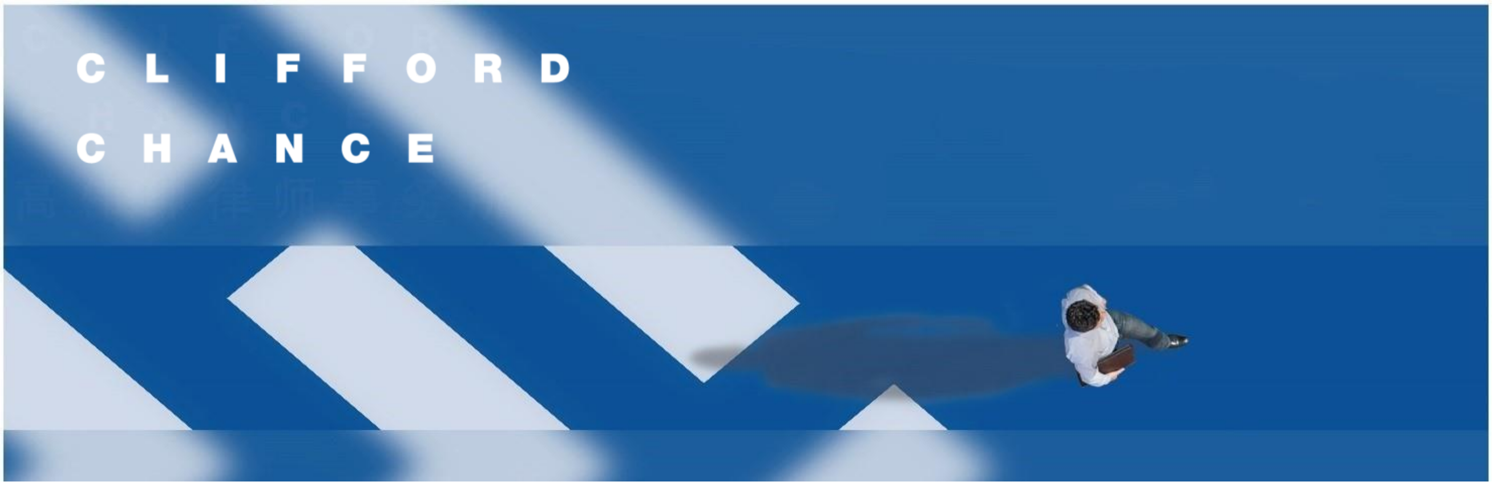


POST-BREXIT UK TARIFF REGIME OPENS FOR PUBLIC CONSULTATION

Following the UK's withdrawal from the EU, the Department for International Trade is consulting on the UK default tariff rates as of 1 January 2021. These tariffs – to be called "the UK Global Tariff" regime – will apply to imports from major economies including the US and China (subject to any new trade agreements), and may also apply to imports from some countries with which the EU currently has preferential trade agreements, such as Canada, Japan and Mexico. If the UK is unable to agree a trade deal with the EU before the end of 2020, the tariffs will be imposed on imports from the EU in addition to new checks on the UK-EU border. If your business imports goods from exposed economies or in tariff-sensitive sectors, you should consider taking part in the consultation. The deadline for responses is 5 March 2020.

Key issues

- As of 1 January 2021, the UK will apply new tariff rates to goods imported into the UK under the "UK Global Tariff" regime.
- The new tariff regime will impact imports from a large number of countries, including the US and China.
- The new tariff regime will also impact imports from the EU if no deal is reached, and EU-trading partners where no "roll over" agreement with the UK has been agreed by the end of the transition period.
- The marginal advantage imports from developing countries currently enjoy under unilateral preferences may also be affected.
- The government has opened public consultations on the proposed new tariff regime.
- Participation is particularly important for businesses with sensitivities to the import / export of currently tariff-protected goods.
- The deadline for responses is 5 March 2020.

MOVING FROM THE EU COMMON CUSTOMS TARIFF TO A UK GLOBAL TARIFF

Tariffs are taxes on goods that are imported into a customs territory. As an EU Member State and full member of its Customs Union, for almost 50 years the UK has applied the EU's Common Customs Tariff (the CCT).

The UK formally left the EU on 31 January 2020 but it will *de facto* remain within the EU Customs Union until the end of the "transition period" provided for by the Withdrawal Agreement. From 1 January 2021, the UK will apply its own tariffs policy to goods coming from outside the UK. An exception under the Withdrawal Agreement will apply for imports into Northern Ireland, where goods deemed at risk of moving to the EU will remain subject to the CCT rather than UK tariffs. Northern Ireland's imports from the EU on the other hand, including from the Republic of Ireland, will not face any tariffs.

A consultation has been launched to gather views from stakeholders about the future "UK Global Tariff" (the UKGT). This is a unique opportunity to influence the future trading position of the UK. Businesses trading in and with the UK (and particularly those in sectors which are subject to higher tariff rates) should consider making a submission to the consultation.

By way of background, in 2019, the UK government developed the Temporary Tariff Regime (the TTR) which would have applied in the event of a "no deal" exit from the European Union. The TTR was not intended to be permanent, and following the successful conclusion and ratification of the Withdrawal Agreement, will not be applied.

WHAT THE UK GOVERNMENT IS PROPOSING

As a starting point, the government intends to adapt the EU CCT to the particular needs of the UK economy. In particular, the government has stated that it intends to:

- simplify and tailor tariffs
- remove tariffs on key inputs to production
- remove tariffs where the UK has zero or limited domestic production.

The government is considering a range of measures to make tariff administration simpler, including deleting "nuisance tariffs" (e.g. removing comparatively low tariffs of 2.5% or less); banding tariffs (e.g. rounding tariffs to the nearest band – such as a 12.3% tariff becoming a 10% tariff); and simplifying agricultural tariffs to ensure they are all expressed as a percentage of the product value (e.g. eliminating tariffs based on weight etc.).

In statements to Parliament, the government has described its intention to pursue tariff reductions which take into account "sensitive UK products". In its approach, the government will have regard to the principles set out in the Taxation (Cross-border Trade) Act 2018, namely:

- the interests of UK consumers
- the interests of UK producers of the goods concerned
- the desirability of maintaining and promoting UK external trade
- the desirability of maintaining and promoting UK productivity the extent to which the goods concerned are subject to competition.

Examples of goods which may face tariff-rate changes include fruits such as bananas and oranges (where the UK has zero or limited domestic production). The UK may however choose to maintain tariffs on goods in UK sectors it considers sensitive such as lamb or cars.

WHICH IMPORTS WILL BE MOST IMPACTED BY A NEW UK TARIFF REGIME?

Imports from an exposed origin

Under the "most favoured nation" (MFN) provision of the WTO General Agreement on Tariffs and Trade (the GATT), the UK will be obliged to apply the UKGT to all WTO members except where: (i) the UK has a preferential trade agreement covering substantially all trade, or (ii) another exception applies (such as the Generalised System of Preferences (GSP) for developing countries).

- **Countries with no current EU trade deal (e.g. China, US):** The UKGT will apply to countries with which the UK has no current preferential trade agreement in place at the end of the transition period. Major trading nations with which the EU (and therefore the UK) does not yet have a comprehensive preferential trade agreement in place include the US and China – although the UK is in the early stages of negotiating with the former.

Jurisdictions with which "roll over" agreements have been signed by the UK (updated February 2020)

- Andean countries
- CARIFORUM
- Central America
- Chile
- Eastern and Southern Africa (ESA)
- Faroe Islands
- Georgia
- Iceland and Norway
- Israel
- Jordan
- Kosovo
- Lebanon
- Liechtenstein
- Morocco
- Pacific states
- Palestinian Authority
- South Korea
- Southern Africa Customs Union and Mozambique (SACUM)
- Switzerland
- Tunisia

- **Countries which do not agree a "roll over" with the UK (e.g. Canada, Japan, Mexico):** The EU has around 40 preferential trade agreements. The UK will be obliged to impose the UKGT on imports from countries which do not agree to "roll over" their EU trade agreement to cover the UK post-transition period. The government has secured around 20 such agreements to date, however, it is known that countries including Canada, Japan and Mexico have held out from agreeing such roll-over deals.
- **The EU, in the event of "No Deal" at the end of the transition period:** Alongside various border checks, should the UK and EU be unable to conclude a trade agreement by the end of the transition period, each would be obliged by WTO rules to impose their respective MFN tariffs on the other. On the UK side, this would be the UKGT.
- **Developing countries:** As an exception to the MFN principle, developed countries are permitted to offer non-reciprocal preferential treatment to developing countries. This means the UK will be able to continue to allow goods from developing countries to enter the UK customs territory without imposing the UKGT. Nevertheless, the final shape of the UKGT could have an impact on these countries depending on the marginal difference between preferential rates and the UKGT. For example, if tariffs on goods such as flowers and sugar are reduced under the UKGT, this will erode the value of the preferential access developing countries currently enjoy.

Imports in an exposed sector

The UK has more scope to reduce tariffs than to raise them (see the graph on p.4). In 2018, the UK submitted a tariff schedule at the WTO, setting the maximum tariff levels it committed to apply internationally (known as the "bound rate") as an independent member of the WTO.[1] The UKGT will be the "applied rate" tariff of the UK, i.e. the actual tariff. It will not be legally possible to exceed the WTO bound rate.

The EU CCT can be characterised by generally low tariffs with "tariff peaks" on sensitive industries (agriculture, textiles) and particularly successful exporting industries (cars, car suppliers, food and drink products). The UK government must choose whether to maintain these "tariff peaks".

UK businesses accustomed to protection under the CCT will likely seek to press the government to maintain the existing protections, while businesses importing products in these areas and consumer groups will seek reductions. Tariffs will likely be of particular significance for businesses in the consumer goods (e.g. food and drink) and retail sectors.

Differing views on the impact of the UKGT

"High tariffs impinge on businesses and raise costs for consumers. This is our opportunity to set our own tariff strategy that is right for UK consumers and businesses across our country."

- Rt Hon Elizabeth Truss, Secretary of State for International Trade and President of the Board of Trade

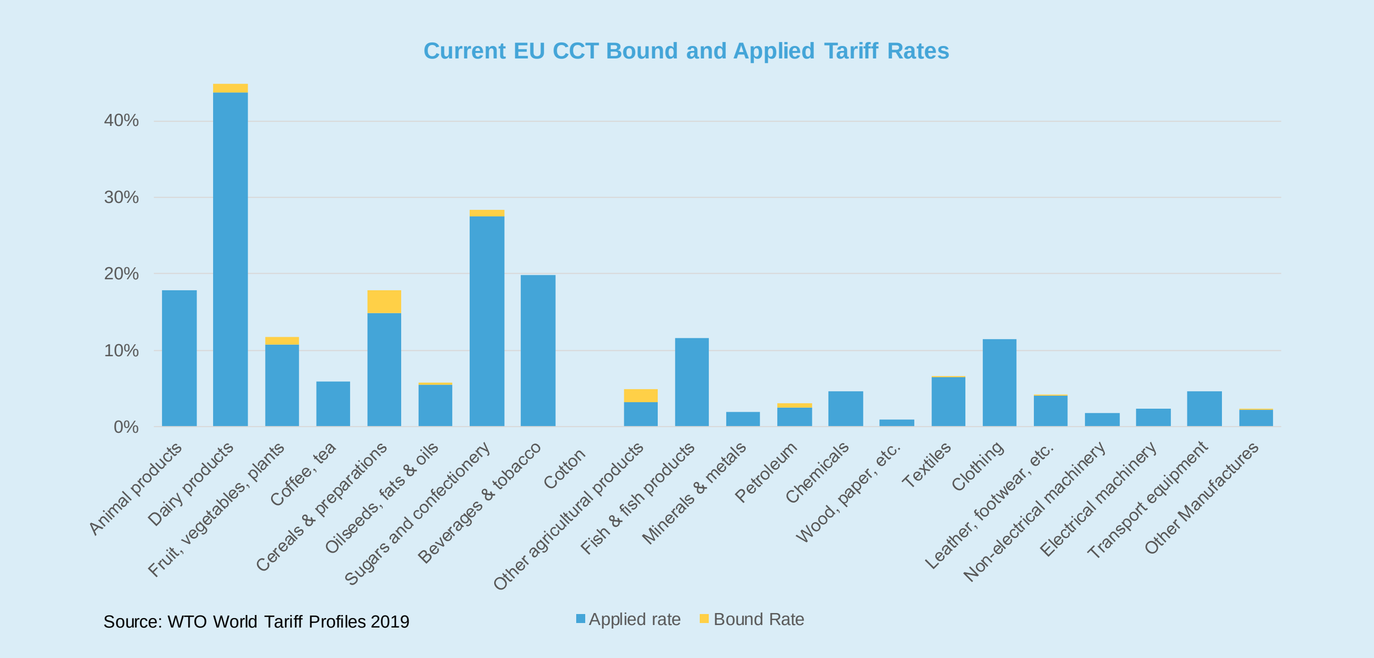
"*Reducing or eliminating tariffs on sugar from all countries would destroy the value of preferential access for [African, Caribbean and Pacific Group / Least Develop Country] states.*"

- ACP Sugar Group

"Forcing British farmers to compete with food produced cheaply at a lower standard and quality will undermine UK agriculture and leave our farmers in an untenable position."

- National Sheep Association

[1] Because any modification to this schedule would have required renegotiation with the WTO membership, the UK chose to follow the existing EU bound rates as far as possible.



PARTICIPATING IN THE CONSULTATION

For businesses with interests in the importing or sale of goods that currently are subject to tariff protection under the EU CCT, participation in the consultation provides a vital avenue for explaining the specificities of their sector to the government.

The consultation offers businesses the opportunity to provide:

- views on a potential series of amendments to the EU CCT to create a bespoke UK tariff
- specific feedback on specific products or commodity codes of importance, including on the corresponding tariff rate
- information on interactions with MFN tariffs and the importance of tariffs to specific sectors.

The deadline for responses is 5 March 2020.

THE CLIFFORD CHANCE TRADE AND INVESTMENT POLICY UNIT

As political forces reshape the complex rules of international trade, our Trade and Investment Policy Unit offers unparalleled insights into how policy developments affect cross-border business. The Unit brings together Clifford Chance experts from across our global network. Together, we advise States and companies on all aspects of trade and investment law and policy, including free trade agreements, WTO law, export controls, customs rules, FCPA and Bribery Act issues, sanctions, national security review and investment protection. Our specialists have extensive experience handling a wide range of trade and investment disputes, including investment arbitrations, sanctions matters and anti-corruption cases. If you have any queries regarding the consultation or how Clifford Chance can help you respond, please do not hesitate to get in touch.

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KEY CONTACTS

Jessica Gladstone
Partner
London

T +44 20 7006 5953
E jessica.gladstone@
cliffordchance.com

Thomas Voland
Partner
Düsseldorf

T +49 211 4355 5642
E thomas.voland@
cliffordchance.com

Janet Whittaker
Senior Counsel
Washington D.C. /
London

T +1 202 912 5444
E janet.whittaker@
cliffordchance.com

Dessislava Savova
Partner
Paris

T +33 1 4405 5483
E dessislava.savova@
cliffordchance.com

Dan Neidle
Partner
London

T +44 20 7006 1000
E dan.neidle
@cliffordchance.com

Phillip Souta
Head of UK Public
Policy, London

T +44 20 7006 1097
E phillip.souta@
cliffordchance.com

Gail Orton
Head of EU Public
Policy, Paris / Brussels

T +33 1 4405 2429
E gail.orton@
cliffordchance.com

Michel Petite
Avocat of Counsel
Paris

T +33 1 4405 5244
E michel.petite
@cliffordchance.com

Roland Scarlett
Trainee Solicitor
London

T +44 (0) 20 7006 2191
E roland.scarlett
@cliffordchance.com

George Bumpus
Trainee Solicitor
London

T +44 (020) 7006 1271
E george.bumpus
@cliffordchance.com