



FAQ

Frequently
Asked
Questions

**WTO Compatibility
of
Border Trade Measures
for
Environmental Protection**

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Preface

Developed economies, like US and EU, are contemplating certain rules in relation to trade and environment which will have significant implication for their border trade measures, such as a Carbon Taxation System for imports. In the current scenario, it is important to have an understanding of the compatibility of Carbon Taxation System with the WTO rules as also with environment related multilateral agreements such as the UNFCCC and Kyoto Protocol. This publication attempts to clarify some of these concepts in the format of Frequently Asked Questions. The answers attempt to give a brief snapshot of the issues involved. The FAQ would help the reader draw his inference on the possible implications that may flow out of such unilateral trade measures.

This FAQ draws on the initial analysis done by the officers of Department of Commerce, Government of India in their individual capacity and does not reflect the official views of the Government of India. Views and comments of readers on the FAQ are welcome. Views and comments can be forwarded by email at: editor_wtcentre@iift.ac.in

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Chapter 1: Trade and Environment

Q1. What are the commitments of the Member countries under the World Trade Organisation (WTO) regarding environment?

A1. The WTO is an organization which deals with international trade. It is neither an environmental agency, nor is taking active steps to address environment issues a function allotted to the WTO under its charter of duties. Presently, the WTO does not have a stand-alone agreement in the area of the environment or for that matter climate change. Nevertheless, several WTO agreements contain provisions that relate to the environment. Notably, promoting sustainable development is one of the fundamental objectives of the WTO and the Preamble to the Marrakesh Agreement establishing the WTO clearly underscores expansion of production and trade while at the same time allowing for *“the optimal use of the world's resources in accordance with the objective of sustainable development”*.

The WTO allows a large measure of autonomy to Members to adopt measures aimed at protecting the environment, subject to certain specified conditions included in various WTO agreements. Some of these measures are as under:

- (i) Article XX of the General Agreement on Tariffs and Trade (**GATT**), 1994 permits WTO Members to depart from their GATT obligations for legitimate national policy objectives. These objectives include:

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- (a) Article XX (b): Measures to protect human, animal or plant life or health; and
 - (b) Article XX (g): Conservation of exhaustible natural resources.
 - (ii) The General Agreement on Trade in Services (**GATS**) also contains an exception identical to GATT Article XX (b).
 - (iii) Article 27 of the Trade Related Intellectual Property Rights (**TRIPS**) Agreement states that “*Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary... to protect human, animal or plant life or health or to avoid serious prejudice to the environment*”.
 - (iv) Agreement on Subsidies and Countervailing Measures (**ASCM**) contained an exemption for certain environmental subsidies (provision has since lapsed).
 - (v) Agreement on Technical Barriers to Trade (**TBT** Agreement) recognizes protection of the environment as a legitimate objective and allows Members to take necessary measures towards this end subject to meeting certain requirements.
 - (vi) Agreement on the Application of Sanitary and Phytosanitary Measures (**SPS** Agreement) allows Members to use sanitary or phytosanitary measures to protect humans, plants and animals from contaminants, disease-carrying organisms, and pests. It elaborates rules for the application of the provisions of Article XX (b).

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- (vii) The Preamble of the Agreement on Agriculture (AOA) reiterates Members' commitment to reform agriculture in a manner that protects the environment. Under the agreement, domestic support measures with minimal impact on trade (known as "green box" measures) are allowed and are excluded from reduction commitments. Among them are expenditures under environmental programmes, provided that they meet certain conditions.

The autonomy in taking environmental measures under the WTO regime is, however, circumscribed by the requirement to respect the agreed rules of international trade as enshrined in several WTO agreements. **Where any national action taken for environmental purposes has trans-border effect, the requirements of the GATT and other covered WTO Agreements will have to be complied with.** This is because, it is often noticed that national measures taken for environmental purposes are actually a subterfuge for serving other interests, such as, protection of the domestic industry and can thus adversely affect the trade interests of other Members.

The WTO rulebook thus allows a large degree of flexibility to its Members to adopt environmental measures within their territories, provided this is done in a non-protectionist manner. *It is not a case of trade "trumping" the environment.*

Q2. Does trade work at cross purpose with environment protection?

- A2.** On the contrary, trade and environment are mutually supportive. International trade creates wealth, encourages innovation and promotes welfare. Trade generates additional resources needed for environmental protection. Specialisation, encouraged by freer trade, will lead to a

more efficient use of resources. A sound environment, on the other hand, sustains trade by providing necessary resources. They complement each other and are mutually supportive, as clearly stated in Agenda 21, adopted at the UN Conference on Environment and Development in 1992. The relevant paragraph of Agenda 21 reads:

“An open multilateral trading system makes possible a more efficient allocation and use of resources and thereby contributes to an increase in production and incomes and to lessening the demands on environment. It thus provides additional resources needed for economic growth..... and improved environmental protection. A sound environment, on the other hand, provides the ecological and other resources needed to sustain growth and underpin continuing expansion of trade”.

There has been no authoritative work to show as to whether the trade is detrimental to the environment or for that matter it contributes to global warming in a big way. It is true, emissions during cross-border movement of goods add to Green house gases (GHGs). But, the carbon footprint of international transportation is not a significant factor contributing to global warming. Marine transport is by far the most carbon efficient mode of transport, with only 14 grams of carbon dioxide emissions per ton kilometer. And, roughly 90% of internationally traded goods are stated to be carried by sea. Further, only about 25% of the world production is exported and 75% is consumed domestically. Production for domestic consumption is therefore a far bigger problem than the production for exports. For example, only about 6% of cement production (a polluting industry) is traded internationally. Studies have shown that only a limited share of ecologically sensitive goods enters into trade. It has also been reported that commercial logging for export plays little part in the destruction of Amazon rain forests. Instead, the basic causes are the demand for land and local

Chapter 2: Carbon Taxation System

Q1. What is a Carbon tax/Carbon Dioxide/CO₂ tax?

A1. Carbon atoms are present in every fossil fuel — coal, oil and natural gas. Essentially all carbon atoms are converted to carbon dioxide (CO₂) when the fuel is burned. CO₂, an otherwise non-lethal and innocuous gas, rises in the atmosphere and remains resident there for years together, trapping heat re-radiated from Earth's surface and causing global warming and other harmful climate change. Other Green house gases (GHGs) such as methane, nitrous oxide, etc. contribute to the problem of climate change in a similar manner, albeit in different degrees. In contrast, non-combustion energy sources — wind, sunlight, falling water, atomic fission, or geothermal do not convert carbon to CO₂. **A carbon tax is a tax on the carbon content of fuels, i.e. effectively a tax on the CO₂ emissions from burning fossil fuels.** These taxes are levied at a fixed rate that may be linked to their carbon content. Some environmental taxes also include other GHGs.

The taxation of carbon is not very widely used in the world at the moment.

Q2. Why is a Carbon Tax levied?

A2. The levels of CO₂ already in the Earth's atmosphere and being added daily are destabilising established climate patterns and threatening the ecosystems on which the humankind and other living beings depend. Emission of GHGs are, in economic terms, an externality in the sense

that those who produce GHG emissions are bringing about climate change, thereby imposing costs on the present as well as future generations but they do not face the full consequences of their actions themselves. Putting an appropriate price on carbon – explicitly through carbon tax or emissions trading, or implicitly through regulation – can, at least theoretically, make them incur the full social costs of their actions, thereby internalizing the aforesaid externality and addressing the market failure.

Forcing the prices of fossil fuels to reflect the full social costs of the negative externalities generated by them, creates incentives to develop and deploy carbon-reducing measures such as energy efficiency (e.g., high-mileage cars and high-efficiency heaters and air conditioners), use of renewable energy (e.g., wind turbines, solar panels), low-carbon fuels (e.g., biofuels from high-cellulose plants), and conservation-based behaviour such as bicycling, recycling and overall mindfulness toward energy consumption. Conversely, taxing fuels according to their carbon content infuses these incentives at every chain of decision and action – from individuals’ choices and uses of vehicles, appliances, and housing, to businesses’ choices of new product design, capital investment and facilities location, and governments’ choices in regulatory policy, land use and taxation.

Some European nations such as Sweden, Finland and Denmark have used carbon tax successfully to cut carbon emissions.

However, a carbon tax by itself may not stop global climate change - other, synergistic actions may as well be required. A carbon tax may not be the most

appropriate strategy since it may affect the development plans of developing countries. Enlightened subsidies (e.g., tax credits for efficiency and renewables), financial assistance and technology transfer may be an effective way out under such circumstances.

Q3. What are ways in which a carbon tax may be levied?

A3. The tax can generally be levied in four different ways:

- Product tax. E.g. tax on consumption of fossil fuels/ tax on motor vehicles
- Tax on inputs that are physically incorporated in the final product
- Tax on inputs that are not physically present in the final product
- Tax on emissions of CO₂ (embedded energy tax) during the production process

The first two are prevalent today, while the latter two are reportedly not being used currently.

Q4. Is carbon tax the most effective way to achieve the intended purpose?

A4. Carbon tax is one among a variety of policies, measures, instruments and approaches that are available to national governments to limit the emission of GHGs; these include:

- Regulations and standards,
- Taxes and charges,
- Tradable emission permits,
- Voluntary agreements,
- Subsidies and incentives,

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- Informational instruments,
 - Research and Development.

The aforesaid instruments are directly linked to GHG emissions. However, instruments may also be used to manage activities that indirectly facilitate climate change objectives.

Q5. What is a Cap-and-Trade System?

A5. A tax on carbon emissions is not the only way to “put a price on carbon”. A **carbon cap-and-trade system** is an alternative approach. E.g. the U.S. *sulfur dioxide* cap-and-trade system instituted in the early 1990s efficiently reduced acid rain emissions from power plants. It is also called **Emissions Trading System (ETS)**. The current EC’s ETS programme is akin to a ‘cap and trade’ system. The draft American Clean Energy and Security Act 2009 (Waxman-Markey Bill) is also based on ETS.

In ETS, a central authority, usually a *governmental* body, sets a limit or *cap* on the amount of a pollutant that can be emitted in an area over a specified period. The overall cap (say 10,000 tons of carbon) for a region is divided into transferable units (10,000 emission permits/ quotas/ allowances/ credits of 1 ton of carbon each), which are then distributed among the covered installations either through auction or for free. These emission permits are then allowed to be traded among the installations, thereby creating a market for tradable emission permits. The cap on the total number of allowances is what creates scarcity in the market, resulting in a price for the permits. Since the quantity of emissions is fixed, the right to emit becomes a tradable commodity. Companies or other groups are issued emission permits and are required to hold an equivalent number of *allowances* (or *credits*)

which represent their right to emit a pre-specified amount. Companies that need to increase their holding of emission allowance (because they emit more than specified limits) must buy credits from those who pollute less than their specified limits, else they would stand to be penalised. In effect, the buyer is paying a charge for polluting, while the seller is being rewarded for having reduced emissions by more than was needed. So if installations invest in reducing emissions, they can earn an income from the sale of allowances.

Installations facing difficulty in keeping their emissions within caps have a choice between taking measures to reduce their own emissions - such as investing in more efficient technology or using less carbon intensive energy sources - or buying the extra allowances they need on the market, or a combination of the two. Such choices are likely to be determined by relative costs of internal abatement vis-à-vis market price of emission permits. This helps in choosing the least-costly way to comply with the pollution regulation, which leads to reductions where the least expensive solutions exist, while allowing emissions that are more expensive to reduce.

Q6. How does ETS help in reducing carbon emissions?

A6. The *cap* is an enforceable limit on emissions that is usually lowered over time – in line with a specified emissions reduction target. The lower the cap, and higher the demand for emissions by the covered installations, higher is the price of the emission permit in a free market. In other systems, a portion of all traded credits is retired, causing a net reduction in emissions each time a trade occurs. In many cap-and-trade systems, organisations which do not pollute may also

participate, thus environmental groups can purchase and retire allowances or credits and hence drive up the price of the remainder according to the law of demand. Corporations can also prematurely retire allowances by donating them to a non-profit entity and then be eligible for a tax deduction. Also, to make it more expensive for the firms to pollute, the regulator may shift from free allocation of permits to their auction sale.

Q7. How are permits allocated in ETS?

A7. Once the emission levels of GHGs are capped by the Government/regulator, the permits to pollute are either freely allocated based on historical emission levels called “grandfathering” or auctioned/ sold to polluters. There could be part free allocation and part auctioning, with progressive shift to the latter. Auctioning helps raise revenues for the Government that can be used for other purposes, such as to reduce impact of distortionary taxes and improve overall efficiency. As compared to free allocation of allowances, auctioning can induce shift to green technologies more effectively.

Q8. Which is better - carbon tax or ETS?

A8. The main difference between the two is that carbon taxes provide price certainty on emissions thereby sending a clear price signal, while ETS gives more certainty around achieving quantitative emissions targets. Although both policy approaches are “market-based,” they operate differently - carbon taxes fix the *marginal cost* for carbon emissions and allow quantities emitted to adjust, while tradable permits fix the *total amount* of carbon emitted and allow price levels of permits to fluctuate according to market forces. A major drawback of a carbon tax is that the environmental outcome (e.g. a limit on the amount of emissions) is not guaranteed. In contrast an ETS suffers

price fluctuations under volatile market conditions, creating uncertainties for businesses. A carbon tax can raise more revenues for governments unless tradable permits are fully auctioned. It can build on existing tax collecting mechanisms and so is simpler and less costly to run. An ETS is, however, often politically more acceptable, since it does not involve an explicit tax.

Q9. Which is the preferential mode of the environment taxation?

A9. The United States has been the strongest proponent of ETS and fought hard to include the flexibility mechanisms under the Kyoto Protocol. The reason - relative to other industrialised countries, the US is energy *inefficient* and has high per capita carbon dioxide emissions levels. Thus carbon taxes would penalise the US relative to other less fossil fuel dependent nations, provided the rates of carbon taxes are identical. The US industry is also strongly against any taxation measures to achieve GHG reductions. An ETS with provision for offsets would allow US firms to purchase emissions allowances from other countries, and avoid domestic reductions.

The **European Union** has traditionally been in favour of strong coordinated policies and measures, such as energy/carbon taxes. Since the EU is already relatively energy efficient (improvements have been made steadily since the late 1980s, through energy deregulation, taxes and agreements with industrial sectors), carbon taxes would be less of a burden than in the US. In Kyoto, the EU was against ETS but was unable to overcome US support for trading. Therefore, EU efforts have been channelled into developing effective rules and guidelines for a trading system. For example, in the EU

ETS at least 50% of countries' reduction targets should be achieved *domestically*.

The developing countries primarily represented by the G-77 + China Grouping in United Nations Framework Convention on Climate Change (UNFCCC) negotiations have been extremely cautious of ETS, and view it primarily as a “loophole” that the US and Japan can use to avoid their domestic responsibility, because ETS has scope for offsets, such as the clean development mechanism (CDM) of the Kyoto Protocol, which allows developed countries (including the EU) to reduce emissions in developing countries. They are in favour of rules and guidelines that ensure equitable allocation of allowances and monitoring provisions. Developing countries favour the principle of carbon taxes - as long as they are levied on rich countries and not poor ones, on account of historical responsibility and their equity concerns.

Chapter 3: Carbon Leakage

Q1. What is carbon leakage?

A1. The issue of carbon leakage – the ground cited by the developed countries for the proposed border tax adjustments (**BTA**) measures on imports – has its origin in the purported apprehension in these countries that in the energy intensive, trade-exposed sectors, the carbon costs imposed by their domestic climate policies (e.g. carbon tax or cap-and-trade scheme) will put domestic producers at a competitive disadvantage *vis-à-vis* producers in countries not imposing similarly strict carbon constraints. It is argued that if stringent domestic climate action causes their firms to relocate to other countries with less stringent or no carbon constraint, or to lose market share to firms from countries having low emission standards, then the emission reduction achieved in countries imposing stringent measures will be offset to a great extent by an increase in emissions elsewhere. According to the developed countries, such carbon leakage could end up undermining the environmental integrity of the carbon constraining domestic policy measures. The concerns expressed by these countries related to carbon leakage are usually linked to two risks:

a risk of creating ‘carbon havens’ by way of attracting carbon-intensive industries in countries with less stringent carbon policies, thereby endangering the global effectiveness of carbon-constraining policies; and

a risk of job losses resulting from the relocation of industries to countries where climate change mitigation policies are less costly.

So far there is little empirical evidence to prove that the companies relocate to take advantage of lax pollution controls. Evidence suggests that the concerns about carbon leakage are overblown. Brookings Institution policy scholar Jason Bordoff pointed out that most U.S. emissions of greenhouse gases come from non-tradeable sectors (e.g., transport and housing) that could not, by definition, move offshore in search of more lenient jurisdictions. Furthermore, the evidence does not support the notion that investment flows to countries that impose relatively few environmental restrictions. Firms apparently place relatively little weight on environmental compliance costs when making their investment decisions. **However, proponents of carbon leakage argue that it could turn out to be a more serious problem as countries tend to implement stricter climate policies and measures in the future.**

Q2. How is carbon leakage sought to be addressed?

A2. The global economic downturn has intensified the fear of developed countries emanating from carbon leakage. The European manufacturers are reported to have complained that purchase of emissions allowances would saddle them with billions of Euros in additional costs that they may not be able to pass on to the customers. Similar concerns have been expressed by a section of the US businesses. To reduce the cost of compliance for potentially affected industries, the countries are taking recourse to:

- Mechanisms such as free “allowances” or exemptions, e.g. to reduce costs during the initial phase of the implementation of ETS, the EC is issuing free

allowances to cement, chemicals, steel and other heavy industries. The US Waxman-Markey Bill also contains a similar provision.

- Another mechanism widely talked about is the use of border measures to impose a cost on the importers similar to that borne by the domestic industry. The EC's ETS plans to do so since 2013 while the US Waxman-Markey Bill proposes doing the same from 2020.

In the case of a carbon tax, a BTA would charge imported goods the equivalent of what they would have had to pay had they been produced domestically. In the case of a cap-and-trade scheme, a BTA would force domestic importers or foreign exporters of goods to buy emission permits based on the amount of carbon emitted in the production process, in a requirement analogous to that faced by domestic producers. The concern about carbon leakage underlies the EU's proposals on BTA in its post-2012 ETS regime that was approved in December 2008.

Chapter 4: Border Trade Measures and WTO Compatibility

Q1. What are the main WTO rules involved in judging the legal compatibility of border trade measures?

A1. (i) Most Favoured Nation Treatment (Art. I GATT): A Member shall not discriminate between like products from different trading partners.

(ii) National Treatment on Internal Taxation & Regulation (Art. III GATT): A Member shall not discriminate between its own and *like* foreign products.

Art. III: 2 GATT: Taxes or other charges levied directly or indirectly on imports shall not be applied “in excess” of those levied directly or indirectly on like domestic products.

(iii) Schedules of Concessions (Article II: 2(a) GATT): A Member may impose on imports a charge equivalent to an internal tax imposed consistently with Art. III:2 GATT in respect of like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part.

(iv) General Elimination of Quantitative Restrictions (Article XI of GATT): This Article bans prohibitions or restrictions on imports other than duties, taxes or other charges.

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- (v) **General Exceptions** (Art. XX GATT): The provision permits WTO Members to depart from their GATT obligations for legitimate national policy objectives.

Besides the GATT 1994, the requirements of other covered agreements such as the TBT Agreement, the AOA, etc. will have to be complied with.

Q2. Are border tax adjustments (BTA) based on carbon taxes WTO compatible?

- A2.** The overall economic objective of a BTA is to level the playing field between taxed domestic industries and untaxed foreign competitors.

(a) Product Taxes on Consumption

The carbon tax directly levied on domestic products, e.g. taxes imposed on domestic fuels and imported “like” fuels, is eligible for tax adjustment at the border under the WTO rules. **The GATT Article II:2(a) allows WTO Members to impose on the importation of any product a charge equivalent to an internal tax levied on a like domestic product.** Taxes directly levied on products (indirect taxes such as excise duties, sales tax and tax on value added) are eligible for adjustment. However, taxes that are not directly levied on products (i.e. direct taxes such as on property or income) are normally not eligible for adjustment.

(b) Taxes on Inputs that are Physically Incorporated

The carbon tax on product inputs that are physically incorporated into the final product is also border-adjustable as clearly held in the *US-Superfund* case. Thus the **taxes on articles used in the manufacture of domestic products may be taken into account in BTA i.e. in imposing an equivalent tax on ‘like’ imported**

products and such tax meets the requirements of GATT Article III:2.

(c) Taxes on Inputs that are not Physically Incorporated

The WTO rules are not clear whether the tax levied on certain inputs, such as, fuels, energy, oil etc. that are not physically incorporated into the final product can be adjusted at the border. Many commentators are of the view that the tax on fuels, oil and energy consumed during the production process cannot be adjusted at the border because energy is consumed and not physically incorporated into the product. According to these commentators, only the taxes on inputs which are physically incorporated into the final product are eligible for adjustments when the final product is imported. This view appears to be legally correct because, from a plain reading of Article II:2 (a) of GATT, 1994, it is clear that this Article allows the tax adjustment to be based on an *“article from which the imported product has been manufactured or produced in whole or in part”* and not *“with the help of which”* the imported and the like domestic product were produced. The French text of GATT Article II: 2 (a) reads more restrictively to require that the input be incorporated into the imported product.

However, a contrary view is also possible. The Article II:2 (a) of GATT allows a Member to impose at any time on the importation of any product a charge equivalent to an internal tax imposed consistently with the provisions of GATT Article III:2 in respect of the like domestic product. Article III:2, first sentence, *talks about internal taxes or other internal charges of any kind ...applied, directly or indirectly to like domestic products*. It has been argued by some commentators that the word *“indirectly”* contained in

Article III: 2 may be interpreted as allowing the use of BTA on taxes that are charged on inputs used during the production process of a product, i.e. applied indirectly to products. According to this argument, a tax on energy or fuels used in the production process or carbon dioxide emitted during production (neither of which is physically incorporated in the final product) could therefore be considered to be applied indirectly to products and hence border-adjustable.

The widely-held view, however, is that the tax on fuels, oil and energy consumed during the production process is not border-adjustable.

(d) Tax on Emissions of CO₂ during Production Process

There have been proposals that carbon taxes should be imposed on imported products based on the emissions of carbon dioxide generated in the production process. This is called a 'carbon footprint tax' or a tax on 'embedded carbon'. The carbon footprint of a product varies widely even when the amount of energy consumed during the production process may be the same. As for instance, carbon emission of a product using 10 units of coal-based energy would be much higher compared to the case where 10 units of solar energy are used in the production of the same product. The embedded energy or embedded carbon of a product will also vary widely depending upon the method of calculation. As for instance, if account is taken of inputs, production processes, transportation, consumption, waste, refuse, etc. i.e. the entire life-cycle of a product, the embedded carbon would be much higher than when only the emissions generated during the production process are taken into account. Some products may apparently look emission-reducing, but

actually it is not so when the entire life-cycle is taken into account. Studies have shown that bio fuels grown in place of forests would actually result in emitting a huge amount of carbon. This is because the carbon lost from deforestation is much greater than the carbon saved from using the current generation bio fuels.

In a BTA scheme based on the emissions of carbon dioxide during the production process, the practical challenge is how to quantify such emissions. Depending upon the manufacturing process, technology adopted, and the source of energy etc. the carbon dioxide emission for manufacturing, say a ton of HR steel will differ from firm to firm and even within a firm. This will also vary from country to country. If carbon emissions of ancillary materials are taken into account, the tracing challenge becomes an additional source of difficulty. Given these intricacies, implementation of a BTA scheme based on the quantity of emissions generated in the production process will be administratively cumbersome. Such a scheme is likely to contravene the non-discrimination principle of GATT Article I because, under this scheme the products originating from different countries would be treated differently, i.e. “like” products would be accorded “unlike” treatment. The origin-based discrimination is completely prohibited under the WTO rules.

It has been suggested that any good sold be accompanied by a certificate (**carbon passport**) stating its carbon footprint, meaning the quantity of GHG producing substances used in its production process. However, there will be administrative problems of verifying the accuracy of certificates attached to imports, or, for that matter, certificates attached to domestic products. This difficulty will be more so for an imported product that may have gone through production stages in several different

facilities at different locations. Further, it may require sharing commercially confidential information on the composition of their products and the producers may be highly reluctant to do so.

In view of the complexity of determining the exact carbon dioxide released during the production process, it has been suggested that some sort of averaging method (based on predominant technology/best available technology) be used to calculate the emissions for each relevant product from each industry. However, the averaging method will not pass WTO muster. Not long ago, the EC had countervailed India's drawback exports on the ground that the drawback rate is an all-industry rate and not based on actual payment of duties and that under the ASCM, rebate of taxes based on an averaging method is not permissible.

Also, while the averaging system would provide rough justice it would also mean that more efficient, lower emitting plants in a country would be penalised vis-à-vis higher emitting plants in the same country. This would disincentivise the shift to cleaner technologies. The more efficient, lower emitting producer in the exporting country may complain that his product is being taxed in the importing country in an amount which is in excess of that applied to a like domestic product. Article III: 2 of GATT, 1994 states that *"the products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products."* With regard to the meaning of "excess", the WTO Appellate Body has held that even the smallest amount of excess is too much and that a complainant need not show the trade impact of the higher taxation nor a protective purpose. In view of this, implementation of a BTA scheme based on average

emissions of carbon dioxide during the production or based on predominant technology/ best available technology is unlikely to pass the Article III test and more often than not will result in a situation of the imported products being accorded treatment less favourable than domestic producers.

Even assuming that emissions can be measured accurately, there will be difficulties in designing a BTA scheme based on the emissions generated during the production process. As for instance, it has been reported that Kenyan flowers that are air-freighted to Europe emit 1/3rd of the carbon dioxide of flowers grown in Holland. Likewise, New Zealand lamb that is transported to the US can actually generate 70% less carbon dioxide than lamb produced in the U.K. Further, some of the fertilizers produced in the US and transported to Europe can generate 13% less carbon dioxide than fertilizer produced in Italy. Given these realities, imposition of a charge at the border on products based on their carbon footprint will result in same products being treated differentially, i.e. “like” products getting “unlike” treatment. This is explicitly prohibited under the present trade rules.

It is not sure whether the GATT disciplines allow taxation on the basis of process and production method (**PPM**). Attempting a tax based on carbon emissions is akin to a tax based on PPM since this emission has no affect on characteristics of output product. It is hard to claim on PPM basis that the goods are not “like products” and thus justify differential tariff treatment. This question is especially complicated if final goods possess identical physical characteristics and have the same end-use. As for instance, a steel product will have the same physical properties regardless of whether the electricity used for making it is generated by nuclear power or renewable

sources. Also, if PPM based standards were to be accepted, it will open door to bring in other PPM based standards in the future, say labour based standard. The goods would then need to be identified on basis of certification and this can create management challenges. The principle of tariff classification is that products are assessed as they are presented to Customs and not on the basis of how they are manufactured, produced or harvested.

The GATT/WTO jurisprudence has evolved over the years on this, say between Tuna-Dolphin cases and Shrimp-Turtle cases. The Tuna cases clearly endorsed the understanding that the GATT rules cover 'only those measures that are applied to the product as such' and not to PPMs. However, roughly a decade later, in Shrimp-Turtle I, although, the US ban was found by the AB to be in violation of GATT Article XX, this was because it required the WTO Members to adopt essentially the 'same' programme as that of the US. This was found to constitute arbitrary discrimination for not taking into account the appropriateness of the US programme for the other Members concerned, thereby violating Article XX *chapeau*. The ban was not *a priori* invalidated on the grounds of it being extra-territorial and PPM-based in nature. When the US amended its law to require the exporting countries to put in place regulatory programmes that may not be the same as those of the US, but 'comparable in effectiveness', the panel and AB in *Shrimp-Turtle II* found the US measure to be in compliance with Article XX *chapeau*, notwithstanding the fact that it still was an extra-territorial measure based on PPM. Hence, there has been some conflict in the WTO decisions on the issue of PPM based taxation.

Q3. Is a BTA based on ETS WTO compatible?

A3. In the US, a debate is presently on whether to link an ETS to certain requirements on imports from countries that do not impose similar emission reduction obligations on their industries (although the EC has also decided that the ETS regime from 2013 would include BTA, the modalities for the same are yet to emerge). The suggestion is that, in such cases, the importers should submit emission allowances as a condition of import from the countries that are not taking emission control measures. The bill recently passed by the House of Representatives in the US contains one such provision. As per this provision, the US importers will be required to submit international reserve allowances for imports from countries that do not limit GHG emissions. The purchase price for this international reserve allowances will be equivalent to the auction clearing price for emission allowances obtained by the domestic producers in the US at the most recent auction. However, as per the US Bill, submission of international reserve allowances will not be required if the product is imported from

a country that is taking emission reduction measures and such measures are at least as stringent as that of the US,

a LDC, or

a country that is *de minimis* emitter of greenhouse gases.

The proposed import allowance requirement in the House bill would be a violation of GATT Article I because of discrimination between countries based on the criterion of having taken or having failed to take “emissions reduction commitments that is at least as stringent as that of the US”. The developing countries in general will fall in the category

of countries as not matching the US efforts to limit GHG emissions. The importers in the US will have to buy “allowances” if the goods are to be sourced from these countries. No such allowances will be required if the goods are to be imported from other countries, say France, a country that is deemed to be taking action to reduce emissions comparable to that of the US, or Bangladesh, a LDC. Such origin-based discrimination will be a clear violation of the MFN principle enshrined in GATT Article I.

The actual cost of allowances would also vary from firm to firm due to different experiences in emission allowance markets, or worldwide differences in emission profiles within a given industry. Further, a single firm might hold different types of allowances: some received free of charge, some purchased from the government in an auction, and others purchased from the open market. This would pose problems in imposing the cost of emission allowances on imported products. It is quite possible that an allowance requirement might discriminate in favour of domestic producers, particularly in situations where the domestic producers were the recipients of free allowances from the government. This may create an excess taxation for imported products, thereby violating the “national treatment” principle of GATT Article III which requires WTO Members to ensure that an imported product is to be treated no less favourably than a like domestic product.

Q4. Are the free allowances in an ETS WTO compatible?

- A4.** To reduce costs of domestic industries during the initial period of the implementation of the ETS legislation, some countries are issuing free permits/allowances. As for instance, the EC is issuing free allowances to cement, chemicals, steel and other heavy industries. In this connection, a question has been raised whether the free

allocation of carbon permits under a cap-and-trade system is a subsidy. Some trade policy specialists are of the view that free allowances may constitute a subsidy under WTO rules. Under the ASCM, a financial contribution by a government would occur in a case where the *“government revenue that is otherwise due is foregone or not collected”*. If allowances are generally auctioned off by the government, the grant of free allowances to certain industries could be considered a case of the government foregoing revenue that is otherwise due. Further, if allowances handed out for free can be sold on the allowance market for cash, then those allowances would appear to confer a clear economic benefit to the recipients. Finally, if the free allowance programme is limited to a few energy intensive industries, there is a real possibility that the subsidy would be considered specific, and therefore potentially actionable under WTO rules.

However, the important question here is how trade-distorting such free allowances are. Under the WTO rules, a country has to prove that a trading partner’s subsidy causes adverse affects on its exports - price decline or loss of market share. Subsidies that are not prohibited are nonetheless actionable if they cause *“adverse effects”* to the interests of another Member, for example by *“displacing or impeding imports . . . in the market of the subsidizing Member,”* or are specific (i.e., limited) to certain industries, and give a benefit to domestic producers in that industry. If a subsidy is found to be actionable, the offending member must remove the subsidy or its injurious effects. It is worth noting that in the event that free emissions allowances are deemed an actionable subsidy, the amount of the subsidy, and the amount of any damages due, will be relatively easy to assess by reference to the *“carbon price”* established in the market for

emissions permits. Any analysis of this type should consider that the carbon price would have been higher if more energy intensive, inelastic demanders of energy (those industries especially favoured with free allowances) had been buying their allowances in the market and pushing the price up. However, so far no WTO Member has challenged the free permits under the EU ETS regime.

Q5. Are there other WTO provisions that would be hit in border taxation methods?

- A5.** The proposed measure will raise the prices of imports, which could affect their sales. The products likely to be affected include, iron & steel, aluminium, pulp & paper products, cement, glass and chemicals. The measure would then be viewed as imposing quantitative restrictions on imports which is prohibited under Article XI of the GATT, 1994.

The provision requiring importers to buy international reserve allowances can also be regarded as “fees” being imposed on imports. Article VIII of the GATT, 1994, states that fees and charges on imports “shall be limited in amount to the approximate cost of the services rendered”. The US measure therefore can potentially violate Article VIII. Further, this Article states that the fees and charges on imports shall not represent an “indirect protection to domestic products or a taxation of imports for fiscal purposes”. The US Bill focuses on competitiveness concerns of the US industry, job losses etc. An argument can be made that the requirement to buy allowances is a measure that represents both an indirect protection to domestic products and also a taxation of imports for fiscal purposes.

Q6. Can countervailing duty be imposed on the goods produced in a less environmentally friendly manner?

A6. It has been suggested that goods produced in a manner that damages the environment can be said to be receiving a subsidy to the extent that the production process is cheaper. In that case such goods could be charged a countervailing duty to offset this advantage. According to the proponents, the CVD on carbon-intensive imports will act as a “stick” against “carbon free riding”.

However, this would not be compatible with the ASCM. Under the ASCM, countervailing action can be taken if the three elements viz,

financial contribution by a government;

a benefit is thereby conferred, and

subsidy is specific to an enterprise or industry, or group of industries are cumulatively present.

Free-riding on carbon emissions cannot be regarded as a subsidy under the ASCM. Thus, countervailing duty cannot be imposed on the goods produced in a less environmentally friendly manner.

Q7. Can anti-dumping duties be imposed on imports?

A7. Under present WTO rules, even if the exporting country does not restrict its carbon emissions, the social cost of carbon cannot be labelled as dumping. The failure to impose a carbon tax, or otherwise internalise the full price of carbon, does not currently give other WTO members the right to impose anti-dumping duties on imports. Such measures would violate the Antidumping Agreement.

Q8. Can the border measures be justified under GATT Article XX?

A8. GATT Article XX permits Members to depart from their multilateral commitments for fulfillment of legitimate national policy objectives such as protection of the environment.

Article XX(b): Allows Members to take measures to protect human, animal or plant life or health.

Article XX(g): Allows Members to take measures relating to conservation of exhaustible natural resources.

It has been argued that policies aimed at reducing carbon dioxide emissions will fall under the GATT exceptions [paragraphs XX (b) and XX (g)], as they are intended to protect human beings from the negative consequences of climate change (such as flooding or sea-level rise); and to conserve not only the planet's climate, but also certain plant and animal species that may disappear as a result of global warming.

Article XX (b) has two requirements:

- (a) show that a measure is intended to protect human, animal or plant life or health; and
- (b) prove that the measure is "necessary".

Under the GATT 1947, the "necessary" criterion was interpreted very restrictively. In the *EC-Asbestos* case, however, the WTO AB emphasised the interpretation of "necessary" as "reasonably available". In this case, the AB upheld the import ban on asbestos by France, stating that the *"WTO Members have the right to determine the level of protection of health that they consider appropriate..."* based

either on the quality of the risk or on the quantity of the risk. This approach shows deference and gives flexibility to national authorities.

As for a measure under Article XX (g), it will have to be seen whether the trade measure concerns the conservation of exhaustible natural resources. The AB has taken a generous view that a “resource” may be living or non-living, and it need not be rare or endangered to be potentially “exhaustible”. Thus, under this expansive interpretation, virtually any living or non-living resources, such as, dolphins, clean air, gasoline and sea turtles would qualify. Once it is determined that a climate measure is “relating” to conservation of exhaustible natural resources, it will then have to be examined whether the measure is “*made effective in conjunction with restrictions on domestic production or consumption*” to avoid any discrimination.

However, the measures taken under the two paragraphs of Article XX are subject to the provision of the *chapeau* of the Article which requires Members to ensure that *such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade*. The WTO Appellate Body has interpreted that the *chapeau* is a safeguard against *abus de droit*, the doctrine that requires the assertion of a right under a treaty to be “*exercised bonafide*” (AB report, *Shrimp-Turtle* case). Further, the measure “*must be applied reasonably*” (AB report, *US-Gasoline*). The AB has also observed that the task of interpreting and applying the *chapeau* is a “*delicate one of locating and marking out a line of equilibrium*” between the rights of the WTO Member invoking the exception and the rights of the Member lodging the case.

The Chapeau thus clearly obligates Members to ensure that such measures are not applied in a subjective manner. The Appellate Body has stated that a violation of the chapeau could occur “*where a measure, otherwise fair and just on its face, is actually applied in an arbitrary and unjustifiable manner*”. An important point to be mentioned here is that whatever paragraph of Article XX is invoked, the burden of proof is clearly on the defendant government; the defendant government will have to prove that its measure does *not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade*. As for instance, a discriminatory BTA scheme, selectively imposing border measures against China and India while leaving out other countries, is unlikely to pass the requirements of Chapeau. It would be hard to argue that another developing country or for that matter an LDC (say, Bangladesh) does not contribute to the emissions of greenhouse gases into the atmosphere and that only India and China do. In *European Communities- Tariff Preferences*, the panel found that the EC did not satisfy its burden of proof by providing evidence to demonstrate that its country selection criteria for a programme dealing with illicit drugs (known as “Drug Arrangements”) did not entail arbitrary and unjustifiable discrimination. The panel could see no justification for the EC’s decision to name only 12 countries as beneficiaries, to the exclusion of other countries with the same prevailing conditions. For example, the EC had not included Iran within the list of beneficiary countries even though Iran was a more seriously drug-affected country than the beneficiary Pakistan.

In *US-Shrimp* case, the AB held that rigidity and inflexibility in the application of the measure, e.g. by

overlooking the conditions in other countries constituted unjustifiable discrimination. **Following this judgement, it is but logical to expect that the EU/US should not require the exporting countries to adopt policies towards climate change mitigation that are “same” as those adopted by them. Rather, they should design the measure in such a manner that “there is sufficient flexibility to take into account the specific conditions prevailing in exporting Members”, say India.** As per US-Shrimp II, the EU/ US must take “into consideration different conditions which may occur” in different exporting countries, and should ensure that the application of the measure at issue allows for an inquiry into the appropriateness of the regulatory programme for the conditions prevailing in those exporting countries. These requirements warrant consideration of the following two issues in the context of application of the proposed border measures:

- Should developing countries like India be expected to carry the same burden as developed countries in the context of climate change?
- Should not emission control measures undertaken by developing countries, such as those taken under the National Action Plan on Climate Change by India be considered appropriate in view of the specific conditions prevailing in those countries and they be treated the “same” as those adopted by the EU/ US?

If the application of the proposed border measures fails to take into account the specific conditions prevailing in developing countries (such as, different levels of development, different emissions per capita, different financial and technological capabilities to undertake mitigation actions, etc.) and does not pay heed to the efforts made by developing countries (say India) towards

adoption of “nationally appropriate” climate policies and actions (such as through NAPCC) or the fact that India has recently declared its intention to reduce the carbon intensity of its emissions by 20-25% per unit of GDP by 2020 from 2005 levels (China has also declared its intention to cut emissions per unit of GDP by 40-45 % from 2005 levels by 2020), there is a high chance that it may be regarded as “arbitrary or unjustifiable discrimination” under Article XX and therefore fail to pass the chapeau test.

In *EC Asbestos* case, the panel had suggested that “intention” is an element of “disguised”, and that discriminatory measures could violate this prong if they are “in fact only a disguise to conceal the pursuit of trade-restrictive objectives”. The panel also suggested that “protectionist objectives” of a measure can be ascertained from its “design, architecture, and revealing structure”. Thus, if the real objective of legislation (the US Bill, for instance) is to maintain “inter se competitiveness” of the industry and prevent loss of jobs, etc. the legislation may not stand the test of legal scrutiny. Under the WTO rules, the Member adopting a domestic measure to mitigate climate change will have to prove demonstratively that such measure is non-protectionist in design and intent. The Member will also have to ensure that the measure is administered in a manner as not to contravene the agreed rules of international trade.

That said, in the *Shrimp-Turtle* case the Panel found that a Member could justify restricting the import of shrimp in order to protect turtles. In the *US-Auto taxes* case the Panel ruled that fuel inefficient imported cars were not “like” fuel efficient domestic cars and could, therefore, be treated less favorably. In the *US-Shrimp Turtle* case, the AB had stated that the term “exhaustible natural resources” has to be “read by a treaty interpreter in the light of contemporary

concerns of the community of nations about the protection and conservation of the environment". These are some of the cases where the AB has given rulings which are supportive of the environment.

However, only a handful of environmental cases have come to WTO in the last ten years. Therefore, it is difficult to conclude, at this point of time, with any degree of certainty as to how the unilateral trade measures to combat climate change would be viewed by the AB. Climate change mitigation measures are likely to affect a wide range of export sectors. They would have an entirely different economic reach. It is unlikely that the AB will "green light" the WTO inconsistent measures easily to accommodate climate concerns by paying lip service to the core trade rules, such as, non-discrimination, least-trade restrictiveness, national treatment and transparency. Even in the *US-Shrimp* dispute, one of the most important recommendations of the AB was that the Parties try to reach a "co-operative" environmental solution for the protection of sea turtles. With a US-BASIC Copenhagen Accord (EC clearly seems to be in favour) in background, it may be difficult to justify unilateral trade measures at least against the countries who are Parties to the Accord.

Q9. Is BTA inevitable to create a level playing field?

A9. The European Commission has long favoured an auctioning system as the fairest and most efficient way to allocate emissions allowances. However, as per the compromise package agreed in December 2008, energy-intensive, trade-exposed sectors, which are determined to be exposed to a significant risk of carbon leakage, will receive free carbon emission permits at least up to 2020, instead of having to buy them under an auction scheme. A programme of free allowances would reduce the degree of

competitive disadvantage that such industries face as a result of 'cap and trade' regulation. This is considered to be an effective way to reduce the disadvantage to the domestic industry that is subject to ETS scheme and which faces competition from imports. Possibly US has drawn lessons from the EC ETS and the Waxman-Markey Bill has adopted an approach that is close to the EU approach by allocation of allowances at no cost to energy-intensive, trade-exposed industries.

Chapter 5: Border Trade Measures, UNFCCC and Kyoto Protocol

Q1. How compatible are unilateral trade measures with the UNFCCC provisions?

A1. Article 3.5 of the UNFCCC clearly states that *“The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Further, the measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade”*. The language of second sentence of the Article has been borrowed from the Chapeau of Article XX of GATT.

Thus Article 3.5 of the UNFCCC encourages Parties to promote an open international economic system but also permits unilateral trade measures provided they are not arbitrary or unjustifiable discrimination. The Art 3.5 needs to be interpreted in the context of the other provisions of the UNFCCC. These provisions provide the framework within which Art. 3.5 should be exercised. The relevant Articles are as under:

- (i) **Art 3.1 UNFCCC:** Emphasises that the Parties protect the climate system on the basis of equity and in accordance with their common but differentiated responsibilities (CDR) and respective capabilities.

Also, the developed country Parties should take the lead in combating CC and the adverse effects thereof.

However, with unilateral trade measures the developing countries would be forced to undertake legally binding emission reduction commitments at the same level as the developed countries, once they are confronted by such measures, in order to be able to retain the competitiveness of their exports. Further, they will be required to undertake mitigation measures comparable in terms of stringency with those adopted by developed countries, else their emissions are likely to be higher than those in the importing country.

- (ii) **Art 3.3 UNFCCC:** Enjoins on the Parties to make efforts to address climate change cooperatively by interested Parties. Unilateral actions are opposed to cooperative efforts, especially when the developing countries are willing to join the battle through voluntary efforts (recent announcements by many developing countries, including India and China) and also through multilaterally agreed deals such as the recent Copenhagen Accord between US and BASIC countries. In contrast countries such as US have been laggards by refusing to ratify the Kyoto Protocol as yet.
- (iii) **Art 3.4 UNFCCC:** Clarifies that the policies and measures to protect the climate system should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change. Under such a dispensation asking developing countries to either take measures

commensurate with the developed countries or risk losing their export markets (because of border measures) is a clear obstacle in their economic development path and disregards their specific conditions.

- (iv) **Art 4.5 UNFCCC:** Enjoins on the developed country Parties and other developed Parties included in Annex II to take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention.
- (v) **Art 4.7 UNFCCC:** Clarifies that the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology. Further, it will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

The above two provisions of Article 4 UNFCCC clarify that the developed countries should take lead to make finance and technology available to the developing countries before they are asked to implement their commitments under the Convention. However, with unilateral trade measures, the developing countries may be required to use similarly advanced technology as developed countries (else emissions are quite likely to be more and their exports would lose competitiveness in face of a carbon tariff). This is turning the UNFCCC

provisions on their head. Naturally, this will affect the capacity of the developing country Parties to address their economic and social development and poverty eradication needs.

However, the UNFCCC provisions, unlike the WTO provisions, cannot be enforced through the binding dispute settlement process. The Annex I Parties apparently want to play around the UNFCCC and WTO rules to justify unilateral trade measures in name of CC measures. Apparently they want to signal to WTO how its rules should be interpreted in context of unilateral border trade measures. This may be their bid to sanctify such measures under GATT Article XX.

Further, it needs to be kept in view that adhoc unilateral measures can only have some degree of legitimacy when there is a lack of multilateral agreements to deal with an issue. However, the UNFCCC Treaty and now the US-BASIC Copenhagen Accord has created an enabling platform on which to build multilateral agreements to address CC rather than use ad-hoc, non-transparent and unilateral measures to achieve the intended objectives.

Q2. What are Kyoto protocol provisions in regard to trade measures?

A2. Article 2.3 of the Kyoto Protocol provides that the Parties included in Annex I *“shall strive to implement policies and measures ...in such a way as to minimise adverse effects, including ...effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties.”*

Such a regime would also discourage border tax adjustment that affects international trade and consequently have socio-economic impacts on exporting developing country Party.

Q3. What steps have been taken by the developing countries in the UNFCCC to pre-empt such unilateral trade measures?

A3. At a meeting of the Ad Hoc Working Group on Long Term Cooperative Action (AWG-LCA) of the UNFCCC in Bonn on 12 August, India proposed the inclusion of the following paragraph in the negotiating text for the Copenhagen conference:

'Developed country Parties shall not resort to any form of unilateral measures including countervailing border measures, against goods and services imported from developing countries on grounds of protection and stabilization of climate. Such unilateral measures would violate the principles and provisions of the Convention, including, in particular, those related to the principle of common but differentiated responsibilities (Article 3, Paragraph 1); trade and climate change (Article 3 paragraph 5); and the relationship between mitigation actions of developing countries and provision of financial resources and technology by developed country Parties (Article 4, Paragraphs 3 and 7).'

The Group of 77 and China – the largest developing country grouping in the UNFCCC negotiations – also called on developed countries (in the same August session) not to adopt unilateral trade-restrictive measures against developing countries. The group argued that adoption of such measures by the developed countries would be tantamount to passing on the mitigation burden by them onto developing countries, and that it would contravene the principles and provisions of the UNFCCC. The G77 and China pointed out that the measures would in particular be contravening the Convention's principles of 'equity', and 'common but differentiated responsibilities and respective capabilities', as well as the principle enshrined in Article 3.5 that the Parties should cooperate to

promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties. Here, it is pertinent to point out that the Copenhagen Accord emphasises the principles of 'equity', and 'common but differentiated responsibilities and respective capabilities'.

Chapter 6: Impending Trade War

Q1. What are the implications of such unilateral trade measures?

A1. As seen above, unilateral trade measures, taken in a protectionist manner, are likely to be held incompatible with the WTO rules. Unilateral trade-restrictive measures are also prohibited by the UNFCCC and the Kyoto Protocol. Some of the implications of bringing such measures into force would be as under.

- (i) Such measures imposing restrictions on imports on the grounds of providing a “level playing field”, or maintaining the “competitiveness” of the domestic industry, etc are likely to be viewed as mere protectionist measures by the developed world to block the exports of the poorer nations. This is because, there is little empirical evidence that companies relocate to take advantage of lax pollution controls.
- (ii) Efforts to address climate change through unilateral trade measures will lead to tit-for-tat trade restrictions. This will spark trade war and will lead to massive, justified, WTO-legal retaliation by the affected countries. In turn, this will generate a plethora of trade disputes. It is doubtful whether the current Dispute Settlement Mechanism of WTO can handle this load. Such actions do not auger well for free and fair trade which the entire international community, as a matter of conscious choice, has strived to promote all along.

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- (iii) Use of WTO-incompatible trade measures diminishes the prospects for development of the developing countries. Trade generates wealth and offers the possibility to developing countries of investing this wealth in renewable energy and energy conservation measures. This will not happen if they are made poorer by the unilateral trade restrictive measures of developed countries. Thus such measures may prove to be counter-productive.
 - (iv) Unilateral trade actions may simply lead to a change in trading patterns with no significant reduction in emissions.

Useful Web Links

- www.commerce.nic.in
- www.wto.org
- www.unctad.org
- www.worldbank.org
- www.wipo.int
- www.fao.org
- www.unescap.org
- www.artnetontrade.org

Other Publications of the Centre for WTO Studies

- FAQ on WTO Negotiations in Agriculture
- FAQ on WTO Negotiations in Non Agriculture Market Access (NAMA)
- FAQ on WTO Negotiations in Services
- FAQ on Geographical Indications
- FAQ on WTO Agreement on Subsidies and Countervailing Measures
- FAQ on WTO Agreement on Safeguards
- Review of Trade Policies of India's Major Trading Partners
- *Discussion Paper 1:* India's Duty Free Tariff Preference Scheme: Case Study for Select LDCs
- *Discussion Paper 2:* Cotton Production, Exports and Price: A Comparative Analysis of India and USA
- Bimonthly newsmagazine titled 'India, WTO and Trade Issues'

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