



## EU EMISSIONS TRADING SYSTEM: EVALUATING THE POTENTIAL IMPACT ON CONTAINER PORTS AND TERMINALS

**In light of the fast-approaching extension of the EU Emissions Trading System (EU ETS) on the maritime transport sector, HFW's Matthew Gore takes a look at the likely impact on container ports and terminals.**

From 1 January 2024, the EU ETS will extend to cover maritime transport. In anticipation of this deadline, there is increasing noise as to the impact on all participants in the maritime industry.

# “One of the concerns surrounding the expansion of the EU ETS to maritime transport, is that there may be an uptake in stops at additional and/or alternative ports to minimise the application of the scope the EU ETS.”

Subject to certain exceptions and the phase-in period,<sup>1</sup> ‘shipping companies’ will be required to financially account for regulated greenhouse gas emissions (**GHG emissions**)<sup>2</sup> from vessels of 5,000 gross tons and above as follows:

- 100% of a vessel’s GHG emissions if travelling between two EU ports of call;
- 100% of a vessel’s emissions during an EU port of call; and
- 50% of a vessel’s emissions between an EU port of call and a non-EU port of call, or vice versa.

One of the stakeholders which will undoubtedly face a significant impact are ports and terminals. Whether these operate inside or outside the EU, they may be subject to its remit in one way or another. It is anticipated that the expansion of the EU ETS may bring with it a change to how shipping companies approach and plan their voyages, and in particular, their ports of call.

## Non-EU Ports and Terminals

One of the concerns surrounding the expansion of the EU ETS to maritime transport, is that there may be an uptake in stops at additional and/or alternative ports to minimise the application of the scope the EU ETS.

As the EU ETS only calculates the GHG emissions for a voyage based on the last or next port of call, without additional measures, on long voyages shipping companies

could decide to call into a port near the EU before entering, or shortly after leaving, an EU port so as to reduce the overall amount of GHG emissions the shipping company is liable to account for.

In response, the EU ETS has limited the definition of a port of call so that, among other things (e.g. stops for the sole purpose of bunkering or obtaining supplies), any designated “neighbouring container transshipment port” (**NCTP**) will not qualify as a port of call for containerships. By excluding NCTPs from this definition, any preceding or successive voyages to the call at the NCTP (including any such voyage to or from an EU port from the NCTP) will be considered as one consecutive voyage for the purposes of calculating GHG emissions. For a port to be designated as a NCTP, the following criteria must be fulfilled:

- 65% or more of the port’s total container traffic must be in respect of transshipment containers during the most recent twelve (12) month period for which relevant data is available;
- the port must be located outside of the EU, but within 300 nautical miles from a port under the jurisdiction of an EU Member State; and
- the port must not be located in a country which applies measures equivalent to the EU ETS.

On 26 October 2023, the Commission adopted an Implementing Regulation which stipulated that, at present, only two ports are designated NCTPs under the EU ETS: East Port Said (Egypt) and the Tanger Med (Morocco).<sup>3</sup> The list of NCTPs will be next be updated by 31 December 2025 and then every two (2) years thereafter.

The effect of the designation of East Port Said and Tanger Med as NCTPs on these ports cannot be understated. The designation removes the potential competitive advantage for these ports and puts them behind ports that are not designated NCTPs. Some shipping companies may elect another non-EU port of call for the purposes of the EU ETS which is not a NCTP rather than call at either of these ports.

In another respect, nearby non-NCTPs and non-EU ports might not have sufficient infrastructure to deal with a large increase in trade. Tanger Med, for example, is the largest port in Africa by cargo capacity; no doubt helped by its close proximity to Europe.<sup>4</sup> Whilst other nearby ports, such as the Port of Casablanca, are well developed and connected ports, it is probable that changes would need to be made to the infrastructure of these ports to accommodate any significant increase in traffic (for example, if a stop is added to load or unload cargo, simply for the purpose of reducing voyage distance).

<sup>1</sup> The phase-in period will apply from 1 January 2024 to 31 December 2025 inclusive. For more information, please see the previous update and breakdown of the EU ETS provided by HFW colleagues Alessio Sbraga, Joseph Malpas and Johanna Ohlman: [The Formal Inclusion Of Maritime Transport In The EU ETS | May 2023](#), and our previous article on potential impact of the EU ETS on shippers and freight forwarders: [HFW | EU Emissions Trading System: Evaluating The Potential Impact On Shippers And Freight Forwarders](#).

<sup>2</sup> The EU ETS covers CO<sub>2</sub> (carbon dioxide) and will cover CH<sub>4</sub> (methane) and N<sub>2</sub>O (nitrous oxide) emissions from 2026 onwards.

<sup>3</sup> [Register of Commission Documents - C\(2023\)7122 \(europa.eu\)](#).

<sup>4</sup> [10 Major Ports In Morocco \(marineinsight.com\)](#).

## EU Ports and Terminals

Naturally, the extension of the EU ETS will have an impact on the ports and terminals operating within the EU. Shipping companies may decide to avoid using EU transshipment ports, insofar as possible, to avoid or reduce any financial liability for GHG emissions under the EU ETS. This is most likely to be the case where the origin and final destination of the vessel and/or her cargo are outside of the EU. Whereas some voyages might have an EU port of call at present for hinterland cargo, where this is not necessary or hinterland cargo can be diverted onto other services, it is probable that shipping routes will be re-planned so as to engage with ports of call outside of the EU (which are not NCTPs). As a result, there might be a negative impact on employment and business activity in EU ports.

Further, it may be that qualifying vessels avoid calling at EU ports altogether. Cargo could be dropped off at a transshipment port which is not a NCTP or a EU port, and thereafter distributed via smaller feeder vessels to EU ports (albeit, the EU ETS does provide for mechanisms to monitor this evasive behaviour). This would substantially impact the traffic and operation of EU ports who might not be equipped to deal with a larger volume of smaller vessels (as opposed to fewer larger vessels).

Whilst the expansion of the EU ETS will undoubtedly bring about uncertainty and change for EU ports,

it also opens up an opportunity for EU ports to seize the growing market for alternative fuels (e.g. LNG, methanol and ammonia). Indeed, many shipping companies will be looking to decarbonise their fleet, insofar as possible, and will need ports and terminals to adapt to provide alternative fuel hubs to facilitate smooth bunkering operations.

### Comment

Speculation as to how and whether shipping companies will re-route their vessels in anticipation of the EU ETS is rife but the consensus appears to be that nearby non-EU ports and non-NCTPs may experience an increase in traffic from vessels looking to avoid or minimise exposure to the EU ETS. Only time will tell as to whether the EU ETS, as currently drafted, is sufficiently effective to minimise carbon leakage, and what the ultimate impact will be to ports and terminals in and around the EU. That being said, the EU ETS is not the only green legislation being implemented, the EU Carbon Border Adjustment Mechanism will also assist in minimising the prospects of carbon leakage.

Of course, where there is change, there is opportunity. Forward thinking terminals and ports will be aware that the push for decarbonising the maritime industry will only continue to grow and, as such, may consider adapting to meet the needs of greener ships and shipping companies.

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