



FEPORT reply to the public consultation regarding the Commission proposal for a Regulation establishing a Carbon Border Adjustment Mechanism (CBAM)

Introduction

FEPORT is the European association which represents the interests of 1225 private companies and terminals performing cargo handling and logistics related activities in the seaports of the EU.

FEPORT fully subscribes to the objectives of the Green Deal and welcomes the opportunity to provide comments regarding the EU Commission proposal for a Regulation establishing a *Carbon Border Adjustment Mechanism*.

FEPORT members regard the “Fit for 55” package as a necessary step to take concrete legislative measures in order to turn the EU’s ambitious climate goals for 2030 and 2050 into action. The CBAM proposal is important as it addresses the risk of economic activities moving elsewhere as a consequence of the increasing EU climate targets.

FEPORT has been a historical supporter of international and European climate targets and many of its members have already met several years ago the emission reduction targets set for 2020.

FEPORT subscribes to the rationale behind CBAM, i.e. to prevent carbon leakage, but would like to share some views on the below points. For private port companies and terminals, it is important that the below issues are clarified, as CBAM could have a significant impact on their activities and on administrative and customs related procedures in ports. Furthermore, cargo flows to European ports as well as global trade patterns could be affected.

1. The introduction of CBAM must not lead to trade disputes

It should at all costs be prevented that the introduction of a Carbon Border Adjustment Mechanism leads to an increase in trade disputes. The set up of CBAM should therefore be accompanied by intense deliberations with the EU’s main trading partners. At the minimum, the EU should ensure that its climate change mitigation measures such as CBAM are WTO compliant.

FEPORT welcomes that the CBAM proposal already alludes to the importance of WTO compliance, but would like the final version of the Regulation to give more assurances with respect to how the EU will seek to mitigate the risks of trade disputes.

For the companies represented by FEPORT, which employ over 390.000 workers, this is a crucial issue as their business model is very much dependent on the seamless and frictionless functioning of international trade.

2. Prevent that cargo flows are diverted away from EU ports or that intra-EU competition is negatively affected

The “Fit for 55” package contains two proposals – FuelEU Maritime and the proposed revised version of the ETS Directive - that introduce the “polluter pays” principle to maritime transport. This is a timely development as it is crucial that every sector contributes equally to the realization of the EU’s climate goals.

However, both proposals could possibly contribute to the shifting of cargo away from EU ports. According to the proposal for a revised ETS Directive, emission trading will apply to 50% of emissions during extra-EU voyages, while the FuelEU Maritime Regulation will also cover half of the energy used on extra-EU voyages. These measures will increase the transportation costs of shipping, which will make it less attractive to import goods to the EU. This effect could be further aggravated with the introduction of a carbon price via CBAM.

FEPORT agrees with the above proposals as they introduce the “polluter pays principle” to shipping and prevent carbon leakage. However, possible adverse impacts on the competitiveness of EU terminals and ports should not be overlooked as EU ports do not only compete within the EU but also with their non-EU counterparts, for example, those located in the Mediterranean and on the other side of the Channel.

In this respect, there is currently a high risk for EU ports to lose their competitive advantage in the aftermath of Brexit, with the UK having announced a “freeport initiative”, which could entail a combination of tax breaks, subsidies and customs facilitations for the companies established in these freeports.

It is still hard to say what will be the exact implications of CBAM, FuelEU Maritime and the EU ETS. Yet, EU and national legislators should also integrate in their reasoning the risks and potential negative impacts on competitiveness that may affect EU ports. The effects of a combined adoption of the above proposals as well as Brexit should be carefully assessed to prevent a shift of cargo flows from Northern ports to the Southern ones or vice-versa, or other distortions of intra-EU competition.

FEPORT calls on the European Union to address and remedy any such distortions of the competitive environment, in the same way the EU intends to protect certain industries through a CBAM.

3. Minimize impact on terminal operators when it comes to customs procedures

FEPOR T understands that CBAM will function through a similar logic as the EU ETS system i.e., importers will need to buy and surrender “CBAM certificates” based on the embedded emissions of their imports. In view of reducing the administrative burden of the declarant, FEPOR T welcomes that article 22.1 allows for the CBAM certificates to be surrendered once a year by 31 May, while declarants should submit a “CBAM report” on a quarterly basis.¹

For terminal operators, such a certificate-based system is preferable over a mechanism where the customs duties would be increased to cover the emissions of the imported goods. The option of customs duties would have the disadvantage of increasing the reference amount of the guarantees terminal operators need to provide as operators of temporary storage facilities for potential or existing customs debts in line with article 89 of Regulation (EU) No 952/2013 as this reference amount is linked to the amount of customs duties. This would mean that terminal operators will need to make increasing funds available to cover this guarantee.

In line with the above, FEPOR T is also satisfied that article 17.6 of the Commission proposal only requires the declarant to pay a guarantee that will be fixed at the maximum amount of the value of the CBAM certificates he has to surrender. It should be absolutely avoided that terminal operators/operators of temporary storage facilities would need to pay a guarantee as they are not responsible and aware of the embedded emissions of the goods they handle.

In the same vein, terminal operators should not be adversely affected by possible changes to the risk criteria and standards pursuant to article 50 of the UCC as a consequence of the incorporation of CBAM related risks into the UCC risk criteria as evoked by article 25.3 of the EU Commission’s CBAM proposal. The reason being that terminal operators should not be held accountable for the emissions of the goods they handle and how declarants report about this.

4. Concluding remarks

FEPOR T welcomes the EU Commission proposal for a Carbon Border Adjustment Mechanism since it is crucial to address the risk of carbon leakage as the EU increases its climate ambition.

However, possible negative impacts on the competitiveness of EU ports and terminals should be carefully assessed, especially in the context of Brexit and other legislative proposals of the Fit for 55 package that could produce similar effects.

To prevent cargo diversion from EU ports, EU policies should focus on rewarding shipping companies that call EU ports.

Besides, the introduction of a Carbon Border Adjustment Mechanism should not lead to an increased administrative burden on terminal operators when it comes to customs procedures and carbon related declarations. The main responsibility in this regard should lie on the declarant.

¹ According to article 35.1-2 of the EU Commission proposal, the CBAM report should be submitted to the relevant Member State competent authority and should contain info on, for example, the quantity per type of goods, the actual total embedded direct emissions and the actual total embedded indirect emissions.