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Object: Unintended consequences of CBAM Reporting requirements on EU and EFTA installations

Dear Mr Thomas,

I am writing on behalf of European Aluminium, the industry association representing the entire European aluminium value chain. As you are aware, European Aluminium has been an active member of and contributed to the workings of the EU's Carbon Border Adjustment Mechanism (CBAM) Expert Group in charge of developing the monitoring, reporting and verification (MRV) rules for the transitional period.

In this forum, we have raised a key concern related to the apparent requirement for importers to also report emissions data of precursors of EU/EFTA origin. At the last Expert Group meeting on December 4th, European Aluminium asked the EU Commission about this requirement: DG TAXUD's first answer was that there was no reporting requirement, but then UBA rectified, confirming that they had to be reported (in line with the Q&A documents published on the EU Commission's website).

From discussions with our membership across the entire value chain, we see that such a requirement results in an immense additional administrative burden, potentially double taxation. This is because:

- **European installations under the EU ETS system exporting goods outside Europe, that are then processed and re-imported as further complex goods listed in Annex I of the CBAM Regulation, are required to double report emissions data already provided under the ETS system to their suppliers in third countries.** They report first to their national authorities in charge of ETS monitoring and verification, and then via the CBAM communication template, upon request by importers who face the reporting obligation under the CBAM. Moreover, the complexity of providing EU ETS carbon pricing data related to Free Allocation adds to the administrative burden faced by European industry from reporting on the embedded emissions of the EU/EFTA precursors they consumed in the process.

- **The activity levels assigned for the monitoring of these emissions, timelines, templates and cost calculation methodologies to report via the ETS and CBAM templates are not aligned.** EU/EFTA ETS installations may need to organise and pay for two sets of verifications, one for EU ETS and one for CBAM purposes. Moreover:

    - Our membership is experiencing requests for emissions (and carbon pricing) data for EU/EFTA goods that *may* in future possibly be re-imported back into the EU as aluminium product under the scope of CBAM. Such requests further increase the compliance burden.

    - Aluminium producing Installations in Europe currently not under the ETS Scope (e.g. recycling units below a certain size for example), which pay no carbon cost today, may end up as CBAM precursors in imported

products, thereby generating new reporting obligations which did not exist before, thus also increasing administrative burden.

- **There is a mismatch of EU ETS prices and CBAM costs, which leads to double taxation.** We understand that the intention is that the end financial impact would be 0 on the basis that the EU ETS price paid at the time of the production of the EU/EFTA precursor can be deducted from the CBAM charge at the EU border if the precursor is re-imported into the EU as part of a CBAM product further down the supply chain. However, this is very unlikely in practice because the EU ETS price when the precursor is produced is likely to be lower than the EU ETS price (on which CBAM certificate price will be based) at the later date of re-entry/import into the EU. It is generally expected that EU ETS prices will increase over time due to various policy interventions and tightening of the market. This leads to a situation of a double taxation. Furthermore, ETS cost for precursors will not always be known, or made available, leading to additional burden.

- **Competition law concerns & Trade complexity.** Under point 6.10 in the Guidance for non-EU installation it is stated that the carbon price to report should be not at individual company level, but country level. Therefore, for EU/EFTA precursor materials under the EU ETS, there should be one average annual price standard value. If it would rather be at installation level – as apparently requested by the template - the disclosure of the actual price paid could be sensitive under competition law. This is because the price paid for the needed CO2 certificates of a production year is determined by the individual hedging strategy of the company, and timing of purchases. Furthermore, materials originating in the EU/EFTA or having brought into free circulation are often traded through merchants. Information of the embedded emissions and paid ETS is currently not available. Adding such information would increase trade complexity.

- **EU/EFTA based suppliers providing precursor material to European installations are also required to double report.** This has a major impact on the entire supply chain: If the EU/EFTA based suppliers to European installations do in turn also have EU/EFTA based suppliers providing CBAM-relevant precursors, the double-reporting continuous even further down the supply chain.

It is our view that the goal of CBAM is to address the risk of carbon leakage. The reporting of such EU & EFTA emissions does not contribute to this goal, and should consequently not be made a requirement, also in view in view of the upcoming work on the methodology for assigning a CBAM cost to imports during the definitive period.

Furthermore, Recital 16 of the CBAM regulation states that the Regulation "*should apply to goods imported into the customs territory of the Union from third countries, except where their production has already been subject to the EU ETS through its application to third countries or territories or to a carbon pricing system that is fully linked with the EU ETS*.

Therefore, implementing a reporting obligation of emission data for precursors of EU/EFTA emission origin is in contradiction to this statement. The unintended consequence of this misalignment is the creation of obligations for double reporting and double taxation, undermining the efficiency and fairness of the CBAM.

In light of these challenges, we would propose as solutions:

- **A full exemption for European installations from the reporting of embedded emissions related to precursors of EU/EFTA origin under the CBAM:** This exemption would alleviate the burden on European producers and contribute to a more streamlined and effective implementation of CBAM;

- Alternatively, simplified reporting requirements, a separate template or further guidance on how to address all the situations above should be urgently provided by the European Commission to European producers and importers.

- **One possible solution could be to have importers declare precursors originating the EU & EFTA in volume but excluding emissions or energy consumption information.** In effect, CBAM then would only be applicable on additional emissions not formerly recognized by the EU ETS. This would be similar to a VAT declaration process, allowing for transparency on imports while providing a practical system to prevent circumvention.

We believe that these adjustments are essential to the success and fairness of the CBAM. Harmonising reporting practices, and addressing such unintended consequences will contribute to the achievement of the European Union's climate objectives while minimising disruptions to the operations of businesses within the EU.

We appreciate your attention to these matters and look forward to continued collaboration with DG TAXUD and other European Commission services to ensure the success of CBAM.

We remain available to further discuss these matters in more detail with you and the Commission Services at your earliest convenience.

Sincerely,

Paul Voss

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