

THE UNILATERAL TURN OF EU TRADE POLICY IN THE LIGHT OF OPEN STRATEGIC AUTONOMY

THE CASE STUDY OF THE NEW CARBON BORDER
ADJUSTMENT MECHANISM

UNIBO-MAECI PROJECT

The WTO as Major Driver of Sustainable
Development and its reform process

Bologna - Tuesday 15 April 2025

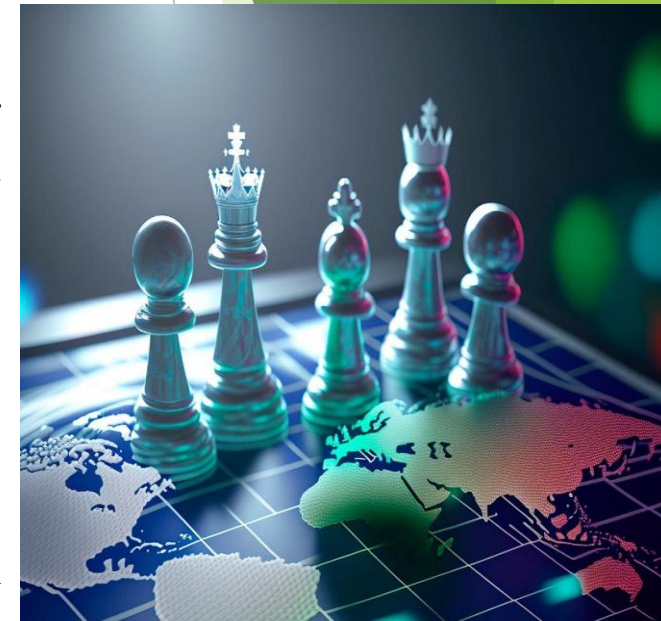
Federico Siscaro

*Trainee Manager
for the Italian National School
of Administration/PhD
Candidate in EU Law,
University of Bologna*



THE PATH TOWARD A UNILATERAL APPROACH

- **Shift from Multilateralism to Hybrid Approach:** The EU has moved away from a purely multilateral trade policy due to growing global instability, adopting a hybrid model that combines unilateral, bilateral, plurilateral, and multilateral mechanisms.
- **Global Crises and Multipolarity:** Several crises have disrupted the rule-based world order and contributed to a new, multipolar global trade environment marked by protectionism and nationalism.
- **Geopoliticization and Strategic Vulnerabilities:** The geopoliticization of trade has exposed the EU's dependence on strategic sectors, pushing it to reassess its global trade position.
- **Open Strategic Autonomy (OSA):** This guiding principle combines strategic autonomy in critical sectors with a commitment to international cooperation, allowing the EU to safeguard its economic interests while promoting sustainability, democracy, and human rights.
- **Use of Unilateral Instruments like CBAM:** The EU has started to employ assertive trade tools such as the Carbon Border Adjustment Mechanism to simultaneously protect the environment, boost competitiveness, and project its values and regulatory standards globally.



WHAT IS CBAM?

► Definition:

- CBAM (Carbon Border Adjustment Mechanism) is a **carbon tax** introduced by the EU to combat climate change and **reduce greenhouse gas emissions globally**
- It entered into force on October 2023 - **Regulation (EU) 2023/956**
- Inspired by the principle of 'the polluters pay', targeting **carbon-intensive goods imported into the EU**

► Carbon-Intensive Goods Covered:

- ***Cement, electricity, mineral and chemical fertilisers, iron and steel, aluminium and hydrogen***
- goods that contribute the most, along their production process, to the increase of greenhouse gases in the atmosphere



#EUGreenDeal



▶ Mechanism of CBAM:

- ▶ Imposes a **price for emissions embedded in products** from specific industries, **similar to that borne by EU producers under the ETA.**
- ▶ Implementation involves assessing emissions intensity of products and applying corresponding carbon price adjustments

▶ Objectives:

- ▶ Aims to **prevent 'carbon leakage'**, i.e. the shift of carbon-intensive production outside the EU due to lower environmental standards or importation of similar products with lower emissions standards.

▶ Main features:

- ▶ CBAM will be implemented in **two phases**: the transitional phase (from 1 October 2023 to 31 December 2025) and the definitive phase (from 1 January 2026).
- ▶ **Exemptions** apply to low-value items, personal goods, and military equipment; countries with equivalent carbon pricing or linked to the EU ETS are excluded. By 2034, CBAM is expected to cover all ETS sectors and both direct and indirect emissions.

WTO Compatibility and Legal Challenges of CBAM

- Though primarily environmental, CBAM functions as a **trade-related measure and must align with WTO rules**, especially under the General Agreement on Tariffs and Trade (GATT).
- CBAM may breach the **non-discrimination principles** in Articles I (**MFN**) and III (**National Treatment**) by treating foreign products less favorably than EU goods.
- The EU may justify CBAM under **environmental exceptions in Article XX (b) and (g)**, provided it passes the **chapeau test** (no arbitrary or unjustifiable discrimination).
- Reliance on **default emission values** and **failure to credit non-price climate policies** may be seen as **unfair**, particularly to developing countries.
- The **slow phase-out of free EU ETS allowances** may raise concerns about differential treatment between EU and foreign producers.



Pathways to WTO Compatibility and Multilateral Engagement

- ▶ **Refining default values** using regional/global averages and supporting third-country reporting capacity would reduce discrimination risks
- ▶ Expanding recognition to **include non-price-based measures** (e.g., energy standards, subsidies) would better reflect global climate diversity
- ▶ A **faster and clearer phase-out of free ETS allowances** would ensure greater parity between EU and foreign producers
- ▶ Reviving **WTO Committee on Trade and Environment** discussions or forming a **plurilateral climate club** could integrate climate goals into trade governance
- ▶ **Capacity building, tech transfer, and inclusive climate finance** would make CBAM more equitable and strengthen global climate cooperation.

