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NOTE

From:	Permanent Representatives Committee (Part 2)
To:	Council
Subject:	Regulation establishing a carbon border adjustment mechanism <i>General approach</i>

I. INTRODUCTION

1. In the European Council conclusions of 10 and 11 December 2020¹, the Heads of State or Government of the Member States of the European Union expressed their support for a net reduction in greenhouse gas emissions in the EU of at least 55 % by 2030 compared with 1990 levels, and called on the European Commission to propose a carbon border adjustment mechanism to ensure the environmental integrity of EU policies and avoid carbon leakage in a WTO-compatible way.

¹ EUCO 22/20, paragraphs 14 and 17.

2. Moreover, Article 2 of the European Climate Law² provides that Union-wide greenhouse gas emissions and removals regulated in Union law are to be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and that the Union will aim to achieve negative emissions thereafter. Furthermore, the relevant Union institutions and the Member States are to take the necessary measures at Union and national level, respectively, to enable the collective achievement of this climate-neutrality objective, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective.
3. The Commission proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism³ (CBAM) was published on 14 July 2021 as part of the ‘Fit for 55’ package. This package consists of a set of proposals, and covers a range of policy areas and economic sectors: climate, energy and fuels, transport, buildings, land use and forestry.
4. The principal objective of the Commission proposal for a CBAM Regulation as an environmental measure is to address the risk of carbon leakage caused by asymmetrical climate policies of non-EU countries (where policies applied to fight climate change are less ambitious than those of the EU). Application of the CBAM would prevent the emissions reduction efforts of the Union being offset by increasing emissions outside the Union due to the relocation of production to non-EU countries or increased imports of carbon-intensive products. Without such a mechanism, carbon leakage is likely to result in an overall increase in global emissions and create an unlevel playing field for European industry.

² Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ L 243, 9.7.2021, p. 1.).

³ ST 10871/21 + ADD 1 to 6; (2021/0214 (COD)).

5. The European Economic and Social Committee adopted its opinion on 8 December 2021. The European Parliament will deliver its opinion in the near future. The European Committee of the Regions has not yet taken a position.

II. STATE OF PLAY

6. Work on this proposal started in 2021 in the ad hoc working party. The progress made was described in detail in the progress report endorsed by the ECOFIN Council in December 2021⁴.
7. Since the beginning of 2022, the French Presidency has organised several meetings of the ad hoc working party so that agreement on a general approach can be reached.
8. The technical discussions in the ad hoc working party addressed all of the issues relating to the text of the CBAM Regulation itself and identified compromise proposals, which now appear to be largely settled and form a basis for agreement in the Council.
9. Furthermore, discussions in the ad hoc working party highlighted some issues that are important as regards the implementation of the CBAM, but which fall under other instruments. These issues, which are expected to be dealt with in the coming months, are identified in the annex to ST 6772/22, which was discussed by the Permanent Representatives Committee on 9 March.
10. At the meeting of the Permanent Representatives Committee on 9 March, the Presidency noted the support of a qualified majority of the Member States and concluded that the text would be forwarded to the Council with a view to the adoption of a general approach.

⁴ ST 14574/21.

11. In the text of the draft CBAM Regulation, in order to take into account the position expressed by one Member State, adjustments have been made to recital 52 on the assessment to be carried out by the Commission before 1 January 2026 in order to add a reference to taking into account the social impact of the mechanism as well as its impact on competitiveness in the internal market. The characteristics and constraints of islands must also be taken into account in this context.
12. The Permanent Representatives Committee also supported ST 6772/22. At the request of one Member State, a reference to the parallel setting up of an alliance of countries with carbon pricing instruments or other comparable instruments ('climate club'), in order to promote the implementation of ambitious climate policies in all countries and pave the way for global carbon pricing, has been added in the annex to this document. At the request of a second Member State, the need to seek solutions to deal with the adverse effects of the introduction of the CBAM on exports has also been taken into account.
13. The Permanent Representatives Committee confirmed that work on the elements set out in point 1 of the annex to ST 6772/22 needs to have progressed sufficiently before negotiations with the European Parliament can begin.
14. The compromise set out in ST 7044/22 and the annex to this note take into account the latest adjustments described above.

III. CONCLUSION

15. The Council is invited to:

- (a) reach a general approach on this draft on the basis of the compromise set out in ST 7044/22;
- (b) take note of the annex, since it has been confirmed that work on the elements set out in point 1 of this annex needs to have progressed sufficiently before negotiations with the European Parliament can begin.

Annex

In relation to the general approach on the proposal for a Regulation on the carbon border adjustment mechanism (CBAM), the following points were noted.

1. The following two issues, which are not covered by the CBAM Regulation, are of significance to the implementation of the CBAM:
 - (a) The rate at which the obligation to surrender CBAM certificates becomes more extensive under Article 31 of the draft CBAM Regulation is determined by the rate at which free allowances are allocated to industry sectors covered by the CBAM, established by the EU Emissions Trading System Directive;
 - (b) The issue of limiting potential carbon leakage from exports calls for appropriate solutions to ensure economic efficiency, environmental integrity and WTO compatibility.
2. Furthermore, it is recalled that the Commission has put forward proposals for own resources based inter alia on revenue from the sale of CBAM certificates. These proposals are being considered with a view to their deliberation by 1 July 2022, in accordance with the Interinstitutional Agreement of 16 December 2020.
3. Lastly, it is noted that the establishment of the CBAM calls for the development of bilateral, multilateral and international cooperation with third countries, including through the parallel setting up of an alliance of countries with carbon pricing instruments or other comparable instruments ('climate club'), in order to promote the implementation of ambitious climate policies in all countries and pave the way for global carbon pricing.