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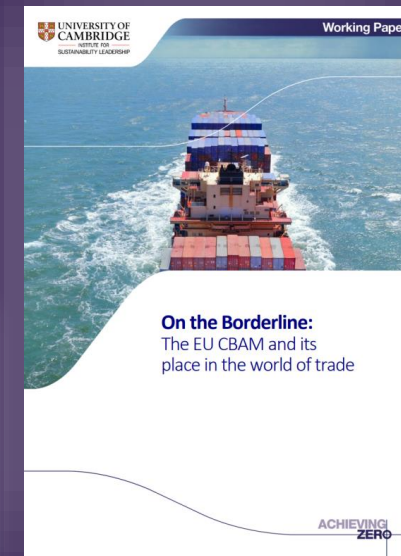
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On The Borderline: The EU CBAM and its place in the world of trade

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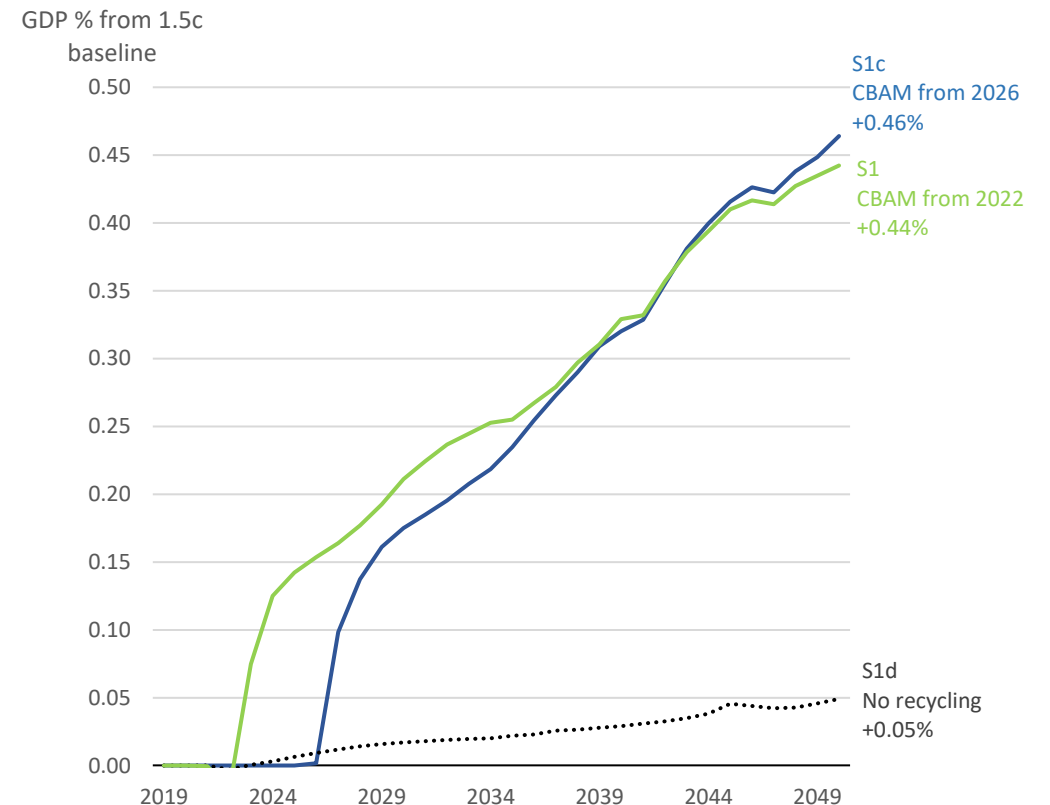
#OnTheBorderline

- 1. Overview of CBAMs**
- 2. Reasoning for and against CBAMs**
- 3. Why is the EU proposing a CBAM & outline of the EU proposal**
- 4. Economic and environmental impacts**
- 5. Questions around the legality**
- 6. Potential political and diplomatic implications**
- 7. Alternatives to CBAMs**

Economic impacts

- Modelling by Cambridge Econometrics' E3ME
- Various scenarios
- Economic minor but positive for the EU (around 0.2 -0.4 of EU GDP) by 2050, compared to baseline
- Could create around 600,000 jobs by 2050 across sectors
- Impacts on global GDP (and countries outside the EU) are very small but generally positive
- GDP in Russia would be adversely affected

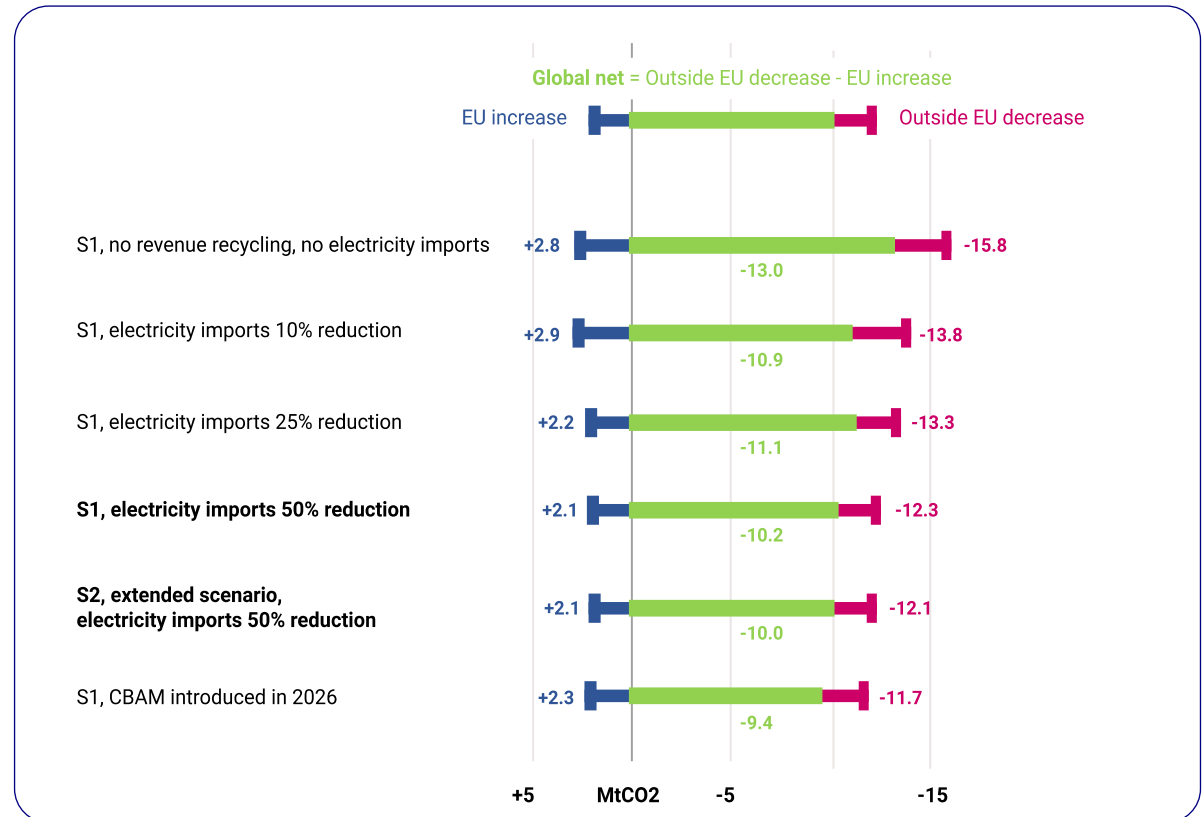
Time profile of impacts in EU CBAM scenarios, GDP difference (%) from baseline in EU27



Environmental impacts

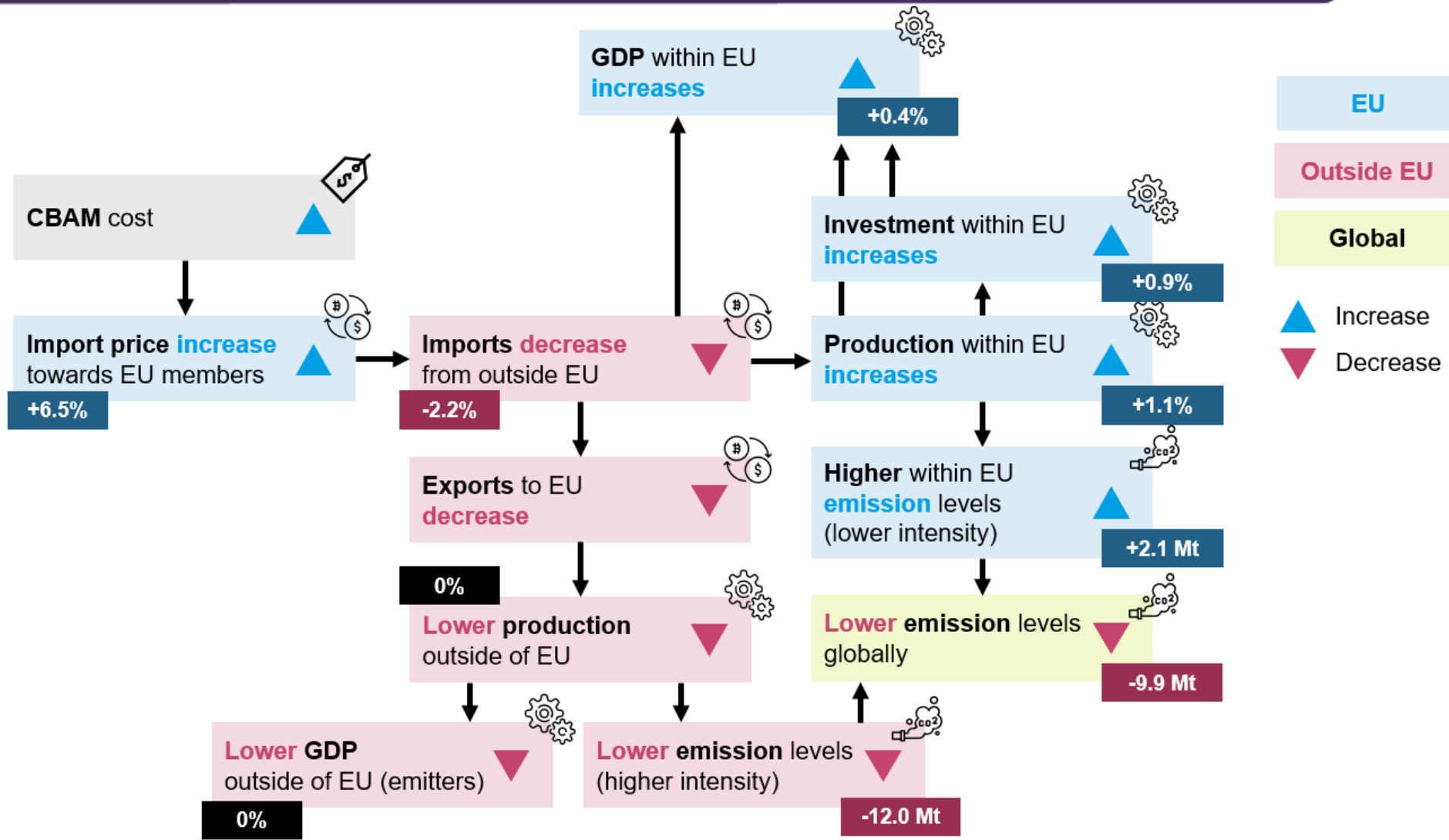
- Reduction on global CO₂ emissions (around 10 MtCO₂ by 2050, or about 0.023 per cent)
- A slight increase in the EU emissions due to increase industrial activity.
- ETS fail scenario
Emissions reduction impact would be considerable, around 912 (MtCO₂) by 2050

CO₂ emission impacts, difference from baseline (MtCO₂) by 2050



CBAM basic impacts by 2050

(50% assumption electricity imports; revenue recycling)



Level 1

Basis for adoption

ie whether it is a global treaty or an agreement among only a few States or unilateral action

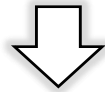


The proposed EU CBAM would be treated as a **unilateral** measure (from outside the EU, the EU is seen as a single entity).

Level 2

The rules of conduct

ie which rules may be breached by the CBAM - ie questions over whether the measure would cause undue restrictions to market access and/or discriminatory treatment)



The proposed EU CBAM would likely be regarded as a **regulation equalising the effects of another regulation** affecting the internal sale of a product (ie the EU ETS), rather than as a tax.

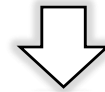
A judgement as to whether domestically produced goods (eg steel) and imported goods would be **deemed to be alike** (regardless of their carbon content). If the goods are deemed to be alike, the specific **details of the carbon equalisation methodology** would determine whether it would be regarded as **discriminatory**.

There is a fair chance that the measure may amount to a **breach of both the National Treatment and the Most Favoured Nations clause**, but it could still be justified.

Level 3

Justification

ie rules that could justify a violation of a rule of conduct (legal defences, typically the general exceptions clause in Article XX of the GATT)



The EU CBAM may be justifiable on the grounds that, as a measure to reduce GHG emissions, it **would mitigate climate change** and **protect human life or health** or as a measure relating to an **exhaustible natural resource** (a stable climate system) adopted in conjunction with domestic restrictions – the ETS.

However, there is an open question as to whether the EU CBAM is '**less trade restrictive**' than reasonably available alternative measures.

It may also be seen as '**imposing**' the **EU carbon price** on other countries.

Level 4

Remedies

ie the ability of a State to adjust a measure to bring it into compliance with a rule of conduct or a justification, but also the margin of manoeuvre left by rules on remedies to keep a course of action



The proposed EU CBAM could be brought into compliance following a finding of breach.

Political and diplomatic considerations - within the EU

- **Must be seen as a part of a bigger political agenda of the EU Green Deal**
- **Subject to lengthy inter-institutional negotiations between the Council, Parliament and the Commission**
- **Final proposal will be shaped by the EU political economy – and possibly foreign pressures – and will likely to look very different to the current one**
- **Member State views still being formed – diverse, subject to change and even internally divided (e.g. producers v users of materials)**

- **Options available to third countries: retaliation, negotiation, litigation against the EU**
- **Can be bilateral or multilateral AND symmetrical or asymmetrical (examples)**
- **Response options not mutually exclusive and may be explored simultaneously**
- **Responses will likely be influenced by the current relationship with the EU, and country level factors (such as presence / absence of ETS or carbon price)**
- **Countries that rely heavily on the EU markets for their exports but are unlikely to qualify for an exemption likely to respond more aggressively**
- **Examples of Ukraine, the UK, the US and Russia discussed in more detail**
- **Litigation unlikely until the EU CBAM becomes a law, but retaliation may take place sooner**

If not CBAM, then what?

- **CBAM legally complicated and potentially politically difficult**
- **Other options**
 - so-called climate clauses in bilateral or multilateral trade agreements
 - multilateral processes under the WTO or OECD convenorship
 - the development of new approaches under the Trade and Environmental Sustainability Structured Discussions (TESSD)
 - the formation of so-called climate clubs
- **Could be used in conjunction with, or instead of, an EU CBAM**
- **Could potentially be much more effective in driving decarbonisation than the sole use of carbon pricing and equalisation measures in the EU**
- **However, practical challenges to implementation are considerable and the extent of their true potential has not yet been systematically assessed**

Conclusions

- **The politics of the current EU CBAM proposal make WTO dispute likely, but not necessarily successful.**
- **If the EU is found to be in violation of the trade rules, the measure can be brought into compliance without retrospective penalties being payable.**
- **The risk of retaliation and loss of reputation are greater than the risk of litigation.**
- **Standardised mechanisms to measure carbon content will be needed to fairly implement a CBAM → could enable other climate policies (esp demand side)**
- **EU CBAM may be necessary to improve the political acceptability of ambitious climate policy and high carbon price (and for the EU to achieve its 2050 target).**
- **A well-designed EU CBAM could incentivise trade partners to implement more ambitious climate policies, thus removing the need for it.**

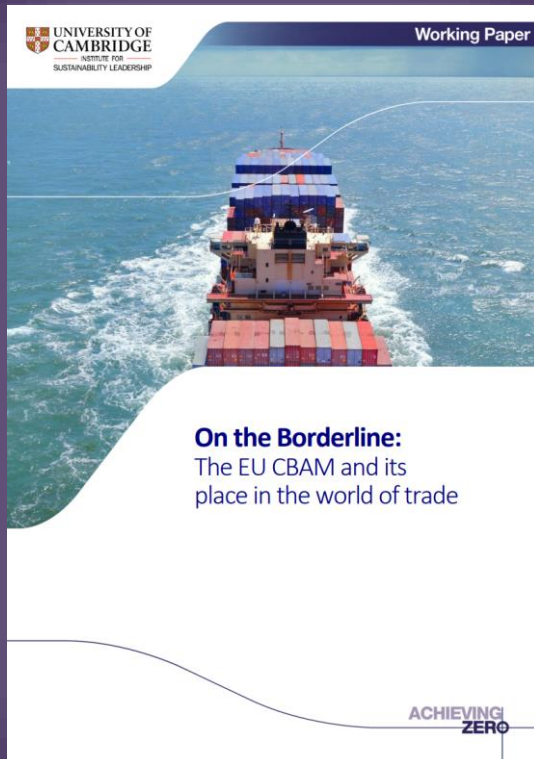
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Thank you!

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