

CBAM IMPLEMENTATION FROM 1 OCTOBER 2023: THE TRANSITION PHASE AND BEYOND

The Implementing Regulation for the European Union's Carbon Border Adjustment Mechanism (CBAM)¹ was adopted by the European Commission on 17 August 2023, a mere six weeks before the beginning of the transition phase on 1 October 2023.

Importers into the EU of cement, iron, steel, aluminium, fertilisers, hydrogen and power will not be required to pay for emissions embedded in their products during the transition period, which ends on 31 December 2025. However, they will be required to comply with the Implementing Regulation's measurement and reporting obligations and be subject to financial penalties for failure to report and incorrect reporting.

Why is the Implementing Regulation important?

The Implementing Regulation follows hot on the heels of the regulation establishing the carbon border adjustment mechanism (the **CBAM Regulation**) adopted in May this year and will affect the success of the latter in reducing global emissions, because it governs which emissions require reporting to the EU and how they should be measured. The data reported will inform the arrangements for the full CBAM scheme to take effect at the end of the transition period.

The Implementing Regulation is also important because arrangements to be observed by importers can now be compared with those applicable to EU producers under the EU Emissions Trading Scheme rules for the same sectors, an important point in relation to compliance of the CBAM with World Trade Organisation rules.

How does it work?

During the transition period, importers must report quarterly on the quantities, location, production route and direct emissions of imported goods. Indirect emissions, by way of consumption of electricity and specific direct emissions in the production process, must also be reported, as must details of carbon prices paid in the country of origin of goods.

The transitional arrangements allow for measurement using activity data and emissions factors or measurement of emissions themselves. Measurement in accordance with local carbon pricing rules or with verification is also permitted until 31 December 2024 and there is provision for other methods if none of these is available until 31 July 2024. Twenty per cent of emissions of complex goods may be reported by way of estimates of the installation operator.

The EU has produced guidance documents for importers and exporters and is offering webinars for each of the target industries. In spite of this help, preparing to report from 1 October and to submit the first quarterly reports within the one month of the end of the reporting period (31 January 2024), will be a significant challenge. In recognition of this, reports may be corrected for a limited period.

It is anticipated that failure to report, or to correct a report by the deadline, will result in a fine of 10 to 50 EUR per tonne of unreported emissions.

¹ Discussed in our earlier article [HFW | CBAM Can the EU achieve carbon adjustment beyond it...](#)

Will the Implementing Regulation meet its objectives?

The EU's aim is to impose measurement and reporting obligations on targeted imports which are as similar as possible to those applicable to EU-based installations in the same sectors. The European Roundtable on Climate Change and Sustainable Transition praises the EU for its success in this respect, but notes: *translating the facility level framework of the EU ETS into a product-based reporting system as required by the CBAM is complex*².

The complexity entails collecting data from a number of different parties, extending down the supply chain of imported goods. Some of these parties will already be collecting emissions data, but many will not. Data will need to be translated into the EU requirements and formats, which will impose administrative burdens on importers and their supply chains.

The flexibility of the Implementing Regulation referred to above will therefore be welcome to importers, although this may compromise the accuracy of the data on which the EU is basing its decisions as to the final scheme and may seem unfair to EU based producers.

The success of the CBAM scheme may depend on the extent to which data reported in the transition period will be sufficiently accurate to allow for sound decision-making as to the final structure of the scheme.

The CBAM is also encountering other challenges, though, in terms of attacks from within and outside the EU (the subject of a separate briefing to be issued shortly). The most advanced of these challenges is an appeal to the Court of Justice of the European Union by the Polish government. However, importers are advised to prepare for the transition period nonetheless, as the timeframe for resolving this challenge will go well beyond the beginning of the transition period.

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² *Emissions Reporting under the EU CBAM: The Proposed Implementing Regulation* 6 July 2023