Steve Charnovitz, "Introductory Remarks" to Border Tax Adjustments: Climate Change, the WTO, and the New Tools for International Environmental Law-Making, 103 Am. Soc'y Int'l L. Proc. 369 (2009).

BORDER TAX ADJUSTMENTS: CLIMATE CHANGE, THE WTO, AND NEW TOOLS FOR INTERNATIONAL ENVIRONMENTAL LAW-MAKING

This panel was convened at 2:45 p.m. on Friday, March 27, by its moderator, Steve Charnovitz of George Washington University Law School, who introduced the panelists: Rachel Brewster of Harvard Law School; Ellen Hey of Erasmus University School of Law; Laura Nielsen of the University of Copenhagen; and Jonathon Zasloff of UCLA School of Law.*

INTRODUCTORY REMARKS BY STEVE CHARNOVITZ†

Welcome to our panel on climate border adjustments and world trade law. This panel has two segments. First, we have two trade law experts discussing whether such measures are consistent with trade law. The speakers are Laura Nielsen from the University of Copenhagen Law School and Rachel Brewster from Harvard Law School. The second segment features two prominent scholars from other fields of international law. They are Ellen Hay from Erasmus School of Law in Rotterdam and Jonanthan Zasloff from UCLA Law School. We have tasked these two panelists to reflect on the implications of the debate on trade and climate.

BORDER CARBON ADJUSTMENTS, THE UNFCCC, AND WTO RULES

By Laura Nielsen‡

My presentation on Trade and Climate Change concludes that border carbon adjustments *can* be consistent with both the climate change and WTO rules—depending, of course, on their design—but that they are not necessarily attractive.

I define border carbon adjustments (or border tax adjustments, carbon taxes, etc.) as border taxes levied on especially carbon intensive products such as steel, aluminum, paper, chemicals, and cement, originating from countries that have not committed themselves to strict climate change laws to lower their green house gas (GHG) emissions. These countries are most often understood as those that have not committed themselves under a cap in the Kyoto Protocol or those that will not commit themselves under a cap in a Post-Kyoto Agreement. Border carbon adjustments can, of course, be aimed at all countries and a broader range of products, or potentially all products, based on their carbon footprint stemming from their production and perhaps even their transportation. However, for purposes of this presentation, I will limit myself to talking about those measures, which are aimed at countries that are not committed under a cap.

The economic rationale behind border carbon adjustment measures is to counter the competitive advantage a foreign product may have because it benefits from coming from a country that is not committed under a cap and thus does not have strict rules for GHG emissions. The environmental rationale is to avoid carbon leakage. Carbon leakage is the term used for the phenomenon that companies or industries may relocate to another country where rules

* Jonathon Zasloff did not submit remarks for the *Proceedings*.

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