



Global Initiative
for Economic, Social
& Cultural Rights

REPORT

Unilateral Trade Measures:

CBAM and Its Compatibility with the Climate Framework



Climate
Emergency



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I. Defining Unilateral Trade Measures and Their Role in Decarbonisation

A. Unilateral Trade Measures in Climate Governance

Unilateral trade measures are any trade-affecting regulatory or fiscal instrument deployed by a single State or regional body that alters the cost or accessibility of goods crossing its borders without multilateral endorsement.¹ The proliferation of these tools aimed at decarbonisation reflects a broader shift in international climate policy. Because multilateral agreements, including the Paris Agreement, do not mandate specific economic instruments, States retain wide discretion over how they pursue their nationally determined contributions. Carbon pricing, border adjustments, and green industrial policy have therefore become the primary vehicles for climate mitigation, generating tension with foundational trade law principles of non-discrimination and national treatment.

These tensions have deep roots. Industrialised countries have defended unilateral climate trade measures as necessary to prevent carbon leakage and sustain domestic political support for decarbonisation. Developing countries have consistently pushed back, arguing that such measures function as regulatory protectionism that shifts the adjustment burden onto economies with fewer resources and less historical responsibility for cumulative emissions.² These objections have been regularly raised in multilateral climate negotiations, including at Conference of the Parties (COP) sessions, where Global South coalitions — principally the Group of 77 and China (G77+China), a bloc of approximately 134 developing States that coordinates common positions across United Nations Convention on Climate Change (UNFCCC) sessions; the BASIC group (Brazil, South Africa, India, and China), which has led coordinated opposition to unilateral border carbon measures at successive COP sessions including COP27, COP28, and COP29; and the Like-Minded Group of Developing Countries (LMDC), a sub-coalition that has similarly opposed such measures through the UNFCCC's response measures forum³ — have stressed the

¹ Rafael Leal-Arcas, *Unilateral Trade-Related Climate Change Measures*, 13 J. World Inv. & Trade 875 (2012).

² Gracia Marín Durán, *Securing Compatibility of Carbon Border Adjustments with the Multilateral Climate and Trade Regimes*, 72 Int'l & Comp. L.Q. 73 (2023).

³ See Antto Vihma, Yacob Mulugetta & Sylvia Karlsson-Vinkhuyzen, *Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations*, 23 Global Change, Peace & Sec. 315 (2011).

principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC), the foundational norm of the UNFCCC framework codified in Article 3(1) of the Convention and rearticulated in Article 2 of the Paris Agreement, which holds that developed countries bear greater mitigation obligations in proportion to their historical contribution to global emissions and their greater financial and technological capacity.⁴ Industrialised States have typically responded by redirecting such disputes to the World Trade Organisation (WTO), leaving the legal status of border carbon measures contested and unresolved at the multilateral level.⁵

B. The EU Carbon Border Adjustment Mechanism

The Carbon Border Adjustment Mechanism (CBAM), probably the most renowned and most complex unilateral trade measure in climate governance, is a scheme established by the European Union (EU) that was adopted through Regulation (EU) 2023/956 and operates alongside the EU Emissions Trading System (EU ETS).⁶ The EU ETS is a greenhouse gas (GHG) emission reduction tool implemented by the EU in 2005. It functions as a “cap and trade” carbon market system, limiting the amount of GHG emissions from the heating and electricity, industrial manufacturing, aviation, and maritime industries. Under the EU ETS, operators from those industries must purchase an allowance for every tonne of carbon emission they produce, with the total number of tonnes sold to operators reducing each year, driving up prices due to scarcity. Any leftover allowances can be held on to or sold on a marketplace. If the requirements are not met, operators face heavy fines.⁷ Given that foreign operators remain unburdened by the costs imposed by the ETS, leading to the import of these GHG-emitting products, the EU established CBAM as an attempt to address the carbon leakage that the EU ETS created.

CBAM currently targets steel, aluminium, cement, fertilisers, electricity, and hydrogen—sectors selected for their emissions intensity and trade exposure. Importers of covered goods must report embedded emissions and, as the mechanism fully phases in, purchase certificates reflecting the EU carbon price. If the exporting country already imposes

⁴ United Nations Framework Convention on Climate Change art. 3(1), May 9, 1992, 1771 U.N.T.S. 107; Paris Agreement art. 2, Dec. 13, 2015, T.I.A.S. No. 16-1104.

⁵ *The Promise and Perils of Carbon Tariffs*, in *Developments in the Law — Climate Change*, 135 Harv. L. Rev. 1640, 1651–55 (2022); see also Laurie Durel, *Border Carbon Adjustment Compliance and the WTO: The Interactional Evolution of Law*, 27 J. Int'l Econ. L. 18 (2024).

⁶ Council Regulation 2023/956, 2023 O.J. (L 130) 52 (May 16, 2023).

⁷ About the EU ETS, European Commission on Climate Change https://climate.ec.europa.eu/eu-action/carbon-markets/about-eu-ets_en (last visited Apr. 7, 2026).

a carbon price, that cost may be deducted, reducing the CBAM liability accordingly.⁸

The compliance architecture is demanding. During the transitional phase (October 2023–end of 2025), importers were required to report embedded emissions according to EU methodological standards.⁹ This regime poses particular challenges for exporters in jurisdictions without mature emissions monitoring, reporting, and verification (MRV) systems, as accurate emissions measurement requires data infrastructure that many developing country producers lack. If a country is unable to provide verified actual emissions data, they are given default values, which are calculated using the average emissions intensity from the ten highest-emission exporting countries for the relevant good.¹⁰ After the conclusion of the three-year transitional phase at the end of 2025, the stage of CBAM implementation that includes financial obligations commenced on 1 January 2026.¹¹ The price per tonne of relevant carbon emissions under CBAM is matched to the market closing price of the EU ETS carbon allowances.¹²

Early analyses have identified several distributional concerns.¹³ Compliance costs fall disproportionately on smaller exporters and those from countries with limited regulatory capacity. Emissions-intensive export sectors in developing economies face increased cost pressure in accessing the EU market. India has been among the most vocal critics, raising formal objections at the WTO Council proceedings and signalling possible dispute settlement action regarding impacts on its steel and aluminium sectors.¹⁴ A further equity concern is that CBAM certificate revenues accrue to the EU budget rather than being directed toward international climate finance.¹⁵

⁸ Regulation 2023/956, Establishing a Carbon Border Adjustment Mechanism, Annex I, arts. 3–4, 9, 2023 O.J. (L 130) 52.

⁹ Commission Implementing Regulation 2023/1773, 2023 O.J. (L 228) (Sept. 15, 2023).

¹⁰ Council Regulation 2025/2083, 2025 O.J. (L 2083).

¹¹ EU Carbon Border Adjustment Mechanism: Financial Obligations Commence Amid Proposed Scope Expansion to Include New Downstream Products, Akin Gump Strauss Hauer & Feld LLP, <https://www.akingump.com/en/insights/alerts/eu-carbon-border-adjustment-mechanism-financial-obligations-commence-amid-proposed-scope-expansion-to-include-new-downstream-products> (last visited Apr. 7, 2026).

¹² Council Regulation 2023/956, art. 21, 2023 O.J. (L 130) 52.

¹³ Timo Beaufils, Harry Ward, Michael Jakob & Leonie Wenz, *Assessing Different European Carbon Border Adjustment Mechanism Implementations and Their Impact on Trade Partners*, 4 *Comm'n's Earth & Env't* 131 (2023); see also Gracia Marín Durán, *Securing Compatibility of Carbon Border Adjustments with the Multilateral Climate and Trade Regimes*, 72 *Int'l & Comp. L.Q.* 73 (2023).

¹⁴ WTO Council for Trade in Goods, Minutes of the Meeting of 30 November–1 December 2023, WTO Doc. G/C/M/140 (Jan. 30, 2024); see also Manoj Kumar & Neha Arora, *India Plans to Challenge EU Carbon Tax at WTO*, Reuters (May 16, 2023).

¹⁵ Regulation 2023/956, Establishing a Carbon Border Adjustment Mechanism, recital 72, 2023 O.J. (L 130) 52; see also Beaufils et al., *supra* note 13 (proposing international revenue recycling schemes as a remedy for this equity concern).

C. Climate-Trade or Trade-Adjacent Measures Beyond CBAM

Although CBAM represents the most developed example of a climate-related border pricing instrument, no Global South country has adopted a comparable border carbon adjustment framework. Instead, many developing economies have implemented domestic climate policies or trade-adjacent regulatory measures that reflect aspects of CBAM's underlying logic without directly imposing carbon pricing at the border. These policies generally seek to integrate climate mitigation into domestic economic governance while minimising the potential trade disruptions associated with border adjustment mechanisms.

Several emerging economies have adopted internal carbon pricing regimes that place an explicit price on GHG emissions within their domestic economies. South Africa implemented a national carbon tax in 2019 under the Carbon Tax Act, which applies to major industrial emitters and is intended to gradually incentivise emissions reductions across key sectors of the economy.¹⁶ Chile introduced a carbon tax as part of its 2014 tax reform, targeting emissions from large stationary sources in the power and industrial sectors.¹⁷ Mexico similarly adopted a carbon tax in 2014 based on the carbon content of fossil fuels, while Colombia implemented its own carbon tax through fiscal reforms enacted in 2016.¹⁸ Although these policies primarily operate within domestic markets, they may interact with CBAM through mechanisms that allow exporters to receive credit for carbon costs already paid in their country of origin when calculating embedded emissions in exports to the European Union.

Other countries have pursued market-based emissions governance through emissions trading systems or hybrid regulatory approaches. China operates the world's largest national emissions trading system, initially covering the power sector and gradually expanding to other industries.¹⁹ Brazil has also advanced legislative proposals for a national emissions trading system and has begun incorporating climate considerations into broader industrial and export policy discussions. While these policies do not include border carbon pricing mechanisms, they reflect increasing integration of climate policy within domestic economic regulation and may influence future climate-trade policy development.

¹⁶ *How Can South Africa Implement a Carbon Tax?*, World Econ. F. (Aug. 10, 2015),

<https://www.weforum.org/stories/2015/08/how-can-south-africa-implement-a-carbon-tax>.

¹⁷ *Chile's Carbon Tax: An Ambitious Step Towards Environmentally Friendly Policies*, NDC P'ship,

<https://ndcpartnership.org/knowledge-portal/good-practice-database/chiles-carbon-tax-ambitious-step-towards-environmentally-friendly-policies-and>

¹⁸ *Mexico: Policies and Action*, Climate Action Tracker, <https://climateactiontracker.org/countries/mexico/policies-action>

¹⁹ Carbon Pricing Dashboard, World Bank, <https://carbonpricingdashboard.worldbank.org>

In addition to explicit carbon pricing policies, several Global South countries have adopted trade-adjacent environmental regulatory frameworks affecting export-oriented sectors. India has expanded emissions reporting requirements and environmental performance standards for energy-intensive industries while simultaneously raising objections to CBAM within international trade discussions. Indonesia and Vietnam have introduced carbon pricing pilot programs and environmental regulations affecting energy-intensive sectors such as cement, steel, and electricity generation.²⁰ These measures often focus on improving emissions monitoring systems, strengthening domestic regulatory capacity, and preparing industries to comply with emerging international climate standards. Taken together, these policy approaches illustrate a consistent pattern across States in the Global South: rather than implementing unilateral border carbon adjustments, governments have largely prioritised domestic climate governance tools that manage emissions internally while responding strategically to the growing influence of climate-related trade policies in international markets.²¹

D. Global South Responses to CBAM and the CBDR-RC Critique

In a comparative perspective, the absence of CBAM-like border carbon adjustment mechanisms in the Global South reflects both structural constraints and differing policy priorities across developing economies. Rather than replicating the EU model, most Global South countries have focused on developing domestic climate governance frameworks that address emissions within their own economies while attempting to manage the trade implications of external climate policies. Several factors contribute to this divergence. As previously mentioned, many developing countries face significant institutional challenges in establishing the MRV systems required to implement complex border carbon pricing regimes, making border carbon adjustments administratively difficult and potentially economically disruptive.

Development priorities also play a significant role. Governments in many developing countries must balance climate policy objectives with goals related to industrial growth, employment generation, and energy security. Border carbon pricing mechanisms that increase production costs for domestic industries could create political resistance or undermine development strategies focused on expanding

²⁰ India Raises Concerns Over EU Carbon Border Measure's Impact on Steel Exports, Reuters (Feb. 9, 2026), <https://www.reuters.com/world/india/europes-carbon-tax-tariff-quotas-hinder-indias-steel-exports-steel-secy-says-2026-02-09>

²¹ Vinod Thomas, *Carbon Markets at COP30*, Brookings Institution (Nov. 4, 2025), <https://www.brookings.edu/articles/carbon-markets-at-cop30>

manufacturing and export sectors. In this sense, convergence between the Global North (understood here as industrialised, high-income economies including the European Union, the United States, the United Kingdom, Japan, Canada, and Australia, which bear primary historical responsibility for cumulative greenhouse gas emissions and are designated as Annex I parties under the UNFCCC)²² and Global South climate governance may occur less through shared adoption of border carbon pricing mechanisms and more through technical harmonisation in areas such as emissions measurement standards, reporting frameworks, and environmental regulatory transparency. The current policy landscape therefore reflects a broader pattern of strategic adaptation rather than replication, with developing countries seeking to manage the economic implications of foreign climate policies while preserving flexibility in domestic climate governance.

However, the debates within certain Global South countries on unilateral trade measures between climate activists and impacted residents on one side, and government officials and carbon-intensive industries on the other side, complicate the dynamic on this issue further. For instance, while Mozambican officials, whose largest trading partner for its aluminium industry is the EU, have spoken strongly against CBAM, there is also support for these policies among climate justice advocates within the country.²³ In Mozambique's case, two-thirds of the manufacturing sector is dominated by Mozal, an aluminium smelter that exports 97% of its product to the EU.²⁴ Civil society groups within the country have filed numerous official complaints regarding the company's environmental pollution and the release of chemicals that are injurious to human health without satisfactory resolution by the government.²⁵ As a consequence, many Mozambican climate activists are hopeful that the outside pressure from CBAM, considering how crucial commerce with the EU is to Mozambique's economy, can result in a change to some of the most carbon-intensive practices.²⁶

All in all, although some may support CBAM for practical purposes, activists also highlight a need to seek bigger structural changes. In its current design, CBAM, due to its "polluter pays" model, will require Global South polluters to pay rather than Global North polluters — in essence, transferring wealth from the Global South to the Global

²² United Nations Framework Convention on Climate Change annex I, May 9, 1992, 1771 U.N.T.S. 107.

²³ Kiri Olivia Santer, *Locating the Global South Across Carbon Borders*, 55 *Econ. and Soc.* 121 (2026), <https://www.tandfonline.com/doi/epdf/10.1080/03085147.2025.2571327?needAccess=true>.

²⁴ *Id.*, at 133.

²⁵ *Id.*

²⁶ *Id.*

North.²⁷ This wealth transfer directly contradicts the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), which recognises that developed countries bear greater historical responsibility for climate change and should therefore shoulder a proportionally larger share of the burden of efforts to address the climate emergency.²⁸ By shifting costs onto Global South producers rather than the Global North polluters who have driven the bulk of historical emissions, CBAM inverts this foundational principle rather than upholding it. This is best understood as flowing from a more fundamental premise embedded in CBDR-RC: that a State's current mitigation responsibility is inseparable from its historical relationship to industrialisation. The principle can be understood to rest on the recognition that the same industrial processes which generated the bulk of cumulative greenhouse gas emissions are also the processes that generated the bulk of global wealth and development. Because industrialised States captured the economic benefits of carbon-intensive growth over the nineteenth and twentieth centuries, they are properly assigned a correspondingly greater share of the burden of addressing its consequences. Conversely, States that industrialised later, or have yet to industrialise fully, both contributed less to the accumulation of atmospheric carbon and received a smaller share of the developmental gains that carbon-intensive growth produced. CBDR-RC, as contained in UNFCCC Art. 3(1) and reaffirmed in Paris Agreement Art. 2(2), operationalises this asymmetry by holding that developed country Parties should take the lead in combating climate change.

Against this understanding of CBDR-RC, CBAM's structure is difficult to reconcile. CBAM applies its carbon price on a formally equal basis: a tonne of embedded carbon in Brazilian steel is charged the same as a tonne of embedded carbon in European steel, calibrated solely to the EU ETS price rather than to the exporting State's development status, historical emissions contribution, or capacity to decarbonise. This formal equality is itself the problem. CBDR-RC does not merely tolerate differentiated treatment between developed and developing States; it actually requires it on the basis of equity. Against that mandate, CBAM does not merely create adverse economic effects on the Global South, as discussed above; it inverts the ordering that CBDR-RC establishes, shifting the practical weight of mitigation costs toward the States with the least historical responsibility and the least developmental cushion to absorb them.

²⁷ John Feffer, *The Case for Global Climate Reparations*, *Foreign Policy in Focus* (Mar. 18, 2026), <https://fpif.org/the-case-for-global-climate-reparations/>.

²⁸ See Vishal Sharma & Mayank Prabha Tomar, *CBDR and CBAM: Who Will Pay the Price of Carbon?*, 19 J. World Energy L. & Bus. 1, at 6–9 (2026), <https://doi.org/10.1093/jwelb/jwaf013>.

Compounding this dynamic is the disparity in low-carbon technological capacity between the Global North and Global South since industrialised economies have a considerably different capacity to invest in the research, infrastructure, and industrial retooling necessary to lower the carbon intensity of their industries. Producers in many developing economies, by contrast, often operate with older or less efficient technology, not for lack of ambition but because access to low-carbon industrial technology has itself been shaped by the same unequal development trajectory that CBDR-RC seeks to address. CBAM does not account for this gap: it charges exporters for the carbon intensity of their existing production methods. The result is that CBAM does not simply impose a cost; it entrenches a competitive advantage already enjoyed by Northern industries, whose lower embedded emissions were themselves made possible by capital and technology that developing economies were never afforded equal access to.

Such dynamic under CBAM's scheme sits uneasily with UNFCCC Art. 4(5), under which developed country parties committed to "take all practicable steps to promote, facilitate and finance... the transfer of, or access to, environmentally sound technologies" to developing countries, and with the analogous technology provisions of Paris Agreement Art. 10. A carbon border measure introduced without a corresponding acceleration of technology transfer effectively asks developing country producers to meet a standard while withholding the means to reach it.

II. CBAM and the UNFCCC: Potential Violation or Compatible Frameworks

A. How to Assess a Potential Clash: Interpreting and Evaluating the Two Frameworks

CBAM's emissions-reporting requirements, certificate-purchase obligations, and sector-specific coverage create measurable burdens on developing economies. However, beyond the burdens imposed by CBAM and the clash with the core of CBDR-RC explained above, the question remains whether, by establishing this framework, the EU has violated any of its obligations under international law, specifically under the UNFCCC framework. To evaluate whether the conduct of a State, or in this case a group of States, is or is not in conformity with a legal framework, it is necessary to assess whether that legal framework includes a specific rule that contradicts the conduct in question. In this case, the question is whether the establishment of CBAM violates rules established under the UNFCCC. Otherwise, if no rule prohibits such conduct, in principle, by virtue of their sovereignty, States can freely perform the conduct in question. Resolving that conflict requires a legal analysis of what the relevant international instruments actually obligate states to do. The starting point for that analysis is treaty interpretation.

Before turning to the UNFCCC's specific provisions and their application to CBAM, it is necessary to establish the interpretative framework through which those provisions will be read. International treaties are the product of negotiation, drafted across multiple languages and applied across diverse legal systems. Because no treaty text is without ambiguity, the law of treaty interpretation provides a standard analytical framework for States, courts, and arbitral tribunals to resolve disputes over the scope of treaty obligations. That framework is found in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VCLT).²⁹ The interpretive provisions of the VCLT are broadly understood as reflecting customary international law and therefore applicable even between states not party to the Convention.³⁰

²⁹ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

³⁰ Ulf Linderfalk, *Is Treaty Interpretation an Art or a Science? International Law and Rational Decision Making*, 26 EUR. J. INT'L L. 169, 170 (2015).

B. Interpretative Methodology under International Law: Article 31 of the VCLT

Article 31 of the VCLT provides the starting point for interpreting international treaties.³¹ It is presupposed that interpretation is always required, as no agreement, however plain its text may appear, will be entirely without ambiguity.³² Article 31(1) provides that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”³³ The overarching good faith requirement binds parties to reasoned, defensible positions. This provision encapsulates three unified approaches to interpretation: textual, contextual, and purpose-based. These function as a holistic methodology to be applied in tandem.³⁴

The starting point is the ordinary meaning of the words employed by the drafters, which all signatories accepted and which may therefore be presumed to most authentically represent their intentions.³⁵ Courts satisfy this by ascribing words to their natural and ordinary meaning, assuming terms carry a consistent meaning throughout the text informed by their historical, current, or trade-specific use. Where the ordinary meaning of a term is disputed, interpreters look to the surrounding context and the treaty’s object and purpose.³⁶ Parties may also stipulate special meanings to terms as long as it is expressly stated.³⁷

³¹ Other methods are employed only if the general interpretative methods of Article 31 fail to resolve the ambiguity. If ambiguity persists following exhaustion of the methods prescribed in Article 31, Article 32 authorises interpreters to analyse supplementary means of interpretation. Article 32 states, “...recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, ... when the interpretation of according to article 31...” leaves the meaning ambiguous or leads to an absurd result. Article 32’s restrictive design subordinates these preparatory documents below the text, ensuring they play only a minor role where textual and purpose-based analysis fail to resolve ambiguities. This reflects a concern that statements, beliefs, and ideas stated in drafting, but not included in the final text, may reflect positions that parties explicitly did not agree to adopt. Therefore, using them to define the terms of the agreement could restructure the treaty in a fundamentally non-democratic way. (Dörr, Article 32: Supplementary Means of Interpretation in Vienna Convention on the Law of Treaties: A Commentary 571, 580 (Oliver Dörr & Kirsten Schmalenback eds., 2d ed. 2018).

³² Oliver Dörr, Article 31: *General Rule of Interpretation in Vienna Convention on the Law of Treaties: A Commentary*, 521, 521 (Oliver Dörr & Kirsten Schmalenback eds., 2d ed. 2018) [hereinafter Dörr, Article 31].

³³ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

³⁴ Dörr, Article 31 at 522 (noting that “[n]o legal text drafted by man [or woman] can possibly be perfect in a way that it never gives rise to doubt as to its scope or actual meaning”).

³⁵ Vienna Convention on the Law of Treaties, Art. 31(1).

³⁶ Dörr, Article 31 at 522 (quoting a WTO Panel Report that states the immediate and more remote context is the next textual guide, with good faith and the treaty’s object and purpose as further aids).

³⁷ See Vienna Convention on the Law of Treaties, Art 31 (4) (describing an exception to the default rule on ordinary meaning that allows the parties to stipulate their own meanings for terms as needed).

Because textualist analysis does not occur in isolation, Article 31(2) directs interpreters to consider the treaty as a whole, including agreements made in connection with its conclusion that were accepted by all parties.³⁸ Article 31(3) broadens this further by requiring consideration of any subsequent agreement or practice regarding interpretation, as well as any relevant rules of international law applicable in the relationship between the parties.³⁹ This ensures continuity of textual definitions across treaties as part of a “single combined operation”.⁴⁰ The International Law Commission’s work confirms that subsequent agreements and practice are “objective evidence of the understanding of the parties as to the meaning of the treaty”, and can be utilised as authentic means of interpretation.⁴¹

Article 31(1) also instructs interpreters to consider the purpose of the treaty, which is referred to as the teleological approach. Unlike text, which was explicitly agreed upon, the purpose may be less clear and carries greater interpretative risk. Different parties may have different idiosyncratic objectives not shared by all at the time of drafting. To mitigate this risk, some treaties will explicitly state the agreed upon purpose. However, a purpose clause cannot prevent the treaty interpreter from establishing whether the purpose of the treaty has been laid down accurately or what exactly that stipulated purpose means.⁴² Purpose-based analysis of text requires caution as an unconstrained teleological approach can displace the text entirely.⁴³ Purpose should serve primarily as a guide to resolve textual ambiguities that remain after exhausting a textualist methodology, and should generally be interpreted from within the text’s preamble and internal structure rather than imported from external sources.⁴⁴

³⁸ Vienna Convention on the Law of Treaties, Art. 31(2)

³⁹ Vienna Convention on the Law of Treaties, Art. 31(3)

⁴⁰ Dörr, Article 31, at 558 (stating that the elements of Art 31(3) incorporate into the general rule such that subsequent agreements, practices, and relevant rules all must be analysed as part of a single combined operation).

⁴¹ Int’l Law Comm’n, *Fifth Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties*, U.N. Doc. A/CN.4/715, 30 at 34 (Feb. 28, 2018) (prepared by Georg Nolte, Special Rapporteur).

⁴² Dörr, Article 31, at 544.

⁴³ Martin Ris, *Treaty Interpretation and ICJ Recourse to Travaux Préparatoires: Towards a Proposed Amendment of Articles 31 and 32 of the Vienna Convention on the Law of Treaties*, 14 B.C. INT’L & COMP L. REV. 111, 118 (1991).

⁴⁴ Dörr, Article 31, at 544 (Arguing that purpose clauses must still be interpreted to determine the meaning and extent of the stipulated purpose)

C. Potential Interpretations of the UNFCCC Framework and their Compatibility with CBAM

The UNFCCC has near-universal membership with 197 State parties as of 2019 and was adopted in 1992.⁴⁵ Entering into force in 1994, its “ultimate objective” is to “[stabilise] greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic [i.e., human] interference with the climate system.”⁴⁶ At the same time, the stabilised level of GHG concentrations is to be achieved “within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, [ensuring] that food production is not threatened, and [enabling] economic development to proceed in a sustainable manner.”⁴⁷ The UNFCCC, a framework convention, was added on to by the Kyoto Protocol in 1997 and the Paris Agreement in 2015.⁴⁸ These are “legally binding treaties and thus hard law” for those States which have ratified them.⁴⁹

Precisely what they legally bind States to do, however, is the subject of much debate and can vary from “requiring frequent meetings between the ratifying countries, known as the Conference of the Parties, or COP,” as in the case of the original UNFCCC, to requiring “developed countries to reduce emissions by an average of 5 percent below 1990 levels and [establishing] a system to monitor countries’ progress,” as in the case of the Kyoto Protocol, to finally “[requiring State Parties] to set emission reduction goals... [and] submit targets” in the Paris Agreement.⁵⁰

Several provisions in the UNFCCC and subsequent agreements are central to the analysis of what States are obligated to perform. To start, UNFCCC Art. 4 lays out the “commitments” of each State Party.⁵¹ UNFCCC Art. 4(1)(f) calls on all State Parties to “[t]ake climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions.”⁵² This phrase is significant because it obligates States to perform climate considerations across many policy areas, including trade. This must be

⁴⁵ UN Climate Change at a Glance, U.N. Framework Convention on Climate Change 3 (Sept. 2019), https://unfccc.int/sites/default/files/resource/Brochure_UN%20Climate%20Change%20at%20a%20Glance.pdf.

⁴⁶ United Nations Framework Convention on Climate Change art. 2, May 9, 1992, 1771 U.N.T.S. 107.

⁴⁷ *Id.*

⁴⁸ UN Climate Change at a Glance, *supra* note 44, at 3.

⁴⁹ Maria Alejandra Anaya-Torres, *Is Soft Law Really Soft? The Value of Treaty-Body Decisions in Global Climate Governance*, BIICL Insights (Feb. 11, 2026), <https://www.biicl.org/blog/124/is-soft-law-really-soft-the-value-of-treaty-body-decisions-in-global-climate-governance?cookieconsent=1&ts=1775612343>.

⁵⁰ Lindsay Maizland & Clara Fong, *UN Climate Talks*, Council on Foreign Relations (Jan. 2, 2025), <https://www.cfr.org/articles/un-climate-talks>.

⁵¹ United Nations Framework Convention on Climate Change art. 4.

⁵² United Nations Framework Convention on Climate Change art. 4(1)(f).

done “to the extent feasible,” which acknowledges some flexibility and practical restraint but stops short of creating a wholesale exception to the obligation. This part of UNFCCC Art. 4(1)(f) provides textual support for the establishment of CBAM, as such climate change policies are lawful and actually entail compliance with the obligations established under the UNFCCC. However, at the same time, UNFCCC Art. 4(1)(f) says that such considerations must be done “with a view to minimising adverse effects on the economy, on public health and on the quality of the environment, or of projects and measures undertaken by them to mitigate or adapt to climate change.”⁵³ A policy as ambitious in scope and broad in its scale as CBAM is likely to have second- and third-order consequences across the international economy.

Providing further support for what such “adverse effects” could be under the broader context of the Convention is UNFCCC Art. 3(5). That Article provides that State measures to reduce emissions “should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”⁵⁴ Furthermore, Kyoto Protocol Art 2(3) provides that State parties “shall strive to implement policies and measures under this Article in such a way as to minimise adverse effects, including...international trade... and economic impacts on other Parties.”⁵⁵ These provisions are strong indications that the UNFCCC includes international trade and investment law obligations within its interpretive framework that could be relied on to push back against CBAM. Finally, UNFCCC Art. 4(10)’s requirement to “take into consideration” the situation of all State Parties and especially developing State Parties which have “economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change” is relevant.⁵⁶ Notably, this applies to those States “with economies that are highly dependent on income generated from” carbon-intensive industries, creating “serious difficulties in switching to alternatives.”⁵⁷ Like the first part of UNFCCC Art. 4(1)(f), this provision does not prohibit climate change policies or create wholesale exceptions to their legality. It does, however, create an obligation that developed States must account for the disproportionate burden such climate change policies may have on developing countries reliant on carbon-intensive exports. This provides a direct route within the language of the UNFCCC to potentially push back against the implementation of CBAM.

⁵³ Id.

⁵⁴ United Nations Framework Convention on Climate Change art. 3(5).

⁵⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change art. 2(3), Dec. 11, 1997, 2303 U.N.T.S. 162.

⁵⁶ United Nations Framework Convention on Climate Change art. 4(10).

⁵⁷ Id.

Looking at a potential purpose-based interpretation, the eminent object and purpose of the UNFCCC, summarised from UNFCCC Art. 2, is to stabilise GHG concentration levels in the atmosphere to prevent further human interference with the Earth's climate.⁵⁸ At the same time, the UNFCCC is a forward-looking, aspirational framework intended to cultivate follow-up agreements and discussions. Therefore, its commitments, which are binding, do not affirmatively require specific courses of action and are couched in flexible terms. In many cases, they require "considerations," or actions taken "to the extent feasible."⁵⁹ In some provisions, these obligations to act on climate change are measured against countervailing responsibilities to developing States, the international economy, future harm to the environment, and other interests of world concern.

Subsequent agreements added additional obligations but entrenched these countervailing responsibilities. The Kyoto Protocol's binding emission targets applied to developed countries in Annex I.⁶⁰ After this approach yielded underwhelming results, the Paris Agreement's approach required States to communicate and maintain their own (self-determined) nationally determined contributions of GHG.⁶¹ While these constitute additional obligations, State flexibility remained and the principle of "common but differentiated responsibilities and respective capabilities" grew.⁶²

It is that very flexibility that leads to the understanding that interpreting the obligations deriving from the UNFCCC following VCLT Art. 31(1)-(2) does not result in a clear answer with respect to State obligations and the legality of CBAM.

On one hand, the EU can argue with considerable force that CBAM is an affirmative fulfilment of its own UNFCCC obligations, particularly under Art. 4(1)(f), by ensuring that its internal climate and emission standards are not undercut by higher levels of carbon output in countries with lower standards. The additional obligations from the Kyoto Protocol and Paris Agreement only strengthen the EU's argument in this respect: CBAM could be considered as a policy meant to lower emissions to required levels under domestic and international law by preventing outsourcing of emissions for which EU Member States would otherwise be responsible.

⁵⁸ United Nations Framework Convention on Climate Change art. 2.

⁵⁹ See, e.g., United Nations Framework Convention on Climate Change art. 4(1)(f).

⁶⁰ Kyoto Protocol to the United Nations Framework Convention on Climate Change annex I.

⁶¹ A. Dannenberg et al., *Naming and Shaming as a Strategy for Enforcing the Paris Agreement: The Role of Political Institutions and Public Concern*, 120 Proc. Nat'l Acad. Sci. 1 (2023).

⁶² United Nations Framework Convention on Climate Change art. 3(1).

On the other hand, States harmed economically by CBAM, especially developing-country exporters of carbon-intensive products, can equally argue with considerable force that CBAM violates obligations under the UNFCCC relating to international trade and the global economy. Particularly, CBAM could be classified by such States as a policy that did not give “consideration” to the economies of developing countries under UNFCCC Art. 4(10), or even a policy that “[arbitrarily] or [unjustifiably]” harms international trade under UNFCCC Art. 3(5).⁶³ Complementing these provision-based arguments is the idea throughout the UNFCCC and subsequent agreements that the State obligations, while binding law, acknowledge flexibility in application and respect for developing countries, thus stopping short of affirmatively requiring a measure as broad as CBAM.

The lack of a clear answer on CBAM’s legality arising from State obligations under the UNFCCC is not a sign of a deficient interpretive process under the VCLT, but rather a result of a structure such as a framework convention. Strong and reasonable arguments for interpretations of the UNFCCC rules as favourable or unfavourable to CBAM exist.

D. Systemic Interpretation: Guidance Beyond the UNFCCC

Beyond the strict content of the vast UNFCCC framework, under VCLT Art. 31(3)(c), “any relevant rules of international law applicable in the relations between the parties” shall be taken into account, together with the context.⁶⁴ The process of deriving such rules is known as “systemic integration.”⁶⁵ This process essentially acts as an “anti-fragmentation” device: its purpose is to coalesce international law and make obligations consistent.⁶⁶ Interpreting the UNFCCC framework in this way would allow broadening the scope of what can guide the reading of a specific rule from the treaty.

Determining what counts as a “relevant rule” for the interpretation of UNFCCC Art. 4 is not a clearly defined legal exercise. As covered above, UNFCCC Art. 4 sets out the “commitments” of all State parties to report national emission data and cooperate in preventing increases in emissions, further requiring developed countries to “[take] the lead” in combating climate change and provide “financial resources” and technologies to developing countries.⁶⁷ UNFCCC Art. 4(1)(f)’s specific

⁶³ United Nations Framework Convention on Climate Change art. 3(5).

⁶⁴ Vienna Convention on the Law of Treaties art. 31(3)(c), May 23, 1969, 1155 U.N.T.S. 331.

⁶⁵ Panos Merkouris, *Principle of Systemic Integration*, in Max Planck Encyclopedia of Int’l Proc. L. (Anne Peters ed., 2020), <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2866.013.2866/law-mpeipro-e2866>.

⁶⁶ Id.

⁶⁷ United Nations Framework Convention on Climate Change arts. 4, 4(2)(a), 4(3).

commitment to consider climate change in social, economic, and environmental policies and actions is significant for systemic integration purposes.⁶⁸ It represents a textual reference that the UNFCCC was understood to involve other areas of international law, such as trade, that govern relations among States on the economic plane.

The relevance of international trade law is strengthened by internal cross-references within the UNFCCC itself, as established. UNFCCC Art. 3(5) states that State measures to reduce emissions “should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”⁶⁹ Kyoto Protocol Art 2(3) provides that State parties “shall strive to implement policies and measures under this Article in such a way as to minimise adverse effects, including...international trade... and economic impacts on other Parties.”⁷⁰ These provisions are stronger indications that the UNFCCC includes international trade law obligations within its framework. The presence of trade rules within the framework of the UNFCCC reinforces the argument that other legally binding trade rules, such as the WTO GATT Agreement of 1994, are relevant for the interpretation of the rules therein established.

The most applicable source for international trade law is the WTO-GATT Agreement of 1994.⁷¹ CBAM essentially functions as a carbon tariff on imports to the EU, placing an additional fee on a certain product’s entry calibrated to the EU’s domestic carbon tax. This implicates several WTO-GATT provisions.

The strongest and most straightforward challenge to CBAM comes from WTO-GATT Art. I’s most favoured nation (MFN) principle.⁷² The MFN principle requires that if a country “improves the benefits it gives to one trading partner, it has to give the same “best” treatment to all the other WTO members so that they all remain most-favoured.”⁷³ For example, if Country X lowers its tariff on grain imports from Country Y to five per cent, under the MFN principle Country X must apply that same tariff rate to grain imports from all other WTO member States. In this way, MFN is essential to upholding the logic of the international trading system by continuing to incentivise trading on global comparative advantages rather than through myriad bilateral trade agreements.

⁶⁸ United Nations Framework Convention on Climate Change arts. 4(1)(f).

⁶⁹ United Nations Framework Convention on Climate Change art. 3(5).

⁷⁰ Kyoto Protocol to the United Nations Framework Convention on Climate Change art. 2(3).

⁷¹ General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187.

⁷² General Agreement on Tariffs and Trade 1994 art. I.

⁷³ Principles of the Trading System, World Trade Org., https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (last visited Apr. 8, 2026).

CBAM is specially structured, however, in that it does not explicitly impose different tariff rates based on country of origin. Instead, as we know, it assigns import tariffs based on how much carbon was emitted in the production of that good and the extent to which that carbon price had been paid in the country of origin. Exporters from countries (likely developing ones) without domestic carbon tax regimes similar to the EU will draw the full ire of CBAM's elevated import rates, while exporters from other countries (likely developed ones) with substantive domestic carbon tax regimes will not.

While CBAM's purpose is to incentivise greener domestic production methods at a global scale to evade its carbon tariff, this will practically differentiate among States depending on their level of compliance. True enough, CBAM is facially-neutral in application to States, but two interpretive methods exist to measure whether “formally origin-neutral measures” violate the WTO-GATT: “the diagonal test” and “the asymmetric impact test.”⁷⁴ While “the diagonal test” asks whether any category of imports receives less favourable treatment than any category of like domestic products, “the asymmetric impact test” asks whether the overall burden on imports in aggregate is larger than the burden on domestic goods.⁷⁵ The EU is less likely to surpass the diagonal test given its high level of green development on such carbon-intensive industries vis-à-vis other exporting nations, particularly from the Global South. As a result, Global South exporters may face much higher CBAM charges than EU producers face in domestic carbon taxes. The EU may stand on stronger footing under the asymmetric impact test, however, if it can demonstrate in the aggregate that the burdens between non-EU exporters and domestic producers are the same.

The MFN principle is incredibly salient at present, given the newly announced “US-EU Framework Agreement on Reciprocal, Fair, and Balanced Trade.”⁷⁶ In this framework agreement, the EU announced its commitment to “work to provide additional flexibilities” in implementing CBAM with respect to the United States, given the latter’s concern with its effect on small and medium enterprises.⁷⁷ At present, the framework is “so indeterminate as to lack enforceable criteria,” but a CBAM modification negotiated specifically between the EU and United States

⁷⁴ Lothar Ehring, *De Facto Discrimination in WTO Law: National and Most-Favored-Nation Treatment—or Equal Treatment?*, Jean Monnet Working Paper No. 12/01 (2001), <https://jeanmonnetprogram.org/archive/papers/01/013201-04.html>.

⁷⁵ Id.

⁷⁶ Trevor Sutton & Evelyn Williams, *US-EU Trade Agreement: No Sea Change for CBAM*, Yet, Ctr. on Glob. Energy Pol’y at Colum. Univ. SIPA (Aug. 28, 2025), <https://www.energypolicy.columbia.edu/us-eu-trade-agreement-no-sea-change-for-cbam-yet/>.

⁷⁷ Id.

would seriously risk violating the EU's MFN obligations.⁷⁸ Under WTO-GATT Art. I, the EU cannot extend such a flexibility, exemption, or reduced compliance regime to U.S. exporters without extending those same relaxed conditions to like products from all other WTO members.⁷⁹ This measure would be opposed to the EU's longstanding position that CBAM is not a trade measure, but one aimed at addressing greenhouse gas emissions, and would generate additional backlash from WTO Member States.

Second, an overarching question is whether CBAM is characterised as a "customs duty" under WTO-GATT Art. II, or as an "internal adjustment" under WTO-GATT Art. III.⁸⁰ This is an essential question because it determines which set of legal obligations apply.

WTO-GATT Art. II covers the "Schedules of Concessions," which are the tariff rates that WTO members have officially applied through their multilateral agreements with other members.⁸¹ WTO-GATT Art. II:1(a) provides that a member shall give to other members "treatment no less favourable than that provided for in the... [tariff] Schedule."⁸² WTO-GATT Art. II:1(b) further prohibits "other duties or charges" beyond the bound rates, unless separately noted in the schedule.⁸³ If CBAM is a customs duty, it would need to fit within the EU's agreed-upon bound rates; otherwise, it could exceed the EU's bound tariff rates and become a violation of WTO-GATT Arts. II:1(a) and II:1(b).

On the other hand, WTO-GATT Art. III covers "National Treatment on Internal Taxation and Regulation."⁸⁴ WTO-GATT Art. III:2, encapsulating the "national treatment" principle, requires that imported goods not be taxed higher than "like" domestic products.⁸⁵ If CBAM is found to discriminate against imports at a higher level than the domestic carbon tax, this article would be violated. WTO-GATT Art. III:4 can supplement this inquiry or stand as its own violated article if the administrative costs of imports become too burdensome relative to domestic EU producers.⁸⁶ Specifically, WTO-GATT Art. III:4 extends the national treatment principle to non-tax regulations, requirements affecting the sale, purchase, transportation, and/or use of products, thus requiring

⁷⁸ Id.

⁷⁹ General Agreement on Tariffs and Trade 1994 art. I.

⁸⁰ General Agreement on Tariffs and Trade 1994 art. III.

⁸¹ General Agreement on Tariffs and Trade 1994 art. II.

⁸² General Agreement on Tariffs and Trade 1994 art. II:1(a).

⁸³ General Agreement on Tariffs and Trade 1994 art. II:1(b).

⁸⁴ General Agreement on Tariffs , and Trade 1994 art. III.

⁸⁵ General Agreement on Tariffs and Trade 1994 art. III:2.

⁸⁶ General Agreement on Tariffs and Trade 1994 art. III:4.

that the imported goods receive treatment “no less favourable” than “like” domestic goods.⁸⁷

On its face, the EU has classified CBAM as an internal adjustment, equivalent to its own carbon tax, thus avoiding the perils of WTO-GATT Art. II. However, it remains to be seen in practice whether this will truly be an equivalent cost under WTO-GATT Art. III.

At the same time, the EU has strong defences under customary international law and the WTO-GATT itself. First, in light of the ICJ's Advisory Opinion on the Obligations of States in respect of Climate Change, which recognised State obligations under customary international law to protect the climate and that failure to do so could amount to legal responsibility, CBAM can be viewed as affirmative compliance with binding customary international law norms rather than a unilateral trade restriction.⁸⁸ Exceptions and defences are contained under WTO-GATT Arts. XX and XXI, however, the former article is more applicable than the latter, which deals with “Security Exceptions” largely in the context of national security, war, and nuclear materials.⁸⁹ Of particular force, WTO-GATT Art. XX contains a list of “General Exceptions,” which permits derogation from WTO-GATT obligations so long as the measure is not an “arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”⁹⁰ WTO-GATT Art. XX(b) states that actions “necessary to protect human, animal or plant life or health” are exceptions to WTO-GATT provisions.⁹¹ This exception has been interpreted broadly with respect to a State's police powers: for example, the WTO DSB and Appellate Body both upheld Brazil's invocation of this exception to ban the importation of EU-based retreaded tyres based on health and environmental risks.⁹² That a ban on tyres was upheld bodes well for the EU given the scale and gravity of the climate change emergency.

Additionally, Art. XX(g) states that actions “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption” are similarly excepted.⁹³ Regarding CBAM, the EU can point to the Earth's atmosphere as a qualifying exhaustible natural resource. WTO

⁸⁷ Id.

⁸⁸ *Obligations of States in Respect of Climate Change*, Advisory Opinion, 2025 I.C.J. Rep. (July 23, 2025).

⁸⁹ General Agreement on Tariffs and Trade 1994 art. XXI.

⁹⁰ General Agreement on Tariffs and Trade 1994 art. XX.

⁹¹ General Agreement on Tariffs and Trade 1994 art. XX(b).

⁹² *Brazil – Measures Affecting Imports of Retreaded Tyres*, WTO Dispute Settlement (DS332) https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm.

⁹³ General Agreement on Tariffs and Trade 1994 art. XX(g).

case law would likely be on its side, as the WTO DSB has previously recognised “clean air” to be an exhaustible natural resource under WTO-GATT Art. XX(g).⁹⁴ Protecting the environment in light of the customary international law jurisprudence on climate change would strengthen these treaty-based defences.

While there remains uncertainty as to whether CBAM operates as an internal adjustment rather than a customs charge, CBAM likely violates WTO-GATT law, particularly with respect to the MFN principle. CBAM defences under WTO-GATT Arts. XX(b) and XX(g) exist and are substantial, but may not cover every dimension of its application, particularly with respect to its treatment of developing country exporters. However, these legal disputes may ultimately be unresolvable in practice. The WTO Appellate Body remains paralysed, and without a functioning appellate mechanism, losing parties at the panel stage may simply appeal into a procedural “void,” indefinitely deferring any binding decision.⁹⁵ The EU could win at the panel stage and face an unappealable loss, or face an adverse panel decision it can appeal to nowhere and question its legal weight. States seeking definitive resolution may pursue the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), but participation is not universal.⁹⁶ Despite there being likely violations, it is difficult to envision the WTO dispute mechanism as a viable vehicle to substantively limit or stop CBAM's implementation in the near term. The challenges that the WTO dispute mechanism presents unsurprisingly coincide with the rise of debates related to unilateral trade measures beyond trade spaces and particularly within the UNFCCC.

⁹⁴ *United States – Standards for Reformulated and Conventional Gasoline*, Panel Report, WT/DS2/R (Jan. 29, 1996).

⁹⁵ World Trade Organization, WTO Reform—An Overview, MC12 Briefing Note, https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfwtoreform_e.htm

⁹⁶ *Id.*

III. Conclusion

CBAM does not fit neatly into any single legal box. Evaluating whether it violates the international climate framework requires moving across three overlapping bodies of international law (rules of treaty interpretation under the VCLT, climate rules under the UNFCCC, and trade regulation under the WTO-GATT framework as a relevant rule for systemic interpretation), none of which yields a clean answer on its own. Whether CBAM is ultimately lawful depends heavily on which interpretive methodology one applies, which legal obligations one treats as controlling, among many other factors. The EU has strong defences available. At the same time, the concerns raised by Global South countries regarding equity, differential treatment, and consistency with UNFCCC are not without legal foundation and deserve serious engagement rather than dismissal.

Beyond the strict question of legality, CBAM's design raises deep concerns about the path climate policy seems to be taking. By imposing higher duties on developing states, the scheme places a heavy burden on countries that have least contributed to historical emissions. This runs counter to CBDR-RC, which calls for developed states (as the primary drivers of historical emissions and holders of greater financial and technological capacity) to lead on climate action rather than shift its costs onto others. CBAM aims to guarantee that emissions reductions in the EU do not end up implying higher emissions outside of the bloc. In effect, when originally introducing the proposal to establish CBAM, the European Commission highlighted as its objectives 'addressing the risk of carbon leakage in order to fight climate change by reducing emissions in the Union and globally'⁹⁷ and indicated this could be a 'tool to push third countries to adopt more stringent climate measures'.⁹⁸ However, the result ends up being higher export costs for developing countries, whose development path must be weighted when considering their climate obligations. Moreover, such an understanding of CBAM as a tool to 'push third countries' seems to be potentially in conflict with the UNFCCC framework, which leaves each State to determine its own nationally determined contributions.

⁹⁷ European Commission, Proposal for a Regulation of the European Parliament and of the Council Establishing a Carbon Border Adjustment Mechanism, COM/2021/564 final (14 July 2021), 15.

⁹⁸ European Commission, Impact Assessment Report Accompanying the Proposal for a Regulation of the European Parliament and of the Council establishing a Carbon Border Adjustment Mechanism, SWD/2021/643 final (14 July 2021), 15.

CBAM is a one-of-a-kind measure, and its uniqueness reflects the reality that most developing economies operate under fundamentally different constraints. No other bloc could arguably establish such a complex scheme outside the EU. In addition, beyond the institutional infrastructure, there are pragmatic barriers for the Global South to establish similar mechanisms, mostly centred around their competing development priorities, and a longstanding conviction that the burdens of decarbonisation should not fall disproportionately on those least responsible for the climate emergency.

As a practical matter, the legal pathways available to those seeking to constrain or dismantle CBAM are narrower than the political rhetoric might suggest. WTO dispute settlement is hamstrung by the paralysis of the Appellate Body, meaning that even a successful challenge at the panel stage can be rendered effectively toothless if the EU elects to appeal into the void. It has been the unviability of that path that has most probably moved discussions on CBAM to the UNFCCC in the last couple of years. However, as a space where decisions are built on consensus, it seems unlikely that the UNFCCC can actually serve as a space to channel this complex legal question.

What makes this debate so difficult to resolve is that it is not purely a legal question, and no treaty interpretation will fully settle it. The sustained opposition from Global South countries over the last couple of editions of the COPs, and in multiple other multilateral spaces, signals something deeper than a technical disagreement over tariff classification or treaty text. At its core, the controversy over unilateral climate trade measures is a dispute about fairness: who bears the cost of the green transition, who gets to set the rules, and whether multilateral cooperation or unilateral action is the more legitimate path forward. CBAM, in all likelihood, is here to stay. But its long-term legitimacy will depend less on what tribunals decide and more on whether the international community can build the kind of shared framework that makes unilateral measures unnecessary in the first place.

What follows from this should at least be to pair CBAM with the kind of support that addresses the capacity asymmetry underlying the dispute in the first place. The deeper equity concerns raised throughout this analysis point toward a solution that lies less in litigating CBAM's legality than in reshaping the conditions under which it operates. Under the UNFCCC and the Paris Agreement, developed States are required to provide financial resources and facilitate technology transfer to developing countries, precisely because unequal capacity, rather than unequal ambition, drives much of the divergence in climate policy

outcomes. Applied to CBAM, this suggests that its burdens on Global South exporters are not simply a byproduct to be litigated away, but a symptom of an unresolved obligation that predates the mechanism itself. Crucially, this finance should take the form of grants rather than loans: many of the same developing economies facing CBAM exposure are already constrained by unsustainable debt burdens and limited fiscal space, and financing decarbonisation through further borrowing would deepen the very structural inequities CBDR-RC was designed to address. Grant-based finance, paired with the transfer of low-carbon production technologies, would allow exporters to decarbonise their industries directly rather than absorbing CBAM's costs indefinitely.

Absent this kind of complementary architecture, CBAM will be a one-directional transfer of costs from South to North even as it succeeds on its own narrow decarbonisation terms; paired with grants and technology transfer, it could instead become one component of a more genuinely shared, capacity-adjusted approach to the global energy transition.

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