NOTE BY THE UNITED KINGDOM DELEGATION

Legal Provisions Affecting Goods Subject to the Temporary Charge on Imports Imported under Pre-Existing Contracts

The present legal position in the United Kingdom is governed by section 10(1) of the Finance Act of 1901, which reads as follows:

"Where any new customs import duty or new excise duty is imposed and any goods in respect of which the duty is payable are delivered after the day on which the new duty takes effect in pursuance of a contract made before that day, the seller of the goods may, in the absence of any agreement to the contrary, recover, as an addition to the contract price, a sum equal to any amount paid by him in respect of the goods on account of the new duty."

This covers the normal case and enables the amount of the new charge to be passed on to the final customer.

It was, however, considered that where an overseas supplier had a contract to supply goods to a United Kingdom importer at a price which included all customs duties payable on the goods, then the obligation undertaken by the overseas supplier (the seller) could be such that the 1901 legislation offered him no relief i.e. that the obligation constituted "an agreement to the contrary". This being so, it followed that the seller could be held to the terms of his contract and made to bear the burden of the temporary import charge.

The United Kingdom Government recognized that this could expose the overseas supplier to considerable hardship and they have therefore introduced the following provision in the legislation imposing the import charge:

"For the purposes of section 10 of the Finance Act 1901 (under which the burden of a new duty imposed on a seller under a contract made before the new duty takes effect may, in the absence of agreement to the contrary, be transferred to the buyer) as it applies in relation to duty under this section, any"
terms in a contract expressly or impliedly making a seller liable for all customs duties (or all customs duties with exceptions not affecting duty under this section) shall not be deemed to amount to an agreement to the contrary (that is to say, to an agreement that the said section 10 shall not apply)."

(Section 3(8) of the Finance Bill).

This provision extends the scope of the 1901 legislation by allowing the addition of the amount of the temporary import charge to the contract price, notwithstanding that there is a specific clause in the contract that the price includes all customs duties. It is expected that this provision will become law later this month and will be of assistance to exporters in certain countries who have made contracts at duty-inclusive prices.