

Introduction

The European Commission recently made important releases in the context of the transitional phase of the Carbon Border Adjustment Mechanism (CBAM); including the publication of default values and other measures, such as the imposition of reduced penalties during the transitional period and the adoption of guidelines to streamline reporting activities. Those tools aim to facilitate the gradual and proper implementation of the CBAM mechanism. The comprehension of these measures by companies is crucial, especially considering that, when the system becomes fully operational starting from January 2026, companies, in addition to being required to purchase CBAM certificates, will face the risk of high fines in case of irregularities.¹

On May 17, 2023, EU Regulation 2023/956, establishing the CBAM, officially entered into force. The CBAM addresses greenhouse gas emissions embedded in imports of goods within six emissions-intensive sectors, namely: cement, iron and steel, aluminum, fertilizers, electricity and hydrogen.²

The main objective of the regulation is to prevent the risk of carbon leakage by imposing a price on the carbon emitted during the production of carbon-intensive goods. This applies specifically to those goods produced in third countries lacking a mechanism similar to the EU emissions trading system, and that are entering the EU (for more information, refer to our [client alert on the CBAM](#)).

The CBAM will be implemented in two phases: a transitional phase started in October 2023 and a definitive phase beginning in January 2026. This gradual introduction of the mechanism will be accompanied by an equally gradual phase-out of the allocation of free allowances under the [EU Emissions Trading System \(ETS\)](#)³ to avoid disparities in treatment between goods produced in Europe and those from third countries.

During the transitional period, EU-based importers of goods covered by CBAM from non-EU countries are obligated to report the embedded emissions of their imports without incurring any financial liabilities.

The requirement to purchase CBAM certificates will come into effect on January 1, 2026, without any retroactive effect, and will involve the imposition of a carbon price designed to align with the allowance price level in the ETS.

Under the general framework of CBAM, companies falling within its scope are obligated to disclose the true embedded emissions of goods originating from a non-EU country. This reporting follows the monitoring methodology, relying on the calculation of actual emissions as specified in Implementing Regulation (EU) 2023/1773 (art. 4 (1) and (2)).⁴ However, during the transitional period, the commission permits importers to use estimations (default values) if they do not have the required information to calculate the embedded emissions in the goods they are importing.⁵

Reporting in the Transitional Period

EU importers of goods falling within the scope are required to provide quarterly reports on the volume of their imports and the greenhouse gas (GHG) emissions embedded during their production. On August 17, 2023, the European Commission adopted [Implementing Regulation \(EU\) 2023/1773](#), which outlines detailed reporting requirements and methodologies for calculating the embedded emissions of covered goods during the transitional phase (for more information, refer to our [client alert on the transitional period](#)).

This phase became effective on October 1, 2023, and continues until December 31, 2025, with the first reporting period for importers set on January 31, 2024. Financial adjustments are not mandatory during this transitional phase. However, starting from 2026, binding financial obligations will be enforced, and the acquisition of CBAM certificates will become mandatory.

The initial two CBAM reports (covering October 1, 2023, to March 31, 2024) can be amended until July 31, 2024, providing additional flexibility. Subsequently, the report must be submitted to the [CBAM Transitional Registry](#), a standardized and secure electronic database managed by the European Commission.

¹ For the amount of the fines, please refer to Footnote 10.

² The specific goods can be identified by their code under the EU's Combined Nomenclature (CN) code listed in Annex I of the CBAM Regulation.

³ Directive 2003/87/EC as recently modified by Directive (EU) 2023/959.

⁴ Paragraph 1 of Article 4 establishes the so-called EU methodology, which entails either (a) determining emissions from source streams based on activity data obtained through measurement systems and calculation factors from laboratory analyses or standard values, or (b) determining emissions from emission sources through continuous measurement of the concentration of the relevant greenhouse gas in the flue gas and the flue gas flow. On the other hand, Paragraph 2 provides an alternative to the European methodology, allowing, until December 31, 2024, the use of one of the following monitoring and reporting methods, provided they achieve a similar coverage and accuracy of emissions data compared to the methods listed in that paragraph: (a) a carbon pricing scheme where the installation is located; or (b) a compulsory emission monitoring scheme where the installation is located; or (c) an emission monitoring scheme at the installation, which may include verification by an accredited verifier.

⁵ In accordance with Article 4(3) of Implementing Regulation (EU) 2023/1773.

The reporting calendar for the transitional period is as follows:⁶

Reporting Period	Submission Due By
October-December 2024	January 31
January-March 2024	April 30
April-June 2024	July 31
July-September 2024	October 31
October-December 2025	January 31
January-March 2025	April 30
April-June 2025	July 31
July-September 2025	October 31
October-December 2026	January 31

How Does the Reporting Process Function?

The importer, upon receiving CBAM goods from various installations (potentially spanning different countries), lodges a customs declaration for each import. Following the customary checks, the customs authority of the relevant member state notifies the European Commission through the CBAM Transitional Registry, confirming the completion of the importation process. Concurrently, the importer seeks information regarding the emissions employed in the production of the goods from the exporter. This data is subsequently integrated into the quarterly report, which is then transmitted to the commission via the CBAM Transitional Registry. At this point, relying on the customs data furnished by the customs authorities, the commission communicates to the competent national authority the list of reporting declarants expected to submit the CBAM reports.

Moreover, the European Commission, in its capacity as the recipient of reports from reporting declarants via the CBAM Transitional Registry, conducts an initial assessment of the received reports. If, during this assessment, a report is found to be incomplete or inaccurate, lacking essential information as outlined in articles 3 to 7 of the Commission Implementing Regulation (EU) 2023/1773, the commission is authorized to issue an indicative assessment to the relevant national competent authority.⁷ Subsequently, the national competent authority has the discretion to initiate a corrective procedure in cases of irregularities. This corrective procedure may lead to penalties if the reporting declarant fails to take necessary corrective actions in response. Simultaneously, penalties may also be imposed on importers falling within the scope of the regulation that neglect to submit the required report. The penalties for unreported emissions range from €10 to €50 per metric ton, with potential adjustments based on the European Index of Consumer Prices.

During this transitional period, the European Commission is endeavoring to elucidate the intricate reporting system as comprehensively as possible, with the goal of facilitating data submission from reporting declarants (importers or indirect customs representatives) and has issued guidance documents for [importers](#) and [installation operators](#), including those outside the EU. The guidance documents provide concepts to be used for reporting embedded emissions, facilitating the correct interpretation of the new rules to promote implementation. The commission has also published an optional [communication template](#) to facilitate the exchange of information between producers and importers. This template can be utilized as a tool to determine the embedded emissions in CBAM goods.

In addition to the challenges of understanding the complex reporting mechanism, one of the issues importers will need to confront in this phase is understanding where the actual emissions related to the development of the imported goods were generated. At the same time, CBAM carbon accounting compliance requirements impose a substantial burden on exporters of covered goods into the EU, necessitating the implementation of systems for tracking and recording both direct and indirect embedded emission data.

Default Values

Given the limited timeframe for obtaining all necessary data from exporters, Commission Implementing Regulation (EU) 2023/1773 introduced flexibility in the calculation of embedded emissions on imports during the transitional phase. This flexibility grants companies the option to select from three reporting approaches:

- Complete reporting following the new methodology (EU method)
- Reporting based on an equivalent method – with three available options (only applicable until the end of 2024)
- Reporting based on default reference values (only applicable in full until July 2024, and with quantitative limits until the end of 2025).⁸

For importers opting for the approach described in point (c), namely reporting based on default values, the European Commission has issued a document providing estimates of embedded emissions in CBAM goods. Importers can utilize this document solely during the transitional period and in situations where they lack the required information.

The [document on default values](#), released by the European Commission December 22, 2023, addresses the application of default values for determining direct emissions embedded in CBAM goods (excluding electricity), default values for determining indirect emissions embedded in CBAM goods (excluding electricity), and default values for electricity as a CBAM good.⁹

⁶ Page 15 of the [FAQ document on the CBAM](#), last updated, at the moment of writing, by the European Commission on January 31, 2024. Last access on February 12, 2024.

⁷ The [provisional list of such authorities](#) was published by the commission on January 9, 2024.

⁸ For further details, please refer to Footnote 4.

⁹ As a clarification, direct emissions pertain to emissions generated during the production process of CBAM goods, while indirect emissions encompass the production of electricity consumed during the production of CBAM goods. Importers are mandated to report both direct and indirect emissions during the transitional phase. However, during the definitive period, the CBAM scope is limited to direct emissions for iron/steel, aluminum and hydrogen. Importers of cement and fertilizers are the exceptions, required to declare both indirect and direct emissions.

The utilization of default values for reporting purposes during the transitional period is permissible for the initial three quarterly reports (until July 31, 2024) without quantitative limits. This means that 100% of the total embedded emissions may be determined using default values. For the remaining transitional period (from July 1, 2024, to December 31, 2025), estimated values may still be used, but a quantitative limit is imposed. During this period, declarants may report emissions based on estimations, capped at 20% of the total embedded emissions for complex goods. Default values will be regularly revised, taking into account data from the first reporting quarter and incorporating feedback from both EU and non-EU producers.

The application of default values is not contingent on the country of origin of CBAM goods and is limited to the transitional period, concluding on December 31, 2025. Starting from 2026, a different set of default values will come into effect. These values will be established based on the average emission intensity of each exporting country, augmented by a proportionately designed markup. According to Article 7(7) of Regulation 2023/956, the determination of these default values will be carried out through implementing acts, scheduled for adoption in 2025, and will undergo periodic revisions.

How We Can Help

Entities within the scope should view this transitional period as an opportunity to familiarize themselves with the new system and develop an appropriate compliance strategy. This aligns with the apparent intent of the regulatory framework itself. Indeed, during this transitional period, the introduced penalties, elaborated further below, do not appear unduly restrictive; instead, they seem to function as an additional incentive for economic operators to initiate preparations for compliance with the new system, effective from January 1, 2026. Furthermore, the introduction of default values, allowing importers to use approximate information on embedded emissions until July 2024, signifies that the commission recognizes the transitional period as a learning phase.

The intricate regulatory framework necessitates a comprehensive examination of legal requirements and the formulation of a strategic approach to ensure compliance. Leveraging our expertise in regulatory EU law, we stand ready to support companies in their preparations for compliance, addressing both the ongoing transitional period and the subsequent full implementation of the mechanism. This will require organizing the supply chain contractually in a manner that ensures that applicable obligations are met. In the latter phase, companies will be mandated to cover the costs associated with emissions generated during the production of imported goods, and it is noteworthy that the penalties during this period will be considerably more stringent compared to those outlined in the transitional phase.¹⁰

¹⁰ The CBAM regulation, regarding penalties, refers to Article 16(3) of Directive 2003/87/EC, which stipulates a penalty of €100 for each metric ton of carbon dioxide equivalent emitted by that installation for which the operator has not surrendered allowances.

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We combine sound legal counsel with a deep knowledge of our clients' businesses to resolve their legal, public policy and political challenges. We care about the quality of our services, the success of our clients and the relationships that are forged through those successes. Our client base spans every type of business, both private and public, worldwide. We advise a diverse mix of clients, from Fortune 100 and FTSE 100 corporations to emerging companies, and from individuals to local and national governments. Leveraging local connections, while exerting global influence, we are commercial, connected and committed.

Our Public Policy Practice Group works with clients to make sure they are heard, at the right time, by the right people, with the right message in Washington DC, Brussels, London and other major capitals around the world.

Contacts

Thomas Delille

Partner, Brussels
T +32 2 627 11 04
E thomas.delille@squirepb.com

Valerio Giovannini

Associate and Public Policy Advisor, Brussels
T +32 2 627 11 04
E valerio.giovannini@squirepb.com

Jamie Barge

Trainee, Public Policy, Brussels
T +322 627 11 02
E jamie.barge@squirepb.com