

**UK GOVERNMENT CONSULTATIONS ON
ADDRESSING CARBON LEAKAGE RISK TO SUPPORT DECARBONISATION
SUBMISSION BY THE AFRICAN CLIMATE FOUNDATION (ACF)
23 JUNE 2023**

The Paris Agreement highlighted the “need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge”. It also emphasised “the intrinsic relationship that climate change actions, responses, and impacts have with equitable access to sustainable development and eradication of poverty”.

Outside the multilateral arrangements of the Paris Agreement, proposals like the European Union’s (EU) Carbon Border Adjustment Mechanism (CBAM) intended to scale efforts to fight against climate change, will have notable implications for African countries as it is progressively implemented.

As the UK considers introducing a CBAM, one of the policy measures covered by the scope of this consultation and the focus of our submission, we believe that lessons emerging from the current analysis available on the CBAM should guide the UK’s considerations.

In summary we raise and recommend the following:

- A carbon border mechanism may not have the intended effect on carbon emissions: Even a mechanism in a larger economy like the EU will only lead to [0.1% of emission reduction](#) globally according to the UN Conference on Trade and Development (UNCTAD).
- Consider the external dimension (non-European) of a carbon border mechanism: If the UK opts for a CBAM-aligned carbon border mechanism, it will have economic ramifications on Africa, especially if the carbon price maintains its current levels in the UK or is aligned to the EU ETS. Inevitably, the competitiveness of African industrial exports, key for the structural transformation of the economy, will be hit further.
- African exports to the UK are not a major threat to its local industry: therefore, exemptions, due to socio-economic impact on middle and low-income countries could be justified.
- Consider the risk for greenwashing: A carbon border mechanism introduces administrative hurdles with respect to emission reporting due to the limited development of systems now. Such systems require time (beyond a 3-year period as currently offered under the CBAM) to be developed, legislated and implemented. In such a context, we see a risk of greenwashing by private companies importing into the EU. This would be counter-productive if the UK wants to reduce carbon leakage.
- The CBAM goes counter to the Common but Differentiated Responsibilities and Respective Capacities (CBDR) principle as outlined in the Paris Climate Agreement.

Key recommendations:

- Differentiated approach for low and middle-income countries that are low emitters. This would imply a temporary waiver and a delayed application on imports from such jurisdictions.



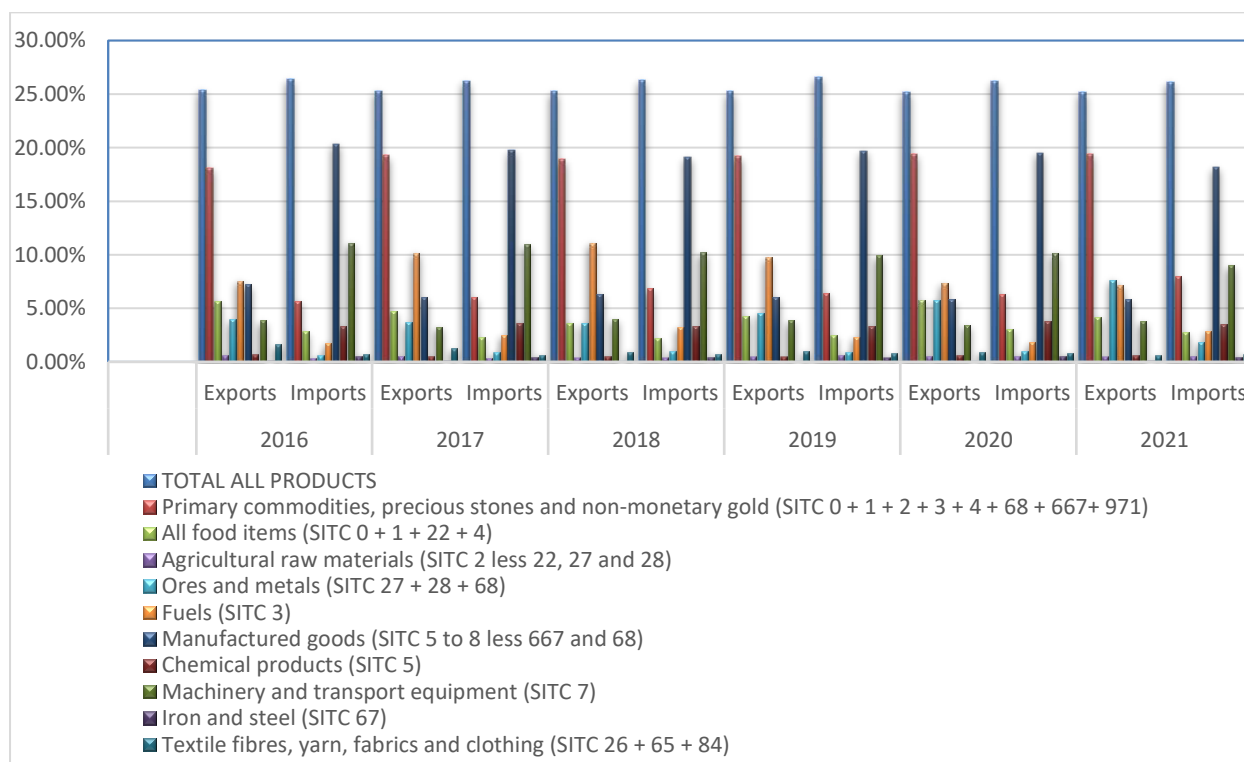
- Combine efforts with other G20 members to support sector-specific transition pathways in affected regions by supporting the required studies on transition pathways as well as the provision of pooled resources to leverage other funding for such transition.
- We urge the UK to focus on meeting its commitments to climate finance to ensure that measures such as a possible carbon boarder measure do not have unintended consequences on low-polluting jurisdictions.

The context of UK-Africa trade

The structure of African countries' exports to the UK as well as their volume will determine the degree of impact resulting from the application of a carbon border adjustment mechanism.

Figure 1 shows the trade patterns between the UK and Africa. According to the data, we observe that African predominantly export raw commodities to the UK, with little value-add. By sector analysis indicates that Africa's exports to the UK characterize carbon intensive sectors such as fuels, chemical products and ores and metals. An introduction on CBAM will likely have an impact on Africa's exports, revenue flows. In figure 2, shows UK's trade patterns with the rest of the world, and the data reveals that the UK imports largely manufactured goods, chemical products, fuels, machinery and transportation equipment as well as agricultural products.

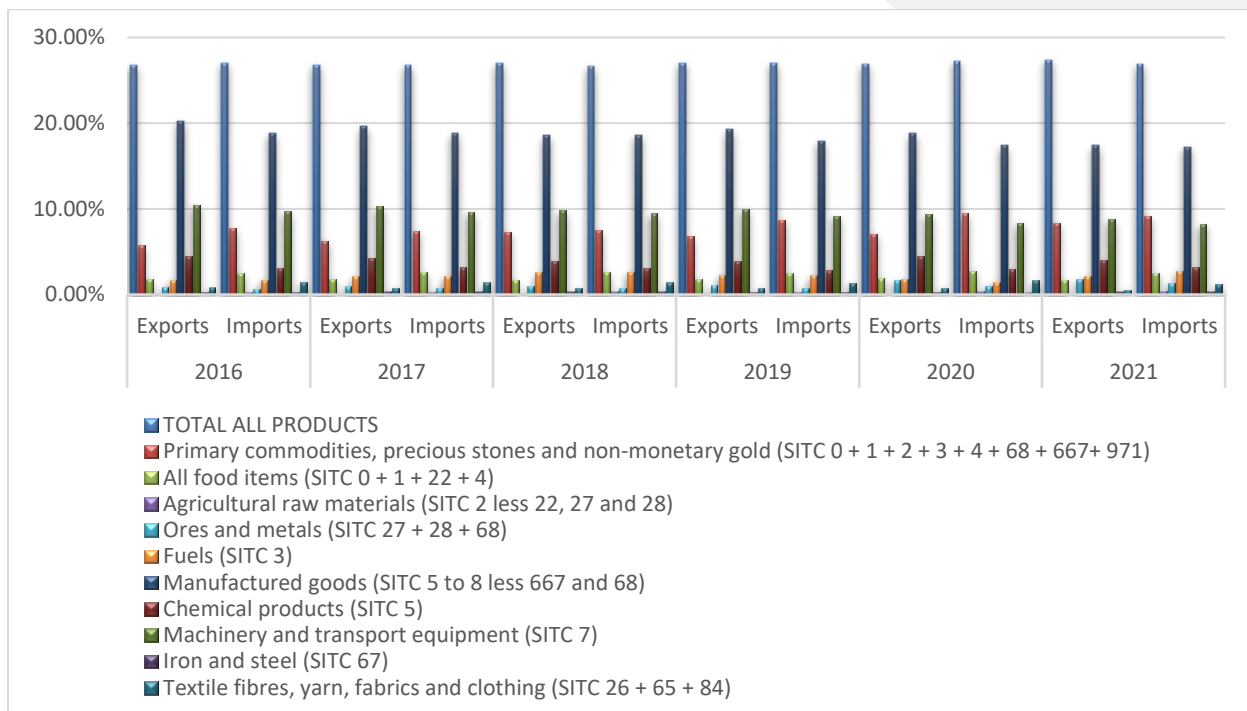
Figure 1 Africa's Exports and Imports with the UK



Source: UNCTAD St



Figure 2 UK Exports and Imports with the Rest of the World



Source: UNCTAD Stats

Carbon border adjustment mechanisms and potential impact on Africa

Our submission is drawn from findings from a detailed impact assessment of the EU CBAM on African economies, which was conducted by the African Climate Foundation (ACF) and the Firoz Lalji Institute at the London School of Economics and Political Science (LSE). The findings raise several issues that can guide the UK’s considerations. The report provides both an economic and legal assessment of the CBAM.

Economic impact

A CBAM equivalent to the EU’s would have negative consequences on Africa. Our results show that:

- The sectoral choice matters. In the case of the EU’s CBAM, the sectoral choices would result in a fall in exports from Africa to the EU of aluminum by up to 13.9%, iron and steel by 8.2%, fertiliser by 3.9% and cement by 3.1%. As per the current sectoral coverage of the CBAM (as per May 2023) and a price of 87Euro/tn (at the time of writing the submission, carbon under the ETS was trading at 85 euro/tn) would result in a decline of GDP of 0.91% (that’s **equivalent to \$25billion/year at 2021 levels**). **A CBAM that would cover the agricultural sector would also have negative ramifications.**
- The design of the CBAM matters. Replicating the model of the EU would affect not only middle-income countries (MICs) but also **least-developed countries (LDCs)**. Indeed, countries like Mozambique and The Gambia will be hit by the CBAM.



Carbon content measurement and verification

Most African countries are still far behind on the internationally accredited infrastructure for carbon content measurement and verification. Also, the absence of carbon pricing systems in Africa (except South Africa) in general, as compared to other countries, indicates that the CBAM will have a detrimental impact on its competitive opportunities. CBAM is not appropriate for all countries.

In the absence of the appropriate systems, we are therefore concerned that a CBAM that is rhetorically about “incentives” would rather result in punitive measures that would be bypassed through greenwashing. It would indeed be more desirable to foresee a sequenced approach in regions with low emissions levels, which would focus on first providing support to building the emissions reduction system before imposing trade measures.

WTO Compatibility

Under the GATT, there are four sets of relevant rules that could be invoked to challenge the CBAM.

The applicability of these provisions for the CBAM would depend, in part, on whether the CBAM would be considered an internal tax or regulation, or rather a border measure.⁵

- If the CBAM were construed as an internal tax or regulation, it would be subject to **national treatment provisions under GATT Articles III:2 and/or III:4**, which requires that WTO members do not discriminate between imported products and ‘like’ domestic products. In particular, three factors related to the design and implementation of the CBAM will play an important role in the national treatment discrimination analysis, including price of carbon, the determination of carbon content, and the phasing out of allowances under the EU Emissions Trading Scheme (ETS).
- If the CBAM were construed as a border measure, it would be subject to **tariff bindings under GATT Article II**. In this case, the CBAM could be considered as an ‘other duty or charge’ in violation of the GATT, as the EU’s consolidated Schedule of Concessions does not contain any scheduled ‘other duties or charges’ for the products covered by the CBAM.
- If the CBAM were construed as a border measure that limits imports, it would be subject to **GATT Article XI, which sets out a prohibition on quantitative import restrictions**. Arguments that the CBAM constitutes a de facto violation of GATT Article XI could be made, if it can be established that the CBAM, by rendering import conditional upon CBAM certificates, creates a disincentive to import and has a limiting effect on the quantities imported.
- Irrespective of whether the CBAM is construed as an internal tax or regulation or a border measure, it will be subject to the **Most Favoured Nation (MFN) provision under GATT Article I**, prohibiting discrimination between ‘like’ products from different trading partners. Based on the existing jurisprudence, products with different carbon intensities will likely be considered ‘like’ products. The CBAM could be found inconsistent with the MFN principle, both de jure and de facto. By exempting European Free Trade Association (EFTA) countries that are already a part of the ETS or that have agreements to the same effect as the CBAM, the CBAM discriminates on the basis of origin. At the same time, a de facto violation may arise as it could distort competition between goods of different WTO members.

Even if the CBAM is found to violate one or more of these provisions, it could possibly be justified under the exceptions clause set out in GATT Article XX. While the CBAM will likely be considered either necessary to protect human, animal or plant life or health under Article XX(b), or related to the conservation of exhaustible natural resources under Article XX(g), it will be challenging for the EU to argue that the CBAM complies with the chapeau of Article XX, which requires that a measure does not arbitrarily or unjustifiably discriminate between countries where the same conditions prevail, or function as a disguised restriction on trade.



Climate finance

It is not desirable to introduce a CBAM without consideration for the capacity of partner countries to scale up their green energy generation capacity to avoid negative ramifications of a CBAM. The UK has fallen short in meeting its financing commitments under the Paris Agreement. Climate Action Tracker show that UK's climate finance contributions have fallen short of its fair share contribution to the USD \$100bn goal and have decreased in the past five years. It is important that the UK focus on working on their commitments and assist developing countries with climate finance. The CBAM could have been cushioned had investments been adequate for a continent that did not create a crisis. Short of that, Africans is being penalized twice for a crisis they did not create.

Common but Differentiated Responsibilities (CBDR) compatibility

To a greater extent, the CBAM deviates significantly from the principles of just transition, and CBDR. It does not take into account the distinct challenges that are faced by developing economies. The IPCC Summary report (2023) noted that “exposure to multiple and compound climate-related risks is projected to increase ... with greater proportions of people both exposed and susceptible to poverty in Africa and Asia”. Climate change is, in its own right, indeed a poverty multiplier. Exogenous factors such as the CBAM that are likely to affect livelihoods will only increase the challenges faced by countries in their quest to tackle climate change.

Strategically looking forward – A green industrialisation partnership

With the debate on the diversification of value chains intensifying, the UK is encouraged to think about Africa as a possible future partner to support the diversification of the value chain. A CBAM that targets primarily industrial sectors can have a negative impact on the industrial base in Africa and act as a disincentive to industrialization. It would, indeed, be more desirable to develop a trade policy that aims at supporting the localization of the manufacturing of some components of the value chain in Africa through a Green Industrialisation Partnership that can also offer opportunities to the UK private sector.