the dtic
Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

Private Bag X84, PRETORIA, 0001, the dtic Campus, 77 Meintjies Street, Sunnyside, 0002, Tel: (012) 394 0000
the dtic Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500, www.thedtic.gov.za

11 July 2023

European Commission
C/o EU Delegation to South Africa
Mr. Roberto Cecutti
Head of Trade and Economics

EU GREEN DEAL: REPORTING OBLIGATIONS DURING THE TRANSITIONAL PERIOD OF THE CARBON BORDER ADJUSTMENT MECHANISM – ARES (2023)4079551

Dear Colleagues,

The Republic of South Africa's (SA) Department of Trade, Industry and Competition (the dtic) would like to thank the European Commission for the opportunity to comment on the European Union's (EU) draft implementation regulations of the carbon border adjustment mechanism (CBAM) during the transitional period (*ARES (2023)4079551*).

The South African government and SA businesses - and indeed most developing countries - are affected by this measure and are concerned by the decision of the European Commission to proceed with implementing its carbon border adjustment mechanism (CBAM) and the EU's draft implementation regulations for the transitional period, despite considerable international opposition. This undermines trust, upon which multilateral cooperation to address global challenges such as climate change depends.

South Africa is fully committed to our climate change mitigation policies and is already implementing our recently updated and comprehensive scope Nationally Determined Contribution, which is aligned to the objectives of the Paris Agreement. We have undertaken to achieve a mitigation range of between 398-510 MtCO2e by 2025, and to between 350-420 MtCO2e by 2030, we also plan to retire 12 GW of coal plants and add 18 GW of new wind and solar PVs, working with DFI partners.
As the EU has placed on record, these are ambitious and progressive targets for a developing country. We further locate this climate action in the context of the full implementation of the United Nations 2030 Agenda and the African Union's Agenda 2063 on sustainable development. We are determined to achieve an all-of-society just transition, which includes realising a low-carbon, climate resilient economy and society by 2050, as outlined in the Just Transition Framework, championed by the Presidential Climate Commission (PCC) and endorsed by our Cabinet in August 2022. This is

supported, in the energy sector, by a detailed Just Energy Transition Investment Plan, towards which the Just Energy Transition Partnership with the EU and other members of the International Partner Group is an important contribution.

We value and appreciate the support provided by the EU towards these objectives and, in that spirit, need to draw the attention of the EU, as one of our Strategic Partners, to measures by the EU, which in our assessment, will have the unintended consequence of more than reversing and contradicting this support. In particular the unilateral imposition of the EU's CBAM and other measures under the Green Deal that pose a threat to our sustainable development and climate change mitigation action imperatives and those of fellow African and other developing countries, including addressing inequality, unemployment and poverty eradiction.

CBAM has the effect of transferring the burden of climate action onto developing economies and places undue and unjust burdens on our country and industries. In this context, it is important to recall that the structure of economies in the global South and the high dependence on the extraction and export of raw materials for beneficiation elsewhere is a historical legacy that was imposed upon us. It is our human and natural resources that have driven development elsewhere over centuries and, looking to the future, it is our human talents with the youngest population being located in the global South and our strategic minerals and rare earths that will be of central importance to the green revolution aspired to elsewhere, including in the EU. This aspect of climate justice needs to be placed in the foreground of any discussions on carbon border taxes and other response measures to climate change.

We must draw to your attention that around US$ 1.5 billion exports of South Africa to the EU are at risk (based on 2021 data). Our Presidential Climate Commission indicates that our overall exports to could decline by 4%, with the steel and aluminum sectors being particularly at risk. CBAM will not only affect the competitiveness of SA exports to the EU but could also result in increased imports by countries looking for alternate markets, resulting in dumping into SA and other developing countries. We have read with concern other analytical papers, including those that predict that the African continent will lose at least $26 billion per annum to the EU through carbon border taxes, at a time when the net outflow of Capital from the African Continent, mainly to the global North, exceeds a trillion dollars per annum.

We would like to raise with you that the framing of the EU's CBAM policy is considered to be coercive, as it imposes climate mitigation policy onto developing countries and hinders our independence to create policy in this space. By doing so, it is a threat to the delicate national consensus we have established through extensive stakeholder consultation in support of our nationally determined sustainable development pathways. As such, rather than driving climate ambition, it risks compromising our ability to achieve our climate objectives and contribution to implementing the Paris Agreement.

We believe that the CBAM undermines the spirit of multilateralism, as well as the guiding principles of the United Nations Framework Convention on Climate Change (UNFCCC) and the agreements negotiated under it, including the Paris Agreement, in particular equity and common, but differentiated, responsibilities and respective capabilities (CBDR&RC) in light of national circumstances. Unambiguously, the Paris Agreement recognises that developing countries should bear less of a burden in reducing emissions than developed nations, such as those found in the EU. The Paris Agreement is based on nationally determined contributions and the EU's CBAM is perceived to be in direct conflict with these principles by insisting countries align with policy set by the global North, or bear extra charges on exports to the EU. This will inevitably lead to counter measures from the global South and pose a risk global trade and international cooperation.

We would also like to also alert you to the fact that those countries that are economically more developed and have already made progress in transitioning to low-carbon economies may benefit more from CBAM than developing countries or less developed countries, especially due to factors such as subsidies. Moreover, the EU's CBAM policy design of using market principles to cut emissions will create a direct impact on South Africa's disadvantaged communities – exacerbating inequality, poverty and unemployment. There are two moral and practical imperatives that need to be respected: historical responsibility for current environmental degradation and the capability to address the problem.

We note with concern that even the most highly vulnerable countries to climate change with the most fragile economies, which includes African countries, Least Developed Countries and Small Island Developing States, are not exempt from CBAM. Paradoxically, the leading emitters from the global North seem confident of securing reciprocal exemptions from each others planned carbon border taxes through arrangements such as the G7's Climate Club, on the self-assessed basis of being standard setters in climate action. We need to frankly draw your attention therefore to our internal assessment that CBAM is more of a protectionist measure than a legitimate climate change response measure.

Furthermore, we are of the view that the EU's CBAM and the draft Implementation Regulations potentially violates the provisions of the World Trade Organisation (WTO) on non-discrimination. As you are aware, the WTO obligations are clear that no less favourable treatment of like products is permitted and the WTO has identified likeness to be assessed at the border with no consideration of production processes and methods, subject only to payments of WTO authorised duties and other restrictions.

We must also raise with you that the transitional period – which is set to begin this October 2023, places a further constraint and obligation on South Africa's and developing countries' industries. It would be in line with our long standing partnership that the European Commission reconsider imposing such strict time bound periods on South Africa (and other developing countries) and uses this time to redesign CBAM to prevent adverse consequences on developing countries. The inclusion of indirect emissions, even if only at a later stage, would have significant negative effects on South African exports and those of other developing countries. The reporting and compliance criteria including collection and verification of emission data will require significant resources. This will be particularly significant for sectors where the inclusion of embedded emissions associated with the production of the aluminium, iron and steel for example will also have to be taken into account and can be complex.

In conclusion, we are of the view that the proposed EU's CBAM and the draft implementation regulations are discriminatory and would require a more extensive discussion and engagement between EU officials, South African officials (and other developing countries) both multilaterally and bilaterally, to ensure that these measures do not place onerous obligations on developing countries and compromise the socio-economic and environmental dimensions of sustainable development.

the dtic
Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

Private Bag X84, PRETORIA, 0001, the dtic Campus, 77 Meintjies Street, Sunnyside, 0002, Tel: (012) 394 0000
the dtic Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500, www.thedtic.gov.za

We would like to take up the EU's offer for officials and industry stakeholders to urgently engage bilaterally in Brussels on CBAM. We are also further of the view that CBAM needs to be a priority agenda item for the forthcoming SA-EU Summit.

Sincerely,

Signed by:Mahnendra Shunmoogam-Gra
Signed at:2023-07-11 23:08:41 +02:00
Reason:Document Digitally Signed

Mahendra Shunmoogam

____

Mahendra Shunmoogam

Director: International Trade Policy

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION: TRADE BRANCH

Cc:

Robert Cecutti: Roberto.CECUTTI@eeas.europa.eu
Ariane Labat: Ariane.Labat@eeas.europa.eu
Angel Abelleira: Angel.Abelleira@eeas.europa.eu
Darryn Allan: Darryn.Allan@eeas.europa.eu