



October 28, 2020

USCIB SUBMISSION TO THE EUROPEAN UNION PUBLIC CONSULTATION ON A PROPOSED CARBON BORDER ADJUSTMENT MECHANISM (CBAM)

The United States Council for International Business (USCIB) welcomes the opportunity to offer comments to the EU public consultation on a proposed Carbon Border Adjustment Mechanism (CBAM). USCIB and its members offer a unique, well-informed and important perspective on the proposal for several reasons:

- USCIB has brought the voice of American business to the UN Framework Convention on Climate Change (UNFCCC) process since 1993, and has standing with the UNFCCC. In addition, it is the American affiliate of the International Chamber of Commerce (ICC), the International Organization of Employers (IOE) and Business at OECD (BIAC). USCIB also is a founding member of the Major Economic Business Forum (BizMEF).
- USCIB supports the UNFCCC and its Paris Agreement. Over decades, USCIB has been regarded as a committed, trusted and responsible actor in the UNFCCC process. It has been a steady advocate for integrated policy solutions to advance energy access and security, innovation, investment in the context of supportive regulatory and market frameworks.
- USCIB represents its members' views on international trade and investment issues, including at the World Trade Organization (WTO). USCIB has recently developed a discussion paper, "Seeking Synergies: Environment, Climate and Trade Policy," on which several points raised below are based, to express support for mutually reinforcing measures and policies that work with the UNFCCC and WTO.
- In USCIB's view, there are numerous synergies, and no inherent contradiction between the aims of the UNFCCC and Paris Agreement and the advancement of open, rules-based multilateral trade. USCIB recognizes the importance and urgency of appropriate policy action to protect the environment – including market- and economic-oriented policy – as an option to address complex transboundary environmental challenges, while ensuring rules-based inclusive trade. We are concerned that the EU CBAM seems to presuppose a contradiction, and in aiming to address it, may inadvertently exacerbate trade tensions and hinder climate action.

Governments and business share an urgent and imperative focus on addressing environmental and climate challenges, which are in many instances transboundary in nature. Both governments and the private sector also understand that advancing rules-based trade is necessary to achieve global and inclusive growth in line with the Sustainable Development Goals (SDGs). It is in that spirit that USCIB members wish to point out priorities, principles and outstanding questions requiring clarification as the EU CBAM proposal is further developed and elaborated.



I. Priority Areas for USCIB // Assessing Opportunities and Impacts, Pursuing Synergies

The EU CBAM proposal is complex, envisioning changes in established policies and institutions, as well as the addition of new requirements and obligations. Rather than address every element of this broad proposal, USCIB comments will address a set of areas which we believe to be most relevant to American companies doing business with and in the EU, across a wide range of sectors.

A. Timing

As countries continue to experience the fall out and economic disruption of the pandemic, we believe governments should proceed cautiously before adding stresses to the global trading system. An ambitious set of measures such as those set out in the EU CBAM will have implications for jobs and livelihoods of its trading partners' citizens, and could aggravate already difficult economic outlooks. For that reason, USCIB would encourage the EU to undertake thorough consultative and data-based economic and trade impact assessments, not only within the common market but as regards developing countries, in order to avoid unintended and counter-productive consequences on livelihoods.

B. WTO compatibility

USCIB appreciates recognition of the importance of ensuring WTO compatibility in developing the EU CBAM proposal. However, concerns remain that where this compatibility is unclear or open to multiple interpretations, there is the potential for disputes that will be time-consuming and delay the positive potential for deployment of innovative technologies and materials, and hinder economic growth and recovery. USCIB emphasizes the need to avoid and head off climate disputes at the WTO that may lead to unpredictable or unintended negative outcomes in environment, climate and trade negotiations. Any further iteration of the CBAM proposal should be weighed against the importance of ensuring an open trade environment.

C. Technical Practicality and Administrative Burdens

USCIB notes the potential for considerable administrative burdens resulting from the EU CBAM. In further developing the proposal, reducing those burdens and the costs they will add to compliance (and thus subtract from resources available for other areas of environmental improvement) should be a priority area for attention.

Uncertainty regarding procedures and timing to resolve outstanding or unclear issues further discourages the most successful engagement of the private sector. The technical practicability of the EU CBAM will be critical to its effectiveness, and credibility. We encourage an emphasis on technically rigorous and globally accepted rules and procedures relating to how products are evaluated for their greenhouse gas impact.

D. Innovation and Deployment of Cleaner, Greener Options

Open trade advances economic prosperity and the SDGs, and it is an essential vehicle to achieve widespread and rapid deployment of climate-related investments and cleaner and more efficient technologies and forms of energy. To meet the commitments and objectives of the SDGs, the United Nations Framework Convention on Climate Change (UNFCCC), and the Paris Agreement, it is clear that more trade will be needed. Yet the EU CBAM seems to envision erecting barriers and obstacles to trade that would complicate and discourage such an



expansion of trade. Moreover, other policy priorities, such as circular economy objectives, could suffer consequences. The concept of circular economy relies on open trade to ensure that materials for refurbishment, reuse and recycling can move through the global marketplace via open trade, which could be endangered if countries pursue “tit-for-tat” retaliation if their products are targeted and disadvantaged by the EU CBAM.

II. Questions for Clarification: Technical Definitions, Alignment with UNFCCC and Paris Agreement

Several important questions remain in connection with the further development of the EU CBAM proposal in 2 areas: technical definitions and definitions and alignment with the UNFCCC.

A. Technical Definitions and Aspects:

USCIB seeks clarification in the following areas at a minimum as consideration is given to further development of the EU CBAM proposal

- Which products will be covered?
- How will the EU CBAM count embodied GHGs of products?
- How will the EU CBAM handle the “same” products produced in different regions?
- What scope of emissions will the EU CBAM cover: those generated inside and/outside “fencelines?” such as transport, those of the finished product and/or the commodities used in its manufacture, indirect emissions, the form of energy used while producing the product?
- At what point does a “product” enter into trade and become eligible for CBAM?
- How will the EU CBAM handle products that are comprised of multiple components/processes, each with their own GHG footprint?
- How will the EU CBAM take into account different national carbon pricing regimes/policies and the multiple carbon prices generated?

B. Alignment with the UNFCCC and Paris Agreement

The UNFCCC and Paris Agreement already envision differentiated actions and responsibilities among countries, reflecting their different capabilities and roles in GHG emissions. In fact, the Paris Agreement is based on diverse nationally determined pledges (NDCs), which all Parties are expected to submit and strengthen periodically. In other words, the concept of an “uneven” playing field is a fundamental element of the Paris Agreement, as agreed by all Parties.

In addition, the negotiations to complete the UNFCCC “Paris Rulebook,” relating to Article 6, are ongoing, and could result in outcomes that are relevant to the market conditions in which companies are engaged in trade and the costs they may face in that connection.

Therefore, USCIB continues to question how to reconcile the EU CBAM’s envisioned unilateral decision-making outside the UNFCCC and Paris Agreement process, that might deem NDCs that are compliant with UNFCCC/Paris Agreement rules to be inadequate. USCIB members wonder how the EU will avoid or resolve this apparent disconnect and its potential to undermine the UNFCCC and Paris Agreement.



III. Principles

In closing, USCIB suggests principles to be followed in the further development of the EU CBAM. The overarching objective in USCIB members' view is to advance mutually reinforcing dialogue and action, inside and outside the UNFCCC, rather than to establish unilateral approaches that seem to compete with multilaterally agreed approaches, including those set out in the UNFCCC and its Paris Agreement.

- **Systems Thinking Approach:** Further development of the EU CBAM should be based on and further cooperation and dialogue across UNFCCC, WTO and UNEP to consider integrated approaches to tackle carbon leakage, while advancing all SDGs, including SDG8
- **Scale:** Potential benefit from trade and environment policies comprising the CBAM proposal will be greatest with participation of all governments concerned. Moving ahead with the CBAM proposal will need to further open dialogue and responsive adjustment of the proposal to views expressed by EU trading partners and their business communities;
- **Multilateral Synergies:** The EU CBAM should pursue positive impact through multilateral synergies rather than unilateral actions;
- The EU CBAM should incentivize **investment and innovation** in clean technologies, and rely on **least trade restrictive** measures which are **WTO compliant**

About USCIB

The United States Council for International Business (USCIB) advances the global interests of American business. It does so through advocacy that calls for an open system of world trade, finance and investment, where business can flourish and contribute to economic growth, human welfare and environmental protection.

USCIB's advocacy spans a broad range of policy issues, leveraging the expertise of our business members and a unique network of global business organizations: the International Chamber of Commerce (ICC), Business at OECD, and the International Organization of Employers (IOE). Through these organizations' official consultative status in major intergovernmental forums, USCIB represents American business positions both to the U.S. government and to the UN system, the OECD and the International Labor Organization, among others.

USCIB policy positions are developed by the membership, encompassing more than 300 global corporations, professional firms and industry associations, who work through committees to provide business input for USCIB to convey to policymakers at home and abroad. USCIB is the National Guarantee Organization for the ATA Carnet, a customs document under which merchandise can be temporarily imported duty-free into the United States and many other countries, and offers a number of other services designed to facilitate cross-border trade and investment.

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