

Compliance of Carbon-related Border Adjustments with WTO Law

Kateryna Holzer, P 4.1 CITEL, World Trade Institute, Bern

Introduction

The phenomenon of border adjustment in international trade attracts much interest in the context of climate change.



Delay with the conclusion of a post-Kyoto global climate agreement

urges industrialized countries to start acting on climate change on their own, curbing not only domestic industrial emissions but also introducing restrictions on emissions in imported products as part of border adjustment schemes.

Background

A government intending to establish an emissions trading scheme (ETS) is likely to be concerned with the competitive disadvantages it might cause for national producers.



Production costs in countries with no emissions reduction commitments are likely to be

lower and imported products from such countries are likely to be cheaper than domestically produced products in countries cutting emissions (1).

The competition distortions might force producers to relocate their emissions-intensive production to countries with no emissions constraints, causing carbon leakage (2). Putting equivalent costs of carbon on foreign producers through border adjustment measures (BAMs) might prevent carbon leakage.

Aim

The PhD explores the compatibility of carbon-related border adjustment measures (BAMs) with the rules of the multilateral trading system of the World Trade Organisation (WTO).

Focus

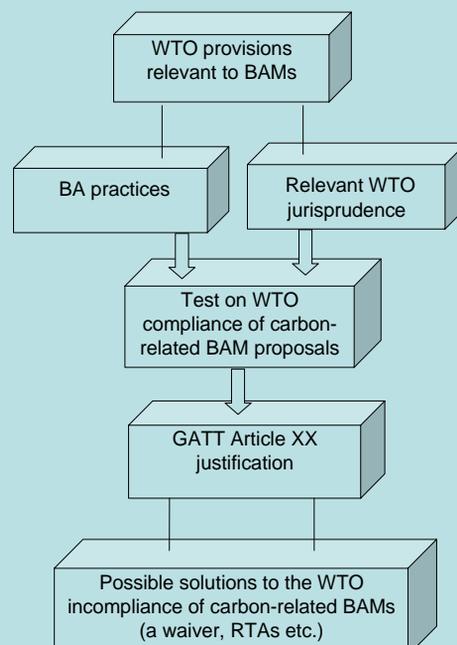
Proposals on carbon-related BAMs:

inclusion of imports into an ETS, import carbon taxes, export allowance rebates etc.



Research questions

1. Do BAMs on carbon comply with WTO substantive rules (MFN, national treatment, rules on subsidies?)
2. Can the violations of WTO rules be justified under environmental exceptions of GATT Article XX?
3. What are the solutions to the WTO incompliance of carbon-related BAMs?



Methods

The PhD will apply the legal methods of law interpretation, case analysis and reasoning to WTO legal framework on border adjustments and relevant WTO case law.

Expected outcomes

It is likely that proposals on carbon BAMs will violate WTO substantive rules, mainly, because they are imposed not on products directly but on emissions happened during the production, i.e. on process and production methods (PPMs).

PPM measures taken for legitimate public policy objectives (climate change) might be justified as exceptions under GATT Article XX (3). The PhD research will come up with a set of conditions under which justification might be possible and offer lines of argument for defence of carbon BAMs in WTO disputes.

In addition, other solutions to the WTO incompliance of carbon-related measures will be assessed (a waiver, bilateral negotiations etc.)

References

1. Janzen, B. „International Trade Law and the „Carbon Leakage“ Problem: Are Unilateral US Import Restrictions the Solution?“ *Climate Law Reporter*, Winter 2008.
2. Cosbey, A. „Border Carbon Adjustment: Key Issues“, in Cosbey A. (ed.) *Trade and Climate Change: Issues in Perspective*, Winnipeg, IISD, 2008.
3. Pauwelyn, J. „U.S. Federal Climate Policy and Competitiveness Concerns: the Limits and Options of International Trade Law“, Nicholas Institute for Environmental Policy Solutions, Duke University, April 2007.