The trade and climate change debate and the topic of border tax adjustments

Ludivine Tamiotti
Counsellor, Secretary to the CTE/CTESS
WTO Trade and Environment Division
Ludivine.tamiotti@wto.org

This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.
WTO: A framework for advancing sustainable development policies

- Objectives
- Rules
- Institutions and monitoring
- Negotiations
- Enforcement /DS
### WTO: A framework for advancing sustainable development

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Living standards, full employment, using the world's resources sustainably &amp; protecting the environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>System of rules</td>
<td>Policy space for trade-related measures for legitimate objectives such as the environment, subject to conditions aimed at avoiding hidden protectionism</td>
</tr>
<tr>
<td>Institutions &amp; Monitoring Mechanisms</td>
<td>Ensure predictability, monitor implementation &amp; enable action if measures impact on trade</td>
</tr>
<tr>
<td>Enforcement Mechanism Dispute Settlement</td>
<td>Confirms a balance between Members’ right to take trade related environmental measures &amp; the rights of other Members under WTO rules</td>
</tr>
<tr>
<td>Doha Round of Negotiations</td>
<td>Leads to more efficient allocation of natural resources, stimulates growth and raises income levels, improves access to green technologies</td>
</tr>
</tbody>
</table>
DDA Negotiations on Environment and the climate agenda?

1. Relationship between existing WTO rules & specific trade obligations set out in MEAs

2. Procedures for regular information exchange between MEAs and relevant WTO committees and the criteria for the granting of observer status

3. Reduction/elimination of tariff and non-tariff barriers to environmental goods and services
The key aim is to reduce or eliminate import tariffs and non tariff barriers on environmental goods: immediate deliverable for climate change mitigation

In the category of renewable energy products, on average, the MFN applied duty is:

- In developed country Members: 1.2% (0%-10%)
- In developing country Members: 6% (0%-40%)
- In LDC Members: 9.1% (0%-43.75%)
<table>
<thead>
<tr>
<th>Key policy instrument</th>
<th>Key objective</th>
<th>Key WTO Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical requirements, e.g.</td>
<td>Improve resource use &amp; reduce pollutants, e.g. for energy efficiency</td>
<td>TBT Agreement</td>
</tr>
<tr>
<td>Product/production specifications,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>voluntary/mandatory, characteristics/</td>
<td></td>
<td></td>
</tr>
<tr>
<td>performance, labelling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Price &amp; market mechanisms, e.g.</td>
<td>Internalize env’tal costs, e.g. for GHG emissions</td>
<td>GATT</td>
</tr>
<tr>
<td>carbon taxes, ETS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support programs, e.g. R&amp;D, fiscal,</td>
<td>Promote development &amp; deployment of green technologies</td>
<td>SCM Agreement</td>
</tr>
<tr>
<td>price and investment measures</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Carbon policies

- Environmental requirements
- Taxes and market tools
- Subsidies
Environmental requirements

Concerns related to inadequate design, insufficient transparency, lack of harmonization or mutual recognition

Increasingly significant determinants of access to foreign markets
Agreement on Technical Barriers to Trade / GATT

Key principles include:

- Non discrimination
- Avoidance of unnecessary trade barrier
- Harmonization
- Transparency
Carbon Measures and Potential Trade Impacts

Renewable Energy Support Programs

May lower costs for producers, leading to lower renewable energy product prices

May reduce exporting countries’ access to the market of the subsidizing country or may increase the exports of the subsidizing country
Agreement on Subsidies and Countervailing Measures

Key concepts include:
• Definition of a subsidy (whether a financial contribution confers a benefit, whether the subsidy is specific to a certain industry)
• Definition of an *actionable* subsidy (whether the subsidy causes adverse effects to the interests of other WTO Members)
Carbon Measures and Potential Trade Impacts

Price and market mechanisms

- May increase production costs of domestic firms
- Border adjustments? Relocation of production to a country that does not apply an equivalent instrument?
Relevant WTO rules

GATT Basic Principles

Non discrimination

Prohibition of quantitative restrictions
Environmental requirements
- Improve resource use and reduce pollution
- Impede market access?

Taxes and other market tools
- Address environmental externalities
- Border adjustments?

Subsidies
- Promote green technology innovation and diffusion
- Trade distortions?
The WTO is a repository for trade-related policy information and a forum for deliberations. Members inform each other about new or forthcoming trade-related measures.

- Technical requirements
- Sanitary and phytosanitary measures
- Subsidies
- Agriculture measures
1995 to September 2014: 18631 notifications submitted to the TBT Committee, an average of 968 measures notified per year

18% about measures related to the environment

1995 to March 2014: 422 specific trade concerns raised in the TBT Committee, an average of 22 measures a year

1/4 about measures related to the environment
The WTO Committee on Trade and Environment is the right forum to foster international co-operation on trade-related environmental measures. Coverage includes sustainability aspects of trade in individual sectors such as forestry and energy, and the effect of green labelling schemes on market access.
WTO rules maintain a delicate balance

Right to adopt measures to achieve legitimate objectives

Rights of others under basic trade rules
WTO jurisprudence has confirmed that WTO rules do not trump environment, as long as several carefully crafted conditions are respected... which seek, among other things, to ensure that green measures are not applied arbitrarily and not used as disguised protectionism.
Climate change border adjustments: Relevant WTO rules

3 key legal challenges

- Coverage?
- Consistency?
- Justifiability?
Climate change border adjustments: Relevant WTO rules

Importance to define the instrument at hand to determine relevant WTO/GATT provisions

Coverage?

A border adjustment to a tax?

A border adjustment to another carbon cost, e.g. an ETS?
Climate change border adjustments: Relevant WTO rules

Consistency?

With basic principles, e.g. non discrimination

- National treatment
- Most Favoured Clause

Prohibition to discriminate between “like” products
Climate change border adjustments: Relevant WTO rules

Consistency?

Prohibition to discriminate between “like” products

Except if...
Under certain conditions, Members can adopt trade-related measures aimed at protecting the environment. Essential to maintain a balance between the rights of other WTO Members under basic trade rules and the right of Members to take regulatory measures to achieve legitimate policy objectives.
Climate change border adjustments: Relevant WTO rules

Weighing and balancing

Confirmation:
Comparison reasonably available alternatives

“Holistic necessity analysis”

Justifiability?
Scope of Article XX (b)

Protection values
Contribution
Restriction on trade
Must exhibit a substantial relationship with the policy objective

Close and genuine relationship of ends & means

Justifiability?
Scope of Article XX (g)
Several disputes on measures that sought to achieve a variety of policy objectives:

- Conservation of clean air from air pollution
- Conservation of sea turtles from incidental capture in commercial fishing
- Protection of human health from risks posed by asbestos
- Protection of human health from risks posed by the accumulation of waste tyres

**Justifiability?**

*WTO jurisprudence has confirmed that WTO rules do not trump environment, as long as...*
Climate change border adjustments: Relevant WTO rules

...as long as several carefully crafted conditions are respected...

Environmental measures must not be applied in a manner which constitutes

→ a means of arbitrary/unjustifiable discrimination or

→ a disguised restriction on international trade
Climate change border adjustments: Relevant WTO rules

Justifiability?

Major practical challenges in implementation

→ in assessing product-specific emissions
→ fluctuations of the carbon price
→ existence of carbon leakage
→ ...

Implementation is key!
The trade and climate change debate and the topic of border tax adjustments

Ludivine Tamiotti
Counsellor, Secretary to the CTE/CTESS,
WTO Trade and Environment Division,
Ludivine.tamiotti@wto.org