



Written Response to Questions for the Record from The Honorable John Shimkus

Submitted by

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Subcommittee on Environment & Climate Change

Committee on Energy & Commerce

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1. What are your views on a “border carbon adjustment” or a tax on imports to protect U.S. manufacturers from being economically disadvantaged by the burdens of climate policies?

RESPONSE:

Any effort to price carbon emissions should be accompanied by a structure of “border carbon adjustment” so that U.S. manufacturers are not disadvantaged in either our domestic marketplace or global markets by any carbon charge that they have to pay.

In today’s world of liberalized trade, the competition for market share is global, and the stringency of carbon regulations in each nation, state, or province becomes an important determinant of the competitiveness of the enterprises located within that territory. Worries about potential marketplace disadvantages take on added significance in the context of political sensitivities about “unfair” trade practices, especially with regard to China, which has emerged as a global trading powerhouse and a trade partner that has systematically failed to meet basic obligations to reciprocity.¹

A structure of border carbon adjustment should be seen as an important component of any carbon pricing framework— to ensure American firms are not penalized by our nation’s climate change policy. The mechanics of such an adjustment are described in my response to 1a.

I believe that we must — and can — ensure that environmental progress does not come at the expense of American competitiveness.

a. How would border adjustments work in practice given that countless thousands of consumer products that may be impacted by energy prices?

RESPONSE:

As you note, many thousands of consumer products are affected by energy prices. It is not practical – or necessary – to measure the carbon footprint of each product in order to adjust tariffs accordingly. Instead, the U.S. Department of Commerce’s International Trade Administration should establish an “effective greenhouse gas price” by country that would provide the baseline for determining whether products entering the United States were, in effect, “subsidized” by the fact that they were produced in a jurisdiction that did not have a roughly comparable price in place on greenhouse gas emissions. A “countervailing duty” would then be charged to offset the implicit subsidy on imports, and exports would be eligible for rebates to offset the unfair advantage those in jurisdictions without appropriate carbon pricing might otherwise benefit from. These policy elements would help ensure the ongoing global competitiveness of American producers. It would also help to prevent “carbon leakage” as economic activities shift to jurisdictions where greenhouse gas emissions are not priced.

b. What analyses have you performed on border adjustments?

RESPONSE:

I have not done any in depth analyses of border tax adjustments in the climate change context. But a number of other scholars have done such work. I would draw the Committee’s attention, in particular, to the following analyses:

- Aaron Cosbey, “Developing Guidance for Implementing Border Carbon Adjustments: Lessons, Cautions, and Research Needs from the Literature” (2019).
- Michael Mehling et al., “Designing Border Carbon Adjustments for Enhanced Climate Action” (2019).
- Brian Flannery et al., “Framework Proposal for a US Upstream Greenhouse Gas Tax with WTO-Compliant Border Adjustments” (2018).
- Adele Morris, “Making Border Carbon Adjustments Work in Law and Practice” (2016).
- Joost Pauwelyn, “Carbon Leakage Measures and Border Tax Adjustments under WTO law” (2013).
- Jennifer Hillman, “Changing Climate for Carbon Taxes: Who’s Afraid of the WTO?” (2013).

2. The Energy Futures Initiative noted in an August 2019 report that: “While the concept of border adjustments is often cited as an element of a carbon pricing policy, the mechanics of

how it would be implemented and the integration of carbon border adjustments into trade policy have not been studied in any depth.”

a. What analyses have you performed on border adjustments?

RESPONSE:

As noted above, I have not done such analyses.

b. What is necessary to analyze the mechanics of how a border adjustment could be implemented within the framework of current trade policy?

RESPONSE:

Please see my answer to question 1a. above.

3. The European Union is actively working to develop a border adjustment—or carbon-based tax on imports. Recently, an [article](#) in Reuters reported that China is lashing out at this effort as trade protectionism. The story says “Any border tax would likely raise the price of Chinese goods in the European market, and Beijing believes it would violate a core principle of the Paris agreement on climate change.” Related to this, Article 3 of the UN Framework Convention on Climate Change, which is the umbrella treaty under which the Paris Agreement was developed, prohibits countries from trade discrimination for climate purposes.

a. How are such climate tariffs compatible with WTO rules and the UN Framework Convention itself?

RESPONSE:

Policymakers can design a “border carbon adjustment” compatible with WTO rules, either by ensuring consistency with General Agreement on Tariffs and Trade (GATT) Articles II and III – as suggested by Flannery et al. – or by relying on Article XX, which balances trade and environmental goals by providing general exceptions to the usual principles of non-discrimination.

While the GATT jurisprudence has not been definitely settled, I believe a well-designed border carbon adjustment structure would be deemed permissible under Articles II and III. And it appears quite clear that such a policy would be consistent with the GATT exceptions enumerated in Article XX. This Article permits measures that are “necessary to protect human, animal or plant life or health” or “relating to the conservation of exhaustible natural resources...” as long as they do not constitute “arbitrary or unjustifiable discrimination” or “a disguised restriction on international trade.”

Van Asselt and Mehling provide a helpful overview of important considerations for each approach in their book chapter titled, “Border Carbon Adjustments in a Post-Paris World: Same Old, Same Old, but Different?” in my forthcoming edited volume (with Sue Biniaz), *Cool Heads in a Warming World: How Trade Policy Can Help Fight Climate Change*.”

I would be pleased to provide a copy of this draft book chapter upon request. In addition, Hillman, whose report is included in my response to question 2b, provides useful insights regarding the permissibility of border carbon adjustments under Titles II, III, and XX.

Finally, a “border carbon adjustment” is not incompatible with the UN Framework Convention on Climate Change (UNFCCC). The principles on international trade enumerated in Article 3.5, prohibit “arbitrary or unjustifiable discrimination” and “disguised restriction on international trade.” I would note, moreover, that these provisions are not legally binding, nor do they create any new law or policy. Instead, the language conforms to Article XX. Further, a contested trade measure designed to mitigate climate change would not have implications under the Paris Agreement, but rather the World Trade Organization (WTO).

b. What are your proposals for ensuring that climate and trade issues do not merge into a single, mega issue?

RESPONSE:

I have long argued – going back to my 1994 book, *GREENING THE GATT* – that trade rules need to take account of environmental standards to ensure that they promote fair outcomes, economic prosperity, and social welfare gains. Likewise, environmental standards should be structured so as to minimize friction with trade principles and the economic benefits of international exchange. Ensuring the international trade and climate regimes are not working against each other does not imply they are a “single, mega issue.” Instead, such careful coordination is simply a matter of good policy.

¹ Peter Navarro, “How China Unfairly Bests the U.S.,” *LA Times* (21 June 2011).