

CLECAT – Outstanding Questions CBAM

1. Is there a specific code or notice required on the customs declaration if an indirect representative declines to act as a CBAM declarant for their EU-based client? If so, what is the format, and where in the declaration or to which data element should this information be added? If there is no such requirement, **how do authorities determine not to hold the indirect representative accountable for the CBAM report?**

Where the importer is established in the EU, indirect customs representatives only act as reporting declarants when they agree to it. Therefore, if it cannot be shown (e.g. through contractual arrangements) that such agreement was given, the importer will be liable for CBAM reporting obligations.

It should be remembered that indirect customs representatives who do not agree to carry out CBAM obligations, are required to notify the importer of the obligation to report in accordance with Art. 8(3) of the Implementing Regulation. The Commission has provided a communication template which can be used for this purpose.

2. Can the COM give some clarification on the following as we note a discrepancy between the wording of the CBAM regulation and the CBAM implementing regulation, where the EU-based importer, for whom the indirect representative refused to act as a CBAM declarant becomes excluded from the list of CBAM declarants, as in this case the importer is not lodging 'a customs declaration for release for free circulation of goods in its own name and on its own behalf'.

We are aware of this discrepancy. However, the Implementing Regulation should be interpreted in light of the CBAM Regulation. Therefore, an importer can also act as reporting declarant when the customs declaration was lodged on his behalf. We are currently considering revising the Implementing Regulation, and we might change Art. 2.1(b) to align it with the CBAM Regulation.

3. Can the European Commission clarify the definition of the reporting declarant when the indirect representative is using their own EIDR authorization (as referred to in Article 182 of Regulation No 952/2013)

When customs declarations are lodged via an EIDR authorisation, indirect representation is not possible because the customs representatives cannot lodge the customs declaration in their name since the EIDR authorisation was not granted to them, but to the holder of such authorisation. A holder of an EIDR authorisation cannot use his own EIDR authorisation as an indirect customs representative of himself/herself.

4. Is CBAM reporting required for non-Union goods that were initially exported as Union goods, in cases where the trader is unable to provide the necessary proof for duty-free treatment as stipulated under Article 203 of the UCC? The trader is unable to specify the name of a third-country manufacturer or the CO2 emissions in a third country, given that the goods originate from the EU. However, from a customs perspective, their status remains unproven.

Art. 203 applies to returned goods. If, according to the rules of origin, a returned good's origin is in the EU, no CBAM applies.

If a returned good's origin is a third country, CBAM applies as provided in Art. 6 and 34 of the CBAM Regulation. In fact, in the transitional period, no reporting obligation applies to returned goods as referred to in Art. 203 UCC. During the definitive period, CBAM declarants can report 'zero' for such returned goods.

If it cannot be proven that a good is a returned good, the CBAM provisions applicable to returned goods will not apply.

5. Referring to the EC's Q&A – second hand goods – recommendation to keep default values: Q8: Does the CBAM apply to 'second hand' goods? A: The CBAM Regulation applies to all goods that are imported into the EU, namely released for free circulation in the EU single market. In the majority of cases production and carbon emission data is unavailable for second hand goods. We recommend that the possibility to use default values are kept after indefinitely for second hand goods.

We are currently discussing how to deal with this issue.

6. Referring to the EC's Q&A – parallel direct and indirect customs representation: Q80: Can an importer use different customs representatives for the customs declaration and the CBAM reporting?

Please note that the section in the FAQ was amended. It is not possible to use an indirect customs representative exclusively for CBAM reporting. But an EU-established importer who uses direct customs representation can delegate the submission of the CBAM report to a CBAM service provider. However, the importer would, in such cases, remain legally liable for the CBAM report. Please see Q50 and Q88 of the FAQ.

7. **Can the Commission confirm/clarify in the next Q&A update that the individual signing the CBAM report should be the actual person completing it, rather than the official representative of the company whose EORI number is utilized as the reporting declarant.** For example, it should not be the MD, who officially represents the company, but rather the employee who has been delegated the authority to complete the CBAM report. We have received repeated questions regarding this.

Please see Q49 of the FAQ:

Any physical person that can prove he/she represents the legal person can contact the National Competent Authority (NCA) of the Member State where that legal person is established to request access to the CBAM Registry as CBAM reporting declarant. The NCA is responsible for verifying the legitimacy of the requests and grant CBAM Declarant access permissions. The owner of the account that will be granted CBAM Declarant access by the NCA is responsible to keep the account confidential and delegate the access to additional accounts (employees) of the company.

Both the owner of the account as well as employees to whom access has been delegated can submit the CBAM report.

8. We would like to draw the European Commission's attention to user problems with Transitional Registry: Referring to the Q&A – problem with different links provided in the Q&A Q37: Importers may connect to the CBAM Transitional Registry through this link: <https://customs.ec.europa.eu/taxud/uumds/cas> - We recommend changing the wording from importers to reporting declarants - Our members in France reported that they cannot deposit data using this link. They have access to the system, but the actual data entry does not work with this url. The link declarants can safely use in France is shared in Q42: Link to the production CBAM Transitional Registry: <https://cbam.ec.europa.eu/declarant> User issue with Default Values in France: When entering logistics data, there is an inconsistency in the automatic loading of the default values. In some instances, these values are populated automatically, while in others, they are not. Additionally, when default values do load, they occasionally reflect those published on December 22nd, but at other times, they do not, and the source of these values is unclear. This necessitates manual correction on our part.

Many thanks for this information. We will amend the FAQ accordingly.

9. We recommend COM to issue a guidance document detailing the various CBAM registration processes in each Member State similar to the one published on EORI registration.

Please see Q47 in our FAQ. Economic operators need to contact the NCA of the Member State of their establishment to be granted access to the Transitional Registry. NCAs are responsible for the registration process. It is currently not planned to issue a guidance document.

10. Is CBAM-reporting also necessary for equivalent (Union) goods under equivalence or for the non-Union goods replacing them (Art. 223 UCC), given that the change of customs status takes place automatically under Art. 269 UCC-IA and thus not by a release for free circulation (as required under the CBAM Regulation)?

No, CBAM does currently not apply to equivalent goods since they are not released for free circulation and therefore not “imported” for CBAM purposes. However, it is possible that this situation might change with the review of the CBAM Regulation planned for 2025.

11. On Q83: In view of the above, how does the European Commission propose for direct representatives, who are not otherwise legally obligated under CBAM legislation, to safeguard their ‘interests’ by verifying whether their clients are compliant with their CBAM-related obligations? For instance, will the CBAM registry data be made accessible to the public to facilitate this verification?

The relevant section in the FAQ only applies to the definitive period. According to Article 25 of the CBAM Regulation, the customs authorities have the obligation to verify that CBAM goods are only imported by persons which are authorised CBAM declarants. In order to allow customs authorities to perform this check, the customs declaration will need to contain the CBAM account number of the authorised CBAM declarant (the CBAM account number is a unique identifier which CBAM declarants will receive when they are authorised). In this regard, the person lodging the customs declaration will be responsible, *inter alia*, for the accuracy of the CBAM account number indicated in the customs declaration.

12.

- a. Can the Commission confirm the process by which a third-party reporting declarant, who is neither the indirect representative nor the importer and uses their own EORI number, is distinguished by the CBAM reporting system from actual indirect representatives and in terms of future identifying responsibilities and obligations?

Please note that the section in the FAQ was amended. We currently only allow CBAM service providers to access the Transitional Registry through a delegation by the reporting declarant. For more information, see Q50 and Q88 of the FAQ.

- b. Can the indirect representative also appoint such a third party reporting declarant?

It is not a third party reporting declarant. It is a CBAM service provider. The CBAM service provider does not become reporting declarant and can therefore not assume legal liability for the CBAM report. In fact, legal liability remains with the reporting declarant who has delegated access to the CBAM service provider.

With this said, both importer and indirect customs representatives can delegate access to a CBAM service provider.

c. Will this option remain open during the definitive period?

No decision has yet been taken in this regard. We are currently assessing options for allowing for third party reporting in the definitive period.

13. Can the Commission confirm that liabilities will be incurred by an indirect representative during the first transitional phase if they represent a non-EU based company, even if said company provenly and/or purposefully provided incomplete or inaccurate CBAM information? In the case penalties, how and by whom are these penalties issued?

If indirect customs representatives act as reporting declarants, they are responsible for CBAM reporting. If a CBAM report is incorrect, the NCA can decide to launch a correction procedure, during which the reporting declarant can correct the report and can demonstrate that it has taken the necessary steps to comply. Ultimately, it will be the NCA who decides whether the necessary steps were taken. The NCA can take all relevant circumstances into account for this purpose and will duly evaluate any relevant information you can provide. The NCA is also responsible for deciding on the potential application of penalties.