

## 5 Windsor Framework: EU customs reform<sup>79</sup>

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**These documents are legally and politically important because:**

- they will affect the basis on which businesses in the UK export and import goods to and from the EU; and
- they are likely to apply in Northern Ireland and may have implications for the operation of the Windsor Framework.

### Action

- Write to the Financial Secretary to the Treasury (Nigel Huddleston MP) requesting further information.
- Draw to the attention of the Business and Trade Committee, the Northern Ireland Affairs Committee, and the Treasury Committee.

### Overview

5.1 The EU Customs Union underpins the free movement of goods within the EU Single Market. All EU countries apply the same customs duties (the Common Customs Tariff) to goods imported from outside the EU and common procedures (the EU Customs Code) to goods entering or leaving the EU customs territory.<sup>80</sup> This means that goods which have cleared customs in one EU Member State can circulate freely within the EU customs territory without further checks or controls. The EU has exclusive competence for the Customs Union but responsibility for the practical implementation of the EU's customs rules rests with national customs authorities.

5.2 In May 2023 the European Commission published proposals which it says would constitute “the most ambitious and comprehensive reform of the EU Customs Union since its establishment in 1968”.<sup>81</sup> Prompted by the rapid expansion in e-commerce, the growing emphasis placed on sustainable and transparent supply chains, and inconsistencies in the way that EU customs rules are interpreted and applied across the EU, the proposals would rewrite the EU Customs Code and seek to create “a truly common external border for goods”.<sup>82</sup> A new EU Customs Authority would be responsible for overseeing an EU Customs Data Hub which, over time, would replace existing customs IT infrastructure

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79 Proposal for a Regulation establishing the Union Customs Code and the European Union Customs Authority and repealing Regulation (EU) No 952/2013; 9596/23; COM(23) 258; Articles 33, 114 and 207 TFEU, ordinary legislative procedure, QMV; HM Revenue and Customs; Not a devolved matter but discussed with Devolved Administrations; 42214.

Proposal for a Regulation amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sale of goods and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold; COM(23) 259; Article 31 TFEU, QMV; HM Revenue and Customs; Not a devolved matter but discussed with Devolved Administrations; 42215.

80 The EU customs territory comprises the 27 EU Member States as well as Monaco and the UK's Sovereign Base Areas in Cyprus.

81 European Commission, EU customs reform, [accessed 15 August 2023].

82 Ibid.

in EU Member States and, the European Commission anticipates, improve supply chain supervision and risk management while making the customs clearance process easier and more efficient for economic operators.

5.3 There are three elements to the proposed customs reforms. The first, a [proposed Regulation](#), would rewrite the EU Customs Code; the second, a [proposed Regulation](#); and the third, a [proposed Directive](#), would update rules on the customs and VAT treatment of goods sold online from a third country to consumers or businesses in the EU. We examine the changes to EU customs rules set out in the proposed Regulations in this chapter. We consider the proposed changes to EU VAT rules in the following chapter.

5.4 The reforms are important because they will affect the basis on which businesses in the UK export and import goods to and from the EU. They are to be phased in at a time when businesses in the UK and the EU will also be adapting their business systems and processes to the UK's new [Border Target Operating Model](#)<sup>83</sup> which is to be implemented gradually between 31 January and 31 October 2024. In addition, as we explain below, the EU Customs Code and related EU customs, VAT and excise laws concerning the movement of goods, as well as any amendments made to them, continue to apply in Northern Ireland under the Windsor Framework.

## Proposed revision of the EU Customs Code

5.5 The EU Customs Code sets out the rules and procedures that apply to goods when they enter or leave the EU customs territory. The collection of revenue from customs duties and indirect taxes (such as excise duties and VAT) is one important function that takes place when goods cross the EU's external border.<sup>84</sup> Checks and controls at the border are also an important means of ensuring that goods are safe, meet EU standards relating to their sustainability and their impact on the environment or on human rights, and comply with any sanctions introduced by the EU. There is increasing interest in using customs data to inform the EU's response to wider geopolitical concerns affecting the security and resilience of its supply chains.

5.6 The European Commission considers that major reform of the EU Customs Union is necessary because the EU external border is not equally protected at all its entry points. National customs authorities have different control priorities, practices and sanctions and operate over one hundred separate interfaces and IT systems which are costly to run and are often not interconnected. There is no central EU customs database or EU supply chain supervision. The growth in e-commerce is another driver of reform, with the high volume of low value transactions making it difficult for sellers to comply with reporting obligations and for customs authorities to supervise online trade flows properly.<sup>85</sup>

5.7 The Commission anticipates that the proposed reforms would be phased in over a 15-year period (see our timeline below). They are intended to 'future-proof' the EU Customs Union and make customs "a strategic capability of the EU", enabling customs authorities to shift their focus from the supervision and control of individual consignments towards

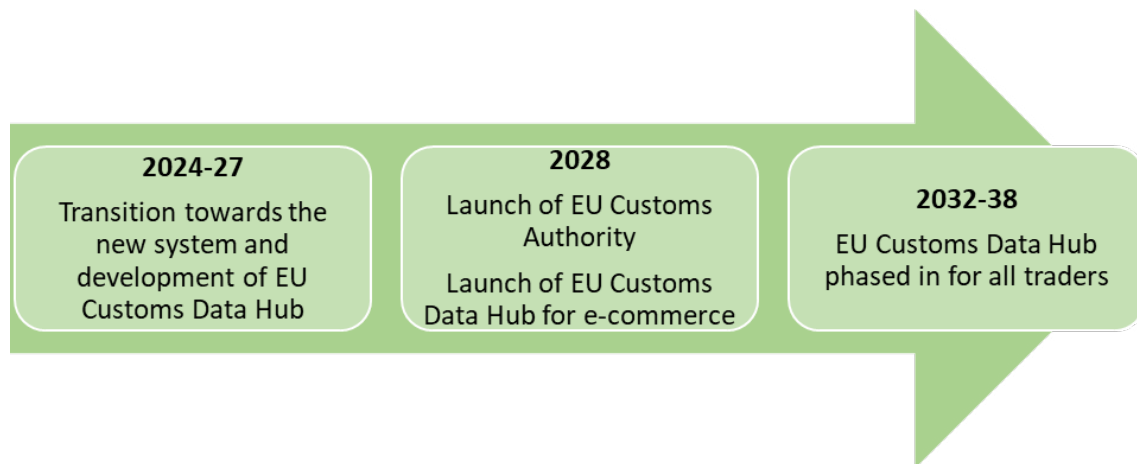
83 The Government published its final Border Target Operating Model in August 2023.

84 Customs duties are an important source of income for the EU, accounting for around 11% of the EU budget in 2022.

85 According to the European Commission in its explanatory memorandum accompanying the proposed Regulation on the EU Customs Code, "In 2022, 890 million e-commerce transactions were declared [...] representing 73% of all import customs declarations but only 0.5% of all import value."

supply chain supervision and risk management based on information contained in a new EU Customs Data Hub.<sup>86</sup> The proposed new EU Customs Authority would use this information to improve risk management, coordinate and supervise operational cooperation between customs authorities, and support them in implementing EU customs laws and controls in a uniform way, ensuring a ‘level playing field’ no matter where goods enter or leave the EU.

#### Proposed timeline



5.8 In the table below, we set out the main elements (or ‘pillars’) of the EU customs reform proposals.

86 See the [Commission Communication](#), ‘Customs reform: Taking the Customs Union to the next level’ (COM(23) 257) (17 May 2023).

| Three Pillars of EU Customs Reform                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| Partnership with business                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Smarter customs checks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | A new framework for e-commerce                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>Aim: reduce customs formalities and administrative burdens for traders without jeopardising effective customs supervision.</p> <p>Businesses will be able to submit customs information covering multiple consignments via a single online portal—the EU Customs Data Hub—rather than through multiple national systems.</p> <p>The Hub will compile the data, run EU-level risk analysis, and provide customs authorities with a comprehensive overview of supply chains and movement of goods.</p> <p>Building on the existing Authorised Economic Operators programme, from 1 March 2032 a new ‘Trust and Check’ scheme will be available for traders who meet certain criteria and have transparent processes and supply chains. This will enable them to release goods into free circulation without any active customs intervention. They will be able to use a Customs One-Stop Shop to clear all their imports with the customs authorities in the Member State in which they are based, no matter where the goods enter the EU.</p> <p>Other traders will continue to liaise with the customs authority in the country where their goods enter the EU, subject to review in 2035.</p> <p>Estimated savings of up to €2.7 billion a year for traders.<sup>87</sup></p> | <p>Aim: improve access to customs data, increase customs’ capacity to detect non-compliant goods, and make EU risk management more efficient.</p> <p>A new EU Customs Authority, operational from 1 January 2028, will pool customs information and provide a repository of expertise, using data provided via the EU Customs Data Hub, so that national and EU level customs authorities ‘act as one’ in controlling the EU’s external border for goods and managing risk.</p> <p>Member States will have access to real-time data on supply chains and production processes for goods entering the EU, ensuring proper collection of duties and taxes.</p> <p>The EU Customs Authority will ensure operational cooperation and coordination with other non-customs authorities, such as those responsible for market surveillance, law enforcement and taxation.</p> <p>AI will be used to analyse and monitor data before goods reach the EU, enabling EU customs authorities to focus resources on unsafe or illegal goods or goods that contravene EU laws in areas such as climate change, deforestation, and forced labour.</p> <p>Estimated savings of up to €2 billion a year in IT operating costs once the EU Customs Data Hub replaces existing IT customs infrastructure in Member States.</p> | <p>Aim: ensure a level playing field between e-commerce and traditional trade in relation to customs and VAT.</p> <p>From 1 March 2028, online platforms rather than consumers will be treated as the official (‘deemed’) importers of goods sold online into the EU. They will be responsible for ensuring that:</p> <ul style="list-style-type: none"> <li>customs duties and VAT are paid at purchase and passed onto the EU Member State in which they are registered, with no hidden charges or unexpected paperwork for consumers or carriers; and</li> <li>goods purchased online are safe and comply with EU environmental, safety and ethical standards.</li> </ul> <p>From 1 March 2028 the current customs duty exemption for goods valued at less than €150 will be removed (a similar VAT exemption for low value imported goods not exceeding €22 was removed in 2021)—this is intended to prevent the undervaluing of goods to avoid import duties and the splitting of consignments into smaller packages which increases their environmental footprint.<sup>88</sup></p> |

<sup>87</sup> See the [Commission Communication](#), ‘Customs reform: Taking the Customs Union to the next level’ (COM(23) 257) (17 May 2023).

<sup>88</sup> The European Commission cites research indicating that around 65% of e-commerce consignments are undervalued to avoid customs duties while around 66% of products purchased online do not meet EU safety requirements. See page 3 of the [Commission Communication](#), ‘Customs reform: Taking the Customs Union to the next level’ (COM(23) 257) (17 May 2023).

| Three Pillars of EU Customs Reform |  |                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                    |  | From 1 March 2028 online platforms will be able to choose to apply simplified tariff rates to online sales of some of the most common low-value goods bought from outside the EU, making it easier to manage customs processes for small parcels, with estimated potential gains of €1 billion per year in customs revenues. <sup>89</sup> |

## Relevance for the UK

### *Application of the EU Customs Code in Northern Ireland*

5.9 Northern Ireland is part of the UK's customs territory but is required (under the [Withdrawal Agreement](#) establishing the terms of the UK's exit from the EU) to apply the EU Customs Code and related EU customs, VAT and excise laws listed in the Windsor Framework<sup>90</sup> as if it were still part of the EU's customs territory in order to avoid a 'hard' customs and regulatory border on the island of Ireland.<sup>91</sup> The European Commission says that its proposed customs reforms will not affect the new customs easements agreed by the UK and EU in March 2023 as part of the Windsor Framework arrangements for goods moving from Great Britain to Northern Ireland which are considered "not at risk" of entering the EU's Single Market.<sup>92</sup> The reform proposals would amend or replace EU laws which currently apply in Northern Ireland and are covered by the automatic alignment provisions of the Windsor Framework. They also fall within the scope of the new 'Stormont Brake',<sup>93</sup> opening up the possibility for the UK Government to prevent the application of all or part of the revised EU Customs Code if asked to do so by a sufficient number of Members of the Northern Ireland Assembly and if it is also satisfied that the stringent conditions for using the Brake are met.<sup>94</sup>

### *Implications for UK customs authorities and traders*

5.10 The [UK/EU Trade and Cooperation Agreement](#) ('TCA') includes provisions on customs cooperation which are underpinned by a shared objective to maintain "appropriate levels of compatibility of [...] customs legislation and practices" and administrative capacity to facilitate trade, effective customs controls and enforcement of customs and trade related

89 Simplified tariff treatment for imported e-commerce goods would be based on five 'duty buckets', each containing specific categories of goods with a fixed duty rate ranging from 0% (e.g. for books and printed materials) to 17% (e.g. footwear, beverages, glassware).

90 The term 'Windsor Framework' refers to the Withdrawal Agreement's Protocol on Ireland/Northern Ireland, as amended by [Decision 1/2023 of the UK/EU Withdrawal Agreement Joint Committee](#).

91 See Article 5(3) and Article 13(1) of the Windsor Framework.

92 See the European Commission's explanatory memorandum accompanying the proposed Regulation establishing the Union Customs Code and Customs Authority.

93 See Article 13(3) and (3a) of the Windsor Framework.

94 See European Scrutiny Committee, Eighteenth Report (2022–23) HC 119–xvi, [chapter 1](#) (24 May 2023) for details of the Windsor Framework and the operation of the Stormont Brake.

rules.<sup>95</sup> It envisages the exchange (under arrangements to be agreed) of certain customs information (such as export and import declaration data on goods traded between the EU and the UK) to target goods which pose a risk to revenue collection or safety and security.<sup>96</sup> The TCA also includes a Protocol setting out the assistance that customs authorities in the UK and EU should provide to one another to ensure that customs laws are properly applied.<sup>97</sup>

5.11 Under the proposed changes to the EU Customs Code, the European Commission, national customs authorities in the 27 EU countries, and the new EU Customs Authority would be able to share customs data with customs authorities in third countries where this is provided for in an international agreement concluded by the EU (such as the TCA with the UK) or in specific EU laws and there are adequate safeguards to protect personal data.<sup>98</sup> In addition, the EU Customs Authority would be able to conclude ‘working arrangements’ with customs authorities in third countries.<sup>99</sup>

5.12 As well as improving the capacity of customs authorities to supervise and control goods entering and leaving the EU, the proposed reforms are also intended to simplify customs clearance processes for businesses, with the creation of the EU Customs Data Hub building on the introduction of the “EU Single Window Environment for Customs” (from 2025).<sup>100</sup> A more harmonised approach to the implementation and application of EU customs rules and processes could be beneficial for UK businesses in managing their post-Brexit trade with the EU.

## The Government’s position

5.13 In her [Explanatory Memorandum dated 3 August 2023](#) the then Financial Secretary to the Treasury (Victoria Atkins MP) notes that the EU Customs Code applies in Northern Ireland “alongside a series of bespoke provisions” in the Windsor Framework which provide for “a unique system for the movement of goods”. The proposed changes to the EU Customs Code are at an early stage in the EU legislative process and “the time horizon for implementation [...] is lengthy”. She continues:

Whether or how individual proposals will apply in respect of Northern Ireland will be subject to further engagement with the European Commission to understand the proposals and their impact in Northern Ireland. However, many of the proposed reforms seek to address challenges common to many customs administrations, including the UK, in trying to streamline processes for traders and modernise borders. It is therefore appropriate that certain of these proposals may apply once properly considered by the appropriate Committee.

95 See Article 101 Of the TCA. Examples of cooperation include the exchange of information on customs laws and procedures, supply chain security and risk management, and technical assistance.

96 See Article 103 of the TCA.

97 See the Protocol on Mutual Administrative Assistance in Customs Matters and a separate Protocol on Administrative Cooperation and Combating Fraud in the field of VAT and on Mutual Assistance for the recovery of claims relating to taxes and duties.

98 The two ‘adequacy Decisions’ adopted by the European Commission in 2021 ensure that personal data can flow freely from the EU to the UK provided that UK data protection laws continue to provide a level of protection which is “essentially equivalent” to the EU General Data Protection Regulation and Law Enforcement Directive.

99 These working arrangements would not create legally binding obligations for the parties.

100 See European Scrutiny Committee. Thirtieth Report (2019–21) HC 229–xxvi, [chapter 5](#) (25 November 2020).

5.14 The Government will engage with the European Commission “via the governance structures provided by the Withdrawal Agreement, including the new dedicated customs sub-group of the Joint Consultative Working Group”. The Minister notes the Commission’s view that the proposed customs reforms will not affect the arrangements and safeguards put in place by the Windsor Framework for goods moving through the so-called ‘Green Lane’, adding that “the new Stormont Brake” is one of the tools available to the UK to manage any difficulties.

5.15 The Minister highlights three elements of the proposed customs reforms that may affect so-called ‘Red Lane’ movements; that is the movement of goods brought into Northern Ireland from elsewhere in the UK or from another non-EU third country which are considered “at risk” of entering the EU Single Market. The first concerns the interaction between the “unique arrangements” for the movement of parcels from Great Britain to Northern Ireland established by the Windsor Framework and the proposed removal of the EU customs duty exemption for the online sale of goods valued at less than €150. The Minister says that the administrative impact of the proposed change is unclear.

5.16 Second, under the TCA, businesses established in the UK which have been granted Authorised Economic Operator (‘AEO’) status by the EU enjoy the same customs facilitations as EU businesses which have AEO status. The customs reform proposals would introduce a new ‘Trust and Check’ trader scheme providing greater customs facilitations than are available to AEOs in return for more transparent business processes and supply chains. This new Trust and Check trader status would only be available to businesses established in the EU. As a result, the Minister says that only “traders established in the EU and moving EU destined goods through Northern Ireland will be able to benefit from this new category”.

5.17 Third, the EU Customs Data Hub is intended to allow traders bringing goods into the EU to log all required information on their products and supply chains in “a single online environment”. The Minister says it will be necessary to consider how the Hub will interact with the governance and data sharing arrangements established under the Windsor Framework.

5.18 The Minister notes the uncertainty around “whether or how” the EU’s customs reform proposals may apply in respect of Northern Ireland, as well as recognition by the EU of the need for consultation with the UK on the potential implications. She says that the UK will continue to engage with the EU within the Trade Specialised Committee on Customs and Rules of Origin (established by the TCA) and in the relevant Withdrawal Agreement bodies, adding that the UK’s Mission to the EU will also “seek to monitor the potential impacts of the proposed reforms”.

## Analysis and Action

5.19 The proposed customs reforms have important implications for the way in which the EU Customs Code and related EU laws will apply in Northern Ireland. At this early stage in the EU legislative process, it is difficult to anticipate how the reforms will interact with the new customs easements introduced by the Windsor Framework for the movement of goods from Great Britain to Northern Ireland which are also being phased in, but over a shorter timescale (until July 2025). It is therefore welcome that the EU and the UK both recognise the need for close engagement in working through the potential implications. It

will also be necessary to ensure that appropriate guidance is made available to businesses when the final reform package is agreed to ensure that they have time to adapt and that there are no unforeseen and unintended consequences for their operations.

5.20 While noting that the challenges the European Commission is seeking to address in its reform proposals are common to many customs administrations, the Minister does not indicate how they compare to the approach the Government has set out in its Border Target Operating Model to simplify and streamline import and export trade processes for business. Nor does she consider how the proposed EU customs reforms might affect the UK's highly developed e-commerce market or the implementation of the TCA provisions on customs and trade facilitation, particularly those on the mutual recognition of Authorised Economic Operator programmes.

5.21 We therefore intend to hold the proposed Regulations under scrutiny and to seek further information from the Minister.

### ***Letter from the Chair to the Financial Secretary to the Treasury (Nigel Huddleston MP)***

Thank you for your predecessor's Explanatory Memorandum on EU proposals to reform the EU Customs Code and related measures which we have considered with great interest. The reform proposals are likely to affect the ease with which businesses in the UK will be able to trade with the EU and, as they are also within the scope of the Windsor Framework, will have implications for the application of EU customs rules in Northern Ireland. We welcome the fact that the UK and the EU recognise the need for close engagement and discussions within the relevant bodies established by the UK/EU Withdrawal Agreement and Trade and Cooperation Agreement as the proposals progress through the EU legislative process. We intend to hold the proposals under scrutiny while these discussions take place and ask you to provide regular updates on their progress.

You note in your Explanatory Memorandum that the challenges the European Commission is seeking to address are common to many customs administrations, including in the UK. In August 2023, the Government published its final Border Target Operating Model which aims to “improve the efficiency of goods movement and trade flow across the UK border” and demonstrate to trade partners how “more data-driven approaches to risk” could help to improve their own import processes.<sup>101</sup> What are the main points of similarity and difference in the UK model and the approach to customs reform proposed by the European Commission? How might the provisions on customs and trade facilitation in the UK/EU Trade and Cooperation Agreement be affected by the proposed EU customs reforms? What implications might the introduction of a new EU ‘Trust and Check’ trader scheme in 2032 have for the continued mutual recognition of Authorised Economic Operator programmes in the UK and the EU?

The growth in e-commerce transactions is one of the main drivers of the reforms proposed for the sale of online goods. What assessment have you made of the potential impact that designating online platforms as the ‘deemed’ importer and removing the customs duty exemption for goods valued at less than €150 will have on the UK's highly developed e-commerce market?

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101 HM Government, [The Border Target Operating Model](#), CP 935, August 2023, p.92, para 364.

Finally, we would welcome your initial thoughts on the role envisaged for the proposed new EU Customs Authority. Do you anticipate that the UK would wish to conclude a ‘working arrangement’ with the Authority and what benefits might it bring to customs cooperation between the UK and the EU?

We look forward to receiving your response by the end of January 2024.