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BEYOND CLIMATE COMPLIANCE:

Procedural fairness, exporter inclusion, and dispute prevention under the eu carbon border adjustment mechanism[1/2/3]

Antonio Lopo Martinez[4]

ABSTRACT: Carbon border measures—particularly emissions-based border adjustment regimes—operate in practice as hybrid instruments: while justified as climate policy, they impose compliance duties, assessments, monetary liabilities, penalties, and review processes that resemble those of tax and customs administration. This hybrid design poses governance and legitimacy challenges for "fair and free trade" agendas: if procedures are opaque, discretionary, or excessively burdensome, carbon border measures may exclude smaller exporters, deepen North–South asymmetries, and increase the likelihood of disputes in trade and investment fora. This article develops a conceptual fair-treatment framework for carbon border measures, focusing on procedural fairness and dispute prevention for exporters, with particular attention to EU–Latin America trade relations. The article makes three contributions. First, it maps the exporter's procedural journey and identifies recurring friction points (scope and classification, emissions methodology, verification, correction windows, assessments, penalties, and review). Second, it proposes a Fair Treatment Procedural Matrix that sets minimum safeguards at each stage: notice and guidance, access to evidence, an opportunity to respond and cure, reasoned decision-making, proportional enforcement, and effective appeal. Third, it offers a dispute-prevention toolkit grounded in transparency, cooperative compliance, mutual recognition of verification, phased implementation, and proportionality-based cost mitigation. The framework provides policymakers with actionable guidance to reconcile environmental ambition with governance, legitimacy, and inclusive participation in international trade.

KEYWORDS: Carbon border adjustment mechanism; procedural fairness and fair treatment; EU–Latin America trade governance.

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1. Antonio Lopo Martinez, "Beyond climate compliance: procedural fairness, exporter inclusion, and dispute prevention under the EU Carbon Border Adjustment Mechanism", *Latin American Journal of European Studies* 6, no. 1 (2026): p. 17 et seq.

2. This research was supported by a Research Productivity Grant (Bolsa de Produtividade em Pesquisa) from the National Council for Scientific and Technological Development (CNPq), Brazil.

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PARA ALÉM DA CONFORMIDADE CLIMÁTICA: EQUIDADE PROCEDIMENTAL, INCLUSÃO DE EXPORTADORES E PREVENÇÃO DE LITÍGIOS NO MECANISMO DE AJUSTE DE FRONTEIRA DE CARBONO DA UE

RESUMO: As medidas de fronteira de carbono—especialmente os regimes de ajuste baseados em emissões—funcionam, na prática, como instrumentos híbridos: embora justificadas como política climática, impõem deveres de conformidade, avaliações, responsabilidades monetárias, penalidades e processos de revisão que se assemelham à administração fiscal e aduaneira. Esse desenho híbrido coloca desafios de governança e legitimidade para as agendas de "comércio justo e livre": procedimentos opacos, discricionários ou excessivamente onerosos podem excluir exportadores de menor porte, aprofundar assimetrias Norte–Sul e aumentar a probabilidade de litígios em foros comerciais e de investimento. Este artigo desenvolve um quadro conceitual de tratamento justo para medidas de fronteira de carbono, com foco na equidade procedimental e na prevenção de litígios, com especial atenção às relações comerciais UE–América Latina. O artigo oferece três contribuições. Primeiro, mapeia a jornada procedimental do exportador e identifica pontos de fricção recorrentes (escopo, metodologia de emissões, verificação, janelas de correção, avaliações, penalidades e revisão). Segundo, propõe uma Matriz Procedimental de Tratamento Justo com salvaguardas mínimas em cada estágio: notificação, acesso às provas, oportunidade de resposta e correção, fundamentação das decisões, proporcionalidade sancionatória e recurso efetivo. Terceiro, oferece um conjunto de ferramentas de prevenção de litígios baseado em transparência, conformidade cooperativa, reconhecimento mútuo de verificação, implementação faseada e proporcionalidade. O quadro fornece orientações acionáveis para conciliar ambição ambiental com governança, legitimidade e participação inclusiva no comércio internacional.

PALAVRAS-CHAVE: Mecanismo de ajuste de fronteira de carbono; equidade procedimental e tratamento justo; governança comercial UE–América Latina

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INTRODUCTION

The urgency of the global climate crisis has driven the adoption of unilateral measures to reduce greenhouse gas emissions and prevent carbon leakage—the displacement of carbon-intensive production to jurisdictions with less stringent environmental regulation. Among these measures, carbon border adjustment mechanisms stand out as instruments designed to equalize the carbon cost between domestic and imported products, thereby protecting the competitiveness of local industries while incentivizing global decarbonization.[5] The European Union leads this trend with Regulation (EU) 2023/956, in force since October 2023, initially applying to sectors at high risk of carbon leakage—cement, iron and steel, aluminium, fertilizers, electricity, and, progressively, hydrogen—requiring importers to declare embedded emissions and, in the definitive phase beginning in 2026, purchase corresponding CBAM certificates.[6]

Although justified as a climate policy instrument, the EU's Carbon Border Adjustment Mechanism imposes a complex compliance architecture involving data collection, third-party verification, periodic declarations, administrative assessments, adjustments, penalties for non-compliance, and appeal mechanisms. This architecture operates, in practice, as a hybrid quasi-tax and quasi-customs system: it determines pecuniary obligations, creates administrative procedures for assessment and collection, establishes sanctions, and institutes review channels. However, unlike mature tax systems—which have incorporated, over decades, consolidated principles of procedural fairness—carbon border measures still lack clear procedural frameworks that guarantee fair treatment, predictability, and inclusion for all exporters, especially small and medium-sized enterprises and suppliers from developing countries.[7]

This hybrid design poses governance and legitimacy challenges to the agendas of "fair and free trade" and "inclusive economies." Carbon border measures can inadvertently operate as *de facto* market-access filters, especially for exporters in developing countries and SMEs, when procedural arrangements are

5. Michael Mehling, Harro van Asselt, Kasturi Das, Susanne Droege, and Cleo Verkuijl, *Designing Border Carbon Adjustments for Enhanced Climate Action*, American Journal of International Law 113, no. 3 (2019): 433–481.

6. Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, Official Journal of the European Union, L 130, 16.5.2023.

7. Thomas Cottier and Tetyana Payosova, "Carbon Border Adjustment and WTO Law," Journal of World Trade 55, no. 6 (2021): 1023–1046.

opaque, highly discretionary, or excessively burdensome. If methodologies for calculating embedded emissions are unclear, verification options are narrow, or correction windows are too strict, smaller exporters — particularly from Latin America — face a higher risk of exclusion from EU value chains despite being potentially competitive on substantive climate performance.[8]

Recent scholarship converges on the view that CBAM implementation entails substantial administrative burdens, complex verification requirements, and high compliance costs that create friction for exporters and regulators. Leonelli describes carbon border measures as price-based policies with tax-like governance effects,[9] and Ceroni classifies CBAM as a qualitative leap in environmental taxation.[10] Ren and Du highlight risks of deepening developed/developing-country inequalities under the principle of common but differentiated responsibilities and respective capabilities.[11] Dobson, in turn, emphasizes the need to justify the burden division imposed on countries with limited institutional capacity.[12]

The absence or fragility of procedural safeguards creates risks of exclusion and conflict. Decisions perceived as arbitrary or unfounded increase the likelihood of disputes in WTO fora, investment tribunals, and bilateral controversies.[13] EU–Latin America trade relations offer a particularly relevant case study: the region exports significant volumes of steel, aluminium, fertilizers, and cement to Europe but faces structural challenges of technical capacity, access to recog-

8. Aaron Cosbey, Susanne Droege, Carolyn Fischer, and Clayton Munnings, "Developing Guidance for Implementing Border Carbon Adjustments: Lessons, Cautions, and Research Needs from the Literature," Review of Environmental Economics and Policy 13, no. 1 (2019): 3–22.
9. Giulia Claudia Leonelli, "Carbon Border Measures, Environmental Effectiveness and WTO Law Compatibility," World Trade Review 21, no. 3 (2022): 315–335.
10. Elisa Ceroni, "The Carbon Border Adjustment Mechanism (CBAM): A Qualitative Leap in Environmental Taxation for a World in Ecological Transition," International Multidisciplinary Scientific GeoConference: SGEM 23, no. 4.2 (2023): 437–444.
11. Qiqi Ren and Jianfeng Du, "The EU's Carbon Border Adjustment Mechanism: Theoretical Dimensions, Implementation Challenges and WTO Compliance," Journal of International Trade Law and Policy (2025), advance online publication.
12. Nora L. Dobson, "(Re)framing Responsibility? Assessing the Division of Burdens Under the EU Carbon Border Adjustment Mechanism," Utrecht Law Review 18, no. 2 (2022): 78–94.
13. Katarina Holzer, Carbon-Related Border Adjustment and WTO Law (Cheltenham: Edward Elgar, 2014).

nized verification systems, information asymmetry, and high compliance costs.[14] Implementation of the CBAM without adequate procedural safeguards may exclude Latin American suppliers, harming the objectives of inclusive trade and generating political tensions within regional agreements.[15]

This article argues that procedural fairness is not an ornamental value but a structural condition of legitimacy for carbon border adjustment measures. The central question is: how can the CBAM and similar instruments be designed to reconcile climate ambition with fair treatment of exporters, reduce EU–Latin America asymmetries, and prevent disputes in trade and investment fora? The answer proposed is a fair-treatment framework structured around three pillars. First, the article maps the exporter's procedural journey—from scope classification to penalty review—identifying critical friction points where a lack of fairness leads to exclusion or conflict. Second, it proposes a Fair Treatment Procedural Matrix that establishes minimum safeguards of transparency, participation, and proportionality at each stage. Third, it develops a dispute-prevention toolkit integrating mechanisms such as advance rulings, cooperative compliance, mutual recognition, SME safe harbours, and pre-litigation mediation.

1 CARBON BORDER MEASURES AS QUASI-TAX GOVERNANCE

Carbon border adjustment mechanisms, such as the EU CBAM, are formally presented as environmental policy instruments. Their stated objective is to protect the integrity of domestic carbon pricing systems—principally the EU Emissions Trading System—against carbon leakage, ensuring that imported products bear a carbon cost equivalent to that applied to European producers.[16] This environmental justification is essential for defending the CBAM's compatibility

14. Susanne Droege, Harro van Asselt, Kasturi Das, and Michael Mehling, "The Trade System and Climate Action: Ways Forward Under the Paris Agreement," Climate Policy 20, no. 10 (2020): 1264–1276.

15. ECLAC, Impacts of the European Union's Carbon Border Adjustment Mechanism on Latin America and the Caribbean (Santiago: Economic Commission for Latin America and the Caribbean, 2023).

16. Joost Pauwelyn, "Carbon Leakage Measures and Border Tax Adjustments under WTO Law," in International Trade Regulation and the Mitigation of Climate Change, ed. Thomas Cottier, Olga Nartova, and Sadeq Z. Bigdeli (Cambridge: Cambridge University Press, 2009), 448–506.

with WTO rules, particularly Articles I and III of GATT 1994 and the exceptions of Article XX. In operational practice, however, carbon border measures function as hybrid administrative regimes combining taxation, customs, and environmental regulation, with profound implications for governance and legitimacy. Table 1 illustrates the functional comparison between the CBAM, traditional tax systems, and customs regimes, highlighting the structural parallels that justify importing procedural safeguards into carbon border measures.

Table 1 – Carbon Border Measures as Quasi-Tax Governance: Functional Comparison

Governance element	Traditional tax system	Customs regime	CBAM
Tax base / dutiable value	Income, consumption, property	Customs value of goods	Tonnes of CO_2eq embed-ded in imports
Rate / price	Statutory tax rate	Tariff rate (ad valorem or specific)	Weekly ETS auction price per certificate
Periodic declaration	Annual / quarterly tax return	Import declaration per shipment	Quarterly (transitional) / annual (definitive)
Verification / audit	Tax audit by revenue authority	Customs inspection and post-clearance audit	Third-party accredited verifier + authority review
Penalties for non-com-pliance	Fines, interest, criminal sanctions	Fines, seizure, suspension	Up to €50/tonne undeclared; additional sanctions
Administrative review	Internal reconsideration + tax tribunal	Internal review + customs appeal board	National competent authority review + judicial appeal
Independent review	Independent tax court / tribunal	Customs court / judicial review	European courts (limited detail in CBAM Reg.)
Procedural safeguards	Mature: notice, hearing, reasoning, proportion-ality	Developed: WTO TFA, advance rulings, right to be heard	Nascent: governance gap identified in this article

Source: Author's elaboration.

1.1 Pecuniary obligation based on administrative assessment

The CBAM establishes a pecuniary obligation based on administrative assessment. Importers must calculate embedded emissions in covered products, declare these emissions to competent national authorities, and purchase CBAM certificates corresponding to a price linked to the weekly auction value of Emissions Trading System allowances.[17] Although technically distinct from a tax—payment acquires a certificate rather than a fiscal license—the operational logic is tax-like: a base (tonnes of CO_2 equivalent), a rate (the certificate price), periodic declaration, administrative assessment, and compulsory collection. Leonelli explicitly frames CBAM as a price-based policy aimed at equalizing economic costs between domestic and imported products,[18] while Ceroni classifies it as a qualitative leap in environmental taxation.[19] Szudoczky and İnal analyse whether the CBAM should have been adopted under Article 192(1) of the Treaty on the Functioning of the European Union, applicable to environmental measures under the ordinary legislative procedure, or under Article 192(2), which requires unanimity for fiscal measures.[20]

1.2 Verification and audit system

The CBAM institutes a verification and audit system analogous to customs and fiscal controls. Operators must maintain detailed records, engage accredited verifiers, submit quarterly reports during the transitional phase and annual declarations in the definitive phase, and be subject to *ex post* audits by competent authorities.[21] This model replicates the supervised-compliance logic of tax and customs administrations: presumption of truthfulness, documentary control,

17. Commission Implementing Regulation (EU) 2023/1773 of 17 August 2023 laying down rules for the application of CBAM, Official Journal of the European Union, L 228, 18.9.2023.
18. Regulation (EU) 2023/956, Articles 20–22.
19. Regulation (EU) 2023/956, Article 26.
20. Rita Szudoczky and Dilara İnal, "Environmental or Fiscal? A Contribution to the Debate on the Legal Basis of the European Union's Carbon Border Adjustment Mechanism," Bulletin for International Taxation 80, no. 1 (2026).
21. Commission Implementing Regulation (EU) 2023/1773, L 228, 18.9.2023.

sample verification, and sanctions for discrepancies. Ren and Du identify practical implementation barriers in documentation, measurement, and reporting that create downstream trade frictions and compliance burdens for firms.[22] The literature converges on the view that verification complexity and equivalence debates—installation-based versus product standards—make design and enforcement technically demanding and politically fraught.[23]

1.3 Administrative penalties

The CBAM provides for administrative penalties for non-compliance. Regulation (EU) 2023/956 imposes fines of up to 50 euros per tonne for undeclared or incorrectly declared emissions, in addition to other sanctions for violations of registration, verification, or deadline obligations.[24] These penalties, although labelled "environmental fines," function as tax sanctions, applied by administrative authorities without prior judicial intervention. Scholars warn of very high implementation and compliance costs that may not yield cost-efficient emission reductions and can disadvantage exporters from lower-price jurisdictions.

1.4 The governance gap

The quasi-tax functionality of carbon border measures generates a governance gap: while tax and customs systems have developed, over decades, consolidated principles of procedural fairness—prior notice, access to evidence, right to be heard, reasoned decisions, proportionality of sanctions, independent review—carbon border measures were designed as environmental instruments and therefore have not automatically incorporated these procedural safeguards.[25] This gap is especially problematic because the affected parties—exporters—are not traditional taxpayers but foreign economic actors, often located in develop-

22. Paul Craig, *EU Administrative Law*, 3rd ed. (Oxford: Oxford University Press, 2018), 395–442.
23. Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law,* 2nd ed. (Oxford: Oxford University Press, 2012), 130–182.
24. Regulation (EU) 2023/956, Article 26.
25. Charter of Fundamental Rights of the European Union, Articles 41 (right to good administration) and 47 (right to effective remedy), Official Journal of the European Union, C 326, 26.10.2012.

ing countries, with less capacity to influence institutional design, less access to information, and less capacity to litigate.[26] Moreover, carbon border measures involve high technical complexity: emissions calculation methodologies, system boundaries, emission factors, verification of primary versus secondary data, and allocation of emissions in integrated processes. This complexity amplifies the information asymmetry between regulator and regulated, making transparent and equitable procedures even more crucial.[27]

2 FAIR TREATMENT AS A GOVERNANCE STANDARD

The concept of "fair treatment" is central to the legitimacy of regulatory regimes that impose obligations, assessments, and sanctions on private actors. Although the term appears in international legal instruments—particularly investment treaties, where "fair and equitable treatment" constitutes a substantive protection[28]—its application to carbon border measures requires specific operationalization focused on procedural fairness, adapted to the hybrid characteristics of these instruments. In this article, "fair treatment" is operationally defined as a governance standard that ensures regulated actors—exporters subject to CBAM—a set of minimum procedural safeguards throughout the administrative cycle, from scope classification to penalty review.

2.1 Transparency and predictability

Transparency requires that the rules of the game be public, clear, and stable. In the CBAM context, this means prior and accessible publication of scope and product classification criteria, disclosure of accepted emissions calculation methodologies, updated lists of accredited verifiers and accreditation criteria, explicit verification standards, penalty schedules, appeal procedures, and version control of regulatory norms with reasonable transition periods when rules

26. UNCTAD, Trade and Development Report 2021: From Recovery to Resilience – The Development Dimension (Geneva: United Nations Conference on Trade and Development, 2021).

27. Craig, EU Administrative Law, 400.

28. Dolzer and Schreuer, Principles of International Investment Law, 150.

change.[29] Predictability goes beyond publication: it requires that exporters can reasonably anticipate how their concrete situations will be treated. This implies temporal stability of rules—no retroactive or abrupt changes—and coherence in administrative decisions, ensuring equal treatment of similar cases. Multiple analyses call for clear rules on measurement, verification, and equivalence to prevent arbitrary outcomes and provide predictability for exporters.[30]

2.2 Non-arbitrariness and reasoned decision-making

Non-arbitrariness prohibits decisions based on uncontrolled discretion or hidden criteria. Every administrative decision affecting rights or imposing obligations must be reasoned, explaining the facts considered, the norms applied, the reasoning connecting facts to norms, and the reasons for choosing among alternatives.[31] In the CBAM, reasoned decision-making is especially critical in decisions about the acceptance or rejection of emissions calculation methodologies, product classification, administrative adjustments to declarations, the determination of penalties, and the granting or denial of recognition of equivalent carbon pricing systems. Dobson underscores the need for regulators to make and publish reasoned justifications when imposing extraterritorial burdens or differential treatment.[32]

2.3 Right to be heard and opportunity to cure

The right to be heard is the core of procedural fairness: the affected party must have an effective opportunity to present its position before an adverse decision is made.[33] This involves three elements: prior notice, meaning the authority must

29. Sven J. Schönberg, Legitimate Expectations in Administrative Law (Oxford: Oxford University Press, 2000).
30. Victor Thuronyi, ed., *Tax Law Design and Drafting,* vol. 1, ch. 6 (Washington, DC: International Monetary Fund, 1996).
31. Takakazu Tridimas, The General Principles of EU Law, 2nd ed. (Oxford: Oxford University Press, 2006), 136–236.
32. UNCTAD, Trade and Development Report 2021, 50.
33. Carol Harlow and Richard Rawlings, Process and Procedure in EU Administration (Oxford: Hart Publishing, 2014).

inform the regulated party of its intention to make an unfavorable decision and the grounds for that intention; access to evidence, meaning the regulated party must see the data that serves as the basis for the decision; and opportunity to respond, meaning the regulated party must be able to present arguments and additional evidence within reasonable deadlines.

Beyond the right to be heard, procedural fairness in complex technical contexts requires the right to correct non-fraudulent errors before sanctions apply. In mature tax systems, the "cure" principle allows taxpayers to rectify incorrect declarations, supplement missing documentation, or correct formal errors within reasonable time windows.[34] In CBAM, the absence of cure mechanisms can be exclusionary for SMEs and exporters from developing countries who face greater difficulty with technical compliance. A system that applies automatic penalties for calculation, classification, or documentation errors—without giving the operator the chance to correct—will be perceived as unfair and punitive, generating resistance and litigation.

2.4 Proportionality of sanctions

The principle of proportionality requires that administrative sanctions be adequate, necessary, and, in the strict sense, proportional to the objective of ensuring compliance.[35] In the CBAM context, proportionality implies graduation of sanctions, distinguishing clearly between formal errors and substantive violations; an increasing penalty scale according to severity and recidivism rather than uniform penalties at the first infraction; alternatives to penalties, such as corrective compliance agreements for SMEs and operators in the learning phase; and limitation of penalties so that they do not make continuation of economic activity or market access unfeasible. Experience with cooperative tax compliance demonstrates that regimes built solely on deterrence tend to generate conflict

34. Thuronyi, Tax Law Design and Drafting, ch. 6.

35. Jürgen Schwarze, European Administrative Law, rev. 2nd ed. (London: Sweet & Maxwell, 2006), 851–917.

and defensive behavior, whereas perceptions of procedural justice strongly influence willingness to comply.[36]

2.5 Independent and effective review

The last essential safeguard is the right to an effective remedy before an independent body.[37] This means that the review body must not be hierarchically subordinate to the authority that made the contested decision; that clear deadlines for appeal decisions must exist, avoiding delay that renders the appeal useless; that in situations of severe penalties or irreversible impact, suspension of the decision pending appeal should be available; and that the review body must be able to examine not only formal legality but also technical reasonableness and proportionality. In CBAM, independent review is crucial to control technical discretion and prevent abuse of sanctioning power.

2.6 Fair treatment as a condition of economic inclusion

Procedural fair treatment directly affects the viability of economic inclusion in international trade under carbon regimes. Exporters from developing countries and SMEs face three structural disadvantages: information asymmetry—less access to technical expertise on emissions methodologies, verification, and foreign regulatory systems; financial capacity asymmetry—less capacity to absorb compliance costs, hire specialists, or litigate across jurisdictions; and political influence asymmetry—less capacity to shape rule design or participate in consultations.[38] These asymmetries make smaller exporters especially vulnerable to opaque, discretionary, or punitive procedures. If CBAM rules are unclear, if decisions are not reasoned, if there is no opportunity for correction, if penalties are disproportionate, and if there is no effective appeal, the result is *de facto*

36. OECD, Co-operative Compliance: A Framework – From Enhanced Relationship to Co-operative Compliance (Paris: OECD Publishing, 2013).
37. Commission Delegated Regulation (EU) 2023/1184 of 16 June 2023 on rules for accreditation of CBAM verifiers, Official Journal of the European Union, L 157, 20.6.2023.
38. Alice Pirlot and Leonardo Meeus, "Corporate Tax Integration and the EU Carbon Border Adjustment Mechanism," Intertax 49, no. 12 (2021): 1050–1068.

exclusion: smaller exporters cannot access the European market, not due to lack of product competitiveness but due to the impossibility of navigating the administrative system.

Procedural fairness also serves as a dispute-prevention strategy. Trade and investment disputes related to regulatory measures often emerge not from the substance of the measure but from procedural failures: arbitrary decisions, lack of defense opportunity, absence of reasoning, disproportionate penalties, and ineffective appeals.[39] Affected exporters may challenge CBAM in WTO, investment, and bilateral fora. Robust procedural safeguards reduce the likelihood and severity of disputes by increasing perceived legitimacy and strengthening legal defensibility.[40]

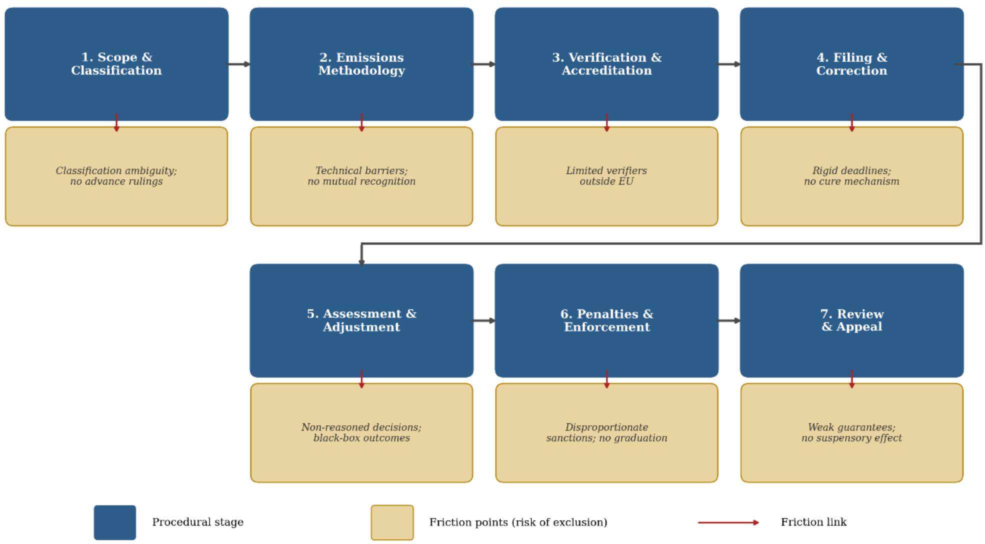
3 THE EXPORTER'S PROCEDURAL JOURNEY: MAPPING FRICTION POINTS

To develop effective procedural safeguards, it is necessary to understand how exporters interact with the CBAM system and where frictions generate exclusion, error, or conflict. The exporter's procedural journey can be described in seven main stages, each presenting characteristic friction points. Figure 1 maps these stages and their associated friction points.

39. Peter van den Bossche and Werner Zdouc, The Law and Policy of the World Trade Organization, 4th ed. (Cambridge: Cambridge University Press, 2017), 178–216.

40. Gerd Winter, "Climate Clubs and Carbon Border Adjustments in Trade Law," Review of European, Comparative & International Environmental Law 32, no. 1 (2023): 5–18.

Figure 1 — The Exporter's Procedural Journey Under CBAM



Source: Author's elaboration based on Regulation (EU) 2023/956 and Implementing Regulation (EU) 2023/1773.

At the first stage of scope determination and product classification, the exporter or the EU importer must determine whether the exported product is covered by CBAM and in which product category it falls. Annex I of the CBAM Regulation lists covered products by Combined Nomenclature codes.[41] Typical frictions include classification ambiguity for products straddling multiple categories, the absence of advance ruling mechanisms that provide official, binding confirmation before shipment, and future scope expansions without adequate transition periods. Exporters may misclassify products, discovering errors only when submitting the declaration or during a subsequent audit, generating retroactive penalties. European importers may refuse purchases from suppliers in developing countries due to classification uncertainty, preferring domestic or established suppliers.

The second stage involves choosing and accepting the emissions calculation methodology. The exporter must calculate embedded emissions in accordance

41. Regulation (EU) 2023/956, Annex I.

with Implementing Regulation (EU) 2023/1773, which establishes a hierarchy among actual data-based methods, standard data-based methods, and EU default values.[42] Frictions arise from high technical requirements for actual data when exporters in countries without robust measurement, reporting, and verification systems may lack reliable primary data; uncertainty about method acceptability when the Regulation does not detail all criteria; and lack of recognition of equivalent national systems—countries such as Chile, Mexico, and Brazil may see their data rejected absent mutual recognition agreements. Valdo demonstrates that CBAM compliance requirements may force multinational enterprises to restructure their supply chains, abandoning independent third-party suppliers in favor of related-party structures that ensure access to auditable emissions data.[43]

The third stage concerns data verification and verifier accreditation. Declarations based on actual data must be verified by an accredited verifier according to Delegated Regulation (EU) 2023/1184.[44] Frictions include limited availability of accredited verifiers outside the EU, lack of transparent accreditation criteria, and verification deadlines incompatible with trade cycles. If verification takes months, exporters cannot issue timely declarations.[45] The literature supports mutual recognition of credible domestic systems to minimize duplicate audits and reduce entry barriers for developing-country exporters.[46]

The fourth stage, declaration submission and correction, involves quarterly declarations in the transitional phase and annual declarations from 2026 onwards.[47] Frictions include rigid deadlines without cure mechanisms, documentary complexity beyond SME capacity, and delayed feedback from authorities, all of which prevent timely correction. Without a clear right to cure non-fraudulent

42. Commission Implementing Regulation (EU) 2023/1773, Articles 4–8.
43. Alesia O. Valdo, “The Impact of ESG and the Carbon Border Adjustment Mechanism on Transfer Pricing,” International Transfer Pricing Journal 32, no. 6 (2025).
44. Commission Delegated Regulation (EU) 2023/1184, L 157, 20.6.2023.
45. Pirlot and Meeus, “Corporate Tax Integration,” 1060.
46. Elahmady Biji, “Sustainable Trade and the WTO: The Compliance Dilemma,” International Journal of Law and Policy 5, no. 2 (2024): 89–110.
47. Regulation (EU) 2023/956, Article 6.

inconsistencies, the regime produces “penalty traps” that disproportionately harm less sophisticated operators.

At the fifth stage of assessment and administrative adjustment, competent national authorities review declarations and may make adjustments, increasing the number of CBAM certificates owed.[48] Frictions include lack of access to the authority’s decision-making process, non-reasoned decisions, and presumptions against the regulated party. In EU trade defense practice, a tradition of providing interested parties with essential facts and opportunities to comment before definitive measures has developed; a similar logic should apply to CBAM.

The sixth stage of penalty application presents concentrated risks of disproportionality. Uniform penalties without graduation between intentional fraud and good-faith technical error, absence of distinction between first offence and recidivism, and heavy cumulative effects for multiple minor infractions generate perceptions of injustice and defensive behavior.[49]

The seventh and final stage, review and appeal, must channel conflicts into institutional tracks rather than externalizing them to WTO or investment arbitration. However, current provisions remain insufficiently detailed, with few explicit guarantees regarding deadlines, suspensory effects, or scope of review.[50]

4 THE FAIR TREATMENT PROCEDURAL MATRIX

The Fair Treatment Procedural Matrix is the core normative proposal of this article. For each stage of the exporter’s journey, it organizes five elements: the stage in the CBAM process, the core decision or power exercised, the minimum procedural safeguard required, the inclusion rationale (with emphasis on SMEs and Latin American exporters), and the dispute-prevention effect. The matrix translates the principles developed in section two into concrete safeguards at

48. Regulation (EU) 2023/956, Article 19.
49. Markus Reséndiz Gutiérrez, “Environmental Taxation in Latin American OECD Countries,” in Environmental Taxation, ed. R. Damberger and C. Dimitropoulou (Vienna: Linde Verlag, 2025), 207–224.
50. Regulation (EU) 2023/956, Article 28.

each step of the procedural journey mapped in section three. Table 2 presents the complete matrix.

Table 2 – Fair Treatment Procedural Matrix

Stage in CBAM/exporter process	Core decision/ power	Minimum procedural safeguard (fair treatment)	Inclusion rationale (SMEs/Latin America)	Dispute-prevention effect
1. Scope and classification	Is the product covered?	Clear, public criteria; advance rulings; reasoned classification decisions	Reduces uncertainty costs; lowers dependence on expensive advisors	Cuts arbitrary classification and de facto discrimination claims
2. Emissions methodology acceptance	Which method is allowed?	Published hierarchy of methods; transparent approval; access to technical basis	Avoids exclusion by unknown standards; supports gradual technology adaptation	Limits challenges over discretionary technical choices
3. Verification requirements	Who can verify? What proof counts?	Clear evidentiary rules; mutual or conditional recognition options; accredited verifier lists	Lowers entry barriers; enables use of local certification infrastructure	Avoids discrimination allegations against non-EU verifiers
4. Filing and correction window	Can errors be cured?	Right to cure; realistic deadlines; notice of deficiencies	Prevents penalty traps; protects SMEs with weaker compliance capacity	Reduces procedural due-process and automatic-sanction claims
5. Assessment/adjustment	Liability set by authority	Full access to the file; right to respond; reasoned assessment	Prevents black box outcomes; allows operators to contest wrong data	Strengthens legal defensibility of CBAM in courts and WTO fora
6. Penalties and enforcement	Sanctions for non-compliance	Proportional penalties; clear distinction fraud vs technical errors; warning-first logic	Protects SMEs from ruinous sanctions; encourages voluntary correction	Lowers risk of disputes over excessive measures and disproportionality
7. Review/appeal	Independent control?	Independent review; time limits; suspension/standstill in appropriate cases	Ensures effective remedy; practical access for smaller operators	Channels conflict into domestic process rather than WTO or ISDS
8. Transition and capacity support	Phased implementation	Explicit transition periods; guidance and training; simplified options	Enables inclusion of Latin American exporters in EU market access	Signals good faith and reduces conflict

Source: Author's elaboration based on Regulation (EU) 2023/956 and the procedural fairness framework developed in this article.

The matrix establishes that procedural safeguards are not optional concessions but minimum conditions of legitimacy. Each safeguard serves a dual function: it protects the regulated party's rights and expectations and strengthens the legal and political defensibility of the measure itself. A CBAM incorporating these safeguards will be substantially harder to challenge as arbitrary or discriminatory in WTO proceedings, investment arbitration, or before European courts.[51]

The inclusion rationale column deserves particular emphasis. Latin American exporters face a unique combination of challenges: distance from EU regulatory institutions, limited availability of EU-accredited verifiers, less developed domestic MRV systems, and high fixed compliance costs relative to firm size. Without the safeguards proposed in the matrix, CBAM risks excluding exporters whose products may be competitive on carbon intensity but who lack the administrative infrastructure to demonstrate this through EU-mandated procedures.

5 DISPUTE PREVENTION TOOLKIT

The dispute-prevention toolkit complements the Fair Treatment Procedural Matrix by proposing institutional design choices that reduce the likelihood of administrative disagreements escalating into formal litigation before the WTO, investment tribunals, or European courts. The toolkit draws on established practices in tax administration, customs law, and trade facilitation, adapted to carbon border measures.

The first tool is a system of advanced rulings on scope, classification, and accepted emissions methods. Advance rulings are well established in customs law and trade facilitation, notably under Article 3 of the WTO Agreement on Trade Facilitation.[52] Applied to CBAM, advance rulings would allow exporters to obtain binding determinations on product classification and on the acceptance of methodologies before shipment, dramatically reducing uncertainty costs and post-shipment disputes. For Latin American exporters, advance rulings

51. International Institute for Sustainable Development, Carbon Pricing and International Investment Law (Winnipeg: IISD, 2018).

52. WTO, Agreement on Trade Facilitation, Article 3 (Advance Rulings), 2014.

would provide the predictability necessary to invest in monitoring, reporting, and verification systems with confidence that their efforts will be recognized by EU authorities.

The second tool is public guidance with version control and reasonable transition periods when rules change. Version control allows operators to identify which rules applied at the time of their transaction and prevents retrospective application of new standards. The OECD emphasizes that digital platforms for regulatory guidance improve compliance rates and reduce friction.[53]

The third tool is a right-to-cure mechanism before penalties for technical mistakes. This mechanism, inspired by voluntary disclosure and correction programs in tax administration, would allow operators to rectify documentation errors, recalculate emissions using corrected data, or supplement missing evidence within a reasonable window without penalty or with substantially reduced penalty. The mechanism should clearly distinguish between good-faith errors amenable to cure and fraudulent conduct for which penalties apply immediately.

The fourth tool is mutual recognition—or conditional recognition—of verifiers and methodologies for trusted jurisdictions and sectors. Mutual recognition agreements are a standard feature of trade facilitation and technical regulation, including under the WTO Agreement on Technical Barriers to Trade.[54] Applied to CBAM, mutual recognition would accept verification performed by accredited bodies in exporting countries, reducing duplication of costs and enabling developing-country certification infrastructure to serve as a gateway to EU market access. Conditional recognition—accepting third-country verification subject to periodic review—may be appropriate where full equivalence has not yet been established.

The fifth tool consists of SME safe harbors, including simplified methods, thresholds, and templates. Safe harbors reduce compliance costs for operators whose individual contribution to total imported emissions is marginal, recognizing

53. OECD, Tax Administration 3.0: The Digital Transformation of Tax Administration (Paris: OECD Publishing, 2020).

54. WTO, Agreement on Technical Barriers to Trade, Annex 3 (Code of Good Practice), 1994.

that the administrative burden of full CBAM compliance is disproportionate for small shipments.[55] Options include mass-based thresholds below which simplified reporting applies, pre-populated templates based on sector averages, and streamlined verification procedures using default or benchmark values.

The sixth tool is an ombudsman or mediation step prior to adversarial review. An independent CBAM ombudsman would serve as first point of contact for disputes, offering informal resolutions before formal appeal procedures. This draws on tax ombudsmen in several OECD jurisdictions and on the OECD Guidelines for Multinational Enterprises, which establish national contact points for mediation of responsible business conduct disputes.

The seventh and eighth tools address the quality and timeliness of administrative decisions: reasoned decisions using standardized templates that allow exporters to understand the legal and factual basis of adverse determinations; and clear time limits for decisions and appeals, preventing bureaucratic delays from functioning as a *de facto* denial of rights.

The ninth tool is a proportional penalty ladder: education, then warning, then corrective plan, then financial penalty. This graduated approach, widely adopted in modern regulatory enforcement, reserves severe sanctions for serious violations and allows operators to demonstrate willingness to comply before punitive measures.[56]

The tenth tool concerns data governance: explainable models if automation is used, and full access to the administrative file. As carbon border measures become more digitized, automated decision-making may play a more prominent role in risk assessment and verification. Fair treatment requires that automated decisions be explainable and contestable, consistent with GDPR principles on automated individual decision-making. Table 3 summarizes the 10 instruments and their expected effects.

55. Robert Baldwin, Martin Cave, and Martin Lodge, Understanding Regulation: Theory, Strategy, and Practice, 2nd ed. (Oxford: Oxford University Press, 2012), 260–290.

56. Baldwin, Cave, and Lodge, Understanding Regulation, 275.

Table 3 – Dispute Prevention Toolkit: Summary of 10 Instruments

№	Instrument	Mechanism	Precedent / Analogy	Expected Effect
1	Advance rulings	Binding determinations on classification and methodology before shipment	WTO TFA, Article 3	Eliminates post-shipment disputes; reduces uncertainty costs
2	Public guidance with version control	Regulatory guidance platform with timestamped versions and transition periods	OECD Tax Administration 3.0	Prevents retroactive application; improves compliance rates
3	Right-to-cure mechanism	Correction window for non-fraudulent errors before penalties apply	Voluntary disclosure programmes in tax law	Reduces penalty traps; supports SME compliance learning
4	Mutual recognition of verifiers	Accept verification by accredited bodies in exporting countries	WTO TBT Agreement, Annex 3	Lowers duplication costs; enables local certification infrastructure
5	SME safe harbours	Simplified methods, thresholds, and pre-populated templates for small shipments	De minimis rules in customs law	Reduces disproportionate burden on marginal importers
6	Ombudsman / mediation	Independent first contact for disputes before formal appeal	OECD NCP for MNE Guidelines; tax ombudsmen	Informal resolution; reduces adversarial escalation
7	Reasoned decisions	Standardized templates with traceable legal and factual reasoning	EU administrative law (duty to give reasons)	Enables informed appeal; strengthens legal defensibility
8	Clear time limits	Explicit deadlines for authority decisions and appeal outcomes	WTO TFA, Article 1; EU good administration	Prevents delay as de facto denial of rights
9	Proportional penalty ladder	Education → warning → corrective plan → financial penalty	Responsive regulation theory (Baldwin et al.)	Reserves severe sanctions for serious violations
10	Explainable data governance	Automated decisions must be explainable and contestable; full file access	GDPR Art. 22; OECD AI Principles	Ensures algorithmic transparency and due process

Source: Author's elaboration based on tax administration, customs, and trade facilitation practices.

6 A PROPORTIONALITY TEST FOR COMPLIANCE COSTS

Beyond the safeguards and dispute-prevention tools proposed above, the article offers a structured proportionality test that regulators can apply to assess whether CBAM compliance costs are justified and whether mitigations are adequate. This test draws on proportionality analysis as developed in EU administrative law and WTO jurisprudence, particularly the necessity test applied in cases such as *Brazil – Retreaded Tyres*.[57]

The proportionality test comprises four sequential elements. The first element is necessity: the compliance requirement must be necessary to achieve the stated climate objective. A verification requirement, for example, is necessary to ensure that reported emissions reflect actual production processes. A requirement that imposes costs without contributing to the accuracy or reliability of emissions data, however, fails the necessity test.

The second element is the least-burdensome effective alternative: among the measures capable of achieving the climate objective, the regulator should select the option that imposes the least burden on exporters, consistent with effectiveness. If a simplified reporting method can achieve 90% of the accuracy of the most demanding method at 20% of the cost, it should be the default for SMEs and developing-country exporters.

The third element is mitigation: even when a demanding compliance requirement is justified, the regulator should provide mitigations to reduce its exclusionary impact. Mitigations include thresholds below which simplified procedures apply; standardized templates and digital tools that reduce per-transaction costs; default methods and benchmark values for operators unable to access actual data; capacity-building support, including training programs and technical assistance for developing-country exporters; and phased implementation schedules that allow operators to build compliance infrastructure progressively.[58]

57. WTO Appellate Body, Brazil – Measures Affecting Imports of Retreaded Tyres (DS332), WT/DS332/AB/R, 3 December 2007, §§ 143–151.

58. ECLAC, Towards an Inclusive Energy Transition in Latin America and the Caribbean (Santiago: Economic Commission for Latin America and the Caribbean, 2022).

The fourth element is non-exclusion: the cumulative effect of compliance requirements must not result in *de facto* market foreclosure for categories of exporters—defined by size, sector, or country of origin—that are unable to meet the administrative burden despite being competitive on substantive climate performance. A carbon border measure that systematically excludes SMEs or developing-country suppliers is not only economically inefficient but also politically unsustainable, as it undermines the legitimacy of the climate policy objective.[59]

Reséndiz Gutiérrez warns that policies such as CBAM and carbon taxes can deepen inequalities and be regressive if they fail to account for institutional capacity and compensatory mechanisms in developing countries.[60] Martinho Fernandes emphasizes that sustainability reporting must go beyond formal compliance to incorporate genuine transparency about the impact of environmental and fiscal measures on vulnerable economic actors.[61] These insights reinforce the importance of non-exclusion: procedural fairness demands that rules be not only formally available but practically accessible to all, including those with limited resources and institutional capacity.

The proportionality test provides a structured analytical tool for regulatory impact assessment. Before introducing new compliance requirements and when reviewing existing ones, regulators should document their analysis of necessity, least-burdensome alternatives, mitigations, and non-exclusions. This documentation serves both as a governance safeguard and as a legal shield: a CBAM requirement that has been subjected to a rigorous proportionality analysis will be substantially more defensible before the WTO, where the necessity defense under Article XX of GATT demands precisely this type of structured reasoning.[62]

59. World Bank, State and Trends of Carbon Pricing 2023 (Washington, DC: World Bank, 2023), 56–78.
60. Reséndiz Gutiérrez, "Environmental Taxation in Latin American OECD Countries."
61. Sandra Martinho Fernandes, "From Tax Transparency to Corporate Communication," International Tax Studies 8, no. 7 (2025).
62. OECD, Regulatory Impact Analysis: A Tool for Policy Coherence (Paris: OECD Publishing, 2009).

FINAL CONSIDERATIONS

Carbon border adjustment mechanisms such as the EU CBAM represent a potentially transformative regulatory innovation in global climate governance. Their legitimacy, effectiveness, and political sustainability, however, depend crucially on procedural-level implementation. The central message of this article is that climate ambition and procedural fairness are complementary and mutually reinforcing rather than conflicting objectives.

A CBAM with transparent, reasoned, proportional, and reviewable procedures increases voluntary compliance, reduces enforcement costs, and decreases domestic and international disputes. It strengthens the instrument's legitimacy and political acceptability among trading partners, promotes genuine inclusion of SMEs and developing-country exporters, and amplifies the measure's global climate impact by incentivizing decarbonization in partner countries rather than exclusion or carbon leakage.[63]

EU–Latin America relations offer an especially fertile field for testing and refining this fair-treatment framework. The region exports significant volumes of CBAM-covered products and, with adequate support, can become a leader in low-carbon production. However, without procedural safeguards and inclusion mechanisms, CBAM risks deepening historical asymmetries, generating political resentment, and undermining trust in multilateral trade institutions.[64]

The Fair Treatment Procedural Matrix, Dispute Prevention Toolkit, and Proportionality Test proposed in this article provide concrete tools for the European Union—and other jurisdictions considering similar measures—to build carbon border regimes that are simultaneously ambitious in climate terms and fair in procedural terms. Based on these three pillars, the article consolidates its policy recommendations in the following 10-point checklist, presented in Table 4 below:

63. OECD, OECD Regulatory Policy Outlook 2021 (Paris: OECD Publishing, 2021), 45–78.
64. ECLAC, Towards an Inclusive Energy Transition, 30–45.

Table 4 – 10-Point Policy Checklist for Procedurally Fair Carbon Border Measures

№	Policy Recommendation	Reference Section
1	Publish stable scope and classification criteria; provide binding advance rulings	Sections 3, 5
2	Make methodology acceptance transparent and reviewable, with published technical criteria	Sections 3, 4
3	Define evidentiary standards and admissible proof ex ante	Sections 2.1, 4
4	Ensure full access to the administrative file and to all data used in assessments	Sections 2.3, 4
5	Provide an effective right to respond and to cure non-fraudulent defects before penalties	Sections 2.3, 5
6	Require reasoned decisions with traceable logic	Sections 2.2, 5
7	Apply proportional penalties, distinguishing fraud from formal errors	Sections 2.4, 5
8	Guarantee independent review and appeal with clear deadlines and suspensory effect	Sections 2.5, 4
9	Build transition support and simplified pathways for SMEs and developing-country exporters	Sections 5, 6
10	Add dispute-prevention steps (ombudsman, mediation) before adversarial proceedings	Section 5

Source: Author's elaboration.

The global climate agenda demands rapid and decisive action, but urgency does not justify procedural shortcuts. On the contrary, in contexts of rapid and disruptive transformation, due process, transparency, and proportionality become indispensable conditions of legitimate governance. As demonstrated throughout this article, it is fully possible to design carbon border measures that combine environmental rigor with procedural fairness—a combination that is not a luxury but a strategic necessity for the long-term success of the global climate transition.[65]

65. IPCC, Climate Change 2022: Mitigation of Climate Change, Contribution of Working Group III to the Sixth Assessment Report, Chapter 13 (Cambridge: Cambridge University Press, 2022).

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