

ICC input: European Commission – Feedback on proposal

COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX laying down the rules for the application of Regulation (EU) 2023/956 of the European Parliament

Draft implementing regulation – Ares (2023)4079551

1. Background

As the institutional representative of over 45 million businesses in more than 170 countries, the International Chamber of Commerce (ICC)'s mission is to make business work for everyone, every day, everywhere.

ICC is deeply committed to the Paris Agreement and has been unwavering in its support for climate action. One of ICC's strategic priorities is to accelerate sustainability and an important area of work has been focused on approaches for effective carbon pricing mechanisms.¹

As the voice of the real economy, ICC represents companies of all sizes across all sectors, and this input drew on that diverse membership to provide insights into implementation challenges that businesses may face under the Act.

This input exclusively addresses the implementation and operationalisation of the European Commission's (EC) draft act for the application of Regulation (EU) 2023/956 regarding the Carbon Border Adjustment Mechanism (CBAM) (the "Act").

2. Entry into effect

The reporting obligations under the draft Act are scheduled to begin with a transitional period in October 2023 and will be gradually expanded until the mechanism is fully in place in January 2026.

While the EC has notified its intention to "gradually phase-in" the CBAM to allow businesses time to adjust, we note that there has not been much time between the CBAM being adopted in May 2023 and the start of the transitional period in October 2023. In June 2023, the draft implementation Act was published, but overall only limited guidance and information have been made available, making it difficult for companies to prepare ahead of the start of the reporting obligations. The final implementing Act is expected to be published in July or August 2023 when many employees

¹ For further reference, please see:

ICC (2021): Carbon Pricing Principles, available here: <https://iccwbo.org/news-publications/policies-reports/icc-carbon-pricing-principles/>, (11/07/23);

ICC (2022): Critical Design Features for Effective Carbon Pricing – A Business Perspective, available here: <https://iccwbo.org/news-publications/policies-reports/critical-design-features-for-effective-carbon-pricing-a-business-perspective/>, (11/07/23).

are on holidays in Europe, leaving essentially only one month (September) to map and operationally prepare for the entry into effect of the Act.

This short timeline is particularly challenging for Small- and Medium-sized Enterprises (SMEs) which lack the resources to quickly navigate new regulations and are only just discovering that they will be subject to the Act.

3. Entering into new territory

In implementing the CBAM system, the EU is venturing into uncharted territory. It is therefore appropriate to start with a transitional phase, primarily aimed at data collection. However, this transitional period is very ambitious: the quarterly CBAM report (Annex I, draft implementing Regulation), which must be submitted for imports as of October 2023, comprises well over 200 data fields – to be multiplied with the goods and consignments. In practice, this means that electronic data upload is mandatory, and tracking/recording will need to start in October 2023.

However, it is not yet clear when/if national reporting portals of individual EU Member States (MS) will be ready, and which import data they will contain. It is also expected that there will be discrepancies between the data in Customs declarations and the actual CBAM goods.

Addressing the complexities associated with these new reporting requirements will require substantial efforts. Obtaining the needed data, which must be sourced from foreign manufacturers, presents significant challenges due to the often limited visibility importers have into these manufacturers or their production locations.

The current Act does not account for trade configurations involving intermediaries. It also does not consider the potential difficulties faced by companies with lower import volumes in obtaining required information from overseas suppliers. There is an added concern that the EC has not sufficiently communicated the data and calculation prerequisites to foreign producers.

Given these administrative complexities, it is anticipated that a significant number of companies may default to the EU's standard values rather than undertake the complex process of calculating the embedded emissions themselves.

4. How does the Act's transitional period affect businesses?

There is a fundamental challenge for companies regarding the Act's implementation since it requires the collection of two distinct and unrelated data sets that each require specialised expertise:

1. customs data, which involves the use of Combined Nomenclature (CN) codes to identify and map the scope of affected goods within a company and its whole value chain; and
2. the calculation of and data for the carbon dioxide (CO₂) content of goods. It requires an understanding of the production processes in order to effectively quantify the CO₂ emissions associated with the goods.

Internally, these two areas are typically managed by distinct teams with the required technical expertise. To adequately prepare for the entry into effect of the Act, it is imperative that experts in these two disparate specialised areas – customs classification and carbon content analysis – collaborate closely to ensure cohesive and accurate data reporting that complies with the new regulations.

In the first phase starting in October 2023, the reporting obligations only apply to selected sectors: cement, iron and steel, aluminium, fertiliser, and electricity. However, some precursors and downstream products are also within the scope and have been selected based on three criteria:

- High risk of carbon leakage (high carbon emissions, high level of trade)
- Covering more than >45% of CO₂ emissions of Emissions Trading System (ETS) sectors
- Practical feasibility

The EC has extended the scope of goods identified by the Combined Nomenclature (CN) codes several times over the past months and also includes semi-finished goods that are not part of the ETS. For instance, in the steel category, in December 2022, the scope has been extended and now includes semi-finished products such as screws (depending on their steel content). For some components it is still not clear if they are included because companies need to know the purchased components, e.g., there may be steel and aluminium components in different categories. They may only discover it upon importing. This implies that many companies, which were initially not impacted during the transitional period, will find themselves subject to the CBAM and faced with the pressing need to prepare for compliance within a significantly condensed timeframe. The list may be extended again and affect companies that were not impacted originally.

While companies with goods falling under the ETS are used and trained to calculate their emissions, with the extended scope, some companies (in particular down-stream) are suddenly concerned and need to:

- 1.** Understand the CBAM Regulations, including its most recent updates and extended lists and set up monitoring systems to ensure most recent updates are captured (also during the transitional period);
- 2.** Evaluate its impact: mapping of operations to identify which products are concerned within their company and/or from which suppliers;
- 3.** Prepare their business operations, e.g., which department(s) or team is responsible and how will the teams work together;
- 4.** Learn how to do the carbon footprint analysis, how to calculate the emissions and train their employees and/or suppliers accordingly;
- 5.** Track and develop internal reporting and compliance strategies. Even though the reporting only starts in January 2024, the tracking needs to start already in October 2023. Thus, strategies need to be in place for data collection and reporting, or existing systems need to be adapted to meet the new requirements; and
- 6.** Assess the financial impact and risk management to be included into financial planning.

Most large companies have been monitoring political discussions in the context of the CBAM closely and are not surprised by the sudden start of the transitional phase, but many SMEs, which have limited resources, are just discovering it, and are still going through the first two steps to understand and evaluate the potential impact on their business.

It is not easy as well for large companies which often have many sites and complex networks spanning over several countries with many suppliers. In fact, due to the absence of comprehensive guidance and details on the data structure for the reporting, the ability of any company to effectively prepare for the transitional period is hampered significantly.

SMEs are the backbone of the European economy and need to be considered when adopting such ambitious timelines with limited guidance and assistance available to ensure a smooth implementation in practice.

5. Navigating uncertainty: the challenges for businesses getting ready for CBAM with limited visibility and guidance

The start of the transitional period (1 October 2023) is approaching quickly and until then businesses need to be ready to collect all necessary data to be able to calculate and report as of 1 January 2024. Thus, all foreign suppliers of affected goods or components need to be trained on what is needed in terms of data and how to collect and transmit such data. It is imperative that companies have their tracking and internal reporting processes in place by 1 October 2023, as in many instances, it is not feasible to retrospectively obtain the required data.

Internally, companies need to decide which team will lead the effort and if it be centralised or spread across teams, taking into account the two distinct areas of expertise and activities that need to be linked up to enable compliance with the Act.

The lack of sufficient guidance and clarity regarding the Act is one of the main challenges faced by companies. This challenge is further exacerbated by the uncertainty of the resources that may be made available soon by the EC and member countries. For example, currently, a company might be allocating resources towards internal awareness campaigns and employee training in preparation for the transitional period. However, there is mention of a potential EU portal that could possibly ease the training and reporting responsibilities that companies are now shouldering. The availability of informational materials prior to the transitional phase remains ambiguous.

Consequently, companies are committing resources to develop training content for their employees and suppliers based on the limited information presently available, yet there is a possibility that official information materials might be released in the coming weeks.

For the successful preparation of the CBAM's transitional phase, it is crucial that there is effective communication among various teams, departments, and even between different entities within business groups. Similarly, it is essential for policymakers to facilitate this process by offering greater transparency and guidance regarding the planned Regulation, which would immensely benefit companies in their efforts to comply with this new mechanism.

When looking at different MS, there are significant differences in the organisation and level of communication of Customs authorities and the relevant Ministries (configuration varies across MS) to businesses with regards to the CBAM implementation.

Companies are also expressing concerns in relation to the lack of clarity on the “spirit” of the transitional period, e.g., will there be a grace period for the first reports? In light of the uncertainty, mistakes are possible, and the penalties could be significant given that the volume is often in the tons.

For instance, default values will be employed in cases where, during the transition, third parties are either not yet certified or unable to provide the necessary information, which may result in penalties. However, the EU is reluctant to release the default values in advance, as it is concerned with potentially skewing the data collection efforts of companies. It seems that the preference is to first receive the raw data from companies and subsequently perform the calculations.

6. Going forward

Currently, the Act is still not finalised. The information websites and reporting portals are not yet online, and the national contact points are also not yet activated. For these reasons, ICC recommends a phased introduction of the CBAM while ensuring:

1. **Guidance and information sharing:** There is a critical need for enhanced guidance and proactive information dissemination at both the national and EU levels. A swift introduction of the CBAM self-assessment tool is needed and an analysis of national implementation procedures.
2. **Having the reporting tools ready:** the functioning of the reporting portals and the provision of import data in the portals by the EU must be guaranteed. If the reporting portals are not ready, the reporting obligation must be postponed.
3. **Protect confidential business information:** the new and complex administrative processes will involve the treatment and processing of confidential business information (CBI) and may expose companies' intellectual property (IP) and trade secrets (e.g., to verify the measurement and calculation, production processes may need to be verified across borders). It is critical that adequate protections of CBI and IP are in place as well as relevant agreements between countries to enable a secure exchange of relevant data prior to the start of the transitional period.
4. **Reduce bureaucracy and help SMEs:** SMEs need special support to understand and prepare for the massive bureaucratic undertaking that is the CBAM. The current draft implementing Regulation should include where feasible SME-specific regulations to reduce the bureaucratic burden on them.

For the first stage of the transitional period, it could be envisioned that only companies with a relevant import volume must report. This introductory phase could last at least one year to allow for the streamlining of data requirements. Based on the experience of this phase, the reporting obligation might be expanded.

The EC should discuss if importers with low import volumes should be permanently exempted from the reporting obligation. Here, the bureaucratic effort and the purpose of the Regulation are not in reasonable proportion – both for companies and for the administrations of the MS. The current exemptions for consignments up to 150 euros in value are by no means sufficient or practical. De minimis limits should be based on the annual import quantity in weight or kilowatt hours and should be based on the exemption methodology for intra-trade statistics, for example.

We urge the EC to provide more clarity and support to companies and to explore a review of the regulation(s) to better accommodate business realities. Fighting climate change is a shared responsibility and close collaboration and consultation among stakeholders is vital.

In the context of the CBAM, public-private sector collaboration is critical to ensure policies achieve their objectives without becoming trade barriers. ICC is committed to mobilise its network to provide the EC with insights and expertise from the real economy.

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ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

As the institutional representative of over 45 million businesses, reaching more than 170 countries, the International Chamber of Commerce (ICC) operates with a mission to make business work for everyone, every day, everywhere. We are the primary voice of the real economy in a range of intergovernmental organisations—from the World Trade Organisation to the UN climate process—championing the needs of local business in global decision making.

The convening power of our global network enables us to set rules and standards that facilitate over US\$10 trillion dollars in trade each year—in addition to providing tailored products and digital services that directly address the real challenges faced by businesses operating internationally.

We also provide the world's premier private global dispute resolution services, leveraging ICC's unique independence, integrity and expertise.