

Research Workshop: Transatlantic Trade Policy, Environmental Issues, and Climate Change

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The WTO as an Environmental Agency Revisited

Remarks of Steve Charnovitz

I am delighted to speak with you today from George Washington University during this multi-day conference on Transatlantic Trade Policy, Environmental Issues, and Climate Change.

Back in 1794, George Washington helped to inaugurate transatlantic trade policy with the Jay Treaty.

The organizers from Carlton University and the University of Salzburg are scholars in Political Science. My scholarship is largely in Legal Science and I have been asked to present on the role of the World Trade Organization (WTO) with special attention to environmental issues and climate change.

Before doing so let me give a digital fist bump to my fellow panelists Christian Häberli and Kyla Tienhaara.

The title of my Presentation is **The WTO as an Environmental Agency Revisited**

I will offer three main points:

First, the world trading system has made great progress in how it interacts with environmental issues since I first began writing about these issues in the runup to the UN Conference on Environment and Development of 1992.

Second, assigning important environmental problems to the WTO to solve will not often be a good idea because the WTO is dysfunctional and because environmental problems should be solved by environmental regimes.

Third, transatlantic cooperation has a greater potential of gaining success through regional and global issues negotiations on trade, climate, and the environment. Here I mean politically broad cooperation that should include USMCA countries, the EU, the UK, Switzerland, and Norway.

That will be a lot to cover in my 12 allotted minutes.

First, let's recognize the WTO's Environmental Progress.¹ Before the advent of the WTO, the GATT's normative stance on the environment was, to use some legal precision, awful

¹Steve Charnovitz, "[The WTO's Environmental Progress](#)," *Journal of International Environmental Law*, September 2007.

But the jurisprudence improved in the WTO especially because of the Appellate Body which gave a sophisticated and pragmatic interpretation of the environmental exceptions in GATT Article XX and a highly textured balanced judgment in the *Canada, Feed in Tariff* case.

The WTO has also improved its openness compared to the untransparent GATT.

Second, let me turn to what the role of the WTO should be regarding the environment and climate. Back in 2008, I wrote a futuristic essay for the United Nations University titled “The WTO As an Environmental Agency.”² I sought to explore what it would mean for the WTO to be reconsidered to be an international environmental agency rather than just as a trade agency.

At that time, my daring scholarly effort to reimagine a greener WTO was well outside of the trade mainstream

13 years ago, the WTO had much less pretension to assign itself an environmental mission than the WTO does in 2021.

Today, the mainstream views seem comfortable with the idea that the WTO should play an active role in promoting the reduction of greenhouse gas emissions. In Geneva, we have seen the TESSD, the Trade and Environment Structured Discussions Among WTO Member Group. In Brussels, we have seen the Trade Commissioner recently call for a new coalition of Trade Ministers to take concerted action on climate goals.

Among the issues that many suppose that trade ministers and/or the WTO can solve include setting carbon pricing, disciplining fishery subsidies, reducing the use of plastics, and disciplining fossil fuel subsidies.

So perhaps I should be satisfied that my 2008 scenario of WTO becoming an environmental agency is now conventional wisdom.

But I am not. The realism of 2021 collides with my idealism of 2008.

To be sure, undertaking effective global action on climate change, fisheries, and plastics are all worthy goals for global governance.

But I am now skeptical that assigning or reassigning these tasks to the WTO will work. More likely it will prove counterproductive.

After all, since 1995, none of the WTO’s environmental negotiations has succeeded. The most important negotiations were to liberalize trade in environmental goods and services and to control fishery subsidies.

²Steve Charnovitz, "[The WTO as an Environmental Agency](#)," in *Institutional Interplay: Biosafety and Trade* (United Nations University Press, 2008).

So today, based on the WTO's own track record of failure, no one should place any faith in the WTO as an institution capable of important non-trade problems.

Equally important, by reassigning environmental problems to the trade regime, one weakens the aspirations and integrity of the environmental regimes with the jurisdictional competence and the technical expertise to broker solutions. As a place to locate negotiations, the WTO is also inferior to environmental regimes, such as the UNFCCC, because the WTO is less transparent and lacks byways for business and NGO participation.

Why not instead seek to address climate problems in the climate regime, and fishery problems in the fisheries regime, and plastics problems within the UN Environment Programme (UNEP).

Don't encourage disintermediation by the WTO because it will just make things worse for the planet.

For fisheries, the classic market failure of overfishing necessitates better transborder IUU fisheries regulation. Oversubsidization is one small piece of that but hardly the central problem of the market and government failures in fishing resources management.

For climate, the original sin was that the Paris Agreement fails to allocate responsibility for the carbon footprint of imports and exports. That normative flaw in the empty Paris Agreement cannot be fixed by the WTO.

Moreover, there is a vital independent reason against WTO mission creep. The inherent treaty-based mission of the WTO to liberalize trade and manage multilateral trade relations remains a job that only the WTO can do.

Don't give the WTO an excuse to avoid its real job.

Now for my third and last point.

Transatlantic cooperation on both environmental and trade issues should be stepped up. Many problems of market failure or government failure are amenable to solutions adopted in transatlantic law and its existing or new transatlantic institutions. The transatlantic arena has successes in CETA and the NAFTA/USMCA, but the transatlantic region could be improved by learning from the ongoing Pacific regional practice in RCEP and CPTPP.

There is also a possibility that transatlantic countries could form a new coalition for progress at the WTO to provide leadership within the WTO for addressing global challenges of protectionism, isolationism, unilateralism, and discrimination.

Speaking from Washington, DC, I wish I could say that the United States is going to step up to be a leading negotiator in a coalition of transatlantic countries and at the WTO.

And perhaps a future will come when I will be able to honestly say that about the United States.