

UK Government introduces new Customs Bill

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On 20 November 2017, the United Kingdom (UK) Government introduced a new Taxation (Cross-border Trade) Bill (the Customs Bill) to the House of Commons and the Customs Bill was given its First Reading. No dates have yet been set for future stages. The Bill follows the Trade Bill released on 7 November which makes provisions relating to international trade which are not directly tax-related. This includes the power to implement non-tariff obligations and the establishment of a Trade Remedies Authority, to deliver the UK's trade remedies function. The two Bills together are intended to "set the groundwork for the UK to become an independent global trading nation."

The Explanatory Notes accompanying the Customs Bill point out that whatever the outcome of negotiations with the European Union (EU), the UK will need domestic legislation to be in place for a new Customs regime from March 2019. That new regime will need to provide for the tariff-related aspects of the UK's future trading framework.

As the Customs Bill does not presuppose any particular outcome from the UK's negotiations with the EU, it needs to provide sufficient flexibility to give effect to a range of potential outcomes. These could include a negotiated position between the UK and the EU, including a possible "implementation period" or the introduction of a new Customs regime that reflects the fact that no negotiated settlement has been reached. It also is necessary for the Bill to amend existing Value Added Tax (VAT) and excise legislation as a consequence of the UK's withdrawal from the EU (with or without an agreement) in order to ensure that these regimes work appropriately upon withdrawal.

In assessing the options for the UK's future Customs relationship with the EU (and therefore, how the Government uses the powers in the Bill), the Government's White Paper of 9 October 2017 sets out that it would be guided by what delivers the greatest economic advantage to the UK, and by three strategic objectives:

- ▶ Ensuring UK-EU trade is as frictionless as possible
- ▶ Avoiding a hard border between Ireland and Northern Ireland
- ▶ Establishing an independent international trade policy

The Customs Bill

Parts 1 and 2 of the Customs Bill, which provide for a new standalone Customs regime, are largely based on current EU law, and it is the Government's intention that the UK's Customs regime will continue to operate in much the same way as it currently does following exit from the EU. However, depending on the outcome of the negotiations, traders that currently trade only with the EU may be subject to Customs declarations and Customs checks for the first time.

The Customs Bill would allow for divergence from EU law where the Government feels it is necessary to do so, or where it believes that there is a clear benefit to business to diverge from it and such divergence is consistent with any bilateral arrangements the Government ultimately agrees with the EU.

While the precise nature of the UK's future Customs relationship with the EU will be the subject of negotiations, the Customs Bill will allow the Government to:

- ▶ Charge Customs duty on goods (including on goods imported from the EU)
- ▶ Define how goods will be classified to establish the amount of Customs duty due
- ▶ Establish a new UK tariff and set out additional tariff-related provisions
- ▶ Set and vary rates of Customs duty, specify where goods are subject to quotas and where goods are relieved from duty
- ▶ Vary or suspend duty at import in certain circumstances, e.g. supporting developing countries by offering preferential treatment
- ▶ Implement arrangements to establish a Customs union between the UK and another territory or country
- ▶ Request and collect tax-related information from declarants and store and share it as appropriate

- ▶ Provide for amendment of existing VAT and excise legislation. It will provide for the EU concept of acquisition VAT (for business-to-business intra-EU movements) to be abolished so that import VAT is charged on all imports from outside the UK
- ▶ Allow the VAT and excise regimes to continue to function whatever the outcome of the negotiations

The Government has previously noted that it is keen to agree with the EU, as soon as possible, on a model for an interim implementation period which would mean that only one adjustment to a new Customs relationship is needed. The length of this interim period is also to be agreed.

Delegated powers are included in the Bill to allow the Government to make future amendments to the imposition, administration, collection and enforcement of Customs duty, including any simplifications that it is not possible to implement immediately upon EU exit. Such powers will also grant flexibility to make appropriate amendments to VAT and excise legislation and allow the Government to make appropriate amendments to primary legislation and use secondary legislation to implement negotiated agreements.

Next steps

The European Council meeting scheduled for 14-15 December 2017 provides the next opportunity for the European Council to consider whether sufficient progress has been made in the first phase of negotiations, and decide whether to expand the European Commission's negotiating mandate to cover the framework for a future relationship and transitional arrangements.

Implications

The progression of these two pieces of domestic Brexit legislation will be seen as a positive step by many, despite the final post-Brexit trade and Customs models remaining unknown and subject to further EU negotiation and agreement. That said, the UK has acknowledged that it will leave the current EU Customs Union and it is clear that, no matter how light, there will be a UK/EU border which businesses should start preparing for now.

Waiting until the end of the negotiation period may not leave enough time to take measured action before rules and trading arrangements change.

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