

**Spanish Cement Industry (OFICEMEN) considerations on consultation on methodology for Commission Decision determining the list of sectors and subsectors deemed exposed to a significant risk of carbon leakage, for the period 2015-2019**

**GENERAL COMMENTS**

The first carbon leakage list deemed to be exposed to a significant risk of carbon leakage was adopted by the Commission at the end of 2009 and is applicable only for the free allocation of allowances in 2013 and 2014, regardless of the outcome of international negotiations.

The cement industry qualified as a sector exposed to a significant risk of carbon leakage on the basis of the so-called GVA criteria (article 10a paragraphs 14 to 17 of the consolidated ETD): the sum of direct and indirect additional costs induced would lead to a particularly high increase of production costs, calculated as a proportion of the gross value added, of at least 30 %.

Oficemen set out a number of general considerations to keep in mind:

- ~ Expectations of reaching a binding international agreement on climate change in 2015 are highly uncertain. Take into account that there is no binding international climate agreement which imposes similar burdens on operators in the major cement producing jurisdictions;
- ~ Ensure a stable legal environment by not modifying essential parameters of the carbon leakage findings, especially since this is not justified by progress in international climate change negotiations nor legally allowed under the provisions of the Directive;
- ~ In the Directive, the purpose of the review of the list of sectors deemed to be exposed to a significant risk of 'carbon leakage', was to see if it had reached in this period a new international agreement on climate change, according to today not been reached. The objectives of the review of the list of carbon leakage sectors it's not modify the formulas or qualification criteria;
- ~ There is clearly a lack of investment confidence for a capital-intensive industry with long-term investment cycles, like the cement industry, caused by the constant unpredictability of the regulatory framework and changes proposed even before entry into force of the provisions for Phase III of the EU ETS Directive;
- ~ Free allowances in the third trading period between 2013 and 2020 from sectors and sub-sectors deemed to be exposed to a significant risk of 'carbon leakage' is one of the requirements necessary to address the competitiveness of the Spanish cement industry;
- ~ Apply exactly the same criteria as those applicable in 2009 in order to preserve an international level playing field for sectors exposed;

- ~ Review list of sectors deemed to be exposed to a significant risk of 'carbon leakage' every five years give great uncertainty for companies and must be added new proposals for possible ongoing structural changes in EU emissions trading system. Any change in the current crisis will mean an unnecessary extracoste without bring about any environmental benefit. The competitiveness of European cement industry has deteriorated significantly as a result of the deep economic crisis and rising energy and electricity costs;
- ~ Sectors and sub-sectors deemed to be exposed to a significant risk of 'carbon leakage' only will receive free allocation for the first two years of the period 2013-2020;
- ~ The grammatical, systematic, teleological and historical interpretation of the Emissions Trading Directive (ETD) shows that the powers delegated to the Commission in the ETD do not provide for any margin of discretion regarding the fixing of the relevant carbon price. The Commission must therefore not deviate from the 30 EUR carbon price tag when it sets up the 2014 carbon leakage list
- ~ Oficemen considers necessary to plan more bilateral meetings between the Commission and concerned business sectors in order to exchange information, identify methodological issues to be solved and agree on the best solutions.
- ~ Since the review is done with the data corresponding to the years 2008-2010, no new countries should be included in the trade intensity criteria because in that period no other country has had a trading scheme allowances comparable to the EU27.
- ~ GVA data that the Commission intends to use comes from Eurostat, which includes facilities not covered by the scope of the EU emissions trading. This may disturb the installation real data included in the EU emissions trading.

## **QUESTIONNAIRE**

Questions marked with an asterisk \* require an answer to be given.

### **A. Registration**

#### **A1. What is your profile?\***

- Business
- Trade association representing businesses
- Government institution/regulatory authority
- Academic/research institution
- Non-governmental organisation
- Citizen
- Other (please specify below)

#### **A2. Please enter the name of your business/organisation/association etc:\* (maximum 500 characters)**

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**A.3. Please enter your contact details (address, telephone, email):\***

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**A.4. If relevant, please state if the sector/industry you represent falls under the scope of the EU ETS:\***

- Yes
- No
- Not relevant (please explain below)

**A.5. Please explain why the question above is not relevant in your case (max 500 characters) (maximum 500 characters)**

Not applicable

**A.6. If your sector/industry falls under the scope of EU ETS, does the sector/company you represent receive free allocation under the harmonised allocation rules?\***

- Yes
- No
- Not relevant (please explain below)

**A.7. Please explain why the question above is not relevant in your case (max. 500 characters) (maximum 500 characters)**

Not applicable

**B. I. General: competitiveness, carbon leakage and the 2009-2014 carbon leakage list**

The questions in this section are an opportunity for stakeholders to express their general and broader view on carbon leakage issues, the list valid for 2013 and 2014 and will be useful from a policy evaluation perspective.

**B.1. As stipulated in the ETS Directive, the aim of the EU Emission Trading System is to promote reductions of greenhouse gas emissions in the most cost-effective and economically efficient manner. To address the risk that, for reasons of costs related to climate policies, relocation of companies to areas which have laxer constraints on greenhouse gas emissions could lead to an increase of carbon dioxide emissions, Commission Decision 2010/2/EU has established the list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage. This list is valid from 2009 to 2014 included, and is incorporated in the determination of free allocation for 2013 and 2014.**

**In your view, how has the risk of carbon leakage evolved since the adoption of the first carbon leakage list in 2009:\***

- Increased substantially
- Increased slightly
- Remained the same
- Decreased slightly
- Decreased substantially
- No opinion

**B.2. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

When it comes to evaluating the risk of leakage, OFICEMEN considers that the risk has even increased since 2009 as Europe's high energy and electricity costs have further reduced the competitiveness of Europe's industry. It is evident that the relatively low carbon price is not an inhibitor to the increase in indirect CO2 costs passed on by the power generators. Although evidence of leakage directly attributable to ETS Phase I and Phase II is limited, the risk of leakage in the future remains high in the absence of globally equalized CO2 pricing. Increased leakage potential is increased by the reduction in shipping costs and the prospect of an international agreement now being less likely than when the first regulatory impact assessment was carried out.

**B.3. In your view, how adequate policy instruments are free allocation and the increased allocation for sectors on the carbon leakage list in particular in relation to the risk of carbon leakage?\***

- Very adequate
- Quite adequate
- Quite inadequate
- Very inadequate
- No opinion

**B.4. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

Free allowance allocation in a trading scheme is a transitory measure to avoid carbon leakage, and for a long term system it is paramount that the Commission establishes a long lasting solution to ensure a level playing field between domestic producers and importers. As long as carbon emissions do not have the same cost in different countries, a level playing field can be achieved most effectively by equalising measures such as border adjustment measures or free allocation provision. The limited evidence of carbon leakage directly attributable to the ETS demonstrates that free allocation, as a measure to insulate vulnerable sectors from part of the ETS costs, is working. However, it should not be assumed that free allocation is insulating operators from all of the ETS costs. Free allocation does not mean 'full free allocation' and some operators will face higher costs than others depending on the allocation base year activity. Furthermore the indirect costs of ETS faced by the cement industry have not been selected for compensation in the Commission guidelines. This means that not only does the cement industry face the full indirect costs of ETS but competing sectors in the construction market such as steel are able to obtain compensation in some member states.

**B.5. Currently 154 sectors and 16 sub-sectors are on the carbon leakage list valid for 2009-2014. In your view, how adequate is the coverage of sectors and sub-sectors in the current carbon leakage list?\***

- The carbon leakage list is too short
- The carbon leakage list is of adequate length
- The carbon leakage list is too long
- No opinion

**B.6. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

The list is as per the parameters set in the Directive. It is not a question of length but rather a question of adequacy and competitiveness.

## **B.A. II. Methodology for new carbon leakage list 2015-2019: options to be discussed in the Impact Assessment**

Based on Article 10(a)18a of the ETS Directive, if third countries have firmly committed to reducing emissions in an extent comparable to the one of the ETS, it can be considered whether the trade between EU and these countries shall be treated the same way as intra-EU trade because there would be no risk of carbon leakage to such countries.

**B.A.1. In your view, is there an increase of the ambition of domestic climate policies undertaken in countries outside the EU/EEA since 2009?\***

- Yes, a significant increase
- Yes, some increase
- No change since 2009
- No, there is even some decrease
- No, there is even a significant decrease
- No opinion

**B.A.2. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

There is some increase in ambition of domestic climate policies undertaken in countries outside the EU/ EAA since 2009 but we are still far away from an equalized climate policy and ambitions over the world, hence the risk of carbon leakage has even increased because of other parameters as outlined under B2. Therefore, trade with third countries that have initiated climate policies should not be treated in the same way as intra-EU trade unless it can be demonstrated that an equivalent CO2 price is being applied to the traded goods.

It has to be noted that climate change policies has somehow been put on hold in certain jurisdictions compared to other policies such as growth and jobs.

**B.A.3. How do you see the climate policies of the following countries outside the EU-28 and EEA EFTA states, with which there are decisions or on-going discussions to implement ETS systems?**

	Fully comparable to the ETS	Partially comparable to the ETS	Not comparable to the ETS	No opinion
B.A.3.1. Australia			X	
B.A.3.2. Switzerland	X			

**B.A.4. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

The most relevant point for comparison are allocation and free allocation over time as well as carbon leakage measures as far as they determine the carbon cost.

**B.A.5. How do you see the climate policies of countries or regions outside the EU-28 and EEA EFTA state?**

	Fully comparable to the ETS	Partially comparable to the ETS	Not comparable to the ETS	No opinion
B.A.5.1. China			X	
B.A.5.2. South Korea			X	
B.A.5.3. New Zealand			X	
B.A.5.4. USA			X	
B.A.5.5. Brazil			X	
B.A.5.6. Russian Federation			X	
B.A.5.7. Middle Eastern Countries			X	
B.A.5.8. Other country (please specify below)			X	

**B.A.6. If you wish, please motivate your answer (max. 2000 characters) (maximum 2000 characters)**

Policies cannot be comparable to the EU-ETS as long as they do not introduce a carbon price equal to that in the EU and where they do not provide for comparable methodology in assessing GHG emission reductions and where there is no equivalence of monitoring, reporting and verification efforts

Furthermore, as long as countries do not face comparable CO<sub>2</sub> costs, the risk of carbon leakage will play an important role for operational and investment decisions. Equalisation can only be achieved if a critical mass of participating economies is covered, until this

critical mass is achieved then no recognition of other trading systems should take place in the 2014 carbon leakage assessment (with the exception of Switzerland).

**B.A.7. The ETS Directive requires the use of the Eurostat NACE classification (Statistical Classification of**

**Economic Activities in the European Community ) for the definition of sectors to be assessed for potential inclusion in the carbon leakage list. In your view, what should be the starting point for the analysis of sectors, taking into consideration both feasibility and the structure of European industry?**

**[1] [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-RA-07-015/EN/KS-RA-07-015-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-07-015/EN/KS-RA-07-015-EN.PDF)**

- NACE 3
- NACE 4
- No opinion

**B.A.8. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

NACE 4 provides the minimum level of disaggregation to properly identify the cement sector. Official data at NACE 4 should be used although more detailed data (than is provided by NACE 4) may be required in some circumstances.

**B.A.9. In your view, the auctioning factor (an estimation concerning the share of allowances to be acquired if not on the carbon leakage list) should be:\***

*All industrial installations in the ETS receive free allowances based on benchmarks, according to the Benchmarking Decision (2011/278/EU). The amount of free allowances received per year if they are not deemed to be exposed to carbon leakage declines from 80% of the benchmark value in 2013 to 30% of the benchmark value in 2020. To assess direct costs, it is necessary to take into account the amount of allowances a sector would need to acquire if were not deemed to be exposed to carbon leakage. This assessment, referred to as 'auctioning factor' is expressed as a percentage and is used alongside actual levels of allocation in the calculation of the direct costs a sector may be facing under ETS.*

- Uniform for all sectors,
- Sectorial at NACE-2 level,
- Sectorial at NACE-3 level,
- Sectorial at NACE-4 level,
- Other (please specify below)
- No opinion

**B.A.10. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

In the interests of harmonisation of the scheme a uniform level of auctioning should be used.

**B.A.11. The current carbon leakage list, applied for free allocation in 2013 and 2014, is based on a carbon price of €30. In your view, is this an adequate carbon price to be used for the new carbon leakage list for the period 2015-2019?\***

- Yes
- No
- No opinion

**B.A.12. Please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

The grammatical, systematical, teleological and historical interpretation of the ETS Directive shows that the powers delegated to the Commission in the ETS Directive do not provide for any margin of discretion regarding the fixing of the relevant carbon price. The Directive is predicated on a regulatory impact assessment which clearly states the necessity to use €30/tCO<sub>2</sub> and deviation from this would present a legal departure from the Directive. The Commission must therefore not deviate from the 30 EUR carbon price tag when it sets up the 2014 carbon leakage list.

**B.A.13. In your view, which is the most adequate CO<sub>2</sub> emission factor that should be used for the calculation of indirect costs?\***

- Average emission intensity of the whole electricity generation mix
- Average emission intensity of the fossil fuel electricity generation mix
- Emission intensity of marginal electricity generation in the current system
- No opinion

**B.A.14. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

- Alliance of Energy Intensive Industries gave ample evidence (2009, 2010) that the marginal power plant determines the cost impact and the environmental impact (for savings and extensions)
- Marginal power plant acknowledged by the Commission: state aid guidelines for the financial compensation of 22 May 2012
- Weighted Average CO<sub>2</sub> factors of state aid guidelines multiplied with gross electricity production Eurostat 2011 (2008 data) give EU Weighted Average of 0.723 ton CO<sub>2</sub>/MWh (= 55% higher impact)

**B.A.15. On a scale from 1 to 5, where 1- the least, and 5- the most, what is your view on the following indicator for the qualitative assessment of the risk of carbon leakage: possibility of individual installations within a sector to reduce emissions**

- a: 1
- b: 2
- c: 3
- d: 4
- e: 5
- f: No opinion



	a	b	c	d	e	f
B.A.15.1. Measurable*					X	
B.A.15.2. Relevant*				X		
B.A.15.3. Important*				X		

**B.A.16. On a scale from 1 to 5, where 1- the least, and 5- the most, what is your view on the indicator for the qualitative assessment of the risk of carbon leakage listed below: current and projected market characteristics**

- a: 1**  
**b: 2**  
**c: 3**  
**d: 4**  
**e: 5**  
**f: No opinion**

	a	b	c	d	e	f
B.A.16.1. Measurable*			X			
B.A.16.2. Relevant*					X	
B.A.16.3. Important*					X	

**B.A.17. On a scale from 1 to 5, where 1- the least, and 5- the most, what is your view on the indicator for the qualitative assessment of the risk of carbon leakage listed below: profit margins**

- a: 1**  
**b: 2**  
**c: 3**  
**d: 4**  
**e: 5**  
**f: No opinion**

	a	b	c	d	e	f
B.A.17.1. Measurable*					X	
B.A.17.2. Relevant*	X					
B.A.17.3. Important*	X					

**B.A.18. If you wish, please motivate your answer (max. 1000 characters) (maximum 1000 characters)**

We believe there is a risk of misunderstanding questions BA15 to 18 by stakeholders. All three indicators are relevant to a qualitative assessment but would all have to be evaluated looking at the future and not at the past.

**B.A.19. On a scale from 1 to 5, where 1- the least, and 5- the most, what is your view on a framework for qualitative assessment, such as the one proposed in the study made for DG Climate Action and published on DG Climate website<sup>[1]</sup>?**

**[1][http://ec.europa.eu/clima/policies/ets/cap/leakage/docs/carbon\\_leakage\\_list\\_en.pdf](http://ec.europa.eu/clima/policies/ets/cap/leakage/docs/carbon_leakage_list_en.pdf)**

**a: 1**

**b: 2**

**c: 3**

**d: 4**

**e: 5**

**f: No opinion**

	a	b	c	d	e	f
B.A.19.1. Complete*		X				
B.A.19.2. Adequate*			X			
B.A.19.3. Comparable across sectors*				X		
B.A.19.4. Transparent*				X		
B.A.19.5. Well-structured*	X					
B.A.19.6. Clear and understandable*				X		

**B.A.20. If you wish, please motivate your answer (max. 1000 characters): (maximum 1000 characters)**

Nevertheless, steps should not be exclusive to proceed hence a (a) was given for the structure under BA.19.5

**B.A.21. In the context of qualitative assessment, after considering the indicators listed in the study, do you consider that other indicators/variables should be taken into account when gathering basic evidence? Please explain (max. 2000 characters) (maximum 2000 characters)**

**B.A.22. If you wish, please provide any general comments on the questionnaire (maximum 1000 characters)**

OFICEMEN calls for the assessment to:

- apply exactly the same criteria as those applicable in 2009 in order to preserve an international level playing field for sectors exposed;
- take into account that there is no binding international climate agreement which imposes similar burdens on operators in the major cement producing jurisdictions;

- ensure a stable legal environment by not modifying essential parameters of the carbon leakage findings, especially since this is not justified by progress in international climate change negotiations nor legally allowed under the provisions of the Directive.
- the grammatical, systematic, teleological and historical interpretation of the Emissions Trading Directive (ETD) shows that the powers delegated to the Commission in the ETD do not provide for any margin of discretion regarding the fixing of the relevant carbon price. The Commission must therefore not deviate from the 30 EUR carbon price tag when it sets up the 2014 carbon leakage list

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