Climate Quotient

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INSIDE PAGES

Carbon Markets

India Seeks to Align Upcoming ETS with the EU's ETS

Reports suggest that India is expected to request concessions from the EU regarding India's upcoming Carbon Credit Trading Scheme (**CCTS**), in a move to harmonize the CCTS with the EU's Emissions Trading System (**ETS**). India is expected to request that credits generated by a "local fossil fuel tax" in India should be regarded as equal to allowances under the EU ETS, as well as mutual recognition for Indian accredited emissions verifiers.[1] It is expected that India will request these concessions in the seventh round of its FTA negotiations with the EU.

The issue of mutual recognition for Indian verifiers gains importance due to the EU's upcoming Carbon Border Adjustment Mechanism (**CBAM**),[2] which would require emissions contained in exports to the EU to be verified by entities accredited under EU law. For this purpose, the CBAM relies on verifiers accredited for the EU ETS,[3] which generally are entities located in the EU.[4] However, the EU can also recognize non-EU entities as verifiers for both the EU ETS and the CBAM.[5] Similarly, the CBAM allows for deductions in payment obligations for the amount of carbon tax already paid in the exporting country.[6] While India does not have a specific "fossil fuel tax", the CCTS would operate as a carbon tax and could allow for deductions for Indian exports.

Another concession to be requested by India involves tax exemptions for small and medium sized enterprises (**SMEs**). While no official communication has been received by the Indian government in this regard, the "tax exemptions" to be sought are likely to be an exclusion of Indian SMEs' exports from the EU's Carbon Border Adjustment Mechanism. This is something that India has previously lobbied for, citing the potential harmful impact of the CBAM onto Indian SMEs.[7]

Key Takeaway for Businesses

Since the operationalization of the CBAM in October 2023, the EU has not provided an exemption to any country under the CBAM. Even if India was to receive an exception, issues such as mutual recognition of verifiers and harmonizing the price of credits under the CCTS with prices under the EU ETS would require extensive discussions between the two countries to be implemented. Thus, Indian exporters of CBAM covered goods would continue to have to monitor emissions contained in products being exported, for the near future and collaborate with importers of their products in the EU to enable them to meet reporting requirements.

EU Extends Deadline for CBAM Reports

The EU has extended the deadline for filing CBAM reports by 30 days. The EU's CBAM requires importers to file quarterly reports covering the amount of emissions released by products imported by them, with the first report being due to be submitted by

[1] Note: While reports use the term "accredited energy auditors", neither the EU ETS nor the CCTS not involve "accredited energy auditors". It is probable that "accredited energy auditors" was mistakenly used to refer to accredited emissions verifiers.
[2] ELP Citation
[3] Art. 18(1), Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023.
[4] Art. 3(3), Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 read with Art. 7, Regulation (EC) No 765/2008 of 9 July 2008.
[5] Art. 18(2), Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023; Art. 3(3), Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018.
[6] Art. 6(2)(c)
[7] https://www.thehindubusinessline.com/economy/eu-carbon-tax-india-seeks-carve-out-for-msmes-in-cbam/article66973267.ece#:~:text=India%20has%20sought%20exemption%20for,Secretary%20Sunil%20Barthwal%20has%20said.

January 31, 2024. These reports were to be submitted on the CBAM's transitional registry.[8]

However, the implementation of the CBAM registry throughout January 2024 has been rife with technical issues.[9] This was exacerbated on January 25, 2024 when reports started emerging regarding technical difficulties with the transitional registry, making it impossible to submit CBAM reports.[10] These issues were later confirmed by multiple EU national registries.[11] Thus, on January 29, 2024, the EU announced that an option will be added on the transitional registry from February 1 to request a delayed submission. This would provide a 30-day extension for filing reports from the day the extension is availed.

Key Takeaway for Businesses

Amid reports of major technical difficulties in the transitional registry, the extension provided by the EU would serve as much-needed breathing room for EU businesses. Additionally, businesses would also be allowed to correct deficiencies in submitted reports until July 31, 2024. These measures signal that the EU is willing to be flexible to accommodate any practical challenges in the implementation of the CBAM, and further highlight the EU's resolve to move forward with the CBAM.

[8] https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en#:~:text=inclusion%20by%202030.-,Where%20to%20report,which%20the%20importer%20is%20established.

[9] https://co2-iq.com/en/deadline-cbam-reports

[10] https://steelnews.biz/eu-cbam-serious-technical-problems-persist/

[11] Companies unable to comply with EU carbon border policy due to tech issues « Carbon Pulse (carbon-pulse.com)

China's Dormant Voluntary Carbon Market Restarts Trading.

The China Certified Emission Reduction scheme (**CCER**), China's national voluntary carbon market, has restarted trading on January 22, 2024 nearly seven years after its suspension in March, 2017. The CCER complements China's ETS, which has remained in operation since 2021. The framework for reviving the CCER was established under the "Measures for the Administration of Greenhouse Gas Voluntary Emission Reduction Trading" (**Measures**) adopted in October, 2023.

As per the Measures, the CCER would cover carbon mitigation and carbon removal projects that fulfill criteria for "authenticity, uniqueness, and additionality". Methodologies for registering projects under the CCER would also be developed, and the Measures allow for third-party verification of projects against said methodologies. Notably, the Measures also introduces the principle of "conservatism" in the verification and evaluation of projects to avoid over-calculation. Lastly, the Measures consolidate the various fragmented pilot trading schemes with credit trading to now be affected on a unified trading platform with nation-wide regulatory authorities.

Key Takeaway for Businesses

China's revival of its CCER is a major step towards achieving its goal of carbon neutrality by 2060. Additionally, changes to the CCER under the Measures (such as the unification of the trading platform and stricter criteria for verification and evaluation of projects) reflect an understanding of the practical issues faced by entities that led to the shutdown of the CCER in 2017. Assuming that project methodologies are robust, comprehensive and unambiguous, it is expected that these changes would provide significant impetus for voluntary credit trading in the country while supporting the existing ETS.

Environmental Societal and Governance

EU Parliament Approves Ban on Climate-Related Claims Based on Offsetting

In an effort to combat greenwashing claims, the EU has modified its consumer protection law to ban claims such as "climate neutral" made by companies on the basis of purchasing carbon offsets.

Carbon offsets are credits generated from engaging in environmentally friendly activities, such as tree plantation or preventing deforestation. These credits represent a certain amount of emissions "prevented" and entities can claim that their products are "climate neutral" by purchasing an amount of credits equivalent to the amount of emissions generated by producing such products.

However, offset credits have been subject to major controversies in 2023 regarding their legitimacy, such as more than 90% of all rainforest credits issued by the world's biggest offsetting entity having no value.[12] This fall in the legitimacy of carbon offsets has raised claims of "greenwashing" by companies where claims for the climate neutrality of products is not backed by actual evidence.

After being passed by the EU parliament, the directive banning offset-based claims will now be required to be approved by the European Council for it to become law. The directive also bans all environmental claims made without "excellent environmental performance" backing said claim, as well as making claims regarding a trader's entire business when backing only exists for a certain aspect of said business. The penalties for infringement shall be decided separately by each EU member state.[13]

Key Takeaway for Businesses:

The EU's decision to ban the aforesaid claims is not surprising, given the general fall in global trust for carbon offsetting. It is likely that businesses would continue to hold various offsets in their possession and such businesses must revisit the program and methodologies under which those offsets were generated. This is critical before a business aims to retire offsets, to not only avoid liabilities in the EU, but to also avoid incurring reputational losses by being accused of greenwashing. Apart from offsets, businesses should also ensure that they possess enough evidence to validate any other environmental claims made by them.

[12] https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe

[13] Art. 13, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005.

WTO Related Developments

Plastics Pollution Dialogue Finalizes Text for MC13 Ministerial Statement

On January 26, 2024, the Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (**Plastics Pollution Dialogue** or **PPD**) finalized the texts for its statement (and the supporting compilation) to be presented at WTO's 13th Ministerial Conference (**MC13**).

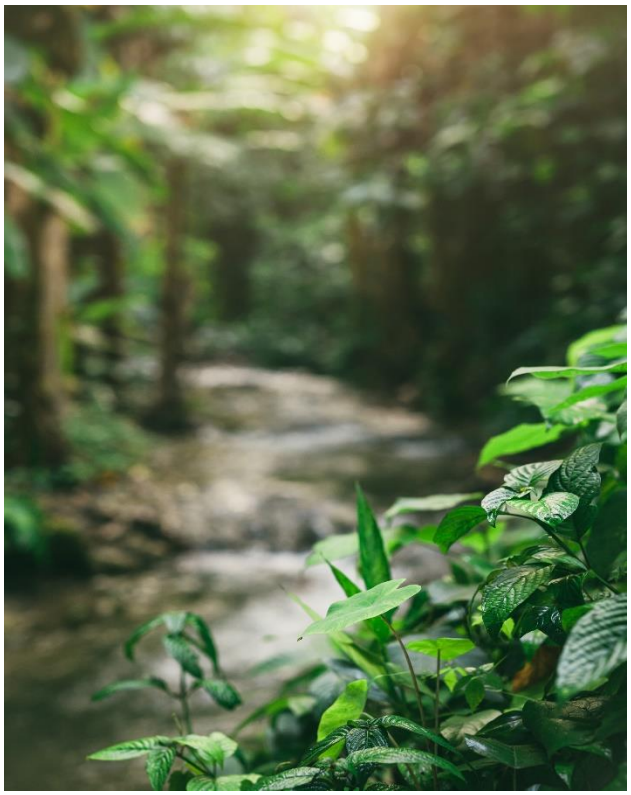
The Plastics Pollution Dialogue is an informal grouping of 76 WTO members to specifically discuss the role of plastics in global trade and ways to mitigate plastics pollution. Via its statement, the PPD primarily aims to set out the contours for its working in the period between MC13 and its successor, *i.e.* MC14. This primarily includes promoting cooperation between PPD members on trade-related policies and measures to reduce trade in harmful and single-use plastics and to promote trade in alternatives to plastics that contribute to plastic pollution.[14]

Additionally, the statement is accompanied by multiple compilations of various measures that can supplement the goals identified in the statement. This includes compilations on potential trade-related measures for reducing plastic pollution, building capacities for developing, least-developed and small-island developing nations, specific plastic items most commonly identified in the dialogue's discussions, and potential substitutes for plastics that contribute to plastic pollution.[15]

Trade and Environmental Sustainability Structured Discussions to Present Package at MC13

The WTO's Trade and Environmental Sustainability Structured Discussions (**TESSD**), another informal grouping of WTO members, will be presenting a package of five documents, consisting of a statement by the dialogue's co-conveners as well as outcome documents of the TESSD's four informal working groups.

The TESSD is headed by Canada and Costa Rica as co-conveners and consists of four informal working groups working on separate tracks under the dialogue. These tracks are environmental goods and services, subsidies, trade-related climate measures, and circular economy (circularity). Similar to the PPD's statement, the TESSD's co-conveners' statement would also highlight the dialogue's history and achievements, as well as present its working plan until MC14. Additionally, the outcome documents by its informal working groups would contain compilations on trade in goods and services key for the renewable energy sector, member practices in the development of trade-related climate measures, trade aspects of the circular economy vis-à-vis product lifecycles, and experiences and considerations with subsidy design.[16]



[14] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TEIDP/W10R2.pdf&Open=True
[15] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TEIDP/RD146R1.pdf&Open=True
[16] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TESSD/W32.pdf&Open=True

Other Updates

EU Parliament Approves Reductions on Emissions from Fluorinated Gases and Ozone-Depleting Substances.

On January 16, 2024, the EU Parliament adopted two directives to strengthen existing laws on reducing emissions from fluorinated gasses (**F-gasses**) and ozone depleting substances (**ODSs**).

The directive covering F-gasses replaces a pre-existing directive regulating the use and production of F-gasses and products containing said gasses.[17] The new regulation requires the recycling, reclamation or destruction of waste equipment containing F-gasses to be financed by manufacturers, prohibitions on selling switchgears relying on F-gasses where alternatives are available and affordable and strengthens measures to monitor illegal trade. The directive also adds additional export restrictions on goods containing F-gasses. Notably, the effect of the directive will be examined in 2030 to consider increases in its scope, subject to the growth of alternatives for certain goods using F-gasses.

Similarly, the new directive on ODSs also makes substantial changes to the previous directive,[18] such as requiring ODSs contained in specific insulation foams to either be destroyed or recovered when said foams are affected by renovation or destruction processes.

Additionally, the new directive also seeks to reduce the scope of exemptions available for using ODSs as feedstock, which represented a major share of the EU's increase in ODS production in 2021. The scope of ODSs covered by the directive is also increased, and member states would be allowed to prescribe civil and criminal penalties for the same infringement.

Key Takeaway for Businesses

At the outset, the directives have only been approved by the EU parliament and could potentially be modified by the European Council before adoption. Regardless of the same, the directives on ODSs and F-gasses introduce additional compliance requirements for the construction, electronics and waste management industries. However, the necessary qualifications for waste management of goods covered under the directives may also provide employment opportunities for skilled waste management professionals.

ELP Explainer: Greenwashing

In a nutshell, "greenwashing" refers to a situation where an entity claims that something is more climate-friendly than it is. Greenwashing has entered global climate discourse due to growing concerns of businesses aiming to capitalize on growing consumer awareness for climate-friendly products and businesses, without taking measures to validate such claims.

Greenwashing is a substantial risk for companies to engage in and can lead to significant repercussions for businesses, regardless of their size. Businesses such as Walmart, H&M, Nike, Allbirds and Canada Goose have all been subjected to class-action lawsuits over greenwashing. Even in cases where litigation has not leaded to adverse decisions or settlements, businesses have often taken significant impacts to sales due to a fall in consumer satisfaction.

[17] https://www.europarl.europa.eu/doceo/document/TA-9-2024-0002_EN.html

[18] https://www.europarl.europa.eu/doceo/document/TA-9-2024-0001_EN.html#def_2_8

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