

Department of Climate Change,  
Energy, the Environment and Water  
Carbon Leakage Review – second  
consultation  
**submission**

December 2024





# Department of Climate Change, Energy, the Environment and Water:

## Carbon Leakage Review – second consultation

### **submission**

The Carbon Market Institute (**CMI**) welcomes this opportunity to provide feedback to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) Carbon Leakage Review's (**Review**) preliminary findings as outlined in 'Consultation Paper 2' (**Consultation Paper**), which opened for consultation on 1 November 2024.

CMI is an independent, member-based institute that promotes the use of market-based solutions and supports best practice in decarbonisation to limit warming to 1.5°C. Our membership of approximately 150 includes primary producers, carbon service providers, First Nations organisations, legal and financial institutions, technology firms and emissions-intensive companies in Australia and the Asia Pacific. The CMI Board updates CMI's Policy Positions annually, which draw on practical insights from—but are ultimately independent of—members.<sup>1</sup> CMI also administers the Australian Carbon Industry Code of Conduct (**ACI Code**), which was established in 2018 to steward consumer protection and market integrity.<sup>2</sup>

CMI consults members to gain practical feedback to inform our positions. The recommendations put forward in this submission are ultimately CMI's view, independent of members, and do not represent any CMI individual, member company or industry sector.

### **Strategic outlook**

CMI welcomes the Review's findings, which align with CMI's previous recommendation that Australia introduce a carbon border adjustment mechanism (CBAM) or 'border carbon adjustment' (BCA) on imports for sectors facing elevated carbon leakage risks.<sup>3</sup>

We consider that a well-designed import BCA could broaden and deepen Australia's climate policy suite, by supporting greater mitigation outcomes through the Safeguard Mechanism than would be possible if carbon leakage risks are not addressed.

Alongside the Safeguard Mechanism and Guarantee of Origin, a BCA would also help to support Australia's economic opportunity as a major producer and exporter of clean energy and industrial commodities. By reinforcing the preconditions for investment in low emissions industrial structures, Australian industries will be well placed to attract international market premiums as the world transitions towards net zero emissions.

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<sup>1</sup> CMI 2024, 'CMI Policy Positions' <https://carbonmarketinstitute.org/app/uploads/2024/10/CMI-Policy-Advocacy-Positions-October-2024.pdf>.

<sup>2</sup> CMI 2024, 'Australian Carbon Industry Code of Conduct', <https://carbonmarketinstitute.org/code/>.

<sup>3</sup> See: CMI 2023, 'Department of Climate Change, Energy, the Environment and Water Carbon Leakage Review – first consultation', [https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12\\_FINAL\\_CMI-submission\\_Carbon-Leakage-Review-first-consultation.pdf](https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12_FINAL_CMI-submission_Carbon-Leakage-Review-first-consultation.pdf); also Position 2(F) in: CMI 2024, 'Policy Advocacy Positions October 2024', <https://carbonmarketinstitute.org/app/uploads/2024/10/CMI-Policy-Advocacy-Positions-October-2024.pdf>.



This will ultimately support the competitiveness of Australian industry, creating additional jobs and ensuring long-term economic prosperity for future generations.

Developing a BCA for high-exposure sectors also presents the opportunity for Australia to advance multilateral and plurilateral initiatives in partnership with our trading partner countries, to increase international capacity and cooperation in accordance with Australia’s commitments under Paris Agreement. These efforts could help to mature carbon pricing and crediting and accelerate the transfer of climate finance, technology and knowledge sharing.

In progressing the design of a BCA, it is important that regional cooperation is integrated into Australia’s diplomatic outreach and approach to ensure Australia supports the maturity and interoperability of carbon compliance markets across the region.

CMI has carefully considered the Carbon Leakage Review’s preliminary findings, as outlined in the Consultation Paper, and presents our recommendations below.

## **CMI Recommendations**

### **1. The Carbon Leakage Review should recommend that Australia introduces a border carbon adjustment (BCA) on imports to protect key domestic industry from carbon leakage.**

As put forward in our response to the Carbon Leakage Review’s first consultation,<sup>4</sup> CMI maintains that a BCA, is the most appropriate, durable medium- to long-term approach to minimising carbon leakage from Australian sectors captured by the reformed Safeguard Mechanism.

We note that the Review’s preliminary finding—that a BCA on imports could be a suitable solution in domestic sectors covered by the Safeguard Mechanism where carbon leakage risks are material—is consistent with this recommendation.<sup>5</sup>

### **2. The Carbon Leakage Review should recommend a phased approach to the introduction of a BCA.**

A phased introduction of the BCA would allow more acute carbon leakage risks facing Australian cement, clinker and lime producers to be addressed promptly. Further to this, a phased approach can facilitate assessment of initial policy design and whether “additional policies”<sup>6</sup> are required to protect at-risk industries while a BCA is being operationalised.

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<sup>4</sup> CMI 2023, ‘Department of Climate Change, Energy, the Environment and Water Carbon Leakage Review – first consultation’, [https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12\\_FINAL\\_CMI-submission\\_Carbon-Leakage-Review-first-consultation.pdf](https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12_FINAL_CMI-submission_Carbon-Leakage-Review-first-consultation.pdf).

<sup>5</sup> Available for download at: DCCEEW 2024, ‘Carbon Leakage Review – consultation paper - November 2024’, <https://consult.dcceew.gov.au/carbon-leakage-review-consultation-paper-november-2024>, p. 9.

<sup>6</sup> See: Department of Climate Change, Energy, the Environment and Water (DCCEEW) 2024, ‘Carbon Leakage Review – Consultation Paper 2’, pp. 38 (available for download at: <https://consult.dcceew.gov.au/carbon-leakage-review-consultation-paper-november-2024>).



CMI suggests that consultation to inform the design and implementation of an import BCA for this initial cohort should commence in the 12 months following the Review's final report to ensure timely implementation.

To support the phased implementation of a BCA, the Carbon Leakage Review should propose assessment criteria that the government can use to determine when carbon leakage risks become material for different sectors and would thus warrant the expansion of the BCA into the future.

The Review's preliminary findings suggest carbon leakage risks for aluminium and alumina, refined petroleum, and pulp and paper should be considered in the scheduled 2026 Safeguard Mechanism but does not offer advice beyond the 2026 timeframe.

The proposed assessment criteria could support government in determining how to assess the materiality of carbon leakage risks, how frequently to review carbon leakage risks and in what circumstances an import BCA requires expansion.

### **3. The Carbon Leakage Review should consider whether lowering the threshold for Safeguard Mechanism could mitigate potential trade law issues that may arise if a BCA is applied to imports in sectors where some domestic producers are not captured by the Safeguard Mechanism.**

The Review's preliminary findings note that introducing a BCA in sectors where domestic producers are only partially captured by the Safeguard Mechanism may contravene the international trade law principle of non-discrimination between domestic and imported products.<sup>7</sup>

Lowering the Safeguard covered facility emissions threshold could support the introduction of a BCA in sectors where Safeguard coverage is currently partial but captured facilities are vulnerable to carbon leakage, thereby helping to mitigate international trade law concerns associated with phasing in a BCA.

CMI has consistently advocated for lowering the covered facility emissions threshold under the Safeguard Mechanism and extending coverage to additional sectors of the economy.<sup>8</sup> Lowering the Safeguard covered facility emissions threshold could also support additional policy outcomes, including to:

- level the playing field across domestic sectors, taking into account the advantages of scale, where coverage is partial by introducing a consistent, sector-wide decarbonisation driver;
- avoid perverse outcomes associated with potential domestic leakage of emissions from sectors covered by the Safeguard Mechanism into sectors without a carbon price (e.g., from rail freight into more emissions-intensive road freight);<sup>9</sup> and
- serve as a first step to harmonise carbon pricing signalling across the economy, as suggested by the Climate Change Authority in their 2024 Pathways Report.<sup>10</sup>

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<sup>7</sup> More information on the international trade law principle of non-discrimination at: World Trade Organization (WTO) 2024, 'Principles of the trading system', [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm).

<sup>8</sup> See Position 2E in: CMI 2024, 'Policy Advocacy Positions October 2024', <https://carbonmarketinstitute.org/app/uploads/2024/10/CMI-Policy-Advocacy-Positions-October-2024.pdf>.



Noting that lime is one such sector where Safeguard covered producers are vulnerable to carbon leakage but domestic sectoral coverage is partial, this should be part of consultation in 2025 to inform the design and implementation of a BCA for the first cohort of cement, clinker and lime.

- 4. In its advice to government, the Carbon Leakage Review should carefully consider design and implementation recommendations, including:**
- a. ensuring the default emissions intensity determination is an appropriate basis upon which to assess importer liability;**
  - b. BCA compliance options and appropriate uses for revenue raised;**
  - c. the phase out of trade exposed, baseline adjustment (TEBA) provisions alongside the phased implementation of a BCA; and**
  - d. ensuring additional reporting requirements associated with a BCA do not create avoidable administrative burden that may also disproportionately impact smaller entities.**

#### Calculating importer liability under a BCA

The Review's preliminary findings suggest that BCA liability would be calculated based on the Safeguard Mechanism emissions intensity determinations.

Emissions intensity calculations typically balance accuracy with resource intensity based on the intended use case, while also being cognisant of timeliness, granularity and the presence of multiple methods<sup>11</sup>.

Given that the emissions intensity determinations were not initially devised to calculate importer liability, CMI suggests that the Review undertake additional work to demonstrate that these are an appropriate basis for calculating importer liability under a BCA.

Best practice benchmarks for designated new facilities may also require additional consideration, as the new facilities may be subject to more stringent requirements than other facilities in their sector which may disadvantage domestic producers and cause investment leakage.

Research suggests data and procedures from industry bodies may present a reasonable approach to calculating default sector level metrics.<sup>11</sup>

Where emissions reporting has not been implemented in importers' countries of origin, the Review should provide details on how these importers could demonstrate compliance and what emissions intensity would be used for the imported product. The Review should advise what the impact on these countries might be and how the policy design will act to support and or not unfairly penalise countries that may have less capacity. Key learnings from the experience of the European Union's CBAM should be used inform this approach.

CMI further notes that negotiating blocs are forming on the international stage to oppose a "discriminatory"<sup>12</sup> EU CBAM (see Recommendation 6(b) below for more detail on this).

In determining importer liability, Australia's BCA arrangements should take a considered approach to importers who are not covered by a mandatory carbon pricing scheme in their country of origin but may

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<sup>11</sup>OECD (2024), *Towards more accurate, timely, and granular product-level carbon intensity metrics: challenges and potential solutions; An IFCMA report*, Inclusive Forum on Carbon Mitigation Approaches Papers, OECD Publishing, Paris

<sup>12</sup> See, for example: : BRICS 2024, 'Kazan Declaration: Strengthening Multilateralism for Just Global Development and Security', <http://static.kremlin.ru/media/events/files/en/RosOySvLzGajtmx2wYFv0lN4NSPZploG.pdf>, p. 22



have voluntarily purchased and surrendered carbon credits or other units. In such cases, Australia should consider which units and carbon market certification standards and schemes would be accepted.

We note that Australia should take care not to operationalise a BCA that may act to discourage voluntary action by only accepting compliance under mandatory carbon pricing schemes. At the same time, arrangements should ensure equitable liability or pricing requirements for both Safeguard-covered domestic entities and importers covered by other voluntary or compliance schemes.

### **BCA compliance options and appropriate use of revenue raised**

CMI suggests the Review carefully consider and present the benefits and drawbacks of different compliance options. For example, the BCA could be levied as a fee, or purchase and surrender of ACCUs and/or SMCs could be permitted as an importer compliance option.

We note that a fee-based approach would be administratively simpler and may be more appropriate, as it creates the potential to support multiple opportunities. Under a fee-based approach, funds could be directed towards public funding initiatives such as the PRF, supporting the cost of BCA implementation, government ACCU purchases, or a combination of the options listed.

Other appropriate channels for revenue raised through a BCA could be supporting decarbonisation initiatives and domestic carbon pricing in key developing country trading partners affected by an Australian BCA, and/or contributing to and leading in multilateral and plurilateral initiatives to support global carbon pricing and BCAs, such as future carbon clubs (see Recommendation 6(b) below).

Revenue could be used to support regional trading partners to achieve conditional higher-ambition Nationally Determined Contribution (NDC) targets, including through cooperative arrangements under Article 6 of the Paris Agreement

If this approach is undertaken, it should be informed by a public investment strategy that is aligned with Australia's climate commitments and domestic interests to guide fund administration appropriately.

Regardless of how BCA liability revenue is discharged, the mechanisms and outcomes should be transparent and subject to review by an appropriate authority. Consideration should be given to whether use of revenue under considered options could, or could be construed to, erode the impact of the BCA, the reformed Safeguard Mechanism, or Australia's overarching climate goals. For example, if revenue raised by a BCA was used to support compliance through funding ACCU purchases by liable entities, this may be perceived as eroding the driver to invest in process decarbonisation.

### **TEBA phase out**

CMI supports the Review's preliminary finding that TEBA provisions could/should be phased out for sectors where an import BCA is implemented. We recognise that maintaining concessional, shallower decline rates for certain facilities under the Safeguard Mechanism will undermine scheme-wide mitigation outcomes and the longer-term competitiveness of Australian industry in a net zero world.<sup>13</sup>

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<sup>13</sup> See: CMI 2023, 'Department of Climate Change, Energy, the Environment and Water Carbon Leakage Review – first consultation', [https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12\\_FINAL\\_CMI-submission\\_Carbon-Leakage-Review-first-consultation.pdf](https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12_FINAL_CMI-submission_Carbon-Leakage-Review-first-consultation.pdf), p. 4.



The Review should provide advice on how the TEBA phase could be approached to minimise disruptions and ensure advance notice for affected facility owners.

### Administrative burden

CMI notes that the proliferation of reporting requirements in recent years—including the introduction of mandatory climate-related financial disclosures from 1 January 2025—is and will continue to place increasing burden on industry. A BCA could create an additional burden, if not carefully operationalised.

The Consultation Papers also states that BCA design should “minimise administrative burden” so the policy is not discriminatory and consistent with international trade laws and obligations.

To support this, the Review should provide more detail on how a BCA could be implemented with minimal additional administrative burden. Consideration should be given to data collection and verification, commercial sensitivity and reporting systems.

Particular attention should be paid to any impacts on small to medium enterprises and developing countries as they often encounter greater barriers with data collection and verification of carbon emissions intensity.<sup>14</sup>

## **5. The Carbon Leakage Review should model the robustness of a potential BCA by undertaking additional scenario analysis.**

CMI notes the Review’s preliminary findings show limited economic impact of the BCA in a business-as-usual scenario.

To demonstrate the robustness of a BCA, we suggest that the Review could undertake additional scenario or sensitivity modelling to determine whether the economic impacts of this policy change in the context of ‘black swan’ events, such as another global pandemic, regional conflict, or other events with the potential to disrupt international trade and global supply chains—including those that may relate to the impacts of climate change.

## **6. The Carbon Leakage Review should recommend additional policy measures as precursors or complementary supports to reinforce the import BCA, including:**

- a. building on the Powering the Regions Fund with more innovative targeted public investment, and**
- b. participation in multilateral and plurilateral initiatives, including potential leadership on a regional carbon club supporting carbon pricing proliferation in the Asia Pacific region**

### Innovative, targeted public investment models

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<sup>14</sup> OECD (2024), *Towards more accurate, timely, and granular product-level carbon intensity metrics: challenges and potential solutions*; *An IFCMA report*, Inclusive Forum on Carbon Mitigation Approaches Papers, OECD Publishing, Paris.



Well-designed public investment can accelerate ambition, drive new technology uptake, and promote behavioural change. Public funding of the right initiatives can also address carbon leakage risks by supporting industries to decarbonise and reduce carbon liability.

As noted in our response to the Carbon Leakage Review’s first consultation, CMI encourages the Review to explore more efficient, targeted public funding measures that could complement a BCA, progressing from the current approach of grants under the Powering the Regions Fund’s Safeguard Transformation Stream and Industrial Transformation Streams. More efficient, targeted and innovative public funding models may include carbon contracts for difference and production subsidies.<sup>15</sup>

### Multilateral and plurilateral initiatives

CMI welcomes the Review’s preliminary findings on the value of multilateral and plurilateral initiatives, having endorsed these in our original submission<sup>16</sup> as important means by which Australia can support the proliferation of carbon pricing and reinforce related carbon border protection policies.

We note that countries are currently forming or using existing blocs—including the BRICS and BASIC groups—to negotiate with the European Union on how the EU CBAM should (or should not) apply to their exporters.<sup>17</sup> Border carbon tariffs can therefore be expected to be on the Presidency or formal negotiating agenda at future UNFCCC Conferences of the Parties (COPs), particularly under Brazil’s Presidency at COP30.

The Review should note this trend in its report, and in preparation for an Australian BCA, the government should carefully monitor and draw lessons from the outcomes of these negotiations.

Australia should focus diplomatic efforts on supporting the maturity and interoperability of carbon compliance markets across the region, as CMI elaborates in its Policy Positions<sup>18</sup> and recent National Carbon Market Strategy policy brief.<sup>19</sup> These efforts should include:

- Evaluating opportunities and planning strategic pathways for Australia to cooperate with its Indo Pacific neighbours through Article 6 mechanisms, both market and non-market (Article 6.8), and
- Supporting government-led and stakeholder-level capacity building -initiatives in the region, including government to government knowledge exchange, pilot funding and community education

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<sup>15</sup> For details, please revisit: CMI 2023, ‘Department of Climate Change, Energy, the Environment and Water Carbon Leakage Review – first consultation’, [https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12\\_FINAL\\_CMI-submission\\_Carbon-Leakage-Review-first-consultation.pdf](https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12_FINAL_CMI-submission_Carbon-Leakage-Review-first-consultation.pdf), p. 7.

<sup>16</sup> See: CMI 2023, ‘Department of Climate Change, Energy, the Environment and Water Carbon Leakage Review – first consultation’, [https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12\\_FINAL\\_CMI-submission\\_Carbon-Leakage-Review-first-consultation.pdf](https://carbonmarketinstitute.org/app/uploads/2023/12/2023.12_FINAL_CMI-submission_Carbon-Leakage-Review-first-consultation.pdf), p. 8.

<sup>17</sup> For example, BRICS countries (Brazil, Russia, India, China, South Africa, Iran, Egypt, Ethiopia and the UAE) reject “unilateral and discriminatory carbon border adjustment mechanisms (CBAMs, due diligence requirements, taxes and other measures and reconfirm full support for the call in COP28 related to avoidance of unilateral trade measures based on climate and environment”, a sentiment supported by the BASIC grouping (see: BRICS 2024, ‘Kazan Declaration: Strengthening Multilateralism for Just Global Development and Security’, <http://static.kremlin.ru/media/events/files/en/RosOySvLzGalTmx2wYFv0IN4N5PZploG.pdf>, p. 22; and Climate Home News 2024, ‘Emerging economies set up COP29 agenda fight over trade measures’, <https://www.climatechangenews.com/2024/11/06/emerging-economies-set-up-cop29-agenda-fight-over-trade-measures/>.)

<sup>18</sup> CMI 2024, ‘CMI Policy Positions’ <https://carbonmarketinstitute.org/app/uploads/2024/10/CMI-Policy-Advocacy-Positions-October-2024.pdf>.

<sup>19</sup> CMI 2024, ‘A National Carbon Market Strategy for Australia – policy brief’, [https://carbonmarketinstitute.org/app/uploads/2024/06/2024.06\\_FINAL\\_National-carbon-market-strategy\\_CMI-policy-brief.pdf](https://carbonmarketinstitute.org/app/uploads/2024/06/2024.06_FINAL_National-carbon-market-strategy_CMI-policy-brief.pdf).





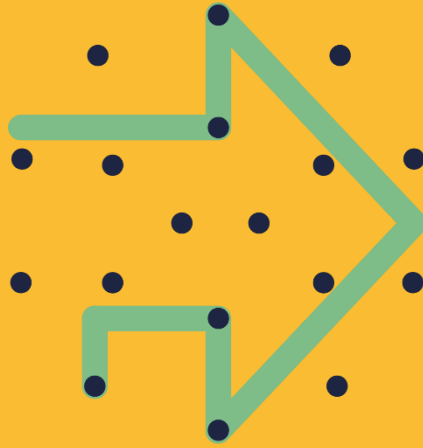
Should you wish to discuss this submission and the recommendations therein in greater detail, please contact Gabriella Warden ([gabriella.warden@carbonmarketinstitute.org](mailto:gabriella.warden@carbonmarketinstitute.org)).

Yours sincerely

A handwritten signature in black ink that reads "Kurt Winter".

Kurt Winter

**Director, Corporate Transition**



## **for more information please contact**

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Engaging leaders, shaping policy and driving action, we're helping business to seize opportunities in the transition to a negative emission, nature positive economy.



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