

Importers to assess implications of Carbon Border Adjustment Mechanism 1/29/23



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Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a carbon border adjustment mechanism (CBAM) came into force on 17 May 2023. This so-called “carbon tax” applies from October 2023, with companies subject to CBAM being liable to file their first CBAM reports in January 2024. Carbon emission certificates will have to be purchased from 2026. In this article we are explaining in detail which companies are subject to CBAM.

Introduction

Climate change is a global problem that needs global solutions. The EU is constantly raising its climate targets, while many non-Union countries have less stringent climate policies. For example, to support the decarbonisation of EU industry, the EU emissions trading system (ETS) operates across Europe, essentially charging producers for the carbon emissions embedded in their products. The ETS clearly affects product prices but it doesn't operate in many third countries. This poses a risk of carbon shifting, as EU-registered companies might move their carbon-intensive production to non-Union countries where climate policies are not so tight as in the EU. A similar risk exists if carbon-intensive products of EU origin are replaced with imports from non-Union countries.

To mitigate these risks, the EU has adopted CBAM, which we briefly discussed in an earlier MindLink article. CBAM is a key instrument for setting a fair price for carbon emissions on goods made outside the EU.

Which companies are subject to CBAM?

The CBAM rules apply only to EU-registered companies importing specified goods from third countries. Non-importers are not bound by CBAM. If your company is importing goods, then you need to assess whether any of your imports are subject to CBAM. It's important to note that this will not be a one-off activity, as the list of goods covered by CBAM will be gradually expanded. So importers are advised to monitor the CBAM rules.

During the first stage – beginning on 1 October 2023 – the CBAM rules will apply to the following materials, goods and their subproducts:

- Aluminium
- Iron and steel
- Cement
- Hydrogen
- Fertiliser
- Electricity

The Regulation contains a detailed list of combined nomenclature codes for goods that are subject to CBAM (see the full list in Annex 1 to the Regulation, beginning from page 39).

The CBAM timeline

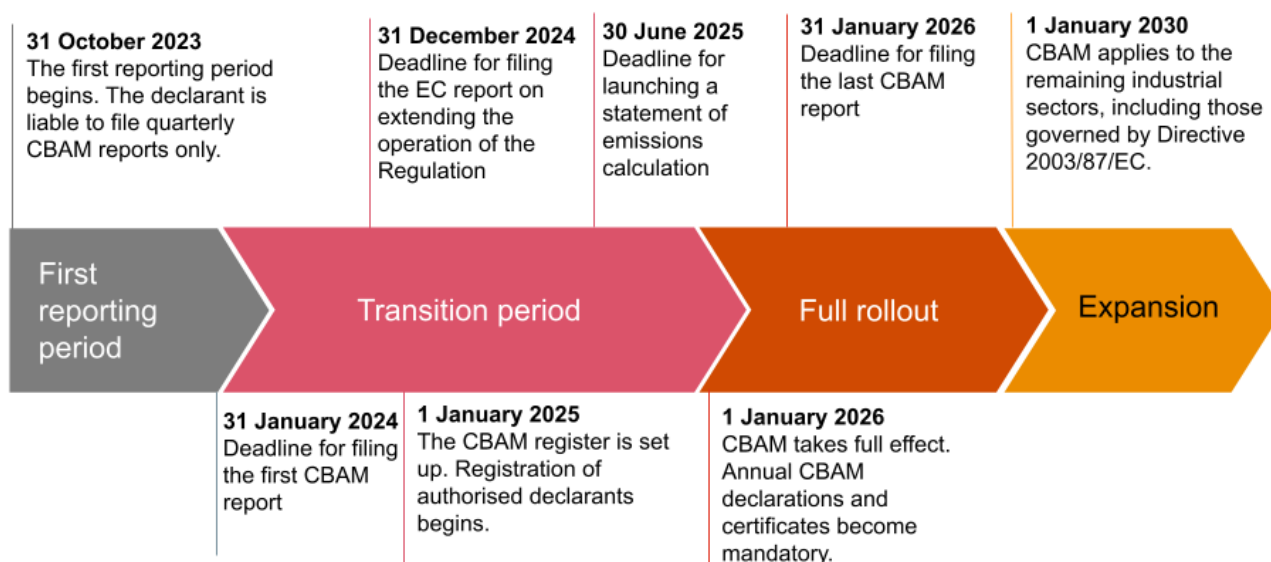
The Regulation provides for several stages of CBAM implementation, with the first reporting period beginning on 31 October 2023. It's important to note that up to January 2026 companies subject to CBAM will only have the reporting obligation, i.e. the duty to file quarterly CBAM reports with the competent authority.

Another key date is 1 January 2025, when companies subject to CBAM should begin registration, i.e. apply to the competent authority for authorised declarant status. It's important to note that this step is not a mere formality, as over time, only authorised CBAM declarants will be permitted to import goods covered by CBAM into the EU. Any person having failed to obtain authorised declarant status and attempting to import such goods into the EU will be either fined or prevented from importing them.

2026 will see the full implementation of CBAM, which includes (1) companies being required to draw up and file with the competent authority their annual CBAM declarations, with the quarterly CBAM reporting obligation ending at the same time, and (2) the obligation to purchase CBAM certificates – comparable to paying carbon tax. It's important to note that CBAM certificates will be available on a limited basis, and they cannot be carried forward or sold. Annually, companies will be liable to surrender their CBAM certificates to the competent authority according to the emissions embedded in their imports.

The chart below shows the stages of CBAM implementation:

CBAM timeline



What should companies be assessing?

Importers need to assess their import portfolio. If any of their imports are subject to CBAM, they should begin to prepare themselves for carrying out the reporting obligation. During the first reporting period and

the CBAM transition period, CBAM reports will be informational in nature. However, at this stage the quality of data to be declared will matter (i.e. what information on embedded emissions is available from the producer, correct calculation of emissions etc.) because the quality of reports will be assessed in deciding to grant authorised declarant status. As stated above, an importer that fails to obtain such status may be fined or its imports prohibited. Based on the data included in CBAM reports, your company can estimate how many CBAM certificates it should buy. If the quality of your original data is inferior and your company, for instance, buys more certificates than necessary, this will cause you a financial loss because such additional certificates cannot be carried forward or sold. So quarterly CBAM reports will allow you to estimate and plan your future CBAM certificate costs more accurately. Your company might also come to the conclusion that it needs to rearrange its supply chain and buy from other producers elsewhere by choosing facilities that are more climate neutral so their goods have lower embedded emissions.

Our team of tax experts is holding a free webinar on the CBAM rules, where we will be expanding on the questions discussed in this article and exploring many more related questions, such as:

- Where should your company begin? And what do you need to consider in analysing the application of CBAM?
- The content of quarterly reports and annual CBAM declarations.
- Why is data quality crucial? And what do we know about calculating emissions under the Regulation?
- CBAM certificates and other questions.

Our free webinar will start at 3 p.m. on 20 September 2023 and you can sign up [here](#).