
NOTE

CALLS FOR A CLIMATE PEACE CLAUSE: INCENTIVIZING A RACE TO THE TOP

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Global efforts to combat climate change are coming up short of the sweeping changes necessary to meet the Paris Agreement targets. Nonetheless, some of the policies governments have implemented are coming under scrutiny for their trade distorting effects. In response to threats to retaliate against climate positive programs with trade distorting effects, environmental advocates have called for a “climate peace clause.” A climate peace clause would be an agreement by signatories to refrain from challenging climate positive policies at the WTO or otherwise retaliate against these programs. This paper looks at past efforts to exempt specific trade measures and subsidies from WTO challenge on environmental and agricultural grounds. It then assesses the hurdles a climate peace clause might face. It concludes that a series of bilateral negotiations conducted with a limited scope, outside the WTO, and focused primarily on climate issues could be one path forward. Any agreement should incorporate a means-ends test of the climate impact of policies that are covered. Such an agreement would limit uncertainties and signal a shift in the priorities at play in the international trade arena. A climate peace clause negotiation should be receptive to valid criticisms, particularly when it comes to the agreement’s impact on economies without the resources to compete with major, industrialized nations. On the other hand, it should also be viewed as a potentially necessary response to the climate crisis. Ultimately, the benefits to a climate peace clause make it a policy worth considering.

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INTRODUCTION	385
I. THE STATE OF CURRENT TRADE AGREEMENTS AND THEIR “PEACE CLAUSES”	390
A. <i>Trade Between the United States and the European Union is Generally Governed by WTO Agreements</i>	390
B. <i>Trade Law Must Adapt to Address Climate Change</i>	391
II. PREVIOUS EFFORTS TO ADDRESS ENVIRONMENTAL ISSUES THROUGH TRADE AGREEMENTS	393
A. <i>GATT Article XX Includes Modest Environmental Carveouts</i>	394
B. <i>The Agreement on Subsidies and Countervailing Measures Included Time Limited Carveouts</i>	397
C. <i>The Environmental Goods Agreement Failed to Balance Trade and Environmental Concerns</i>	399
D. <i>The Global Arrangement on Sustainable Steel and Aluminum Adopted a Bilateral Approach</i>	401
E. <i>Recent Efforts to Address Environmental Issues Remain in Limbo</i>	403
F. <i>The Agreement on Agriculture Carveouts</i>	404
G. <i>An Agreement on Stockpiling for Food Security Purposes is a Negotiating Success</i>	405
H. <i>These Past Negotiations and Agreements Demonstrate a Potential Path Forward</i>	406
III. WHAT MIGHT A CLIMATE PEACE CLAUSE LOOK LIKE	407
IV. CRITICISMS OF A CLIMATE PEACE CLAUSE	409
A. <i>A Climate Peace Clause Could Exacerbate Trade Based Injustices</i>	410
B. <i>Some Justice Concerns Can Be Mitigated</i>	412
C. <i>A Climate Peace Clause Would Be Protectionism in Disguise</i>	414
D. <i>The Protectionist Critique Ultimately Misses the Purpose of a Climate Peace Clause</i>	414
E. <i>Political Fortunes Have Changed</i>	416
IV. A STUDY OF THE UNITED STATES-EUROPEAN UNION CLIMATE SUBSIDY TRADE DISPUTE	416
A. <i>The European Union Leads the United States on Climate Policy</i>	417
B. <i>The United States Pursues a Subsidy-Based Approach</i>	419
C. <i>The European Union Responds with a Race to the Top</i>	421
CONCLUSION	424

INTRODUCTION

The climate crisis is an urgent and pressing threat. Global temperatures are poised to significantly exceed the Paris Agreement's target of 1.5°C unless countries make rapid changes to how they generate energy, consume resources, and release greenhouse gas emissions.¹ The planet has already warmed by an average of 1.1°C above pre-industrial averages, and this has contributed to dangerous climate and weather extremes² that disproportionately impact poorer and more vulnerable areas.³ Three-quarters of our greenhouse gas emissions come from the modern energy system.⁴ Thus, transitioning off of fossil fuels and deploying renewable energy is a key step to avoid climate change's most catastrophic impacts. While there is a chance of reaching these targets with clean energy technology, including renewable energy, this technology is not being deployed fast enough.⁵ Urgent government action to accelerate this transition is needed.

To achieve this transition, some environmental advocates have argued that governments should remove existing international trade barriers under the World Trade Organization (WTO).⁶ More than 40 groups across the United States and European Union have proposed a "climate peace clause." A climate peace clause would protect policies implemented to address climate change from challenges at the WTO that could otherwise lead to their revocation or to retaliatory measures from other countries.⁷ In May 2022 and August 2023, hundreds of environmental and climate organizations signed on to

¹ See *Climate Change*, INT'L ENERGY AGENCY, <https://www.iea.org/topics/climate-change> (last visited May 28, 2025); see also *Special Report Global Warming of 1.5 °C*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, <https://www.ipcc.ch/sr15/> (last visited May 28, 2025).

² INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2023: SYNTHESIS REPORT, SUMMARY FOR POLICYMAKERS 4–5 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

³ See *id.* at 5.

⁴ See *Climate Change*, *supra* note 1.

⁵ See *id.*

⁶ See *Climate Peace Clause*, PUBLIC CITIZEN, <https://www.citizen.org/topic/globalization-trade/climate-peace-clause/> (last visited May 28, 2025).

⁷ See Letter from Anders Handeln et al. to U.S.-E.U. Trade and Tech. Council (Feb. 27, 2023), <https://www.citizen.org/wp-content/uploads/US-EU-IRA-CPC-letter-Feb-2023.pdf>.

letters to the U.S. Trade Representative, who is the head trade negotiator for the United States, calling for a climate peace clause.⁸ A similar letter was sent to the U.S.-E.U. Trade and Technology Council.⁹

Advocates calling for a climate peace clause have emphasized several key benefits of such a clause. One area of concern is the threat that climate policies intended to incentivize a green energy transition could be challenged under existing trade laws.¹⁰ The letters have also emphasized environmentalists' concern over trade laws that allow companies to challenge policies that restrict development of new fossil fuel projects.¹¹ Alongside these complaints about trade law, the letters have called for the United States and European Union to "make good on climate financing and green technology transfer to countries in the Global South."¹² A common thread among the letters is a desire to see governments negotiate an agreement at the WTO, under which all WTO members agree to refrain from using WTO rules to attack each other's climate policies.¹³

Calls for a climate peace clause have become especially relevant in the United States after the passage of the Inflation Reduction Act (IRA). The IRA included incentives to support the development and deployment of renewable energy. It also included local content requirements that run counter to WTO norms. Under the second

⁸ See Letter from 350 Bay Area et al. to Hon. Katherine Tai, U.S. Trade Rep., Office of the U.S. Trade Representative (Aug. 8, 2023), https://149754478.v2.pressablecdn.com/wp-content/uploads/ClimatePeace-Clause_StateLocalEnvirosLetter_0823.pdf; Letter from 350.org et al. to Katherine Tai, U.S. Trade Rep. (May 10, 2022), https://149754478.v2.pressablecdn.com/wp-content/uploads/USTR_ClimatePeaceClauseLetter_051022final-1.pdf.

⁹ See Handeln et al., *supra* note 7.

¹⁰ See 350.org et al., *supra* note 8 (emphasizing concerns with trade-based attacks on "governments' green energy projects both domestically and internationally"); Handeln et al., *supra* note 7.

¹¹ See 350.org et al., *supra* note 8 (addressing a challenge brought by TC Energy under the North American Free Trade Agreement against a refusal to issue permits for the Keystone Pipeline).

¹² Handeln et al., *supra* note 7.

¹³ See 350.org et al., *supra* note 8; 350 Bay Area et al., *supra* note 8; Handeln et al., *supra* note 7.

Trump Administration, the entire IRA has come under threat.¹⁴ Advocates of a climate peace clause have been concerned about threats from Europe and other governments to challenge these policies at the WTO.¹⁵ These trade-based challenges to climate policies are not limited to the IRA. For instance, the United States has threatened to challenge programs designed to boost solar production in India. At the same time, India has challenged American “buy local” provisions that predated the IRA, which have been implemented by various state governments.¹⁶ The basis of a hypothetical peace clause would include an agreement to refrain from challenging the kinds of policies that could credibly be claimed as mitigating greenhouse gas emissions or incentivizing “a transition to a clean energy economy.”¹⁷ Academic commentators have also recognized the need to adopt new trade agreements to account for the climate policy approaches of the United States, China, and the European Union.¹⁸ While the current Trump Administration is unlikely to pursue a climate peace clause, the Administration’s dramatic shifts in trade policy have led to many new trade negotiations. These could present an opportunity for negotiating partners outside the United States who might push to include protections for trade in goods and services necessary to achieve a green transition. Furthermore, removing

¹⁴ See Nadya Britton & Natalie Runyon, *IRA’s Uncertain Future: How the Trump Administration’s Approach Could Impact Corporate Tax Functions*, THOMPSON REUTERS (Feb. 27, 2025), <https://www.thomsonreuters.com/en-us/posts/corporates/ira-uncertain-future/>.

¹⁵ See *Stopping Trade Attacks on Climate Policies: The Need for a Climate Peace Clause*, TRADE JUSTICE EDUC. FUND, https://149754478.v2.pressablecdn.com/wp-content/uploads/ClimatePeaceClause_Factsheet_0323.pdf (last visited Mar. 3, 2024); 350 Bay Area et al., *supra* note 8; Handeln et al., *supra* note 7.

¹⁶ See 350 Bay Area et al., *supra* note 8 (noting that these challenges have since been dropped).

¹⁷ *Stopping Trade Attacks on Climate Policies: The Need for a Climate Peace Clause*, *supra* note 15 (giving examples such as “rejections of fossil fuel permits or development; removal of fossil fuel subsidies; green energy subsidies; local content preferences that help ramp up the production and distribution of renewable energy and clean energy goods; and policies to create and/or protect jobs that facilitate a transition to a clean energy economy”). This letter also calls for environmental and labor provisions to be exempted from a climate peace clause and argues that the peace agreement should last for at least 10 years. *See id.*

¹⁸ See Chad P. Brown & Kimberly A. Clausing, *How Trade Cooperation by the United States, European Union, and China Can Fight Climate Change* 27 (Peterson Inst. for Int’l Econ., Working Paper No. 23-8, Oct. 2023).

trade barriers for green energy products could lead to more accessible clean energy for consumers in the United States and elsewhere.

During the Biden Administration, the United States and the European Union ultimately did not enter a trade war over the IRA programs because various negotiations yielded temporary solutions.¹⁹ This may indicate that a climate peace clause is unnecessary because the importance of climate programs has been enough to force parties to negotiate to avoid trade wars, although this may not be true under the new Trump Administration. Today, the need for trade negotiations in the climate context may be even greater to protect politically popular, yet trade-prohibitive policies within climate provisions. Regardless of its effects on trade, a climate peace clause would create certainty with respect to which government policies are permissible and thus protected from being challenged at the WTO. This is especially relevant as climate policy is treated differently across various political parties and administrations.²⁰

While the letters' authors have called for an agreement through the WTO, they also recognize that a climate peace clause could be obtained as a part of ongoing bilateral negotiations.²¹ Furthermore, climate peace clauses in bilateral agreements could avoid the need to actually amend the WTO's structure, a hurdle that could be impossible to overcome. Instead, these enforceable agreements negotiated outside the WTO, and later applied under WTO rules for mutually agreed solutions, would assure countries that their trade partners will not use WTO protections in situations where climate-oriented policies are at issue.²² The benefits identified by advocates

¹⁹ See BRUCE STOKES, EU-US RELATIONS AFTER THE INFLATION REDUCTION ACT, AND THE CHALLENGES AHEAD 2 (Feb. 2024), [https://www.europarl.europa.eu/RegData/etudes/STUD/2024/759588/EPRS_STU\(2024\)759588_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2024/759588/EPRS_STU(2024)759588_EN.pdf).

²⁰ See, e.g., Michael Mehling, *A New Direction for US Climate Policy*, 1 CARBON & CLIMATE L. REV. 3, 3 (2017).

²¹ See 350 Bay Area et al., *supra* note 8.

²² These agreements not to pursue actions at the WTO challenging each other's trade policy could take the form of independently negotiated and ratified agreements between states or could take the form of an agreement more intertwined with WTO rules. If a bilateral agreement is reached, parties could later notify it under Article 3.6 of the WTO's Dispute Settlement Understanding (DSU) which would allow parties to argue in future disputes that the agreed upon climate peace clause rendered adjudication by the WTO dispute settlement body unnecessary. See Lakshmikumaran & Sridharan, *The 'Mutuality' of a Mutually Agreed Solution Under the Dispute Settlement Understanding*, LEXOLOGY (Sept. 30, 2020), <https://www.lexology.com/library/detail.aspx?g=9f9f880d-e9b4-4eb0-bddb->

of a climate peace clause include protecting existing climate policies from being challenged, allowing governments to implement new policies without fear of trade-based repercussions, and incentivizing countries to work together to resolve conflicts that arise between climate initiatives and international trade.²³ Commentators have also noted that incorporating climate trade policy into a rules based system could promote “private sector innovation and investment.”²⁴

Carveouts under trade law for certain politically and socially important policies is not a new idea. Historically, carveouts have been provided for agricultural and environmental programs. However, many of these exemptions have expired.²⁵ Attempts to define what qualifies as an acceptable program for exemption purposes have proven difficult in past efforts to protect those programs from WTO challenge.²⁶ Environmental carveouts in particular have been dropped from modern WTO rules.²⁷

In order to analyze a potential climate peace clause, this paper will examine the history of other environmental and agricultural carveouts to WTO requirements. This history is informative of the pitfalls that these agreements have encountered. Tracing the efforts to negotiate and maintain these exceptions over time provides insight into the challenges advocates for a climate peace clause may face. The few successful examples of existing carveouts also provide insight into how a climate peace clause could theoretically be negotiated. From these lessons, this paper will consider what a

59bfed5dc42d; *see also* Understanding on Rules and Procedures Governing the Settlement of Disputes art. 3.6, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU].

²³ *See Stopping Trade Attacks on Climate Policies: The Need for a Climate Peace Clause*, *supra* note 15.

²⁴ Brown & Clausen, *supra* note 18, at 31.

²⁵ *See* Ching-Wen Hsueh, *A Greener Trade Agreement: Approaches to Environmental Issues in the TPP Negotiations*, 8 *ASIAN J. WTO & INT'L HEALTH L. & POL'Y* 521, 530 (2013); Sadeq Z. Bigdeli, *Resurrecting the Dead—The Expired Non-Actionable Subsidies and the Lingering Question of Green Space*, 8 *MANCHESTER J. INT'L ECON. L.* 2, 8–9 (2011); Li Xiaoling, *Expired Peace Clause: Claims Under WTO's Agreement on Subsidies & Countervailing Measures and Agreement on Agriculture*, 3 *PEKING U. J. LEGAL STUD.* 53, 53 (2012).

²⁶ *See* Jaime de Melo & Jean-Marc Solleder, *The Role of an Environmental Goods Agreement in the Quest to Improve the Regime Complex for Climate Change* 4–5 (Eur. Univ. Inst. Working Papers, RSCAS 2019/55, Aug. 2019), https://cadmus.eui.eu/bitstream/handle/1814/63811/RSCAS_2019_55.pdf?sequence=4&isAllowed=y.

²⁷ *See* Ching-Wen Hsueh, *supra* note 25; Bigdeli, *supra* note 25.

climate peace clause could look like and then discuss how that vision might impact the trade tensions that have arisen between the United States and European Union over the IRA and other climate policies. This case study is one example of the political and policy landscapes a climate peace clause might enter. Through investigations into the history of previous trade agreements and through the lens of ongoing trade disputes, this paper will present a climate peace clause as a difficult-to-obtain departure from traditional WTO rules that, if adopted, could become an avenue for incentivizing a race to the top in climate financing.²⁸

I. THE STATE OF CURRENT TRADE AGREEMENTS AND THEIR “PEACE CLAUSES”

A. *Trade Between the United States and the European Union is Generally Governed by WTO Agreements*

Despite around \$1.3 trillion traded in goods and services between the United States and the European Union, there are no independent free trade agreements in place between either the United States and the European Union as a whole or between the United States and any European Union Member state.²⁹ As a result, trade between the United States and the European Union and its member states is governed by the rules set out in the agreements establishing the WTO.³⁰ From an environmental law perspective, this affords

²⁸ Commentators have discussed climate subsidies in the context of a race to the top in the past. *See, e.g.,* Kimberly A. Clausing & Catherine Wolfram, *Carbon Border Adjustments, Climate Clubs, and Subsidy Races When Climate Policies Vary*, 37 J. ECON. PERSPS. 137, 147 (2023). Climate subsidies can lead to a positive externality because they meet a need the market has failed to address. *See* Brown & Clausing, *supra* note 18, at 18. *See also* David Kamin & Rebecca Kysar, *The Perils of New Industrial Policy: How to Stop a Global Race to the Bottom*, 102 FOREIGN AFFS. 92, 97 (May/June 2023).

²⁹ *See European Union*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions/europe-middle-east/europe/european-union#:~:text=U.S.%20goods%20and%20services%20trade,estimated%20%241.3%20trillion%20in%202022> (last visited June 4, 2025); *Free Trade Agreements*, INT’L TRADE ADMIN., <https://www.trade.gov/free-trade-agreements> (last visited June 4, 2025); *Negotiations and Agreements*, EUR. COMM’N, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en (last visited June 4, 2025).

³⁰ *See United States*, EUR. COMM’N, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/united-states_en (last visited June 4, 2025).

limited protection to programs and policies directed at addressing climate change. As discussed in more detail below, provisions under the General Agreement on Tariffs and Trade (GATT), the Marrakesh Agreement, and existing WTO guiding documents, as well as other specific efforts to negotiate around environmental protections, have failed to yield the kind of carveouts that would protect climate policies. Instead, the WTO allows members to challenge policies that might be considered climate friendly. These challenges have become even more complicated in light of the WTO's dysfunctional dispute settlement process which adds uncertainty to WTO-based challenges.³¹ Under the new Trump Administration, the U.S. has moved to withdraw funding from the WTO and any hope for a return to a rules-based WTO structure looks even more far-fetched.³²

Even before that move or the adoption of the IRA, the United States adopted many renewable energy programs at the state level that relied on local content requirements to gain political support.³³ Under current WTO rules, these programs may be vulnerable to trade disputes. Similarly, when the IRA included buy local provisions, the European Union and other U.S. trading partners expressed concern.³⁴ Local content requirements are key to overcoming political hurdles that may delay urgently needed climate action, now more than ever. Governments aiming to promote climate progress through these policies are undermined if the programs can lead to the imposition of penalties under existing trade law.

B. Trade Law Must Adapt to Address Climate Change

The idea that trade laws need to be adapted to better align with efforts to address climate change has been examined in the past. In 2014, the International Bar Association published a report focused on human rights in the era of climate change that included a focus on trade law and climate policy. This report highlighted criticism of the WTO for failing to successfully negotiate better climate

³¹ See Brown & Clausen, *supra* note 18, at 24.

³² See, e.g., Emma Farage, *Exclusive: US Pauses Financial Contributions to WTO, Trade Sources Say*, THOMPSON REUTERS (Mar. 28, 2025), <https://www.reuters.com/world/us-suspends-financial-contributions-wto-trade-sources-say-2025-03-27/>.

³³ See Matthew C. Porterfield, Kevin P. Gallagher & Judith Claire Schachter, *Assessing the Climate Impacts of U.S. Trade Agreements*, 7 MICH. J. ENV'T. & ADMIN. L. 51, 67 (2017).

³⁴ See STOKES, *supra* note 19, at 1–2.

policies.³⁵ The report specifically identifies the uncertainty around WTO climate rules as a risk that could limit the implementation of policies that are technically WTO compliant.³⁶ Among the policies identified as subject to concern are subsidies for renewable energy.³⁷ Those same critiques remain relevant today.³⁸ Additionally, the “national treatment” requirement within the WTO system bars governments from implementing programs that would favor domestic over imported products.³⁹ As a general principle, this might threaten policies that are centered around domestic content requirements like the IRA. In fact, the WTO has previously interpreted renewable energy programs with local content requirements to have violated this principle.⁴⁰ While it is possible that “national treatment” principles could be waived under GATT Article XX exemptions, for the reasons discussed below, that remains an unreliable protection.

In order to address the incompatibility between modern climate policies and the WTO regime, the IBA put forward several recommendations. One of the principal recommendations is to limit uncertainty in how climate policies will be treated under the WTO regime.⁴¹ Even without the pressure of a meaningful WTO regime, providing certainty around the treatment of climate policies would be one of the significant benefits to implementing a climate peace clause. This certainty would allow regulators to move forward with the policies they determine to be the most effective for combating climate change and would provide predictability for industries looking to avail themselves of the incentives their governments provide. The IBA report goes on to suggest various other changes to the WTO structure including enhancing the powers of the Committee

³⁵ See INT’L BAR ASS’N CLIMATE CHANGE JUST. AND HUM. RTS. TASK FORCE, *ACHIEVING JUSTICE AND HUMAN RIGHTS IN AN ERA OF CLIMATE DISRUPTION* 70 (July 2014), https://www.lagbd.org/images/7/75/Climate_Change_Justice_and_Human_Rights_Report_FULL.pdf.

³⁶ See *id.*

³⁷ See *id.* at 71.

³⁸ See Brown & Clausing, *supra* note 18, at 30–31.

³⁹ See *id.* at 22.

⁴⁰ See Mukta Batra & Namit Bafna, *Renewable Energy, The WTO’s Position on Local Content Requirements*, 39 ENERGY L. J. 401, 401 (2018).

⁴¹ See INT’L BAR ASS’N CLIMATE CHANGE JUST. AND HUM. RTS. TASK FORCE, *supra* note 35, at 75.

on Trade and Enforcement, “greening” WTO Appellate Body Jurisprudence, and even amending the WTO agreements.⁴²

Unfortunately, as discussed in more detail below, efforts to amend the WTO’s requirements to better account for environmental issues, particularly around climate change, have thus far failed to generate meaningful and sustainable agreements, and the United State is unlikely to help them gain traction in the near future. Furthermore, as the urgency of the climate crisis escalates, lengthy multilateral trade negotiations at the WTO are becoming an increasingly impractical solution. The IBA report does note that, even in 2014, bilateral and regional trade agreements were already providing a more promising forum for pro-environment measures.⁴³ Even during the last Trump Administration, the renegotiated trade agreement between the United States, Canada, and Mexico included stronger environmental protections than its predecessor agreement.⁴⁴ This could serve as an example for negotiators looking to push the new Trump Administration to include carveouts for climate and renewable energy policies. An independently negotiated climate peace clause, or one that is included in a smaller bilateral or regional agreement, might be the best path forward for robust climate protections in the trade sphere.

II. PREVIOUS EFFORTS TO ADDRESS ENVIRONMENTAL ISSUES THROUGH TRADE AGREEMENTS

A climate peace clause would not be the first attempt the global community has made to address the conflict between trade law and environmental policy. Both the 1947 GATT and the 1994 Marrakesh Agreement included various peace clauses and carveouts, although sometimes on a temporary basis.⁴⁵ More recently, negotiations over an Environmental Goods Agreement began in 2014. In 2021, negotiations over a Global Arrangement on Sustainable Steel

⁴² See *id.* at 163–8.

⁴³ See *id.* at 168.

⁴⁴ *Benefits for the Environment in the United States-Mexico-Canada Agreement*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/benefits-environment-united-states-mexico-canada-agreement> (last visited Apr. 20, 2025).

⁴⁵ See General Agreement on Tariffs and Trade, Oct. 30, 1947, art. XX, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]; Ching-Wen Hsueh, *supra* note 25; Bigdeli, *supra* note 25.

and Aluminum were also initiated between the United States and the European Union.⁴⁶ Both negotiations involved environmental issues.⁴⁷ Lessons from these past or ongoing efforts highlight some of the challenges advocates for a climate peace clause might encounter.

A. GATT Article XX Includes Modest Environmental Carveouts

Historically, the GATT served as a key development in global trade governance. Environmental programs implemented in countries covered by the GATT can sometimes be exempted under GATT Article XX.⁴⁸ Under Article XX, environmental policy measures affecting trade can be exempted from the GATT if they meet two conditions. First, the measure must be applied in a manner that is not “arbitrary or unjustifiable” and that does not discriminate between countries “where the same conditions prevail.”⁴⁹ Second, the measure must not constitute a “disguised restriction on international trade.”⁵⁰ These exemptions apply to measures that effect international trade when the measures are “necessary to protect human, animal or plant life or health” or when the measures relate “to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”⁵¹

⁴⁶ See *Joint EU-US Statement on a Global Arrangement on Sustainable Steel and Aluminium*, EUR. COMM’N, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5724 (last visited June 4, 2025).

⁴⁷ See *id.*; *Environmental Goods Agreement (EGA)*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/envir_e/ega_e.htm (last visited Sept. 8, 2024).

⁴⁸ See GATT, *supra* note 45, art. XX(b), (g).

⁴⁹ GATT, *supra* note 45, art. XX.

⁵⁰ *Id.*

⁵¹ GATT, *supra* note 45, art. XX(b) and (g). This paper does not perform a full analysis of the extensive case law interpreting the meaning of the GATT Article XX provisions. Still, it is worth noting a few areas that the WTO Appellate Body has addressed. In particular, its interpretations of “necessary” under Article XX(b), and also the general requirements that policies exempted under GATT Article XX not be “arbitrary or unjustifiable” in countries in which “the same conditions prevail,” are important. In a case brought by the European Commission against Brazil for an import prohibition on retreaded tires, the Appellate Body held that under Article XX(b), Brazil’s import ban was “necessary to protect human, animal or plant life or health.” In reaching this decision, the Appellate Body weighed the “interests or values at stake, the extent of the contribution to the achievement of the measure’s objective, and its trade restrictiveness” before then comparing it to

Despite the inclusion of environmental provisions in the GATT, which is still applied at the WTO, these exceptions have failed to provide the kind of protection necessary to support environmental efforts and similarly fall short of protecting climate policies from trade disputes. For instance, in an environmental dispute related to the protection of sea turtles from shrimp farming, the WTO Appellate Body, which adjudicates trade disputes, determined that the Article XX exemptions did not apply.⁵² They found that the standard used by the United States to protect sea turtles in the policy at issue was both too rigid and was not deployed in a manner that appropriately recognized the efforts of other nations to comply with the standard.⁵³ Ultimately, this ran afoul of Article XX's first prohibition against arbitrary or unjustifiable standards that discriminate against countries with the same conditions.⁵⁴ While the United States was later able to comply by engaging in "good faith efforts to reach a multilateral agreement,"⁵⁵ this same issue would likely come up with respect to the local content requirements in the IRA which discriminate against certain trade partners, namely those with whom

alternative measures which would achieve the same results. Appellate Body Report, *Brazil—Measures Affecting Imports of Retreaded Tyres*, ¶ 178, 183, WTO Doc. WT/DS332/AB/R (adopted Dec. 3, 2007) [hereinafter *Brazil—Retreaded Tyres*]. However, due to an exception to the ban imposed by Brazil's courts, the Appellate Body found that the measure was not applied in a manner free of "arbitrary or unjustifiable discrimination." *See id.* ¶ 228–9. In its assessment, the Appellate Body adopted an approach to evaluating unjustifiable or arbitrary discrimination that focused on the objective of the exemption rather than its effects. *See id.* In doing so they considered whether the exception to the measure bore a "relationship to the legitimate objective pursued by the Import Ban." *Id.* As part of this analysis the Appellate Body appears to have adopted a definition of "where the same conditions prevail" which effectively considers the impact of the measure on the WTO members involved in the dispute. *See id.* ¶ 217. This case presents an example of how the WTO has applied these terms and an example of how the measures which governments might claim are protected by the GATT Article XX exemption can be subjected to interpretation and review in ways that limit their application.

⁵² *See* Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 184m, 187(c), WTO Doc. WT/DS58/AB/R (adopted Oct. 12, 1998).

⁵³ *See* Virginia R. Hildreth, *Renewable Energy Subsidies and the GATT*, 14 CHI. J. INT'L L. 702, 713 (2014).

⁵⁴ *See id.*

⁵⁵ Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 153, WTO Doc. WT/DS58/AB/RW (adopted Oct. 22, 2001).

the United States doesn't have a free trade agreement. While Article XX, as interpreted by the Appellate Body, might allow the United States to preserve these policies through good faith multilateral efforts, the uncertainty and time intensive process involved in that effort could serve as a disincentive to adopt such policies in the first place. This is one example of how Article XX's first prong is applied restrictively.

The "necessary" provision of Article XX(b) could also be an issue. Under Article XX(b), the Appellate Body assesses whether a challenged measure is "necessary" and thus qualifies for an exemption.⁵⁶ This creates a very strict standard where the existence of any imaginable alternative measure consistent with GATT rules would be enough to invalidate the challenged environmental policy for which exemption has been sought.⁵⁷ Article XX(g) is also restrictive in its requirement that any measures implemented to protect against exhaustion of natural resources be made alongside domestic restrictions in production or consumption.⁵⁸

Even where Article XX could be argued to protect an otherwise GATT-noncompliant measure from being challenged, it is not clear that the article applies to the WTO agreements that succeeded the GATT as Article XX technically refers only to "this agreement" (which is the GATT).⁵⁹ The existence of more recent agreements that speak specifically to measures affecting trade, like the Agreement on Subsidies and Countervailing Measures (ASCM), suggests that those agreements may govern disputes over the measures they cover more directly than the GATT.

For these reasons, Article XX carveouts are not an adequate way to protect climate policies from trade challenge. They do, however, offer additional insight into the pitfalls a climate peace clause may encounter. Where agreements surrounding a climate peace clause are too strict, they are likely to offer very limited protections. Advocates for a climate peace clause have emphasized the need for flexibility. They recognize that domestic politics may prevent their governments from implementing environmental policies which are WTO consistent or those that the dispute settlement body might see

⁵⁶ See GATT, *supra* note 45, art. XX(b).

⁵⁷ See Yenkong Ngangjoh-Hodu, *Relationship of GATT Article XX Exceptions to Other WTO Agreements*, 80 NORDIC J. INT'L L. 219, 222 (2011).

⁵⁸ See GATT, *supra* note 45, art. XX(g).

⁵⁹ GATT, *supra* note 45, art. XX, General Exceptions.

as more favorable alternatives to other policy options. Restrictions like those included under GATT Article XX might then limit the applicability of such a device to protecting climate policies.

*B. The Agreement on Subsidies and Countervailing Measures
Included Time Limited Carveouts*

Since the Marrakesh Agreement created the WTO in 1994, various co-agreements have taken a primary position in resolving trade disputes. The Agreement on Subsidies and Countervailing Measures (ASCM) is particularly relevant to the calls for a climate peace clause. The ASCM applies to the subsidy programs that are at issue in many disputes between the United States, the European Union, and others. The ASCM was adopted after the GATT and, as noted above, commentators believe that the GATT's Article XX exemptions would not apply to subsidies covered by the ASCM.⁶⁰ The central nature of subsidy schemes to the IRA makes ASCM carveouts particularly important to IRA disputes. While there were once specific environmental exemptions included in the ASCM under Article 8.2(c), these exemptions expired in 1999.⁶¹

Before its expiration, Article 8.2(c) of the ASCM may still have come up short of the peace clause sought by today's climate advocates. The carveout was crafted in 1994 and only covered "assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms."⁶² This language made sense at the time of implementation. It sought to prevent tariffs from being used to retaliate against companies and governments for subsidy programs that were designed to compensate companies for financial harms imposed on them by stricter regulations. However, the limited nature of this exemption would be unlikely to provide a resolution to disputes arising out of the IRA and other policies that act primarily as incentives to promote innovation

⁶⁰ See Steve Charnovitz, *Green Subsidies and the WTO* 10 (Robert Schuman Ctr. for Advanced Stud., Research Paper No. RSCAS 2014/93, 2014) (citing Gary N. Horlick, *The WTO and Climate Change 'Incentives'*, in INT'L TRADE & THE MITIGATION OF CLIMATE CHANGE 194 (Thomas Cottier, Olga Nartova, Sadeq Z. Bigdeli, eds., 2009)).

⁶¹ See Ching-Wen Hsueh, *supra* note 25, at 530.

⁶² Agreement on Subsidies and Countervailing Measures art. 8.2(c), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14 [hereinafter ASCM].

in green products. The IRA does not impose the kind of costs on business that are contemplated in the ASCM carveout. Still, the relationship between the ASCM's protection of some environmental subsidies and the current calls for a climate peace clause to protect climate focused subsidies warrants further exploration of the factors contributing to the ASCM Article 8.2(c) exemption's non-renewal.

Analysts looking into the failure to renew the ASCM's environmental exceptions have pointed to a few significant factors. First, during its five years in existence the provision was never utilized and did not result in the public declaration or notification of any non-actionable subsidies.⁶³ Having gone unused, Article 8.2(c) generated very little attention from more developed countries, which already had various environmental protections in place. Some of these countries were mostly concerned with the public reaction to a lapse in environmental protections.⁶⁴ On the other hand, Brazil, India, and Pakistan had objections to the provision. They saw the exemption as a protective measure implemented by more developed WTO members. They felt it would not be used by members with economies that were still deemed developing at the time.⁶⁵ Ultimately, one major reason for the non-renewal of Article 8.2(c) protections was the gap between the interests of countries aligned with Brazil, India, and Pakistan on the one hand and indifferent parties like the United States, New Zealand, Switzerland, and Canada on the other.⁶⁶

Since Article 8.2(c) expired, views over its carveouts have continued to diverge. While India remains in strong opposition, Egypt has taken a more middle of the road approach and is open to carving out some kinds of environmental subsidization from trade challenges.⁶⁷ Cuba and Venezuela have adopted a position in favor of the protections, seeing them as integral to support what they deem to be legitimate and important policy objectives.⁶⁸ These differences of opinion highlight the coordination obstacles a WTO-driven climate peace clause may experience. Recent years have shown a decline in the success of multilateral agreements and a collapse of the

⁶³ See Bigdeli, *supra* note 25.

⁶⁴ See *id.* at 9.

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ See *id.* at 9–10.

⁶⁸ See Bigdeli, *supra* note 25, at 10.

WTO Appellate Body.⁶⁹ Most recently, the second Trump Administration has sought to revoke funding from the WTO.⁷⁰ A bilateral approach to negotiating a climate peace clause may be a way to avoid issues at the WTO. These negotiations could be applied to the individual circumstances of each trading partner and could recognize that responses to climate change will vary from government to government.

Since the Article 8.2(c) carveouts were unused, negotiating parties did not experience obvious benefits and were not motivated to keep the exemptions in place.⁷¹ This could be because they did not provide a necessary benefit (i.e., there were no subsidies that would be covered by the exemption) or because the scope of the benefits was too limited. These explanations of the non-renewal of the Article 8.2(c) exemptions suggests that a climate peace clause needs to be obviously beneficial and broad enough to impact a wide range of policies.

Of course, there needs to be abuse protection provisions to ensure that only beneficial subsidies are covered. The history of the ASCM's Article 8.2(c) exemption, which includes means-ends tests, also offers a guide.⁷² Means-ends tests that require the subsidies to actually benefit the climate could help align subsidies with the goals of a climate peace clause.

C. The Environmental Goods Agreement Failed to Balance Trade and Environmental Concerns

In 2014 the European Union, the United States, China, and fifteen other participants began special negotiations on the Environmental Goods Agreement (EGA) in an effort to eliminate tariffs on a variety of products that further environmental and climate goals.⁷³ The parties sought to establish a WTO multilateral agreement by

⁶⁹ See Brown & Clausing, *supra* note 18, at 24; see also Bigdeli, *supra* note 25, at 8–9, 11.

⁷⁰ See Farage, *supra* note 32.

⁷¹ See *id.* at 20.

⁷² See, e.g., ASCM, *supra* note 62, art. 8.2(c)(iv) (requiring that exempted assistance “is directly linked to and proportionate to a firm’s planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved”).

⁷³ See *Environmental Goods Agreement*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/envir_e/ega_e.htm (last visited Apr. 20, 2025).

first negotiating between themselves. They hoped that any agreement might later be more widely adopted.⁷⁴ Unfortunately, these negotiations have stalled out after an initial two years of progress and have not led to any significant changes.⁷⁵

Following the stalled negotiations, researchers identified three significant barriers to a deal. These included (1) defining an environmental good, (2) mismatched goals between environmentalism and mercantilism, and (3) concerns over updating the agreement in the future as new technology is developed.⁷⁶ A commonly discussed example of the lack of consensus over what constitutes an “environmental good” is the issue of whether to include bicycles in the list of environmental goods. Trade in bicycles is climate positive because it improves access to an emissions-free method of transportation; however, the European Union opposed an attempt to include bicycles in the agreement.⁷⁷ Bicycles from China faced U.S. tariff rates of 9.7% and E.U. tariff rates of 14.6% when they were proposed for inclusion in the EGA.⁷⁸ Reducing these tariffs would affect the domestic bicycle manufacturers that benefitted from anti-dumping trade remedies in the European Union and United States.⁷⁹ EU negotiators faced pressure from domestic bicycle manufacturers over the impact of more open trade in bicycles, and this motivated opposition to their inclusion in a final EGA list. This ultimately contributed to a breakdown in negotiations.⁸⁰ Negotiators from developing countries also expressed concerns over the use of environmental carveouts to push forward trade policies that might be

⁷⁴ See James Bacchus & Inu Manak, *Free Trade in Environmental Goods Will Increase Access to Green Tech*, CATO INST. FREE TRADE BULL. 2 (June 8, 2021), <https://www.cato.org/free-trade-bulletin/free-trade-environmental-goods-will-increase-access-green-tech>.

⁷⁵ See *id.*

⁷⁶ See Bacchus & Manak, *supra* note 74, at 2–5; de Melo & Solleder, *supra* note 26, at 4–5.

⁷⁷ See de Melo & Solleder, *supra* note 26, at 5–6; Bacchus & Manak, *supra* note 74, at 2–5.

⁷⁸ See de Melo & Solleder, *supra* note 26, at 5.

⁷⁹ See Bacchus & Manak, *supra* note 74, at 4.

⁸⁰ See *id.* (noting that the rates were imposed through antidumping duties, a form of trade remedy available at the WTO); see also Iana Dreyer, *Environmental Goods Agreement—Why Talks Faltered*, BORDERLEX (June 12, 2016), <https://borderlex.net/2016/12/06/environmental-goods-agreement-talks-faltered/>.

harmful to their economies, and many did not participate in EGA negotiations.⁸¹

*D. The Global Arrangement on Sustainable Steel and Aluminum
Adopted a Bilateral Approach*

Today there are ongoing efforts to address the risk that international trade disputes will disrupt domestic environmental policy priorities. The Global Arrangement on Sustainable Steel and Aluminum (Global Arrangement), which began in 2021, is one example.⁸² Unfortunately, like the EGA, these negotiations have bypassed their initial deadlines without an agreement. As part of the Global Arrangement negotiations, the United States and European Union have agreed to extend a suspension of tariffs on various products related to their steel and aluminum disputes into 2025 to continue to facilitate negotiations, although it is unclear what impact the change in U.S. leadership will have on this.⁸³ In an approach reminiscent of the EGA, the Global Arrangement negotiations have included a limited number of parties, just the United States and the European Union. Narrowing negotiations to just two parties can limit the number of competing interests and is one way that parties may identify common ground. This is also a model that is becoming increasingly common with the rise of regional trade agreements, which include bilateral agreements.⁸⁴ The Global Arrangement negotiations are also narrowly focused. They address only steel and aluminum trade between the United States and the European Union, and they are focused on eliminating overcapacity in the steel industry, which was

⁸¹ See de Melo & Solleder, *supra* note 26, at 10; Kundan Pandey, *[Interview] Unpacking WTO's Involvement in Trade and Environment Negotiation at COP28 with Abhijit Das*, MONGABAY (Nov. 28, 2023), <https://india.mongabay.com/2023/11/unpacking-wtos-involvement-in-trade-and-environment-negotiation-at-cop28/>.

⁸² See *Joint EU-US Statement on a Global Arrangement on Sustainable Steel and Aluminium*, EUR. COMM'N (Oct. 31, 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5724; *Steel and Aluminum U.S.-E.U. Joint Statement*, U.S. TRADE REPRESENTATIVE (Oct. 31, 2021), <https://ustr.gov/sites/default/files/files/Statements/US-EU%20Joint%20Deal%20Statement.pdf>.

⁸³ See European Commission Press Release IP/23/6713, EU Prolongs Tariff Suspension for US Products Related to the Steel and Aluminum Dispute (Dec. 19, 2023).

⁸⁴ See *Regional Trade Agreements*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited June 4, 2025).

also a priority in the first Trump Administration. Since they began, the negotiations have been limited further to focus on developing a “Green Steel Deal.”⁸⁵ They also include discussions around addressing the carbon intensity of steel produced in both jurisdictions.⁸⁶ If successful, an agreement would “invite like-minded economies to participate in the arrangements and contribute to achieving the goals of restoring market-oriented conditions and supporting the reduction of carbon intensity of steel and aluminum across modes of production.”⁸⁷ The idea that an agreement would be struck bilaterally and then expanded by invitation to other states aligns with a theory of negotiations reminiscent of the EGA, and the focus on specific products highlights the benefits that can be drawn from narrowly tailored negotiations. Ideally, negotiators can aim to agree on environmental trade positions with likeminded trading partners and only then expand out to include additional states.

Still, negotiating even bilaterally on an agreement that intermingles trade considerations and environmental concerns has proven to be a difficult task. One major sticking point in the negotiations are the U.S. imposed Section 232 tariffs on steel and aluminum products from Europe. Section 232 tariffs were implemented during the first Trump Administration for national security purposes.⁸⁸ Specifically, they were meant to stabilize the U.S. steel and aluminum industry from the threat of “excessive foreign imports.”⁸⁹ Eventually a quota was put in place that allowed a certain amount of steel and aluminum from the European Union to enter the United States without being subject to the Section 232 tariffs. Eliminating Section 232 tariffs on European steel and aluminum has been a priority for the European Union in the Global Arrangement

⁸⁵ Brown & Clausen, *supra* note 18, at 15.

⁸⁶ See *Joint EU-US Statement on a Global Arrangement on Sustainable Steel and Aluminium*, *supra* note 82; *Steel and Aluminium U.S.-E.U. Joint Statement*, *supra* note 82.

⁸⁷ *Id.*

⁸⁸ See Proclamation No. 9705, 83 Fed. Reg. 11625 (Mar. 15, 2018).

⁸⁹ U.S. Office of Public Affairs, *Presidential Memorandum Prioritizes Commerce Steel Investigation*, U.S. DEP’T OF COM. (Apr. 20, 2017), <https://2017-2021.commerce.gov/news/press-releases/2017/04/presidential-memorandum-prioritizes-commerce-steel-investigation.html>.

negotiations and an obstacle to agreement with the United States.⁹⁰ Ultimately, the delay of the Global Arrangement negotiations tells a story similar to the collapse of the EGA. Where environmental concerns in trade are tied up with negotiations that would involve opening domestic markets to foreign goods, resistance from domestic industry makes reaching an agreement a significant challenge.

E. Recent Efforts to Address Environmental Issues Remain in Limbo

Beyond the Global Arrangement, EGA, and provisions incorporated into the GATT and Marrakesh Agreements, there have been other efforts to address environmental issues in international trade agreements. As part of the Trade and Environmental Sustainability Structured Discussions (TESSD), fifty WTO members are engaged in efforts to address issues involving trade and the environment that include “discussions on the environmental effects and trade impacts of relevant subsidies and the role of the WTO in addressing these.”⁹¹ These negotiations include many members and cover a wide range of other topics. These efforts have yet to lead to any significant breakthroughs. In December 2021, WTO members also announced an initiative through which they would explore efforts to phase out fossil fuel subsidies.⁹² Yet another example of ongoing efforts to address environmental issues is the Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (DPP). Recognizing the threat of plastic pollution, eighty-two WTO members as of July 2024 have committed to attempting to use the WTO to reduce the problem.⁹³ These ongoing efforts to address environmental issues may lead to successes, which could inform efforts to develop a climate peace clause. However, none have yet overcome the challenges that this paper identifies.

⁹⁰ See Pietro N. Bianchi, *Global Arrangement on Sustainable Steel and Aluminum Negotiations Failed, Maybe*, LEXOLOGY (Dec. 5, 2023), <https://www.lexology.com/library/detail.aspx?g=0d7c53a2-6a68-4df7-b058-25c5f09bb356>.

⁹¹ World Trade Organization, Ministerial Statement of 14 December 2021 on Trade and Environmental Sustainability, WTO Doc. WT/MIN(21)/6/Rev.2 (2021).

⁹² See World Trade Organization, Ministerial Statement of 14 December 2021 on Fossil Fuel Subsidies, WTO Doc. WT/MIN(21)/9/Rev.1 (2021).

⁹³ See *Plastics Pollution and Environmentally Sustainable Plastics Trade*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/ppesp_e/ppesp_e.htm (last visited June 4, 2025).

As discussed above, implementing environmental protections through trade agreements has become an increasingly difficult task. However, there are areas of trade law that have established carve-outs that have been far more prominent and longer lasting. These areas of international trade may be informative of approaches that could be used to successfully implement a climate peace clause in the future.

F. *The Agreement on Agriculture Carveouts*

Given the challenges negotiators have encountered in their efforts to create environmental exceptions to trade agreements, advocates for a climate peace clause might look to the implementation of peace clauses in other areas of international trade for guidance. In particular, agricultural carveouts provide insight into the tactics that could be employed to protect climate policies from challenge under existing trade laws. The WTO Agreement on Agriculture (AOA) originally contained a peace clause that exempted certain agricultural subsidies. When a subsidy was deemed a “green box” subsidy, because it achieved some agreed upon benefit, it could not be challenged under the ASCM.⁹⁴ These exemptions even included protections for some environmental programs.⁹⁵

According to Article 13 of the AOA, certain domestic support measures became non-actionable under the ASCM and other relevant GATT provisions when conditions under Annex 2 of the agreement were met.⁹⁶ For example, services that were provided to rural communities became exempt when they included research into environmental issues, pest control, training services, advisory services, inspection services, marketing and promotion services, or general infrastructure services (not including on-farm infrastructure).⁹⁷ The agreement also required that the services not include “direct payments to producers or processors.”⁹⁸ Other exempt

⁹⁴ See *Agriculture: Explanation: Other Issues: Peace Clause*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/agric_e/ag_intro05_other_e.htm#peace_clause (last visited June 4, 2025).

⁹⁵ See Agreement on Agriculture art. 13, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 410 [hereinafter AOA].

⁹⁶ See *id.*

⁹⁷ See *id.* Annex 2.

⁹⁸ See *id.*

programs included public consumption of products in order to stockpile food supplies or domestic food aid programs.⁹⁹ Some of these protections remain in effect under an interim agreement discussed below.

Even direct payments to producers could become exempt from challenge under programs covering income support, insurance, natural disaster recovery, retirement programs, investment aids for restructuring, regional assistance for disadvantaged regions, and even environmental programs that lead to increased costs associated with conservation or environmental protection.¹⁰⁰ These programs became exempt when they met certain criteria. Among these criteria were requirements that the programs not be linked to producing a certain volume of products, meeting a certain price point, or mandated levels of production.¹⁰¹ Each individual program was also subject to its own requirements such as not providing insurance support or recovery assistance extending beyond the value of the products produced or requirements dictating the time periods of retirement programs.¹⁰² Ultimately, this provision expired after 2003 and was not renewed.¹⁰³

G. An Agreement on Stockpiling for Food Security Purposes is a Negotiating Success

More recently, WTO members agreed to an interim peace clause addressing stockpiling for food security purposes. Under this agreement, members agreed to refrain from challenging “support provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision.”¹⁰⁴ The clause applies to developing WTO members that fulfill other requirements under the AOA including domestic support reporting and notification requirements.¹⁰⁵ It is also an interim measure set to expire at the point that a permanent

⁹⁹ *See id.*

¹⁰⁰ *See AOA, supra* note 95.

¹⁰¹ *See id.*

¹⁰² *See id.*

¹⁰³ *See Xiaoling, supra* note 25, at 53.

¹⁰⁴ World Trade Organization, Ministerial Decision of 7 December 2013 on Public Stockholding for Food Security Purposes, WTO Doc. WT/MIN(13)/38 (2013) [hereinafter Public Stockholding for Food Security Decision].

¹⁰⁵ *See id.*

measure is successfully negotiated. Despite its temporary nature and limited applicability, there may be lessons to take from this particular peace clause given the failure of negotiations around other carve-outs around the same time.

H. These Past Negotiations and Agreements Demonstrate a Potential Path Forward

The history of peace clauses in the AOA demonstrates how they can provide clarity in an otherwise complicated system of rules. Where the ASCM classified subsidies as either prohibited or actionable, the AOA classified them as domestic support or export subsidies and initially separated them from the challenges that were permissible under the ASCM. Negotiators of the agreement prioritized eliminating export subsidies while domestic support programs seemed to occupy a more ambiguous position.¹⁰⁶ Now, without a peace clause, these programs are vulnerable to challenge under the ASCM, creating an unstable framework.

At one point, the social, cultural, and economic influence of agricultural policy may have set it apart from other areas of industry. However, presently, the AOA is in a post-peace clause era and is consequently intertwined with the subsidy rules of the ASCM in ways that do not produce clarity.¹⁰⁷ Despite the recent developments, one of the lessons we can take away from the history of carveouts in the AOA is the success of its peace clause expiry provision in reducing the overall level of controversy over adopting a carveout for certain programs. While the agreement from 2013 on food stockpiling does not clarify the uncertainties between the two agreements, it does offer an example of how a compromise that is limited in scope and time can move forward while larger negotiations fail. This seems especially true in areas where public policy concerns obviously outweigh trade efficiencies.

The history of GATT Article XX exemptions suggest that effective peace clauses cannot be too restrictive or too ambiguous. The ASCM's expired peace clause shows us how multilateralism can hinder the success of negotiations. Furthermore, the ASCM suggests that an agreement should be immediately useful and implementable. Measures like a means-ends test might help to achieve

¹⁰⁶ See Li, *supra* note 103, at 64.

¹⁰⁷ See *id.* at 53–54.

this. The EGA and Global Arrangement negotiations also show us that trying to bring too many issues under one negotiation can be a problem. Finally, the AOA peace clause and the stockpiling agreement show that measures that are considered interim, or those with set expiry dates, can be a way to alleviate concerns over both unintended impacts and future applicability.

III. WHAT MIGHT A CLIMATE PEACE CLAUSE LOOK LIKE

Taking these lessons into consideration, we can begin to develop a picture of what a climate peace clause negotiation might look like. As shown by the history of GATT Article XX exemptions, negotiations around a climate peace clause must avoid being too general or too strict. Overly general agreements are excessively open to interpretation. Agreements which are too strict fail to account for the various policy preferences of different actors over time. The GATT Article XX shortcomings underscore the need to strike this balance. Any agreement would need to support the various approaches to carbon reduction that are implemented across widely variant political institutions and economies. Preserving the ability of governments to implement the policies that work within the pressures of their domestic political environment will be integral to the success of any peace clause agreement.

Along those lines, negotiating an agreement outside of the framework of the WTO in a manner similar to the Global Arrangement may also provide various benefits. First, peace clauses that are contained within the WTO become subject to a patchwork of other rules,¹⁰⁸ which may negatively impact the clarity a climate peace clause is intended to provide. Furthermore, the WTO system may not be well suited for managing a negotiation between a small number of parties. Past agreements have made some progress when environmental agreements are negotiated with a limited number of parties.¹⁰⁹ Negotiations around a climate peace clause may be best conducted on a bilateral basis between large, somewhat likeminded

¹⁰⁸ See, e.g., *Understanding the WTO: The Agreements*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm (last visited June 4, 2025) (describing the landscape of WTO agreements).

¹⁰⁹ Initial progress on the Global Arrangement helped ease trade tensions by adjusting 232 tariffs and reducing retaliatory tariffs. See, e.g., *What's Next for the U.S.-EU Green Steel and Aluminum Talks?*, LOTSIXTEEN (Apr. 15, 2024), <https://www.lotsixteen.com/blog/33lrwtu9esq38g2oyamlj57a5nul6w>.

economies. Or, even if the parties are not likeminded, some authors have suggested that there may still be benefits to limiting negotiations to just the United States, China, and the European Union.¹¹⁰ If an agreement can be reached, it can be expanded out once proof of concept is established. In this way, climate peace clause negotiations could follow the model of the Global Arrangement/Green Steel Deal negotiations.

Advocates for a climate peace clause would also benefit from learning the lessons of the Global Arrangement negotiations. Where the Global Arrangement negotiations stalled because of conflicting interests,¹¹¹ a climate peace clause agreement might benefit from limiting the topics of negotiation. Stumbling blocks in prior efforts have included failure to define an environmental good, mismatched goals between industry and environmentalists, and concerns over how the agreement will adapt to future policies. Climate peace clause negotiations could overcome these obstacles by prioritizing agreements that protect government efforts to combat climate change as their sole aim. In doing this, negotiators may be able to avoid the pitfalls of mismatched objectives. This could in turn provide clarity around what is a beneficial policy and what is not. For example, those policies that are aligned with Paris Agreement targets could be covered while those that are not aligned with achieving Nationally Determined Contributions (NDCs) would not. Demonstrating consistency with a country's plan to meet its NDC would also incentivize the kinds of policies that actually advance climate progress. During negotiations, parties could determine whether the climate peace clause is narrowly tailored to only protecting policies which are fully consistent with NDCs or more broadly applicable to any program moving a country towards its decarbonization goals. This would also leave room for flexibility in how policies are rolled out.

Ultimately, negotiators may also seek a peace clause with a limited duration in order to avoid concerns of indefinitely permitting subsidies that may not provide a positive impact several years into

¹¹⁰ See Brown & Clausen, *supra* note 18, at 27.

¹¹¹ See Euan Sadden & Justine Coyne, *EU, US Fail to Secure Deal on Steel, Aluminum Sustainability; Extend Deadline to Year-End*, S&P GLOB. (Oct. 21, 2023), <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/metals/102123-eu-us-fail-to-secure-deal-on-steel-aluminum-sustainability-extend-deadline-to-year-end>.

the future. By including a limited duration to the peace clause, negotiators could achieve success in ways that mirror the peace clauses of the ASCM and the AOA.¹¹² Alternatively, they could adopt an “interim” measure like the stockpiling food peace clause, which is intended only to bridge the gap between immediate need and a more detailed agreement in the future.¹¹³

In sum, negotiations for a climate peace clause may have the best chance of success if they are limited to a small number of parties, focused on a specific climate-oriented goal, arranged to cover a set period of time, and organized so as to produce an agreement that is not so general as to be misinterpreted but not so specific as to be inapplicable to changing domestic priorities over time. Keeping the negotiations focused on climate change will help to remove the pressure to balance trade and environmental interests and will reflect the reality that climate change is a pressing public policy concern that warrants an individual and unique approach. Keeping the negotiations separate from the WTO will avoid the challenges recently associated with multilateral negotiations.

IV. CRITICISMS OF A CLIMATE PEACE CLAUSE

In order to properly evaluate a climate peace clause, a few significant concerns should also be considered. For purposes of this analysis, this paper assumes that a climate peace clause would open the door to an increase in subsidies provided for the development of climate friendly goods and services. It also assumes that it might lead to an increase in policies like the European Union’s carbon border adjustment mechanism (CBAM), which would prevent carbon leakage and protect domestic industries by imposing a tax on products which enter the domestic market based on the carbon intensity of those products.¹¹⁴ First, under this analysis a climate peace clause could exacerbate inequalities between countries with the capital

¹¹² See Ching-Wen Hsueh, *supra* note 25; Bigdeli, *supra* note 25.

¹¹³ See Public Stockholding for Food Security Decision, *supra* note 104.

¹¹⁴ The European Union’s CBAM will enter into full effect in 2026 after a two-year transitional phase. At that time, European importers will be required to buy certificates which will be used to account for the carbon intensity of the products they are importing and then “declare the emissions embedded in their imports and surrender the corresponding number of certificates each year.” *Carbon Border Adjustment Mechanism*, EUR. COMM’N (Nov. 4, 2024), https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en.

resources to provide subsidies to their own industries and those countries that lack that capacity.¹¹⁵ These inequalities would be heightened if countries with less established green industries are blocked from entering markets that are protected by tariffs imposed on carbon intensive products.¹¹⁶ Second, a more traditional critique suggests that opening the door to the legalization of any subsidies risks abandoning the WTO's efforts to liberalize trade policy while providing a major win for protectionism. Even if parties reject this critique and agree to prioritize climate adaptation over liberalized trade policy, the promotion of protectionist measures like local content requirements or export restraints could reduce the uptake of green technology by making it less available or increasing prices.¹¹⁷

A. A Climate Peace Clause Could Exacerbate Trade Based Injustices

Historically, in countries that are in the process of developing, or have not yet developed, strong renewable energy industries have objected to negotiations that purport to link trade policy and environmentalism.¹¹⁸ These objectors argue that incorporating environmental rules into trade policy would restrict their ability to pursue "catch-up" industrial policies that would grow their economies.¹¹⁹ Opponents of policies like the European Union's CBAM, such as India, have argued that it provides little benefit in terms of carbon reduction and severely limits exports from countries that are still developing competitive green industries.¹²⁰ Ultimately, policies that protect existing industries in industrially developed economies and eliminate barriers to trade with countries that have not established a developed industrial sector threaten to hamper development. This creates increased dependency on the countries that are already producing and exporting renewable energy technologies and other green products. Following this line of thinking, industrial

¹¹⁵ See Brown & Clausen, *supra* note 18, at 11, 30.

¹¹⁶ See Wendell Roelf & Kate Abnett, *SAfrica Considers Complaining to WTO Against EU Carbon Border Tax*, REUTERS (May 22, 2024), <https://www.reuters.com/world/africa/safrica-considers-complaining-wto-against-eu-carbon-border-tax-2024-05-22/>.

¹¹⁷ See Kamin & Kysar, *supra* note 28, at 100.

¹¹⁸ See Pandey, *supra* note 81.

¹¹⁹ *Id.*

¹²⁰ See *id.*; Clausen & Wolfram, *supra* note 28, at 153.

economies would end up with an advantage in exporting existing green products while countries that are developing their green industry could be denied a fair playing field in which to grow. For this reason, the UNFCCC itself has condemned unilateral climate measures that are used to disguise impermissible, arbitrary, or unjustifiable discrimination and restraints on trade.¹²¹ The availability of subsidies in countries with easy access to capital can exacerbate this effect.

Additionally, response measures implemented in one jurisdiction can impose costs on those in another jurisdiction.¹²² Tariffs, non-tariff barriers, fiscal measures, and non-fiscal border measures have been a sticking point in debates around climate and trade for years.¹²³ In particular, border measures like carbon border taxes have been viewed as a way to simply pass the cost of climate mitigation onto manufacturers located in jurisdictions without robust climate protections in place.¹²⁴ There are obvious consequences for economies that are dependent on fossil fuels when unilateral response measures force those economies to internalize the cost of carbon in order to participate in international trade. There are also additional effects on tourism, agriculture, and manufacturing that remain relevant from a competition standpoint even when border adjustments are not the primary concern.¹²⁵

Subsidies for various green products are a prime example of a policy that carries both costs and benefits to the non-subsidizing nation depending on the trade relationship of the parties in question.¹²⁶ When a product is subsidized, consumers of that product benefit because prices will fall.¹²⁷ This is often true regardless of whether the consumers are in the domestic economy or are importing subsidized products. However, foreign subsidies can have a detrimental effect on the unsubsidized economy's producers because they are less able

¹²¹ See *id.* at 531 (citing United Nations Framework Convention on Climate Change art. 3, para. 5, May 9, 1992, 1771 U.N.T.S. 107).

¹²² See Chris Wold et al., *Climate Change, International Trade, and Response Measures: Options for Mitigating Climate Change Without Harming Developing Country Economies*, 46 GEO. WASH. INT'L L. REV. 531, 537 (2014).

¹²³ See *id.*

¹²⁴ See *id.*

¹²⁵ See *id.* at 546.

¹²⁶ See Wold, *supra* note 122, at 556.

¹²⁷ See *id.*

to compete with the cheap imports that are now available.¹²⁸ If companies or the government in the unsubsidized economy cannot afford to engage in a subsidy war, the subsidies available to their competitors can lead to unfair and uncompetitive results that are detrimental to the unsubsidized economy's domestic industry.¹²⁹ Some commentators have even suggested that subsidies provided by the United States, China, and the European Union are "starting to look like the kind of global subsidy war that tends to benefit wealthy nations at everyone else's expense."¹³⁰ Ultimately though, it is this very spillover effect that could also bring benefits under a CBAM or climate subsidy regime by pressuring foreign governments to respond with their own policies that would incentivize clean energy.¹³¹ The competition these policies create can act as an incentive to motivate even uncooperative trade partners to adopt climate beneficial measures. The goal is to find a way to do this without exacerbating injustice.

B. *Some Justice Concerns Can Be Mitigated*

In response to these concerns, analysts have suggested solutions that limit the impact of unilateral response mechanisms.¹³² These solutions include a notification and consultation rule where response measures (like subsidies or border adjustments) are discussed via consultation with trade partners.¹³³ This would increase access to information but would not offer an opportunity to alter the policy. Second, parties might adopt a system similar to the AOA's three-tiered system for subsidies, which essentially categorizes subsidies as green, yellow, or red, by agreeing that certain measures would be always prohibited, some subject to scrutiny, and others always permitted.¹³⁴ While this would fit under existing multilateral structures, it may pose further problems when negotiators are forced to identify the response measures that fit in each category. Measures

¹²⁸ *See id.*

¹²⁹ *See id.*

¹³⁰ Bryce Baschuk, *How US Green Deal Has Opened Floodgates for Subsidies*, BLOOMBERG (Jan. 18, 2023).

¹³¹ *See, e.g.,* Clausen & Wolfram, *supra* note 28, at 152–3 (arguing that policy changes like a CBAM imposed "by a wide group of importers . . . have the potential to induce virtuous policy changes abroad").

¹³² *See* Wold, *supra* note 122, at 557–558.

¹³³ *See id.* at 557–8.

¹³⁴ *See id.*

like border adjustments, which are especially controversial, may ultimately prove challenging to incorporate under this solution. Third, parties could adopt an impact assessment that would force adopting countries to describe the environmental impacts the measure might have.¹³⁵ Like environmental impact assessments in domestic laws, these could provide procedural relief for parties impacted by unilateral response measures. Finally, for the most controversial measures, parties could adopt exemptions for the most affected trading partners.¹³⁶ This last solution might be analogized best to the benefit obtained through bilateral negotiations, which can be tailored to the specific needs of negotiating parties. While the solutions suggested above are tailored to multilateral negotiations, they do provide a framework for incorporation into other climate peace clause talks that might occur outside of multimember fora.

Climate change is both an existential threat and a driver of significant injustice on a global level. Industrialized nations, responsible for the vast majority of the carbon emissions driving the climate crisis, are often shielded from climate change's most detrimental impacts.¹³⁷ They are also in the best position to both adapt to and benefit from a clean energy transition. Without recognition of the negative impacts a climate peace clause might have on countries whose economies have not experienced those same benefits, efforts to address climate injustice threaten to stymie economic development and further a different injustice. By adopting a bilateral approach to negotiating peace clauses, some of these concerns can be taken into an account on a country-by-country basis. One way to address this would be to require that financial benefits from restrictive trade programs like a CBAM be distributed to trade partners in order to provide resources to assist with development goals. Debates and negotiations around a climate peace clause should recognize these risks and prioritize solutions that minimize harm to developing countries.

¹³⁵ See *id.*

¹³⁶ See *id.*

¹³⁷ See, e.g., Bethany Tietjen, *Many of the World's Poorest Countries Are the Least Polluting but the Most Climate-Vulnerable. Here's What They Want at COP27*, PBS (Nov. 2, 2022), <https://www.pbs.org/newshour/science/many-of-worlds-poorest-countries-are-the-least-polluting-but-the-most-climate-vulnerable-heres-what-they-want-at-cop27>.

C. *A Climate Peace Clause Would Be Protectionism in Disguise*

Outside of the justice critique, others have argued that a climate peace clause would be a step backwards in efforts to achieve the aims of the WTO—namely trade liberalization. Responding to various developments in WTO negotiations, including requests for a waiver of certain green energy license requirements submitted by the African Group of 44 countries, Georgetown Professor Marc Busch articulated a concern that waiving certain WTO provisions might be a slippery slope to permitting many kinds of exemptions.¹³⁸ He has also suggested that a climate peace clause would be a win for protectionists designed to incentivize subsidization in a way that has no history in prior WTO “peace clause” agreements.¹³⁹ Busch sees the increasing use of subsidies and local content requirements as a victory for protectionists seeking to defend against domestic job losses and not an effort to protect the environment.¹⁴⁰ A major concern here is that poorly defined exemptions may clear the road for protectionist policies that have until now been prohibited and eliminated through the efforts of WTO members.¹⁴¹

Even authors who accept that climate subsidies should be treated differently from other types of subsidization might object to a climate peace clause because it is inefficient.¹⁴² Limiting subsidies to domestic manufacturers restricts access to more affordable inputs, raising costs for consumers.¹⁴³ These arguments acknowledge that climate change may justify support for an industry designed to mitigate the negative externality of climate change, but balk at overly broad solutions that authorize inefficiencies in the very progress subsidies are intended to promote.

D. *The Protectionist Critique Ultimately Misses the Purpose of a*

¹³⁸ See Marc Busch, *Questionable Waivers Threaten the World Trade Organization's Relevance*, THE HILL (Oct. 6, 2023), <https://thehill.com/opinion/international/4240369-questionable-waivers-threaten-the-world-trade-organizations-relevance/>.

¹³⁹ See Marc Busch, *A WTO Climate Peace Clause Would Help Protectionists, Not the Environment*, THE HILL (May 4, 2023), <https://thehill.com/opinion/energy-environment/3985679-a-wto-climate-peace-clause-would-help-protectionists-not-the-environment/>.

¹⁴⁰ See *id.*

¹⁴¹ See *id.*

¹⁴² See Clausen & Wolfram, *supra* note 18, at 10.

¹⁴³ See Kamin & Kysar, *supra* note 28, at 100.

Climate Peace Clause

The protectionist critique hits on several legitimate concerns. A broad climate peace clause would challenge the existing WTO regime and would lead to an increase in what are otherwise prohibited protectionist trade policies. A climate peace clause necessarily prioritizes climate issues above fortifying the modern international trade regime. Subsidies and buy local requirements are not always environmental policies but are always efforts supporting domestic labor. However, these policies are also the product of a political system that has otherwise failed to address the climate crisis in meaningful ways. The domestic benefits of this legislation are often what make climate action politically feasible. At this point it is worth noting that 70% of emissions are attributable to domestic economic activity, meaning international trade may therefore occupy a comparatively less significant position for policymakers.¹⁴⁴ Thus, protecting the political liberty of governments to tailor their domestic policy to meet domestic needs is essential from a climate perspective. Furthermore, allowing for domestically popular climate policies might help the policies survive changes in political administrations. As the second Trump Administration considers the fate of the IRA, this benefit to incentivizing sometimes inefficient but politically popular programs may be further demonstrated.

The calls for a climate peace clause recognize this political reality and attempt to account for that reality in the context of an international trade regime that is not designed around this specific crisis or this political moment. In that way, Busch's critique highlights the fact that efforts to negotiate a climate peace clause will fail when they place a desire to maintain trade liberalization at the same level of priority as a rapid response to the climate crisis.

Similarly, concerns about inefficiencies in climate policy that are driven by exceptions to trade laws become meaningless if governments do not have the latitude to build domestic support for their policies. A relatively broad climate peace clause would protect and incentivize various policies across various political jurisdictions. This may not be the most efficient solution, and to the degree parties can agree on efficient allocation of resources, that is preferable. But ultimately, the goal of a climate peace clause is a recognition of the

¹⁴⁴ See Clausing & Wolfram, *supra* note 28, at 143.

political necessity of urgent and imperfect action to address the climate crisis.

E. Political Fortunes Have Changed

Of course, a final critique of a climate peace clause in 2025 is that such a proposal would be dead on arrival in the new U.S. Administration. There are responses to this critique. First, as the negotiations around the United States, Canada, & Mexico's trade agreement during the first Trump Administration show, trade negotiations are a two-way street. While the Trump Administration is unlikely to agree to a bilateral climate negotiation today, elements of a climate peace clause could be pursued in bilateral agreements between non-U.S. parties or pushed by U.S. trade partners during other negotiations that the Trump Administration pursues. Second, the problem of climate change is not going away. If the next U.S. elections bring another shift in presidential politics, international progress on a climate peace clause could be picked up by a new administration and quickly deployed.

IV. A STUDY OF THE UNITED STATES-EUROPEAN UNION CLIMATE
SUBSIDY TRADE DISPUTE

Under the existing system, there have been many high-profile trade disputes between the United States and European Union, including a long-running dispute over subsidies provided to Boeing and Airbus by each company's respective government.¹⁴⁵ That dispute has resulted in the imposition of high-profile tariffs on both sides.¹⁴⁶ One of the concerns of those calling for a climate peace clause is that similar disputes could arise in the future over support for products that are used to combat climate change.¹⁴⁷ This concern is not unwarranted.

¹⁴⁵ In a saga that began in 2004, trade remedy cases were brought at the WTO by the United States against the European Union in relation to subsidies provided to Airbus, and also by the European Union against the United States in relation to subsidies provided to Boeing. Ultimately, this resulted in the imposition of billions of dollars of tariffs. See *Highlights of the 17-Year Airbus, Boeing Trade War*, REUTERS (June 15, 2021), <https://www.reuters.com/world/highlights-17-year-airbus-boeing-trade-war-2021-06-15/>.

¹⁴⁶ See *id.*

¹⁴⁷ See Letter from International Association of Machinists and Aerospace Workers (IAM) et al. to President Biden (Jan. 18, 2023),

Both the United States and the European Union have made subsidies a key part of their climate policies in recent years.¹⁴⁸ This in turn has generated controversy and, at times, the threat of trade disputes that could either limit the impact of these policies on incentivizing green energy adoption or threaten their political support domestically.¹⁴⁹ In particular, the policies contained in the European Union's Green New Deal and Net Zero Industry Act, along with the policies included in the United States's Inflation Reduction Act, are demonstrative of a shifting paradigm in which domestic political realities have produced different sets of protectionist policies designed to combat climate change.¹⁵⁰ A comparative analysis of each government's subsidy policies, their intended impacts, and their vulnerability to trade remedy disputes illustrates the impact that a climate peace clause could have on incentivizing a race to the top in green energy.

A. *The European Union Leads the United States on Climate Policy*

The European Union has implemented meaningful climate policies since the 1990s.¹⁵¹ Prior to the Green Deal (2019) and the Net Zero Industry Act (2024), the European Union had developed an Emissions Trading Scheme (ETS) in the 2000s designed to curb carbon emissions using market mechanisms.¹⁵² This later grew to include the multi-phase rollout of the EU Carbon Border Adjustment Mechanism, a border tax based on carbon intensity that will take full

<https://www.citizen.org/wp-content/uploads/Organizational-Letter-on-IRA-defense-from-Trade-Challenges.pdf>.

¹⁴⁸ See Timothy Conley & Kimberley Botwright, *Climate Action: What do Green Subsidies Mean for the Future of Climate and Trade?*, WORLD ECON. F. (Mar. 13, 2023), <https://www.weforum.org/agenda/2023/03/what-do-green-subsidies-mean-for-the-future-of-climate-and-trade-099a016307/>.

¹⁴⁹ See Hans von der Burchard & Clea Caulcutt, *Scholz and Macron Threaten Trade Retaliation Against Biden*, POLITICO (Oct. 27, 2022), <https://www.politico.eu/article/france-and-germany-find-ground-on-a-common-concern-u-s-protectionism/>; Andy Bounds, *EU Accuses US of Breaking WTO Rules with Green Energy Incentives*, FIN. TIMES (Nov. 6, 2022), <https://www.ft.com/content/de1ec769-a76c-474a-927c-b7e5aeff7d9e>.

¹⁵⁰ See CHRISTIAN SCHEINERT, EU'S RESPONSE TO THE US INFLATION REDUCTION ACT (IRA) 1–3 (June 2023), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/740087/IPOL_IDA\(2023\)740087_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/740087/IPOL_IDA(2023)740087_EN.pdf).

¹⁵¹ See *id.* at 1; Claire Dupont, et al., *Three Decades of EU Climate Policy: Racing Toward Climate Neutrality?*, 15 WIREs CLIMATE CHANGE 1, 3 (2024), <https://wires.onlinelibrary.wiley.com/doi/10.1002/wcc.863>.

¹⁵² See *id.*

effect in 2026.¹⁵³ These regulatory mechanisms were not initially mirrored in the United States despite legislative efforts to introduce similar forms of regulation in Congress in 2009 and other efforts to regulate emissions from cars and the power sector from the 2000s to the 2020s.¹⁵⁴

While the EU's market based policies remain central to European climate mitigation efforts and will continue to create incentives to decarbonize, the EU has also explored and implemented other policies to incentivize a green transition through the European Green Deal and other support mechanisms.¹⁵⁵ The European Green Deal included the European Green Deal Investment Plan (EGDIP) and the Sustainable Europe Investment Plan (SEIP).¹⁵⁶ Policymakers also supported a Green Deal Industrial Plan.¹⁵⁷ Additionally, during the COVID-19 pandemic, the European Union implemented the Recovery and Resilience Fund that included significant subsidies structured around €648 billion in support to E.U. member states through grants and loans.¹⁵⁸ The SEIP is structured to mobilize over €1 trillion in sustainable investments within a decade.¹⁵⁹ The SEIP facilitates sustainable investment from both public and private investors. Overall, the €1 trillion comes from a combination of funding derived from the emissions trading system, the EU budget (currently around €503 billion), and InvestEU, which utilizes funding from both public and private investors.¹⁶⁰ In order to realize the goals of these investments, which include generating clean energy

¹⁵³ See *id.* at 6.

¹⁵⁴ See Dan Farber, *30 Years of U.S. Climate Policy*, LEGAL PLANET (Jan. 12, 2023), <https://legal-planet.org/2023/01/12/30-years-of-u-s-climate-policy/>.

¹⁵⁵ See Dupont, *supra* note 151, at 4.

¹⁵⁶ See *The European Green Deal Investment Plan and Just Transition Mechanism Explained*, EUR. COMM'N (Jan. 14, 2020), https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24.

¹⁵⁷ See *The Green Deal Industrial Plan*, EUR. COMM'N, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/green-deal-industrial-plan_en (last visited May 28, 2025).

¹⁵⁸ See SCHEINERT, *supra* note 150, at 4; *The Recovery and Resilience Facility*, EUR. COMM'N, https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en; *NextGenerationEU*, EUR. UNION, https://next-generation-eu.europa.eu/recovery-and-resilience-facility_en (last visited Apr. 20, 2025).

¹⁵⁹ See *The European Green Deal Investment Plan and Just Transition Mechanism Explained*, *supra* note 156.

¹⁶⁰ See *id.*

alongside a transition to a circular economy, the Green Deal Investment Plan will tailor financing to projects ranging from sustainable household renovations to expanding the availability of EV charging stations.¹⁶¹ Alongside these investments, the European Green Deal sets a 2050 target for climate neutrality that requires all European Union policies to be structured around compliance with that target.¹⁶² It also includes a strategy through the Green Deal Industrial Plan to develop new markets for green products manufactured in Europe, stricter regulations for cars, efforts to prioritize decarbonization of businesses, research and innovation in food production, and other research and development plans.¹⁶³ While many of these plans included various kinds of subsidies, the subsidies were not linked to the kinds of local content requirements that were included in the Inflation Reduction Act (IRA).¹⁶⁴

B. The United States Pursues a Subsidy-Based Approach

The IRA was adopted in the United States in the summer of 2022 after many failed efforts to implement aggressive climate policies, including significantly larger plans proposed at the beginning of the Biden Administration. Prior to the IRA, Democratic administrations in the United States had promulgated regulations intended to incentivize a clean energy transition. However, these administrative actions remained perpetually at risk of challenge in court or reversal by Republican presidents.¹⁶⁵ The IRA, on the other hand, was an Act of Congress and therefore more difficult to overturn. This has proven true through the beginning of the second Trump Administration.¹⁶⁶ It included significant funding for climate initiatives

¹⁶¹ *See id.*

¹⁶² *See* Anne Lapierre & Katie McDougall, *The EU Green Deal Explained*, NORTON ROSE FULBRIGHT (Apr. 21, 2021), <https://www.nortonrosefulbright.com/en/knowledge/publications/c50c4cd9/the-eu-green-deal-explained>.

¹⁶³ *See id.*

¹⁶⁴ *See* Timothy Conley & Kimberly Botwright, *What Do Green Subsidies Mean for the Future of Climate and Trade?*, WORLD ECON. F. (Mar. 13, 2023), <https://www.weforum.org/agenda/2023/03/what-do-green-subsidies-mean-for-the-future-of-climate-and-trade-099a016307/>.

¹⁶⁵ *See* Farber, *supra* note 154.

¹⁶⁶ Sam Frankhauser, *US Clean Energy Subsidies Could be Impossible to Repeal*, FINDS SMITH SCHOOL ANALYSIS, SMITH SCHOOL (Jan. 28, 2025), <https://www.smithschool.ox.ac.uk/news/us-clean-energy-subsidies-could-be-impossible-repeal-finds-smith-school-analysis>.

that were a priority for the Biden Administration. Once this money goes out the door, it is difficult or impossible to pull back.¹⁶⁷

The IRA was defined by the United States's political dynamics. Where climate policies had previously failed to make it through Congress, there was now support for subsidies designed to move the country towards a green transition as opposed to the carbon pricing and market mechanisms that had previously failed in the United States. The IRA, alongside the Bipartisan Infrastructure Act and the CHIPS Act, introduced over \$2 trillion in new spending by the federal government over a 10-year period.¹⁶⁸ Of the \$394 billion provided under the IRA for energy and climate incentives, only \$40 billion is set aside for loans.¹⁶⁹ This leaves at least \$354 billion, in the form of grants, tax incentives, and federal operations spending, although this number could be an underestimate if more tax incentives are claimed.¹⁷⁰ Controversially, a number of benefits under the IRA, including subsidies provided to incentivize the green transition, are structured around local content requirements that require supply chains to be sourced domestically or from countries with whom the United States has a free trade agreement.¹⁷¹ Many of the IRA's tax incentives are limited in this way and this structure can promote the use of the benefits at home or with specific trading partners.¹⁷² For reasons discussed below, this incentive structure and the restrictive provisions involved in its distribution has been a particular source of controversy with European trading partners, none of

¹⁶⁷ See Kelsey Tamborrino, *Trump Vows to Pull Back Climate Law's Unspent Dollars*, POLITICO (Sept. 5, 2024), <https://www.politico.com/news/2024/09/05/trump-inflation-reduction-act-00177493> (discussing a desire by President Trump to pull back unspent IRA money, but not money which is already spent, and Biden administration efforts to get that money out the door).

¹⁶⁸ See *The Inflation Reduction Act: Here's What's In It*, MCKINSEY (Oct. 24, 2022), https://www.mckinsey.com/industries/public-sector/our-insights/the-inflation-reduction-act-heres-whats-in-it#.

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

¹⁷¹ See *id.* For example, the Clean Vehicle Credit, which is included in the IRA, requires the vehicle to contain "a threshold percentage of critical minerals extracted or processed in the United States or in a country with which the United States has a free trade agreement, or recycled in North America." THE WHITE HOUSE, BUILDING A CLEAN ENERGY ECONOMY GUIDEBOOK 49 (Jan. 2023), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>.

¹⁷² See THE WHITE HOUSE, *supra* note 171, at 49.

whom are covered by a free trade agreement with the United States.¹⁷³

C. The European Union Responds with a Race to the Top

The European Union proposed the Net-Zero Industry Act in early 2024 in response to competition generated by efforts to expand clean energy manufacturing in non-E.U. countries, which likely include policies like the Inflation Reduction Act as well as subsidies and support mechanisms implemented by the Chinese government.¹⁷⁴ E.U. lawmakers referenced the IRA in the European Parliament following passage of the Net-Zero Industry Act, calling it a reaction to the U.S. policies.¹⁷⁵ The European Parliament's press release announcing passage of the Act also notes that it was passed against a background where "many non-EU countries have stepped up their efforts to expand their clean energy manufacturing capacity."¹⁷⁶ Under the law, Europe would seek to supply 40 percent of the bloc's green tech from domestic sources by 2030.¹⁷⁷ The law accelerates the European Union's permitting processes for clean technology and protects domestic companies from unfair competition with foreign competitors.¹⁷⁸ The law also designates some clean technologies as strategic.¹⁷⁹ This would allow E.U. companies to access funding more easily, gain permit approvals faster, and in some cases prioritize E.U. technology for government contracts.¹⁸⁰

In addition to the Net-Zero Industry Act, other European Policies can be viewed as a response to the IRA. The Net-Zero Industry Act comes within a proposal for the Green Deal Industrial Plan,

¹⁷³ See *United States—EU Trade Relations with the United States. Facts, Figures, and Latest Developments*, EUR. COMM'N, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/united-states_en#:~:text=Despite%20the%20US%20being%20the,the%20EU%20and%20the%20US (last visited June 4, 2025).

¹⁷⁴ See European Parliament Press Release, MEPs Adopt Plans to Boost Europe's Net-Zero Technology Production (Apr. 24, 2024).

¹⁷⁵ See Federica Di Sario, *EU Finalizes Green Tech Bill, Responding to US Effort*, POLITICO (Feb 6, 2024), <https://www.politico.eu/article/europe-net-zero-industry-act-climate-change-green-technology/>.

¹⁷⁶ European Parliament Press Release, *supra* note 174.

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

¹⁷⁹ See *id.*

¹⁸⁰ See *id.*

which was first presented in 2023.¹⁸¹ Around this time, the European Union also implemented the Critical Raw Materials Act and relaxed certain state aid rules allowing for more subsidies to be handed out at the national level by E.U. member states.¹⁸² These all come in the context of new pressure created by IRA subsidies and local content requirements. Today, the existence of this competition could incentivize the Trump Administration to keep protections for U.S. industry in place.

These recent developments highlight a tension between climate policy in the United States and European Union. The United States used direct incentives to support the clean energy transition while protecting domestic labor with local content requirements. The European Union's tapestry of regulations and investments have avoided those same local content requirements. This has led to tensions that have occasionally threatened trade relationships between the two economies.

Immediately after the IRA's passage, some European leaders came out against the program. Brussels expressed concern that U.S. tax credits in the IRA might violate WTO rules by discriminating against foreign made vehicles.¹⁸³ French and German leaders quickly spoke out against the buy American provisions of the IRA that created local content requirements.¹⁸⁴ They argued that the provisions may not be WTO compliant and contended that negotiations would need to occur in order to bring the agreement into compliance.¹⁸⁵ At the same time, they also suggested that the European Union would need to respond with its own local content requirements.¹⁸⁶ European Commission leaders also argued that IRA provisions violated WTO requirements by discriminating against imported products.¹⁸⁷ Specifically, the European Union argued in a November 2022 comment to the U.S. Treasury Department that the

¹⁸¹ See SCHEINERT, *supra* note 158, at 3.

¹⁸² See *id.*

¹⁸³ See John Chalmers & Hyunjoo Jin, *EU, South Korea Say U.S. Plan for EV Tax Breaks May Breach WTO Rules*, REUTERS (Aug. 11, 2022), [https://www.reuters.com/business/autos-transportation/eu-says-us-plan-ev-tax-breaks-discriminatory-may-breach-wto-rules-2022-08-11/#:~:text=BRUSSELS%2C%20Aug%2012%20\(Reuters\),Trade%20Organization%20\(WTO\)%20rules](https://www.reuters.com/business/autos-transportation/eu-says-us-plan-ev-tax-breaks-discriminatory-may-breach-wto-rules-2022-08-11/#:~:text=BRUSSELS%2C%20Aug%2012%20(Reuters),Trade%20Organization%20(WTO)%20rules).

¹⁸⁴ See von der Burchard & Caulcutt, *supra* note 149.

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

¹⁸⁷ See Bounds, *supra* note 149.

“United States’ climate objectives unfairly tilt the playing field to the advantage of production and investment in the United States at the expense of the European Union and other trading partners of the United States.”¹⁸⁸ With respect to the domestic content requirements in particular, the European Union alleged that U.S. policies in the IRA violated rules in both the GATT and ASCM.¹⁸⁹ According to the letter, the IRA policies risked triggering a “harmful global subsidy race to the bottom.”¹⁹⁰ Despite these initial tensions, the United States and the European Union participated in an IRA based task force that engaged in discussions that helped limit this friction.¹⁹¹

In part because of ongoing dialog, these disagreements have not manifested as full-on trade disputes or a trade war. Still, they threaten to undermine the commitments each government has made to addressing climate change by throwing uncertainty into efforts to develop and roll out new climate policies. They also put the requirements of the policies in jeopardy, making it more difficult for potential beneficiaries to take advantage of the incentives. This uncertainty has led advocacy groups to call for a climate peace clause.¹⁹² Advocates of a climate peace clause recognized that the IRA may have contravened WTO rules.¹⁹³ Still, in order to pass the legislation, the local content requirements at issue may have been needed to win political support from domestic manufacturing. They are likely even more important politically today. Commentators have even recognized that trade challenges to climate regulations can lead policymakers to alter their domestic legislation.¹⁹⁴ The IRA passed the U.S. Senate by one vote.¹⁹⁵ Altering the bill by removing local content requirements prior to the vote could have undermined the narrow political support that was necessary to pass this significant

¹⁸⁸ Delegation of the Eur. Union to the U.S., Submission by the European Union on the Inflation Reduction Act 1–2 (Nov. 2022), <https://www.regulations.gov/comment/IRS-2022-0020-0774> [hereinafter EU Comments on the IRA].

¹⁸⁹ *See id.* at 2.

¹⁹⁰ *Id.* at 3.

¹⁹¹ *See* EU Comments on the IRA, *supra* note 188, at 1–2.

¹⁹² *See* Handeln et al., *supra* note 7.

¹⁹³ *See id.*

¹⁹⁴ *See* Porterfield, *supra* note 33, at 73.

¹⁹⁵ *See* Melissa Quinn, *Senate Passes Democrats’ Sweeping Climate, Health and Tax Bill, Delivering Win for Biden*, CBS NEWS (Aug. 8, 2022), <https://www.cbsnews.com/news/inflation-reduction-act-senate-pass-climate-healthcare-tax-bill/>.

piece of climate legislation. This fact was not lost on E.U. lawmakers and may have played into the decision to forgo trade action and instead respond with their own policy plans.

Unlike other efforts to incorporate environmental protections into trade policy, a climate peace clause would elevate efforts to address climate change over the trade concerns prioritized by existing agreements. It would also prioritize making climate policies more politically palatable. The dispute over local content requirements in the IRA demonstrates that this thinking may already be taking hold. Instead of bringing trade actions, the European Union has responded to the IRA's local content requirements with negotiations and its own new incentives to support a local green transition. While this has generated more protectionist trade measures, these measures have also come alongside an increase in support for technology and policies that promote a green energy transition. That is the trade-off a climate peace clause would bring.

While the immediate threat of a trade war between the European Union and United States over the IRA may have subsided, there is no certainty that this will persist in the long run, particularly as trade tensions heat up. Furthermore, programs like the IRA may remain vulnerable to challenge by other trade partners down the line if agreements to refrain from challenging climate policies are not put in place. These challenges would likely push policies into alignment with the trade liberalization goals at the heart of the WTO, but they would also threaten the political support necessary to implement aggressive climate policies. However, the very fact that the European Union has refrained from challenging the U.S. policies is an indication that policymakers are increasingly willing to prioritize climate goals. This offers hope that agreements to protect climate beneficial policies from WTO challenge could be negotiated in the future.

CONCLUSION

A climate peace clause would provide clarity to governments that are considering adopting climate positive policies and provide incentives to keep existing policies in place. When climate measures are domestically popular but internationally fraught, a climate peace clause would protect these measures from being challenged at the WTO, and it would protect their implementing governments from facing retaliation from trade partners. This in turn would increase

the likelihood that those policies will actually be implemented and would provide an avenue through which to build political support for climate spending. A climate peace clause would also incentivize trading partners to respond with their own climate policies as seen in the European Union's response to the IRA. This may create virtuous cycle that survives political changes as economic policy becomes linked to a green transition.

Still, coming to an agreement around a climate peace clause might prove extraordinarily difficult and subject to the pitfalls previously described. Successful negotiations would likely require (1) focusing exclusively on the climate benefits the agreement hopes to generate (in situations where this is feasible); (2) linking these benefits to some kinds of means-ends test; (3) negotiating on a bilateral basis outside the WTO; (4) addressing the concerns of each individual trade partner to reflect the different abilities for trade partners to respond to large scale subsidy programs or other barriers to trade; and (5) considering the use of temporary agreements that might prove less controversial.

Even if an agreement could be reached, critics are right to point out that subsidy wars can be fundamentally damaging to countries without the resources to compete against countries with better access to capital. This threat risks exacerbating the existing inequalities that arise under climate change. As skeptics of a climate peace clause have highlighted, opening the door to unrestrained climate subsidies could also have significant and far-reaching effects and can lead to inefficiencies. The history of the IRA shows us that the availability of subsidies to domestic actors in one jurisdiction forces other jurisdictions to either subsidize their domestic industry or risk losing local manufacturing. Traditionally, this outcome has been known as a race to the bottom. In the context of climate change, however, this thinking may be worth revisiting.

Instead of looking at subsidization of green technology as a race to the bottom, this additional subsidization could be seen as a race to the top that expedites the transition towards a net-zero global economy. Negotiating climate peace clauses between trading partners would then incentivize this new climate-oriented trade policy. Removing the threat of retaliation from trading partners before disputes arise would incentivize the implementation of policies that are both domestically popular and likely to expedite the necessary transition away from fossil fuels. This would provide more certainty to

companies that are looking to benefit from the climate policies implemented by their respective governments, generating a race to the top in the transition away from a carbon-based economy. These benefits make the adoption of a climate peace clause a policy proposal worth considering.