Van Bael & Bellis

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EU Carbon Border Adjustment Mechanism (CBAM) – overview of recent developments

This client update highlights recent developments concerning the EU Carbon Border Adjustment Mechanism (CBAM) since our July 2026 update (see here). It covers the use of third-country carbon prices, legal challenges to CBAM and other recent developments.

Implementing Regulation on the use of third country carbon prices

On 16 November 2026, Commission Implementing Regulation (EU) 2026/2498 on third country carbon prices was published in the Official Journal.

The Implementing Regulation sets out how carbon prices effectively paid in third countries can be used to reduce the number of CBAM certificates to be surrendered. In practice, third-country operators must calculate the carbon price paid with respect to emissions embedded in their goods, taking account of any rebates or compensation. They must also prepare a carbon price report certified by an independent person. The certified amount is then used to calculate the reduction in the number of CBAM certificates due, applying the yearly average exchange rate and the yearly reference price of CBAM certificates. Authorised CBAM declarants may claim a reduction based on the carbon price effectively paid, where embedded emissions are calculated using actual values. In the alternative, they may rely on default third country carbon prices set by the Commission. Where embedded emissions are calculated using default values, a reduction may be claimed only on the basis of the relevant default carbon price. The country-specific default carbon prices – yet to be determined – will be available in the CBAM registry.

Annex II to the Implementing Regulation contains a non-exhaustive list of recognised third-country carbon price mechanisms. That list will be updated with the view to cover as many carbon price mechanisms as possible. Unlisted mechanisms may also qualify, subject to assessment against the applicable requirements.

As a transitional measure, the Implementing Regulation allows accredited CBAM verifiers, subject to approval, to certify carbon price reports for the 2026 and 2027 reporting periods without separate carbon price accreditation. The Implementing Regulation also sets conditions under which decarbonisation subsidies are excluded from rebates and compensation, and clarifies that carbon prices charged only on emissions embedded in exported goods are not eligible for a reduction.

The Implementing Regulation applies retroactively from 1 January 2026 and is due to be revised by December 2027.

The Commission is expected to publish country-by-country guidance on documentary evidence of payment before the end of 2026.

CBAM legal challenges

EU courts

On 12 November 2026, the Court of Justice dismissed Poland's action to annul CBAM on the ground that it had been adopted on the wrong legal basis. CBAM was adopted as an environmental measure under Article 192(1) of the Treaty on the Functioning of the European Union ("***TFEU***") in accordance with the ordinary legislative procedure which provides for qualified majority voting in the Council. Poland argued that CBAM should instead have been adopted under a special legislative procedure under Article 192(2)(a) of the TFEU which requires unanimity in the Council for "provisions primarily of a fiscal nature".

The Court held, following an assessment of CBAM's aim and its content, that the sole objective of CBAM is the protection of the environment. It further found that even if CBAM could be viewed as pursuing a two-fold purpose, its environmental purpose should be regarded as the predominant one, so that its alleged budgetary purpose is merely incidental. Consequently, the Court found that Article 192(1) of the TFEU is the correct legal basis. In reaching this conclusion, the Court looked at various aspects, including the stated aim of CBAM of preventing carbon leakage and encouraging third-country producers to reduce carbon emissions; the broader Paris Agreement objectives and European Climate Law binding targets to which CBAM aims to contribute; and the alignment between CBAM and the EU Emissions Trading System ("***ETS***"). It also dismissed arguments that CBAM has characteristics of a tax and that the lack of limitations on the number of available CBAM certificates encourages circumvention of CBAM and prevents it from fulfilling its environmental function.

WTO

On 25 September 2026, the WTO Dispute Settlement Body established a panel to hear the case brought by the Russian Federation against the EU's CBAM. Russia initiated the case in May 2025 but the European Union declined to enter into consultations, the first stage of the WTO dispute settlement process. The European Union also objected to Russia's request for the establishment of a panel, referring to Russia's aggression against Ukraine and questioning the legitimacy of Russia's recourse to WTO dispute settlement. The European Union declared that it will engage in the panel proceedings only to the extent necessary to ensure an adequate defence and proper representation of its measures and that it will not engage directly with the Russian Federation. The next step is the composition of the panel, i.e. selection of three panelists to hear the case. 28 WTO Members have reserved their rights to participate as third parties. The panel report is not expected before early 2028.

Other developments

EU developments

On 5 October 2026, the European Commission published the **CBAM certificate price** for Q3 2026, which is now EUR 82.32 (see here). This is higher than the prices for Q1 (EUR 75.36) and Q2 (EUR 75.28).

In addition, the European Commission published on 13 November 2026 an updated document on the state of play of CBAM accreditation. According to that document, most EU Member States and EFTA states have agreed to provide **CBAM accreditation** and are ready to accept applications. However, only France, Greece, Italy, the Netherlands, Poland, Slovakia and Sweden have agreed to accept applications from third-country verifiers. Sweden has also reached agreements with the national accreditation bodies of the UK (UKAS) and India (NABCB) to accelerate applications from those countries. Although several entities have already obtained accreditation as CBAM verifiers, concerns remain as to whether enough accredited verifiers will be available to meet demand. The Commission has yet to publish an official list of accredited CBAM verifiers.

Finally, concerning the proposed **regulation extending the scope of CBAM** and adding further anti-circumvention measures, trilogues are still ongoing. It is understood that negotiators are aiming to reach an agreement at the next trilogue meeting on 30 November 2026. However, reportedly there is still no agreement on crucial elements such as the scope of the proposed product expansion and a provision proposed by the European Commission which would allow it to temporarily exempt products in case of "serious and unforeseen circumstances". Therefore, it remains to be seen whether the regulation will be adopted by the end of the year as expected.

Developments relating to third countries

On 20 November 2026, the European Union and the United Kingdom announced the conclusion of negotiations on **linking the EU and the UK ETS** allowing for future exemption of EU and UK goods from respective CBAMs. The details of this arrangement are still to be finalised. The UK government intends to exempt goods originating in the EU, EEA and Switzerland from the UK CBAM from 1 January 2027. However, the EU CBAM exemption is expected to apply only from 1 January 2028, once the EU completes its legislative procedures.

From 1 January 2027, **CBAM will also apply in Norway and Iceland** to goods imported into their customs territories, in the same way as it applies to goods entering the European Union. The extension follows a decision by the EEA Joint Committee incorporating Regulation (EU) 2023/956 establishing CBAM into the EEA Agreement. Liechtenstein remains outside the CBAM area.

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