



Sioufas & Associates
Law Firm

CARBON BORDER ADJUSTMENT MECHANISM (CBAM) - IMPLEMENTATION AND TRANSITIONAL PERIOD ANALYSIS

WWW.SIOUFASLAW.GR



Carbon Border Adjustment Mechanism (CBAM) - Implementation and Transitional Period Analysis

- **This article concerns:** The six sectors covered in the first phase of the CBAM, namely the EU importers of cement, iron and steel, aluminum, fertilizers, electricity, and hydrogen.
- **The benefits of the new Mechanism are:** That imports will have paid a price for the carbon emissions produced during their manufacturing. This makes the carbon cost of imports comparable to domestic production, safeguarding the EU's climate goals.
- **Entry into force:** The CBAM has been operational in a transitional phase since 1st October 2023 and will continue until 31 December 2025. The full-fledged system is scheduled to be implemented on 1st January 2026.
- **First Reports Due Date:** Importers must submit their first quarterly reports within one month of the reporting period's end, with the initial deadline being 31 January 2024.

I. INTRODUCTION

On **1 October 2023**, the European Union took a significant step in its climate policy by introducing the Carbon Border Adjustment Mechanism (CBAM),¹ a cornerstone of the EU's 'Fit for 55' agenda that aims

¹ CBAM regulation in the Official Journal of the EU English, Official Journal of the European Union, L 130, 16 May 2023, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2023%3A130%3ATOC>

Athens

6^a Neou Falirou St.
GR-182 33, Ag. I. Renti
tel: +30 210 3673000
fax: +30 210 3673070
email: info@sioufaslaw.gr
website: www.sioufaslaw.gr

Thessaloniki

3 Nikiforou Ouranou St.
GR-546 27, Thessaloniki
tel: +30 231 6005800
fax: +30 231 6005899

Patra

65 Othonos-Amalias Ave.
GR-262 22, Patra
tel: +30 261 0226549
fax: +30 261 0242971

Romania

76 Splaiul Unirii, River Plaza Tower A 7th floor
Bucharest, District 4, P.C.040037
tel: +40 372 171778
fax: +40 372 171779
email: info@sioufaslaw.ro
website: www.sioufaslaw.ro





to reduce greenhouse gas emissions by 55% by 2030. Specifically, CBAM serves as a tool to prevent carbon leakage and ensure the competitiveness of European industries by imposing a carbon cost on imports equivalent to domestic products, thus reinforcing the EU's ambitious climate goals.

II. CBAM OVERVIEW

The transitional phase of CBAM began on October 1, 2023, marking a crucial transition in the EU's approach to carbon pricing and international trade. Designed to be compatible with World Trade Organization (WTO) rules, namely *Article III-4* of the General Agreement on Tariffs and Trade (GATT).² Following that, CBAM targets six sectors that are highly carbon-intensive during its initial phase, with plans to expand its coverage in the future. This mechanism upholds the integrity of the EU's climate policies, ensuring that manufacturers outside the EU incur a carbon cost akin to that within the Union.

III. TARGETED INDUSTRIES – IMPACT ON (NON) EU BUSINESSES

The initial phase impacts **EU-based importers** in **six (6) sectors** such as cement, iron and steel, aluminum, fertilizers, electricity, and hydrogen. These businesses are now mandated to track and report the greenhouse gas emissions of their imports, promoting transparency and equipping stakeholders for the upcoming fiscal adjustments when the permanent system takes effect after 2025.

With respect to the **non-EU companies**, the CBAM imposes significant compliance burdens, especially on small and medium enterprises (SMEs) in developing countries. These entities will be required to implement carbon accounting methods to measure and independently verify the embedded emissions in their products. Further, understanding the complex EU legislation and bearing the costs associated with non-compliance or failure to meet the EU's advanced decarbonization standards could be particularly challenging for these businesses. This compliance burden could lead to a rise in export costs, impacting their competitiveness in the EU market.³

IV. OBLIGATIONS, COMPLIANCE AND REPORTING

² Article III.4 of the General Agreement on Tariffs and Trade (GATT) states that, based on the national treatment principle, the WTO allows for border adjustments, and that WTO members must not accord discriminatory treatment between imports and "like" domestic products (except for the imposition of tariffs, which is a border measure). Therefore, under the CBAM (which is being applied as a border measure and not an internal tax), imports shall be treated no less favorably than like products in the EU. The GATT is available at [\[https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art3_jur.pdf\]](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art3_jur.pdf)

³ Mekhla Jha, *Understanding the EU's carbon border adjustment mechanism*, Hinrich Foundation, 7 November 2023, available at [\[https://www.hinrichfoundation.com/research/article/sustainable/eu-carbon-border-adjustment-mechanism/\]](https://www.hinrichfoundation.com/research/article/sustainable/eu-carbon-border-adjustment-mechanism/).



During the transitional phase, importers are tasked with documenting their imported goods' embedded emissions. The **Implementing Regulation**,⁴ published on 17 August 2023, offers guidance and grants a degree of flexibility in reporting. Notably, the full reporting according to the EU methodology becomes mandatory from 1 January 2025.

V. TRANSITIONAL PERIOD CONSIDERATIONS

This period serves as a preparatory stage, facilitating a smoother transition to the definitive CBAM. In particular, importers will need to start collecting relevant data in the fourth quarter of 2023 and submit their inaugural reports **by the end of January 2024**. Further, to aid with compliance, the European Commission has provided a CBAM transitional registry, comprehensive guidance, as well as auxiliary materials.⁵

VI. BEYOND THE TRANSITIONAL PHASE

From 1 January 2026, the CBAM will require **financial adjustments** based on the quantity of goods imported and their embedded emissions. Following that, the pricing of CBAM certificates will correlate with the weekly average auction price of EU Emissions Trading System (ETS)⁶ allowances. Simultaneously, the phase-out of free allocation under the EU ETS will occur incrementally, aligning with the phase-in of the CBAM from 2026 to 2034.

VII. CONCLUDING REMARKS AND FUTURE PROJECTIONS

As we anticipate the transition to the permanent CBAM, a thorough evaluation of its pilot phase will be imperative. This assessment will not only gauge the effectiveness of the CBAM during its initial application but will also consider the potential to broaden its scope. Specifically, there is contemplation of extending coverage to additional goods within the ETS sectors by 2030.

⁴ Commission Implementing Regulation (EU) 2023/1773 of 17 August 2023 laying down the rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as regards reporting obligations for the purposes of the carbon border adjustment mechanism during the transitional period (Text with EEA relevance), available at [https://eur-lex.europa.eu/eli/reg_impl/2023/1773/oj].

⁵ The CBAM transitional registry to help importers perform and report as part of their CBAM obligations, available at [https://customs.ec.europa.eu/taxud/uums/cas/uums-wayf/wayf?loginRequestId=ECAS_LR-38855-564WASpJozzyWMrIE8AvSM1ii5287WainyGgiqTPLYlwG254S79Z1Kk5zMXk6FDqvdxyYznroWP1BHqzc7U1Ekh-CiDsmZJBYJebBF1NwXA9Ou-935pSGtU4PNyp4KSQviwJN4fgm57S2tTzNhMIWc3Lq52nJGftzdZXxW2AYZ8ZliPgZ78P1uzJ6JTksDVkVQUKG&locale=en].

⁶ More information about the Emissions Trading System (EU ETS), available at [https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets_en].





In essence, the CBAM is poised to become a pivotal mechanism for the European Union in its quest to achieve its ambitious climate goals. It introduces a framework that balances environmental imperatives with the principles of fair competition in the international trade arena. Furthermore, the structured introductory phase of the CBAM is crafted to allow for a gradual adjustment period, facilitating a smoother transition for stakeholders to comply with new fiscal responsibilities.

In light of recent legislative developments and political endorsements, there is a discernible commitment to the establishment of the CBAM. The expeditious implementation of this system, along with other proposed new revenue sources, is integral to financing the EU's budget⁷ in a manner that supports the Union's overarching environmental objectives.

Maria-Konstantina Lili-Kokkori

Lawyer

LL.M. Energy and Climate Law, University of Groningen
LL.M. in Public International Law, Law School of Athens,
National and Kapodistrian University of Athens

⁷ *European Parliament: Votes to amend own resources legislation - ETS and CBAM revenues included*, energy.press.gr, available at (In Greek) [<https://energy.press.gr/news/eyrokoinoboylio-psifise-tropopiisi-tis-nomothesias-gia-toys-idiouys-poroys-perilambanontai-ta>].

Athens

6^a Neou Falirou St.
GR-182 33, Ag. I. Renti
tel: +30 210 3673000
fax: +30 210 3673070
email: info@sioufaslaw.gr
website: www.sioufaslaw.gr

Thessaloniki

3 Nikiforou Ouranou St.
GR-546 27, Thessaloniki
tel: +30 231 6005800
fax: +30 231 6005899

Patra

65 Othonos-Amalias Ave.
GR-262 22, Patra
tel: +30 261 0226549
fax: +30 261 0242971

Romania

76 Splaiul Unirii, River Plaza Tower A 7th floor
Bucharest, District 4, P.C.040037
tel: +40 372 171778
fax: +40 372 171779
email: info@sioufaslaw.ro
website: www.sioufaslaw.ro

