

The Climate Show episode 16

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Transcript

00:00:04 Linnea Nordlander

Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez

Hi. We are Beatriz Martinez, Linnea Nordlander and Alessandro Monti. And we are your host at the climate show.

00:00:24 Beatriz Martinez

The link between climate change and international trade is becoming increasingly significant, while new generation free trade agreements contain several references to climate commitments, new avenues for international cooperation on trade and climate change are also taking off within the World Trade Organization this.

00:00:41 Linnea Nordlander

Is an important development as the international climate and trade regimes have developed rather separately from each other for a long time. Establishing synergies between trade and climate goals is not an easy task, as products traded internationally account for a large share of global greenhouse gas emissions. Therefore, some initiatives are developing to foster international cooperation and action on trade and sustainability in order to learn more about the challenges of reconciling. Climate and trade we sat down to talk to two experts on this matter, Carolyn Birkbeck and our very own Alessandro.

00:01:14 Beatriz Martinez

Carolyn Birkbeck is the director of the Geneva Based Forum on trade, Environment and Sustainable Development Goals. She holds a PhD in international relations from University College, Oxford, and has published extensively within the field of international trade and sustainable development. Alessandro Monti, who you might recognize as one of the host of the climate show. Is an assistant professor in energy and sustainability law at the University of Copenhagen. He is joining today as a guest as he is an expert on the intersection of international trade and climate change law, and has recently published a monograph on this topic.

00:01:56 Beatriz Martinez

Alessandro, thank you so much for joining us on the Climate show today welcome.

00:02:01 Carolyn Deere Birkbeck

Thank you so much for the invitation.

00:02:03 Alessandro Monti

Thank you so much. It's a pleasure to be here as a guest on the other side.

00:02:09 Beatriz Martinez

Carolyn, you've been working for several years on the interface between trade and sustainability. How would you describe the challenge of reconciling trade with sustainability imperative?

00:02:18 Carolyn Deere Birkbeck

So it's a good question. In fact, when I think of this, I focus more on what are the priorities of reconciling trade with sustainability, because there are challenges. But there are also opportunities in this space. For me, the key priority is to ensure that trade and trade policies are harnessed to support and drive transformation towards sustainability and also to help us phase out that which is not sustainable in trade as well. So for me, we have this urgent need to tackle environmental crises of pollution, nature loss and climate crisis. We also need to do so in a way that supports sustainable development. So this is where there's that sustainability dimension where we need to look at the environmental, social and economic aspects, and that means that we need to balance. Ambition and effectiveness, also with inclusiveness and fairness.

00:03:10 Beatriz Martinez

And Alessandro, you have been also working on on this interface between climate sustainability and trade. How do you see research or your research contributing to this conversation?

00:03:23 Alessandro Monti

Yes, my research in this connection has been primarily focused on the interaction between climate and trade for renewable energy, and I am actually very happy to share that my book promoting renewable energy, the mutual supportiveness of climate and trade law, which is based on the PhD thesis that I wrote. Some years ago has now been published by Edward Elgar and in this book I examined precisely how climate and trade law interact with respect to the renewable energy sector.

00:03:56 Beatriz Martinez

And Caroline. I'm talking about this interaction you launched in 2021 TEST, which is a forum on trade environment and the Sustainable Development Goals as a partnership between the Geneva Graduate Institute and the United Nations Environment Program. Could you briefly describe to us what TEST is and how it aims to contribute to incorporating Climate change in the international trade agenda.

00:04:19 Carolyn Deere Birkbeck

Thank you. Sure. So we created TEST in 2021 specifically to try to promote more inclusive action and cooperation on trade and sustainability. We focus on 4 core thematic areas. One of them is the climate crisis. The other is the natural environment. We have pollution and also circular economy. But for us, this work on climate crisis is really key to our work in terms of what we do most of our work is on promoting constructive policy dialogue among government officials, experts from IGO's and stakeholder groups to try and identify positive pathways forward to incorporating issues like climate change in the international trade agenda and specifically this involves connecting the dots and breaking down silos

between different international organizations and. Lessons trying to identify the best evidence on what works, bringing forward experience from the national level, and particularly here from developing countries. So a lot of our focus is on making sure that the perspectives of developing countries are heard and then identifying very concrete policy options and pathways for cooperation. On issues like renewable energy, trade and climate adaptation, trade and deforestation, free supply chains, and so on. The core priority of our work is to make sure that as we pursue a climate agenda in the trade arena, we avoid creating unnecessary tensions and fragmentation that will undermine the cooperation we actually need to see on climate and also to make sure that we don't inadvertently create a 2 tier global economy where. Some countries are winning in that greener global economy, and some countries are falling behind because that won't help us achieve our climate outcomes if we don't engage them. In this process, so part of that is recognizing there's variation between countries and there are no simple solutions to a lot of these challenges. But what we do need is more dialogue, cooperation and evidence, and that's what we hope to bring to the table.

00:06:26 Beatriz Martinez

And within the WTO, there is a forum, called trade and environmental sustainability structure discussions that has been tasked to intensify the WTO work on trade and environment, including climate change, despite the similar acronym Test-D, it is a very different form for environmental cooperation within the trade context. To what extent does the work of TEST And test-D the support and complement each other.

00:06:57 Carolyn Deere Birkbeck

Good question. So first to underline that test-D is really been a great innovation in the WTO system. It was created by the membership. So there are 76 members representing over 80% of global trade to have all of the major players have countries from all regions and different levels of development and really what it's trying to do is to promote. Constructive dialogue and cooperation among countries on environmental issues in the WTO context, I think a key thing to note is from many, many years, there's not been a lot of progress on these issues in the WTO and here what the Members wanted to do was to sort of kick start and put some energy behind these topics, create a space where interested.

Governments could exchange views, identify pathways forward, look for ways to cooperate on this in a non-negotiating format that would also complement the traditional settings of the WTO, like the Committee on Trade and Environment. So you have the work of the test-D is really led by members. There are some stakeholders that can contribute to those discussions and they invite outside speakers. But our role at TEST, our organization TEST is really to provide a supporting role to that sort of dialogue that happens in the more formal setting of the WTO to contribute ideas, policy options to spur dialogue behind the scenes, and especially to support the engagement of developing countries in the work of test-D.

00:08:27 Beatriz Martinez

Further, 2023 is an important year as the coalition of Trade Ministers on climate has been launched to offer political leadership for inclusive international cooperation on trade and climate. What is in your view the potential of such coalition and similar member-led initiatives to drive transformative change at WTO level with respect to climate change?

00:08:50 Carolyn Deere Birkbeck

Thank you. So I think the coalition of Trade Ministers on climate is excellent news for those keen to promote, to promote more cooperation and synergy between the trade and climate agendas. So the coalition has 56 trade ministers as members representing all regions, levels of development and climate vulnerabilities. The coalition is led by Ecuador, the European Union, Kenya and New Zealand, which already reflects some of the diversity of the coalition and really, critically, it includes the least developed countries and also small island states that are most impacted by the climate.

00:09:24 Carolyn Deere Birkbeck

So it's really a different format and setting to what you see at the G7 or the OECD or the G20, the real commitment to building a broader conversation at the same time, it has some of the key economic powers that have the ability to drive change and that we need to see transform in order to tackle the climate crisis. I think what it really offers The trade, the climate and trade agenda and also work at the WTO is some political level leadership. So the idea behind the coalition is to provide ministerial level guidance and momentum that can drive some of the more detailed policy work that might happen, for instance in context, like testing, but also in the bilateral and regional level, so the coalition is not directly linked only to the WTO. They are hoping to promote cooperation. It could be in the African region, it could be cross regional, it could be through bilateral relations, what they really want to try to do is to inspire trade ministers to take more initiative and collective action on issues of climate in order that they can really contribute to part of the global response to the climate crisis.

00:10:34 Beatriz Martinez

So it seems there is an increasing interest in the trade community for climate change issues. And Alessandro, I'm thinking about the book that you mentioned. How is how you examine this concept of mutual supportiveness of climate and trade law? Could you explain what this concept entails and how it is incorporated in the respective legal regimes?

00:10:56 Alessandro Monti

Yes, sure. So as I mentioned, the book covers the interaction between the climate and the trade regimes, and they use these lenses of mutual supportiveness as an analytical tool to examine how these two regimes interact for renewable energy. Mutual supportiveness is something that legal scholars have described as a principle, according to which international legal rules, which are all parts of the same legal system, international law are to be understood and applied as reinforcing each other. So it's a principle that really focuses on the synergetic potential. At least, if not the actual synergies between legal rules that are part of very distinct regimes of international law. And what is particularly interesting about mutual supportiveness is that as a principle in a specific regard to the objectives that are pursued by the different trade regimes, so instead of just looking at the interaction at the level of single provisions, it really looks at the broader scope, the broader aim of legal regimes. And how this can be reconciled? And one of the reasons why I applied this to the climate and trade interaction is that mutual supportiveness is mentioned in several trade agreements, trade declarations of the Ministerial Conference of the WTO. So essentially, since adoption of Agenda 21. That's been one of the dominant principles in forming the way in which the trade ward should interact with environment and climate and mutual supportiveness at the same time. Can also have references within the climate regime. If we look,

for example, at Article 3.5 of the UNFCCC calling for a open and non discriminatory economic system. So it's clear that both the climate and the trade regimes somehow aim to reconcile their. Very different objectives under the lenses of mutual support. This is why I was fascinated by this principle and I used it as an interpretative or analytical tool to look at specifically how the legal regimes of trade and climate interact for renewable.

00:13:15 Beatriz Martinez

And to what extent is the mutual supportiveness of climate and trade law important for the promotion of renewable energy?

00:13:22 Alessandro Monti

Well, I would argue that it's very important, but I also found out in my book in my research that if we look especially at the several trade disputes that have taken place over the past decades on renewable energy subsidies. The way in which the two regimes have in fact interacted and the way in which.

00:13:44 Alessandro Monti

Trade provisions have been interpreted by the panel's by the Appellate Body of the WTO in several disputes was not necessarily always a mutually supportive interaction, and in the book I differentiate between 2 categories of disputes, the ones that have focused on discriminatory elements in renewable energy. Subsidies such as, for example, feeding tariffs with local content requirements, and there are several examples from Canada to India to the United States of support schemes for renewables that had this type of discrimination. Which was oftentimes considered the anti or in conflict with international trade rules and on the other hand there is another type of disputes which relate to unilateral trade remedies. So they concern anti dumping duties and countervailing duties that have been imposed unilaterally by trade. Partners to respond to economic incentives given by exporting countries to renewable energy and you know this. I found out that although to some extent it is good that WTO rules on national treatment, for instance, prevent discriminatory elements in subsidies, which can lead to less competitiveness. Of renewable energy, these heavy fossil fuels by not really supporting the most competitive, but rather the local product. At the same time, especially with regard to trade remedies, uh, it is a bit too generous, perhaps. How under WTO rules members can implement these measures unilaterally, and sometimes they can actually lead to higher costs for renewable technologies which cause against the need to make them more. Competitive for the pursuit of climate codes. So All in all, it's a mixed picture that I found out.

00:15:46 Beatriz Martinez

And is this reflected in at the WTO level, in bilateral and regional trade agreement?

00:15:53 Alessandro Monti

Yes. So at the WTO level, so at the multilateral level, it is reflected to some extent and there have been discussions, for example within the initiative for the environmental goods agreement, which gained some traction for a few years. But it was never really adopted. So there have been discussions, but I see that more effective progress has been made in bilateral and in regional trade agreements where it's said we can find examples such as some of the latest agreements.

00:16:27 Alessandro Monti

Signed by the EU with trade partners like Vietnam or Singapore, where specific provisions tackle non tariff barriers for renewable energy, including discriminatory elements and subsidies such as local content requirements. So this is something dealt with better, perhaps at a smaller scale and even. More progressive if we look at the recent trade agreement between the EU and the UK also in that case we have provisions that not only try to, for instance, create obligations for carbon pricing, but also have enforceability mechanisms that are more stringent because in that agreement it is climate change and compliance with the Paris Agreement is. Considered as an essential element, so this is a very innovative way of dealing with climate change in a trade. And I would like to add also that this can be a very important development also for another area of my research which is investment law and climate change, which relates to the project enacted that we have been carrying out at the law faculty of the University of Copenhagen over the past few years and also in that sense. I have done some research on the fact that free trade agreements can actually be more ambitious than investment agreements than BAT's, and since many FTA's so free trade agreements now incorporate investment chapters, they can also serve as a very powerful tool to make investment law greener.

00:18:04 Beatriz Martinez

Well, thank you so much for this overview. I'm I'm looking forward to reading your book before we wrap up. Is there anything else that you would like to raise that we haven't talked about yet?

00:18:16 Carolyn Deere Birkbeck

I just had a quick couple of thoughts that arose when I was listening to Alessandra. Just on the state of play at the WTO and in the testy discussions on climate, I think that while there are no new agreements in train being appreciated, there is some really important work that represents progress. So in the testing there's a working group on trade related climate measures where countries are having really detailed and constructive discussions on different standards and regulations being used by countries to drive climate action and to explore some of the trade dimensions of those, there's also interesting discussions in the working group on subsidies around subsidies to renewable energy, and also phasing out fossil fuel subsidies and in another working group on environmental goods and services, there's a strong focus on how we can use trade and trade policies to promote the diffusion and accessibility of critical goods, services and technologies for the climate action, both on mitigation and on adaptation. So I think that's really good news because it's it's not in negotiating mode, but it's about countries looking at solving problems, understanding what each other are doing. And there's a lot to be said for that building. The kind of momentum and dialogue needed to take action bilaterally or regionally or at other levels, or just to take national action that's supporting and and the one other thing I wanted to mention if I may, is just on the coalition because you had asked before what it can do to drive transformation at the WTO. And whilst it is not a WTO It is treated in their five priorities. One of the priorities is precisely to try and support enhanced cooperation in the multilateral trading system on climate, so to lend the voice of ministers to the importance of that effort, and it's also to promote our trade and investment that supports climate action. Both in terms of adaptation and mitigation, and the other element which I find quite excited, is that exciting is their commitment to support trade related climate strategies of the most vulnerable developing countries, especially the least developed countries. So there's really this emphasis on trying to build corporation and at least to try and manage and avoid some of the tensions and fragmentation. And that we also see in this space and that's, you know, part of

the geopolitical reality of the trade and climate discussions. So we can't paper over those. But I think it's a good real effort to try and rise above them and create something more constructive, Alessandro.

00:20:55 Alessandro Monti

Yes, I'd just like. To add that, I really admire the work that your Caroline are doing and with. Last, because honestly, when I was working on my PhD, which then became my book, all of this for me was just wishful thinking. And then as I progressed with that, I could see that also negotiations progress so much and that initiatives such as this also informed that the the political discussions so just thank you for all this work that you're doing, because it's really making trade more climate friendly, which is ultimately what we want and what the planet I think what's.

00:21:30 Carolyn Deere Birkbeck

Well, thank you very much. I think it takes. All of us it takes. Ecosystem of people and we need experts like you writing your great new book. Which I'm looking forward to reading because as I was saying, I think that as these discussions go forward, countries and stakeholders will need to get more concrete about how this whole trade climate discussion, which can seem very legal and esoteric, but how it actually appears. Real world problems like promoting the diffusion and production and scaling up of renewable energy. So I look forward to reading.

00:22:00 Beatriz Martinez

Well, thank you so much for your work and thank you for taking the time to come to the. Show today it's been a tremendous future. Thank you for listening to this episode. If you would like to read more about TEST and Alessandro Monti's book promoting renewable energy, *The Mutual Supportiveness of Climate and Trade Law*, seek out the information in the show notes. Stay tuned for our next episode.