

VAN BAEL & BELLIS



**Carbon Border Adjustment
Mechanism Regulation approved:
New obligations for importers**

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On 16 May 2023, the final text of [Regulation \(EU\) 2023/956](#) establishing the *Carbon Border Adjustment Mechanism*, or **CBAM (Regulation)**, was officially published in the Official Journal of the EU. The CBAM is a mechanism that aims to incentivise non-EU countries to increase their climate ambition and to ensure that EU and global climate efforts are not undermined by production being relocated from the EU to countries with less ambitious climate policies. It does so by equalizing the price of carbon paid for EU products under the EU European Trading System (ETS) and the price paid for certain imported goods through the purchase and annual surrender of certificates representing CO2 emissions (**CBAM certificates**)

SCOPE OF CBAM

The CBAM is an essential component of the [Fit for 55 in 2030 package](#), which aims to achieve the targets set by the [European Green Deal](#) by reducing greenhouse gas emissions by 55% by 2030. The CBAM was established to counter the phenomenon of environmental dumping by preventing goods imported from non-EU countries from enjoying an undue competitive advantage from the absence of carbon costs in their countries of origin. Many products in the EU are already subjected to the ETS established by [Directive 2003/87/EC](#).

The ETS is the European Economic Area's (EEA) CO2 emissions trading system. The ETS applies to several economic sectors (including the production of cast iron, steel, aluminium, cement, glass, ceramics, pulp, paper, certain chemicals, oil refining processes and aviation) and is based on a 'cap and trade' mechanism, which provides a cap on the amount of CO2 that can be emitted by installations located in the Member States. In addition, at the end of each year, operators subject to the ETS are obliged to surrender a number of ETS allowances equal to the emissions produced by their installations (each ETS allowance corresponds to one tonne of CO2) to the states of establishment's competent authorities. These certificates can be freely bought and sold, depending on the needs of each operator.

In order to limit the relocation of companies producing the so-called 'carbon-intensive' goods (i.e. goods whose production results in high CO2 emissions into the atmosphere), the ETS provides for a certain number of free ETS allowances to be allocated to EEA producers. These free allocations of ETS allowances will be phased out in parallel with the introduction of the CBAM.

ENTRY INTO FORCE AND IMPLEMENTATION OF CBAM

Following the publication of the Regulation in the Official Journal of the EU, the CBAM officially entered into force. In order to be implemented, the Commission must adopt regulations that regulate the technical aspects not yet specified in the Regulation's text. This will be done by 1 October 2023, which coincides with the start of the transitional period provided for in the Regulation.

CBAM GOODS

The CBAM only applies to the carbon-intensive goods (**CBAM goods**) listed in Annex I to the Regulation. The list includes, in particular:

- (i) cement and cement products;
- (ii) electricity;
- (iii) mineral and chemical fertilisers;
- (iv) iron and steel products;
- (v) aluminium products; and
- (vi) hydrogen.

However, it is envisaged that in the future the list of CBAM goods will be extended with the aim of including all products already subject to ETS regulation by 2030.

OBLIGATIONS FOR IMPORTERS

On 1 January 2026, the Regulation will become fully operational. As a result, importing CBAM goods into the EU can only be made by the so-called 'CBAM declarants'. In order to obtain the status of CBAM declarant, each importer (or, if he is not located in one of the Member States, his indirect customs representative) will have to send an application to the Member State's competent authority. The competent authority will have 15 days to carry out the necessary checks and, if the importer fulfils the conditions set out by the Regulation, include the importer in the CBAM register. **Please note, without this authorisation, it will be impossible to import CBAM goods into the EU.**

Once authorised, CBAM declarants will be obliged to:

- calculate the amount of CO₂ embedded in imported CBAM goods and retain the information used to calculate the emissions for a period of 4 years. This calculation of CO₂ emissions will have to be confirmed and certified by an accredited verifier;
- purchase the CBAM certificates, sold through a platform set out by the Commission, needed to offset the emissions embedded in imported CBAM goods in the previous year. Each CBAM certificate (corresponding to one tonne of CO₂ emitted into the atmosphere) will be purchasable at the average weekly ETS allowance's cost. CBAM declarants will also have to ensure quarterly that the number of CBAM certificates held (and visible on their 'CBAM account') covers at least 80 per cent of the emissions embedded in all CBAM goods imported since the beginning of the calendar year;
- surrender CBAM certificates through the CBAM registry. CBAM declarants will be obliged to surrender (by 31 May of each year) certificates corresponding to the amount of CO₂ emissions embedded in CBAM goods imported during the calendar year;
- submit the annual CBAM declaration by 31 May of each calendar year. This declaration must include (i) the total quantity of CBAM goods imported in the preceding calendar year; (ii) the total CO₂ emissions embedded in those goods; (iii) the total number of CBAM certificates surrendered; and (iv) a copy of the emissions verification report issued by an accredited body; and
- ensure that the total CO₂ emissions reported in the CBAM statement are verified by an accredited verifier. This status will be granted to verifiers accredited under the ETS, and to CBAM verifiers specifically accredited by the Member States.

It should be noted that the verification of **emission calculations will de facto require the full cooperation of the producer/supplier located in non-EU countries**. Without the information provided by the latter, accredited verifiers will not be able to carry out the checks required by the Regulation, and the emissions embedded in imported CBAM goods will be calculated on the basis of penalising default values.

In order to avoid this risk and to simplify the administrative burden on CBAM declarants, manufacturers/suppliers established in non-EU countries will be able to have their installations registered in the CBAM register as of 31 December 2024. For this purpose, manufacturers will have to:

- address a special request to the Commission containing, inter alia, information on the location of each installation and the production performed;
- implement an internal monitoring system to collect CO2 emission data;
- ensure that the installations for which registration is sought are directly connected to a power generation source; and
- undergo verification by an accredited body, in accordance with the procedure set out in Implementing Regulation (EU) 2018/2067. The verification shall ascertain the correctness of the calculation of emissions made by the applicant, taking into account the actual characteristics of the installations.

If granted, the registration will ensure the calculation of the embedded emissions in the goods produced in the registered installations prior to being imported into the EU.. This information may be used by the importer for the purposes of the CBAM declaration, relieving him of the task (and responsibility) of calculating the emissions embedded in the imported CBAM goods. In addition, both the CBAM declarant and the supplier/manufacturer established in non-EU countries will avoid having to undergo ex-post verifications by accredited verifiers on a case-by-case basis, as these will be replaced by the prior registration.

TRANSITIONAL PERIOD

During the transitional period from 1 October 2023 to 31 December 2025, the Regulation only provides for reporting obligations. Importers of CBAM goods or their indirect customs representatives will be required to submit a quarterly report to be checked by the Commission detailing: (i) the total quantity of each type of CBAM goods imported during the quarter; (ii) the CO2 emissions embedded in those goods; and (iii) any costs incurred in the country of origin in relation to those emissions. Incomplete or inaccurate declarations may be sanctioned by the competent Member State authority.

FOCUS: CALCULATING EMISSIONS

The number of CBAM certificates to be purchased and surrendered at the time of the annual CBAM declaration depends on the amount of CO2 emissions embedded in the imported CBAM goods during the previous calendar year.

According to the Regulation, the calculation of emissions must take into account (i) direct emissions, i.e., those resulting directly from the production processes of the CBAM goods, and (ii) indirect emissions, i.e., those resulting from the production of the electricity consumed during the manufacture of those goods. However, for iron, steel, aluminium and hydrogen products, only direct emissions will initially be considered.

Emissions are normally calculated on the basis of the formula in Annex IV of the Regulation. Where emissions cannot be adequately determined, the calculations will be approximated by default values set in implementing acts adopted by the Commission periodically.

PENALTIES

The Regulation provides for sanctions against a CBAM declarant who fails to surrender, by 31 May of each year, a number of CBAM certificates corresponding to the embedded emissions in the CBAM goods imported during the previous year. In particular, there is a penalty of EUR 100 for each tonne of CO₂ not issued, as well as further administrative or criminal penalties, in accordance with the legislation of the Member State.

EXEMPTIONS

The CBAM does not apply to imports from countries where the ETS mechanism applies (i.e., EEA countries), as well as non-EU states that have introduced an emissions trading system equivalent to the ETS (e.g., Switzerland). Furthermore, the CBAM does not apply to low-value imports, e.g., shipments of CBAM goods with a maximum intrinsic value of EUR 150, goods in transit and goods used in the context of military activities.

FOCUS: NEXT STEPS

Since the effective entry into force of the monitoring obligations will not be until 1 October 2023, it is advised for importers of CBAM goods to request in advance information from their foreign suppliers on: (i) the customs classification and origin of the imported goods; (ii) the type of installation used to manufacture such goods; (iii) the CO₂ emissions produced during the production process of CBAM goods (direct emissions); and (iv) the electricity consumption as part of this process (necessary for the calculation of indirect emissions).

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