



CONFIAD PAN EUROPEAN NETWORK

**CONFEDERATION INTERNATIONALE DES AGENTS EN DOUANE – INTERNATIONAL FEDERATION OF
CUSTOMS BROKERS AND CUSTOMS REPRESENTATIVES**

**CONFIAD’S POSITION PAPER – COMMENTS ON THE REPORTING OBLIGATIONS UNDER CBAM
REGULATION**

July 2023

This paper discusses the position of Confédération Internationale des Agents en Douane (“**CONFIAD**”)¹ relating to the issues arising in the context of the implementation of the Carbon Border Adjustment Mechanism (“**CBAM**”).

The present submission has been prepared in the context of the public consultation of the European Commission opened on 13 June 2023 relating to the reporting obligations during the transitional period of the CBAM. In view of the limits on the length of an electronic feedback, CONFIAD prepared this position paper to provide a more detailed reasoning of its views. As feedback will be taken into account for finalizing of the draft implementing regulation, CONFIAD therefore respectfully asks the European Commission to consider its electronic feedback and this position paper on the CBAM implementation which will be explained below.

By way of background, CONFIAD was founded in 1982 as the organization of the European Customs Brokers, with the purpose of defending and coordinating the professional interests of its members, supporting the harmonization of the legislative, professional and customs regulations at European level. The members of CONFIAD are national associations representing customs brokers in nine EU Member States. CONFIAD has a permanent presence in Brussels in the form of an AISBL and regularly contributes to the policy-making activities of the European Institutions in the areas of customs.

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On 16 May 2023, the EU published the CBAM Regulation No. 2023/956, which entered into force on the following day.² The Regulation provides for a transition period from 1 October 2023 to 31 December 2025, whereas the system should be permanently operational as of 1 January 2026. Despite the transitional period of the application of the CBAM mechanism, the Regulation imposes reporting obligations on importers or indirect customs representatives to submit periodic reports on direct and indirect carbon emissions for specific imported goods. The reporting obligations become effective as of 1 October 2023 while the first report is to be submitted by 31 January 2024.

¹ CONFEDERATION INTERNATIONALE DES AGENTS EN DOUANE AISBL, Transparency Register Number 900179622923-45

² Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance), OJ L 130, 16.5.2023, p. 52–104.

On 13 June 2023, the European Commission presented a draft Implementing Regulation which lays down the rules for the application of the CBAM Regulation concerning reporting obligations during the transitional period. In addition, the European Commission initiated a public consultation to seek the opinion of stakeholders on the draft Implementing Regulation.

CONFIAD raise serious concerns that the adoption of the Implementing Regulation laying down rules on the reporting obligations **will place unnecessary burden customs representatives and other economic operators**, and, therefore, the draft Implementing Regulation should be revised, considering the following:

Short Preparation Time to Fulfil Reporting Obligations

The approach of the European Commission is to ensure “*careful, predictable and proportionate transition for EU and non-EU businesses.*”³ During the transitional period, there is no need to make any payments for greenhouse gas emissions, but only to report the embedded carbon emissions, both direct and indirect, for the imported goods. As mentioned above, the CBAM Regulation was published on 16 May 2023, and the draft Implementing Regulation was presented on 13 June 2023 allowing for a one-month public consultation, which ends on 11 July 2023. As the Commission needs time to analyze the feedback received and take it into account when finalizing the Implementing Regulation, the actual time before the beginning of the reporting obligations as from 1 October and possible adoption of the rules is likely to be 2-2.5 months.

Such a period of time is too short for customs representatives and other economic operator to properly prepare for reporting obligations. However, all imports entering the EU since October 2023 should meet the CBAM reporting obligations. One of the suggested solutions is to postpone the reporting obligations for one year until October 2024 and allow a more reasonable timeline for businesses and customs representatives to adapt their business and operational models to meet the CBAM requirements.

Increased Burden on Customs Representatives, in Particular SMEs

The Commission admitted itself that “*[i]n view of the limited time available for third country operators to ensure compliance with the required monitoring and reporting obligations, and to best exploit synergies with monitoring and reporting systems, as well as to ensure efficient and accurate data reporting in the beginning of the transitional period, reporting of emissions during the transitional period should also consider existing monitoring and reporting rules in third countries, exploring the possibility to find synergies.*”⁴

The draft Implementing Regulation offers two solutions: a) either a derogation until the end of 2024 if the operator of installation is subject to a monitoring, reporting and verification systems associated to a mandatory pricing scheme, an emission reduction project or compulsory emission monitoring scheme; or 2) a shorter derogation until 31 July 2024, if the reporting declarant does not have all the information from third country operators to determine the actual embedded emissions, but may use and reference another method for determining the direct embedded emissions.⁵

³ https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

⁴ Draft Implementing Regulation, Recital 9

⁵ Draft Implementing Regulation, Article 4(2) and (3).

The Commission will develop a template to be completed by third country operators, but **it is the reporting declarant, including the indirect customs representative, that will be responsible for CBAM obligations when placing goods on the EU market.** Customs representatives have to rely on the data supplied by the operator in a third country, but verification of data will require a specific knowledge of methods and techniques to properly calculate the emissions. Moreover, access to production documents may be required. This might lead to situations of either non-provision of emission data, or provision of data by a third-country operator which cannot be properly checked. In cases where it might be possible to obtain reliable data from the manufacturer, it becomes extremely complicated when import involves a complex supply chain, and the reporting declarant accepts obligations in the middle of the supply chain. In addition, in order to protect reporting declarants, including customs representatives, it should be ensured that data provided by the operator/manufacturer of a third country is certified by an accredited body at the European level, which checks its truthfulness during the inspection and validation phase. Particular attention should be paid to SMEs who may face even more difficulties due to their size in ensuring reliability of data from third country operators. Simplifications should be ensured for them.

For reporting declarants, the fulfilment of CBAM reporting requirements will thus necessitate the acquisition of specialized knowledge to find out how the direct and indirect emissions are calculated, and more importantly, to be able to simulate whether the calculations are correct or not. The compliance requirements will require additional human resources and increased time for processing of declarations. Otherwise, (some) consignments will be rejected by customs representatives for not meeting the CBAM declarations, which will lead to potential loss of clients and revenue, and thus put the profession at a greater risk.

It is more so, **when customs representatives are SMEs, which do not dispose of necessary resources to ensure extensive compliance with the CBAM reporting obligations** – it may exclude them *de facto* from working in CBAM-affected sectors, thus undermining the level playing field.

One of the express safeguards for indirect customs representatives is envisaged in Article 8(3) of the draft Implementing Regulation:

“Where an indirect customs representative does not agree to carry out reporting obligations of the importer under this Regulation, the indirect customs representative shall inform the importer of the obligation to comply with this Regulation.”

It should be specified in the Implementing Regulation that if the indirect customs representatives find out after agreeing to carry out reporting obligations that the importer supplied incorrect or incomplete information, they may refuse at any time to carry out these reporting obligations of the importer under the Implementing Regulation.

A solution may be to intensify work by the European Commission with EU and non-EU businesses and third countries, invest in promoting sustainable and green agendas, increase third countries’ capabilities to record and report carbon emissions for subsequent gradual reduction. **It is unfair and unreasonable to place additional burden solely on reporting declarants for fulfilling the CBAM requirements.** The Commission itself should be active in working with third countries’ partners to help them meeting new requirements.

Learning Should Not Be at the Cost of Businesses, Customs Representatives or Other Economic Operators

The draft Implementing Regulation provides for an enforcement mechanism in the form of a fine from 10 to 50 EUR per tonne of unreported embedded emissions.⁶ The exact amount is determined by the competent authorities on the basis of a number of factors. In Recital 12, the Commission specified that generally “*actual amount of penalty should be based on the gravity and duration of the failure to report.*”⁷

Moreover, after 31 December 2025, according to Article 14(3) of the draft Implementing Regulation, the competent authorities may initiate the correction procedure regarding incomplete or incorrect CBAM reports and failure to submit a CBAM report. The declarants are given a possibility to remedy the irregularities. Otherwise, the situation may result in a fine.

Despite reassurances that “*reporting requirements should be limited to what is necessary to minimise the burden on importers in the transitional period*” and “*facilitate the smooth roll-out of the CBAM declaration requirements after the transitional period*”⁸, and the transition period should “*serve as a pilot and learning period for all stakeholders (importers, producers and authorities) and to collect useful information on embedded emissions to refine the methodology for the definitive period*”⁹, **the proposed text suggests that the learning may come at the cost of the learner.**

CONFIAD maintains that **there should be no fines in the transitional period**, let alone retroactive review of declarations submitted during the transitional period which may potentially lead to financial penalties. In the alternative, there should be no fines in CBAM reports submitted in 2024, whereas for reports submitted in 2025, a fine may be established at the level of 5 to 10 EUR per tonne.

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CONFIAD would like to thank the European Commission for its attention and for the opportunity granted to present its position. CONFIAD remains at the European Commission’s full disposal should there be questions or request for clarifications.

For CONFIAD

Massimo De Gregorio

President

⁶ Draft Implementing Regulation, Article 16(2).

⁷ Draft Implementing Regulation, Recital 12.

⁸ Draft Implementing Regulation, Recital 6.

⁹ https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en#:~:text=with%20WTO%2Drules.-,Latest%20developments,importers%20ending%2031%20January%202024.