THE EU CARBON BORDER ADJUSTMENT MECHANISM AND WTO LAW: LEGAL OPTIONS FOR INDIA

by

Manish Kumar Sahu[1]

ABSTRACT

The European Union's Carbon Border Adjustment Mechanism (CBAM) entered its definitive phase on 1 January 2026, requiring importers of iron and steel, aluminium, cement, fertilisers, electricity and hydrogen to account for embedded emissions. For India, whose steel and aluminium exports to the EU are substantial, CBAM raises pressing questions of legality and strategy. This paper asks whether CBAM can be justified under Article XX of the GATT 1994 and what recourse India has. It argues that CBAM is best defended under Article XX(g), with Article XX(b) a weaker alternative, but that its vulnerability lies at the chapeau, in three implementation features: the default-value and verification regime, the asymmetric recognition of carbon prices paid abroad, and limited differentiation for developing countries. The paper then assesses India's options in light of the EU–India free trade agreement concluded in January 2026, which grants no CBAM exemption, and the WTO panel established in September 2026 in DS639, in which India is a third party. It contends that litigation offers India limited practical value while the Appellate Body remains inoperative, and that a combined strategy of third-party engagement, negotiated recognition of India's Carbon Credit Trading Scheme and verifiers, and prompt completion of domestic carbon pricing is more promising. The paper concludes with recommendations for Indian policymakers.

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Keywords: Carbon Border Adjustment Mechanism; GATT Article XX; WTO Dispute Settlement; Common but Differentiated Responsibilities; Carbon Pricing; India

[1] Assistant Professor, Faculty of Law, Shri Rawatpura Sarkar University, Raipur.

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I. Introduction

On 1 January 2026, the European Union's Carbon Border Adjustment Mechanism (CBAM) moved from a reporting-only transitional period into its definitive phase.[2] Importers of iron and steel, aluminium, cement, fertilisers, electricity and hydrogen must now account for the greenhouse gases embedded in those goods and, from 2027, purchase and surrender CBAM certificates priced by reference to the EU Emissions Trading System (EU ETS).[3] In the EU's framing, the scheme is an anti-leakage device that complements its domestic carbon price. In the framing of many exporting countries, it is a unilateral trade measure that charges their industries for climate policies they did not choose.

India's stake is considerable. A leading Indian think tank estimated that iron, steel and aluminium exports worth about US$8.2 billion went to the EU in 2022, roughly 27 per cent of India's exports of those products.[4] The same think tank reports that India's steel and aluminium exports to the EU fell by 24.4 per cent in financial year 2024–25, before any financial obligation arose.[5] In January 2026, India and the EU announced the conclusion of free trade agreement (FTA) negotiations, and the European Commission confirmed that the deal gives India no CBAM exemption.[6] In September 2026, the WTO Dispute Settlement Body (DSB) established a panel in *European Union and Its Member States – Carbon Border Adjustment Mechanism* (DS639), brought by Russia, the first panel proceeding on a border carbon adjustment; India is among the members that reserved third-party rights.[7]

This paper asks two questions. First, can CBAM be justified under the general exceptions in Article XX of the General Agreement on Tariffs and Trade 1994 (GATT)?[8] Second, given the answer, what legal and policy recourse does India have? The paper argues that CBAM is best defended under Article XX(g) and that Article XX(b) is a weaker though not negligible

[2] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism, 2023 O.J. (L 130) 52 [hereinafter CBAM Regulation].

[3] Regulation (EU) 2025/2083 of the European Parliament and of the Council Amending Regulation (EU) 2023/956 to Simplify the Carbon Border Adjustment Mechanism (entered into force Oct. 20, 2025) [hereinafter Omnibus Regulation]; *see also CBAM Simplification: 50 Tonne Threshold and New Dates*, Ekobon, https://www.ekobon.com/blog-cbam-simplification-omnibus-changes.html (last visited Nov. 14, 2026).

[4] Global Trade Research Initiative, *The Carbon Border Adjustment Mechanism: EU's Climate Trojan Horse to Obstruct Imports* 4–7, https://gtri.co.in/gtriRep6.pdf (last visited Nov. 14, 2026).

[5] *EU's Carbon Rules Enter Implementation Phase, Putting Indian MSMEs Under Pressure*, Down To Earth, https://www.downtoearth.org.in/economy/eus-carbon-rules-enter-implementation-phase-putting-indian-msmes-under-pressure (last visited Nov. 14, 2026).

[6] *EU-India FTA Leaves CBAM Untouched*, Argus Media (Jan. 2026), https://www.argusmedia.com/en/news-and-insights/latest-market-news/2781007-eu-india-fta-leaves-cbam-untouched.

[7] *WTO: Panel Set on EU's CBAM, US Again Blocks AB Appointments*, TWN Info Serv. on WTO & Trade Issues (Sept. 2026), https://twn.my/title2/wto.info/2026/ti260923.htm; *see also Russia Requests Dispute Panel on EU Carbon Border Adjustment and Emissions Trading Scheme*, WTO News (July 24, 2026), https://www.wto.org/english/news_e/news26_e/dsb_24jul26_464_e.htm.

[8] General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter GATT].

alternative. Its real exposure lies at the chapeau of Article XX, and in three implementation features in particular: the default-value and verification regime, the asymmetric recognition of carbon prices paid abroad, and the limited differentiation for developing countries. On recourse, the paper argues that formal litigation offers India limited practical value while the Appellate Body remains inoperative, and that a combined strategy of engagement in DS639, negotiated recognition under the India–EU FTA framework, and rapid completion of India's own carbon pricing is more promising than a stand-alone complaint.

The analysis is doctrinal and draws on WTO jurisprudence, EU and Indian legal instruments, and the best available trade data. Two cautions apply. First, no WTO panel has yet ruled on CBAM, so the assessment is necessarily predictive. Second, the facts are moving: this paper reflects developments to mid-November 2026, and several, including the legal text of the India–EU FTA and India's steel and fertiliser targets, remain unsettled. The paper does not address claims under the Agreement on Subsidies and Countervailing Measures or the Agreement on Technical Barriers to Trade, which are raised in DS639 and merit separate treatment.

Part II describes CBAM's design and India's exposure. Part III analyses CBAM under GATT Article XX. Part IV assesses India's options. Part V sets out recommendations, and Part VI concludes.

II. CBAM: Design and Impact on India

A. The Legal Architecture of CBAM

CBAM requires importers of covered goods to register as authorised CBAM declarants, to declare the emissions embedded in goods imported in a calendar year, and to surrender a corresponding number of CBAM certificates by 30 September of the following year.[9] Certificate prices track the EU ETS allowance price. For 2026 imports, the price is a quarterly average of auction prices, and the Commission reported €75.36 per tonne of carbon dioxide equivalent for the first quarter and €75.28 for the second.[10] No certificates are bought in 2026 itself: sales begin on 1 February 2027, and the first declaration is due on 30 September 2027.[11]

[9] CBAM Regulation, *supra* note 1, arts. 4, 6, 22; Omnibus Regulation, *supra* note 2.

[10] *CBAM 2026: The Real Cost of the Definitive Phase*, EcoLedger, https://theecoledger.com/insights/cbam-2026-the-real-cost-of-the-definitive-phase-in-six-charts-and-one-checklist (reporting Commission data) (last visited Nov. 14, 2026).

[11] Omnibus Regulation, *supra* note 2.

Four design features matter for the legal analysis. First, embedded emissions are determined from actual, verified data where available, and from default values where not. Default values are set at levels intended to be less favourable than actual performance, and the declarant's data must be verified by an accredited verifier.[12] Second, the obligation is reduced by the carbon price effectively paid in the country of origin, which the Regulation defines by reference to taxes, levies or fees and to allowances under an emissions trading system.[13] Third, goods from countries whose carbon pricing systems are linked to or integrated with the EU ETS are excluded from the mechanism.[14] Fourth, CBAM's phase-in is paired with the phase-out of free allocation of EU ETS allowances to EU producers between 2026 and 2034, and the CBAM obligation is adjusted for any free allocation.[15] The Omnibus Regulation added a single de minimis threshold of 50 tonnes per importer per year, which is reported to exempt around 90 per cent of importers while retaining about 99 per cent of covered emissions.[16]

The mechanism is also expanding. In April 2026, the Commission proposed extending CBAM to roughly 180 further downstream steel and aluminium products from 2028, and, according to GTRI, a draft report before the European Parliament would go further.[17] Legal analysis of CBAM today is therefore analysis of a moving target.

B. India's Export Exposure

Estimates of India's exposure vary, and the variation matters for strategy. The Global Trade Research Initiative (GTRI) estimates that CBAM-covered sectors account for about 10 per cent of India's exports to the EU and about 1.64 per cent of its total exports, but warns that downstream expansion could reach engineering goods, auto components and machinery.[18] A more granular study by the think tank Sandbag, published in August 2026, finds that India exported about 4.0 million tonnes of CBAM-covered steel to the EU in 2025, mostly flat products, and concludes that because India's exports are dominated by basic rather than highly transformed steel, downstream extension would not materially increase CBAM's impact on its competitiveness, even though the exposure from steel itself is substantial.[19]

[12] CBAM Regulation, *supra* note 1, arts. 7–8.
[13] *Id.* arts. 3, 9.
[14] *Id.* art. 2.
[15] *Id.* art. 31.
[16] Omnibus Regulation, *supra* note 2; *see* EcoLedger, *supra* note 9.
[17] *Trade Liberalisation Meets Carbon Tariffs as India Eyes EU Market*, Mongabay India (June 2026), https://india.mongabay.com/2026/06/trade-liberalisation-meets-carbon-tariffs-as-india-eyes-eu-market-commentary/; Global Trade Research Initiative, *CBAM Expansion Report* (2026), https://www.gtri.co.in/upload/flagshipreport/1778050699.pdf.
[18] Mongabay India, *supra* note 16; GTRI, *supra* note 16.
[19] Sandbag, *CBAM Impact on India* (Aug. 2026), https://sandbag.be/wp-content/uploads/04.08.2026-Sandbag-CBAM-impact-on-India.pdf.

Causation should be treated with care. The 24.4 per cent fall in Indian steel and aluminium exports to the EU in 2024–25, within which steel fell 35.1 per cent, preceded any certificate obligation.[20] It may reflect anticipatory buyer behaviour, compliance uncertainty and price effects, but other market factors also operate, and the relative weight of each is not established. For present purposes, what matters is that exporters and their EU customers are already pricing in CBAM, which strengthens the case that India has a present commercial interest in the legal questions that follow.

III. CBAM under WTO Law

A. The Threshold Question: Which GATT Provisions Are Engaged?

A defence under Article XX arises only if CBAM is otherwise inconsistent with the GATT. Whether it is depends on how the measure is characterised. If the CBAM obligation is an ordinary customs duty or other charge imposed on or in connection with importation, it falls under Article II:1(b), and would breach the EU's bound rates unless it is an equivalent of an internal charge.[21] If it is instead an internal charge applied at the border to compensate for the EU ETS, it falls under Article III:2, which prohibits internal charges on imports in excess of those on like domestic products.[22] Free allocation to EU producers, and the adjustment to CBAM obligations that mirrors it, are part of the EU's argument that the burden on imports does not exceed that on domestic goods. The "like products" inquiry is contested, because CBAM distinguishes goods by their production emissions, and the extent to which production-process differences that leave no trace in the final product can justify different treatment is unsettled.

Separately, CBAM's exclusion of goods from countries linked to the EU ETS, together with differential treatment of other third countries, engages the most-favoured-nation obligation in Article I:1, and authorisation and verification requirements may be challenged under other provisions.[23] Russia's DS639 claims reportedly span Articles I, II, III, X and XI of the GATT, the Import Licensing Agreement and the SCM Agreement.[24] This paper assumes, without deciding, that at least one inconsistency is found, since the EU's principal defence, and the

[20] *India's Carbon Credit Trading Scheme: Strong Start, Critical Design Choices Ahead*, IEEFA (July 14, 2026), https://ieefa.org/articles/indias-carbon-credit-trading-scheme-strong-start-critical-design-choices-ahead.
[21] GATT, *supra* note 7, art. II:1(b).
[22] *Id.* art. III:2 & Ad Note.
[23] *Id.* art. I:1; *see also id.* art. XI.
[24] *WTO Establishes DS639 Panel: CBAM Faces First WTO Panel Review*, CBAM Guide (Sept. 25, 2026), https://cbamguide.com/news/2026-09-25-wto-establishes-ds639-panel-cbam/.

question that matters most to developing-country exporters, is whether Article XX saves the measure.

Article XX applies a two-tier test. The measure must first fall within a listed exception, and must then satisfy the requirements of the chapeau, namely that it is not applied in a manner that constitutes arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.[25] The two tiers are examined in that order below.

B. Justification under Article XX(g)

Article XX(g) covers measures "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."[26] The EU's strongest case lies here, for four reasons.

1. An Exhaustible Natural Resource

The Appellate Body has read "exhaustible natural resources" in an evolutionary manner, in light of the contemporary concern of the international community for the protection of the environment. It has accepted that living resources can be exhaustible, and in *US – Gasoline*, it left undisturbed the finding that clean air is an exhaustible natural resource.[27] By analogy, the climate system's capacity to absorb greenhouse gases without dangerous interference is a plausible candidate. The more serious difficulty is the measure's stated objective, considered next.

2. "Relating To" Conservation

A measure "relates to" conservation if there is a close and genuine relationship of ends and means, assessed from the measure's design and structure.[28] The EU's difficulty is that the CBAM Regulation presents the measure as protecting the integrity of the EU ETS against carbon leakage. India can argue that preventing leakage safeguards the competitiveness of EU industry, which is an economic rather than a conservation purpose. The EU's response is that leakage prevention is itself an environmental objective, because relocated emissions

[25] Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R (adopted May 20, 1996).
[26] GATT, *supra* note 7, art. XX(g).
[27] Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (adopted Nov. 6, 1998); *see* Appellate Body Report, *US – Gasoline*, *supra* note 24.
[28] Appellate Body Reports, *China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, WT/DS431/AB/R, WT/DS432/AB/R, WT/DS433/AB/R (adopted Aug. 29, 2014).

undermine the climate benefit of the ETS. The better view is that the Panel will look at whether the charge tracks embedded emissions, which it does, and that this tight link between the charge and the emissions it targets supports the "relating to" requirement. Even so, the dual economic and environmental rationale gives India a line of attack on the necessity and chapeau analyses.

3. Even-Handedness: Restrictions on Domestic Production or Consumption

The requirement that the measure be made effective in conjunction with domestic restrictions is one of even-handedness: the burden of conservation must not fall on imports alone.[29] CBAM is closely tied to the EU ETS, which caps emissions from EU installations and imposes the same carbon price on them. This is arguably the paradigm case of even-handedness, and it is the feature that most distinguishes CBAM from a purely external tariff. India's counter is that free allocation, which continues to shelter EU producers during the phase-out, means domestic and imported goods bear different burdens during the transition. The EU's answer is that CBAM is itself reduced by the free allocation received, so the burdens converge.

4. Jurisdictional Nexus

In *US – Shrimp*, the Appellate Body noted a sufficient nexus between the migratory, endangered sea turtles and the United States, and left open whether Article XX(g) contains an implied jurisdictional limitation.[30] Climate change is the clearest example of a global common concern, and the EU can point to its own ETS emissions as providing a nexus. A nexus argument is unlikely to be India's strongest.

On balance, Article XX(g) appears the more natural fit for CBAM than Article XX(b), principally because of the ETS-based even-handedness showing. The unresolved issue is whether the leakage-prevention purpose weakens the "relating to" link, and this is likely to be contested in DS639.

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C. Justification under Article XX(b)

Article XX(b) requires the measure to be "necessary to protect human, animal or plant life or health." The inquiry has three steps: whether the policy objective falls within the provision, how much the measure contributes to it, and whether a less trade-restrictive alternative is

[29] Appellate Body Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/AB/R, WT/DS395/AB/R, WT/DS398/AB/R (adopted Feb. 22, 2012).
[30] Appellate Body Report, *US – Shrimp*, *supra* note 26.

reasonably available.[31] The Appellate Body has treated the weighing of the importance of the interest, the measure's contribution and its trade impact as central to necessity.[32]

The objective, mitigating climate change, plainly engages human, animal and plant life and health. The contribution requirement is more difficult, because CBAM's own marginal effect on global emissions is hard to quantify and is partly indirect, working through leakage prevention and the incentive for foreign producers to decarbonise. In *Brazil – Retreaded Tyres*, the Appellate Body accepted that the contribution of a measure to its objective may be shown through a qualitative or quantitative analysis, and that it may be assessed over time. This standard helps the EU. Here, India's best argument concerns alternatives. It can say that a less trade-restrictive path is reasonably available, namely one that relies on the exporting country's own carbon pricing and verified data, with technology and finance support, rather than on default values and EU-accredited verification. The EU would reply that alternatives that depend on third-country regulation cannot ensure the same level of protection.

Because the objective is pursued by trade-restrictive means that touch the whole production chain of covered goods, Article XX(b) is likely to invite the closer scrutiny of the two provisions. The EU would be wise to lead with Article XX(g), and India should be ready to contest necessity on the alternatives point.

D. The Chapeau: Where CBAM Is Most Exposed

The chapeau asks not whether the measure is justified in itself but whether it is applied in a way that is arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on trade. It is the stage at which most environmental measures have been found wanting, and the Appellate Body has treated it as an expression of the good faith principle that balances the right to invoke an exception against the substantive rights of other members.[33]

Three lines of jurisprudence are directly relevant. In *US – Gasoline*, the United States was found to have applied baseline rules in a manner that amounted to unjustifiable discrimination, because it had not explored cooperative arrangements that would have eased the burden on foreign refiners.[34] In *US – Shrimp*, the measure failed because it required other

[31] Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R (adopted Dec. 17, 2007).

[32] Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R (adopted Jan. 10, 2001); Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R (adopted Apr. 5, 2001).

[33] Appellate Body Report, *US – Shrimp*, *supra* note 26.

[34] Appellate Body Report, *US – Gasoline*, *supra* note 24.

members to adopt essentially the same regulatory programme, without regard to different conditions in those countries, and because the United States had not engaged in serious negotiations with exporters.[35] In *Brazil – Retreaded Tyres*, discrimination was assessed in light of the policy objective, and an exemption for MERCOSUR partners that undermined the stated goal rendered the discrimination unjustifiable.[36] The *EC – Seal Products* report confirms that the analysis asks whether differential treatment can be reconciled with, or is rationally related to, the measure's objective.[37] Three CBAM features can be tested against these standards.

1. Default Values and the Verification Regime

The *Gasoline* analogy is closest here. Producers able to show actual emissions can avoid default values that are set deliberately above average performance, but doing so requires verified data from an accredited verifier.[38] Indian producers, and particularly small and medium enterprises supplying large producers, often lack plant-level data or access to verifiers recognised by the EU.[39] If default values with a mark-up are applied in practice because Indian verification is not recognised, the effect is a higher burden on imports that India cannot readily reduce, and the EU may be accused of failing to explore cooperative arrangements, such as recognition of Indian accreditation, that would reduce the burden. India's reported effort to obtain EU recognition of the National Accreditation Board for Certification Bodies is therefore legally as well as commercially significant:[40] a refusal without good reason would strengthen a *Gasoline*-type claim.

2. Asymmetric Recognition of Carbon Prices Paid Abroad

CBAM credits carbon prices paid abroad, but the Regulation's definition of a "carbon price" refers to taxes, levies, fees and emission allowances under emissions trading systems.[41] Two asymmetries follow. The first is the complete exclusion of goods from countries linked to the

[35] Appellate Body Report, *US – Shrimp*, *supra* note 26; Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products: Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/AB/RW (adopted Nov. 21, 2001).

[36] Appellate Body Report, *Brazil – Retreaded Tyres*, *supra* note 30.

[37] Appellate Body Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R, WT/DS401/AB/R (adopted June 18, 2014).

[38] CBAM Regulation, *supra* note 1, arts. 7–8.

[39] *How CBAM Affects Indian Businesses*, Sprih, https://www.sprih.com/blogs/cbam-india/ (last visited Nov. 14, 2026).

[40] *WTO Carbon Border Tax Challenge Leaves CBAM Running*, Discovery Alert, https://discoveryalert.com/analysis/wto-carbon-border-tax-cbam-challenge-september-2026/ (last visited Nov. 14, 2026).

[41] CBAM Regulation, *supra* note 1, arts. 3, 9.

EU ETS, which is justified by the equality of carbon pricing but, as in *Retreaded Tyres*, is difficult to square with a purpose that is about emissions rather than about the identity of the exporter. India can say that countries with a comparable or developing carbon price, but not a linked one, receive no equivalent treatment. The second is that systems that do not fit the definition, such as intensity-based baseline-and-credit schemes of the kind India has adopted, may receive only partial recognition or none. The EU will reply that recognition rests on objective criteria applied to all, and that any member may apply for recognition. Whether the criteria can be met by a system of India's design is, as yet, untested, which is itself a reason for India to press for a clear pathway.

3. Differentiation and the Obligation to Negotiate

US – Shrimp teaches that a measure that is rigid and inflexible and that does not take account of different conditions in exporting countries risks failing the chapeau, as does a failure to pursue serious, good-faith negotiation. In the follow-up proceedings, the Appellate Body accepted that a member could comply by allowing a programme that is comparable in effectiveness rather than identical. The EU can point to the technical dialogue on CBAM provided for in the India–EU FTA framework, the assurance that any flexibilities granted to third countries will be extended to India, and cooperation on recognition of carbon prices and verifiers, as evidence of engagement.[42] India can answer that the Commission has said it makes no commitment to change CBAM or to grant India more favourable treatment, so the engagement is process without substance until recognition decisions are made.[43] This sub-issue is likely to turn on what actually results from the dialogue, which is a point in time that is still ahead.

4. Disguised Restriction on International Trade

A disguised restriction is shown by the measure's design, architecture and revealing structure, and not only by its concealment. The signals here are mixed. The rule-based tie to ETS cost and the adjustment for free allocation indicate environmental design. The mechanism's steady widening in scope, the reported use of default values with mark-ups, and a leakage rationale grounded in competitiveness give India material to argue that protection of EU industry is an

[42] Press Information Bureau, Ministry of Commerce & Industry, *India–EU Free Trade Agreement Concluded: A Strategic Breakthrough in India's Global Trade Engagement* (Jan. 27, 2026), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2219065.
[43] Argus Media, *supra* note 5.

operative purpose. A panel is unlikely to treat this limb as decisive unless the other limbs are also made out.

E. Common but Differentiated Responsibilities as Context

India has consistently argued that CBAM is incompatible with the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), which appears in the Rio Declaration, the UN Framework Convention on Climate Change and the Paris Agreement.[44] The legal route by which CBDR-RC can matter in a WTO dispute is narrow. It does not override GATT obligations, and a panel is unlikely to treat it as a self-standing defence. Its role is interpretive. The chapeau must be read, as in *US – Shrimp*, in light of the objective of sustainable development recorded in the preamble to the Marrakesh Agreement, and the chapeau's own language is echoed in the UNFCCC, which states that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.[45] In its 2025 advisory opinion on climate change, the International Court of Justice reaffirmed that States bear obligations in respect of climate change under a range of sources, which supplies further interpretive context.[46]

The EU's answer is that CBAM does not tax countries but products, applies the same carbon cost to EU and foreign producers, and leaves developing countries the option of pricing carbon at home and keeping the revenue. The strength of India's CBDR-RC argument therefore lies not in claiming exemption, but in showing that the absence of any differentiation, such as phased treatment, capacity-building, or recognition of developing-country schemes, contributes to unjustifiable discrimination at the chapeau.

F. Assessment

Putting the analysis together, a panel could plausibly find that CBAM is within Article XX(g), because of its structural link to the ETS and the tight relationship between the charge and embedded emissions. Article XX(b) is more exposed on necessity and alternatives. The measure's overall defensibility is most at risk at the chapeau, and the exposure is practical rather than conceptual: it arises from how default values, verification and recognition work in

[44] Rio Declaration on Environment and Development, princ. 7, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992); United Nations Framework Convention on Climate Change art. 3(1), May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC]; Paris Agreement art. 2(2), Dec. 12, 2015, T.I.A.S. No. 16-1104.
[45] UNFCCC, *supra* note 43, art. 3(5).
[46] Obligations of States in Respect of Climate Change, Advisory Opinion (I.C.J. July 23, 2025).

operation. That is both an opportunity and a limit for India. It is an opportunity because the EU can reduce the legal risk by improving implementation, which gives India leverage in negotiations. It is a limit because a litigated finding on the chapeau would turn on facts about application that are still developing.

IV. India's Legal and Policy Options

A. The WTO Route

1. Participating as a Third Party in DS639

India reserved third-party rights in DS639.[47] Third-party status allows India to make written and oral submissions and to place its reading of Article XX on the record, without bearing the cost or political risk of being a complainant. It also enables India to stress the issues most relevant to developing-country exporters, namely verification, recognition of carbon prices and differentiation, which may not be Russia's priorities. Russia's own interests as a major exporter of covered goods differ in important respects from India's, and India has an interest in ensuring that any ruling does not rest on factual assumptions that disadvantage Indian producers. Compared with a separate complaint, this route is cheap and fast to adopt. Its limit is that India does not control the issues framed or the remedy sought.

2. Initiating a Separate Complaint

India could request consultations under the Dispute Settlement Understanding and, if they fail, a panel.[48] Four considerations weigh against doing so now. First, DS639 is already before a panel, with a report realistically expected in 2027 or 2028,[49] and a second panel on the same measure would add little before that report issues. Second, remedies in WTO law are prospective, and compliance periods can be long, so the practical relief for exporters would arrive after the carbon obligations have been priced into contracts. Third, the Appellate Body has been unable to hear appeals since December 2019, so a losing party can appeal into the void, leaving a report unadopted. The Multi-Party Interim Appeal Arbitration Arrangement

[47] TWN Info Serv. on WTO & Trade Issues, *supra* note 6.
[48] Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 4, 6, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU].
[49] *See* CBAM Guide, *supra* note 23.

offers a workaround only between participating members, and India is not among them.[50] Fourth, political economy matters: a complaint would be lodged during a period when India is seeking recognition decisions from the same counterpart, and the FTA text, once finalised, should be examined for any provision that channels CBAM concerns into dialogue before litigation.[51]

None of this means that litigation is never appropriate. If recognition decisions stall, or if DS639 yields a ruling that leaves the verification and recognition questions open, a targeted complaint focused on those implementation features would be better tailored than a general attack on CBAM's legitimacy. The option should be kept in reserve and its legal groundwork prepared now.

B. Negotiated Outcomes under the India–EU FTA

The FTA concluded politically in January 2026 does not give India a CBAM exemption. According to India's Ministry of Commerce, it secures an assurance that any flexibilities granted to third countries under the Regulation will be extended to India, enhanced technical cooperation on recognition of carbon prices and verifiers, and financial and technical support to help industry comply.[52] The Commission's statement is that the EU has made no commitment to change CBAM or to give India more favourable treatment than other states.[53] The two accounts are consistent: India obtained process and most-favoured-nation protection, but no substantive carve-out. The political conclusion is not itself legally binding, and entry into force was expected in late 2026 or early 2027.[54]

From a legal standpoint, an EU refusal to give India a carve-out is unsurprising. A country-specific exemption for an FTA partner would raise a most-favoured-nation problem under Article I of the GATT, and it is doubtful that Article XXIV, which addresses duties and other restrictive regulations of commerce on substantially all trade between the parties, would cover an exemption from a carbon charge.[55] The more productive path is therefore a rule-based one: obtain recognition of Indian carbon pricing and verification on objective criteria that any

[50] Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes, JOB/DSB/1/Add.12 (Apr. 30, 2020); *see* DSU, *supra* note 47, art. 17.
[51] GTRI has said that India has limited ability to retaliate because of CBAM-related provisions in the FTA text. GTRI, *supra* note 16. This claim should be tested against the final legal text, which has not yet entered into force.
[52] PIB, *supra* note 41.
[53] Argus Media, *supra* note 5.
[54] *Two Decades in the Making, India and EU Reach Deal Opening Up Markets*, Business Standard (Jan. 27, 2026), https://www.business-standard.com/economy/news/india-eu-conclude-long-awaited-free-trade-agreement-after-two-decades-126012700531_1.html.
[55] GATT, *supra* note 7, arts. I, XXIV.

country could meet. That aligns with the interests of other developing-country exporters, and it carries less legal risk for the EU.

There is a live precedent for this approach. In September 2026, the United Kingdom recognised India's Carbon Credit Trading Scheme (CCTS) for the purposes of its own CBAM, which begins in 2027, so that UK importers of eligible Indian goods can seek relief for the effective carbon price borne under the CCTS, subject to evidence requirements.[56] The UK decision shows that recognition of an intensity-based scheme is administratively feasible, and it strengthens India's argument that refusal by the EU, absent a principled distinction, would be difficult to explain under the chapeau. India has also reportedly placed CBAM recognition on the agenda of the India–EU Trade and Technology Council at ministerial level.[57]

C. Domestic Carbon Pricing as a Strategic Response

India's principal domestic response is the CCTS, established under the Energy Conservation (Amendment) Act, 2022 and notified in 2023.[58] Under the scheme, obligated entities must meet greenhouse gas emission-intensity targets and may earn or buy tradable carbon credit certificates. Targets were first notified in October 2025 for 282 plants in aluminium, cement, chlor-alkali, and pulp and paper, and extended in January 2026 to petroleum refining, petrochemicals, textiles and secondary aluminium, which brought the total to about 490 entities. Targets for iron and steel were issued only in revised draft form in June 2026, and those for fertilisers are still awaited.[59] Steel is the sector with the greatest CBAM exposure, which makes the delay the most consequential gap. Trading under the scheme had been expected to begin around October 2026, and that timing was a government expectation rather than a legal deadline.[60]

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[56] *UK Recognises India's Carbon Credit Scheme Under Its Carbon Tax Mechanism, Prevents Indian Exporters from Paying Dual Charges*, All India Radio News (Sept. 8, 2026), https://newsonair.gov.in/uk-recognises-indias-carbon-credit-scheme-under-its-carbon-tax-mechanism-prevents-indian-exporters-from-paying-dual-charges/.

[57] *India Accelerates Its CBAM Response*, CBAM Guide (July 20, 2026), https://cbamguide.com/news/2026-07-20-india-ccts-carbon-market-cbam-recognition/.

[58] Energy Conservation (Amendment) Act, 2022 (India); *see India's Carbon Market: The New Compliance and Commercial Considerations for Businesses*, Legal 500, https://www.legal500.com/intelligence/india/corporate-commercial-law/indias-carbon-market-the-new-compliance-and-commercial-considerations-for-businesses (last visited Nov. 14, 2026).

[59] Legal 500, *supra* note 57; *see also Compliance Obligations Under India's Carbon Credit Trading Scheme Enter Force in Seven Sectors*, ICAP, https://icapcarbonaction.com/en/news/compliance-obligations-under-indias-carbon-credit-trading-scheme-enter-force-seven-sectors (last visited Nov. 14, 2026).

[60] *India to Launch First Carbon Trading Programme by October 2026*, Outlook Business, https://www.outlookbusiness.com/news/india-to-launch-first-carbon-trading-programme-by-october-2026; *India Kicks Off Carbon Trading Programme but Key Polluters Left Out*, Business Standard (Feb. 24, 2026), https://www.business-standard.com/industry/news/india-kicks-off-carbon-trading-programme-but-key-polluters-left-out-126022401016_1.html.

Three legal-design questions determine whether the CCTS can lower India's CBAM costs. The first is recognition: CBAM relief depends on whether a payment is a "carbon price" within the Regulation's definition, and a baseline-and-credit system based on intensity, where the effective price depends on credit prices and on how far an entity exceeds its target, does not map neatly onto a tax or an allowance price. The second is price discovery and stability: a thin or volatile credit price yields a small or uncertain deduction. The third is monitoring, reporting and verification, which must be aligned with the EU's requirements if Indian data are to be accepted. A domestic price also changes who collects revenue. Where an Indian exporter bears a recognised domestic carbon price, the EU importer's CBAM obligation falls by a corresponding amount, whereas the absence of a domestic price leaves the entire charge payable in the EU.

Domestic pricing is also a question of consistency with India's own obligations. If the CCTS is administered even-handedly, it is a domestic regulatory scheme that can be defended on its own terms and strengthens India's position as a party that treats its industry to the same carbon-cost discipline it asks the EU to respect. It also supports an argument at the chapeau: that the EU's refusal to recognise a functioning, comparable scheme is unjustifiable.

D. A Combined Strategy

The options are complementary, and their sequencing matters. Participation in DS639 costs little and preserves India's legal position. Negotiation under the FTA framework is the most likely route to concrete relief, and it benefits from the legal risk that the chapeau analysis places on the EU. Domestic pricing is the one lever fully within India's control, and it generates the evidence (a functioning price, verified data) that recognition requires. Pursuing all three also avoids the weaknesses of each: the limited remedial value of litigation, the lack of any substantive exemption in the FTA, and the delay in domestic implementation.

V. Recommendations

First, India should use its third-party rights in DS639 to put forward a concrete reading of the chapeau focused on verification, recognition and differentiation, and should prepare, but not yet file, a narrowly framed complaint addressed to those implementation features should recognition efforts fail.

Second, in the technical dialogue under the FTA framework, India should seek concrete deliverables rather than general assurances: a published pathway and criteria for recognising intensity-based carbon pricing; recognition of Indian accreditation and verification bodies;

reasonable limits on the mark-up applied to default values where verification is pending; and a review clause tied to the Commission's own reports on CBAM's effects on developing countries. India should insist on the most-favoured-nation assurance being operationalised in writing.

Third, India should finalise the steel and fertiliser targets under the CCTS without delay, and should consider a price-stability mechanism and an early engagement with the EU on how credit prices will be converted into an effective carbon price for CBAM deduction. The UK recognition decision is a useful template for the evidence India will be asked to provide.

Fourth, the Government should support small and medium exporters with emissions measurement, verification capacity and data-sharing from large producers, because the legal argument is strongest where Indian producers cannot use actual data through no fault of their own, and a legal victory would come too late to help firms that have already lost their EU customers.

Fifth, India should continue to raise CBAM in the WTO Committee on Trade and Environment and to coordinate with other developing-country exporters, including on a multilateral discussion of the relationship between unilateral border carbon measures and CBDR-RC. India should avoid retaliatory measures, which would weaken its position under the chapeau's requirement of good-faith negotiation and would risk the market access the FTA is intended to deliver.

VI. Conclusion

CBAM is neither plainly lawful nor plainly unlawful under the GATT. Its architecture, and in particular its link to the EU ETS, gives it a respectable defence under Article XX(g). Its weak points are at the chapeau, and they are specific: how default values and verification operate against producers who cannot readily access recognised verifiers, how carbon prices paid abroad are recognised, and whether the absence of differentiation for developing countries can be reconciled with the measure's environmental purpose. Because those weaknesses are practical, they are also curable, and the EU can reduce its legal exposure by improving implementation.

For India, that analysis points away from a single, decisive legal strike and toward a coordinated strategy: use the third-party role in DS639 to shape the law, use the FTA framework and the UK precedent to obtain recognition, and complete India's own carbon pricing so that the recognition India seeks has something to attach to. The limits of the multilateral system, in particular the absence of a functioning appellate stage, reinforce this

conclusion. The pace of change in the underlying facts means that each of these judgments should be revisited when the DS639 panel reports, when the FTA text is finalised, and when India's steel targets are notified.

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