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...
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 stabiliza-
and reduction targets. Developing coun-
tries are not expected to take similar measures.
If a developed country decides to adopt certain
regulations or controls with a view to imple-
menting its mitigation commitments under the
Convention, it has no right to insist that a de-
veloping country should also enforce similar
regulations or controls. This would constitute a
violation of the Convention. Yet, this is pre-
cisely 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 devel-
oped 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 mitiga-
tion measures involving incremental costs, in-
cluding those involved in technology transfer,
unless these are fully covered through financial
resources contributed by the developed coun-
tries 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 ade-
quate support from developed countries to an
extent covering “agreed full incremental costs, in-
cluding 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 commit-
ments under the Convention will depend on the ef-
fective 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 imple-
mented, 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 conse-
quences laid down by the bill. This would
violate the provisions of Article 4, which ex-
empts developing countries from uncompen-
sated mitigation actions involving incre-
mental costs. The bill seeks to shift the finan-
cial burden of such costs, including costs in-
volved in technology transfer, from the shoul-
ders of the Annex II developed countries to
those of developing countries, in contraven-
tion 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. Cli-
mate change is result of excessively high lev-
els of greenhouse gas concentrations in the
atmosphere; and since these have originated
mostly in the industrialized countries, the de-
veloped countries are mainly responsible for
caus ing climate change. The developed coun-
tries also possess much greater financial and
 technological resources for addressing cli-
mate change. The Convention, therefore,
draws a clear distinction between the com-
mitsments of the developed and developing
countries, respectively. Unilateral trade re-
strictive measures, purportedly aimed at pro-
tecting the climate system, would violate the
principles and provisions of the Convention
to the extent that they adversely affect devel-
oping countries.

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