

# Trade and the Environment: Use of Protectionist Unilateral Trade Measures (UTMs)



Presentation by INDIA

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# Link between Trade & Environment (1)

- The links between trade and the environment are multiple, complex and important.
- Trade liberalization is—of itself—neither necessarily good nor bad for the environment. Its effects on the environment in fact depend on the extent to which environment and trade goals can be made complementary and mutually supportive. A positive outcome requires appropriate supporting economic and environmental policies at the national and international levels.



# Link between Trade & Environment (2)

- ✓ Trade creates the wealth that could be used to increase human wellbeing.
- ✓ Wealth created by trade can be used for environmental improvement, since the efficiency gains from trade can mean fewer resources used and less waste produced.
- ✓ Trade can enhance access to efficient and environmentally-friendly technologies.



# Use of Unilateral Trade Measures (UTMs)

✓ Unfortunately countries are resorting to UTMs/Border Measures, in the guise of environmental cause, to keep foreign competition out of their markets.

✓ For example:

- carbon footprint standards

- Border Carbon Adjustment such as-

  - Carbon border tax

  - Cap & Trade Scheme

- American Clean Energy & Security Act, 2009

- EU Emission Trading Scheme



# Use of UTMs: Violate Provisions of UNFCCC (1)

✓UTMs would undermine the basic principles of ‘common but differentiated responsibility’ and equity under UNFCCC negotiations.

✓UTMs would violate UNFCCC provisions -

- **Article 3.5:** Measures taken to combat CC should not create arbitrary or unjustifiable discrimination or a disguised restriction on international trade.
- **Article 3.1:** Climate Change (CC) to be handled on basis of equity and CBDR. Developed countries should take lead in CC.
- **Article 3.4:** Measures to protect CC should be appropriate to specific conditions of each Party. Economic development is essential for addressing CC. Trade is an engine for economic and social development, unilateral trade measures against the exports of DCs will hinder their capacity for sustainable development.



## Use of UTMs: Violate Provisions of UNFCCC (2)

○ **Article 4.3:** Developed country Parties shall provide financial resources, including for TOT, needed by developing country Parties to meet full incremental costs of implementing CC measures.

○ **Article 4.5:** Developed country Parties shall take steps to promote, facilitate and finance, transfer/ access to ESTs.

○ **Article 4.7:** Extent to which developing country Parties implement commitments will depend on effective implementation by developed country Parties of commitments related to financial resources and TOT. Economic & social development and poverty eradication are first and overriding priorities of developing country Parties.



# UTMs: Cause of Concern

- UTMs can have distortive effects on international trade and restrict market access of LDCs and developing countries in developed countries.
- UTMs can have adverse impact on economic and social development and poverty eradication in developing countries.
- efforts to address climate change through unilateral trade measures will lead to tit-for-tat trade restrictions. This will spark trade wars and will lead to massive, justified, WTO-legal retaliation by the affected countries.





# UTMs: Cause of Concern

- Use of WTO-incompatible trade measures diminishes the prospects for development of the developing countries.
  - Unilateral trade actions will simply lead to a change in trading patterns with no significant reduction in emissions; and
  - Such actions will not succeed either in forcing or “encouraging” other countries to adopt equivalent environmental policies.
  - In view of the above, India firmly believes that trade measures are not the appropriate means to address climate change
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# UTMs: Issue of WTO Compatibility

- Possible violation of National Treatment and MFN Obligations: Since the measure seeks to distinguish between 'like' products, based on the methods of production.
- The principal purpose of the MFN treatment obligation under Article I: 1 is to ensure equality of opportunity to import from, or to export to, all WTO Members.
- Article I: 1 prohibits discrimination between like products originating in, or destined for, different countries and ensures that like products are treated equally irrespective of their origin.
- This Article covers not only 'in law', or *de jure* discrimination but also 'in fact', or *de facto* discrimination, meaning thereby that both *de jure* and *de facto* discriminatory measures applied to imports or exports are prohibited under the WTO law.

# UTMs: Issue of WTO Compatibility

- Article II: 2(c) with fees and charges on imports. Article VIII: 1 (a) states that all fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation shall be limited in amount to the approximate cost of services rendered. This Article further states that such fees and charges shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes.
- Article XI: 1 of the GATT 1994 deals with general elimination of quantitative restrictions on imports and exports. As per this Article, *“no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party...”*

# Way Ahead

- Transfers of environment friendly technology and financial support to developing countries are important instruments to help the cause of climate change.
- Specific commitments and work programmes would need to be evolved with focus on obligations from developed country Members to ensure transfer of technology, including ensuring financing commitments to enable access to technologies protected by Intellectual Property Rights (IPRs).
- To deal with the Climate Change through UNFCCC rather than UTMs.

Thank You for Your  
Kind Attention