



The EU Carbon Border Adjustment Mechanism (CBAM): what's at stake for the trilogue?

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On 14 July 2021, the European Commission published its proposal for the [CBAM Regulation](#) (the CBAM Proposal).

Through the CBAM, the European Union (EU) seeks to address the risk of carbon leakage, a phenomenon when companies move their production abroad to avoid the costs of complying with stringent environmental standards domestically or import cheaper but more carbon-intensive foreign products. Compliance with the CBAM will require to monitor, calculate and eventually pay for the greenhouse gas (GHG) emissions embedded in certain carbon-intensive products imported into the EU.

The CBAM Proposal is subject to the ordinary legislative procedure, which requires approval from the European Parliament and the Council of the EU. Both [the Council](#) and [the European Parliament](#) have now adopted their respective negotiating positions for the forthcoming trilogue discussions with a view to conclude the legislative process this autumn.

While co-legislators support the introduction of the CBAM already in January 2023, they disagree on a number of key issues which will be at the heart of the trilogue discussions. Their positions differ among others on the product and emission scope of the CBAM, the duration of the transitional period, the nature of the CBAM authority, the co-existence of the CBAM with the EU Emissions Trading System (EU ETS), export adjustments and penalties. The **below table** offers a brief summary of the key contentious issues that will need to be reconciled during the trilogue negotiations.

Topic	European Commission's Proposal	Council's General Approach	European Parliament's Report
Scope	<ul style="list-style-type: none"> Aluminium, cement, electricity, fertilisers, and iron and steel 	<ul style="list-style-type: none"> Expand the scope to aluminous cement, other articles of iron and steel (CN 7326), and a number of additional aluminium products such as aluminium structures, reservoirs and cans (CN 7610, 7611 00 00, 7612, 7613 00 00, 7614, 7616) 	<ul style="list-style-type: none"> Expand the scope to aluminous cement and additional sectors: organic chemicals, hydrogen, anhydrous ammonia, ammonia in aqueous solution and polymers, including plastics and articles thereof By 1 January 2030 CBAM shall apply to all EU ETS sectors
	<ul style="list-style-type: none"> Direct emissions Commission's report by 2025 on potential extension of the scope to indirect emissions 	<ul style="list-style-type: none"> Direct emissions Commission's report by 2025 on potential extension of the scope to indirect emissions 	<ul style="list-style-type: none"> Direct and indirect emissions
Transitional period	<ul style="list-style-type: none"> 2023 - 2025 	<ul style="list-style-type: none"> 2023 - 2025 	<ul style="list-style-type: none"> 2023 - 2026
CBAM authority	<ul style="list-style-type: none"> Member State competent authorities 	<ul style="list-style-type: none"> Member State competent authorities 	<ul style="list-style-type: none"> Single EU-wide CBAM authority
Co-existence with the EU ETS	<p>Commission's proposal on the revised EU ETS:</p> <ul style="list-style-type: none"> Gradual phase-out of free emission allowances for CBAM sectors between 2026-2035, by 10 % each year 	<p>Council's General Approach on the revised EU ETS:</p> <ul style="list-style-type: none"> Gradual phase-out of free emission allowances for CBAM sectors between 2026 and 2035: 95% in 2026, 90% in 2027, 85% in 2028, 77.5% in 2029, 70% in 2030, 60% in 2031, 50% in 2032, 35% in 2033, 20% in 2034, and 0% in 2035 	<ul style="list-style-type: none"> Gradual phase-out of free emission allowances for CBAM sectors between 2026 and 2032: 100% in 2026, 93% in 2027, 84% in 2028, 69% in 2029, 50% in 2030, 25% in 2031, and 0% in 2032
Export adjustment	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Commission's report by 2025 on the impact of the CBAM on carbon leakage, including in relation to exports 	<ul style="list-style-type: none"> Commission report by 2025 on WTO-compatibility Free emission allowances for CBAM products destined for export to third countries without carbon pricing mechanisms similar to the EU ETS
Penalties	<ul style="list-style-type: none"> EUR 100 per missing CBAM certificate Member States <i>may</i> impose administrative and criminal penalties 	<ul style="list-style-type: none"> EUR 100 per missing CBAM certificate More severe penalties for importing without authorisation: 3 to 5 times the regular penalty Revocation of authorisation in case of serious or repeated infringement 	<ul style="list-style-type: none"> 3 times the average price of a CBAM certificate in the previous year per missing certificate Member States <i>shall</i> impose administrative or criminal penalties Suspension of CBAM account in case of repeated offences

For additional information on the EU CBAM, you may be also interested to consult the following additional resources prepared by our team:

- [European Commission proposal for a regulation establishing a carbon border adjustment mechanism \(“CBAM”\)](#), VBB client alert, 15 July 2021
- [The EU proposal for a carbon border adjustment mechanism \(“CBAM”\) – implications for third countries](#), VBB / RRH Webinar, 15 September 2021
- [The EU Carbon Border Adjustment Mechanism in Seven Questions for MENA Industries](#), VBB client alert, 20 September 2021
- [Propuesta de la Comisión Europea de un Reglamento por el que se establece un Mecanismo de Ajuste en Frontera por Carbono \(“MAFC”\)](#), VBB client alert, 20 September 2021
- [欧州委員会による炭素国境調整措置（CBAM）導入規則案の公表及び日本企業への示唆](#), VBB client alert, 14 January 2022
- [The EU Carbon Border Adjustment Mechanism – Implications for India](#), article by Tetyana Payosova (VBB), Joanna Redelbach (VBB) and Sanjay Notani (ELP), February 2022
- [O mecanismo de ajuste de carbono da União Europeia: como exportadores do Brasil serão afetados?](#), article by Tetyana Payosova (VBB), Inês Aguiar Machado (WTO) and Fabrizio Sardelli Panzini (CNI), March 2022

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In addition to Van Bael & Bellis’ long-standing experience in WTO litigation, our trade team advises governments and multinational companies on FTA negotiations, assists governments in assessing compliance of their domestic legislation with WTO agreements and FTAs, helps clients with managing the risk of dispute settlement and advises governments on mutually agreed solutions in the context of WTO and FTA dispute settlement.

Our team is also experienced in helping governments and corporate clients with cross-cutting legal issues, including trade and environment (climate change, carbon border adjustments, trade in environmental goods and services, deforestation and sustainability due diligence), human rights, and labour protection, in the context of international trade and investment obligations under WTO law and FTAs.

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