

Proposals for amendments to the second draft compromise of the Council Presidency on the CBAM downstream scope expansion proposal

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Introduction

By introducing an on-off switch for the application of the Carbon Border Adjustment Mechanism (CBAM), Article 27a undermines the integrity of the instrument and introduces massive uncertainty for industrial and decarbonization investments in the EU. The only way to prevent disturbances to the Internal Market, safeguard investments, and restore the credibility of Europe's climate and trade policy, is to delete the article.

If, despite industry and legal concerns, the Council wishes to maintain an emergency clause within the CBAM Regulation, the second draft compromise of the Council Presidency must be amended in relation to recital 50 and Article 27a to, as a minimum, introduce stronger safeguards.

Proposal for an amendment – Recital 50

(50) In order to amend certain ~~non-essential elements~~ **elements non-essential for achieving the climate objective** of Regulation (EU) 2023/956 **this Regulation [on Scope Expansion, proposal COM/2025/989]**, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of temporarily exempting a specific imported goods from the obligations under this Regulation **[on Scope Expansion, proposal COM/2025/989]** in cases of severe harm to the Union internal market due to ~~serious and unforeseen circumstances~~ **exceptional occurrences, directly exacerbated by the application of CBAM on the good which causes a severe disruption in the functioning of the supply chain or prices of goods to rise significantly above the carbon cost on embedded emissions.** In doing so, the Commission should consider the relevant evidence and proceed based on a reasoned assessment demonstrating the impact of the temporary exemption on the internal market and the functioning of the CBAM **essential for achieving its climate objective**, as well as explaining why less intrusive measures would be insufficient. ~~To provide certainty and simplicity to authorised CBAM declarants,~~ ~~‡~~**The temporary exemption should apply at least for a full calendar year to a quarter of the calendar year.** Goods should not be exempted for more than ~~two~~ **a total of one** years under the same ~~serious and unforeseen circumstances~~ **exceptional occurrences**. The temporary exemption of a good should not lead to an increased risk of carbon leakage, therefore the phasing-out of free allowances under Directive 2003/87/EC should not apply to installations covered by this Directive for the share of their production covered by the exempted goods **and for the duration of the exemption from this Regulation [on Scope Expansion, proposal COM/2025/989]**. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. The Commission should also be empowered to adopt implementing acts to further specify the application of temporary exemption. **During the period of temporary removal, the Commission shall report to the European Parliament and Council every three months on the harm to the Union Internal Market and the evolution of the identified exceptional occurrences, demonstrating efforts to find solutions improving the functioning of CBAM.**

Proposal for an amendment – Article 3(36)

(36) '~~serious and unforeseen circumstance~~' '**exceptional occurrence**' means an exceptional, unexpected and sudden, natural or man-made event of extraordinary nature and scale that takes place within or outside the Union.

Proposal for an amendment – Article 27a

(17) the following Article 27a is inserted:

Article 27a

~~Serious and unforeseen circumstances~~ **Exceptional occurrences**

1. The Commission shall monitor the situation at Union level with a view to assessing the impact of the CBAM on the Union internal market. Where the Commission, taking into account the relevant evidence, and on the basis of a reasoned assessment demonstrating the impact on the Union internal market and the functioning of the CBAM, and explaining why less intrusive measures would not be sufficient, considers that the inclusion of **a certain goods in Annex I of this Regulation [on Scope Expansion, proposal COM/2025/989]** severely harms the Union internal market including through a disruption of the functioning of the supply chains or a distortion of prices formation due to serious and unforeseen circumstances **during an exceptional occurrence, due to the implementation of the CBAM procedure causing a severe disruption in the functioning of the supply chain or due to serious and unforeseen circumstances related to the impact of CBAM on the prices of goods which significantly exceed the carbon cost on embedded emissions, and determines that the inclusion of the good is non-essential for achieving the climate objective of CBAM measured at sector-level**, it is empowered to adopt delegated acts to amend Annex I.
2. The temporary exemption shall apply ~~to a full calendar year~~ **to a quarter of the calendar year and it may only be extended three times, by way of delegated acts**. If the delegated acts apply before 31 October, the temporary exemption shall apply from 1 January until 31 December, and it may only be extended once, for the following calendar year, by way of delegated acts. If the delegated acts apply after 31 October, the temporary exemption may apply from 1 January until either the end of the calendar year or until the end of the following calendar year. **The Commission shall on a quarterly basis report to the European Parliament and Council on the harm to the Internal Market and the evolution of identified exceptional occurrences as well as the solutions identified to remove or mitigate the root cause of the disturbance, improving the functioning of CBAM. Any delegated act adopted pursuant to this Article shall apply only from the date of its entry into force and shall not affect obligations, rights or liabilities stemming from Regulation (EU) 2023/956 and this Regulation [on Scope Expansion, proposal COM/2025/989], accrued prior to that date.**
3. The amendment shall take the form of a footnote inserted next to the CN codes of the relevant goods referred to in Annex I. The footnote shall state that ~~the CBAM shall not apply to the goods in question and specify the year or years of the exemption~~ **the good is temporarily removed from the CBAM scope and shall specify the quarter of the removal**. Goods shall not be exempted for more than ~~two years~~ **four quarters** under the same ~~serious and unforeseen circumstances~~ **exceptional occurrences**. Once the exemption period ends, the Commission shall remove the footnote and promptly publish information about the deletion in the Official Journal of the European Union.
4. Imported goods that are subject to the temporary exemption shall be exempted from the obligations under this Regulation. ~~The CBAM certificates purchased pursuant to Article 22(2) for goods subject to the temporary exemption may be repurchased in accordance with Article 23(1). However, the limit referred to in Article 23(2) shall not apply to these CBAM certificates.~~ The Commission may adopt implementing acts further specifying the application of the temporary exemption. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2) of this Regulation.

5. ~~Before a delegated act adopted under this Article expires, the Commission may submit a legislative proposal to amend this Regulation and remove certain goods from Annex I.¹;~~

Justification for the proposals

CBAM is a climate policy tool – any adjustment of CBAM for economic and competitiveness reasons risks justified retaliation within the WTO context

- *As enshrined in recital 15 of Regulation (EU) 2023/956, the aim of CBAM is to protect against carbon leakage and reduce global GHG emissions, making the Regulation a climate policy tool compatible with WTO rules. If the CBAM Regulation via Article 27a empowers the Commission to adjust the application of CBAM for economic reasons, the bloc's trading partners would have a valid argument that CBAM is a trade barrier in disguise. It is therefore paramount that the CBAM downstream scope expansion does not jeopardize the CBAM's WTO-compatibility.*
- *The wording "serious and unforeseen circumstances" stems from WTO language on economic safeguard action (Article XIX 1(a) of the GATT - Emergency Action on Imports of Particular Products). Such wording on unforeseen circumstances or serious harm is commonly used in WTO dispute settlement. The draft text of the Council Presidency thus implicitly recognizes that CBAM can be modified to influence its impact on the relative competitiveness of European economic actors versus the rest of the world. In contrast, the wording "exceptional occurrences" is derived from Article 107 of TFEU, thus, avoiding a WTO language reference.*
- *For any temporary removal of a good from CBAM, there must be a direct link between CBAM's application and the causing of serious harm. Thus, in the case of a crisis situation ("exceptional occurrence"), if CBAM's application causes critical goods to become unavailable or leads to significant delay in sourcing the goods, then CBAM can be considered as exacerbating the pressure of the crisis on the economy. Article XX(j) of GATT allows WTO Members to adopt measures "essential to the acquisition or distribution of products in general or local short supply", thus, supply shortages caused by CBAM can be considered as a valid argument for a temporary suspension of a good. On the contrary, if CBAM functions properly, then the actual burden of CBAM (cost of certificates and reporting) is insignificant compared to the upheaval and volatility of the crisis events. While the Commission proposal refers to "the impact of CBAM on", the draft Council compromise proposes to delete this reference. This is concerning from a WTO perspective, as without an explicit link to the functioning of CBAM, the article risks becoming a trade policy tool.*

Ensuring a sound legal basis for the empowerment of the Commission to introduce delegated acts on non-essential legislative elements

- *The concept of "certain non-essential elements", which creates the grounds for the Commission to be empowered to introduce delegated acts, is embedded in Recital 50, but is missing from the article itself. It should be included within the Article 27a. Furthermore, to reconfirm the CBAM's nature as a climate policy tool (in line with the WTO argument), it should be explicitly linked to the climate objective of CBAM and the level of embedded emissions imported. If the imported embedded emissions for a specific customs code are insignificant, then the temporary removal does not fully invalidate the overall position taken by the legislators or the climate rationale behind CBAM, and can thus be considered "non-essential". If instead an entire sector would be removed, the credibility of the legislative process and the climate rationale are destroyed.*
- *While the Commission proposal mentions the removal of a "good" and this can be considered "non-essential" in the above-noted circumstances, the draft Council compromise expands this approach to "goods" (plural), which puts at risk the climate objective of CBAM and the "non-essential" argument of recital 50.*

Ensuring legislative predictability for sectors already in the scope of CBAM

- *The original intention of Article 27a was to address potential issues arising from the Downstream Scope Expansion proposal. This is evident by such article not having been required for the original Regulation, which was still under negotiations during a crisis situation – the first ten months of the Russian war on Ukraine. The inclusion of such a clause in the Downstream Scope Expansion proposal is logical because of the broad and diverse list of goods being added to Annex I. The article shall thus not affect goods included via the original CBAM Regulation. It is therefore advisable to amend Article 27a and explicitly link the article to the Downstream Scope Expansion Regulation.*

Preventing measures that would disturb the Internal Market without any benefit for impacted sectors

- *Article 27a shall not have a retroactive effect, as this would cause disturbance on the Internal Market. The obligations and interests of all economic actors would be impacted in an unpredictable way, making this impact a negative one. Furthermore, retroactivity would not benefit sectors affected by an exceptional occurrence. For example, farmers purchase the majority of their fertilizers from agri cooperatives and regional distributors (as opposed to purchasing directly from importers). Thus, while an importer might be able to recuperate the paid CBAM costs, this would not be possible for farmers.*
- *Retroactivity also puts less carbon-intensive goods at a disadvantage. An importer who prefers the conventional product in combination with paying the full CBAM charge would benefit via a retroactive adjustment of CBAM. An importer who has sourced more climate-friendly goods and thus paid a premium to the overseas manufacturer would not be able to recoup the additional cost. Since the Commission already issued a Q&A document on retroactivity, the amended text should explicitly exclude the option.*

Ensuring a time-limited exemption of a good and its reintroduction into CBAM as soon as possible

- *Article 27a (5) notes that the Commission may introduce a permanent scope change via the Ordinary Legislative Procedure (OLP). The Commission does not need Article 27a to amend CBAM via the OLP. This reference within the context of the article would indicate that a temporary removal is a preliminary step towards a permanent removal. This paragraph will create uncertainty in CBAM sectors and will halt investments, thus, it is best deleted.*
- *Any exemption of a good from CBAM is meant to be temporary and the good shall be reinstated under CBAM as soon as possible. A quarter of a year, extendable to maximum one year, is appropriate to minimize the destabilization of the markets of CBAM sectors and the uncertainties/ delays for upcoming decarbonization investment decisions.*
- *If CBAM impacts the market negatively in an unplanned way, then the Commission shall look into solutions which do not require the removal of the good from the scope of CBAM. The Commission should be explicitly mandated to report on the evolution of the occurrence or CBAM issue at regular intervals. And it must be mandated to look into solutions to remove or mitigate the root cause of the disturbance. A temporary suspension can provide the time to develop other market measures or resolve practical challenges in the CBAM procedures. This would allow a more rapid reinstatement of the good under CBAM.*