Until very recently the climate and trade debate was considered to be primarily an academic exercise not linked to the agendas of states and international organisations. Things have changed rapidly over the past few years, if not months. This special issue of the Carbon and Climate Law Review, therefore, focuses on very timely questions. As the recent Conference of the Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) in Bali in December 2007 showed, the debate on climate change and trade is rapidly “warming” up. Although countries agreed on a Bali “road map”, there is still a strong transatlantic divide on how to tackle climate change internationally. The United States is not willing to adopt mandatory emission reduction targets if these do not also include the major emerging economies in the developing world. On the other hand, the European Union wishes to promote global leadership in the fight against climate change, but is weary of moving ahead alone without the US. Moving towards Copenhagen in 2009, one of the main negotiation points will, therefore, be the free-rider and competitiveness impacts of a post-2012 agreement.

From a legal perspective, this raises two central questions for scholars and practitioners: Can states adopt measures to deal with competitiveness concerns arising from the presence of different climate policies? And what can and should the role of the World Trade Organization (WTO) be in the global fight against climate change?

Both questions are dealt with in this special issue of the Carbon & Climate Law Review. The first question, relating to whether states may adopt trade restrictions to offset competitive disadvantages linked to their internal climate change policies, has risen to prominence on the political agenda of a number of major actors, including the US and the EU. The US House of Representatives Committee on Energy and Commerce and its Sub-Committee on Energy and Air Quality are currently considering options for a mandatory scheme to reduce greenhouse gas emissions at the federal level. One of the stated concerns is to draft legislative proposals in a way that “is reasonably certain to withstand challenge before the World Trade Organization.” This is related to the goal of the US to “craft legislation limiting U.S. carbon emissions that also induces developing countries to limit their emission growth”. Addressing one of the potential solutions, Charles Verrill, in his contribution to this issue, considers the WTO compatibility of technical regulations limiting the carbon intensity of basic products. He concludes that proposals following this approach could be compatible with the WTO Agreement on Technical Barriers to Trade (TBT).

In Europe, a heated debate has arisen around the option of border tax adjustments (BTAs) to level the playing field with internal carbon restrictions. Whereas some European countries, such as France, seem eager to adopt measures in this vein, the European Commission is still considering different approaches to address competitiveness and carbon “leakage” concerns. Despite this disagreement, BTAs are receiving significant attention as a measure to deal with competitive advantages for non-Parties to the Kyoto Protocol or a possible follow-up agreement. In this special issue, several authors engage in the discussion on the overall feasibility and WTO-compatibility of BTAs. Jochem Wiers frames the debate within the French political context, while Matthew Genasci focuses mainly on how the design of a future BTA measure affects its WTO compatibility. BTAs are just one of the possible measures that could lead to tensions between domestic climate-related efforts and the multilateral trading system. Two contributions deal with other possible climate-trade interactions. Richard Tarasofsky engages in a critical study of the relationship between WTO norms and a range of greenhouse gas mitigation measures, including subsidies,
labelling programmes, and measures based on so-called climate-friendly process and production methods (PPMs). Christina Voigt examines whether international emissions trading may trigger WTO disputes, and discusses the possible outcome of such conflicts.

The legal analysis of BTAs and other possible climate and trade interactions within the WTO sheds a new light on old questions in the long-standing trade and environment debate. When addressing the nexus of climate and trade, we must automatically face questions such as the role of PPMs, the definition of like products, and the principles governing application of the general exceptions contained in Article XX of the General Agreement on Tariffs and Trade (GATT). All of these issues have been covered to a greater or lesser extent by most of the authors in this issue.

The second overarching question concerns the role of the WTO in international climate policy. At the COP in Bali, the WTO for the first time hosted a formal side-event devoted to this question. In addition, the Indonesian Government hosted an Informal Trade Ministers Dialogue on Climate Change that brought together 33 ministers from various key countries, and also attracted the participation of Pascal Lamy, Director General of the WTO. In his speech devoted to climate change, Mr. Lamy maintains that “Doha could deliver a double-win for environment and trade”. Two authors examine the positive role that the WTO could play in tackling climate change. On the one hand, Haroldo Machado Filho argues that the Doha negotiations on the liberalisation of environmental goods and services should be used to promote international trade in biofuels. The latter, in the author’s view, are not only a tool in the global fight against climate change, but could also benefit rural development in developing countries, particularly in Sub-Saharan Africa. On the other hand, Sadeq Bigdeli acknowledges that one of the successes of the Doha Round has been the launch of negotiations to reduce fisheries subsidies. He then goes on to explore whether the same could be achieved with regard to fossil fuel subsidies so as to reduce overall carbon emissions. The WTO, he argues, could play a pivotal role in reducing fossil fuel subsidies that run counter to the objectives of the international climate regime. As these articles suggest, a fruitful collaboration between the climate regime and the WTO clearly merits further analysis.

Market interventions to address climate change are rapidly becoming an integral part of the world economy. The two final contributors to this special issue place the climate debate within this larger context. First, Geert Van Calster challenges the emissions trading mantra pursuant to which harmonized carbon markets are the most suitable policy instrument to deal with climate change. He argues instead for a degree of regulatory competition. Jacob Werksman, in turn, deals with the increase in complaints of private parties against the Clean Development Mechanism (CDM) Executive Board. This Kyoto Protocol body has the power to reject projects that do not meet specific standards. Although these decisions can have huge financial consequences, they seem to be immune from judicial review in domestic and international courts. This debate raises issues of international accountability, investment law and broader public international law that transcend the narrow field of international trade law. By addressing the role of climate change in a global economy, this third issue of the Carbon & Climate Law Review once again invites readers to explore one of the “hot” topics currently under discussion in the climate debate. Future developments within the context of climate and trade merit careful attention to ensure that international trade law does not become an obstacle on the trajectory set out by the Bali roadmap. At the same time, a range of synergies must be explored at the junction of climate change and international trade. Both concerns need to remain at the top of the agenda as we move towards Poznań and Copenhagen.
Joost Pauwelyn  
Graduate Institute of International and Development Studies, Geneva

Francesco Sindico  
University of Surrey, Guildford