

UKELA Climate Change Working Party

Nabarro Offices, London

15 June 2010



Climate Change and International Trade



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Background



- **Environmental Regulatory Research Group and School of Law at the University of Surrey**

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- F. Sindico, “The EU and Carbon Leakage: How to Reconcile Border Adjustments with the WTO?”, 17 *European Energy and Environmental Law Review* (2008), pp. 328-340
- F. Sindico, “Climate and Trade in a Divided World: Can Measures Adopted in the North End Up Shaping Climate Change Legislative Frameworks in the South?”, in Y. Le Bouthillier, H. McLeod-Kilmurray, B. Richardson and S. Wood (Eds.), *Climate Law and Developing Countries: Legal and Policy Challenges for the World Community*, Cheltenham, Edward Elgar, 2009, pp. 361-385

Outline



- **Why a climate and trade debate?**
- **Which measures are being considered to deal with this debate?**
- **Impact of Copenhagen on the likelihood of these measures?**
- **Legality of these measures?**
- **Geo-political considerations arising from the possible application of these measures?**

Why a climate and trade debate?

- Different climate standards
- Competitiveness concerns
 - Relocation
- Carbon leakage
 - Increase in global greenhouse gas emissions






Measures considered to deal with the climate and trade debate

- Carbon Equalisation System
- Rebates for energy intensive trade-exposed manufacturers
 - Free allowances - domestic products
- Border adjustment measures
 - Requirement to buy carbon allowances – imported products

Impact of Copenhagen



- Triggering of carbon equalisation systems depends on how successful international climate change negotiations are
- Copenhagen outcome from legal lens
Voluntary targets and no compliance mechanism 
- Copenhagen outcome through environmental lens
2.0% versus 1.5% 
- Copenhagen outcome through political lens
Key emitters and conditionality 

Legality of climate related border adjustment measures



- A complaint would come most likely from a developing country WTO Member State (India)
- Stated goal of the legislation
Carbon leakage vs competitiveness concerns
- Nature of the measure
Product based vs origin based
- Litigation strategy
General exception vs like product debate



Geo-political considerations

- North South climate trade dispute
- Effects on the climate change negotiations
 - Weaken the trust that is being rebuilt after Copenhagen
- Effects on the international trade negotiations
 - Lessen possibility of getting out of the Doha deadlock
- Effects on the global climate change problem
 - Greener policies in developing countries or increase in South-South trade?

Conclusions



- Carbon leakage and competitiveness concerns may trigger the adoption of climate related border adjustment measures.
- If adopted, carbon equalisation systems will be directed against imports coming from developing countries with lower climate standards.
- The failure to agree to an internationally legally binding outcome in Copenhagen *may* make these climate border adjustment measures more likely.
- Their WTO compatibility will depend on their structure and on the stated goal they pursue
- A climate and trade dispute is likely to undermine the already fragile Doha and climate change negotiations.

Thank you!



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