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Brexit: trade tariffs if there is no deal

By Dominic Webb

1. Introduction

The information in this note is now out of date.

The Government has published information on UK tariffs which will apply from 1 January 2021 – see https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021

if there is a no deal Brexit, the UK will have to implement its own set of tariffs. This short note explains what tariffs are, how they work in the EU, the no deal tariffs announced by the Government and the role the House of Commons will play in scrutinising them.

2. What are tariffs?

Tariffs are taxes on imports. These are paid by the importer, although some or all of the tariff may be passed on to the consumer of the good. Tariffs apply only to goods imports – not services. They may be a percentage of the value of the good imported (*ad valorem* tariffs), a fixed amount per unit of weight or volume ("specific tariffs") or a combination of the two.

The tariff schedule sets out the tariff rate for each type of product. Tariffs are set for each type of good individually at a very detailed level. The EU has more than 17,000 separate tariff lines.[1]

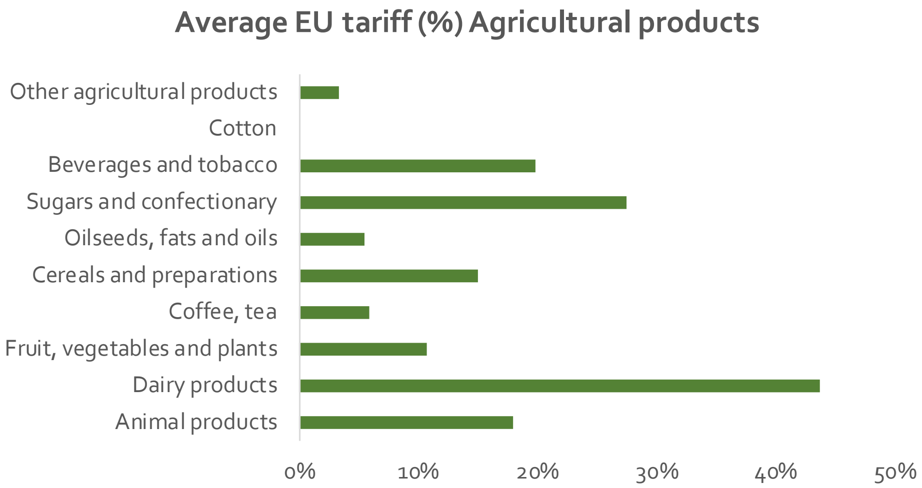
The schedule also includes Tariff Rate Quotas. These allow a certain volume of goods to be imported at a reduced tariff. Imports above the quota are charged the full tariff.

3. Pre-Brexit tariff levels

While the UK is still an EU member state, tariffs are set by the EU. The EU is a customs union which means all member states apply the same set of tariffs. There are no tariffs on trade between EU member states.

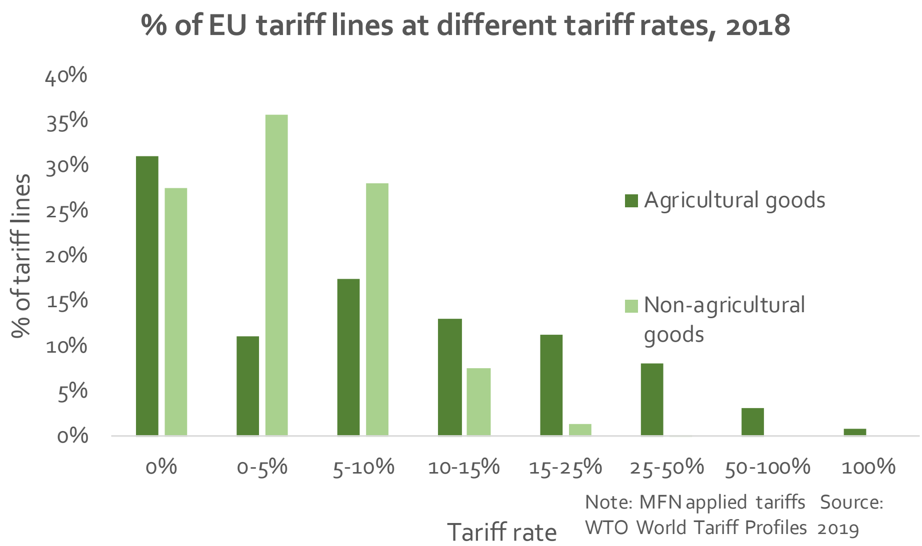
1 Taxation (Cross-border Trade) Bill Deb 25 January 2018 c91

On average, tariffs are relatively low. But they are significant in some sectors. The EU's tariff on cars is 10%. Tariffs on some agricultural products are much higher. The trade weighted average EU tariff on non-agricultural goods was 2.7% in 2017 compared with 8.1% for agricultural goods.[2] The chart below shows average EU tariffs for types of agricultural products. Tariffs are particularly high in the dairy sector. Tariffs on some individual products are much higher (over 100% in some cases) than the averages shown in the chart.



Note: MFN applied tariffs Source: WTO World Tariff Profiles 2019

It is also important to note that the EU tariff on around 30% of tariff lines is already zero with many more being less than 5% (see chart below). These figures are based on number of tariff lines rather than volume of imports.



Note: MFN applied tariffs Source: WTO World Tariff Profiles 2019

4. Winners and losers

Changes to tariff rates create winners and losers. Significant cuts to tariff rates benefit consumers of those products. However, if high tariffs were to be removed or significantly

[2] WTO, World Tariff Profiles 2019, p88

reduced, domestic producers who compete against these products are likely to be made worse off as they face competition from cheaper imports.

Unilateral reduction of tariffs to all trading partners also reduces the advantage enjoyed by countries which already have preferential access, through a free trade agreement or other preferential access scheme. In addition, lowering tariffs unilaterally may reduce bargaining power in future trade agreement negotiations.

5. The UK's tariff schedule

If the UK leaves the EU without a deal, it will need its own tariff schedule as it will no longer be part of the EU customs union.

The tariff schedule sets the "default" tariffs. They are the tariffs which apply to trade on "WTO rules" (sometimes referred to as Most Favoured Nation (MFN) tariffs). There are, however, some important exceptions to this:

- Tariffs are reduced or eliminated where there is a free trade agreement or customs union;
- Developing countries are often given market access at reduced or zero tariffs under preference schemes such as the EU's Everything But Arms scheme and the Generalised Scheme of Preferences (GSP); and
- Tariffs are higher on specific products where anti-dumping duties are imposed on imports sold at unfairly low prices.

In the event of a no deal Brexit, the UK tariffs would be charged on imports from both EU and non-EU countries. EU countries would thus lose the advantage they currently have from tariff-free access to the UK market.

6. Publication of UK tariffs under no deal

6.1 Initial publication: March 2019

The Government initially announced draft no deal tariffs on 13 March 2019 – see Department for International Trade and HM Treasury: Temporary tariff regime for no deal Brexit published. Tariffs will remain in the following areas:

- a mixture of tariffs and quotas on beef, lamb, pork, poultry and some dairy to support farmers and producers who have historically been protected through high EU tariffs
- retaining a number of tariffs on finished vehicles in order to support the automotive sector and in light of broader challenging market conditions. However, car makers relying on EU supply chains would not face additional tariffs on car parts imported from the EU to prevent disruption to supply chains
- in addition, there are a number of sectors where tariffs help provide support for UK producers against unfair global trading practices, such as dumping and state subsidies. Tariffs would be retained for these products, including certain ceramics, fertiliser and fuel
- to meet our long-standing commitment to reduce poverty through trade, the government currently offers preferential access to the UK market for developing countries. To ensure that access for developing countries is

> maintained, we would retain tariffs on a set of goods, including bananas, raw cane sugar, and certain kinds of fish[3]

6.2 Revised tariffs: October 2019

A revised set of no deal tariffs was published on 8 October 2019: HM Treasury and Department for International Trade, Temporary tariff regime updated, 8 October 2019 (see also Department for International Trade, Statutory Guidance: Temporary import tariff rates and quotas after no-deal Brexit, 8 October 2019. This made amendments in three areas: HGVs, bioethanol and some clothing items. The Department for International Trade said:

- lower tariffs on HGVs entering the UK market, striking a better balance between the needs of British producers and the SMEs that make up the UK haulage industry, ensuring that crucial fleet replacement programmes that help to lower carbon emissions can continue
- adjust tariffs on bioethanol to retain support for UK producers, as the supply of this fuel is important to critical national infrastructure
- apply tariffs to additional clothing products to ensure the preferential access to the UK market currently available to developing countries (compared to other countries) is maintained[4]

88% of total UK imports by value would be eligible for tariff-free access under these proposals. The temporary tariffs would apply for up to a year.

The Government said that it would closely monitor the effects of the temporary tariffs on the economy. The Government also announced "an exceptional review process" under which changes to tariffs could be made if required. A full consultation on the UK' future tariffs will start in January 2020.

Details of how to find tariffs for specific products is available here: Check temporary rates of customs duty on imports after EU exit.

6.3 Response from industry

The NFU had written to the Prime Minister calling for an urgent review of no deal tariffs and reiterated its view that no deal would be a disaster for British farming.[5] Responding to the revised tariffs, the NFU President Minette Batters said:

> the government has severely undermined the British farming industry by confirming it will remove the tariff safeguards for a number of key agricultural sectors in the event of a no-deal Brexit, including grains, eggs, fruit and vegetables and a number of dairy products.[6]

Richard Burnett, chief executive of the Road Haulage Association said:

> The original proposal of a 22% tariff on HGVs coming in from the EU was unbelievable. A 10% tariff will still be crippling and will severely damage the lives and livelihoods of those responsible for operating the very industry that keeps the UK fit to live in.

3 HM Treasury, Department for International Trade, Temporary tariff regime for no deal Brexit published, 13 March 2019
4
5 'Brexit: NFU urges government to review no-deal applied tariffs', *NFU,* 30 August 2019
6 NFU responds to government tariff review, 8 October 2019

> Government is already forcing hauliers to upgrade their vehicles halfway through their working lifecycle to meet new clean air rules. These tariffs will see consumers facing higher prices in the shops as operators' margins are squeezed even tighter.[7]

7. No checks on goods crossing from Ireland to Northern Ireland

The Government has said that tariffs will not apply to goods imported into Northern Ireland from Ireland. This is to avoid checks at the Irish border. Tariffs will be payable on goods imported into Great Britain from the EU via Northern Ireland.[8]

UK Government guidance

In guidance originally issued in March 2019 (updated in April 2019), the Government said:

> We are confirming a strictly unilateral, temporary approach to checks, processes and tariffs in Northern Ireland. This would apply if the UK leaves the EU without a deal.
>
> The UK government would not introduce any new checks or controls on goods at the land border between Ireland and Northern Ireland, including no customs requirements for nearly all goods.
>
> The UK temporary import tariff announced would therefore not apply to goods crossing from Ireland into Northern Ireland.
>
> We would only apply a small number of measures strictly necessary to comply with international legal obligations, protect the biosecurity of the island of Ireland, or to avoid the highest risks to Northern Ireland businesses - but these measures would not require checks at the border.
>
> Because these are unilateral measures, they only mitigate the impacts from exit that are within the UK government's control. These measures do not set out the position in respect of tariffs or processes to be applied to goods moving from Northern Ireland to Ireland.[9]

The guidance went on to say:

> We recognise that Northern Ireland's businesses will have concerns about the impact that this approach would have on their competitiveness. That is why we remain determined to secure a deal and an orderly exit from the EU.
>
> A negotiated settlement is the only means of sustainably guaranteeing no hard border and protecting businesses in Northern Ireland. This is why we are, first and foremost, still committed to leaving the EU with a deal. In a no deal scenario, the UK government is committed to entering into discussions urgently with the European Commission and the Irish Government to jointly agree long-term measures to avoid a hard border.
>
> We also recognise that there are challenges and risks for maintaining control of our borders, monitoring the flow of goods into the UK, and the challenge posed by organised criminals seeking to exploit any new system. That is why we are clear that this approach will only be strictly temporary.

Comment

Legality

The CBI has asked for Government legal advice to be published "to reassure firms in Northern Ireland that they will be operating without contravening international law by

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7 RHA, 'No-deal' truck tariffs will bite hard despite a 12% reduction, 8 October 2019
8 Most imports tariff-free under no-deal plan, BBC News, 13 March 2019
9 Brexit: Avoiding a hard border in Northern Ireland in a no deal scenario, 2 April 2019

following UK government advice."[10] Holger Hestermeyer, Shell Reader in International Dispute Settlement at King's College, London, tweeted that the approach to the Irish border appeared to be a violation of WTO rules on non-discrimination.[11]

Smuggling

There are also concerns that this approach could encourage smuggling. The CBI commented:

> Firms doing legitimate business on the island are particularly concerned about what the UK government's plans will mean for smuggling across the Irish border, firstly and most obviously because the proceeds of smuggling in Northern Ireland are used to fuel crime within communities. Smuggling will only be encouraged by the tariff differentials arising from the UK government's temporary plans not to impose tariffs on goods moving from the Republic of Ireland into Northern Ireland. The Northern Ireland Food and Drink Association has estimated that a 28t lorry can expect to have a tariff differential North-South of £70,000 for beef or £52,000 for cheese and butter, creating huge incentives to dodge duties.[12]

The Operation Yellowhammer document said that the proposals for the Irish border were "likely to prove unsustainable due to significant economic, legal and biosecurity risks and no effective unilateral mitigations to address this will be available."[13]

8. Parliament's role

The *Taxation (Cross-border Trade) Act 2018* (often referred to simply as "the Customs Act") gives the Government powers to create a set of import tariffs for the UK. Section 8(1) of the Act says:

> The Treasury must make regulations establishing, and maintaining in force, a system which—
>
> (a) classifies goods according to their nature, origin or any other factor,
>
> (b) gives codes to the goods as so classified,
>
> (c) specifies the rate of import duty applicable to goods falling within those codes (whether by a formula or otherwise), and
>
> (d) contains rules for determining the amount of import duty applicable to those goods

Section 32 of the Act says that these Regulations are to be made by statutory instrument. On 13 March 2019, HMRC published a number of regulations connected with the customs tariff (some in draft).

Section 32 also sets out that the "made affirmative" procedure is to be used. Section 32(2) says:

> A statutory instrument containing any regulations to which this subsection applies must be laid before the House of Commons, and, unless approved by that House before the end of the period of 28 days beginning with the date on which the instrument is made, ceases to have effect at the end of that period.

This procedure will be used for the first regulations setting out the customs tariff (Section 32(3)). The period of 28 days is extended to 60 days if section 52 applies (i.e. if the

10 CBI, What comes next: The business analysis of no deal preparations, July 2019, p65
11 Holger Hestermeyer Twitter, 13 March 2019
12 CBI, What comes next: The business analysis of no deal preparations, July 2019, p67
13 Operation Yellowhammer, HMG Reasonable Worst Case Planning Assumptions As of 2 August 2019, para 18

Government considers it appropriate in connection with Brexit). The use of the made affirmative procedure was criticised by two House of Lords Committees. The Constitution Committee said:

> We are concerned that the 'made affirmative' procedure, which may be justified in a limited number of urgent cases, is being sought for non-urgent reasons as a convenient means of executive law-making.[14]

The Delegated Powers and Regulatory Reform Committee made a similar point:

> We consider that the preferable approach for affirmative instruments is the one normally adopted by the Government. "Draft affirmative" instruments should be the norm. "Made affirmative" instruments should be confined to urgent cases.[15]

9. Further information

UKTPO, What should we make of the UK's 'No Deal' Tariffs?, March 2019

UKTPO Briefing Paper 29, Deal or 'No Deal': The economic consequences of the UK's 'No Deal' tariffs, March 2019

Zero-tariff plan for Irish border could face WTO legal threat, says Gove, Guardian, 27 March 2019

[14] Constitution Committee, *Taxation (Cross-border Trade) Bill*, 23 February 2018, HL Paper 80, para 9
[15] Delegated Powers and Regulatory Reform Committee, *11th Report of Session 2017-19*, 17 January 2018, HL Paper 65, para 9