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# Implications of the EU carbon border adjustment mechanism (“CBAM”) for Switzerland

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On 14 July 2021, the European Commission (“Commission”) published its [proposal](#) for a regulation establishing a carbon border adjustment mechanism (“CBAM proposal”).

The EU CBAM will put a price on carbon embedded in certain imported products and is conceived as a measure against the risk of carbon leakage. That risk could arise if EU companies move their production abroad to avoid the costs of paying for carbon domestically (i.e. under the EU Emissions Trading System (“EU ETS”)) or import cheaper foreign products that are not subject to a carbon price in their country of production. The EU CBAM thus aims not only at preventing the risk of carbon leakage, but also at ensuring a level playing field for domestic and imported products.

The CBAM proposal initially targets five sectors – aluminium, cement, electricity, fertilisers as well as iron and steel. In addition, as proposed by the European Parliament (“EP”), it could potentially also apply to hydrogen, organic chemicals and plastics. In the long run, its scope will be gradually expanded to other sectors covered by the EU ETS, such as glass, ceramics and synthetic rubber.

The CBAM Regulation could enter into force as early as on 1 January 2023. During the initial transitional period, the duration of which is yet to be set and will likely be 3-4 years, the importers of the covered products will be subject to a reporting obligation, requiring them to provide information, among others, on direct and indirect emissions embedded in the imported products. After that, the importers will also need to pay for those embedded emissions by purchasing the so-called CBAM certificates.

The CBAM proposal has already been discussed by the [Council of the European Union](#) (“Council”) and by the [EP](#), both institutions proposing some amendments to the proposal. Both the Council and the EP will need to adopt the CBAM proposal jointly. The trilogue negotiations, during which the EP, the Council and the Commission will discuss the outstanding differences in their positions, were initiated in July 2022 and should be concluded by the end of the year, if the CBAM Regulation is to enter into force on 1 January 2023.

Considering the close trade ties between the European Union (“EU”) and Switzerland, it is important for Swiss businesses to assess potential implications of the EU CBAM on their business operations in Switzerland and in the EU.

## GENERAL COUNTRY EXEMPTION FOR SWITZERLAND

The EU CBAM will apply to all imports of the products concerned, except when they originate from a country falling under the general country exemption. This exemption will be available to countries applying the EU ETS or operating a domestic ETS that is linked to the EU ETS.

Under Annex II to the CBAM proposal, Switzerland is listed as one of the countries that fall outside the scope of application of the CBAM. The rationale behind that exemption is based on the fact that Switzerland operates its own ETS, which is linked to the EU ETS pursuant to an [intergovernmental agreement](#) concluded with the EU in 2020. Under that agreement, emissions allowances are transferrable between the Swiss and the EU ETS systems, allowing participants to use emissions allowances of either system to comply with their respective ETS obligations.

In practice, this means that importation of goods originating in Switzerland will not be subject to the EU CBAM obligations. However, despite the general country exemption, Swiss businesses could still be affected by the implementation of the EU CBAM as explained below.

## **IMPLICATIONS OF THE EU CBAM FOR SWISS BUSINESSES**

Swiss companies acting as importers of the covered products into the EU will be fully subject to the CBAM obligations. This means that such companies will need to collect the necessary data from foreign producers (e.g. on direct and indirect emissions, on the carbon price paid abroad etc.), report these data to a competent authority and, subsequently, also purchase the necessary amount of the CBAM certificates to cover the emissions embedded in the imported products. Swiss companies acting as importers should thus acquaint themselves as soon as possible with the CBAM proposal, assess their current supply chains and contact their business partners, who will need to monitor emissions, and, finally, calculate potential additional costs arising from the administrative and financial obligations imposed by the EU CBAM.

In addition, Swiss companies could also be affected by the EU CBAM through anti-circumvention disciplines. In particular, due to the fact that Switzerland does not have its own CBAM and that it is exempted from the scope of the EU CBAM, importers may seek to use Switzerland to circumvent their EU CBAM obligations.

The CBAM proposal defines circumvention as a change in the pattern of trade in relation to the covered products that has insufficient due cause or economic justification other than avoiding CBAM obligations. The EP in this regard provides a detailed illustrative list of circumvention practices, which includes the transshipment of carbon-intensive products from third countries to the EU and the outsourcing of production of downstream products that contain one or more of the covered products. To counter circumvention, the Commission must continually monitor any significant change in the pattern of trade of goods and slightly modified products at EU level and may supplement the scope of the CBAM Regulation, through a delegated act, in order to include slightly modified products in case it has sufficient reasons to believe that circumvention takes place. The Commission may act upon its own initiative or based on a notification from a Member State or an affected party. In addition, the text proposed by the EP specifically provides that the European Commission must launch an investigation into the circumvention practice upon receiving any such notification.

To the extent that Swiss importers or producers will be involved in one of the circumvention practices, such as the transshipment of covered products through Switzerland or the outsourcing of production, they could be subject to future CBAM anti-circumvention rules, including potential penalties. In particular, Swiss producers of covered products may face additional administrative procedures imposed by the European Commission, including market surveillance and investigations, which will likely result in additional costs and delays in the exportation of covered goods from Switzerland.

Finally, the general country exemption under the CBAM proposal will apply only to the extent that the Swiss ETS and the EU ETS remain linked. If in the future it becomes impossible to maintain the link between the two systems, Switzerland could be removed from the list of exempted countries and Swiss producers would carry the same burden imposed by the EU CBAM as producers of any other third country. This would primarily affect chemicals, if covered by the CBAM, as well as steel products produced in Switzerland and exported to the EU.

## POSSIBILITY OF A SWISS CBAM

Switzerland, like many other third countries, has been closely following developments in respect of the EU CBAM and is considering the introduction of its own similar mechanism. Bilateral discussion between Switzerland and the EU in respect of the EU CBAM were initiated in the spring of 2021 and will likely be completed in 2022.

There are currently two proposals addressing the issue of CBAM in Switzerland. On 15 September 2021, the Swiss National Council adopted the [motion](#) on Switzerland's participation in the EU CBAM, thereby initiating the preparatory work for a CBAM. Second, on 18 March 2021, a [parliamentary initiative](#) on the amendment of the Swiss CO<sub>2</sub>-Act to create the legal basis for the Swiss CBAM was submitted to the Swiss National Council. The initiative was endorsed by the Committee for Environment, Planning and Energy on 25 April 2022.

The rationale behind the proposals for the introduction of a CBAM in Switzerland is at least twofold. First, this may be necessary especially in light of the possibility of circumventive practices. In particular, it cannot be excluded that the EU may in the future require third countries with agreements linking ETS to introduce a similar CBAM as a condition for being granted country exemption under the CBAM Regulation. In addition, considering the trend among some of the other major trading partners towards developing their respective CBAMs, Switzerland may wish to do to the same.

While a Swiss CBAM may have an array of positive implications for Swiss businesses, such as increased competitiveness of Swiss producers covered by the Swiss ETS, the considerations and challenges surrounding the EU CBAM, including questions concerning its WTO compatibility, would be similarly relevant for a Swiss CBAM.

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