CBAM sectors urge the Commission to propose an effective export solution

Addressing effectively the carbon leakage risk is essential not only for industrial competitiveness and resilience, but also for the environmental integrity of the EU' climate policy. In the current regulatory framework, the Carbon Border Adjustment Mechanism (CBAM) is meant to gradually replace free allocation in the sectors covered by the instrument, notably aluminium, cement, ferro-alloys, fertilizers and steel. Yet, while free allocation mitigates the carbon leakage risk both on the EU and export markets, the CBAM currently covers only goods imported in the EU; hence, European exports to third countries will be impacted by the unilateral EU carbon price and increased raw material and other production costs. In 2024 exports from the current CBAM sectors accounted for more than 76 bn €, of which 64 bn € for iron and steel, 7.5 bn € for aluminium, 3.4 bn € for fertilizers, 1 bn € for cement and 0.3 bn € for ferro-alloys.

According to the workplan announced in the Steel and Metals Plan, the European Commission will issue by the second quarter of this year "*a communication providing analysis and options on how to address the problem of carbon leakage for CBAM goods exported to third countries; [...] the Commission will propose a solution to address the risk of carbon leakage for goods produced by CBAM sectors in the EU for export*".

Against this background, the signatory associations representing the industrial sectors covered by the CBAM urge the European Commission to present effective proposals that take into account the business reality of our sectors.

Already today, European industries are faced with a competitive disadvantage in relation to producers in third countries not subject to equivalent climate policies, even though European products are often cleaner than our major global competitors. This trend will be exacerbated by the increased cost pressure from the phase-out of free allocation and application of the CBAM on imported raw materials and products. This will inevitably result in lower access to export markets for the European industry, with a negative impact on global carbon performance. Loosing access to third countries' markets would jeopardise not only these volumes but the entire competitiveness of companies since they would strive to achieve sufficient capacity utilisation to secure their sustainable viability. This would undermine also the financial ability to invest in decarbonisation projects.

Therefore, it is essential to develop an effective solution for European exports as part of the CBAM. The WTO compatibility of such solution has been addressed and cleared by several legal experts[1] on the basis of the following key arguments:

- an export adjustment is to be considered as part of a regulatory regime and not as a fiscal or financial measure under WTO rules;
- even if considered as a financial or fiscal measure, free allowances for EU operators cannot be considered as a financial benefit or as revenue foregone by the (EU or national) authorities;
- even if both arguments above are rejected, the CBAM charge cannot be considered as a prohibited subsidy under the WTO Subsidies and Countervailing Subsidies Agreement (SCM) provided there is a level playing field with the like products in the market of destination.

The following options can be envisaged to address the carbon leakage risk for exports, while preserving the incentive to decarbonise for European exporting producers:

1. Continued free allowances upon export: under this approach, products destined for exports would benefit from continued free allowances according to the relevant EU ETS methodology without application of the CBAM factor and Cross Sectoral Correction factor. Such solution requires a separate accounting between products for the domestic market and products for export with the latter subject to an independent verification.
2. Export Adjustment Certificates: on the basis of the existing free allocation methodology, European producers are issued non-tradable and non-transferable export adjustment certificates corresponding to the average emissions intensity of the 10% least carbon-intensive producers in the EU, or – for those producers meeting or exceeding the free allocation level – the actual emissions embodied in exported goods. Producers holding export adjustment certificates can exchange these for EUAs used towards compliance with their obligation to surrender EUAs for emissions from covered activities.
3. Rebate upon export: this solution is similar to the duty suspension concept presented by the European Commission in its Staff Working Document accompanying the proposal for CBAM Regulation. It would consist of an excise duty levied on domestic products and imported products at the moment of consumption. The duty would then be calculated by applying the relevant carbon price to the quantity of the carbon intensive material produced or imported multiplied by a carbon intensity factor which could be linked to the EU ETS free allocation level. For exports from the EU, the liability

[1] For further details, please see the legal opinions commissioned by AEGIS to King & Spalding and by CEMBUREAU to Prof Dr Baetens. Key arguments of both have been reflected, along wth other studies, in the report by Marcu, A., Mehling, M, Cosbey, A. and Fleury, S. (ERCST), "Solutions for Exports of EU CBAM covered goods" 2025

would also be created at the moment of production but the excise duty would be waived at the moment of export and before consumption.

All the above solutions should be designed in a way to alleviate the expected ETS, raw material and production cost increases for European exporters due to the free allocation phase out and CBAM effect on imports. Contrary to the above options, funding support for decarbonisation does not represent an effective export solution. While funding support is critical for decarbonisation projects and innovation for individual companies, it will not prevent the immediate loss of export markets for entire EU sectors due to the different time horizons of such instrument in comparison to the issue it is meant to tackle. On one side, EU exports need a solution as quickly as possible to remain competitive in short-medium term, when the difference in carbon costs with the rest of the world is the highest. On the other side, the benefits from EU industrial decarbonisation projects will be delivered over time in the transition towards climate neutrality.