

Updated Briefing on the EU carbon border adjustment mechanism (CBAM)

The Council and the European Parliament reached in trialogue a provisional agreement on Carbon Border Adjustment Mechanism (CBAM) at the end of last year (CLECAT circular 2022/213 refers). In February 2023, the European Parliament's ENVI Committee as well as the Council's Committee of Permanent Representatives (COREPER) approved the provisional agreements in the 'Fit for 55' package, including CBAM. The agreed text still needs to be formally approved by the EP's Plenary in the coming month, followed by the formal approval in Council before the publication in the Official Journal of the EU. The purpose of this briefing is to provide a brief analysis of the agreed text on the issues which are of relevance for freight forwarders and customs agents.

CBAM will enter into force on the twentieth day following its publication in the Official Journal of the European Union and it will apply as **from 1 October 2023**. However, there is a transitional period:

Chapter X - Article 32 - Scope of the transitional period

- *During a transitional period from **1 October 2023 until 31 December 2025**, the obligations of the importer under of this Regulation are limited to the **reporting obligations** set out in Articles 33 to 35. Where such importer is established in a Member State and uses indirect representation in accordance with Article 18 of Regulation (EU) No 952/2013, and where the indirect customs representative so agrees, the reporting obligations shall apply to such indirect customs representative. (note: we can assume that where there is no agreement, the importer is responsible for CBAM related obligations). **Where the importer is not established in a Member State, the reporting obligations shall apply to the indirect customs representative.***
- Article 36 (entry into force) notes that article 5 and 17 shall apply from **31 December 2024**, This means that when the importer is not established in a Member State, the indirect customs representative (article 5) has to apply to become an "authorized CBAM declarant" (and is subject to the CBAM requirements).
- The permanent system will enter into force on **1 January 2026**. Importers will need to declare each year the quantity of goods imported into the EU in the preceding year and their embedded GHG. They will then surrender the corresponding number of CBAM certificates.

Article 5 - Application for an authorisation

Acting as authorized CBAM declarant in the case that the importer is established outside the EU

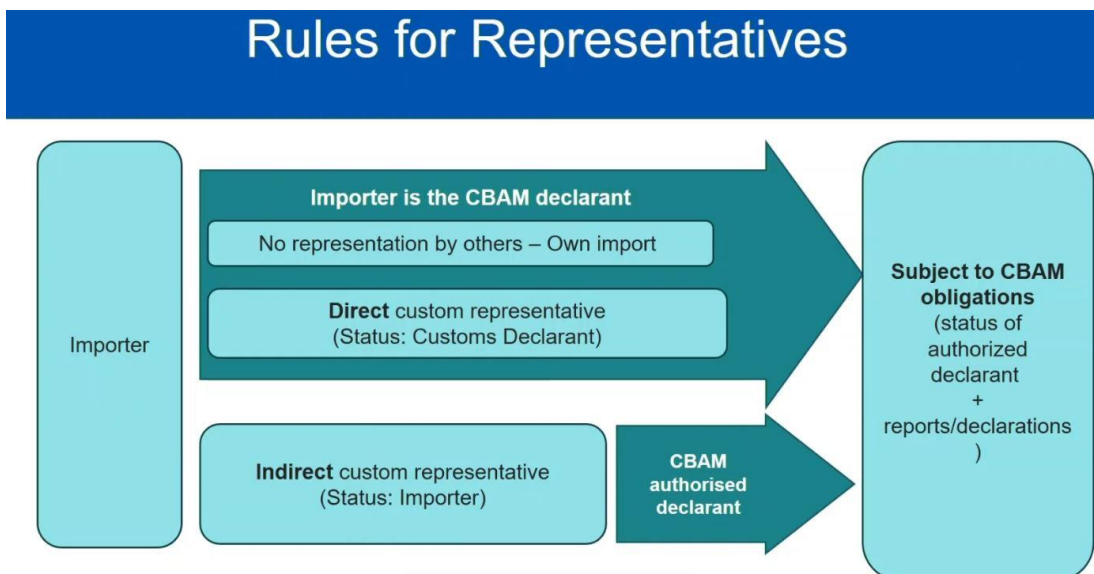
- CLECAT expressed serious concerns regarding the requirements to act as authorized CBAM declarants under scenario's described in Article 5 of the text. ([Joint Proposal for a Review of Article 5 of the Council General Approach on CBAM](#) with EEA refers). Unfortunately, the text as proposed by the Council has not been changed. This means acting as authorized CBAM

declarant in the case that the importer is established outside the EU as Article 5 (1a) provides that:

1. Any importer established in a Member State shall, prior to importing goods into the customs territory of the Union, apply for the status of authorised CBAM declarant.
Where such importer is using indirect representation in accordance with Article 18 of Regulation (EU) No 952/2013 and where the indirect customs representative agrees to act as an authorised CBAM declarant, the application shall be submitted by such indirect customs representative.
1a. Where the importer is not established in a Member State, the application referred to in paragraph 1 shall be submitted by the indirect customs representative.
1b. The application in paragraph 1 and 1a shall be submitted through the CBAM registry established in accordance with Article 14

The agreed text also notes that:

The customs authorities should not allow the importation of goods by any other person than an authorised CBAM declarant. In accordance with Article 46 and 48 of Regulation (EU) No 952/2013, the customs authorities may carry out checks on the goods, including with respect to the identification of the authorised CBAM declarant, the eight-digit CN code, the quantity and the country of origin of the imported goods, the date of declaration and the customs procedure.



As the text is now agreed, the next opportunity for CLECAT and EEA to have this amended is only during the next review when we can call for the language as proposed by the EP:

*Where the importer is not established in a Member State, the application referred to in paragraph 1 shall be submitted by **their appointed CBAM representative that is established in a Member State and that can also be the indirect customs representative.***

Article 33 – Importing of goods

Article 33 is another relevant article for customs agents as it notes that:

2. *The customs authorities shall inform the customs declarant of the reporting obligation referred to in Article 35, at the latest at the moment of the release of goods for free circulation*
3. *The customs authorities shall periodically and automatically, notably by means of the surveillance mechanism established pursuant to Article 56(5) of Regulation (EU) No 952/2013 or by electronic means of data transmission, communicate to the Commission information on imported goods, including processed products resulting from the outward processing procedure. Such information shall include the EORI number of the customs declarant, and of the importer, the eight-digit CN code, the quantity, the country of origin, the customs declarant, the date of declaration and the customs procedure.*
4. *The Commission shall communicate the information referred to in paragraph 3 to the competent authorities of the Member States where the customs declarant, and where applicable the importer, are established.*

This article is not clear as it presumes under item 2 that even if the importer is based in the EU, the indirect customs representative is the customs declarant. By contract, article 32 notes that agreement of the indirect customs representative is required in this case. (article 32: *Where such importer is established in a Member State and uses indirect representation in accordance with Article 18 of Regulation (EU) No 952/2013, and **where the indirect customs representative so agrees**, the reporting obligations shall apply to such indirect customs representative*)

Communication/Capacity Building

In view of the impact and liabilities of the customs declarant acting under indirect representation as the authorized CBAM declarant, it is important that DG TAXUD and customs authorities launch a campaign to inform the sector on the important responsibilities and impacts. At the recent TCG meeting the Commission has noted that the communication campaign with further details will start as soon as the regulation is adopted.

- So far the text notes in article 38:

The text notes that ‘During the transitional period, the customs authorities should inform customs declarants of the need to report information, so as to contribute to the gathering of information as well as to the awareness on the need to request the status of authorised declarant when applicable. Such information by the customs authorities should be communicated in an appropriate manner to ensure that customs declarants are made aware of such need.’

CLECAT notes that during this period customs will need to be educated on the ‘to-do’ including

1. Building capacities on the financial and administrative preparedness
2. Identification of the eight-digit CN codes to identify whether goods that are within the scope of CBAM are imported

3. Creating awareness on the additional layer of responsibility by means of additional CBAM services. The customs declarant may have to realise that providing services to importers will be **commercial choice** (which could equally be declined).

Article 2 - Scope

- CBAM will initially cover a number of specific products originating in a third country in some of the most carbon-intensive sectors: iron and steel, cement, fertilisers, aluminium, electricity and hydrogen, as well as some precursors and a limited number of downstream products.

The product scope will be reviewed to assess the feasibility of including other goods produced in sectors covered by the EU ETS in the scope of the CBAM mechanism, such as certain downstream products and those identified as suitable candidates during negotiations. The report will include a timetable setting out their inclusion by 2030.

Article 30 notes that *‘the Commission, in consultation with relevant stakeholders, shall collect the information necessary with a view to the extension of the scope of this Regulation as indicated pursuant to paragraph 2(a), and to the development of methods of calculating embedded emissions based on environmental footprint methods.’*

Before the end of the transitional period the Commission will present a report to the European Parliament and the Council on the application of this Regulation.

The report will contain, among others, the possibility to extend the scope to:

- embedded indirect emissions to the sectors listed in Annex Ia;
- embedded emissions in the transport of goods listed in annex I and transportation services;
- other goods at risk of carbon leakage than those listed in Annex I, and specifically organic chemicals and polymers;
- other precursor materials for the goods listed in Annex I.

CLECAT will need to seek more information on the possible extension of the scope to ‘embedded emissions in the transport of goods’ as it is unclear how this could apply in practice (as CBAM has been developed for goods, not services) and there is a risk of double-counting for goods covered by CBAM. DG TAXUD was unable to comment on this in a meeting with EEA.

The agreed text includes certain downstream products considered for inclusion based on their simplicity and share of CBAM goods in the volume of the final product:

- CN 7318 - Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel;
- CN 7326 – Other Articles of Iron and Steel – Forged or Stamped, but not further worked;
- CN 7616 – Other articles of aluminium.

In addition, the Commission will monitor the functioning of CBAM with a view of evaluating the impacts and possible adjustments to the application. Before 1 January 2028, as well as every two years thereafter, the Commission will present a report to the European Parliament and the Council which will contain, among others, a further assessment of the scope of the Regulation.

Article 26 - Penalties

- *Member States are responsible to apply penalties to infringement of this Regulation. The penalties amount for the failure of an authorised CBAM declarant to surrender CBAM certificates should be identical to penalties currently applied within the Union in case of infringement of EU ETS according to Article 16(3) and (4) of Directive. However, where the goods are introduced into the Union by a person other than an authorised CBAM declarant without complying with the obligations of this Regulation, the amount of those penalties should be higher.*