

25 august 2021

CĂTRE: GUVERNUL ROMÂNIEI – MINISTERUL MEDIULUI, APELOR ȘI PĂDURILOR

ÎN ATENȚIA: Doamnei Elena-Oana Antonescu-Stan – Director, Direcția Schimbări Climatice și Dezvoltare Durabilă, Ministerul Mediului, Apelor și Pădurilor

Doamnei Nicoleta Datcu – Consilier, Direcția Schimbări Climatice și Dezvoltare Durabilă

REF: **Observații preliminare – Propunerea de Regulament cu privire la Mecanismul UE de Ajustare la Frontieră a Emisiilor de Carbon (Carbon Border Adjustment Mechanism – CBAM)**

Stimate doamne,

În numele Comitetului pentru Energie al Camerei de Comerț Americane în România (AmCham România), reiterăm interesul și disponibilitatea membrilor noștri de a sprijini Ministerul Mediului, Apelor și Pădurilor în demersurile de calibrare a poziției României cu privire la mecanismul Uniunii Europene de ajustare la frontieră a emisiilor de carbon (*Carbon Border Adjustment Mechanism – CBAM*).

Salutăm deschiderea Ministerului pentru colaborarea cu mediul de afaceri și apreciem că reprezintă un exercițiu de bun augur în vederea asigurării transparenței și consultării tuturor părților relevante și impactate de acest mecanism, prin prisma activităților desfășurate și contribuției la nivelul economiei și industriilor românești. În acest sens, vă transmitem în anexa acestei scrisori **un set de propuneri și comentarii, din partea membrilor noștri, cu privire la propunerea de regulament publicată de către Comisia Europeană în data de 14 iulie 2021**. În subsidiar, precizăm că vom reveni, după caz, cu observații suplimentare, în măsura în care acestea vor rezulta ca urmare a demersurilor de analiză a impactului CBAM în cadrul grupului de lucru constituit la nivelul AmCham.

În spiritul colaborării solide și constructive dintre AmCham România și Ministerul Mediului, Apelor și Pădurilor, vă asigurăm că rămânem un partener, prin resursele și expertiza membrilor noștri, în procesul de analizare a impactului mecanismului CBAM asupra României, cât și a definirii poziției naționale în perspectiva negocierilor la nivel european.

Cu deosebită considerație,

Valeriu Binig

Președinte al Comitetului pentru Energie  
Camera de Comerț Americană în România (AmCham România)

Propunere act legislativ	Comentarii/Observații/Întrebări	Propunere modificare text (dacă este cazul)
<p><b>Whereas: (...)</b></p> <p>(10) Existing mechanisms to address the risk of carbon leakage in sectors or sub-sectors at risk of carbon leakage are the transitional free allocation of EU ETS allowances and financial measures to compensate for indirect emission costs incurred from GHG emission costs passed on in electricity prices respectively laid down in Articles 10a(6) and 10b of Directive 2003/87/EC. However, free allocation under the EU ETS weakens the price signal that the system provides for the installations receiving it compared to full auctioning and thus affects the incentives for investment into further abatement of emissions.</p>		<p>(10) Existing mechanisms to address the risk of carbon leakage in sectors or sub-sectors at risk of carbon leakage are the transitional free allocation of EU ETS allowances and financial measures to compensate for indirect emission costs incurred from GHG emission costs passed on in electricity prices respectively laid down in Articles 10a(6) and 10b of Directive 2003/87/EC. <del>However, free allocation under the EU ETS weakens the price signal that the system provides for the installations receiving it compared to full auctioning and thus affects the incentives for investment into further abatement of emissions.</del></p>
<p>(11) The CBAM seeks to replace these existing mechanisms by addressing the risk of carbon leakage in a different way, namely by ensuring equivalent carbon pricing for imports and domestic products. To ensure a gradual transition from the current system of free allowances to the CBAM, the CBAM should be progressively phased in while free allowances in sectors covered by the CBAM are phased out. The combined and transitional application of EU ETS allowances allocated free of charge and of the CBAM should in no case result in more favourable treatment for Union goods compared to goods imported into the customs territory of the Union.</p>		<p>(11) The CBAM <del>seeks to</del> will replace <del>these existing mechanisms</del> <b>the mechanisms in Article 10a, with the exception of Article 10a(6) and Article 10b starting with 2036</b> by addressing the risk of carbon leakage in a different way, namely by ensuring equivalent carbon pricing for imports and domestic products. To ensure a gradual transition from the current system of free allowances to the CBAM, the CBAM should be progressively phased in <b>after 2030</b> while free allowances in sectors covered by the CBAM are phased out. The combined and transitional application of EU ETS allowances allocated free of charge and of the CBAM should in no case result in more favourable treatment for Union goods compared to goods imported into the customs territory of the Union.</p>

		<p>(11bis) The mechanism in Article 10a(6) shall remain outside the scope of CBAM given the unique characteristics of price formation on the EU electricity market, that are not existing in third countries.</p>
<p>(13) As an instrument to prevent carbon leakage and reduce GHG emissions the CBAM should ensure that imported products are subject to a regulatory system that applies carbon costs equivalent to the ones that otherwise would have been borne under the EU ETS. The CBAM is a climate measure which should prevent the risk of carbon leakage and support the Union’s increased ambition on climate mitigation, while ensuring WTO compatibility.</p>		<p>(13) As an instrument to prevent carbon leakage and reduce GHG emissions the CBAM should ensure that imported products are subject to a regulatory system that applies carbon costs <del>equivalent</del> <b>equal</b> to the ones that otherwise would have been borne under the EU ETS. The CBAM is a climate measure which should prevent the risk of carbon leakage and support the Union’s increased ambition on climate mitigation, while ensuring WTO compatibility.</p>
<p>(14) This Regulation should apply to goods imported into the customs territory of the Union from third countries, except where their production has already been subject to the EU ETS, whereby it applies to third countries or territories, or to a carbon pricing system fully linked with the EU ETS.</p>		<p>(14) This Regulation should apply to goods imported into the customs territory of the Union from third countries, except where their production has already been subject to the EU ETS, whereby it applies to third countries or territories, or to a carbon pricing system fully linked with the EU ETS. <b><u>Exceptions will be granted only to those goods subject to carbon costs equal to the ones incurred by EU producers under EU ETS.</u></b></p>
<p>(15) In order to exclude from the CBAM third countries or territories fully integrated into, or linked, to the EU ETS in the event of future agreements, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of amending the list of countries in Annex II. Conversely, those third countries or territories should be excluded from the list in Annex II and be subject to CBAM whereby they do not effectively charge the ETS price on goods exported to the Union.</p>		<p>(15) In order to exclude from the CBAM third countries or territories fully integrated into, or linked, to the EU ETS <b><u>and where the carbon costs are equal to the ones under EU ETS,</u></b> in the event of future agreements, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of amending the list of countries in Annex II. Conversely, those third countries or territories should be excluded from the list in Annex II and be subject to CBAM whereby they do not effectively charge the ETS price on goods exported to the Union.</p>

<p>(17) The GHG emissions to be regulated by the CBAM should correspond to those GHG emissions covered by Annex I to the EU ETS in Directive 2003/87/EC, namely carbon dioxide ('CO<sub>2</sub>') as well as, where relevant, nitrous oxide ('N<sub>2</sub>O') and perfluorocarbons ('PFCs'). The CBAM should initially apply to direct emissions of those GHG from the production of goods up to the time of import into the customs territory of the Union, and after the end of a transition period and upon further assessment, as well to indirect emissions, mirroring the scope of the EU ETS.</p>		<p>(17) The GHG emissions to be regulated by the CBAM should correspond to those GHG emissions covered by Annex I to the EU ETS in Directive 2003/87/EC, namely carbon dioxide ('CO<sub>2</sub>') as well as, where relevant, nitrous oxide ('N<sub>2</sub>O') and perfluorocarbons ('PFCs'). The CBAM should <b>initially</b> apply to direct emissions of those GHG from the production of goods up to the time of import into the customs territory of the Union. <del>And after the end of a transition period and upon further assessment, as well to indirect emissions after</del>, mirroring the scope of the EU ETS.</p>
<p>(21) In order to preserve its effectiveness as a carbon leakage measure, the CBAM needs to reflect closely the EU ETS price. While on the EU ETS market the price of allowances is determined through auctions, the price of CBAM certificates should reasonably reflect the price of such auctions through averages calculated on a weekly basis. Such weekly average prices reflect closely the price fluctuations of the EU ETS and allow a reasonable margin for importers to take advantage of the price changes of the EU ETS while at the same ensuring that the system remains manageable for the administrative authorities.</p>		<p>(21) In order to preserve its effectiveness as a carbon leakage measure, the CBAM needs to <b>fully</b> reflect <del>closely</del> the EU ETS price. While on the EU ETS market the price of allowances is determined through auctions, the price of CBAM certificates should <del>reasonably</del> <b>fully</b> reflect the price of such auctions through averages calculated on a weekly basis. Such weekly average prices reflect <del>closely</del> the price fluctuations of the EU ETS and allow <del>a reasonable margin for</del> importers to take advantage of the price changes of the EU ETS while at the same ensuring that the system remains manageable for the administrative authorities.</p>
<p>(34) However, aluminium products should be included in the CBAM as they are highly exposed to carbon leakage. Moreover, in several industrial applications they are in direct competition with steel products because of characteristics closely resembling those of steel products. Inclusion of aluminium is also relevant as the scope of the CBAM may be extended to cover also indirect emissions in the future.</p>		<p>(34) However, aluminium products should be included in the CBAM as they are highly exposed to carbon leakage. Moreover, in several industrial applications they are in direct competition with steel products because of characteristics closely resembling those of steel products. <del>Inclusion of aluminium is also relevant as the scope of the CBAM may be extended to cover also indirect emissions in the future.</del></p>
<p>(52) The Commission should evaluate the application of this</p>		<p>(52) The Commission should evaluate the application of this</p>

<p>Regulation before the end of the transitional period and report to the European Parliament and the Council. The report of the Commission should in particular focus on possibilities to enhance climate actions towards the objective of a climate neutral Union by 2050. The Commission should, as part of that evaluation, initiate collection of information necessary to possibly extend the scope to indirect emissions, as well as to other goods and services at risk of carbon leakage, and to develop methods of calculating embedded emissions based on the environmental footprint methods<sup>1</sup>.</p>		<p>Regulation before the end of the transitional period and report to the European Parliament and the Council. The report of the Commission should in particular focus on possibilities to enhance climate actions towards the objective of a climate neutral Union by 2050 <b><u>and possibilities to improve carbon leakage measures</u></b>. The Commission should, as part of that evaluation, initiate collection of information necessary to possibly extend the scope <del>to indirect emissions, as well as</del> to other goods and services at risk of carbon leakage, and to develop methods of calculating embedded emissions based on the environmental footprint methods</p>
<p>(59) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>2</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>		<p>(59) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert <b><u>and industry</u></b> level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>3</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>

<sup>1</sup> Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

<sup>2</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

<sup>3</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

<p><b>Chapter I</b>  <b>Subject matter, scope and definitions</b>  <b>Article 1</b>  <b>Subject matter</b></p> <p>3. The mechanism will progressively become an alternative to the mechanisms established under Directive 2003/87/EC to prevent the risk of carbon leakage, notably the allocation of allowances free of charge in accordance with Article 10a of that Directive.</p>		<p>3. The mechanism will progressively become an alternative to the mechanisms established under Directive 2003/87/EC to prevent the risk of carbon leakage, notably the allocation of allowances free of charge in accordance with Article 10a of that Directive.</p> <p>The CBAM will not replace the mechanism in Article 10a(6) of Directive 2003/87/EC.</p>
<p><b>Article 2</b>  <b>Scope</b></p> <p>5. Countries and territories shall be listed in Annex II, Section A, subject to the cumulative fulfilment of the following conditions: :</p>		
<p>(a) the EU ETS established pursuant to Directive 2003/87/EC applies to that country or territory or an agreement has been concluded between that third country or territory and the Union fully linking the EU ETS and the third country or territory emission trading system;</p>		
<p>(b) the price paid in the country where the goods are originating in is effectively charged on those goods without any rebate beyond those also applied in the EU ETS.</p>		
		<p>c) the price paid in the country where the goods are originating in is equal to the price of the EU ETS allowances paid by EU producers.</p>
<p><b>Chapter II</b>  <b>Obligations and rights of authorised declarants of goods</b>  <b>Article 5</b>  <b>Application for an authorisation</b></p> <p>1. Any declarant shall, prior to importing goods as referred to in Article 2, apply to the competent authority at the place where it is established, for an <b>authorisation to import those goods into the customs territory of the Union.</b></p> <p>2. By way of derogation from paragraph 1, where transmission</p>	<p><b>ÎNTREBĂRI:</b></p> <ul style="list-style-type: none"> <li>Care va fi instituția către care vor fi notificate importurile de energie?</li> <li>Care va fi instituția care va certifica verificatorii?</li> <li>Cum vor fi pregătiți verificatorii (aceștia vor trebui să verifice, printre altele, că a fost rezervată capacitatea de conexiuni transfrontalieră de transport egală</li> </ul>	

<p>capacity for the import of electricity is allocated <b>via explicit capacity allocation</b>, the person to which capacity has been allocated for import and which nominates this capacity for import shall, for the purposes of this Regulation, <b>be regarded as an authorised declarant in the Member State where the person declares the import of electricity</b>. Imports are to be measured per border for time periods not longer than one hour and no deduction of export or transit in the same hour is possible.</p>	<p>cu puterea importată pe parcursul importului)?</p> <ul style="list-style-type: none"> <li>• În vederea clarității pentru desemnarea instituțiilor abilitate, ar trebui prevăzute responsabilități și atribuții astfel încât să poată fi identificate instituțiile adecvate în fiecare țară, sau să poată fi alocate / modificate legile de funcționare a instituțiilor existente.</li> </ul>	
<p><b>Article 8</b>  <b>Verification of embedded emissions</b></p> <p>1. The authorised declarant shall ensure that the total embedded emissions declared in the CBAM declaration submitted pursuant to Article 6 are verified by a verifier accredited pursuant to Article 18, based on the verification principles set out in Annex V.</p>		<p>1. The authorised declarant shall ensure that the total embedded emissions declared in the CBAM declaration submitted pursuant to Article 6 are verified by a verifier accredited pursuant to Article 18, based on the verification principles set out in Annex V.</p> <p>The competent authority is authorised to verify the accuracy of the information in the CBAM declaration.</p>
<p>3. The Commission is empowered to adopt implementing acts concerning the principles of verification referred to in paragraph 1 as regards the possibility to waive the obligation for the verifier to visit the installation where relevant goods are produced and the obligation to set thresholds for deciding whether misstatements or non-conformities are material and concerning the supporting documentation needed for the verification report.</p>		<p><del>3. The Commission is empowered to adopt implementing acts concerning the principles of verification referred to in paragraph 1 as regards the possibility to waive the obligation for the verifier to visit the installation where relevant goods are produced and the obligation to set thresholds for deciding whether misstatements or non-conformities are material and concerning the supporting documentation needed for the verification report.</del></p>

<p><b>Article 9</b>  <b>Carbon price paid in a country of origin</b></p> <p>4. The Commission is empowered to adopt implementing acts establishing the methodology for calculating the reduction in the number of CBAM certificates to be surrendered, regarding the conversion of the carbon price paid in foreign currency into euro at yearly average exchange rate in accordance with paragraph 1, and regarding the qualifications of the independent person certifying the information as well as elements of proof of the carbon price paid and the absence of export rebates or other forms of compensation on exportation being applied as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).</p>		<p>4. The Commission is empowered to adopt implementing acts establishing the methodology for calculating the reduction in the number of CBAM certificates to be surrendered, <b>regarding the verification methodology</b>, regarding the conversion of the carbon price paid in foreign currency into euro at yearly average exchange rate in accordance with paragraph 1, and regarding the qualifications of the independent person certifying the information as well as elements of proof of the carbon price paid and the absence of export rebates or other forms of compensation on exportation being applied as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).</p>
<p><b>Article 10</b>  <b>Registration of operators and installations in third countries</b></p> <p>6. The records referred to in paragraph 5, point ©, shall be sufficiently detailed to enable the verification in accordance with paragraph 5, point (b), and to enable any competent authority to review, in accordance with Article 19(1), the CBAM declaration made by an authorised declarant to whom the relevant information was disclosed in accordance with paragraph 8.</p>		<p>6. The records referred to in paragraph 5, point c), shall be sufficiently detailed to enable the verification in accordance with paragraph 5, point (b), and to enable any competent authority <b>to verify and</b> to review, in accordance with Article 19(1), the CBAM declaration made by an authorised declarant to whom the relevant information was disclosed in accordance with paragraph 8.</p>
		<p><b>Chapter VI</b>  <b>Export rebates</b></p>
		<p>Article 26.....</p>



<p><b>Chapter VI</b></p> <p>Enforcement</p>		
<p>Article 26</p> <p>Penalties</p>		
		<p>1. An authorised declarant who submits false or inaccurate information in its CBAM declaration is automatically excluded from the register and it is banned from the register for a period of 3 years from the date of exclusion. The respective verifier who has certified the accuracy of the information in the CBAM declaration has its certification withdrawn by the issuing national authority.</p>
<p><b>Chapter VIII</b>  <b>Reporting and review</b></p> <p><b>Article 30</b>  <b>Review and reporting by the Commission</b></p> <p>2. Before the end of the transitional period, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation. The report shall contain, in particular, the assessment of the possibilities to further extend the scope of embedded emissions to indirect emissions and to other goods at risk of carbon leakage than those already covered by this Regulation, as well as an assessment of the governance system. It shall also contain the assessment of the possibility to further extend the scope to embedded emissions of transportation services as well as to goods further down the value chain and services that may be subject to the risk of carbon leakage in the future.</p>		<p>2. Before the end of the transitional period, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation. The report shall contain, in particular, the assessment of the possibilities to further extend the scope of embedded emissions <del>to indirect emissions</del> and to other goods at risk of carbon leakage than those already covered by this Regulation, as well as an assessment of the governance system. It shall also contain the assessment of the possibility to further extend the scope to embedded emissions of transportation services as well as to goods further down the value chain and services that may be subject to the risk of carbon leakage in the future.</p>