

Centre for Environmental Strategy, University of Surrey

CES Seminars

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Climate and Trade: Sustainable Consumption and the Question of Likeness

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Background for today's presentation



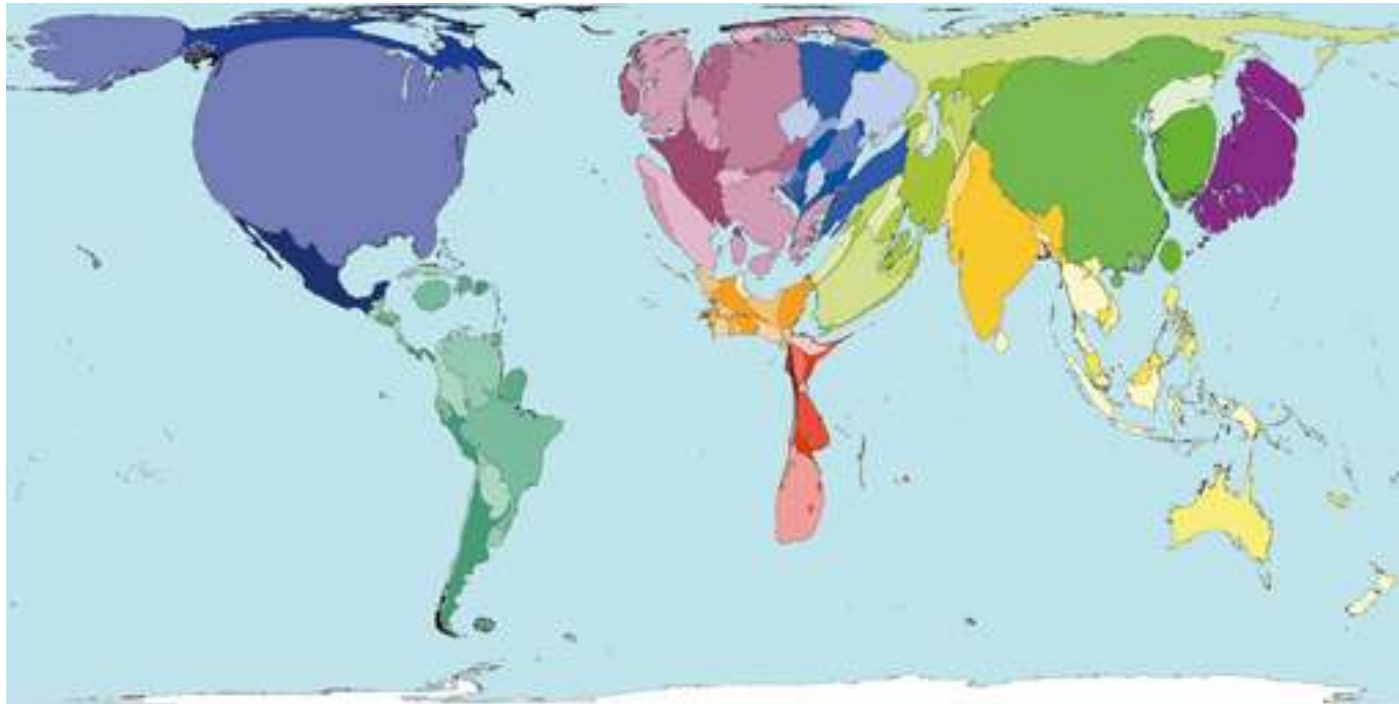
- **Doctoral thesis “The Legal Relationship between International Climate Measures and the International Trade Regime”**
- **2.1. *Carbon and Climate Law Review* (2008) special issue on “Climate Change in a Global Economy”**
- **30/05/08 - Surrey Workshop “From Production to Consumption: Legal and Policy Challenges to a New Approach to Climate Change”**

Outline of today's presentation



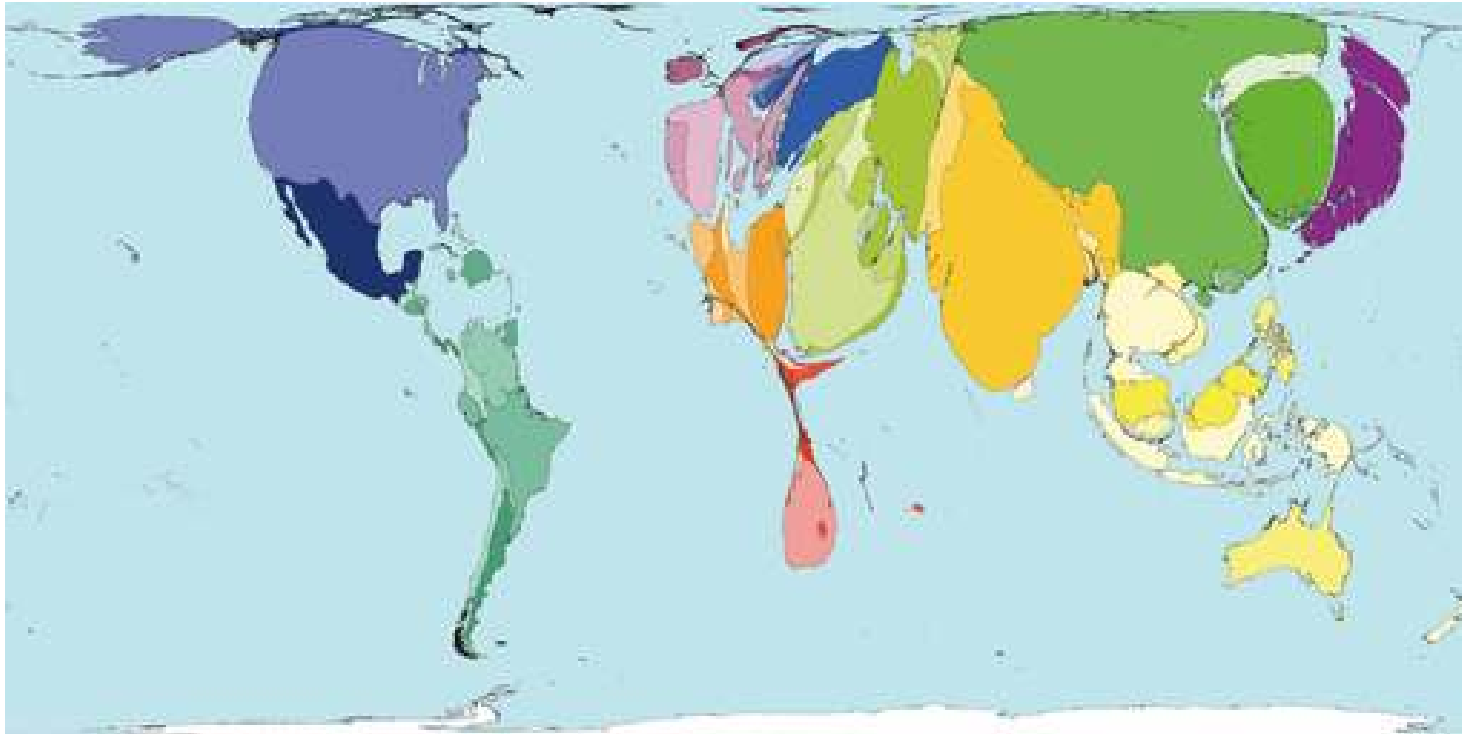
- **Production vs Consumption**
- **Climate and Trade and the question of 'likeness' within the World Trade Organisation (WTO)**
- **Policy solutions vs legal impediments?**

1. Production vs Consumption



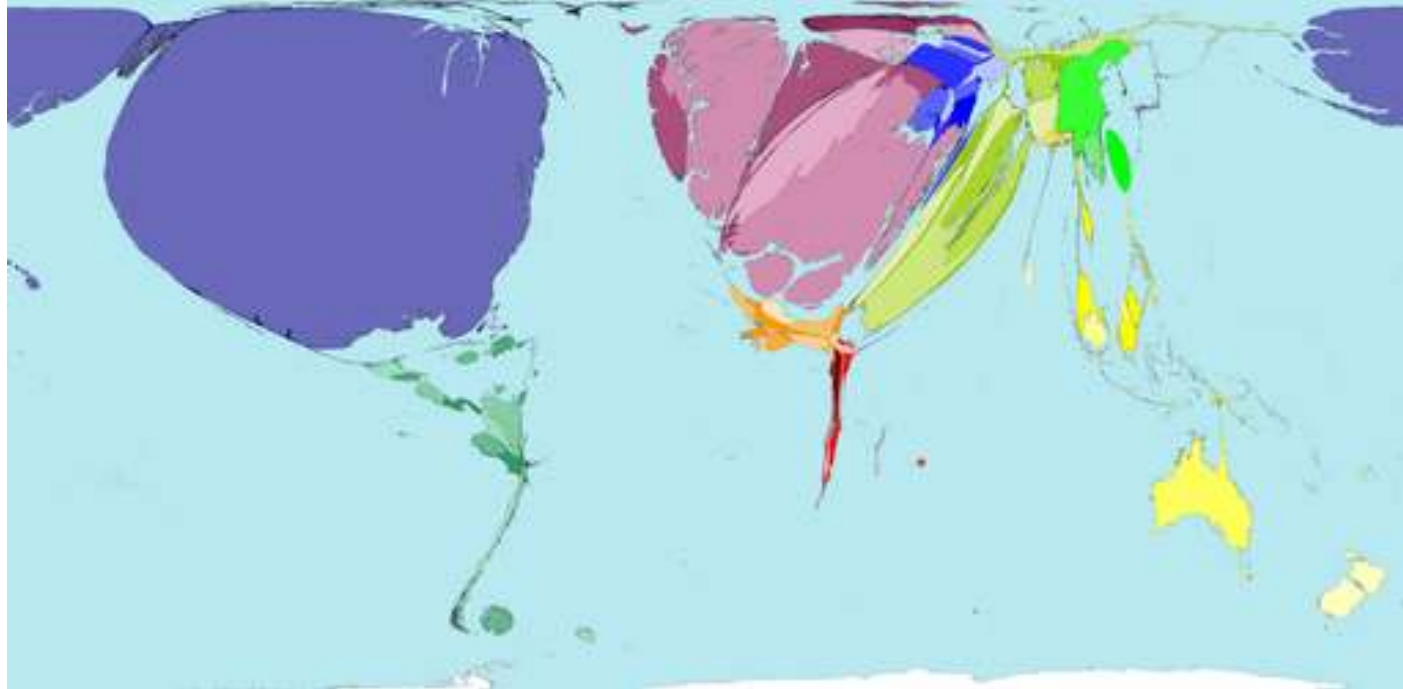
- Greenhouse gases emissions (www.worldmapper.org)

1. Production vs Consumption



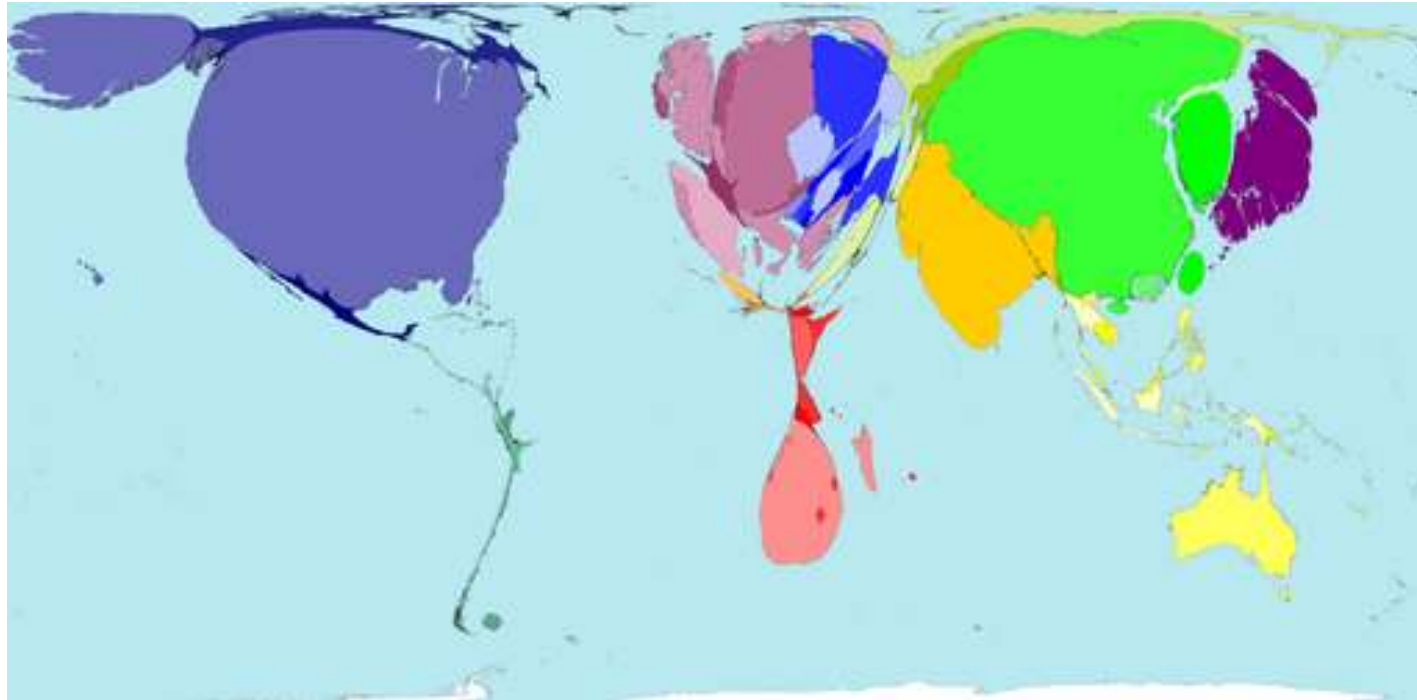
- **Carbon emissions increase between 1980 and 2000**
(www.worldmapper.org)

1. Production vs Consumption



- Cars imports (www.worldmapper.org)

1. Production vs Consumption



- **Coal Power (www.worldmapper.org)**

1. Production vs Consumption



- International climate regime is designed on a production approach to emissions
- Carbon embedded in trade and shift towards consumption based approaches to emissions (virtual water trade and ecological footprint)
 - **Importance of a life cycle analysis**

1. Production vs Consumption



- Economic literature on carbon embedded in trade
G.P. Peters & E.G. Hertwich, CO2 Embodied in International Trade with Implications for Global Climate Policy, *Environmental Science and Technology* (2008) & WWF, EU Consumption, Global Pollution (2008).

- Linkage between Norway's consumption and China's emissions
 - **Need for a global multilateral answer**

2. Climate and Trade



- As of today there is no global multilateral answer that allows to tackle emissions coming from consumption

- **Unilateral action**
 - In order to reduce global emissions and promote an efficient international climate regime...
 - In order to deal with domestic competitiveness concerns and carbon leakage...

- Law more interested in solving conflicts, but the debate on sustainable consumption gives us the possibility to influence policy-makers!

2. Climate and Trade



- Norway establishes a climate policy based on sustainable consumption
 - ... and decides to promote climate friendly products by blocking imports from those countries that have less stringent climate requirements
- Norwegian policy is based on a **life cycle analysis** that allows to calculate the emissions emitted in the **process methods of a product**
 - **Is such a climate policy WTO compatible?**

2. Climate and Trade



- GATT, article I (General Most – Favoured Nation Treatment)
 - With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation ... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the **like product** originating in or destined for the territories of all other contracting parties.
 - Like products?

2. Climate and Trade



- GATT, article III.2 (National Treatment)
 - The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to **like domestic products**.
 - Like products?
 - If two products (domestic and imported) are not like, Norway can lawfully discriminate between them...
 - If two products (domestic and imported) are like, and Norway discriminates between them, it will be breaching WTO law

2. Climate and Trade

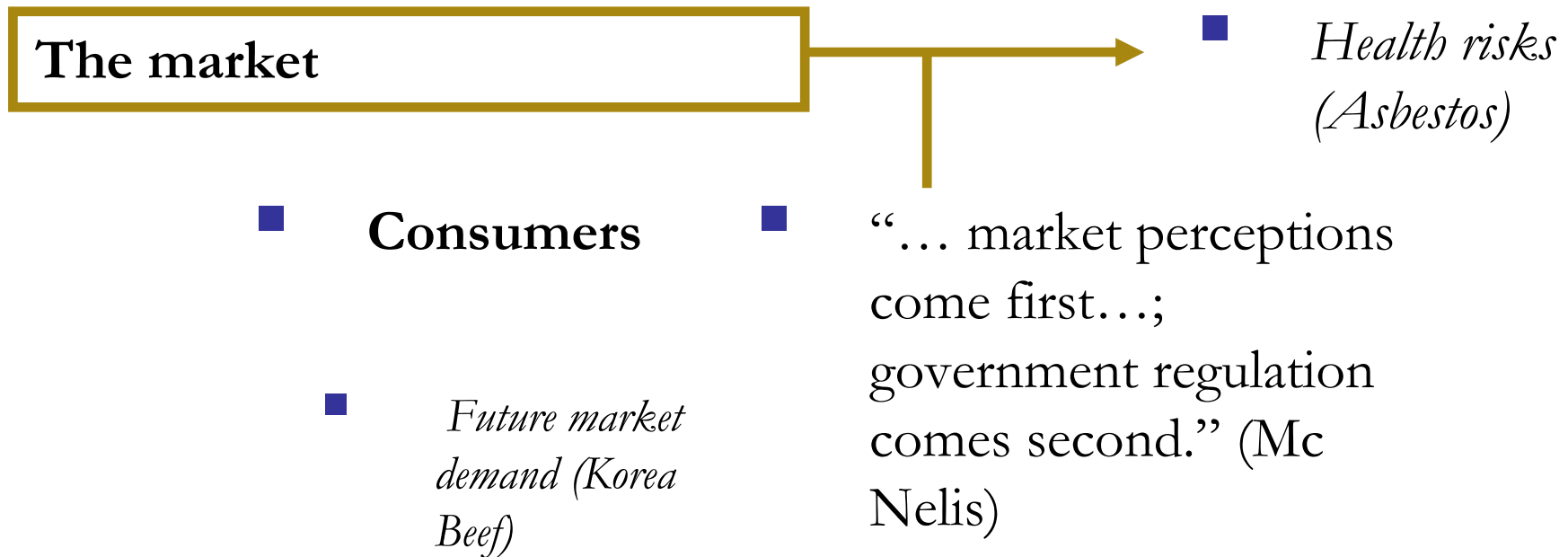


- **What are like products?** ■ Can the emissions embedded in a product differentiate two otherwise similar products?
 - Jurisprudential evolution of the concept of like products
 - **Physical properties (Tuna case)**
 - **Aim and effects (US Autos)**
 - **Market (Japan / Alcoholic Beverages)**
- Product's properties
Product's end uses
Consumer's tastes and habits
Tariff classification

2. Climate and Trade



- Two products are **like** if they have same **end uses**
 - When two products meet the same demand / if they are in competition



2. Climate and Trade



- Can the emissions embedded in a product differentiate two otherwise similar products?
- Process and production methods (PPMs)
 - Product related
 - Non-product related

*“What a country cannot do under WTO rules is apply trade restrictions to attempt to change the **process and production methods** of its trading partners. Why? Basically because the issue of production and process methods lies within the **sovereign jurisdiction** of each country.” (Renato Ruggiero – former WTO DG)*

2. Climate and Trade



- **WTO does not ban PPMs**

- **National Sovereignty**

Right to decide its own production processes vs Sovereign Right to not participate in an activity that is harming the environment

- **Protectionism**

Economic protectionism vs Environmental efficiency

2. Climate and Trade



- **Process and production methods in the light of the like products jurisprudence**

- | | | |
|---|---|---------|
| ■ Physical properties
(Tuna case) | → | ■ PPM X |
| ■ Aim and effects (Malt
beverages) | → | ■ PPM |
| ■ Market (Japan /
Alcoholic Beverages) | → | ■ PPM X |
| ■ Health risks
(Asbestos) | → | ■ PPM |

3. Policy solutions vs legal impediments



- WTO law hostage of the questions of likeness and PPMs

- WTO policy may open an avenue through the current Doha talks on trade and environment
 - **Doha mandate, paragraph 31.3**
“the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services”

3. Policy solutions vs legal impediments



- Peters argues that trade can be part of the climate solution...
- Is climate change majorly an environmental or an economic global problem/challenge?

- **Economic**

WTO

- **Environmental**

A multilateral global answer in which trade can play a role must be found within the international climate regime

Legal aspects of sustainable consumption
climate policies and their WTO relationship
must be raised in Poznan and Copenaghen!



Thank you!



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