

## 炭素国境調整メカニズムに関する当組合コメント

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EU グリーンディールの一環として導入が検討されている炭素国境調整メカニズムの  
パブリックコンサルテーション

(欧州委員会が 2020 年 7 月 22 日から 10 月 28 日まで実施) に、当組合としてコメントを提出致しました。

コメント主旨(詳細添付参照) :

- 1) 温暖化効果ガス削減は持続的な地球環境、社会の維持に資するものであり、その為の対策は必要と理解。
- 2) 当組合は多角的、マルチラテラルなルールに基づく貿易投資を支持するものであり、本メカニズム導入に当たっては WTO ルールやパリ協定等国际的な枠組みで決められたルールとの整合が必要。
- 3) 欧州委員会が予定している 2021 年中の法案化は時期尚早であるので、スケジュールを再考し、国際的合意形成を優先頂きたい。

本件に関するご意見は以下宛先までお送りください。

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## JMC Position Paper for EU Public Consultation on the Carbon Border Adjustment Mechanism

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### 1. Introduction

The Japan Machinery Center for Trade and Investment (“JMC”) is a non-profit organization with the character of a public-interest corporation. It was established in December 1952 in accordance with the Japanese Export and Import Trade Law under the authorization of the Minister of Economy, Trade and Industry of Japan. The objective of JMC is to engage in activities that enhance the common benefit of member companies and promote the sound development of international trade and investment by the machinery industry. JMC comprises member companies engaged in machinery and systems-related exports and foreign investments such as machinery manufacturers, trading houses and engineering companies. At present, the total number of JMC member companies is about 240.

JMC established a branch office in Brussels in August 1963. Since then, JMC has contributed to European society and its economy by supporting member companies active in Europe in various ways, including by submitting constructive opinions to the EU and its Member States.

The European Commission (the “Commission”) has announced in its Communication on the European Green Deal that it will propose: “*a carbon border adjustment mechanism, for selected sectors, to reduce the risk of carbon leakage*”.<sup>1</sup> JMC welcomes the general initiative of the Commission in proposing ways to achieve decarbonisation and recognizes the potential of the Carbon Border Adjustment Mechanism (“CBAM”) to reduce carbon emissions and stimulate technological development. JMC wishes to take this opportunity to participate in the EU consultation, and to respectfully submit to the Commission that a number of important elements should be fully considered by the EU in moving ahead with any form of a CBAM, as set out below.

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<sup>1</sup> Communication from the European Commission, “The European Green Deal”, 11 November 2019, COM(2019) 640 final, 5.

In particular, JMC would like to underline its view that for the CBAM to evolve as an effective measure for decarbonization, any legislation must ensure a level playing field between exporters from third countries and EU manufacturers.

## 2. Compliance with the international legal framework

Since its inception, the EU has been committed to international cooperation, as shown by its participation in organizations such as the World Trade Organization (“WTO”) and the United Nations (“UN”). JMC fully endorses this multilateral approach, and supports negotiations at the international level to ensure that global challenges are tackled with a global approach, and a level playing field for all countries is created. JMC particularly applauds the initiatives taken at UN level to confront climate change, and to reduce emissions, for instance by the conclusion of the 2015 Paris Agreement and the work by specialized agencies such as the International Maritime Organization to reduce shipping emissions.<sup>2</sup>

JMC believes that international cooperation is the best solution to achieve the worldwide reduction of CO<sub>2</sub> emissions which is necessary. Unilateral action could potentially undermine the efforts taking place on the global stage, and could induce retaliation by trading partners. JMC notes that there is currently no international consensus on the acceptability of the EU CBAM.<sup>3</sup> JMC therefore endorses the Commission’s stated intention to engage with third countries through the WTO and other international channels,<sup>4</sup> in order to avoid counter-measures which would have a debilitating effect in an already stagnating global economy.

JMC welcomes the Commission’s assurances that the CBAM will be designed to comply with WTO rules.<sup>5</sup> Full compliance with the WTO rules should allow for an international level playing field. On the basis of the current, limited, information available to it, JMC would respectfully draw the Commission’s attention to the following WTO provisions, which determine the conditions the CBAM would need to meet in order to be WTO compliant.<sup>6</sup>

First, if the CBAM were to take the form of an import tariff, the EU has committed itself to maximum import duty rates under Article II of the General Agreement on Tariffs and Trade (“GATT”); however the effect of the CBAM could be that the EU would deviate from these import duty rates. Article II allows such a deviation only if the CBAM were to be a “charge *equivalent* to

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<sup>2</sup> See for example, International Maritime Organization, MARPOL amendments of 1 January 2013 on energy efficiency of international shipping.

<sup>3</sup> European Parliament, INTA Committee, “Political Assessment of possible reactions of EU main trading partners to EU Border Carbon Measures”, 14 April 2020.

<sup>4</sup> European Commission, Inception Impact Assessment, 4 March 2020, Ares(2020)1350037.

<sup>5</sup> See, for example, European Commission, Inception Impact Assessment, 4 March 2020, Ares(2020)1350037.

<sup>6</sup> European Parliament, INTA Committee, “Trade related aspects of a carbon border adjustment mechanism: a legal assessment”, 14 April 2020.

an internal tax” (emphasis added).

Secondly, if the CBAM were to take the form of an internal tax or regulation, Article III of the GATT embodies the principle of non-discrimination, by which WTO members have committed themselves not to discriminate between their domestic and “like” foreign products, and the CBAM should comply with this requirement.

Thirdly, if the CBAM were not to be considered an import tariff or duty, nor an internal tax or regulation, but rather a border restriction limiting imports (*e.g.*, a quota), Article XI of the GATT on the prohibition of quantitative restrictions could potentially be violated.

Finally, Article XX of the GATT allows for certain exceptions to GATT rules based on environmental protection, but requires that such an exception does not result in a means of “*arbitrary or unjustifiable discrimination*” between countries in the same situation and is not a “*disguised restriction on international trade*”. JMC submits that this essentially requires the CBAM to be designed specifically to mitigate climate change, and that it should not have the intention or consequence of protecting the competitiveness of the EU’s domestic industry. The fact that the CBAM is explicitly stated as being intended to raise revenue for the EU’s own budget, rather than being wholly directed to environmental ends, is an indication that the CBAM is currently not entirely aimed at environmental protection.<sup>7</sup>

While the Commission points to various options to calculate the carbon content of imported products,<sup>8</sup> there is no international consensus on an appropriate mechanism. JMC considers that due to the complexity of product value chains, such a mechanism would likely be extraordinarily complex and burdensome for importers. The CBAM could therefore become a potential non-tariff barrier to international trade in itself. JMC considers that the calculation of carbon content should not take into account the amount of carbon emitted by the international transportation of goods, since this would fundamentally disadvantage importers and harm the competitiveness of all imported products entailing long distance transportation. Further, such a mechanism could be inconsistent with WTO law, as it would appear to favour certain goods from jurisdictions in closer proximity to the EU.

In addition, imposing additional costs on exporters could be counter-productive in that this might deplete financial resources that are or could otherwise be allocated for the introduction and development of new technologies for CO<sub>2</sub> emission reduction. This would have the adverse effect of hindering the progress of technology in the countries and regions affected (and the ultimate

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<sup>7</sup> European Council Conclusions of 21 July 2020, EUCO 10/20, A.29.

<sup>8</sup> Section 10 of the public consultation.

availability of such technologies globally), which is the opposite of what the EU is aiming to achieve.

Furthermore, it is respectfully submitted that any mechanism should take into account third country efforts in combatting climate change and reducing carbon emissions. The Paris Agreement explicitly recognizes the different pathways that countries follow towards limiting climate change by introducing nationally determined systems with various contributions. JMC notes that the approach of recognizing third country efforts, based on a common but differentiated responsibility, has gained international consensus and is embedded in the 2015 Paris Agreement, and JMC therefore submits that this must be duly considered by the Commission in designing any form of EU CBAM.

### 3. The need for a truly level playing field

The Commission has indicated that the main goal of the CBAM is to address carbon leakage.<sup>9</sup> In this respect, JMC wishes to underline that some third countries outside the EU have also taken important actions to reduce greenhouse gas (“GHG”) emissions, and this should be taken into consideration by the Commission. For example, Japan has already taken extensive measures, such as establishing local emissions trading schemes, and requiring producers to bear additional costs, such as those involved in the Feed in Tariff scheme to encourage decarbonisation through the use of renewable energy. The Japanese Government has also established a Tax for Climate Change Mitigation, adding tax rates in accordance with CO<sub>2</sub> emissions to the existing Petroleum and Coal Tax, which covers all fossil fuels. Through these measures, Japan has achieved significant results in reducing its GHG emissions. Japan has reduced its GHG emissions for five consecutive years, and GHG emission for 2018 is 12% lower compared to 2013.<sup>10</sup> In addition, GHG emissions per GDP is comparable to that of EU.<sup>11</sup>

JMC recognizes the EU’s endorsement of the polluter pays principle.<sup>12</sup> However, again in order to maintain a level playing field, JMC submits that the CBAM would necessarily need to include a mechanism taking into account all costs that third country exporters have incurred in their supply chains to contribute to decarbonisation. Otherwise, the risk exists that the CBAM will not contribute to a level playing field, but will instead unfairly disadvantage imports into the EU. JMC therefore supports the Commission’s consideration of whether an exemption of the CBAM for countries that have similar climate measures to the EU could contribute to the goal of a level playing field, and the WTO compatibility of any measure. JMC in general emphasizes the need to take third country efforts into account when designing the CBAM.

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<sup>9</sup> Communication from the European Commission, “The European Green Deal”, 11 December 2019, COM(2019) 640 final.

<sup>10</sup> Reuters, Japan's 2018/19 greenhouse emissions fall 3.9% to record low, 14 April 2020.

<sup>11</sup> Climate Watch, Historical GHG Emissions Chart, GHG per GDP, 2000-2016.

<sup>12</sup> Article 191(2) Treaty on the Functioning of the European Union.

#### 4. The need for realistic timing and legal certainty

JMC notes that neither the mechanism nor the sectoral scope of the CBAM has yet been determined. The Commission's public consultation document indicates several options to calculate the carbon content of imported products,<sup>13</sup> but there is not yet an international consensus for one of these methods. Nevertheless, the Commission is currently planning to issue its CBAM legislative proposal next year, in 2021.<sup>14</sup> JMC respectfully invites the Commission to reconsider this timeline, and to take account of the need to first achieve an international consensus on the design, scope and implementation of the CBAM. JMC submits that a hastily introduced CBAM would create considerable legal uncertainty, and this uncertainty could in itself become a significant barrier to international trade.

#### 5. Conclusion

JMC emphasizes its full support for the initiatives taken by the European Commission to reduce greenhouse gas emissions and combat climate change. JMC also recognizes that the CBAM has the potential to contribute to the reduction of GHG emissions. However, JMC also stresses the importance of multilateralism, and compliance with the international legal framework established under the WTO. JMC respectfully submits that the Commission should give careful consideration to whether the CBAM can be designed in a way that does not discriminate between foreign and EU producers, and can be implemented based on an international consensus between the EU and third countries.

A rapidly implemented CBAM, not in compliance with the international framework, and without a mechanism that ensures a level playing field globally, would be a significant barrier to international trade. In addition, it could undermine multilateral efforts to mitigate climate change, and result in harmful countermeasures by third countries. In this way, the CBAM could be counterproductive to the EU's aims.

JMC is grateful for the opportunity to take part in the EU consultation and hopes that this contribution provides the Commission with constructive feedback on the EU CBAM initiative.



Koichiro Akatsu

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<sup>13</sup> Section 10 of the public consultation.

<sup>14</sup> Annex to the Communication from the European Commission, "The European Green Deal", 11 December 2019, COM(2019) 640 final.