INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

BEYOND CONFRONTATION: INDIA'S STRATEGIC RESPONSE TO THE EUROPEAN UNION'S CARBON BORDER ADJUSTMENT MECHANISM

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Abstract

The European Union's Carbon Border Adjustment Mechanism, formally established under Regulation (EU) 2023/956, marks a significant turning point in the international economic order. By imposing a carbon equivalent charge on imports of designated goods, the Mechanism extends the regulatory reach of the European Union beyond its territorial boundaries and effectively conditions market access upon compliance with European carbon pricing standards. For India, the operational consequences are substantial. Carbon intensive export sectors face heightened compliance costs, methodological asymmetries, and structural disadvantages arising from the under developed state of domestic monitoring, reporting, and verification infrastructure. This paper examines India's strategic options in responding to the Mechanism through three interrelated dimensions: the doctrinal feasibility of a challenge before the World Trade Organization, the calibration of domestic carbon pricing instruments toward eventual recognition of equivalence, and the multilateral pursuit of climate justice grounded in the principle of common but differentiated responsibilities and respective capabilities. Drawing on emerging empirical data from the CBAM transitional phase, it is argued that a confrontational litigation strategy is unlikely to yield strategic gains, and that India's most viable pathway lies in a calibrated approach that combines domestic regulatory deepening, reciprocal engagement on climate finance, and coordinated diplomatic action through coalitions such as BASIC and the Like Minded Group of Developing Countries. The paper concludes by proposing a five point strategic framework designed to convert India's compliance burden into a structurally reciprocal arrangement, thereby preserving market access while advancing equity based reform of the international climate trade regime.

Keywords: Carbon Border Adjustment Mechanism; India; World Trade Organization; Common But Differentiated Responsibilities; Carbon Credit Trading Scheme; Monitoring,

ISSN: 2582-6433

Reporting and Verification; International Trade Law; Climate Justice.

1. Introduction

The European Union's Carbon Border Adjustment Mechanism (the "Mechanism" or "CBAM"), formally established under Regulation (EU) 2023/956 of 10 May 2023, represents a defining moment in the evolution of international climate governance.[1] By imposing a carbon equivalent charge on imports of designated goods, the Mechanism extends the regulatory reach of the European Union beyond its territorial boundaries and conditions market access upon compliance with European carbon pricing standards. Its declared objective is to prevent carbon leakage and equalise competitive conditions between European producers operating under the European Union Emissions Trading System and producers operating in jurisdictions with less stringent climate regimes.[2]

For India, the operational implications of the Mechanism are particularly significant. India is among the largest exporters to the European Union of products falling within the initial scope of CBAM, including iron and steel, aluminium, fertilisers, and cement.[3] According to the Global Trade Research Initiative, approximately seven to eight billion United States dollars of annual Indian exports will be affected during the initial phase of CBAM implementation.[4] The Indian Council for Research on International Economic Relations has further estimated that compliance costs for Indian exporters may rise by twenty to thirty five per cent, depending on the emissions intensity of the affected sectors and the maturity of their monitoring, reporting, and verification ("MRV") infrastructure.[5]

The doctrinal and policy question that India confronts is therefore not whether to respond to the Mechanism, but how. A confrontational response through the World Trade Organization is doctrinally available, since the Mechanism may potentially be challenged under Articles I, III, and XI of the General Agreement on Tariffs and Trade 1994. A more cooperative response involves the calibration of domestic carbon pricing instruments to qualify for the equivalence provisions built into the Mechanism itself. A third response, longer in horizon but doctrinally consequential, involves the multilateral pursuit of climate justice through coalitions of developing economies that share India's structural exposure.

This paper examines these three strategic dimensions. Part 2 considers the structural vulnerability of Indian export sectors to CBAM, drawing on empirical data from the transitional phase. Part 3 evaluates the doctrinal feasibility of a WTO challenge, with particular attention to the cautionary precedent of *India – Certain Measures Relating to Solar Cells and Solar Modules*. Part 4 examines the institutional architecture of India's Carbon Credit Trading

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Scheme and identifies the regulatory gaps that limit its credibility as a basis for equivalence recognition. Part 5 evaluates India's negotiating posture within multilateral fora and the doctrinal foundations of the CBDR-RC defence. Part 6 develops a five point strategic framework that situates India as a proactive participant rather than a passive regulatory recipient.

2. The Structural Vulnerability of Indian Exports to CBAM

India's exposure to the Mechanism arises from the combined operation of several structural factors: the concentration of Indian exports in carbon intensive sectors, the high emissions intensity of those sectors relative to European benchmarks, and the under developed state of the institutional infrastructure required to demonstrate compliance.

The transitional phase of CBAM, which commenced on 1 October 2023, requires importers to submit quarterly reports on the embedded emissions of designated imported goods.[6] From 1 January 2026, importers will be required to purchase CBAM certificates corresponding to those emissions, with prices linked to the closing prices of EU ETS allowances. The Mechanism therefore extends European carbon pricing standards indirectly into foreign jurisdictions through the medium of trade.[7]

Empirical evidence from the transitional phase illustrates the magnitude of the regulatory exposure India confronts. According to a study commissioned by the Foundation for European Progressive Studies in collaboration with the National Institute of Public Finance and Policy, India will face an effective duty of approximately one hundred and seventy three euros per tonne on steel exports to the European Union once the definitive regime becomes operative in 2026.[8] This figure represents an additional cost equivalent to roughly sixteen per cent of the unit value of Indian steel exports at 2022 prices. Sectoral analysis by the Global Trade Research Initiative further indicates that India's steel and aluminium exports to the European Union declined by approximately twenty four per cent during the financial year 2024 to 2025, with steel alone contracting by thirty five per cent, even before the imposition of definitive CBAM certificates.[9]

Major Indian producers have begun adjusting their commercial strategies in anticipation of the definitive regime. Tata Steel Limited and JSW Steel Limited, which together account for over thirty per cent of India's steel exports to the European Union, have adopted internal carbon pricing mechanisms, executed long term power purchase agreements for renewable electricity, and undertaken substantial investments in scrap based electric arc furnaces.[10] Hindalco Industries Limited has instituted an internal shadow carbon price specifically to manage

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CBAM related transition risk in its aluminium operations.[11]

Geographically, the impact is concentrated within Odisha, which contributes approximately twenty five per cent of India's total steel output, alongside the industrial corridors of Jharkhand, Chhattisgarh, Gujarat, Maharashtra, and Karnataka.[12] The structural problem is intensified for micro, small, and medium enterprises engaged in downstream production. Such enterprises typically lack both the capital resources to invest in low carbon production technologies and the institutional capacity to engage European accredited verifiers for embedded emissions certification. Modelling by the Boston Consulting Group has projected that Indian steel exporters will face cumulative cost increases of approximately thirty two per cent by 2032, the steepest among major exporting nations. This is principally due to India's continued reliance on the blast furnace and basic oxygen furnace production route, which generates emissions intensity averaging approximately two and a half tonnes of carbon dioxide per tonne of steel as against the European benchmark of approximately one point three seven tonnes.[13]

The cumulative consequence is that India confronts a regulatory exposure that is not merely commercial but structural, intersecting with the broader question of how a developing economy with limited fiscal capacity may participate in a low carbon transition coordinated through the architecture of international trade.

3. The Limits of WTO Litigation as a Strategic Response

A challenge before the World Trade Organization presents itself as a doctrinally available response. The Mechanism may potentially be challenged under Articles I, III, and XI of the General Agreement on Tariffs and Trade 1994 on grounds of discriminatory treatment between trading partners, less favourable treatment of imported goods relative to like domestic goods, and the imposition of trade restrictive measures inconsistent with the European Union's tariff commitments.[14] The European Union's first formal exposure to such a challenge has already materialised through the consultations requested under WTO Doc. WT/DS639/1, indicating that the doctrinal question is now operationally rather than theoretically posed.[15]

The analysis advanced here, however, suggests that a confrontational litigation strategy is unlikely to yield strategic gains. Three considerations support this conclusion.

First, the WTO jurisprudence on environmental measures, particularly the decisions in *United States - Standards for Reformulated and Conventional Gasoline*, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, *European Communities - Measures Affecting Asbestos and Asbestos Containing Products*, and *Brazil - Measures Affecting Imports of Retreaded Tyres*, demonstrates that the Appellate Body has consistently shown willingness

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to uphold environmental measures under Article XX of the GATT 1994, provided that they are applied in a non arbitrary and non discriminatory manner.[16] The European Union has invested substantial regulatory effort in calibrating CBAM to satisfy Article XX requirements, including transitional flexibility, methodological openness to actual verified emissions, and parallel obligations on domestic producers under the EU ETS.[17]

Second, the cautionary precedent of *India - Certain Measures Relating to Solar Cells and Solar Modules* is doctrinally instructive. In that dispute, the Appellate Body affirmed the Panel's finding that India's domestic content requirements under the Jawaharlal Nehru National Solar Mission breached Articles III:4 of the GATT 1994 and 2.1 of the TRIMs Agreement, notwithstanding India's invocation of environmental and energy security justifications under Articles XX(d) and XX(j).[18] The litigation consumed substantial diplomatic and financial resources over a four year period, ultimately requiring India to amend its domestic procurement framework while the underlying solar deployment trajectory remained largely unaffected. The structural inference is significant: even a doctrinally meritorious challenge against a unilateral climate trade instrument does not arrest the underlying regulatory transformation it sets in motion.

Third, the procedural fragility of the WTO Dispute Settlement Mechanism following the impairment of the Appellate Body since 2019 renders any contested CBAM challenge practically dependent on the Multi Party Interim Appeal Arbitration Arrangement under Article 25 of the Dispute Settlement Understanding.[19] India, which has not joined the Arrangement, would therefore confront procedural fragility before achieving any substantive vindication. Even if a Panel ruled in favour of India on certain doctrinal grounds, the absence of a fully functional appellate mechanism creates the prospect of prolonged uncertainty, with the European Union likely to maintain operational implementation pending resolution.

These three considerations cumulatively suggest that the broader structural transition toward carbon linked trade regulation would likely continue irrespective of the outcome of any individual dispute.[20] A litigation centred strategy, while doctrinally defensible, is unlikely to address the underlying industrial decarbonisation imperatives now reshaping global supply chains.

4. India's Carbon Credit Trading Scheme and the Question of Equivalence

A more strategically promising pathway lies in the calibration of India's domestic carbon pricing instruments toward eventual recognition of equivalence under European Union procedures. The doctrinal basis for such an approach lies in the design of CBAM itself, which

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permits deductions from CBAM certificate obligations for carbon prices effectively paid in third countries.[21]

The principal Indian regulatory instrument in this regard is the Carbon Credit Trading Scheme, notified in the Gazette of India in June 2023 pursuant to Section 14AA of the Energy Conservation (Amendment) Act, 2022.[22] The Scheme establishes a compliance market in which Designated Consumers in specified energy intensive sectors receive emissions intensity targets and may either receive Carbon Credit Certificates for over compliance or be required to purchase Certificates to meet deficit positions. The Phase 1 sectors include aluminium, cement, chlor alkali, fertilisers, iron and steel, pulp and paper, petroleum refining, petrochemicals, and textiles, substantially overlapping with the sectors initially covered by CBAM.[23]

The institutional architecture of the Scheme involves multiple Indian regulatory bodies. The Bureau of Energy Efficiency, designated under Section 14AA of the Energy Conservation Act, is responsible for issuance of Carbon Credit Certificates. The Central Electricity Regulatory Commission provides regulatory oversight of trading and market design, while the Grid Controller of India operates the registry and clearing functions. Strategic oversight is exercised by the National Steering Committee for the Indian Carbon Market.[24]

Notwithstanding the institutional ambition of the Scheme, several structural gaps remain that limit its credibility for purposes of equivalence determination under CBAM. The first such gap concerns methodological orientation. The existing architecture is predominantly intensity based rather than absolute emissions based, reflecting its origin in the Perform, Achieve and Trade Scheme administered by the Bureau of Energy Efficiency.[25] CBAM, by contrast, operates on the basis of installation level absolute emissions, requiring a methodological transition that has not yet been fully accomplished within the Indian framework.

The second gap concerns institutional accreditation. India lacks a domestic accreditation body recognised by the European Commission's CBAM Authority for verifier accreditation, with the consequence that Indian exporters must currently rely on verifiers accredited under foreign national accreditation bodies. This represents a structural impediment with significant cost implications, particularly for medium sized exporters lacking the financial resources to engage international verifiers.[26]

The third gap concerns interoperability with international reporting frameworks. The absence of a national emissions registry interoperable with the Paris Agreement's Enhanced Transparency Framework under Article 13 restricts India's capacity to demonstrate methodological comparability at the international level.[27] This gap is particularly significant given that the European Union's equivalence assessment is likely to depend on the availability

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of verifiable, comparable, and independently validated emissions data.

The fourth gap concerns the absolute level of the domestic carbon price. Whereas the EU ETS allowance price has typically ranged between sixty and eighty euros per tonne of carbon dioxide during the period 2022 to 2024, initial estimates suggest that the Indian Carbon Credit Certificate price is unlikely to exceed ten United States dollars per tonne in its initial operational phase.[28] This price differential limits the magnitude of deduction available under the CBAM framework and consequently the practical economic benefit of equivalence recognition.

Addressing these four gaps will require coordinated regulatory deepening across multiple dimensions. Legislative amendment must broaden the scope of domestic accreditation under the National Accreditation Board for Certification Bodies. Operational integration is required between the Ministry of Environment, Forest and Climate Change and the Ministry of Power. The development of a unified national emissions registry, interoperable with the Enhanced Transparency Framework, is essential to establishing the data foundation upon which equivalence determinations may rest.

5. Climate Justice and the CBDR-RC Doctrine

The doctrinal foundation for India's multilateral engagement on carbon border measures lies in the principle of common but differentiated responsibilities and respective capabilities, articulated in Articles 3.1 and 4.7 of the United Nations Framework Convention on Climate Change and Article 2.2 of the Paris Agreement.[29] The principle recognises that all states bear a shared responsibility for addressing climate change, but according to their differing historical contributions to cumulative greenhouse gas emissions and their differing present day capacities to undertake mitigation and adaptation measures.

The doctrinal significance of CBDR-RC has been progressively elaborated through successive Conferences of the Parties. The Paris Agreement marked a doctrinal shift from the binary Annex I and non Annex I categorisation of the Kyoto Protocol toward a more nuanced framework based on Nationally Determined Contributions, while preserving the underlying equity logic of differentiation. Scholarly literature has characterised this evolution as a transition from prescriptive differentiation toward facilitated differentiation, in which equity is operationalised through procedural mechanisms rather than substantive obligations alone.[30]

Carbon border measures applied without proportionate transition support to developing economies risk inverting these equity principles by transferring adjustment costs to the very economies that contributed least to historical cumulative emissions and possess the least fiscal

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capacity to absorb them. The Alliance of Small Island States, the Like Minded Group of Developing Countries, and the African Group have repeatedly emphasised this asymmetry in their submissions to the UNFCCC, characterising unilateral carbon trade measures as inconsistent with the equity principles enshrined in the climate treaties.[31] The South Centre has similarly argued that CBAM style mechanisms generate de facto discrimination against foreign producers, particularly those from developing economies, and may operate as a form of green protectionism disguised as environmental regulation.[32]

India's negotiating position has consistently reflected this equity grounded perspective. Submissions before recent Conferences of the Parties at Dubai and Baku have emphasised that unilateral climate trade measures must not undermine the differentiated obligations recognised under international climate law.[33] At the operational level, the Government of India has articulated a strategy of pursuing CBDR-based flexibility within multilateral fora rather than direct confrontation through dispute settlement.[34]

This negotiating posture finds doctrinal support in the architecture of international climate law itself. Articles 9, 10, and 11 of the Paris Agreement collectively impose obligations on developed country Parties to provide financial resources, technology transfer, and capacity building assistance to developing country Parties.[35] Operationally, this entails strategic engagement with multilateral climate finance institutions, including the Green Climate Fund, the Global Environment Facility, and the recently operationalised Loss and Damage Fund established at the Twenty Eighth Conference of the Parties at Dubai pursuant to Decision 1/CP.28.[36]

The doctrinal connection between CBDR-RC and CBAM equivalence is therefore not merely rhetorical. It provides the normative foundation for an Indian negotiating posture that links the granting of regulatory equivalence under CBAM to verifiable commitments by the European Union for technology transfer and financial assistance, thereby converting a passive compliance burden into a strategically reciprocal arrangement.[37]

6.A Strategic Framework: Five Complementary Initiatives

Drawing on the foregoing analysis, this paper proposes a five point strategic framework for India's response to CBAM. The framework reflects a paradigm of measured alignment, combining domestic regulatory deepening with multilateral engagement and reciprocal diplomatic action, rather than confrontational litigation or passive compliance.

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6.1 Domestic Regulatory Deepening

The first initiative involves strengthening the Carbon Credit Trading Scheme through expansion of its sectoral scope, the introduction of installation level absolute emissions accounting, and the establishment of a domestic accreditation framework for verifiers recognised under the European Commission's CBAM Authority procedures.[38] This requires legislative amendment to broaden the scope of accreditation under the National Accreditation Board for Certification Bodies, and operational integration between the Ministry of Power, the Ministry of Environment, Forest and Climate Change, and the Bureau of Energy Efficiency. A useful precedent exists in the institutional architecture of the EU ETS itself, which combines technical implementation by Member State authorities with overarching coordination by the European Commission.

6.2 Multilateral Engagement Within the WTO Framework

The second initiative involves formalising India's participation within the Trade and Environmental Sustainability Structured Discussions and engaging actively within the WTO Committee on Trade and Environment, where India's position as a leading developing country economy can shape emerging interpretative guidance.[39] India is currently not a participating member of TESSD but maintains observer status. Conversion to participating member status would enable India to influence the development of multilateral guidance on methodologies for measuring embedded greenhouse gas emissions, thereby shaping the doctrinal framework against which carbon border measures will eventually be assessed.

6.3 Bilateral Negotiation Through the EU-India Free Trade Agreement

The third initiative involves leveraging the ongoing India-European Union Free Trade Agreement negotiations, which have been under active consideration since 2022, to secure differentiated transitional arrangements for Indian exporters. These could include extended compliance timelines, MSME carve outs, and recognition of domestic MRV equivalence, thereby providing structured relief from the compliance burden imposed during the early years of the definitive CBAM regime.[40]

6.4 Plurilateral Coordination With Other Affected Economies

The fourth initiative involves integrating carbon equivalence considerations into bilateral and plurilateral arrangements with other CBAM exposed economies, particularly China, Brazil, South Africa, Türkiye, and the members of the Association of Southeast Asian Nations.[41] These

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countries collectively account for a substantial proportion of CBAM covered imports into the European Union, and coordinated negotiating positions, shared technical infrastructure, and joint capacity building initiatives may yield greater collective bargaining power than individual action. The BASIC grouping of Brazil, South Africa, India, and China provides an established platform for such coordination.[42]

6.5 Strategic Linkage With Climate Finance and Technology Transfer

The fifth initiative involves explicitly linking the granting of regulatory equivalence under CBAM to verifiable commitments by the European Union for technology transfer and financial assistance under Articles 9 and 10 of the Paris Agreement.[43] This approach transforms India's negotiating posture from one of seeking exemption from a compliance burden to one of demanding reciprocal obligations consistent with the architecture of international climate law. The recently operationalised Loss and Damage Fund, the Green Climate Fund, and the Sovereign Green Bond framework introduced by the Reserve Bank of India in 2022 collectively provide potential channels for the operationalisation of such reciprocal arrangements.[44]

7. Conclusion

The European Union's Carbon Border Adjustment Mechanism marks a structural transformation in the international economic order, in which climate regulation, trade governance, and industrial policy increasingly operate as integrated rather than separate domains. For India, the operational consequences are substantial, and the regulatory exposure cannot be addressed through any single instrument or strategy.

The analysis advanced in this paper suggests that a confrontational litigation strategy through the World Trade Organization is unlikely to halt the momentum of carbon linked trade regulation, even in the event of a doctrinally favourable outcome. The institutional fragility of the WTO Dispute Settlement Mechanism following the impairment of the Appellate Body, combined with the substantial regulatory effort the European Union has invested in calibrating CBAM to withstand Article XX scrutiny, render litigation a strategically suboptimal pathway. The cautionary precedent of *India - Solar Cells* further indicates that successful litigation against a unilateral climate trade instrument does not necessarily arrest the underlying regulatory transformation.

A more promising pathway lies in the calibration of India's domestic carbon pricing instruments toward eventual recognition of equivalence under CBAM procedures, combined with

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multilateral engagement grounded in the principle of common but differentiated responsibilities and respective capabilities. The architecture of the Carbon Credit Trading Scheme provides an institutional foundation upon which methodological deepening, sectoral expansion, and equivalence oriented reform may be progressively built. The pursuit of climate justice through coalitions such as BASIC, the Like Minded Group of Developing Countries, and the African Group provides a complementary multilateral track.

The five point strategic framework proposed in this paper situates India as a proactive participant in the emerging architecture of climate trade regulation rather than a passive regulatory recipient. By combining domestic regulatory deepening, multilateral engagement, bilateral negotiation, plurilateral coordination, and strategic linkage with climate finance, India may convert a structural compliance burden into a strategically reciprocal arrangement consistent with the equity principles enshrined in international climate law.

The harmonisation of carbon accounting norms is therefore not merely a technical exercise. It engages fundamental questions of institutional legitimacy, distributive equity, and global climate justice. The trajectory of India's response to CBAM will shape not only the immediate commercial fortunes of Indian exporters but also the broader question of whether the international legal order can construct frameworks of carbon governance that simultaneously discharge climate ambition, preserve non discrimination in trade, and respect the differentiated capacities of developing economies.

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