

Feedback on the Draft Implementing Regulation laying down the rules regarding reporting obligations for the purposes of the CBAM during the transitional period

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Sandbag is a non-profit climate change think tank that uses data analysis to build evidence-based criticism and recommendations for better EU policies. Our research focuses in particular on the EU ETS, the CBAM, and emissions reductions in industrial sectors.

We welcome the Commission's draft of the CBAM implementing regulation concerning the reporting obligations and provisional methodology for calculating embedded emissions in CBAM goods. However, we have concerns regarding the accounting and monitoring rules applied to metal scrap. We are worried that they may open the door to **carbon leakage for aluminium and steel production**, i.e. the metals currently covered by the CBAM.

It is common for metal scrap to be remelted and used in the metal industry. Yet, while EU aluminium and steel producers will gradually pay for all the source emissions generated during the manufacturing process – as free allocations are gradually phased out – nothing in the current draft of the Implementing Regulation prevents importers and third-country installations from **circumventing the CBAM**.

The current draft of the Implementing Regulation would allow importers of metal products to engage in “**resource shuffling**”, whereby they selectively import products made of higher quantities of **scrap** to the EU and continue selling other, more carbon-intensive products outside of the EU.

This is made possible by the proposed provisions to monitor direct emissions from the metallurgic industry (Annex II, articles 2.15.2.1, 2.15.2.2, 2.17.2.2), which fail to properly account for the **carbon emissions embedded in metal scrap**. For steel, the current text suggests that carbon entering the production process in scrap “*is taken into account by using a mass balance approach*”, which represents less than 1% of the emissions embedded in steel products.

With the proposed text, an installation in a third country could even deliberately increase the output of “**pre-consumer scrap**” during the first phase of metal production. Any product made during this first phase would be sold in a market that does not impose a carbon levy, while all the products made from the reused metal scrap would be exported to the EU. Those products would require fewer CBAM certificates, since all the scrap would be allocated “zero-embedded emissions” according to the proposed CBAM rules. This is made possible by Annex III F.2, which stipulates that pre-consumer scrap should be assigned “zero emissions”. This would effectively allow installation to **cheat the system** and export carbon-intensive products to the EU at no CBAM costs.

In addition to increasing risks of carbon leakage, this huge loophole **undermines the competitiveness of the EU aluminium and steel industry** by creating a discrepancy in the CO₂ costs borne by EU and non-EU installations. For the CBAM to be effective, it is essential that carbon costs imposed on third-

country imports align with those charged by the EU ETS on domestic production. Failing to do so would **threaten the level playing field principle** extended by the CBAM *vis-à-vis* the compliance costs faced by domestic installations under the EU ETS.

We therefore recommend the following amendments to the Implementing Regulation.

Annex II – 2.15.2.1 Basic oxygen steelmaking	
Commission draft	Sandbag’s suggested amendments
<p>For that production route, direct emissions monitoring shall encompass:</p> <ul style="list-style-type: none"> – CO2 from fuels such as coal, natural gas, fuel oils, waste gases such as blast furnace gas, coke oven gas or converter gas, etc. – CO2 from process materials such as limestone, magnesite and other carbonates, carbonatic ores; materials for flue gas cleaning; – Carbon entering the process in scrap, alloys, graphite etc. and carbon remaining in the product or in slags or wastes is taken into account by using a mass balance approach in accordance with Section B.3.2 of Annex III. 	<p>For that production route, direct emissions monitoring shall encompass:</p> <ul style="list-style-type: none"> – CO2 from fuels such as coal, natural gas, fuel oils, waste gases such as blast furnace gas, coke oven gas or converter gas, etc. – CO2 from process materials such as limestone, magnesite and other carbonates, carbonatic ores; materials for flue gas cleaning; – Carbon entering the process in scrap, alloys, graphite etc. and carbon remaining in the product or in slags or wastes is taken into account by using a mass balance approach in accordance with Section B.3.2 of Annex III. – <i>Carbon entering the process in scrap is taken into account by estimating the emissions incurred in the production of the products from which the scrap was derived.</i>
Justification	
<p><i>The CBAM must properly account for the carbon emissions embedded in metal scrap. We recommend changing the mass balance approach (which only accounts for less than 1% of embedded emissions) for an estimation of the embedded emissions of the products from which the scrap was collected - in order to ensure consistency with ETS costs borne in the EU and thereby avoid resource shuffling.</i></p>	

Annex II – 2.15.2.2 Electric arc furnace

Commission draft	Sandbag’s suggested amendments
<p>For that production route, direct emissions monitoring shall encompass:</p> <ul style="list-style-type: none"> – CO2 from fuels such as coal, natural gas, fuel oils, as well as from waste gases such as blast furnace gas, coke oven gas or converter gas. – CO2 from the consumption of electrodes and electrode pastes; – CO2 from process materials such as limestone, magnesite and other carbonates, carbonatic ores; materials for flue gas cleaning; – Carbon entering the process, e.g. in the form of scrap, alloys and graphite, and carbon remaining in the product or in slags or wastes is taken into account by using a mass balance approach in accordance with Section B.3.2 of Annex III. 	<p>For that production route, direct emissions monitoring shall encompass:</p> <ul style="list-style-type: none"> – CO2 from fuels such as coal, natural gas, fuel oils, as well as from waste gases such as blast furnace gas, coke oven gas or converter gas. – CO2 from the consumption of electrodes and electrode pastes; – CO2 from process materials such as limestone, magnesite and other carbonates, carbonatic ores; materials for flue gas cleaning; – Carbon entering the process, e.g. in the form of scrap, alloys and graphite, and carbon remaining in the product or in slags or wastes is taken into account by using a mass balance approach in accordance with Section B.3.2 of Annex III. – <i>Carbon entering the process in scrap is taken into account by estimating the emissions incurred in the production of the products from which the scrap was derived.</i>
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Annex II – 2.17.2.2 Secondary melting (recycling)

Commission draft	Sandbag’s suggested amendments
<p>Secondary melting (recycling) of aluminium uses aluminium scrap as main input. However, where unwrought aluminium from other sources is added, it is treated like a precursor. Furthermore, where the product of this process contains more than [5%] alloying elements, the embedded emissions of the product are calculated as if the mass of alloying elements were unwrought aluminium from primary smelting.</p> <p>For that production route, direct emissions monitoring shall encompass:</p> <ul style="list-style-type: none"> – CO2 emissions from any fuels used for drying and pre-heating of raw materials, used in melting furnaces, in pre-treatment of scrap such as de-coating and de-oiling, and combustion of the related residues, and fuels required for casting of ingots, billets or slabs; – CO2 emissions from any fuels used in associated activities such as treatment of skimmings and slag recovery; – CO2 emissions from any flue gas treatment, from soda ash or limestone if relevant; <p>Relevant precursors:</p> <ul style="list-style-type: none"> – Unwrought aluminium from primary smelting, if used in the process. 	<p>Secondary melting (recycling) of aluminium uses aluminium scrap as main input. However, where unwrought aluminium from other sources is added, it is treated like a precursor. Furthermore, where the product of this process contains more than [5%] alloying elements, the embedded emissions of the product are calculated as if the mass of alloying elements were unwrought aluminium from primary smelting.</p> <p>For that production route, direct emissions monitoring shall encompass:</p> <ul style="list-style-type: none"> – CO2 emissions from any fuels used for drying and pre-heating of raw materials, used in melting furnaces, in pre-treatment of scrap such as de-coating and de-oiling, and combustion of the related residues, and fuels required for casting of ingots, billets or slabs; – CO2 emissions from any fuels used in associated activities such as treatment of skimmings and slag recovery; – CO2 emissions from any flue gas treatment, from soda ash or limestone if relevant; <p>Relevant precursors:</p> <ul style="list-style-type: none"> – Unwrought aluminium from primary smelting, if used in the process. – <i>Any kind of pre-consumer and post-consumer scrap, off-spec products, by-products and waste.</i>
<p>Justification</p>	
<p><i>The CBAM must ensure consistency with ETS costs borne in the EU and address all potential risks of carbon leakage for the aluminium industry. As such, we believe it is essential to add the explicit mention of both pre-consumer and post-consumer scrap to the list of relevant precursors.</i></p>	

Annex III – F.2 Monitoring rules for activity levels

Commission draft	Sandbag’s suggested amendments
<p>Only goods which can be sold or directly used as precursor in another production process shall be taken into account. Off-spec products, by-products, waste and scrap produced in a production process, irrespective of whether they are returned to production processes, delivered to other installations or disposed of, shall not be included in the determination of the activity level. They are therefore assigned zero embedded emissions when entering another production process.</p>	<p>Only goods which can be sold or directly used as precursor in another production process shall be taken into account. Off-spec products, by-products, waste and scrap produced in a production process, irrespective of whether they are returned to production processes, delivered to other installations or disposed of, shall not be included in the determination of the activity level. They are therefore assigned zero embedded emissions when entering another production process.</p>
<p>Justification</p>	
<p><i>The CBAM should prevent any circumvention or attempt to “game” the system. Assigning zero emissions to pre-consumer scrap would allow importers and third-country exporters to set up CBAM-free production lines, where metal scrap is controlled for this purpose. It is thus essential to assign the same embedded emissions as the original primary input material to pre-consumer scrap.</i></p>	