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The EU Carbon Border Adjustment Mechanism towards its Definitive Phase

1. Introduction

The European Carbon Adjustment Mechanism (“**EU CBAM**”) – the environmental policy tool introduced by the EU Regulation 2023/956 (“**Regulation**”) to reduce the risk of carbon leakage¹ and encourage decarbonisation – will enter into its definitive phase on **1 January 2026**. Consequently, new obligations will take effect that will significantly impact EU importers of the categories of goods within the scope of EU CBAM. In this alert, we provide an overview of the relevant new obligations and of their practical impacts on EU importers’ supply chains.

2. What are the main changes that EU importers will face in the transition to the definitive phase?

The EU CBAM is a system of carbon certificates that EU importers of certain categories of goods within the scope of the Regulation must purchase to cover the green-house gas emissions associated with those goods. Specifically, the EU CBAM:

- applies to imports of the goods listed in Annex I of the Regulation into the EU from a third country (unless that third country is identified as outside the scope of EU CBAM application under Annex III of the Regulation)². Covered goods include cement, electricity, fertilisers, iron and steel (as well as some downstream products of iron and steel), aluminium (as well as some downstream products of aluminium) and hydrogen. By 31 December 2025, the European

¹ In a nutshell, the raising of carbon pricing in the EU (with the aim of reducing the greenhouse gas emissions) is going to increase EU producers’ operating costs and lead to disadvantages against competitors. This might encourage the relocation of emissions-intensive production to non-EU jurisdictions.

² The countries listed in Annex III that are out of scope are Iceland, Liechtenstein, Norway, and Switzerland. Iceland, Liechtenstein, and Norway are part of the European Economic Area (EEA), which is part of the EU Emissions Trading Scheme (EU ETS). The EU ETS has been linked with the Swiss Emission Trading Scheme since January 1, 2020. Therefore, the risk of carbon leakage does not exist in relation to these countries. The list would also include the United Kingdom once an ETS linking agreement between the two countries has been signed.

Commission shall evaluate whether to extend the scope of the EU CBAM to the goods listed in Annex II³;

- takes into account both direct and certain types of indirect (together, “embedded”) greenhouse gas emissions listed in Annex I, calculated in accordance with the methods set out in Annex IV of the Regulation. For the goods listed in Annex II that may be included within the scope of the EU CBAM by 31 December 2025, only direct emissions will be considered.

The EU CBAM took effect on 1 October 2023, but some of the Regulation’s provisions apply on a phased basis:

- a) from the outset, the Regulation introduced **quarterly reporting obligations** for EU importers concerning the in-scope imported goods, the actual total embedded greenhouse gases emissions released during the production of such goods (with a breakdown of the total indirect emissions) and any carbon price due in the country of origin for the embedded emissions in the imported goods. The first reports were due to be submitted electronically by EU importers or their indirect customs representatives by 31 January 2024 through the CBAM registry (with 30 day extension due to technical difficulties with the CBAM registry). Failure to comply with these obligations may result in sanctions, including resubmission or monetary fines (ranging from € 10-50 per tonne of unreported embedded emissions);
- b) starting from 31 December 2024, importers must apply for the status of **authorised CBAM declarants** by submitting a request via the CBAM registry. While EU-based importers could apply directly, those based outside the EU must apply through an indirect customs representative;
- c) finally, as of 1 January 2026, two significant changes will take effect: (1) only importers qualified as authorised CBAM declarants will be permitted to import goods into the EU; and (2) authorised CBAM declarants will be required to submit an **annual CBAM declaration** and surrender **CBAM certificates**.

Focusing more in detail on the above-mentioned obligations that will kick-in from 1 January 2026:

- the CBAM declaration must include the following information: (1) the quantity of goods; (2) their embedded greenhouse gases emissions and (3) the total number of CBAM certificates to be surrendered. The declaration must be accompanied by verification reports issued by accredited

³ Annex II lists, among other things, additional iron, steel and aluminium goods and hydrogen.

verifiers. The first CBAM declaration shall be submitted by 31 May 2027, in relation to the calendar year 2026;

- by 31 May of each year (starting from 31 May 2027 in relation to calendar year 2026), the CBAM declarants must surrender the CBAM certificates in an amount corresponding to the quantity of greenhouse gas emissions embedded in their in-scope goods imported into the EU in the previous calendar year (minus the carbon price paid in the country of origin), as set out in the relevant CBAM declaration. The price of the CBAM certificates will be calculated according to the weekly average auction price of the allowances under the EU Emissions Trading Scheme;
- after complying with their surrender obligations, the declarants may sell back to the competent authorities the CBAM certificates in excess (up to one third of those purchased in the previous year);
- declarants who do not surrender the necessary certificates by 31 May (for the preceding compliance year) may be subject to fines.

3. Practical impacts on supply chains and best practices

Under the Regulation, the liability for the compliance with the reporting and surrendering obligations rests with the “authorised CBAM declarant”. The Regulation defines the “authorised CBAM declarant” as the person authorised by the competent authority in accordance with article 17 of said Regulation: in practice, this corresponds to the importer of the goods into the European Union.

Therefore, importers of goods within the scope of the Regulation into the EU – even if such goods are extracted, produced or finished by other companies in the supply chain – must comply with the obligations set out in the Regulation and are liable for any breaches.

At the same time, however, it is undeniable that any authorised CBAM declarant relies on data provided by its suppliers to prepare the quarterly CBAM report and the annual CBAM declaration.

In light of the above, the EU importers of goods falling within the scope of the Regulation shall implement safeguards to protect themselves from the potential liabilities they may face under the Regulation or damages they may otherwise suffer due to the actions or omissions of the suppliers.

There are different solutions that may be implemented to address this risk:

- a) from an operational perspective, the relevant importers should implement effective monitoring and control procedures to be applied consistently by all supply chain operators. These procedures should establish a common framework, including, among other things:

- (i) parameters to be monitored to ascertain the “embedded emissions”, in accordance with the methods set forth under Annex IV of the Regulation;
 - (ii) methodology for reporting and verifying the relevant parameters;
 - (iii) inspection and control procedures, in relation to the data and information included in the CBAM report and declaration, to reduce the risk of any inaccuracies;
 - (iv) measures to oversee the information relating to carbon prices paid;
- b) from a legal viewpoint, the relevant agreements between the importer and its suppliers should include contractual conditions that provide for the following:
- (i) the supplier’s obligation to comply with the monitoring and control procedures developed by the importer to establish a common framework within the supply chain (as described in letter a) above). The content of such procedures may be described in detail in the agreements’ annexes;
 - (ii) the supplier’s obligation to include corresponding obligations also in the agreements with the sub-suppliers, with whom the importer does not have a direct contractual relationship;
 - (iii) the supplier’s accountability for any fines imposed on the importer, as the CBAM authorised declarant under the Regulation, due to inaccuracies or errors in the information embedded in the CBAM report or CBAM declaration, when the inaccuracy or error is attributable to the supplier or its sub-suppliers;
 - (iv) the supplier’s accountability for losses (including loss of profits) suffered by the importer due to the inaccuracies in the emissions data provided by the supplier or its sub-suppliers that lead to an incorrect calculation of the CBAM certificates to be surrendered, resulting in an increase in the prices of the relevant goods.

For any question you may have on the content of this alert, please feel free to reach out.



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