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The EU's CBAM in a Turbulent Global Context - *A New Horizon for the Green Transition or the Beginning of a New Trade War?*

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Abstract

This thesis investigates the European Union's Carbon Border Adjustment Mechanism (CBAM) as a novel intersection between climate regulation and international trade law. It explores the extent to which CBAM serves as a legitimate environmental measure under EU and World Trade Organization (WTO) legal frameworks or whether it risks functioning as a de facto instrument of protectionism. This is particularly in the context of rising global trade tensions. The analysis is structured around three core research questions: the legal design and operational structure of the EU CBAM, its compatibility with WTO rules especially to GATT Articles I, III, XX and the geopolitical implications of CBAM within a volatile trade environment shaped by US tariffs and the EU's green industrial agenda.

A doctrinal legal method is combined with a "law in context" approach to situate CBAM within broader economic, geopolitical and legal dynamics. EU legislative acts, including Regulation (EU) 2023/956 and its implementing measures together with the recently proposed "Omnibus"-package of simplification. The study finds that while CBAM is formally grounded in environmental objectives, its practical application may impose asymmetric burdens on developing countries and risk WTO inconsistency without clear procedural safeguards and transparency. Moreover, CBAM's role in transatlantic trade relations particularly in light of escalating US tariffs highlights its dual function as both a climate tool and a geopolitical lever. Ultimately, the thesis concludes that CBAM embodies the legal and strategic complexities of advancing sustainable development within an increasingly fragmented global trade order.

Keywords: CBAM, GATT, trade war, non-discrimination, tariff

Abbreviations

CBAM	Carbon Border Adjustment Mechanism
CJEU	Court of Justice of the European Union
CSRD	Corporate Sustainability Reporting Directive
DSU	Dispute Settlement Understanding
EC	European Community
ETS	Emission Trading System
EU	European Union
GATT	General Agreements on Tariffs and Trade
GHG	Greenhouse Gas
MFN	Most Favoured Nation principle
NAFTA	North American Free Trade Agreement
NT	National Treatment principle
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
SME	Small and medium-sized enterprises
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
US	United States
WTO	World Trade Organisation

1. Introduction

1.1 Background

The European Union's green regulatory framework, led by the Carbon Border Adjustment Mechanism (CBAM) positions the European Union (EU) as a global pioneer in sustainable industrial transformation.¹ Yet, this ambition is not without controversy. CBAM has sparked international tensions with third countries which view the mechanism as a form of protectionism rather than a climate initiative.² Internally, the EU's vision faces equally complex challenges. Green investments exemplified by firms like Northvolt and Stegra reveal the promise and the fragility of Europe's industrial transition as regulatory burdens and financial setbacks raise concerns over long-term viability.³ If even well-funded initiatives in Europe struggle to succeed, what hope remains for the broader global transition?

While CBAM and the EU Emissions Trading System (ETS) are central to the Union's efforts to align climate goals with economic competitiveness, many emerging economies fear exclusion from the global green economy.⁴ The divergence between the EU's regulatory approach and US industrial policy reflects a growing risk of fragmented global trade, with new barriers emerging under the guise of climate action. By early 2025, market uncertainty and the absence of clear international rules have only deepened this divide, particularly with the United States tariff-based strategy.⁵

At the same time, European companies must navigate a rapidly evolving regulatory landscape shaped by CBAM, the Sustainable Finance Disclosure Regulation (SFDR) and the Corporate Sustainability Reporting Directive (CSRD).⁶ Questions remain if the early failures in the

¹ European Commission, "Carbon Border Adjustment Mechanism", 28 March 2025. https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

² Erkan Erdogan, "The Carbon Border Adjustment Mechanism: Opportunities and Challenges for Non-EU Countries" (2025, p.3) Wiley. <https://wires.onlinelibrary.wiley.com/doi/epdf/10.1002/wene.70000>

³ Dagens industri, "Di avslöjar: Stegra nobbas miljardstöd-pressar regeringen" (24 March 2025) <https://www.di.se/nyheter/di-avslöjar-stegra-nobbas-miljardstod-pressar-regeringen/>

⁴ Erkan Erdogan, "The Carbon Border Adjustment Mechanism: Opportunities and Challenges for Non-EU Countries" (2025, p.2) Wiley. <https://wires.onlinelibrary.wiley.com/doi/epdf/10.1002/wene.70000>

⁵ Business Sweden, "After Liberation Day, U.S. trade enters a new phase" (8 April 2025) <https://www.business-sweden.com/insights/blogs/us-trade-policy-shifts/u.s.-trade-shifts-navigating-trumps-liberation-day-policies>

⁶ European Commission, "Commission simplifies rules on sustainability and EU investments" (28 March 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_614

green industry are the result of structural flaws, mismanagement or the natural learning curve of innovation? As sovereign wealth funds with other investors for the green-transition, like Sweden's AP1-AP6 and Volkswagen, face multi-billion losses the doubts grow over the sustainability of green investments in Europe.⁷

The EU now stands at a crossroads. Is it, as Mario Draghi (2024) suggests, becoming overregulated and non competitive, or is it laying the groundwork for long-term leadership in a decarbonised global economy? The Omnibus-package initiative hints at a shift toward deregulation, but European firms must still navigate in a volatile, politicised trade environment.⁸ As the economic impact of U.S. tariffs unfolds, the CBAM may increasingly be perceived either as a form of protectionism or as a strategic instrument in trade negotiations amid an emerging trade conflict.

1.2 Purpose and Research Questions

The purpose of this thesis is to investigate if the EU CBAM as a legal instrument advances sustainable transition or veils a new form of protectionism, risking legal and geopolitical friction towards a trade war with third countries.

Main Research question

At the core of the investigation lies the following overarching research question. *What is the role of EU CBAM in a turbulent context of international trade law concerning green transition and trade tensions?*

Three Sub-questions

The main research question is further divided into three sub-research questions for different chapters respectively. The first research question is *How does the EU design the EU CBAM* and will be addressed in chapter 2. *Is EU CBAM a climate measure or a protectionism measure from the perspective of international trade law* is the second research question and

⁷ Erica Sunden, "Större försiktighet inför gröna investeringar efter Northvolts konkurs" (Sveriges Radio, 2 April 2025)

<https://www.sverigesradio.se/artikel/storre-forsiktighet-infor-grona-investeringar-efter-northvolts-konkurs>

⁸ Mario Draghi, "The Future of European Competitiveness". (European Commission, 2024)

https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?file_name=The%20future%20of%20European%20competitiveness%20-%20A%20competitiveness%20strategy%20for%20Europe.pdf

will be addressed in chapter 3. The last research question *What are the impact and challenges of the EU CBAM in the emerging global trade tensions* and will be addressed under chapter 4.

- (i) *How does the EU design the EU CBAM?*
- (ii) *Is EU CBAM a climate measure or a protectionism measure from the perspective of international trade law?*
- (iii) *What are the impact and challenges of the EU CBAM in the emerging global trade tensions?*

1.3 Delimitations

This thesis focuses specifically on the EU Carbon Border Adjustment Mechanism (CBAM) in the context of contemporary global trade tensions, with particular attention to the emerging dynamics between the European Union and the United States, including recent developments in US tariff policy. Accordingly, the analysis is delimited to trade-related dimensions of CBAM and does not engage in depth with broader EU climate law, such as Articles 191 and 192 TFEU, which have been extensively addressed in previous academic works and student papers for example Anna Holm's (2024) thesis.⁹

To adopt a more current and geopolitical perspective of the trade related tensions occurring, the thesis examines the intersection between EU CBAM potential impact and US Tariffs agenda. As opposed to revisiting well-established legal analyses of EU climate law, TRIPS, TPT or SPS the focus can be on the issue with EU's internal market competitiveness and include the proposed Omnibus-package.¹⁰

Furthermore, the historic perspective of international environmental law and the development of global climate change treaties is not investigated. The 1992 UNFCCC and the 1997 Kyoto Protocol as well as the Paris Agreement from 2015 may be mentioned but are not further examined. These instruments have a foundational relevance to the subject but provide no specific relevance for the investigation of the research questions. The same applies to non-binding constitutional declarations for instance the 1972 Stockholm Conference on the

⁹ Anna Holm, "Free Trade in the Age of Climate Change". (2024) Lund University. <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9158327&fileId=9158328>

¹⁰ European Commission, "Commission simplifies rules on sustainability and EU investments" (28 March 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_614

Human Environmental and the 1992 Rio Conference on Environment and Development.¹¹ Instead, the research and analysis is focused on whether the environmental objectives are incorporated into WTO law, in particular under GATT Article XX.¹²

The study does not explore the domestic legal systems of individual states, including neither specific EU Member State legislation such as Sweden's Government Prop.2023/24:77 implementing CBAM.¹³ It likewise does not evaluate the legality of U.S. tariffs under domestic US law, despite political statements such as those made by California Governor Gavin Newsom.¹⁴ The analysis is therefore situated at the level of EU external trade law and WTO law with a general emphasis on Swedish and European perspectives.

It is important to note that the topic selection was finalised on March 26, 2025, in the context of a rapidly evolving trade environment marked by renewed tariff activity by the US, including a 10% tariff announced for implementation in February 2025. It is a volatile market environment 2025 and an uncertain time where much changes over one day, therefore the information in this essay is based on information up until and including 9th April and no further. This investigation only stretches to when Trump imposed a 90 day pause on tariffs. One exception applies in Section 4.2.1, which includes reference to the U.S. administration's partial reduction and temporary suspension of tariffs (to 30%) after that date, as it represents a significant shift in the analysis of trade dynamics relevant to the research.¹⁵

1.4 Methodology

The Methodology of the thesis will be based on a qualitative approach and be utilized to answer the research questions. This thesis employs a multi-faceted legal research

¹¹ UNFCCC, "History of the Convention" (UNFCCC, 28 March 2025)

<https://unfccc.int/process/the-convention/history-of-the-convention#Climate-Change-in-context>

¹² World Trade Organization, "WTO rules and environmental policies: GATT exception" (WTO)

https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm

¹³ Prop. 2023/24:77 "Kompletterande bestämmelser till EU:s förordning om inrättande av en mekanism för koldioxidjustering vid gränsen" (Finansdepartementet, 12 March 2024)

<https://regeringen.se/rattsliga-dokument/proposition/2024/03/prop.-20232477>

¹⁴ Lauren Gambino "California launches legal challenge against Trump's 'illegal' tariffs" (16 April 2025) The Guardian.

<https://www.theguardian.com/us-news/2025/apr/16/california-launches-legal-challenge-against-trump-tariffs>

¹⁵ Donald J. Trump, "Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment" (Executive Order, 9 April 2025) The White House.

<https://www.whitehouse.gov/presidential-actions/2025/04/modifying-reciprocal-tariff-rates-to-reflect-trading-partner-retaliation-and-alignment>

methodology combining doctrinal analysis, scholarly literature review and a law in context approach. Moreover, situating the law within its broader political and economic environment. This integrated approach ensures a rigorous examination of CBAM's legal underpinnings as well as its real world implications. The purpose of the thesis will be examined through the lens of international WTO (GATT) and EU law by addressing three research questions. To answer the purpose the research process has other than legal regulations used literature review with books, articles and report interviews for understanding law in context.¹⁶

Throughout this thesis, I apply William Twining's analytical framework, which distinguishes between the roles of the "expositor" concerned with stating what the law is (de jure) and the less often seen in legislation "censor" focused on what the law ought to be and the "craftsman" concerned law is used in practice of de facto.¹⁷ The expositor perspective guided my examination of the legal texts including the CBAM Regulation, relevant GATT provisions under WTO law and U.S. tariff policy. In contrast, the roles of the censor and the craftsman informed my normative and practical analysis, allowing for a deeper evaluation of how legal mechanisms operate in reality. This approach supports the view that law should not be seen solely as a formal system of rules, but as a dynamic institution shaped by and embedded within broader societal, political and economic contexts.¹⁸

Firstly a "*Legal doctrinal analysis*" develops an understanding of CBAMs purpose and as a "player" in the global context. The foundation of the research is doctrinal legal analysis and law research. This concerned interpreting legal rules and principles from authoritative sources. In practice, the thesis closely examines primary legal materials to answer the question of "what the law is" on the EU's CBAM and related trade obligations. Key sources in my thesis include EU legislation and WTO agreements as well as leading case law. EU Law The core instrument under review is the CBAM Regulation (EU) 2023/956, which establishes the mechanism's design and obligations. The Regulation itself notably its objectives and operative provisions will be analyzed. Attention is given to the legal structure

¹⁶ Bohm, Cryer, Harvey, Burley. "Research Methodology is in EU & International law". (2011, p.5). <https://www-bloomsburycollections-com.ludwig.lub.lu.se/monograph-detail?docid=b-9781472560919&pdfid=9781472560919.ch-001.pdf&tocid=b-9781472560919-chapter1>

¹⁷ William Twining. "Law in Context: Enlarging A Discipline". (1997, p.145-146.) Oxford University Press. <https://eds-p-ebSCOhost-com.ludwig.lub.lu.se/eds/pdfviewer/pdfviewer?vid=5&sid=c7884b5a-4f2e-40ff-a047-42a68ceadfe%40redis>

¹⁸ *ibid*

of CBAM (e.g. the requirement for importers to surrender carbon certificates) and its integration with the EU Emissions Trading System (ETS). A key concern of the thesis was to examine the design and application of the EU CBAM Regulation through the interpretative framework outlined by Hettne and Eriksson (2011), which highlights the significance of contextual and purposive methods in EU legal analysis.¹⁹

In addition, the research considers the proposed Omnibus legislative package which introduces amendments to streamline CBAM's implementation. This Omnibus proposal, part of a broader simplification effort through technical adjustments to the CBAM regime.²⁰ Reviewing these primary EU legal texts will clarify the formal legal basis of CBAM and any safeguards or flexibilities built into the scheme. Therefore, I used the Twinings' approach of understanding the law's intention and issue as well as the law is not just a system of formal rules but a dynamic institution embedded in society.²¹ Which is the case also for the CBAM with the Omnibus. This was in line with Lieve Van Woensel (2024) argument of foresight methods into EU policymaking enhances strategic resilience by anticipating future uncertainties through tools like horizon scanning and scenario planning.²²

Concerning the International Trade Law (WTO), I applied doctrinal analysis of CBAM's legality under WTO rules forms a critical part of the methodology. Focusing on key provisions of the General Agreement on Tariffs and Trade (GATT 1994) namely Articles I (Most-Favoured Nation)²³, III (National Treatment)²⁴ and XX (General Exceptions)²⁵.²⁶ I conduct a close reading of these articles to evaluate how CBAM aligns with WTO principles and whether it may be interpreted as a trade-restrictive or protectionist measure. In order to

¹⁹ Jörgen Hettne and Ida Otken Eriksson "EU-rättslig metod, Teori och genomslag i svensk rättstillämpning." (2011, p.158) Norstedts Juridik.

²⁰ European Commission, "Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism". COM(2025) 87 final, 26 February 2025.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0087>

²¹ William Twining. "Law in Context: Enlarging A Discipline".(1997) Oxford University Press.

<https://eds-p-ebSCOhost-com.ludwig.lub.lu.se/eds/pdfviewer/pdfviewer?vid=5&sid=c7884b5a-4f2e-40ff-a047-42a68ceadef%40redis>

²² Lieve van Woensel, "Foresight in EU policy making: Purpose, mindsets and methods" (2024) Wiley. <https://onlinelibrary.wiley.com/doi/abs/10.1111/eulj.12522>

²³ General Agreement on Tariffs and Trade 1947, art I

²⁴ General Agreement on Tariffs and Trade 1947, art III

²⁵ General Agreement on Tariffs and Trade 1947, art XX

²⁶ Lester Simon, Bryan Mercurio & Arwel Davies. "World Trade Law: Text, Materials and Commentary." 3rd ed. (2021, p.259) Oxford.

understand this a close reading of WTO texts and interpreting them in light of how a carbon border measure might fit within these legal standards and how the CBAM can impact innovation R&D, research and development, the economic impact and technology for both in the internal market but also third countries such as developing countries. To support this analysis, I draw on relevant WTO case law including US-Shrimp, US-Gasoline, Japan-Alcoholic Beverages, Korea-Beef and EC-Asbestos. These cases provide critical legal standards for interpreting concepts such as “like products” and the scope of environmental exceptions under Article XX.

Secondly a *study of literature* to complement the doctrinal analysis. This thesis conducts an in-depth review of scholarly literature to clarify the legal and policy dimensions of the EU CBAM. Academic books, journal articles and institutional reports are used to situate the regulation within broader debates on climate governance, international trade and protectionism. Works by Lester Simon, Bryan Mercurio and Arwel Davies “World Trade Law: Text, Materials and Commentary” (2021) as well as Chalmers Damian, Gareth Davies and Giorgio Monti (2024) “European Union Law” inform the understanding of EU regulatory frameworks²⁷, while WTO-focused literature provides interpretative insight into GATT Articles I, III and XX through case law discussions, including US-Shrimp and EC-Asbestos.²⁸ This literature helps identify doctrinal tensions, such as whether CBAM may violate WTO non-discrimination principles or qualify under environmental exceptions. The literature thus supports both doctrinal interpretation and critical assessment of CBAM’s legal and geopolitical implications.

Finally, the methodology is enriched by a “*Law in Context*” approach. As William Twining’s (1997) mediates the terms “context of law” or “the law in action” is to break the stereotype and explore an approach not often applied in “Common law”.²⁹ However, the perspective is of the character that law shall not be isolated and applied only as “What the law is”, but rather analyzed in a broader economic, political and geopolitical sense.³⁰ Therefore this thesis follows the lines of Twining’s view, that CBAM and EU law’s impact requires examining the social and economic realities behind it. To analyse and go beyond statutory text and case law,

²⁷ Chalmers Damian, Gareth Davies & Giorgio Monti. *European Union Law*. 5th ed. Cambridge. (2024) Cambridge University Press.

²⁸ Lester Simon, Bryan Mercurio & Arwel Davies. “World Trade Law: Text, Materials and Commentary.” 3rd ed. (2021) Oxford.

²⁹ William Twining. “Law in Context: Enlarging A Discipline”. (1997, p.36-38) Oxford University Press

³⁰ William Twining. “Law in Context: Enlarging A Discipline”. (1997) Oxford University Press

the thesis will analyze how CBAM functions as a policy instrument amid real world trade dynamics.³¹

The thesis will consider how geopolitical trade tensions could influence or be inflamed by the CBAM. The measure's introduction comes at a time of heightened trade frictions internationally from the recent US tariff war. A contextual lens is especially useful for understanding the position of developing countries. Many developing economies worry that CBAM could harm their industries and impose de facto trade barriers under the banner of climate action. The methodology incorporates perspectives from these countries, treating their concerns as part of the factual backdrop to legal analysis. How I used the CBAM regulation was in purpose to understand the "de jure" with the intention of CBAM and the effect of the legislation "de facto" and who will benefit "cui bono" from it.³² By including this context, the analysis can better assess the legal-geopolitical balance struck by CBAM. Twining's focus on intellectual skills engage directly with primary texts and critically analyse competing legal theories and policy goals.³³ Therefore I focused on the intent and effect as the core issue of CBAM with interplay of WTO law that has a broader context of geopolitical tensions and economic impact.

This contextual lens is further grounded by real world case studies, including Northvolt and Stegra (H2 Green Steel), two green industrial initiatives in Europe facing regulatory and financial pressures. Omnibus simplification package and Draghi's report³⁴ on EU competitiveness highlights a perspective of the tension between regulatory ambition and industrial resilience, showing the dynamic nature of law.³⁵ In addition, economic commentary and stakeholder perspectives including those of European Commission's President Ursula

³¹ *ibid*

³² Lester Simon, Bryan Mercurio & Arwel Davies. "World Trade Law: Text, Materials and Commentary." 3rd ed. (2021, p.263) Oxford.

³³ William Twining. "Law in Context: Enlarging A Discipline". (1997, p.145) Oxford University Press. <https://eds-p-ebSCOhost-com.ludwig.lub.lu.se/eds/pdfviewer/pdfviewer?vid=5&sid=c7884b5a-4f2e-40ff-a047-42a68ceadfe%40redis>

³⁴ Mario Draghi, "The Future of European Competitiveness". (European Commission, 2024) https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?file_name=The%20future%20of%20European%20competitiveness%20%20A%20competitiveness%20strategy%20for%20Europe.pdf

³⁵ Lieve van Woensel, "Foresight in EU policy making: Purpose, mindsets and methods" (2024) Wiley. <https://onlinelibrary.wiley.com/doi/abs/10.1111/eulj.12522>

von der Leyen³⁶ and JP Morgan Chase CEO Jamie Dimon³⁷, are reviewed to contextualize the trade and global tensions.

1.5 Outline

The thesis consists of five chapters where the outline of this essay is as follows. Chapter one, Introduction, presents the background of EU legislation's impact and CBAM regulation with the global tensions of trade war as well as the purpose and research questions of the essay, delimitations and methodology. The second chapter gives a general introduction of the EU CBAM and investigates the European Union's intentions and legislative design of the CBAM. This is done in three sections, 2.1 *Legislative background, purpose and process of the EU CBAM*, 2.2 *The Operation of the EU CBAM* and 2.3 *The key elements and features of the EU CBAM* and a concluding remark at the end 2.4. Under chapter 3 the concerns of EU CBAM in relation to the general principles of WTO Law. This section discusses the relevant legal issues by the non-discrimination principle and the general exemption under GATT's Article I, III and XX. Chapter 4 deals with the current geopolitical landscape of global trade tensions that is increasingly defined by rising protectionism and strategic rivalry. This chapter introduces US Tariffs under President Donald Trump's both terms and the CBAMs position to impact and EU attitude. It deals with the question if EU CBAM can make it worse or be a tool in the negotiations with other countries and look beyond legal critiques as the trade war reflects broader economic and geopolitical concerns. Chapter 5 is a summary and conclusion of the entire thesis, which ends with suggestions of further studies and some potential error of sources.

³⁶ European Commission, "Commission responds to unjustified US steel and aluminium tariffs with swift and proportionate measures". (12 March 2025)

https://ec.europa.eu/commission/presscorner/detail/en/ip_25_740

³⁷ Kristen Altus, "Jamie Dimon Warns Recession Now a Likely Outcome for US Economy"(Fox Business, 9 April 2025)

<https://www.foxbusiness.com/media/jamie-dimon-warns-recession-now-a-likely-outcome-us-economy>

2. General Introduction of the EU CBAM

This chapter investigates the European Union's intentions and legislative design of the Carbon Border Adjustment Mechanism (CBAM). Through Regulation (EU) 2023/956 and its implementing acts, the CBAM introduces a legal framework that imposes climate-related compliance obligations on importers of carbon-intensive goods, reflecting a shift towards regulatory convergence and sustainable trade policy.³⁸ This chapter proceeds in three sections as well as a conclusion at the end. Each addressing a distinct aspect of the mechanism, 2.1 *Legislative background, purpose and process of the EU CBAM*, 2.2 *The Operation of the EU CBAM* and 2.3 *The key elements and features of the EU CBAM*.

2.1 Legislative background, purpose and process of the EU CBAM

The Carbon Border Adjustment Mechanism (CBAM) forms a critical pillar of the European Union's evolving climate strategy and legislative architecture which is intended to align trade practices with the Unions environmental objectives.³⁹ In July 2021, the European Commission presented the CBAM to mitigate the "carbon leakage". The CBAM regulation will thereby equalize the carbon costs of imported goods with the ones produced within the Member States. This follows with a requirement of EU importers to purchase "carbon certificates". The certificates reflect the emissions embedded in third country goods in alignment with the EU ETS.⁴⁰

The European Union's legislative approach for the CBAM is a complementary mechanism to EU ETS as a climate measure. The design is aligned with the ETS and addresses climate change rather than a tariff or carbon tax.⁴¹ Conceived as a part of the broader European Green Deal and formalised through the "Fit for 55" legislative package.⁴² The legislation has to be adopted by the EU Member States with the measures of EU's climate strategy to make the

³⁸ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (2023) OJ L130/52.

³⁹ Chalmers Damian, Gareth Davies & Giorgio Monti. "European Union Law". 5th ed. Cambridge. (2024, p.1045) Cambridge University Press

⁴⁰ European Commission, "Carbon Border Adjustment Mechanism" (28 March 2025) https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

⁴¹ *ibid*

⁴² Governance of Sweden. "EU Fit for 55 climate package a milestone in climate action". (2023). Government.

<https://www.government.se/articles/2023/07/eu-fit-for-55-climate-package-a-milestone-in-climate-action/>

Union climate neutral by 2050 and to lower the greenhouse gas emissions with minimum 55% by 2030.⁴³ The CBAM thereby serves a dual function by reducing global carbon emission and preventing “carbon leakage” by subjecting imports to climate-related costs comparable to those mothered by domestic produced products.

“Carbon leakage” refers to the relocation of production or the sourcing of goods to countries with less stringent environmental regulations, driven by increasing domestic carbon costs. such as those resulting from allowance auctioning under the ETS. These are often described as pollution havens that impose weaker climate obligations. Even if the ETS initially aim was to mitigate the risk through the distribution of free allowances. This has potentially resulted in higher global greenhouse gas emissions while diminishing the competitiveness of EU industries.⁴⁴ In response, the European Union established the CBAM to gradually replace free allocations. CBAM imposes a carbon cost on selected imports reflecting the weekly average ETS allowance price. Thereby addressing leakage risks while preserving the environmental ambition of EU climate policy without operating as a traditional “cap and trade”-system.⁴⁵

As an introduction for the CBAM a historical description of the EU ETS will be necessary for understanding the process. The system launched in 2005 and was the world’s first large-scale carbon market and remains a cornerstone of the European Union’s climate policy.⁴⁶ The ETS itself is governed by Directive 2003/87/EC and sets the foundation for the Unions internal “cap-and-trade” scheme for greenhouse gas allowances established by the UN Paris Agreement 2015.⁴⁷ It functions as a “cap and trade” mechanism designed to reduce greenhouse gas (GHG) emissions through a regulated market of emission allowances.⁴⁸ Legally binding cap on total emissions with emission permits allocated or auctioned to participating industries based on a supply and demand model governed by EU legislation.⁴⁹

⁴³ Council of the European Union, “Fit for 55” (2025) Councilium.

<https://www.consilium.europa.eu/en/policies/fit-for-55/>

⁴⁴ Sanna Markkanen et al, “On the Borderline: The EU CBAM and its place in the world of trade” (2021, p.8) Cambridge Institute for Sustainability Leadership.

https://www.cisl.cam.ac.uk/files/cbam_report.pdf

⁴⁵ *ibid*, p.37

⁴⁶ Chalmers et al, 2024 p.1033.

⁴⁷ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (2003) OJ L275/32

<https://eur-lex.europa.eu/eli/dir/2003/87/oj/eng>

⁴⁸ Chalmers et al, 2024 p.1032

⁴⁹ Directive 2003/87/EC

The ETS applies primarily to energy-intensive sectors including power generation, cement and steel production. Companies within these sectors receive a specific number of allowances, each representing the right to emit one tonne of carbon.⁵⁰ These allowances are either distributed freely or acquired through auctions conducted by Member States. At the end of each year all companies must surrender their allowances equivalent to their verified emissions.⁵¹ If a company emits more than its allocated amount it will be forced to purchase additional permits from others in the market. Conversely if emissions fall below the allowance the surplus permits may be sold and creating an internal incentive to reduce emissions efficiently. Central to the ETS is the concept of a declining cap, which reduces the total volume of allowances available annually. This gradual tightening of the cap aligns with the EU's climate targets, increasing the scarcity and therefore the price of allowances over time. As the cap decreases companies are compelled to adopt cleaner technologies and improve energy efficiency to remain compliant and economically competitive.⁵²

To mitigate the risk of carbon leakage where companies might relocate production to countries with weaker climate regulations the ETS employs a dual allocation approach. This includes both auctioning and targeted free allocations for sectors deemed vulnerable to international competition.⁵³ These free allowances are distributed based on standardised emission benchmarks, ensuring that emissions reductions are incentivised without placing EU industries at a competitive disadvantage.⁵⁴

However, this allocation strategy is closely integrated with the CBAM and serves to extend carbon pricing to imported goods from third countries. By ensuring that both EU-based and foreign producers face comparable carbon costs, the CBAM complements the ETS in fostering a “level playing field” and supporting a fair, effective transition to a low-carbon economy.⁵⁵ Unlike the ETS-system which concerns only direct to installations within the Member States, the CBAM imposes an obligation on importers of certain “carbon-intensive” products such as iron and steel, aluminium, cement, hydrogen electricity and fertilisers.⁵⁶ To

⁵⁰ Directive 2003/87/EC, Art 3(a) & 12(3)

⁵¹ Directive 2003/87/EC, art 6(2)(e)

⁵² Chalmers et al, 2024 p.1032

⁵³ European Commission, “Guidance on determining the allocation at installation level” (2024, p.5-6) Guidance Document No 2.

https://climate.ec.europa.eu/document/download/a4c0cb40-35f9-4705-882d-b55382d03e9a_en?filename=2_gd2_allocation_methodologies_en.pdf&prefLang=mt

⁵⁴ *ibid*, p.6-10.

⁵⁵ *ibid*, p.10-12.

⁵⁶ Regulation (EU) 2023/956, para 31-32.

address the risk of carbon leakage, the core principle of the CBAM is to ensure that importers bear a carbon cost equivalent to that faced by EU producers, in cases where the country of origin does not implement a comparable carbon tax or emissions trading system in similarity with the ETS.⁵⁷ Weng (2025) highlights this in his study, that CBAM is a response to the threat of carbon-intensive production shifting to countries with weaker climate policies. The mechanism imposes a carbon cost on specific imported goods to mirror the financial burden faced by domestic producers under the EU Emissions Trading System.⁵⁸

The CBAM's development forms part of a broader legislative shift within the European Union's climate agenda. Initially proposed in December 2019 it underwent subsequent legislative procedures.⁵⁹ This included the Council negotiations in March 2022 and later the approval by the European Parliament in June 2022 with a final agreement in December 2022. This agreement marks a significant evolution in the EU's effort to align trade policy with environmental objectives (elaborated in Chapter 4).⁶⁰

The central legal act that enacts the CBAM is Regulation (EU) 2023/956 and was adopted by the European Parliament and the Council on 10 May 2023.⁶¹ For the legal and policy basis of CBAM, the implementation is detailed in Commission Implementing Regulation (EU) 2025/486, adopted on 17 March 2025, which outlines the procedural conditions for importers, referred to as "authorised CBAM declarants".⁶² The regulation elaborates on how GHG emissions are to be reported, how certificates are to be acquired, submitted and the administrative requirement for compliance. Its aim is to ensure that the primary regulation is enforceable, proportionate and effective in practice.⁶³ During the transitional phase importers of designated "carbon-intensive" goods are required to report direct emissions only, while indirect emissions are included for specific sectors, all without the obligation to surrender

⁵⁷ Regulation (EU) 2023/956

⁵⁸ Lee Shee Weng, "The EU's Carbon Border Adjustment Mechanism (CBAM): Balancing Climate Action and Global Trade" (SSRN, 1 March 2025)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5160814

⁵⁹ Regulation (EU) 2023/956, para 1

⁶⁰ European Parliament, "Carbon Border Adjustment Mechanism" (Legislative Train Schedule).
<https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-carbon-border-adjustment-mechanism>

⁶¹ Regulation (EU) 2023/956

⁶² Commission Implementing Regulation (EU) 2025/486 of 17 March 2025 laying down rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as regards the conditions and procedures related to the status of authorised CBAM declarant (2025) OJ L486/1.
https://eur-lex.europa.eu/eli/reg_impl/2025/486/oj/eng

⁶³ Chalmers et al, 2024 p.1040

certificates. Until the end of 2024 firms may report emissions using either the EU method, an approved equivalent approach or default values (the latter only until July). From January 2025, third countries based operators can submit data centrally through the CBAM Registry and EU-based declarants will be eligible to obtain authorised status thereby enhancing administrative efficiency and compliance oversight.⁶⁴

In February 2025, the European Commission presented a legislative proposal to amend the CBAM Regulation seeking to simplify the reporting obligations and enhance the mechanism of administrative efficiency. This reform proposal reflects a dynamic legislative process responsive to practical implementation challenges and stakeholder feedback to ease the burden on companies and people operating in the Union.⁶⁵

It was during the EU summit in Budapest in November 2024, Ursula von der Leyen presented the proposal to simplify sustainability legislation through an “Omnibus”-package. The European Commission introduced a set of regulatory adjustments aimed at streamlining the EU Carbon Border Adjustment Mechanism (CBAM). These proposals, presented as part of the first Omnibus package, seek to reduce administrative complexity and enhance the usability of the system, particularly for smaller market participants. A central element of the reform is the introduction of a de minimis exemption for low-volume importers. Under this proposal, importers bringing in less than 50 tonnes of CBAM covered goods annually would be exempt from compliance obligations. This measure is expected to relieve approximately 90% of importers which are primarily small and medium-sized enterprises (SMEs) and private individuals of CBAM-related duties, while still maintaining regulatory coverage of over 99% of emissions subject to the mechanism.⁶⁶

The suggested adjustments are intended to simplify compliance procedures for companies that continue to fall within the CBAM scope. This includes streamlined processes for emissions calculation and reporting, as well as a more efficient framework for the

⁶⁴ European Commission, “Carbon Border Adjustment Mechanism” (28 March 2025) https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

⁶⁵ European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism COM(2025) 87 final, 26 February 2025. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0087>

⁶⁶ European Commission, “Carbon Border Adjustment Mechanism” (28 March 2025) https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en#latest-developments

authorisation of declarants and the management of financial obligations associated with CBAM.⁶⁷

In parallel, the Commission is proposing enhanced enforcement mechanisms to address circumvention and abuse. A coordinated strategy will be developed in collaboration with national authorities to strengthen oversight and uphold the integrity of the CBAM framework. These simplification measures form part of a broader strategic effort to prepare for the future expansion of CBAM. The legislative proposal is scheduled for early 2026 and will aim to extend the scope of the mechanism.⁶⁸

2.2 The Operation of the EU CBAM

The operational implementation and compliance mechanism of CBAM is being introduced through a two-phase framework.⁶⁹ This is for the benefit of regulators and economic operators to facilitate an orderly transition. Firstly, as defined in Regulation(EU) 2023/956 Article 32, the initial transitional period began on 1 October 2023 and will continue until 31 December 2025.⁷⁰ During this phase the importers are required to report their embedded greenhouse gas emissions of covered goods in accordance with Article 35.⁷¹ However, they are not subject to any financial obligations or penalties. This is due to the stage being designed and functioning as a preparatory “pilot” mechanism. Therefore even before the system becomes fully operational in January 2026, the European Commission can collect emissions data and evaluate implementation practices.⁷²

The reduction and elimination of free allowances from the ETS is scheduled between 2026-2034 and will happen strategically/gradually under the CBAM phase-in.⁷³ The coordinated approach aims to maintain carbon price parity between EU produced and imported goods, thereby mitigating the risk of carbon leakage and reinforcing the integrity of

⁶⁷ *ibid*

⁶⁸ PwC Sweden, “Detta innebär förslaget Omnibus från EU-kommissionen” (26 February 2025). PwC. <https://www.pwc.se/omnibus>

⁶⁹ Sanna Markkanen et al, “On the Borderline: The EU CBAM and its place in the world of trade” (2021, p.45) Cambridge Institute for Sustainability Leadership. https://www.cisl.cam.ac.uk/files/cbam_report.pdf

⁷⁰ Regulation(EU) 2023/956, Article 32

⁷¹ Regulation(EU) 2023/956, Article 35

⁷² European Commission, “Carbon Border Adjustment Mechanism” (28 March 2025) https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en#cbam-transitional-phase-2023--2025

⁷³ European Union, “EU emissions trading system” (EUR-Lex, 21 March 2024) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:l28012>

EU climate policy. The participation in CBAM mechanism requires importers to obtain declarant status which entails strict adherence to EU-defined procedures for emissions tracking, data submission and third party verification.⁷⁴ To maintain fairness and avoid the risk of double carbon pricing, the regulation permits a deduction in certificate obligations where a comparable carbon cost has already been incurred in the country of origin. This adjustment mechanism, detailed in Article 9, is designed to uphold the EU's compliance with WTO principles on non-discrimination.⁷⁵

As stated earlier, 1 January 2026 and forward importers holding the status of authorised CBAM declarants will be obligated to annually disclose the embedded greenhouse gas emissions of their imported goods and to purchase a corresponding number of CBAM certificates. These certificates are priced in alignment with the average weekly auction price of EU ETS allowances, thereby ensuring consistency between internal and external carbon pricing regimes.⁷⁶

Distinct from conventional trade barriers, CBAM is not devised as a revenue generating tool. Rather it serves to embed the environmental cost of imported goods into the market price in line with the polluter-pays principle.⁷⁷ By this principle CBAM can function and achieve the broader strategic objective to foster regulatory convergence on climate action by encouraging third country producers to adopt equivalent carbon pricing frameworks. This can be seen as an instrument of EU climate diplomacy and reinforcing the Union's role in shaping global environmental governance.⁷⁸

The “carbon intensive” sectors⁷⁹ listed under Annex I of the regulation will impact both exporters and producers in third countries with the intention to place goods on the internal market and must comply with specific regulatory obligations.⁸⁰ Prior to importation the associated EU-based importer is required to secure authorization from the competent

⁷⁴ Regulation(EU) 2023/956, para 44.

⁷⁵ Regulation (EU) 2023/956, Art. 9.

⁷⁶ Regulation (EU) 2023/956, Art. 21.

⁷⁷ Regulation (EU) 2023/956, para 1.

⁷⁸ Sanna Markkanen et al, "On the Borderline: The EU CBAM and its place in the world of trade" (2021, p.17) Cambridge Institute for Sustainability Leadership.

https://www.cisl.cam.ac.uk/files/cbam_report.pdf

⁷⁹ Regulation (EU) 2023/956, para 32.

⁸⁰ European Commission, Carbon Border Adjustment Mechanism (CBAM): Questions and Answers. (22 December 2023, p.8 and p.23).

https://taxation-customs.ec.europa.eu/system/files/2023-11/CBAM%20Frequently%20Asked%20Questions_November%202023.pdf

authority of the relevant Member State, thereby attaining the status of an “authorised declarant”.⁸¹ The calculation and methodology for “authorised declarant” concerning the embedded greenhouse gas emissions of the imported goods are distributed in Annex III with two primary approaches.⁸² The regulation mandates the use of “default values” to approximate emissions if direct emissions data from the producers is insufficient or unavailable.⁸³ If such data is also lacking, a fallback mechanism applies, whereby emissions are calculated based on the average intensity of the top 10% of emitting installations within the EU for the relevant product category.⁸⁴ This tiered approach ensures the robustness and comparability of emissions reporting across jurisdictions while maintaining environmental integrity within the CBAM framework.

In addition to undergoing standard customs clearance, imports falling within the scope of the CBAM must be accompanied by a formal CBAM declaration. Concerning cross-border trade and the integration of climate measures and accountability this declaration plays a critical role. This is accomplished through documenting the quantity of imported goods over the course of a calendar year along with the associated greenhouse gas emissions released during their production outside the European Union.⁸⁵ The emission data must be independently verified by an accredited verifier in the Union for the regulatory integrity.⁸⁶ As an alternative, third-country producers may register in the European Commission’s central CBAM register, which authorizes them to submit verified emissions data for a five-year period. Thereby streamlining the compliance process for repeated transactions.⁸⁷

Furthermore, following the verification the authorised declarant as an importer must annually purchase and surrender CBAM certificates reflecting the net embedded emission of imported goods adjusted for any carbon costs previously paid and applicable free allocations.⁸⁸ The certificate price is indexed to the average weekly auction value of EU ETS allowances, ensuring parity with the internal EU carbon cost.⁸⁹ Unlike ETS allowances, the CBAM

⁸¹ Regulation (EU) 2023/956, para 43.

⁸² Sanna Markkanen et al, “On the Borderline: The EU CBAM and its place in the world of trade” (2021, p.45) Cambridge Institute for Sustainability Leadership.
https://www.cisl.cam.ac.uk/files/cbam_report.pdf

⁸³ Reg (EU) 2023/956, Article 7.

⁸⁴ Sanna Markkanen et al, “On the Borderline: The EU CBAM and its place in the world of trade” (2021, p.20) Cambridge Institute for Sustainability Leadership.
https://www.cisl.cam.ac.uk/files/cbam_report.pdf

⁸⁵ Reg (EU) 2023/956, Article 6.

⁸⁶ *ibid*, Article 8

⁸⁷ *ibid*, Article 10:3

⁸⁸ *ibid*, Article 20

⁸⁹ *ibid*, Article 21.

certificates are non-transferable and cannot be traded on the open market.⁹⁰ However, declarants may return up to one third of unused certificates by 31 May each year, with any remaining unused certificates expiring on 30 June.⁹¹ This design prevents speculative accumulation and reinforces CBAM's regulatory function within a centrally governed compliance framework.

2.3 The key elements and features of the EU CBAM

The CBAM pricing-system is designed to complement the ETS by progressively phasing out the allocation of free emissions allowances. Thereby mitigating the risk of carbon leakage the relocation of carbon-intensive production to jurisdictions with environmental regulations.⁹² As described in section 2.2 CBAM applies to a defined set of sectors outlined in Annex I of Regulation (EU) 2023/956. These sectors of electricity, cement, aluminium, fertilisers, iron, steel and hydrogen are characterised by high levels of greenhouse gas emissions and are particularly exposed to international competition. As such, they are considered at heightened risk of carbon leakage, especially under the EU's increasingly stringent climate policies.⁹³

In practice the EU will "level the playing field" with CBAM and force the third countries producers to intensify and adapt their production to lower-emission technologies.⁹⁴ This will contribute to broader convergence of climate policies by placing a carbon cost on imported goods. Eicke, Weko, Apergi and Marian (2021) highlights in their report the reasoning from the European Commission of the importance of CBAM as a climate action in accordance with Paris Agreement even if third countries see it as trade barriers,

*"As long as many international partners do not share the same climate ambition as the EU, there is a risk of carbon leakage..."*⁹⁵

At the same time, the measures to compel action by force in alignment to achieve climate goals and the Paris agreement, the CBAM has received backfire and in some cases seems as a

⁹⁰ *ibid*, Article 31(1)

⁹¹ *ibid*, Article art 22 and 23

⁹² European Commission, "Carbon Border Adjustment Mechanism" (28 March 2025)

⁹³ Regulation (EU) 2023/956, para 31-32.

⁹⁴ Chalmers et al, 2024 p.1046.

⁹⁵ Eicke, et al. (2021). "Pulling up the carbon ladder? Decarbonization, dependence and third-country risks from the European carbon border adjustment mechanism. p 2."
<https://doi.org/10.1016/j.erss.2021.102240>

critical act towards developing countries due to vulnerability and inability to adapt. On the other hand, the alternative would instead frustrate the effort of Member States industries and put an unfair burden on them. The CBAM can therefore work to align import prices more closely with the carbon emissions associated with their production.⁹⁶ While trade liberalisation under frameworks such as the World Trade Organization (WTO) can enhance global access to goods and may also contribute to “environmental degradation” by facilitating, pollution havens with the production shifts to jurisdictions with weaker environmental regulations (Basel Convention, 2019).⁹⁷

The EU CBAM in the terms of sustainable development operates with a “Technocentric” focus. This approach of climate policy that the CBAM regulation embody shows a huge step towards further Sustain development in the essence as Brundtland report “Our common future” (1987) describes “*development that meets the needs of present without compromising the ability of future generations to meet their own needs*”.⁹⁸ The technocentric approach of CBAM regulation is the reliance on technological innovation and reducing emission by innovation. The regulatory “structure” of CBAM and the market based tools such as carbon pricing may drive technological innovation and reduce emission. As Paragraph 14 of the CBAM Regulation (EU) 2023/956 states the mechanism not only aims to prevent the risk of carbon leakage but also focuses to encourage producers in third countries to adopt more efficient and low carbon technologies.⁹⁹ By implementing a regulatory framework that strengthens the pursuit of UN sustainable development goals and addresses carbon leakage on a global scale, the CBAM supports climate protection through the promotion of green technological innovation. In doing so, it contributes to achieving the objectives of Agenda 2030 and “Net-zero” target 2050¹⁰⁰ by reducing pollution and protecting the environment by a “level the playing field” for industries supply chains and their carbon emissions.¹⁰¹

On the other hand, the article Yanan Ren, Guangxin Liu and Lei Sh (2023) argues that the implementation of CBAM may hinder technological development and innovation,

⁹⁶ *ibid*, p. 2-3.

⁹⁷ Sanna Markkanen et al, “On the Borderline: The EU CBAM and its place in the world of trade” (2021, p.10) Cambridge Institute for Sustainability Leadership.
https://www.cisl.cam.ac.uk/files/cbam_report.pdf

⁹⁸ European Union, “Sustainable development” (EUR-Lex).
<https://eur-lex.europa.eu/EN/legal-content/glossary/sustainable-development.html>

⁹⁹ Reg (EU) 2023/956, paragraph 14

¹⁰⁰ Sanna Markkanen et al (2021), p.19.

¹⁰¹ Chalmers et al, 2024 p.1046.

particularly in developing countries. The authors warn that CBAM could impose disproportionate technological and financial burdens on nations that lack adequate infrastructure and the capacity for effective emissions monitoring, ultimately acting as a trade barrier and limiting their technological progress.¹⁰² While Paragraph 1 of Regulation (EU) 2023/956 positions CBAM as an integral part of the European Green Deal and a pillar of the Union's future competitiveness.¹⁰³ The outcomes may suggest otherwise with the Commission's simplification proposal COM(2025)87.¹⁰⁴ However, Thang Nam Do argues in the article "Reimagining Carbon Border Adjustment Mechanisms: A Path to Climate and Development Synergy" (2025) that reinvesting the revenues generated by CBAM and could play a pivotal role in expanding clean energy infrastructure and facilitating technology transfer to the "Global South".¹⁰⁵ Such an approach could help reconcile climate policy with development goals and ensure that CBAM supports rather than restricts global innovation and equitable transitions. As a result, the EU opted for a non-tax regulatory approach which is better aligned with its broader strategy of advancing climate objectives through governance mechanisms rather than direct fiscal policy.

In relation to other regulatory frameworks developed by the European Union that connects to the environmental reporting and the structural architecture of CBAM, the *Disclosure Regulation (EU) 2019/2088 (SFDR)* outlines sustainability-related disclosures in the financial sector that align with overarching frameworks such as the UN 2030 Agenda for Sustainable Development (Art. 1) and the Paris Agreement (Art. 2). In this broader context, the CBAM as well has the potential to influence technological innovation and a turning point within carbon-intensive sectors by incentivising the adoption of cleaner production methods. This aligns with Article 10 of the Paris Agreement which emphasises the importance of fostering technological advancement and facilitating technology transfer to support climate mitigation and sustainable development by particularly in developing economies.¹⁰⁶ Through CBAM's

¹⁰² Yanan Ren, Guangxin Liu and Lei Sh. "The EU Carbon Border Adjustment Mechanism Will Exacerbate the Economic-Carbon Inequality in the Plastic Trade". (2023) <https://www.sciencedirect.com/science/article/abs/pii/S0301479723000907>

¹⁰³ Reg (EU) 2023/956, Paragraph 1.

¹⁰⁴ European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism COM(2025) 87 final, 26 February 2025. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0087>

¹⁰⁵ Thang Nam Do, "Reimagining Carbon Border Adjustment Mechanisms: A Path to Climate and Development Synergy" (2025) Science Direct. <https://doi.org/10.1016/j.glt.2025.03.003>

¹⁰⁶ Paris Agreement, 2015. Art. 10. https://unfccc.int/sites/default/files/english_paris_agreement.pdf

design, it can contribute to addressing carbon leakage while promoting low-carbon industrial transformation consistent with international climate commitments.

2.4 Concluding Remarks

Chapter 2 has outlined the legislative and operational framework of the CBAM in the design from the EU revealing it as a regulatory innovation embedded within the EU's broader climate strategy. CBAM is not merely an environmental tool but a structured attempt at market equalization through carbon pricing on imports. It seeks to internalize environmental costs into cross-border trade and reinforce the ETS by phasing out free allowances. It requires importers of carbon intensive goods such as cement, steel, iron, aluminium, fertilizers and hydrogen electricity to purchase CBAM certificates reflecting the embedded carbon emission of those products. The mechanism includes a transitional phase (2023-2025), after which full financial obligations begin in 2026. However, while it promotes the principle of "carbon cost parity", it also presents substantial administrative burdens and compliance requirements. Particularly for SMEs in which the Omnibus package will have a huge impact and third-country exporters.

This chapter has shown how CBAM's design priorities alignment with international climate commitments such as the Paris Agreement. The mechanism's dual role as a climate instrument for dealing with "carbon leakage" and "level the playing field" for European competitiveness will set the stage for its legal evaluation under WTO norms in the subsequent chapter.

3. EU CBAM under general principles of WTO Law

This section discusses the relevant legal issues under the non-discrimination principle and the general exemption with their implications in the context of a potential trade war. The regulatory nature of the CBAM certification system, in conjunction with the EU's Carbon Pricing mechanism is likely to raise legal issues under WTO law, particularly in relation to imports of carbon-intensive products.¹⁰⁷

The CBAM under international trade law is concerned in this section particularly in the relation of EU member states obligations under the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT). These issues will be investigated in detail below through the lens of WTO legal principles and with focus on GATT's Article I, III and XX. As most WTO members are also signatories to a range of multilateral agreements, they are also bound by their trade obligations and broader commitments. Including addressing environmental protection under other international legal frameworks.¹⁰⁸

In shaping its external relations the European Union operates within a legal framework that closely aligns its trade and environmental policies with international law. The Article 21 of the Treaty on European Union (TEU) underscores the Union's commitment to global engagement and states a promotion of international law and the strengthening of multilateral systems (This includes as well as environmental protection.).¹⁰⁹ (Art. 21(2)(f) and (h)). Furthermore the external relations are governed by Article 3 TEU where paragraph (3) ties the development of the internal market to an approach of sustainable development and paragraph (5) extends a sustainable responsibility to the global stage.¹¹⁰ In parallel, the Articles 206 and 207 TFEU establish the EU's exclusive competence in external trade. This is by mandating commercial policy to support the harmonious development of world trade as well as be governed by uniform principles which includes tariff policies and trade agreements.¹¹¹

¹⁰⁷ Chalmers et al. (2024, p.1045)

¹⁰⁸ World Trade Organization, "General Agreement on Tariffs and Trade (GATT 1947)". WTO. https://www.wto.org/english/docs_e/legal_e/gatt47_e.htm

¹⁰⁹ Consolidated Version of the Treaty on European Union (TEU) (2016), Art. 21(2)(f) and (h).

¹¹⁰ *ibid*, Art 3(2) and (5)

¹¹¹ Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) (2016) OJ C 202/48, Art 206 and 207.

3.1 EU CBAM under the non-discrimination principle

Articles I and III of the GATT 1994 enshrine the WTO's central non-discrimination principles. The obligation to extend Most Favoured Nation (MFN) treatment to all members and the requirement to avoid less favourable treatment of imported goods relative to domestic products (National Treatment). The EU's CBAM raises concerns regarding its alignment with these principles, particularly whether it results in indirect discrimination against non-EU countries or suggests a protectionist intent. This leads to an important legal question, if the EU CBAM is consistent with the WTO's non-discrimination rules?

3.1.1 EU CBAM under the Most Favored Nation (MFN) principle

The Most-Favoured-Nation (MFN) principle embodies the norm of non-discrimination in international trade and mandating equal treatment of all trading partners irrespective of origin. The principle ensures trade liberalization that tariff reductions and other concessions granted to one country are automatically extended to all members, thereby promoting a uniform and inclusive trading environment.¹¹² This broad application reduces the scope for preferential treatment and fosters greater market openness. Furthermore, by discouraging selective alliances and discriminatory practices, the MFN principle contributes to more stable and cooperative international trade relations, mitigating potential conflicts and reinforcing the multilateral trading system.¹¹³

The Most Favoured Nation principle brings benefits and protective effects that need to be put in perspective to what the third countries see the CBAM regulation can impact on. The principle plays an geopolitical and economic role by promoting efficiency in global production. By ensuring uniform tariff treatment, it allows firms to locate production based on comparative advantage rather than tariff incentives, thereby minimizing distortions in trade patterns. Lester describes that the principle has an imported part in trade negotiations with tariffs by the historic perspective of bilateral trade agreement “unconditional” MFN and “conditional” MFN. Additionally, MFN contributes to broader trade liberalization, as concessions granted to one nation extend automatically to all. The unconditional application of MFN simplifies trade negotiations, fosters transparent and predictable customs policies

¹¹² General Agreement on Tariffs and Trade (GATT) (1994) art. I.

¹¹³ *ibid*

that helps reduce international tensions by ensuring equal treatment of all trading partners, regardless of their size or influence.¹¹⁴

A close examination of the wording in “The General Most Favoured Nation Treatment” legislation provided in Article 1 GATT reveals the critical importance of the intent, the effects of the measures and the specific products concerns.¹¹⁵

The distinction of two products, one product gets better treatment in lower tariffs than a “like product”. The WTO Appellate Body interprets "like products" under Article I and III GATT as those that are economically interchangeable or serve similar functions with the words “directly competitive or substitutable” products.

“..any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.” - Article I:1 GATT WTO¹¹⁶

Unequal treatment of “like” products undermines the MFN Principle. A core feature of CBAM is that importers can reduce their CBAM obligation if a verifiable carbon pricing framework inherently benefits countries with established emissions trading schemes or carbon taxes. Exporters from jurisdictions lacking such a mechanism can not claim similar deductions, placing them at a financial disadvantage even where products are “like”. Moreover, imports from countries with carbon markets systems fully linked to the EU ETS such as the European Free Trade Association (EFTA) countries (Iceland, Liechtenstein and Norway) and UK as well as Switzerland are likely to be exempted from CBAM altogether.¹¹⁷ Although the EU justifies this by regulatory harmonisation, it nonetheless confers preferential treatment which breaches Article I GATT MFN principle.¹¹⁸ Therefore CBAM’s risks rising

¹¹⁴ Lester et al., 2021, p.313.

¹¹⁵ Lester et al., 2021, p.327.

¹¹⁶ General Agreement on Tariffs and Trade (GATT) (1994) art. I:1.

¹¹⁷ European Commission, “Scope of the EU ETS”.

https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/scope-eu-ets_en

¹¹⁸ André Sapir, “The European Carbon Border Adjustment Mechanism: Key Features and WTO Compatibility” (Bruegel, 2021)

<https://www.bruegel.org/blog-post/european-unions-carbon-border-mechanism-and-wto>

“de facto” discriminatory effects and non-compliance with article I paragraph 1 GATT. Unless such differentiation is grounded in WTO-sanctioned exception Article XX GATT.¹¹⁹

The concept of “like product” concerning Article I and III GATT has been interpreted in case law as Japan - Alcoholic Beverages, where the Appellate Body emphasised physical characteristics with the end-use and tariff classification.¹²⁰ Similar reasoning is held from the Appellate Body in EC - Asbestos, that products with similar physical properties and uses may nonetheless not be “like” if one poses significant health risks.¹²¹ Both ruling of the separate cases suggest the likeness is determined by objective market criteria rather than regulatory intent, such as emissions intensity or production method.

Aligned reasoning is provided through Anna Holms (2024) investigation of “Like” and “Likeness”, where she argues that environmental distinctions in production methods do not prevent products from being classified as “like” under WTO law. Instead, the determination relies on a case-specific evaluation of various factors, including product characteristics, usage, tariff classification as well as consumer perception. Holm provides that the flexible and context-driven approach underscores the absence of a uniform standard for assessing product similarity. However there is no absolute difference in product production process under WTO-law if one is produced less “green”-friendly it is still classified as a “like”-product.¹²²

3.1.2 EU CBAM under the National Treatment on Internal Taxation

The GATT Article III obliges Members to treat imported products no less favourable than like domestically products with respect to internal taxation and regulatory measures. Specifically, Article III:2 and III:4 prevent the imposition of rules when products are treated with less favourable conditions. In this context, the EU CBAM must be assessed in terms of whether places foreign goods from third countries are less favourable or with comparative disadvantage to those produced within the EU.

In Article III:2 the first sentence highlights the requirement to maintain competitive conditions that do not disadvantage imported goods in relation to “like” domestic products. In

¹¹⁹ World Trade Organization, General Agreement on Tariffs and Trade (GATT 1947). WTO. https://www.wto.org/english/docs_e/legal_e/gatt47_e.htm

¹²⁰ Appellate Body Report, *Japan - Taxes on Alcoholic Beverages*. (1996).

¹²¹ Appellate Body Report, *European Communities - Measures Affecting Asbestos and Asbestos-Containing Products*. (2001).

¹²² Holm, 2024, p.30.

parallel, Article III:4 has been interpreted to mandate an “effective equality of opportunities” for imported products as in how domestic products are treated in practice and affected.¹²³

The National treatment requirement prohibits the discrimination against foreign products, to determine if CBAM is a discrimination towards domestic products the intention of EU CBAM needs to be explored. The aim of CBAM is to prevent carbon leakage and harmonise the carbon costs imposed on EU producers and foreign exports by setting the CBAM certificate price in alignment with EU ETS allowance prices. This strategy frames CBAM as an internal adjustment mechanism rather than a border tariff which allows it to fall within the scope of article III rather than article II of GATT. These alignments hold true de jure with preserving the national treatment but the question is also if it does de facto with the effects.

The ongoing allocation of free emission allowances to EU-based industries, scheduled to be fully phased out by 2034, continues to confer a competitive advantage on domestic producers.¹²⁴ In contrast, importers are immediately subject to the full cost of embedded carbon emissions through the mandatory purchase of CBAM certificates. This regulatory imbalance may lead to disproportionately higher carbon costs for foreign producers, potentially resulting in de facto discrimination and raising concerns under the equal treatment obligation set out in Article III of the GATT. WTO and GATT jurisprudence on national treatment has frequently addressed such instances of indirect discrimination. The Appellate Body has emphasized that differential treatment must adversely affect the “competitive conditions” for imported goods, as exemplified in the Korea Beef case.¹²⁵ Importers must obtain authorisation as CBAM declarants, engage in periodic emissions reporting and secure independent verification.¹²⁶ Though domestic producers are also subject to verification under the EU ETS and benefit from a pre-established compliance structure and potential free allocations (EU 2023/956). For foreign producers, particularly those from countries with weaker emissions monitoring systems the administrative burden may be disproportionately high and raise concerns under Article III:4 about unequal regulatory treatment. These issues

¹²³ “Part II, Article III National Treatment on Internal Taxation and Regulation” WTO, p.126, https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art3_e.pdf

¹²⁴ European Commission, Carbon Border Adjustment Mechanism (CBAM): Questions and Answers. (22 December 2023, p.7). https://taxation-customs.ec.europa.eu/system/files/2023-11/CBAM%20Frequently%20Asked%20Questions_November%202023.pdf

¹²⁵ Appellate Body Report, Korea-Beef. paragraph 135-138.

¹²⁶ Lester, p.263

suggest that implementation of CBAM may create barriers to trade that adversely affect foreign goods which goes against article III:2-4 GATT.

In counter the Commission’s proposal for simplification aims to ease administrative complexity. The inclusion of flexible reporting options also helps reduce the potential for de facto discrimination under Articles I and III of the GATT. By enabling producers from third countries to engage with the EU market through registration and verification systems, the mechanism includes and supports more equitable market access.¹²⁷ For example Under CBAM imported and domestic steel are treated differently if the foreign product is not subject to a carbon price. De jure, the mechanism is origin neutral and applies framework to all products. However when it comes to de facto the exporters from countries without equivalent carbon pricing may face higher compliance costs and restricted market access with the “legitimate expectations” for investors in danger with “Fairness and equality”, potentially altering the conditions of competition in violation of Article III:2 and 4.¹²⁸

3.2 EU CBAM under Article XX of GATT

A justification for CBAM, if classified as a trade barrier, may fall under the exceptions provided in Article XX of the GATT, where paragraphs (a) to (j) are recognized as exceptions to the general rules. The following section therefore examines the potential for justifying CBAM under Article XX and assesses whether the EU mechanism meets the conditions set out in the so-called chapeau of Article XX, in light of WTO jurisprudence.

Introduction of Article XX Structure and burden proof

The structural design of Article XX functions as a safeguard within the GATT system, allowing governments to deviate from fundamental commitments in order to protect legitimate public interests. However, as outlined above, the burden of proof lies with the party invoking the justification. Under Article XX, a measure must first be shown to fall within one of the exceptions listed in the subparagraphs (a–j) of the article. The EU can act inconsistently with GATT obligations in order to pursue certain designated policies and goals

¹²⁷ European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism COM(2025) 87 final, 26 February 2025.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0087>

¹²⁸ World Trade Organization, General Agreement on Tariffs and Trade (GATT 1947)

of the government.¹²⁹ The burden of proof required under Article XX is on the party invoking a specific sub-paragraph (a-j) and argument concerning “the chapeau” to show that the measure is justified under the provision. Concerning EU CBAM that follows under the question of exceptions of particular relevance to protection of the environment with the two subheadings (b) and (g) which is motivated by the aim of EU CBAM.

(b) “ *necessary to protect human, animal or plant life or health*; “¹³⁰

(g) “ *relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption*; “¹³¹

Thereafter, the measure must also satisfy the requirements of the chapeau of Article XX which is that it must not constitute a means of “arbitrary” or “unjustifiable discrimination” between countries where the same conditions prevail, nor serve as a disguised restriction on international trade.¹³² A two-tier analysis is required to justify a measure under Article XX, involving both the specific exceptions set out in paragraphs (b) and (g) as well as the compliance with the chapeau. Accordingly, the burden of proof lies with the invoking party to demonstrate that the measure is justified. An approach affirmed in the US-Gasoline case.¹³³

3.2.1 The compatibility of EU CBAM with Article XX (b)

According to Article XX(b), measures may be taken if they are:

“*necessary to protect human, animal or plant life or health*”¹³⁴

The defence for EU CBAM under this paragraph is in the determination of the “measure” at issue is designed to pursue a policy of protecting the human, plant and animal life which if according to the aim and purpose of Commission indicate CBAM as an environmental tool rather than trade and falls in to the scope of “measure”. Environmental considerations have progressively been integrated into the legal framework of the World Trade Organization (WTO) through various legal and institutional developments, including the inclusion of

¹²⁹ GATT, art XX.

¹³⁰ *ibid*, art XX(b)

¹³¹ *ibid*, art XX(g)

¹³² *ibid*, art XX

¹³³ Appellate Body Report, *United States - Standards for Reformulated and Conventional Gasoline*. WT/DS2/AB/R, adopted 20 May 1996.

¹³⁴ GATT, art XX(b)

environmental language in the preamble to the Marrakesh Agreement, the adoption of the Agreement on Technical Barriers to Trade (TBT) and the establishment of the Committee on Trade and Environment (CTE). Nevertheless, it is primarily under Article XX(b) of the GATT that WTO law enables a structured balancing between environmental protection and trade liberalisation commitments. A key legal issue in this context concerns the interpretation of the notion of “necessity” in relation to measures aimed at protecting human, animal or plant life or health.¹³⁵

WTO jurisprudence has developed a “necessity test” which involves an assessment of proportionality, the availability of alternative measures and the degree of trade restrictiveness. The interpretation of “necessary” remains a complex and nuanced issue.¹³⁶ Case law indicates that the analysis requires consideration of the common interests and values protected by the measure, as well as its impact on international trade. This includes evaluating whether alternative measures are reasonably available, whether they would be less trade-restrictive, or whether they might in fact result in an even greater distortion of trade.

In the case of EC-Asbestos, the Appellate Body accepted a strict regulatory measure on the basis that no reasonable alternative was available and less trade-restrictive alternatives could achieve the same level of health protection. France, in this instance, pursued a public health objective that was deemed unattainable through alternative means. A hypothetical option, such as allowing “controlled” imports instead of a total ban, was considered insufficient, as it would undermine the objective of protecting public health.¹³⁷ The Appellate Body concluded that a ban on products posing a mortal risk was “necessary” to protect human life and health within the meaning of Article XX(b) GATT. The measure was assessed as “vital” and “important in the highest degree” in achieving this objective.¹³⁸

The term “necessary”, as used in Article XX(b), also appears in XX(d), which was examined in the Korea-Beef case.¹³⁹ That case provided a more detailed framework for assessing alternatives and was referenced in EC-Asbestos to reinforce the necessity analysis. In Korea-Beef, the Appellate Body emphasized the role of proportionality and a balancing

¹³⁵ Lester et al., p. 379.

¹³⁶ *ibid.*

¹³⁷ The Appellate Body EC-Asbestos, para 174.

¹³⁸ *ibid.*

¹³⁹ Appellate Body Report, *Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R & WT/DS169/AB/R, adopted 10 January 2001.

approach, affirming that WTO Members must pursue their policy objectives in a manner that minimizes the adverse impact on international trade. It held that a measure cannot be considered “necessary” under Article XX(d) if a reasonably available alternative exists that is less trade-restrictive and consistent with the GATT. In the absence of such a fully compliant alternative, a Member must choose the measure that deviates least from GATT obligations. The necessity assessment thus requires balancing the measure’s trade-restrictiveness against its effectiveness in achieving the intended policy goal.¹⁴⁰

In EC-Asbestos, the protection of human life and health was recognized as a value of the highest order, justifying a complete ban on asbestos containing products. However, there were no “alternative measure” provided that could offer an equivalent level of protection.¹⁴¹ In the case Brazil-Retreaded Tyres¹⁴², the Appellate Body clarified that the fact that a measure has restrictive effects on trade does not preclude it from being considered "necessary", provided that no reasonably available alternative exists that would ensure an equivalent level of protection.¹⁴³ This assessment requires a weighing and balancing of the measure’s contribution to the legitimate objective against its trade-restrictive impact. Where a less trade-restrictive measure is available that achieves the same level of protection, such an alternative must be preferred. The importance of “necessary” and reasonable available “alternative” is further highlighted in *Thailand - Restrictions on importation of and Internal Taxes on Cigarettes* case, where the observation of Thailand's import restrictions may qualify as “necessary under Article XX(b) only with the no alternative measure is available or inconsistent with GATT. Thailand could therefore in the case with the common interest and end pursued reasonably be expected to achieve health policy objectives.¹⁴⁴

This legal standard is directly applicable to the European Union’s CBAM, particularly in assessing its compatibility with WTO law. In order for CBAM to be justified under Article XX(b), the EU must demonstrate that the mechanism is necessary to safeguard human health

¹⁴⁰ Korea-Beef, para. 171

¹⁴¹ EC-Asbestos, para. 172

¹⁴² Appellate Body Report, *Brazil - Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007.

¹⁴³ Appellate Body Report, *Brazil-Retreaded Tyres*. para 141.

¹⁴⁴ *Thailand - Restrictions on importation of and Internal Taxes on Cigarettes*, para 170. & Lester et al, p.413.

and the environment from the adverse consequences of climate change.¹⁴⁵ This entails both establishing a causal link between greenhouse gas emissions, health risks and showing that no other reasonably available measure would provide the same protective outcome with less interference in trade.

A frequently suggested alternative to CBAM is the implementation of a global carbon tax. However, such a scheme is not only politically and institutionally difficult to realise, but would likely impose even greater trade distortions than the CBAM mechanism. In this regard CBAM particularly as it is designed in connection with the EU's domestic climate policy can be regarded as the least trade-restrictive option reasonably available and therefore potentially justifiable under Article XX(b).

3.2.2 The compatibility of EU CBAM with Article XX (g)

“relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; “

- Article XX (g)¹⁴⁶

In this context, it is also relevant to examine whether CBAM can be justified under the general exceptions provided in Article XX(g) of the GATT. Previous WTO case law highlights the importance of interpreting the terms “exhaustible natural resources” and “relating to” within the meaning of Article XX(g). A key question is whether the concept of “exhaustible natural resources” is limited solely to the physical depletion of finite materials such as oil and minerals or whether it can also include broader environmental concerns. As in our case aimed at addressing carbon emissions for environmental purposes. The US-Shrimp case confirms that living resources may also fall within the scope of “exhaustible” under Article XX(g). The Appellate Body clarified that there is no definitive legal boundary between renewable and non-renewable resources.¹⁴⁷ It concluded that sea turtles constituted a “natural resource” and an “exhaustible” one, with that the contested measure was “reasonably related” to the conservation of that resource. This interpretation opens the possibility of applying Article XX(g) more broadly.¹⁴⁸ It supports the argument that measures addressing carbon emissions, such as CBAM, may be linked to the protection of the climate system as an exhaustible resource, thereby potentially satisfying the conditions set out in Article XX(g).

¹⁴⁵ GATT, Art XX(b).

¹⁴⁶ GATT, Art XX(g)

¹⁴⁷ Appellate Body Report, US-Shrimp. para 131.

¹⁴⁸ Lester et al., p.418.

A broader interpretation of the term “exhaustible natural resources” as discussed above, can also be found in US-Gasoline, where the Panel Report included “clean air” within the scope of this concept.¹⁴⁹ This suggests that climate change, particularly greenhouse gas emissions addressed by the CBAM may fall under the definition of a natural resource. This aligns with the Appellate Body’s reasoning in US-Shrimp, which emphasised that Article XX(g) is not limited to the conservation of mineral or non-living resources. It explicitly stated that living resources can be equally “finite” and therefore subject to protection under the same provision.¹⁵⁰

As for the interpretation of the term “relating to” in Article XX(g), it is generally considered more straightforward than the stricter “necessity” test found in Article XX(b). Unlike the latter which requires the measure to be strictly necessary to achieve its objective, Article XX(g) only demands that the measure be "related to" the conservation of natural resources.¹⁵¹

In the US-Gasoline case, the Appellate Body affirmed that Article XX(g) requires a functional connection between the measure and the conservation of natural resources, rather than a necessity requirement.¹⁵² WTO panels have supported the view that, to fall under Article XX(g), a measure must be “primarily aimed at” conserving natural resources, serving as a guiding principle for interpretation. The Appellate Body concluded that the US regulations establishing fuel quality baselines were genuinely linked to the goal of protecting “clean air” and that the measure as a whole was related to environmental objectives involving the conservation of exhaustible natural resources.¹⁵³ These baselines enabled regulators to monitor emissions and enforce environmental standards, even though the rules conflicted with GATT Article III:4 on National Treatment. Given that the measure pursued environmental protection rather than protectionist objectives, it was found justifiable under Article XX(g).

CBAM’s objective to internalize the cost of carbon emissions and thereby incentivize emission reductions among both EU and non-EU producers aligns closely with this rationale. It reflects a genuine environmental purpose consistent with the reasoning upheld in the

¹⁴⁹ Panel report, US-Gasoline. para. 6.37.

¹⁵⁰ Appellate Body Report, US -Shrimp, para. 128

¹⁵¹ Lester et al., p.418.

¹⁵² Appellate Body Report, US-Gasoline, 1996, p18-19.

¹⁵³ Lester et al., p.410-411.

US-Gasoline. Robert Howse has likewise emphasized that WTO Members retain a degree of regulatory autonomy under Article XX(g), provided that the link between the measure and the resource it aims to protect is genuine and not protectionist in nature.¹⁵⁴

3.2.3 The compatibility of EU CBAM with “The Chapeau”

“ Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: ” - Article XX General Exceptions¹⁵⁵

Even where a measure falls within the scope of one of the specific exceptions enumerated in the subparagraphs of Article XX, it must still comply with the overarching conditions set out in The Chapeau. The introductory clause of Article XX makes clear that the listed exceptions are not absolute. To rely on an Article XX exception, a measure must not only meet the requirements of a specific subparagraph but also comply with the chapeau, ensuring it is not applied in a way that leads to arbitrary or unjustifiable discrimination or disguises a restriction on trade with a disguise of protectionism. It is therefore the character of a two tier analysis proving with the exemptions of art XX paragraph (b) and (g) as well as the “The Chapeau”.¹⁵⁶

The two cases mentioned earlier US - Gasoline and Brazilian - Retreaded Tyres were considered to be justified under the subparagraph of Article (b) and (g) but were not considered to fulfil the requirements of the chapeau. In US - Gasoline the United States applied stricter standards to imported gasoline than to domestic products, without offering equivalent procedural fairness to foreign producers.¹⁵⁷ This resulted in “arbitrary” and “unjustifiable discrimination”.¹⁵⁸ In Brazil - Retreaded Tyres, Brazil’s exemption of MERCOSUR countries from its import ban undermined the even-handedness of the measure’s application. These rulings demonstrate that measures justified under Article XX

¹⁵⁴ Robert Howse, (2022). “The Appellate Body Rulings in the Shrimp/Turtle Case” <https://www.worldtradelaw.net/document.php?id=articles/howsheshrimp.pdf>

¹⁵⁵ GATT, Article XX

¹⁵⁶ Lester et al, p.427.

¹⁵⁷ US - Gasoline

¹⁵⁸ Lester 428-429

must still be administered consistently and without discrimination to comply with the chapeau.¹⁵⁹

Furthermore, the Appellate Body in EC-Seal Regime concluded that the EU did not comply to meet the requirements of the chapeau of Article XX GATT, as it resulted in arbitrary and unjustifiable discrimination.¹⁶⁰ While the EU had actively facilitated access to the IC exception for Greenlandic Inuit, it had not made comparable efforts for Canadian Inuit, nor adequately addressed local conditions or regulatory misunderstandings.¹⁶¹ This disparity, combined with a lack of genuine engagement indicated that the measure lacked a consistent relationship to its stated objectives and undermined its justification under Article XX(a).¹⁶²

A key challenge to the WTO consistency of the EU CBAM arises from the EU's unilateral authority to assess the adequacy of climate action undertaken by other WTO Members. Granting such discretion to a single Member may give rise to arbitrary or unjustifiable discrimination, particularly if the criteria used to evaluate third-country measures lack transparency.¹⁶³ This concern is heightened by the continued allocation of free emissions allowances to domestic industries under the EU Emissions Trading System (ETS). When combined with CBAM this dual mechanism could be perceived as “a disguised restriction on international trade”, which is prohibited under the chapeau of Article XX GATT. The WTO Appellate Body has previously emphasised that, even where a measure serves a legitimate policy objective, it must not be applied in a way that confers protectionist advantages. In the US-Shrimp, for example, the Appellate Body stressed that measures lacking flexibility and equitable treatment among trading partners could breach the chapeau due to their discriminatory nature.¹⁶⁴ Accordingly, both the unilateral nature of climate assessments and the parallel use of free allowances raise serious questions regarding CBAM's compatibility with WTO law.

¹⁵⁹ *ibid.*, p.434.

¹⁶⁰ Appellate Body in EC-Seal Regime, para. 5.339.

¹⁶¹ *ibid.*, para. 5.337

¹⁶² *ibid.*, para. 5.336

¹⁶³ Lester et al., p.428.

¹⁶⁴ , para.177

3.3 The Impact of the CBAM on Developing Countries

This section examines the distributional effects of the EU CBAM on developing countries, with particular emphasis on legal and economic asymmetries. It explores how the mechanism interacts with the principle of Common But Differentiated Responsibilities (CBDR) under international climate law and assesses its implications for Least Developed Countries (LDCs) facing structural disadvantages in global trade.

3.3.1 EU CBAM under the CBDR principle of international climate law

The principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) is of international climate law and established in the Paris Agreement 2015.¹⁶⁵ CBDR-RC reflects the need to account for historical emissions and varying national capacities for Developing Countries and LDC. Developing countries may argue that the EU's Carbon Border Adjustment Mechanism (CBAM) disregards this principle by applying uniform carbon costs to imports, without considering historical responsibility or capacity constraints.¹⁶⁶ This exclusion risks shifting the burden of climate mitigation to countries that have contributed least to greenhouse gas emissions. Although CBDR-RC is not formally recognised under WTO law, it may be relevant in interpreting WTO provisions in light of international environmental law.¹⁶⁷ Furthermore, developing countries may invoke the "Enabling Clause" to argue that CBAM violates their special rights by failing to offer financial support or technology transfer to facilitate green transitions.¹⁶⁸

When combined with the ongoing allocation of free emissions allowances within the EU, CBAM may also be seen as a disguised restriction on international trade, inconsistent with the Article I, III and XX GATT. While the EU claims CBAM prevents carbon leakage, the developing countries may raise legal concerns under CBDR-RC. The EU's use of climate justifications as a disguise protectionism, where the developing countries can claim that CBAM unfairly burdens them and their rights as "developing countries" under the CBDR RC, without the EU offering financial support or technology for a green transition.

According to *Paragraph 10 (EU)2023/956* the mechanism of CBAM is also intended to promote decarbonisation efforts in third countries by creating incentives aligned with the

¹⁶⁵ Paris Agreement 2015, Article 2.2.

¹⁶⁶ Chalmers et al, p.1046.

¹⁶⁷ Paris Agreement 2015

¹⁶⁸ WTO, "Differential and more favourable treatment reciprocity and fuller participation of developing countries" (Decision of 28 November 1979) WTO.

https://www.wto.org/english/docs_e/legal_e/enabling_e.pdf

EU's climate objectives.¹⁶⁹ In recognition of the challenges faced by developing and least developed countries, the Regulation further emphasises the Union's responsibility to provide targeted technical assistance to support their transition.¹⁷⁰ To address disparities in institutional readiness and climate financing, the European Union has pledged tailored CBA). This includes support for establishing carbon pricing frameworks and broader decarbonisation efforts. Although these countries are not currently the primary targets of CBAM, the EU plans to conduct a full review of its implications and the adequacy of the support measures before the transitional phase ends in 2025.¹⁷¹

While CBAM seeks to address carbon emissions, it fails to consider the capacity of developing nations in transitioning to green energy. Without any direct plan of structure how to help with financial support, technological transfer and capacity building. The developing countries prioritizes "SDG" goals such as no poverty and no hunger rather than innovation of technology concerning Carbon emission. Simon Otto(2024) addresses the position of developing countries with India as a key example that are on track to reach the lower goals but ask for financial and technological support.¹⁷² However, the CBAM changes the path of prioritizing from SDGs goals as "poverty" to focusing on the level of developed countries carbon and climate acts (SDG goals 8 and 11). In accordance with Article 32 "Transitional period CBAM", a phased implementation alone does not address the fundamental inequity in CBAM.¹⁷³

Shapovalova (2020) argues that the principle of CBDR-RC continues to play a vital role in shaping both global climate policy and national legal frameworks. Its adaptable nature allows it to remain relevant in changing legal and political contexts, supporting efforts toward a more just and cooperative international climate response.¹⁷⁴ Even if CBAM includes the principle, it lacks concrete measures for financial and technical support to developing countries, making it difficult for them to meet the demands of this transition. Instead of a

¹⁶⁹ Regulation (EU) 2023/956, paragraph 10.

¹⁷⁰ Regulation (EU) 2023/956, paragraph 71.

¹⁷¹ CBAM and developing countries/LDCs.

https://taxation-customs.ec.europa.eu/document/download/7abe56cc-4af0-490d-90e1-0a0825aabe37_en?filename=CBAM%20and%20developing%20countries.pdf

¹⁷² Simon Otto. "The external impact of EU climate policy: political responses to the EU's carbon border adjustment mechanism". Springer.

(28 January 2025) <https://link.springer.com/article/10.1007/s10784-025-09667-z>

¹⁷³ Transitional period CBAM, art 32

¹⁷⁴ Shapovalova, "In Defence of the Principle of Common but Differentiated Responsibilities and Respective Capabilities". (2020) SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3652184

phase-in period, developing countries advocate for more targeted and direct support mechanisms, including financing and technology transfer, to achieve meaningful emission reductions. Applying a uniform carbon cost effectively penalizes less developed nations, whose industries have not had equal access to low-carbon technologies. Thus, while technically non-discriminatory, CBAM creates an uneven economic playing field in practice favoring EU industries and putting pressure on third country exporters.¹⁷⁵

The unilateral imposition of emissions calculation requirements has prompted concerns among several developing countries, who argue that such obligations may unfairly burden states lacking the financial resources, technological and institutional capacity necessary to carry out these assessments effectively.

CBAM's additional costs on imports act as a de facto tariff and could conflict with WTO principles by imposing uneven burdens on developing economies that lack equivalent emissions reduction resources. According to developing countries such as India, the CBAM mechanism is not considered a measure to protect the environment, it's rather an economic tool of hidden tariff that unfairly targets developing countries. It will give developed countries of the EU a competitive advantage, especially in sectors where they have already transitioned to greener technologies. A total of 8 billion dollars of metal export from India, 27% went to the EU (year 2022). Viewed through the lens of green protectionism, this will not be the case when the CBAM is implied and may expose the Indian metal industry to significant regulatory and cost burdens associated with decarbonization and energy transition.¹⁷⁶

The CBAM may widen the economic gap between developed and developing nations by imposing border taxes on high-carbon products with "Green Protectionism", raising costs for exporters and worsening trade terms as Brics already opposed CBAM 2021.¹⁷⁷

This is contrary to the CBDR-RC principle of the Paris Agreement and reduces the competitiveness of developing countries industries like steel, cement and textiles. The CBAM may be problematic under article I and III GATT as the MFN when it comes to developing countries concerns. The efficiency in global production by encouraging firms to manufacture

¹⁷⁵ Lee Shee Weng, "The EU's Carbon Border Adjustment Mechanism (CBAM): Balancing Climate Action and Global Trade" (SSRN, 1 March 2025)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5160814

¹⁷⁶ *ibid*

¹⁷⁷ Eicke et al., 2021. p, 3.

goods in the most cost-effective locations is in line with the principle of comparative advantage. In contrast, without the MFN obligation, CBAM may impact companies that choose to locate production in countries offering preferential tariff rates, even if those locations are not the most efficient, thereby distorting production patterns. CBAM thereby risks undermining this system by imposing a disguised tariff with imposing differentiated carbon costs on imports depending on the exporting country's climate policy. The required equal treatment of all countries, regardless of their size or power and trade liberalisation is in danger. Furthermore, the CBAM does not fully consider the effects of un-finished non-pricing mechanisms, which puts developing countries at a disadvantage compared to countries with carbon pricing systems.

The debate surrounding Special and Differential Treatment (SDT) in WTO law continues to raise critical questions regarding the definition of "developing country" status, the criteria for graduation and whether SDT provisions actually lead to long-term developmental gains. Although the WTO contains several SDT mechanisms including longer implementation periods, enhanced market access and technical assistance provisions. Article XVIII of the GATT permits certain derogations from MFN obligations for developing countries and provisions under the Dispute Settlement Understanding (DSU) Article 4.10 with the requirement that due consideration be given to the "special needs" of these members. Developing countries have criticized CBAM, arguing that linking carbon pricing to a product's origin may violate the WTO's MFN principle. They also contend that applying uniform carbon taxes ignores the CBDR principle, which calls for differentiated climate responsibilities based on countries' capacities and emissions histories.¹⁷⁸

However, the European Union's Carbon Border Adjustment Mechanism (CBAM) raises new legal and normative concerns within this framework. While the EU affirms its commitment to providing technical assistance to developing and least developed countries in paragraph 71 and Article 30(2)(f) of the CBAM Regulation (Regulation (EU) 2023/956), its practical implications may run counter to the spirit of SDT and WTO's objective of enhancing market access for developing countries and safeguarding their trade interest when new measures are adopted.¹⁷⁹ Developing countries have argued that CBAM imposes disproportionate costs on

¹⁷⁸ Kartikeya Garg, (2022) "The "Common But Differentiated Responsibilities"-WTO Conundrum". OJ. <http://opiniojuris.org/2022/09/09/the-common-but-differentiated-responsibilities-wto-conundrum/>

¹⁷⁹ Regulation (EU) 2023/956, paragraph 71 and Article 30(2)(f).

its industries and raises barriers to export, increasing production costs and potentially stalling its industry. In this context, CBDR-RC as established in Article 3(1-2) of the UNFCCC¹⁸⁰ and reaffirmed in the Paris Agreement (2015) is arguably more influential today than the Doha Development Agenda (2001).¹⁸¹ CBDR-RC recognises that developed countries bear the primary responsibility for historic emissions and are therefore obligated to lead climate action and assist developing countries in their transitions. The principle also demands that measures avoid placing “abnormal or disproportionate burdens” on “vulnerable economies”.¹⁸² However, by imposing carbon pricing at the border without tailored transitional support, CBAM risks violating these equity-based obligations. Rather than facilitating developing countries green transformation, CBAM may burden its industries with additional trade obstacles raising concerns about coherence between the EU’s climate policies and its obligations under both WTO law and international climate law.

3.3.2 The Impact of the CBAM on LDC

The United Nations classifies 45 countries as Least Developed Countries (LDCs), these nations are characterized by low income and economic vulnerability wherein positions them particularly subjected to external and climate-related challenges.¹⁸³ International climate agreements embed the principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), in which UNFCCC Article 3.1 urges that developed countries lead in combating climate change and that developing countries “special needs” and potential “abnormal burden” be given full consideration.¹⁸⁴ Similarly, the Paris Agreement mandates that its implementation reflect equity and CBDR-RC in light of different national circumstances. The CBAM’s equal treatment of all exporters regardless of development status, does not directly reflect CBDR-RC since an LDC producer faces the same carbon cost on exports as a developed-country producer. Critics argue this is normatively at odds with climate equity for example one of the world’s poorest economies Mozambique exports over 90% of its aluminum to Europe and from 2026 these exports will incur EU carbon charges,

¹⁸⁰ Ieva Baršauskaitė, Alice Tipping, (2023). Border Carbon Adjustments - Priorities for international cooperation. International Institute for Sustainable Development.

<https://www.iisd.org/system/files/2023-08/border-carbon-adjustments-international-cooperation.pdf>

¹⁸¹ UNFCCC, 1992, art 3:1-2.

¹⁸² *ibid*, art 3:2

¹⁸³ “The UN Capital Development Fund makes finance work for the LDCs.”, UNCDF.

<https://www.uncdf.org/ldcs#:~:text=Inclusion.%20To%20be%20classified%20as%20an%20LDC%2C,Today%2C%2045%20countries%20are%20classified%20as%20LDCs.>

¹⁸⁴ UNFCCC, Article 3.1.

potentially eroding its workers' wages and government revenue.¹⁸⁵ Such outcomes sit uneasily with the CBDR-RC principle that poorer countries should not bear the same burden. However, the EU has explicitly tried to reconcile CBAM with CBDR-RC through support measures, seen in the CBAM Regulation's preamble where the EU acknowledges the need for partnership with developing countries. The paragraphs 71–74 commit the EU to “provide technical assistance” to developing countries and LDCs to facilitate CBAM implementation and to continue financial support for decarbonization in LDCs as part of the EU's climate finance obligations.¹⁸⁶

“... The Union should continue to support those countries through the Union budget, especially LDCs, in order to contribute to ensuring their adaptation to the obligations under this Regulation. The Union should also continue to support climate mitigation and adaptation in those countries, including in their efforts towards the decarbonisation and transformation of their manufacturing industries, within the ceiling of the multi-annual financial framework and the financial support provided by the Union to international climate finance. The Union is working towards introducing a new own resource based on the revenues generated by the sale of CBAM certificates.”¹⁸⁷

The CBAM holds significant potential to reshape global climate governance and promote sustainable economic development. In situations where concerns from affected countries are limited in scope by constructive measures such as technology sharing, financial support or direct compensation to LDCs could offer viable pathways for cooperation. However, should resistance from the international community intensify beyond manageable levels, the European Union may face increasing pressure to substantially revise or even possibly withdraw the mechanism.¹⁸⁸

Concerning CBAMs “*de facto*” effects and the question of “*cui bono*”, Boqiang Lin and Hengsong Zhao study highlights the need for a more detailed evaluation of CBAM's economic effects on developing countries. Using an input-output model, it finds that

¹⁸⁵ Pamela Machado, “Threat of EU carbon tax prompts dubious “green aluminium” claims in Mozambique” (2023).

<https://www.climatechangenews.com/2023/07/03/mozambique-aluminium-cbam-carbon-border-tax/#:~:text=Sinoia%20worries%20that%20a%20reduction,less%20revenue%20through%20industrial%20t axes>

¹⁸⁶ Reg (EU) 2023/956, para 71-74.

¹⁸⁷ Reg (EU) 2023/956, para 74.

¹⁸⁸ Erdogdu, p.4.

non-OECD countries face greater output losses and cost increases compared to OECD countries. African nations are hit hardest by output declines, while Asian countries experience sharper cost rises. Most developing countries, apart from BRICS, show limited emission reduction efficiency. A refund mechanism based on historical emissions benefits Least Developed Countries (LDCs), whereas green innovation incentives primarily favour wealthier states.¹⁸⁹

Additionally Hauke Warda, Jan Christoph Steckel, Michael Jakob report shows that a uniform carbon price would enhance efficiency and prevent carbon leakage, the study finds that its impact on competitiveness varies significantly across countries and sectors. Advanced economies such as Brazil, Japan, the USA and EU member states are likely to see competitive gains, whereas newly industrializing Asian economies and Eastern Europe face strikingly economic and employment challenges.¹⁹⁰

The European Commission must review CBAM's impact on developing countries, "with special interest to LDCs" and report on the effectiveness of the technical assistance provided.¹⁹¹ By 2028, the Commission will also assess how EU climate finance has contributed to decarbonizing LDC industries, with these provisions operationalizing the CBDR-RC principle by recognizing differing capacities and aiming to build LDC capabilities to comply. In effect, while CBAM imposes a uniform carbon price in line with the EU's interpretation of non-discrimination under GATT Articles I and XX, the EU seeks to operationalise common responsibility by modulating the burden in accordance with respective capabilities, primarily through targeted technical and financial assistance to Least Developed Countries.¹⁹²

3.4 Concluding Remarks

Chapter 3 examined the CBAM's compatibility with core WTO principles, particularly the non-discrimination obligations under GATT Articles I, III and the environmental exceptions under Article XX. From a trade law perspective, CBAM poses complex legal tensions while it claims environmental justification, its operational design may de facto result in unequal

¹⁸⁹ Boqiang Lin & Hengsong Zhao. (2023) "Threatening the Poor? The economic impacts of the carbon border adjustment mechanism on developing countries". Science Direct. <https://doi.org/10.1016/j.enpol.2023.113573>

¹⁹⁰ Hauke Warda, Jan Christoph Steckel & Michael Jakob. "How global climate policy could affect competitiveness" (2019), Science Direct. <https://doi.org/10.1016/j.eneco.2019.104549>

¹⁹¹ Reg (EU) 2023/956, Article 30(2)(f).

¹⁹² Reg (EU) 2023/956, paragraphs 71–74 & Article 30(2)(f).

treatment of imported goods. This raises MFN and National Treatment concerns. The legal analysis reveals that the mechanism may be defensible under Article XX (b) and (g), provided it passes the “necessity” and “proportionality” tests and does not constitute disguised protectionism under the Chapeau. The chapter also explored CBAM’s impact on developing countries, suggesting that although the EU cites climate necessity, it could conflict with the Common but Differentiated Responsibilities (CBDR) principle in international environmental law. In essence, CBAM stands at a legal crossroad between legitimate climate action and a potentially WTO-inconsistent trade restriction and posing a substantial risk of dispute settlement proceedings. Whether CBAM can be lawfully sustained under the current WTO framework remains contingent on its implementation, transparency and flexibilities for less developed nations.

4. EU CBAM under trade tensions triggered by US Tariffs

This chapter will contextualize the EU CBAM within the broader geopolitical and discuss economic tensions of a fragmented global trade system. It evaluates how the CBAM interacts with US tariffs and protectionist measures. The CBAM may adopt a focusing role as either a catalyst for escalating trade conflict in negotiations or a strategic tool within EU trade diplomacy. The chapter assesses economic (corporate), legal and geopolitical risks in an increasingly multipolar economic order looking beyond legal critiques.

4.1 Trade tensions and the US Tariffs of Trump Administration

This section investigates the resurgence of trade tensions between the EU and the United States, focusing on tariff policies initiated under the Trump administration. It situates the CBAM within this evolving context and I will analyze how competing regulatory with more protectionism trade policies deepen transatlantic economic divergence.

4.1.1 The US Tariff impact on the Economy

Section 4.1.1 provides a detailed overview of the economic consequences stemming from US tariff policy, including historical developments under Trump and recent updates under Biden as well as Trump's second term. From the historic 2008 when President Trump first came to power with the trade policy and strategy shifted, all the way to 2025 "liberation day" and the economic impact it potentially will give.

It considers the strategic objectives behind tariff protectionism and its ripple effects on the EU economy and industrial competitiveness.

4.1.1.1 Historic background: Trump-era tariff and Biden

In 2008 during President Trump's first term, the Trump administration imposed a shifted strategic instrument of US trade policy by the utilization of Tariffs. President Trump imposed tariffs on industries such as steel (25%) and aluminium imports (10%).¹⁹³

¹⁹³ The White House, "Fact Sheet: President Donald J. Trump Restores Section 232 Tariffs" (February 11, 2025).
<https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-section-232-tariffs/>

Section 232 of the Trade Expansion Act “justified” the tariffs on grounds of “national security” and “economic resilience”. The initiative aimed to counteract persistent market distortions caused by state-supported overproduction abroad, which had led to “dumping” and a surge of underpriced metal imports into the U.S. market. The policy was presented as essential for re-establishing competitive conditions and enhancing strategic industrial capacity. Reportedly, it contributed to stabilising the domestic steel industry and preserving the aluminium sector, with a target of achieving at least 80% capacity utilisation for long-term viability.¹⁹⁴ These tariffs targeted for example European steel and aluminium exports with a worth of 6.4 billion euros.¹⁹⁵ In January 2020, the United States expanded its trade measures by imposing further duties on selected steel and aluminium goods from the European Union which will impact approximately 40 million euros in exports.¹⁹⁶ Additionally, under Section 301 of the Trade Act of 1974 the Trump administration targeted a wide range of Chinese products with tariffs in response to alleged unfair trade practices and to protect critical industries as well as intellectual property.¹⁹⁷ Subsequently, the original Section 232 tariffs on EU steel and aluminium were revised and replaced with a tariff-rate quota system, whereby imports within pre-defined historical trade volumes were exempt, while shipments exceeding these thresholds remained subject to elevated duties.¹⁹⁸ The Biden administration maintained many of these tariffs and a more protective trade policy with a skeptical view of “free trade” with especially China as a competing nation.

4.1.1.2 US Tariff 2025 - Protecting industry and impact on EU

On 12 March 2025 under President Trump's second term, the United States imposed specific import duties of up to 25 percent on aluminium, steel and related derivative products

¹⁹⁴ *ibid*

¹⁹⁵ European commission, 2023. “EU prolongs tariff suspension for US products related to the steel and aluminium dispute” https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6713

¹⁹⁶ “EU Counter Tariffs announced against the USA” (18 March 2025) Foydz. <https://www.floydzad.com/news/eu-counter-tariffs-announced-against-the-usa/>

¹⁹⁷ US Custom and Border Protection. “Section 301 Trade Remedies Frequently Asked Questions” (Apr 14, 2025)

<https://www.cbp.gov/trade/programs-administration/entry-summary/section-301-trade-remedies/faqs>

¹⁹⁸ European Commission, “EU prolongs tariff suspension for US products related to the steel and aluminium dispute” (Dec 19, 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6713

originating from the European Union, thereby escalating transatlantic trade tensions and reinforcing a broader protectionist shift in U.S. trade policy.¹⁹⁹

The so-called “*Liberation Day*” policy was announced the 2 April 2025 and marked a reorientation towards further protectionism in U.S. trade strategy. Justified by claims of widespread price dumping and the assertion that foreign trading partners had “*taken advantage*” of the United States.²⁰⁰ The policy aimed to restore industrial sovereignty and reverse the persistent trade deficit. Central to this initiative was a universal 10 percent tariff on nearly all imported goods and accompanied by additional reciprocal-tariffs. The European Union was hit by an additional reciprocal-tariff of 20% on 9th may, but in some cases the additional tariff could reach up to over 40 percent. This was specifically for targeting exports from countries such as China and Vietnam.²⁰¹ Framed as a mechanism to “*bring factories back*”, the policy sought to revitalise domestic manufacturing and reduce reliance on foreign production. While sectors such as steel, iron and pharmaceuticals were viewed as less vulnerable due to more established domestic capabilities, the broader vision of US “re-industrialisation” under this regime was not entirely detached from global supply chains, raising practical challenges for achieving long-term strategic autonomy.²⁰²

To confront the ongoing national emergency stemming from the United States significant and sustained trade imbalance, President Trump exercised powers granted under the International Emergency Economic Powers Act of 1977 (IEEPA). This legal measure was intended to reinforce the nation’s global economic standing and safeguard domestic labour interests.²⁰³

¹⁹⁹ The White House, “Fact Sheet: President Donald J. Trump Restores Section 232 Tariffs” (February 11, 2025).
<https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-section-232-tariffs/>

²⁰⁰ The White House, “My fellow Americans, this is Liberation Day. April 2, 2025...” (April 3, 2025)
<https://www.whitehouse.gov/past-events/my-fellow-americans-this-is-liberation-day-april-2-2025-president-donald-j-trump-🇺🇸🇵🇹/>

²⁰¹ Johan Karlberg, “After Liberation Day, U.S. trade enters a new phase”. (8 april, 2025) Business Sweden.
<https://www.business-sweden.com/insights/blogs/us-trade-policy-shifts/u.s.-trade-shifts-navigating-trumps-liberation-day-policies>

²⁰² Paurush Oma “‘Tariffs don’t protect, they backfire’: Former US President Ronald Reagan’s resurfaced warning echoes amid Trump’s new trade war.” 8 april 2025. The Economic Times.
https://economictimes.indiatimes.com/magazines/panache/tariffs-do-not-protect-they-backfire-former-epublican-us-president-ronald-reagans-resurfaced-warning-echoes-amid-donald-trumps-new-trade-war/articleshow/120096012.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cps

²⁰³ US Embassy and Consulate in Brazil, “President Trump Declares National Emergency to Increase Competitive Edge, Protect Sovereignty and Strengthen our National and Economic Security” (2 april 2025)
<https://br.usembassy.gov/president-trump-declares-national-emergency-to-increase-competitive-edge-protect-sovereignty-and-strengthen-our-national-and-economic-security/>

Although the tariffs are framed as a strategy to revitalise domestic manufacturing and reduce trade deficits, the policy also functioned as a revenue-raising mechanism to finance anticipated tax cuts before year-end. However, the economic efficacy of such tariffs is questionable as higher duties tend to suppress trade volumes and limit fiscal yield. This is something former US President Ronald Reagan commented about the escalation towards a new trade war and Trump's tariffs:

“Tariffs don't protect they backfire” - Former U.S. President Ronald Reagan.²⁰⁴

On 9 April 2025 President Trump issued a modification to “Executive Order 14257” invoking Section 4(c) to amend the tariff provisions under the U.S. Harmonized Tariff Schedule (HTSUS). This amendment introduced a temporary 90-day suspension of differentiated ad valorem duties applicable to designated foreign trading partners, as outlined in Annex of the original order. Significantly, this suspension did not apply to China, which remained subject to previously imposed tariff rates.²⁰⁵ In parallel, the administration eliminated the de minimis exemption for low-value shipments from China and Hong Kong, effective 2 May 2025. This change mandated full customs declarations, financial guarantees and duty remittance for all such imports by placing a considerable administrative burden on carriers and importers.²⁰⁶

4.1.1.3 Economic impact of US Tariffs

The rationale for cooperative trade negotiations stems from the recognition that when countries seek gains at others' expense, all may be worse off. Historically, core WTO principles of reciprocity and non-discrimination have proven effective in mitigating such harmful dynamics.²⁰⁷ Tariffs are primarily used to restrict imports, but also come with broader economic implications. They may cause a one-time rise in domestic prices and under certain conditions contribute to persistent inflation via wage-price spirals. The US tariffs can undermine exports by raising input costs and redirecting resources toward protected industries, which increases wages and reduces export competitiveness through real exchange rate appreciation. Additionally, tariffs may lead to nominal currency appreciation either

²⁰⁴ Paurush Oma “‘Tariffs don't protect, they backfire’: Former US President Ronald Reagan's resurfaced warning echoes amid Trump's new trade war.” 8 april 2025. The Economic Times.

²⁰⁵ Donald J. Trump, “Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment” (Executive Order, 9 April 2025) The White House.

²⁰⁶ *ibid*

²⁰⁷ Bagwell and Staiger, “Economic Theory and the Interpretation of GATT/WTO” 2002. <https://journals.sagepub.com/doi/epdf/10.1177/056943450204600201>

directly by lowering foreign exchange demand or indirectly through anticipated monetary tightening. Though tariffs often fail to correct overall trade imbalances, they can alter bilateral trade flows by changing relative prices while highlighting their multifaceted impact on global economic dynamics.²⁰⁸

An economic model by CPA conducted in 2024 estimated that the implementation of a uniform 10% global tariff could result in a \$728 billion expansion of the global economy, the creation of approximately 2,8 million jobs and a 5,7% rise in real household income.²⁰⁹

The implication of tariff as a trade policy creates uncertainty and volatility, where the restrictions impact global trade in two ways. It raises transaction costs and contributes to broader economic slowdowns. Expected short-term inflation can prompt consumers to postpone purchases, while firms, particularly those dependent on foreign inputs may face declining confidence.²¹⁰ Heightened uncertainty tends to encourage more cautious economic behaviour with macroeconomic findings suggest that ambiguity surrounding tariffs contributes to reduced business investment and slows overall economic performance by undermining corporate confidence.²¹¹ The policy's industrial ambition extended beyond sectors traditionally seen as strategic such as pharmaceuticals, defence, infrastructure and technology and included categories like food products and low-impact consumer goods, many of which pose negligible national security risks. The scope and intensity of these measures support the argument that US tariffs in 2025 were not merely regulatory tools, but rather instruments of economic confrontation.

“ ‘Let's impose tariffs on foreign imports,’ it looks like they're doing the patriotic thing by protecting American products and jobs. And sometimes for a short while it works - but only for a short time.... High tariffs inevitably lead to retaliation by foreign countries and the triggering of fierce trade wars. The result is more and more tariffs, higher and higher trade barriers, and less and less competition. So, soon, because of the prices made artificially high by tariffs that subsidize inefficiency and poor management, people stop buying. Then the

²⁰⁸ World Trade Organization “Global Trade Outlook and Statistics April 2025” (2025, p19-20) WTO https://www.wto.org/english/res_e/booksp_e/trade_outlook25_e.pdf

²⁰⁹ The White House, “Fact Sheet: President Donald J. Trump Restores Section 232 Tariffs” (February 11, 2025).

²¹⁰ World Trade Organization “Global Trade Outlook and Statistics April 2025” (2025, p18) WTO

²¹¹ IMF WEO, 2024

worst happens: Markets shrink and collapse; businesses and industries shut down; and millions of people lose their jobs.” - Former US President Ronald Reagan²¹²

In light of current protectionist trends, the concerns once expressed by former U.S. President Ronald Reagan regarding the economic dangers of tariffs remain strikingly relevant. Viewed through the lens of today, the efforts to industrialize the U.S. economy through tariffs face practical constraints. For instance restarting labour-intensive industries such as textile manufacturing will remain economically challenging amid a 4% unemployment rate in the US with high wage expectations and entrenched global competition from low-cost producers in China, Bangladesh and Vietnam. While supply chain security remains a legitimate concern, especially in light of recent global disruptions, the tariffs alone are unlikely to reconstitute industrial capacity without complementary investment, training and infrastructure development.

In an interview with Maria Bartiromo on Fox Business (2024), Jamie Dimon offered a measured yet pointed warning about the economic risks associated with continued tariff escalation. The JP Morgan Chase CEO issued a carefully worded yet direct warning about the growing risk of recession, while also making a clear argument for reconsidering the continuation of high tariffs. Reflecting on the economic consequences of the Trump administration’s tariff policy, Dimon noted that the tariffs were beyond what people expected and can slow down the growth cause of inflation. He expressed cautious optimism about the potential for future trade agreements but acknowledged their complexity.²¹³

On the other hand, Janet Yellen, former U.S. Treasury Secretary under President Biden, stated in the previous year that tariffs were unlikely to significantly affect consumer prices, asserting that she did not expect American households to experience any substantial increase in the cost of goods.²¹⁴ However, the financial impact of 2018-2019 US-China trade war, with the U.S. firms heavily reliant on Chinese trade saw significant declines in market value following tariff announcements, with effects extending to their suppliers and customers. The

²¹² Ronald Reagan, “Radio Address to the Nation on Free and Fair Trade” (April 25, 1987) <https://www.reaganlibrary.gov/archives/speech/radio-address-nation-free-and-fair-trade-4>

²¹³ Kristen Altus. (April 9, 2025.) “Jamie Dimon warns recession is now ‘a likely outcome’ for US economy”

<https://www.foxbusiness.com/media/jamie-dimon-warns-recession-now-a-likely-outcome-us-economy>

²¹⁴ The White House, “Fact Sheet: President Donald J. Trump Restores Section 232 Tariffs” (February 11, 2025).

impact was strongest among firms with low R&D intensity or dependence on specialized Chinese inputs.²¹⁵

Short-Term Economic Outlook

In the current economic environment, heightened uncertainty has had both direct and indirect effects on the Global and particular US economy. Financial markets, interest rates and equity indices have experienced increased volatility. Rising US interest rates have raised borrowing costs for the government, posing a risk for a highly indebted nation reliant on the strength of the dollar. Small and medium-sized enterprises (SMEs), especially those focused on domestic markets have been disproportionately affected due to increased costs, supply shortages and declining consumer demand. The imposition of tariffs has reduced household purchasing power, leading to lower consumption and weaker labour market conditions. Consumers are the market and when it declines as now in the US it threatens unemployment and central banks have started to inject money to the market for stimulation. The uncertainty has also constrained bank lending, slowing economic activity.²¹⁶ As a result, investment deals have stalled and initial public offerings (IPOs) are largely on hold.²¹⁷ The prevailing instability has thus impeded economic recovery efforts and depressed business confidence.

Long-Term Consequences

Over the longer term, continued trade disruptions pose a threat to GDP growth, with recession risks rising. Projections suggest a 30-40% likelihood of recession, defined by two consecutive quarters of negative growth.²¹⁸ Inflation has begun to ease, yet central banks such as the Federal Reserve and the European Central Bank are under pressure to lower interest rates. This, however, brings a risk of deflation, particularly as the labour market weakens.

The absence of progress toward lowering tariffs or concluding new free trade agreements could strain global trade relations and erode consumer welfare. Moreover, diminished predictability in U.S. trade policy has undermined the country's credibility as a stable economic partner. This uncertainty has contributed to a weakening of the U.S. dollar, which

²¹⁵ Yi Huang, Chen Lin, Sibbo Liu, Heiwai Tang. "Trade networks and firm value: Evidence from the U.S.-China trade war" 2023. <https://doi.org/10.1016/j.jinteco.2023.103811>

²¹⁶ Kristen Altus. (April 9, 2025.)

²¹⁷ Mikael Olsson & Ida Hansson Brusewitz, "Uppgifter: Klarna pausar borsplaner" (April 2025) Di. <https://www.di.se/digital/uppgifter-klarna-pausar-borsplaner/>

²¹⁸ Kristen Altus. (April 9, 2025)

has depreciated by 14% since the beginning of the year. It's the worst quarterly performance since 1995.

Historically, the United States and the US dollar have served as a risk-averse strategy for investors. When bond yields decline the dollar typically appreciates as capital flows toward safe-haven assets. However, as the US increasingly appears to be an unreliable trading partner marked by erratic policy decisions and diminished long-term predictability there is a growing risk of a breakdown in the existing monetary order. This may trigger a rapid depreciation of the US-dollar and potentially lead to a global economic downturn, with a shift in the international reserve currency.²¹⁹ Investors and countries including China, Japan and several European countries have divested from the US Treasury securities and the US dollar in favour of alternative markets such as Germany, gold or the Euro.²²⁰

Japan's finance minister Kato recently expressed concern over increased global volatility, noting the need to examine the impact of US tariff measures on exchange rate fluctuations.²²¹ President Trump, however, continues to monitor and respond to market movements, with trade policy partly guided by stock market reactions. In contrast, nations like Norway have taken advantage of declining US asset prices, with its sovereign wealth fund increasing investments in the US following the April 2025 "Liberation Day" tariff announcement.

Although the US remains capable of drawing parties to renegotiation talks, the long-term predictability of its trade posture is uncertain. While the 90-day tariff pause offers temporary relief, fundamental questions remain regarding post-suspension policy direction. If trade agreements are reached, renewed confidence could stabilise markets and strengthen the dollar. Nevertheless, the underlying challenges of weakened domestic demand, inflationary pressures and diminished fiscal flexibility persist. Conversely, should tariff reductions and deregulatory policies gain traction so markets may shift their focus to pro-growth measures such as tax reform.

²¹⁹ Gianluigi Mandruzzato "The beginning of the end for the US dollar?" EFG (14 April 2025) https://www.efginternational.com/insights/2025/the_beginning_of_the_end_for_the_us_dollar.html

²²⁰ Gustav Tägtström, "Kinesiska investerare flyr USA – tar sikte på Europa" (18 April 2025), EFN. <https://efn.se/kinesiska-investerare-flyr-usa-tar-sikte-pa-europa>

²²¹ Takaya Yamaguchi, Leika Kihara & Makiko Yamazaki, "Japan's finance minister is 'deeply concerned' over impact of Trump's tariffs". (18 April 2025). The Japan Times. <https://www.japantimes.co.jp/business/2025/04/18/economy/finance-minister-concern-tariffs/>

4.1.2 The CBAM and US Tariff impact on Corporates

The European Union's CBAM is emerging as a dual instrument for companies with both a trade measure and a framework to promote the green transformation of industry. European firms including Volvo, Cements (Heidelberg Group), Stegra and Northvolt have made substantial investments aligned with EU climate regulations such as the Sustainable Finance Disclosure Regulation (SFDR) and the Corporate Sustainability Reporting Directive (CSRD). These measures have been complemented by CBAM aimed to reward early movers in the green transition of industrial decarbonisation transformation.

Companies like Volkswagen and institutional investors such as the Swedish AP funds have also committed significant capital to the transition. However, recent bankruptcies and financial strain among firms like Northvolt²²² and Stegra (H2 Green Steel)²²³ raise concerns about whether this momentum is sustainable or merely a reflection of early-stage challenges in a transformative industrial shift that CBAM is designed to support.

As outlined in Paragraph 1 of the CBAM Regulation (EU) 2023/956 and discussed in the 2022 report "*No More Free Lunch - Ending Free Allowances in the EU ETS to the Benefit of Innovation*", the European Union, through instruments like the CBAM holds a strategic position to become a global leader in the development of clean technologies essential for achieving climate neutrality. This leadership ambition spans key sectors in industrial decarbonisation, including the advancement of circular economy models, the scaling-up of renewable energy infrastructure and the deployment of hydrogen for producing low-carbon materials such as green steel.²²⁴

Rather than maintaining the practice of allocating free emissions allowances, both the regulation and the report advocate for redirecting these resources toward innovation-driven initiatives. The rationale is that taking an early lead in regulatory frameworks and green industrial transformation should give European firms a competitive edge. However, this outcome has not been consistently realised. In fact, recent examples such as Northvolt and

²²² SVT, "AP-fondernas chefer frågades ut om investering i Northvolt i finansutskottet" 6 May 2025.

<https://www.svt.se/nyheter/inrikes/ap-fondernas-chefer-fragas-ut-om-investering-i-northvolt-i-finansutskottet>

²²³ Dagens industri, "Di avslöjar: Stegra nobbas miljardstöd-pressar regeringen" (24 March 2025).

²²⁴ Thomas Pellerin-Carlin, Domien Vangenechten, Pascal Iamy & Genevieve Pons, "No More Free Lunch - Ending Free Allowances in the EU ETS to the Benefit of Innovation", (2022, p.4.) Jacques Delors Institute

https://institutdelors.eu/wp-content/uploads/2024/09/PB_220203_No-more-free-lunch_Pellerin-Carlin.pdf

Stegra suggest otherwise. As highlighted in Mario Draghi's report, excessive regulatory burdens have in some cases hindered, rather than supported, innovation and growth leading to weakened competitiveness and, in some instances, the collapse of promising ventures. These developments raise questions about whether the EU may be reconsidering its policy trajectory in balancing ambition with industrial viability.²²⁵

The recent proposal, COM(2025) 87 final, introduces simplification through "Omnibus" legislative packages (described in section 2.1) will have a huge impact on the corporate competitiveness. The simplification follows the recommendations from the Mario Draghi report "The future of European competitiveness" to strengthen the competitiveness in European industry and companies. This proposal seeks to reduce administrative burden while maintaining regulatory ambition, offering clarity through mechanisms such as "default prices" for CBAM certificates.²²⁶ Paragraph 13 of the CBAM Regulation emphasizes that, in light of increasing carbon costs, businesses require a stable and foreseeable regulatory environment. Such clarity is essential for guiding long-term investment decisions aimed at decarbonising industrial operations.²²⁷

On 3 April 2025 the European Parliament approved the "Stop the Clock" proposal, with the Council granting its approval on 14 April. The aim of the "Stop the Clock" initiative is to provide companies with additional time to prepare for compliance, which postpones the implementation of sustainability reporting requirements under the CSRD, the EU Taxonomy as well as the Corporate Sustainability Due Diligence Directive (CSDDD).²²⁸ Under the revised timeline, large companies classified under wave 2 will be required to begin reporting for the financial year 2027. Meanwhile, listed SMEs, as well as non-complex credit institutions and similar entities falling under wave 3, will commence reporting from the financial year 2028.²²⁹

²²⁵ Mario Draghi, "The Future of European Competitiveness". (European Commission, 2024)

²²⁶ European Council of the European Union, "Simplification: Council gives final green light on the 'Stop-the-clock' mechanism to boost EU competitiveness and provide legal certainty to businesses" 14 April 2025.
<https://www.consilium.europa.eu/en/press/press-releases/2025/04/14/simplification-council-gives-final-green-light-on-the-stop-the-clock-mechanism-to-boost-eu-competitiveness-and-provide-legal-certainty-to-businesses/>

²²⁷ Reg (EU) 2023/956, paragraph 13

²²⁸ European Council of the European Union, "Simplification: Council gives final green light on the 'Stop-the-clock' mechanism to boost EU competitiveness and provide legal certainty to businesses" 14 April 2025.

²²⁹ PwC Sweden, "Detta innebär förslaget Omnibus från EU-kommissionen" (26 February 2025). PWC.

The Confederation of Swedish Enterprise “Svenskt Näringsliv”(2025) emphasizes that the CBAM should be designed to effectively and proportionately address the risk of carbon leakage, while minimizing the administrative burden on companies. They stress that the principle of competitive neutrality must be upheld in both the cost structure of emission allowances under the ETS and certificates within CBAM, as well as in the respective administrative requirements. In this context, they see a review of the CBAM regulation with the aim of regulatory simplification as both necessary and constructive. They express particular support for the European Commission’s proposal to introduce a “de minimis” threshold under Article 1:1, arguing that it has the potential to significantly reduce the overall compliance burden without undermining the environmental objectives. This is due to the fact that the exempted import volumes account for only a marginal share of total imported emissions. Consequently, the protective function of CBAM for European industry during its green transition remains intact.²³⁰

Commissioner Dombrovskis explains that insights from the CBAM’s transitional period revealed that a large number of small importers accounted for only a minimal share, roughly 1%, of the associated carbon emissions. To address this imbalance, the proposal of simplification which will exempt around 182 000 importers (90%), predominantly small and medium-sized enterprises from CBAM requirements. This adjustment is projected to generate substantial cost reductions, estimated at 1,12 billion euros for businesses and approximately 87,5 million euros in administrative savings for national authorities. According to Dombrovskis, the change demonstrates how simplification can effectively align climate ambitions with economic resilience.²³¹

The unpredictability of EU policy²³², however, poses a substantial risk. For example, the delay of the EU’s 2024 electric vehicle (EV) target to 2026 particularly affects early investors like Volvo, who acted in alignment with the original timeline. Sudden shifts in regulatory

²³⁰ Svenskt Näringsliv, “Remissyttrande Europeiska kommissionens förslag till ändringar av Europaparlamentets och rådets förordning (EU) 2023/956 om inrättande av en mekanism för koldioxidjustering vid gränsen”. (2025). https://www.svensktnaringsliv.se/bilder_och_dokument/rapporter/2h83ac_remissvar_2025-53pdf_1230014.html/remissvar_2025-53.pdf

²³¹ Dombrovski, “Dombrovskis remarks on Omnibus proposal” (Feb 26, 2025) European Commission. https://ec.europa.eu/commission/presscorner/detail/en/statement_25_629

²³² European Parliament. “The future of European electric vehicles”. (Nov 2024) [https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/762873/EPRS_IDA\(2024\)762873_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/762873/EPRS_IDA(2024)762873_EN.pdf)

targets or withdrawal of instruments like CSRD or SFDR create an environment in which firms may hesitate to invest or adapt to CBAM, fearing that the EU may reverse course. This is exemplified by the recent EV policy change, which undermined companies that had already aligned production strategies with previous EU directives.²³³

Another illustration of how companies are investing to align with CBAM requirements is Cementa's collaboration with Skanska to deliver net-zero cement "evoZero" in line with Agenda 2030 demonstrates the green transition and that CBAM can facilitate commercial success with environmental benefit.²³⁴ However, as LKAB's chairman Anders Borg notes,

*"There is no political clarity at present on where carbon prices are heading. The EU must provide us with firm assurances."*²³⁵

The volatility of EU ETS pricing and uncertainties over free allowance phase-outs further complicate strategic planning. Furthermore, Zapletal (2021) argues that fluctuations in the price of ETS carbon allowances can significantly influence the operational efficiency of national steel industries, particularly in sectors such as long engineering steel manufacturing.²³⁶ Viktor Eldeus Sörman and Marcus Söderholm (2024) study suggest that with the phase-out of free allowances by 2034 sectors such as cement may have to allocate over 20% of revenues to CBAM's carbon certificates, intensifying the need for coherent and reliable regulatory frameworks for a green transition.²³⁷

CBAM's global implications are also relevant as a border mechanism; it can introduce friction in international trade but simultaneously positions the EU as a structured alternative to the more aggressive trade posture of the United States, particularly under recent US tariffs.

²³³ Tomas Augustsson (2025) "Volvo-vd totalsågar EU:s elbilsbeslut: "Besvikelse". " SVD.

<https://www.svd.se/a/0VJAg6/volvo-vd-om-eu-s-elbilsbeslut-besvikelse>

²³⁴ Heidelberg Materials Cement Sverige, "Skanska och Heidelberg Materials banar väg för hållbart byggande med nettonoll-betong" (June 2024)

<https://www.cement.heidelbergmaterials.se/sv/skanska-och-heidelberg-materials-banar-vag-for-hallbart-byggande-med-nettonoll-betong>

²³⁵ Jens Kärma, "LKAB tvekar om Hybrit – igen: "Har inte bråttom"" (April 2025) Di.

<https://www.di.se/nyheter/lkab-tvekar-om-hybrit-igen-har-inte-brattom/>

²³⁶ Zapletal, F. 2021. On influence of emissions trading on efficiency of the EU national steel sectors. Carbon Management, 12(3), p.249-264. & Tim Fahlstedt, Oliver Håkansson. (2022) "The Effects of ETS & CBAM on Cost Differences in the European Steel Industry A Case Study on Swedish and German Long Engineering Steel Manufacturers". KTH.

²³⁷ Viktor Eldeus Sörman, Marcus Söderholm. (2024) "Impact of Emission Allowances on Financial Performance of Companies in the EU ETS - A quantitative study on Swedish manufacturing companies".

European firms may face pressures to relocate production to the U.S. to remain competitive, which have been exemplified by speculation of Ericsson and Volvo cars. However, this moment may also serve as an opportunity for the EU to present itself as a stable governance, reliable rules-based market attractive to investors and firms seeking regulatory reliability.

4.2 Geopolitical Trade Tensions

This section analyzes the geopolitical dimensions shaping global trade tensions, with a focus on the European Union's strategic positioning amid rising protectionism. It considers how the CBAM functions not only as an environmental tool but also as a potential countermeasure within the EU's broader geopolitical response to the United States' tariff driven industrial agenda. In doing so, the section reflects on the CBAM's dual role as a climate policy instrument and a mechanism of economic diplomacy in an increasingly fragmented international trade order.

4.2.1 Trade war risks in a fragmented global order

A trade war refers to a situation where two or more countries engage in escalating retaliatory measures, such as raising tariffs or imposing other trade restrictions, in response to each other's actions often leading to heightened economic tension and disrupted global trade.²³⁸ The Trump administration decisively shifted away from the principle of "open market access", marking a turning point in U.S. trade policy. Tariffs, viewed not only as a response to foreign protectionism targeting American exports were also framed as a strategic tool to promote domestic reindustrialization. By increasing the cost of imports, the policy aimed to alter the economic logic underpinning globalized production, encouraging companies to relocate manufacturing operations and reestablish supply chains within the United States. In the administration's view, this approach would simultaneously generate revenue and create fiscal space for future tax reductions.²³⁹

Global tariff levels have reached heights not seen in a century. Although previous periods of instability such as the late 1980s, the 2008 financial crisis and the COVID-19 pandemic have tested global markets with the present trade tensions are unfolding on a different scale. The United States under the Trump administration has departed from traditional trade norms and

²³⁸ European Parliament (2025) "Trade wars: what are the EU's trade defence instruments?" <https://www.europarl.europa.eu/topics/en/article/20180308STO99328/trade-wars-what-are-the-eu-s-trade-defence-instruments>

²³⁹ Barath Harithas, Kyle Meng, Evan Brown & Catharine Mouradian (April 3, 2025) "Liberation Day" Tariffs Explained" CSIS. <https://www.csis.org/analysis/liberation-day-tariffs-explained>

is now engaged in a full-fledged trade conflict with China. This includes tariffs targeting automobiles, consumer electronics such as iPhones and agricultural products. In response to the administration's tariff strategy California Governor Gavin Newsom has sought judicial intervention to halt what he deems "illegal tariffs" citing their severe impact on families, businesses and the broader economy of the state.²⁴⁰

While a 90-day suspension of tariffs above 10% (excluding China) has been introduced, this pause does not eliminate the underlying 10% baseline duties which will continue to affect trade flows. From the European perspective Sweden's trade minister has emphasised the importance of dialogue and mutual market access by supporting the European Commission's "zero-for-zero" tariff proposal. China's accession to the WTO in 2001, along with the granting of normal trade relations under MFN obligations, may have significantly influenced President Trump's view of the US market particularly in relation to job losses, factory closures and negative impacts on strategic sectors such as the automotive industry and defence-related manufacturing. However, a more liberal global trade environment necessitates a competitive market in which each country prioritises efficiency, rather than resorting to protectionist measures designed to shield domestic industries. The United States rejected the offer, citing issues related to GDPR obligations as well as concerns about reciprocal tariffs. The US imposes a 2,5% import duty on European passenger vehicles while the EU exports face a 10% duty when entering the US market.²⁴¹

This divergence has opened new possibilities for EU-China trade cooperation, such as agreements in the electric vehicle sector. However, both China and the US face criticism for breaching World Trade Organization (WTO) norms. China has been repeatedly accused of "dumping practices" that may contravene Article II of the GATT. With the US market becoming less accessible due to elevated tariffs, China's exports have increasingly targeted the European market with heightening competitive pressures on EU producers.

The U.S. withdrawal from NAFTA and the subsequent establishment of the USMCA further illustrates its shift toward bilateralism. Meanwhile, the EU has intensified negotiations for new free trade agreements with Mercosur, Mexico and India. Despite the growing interest in

²⁴⁰ Lauren Gambino "California launches legal challenge against Trump's 'illegal' tariffs" (16 April 2025) The Guardian.

<https://www.theguardian.com/us-news/2025/apr/16/california-launches-legal-challenge-against-trump-tariffs>

²⁴¹ The White House, "My fellow Americans, this is Liberation Day. April 2, 2025..." (April 3, 2025)

deals with the U.S., data show that US trade negotiations typically take 18 months to conclude, with an average implementation period of 45 months.²⁴²

The European Union has a range of instruments at its disposal to address unfair trading practices, ranging from initiating dispute resolution proceedings through the World Trade Organization to implementing more assertive trade retaliation measures.²⁴³ In the face of such volatility, the EU has strengthened its defensive instruments. The 2023 “Anti-Coercion Instrument” allows the Union to respond proportionately to foreign economic pressure, including through restrictions on foreign direct investment and access to public procurement markets.²⁴⁴ If triggered, it may address trade distortions caused by third country interference particularly in the context of strategic supply chains, capital flows and technology access. Currently, U.S. tariffs have risen as high as 145%, before being reduced to 30% during the 90-day pause. While China appears to have diversified its export markets in reaction for the high tariffs, the U.S. continues to struggle with the consequences of supply chain disruption and domestic production gaps. This may lead to new export opportunities for other suppliers able to fill the gap and open the door for some least-developed countries (LDCs) to increase their exports to the US market.²⁴⁵

4.2.2 CBAM in the EU toolbox towards Trump Administration’s Tariffs

In response to the imposition of a 25% tariff by the United States on imports of steel and aluminium, European Commission President Ursula von der Leyen expressed deep concern regarding the potential economic consequences of such measures. She emphasised the unparalleled scale of EU and US trade relations, describing them as the most significant globally in terms of volume and mutual benefit, having contributed to economic prosperity and job creation on both sides of the Atlantic. Von der Leyen characterised tariffs as a form of taxation that not only undermines business confidence but also imposes additional costs on consumers. She warned that such trade barriers risk disrupting established supply chains, fuelling economic uncertainty, threatening employment and driving up consumer prices both in Europe and in the United States.²⁴⁶

²⁴² *ibid.*

²⁴³ European Parliament (2025) “Trade wars: what are the EU's trade defence instruments?”

²⁴⁴ European Commission. “Protecting against coercion”

https://policy.trade.ec.europa.eu/enforcement-and-protection/protecting-against-coercion_en

²⁴⁵ WTO. Global Trade Outlook and Statistics. (April 2025)

²⁴⁶ European Commission, “Commission Responds to Unjustified US Steel and Aluminium Tariffs with Countermeasure” (2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_740

In light of these developments, the European Union determined it was necessary to implement countermeasures to defend the interests of its industries and citizens. The EU's response, while firm, was framed as "proportionate" to the scale of the US tariffs. The amounting to 26 billion euros in retaliation against the estimated 28 billion dollars value of the US-imposed duties. These actions reflect a broader strategy aimed at maintaining balance in transatlantic trade while signalling the EU's resolve to uphold fair trading conditions.²⁴⁷

*"... Our countermeasures will be introduced in two steps. Starting with 1 April and fully in place as of 13 April. In the meantime, we will always remain open to negotiation. We firmly believe that in a world fraught with geopolitical and economic uncertainties, it is not in our common interest to burden our economies with tariffs. We are ready to engage in meaningful dialogue. I have entrusted Trade Commissioner Maroš Šefčovič to resume his talks to explore better solutions with the US." - President of the European Commission, Ursula von der Leyen.*²⁴⁸

The re-imposition of US Tariffs on EU steel and aluminium which was originally introduced by President Trump's first term and renewed in 2025 has prompted the EU not only to counter with rebalancing measures but also to seek a negotiated resolution. On 1 April 2025, the European Union will reactivate its full set of rebalancing measures in response to US tariffs introduced in 2018 and 2020, as the suspension of these measures expires on 31 March. This marks the first time the EU will implement the countermeasures in their entirety. The tariffs will apply to a diverse range of US exports on steel and aluminium products. Initially adopted in 2018, the EU's response was divided into two phases, Annex I which covered 2,8 billion euros in goods and applied immediately and Annex II which targeted an additional 3,6 billion euros scheduled for later enforcement. Although both sets of measures were suspended before full implementation this temporary suspension will now be lifted and enable the EU to enforce the full scope of its earlier retaliatory framework.²⁴⁹

CBAM could be a major player in the negotiations as a bargaining tool to address or remove tariffs. The European Union's long term strategy has been to integrate trade policy with climate cooperation, a linkage that was markedly employed during the 2021 trade

²⁴⁷ ibid

²⁴⁸ ibid

²⁴⁹ European Commission, "EU Countermeasures on US Steel and Aluminium Tariffs Explained" (2025) https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_750

negotiations with the US concerning the suspension of disputes over steel and aluminium tariffs.²⁵⁰ Both the US and EU began a discussion on a Global Arrangement on Sustainable Steel and Aluminium (GSA) aiming to curb overcapacity and carbon emissions in steel production.²⁵¹

During the negotiations, European Commission President Ursula von der Leyen and United States President Joe Biden reaffirmed their commitment to a cooperative transatlantic approach, aiming to resolve the Section 232 tariff dispute while advancing shared goals on decarbonising the steel and aluminium sectors.²⁵² Concerning the current situation after “liberation day” 2025 the EU has often historically interacted trade with climate measures into agreements.²⁵³ The GSA example indicates that the EU sees climate-oriented measures like CBAM as intertwined with trade disputes.²⁵⁴ As provided by paragraph 16 and 72, the establishment of a transatlantic climate agreement could enable the US to qualify for exemptions under the CBAM. Insofar as it implements a comparable carbon pricing system or concludes a sectoral agreement deemed equivalent by the EU.²⁵⁵

On the other hand, the EU CBAM could make matters worse. If the US perceives CBAM as unilateral pressure or as undermining its industries’ access to the EU, it could harden the US negotiating stance. Under a Trump administration known for skepticism toward climate policies, CBAM might be cast as another hostile trade barrier. Rather than incentivizing cooperation the CBAM could feed into the narrative of EU protectionism and potentially provoking additional tariffs or a collapse in negotiation talks. The European Commission is aware of these sensitivities. The EU Commission's President Ursula von der Leyen explicitly stated that although the EU’s countermeasures are “*strong but proportionate*”, the EU remains “*ready to engage in meaningful dialogue*” and can reverse its measures if a solution is found. In that context the EU CBAM’s role should ideally be that of a catalyst for

²⁵⁰ European Commission, “EU and US agree to start discussions on a Global Arrangement on Sustainable Steel and Aluminium and suspend steel and aluminium trade disputes” Oct 31, 2021. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5721

²⁵¹ European Commission, “EU Prolongs Tariff Suspension for US Products Related to the Steel and Aluminium Dispute” (2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6713

²⁵² European Commission, “EU and US agree to start discussions on a Global Arrangement on Sustainable Steel and Aluminium and suspend steel and aluminium trade disputes” “Oct 31, 2021

²⁵³ Jamal Khan, Yuan Li & Eric Girardin. (2022) “Is a clash coming when trade and climate meet at the border? The impact of the EU's carbon border adjustment on China's belt and road initiative”, <https://doi.org/10.1016/j.strueco.2022.09.01>

²⁵⁴ European Commission, “EU and US agree to start discussions on a Global Arrangement on Sustainable Steel and Aluminium and suspend steel and aluminium trade disputes” “Oct 31, 2021.

²⁵⁵ Regulation(EU) 2023/956, para 16 & para 72.

negotiations as a signal that the EU will press ahead with climate aligned trade measures if the US avoids negotiations over Trump's tariffs.²⁵⁶

In the context of the transatlantic trade war that has emerged by the US-tariffs on EU metals. The CBAM could indirectly serve as a legal weapon for the EU in negotiations. By applying an “*ex ante*” climate levy on carbon- intensive US exports, the EU would be acting within a pre-established regulatory framework aimed at environmental goals rather than imposing a tariff. In effect the CBAM could mitigate the competitive disadvantage to EU steel and aluminium producers caused by the US-tariffs protectionism. This is done by ensuring US steel importers carry equivalent carbon costs.

However, whether CBAM can truly function as a legal weapon in a trade war depends on the regulations implementation and design of environmental concerns in compliance with WTO rules rather than protectionism of US-tariffs.

If President Trump were to violate WTO rules with the tariffs and undermine the principles of free trade, investors would likely seek to reduce their dependence on the United States and instead favour regions where trade is conducted within a stable and rules-based framework. In such a scenario, where reciprocal tariffs become the primary tool of trade policy and free trade is significantly diminished the environment of uncertainty would intensify. As discussed in Section 4.1.1.3 (Economic Impact of US Tariffs), this could lead the United States towards a more fragile economic climate, potentially resulting in a downgrade of its credit rating, weakening of the US dollar and broader macroeconomic instability. Under these conditions, the European Union may find leverage in negotiations, as investors shift towards the euro and German government bonds as safer and more predictable alternatives.

US tariffs affect approximately 379 billion euros of EU exports. The consultation covers a potential 95 billion euros in US goods and explores restrictions on select EU exports valued at 4.4 billion euros.²⁵⁷ These measures are intended as contingency actions should ongoing negotiations with the United States fail to produce a mutually acceptable resolution. In parallel, the EU plans to launch proceedings at the WTO, arguing that the US tariffs breach multilateral trade rules. Although discussions are continuing during a temporary tariff

²⁵⁶ European Commission, “Commission Responds to Unjustified US Steel and Aluminium Tariffs with Countermeasure” (2025)

²⁵⁷ European Commission. “Commission consults on possible countermeasures and readies WTO litigation in response to US tariffs” (8 May 2025)
https://europa.eu/newsroom/ecpc-failover/pdf/ip-25-1149_en.pdf

suspension, the EU is preparing appropriate legal responses. President von der Leyen reiterated the EU's preference for a negotiated outcome while underlining the need to defend European industry and consumers against unilateral trade actions.²⁵⁸

The EU's regulatory simplification initiative, "Omnibus" COM (2025) 87, may be strategically employed as a bargaining instrument in negotiations with the United States. Of particular relevance is the simultaneous reintroduction of US tariffs and the adoption of the Omnibus package suggests a potential interplay between these parallel developments, indicating that the EU's internal regulatory adjustments could be leveraged in the broader context of transatlantic trade relations.²⁵⁹

Furthermore, the Omnibus package's emphasis on "boosting competitiveness" resonates with a US critique that overly stringent EU regulations can act as trade barriers. By addressing such concerns proactively, the EU removes distractions from the core trade dispute and deprives the US of arguments that EU regulatory policy is unfair. The Omnibus I "Stop the clock" Directive is primarily an internal measure, its strategic timing and substance can subtly reinforce the EU's negotiating position. That said, the Omnibus simplification²⁶⁰ is a soft bargaining chip, not a direct concession to the US.

Unlike tariff suspensions or market-access offers, the changes in COM(2025) 87 do not grant any obvious benefit to the US side, they are fundamentally a unilateral adjustment for the EU's own benefit by boosting EU competitiveness. Mario Draghi's report, *The Future of European Competitiveness (2024)*, appears to have influenced a potential shift in the European Commission's strategic approach, encouraging the development of new policy instruments to reinforce the EU's global economic standing. This repositioning may also enhance the Union's bargaining power, particularly in the context of economic competition with the United States with tariffs and the Omnibus-package. Draghi presents a stark assessment of Europe's declining competitiveness, describing it as a critical juncture requiring immediate action. He calls for a fundamental rethinking of the EU's economic model, warning that failure to adapt could result in increasing dependency on global powers

²⁵⁸ European Commission, "Commission consults on possible countermeasures and readies WTO litigation in response to US tariffs" (2025)

https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1149

²⁵⁹ European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism COM(2025) 87 final, 26 February 2025.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC008>

²⁶⁰ European Commission, "Commission simplifies rules on sustainability and EU investments" (28 March 2025)

such as China and the United States for critical technologies and raw materials. Of particular concern is the risk that overregulation may stifle innovation and flexibility, especially in strategic sectors vital to long-term competitiveness.²⁶¹

4.3 Concluding Remarks

This chapter contextualized CBAM within the broader framework of contemporary geopolitical trade tensions and focusing on the resurgence of US tariffs. The CBAM could either escalate trade frictions especially with the US or act as a negotiating tool within a retaliatory framework. Commission's President Ursula von der Leyen stated that the EU's countermeasures are "strong but proportionate".

The chapter revealed that CBAM is not isolated from politics but operates within a high-stakes environment of industrial policy, supply chain realignment and regulatory divergence. With the introduction of the Omnibus package and a de minimis threshold, the EU aims to reduce administrative friction while preserving the integrity of CBAM. Nevertheless, the chapter concludes that unless multilateral dialogue is strengthened, CBAM may deepen global trade divides rather than support cooperative climate governance. Legal certainty and political pragmatism will determine whether CBAM becomes a provocation in international economic law or seen as a "necessary measure" for a revolutionary shift to decarbonisation.

²⁶¹ Draghi, 2024, p. 24.

5. Conclusion

The purpose of this thesis has been to investigate if the EU CBAM as a legal instrument advances sustainable transition or veils a new form of protectionism, risking legal and geopolitical friction towards a trade war with third countries. This has been done by analysing three sub-research questions for different chapters respectively.

- (i) *How does the EU design the EU CBAM?*
- (ii) *Is EU CBAM a climate measure or a protectionism measure from the perspective of international trade law?*
- (iii) *What are the impact and challenges of the EU CBAM in the emerging global trade tensions?*

Based on the discussion in Chapter 2 the first research question (i) *How does the EU design the EU CBAM?* has outlined that the Carbon Border Adjustment Mechanism (CBAM) is structured as a regulatory complement to the EU ETS and the design aims to equalize the carbon cost between EU domestic product and imports. Thereby preventing “carbon leakage” and promoting regulatory convergence. It requires importers of carbon intensive goods such as cement, steel, iron, aluminium, fertilizers and hydrogen electricity to purchase CBAM certificates reflecting the embedded carbon emission of those products. The mechanism includes a transitional phase (2023-2025), after which full financial obligations begin in 2026. Importantly the CBAM is designed to function as a compliance framework governed by environmental legislations and not operate as a tariff or tax. Distinct from conventional trade barriers CBAM is not devised as a revenue generating tool and adapts a “polluter pay principle”.(Revenues generated by certificates sale, 2023/956 para 74)

Chapter 3 investigates the research question (ii) *Is EU CBAM a climate measure or a protectionism measure from the perspective of international trade law?* The conclusion is although the EU presents CBAM as a legitimate climate policy there is significant contention about its legality under international law and its broader impact on developing countries. CBAM has been evaluated under WTO law, especially from GATT Article I (MFN), III (NT) and XX (General Exceptions). From an international trade law perspective the CBAM risks violating the non-discrimination principles under Most Favored Nation and National Treatment. The concerns raise indirect discrimination and unequal treatment for countries

without a carbon pricing system or are unable to develop technological innovation for green-friendly industries. The CBAM regulation 2023/956 with Article 30(2)(f) and paragraphs 71–74 states that it can provide technology and finance to developing countries as it is obligated to under WTO. However CBAM regulation lacks to give concrete manners of how to make sure this is where many third countries and developing countries advocate for an “abnormal or disproportionate burdens” on “vulnerable economies” under UNFCCC, 1992, article 3(2).

On the other hand the reasoning has provided the appellant bodies arguments in case laws which guides us to a “necessity test” and that CBAM may be seen as proportionality with no “reasonable alternative” available that would not birth “trade barriers” and distortion (Lester, p. 379). The EU therefore can invoke environmental exceptions under justifications of Article XX(b)(g). Because the intention of law “de jure” is for public health and environmental matters. Critical voices could argue that the mechanism imposes a “de facto” protectionist effect by disadvantageous imports and restricts market access with an ongoing phase-out of free allowances to EU producers can complicate the perception of fairness.

The conclusions from Chapter 4 (iii) *What are the impact and challenges of the EU CBAM in the emerging global trade tensions?* is from a strategic standpoint that the CBAM introduction coincides with a period of heightened global friction and intensifying transatlantic tensions. The EU’s deployment of CBAM can thus be constructed as both a climate instrument and a geopolitical tool raising the spectre of “green protectionism” but can be a response in negotiations to the US re-escalating tariff regime. CBAM could feed into the narrative of EU protectionism and potentially provoking additional tariffs or a collapse in negotiation talks. The European Commission is aware of these sensitivities with EU Commission’s President Ursula von der Leyen stating that the EU’s countermeasures are “strong but proportionate” and the EU remains “ready to engage in meaningful dialogue” and can reverse its measures if a solution is found. In that context the CBAM’s role should ideally be that of a catalyst for negotiations as a signal that the EU will press ahead with climate aligned trade measures if the US avoids negotiations over Trump’s tariffs.

For future speculations, reflecting on the economic consequences of the Trump administration’s tariff policy a growing risk of economic recession. The US increasingly appears to be an unreliable trading partner marked by diminished long-term predictability, there is a growing risk of a breakdown in the existing monetary order. This may trigger a rapid depreciation of the US-dollar and potentially lead to a global economic downturn, with

a shift in the international reserve currency. Investors and countries have divested from the US Treasury securities and the US dollar in favour of alternative markets such as Germany, gold or the Euro.

This is a huge change for the EU future when it comes at the same time as the proposed Omnibus-package which aims to reduce the administrative burdens by simplification of the CBAM regulation and thereby boost competitiveness of European business in the same way as Draghi's report argued. Further challenges arise when considering the CBAM through a dual lens. Either CBAM can be seen as a form of green protectionism risking an escalation of the trade conflict with the US or as an environmentally crucial measure with rather no "reasonable alternative". CBAM regulation embody shows a huge step towards further Sustain development and embodies a direction for implement a framework for Brundtland's description "*the kind of development that meets the needs of present without compromising the ability of future generations to meet their own needs*" (Bruntland, "Our common future" 1987) and is a "necessary measure" for a revolutionary shift to decarbonisation and R&D. On the other hand, the chapter has also investigated if these changes of stable-regulations makes the market's position to EU legislation unreliable and non-financially argued to make green transition investments for companies with a regulator environment that shifts their playground and deadlines.

Further thesis may benefit from being written in a more stable period, allowing for a clearer analysis of tariff impacts and the implementation of the EU CBAM. This temporal certainty enables a more focused examination of narrow topics. In contrast, this thesis has been conducted during a volatile phase in EU and US trade relations where rapidly shifting tariff and trade policies occur. This can be seen as a source error when it comes to a total shift of data from trade negotiations and tariff pauses or escalation. Additionally, the exclusion of no further investigation of EU climate law may impact the chapter 2 investigation. Further thesis research can therefore be more specific, with an environmental concern of EU design, particularly in the light of the CBAM regulation as the Omnibus reform is implemented. The EUs attitude to US tariffs and negotiation tactics can also be an interesting investigation under the scope for future thesis.

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