

Purpose and powers of the Taxation (Cross-border Trade) Bill 2017–19

19/01/2018

Tax analysis: The Taxation (Cross-border Trade) Bill will give the government the ability to establish a standalone customs regime, and ensure VAT and excise legislation operates effectively, following the UK's withdrawal from the EU. Heather Gething, partner, and Dorothy Livingston, consultant, both at Herbert Smith Freehills LLP, discuss the Bill in more detail, focusing on the options outlined, protection against unfair trading practices, and information sharing obligations, among other things.

Original news

Taxation (Cross-border Trade) Bill—Second Reading, [LNB News 08/01/2018 74](#)

The Taxation (Cross-border Trade) Bill passed its Second Reading on 8 January 2018. The financial secretary to the Treasury confirmed the government will look at ways to minimise adverse cash-flow effects on small businesses of the move away from EU acquisition VAT to import VAT. In an exchange of correspondence with the chair of the Treasury select committee, the Chancellor has declined to rule out the UK's future participation in a long-term customs union with the EU.

What is the purpose of the Bill?

The purpose of the Bill is to make provision for the UK ceasing to be a Member State of the EU and its customs union. It deals with:

- customs and import duties
- excise duties
- trade defence (eg anti-dumping measures)
- VAT on imports from the EU
- the powers needed to administer the new system

The government's aim is to deal with all of the possible options that may apply after the UK leaves the EU in March 2019 and to assist the UK economy to remain on an even keel at this time of change.

What options are outlined in the Bill for the future of the EU/UK customs relationship and that with other countries?

The Bill covers a range of possibilities ranging from a very close relationship with the EU to the 'no deal' option in which standard World Trade Organization (WTO) rules would apply.

It gives HMRC power to make regulations to implement any customs union agreed between the UK and any other territory. A customs union is one where no duty is charged between the UK and the other territory, and where the other territory and the UK have the same or substantially the same rules for charging duty on imports from third countries, with duty-free circulation of goods within the customs union. This would enable the UK to remain in or re-join the EU customs union on a permanent or temporary basis. The EU is presently the only customs union recognised as a WTO member in its own right, but others may emerge, particularly in the Asia/Pacific region.

In relation to customs and import duties, the Bill empowers the Secretary of State and the Treasury to create a new standard tariff which will classify goods as they are classified now by reference to nature, origin and other factors, to allocate a code to determine the rate of import duty and whether it is to be determined by reference to weight, volume or other measure. These rates are expected initially to be the same as those applied by the EU.

Preferential rates or rate quotas are possible to give effect to any free trade agreement (FTA) made between the UK government and any other territory or country, and also preferential schemes for developing countries (which may be bilateral or unilateral arrangements).

It is anticipated that the UK will seek as quickly as possible to make arrangements to continue trading with countries that have FTAs with the EU on the same terms as they have agreed with the EU, except as regards the size of any rate quotas. If and when the UK leaves the EU customs union, it is hoped there will be a new comprehensive trade agreement with the EU that removes nearly all tariffs, similar in effect to the customs provisions of the EEA agreement between the EU and Norway, Iceland and Liechtenstein.

In any event, the standard rates will apply to imports originating in WTO member countries with which the UK does not have an FTA and the Bill deals with the mechanics of payment of these duties, including the person who is liable to pay import duty and the time at which it must be paid.

The Bill also empowers the Treasury to make comparable arrangements in relation to export duties and excise duties.

What will the Bill enable the UK to do to protect itself against unfair trading practices by other countries?

The Bill provides a new trade remedies framework, which will enable the UK to protect itself against unfair trading practices of other countries. These include:

- anti-dumping measures—ie higher rates of duty applied to specific goods that are being sold in the UK at significantly less than the price of the same goods in the domestic market of the exporter and which cause injury to UK industry
- anti-subsidy/countervailing measures—ie higher rates of duty applied where imports benefit from subsidisation of the supplier by a foreign government or public body and cause injury to UK industry. A recent example of this is the duties imposed by the USA on Bombardier aircraft alleged to have been subsidised by the Canadian and other governments
- safeguards measures—where a surge of fairly traded imports is seriously injuring a domestic industry. This sort of measure is less commonly used than other trade defence measures
- countermeasures—where the UK has established through WTO processes that WTO rules are being broken by another country in a way that is damaging to its interests. This can work very strangely—for example, the US put pressure on the EU in a dispute about bananas, by placing extremely high duties on Harris tweed and a range of other products in completely different sectors

This framework will replace that currently administered by the EU. It will only be used consistently with the UK's international obligations, primarily under WTO rules.

How does the Bill propose to deal with VAT on movement of goods between the EU and the UK once Brexit has happened?

In short, subject to the terms of any negotiated agreement to the contrary, all goods acquired from the EU will be treated in the same way as goods that are acquired from outside of the EU currently:

- VAT will be imposed on imports
- no UK VAT will be charged on exports

The changes may not be implemented if the UK and EU negotiate an agreement to maintain their current treatment of VAT. The main changes, in the absence of such agreement, are:

- the abolition of the concept of 'acquisition' of goods from the EU and the abolition of registration for traders engaged in distance selling. All non-domestic acquisitions will give rise to import VAT. This may have considerable cash-flow implications for businesses importing from the EU
- the removal of references to EU law and regulation. All EU provisions will cease to have effect save as specified in the European Union (Withdrawal) Bill. EU law will be relevant in determining the meaning of VAT law. The principal EU VAT [Directive 2006/112/EC](#) and implementing Regulations will continue to have effect for the purpose of determining the meaning of the legislation subject to any changes required by the Treasury

What legislative powers are proposed by the Bill? What is the extent of the powers?

The powers conferred on the various persons and bodies are extensive as they are empowered not only to complete the creation of the new UK regime, but to bring forward legislation and regulations to give effect to the agreement reached between the UK and the EU and any other arrangement agreed between the UK and a third state of country.

There are various limitations on the ability of the Treasury/Secretary of State or other Minister to make regulations. Some can only be made if required by the Secretary of State, or if the person concerned takes into account certain overriding objectives. For example, for the introduction of a quota system with any territory, regard must be had to the interests of consumers, the desirability of external trade, the desirability of maintaining UK productivity and the amount of competition in the UK.

Regulations made in relation to the establishment of a customs tariff must be by statutory instrument and be approved by the House of Commons.

Other regulations may be made by amending existing legislation which would be approved by the House of Commons. Where what is being amended is an existing regulation which may be amended by statutory instrument under the negative procedure without the positive approval of the House of Commons, the amending regulations may be made using that procedure.

Some regulation-making powers are delegated to HMRC, for example, regulations requiring importers to produce documentation may be made by HMRC Commissioners alone and are more in the nature of administrative requirements.

What information-sharing obligations are included in the Bill?

The Bill does not impose additional information-sharing obligations. It requires the relevant public bodies, such as the Treasury and HMRC, to have regard to international arrangements to which the UK government is a party, which include information sharing arrangements.

The Bill allows HMRC to co-operate with other customs services, by the exchange of information or otherwise, on matters of mutual concern with a view to securing the administration of the import duty system and combating evasion and avoidance. It gives HMRC power to disclose information relating to import duty for the purposes of the imposition, enforcement or other regulation of import duty. Such disclosure of information is subject to the usual safeguard such as no onward disclosure without HMRC's consent and limiting the use of the information by the receiving party to customs duty purposes only.

What is the timeline for the Bill?

The Bill passed its Second Reading in the House of Commons on 8 January 2018. It will now be considered in a Public Bill Committee, which is scheduled to commence on 23 January 2018 and conclude by 1 February 2018. This is likely to take longer because the Bill will have eight House of Commons Committee sittings.

The Speaker of the House of Commons has yet to make a decision as to whether the Bill should be certified a money Bill at a later stage. If it is certified as a money Bill, the power of the House of Lords to amend it would be restricted and arguably the time the Bill would spend in the House of Lords would be reduced as a result.

Note: The government has issued its own explanatory note, 'Preparing for a UK Trade policy: a guide to trade legislation', published 8 January 2018, available [here](#).

Interviewed by Susan Ghaiwal.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

FREE TRIAL