



11 July 2023

Attn Mr Vicente Hurtado Roa
Director General
DG TAXUD
European Commission

Subject: Comments on the Proposal for the Implementing Regulation as regards the reporting obligations during the transitional period of the carbon border adjustment mechanism ('CBAM Reporting Obligations Regulation')

Dear Mr Hurtado Roa,

PwC International Ltd, on behalf of its network of member firms (PwC IL), with input from the PwC Green Deal Centre of Excellence, welcomes the opportunity to provide comments on the EC proposal for the CBAM Implementing Regulation as regards the reporting obligations during the transitional period of the carbon border adjustment mechanism (hereinafter referred to as CBAM Reporting Obligations Regulation).

Our main findings and recommendations are as follows:

- We note that the reporting requirements and the number of datapoints are rather extensive. In the context of the EU's ambition to reduce corporate reporting requirements by 25%, simplifying and reducing the reporting detail would be welcome.
- For the terminology used in the CBAM Reporting Obligations Regulation we recommend the use of clear, uniform terms and definitions, which are as much as possible aligned with those definitions in existing EU customs or international trade legislation. Examples are the terms 'reporting declarant' in article 2 and 'shipped from' in article 3. (Please see our full comments hereafter). Where possible, we would recommend to align the terms and definitions across applicable laws and regulations.
- Given the practical importance of the provisions in this Regulation, we have focused our comments on needed as well as desirable clarification, explanation and supplementation of specific situations and circumstances.

Our response hereafter follows the numbering of the articles of the CBAM Reporting Obligations Regulation, as proposed by the European Commission. We have not commented on the Annexes supporting the proposed regulation, nor on the already approved CBAM regulation, in accordance with the request for feedback by the European Commission.

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Article 2

This article is quite confusing as it introduces the 'reporting declarant'. The article seems more or less in line with the requirements of the CBAM declarant but is not identical. Also it gives no clarity about the difference between the CBAM declarant and the reporting declarant.

Reading the text carefully we conclude that the reporting declarant should be established in the EU similar to the CBAM declarant. If the importer is not established in the EU it feels that by default the indirect representative as mentioned in article 18 of the Union Customs Code is the reporting declarant. This feels a bit strange as the data for the reporting needs to be filed after the products are released into free circulation and at that point, in 99 percent of all cases, the declaration is already accepted by the authorities.

The data that needs to be reported is challenging to obtain. It needs to be obtained from parties within the supply chain with whom the indirect representative does not have any relationship. As such we question whether this 'indirect representative' reporting declarant can be held liable for the data provided. In addition, what if the importer does not provide data to the indirect representative and as such the indirect representative cannot fulfil its obligation to file the report.

We feel that the default burden on the indirect representative, i.e. in the majority of cases a broker, is too high on a business that is already a high volume, low margin business. Can you please elaborate what you see as the role, including the liabilities of the indirect representative, in case they (need to) act as reporting declarant.

Could it be considered that in case of a non-EU CBAM importer, this importer can appoint an indirect representative for CBAM purposes if the indirect representative fulfils the criteria as set in article 17 of Regulation 2023/956?

Please consider the inclusion of an explanation based on the below scenario:

What is the envisioned mechanism for a credit to be obtained for a foreign carbon price paid when there is inconsistency between who pays the local (foreign) carbon price and who is eligible to claim the credit in the CBAM report as the authorised CBAM declarant?

We would anticipate this scenario to arise between both commonly owned group companies, and also between unrelated third party companies.

Article 3

Additional clarification requested

For consistency, we recommend using terms as close as possible to existing terms in enacted EU customs legislation. For example, in Article 2 sub 2 letter a, the term 'shipped from' could be used rather than 'country of origin', which has a specific customs meaning.

There is also a lack of clarity around the term 'imported goods', which also seems to be referred to in Annex I as 'imported CBAM goods'. This is similar with 'imported emissions' and 'imported CBAM emissions', which appear to be used interchangeably throughout the draft.

The term 'produced' in Article 3 sub 2 letter b, in the context of installations is not entirely clear. E.g. is this the last economic transformation, or where raw materials were last used? We recommend clarifying this term to provide a specific definition.

Article 5

We recommend adding further explanation of the distinction between 'complex goods' and 'simple goods', e.g. in the form of an easily understood table.

Query for clarification/confirmation

In the current draft the use of the default value is limited to 20 percent. Will this also be the case as of 1 January 2026 or will the threshold for the default value be removed as this will be the most expensive option and as such there is an incentive to declare real values?

Article 7

Annex I includes the information to be submitted in the CBAM reports, where the reporting declarant shall fill in the fields marked as mandatory for completing the CBAM report (M). Optional fields (O) can be filled in by the reporting declarant to ensure greater transparency of the data reported and conditional fields (C) must be filled in by the reporting declarant if certain conditions are met. In the grey marked headings however, some elements are marked as optional, but then in the subheading underneath, elements are marked as mandatory. How does this work? Does this mean the heading is optional, but if you chose to apply the heading, then all the details related to that heading are mandatory?

Query for clarification/confirmation

It would be helpful to provide an example of how the rebate works out in practice. We recommend preparing and including a detailed example in this context.

We would like to understand whether a CBAM declarant (which could be an EU established company or indirect representative) can do the CBAM reporting for imports throughout the EU. For example, in case an indirect representative (such as the logistics service provider DHL) is CBAM declarant in France for the import of CBAM goods, can the same CBAM declarant in France report the CBAM goods which are being imported in Poland and the import declaration is filed in Poland by another CBAM declarant? Or should

another CBAM declarant physically located in Poland be responsible for the CBAM reporting of these goods?

Article 13

Article 13 states that: "*A CBAM report is incorrect in any of the following cases: [...] (b) the declared specific embedded emissions deviate from the default values in Article 5 without any justification;*"

We couldn't find any provision that requires providing a justification for a declaration that deviates from default values. Therefore, we are not sure about how to interpret this: (i) do declarants have to provide a justification every time a measurement deviates from the default values or (ii) it is meant for a case in which the declarant does not provide any actual measurements nor it declares the default values (i.e., it declares a value without any substantiation).

Article 14

Our interpretation of this Article is there is no need to verify CBAM reports until the end of the transitional phase. This leads us to the conclusion that verification by an accredited verifier is not required until the end of 2025. Is this correct? In that case, the implementing acts should explicitly confirm this to avoid any confusion by CBAM declarants. In addition, to the extent the Commission can provide further guidance on the verification requirements that would be appreciated.

Article 14 sub 3 states that after 31 December 2025, incomplete or incorrect CBAM reports may be corrected by the competent authority. Additional clarification on the Commission's intention for this Article during the Transitional Period would be much appreciated. Can (and will) Competent Authorities correct incorrect reports during the Transitional Periods? We also note that the Article implies Competent Authorities will exchange information where CBAM reports are not complete. Additional explicit information would be welcome in regard to this, particularly given the need to maintain commercial sensitivity and privacy with the information disclosed in the CBAM report.

We note there is no mention of contacting importers to request corrections in their lodged CBAM Reports. We note that the effect of Article 16 is that penalties may be applied for failure to report correctly. Is it the Commission's expectation that penalties would be applied without first contacting the CBAM declarant to discuss the contents of the CBAM Report? Could the Commission provide clear guidance on its anticipated correction procedure?

Article 15

Considering that the CBAM report is likely to contain business-sensitive information, how secure will the CBAM Reporting information be kept? Is there any intention to publicly release information from the CBAM reports, on an individual or aggregate basis, as is done for the EU Emissions Trading Scheme?

Considering the Reporting Declarant may depend on suppliers for the information needed for their CBAM report, how can the CBAM declarant respond when/if suppliers are unwilling to share information required



for the Authorised Declarant to properly complete the CBAM report? Does the Commission have a view on how EU Data Privacy rules interact here?

Article 16

The Commission should consider the time period for which penalties for non-compliance can be applied retroactively. Additionally, is a statute of limitations intended to apply? We also assume based on the language of the Article that the type and size of the penalties are set nationally, as mandating penalties is not in the purview of the Commission. Is that correct, or are there guidelines that are expected to apply?

Conclusion

If you would like to discuss these issues in more detail, please do not hesitate to contact me at william.h.morris@pwc.com or one of the persons listed below. We again thank the Commission for the opportunity to respond to the draft implementing act.

Your sincerely,

A handwritten signature in black ink that reads "Will Morris".

Will Morris
Global Tax Policy Leader

PwC IL is registered under number 60402754518-05 in the EU Transparency Register

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