

BREXIT – CUSTOMS, SANCTIONS AND EXPORT CONTROLS

A JOINT EVENT OF ADS/EGADD AND TECHUK
TUESDAY, 27 MARCH 2018

SUMMARY NOTE

Brexit and Customs

Speakers: Aaron Dunne of HMRC, David MacReady of Fujitsu and Steve Parker of DHL.

Withdrawal Agreement

Given the “green” status of provisions on customs in the draft Withdrawal/Transition agreement, we can be confident that the status quo will continue during this period. However, as “nothing is agreed until everything has been agreed”, there remains a risk that a different transition agreement or none at all could be in place on 29 March 2019, and a great deal of uncertainty remains regarding the customs arrangements post-transition.

Legislation

The Taxation (Cross-Border Trade) Bill is currently at the House of Commons committee stage. This will establish a customs, VAT and excise regime to take effect at the end of the transition period. This will largely replicate the effect of the Union Custom Code and give the government the powers and flexibility to put into force whatever long-term customs agreement is reached with the EU.

Post-Brexit Options

Since UK policy is not to remain part of the customs union in order to be able to have an independent trade policy and strike its own free trade agreements with other countries. Therefore some customs friction for trade with the EU will be inevitable. The government is looking at how to minimise this, focused on the 2 options set out in its White Paper:

- a) a **‘highly streamlined’ customs arrangement under which declarations are required:**
- delays: an inevitable consequence of this option is a risk of delays due to custom checks;
 - preparation: over 140,000 UK-based traders (and more in the EU) have only ever conducted intra-EU trade and will need help to prepare. DHL are considering establishing a traders’ advice desk and to provide industry guidance through leaflets and other resources;
 - data flows: effective data protection arrangements are crucial, as the efficient transfer of customs data will minimise delay. Businesses must ensure their data systems are up to date;
 - staffing: businesses must also account for the cost of recruiting or training existing staff in customs procedures, a cost unlikely to be offset by any extra revenue.
- b) A **‘customs partnership’: the UK border charges EU tariffs on goods destined for the EU and UK tariffs on goods for the UK:**
- No declarations required for UK-EU trade, minimising the burden and risk of delay;
 - It would ensure no hard border in Ireland;
 - there is no existing example of this model, it would be highly complex to implement;
 - the EU is not currently amenable to it. The burden is on the UK to show it can work.

Mutual Recognition, AEO,

The UK wants to agree mutual recognition of the customs framework, including AEO status. Businesses were encouraged to conduct cost/benefit analyses of applying for AEO. This is a lengthy and complex process - it is not intended to be easy to acquire.

VAT

Although the text in the transition agreement is “yellow” (i.e. agreed on the policy objective but subject to drafting changes), the government expects this to be agreed, maintaining the status quo

during the transition period. Post-Brexit VAT policy is still in its infancy, with HMRC looking to mitigate the impact of VAT import charges. Public consultations will be conducted on the issue.

Chief/CDS

Plans for CDS predate Brexit. HMRC are confident it will be in place on schedule and scalable to manage increased volumes of trade post-Brexit, if the ‘customs partnership’ option is not adopted.

Rules of Origin

The panel emphasised the difficulty of predicting the friction that could result from rules of origin without a clear idea of what the EU-UK FTA will look like. Under the ‘customs partnership’ option, rules of origin would not apply to UK-EU trade. Under the ‘highly streamlined’ option, if zero tariffs are established between the UK and the EU, rules of origin may only be an issue in so far as there is a difference between the tariffs offered to third countries by the EU and by the UK.

Communications

Businesses were also encouraged to maximise dialogue with trade bodies, who are in the best position to communicate the views of businesses to the government, and to register for Brexit updates from governmental websites.

Brexit and Sanctions

Speakers: Louise Marshall of OFSI/HMT, Qudsi Rasheed of FCO, Spencer Chilvers of Rolls-Royce and Roger Matthews of Dechert.

Sanctions Policy

The UK is fully expected to remain post-Brexit at the forefront of global sanctions policy formulation. UK sanctions policy will largely remain unchanged - sanctions will still be seen as a critical diplomatic tool. The UK and EU will continue to share the same security threats and interests - particularly in relation to Russia and Iran. The UK hopes for close cooperation with the EU and its member states, given that implementation is a member state competency. The government intends to carry over as many existing sanctions as possible, so as to begin Brexit from a level-playing field.

Legislation

The Sanctions and Anti-Money Laundering Bill is expected to return to the House in April or May. The Bill’s purpose is to establish the powers the UK needs to conduct an autonomous sanction policy. But it will not predetermine what the actual policy will be. The Bill affords the power to make regulations, which will establish the detail of each sanction regime.

Sanctions Regimes

Regimes will cover the same areas currently covered by EU law - such as trade and shipping - and will provide for the implementation of both UN sanctions and UK autonomous sanctions. OFSI intend to provide a “snapshot” of sanctions in force at the end of the implementation period, and hopefully will continue to update this in the future. There will ultimately be three sanctions regimes that businesses will need to take account of: UK, EU and US. This will inevitably add an extra layer of complexity, particularly if they diverge and develop incrementally. As the UK is one of the main countries that provides information for sanctions designations (of organisations and individuals), alignment of the designation process under the EU, UK and US regimes would be both logical and desirable.

UK improvements

Areas for potential improvements included:

- clarify existing ambiguities, such as how to interpret “ownership and control”;
- general licences for financial sanctions could be introduced;
- licensing and guidance could be improved.

OFSI will be consulting stakeholders on what is required.

Session Three: Brexit and Export Controls

Speakers: Chris Chew of ECJU/DIT and Richard Tauwhare of Dechert.

Policy and Legislation

The UK's aim will be maintaining the integrity and effectiveness of the export licensing system after Brexit, to keep additional burdens on business at a minimum and to maintain the ECJU's licensing performance.

All existing EU export control regulations will be transferred unchanged into UK law. This will include the revised Dual-Use Regulation if, as is likely (though not certain), it is adopted before the end of the transition period. The status quo will be maintained during the transition period, but the UK will lose its seat on EU Working Groups and not be able to negotiate or vote on the new Regulations.

We will (eventually) be able to consolidate controls from retained EU legislation into a new-look Export Control Order, but when and what this might look like is not yet known.

Issues for UK-EU negotiation

- cooperation: we would seek to maintain cooperation with the EU where it is in our interests e.g. information sharing for licence denials and (possibly) a 'no-undercut' agreement (i.e. if the UK denies a licence, all the EU Member States would deny a similar application);
- simplifications: maintain benefits for the UK of existing simplifications for UK-EU movements of military and dual-use items;
- mutual recognition: aim to agree on time-limited mutual recognition of dual-use licences that are still valid at the end of the transition period, and possible mutual recognition of future licences so that UK dual-use goods can transit through and/or be exported from an EU country with a UK licence and vice-versa;
- Control Lists: close cooperation on amendments to the lists of items subject to control. These will still originate from the four international Export Control Regimes, of which the UK will remain a full member, so significant divergence is not expected. What kind of notification process there should be if the UK or the EU decide to add additional export controls?

Potential Issues

- UK OGEL for EU: licences will be required to export dual-use items from the UK to the EU, but this will be simplified by an Open General Export Licence. Businesses hoped that this new licence would not impose the standard reporting and auditing requirements for OGELs, which would be a heavy new burden on both ECJU and traders, but this was not confirmed;
- EU001: It was strongly hoped (but not yet clear) that the EU would reciprocate by adding the UK to its existing EU001 licence. We should engage EU partners in industry to ensure this was agreed as failure to do so would severely affect our imports from the EU;
- Consolidated Criteria: the government intends to maintain these (for assessing licence applications) in force until new or amended guidance is announced to Parliament;
- New FTAs: In negotiating UK free trade agreements with third countries (e.g. the US, Japan), we might seek to gain a privileged export licensing status, though it was noted that the existing UK-US defence goods agreement had achieved little;
- ICT: With the UK outside the Directive on Intra-EU Transfers on Defence-related Products (ICT), would UK exports to the EU require transit permits and would EU exports to the UK require SIELs;
- Resources: Would ECJU have sufficient resources at least to maintain its current service levels, and what help could it provide particularly to SMEs only familiar with intra-EU trade.