



OPINION

European Economic and Social Committee

Carbon Border Adjustment Mechanism

Proposal for a Regulation of the European Parliament and of the Council establishing a
carbon border adjustment mechanism
[COM(2021) 564 final – 2021/0214 (COD)]

NAT/834

Rapporteur: **Andrés BARCELÓ DELGADO**

Co-rapporteur: **John COMER**

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Referral	European Parliament, 13/09/2021 Council, 21/09/2021
Legal basis	Articles 192(1) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Agriculture, Rural Development and the Environment
Adopted in section	25/11/2021
Adopted at plenary	08/12/2021
Plenary session No	565
Outcome of vote (for/against/abstentions)	179/3/7

1. Conclusions and recommendations

- 1.1 The EESC welcomes the Commission proposal to set a Carbon Border Adjustment Mechanism (CBAM) with the aim of raising awareness on the EU climate ambition and to establish a level playing field within the Single Market.
- 1.2 The EESC calls for the impact assessment to be extended to the export activities of the sectors included in the scope of the CBAM. The EU must continue to pursue its climate ambition but, at the same time, it needs to guarantee European industry a level playing field in the international arena by enabling it to compete in the single market and export to international markets.
- 1.3 The EESC encourages EU legislators to explore how to handle exports in order to allow EU industry to remain competitive in international markets. The EESC recommends an impact assessment to find out how the WTO rules must be interpreted or adapted in such a way that they support the goals and efficiency of the CBAM in order to contribute to the avoidance of industrial CO₂ emissions worldwide.
- 1.4 Many important topics will need further development through delegating acts for implementation. Therefore, considering this point together with the previous one, it is almost impossible to figure out what the consequences of implementation will be for each manufacturing sector. Doubts about several key details of the proposed Regulation make it difficult to assess it until the legislative process has progressed further. However, uncertain framework conditions must be avoided, especially when assessing CO₂ for imports, so as not to undermine the proactive and anticipatory measures taken by European companies to protect the climate.
- 1.5 The EESC asks European legislators to directly allocate revenue from the CBAM to support the industrial transition of the affected sectors. Some economic sectors suffering from unfair climate competition might need additional support, in recognition of their efforts, as they might become less competitive against those which do not internalise the climate/environmental footprint.
- 1.6 The EESC prompts the European Union to help less developed countries improve their technological capabilities, to avoid the risk of CBAM circumvention.
- 1.7 A sound verification of the actual emissions embedded in imported products will be key to a fair deployment of the CBAM. The EESC recommends that the Commission set specific requests to authorised verification bodies.
- 1.8 The Committee notes the need for a strong industrial footprint in Europe which is fully competitive, and climate responsible.
- 1.9 At the same time as the legislative procedure, the Commission is requested to carry out an impact study on the possible effects of the CBAM along the value chain, as a consequence of its implementation.

- 1.10 The introduction of CBAM would cause a major change in the world trading system. The EU must take all necessary steps to ensure that CBAM does not lead to an increase in GHG emissions in other parts of the world with the potential for extra global emissions. The CBAM must not in any way lead to the deindustrialisation of the EU. The EU must balance its climate ambition with the real fact that reducing greenhouse gas (GHG) emissions is a global issue.
- 1.11 The political dimension of the CBAM has not been sufficiently highlighted. The final decisions regarding the CBAM will largely be based not only on discussions within the EU but also on the negotiations that will be necessary with trading partners to agree on an outcome and avoid a trade conflict.
- 1.12 The EESC has a reasonable expectation that a functioning CBAM system will make employment in the climate-friendly transformed former CO₂-intensive companies and sectors more robust. However, it also warns of the risk of failure of the CBAM, in conjunction with the ETS system. The complete abolition of free allocation with the introduction of the CBAM could lead to major job losses in the EU.
- 1.13 The CBAM will support both the EU climate ambition and a stronger future industrial footprint in Europe. Obvious risks, such as difficulties in the verification of provided information about CO₂ emissions from third countries and possible circumvention must be taken into account when implementing the CBAM, during and after the transition period.

2. Gist of the Commission proposal

- 2.1 On 14 July, the Commission published the "Fit for 55: delivering the EU's 2030 Climate Target on the way to climate neutrality" package¹. It includes a proposal on the Carbon Border Adjustment Mechanism (CBAM)², which is closely linked to the revision of the Emissions Trading System (ETS) Directive³. The fit for 55 package itself arises as a consequence of the European Green Deal Communication⁴, which was presented on 15 December 2019.
- 2.2 The proposal provides for a "notional ETS" to be applied to imports of several industrial products and electricity. The sectors covered in the first phase are: cement, steel, fertilisers, aluminium and electricity.
- 2.3 For those materials with more intensive downstream processing, the proposal already includes many downstream products. Nevertheless, there is a reference to "complex products" which could enlarge the scope of the proposal.
- 2.4 The CBAM administrative burden rests with the Commission, the Member States and importers into the EU market.

1 [COM\(2021\) 550 final](#)

2 [COM\(2021\) 564 final](#)

3 [COM\(2021\) 551 final](#)

4 [COM\(2019\) 640 final](#)

- 2.5 The "notional ETS" mirrors the current ETS with some key differences: emission certificates will not be tradeable and importers will have to surrender those certificates at the current CO₂ price in the EU, based on the embedded emissions in the products to be imported into the EU.
- 2.6 The list of sectors and products covered by the CBAM is specified in Annex I of the proposal. The Commission would enlarge the scope of the CBAM to new products if it identifies a serious risk of circumvention. A Commission proposal to include new sectors or products will go through the full legislative process.
- 2.7 The proposed system only takes into account direct emissions (Scope 1) and not indirect emissions linked to energy (electricity or heating) (Scope 2) or indirect emissions of products in the downstream value chain, but it would include limited upstream value chain emissions (not including transport or the corporate value chain) (Scope 3) through the concept of "complex goods". How this will work is not well detailed in the proposal and will be settled by the Commission through implementing acts.
- 2.8 The geographical scope covers all third countries outside the customs union except those included in the current EU ETS or countries "coupled" with the EU ETS. Specific measures are included to take into account the carbon price charged in several third countries.
- 2.9 The CBAM differs from the ETS as the CBAM will be focused on products (with specific Combined Nomenclature (CN) codes), whereas the ETS is focused on installations.
- 2.10 The CBAM's final goal is a gradual substitution of the current free allocation in the covered sectors. After the "transition period of three years", free allocation will be phased out from 2026 at a rate of 10% a year for ten years as currently foreseen in the Commission's proposal. Details about the progress of the phase-out of free allocation for the involved sectors are not included in the CBAM proposal but in the ETS Directive review.
- 2.11 The CBAM will take into account the free allocations granted to EU industry to avoid double protection. Commission implementing acts will establish the methodology to apply to calculate the CBAM level for every product.
- 2.12 The rules to determine the embedded emissions in products are general, with a specific and simplified approach to electricity imports.
- 2.13 The Commission thinks that a transitional phase of three years will be needed to refine the calculation of embedded emissions and to determine who will be the accredited verifiers of those emissions. An overall revision of the system must be carried out in 2025 before the second phase of the CBAM.
- 2.14 Revenues from the CBAM will be collected by national authorities, which will, in principle, pay them into the EU Treasury, after deducting the administrative cost associated with managing the procedures.

- 2.15 The proposal envisages a three-year (2023-2025) administrative trial phase without economic consequences. Importers will need to carry out some reporting procedures but without having to verify embedded emissions, being preauthorised or having to pay for the certificates for the imported products.

3. **General comments**

- 3.1 The Commission, led by DG TAXUD, has done a good job drafting the proposal, taking into account the need to combine the expansion of the EU's climate ambition and the need to avoid the risk of carbon leakage.
- 3.2 The proposal seems to have been presented without identifying some technicalities that will be decided by the Commission during the first phase (testing period). Both the Council and the Parliament are committed to launching the CBAM in 2023, which is a tight schedule.
- 3.3 Many important topics will need further development through delegating acts for implementation. Therefore, considering this point together with the previous one, it is almost impossible to figure out what the consequences of implementation will be for each manufacturing sector. Doubts about several key details of the proposed Regulation make it difficult to assess it until the legislative process has progressed further. However, uncertain framework conditions must be avoided, especially when assessing CO₂ for imports, so as not to undermine the proactive and anticipatory measures taken by European companies to protect the climate.
- 3.4 For electricity imports, it is unclear if the Commission has properly assessed the impact on the electricity price in the EU electricity market and how it would generate higher costs for consumers and, therefore, would increase the risk of carbon leakage among electricity-intensive sectors. It should not be forgotten that the consumption of electricity is not considered in the scope for calculation of the carbon footprints of imported products⁵.
- 3.5 European industry is export-oriented and if, as a consequence of the CBAM, it has some protection against imports but cannot compete in international markets, the lack of competitiveness will be considerable and Europe will no longer be able to attract industrial investments.
- 3.6 A very quick replacement of existing CO₂ leakage measures by the CBAM could lead to significant uncertainty, disrupting long-term investment decisions already taken based on the recently revised 2030 targets. It could also reduce the industry's capacity to invest in low-carbon technologies and become a barrier to competition for access to third markets. Therefore, where necessary, the current rate of free allowance should be retained initially to enable CBAM covered industries to become more carbon efficient followed by a gradual reduction in free allowances, as deemed appropriate, to facilitate further decarbonisation.

⁵ European Commission CBAM impact assessment, Annex 8.

- 3.7 Competitiveness and price effects on the value chain should be carefully assessed to limit the impact, especially in exporting sectors such as agri-food, among others, that are very dependent on products from the sector already covered in the CBAM proposal.
- 3.8 The CBAM could only effectively achieve its full goals if the requirement of avoiding CO₂ for imports into the EU is offset by advantages from climate-friendly production for exports by European producers. It might be the case that there will be a reasonably level playing field between third-country companies and EU companies in the Single Market, but no EU company could compete abroad, as EU producers will pay full carbon costs, while competitors from third countries pay little or none.
- 3.9 The system may open the door to several circumvention schemes such as source shifting, verification details, multi-facility companies in third countries falsely claiming that products made in high carbon footprint facilities are made in low carbon footprint facilities, source shuffling and definition of goods. This could hamper progress in meeting the CBAM's more ambitious climate goals. The proposal should be carefully refined throughout the legislative process to avoid those pernicious behaviours which seriously harm the legislation's objective: goods should bear their own climate footprint regardless of where they come from to promote efficiency in worldwide climate change mitigation instead of a local reduction by outsourcing the emissions.

4. **Specific comments**

- 4.1 The EESC has been very active in exploring the possibilities, limitations and important aspects to be developed under a Border Adjustment Scheme or tax related alternative, in order to reduce carbon leakage by equalising climate cost and efforts, either from EU or non-EU products. The EESC was the first EU institution to identify these possibilities as a complementary measure for limiting carbon leakage.
- 4.2 The Commission wishes to broaden the CBAM to include "Scope 2 emissions" (derived from electricity or heating), which are currently excluded. EU legislators must take into account that compensation for indirect costs derived from electricity is far from homogeneous as it relies on Member States' decisions. The worst-case scenario is that the CBAM would limit the compensation received by industry for indirect costs, resulting in less compensation than allowed by EU guidelines.
- 4.3 The CBAM proposal excludes ferroalloys (CN 7202) but it is not clear if the embedded emissions for ferroalloys will be taken into account in relevant products (e.g. stainless steel (CN 7218)), as many aspects are waiting for secondary regulation that will cover technical and other very important topics.
- 4.4 At EU level, legal certainty is of paramount importance and the CBAM proposal must be refined throughout the legislative process to provide certainty to all economic operators, whether from Europe or from third countries.

- 4.5 A fair "climate and environmental competitiveness" of the European or non-European efficient industry, which also includes fair labour conditions agreed in collective bargaining between the social partners, should be promoted in the international arena on a similar footing. Only climate-friendliness under fair labour and social conditions creates the socially desirable new competitiveness of European industry. Such an understanding on the EU single market, and also on the international market, will encourage fair climate competition.
- 4.6 The compliance of imports to the EU with the CBAM requirements is based on documents issued outside the EU. This raises the question of extraterritoriality and the EU's competence to establish the validity of such documents. Moreover, the time required to carry out such an assessment would allow imported goods with a higher carbon footprint than declared to access the EU market to the detriment of the proposed Regulations and European industry.
- 4.7 It is unclear how to calculate embedded emissions in processed products not named in Annex 1 but containing materials listed in Annex 1.
- 4.8 Reporting, verification, traceability and monitoring are key aspects, and they should not just rely on random monitoring, just as ETS monitoring does not. There should be a clear and quick procedure to ensure that when a possible circumvention or a lack of CBAM compliance occurs, that they are solved in a reduced time to avoid both circumvention but also trade/supply chain disruptions.
- 4.9 Verification and monitoring should be fully transparent and reliable in the European Union and Member States. The information should be available to the relevant bodies authorised to carry out the surveillance, with the logical preservation of confidentiality.
- 4.10 The European Commission should offer its support to EU Member States with weak border administrative capabilities, as they could be targeted by unfair practices and become the entry door of CBAM circumvention. It must also include CBAM "training" in its programmes to support developing and neighbouring countries in order to help them to cope with the challenges of climate protection and to avoid the risk of circumvention.
- 4.11 The revenues from the CBAM should be devoted to supporting an industrial and fair European transition to a carbon neutral economy of the involved sectors. The EU could launch a specific innovation fund for technological development, to promote industrial transition without risking their climate competitiveness.

5. WTO-related comments

- 5.1 The Commission has been very careful in relation to WTO compatibility. For this reason, exports have been put aside in the proposal. As there are contradictory opinions in relation to WTO compatibility, a detailed analysis of this topic must be carried out, together with honest diplomatic discussions with trade partners to avoid a trade war and to allow EU industry to be competitive in international markets.

- 5.2 Article XX(b) and (g) of the General Agreement on Tariffs and Trade (GATT; 1994) is likely to be used to justify the CBAM as an environmental protection policy. No one can be sure what decision a WTO panel or an appellate body would make on this matter.
- 5.3 Under the current circumstances, with the urgency of fighting climate change, it is key that the renewed WTO include the environmental and climate scope in its agenda. The EU could use the CBAM as an opportunity to launch this debate, together with other trade partners within the WTO. The EESC had already proposed this in its opinion REX/531⁶.

Brussels, 8 December 2021

Christa Schweng
The president of the European Economic and Social Committee

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N.B.: Appendix overleaf

⁶ The EESC opinion on the *Carbon markets: Emergence, structuring and challenges for European industry* (REX/531), [OJ C 429, 11.12.2020, p. 122](#).

APPENDIX to the OPINION
of the
European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 43(2) of the Rules of Procedure):

AMENDMENT 1

Point 3.6 - Amend as follows:

<i>Section opinion</i>	<i>Amendment</i>
A very quick replacement of existing CO ₂ leakage measures by the CBAM could lead to significant uncertainty, disrupting long-term investment decisions already taken based on the recently revised 2030 targets. It could also reduce the industry's capacity to invest in low-carbon technologies and become a barrier to competition for access to third markets. Therefore, where necessary, the current rate of free allowance should be retained initially to enable CBAM covered industries to become more carbon efficient followed by a gradual reduction in free allowances, <i>as deemed appropriate</i> , to facilitate further decarbonisation.	A very quick replacement of existing CO ₂ leakage measures by the CBAM could lead to significant uncertainty, disrupting long-term investment decisions already taken based on the recently revised 2030 targets. It could also reduce the industry's capacity to invest in low-carbon technologies and become a barrier to competition for access to third markets. Therefore, where necessary, the current rate of free allowance should be retained initially to enable CBAM covered industries to become more carbon efficient followed by a gradual reduction in free allowances, <i>until the new measure has proved its effectiveness</i> , to facilitate further decarbonisation.

Reason
As point 3.6 essentially refers to free allowance that should be retained initially to enable CBAM covered industries to become more carbon efficient followed by a gradual reduction in free allowances, this provision should also be moved to the conclusions and recommendations, further inserting the note "until the new measure has proved its effectiveness", which reinforces the position that the CBAM should be seen as a complementary instrument to free allocation until the CBAM is fully operational, effective and does not lead to carbon leakage, thereby ensuring a truly level playing field for the EU industry.

Outcome of the vote:
In favour: 66
Against: 90
Abstention: 24

AMENDMENT 2

Point 1.12 - Amend as follows:

<i>Section opinion</i>	<i>Amendment</i>
The EESC has a reasonable expectation that a functioning CBAM system will make employment in	The EESC has a reasonable expectation that a functioning CBAM system will make employment in

the climate-friendly transformed former CO ₂ -intensive companies and sectors more robust. However, it also warns of the risk of failure of the CBAM, in conjunction with the ETS system. The complete abolition of free allocation with the introduction of the CBAM could lead to major job losses in the EU.	the climate-friendly transformed former CO ₂ -intensive companies and sectors more robust. However, it also warns of the risk of failure of the CBAM, in conjunction with the ETS system. The complete abolition of free allocation with the introduction of the CBAM could lead to major job losses in the EU. <i>The current rate of free allowance should be retained initially to enable CBAM covered industries to become more carbon efficient followed by a gradual reduction in free allowances, until the new measure has proved its effectiveness, to facilitate further decarbonisation.</i>
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Reason
<p>The intention is to move a very important text to the conclusion from point 3.6 (see above).</p> <p>The emphasis should be on the aspect that CBAM free allowances should be fully abolished only when the new mechanism has proved its effectiveness.</p>

Outcome of the vote:
<p>In favour: 60</p> <p>Against: 94</p> <p>Abstention: 26</p>