THE ROLE AND MEANING OF THE CARBON BORDER TAX IN THE EUROPEAN UNION AND RUSSIA

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The article analyzes experts' opinions on climate change and the expediency of the introduction of the carbon border tax to review the European carbon border tax adoption initiative, takes note of the advantages and shortcomings related to the introduction of the carbon border tax, in particular, such as: leveling the playing field (the European Commission has singled out the border tax as the key instrument to guarantee that European Union companies would compete on equal footing with non-EU countries), the impact of carbon leakage on human health and ecology, the high price of the introduction and application of this tax. The article also comes to a conclusion that CBT (carbon border tax) should be in line with the policy and laws of the World Trade Organization (WTO). For Russia, in particular, the carbon tax will facilitate economy diversification and modernization, improve the air quality affecting human health and give a boost to the development of the renewable energy sector.

The object of studies is social relations in the introduction of the carbon border tax and the subject of studies is the European carbon tax adoption initiative as well as the role and meaning of the carbon tax for the European Union (EU) and Russia.

Keywords: *energy law, carbon tax, limitation of greenhouse gas emissions.*

We are now witnessing massive climate changes, which raises concerns of the international community. The legal framework for the international cooperation on climate change is the United Nations Framework Convention on Climate Change (UNFCC) adopted in New York on May 9, 1992. Then, the Kyoto Protocol was adopted in Kyoto on December 11, 1997, that committed the parties to limit or reduce greenhouse gas emissions in the first commitment period from 2008 to 2012, and in the second commitment period from 2013 to 2020 for parties to the Doha Amendment to the Kyoto Protocol. After that, the Paris Climate Agreement was adopted on December 12, 2015.

The states that signed the Paris Agreement have a different view on the implementation of its provisions. Let us review the approaches developed in the European Union based on the experts' opinions.

Legal publications of the EU member states note that the carbon border tax serves two main functions: leveling the playing field for competing manufacturers and creation of political leverage for more ambitious actions aimed at combating climate change in different countries [1].

The publications also emphasize that the consequence mitigation policy in different countries that is to a large extent integrated in international goods will affect commodity flows. The regulatory burden on domestic goods manifested as direct carbon price in form of a tax or an emissions trading system puts competitive pressure on manufacturers if they are unable to pay the accompanying costs. In this case, imported goods can have a larger market share if they are cheaper. The share of domestic manufacturers on the international market can decrease if competitors on those markets do not face a similar consequence mitigation burden. Carbon border price adjustment can counteract these impacts balancing the rules of the game. The second CBT goal is to put pressure on the countries lagging behind in the climate policy. CBT depends on climate figures and in the same way as sanctions can change the strategic estimate of the countries that trail behind and force them to take tougher measures to fight climate change. In order to reach this double goal, CBT needs to be developed thoroughly to leave no doubts that it has no underlying protectionist motives [2].

The European Green Deal is a response and a commitment to fight growing negative consequences of climate change [3]. President of the European Commission Ursula von der Leyen believes facilitating of actions aimed at the fight against climate change and providing the EU the possibility to become the world's first climate neutral continent to be one of the biggest issues and opportunities of our times [4].

To respond to this challenge, the European Commission published the final message on December 11, 2019, describing the European Green Deal for the European Union and citizens of the Union [5]. The aim of this Green Deal is not only to increase target rate of greenhouse gas (GHG) emissions reduction in the European Union by 2030 [6] but to make the EU carbon neutral by 2050 [7]. The European Commission has adopted a new, more ambitious strategy of adaptation to climate change, and one of the key proposals is the introduction of the carbon border adjustment mechanism for separate sectors to lower the carbon leakage risk. The CBT goal is the protection of European business against carbon leakage and economic dumping.

On June 17, 2020, the European Commission presented its White Paper on leveling the playing field as regards foreign subsidies aimed at a new regulatory framework built on three modules. Module 1 is intended as a general instrument to address foreign subsidies that cause distortions in the internal market. Module 2 is intended to specifically address distortions caused by foreign subsidies facilitating the acquisition of EU targets. Last module 3 is dedicated to foreign subsidies within the EU public procurement procedure. The new instrument should be applied in a non-discriminatory manner to the subsidies provided in all third countries [8].

Final project proposals were presented in 2021 together with reconsideration of the EU emission trading system [9].

On July 14, 2021, the European Commission presented a draft of the climate law package: Regulation of the European Parliament and of the Council Establishing a Carbon Border Adjustment Mechanism and Annexes to the Regulation of the European Parliament and of the Council Establishing a Carbon Border Adjustment Mechanism.

Thus, the Green Deal of the European Union stipulates the appearance of a carbon border adjustment mechanism in respect of imported carbon intensive products that provides for an additional charge on products depending on the greenhouse gas emission intensity rate during their production. It is planned to expand the European emission trading system to cover new sectors and withdraw free emission allowances for aviation.

The following regulations were adopted in Russia during that period: Federal Law No. 296-FZ of July 2, 2021 On Limitation of Greenhouse Gas Emissions that establishes the framework for the legal regulation of relations in the business sphere and other spheres of activity accompanied by greenhouse gas emissions and performed in the Russian Federation, on the continental shelf, in the exclusive economic zone of the Russian Federation, the Russian part of the Caspian Sea; Resolution of the Government of the Russian Federation No. 3052-r of October 29, 2021 On the Approval of the Strategy of the Socioeconomic Development of the Russian Federation with Low Greenhouse Gas Emissions until 2050; Federal Law No. 34-FZ of March 6, 2022 On Performance of an Experiment on Limitation of Greenhouse Gas Emissions in Some Constituent Entities of the Russian Federation.

In November 2021, the 26th UN Climate Change Conference took place in Glasgow, the conference summed up the results achieved from signing the Paris Agreement in 2015. The President of Russia was speaking at the summit and stated that carbon neutrality was to be ensured by 2060.

Analyzing CBT feasibility, it's important to know that there are some arguments for and against the concept.

Supporters of carbon tax introduction [10-16] believe that CBT solves the carbon leakage problem by mitigating climate change consequences. In their opinion, the idea is to introduce CBT to protect the EU industry against climate and environmental dumping [17].

Experts believe that by leveling the playing field, CBT will also help create political leverages for more ambitious international climate change counteraction [18]. The border tax on import of goods produced by foreign energy intensive industries also known as the "carbon border tax" can be a high-powered incentive for the countries to become a part of the green deal and a potential political mechanism to level the playing field and reduce carbon leakage [19].

Another point of view is against the carbon tax.

As the author fairly note, the general CBT idea can damage international trade [20].

Experts also point out that CBT is a trade barrier that can be used for protectionism. Border taxes can be used to make foreign goods more expensive as compared to local ones. Some developing countries such as India already intend to challenge any CBT in the WTO [21].

Trade-related problems constitute a general free trade problem that lies in the restriction of access to the market and a specific problem of trade relations between countries that can trigger a trade war [22].

Free trade is necessary to ensure sustainable development in developed as well as developing countries. This becomes evident if we look at the WTO rules where trade restrictions usually need to be justified. This is also an argument against CBT or similar measures. The measure itself needs to be additionally assessed to see whether it falls within the scope of the WTO law and if it does, whether there are any exceptions applicable to it.

Regulatory measures similar to CBT have been described as "eco-imperialism" [23] as developed countries are in general better aware of limitation of carbon emissions during production leaving the goods made by developing countries behind on the international commodity market as the latter employ no such measures.

The experts also note that high implementation cost can be an additional argument against CBT. In particular, it is noted that if one imagines that CBT will take the form of the greenhouse gas tax, CBT will be charged on goods imported from the countries that have no equivalent internal regulations aimed at mitigation of climate change consequences. Goods exported to such countries can be released from tax.

This will limit the loss of competitiveness of domestic companies and can contribute to reduction of greenhouse gas emissions as domestic exporters have no intention to make their production process less carbon intensive [24].

The CBT adoption will be contested by trade partners of the EU and will most probably become a subject of legal and economic disputes that can be interpreted as protectionism and challenged in accordance with the WTO rules.

Experts note that in fact, there are two ways CBT could be challenged.

Firstly, CBT could be challenged in the WTO system. A WTO member cannot unilaterally state that a specific measure is illegal, it can challenge internal measures of another member as violation of the WTO procedure by filing a complaint to the Dispute Settlement Body (DSB) [25]. The Dispute Settlement Body establishes a commission for consideration of the case on the merits following the consulting with and at the request of the complaint filing member. If the commission resolves that the CBT measure violates the WTO procedure and it will be successfully appealed before the Appellate Body, the breaching country will be forced to bring the CBT measure in compliance with its obligations before the WTO [26]. The claimant may demand compensation if the non-prevailing party fails to comply with the measure [27]. If the parties cannot reach an agreement on compensation, the prevailing party can ask the DSB for a permission to suspend trade concessions or other WTO obligations before the breaching member until such measure is cancelled by the WTO [28].

The second path is an economic and political one. The CBT introduction can result in companies actively trying to avoid entrance to the EU market with or without political pressure. Instead, such companies can focus on other world's markets. The countries can also confront CBT by introducing similar restrictions on import of goods from the EU market, which can lead to a trade war [29].

Facing CBT, EU trade partners may come back to unilateral punishment, which can result in punishment of the EU by introduction of prohibition fees.

The EU came across counter-measures in 2012 in an attempt to include international flights in the EU Emission Trading System. China, India, Russia, Brazil, Mexico, Japan, South Africa and the USA requested the EU to transfer the management of international aviation emission to the International Civil Aviation Organization. Their joint response measures included settlement of international disputes, restriction of access to their markets for EU carriers and imposition of additional measures on them. Such a response shows how strong the counter-measures can be if the EU introduces the carbon tax on import. Finally, the European Commission was forced to postpone the proposal and instructed the International Civil Aviation Organization to look for a viable solution [30-31].

Considering that CBT will most likely be challenged by EU trade partners, it makes sense to study various alternatives to CBT and assess sustainability of the alternatives and their efficiency.

This part of the article reviews three alternatives to CBT noted by experts:

1. Conclusion of a global carbon emission regulation agreement in sectors with a high carbon leakage risk. It would be possible to work on reaching a consensus on a multilateral agreement between the world's main countries and the countries having no carbon emission standards. Development of a global or an almost global carbon emission regulation agreement in sectors subject to a high carbon leakage risk might eliminate the need for CBT. Several countries have earlier come to agreements on environmental provisions, the latest one is the Paris Agreement ratified by 189 out of 197 UNFCC Parties [32-33]; its main aim is to enforce the global reaction to climate change. This alternative could be

viable but since it requires global or almost global participation, there is a low possibility to reach a global agreement on carbon emission standards that would be sufficiently high to satisfy the EU and thus eliminate the need for CBT.

2. The EU Emission Trading System is now granting free carbon emission credits for steel casting, mining and cement sectors until 2030 as these sectors are subject to a high carbon leakage risk [34]. Should the carbon tax be introduced, such exceptions will no longer be applicable and EU manufacturers will face the risk of losing the existing financial support and in exchange will have to pay a tax on their products, which could be challenged in accordance with the WTO rules and can result in response measures from EU trade partners including the USA [35]. Granting of free credits to respective companies within the emission restriction procedure or compensation of a part of the carbon tax income can help limit the emissions. From the standpoint of economic consequences, this scheme is equivalent to establishment of the carbon price and subsidizing of domestic production. Thus, this solves the problem to some extent as it facilitates the development of domestic, presumably more environmentally friendly production and at the same time reduces the risk of lowering of competitive performance. This is achieved through costs: the subsidy effect lowers prices on energy intensive goods for domestic consumers resulting in the efficiency loss.

3. Granting of full exception equivalent to reduction of target emission ratios to zero could become one more alternative to CBT. However, any exceptions based on trade partner’s climate change combating efforts can be viewed as attempts to put pressure on such partner, which is incompatible with GATT. Exceptions can be justified by provisions on GATT exceptions if they facilitate environmental protection. The performed studies point out five possible exceptions: release of countries that have established the domestic emission limit, release of countries that take “adequate” domestic measures except for domestic limits, release of sectors in the countries that introduce a sectoral limit, release of the least developed and low income countries and release countries on administrative flexibility grounds [36]. However, these exceptions should be introduced in CBT with care because they could have been more useful if these mechanisms were simpler from the administrative standpoint as compared to modifications of carbon border adjustment to avoid double charges [37].

In general, an analysis of expert opinions on the Green Deal of the European Union has shown that it is stipulated to introduce carbon tax on import of carbon intensive products from the metallurgical and other branches of the economy.

Thus, the main goal and role of carbon border tax is the struggle against carbon leakage and climate change, but its cost will be high.

In Russia, the carbon tax introduced by the European Union triggers the need to ensure compliance with the procedure for the determination of the carbon footprint of products made by companies (economic entities).

An important role in carbon intensive production sectors is played by taxonomy of transition projects focused on projects yielding substantial environmental effect. Availability of the own set of criteria and verification of sustainable and transition green projects will give an opportunity to significantly broaden the circle of potential investors of such projects, grant access to cheaper financing, avoid the risks of illegal classification of products as green and make the market of new financial instruments as transparent as possible [38].

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