

FROM THE PERMANENT SECRETARY
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Crawford Falconer
Second Permanent Secretary
Department for International Trade
By email

21 December 2017

Dear Crawford,

Taxation (Cross-border Trade) Bill

Thank you for your email dated 3 November regarding the Taxation (Cross Border Trade) Bill, which was introduced in Parliament on 20 November.

I welcome the opportunity to comment on this Bill given the need for continuous and sustained engagement with the devolved administrations as we move forward with preparations for EU exit. This is especially important in relation to Northern Ireland given its unique position, not least in that it is the only part of the UK that shares a land border with another EU country. It will be particularly important to keep in touch on these issues in parallel with the work flowing from the section on the Irish Border in the negotiation report of 8 December.

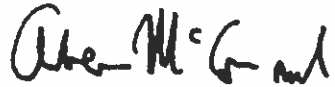
I note that most of the implementing regulations relating to the Bill will be subject to Negative Procedure which makes prior engagement with devolved administrations even more essential.

Comments have been gathered from colleagues in relevant departments across the Northern Ireland Civil Service (NICS). As a result there are a number of areas of the Bill on which I would be grateful for clarification. These are set out in the attached Annex.

You will see from the Annex that many of the comments we provided on the Trade Bill carry over to the Taxation Bill including, for example, the importance of the Northern Ireland voice being represented on the Trade Remedies Authority.

I look forward to your response and to continued constructive working on these matters over the coming months and years. I am copying this letter to Alex Chisholm, Philip Rycroft, Clare Moriarty, Jonathan Stephens and David Sterling.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew McCormick'. The signature is written in a cursive, slightly slanted style.

ANDREW McCORMICK
Permanent Secretary

Annex - Comments from NICS

1. Further engagement on the following areas, as related regulations are developed, has been identified as of particular importance.

Clause 8 (5):

The Customs tariff – formal channels for devolved administrations to influence the Treasury when considering the rate of import duty will be essential. What role do you see Devolved Administrations playing here? For Northern Ireland areas for discussion would include the Good Friday Agreement and the impact of the final decisions on customs on the land border.

Clause 26:

Cooperation with other customs services – Has consideration been given to how HMRC might cooperate with devolved administrations for trade policy / trade promotion purposes?

Clause 30:

General provision – How will the devolved administrations influence and be informed of the use of this catch all power?

Schedule 4 (general)

Trade Remedies - Given the differences in domestic industry across the UK, it is essential that Devolved Administrations are consulted during the development of regulations related to trade remedies. In particular, a flexible definition of domestic industry would be helpful to insure that NI industry concerns can be taken into consideration when it comes to defining the injury to a UK industry.

The Bill's procedural rules on safeguard investigations are broadly in line with WTO law. There are, however, a few deviations. Firstly, under WTO law safeguard measures can only be applied in the event of 'unforeseen developments'. This requirement does not appear to be replicated in the Bill. Secondly, under WTO law the determination of 'injury' caused to domestic industry requires the assessment of factors such as increase in imports, market share, sales trends, production and productivity. The Bill does not appear to directly engage with these issues either.

Might this raise questions regarding the compatibility of UK safeguard investigations under WTO law. Can I ask whether consideration was given to including these requirements, if so, what was the rationale for their exclusion?

Schedule 4, Part 1 (6) + Schedule 5, Part 2 (7):

Has any thought been given to whether focussing the Trade Remedy Authority's (TRA's) resources on industries that have a 'major proportion of the total production in the UK' might negatively impact on devolved administrations' ability to put cases to the TRA? For example, industries may have a relatively small share of total UK production but large economic and/or political significance to the regional economy. Will consideration be given to a means for devolved administrations to put cases to the TRA where they fall below the UK market share threshold but meet local injury thresholds?

Schedule 4, Part 2, (9) (a):

Could provision be included to allow devolved ministers to make cases to the TRA in exceptional circumstances?

2. A number of queries / comments were also raised about issues specifically related to the land border and potential solutions to the difficulties presented by Northern Ireland's unique position.

Clause 1/Clause 33:

Chargeable goods and meaning of domestic goods – It is our understanding that the HMRC powers to specify where goods retain their domestic goods status include 'local trade in local markets' or goods involved in cross border supply chains, and these are therefore carved out of customs controls. However, we would welcome confirmation of this, along with clarification on how this will be achieved if a bilateral trade agreement with the EU is not accomplished.

Clause 19:

Reliefs –19 (2) (a), (c) and (e) could be interpreted as encompassing the specificities of cross-border trade on the island of Ireland, however, it is unclear and the position for Northern Ireland requires clarification.

Clause 22 (3) (d):

Authorised economic operators – It is our understanding that this will facilitate trusted trader schemes in Northern Ireland, on an individual business basis. However, we would welcome clarification on how this will be achieved in the absence of a bilateral trade agreement with the EU and what consideration has been given to a special regime for Northern Ireland, from a regulatory perspective, due to the unique position caused by the land border.

Clause 23:

Persons authorised or approved – Will exemptions or facilitations be granted to all businesses by virtue of size and/or geographic location, as set out in the cross border trade exemption model in the UKG position paper?

Clause 34 (3):

Presentation of goods to Customs on import or export – Is there scope within these clauses for declarations to be made before or after crossing the land border, or not required at all?

Clause 36:

Outward processing – Will consideration be given to cross border supply chains when defining these rules? In particular to an exception for NI importers to alleviate them of the burden of submitting a form for every batch of goods imported for processing into NI.

3. A further group of questions / comments relate to customs issues generally, in a Northern Ireland context, and to the potential impact on the economy.

Clause 17 (6):

Place of origin – In making the regulations on rules of origin, it is essential that the impact on island of Ireland supply chains is minimised. What consideration has been given to keeping Rules of Origin as liberal as possible, and classifying products as 'local trade in local markets', to facilitate this?

Clause 31:

Territories forming part of a customs union with the UK – This provision only relates to customs unions that would encompass the entire UK. The Bill does not anticipate the possibility of separate constituent parts of the UK forming part of a customs unions with another jurisdiction. What consideration has been given to the need to include this flexibility?

Schedules 1 & 2:

Is there scope for specific Northern Ireland procedures for declarations etc. to be developed?

Schedule 2, Part 2, para 2(1):

Meaning of goods declared for a 'storage procedure' - Might operational regulations allow for all of Northern Ireland to be declared a 'free zone'? What would be the operational implications of this action?

Schedule 2, Part 3 (5):

Transit procedure – This is significant for goods moving between Northern Ireland and Great Britain, travelling via Ireland. Does this also include the Common Transit Convention? If so, should this be referenced specifically?

Schedule 7, Part 1, 47:

Has an impact assessment been completed on £20,000 fines for non-compliance in Northern Ireland?

On Energy:

Has consideration been given to the impact, in terms of tariffs levied on energy services, on energy costs? Higher costs would have a direct impact on consumer prices and would result in reduced business competitiveness and higher levels of fuel poverty. This is of particular concern in Northern Ireland given the interconnectedness of the energy markets both on the island of Ireland and across the UK, along with cross-border supply chains for electricity, gas and oil.