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Eurometaux's position on the call for evidence on carbon price paid in 3rd countries

This paper provides Eurometaux's position on the call for evidence on the carbon price paid in 3rd countries. Eurometaux represents European producers of Non-Ferrous Metals like Aluminium, Copper, Lithium, Nickel, Zinc, Silicon, but also ferro-alloys, among other energy transition metals.

Key points

This call for evidence aims to inform the upcoming draft implementing act allowing EU importers to apply for a reduction in the number of CBAM certificates to be surrendered to take into account the carbon price effectively paid in a 3rd country for the declared emissions.

For this purpose, the Commission will lay down the rules for converting the carbon price paid on a set of emissions under a carbon pricing scheme in a 3rd country into a corresponding number of CBAM certificates. Please find below Eurometaux's key concerns, followed by a more detailed explanation of each aspect.

Our position:

1. Define **clear criteria** and **establish a transparent, coherent framework for assessing carbon pricing systems**, with particular attention to **subsidies and rebates that distort the carbon cost**, alongside other aspects such as free allocation and MRV robustness.
2. **Develop regular country reports** detailing tax regimes, subsidies, rebates and other support schemes in key exporting countries. These reports should serve as the **default reference period** when assessing the effective carbon price paid, ensuring disguised rebates are fully accounted for.
3. Mirror the EU ETS framework by **not recognising domestic or international carbon credits under CBAM until they are treated equivalently under the EU ETS**.

1. Define clear criteria and establish a transparent, coherent framework for assessing carbon pricing systems, with particular attention to subsidies and rebates that distort the carbon cost, alongside other aspects such as free allocation and MRV robustness

- Evaluating diverse carbon pricing systems is challenging due to differences in language, calculation methods, among others. Nonetheless, **a harmonised approach is crucial to ensure fairness and transparency. Clear criteria and a well-defined framework are necessary to provide legal certainty and prevent cost-shifting measures like subsidies from distorting carbon costs.**
- Therefore, **the Commission must define clear criteria and a coherent framework for assessing carbon pricing systems, with special attention to subsidies and rebates that distort carbon costs,** which could be

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deducted from the carbon price identified in third countries. In order to ensure a level playing field, recognition of effective third country carbon prices must take into account not only the market price but also account for other design aspects which impact the effective carbon price paid by importers. For example, the level of free allocation, type of cap, use of offsets and robustness of MRV rules in comparison to the EU ETS.

- Indeed, the carbon price paid in third countries must only be deducted from the CBAM financial liability, in cases where the carbon price was **effectively** paid in the country of origin, taking into account any rebate or other form of compensation available in that country that would have resulted in a reduction of that carbon price (Article 9(1)). The declarant must include the carbon price due in the country-of-origin and any rebate or other form of compensation available in their annual CBAM report (Article 35(2)(d)), where this report can be checked for completeness and correctness by the Commission (Article 35(4)) and incompleteness/incorrectness must be rectified by the declarant, otherwise liable to the imposition of penalties (Article 35(5)).
- One issue is that such reports are confidential and thus only accessible to the Commission and other empowered authorities (Article 14(4) CBAM Regulation); there is no possibility for industry interests/other entities to monitor the reports themselves. **However, under the EU ETS system, all decisions relating to free allocation, as well as emissions reports required from operators, are made public** (Article 17 ETS Directive 2003/87/EC). Operator reports must provide information for all their emissions sources and source streams in tons of CO₂ (Article 68(3) and Annex X Commission Implementing Regulation 2018/2066).
- **In this light, we suggest the following:** To reflect the level of transparency within the EU ETS, and with the addition of obligations to report any partial or full subsidy received by the third country operator in its country that undermines the effectiveness of the carbon price effectively paid there, **we recommend adding to the CBAM Regulation a transparency instrument mirroring the ETS system**. This way, circumvention risks and illicit benefits from subsidies would be better tackled by giving all interested parties access to reporting and allowance purchase activities.

2. Develop regular country reports detailing tax regimes, subsidies, rebates and other support schemes in key exporting countries. These reports should serve as the default reference period when assessing the effective carbon price paid, ensuring disguised rebates are fully accounted for.

- The CBAM is supposed to ensure a level playing field between products produced in Europe and products imported from abroad. Therefore, the relevant factor is not the carbon price that exists in a third country, but rather the effective carbon **cost** that a third country producer is exposed to after accounting for potential carbon leakage measures, deductions, rebates, subsidies, tax breaks or any other measure that might reduce the cost impact of the carbon price that exists in the third country. Just like the CBAM accounts for free allocation that European producers receive under the EU ETS, the same should also apply to carbon pricing systems applied in third countries.
- Accurately assessing this carbon cost requires an in-depth assessment of any carbon pricing system that might be applied in each third country, along with the surrounding regulatory framework. In trade cases, we have seen examples of countries levying a certain cost on companies before refunding this cost through other measures

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(e.g. reduced taxation). Such measures must be considered in their totality in order to accurately calculate the resulting cost impact (or lack thereof) on third country producers.

- In order to do this, we recommend that the Commission develop **regular country reports** (similar to those used in EU trade defence investigations) documenting the tax regimes, subsidies, rebates, and other support schemes in key exporting countries. These reports could serve as a **default reference point** when assessing the effective carbon price paid, ensuring that disguised rebates are properly considered. While such an exercise would be administratively demanding, it is the only systematic and transparent way to guarantee fairness and avoid granting unjustified reductions to non-European producers.
- Considering that assessing the intricacies of different countries' carbon pricing systems and surrounding regulatory framework is a very complex and time-consuming task, **we also recommend the Commission first prioritise the countries that export more to Europe when embarking on the necessary evaluations of carbon pricing systems abroad.**

3. Mirror the EU ETS framework by not recognising domestic or international carbon credits under CBAM until they are treated equivalently under the EU ETS.

- In order to fulfil the principle of mirroring the EU ETS as well as to not undermine the competitiveness of European industry, **domestic or international carbon credits/offsets must not be recognised under CBAM until if/when such credits are recognised in the EU ETS.** Otherwise, third country producers would benefit from compliance flexibility that European producers do not. If/when such credits/offsets are recognised under the EU ETS, any mirroring of this under CBAM must include the same high integrity criteria and MRV as under the EU ETS.

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