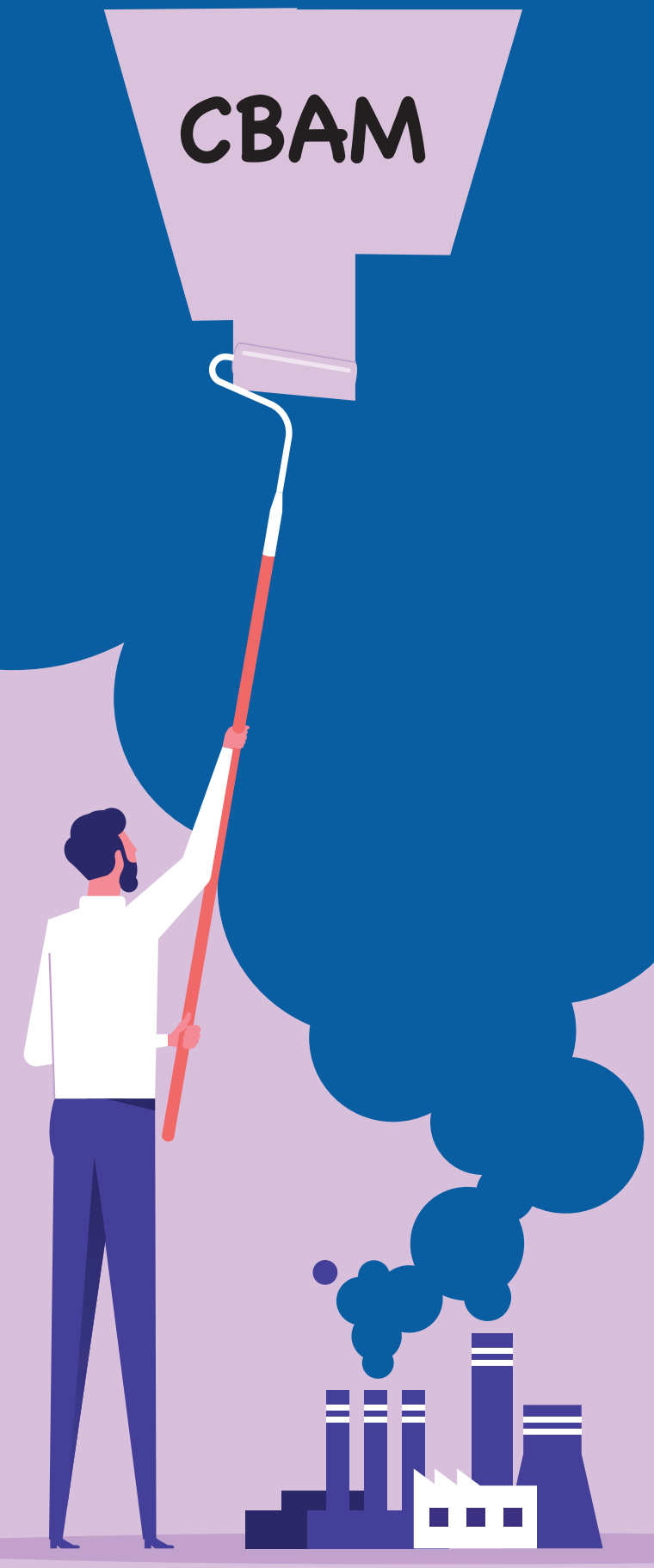

Update on the requirements of CBAM

At the beginning of September, the European Fastener Distributor Association (EFDA) held another webinar for its national member associations on the impact of the CBAM regulation, including new EU requirements.

Andreas Schneider of StahlmarktConsult once again gave a presentation on the intricacies of the CBAM regulation and provided hints on how importers can make their way through the 'jungle' that is the CBAM obligations.

To begin with Andreas went through the basics of CBAM and gave an update on the situation (as of the beginning of September). He also discussed the responsibilities in the transition phase, such as what is required and who is responsible, as well as some recommendations on how fastener importers should proceed.

As previously discussed in the July edition of Fastener + Fixing Magazine, the political decision to introduce CBAM was made at the end of 2022, with the CBAM regulation (L130/52) published in May 2023. The »

basic approach of CBAM is that when goods from third countries are imported into the EU, they should bear a levy equal to the CO_2 costs of EU manufacturers.

The regulation concerns the import of all fasteners under code CN 7318 originating from third countries into the EU, with the exception of Iceland, Norway, Liechtenstein and Switzerland. "The decisive factor is the origin of the goods," highlighted Andreas. "If the goods are produced in third party countries and then exported via Switzerland into the EU, for example, the CBAM obligations will be fully enforced."

Since the previous article in July, there have been a number of updates to the CBAM regulation that relate to the transition period, including over 100 pages of annexes – underlining that adhering to the regulation is not going to be a straightforward process.

> "According to Article 16 of the Implementation Regulation the national authorities may impose sanctions if the notifier fails to take necessary measures to comply with the obligation to submit a CBAM report..."

"Even now the necessary documents or steps have not been fully completed, we have the framework but some of the details are missing," underlined Andreas. "For instance, we are still missing default values; we do not know what the national competence authorities will be in each country of the EU; and we are also still missing the transitional registry."

Even with some details missing, the transition period of the regulation started on 1st October 2023 and will continue until the end of 2025. "The transition phase mainly contains reporting requirements and no financial obligations," mentioned Andreas. "It is also the phase for the European Commission to set-up all the authorities and collect the necessary data and look to optimise processes. It is not until the final implementation phase, which will start from 2026 onwards, that it will be necessary to purchase CBAM allowances and there will be potential costs involved. There will also be further registration obligations and the reporting requirements will be extended."

What are the obligations?

Andreas explained that every company that imports goods into the EU during Q4 of 2023 must submit a CBAM report to the European Commission no later than one month after the end of the quarter – January 2024. "Through the updates, the European Commission has confirmed that the 'importing declarant' can either be the importer who lodges a customs declaration; a person who is authorised to lodge a customs declaration; or it can be an indirect customs representative. This means a company does not necessarily have to submit the report itself, it can also be done by a customs declarant or a customs representative. However, the legal obligation to submit the CBAM report lies with the importer."

Reports will be submitted electronically after registration via the CBAM transitional register, which is not yet available, but will be interoperable with existing customs systems.

With it being a new process, and importers required to collect so much new data, Andreas was keen to underline how they could get additional time to fulfil these duties if required. "There are several options available, such as the declarant being able to amend a submitted CBAM report two months after the end of the relevant reporting quarter. This gives importers a little bit more time during the introductory phase if needed. Option two is a special clause that applies to the first two reports, which says the reports for Q4 2023 and Q1 2024 can be corrected until 31st July 2024. The third option is, at the justified request of the reporting declarant, the competent authority must examine the application in question and, if necessary, allow the declarant to resubmit or correct the CBAM report within one year of the end of the relevant reporting quarter (Art. 9 (3) Impl Reg). This means that if you do not have all the necessary information, you can get some additional time to gather this data. However, I believe it is better to submit an incomplete report than to give no report at all."

Monitoring and sanctions

When it comes to the monitoring and sanctions, the monitoring is carried out by the European Commission, which informs the national authorities in the case of non-submission or deficiencies. The national authorities will then carry out an assessment within three months and, if necessary, initiate correction procedures.

According to Article 16 of the Implementation Regulation, the national authorities may impose sanctions if the notifier fails to take necessary measures to comply with the obligation to submit a CBAM report, or where the report is inaccurate or incomplete and the necessary correction action is not taken after the rectification procedure has been implemented.

Andreas reported that the amount of the penalty will initially be between €10 and €50 per tonne of unreported emissions. The penalty might be even higher in cases where the report submission has been missed for more than six months or if incorrect reports have been submitted more than two times in a row and not corrected. "With the possibility of these penalties, importers should submit reports even if certain data is missing initially."

Reporting obligations

Next up, Andreas talked about the reporting obligations as part of the CBAM Implementation Regulation, especially Articles 3 and 7. "Each CBAM report should include a wide range of information, including quantity of goods imported in tonnes; types of goods as identified by the CN codes; country of origin; production routes used – defined in Section 3 of Annex II; information on specific parameters; specific embedded direct emissions of goods in CO_2 per tonne; reporting requirements that have an effect on embedded emissions – as referred in Section 2 of Annex IV – for steel goods; the identification number of the specific steel mills – where

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known; additional information for specific embedded indirect emissions (electricity) – if applicable; additional information on the methodological basis for determining emissions; and, if applicable, information on the CO_2 price paid in the country of origin."

Andreas added: "The importer also needs to report the installation where the goods are produced. This is mandatory under CBAM and whilst it might prove difficult to find out this information from suppliers, it is needed along with an address and a location code, including geographical coordinates."

Division of tasks

Next up, Andreas gave a clear division of tasks when it comes to the CBAM report. "Firstly, for the determination of emissions, the main responsibility lies with the third country producer. It is clear the installation operators in third countries are responsible for the monitoring and reporting of emissions. This might be questionable from a legal point of view, as the EU cannot issue a regulation that is directly binding on companies in third countries, but the Commission wants the third country operators to collect data on emissions and then send a report as a third country manufacturer."

Andreas continued: "The main responsibility for the importer is to ensure the completeness of the import list and of the other relevant factors that are not emissions. When the documents were originally published in August a lot of importers would have spent time on the determination and calculations of emissions. However, I believe importers should not be too concerned with the details or determination of the emissions. It is clear from Article 3.1 of the Implementation Regulation that this is the main responsibility of the third country producer."

> "In the case of fasteners, the embedded emissions of the fasteners will be composed of the emissions of the production process (heat applied for making the rods and for annealing the final product), plus the embedded emissions of the wire rod and any precursors."

"A few other areas of the regulation that could help importers simplify the process include Article 4.3, which says that for the first three CBAM reports (until 31st July 2024) the declarant (importer) may use methods for determining emissions other than those specified in the EU regulation. These include default values set by the EU Commission, which have not been published yet but hopefully will be soon."

Another aspect of the regulation that could help fastener importers is Article 5.3, which says that up to 20% of the total embedded emissions associated with complex goods can be based on estimates provided by the plant operator. This is very important for fastener importers as the EU default values qualify as an estimate. "Producers of fasteners will be able to typically estimate the emissions of their own installations or use default values for the implementation phase of the regulation, which hopefully will make things easier," stated Andreas. "As already mentioned, the default values are not published yet, but I hope they will be published soon by the Commission. They will then apply regardless of the country of origin and are uniformly defined for screws for the four-digit level of the CN 7318 – covering direct and indirect emissions. This means there will be one default value for all fasteners."

Andreas went on to explain that whilst he expects these default values to be set at globally high-levels, it is not too much of a concern during the transition phase. "During the transition phase you do not have to pay or buy certificates, so there is no issue with using higher default values. However, once the implementation phase starts in 2026 the default values, if set at high-levels, will cause higher costs when calculating emission levels."

Adding complexity

Whilst Andreas agreed that some updates had helped simplify certain aspects, there was one part of the regulation that appears to be more complex than previously thought and that involves the indirect emissions that stem from the electricity consumed during the production process. "This must now be determined for steel products in the transition phase, which was not initially planned. Whilst these indirect emissions need to be reported during the transition phase, as things

» stand they do not need to be reported in the implementation phase, but this is not 100% confirmed, as it is still in discussion."

The calculation of indirect emissions, at least in the case of steel goods, is very complex according to Andreas. "In Annex III of the regulation there is a lot of hints and methods that have to be used. Aspects that need to be reported include manufacturing routes, production processes, as well as process boundaries for all relevant raw materials. However, I believe importers should not lose themselves in the detail too much, as this is not the main focus. If companies do want to do it then they can find some guidance in the document guidance for installation operators."

Reporting emissions

Andreas confirmed there has a been simplification when it comes to the reporting of emissions, as Annex IV states that for each good, emissions might be determined for each CN code or for aggerated goods categories. This means that importers do not have to report emissions for each single CN code of fasteners. Emissions can be reported for the category of iron or steel products or category of fasteners.

"This makes things a little easier, as otherwise it would require a huge data set for each CN coded product. Whilst this has been simplified, there are other things that have not. For instance, the report of emissions is divided into two elements – the first element is specific to embedded/direct emissions and the second element is the indirect embedded emissions of each of the goods. In both cases, they are calculated from two parts – the production process of the fasteners and the second is the embedded emissions from any relevant precursor."

Andreas continued: "When we talk about specific emissions, it is the total emissions divided by the quantity of goods produced. In the case of fasteners, the embedded emissions of the fasteners will be composed of the emissions of the production process (heat applied for making the rods and for annealing the final product), plus the embedded emissions of the wire rod and any precursors."

Emissions of precursors

Andreas went on to point out the emissions of precursors is, in his opinion, the most difficult and complex part of the whole process. This is because for precursors the operators of installations need to monitor the quantity of each precursor used during the reporting period for each of their production processes.

For instance, the first precursor of fasteners could be the wire rod, but then all the precursors for wire/wire rod themselves need to be included too – for instance crude steel, pig iron, and any other production routes of steel.

> "...it makes sense to use a pragmatic approach when it comes to CBAM..."

"The regulation states clearly that if the precursor is a complex product, which is true of steel, all relevant precursors must be included until no precursor is left," reported Andreas. "Therefore, if the manufacturer of screws does not have this information, they must request the relevant information (identification of the installation, direct and indirect embedded emissions, production route, additional parameters, etc) from the relevant raw material suppliers, which could prove very complex."

Andreas added: "A slight simplification within the regulation is that the operator of the production facility of fasteners, and also the precursors before the fastener production, don't have to report detailed data on the emissions, as it is optional. The mandatory aspect is only to report the value of emission of the installation of third countries, which must be included in the CBAM report."

Sample procedure for determining emission data

When it comes to determining emissions data, Andreas was clear that without the constructive cooperation from all parties 'actual data' cannot be determined. "In my opinion, this type of data will not be available from the different aspects of the supply chain. Unless there are already recording systems that meet the requirements, it is questionable whether/when the requested data will be available. What makes it even more complicated is the production routes of steel that might be used in the case of fasteners, can be different. Mainly it will be the integrated blast furnace route, where coke and iron ore and other precursors are used. However, it is possible that the steel could be from an electric arc furnace, which is high alloyed. Even within the different process routes you might have different plant configurations. This will create a whole bunch of different emission processes and values in the case of the production and the precursors of fasteners."

Andreas did point out that the European Commission does allow under certain conditions a simplified 'bubble approach' for the emissions of steel production under certain conditions. "The end of the boundaries depends on several conditions, but you have to include the emissions of wire rod and if the wire rod comes from an integrated steel mill, which is allowed to work with a simplified 'bubble approach', then the process might end here. However, if the conditions are not met, then it will be necessary to go through the production process to include the producers of the individual raw material parts (coke, iron ore, etc)."

Andreas highlighted that for the guidance of third country operators, there is a section for the emission of steels and there is clear guidance on how to calculate emissions for producing steel – including some examples – and also the conditions for the 'bubble approach', which makes it easier. The main condition of the simplified 'bubble approach' is that all materials are consumed within the steel works, and the steps are done outside.

Recommendations on how to proceed

Andreas explained that whilst it is a very complex issue, in his opinion it makes sense to use a pragmatic approach when it comes to CBAM and recommended using two main sources – the first is Annex I of the Implementation Regulation, which is a table that contains the structure of the CBAM report and a second table that lists detailed information requirements that have to be included in the CBAM report. The second main source is Annex IV, which whilst only a few pages, contains the content of communication from operators.

"From these two sources, you can divide your approach into two questions – what part of the reporting obligations can be fulfilled through one's own efforts and where do I depend on data from third country producers? Both will provide good guidance on how to navigate and use the CBAM report," suggested Andreas.

As a final point Andreas highlighted some key questions that each importer needed to ask themselves, such as do they want to continue to import goods from third countries? Do they want to be a 'CBAM declarant' or should this be done by another company or a customs declarant? Also, if the importer is doing it themselves, Andreas suggested they need to assign responsibilities within the company to make sure all data is collected and reported.

"From 1st October importers who have decided to be a 'CBAM declarant' themselves must ensure that all CBAM related products are fully recorded within the company. The minimum should be the CN Codes (8-digit level), as well as quantity and country of origin (where it is produced)," concluded Andreas. "The quantities in the CBAM report must also be given by customs procedure, so that you can follow up the CBAM declaration." +

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Since the EFDA webinar the CBAM Transitional Registry has been activated and for most countries (not including Germany) the competent national authorities have been published. It is understood that importers can only register once the national authorities have been determined.