

Including consumption in the EU ETS -

A chance for the European Union to overcome carbon leakage

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1. Overview

- 1.1 Objectives of the “Inclusion of Consumption”
- 1.2 EU ETS and Carbon Leakage

2. Including consumption in the EU ETS

- 2.1 Overview: Including consumption
- 2.2 European Primary Law (Article 192 TFEU)
- 2.3 World Trade Law

3. Implementation: Defining consumption sphere



1.1. Objectives of the “Inclusion of Consumption”

Economically:

- reactivate emissions reduction potentials on production and consumption side under carbon leakage constraints
- establish level-playing field between low- and high-carbon products
- incentivise investment in low-carbon technology
- promote sustainable consumption

Politically

- create trade neutrality
- do not discriminate against imports
- avoid political constraints at European level
- design a systemic approach



1.1. EU ETS and Carbon Leakage

EU ETS:

- Market-based approach...
- ...through production efficiency...
- ...to promote emissions reductions...
- ...and consumption efficiency.

Carbon leakage:

- Increase of emissions in region A...
- ...due to unilateral climate policy in region B.
- ...and decrease of emissions in region B...
- Undermines an effective and efficient ETS at production and consumption side

Approaches to tackling
carbon leakage

Border Carbon Adjust.

Political constraints

HAL-allocation

Economic inefficiencies

Output-based allocation

Limited pass-through of carbon costs

2.1. Overview: Including consumption

Production pillar

- output-based allocation of allowances to sectors exposed to a risk of carbon leakage based on benchmarks that reflect BAT

Consumption pillar

- including consumption of carbon-intensive goods (**metals, non-metals, clinker**) in the EU ETS...
- ...by means of a parafiscal charge...
- ...imposed at the time of release for consumption...
- ...assigned to national trust funds...
- ...used for the acquisition of allowances at the auction platforms and mitigation efforts...
- ...calculated according to the carbon content and carbon price at the time of consumption (benchmark*weight*carbon price).

Charge = weight x product specific benchmark x carbon price

2.2. European Primary Law (Article 192 TFEU)

Unanimity
(Art. 192 (2) (a) TFEU)

vs.

Qualified majority vote
(Art. 192 (1) TFEU)

'provisions primarily of a fiscal nature'

- measures which are fiscal in substance...
- ...but not market-based approaches

cf.
ECJ C-27/67 and
ECJ C-366/10

- primarily implemented for environmental purposes and not to generate income for public authorities;
- the amount levied is determined by its environmental aim;
- the amount payable cannot be determined in advance by establishing a base of assessment or rate in advance

- parafiscal charge is no tax in the narrow sense
- parafiscal charge as auxiliary tool
- integration into EU ETS
- level of charge determined by allowance price and carbon content of products

'Inclusion of consumption'
constitutes market-based approach

→ qualified majority vote sufficient

2.3 World Trade Law

	GATT	Inclusion of consumption
Adjustments for	<ul style="list-style-type: none"> internal taxes and charges (Articles II (2) (a), 3 (2) GATT) <ul style="list-style-type: none"> consumption based charges directly levied on a product (i.e. excise tax, VAT, sales taxes; working party on BTA) irrespective of its purpose (Superfund Case) 	<ul style="list-style-type: none"> parafiscal charge to be in line with WTO law charge directly levied on the consumption of i.e. steel <p>→ adjustments feasible under WTO law</p>
National treatment requirement (Art. III (2) GATT)	<ol style="list-style-type: none"> Like products Defined with reference to the product's end-uses, consumers' tastes and habits, product's properties, nature and quality, and similar tariff qualification; not based on the production process Non-discrimination 	<ul style="list-style-type: none"> target product: i.e. steel, clinker calculation of the charge based on benchmarks and weight of target product no differentiation between i.e. low- and high-carbon steel <p>→ equal treatment of imported products and EU products</p> <p>→ Compatible with GATT</p>

3. Implementation: Defining consumption sphere

aims

- shift charge closer to final consumer
- reduce administrative costs
- avoid carbon leakage downstream

Introduction of duty suspension arrangements similar to excise tax law

approach

duty suspension arrangements

- suspense payment of the parafiscal charge
- applicable to production, processing, holding or movement of high carbon goods
- can be applied upon importation of carbon-intensive goods

consequences

- carbon-intensive goods subject to charge at time of production or importation
- chargeable at the time of departure of goods from duty suspension arrangement
- payable by person that releases goods from duty suspension arrangement

requirements

- licensing of producers as warehouse keepers
- licensing of production premises as carbon warehouses

Thank you for your attention!

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