Launch Event

Response to the Q4 2025 CBAM Legislative Proposal

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ERCST
Roundtable on Climate Change and Sustainable Transition

Launch Event Agenda

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- Presentation of the report
- Opening remarks & panel interventions
- Roundtable discussion
- Closing remarks

Carbon Leakage, CBAM Objectives and ERCST Criteria

Definition of carbon leakage

- Emission reductions in stricter-policy countries partially or completely offset by increases elsewhere
- Multiple channels: production, investment, exports, value chain leakage

CBAM objectives: three interpretations

- Product-level: mirror EU carbon price on imports' carbon intensity
- Sector-level: ensure comparable effective carbon pricing across exporting sectors
- Global-level: prevent an overall increase in global GHG emissions

ERCST assessment criteria

- Governance and legal implications
- Political feasibility and external implications
- Technical feasibility
- Environmental implications
- Competitive implications

Anti-Circumvention 1/2: Commission Measures

Legal changes introduced

- Inclusion of pre-consumer scrap of aluminium and steel as CBAM-covered precursors with non-zero embedded emissions (but not covered as goods per se)
- Commission empowerment to further detail CN codes where there is risk of mis-declaration of composition and thus GHG intensity
- Commission empowerment to require additional proof of time and place of production where there is risk of mis-declaring installation-based origin of imports
- Commission empowerment to require additional evidence demonstrating that abusive practices have not occurred, where there is deemed to be high risk

Key objectives stated

- "Tackle attempts to avoid the CBAM obligation" whether through "misdeclaration of emissions intensities" or through "abusive practices“
- Four specific avoidance cases: the "scrap loophole"; mis-declaration of emissions intensity within CN codes; mis-declaration of installation-level origin; "abusive practices" — gaining a benefit by unduly avoiding, wholly or partially, the CBAM financial liability

Enforcement and monitoring

- Commission shall monitor for evidence of high risk of abusive practices; where found, shall within three months adopt delegated acts on identification of goods and origins requiring additional evidence

Anti-Circumvention 2/2: ERCST Assessment

Assessment

- Including pre-consumer scrap is legally sound: producers pay the carbon cost as passed through by upstream installations
- Empowering the Commission to act on abusive practices without better defining them introduces critical legal uncertainty
- A low-GHG-intensity foreign installation pivoting to export to the EU is a normal market reaction to a carbon price — not an abusive practice
- In the worst case, abusive practices provisions would be used to address resource shuffling — disincentivizing foreign decarbonization and potentially increasing global GHG emissions

Areas of alignment

- ERCST has highlighted the "scrap loophole" in previous reports
- Using abusive practices provisions against resource shuffling would conflict with ERCST recommendations against restricting actual data submission

Recommendations

- Include post-consumer scrap as CBAM-covered input — scrap prices track primary product prices, creating the same uneven playing field for post-consumer as for pre-consumer scrap
- Abusive practices provisions must not be used to address resource shuffling — which is avoidance, not circumvention
- Resource shuffling is more appropriately addressed by extending the phase-out timeline for free allocation

Article 27a 1/2: Commission Measures

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What the provision does

Where the Commission, taking into account the relevant evidence, considers that the inclusion of a good in Annex I causes "*severe harm to the Union internal market due to serious and unforeseen circumstances related to the impact on the prices of goods*", it is empowered to adopt delegated acts in accordance with Article 28 to remove that good from Annex I until those serious and unforeseen circumstances have passed

- Enables temporary removal of goods from Annex I via delegated acts
- Three cumulative elements:
  - (i) severe harm to the internal market;
  - (ii) serious and unforeseen circumstances;
  - (iii) connection to impacts on the prices of goods
- Urgency procedure; retroactive application possible from the moment conditions are considered to have been met
- Exclusions remain temporary and targeted: once circumstances no longer exist, normal CBAM application should resume

Article 27a 2/2: ERCST Assessment

Assessment

- Until now, CBAM scope has been anchored in primary legislation; exclusions through delegated acts introduce a more agile instrument which relies on significant Commission discretion
- "Severe harm" and "serious and unforeseen circumstances" remain open-textured legal standards — if left open to interpretation, the provision generates uncertainty for market participants
- Retroactive application raises questions regarding legal stability
- Sectors experiencing price pressures may perceive Article 27a as an avenue through which relief could be sought — managing such expectations will be central to maintaining confidence in the mechanism
- Any temporary removal of goods suspends the carbon price signal at the border and could increase exposure to leakage

Areas of alignment

- The temporary and targeted nature of exclusions corresponds to ERCST's recommendation that deviations must be clearly bounded in time – but should be governed by transparent procedures

Recommendations

- Operationalization must be accompanied by clearly defined conditions, robust procedural safeguards, and transparent decision-making
- The safeguard should remain exceptional in character — reliance on exclusions as a recurring response to structural market challenges would weaken the CBAM
- Since this type of provision is implemented for EU sectors and circumstances, it should be considered when such circumstances also occur in exporting countries

Carbon Prices in Third Countries 1/2: Commission Measures

Legal architecture

Article 9, CBAM Regulation: "*The reduction may be claimed only if the carbon price has been effectively paid in the country of origin. In such a case, any rebate or other form of compensation available in that country that would have resulted in a reduction of that carbon price shall be taken into account.*“

- Article 3(29) defines "carbon price" narrowly: explicit instruments such as ETSs or carbon taxes based on GHG emissions
- The December 2025 package does not fundamentally alter the Article 9 architecture
- All legislative and policy documents have consistently stated that the carbon price must be "effectively paid" — signaling a focus on actual price incidence at installation level, taking into account free allocation, rebates, exemptions, or other relief mechanisms

What the December 2025 package adds

- Forthcoming implementing act (expected Q1/Q2 2026) will work on the principle of equivalence and clarify how claims for carbon credits under compliance schemes, including Article 6 of the Paris Agreement, can be taken into account
- Commission empowered to adopt implementing acts on certification procedures and accreditation for carbon price documentation
- Article 2(12) provides a basis for bilateral agreements enabling more structural recognition of third-country carbon pricing; no implementing act adopted and no formal bilateral arrangements concluded to date

Carbon Prices in Third Countries 2/2: ERCST Assessment

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Assessment

- Absence of operational guidance at the start of the definitive phase could blunt incentives for third-country carbon pricing deployment
- "Effectively paid" shifts rather than solves the comparability problem: ETSs differ widely in scope, allocation design, banking rules, and offset use; free allocation, rebates, and hybrid instruments further complicate
- Integration of Article 6 credits would need to be reconciled with the accounting logic of Article 9 and the environmental integrity safeguards of the Paris Agreement
- Overly permissive rules risk encouraging instruments designed primarily to offset CBAM liability; overly restrictive rules could dampen incentives for comprehensive carbon pricing reform abroad

Areas of alignment

- Commission's insistence on "effectively paid" aligns with ERCST's emphasis on avoiding double pricing while safeguarding environmental integrity
- Potential use of bilateral agreements under Article 2(12) is consistent with earlier calls for structured cooperation

Recommendations

- Maintain the core logic of Article 9: crediting anchored in an explicit domestic carbon pricing system
- Bilateral agreements under Article 2(12) may offer the most pragmatic and administratively feasible approach — their purpose, scope, and procedural implications should be clarified

Exports of Goods 1/2: Commission Measures (TDF)

The problem

- Export-related leakage remains a distinct channel: as free allocation declines, EU exporters face loss of market share in jurisdictions without equivalent carbon constraints; CBAM only levels the playing field for imports

The Temporary Decarbonization Fund

- Financed from 25% of CBAM certificate revenues for 2026–2027; estimated resources ~€633 million
- Single application call in 2028; support disbursed by end-2029
- Covers ~25% of CBAM goods: selected aluminum, fertilizers, and iron & steel; electricity, cement, and hydrogen excluded
- No proof-of-export requirement: support allocated on the basis of production, irrespective of whether goods were subsequently exported
- Conditionality: energy audit compliance, investment commitments, or equivalent decarbonization measures
- Designed as a bridge solution, pending more comprehensive treatment in the ETS revision expected mid-2026

Exports of Goods 2/2: ERCST Assessment

Assessment

- Principal concern: lack of specificity — resources risk being distributed too thinly to meaningfully offset carbon cost asymmetries faced by exporters
- No link to export exposure: support directed by production volumes rather than trade intensity, potentially missing operators most exposed to global competition
- Estimated eligible demand (~€265 million) modest relative to phased-out free allowances over 2026–2027 (~€1.5 billion)
- Using CBAM revenue to support EU producers may attract scrutiny under WTO subsidy rules

Areas of Alignment

- ERCST has proposed export certificates: redeemable towards ETS compliance, linked directly to exported volumes, benchmark-based, and building on existing ETS infrastructure
- The Commission's preference for a decarbonization-linked instrument reflects ERCST's emphasis on environmental integrity; however, the absence of a link to export exposure diverges from ERCST's recommendations

Recommendations

- A durable export solution must reflect the free allocation phase-out trajectory, maintain decarbonization incentives, and be explicitly linked to export exposure
- The TDF may serve as a bridge, but cannot substitute for a long-term structural solution — the export certificate mechanism merits renewed consideration in the context of the post-2030 ETS architecture

Downstream Extension 1/2: Commission Measures

Summary of legal changes

- Extension of CBAM coverage to 180 additional goods in the aluminium and steel sectors (~15% more goods covered)
- Coverage applies only to embedded emissions from CBAM-covered inputs — not to emissions created during the downstream production stage itself
- Objective: "address the risk of carbon leakage for products further down the value chain of the steel and aluminium products currently in CBAM's scope“

Selection methodology

- Carbon leakage filter: carbon costs >5% of gross value added AND trade intensity >10%
- EU production emissions floor: minimum 150,000 tCO_2e embedded in annual EU consumption of the good
- Special treatment proposed for complex downstream goods with multiple CBAM-covered precursors: default values without the standard mark-up

Downstream Extension 2/2: ERCST Assessment

Assessment

- Selection criteria are broadly consistent with those used to determine the original CBAM scope — the Commission has considered a number of issues raised by stakeholders
- However, the proposed scope involves more complexity and compliance cost than is easily justified by the results: 180 additional goods, 7,000+ new importers, yet less than 1 MtCO2e of global emission reductions (0.83 Mt)
- Carbon leakage in covered sectors falls from 63% to 26% by 2035 — significant in relative terms, marginal in absolute terms
- The further down the value chain, the lower the share of embedded carbon in value added, the lower the leakage risk, and the more non-price factors drive purchasing decisions
- If coverage extends to goods with genuinely low leakage risk, the WTO-legal defensibility of the CBAM is weakened

Recommendations

- Pursue a more limited downstream scope: "option 1" from the EC impact assessment — 70–80 CN codes, ~1,400–1,500 new importers
- The difference between option 1 and the Commission's proposal is ~0.5 MtCO2e and at most a tenth of a percent of sectoral output by 2035; the difference in administrative burden is substantial

Conclusions

Overall Assessment

- The December 2025 proposals put forward means to address several issues central to the CBAM debate, and in this they are welcome. At the same time, many critical issues remain unaddressed or still waiting for a permanent solution, with unresolved trade-offs between environmental ambition, administrative feasibility, and regulatory predictability

Anti-circumvention & Article 27a

- Anti-circumvention measures should have positive results in some circumstances, but fall short of providing solutions to some of the more fundamental challenges. The lack of coverage for post-consumer scrap is a significant gap. Abusive practices remain insufficiently defined and must not constrain normal market responses to pricing signals
- Article 27a adds flexibility for exceptional circumstances, but "severe harm" and "serious and unforeseen circumstances" will need to be clearly defined to preserve regulatory predictability

Carbon prices in third countries

- The forthcoming implementing act under Article 9 will determine whether the CBAM creates incentives for explicit carbon pricing abroad or encourages narrowly tailored instruments aimed primarily at offsetting CBAM liability
- Greater clarity is also needed on how the bilateral agreement pathway under Article 2(12) would operate in practice

Downstream extension & exports

- 180 additional goods and 7,000+ new importers, while estimated global emission reductions amount to less than one megatonne of CO_2e — a more targeted scope of 70–80 CN codes would achieve a more defensible balance
- The Temporary Decarbonization Fund may provide short-term support, but its lack of a direct link to export exposure limits its effectiveness — the export certificate mechanism will likely be required to durably address this channel of leakage

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Opening remarks

- Martin Becker, **DG TAXUD, European Commission**

Panel interventions

- Adolfo Aiello, **Eurofer**
- Luc Haustermans, **Yara**
- Lidia Tamellini, **Carbon Market Watch**
- Anna Feldman, **VDMA**
- Emanuele Manigrassi, **European Aluminium**

Roundtable discussion

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Closing remarks

THANK YOU!