

FIT FOR 55 CLIMATE LEGISLATIVE PACKAGE

Carbon Border Adjustment Mechanism (CBAM)

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a carbon border adjustment mechanism- COM/2021/564 final

SEA Europe position paper (Final)

Brussels, 02 December 2021

1. Introduction

SEA Europe – representing European Shipyards and Maritime Equipment industry (hereafter “Maritime Technology Sector”) – supports the objective of preventing carbon leakage under the proposed Carbon Border Adjustment Mechanism (CBAM). At the same time, however, **SEA Europe is highly concerned that a CBAM imposed on the import of products used in shipbuilding (such as steel, aluminium and electricity) will have unintended severe negative consequences for the competitiveness of Europe’s Maritime Technology Sector**, particularly when combined with the (parallel) “phase-out” of free allowances in Europe.

These unintended severe adverse consequences would come on top of Asia’s well-known competitive distortions and trade barriers from which Europe’s maritime technology sector has been suffering from for decades and against which Europe has been unable to defend itself due to a unique legal gap in trade defence instruments. **With Covid-19, Asia’s competitive distortions have only but aggravated, to the detriment of Europe’s maritime technology sector.** Almost all recent orders for newbuilt vessels, including for green vessels, have been placed in South Korea or China, also by European shipowners, due to low prices offered by Asian yards, benefitting from past and present state support. **Hence, any additional competitive distortions will no doubt result in a loss of the remaining part of Europe’s maritime technology sector, at a time that Europe aims at implementing the European Green Deal, also for the waterborne (transport) sector.**

Therefore, **SEA Europe calls for an equitable, predictable and burdenless CBAM, capable of achieving Europe’s European Green Deal goals, without any adverse impact on the maritime technology sector.** At the same time, **SEA Europe calls for prompt sectoral measures for the maritime technology sector**, based on the logic of CBAM, not only to protect the sector effectively but also to allow Europe to secure a competitive, sustainable and innovative maritime technology industry, to create prosperity and jobs, and to safeguard Europe’s maritime strategic autonomy.

2. SEA Europe’s main concerns with the CBAM proposal

SEA Europe’s main concerns on the CBAM proposal are as follows:

- **Ships built in the EU will suffer from a competitive disadvantage when compared with similar ships built outside the EU.** There will indeed be additional costs from higher steel costs (subject to ETS, if produced in EU, or to CBAM, if imported), whereas foreign competitors (e.g., Asian shipbuilding nations) will not have to pay for their GHG emissions and still benefit from domestic subsidies and/or other support measures.

- For the products in the CBAM scope, the **progressive phase-out of free allowances will not only lead to an increased cost of these products but also of all downstream products, when produced in EU**. E.g., the phase-out of ETS free allowances for steel production in Europe may lead to more expensive European steel products.
- **Import of (plain) steel in Europe will become more expensive because of CBAM** and will create strong administrative burdens for downstream steel-processing producers (such as shipyards).

For ships destined for the internal market, the following scenarios may then occur:

- Ships built in Europe with steel (or aluminium) produced or imported in Europe will become even more expensive than today (and more expensive than similar ships built in Asia) as a knock-on effect of the potential EU steel (or aluminium) cost increases resulting by the phase-out of ETS free allowances for EU steel (or aluminium) producers and CBAM.
- A ship's hull produced outside Europe with non-European steel or aluminium and imported into Europe will be cheaper than one built in Europe as this steel product (the hull) will not be subject to CBAM when imported.
- A foreign built ship consisting of foreign produced steel will remain the cheapest option, also for EU shipowners, as this scenario falls outside CBAM.

As a result, CBAM would lead to a **double negative incentive**, notably materials produced in the EU (e.g., steel) will become more expensive than those produced in foreign countries, whilst activities such as ship hull construction will likely be outsourced to foreign countries for cost reasons. **Hence, whilst CBAM is designed to create a level playing field amongst upstream producers, it may do the opposite for downstream industries, such as shipbuilding.**

3. SEA Europe's recommendations

To avoid these anticipated negative effects, SEA Europe recommends some mitigating measures, i.e.:

- **Maintain the free allowances' system under the EU ETS well beyond 2026** to safeguard the competitiveness of the affected European raw materials' producers (upstream) as well as the users of these raw materials (downstream), e.g., European shipbuilders and equipment manufacturers. In this respect, SEA Europe refers to a [legal study](#) commissioned by AEGIS Europe, which concluded that an EU ETS, incorporating both free allowances and a CBAM, is WTO compatible¹.
- **Reinvest CBAM revenues into the affected European downstream sectors relying importantly on uses of steel or aluminium, including Europe's maritime technology sector**, proportionately to the "financial adjustment" amounts eventually paid. As the European Commission has repeatedly asserted that the CBAM is an environmental measure not motivated to raise revenues for the EU budget, it would be well advised to earmark the collected revenues and not let them become an own resource in the EU general budget. Hence, the legislation should dedicate CBAM revenues to support (e.g., via dedicated funds) sectoral decarbonization projects, the deployment of low-carbon technologies and the environmental enhancement of production processes.

¹ AEGIS Europe legal study "Consistency of an EU carbon border adjustment mechanism ("CBAM") with World Trade Organization ("WTO") rules" accessible [here](#). AEGIS Europe considers that even if an EU ETS – incorporating both free allowances and a CBAM – would be considered by a Panel as WTO inconsistent, such a system can still be justified under GATT Article XX since it would fall under the GATT general exceptions relating to the conservation of exhaustible natural resources (GATT Article XX(g)) or to the necessity to protect human, animal or plant life or health (GATT Article XX(b)). Moreover, it would not arbitrarily or unjustifiably discriminate between countries where the same conditions prevail or represent a disguised restriction on international trade.

- **Finished products such as ships² should be included in the CBAM soonest** to avoid a competitive disadvantage for the EU (maritime technology) industry, both on the export market and in the internal market. In this regard, consideration should be given to developing sectoral CBAM measures for ships destined for operation in the EU as a possible measure to protect European shipyards and equipment manufacturers from Asia's unfair competition. The shipbuilding sector's specificities will need to be considered carefully to address the fact that – contrary to most other industrial goods – ships are normally not “imported” in the sense of “released for free circulation”³ in the EU's customs territory.
- **CBAM should, furthermore, not negatively affect the competitiveness of EU products (including e.g. ships) on the world markets. To this end, export adjustments – in the form of reimbursements or rebates - should be granted to EU producers affected by CBAM selling their (carbon-limited) products to export markets, taking due account of sectoral specificities.**
- **CBAM administrative burden for importers should be finally kept to a minimum.**

Consistently with the European Green Deal ambition, the goal of the “Fit-for-55”, including an introduction of a CBAM, should not only aim at combatting climate change but it should equally be a strategy in support of the growth of the entire EU economy. Therefore, the current CBAM proposal should be reviewed in order to address the anticipated shift of carbon leakage risks to downstream value chains, with a negative impact on the competitiveness of Europe's maritime technology industry. Only in this way, the transformation to climate-friendly products and production processes – which is supported by SEA Europe – can succeed without any significant losses to the competitiveness of Europe's (maritime technology) industry.

4. Conclusions

In sum:

- **SEA Europe supports the policy goals of CBAM.**
- **However, SEA Europe is worried about the unintended adverse effects of CBAM on the competitiveness of Europe's maritime technology sector:** whilst CBAM is designed to create a level playing field, it may do the opposite for shipbuilding.
- **In the absence of the above-mentioned mitigating measures as well as sectoral support policies, there is a serious risk that CBAM's twin objective of levelling the playing field and combating carbon leakage *upstream* will lead to an uneven playing field *downstream* in sectors such as the maritime technology sector as well as unintended adverse consequences (e.g., the outsourcing of ship hull construction to foreign countries), at a time that this sector is already heavily affected by unfair competition from Asia, which has only but aggravated with Covid-19.**

Background Note:

SEA Europe represents close to 100% of the European shipbuilding industry in 16 nations, encompassing the production, maintenance, repair and conversion of all types of ships and floating structures, commercial as well as naval, including the full supply chain with the various producers of maritime systems, equipment material, and services. For further information please visit www.seaeurope.eu or contact: Christophe Tytgat, Secretary General ct@seaeurope.eu Tel: +32 (0)2.230.32.87

² E.g. NACE C30.1.1 – “Building of ships and floating structures”

³ The CBAM draft Regulation proposes to apply to goods as listed in Annex I, originating in a third country, when those goods are imported into the customs territory of the Union. Article 3 of the CBAM draft Regulation defines ‘importation’ as “the release for free circulation provided for in Article 201 of Regulation (EU) No 952/2013”. Goods “released for free circulation” means goods that permanently enter the EU customs territory. However, due to the nature of the sale and the use of ships, they are rarely if ever “released for free circulation” as ships are generally put into service upon delivery at the yard, and neither physical delivery, customs clearance, nor even registration, take place in the country where the buyer is established.