



Legal study demonstrates that an EU ETS incorporating a carbon border adjustment mechanism (CBAM), continued free allowances and a new export adjustment mechanism is WTO consistent

Brussels, 2 July 2021 – A legal study carried out by the law firms [King & Spalding](#) and [Nctm](#) confirms the WTO consistency of an EU ETS that incorporates a CBAM to address carbon leakage on imports, an export adjustment mechanism (CEAM) to address carbon leakage through the loss of carbon controlled exports and the continuation of free allowances. Fully integrated into the EU ETS, free allowances, the CBAM and the CEAM contribute to the EU's GHG limitation and costing objective and cannot be considered as domestic or export subsidies.

“European Industries support the European Union’s goal to fight climate change and make the European Union the most sustainable economy globally. However, to achieve these goals, it is essential for the EU to put in place mechanisms which fully address all aspects of carbon leakage¹ which would be jeopardizing the EU’s climate change goals. For this reason, we have looked at the WTO consistency of an EU ETS which would include both CBAM and free allowances as well as addressing exports,” comments Inès Van Lierde, Chair of AEGIS Europe.

The legal study, commissioned by AEGIS Europe members concluded that an EU ETS – incorporating both free allowances and a CBAM – is a border measure reflecting an internal policy and is WTO compatible² so long as EU products and imports face an equivalent regulatory burden applied on an even-handed basis.

The adoption of “export adjustments” under the EU ETS umbrella – which is imperative to prevent carbon leakage associated with exports from the EU – is also consistent with the WTO Agreement on Subsidies and Countervailing measures. The legal studies highlight that *de facto* export adjustments (extending free allowances to EU production destined for exports) and/or *de jure* export adjustments (granting refund/credit for allowance obligations on exports) should be kept in place until other countries align their climate policy to the EU’s.

AEGIS Europe considers that an EU CBAM must apply to products from all origins. “Double carbon costs” or unjustified export adjustments should be avoided when implementing the overall EU ETS mechanism in order to ensure consistency with WTO rules. Thus, adjustments must be made if a foreign product has been subject to comparable carbon costs and reduction obligations in the place where essential manufacturing occurs.

“These legal studies have shown that an EU ETS, incorporating free allowances, a CBAM and export adjustments, make up a single integrated carbon limitation and reduction regulatory regime and are not a fiscal or financial measure. Therefore, WTO consistency, which rightly remains a major concern for the EU, would be ensured under an EU ETS incorporating both a CBAM and the much needed existing carbon leakage measures,” concludes Van Lierde.

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About AEGIS Europe:

AEGIS Europe is an industry alliance that brings together more than 20 European manufacturing associations from metals and ceramics to energy and transportation industries committed to manufacturing in the EU on a truly level playing field ensured by a rules-based free and fair international trade. Our members account for more than €500 billion in annual turnover, as well as for millions of jobs across the EU.

¹ This refers to situations where compliance costs related to climate policies cause a shift in production and/or consumption (either within the EU or in third countries) resulting in an increase in net global GHG emissions.

² GATT non-discrimination principles (GATT Article III:4 (national treatment) and Article I:1 (MFN)). It can also be justified under GATT Article XX.