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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Simplification
Subject:	Explanatory Note – CBAM Simplification revised Presidency compromise text

Delegations will find attached an explanatory note on the revised Presidency compromise text for CBAM Simplification (circulated in doc. ST 7878/25), in preparation of the meeting of the Antici Group (Simplification) on 16 April 2025.

EXPLANATORY NOTE

CBAM SIMPLIFICATION – revised Presidency text

Antici Group on Simplification (AGS)

16 April 2025, Wednesday

PUBLIC

The purpose of this explanatory note is to provide delegations with additional information, clarifications and reasoning for the amendments proposed by the Presidency in the revised text (ST 7878/25).

Only a limited set of amendments to the recitals are presented in this revised text. The remaining recitals of the Commission proposal will be updated, if necessary, before the meeting on the April 30th.

Explanation on Article 20(6):
Please note that **no change** has been made in the Article 20(6) in the revised text published on the April 12th. We took note of all the comments made by the delegations. Presidency is working on the appropriate wording and the proposal on this issue will be included in the next revised text before the meeting on the April 30th.

ARTICLE	REASONING
Recitals (limited set of)	
Recital (3)	Wording "but not electricity and hydrogen" has been deleted and a separate recital on that matter has been added. Wording "before any further goods are imported into the customs territory of the Union" has been considered redundant and repeating provisions. Other changes are editorial.
Recital (3a)	A new recital that explains exclusion of electricity and hydrogen as referred to in Article 2a(4).
Recital (5)	Please see explanations of the amendment in Article 2a(3).
Recital (6)	Amendment for the purpose of clarification of the indirect customs representatives in the context of the introduction of the single mass-based threshold.
Recital (7)	Amendment for the purposes of clarification.
Recital (8)	Amendment for the purposes of clarification.
Recital (13a)	A new recital that clarifies the situation of electricity and hydrogen exclusively generated in the exclusive economic zone or on the continental shelf.
Article 2a. De minimis exemption	
Article 2a(2)	Editorial changes for purpose of precision.
Article 2a(3)	Amendment addresses Member States' concerns that provisions in Article 2.a(3) may lead to frequent updates of the threshold, creating uncertainty for importers. In addition, Member States suggested to change the frequency of the assessment whether an update is warranted to every two years instead of every year as currently stipulated in Article 2.a(3). While the Presidency

	understands the wish of Member States to reduce the frequency of updates, it is still important to maintain a possibility to update the threshold, if significant changes in trade patterns occur. Therefore, instead of reducing the frequency of the update, Presidency proposes to increase from currently 5t to 15t the parameter that defines what is considered a material change in trade patterns and therefore would trigger an update of the threshold. This means, if the methodology set out in Annex VII(2) before rounding to the nearest ten would lead to a figure in between 35 t and 65 t, no update would be triggered via the provisions in Article 2.a(5). This will decrease the likelihood of updates of the threshold compared to the Commission proposal, where such an update would have already been triggered as soon as the figure is outside the range of 45t to 55t.
Article 2a(4)	Amendment for the purposes of clarification that the importers of hydrogen or electricity are always in the scope of CBAM as explained in a new Recital (3a).
Article 5. Application for authorization	
Article 5(1aa) Article 5(2)	Amendments clarifying obligations of an indirect customs representative, in particular obligation to obtain the status of CBAM declarant prior to importing goods into the customs territory of the Union.
Article 5(5)(ga)	Amendment providing correct legal reference to the status of authorized economic operator.
Article 7. Calculation of embedded emissions	
Article 7(7)(a)	The amendment responds to the concerns of unintended consequences of the wording of this provision as proposed by the Commission, as the ETS system boundaries are defined in terms of activities in installations, not in terms of goods or products and it is very difficult to apply the ETS system boundaries to installations and production processes outside the EU. The intention is to ensure that the system of boundaries of production processes in CBAM would be aligned with those in the EU ETS where possible and appropriate, to avoid the undesirable consequences.
Article 9. Carbon price paid in a third country	
Article 9(3a)	Deleted parts have been considered redundant and repeating what already follows from the previous paras.
Article 9(5)	The purpose of the amendment is to ensure that production in the EU will not be treated less favorably than production in third countries. For some goods originating in a third country, the production of the part of the good can take place within the EU ETS. When reporting the embedded emissions using default values, the carbon price paid under the EU ETS should be possible to be taken into account to claim reduction in the number of CBAM certificates to be surrendered.
Article 10a. Registration of accredited verifiers	
Article 10a(2)	The amendment proposed to align the text with the Regulation 765/2008 that imposes the national accreditation body to act based on harmonized standards referenced in the OJEU.
Article 10a(3)	The amendment providing coherence with Article 10a(6) where the competent authority is obliged to notify the Commission and the other competent authorities of the deregistration of accredited verifiers while, in the Commission proposal, the competent authority was not obliged to notify of the registration in the first place.

Article 17. Authorization	
Article 17(5)	The amendment provides further simplification for importers and allows the competent authorities to take into account the adjustment for free allocation in the ETS when calculating the amount of the guaranty required.
Article 17(7a)	The amendment responds to concerns that due to legal uncertainty a vast majority of CBAM declarants will likely only apply for authorization after the amendment to CBAM regulation is officially adopted and NCAs would not be able to process that many applications in the short time remaining. Presidency proposes – as a temporary regime – that an importer who has submitted an application by 28 February 2026 is allowed provisionally to import goods until the competent authority takes a decision on granting the status of authorized CBAM declarant under Article 17. The provision further specifies the situation where the competent authority refuses to grant the status of authorized CBAM declarant. In such case corresponding Article 26(2a) allows the competent authority to decrease the penalty for importing above the threshold without authorization.
Article 18. Accreditation of verifiers	
Article 18(2)	The amendment provides coherence with the Regulation 765/2008 where a national accreditation body can only grant accreditation to a legal person, not a natural person.
Article 18(3)	Editorial change.
Article 22. Surrender of CBAM certificates	
Art. 22(2a)	Amendment addresses concerns that an importer who exceeds the threshold at the end of the quarter may not be able to meet this obligation in this quarter. Therefore it is proposed to apply this obligation as of the following quarter.
Article 23. Repurchase of CBAM certificates	
Article 23(2)	Amendment for the purposes of clarification. Many delegations considered previous wording ("for the purpose of complying with the obligations set out (…)" as unclear and confusing.
Article 24. Cancellation of CBAM certificates	
Article 24(2)	Correction as per corrigendum issued after the meeting on April 7th
Article 25. Rules applicable to the importation of goods	
Article 25(2)	This amendment responds to the concerns that certain information cannot be provided by means of the surveillance mechanism established pursuant to Article 56(5) of Regulation (EU) No 952/2013. While in original wording the surveillance mechanism was provided as an example how the customs authorities shall communicate to the Commission specific information, the new wording provides additional clarity.
Article 25a. Monitoring and enforcement of the threshold laid down in point 1 of Annex VII	
Article 25a(1)	The amendment confirming that the Commission shall have the oversight role in the monitoring of the threshold.
Article 25a(2)	The amendment providing the correct term.
Article 25a(3)	The amendment for the purposes of clarification. It is proposed to provide further clarity on the situation where an importer is represented by one or more indirect customs representatives.

Article 25a(4)	The amendment reintroducing the wording of the Commission's proposal ("which has been put into place for the main purpose or one of the main purposes of falling below the threshold") considered by the delegations as important to define non genuine practice/ arrangement.
Article 26. Penalties	
Article 26(1a)	Based on the comments from the delegations, in the new wording reference to "best efforts" has been deleted. It is proposed - coherently with the next paragraph of this article – to ensure flexibility to NCAs (*The penalty shall be effective, proportionate and dissuasive, taking into account in particular the duration, gravity, scope, intentional nature and repetition of the non-compliance and the level of co-operation of the authorized CBAM declarant with the competent authority*.) but at the same time avoiding deferring too much from the logic of penalties in the EU ETS.
Article 26(2a)	The amendment responds to the concerns of the delegations related to the application of the penalties in the context of the exceedance the single mass-based threshold. Proposed text intends to provide clarity on the system of penalties as proposed by the Commission (subparagraph 1). Subparagraph 2 responds to the comments that the system might be too harsh (and therefore not proportional) for those exceeding the threshold by a small amount/in case in which after temporal authorization there is a refusal to grant the status of authorized CBAM declarant. This subparagraph gives the competent authority a possibility to decrease the penalty. It also corresponds with the temporary regime as described in Article 17(7a).
Article 30. Review and reporting by the Commission	
Article 30(6)(b)(i)	As some delegations expressed concerns on the issue of guarantees that requires further analysis taking into account different national circumstances, this amendment provides clarity that this will be done as part of the upcoming review.
Article 30(6)(b)(v)	This amendment further specifies that the review of the application of the threshold will include the possibility of increasing this threshold or introducing a supplementary consignment-based threshold.
Annex IV. Methods for calculating embedded emissions for the purpose of Article 7	
Annex IV	Correction of a typo in the regulation. In the equation it should be EEInpMat and not EEImpMat.