CLIMATE PROTECTION OR GREEN PROTECTIONISM? A COMPARATIVE STUDY OF INDIA'S AND CHINA'S RESPONSE TO THE EUROPEAN UNION'S CARBON BORDER ADJUSTMENT MECHANISM (CBAM)

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ABSTRACT

The European Union (EU) has started imposing an import levy based on the carbon content of certain products like cement, iron and steel, aluminium, fertilisers, electrical goods and hydrogen products. While the EU claims that their new Carbon Border Adjustment Mechanism (CBAM) will help protect the climate and avoid carbon leakage, large producers of these goods such as India and China have considered it is something that's going to affect their trade. This research pitches whether this is actually an environmentally friendly measure or just a form of green protectionism. Drawing on a doctrinal, comparative approach, this paper analyses the CBAM Regulation from the perspective of the General Agreement on Tariffs and Trade, the Subsidies Agreement, the Paris Agreement and the principle of common but differentiated responsibilities. This paper will set out the 4 criteria to determine if something is protectionist. This paper concludes that although CBAM is good from an environmental perspective, it does not have much consultation involved and only looks at explicit carbon pricing measures which could conclude to a WTO panel that it is an unacceptable form of discrimination. India has chosen to negotiate while creating their own domestic carbon market. Suggestions include looking more into equivalent measures, targeted support for developing countries who would be impacted by the policy and an ongoing consultation process.

Keywords: European Union (EU); Carbon Border Adjustment Mechanism; General Agreement on Tariffs and Trade; Subsidies Agreement; Paris Agreement; World Trade Organization;

I. INTRODUCTION

The European Union has implemented carbon pricing at the border on 1st of January 2026.[1] Importers of cement, iron and steel, aluminium, fertilisers, electricity and hydrogen need to purchase certificates under Regulation (EU) 2023/956 for the same amount of emissions as is contained within the products they are importing.[2] The certificate costs relies on the price of allowances under the EU Emissions Trading System (ETS). The EU have branded this policy the Carbon Border Adjustment Mechanism (CBAM), a climate policy designed to prevent carbon leakage in the form of emission-intensive production being offshored to areas with lower regulations.[3] However, many developing world governments, and quite a few scholars, see this as a green protectionist policy which has been imposed by industrialised nations, who used cheap fossil fuels to develop their economy, on countries who never had this option and still claim to be entitled to different treatment in climate law.

[1]Regulation (EU) 2023/956 establishing a carbon border adjustment mechanism (the CBAM Regulation), as amended by Regulation (EU) 2025/2083.
[2]CBAM Regulation, Articles 6 and 22.
[3]CBAM Regulation, Article 1.

India and China are interesting bedfellows when it comes to these goods. They both produce them in large quantities and oppose unilateral carbon measures. While China implemented a ETS in 2021 across its nation and recently expanded it to include the steel, cement and aluminium sectors, India is still figuring out its carbon market. India too is in talks over a free trade agreement with the EU. While both countries have opted to reserve third-party rights in relation to the first CBAM dispute (brought by Russia) in the WTO, they have not brought a complaint themselves. This tells us a lot about how legal strategy will be impacted by the economic position of the country.

This paper seeks to address three key questions: 1) whether the policy measure is WTO-compliant and is based in the climate regime; 2) how India and China have responded to CBAM using their domestic legal systems, diplomatic strategies and litigation; and 3) what insights we can take from these responses regarding whether CBAM is an example of climate protection or green protectionism. While there are legitimate environmental arguments surrounding the CBAM, there are also policy decisions that can be argued to take a protectionist stance and have been difficult to justify under the chapeau of Article XX GATT.[4] This has resulted in India using its diplomatic skills to come to terms during its construction. China have however, constructed quickly while keeping an eye on any litigation issues.

Doctrinal and comparative method. Primary sources were used such as EU protocols, WTO agreements, panel reports, Appellate Body reports, and climate agreements. Indian and Chinese statutes, rules and regulations. Secondary sources used were academic, official statements and specialist media. There are also some uncertainties within this. The WTO panel has yet not come in peace with the Russian issue. Although there is an agreement between the EU and India, this doesn't seen to be put into practice. This law is current as of November 2026.

II. THE LEGAL FRAMEWORK OF CBAM

A. Objectives and Functioning

The Carbon Border Adjustment Mechanism can only be properly understood in the context of the EU ETS. Under the EU ETS, installations under this are required to surrender allowances for their emissions. As the EU ETS has been progressively tightened over time, the price of allowances has increased. To give cover to those industries prone to risk to unfair competition from other industries not facing similar costs, the EU have given them free allowances. This is what CBAM aims to do. As the free allocations are progressively removed from these sectors (between 2026-2034), Importers have been given an obligation. This will mean that a tonne of steel produced in Duisburg will deal with the same repercussions as a tonne produced in Odisha.

Importers must be accredited declarants who declare their embedded emissions annually and purchase CBAM certificates to compensate.[5] When actual data is not available default values will be used. There will be a transition phase between October 2023 and the end of 2025, during which importers will only have to report. But within the recent regulation , adopted in October 2025,[6] importers must now report if they import more than 50 tonnes of covered goods per year. The sale and surrender of certificates has been moved to February 2027 (covering the

[4]General Agreement on Tariffs and Trade 1994 (GATT), Article XX. On the WTO compatibility of CBAM under Article XX, see Ipsa Mittal and Saesha Gehani, 'Green Walls Or Green Pretexts? Examining The WTO Compatibility Of The EU Carbon Border Adjustment Mechanism', Indian Journal of Law and Legal Research.

[5]CBAM Regulation, Articles 4 to 6 and 20 to 22.

[6]Regulation (EU) 2025/2083.

embedded emissions of goods imported in 2026). Importers must provide annual declarations by 30 September of the respective year.[7]

B) Deduction for Carbon Prices Paid in Foreign Country

The most important provision in this paper is the deduction of already paid carbon prices in the exporting country (Art. 9).[8] This has been amended in 2025 to specify that the amount must be certified by an independent certified body.[9] Nations checking in the EU ETS or a linked trading system are not part of the system. This leads to disparity between countries that have an explicit carbon price, leading to credits being given to producing firms in those countries. However effective the methods used by a country that has worked towards this goal (for example, by setting performance standards, implementing carbon taxes or providing subsidies for clean technologies), they receive nothing.

C. Dual-Edged Characteristics

Most of the characteristics of the design can be viewed as either environmentally stringent or protective. While it makes sense to focus on sectors with high emissions intensity and risk of leakage, these are also the sectors that European industry is under the highest pressure from cheap imports. Also, CBAM does not differentiate between different income countries. This would corroborate equality of treatment but would mean there is no procedure through which differentiated responsibilities are taken into account. As currently drafted, the revenue raised by the Regulation will not be earmarked for decarbonisation in those countries exporting to pay.

III. THE LEGAL FRAME: WTO LAW AND THE CLIMATE REGIME

A. Intersection with GATT

CBAM intersects with several of the obligations set forth in the GATT.[10] If the Certificate is a duty, then Article II is triggered.[11] This Certificate needs to be checked whether it exceeds the bound EU rates. If the Certificate is a domestic duty, Article III:2 applies, which means that there shouldn't be any higher duties for products.[12] The foreign carbon price adjustment will invoke Article I, which means products from different origin countries can be treated differently depending on the carbon policy of the origin country.[13] Border adjustments are not new to GATT law. The Working Party on Border Tax Adjustments of 1970 readily agreed to permit tax adjustments relating to products but was much less keen on permitting tax adjustments for what they termed "taxes occultes".[14] The Superfund panel signified a tax to be put to imports of certain substances at the same rate as for domestically produced goods but did not address the more problematic issue of inputs used in production.[15]

This completely depends on whether identical steel products can be considered similar when they have differing levels of carbon footprints. From the Appellate Body in EC—Asbestos, we

[7]CBAM Regulation, Article 6, as amended by Regulation (EU) 2025/2083.

[8]CBAM Regulation, Article 9.

[9]Regulation (EU) 2025/2083, amending Article 9 of the CBAM Regulation.

[10]GATT 1994, Articles I, II and III.

[11]GATT 1994, Article II:1.

[12]GATT 1994, Article III:2.

[13]GATT 1994, Article I:1.

[14]Report of the Working Party on Border Tax Adjustments, GATT BISD 18S/97 (1970).

[15]*US — Superfund*, GATT Panel Report, L/6175 (1987).

know that the focus is on competition and what consumers.[16] As there is no gap between the products due to their emissions in production, therefore CBAM would fall under Articles I and III. There is a divide amongst scholars. There are conflicting opinions on whether a carbon mechanism can be made in sync with the GATT. Some people think a carbon adjustment can be made compatible with the GATT whilst others think it will only be able to survive under Article XX.[17] There is also a risk under the Agreement on Subsidies and Countervailing Measures. Russia have argued that the free allocation scheme in the EU ETS should be considered as an illegal export subsidy. If a panel agreed then this would make the justification behind the CBAM fall apart.

B. Article XX and its Chapeau

The core of the EU's argument appears to be based on Article XX(b), which allows measures necessary for the protection of human, animal or plant life or health and XX(g), providing measures relating to the conservation of exhaustible natural resources so long as they are applied in conjunction with quantitative restrictions on domestic production or consumption.[18] However in Brazil, the Appellate Body held that exceptions should not undermine the object of the measure, therefore any transitional free allocation.[19]

Prevents arbitrary and unjustified discrimination and hidden means of restricting trade.[20] Most likely area in which the issue will be resolved. The leading case for this area is US—Shrimp.[21] However, the Appellate Body determined that it was unjustified to require other Members to apply generally similar standards and there needs to be genuine attempts to negotiate by the importing state.[22] This has been acknowledged in the report. A flexible measure may also be put in place following bona fide negotiations. China is placed at a pedestal which is conflicting in this situation. China has played the role of the respondent in China-Raw Materials and China-Rare Earths.[23] XX(g) was interpreted by the Appellate Body to mean that balance must be achieved between domestic and foreign barriers.[24] A further sentence has been added to the law of climate treaties. It states that unilateral measures are taken to combat climate change must not be used as a bait for arbitrary or unwarranted discrimination or as a covert restriction on international trade.

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[16] *EC — Asbestos*, Appellate Body Report, WT/DS135/AB/R (2001).

[17] See for example Joost Pauwelyn, *U.S. Federal Climate Policy and Competitiveness Concerns* (Duke University, 2007); Kateryna Holzer, *Carbon-Related Border Adjustment and WTO Law* (Edward Elgar, 2014). For Indian research on this question, see Arwel Davies, 'The EU's Proposed Carbon Border Adjustment Mechanism and Compatibility with WTO Law' (2023) 14(2) Trade, Law and Development (NLU Jodhpur, India).; Ipsa Mittal and Saesha Gehani, 'Green Walls Or Green Pretexts? Examining The WTO Compatibility Of The EU Carbon Border Adjustment Mechanism', Indian Journal of Law and Legal Research.; Urshita Sharma, 'The EU's Carbon Border Adjustment Mechanism (CBAM) And The Erosion Of Multilateral Trade Principles: A Legal Analysis Of WTO Compatibility And Developmental Equity', Indian Journal of Law and Legal Research.

[18] GATT 1994, Article XX(b) and (g).

[19] *Brazil — Retreaded Tyres*, Appellate Body Report, WT/DS332/AB/R (2007).

[20] GATT 1994, Article XX (chapeau). See also Urshita Sharma, 'The EU's Carbon Border Adjustment Mechanism (CBAM) And The Erosion Of Multilateral Trade Principles: A Legal Analysis Of WTO Compatibility And Developmental Equity', Indian Journal of Law and Legal Research.

[21] *US — Shrimp*, Appellate Body Report, WT/DS58/AB/R (1998).

[22] *US — Shrimp*, Appellate Body Report, WT/DS58/AB/R (1998). See also the Article 21.5 (Malaysia) report, WT/DS58/AB/RW (2001).

[23] *China — Raw Materials*, Appellate Body Reports, WT/DS394/AB/R and others (2012). *China — Rare Earths*, Appellate Body Reports, WT/DS431/AB/R and others (2014).

[24] *China — Raw Materials*, Appellate Body Reports, WT/DS394/AB/R and others (2012).

C. Common but Differentiated Responsibilities

The Climate Regime operates under the principle of common but differentiated responsibilities and respective capabilities of states. This can be seen in the Framework Convention and the Paris Agreement, which state that the implementation of the Agreement shall take into account the common equity principle but differentiated responsibilities in light of the differing circumstances of every state. The declaration also states that no unilateral measures should be taken in relation to environmental matters which fall outside of the importing country's jurisdiction. There is some controversy as to how much this should be treated. As differentiation is a component of treaties but not comes under the GATT it cannot override any agreements. It can however help with interpreting. Article 31(3)(c) of the Vienna Convention on the Law of Treaties includes that interpretation should take into account any applicable rules of international law. The Appellate Body have referred to many treaties when articulating Article XX.[25] The strongest argument therefore would be that this may play a part in determining if the discrimination within the chapeau is justified.

D. A Four Part Test for Green Protectionism

Given the loose terminology surrounding 'green protectionism', this paper will offer a definition of green protectionism based on the following factors found in the chapeau case law and literature surrounding border carbon adjustments.[26] The first factor to be seen is Fit, which is concerned with the alignment between the measure and environmental objectives. Parity. This will take into consideration whether exporters and importers are treated the same. If the measure takes into account the current measures taken by the exporting state it will be recognised. Process refers to whether there was negotiation by the importing state and flexible measures before and during implementation. If a measure does not have a good fit, it will be protectionist in nature. If it has good fit and parity, but poor recognition and process, it becomes more problematic as there is a protectionist effect through design rather than intent.

IV. INDIA

A. Exposure and Position

India has been exposed mainly in iron and steel and aluminium. At the later stages of EU-India trade talks, trade press estimated pressure on Indian exporters in these sectors was between 15 and 22 per cent. India has presented its case in the WTO Committee on Trade and Environment as well as the India-EU trade negotiations on the basis of different responsibilities, unilateral nature and high costs for the developing economy. However, it has not requested consultations on its own.

B. Creating a Domestic Carbon Market

The Energy Conservation (Amendment) Act, 2022 incorporates a 1egal basis for the creation of a carbon trading mechanism by the Central Government. This carbon credit trading scheme was notified in 2023. Following this, the Greenhouse Gases Emission Intensity Target Rules, 2025 have been issued setting out sectoral targets. The Draft was published in April 2025, and final targets for Aluminium, Cement, Chlor-Alkali and Pulp & Paper sectors were then finalised after a second notification in June. These were notified on 8 th October 2025. Targets for Refineries, Petrochemicals, Textiles and Secondary Aluminium were notified on 16 th January

[25]See *US — Shrimp*, Appellate Body Report.

[26]See *US — Shrimp* and *Brazil — Retreaded Tyres*; Michael Mehling and others, 'Designing Border Carbon Adjustments for Enhanced Climate Action' (2019) 113 AJIL 433.

2026. Iron, steel and fertilisers were included within the draft proposals for June 2025. However, there is no certainty that this will be included within the final proposal. Particularly of note is that steel is the sector most vulnerable to CBAM. The baseline year was 2023/24 and the compliance years were 2025/26 and 2026/27. It was assumed that the market would start working from around 2026 however it was not confirmed by the source whether this had occurred.

An issue arises with regard to the doctrine involved in Article 9. The Indian scheme includes an intensity based approach. Therefore, if the installation is more than what was targeted then they will be rewarded with credits but if they fall short they will have to buy credits. However, it has not been checked that purchasing credits would incur a 'carbon price paid' (as stated in the Regulation) and if the cost can be tested (in line with the 2025 amendment).[27]The Indian scheme may have real carbon impacts and yet still cannot be seen by the CBAM deduction until the EU states otherwise.

C. Negotiation: EU-India Agreement

The main tool employed by India is negotiation. India attempted to negotiate recognition of other ways to comply with CBAM. These include using domestic measures such as energy taxes and climate measures. However, India were not able to receive any exemptions and a more flexible framework was also not given to them. It was announced on the 27th January 2026 that the framework would remain, however a technical consultation process would be set up. There is an entire section dedicated to climate collaboration. There is also an assurance from the EU that no nations will get preferential treatment under the CBAM apart from what is assigned to India. This is somewhat useful. It aligns with the EU's own stance that the Regulation does not allow for preferential agreements on a country-by-country basis and gives India a quasi-most favoured nation guarantee.

It is apparent why India has not stepped into legal action. Any complaint would put at risk a commercially sensitive negotiation. The only dispute currently being pursued was brought by a state whose access to the WTO was opposed by the EU for reasons not related to the carbon rules. In addition, India can pursue the differentiation and chapeau arguments in front of the panel based on third-party status.

D. Assessment

India has a mixed argument on the four-part test. They are in consensus that emissions should decrease, meaning they do not suffer from a lack of fit. There is, however, a valid argument around recognition, as the Regulation recognises a price rather than a policy. Whilst there is a step forward in having a technical discussion, the lack of an obligation to change the rules means the discussion does not live up to the serious negotiations that took place in US—Shrimp.[28] Overall India's argument is a legal argument every limited in nature. They do not have to argue that CBAM is illegal, but can argue that the rules around recognition are too inflexible to justify using the chapeau.

[27]CBAM Regulation, Article 9, as amended in 2025.

[28]*US — Shrimp*, Appellate Body Report.

V. CHINA

A. Exposure and Stance

China is seen to have a lower level of direct exposure. One analysis shows that exports of cement, aluminium, fertilisers and iron and steel from China to the EU make up less than 2% of total exports in 2019; however, the analysis is old, and CBAM could have a broader scope. China's public stance has been general and political. They commented in September 2023 that CBAM had raised doubts amongst many WTO members. They have called on the EU to refuse from imposing green trade barriers and have also commented that they are ready to work to ensure there is multilateral dialogue on environmental trade issues within the WTO.

B. Constructing Rapidly

China's response has mainly been internal, with rapid progress. The national ETS commenced for the power sector under the Trial Measures of the Ministry of Ecology and Environment in July 2021. It was then further solidified by a regulation issued by the State Council in 2024. On 26 March 2025, the Ministry announced that the industry would be expanded to the steel, cement and aluminium smelting sectors hence including approximately 1500 companies to the regulations. The free allocation for the first compliance period will be based on verified emissions levels in 2024. From 2026 and 2027 it will move to intensity benchmarks for individual sectors. However, in August 2025 an opinion was issued by the State Council stating that sectors with relatively constant emissions will have absolute emission caps from 2027 with a mix of free and auctioned allocation by 2030.

This essentially creates the Article 9 pathway. Through a cap-and-trade mechanism where there is a price to purchase allowances, there is a tangible price mechanism under the regulation. However, this price is fairly low. The average carbon cost in China is below $9 in 2022, compared to around $85 per tonne this year. This means that if we do not get a higher carbon price to match the EU we will only see a small deduction with most of the CBAM cost coming out in the EU border. Factually this has been pitched by Chinese commentators that have described it as an external force to enhance their market.

C. A Complainant with a Past

China is a third party in this case and therefore has not submitted its own. However, her position is somewhat ironic. In Raw Materials and Rare Earths, she claimed that her export restrictions were conservation measures under XX(g).[29] Unfortunately, she lost the case as she was unable to prove that the burden of the restriction was equally borne by local users and foreign users.[30] If she claims now that CBAM is not equally burdensome, she will be using the same criteria that were used against her. This is another reason why a State may want to remain in the position of a third party rather than a lead complainant. We cannot be too quick to come to conclusions and propound China will be the main complainant to CBAM.

D. Assessment

China's situation is similar to India's. It does not really challenge its fit. However, they have fewer issues concerning parity than India as they are converting from producers. They do have issues regarding recognition. Will a price significantly below the EU price be recognised, and will they recognise an intensity-based phase? They haven't been very specific on the processes so far. They haven't asked India to include bilateral talks as they do in their trade deal. China are looking to build and watch. India are negotiating.

[29] *China — Raw Materials* and *China — Rare Earths*.

[30] *China — Raw Materials*, Appellate Body Reports, WT/DS394/AB/R and others (2012).

VI. CLIMATE OR GREEN PROTECTIONISM?

Looking at its application within the EU it can be concluded that it satisfies the rule for fit by taking into account problems regarding emissions intensity and leakage. It also has analogous costs to the ETS and also includes a phase out of free allocations to ensure there is no discrimination. Parity is also looking like it will be achieved. We currently have the scheme which provides some form of free allocation until 2034. Arguments are currently being presented to a panel about whether these can be classed as prohibited subsidies. The EU's response to this argument is that CBAM simply aims to reflect the carbon costs at home once free allocations have been removed. This seems to be a logical design but will be seen based on its application.

This is also a weakness. Article 9 incorporates an explicit carbon price, the incentive is made for the nations to adopt the EU's rules and regulations. States that do not will gain nothing. It also creates the situation where foreign efforts are put to picture but only if they appear to be similar. This can be noted in US-Shrimp where the importing state required others to take up a basically identical scheme.[31] Whilst the 2025 amendment accepts that verified third-country prices can be used, the nature of the deduction is still purely price-based.[32] Regarding the process, the EU is ready to discuss but there is no certainty that it will change anything. They have also refuted to have any negotiations with Russia due to the invasion of Ukraine.

This shows that there are a plethora of issues surrounding green protectionism. The CBAM is not protectionist itself however due to the correct fit of the policy. However, some aspects of the scheme can be seen to have a protectionist impact on a developing country exporter who has taken a different route. Whether the chapeau arguments are justifiable depends on how the EU applies Article 9, any additional provisions in relation to downstream goods and how the evidence of negotiation is interpreted by the Panel. However, the most serious legal criticism is that it is a rigid instrument.

VII. Recommendations

From the analysis, we can make the following recommendations:

- The EU should apply the deduction contained under Article 9 to include the measures to serve all the nations equally. This will include policies that provide equivalent emission reductions, but do not involve a direct price signal such as trading-based intensity targets and performance standards. These should be independently verified (as is required in the 2025 amendment).[33]
- The revenues of the CBAM must be administered to decarbonise the least developed and other developing nations that are facing this problem hence ensuring differentiated responsibility.

[31] *US — Shrimp*, Appellate Body Report.

[32] CBAM Regulation, Article 9, as amended in 2025. On recognition of other countries' measures, see Ipsa Mittal and Saesha Gehani, 'Green Walls Or Green Pretexts? Examining The WTO Compatibility Of The EU Carbon Border Adjustment Mechanism', Indian Journal of Law and Legal Research.

[33] Regulation (EU) 2025/2083.

- Ensure permanent dialogue mechanisms within the EU with a permanent mechanism for dialogue with key trade partners, publication of methods and default values and dialogue on how to expand the downstream goods in the future.
- India: Confirm final market(s). Specify target sector(s) for Iron & Steel and Fertilisers. Ensure Carbon Market is active. Confirm that we have MRV capabilities to raise the hand in consensus with our Article 9 position.
- China: Ensure that Absolute Cap deadlines are met. Ensure that allowances are priced and benchmarked. Ensure that China's accounting methodologies in compliance with EU methodologies to confirm pricing.
- Multilateral Channels: The parties have access to submissions from the third party and the Committee on Trade and Environment. The parties should try to incorporate their arguments and ensure that they are recognised. They should also aim to raise their hand to the development of understanding and solutions on border carbon measures.

IX. CONCLUSION

The CBAM cannot be understood exclusively as a climate measure or as a barrier as its critics claim respectively. At its heart it seeks to ensure that imported goods pay the same carbon costs that European producers pay. This can be justifiably included within the chapeau of article XX. However, the principle is flawed in that it will only recognise efforts made by other countries if they are in monetary terms and the process itself is weak.

India and China have acted in their own styles. India has negotiated a dialogue and assurance of no discrimination. Unfortunately, India has not received any benefit. China has been more ambitious and will have the benefit once it raises its carbon price. Both countries have accepted the EU position for now, and are keeping their legal arguments up their sleeve. They will be looking to see what the panel on the Russian dispute will say about the chapeau. In terms of carbon adjustment, the EU has either set a bar by finding it justifiable, or it has a very good reason to enhance recognition. Countries that have used the time period to develop credible carbon markets will be in a stronger position to deal with EU to those who still have not incorporated it.

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