



International agreement on elaborating and applying border carbon adjustment

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ENTWINED Policy seminar, Stockholm, Oct 20, 2011

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Overview

- Guidance: What and why?
- Starting points, definitions
- Guidance:
 - scope of application
 - determining adjustment
 - use of revenues
 - Governance
- What is the value of this exercise? What role for such agreements?

Guidance on Good Practice: What and Why?

- BCA is likely to remain a divisive and current topic for some time, and will probably eventually be implemented.
- Enormous potential for damage if done badly
- Multi-stakeholder small group of experts
- Our goal:

BCA should be formulated and carried out in a manner that is effective in reducing global GHG emissions, effective in achieving its intended goals at the national level, transparent, and coherent with the principles of the multilateral system of trade, the principles of the multilateral climate change regime and other internationally agreed principles and objectives..

Small group members:

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Starting points

- (Caveat: this is draft material for now)
- BCA is a fall back – second best measure
- First best is international agreement that defines appropriate levels of national action
- BCA needs to be judged against alternatives using full set of criteria: economic effectiveness, environmental performance, political impacts, social impacts

Definitions

- BCA: border measures to level playing field vs. foreign producers facing lower costs of regulation.
- Motivations for BCAs (in concert with climate policies):
 - Preventing leakage: increase in emissions in other jurisdictions as a result of domestic climate policies. Preventing leakage is the only motivation we accept as appropriate.
 - Competitiveness concerns: loss of production and related jobs from relocation, diversion of investment.
 - Leverage: bringing economic pressure on other countries to take climate action.

Scope of applicability: Exemptions

Exemptions	Global envl effectiveness	National policy effectiveness	Feasibility	Policy coherence	Good governance
Party to multilateral agreement	risk that "leverage" may backfire; need trans-shipment provisions		difficult to define what is an adequate agreement, who is in compliance	creates problems with GATT MFN obligation	
National emissions cap	no risk of leakage; need trans-shipment provisions	may allow for <i>sectoral</i> leakage, even if not global	if equivalent action allowed, difficult to calculate effects	creates problems with GATT MFN obligation; probably saved by GATT Art. XX	
Adequate national action	leakage not prevented; need trans-shipment provisions		difficult to define what is adequate action	can be defined so as to respect CBDR, SDT creates problems with GATT MFN obligation	lack of predictability stems from difficulty defining adequate action
Sectoral emissions cap	no risk of leakage; need trans-shipment provisions		if equivalent action allowed, difficult to calculate effects		
LDCs and LICs	probably minimal impact from exempting them; need trans-shipment provisions		fewer countries makes it administratively simpler	creates problems with GATT MFN obligation creates coherence with CBDR, S&DT	
Minimal trade volumes (sector/good)	minimal impact from exempting		fewer goods/sectors makes it administratively simpler		
Exempted by administration (country)	uncertain impacts - depends on amount of emissions covered; needs trans-shipment provisions	uncertain impacts - depends on amount of emissions covered	fewer countries makes it administratively simpler	creates problems with GATT MFN obligation	lacks predictability, transparency

Scope of applicability: Exemptions

We recommend exemptions for:

- Countries with a national emissions cap (with trans-shipment provisions);
- Countries taking adequate national actions other than caps (with trans-shipment provisions);
- Sectors covered by a sectoral cap, or by some equivalent measures such as export taxes (with sectoral trans-shipment provisions);
- LDCs and LICs *if it could be assured that this would be carved out by the WTO's Enabling Clause*;
- Sectors or goods that fall below a *de minimus* level of imports.

Scope of applicability: Covered products and sectors

To which sectors, products will the regime apply?

- Danger is in overly broad coverage – breadth yields limited marginal benefits, but risks more unfair application.
- Ideal process considers cost pass-through, responsiveness of net exports. But this is difficult. Need to be pragmatic.
- Two criteria, used simultaneously:
 - **High costs of climate regulations (high GHG intensity of production or value added)**
 - **Inability to pass through costs of regulations (trade sensitivity. Proxy: trade intensity)**

Determining level, type of adjustment: Benchmarks

Benchmarks	Global envl effectiveness	National policy effectiveness	Feasibility	Policy coherence	Good governance
Avg emissions intensity in exporting country	no incentives for worse-than-average performers to improve		requires data from foreign jurisdictions that might not be available or verifiable	conflicts with GATT MFN, possibly saved by GATT Art. XX	
Avg emissions intensity in importing country	low incentives for improvement; low protection against leakage		simple scheme		
Emissions intensity from best available technology	very low incentives for improvement; very low protection against leakage		simple scheme, unlikely to raise challenges		
Emissions intensity from worst practice in importing or exporting country	high protection against leakage		if based on exporting country, requires data that might not be available or verifiable	quasi-punitive, and counter to spirit of SDT, CBDR; if based on exporting country, conflicts with GATT MFN	

Determining level, type of adjustment

- In the first instance, producers should be given the option to provide verified firm-level data on emission intensity, using the same system boundaries used for domestic producers. Otherwise, use benchmarks.
- The benchmarks should be product-specific, and also where appropriate specific to different production processes.
- For direct emissions, the benchmarks should use worst-practice emissions intensity in the importing country.

Determining level, type of adjustment (cont'd)

- Financial and technical assistance in accounting, reporting and verification, to assist foreign covered exporters in submitting verified individual data.
- For indirect emissions – from off-site generated electricity and heat – the benchmarks should use average data from the exporting countries.
- Existing methodologies, standards and protocols should be used where they are available.

Determining level, type of adjustment (cont'd)

Modifications to the adjustment level:

- Levels of exporter country carbon pricing should be credited.
- Free allowances or other compensatory mechanisms to shelter domestic firms need to be taken into account when calculating the amount of adjustment due.
- Special benchmarks could be developed for less developed countries (respecting CBR).

Adjustment need not be in the form of charges – could also be requirements to buy allowances.

Use of revenues from import adjustment

- Options for use of revenue include:
 - Keeping it – funds to general revenues
 - Refund to exporter (directly or via clean fund)
 - Contribute to internationally administered adaptation fund
 - Disbursed by collecting government in ways that help developing countries cope with climate change
- We recommend any of the last three, out of respect for CBDR. Any of these probably helps with WTO compatibility – helps demonstrate environmental motivation.

Governance structures

- Pre-establishment: notification for trade partners, meaningful opportunity to comment. Adequate lead time.
- Official contact point established
- Methodologies public, predictable
- Calculations, parameters reviewed regularly
- Appellate procedure
- Data reporting follows international norms
- Regular assessment of regime against stated objectives
- Explicit sunset provisions

Where to from here?

- Further elaboration from small group
- Then wider circulation for comments – launch in Durban at COP-17
- Garner wider buy in, further refinement. Developing country input is particularly weak at present.
- Ultimate goal: Guidance used by those making BCA regimes, those targeted, and by observers

Is there an informal law role for this exercise?

- Referenced in UNFCCC negotiations? Or in forum on “response measures”?
- Referenced in WTO negotiations? In non-negotiating fora such as CTE?
- Basis for standard in, for example, ISO?
- Other?



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