



Border Tax Adjustment and Carbon Tariffs



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Carbon Leakage

- Carbon taxes increase production costs and trigger fears of carbon leakage i.e. the transfer of production to a country with low emission standards, avoiding abatement and increasing overall CO₂ emissions
- Trade Policy Options:
 - Product and Production Standards (TBTs)
 - Border Tax Adjustment (BTA)
 - Carbon Tariffs on imports

PPMs

- **Product-related PPMs**
- Process and Production methods which impact on the quality of the product form part of the product. For example, PPMs related to the production of cheese in order to secure high quality standards and hygiene, are directly related to the product and thus share the fate of the product as such. They are subject to the disciplines of national treatment.
- **Non-product Related PPMs (NPR-PPMs)**
- Product and process methods which do not impact on the final quality of the product and cannot be traced within the product, have a life of their own and are separate from the product. Two products, produced by different processes and methods, are exactly like and thus are entitled to treatment no less favorable. It is controversial whether differences of production and methods allow treating such products differently. Needs assessment under TBT, GATT Article III and Article XX.

TBT and Processes and Production Methods

- US – Clove Cigarettes Appellate Body Report, United States – Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R, adopted 24 April 2012
- *US – Tuna II (Mexico) Appellate Body Report, United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/AB/R, adopted 13 June 2012 and subsequent case law*
- *US – COOL Appellate Body Reports, United States – Certain Country of Origin Labelling (COOL) Requirements, WT/DS384/AB/R / WT/DS386/AB/R, adopted 23 July 2012*
- *European Communities, Appellate Body Report – Measures Prohibiting the Importation and Marketing of Seal Products (WT/DS400/AB/R, 22 May 2014)*

Impact of GATT Article XX

- Trade and environment debate
- PPMs generally considered to be a violation of Article III GATT
- Violation can be justified under GATT XX
- *States - Reformulated Gasoline*
- *United States – Shrimps Turtle*
- *EC –Seal Products*

Border Tax Adjustment (Art. II(2(a) GATT

- Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:
- (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III* in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
- (b) ...
- Holzer 2014

BTA Disadvantages

- BTA can only be levied to the extent imposed on domestic production –otherwise a tariff
- Limited scope in service based economies importing goods - phase out effects
- Difficulty to translate domestic PPM based taxes on imported goods (emission trading)
- WTO assessment: devil in the details



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Carbon Tariffs

- Tariffs in WTO main lawful instrument of protection independent of taxes and levies on domestic production
- Tariff reduction in industrial goods reduced on average from 40% to 4 %; agriculture: >20%)
- Consolidation and bound tariffs
- Application of Article XX(g) for PPM distinctions
- Unilateral deconsolidation and compensation for clean products on the basis of PPM distinctions (6-8 tariff lines)
- Cottier et al 2014



List of countries and products

- Importers: Australia, Canada, the EC, Iceland, Japan, New Zealand, Norway, Switzerland and USA
 - Exporters: Argentina, Brazil, Chile, China, India, Indonesia, Israel, Mexico, the Philippines, Russia, South Africa, South Korea, Thailand & Turkey
 - These countries account for 70-80% of global CO₂ emissions over 1996-2008
- Products: Paper, rubber, plastics, iron & steel, basic chemicals, glass
- Results from partial equilibrium simulations suggest that the committed importing countries would have to raise their tariffs only slightly to effect a significant decline in the imports of these products from the non-committed countries
 - Risk of trade diversion: Carbon tariffs should be part of a multilateral/plurilateral framework

Technology Transfer Imperative

- BTA and carbon tariffs decrease market access for fossil based production and goods abroad
- Politically acceptable only in combination with technology transfer of low-carbon technology
- Climate Change: A Common Concern of Humankind



Thank you for your attention!

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- Cottier, T., Renewable Energy and WTO Law: More Policy Space or Enhanced Disciplines?, 5 Renewable Energy Law and Policy Review 40-51 (2014)
- Holzer, K., Carbon-Related Border Adjustment and WTO Law (Edward Elgar 2014)
- Cottier, T., Zaker Ahmad (eds.), The Prospects of Common Concern of Humankind in International Law (forthcoming: Cambridge University Press 2021)