

# The Green Deal at the Border: Public Consultation on the EU Carbon Border Adjustment Mechanism Launched

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Environmental/Public Policy

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Last week, the European Commission launched a [public consultation](#) on the possible adoption of a new EU Carbon Border Adjustment Mechanism (“CBAM”). This consultation is yet another of the initiatives that the Commission is taking to roll out its ambitious [European Green Deal](#) (for a recent overview webinar [see here](#)). Manufacturers in virtually all industrial sectors and their trade associations would be wise to assess the potential impact of the CBAM on the products they market in Europe and to consider participating in the public consultation and comment process.

Europe’s discussions on the introduction of a CBAM are at the crossroads of two priority regulatory areas for the EU. On the one hand, the CBAM initiative is part of the Green Deal, which has now become the main driver for the EU’s recovery plan in response to the COVID-19 crisis. On the other hand, the CBAM fits with the EU’s industrial strategic objective to “level the playing field” between companies in the EU and those competing from elsewhere. This agenda for a “level playing field” finds additional manifestations in the European Commission’s recent announcement on the screening of [foreign direct investment](#) and [foreign subsidies](#).

The European Commission’s proposed goal that the EU achieves climate neutrality by 2050 has reinforced the position of those advocating for the need to adopt a CBAM. Supporters of the CBAM claim that it will ensure that all goods consumed in the EU/EEA, whether imported or produced domestically, are treated the same way and will push other countries across the world to also decarbonize. In line with this, in its [Communication](#) on a European Green Deal in December 2019, the European Commission announced that “*should differences in levels of ambition worldwide persist, as the EU increases its climate ambition, the Commission will propose a carbon border adjustment mechanism, for selected sectors, to reduce the risk of carbon leakage. This would ensure that the price of imports reflect more accurately their carbon content.*” The Commission’s [Inception Impact Assessment](#) on the Adjustment Mechanism also stated that the mechanism “*would ensure that the price of imports reflect more accurately their carbon content. The measure would need to be designed to comply with World Trade Organization rules and other international obligations of the EU.*”

Half a year and a pandemic after the European Commission's announcement of its Green Deal, the EU and many of its Member States appear firmly committed to adopting some sort of CBAM. Indeed, the fact that the CBAM sits at the crossroads of the Green Deal and the EU's level playing field strategy strongly suggests that the Commission and later the European Parliament and Council will move swiftly on this legislative file. The European Parliament has already been [working on its own initiative](#), and the European Commission is expected to present a formal legislative proposal to the Parliament and Council in 2021.

In principle, the CBAM could cover all sectors subject to the EU's [Emissions Trading System](#) ("ETS"). However, at this stage, the thinking within the European Commission seems to be converging initially on only subjecting the steel and cement industries to the CBAM. Steel and cement products are energy intensive in their production and their low-cost, heavy, and bulky nature means that their transport is, in terms of relative price, also often energy intensive. This could be why the Commission may be considering these products as particularly suited for the CBAM, serving also as a trial run for potential extensions to other products at a later stage. This thinking within the Commission is, of course, subject to the results of the public consultation and other exchanges over the coming months.

The Commission's consultation on the CBAM raises important climate, international trade, development, and economic issues. To list but a few:

- Should the adjustment mechanism target specific industries (g., cement and steel), or instead apply horizontally across all industrial production?
- What will be the specific design of any CBAM? Would it strictly apply as a tax at the border, or would it be folded into the existing ETS regime, perhaps also creating new obligations for economic activity within the EU?
- How will the EU be able to develop an objective methodology to calculate the carbon footprint of a product?
- To what extent should the existence of an emissions trading scheme similar to the EU's ETS in the product's country-of-origin exempt the imported product from any border adjustment? To which minimum standards should these non-EU emissions trading schemes be subject?
- Should the introduction of a CBAM mean the complete end of free ETS allowances for industrial sectors suffering from "carbon leakage"?
- What design would be necessary to ensure the CBAM's compliance with the EU's international economic law obligations, particularly those of the World Trade Organization, bilateral trade agreements between the EU and third countries, and multilateral environmental agreements that call for "common but differentiated responsibilities" in the fight against climate change?

The consultation's specifically listed questions touch upon the general issues outlined above and cover four principal areas:

- Justification and objectives (*g.*, is the Green Deal going to increase “carbon leakage”?).
- Design and coverage (*g.*, the relationship with the ETS).
- Specific implementation issues (*g.*, how to calculate and verify the carbon content of imported products).
- Potential impacts on the economy, the environment, and other social objectives (*g.*, changes to the costs of products covering basic needs).

Interested parties may submit comments to the specific questions in these areas as well as more general arguments on the CBAM until October 28, 2020.

The Covington team is advising clients on the CBAM and its implications, how to respond to the Commission's consultation and the EU's follow up legislative initiative, and the EU Green Deal in general.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Environmental and Public Policy practices:

<b><u>Cándido García Molyneux</u></b>	+32 2 549 52 61	<a href="mailto:cgarciamolyneux@cov.com">cgarciamolyneux@cov.com</a>
<b><u>Péter Balás</u></b>	+32 2 549 5230	<a href="mailto:pbalas@cov.com">pbalas@cov.com</a>
<b><u>Sinéad Oryszczuk</u></b>	+44 20 7067 2141	<a href="mailto:soryszczuk@cov.com">soryszczuk@cov.com</a>
<b><u>Paul Mertenskötter</u></b>	+32 2 545 7517	<a href="mailto:pmertenskoetter@cov.com">pmertenskoetter@cov.com</a>

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