President Ursula von der Leyen

College of Commissioners

European Commission
Rue de la Loi 200
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Via e-mail

29 June 2021

**Concerning: Co-existence of CBAM and free allowances under ETS – crucial for the future of the EU-based fertilizer industry**

Dear President,

Dear Commissioners,

The European fertilizer industry supports the European Green Deal's ambition of climate neutrality by 2050. Already today, European fertilizer products have a climate footprint which is typically half of the global average. Furthermore, through investments and production of green and blue ammonia the sector can play a key role in the decarbonisation of the economy.

At the same time, the European climate ambition is very demanding on the European fertilizer industry and will require major investments in new technology and process adaptation. The decarbonisation of the fertilizer industry is estimated to require capital investments of between 30 – 35 billion € by 2050. Effective carbon and investment leakage measures are thus acutely needed for the EU fertilizer industry's ability to attract the necessary capital and thereby ensure that the investment, the production and the accompanying jobs continue to be placed in the European Union.

The EU is a net importer of fertilizers in total tons, but for high value fertilizer products the European industry remains a very important exporter. Data shows that whereas imports have increased from 8,6 mill tons to 11,7 mill tons between 2012 and 2019, export of fertilizer products on their side increased from 5,2 mill tons to 6,1 mill tons.

The fertilizer industry is paying significant carbon costs, being 18 % short on free allowances according to recent calculations by DG CLIMA. These costs are not borne by global competitors, seriously undermining the competitiveness of the European fertilizer industry on the internal market. The ability to compete on export markets is crucial to manage the inherent seasonality of the fertilizer market, and it is seriously under threat.

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A PWC study[1] on CBAM commissioned by Fertilizers Europe highlights as key finding that with no free allowances in 2030 and a carbon price of 80 €, the carbon cost alone of ammonia production would be 171 €/T which should be compared to a current ammonia price of 285 €/T. This is an impossible competitive situation, both domestically in the agri-food value chain and on the world market. This also explains why PWC estimates the risk of carbon leakage to be in the deep red zone in 2030.

The Commission decisions on CBAM and ETS are going to have very real economic consequences for the sectors involved, including the fertilizer sector. The challenges related to competition, investments and technology are huge. Neither should the Commission underestimate the potential knock-on effects for farmers, the agricultural value chain and for Europe's chemical industry, which uses nitrogen chemicals as a building block for a wide range of products.

More specifically concerning CBAM, the EU fertilizer industry insists on the following conditions:

1. It is imperative that free allowances are maintained to minimum 2030. Sectors within the CBAM should be granted free allowances on identical basis to other ETS sectors. A combination of CBAM and free allowances is necessary, as only under such conditions will the fertilizer sector stay competitive, including on export markets which are not protected by CBAM.

   Notwithstanding the long discussion on CBAM, no coherent and convincing reason has been presented that would justify earlier withdrawal of free allowances for CBAM sectors.

   The combination would NOT be contrary to the WTO rules, as the CBAM will cover only embedded emissions over and above the ETS benchmarks, i.e. equivalent to the costs of EU producers.

   [redacted][2], University of Oslo - University of Leiden, concludes that "WTO law does not per se prohibit such co-existence of measures…" and further that "it would be overly restrictive to rule out co-existence at this point".

2. The scope of a CBAM should encompass ammonia and nitric acid (CN codes chapter 28), all finished fertilizer products encompassed by CN codes chapter 31.02 and 31.05[3] and selected technical products with a nitrogen percentage above a certain level to be established. Since about 2/3 of nitrogen is imported as finished fertilizers products, this extension of the scope is needed to avoid that a CBAM is simply circumvented.

[1] PWC, "Carbon Border Adjustment Mechanism", October 2020. The study has been forwarded to the Commission services.

[2] [redacted],"Legal opinion on WTO Compatibility of a Carbon border Adjustment Mechanism (CBAM) in combination with Free Allowances under the EU Emissions Trading System (ETS)", May 2021. This opinion has also been forwarded to the Commission services.

[3] Except CN code 31.05.60 which does not contain nitrogen.

3. An export “levelling” mechanism must be introduced to ensure that the fertilizer sector remains competitive on the world market. As mentioned above, the European fertilizer industry has an important export of value-added fertilizers and selected technical products and these markets must be maintained.

The EU fertilizer industry has through several concrete green ammonia projects shown its determination to be part of the solution for the decarbonisation of society. This is important as green ammonia has the potential to become the workhorse of the hydrogen economy.

The industry will also be able to directly support the objectives of the Farm-to-Fork Strategy. Through low carbon production, improved products and technological tools, the industry will support improved nutrient management and further promotion of precision farming, leading to significant reduction of nutrient losses to the environment.

I trust that you will take the concerns and conditions mentioned above into consideration when taking your forthcoming decisions and when guiding negotiations with the other EU institutions.

Best regards

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