

Frequently Asked Questions on CBAM¹ and Electricity

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Who is the authorised CBAM declarant for electricity?

The authorised declarant for CBAM purposes must be the same entity that imports the CBAM goods, i.e. the entity that submits the customs declaration and refers to the CBAM account number therein. This entity is either the importer or the indirect customs representative. This applies to all CBAM goods including electricity, and follows from the combined provisions of Articles 3(15), 3(17) 5(1), 5(2) and 5(4) and 17(1) of Regulation (EU) 2023/956 (the CBAM Regulation). Under customs legislation, the “importer” is the person identified by current data element 13 04 000 000 in Annex B of the Union Customs Code Delegated Act (UCC-DA)². It should be noted that customs legislation does not dictate which type of entity should submit this declaration. The entities could be electricity traders, interconnector operators, transmission system operators (TSOs), individual companies who consume electricity etc. The person lodging the customs declaration will be the result of commercial arrangements between the parties involved.

It should also be noted that Article 5(4) of the CBAM merely provides a derogation from the general authorisation regime that applies to certain electricity importers, but does not define who the CBAM declarant should be. In cases covered by Article 5(4), the CBAM declarant is the person to whom capacity has been allocated and who nominates this capacity, and who declares the import of electricity in the customs declaration. Hence, the general regime remains applicable that only an importer or an indirect customs representative can act as CBAM declarant. Equally, for electricity importers not covered by Article 5(4), the CBAM declarant is either the importer or the indirect customs representative. The only difference between importers covered by Art. 5(4) and those not covered by that Article is that the former are considered to be CBAM declarant, without having to apply for a CBAM authorisation, while the latter are required to undergo the standard authorisation procedure in line with Articles 5 and 17 of the CBAM Regulation in order to become authorised CBAM declarants. It should be noted that where an indirect customs representative wants to act as CBAM declarant for the person to whom capacity has been allocated and who nominates this

¹ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (CBAM), as amended.

² Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

capacity, that indirect customs representative is also required to undergo the standard authorisation procedure.

What type of electricity flow should be reported in CBAM?

According to Articles 2(1) and 5(4) of the CBAM Regulation, CBAM declarations must report the same electricity flows that were included in the customs declarations for release for free circulation (importation).

Customs legislation requires that a customs declaration is lodged for all goods imported into the EU. For electricity, only quantities intended to be put in the Union market or for private use or consumption in the customs territory Union have to be declared for customs purposes, for release for free circulation (see Article 201 UCC³). The CBAM declarant should be prepared to provide any evidence supporting the imports declared both in the CBAM and customs declarations.

How to deal with electricity in transit?

Following the general CBAM principles, imports of electricity that must be declared in CBAM have to match the ones declared in the customs declarations for release for free circulation (import). Unlike other goods that are normally declared to customs when they are at the border customs office, in the case of imported electricity that is to be consumed in the Union, this electricity is deemed to be placed under the Union transit procedure and later declared for release for free circulation after it has entered the Union. Where electricity enters and exits the EU without being consumed in the EU this electricity is deemed to have been placed under the customs transit procedure (see Article 321 of Regulation (EU) 2015/2447⁴) and no CBAM declaration is required. It is to be noted that Article 5(4) of the CBAM Regulation (*“Imports are to be measured per border for time periods no longer than one hour and no deduction of export or **transit** in the same hour shall be possible.”*) does not refer to transit in the sense of a customs procedure as set out in the UCC.

It should also be noted that under custom rules, the country of production of electricity is always the same as the country of origin.

CBAM declarants should ensure that the same identification of country of origin is made both in the customs declaration and in the CBAM declaration.

³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, as amended.

⁴ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

If electricity that is produced in a third country A, is traded via another third country B, and then exported to the EU, and the embedded emissions of that electricity are calculated for CBAM purposes based on default values, then the value to be used for the calculation is the one for country A, i.e. the country of production of the imported electricity (see Annex IV, point 4.2 of the Regulation).

Finally, it should be recalled that electricity produced in the EU is not subject to CBAM.