

Client Update

Brexit Tax Update – Future Customs Arrangements – Fantasy or Inspired?

“And now, the end is near, and so [we] face the final curtain”: Frank Sinatra captures the mood of the United Kingdom facing Brexit (there are not many that wouldn’t agree with the line “regrets, [we]’ve had a few”). The overall message of independence presented by the song’s famous line “I did it my way” could be the United Kingdom’s guiding principle when preparing their proposal on the future of UK-EU customs arrangements.

Last week, the Department for Exiting the European Union released its first future partnership [paper](#) “Future customs arrangements”. In this paper, the Government states that its three objectives for the UK once it has left the EU Customs Union are:

- ensuring UK-EU trade is as frictionless as possible;
- avoiding a “hard border between Ireland and Northern Ireland”; and
- establishing an independent international trade policy.

The paper suggests two possible approaches for a future customs arrangement with the EU: either “a highly streamlined customs arrangement” or “a new custom’s partnership with the EU”. In either case, the UK would seek to trade independently with the rest of the world. Before we delve into what these mean, we will pause to consider what already exists.

THE CURRENT EU CUSTOMS UNION

The current EU Customs Union consists of EU member states, Monaco, the Channel Islands and the Isle of Man. As a customs union, there are no customs duties within the EU’s territory, and member states share common external tariffs with third countries and are treated as one unit in trade agreements negotiated with third countries.

Turkey, Andorra and San Marino have separate bilateral customs unions with the EU regarding customs but exclude certain goods.

THE FUTURE (AS PROPOSED BY THE UK)

A Highly Streamlined Customs Arrangement

Under this arrangement, the UK and the EU would be “trading with each other essentially as third parties”, but the UK would seek “to ensure the supporting customs processes are as efficient as possible”. Specifically on this, the UK is not seeking to replicate any other country’s customs model.

In negotiating this arrangement, the UK would hope to agree on “trade facilitations” with the EU. On the domestic front, it would make “unilateral improvements”. The latter would have the double benefit of facilitating trade with both the EU and other countries. The paper does however recognise that “there would remain an increase in administration compared with being inside the EU Customs Union”.

The facilitations and unilateral improvements suggested by the Government (at paragraphs 32 to 35 of the paper) include:

- a continued waiver from the requirement to submit entry and exit summary declarations for goods being moved between the UK and the EU;
- membership of the Common Transit Convention, which simplifies border crossing for goods in transit;
- negotiating mutual recognition of Authorised Economic Operators (AEOs), enabling faster clearance of AEOs’ goods at the border;
- bilateral implementation of a technology-based solution for roll-on, roll-off ports (consisting, potentially, of pre-arrival notification of consignments on a port IT system, linked to customs declarations and vehicle registration numbers to allow vehicles to pass through the border without stopping);
- replicating existing levels of UK co-operation with other Member States to reduce revenue and security risks to the UK;
- simplifications for business, such as self-assessment to allow traders to calculate their own customs duties and aggregate their customs declarations; and
- speeding up some authorisation processes, for example, through increased automation and better use of data, and in the longer term streamlining authorisation requirements to reduce complexity, such as in relation to the UK’s existing framework of duty suspensions and reliefs.

A New Customs Partnership with the EU

This second suggestion would require the UK to act “in partnership with the EU to operate a regime for imports that aligns precisely with the EU’s external customs border, for goods that will be consumed in the EU market, even if they are part of a supply chain in the UK first”.

To achieve this, the paper recognises that “the UK would need to impose the same tariffs as the EU, and provide the same treatment for rules of origin for those goods arriving in the UK and destined for the EU”.

The UK and EU would not need to operate customs processes between them as the UK would ensure that all goods entering the EU via the UK had already paid the correct EU duties. Goods could therefore continue to move between the UK and the EU as they do now.

In addition, the benefit to the UK is that it “would also be able to apply its own tariffs and trade policy to UK exports and imports from other countries destined for the UK market”.

The paper recognises that this is “an innovative and untested approach” that would require “a robust enforcement mechanism”, involving, perhaps, a tracking system. The Government is keen to hear from businesses and other stakeholders their views on how such a system might operate.

TRANSITIONAL PERIOD

In terms of a transitional period, the paper suggests “a model of close association with the EU Customs Union for a time-limited interim period”. This interim agreement “could be a new customs union between the UK and the EU Customs Union, based on a shared external tariff and without customs processes and duties between the UK and the EU”.

During this time, the Government would seek to establish other trade relationships but would not bring any such agreements into effect during the interim period if they were not in accordance with the terms of the interim agreement.

There is no suggested length of time for the interim period.

CUSTOMS BILL

The Government will “legislate for a new customs regime to be in place by March 2019, and make changes to the VAT and excise regimes”. This will be necessary as the majority of the current customs regime is set out in EU law. The Government will publish a Customs White Paper followed by a Customs Bill in the autumn. The Government intends to draft UK customs provisions which are “as consistent as possible with EU law”.

The Customs Bill will also give the Government “the powers necessary to operate standalone customs, VAT and excise systems, as necessary”, in case no negotiated settlement with the EU is reached. If this is the outcome, the UK would find itself trading with the EU in the same way as it currently trades with non-EU countries.

OTHER POINTS TO NOTE

As the UK will once again have its own seat at the WTO and will therefore need to update the terms of its current WTO membership, the Government will “prepare schedules that replicate as far as possible [the UK’s] current obligations”.

Looking to the developing world, the paper states that the UK “will maintain current access for the Least Developed Countries (LDCs) to UK markets and aim to maintain the preferential access of the remaining (non-LDC) developing countries, including those countries with which the UK has Economic Partnership Agreements”.

The paper notes (on various occasions) that the Government has and will continue to engage with businesses and other stakeholders.

A Trade Bill is also due in the autumn and a Trade White Paper will be published in advance.

The paper notes that “the Government has made clear that the answer to avoiding a hard border between Northern Ireland and Ireland cannot be to impose a new customs border between Northern Ireland and Great Britain”. A paper in relation to Northern Ireland was published last week ([here](#)).

COMMENT

Many will see this paper as a positive indication of the way that the UK is moving. Secretary of State for Exiting the EU, David Davis, commented that “The approaches we are setting out... will benefit both the EU and UK and avoid a cliff-edge for businesses and individuals on both sides.” However, Belgian MEP, Guy Verhofstadt’s tweet that “to be in & out of the Customs Union & “invisible borders” is a fantasy...” is a dampening response. As ever with Brexit, we need to wait for the *final curtain*.

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Please do not hesitate to contact us with any questions.

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