

The Carbon Border Adjustment Mechanism (CBAM) as a Legal Instrument of Climate Protection in the European Union

The initiative concerning the Carbon Border Adjustment Mechanism (CBAM), established by Regulation 2023/956, forms part of the “Fit for 55” package – a set of legislative measures designed to reduce greenhouse gas emissions in the European Union by at least 55% by 2030 and to set a trajectory towards climate neutrality by 2050. CBAM is intended to constitute a key component of the Union’s legal toolkit to achieve climate neutrality no later than 2050, in accordance with the Paris Agreement, by mitigating the risk of carbon leakage stemming from the Union’s higher level of climate ambition. It is further expected that CBAM will incentivize decarbonization efforts in third countries.

Accordingly, the purpose of this dissertation is to examine whether, and to what extent, the assumptions and legal solutions contained in the CBAM Regulation align with the underlying objective of reducing carbon dioxide emissions within and beyond the Union’s borders. The analysis focuses on the legal challenges associated with the design and implementation of this novel regulatory instrument, its compatibility with the principles of the World Trade Organization (WTO), and the preliminary assessment of its impacts at the current stage of its operation.

The research is structured around the following questions:

1. How does the Carbon Border Adjustment Mechanism fit within the broader EU climate strategy?
2. To what extent will CBAM replace the currently existing instruments aimed at preventing carbon leakage?
3. Do the legal design choices made by the European Commission in respect of CBAM correspond to the objectives invoked by Union institutions in supporting and justifying its proposal?
4. What foreseeable global and Union-level effects will the introduction of CBAM generate?

The structure of the dissertation reflects the logical sequence of inquiry. The first chapter introduces the fundamental concepts underpinning the research, including climate, environment, climate change, and greenhouse gases. It outlines the objectives, rationale, and principles of climate protection law, tracing the historical and legal evolution of international and Union climate policy, as well as the genesis of climate protection within EU law. Sources

most influential for the current shape of this field of law are identified, alongside strategic documents expected to steer future Union policy.

The second chapter presents the classification and typology of legal instruments of climate protection within EU law. Existing mechanisms aimed at mitigating the risk of carbon leakage in vulnerable sectors include the transitional allocation of free allowances within the EU ETS and financial measures designed to compensate for indirect emission costs passed on through electricity prices. CBAM, however, seeks to replace such measures by addressing the risk of carbon leakage through the imposition of equivalent carbon costs on imported and intra-EU products. In this context, CBAM is intrinsically linked to other instruments of EU climate law, particularly the EU ETS. Accordingly, the legal framework of these instruments is outlined, with particular emphasis on the EU ETS, in order to situate the analysis of CBAM's operative rules.

The third chapter provides an in-depth examination of CBAM, adopted as one of the core instruments of the European Green Deal. It first considers the normative and policy rationales underpinning its introduction, notably the need to counteract carbon leakage and reinforce the effectiveness of the EU ETS. The chapter then details CBAM's key features, structure, and operational mechanism, including its material and personal scope, and distinguishes between the transitional and definitive phases of implementation, with specific reference to the obligations imposed on importers and supervisory authorities. Particular attention is devoted to a comparative analysis of CBAM and the EU ETS, highlighting their interrelationship, areas of complementarity, and potential regulatory tensions. The chapter concludes with an assessment of CBAM's compatibility with WTO law.

The fourth chapter discusses the consequences of the adoption of CBAM. Since 1 October 2023, the transitional phase of the mechanism has been in effect, designed to prepare for the system's full implementation on 1 January 2026. As demonstrated in the third chapter, CBAM's legal architecture and underlying assumptions reveal a number of challenges and uncertainties concerning its practical application. Against this backdrop, the chapter employs a case-study approach to examine CBAM's impact on third countries in the context of parallel legislative initiatives aimed at establishing comparable climate protection mechanisms, trade relations with major partners, the mitigation of carbon leakage, and the competitiveness of Union enterprises in global markets.

The final *de lege ferenda* conclusions underscore the need for further refinement of the CBAM's legal framework so as to enhance its coherence, transparency, and effectiveness.