



CLIMATE CHANGE AND INTERNATIONAL TRADE LAW

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Outline

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- Domestic carbon regulations
- Mitigate impact of domestic regulations
 - Subject to WTO rules
 - Tax border adjustment
 - Countervailing duties
 - Technical regulations
- Conclusion

Introduction

- Importance of carbon emission reduction
- International commitments
- Domestic carbon regulations
 - Carbon tax
 - Cap and trade system
 - Technical regulations



Domestic carbon regulations

- Can affect competitiveness
- Lead to relocation of economic resources



Mitigate impact of carbon regulations

- Border measures
 - Tax border adjustment
 - Countervailing duties...
- Technical regulations



Subject to WTO rules

- Non discrimination
- Not more trade restrictive than necessary
- Exception
 - Border adjustment
 - Environmental protection



**ORGANISATION MONDIALE DU COMMERCE (OMC)
WORLD TRADE ORGANISATION (WTO)
ORGANIZACIÓN MUNDIAL DEL COMERCIO (OMC)**

Légende: ■ Ratifié ■ Non ratifié



Tax border adjustment

- Art. II GATT

- Tax imposed on imports of any product, or
- Rebate on domestic products to be exported
- *Equivalent* to an internal tax imposed on like domestic products

- Art. III GATT

- Non discrimination

Tax border adjustment challenge

- Carbon tax
 - Not an internal tax on products
 - But on CO₂ production process emission tax
- Cap and trade
 - Determine « equivalent » to an internal tax

- *American Power Act*
 - International reserve payment
 - In the absence of a multilateral agreement



Tax border adjustment

- Art. XX GATT
 - Measure to protect the environment
 - Necessary to achieve policy's objective

- No competitiveness concern



Countervailing duties

- Remove the injury to domestic industry from prohibited subsidy (e.g. export, specific)
 - Free allocation of CO₂ permits
 - Arguably, absence of carbon regulations
- EU 2009 Directive
 - Bid-auction allocation of CO₂ permits

Technical regulations and standards

- Marking, packaging, eco-labelling... requirements on product, process or production method
 - Non-discriminatory
 - Not be more trade-restrictive than necessary to fulfil a legitimate objective
 - Use of international standards
 - e.g. ISO 14000

Carbon Facts	
Fuel Consumed	
Delivery Trucks	.02 Gal
Cooking Oats	.004 Gal
Paper	.016 Gal
Paper Consumed	
Cardboard Box	.05 lb.
Shipping Container	17 lb.

Conclusion

- Trade policy challenge
- WTO rules not adequate to fully address climate change issues





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