BLOMSTEIN

CBAM – An update for non-EU producers

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The EU introduced the Regulation establishing an EU Carbon Border Adjustment Mechanism (*CBAM*). Under the CBAM, importers into the EU of carbon-intensive goods (mainly cement, electricity, fertilizers, iron and steel, aluminum, and hydrogen) will be required to pay a charge for the carbon emissions embedded in those products. This charge will be gradually phased in from 2026 to 2034.

We are currently in the transitional phase, which requires EU importers to submit a quarterly report containing the following:

- Total quantity of goods imported during the preceded quarter
- Total embedded direct and indirect emissions
- The carbon price due in the country of origin for the embedded emissions.

Non-EU producers of CBAM goods often will already have been approached by the EU customers asking for relevant data as they have direct access to information on the emissions of their installations. The EU Commission issued a Guidance for installation operators outside the EU. Here is a summary of what non-EU producers will have to do in order to correctly monitor and report the embedded emissions of goods they have produced to their customers.

Steps to follow for monitoring embedded emissions

1. Identifying CBAM goods

First, non-EU producers must identify all goods produced at the production site (so called "installation") and the input materials for the production of these goods which themselves have embedded emissions obtained from other parties (the so-called "precursors") falling under the scope of CBAM. Therefore, Annex I to the CBAM Regulation needs to be checked and compared.

2. Define boundaries for production system

As a second step, non-EU producers need to define the system boundaries, the production processes, and routes. This means that there is a need to identify the goods under CBAM scope. The operator must identify the material and energy flows that can impact emissions as part of the CBAM production process.

3. **Monitoring direct emissions**

As a third step, the direct emissions associated with the production of the good must be monitored. Whenever an installation produces several different products, the emissions must be appropriately attributed to the individual products. It is also important to clarify what upstream processes (e.g. production of precursor goods) and downstream activities (e.g. rolling or casting, cleaning and coating of steel products) take place on the same installation. This is because different monitoring rules may apply to these activities and separate production process may need to be defined.

Therefore, due to the specific rules for attributing emissions to goods, there is also a need to determine certain flows of heat (steam, hot water, etc.) to and from the installation, and between relevant production processes. The same applies to so-called "waste gases" (e.g. blast furnace gas in the steel industry). Both heat and waste gases contribute to the direct emissions.

4. **Monitoring precursors**

Furthermore, the quantities of specific input materials which themselves have embedded emissions (the so-called "precursors") used in the manufacturing process must be monitored and the embedded emissions of these precursor materials must be determined. Whenever precursors are purchased, one must obtain data on the embedded emissions of precursor materials used in the production of the CBAM goods from the supplier of these precursors. In practice, this can be very difficult, so it might be necessary to implement clauses in the relevant supply contracts.

5. **Monitoring indirect emissions**

Indirect emissions released from the generation of the electricity consumed during the production of all CBAM goods similarly must be monitored for the purposes of the CBAM and attributed to the goods produced. Again, emissions embedded in precursors must be included, where relevant.

During the transitional period, indirect emissions of *all* CBAM goods are to be monitored and reported, including the embedded indirect emissions of precursors. However, in the definitive period, indirect emissions will be included only for certain products (the goods included in Annex II to the CBAM Regulation).

Monitoring methods

Monitoring can be done by two methods:

- A continuous monitoring by measuring the concentration of the relevant greenhouse gas emissions themselves or

- a calculation of the emissions based on activity data from separate source streams.

Annex III to the CBAM Implementing Regulation details the different approaches.

The EU Commission's template for the communication between operators and importers is designed to perform most of the relevant calculations automatically when the necessary data is inserted. The worksheet "Summary_Communication" contains all the information that an EU importer needs for the CBAM report. It is therefore recommended to use the spreadsheet when communicating with EU customers.

Reporting period for non-EU producers

The default reporting period for non-EU producers is twelve months. For the first report to be submitted 31 January 2023, non-EU producers should aim to share a full year of data for 2023 in January 2024.

Is compliance obligatory?

Monitoring emissions is a burdensome and complicated process. The CBAM Regulation only applies to non-EU producers indirectly as the Regulation is aimed at European importers of CBAM goods. However, the EU customers need the relevant data from their contractual partners. If a non-EU producer does not comply with the request, it might lose business. It is therefore advisable to follow CBAM and to monitor and collect the relevant data. Nevertheless, non-EU producers should closely scrutinise requests from EU importers to ensure that they do not demand more than CBAM actually requires. Also, non-EU producers should make sure that suitable liability clauses are agreed upon.

BLOMSTEIN and its ESG team will continue to closely follow developments related to the CBAM. We are at your disposal at any time to answer questions on the practical implementation as well as on the scope of application of CBAM. Please do not hesitate to contact Anna Huttenlauch, Roland Stein, Florian Wolf, Bruno Galvão and Leonard von Rummel.