CILT further concerns with Taxation (Cross-Border Trade) Bill

The paragraph below explains that the intention for this Bill is to be a 'framework', some call it an 'enabling Bill' only with Secondary legislation actually giving the detail. The following excerpt from the Explanatory Notes to the Bill states the UK Government's intention to broadly follow the current legal position (the Union Customs Code or UCC) but neither the Bill nor the Explanatory Notes give any details as to which parts of current law will be altered or omitted.

This leaves UK importers and exporters unable to plan for post-BREXIT imports and exports as although initially the Government stated that we would adopt the UCC into UK law now there is no way of knowing what that law will be in the detail that is required. It should be noted that this applies to rest of world or third country exports and imports not just movements to and from the EU27. This means that the certainty that Trade thought it had regarding non-EU shipments has now been lost.

TAXATION (CROSS-BORDER TRADE) BILL *<u>EXPLANATORY NOTES</u>*

Customs and the UK Tariff

> *10. Parts 1 and 2 of the Bill, which provide for a new standalone Customs regime, are largely based on EU law, and it is the government's intention that the UK's Customs regime will continue to operate in much the same way as it does today following exit from the EU.*

Delegated powers

> *21. In its White Paper, the government noted that for tax matters it is usual practice for primary legislation to set out a 'framework', and for secondary legislation to be used to set out rules concerning administration, collection and enforcement. This is the approach that the government will also be taking to the new Customs regime.*

The Bill is 156 pages in length, the full UCC is over 960 pages. This is a measure of the lack of essential detail that we are presented with. There appears to be no date set for the issue of the relevant detail.

Some examples of practical difficulties:

Part 16 – Value of Chargeable Goods

Much of the text of this paragraph is couched in familiar terms from both the WTO valuation rules and the current UCC valuation rules e.g. 'the transaction value is the amount payable for the goods' is close to the 'amount paid or payable for the goods' seen in the UCC. However according to the WTO and the UCC there are actually six Methods of Valuation, of which the Transaction Value is Method 1. Under the WTO and UCC Method 1 requires the price paid or payable for the goods to be adjusted according to rules by the addition or subtraction of a long list of items such as buying commission, licence fees, freight costs etc. The rules for determining these additions or subtractions are fully explained and for the most part undisputed (there is some discord on the licence fee/royalties inclusion).

All this Bill says on the matter is: 16(3) final sentence – 'subject to the inclusion or exclusion of matters specified in regulations made by the Treasury'. The guidance notes to the Bill do not make the matter any clearer as all they say is – Clause 16 Para 95 'some transport and insurance costs'. This is a perhaps a nod to the fact that EU and presumably future UK valuation will be based on the goods+ freight + insurance principal which is the same as current legislation.

As to the other five Methods of valuation the Bill merely states : Para 16(5) – 'Regulations made by the Treasury may make provision for the value of the goods for the purposes of this Part to be a value other than the transaction value'. Para 16(6) adds two examples of the kind of provision that may be made e.g. related party transactions and imports where the value cannot be readily determined.

The UCC rules on related party transactions go into great detail to define what is a 'related party' for example where family members are on the Board of both companies out to 'Brothers- in Law' level or what percentage of shares of each company may be owned by the same person who is on the Board. We are given no idea what the UK's position will be on this fundamental topic. Nor are we given any idea what the other types of permissible value will be offered. For your information the other five WTO/UCC valuation Methods are: The value of identical goods, The value of similar goods, the deductive method (selling price), the cost plus price and the fall-back method where you agree with HMRC a combination or variation of the other methods.

However, there is a further issue to consider when considering the import of goods which have been subject to multiple sales during their inbound journey. The only comment in the Bill under Section 16 is the value to be used is the transaction value 'when sold for export to the United Kingdom'. It is entirely possible that all the sales during the inbound journey could be 'sold for export to the United Kingdom' – which sales price should be used? The UCC determines that the last sale immediately before the goods are imported to the EU is the one that should be used. This was a change from the previous rule under the Community Customs Code (CCC) which allowed in certain circumstances the first sale in the chain to be used. Clearly as each sale might be assumed to be at a higher price than the previous sale it matters a great deal which of these sales must legally be used as the basis for the calculation of import duty. Trade has been pressing for the new UK law to permit the 'first sale' principal once again. However, this Bill is ambiguous on this point.

Traders and their freight agents or customs brokers cannot now predict what the import duty and VAT will be on future imports as we do not know the basis of calculation nor the rules of calculation.

Part 17 – Place of Origin of Chargeable Goods

According to WTO and UCC rules all goods have a Non-Preferential origin which governs amongst other things labelling of products. Only some goods have a Preferential origin which is determined by their inclusion in Free Trade Agreements and the like and grants import duty discounts. We are speaking here of economic origin not geographical origin.

Both non-preferential origin and preferential origin are based on two options: product wholly obtained in one country or product obtained from manufacture in more than one country where the principal of last substantial economically justified processing determines origin.

Currently the EU version of the WTO rules of non-preferential origin for goods whose manufacturing takes place in more than one country can be found in the UCC Annex 22-01 – origin is determined by tariff code (commodity code) with each code having a different rule. The rules determine exactly what level of production or product content is required to evidence last substantial economically justified processing. The Bill does not mention non-preferential origin in Section 17(1-6) but since Section 17(7) then mentions preferential origin we might guess that paras 1-6 are meant to be for non-preferential origin.

The Bill does mention preferential origin. It does not, however list the rules it merely restates the two origin options and states that the Treasury may by regulations determine what constitutes substantial economically justified processing and may also determine what evidence is required to show that the goods originate from a particular country under these rules. So we don't even know what document to produce e.g. EUR1 form to obtain preferential origin discounts at import. Perhaps this is because the UK wishes to invent its own version of the EUR1.

This means that that although the Bill legislates for a UK version of the current EU Generalised System of Preferences (GSP) scheme of import duty discounts for listed developing countries the rules of origin which determine whether or not a product from those countries may benefit are not listed. This leaves UK importers unable to plan their future supply chains to ensure they obtain a particular origin for their product according to post-BREXIT UK rules.

It is understandable that other preferential rules of origin do not appear in the Bill as the UK has yet to agree and sign any Free Trade Agreements for post-BREXIT trade and these rules would form part of the negotiation.

The final paragraph to this Section of the Bill states that the Treasury may only make regulations under this section on recommendation of the Secretary of State.

Schedule 6

I have also noted that under Schedule 6 of the Bill Paragraph 4(1) gives HMRC 3 years to notify a person of the need to pay import duty. HMRC currently have this right and where they find mistakes etc. they can require revision of import duty calculations from the previous three years. However Paragraph 4(2) also gives HMRC the right, where they believe an offence has been committed which need not be related in any way to import duty, to go back 20 years. This seems excessive since current customs law requires companies for duty purposes to keep four years of records (3+1 to allow for overlapping liabilities) and current VAT law requires companies to keep seven years (6+1) of records. I would suggest that most companies would not have records sufficient to find evidence for the previous 20 years.

Part 4 – Inward Processing Relief

This section refers to goods declared for an inward processing procedure in the 'standard' form and in the 'supplementary' form. This is not terminology that is currently in use under the UCC and appears to set different rules to those currently in the UCC for one of the most facilitating and powerful of the Special Procedures although most of the detail is once again missing in this Section.

The comments above merely serve to demonstrate the issues with the majority of the Sections of the Bill, which are not for the most part assisted by the explanatory notes which presumably do not have the force of law.

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