

Carbon Border Adjustment Mechanism (CBAM)

What CBAM brings and aims to achieve?

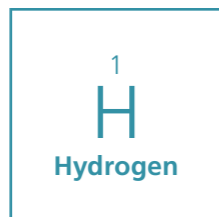
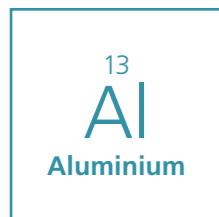
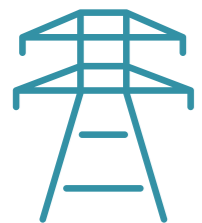
The European Union's Carbon Border Adjustment Mechanism (CBAM) is a key element of the European Green Deal and the Fit for 55 Package, introducing new regulatory obligations for trade with the EU. Designed to mitigate carbon leakage, CBAM addresses the concern of businesses potentially relocating production to countries with more lenient climate regulations. This is achieved by imposing a carbon cost on imports from some of the most emissions-intensive industries into the European Union (EU) (see Scope below).

CBAM's implementation will require rigorous monitoring and reporting emissions associated with imported CBAM goods. These measures will have significant impact on industries and companies, both within and outside the EU.



Scope

CBAM applies to certain goods imported into the EU from third countries. It targets sectors at risk of carbon leakage, such as iron and steel, cement, fertilizers, aluminum, hydrogen, and electricity, aligning with the sectors covered by the EU Emissions Trading System (ETS). Each of these categories is defined by specific Combined Nomenclature (CN) codes in Annex I of CBAM Regulation and is associated with greenhouse gases, primarily carbon dioxide and, in some cases, perfluorocarbons and nitrous oxide. The European Commission (EC) intends to broaden the scope of CBAM to include a wider range of goods that have high carbon emissions.



EU Emissions Trading System (ETS) connection

The ETS aims to reduce emissions from production processes within the EU. CBAM complements the ETS by applying an equivalent set of rules to imports.

During the definitive phase of CBAM, importers of in-scope goods from outside the EU will be required to purchase digital certificates reflecting the carbon emissions embedded in CBAM goods. The carbon cost associated with these certificates will mirror the carbon pricing applied to similar domestic goods under the ETS. The final price of CBAM certificates will be adjusted to reflect any carbon price paid in the exporting country.

The European Commission intends to broaden the scope of CBAM to include a wider range of goods that have high carbon emissions.



Exposed countries

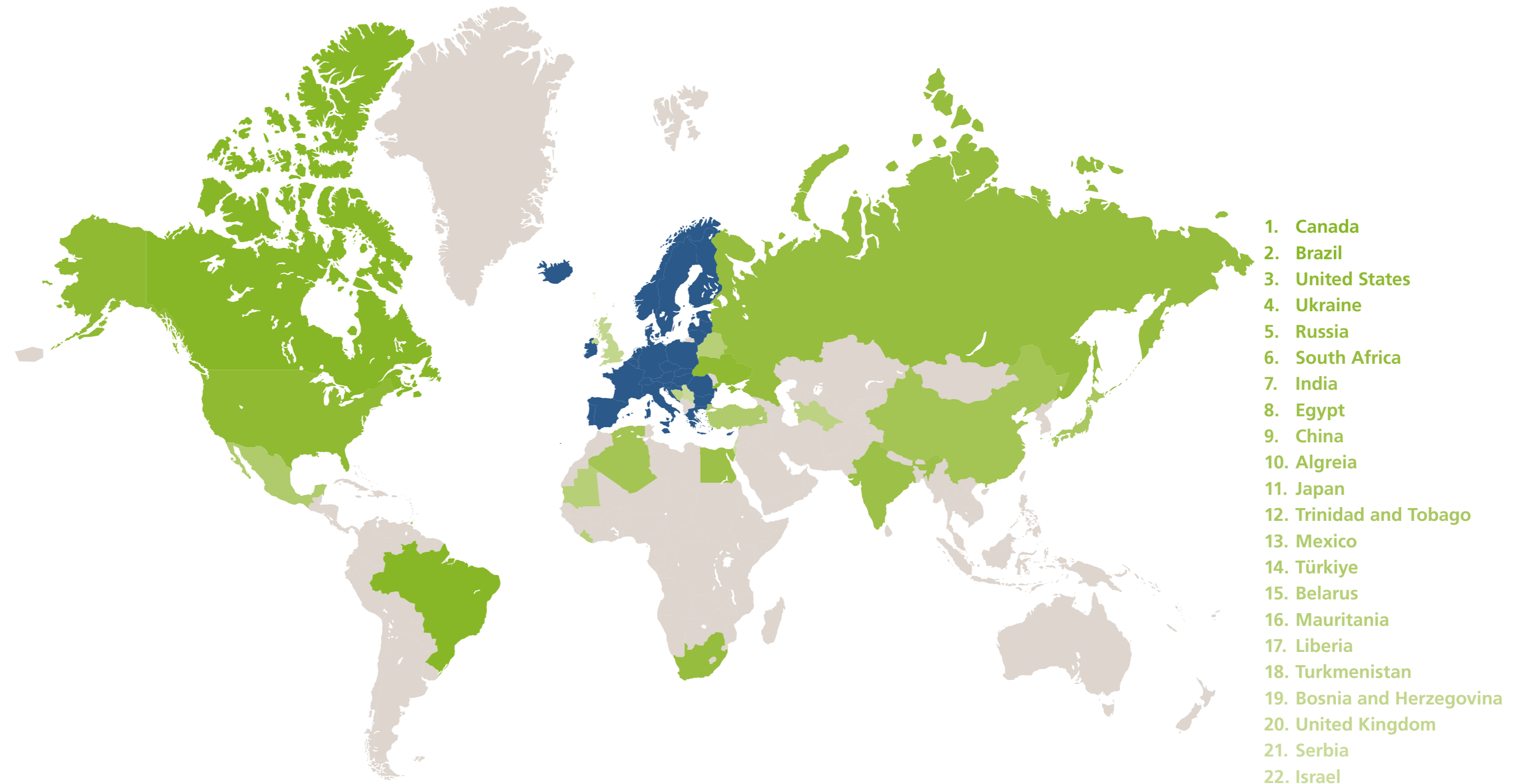
CBAM will impact the economies of third countries, particularly those heavily exporting CBAM goods to the EU or with high industrial CO2 emissions. Exporting the relevant goods into the EU will become more expensive, making exports less competitive.

To mitigate the impact of CBAM, countries may consider adopting measures such as providing incentives and financial support to reduce emissions and lower their carbon footprint. Additionally, they may consider introducing a national system for carbon pricing, which mirrors CBAM in order to potentially qualify for exemption or reductions in CBAM certificates' cost.

Third countries and territories outside the scope of CBAM

CBAM does not apply to goods originating from Iceland, Liechtenstein, Norway, Switzerland, nor from the territories of Büsingen, Heligoland, Livigno, Ceuta and Melilla.

Top CBAM Exporters to EU: A Global Overview



Timeline and Obligations



Transitional Period

CBAM transitional phase is designed to extend legal certainty to businesses, providing a structured roll-out until **31 December 2025**. Its objectives include data collection, laying the groundwork for full CBAM application, and raising awareness about the requirements for becoming an authorised CBAM declarant. Although tariffs are not applied, administrative duties are mandatory. Within this timeframe, importers must:

- Register as 'reporting declarants' with their EU Member State's competent authority for Transitional Registry access; and
- File quarterly reports on imported goods, including quantity, embedded emissions, and carbon prices paid in the origin country. The first CBAM report is due to be submitted for **31 January 2024**.



Reporting

The reporting framework under CBAM is detailed and specific. During the transitional phase, importers must submit quarterly CBAM Reports via the Transitional Registry, detailing embedded emissions data. From 2026, annual CBAM Reports will be submitted to the CBAM Registry, reflecting a shift to a permanent reporting structure.



Definitive Period

The transitional phase serves as a precursor to the definitive phase, commencing on **1 January 2026**. Importers are transitioned from 'reporting declarants' to 'authorised CBAM declarants', adapting to new responsibilities that include:

- Registration with national authorities as an 'authorised CBAM declarant';
- Acquiring CBAM certificates through the Common Central Platform;
- Annually declaring imported goods and their emissions by **31 May**; and
- Surrendering corresponding digital CBAM certificates for the verified emissions.



CBAM Certificates

During the definitive phase, importers will need to purchase CBAM certificates, each equivalent to one tonne of GHG emissions, to cover their declared emissions from the previous year. This system monetises the carbon footprint of imported goods, aligning non-EU producers with EU climate objectives.

How your CMS team can help?

CMS provides comprehensive legal assistance to both EU and non-EU companies in navigating the intricacies of CBAM Regulation. We offer clear, practical advice on understanding CBAM rules and requirements for each category of CBAM goods, managing reporting requirements, and developing robust strategies for seamless compliance.

Our team, spread across various jurisdictions, is well-versed in sustainability and ESG-related regulations. Our proactive approach involves closely monitoring developments, updating our clients, and positioning ourselves as industry leaders in providing strategic advice.

At CMS we provide the following services:

- Assist clients with any CBAM-related questions, including but not limited to: (i) interpretation of the CBAM legislation; (ii) market practice; and (iii) correspondence with EU importers and authorities (including customs authorities and the EU Commission);
- Business operations and gap analysis. Based on such gap analysis, we prepare tailored checklists and make recommendations to ensure data collection and calculation are in accordance with the Implementation Regulation and the reporting requirements thereunder;
- Bespoke training sessions and workshops to explain CBAM requirements to client teams;
- Advise clients on best practices and provide ongoing compliance updates. For non-EU companies who are installation operators, we provide assistance to ensure they deliver correct and complete data to EU importers and customs representatives;
- Following the end of the transitional period, advise clients on how to become “authorised declarant” (starting from 1 January 2025) and the acquisition and surrender of CBAM certificates; and
- Implementation of CBAM covenants within supply agreements, policies as well as terms and conditions, including providing guidance, customising provisions to meet specific business needs and ensuring compliance with regulatory standards.

At CMS we provide a broad range of services to help our clients navigate CBAM, ranging from interpreting reporting requirements, conducting a gap analysis, providing tailored checklists and recommendations to best practices and ongoing compliance updates.

CMS contacts



Dr. Döne Yalçın

Partner

T +43 1 404430

E doene.yalcin@cms-rrh.com



Siobhan Kahmann

Partner

T +44 7909 577944

E siobhan.kahmann@cms-cmno.com



Merve Akkuş

Senior Associate

T +902124014270

E merve.akkus@cms-rrh.com



Tiago de Magalhães

Senior Associate

T +351 21 095 8100

E tiago.magalhaes@cmsportugal.com



Jovana Bingulac

Senior Associate

T +382 20 416 070

E jovana.stevovic@cms-rrh.com



Mihaela Ungureanu

Stagiaire

T +32 2 898 33 70

E mihaela.ungureanu@cms-cmno.com



Jan Gröschel

Senior Associate

T +49 40 37630 318

E jan.groeschel@cms-hs.com



José Luis Pérez-Campoamor

Counsel

T +34 91 451 93 08

E joseluis.perez-campoamor@cms-asl.com



Florencia Cereceda

Associate

T +56 22 48520 73

E florencia.cereceda@cms-ca.com



Álex Flórez

Senior Associate

T +57 1 321 8910

E alex.florez@cms-ra.com



Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.

cms-lawnow.com

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000

F +44 (0)20 7367 2000

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Cameron McKenna Nabarro Olswang LLP is a limited liability partnership registered in England and Wales with registration number OC310335. It is a body corporate which uses the word “partner” to refer to a member, or an employee or consultant with equivalent standing and qualifications. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales with SRA number 423370 and by the Law Society of Scotland with registered number 47313. It is able to provide international legal services to clients utilising, where appropriate, the services of its associated international offices. The associated international offices of CMS Cameron McKenna Nabarro Olswang LLP are separate and distinct from it. A list of members and their professional qualifications is open to inspection at the registered office, Cannon Place, 78 Cannon Street, London EC4N 6AF. Members are either solicitors or registered foreign lawyers. VAT registration number: 974 899 925. Further information about the firm can be found at cms.law

© CMS Cameron McKenna Nabarro Olswang LLP

CMS Cameron McKenna Nabarro Olswang LLP is a member of CMS Legal Services EEIG (CMS EEIG), a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG’s member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name “CMS” and the term “firm” are used to refer to some or all of the member firms or their offices. Further information can be found at cms.law