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NAVIGATING TRADE FRAGMENTATION: LEGAL STRATEGIES FOR SOUTH ASIAN SUPPLY CHAINS UNDER WTO REGULATIONS AND GREEN TRADE BARRIERS

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ABSTRACT

Global trade has led to the emergence of green trade barriers that are policies aimed at reducing carbon emissions, but often serve as non-tariff barriers in developing countries. The most notable of them has become the Carbon Border Adjustment Mechanism (CBAM) of the European Union that has attracted a significant amount of interest in the discussion of international trade. All exporters, even in developing countries, such as India, Bangladesh and Sri Lanka must incur indirect compliance cost because of the extraterritorial impact of CBAM, although it is an internal EU regulation and not a binding rule to all nations. Due to their heavy reliance on carbon-intensive exports, these economies are under increasing pressure to comply with emission pricing and carbon disclosure standards, even if they lack the necessary financial resources and have conflicting developmental goals. This paper examines how South Asian countries can protect the supply chains and exports from new green trade barriers by implementing WTO-compliant legal strategies. It critically examines how the principle of non-discrimination in article I and III of the GATT, and the environmental exceptions in article XX of the GATT in addition to keeping in mind the principle of special and differential treatment of developing countries, are compatible with CBAM-like measures. This paper will use a doctrinal legal approach to analyze the structural issues with South Asian exporters. It suggests a series of regional and institutional policies, such as establishment of carbon certification systems, joint climate policy and improved carbon amounting systems to maintain trade residence. This paper ends by showing a roadmap on WTO based directions that the South Asian countries should embark on as they move through green trade regulations, ensuring that environmental responsibility builds up together with equitable and sustainable trade development.

KEYWORDS: Carbon Border Adjustment Mechanism (CBAM), World Trade Organization (WTO), Green Trade Barriers, South Asian Trade Policy, Sustainable Supply Chains.

I. BACKGROUND OF THE STUDY

International trade policy has grown beyond its traditional focus on opening markets in the recent years. Since globalization has made climate change a national agenda, nations are increasingly emphasizing the need to make trade undertakings sustainable. The trade measures are increasingly being employed by countries as a means of facilitating decarbonation¹, demonstrating a requirement that imported goods enter the market in order to meet the requirements of climate related measures such as carbon taxes, emission reporting requirements and sustainability certificates which are taken to promote greener production practices and to stop environment harmful practices.

As a significant result of this transition, green trade barriers have become an important regulating characteristic in the changing trade arena². Although these measures are indeed environmentally-sound, they in fact act as non-tariff barriers since they add extra costs, technical conditions and compliance requirements to foreign exporters who wish to be in the market particularly the developing countries³. The South Asian developing countries are most severely impacted by these green trade barriers. Export sectors such as steel, cement, textiles, etc. are facing increased costs due to the emission measurement, reporting and verification compliances. Countries like India, Bangladesh and Sri Lanka are facing these obstacles while simultaneously dealing with other developmental issues like industrial growth, poverty reduction, and also coping with climate change. At a global level, the expansion of climate-oriented trade policies is taking shape within a multilateral trading system, which was founded on the core principles of markets, non-discrimination and equal treatment under the GATT and WTO agreements. Whereas at the same time, with the expansion of unilateral climate related border tools, the countries are relying more heavily on general exceptions and carve-outs within trade agreements to legitimize these measures. The European Union's Carbon Border Adjustment Mechanism (CBAM) has become a prominent example of a green trade measure that is directly affecting the global commerce. By mandating the EU's carbon pricing rules for imported products, such as steel, cement, textiles, etc. into the European Union market. It is reshaping cost structures and competitiveness particularly for the producers in Asia. Yet most existing discussions relate to whether policy-oriented or economic, focuses on Europe, China

¹ European Commission. (2021). *Proposal for a Regulation establishing a Carbon Border Adjustment Mechanism*. European Union.

² Mehling, M., van Asselt, H., Das, K., Droege, S., & Verkuijl, C. (2019). Designing border carbon adjustments for enhanced climate action. *American Journal of International Law*, 113(3), 433–481.

³ Cosby, A., Droege, S., Fischer, C., & Munnings, C. (2019). Developing guidance for implementing border carbon adjustments. *Review of Environmental Economics and Policy*, 13(1), 3–22.

or Southeast Asia. The only thing that is not explored is the interaction between such instruments as CBAM and WTO rules within the framework of South Asian supply chains. The rise of green trade barriers, such as CBAM has created tension between climate-driven trade regulations and the fundamental principles of WTO like non-discrimination, market access and fair competition. Due to limited financial capacity, inadequate carbon-accounting infrastructure, the South Asian developing countries are highly affected. Therefore, this raises a critical question: how can South Asian developing countries protect their exports and also keep their supply chains stable when new environmental trade rules like CBAM from other countries are becoming stricter and apply beyond their own borders?

This paper addresses the gap by offering a region-specific legal analysis of CBAM and similar green trade barriers through lens of WTO rules, developmental constraints and trade vulnerability.

II. STATEMENT OF PROBLEM & SCOPE

i. Research Problem:

The period after the post Paris agreement has seen a significant change in the global trade governance where climate goals are increasingly overlapping with market access regulations. Environmental trade measures which include carbon pricing, emission disclosure and sustainability certifications are increasingly used by the countries as an instrument to decarbonize. Although these actions are introduced as environmentally needed, they have led to the increase of fragmentation in the trade by introducing varying standards of regulations in different jurisdictions. This fragmentation is unequal with developing countries being the biggest beneficiaries, especially those incorporated into the global supply chains that are carbon-intensive in nature.

One of the most prominent examples of this trend is the Carbon Border Adjustment Mechanism (CBAM) of the European Union that is designed as a green trade tool creating substantial non-tariff barrier impacts. CBAM has the effect of expanding the domestic climate regulations beyond the domestic market borders as it conditions the market access to adherence to the EU compatible, carbon rising and reporting standards. These measures are costly in compliance in case of the South Asian countries like India and Bangladesh, which heavily depend on export driven industries such as steel, cement and textiles. Structural constraints such as low infrastructure of monitoring, reporting, verification, lack of capital, developmental priority; such as

industrial growth and the eradication of poverty only contribute to these burdens. The core research problem examined in this paper is that whether unilateral climate-driven trade measures contribute to eco-protectionist effects that are unfairly imposed on the South Asian exporters out of proportion compared to the principles and requirements of the World Trade Organization (WTO). In particular this paper challenges the sufficiency of the current WTO provisions (especially its non-discrimination, environmental exceptions and Special and Differential Treatment) to meet the trade-distortive implications of the new green trade barriers to the growing system of fragmented trade.

This paper advances the argument that WTO's currently legal framework is insufficient in addressing the challenges possessed by environmentally motivated trade restrictions, which thereby places developing South Asian Countries at a systematic disadvantage.

ii. Objectives:

- Analyze how trade fragmentation and green trade barriers affect South Asian economies within the framework of WTO law;
- Identify WTO-compliant legal strategies that developing countries may adopt to align sustainability objectives with trade obligations;
- Assess whether existing WTO provisions sufficiently address eco-protectionist trade barriers imposed by developed economies; and
- Explore potential models of regional legal cooperation among South Asian states to promote sustainable and equitable trade.

a. Methodology Overview

This study adopts a doctrinal legal research methodology to examine the impact of green trade barriers on South Asian economies within the framework of World Trade Organization (WTO) law. The research is based on an analysis of primary legal instruments, including the General Agreement on Tariffs and Trade (GATT) 1994, particularly Articles I, III, and XX, along with relevant WTO rules governing non-discrimination and environmental exceptions. Secondary sources such as academic literature, policy reports, and institutional publications are used to support the doctrinal analysis. References to select national legal frameworks are included illustratively to contextualize developing-country responses to climate-related trade

measures. This methodological approach enables a systematic assessment of the compatibility of green trade barriers with WTO principles while accounting for sustainability and developmental considerations.

III. CONCEPTUAL FRAMEWORK

i. GREEN TRADE BARRIERS

Green trade barriers are an exclusive type of non-tariff barriers that are used to advance, environmental and climate objectives to achieve through regulatory instruments of trade these policies normally involve modern carbon pricing changes. Standards of products on the basis of life, cycle, emissions, mandatory disclosure of carbon footprints and certification duties on sustainable manufacturing of products. They do not exist as separate tariffs as the traditional ones; instead, they exist as part of national environmental or climate governance framework on a represented as general regulatory, provisions, as opposed to direct trade impediments. As a result, they work by setting technical requirements for entry into the markets like meeting admission limits, obtaining sustainability certificates or undergoing monitoring and verification, rather than changing a straightforward tariff at the border. In practical terms, such measures can substantially increase the cost of exporting, particularly for the producers in the developing countries. Compliance to the mandates, require investments and monitoring, reporting and verification bracket MRV systems, adoption of low carbon techniques and aligning with complex assessment procedures. These become regulatory burdens for countries that lack financial resources or technological infrastructure which leads to creating structural disadvantages and global trade.

Green trade barriers fall within this broad category. Although they appear to be neutral in nature and justified on environmental grounds, but the way they are designed and implemented can lead to the factor discrimination, distort, market, competition, or impose, heavy compliance costs. Developing countries feel these impacts the most as exporters do not have the regulatory systems, funding, or technology that is required to meet the high environmental standards which are demanded by the developed nations.

ii. TRADE FRAGMENTATION

Unilateral green trade measures are emerging at a time when global trading system is becoming more fragmented than ever. Traditional tariffs work through an explicit and quantifiable duty imposed on the value or volume of goods imported and are directly regulated through tariff binding commitments under GATT 1994. Non-tariff barriers refer to regulatory,

administrative, and procedural requirements such as quotas, licensing rules, technical standards, and sanitary or environmental regulations that define terms of market access without actually relying on a direct fiscal charge.

As countries implement different carbon-pricing mechanisms, reporting standards and sustainability certifications, global companies have to deal with complex network of overlapping and at times conflicting regulations. This lack of uniformity raises compliance and operational costs, shifts trade routes and often forces companies to move their production to places that better fit their supply chain goals.

The fragmentation creates both economic as well as legal challenges. Economically, this will create an uneven environment in respect of climate-trade rules that upsets competitiveness, reduces market access for carbon-intensive exporters, and widens the gap between developed countries and still industrializing regions such as South Asia. Legally, it makes the application of WTO rules more complicated because countries rely more on environmental or security exceptions to justify actions that may violate non-discrimination principles. It also heightens disputes over extraterritorial regulatory authority, the boundaries of domestic regulatory power, and the proper balance between trade liberalization and the sovereign right to pursue climate goals. Taken together, these developments make the global trading environment far less predictable for countries that rely on steady market access.

IV. GREEN TRADE MEASURES GOVERNED UNDER WTO

The key legal basis for testing the consistency of green trade barriers with international trade rules is the WTO framework. Its core rule, the Most Favoured Nation principle under GATT Article I, states that all WTO members must be treated equally. Put simply, a trade benefit extended to one country must go to all others as well. Given that green trade barriers may discriminate between countries through selective exemptions or through recognition of only certain carbon pricing systems, such trade barriers could also contravene the MFN principle. The concern is stronger where developed countries extend preferences to chosen partners and impose more onerous obligations on developing-country exporters.

National Treatment under GATT Article III precludes a country from treating imports less favorably than similar domestic products when applying taxes, regulations or other internal requirements. This means that carbon-pricing rules, emissions standards and lifecycle-based product requirements may fall under Article III if they make foreign goods more expensive to sell.

GATT Article XI, which bans quantitative restrictions, this applies when climate policies rely

on bans, quotas or other limits on trade volumes. Even non-tax policies can violate these if they impair market access.

These provisions must also be assessed collectively with Article XX of the GATT, dealing with exceptions related to the environment and health. For a policy to satisfy Article XX, a country must cloak it with one of the exemption reasons and have it pass the chapeau test, preventing abused exemption. This is why CBAM raises debate as to whether it is a genuine environmental tool or whether it unintentionally creates unfair disadvantages for developing countries.

V. LEGAL ANALYSIS OF CBAM-LIKE MEASURES UNDER WTO

1. Non-Discrimination under GATT Articles I and III

From a WTO law perspective, any Carbon Border Adjustment Mechanism (CBAM) must first be assessed under the non-discrimination rules of GATT 1994, particularly Articles I and III⁴. Article I establishes the MFN principle, under which trade advantages must be granted equally to all WTO members⁵. Where CBAM frameworks recognize only certain foreign carbon-pricing regulations or provide exemptions mainly to favoured partners, they create unequal treatment among exporters of like products⁶.

If imports from countries with recognized carbon-pricing systems get CBAM discounts, but South Asian exporters without such systems may pay the full CBAM cost, the measure creates unequal treatment among like products. This pattern closely resembles the discrimination identified in *Canada-Autos*, where tariff benefits were given to a limited group of countries, which the WTO found to violate MFN rules⁷.

Article III applies once CBAM is treated as part of the EU's internal carbon rules. Under this rule, imports must not be treated less favourably than the domestic products⁸. WTO cases like *EC-Asbestos* show that even neutral environment rules can break this rule if they put imports at a competitive disadvantage⁹. In case of CBAM,

⁴ General Agreement on Tariffs and Trade (GATT) 1994, opened for signature 15 April 1994, 1867 UNTS 187 (entered into force 1 January 1995) arts I, III.

⁵ GATT 1994, supra note 1, art I:1 ('Most-Favoured-Nation Treatment').

⁶ Ishika Garg, 'Legal Analysis of Carbon Border Adjustment Mechanism within the World's Trade Organization Framework' (2024) SSRN

⁷ Appellate Body Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/AB/R, WT/DS142/AB/R, adopted 31 January 2002, paras 84-124 (violation of GATT art I:1).

⁸ GATT 1994, supra note 1, art III ('National Treatment on Internal Taxation and Regulation').

⁹ Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, adopted 5 April 2001, paras 98-110 (Article III:4 violation justified under art XX(b)).

the main issue would be whether imports face an equivalent carbon cost once free allowances and other regulatory benefits available to EU producers are taken into account.

If domestic producers continue to enjoy free allowances or indirect compensation under the EU ETS, while the foreign producers exporting into the EU market are subject to the full CBAM charge, it leads to an unfair market competition. In such case, CBAM violates Article III :2 Article III :4, because imported goods are placed at a disadvantage.

Even though CBAM is meant to apply equally to all countries, due to the differences in regulatory capacity and data constraints can lead to unequal outcomes. As a result, South Asian exporters may face a systematic competitive disadvantage, while raising issues under both Article I (MFN) and Article III (National Treatment) of GATT 1994.

2. CBAM and Article XI: Quantitative Restrictions

Article XI:1 OF GATT 1994 bans trade restrictions like quotas, licensing systems or any other measures that limits imports or exports, except for taxes or duties¹⁰. CBAM does not directly limit the number of imports or exports to the EU market, but it does require importers to comply with strict reporting rules and buy CBAM certificates before the goods can enter the market. These requirements increase the compliance costs and discourage imports in practice.

Several scholars argue that if CBAM requirements become a burden for countries to comply with, it would act like an indirect import restriction and violate Article XI¹¹. This is a serious problem for developing South Asian countries exporting to the EU market, that face higher compliance costs which can significantly limit effective market access.

At the same time, CBAM can also be viewed as an extension of the EU's internal carbon-pricing system. If CBAM certificates are treated as charges similar to those faced by EU producers under the EU ETS, then the measure would mainly be examined under Article III. The main issue is whether CBAM simply replicates

¹⁰ Appellate Body Report, European Communities – Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, adopted 5 April 2001, paras 98-110 (Article III:4 violation justified under art XX(b)).

¹¹ Ishika Garg, *supra* note 3, 22-25 (arguing CBAM reporting as de facto restriction); *see also* Panel Report, Argentina – Import Measures, WT/DS438/R and Add.1, WT/DS444/R and Add.1, WT/DS445/R and Add.1, adopted 26 January 2015 (licensing under art XI:1).

domestic carbon rules or adds extra conditions only for imports. If it does the latter, then it would lead to violation of Article XI.

3. Justification under Article XX(b) and (g)

If CBAM is found to violate Articles I and III of GATT 1994, then the European Union is likely to reply upon the general exceptions under Article XX (b) and (g). Article XX (b) allows measures that are necessary to protect human, animal or plant life or health, which fits well with climate actions that are aimed at reducing environmental harm and protecting human well-being. Article XX (g) permits measures relating to the conservation of exhaustible natural resources, provided that they are applied alongside a comparable restriction on domestic production or consumption.

On those grounds, the EU would also have to prove, under Article XX(b), that the measure contributes significantly to the protection of life and health mainly by way of the prevention of carbon leakage and protection of the effectiveness of its internal climate policies and that no reasonably available alternative, less trade-restrictive to achieve the same degree of protection exists. If pursuant to Article XX(g), the analysis will concentrate on whether CBAM is genuinely linked to the conservation objectives, whether similar constraints are imposed on domestic producers. This again necessitates a thorough scrutiny of free allowances, indirect cost compensation, and other support mechanisms in the EU Emissions Trading System to ensure that imports are not exposed to a more severe burden of carbon responsibilities compared to the domestic product.

4. Chapeau of Article XX: Application of CBAM

Even in cases in which a measure preliminarily qualifies under Article XX(b) or (g), it has to satisfy the chapeau, which defines that a member cannot use the provisions in a way which is arbitrary or unjustifiable discrimination between members where the same situation occurs, or a disguised obstacle to international trade. This has been illustrated in the case law of the WTO, specifically in US – Shrimp and the US – Tuna cases, in which it is stated that the structure, flexibility, and administration of the law, as well as whether a country has made a genuine attempt at international cooperation, need to be considered.

Talking specifically about CBAM, chapeau factors include fixed default emissions, short transition periods, verification procedures that are unduly burdensome on small or developing country producers, and the treatment of "equivalent" carbon pricing mechanisms that gives preferential treatment to certain trade partners. On the other

hand, use of fixed or installation-level emissions, taking into account different climate policies that produce similar effects, providing assistance to developing country exporters, as well as transparent governing frameworks are CBAM elements that would make the case that a negative trade impact is based on a legitimate non-discrimination rather than arbitrary discrimination.

5. PPMs (Process and Production Methods), Extraterritorial Effects and WTO Law

CBAM squarely implicates the longstanding debate on Process and Production Methods (PPMs), given that it distinguishes products according to the associated greenhouse gas emissions of their production process rather than physical product features. The relevant WTO jurisprudence has long stepped away from any categorical prohibition of PPM-based measures. In *US – Shrimp*, the Appellate Body accepted that states may condition market access on foreign production methods in order to protect global environmental goods, provided such measures are designed and applied in a non-discriminatory and flexible manner. The subsequent *US – Tuna* disputes further indicate that PPM-based regulatory conditions are not inherently inconsistent with WTO law, but must avoid unjustifiable discrimination and ensure evenhanded compliance pathways.

From an extraterritoriality perspective, CBAM unquestionably affects production decisions beyond the regulating state, since market access is conditioned on the reduction of embedded emissions. WTO law does not contain an absolute prohibition against measures with extraterritorial effects, but panels have shown concern where such measures amount to coercive attempts at exporting domestic regulatory models in the absence of appropriate multilateral engagement. A CBAM that is accommodating of diverse but equivalent climate policies, allows for tailored compliance mechanisms, and is nested within broader co-operative climate frameworks is more likely to be considered a legitimate response to carbon leakage. Conversely, a rigid and one-size-fits-all CBAM that succeeds in forcing trading partners-particularly developing economies with limited regulatory capacity-to adopt the EU's regulatory preferences would heighten concerns of far-reaching extraterritorial regulation and increase the prospects of incompatibility with Articles I, III, XI, and XX of GATT 1994.

VI. CONCLUSION

The growing use of green trade barriers such as the Carbon Border Adjustment Mechanism (CBAM), a tool of the European Union, is a sign of a paradigm shift in how the aim of the environment is pursued as a matter of trade law. Even though climate mitigation remains a necessary goal, the use of the borders-for-climate solution undermines the inherent structural problems that exist within the WTO regime, especially for developing regions such as South Asia.

This article has shown that CBAM-type mechanisms, while seeming neutral, significantly affect South Asian exporters. The uniform application of carbon pricing obligations on non-homogeneous economies is prone to violating the non-discrimination norm enshrined in the GATT Rules, specifically Articles I and III. Additionally, the reporting, verification, and certification cost burdens of carbon emissions might exert a trade barrier effect, thus violating Article XI provisions. Invariably, such regimes are set to impose a penalty on exporters not for pollution per se, but for lack of capacity to cope with regulatory standards.

Despite the presence of environment exceptions under Article XX of GATT, it is evident that under WTO jurisprudence, such exceptions are not unconditional. The chapeau of Article XX: it requires good faith and also calls for flexibility and true multilateral co-operation. An ambitious CBAM that leans heavily on fallback GHG emissions, has short transition periods, with particularized treatment of carbon regimes, is likely to fall short of the chapeau requirements. Failure to provide adequate consideration for developing country circumstances may result in green trade measures extending arbitrary discrimination disguised as a limitation on international trade, as set forth in the MFN prescription.

The problem for South Asian economies is not one of resisting regulatory control but of challenges to the unfair application of that control. There is a need to address carbon accounting but merely solving that problem is not a solution. The issue is that sustainability standards, without having enforceable flexibility will likely reinforce current trade inequalities instead of fixing them. There is a need to address sustainability standards by applying Special and Differential Treatment to the issue of sustainability within trade in the WTO. The legitimacy of a rules-based trade regime cannot be guaranteed when the environment is managed in such a way that developing nations are discriminated against when it comes to past emissions. The relationship between ambition on climate change and trade is a balance that has to be adjusted with regard to green trade instruments.