



CENTRE FOR TRADE AND INVESTMENT LAW



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SOUTH ASIA INTERNATIONAL ECONOMIC LAW NETWORK

invite you to attend the virtual discussion on

**THE EU CBAM PROPOSAL: OPTIONS, IMPLICATIONS
AND THE WAY FORWARD**

26 JULY, 2021, 6:00-7.30 P.M. (IST)



As part of the European Green Deal launched in December 2019, the EU released the *Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism* (the EU-CBAM Regulation) on 14 July 2021. The Regulation seeks to impose a price on carbon internationally to prevent carbon leakage. The Regulation will become fully operational by 2026. During 2023-2026, i.e., the transitional phase of 3 years, the Regulation sets an emission reporting mechanism. That is, it requires the EU importers of covered goods to declare the quantity of goods imported in the preceding year, with their embedded emissions. From 2026 onwards, in addition to the reporting of greenhouse gas emissions, the Regulation will also require surrendering of the CBAM certificates, corresponding to the amount of the greenhouse gas emissions.

The CBAM certificates will be electronic documents corresponding in value to specified amounts of carbon emissions (one certificate corresponding to one tonne of emissions embedded in the imported goods) and may be sold, surrendered, re-purchased or cancelled. The Regulation also includes an independent verification mechanism, for declarants to establish the veracity of the reported emissions. Where the actual emissions cannot be adequately verified, or where the declarants fail to submit the necessary information, the number of CBAM certificates to be surrendered will be determined based on default values. The methodology of determining the default values is yet to be set out.

The EU CBAM Regulation proposes various policy options – import carbon tax, import certificates based on EU average emissions, import certificates based on actual emissions, import certificates with parallel continuation of free allowances, import allowances on basic materials as part of components and finished products, and excise duty. While providing an impact and efficiency assessment of these options, the Regulation foresees “**import certificates based on actual emissions**” as the preferred policy option for a EU CBAM measure, while continuing with free EU ETS allowances during the transitional period(s).

While the EU plans its measure by ensuring its WTO compatibility, the issues concerning the WTO compatibility of the measure remain, specifically on the use of PPMs to distinguish between otherwise like products, based solely on their carbon emissions, and of the adjustability of taxes in the nature of “*tax occultes*”, such as those imposed on transboundary emissions. In addition to these existing concerns, other concerns that the EU CBAM Regulation gives rise to include – the specific capacities of producers in various countries to calculate the carbon emissions of their production methods, the role of individual recognition arrangements/agreements with third countries, and the issue of technology transfer. Moreover, reassessing the role and relevance of multilateral environmental agreements, (including the Paris Climate Agreement, wherein countries have undertaken their own carbon reduction goals), is also pertinent for determining the global acceptability of the EU’s unilateral measure.

In this backdrop, this discussion would focus on the role, status and suitability of WTO law, in dealing with measures such as the EU CBAM Regulation, and also examine various aspects of the different policy options under the EU CBAM Regulation. The discussion would also seek to highlight the possible implications of the EU CBAM Regulation for

producers and exporters of developing countries and LDCs, and examine whether such regulatory requirements raise newer concerns, specifically with respect to the WTO disciplines.

DISCUSSANTS

1. Dr. James J. Nedumpara, Professor and Head, Centre for Trade and Investment Law, IIFT, New Delhi.
2. Dr. Edwin Vermulst and Ms. Juhi Sud, VVGB Advocaten, Brussels.
3. Ms. Anuradha R.V., Partner, Clarus Law Associates, New Delhi.
4. Ms. Shailja Singh, Associate Professor, Centre for WTO Studies, IIFT, New Delhi.
5. Ms. Prachi Singhal, Deputy Director, Department of Commerce, Ministry of Commerce and Industry, Government of India.
6. Mr. Victor Crochet, Associate, Van Bael and Bellis, Brussels.
7. Ms. Shiny Pradeep, Assistant Professor, Centre for Trade and Investment Law, IIFT, New Delhi.

CONCLUDING REMARKS

Professor Leïla Choukroune, University of Portsmouth



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