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Brexit Law – your business, the EU and the way ahead

Tariffs and customs on a hard Brexit

As the political debate continues over the terms, and timing, of the UK's departure from the European Union, the UK Government has published, with little fanfare, its proposed tariff rates to apply to UK imports in the event of a hard Brexit.[1] Prior to the UK Government's announcement, it had stated that the UK would replicate the current tariff rates imposed by the UK as a member of the European Union. However, that would have led to considerable cost increases in relation to a number of categories of goods, potentially impacting on the viability of cross-border supply chains, as well as potentially driving up prices for consumers.

To mitigate against those impacts in the short term, the effect of the UK Government's announcement is that, for a period of 12 months after a hard Brexit, 87% of total imports to the UK by value would be eligible for tariff free importation into the UK. The products which will continue to attract tariffs include certain agricultural products (beef, lamb, pork, poultry and some dairy products), finished vehicles (although car parts imported into the UK will be tariff free), ceramics, fertilisers, fuel and certain products imported from developing nations such as bananas, raw cane sugar and certain types of fish. For example, vehicles will attract a tariff rate of up to 22%, some fertilisers a 6.5% tariff rate, some types of tyres a 4.5% tariff rate, some fats and oils will attract a 12.7% tariff rate, ceramics will attract up to a 12% tariff rate and polyethylene terephthalate a 6.5% tariff rate.

In order to avoid new checks and controls on goods at a possible land border between Northern Ireland and the Republic of Ireland, if the UK leaves the EU without a deal, the UK's temporary import tariffs will not apply to goods crossing from Ireland into Northern Ireland. All such imports into the UK will be tariff free. We understand that, if trade is diverted through Ireland and Northern Ireland in order to avoid tariffs applying, HMRC considers that it will have the power to require the relevant duties to be paid.

Additionally, subject to a number of exceptions, the Government have announced that there will be no new customs requirements for nearly all goods imported from Ireland into Northern Ireland. The exceptions will include a requirement that animals and animal products from countries outside the EU would need to enter Northern Ireland through a Border Inspection Post, high-risk plant material entering Northern Ireland from the EU would require a phytosanitary certificate and pre-notification and electronic notifications would be required for trade in dangerous chemicals, ozone depleting substances and F-gases.

The tariffs will not just apply to imports from the EU. Under the WTO "most favoured nation" principles, the temporary tariff regime will apply equally to imports from all of the UK's trading partners, except for those where a free or regional trade agreement is in place with the UK or where those goods will enter the UK under a preferential access scheme such as that for developing countries. This also means that importers and the UK authorities will not need to be concerned with rules of origin in relation to those goods imported under the zero-tariff rate regime which will temporarily reduce the regulatory burden associated with a hard Brexit.

Alongside the announcement in relation to the reduction in tariffs, the UK Government also announced that it would maintain the EU's countermeasures designed to protect the EU market from increased imports resulting from the current US steel and aluminium safeguards.

[1] A so-called "hard Brexit" is the scenario in which the UK leaves the EU without a legally binding agreement in place relating to the terms of the UK's withdrawal.

The reduction in tariff rates on imports to zero could open up opportunities for businesses to enter into the UK market in circumstances where the current tariff rate renders that uneconomical. Consequently, it also has the potential to increase competition in the UK market to the detriment of certain domestic businesses. In all cases though, UK businesses will need to carefully consider the impact of the UK Government's announcement on their pricing and position in the market in the event of a hard Brexit. This is one of the first steps of many if the UK is to pursue its own trade policy independent of the EU. Some difficult choices no doubt lie ahead and substantive trade negotiations between the UK and its main trading partners may prove to be as politically divisive as the recent discussions over the terms of the UK's withdrawal from the EU.

Should you have any questions on the matters discussed in this bulletin, please contact Matthew Townsend (Partner), Jonathan Benson (Senior Associate) or your usual contact at Allen & Overy LLP.

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