliance with WTO obligations, only to the extent that the requirements of the GATT, the GATS, and other relevant WTO agreements are fulfilled.

Given the strong potential of climate clubs and coalitions to complement multilateral action, it is imperative that the trade and climate regimes be mutually supportive of plurilateral climate action and able to respond positively to this development.

POLICY OPTION 13

Through a decision by the members of the WTO, provide that:

- There is no territorial limitation to Article XX of the GATT, and that therefore WTO members have the legal right to take measures domestically to address environmental harms that occur outside their national territory;
- Or, provide, more narrowly, only that there is no territorial limitation to Article XX of the GATT and Article XIV of the GATS for measures taken for climate reasons relating to the amount of carbon used in making traded products.

Putting a price on carbon is essential to climate change mitigation. But doing so in a largely uncoordinated manner enormously complicates the options for preventing a collision between the trade and climate regimes.

AN AGREED FRAMEWORK FOR EMISSIONS TRADING, CARBON TAXES, BORDER MEASURES

Among the fragmented responses to climate change post 2015, we can expect the proliferation of a range of policies to price carbon, including emissions trading, carbon taxes, and possibly border measures. Putting a price on carbon is essential to climate change mitigation. But doing so in a largely uncoordinated manner enormously complicates the options for preventing a collision between the trade and climate regimes. It does so especially with respect to the array of trade restrictive border measures, which could be implemented by countries for fear of carbon leakage and also as political concessions for the acquiescence of domestic producers to national restrictions on carbon emissions. We offer two options that respond to one of the main concerns in the climate-trade interface: that of unnecessarily restricting trade for climate reasons—a debate that is ongoing in the UNFCCC as well as in the WTO and other trade settings.

A key challenge in addressing climate change is to provide at a minimum a level playing field between clean and fossil energies. Moreover, it will be necessary to stimulate the production and use of low-carbon products.

POLICY OPTION 14

Through a decision by the members of the WTO, clarify the relationship between international emissions trading schemes and the WTO so as to:

- Ensure that WTO rules explicitly apply to international emissions trading;
- Permit importing countries to require importers to purchase emission reduction units under that country's emissions trading scheme as a condition of importing;
- Affirm that grants of exemptions and “free allowances” in emissions trading schemes are actionable subsidies under WTO rules. This could be combined with a time-limited peace clause allowing for a phase-out of existing free allowances so as to avoid challenges in the Dispute Settlement Body.

POLICY OPTION 15

Through a decision by the members of the WTO, provide that a carbon tax or any similar tax based on the amount of carbon used in making a product is an indirect tax on a product that is therefore eligible for a “border tax adjustment” under Article II:2(a) of the GATT, either through a charge on an imported product or through a remission on an exported product, and, consequently, is not a violation of the prohibition against excessive taxation of imported products in Article III:2 of the GATT.

MAKE USE OF SUBSIDIES, STANDARDS, GOVERNMENT PROCUREMENT, INTELLECTUAL PROPERTY

A key challenge in addressing climate change is to provide at a minimum a level playing field between clean and fossil energies. In addition to putting a price on carbon, it is essential to stop subsidizing it. We believe that the WTO has a role to play in this context, because fossil fuel subsidies are likely to affect competition and trade. Moreover, to address climate change, it will be necessary to stimulate the production and use of low-carbon products. Towards this end, a range of policy instruments are being used by policy-makers, including the use of subsidies, standards, intellectual property rules, and government procurement. In some cases, there is a lack of clarity on what is allowed and what is not, creating a zone of uncertainty that the six policy options offered in this category would seek to address.

POLICY OPTION 16

Mandate full disclosure of fossil fuel subsidies under WTO rules, affirm that fossil fuel subsidies are actionable subsidies under those rules, and agree on the gradual phase-out and ultimate prohibition of such subsidies.

POLICY OPTION 17

Specify that Article XX of the GATT applies to the Agreement on Subsidies and Countervailing Measures (ASCM), so that subsidies intended to support climate action may deviate from the general obligations.

POLICY OPTION 18

Ban “Buy National” government procurement and permit only non-discriminatory purchases of climate-friendly environmental goods and services under the WTO Agreement on Government Procurement (GPA) while encouraging more WTO members to accede to that Agreement. (See the Agreement on Government Procurement.)

POLICY OPTION 19

Enhance the clarity of current WTO rules on the permissibility of non-discriminatory environmental standards and technical regulations by encouraging high standards and regulations while barring both *de jure* and *de facto* discrimination. (See Article I and Article III of the GATT and Articles 2.1 and 2.2 of the Technical Barriers to Trade (TBT) Agreement.)

POLICY OPTION 20

Encourage the conclusion of mutual recognition and harmonization of environmental standards through use and enhancement of existing WTO rules, especially through the further development of international standards. (See Articles 2.6 and 2.7 of the TBT Agreement.)

POLICY OPTION 21

Speed the spread of new green technologies by improving the provisions in WTO intellectual property rules on “green” technology transfer to least-developed and other developing countries. A new WTO working party should be appointed to explore and recommend ways of striking an appropriate balance to meet the needs for both access and innovation. (See Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights—TRIPS.)

FOSTER SECTORAL APPROACHES, INCLUDING MARITIME SHIPPING AND AVIATION

In tackling climate change, where progress among smaller groups of stakeholders on a limited set of issues at a time is more easily within reach than a global, comprehensive deal, it is relevant to also revisit the concept of sectoral deals. Sectoral rules can be the building blocks towards global rules. For our final three policy options, we have considered two sectors with a clear trade link and with abatement opportunities at hand: international shipping and aviation.

In tackling climate change, where progress among smaller groups of stakeholders on a limited set of issues at a time is more easily within reach than a global, comprehensive deal, it is relevant to also revisit the concept of sectoral deals.

POLICY OPTION 22

Through a decision of the members of the WTO, affirm that climate agreements affecting trade made by certain international organizations such as the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO) will be upheld in WTO dispute settlement as to WTO members that are parties to those agreements, but not to those WTO members that are not.

We suggest that the Conference of the Parties (COP) should call for the ICAO to address issues of climate change more urgently than it has done to date. Furthermore, if significant progress is not made by the ICAO to address climate change issues, then the next COP should request the United Nations General Assembly to consider reform and restructuring of the ICAO to ensure that climate change issues are sufficiently addressed.

POLICY OPTION 23

The IMO should set a global target for carbon dioxide emissions in international maritime shipping.

POLICY OPTION 24

The IMO or a group of Arctic countries should reach an agreement on addressing black carbon and methane emissions in the Arctic region in particular by adopting and enforcing performance standards for ships operating in the region.

None of the options for dealing with the nexus of trade and climate change will succeed if significant additional efforts are not made by the climate and trade regimes to work as one on behalf of our overriding global goals for sustainable development.

NEXT STEPS

The trade regime and the climate regime are moving forward on any number of interrelated issues affecting the intersection of trade and climate change. Above all, we urge the two communities simply to communicate. They must come together now, and they must work together now, to explore mutual solutions to prevent a collision between the two regimes, and, further, to foster and facilitate an ongoing cooperation and collaboration between the two regimes. None of the options for dealing with the nexus of trade and climate change will succeed if significant additional efforts are not made by both regimes to work as one on behalf of our overriding global goals for sustainable development.

Our intent in offering this list of policy options is to be thought-provoking. It is not to be definitive. We see the list of policy options as, more than anything else, a long “checklist” of possibilities for decision-makers to consider. We certainly do not anticipate that all of these policy options will be implemented. We hope to inspire considered deliberation by trade and climate negotiators and other decision-makers alike. We hope too that this considered deliberation will help inspire action.

In our view, the key to identifying the improvements needed in trade rules can be found by keeping the promise made by the members of the WTO in the preamble to the Marrakesh Agreement that established the organization. The more than 100 countries that agreed to transform the GATT into the WTO expressed their shared desire 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 development.”

TABLE SUMMARY OF MAIN POLICY OPTIONS

POLICY OPTION	CURRENT STATUS AND GAP
Maximize the ways trade can address climate change while minimizing conflicts between the trade and climate regimes	
<p>1. Enhance the mutual understanding between the trade and climate regimes through recognizing the legitimacy of each regime and through a greater use of existing fora, such as the Committee on Trade and Environment and the Trade Policy Review Mechanism of the WTO as well as the Subsidiary Body on Scientific and Technological Advice of the UNFCCC, for assessing implications of one regime for the other.</p>	<p><i>Ad hoc</i> discussions have been held in the WTO Committee on Trade and Environment (CTE) on climate-related topics.</p> <p>Some trade-relevant discussions have also been carried out under the UNFCCC response measures forum-SBSTA/SBI. A decision on the continuation of the response measures forum is pending. A more systematic approach is needed.</p>
<p>2. Strengthen the WTO Trade Policy Review Mechanism to include a required assessment of the impact of relevant domestic measures on climate change, and also on efforts to address climate change.</p>	<p>No steps taken. At the 2009 Copenhagen Climate Summit, US President Obama proposed that the WTO Trade Policy Review Mechanism be replicated in a climate governance context, but no concrete steps pursuant to this have been taken within the UNFCCC.</p>
<p>3. Continue to explore the role for a formal and mandatory climate dispute settlement mechanism in the UNFCCC and in other international climate agreements.</p>	<p>A non-paper by Bolivia on a climate tribunal had been submitted in the context of the UNFCCC Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP). The latest draft text of the Draft agreement and draft decision on workstreams 1 and 2 of the ADP (10 November 2015) includes under Article 11 (Facilitating Implementation and Compliance) an option for the establishment of:</p> <ul style="list-style-type: none"> ■ An International Tribunal of Climate Justice to address cases of non-compliance with the commitments of developed country Parties on mitigation, adaptation, provision of finance, technology development and transfer, capacity-building, and transparency of action and support, including through the development of an indicative list of consequences, taking into account the cause, type, degree, and frequency of non-compliance. ■ Bracketed text in the Draft Agreement (Article 104) also requests the [IPC][ADP] [COP][SBI] to develop the [additional] modalities and procedures for the [effective operation of the Committee][process][mechanism][International Climate Justice Tribunal] [, including the Committee,] referred to in Article 11 of the Agreement, with a view to completing its work on this matter for consideration and adoption by the CMA at its first session. ■ The scope of the text is limited to developed countries and will await an outcome at COP21 in Paris.
<p>4. In the UNFCCC, include an agreed means for measuring, reporting, and verifying measures taken to implement Intended Nationally Determined Contributions (INDCs) that can be used for purposes of identifying “climate measures” in trade and other dispute settlement.</p>	<p>The latest draft text of the Draft agreement and draft decision on workstreams 1 and 2 of the ADP (10 November 2015) provides for a number of options for a review, monitoring and verification. So far the nature, impact, regularity, and other details of the review process remain to be decided at COP21 in Paris. “Climate Measures” are not specifically defined but the draft text provides that further definitions may be required at a later stage in the negotiation process.</p>
<p>5. Have the WTO agree that it will be bound for purposes of WTO dispute settlement by the judgments in any climate dispute settlement mechanism relating to climate compliance under those agreements. Provide that:</p> <ul style="list-style-type: none"> • A national measure taken by WTO Members which is found to be in furtherance of a national climate “contribution” in a climate agreement will be respected in WTO dispute settlement, and that such a measure will be exempt from what would otherwise be that WTO Member’s WTO obligations; • Trade sanctions taken by one WTO Member against goods or services of another WTO Member pursuant to the terms of a climate agreement to which both those WTO Members are parties will be considered to be in compliance with WTO obligations. 	<p>No steps taken</p>

TABLE SUMMARY OF MAIN POLICY OPTIONS (continued)

POLICY OPTION	CURRENT STATUS AND GAP
6. Through a decision or some other legal action by the Members of the WTO, create a legal breathing space by establishing a “peace clause” for climate action. Such a “peace clause” could require WTO Members to wait at least three years before challenging national climate measures or countermeasures that restrict trade or otherwise have trade effects in WTO dispute settlement.	No steps taken
7. Through a common action by the UNFCCC and the WTO, clarify the differences, if any, between the concept of “common but differentiated treatment” in the climate regime and the concept of “special and differential treatment” in the trade regime, and, further, clarify the ways and the extent to which these forms of treatment should be acknowledged in dispute settlement involving trade-related climate measures.	No steps taken
Recognize embedded carbon in trade and revisit the concept of “like” products	
8. Initiate a joint effort by the WTO, the UNFCCC, and other relevant international institutions to establish an agreed common international standard for calculating the amount of carbon used in the making of traded products.	No steps taken
9. Agree on a “waiver” from WTO obligations for all trade restrictive “climate measures” that are based on the amount of carbon used in making a product and that are taken in furtherance of and in compliance with a UNFCCC climate agreement or with a plurilateral “climate club.”	No steps taken
Foster climate action through enabling the formation of climate clubs and coalitions	
10. Members of the WTO should affirm by a decision that climate measures taken pursuant to a climate agreement of the UNFCCC are measures falling within the scope of Article XX of the GATT and of Article XIV of the GATS, and will be entitled to the benefit of those general exceptions to the obligations in the WTO treaty provided they comply in their application with the conditions to those exceptions reiterated in Article 3.5 of the UNFCCC.	No steps taken
11. Members of the WTO should agree on a set of circumstances in which there would be a presumption in favour of granting a waiver for a climate-related “club” organized outside the framework of the WTO to become a “plurilateral” agreement under the WTO treaty. Members of the plurilateral could commit to a set of rules on climate change that would be binding solely on them and would be fully enforceable in WTO dispute settlement.	No steps taken

POLICY OPTION	CURRENT STATUS AND GAP
<p>12. Through a decision by the Members of the WTO:</p> <ul style="list-style-type: none"> • Affirm that an agreement by a climate “club” to provide “WTO-plus” trade benefits over and above those due under the WTO treaty to WTO Members that are members of that “club,” and not to those WTO Members that are not “club” members, is permissible under WTO rules; • Provide that trade sanctions taken by a WTO Member pursuant to a plurilateral “climate club” or some other plurilateral climate agreement to which that WTO is a party against another WTO Member that is not a party to that plurilateral climate agreement will be in compliance with WTO obligations, only to the extent that the requirements of the GATT, the GATS, and other relevant WTO agreements are fulfilled. 	No steps taken
<p>13. Through a decision by the Members of the WTO, provide that:</p> <ul style="list-style-type: none"> • There is no territorial limitation to Article XX of the GATT, and that therefore WTO Members have the legal right to take measures domestically to address environmental harms that occur outside their national territory; • Or, provide, more narrowly, only that there is no territorial limitation to Article XX of the GATT and Article XIV of the GATS for measures taken for climate reasons relating to the amount of carbon used in making traded products. 	No steps taken
An agreed framework for emissions trading, carbon taxes, border measures	
<p>14. Through a decision by the Members of the WTO, clarify the relationship between international emissions trading schemes and the WTO so as to:</p> <ul style="list-style-type: none"> • Ensure that WTO rules explicitly apply to international emissions trading; • Permit importing countries to require importers to purchase emission reduction units under that country’s emissions trading scheme as a condition of importing; • Affirm that grants of exemptions and “free allowances” in emissions trading schemes are actionable subsidies under WTO rules. This could be combined with a time-limited peace clause allowing for a phase-out of existing free allowances so as to avoid challenges in the Dispute Settlement Body. 	No steps taken but a more ambitious mandate on the lines of Para 31 (i) of the Doha Declaration (Clarifying the relationship between specific trade obligations in multilateral environmental agreements (MEAs) and WTO rules) could be envisaged in the future.
<p>15. Through a decision by the Members of the WTO, provide that a carbon tax or any similar tax based on the amount of carbon used in making a product is an indirect tax on a product that is therefore eligible for a “border tax adjustment” under Article II:2(a) of the GATT, either through a charge on an imported product or through a remission on an exported product, and, consequently, is not a violation of the prohibition against excessive taxation of imported products in Article III:2 of the GATT.</p>	No steps taken

TABLE SUMMARY OF MAIN POLICY OPTIONS (continued)

POLICY OPTION	CURRENT STATUS AND GAP
Make use of subsidies, standards, government procurement, intellectual property	
16. Mandate full disclosure of fossil fuel subsidies under WTO rules, affirm that fossil fuel subsidies are actionable subsidies under those rules, and agree on the gradual phase-out and ultimate prohibition of such subsidies.	No steps taken
17. Specify that article XX of the GATT applies to the Agreement on Subsidies and Countervailing Measures (ASCM), so that subsidies intended to support climate action may deviate from the general obligations.	Para 28 of the Doha Ministerial Declaration calls for negotiations aimed “at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants.” However this would depend on the eventual outcome of the Doha Round.
18. Ban “Buy National” government procurement and permit only non-discriminatory purchases of climate-friendly environmental goods and services under the WTO Government Procurement Agreement while encouraging more WTO Members to accede to that Agreement.	No steps taken
19. Enhance the clarity of current WTO rules on the permissibility of non-discriminatory environmental standards and technical regulations by encouraging high standards and regulations while barring both de jure and de facto discrimination. (See Article I and Article III of the GATT and Articles 2.1 and 2.2 of the TBT Agreement.)	No steps taken
20. Encourage the conclusion of mutual recognition and harmonization of environmental standards through use and enhancement of existing WTO rules, especially through the further development of international standards. (See Articles 2.6 and 2.7 of the TBT Agreement.)	<p>The use of IEC and ISO International Standards is deemed consistent with the obligations of countries that are members of the WTO and both have adopted the WTO TBT Code of Good Practice for preparation, adoption and application of standards.</p> <p>The IEC and ISO also developed various environment-related standards including in the following areas of climate mitigation: (i) Monitoring and measurement of greenhouse gas emissions (ii) Measuring the carbon footprint of networks and products (iii) Designing and building energy efficient homes and workplaces (iv) Benchmarking for good practices including environmental and energy efficiency labelling (v) Promoting good practice for environmental management and design, and for energy management (vi) Disseminating innovative technologies that promise to help reduce the effects of climate change (vii) Fostering the introduction of new energy-efficient technologies and services.</p> <p>The IEC has a dedicated advisory committee on environmental aspects (ACEA). The ACEA coordinates and guides the IEC’s efforts to ensure that IEC International Standards don’t include specifications which would harm the environment. The IEC also has several technical committees working in the field of renewable energies, looking at areas such as hydropower, ocean power, solar energy, wind turbines, and fuel cell technologies.</p> <p>In addition a number of bilateral mutual recognition agreements (MRAs) has been signed between countries although most of these have to do with conformity assessment and very few presume equivalence of standards. Many of the standards that are deemed equivalent have to do with technical specifications for products medical or electrical equipment and are not specifically related to the environment.</p>
21. Speed the spread of new green technologies by improving the provisions in WTO intellectual property rules on “green” technology transfer to least-developed and other developing countries. A new WTO working party should be appointed to explore and recommend ways of striking an appropriate balance to meet the needs for both access and innovation. (See Article 66.2 of the Agreement on Trade Related Aspects of Intellectual Property Rights–TRIPS.)	Ecuador submitted a proposal (IPC/W/585) at WTO TRIPS Council meeting on 11-12 June 2013 proposing a number of solutions to facilitate the transfer to developing countries of environmentally sound technologies that might be hindered by intellectual property rights. These included a reaffirmation of flexibilities in the TRIPS that would be available for green technologies, a review of a review of Article 31 of TRIPS, on “Other Use Without Authorization of the Right Holder,” and an evaluation of Article 33 of the TRIPS on the term of protection. The initial proposal has yet to find traction among a number of other WTO members. Discussions on the topic will continue in the context of the TRIPS Council.

POLICY OPTION	CURRENT STATUS AND GAP
Foster sectoral approaches, including maritime shipping and aviation	
<p>22. Through a decision of the Members of the WTO, affirm that climate agreements affecting trade made by certain international organizations such as the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO) will be upheld in WTO dispute settlement as to WTO Members that are parties to those agreements, but not to those WTO Members that are not.</p>	<p>No steps taken</p>
<p>23. The IMO should set a global target for carbon dioxide emissions in international maritime shipping.</p>	<p>More Can be Done: The IMO's Marine Environment Protection Committee (MEPC) has so far not set a GHG emissions reduction target for the shipping industry. The committee pledged instead to continue analytic work in this area. This includes efforts on mandatory measures adopted in 2011 and effective from 2013 on improving the fuel efficiency of new and existing ships. The fuel efficiency objectives of these measures are relevant because they can reduce GHG as well as black carbon emissions. The fuel efficiency regulations are mandatory, tangible, in force—in the form of amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL)—and will evolve over time.</p>
<p>24. The IMO or a group of Arctic countries should reach an agreement on addressing black carbon and methane emissions in the Arctic region in particular, by adopting and enforcing performance standards for ships operating in the region.</p>	<p>More Can be Done:</p> <ul style="list-style-type: none"> ■ The Arctic Council has approved an Arctic Council Framework for Action titled "Enhanced Black Carbon and Methane Emissions Reductions." ■ In this the eight member states commit to: "Develop and improve emission inventories and emission projections for black carbon using, where possible, relevant guidelines from the Convention on Long-Range Transboundary Air Pollution (CLRTAP) and improve the quality and transparency of information related to emissions of black carbon," and "Enhance expertise on the development of black carbon inventories, including estimation methodologies and emissions measurements, by working jointly through the Arctic Council and other appropriate bodies..." ■ The IMO International Code for Ships Operating in Polar Waters, addresses safety and environmental issues for shipping in hazardous and environmentally vulnerable waters of the Arctic and Antarctic regions. The code will be mandatory through amendments under both MARPOL and the International Convention for the Safety of Life at Sea (SOLAS). It will enter into force on 1 January 2017. Black carbon has however not been included in the code. Perhaps in the future the code might be used to serve as a legal basis for expanding IMO regulations to mitigate Arctic black carbon. The IMO's fuel-efficiency regulations will also contribute towards reducing black carbon emissions.

EXPERT GROUP PAPERS AND THINK PIECES

The papers commissioned for the E15 Expert Group on Measures to Address Climate Change and the Trade System can be accessed at <http://e15initiative.org/publications/>.

Bacchus, James. 2016. *Global Rules for Mutually Supportive and Reinforcing Trade and Climate Regimes*. E15 Expert Group on Measures to Address Climate Change and the Trade System – Policy Options Paper. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Cottier, Thomas. 2015. *Renewable Energy and Process and Production Methods*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Derwent, Henry. 2015. *What Has Climate to Fear from Trade?* E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Leycegui, Beatriz, and Imanol Ramirez. 2015. *Addressing Climate Change: A WTO Exception to Incorporate Climate Clubs*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Petsonk, Annie, and Nathaniel Keohane. 2015. *Creating a Club of Carbon Markets: Implications of the Trade System*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Victor, David G. 2015. *The Case for Climate Clubs*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

MEMBERS OF THE EXPERT GROUP

James BACCHUS – *Theme Leader*
Chair, Global Practice, Greenberg Traurig

Thomas BREWER – *Convener*
Senior Fellow, International Centre for Trade and Sustainable Development (ICTSD)

Henry DERWENT – *Co-Convener*
Senior Advisor, Climate Strategies

Sadeq BIGDELI
Senior Lecturer, University of Waikato

James CAMERON
Chairman, Climate Change Capital

Steve CHARNOVITZ
Professor of Law, George Washington University

Aimee CHRISTENSEN
Founder and CEO, Christensen Global Strategies

Thomas COTTIER
Managing Director, World Trade Institute (WTI)

Kasturi DAS
Associate Professor, Institute of Management Technology

Michael GRUBB
Professor of International Energy and Climate Policy, University College London (UCL)

Moustapha Kamal GUEYE
Senior Specialist, Green Jobs, International Labour Organization (ILO)

Gary Clyde HUFBAUER
Senior Fellow, Peterson Institute for International Economics (PIIE)

Nathaniel KEOHANE
Vice President for International Climate, Environmental Defense Fund (EDF)

Rubén KRAIEM
Partner, Covington & Burling LLP

Rafael LEAL-ARCAS
Professor of Law, Queen Mary University of London

Beatriz LEYCEGUI GARDOQUI
Partner, SAI Law & Economics

Patrick LOW
Visiting Professor, Hong Kong University

Ricardo MELÉNDEZ-ORTIZ
Chief Executive, ICTSD

Joshua Paul MELTZER
Fellow in Global Economy and Development, Brookings Institution

Håkan NORDSTRÖM
Trade Policy Consultant, EKONsulting

Amy PORGES
Principal, Law Offices of Amelia Porges PLLC

Akihiro SAWA
Executive Senior Fellow, 21st Century Public Policy Institute of Keidanren

Sourabh SEN
Co-Chairman and Co-Founder, Astonfield Renewables

Harro VAN ASSELT
Senior Research Fellow, Stockholm Environment Institute

Scott VAUGHAN
President and CEO, International Institute for Sustainable Development (IISD)

David G. VICTOR
Professor, University of California, San Diego

Tancrede VOITURIEZ
Director of the Governance Programme, International Institute of Sustainable Development and International Relations (IDDRI)

Ingrid JEGOU – *Group Manager*
Senior Manager, ICTSD

The experts all participated in their personal capacity. The analysis and policy recommendations are not attributable to any institution with which members of the E15 Expert Group are associated.

E15 INITIATIVE: EXPERT GROUPS AND TASK FORCES

In the quest for effective responses to the challenges faced by the global economy at this time, foremost experts were invited to contribute to 15 thematic groups as well as three task forces addressing horizontal issues. The groups met regularly between 2012 and 2015 with the goal of delivering a set of policy options on the occasion of the WTO's 20th anniversary. These options are intended to animate discussions and feed the present and future international trade and investment policy agenda for sustainable development. The full volume of policy options papers, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting in Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade. The second phase of the E15 Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

E15 INITIATIVE THEMES

- 1 – Agriculture and Food Security
- 2 – Clean Energy Technologies
- 3 – Climate Change
- 4 – Competition Policy
- 5 – Digital Economy
- 6 – Extractive Industries
- 7 – Finance and Development
- 8 – Fisheries and Oceans
- 9 – Functioning of the WTO
- 10 – Global Trade and Investment Architecture*
- 11 – Global Value Chains
- 12 – Industrial Policy
- 13 – Innovation
- 14 – Investment Policy
- 15 – Regional Trade Agreements
- 16 – Regulatory Coherence
- 17 – Services
- 18 – Subsidies

* Policy options to be released in late 2016

Implemented jointly by ICTSD and the World Economic Forum, the E15 Initiative convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global trade and investment system for sustainable development.



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