

Strategic Domestic Policy Implementation: A Tool for Averting Inter-Regime Conflict

Background and Hypothesis: In our increasingly more interconnected and interdependent global economy, conflict is emerging between environmental and free trade interests. The often diverging rules and norms of environmental and free trade regimes have already begun to create conflict at the domestic level. For example, as a result of conflicting obligations with international trade agreements, U.S. environmental policies aimed at sea turtle and dolphin conservation have been challenged under the WTO. Similar conflicts are likely to emerge between trade-related provisions in multilateral environmental agreements (MEAs) (i.e. Kyoto Protocol) and World Trade Organization (WTO) policies (Brack et al. 2000 and Conca 2000).

Existing research regarding inter-regime conflict has largely focused on international institutional reform such as the creation of a world environmental organization to balance the WTO (Biermann 2000). *I hypothesize that institutional reform is not imperative, and that inter-regime conflict can be successfully avoided through strategic domestic implementation of international commitments.* I define implementation as “the measures that states take to make international accords effective in their domestic law” (Weiss et al. 1998). For the purposes of this project I would also add that in order for these measures to be effective they must not conflict with international trade policy. International relations scholars have studied how regime design impacts compliance and overall effectiveness of international environmental regimes (Mitchell 1994, Downs 2000, Weiss et al. 1998). However, the literature does not adequately address how policy implementation strategies can be used to *avoid* inter-regime conflict.

Domestic implementation of the Kyoto Protocol’s emissions trading system provides the ideal framework through which to analyze this problem. The Kyoto Protocol will likely set precedence for negotiation of future multilateral environmental agreements. In addition, based on strong support for the emissions trading system from the EU¹, it is likely that even in the absence of complete ratification of the Kyoto Protocol, emissions trading will continue to play a major role in the climate regime. Furthermore, in the absence of a protective MEA framework, it is likely that domestic carbon emissions trading systems with international trade components (i.e. EU trading system referenced above) will be increasingly vulnerable to trade-related conflict.

A number of potential trade-related conflicts between the Kyoto Protocol’s emissions trading system and the WTO have been identified (Charnovitz 2003 and Brack et al. 2000). For example, the Kyoto Protocol requires that member nations allocate assigned amount units (AAUs)² to domestic industries that emit carbon dioxide. Once allocated, AAUs can be (1) used to offset domestic emission reduction requirements, or (2) traded on the emissions trading market for profit. Depending on how governments implement domestic allocation policies, AAUs may be seen as a subsidy impermissible under the WTO Agreement on Subsidies and Countervailing Measures (Brack et al. 2000). My master’s thesis explored another aspect of potential trade-related conflict between Kyoto and the WTO. Entitled: “Emissions Trading Under the Kyoto Protocol: NAFTA and WTO Concerns” it will be published in the forthcoming Fall 2003 edition of *Georgetown International Environmental Law Review*. A legal analysis, the central question asks: Can WTO members that are non-Kyoto signatories (i.e. the U.S.) be excluded from participation in Kyoto’s emissions trading market? This project provided me with a strong background in the relevant policies, and is an excellent springboard from which to pursue more theoretically structured, solution oriented doctoral research.

Objectives: The objectives of my research are twofold: (1) It will provide a new theoretical framework from which to evaluate state implementation of international accords when the risk of conflict between regimes is present. Trade conflict between MEAs and international trade regimes has been discussed at length in legal communities (Charnovitz 2003, Page 2002 and Werksman 2001) however, to date international relations theorists have not laid out a comprehensive theoretical framework for defining the normative preconditions and implementation mechanisms which will result in the greatest number of conflict-free outcomes (initial studies include Rosendal 2001 and Biermann et al. 2003). (2) It will provide practical recommendations to WTO member governments on how to implement Kyoto Protocol requirements domestically to assure compliance with their trade obligations. The timing for this research is ideal, as successful implementation of the Kyoto Protocol over the next five years is crucial in order for members to meet their greenhouse gas reduction goals during the first commitment period (2008- 2012).

Methods: After identifying all potential arenas for conflict between the Kyoto Protocol’s emissions trading program and WTO rules through document review, this research will evolve in five stages: (1) Drawing from

¹ The EU is currently in the process of implementing a carbon emissions trading system which will likely remain in place with or without Kyoto.

² AAUs are the unit of trade under the Kyoto Protocol’s emissions trading system. Allocation of 1 AAU gives an industrial source the right to emit 1 ton of carbon dioxide per year.

secondary case studies of other multilateral environmental agreements containing trade measures (i.e. Convention on Biodiversity), I will use implementation theory (Lester et al. 1998 and Victor et al. 1998) to examine under which circumstances policy design criteria have been effective in implementing trade-related policy objectives. (2) I will codify the existing WTO dispute resolution panel decisions in order to tease out the situations under which domestic environmental policies were in conflict with WTO obligations by virtue of the way they were implemented (i.e. transparency, participation, etc.). (3) I will conduct semiannual expert interviews with members of the U.S. Trade Representative (USTR), WTO Secretariat and the emissions trading community (i.e. policy makers and brokers in the U.S. and EU). As the U.S. is the nation most likely to bring Kyoto-related conflict before the WTO, I will ask the USTR where they see potential for conflict to emerge between these two regimes. In addition, the WTO Secretariat's evolving perspective on the status of the trade environment debate will be central to directing this research. My advisor, Professor O'Neill, will assist me in making the necessary contacts to conduct these interviews. Lastly, the emissions trading community will provide insight into contemporary concerns about potential conflicts and tensions between Kyoto's emissions trading system and WTO rules. My experience working as an emissions trading broker for Cantor Fitzgerald will allow me to draw on existing contacts to conduct these interviews, as well as give me a unique insider's perspective on the issue of implementation of an emissions trading system. (4) I will study successful and emerging emissions trading programs (i.e. U.S. acid rain program and EU CO₂ program) in order to analyze their structures, assess their successes, and evaluate the extent to which problems contained in these systems may be dissected from future Kyoto emissions trading systems. (5) Lastly, I will apply these observations to the case of the Kyoto Protocol's emissions trading system, and suggest a methodology by which strategic domestic implementation will serve avoid conflict with WTO obligations.

Support: U.C. Berkeley has brilliant resources available for the execution of this project. I plan to draw on the expertise of leading scholars including, my advisor, Kate O'Neill, in international relations; David Vogel, in trade and environment studies and comparative politics, Alex Farrell, in market based environmental regulation, and David Caron, in international law. I also remain in close contact with David Aronofsky, who supervised my master's thesis at the University of Montana, and is a scholar of international trade law.

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