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**Committee on Market Access
Council for Trade in Goods**

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EUROPEAN UNION – PROPOSED CARBON BORDER ADJUSTMENT MECHANISM (CBAM)

QUESTIONS FROM THE RUSSIAN FEDERATION

The following communication, dated 7 October 2021, is being circulated at the request of the delegation of the Russian Federation.

1 RELATIONSHIP WITH INTERNATIONAL CLIMATE AGREEMENTS AND WTO AGREEMENTS

1.1 Set of Questions 1

1. On what specific provisions of international climate agreements does the EU base its CBAM described in the European Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism, including its Annexes¹ (hereafter – "Proposal")?

2. Could the EU explain its interpretation of "the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances"?

1.2 Question 2

In designing the CBAM, what specific provisions of the WTO Agreements did the EU take into account to ensure the EU's compliance with its obligations and commitments in the WTO?

2 PREVENTION OF THE RISK OF CARBON LEAKAGE

2.1 Set of Questions 3

Article 1 of the Proposal states that this Regulation establishes the CBAM "in order to prevent the risk of carbon leakage". Could the EU provide answers to the following questions:

- a) Whether the term "carbon leakage" is defined in EU law? Please describe the meaning of this term and provide references to specific provisions in EU law.
- b) What causes "carbon leakage"? Please provide references to scientific analysis.
- c) Whether the EU assessed the risk of "carbon leakage" before the adoption of Directive 2003/87/EC? Please provide references to this risk assessment and describe its result.
- d) Whether the EU assessed the risk of "carbon leakage" prior to designing the CBAM? Please provide references to this risk assessment and describe its result.

¹ European Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism, 14.7.2021, COM(2021) 564 final.

3 PROCEDURES FOR THE IMPORTATION OF COVERED GOODS

3.1 Set of Questions 4

Article 4 of the Proposal contains the requirement that goods listed in Annex 1 (certain CN codes of cement, electricity, fertilizers, iron and steel, and aluminum) "shall only be imported into the customs territory of the Union by a declarant that is authorised by the competent authority" of a Member State of the EU. Article 25 of the Proposal establishes procedures at the EU's border and requires that "[t]he customs authorities shall not allow the importation of goods unless the declarant is authorised by a competent authority at the latest at the release for free circulation of the goods". In its turn, Article 17.9 of the Proposal states that "[t]he competent authority shall revoke the authorization for a declarant who no longer meets the conditions laid down in paragraph 1, or who fails to cooperate with that authority".

1. Could the EU explain from what date the importation of goods listed in Annex 1 by a non-authorised declarant will be prohibited?
2. Could the EU provide an exhaustive list of reasons for revoking the authorization for a declarant and explain the rationale for each of them.

3.2 Question 5

Chapter X of the Proposal contains transitional provisions on importation of goods listed in Annex I to the Proposal. In particular, according to Article 33.1, "[a] declarant importing goods shall be obliged to fulfil a reporting obligation as set out in Article 35".

Could the EU confirm that the Proposal envisages that from 1 January 2023 to 31 December 2025 the importation of goods listed in Annex 1 will be conditioned by two requirements: (i) a declarant is established in the EU and has an Economic Operators Registration and Identification number; (ii) a declarant's obligation to submit a quarterly CBAM report within a month after the end of each quarter?

3.3 Set of Questions 6

Article 35.2 of the Proposal states what information shall be included in the CBAM report. The Proposal requires "a declarant importing goods" to provide, in particular, "the actual total embedded emissions ... calculated in accordance with the method set out in Annex III", "the actual total embedded indirect emissions" and "the carbon price due in a country of origin for the embedded emissions in the imported goods, which is not subject to an export rebate or other form of compensation on exportation". Could the EU respond to the following questions:

Does Article 35.2 contain an exhaustive list of required information?

- a) What specific "method set out in Annex III" shall be used for each category of covered goods (simple goods, complex goods, electrical energy)?
- b) Will verification requirements apply during the transition period?
- c) Why does the EU require information on "the actual total embedded indirect emissions"?
- d) Is it a correct understanding that under the phrase "the carbon price due in a country of origin for the embedded emissions in the imported goods, which is not subject to an export rebate or other form of compensation on exportation", the EU means the actually paid carbon price in the country of origin of the covered goods?

4 METHODS FOR CALCULATING EMBEDDED EMISSIONS AND CARBON PRICES UNDER THE EU ETS AND THE PROPOSAL

4.1 Set of Questions 7

According to Article 1.2 of the Proposal, "[t]he CBAM complements the system established for greenhouse gas emission allowance trading within the Union by Directive 2003/87/EC by applying an equivalent set of rules to imports into the customs territory of the Union of goods referred to in Article 2".

With respect to methods for calculating embedded emissions, could the EU explain:

- a) What methods and equations are used for calculating embedded emissions in goods, which are covered by the Proposal, under the EU Emissions Trading System (EU ETS)?
- b) Does the EU differentiate between "simple goods" and "complex goods" and how are these terms defined under the EU ETS?
- c) Does the EU ETS establish the same rules for determination of actual direct embedded emissions for complex goods as described in para. 3 of Annex III of the Proposal? In particular, does the EU require that domestic producers of "complex goods" use in their calculations "the value of emissions resulting from the installation where the input material was produced" and "that installation's data can be adequately measured"?
- d) Does the EU ETS establish "default values" for embedded emissions and what are these values?
- e) Why does the Proposal require that "the default values shall be based on the average emission intensity of the 10 per cent worst performing EU installations for that type of goods" (paragraph 4.1 of Annex III to the Proposal) and what is the EU's justification for such a requirement?
- f) What does the EU understand under the wording "that type of goods" in connection with CN codes and description of goods covered in Annex I to the Proposal?

4.2 Set of Questions 8

With respect to the EU ETS, could the EU describe:

- a) What are the main principles of the EU ETS and how the EU regulates carbon pricing under the EU ETS?
- b) What is the total number of general allowances to be issued in each year in the period 2021-2035?
- c) How many of general allowances are to be sold in each year in the period 2021-2035?
- d) How many of general allowances are to be allocated for free in each year in the period 2021-2035 and for what goods listed in Annex 1 to the Proposal?
- e) How many installations are excluded or exempted from the EU ETS? What are they and what goods are produced by these installations?

4.3 Set of Questions 9

According to Article 21 of the Proposal "[t]he Commission shall calculate the price of CBAM certificates as the average price of the closing prices of EU ETS allowances on the common auction platform in accordance with the procedures laid down in Commission Regulation (EU) No 1031/2010 for each calendar week". Could the EU explain:

- a) Whether "the common auction platform" is the only platform that will be used for selling emission allowances in the EU?
- b) What is the price difference in emission allowances auctions at EEX held: (i) on behalf of Poland, (ii) on behalf of Germany and (iii) on behalf of 25 EU Member States and 3 EEA EFTA States as well as for the Innovation Fund and the Modernisation Fund?
- c) What prices and fees/charges are covered by the term "the closing prices of EU ETS allowance"? Please indicate amounts of fees and charges, if any.
- d) Whether it is possible to use the previous day prices for selling the CBAM certificate and, if not, why not?

4.4 Set of Questions 10

In the document accompanying the Proposal, the European Commission claims that the "CBAM is designed with a view to mirror the EU emission trading system".

1. Could the EU explain what elements of the EU ETS were reflected in the CBAM?

2. Could the EU confirm that the following elements were "mirrored": (i) the price of the CBAM certificates and the price of the EU ETS allowances; (ii) the coverage of goods and greenhouse gases; (iii) exclusions and exceptions for covered goods, production methods and certain installations; (iv) methods for calculating embedded emissions for each category of covered goods; (v) reporting

obligations; (vi) book-keeping requirements; (vii) verification requirements; (viii) reasons for penalties and their amounts; (ix) procedures to address circumvention?

5 CARBON PRICE PAID IN A COUNTRY OF ORIGIN

5.1 Question 11

Article 2.12 of the Proposal states that the EU "may conclude agreements with third countries with a view to take account of carbon pricing mechanisms in these countries in the application of Article 9". Could the EU explain whether the conclusion of such agreements will be subjected to any conditions? If yes, what are these conditions?

5.2 Set of Questions 12

Article 9.1 of the Proposal stipulates that "an authorised declarant may claim in its CBAM declaration a reduction in the number of CBAM certificates to be surrendered in order for the carbon price paid in the country of origin for the declared embedded emissions to be taken into account". Could the EU respond to the following questions:

- a) What provision of the Proposal requires the competent authority to take into account the carbon price paid in the country of origin?
- b) Could the EU confirm that the total amount of the CBAM certificates and, therefore, amount of carbon price to be paid in relation to the importation of products would be reduced?
- c) Could the EU provide an exhaustive list of conditions for the reduction in the number of CBAM certificates to be surrendered?
- d) Should the third country have a specific agreement with the EU for a carbon price paid in that country to be accepted by the competent authority?

5.3 Set of Questions 13

Articles 9.2, 9.4 and 35.2(d) of the Proposals refer to the condition for acceptance of the carbon price paid in the country of origin, namely that carbon price "should not have been subject to an export rebate or any other form of compensation on exportation". In contrast, according to Article 2.5(b) one of the conditions for exclusion of a country from the CBAM is that "the price paid in the country where the goods are originating in is effectively charged on those goods without any rebates beyond those also applied in the EU ETS". Could the EU respond to the following questions:

- a) With respect to "export rebates and any other form of compensation on exportation", could the EU explain what rebates and compensations are applied in the EU ETS and in the countries which the EU listed in Section A of Annex II to the Proposal?
- b) How does the EU explain differences in the conditions for acceptance of the carbon price actually paid in the country of origin?
- c) Could the EU confirm that the carbon price actually paid by an installation in the country of origin will be accepted and the total number of CBAM certificates to be surrendered will be reduced to reflect this payment?
- d) Would the EU accept expenses of an installation which resulted in decreased emissions of greenhouse gases listed in Annex I and take these expenses into account in calculating the total number of CBAM certificates to be surrendered?

5.4 Set of Questions 14

According to Article 9 of the Proposal, records of the documentation, confirming that a carbon price was paid in the country of origin of the good, shall be certified by "an independent person". Could the EU explain:

- a) What is the reason for not accepting producers' records and establishing an additional requirement for certification which will result in additional costs?
- b) What qualifications will be required by the EU in order to be recognized as "the independent person"? Does the EU envisage citizenship, domicile or other similar requirements to qualify as "the independent person"?

6 CBAM CERTIFICATE

6.1 Set of Questions 15

Chapter IV of the Proposal provides requirements regarding CBAM certificates. In particular, Article 20.1 of the Proposal contains the requirement that "[t]he competent authority of each Member State shall sell CBAM certificates to declarants authorised in that Member State at the price calculated in accordance with Article 21".

1. Could the EU clarify whether it considers the obligatory payment for the CBAM certificate as import duty, additional duty, charge or internal tax?
2. Could the EU explain why the Proposal allows to sell CBAM certificates only to authorised declarants and not to exporting companies?

6.2 Question 16

Article 22 of the Proposal states that "by 31 May of each year, the authorised declarant shall surrender a number of CBAM certificates to the competent authority that corresponds to the embedded emissions". It appears that the number of CBAM certificates and, therefore, the amount of price to be paid, will be different for like or similar products originating in different WTO Members.

Could the EU elaborate whether this understanding is correct? If so, could the EU explain the legal basis for such differences in treating like or similar products?

6.3 Set of Questions 17

Chapter IX of the Proposal concerns coordination of the CBAM with free allocation of allowances under the EU ETS. Article 31.1 provides that the CBAM certificates to be surrendered in accordance with Article 22 shall be adjusted to reflect the extent to which EU ETS allowances are allocated free of charge in accordance with Article 10a of Directive 2003/87/EC to installations producing, within the EU, the goods listed in Annex I. According to Article 31.1, a calculation methodology for the reduction referred in Article 31.1 will be set out in the implementing acts by the European Commission.

In its turn, paragraph 1a, which is proposed for insertion into Article 10a of Directive 2003/87/EC², refers to the CBAM factor, i.e. "a factor reducing the free allocation for the production" of goods listed in Annex I to the Proposal. Paragraph 1a states, *inter alia*, that "[t]he CBAM factor shall be equal to 100 % for the period during the entry into force of [CBAM regulation] and the end of 2025, 90 % in 2026 and shall be reduced by 10 percentage points each year to reach 0 % by the tenth year".

1. Could the EU explain what methodology it intends to use in order to ensure that the CBAM and the mechanisms that the EU applies to prevent the risk of carbon leakage under the EU ETS are not cumulative?
2. Could the EU explain its plan with respect to financial measures referred to in Article 10a(6) of Directive 2003/87/EC which, according to the European Commission, are used to address the risk of carbon leakage in sectors or sub-sectors at risk of carbon leakage?

7 EXCLUSIONS AND EXEMPTIONS OF GOODS ORIGINATING IN CERTAIN WTO MEMBERS FROM THE CBAM

7.1 Question 18

According to Articles 2.3, 2.7, 2.8 of the Proposal, the CBAM does not apply to goods originating in certain countries and territories. Section A in Annex II provides, in particular, a list of countries and territories that have been excluded from the scope of the CBAM. There are four WTO Members in

² European Commission's Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757, 14.7.2021, COM(2021) 551 final.

Section A. Section B in Annex II will contain a list of countries and territories outside the scope of the CBAM with regard to the importation of electricity into the customs territory of the EU. At the moment, Section B is empty.

Could the EU explain on what provisions of the WTO Agreements it relies in justifying the exclusion and exemptions of certain countries and their goods from the CBAM?

8 PROCEDURES FOR VERIFICATION AND ACCREDITATION

8.1 Set of Questions 19

Article 8 of the Proposal contains provisions on verification of embedded emissions. According to Article 8.1, the authorised declarant shall ensure that the total embedded emissions declared in the CBAM declaration are verified by an accredited verifier, based on the verification principles set out in Annex V. In addition to verification principles, Annex V to the Proposal describes the minimal requirements for the content of a verification report. Could the EU respond to the following questions:

- a) Whether during the transition period of the CBAM the EU will require a verification of emissions, including installation visits, for the CBAM report which each declarant shall submit for each quarter of a calendar year in accordance with Article 35.1 of the Proposal?
- b) How many verifiers and how many installation visits are required by the EU to carry a verification and to prepare a verification report under the CBAM?
- c) What specific criteria should be met in order for the EU to waive a mandatory installation visit?
- d) Will the EU require a verification of an installation producing an input material (precursor)?
- e) Does the EU ETS require to include in the verification report for "complex goods" quantities of input materials (precursors) used, the specific embedded emissions and "the identification of the installation where the input material has been produced and the actual emissions from the production on that material"?
- f) Could the EU confirm that procedures for verification of embedded emissions, principles of verification, thresholds for deciding whether misstatements and non-conformities are material and content of a verification report under the CBAM mirror those under the EU ETS?

8.2 Set of Questions 20

Article 18 of the Proposal establishes rules for the accreditation of verifiers. In particular, Article 18.3 of the Proposal indicates that in the adopted delegated acts the European Commission will specify certain conditions including for "mutual recognition and peer evaluation of the accreditation bodies". Could the EU respond to the following questions:

- a) Whether a person and an accreditation body established in a third country can become an accredited verifier for the purpose of the CBAM? What criteria will be applied and what procedures should be followed for such an accreditation?
- b) What are the conditions for "mutual recognition and peer evaluation of the accreditation bodies" for the purpose of the CBAM?
- c) Could the EU confirm that verification bodies established in third countries would be accredited under the CBAM regulation?

9 ADAPTATIONS BASED ON VARIOUS FACTORS, INCLUDING NATURAL RESOURCES AND SPECIFIC MARKET CONDITIONS

9.1 Set of Questions 21

Article 7.6 of the Proposal states that "the default values can be adapted to particular areas, regions or countries to take into account specific objective factors such as geography, natural resources, market conditions, prevailing energy sources, or industrial processes". Paragraph 6 of Annex III to the Proposal also provides for an adaptation of default values and lists several "factors such as natural resources, market conditions, energy mix of industrial production".

1. Could the EU provide an exhaustive list of "factors" and reasoning for using these factors for adaptations of default values?

2. Could the EU provide an example of how the default values can be adapted to such factors as "natural resources" and "market conditions"?
3. Could the EU explain what specific elements will be considered under the terms "natural resources" and "market conditions"?
4. Could the EU elaborate why it establishes a correlation between the embedded emissions released during the production of goods and the geographical and economic environment in the country of origin of the covered goods?

10 USE OF REVENUE GENERATED BY THE CBAM

10.1 Set of Questions 22

1. Could the EU indicate whether it expects the carbon price to rise and to what extent?
2. Will the EU establish a cap on the number of CBAM certificates?
3. Will the number of CBAM certificates released depend on the volume of production in covered EU sectors? If the EU's production of a product, which is covered by the CBAM, substantially decreases or stops, will the EU exclude this sector from the CBAM coverage?
4. What is the EU's expectation with respect to the amount of revenue generated by the CBAM each year?
5. How does the EU plan to allocate and spend this additional revenue? Please provide a list of 5. programs.
6. How the EU could confirm its full compliance with the Agreement on Subsidies and Countervailing Measures in the use of revenue generated by the CBAM?

11 SUBSTANTIAL ADMINISTRATIVE BURDEN AND NEGATIVE IMPACT ON INTERNATIONAL TRADE

11.1 Question 23

The CBAM is designed in such terms that it will result in substantial administrative burden and additional importation costs of the covered goods. The cost of CBAM certificates together with extensive administrative requirements and associated costs will inevitably reduce import of these goods to the EU.

Has the EU considered the possibility of reducing administrative requirements in order to lessen administrative burden and trade restrictiveness of its CBAM? For example, has the EU considered elimination of the requirement that only an authorised declarant registered in the EU can import covered goods? Could the EU reduce reporting and verification requirements to an absolute minimum?