

Chartered Institute of Transport and Logistics

Position Paper February 2018

The Taxation (Cross-Border Trade) Bill - The Customs Bill

1. Primary & Secondary Legislation

CILT recognises the importance of the debate regarding the use of Primary and Secondary Legislation in this Bill. However, CILT is neither a political nor a politically lobbying organisation and believes that this is primarily a political discussion. CILT therefore remains neutral on this topic. CILT also recognises that the JCCC was not created to lobby on political matters and therefore believes that this is not a topic for the JCCC.

2. Content overview

CILT would characterise the content of this Bill as primarily an overview to enable the UK to adopt its own customs rules post BREXIT. It is high level and lacking in the detail of the Union Customs Code (UCC). Our members are concerned that as a future agreement with the EU is still being negotiated this Bill lacks important legal and technical detail which leaves businesses and their advisers unable to plan adequately or with confidence for the changes that will undoubtedly be necessary either in March 2019 or by the end of an 'implementation period'. Logistics, Transport and Customs work has a considerable practical element and a considerable practical impact on the supply chain and an inability to plan and prepare for changes has to be a major concern.

We had been told that the new UK law would replicate the UCC but this Bill does not do that, it sets the framework but not the detail. Our members believe that given the time constraints of BREXIT it would have been preferable for the Government to have adopted the previously discussed approach of incorporating the existing EU Union Customs Code into UK law with specific, clearly identified changes being made where necessary rather than simply creating more uncertainty with an overview that lacks sufficient detail to be operational in its own right.

The Bill does offer future detail in HMRC Customs Notices and Information Papers. Our concern would be that such Customs Notices and Information Papers would need to contain much greater technical detail that is currently available on most topics on the .gov website. A return to the old style documents that existed prior to May 2016 would be practical so long as they could be available electronically. CILT believes the JCCC and its sub-committees would be key to assisting HMRC with the writing of such documents and to ensuring that they meet the needs of all in the supply chain enabling a high level of compliance to be attained. However, those old style Customs Notices and Information Papers were primarily 'guidance' and not the 'law' – clearly as the 'law' in respect of the Taxation (Cross-Border Trade) Bill has insufficient detail these new documents would need to have the force of law.

3. Detailed points

The wording of the Bill is difficult for our members in many areas due to ambiguity or conflict in terminology. Such problems arise for example in the sections concerning goods origin, customs valuation and the legislation for VAT payment. There is no clarity in the Bill or the guidance to the Bill regarding for example customs valuation, whilst there are familiar phrases from the UCC and WTO regulations such as 'price paid or payable' it is not at all clear how this should be defined under this new Bill and whether or not this is intended to match the current EU interpretation and the General Interpretive Rules which are in use today. This is unhelpful and unsettling for business and needs prompt clarification from Government.

The terminology, lack of meaningful detail and confusing text around Special Procedures is also of serious concern to our members. Our members are looking to the use of these beneficial and enabling procedures to mitigate some of the downsides of the potential imposition of positive tariffs between the UK and the EU27. CILT would welcome HMRC working with the JCCC to ensure that the current UCC text will be applicable with any UK modifications very clearly stated.

The Treasury are interested in collecting revenue – it is their primary function. Via the Government Gateway the Treasury are attempting to assist everyone to make timely and accurate electronic tax returns.

When VAT revenue is collected companies are permitted to complete a tax return using their own commercial systems and data, on which they calculate according to complex rules how much VAT is due to the Treasury and arrange to pay it.

CILT is not aware of anyone suggesting that this is a bad system and that we need to go back to companies passing VAT payments to the Treasury for each and every invoice at the time that each and every invoice is generated. Such a transactional system would be a terrible burden to trade and government.

But this is exactly what is done for imports and exports. A totally transaction based system with CHIEF and its replacement CDS calculating and taking payment of import duty and VAT before the goods can leave the port/airport unless payment can be made via a deferment account. The Self-Assessment process which is written into EU law is an attempt to allow importers to make the equivalent of a VAT return each month or quarter removing the need for customs entries (the transaction). Such a system (only available to AEO(C) companies) would not remove revenue it would probably increase it as the data would not have to be re-input to CHIEF/CDS which in itself creates input errors and the data would come from the trader's own systems which have the depth of information needed to be more accurate. CILT members would like to have seen far greater emphasis on the Self-Assessment process in the Bill which after all attempts to take customs processes into the future rather than just for the next few months and would like to see far greater weight given to it by HMRC so that a system is up and running prior to BREXIT.

The change from intra EU regulation (intrastats etc.) to customs entries could present a cash flow issue for importers post BREXIT. CILT believes that whilst a commitment from Government to offer a system of postponed accounting, easily accessed by importers or their agents, would be welcome much more should be done to publicise the benefits of

existing schemes such as deferment accounts, SIVA and the intelligent timing of imports to aid cash flow. CILT members would also welcome clear confirmation that the government will drop the requirement for guarantees for potential debt at the point of BREXIT.

CILT welcomes on behalf of its members Government's stated commitment to minimise Freight friction in the port zones after BREXIT. This is essential for the successful operation of the sophisticated supply chains inherent in EU and Global industry. With current volumes approaching 4 million HGV movements each year transiting the Channel Tunnel and the Port of Dover alone it is understood that Government is committed to initially accepting the risk after BREXIT to maintain unimpeded cross-border HGV movement on the basis of "Trusted trader, known transporter".

CILT members are also concerned regarding the paragraph regarding liability for customs duty should the goods not be presented appropriately as it appears that many participants in the supply chain other than the actual importer could be held liable regardless of the circumstances leading to the non-compliance. CILT would welcome clarification of the text.

AEO was intended to be a benchmark of a company's compliance with customs rules and its ability to secure the international supply chain both by its own internal efforts and by its choice of third party providers. It is a global standard based on the WTO 'Safe framework' standards. If Mutual Recognition Agreements (MRA) with other country's AEO's are to be negotiated deviation from the WTO framework is not desirable. It is these MRA's that give the greatest benefit to global trade by permitting faster, less bureaucratic and all round easier imports and exports and cross border movements for those who are compliant, secure and self-policing. CILT considers this to be key post-BREXIT to ensure the swift and uninterrupted movement of freight between the EU27 and the UK. CILT therefore does not support the suggestion that there should be different levels of AEO certification post-BREXIT. A company is either compliant and secure or it is not, there is no half-way house.

CILT does support a drive to educate and inform businesses of all sizes and types about customs and supply chain security so that the UK can gain the benefit of professional, efficient and competitive global trade. CILT also supports the expansion of AEO certification. It is after all much easier for Micro, SME and Medium sized business to gain AEO than it is for larger companies as it requires less work, less change, less investment and less internal politics. CILT would support improvements to the application procedure, to HMRC processing of applications and a publicity campaign to drive greater awareness in the UK of the benefits of AEO status.

Anecdotal evidence suggests that some EU countries hand out AEO certification with less diligence than others. In our view the answer is not to rush to the lowest denominator and join them but to complain that they are weakening the credibility of the EU AEO program and that this should be stopped not encouraged. A standard is after all a 'standard'.

CILT would also strongly support a strengthening of customs audit standards and expertise for AEO so that companies can be sure that judgements made by officers will be objective and consistent no matter which officer is undertaking the audit.

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