

Carbon Borders Without Differentiation: Why India's Challenge Tests the European Union's Climate Diplomacy

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As the European Union's Carbon Border Adjustment Mechanism (CBAM) enters its definitive phase, India confronts a fundamental challenge to differentiated responsibility under the Paris Agreement. With default values imposing 30% markups by 2028 and verification requirements disproportionately burdening developing producers, CBAM tests whether unilateral measures can override the principle that developed nations bear greater responsibility for atmospheric carbon depletion.

On 1 January 2026, the European Union's (EU) Carbon Border Adjustment Mechanism (CBAM) transitioned to enforcement, triggering [financial obligations for importers](#) to purchase certificates reflecting embedded emissions. For India, whose [steel exports to Europe account for more than 60% of the sector's total exports](#), CBAM raises questions about whether unilateral measures can impose uniform carbon pricing without considering the differentiated responsibilities outlined in the [Paris Agreement](#). Between 2020 and 2024, India [formally objected 29 times at the World Trade Organisation](#) (WTO), articulating that CBAM violates WTO non-discrimination provisions and climate justice principles.

Default Value Penalties as Structural Barriers

Under [the implementing acts adopted on 17 December 2025](#), importers without facility-specific verified emissions data must apply country-specific default values with punitive markups: [10% in 2026, 20% in 2027, and 30% from 2028](#). For Indian steel, the [default emission intensity is 4.32 tonnes CO₂ per tonne](#). With a 30% markup, this becomes 5.616 tonnes CO₂ per tonne. At [projected 2026 EU Emissions Trading System \(ETS\) prices of €83-92 per tonne CO₂](#), default values impose certificate costs of €466-517 per tonne. Producers providing verified data reflecting the national average of 2.5 tonnes of CO₂ face costs of only €79 to €88 per tonne after benchmark adjustments are applied. Default values impose costs nearly six times higher.

For India's secondary steel sector, which accounts for 40% of national production and is dominated by Micro, Small, and Medium Enterprises (MSMEs), verification presents insurmountable barriers. These facilities lack continuous emission monitoring and cannot afford ISO 14065-compliant verification. National Accreditation Bodies are already at high capacity and unlikely to begin mass accreditation of third-country verifiers. MSMEs cannot afford verification, yet they face default values that render exports commercially unviable without it. CBAM assumes sophisticated monitoring infrastructure characteristic of developed economies, without transition mechanisms for countries building such capacity.

WTO Compatibility and Shrimp-Turtle Constraints

CBAM's WTO legality hinges on Article XX of the General Agreement on Tariffs and Trade (GATT) environmental exceptions. Prima facie, CBAM violates Article II (tariff bindings). Whether it also violates Article III:4 (national treatment) is contested: scholars disagree on whether production process distinctions can differentiate otherwise physically identical products. The Article XX chapeau analysis is dispositive regardless. The EU invokes Article XX(g), which permits measures *relating to the conservation of exhaustible natural resources*, subject to the chapeau requirement that such measures not constitute *arbitrary or unjustifiable discrimination between countries where the same conditions prevail*.

The Appellate Body's Shrimp-Turtle jurisprudence provides controlling precedent. India, Malaysia, Pakistan, and Thailand challenged a US ban on shrimp imports from countries not certified as requiring turtle excluder devices that meet US standards. The Appellate Body held that the measure failed because it provided Caribbean countries with technical assistance and a three-year phase-in, whereas it gave Asian complainants only four months. Critically, Article XX does not permit measures that impose *a rigid and unbending standard*, forcing trading partners to *adopt essentially the same comprehensive regulatory regime*.

CBAM exhibits parallel defects. First, benchmarks derived from the 10% most efficient EU installations require third countries to match best-in-class European production. Second, CBAM provides no differentiated treatment based on development status or technological capacity. Third, default-value penalties discriminate against countries lacking verification infrastructure, mirroring the differential phase-in discrimination in the Shrimp-Turtle case.

The chapeau's *same conditions* language is dispositive. Legal scholars argue that the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) constitute relevant conditions that justify differential treatment. India's

historical emissions account for 3.4% of the cumulative global CO₂ emissions, compared to the EU's 22%. India's per capita emissions are 1.9 tonnes of CO₂ annually, compared to 7 tonnes in the EU. These facts establish materially different conditions permitting differential treatment under the chapeau's express terms.

CBDR-RC as Structural Constraint

Common but differentiated responsibilities and respective capabilities, as enshrined in the United Nations Framework Convention on Climate Change (UNFCCC) Article 3.1 and the Paris Agreement Article 2.2, stipulate that *parties should protect the climate system... based on equity, with developed country Parties taking the lead*. CBDR-RC operates as a structural constraint on multilateral action. Under the Paris Agreement, it permits differentiated nationally determined contributions, justifies the financial obligations of developed countries under Article 9 for climate finance, and informs the assessment criteria for the Global Stocktake.

CBAM reflects a different logic: uniform carbon pricing benchmarked to European standards, with no categorical exemptions for development status and no revenue recycling. The Organisation for Economic Co-operation and Development (OECD) estimates that CBAM would reduce global emissions by only 0.54%, raising proportionality questions: whether minimal environmental gains justify measures that transfer revenue from developing to developed country treasuries, while undermining multilateral cooperation.

India's Carbon Credit Trading Scheme: Cooperation or Coercion?

Under the EU-India Strategic Agenda, adopted in September 2025, the EU committed to deducting the carbon prices effectively paid in India from CBAM financial adjustments, offering potential for cooperation. India's CCTS establishes an intensity-based baseline-and-credit system covering nine sectors. Expected to commence mid-2026, it will cover over 700 million tonnes CO₂ equivalent. The EU Commission's December 2025 review acknowledged that *carbon prices effectively paid under different compliance schemes can be deducted*. However, whether India's system qualifies for such deductions remains a matter of contention.

Fundamental incompatibilities remain. CCTS operates as an intensity-based system, whereas the EU ETS imposes absolute caps with auctioned allowances. Whether Carbon Credit Certificates constitute *effectively paid* carbon prices requires complex equivalency determinations. India's accelerated development of CCTS

responds explicitly to CBAM pressure, raising questions about whether this represents voluntary action or coerced convergence. If CBAM compels the adoption of EU-style carbon pricing, it may violate the Shrimp-Turtle prohibition on conditioning market access on the *adoption of an essentially the same regulatory regime*.

Conclusion: Toward Justice-Oriented Border Adjustments

The India-CBAM dispute reveals whether climate-trade architecture can accommodate differentiated responsibility or fracture into competing blocs that impose asymmetric burdens. Justice-oriented reform necessitates structural changes that extend beyond technical adjustments. First, default value markups must recognise capacity constraints through differential schedules based on World Bank income classifications. Second, [revenue recycling mechanisms](#) must channel CBAM revenues to source countries for monitoring infrastructure and decarbonisation investments, transforming CBAM from an extractive penalty to cooperative financing. Third, multilateral governance must replace unilateral design through WTO plurilateral agreements establishing shared methodologies and mutual recognition.

The December 2025 definitive phase marks a turning point, not a conclusion. India must pursue both the operationalisation of CCTS and international advocacy for CBAM reforms, in line with its Paris commitments. The EU faces the question of whether CBAM can evolve from a unilateral instrument into a platform for North-South collaboration. The integrity of multilateral climate governance may depend on resolving whether environmental ambition can coexist with trade justice, or whether border measures will fracture the consensus that differentiated responsibility must guide global responses to atmospheric carbon depletion.