

## **G8 “climate deal” ducks looming clash with WTO**

### **Heiligendamm’s false promise must be addressed in Bali**

by Victor Menotti

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“Persuading George W. Bush, the US president, to embed his climate-change initiative in the UN-led Kyoto process, however, was a substantial achievement, according to European diplomats and non-government organizations,” reported the *Financial Times* in its coverage of the G8’s 2007 Summit in Heiligendamm, Germany.<sup>1</sup>

But hold the champagne; a larger fight looms over who holds real power to determine any global climate regime: the United Nations (UN) or the World Trade Organization (WTO). While European news networks cheered, it went entirely unsaid that 150 national governments have already empowered the WTO to “*allow Member Nations to challenge almost any measure to reduce greenhouse gas emissions enacted by any other Member,*” according to Mitsuo Matsushita, an ex-panelist who ruled against the US Clean Air Act in the WTO’s first dispute resolution case in 1996.<sup>2</sup>

Heiligendamm’s so-called victory reinforces a false sense of security that ignores the bigger clash between any meaningful global climate regime and current world trade rules. Worse, the G8 Final Communiqué urges rapid completion of the WTO Doha Round, which would expand WTO’s powers over climate policies enormously.<sup>3</sup>

To begin moving toward international relations that promote global sustainable development, world leaders should address the inevitable clash between these two systems of international law at the UN’s upcoming climate summit in Bali.

#### **FAKE FIGHT OBSCURES FOCUS ON GOVERNANCE ISSUES**

President Bush surprised many people only days before the G8 Summit by announcing that, “the United States will convene a series of meetings of nations that produce the most greenhouse gas emissions, including nations with rapidly growing economies like India and China... This new framework would help our nations fulfill our responsibilities under the U.N. Framework Convention on Climate Change.”<sup>4</sup>

For people rightly concerned about US unilateralism, Bush’s direct deference to UN processes should have come as a pleasant surprise. Still, some were concerned by the fact that he said, “the US will convene,” causing them to wonder whether this was Bush’s latest unilateralist spasm or an honest effort to express that America was, at last, ready to lead. German Chancellor Angela Merkel and British Prime Minister Tony Blair may have exacted a useful clarification that Bush use the UN, but it is more than likely his proposal was still half-baked and fuzzy on details. What’s important is that President Bush wants a deal signed before he leaves office in 18 months and fossil fuel interests know they’ll never get a better chance at a sweeter deal than now.

The problem is that the UN relies on trade measures to enforce its multilateral environmental agreements (MEAs) while the WTO generally prohibits restrictions on trade. WTO has a “legal

personality” to enforce its laws, but they can conflict with the trade measures used in the UN’s MEAs. The UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol both aim to conform to WTO rules but when national governments act to cut emissions they run into trade rules. As climate and energy policies begin to move market behavior, they are increasingly being viewed as “illegal barriers to trade,” such as Europe’s proposed “Kyoto tax,” America’s fuel efficiency standards, alternative fuels programs, and others noted below.

WTO’s approach to energy can promise neither climate protection nor energy security because its mission is to reduce the role of government whereas what is needed now are explicit government measures that send market signals to investors and consumers that redirect their decisions about what sort of energy to produce and consume at a rate and scale that respects ecological limits.

With the “death of Doha” seemingly imminent, US “fast track” negotiating authority expired, and the Democrats who now control Congress rethinking approaches to trade policy, a political space has opened to explore the links between trade, climate change, and energy security. The trade and climate policy communities need to collaborate to create trade rules that can accommodate what governments need to do to deliver a stable and sustainable energy future.

#### GET THE BALL ROLLING IN BALI

The UN Framework Convention on Climate Change, which will next meet December 3-14, 2007 in Bali, Indonesia, should include in its agenda the need to address trade policies if any post-Kyoto global climate regime is to actually be effective. Although key climate policy leaders are aware of the trade tensions with WTO, no organized effort exists to take on the looming threat it poses to any meaningful multilateral regime to tackle climate change. What’s at stake are peoples’ rights to use their governments to shift to socially stable and ecologically sustainable energy supplies.

Some key climate policies threatened by WTO rules include:

- \* European Ministers of Environment and Industry proposed a “Kyoto tax” on imports from countries without carbon controls but the idea was dismissed out of hand by European Trade Commissioner Peter Mandelson as a violation of WTO rules. Without some fair way to adjust carbon costs of imports, domestic industries will continue to oppose strong action due to unfair competition from countries with no climate regime.<sup>5</sup>
- \* The United States’ single most effective measure for reducing greenhouse gas emissions would be to approve the stronger standards for fuel efficiency now being considered by Congress, however the Senate Finance Committee’s International Trade Counsel is not aware of the fact that CAFÉ standards were already deemed “discriminatory” against European auto exports and knows of no changes in the current CAFÉ proposals to make them conform.<sup>6</sup> Nor has Europe renounced the possibility of repeating its successful challenge against the US.<sup>7</sup>
- \* Biofuels are rapidly expanding so the Bush and Lula governments recently agreed to cooperate on establishing new rules in the WTO to govern their trade, possibly prohibiting the use of any “sustainability criteria” now being mandated by Europe and some US states. Also, the European Biofuels Board is calling on Mandelson to launch a challenge against the US biofuels programs as a violation of WTO rules prohibiting subsidies for any “specific” product, even if they are renewable fuels.<sup>8</sup>

\* Carbon trading in a globalized market was a top G8 priority for Britain's Mr. Blair.<sup>9</sup> European Union and World Bank officials have endorsed such a market, noting that it must be made "consistent with WTO." The US has formally proposed putting "climate protection services" under the WTO, which could make illegal any requirements to preference local communities, exclude monocultures, or limit market share.<sup>10</sup> Carbon taxes are also at risk in WTO because of the way they would impact imports; legal analyses show that trade challenges are all but certain.<sup>11</sup>

\* Both the United States and the European Union are now pressuring energy-exporting nations to open their markets for "energy services" to allow Halliburton and others to enter without limitations on what type of energy resources can be exploited or what type of technology can be used.<sup>12</sup> The US Trade Representative calls energy services a "breakthrough" sector that must be delivered to complete the Doha Round. Nigeria, Indonesia, Brazil, and perhaps others, are preparing to submit formal offers to liberalize their energy services.

The G8's May 14, 2007 draft listed that its foremost "global solution" to climate change was to "work toward the reduction or, as appropriate, the elimination of tariff and non-tariff barriers to environmental goods and services through the WTO Doha negotiations."

#### CLEAN ENERGY SOVEREIGNTY REQUIRES NEW TRADE RULES

The world needs new trade rules for clean energy sovereignty, which is the freedom of regional, national and local communities to promote and protect their own autonomous and ecologically sustainable energy systems. Of course, we need international cooperation but expanding WTO's power over energy and climate policies is not the way. The logic of USTR's proposal ignores the conclusion of its own recent study that "demand for renewable energy services is driven largely by government policies including those that stem from national obligations under international environmental agreements."<sup>13</sup> We must reduce the rigidity of trade disciplines over all natural resources.

The Bali meeting should clarify that full authority over international policies for energy and climate belongs under the United Nations, not the WTO, and that governments will coordinate to change world trade rules to, at least:

- Ensure that domestic regulation and standard-setting needed to shift toward socially stable and ecologically sustainable energy supplies stays under the control of domestic democratic policy processes and is supported by international climate and energy agencies, not transferred to international trade bureaucracies. This re-directs trade negotiators away from the dangerous direction of current talks on Energy Services (where some propose to establish new criteria for justifying domestic regulations) and Energy Goods (where energy efficiency standards may become more vulnerable to challenge as Non-Tariff Barriers);
- Allow specific subsidies for promoting renewable energy programs and practices. This instructs trade negotiators to change current subsidies rules to avoid challenges against renewable energy;
- Promote a fair balance between promoting access to clean energy technologies and protecting innovation in developing nations. This advises trade negotiators to avoid repeating the intellectual property trap that pharmaceutical patent-holders have gotten caught in so that we can expedite the transfer of climate-friendly technologies;

- Re-establish the rights of nations to freely determine the country of origin, scale of production, and environmental impact of their energy imports so they can pursue energy sovereignty and protect climate stability. This urges changes to basic trade principles that now prevent using market access to secure stable and sustainable energy supplies.
- Encourage governments to freely implement multilateral environmental agreements (MEAs) such as the United Nations' Kyoto Protocol, by exempting the trade measures needed to enforce them from WTO challenges. This establishes a clear hierarchy of sustainable development imperatives over trade interests, and could be the single most effective way to address the issue in one fell swoop.

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The Bali meeting aims to create a new comprehensive framework for countering climate change. Including trade issues will, of course, not change the trade issues per se because that must be done formally in the trade bodies themselves. But as the foremost body empowered to discuss and determine what actions the world will collectively take to protect our common future, the 13<sup>th</sup> Convention of the Parties (COP-13) of the UNFCCC meeting in Bali has an obligation to send a strong signal to trade ministers and the trade policy community that trade rules must accommodate the climate challenge.

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<sup>1</sup> “Cheers all round for ‘winner’ Merkel,” by Bertrand Benoit and Hugh Williamson in Heiligendamm and Andrew Ward in Rostock, *Financial Times*, June 9, 2007.

<sup>2</sup> Interview at side event sponsored by the Center for International Environmental Law at the Fifth Ministerial of the World Trade Organization in Hong Kong, December 2005.

<sup>3</sup> “The Other Oil War: Halliburton’s Agenda at the WTO,” by Victor Menotti, IFG, [www.ifg.org/reports/WTO-energy-services.htm](http://www.ifg.org/reports/WTO-energy-services.htm) June 2006.

<sup>4</sup> President Bush Discusses United States International Development Agenda, Ronald Reagan Building and International Trade Center, Washington, D.C., May 31, 2007.

<sup>5</sup> “EU trade chief to reject ‘green’ tax plan,” *Financial Times*, by Andrew Bounds, [www.ft.com/cms/s/9dc90f34-8def-11db-ae0e-0000779e2340.html](http://www.ft.com/cms/s/9dc90f34-8def-11db-ae0e-0000779e2340.html), December 17 2006.

<sup>6</sup> Conversation with International Trade Counsel of the US Senate Finance Committee on June 27, 2007.

<sup>7</sup> “United States- Taxes on Automobiles: Report of the Panel,” General Agreement on Tariffs and Trade, September 29, 1994. [www.law.georgetown.edu/iel/cases/US-Automobiles\(abr\).pdf](http://www.law.georgetown.edu/iel/cases/US-Automobiles(abr).pdf)

<sup>8</sup> European Biodiesel Board letter to European Trade Commissioner, Peter Mandelson, “Re: International trade of biodiesel-unfair competition from “B99” subsidized exports from US and Argentinean Differential Export taxes (DETs), March 19, 2007.

<sup>9</sup> Berlin Speech given by Tony Blair on climate change. [www.britischebotschaft.de/en/news/items/070603.htm](http://www.britischebotschaft.de/en/news/items/070603.htm), 3 June 2007.

<sup>10</sup> Revised U.S. Services Offer to the WTO, [www.ustr.gov/Trade\\_Sectors/Services/2005\\_Revised\\_US\\_Services\\_Offer/Section\\_Index.html?ht=](http://www.ustr.gov/Trade_Sectors/Services/2005_Revised_US_Services_Offer/Section_Index.html?ht=);

<sup>11</sup> “US Federal Climate Policy and Competitiveness Concerns: The Limits and Options of International Trade Law, Joost Pauwelyn, Law Professor, Duke University, April 2007.

<sup>12</sup> “The Other Oil War: Halliburton’s Agenda at the WTO,” by Victor Menotti, IFG, [www.ifg.org/reports/WTO-energy-services.htm](http://www.ifg.org/reports/WTO-energy-services.htm) June 2006.

<sup>13</sup> Renewable Energy Services: An Examination of US and Foreign Markets, Investigation No. 332-462, US International Trade Commission, Washington, D.C., October 2005.