

# JBCE'S POSITION ON THE REPORTING OBLIGATIONS DURING THE TRANSITIONAL PERIOD OF CBAM<sup>1</sup>

## INTRODUCTION

JBCE would like to reiterate its appreciation and strong support for the EU's leadership and positive approach to climate change. Japan has concluded an Economic Partnership Agreement and a Green Alliance and shares values on trade and investment with the EU. As an organization representing Japanese businesses, JBCE is impacted by the novel CBAM Regulation and its draft implementing regulation. Therefore, we very much welcome being able to contribute to the development of CBAM as a framework that is harmonized with the WTO rules.

JBCE previously submitted its position on CBAM to the European Commission, pointing out the following points:<sup>2</sup>

- (i) A system should be developed at global level to encourage the low carbon intensity products.
- (ii) Efforts should be made to ensure a level playing field to avoid disparities between imports and domestic EU products in the calculation of greenhouse gas (“GHG”) emissions.
- (iii) CBAM must be in compliance with WTO rules.
- (iv) In-depth verification and assessment of feasibility and burden on industries, including from a technological perspective, should be implemented, before expanding the scope of CBAM to other products.

The EU is expected to be an economic area advocating for free, fair and rules-based trade and investments in line with WTO rules. Industries invest and create employment in the EU on the premise that the EU complies with WTO rules and is a fair market which ensures a level playing field. In particular, to achieve decarbonization – which is a common objective for both the EU and Japan – the CBAM Regulation must ensure harmonization with WTO rules and a level playing field between European and foreign enterprises. In this regard, we would like to present 6 specific requests concerning the proposed CBAM implementing regulation (“**draft CBAM IR**”).<sup>3</sup>

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<sup>1</sup> Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (“**CBAM**”), available [here](#).

<sup>2</sup> See “Joint Industry Recommendation on Carbon Border Adjustment Mechanism” of 25 April 2022, available [here](#).

<sup>3</sup> See Draft implementing regulation - Ares(2023)4079551 and Annex - Ares(2023)4079551 (13 June 2023), available [here](#) (“**draft CBAM IR**”).

## KEY MESSAGES

### ❖ Elimination of disparities between domestic products and imports in reporting and procedures

CBAM needs to include the same requirements for reporting and processes as the EU Emissions Trading System (“EU ETS”),<sup>4</sup> from the perspective of non-discrimination between domestic and international businesses, WTO compliance,<sup>5</sup> as well as stable implementation of the regulation after the transitional period. Regarding the complexity and frequency of reporting procedures, no differences should exist between activities within and outside the EU. Specifically, the reporting details specified in the draft CBAM IR include some requirements that are not included in the EU ETS, which CBAM aims to complement without disparities. Such administrative processes must not be an implicit trade barrier and a level playing field should be ensured.<sup>6</sup>

For example:

- In Annex IV of the draft CBAM IR, the reporting of emissions on a quarterly and 'facility-by-facility' basis is mandatory, including for example alloy element ratios and scrap usage, to be shared with a potentially unrelated reporting declarant who is importing the product into the EU. This is not the case under the EU ETS<sup>7</sup> (P). As reporting such emissions per installation and per product could potentially expose data that may be highly confidential, it is not appropriate to make it mandatory, also in terms of symmetry with the EU ETS. Therefore, we seek that this reporting should be done on a voluntary basis.
- In the EU ETS, producers report on the emissions within the system boundary of their installation when producing products within scope.<sup>8</sup> EU manufacturers are not responsible for reporting on emissions derived from all precursors outside their own production and the administrative burden for collecting the related data is not the same as under CBAM.<sup>9</sup> In order to ensure a level playing field for domestic and foreign companies, it is necessary to reconsider the inclusion of precursors in CBAM,

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<sup>4</sup> Article 14(3) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (the “EU ETS Regulation”).

<sup>5</sup> In particular the Most-Favoured-Nation (“MFN”) and National Treatment (“NT”) provisions of the General Agreement on Tariffs and Trade (“GATT 1994”).

<sup>6</sup> Administrative burdens could be considered an illegal restriction of international trade, including under Article XI of the GATT 1994.

<sup>7</sup> The reporting requirements in the EU ETS as described in Articles 19-23 of Commission Implementing Regulation (EU) 2018/2066 (see below) suggests that operators subject to the EU ETS will report annually and directly to the competent authority, not to a third-party which may raise competitive concerns.

<sup>8</sup> Annex I of the EU ETS regulation.

<sup>9</sup> Commission Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions of 19 December 2018. For CBAM, see Article 7(7)(a) and Annex IV paragraph 2 of the CBAM Regulation, and in particular Annex II and III of the draft CBAM IR.

and to include an exemption from the obligation to provide information on precursor-related emissions measurement and calculation with the aim of reducing the administrative burden.

- Under CBAM, if imported products have a value greater than EUR 150 per consignment (where a consignment value under such threshold is defined as negligible value under current EU customs rules<sup>10</sup>), the submission of emission data for the products is required. However, under EU ETS's Monitoring and Reporting Regulation ("MRR"),<sup>11</sup> facilities that meet requirements such as annual emissions below 25,000 tons are considered as "installations with low emissions";<sup>12</sup> they are granted derogations, such as simplified methods for measuring and calculating "activity data," which includes the fuels, raw materials and manufactured products used in manufacturing. This consideration for small and medium-sized enterprises should also be incorporated into CBAM reporting requirements.

#### ❖ **Carbon intensity default values**

In the draft CBAM IR, the use of default values for carbon intensity is allowed in various instances during the transitional period.<sup>13</sup> However, from our understanding, default values after that period have not yet been specified, and this should be done already at this stage for reasons of legal certainty. Regarding this default value specification, it is essential to harmonize with international discussions at OECD level and communicate with third countries such as Japan, in particular given the EU-Japan Green Alliance, in order to define the default value in a transparent and globally recognized way. Hence, we ask the European Commission to closely communicate with international like-minded partners.

#### ❖ **Symmetry between EU ETS and CBAM**

As the allocation of free allowances within the EU ETS is gradually decreasing along the full implementation of CBAM, it should be clarified how emissions will be calculated on a product-by-product basis under the CBAM Regulation. This will ensure harmonization between these two systems.

#### ❖ **Carbon pricing in third countries**

Following the full implementation of the CBAM Regulation, equitable treatment of carbon pricing in third countries is one of the most important points from the perspective of international harmonization and WTO compliance.<sup>14</sup> If producers in third countries are to be unfairly charged with carbon prices of both the country of origin and the EU, it would be

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<sup>10</sup> Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, available [here](#).

<sup>11</sup> Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions, available [here](#) ("MRR").

<sup>12</sup> Article 47 of MRR.

<sup>13</sup> See Article 3(3)(b) and Article 5 of the draft CBAM IR.

<sup>14</sup> In particular, the MFN and NT provisions of the GATT 1994.

extremely difficult for these companies to contribute to EU initiatives such as the Green Deal, and there would be further concerns about WTO compliance. We call on both Japanese and EU governments to ensure close communication on the handling of carbon pricing.

❖ **Participation of third countries in expert working groups**

As CBAM is a border adjustment mechanism, the EU will need to communicate with third countries that have a common aim of carbon neutrality. As with the expert committee established prior to the proposal of the draft CBAM IR, we strongly urge that third country governments be allowed to participate as observers in the expert bodies and technical working groups that will be established in the future.

❖ **Expansion of the CBAM scope**

If the product scope of CBAM were to be expanded in the future, the feasibility and burden on industries, including from technological perspectives, should be thoroughly verified and assessed.

JBCE is an organisation working as a bridge between the EU and Japan and contributes to the establishment of a regulatory framework that reduces GHG emissions. We greatly appreciate the opportunity to continuously discuss with the EU institutions.

## ABOUT JBCE

Founded in 1999, Japan Business Council in Europe (JBCE) is a leading European organization representing the interests of 100 multinational companies of Japanese parentage active in Europe. Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, textiles, and glass products.

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