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DIALOGUE SESSION ON CARBON BORDER ADJUSTMENT MECHANISMS (CBAM) AND OTHER PROTECTIONIST MEASURES AND IMPLICATIONS FOR THE SOUTH AFRICAN ECONOMY

HELD ON 21 AUGUST 2024

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LIST OF ACRONYMS

AfCFTA	African Continental Free Trade Area
CBAM	Carbon Border Adjustment Mechanism
the dtic	Department of Trade, Industry and Competition
EU	European Union
GHG	Greenhouse Gas
IRA	Inflation Reduction Act
NDC	Nationally Determined Contribution
Nedlac	National Economic Development and Labour Council
PCC	Presidential Climate Commission
TIC	Trade and Industry Chamber
TIPS	Trade & Industry Policy Strategies
UK	United Kingdom
UNFCCC	United Nations Framework Convention on Climate Change
USA	United States of America
WTO	World Trade Organisation

EXECUTIVE SUMMARY

The Dialogue Session on Carbon Border Adjustment Measures (CBAM) and Other Protectionist Measures such as the Inflation Reduction Act (IRA), Deforestation Regulations, Decarbonisation & Green protectionism) and the implications for South Africa stem from ongoing preparations related to international trade negotiations and the pressing need to align South Africa's domestic policies with global sustainability goals.

The dialogue session highlighted the complexities involved in balancing environmental commitments and economic competitiveness, reflecting a broader global trend where countries are increasingly adopting unilateral trade measures under the pretext of environmental protection.

The CBAM, heralded by the European Union (EU), serves as a protective measure against carbon leakage against foreign competition that does not adhere to similar carbon emission standards. As a developing nation, South Africa's unique position requires a nuanced approach to these protectionist measures while safeguarding its economic interests.

The discussions revealed concerns over potential adverse impacts on developing nations, particularly South Africa, which is heavily reliant on sectors like steel and aluminium. As articulated by government, the unilateral nature of these measures demands collective action and negotiation to safeguard the interests of developing countries while working towards global sustainability goals.

The importance of a comprehensive national strategy to respond to global protectionist measures was echoed by social partners. They also highlighted the need to better understand the implications of CBAM and related regulations on the South African economy. Given that South Africa is a nation rich in natural resources, these regulations may inadvertently stifle growth, competitiveness and ultimately decimate critical economic sectors.

A significant aspect of the discussions revolved around exploring both legal avenues and economic incentives to mitigate the impacts of these protectionist measures. Recommendations included the launch of World Trade Organisation (WTO) disputes against CBAM, as well as enhancing domestic measures to support local industries in adjusting to these new realities. The need for investment incentives aimed at transitioning towards a greener economy was framed as both a necessary response to CBAM and a path forward for sustainable growth.

A critical takeaway from the discussions was an agreement to establish a working group comprising of representatives from labour, business, and government. The aim of the working group is to formulate a collective position on CBAM and other protectionist measures, that aligns with South Africa's economic goals.

1 INTRODUCTION

The National Economic Development and Labour Council (Nedlac) convened a dialogue session on CBAM and Other Protectionist Measures such as the United States of America (USA) Inflation Reduction Act, Deforestation Regulation, Decarbonisation & Green protectionism and the Implications for the South African economy on 21 August 2024.

The purpose of the dialogue session was to:

- Examine the implications of CBAM and other protectionist measures in the South African context.
- Propose potential solutions and mechanisms that ensure that the effects of implementing CBAM and other protectionist measures do not adversely impact the South African economy.
- Contribute to the further deliberations on the country's position on CBAM and other protectionist mechanisms such Deforestation Regulations, USA IRA, Decarbonisation & Green Protectionism.

The dialogue session was chaired by Nedlac Executive Manager, Ms. Nobuntu Sibisi, and attended by members of Nedlac's Trade and Industry Chamber (TIC), Technical Sectoral Liaison Committee and Energy Workstream members. After a presentation from Ambassador Xolelwa Mlumbi-Peters from the Department of Trade, Industry and Competition (**the dtic**), a panel discussion was facilitated by Mr Roscoe Van Wyk. The panel discussion focused on, among other issues, challenges with the implementation of CBAM and other protectionist measures, risk mitigation strategies, proposed solutions to ensure the effects of the implementation of CBAM or other protectionist measures do not adversely affect the South African economy.

This report provides a summary of the discussions undertaken during the session.

2 DISCUSSIONS

2.1 Background Presentation on CBAM, USA IRA, Deforestation Regulation, Decarbonisation and Green Protectionism

2.1.1 CBAM and its Economic Consequences

2.1.1.1 The presentation on CBAM and other protectionist measures, delivered by Ambassador Xolelwa Mlumbi-Peter underlined the global push for climate action fuelled by international commitments such as the United Nations Framework Convention on Climate Change and the Paris Agreement.

2.1.1.2 With nations striving to limit global temperature increases to below 2°C, there is a collective emphasis on reducing greenhouse gas (GHG) emissions while balancing the diverse socio-economic and developmental realities across countries.

2.1.1.3 The challenges facing developing nations, particularly those in Africa, have come into sharp focus, as they grapple with the disproportionate impacts of climate change, despite being among the least responsible for its causes.

2.1.1.4 South African authorities recognize that tackling climate change required a nuanced approach, one that acknowledges varying levels of development across nations. This includes the principle of the United Nations Framework Convention on Climate Change (UNFCCC) "Common but Differentiated Responsibility and Respective Capabilities" which suggests that developed nations, having historically contributed more to emissions, should take more substantial action in addressing climate change.

2.1.1.5 One pressing issue highlighted by the presentation was the rise of unilateral measures imposed by trading partners, which are considered to be protectionist. Such measures, often framed under environmental regulations, pose severe challenges for South Africa and other developing economies. According to the analysis, the anticipated impacts of the CBAM introduced by the United Kingdom (UK) and the EU on South African exports could have far-reaching consequences, potentially affecting over $2.4 billion in trade and leading to an increase in income inequality.

2.1.1.6 **The dtic** emphasized the urgency to address these challenges, stating that the interplay of trade regulations and environmental commitments poses challenges in ensuring local industries remain competitive without undermining global environmental goals.

2.1.1.7 Moreover, if global trade dynamics shift toward greener standards, South Africa must navigate potential trade diversion, as companies may seek less restrictive markets. As articulated in the presentation, a comprehensive policy response must be implemented to safeguard local industries while exploring new avenues for trade and market diversification.

2.1.1.8 The South African government has consistently voiced concerns regarding the proliferation of CBAM and similar protection measures, stressing that these do not adequately consider the unique circumstances of developing economies.

2.1.2 Inflation Reduction Act

2.1.2.1 The presentation further extended to the United States of America (USA) IRA, which notably diverges from the CBAM model by not imposing similar restrictions but instead emphasizes domestic manufacturing and the enhancement of green goods production via subsidies and tax incentives.

2.1.2.2 However, similar to the CBAM, the IRA raised concerns about the implications for international trade agreements. As noted, the US has effectively rendered the WTO dispute settlement mechanisms as dysfunctional, curbing fair resolution avenues for affected countries.

2.1.3 The Imperative for Industrial Development

2.1.3.1 A critical matter in this presentation revolved around the crucial raw materials necessary for the transition to green economies. As the South African government has cautioned, South Africa and other natural resource-rich African nations possess significant mineral wealth, yet without proactive strategies for value addition, they risk becoming mere suppliers in the global value chain. Thus, **the dtic** emphasized the necessity of using trade policies to incentivize greater local processing and distribution of these resources, rather than continuing a cycle of exporting raw materials.

2.1.3.2 As countries engage in a "scramble for Africa's resources", Ambassador Mlumbi-Peter pointed out that strategic discussions are necessary to forge pathways for local value addition. South Africa's engagement in regional forums, such as the Southern African Development Community (SADC) and the Brazil, Russia, India, China and South Africa (BRICS) alliance, underscored the need for collective action among developing nations to promote industrial growth while advocating for fair trade practices that account for the continent's unique development challenges.

2.1.4 Confronting Deforestation Regulations

2.1.4.1 Another emerging challenge relates to Deforestation Regulations initiated by the EU and UK, which requires clear proof that traded goods are not sourced from land that has been deforested or degraded since 31 December 2020.

2.1.4.2 Moreover, recent regulations aimed at combating deforestation pose additional burdens on developing nations, particularly those with ample agricultural potential yet underutilised land resources. The EU's stringent requirements to trace products back to deforested land highlight a disconnect, placing undue pressure on African nations striving for food security and sustainable agricultural practices.

2.1.4.3 These restrictions threaten South Africa's competitiveness in critical markets, illustrating the complexities involved in aligning environmental goals with trade realities.

2.1.5 Policy Toolbox

2.1.5.1 The presentation concluded calling for a comprehensive approach to navigate the complex layers of trade policy and climate commitment.

A detailed presentation on these issues is attached as **Annexure A.**

2.2 Inputs by Social Partners

2.2.1 **Mr, Virgilio Da Molo** representing the business constituency highlighted the significant focus on steel as a key sector affected by carbon regulations. He emphasized the creation of a working group aimed at improving measurement, reporting, and verification standards in response to regulatory compliance. The goal of the working group is to gather and improve reliable data, and to further explore viable proposals for policy interventions that would support the industry's transition toward more sustainable practices. A detailed presentation from the Manufacturing Circle is attached as **Annexure D**.

2.2.2 **Ms. Jane Molony**, cautioned against unintended consequences of strict regulations for smallholder farmers, particularly in the timber and agricultural industries. Referencing the complex requirements for proving compliance under the new deforestation regulations. She asserted that this would place undue constraints for smallholder farmers to conduct international trade.

2.2.3 This sentiment was echoed by Mr. **Theo Boshoff**, who noted the broader implications for African countries, emphasizing the importance of considering both micro and macro-level impacts of deforestation regulations. Mr. Boshoff called for a comprehensive evaluation of these policies within the African context.

2.2.4 The perspective from the Labour constituency, articulated by Mr. **Tengo Tengela**, painted a stark picture of the trade-offs facing industries. He pointed out that the move towards green protectionism must be matched with incentives for decarbonization in sectors like steel to avoid job losses. He warned that if strategic measures are not taken to decarbonize, most of the sectors that rely on steel would be decimated.

2.2.5 Mr. Tengela further called for a strategic approach to mineral beneficiation, advocating for reconsideration of export taxes and implementation of other protective trade measures to bolster local industries. By proposing these measures, Labour’s aim is to ensure that South Africa benefits economically from its mineral wealth through local beneficiation rather than exporting raw materials at a loss.

2.3 Facilitated Panel Discussions

2.3.1 **Mr. Steve Nicholls** from the Presidential Climate Commission (PCC) indicated that countries are evolving their economies in pursuit of net-zero targets while simultaneously redefining competitive advantage. He articulated a pressing need for South Africa to establish a reliable net-zero plan and committed to green industrialization. Mr. Nicholls called for a tailored response to global shifts rather than a blanket rejection of them. His emphasis on localizing critical materials and manufacturing pointed to a path of economic diversification essential for energy security and prosperity.

2.3.2 Mr. Nicholls also underscored the historical power imbalances at play, noting that the countries that are rich in critical minerals often remain outside traditional power structures. He urged for negotiation of the “rebalancing of equity” globally, reflecting the essence of discussions about fairness and justice in transitions. In supporting the development of a green industrial strategy, he indicated that proactive engagement rather than passive resistance to global initiatives is crucial.

2.3.3 **Mr. Ayabonga Cawe**, who is an Development Economist, underscored the need to register South Africa's displeasure with protectionist unilateral measures. He called for a more cohesive strategy that addresses the unique challenges faced by developing nations while ensuring their voices are heard in international forums.

2.3.4 He acknowledged the uneven impact of CBAM across various sectors, pointing out the importance of developing carbon pricing capabilities to enhance South Africa's negotiating power.

2.3.5 The importance of economic diplomacy shined through Mr. Cawe’s discussion on trade policies, suggesting that South Africa must leverage its existing regulatory levers provided by the International Trade Administration Act No 71 of 2002. This levers includes the potential for introducing export controls or quotas on certain raw materials.

2.3.6 **Mr. Seutame Maimele** from Trade and Policy Strategies (TIPS) emphasized the importance of not just focusing on specific initiatives, such as the CBAM, but rather adopting a holistic view of the array of policies currently being developed in the green space.

2.3.7 A significant concern raised by Mr. Maimele revolved around the implications of unilateral measures introduced by developed nations on developing countries. He noted that the global South is wary of what may be perceived as protectionist tactics, masked under the guise of climate policies. The complexity of this situation was compounded by the varying degrees of readiness and capacity among countries to implement similar measures.

2.3.8 Another focal point in Mr. Maimele's presentation was the critical need for enhanced coordination among stakeholders in both industry and government. He underscored the existing pattern of isolation among different players within the climate policy arena, which posed a barrier to effective collaboration. To move forward effectively, more organizations need to align and present a unified stance on these climate issues. A detailed presentation from TIPS is attached as **Annexure B.**

2.3.9 **Mr. Peter Lunenborg** from the South Centre pointed out that the advanced stages of CBAM transparency and compliance requirements could impose higher costs on South African exporters, diverting essential resources away from domestic green initiatives towards compliance with foreign regulations. Mr. Lunenborg noted that while the logic behind CBAM is understandable, it must not result in additional burdens for foreign producers to the extent that it discriminates unfairly against them – a clear violation of trade norms. A detailed presentation from the South Centre is attached as **Annexure C.**

2.3.10 Furthermore, **Ms. Olivia Rumble** from Climate Legal emphasized the importance of crafting a holistic narrative to engage regional partners, particularly through platforms like the African Continental Free Trade Agreement (AfCFTA). She further advocated for wider coalitions to influence international policy and enhance trade dynamics among African countries.

2.3.11 Mr. Mahendra Shunmoogam, from the dtic, highlighted the long-standing issue of developed nations historically contributing more to global emissions while restricting developing countries' access to technology and resources necessary for mitigation.

2.3.12 He emphasized the need for a collective approach among social partners to redefine strategies that align with global economic realities. He pointed out the potential for South Africa to leverage its position in global value chains by innovating and refining production processes while maintaining job security within transitioning sectors.

2.4 Inputs by Social Partners

2.4.1 The Need for a Coordinated Approach

2.4.1.1 **Mr. Michael Lawrence,** from the Business Constituency highlighted the necessity for government to outline a clear strategic direction. He pointed out that the absence of such a plan leaves businesses uncertain about where to allocate resources and how to effectively invest in sustainable practices. The overarching sentiment is one of collaboration; businesses seek a framework in which they can contribute meaningfully while addressing the complexities of the national and global economic landscape.

2.4.1.2 Central to Mr. Lawrence's argument was the recognition that while the challenges of climate change are daunting, they also presented unique opportunities for innovation and growth. He posited that the transition to a decarbonized economy can lead to improvements not only in job quantity but also in job quality. The opportunity to develop skills in science, technology, engineering, and mathematics was critical in this process.

2.4.1.3 Mr. Lawrence pointed out that while there are numerous avenues to pursue, including leveraging international trade agreements and regional partnerships, clarity and direction from the government are paramount. He expressed both confidence and scepticism regarding the current frameworks, such as the AfCFTA, suggesting that while they present opportunities, their efficacy in solving key issues remains unproven.

2.4.2 Stakeholder Collaboration

2.4.2.1 The value of stakeholder collaboration was echoed by **Steve Nicholls**, who recognized the necessity of incorporating diverse viewpoints into the national climate response. He acknowledged the structured opportunities available through updates to the Nationally Determined Contribution (NDC) under the Paris Agreement.

2.4.2.2 Mr. Nicholls stated that the scheduled discussions around the new targets for the NDC due at the upcoming Conference of the Parties in Brazil highlighted a vital juncture for South Africa to not only reaffirm its commitments but also lay groundwork for collaboration among social partners.

2.4.3 Financing for Transition

2.4.3.1 One key theme that emerged from the discussions was the funding market failure inherent in transitioning to a low-carbon economy. **Ayabong Cawe** highlighted this by pointing out that "if South Africa agreed on what to do" in terms of transitioning, the conversation must also pivot towards how these strategies will be financed. He argued that navigating the risk of job losses isn't insurmountable and that proactive measures can be put in place.

2.4.3.2 The dialogue also emphasized the importance of social dialogue beyond a state-heavy approach. Mr Cawe contended that relying solely on government directives could stifle the benefits of diverse opinions that arise from wider societal engagement.

2.4.3.3 Mr. Tengo Tengela advised that South Africa could draw lessons from international initiatives, such as those undertaken in the EU and the US, where significant state investment has been directed towards decarbonization initiatives. This systemic allocation of resources provided a blueprint that could inform similar strategies particularly in countries where fossil fuel dependence remains high.

2.4.3.4 Mr. Tengela also touched on critical institutional questions such as the role of the Central Bank in regulating financial flows and how this could impact the funding nexus for industries, particularly those in carbon-intensive sectors.

2.4.3.5 The discussion also revolved around the pressing need for resources to scale up initiatives to match the magnitude of the climate challenge. Mr Tengela acknowledged that while various funding mechanisms exist, such as the Industrial Development Corporation (IDC), they remain insufficient for the extensive scope of decarbonization required.

2.4.3.6 A notable point of consensus among participants was the necessity of promoting green investments and innovations within South Africa. **Olivia Rumble** advocated for more substantial incentives for green manufacturing, drawing attention to the limited nature of existing mechanisms under the South African Climate Change Act. She underscored the importance of robust domestic frameworks, akin to the USA IRA, as a necessity for stimulating local industries.

2.4.4 Monitoring and Reporting GHG Emissions

2.4.4.1 A salient point raised revolved around monitoring and reporting GHG emissions, which remains an area of weakness for South Africa. As **Seutame Maimele** highlighted, the lack of robust infrastructure for GHG emissions reporting creates challenges for industries that are increasingly under obligation to report their emissions transparently. He emphasized the critical need for adopting streamlined reporting mechanisms to ensure accurate emissions tracking and management.

2.4.4.2 In terms of actionable steps, the notion of integrating technological advances into industrial practices was paramount. Mr. Maimele raised the issue of carbon intensity in relation to South African exports, speculating on the competitive disadvantages this might involve.

2.4.5 Displacement of Jobs

2.4.5.1 Another essential aspect brought to light was the role of labour in the transition to cleaner energy. Labour raised a poignant concern regarding the preservation of jobs within carbon-emitting sectors. Importantly, they stressed the need for a “national conversation” about strategies that can mitigate job losses resulting from the transition to cleaner practices. With unemployment levels already a pertinent issue in South Africa, the challenge lies in developing protective measures for workers whose livelihoods may be at risk due to the declining demand for fossil fuel-related jobs.

2.4.6 A Nuanced Sectoral Approach

2.4.6.1 The dialogue session underlined the need for a nuanced approach that considers the diverse capabilities of different sectors in South Africa. **Business constituency** cautioned against the application of a blanket approach across all industries, advocating for a focus on export industries to initially bear the burdens of compliance. The intention was not to exempt non-exporting sectors from future compliance but rather to phase in requirements as these sectors mature.

2.4.6.2 From a collaborative perspective, business called for a unified national strategy rather than fragmented sector-specific responses. **Michael Lawrence** encapsulated this sentiment by urging the need for a cooperative approach, indicating a desire for a task team to streamline discussions and strategic planning across sectors.

2.4.6.3 **Tengo** Tengela emphasized the importance of a coherent strategy that doesn't just react sector by sector but positions South Africa as a serious participant in international trade dialogues. **Michael Lawrence** also reiterated this sentiment by stressing the importance of a cohesive national strategy, rather than a fragmented sectoral response.

2.4.7 Regulatory and Legal Issues

2.4.7.1 Legal challenges surrounding the CBAM and other protectionist measures were also a prominent topic, particularly the question of whether they constituted unjustified discrimination against developing countries. As highlighted by **Olivia Rumble**, the design of the CBAM, for example, was seen as a protectionist measure that may face challenges under international trade law, raising the issue of equity in environmental regulations imposed on lower-income economies. She further highlighted the potential for countries such as South Africa to engage in dispute resolution processes through the WTO.

2.4.7.2 **Peter Lunenborg** shared insights regarding potential strategies to mitigate the risks associated with the CBAM. He noted that the successful functioning of the CBAM required at least ten additional implementing regulations, which are often unwieldy in scope and detail. Mr. Lunenborg highlighted the absence of an appellate function in the WTO Dispute Settlement Body, implying potential difficulties in contesting adverse determinations under the mechanism. He suggested that challenging these inconsistencies could lead to delays in the implementation of the CBAM, granting affected countries time to adapt to the new trade landscape.

2.4.7.3 Mr. Lunenborg urged for ongoing dialogue and proactive engagement in developing guidelines for trade-related environmental measures. He advocated collaboration through existing committees within the WTO to bring attention to the implications of the CBAM and propose necessary adjustments.

2.4.7.4 During the discussions, a consensus emerged among social partners, advocating for government action to initiate a dispute resolution process within the WTO to address what they perceive as unfair trade practices.

2.4.8 Inclusive Dialogue

2.4.8.1 **Tebello Radebe** emphasized the need for community voices to ensure that the development strategies do not overlook the socioeconomic impacts on vulnerable populations.

2.4.9 Understanding Protectionist Measures

2.4.9.1 The discussion emphasized the need to comprehend the critical protectionist measures being implemented or planned by other countries. Social partners pointed out that understanding these strategies is essential not only for responding to current challenges but also for anticipating future shifts in the international trade landscape.

2.4.10 Data Sovereignty and Privacy

2.4.10.1 The requirement to share emissions data with foreign entities under CBAM regulations was flagged as a concern. The **Secretariat** raised questions about data sovereignty and the potential misuse of sensitive industrial information. This underscored the significant risks posed by these proposed regulations to both the economy and national security.

2.4.11 Actionable Plans for Implementation

2.4.11.1 The dialogue session also underscored the importance of an actionable plan to navigate the complexities of the current landscape. Discussion pivoted towards the creation of a structured action plan to delineate short-term, medium-term, and long-term interventions.

2.4.11.2 Notably, **Mahendra Shunmoogam's** query about the concrete steps businesses are taking to decarbonize highlighted an urgent need for action. He suggested exploring avenues like innovation funds for young entrepreneurs and the development of local battery manufacturing opportunities.

2.4.12 Proposal for a Working Committee

2.4.12.1 The establishment of a “three-a-side” member working committee was proposed, Social partners recognized the need to form this committee to streamline coordination processes and develop a national position to address CBAM and other protectionist measures. Furthermore, proposed terms of reference (ToR) for this working group were encouraged to ensure focus and avoid overwhelming its mandate.

3 RECOMMENDATIONS AND WAY FORWARD

The dialogue session agreed that:

3.1 A working group comprising representative from social partners and the PCC will be established.

3.2 The ToR for the working group will be drafted which will delineate the working group's scope of work.

4 ANNEXURE A: PRESENTATION FROM the dtic

5 ANNEXURE B: PRESENTATION FROM TIPS

6 ANNEXURE C: PRESENTATION FROM THE SOUTH CENTRE

7 ANNEXURE D: PRESENTATION BY THE BUSINESS CONSTITUENCY