

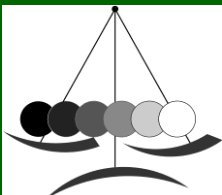
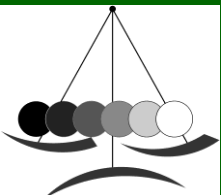
Border Adjustments, Climate Change, and WTO Law

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EU: Role-Model in Climate Policy?

- climate policy: only example (resource politics do matter, too)
- challenge: prevent serious effects of climate change in terms of food and water supply, economic effects, human lives etc. = carbon-free society by 2050
- relevance: not only electric power and industries, but also heating, mobility, fertilizers, etc.
- reality in the EU: stable emissions on a high level
 - emissions still five times higher than sustainable level
 - myth of emission reductions: absolute numbers matter – and relocation of emissions to other countries

Criteria for Policy Options

- most important political solution: pricing for fossil fuels and land-use with ambitious caps (or prices), covering all sectors and as many countries as possible
- triggers renewable energy, energy efficiency – and sufficiency (= behavioral change), if technical options alone (!) don't manage to match the cap
- avoids rebound effects and relocating effects (to other countries, sectors and resources – not only carbon leakage!)
- carbon leakage to non-participating countries?
 - >>> **border adjustments for imports/ exports**

Intentions of Border Adjustments

- >>> border adjustments (tax adjustment, obligation to buy certificates, etc.) against countries that don't participate in appropriate carbon pricing (by caps, charges, etc.)
- integration of as many countries as possible in pricing systems such as ETS from the beginning
- avoiding carbon leakage
- avoiding global race to the bottom
- showing the possibility of an economically reasonable environmental policy
- spreading pricing systems on a worldwide scale
- offering the revenues to developing countries that participate in carbon pricing

Problems of WTO Law

>>> Pascal Lamy: conformity with WTO law (+)

- Art. II:2a, Art. VI:4 and footnote 61 of Annex II seem to explicitly allow border adjustments
- only valid for “charges” (and not for the costs of ETS)?
- in any case, conformity with Art. III GATT (= equal treatment for like products from abroad) has to be discussed
- maybe Art. III GATT = no problem, since foreign products are not discriminated = level playing-field
- in case of non-conformity with Art. III GATT >>> violation justified by Art. XX GATT?

Art. XX GATT

- climate protection (global good!) as a sufficient goal for justification under Art. XX GATT
- „sustainability“ as central WTO target in WTO Framework Convention
- colliding international environmental law (relevant with regard to Art. 31 Vienna Convention): **Art. 2 UNFCCC**
- for chapeau = conservative calculation of border adjustments – and try firstly to integrate as many countries as possible into the system of carbon pricing

References

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Thank you!

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