

The EU proposal for a Carbon Border Adjustment Mechanism (CBAM)

Content and first assessment

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Studio for the development of the future legal framework for the energy transition

- ▶ Non-profit, specialised research institute
- ▶ Guiding Question: How must the legal framework change in order to allow the achievement of our energy and climate policy goals?
- ▶ Interdisciplinary research partners, close exchange with practitioners
- ▶ Scholarly debate and advice in legislative procedures

Agenda

- ▶ Background and international context
- ▶ Content of the proposal
 - Principle: „No cap but trade“ and administration through the Member States
 - Interrelation with EU Emission Trading
- ▶ EU legal context and discussion



Background and international discussion

Rationale for the EU CBAM

- ▶ **Paris Agreement on Climate Protection:** EU as „international front runner“
 - CBAM supposed to contribute to **GHG emission reduction worldwide**
- ▶ **Phenomenon of „Carbon Leakage“:**
 - Within EU: **mechanisms to address/put a price on GHG emissions**
 - **EU Emission Trading System (ETS)** for a harmonized „CO₂“-Price
 - ▶ „**Cap and Trade**“ system on EU level, where installations need to be registered, hold a permit and purchase emission allowances
 - **„Non-ETS“ sector:** Member States have (to date) implemented national policies to achieve certain GHG emission reductions
 - ▶ Attention!: EU Commission proposed **„ETS 2“ for heating and cooling and transport** (current „Non-ETS“)
 - However: Already **certain mechanisms to address „Carbon Leakage“**
 - Free allocation and State aid available for energy intensive undertakings

(International) Reactions to first announcements of EU Commission

- ▶ **Compatibility with EU law?** (legislative competences and procedures...)
- ▶ **International law principle of „territoriality“?**
- ▶ **WTO law compliance?**
- ▶ **Discrimination issues (for developing countries)?**
- ▶ Is – in the end – a CBAM actually even **effective/efficient?**

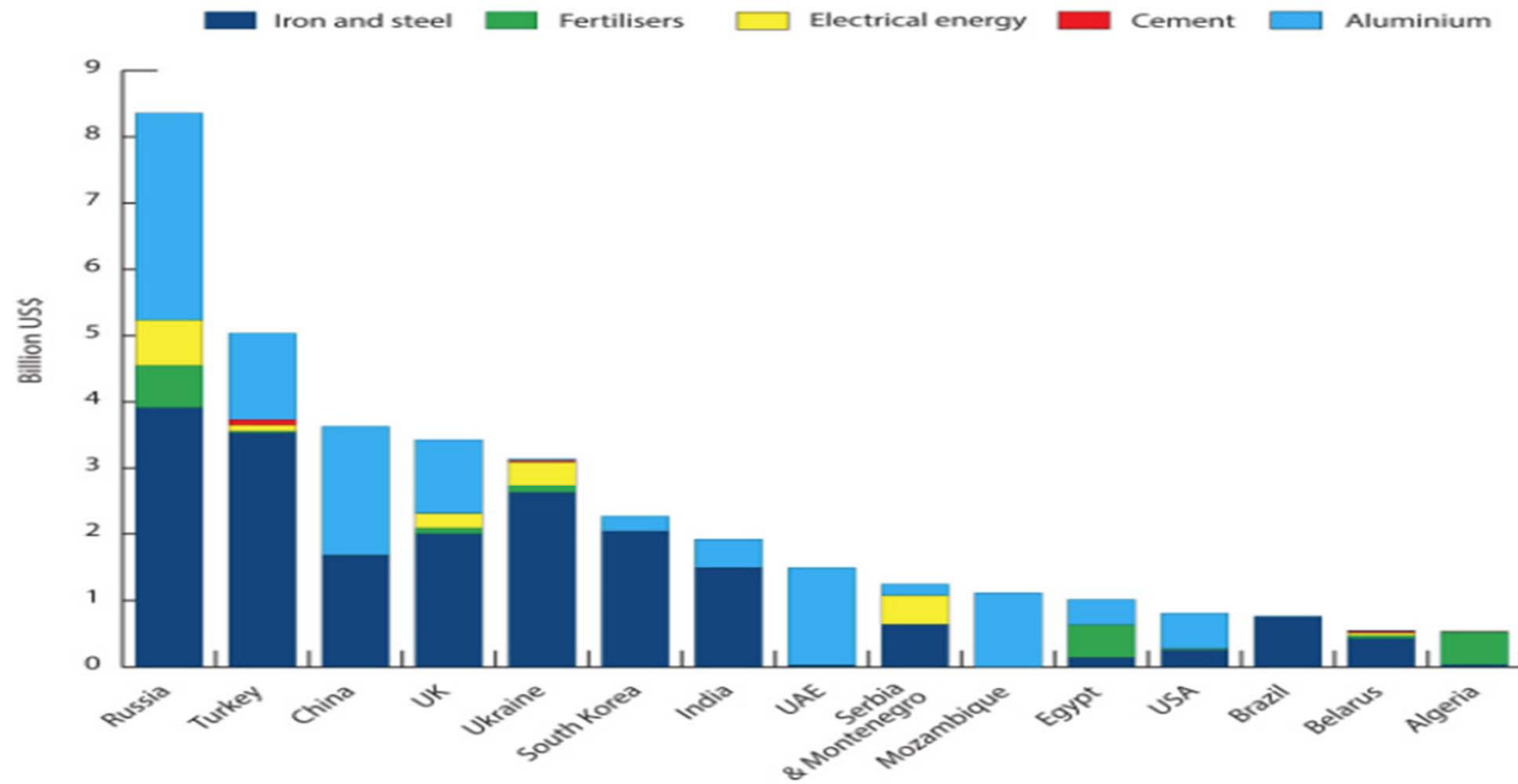
- ▶ However: **increased international awareness of climate protection needs/motivation?**
 - Commitments USA, China...

„... I think it is something that's more of a last resort, when you've exhausted the possibilities of getting emission reductions and joining in some kind of compact by which everybody is bearing the burden...“

„...serious implications for economies, and for relationships, and trade...“

John Kerry, 10.03.2021

Chart 1: EU imports of products covered by proposed CBAM regulation from 15 most exposed countries, 2019



Quelle: Centre For European Reform



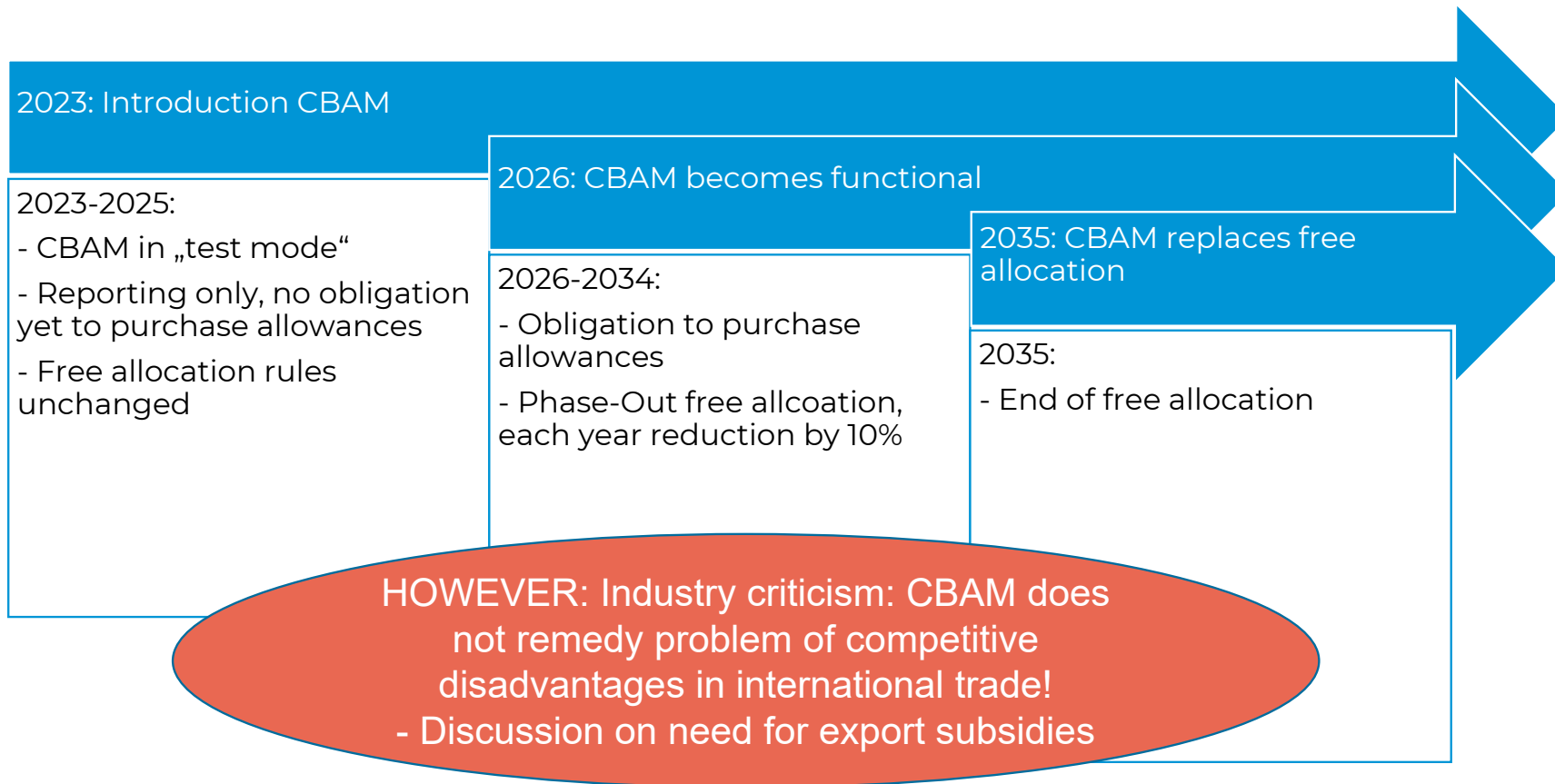
Content of the proposal

The EU Commission's CBAM proposal

Principle of „Non-Cap and Trade“

- ▶ **Coverage: CO₂ Electricity, Cement, Iron & Steel, Aluminium, Fertilizers**
- ▶ **No cap** on CO₂ emission allowances
 - EU Commission to calculate prices for GHG emission allowances based on price in EU ETS
 - However: **„separate system“ from EU ETS** – no „cross-system trade“
- ▶ Obligation to **register** with MS authorities and receive **CO₂ emission permit**
 - Verification with national authorities in the home country + MS within EU
- ▶ Obligation to **purchase CO₂ emission allowances from MS in accordance with „CBAM declaration“**
 - Phase-In through (mere) reporting of CO₂ emissions
 - **Benchmark system for calculation of (embedded) emissions:**
 - For goods: calculation based on actual emission values;
 - For electricity: calculation based on „benchmarks“

The EU Commission's CBAM proposal Interrelation with EU ETS





EU legal context and discussion

EU legal discussion and context

- ▶ Is the EU Commission/EU legislator **competent to adopt a CBAM**?
 - **Environmental competence (generally) allows for CBAM legislation.**
 - Qualified majority voting as – according to ECJ case-law – no „taxation“.
- ▶ **Sector coverage**? EU Commission sees (currently proposed) coverage only as a „start“ – intends to expand sector coverage.
- ▶ **Geographical coverage** and linkage? Possibility for international cooperation/climate club/etc.
- ▶ Interaction with **other instruments**? In particular ETS and energy taxation –interaction with CO₂-price(s)?
- ▶ What will the EU do **with the money**? Uncertainty about distribution.
- ▶ General questions on the functioning (registration, emission verification etc.)... is it – in the end – **„worth the effort“**?

Plus: International discussion

- ▶ Territoriality... (**international law**)
- ▶ WTO-Law... (**most favored nation, equal treatment...**)
- ▶ Discrimination (of developing countries)... („**common but differentiated responsibility and respective capabilities**“)
- ▶ Fear of **trade wars...**

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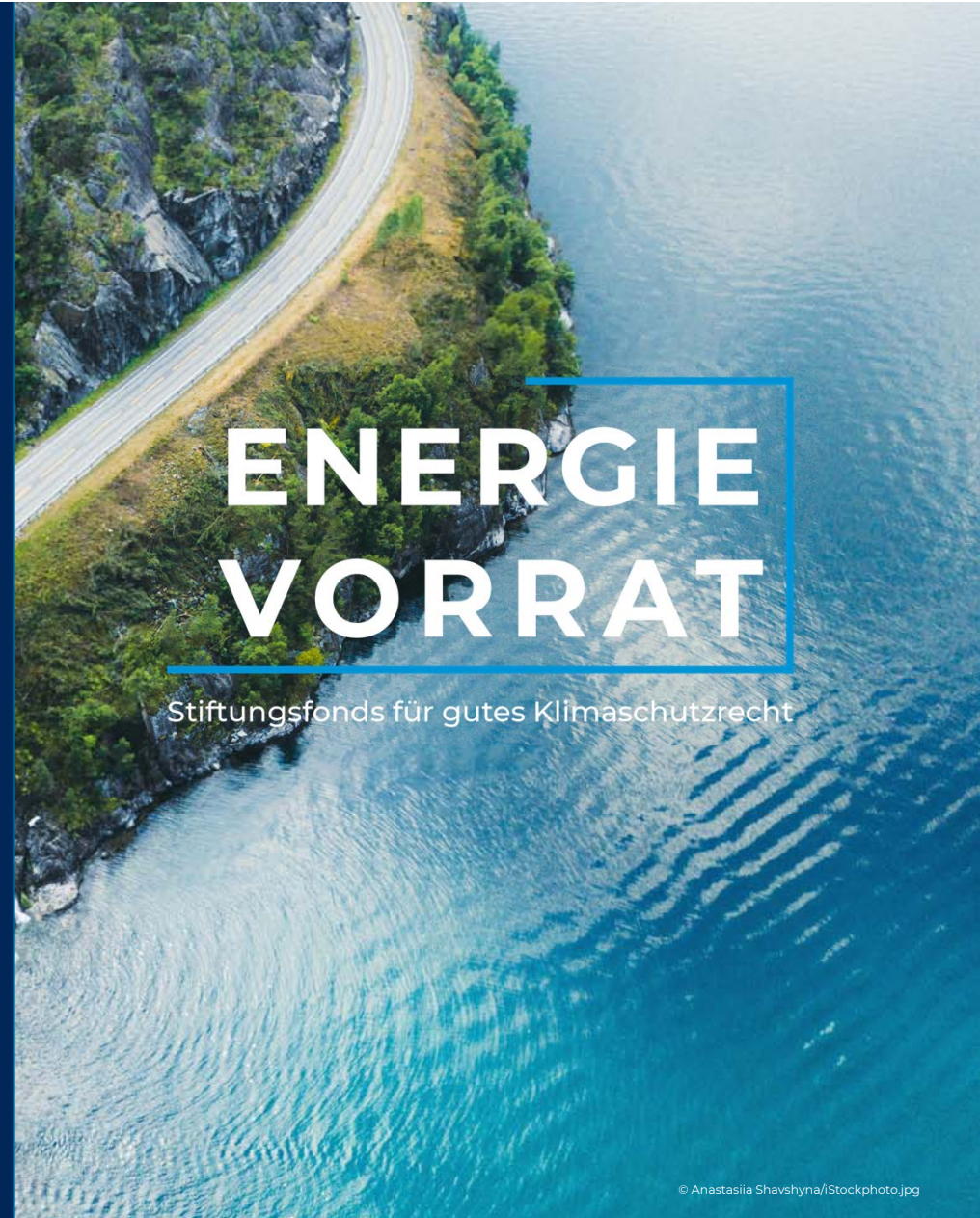
Invest now in the future
of climate protection law!



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