



Position Paper

An opt-in solution to CBAM circumvention and complexity

Sandbag's position on the Commission's legislative
proposal amending the CBAM

APRIL 2026

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The Carbon Border Adjustment Mechanism (CBAM) is an essential piece of EU climate legislation, the objective of which is to replace free allocation in the Emissions Trading System (ETS)¹. The CBAM is also “expected to support the reduction of greenhouse gas emissions in third countries”².

Article 1.3 of the CBAM Regulation:

“The **CBAM is set to replace** the mechanisms established under Directive 2003/87/EC to prevent risk of carbon leakage by reflecting the extent to which **EU ETS allowances are allocated free of charge** in accordance with Article 10a of that Directive” (emphasis added).

Recital 14 of the CBAM Regulation:

“While **the objective of the CBAM is to prevent the risk of carbon leakage**, this Regulation would also encourage producers from third countries to use technologies that are more efficient in reducing greenhouse gases so that fewer emissions are generated. For that reason, the **CBAM is expected to effectively support the reduction of greenhouse gas emissions in third countries**” (emphasis added).

However, the way it is currently designed, the CBAM focuses on decarbonising trade flows to Europe. These represent, for some large exporting countries, less than 1% of their domestic production. For example, in 2025, Japan's steel production was 80.7 million tonnes, and its CBAM-covered steel exports were only 0.8m tonnes and China produced nearly 1 billion tonnes but only exported 8.9m CBAM steel goods to the EU³. Thus, the CBAM only impacts the emissions related to these small flows, and in some cases it might lead to a mere reallocation of goods and inputs rather than emissions reductions. If this reallocation could be achieved at low costs, market forces might create favourable conditions to some imports even without deliberate intentions to circumvent the rules, and make the CBAM less effective at preventing carbon leakage.

¹ Article 1(3) of the CBAM Regulation

² Recital 14 of the CBAM Regulation

³ Sources: Eurostat, WorldSteel

The recent legislative proposal from the Commission is therefore a welcome step to prevent circumvention. However, it could be strengthened in some areas.

Scope extensions: A necessary step to prevent circumvention

Extending the scope of the CBAM to downstream products, to cover 180 additional goods is a welcome step to prevent non-EU exporters circumventing the system.

The inclusion of pre-consumer scrap as a precursor material with associated embedded emissions is also a welcome measure to prevent non-EU producers artificially increasing production of pre-consumer scrap to circumvent the CBAM. However, the possibility remains for exporters to reserve post-consumer scrap for use in products sold to the EU. The Commission may look to use anti-circumvention measures to counteract such resource shuffling, arguing that this constitutes ‘abusive practices’, which are defined as “unduly avoiding, wholly or partially, the CBAM financial liability” in Article 3 (35). While further clarity is needed in this area on what constitutes such avoidance, it does not change the fact that qualifying imports with higher post-consumer scrap content will keep paying lower CBAM fees despite not reducing overall emissions in their country of origin.

Enabling opt-in for systematic default values

While, downstream extension is necessary, it presents challenges for importers in terms of complexity, with covered goods often produced from several simple or complex goods, themselves produced via multi-step processes. In the CBAM’s current design, importers can choose to report embedded emissions based on either verified emissions or punitive default values. The high level of default values makes verified data the naturally preferred option, however verified data sometimes fails to capture the wider impact of imports on the overall emissions of the country of origin of the goods. For some types of products, it may just incentivise the reallocation of more emission-intensive production to other markets than the EU.

To address this problem for products and countries where such risk exists, emissions reporting could be based on default values more systematically, i.e. attributing **the same emission intensity to all products of the same type** manufactured in a given country, based on the country average.

The CBAM will be more effective, if implemented in a cooperative way. To secure cooperation from third countries, the systematic use of default values could apply based on an opt-in basis (at country level) and rewarded by lower default values, reflective of country averages (with no mark-ups) rather than punitive ones. Opting for systematic default values would provide multiple benefits to third countries:

- **Reduced transaction costs:** Not having to set up monitoring plans, trace information internally and externally along the supply chain, create monitoring reports and pay for third party verification would save time and resources.
- **No verification risk:** The identity and number of accredited verifiers is still uncertain, and accredited verifiers will likely struggle to meet the demand from importers in a tight schedule. In addition, the verification process is extended by the chain of precursors involved in each type of goods. Not requiring verification fully mitigates exposure to such a verification risk.
- **No volume risk:** The actual amount of emitted emissions is uncertain and can only be verified long after the goods are sold, and the transmission of this risk along value chains makes this exposure less manageable. Opting for systematic default values and not requiring verification mitigates such volume risk.
- **Fairer competition:** By reducing fixed costs and the level of default values, the systematic use of lower default values would affect importers of smaller quantities of goods less disproportionately than actual data, allowing for fairer competition between exporters of the same country.
- **No data disclosure:** By only using default values, no information on technology, production route, amounts, inputs and activity volumes would need to be shared with independent verifiers.

The systematic use of default values would also bring climate benefits. By better protecting against carbon leakage, it would enable the EU to steadily step up its climate ambition. Using default values that reflect country averages would create incentives for countries of origin to reduce their overall emissions rather than just reallocating them from EU imports to other markets. The CBAM regulation could be amended as shown in Annex 1 to enable this opt-in regime.

Article 27a: A false solution to global shocks which only creates uncertainty

Article 27a of the legislation proposal would allow the Commission to remove goods from the CBAM when “severe harm” could be caused to the EU internal market. The inclusion of this clause has already emboldened actors to push for the exclusion of fertilisers from the scope of the CBAM, creating significant uncertainty for investments in cleaner production and alternative processes.

As we have [recently shown](#), the impact of the CBAM on fertiliser prices in the EU will be low in the early years of implementation. Temporarily excluding fertilisers from the scope as a short-term relief against high fossil prices will not shift the needle on this, and will undermine progressive business cases in the EU.

There is a real danger that the inclusion of this clause would lead to frequent calls to exclude certain goods from the CBAM and prolong the phaseout of free allocation under the EU ETS, leading to damaging uncertainty within both instruments. We therefore argue the clause should be removed from the legislation proposal.

Assessment of other downstream extensions also needed

Phasing out free allocation and phasing in of the CBAM in the EU will inevitably lead to a steady increase in the price of covered goods over the coming years, as EU importers look to pass on the cost of importing covered goods. It is therefore important to consider the impact of the CBAM on downstream goods not currently covered in the CBAM scope which may be impacted, including the **agri-food** industry which is downstream of fertilisers. Products including beef, rice, plant-based fibres, cereals, wheat, and vegetable oils have already been touted as potential candidates.⁴ While calculating the embedded emissions of these agri-food products will present challenges, the Commission should be proactive in carrying out such an assessment. This is especially relevant to consider in the context of the potential introduction for carbon pricing of emissions from agriculture in the EU, as the European Scientific Advisory Board on Climate Change (ESABCC) [recently recommended](#).

Additionally, **chemicals** which are downstream of hydrogen and ammonia are currently outside the scope of the CBAM. As free allocation is phased out and the CBAM is phased in for hydrogen and ammonia, the cost of production in the EU will increase, presenting a risk of carbon leakage for downstream products which are not currently protected by the CBAM. The Commission should therefore look to include these downstream value chains as a matter of urgency, along with other key value chains, as we [recently recommended](#).

⁴ A. Spiegel et al. 2024, *Climate Change Mitigation in Agriculture beyond 2030: Options for Carbon Pricing and Carbon Border Adjustment Mechanisms*, EuroChoices.

Annex 1: Suggested changes to the CBAM Regulation

Current text	Suggested change
<i>Regulation</i>	
<p>Article 7(7)(a)</p> <p>7.</p> <p>The Commission is empowered to adopt implementing acts concerning:</p> <p>(a)</p> <p>the application of the elements of the calculation methods set out in Annex IV, including determining system boundaries of production processes, which shall be aligned with those covered by the EU ETS, and relevant input materials (precursors), emission factors, installation-specific values of actual emissions and default values and their respective application to individual goods, as well as lay down methods to ensure the reliability of data on the basis of which the default values shall be determined, including the level of detail of the data, and including further specification of goods that are to be considered as “simple goods” and “complex goods” for the purpose of point 1 of Annex IV. Those implementing acts shall also specify the elements of evidence demonstrating that the criteria required to justify the use of actual emissions for imported electricity and for electricity consumed in the production processes of goods for the purposes of paragraphs 2, 3 and 4 that are listed in points 5 and 6 of Annex IV are met; and</p>	<p>Article 7(7)(a)</p> <p>7.</p> <p>The Commission is empowered to adopt implementing acts concerning:</p> <p>(a)</p> <p>the application of the elements of the calculation methods set out in Annex IV, including determining system boundaries of production processes, which shall be aligned with those covered by the EU ETS, and relevant input materials (precursors), emission factors, installation-specific values of actual emissions and default values and their respective application to individual goods, as well as lay down methods to ensure the reliability of data on the basis of which the default values shall be determined, including the level of detail of the data, and including further specification of goods that are to be considered as “simple goods” and “complex goods” for the purpose of point 1 of Annex IV. Those implementing acts shall also specify the elements of evidence demonstrating that the criteria required to justify the use of actual emissions for imported electricity and for electricity consumed in the production processes of goods for the purposes of paragraphs 2, 3 and 4 that are listed in points 5 and 6 of Annex IV are met; and</p>
<i>Annex IV</i>	
<p><u>4.1 Default values referred to in Article 7(2)</u></p> <p>“When actual emissions cannot be adequately determined by the authorised CBAM declarant, default values shall be used. Those values shall be set at the average emission intensity of each exporting country and for each of the goods listed in Annex I other than</p>	<p><u>4.1 Default values referred to in Article 7(2)</u></p> <p>“When actual emissions cannot be adequately determined by the authorised CBAM declarant, or where countries opt-in for systematic default value regime, default values shall be used.</p>

electricity, increased by a proportionately designed mark-up. This mark-up shall be determined in the implementing acts adopted pursuant to Article 7(7) and shall be set at an appropriate level to ensure the environmental integrity of the CBAM, building on the most up-to-date and reliable information, including on the basis of information gathered during the transitional period. When reliable data for the exporting country cannot be applied for a type of goods, the default values shall be based on the average emission intensity of the 10 exporting countries with the highest emission intensities for which reliable data can be applied for that type of goods.

For each of the goods listed in Annex I other than electricity that have standard default values, those values shall be set at the average emission intensity of each exporting country ~~and for each of the goods listed in Annex I other than electricity~~, increased by a proportionately designed mark-up, unless the exporting country 'opts in' to systematic use of default values.

If the exporting country has not opted in to the systematic default value regime, the ~~This~~ mark-up shall be determined in the implementing acts adopted pursuant to Article 7(7) and shall be set at an appropriate level to ensure the environmental integrity of the CBAM, building on the most up-to-date and reliable information, including on the basis of information gathered during the transitional period. When reliable data for the exporting country cannot be applied for a type of goods, the default values shall be based on the average emission intensity of the 10 exporting countries with the highest emission intensities for which reliable data can be applied for that type of goods.

If the exporting country has opted in to the systematic default value regime, those default values shall be set at the weighted average emission intensity of the precursors, based on the average emission intensity of the exporting country. When reliable data for the exporting country cannot be applied for a type of goods, the default values shall be based on the average emission intensity of the 10 exporting countries with the highest emission intensities for which reliable data can be applied for that type of goods.



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smarter climate policy