



Initial views on the EU CBAM

**EU CBAM Webinar
presented by Zsolt Lengyel**

- ✓ The basics & big picture: where we all tend to agree & context
- ✓ What have we learnt? – historic attempts
- ✓ The details: where the devil and disagreement lie based on initial Public Consultation etc. feedback
- ✓ Some legal hurdles:
 - ✓ WTO: arguments and turtles....
 - ✓ EU internal issues: [‘Towards a more Efficient and Democratic Decision Making in EU Tax Policy’](#) (January 2019) & ongoing [revision of the Energy Taxation Directive](#)

Economic instruments: carbon pricing building blocks & carbon border adjustment

What is needed and mostly agreed within the EU:

1. impose higher prices on GHG emissions;
2. guide deep transformation of entire economies;
3. minimise the resulting social fallout,
4. ensure border carbon adjustment and
5. globalise the EU's decarbonisation.

How to do this – what instruments are needed:

1. EU carbon price must become high enough to lead to rapid and significant changes in behaviour.
2. EU emissions trading system to be extended to not yet covered sectors (or alternative methods, industrial policies, needed)
3. Enhance regulation on sustainable finance to manage climate risks and drive decarbonisation.
4. Address distributional concerns or risk failing the Green Deal; carbon tax proceeds could be redistributed to reduce the burden on low-income households.
5. Innovation requires public funding to accelerate the emergence of new technologies, which will create new activities and also cut the cost of clean energy /decarbensation

Economic instruments: carbon leakage and competitiveness

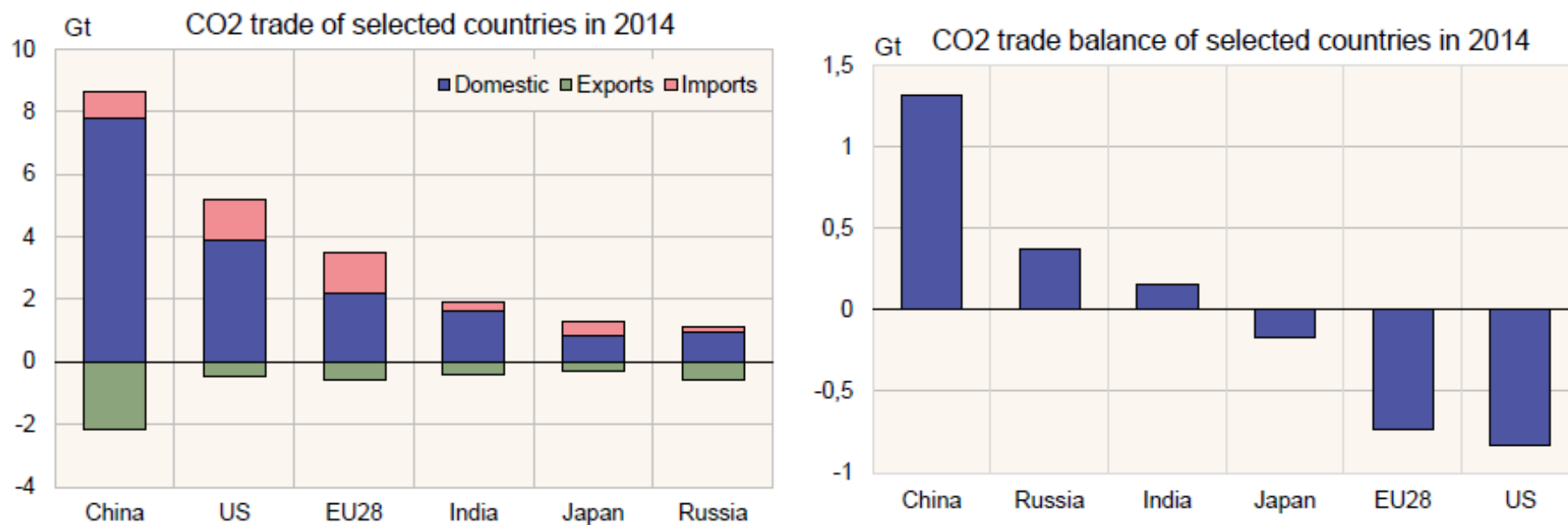
What is carbon leakage and how to handle it:

1. **Carbon leakage** refers to the situation that occurs if, for reasons of costs related to climate policies, businesses in certain industry sectors or sub-sectors were to transfer production to other countries with less stringent emission constraints.
2. Carbon leakage therefore could lead to **an increase in total emissions**. The risk of carbon leakage may be higher in certain energy-intensive industries. To safeguard the competitiveness of industries covered by the EU ETS, the production from sectors and sub-sectors deemed to be exposed to a significant risk of carbon leakage receives a higher share of free EU ETS allowances compared to the other industrial installations
3. In this context, the European Green Deal emphasized that *“should differences in levels of ambition worldwide persist, as the EU increases its climate ambition, the Commission will **propose a carbon border adjustment mechanism**, for selected sectors, to reduce the risk of carbon leakage”*.

How significant carbon leakage is?

Embodied and consumption based carbon accounting (1)

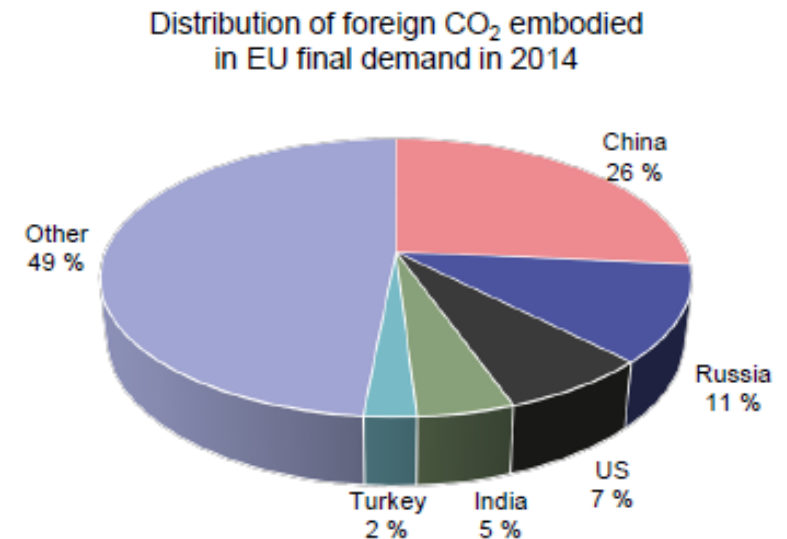
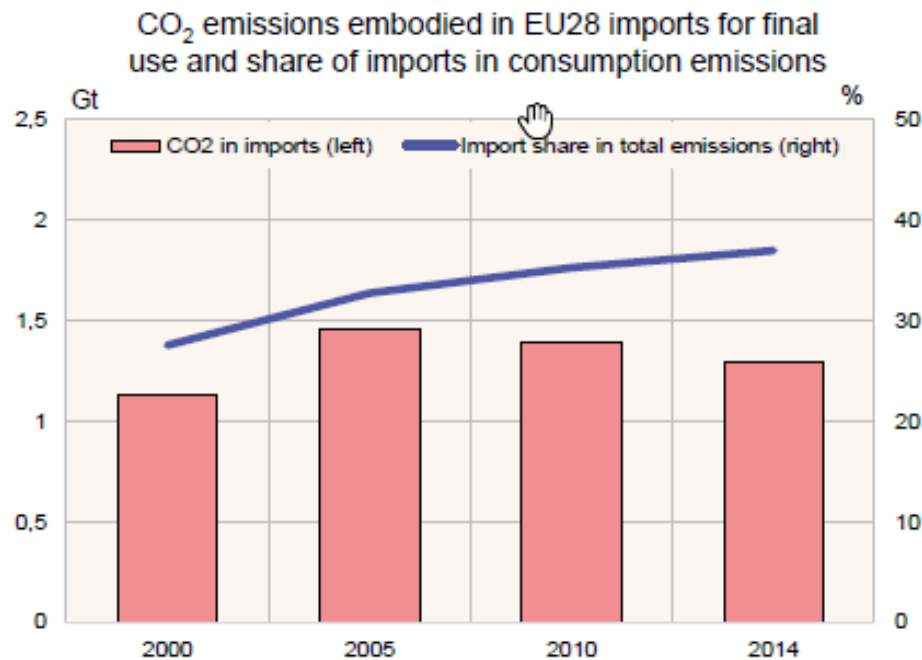
Figure 2. CO₂ emissions embodied in the foreign trade flows of the largest emitter countries



Source: “CO₂ emissions embodied in EU–China trade and carbon border tax” Heli Simola, 2020, Bank of Finland

How significant carbon leakage is? Embodied and consumption based carbon accounting (2)

Figure 3. CO₂ emissions embodied in EU imports



Source: “ CO₂ emissions embodied in EU-China trade and carbon border tax” Heli Simola, 2020, Bank of Finland

Difficulties: EU attempts up to date (1)

Given the carbon leakage and the sustained differences in climate ambition the EU has tried to introduce various CBAMs; these attempts are as follows:

Table 2: Summary of the FAIR Proposal (2007)

Legal basis	Directive 2003/87/EC and new ETS Directive for Phase 3
Motivation	Addressing carbon leakage and international competitiveness effects (Art. 29.1)
Exemptions	Goods from countries with comparable action (Art. 29.1); goods from countries with an emissions trading schemes linked to the EU ETS (Art. 29.1)
Country coverage	Goods from countries without comparable action (see exemptions)
Covered goods/sectors	Goods identified as being at risk of carbon leakage (methodology not specified)
Adjustment basis for imports	Average carbon intensity of EU goods, corrected for average free allowance allocation to production (multiplied by the imported weight)
Adjustment basis for exports	Actual exports of goods (Art. 29.5)

Source: Michael Mehling, Harro van Asselt, Kasturi Das, Susanne Droege, and Cleo Verkuil (2017), [Designing Border Carbon Adjustments for Enhanced Climate Action](#), Climate Strategies

Difficulties: EU attempts up to date (2)

Table 3: Summary of the Carbon Inclusion Mechanism (2009)

Legal basis	Art. 10b(1)(b) of Directive 2009/29/EC
Motivation	Addressing carbon leakage
Exemptions	All goods from countries which cooperate in a global climate agreement
Country coverage	Option 1: Goods from countries which do not cooperate under a new international climate agreement on mitigation;
Option 2: Goods from countries without carbon pricing for the sectors covered by the EU ETS	Goods identified as being at risk of carbon leakage (methodology not specified)
Covered goods/ sectors	Goods identified as being at risk of carbon leakage according to Art. 10a EU ETS Directive
Adjustment basis for imports	Average direct emissions of a European producer, minus the free allocation received based on product benchmarks, multiplied by the volume of imported goods
Adjustment basis for exports	Not determined, but to be in compliance with WTO law

Source: Michael Mehling, Harro van Asselt, Kasturi Das, Susanne Droege, and Cleo Verkuil (2017), [Designing Border Carbon Adjustments for Enhanced Climate Action](#), Climate Strategies

Difficulties: EU attempts up to date (3)

Table 4: Summary of the Border Adjustment Proposal for the Cement Sector (2016)

Legal basis	Art. 10b(1)(b) of Directive 2009/29/EC
Motivation	Addressing carbon leakage
Exemptions	Cement imports from countries with adequate mitigation efforts and/or carbon content pricing equivalent to EU
Country coverage	None (focus on defined products)
Covered goods/sectors	Cement sector; import of clinker
Adjustment basis for imports	Average emissions from EU production (or less, if lower emissions can be proven) minus European benchmark-based free allocation value (multiplied by the number of goods imported)
Adjustment basis for exports	Not included
Adjustment basis for exports	Not determined, but to be in compliance with WTO law

Source: Michael Mehling, Harro van Asselt, Kasturi Das, Susanne Droege, and Cleo Verkuijl (2017), [Designing Border Carbon Adjustments for Enhanced Climate Action](#), Climate Strategies

Initial CBAM feedback: the devil in the details & positions (1)

Keynote speech by President von der Leyen at the World Economic Forum

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"Check against delivery"

Thank you. Dear Klaus,

The World Economic Forum stands for multilateralism, global cooperation, listening to each other, and ideas for the future.

“ if we increase the import of CO₂ from abroad. It is not only a climate issue; it is also an issue of fairness. It is a matter of fairness towards our businesses and our workers. We will protect them from unfair competition. One way for doing so is the Carbon Border Adjustment Mechanism.

But I prefer to encourage our trading partners, to work with us for a global level playing field, for the benefit of all of us. “

Climate change: China aims for 'carbon neutrality by 2060'

By Matt McGrath
Environment correspondent

22 September 2020

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COP26



China will aim to hit peak emissions before 2030 and for carbon neutrality by 2060, President Xi Jinping has announced.

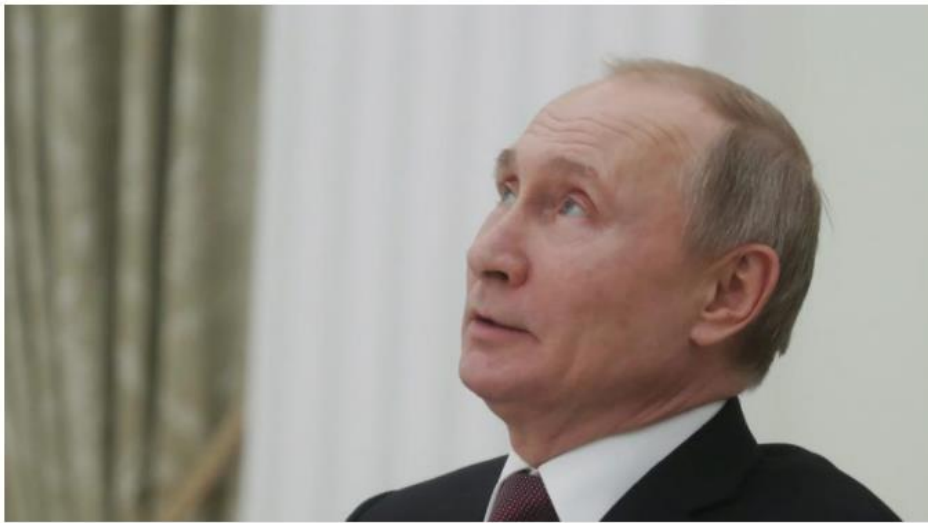
Initial CBAM feedback: the devil in the details & positions (2)

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EU's anti-climate-dumping tool worries Russia

By Sam Morgan | EURACTIV.com

Feb 7, 2020 (updated: Feb 11, 2020)



Russian President Vladimir Putin reacts during a meeting with Bavarian State Prime Minister Soeder in Moscow, Russia, 29 January 2020. [Photo: EPA-EFE/MAXIM SHEMETOV / POOL]

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In a sign that Moscow has taken note of the EU's plan to deploy a carbon border tax, a top Kremlin adviser has urged Russia's business giants to start adapting now if they want to continue selling their wares in the single market.

EU could use carbon border tax against Brexit Britain, warns MEP

By Sam Morgan | EURACTIV.com

Jan 28, 2020 (updated: Jan 31, 2020)



Pascal Canfin warned that the EU "should be tough" during the next round of Brexit talks. [Photo: EP]

Languages: Français | Deutsch

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The EU could deploy a carbon border tax against the UK after Brexit, according to the head of the European Parliament's environment committee, if Westminster diverges from bloc rules on issues like carbon markets.

French MEP Pascal Canfin told reporters on Monday (27 January) that the EU "should be tough"

Sources: <https://www.euractiv.com/section/climate-environment/news/eus-anti-climate-dumping-tool-worries-russia/> & <https://www.euractiv.com/section/climate-environment/news/eu-could-use-carbon-border-tax-against-brexit-britain-warns-mep/>

Initial CBAM feedback: the devil in the details & positions (3)



1. CBAM Roadmap Feedback:

The EU Commission received feedback from 224 interested parties, of which seven are located in lesser developed and developing countries like Ecuador, Kenya, Russia, South Africa, Turkey (TÜSIAD) and Ukraine. Of the developing country responders, five are companies, one represents the national government's point of view (i.e. the Ministry of Trade in Ukraine) and two are NGOs/Industry Associations.

2. Public consultation: open until 28 October

Carbon Border Adjustment: opportunities to complement efforts under the Green Deal

Eurelectric position paper

March 2020

Sources:

https://cdn.eurelectric.org/media/4271/eurelectric_position_on_carbon_border_adjustment-2020-030-0170-01-e-h-D754C926.pdf & [Eurelectric submissionhttps://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12228-Carbon-Border-Adjustment-Mechanism/F510162](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12228-Carbon-Border-Adjustment-Mechanism/F510162)

1. *The rationale or justification of the measure matters.* An **environmental rationale** – e.g. tackling carbon leakage, internalising the social cost of carbon, overcoming domestic resistance against deeper emission reductions or inducing other countries to join international climate efforts – would help **prove that a measure is ‘necessary’** to protect human, animal or plant life or health under Article XX(b) of the GATT or ‘relating to’ the conservation of exhaustible natural resources under Article XX(g);
2. *The extent to which the BCA effectively contributes to climate change mitigation* is relevant;
3. *The application of the BCA to either imports and/or exports* is of importance;
4. *The timing of the BCA* is important;
5. It matters *how the level of the adjustment is determined and whether it is applied across the board*;
6. it is important to understand how the BCA *accounts for climate policies in other countries*;
7. *whether and to what extent the BCA differentiates between foreign countries*;
8. how the implementation of BCAs respects ‘*basic fairness and due process*’;
9. whether a BCA is adopted *unilaterally or in the context of a multilateral framework*.

Source: Michael Mehling, Harro van Asselt, Kasturi Das, Susanne Droege, and Cleo Verkuijl (2017), [Designing Border Carbon Adjustments for Enhanced Climate Action](#), Climate Strategies

WTO: arguments and turtles.... (2)

The 1998 shrimp–turtle case:

The ruling states that the United States implemented its shrimp ban, however, was discriminatory, and ordered the United States to end the ban. Still, it emphasized that:

“In reaching these conclusions, we wish to underscore what we have not decided in this appeal. **We have not decided that the protection and preservation of the environment is of no significance to the WTO.** Clearly, it is. We have not decided that sovereign nations that are members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. And **we have not decided that sovereign states should not act together bilaterally, plurilaterally or multilaterally, either within the WTO or in other international for a, to protect endangered species or to otherwise protect the environment. Clearly, they should and do** [Emphasis in the original] ([Appellate Body, 1998](#)).”



EU internal issues: unanimous approval requirements & ongoing revision of the Energy Taxation Directive

- Article 113 of the Treaty on the Functioning of the European Union (TFEU) requires unanimity in the **passing of new excise taxes aimed at the harmonization of the legislation of the internal market**. –> *how to overcome the barrier regarding the requirement of unanimous approval on the harmonization of legislation concerning indirect taxes ?*
- in January 2019 the European Council issued a Communication to the European Parliament, entitled ‘[Towards a more Efficient and Democratic Decision Making in EU Tax Policy](#)’ (hereinafter, the Communication) where the EU Commission proposed to **replace the unanimity vote on harmonization of taxes by a qualified majority vote**.
- According to the Communication, the most practical way to move from unanimity to qualified majority voting in taxation would be to use the ‘passerelle’ clauses enshrined in the EU Treaties. Notably, the Treaty on the European Union (TEU) carries both general and specific passerelle clauses. Relevant to the **achievement of environmental policy goals** is Article 192(2) of the Treaty on the Functioning of the European Union (TFEU) which contains a specific passerelle clause for measures in the **environmental field** currently subject to unanimous voting, including provisions ‘primarily of a fiscal nature’ – > *will unanimity modified to a qualified majority voting?*

Source: Legal Impediments to the Introduction of an EU wide Carbon Border Adjustment Mechanism, [Kluwer International Tax Blog](#), September 17, 2020 <http://kluwertaxblog.com/category/eueea>

“Zorla güzellik olmaz”
(You can lead a horse to water but you can’t make him
drink)

Follow-up questions?

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