Carbon Border Adjustment Mechanism

Legal perspectives and beyond!
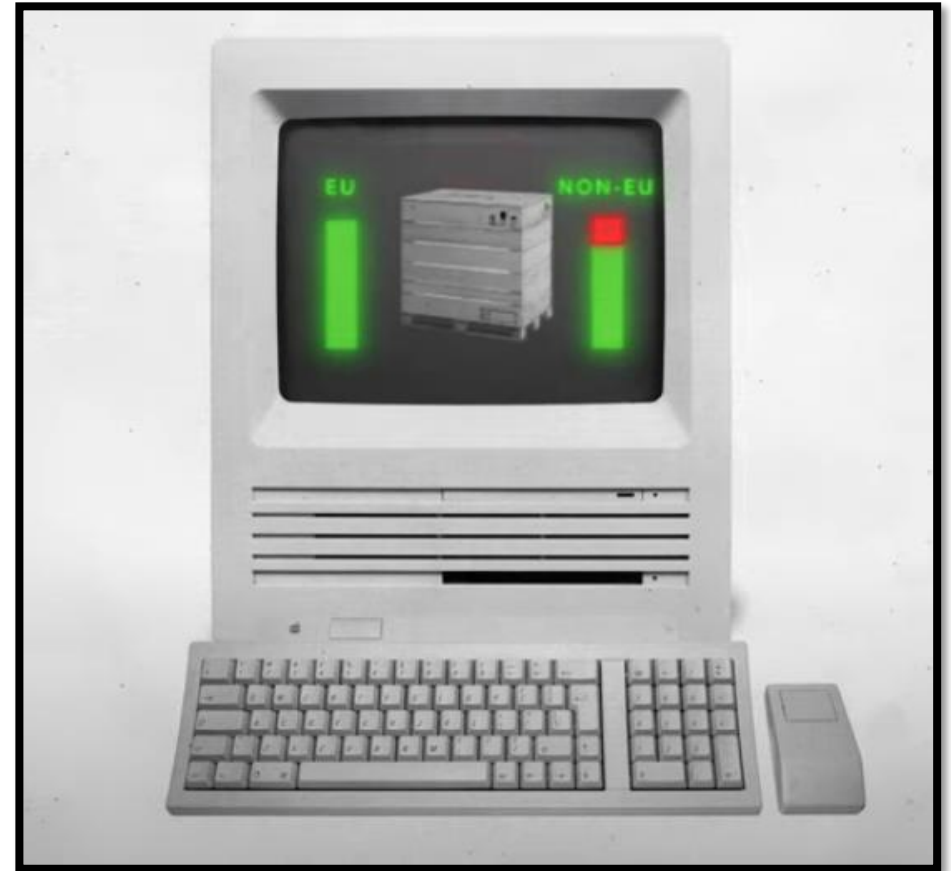
By Stuti Toshi
(speaking in strictly personal capacity)

@ Trade Policy Research Forum
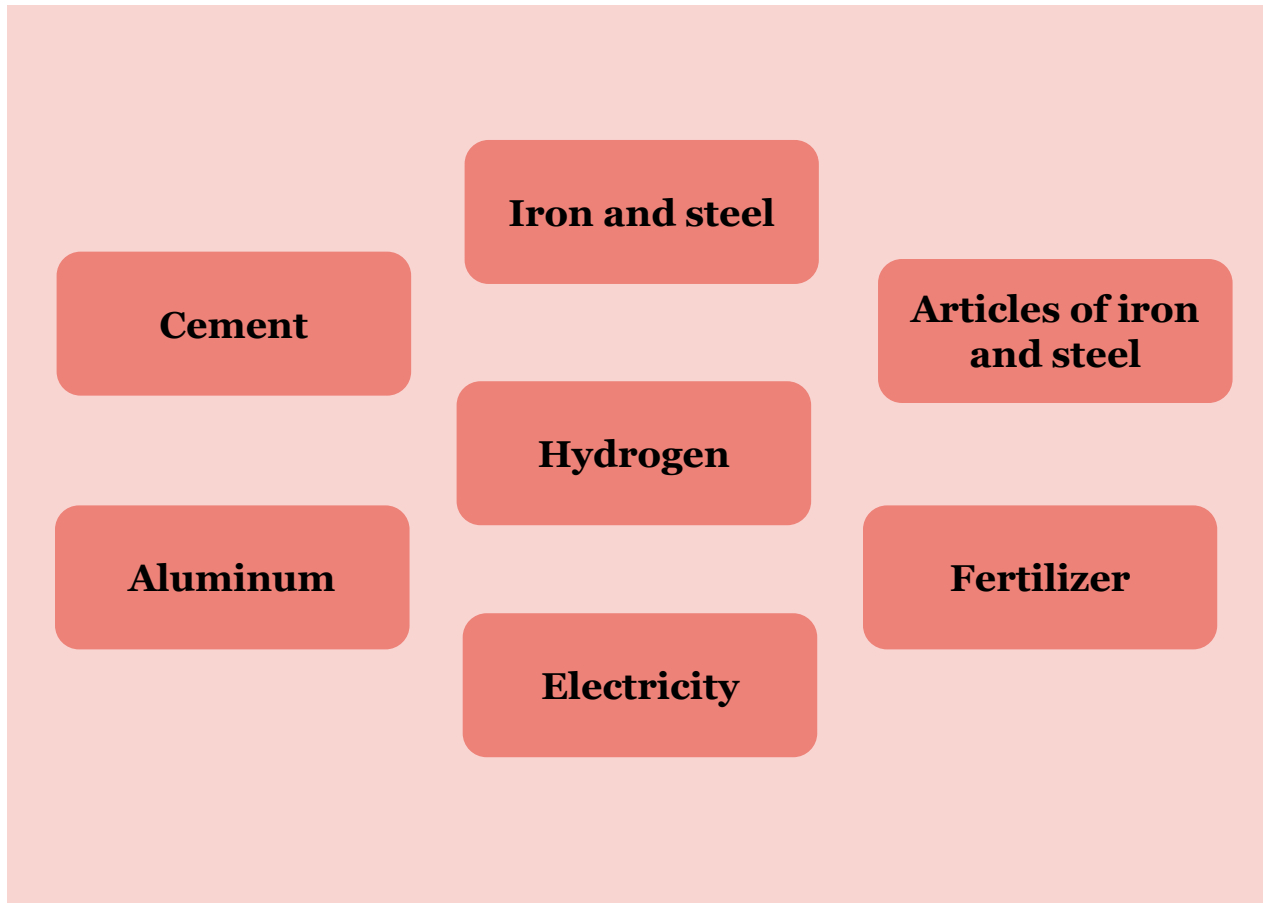**With Ben Shephard and Hanna C. Norberg**

What is CBAM?

Carbon Border Adjustment Mechanism – CBAM

- **Proposal – July 21; Regulation – May 23**

- **Implementing Regulation – August 23**

- **Part of 'Fit for 55' European Green Deal Package**

- **Purpose claimed: address carbon leakage**

- **Method: quantify embedded emissions in imported goods and translate them into costs via CBAM certificates**

- **Complementary to EU ETS**

- **Two stage implementation – transitional phase (23-25); actual levy phase – 26+**

- **De facto implication – get others to start levying equivalent carbon tax! (Article 2.6, CBAM regulation)**

Sectors & ETS allowance prices

Cement

Iron and steel

Articles of iron and steel

Aluminum

Hydrogen

Electricity

Fertilizer

Source: tradingeconomics, updated 18 Jan'23

WTO compatibility

Potential WTO compatibility issues

Article I and III of GATT, 1994

- Non-discrimination – NT & MFN – like products from countries charged differently (country-based differences due to different levels of emissions involved)

- Could non-product related production and process methods (NPR – PPMs) impact likeness?

Article II(2)(a), GATT 1994 – [Internal Tax] = (equivalent) [charge imposed (...)]

- Price of CBAM certificate – weekly average price of ETS allowances sold

- ETS allowances – financial instruments (2018 onwards)

Article XI, GATT 1994 – *no prohibitions or restrictions* – restrictive effect of reporting requirements?

Potential justification under Article XX and its limitations!

Article XX(g), GATT 1994: objective assessment

- Conservation of exhaustible natural resource: which resource? Air? Could air be argued to be exhaustible?

- How is carbon leakage associated with conservation of air (or another natural resource)?

- UNCTAD Study, 2021 – CBAM reduced global CO_2 emissions by 27 $MtCO_2$, a reduction of 0.1% of global emissions.

- The charge – CBAM fund – is it funding decarbonization initiatives or climate change mitigation? If not, then how is it really conservation related?

Article XX(g), GATT 1994: chapeau assessment

- Arbitrary or unjustifiable discrimination?
- Disguised restriction on international trade?
- Better alternative which meets the same objective and is less trade distortive?

Developing country implications

Who has contributed most to global CO_2 emissions?

Cumulative carbon dioxide (CO_2) emissions over the period from 1751 to 2017. Figures are based on production-based emissions which measure CO_2 produced domestically from fossil fuel combustion and cement, and do not correct for emissions embedded in trade (i.e. consumption-based). Emissions from international travel are not included.
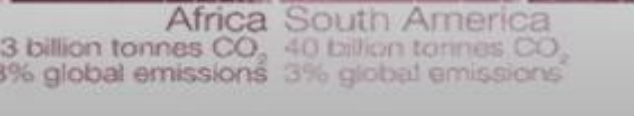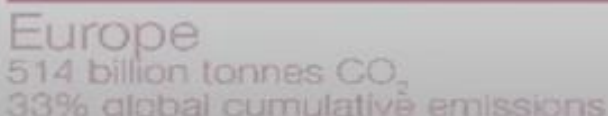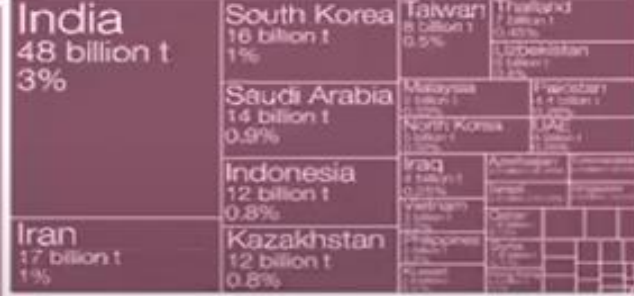
North America
457 billion tonnes CO_2
29% global cumulative emissions

USA
399 billion tonnes CO_2
25% global cumulative emissions

Canada
32 billion t
2%

Mexico
19 billion t
1.2%

Asia
457 billion tonnes CO_2
29% global cumulative emissions

China
200 billion tonnes CO_2
12.7% global cumulative emissions

Japan
62 billion t
4%

EU-28
353 billion tonnes CO_2
22% global cumulative emissions

Russia
101 billion tonnes
6% global emissions

India
48 billion t
3%

South Korea
16 billion t
1%

Taiwan
8 billion t
0.5%

Thailand

Uzbekistan

Saudi Arabia
14 billion t
0.9%

Malaysia

North Korea

Pakistan

Indonesia
12 billion t
0.8%

Iraq

Vietnam

Iran
17 billion t
1%

Kazakhstan
12 billion t
0.8%

Ukraine
19 billion t
1.2%

Turkey
9.6 billion t
0.6%

South Africa
19.8 billion t
1.3%

Algeria

Nigeria

Brazil
14.2 billion t
0.9%

Venezuela

Australia
17.4 billion t
1.1%

Argentina

Egypt

Oceania
20 billion tonnes CO_2
1.2% global emissions

Europe
514 billion tonnes CO_2
33% global cumulative emissions

Africa
43 billion tonnes CO_2
3% global emissions

South America
40 billion tonnes CO_2
3% global emissions

Developing country implications

UNCTAD Report, 21 – While the CBAM would reduce global CO_2 emissions by just 0.1%, it could cut exports from poor countries by much more!

How is CBAM a climate change initiative if it bring revenue which should go for climate change mitigation to EU's pockets?

Historical emissions – disregarded; EU's own decarbonization goals – extended on other jurisdictions

Carveouts for developing countries or least developed countries? – None!

Why do the initial rungs of the ladder have to be dirty when those on the top can afford to clean them? (CBAM fund – towards green financing, technology transfer, capacity building, etc.)

Thank you!