

## CLECAT COMMENTS

### **to the consultation on the Draft Implementing Regulation on the reporting obligations for the Carbon Border Adjustment Mechanism (CBAM) during the transitional period**

CLECAT, the European Association for Forwarding, Transport, Logistics and Customs supports the objective of the CBAM Regulation to address the risk of ‘carbon leakage’ which can undermine EU’s efforts to make Europe the first climate-neutral continent by 2050, when production is moved abroad to avoid carbon pricing. CLECAT welcomes the opportunity to comment on the draft rules for the implementation of the Carbon Border Adjustment Mechanism (CBAM) during its transitional phase as published on 13 June. This paper seeks to provide a comprehensive overview of the European intermediary sector’s considerations and questions regarding the CBAM reporting obligations.

#### **Summary**

- Since the proposal has been on the table, a gradual implementation schedule has been promised to allow economic operators time to adapt in a predictable manner. CLECAT reiterates that its members consider that the timeframe that has now been given to economic operators is inadequate and unrealistic to properly prepare for being compliant with the new rules.
- The draft Implementing Regulation places freight forwarders and customs agents with the onerous obligation of becoming CBAM reporting declarants when acting as indirect customs representatives for non-EU established importers. The foreseen timeline of less than three months to learn the details on the applicability of the new rules before the beginning of the reporting obligations foreseen during the transition period creates an enormous burden on the economic operators we represent, to prepare in a successful and compliant manner. This is not only related to the reporting obligation itself, in terms of roles and liabilities, but also to all the resources and activities required to collect, process, and submit the CBAM quarterly reports.
- Customs agents and freight forwarders are not able to obtain and verify complex information and calculation/claim of embedded emissions of a specific product manufactured by a party in a third country, nor assume major reporting obligations that they could then become liable for.
- The Implementing Regulation does not provide any facilitation for customs agents who will be obliged to become CBAM reporting declarants when acting as indirect customs representatives for non-EU established importers. The simplification proposed by the Commission using default values during the transitional period creates additional concerns rather than providing clarity.
- Finally, it is also very concerning that there is still no clarity about when and how the Commission intends to launch the communication campaigns for third country partners and non-EU established traders. Customs agents and freight forwarders operate through global logistics and transport networks, and it might be almost impossible to comply with CBAM reporting obligations if importers outside the EU are not informed in due to time about their own obligations.

## **CLECAT comments on specific Articles of the Draft Implementing Regulation**

### **Article 2 – Definitions**

*(...) (1) reporting declarant’ means any of the following persons: (...) (c) the indirect customs representative, where the customs declaration is lodged by the indirect customs representative appointed in accordance with Article 18 of Regulation (EU) No 952/2013, when the importer is established outside the Union or where the indirect customs representative has agreed to the reporting obligations in accordance with Article 32 of Regulation 2023/956.*

Under the new rules the indirect customs representative will be considered ‘reporting declarant’ when the importer is established outside the Union, which, as we have noted on many occasions, disproportionately stretches the scope and nature/legal definition of the customs representative under the Union Customs Code. Responsibilities and potential liability of different stakeholders need to be proportionate to their role and their ability to verify the data provided. Transferring the responsibility of the CBAM declaration to the customs representative imposes a disproportionate burden on the EU based customs agents.

### **Article 3 – Reporting obligations of reporting declarants**

### **Article 4 – Calculation of embedded emissions**

### **Article 7 – Reporting of information regarding carbon price**

While customs representatives are well placed to act on behalf of third country established importers to address customs procedures, they are not in the position to address the CBAM sustainability obligations of their customers. It cannot reasonably be assumed, that a customs representative is well informed of the production processes and related CO<sub>2</sub> emissions for goods manufactured outside the EU. A customs representative will rely wholly on information provided by its customer as they are themselves not able to obtain or verify complex information and calculation/claim of embedded emissions of a specific product manufactured by a party in a third country, nor assume major reporting obligations that they could then become liable for.

Furthermore, since the time the CBAM proposal was tabled, we were advised by the European Commission that the gradual approach will give trade time to adapt in a predictable manner and that the transitional period will be used to learn more on the different methods for calculating emissions facilitating a careful, predictable, and proportionate transition for EU and non-EU business. CLECAT considers that this is far from the reality as the first CBAM quarterly report will have to be submitted in January 2024, which means that the process of collecting information already starts in October of this year. Whereas the European Commission promises guidance and support, today, three months before the application of CBAM, there is no practical information or training for CBAM reporting declarants to perform and report their emissions.

### **Article 5 – Use of default values**

- 1. Default values for the transitional period made available and published by the Commission may be used for input materials or subprocesses contributing to less than 20% of the total emissions of the good, where the reporting declarant reports actual emissions for complex goods.*

This article on the use of default values raises more questions than it provides answers. In particular

1. Will the European Commission provide default values for each HS codes that fall within the scope of CBAM?
2. When will the default values for the transitional period be published?
3. Does the limitation to using default values for “less than 20% of the total emissions of the good” mean that the reporting declarant needs to know the actual total emissions of the good? This would make the use default values rather ineffective and redundant.
4. If the European Commission can provide business with relatively easy to use default values, CLECAT would propose to extend the use of default values during the transition period to all CBAM goods.

#### **Article 8 – Submission of CBAM Reports**

*.. (3) 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. The information shall include the information provided by the Customs Authorities.*

1. CLECAT questions why the draft implementing regulation imposes this notification whereas the importer should be aware of all applicable requirements that need to be fulfilled. It should be the responsibility of a neutral party to provide this information, such as the customs authority.
2. CLECAT considers that in case no reporting is done, the consequences and/or penalties will be placed on the importer and not on the customs representative. It could also be considered to pass on the responsibility of reporting towards a specific designated party, e.g. with a Power of attorney on behalf of the importer, so the customs representative will be released from his obligation.
3. The last line of point 3 of article 8 notes that ‘*The information shall include the information provided by the Customs Authorities.*’ On this point of communication, it is not clear what information will be given to the indirect customs representative.

#### **Article 9 Modification and correction of CBAM reports**

*.. 1. A reporting declarant may modify a submitted CBAM report until two months after the end of the relevant reporting quarter. 2. By way of derogation from paragraph 1, a reporting declarant may modify the CBAM reports for the first two reporting periods until the submission deadline for the third CBAM report. 3. Upon request of the reporting declarant, the competent authority or the Commission shall, allow the reporting declarant to resubmit a CBAM report or to correct it, where the CBAM report submitted is incorrect or incomplete. The resubmission of the corrected CBAM report or the correction, as applicable, shall be made no later than a month after the approval to modify or resubmission.*

According to article 9, it will be possible to modify, correct or resubmit CBAM reports under certain conditions. The reality is that by the end of January 2024, a customs agents may not have all the technical information that is required for a shipment that is already released for free circulation in October 2023.

### **Article 32 Training support on the use and functioning of the common components**

Article 32 notes that the *'The Commission shall support the Member States on the use and functioning of the common components of the electronic systems by providing the appropriate training material.'*

We wonder why Article 32 only refers to the support to Member States, whereas the CBAM Trader Portal is one of the common components of the Registry and therefore, there must be training material and support for Traders in order to understand the use and functioning of CBAM TP.

There is also an urgent need for the Commission to inform traders on the communication campaigns for third country partners and non-Union established traders.

### **Alternative proposals**

#### **Calculation of embedded emissions after the transitional period**

CLECAT calls for the introduction of a specific weight threshold under which default values could be applied after the transition period ends. For example, a weight threshold equal to 1000 Kg would allow to highly simplify the work of the CBAM reporting declarant that aims to meet its obligations but would not have any significant impact on the exercise aimed at calculating total emissions of goods.

### **Conclusions**

CLECAT continues to express its concern over the fact that the shifting the responsibility of the CBAM reporting/declaration to the customs representative imposes a highly inconsistent and undue burden on EU based customs agents. We stress the importance of making a distinction between customs representatives' responsibilities and CBAM responsibilities. Taking on CBAM responsibility should be based on a commercial agreement, not imposed by legislation.

CLECAT remains highly concerned about the rules governing the implementation of the CBAM during its transitional phase. Our members will have extremely limited time to prepare in a successful and compliant manner. The process to understand and collect information to be reported starts in October and the first CBAM quarterly report has to be submitted in January 2024. With less than 3 months away from the start of the transitional period there is neither practical information, nor support, and nor training for CBAM reporting declarants to perform and report these calculations.

CLECAT members also lack information on the readiness of the Member States in case they want to establish a certain national CBAM authority. The IA does not provide any insight on when and how the training material or communication campaign will be available for EO's neither for third country partners and non-Union established traders. Due to the late communication from the European Commission, there is also a lack of communication from the national customs authorities to the operators that are affected by this regulation.