



CUSTOMS  
NEWSLETTER

## The Carbon Border Adjustment Mechanism is getting closer

02 | 2023

### 1 Background

Under European Climate Law (Regulation (EU) 2021/1119), EU countries must reduce their greenhouse gas (GHG) emissions by at least 55% by 2030. However, the implementation of this climate target is accompanied by the risk that companies will shift their production, and thus their GHG emissions, to third countries that do not share the same standards of climate protection as those of the Union. These companies will then seek to import carbon intensive products, from countries with a lower carbon price, into the Union (so-called "carbon leakage"). As part of the "Fit for 55" package, which is the core component of the EU's efforts to achieve climate neutrality, the European Commission published a draft regulation on 14.07.2021 creating a Carbon Border Adjustment Mechanism (CBAM). The main objective of the CBAM is to mitigate the risk of carbon leakage by regulating the production-related GHG emissions of goods during their importation into the customs territory of the EU. In this way, CBAM aims to ensure that, firstly, the strict EU climate requirements do not result in a disadvantage for European companies in international competition and secondly, that the requirements encourage industry outside the EU to reduce emissions. On 18.04.2023, the EU Parliament adopted, by a clear majority, the rules on the new Carbon Border Adjustment Mechanism. The new Regulation (EU) 2023/956, establishing a Carbon Border Adjustment Mechanism, was published in the Official Journal of the EU and entered into force on 17.05.2023.

### 2 General

CBAM is aimed at the importation of goods in carbon intensive industries. The affected product groups are listed in Annex I of the Regulation. In addition to the product groups cement, electricity, fertilisers, iron, steel and aluminium, upstream and



Dr. Christian Salder  
Lawyer, Certified Tax  
Consultant

+49 (0) 89 217 50 12-85  
christian.salder@kmlz.de

some downstream iron, steel and aluminium products, as well as polymers and organic chemicals, hydrogen and ammonia, are also covered by the measure. By 2030, CBAM is to extend to all other sectors that are covered by EU emissions trading.

Similar to EU emissions trading, CBAM will price GHG emissions through the use of certificates. The price of affected goods imported into the EU is to be aligned with the price of corresponding EU goods through the additional cost of carbon certificates. Companies importing such goods into the EU will therefore be obliged to purchase CBAM certificates. The EU Commission will calculate the price of the CBAM certificates, based on the average weekly price of EU emission allowances. Thus, the carbon price to be paid for the importation of goods is to be aligned with the (higher) price of CO<sub>2</sub> certificates in EU emissions trading.

### 3 What happens next?

The Regulation will apply as from 01.10.2023. A transitional phase will then initially begin, during which importers of affected goods will be required to file quarterly CBAM reports. The reporting obligation will include information on the quantity of imported goods, the emissions contained in the goods and carbon prices already paid in other EU countries. The transitional phase will be limited to reporting. Companies will not yet be required to purchase certificates.

At the end of the transitional phase on 01.01.2026, only “authorised CBAM declarants” will be able to import affected goods into the EU. Certificate trading will also start at this time. Step by step and parallel to the abolition of free allowances in EU emissions trading, declarants of the goods concerned will need to purchase sufficient CBAM certificates during the year to cover the CO<sub>2</sub> content of the goods to be imported. Authorised CBAM declarants will be able to purchase CBAM certificates from the Member States via a common central platform. Certificates bought in excess can be returned to the respective Member State. Trading of certificates between economic operators is not provided for.

In addition, authorised CBAM declarants must, in future, file an annual CBAM declaration (for the first time by 31.05.2027 for 2026). Similar to the transitional phase, the CBAM declaration must contain information on the quantity of imported goods and the emissions contained in the goods. In addition, the total number of CBAM certificates purchased in advance, to offset the emissions contained in the imported goods, must be stated. Any carbon price already paid in the country of origin may be deducted and a reduction in the CBAM certificates to be surrendered may be claimed. Only companies established in an EU Member State can become authorised CBAM declarants. Therefore, companies that are not established in the EU need a CBAM declarant to represent them, in addition to the indirect import clearance representative.

### 4 Need for action for companies concerned

The economic impact on companies importing products affected by the Carbon Border Adjustment Mechanism will be enormous. In addition to the burden of acquiring the certificates, the CBAM will also be accompanied by substantial administrative challenges. Companies importing goods from the relevant sectors should use the remaining time to check whether, and to what extent, they are affected by the new regulation. In future, companies concerned will have to go to great lengths to calculate and document the direct and indirect emissions generated in the production process of their imported goods. They should identify the manufacturers of the goods and request information on the emissions contained at an early stage. The reporting obligation for CBAM reports under the transitional phase already applies as from 01.10.2023. To this end, it is advisable to clarify internal responsibilities as soon as possible and, if necessary, set up an interdepartmental working group. Non-compliance with the new regulations will be punished with sanctions. Companies operating in the affected sectors should therefore act quickly.