

CLIMATE CLUBS IN (WTO) LEGAL CONTEXT

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WTO-BASICS: MOST-FAVORED NATION AND NATIONAL TREATMENT PRINCIPLES

Art. I:1 GATT: „**Most-favored nation principle**“

- › „Any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded **immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties**“ (no discrimination between products from other WTO states).

Art. III:1 GATT: „**National treatment principle**“

- › „Internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, **should not be applied to imported or domestic products so as to afford protection to domestic production**“ (no discrimination against products from other WTO states).

WTO-BASICS: NATIONAL TREATMENT AND BORDER ADJUSTMENT TAXES

Art. III:2 GATT: „**National treatment**“ continued

- › “Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies **to an imported product and to the like domestic product** and is collected or enforced in the case of the imported product at the **time or point of importation**, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly **subject to the provisions of Article III**” (i.e. even taxes that apply to imported and like domestic products may not be used so as to protect national production).

Art. II: 2 lit a GATT: Border Adjustment Taxes

- › “A charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part” (i.e. see above: BAT cannot be designed in a manner that protects national production).

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WTO-BASICS: NATIONAL TREATMENT AND BORDER ADJUSTMENT TAXES

Art. III:2 GATT: „**National treatment**“ continued

- › “Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies **to an imported product and to the like domestic product** and is collected or enforced in the case of the imported product at the **time or point of importation**, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, **subject to the provisions of Article XXIV** and so as to protect national production, **where the same conditions prevail, or a disguised restriction on international trade**”.

Art. II: 2 lit a GATT:

- › “A charge equivalent to an internal tax imposed consistently with the provisions of paragraph 1 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part” (i.e. see above: BAT cannot be designed in a manner that protects national production).

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US-SHRIMP-TURTLE DISPUTE (WTO DS58/R 1998)

„ARBITRARY OR UNJUSTIFIABLE DISCRIMINATION“/“DISGUISED RESTRICTION“

„It is not acceptable to use an economic embargo to **require other Members to adopt essentially the same comprehensive regulatory program**, to achieve a certain policy goal **without taking into consideration different conditions which may occur in the territories of those other Members.**“

- › i.e. need to consider if/where other states have measures in place that are „**comparable in effectiveness**“.
- › Though: **not necessary** „to anticipate and provide explicitly for the specific conditions prevailing and evolving in *every individual Member*“.
- › Overall: States should „**engage in serious negotiations** with the objective of concluding **bilateral or multilateral agreements**“.

WTO-BASICS: CUSTOMS UNIONS (CU) AND FREE TRADE AREAS (FTA)

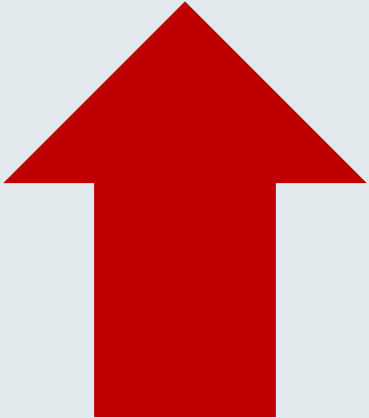
Art. XXIV:4 (ff) GATT:

- › Recognition of „*desirability of increasing freedom of trade by the development, through **voluntary agreements**, of closer integration between the economies of the countries parties to such agreements*” and accordingly,
- › The “*purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and **not to raise barriers to the trade of other contracting parties with such territories***”.

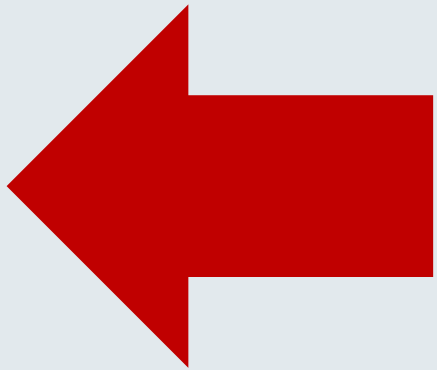
THUS: CU/FTA may **not** lead to duties or regulations for WTO parties not member to the CU/FTA that are “*on the whole (...) **higher or more restrictive** than the general incidence of the duties and regulations of commerce **applicable in the constituent territories prior**” to the **CU/FTA**.*

ALSO: **Plans for CU/FTA need to be consulted and approved** by WTO General Assembly.

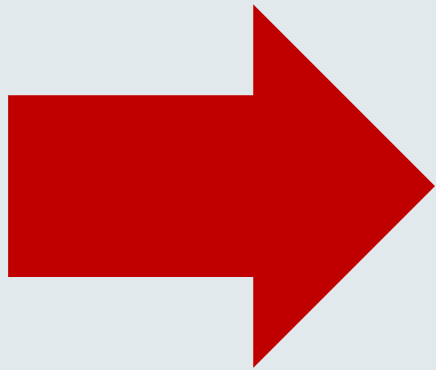
**Discrimination +
Justification
(environment)**



„Climate Club“



**Border
Adjustment Tax**



**Customs
Union/Free
Trade Area**

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**“I REFUSE TO JOIN ANY CLUB THAT WOULD HAVE ME AS A MEMBER.”
GROUCHO MARX**

- There is **no „one“ Climate Club model** - or even idea;
- **WTO law** may be problematic for procedural requirements (Art. 26 GATT) as well as substantive requirements (Art. 20 GATT);
- But the „problem“ is not only a legal one, it is **political**.
- EU CBAM as an **attempt to push for a multilateral solution**, that may facilitate **minilateral – or even sectoral – progress**.

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