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International Agreements Committee

1st Report of Session 2022–23

Scrutiny of international agreements: Customs Co-operation Agreement with Canada

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International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

Membership

The Members of the International Agreements Committee are:

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Lord Gold	Lord Oates
Baroness Hayter of Kentish Town (Chair)	Lord Razzall
Lord Kerr of Kinlochard	Lord Sandwich
Lord Lansley	Lord Udny-Lister
Baroness Liddell of Coatdyke	Lord Watts

Declaration of interests

See Appendix.

A full list of Members' interests can be found in the Register of Lords' Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests

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Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst) and Robert Cocks (Committee Operations Officer).

Contact details

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SUMMARY

This report addresses the following agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), which we report for information.

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada on Customs Cooperation and Mutual Assistance in Customs Matters (CP 668, 2022)

While we report this agreement for information only, we raise a number of questions with the Government. In particular, we call on the Government to ensure that where new agreements are based on an underlying EU treaty (like this one), the EM contains information on the key differences between the EU and new bilateral agreement, and the rationale for those differences.

Scrutiny of international agreements: Customs Co-operation Agreement with Canada

AGREEMENT REPORTED FOR INFORMATION

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada on Customs Cooperation and Mutual Assistance in Customs Matters (CP 668, 2022)[1]

1. The UK-Canada Customs Cooperation and Mutual Assistance in Customs Matters Agreement (CCMAA) was laid on 28 April 2022. The scrutiny period is due to end on 21 June. It was considered by the Committee on 9 June.

2. The CCMAA will provide a legal basis for continued cooperation between HMRC and Canada's Border Service Agency.[2] It contains provisions to enable the provision of technical assistance and expertise in customs matters and to allow the exchange of information between customs authorities.[3]

3. The Government explains in the Explanatory Memorandum (EM) published alongside the Agreement that the CCMAA is a successor treaty to the EU-Canada Agreement on Customs Cooperation and Mutual Assistance in Customs Matters.[4] The EU-Canada Agreement came into force on 1 January 1998 and applied to the UK until the end of the post-Brexit transition period on 30 December 2020.[5]

4. Although a successor to an EU treaty, the Government's EM does not provide any details about the differences between the CCMAA and the EU-Canada Agreement. The two Agreements appear to be substantially similar, but some of the key differences include:

    - A new provision to enable the UK and Canada to mutually recognise each other's Authorised Economic Operator programmes should they wish to do so (Article 2).

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1 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada on Customs Cooperation and Mutual Assistance in Customs Matters, CP 668, April 2022: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071699/CS_Canada_1.2022_Customs_Cooperation_Mutual_Assistance_Customs_Matters.pdf [accessed 10 June 2022]

2 Her Majesty's Revenue and Customs, *Explanatory Memorandum on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada on Customs Cooperation and Mutual Assistance in Customs Matters*, April 2022, para 3.3: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1072289/explanatory-memorandum-canada-customs-cooperation-mutual-assistance.odt [accessed 10 June 2022]

3 EM, para 4.1

4 EM, para 3.3

5 Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1400750782190&uri=CELEX:21998A0113(03) [accessed 10 June 2022]; and European Commission, 'EU-Canada customs cooperation': https://ec.europa.eu/taxation_customs/customs-4/international-affairs/third-countries/eu-canada-customs-cooperation_en [accessed 10 June 2022]

- More detailed provisions relating to the protection of personal data (Articles 15 and 23).
- A new Article setting out how disputes are to be settled (Article 20).
- Provision for either Party to request a meeting to consider reviewing the Agreement (Article 23).

5. The scope of certain provisions of the EU-Canada agreement are narrowed down or clarified. For example:

   - The Agreement includes a specific provision that does not require the Parties to cooperate with respect to requests to arrest or detain people, to confiscate or seize goods or property, or to collect taxes, levies or other monies on behalf of the other Party (Article 6(5)).
   - The Agreement clarifies that the Agreement does not provide for customs duties incurred in one Party's territory to be recovered in the other Party's territory (Article 6(6)).

6. These changes are not explained.

7. **We call on the Government to ensure that where new agreements are based on an underlying EU treaty, the EM contains information on the key differences between the EU and new bilateral agreement, and the rationale for those differences. We are aware that there are a limited number of agreements still to be concluded based on EU ones, but the Government may wish to update its *Treaties and MOUs* guidance to set this out explicitly.**[6]

Governance and amendments

8. The CCMAA will establish a Joint Customs Cooperation Committee (JCCC), consisting of representatives of the Parties' customs authorities, to "see to the proper functioning" of the Agreement.[7] Disputes may be settled by the Parties through diplomatic means or by the JCCC.[8]

9. The CCMAA does not provide a mechanism for amendments, but the EM notes it may be amended by agreement between the UK and Canada.[9] The EM states that the Government will comply with the requirements of the Constitutional Reform and Governance Act 2010 (CRAG) in relation to any amendment that requires ratification.[10]

10. **We repeat our long-standing recommendation that the Government should publish clear guidelines on how it decides whether treaty amendments should be subject to ratification (and therefore laid under CRAG).**[11]

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6 Foreign Commonwealth and Development Office, *Treaties and MOUs: Guidance on Practice and Procedures*, 15 March 2022: https://www.gov.uk/government/publications/treaties-and-mous-guidance-on-practice-and-procedures [accessed 10 June 2022]

7 Article 19

8 Article 20

9 EM, para 4.4

10 *Ibid.*

11 See, for example, our reports *Working Practices: one year on* (7th Report, Session 2021–22, HL Paper 75) and *Treaty Scrutiny: Working Practices* (11th Report, Session 2019–21, HL Paper 97)

Entry into force

11. The CCMAA will enter into force on the date that both Parties have notified each other that they have completed their domestic legal procedures.[12] No new implementing legislation is required.[13]

Territorial scope and consultation

12. The CCMAA will apply to the UK and to Jersey, Guernsey and the Isle of Man (the Crown Dependencies). The EM states that the CCMAA deals with customs, which is a fully reserved matter with no implications for the Devolved Administrations, and that the Government has not consulted the Devolved Administration on the drafting of the Agreement.[14] It also states that the Crown Dependencies were formally consulted and that they officially requested to be included in the territorial scope of the CCMAA.[15]

13. **We report the UK-Canada Customs Cooperation and Mutual Assistance in Customs Matters Agreement to the House for information. In particular we highlight our comments at paragraphs 7 and 10.**

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12 Article 24
13 EM, para 5.1. The relevant legislation is section 8B of the Customs and Excise Management Act 1979.
14 EM, para 10.1
15 EM, para 10.2

APPENDIX: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Astor of Hever
No relevant interests
Lord Gold
Director, Gold Collins Associates Ltd
Principal, David Gold & Associates LLP
Baroness Hayter of Kentish Town
Senior Non-Executive Director, Association of British Insurers
Lord Kerr of Kinlochard
No relevant interests
Lord Lansley
Director, LOW Associates Ltd
Chair, UK-Japan 21st Century Group
Trustee, Radix
Baroness Liddell of Coatdyke
Association Member, Bupa
Chair, Annington Ltd
Honorary Vice President, Britain-Australia Society Education Trust
Trustee, Northcote Educational Trust
Lord Morris of Aberavon
No relevant interests
Lord Oates
Director, H&O Communications Ltd
Lord Razzall
Director, North Atlantic Mining Associates Limited
Director, ZeU Technologies Inc
Shareholdings, ZeU Technologies Inc
Shareholdings, St-Georges Eco-Mining Corporation
Shareholdings, Tintra plc
Earl of Sandwich
No relevant interests
Lord Udny-Lister
Advisor to the Group Chairman of HSBC
Lord Watts
No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), and Robert Cocks (Committee Operations Officer).

The Committee is grateful for the support provided by Nicola Newson (Senior Library Clerk).