

CLIMATE, TRADE & LEGITIMACY

Narrating BCAs in Europe, North America and the Global South



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Chart Room

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Executive Summary

Border carbon adjustments (BCAs) are no longer hypothetical. The EU's Carbon Border Adjustment Mechanism (CBAM) entered full implementation in 2026, and comparable instruments are under development in the United Kingdom, Canada, Australia, and the United States. The persistence of contestation surrounding these measures, beyond their near-term economic impact, signals that what is at stake is not only a technical trade question but a broader contest over norms, responsibility, and authority. This report maps that contest through two analytical lenses: justice and sovereignty.

The justice framework is essentially distributive: who bears the cost of emissions, to whom, and according to which baseline. Developed economies deploy a commodity grammar, treating emissions as a tradable externality whose correction through carbon pricing restores competitive fairness and avoids carbon leakage. Developing economies respond with a responsibility grammar, insisting that climate burdens must reflect historical causation and developmental asymmetry. These grammars rest on fundamentally different normative baselines, and the actors deploying them select the framework whose baseline happens to favor their position.

The sovereignty framework is essentially cooperative: who defines the terms of collective climate action, and under what procedures. The EU supplements the carbon leakage defense with a universalist narrative, positioning CBAM as the building block of a multilateral carbon pricing architecture. The United States and Canada, despite a shared interest in developing BCAs of their own, contest the premise that domestic regulatory choices should be evaluated against an external benchmark. In the Global South, the objection runs deeper, filtered through the experience of conditionality and postcolonial asymmetry, and irrespective of domestic priorities, institutional capacity, or alternative approaches to mitigation.

The distinctive ambition of BCAs is to serve both logics simultaneously. They operate as a point of reconciliation between two normative orders that are structurally foreign to one another: the distributive logic of fair competition and the cooperative logic of climate governance. That ambition is not without tension: building alignment between competing interests is precisely what the measure aspires to. Despite its contested trajectory, CBAM has already accelerated the adoption of carbon pricing across a growing number of jurisdictions. This report examines how these two logics manifest in the debates surrounding BCAs, how they might coexist within a single instrument, and whether BCAs ultimately represent a productive synthesis or an unresolvable contradiction.

Methodology

This report examines how competing narratives of legitimacy surrounding BCAs shape their adoption, reception, and contestation in transatlantic and multilateral policy debates. Its central concern is not the technical design, legal compliance, or economic effects of specific instruments, but the normative frameworks through which actors construct and challenge the authority of such measures. The analysis neither endorses nor rejects any particular BCA design, nor does it pass judgment on the propriety or desirability of any specific measure. It maps a terrain of competing legitimacy claims and assesses their internal coherence, their institutional foundations, and their implications for international cooperation on climate and trade.

Research design. The report draws on three bodies of evidence. The first is a review of primary sources, including legislative instruments and official communications from jurisdictions developing or considering BCA measures, submissions and communications to multilateral bodies, and relevant decisions and advisory opinions from international judicial and quasi-judicial bodies. The second is a review of literature spanning international trade law, environmental economics, political ecology, and the emerging scholarly debate on climate-related unilateral trade measures. The third is a series of expert consultations conducted with researchers, practitioners, and policymakers working at the intersection of climate policy, trade governance, and international law.

Expert consultations. Consultations were conducted with individuals selected for their expertise in areas directly relevant to the report's analytical scope: BCA design and governance, WTO jurisprudence and dispute settlement, climate finance, common but differentiated responsibilities, and the political economy of trade-climate linkages. Conversations were semi-structured and organized around the report's central research question. Interviewees were not asked to validate the report's findings or to represent institutional positions. Their insights informed the conceptual framework, sharpened the analysis of contested claims, and identified relevant precedents and emerging developments. Pull quotes reproduced throughout the report are drawn directly from these conversations and serve to illustrate the range of positions and framings that animate current debates. They are attributed to interviewees in their individual capacities. The author is grateful to all participants for their time and for sharing their perspectives with the project.

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List of Abbreviations

BCA	Border Carbon Adjustment
BRICS	Brazil, Russia, India, China, and South Africa
CBAM	Carbon Border Adjustment Mechanism
CBDR-RC	Common But Differentiated Responsibilities and Respective Capabilities
CCA	Clean Competition Act
EPA	Environmental Protection Agency
ETS	Emissions Trading System
EU	European Union
FPFA	Foreign Pollution Fee Act
GASSA	Global Arrangement on Sustainable Steel and Aluminum
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GHG	Greenhouse Gas
ICJ	International Court of Justice
IMF	International Monetary Fund
ITLOS	International Tribunal for the Law of the Sea
MRV	Measurement, Reporting, and Verification
MSME	Micro, Small, and Medium Enterprise
NDC	Nationally Determined Contributions
NPR	Non Product Related
OBPS	Output-Based Pricing System
OECD	Organisation for Economic Co-operation and Development
PPM	Process and Production Methods
PPP	Polluter-Pays Principle
S&D	Special and Differential Treatment
WTO	World Trade Organization
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
US	United States
USTR	United States Trade Representative

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Introduction

Border carbon adjustments (BCAs) are no longer hypothetical instruments confined to academic proposals or exploratory policy papers. The European Union's Carbon Border Adjustment Mechanism (CBAM), which entered into full implementation in 2026, represents the most advanced such measure in operation. The United Kingdom is developing its own carbon border adjustment, targeted for 2027. Canada's 2023 federal budget signaled exploratory work on a domestic BCA. Australia has indicated interest in similar instruments. In the United States, while no federal carbon pricing exists, successive legislative proposals reflect a growing acceptance that climate costs should be reflected at the border.

Persistent controversy. BCAs have generated sustained debate in international trade discussions — sometimes out of proportion with their near-term economic impact. CBAM covers a significant but limited share of total EU trade. The measure is carefully designed and draws on established principles. By conventional metrics, broader acceptance should have been secured with less difficulty. The persistence of contestation, even as more jurisdictions move toward adopting their own BCAs, suggests that what is at stake is not primarily a technical trade measure calling for implementation adjustments, but a broader contest over the norms and principles governing the intersection of climate and trade policy. The BCA controversy functions as a proxy debate about justice, responsibility, sovereignty, and regulatory autonomy in the international order.

Justifications. Part of the explanation lies in the EU's own approach. In an effort to pre-empt challenges, Brussels has invested heavily in elaborating sophisticated justifications for CBAM. This effort at justification opened the door for sustained contestation: each argument the EU advanced became a surface for counterargument. The EU inadvertently transformed a trade instrument into a philosophical referendum on the meaning of fairness, responsibility, and authority in the climate era.

Rival narratives. These debates were, in many respects, inevitable. They reflect unresolved tensions in the architecture of international climate and trade governance that predate CBAM by decades. The legitimacy disputes surrounding BCAs take shape around broader, rival narratives — competing accounts of what justice requires, who has the authority to act, and what necessity demands. These narratives cannot be reconciled through legal analysis or economic modelling alone; they must be understood, mapped, analyzed, and negotiated. The proliferation of BCAs, and their expansion to a growing number of sectors, makes addressing these questions critical.

Duality. BCAs can be analyzed through two distinct, complementary lenses that correspond to two different visions of the nature and purpose of these instruments. On one reading, BCAs aim at correction: they equalize market conditions between producers subject to stringent carbon regulation and less regulated imports, providing a self-centered defensive measure against carbon leakage and unfair competition. This is distributive bargaining; the central concern is justice, a question of who pays, to whom, and on what basis. On another reading, BCAs aim at convergence: they are designed to foster collective action, reshape emissions incentive structures and advance mitigation through explicit carbon pricing. This is cooperative bargaining; the central concern is sovereignty, a question of what are the common standards, who gets to define them, and under what procedures.

Generative tension. BCAs carry a distinctive structural ambition: to bridge two normative orders that are, at their foundations, foreign to one another. Their main appeal is their promise to reconcile the distributive logic of fair competition and the cooperative logic of climate governance. The tensions this generates are not reducible to design flaws or implementation failures; they reflect the deeper division between the two underlying logics that BCAs seek to reconcile. This report examines how these two logics manifest in the debates surrounding BCAs, how they might coexist within a single instrument, and whether the normative landscape BCAs are helping to create can generate shared narratives of legitimacy.

I. Justice: Common Burden, Competing Baselines

BCAs primarily raise a distributive question: who bears the cost of emissions, to whom, and according to which baseline. Different actors answer differently, and their answers reflect two competing conceptions of justice. The first is justice as competitive fairness, which demands that equivalent products bear equivalent carbon costs and treats the absence of a border adjustment as a market distortion. It deploys a commodity grammar in which emissions are a priced externality that must be internalized. The second is justice as distributive equity, which insists that climate burdens must reflect historical responsibility and developmental asymmetry. It develops a responsibility grammar in which uniform costs imposed on unequal economies are not fair but discriminatory. These two grammars rest on fundamentally different normative baselines; the actors deploying them are, to a significant extent, selecting the framework whose baseline happens to favor their position.

A. Fair Competition and Non-Discrimination

The intellectual foundations of BCAs rest on a sequence of normative premises that together form a distinct vision of environmental responsibility and its enforcement in an open international economy. This report terms that vision a commodity grammar: a framework in which greenhouse gas (GHG) emissions are treated as an externality that needs to be internalized through an adequate price signal. If different jurisdictions price it differently, a correction takes the form of a price adjustment applied at the border. That commodity grammar plays a central role in modern environmental economics, from the Pigouvian externality logic through the Polluter-Pays Principle (PPP) and the carbon leakage rationale, to how developed economies design specific policy instruments.

1. Commodity Grammar and Carbon Leakage

The commodity grammar rests on a specific chain of reasoning. Pollution is a negative externality; the Polluter-Pays Principle assigns the cost to the producer. In contrast, the absence of carbon pricing is regarded as an implicit subsidy. When different jurisdictions price carbon differently, a border adjustment restores competitive neutrality.

Market externalities. The initial premise is that human economic activity causes pollution, and that nature requires protection from it.¹ Pollution is viewed as a negative externality that markets fail to reflect. In the absence of a corrective measure, the costs are borne by third parties. In the 1920s, Arthur Pigou proposed a corrective tax equal to the marginal social cost of the externality to restore efficient resource allocation.² The externality is internalized: the cost of pollution is borne by the producer and reflected in the price of the product. Applied to GHG emissions, this reasoning yields a family of market-based instruments, from carbon taxes to cap-and-trade systems, each designed to alter the relative cost of clean and polluting production. The underlying assumption is that environmental degradation is fundamentally a pricing problem: pollution is cheaper than it should be, and the corrective instrument makes it more expensive.

Polluter-Pays. The Polluter-Pays Principle formalized this logic within international economic governance. The Organisation for Economic Co-operation and Development (OECD) defined it in 1972 as a means of allocating pollution control costs so as to encourage the rational use of environmental resources and to avoid distortions in international trade and investment.³ A follow-up recommendation specified that countries should not assist polluters in bearing compliance costs through subsidies or tax advantages, as doing so would itself cause market distortions.⁴ The 1992 Rio Declaration restated the principle at the global level, calling on states to promote the internalization of environmental costs with due regard to the public interest and without distorting international trade.⁵ This framing constitutes the commodity grammar: emissions are a tradable externality whose correction is a pricing problem, and whose non-correction generates unfair competitive advantage.

Trade Distortions. In the absence of mutually agreed norms and standards, and with different countries pursuing different levels of ambition, the internalization of environmental costs remains uneven, and the risk of market distortion persists. Producers operating under a carbon price face higher costs than foreign competitors producing equivalent goods without comparable regulation. This asymmetry generates two distinct risks. The first is straightforward competitive disadvantage: regulated firms lose market share to unregulated ones. The second is carbon

¹ Frank Uekoetter, *The Age of Smoke: Environmental Policy in Germany and the United States, 1880–1970* (Pittsburgh: University of Pittsburgh Press, 2009). See also John Broome, *Counting the Cost of Global Warming* (Cambridge: White Horse Press, 1992).

² Arthur C. Pigou, *The Economics of Welfare* (London: Macmillan, 1920); E. Donald Elliott and Daniel C. Esty, "The End Environmental Externalities Manifesto: A Rights-Based Foundation for Environmental Law," *N.Y.U. Environmental Law Journal* 29 (2021): 506-542.

³ OECD, Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies, C(72)128 (Paris: OECD, 1972).

⁴ OECD, Recommendation on Implementation of the Polluter-Pays Principle, C(74)223 (Paris: OECD, 1974).

⁵ Rio Declaration on Environment and Development, Principle 16 (Rio de Janeiro: United Nations, 1992).

leakage, whereby production migrates to jurisdictions with weaker regulation, resulting in no global emissions reduction and loss in domestic industrial capacity. The economic literature formalized both dynamics. Copeland and Taylor demonstrated in 1994 that regulatory asymmetry causes free trade to shift pollution-intensive production toward less-regulated jurisdictions.⁶ Hoel identified an additional channel: when a regulated jurisdiction reduces fossil fuel demand, global energy prices fall, stimulating consumption and emissions elsewhere even without physical relocation of production.⁷ Recent empirical work has lent growing, if uneven, support to these theoretical predictions.⁸

Border adjustment. The policy response that emerged from these concerns was to apply a border adjustment between markets with different levels of internalization — taking the PPP from aspirational harmonization to immediate correction. This design frames border adjustments as a politically neutral principle of equalization. Border adjustments were not entirely new: the 1970 GATT Working Party on Border Tax Adjustments concluded that indirect taxes on products could be adjusted at the border to ensure equal treatment of domestic and imported goods.⁹ This precedent has been invoked by proponents of BCAs, but the Working Party addressed taxes levied on products, not on processes and production methods (PPMs). Yet, this parallel continues the approach to climate policy with market-based instruments. Rather than restricting access or imposing standards, it requires that imported goods bear a cost equivalent to the one domestic producers already pay.

Implicit subsidy. The corrective case for BCAs was made possible by a significant narrative inversion. While the conventional framing treats a border charge as a potentially protectionist trade barrier, this inversion reframes the absence of a carbon price as the true distortion. If a government absorbs pollution control costs, or simply fails to impose them, the result is a hidden subsidy to domestic producers. Esty argued in 1994 that where states allow producers to emit without charge, those producers benefit from an implicit subsidy that distorts competition as

⁶ Brian R. Copeland and M. Scott Taylor, "North-South Trade and the Environment," *Quarterly Journal of Economics* 109, no. 3 (1994): 755–787.

⁷ Michael Hoel, "Global Environmental Problems: The Effects of Unilateral Actions Taken by One Country," *Journal of Environmental Economics and Management* 20 (1991): 55–70. See also IPCC, *Climate Change 2007: Mitigation of Climate Change*, Working Group III (Cambridge: Cambridge University Press, 2007).

⁸ Yannick Hemmerlé, Tobias Kruse, and Mauro Pisu, "How Different Climate Policies Affect Carbon Leakage through Trade: Cross-Country Evidence for the Manufacturing Sector," OECD Economics Department Working Paper No. 1851 (2025); Zhiyuan Li, Bing Lu, and Sili Zhou, "Production Leakage: Evidence from Uncoordinated Environmental Policies," University of Macau Faculty of Business Administration Working Paper (2024).

⁹ GATT Working Party on Border Tax Adjustments, Report adopted 2 December 1970, BISD 18S/97. See also Joost Pauwelyn, "U.S. Federal Climate Policy and Competitiveness Concerns: The Limits and Options of International Trade Law," Duke Nicholas Institute Working Paper 07-02 (2007).

surely as any direct fiscal transfer.¹⁰ Helm, Hepburn, and Ruta sharpened this argument in 2012, contending that the conventional characterization of border adjustments as protectionist measures “should be turned on its head”: it is the absence of a carbon price that constitutes the distortion, and the border adjustment that corrects it.¹¹ On this account, the adjustment merely restores a competitive equilibrium that should have existed in the first place.

2. EU CBAM and the Level Playing Field

The EU’s political project and institutional identity strongly align with the commodity grammar. CBAM in particular, reflects long-held EU views on market integration, competition disciplines, and a normative preference for competitive neutrality over direct fiscal intervention.¹² The “level playing field” is not merely a policy objective; it is a manifestation of the EU’s approach to environmental economics, and CBAM is arguably its most sophisticated external application.

Market logic. The EU’s adoption of a cap-and-trade system was shaped at least as much by institutional constraints as by environmental reasoning. When the EU began formulating its response to the Kyoto Protocol, a carbon tax was the most prominent alternative. However, the adoption of fiscal measures requires unanimity among member states. The Emissions Trading System (ETS), designed as an environmental measure, could proceed on a qualified majority vote.¹³ The result was a climate instrument whose internal logic became inseparable from that of the single market. The ETS Directive of 2003 defined its purpose as the promotion of GHG emission reductions “in a cost-effective and economically efficient manner.”¹⁴ The preamble emphasized that an efficient carbon market would deliver reductions with the “least possible diminution of economic development and employment.”¹⁵ This language reflects a normative hierarchy in which environmental ambition must operate within the competitive order, not against it.

¹⁰ Daniel C. Esty, *Greening the GATT: Trade, Environment, and the Future* (Washington, DC: Institute for International Economics, 1994). See also Pascal Lamy, “The Greening of the WTO Has Started,” address at Yale University, 24 October 2007.

¹¹ Dieter Helm, Cameron Hepburn, and Giovanni Ruta, “Trade, Climate Change, and the Political Game Theory of Border Carbon Adjustments,” *Oxford Review of Economic Policy* 28, no. 2 (2012): 368–394.

¹² David J. Gerber, *Law and Competition in Twentieth Century Europe: Protecting Prometheus* (Oxford: Oxford University Press, 1998); European Commission, *Aligning Competition Policy and Industrial Policy in the EU*, CRC TR 224 Discussion Paper No. 710 (2025).

¹³ A. Denny Ellerman, Frank J. Convery, and Christian de Perthuis, *Pricing Carbon: The European Union Emissions Trading Scheme* (Cambridge: Cambridge University Press, 2010).

¹⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, Article 1.

¹⁵ Directive 2003/87/EC, Preamble, Recital 5.

Green Deal rhetoric. This commodity grammar has remained central to the European narrative. Commission President Ursula von der Leyen has repeatedly stated that “carbon must have its price, because nature cannot pay the price anymore.”¹⁶ The formulation is more than a communication element. The payment metaphor implies commensurability between payment and atmospheric absorption. This exposes the fundamental assumption that pricing emissions and reducing them are equivalent — despite the instrument's entire justification resting on their difference. Von der Leyen’s formulation also carries a temporal claim. The suggestion that nature “cannot pay the price anymore” implies a prior state in which nature could absorb the cost. It depicts the preceding two centuries as a period of legitimate, if unsustainable, borrowing from a generous creditor. The relevant question is not who caused the atmospheric deficit but how to restore solvency going forward. The moral urgency is real, but it is channeled entirely through market failure logic.

Carbon leakage. Rising EU climate ambitions and the implementation of domestic carbon pricing carry a substantial risk of competitive distortions and carbon leakage. This narrative positions EU countries as the injured parties: their producers are disadvantaged, their climate effort is being undermined, and their market is being distorted by others’ inaction. The EU’s initial response was an internal compensation mechanism: the free allocation of emissions allowances to sectors deemed at significant risk of carbon leakage.¹⁷ Free allocation served its immediate purpose of preventing large-scale industrial relocation, but it weakened the carbon price signal the system was designed to produce. As the EU raised its ambition toward a 55 percent reduction target by 2030, the contradiction sharpened.¹⁸ In 2021, the Commission found that the risk of carbon leakage would “likely increase in view of the persistence of differences in levels of climate ambition.”¹⁹ CBAM was framed as the instrument that would allow the phase out of free allocations without exposing European producers to unfair competition.

Domestic regulatory authority. The EU has framed CBAM primarily as an exercise of sovereign regulatory authority over the internal market. The argument is one of coherence: if domestic producers pay for their emissions, then imported goods must bear an equivalent cost. Recital 17 of the CBAM Regulation emphasizes the need for “coherence of the Union legal order,” framing the mechanism not as a trade restriction but as a requirement of the EU’s internal regulatory

¹⁶ Commission President Ursula von der Leyen, State of the Union Address, September 2020.

¹⁷ European Commission, Decision 2014/746/EU determining, pursuant to Directive 2003/87/EC, a list of sectors and subsectors deemed at significant risk of carbon leakage for the period 2015–2019. See also European Commission, Impact Assessment accompanying the proposal for a Carbon Border Adjustment Mechanism, SWD/2021/643.

¹⁸ Carbon Market Watch, ‘Position on the Carbon Border Adjustment Mechanism,’ January 2022, 3–4.

¹⁹ European Commission, Impact Assessment SWD/2021/643, Part 1, Section 2.1.

integrity.²⁰ Foreign producers who choose to access the EU market must meet its conditions, just as they must comply with any other product regulation. The EU does not regulate foreign producers in their home jurisdictions; it regulates the conditions of importation into its market.

Symmetry. The level playing field claim calls for a strict equalization logic: everyone should pay the exact same carbon cost as a matter of competitive fairness. The CBAM Regulation makes this logic central to its legitimacy claim. Recital 12 states that the mechanism is designed to replace free allowances by “ensuring equivalent carbon pricing for imports and domestic products,” while emphasizing that the combined system “should in no case result in more favorable treatment for Union goods,” providing preemptive reassurance to affected trade partners.²¹ Recital 15 describes CBAM as a “regulatory system that applies carbon costs equivalent to those borne under the EU ETS.”²² On this reading, CBAM is purely defensive and internally referential: it is indifferent to other countries’ policies; it merely neutralizes the competitive distortion created in the EU by its own climate policy.

“Whether it's done through a subsidy or a regulation or any kind of other restriction — if it works, if the amount of greenhouse gases actually in the ton of steel is lower, it pays a lower tariff.”

–Jennifer A. Hillman

Domestic justification. The carbon leakage narrative is central to CBAM’s domestic justification. The Commission framed the level playing field as a driver of both climate performance and economic prosperity, projecting that CBAM would reduce carbon-intensive imports while generating GDP gains and additional jobs.²³ European industry broadly endorsed this framing, if sometimes with technical reservations.²⁴ EUROFER, the European steel association, advocated for a “watertight” CBAM as a precondition for maintaining the sector’s viability under rising carbon costs.²⁵ Cembureau, the European cement association, framed CBAM as necessary to equalize carbon costs and prevent a surge of high-carbon imports, opposing proposals for an

²⁰ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, Recital 17.

²¹ Regulation (EU) 2023/956, Recital 12.

²² Regulation (EU) 2023/956, Recital 15.

²³ European Commission, Impact Assessment SWD/2021/643, Part 2, Sections 6–7. See also Sanna Markkanen, Jorge Viñuales, Hector Pollitt et al., *On the Borderline: The EU CBAM and Its Place in the World of Trade* (Cambridge: Cambridge Institute for Sustainability Leadership, 2021).

²⁴ EUROFER, “CBAM Proposals Single Out Key Loopholes but Fall Short of Ensuring Comprehensive and Structural Solutions,” press release, 2025. See also European Aluminium, “Position Paper: CBAM – An Ineffective Carbon Leakage Protection Measure for Aluminium in Need of Urgent Reform,” 2024.

²⁵ EUROFER, press release, 2025.

implementation delay on the grounds that large-scale decarbonization investments require regulatory certainty.²⁶ For these sectors, CBAM is understood as a competitive safeguard that makes the green transition investable.

Export rebates. The symmetry argument encounters a structural challenge at the export margin. In the absence of export rebates, CBAM does nothing to protect EU producers in third-country markets where no carbon price exists.²⁷ A neutral market equalization logic would call for exempting EU exports from carbon costs. But providing export rebates would make the measure considerably harder to present as an environmental instrument, since it would effectively relieve emissions obligations for goods sold abroad. The tension exposes a fundamental ambiguity: the measure cannot simultaneously function as an internal regulatory correction and as a tool for global environmental improvement.

Dual register. The export rebates question exemplifies the underlying tension between a duality of registers in the CBAM narrative. The instrument draws its political viability from its capacity to serve two objectives simultaneously: the climate objective of reducing emissions and the industrial policy objective of protecting domestic producers. That same duality is the principal source of skepticism among trading partners. The symmetry claim frames the adjustment as an act of fairness, but the immediate beneficiaries are EU firms. The mechanism is, by its own stated logic, protectionist in a specific sense: it prevents foreign producers from gaining a competitive advantage through the absence of a carbon price.

3. Competitive Fairness in the United States and Canada

The United States and Canada regulate emissions through different domestic instruments, but their underlying economic position is comparable. Both are advanced industrial economies with cleaner-than-average production profiles, and both acknowledge that asymmetric environmental regulation creates competitive distortions in international trade warranting some form of corrective response. The normative visions they bring to that shared diagnosis, however, differ in significant ways.

US Regulatory tradition. US environmental economics scholarship was instrumental in developing the theoretical case for market-based mechanisms, and the sulphur dioxide cap-and-trade program under the 1990 Clean Air Act amendments served as a proof of concept for

²⁶ See “CEMBUREAU Calls for Timely CBAM Start,” *International Cement Review*, January 2025.

²⁷ FuelsEurope, “Position Paper on the Carbon Border Adjustment Mechanism,” 2022. See also Giulia C. Leonelli, “Export Rebates and the EU Carbon Border Adjustment Mechanism: WTO Law and Environmental Objections,” *Journal of World Trade* 56, no. 6 (2022): 963 – 984.

emissions trading.²⁸ In practice, however, the dominant tradition in US environmental regulation is command-and-control, not market-based externality correction. The Environmental Protection Agency's mandate is to protect human health and the environment by setting emissions standards, not by internalizing externalities through a price signal.²⁹ The Inflation Reduction Act of 2022 reflects a preference for subsidies over explicit carbon pricing.³⁰ No federal carbon price has ever been enacted, and the regulatory trajectory under the current administration makes this prospect distant. In February 2026, the EPA rescinded the 2009 Greenhouse Gas Endangerment Finding and repealed all federal motor vehicle GHG emission standards, characterizing the action as the largest deregulatory measure in US history.³¹ The legal basis invoked was statutory interpretation rather than a contestation of climate science, but the practical effect is the dismantling of the federal regulatory architecture for GHG emissions.³²

Sub-national markets. Independent of this federal trajectory, sub-national carbon pricing has continued to mature. In 2025, California's Cap-and-Invest program was extended to 2045. In March 2026, California, Washington State, and Québec released a draft agreement to link their respective carbon markets into what officials described as the largest carbon market in North America and the third largest globally.³³ These initiatives represent a significant and expanding network of emissions pricing. Their position as state-level measures, however, prevents them from charging any border adjustment, and their sub-national status may complicate recognition by foreign BCAs.

²⁸ Richard Schmalensee and Robert N. Stavins, "Lessons Learned from Three Decades of Experience with Cap and Trade," *Review of Environmental Economics and Policy* 11, no. 1 (2017): 59–79.

²⁹ Clean Air Act, 42 U.S.C. §§ 7401 et seq. (1970, as amended).

³⁰ Michael A. Mehling, Geoffroy Dolphin and Robert A. Ritz, "The European Union's CBAM: averting emissions leakage or promoting the diffusion of carbon pricing?," Working Papers EPRG2416, Energy Policy Research Group, Cambridge Judge Business School, University of Cambridge.

³¹ US EPA, "President Trump and Administrator Zeldin Deliver Single Largest Deregulatory Action in U.S. History," press release, February 2026.

³² Holland & Knight, "EPA Repeals Vehicle Greenhouse Gas Standards and the Underlying Endangerment Finding," February 2026; Jackson Walker, "EPA Rescinds Greenhouse Gas Endangerment Finding, Repeals All Vehicle GHG Standards," February 2026.

³³ Latham & Watkins, "California Cap-and-Trade Reauthorization: What It Means for Market Participants," 2025; DLA Piper, "Climate Agreement for Market-Based GHG Reduction Programs," March 2026.

Border proposals. The absence of a federal carbon price has not precluded proposals for border carbon measures. The Clean Competition Act (CCA), reintroduced in December 2025, proposes a carbon intensity charge applied to emissions that exceed a US industry benchmark set at the sector’s average carbon intensity, starting at \$60 per metric ton of CO₂ equivalent.³⁴ Sponsors cite data indicating that the US economy is on average over 50 percent less carbon-intensive than its trading partners.³⁵ The normative logic is clear: the United States defines its own standard of environmental performance, rewards domestic producers who meet it, and penalizes imports that fall short. Symmetry is maintained through recognition of carbon prices paid in the exporting country. The CCA faces no realistic prospect of passage in the current Congress, but it articulates the clearest US version of a performance-based border adjustment.

"It is the position of this US trade representative to explore this connection between a failure to enforce robust environmental protections abroad and damages to the US economy."

–Catrina Rorke

Foreign Pollution Fee Act. A distinct proposal, sponsored by Senators Bill Cassidy and Lindsey Graham, takes the decoupling of border adjustment from domestic carbon pricing further.³⁶ The Foreign Pollution Fee Act (FPFA) applies ad valorem tariffs to imported goods based on the pollution intensity difference between the imported and equivalent domestic product. The bill explicitly provides that it does not authorize the creation of a domestic carbon tax.³⁷ Its sponsors frame it almost entirely in terms of manufacturing jobs, economic growth, and competitive advantage.³⁸ Senator Cassidy has been explicit about the political calculus, accepting the reality that a domestic carbon price cannot pass a Republican-controlled Congress.³⁹ Although an evaluation found that re-routing and resource shuffling would prevent the FPFA from generating revenue,⁴⁰ it illustrates the dual register of BCAs: where CBAM presents itself as a climate

³⁴ Clean Competition Act, S.3523, 119th Congress (2025–2026). See also Niskanen Center, “Senator Whitehouse Reintroduces a Clean Competition Act, Aiming to Link Industrial Competitiveness and Carbon Advantage,” 18 December 2025. See also Resources for the Future, “Projected Effects of the Clean Competition Act of 2025” (2025).

³⁵ Senator Sheldon Whitehouse, press release, 20 February 2024.

³⁶ Niskanen Center, “Where U.S. Carbon Policy Is Being Decided in 2026,” 3 February 2026; Bipartisan Policy Center, “Understanding the Foreign Pollution Fee Act of 2025,” November 2025.

³⁷ Bipartisan Policy Center, “Understanding the Foreign Pollution Fee Act of 2025,” November 2025.

³⁸ Senator Bill Cassidy, “Foreign Pollution Fee to Boost Economy, Lower Emissions,” press release, 2025.

³⁹ Amelia Davidson, “Republicans Tap Trump’s Love of Tariffs in New Carbon Bill,” E&E News, 2025.

⁴⁰ Kimberly Clausing et al., “Evaluating the Economic and Environmental Impacts of the Foreign Pollution Fee Act on Carbon-Intensive Sectors,” MIT CEEPR Working Paper, June 2025.

instrument with trade implications, the FPPA presents itself as a trade instrument with incidental climate co-benefits.

Canadian carbon pricing. Canada offers a different configuration. The federal government formally subscribed to carbon pricing through the Greenhouse Gas Pollution Pricing Act, upheld by the Supreme Court of Canada in 2021 as a matter of national concern.⁴¹ In practice, however, the consumer-facing carbon tax was effectively eliminated in March 2025 when federal fuel charge rates were reduced to zero.⁴² The industrial Output-Based Pricing System (OBPS) for large emitters was maintained, but its application across provinces is severely fragmented. In Alberta, a surplus of 48 million credits has driven actual market prices to roughly CAD \$18; in Saskatchewan, the system was effectively paused, resulting in a zero-carbon price.⁴³ The narrative has accordingly shifted from climate ambition to industrial defense. In September 2025, the government announced a \$5 billion Strategic Response Fund to support firms in aluminum, steel, and other sectors adapting to US tariffs and global trade disruptions.⁴⁴ Exploratory work on a Canadian BCA has been underway since federal consultations in 2021, and Prime Minister Carney's 2025 Climate Competitiveness Strategy referenced BCAs, but no concrete measure has been confirmed.⁴⁵

Political convergence. Regardless of how they regulate emissions domestically, the EU, the US, and Canada share an economic rationale for BCAs. All three have relatively clean industrial profiles, significant historical emissions, and a fundamental interest in protecting their domestic industry from competitors in less-regulated economies. In the EU, climate and trade converge naturally on the same measure because emissions have always been treated as a priced commodity. The alignment is less immediate for the US and Canada, but political support for industrial protection compensates. This dual legitimating function explains why carbon border measures prove more politically durable than pure climate instruments. Canada's consumer carbon tax collapsed under political pressure; industrial carbon pricing with a border adjustment logic survives because it also serves as industrial policy. The FPPA is explicitly framed as a trade competitiveness instrument because that framing makes it politically viable. CBAM has survived internal EU political challenges in part because it serves the Clean Industrial Deal logic alongside

⁴¹ *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11.

⁴² Government of Canada, "Removing the Consumer Carbon Price, Effective April 1, 2025," March 2025.

⁴³ Laurie Smith, "Navigating Canada's Carbon Markets Ahead of the 2026 Federal Benchmark Review," ClearBlue Markets, 2026; Nicholas Rivers, *One Federation, Many Prices: A Price Floor for Carbon Pricing in Canada* (Toronto: C.D. Howe Institute, 2025).

⁴⁴ Government of Canada, "Québec and Canada Strong," September 2025; Build Canada, "Launch a \$5 Billion Strategic Response Fund for Tariff-Impacted Firms," 2025.

⁴⁵ Torys, "Budget 2025: The Climate Competitiveness Strategy," November 2025.

the climate logic. The two logics are mutually reinforcing, but the resulting measure also becomes more exposed to the charge that climate is a pretext for green protectionism.

Transatlantic frictions. Despite a shared interest in developing their own BCAs, the US and Canada have raised concerns about the recognition of their environmental performance under CBAM. Their low-carbon industrial base may view international carbon accounting as an opportunity in principle, but they contest its implementation. In Canada, the Québec aluminum sector serves as the paradigm case. Powered by hydroelectricity, Québec’s primary smelters produce aluminum with a very low carbon footprint. CBAM recognizes actual emissions and allows exporters to claim them, but its documentation requirements are complex and burdensome. Canadian industry representatives have argued that the administrative effort often exceeds the value of the emissions recorded, particularly for low-carbon producers whose actual carbon liability is minimal.⁴⁶ The question of whether Canada’s diverse provincial pricing systems qualify for equivalence under CBAM also remains unresolved as of early 2026, although there is no opposition in principle.⁴⁷ In the US, CBAM has been criticized for offering no specific methodology for crediting regulatory standards, technology mandates, or tax incentives. While these measures should result in lower charges to companies that provide verified data, reliance on global default values rather than localized averages risks placing US manufacturers at a distinct competitive disadvantage.⁴⁸ The proposed expansion of CBAM’s scope to 180 downstream manufactured products from 2028 is likely to intensify these tensions.

Conclusion. The commodity grammar provides a coherent normative architecture for BCAs. Emissions are framed as an externality whose internalization is a pricing problem; the PPP allocates the cost to the producer; carbon leakage justifies extending that cost to imports; and the level playing field claim presents the resulting adjustment as a neutral act of competitive correction. The reframing of the absence of a carbon price as an implicit subsidy completes the inversion: the border measure is not the distortion but the remedy. This logic has proved politically durable across different regulatory traditions, because the competitive fairness argument aligns climate policy with industrial protection and sustains domestic support in a way that pure climate instruments cannot. Yet the commodity grammar treats emissions as a generic externality requiring price correction without regard for the specific history of those emissions.

⁴⁶ Tyson Dyck et al., “The World’s First Carbon Border-Adjusted Tax Enters Its Definitive Phase: What It Means for Canada,” BLG, January 2026.

⁴⁷ German Environment Agency (UBA), “Third Country Carbon Pricing Under the EU CBAM,” 2025.

⁴⁸ Climate Leadership Council, “The EU CBAM’s Rocky Debut—and Why the U.S. Should Lead the Next Phase,” 2026.

B. Climate Equity and Historical Responsibility

The commodity grammar provides a valid justification for BCAs as corrective measures, but it rests on a premise that a number of countries reject. GHG emissions are not a generic externality: they are the product of two centuries of industrialization whose benefits have been distributed unevenly. A mechanism that treats all producers identically regardless of their country's historical contribution to the problem, its stage of development, or its institutional capacity to decarbonize is, on this view, not neutral but biased toward those who already hold the advantage. Developing countries deploy an alternative framework referred to as the responsibility grammar. The principle of Common But Differentiated Responsibilities establishes that the burden of climate action must reflect historical causation. The development critique establishes that uniform costs imposed on structurally unequal economies produce substantive injustice. Revenue allocation makes the distributional consequences concrete: who pays, who benefits, and whether the resulting transfer is consistent with the norms that the implementing parties have themselves endorsed.

1. Responsibility Grammar and Differentiated Obligations

The most significant challenge to the commodity grammar is based on the principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), enshrined in the United Nations Framework Convention on Climate Change (UNFCCC) and reaffirmed in the Paris Agreement. CBDR-RC holds that while all states share a common obligation to address climate change, the scope of that obligation must reflect each state's historical contribution to the problem and its present capacity to respond. This principle grounds an alternative vision for climate and trade policy, assessing justice not by the cost equivalence between producers, but by the distribution of cumulative burdens among states.

Foundations. The 1972 Stockholm Declaration first acknowledged that environmental standards designed for industrialized countries might impose costs that developing economies could not reasonably bear, linking environmental protection to economic development from the outset.⁴⁹ The 1992 Rio Declaration formalized this acknowledgement as a structural principle, establishing that states bear differentiated responsibilities in view of their different contributions to environmental degradation.⁵⁰ The UNFCCC institutionalized this logic as a core obligation of the climate regime. Article 3(1) requires developed countries to take the lead in combating climate

⁴⁹ Stockholm Declaration of the United Nations Conference on the Human Environment (1972), Principles 11 and 12.

⁵⁰ Rio Declaration on Environment and Development (1992), Principle 7.

change and to provide financial resources for developing countries to follow.⁵¹ The foundation of the responsibility grammar is the record of cumulative emissions: if the atmosphere has a finite capacity to absorb carbon, then countries that consumed the majority of that capacity during their industrialization drew on a shared resource that others never had the opportunity to access.⁵²

Responsibility without liability. While CBDR-RC makes explicit reference to historical contribution, it does not rest on tortious logic and does not recognize a debt. It functions as a sequencing mechanism, and financial commitments are framed as voluntary cooperation and assistance rather than remedy or reparation.⁵³ In doing so, the UNFCCC arguably foreclosed the alternative legal trajectory in which cumulative emissions would have been actionable as harm. The compromise reflected in Article 8 of the Paris Agreement and its adoption decision made this explicit: the loss and damage provisions do not involve or provide a basis for liability or compensation.⁵⁴ The idea that historical emissions generate an actionable legal liability has been developed in climate scholarship; it has played a role in the advisory opinion processes before the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS). Yet, the dominant narrative is that developed countries bear greater responsibility, but that responsibility does not constitute an admission of wrongdoing.

Developing country status. The 1997 Kyoto Protocol operationalized CBDR-RC through an institutional distinction between developed and developing countries, imposing binding emission reduction targets on the former and none on the latter. The 2015 Paris Agreement moved toward a more universal framework in which every country communicates Nationally Determined Contributions (NDCs). Article 2(2) added the qualifier “in the light of different national circumstances” to the CBDR-RC principle, reflecting a compromise between the rigid Kyoto binary and a more dynamic interpretation of differentiation.⁵⁵ Developed countries have

⁵¹ United Nations Framework Convention on Climate Change (1992), Article 3(1). See also Resources for the Future, “For Climate-and-Trade Policies, the Principle of Common but Differentiated Responsibilities Cuts Both Ways,” 2025.

⁵² World Resources Institute, “Navigating the Numbers: Greenhouse Gas Data and International Climate Policy,” Chapter 6; Center for Global Development, “Climate Change and Development in Three Charts: An Update,” 2025; Center for Global Development, “Climate Change and Development in Three Charts,” 2025.

⁵³ Henry Shue, “Global Environment and International Inequality,” *International Affairs* 75, no. 3 (1999); Simon Caney, “Cosmopolitan Justice, Responsibility, and Global Climate Change,” *Leiden Journal of International Law* 18, no. 4 (2005). See also Margaretha Wewerinke-Singh, *State Responsibility, Climate Change, and Human Rights under International Law* (Oxford: Hart Publishing, 2019).

⁵⁴ Paris Agreement (2015), Article 8. See also Decision 1/CP.21, paragraph 51; Legal Response International, “Loss and Damage in the Paris Agreement and COP Decision and State Responsibility,” 2021.

⁵⁵ Paris Agreement (2015), Article 2(2). See also Ielyzaveta Badanova, “Dynamic Differentiation and Common but Differentiated Responsibilities under the Paris Agreement: Some Clarification but Not Yet Clarity,” *Cambridge International Law Journal*, 2025.

argued that Paris supports an evolving assessment of state capabilities, one that reflects current economic realities rather than fixed historical categories. The ICJ's characterization of state obligations as falling along a spectrum rather than in two fixed groups has partly validated this reading. Yet the core principle survived: the advisory opinions of ITLOS in 2024 and the ICJ in 2025 reaffirmed that climate obligations must be assessed in light of historical and current contributions to cumulative emissions.⁵⁶

CBAM contestation. CBAM has been widely criticized for its failure to incorporate differentiation into its legal architecture. By imposing a uniform carbon cost on imported goods, the mechanism is at odds with the foundational equity principle of the international climate regime.⁵⁷ At the Maputo meeting in early 2026, African trade ministers adopted a common position requiring that any climate-related trade measure be development-centered and respect the historical contribution of industrialized nations.⁵⁸ China's Ministry of Commerce accused the EU in January 2026 of practicing new forms of trade protectionism by disregarding historical responsibility and differences in technological capabilities, while emphasizing its role as the world's manufacturing base.⁵⁹ The BRICS group acknowledged the role of carbon markets as a driver of climate action, but condemned the mechanism as unilateral and discriminatory.⁶⁰ Many developing-country critics do not reject climate action or the concept of carbon pricing as such, but object to a design that treats unequal economies identically: a legitimate border measure should take into account the exporting country's historical emissions, development status, or institutional capacity to decarbonize.

Indian position. India illustrates the concrete burden that a non-differentiated border measure imposes. Indian iron and steel, which accounts for approximately 90 percent of India's CBAM-covered

"Economies that industrialized during periods of unconstrained emissions are now effectively imposing market access conditionalities linked to production standards that many developing economies are still building the capacity to comply with."

–Arunabha Ghosh, Aparna Sharma

⁵⁶ International Tribunal for the Law of the Sea, Advisory Opinion on Climate Change and International Law (21 May 2024); International Court of Justice, Advisory Opinion on Obligations of States in Respect of Climate Change (23 July 2025).

⁵⁷ Gracia Marín Durán, "Securing Compatibility of Carbon Border Adjustments with the Multilateral Climate and Trade Regimes," *International and Comparative Law Quarterly* 72, no. 1 (2023): 73-103.

⁵⁸ African Union, Ministers of Trade Common Position adopted at Maputo, February 2026; Third World Network, "WTO: African Group Declares Its Priorities for MC14," November 2025.

⁵⁹ Institute of New Europe, "EU-China Affairs Review January 2026," 2026. See also Carbon Pulse, "China Warns of Countermeasures against EU CBAM," 2026.

⁶⁰ Zero Carbon Analytics, "Carbon Border Adjustment Mechanisms Require Coordinated Global Action," November 2025.

exports to the EU, relies heavily on coal-based blast furnace production, generating roughly 2.4 tonnes of CO₂ per tonne of steel. At a projected European carbon price of approximately €80 per tonne, this translates into a CBAM cost exposure of around €192 per tonne of steel.⁶¹ Indian negotiators have framed this as a transfer of resources away from a developing economy whose per capita emissions remain substantially below the EU average. Beyond the direct cost, Measurement, Reporting, and Verification (MRV) requirements represents a significant barrier: close to 30 percent of India's metal-sector micro, small, and medium enterprises (MSMEs) lack the basic digital systems needed to track emissions, and exporters unable to provide plant-level verified data face default emission values set 30 to 80 percent above actual levels.⁶² India's Commerce Minister Piyush Goyal has described CBAM as an instrument that imposes a double punishment on Indian industry, while ignoring the different national circumstances of its producers.⁶³

2. Carbon Space and the Right to Develop

The equity critique of BCAs extends beyond the accounting of historical emissions to the developmental implications of uniform carbon pricing. Developing economies require what climate negotiators have long called "carbon space": the atmospheric capacity needed to pursue economic growth and poverty reduction through industrial processes that, at least transitionally, remain carbon intensive. By placing equivalent carbon costs on goods from economies at vastly different stages of development, BCAs risk constricting this space precisely when it is most needed. Beyond historical accounts, the development critique makes a forward-looking assertion: that economies at early stages of industrialization have a legitimate interest in flexibility during a transitional period.

Carbon space. The concept of carbon space, developed most influentially by Anil Agarwal and Sunita Narain in 1991, holds that the atmosphere's capacity to absorb greenhouse gases is a global commons, and that every individual has an equal right to a share of that capacity.⁶⁴ Where the commodity grammar allocates atmospheric capacity through price, with the market determining efficient distribution, the carbon space framework distributes it on an equitable per capita basis.⁶⁵ The injustice, under this view, is that industrialized nations used this shared

⁶¹ Indian Council of World Affairs, "Carbon Border Adjustment Mechanism: An Impact on India-EU Trade," 2026; CEEW, "EU Carbon Border Adjustment Mechanism," 2026.

⁶² CEEW, "EU Carbon Border Adjustment Mechanism," 2026.

⁶³ Economic Times, "EU Regulations to Impact Its Businesses: Piyush Goyal," January 2026.

⁶⁴ Anil Agarwal and Sunita Narain, *Global Warming in an Unequal World: A Case of Environmental Colonialism* (New Delhi: Centre for Science and Environment, 1991).

⁶⁵ Tejal Kanitkar and T. Jayaraman, "Equitable Access to Sustainable Development," ResearchGate (2022).

resource disproportionately before any rules were established. The portion of the global carbon budget consumed during the development of advanced economies represents an appropriation of common capacity. Contemporary per capita emissions data underscores this gap: the US and Canada emit between 13 and 15 tonnes of CO₂ per person annually, compared to approximately 1.9 tonnes in India, while over 560 million people in sub-Saharan Africa still lack access to basic electricity infrastructure.⁶⁶

Policy space. A similar logic is used by developing countries to claim policy space: in *Kicking Away the Ladder* (2002), Ha-Joon Chang demonstrated that developed economies historically used trade protectionism and industrial policy to develop, then advocated international rules that prohibit developing countries from using the same instruments.⁶⁷ The WTO principle of Special and Differential Treatment (S&D) reflects a similar recognition: developing countries cannot be held to the same obligations as developed ones when they enter the trading system from fundamentally different starting points. Industrialized nations, having built their wealth through unrestricted carbon-intensive production, now deploy carbon-based trade barriers that foreclose the same developmental path for others. African Union officials and scholars from emerging economies have articulated this position in multilateral fora. At the WTO, the African Group circulated reform proposals in 2023 calling for a rebalancing of trade rules to priorities technology transfer over unilateral trade measures.⁶⁸ At the 14th WTO Ministerial Conference in Yaoundé in March 2026, the African Group, the LDC Group, and the ACP Group continued to oppose measures they view as giving priority to European producers over foreign exporters.⁶⁹

Compliance burden. Beyond the claim for flexibility in the carbon and policy space, developing countries argue that they lack the institutional means to fully comply with MRV requirements. A mechanism that treats all exporters identically is not neutral, on this view, but biased toward

"None of the countries that now have carbon pricing started there. They all began with regulations, subsidies, and other measures. Only once they had tested their market and better understanding, and the public was ready, they introduced the carbon price."

–Chantal Line Carpentier

⁶⁶ IICA, Carbon Border Adjustment Mechanism (CBAM), 2024. See also Vayuveg, "'Net Zero' or Carbon Colonialism of the West?," March 2026.

⁶⁷ Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (London: Anthem Press, 2002).

⁶⁸ Third World Network, "WTO: African Group Calls for 'Re-Balancing' Reforms for Industrialization," July 2023. See also Institute for Economic Justice, *Removing International Obstacles to Sustainable Industrial Policy*, G20 report, November 2025.

⁶⁹ African Climate Wire, "WTO Reform Agenda Takes a Dive at MC14," April 2026.

economies that already possess the institutional frameworks for carbon pricing and the measurement infrastructure for emissions tracking. CBAM provides concrete evidence for the asymmetry claim: exporters must submit emissions data verified by auditors accredited under ISO 14065 or EU-specific rules. Exporters who cannot provide verified data face default values based on high-emission benchmarks, which effectively penalize unverified goods. The burden falls disproportionately on MSMEs in developing countries, while benefitting the largest and best-resourced exporters, regardless of their actual environmental performance.⁷⁰ In response to these concerns, the EU adopted Regulation 2025/2083, introducing a 50-tonne annual mass threshold that exempts approximately 90 percent of individual importers, while retaining coverage for 99 percent of total embedded emissions.⁷¹ A more contentious proposal emerged in late 2025, when the Commission introduced a draft Article 27a that would grant it delegated powers to temporarily exempt specific goods from the mechanism. European heavy industry associations warned that vague exemption criteria risk undermining the regulatory stability on which investment in decarbonization depends, while some national governments supported the measure in response to rising fertilizer import costs.⁷²

Regional exposure. Modelled economic assessments illustrate the potential impact on developing economies. UNCTAD projections indicate that major emerging markets, including India, Brazil, South Africa, and Indonesia, could face collective export losses of up to \$5.6 billion per year.⁷³ A 2023 study projected that, under full CBAM coverage and a carbon price of €87 per tonne, total African exports to the EU could fall by 5.72 percent, reducing the continent's aggregate GDP by 1.12 percent, equivalent to €31 billion.⁷⁴ Sector-specific risks are more acute: African aluminum exports to the EU were forecast to decline by up to 13.9 percent, iron and steel by 8.2 percent, and fertilizers by 3.9 percent.⁷⁵ South Africa, whose electricity generation remains predominantly coal-based, has raised concerns that the mechanism is incompatible with its just transition objectives: a country attempting to manage a complex energy transition cannot

⁷⁰ Y. Shi Y, J. Li, X. Feng, Z. Lian and M. Zhao, "Building Regulatory Resilience in Shipping: Green Technology Licensing and Carbon Tax Policies," *Frontiers in Marine Science* 12 (2025): 1.

⁷¹ European Commission, "Commission Strengthens the Carbon Border Adjustment Mechanism," press release, May 2025. See also Regulation (EU) 2025/2083 of the European Parliament and of the Council (Omnibus Regulation), entered into force October 20, 2025.

⁷² Impakter, "Weakening EU Carbon Border Tax Leads to Industry Pushback," 2026. See also Bellona, "CBAM at Risk: Why Article 27a Could Undermine the Backbone of European Climate Policy," February 2026.

⁷³ UNCTAD projections cited in T20 South Africa, "Addressing Trade Discrimination," October 2025.

⁷⁴ African Climate Foundation and Firoz Lalji Institute for Africa, London School of Economics, "Implications for African Countries of a Carbon Border Adjustment Mechanism," 2023.

⁷⁵ Ibid.

simultaneously absorb the cost of carbon border levies on its core industrial exports.⁷⁶ In Southeast Asia, the CLIMTRADE framework estimated that Vietnam, Indonesia, and Thailand would face the most significant effects, with Vietnamese steel, aluminum, and plastics exporters facing annual revenue losses of up to \$830 million.⁷⁷ ASEAN countries have flagged that the potential expansion of CBAM to plastics and chemicals poses particular risks for smaller economies with limited adaptive capacity.⁷⁸

Transitional needs. The developmental critiques do not overlook climate urgency, and they do not assert a right to pollute indefinitely. The claim is that a transitional period of carbon-intensive growth, supported by access to technology and finance, is the practical precondition for the structural transformation that decarbonization requires.⁷⁹ Beyond political goodwill, the transition away from fossil fuels demands upfront investment in infrastructure, and manufacturing capacity that most developing economies do not yet possess. When borrowing costs are high, fiscal space is constrained by debt service obligations, and domestic capital markets are shallow, the clean energy transition remains dependent on concessional external finance. Research has shown that climate change vulnerability in emerging and developing economies is associated with a major increase in long-term borrowing costs.⁸⁰ The Vulnerable Twenty (V20) group of climate-vulnerable nations estimated that its members paid more than \$60 billion in additional interest over a decade due to this climate premium.⁸¹ The result is a compounding constraint: the countries most in need of climate investment face the highest costs for the capital required to undertake it. This raises the question of who bears the cost for carbon.

3. Revenue Capture and Redistribution

The question of who funds the global green transition, and who captures the fiscal proceeds of climate-related trade measures, concentrates the distributional stakes of BCAs into their most

⁷⁶ Engineering News, "Despite Some Immediate CBAM Reprieve, South African Industry Warns of Serious Potential Fallout," October 2025.

⁷⁷ CASE for South East Asia, "Trading-Off: Exploring the Potential Implications of the EU's New Carbon Border Adjustment Mechanism for Southeast Asian Economies," 2025.

⁷⁸ IGES, "Implications of the EU's Carbon Border Adjustment Mechanism (CBAM) for ASEAN," 2025.

⁷⁹ ECDPM, "Navigating Green Economy and Development Objectives: The Effects of External Climate Regimes on African Economies," 2025. See also African Climate Foundation and London School of Economics, "Implications for African Countries of a Carbon Border Adjustment Mechanism," 2023.

⁸⁰ Serhan Cevik and João Tovar Jalles, "This Changes Everything: Climate Shocks and Sovereign Bonds," IMF Working Paper 20/79 (2020).

⁸¹ IEEFA, "How Credit Ratings Can Undermine Climate Finance for the Global South," 2026. See also Bennett Institute and Oxford Institute for New Economic Thinking, "The Adaptation Imperative: Climate Change and Sovereign Credit Risk," February 2025.

concrete form. Revenue allocation is where the abstract principles of historical responsibility and differentiated obligations produce tangible winners and losers, and where the tension between environmental purpose and fiscal interest becomes most difficult to resolve.

Greening development. The traditional claim for atmospheric carbon space rested on the premise that fossil-intensive industrialization was the main path to economic development. That premise is historically contingent. As clean technologies become available at comparable cost and scale, the demand for a proportional share of a shrinking global carbon budget loses much of its relevance.⁸² International policy frameworks now converge on universal net-zero targets, rendering the negotiation of emissions rights as an industrial commodity increasingly obsolescent. Historical responsibility for cumulative emissions remains with developed countries, but the modern expression of the right to development is no longer an entitlement to emit; it is an entitlement to develop cleanly. In practical terms, climate finance and technology transfer carry at least as much weight as the older carbon space claim, and BCAs sit at the center of this reconfigured conversation.⁸³

Environmental or fiscal. BCAs ground their international legitimacy in their character as environmental instruments. Yet the absence of earmarking for climate purposes raises questions about their actual function. Although BCAs formally impose costs on importers rather than on foreign producers, the latter may bear an effective liability through lower margins or lost market share. Modelling suggests that a carbon tariff imposed without accompanying domestic production requirements would extract significant revenue from the Global South while producing little to no net global emissions reductions.⁸⁴ In that scenario, the instrument functions as a tariff rather than a climate measure. It would effectively collect revenue from the exports of countries least responsible for historical emissions, and retain it for the domestic benefit of

"If it's going to have negative consequences, especially for exporters in developing countries, it should be accompanied by some kind of means of support, both for compliance and in terms of ultimately decarbonization"

–Aaron Cosby

⁸² Navroz K. Dubash, *Climate of Distrust: The 2024 UNFCCC Negotiations in Context* (Cambridge: Cambridge University Press, 2024); Lavanya Rajamani, "The Principle of Common but Differentiated Responsibilities and the Paris Agreement," in Daniel Klein et al., eds., *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford: Oxford University Press, 2017).

⁸³ Arunabha Ghosh, "Climate Finance and the Right to Develop Cleanly," CEEW Working Paper, 2024; T20 South Africa, "Addressing Trade Discrimination: A Framework for Equitable Carbon Border Adjustments," October 2025.

⁸⁴ CSIS, "Can the 2025 Clean Competition Act Cut Global Emissions and Maintain US Competitiveness?," January 2026.

countries most responsible, which scholars have described as a “compound injustice.”⁸⁵ While this does not directly violate the CBDR principle as a legal rule, it sits in visible tension with the equity architecture of the international climate regime. Beyond principles, the fiscal stakes are substantial. The International Energy Agency projects that CBAM could generate approximately \$25 billion annually once free allowances under the EU ETS are fully phased out.⁸⁶ This outcome coexists with a broader pattern: the EU’s efficient collection of carbon revenues stands alongside the persistent failure of developed nations to meet the \$100 billion annual climate finance pledge. The two cannot credibly be assessed in isolation from each other.⁸⁷

Multilateral contestation. These critiques have been formalized across multilateral platforms. At COP30 in Belém in November 2025, the G77 and China proposed the establishment of a Global Mechanism for Just Transition, identifying revenues from trade-related climate measures as a primary funding source.⁸⁸ At the WTO, the African Group has argued in submissions to the Committee on Trade and Environment that the domestic capture of CBAM revenue constitutes a form of disguised trade protection incompatible with multilateral trade principles.⁸⁹ The Maputo Ministerial Declaration of February 2026 warned against the use of “level playing field” narratives to justify constraints on the legitimate development policies of developing countries, and rejected attempts to condition access to S&D on arbitrary income thresholds. A shift in the framing of these demands has taken place: revenue redistribution is increasingly presented not as development aid but as reciprocity. If developed economies impose costs on Global South exports to address historical damage, they are expected to provide the finance and technology required for those exporters to meet the standards imposed.⁹⁰ The T20 South Africa policy brief on trade discrimination proposes a Carbon Leakage Fund Programme that would allocate 35 percent of total CBAM revenue, approximately €525 million annually by 2028, to affected trading partners, with allocation criteria weighted by the World Bank’s CBAM Exposure Index.⁹¹

ETS and CBAM. The EU’s response has combined rhetorical acknowledgement of these concerns with institutional resistance to revenue sharing. The definitive CBAM regulation

⁸⁵ Overland et al., “The Compound Injustice of the EU Carbon Border Adjustment Mechanism (CBAM),” *Ethics, Policy & Environment* 28, no. 1 (2023): 26-45.

⁸⁶ International Energy Agency estimate cited in T20 South Africa, “Addressing Trade Discrimination: A Framework for Equitable Carbon Border Adjustments,” October 2025.

⁸⁷ Climate Action Network, “State of Play from Belém: COP30 Midway Media Brief,” November 2025.

⁸⁸ Down to Earth, “At COP30, a North-South Rift Widens Over How to Fund a Fair Energy Transition,” November 2025.

⁸⁹ T20 South Africa, “Addressing Trade Discrimination,” October 2025.

⁹⁰ ESI Africa, “Carbon BAM on Africa,” 2025.

⁹¹ T20 South Africa, “Addressing Trade Discrimination,” October 2025.

contains no formula for revenue redistribution to trading partners: CBAM revenues flow into the EU's general budget as "own resources." The absence of earmarking also creates an internal coherence problem within the EU's own framework. The ETS, which CBAM is designed to extend to imports, does earmark revenues, at least partially, for climate objectives. The Innovation Fund, the Modernisation Fund, and the obligation on member states to spend ETS revenues on climate and energy purposes all maintain a visible link between the carbon price and its stated environmental purpose. CBAM breaks that link. The Temporary Decarbonisation Fund, financed by 25 percent of CBAM certificate sales in 2026 and 2027, does not restore it: the fund is temporary, directed exclusively at energy-intensive EU industries facing the phase-out of free allowances, and the remaining 75 percent of revenues flows to the general budget.⁹² The legislative history sharpens the critique. In June 2022, the European Parliament voted to recommend that the EU increase climate finance toward least-developed countries by an amount at least equivalent to CBAM revenues collected from them; this provision was not adopted.⁹³ The Senate-proposed Clean Competition Act offers a structural contrast in the US: it earmarks 75 percent of revenue for domestic industrial decarbonization and 25 percent for international climate assistance, making the domestic priority explicit while acknowledging an external obligation the EU framework doesn't.⁹⁴

Conclusion. The responsibility grammar challenges the commodity grammar not by rejecting carbon pricing or border adjustment as such, but by insisting that any legitimate instrument must account for the conditions under which it operates. CBDR-RC establishes that differentiation is not a concession to developing countries but a structural feature of the international climate regime, grounded in the historical record of cumulative emissions. The development critique extends this into a forward-looking claim: economies at early stages of industrialization require carbon space, policy space, and institutional support during a transitional period that uniform carbon costs foreclose. Revenue allocation concentrates these stakes into their most concrete form, exposing a pattern in which the countries least responsible for historical emissions bear costs whose fiscal proceeds are retained by the countries most responsible. The absence of mandatory revenue redistribution, the persistent shortfall in climate finance commitments, and the compliance burden imposed on economies that lack the institutional infrastructure for emissions verification all reinforce the perception that BCAs function as fiscal instruments serving domestic interests under an environmental justification.

⁹² European Parliamentary Research Service, Temporary Decarbonisation Fund, EPRS Briefing PE 782.666, 2026.

⁹³ Overland et al. (2023).

⁹⁴ Resources for the Future, "Projected Effects of the Clean Competition Act of 2025," December 2025.

Conclusion Part I.

The fundamental question of this part is who gets to pay for the transition. Parties to this conversation legitimately act in a self-interested way: each seeks to minimize the exposure of its own industry, while keeping foreign markets open and limiting its financial contribution to the global effort. To that end, each selects the normative framework whose baseline happens to favor its position, and calls it justice. The conversation draws a broad divide between developed and developing economies, with two distinct sets of narratives.

Rival narratives. The commodity grammar, deployed by developed economies, treats emissions as a cost that must be internalized in products and evenly distributed. Under the non-discrimination principle, equivalent products must bear equivalent carbon costs in order to restore fair competition. The absence of a border adjustment rewards free riders and punishes climate ambition. Developing economies respond that BCAs do not equalize carbon costs on products but impose a uniform fee on countries operating under fundamentally different conditions. The responsibility grammar insists that historical emissions and developmental asymmetry must shape the distribution of climate burdens. These two narratives rest on fundamentally different normative baselines.

Structural conflict. The coexistence of non-discrimination and CBDR-RC is not new; the two were recognized by substantially the same states at the same time under the WTO agreements and the UNFCCC. The conflict was always latent in the coexistence of the two frameworks. It became inevitable when state-level reduction targets were operationalized and translated into a pricing policy on producers, consistent with the commodity grammar. From that moment, implementing differentiation would necessarily distort competition. The tension became economically consequential when the carbon price under the EU ETS rose high enough to threaten industrial competitiveness. The distributive bargaining nature of the situation was exposed: the EU accepted CBDR-RC, but not at any price. The pattern is familiar: post-materialist commitments hold when prosperity feels guaranteed, and yield to material self-interest when it is under threat.

Beyond distribution. Yet fair allocation between countries does not exhaust the question. BCAs also carry a collective dimension. If the immediate objective of CBAM is to protect domestic industry against carbon leakage, the instrument is fundamentally the extension of a climate measure that expresses a common duty and benefits all. Domestic carbon pricing did not need to claim universal reach, but its extension to imports through a border mechanism places a collective ambition at the center of the instrument.

II. Sovereignty: Universal Ambitions, Fragmented Solutions

Border carbon adjustments are primarily designed as defensive instruments, but they also open the door to a collective dimension. The idea is not only to protect domestic industry but to bring a solution to a common problem; to change the incentive structure so that cooperation becomes individually rational. The message is clear: jurisdictions that price carbon domestically retain the revenue; those that do not pay at the border. As the main instigator of this enterprise, the EU leverages its market power to multilateralize its internal mechanism, attempting to build a Brussels Consensus around the commodity grammar. The question is no longer whether climate change requires cooperation but how to make it happen and who gets to define the terms. Climate science and international law provide substantial guidance, but a number of countries resist, asserting sovereign prerogative over climate governance choices rather than accepting a universal standard defined by others. Contestation is directed at the substance and procedure of the framework for its failure to take account of national specificities, and in some cases at the cooperative premise itself.

A. Universal Values and Standard Setting

The market equalization logic provides BCAs with a degree of legitimacy as corrective measures, but their international dimension extends well beyond competitive neutrality. The EU supplements the correction logic with a universalist narrative that claims to ground CBAM in environmental necessity and global standards. Carbon pricing is viewed not as one policy option among several but as the solution prescribed by climate science, international law, and economic theory. The EU relies on this narrative layer to build a Brussels Consensus, while presenting climate action as a general legal obligation and designing CBAM with WTO compatibility at its core.

1. Building the Brussels Consensus

As a climate measure, explicit carbon pricing and border adjustment are presented by the EU not as an instrument of its own interest but as the solution directly prescribed by climate science, international law, and economic theory to address a global problem. The implicit premise is that universal rules act on everyone equally, and that the EU merely serves as the instrument of their application.

Universal aspiration. Although CBAM is a direct extension of a domestic regulatory system, the mechanism carries a broader normative ambition. Recital 8 of the CBAM Regulation asserts the EU's "responsibility to continue playing a leading role in global climate action."⁹⁵ On this reading, CBAM is not merely defensive but generative: it positions the EU as the first mover in what should ultimately be a global mitigation effort, ideally through carbon pricing. The claim is not one of power but of necessity. Someone must act, and the EU, having developed the most advanced emissions trading infrastructure, presents itself as the natural standard-setter for an emerging universal regime.

"Europe is legitimate and justified because they say no one else is acting to make sure the world stays with this commitment. We're going to do it. So we're unilateral only to the extent that we are committing ourselves to defend the multilaterally agreed upon goal."

–Daniel C. Esty

Borrowed authority. This posture is anchored in Enlightenment rationalism. Kant's cosmopolitan vision of a universal legal order and his categorical imperative supply the philosophical foundation: rational moral law applies to all by virtue of rationality alone, and universality is derived from reason itself.⁹⁶ The EU is not merely influenced by this intellectual tradition; it is constitutively built on it. The European project was explicitly framed as the application of Enlightenment rationalism to the problem of war.⁹⁷ The EU is not a nation-state, it does not ground its legitimacy in democratic mandate or geopolitical power in the way that traditional sovereign actors do: it borrows authority from external sources, including science, economics, and international law.⁹⁸ This reliance is more a constitutional necessity than a rhetorical strategy. The position is that the EU has transcended the particular and achieved a form of post-national rational order. CBAM echoes this architecture: the EU presents itself not as imposing preferences on trading partners but as enforcing the logic of carbon pricing.

⁹⁵ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a Carbon Border Adjustment Mechanism, Recital 8.

⁹⁶ Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (1795); Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785).

⁹⁷ François Duchêne, "Europe's Role in World Peace," in *Europe Tomorrow: Sixteen Europeans Look Ahead*, ed. Richard Mayne (London: Fontana, 1972); Hedley Bull, "Civilian Power Europe: A Contradiction in Terms?," *Journal of Common Market Studies* 21, no. 2 (1982): 149–170; Ian Manners, "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 40, no. 2 (2002): 235–258.

⁹⁸ Helene Sjusren, "The EU as a 'Normative Power': How Can This Be?" *Journal of European Public Policy* 13, no. 2 (2006): 235–251.

Naturalization. This dynamic is visible in Von der Leyen’s statement that “carbon must have its price, because nature cannot pay the price anymore.”⁹⁹ The formulation does not merely promote a market-based solution; it naturalizes the commodity grammar by projecting market logic onto the pre-existing relationship between human activity and the atmosphere. Carbon pricing is presented not as a human invention for managing a human-caused problem but as the discovery of a mechanism that was always latent. The market logic is not imposed on nature; nature is recognized as having always operated according to it. The effect is to de-politicize the ETS and the CBAM, rendering them not as political choices but as technical recognitions of physical reality. This construction builds strong loyalty to the common discipline, producing regulatory determination but also institutional rigidity.

Brussels Consensus. The resulting governance model can be described as a Brussels Consensus in the climate and trade space, combining two elements. First, like the Washington Consensus before it, it packages particular policy prescriptions, namely explicit carbon pricing, market-based emissions caps, and border adjustments, as what reason and knowledge require rather than as one normative vision among several.¹⁰⁰ The political choices embedded in these prescriptions are rendered technical, universal, and non-negotiable. Second, it operationalizes the Brussels Effect, the mechanism by which the EU exports regulatory standards not through negotiation but through market power. Firms and countries that want access to a consumer market of approximately 450 million people must comply with EU standards, which gradually become de facto global norms.¹⁰¹ CBAM constitutes a deliberate iteration of this dynamic. Rather than the unintended by-product of internal regulation, it functions as an active instrument for exporting the EU’s carbon pricing framework and promoting global decarbonization without formal multilateral agreement.¹⁰²

Incentive logic. While CBAM's opponents view it as a punitive imposition on foreign producers, its incentive dimension is central to this logic of convergence. Exporters that demonstrate a carbon price has been paid in their country of origin receive a corresponding reduction in the CBAM certificates required for European market access.¹⁰³ This does not merely avoid double

⁹⁹ Commission President Ursula von der Leyen, State of the Union Address, September 2020.

¹⁰⁰ John Williamson, “What Washington Means by Policy Reform,” in *Latin American Adjustment: How Much Has Happened?*, ed. John Williamson (Washington, DC: Institute for International Economics, 1990).

¹⁰¹ Anu Bradford, “The Brussels Effect,” *Northwestern University Law Review* 107, no. 1 (2012): 1–67; Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford: Oxford University Press, 2020).

¹⁰² Michał Bernat and Francesco Spera, “The De Jure ‘Brussels Effect’: Current Legal Trends in the EU’s Unilateral Regulatory Globalisation,” *Biblioteka Nauki*, 2025.

¹⁰³ Regulation (EU) 2023/956, Article 9. See also Léa Bou Sleiman and Michael Grubb, “The European Union’s CBAM: Averting Emissions Leakage or Promoting the Diffusion of Carbon Pricing?” *Cambridge Journal of Economics*, 2025.

carbon taxation: this is a direct invitation for the EU's trading partners to implement a carbon pricing system equivalent to the EU ETS. The mechanism presents third-country governments with a direct choice: retain carbon revenue domestically by pricing emissions at home, or forfeit it to the EU treasury at the border. In fact, the Commission's main answer to the equity criticism has been to promote Climate Clubs, inviting trading partners to adopt their own carbon pricing systems in exchange for a reduction in CBAM charges and the ability to retain revenue locally.

Reciprocity. This incentive dimension reframes the narrative from imposed symmetry to consented reciprocity. This logic has altered the political economy of carbon pricing in several jurisdictions. Empirical research covering 163 countries between 2014 and 2025 indicates that a country's trade exposure to CBAM-covered sectors has a statistically significant effect on its likelihood of adopting carbon pricing.¹⁰⁴ Taiwan, China, Vietnam, Brazil, Turkey, and Malaysia have all introduced or accelerated carbon pricing instruments in direct or partial response to CBAM, and India has established its Carbon Credit Trading Scheme covering sectors aligned with CBAM's scope despite formally contesting the mechanism at the WTO.¹⁰⁵ On this reading, CBAM functions as a transitional, sub-optimal mechanism whose success is measured by its own obsolescence: a world in which all major trading partners price carbon equivalently is a world in which BCAs are no longer necessary. The G7 Climate Club, advanced during Germany's 2022 presidency, embraces this logic through its commitment to mutual recognition, interoperability of carbon accounting approaches, and the eventual elimination of border measures between members.¹⁰⁶

2. The Case for International Legality

CBAM has been criticized for the burden it imposes on third parties without their explicit consent. States possess domestic authority to regulate access to their internal markets, but this authority does not by itself guarantee international acceptance. Alleged compatibility with international law provides a powerful narrative tool to that end. The frameworks against which BCAs are assessed are consensual in nature: trade and climate treaties were formally accepted by state parties, and the principles of state responsibility articulated by the ICJ reflect customary

¹⁰⁴ Jorge Galindo, Pauline Weil, and Georg Zachmann, "Carbon Pricing Beyond Borders: Assessing the External Effects of the EU's CBAM," Bruegel Working Paper 05/2026, March 2026.

¹⁰⁵ Taiwan introduced a carbon fee in 2025 with an ETS under development; China expanded its national ETS to steel, cement, and aluminum in late 2025; Vietnam launched a pilot ETS in August 2025; Brazil enacted its ETS (Law 15,042) in late 2024; Turkey established a national ETS (Law No. 7552) in July 2025; Malaysia proposed a carbon tax in its 2026 budget. India established the Carbon Credit Trading Scheme in 2024 covering nine sectors aligned with CBAM's scope. See Zero Carbon Analytics, "Pragmatism vs Principle: Carbon Markets as a Response to the EU's CBAM," October 2025; European Commission, "CBAM Transitional Phase Review," 2025.

¹⁰⁶ Climate Club Statement, September 2025.

international law binding on all states. The international legality argument functions as a legitimacy resource for measures that might otherwise be dismissed as unilateral.

Sequential opinions. A significant development is the sequence of three advisory opinions delivered between May 2024 and July 2025. The International Tribunal for the Law of the Sea issued the first in May 2024, at the request of the Commission of Small Island States on Climate Change and International Law. The Inter-American Court of Human Rights followed in early July 2025. The International Court of Justice completed the sequence on 23 July 2025, delivering a unanimous opinion on the obligations of states in respect of climate change, the first time the UN's principal judicial organ had examined the international legal framework applicable to climate change.¹⁰⁷ The proceedings drew ninety-six states and eleven international organizations, the highest participation in the Court's history.¹⁰⁸ These three opinions represent a structural transformation in the legal status of climate obligations, and their combined logic bears directly on the legitimacy of BCAs.¹⁰⁹

Legal substance. The problem these opinions were designed to solve is the structural softness of the international climate regime. The UNFCCC, the Kyoto Protocol, and the Paris Agreement have always operated in a register of political commitment rather than legal obligation. NDCs are self-imposed commitments; they are not externally reviewable for adequacy; the Paris Agreement contains no compliance mechanism. This architecture was deliberate: developed countries would not accept binding reduction targets, and the price of universal participation was softness in obligation. The UN Convention on the Law of the Sea (UNCLOS) was adopted in 1982, more than a decade before climate change entered international legal frameworks, and makes no reference to GHG emissions. The advisory opinions can be read as an attempt by international tribunals to recover and formalize legal substance from that architecture.¹¹⁰

ITLOS opinion. The ITLOS opinion's central contribution was to bring climate change within the scope of existing law through a path that bypassed the climate treaty regime entirely. By holding that GHG emissions constitute pollution of the marine environment within the meaning of UNCLOS, the Tribunal elevated climate obligations to an issue of general international law.¹¹¹

¹⁰⁷ ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion (23 July 2025).

¹⁰⁸ House of Commons Library, "Climate Change at the International Court of Justice," Research Briefing CBP-10354 (January 2026).

¹⁰⁹ Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2025 Snapshot* (London: Grantham Research Institute on Climate Change and the Environment, 2025).

¹¹⁰ Frédéric G. Sourgens, "Appraisal of the International Court of Justice's Climate Advisory Opinion" (Tulane University Law School, 2025).

¹¹¹ ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, Case No. 31 (21 May 2024), paras. 161–179.

On this reading, UNCLOS generates stringent obligations to prevent, reduce, and control marine pollution from GHG emissions.¹¹² States party to UNCLOS are therefore bound by climate mitigation obligations that exist alongside the climate treaty framework, irrespective of their participation in the Paris Agreement. The Tribunal also integrated CBDR-RC into its analysis, finding that the obligation to take necessary measures contains elements common to CBDR-RC, particularly in provisions requiring states to act in accordance with their capabilities.¹¹³ This embeds differentiation not as a political concession to developing countries but as a structural feature of general international law's approach to shared environmental problems.

ICJ opinion. The ICJ opinion went further in several dimensions. Its most foundational move was to characterize climate obligations as *erga omnes*, obligations owed not bilaterally between specific parties but toward the international community as a whole, on the basis that every state is harmed by non-performance.¹¹⁴ This classification converts climate protection from a bilateral or plurilateral exchange into a universal interest. The Court also rejected arguments that the UNFCCC, Kyoto Protocol, and Paris Agreement form a self-contained *lex specialis* framework excluding other rules, holding instead that customary norms remain independently applicable, particularly the duty to prevent significant environmental harm and the duty to cooperate in good faith.¹¹⁵ Under this customary duty of prevention, the standard of conduct is a stringent obligation of due diligence, and the failure of a state to take appropriate action to protect the climate system may constitute an internationally wrongful act.

Dynamic differentiation. The ICJ's treatment of CBDR-RC brings direct implications for BCAs. The Court confirmed that climate obligations depend on each state's historical contributions to cumulative emissions, its current capabilities, and its national circumstances. The Court also introduced what scholars have called dynamic differentiation: the development status of countries resembles a spectrum rather than two fixed groups.¹¹⁶ This formulation was itself contested. The dynamic interpretation is the reading that developed countries favor, because it opens the door to increasing obligations on major emerging economies without requiring developed countries to discharge historical debts first. Judge Xue of China dissented, arguing

¹¹² ITLOS Advisory Opinion, paras. 241–257.

¹¹³ ITLOS Advisory Opinion, paras. 229, 327–329.

¹¹⁴ ICJ Advisory Opinion (23 July 2025); ASIL, "ICJ Delivers Unanimous Advisory Opinion on States' Climate Change Obligations" (24 July 2025).

¹¹⁵ ICJ Advisory Opinion, paras. 162–171; Columbia Climate Law Blog, "Harmonizing Sources, Hardening Duties: Inside the ICJ's Advisory Opinion on Climate Change" (11 August 2025).

¹¹⁶ ICJ Advisory Opinion, para. 226; Caroline E. Foster, "The 2025 International Court of Justice Advisory Opinion on Obligations of States in respect of Climate Change," *International and Comparative Law Quarterly* 74, no. 4 (October 2025): 775–809.

that the spectrum language distorts the foundational distinction between developed and developing states and the historical responsibility logic on which it rests.¹¹⁷ The Court gave both sides partial satisfaction: it confirmed that CBDR-RC is legally operative and that historical contribution is a relevant criterion, while simultaneously validating the Paris Agreement's move away from fixed binary categories.¹¹⁸

Polluter-pays principle. The ICJ also considered the PPP among the general principles potentially applicable to climate obligations, but determined that it does not apply in this context, having not been incorporated into the climate treaty framework in a manner that gives it binding legal force.¹¹⁹ This finding carries direct implications for the EU's commodity grammar, weakening the legal grounding of CBAM's core justification. The instrument can still be defended under WTO law and under the Paris Agreement's general mitigation obligation, but the specific framing of carbon pricing as the direct implementation of the PPP is undermined by the Court's analysis. Judge Bhandari argued in a separate opinion that the Court overlooked the principle's normative grounding and missed an opportunity to strengthen the accountability architecture.¹²⁰

Cooperation. The ICJ also held that cooperation in addressing climate change is a legal obligation, grounded in treaty and customary international law and binding even on states not party to the climate treaties.¹²¹ This formulation is the legal expression of the universalist logic: the cooperative game is mandatory, which could support the EU's vision, if not the method.

"States now have less room to portray robust climate regulation as optional, while those defending a BCA must still explain why that particular measure is a necessary, even-handed and good-faith component of a broader mitigation architecture."

–Margaretha Wewerinke-Singh

Outcome. The advisory opinions thus produce a carefully balanced result for the legitimacy contest around BCAs. They strengthen the EU's position in confirming that ambitious mitigation is legally required, that cooperation is obligatory, and that climate obligations are owed erga omnes. They simultaneously reinforce the developing country position in confirming that CBDR-

¹¹⁷ ICJ Advisory Opinion, Separate Opinion of Judge Xue, paras. 3, 62–64.

¹¹⁸ Chhaya Bhardwaj and Suraj Pratim Saikia, "Common but Differentiated Responsibilities in the Advisory: Development and Equity," Indian Blog of International Law (August 2025).

¹¹⁹ ICJ Advisory Opinion, paras. 159–160; Caroline E. Foster, "The 2025 International Court of Justice Advisory Opinion on Obligations of States in respect of Climate Change," *International and Comparative Law Quarterly* 74, no. 4 (October 2025): 775–809.

¹²⁰ ICJ Advisory Opinion, Separate Opinion of Judge Bhandari; Columbia Climate Law Blog, "Harmonizing Sources, Hardening Duties: Inside the ICJ's Advisory Opinion on Climate Change" (11 August 2025).

¹²¹ ICJ Advisory Opinion, paras. 263–265, 302.

RC is legally operative, that historical contribution and current capabilities are relevant criteria for assessing the adequacy of climate effort, and that the financial obligations of developed countries toward developing ones are legally binding.¹²² Although the Court did not rule on CBAM specifically, a mechanism that imposes uniform costs on exporters regardless of their historical responsibility, and without redistributing revenue to support the transitions of those most affected, seems difficult to reconcile with this.¹²³

3. WTO Compatibility Under Strain

The EU has placed considerable attention to WTO compatibility in the CBAM design. It has also deployed intense diplomatic effort to avoid a formal legal challenge. No WTO panel has issued a ruling on the CBAM or any comparable measure, and the Appellate Body's continuing crisis makes a definitive determination unlikely in the near term. The absence of adjudication does not render WTO law irrelevant; it still operates as a reservoir of legitimacy claims and contestation that all sides invoke to support their positions. The legal contest is real, but its function is persuasive rather than adjudicatory, shaping the terms on which political negotiations proceed.

Legal architecture. The right of WTO members to take border carbon measures is not necessarily disputed in principle, but whether the EU's specific design satisfies the detailed requirements of non-discrimination and the Article XX exceptions is genuinely open and highly fact-specific.¹²⁴ The EU's case for compatibility primarily rests on the basic non-discrimination obligations of the GATT, including MFN treatment under Article I and national treatment under Article III.¹²⁵ The CBAM was designed with these obligations explicitly in mind: each feature corresponds to a specific obligation, and the whole structure is intended to satisfy the non-discrimination baseline before any broader justification is required.¹²⁶ The phase-out of free allowances between 2026 and 2034 addresses the most evident vulnerability under Article III.¹²⁷ The deduction mechanism

¹²² IISD SDG Knowledge Hub, "What Role Can the ICJ Advisory Opinion Play in Climate Politics?" (October 2025).

¹²³ Carlo De Stefano, "The International Law Reading of the EU Carbon Border Adjustment Mechanism (CBAM)," *European Papers* (2 April 2026).

¹²⁴ TESS, "Making a Border Carbon Adjustment Mechanism Work for Climate, Trade, and Equity," 2024.

¹²⁵ General Agreement on Tariffs and Trade 1994, Articles I and III.

¹²⁶ Joost Pauwelyn, "WTO Dispute Settlement Post 2019: What to Expect?," *Journal of International Economic Law* 22, no. 3 (2019): 297–321; CSIS, "CBAM Precedents: Experts Weigh In," August 2025.

¹²⁷ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130/52; European Commission, COM(2025) 783 final, CBAM Review Report, December 2025.

for carbon prices paid in the country of origin addresses the most-favored-nation dimension, at least partially, by ensuring that exporters from jurisdictions that already price carbon are not double-charged.

The PPM problem. CBAM is not, however, a straightforward border tax adjustment. A classic border tax adjustment applies a domestic tax to an equivalent import on the basis of product characteristics. The EU's mechanism charges a fee not on the product itself, but on the emissions generated for its production, making it a hybrid of tax and regulatory condition.¹²⁸ The multilateral trading system typically governs products, without engaging with non-product related process and production methods (NPR PPMs). The 1991 GATT panel ruling in *United States–Tuna* established that one country may not embargo imports on the basis of foreign production processes, creating a lasting precedent.¹²⁹ The question gained new prominence after the EU adopted a “new generation” of sustainability-oriented trade measures explicitly based on PPMs, including the CBAM, the Deforestation Regulation, and the Renewable Energy Directive.¹³⁰

Article XX. Although WTO compatibility under general provisions is uncertain, justification may be sought under the exceptions of Article XX, specifically XX(b), which permits measures necessary to protect human, animal, or plant life or health, and XX(g), which permits measures relating to the conservation of exhaustible natural resources.¹³¹ The necessity and relatedness tests under XX(b) and XX(g) require the measure to be genuinely aimed at its environmental objective. In that regard, WTO jurisprudence suggests that the relevant comparison for environmental measures should be between the environmental effectiveness of domestic and

"If you can establish as a basic principle of law that you are allowed to treat high carbon, high GHG products differently than you treat low GHG products, even though they are otherwise like — that is the really important principle"

–Jennifer A. Hillman

¹²⁸ Peterson Institute for International Economics, “The European Union’s Carbon Border Adjustment Mechanism,” Policy Brief 21-23, 2021; Centre for Social and Economic Progress (CSEP), “Examining the Carbon Border Adjustment Mechanism: Issues and Challenges,” 2024.

¹²⁹ GATT Panel Report, *United States – Restrictions on Imports of Tuna*, DS21/R, 3 September 1991, unadopted.

¹³⁰ International Institute for Sustainable Development, “PPMs Are Back: The Rise of New Sustainability-Oriented Trade Policies Based on Process and Production Methods,” April 2023; Kateryna Holzer, “Reconciling Trade Measures with Development and Sustainability Concerns: The Case of Process and Production Methods,” University of Eastern Finland Centre for Climate Change, Energy and Environmental Law, May 2023. See also CSIS, “CBAM Precedents: Experts Weigh In,” August 2025.

¹³¹ General Agreement on Tariffs and Trade 1994, Article XX(b) and XX(g).

imported production, not between the costs each bears.¹³² The EU's cost-equalization logic, embedded in its price-mirror architecture, risks putting the CBAM at odds with this standard. In addition, Article XX exceptions are subject to the chapeau's requirement that measures not constitute arbitrary or unjustifiable discrimination. CBAM includes provisions for recognizing equivalent carbon pricing systems, but it has no established framework for crediting the wide range of non-price climate policies that other countries deploy.¹³³ The objection from affected countries is not that CBAM ignores their environmental effort in principle; it is that the accounting methodology itself is inadequate or burdensome. Whether a WTO panel would find this selectivity to constitute unjustifiable discrimination between countries in similar environmental circumstances is genuinely uncertain.¹³⁴

"CBAM is a debate on exceptions in the WTO system as it stands, although those exceptions were said to be rights — the rights of States to give priority or importance, for instance, to climate."

–Gabrielle Marceau

Revenue and fiscal coherence. The allocation of revenues also affects CBAM's legal defensibility under Article XX. The environmental exceptions require the measure to be genuinely aimed at conservation, and a measure that functions fiscally like a general tariff, raising revenue for general expenditure, sits less comfortably within that exception.¹³⁵ The European Commission's current framework directs the majority of revenues into the general budget of the Union.¹³⁶ Scholars have argued that a BCA without revenue recycling toward environmental or developmental purposes

¹³² WTO Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996; WTO Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998; WTO Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007; WTO Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R, WT/DS401/AB/R, adopted 18 June 2014; Timothy Meyer, "Taxing, Regulating, and Trading Carbon: An Introduction to the Symposium," *AJIL Unbound* 116 (2022): 191–195.

¹³³ Anatole Boute, "Accounting for Carbon Pricing in Third Countries Under the EU Carbon Border Adjustment Mechanism," *World Trade Review* 23, no. 2 (2024): 169–189. See also OECD, "International Climate Cooperation for Energy Intensive Industry," 2022.

¹³⁴ Jennifer Hillman, 'Congress Can Address Competitiveness and Climate Change — Without Breaking Trade Rules', *The Hill* (19 July 2022); Gracia Marín Durán, "Securing Compatibility of Carbon Border Adjustments with the Multilateral Climate and Trade Regimes," *International and Comparative Law Quarterly* 72, no. 1 (2023): 73-103.

¹³⁵ Rachele Magnaghi, "The CBAM Regulation and US BCA proposals: an analysis across the GATT non-discrimination obligations and the CBDR-RC principle", *Journal of World Energy Law & Business* 18, no. 5-6 (2025): 1–20.

¹³⁶ European Commission, COM(2025) 783 final, December 2025. See also European Parliamentary Research Service, Briefing PE 782.666, 2026.

may be difficult to justify under Article XX.¹³⁷ The equity critique and the legal compatibility analysis converge at this point. An OECD estimate suggesting that the mechanism would reduce global emissions by only 0.54 percent sharpens the question of whether minimal environmental gains can justify a measure that transfers revenue from developing to developed country treasuries.¹³⁸

Differentiated treatment. The principle of CBDR-RC, which structures the international climate regime, is formally alien to the WTO Agreements. Developmental asymmetry, however, is not absent from WTO law. The system of Special and Differential Treatment for developing countries, and the Article XX necessity test's requirement to consider feasible alternatives that respect countries' level of development and institutional capacity, provide a channel through which development status can be acknowledged within trade law.¹³⁹ For developing country exporters that lack the administrative infrastructure to navigate complex verification requirements, or the financial resources to invest in rapid decarbonization, this alternative-measure analysis could be significant in any future dispute.¹⁴⁰

Narrative Shift. As CBAM's WTO compatibility remains genuinely uncertain, the EU must defend the measure on two parallel tracks simultaneously: as a non-discriminatory equalization of carbon costs under Articles I and III, and as a legitimate environmental exception under Article XX. The shift between these two tracks is not merely procedural: it reflects a deeper narrative transition that runs through the entire CBAM debate. Articles I and III rely on a logic of competitive fairness: they only require that like products be treated alike. This is the legal expression of the border adjustment logic, and it is the foundation on which the EU's level playing field rhetoric rests. In contrast, Article XX invokes universal values that transcends competitive neutrality: the exceptions require the measure to serve a specific purpose, warranting departure from the non-discrimination baseline. An exception under Article XX is not about competitive fairness; it is about a higher objective, leaning into the universalist logic. The CBAM attempts to rest on both foundations simultaneously, with the instability of its justifications mirroring the GATT's architecture. A measure designed as a perfect mirror of domestic carbon costs — which maximizes its credibility as a non-discriminatory equalizer under Articles I and III — may be less convincing as a genuine environmental instrument under Article XX, because its logic is internal

¹³⁷ IDOS (German Institute of Development and Sustainability), "Priorities for a Development-Friendly EU Carbon Border Adjustment Mechanism," Briefing Paper 20/2021. See also Bhavya Johari, "Carbon Borders Without Differentiation: Why India's Challenge Tests the European Union's Climate Diplomacy," IELP, March 2026.

¹³⁸ Ibid.

¹³⁹ On WTO special and differential treatment provisions, see WTO Analytical Index, "Special and Differential Treatment Provisions," updated 2024.

¹⁴⁰ IDOS, "Priorities for a Development-Friendly EU CBAM," 2021.

and self-referential rather than oriented toward global environmental outcomes. A measure designed to maximize its environmental credibility — structured around emissions reduction rather than cost equalization, sensitive to alternative reduction efforts and developmental constraints — may generate differential effects that are harder to defend under the primary non-discrimination obligations.¹⁴¹ The EU cannot fully satisfy both simultaneously.

Conclusion. The EU constructs CBAM as the building block of a multilateral carbon pricing architecture, grounding its claim in a Brussels Consensus that borrows authority from science, economics, and law. The correction logic is supplemented by a convergence narrative that positions the mechanism as a natural solution to a collective problem. International law provides substantial support: the advisory opinions confirm binding mitigation obligations and the *erga omnes* character of climate protection. While lawfulness may be challenged on specific points, the overall legal structure appears defensible. The incentive logic is producing demonstrable results, with a growing number of jurisdictions adopting or accelerating carbon pricing in direct response to CBAM. Yet legitimacy remains fragile. The additional layer of collective ambition introduces a fundamental instability: what its proponents may have seen as strengthening the measure also provides opponents with a wide surface for contestation. The competitive fairness claim and the environmental purpose claim pull in different directions. The first demands strict equivalence of costs; the second demands sensitivity to context and diplomatic efforts. What is visible in political contestation is equally apparent in legal analysis: the measure almost certainly does not qualify as a politically neutral border tax adjustment, yet it does not fully convince as a genuinely environmental instrument either. The EU has not resolved this tension so much as institutionalized it, and the resulting ambiguity is precisely the space in which contestation operates.

B. Particular Claims and Sovereign Resistance

The EU invokes a universal project to justify CBAM both politically and legally. To a large extent, the resistance it encounters is directed not despite the universal framing but because of it. This narrative, while grounding the CBAM's claim to act as a collective framework, exposes new vulnerabilities: carbon pricing is not a technical necessity but a normative vision, and the EU is not merely defending its market but projecting a model. The Brussels Consensus collides with sovereignty claims, with other countries contesting the process by which CBAM was designed without their meaningful participation, the substantive content of a measure that fails to recognize particular situations, and in some cases the idea that a single universal instrument is

¹⁴¹ Jennifer Hillman, "Congress Can Address Competitiveness and Climate Change — Without Breaking Trade Rules," *The Hill*, 19 July 2022; Gracia Marín Durán, "Securing Compatibility of Carbon Border Adjustments with the Multilateral Climate and Trade Regimes," *International and Comparative Law Quarterly* 72, no. 1 (2023): 73-103.

the appropriate response to a problem that manifests differently in different contexts. These different levels of resistance are examined across two distinct configurations: the assertion of regulatory autonomy by the US and Canada, and the deeper challenge from the Global South, where CBAM is perceived through the lens of conditionality and postcolonial experience.

1. Regulatory Overreach and Legitimacy Deficit

CBAM is formally presented as a territorial measure, applying to goods entering EU customs territory. Its practical effects, however, reach into the production systems of exporting countries. This does not render the mechanism unlawful, but it complicates its reception, particularly given that it was designed and adopted unilaterally. The tension between territorial authority and extraterritorial consequences sits at the center of the legitimacy challenge surrounding the EU's climate-trade agenda.

Brussels Effect. When the world's largest single market conditions access on the carbon intensity of imported goods, the boundary between domestic regulation and external standard-setting becomes difficult to sustain. While the mechanism formally regulates what crosses the border, it actually shapes production decisions taken in other jurisdictions. The EU maintains that foreign producers remain free to manufacture using any method they choose, provided they pay the associated carbon cost for EU market entry.¹⁴² Exporters characterize this as a Hobson's choice: the economic necessity of accessing the EU's market, and the threat of punitive default values, render compliance de facto mandatory for globally competitive firms. The Brussels Effect, in this context, is not merely an observed phenomenon of regulatory diffusion but an actively leveraged instrument of climate governance.

Legal baseline. The general principle of territorial sovereignty is that states are generally free to act unless a specific prohibition in international law exists, and that a state may not exercise its power in the territory of another.¹⁴³ Proponents of CBAM invoke the permissive element to argue that no treaty prohibits carbon-based border charges. Critics invoke the restrictive element, contending that the requirement for installation-level audits by EU-accredited verifiers amounts to an exercise of jurisdiction over foreign industrial processes.¹⁴⁴ The effects doctrine offers an alternative legal basis, permitting regulation of foreign conduct that produces substantial,

¹⁴² Ottavio Quirico, "The European Union's Carbon Border Adjustment Mechanism as a (Generally Lawful) Countermeasure," in Ottavio Quirico and Walter Baber, eds., *Implementing Climate Change Policy: Designing and Deploying Net Zero Carbon Governance* (Cambridge: Cambridge University Press, 2025): 231-244.

¹⁴³ Permanent Court of International Justice, *Case of the S.S. Lotus (France v. Turkey)*, 1927 PCIJ (Ser. A) No. 10.

¹⁴⁴ Friedl Weiss, "Extra-Territoriality in the Context of WTO Law," in Gunther Handl, Joachim Zekoll, and Peer Zumbansen, eds., *Beyond Territoriality—Transnational Legal Authority in an Age of Globalization* (Leiden: Brill, 2012): 463-486.

foreseeable, and direct effects within the regulating state's territory.¹⁴⁵ Emissions contribute to pollute a shared global atmosphere, but the connection between a specific batch of imported aluminum and climate effects in Europe is arguably too diffuse to satisfy the doctrine's traditional requirements.

Regulatory export. The underlying question is whether the EU is merely charging a price at its border, or conditioning access to its market to the respect of its own production standards in the country of origin. Compliance with CBAM extends well beyond paying a fee at the border. The

"Without coordination, the differences in ambition, sequencing, and approaches enabled by Paris Agreement are ignored, and can erode the very trust needed to achieve the green and low-carbon market transitions."

–Chantal Line Carpentier

exporting country's energy mix, industrial processes, and emissions accounting practices all become relevant to the cost of market access.¹⁴⁶ The EU's exercise of regulatory sovereignty creates practical consequences for other jurisdictions that constrain their policy autonomy. Domestic climate policy in exporting countries is being evaluated against a European benchmark they did not help design and do not necessarily endorse.¹⁴⁷ The extraterritorial dimension is not purely incidental: CBAM explicitly encourages the adoption of carbon pricing equivalent to the ETS.

First mover. The EU's universalist narrative, with the collective dimension of CBAM, is both its strongest source of legitimacy and its most exposed vulnerability. The EU is the only major actor currently willing to bear the political cost of acting on a collective problem in the name of shared rules rather than narrow interest. In the present moment, when other powers are openly retreating from multilateral commitments, that willingness deserves credit. The question is whether the EU is able to sustain this leadership, to appear legitimate and to build momentum. The cooperative, rational framing on which the EU relies requires a minimum common understanding. Insisting on the correct technical solution while others pursue different interests may produce isolation rather than followership. The risk of isolation intensifies when the rational position happens to coincide with the rational actor's economic interests, which undermines the claim to disinterested correctness.

¹⁴⁵ American Society of International Law, *Benchbook on International Law* (2014), Chapter II.A; European Parliament, *The Extraterritorial Effects of Legislation and Policies in the EU and US* (Brussels: European Parliament, 2012).

¹⁴⁶ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a Carbon Border Adjustment Mechanism, OJ L 130, 16.5.2023; European Commission, *Carbon Border Adjustment Mechanism: Definitive Regime* (2026).

¹⁴⁷ Natalie L. Dobson, *Extraterritoriality and Climate Change Jurisdiction: Exploring EU Climate Protection under International Law* (Oxford: Hart Publishing, 2021), 44–45.

Consistency trap. Universal values build legitimacy only if the actor invoking them is visibly subject to the same rules it applies to others. The EU has maintained its carbon pricing architecture, deepened its climate targets, and pressed forward with CBAM despite intense diplomatic friction. That consistency has real institutional value. Yet it also exposes a coherence problem: collecting CBAM revenues without returning them to affected developing countries, while underdelivering on climate finance commitments, seems to contradict the environmental logic the EU invokes.¹⁴⁸ On a deeper level, this exposes a structural fragility. The EU has relied on a syllogism: climate change is a global problem requiring universal action; CBAM is grounded in science, law, and reason; therefore, CBAM's legitimacy should be universally accepted. Shared values do not, however, automatically generate agreement on the specific instrument through which they are pursued. The risk is that contestation of the instrument is then read as rejection of the values.

Rationality Trap. Strict attachment to principles also risks creating a negotiating problem. Actors who define themselves by their rationality may find it difficult to make concessions that appear irrational within their own framework. Revenue redistribution, differentiated application, and recognition of non-price policies are concessions that could make sense within a justice framework but appear as market distortions under the commodity grammar. The EU's self-definition through rationality could make it structurally resistant to precisely the accommodations that could broaden CBAM's legitimacy. It cannot easily give ground without appearing to abandon the principles that justify its position in the first place.

Procedural posture. At every step of the process, a critical element is whether the EU presents itself as one actor proposing a framework for negotiation, or as the enforcer of a framework already settled. CBAM's design, which is unilateral, without prior multilateral agreement, and benchmarked to EU standards, sits closer to the second posture than the first, placing the mechanism at odds with its claimed collective ambition. This risk is not entirely new in the critique of liberal internationalism. Claiming to act on behalf of humanity is a particular kind of power move: unlike open interest assertion, it delegitimizes opposition by definition.¹⁴⁹ The critique does not invalidate the EU's climate ambition. It does, however, identify a structural risk: that framing a specific instrument as the enforcement of universal values forecloses the deliberative space needed to make that instrument broadly legitimate.

¹⁴⁸ Open Research Europe, "How to Navigate the EU's CBAM Trilemma: A Review of Policy Objectives and Possible Designs," Open Research Europe 6, no. 5 (2026); SPES, Effective, Fair and Inclusive Climate Policies in Europe and in the Global South, Policy Brief 6 (2025).

¹⁴⁹ Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (1950; English trans., New York: Telos Press, 2003).

2. Regulatory Autonomy in the U.S. and Canada

A central objection to CBAM is that explicit carbon pricing should not be unilaterally elevated as a global standard. The claim is not that carbon pricing is without merit, but that the EU's determination of what constitutes an equivalent carbon price in another country is inherently partial. On a deeper level, the EU's universalist framing invites resistance from jurisdictions that ground their climate policy authority in sovereign prerogative rather than universal principles. In that sense, CBAM is said to disregard the regulatory sovereignty of states that have pursued different, and in some cases demonstrably effective, decarbonization pathways.¹⁵⁰ The US, and Canada to a lesser extent, illustrate this dynamic with particular clarity, even though they are not the most affected by CBAM in economic terms.

Regulatory autonomy. The resistance of the US and Canada reflects a deep disagreement over the limits of regulatory jurisdiction. Both countries have developed climate policy frameworks shaped by their own political economies, energy systems, and institutional structures. They do not seek developing-country exemptions or invoke differentiated responsibility, nor do they rank among the jurisdictions most heavily impacted by CBAM obligations. They might even see it as an opportunity. Their objection is that domestic environmental performance should not be adjudicated against European criteria. The prospect of having well-established regulatory choices evaluated by an external authority, and found wanting according to that authority's standards, touches a nerve that runs deeper than the specific economics of CBAM.

American particularism. The United States brings a normative approach that is structurally distinct from the EU's. Where the EU grounds its authority in universal principles, the US has historically grounded its foreign economic policy in the assertion of national interest, sovereign prerogative, and the right to define its own standards without reference to external benchmarks.¹⁵¹ This reflects a persistent feature of American political culture: a suspicion of supranational authority, a preference for bilateral over multilateral arrangements, and a conception of sovereignty that treats external normative pressure as encroachment. The posture has been visible in US relations with the WTO, with Washington blocking judicial appointments to the Appellate Body and treating WTO compatibility less as a binding legal constraint than as

¹⁵⁰ European Parliament, *The Near-term Future of the Transatlantic Relationship*, Study PE 782.657 (2026); Zhuang Liu and Lili Kong, "The Fairness Controversy over CBAM and Its Policy Implications," *Climate Policy and Governance* 1, no. 1 (2023).

¹⁵¹ Stewart Patrick, *The Sovereignty Wars: Reconciling America with the World* (Washington, DC: Brookings Institution Press, 2018).

a political consideration. American trade policy, including its carbon-linked border measures, is justified in terms of competitive advantage, national security, and industrial protection, not in terms of what norms should govern global production. The US administration even described an international carbon pricing proposal as “neocolonial export of global climate regulations,”¹⁵² indirectly targeting any universalist approach to the climate issue.

"The Foreign Pollution Fee Act is not designed to price carbon. It is designed to recognize that because of a variety of factors, the U.S. economy is much more efficient in producing goods."

–Catrina Rorke

Legislative instruments. US legislative proposals for border carbon measures reflect this sovereign posture. The Clean Competition Act anchors its adjustment in a US-centric carbon intensity baseline, imposing fees on domestic and imported goods whose emissions exceed an industry average.¹⁵³ The Foreign Pollution Fee Act goes further, levying charges based on the carbon intensity differential between domestic and foreign production, with multipliers targeting non-market economies and foreign entities of concern; it is framed as a trade and national security instrument rather than a climate measure.¹⁵⁴ The political environment under the second Trump administration has accelerated the migration of border carbon measures from the environmental register to the industrial policy register. The rescission of the Greenhouse Gas Endangerment Finding removed the legal basis for federal GHG regulation without diminishing interest in carbon-linked trade instruments.¹⁵⁵ Border carbon fees are now discussed primarily as tools of industrial policy directed at economic competitors. The 2026 USTR Trade Policy Agenda reinforces this orientation, emphasizing manufacturing protection, supply chain security, and enforcement against overcapacity.¹⁵⁶

Collision of sovereignties. The US response to CBAM is a direct expression of this vision. The Trump administration has framed CBAM as an extraterritorial tax on American energy, and US industry groups have pressed the point that CBAM’s exclusive reliance on explicit pricing

¹⁵² Institute for Energy Research, “How the PROVE IT Act Got a Second Life, and Why It Could Tax Americans Anyway,” 2026. See also Niskanen Center, “Where U.S. Carbon Policy Is Being Decided in 2026,” February 2026.

¹⁵³ U.S. Senate Committee on Environment and Public Works, “Whitehouse, DelBene Reintroduce Carbon Border Adjustment to Boost Domestic Manufacturers, Tackle Climate Change,” press release, December 2025; Niskanen Center, “Senator Whitehouse Reintroduces a Clean Competition Act,” December 2025.

¹⁵⁴ Bipartisan Policy Center, “Understanding the Foreign Pollution Fee Act of 2025,” 2025; C2ES, “Developments in Border Carbon Adjustments in the 119th Congress and Abroad,” January 2026.

¹⁵⁵ U.S. Environmental Protection Agency, “Final Rule: Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act,” February 2026.

¹⁵⁶ Office of the United States Trade Representative, The President’s 2026 Trade Policy Agenda and 2025 Annual Report (Washington, DC: USTR, March 2026).

penalizes American producers whose carbon intensity already falls below that of most competitors.¹⁵⁷ The American Iron and Steel Institute has argued that domestic steel production is the least carbon-intensive among major producers; the American Chemistry Council has objected that European regulatory requirements should not be imposed on American firms.¹⁵⁸ Industry groups have also flagged CBAM's conservative default emission values, which inflate estimated carbon intensity for exporters unable to meet EU-specific verification requirements, as a practical barrier to fair treatment.¹⁵⁹ The underlying friction, however, extends beyond the recognition of environmental effort. It forms part of a broader claim that CBAM, alongside other EU regulatory instruments, penetrates what Washington considers its own jurisdictional sphere. The US objection is less about international law than about the collision between two expansive conceptions of sovereign regulatory authority.

Transatlantic impasse. The failed negotiations over a Global Arrangement on Sustainable Steel and Aluminum (GASSA) illustrate this divergence. The arrangement was intended to create a joint framework linking market access to the carbon intensity of traded steel and aluminum, with shared tariffs on carbon-intensive imports from non-market economies. The US proposed a performance-based model in which both sides would impose tariffs on high-carbon imports while exempting each other's products, a solution arguably incompatible with WTO law. The EU insisted on a rules-based arrangement requiring carbon pricing equivalence, which in practice meant that the US would need to adopt a system comparable to CBAM. Neither side accepted the other's framing, resulting in the reinstatement of Section 232 tariffs on EU steel and aluminum.¹⁶⁰ The episode is revealing because the disagreement was not about one side imposing measures on the other: the stalemate concerned the terms on which they would jointly impose such measures on the rest of the world, and what each considered a legitimate basis for doing so.

Canadian defensive sovereignty. Canada occupies a distinct position. It has invested in domestic carbon pricing as the centerpiece of its climate strategy and does not reject the principle that carbon should carry a cost. Its sovereignty narrative takes a more defensive form: securing recognition of its existing policy architecture as equivalent to the standards imposed by others.

¹⁵⁷ European Parliament, *The Near-term Future of the Transatlantic Relationship*, Study PE 782.657 (2026).

¹⁵⁸ American Iron and Steel Institute, *Comments on CARB SB 253 and 261 Implementation*, 9 February 2026; American Chemistry Council, *Statement Ahead of President Trump's State of the Union Address*, March 2026.

¹⁵⁹ Bipartisan Policy Center, *"High CBAM Default Values Underscore the Need for U.S. Data,"* January 2026.

¹⁶⁰ Center for American Progress, *"Trade Beyond Neoliberalism: Concluding a Global Arrangement on Sustainable Steel and Aluminum,"* April 2025; Columbia University Center on Global Energy Policy, *"EU's Proposed Tariffs on Steel to Address Excess Capacity and Enable Decarbonization Could Worsen Trade Tensions,"* January 2026; Congressional Research Service, *"Expanded Section 232 Tariffs on Steel and Aluminum,"* IN12519, updated September 2025.

The Climate Competitiveness Strategy announced in Budget 2025 frames industrial carbon pricing as a sovereign project of economic modernization.¹⁶¹ The elimination of the federal consumer carbon tax in March 2025, while retaining the industrial OBPS, reflected the tension between political viability and CBAM equivalence: the politically visible price was withdrawn, but the component most relevant to the EU's recognition criteria was preserved.¹⁶² Experts testifying before Parliament have argued that Canada must develop its own BCA to retain carbon revenue that would otherwise be collected at foreign borders.¹⁶³ Canada's sovereignty claim is oriented less toward asserting the right to impose costs on others and more toward asserting the right to have its own climate effort recognized on its own terms.

"Canada is a strong supporter of WTO rules and multilateralism. They don't want to risk breaching those rules by putting in place an export coverage, which would be viewed by many as illegal."

–Aaron Cosbey

Negotiated interoperability. The regulatory autonomy critique is not a mere tactical objection. It is a substantive normative claim about the limits of regulatory jurisdiction in a world without a global carbon price. In the absence of a multilateral agreement on carbon pricing, any determination by one jurisdiction that another's mitigation effort is insufficient will remain inescapably controversial.¹⁶⁴ Mutual recognition and equivalence agreements offer one path forward, allowing jurisdictions with comparable climate policies to recognize each other's measures and exempt exports from border charges. The OECD's Inclusive Forum on Carbon Mitigation Approaches is developing shared methodologies for measuring carbon intensity and determining equivalence, with its Climate Policy Database, released in December 2025, mapping mitigation approaches across sixty governments.¹⁶⁵ The UK and the EU are negotiating the linkage of their emissions trading systems, which would provide a basis for mutual CBAM exemption.¹⁶⁶ The structural problem, however, is not whether a given mechanism recognizes climate efforts in another country, but that one jurisdiction makes that determination unilaterally.

¹⁶¹ Government of Canada, 2025 Progress Report on the 2030 Emissions Reduction Plan, 2025; Government of Canada, "Canada's New Climate Competitiveness Strategy," Budget 2025, November 2025.

¹⁶² Government of Canada, "Discussion Paper: Driving Effective Carbon Markets in Canada," 2025.

¹⁶³ Canadian House of Commons Standing Committee on Environment and Sustainable Development, Evidence, 9 October 2025 (Aaron Cosbey, Chair, Commission on Carbon Competitiveness).

¹⁶⁴ Jiarui Zhong and Ingo Pies, "The Fairness Controversy over CBAM", *Climate Change Economics* 15, no. 1 (2024); Alice Pirlot, "Carbon Border Adjustment Measures: A Straightforward Multi-Purpose Climate Change Instrument?," *Journal of Environmental Law* 34, no. 1 (March 2022): 25–52.

¹⁶⁵ OECD, "New Climate Policy Database Maps Mitigation Policies across 60 Countries," press release, 16 December 2025; Climate Club Work Programme 2025–26, January 2025.

¹⁶⁶ UK Parliament, "The 2026 Review of the Trade and Cooperation Agreement and the UK-EU Reset," 2026; Emily Lydgate, "Climate Equivalence and International Trade", *World Trade Review* 22, no. 3-4 (2023): 484-496.

3. Climate Conditionality in the Global South

The sovereignty critique surrounding BCAs acquires particular force in the Global South, where it operates through a deeply embedded postcolonial experience. Developing countries have long faced external policy requirements imposed without meaningful consent and without accompanying resources for implementation. CBAM is perceived by many as a requirement to adopt the EU's preferred policy instrument irrespective of domestic priorities, institutional capacity, or alternative approaches to mitigation. While the EU's universalist framing grounds its legitimacy in science and international law, it also risks positioning resistance as irrational or irresponsible.

Colonial reference. The civilizing mission behind European colonization was consistently grounded in appeals to reason, law, and progress. The violence was framed as a transitional cost. The postcolonial theorists identified this epistemological structure with precision.¹⁶⁷ Resistance to BCAs in the Global South is directed not only at the economic burden but at the argumentative structures that echo these historical encounters. When external institutions claim to enforce science and law, postcolonial memory recalls prior instances in which foreign intervention was framed as the neutral enforcement of universal civilization. The concept of "double theft," developed in postcolonial environmental scholarship, captures this dynamic: the dual appropriation of natural resources through historical emissions and of the vocabulary of environmental justice through unilateral trade measures framed as instruments of fairness.¹⁶⁸

Washington Consensus. The concept of conditionality in international economic relations draws a specific genealogy. It originated in the lending practices of the International Monetary Fund (IMF) and the World Bank during the structural adjustment era of the 1980s and 1990s, with access to financial resources being contingent on the adoption of prescribed domestic reforms. Conditions gradually expanded to encompass structural requirements including privatization, deregulation, and the reduction of public sector employment.¹⁶⁹ Scholars have documented how these conditions often eroded bureaucratic capacity and narrowed the policy instruments available to sovereign governments, producing effects experienced as the loss of domestic

¹⁶⁷ Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963); Edward Said, *Orientalism* (New York: Pantheon Books, 1978); Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, Cary Nelson and Lawrence Grossberg, eds. (Urbana: University of Illinois Press, 1988); Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000).

¹⁶⁸ Miriam Lang, Breno Bringel, and Mary Ann Manahan, eds., *The Geopolitics of Green Colonialism: Global Justice and Ecosocial Transitions* (London: Pluto Press, 2024).

¹⁶⁹ IMF Independent Evaluation Office, "Structural Conditionality in IMF-Supported Programs," 2008. See also Sarah Babb and Bruce Carruthers, "Conditionality: Forms, Function, and History," *Annual Review of Law and Social Science* 4 (2008).

policy autonomy.¹⁷⁰ By the late 1990s, the Washington Consensus had become synonymous with externally imposed reform serving the interests of creditor nations under the guise of technical necessity.

Environmental conditionality. The transition from economic to environmental conditionality is interpreted by many as a modification of the justification for external authority rather than a change in its structure. The IMF's inclusion of climate-related lending conditions has been characterized by critics as structural adjustment in environmental form, restricting the fiscal space that developing countries need to invest in their own green transitions while reflecting the priorities of historical emitters rather than those of the countries being conditioned.¹⁷¹ The broader pattern has been described in terms of "green colonialism": the large-scale extraction of strategic minerals required for Northern green transitions imposes new environmental burdens on Southern territories, while the framing of uniform mitigation efforts as universal necessity fails to account for the conditions of the Global South.¹⁷²

"The debate is not only about technical design, but about how climate ambition intersects with longstanding patterns of conditionality in the global economic system. For many countries in the Global South, BCAs such as CBAM can appear as a new form of climate-related conditionality embedded in market access."

–Arunabha Ghosh, Aparna Sharma

Uruguay Round. The conditionality charge against BCAs is reinforced by the institutional memory of how trade rules were negotiated. The Uruguay Round is remembered by developing country representatives as an era of intense pressure in which regulations on intellectual property, services, and foreign investment were introduced through the exercise of asymmetric power.¹⁷³ The case of the Cotton Four remains a potent reference point: Benin, Burkina Faso, Mali, and Chad challenged the US agricultural subsidies that depressed global prices and impoverished millions of small-scale African farmers. At the center of that dispute was a struggle over competing representations of legitimacy, in which African countries whose competitiveness was

¹⁷⁰ Sarah Babb and Saskia Sassen, "The World System and the Hollowing Out of State Capacity: How Structural Adjustment Programs Affect Bureaucratic Quality in Developing Countries," *American Journal of Sociology* 124, no. 4 (2019).

¹⁷¹ Lara Merling, "'Greenwashing' Structural Adjustment," *Phenomenal World*, 2025; International Monetary Fund, "The Resilience and Sustainability Facility (RSF)," Factsheet, 2025.

¹⁷² Miriam Lang, Mary Ann Manahan and Breno Bringel, eds., *The Geopolitics of Green Colonialism* (Pluto Press, 2024). See also Kiri Olivia Santer, "Locating the Global South across Carbon Borders," *Economy and Society* 55, no. 1 (2026): 121–143.

¹⁷³ UNESCO, *Governing Globalization: The Policy of Inclusion*, 2002.

undermined by the economic structures of developed nations faced enormous institutional barriers in pressing their claims.¹⁷⁴

Procedural legitimacy. CBAM is perceived as continuous with, rather than distinct from, these prior exercises of economic power. Its proponents emphasize effectiveness: the mechanism will reduce global emissions. But environmental justification may not be sufficient to secure legitimacy when a measure is understood as an exercise of power by actors who already hold disproportionate influence over international economic rules. The mechanism was designed and adopted without meaningful consultation with the countries whose exporters would be most affected, and developing country attempts to participate in the design process have been documented as marginalized.¹⁷⁵ The capacity to define what counts as a legitimate climate policy, to frame carbon pricing as the natural and objective solution, and to present this framing as universal rather than as a specific policy choice with specific beneficiaries, is itself an exercise of symbolic power.¹⁷⁶

Diplomatic positions. As of early 2026, these arguments have been formalized across international forums. India has framed CBAM as a masked form of protectionism, emphasizing that its per capita emissions remain a fraction of Europe's and that the mechanism restricts the domestic and fiscal policy space that developing economies require.¹⁷⁷ South Africa has described the mechanism as coercive, and has indicated readiness to challenge it through the BASIC bloc.¹⁷⁸ At COP30 in Belém, the BASIC group took a unified stand against unilateral trade measures related to climate change, arguing that such measures disregard historical responsibility and the distinct starting points of developing nations.¹⁷⁹ What is being claimed in

¹⁷⁴ Matthew Eagleton-Pierce, *Symbolic Power in the World Trade Organization* (Oxford: Oxford University Press, 2012); Basile Chartier, "Cotton at the WTO", Master's Thesis (Paris: Sorbonne Law School, 2015).

¹⁷⁵ Julie Damborg, Naghmeh Nasiritousi, Björn-Ola Linnér and Tina-Simone Neset, "The EU CBAM and the Global South: a review of the economic and geopolitical implications of unilateral climate and trade measures", *Environmental Research Letters* 21, no. 2 (2026).

¹⁷⁶ Matthew Eagleton-Pierce, *Symbolic Power in the World Trade Organization* (Oxford: Oxford University Press, 2012).

¹⁷⁷ International Bar Association, "Climate Crisis: COP30 Highlights Importance of International Cooperation," February 2026; International Economic Law and Policy Blog, "Carbon Borders Without Differentiation: Why India's Challenge Tests the European Union's Climate Diplomacy," March 2026.

¹⁷⁸ Kiri Olivia Santer, "Locating the Global South across Carbon Borders," *Economy and Society* 55, no. 1 (2026): 121–143; Katharina Koch, Alaz Munzur, and Jennifer Winter, "Climate Policy as a Geopolitical Tool: How the EU's CBAM Affects Its Relationships with Africa and China," *The Palgrave Handbook on China-Europe-Africa Relations* (2025): 973-1006; Third World Network, "Trade: WTO Draft Reform Package Sparks Deep Divisions ahead of MC14," March 2026. See also Maputo Ministerial Declaration, 26 February 2026.

¹⁷⁹ TESS, "Making a Border Carbon Adjustment Mechanism Work for Climate, Trade, and Equity," 2025. See also ACT Alliance, "Press Release COP30," November 2025.

these positions is not a legal argument about jurisdiction, it is an argument about legitimacy and the reclamation of political space.

Conclusion. The EU's universalist framing provides the normative ambition that the correction logic cannot supply, but it also triggers the resistances that the correction logic had avoided. By presenting CBAM as the enforcement of universal values rather than as one proposal among several, the EU positioned contestation of the instrument as rejection of the values themselves, narrowing the space for negotiation. The resistances operate at different levels but converge on a common diagnosis. The United States and Canada do not invoke differentiated responsibility or claim exemptions; their objection is that domestic regulatory choices should not be evaluated against an external benchmark they did not help design. In the Global South, the objection runs deeper: CBAM is read through the lens of conditionality and postcolonial experience. The mechanism was designed without meaningful consultation with those most affected, its compliance requirements are disproportionately burdensome for economies that lack verification infrastructure, and its revenue flows to the EU treasury while climate finance commitments remain unmet.

Conclusion Part II.

This part has examined how the EU supplements the correction logic of BCAs with a universalist framing designed to build convergence around the commodity grammar and to secure international legitimacy, while laying the ground for a collective approach to climate action, and how third countries are reacting to it.

Brussels Consensus. The EU borrows authority from science, economics, and international law to present carbon pricing as the natural response to a global problem, and leverages its market power to multilateralize its own solutions. The outcome is a Brussels Consensus that would tentatively reconcile climate and trade policy. The incentive logic is producing results: a growing number of jurisdictions have adopted or accelerated carbon pricing in response to CBAM. International law provides arguments to the idea of a border adjustment measure. The ITLOS and ICJ advisory opinions confirm binding mitigation obligations, and the erga omnes character of climate protection. The measure also appears defensible under WTO law.

Legitimacy deficit. Yet, CBAM encounters resistances that operate at different levels. CBAM's practical effects reach into the production systems of exporting countries, blurring the line between domestic regulation and external standard-setting. The United States and Canada do not invoke differentiated responsibility; their objection is that domestic regulatory choices should not be evaluated against a benchmark they did not help design. The failed GASSA negotiations illustrate that disagreement extends even to the terms of joint action. In the Global South, resistance runs deeper: CBAM is read through the experience of conditionality and postcolonial asymmetry, and the structural parallels with prior exercises of economic power are identified with precision. The claim is not primarily about jurisdiction but about legitimacy and the reclamation of political space.

Colliding sovereignties. The result is not merely a collision of interests but a collision of sovereignties. While it is established that climate change is a global problem requiring collective action, the legitimacy of the resulting instrument cannot be established by the actor that designed it alone. These resistances are not primarily technical objections; they are claims about who has the authority to define the terms of cooperation and under what procedures. Revenue redistribution, differentiated application, recognition of non-price policies, or meaningful consultation are not necessarily concessions that weaken the measure; they could also be conditions for making it broadly legitimate. The EU's universalist ambition, which is the strongest source of CBAM's normative reach, is simultaneously the principal source of its legitimacy deficit.

General Conclusion

Narrative ladder or unrealistic stretch?

BCAs operate through a dual register. The first is the carbon leakage defense: a technically sound, politically neutral correction that equalizes market conditions between regulated domestic producers and less regulated imports. The second is the climate ambition: an attempt to foster environmental action through explicit carbon pricing as a shared framework. The two are not always distinguishable in practice, and the EU has oscillated between these two registers in ways that have compounded the CBAM's legitimacy problem.

The correction logic is economically valid but insufficient on its own, particularly given the transnational effects of BCAs on foreign exporters. The convergence logic fills that gap, supplying the collective dimension that the correction logic cannot provide. The EU's simultaneous deployment of both registers is not rhetorical opportunism but a structural necessity given the instrument's design. Without the correction logic, CBAM has no domestic political constituency and no defensible claim under the non-discrimination principle. Without the convergence logic, it lacks climate credibility and remains exposed to the protectionism charge.

Both registers are backed by solid justifications, yet they rest on fundamentally different normative visions. The universalist project is not a mere extension of the self-interested one; it represents a shift from a distributive to a cooperative logic. The instrument requires both simultaneously, but their coexistence within a single design creates structural instability. They seem to be mutually dependent and mutually undermining.

This is not to say that the two visions are irreconcilable. Some design choices point in clearly different directions — the export rebate question being the clearest illustration — but these are not numerous. Building alignment between competing interests is precisely what the measure aspires to, and the main appeal of BCAs is their promise to reconcile fair competition and climate ambition. Recent developments in international law provide elements for an integrated reading of trade and climate instruments. Beyond legal claims, consultations and inclusivity are essential to that end, not only because of the requirements BCAs impose on foreign exporters, but because they are truly novel instruments, and not a mere implementation of pre-existing rules.

Norm diffusion and the seeds of a new order

Despite a contested trajectory, CBAM has already accomplished something substantial. The conversation it has provoked is itself productive: it has accelerated the adoption of carbon pricing mechanisms across a growing number of jurisdictions and established precedents that will shape future BCA discussions and their extension to new sectors. BCAs are increasingly framed not as exceptional instruments but as an emerging category of trade governance. The United Kingdom's own carbon border adjustment, Australia's exploratory consultations, Canada's budget commitment, and successive US legislative proposals all point toward a

normative shift in which the principle that climate costs should be reflected at the border is gaining acceptance, even as its specific implementation remains contested.

This normalization has been interpreted through the lens of the Brussels Effect. Proponents frame CBAM's influence as beneficial norm diffusion toward higher climate ambition, with the EU acting as a catalyst rather than a coercive power. The distinction between diffusion and imposition is both empirical and narrative, but the spread of carbon pricing can only be presented as natural convergence toward sound policy if those subject to the standard have a meaningful role in shaping it.

The proliferation of BCAs also raises consequential questions about coordination. If multiple jurisdictions implement such mechanisms with different methodologies, baselines, and product scopes, the result could be a fragmented landscape of overlapping and potentially conflicting measures. The governance challenge is not only one of legitimacy but of institutional design. Interoperability is the next critical challenge: ensuring that a patchwork of national mechanisms functions as a system rather than as a set of competing barriers.

This is where the narrative dimension reconnects with institutional innovation. Proposals such as the Villars Framework for WTO reform represent efforts to construct the institutional architecture that could support the emerging norm. The question is whether the normative landscape that BCAs are helping to create can generate shared narratives of legitimacy. The construction of such narratives, grounded in a common understanding of justice and sovereignty, will be the decisive challenge to make BCAs function as catalysts for global emissions reduction rather than as sources of permanent friction.

"The final goal of border carbon adjustment should really be border sustainability adjustment, and it should be interoperability that allows some flexibility of different regimes and not a common carbon price."

–Daniel C. Esty

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