Our friends Daniel Firger and Michael Gerrard at Columbia Law School's Center for Climate Change Law have written a useful new paper analyzing two important pending WTO climate cases. Of these, the more important appears to be DS 419, in which the United States is challenging China's wind energy subsidies.

Firger and Gerrard note that the factual record remains unclear pending future briefing, but at first blush, the entire action appears bizarre. First, the United States complains that China will not accept binding emissions targets; then, when Beijing attempts to foster clean energy, the United States complains about that.

It's possible, of course, that the Chinese subsidy program requires domestic content, but that is odd on a couple of grounds. It seems counterintuitive to think that Chinese product would be more expensive given lower labor and transport costs. More importantly, given the fairly massive externalities involved in any program of carbon emissions abatement, standard international trade theory would appear somewhat inapposite: this is one reason why Article XX of the GATT provides environmental exceptions.

Perhaps the United States is arguing that China couldn't care less about carbon emissions: Beijing is thirsty for reliable power, and perhaps for reliable power that avoids *localized* environmental impacts, and shouldn't get an Article XX exception because of incidental climate benefits. The problem, of course, is how one could tell, particularly in a decision-making system as opaque as China's. In any event, subjective standards like this are notoriously slippery, as the managers of the Clean Development Mechanism have learned. It's better to determine on the basis of some sort of objective evidence, whether a project would qualify.

But then what would the standard of such evidence be? Perhaps one way to approach the problem would be to consider a nation's overall GHG policy, and consider what role a policy or project plays in achieving that policy's overall goals. The point isn't *why* China has decided to enact subsidies; rather, the inquiry would turn on China's overall carbon control goals and whether those goals advance the world toward meeting the G-20's target of limiting surface temperature increase to 2 degrees Celsius.

Obviously, this framework raises far more questions than it answers: what in fact would it mean for Chinese policy to "advance" reducing the world to a 2-degree increase? It might require a WTO appellate body to set its own guidelines for nations' fair shares in order to determine whether a nation can get a climate

exception.  But that also seems fair: if a nation is going to claim a climate exception to WTO rules, then it should present evidence that it is actually doing its part. (Would such a posture overly disincentivize incremental measures?).

In any event, it’s not clear whether USTR has considered any of these things, or even whether it has consulted with the climate representatives in the State Department (one more reason why, as I have argued to no avail, that USTR should actually handle American climate diplomacy).  And if we are going to criticize the seriousness of other countries’ climate efforts, we might want to take a stern look in the mirror.