

## client alert

EU | BREXIT | LEGAL UPDATE

9 NOVEMBER 2017

### UK GOVERNMENT PUBLISHES DRAFT LEGISLATION FOR UK TRADE POST-BREXIT: THE TRADE BILL

The UK Government has published the Trade Bill providing key measures required to build a future trade policy for the UK once it leaves the European Union (EU). The Bill is only the third piece of draft legislation produced by the UK Government in relation to Brexit, following the European Union (Notification of Withdrawal) Act 2017 (passed to approve the triggering of Article 50) and the European Union (Withdrawal) Bill, which is soon to move to Committee stage in the House of Commons, and to which around 300 proposed amendments have been tabled. Like the Withdrawal Bill, the Trade Bill is relatively short on detail, and confers considerable powers on the Government, giving rise to complaints of limited opportunity for parliamentary scrutiny.

The Bill includes:

- a power to ensure that the UK can implement any procurement obligations arising from the UK becoming a member of the Agreement on Government Procurement (GPA) in its own right;
- a power for the Government to implement any changes to domestic law necessary for the UK to meet obligations arising from agreements with partner countries corresponding to the EU's Free Trade Agreements (FTAs) and other trade agreements in place before the UK's exit from the EU;
- provisions relating to a new Trade Remedies Authority (TRA) to deliver the new UK trade remedies framework; and
- powers for HM Revenue and Customs (HMRC) to collect data on exporters of goods and services in the UK for trade promotion purposes, and to share such data with other public and private bodies.

#### **GOVERNMENT PROCUREMENT AGREEMENT**

The GPA is a plurilateral agreement within the framework of the WTO to open government procurement markets among its parties.

The GPA establishes rules requiring open, fair and transparent conditions of competition in government procurement. These rules do not automatically apply to all procurement activities of each party. Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values are covered by the Agreement.

The UK currently participates in the GPA through its membership of the EU. The Trade Bill provides a power for the UK to implement the GPA obligations when it becomes an independent member after Brexit.

## **INTERNATIONAL TRADE AGREEMENTS – MAINTAINING EXISTING TRADE ARRANGEMENTS WITH OTHER COUNTRIES**

The UK currently enters into commitments in international trade agreements as a member of the EU. As a member of the EU, the UK has been party to the EU's trade agreements with third countries. The UK Government has expressed a commitment to providing continuity in the UK's existing trade and investment relationships with these third countries, and wants to replicate as closely as possible the effects of these trade agreements, a process the Government has termed "transitional adoption".

The Trade Bill provides the UK Government with the powers to make any changes to domestic legislation that are necessary to ensure these agreements, once signed by both parties, are fully implemented and can be ratified as soon as possible after Brexit, and ideally simultaneously with it. What it does not, and cannot, do is provide the UK with the right to negotiate or conclude international trade agreements with third countries prior to Brexit.

## **TRADE REMEDIES AUTHORITY**

Trade remedy measures protect domestic industries from injury caused by dumped, subsidised or surges of imports. Within the EU, investigations, decisions and monitoring of trade remedy measures are performed by the European Commission on behalf of all Member States. Once the UK is no longer part of the EU and has an independent trade policy, UK companies will no longer be able to make a request to the European Commission to investigate claims of dumping or subsidy in the UK. To ensure that UK companies continue to have access to a trade remedies system, the Trade Bill contemplates the establishment of a new TRA to carry out investigations, and impose and enforce trade remedy measures.

The Bill provides for the establishment of the TRA, a new Non-Departmental Public Body, which will provide advice, support and assistance to the Secretary of State for International Trade, so that the Government can fulfil its obligations relating to decisions on a number of areas including in relation to trade remedies and international trade disputes. It also allows the TRA to provide advice, support and assistance to other organisations on its own initiative.

There will be a separate Taxation (Cross-Border Trade) Bill which will address tariff provisions – those elements of a trade agreement that set tax and duties on imports and exports.

## TRADE INFORMATION

The Trade Bill will allow HMRC to collect data on behalf of the Government to confirm the number of exporters of goods and services in the UK and to be able to identify those exporters for trade promotion purposes. The Trade Bill will also allow HMRC to share data with other public and private bodies as necessary so that those bodies can fulfil their public functions related to trade after the UK leaves the EU. This power will provide access to information which the Government and the TRA need to carry out functions that were previously carried out by the European Commission and so that the Government can design and monitor trade policy (including conducting trade disputes) and the TRA can apply trade remedies. HMRC legislation will allow for HMRC to share data with departments when it is related to a customs duty purpose only. The Trade Bill includes powers to share data, when needed, with international organisations that oversee the world trade system (for example the World Trade Organization). There are measures in the Trade Bill to safeguard and protect appropriate use of the data.



Check out our dedicated **Gide / Brexit** LinkedIn page to learn more about the consequences and legal implications of Brexit.

---

## CONTACT PARTNERS

**MARGARET BOSWELL**

tel. +44 (0)20 7382 5560  
boswell@gide.com

**DAVID KLASS**

tel. +44 (0)20 7382 5754  
david.klass@gide.com

**RUPERT REECE**

tel. +44 (0)20 7382 5768  
reece@gide.com

You can also find this legal update on our website in the News & Insights section: [gide.com](http://gide.com)

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department ([privacy@gide.com](mailto:privacy@gide.com)).