



International Trade and Climate Change

UNFCCC and International Trade

Article 3 of the Framework Convention on Climate Change lists the “principles” on which the framework convention is based. **Paragraph 1** enunciates the basic principle of “common but differentiated responsibilities” underlying the Convention. It reads:

“The Parties should protect the climate system...on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.”

The Convention notes in the preamble that the “largest

Executive Summary

The Waxman - Markey bill recently passed by the U.S. House of Representatives envisages certain measures to restrict carbon dioxide emissions and requires the president to levy a charge on imports of carbon-intensive products from countries that do not adopt similar climate change measures. U.S. importers would have to buy carbon “allowances” for such products, purportedly for maintaining a level playing ground between domestic and overseas producers. The bill is directed particularly against emerging economies such as China, India, Brazil and South Africa. Similar calls for countervailing border levies have been sounded in the European Union, mostly stridently by President Sarkozy of France.

A considerable body of literature already exists on the question of whether such unilateral trade restrictive measures are compatible with the WTO regime. There are advocates of both sides of the case; the mainstream view appears to be that compatibility is doubtful. In contrast, little attention has been paid in the literature to the question of the compatibility of the proposed unilateral trade restrictions with the universally accepted UN Framework Convention on Climate Change (UNFCCC), even though the answer to this question will be relevant in any future dispute settlement procedure in the WTO.

This policy brief examines the question whether the proposed measures are consistent with the UNFCCC. It comes to the conclusion that proposals for unilateral measures to restrict imports from developing countries contravene the principles and provisions of the UN Framework Convention on Climate Change, in particular, Articles 3.1, 3.5, and 4.7 read with 4.2, 4.3 and 4.5.

share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs". The excessively high atmospheric concentrations of greenhouse gases which have led to climate change have originated mainly in the developed countries. They are, therefore, primarily "responsible" for causing climate change and must take corresponding mitigation actions. Moreover, the developed countries possess much greater financial and technological resources, or "capability" for undertaking mitigation actions. Thus, the principle of common but differentiated responsibilities makes it clear that developing countries cannot be required to undertake similar mitigation measures as developed countries.

By failing to differentiate between developed and developing countries, the Waxman-Markey bill (and similar protectionist calls in the European Union) violates one of the basic principles of the UN Framework Convention on Climate Change.

Article 3, paragraph 5 of the Framework Convention deals specifically with trade and climate change.

"The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade" [emphasis added].

The paragraph provides an interpretation of WTO regulations in the specific context of the global response to climate change. In this context, it emphasizes the need to avoid trade restrictive measures affecting developing countries, since such measures would undermine their ability to address the

problems of climate change. The impacts of climate change will fall most heavily on developing countries since they lack the financial, technological and human resources necessary for adaptation. They must develop rapidly in order to build up their adaptive capacity and, thereby, address the problems of climate change in an effective manner. Unilateral trade restrictive measures against developing countries, including countervailing border measures, cannot be justified on grounds of combating climate change.

Article 4 lays down the differentiated commitments of the developed and developing country Parties, respectively. Paragraph 1 enumerates certain general obligations applicable to all Parties, including developing countries. All Parties are required to implement "*programmes containing measures to mitigate climate change*" but there is no reference in this clause to quantified targets. Parties are required to implement these general commitments in accordance with the principle of common but differentiated responsibilities.

Furthermore, the Convention specifically reiterates Principle 11 of the Rio Declaration on Environment and Development, recognizing in its preamble that "*environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries*".

Thus, developing countries are not expected to implement the general commitments set out in paragraph 1 to the same extent as developed countries, nor are they required to adopt similar priorities, standards or management objectives – in a word, policies and measures.

Subsequent paragraphs introduce additional elements of differentiation between developed and developing country Parties in respect of mitigation, as well as finance and technology. Thus, **paragraph 2** lays down *additional* mitigation commitments applicable *only* to developed countries (Annex I Parties), in the form

of quantified, time-bound emission stabilization and reduction targets. Developing countries are *not* expected to take similar measures. If a developed country decides to adopt certain regulations or controls with a view to implementing its mitigation commitments under the Convention, it has no right to insist that a developing country should also enforce similar regulations or controls. This would constitute a violation of the Convention. Yet, this is precisely the intention of the Waxman-Markey bill.

Paragraph 3 requires developed country parties listed in Annex II to provide “new and additional” “financial resources, including for the transfer of technology, needed by the developing country Parties that are covered by paragraph 1 of this Article...” **Paragraph 5** requires the developed country Parties included in Annex II to “take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country parties to enable them to implement the provisions of the Convention.” It will be seen that developing countries are not required to implement mitigation measures involving incremental costs, including those involved in technology transfer, unless these are fully covered through financial resources contributed by the developed countries listed in Annex II. Thus, these paragraphs introduce a further element of differentiation between developed and developing countries. Implementation of the common obligations set out in paragraph 1 is *conditional*, in the case of developing countries, to their receiving adequate support from developed countries to an extent covering “agreed full incremental costs, including for the transfer of technology”.

This is spelt out in specific terms in **paragraph 7**, which reads as follows:

“The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first

and overriding priorities of the developing country Parties.”

The Waxman-Markey bill, if implemented, would have the effect of compelling developing countries to implement measures that are not a requirement for them under the Convention, or else to bear financial consequences laid down by the bill. This would violate the provisions of Article 4, which exempts developing countries from uncompensated mitigation actions involving incremental costs. The bill seeks to shift the financial burden of such costs, including costs involved in technology transfer, from the shoulders of the Annex II developed countries to those of developing countries, in contravention to the provisions of the Convention.

Conclusion

The UN Framework Convention on Climate Change seeks to protect the climate system on the basis of the principle of “common but differentiated responsibilities and respective capabilities” of Parties. Climate change is result of excessively high levels of greenhouse gas concentrations in the atmosphere; and since these have originated mostly in the industrialized countries, the developed countries are mainly responsible for causing climate change. The developed countries also possess much greater financial and technological resources for addressing climate change. The Convention, therefore, draws a clear distinction between the commitments of the developed and developing countries, respectively. Unilateral trade restrictive measures, purportedly aimed at protecting the climate system, would violate the principles and provisions of the Convention to the extent that they adversely affect developing countries.

Note: This policy brief is written by C. Dasgupta, Distinguished Fellow, Tata Energy Research Institute of India.



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