

# WTO Law Compatibility of Feebate Schemes on Imported Products

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# Aim

Identify design features to reduce WTO law compatibility concerns

- General Agreement on Tariffs and Trade (GATT)
- Agreement on Subsidies and Countervailing Measures (SCM)
- Free Trade Agreements EU - FIP countries (FTA)

# Internal Tax versus Import Tax

## Import tax - problems:

- Tariff limit applies
- Incompatible with FTAs

## Internal tax - design:

- Obligation to pay linked to internal factor
  - After importation
  - Within territory of the importing state

# Tax Rate - Production Processes

Two potential problems:

- Tariff limit may apply **or**
- Imported product taxed in excess of like domestic products

# Exceptions Article XX GATT

(b) Necessary to protect human, animal or plant life or health

- Engage in international negotiations

(g) Relating to the conservation of exhaustible natural resources

- Restrictions on domestic production

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## Common requirements

- Not coerce other states to implement a particular SFM regime
  - Leave flexibility to obtain rebate
- Due process - transparency, predictable, accessible

# Jurisdiction

Legal uncertainty, but two possibilities:

- Sufficient nexus between state and the interest protected
  - Climate change as a threat to the economy and security of countries
- Territoriality principle
  - Consumer/importer as the nominal tax payer

# SCM Agreement

- Rebate granted to producers but nominal tax payer is consumer/importer
- Rebate linked to objective criteria (sustainability level of forest management)
- Exceptions of Article XX GATT may apply, but debated

# Conclusion

If carefully designed, not necessarily incompatible with WTO law. Important aspects:

- Internal tax;
- Apply scheme also to internal production;
- Engage in international negotiations;
- Rebate: based on objective but flexible criterion/a;

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