



Environmental Defenders Office

3 December 2024

Carbon Leakage Review team

Department of Climate Change, Energy, the Environment and Water

Submitted via [Consultation Hub](#)

Dear Carbon Leakage Review team,

Submission on the Carbon Leakage Review Consultation Paper

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission on the Carbon Leakage Review Consultation Paper (**consultation paper**). Carbon leakage is the relocation of industrial production outside of Australia on the basis of a difference in carbon policies. The carbon leakage review has been progressed because of Australia's updated and reformed carbon reduction policies, including changes to the Safeguard Mechanism based on the legislated target of a 43% reduction in carbon emissions by 2030 (on 2005 levels).¹

Ultimately the consultation paper recommends the adoption of a border carbon adjustment to mitigate the potential penalty to domestic facilities covered by the Safeguard Mechanism. EDO **supports** the introduction of a carbon border adjustment (**CBA**) to address the problem of carbon leakage. A CBA would impose liabilities on imports where the embedded emissions of those products were higher, and origin country compliance costs lower, than if the product were produced in Australia and subject to emissions mitigation measures domestically.

A CBA will assist in encouraging further, faster, and more effective carbon mitigation policies to be introduced domestically by removing a key barrier and addressing concerns of impacted industries. However, EDO agrees that addressing carbon leakage must mean helping 'create the preconditions for investment in new low emissions industrial structures [...] rather than shielding existing high emissions processes from change.'² The CBA must be carefully designed, and interaction with the settings of the Safeguard Mechanism should be closely considered on an ongoing basis.

EDO notes that Australia is not a first mover in this field, and that carbon border adjustments are beginning to be introduced in key jurisdictions including the EU and considered in countries like the UK and Canada. It will be important to progress both Australia's domestic emissions reduction frameworks, as well as carbon leakage mitigation, as quickly as possible to keep up with other comparable economies.³

¹ *Climate Change Act 2022* (Cth).

² Department of Climate Change, Energy, the Environment and Water (**DCCEEW**), Carbon Leakage Review: Consultation Paper 2, (November 2024) (**Consultation Paper**) 5.

³ See, Climate Council, [Markets are moving: the economic costs of Australia's climate inaction](#) (2021).

Design considerations for the proposed carbon border adjustment

The consultation paper proposes a carbon border adjustment, which would apply to imports only, with the intention of preventing carbon leakage as a result of the reformed Safeguard settings. Liability is proposed to be applied to imports where the emissions intensity of the import is higher than the Safeguard baseline applicable to the import, and the carbon cost of that import is lower than if it were produced in Australia.⁴ EDO **supports** this approach, conditional on the accurate measurement of the international policy equivalent relevant to the product, and accurate reflection of the Safeguard imposition on that product (i.e. the impact of the Safeguard baseline).

This submission considers design features of the proposed CBA and makes the following recommendations:

- *Limitations of the Safeguard Mechanism must be taken into account when designing a CBA*
- *Trade exposed baseline adjusted facility allowances should be phased out*
- *Coverage of the Safeguard Mechanism should be extended, and consequently also the CBA*
- *The use of ACCUs to meet liability under a CBA should be explored further*

Limitations of the Safeguard Mechanism must be taken into account when designing a CBA

At the outset, it is important to note that the Safeguard Mechanism is Australia's only policy that imposes an obligation on industrial facilities to make emissions cuts. It applies to about 220 facilities producing emissions above a certain threshold,⁵ accounting for about 30% of annual national emissions.⁶ Only scope 1, direct, emissions are regulated by the Mechanism.

The reforms made to the Safeguard Mechanism, passed in 2023, have applied a more stringent baseline (or limit) on facilities covered by the Mechanism, set at 4.9% as a default. However, all facilities are able to use carbon credits to meet their baselines. This means there is no legal mandate for covered facilities to reduce or mitigate emissions on site, beyond a broad legislative objective towards ensuring 'the responsible emitter for each designated large facility has a material incentive to invest in reducing covered emissions from the operation of the facility'.⁷ In reality, facilities may meet their baseline obligations by purchasing carbon credits, either Australia Carbon Credit Units (**ACCUs**) or Safeguard Mechanism Credits (**SMCs**).

A cost containment measure implemented with the Safeguard reforms means that eligible facilities can purchase ACCUs from the Government at a price of \$75 in 2023-24, which increases with CPI plus 2% each year. This means ACCU price is costs effectively capped, regardless of the level of demand for ACCUs increasing or decreasing. With the price cap in place, the low cost of ACCUs compared with the cost of genuine business transformation makes it unlikely in practice (at least in the short to mid-term) that facilities will opt for business transformation, which guarantees emissions reduction, despite the legislated objective. Feasibly, under the current model, a covered facility may have no

⁴ Consultation Paper, 69.

⁵ 100,000 tonnes of carbon dioxide equivalent (tCO₂-e) of scope 1 emissions per year.

⁶ Consultation Paper, 21.

⁷ *National Greenhouse and Energy Reporting Act 2007* (Cth) s 3(2)(e).

plausible plan to reduce emissions other than by externalising their obligations through offsetting with low integrity carbon offsets.⁸

It is critical that CBA settings accurately reflect the impact of the Safeguard Mechanism, including the policy settings that are already in place to reduce or moderate the impact of the Mechanism on covered facilities. EDO **recommends** that calculating the ‘Safeguard production baseline emissions intensity’⁹ should take into account not just the applicable Safeguard baseline, but the real impact of Safeguard on the relevant sector or product– i.e. the use of ACCUs and prevalence of trade exposed baseline adjusted facilities. Overstating the impact of Safeguard could lead to the perverse situation of penalising imports which should be encouraged for their lower embedded emissions, or which in reality have a higher compliance cost under the producing country’s emission reduction policy.

Trade exposed baseline adjusted facility allowances should be phased out

Under the Safeguard reforms, trade exposed baseline adjusted (**TEBA**) facilities – facilities most at risk of carbon leakage – can apply a less stringent emissions reduction baseline of 2% for non-manufacturing sectors or 1% for manufacturing sections. These allowances for TEBA facilities therefore constrain the contribution of Safeguard Mechanism sectors to Australia’s overall emissions reduction efforts, by reducing the emissions reduction required by some covered facilities.¹⁰

It is currently unclear how extensively the TEBA provisions and allowances are being used, with this information likely to be available in the new year. However, given the similar policy basis for the TEBA framework and the proposed CBA, EDO **recommends** TEBA provisions be phased out as the CBA is implemented, with no overlap on commodities or products across the two policies. With the implementation of a CBA, imports and domestically produced commodities would have the same carbon cost. Phasing out the TEBA allowances would encourage greater emissions reductions domestically, and improve the efficacy of the Safeguard Mechanism, while accounting for impacts on specific sectors and risks of carbon leakage. EDO **supports** the conclusion in the consultation paper to this end.¹¹

Coverage of the Safeguard Mechanism should be extended, and consequently also the CBA

EDO has previously argued that the Safeguard coverage should be extended to capture facilities which emit less than 100,000 tonnes of CO₂e per annum.¹² To ensure the CBA applies logically and equitably across domestic facilities as well as imports, EDO **supports** the design option considered in the consultation paper to reduce the existing annual threshold to cover all production for commodities to which a CBA might be applicable.¹³

This would have the dual impact of widening Safeguard coverage and therefore emissions reduction impact, and make it easier to apply a CBA to commodities which don’t currently have 100%

⁸ Preliminary 2024 data from the Climate Change Authority shows that of 215 covered facilities, only 60 facilities actually reported emissions below their applicable baseline, with 71% reporting covered emissions higher than their baseline. Climate Change Authority, [2024 Annual Progress Report](#), 85.

⁹ See Consultation Paper, 87.

¹⁰ Consultation Paper, 21 (Preliminary Finding 1).

¹¹ Consultation Paper, 70.

¹² EDO, [submission in response to the Safeguard Mechanism Reform Consultation Paper](#) (September 2022).

¹³ Consultation Paper, 67.

Safeguard coverage. EDO **recommends** the Safeguard threshold should be reduced to a level which would cover all production for commodities with a carbon border adjustment.

The use of ACCUs to meet liability under a CBA should be explored further

EDO **recommends** a fee model be adopted for the CBA. Moreover, any revenue collected from the imposition of a CBA should in the first instance be used to implement the policy framework, as needed. Further, funds could go towards international capacity building in developing countries to support decarbonisation.¹⁴

EDO would be interested in exploring the possibility of an ACCU surrender model. Theoretically, allowing importers to meet their CBA liability through relinquishment of carbon credits could result in both financial parity with domestic producers, and an equivalent emissions reduction. Unfortunately, carbon offsetting in general is very rarely equivalent to real emissions reduction, for reasons including inherent uncertainties in the quantification of carbon offsets and the problem of permanence.¹⁵ In Australia, significant concerns remain about the veracity of ACCU methods, particularly given ACCUs created under impugned methods remain in circulation, with some 70% of existing ACCUs being based on methods which have been roundly criticised by experts.¹⁶

The unlimited availability of ACCUs to Safeguard covered facilities to meet their mandatory emissions reduction baselines means that real, permanent and credible emissions abatement under the Safeguard Mechanism is not guaranteed. The use of ACCUs to meet CBA liability would be subject to similar considerations, insofar as meeting a CBA liability could have an emissions mitigation impact. However, the increased demand this would place on ACCUs could, in theory, be beneficial, leading to greater demand for SMCs to meet baselines domestically– and therefore real and on-site emissions mitigation by covered facilities.

Conclusion

It is worth emphasising that the Safeguard Mechanism covers about 30% of Australia’s scope 1 emissions - but that it has no bearing on Australia’s biggest contribution to global emissions, fossil fuel exports,¹⁷ and is limited in true mitigation potential due to the loopholes around carbon credits built into the policy. Domestically, a significant risk comes from doing too *little* to mitigate climate change – i.e. when Australian products are subject to a carbon border adjustment at the border of another country which might have a functioning carbon price, or strict emissions mitigation measures in place.¹⁸

¹⁴ Consultation Paper, 12.

¹⁵ Derik Broekhoff, Expert Report (4 July 2022) available at <https://www.clientearth.org/media/exyfp2p/productie-4-broekhoffexpert-report-v2-2-final.pdf>.

¹⁶ Andrew Macintosh et al, Implications of the Independent Review of Australian Carbon Credit Units (ACCUs) and low integrity ACCUs for Australia’s Safeguard Mechanism (February 2023) available at <https://law.anu.edu.au/files/2024-02/Impact%20of%20Low%20Integrity%20ACCUs%20on%20the%20SGM%20Final%20150223.pdf>.

¹⁷ Climate Analytics, [Australia's global fossil fuel carbon footprint](#) (August 2024).

¹⁸ Climate Council, [Markets are moving: the economic costs of Australia’s climate inaction](#) (2021).

There is much more the federal government needs to be doing to reduce Australia's oversized contribution to climate change, including both through Safeguard and broader policy measures. To further galvanize this change, the adoption of a CBA is a useful, complimentary measure.

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Yours sincerely,

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