

IUCN Academy of Environmental Law

Climate Law in Developing Countries post-2012: North and South Perspectives

Faculty of Law, University of Ottawa, Canada

26-28 September 2008



Climate and Trade in a Divided World

Francesco Sindico

Lecturer in Law, School of Law
University of Surrey, Guildford, UK
f.sindico@surrey.ac.uk

www.surrey.ac.uk



Background for today's presentation



- Doctoral thesis “The Legal Relationship between International Climate Measures and the International Trade Regime” (in Spanish)
- 2.1. *Carbon and Climate Law Review* (2008)
special issue on “Climate Change in a Global Economy”
- *Environmental Regulatory Research Group*, School of Law, University of Surrey

Paper's outline

- Carbon leakage and competitiveness concerns
- Climate related trade measures
- WTO climate / trade dispute
- North South implications

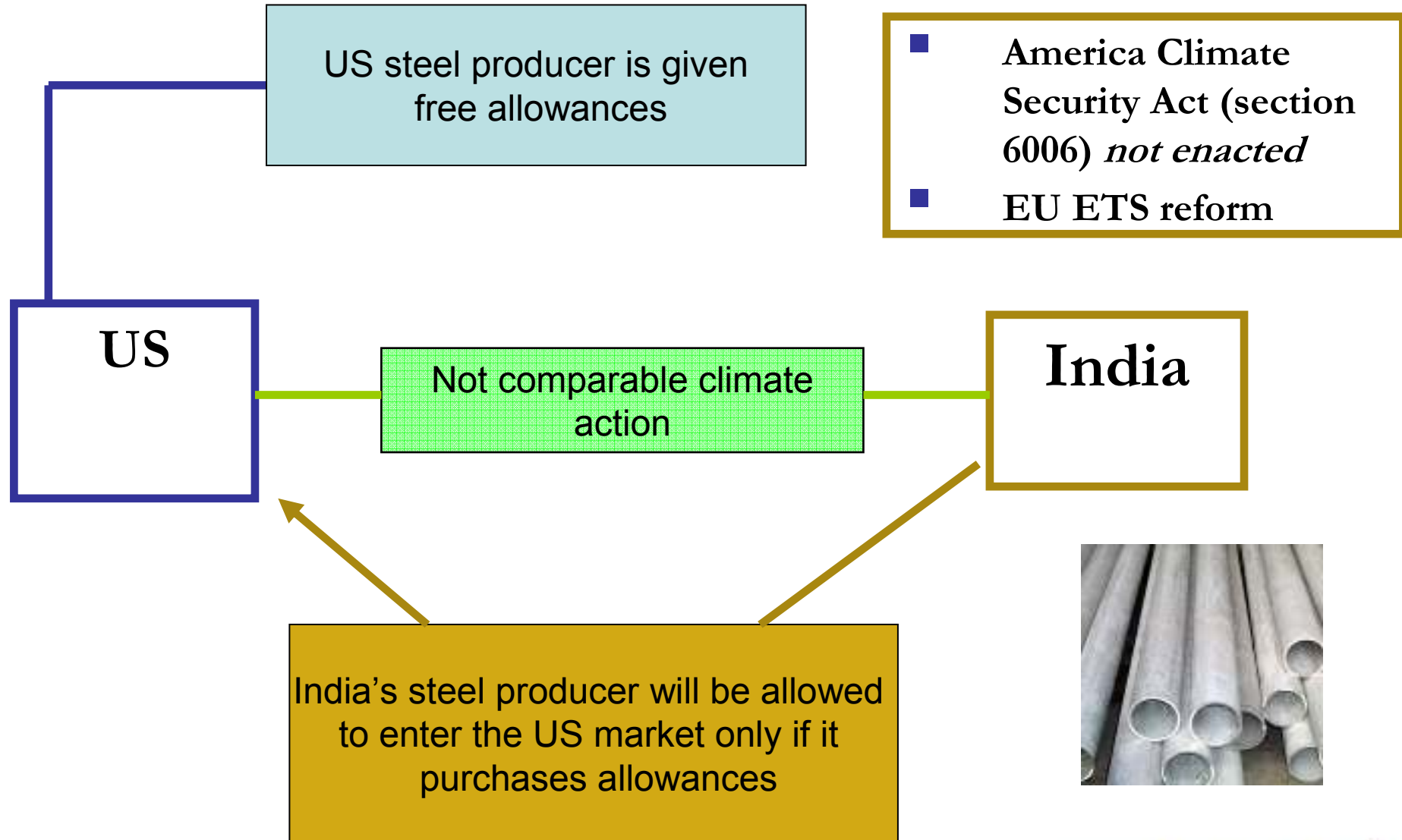
Goals of this presentation

- What kind of climate related trade measure could be adopted?
- Which questions could a developing country raise before the WTO dispute settlement system?
- What can a developing country expect from the outcome of a WTO dispute? www.surrey.ac.uk

1) Climate related trade measure

- US Climate Change Legislation Design White Paper: “our goal will be to craft legislation limiting US carbon emissions that also induces developing countries to limit their emissions growth... *in a manner that is reasonably certain to withstand challenge before the WTO.*”
- Confederation of Indian Industry “Principally, we do not agree with the proposal. It seems a new tariff barrier is being set up and we are preparing inputs for the government to *fight it at the WTO.*”
- **Climate and Trade: from theory to practice**

1) Climate related trade measure



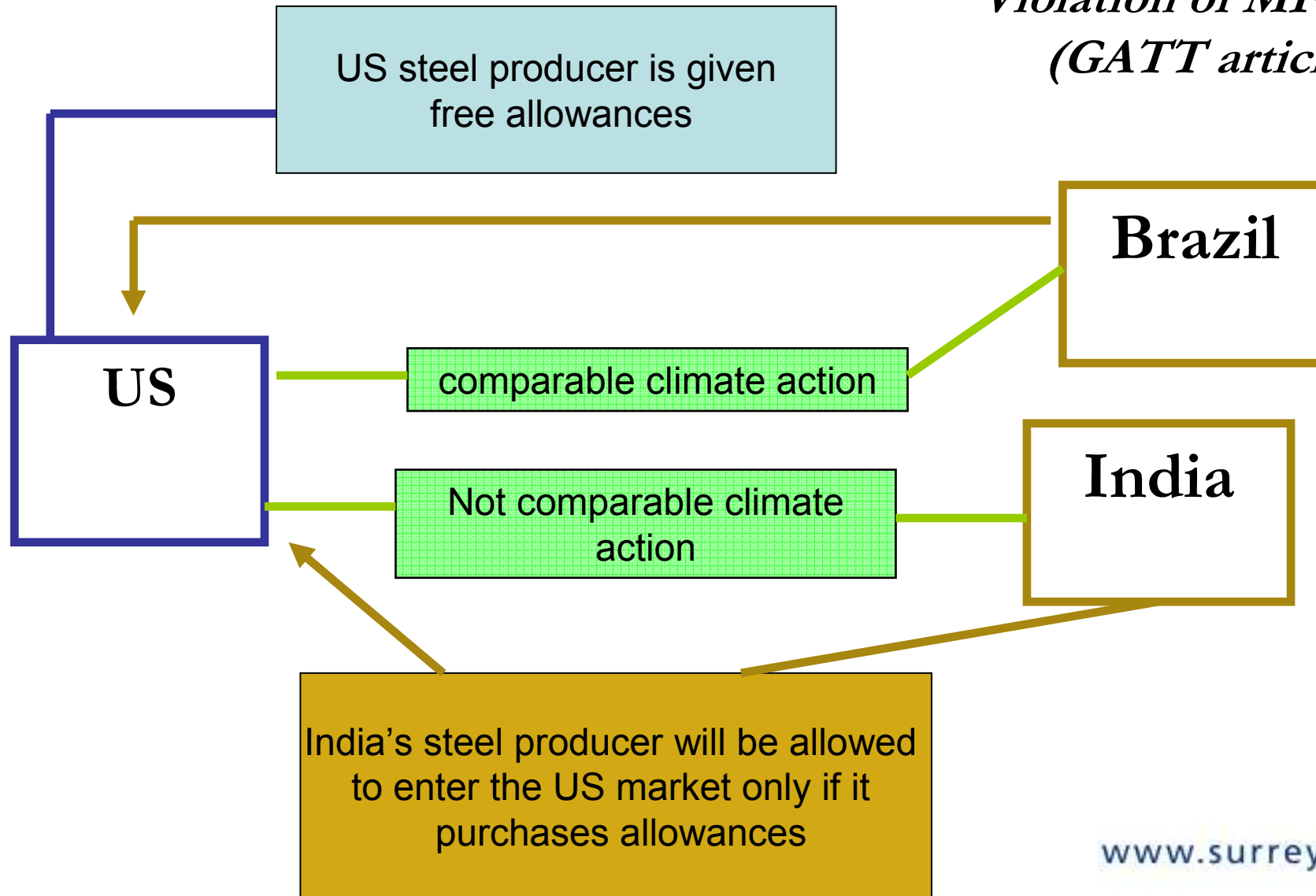
2) WTO climate/trade dispute developing country strategy



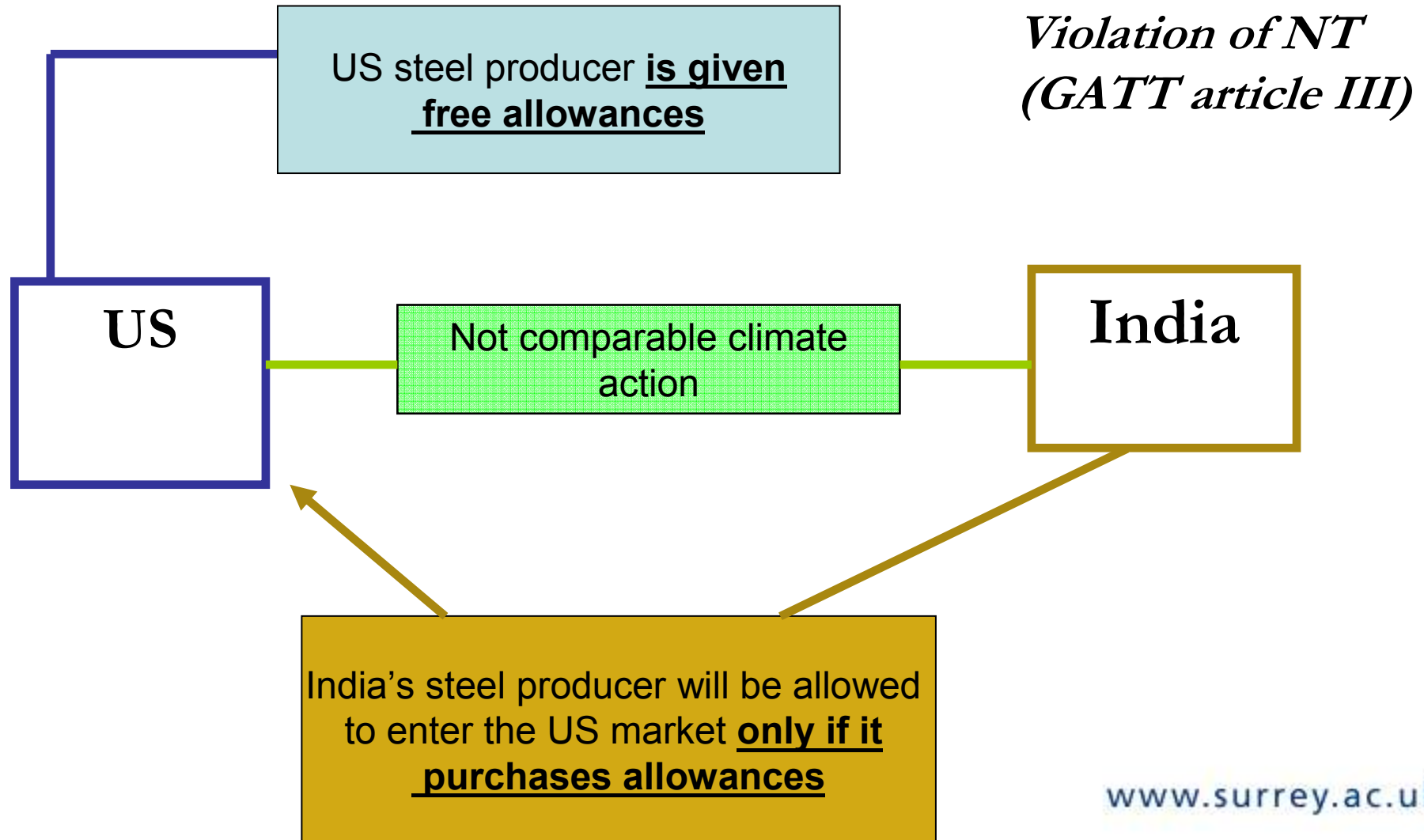
- Coverage
- Criteria according to which imports may be targeted
- Implementation of the climate related trade measure

2) WTO climate/trade dispute: developing country strategy I

*Violation of MFN
(GATT article I)*

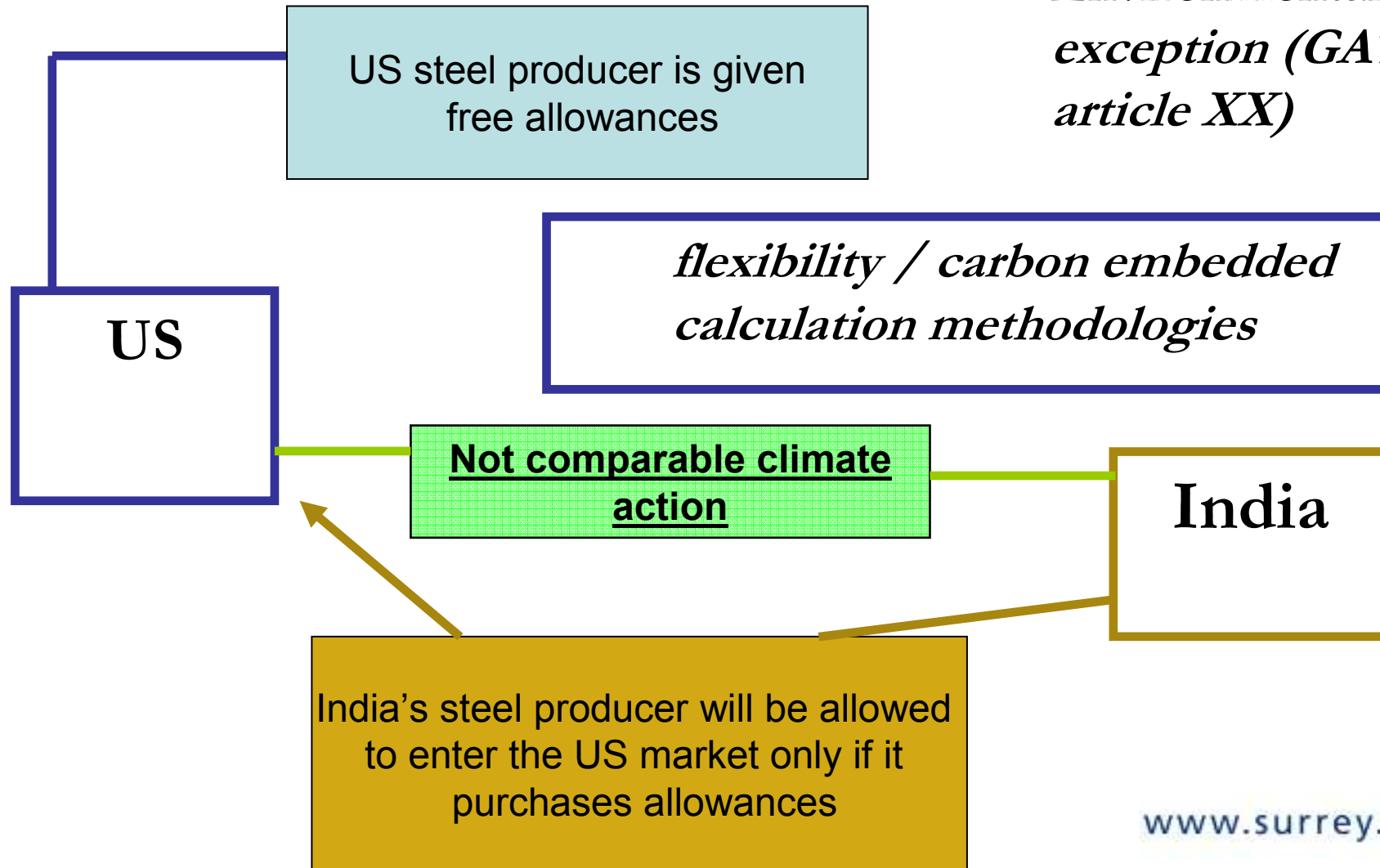


2) WTO climate/trade dispute: developing country strategy II



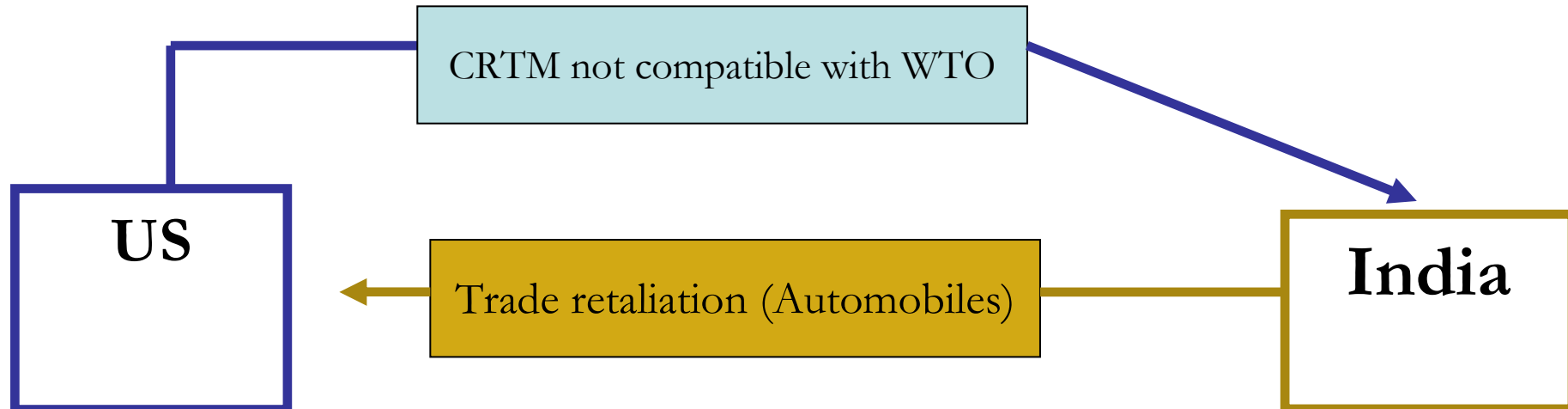
2) WTO climate/trade dispute: developing country strategy III

*Environmental
exception (GATT
article XX)*



3) North/South implications

- US Climate Change Legislation Design White Paper: “....on terms that pose acceptable *risks* to US interests *in the event of a negative WTO determination.*”



- Retaliatory nature of WTO countermeasures may just increase North/South tension

3) North/South implications



- **Doha Round**
- **Energy intensive industries sectoral agreements**
- **International dialogue on sustainable consumption and production policies**

Conclusions



- What kind of climate related trade measure could be adopted?
- **Border Adjustment Measure / Carbon equalisation system**
- Which questions could a developing country raise before the WTO dispute settlement system?
- **Coverage, Criteria and Implementation**
- What can a developing country expect from the outcome of a WTO dispute?
- **Countermeasures may lead to more tension / Doha Round stalled / international dialogue on sustainable consumption and production policies**

Thank you!



■ **Francesco Sindico**

- Lecturer in Law / Deputy Director
School of Law / Environmental Regulatory Research
Group

www.surrey.ac.uk/errg

f.sindico@surrey.ac.uk