

---

# The CBAM – what is it and how will it affect the market?

---

**Regulation (EU) 2023/956 establishing a carbon border adjustment mechanism (CBAM) entered into force on 17 May 2023. The implementation of the CBAM has been divided into a transitional period (from 1 October 2023 to 31 December 2025) and a target period (starting 1 January 2026).**

## Why has the CBAM been introduced?

With the establishment of the scheme for greenhouse gas emission allowance trading (EU ETS) in 2005, which covers, among other things, energy intensive installations, the European Union has set a course of action to reduce overall greenhouse gas emissions. However, the ever-rising costs of the decarbonisation measures introduced by the European Union for EU industry have resulted in recent years in an increasing relocation of energy intensive industries outside the European Union or the importing of goods into the EU customs territory from countries lacking effective climate policies and large-scale decarbonisation measures (i.e. carbon leakage). It should be noted, however, that recently there have been indications that economies, which thus far have been seen as reluctant to put decarbonisation measures in place, such as the People's Republic of China, are announcing a gradual introduction of emission reduction targets for energy intensive industries from 2030 to 2055.

Existing mechanisms for addressing the risk of carbon leakage in sectors or subsectors where

such risk exists consist of the transitional free allocation of EU ETS allowances and financial measures to compensate for indirect emission costs incurred from greenhouse gas emission costs passed on in electricity prices.

The EU, however, is of the opinion that such free allocation weakens the price signal that the system provides and affects the incentives for investment through the further reduction of greenhouse gas emissions and decarbonisation measures.

The CBAM is designed to reduce the risk of carbon leakage (i.e. the release of greenhouse gases into the atmosphere from the production of goods) with the expectation that it will at the same time contribute to decarbonisation in third countries (a country or territory outside the customs territory of the Union). The CBAM aims to achieve transition from the existing mechanisms to carbon prices that are equivalent for imports and domestic products. To ensure a gradual transition from the current system of free allowances to the CBAM, the CBAM will be progressively phased in while free allowances in sectors covered by the CBAM are phased out.

The CBAM is part of the “Fit for 55” package that is an element of the European Green Deal initiative presented by the European Union, which aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where there will be no net emissions of greenhouse gases by 2050 (at the latest) and where economic growth will be decoupled from the use of resources.

### How does CBAM work?

The CBAM introduces a charge that will increase – as an additional cost – the price of imported industrial products, taking into account the emissions generated by these products (i.e. embedded emissions). This charge is intended primarily to protect EU emission-intensive businesses, which incur growing costs of the purchase of greenhouse gas emission allowances, while outside the EU such costs are often not paid at all, and thus imported goods are simply cheaper, which affects the competitiveness of EU producers that are subject to charges under the EU ETS system. The CBAM applies to greenhouse gas emissions embedded in goods on their importation into the customs territory of the EU from a third country. The date determining whether or not certain goods will be covered by a CBAM report is the date when the goods are released for free circulation in the customs territory of the EU.

### Sectors covered

Phased in gradually, the CBAM will initially apply, among others, to the following goods:

- cement;
- electricity;

- fertilisers;
- iron and steel;
- aluminium;
- organic chemicals and plastics, and goods made from them;
- hydrogen;
- ammonia.

In addition, the CBAM applies to processed products from those goods resulting from an inward processing procedure. With this scope, once fully implemented, the CBAM will cover more than 50% of emissions in the sectors falling under the EU ETS. A detailed list of goods covered by the CBAM is provided in Annex I to Regulation 2023/956. Ultimately, the scope of the CBAM may be extended to include other goods.

### Who do the new obligations apply to?

The obligations under the CBAM will have to be fulfilled by importers, who will be under a duty to declare annually the quantity of goods imported into the EU in the previous year, along with their embedded greenhouse gas emissions. The gradual phase-in of the CBAM between 2026 and 2034 will take place in parallel with the gradual phase-out of the free allocation of EU ETS allowances. The process of applying for the authorisation of declarants, registration of operators and installations in third countries, as well as setting up accounts in the CBAM registry, will begin on 31 December 2024.

### How to calculate emissions in accordance with the CBAM?

The European Union has laid down detailed rules for the calculation of embedded emissions. CBAM reporting declarants must take into account direct emissions from the production process, as well as indirect emissions related to the generation of energy used in the production process. The Regulation establishing the carbon border adjustment mechanism lists certain goods (also from the iron and steel sector) for which only direct emissions have to be taken into account, since production facilities benefit from compensation for higher electricity prices due to carbon prices. In order to calculate their direct emissions, obliged entities may use one of the following methods:

- a calculation-based approach where raw materials and inputs used in production are combined with calculation factors, such as calorific values or emission factors;
- a measurement-based approach where emissions are determined by continuously measuring the flue gas flow and the concentration of greenhouse gases in the flue gas.

In the event that CBAM-obliged entities do not have the data required to carry out the calculations, they can rely on default values to be used as emission factors. Default values will be published by the European Commission.

### **CBAM transitional period**

Recognising the challenges posed by the CBAM to declarants, the European Union is implementing the mechanism gradually with a transitional period

that began on 1 October 2023 and will end on 31 December 2025. The transitional period is intended to function as a trial and educational phase for all parties involved, including importers, producers and authorities. Its purpose is to collect data on embedded emissions in order to improve the methodology for the target period, which is to begin on 1 January 2026. During the transitional period, the CBAM obligations are limited to reporting embedded emissions for imported goods.

During the transitional period, declarants are under a duty to submit CBAM reports on a quarterly basis. However, the calculation and general reporting requirements have been relaxed somewhat during the transitional period as compared to the target one. In addition to the calculation methodology (i.e. EU method) described above, two additional methodologies are available during the transitional period:

Until 31 December 2024, embedded emissions may be determined through third-country national systems, such as carbon pricing or monitoring systems, whose accuracy and scope are similar to the EU ETS.

Until 31 July 2024, embedded emissions may only be determined using default values from the European Union or other countries if the calculation methods are compatible.

During the transitional period, all CBAM obliged entities must report both direct and indirect emissions.

To ensure that the reporting obligations are met during the CBAM transitional period, the European Commission maintains a transitional CBAM registry. This registry is used for the submission of

CBAM reports during the transitional period. The European Commission has created and administers the CBAM Registry. Work is currently underway on the part of EU member states to allow CBAM-obliged entities access to the registry.

During the transitional period, the CBAM report will only be filed in electronic form. Annex I to Regulation 2023/956 provides details of the data to be contained in the CBAM report.

During the transitional period, it is not obligatory to:

- obtain special status in order to import goods covered by the CBAM – such status (of the authorised CBAM declarant) will have to be obtained during the CBAM target period, starting from 1 January 2026, in order to be able to import goods covered by the CBAM during the target period;
- account for emissions using CBAM certificates – such an obligation will be introduced during the CBAM target period.

It is important to note that during the transitional period, penalties may be imposed on CBAM-obliged entities in cases where the declarant fails to submit a correct or complete CBAM report or fails to correct errors identified by the competent authority. Penalties range from EUR 10 to EUR 50 per tonne of unreported emissions.

The National Centre for Emissions Management (**KOBiZE**) has been notified as the CBAM competent authority in Poland and it will perform some tasks under the CBAM during the transitional period.

## **CBAM target period**

The CBAM target period will begin on 1 January 2026. During the target period, an importer that intends to introduce goods covered by the CBAM into the EU or a customs broker for an importer will have to obtain the status of an “authorised CBAM declarant”. Authorised CBAM declarants will be under a duty to declare annually the quantity of goods imported into the customs territory of the EU in the previous year and the associated embedded emissions (i.e. greenhouse gas emissions), and then account for these emissions with the corresponding number of dedicated emission units – CBAM certificates.

## **CBAM registry**

Starting 1 January 2026, goods will only be allowed to be imported into the customs territory of the Union by authorised CBAM declarants.

By 31 May of each year, and for the first time in 2027 for the year 2026, each authorised CBAM declarant will be required to use the CBAM registry to submit a CBAM declaration for the previous calendar year, containing the following information:

- the total quantity of each type of goods imported during the previous calendar year;
- the total embedded emissions associated with the above-mentioned goods;
- the total number of CBAM certificates to be surrendered;
- copies of verification reports, issued by accredited verifiers.

## **CBAM certificates**

Importers of goods covered by the CBAM will have to purchase CBAM certificates and, by 31 May of each year, surrender the number of certificates corresponding to the emissions embedded in the imported goods. The price will be calculated depending on the average weekly auction price of EU ETS allowances expressed in the EU ETS in EUR/tonne of CO<sub>2</sub> emissions. The certificates will not be traded on the secondary market.

The number of certificates to be surrendered will be adjusted proportionally to take into account the carbon price paid in the country of origin of the goods, as well as the free allocation of emission allowances in the EU.

An authorised CBAM declarant that does not, by 31 May of each year, surrender CBAM certificates in a number corresponding to the embedded emissions in the goods imported during the previous calendar year will be subject to a financial penalty. Payment of the penalty does not, however, relieve the authorised CBAM declarant of the obligation to surrender the remaining number of CBAM certificates in a given year.

### **Are there any options left open?**

In exceptional cases, goods will not be covered by the CBAM. This is the so-called *de minimis* exemption – goods listed in Annex I to Regulation 2023/956 with a total value not exceeding EUR 150/shipment and goods listed in Annex I to Regulation 2023/956 with a total value not exceeding EUR 150/personal luggage. Goods imported from the following countries: Iceland, Liechtenstein, Norway and Switzerland, and the territories: Büsingen, Heligoland, Livigno, Ceuta, Melilla, will not be covered by the CBAM.

The Regulation also provides for the possibility of an exception for the import of electricity (however, no country or territory is currently covered by the derogation) and goods imported in the context of military activities. In addition, it is possible to take into account the carbon price paid in the country of origin and thus reduce the number of CBAM certificates to be surrendered.

### **What is the market paying attention to and fearing?**

In the context of the CBAM, undertakings draw attention to the risk of a “dilution”, understood as the lack of control and ability to verify the actual embedded emissions in the goods imported into the customs territory of the Union, and thus the risk of submitting reports with inaccurate (understated) emission figures. They also point to the risk of a circumventing of the mechanism by producers and importers attempting to use improper CN (Combined Nomenclature) codes for manufactured goods so that they are not covered by the CBAM.

Furthermore, in accordance with the Regulation, the costs of implementing the system should be borne by importers, but one can expect that in practice they will be passed on to customers. Industries such as construction, chemicals and energy will be particularly affected.

### **What should undertakings do?**

Although there are still two years to go before the CBAM target period begins, entities covered by it should undertake preparations today that will allow them to transition more smoothly into the target period:

- Identify the imported products that are covered by the CBAM.
- Engage with suppliers and producers to collect emissions data for imported goods.
- Gather information on carbon pricing schemes in the countries of origin of goods covered by the CBAM.
- Register as a CBAM declarant.
- Obtain access to the transitional CBAM registry. It is an interface for regulators and regulated entities during the transitional period.
- Familiarise yourself with the CBAM template published by the European Union.
- Establish internal processes for collecting emissions data and ensure adequate staff levels to fulfil CBAM obligations.
- Forecast EU ETS allowance prices and embedded carbon emissions to assess the medium-term economic impact of the CBAM regulations on your own supply chain and operations.

With the introduction of the CBAM, emissions monitoring and reporting, along with carbon pricing, plays an increasingly important role for non-EU producers and importers. While the emissions reporting obligations in the CBAM transitional period are new to many companies and require comprehensive preparation, the CBAM regulations will evolve in the coming years and should be closely monitored by third-country and EU producers, as well as traders and importers. Ultimately, companies need a strategic approach to

these new realities of global trade and decarbonisation.

Author: Bartłomiej Głąbiński, Advocate, Associate in the Energy and Infrastructure Practice at CMS

# CBAM

