

TAXATION (CROSS-BORDER TRADE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Taxation (Cross-border Trade) Bill as introduced in the House of Commons on 20 November 2017 (Bill 128).

- These Explanatory Notes have been prepared by HM Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Taxation (Cross-border Trade) Bill has 56 clauses and 9 schedules. A summary of, and background to, the Bill is provided below.
- 2 Whatever the outcome of negotiations with the European Union (EU), the UK will need to legislate for a new Customs regime to be in place by March 2019. The new regime must provide for the tariff-related aspects of the UK's future trading framework. It will need to allow sufficient flexibility to give effect to a range of potential outcomes from negotiations with the UK's European partners, including an implementation period, and implementation of a new Customs regime in the event there is no negotiated settlement.
- 3 In relation to VAT and excise, it is necessary to amend existing legislation as a consequence of the UK's withdrawal from the EU with or without an agreement in order to ensure that these regimes work appropriately on withdrawal.

Policy background

- 4 On 23 June 2016, the UK voted to leave the EU, and on 29 March 2017 the Prime Minister wrote to European Council President Donald Tusk to notify him of the UK's intention to leave the EU.
- 5 Up until the UK leaves the EU, it will continue to be a member of the EU Customs Union and will continue to apply EU law on Customs, VAT and excise. The rules for the EU Customs Union are governed by EU law, with Customs policy being an exclusive competence of the EU. Membership of the EU Customs Union means that:
 - goods moving between the UK and other EU Member States are not subject to Customs duty, quotas or Customs processes (including the need to provide Customs declarations); and
 - Member States apply the EU's Common External Tariff (i.e. the same rates of Customs duty) and its quotas and Customs processes to goods moving between the EU and non-EU countries. The EU negotiates trade agreements (including tariffs), investigates and implements trade remedy measures such as anti-dumping duties, and handles trade disputes on behalf of all Member States.

Relevant government publications

- 6 On 15 August 2017, the government published '*Future Customs arrangements: a future partnership paper*'¹. This detailed the government's aspirations for the UK's future Customs arrangements as it leaves the EU and the EU Customs Union.
- 7 A subsequent White Paper ('*Legislating for the UK's future Customs, VAT, and excise regimes*') published on 9 October 2017 set out the government's approach to the Taxation (Cross-border

¹ Available at: <https://www.gov.uk/government/publications/future-customs-arrangements-a-future-partnership-paper>

Trade) Bill². This White Paper explained how the current Customs, VAT and excise regimes operate, why the Bill is necessary, and what the Bill contains. It set out further detail of how the Bill will provide for certain negotiated outcomes, as well as a contingency scenario in which no agreement is reached.

- 8 A White Paper, titled '*Preparing for our future UK trade policy*', was published by the Department for International Trade (DIT) on 9 October 2017³. This set out the initial steps that the government will take to build its own trade policy after the UK leaves the EU.

Contents of the Taxation (Cross-border Trade) Bill

Customs and the UK tariff

- 9 The Taxation (Cross-border Trade) Bill does not presuppose any particular outcome from the UK's negotiations with the EU. In addition to legislating for a contingency scenario where the UK leaves the EU without a negotiated outcome, the Bill also provides for a range of negotiated outcomes, including an implementation period.
- 10 Responding to business representations, 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. However, depending on the outcome of the negotiations, traders that currently trade only with the EU may be subject to Customs declarations and Customs checks for the first time.
- 11 The Bill would allow for divergence from EU law where the government feels it is necessary to do so, or where it believes that there is a clear benefit to business to diverge from it and such divergence is consistent with whatever bilateral arrangements the government agrees with the EU.
- 12 The Bill will allow the government to create a standalone Customs regime by ensuring that, among other things:
- the UK can charge Customs duty on goods (including on goods imported from the EU)
 - the UK can define how goods will be classified to establish the amount of Customs duty due (known as the nomenclature)
 - the UK can establish a new UK tariff and set out additional tariff-related provisions, for example the tariff applicable to developing countries (unilateral preferences)
 - the UK can set and vary rates of Customs duty, specify where goods are subject to quotas and where goods are relieved from duty

² Available at: <https://www.gov.uk/government/publications/customs-bill-legislating-for-the-uks-future-customs-vat-and-excise-regimes>

³ Available at: <https://www.gov.uk/government/publications/preparing-for-our-future-uk-trade-policy>

- the UK can vary or suspend duty at import in certain circumstances
 - the UK can implement arrangements to establish a customs union between the UK and another territory or country
 - HMRC can request and collect tax-related information from declarants and store and share it as appropriate.
- 13 The Bill will allow the UK to accommodate the transition to a new regime by ensuring:
- where appropriate, existing treatments of traders or goods (for example, existing authorisation or Customs status granted as a result of EU law) can continue under UK law
 - most tax-related negotiated outcomes and the smooth facilitation of trade can be accommodated
 - appropriate mechanisms are in place to transition existing trade remedy measures, where they are relevant to UK companies.
- 14 The Bill will also make provision for consequential amendments to be made to various UK Acts that relate to Customs duty, most significantly the Customs and Excise Management Act 1979 (CEMA), which will continue to form an important part of the Customs regime and will work alongside and in conjunction with the Taxation (Cross-border Trade) Bill.
- 15 There are connections between the Taxation (Cross-border Trade) Bill and the Trade Bill which will together ensure that the necessary tools are in place to deliver an independent trading framework for the UK outside of the EU.
- 16 Provisions made in the Taxation (Cross-border Trade) Bill will impact upon and be impacted by the UK's future international trade policy in so far as this directly relates to the applicable rate of Customs duty. These include:
- the basis of a new UK trade remedies framework that can be used to impose additional Customs duty in certain circumstances.
 - the ability to impose additional duty in the event of a dispute between the UK government and the government of another territory or country where authorised to do so by international law.
 - the creation of a unilateral trade preference scheme, which can be used to decrease the Customs duty paid on imports from developing countries.
- 17 The Trade Bill makes provisions relating to international trade which are not directly tax-related. It will, for example, provide:
- for the UK to implement non-tariff obligations flowing from international trade agreements, including those flowing from transitionally adopted international trade agreements and the World Trade Organization (WTO) Government Procurement Agreement (GPA).
 - a new investigating authority, the Trade Remedies Authority, to deliver the UK's trade remedies function.

18 Further details on trade related policy can be found in the publication '*Preparing for our future*

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VAT and excise

- 19 The Bill will provide for amendment of existing VAT and excise legislation. It will provide for the EU concept of acquisition VAT (for business-to-business intra-EU movements) to be abolished so that import VAT is charged on all imports from outside the UK.
- 20 In addition, the Bill will allow the VAT and excise regimes to continue to function whatever the outcome of the negotiations. So, for example, the Bill will give the government:
 - the flexibility to give effect to an agreement with the EU on supplies or movements in progress on the day of EU exit and enable supplies or movements of goods and services by businesses and individuals to continue as freely as possible thereafter
 - the flexibility to deal with VAT on movements of goods and services between the UK and EU
 - the flexibility to allow HMRC to adapt IT systems, for example the Excise Movement and Control System, for UK internal excise duty suspended movements
 - the flexibility to vary the UK information sharing obligations to give effect to any new agreement about the continued exchange of information with EU Member States to tackle avoidance and evasion.

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.
- 22 Delegated powers are included in the Bill to allow:
 - the government to make future amendments to the imposition, administration, collection and enforcement of Customs duty. This will allow the UK's Customs regime to keep pace with future developments in trade, trader behaviour and international agreements. It will also allow the government to implement simplifications to the regime that it is not possible to implement immediately on EU exit
 - flexibility to make appropriate amendments to VAT and excise legislation so that the VAT and excise regimes continue to function after EU withdrawal, including ensuring the continued effective administration and collection of VAT and excise duties
 - the government to make appropriate amendments to primary legislation and use secondary legislation to implement negotiated agreements
- 23 Further details of these powers can be found in the 'Commentary on provisions of Bill' (below), and the Delegated Powers Letter which accompanies this Bill.

Legal background

Customs and the UK tariff

- 24 Most of the law governing the administration of the EU Customs Union is contained in the Union Customs Code (UCC) and its delegated and implementing acts. As an EU Regulation, the UCC is directly applicable in the UK, meaning that it is automatically given legal effect in the UK. Domestic legislation governs certain aspects of the current Customs regime, such as enforcement powers, penalties, and appeals. The most substantial piece of domestic legislation which relates to the current Customs regime is in CEMA.
- 25 Duties are generally applied at a standard rate – known as the Most Favoured Nation (or “MFN”) rate. These rates may be reduced through preferential tariff rates for certain goods originating from certain countries. Such trade preferences are permitted by the WTO as an exemption to the MFN rule (which is contained in Article I of the General Agreement on Tariffs and Trade (“GATT”) 1994).⁴ Article XXIV of the GATT allows preferences in the context of free-trade areas and Customs unions. The UK currently participates in many free trade agreements (FTAs) as a member of the European Union.
- 26 The ‘Enabling Clause’⁵ permits trade preference schemes in order to promote the trade of developing countries, on the basis that the preferential treatment is made available to all other similarly situated countries. They should, according to WTO rules, be based on objective eligibility criteria relating to a country’s economic circumstances.
- 27 The UK currently provides trade preferences for exports of goods from around 70 countries through EU Regulation 978/2012 Applying a Generalised Scheme of Preferences (“GSP”).⁶ There are three tiers within this model:
- Everything but Arms (EBA): full import duty-free and quota-free access for all products except arms and ammunitions. A country is granted EBA status if the UN has listed it as a Least Developed Country⁷.
 - standard GSP: reduced import duties on two thirds of product tariff lines.
 - enhanced GSP terms (GSP+): full removal of import duties on the two thirds of product tariff lines covered by the standard GSP. Available to economically vulnerable countries which ratify and implement 27 international conventions on

⁴ The MFN rule is contained in article 1 of the General Agreement on Trade in Goods (GATT) 1947, but that agreement has been replaced by the Marrakesh Agreement establishing the World Trade Organization (15.4.1994), which contains at Annex 1A, the General Agreement on Trade in Goods (GATT) 1994 (albeit the latter incorporates the GATT 1947, which has to be read in to the GATT 1994). Relevant links are here: https://www.wto.org/english/docs_e/legal_e/legal_e.htm

⁵ See: https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm

⁶ See: http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

⁷ See: <http://ec.europa.eu/trade/import-and-export-rules/import-into-eu/gsp-rules/everything-but-arms/>

human and labour rights, environmental protection and good governance⁸.

28 WTO agreements enable members to apply trade remedy measures. These can be applied where imports are being dumped (exported at prices below the selling price in the exporter's domestic market or below the normal commercially viable selling price); where the imports have been subsidised; or where there is a harmful surge in imports.

29 Trade remedies rules are currently operated at an EU level by the European Commission, and are provided for through EU regulations 2016/1036 (anti-dumping), 2016/1037 (anti-subsidy) and 2015/478 (safeguards). Trade remedies include:

- imposition of anti-dumping duty as permitted by Article VI of the GATT 1994⁹
- anti-subsidy measures as outlined in the WTO Agreement on Subsidies and Countervailing Measures¹⁰
- safeguards measures as outlined in the WTO Safeguards Agreement¹¹

VAT and excise

30 EU law largely harmonises VAT and excise rules across the EU. As an EU Member State, the UK is required to implement EU Directives in domestic legislation. The main legislation for VAT is the EU Principal VAT Directive (Directive 2006/112) and the main legislation for excise is the Excise Directive (Directive 2008/118). Other EU Directives also apply and there are various EU VAT and excise Regulations which are directly applicable in the UK.

31 The UK has implemented the Principal VAT Directive through the Value Added Tax Act 1994 (as amended). The main body of the Act sets out the general principles governing the tax, such as when the tax becomes chargeable, what the rate of VAT is, who has to pay it, and what VAT businesses can recover. More detailed rules, such as lists of supplies of goods or services that are exempt or zero-rated, are contained within its schedules. The Act also provides a range of powers to introduce secondary legislation. Some parts of HMRC's VAT public notices also have the force of law. This tertiary legislation usually prescribes administrative procedures.

32 The UK also gives effect to EU excise rules in primary legislation, including through the Customs and Excise Management Act 1979, Alcoholic Liquors Duty Act 1979, and Tobacco Products Duty Act 1979. EU excise provisions are also implemented substantially through secondary legislation, such as the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (SI 2010/593). This includes the duty suspension regime, which ensures the equal treatment of excise goods moving within and between Member States with excise duty only being charged in the member state where the goods will be consumed.

⁸ See: <http://ec.europa.eu/trade/import-and-export-rules/import-into-eu/gsp-rules/gsp+/>

⁹ See: https://www.wto.org/English/Docs_E/legal_e/06-gatt_e.htm

¹⁰ See: https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

¹¹ See: https://www.wto.org/english/tratop_e/safeg_e/safeg_info_e.htm

Territorial extent and application

- 33 This Bill extends, and applies in relation to, England, Wales, Scotland and Northern Ireland.
- 34 The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- 35 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: Import duty

Chapter 1: The charge to tax

Clause 1: Charge to import duty

- 36 Clause 1 provides for duty to be charged on chargeable goods by reference to their importation into the UK. This duty is to be known as import duty.

Clause 2: Chargeable goods

- 37 Clause 2 provides that goods are chargeable (and therefore subject to import duty as set out above) unless they are domestic goods as defined in clause 33.

Chapter 2: Incurring of liability to import duty

Clause 3: Obligation to declare goods for a Customs procedure on import

- 38 Clause 3 requires chargeable goods presented to Customs to be declared for a Customs procedure by the making of a Customs declaration. Under paragraph 1 of Schedule 1, which clause 3 introduces, goods must be presented to Customs on import. If chargeable goods are not presented, then they are liable to forfeiture, as set out at clause 5; the definition of presenting goods to Customs for these purposes is set out at Clause 34.
- 39 Customs declarations are currently only required for goods imported into the UK from outside the EU, but with the UK's departure from the EU Customs Union this requirement may also extend to goods originating from within the EU.
- 40 Imported goods can be declared for either the free-circulation procedure or one of a number of special procedures. Schedule 1 contains further rules about making a declaration, which apply in both cases. It is the procedure for which the goods are declared which determines when a liability to import duty is incurred.
- 41 Where chargeable goods are declared for the free-circulation procedure, and the procedure has been discharged, they become 'domestic goods' as defined at clause 33.
- 42 The special procedures, which are referred to in this clause, are processes whereby a liability to import duty which would otherwise arise is not imposed (or is imposed at a lower rate), provided that certain conditions are complied with.
- 43 A summary of the different special procedures is given in Box 1. These concepts already exist in the UCC, but in the future their operation will be determined by the provisions of this Bill, and not EU law.

Box 1: Special procedures

Storage procedures

A storage procedure allows imported goods to be held in storage which can be either a premises approved by HMRC (such as a Customs Warehouse), or a free zone. This will allow any liability to import duty to be suspended until they are removed from storage.

For example, a retailer or wholesaler can import goods and store them in approved premises without incurring duty at that point. When they

subsequently wish to sell them, they can remove the goods from storage, and declare those goods for free circulation, incurring any duty liability then. Deferring the payment of duty in this way could be valuable in helping a business manage its cash flow. Alternatively, they can export goods back to their place of origin or to an external market within another Customs territory without incurring duty or other trade remedies, or they may in certain situations declare the goods to another special procedure.

Transit procedures

A transit procedure allows goods to move between two places without incurring a charge to UK import duty. For example, goods from another country can pass through the UK en route to another destination, or goods which had previously been declared for another special procedure can move within the UK, without needing to be declared for free-circulation.

Inward processing procedures

An inward processing procedure allows goods to be imported in order to be processed in the UK without incurring a charge to import duty, provided that certain requirements are met. Once the procedure has been completed the goods may be exported, or the processed products may be declared to free-circulation. Such processes include the repair of goods or the assembly of components into a finished product – such as a laptop computer – where that is the purpose of bringing the goods into the UK.

Authorised use procedures

An authorised use procedure is designed to assist certain industries. It allows a lower rate (including a zero rate) of import duty or a relief to apply to specified goods which are put to a specific authorised use. An example would be where certain hydrocarbon oils are brought from overseas to undergo a specific distillation process in the UK. If those goods were imported for another, non-specified process, such as for resale, they would need to be declared for free-circulation and the full rate of duty would apply.

Temporary admission procedures

A temporary admission procedure allows goods to enter the UK Customs territory for a temporary period during which a full or partial relief will apply. Temporary admission can, for example, allow artworks situated overseas to be loaned to a UK gallery for a public exhibition without import duty being payable. The temporary admission procedure can also apply where goods are brought to the UK for auction and subsequently taken overseas.

44 Schedule 2 contains further rules about special procedures.

Clause 4: When liability to import duty incurred

- 45 Clause 4 sets out when the liability to import duty is incurred.
- 46 For goods declared for the free-circulation procedure, liability is incurred when HMRC accepts the declaration.
- 47 For goods declared to the temporary admission or authorised use procedures, liability is also incurred when HMRC accepts the declaration. However, this will be at a reduced (potentially zero) rate provided that the declarant is entitled to make such a declaration. There are further rules that set out the appropriate rate of import duty due when the liability is incurred, and that additional liabilities can also be incurred if the terms of the procedure are breached.
- 48 The general rule for goods declared to a storage procedure, a transit procedure, or an inward processing procedure is that liability is not incurred when the goods are imported, or when the declaration for these procedures is accepted by HMRC.
- 49 Liability may arise at a later date, for example if a good previously declared to a storage procedure is subsequently declared for free-circulation. In that case, the liability would be incurred when HMRC accepted the declaration for free-circulation.
- 50 Where the declarant was never entitled to declare the goods for the storage procedure, transit procedure or an inward processing procedure, liability is incurred at the time the declaration was made.
- 51 Where there is a breach of any requirement relating to the storage procedure, transit procedure or an inward processing procedure, liability is incurred at the time of the breach.

Clause 5: Goods not presented to Customs or Customs declaration not made

- 52 Clause 5 provides that where chargeable goods are not presented to Customs when they are imported into the UK they are liable to forfeiture.
- 53 It also states that a liability to import duty is incurred at the time goods become liable to forfeiture. This is the case whether they have become liable to forfeiture because they have not been presented to Customs or because they have been presented to Customs but not declared, as set out in paragraphs 1(5) or 3(4) of Schedule 1.

Chapter 3: Person liable to import duty

Clause 6: Person liable to import duty

- 54 Clause 6 determines who will be liable to pay any import duty on goods imported into the UK. The general rule is that the person in whose name a Customs declaration is made is liable to pay the import duty for the goods in respect of which the declaration is made for.
- 55 There are however exceptions to this general rule. Where liability to import duty arises as a result of goods not being presented to Customs or on goods where Customs declarations have not been made (as set out in the preceding clause) liability for import duty falls onto any person who is in possession or control of the goods.
- 56 In addition, certain other persons will also be liable to import duty. These include a person on whose behalf a Customs declaration is made, a person that is liable as a result of the provisions surrounding liability for Customs agents as set out in clause 21, a person that is liable as a result of provision surrounding breaches of special Customs procedures and any other person that is involved in the breach of a Customs obligation.

- 57 Subsection (7) makes clear that where there is more than one person liable for import duty the liability is joint and several in nature.

Chapter 4: Amount of import duty: the Customs tariff, preferences, safeguarding etc

Clause 7: Amount of duty: introduction

- 58 Clause 7 introduces the provisions that deal with determining the amount of import duty applicable to goods.
- 59 This clause establishes that the clauses specified in subsection (1) will make provision for the applicable rate of import duty and for the amendment or adjustment of this. Subsection (2) introduces clauses 16 to 19 which relate to the determination of the value of goods, their origin, and any relief, which will be relevant to the determination of the applicable rate of import duty.

Clause 8: The Customs tariff

- 60 Clause 8 places a requirement on the Treasury to make regulations establishing and maintaining a “Customs tariff”.
- 61 The Customs tariff established under clause 8 will set out the rate of import duty to be applied to an imported commodity. This is referred to throughout the Bill as the Customs tariff in its standard form. Where there is a liability to pay import duty, the rates set out in the Customs tariff in its standard form will apply, unless those rates are amended or adjusted by another provision of the Bill.
- 62 The Customs tariff will enable an importer to ascertain the applicable rate of import duty for particular goods by setting out the rules for determining the correct classification of goods and the duty associated with those goods based on their nature, origin and any other factor relevant to their treatment for Customs purposes. The system used for classifying goods will, as is currently the case, be based upon that of the World Customs Organization’s Harmonised System, which is recognised by 180 countries around the world.
- 63 The amount of import duty applicable to goods may be determined in a number of ways.
- a. Subsection (3)(a) describes an *ad valorem* tariff. An *ad valorem* tariff is based on the value of the goods, and is calculated as a percentage thereof (e.g. 10%).
 - b. Subsection (3)(b) describes a specific tariff. A specific tariff is based on the quantity of goods, and is a fixed fee (e.g. £100/kg).
 - c. A compound tariff combines the features of an *ad valorem* tariff and a specific tariff, where both (3)(a) and (3)(b) apply, (e.g. £100/kg plus 10% of the value).
- 64 The rate of import duty may be specified in the Customs tariff by reference to formulae or otherwise. The ability to do this is particularly important for variable duty regimes. In these circumstances, the formula will be specified in the Customs tariff but the rate of import duty that the formula produces may increase or decrease automatically without the need for further legislation. For example, a duty may be set with reference to a global price benchmark for a commodity.

Clause 9: Preferential rates: arrangements with countries or territories outside UK

- 65 Clause 9 allows provision to be made for a lower rate of duty (a ‘preferential rate’) to be applied to goods originating from specific territories in order to give effect to arrangements between the UK and the governments of those territories. This clause broadly covers any

arrangements, international agreements or memoranda of understanding. For example, such an arrangement could include giving effect to an FTA between the UK on the one part and another State, territory or regional economic integration organisation (such as the EU) on the other; or to an arrangement the UK may have with a British Overseas Territory.

- 66 The ability to use a preferential rate under an arrangement may be subject to any conditions specified in the arrangement, including, for example, quotas, rules of origin or safeguard measures.

Clause 10: Preferential rates given unilaterally

- 67 Clause 10 allows the Secretary of State to make regulations to create a trade preference scheme for developing countries. It specifies that the import duty applied to goods from countries included in the preference scheme shall be lower than the standard import duty specified in the Customs tariff. The preferential rate could range from a reduced tariff (compared to the standard Customs tariff) up to the full removal of the tariff. This provision will allow the Secretary of State to decide the most appropriate preferential rate to encourage trade between the UK and eligible developing countries.
- 68 The power in subsection (1) will allow the Government to create and administer the trade preference scheme. Different tiers of preferences can be applied to different groups of countries. When the UK first leaves the EU, it is intended that the products and preferential tariffs applied in each tier would reflect the current EU scheme to ensure that market access for all beneficiary countries is maintained.
- 69 Subsection (2) sets out the parameters for the scheme.
- Paragraph (a) says that the trade preference scheme may apply to one or more eligible developing countries. The immediate intention is to continue to offer preferences to all countries receiving preferences under the UK's existing arrangements. The developing countries which may be included in a trade preference scheme are limited to those listed in Schedule 3.
 - Paragraph (b) says that a trade preference scheme may contain conditions for the application of tariff reductions. For example, eligibility for different levels of tariffs could be conditional on economic circumstances or could require a country to satisfy certain requirements, such as ratifying certain international agreements (as the UK currently does under the GSP+ arrangement). It is the government's intention that eligible developing countries which currently receive the same or better market access under another arrangement (for example, a FTA or Economic Partnership Agreement) would not also receive unilateral trade preferences.
 - Paragraph (c) says that the trade preference scheme may provide for circumstances in which the application of the lower import duties may be varied, suspended, or withdrawn. For example, the tariff reduction on a particular good could be temporarily removed in the event that a large surge of imports of that good was causing harm to domestic industry. Preferences could also be varied or withdrawn from a country in response to serious and systematic human rights violations. Tariff reductions on a particular product from a beneficiary country are also expected to be withdrawn according to predetermined rules when imports of that product reach certain levels – this is known as “product

graduation”.

- 70 Regulations will provide more details on the circumstances and process for the variation, suspension, or withdrawal of preferences. Where a decision involves an element of discretion, (as opposed to simply applying predetermined rules relating to product graduation, for instance), the process could, for example, allow the affected countries to present evidence and make representations about their situation before changes to their preferences take effect. The process could also allow functions (for instance investigation functions) relating to the process for surges in imports to be delegated to the Trade Remedies Authority. Such delegation is enabled by subsection (7) (a) of clause 32.
- 71 Subsections (3) and (4) set out the specific parameters for least developed countries.
- 72 Paragraph (a) of subsection (3) requires that if a trade preference scheme is created under subsection (1), regulations must provide for a nil rate of import duties on products imported from least developed countries except for arms and ammunition. This is an international commitment in the UN Sustainable Development Goals which the UK supports.
- 73 Paragraph (a) of subsection (4) explains that arms and ammunitions shall be defined in regulations. The intention is that, for the purposes of this clause, “arms and ammunitions” shall follow and cross refer to the classification to be specified under clause 8, when the UK Customs Code is established. We expect the UK Customs Code to adopt the classification in chapter 93 of the Harmonised System, the internationally recognized coding system established by the World Customs Organization.
- 74 Paragraph (b) of subsection (3) says that regulations may provide for circumstances in which the nil rate of tariffs on import duties may be suspended or withdrawn from a least developed country, for example in response to serious and systematic human rights violations. The intention is that this provision shall only be used in exceptional circumstances. The action taken may include the application of a different preferential tariff rate or reversion to the Most Favoured Nation rate, as stated in subsection 4(b).
- 75 Subsection (5) clarifies that reference to the Customs tariff in its standard form does not include adjustments to the tariffs made by clauses 9, or 11-15 of this Bill. These include the preferential rates under international arrangements (clause 9) and the tariffs applied in cases of safeguarding (clause 14).

Clause 11: Quotas

- 76 Clause 11 allows provision to be made in respect of goods where the applicable duty rate is dependent on a quota, commonly known as a tariff rate quota.
- 77 A tariff rate quota is a set quantity of specific goods that can be imported at a lower rate of import duty than that which is specified in the Customs tariff in its standard form. Any further imports in excess of the quota will be charged at the standard rate.
- 78 There are different types of quota. They can arise from an arrangement with another territory (such as a FTA) or the UK’s schedule of concessions at the WTO. Such arrangements may establish tariff rate quotas for certain products and may specify details such as which products are covered and the in-quota duty. Others are known as autonomous quotas, which may be proposed by the Government in secondary legislation. An autonomous quota may also be created when requested by other countries.
- 79 The administration of a tariff rate quota can be determined by a variety of factors, laid down in regulations.
- 80 Importers may need to seek a licence or allocation of the quota in order to benefit from the

lower rate of import duty and a fee could be payable. Other quotas operate on a first-come-first-served basis. Where a claim on such a quota is refused, or cannot be made because the quota limit has been reached, the goods would be charged at the standard rate of duty appropriate to those goods (by reference to the Customs tariff in its standard form).

Clause 12: Tariff suspension

- 81 A tariff suspension allows for the waiver of some or all of the amount of import duty for specified goods for a set period, in order to encourage trade and support domestic production by ensuring that UK businesses have access to the supplies they need.
- 82 Clause 12 sets out the means by which the Treasury may make provision to lower the rate of import duty for goods that are to be subject to a tariff suspension. Generally, these are commodities that are not yet manufactured or worked into finished goods. The conditions determining whether a commodity may be eligible for a suspension will be set by regulation. These lower rates of import duty are intended to apply temporarily, and could apply only for a limited amount of a commodity.
- 83 The clause also establishes the right of businesses to request a suspension, which must be considered by the Secretary of State. The requirements for an application will be set by regulation.

Clause 13: Dumping of goods, foreign subsidies and increases in imports

- 84 If trade remedies duties are imposed following a dumping or subsidy investigation, the measures imposed will function as an additional amount of import duty, and will be chargeable on goods which are specified in a public notice from the Secretary of State, in accordance with the details set out in the Secretary of State's notice. Schedule 4 sets out further details of dumping and subsidy investigations.
- 85 Safeguarding remedies will function as an additional amount of import duty or a tariff related quota, and will be chargeable on goods which are specified in a public notice from the Secretary of State. The duty or tariff related quota must be in accordance with a relevant recommendation made by the Trade Remedies Authority, and the details set out the Secretary of State's notice. Schedule 5 sets out further detail of safeguard investigations.

Clause 14: Increase in imports or changes in price of agricultural goods

- 86 Clause 14 allows for Special Agricultural Safeguards, which are permitted under Article 5 of the WTO Agreement on Agriculture¹². This provision allows members of the WTO to set additional import duty on certain agricultural goods designated on their schedule of commitments.
- 87 These additional duties are applicable if the relevant imported goods either: exceed a set volume of imports in a given time period; or when individual shipments of those products fall below a set price. These are known as trigger points.
- 88 Regulations under this clause must define the designated products in scope and set the trigger points for price and volume for those products. The regulations can also define when

¹² Available at: https://www.wto.org/English/docs_e/legal_e/14-ag_01_e.htm

representative prices are used to check the import prices of individual consignments.

- 89 Special Agricultural Safeguards cannot be applied to a good which either already has a global safeguard measure applied to it or is currently within its import quota.

Clause 15: International disputes etc.

- 90 Clause 15 enables the Secretary of State to vary the rate of import duty when a dispute or other issue has arisen between the UK government and the government of another country and the UK is authorised to do so under international law. The clause replaces equivalent existing powers available to the European Commission.
- 91 One of the circumstances in which this power may be exercised is in the context of international trade disputes, where the UK may be authorised to impose retaliatory trade measures, including higher import duty against the imports of goods of a respondent territory which fails to comply with a dispute ruling within the required period of time. Another of the circumstances in which this power may be exercised is where the UK may be required to offer compensation to complainants (including in the form of lower import duty) when it has lost a dispute and has not brought itself into compliance within the required period of time.
- 92 Authorisation to vary the rate of import duty may also arise in other specific situations, including in the context of rebalancing trade concessions when another Member of the WTO or a party to a trade agreement has taken action which undermines trade concessions to which it has previously committed.
- 93 Clause 15(2) addresses the interaction of retaliatory duties under this clause and duties under clause 13 in relation to the same subsidised imports.

Chapter 5: Amount of import duty: supplementary

Clause 16: Value of chargeable goods

- 94 Clause 16 sets out the principles governing the valuation of goods.
- 95 The general rule is that the value of the goods is their transaction value (the amount payable for the goods at the time of export to the UK), which includes consideration for the goods and certain specified costs associated with the importation (e.g. some transport and insurance costs).
- 96 The clause also allows the Treasury to make regulations that permit or require something other than the transaction value to be used – for instance where transaction values cannot (or cannot readily) be determined. The regulations may also specifically exclude or include certain costs from the transaction value.

Clause 17: Place of origin of chargeable goods

- 97 Clause 17 sets out rules for determining the place of origin of goods.
- 98 It is necessary to determine the place of origin of imported goods for the purposes of international trade. For example, rules of origin ensure that preferential rates (as provided for in clauses 9 and 10) can only be applied to the goods that are intended to benefit from the lower rate of duty. When goods are imported under a preferential regime, they are deemed eligible for this regime only if they originate from a particular country or territory with which the preference arrangement exists.
- 99 It is also necessary to determine the place of origin of goods where they are subject to other trade measures, trade remedies (as provided for in clauses such as 13, 14 and 15) or quotas (provided for in clause 11).

100 In certain circumstances, different rules of origin may apply to the same commodity. For example, a specified amount of a commodity may be imported at preferential duty rates under a more flexible rule of origin. This would allow a greater proportion of the commodity in question to consist of material originating from a state with which the UK does not have a preference. Imports beyond the specified amount can only be imported under a tariff preference if they meet stricter rules of origin. Such provisions can be found in a small number of FTAs, such as between the EU and Canada.

Box 2: Rules of origin

Where goods originate is determined using 'rules of origin'.

Simply because goods are considered to be originating by one territory does not mean that another territory will consider them also to have originated there, as the rules can be very different from Customs territory to Customs territory.

Rules of origin are applied to check that goods meet the criteria established in a preferential arrangement (for example, a FTA) or unilateral preference. They protect the Exchequer by preventing goods, which originate from territories with which the UK has no preferential arrangement, from wrongfully benefiting from any preferential arrangements that the UK has with other territories. For example, goods imported to the UK via a territory that has a preferential arrangement with the UK.

The rules of origin in an arrangement lay out the minimum requirements for a product to be considered "originating" in parties to the FTA, in order for it to benefit from preferential import duties under that arrangement. Such requirements typically limit the use of third-country material to be used in the production of a product or require a minimal level of economic activity to transform the goods.

Clause 18: Currency

101 Clause 18 makes provision for the currency of values for Part 1 of the Bill, requiring the value of all chargeable goods be expressed in sterling.

102 All amounts that are used to calculate the final value of chargeable goods (such as values that are obtained from invoices) must first be converted into sterling before calculations are made.

103 Any such conversion must be made in accordance with what HMRC has provided for by way of public notice. This clause also expands on what HMRC may include in such public notice.

Chapter 6: Reliefs

Clause 19: Reliefs

104 In certain circumstances relating to the particular nature or use of the goods or the type of importer, levying duty is not considered appropriate. In such circumstances, arrangements may be made, both internationally and in the UK, to relieve the importation from some or all of the import duty which would otherwise be due. These reliefs are comparable to those currently covered by EU legislation and can be conditional on prior approval, the completion of certain procedures or evidence of eligibility.

105 Examples of the type of uses under which such goods are eligible for reliefs are: where the goods are only imported for a limited period prior to re-export; previously exported domestic goods are being returned without alteration; goods being imported for specific end uses, as designated by the tariff; items imported for educational, scientific or cultural purposes or research; goods imported to encourage future trade, such as samples or items for testing; donated items, private gifts and inherited items.

106 Certain reliefs can also be specific to the importer and are therefore used by organisations such as charities, museums and galleries; or eligible individuals.

Chapter 7: Administration etc.

Clause 20: Notification and payment of import duty, etc.

107 Clause 20 introduces Schedule 6 of the Bill. Schedule 6 sets out the relevant rules for, amongst other things, how a liability to pay import duty is to be notified, how import duty is to be paid, when guarantees may be required, and how import duty is to be repaid.

Clause 21: Customs agents

108 Clause 21 provides that any person, referred to as the “principal” in the legislation, may appoint and use a Customs agent to act on their behalf. It distinguishes between two types of agents: direct agents that act in the name of the importer, and indirect agents that act in the agent’s own name. The appointment of an agent, or the withdrawal of that appointment, must be notified to HMRC in accordance with regulations made by HMRC.

109 The general rule is that unless otherwise specified the actions of an agent are to be regarded as done by the principal and the principal is liable for the actions of a direct agent. An indirect agent however is jointly liable with the principal for any import duty.

110 There are additional instances where a Customs agent may also be liable for Customs duty, as set out in subsection (6). This may be where a Customs agent acts when their appointment has not been disclosed to HMRC as required, because the agent’s appointment has been withdrawn, because they do not have authority to act as an agent, and also where declarations made under paragraph 9 of Schedule 1 (simplified Customs declarations) are not made in accordance with the provisions of that provision.

111 Subsection (7) allows HMRC to make further provisions about Customs agents in regulations, and subsection (8) provides examples of the types of regulations that HMRC may create under this clause. This includes requiring Customs agents to be approved by HMRC and specifying the criteria for approval.

Clause 22: Authorised economic operators

112 Clause 22 allows the setting up of an Authorised Economic Operator (AEO) scheme. AEO status is an internationally recognised quality mark indicating that an operator has met recognized standards of compliance.

113 AEO status is not mandatory, but Operators with AEO status may gain quicker access to some of the simplified Customs procedures set out in Part I. It can also give the right, in some cases, to ‘fast-track’ shipments through some Customs procedures.

114 This clause allows HMRC to make regulations setting out that certain requirements in Part 1 of the Bill can be simplified or not applied with regards to AEOs, or to make regulations specifying that the status of AEOs must be taken into account in the exercise of a power or function under this part. This includes the criteria that can be applied in determining whether or not AEO status should be granted and making the granting of AEO status conditional on

compliance with conditions specified. AEO status may have more than one class. Different classes and the benefits a particular class confers can also be set out in regulations.

Clause 23: Approvals and authorisations granted under regulations

115 In establishing the processes and requirements of the UK's Customs system, various clauses in Part 1 also set out where regulations can make provision requiring HMRC's approval to do certain things. For example, provision made by regulations may require a person and/or their premises to be approved before they can operate a Customs warehouse. Approval is needed so that HMRC can be assured that individuals or businesses meet a prescribed standard. Clause 23 and the regulations made under it set out the rules that apply in relation to any approvals or authorisations granted as a result of regulations made under Part 1 of the Bill, unless the regulations make alternative provision.

116 The regulations may include provision to, for example, set out how applications for the approval should be made to HMRC and set out what information will be required. The regulations may also make provision setting out where HMRC may amend, suspend or revoke an approval.

117 Where an application for approval was deficient, the business or individual making the application knew this, HMRC would not have granted the approval if the deficiency had been known, and the applicant has been given appropriate notice, then the approval is treated as though it had never been granted. However, clause 23(6) allows HMRC to make regulations specifying circumstances in which such an approval is nevertheless to be treated as still being in force. This would, for example allow HMRC to make provision remedying any adverse effects upon innocent third parties where an approval or authorisation is revoked.

Clause 24: Rulings as to application of Customs tariff or place of origin

118 Clause 24 requires HMRC to establish a system, by way of public notice, to give rulings for determining the correct tariff code and origin of the goods. Under the current Customs system such decisions are known as Binding Tariff Information and Binding Origin Information decisions.

119 Subsection (2) clarifies that the public notice can among other things, specify the form in which an application and determination must be made and the period after which a person would expect to have received a determination. This notice may also include the period for which a notice would have effect (subject to the circumstances of the determination continuing to be met), and when a determination would be withdrawn. The notice may also set out cases in which rulings will not be given.

120 Subsection (3) requires that an application for a ruling may be made even if an HMRC officer considers the ruling may not be required to resolve a doubt or issue being determined.

121 These rulings allow businesses certainty when calculating their liability to import duty, by ensuring that the tariff code (clause 8 (1)(a) and (b), and elsewhere) and origin information (clause 17 and elsewhere) are determined correctly.

Chapter 8: Supplementary

Clause 25: Disclosure of information

122 Clause 25 allows HMRC to disclose information relating to import duty for Customs duty purposes. For example, HMRC currently exchanges information with other law enforcement partners so that it can more effectively target criminals or deliberate wrongdoers who are looking to evade import duty.

123 The clause sets out the type of information that can be disclosed, the purpose for which it may be disclosed, and what can be done with the information once it has been disclosed. For example, any person who receives information under this section cannot forward it on (or otherwise further disseminate it) without HMRC's consent. Any such wrongful disclosure would be a criminal offence under existing rules set out in section 19 of the Commissioners for Revenue and Customs Act 2005 (CRCA 2005).

124 HMRC is also subject to other laws that regulate the disclosure of information. This clause does not affect the circumstances in which information may be disclosed under section 18(2) of the CRCA 2005, or any other law. In addition, this clause does not permit a disclosure which is in breach of the Data Protection Act or that is prohibited by relevant provisions of the Investigatory Powers Act 2016.

Clause 26: Co-operation with other Customs services

125 Clause 26 allows HMRC to cooperate with other Customs services on matters of mutual concern.

126 The restrictions that apply in relation to the disclosure of information in clause 25 also apply in relation to information that is disclosed under this section.

Clause 27: Fees for exercise of functions in connection with import duty

127 Clause 27 allows the Treasury to make regulations that will allow for fees to be charged for the exercise of functions in connection with import duty.

128 The power to make regulations charging fees may only be exercised if to do so is consistent with international agreements and if it is fair and reasonable for the charge to be made. An example of where fees may be charged is where out of hours support is needed at the request of the importer (or another party connected to the importation).

Clause 28: Requirement to have regard to international obligations

129 Clause 28 places a requirement upon specified persons, departments, and bodies exercising functions specified in Part 1 of this Bill to have regard to international arrangements that the UK is a party to and that are relevant to the exercise of that function. This would, for example, include agreements with the WTO.

130 This clause does not seek to impact upon the question of whether or not there would otherwise be an obligation to have regard to such agreements.

Clause 29: Consequential amendments

131 Clause 29 introduces Schedule 7 ('Import Duty: Consequential amendments'), which contains a series of consequential amendments that the Bill makes to other legislation. This includes amendments made to CEMA 1979, the Customs and Excise Duties (General Reliefs) Act 1979, the Finance Act 1977, The Isle of Man Act 1979, the Finance Act 1994, the Finance Act 2003, the Income Tax (Trading and Other Income) Act 2005, the Borders, Citizenship and Immigration Act 2009 and the Corporation Tax Act 2009.

Clause 30: General provision for the purposes of import duty

132 Clause 30 allows the Treasury to make further provision (supplementary or otherwise) in relation to import duty.

133 This provision could supplement provision made in relation to import duty by Part 1 of this Bill or any other Act of Parliament.

134 This would also allow the Treasury to make provision in relation to import duty in

circumstances where the Bill or other Acts do not cater for the UK's import duty requirements.

Chapter 9: UK's Customs union

Clause 31: Territories forming part of a Customs union with UK

135 Clause 31 would enable the UK to give effect to a Customs union arrangement with another territory or territories. A Customs union is defined in subsection (2) as one in which there is no Customs duty on goods moving between the two territories in question and where each territory applies substantially the same rules for charging import duty when goods are imported from outside either territory.

136 This clause could facilitate a Customs arrangement with the Crown Dependencies and/or an interim Customs arrangement with the EU.

137 Other provisions allow further regulations to be made for the purposes of implementing a Customs union arrangement, for example, to modify provisions made by this Bill, so that the legislative framework for Customs can be aligned between the UK and the territory with which the UK is in a Customs union.

Chapter 10: Regulations etc

Clause 32: Regulations etc.

138 Clause 32 sets out the parliamentary procedures which apply when regulations are made under Part 1 of the Bill, including Schedules 1 to 7. All regulations under this Part are to be made by statutory instrument.

139 In most cases, regulations are subject to the negative procedure in the House of Commons. The exceptions to this are the first statutory instrument which sets the Customs tariff under clause 8 of the Bill and any further regulations under clause 8 which result in an increase in the amount of import duty payable in a standard case. These are subject to the affirmative procedure in the House of Commons. The regulations must be approved by the end of a period of 28 days unless the regulations provide for any of its provisions to come into force on such day as the Treasury may appoint under clause 52(2). In such a case the regulations must be approved within 60 days of the first day on which any of it comes into force.

140 The clause provides that, once the Trade Remedies Authority has been established, regulations made under Schedule 4 or 5 can only be made after the Secretary of State has consulted the Trade Remedies Authority.

141 The clause also provides that an Order made under clause 31 of the Bill which gives effect to a Customs union between the UK and an overseas territory must be laid in draft and approved by a resolution of the House of Commons before it can be laid before Her Majesty.

142 The clause also provides that any power to make regulations in Part 1 of the Bill may make different provision for different circumstances, may confer discretion on a person to do something under the regulations, may make provision by reference to things specified in a public notice and may make supplementary, incidental, consequential, transitional, transitory and saving provision.

143 The clause also provides that powers to make provisions by public notice may be made by regulations.

144 The clause further provides that a power of HMRC to make regulations is also exercisable by the Treasury.

Chapter 11: Interpretation etc

Clause 33: Meaning of “domestic goods”

- 145 Clause 33 defines the term 'domestic goods' as it is used in Part 1 of the Bill. Domestic goods are either those which are wholly obtained in the UK in accordance with the definition in clause 37(3) or those which have been imported into the UK and undergone the relevant Customs procedure in the UK and have been discharged from that procedure. In addition it specifies that goods shall lose their status as domestic goods upon export from the UK.
- 146 The clause also provides the power for HMRC to specify circumstances where goods will retain their domestic status notwithstanding that they have been temporarily removed from the UK.
- 147 The clause provides that any goods situated in the UK are presumed to be domestic goods unless the contrary is shown. However it also provides a power for the Treasury to reverse this presumption for certain circumstances for example where goods are passing through a port or international airport (such as for tobacco without UK fiscal markings) and/or to prescribe the evidence that is required to show that goods are domestic. The Treasury is also given the power to specify cases where goods are, or are not, to be regarded as domestic goods.

Clause 34: Presentation of goods to Customs on import or export

- 148 Clause 34 defines the term 'presented to Customs on import' as it is used in Part 1 of the Bill. Broadly, goods are presented to Customs on import when a Customs officer is notified that goods have been imported into the UK. The notification of arrival can be given prior to import, however, in such cases the goods are not considered to have been presented until the time that importation into the UK has occurred. In most cases, goods need to be declared to Customs within a specified time after they have been presented.
- 149 The clause also defines the term 'presented to Customs on export' as it is used in Part 1 of the Bill. Goods are presented to Customs on export where the export is notified to HMRC in accordance with regulations made by HMRC.
- 150 Regulations can also provide more detailed rules on how an import or export should be notified, including the form, manner and timing of a notification and the requirement for accompanying documents.

Clause 35: Exports made in accordance with applicable export provision

- 151 Clause 35 defines what is meant by export in accordance with applicable export provisions, which is a term used elsewhere in Part 1. It provides that goods must be presented to Customs on export in accordance with clause 34, and then exported in accordance with a procedure specified by HMRC in regulations.
- 152 Reference to this procedure is made elsewhere in this Part. For example in clause 33(3), which determines that a domestic good will become a chargeable good once it is exported in accordance with this procedure. Furthermore, exporting goods in accordance with this procedure may be necessary in order to meet the conditions of a special procedure set out in Schedule 2, or a relief provided for under the power in clause 19.
- 153 Clause 35(3) gives HMRC a power to make regulations specifying how the export procedure is to operate. These regulations may apply or replicate (with or without modifications) the effect of provisions governing Customs declarations on import made by or under Schedule 1. The export procedure is largely intended to be administered as a mirror of the import procedures and therefore regulations may, for example, require a declaration to be made; impose requirements upon a person(s) associated with the goods whilst they are subject to the

procedure; deem an export to have been made in accordance with the procedure in specified cases; specify the period during which the procedure applies; and subject goods to the control of an HMRC officer from a specified time.

Clause 36: Outward processing procedure

- 154 Clause 36 provides for a procedure named ‘outward processing’. This allows businesses to temporarily export goods for repair or processing, and for those goods to either maintain their domestic status (in the case of goods for repair without charge) or incur a reduced duty liability upon re-importation (in the case of goods for other processing), provided certain conditions are satisfied.
- 155 The length of the ‘temporary period’ during which goods are processed is set by a written notice given to the declarant by an HMRC officer, and may be extended in the same manner.
- 156 Under EU law outward processing is defined as a special Customs procedure. However, given outward processing is an export process, within this Bill’s structure it now sits with the export provisions as opposed to in Schedule 2.
- 157 If goods exported under this process are being repaired overseas without charge, they are not subject to import duty when they are re-imported, as in this case they continue to be domestic goods. This is only the case if there is no breach of the terms of the declaration or any other requirements relating to the procedure.
- 158 In cases other than repair without charge, the goods are to be considered as chargeable goods and will be subject to import duty when re-imported. However, the dutiable value of the processed goods is reduced to reflect the value of the UK domestic goods that were incorporated.
- 159 An example of this is a business that exports cloth to India for a temporary period, in order to be made into men’s suits. When the business re-imports these suits to the UK at the end of the period, it is only liable for duty on the increase in value of the suits compared to the value of the cloth before it was exported.
- 160 Rules on when the outward processing procedure may be used – including for example rules governing how the change in the value of goods should be calculated, how the authorisation for repair may also accommodate like-for-like replacement, requirements on any person in relation to the procedure, and other expectations related to the procedure – may be set out by HMRC in regulations, as provided for by subsection (8).
- 161 Goods exported under this procedure are not subject to the normal export procedure set out in clause 35, but HMRC may, by regulations, apply such provisions to them, as subsection (5) states.

Clause 37: Minor definitions

- 162 Clause 37 defines various terms as they are used in Part 1 of the Bill.

Clause 38: Table of definitions

- 163 Clause 38 provides a table of various expressions used in Part 1 of the Bill and indicates where those expressions are defined or explained.

Part 2: Export duty

Clause 39: Charge to export duty

- 164 Clause 39 allows the Treasury to make provision for establishing a charge to tax on the export of goods from the UK. This is referred to in the Bill as ‘export duty’.

These Explanatory Notes relate to the Taxation (Cross-border Trade) Bill as introduced in the House of Commons on 20 November 2017 (Bill 128)

165 The Bill does not, itself, establish a charge to tax on export duty but the power to do so is contained in the Bill so that if the UK decides to introduce export duty in the future it can do so through regulations made by the Treasury. This will allow an export duty regime to be implemented more quickly, if necessary. Rather than duplicate Part 1 in its entirety, clause 39 allows the replication or amendment of any part of the import duty regime required to facilitate the imposition of an export duty. Provision for export duty exists in the Union Customs Code.

Clause 40: Regulations under section 39: supplementary

166 Clause 40 sets out provisions that apply when regulations are made under clause 39. This clause contains provisions analogous to the provisions in clause 32 in relation to regulations applicable to import duty.

167 This clause specifies the circumstances where a regulation may be subject to the negative or affirmative procedure and the period of days by which regulations under the affirmative procedure must be approved.

Part 3: Value Added Tax

168 The changes made in this Part are conditional upon the outcome of exit negotiations with the EU. In the event of a negotiated outcome being reached, the government may choose not to make an appointed day order commencing these changes. The government would subsequently legislate to give effect to the negotiated outcome through use of a power provided by this Bill and existing powers.

Clause 41: Abolition of acquisition VAT and extension of import VAT

169 Clause 41 (1 and 2) amends the Value Added Tax Act 1994 (VAT Act) to abolish the concept of “acquisition” as a taxable event for goods entering the UK from EU Member States. Acquisitions are the supply of goods between businesses from one Member State to another. When the UK leaves the EU, in the absence of a negotiated agreement, these goods will fall to be treated as imports and subject to import VAT.

170 Clause 41(3) substitutes a new section 15 in the VAT Act. It maintains the current treatment that import VAT is due at the same time and from the same person(s) who is/are liable for Customs duty (or would be if duty were due). It also ensures that the new section 15 does not affect the meaning of importer or importation in other legislation applied for import VAT purposes by section 16 of the VAT Act.

Clause 42: EU law relating to VAT

171 Clause 42 sets out how EU law converted into domestic law by the EU (Withdrawal) Act 2018 applies in relation to VAT, in particular as regards EU regulations, including the implementing VAT regulations, and how EU-derived law is to be interpreted.

172 Clause 42 (1,3 and 4) provides for the treatment of any EU regulations and corresponding EU legislation as well as Court of Justice of the European Union (CJEU) case law relating to VAT following the introduction of the European Union (Withdrawal) Act 2018.

173 Clause 42 (2, 6 and 7) provides the Treasury with the power to exclude or modify direct EU law by statutory instrument, subject to the negative resolution procedure.

174 Clause 42(5) provides for the treatment of EU implementing VAT regulations.

Clause 43: Other VAT amendments connected with withdrawal from EU

175 Clause 43 introduces Schedule 8 which makes amendments to the VAT Act and other enactments relating to VAT in consequence of the provisions made by Clause 41 or 42 or

otherwise in connection with withdrawal of the UK from the EU.

Part 4: Excise Duties

176 The changes made in this Part are conditional upon the outcome of exit negotiations with the EU. In the event of a negotiated outcome being reached, the government may choose not to make an appointed day order commencing these changes. The government would subsequently legislate to give effect to the negotiated outcome through use of a power provided by this Bill or through existing powers.

Clause 44: Excise duties: postal packets sent from overseas

177 Clause 44 provides a power to deal with the treatment of postal packets sent from overseas.

178 Subsection 1 allows, in the case of goods arriving in the UK, HMRC to impose liability to excise duty on a person based outside the UK, if the person sends or arranges for the sending of excise goods in a postal packet to a UK based recipient.

179 Subsection 2 allows the regulations to impose a liability to excise duty on the sender only in relation to goods of a certain value, to specify that others are jointly and severally liable for the excise duty and to remove the liability from any persons who would otherwise be liable to the excise duty.

180 Subsection 3 allows the regulations to require registration with HMRC in relation to excise goods sent in postal packets from overseas, to require the provision of information to HMRC about the goods or the sender, to apply penalties for failure to comply with the regulations and to modify the application of the Customs and excise Acts in relation to the regulations.

Clause 45: General regulation making power for excise duty purposes etc

181 Subsection 1 provides that HMRC may make regulations generally for excise duties. The definition of “excise duty” at clause 49 limits the breadth of the power and ensures that it can only be exercised in relation to excise duties under the Alcoholic Liquor Duties Act 1979, Hydrocarbon Oil Duties Act 1979 or the Tobacco Products Duty Act 1979. These are the excise duties that are most affected by the UK’s withdrawal from the EU. This definition of excise duties excludes Air Passenger Duty and betting and gaming Duties.

182 This power is required to ensure that HMRC has the flexibility to deliver the amendments to existing excise legislation which will be necessary to maintain a functioning and legally operable excise regime at the point the UK has left the EU. The excise regime is largely set out in secondary legislation using a complex mix of powers. For example, the Excise Goods (Holding, Movement and Duty Points) Regulations 2010 are made under multiple powers, including section 2(2) of the European Communities Act 1972. The power in clause 45 is required to make changes to existing provisions made under section 2(2) after the European Communities Act 1972 has been repealed. Without this there is a risk that there will be a gap in powers or that it will be necessary to replace whole sets of regulations rather than make amendments to existing provisions.

183 It is not yet known what will be agreed with the EU as regards excise and therefore what changes will be required to existing legislation. Given this, the power is broad enough to deal with all possible outcomes. For example, the power is broad enough to ensure the continued operation of the Excise Movement and Control System (ECMS) in the UK whether or not there is a negotiated solution with the EU, as this is important to businesses, as well as retaining the flexibility to deal with the full range of possible negotiated outcomes as regards ECMS.

184 Subsection 2 gives a non-exhaustive list of areas which regulations made under subsection (1) may cover. The list includes the key administrative features of the excise duty regime such as

when excise duty becomes due, who will be liable for excise duty, reliefs and the rules around the holding and movement of excise goods. It includes the ability to make provision for the purposes of excise duty as a result of any territories forming part of a Customs union with the UK that has effect under Clause 31. It does not include the ability to set excise duty rates.

185 Subsection 3 provides that regulations laid under this section may amend or repeal any Act of Parliament whenever passed. It does not include the ability to amend the Bill itself. This provision will ensure that the United Kingdom can make further changes required to maintain a fully functioning and legally operable excise regime independent of the EU, and can accommodate a number of potential outcomes of negotiations with the EU.

186 Subsection 4 provides that approvals, mentioned in subsection (2), includes authorisations and licences.

Clause 46: Exercise of information powers in connection with excise duty

187 Clause 46(1) provides HMRC with the power to make regulations which impose obligations on revenue traders (as defined in 46(9)) for the purposes of giving effect to international excise arrangements, where they consider that to do so would facilitate the collection, administration, or enforcement of UK excise duty. The regulations may require that revenue traders provide statements to HMRC about 'relevant business matters' and this expression is defined in the Clause 46(4).

188 Clause 46 also sets out circumstances in which officers can exercise powers in primary and secondary legislation to obtain information or documents relating to excise duty, in relation to international excise arrangements. The powers can be used in relation to international excise arrangements only where HMRC has given a direction in writing authorising their use.

189 Subsection 6 provides that HMRC may disclose the information obtained if the disclosure is in accordance with those international excise arrangements and HMRC is satisfied that the recipient will observe rules of confidentiality which are no less strict than those which apply to the information in the UK and also that the recipient will use the information only for purposes contemplated by the arrangements.

190 Subsection 8 permits HMRC to make a direction under Clause 46(7) or make regulations under Clause 46(1) only where they consider that to do so would facilitate the collection, administration, or enforcement of excise duty.

191 Subsection 9 defines what is meant by the term 'international excise arrangement'.

Clause 47: EU law relating to excise duty

192 Clause 47 sets out how EU law and the EU (Withdrawal) Act 2018 apply in relation to excise duties, in particular as regards the interpretation of derived EU law.

193 In addition, clause 47(2) provides the Treasury with the power to exclude or modify direct EU law by statutory instrument subject to the negative resolution procedure.

194 Clause 47(4) confirms that nothing in the section is to be read as restricting the power of section 45.

Clause 48: Regulations under ss. 44 to 47

195 Clause 48 makes various provisions in relation to the powers under Part 4 of the Bill.

196 Subsection 1 provides that any regulations made under Part 4 must be made by statutory instrument.

197 Subsection 2 provides that any statutory instrument which contains regulations made under

section 45 that make provision of the kind mentioned in subsection 3 are subject to the made affirmative procedure in the House of Commons. The statutory instrument must be approved by the end of a period of 28 days unless it provides for any of its provisions to come into force on such day as the Treasury may appoint under clause 52(2). In such a case it must be approved within 60 days of the first day on which any of it comes into force.

- 198 Subsection 3 lists the kinds of provisions that require the made affirmative procedure. These are provisions that amend or repeal any Act of Parliament; restrict any rebate of or relief from excise duty; extend the descriptions of goods on which excise duty is chargeable or extend the cases in which stamping or marking of goods is required.
- 199 Subsection 4 provides that where a statutory instrument ceases to have effect nothing done previously under that instrument nor the making of a new instrument is affected.
- 200 Subsection 6 provides that, unless it contains provision of a kind mentioned in subsection (3), a statutory instrument containing regulations under sections 44 to 47 is subject to the negative resolution procedure.
- 201 Subsection 7 provides that if a statutory instrument contains provision under any of sections 44 to 47 and also excise duty provision under any other enactment, provided the other enactment does not require approval of the House of Commons, the parliamentary procedure provided for in this clause shall apply, not the procedure in the other enactment. This provision enables the powers in the Bill to be combined with powers in other enactments that are subject to the negative procedure or no procedure. The statutory instrument will be subject to scrutiny by the House of Commons only, regardless of what the other enactment provides. The ability to combine powers in this way will reduce substantially the number of statutory instruments that are required to make amendments to the excise regulations. Furthermore, the excise regulations that will require amending, in both a negotiated and non-negotiated scenario, all relate to taxation. Scrutiny by the House of Commons only is in line with the convention that tax legislation is not subject to House of Lords scrutiny.
- 202 The Government does not intend to use the powers in the Bill to make provision which is incidental to the main provisions in the regulations concerned in order to make the regulations subject to scrutiny by the House of Commons only, where otherwise they would be subject to scrutiny by both Houses.
- 203 Subsection 8 provides that for the purposes of subsection (7) a statutory instrument requires House of Commons approval if, as a condition of it continuing to have effect or its making, the House of Commons has to approve the statutory instrument or a draft of it.
- 204 Subsection 9 clarifies that the enactment of the powers in sections 44 to 47 does not impliedly repeal any existing excise duty regulation making powers, where the new powers in sections 44 to 47 and existing powers may overlap.
- 205 Subsection 10 confirms that regulations laid under any of sections 44 to 47 may relate to all cases to which the power extends or some of them only and may allow different provision for different circumstances and/or areas. This includes the ability to make different provision covering different geographical areas for example Northern Ireland, or specific product types for example limiting duty suspended movements for certain products.
- 206 Subsection 11 confirms that the powers to make regulations in Part 4 includes the ability to: confer a discretion on any specified person to do a thing under or for the purposes of the regulations; make provision by reference to things specified in a notice published in accordance with the regulations; and to make supplementary, incidental and consequential provision as well as transitional and transitory provision and savings. This includes the ability

to publish a notice with the force of law. It is anticipated that the government will use this ability to, for example, specify what forms must be used for any continuing duty suspended system.

Clause 49: Sections 44 to 48: interpretation

207 Clause 49 defines what is meant by the term 'excise duty' as it is used in Part 4, sections 44 to 48 of the Bill; meaning any excise duty under -

- a. the Alcoholic Liquor Duties Act 1979,
- b. the Hydrocarbon Oil Duties Act 1979, or
- c. the Tobacco Products Duty Act 1979.

208 The scope of the provision limits the definition to exclude Air Passenger Duty and Betting and Gaming Duties, i.e. it limits the provision made to excise goods.

Clause 50: Excise duty amendments connected with withdrawal from EU

209 Clause 50 introduces Schedule 9, which makes amendments to enactments relating to excise duty in connection with the withdrawal of the UK from the EU

Part 5: Other provision connected with withdrawal from EU

Clause 51: Power to make provision in relation to VAT or duties of and Customs or excise

210 Clause 51 enables the appropriate Minister to make regulations relating to VAT, Customs or excise duties where they consider it appropriate to do so as a consequence of, or otherwise in connection with, the UK's withdrawal from the EU.

211 The European Union (Withdrawal) Bill (EUWB) converts the body of existing EU law into domestic law. Clause 42, clause 47 and Schedule 7, Part 1 provide that a large proportion of this converted law will not apply in relation to VAT, excise or Customs. Instead domestic provisions are being made in the Bill which alter the existing domestic legislation or, in the case of Customs, introduce alternative regimes to fill the gap which is left once converted EU law no longer applies.

212 There are a number of areas where it is expected that provisions or amendments will need to be made but their content is, as yet, unknown. The changes required are dealt with as far as possible in the provisions of the Bill itself, but because negotiations will continue with the EU after the point that the Bill is introduced and given Royal Assent, and because of the need to legislate now to ensure that the UK has customs, VAT and excise regimes which function as required on the UK's withdrawal from the EU, it is not possible to include all these provisions in the Bill:

- provisions or amendments to address deficiencies of a similar nature to those which are dealt with by clause 7 of EUWB which arise as a consequence of leaving the EU
- provisions or amendments arising from the introduction of replacement domestic legislation or from the alterations made to domestic legislation. This includes amending existing legislation to ensure that it dovetails with the new/amended legislation
- provisions or amendments that are required to implement or facilitate any

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arrangements that the UK and the EU agree in their negotiations which may include replicating or applying EU law for a limited period.

- provisions or amendments that are required to implement or facilitate policy decisions made in the future which are connected to withdrawal in other policy areas which impact on VAT, Customs and excise and which may involve replicating or applying the law disapplied by the provisions in the Bill
- provisions or amendments to “transition” existing EU trade remedy measures. This might involve converting existing EU measures – e.g. measures whose complete removal upon the UK’s withdrawal from the EU could damage UK producers – into new UK measures. This in turn might involve making provision for relevant processes such as applications by UK producers to determine which measures should be considered for transition and reviews: to ensure, for example, that keeping a measure in place as a UK measure post-exit was justified
- provisions or amendments that are required to deal with developments arising after the enactment of this Bill in connection with the UK’s withdrawal from the EU but which have not been foreseen. The government expects that after this Bill the opportunities to legislate to accommodate unforeseen developments will be very limited. This power is drafted widely to cover legislation that is required to deal with such situations to ensure that the UK has VAT, Customs and excise regimes which function as required on its withdrawal from the EU.

213 Subsection (2) provides that the regulations made under the section can make any provision that could be made by an Act of Parliament, including making changes to or repealing the Bill itself. However, these regulations cannot have retrospective effect.

214 Subsection (3) determines who the appropriate Minister is. For secondary legislation relating to matters dealt with by clause 10 and Schedule 3 (unilateral preferences), by clause 15 (varying duties in the light of international disputes etc), and by clause 13, Schedules 4 to 5 and paragraph 1 of Schedule 7 (any trade remedy element of a Customs duty etc), the appropriate Minister is the Secretary of State or the Treasury. As secondary legislation relating to these matters may have implications for trade policy, it is appropriate for the Secretary of State to be able to exercise the power. For everything else, the appropriate Minister is the Treasury alone.

215 Where regulations are to be made after the Trade Remedies Authority has been established and it is proposed that they contain provisions relating to anything dealt with by Schedule 4 or 5, the appropriate Minister must consult the Authority before including those provisions.

216 Regulations made under this section that amend or repeal an Act of Parliament must be approved by resolution of the House of Commons within 28 days of being made or they cease to have effect. That regulations are not approved by the House within 28 days does not affect anything done under the regulations when they had effect, nor does it affect the making of new regulations.

217 Regulations which do not amend or repeal an Act of Parliament are subject to the negative procedure.

218 Subsection (8) concerns the parliamentary procedure which applies for provision relating to excise duty. If a statutory instrument contains a use of a power in this Bill as well as a use of a power in any other enactment, provided that the other enactment does not require an affirmative procedure, the procedure for the use of the power in this Bill applies to the

statutory instrument as a whole.

Clause 52: Subordinate legislation relating to VAT or duties of Customs or excise

219 Clause 52 concerns subordinate legislation relating to VAT, Customs or excise, whether made under the powers in the Bill or under powers in any other relevant enactment.

220 Subsections (2) to (4) provide that, where the person making that subordinate legislation considers it appropriate to do so in consequence of or otherwise in connection with the withdrawal of the UK from the EU, that legislation may come into force on a day to be appointed in regulations made by the Treasury. Moreover, if that subordinate legislation containing such a commencement provision is subject to the 28-day affirmative procedure, it must be approved by the House of Commons within 60 days of the first day on which any of it comes into force.

221 Subsection (5) amplifies powers to make subordinate legislation relating to VAT, excise or Customs so that they all include power to make supplementary, incidental or consequential provision and power to make transitional and transitory provision and savings, if the person exercising the power considers it appropriate to make the provision in consequence of or otherwise in connection with the withdrawal of the UK from the EU.

Clause 53: Meaning of “excise duty”

222 Clause 53 provides that “excise duty” in Part 5 of the Bill means any excise duty under —

- a. the Alcoholic Liquor Duties Act 1979,
- b. the Hydrocarbon Oil Duties Act 1979, or
- c. the Tobacco Products Duty Act 1979.

Part 6: Final provisions

Clause 54: Consequential and transitional provision

223 Clause 54 confers power on the appropriate Minister to make consequential and transitional provisions in regulations.

224 Subsection (1) allows the appropriate Minister to make regulations which it considers appropriate in consequence of the Bill being enacted. Subsection (2) provides that the appropriate Minister can exercise this power by amending or repealing any Act of Parliament. However, this does not extend to any Act which is passed in a session of Parliament after that in which the Bill itself is passed. Sub-section (4) allows the appropriate minister to make transitional, transitory and saving provision in regulations which it considers appropriate in connection with the coming into force of any provision of the Bill.

225 Subsection (5) determines who the appropriate Minister is. For secondary legislation relating to matters dealt with by clause 10 and Schedule 3 (unilateral preferences), by clause 15 (varying duties in the light of international disputes etc), and by clause 13, Schedules 4 to 5 and paragraph 1 of Schedule 7 (any trade remedy element of a Customs duty etc), the appropriate Minister is the Secretary of State or the Treasury. As secondary legislation relating to these matters may have implications for trade policy, it is appropriate for the Secretary of State to be able to exercise the power. For everything else, the appropriate Minister is the Treasury alone.

226 Where regulations are to be made after the Trade Remedies Authority has been established and it is proposed that they contain provisions relating to anything dealt with by Schedule 4 or 5, the appropriate Minister must consult the Authority before including those provisions.

227 Regulations made under this section can make different provision for different purposes or areas.

228 Regulations made under section 54(1) that amend or repeal an Act of Parliament must be approved by resolution of the House of Commons within 28 days of being made or they cease to have effect. That regulations are not approved by the House within 28 days does not affect anything done under the regulations when they had effect, nor does it affect the making of new regulations.

229 Regulations under section 54(1) which do not amend or repeal an Act of Parliament are subject to the negative procedure. There is no Parliamentary procedure for regulations under section 54(4).

230 Subsection (12) concerns the parliamentary procedure which applies for provision relating to excise duty. If a statutory instrument contains a use of a power in this Bill as well as a use of a power in any other enactment, provided that the other enactment does not require an affirmative procedure, the procedure for the use of the power in this Bill applies to the statutory instrument as a whole.

Clause 55: Commencement

231 Clause 55 sets out the commencement provisions for the Bill.

232 Subsection (1) provides that the powers to make regulations can be exercised when the Bill receives Royal Assent. It also provides that the final provisions of the Bill come into force at Royal Assent.

233 Subsection (2) provides that clauses 10, 13 and 15 and Schedules 3 to 5 and paragraph 1 of Schedule 7 of the Bill come into force on a day appointed by the Secretary of State in regulations.

234 Subsection (3) sets out that the remaining provisions of the Bill come into force on the day or days appointed by the Treasury in regulations.

235 Subsection (4) also provides that the power to appoint a day when the provisions of the Bill come into force can specify different days for different provisions and specific times of day where they consider it appropriate to do so. This includes appointing a time of day by reference to the time when any other Act of Parliament receives Royal Assent.

Clause 56: Short title

236 Clause 56 establishes that the short title of the Bill when enacted will be the Taxation (Cross-border Trade) Act 2018.

Schedule 1: Customs Declarations

Presentation of goods to Customs and period for making a Customs declaration etc.

237 Paragraph 1 requires goods to be presented to Customs on import and a Customs declaration to be made within 90 days of presentation. Clause 34 defines when goods are presented to Customs and the procedures that must be followed. However, there is no need to make a declaration if the goods are exported from the UK within those 90 days in accordance with the applicable export provisions. Paragraph 1 also provides that HMRC may make regulations about presentation, including specifying the circumstances in which presentation is not required.

238 Goods are under the control of a Customs officer from the time of importation and paragraph 1 provides the power for HMRC to make regulations imposing restrictions and conditions on the

goods during that 90-day period.

- 239 If a declaration is not made within the 90 day period and the goods have not been exported the goods are liable to forfeiture under sub-paragraph (5) and a liability to import duty arises in accordance with clause 5.

Eligibility of persons to make Customs declarations

- 240 Paragraph 2 establishes that a Customs declaration may be made by the person who is able to present, or secure presentation of, the goods to Customs on import into the United Kingdom.
- 241 HMRC may make regulations placing specific conditions on the person making a declaration. These may include a requirement to be established in a specified place.

Time at which Customs declarations required or authorised to be made

- 242 Paragraph 3 establishes the timing of the Customs declaration. It allows HMRC to make regulations requiring the Customs declaration to be made before the goods are imported in specified cases. Failure to make a declaration in such cases would result in the goods being liable to forfeiture under sub-paragraph (4) and a liability to import duty arising in accordance with clause 5.
- 243 In cases where a declaration in advance of import is not mandatory, paragraph 3 permits a person to declare goods prior to importation. The goods must then be presented to Customs within a permitted period (specified as 30 days from the time at which the declaration is made, unless a different period has been set in a public notice); if the goods are not presented within that period then the declaration is treated as having been withdrawn.

Form of Customs declarations and how they are made

- 244 Paragraph 4 establishes the general rules for the form of declarations. The general rule is that declarations should be made in an electronic form prescribed by HMRC.
- 245 Paragraphs 5 and 6 establish alternative methods for making declarations that may be used in specified cases. Under paragraph 5 declarations may be made in writing rather than electronically and under paragraph 6 declarations may be made orally or by conduct. These alternative methods will be used in circumstances where it is impractical to make declarations electronically. This will allow, for example, a traveler with personal luggage satisfying certain conditions to make a declaration by walking through the green channel.
- 246 HMRC can make regulations in order to give effect to these alternative means of making declarations. This includes disapplying provisions in Part 1 or other Customs enactment and treating anything done, or omitted to be done, as meeting a condition imposed under this Part or other Customs enactment.

Contents of Customs declarations

- 247 Paragraph 7 provides that HMRC may further specify, by public notice, the information that must be included in Customs declarations and the documents which must accompany it.
- 248 The public notice may specify the circumstances under which the requirement to produce such documents may be met by the person making the declaration or another person making other information or documents available to HMRC. This allows, for example, a person to satisfy the requirements by making documents available through an electronic platform.
- 249 Paragraph 8 allows HMRC to make provision in a public notice that a single declaration may cover a number of goods or that separate declarations must be made in respect of goods of the same description.

Simplified Customs declarations etc

250 Paragraph 9 allows for HMRC to make regulations to disapply or simplify the requirements in Part 1 of the Act to allow for simplified Customs declarations.

251 These provisions may, for example, allow the declarant to declare the goods by means of entry into their own approved record system and software linked to HMRC's systems.

Acceptance of Customs declarations

252 Paragraphs 10, 11, and 12, set out the responsibilities of officers of HMRC when receiving and accepting Customs declarations.

253 As soon as practicable after receipt, HMRC is required to determine whether or not a declaration has been properly made (i.e. in accordance with the requirements provided in Schedule 1) and contains all the required information and is accompanied by all the required documents.

254 If the Customs officer is satisfied that the Customs declaration has been made in accordance with the requirements and the goods have been presented to Customs on import, they must notify the declarant. This notification constitutes acceptance, but does not prevent an officer from subsequently verifying the declaration in line with paragraphs 13 and 14 of the Schedule.

Verification of Customs declarations

255 Paragraphs 13 and 14 set out the process by which an officer of HMRC may verify a Customs declaration. A Customs officer may take any steps to establish whether the conditions for the making of a Customs declaration have been met, the person making the declaration was entitled to make the declaration, and the accuracy of the declaration and supporting documents. These steps include any documentary and physical inspection of goods under Parts 7 and 12 of CEMA 1979 and may take place before or after the declaration is accepted by HMRC.

256 If a Customs officer considers that there is an inaccuracy in the declaration (whether the declaration itself, or any document in support of the declaration), the officer must notify the declarant, correct the declaration or direct the person making the declaration or another appropriate person to make the necessary correction. However, HMRC is not required to notify the inaccuracy if doing so would prejudice an investigation. The liability to import duty is determined on the basis of the corrected declaration.

Amendment or withdrawal of Customs declarations

257 Paragraphs 15 and 16 provide that a person who has made a Customs declaration may amend or withdraw it before HMRC accepts, takes steps to verify, or indicates that they intend to verify, the declaration. After one of these events has occurred the declaration can be amended or withdrawn only after notification within a period set out in a public notice and with the consent of an HMRC officer.

Releasing and discharging goods to and from Customs procedures

258 Paragraph 17 provides that goods declared to the free-circulation procedure cease to be under the control of an HMRC officer when they are discharged from that procedure.

259 Goods declared for free-circulation are released to that procedure when the correct import duty is paid to HMRC, or if there are alternative arrangements, such as guarantees, in place, when the declaration is accepted by HMRC and are discharged from the procedure when HMRC notifies the person making the declaration that the goods are discharged.

260 Goods declared for a special Customs procedure are released to that procedure when HMRC

accepts the declaration; or, in cases where an authorisation is required for a special Customs procedure, the goods are released at a specified time from which the procedure may be used for those goods if this is later than the acceptance of the declaration by HMRC. The goods are then subject to the provisions made under Schedule 2 for the relevant procedure and these continue to have effect until the goods are discharged from that procedure.

Declarations for different Customs procedures

261 Paragraph 18(1) provides that a declaration can be made in relation to goods for another Customs procedure notwithstanding the fact that the goods are already subject to a different Customs procedure. Accordingly, if goods are declared for the temporary admission procedure and the importer then wishes to sell the goods in the UK the trader can subsequently declare those goods for free-circulation.

262 Paragraph 18(2) provides that goods may not be subject to two Customs procedures simultaneously; the first Customs procedure must be discharged before the goods can enter the second procedure. Schedule 2 provides for the circumstances when goods are discharged from a special Customs procedure and these include where goods are declared for another Customs procedure and that declaration is accepted by HMRC.

Notifications given by HMRC or HMRC officers

263 Paragraph 19 provides that notifications given by HMRC under this Schedule may be given in any way that the person giving it considers appropriate. It also provides that HMRC may make regulations specifying cases where it is presumed that a person has been notified under Schedule 1, including circumstances where that presumption may not be rebutted.

Schedule 2: Special Customs Procedures

Entitlement to declare goods for special Customs procedures

264 Part 1 of Schedule 2 sets out general requirements regarding how goods may be declared for special Customs procedures. It allows HMRC to make regulations allowing a person to declare goods for a special procedure only if that person is authorised to do so and other specified conditions are met. These rules are intended to ensure that goods can only enter a special procedure in appropriate circumstances, and assist in ensuring compliance with the procedure. Further general provisions governing the use of special procedures are set out at Part 7.

265 This Part sets out a number of examples of the types of provision which may be made by regulations, setting out the requirements for a person to be granted authorisation to declare goods for a special procedure. Such regulations may include requirements regarding where a person must be established, and specifying conditions regarding their suitability. The regulations may also set rules regarding the length of duration of an authorisation and the time from which a special procedure may be used, as well as rules surrounding the application process itself.

266 It also gives a power to the Treasury to direct HMRC to include provision in the regulations for particular authorisations to only be granted where the granting would not adversely affect the interests of UK producers.

Storage procedure

267 Part 2 sets out the requirements specific to a storage procedure. A storage procedure is a type of special procedure which allows goods to be kept in premises approved by HMRC, or in a free zone, without incurring import duty. A declaration for a storage procedure is a declaration that the goods will be (or were) kept in the approved premises or free zone in accordance with the relevant requirements.

268 Under the powers set out in this part, HMRC may make regulations setting out the requirements for a storage procedure, including those governing approved premises and the persons who may make use of them. This would include for example, the criteria for approval.

269 This Part also provides that HMRC may make regulations to govern goods entering and leaving a free zone, or the consumption of goods in a free zone. For example, imposing a requirement that goods be presented to Customs when entering or leaving a free zone or the manner in which the domestic or non-domestic status of goods within the free zone needs to be determined. CEMA includes provision to allow the authorisation of areas to use as free zones. Currently there are no free zones within the territory of the United Kingdom, but the provisions in this Part give flexibility in regards to how these powers may be used following EU exit.

270 The definition of free zone used in this Part is an area in the United Kingdom designated as a special zone under section 100A, CEMA 1979.

Transit Procedure

271 Part 3 sets out the requirements specific to a transit procedure. A transit procedure is a type of special procedure which allows goods to move while in a Customs territory, subject to certain requirements, without incurring liability to import duty. The existence of effective transit arrangements is of importance to business, and enables the government to meet its obligations under international agreements on transit.

272 A declaration of goods to a transit procedure is a declaration that the goods are to move between specified places and that their passage while in the United Kingdom will be subject to requirements imposed by regulations made by HMRC. The requirements imposed by such regulations may extend to any person in relation to the transit procedure.

273 This Part provides the powers for making regulations which set out these requirements. The requirements which may be made by regulations under this Part include for example, a requirement for a person to permit the inspection of goods or their means of transport, as well as any requirements which must be imposed on any person as a result of implementing an international transit arrangement. Such arrangements currently include, for example, the Transports Internationaux Routiers Convention (TIR Carnet), and the NATO Convention Form 302 relating to the movement of goods for NATO forces.

Inward Processing Procedure

274 Part 4 sets out the requirements specific to an inward processing procedure, in both its standard and supplementary forms. This special procedure allows imported goods to undergo certain types of processing during a temporary period while not incurring liability to import duty. Duty would become due if the goods are subsequently declared to free-circulation. If however the goods are exported, no duties are paid, thus assisting cash flow for businesses and encouraging trade and manufacturing for export markets.

275 A declaration in the standard form is a declaration that the goods are to be imported to the UK for processing and that processing will take place during a temporary period. It is also a declaration that the processing will consist of qualifying activities, and it will be carried out in accordance with requirements imposed by way of regulations made by HMRC. Paragraph 9(4) defines qualifying processing activities.

276 This Part also provides the powers for making regulations which set out the requirements which goods may be subject to while under an inward processing procedure in the standard form. Such requirements may include for example requiring that the processing results in the production of a certain quantity of other goods.

277 The temporary period for which goods may remain in the United Kingdom will be set out in a notice given to the person making the declaration by a Customs officer, and may be extended by a further notice.

278 Goods that are subject to an inward processing procedure in the standard form may temporarily leave the United Kingdom again for further processing, without requiring the inward processing procedure to be discharged. HMRC may make regulations imposing conditions on this.

279 A declaration of goods for an inward processing procedure in the supplementary form is a declaration that the goods are to be subject to any operation that is designed to ensure that there can be compliance with requirements that must be met before the goods are released for free-circulation, or that is designed to ensure preservation, improvement or preparation of the goods for distribution or resale.

280 In a situation where goods require modification to meet specific standards, or further preparation or improvements, this form of inward processing allows this work to be carried out in the UK without incurring liability to import duty. This encourages such processing to be carried out in the UK rather than overseas, prior to the goods being declared for free-circulation, distribution, or resale. HMRC may make regulations imposing requirements related to this.

Authorised use procedure

281 Part 5 sets out the requirements of an 'authorised use procedure', where a good must be subject to a particular use to qualify for a reduced rate of import duty.

282 A declaration for an authorised use procedure is a declaration that the goods will be subject to a particular use that is specified by HMRC in regulations.

283 HMRC may make regulations governing the required end use for eligibility to this procedure – for instance specifying that particular hydrocarbon oils imported under this procedure must be used for a specific distillation process – as well as imposing requirements on any person in relation to the procedure.

Temporary admission procedure

284 Part 6 sets out the requirements specific to a temporary admission procedure. A declaration for this procedure is a declaration that the imported goods are of a specified description, and will be used for a specified time, after which they will be exported from the United Kingdom in accordance with the applicable export provisions outlined at clause 35. Under this procedure, a full or partial relief will apply.

285 HMRC may make regulations under this Part specifying the goods which may be declared for the procedure, and the period of time before the goods must be exported – for instance, in the example of overseas artworks being loaned for an exhibition, HMRC could specify that particular paintings may be imported into the UK under this procedure for a period of twelve months. HMRC may also make regulations imposing additional requirements on any person in relation to a temporary admission procedure.

Supplementary provisions

Records

286 Paragraph 17 allows HMRC to make regulations requiring the keeping of records in relation to goods subject to a special procedure. Records can assist HMRC in determining if requirements have been followed or if there has been a breach.

287 These regulations can impose requirements on persons authorised to make a declaration to a special procedure; any person involved in the handling, processing, disposal, or other dealings with the goods while the procedure has effect; as well as any other person in respect of the records.

Discharge of special Customs procedures: rules applicable to all procedures

288 Paragraph 18 sets out rules applicable to the discharge of all special procedures.

289 It establishes the general rule that a special procedure is considered discharged when the goods are declared to another Customs procedure, and the declaration is accepted by an HMRC officer. If a special procedure were to continue indefinitely, it could potentially be a means of avoiding paying duty that would be incurred on declaration for free-circulation. HMRC may therefore issue a direction requiring a special procedure to be discharged before a specified date, or a date calculated in accordance with the directions.

290 Where a procedure is not discharged in the required time, and HMRC has given notice to the person who declared goods under the procedure, then the goods may be treated as if they had been declared to the free-circulation procedure from the date the notice was given, with the consequence that a liability to import duty arises (see clause 4).

291 Directions under this paragraph may be given in relation to a specific case or can also be given generally. Directions that are intended to be of general application may be given in the form of a public notice.

Discharge of special Customs procedures: rules applicable to particular procedures

292 Paragraph 19 sets out further ways in which particular special procedures can be discharged, as these vary according to what the procedure itself involves.

293 A transit procedure is discharged in accordance with regulations made by HMRC. This power gives flexibility to ensure that the requirements of international agreements on transit which the UK is, or becomes, a party to, can be enforced domestically. It also gives the ability to allow for different mechanisms of discharge where goods are moved by different types of transport.

294 A storage procedure, an inward processing procedure, an authorised use procedure or a temporary admissions procedure is discharged if the goods are re-exported in accordance with the applicable provisions made by or under clause 35; or if the goods are destroyed or liable to forfeiture.

295 An authorised use procedure and temporary admission procedure are also discharged if the requirements made in relation to those procedures are met. The nature of these requirements has already been outlined earlier in the note to this Schedule.

Discharge of special Customs procedures: other provision

296 Paragraph 20 (1) and (2) qualify the general rules on the discharge of special procedures, by stating that where a liability to import duty has been incurred while the special procedure is in effect, for example where the conditions have been breached, a special Customs procedure cannot be discharged unless that duty is paid, or a guarantee has been given in relation to the goods. However, this does not prevent the goods being released to another special procedure.

297 Paragraph 20 (3) allows HMRC to make regulations governing the evidence required in order to show that a special Customs procedure has been discharged. The evidence that will be required in order to show that a special procedure has been properly discharged will depend upon a range of factors such as the type of special procedure, the specific circumstances in which goods were declared for that procedure, and the nature of the commodity.

Liability to import duty imposed on persons other than declarant etc.

- 298 Goods declared for special procedures are subject to particular requirements made by or under Schedule 2. A breach of these requirements can result in liability, or a higher liability, to import duty.
- 299 The requirements that are imposed by a special procedure may not always be imposed on the person who made the declaration. For example, a person transporting goods under a transit procedure may not be the declarant, but could still be subject to certain requirements, such as using a particular route.
- 300 Paragraph 21 allows HMRC to make regulations to impose liability to import duty on any person who breaches a requirement imposed on them under Schedule 2, not just the declarant. It also allows for regulations to provide for cases where there is a breach, but the person should not be liable to import duty, for example, in a case of joint liability where the breach by one party was technical.

Changes in nature of goods while subject to a special Customs procedure etc.

- 301 Paragraph 22 covers how a liability to import duty is to be determined when goods change in nature while subject to a special procedure.
- 302 It sets out that HMRC may, by regulations, make provision for the calculation of this liability by reference to the goods at the time when they were declared to the special procedure, and not the time at which the liability is incurred.
- 303 This power allows HMRC to make provision addressing situations where, for example, a commodity has been processed and therefore changed in some way, for instance during the inward processing procedure. The general rule established by clause 4 (3)(b) is that the liability is treated as having been incurred at the time of the breach. However, depending on the nature of the processing and the point of the processing when the breach occurred, the commodity could now be different in nature when it was originally imported and declared. Provisions made under this power would allow for the liability to be determined on the goods as they stood at the time of declaration.
- 304 Provisions of this kind are necessary to prevent a person seeking to avoid the application of a particular tariff rate, or trade policy measure, by declaring goods for a special procedure in order to avoid the imposition of a liability to import duty and then transforming the goods into a different commodity having a lower liability to import duty while that special procedure is in effect.
- 305 These regulations may limit their application to specific procedures, and to circumstances where an HMRC officer considers that they should apply.
- 306 HMRC may also by regulations make provision to treat the value of the goods declared to a special procedure as having increased or decreased for the purpose of import duty, in order to take into account things done before or during the procedure.
- 307 An example of this might be when the import of components to manufacture a car carry a higher duty rate than the car. This provision could then allow the processed product – the car – to be declared to free-circulation following processing, rather than the components. This could serve to reduce the duty bill, with the aim of encouraging UK manufacturing.

Use of equivalent domestic goods

- 308 Paragraph 23 allows HMRC to make provision by regulations for the use of equivalent domestic goods in special procedures (other than a transit procedure) where imported goods are intended to be declared. Such regulations would permit UK goods (the 'equivalent

domestic goods’) to be stored, used or processed instead of the imported goods.

309 This enables orders to be completed where the trader may have domestic goods in stock but not non-UK goods. Allowing orders to be fulfilled from the domestic stock whilst waiting for the non-UK goods to arrive means that businesses can complete orders and avoid delaying production.

310 This paragraph allows HMRC to make by regulation rules governing both the authorisation of goods as ‘equivalent’, and their use in the manner set out above.

Directions

311 Paragraph 24 works in conjunction with other provisions where the Treasury or HMRC has a power to make directions. An example of these is in paragraph 18, where HMRC has the ability to make directions regarding the discharge of a special procedure.

312 This paragraph provides that any directions given by the Treasury or HMRC under Schedule 2 may be amended or revoked.

Schedule 3: Developing countries

Introduction

313 Paragraph (1) states that, for the purposes of the trade preferences scheme, the term “eligible developing countries” means the countries in Part 2 or Part 3 of Schedule 3; and the term “least developed country” means a country listed in Part 2 of Schedule 3. Schedule 3, therefore, sets the parameters to be considered for inclusion as a beneficiary country under the preference scheme, but does not guarantee that a listed country will be granted a preference. The conditions in which specified countries in Part 2 or Part 3 of Schedule 3 are granted preferences will be set out in secondary legislation.

314 For example, some countries which are listed in Schedule 3 actually trade with the UK under different trade arrangements, including an FTA or Economic Partnership Agreement (EPA). They are included in the schedule because they meet the objective eligibility criteria regarding their economic status but would not meet conditions to be granted unilateral trade preferences through the scheme. The government is proposing to exercise the powers in clause 9 so that eligible countries either receive preferential tariff rates under a trade agreement or preferences, but not both.

Least Developed Countries

315 Part 2 lists the class of “least developed countries” eligible for the nil rate of duty specified in subsection (3) of section 10. The countries included in this Part are currently defined as “Least Developed Countries” by the UN, or have only recently graduated.¹³ It is the government’s intention to continue to have regard to the classifications of the UN (see subsection (2)(2) of Part 4), but the term “least developed country” in Schedule 3 is not legally tied to the UN definition. This avoids UK legislation being framed by an external body which may change its approach from time to time. In line with the UK’s existing preference arrangements, it is expected that countries would remain on this Part of the Schedule for three years after

¹³ <https://www.un.org/development/desa/dpad/least-developed-country-category.html>

graduation from UN “Least Developed Country” status.

Other eligible developing countries

316 Part 3 lists ‘other eligible developing countries’ that could receive trade preferences under a UK scheme. In line with existing EU preference arrangements, this Part of the Schedule includes countries which have not been classified by the World Bank as Upper Middle Income or High Income for the last three consecutive years.

Power to amend Parts 2 and 3

317 Sub-paragraph 2(1) enables the Secretary of State to amend the list of eligible developing countries contained in Part 3 of Schedule 3, or those defined as least developed countries in Part 2 of Schedule 3.

318 Sub-paragraph 2(1) (a) says that a country may be added or removed from Part 2 of Schedule 3 when it has become, or ceased to be, a least developing country. Sub-paragraph 2(2) says that when exercising the power in sub-paragraph 2(1) (a), the Secretary of State must have regard to the country’s classification by the United Nation.

319 Sub-paragraph 2(1) (b) says that a country may be added or removed from Part 3 of Schedule 3 when it has become, or has ceased to be, similarly situated in terms of its economic characteristics to the other countries in Part 3. Sub-paragraph (2)(3) says that when exercising the power in sub-paragraph 2 (1)(b), the Secretary of State must have regard to the country’s classification by the World Bank. This principally refers to the World Bank’s country income level classifications which are based on Gross National Income per capita. Countries included in Part 3 are Low Income Countries, Lower Middle Income Countries, or have been an Upper Middle Income Country for less than three consecutive years. The list also includes some small island states, not classified by the World Bank, that currently receive trade preferences under the EU’s GSP. These small states are considered to have a similar level of national income to the other eligible developing countries and so are similarly situated in terms of economic characteristics.

320 The Secretary of State must have regard to United Nations or World Bank classifications when exercising the power in sub-paragraph 2(1). The power is not wholly locked into these informal international classifications, as these could change. Should the United Nations or World Bank adopt a different approach to classifying developing countries in the future, other suitable criteria could be used to determine countries’ economic characteristics.

321 Sub-paragraph 2(4) is a power to amend the Schedule in the event that a country changes its name.

Schedule 4: Dumping of goods or foreign subsidies causing injury to UK industry

Key Definitions

322 The WTO Anti-Dumping Agreement sets out the requirements which must be met for WTO Members such as the UK to be able to impose anti-dumping measures. For anti-dumping measures to be applicable, the relevant goods must be being “dumped” in the UK, and must have caused (or threaten to cause) material injury to UK producers. Paragraph 1 sets out what it means for goods to be “dumped” into the UK market, following the definition set out in the WTO Anti-Dumping Agreement. Goods will be considered to be “dumped” if they are imported into the UK at a price which is lower than the price they are being sold for in the exporter’s domestic market (their “normal value”). There are instances where it is not appropriate to use the normal value as a comparator, such as if the exporter does not sell in

These Explanatory Notes relate to the Taxation (Cross-border Trade) Bill as introduced in the House of Commons on 20 November 2017 (Bill 128)

their domestic market or if distortions in the exporter's domestic market mean that the prices in that market cannot be seen to reflect prices in the ordinary course of trade. The detail of how to determine the relevant export price of goods, the comparable price it should be contrasted against and how to ensure a fair comparison may be set out in secondary legislation. Paragraph 2 sets out that the difference between the export price and "normal value" of the goods is the "margin of dumping" for those goods. Under WTO rules, any remedy which is imposed to address dumping must not exceed this margin of dumping.

323 The WTO Subsidy and Countervailing Measures Agreement sets out the requirements which must be met for WTO Members such as the UK to be able to impose anti-subsidy measures. Paragraph 3 sets out that for anti-subsidy measures to be applicable, the goods must have benefitted from a financial contribution from a relevant foreign authority which is targeted at a particular company or group or companies, industry or region (rather than being generally available), and that the financial contribution is granted either directly or indirectly for the manufacture, production, export or transport of goods. These forms of subsidisation count as a "countervailable" subsidy, and therefore fall under the WTO rules on anti-subsidy measures. For anti-subsidy measures to be applicable, the goods must have caused (or threaten to cause) material injury to UK producers. Any remedy which is imposed to address subsidised goods must not exceed the amount of the benefit which the exporter gained from the subsidy in question, as set out in paragraph 4. The detail of how the Trade Remedies Authority will determine the benefit conferred (ie. "the amount of the subsidy") may be set out in secondary legislation.

324 For the purposes of determining whether anti-dumping or anti-subsidy measures are appropriate, the Trade Remedies Authority will need to establish whether the goods have caused (or threaten to cause) material injury to UK producers which produce comparable goods. Paragraphs 5-7 set out that relevant UK goods for comparison (the "like goods") must be like the imported goods in all respects, or must have characteristics closely resembling those of the imported goods in question. For the imported goods to be considered to have caused "injury" to the UK industry, they must either have caused material injury, threaten to cause material injury to the UK industry, or have impeded the establishment of a relevant industry in the UK. The injury caused is assessed in relation to the UK industry in the "like goods", which could either be all of the UK producers of the like goods, or those UK producers which account for a major proportion of the production of the like goods in the UK. Secondary legislation may set out further detail about the interpretation of what constitute "like goods", as well as how the Trade Remedies Authority will determine whether material injury is being caused by dumped or subsidised goods and the detail of what constitutes a UK producer and a major proportion of UK total production of like goods.

Dumping and Subsidisation Investigations

325 Paragraphs 8-10 of Schedule 4 provide the power for the Trade Remedies Authority to carry out dumping and subsidy investigations to establish whether dumped or subsidised imports are causing injury to the UK industry. They set out the circumstances in which the Trade Remedies Authority may initiate an investigation. In order to do so, the Trade Remedies Authority must have received a request by or on behalf of the UK industry and must be satisfied that the application demonstrates sufficient evidence of injury to UK industry and either dumped or subsidized imports. In line with WTO requirements, the evidence must demonstrate sufficiently that the volume of the imported goods in question or the injury suffered is more than negligible and that either the margin of dumping or the amount of subsidy is more than minimal. These thresholds may be set out in regulations, along with further details of the application process.

326 In order to focus the Trade Remedies Authority's attention and resources where they are

needed, applications will be subject to a UK market share threshold, which is intended to filter out cases which are manifestly unlikely to result in measures being imposed. Regulations will set out the operation of the market share threshold. Where a case meets the thresholds set out by the WTO but does not satisfy the market share threshold, the Trade Remedies Authority will have the discretion to decide whether to take the case forward or not. If an application meets all the requirements, or the Trade Remedies Authority waives the market share threshold, then the Authority must accept the application, notify relevant interested parties and publish notice of its decision to initiate an investigation. In the case of an anti-subsidy investigation, WTO rules also require the Trade Remedies Authority to consult with the government of the exporting country before initiating the investigation.

- 327 Paragraph 10 sets out that the detail of the investigation procedure may follow in secondary legislation, which would cover details such as the information which the Trade Remedies Authority must make available throughout the investigation process, the treatment of information and conduct of oral hearings.
- 328 Paragraph 11 covers the determinations which the Trade Remedies Authority may make at provisional and definitive stages of the investigation. At the final stage of the investigation the Authority must either reach a definitive affirmative determination, concluding that dumped or subsidised imports are causing injury to UK industry, or it must make a negative determination confirming that it cannot reach this conclusion on the basis of the evidence. In addition to this, the Authority may at any stage of the investigation make a provisional affirmative determination if it is satisfied that interested parties have been given adequate opportunity to input and is satisfied on the basis of the evidence that dumping is taking place and causing injury to UK industry or – in the case of an anti-subsidy investigation – that subsidised goods are causing injury to UK industry. The Authority must have reached a provisional affirmative determination if it wishes to recommend imposing provisional measures to prevent injury being caused to the UK industry during the course of the investigation process. Parts 3 and 4 provide further detail of the process which the Trade Remedies Authority will follow for provisional and definitive remedies after reaching its determination.
- 329 Paragraph 12 sets out that an investigation will terminate if measures are not pursued – such as because the Trade Remedies Authority has made a final negative determination or has not recommended imposing measures following application of the economic interest test, or because the Secretary of State has rejected a recommendation to impose measures. Equally, an investigation will terminate if measures are imposed or if Secretary of State accepts a voluntary undertaking in lieu of measures.

Provisional Remedy – Requiring a Guarantee

- 330 Part 3 of Schedule 4 outlines the process for recommending the imposition of provisional remedies, and the role of Secretary of State in either accepting or rejecting a recommendation from the Authority to impose remedies. Provisional remedies involve requiring importers to provide a guarantee against the goods, which may be definitively collected if the final determination is affirmative and meets certain criteria (see paragraph 19 of Part 4).
- 331 In line with WTO rules, the Trade Remedies Authority may only recommend that provisional remedies are imposed if it is satisfied that they are necessary to prevent injury being caused to UK industry during the course of the investigation. The Authority must also be satisfied that the measures meet the economic interest test. Further detail on the economic interest test is set out at paragraph 25 of Schedule 4. If the Authority reaches the conclusion that imposing provisional measures would not be in the economic interest, then it must publish notice of its findings and notify the Secretary of State and interested parties.

332 Where the Trade Remedies Authority recommends requiring guarantees, the rate of the guarantee must not exceed the margin of dumping or the amount which the Authority is satisfied is sufficient to remedy the injury being caused to UK industry – whichever is the lesser of the two. The rate recommended may differ according to different exporters or countries, to reflect the fact that one exporter or country may be dumping or subsidising to a greater or lesser degree than another. In line with WTO rules, any provisional remedies can only be applied a minimum of 60 days after the investigation was initiated and provisional anti-dumping remedies may only apply for a total of 6 months, unless the measures are extended to a maximum of 9 months (see paragraph 16). For anti-subsidy cases, provisional remedies may only apply for a maximum of 4 months. Paragraph 15 sets out that the detail of the circumstances in which provisional anti-dumping remedies may be extended will be set out in secondary legislation.

333 Following a recommendation from the Trade Remedies Authority to impose provisional remedies, Secretary of State will decide whether to accept or reject the recommendation. The Secretary of State may only reject a recommendation on public interest grounds or on the grounds that the recommendation does not satisfy the economic interest test. If Secretary of State rejects a recommendation then he or she must lay a statement in the House of Commons explaining his or her reasons for doing so. If the Secretary of State accepts the recommendation, then he or she will publish a notice applying the provisional anti-dumping duty or requiring a guarantee, which will implement the recommendation. Regulations made under Schedule 6 of the Bill will set out the process of giving guarantees for any liability to pay import duty, including for additional amounts of trade remedies duties.

Definitive Remedies – Anti-Dumping Amount or Countervailing Amount

334 At the conclusion of a dumping or subsidy investigation, the Trade Remedies Authority must make a final determination as to whether dumping is taking place and causing injury to UK industry or – in the case of an anti-subsidy investigation – whether subsidised goods are causing injury to UK industry. If the Authority determines that this is the case then it will make a “final affirmative determination”; if not, then it will make a “final negative determination”.

335 If the Trade Remedies Authority concludes following its investigation that dumping or subsidisation are causing injury to UK industry, and is satisfied that imposing measures is in the wider economic interest of the UK, then it must recommend imposing definitive duties on the imports in question. If the Authority reaches the conclusion that imposing definitive measures would not be in the economic interest, then it must publish notice of its findings and notify the Secretary of State and interested parties.

336 Where the Trade Remedies Authority recommends imposing definitive anti-dumping or anti-subsidy duties, the rate of the duty must not exceed the margin of dumping or amount of subsidy, or the amount which the Authority is satisfied is sufficient to remedy the injury being caused to UK industry – whichever is the lesser of the two. The rate of duty recommended may differ according to different exporters or countries, to reflect the fact that one exporter or country may be dumping or subsidising to a greater or lesser degree than another. Definitive measures will be applied for as long as the Authority considers necessary to remedy the injury to the domestic industry, but must not apply for longer than 5 years, unless the measures are extended following a review.

337 As set out in the WTO rules, the remedies can only be applied prospectively (ie. after the notice of application is published), unless certain criteria are met and the Trade Remedies Authority determines to apply the measures to a period before the final public notice was issued. Paragraph 19 provides that regulations may specify the circumstances in which the Trade

Remedies Authority can recommend that definitive duties are applied in this way. It clarifies that if definitive duties are applied to the period for which provisional remedies were in place, then the amount collected when the duties are applied cannot exceed the level of the provisional remedy which was imposed. If provisional remedies are imposed, but the Trade Remedies Authority makes a negative final determination, or affirmative determination where it is not possible to apply the duty to the period before the final public notice, then any guarantees will be released.

- 338 Following a recommendation from the Trade Remedies Authority to impose definitive measures, Secretary of State will decide whether to accept or reject the recommendation. The Secretary of State may only reject a recommendation on public interest grounds, or on the grounds that the recommendation does not satisfy the economic interest test, and must lay a statement in the House of Commons explaining his or her reasons for any decision to reject the Authority's recommendation. If the Secretary of State accepts the recommendation, then he or she will publish a notice applying the definitive anti-dumping remedy, which will implement the recommendation.
- 339 WTO rules set out a number of instances in which trade remedies measures must or may be reviewed, such as prior to the expiry of the measures to determine whether they should be extended in order to prevent injury recurring, and at an interim period to determine whether the measures are still necessary to address injury to the domestic industry. The Government's intention is that this will include reviews to assess whether the intended effect of the measures is being undermined by circumvention activity or by exporters reducing their prices still further to mitigate the impact of duties put in place, and to enable the Trade Remedies Authority to take mitigating action. Paragraph 21 provides that the details of the types of reviews which the Trade Remedies Authority must or may carry out, the circumstances in which it will do so and how these reviews will be carried out will be set out in secondary legislation. Reviews will also apply to voluntary undertakings which have been accepted, and paragraph 24 sets out that regulations will set out how these will apply.
- 340 Where a decision in an international dispute finds that a UK trade remedy measure is not compatible with international law, the UK will be obliged to bring these measures into compliance. There might also be other UK trade remedy measures that were not subject to a dispute, but which are also potentially incompatible with international law in light of a new judgement. Paragraph 22 sets out that regulations may provide for an investigation into whether to vary or revoke any affected measures to bring them into compliance with international law. The regulations will include detail as to the conduct of that investigation and the subsequent recommendation to the Secretary of State, which may make the same types of provisions as the regulations under Part 2, Paragraph 10 setting out the conduct of dumping and subsidisation investigations more generally.

Undertakings

- 341 In cases where the Trade Remedies Authority recommends imposing definitive measures, it is possible for exporters (and relevant foreign authorities in the case of anti-subsidy measures) to offer a voluntary "undertaking" in lieu of measures, either of their own volition or in response to a request from the Trade Remedies Authority.
- 342 There is no obligation on exporters (and for subsidies, foreign authorities) to offer an undertaking. If they do choose to do so, then for the purposes of a dumping investigation this would involve them committing to revise their prices. For the purposes of a subsidy investigation, this would either involve a commitment from the exporter to revise their prices or a commitment from the relevant foreign authority to eliminate or limit the injurious subsidy or otherwise mitigate its effects. If the Trade Remedies Authority is satisfied that the

undertaking is sufficient to address the injury to UK industry and that it is appropriate to accept the undertaking, it may recommend to Secretary of State that he or she accept an undertaking in lieu of the definitive measures which would otherwise be applied. Regulations will set out the detail of recommendations by the Trade Remedies Authority and decisions by the Secretary of State relating to undertakings. If the Secretary of State decides to accept the undertaking, he or she must publish notice of the decision and notify the party which offered the undertaking, as well as other interested parties.

Supplementary

343 Before recommending measures, the Trade Remedies Authority must apply an economic interest test to establish whether those measures would be in the economic interest of the UK. The rationale for this is that because the effect of measures is to place restrictions on imports, they inherently increase costs on other parties which rely on the affected products, such as downstream users, consumers and upstream suppliers. This ensures that the need to address the injury to UK producers does not disproportionately impact other economic players in the relevant market. Other WTO members seek to address this with similar tests.

344 The Trade Remedies Authority must apply the economic interest when determining whether to recommend provisional or definitive anti-dumping, subsidy or safeguard measures, and whether to recommend that definitive duties should be continued or varied following a review. If the Authority considers that the test is not met, then the case will be dismissed and the Secretary of State will be informed of the decision – or, in the case of the review, the Authority will recommend that the measure is terminated. If the test is met, then the Authority must recommend that measures are applied.

345 Paragraph 25 sets out a starting presumption that anti-dumping and anti-subsidy measures are in the UK's economic interest, so the onus is on the Authority to demonstrate that this is not the case.

346 The Authority must consider the following criteria:

- The economic significance of affected industries and consumers in the United Kingdom: The Trade Remedies Authority would need to establish who could be affected by measures and their size and significance to the UK economy.
- The likely impact on affected industries and affected consumers in the United Kingdom: This will involve assessing the extent of the impact of measures, or lack thereof, on the UK interests already identified.
- The likely impact on particular geographic areas, or particular groups, in the United Kingdom: This requires the Authority to consider whether measures, or lack thereof, would impact certain groups or geographical regions in a disproportionate manner.
- The likely consequences for the competitive environment and for the structure of markets for goods in the United Kingdom: This assessment will consider how the structure and conditions of the market will evolve in the long-term if measures are or are not imposed.

347 The TRA may recommend to the Secretary of State that provisional or definitive anti-dumping or countervailing measures are temporarily suspended if market conditions change to the extent that injury would be unlikely to recur. The Government intends that suspensions would take place in limited circumstances where conditions change suddenly and drastically, such

that measures are temporarily not in UK's interest – for example if the production facilities of UK producers were to become suddenly inoperable to the extent that market needs could not be met without the trade remedies in place being temporarily suspended. Paragraph 26 allows Secretary of State to provide for investigations by the TRA into whether to suspend measures, as well as the period for which measures may be suspended.

- 348 Paragraph 27 clarifies that while it is possible under WTO rules to carry out dumping and subsidisation investigations in respect of the same imports, both sorts of remedy should not be applied to deal with one and the same issue.
- 349 There will be instances in which it is necessary to refund amounts of trade remedy duties collected, such as following a successful appeal against the remedy applied to goods from a particular exporter. Regulations under paragraph 10 of Schedule 6 will set out details of the repayment of import duty and the repayment of interest paid in respect of import duty. Paragraph 28 of Schedule 4 clarifies that regulations may also provide for the Trade Remedies Authority to investigate whether an amount of dumping or countervailing duty should be repaid or whether a guarantee taken as a provisional measure should be released.
- 350 Paragraph 29 enables regulations to provide for imports of goods to be registered. Registration would follow on from a public notice from the Secretary of State, and would allow measures to be applied to the period for which goods have been registered, in line with the provisions set out in paragraph 19.
- 351 Paragraph 30 provides that the Secretary of State may set out in secondary legislation the reconsideration and appeal mechanisms of decisions made by the Trade Remedies Authority, and appeal mechanisms of decisions made by the Secretary of State. Decisions made by the Trade Remedies Authority are first subject to internal reconsideration before an appeal so that administrative errors can be rectified in a cost-effective and proportionate manner. The Government's intention is for the domestic appeals system to go beyond the minimum requirements of the applicable WTO agreements on domestic reviews of trade remedies decisions.
- 352 Paragraph 31 sets out that secondary legislation will make provision about the form and content of notices by the Secretary of State to impose trade remedies measures, as well as the manner of publication.
- 353 Paragraph 32 outlines a number of definitions used throughout the Schedule, such as references to 'like goods' or 'the margin of dumping'.

Schedule 5: Increase in imports of goods causing serious injury to UK producers

Key Definitions

- 354 The WTO Agreement on Safeguards sets out the requirements which must be met for WTO Members such as the UK to be able to impose safeguard measures. For safeguard measures to be applicable, there must be an increase in imports of relevant goods, which must have caused (or threaten to cause) serious injury to UK producers of like or directly competitive products. Paragraph 1 sets out what it means for there to be an increase in imports, following the definition set out in the WTO Agreement on Safeguards. Goods will be considered to be imported in "increased quantities" if there is an absolute increase in the actual volume of imports, or a relative increase of the market share of imports as compared to production by UK producers. Secondary legislation may set out further detail about the interpretation of what constitutes a "significant increase", as well as how the Trade Remedies Authority will

determine the amount of an increase.

355 The WTO Agreement on Safeguards sets out that any remedy which is imposed to address increased imports must not exceed the level of this injury caused to UK producers. This paragraph sets out what it means for goods to have caused serious injury or threat thereof, following the definition set out in the WTO Agreement on Safeguards. The detail of how the Trade Remedies Authority will determine whether serious injury or threat thereof has been caused may be set out in secondary legislation.

356 The “serious injury” caused is assessed in relation to UK producers of like or directly competitive goods. Paragraph 3 sets out that this would be all UK producers of the like or directly competitive goods, or those UK producers which account for a major proportion of the production of the like or directly competitive goods in the UK. Paragraph 4 sets out that the “like goods” must be like the imported goods in all respects or have characteristics closely resembling those of the imported goods in question. Secondary legislation may set out further detail about the interpretation of what constitutes “like goods” or “directly competitive” goods, as well as the detail of what constitutes a UK producer and a major proportion of UK total production of like or directly competitive goods.

Safeguarding Investigations

357 Paragraphs 6-8 provide the power for the Trade Remedies Authority to carry out safeguarding investigations to establish whether increased imports are causing serious injury or threat thereof to UK producers. They set out the circumstances in which the Trade Remedies Authority may initiate an investigation. In order to do so, the Trade Remedies Authority must have received a request by or on behalf of the UK industry and must be satisfied that the application demonstrates sufficient evidence of serious injury or threat thereof to UK producers and the existence of increased imports. The Trade Remedies Authority must also have received a preliminary adjustment plan setting out how UK producers intend to adjust to market conditions throughout the duration of a safeguarding measure. This ensures that producers have a plan to improve their competitiveness alongside any measures which may be imposed, so that measures are not simply a temporary solution.

358 In order to focus the Trade Remedies Authority’s attention and resources where they are needed, applications will be subject to a UK market share threshold, which is intended to filter out cases which are manifestly unlikely to result in measures being imposed. Where a case meets the requirements set out by the WTO but does not satisfy the market share threshold, the Trade Remedies Authority will have the discretion to decide whether to take the case forward or not. If an application meets all the requirements, then the Trade Remedies Authority must accept the application, notify relevant interested parties and publish notice of its decision to initiate an investigation.

359 Paragraph 8 sets out that the detail of the investigation procedure may follow in secondary legislation, which would cover details such as the information which must or may be provided to the Trade Remedies Authority (including on whether safeguarding measures would be in the public interest of the UK), the treatment of information and conducting oral hearings.

360 Paragraph 9 covers the determination which the Trade Remedies Authority may make at provisional and final stages of the safeguarding investigation. If the Authority is satisfied that interested parties have been given adequate opportunity to provide information, then it may make a provisional affirmative determination on the basis of the evidence that there has been a significant increase in imports which is causing serious injury to UK producers. At the conclusion of a safeguarding investigation, the Trade Remedies Authority must make a final determination as to whether there has been a significant increase in imports which is causing injury to UK producers. If the Authority determines that this is the case then it will make a

“final affirmative determination”; if not, then it will make a “final negative determination”.

361 Paragraph 10 sets out the circumstances in which an investigation may be terminated. If the Trade Remedies Authority decides to terminate an investigation, then it must publish notice of the termination and notify the Secretary of State and interested parties.

Provisional Remedy: provisional safeguarding amount

362 Part 3 of Schedule 5 outlines the provisional measures which the Trade Remedies Authority may recommend if it comes to a provisional affirmative determination, and the role of Secretary of State in either accepting or rejecting a recommendation from the Authority to impose provisional measures.

363 In line with WTO rules, the Trade Remedies Authority may only recommend that provisional measures are imposed if it is satisfied that the delay required for completing the investigation in full would cause damage that would be difficult to repair. In addition, it must be satisfied that the measures meet the economic interest test. Further detail on the economic interest test is set out at paragraphs 376-379 below. If the Authority reaches the conclusion that imposing provisional measures would not be in the economic interest, then it must publish notice of its findings and notify the Secretary of State and interested parties.

364 Where the Trade Remedies Authority recommends imposing provisional safeguarding duties, the rate of the duty must not exceed the amount which the Authority is satisfied is sufficient to remedy the injury being caused to UK industry. In line with WTO rules, provisional measures in a safeguarding case can only take the form of imposing provisional safeguarding duty, and may only apply for a total of 200 days and cannot be extended.

365 Following a recommendation from the Trade Remedies Authority to impose provisional measures, the Secretary of State will decide whether to accept or reject the recommendation. The Secretary of State may only reject a recommendation on public interest grounds and must lay a statement in the House of Commons explaining his or her reasons for any decision to reject the Authority’s recommendation. If the Secretary of State accepts the recommendation, then he or she will publish a notice applying the provisional anti-dumping duty or requiring a guarantee, which will implement the recommendation.

366 If provisional measures are imposed, but the Trade Remedies Authority’s final determination is a “final negative determination”, the provisional safeguarding duty collected will be refunded.

Definitive Remedies: definitive safeguarding amount & tariff rate quotas

367 If the Trade Remedies Authority concludes following its investigation that a significant increase in imports is causing serious injury to UK producers, and is satisfied that imposing measures is in the wider economic interests of the UK and that producers have suitable adjustment plans in place, then it may recommend imposing definitive measures on the imports in question. If parties have submitted evidence as to whether or not measures are in the public interest, then the recommendation must contain details of those submissions. Further detail on the economic interest test is set out at paragraphs 376-379 below. If the Authority reaches the conclusion that imposing definitive measures would not be in the economic interest, then it must publish notice of its findings and notify the Secretary of State and interested parties.

368 Where the Trade Remedies Authority recommends imposing safeguarding measures, the recommended measure must either be in the form of a duty or a tariff-related quota. The measure must not exceed the amount which the Authority is satisfied is sufficient to remedy the serious injury being caused to UK producers and to facilitate adjustment by UK producers.

Where the Trade Remedies Authority is minded to recommend a tariff related quota, it must first consult with the Secretary of State on how the quota should be allocated between the different countries that export the relevant product. It must have regard to what the Secretary of State considers would be effective, fair and equitable, and must subsequently recommend a measure which it considers is no more than necessary to remedy the serious injury and to facilitate adjustment.

369 The recommendation must also include a suggested timetable for progressive liberalisation of the measure, and an explanation as to UK producers' adjustment plans and explain why the plans are suitable. Both of these requirements are to facilitate the adjustment and increased competitiveness of UK producers, since the purpose of safeguarding measures is to provide breathing space for UK producers to adjust to increased imports and ultimately compete without the need for protection.

370 Definitive measures will be applied for as long as the Authority considers necessary to remedy the injury to the domestic industry, but must not apply for longer than 4 years, but can be extended once by up to a maximum of 8 years following a review.

371 Following a recommendation from the Trade Remedies Authority to impose definitive measures, Secretary of State will decide whether to accept or reject the recommendation. The Secretary of State may only reject a recommendation on public interest grounds and must lay a statement in the House of Commons explaining his or her reasons for any decision to reject the Authority's recommendation. If the Secretary of State accepts the recommendation, then he or she will publish a notice applying the final measure.

372 The Agreement on Safeguards sets out a number of instances in which safeguarding measures may or must be reviewed, such as at mid-point if the duration of the measure is more than three years to determine whether the measures are still necessary to address the injury to UK producers, or prior to the expiry of the measures to determine whether they should be extended in order to prevent injury recurring. The outcome of the review cannot make the measure more restrictive than it was at the end of the initial period.

373 Secondary legislation may provide the details of the types of review which the Trade Remedies Authority must or may carry out, the circumstances in which it will do so and how these reviews will be carried out.

374 Where a decision in an international dispute finds that a UK trade remedy measure is not compatible with international law, the UK will be obliged to bring these measures into compliance. There might also be other UK trade remedy measures that were not subject to a dispute, but which are also potentially incompatible with international law in light of a new judgement. Paragraph 20 sets out that regulations may provide for an investigation into whether to vary or revoke any affected measures to bring them into compliance with international law. The regulations will include detail as to the conduct of that investigation and the subsequent recommendation to the Secretary of State, which may make the same types of provisions as the regulations under Part 2, Paragraph 8 setting out the conduct of safeguarding investigations more generally.

Supplementary

375 Before recommending measures, the Trade Remedies Authority must apply an economic interest test to establish whether those measures would be in the economic interest of the UK. The rationale for this is that because the effect of measures is to place restrictions on imports, they inherently increase costs on other parties which rely on the affected products, such as downstream users, consumers and upstream suppliers. This ensures that the need to address the injury to UK producers does not disproportionately impact other economic players in the

relevant market. Other WTO members seek to address this with similar tests.

- 376 The Trade Remedies Authority must apply the economic interest test when determining whether to recommend provisional or definitive anti-dumping, subsidy or safeguard measures, and whether to recommend that definitive duties should be continued or varied following a review. If the Authority considers that the test is not met, then the case will be dismissed and the Secretary of State will be informed of the decision – or, in the case of the review, the Authority will recommend that the measure is terminated. If the test is met, then the Authority must recommend that measures are applied.
- 377 For anti-dumping and anti-subsidy cases, the Bill sets out a starting presumption that measures are in the UK’s economic interest, so the onus is on the Authority to demonstrate that this is not the case. For safeguard cases, the presumption is reversed.
- 378 The Authority must consider the following criteria:
- The economic significance of affected industries and consumers in the United Kingdom: The Trade Remedies Authority would need to establish who could be affected by measures and their size and significance to the UK economy.
 - The likely impact on affected industries and affected consumers in the United Kingdom: This will involve assessing the extent of the impact of measures, or lack thereof, on the UK interests already identified.
 - The likely impact on particular geographic areas, or particular groups, in the United Kingdom: This requires the Authority to consider whether measures, or lack thereof, would impact certain groups or geographical regions in a disproportionate manner.
 - The likely consequences for the competitive environment and for the structure of markets for goods in the United Kingdom: This assessment will consider how the structure and conditions of the market will evolve in the long-term if measures are or are not imposed.
- 379 Paragraph 22 sets out that secondary legislation will make provision about the suspension of safeguarding measures where market conditions temporarily change to the extent that injury would be unlikely to recur as a result of the suspension. The Government intends that suspensions would take place in limited circumstances where conditions change suddenly and drastically, such that measures are temporarily not in UK’s interest – for example if the production facilities of UK producers were to become suddenly inoperable to the extent that market needs could not be met without the trade remedies in place being temporarily suspended.
- 380 Paragraph 23 sets out that secondary legislation will make provision about how imports from specific countries can be exempted from the Schedule. This is intended to give effect to provisions in existing free trade agreements, in order to replicate protections for countries that are trading partners under those agreements. It also sets out that secondary legislation will make provision about how imports from specific countries can be exempted from the Trade Remedy Authority’s recommendations. This gives effect to the Agreement on Safeguards which sets out that safeguarding measures cannot be applied to imports from developing countries where those countries’ share of relevant imports is within de minimis levels.
- 381 The Agreement on Safeguards provides that no new safeguarding measure can be applied again to a product that has already been subject to a definitive safeguarding measure for a

period that is equal to the duration of the earlier definitive measure, provided that the period of non-application is at least two years. However, a safeguarding measure of 180 days or less can be reapplied to a product if it has been at least one year since the earlier definitive measure was imposed, and a safeguarding measure has not been applied to that product more than twice in the last five years. Paragraph 24 gives effect to this.

382 Paragraph 25 provides that, in assessing what is necessary to remove serious injury or threat thereof, the Trade Remedies Authority must take account of any dumping or subsidy measures that have been applied to the relevant product. This ensures that the cumulative impact of measures on any product is not greater than is necessary to remove injury.

383 Paragraph 26 sets out that secondary legislation will make provision about the repayment of additional amounts of import duties, tariff related quotas, and any interest accrued in respect of these payments.

384 Paragraph 27 provides that the Secretary of State may set out in secondary legislation the reconsideration and appeal mechanisms of decisions made by the Trade Remedies Authority, and appeal mechanisms of decisions made by the Secretary of State. Decisions made by the Trade Remedies Authority are first subject to internal reconsideration before an appeal so that administrative errors can be rectified in a cost-effective and proportionate manner. The Government's intention is for the domestic appeals system to go beyond the minimum requirements of the applicable WTO agreements on domestic reviews of trade remedies decisions.

385 Paragraph 28 sets out that secondary legislation will make provision about the form and content of notices by the Secretary of State to impose trade remedies measures, as well as the manner of publication.

386 Paragraph 29 outlines a number of definitions used throughout the Schedule, such as references to 'directly competitive goods'.

Schedule 6: Import duty: notification of liability, payment etc

387 Schedule 6 sets out detailed rules for notifying a person that they are liable to pay import duty and the process for discharging it. It also deals with cases in which HMRC will repay or remit amounts of import duty.

Notification of liability to pay import duty

388 Paragraph 1 provides that a person cannot be required to pay import duty before they have been notified of their liability to do so in line with the rules set out in the Schedule. Paragraph 2 specifies what must be included in a notification and sets out that a notification of liability may be given in such form and manner as HMRC consider appropriate.

389 Paragraph 3 allows HMRC to make regulations that set out exceptions to the above rule. This might be, for example, where a person is authorised to use facilitations whereby they are responsible for notifying the nature and extent of their liability to HMRC, or where the debt has already been paid.

390 Paragraph 3(2) provides that any regulations specifying cases where the duty to notify does not apply must set out that there must be some other acknowledgement of the liability to pay import duty.

391 Paragraph 4(1) sets out the general rule that HMRC must notify a person of their liability to pay duty within 3 years from the day it arose. Paragraph 4(2) sets out an exception to this rule

that applies where HMRC consider that a criminal offence has been committed. In such cases, the period in which HMRC must notify a person of a liability is extended to 20 years.

Payment of import duty

392 Paragraph 5 requires HMRC to make regulations about the payment of import duty. For example; time limits within which import duty must be paid, the method for paying it and the circumstances in which interest will be charged and how it will be calculated.

Guarantees

393 Paragraph 6 requires HMRC to make regulations about giving guarantees for any liability or potential liability to pay import duty. These may include matters such as the form a guarantee must take and the process for discharging it.

394 Where a guarantee is given in relation to goods declared for free-circulation the regulations made under paragraph 6 (regulations regarding guarantees) must set out that the liability to pay import duty is deferred for a specified time.

Repayment of import duty

395 Paragraph 10 requires HMRC to make regulations about the repayment of import duty and the repayment of any interest paid in respect of import duty. Paragraph 10(2) sets out a list of what may be included in such regulations, for example, the form, manner and timing of a claim, and the person entitled to submit a claim.

Remission of import duty

396 Paragraph 11 provides that HMRC may also make regulations about the remission of import duty (the cancellation, in appropriate circumstances, of a debt which has arisen but not yet been paid, for example, where goods are exported because they are defective).

Recovery of import duty

397 Paragraph 12 provides that any amount due to be paid as import duty is recoverable as a debt to the Crown.

398 This does not apply, however, where the goods which give rise to the liability are condemned as forfeited and neither restored nor sold by HMRC. In such cases the amount of import duty is not recoverable as a debt. There is an exception to that rule where the goods are sold by HMRC: in such cases, the debt is not extinguished and the purchaser is liable to pay the debt to the Crown.

399 The provisions in paragraph 12 do not restrict any other way in which import duty can be recovered under any other enactment.

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Schedule 7: Import duty: consequential amendments

401 Schedule 7 makes a series of amendments to other Acts of Parliament which are required as a consequence of Part 1 of the Bill.

Replacement of EU Customs duty

402 Part 1 of the Schedule disapplies any EU law in so far as it relates to EU Customs duty which becomes part of UK legislation as a result of clause 3 of the European Union (Withdrawal) Bill, disapplies any EU rights, powers, liabilities, obligations, restrictions, remedies and procedures which becomes part of UK legislation as a result of clause 4 of the European Union (Withdrawal) Bill, and provides that Part 1 (with the exception of the amendments in Schedule

7) of the Bill replaces EU Customs duties. However EU law which has already been implemented in domestic law, for example CEMA, will continue to have effect.

403 Paragraph 1(3)(c) provides that the powers in Part 1 enable provision to be made of a kind corresponding to that which could have been made under the disapplied EU law.

404 EU Customs duty includes any EU trade duties which are; anti-dumping duty, countervailing duty, safeguard duty and any duty imposed in consequence of an international dispute.

Amendments to the Customs and Excise Management Act 1979 (“CEMA”)

405 This Part makes a number of amendments to CEMA.

Repeals and amendments

406 The Schedule repeals a number of provisions in CEMA concerned with the imposition or administration of import duty and therefore their retention would have unnecessarily replicated, and in certain instances been inconsistent with, provision in the Taxation (Cross-border Trade) Bill.

407 The Schedule also amends a number of provision in CEMA concerned with the imposition or administration of import duty whose retention would therefore have unnecessarily replicated, and in certain instances been inconsistent with, provision in the Taxation (Cross-border Trade) Bill. The effect of the amendments is to disapply those provisions for the purpose of Customs duty. In addition the Schedule amends some provisions in CEMA to enable them to apply to rail movements into or out of Northern Ireland since, following EU withdrawal, such movements may result in goods crossing a Customs frontier.

Minor amendments

408 A large number of the amendments made to CEMA are minor consequential changes to terminology. This includes, replacing cross-references to EU legislation with references to the Taxation (Cross-border Trade) Bill, removing references to EU institutions and terminology such a “Member State” and “EU Customs duty”, and updating terminology to reflect internationally-recognised modern usage.

Insertion of new provisions into CEMA

409 Paragraph 6 inserts new subsections into section 5 of CEMA. Section 5 of CEMA determines the time at which goods are treated as having been imported into, or exported from, the UK. The new subsections give HMRC a power to make regulations specifying circumstances in which goods are to be treated as having been imported into, or exported from, the UK at an earlier time. This power could be used to, for example, give effect to Customs cooperation aspects of international arrangements which the UK may wish to enter into with, for example, the Crown Dependencies or the EU.

410 Paragraphs 9, 11, 12, 13, 16, and 17 amend, respectively, sections 20, 20A, 22, 22A, 25, and 25A of CEMA. Paragraphs 9, 12, and 16 amend sections 20, 22, and 25 to insert a new power to make regulations specifying conditions which must be satisfied in order for a place to be approved by HMRC as a port (section 20), examination station at a Customs and excise airport (section 22), or temporary storage facility (section 25). Paragraphs 10, 13, and 17 amend sections 20A, 22A, and 25A of CEMA to provide that a person who fails to comply with a condition of an approval shall be liable upon summary conviction to a financial penalty of an amount not exceeding £20,000. There is, in addition, provision for an enhanced penalty to be imposed in circumstances where an operator continues to act in breach of a condition. The power may only be used to impose conditions which facilitate the collection, administration, and enforcement of a duty of Customs; it would be used, for example, to specify conditions

concerning the facility itself as well as specific standards to which the operator must adhere.

- 411 Paragraph 18 amends section 26 CEMA to insert a new section 26(1ZA). The new subsection (section 26(1ZA) gives HMRC the power to make regulations applying provision made by or under CEMA in a specific manner in respect of road or rail vehicles in Northern Ireland as well as a power to designate areas as “railway Customs areas” for the performance of Customs controls. Section 26 as originally enacted envisaged the use of checkpoints in order to carry out border formalities in Northern Ireland. The new subsection 26(1ZA) is intended to enable alternative provision to be made for the completion of import formalities at sites located away from the frontier.
- 412 Paragraph 28 inserts a new section 35A into CEMA giving HMRC a power to make regulations specifying cases where a vehicle operator must confirm upon arrival in the UK that a Customs declaration has previously been made, or that they reasonably believe one to have been made, in respect of all goods which they are carrying. Section 35A(3) provides that a vehicle operator who fails to give the confirmation in accordance with regulations made under section 35A shall be liable to a penalty of level 3 on the standard scale.
- 413 Paragraph 48 inserts a new section 52A into CEMA providing that a person who breaches requirements concerned with export shall be liable on summary conviction to a penalty which does not exceed £20,000 or three times the value of the goods, whichever is the greater. Section 52A consolidates a number of separate offences concerned with the export of goods for which CEMA provided and which were set out in a number of different sections in that Act. This ensures consistency both with the enforcement provisions which apply in respect of the import of goods and also reflects the fact that administrative requirements concerned with the export of goods for Customs purposes are set out in a single export procedure in the Taxation (Cross-border Trade) Bill. A number of distinct export requirements prescribed in CEMA sections 54-58E have therefore been repealed and the various enforcement provisions consolidated into a single provision in section 52A.
- 414 Paragraph 109 inserts a new section 160ZA into CEMA which makes provision concerned with the examination of goods in circumstances where a Customs declaration, or accompanying document, is to be examined. Section 160ZA replicates in UK domestic law provision concerned with the examination of Customs declarations which is currently made in the UCC; in particular it, gives a declarant a right to be present where goods are to be examined, permits HMRC to require that a declarant be present, and makes provision concerning the extent to which a sample of goods can be taken to be representative of an entire consignment.

Amendments of other enactments

- 415 Part 3 also makes consequential amendments to various other enactments. The nature of those amendments can be summarised as follows.
- 416 Amendments are made to provisions in the Customs and Excise Duties (General Reliefs) Act 1979 in order to disapply that Act for the purposes of Customs duty. The Taxation (Cross-border Trade) Bill makes comprehensive provision for reliefs from Customs duty and so the provisions in the Customs and Excise Duties (General Reliefs) Act 1979 establishing specific reliefs for the purposes of Customs duty are accordingly unnecessary.
- 417 Amendments are made to the Isle of Man Act 1979, Finance Act 1994 (concerned with the bringing of appeals), Finance Act 2003 (concerned with the imposition of civil penalties) and the Borders, Citizenship and Immigration Act 2009, to substitute cross-references to EU legislation or EU Customs duty in those Act with references to this Bill and import duty imposed under this Bill.
- 418 In addition, paragraphs 150 and 151 make amendments to sections 26 and 32 of Finance Act

2003 to reflect the amendments to section 20, 22, and 25 of CEMA referred to above; in particular, to specify that a continuing breach of a condition imposed under one of those constitutes a new and separate breach for the purposes of applying the penalty provisions in the Finance Act 2003.

419 Minor terminology changes are made to the Income Tax (Trading and Other Income) Act 2005, Corporation Tax Act 2009, and the Terrorism Act 2000.

Schedule 8: VAT amendments connected with withdrawal from EU

420 The changes made by this Schedule are, to a large extent, conditional upon the outcome of exit negotiations with the EU. In the event of a negotiated outcome being reached, the government may choose not to exercise powers or make an appointed day order commencing these changes. The government would subsequently legislate to give effect to the negotiated outcome, either through use of a power provided by this Bill or already contained in the VAT Act or through future legislation.

421 Schedule 8 makes amendments to the VAT Act (Part 1 of the Schedule) and to other enactments relating to VAT (Part 2 of the Schedule) as a consequence of the UK's exit from the EU. These amendments ensure that the UK VAT regime will function properly after the UK leaves the EU.

422 Multiple amendments are made consequent on the abolition of acquisition tax and the extension of import VAT by clause 41, and consequent on the imposition of import duty by clause 1. These amendments include¹⁴:

¹⁴ The sections of the VAT Act amended or omitted to give effect to this change are s1(3) and (4), s2(1), s5(3), s6(7), (8) and (14), s7(1), (4), (5), (6) and (9), ss10-14, s17(1), (2) and (5)(a), s18(1)-(4) and (6)(c), s18B(1)-(5) and (7), s18D(1) and (2), s18F(1), s20, s21(1), (2), (3), (4), (6D), s24(1), (2), (5) and (6), s25(1) and (7), s26(1), s27(1), s29A(1) and (2), s30 (3), (5), (6), (9) and (10), s31 (heading) and (1), s33(1) and (2), s33A(1), (4), (6) and (8), s33B(1), (3), (5) and (6), s33C(2), (4), (5), and (6), s33E(1), (4), (5), (6) and (7), s34(1) and (2), s35(1), s36A, s37(1), (2), (3) and (4), s38, 39A, s40, s41(3) and (4), s43(1) and (1AA), s44(2) and (9), s45(1), (2) and (5), s46(3) and (6), s47(1), s48(1), s50A(5), s52, s55A (heading), s62(1A) and (2), s69(1), s72(2) and (10), s73(3) and (7), s74(1), s75, s76(6), s77(1), (4), (4C) and (6), s78A(7), s83(1), s84(4)(c), s88(1), (4), (7) and (8), s90(1), (2) and (3), s95, s96(1) and (3), s99, Schedule 1 paras 1(4)(a), 1(5), 1(7), 1(9), 2(7), 4(3), Schedule 1A para 3, Schedule 2, Schedule 3, Schedule 3A para 1, Schedule 4 paras 5(5), 6 and 8(2), Schedule 6 paras 1A(4), 1A(6) and 3(1)(a), Schedule 7, Schedule 8 Group 7, Group 8 Items 5, 11, 12, 13 and Note (9), Group 12 Notes 1, 5N, 5O and 5T, Group 13 Items 1 and 3 and Note 5, Group 15 and Group 18, Schedule 9 Group 5 Item 9 and Note 6, Group 14 Item 1 and Notes 7, 9, 10 and 15, Schedule 9A para 1(5)(a), Schedule 11 paras 2(3), (3ZA), (4), (5), (5A), (5B), (5D), (8) and (9), 3(2), 6(1), 8(1) and 14(1), Schedule 11A para 2A(2). The following provisions of other Acts are amended or omitted: s2(5A) Diplomatic Privileges Act 1964, para 10(1A) of the Schedule to the Commonwealth Secretariat Act 1966, s1(8A) and s8(1) of the Consular Relations Act 1968, para 19(c) of Schedule 1 to the International Organisations Act 1968, s1(5) Diplomatic and other Privileges Act 1971, s13(4) Customs and Excise Duties (General Reliefs) Act 1979, s8(2) Vehicle Excise and Registration Act 1994, Schedule 3 paras 3, 4, 6, 7, 14 and 15 of the Finance Act 1996, Schedule 8 para 22 of the Postal Services Act 2000, s100(2), Schedule 31 para 4(4) and (5) of the Finance Act 2001, s25 of the Finance Act 2002, s23, s24(3), s26(8) and Schedule 2 to the Finance Act 2003, paras 11 and 34 of Schedule 36 and paras 1 and 7 of Schedule 41 to the Finance Act 2008, s78 of the Finance Act 2009, Schedule 1 para 227 of the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, Schedule 1 para 285(c) of the Corporation Tax Act 2010, Schedule 28 para 14, 15 and 17, Schedule 29 paras 2(2), 9, 10 and 12(3), (6) and (7) of the Finance Act 2012, article 3 of the Value Added Tax (Relief for European Research Infrastructure Consortia) Order 2012, paras 5(4), 6(2) and 36(8) of Schedule 18 to the Finance Act 2016, Schedule 1 para 12(3) and (8) of the Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 and s48(1)(a), (1)(b), (3), and (5), s49(1), (2), (3) and (5), s50(3), s51(1)(d), s53(1)(a) and 2(a), s54(1)(a) and (2)(b), s55(1), Schedule 13 para 1(1)(a) and

- a. the omission of references to goods being “removed” from or “dispatched” to the EU, or to intra-Community transactions;
- b. amendment to references to the acquisition and importation of goods so that goods entering the UK from the EU are also treated as imports;
- c. the omission of registration provisions in relation to distance selling and acquisitions.

423 In addition, section 3A, Schedule 3B and Schedule 3BA (together with consequential changes¹⁵) are withdrawn. This reflects that the EU law that establishes the VAT Mini One Stop Shop system will no longer apply, and therefore the UK will no longer be able to collect and pass on VAT due in EU Member States on their behalf.

424 The Bill removes direct references in the VAT Act and related domestic legislation to EU law and to requirements of EU Member States, to reflect the fact that the UK is no longer an EU Member State. It also removes HMRC’s power to provide, for the purposes of the VAT Act, that the territory of the EU includes particular territories, since this is no longer relevant.¹⁶

425 Additional amendments make changes to the UK’s warehousing regime whereby goods can be supplied VAT and duty free while in a warehouse. In the case of fiscal warehouses, changes reflect that (i) goods can no longer obtain such relief if transferred between fiscal warehouses in the UK and those in the Member States, and (ii) the removal of EU law compliance related matters that may be considered in an application to be a fiscal warehousekeeper¹⁷.

426 This Bill also removes some references to the ‘Management Act’ as it is one of the Customs and excise Acts to which this part already refers.¹⁸

427 Paragraph 8 amends the definition of a ‘relevant business person’ in section 7A of the VAT Act to remove the references to EU legislation, Member States and registration under the VAT Act or an Act of Tynwald. The underlying rule is unchanged, namely that a person is a ‘relevant business person’ if he carries on a business and the services are not received by the person wholly for private purposes.

428 Paragraph 9 amends section 9 of the VAT Act to remove the reference to EU legislation. There is no change to the substance of section 9.

Schedule 17 para 6(3)(b) and (c), para 6(5)(b) and (c) of the Finance (No. 2) Act 2017, and article 4 of the Value Added Tax (Increase of Registration Limits) Order 2017.

¹⁵ The parts of the VAT Act amended or deleted to give effect to this change are s3A, s76(1), s76(3A), s76A(1), s76A(3), s80(7), s84(6) and Schedule 1 para 13(8), Schedule 1A para (12), Schedule 3B and Schedule 3BA. The following provisions of other Acts are amended or omitted: para 1 of Schedule 24 to the Finance Act 2007, ss101 and 108, Schedule 55 paras 1 and 13A, and Schedule 56 para 1 of the Finance Act 2009, s103 and Schedule 22 of the Finance Act 2014 and s123(12) of the Finance Act 2016.

¹⁶ The parts of the VAT Act amended or deleted to give effect to this change are s7A(4), s9(6), s18A(4), s18B(6), s18C(4), s21(2A) and (2B), s41A, s47(5), s48(1B), s80(3C), s92, s93, s96(3), Schedule 5A (heading), Schedule 8 Group 8 Note C1, Group 16 Note 4, Group 16 Note 4A, Group 18, Schedule 9 Group 16 Item 1, Schedule 11 para 2(3ZA), para 2A(2), Finance Act 2008 Schedule 36 para 63, Finance Act 2011 Schedule 23 para 45.

¹⁷ The parts of the VAT Act amended or deleted to give effect to this change are s18A(4)(c) and (d), s18B(1) and (6), and s30(8A).

¹⁸ This change is effected in the Customs and Excise Management Act 1979 s1(1) definition of ‘customs and excise Acts’.

These Explanatory Notes relate to the Taxation (Cross-border Trade) Bill as introduced in the House of Commons on 20 November 2017 (Bill 128)

- 429 Paragraph 10 amends the definition of ‘relevant goods’ in section 9A of the VAT Act, to remove the reference to the territory of a Member State. The reverse charge on gas supplied by persons outside the UK through a natural gas system applies only to supplies made in the UK rather than to supplies made in any Member State. There is no change in the practical effect of the section.
- 430 Paragraph 13 substitutes a new section 16 in the VAT Act that reflects the current section 16. This applies, to import VAT, the provisions of other legislation relating to the importation of goods and charging of duty, except in so far as those provisions are not relevant or otherwise applicable to import VAT or are disapplied by regulations made under this section. It also preserves the power to make regulations under the Postal Services Act 2000 for goods imported or exported in postal packets.
- 431 Paragraph 14 inserts new section 16A into the VAT Act, which provides a power to make regulations to govern the VAT treatment of goods entering the UK from another territory that is in a Customs union with the UK.
- 432 Paragraph 15 inserts new section 16B into the VAT Act, which provides HMRC with a power to deal with the VAT treatment of postal packets sent from overseas.
- a. Subsection 1 provides for regulations to make the overseas sellers of goods, sent to the UK in postal packets, liable for VAT.
 - b. Subsection 2 provides that the regulations may apply to goods of certain values and specify that others are jointly and severally liable for the VAT.
 - c. Subsection 3 allows the regulations to cover, amongst other subjects, the registration and information requirements on these overseas sellers.
- 433 Paragraph 38 make changes to section 35 of the VAT Act so that VAT incurred in a Member State on materials used to build a house in the UK cannot be recovered under the DIY House Builder Scheme.
- 434 Paragraph 42 amends section 39 of the VAT Act which gives HMRC the power to make regulations to allow the recovery of VAT on supplies by those who carry on businesses outside the UK on supplies, where that VAT would have been deductible had they been VAT registered in the UK. The amendment also permits HMRC to make different provisions in relation to persons carrying on business in different places.
- 435 Paragraph 43 withdraws section 39A and so HMRC will no longer have a legal obligation to make arrangements for dealing with applications made to them by UK registered taxpayers for VAT refunds on supplies or importations made in another Member State. HMRC is currently obliged to make arrangements for forwarding such applications to the tax authorities of the relevant EU Member State.
- 436 Paragraph 46 amends section 41A of the VAT Act which determines whether public authorities are making supplies in the course or furtherance of business when they are making supplies in the course of transactions in which they are engaged as a public authority. This section now includes a list of activities, formerly set out in EU law, that are always seen as a supply made in the furtherance of a business by a public authority (unless the activity is negligible).
- 437 Paragraph 51 makes consequential amendments to section 47 of the VAT Act (which deals with agents and the application of VAT), to remove reference to acquisitions from a Member State and explicit reference to EU legislation.
- 438 Paragraph 52 amends section 48 of the VAT Act which ensures that HMRC’s power to require a VAT representative to be appointed can extend to a person who is established in the EU if

relevant mutual assistance arrangements are not in place

- 439 Paragraph 55 amends section 54 of the VAT Act so that designated activities for farmers are not determined by reference to the Principal VAT Directive.
- 440 Paragraph 56 amends section 55A to reflect that it will still be applicable to domestic supplies used in missing trader fraud.
- 441 Paragraph 58 introduces a new section 58ZA of the VAT Act, which provides HMRC the power to make regulations imposing obligations on taxpayers for the purpose of giving effect to international VAT arrangements. It also provides that, where international VAT arrangements are in place, any power under Schedule 11 to the VAT Act and any HMRC VAT power to obtain information or documents are exercisable in relation to those arrangements, but only if the Commissioners have given written direction authorising the use of those powers. The section also permits HMRC to disclose information where that is required by the arrangements and where the recipient is bound by confidentiality rules no less strict than in the UK. Neither the regulation making power nor the direction regarding information powers may be exercised unless HMRC consider it would facilitate the administration, collection or enforcement of UK VAT.
- 442 Paragraphs 60 and 61 amends sections 65 and 66 of the VAT Act, respectively, to reflect that whilst EC statements (record of sales to Member States) are no longer required section 55A statements will continue in respect of goods of a kind used in missing trader fraud. Failure to submit statements and inaccurate statements in respect of section 55A of the VAT Act will continue to be liable to penalties.¹⁹
- 443 Paragraph 63 amends section 69C of the VAT Act so that there is a consistent approach to the application of Court of Justice of the European Union decisions for VAT.
- 444 Paragraph 80 amends section 96 of the VAT Act by removing definitions and interpretive provisions that are no longer appropriate and confirms that references to “TCTA 2018” are to the Taxation (Cross-border Trade) Act 2018.
- 445 Paragraph 90 makes consequential amendments to Schedule 4A of the VAT Act (place of supply of services special rules) as a result of the UK’s exit from the EU. The rules are intended to continue operating as previously except that EU Member States are treated in the same way as the rest of the world. Paragraphs 6 and 12 of Schedule 4A are omitted since provision for on-board catering on transport moving between EU Member States and provision for intra-Community transport of goods are no longer relevant.
- 446 Paragraph 91 amends Schedule 5A of the VAT Act to rename the ‘commodity codes’ heading as ‘Customs tariff (within the meaning of TCTA 2018) code’ to reflect that the UK no longer relies on the EU nomenclature codes but instead relies upon the Customs tariff as introduced in this Bill.
- 447 Paragraph 94 amends Schedule 7A of the VAT Act, withdrawing Group 3, Note 2(3)(e) as grants from the EU will no longer be available to fund relevant schemes for the installation of certain types of heating equipment, of security goods and of supplies related to connecting a

¹⁹ Consequential amendments or deletions, other than to the VAT Act, to give effect to this change are s19(3) and (4) of the Finance Act 2006.

gas supply.

448 Paragraph 95 amends Schedule 8 of the VAT Act to ensure the VAT zero-rate continues to apply to supplies made in the UK and not the wider Member States. The changes ensure the zero-rate will continue to apply to supplies of work on goods that are in the UK and subsequently exported, on the handling and storage of goods in the UK, and that certain protective clothing and helmets will be zero-rated as determined solely by existing UK regulations. The amendment in relation to travel services provides that the zero-rate will not apply to travel services enjoyed in the UK or the EU.

449 Paragraph 96(4) amends Schedule 9 group 16 item 1(a) to retain the existing VAT treatment of exempting supplies by those who form a cost share group where each of those persons carry out an activity that is exempt from VAT or not in the course of carrying on a business.

450 Paragraph 98 amends Schedule 11 of the VAT Act as follows:

- a. Sub-paragraphs 2(3ZA), (4) and (5) are withdrawn as they relate to specific powers to impose VAT accounting or payment requirements in relation to supplies of goods and services to and from the EU, which will no longer be required.
- b. Sub-paragraph 2(5D) removes the definition of a 'means of transport' which is no longer required as it applied to eligible goods purchased by private individuals that were moved to a Member State.
- c. New sub-paragraphs 2(5E) and 2(5F) are inserted to provide the new definition of means of transport and a power to make amendments to this by Treasury Order.
- d. Sub-paragraph 2A(2)(b) is amended to remove the reference to VAT being chargeable under the law of another Member State.

451 Paragraph 100 clarifies that the VAT Directive and EU implementing VAT regulations remain relevant for interpreting the VAT Act as amended by Part 1 of Schedule 8 to the Bill.

Schedule 9: Excise duty amendments connected with withdrawal from EU

452 The changes made by this Schedule are, to a large extent, conditional upon the outcome of exit negotiations with the EU. In the event of a negotiated outcome being reached, the government may choose not to exercise powers or make an appointed day order commencing these changes. The government would subsequently legislate to give effect to the negotiated outcome, either through use of a power provided by this Bill or already contained in either existing or future legislation.

Customs and Excise Management Act 1979

453 Paragraph 3(1) to (3) amends section 157 of the Customs and Excise Management Act (CEMA) 1979. Under Section 157 of CEMA HMRC may require any person to give security (or further security) for the observance of any condition in connection with the Customs or excise regimes.

454 When the UK leaves the EU, this condition will be required only in connection with duty charged under the law of the United Kingdom and not EU law. As such, any reference to EU law will become redundant. These amendments remove the references to 'the law of a Member State'; 'the tax authorities of each Member State', and Council Directive 92/12/EEC. As such, these changes remove provisions for EU excise goods to be treated in different ways to excise goods from other non-EU countries:

- a. Subsection (1A) is amended to reflect that conditions set under section 157 will no

longer refer to the law of EU Member States, or EU legislation.

- b. Subsection (2)(a) is amended to ensure any guarantee or security taken will be 'on behalf of Her Majesty'.
- c. In subsection (2), the reference to the law of EU Member States, or EU legislation is removed in relation to an 'assigned matter' as it is no longer needed due to the amendment made to subsection (1A).

455 In addition, paragraph 3(4) makes consequential amendment to section 27 of the Finance Act 2000, repealing the provisions which inserted the text now being amended, as they are now redundant.

Hydrocarbon Oil Duties Act 1979

456 Sections 13AC and 14E of the Hydrocarbon Oil Duties Act 1979 (HODA) provide that fuel used for "Private pleasure-flying" and in "Private pleasure craft" shall be subject to duty at the full (Road Fuel) rate. At 13AC(7) and 14E(8) these terms are defined by direct reference to Articles 14(1)(b) and 14(1)(c) of Council Directive 2003/96/EC (taxation of energy products etc).

457 Paragraphs 5 and 6 amend the above sections of HODA in order to directly define these terms in UK law. There is no intention to change the current meaning of the definitions.

458 Paragraphs 5 and 6 also provide powers which enable HMRC to make regulations specifying what is to be treated as being, or not being, private pleasure-flying and a private pleasure craft for the purposes of those sections.

Tobacco Products Duty Act 1979

459 Paragraph 7 amends section 5(1A) (a) of the Tobacco Products Duty Act 1979 (TPDA 1979) to remove the existing reference to 'a member State' and substitute 'the United Kingdom'.

460 The rate of excise duty on cigarettes is the higher of either the minimum excise tax or an amount comprised of a specific amount per thousand cigarettes and a percentage of the retail price.

461 Section 5(1A) of the TPDA 1979 defines the recommended price of cigarettes. It refers to the retail price recommended by a manufacturer in a Member State and in any other case, the retail price recommended by an importer.

462 When the UK leaves the EU, a UK manufacturer of cigarettes will not be a manufacturer in a Member State, nor will it be an importer. This amendment is required to ensure continued provision for UK manufacturers to be required to give HMRC their recommended retail price for cigarettes on which the rate is based. The recommended retail price of all cigarettes manufactured outside the UK will be required to be notified to HMRC by the importers after EU withdrawal.

Finance Act 1994

463 Paragraph 6 of this Schedule remove references to EU legislation in section 12 of the Finance Act 1994.

464 Under section 12 (assessment to excise duty) where any amount has become due in respect of any duty of excise; and there has been a specified default under subsection (2), HMRC may assess the amount of duty due and notify the amount to that person or his representative. The defaults specified in subsection (2) include certain categories of obligations (for example, record keeping) required or directed under any enactment.

465 Paragraph 8(1) of this Schedule amends subsection (2A) to remove from the definition of

"enactments" those enactments by or under any directly applicable EU provision.

466 In addition, paragraph 8(2) of this Part makes consequential amendment to regulation 9 of the Excise Duty Points (Duty Suspended Movements of Excise Goods Regulations 2001, repealing the provision which inserted the text now being amended, as it is now redundant.

Commencement

467 As detailed in clause 55, the following provisions come into force on the day on which this Act is passed –

- a. Part 1 but only for the purpose of exercising any power to make any regulations or give a public notice,
- b. Part 2,
- c. Sections 44 to 46 and sections 48 and 49
- d. Part 5, and
- e. Part 6.

468 Subsection 55(2) specifies certain provisions that will come into force on a day (and, if appropriate, a time) to be specified by the Secretary of State in regulations.

469 The Act's remaining provisions come into force on a day (and, if appropriate, a time) to be specified by the Treasury in regulations. Different days of commencement may apply to different provisions.

Financial implications of the Bill

470 This Bill contains the powers to impose Customs duty on goods and vary the amounts of duty which will be payable (for example, by varying or suspending duty at import). Customs duties collected will, like all tax income, flow into the Consolidated Fund. This Bill also contains powers to amend the VAT and excise duty regimes, and use of these powers may also have associated revenue implications for the Consolidated Fund.

471 In addition to these revenue implications, powers contained in this Bill could result in additional expenditure from the Consolidated Fund. For example, additional expenditure not otherwise covered under the Supply and Appropriation (Main Estimates) Act 2017 could be necessary for HMRC in order to implement and operate the new Customs regime.

472 Most parts of this Bill will not result in immediate financial implications because the way in which the powers will be used will depend on the outcome of negotiations with the EU and on policy decisions yet to be taken, meaning it is not possible at this stage to provide an estimate of the impact on either the Consolidated Fund or the National Loans Fund.

473 For the same reason, it is also not possible to estimate the impact of this Bill on total public expenditure at this stage.

474 The explanatory memorandum accompanying each statutory instrument made by the Treasury or the Secretary of State under a power in this Bill will include details of the financial implications of the instrument, if any, providing ongoing transparency on the financial implications of the use of the powers in the Bill.

475 Clause 41 provides for the possible abolition of acquisition VAT and application of import VAT. Commencement of the provision will be at a time to be specified by the Treasury in regulations and, in turn, this time is dependent on the outcome of the negotiations with the EU. This may have financial implications, but this will depend on future policy decisions which will be set out through secondary legislation.

Parliamentary approval for financial costs or for charges imposed

476 This Bill is a bill brought in on ways and means resolutions, which means that ways and means resolutions are required to authorise the Bill as a whole. Generally, a ways and means resolution is required where a Bill creates or confers power to create new charges on the people (broadly speaking, new taxation or similar charges). The provisions in this Bill create new charges to import duty, provide for a power to create a new charge to export duty, make changes to the VAT and excise regimes in connection with the withdrawal of the UK from the EU, and make provision in relation to subordinate matters which are incidental to these things. All of the provisions in this Bill are authorised by ways and means resolutions.

477 Among the resolutions that have been passed in relation to this Bill is a money resolution. A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). In this Bill, among other things, the money resolution covers expenses which might be incurred by public bodies under regulations under clause 11 (which deals with the establishment and management of quotas in relation to import duty). It allows any fees received by a public authority to be paid into the Consolidated Fund (for example, fees received in respect of licences granted under clause 11 or similar provision made by clause 13), and it also authorises public expenditure in relation to the Trade Remedies Authority's exercise of functions under Schedules 4 or 5.

Compatibility with the European Convention on Human Rights

478 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a bill to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). The Chancellor of the Exchequer has made the following statement:

"In my view, the provisions of the Taxation (Cross-border Trade) Bill are compatible with the Convention rights".

479 Parts 1 and 3 engage article 1 of protocol 1. However these provisions do not constitute an infringement of this right as this is an exercise of the State's right to raise taxes in accordance with the law and falls within the wide margin of appreciation accorded to the State in the area of taxation. These provisions pursue the legitimate aims of establishing a UK Customs regime, securing the payment of tax and promoting the public interest in ensuring fair competition in the domestic market and is proportionate to those aims.

480 Clauses j404 and j102 and j111s create new criminal offences and therefore engage article 6. These offences, which are necessary in order to ensure compliance with certain aspects of the new Customs regime, do not constitute an interference with this right as the article 6 protections are secured. In particular, these offences are not retrospective, and a person that is charged with any of these offences will have the right to a fair and impartial trial in the criminal courts of the United Kingdom and will have the opportunity to make any case known.

481 Part 3 makes consequential amendments to penalty provisions for non-compliance, which may be criminal in nature and therefore engage article 6. However, these provisions do not constitute an interference with this right as the article 6 protections are secured. Among other things, the provisions are not retrospective, the penalty can be appealed to an independent Tribunal, and HMRC have established procedures for dealing with penalties that are criminal in nature in terms of notifying people of their rights.

- 482 Provisions in parts 1, 3 and 4 will allow the disclosure of information by HMRC which could include personal information capable of identifying individuals. Article 8 is therefore engaged. However, these provisions constitute a necessary and proportionate interference with article 8 and one that is capable of being made by the UK within its margin of discretion. In particular, sharing information relating to Customs duty, VAT and excise is necessary to collect, administer and enforce these taxes, and the provision made by these clauses is proportionate to that aim. Further, there are various safeguards built in to the legislation. For example, there are restrictions on the type of information that may be disclosed and the purpose for which information may be disclosed.
- 483 Provisions in parts 1, 3 and 4 will require the disclosure of information to HMRC, which may in certain circumstances interfere with article 8. To the extent that provisions in the Bill engage article 8 they constitute a necessary and proportionate interference with the rights protected by that article and one that is capable of being made by the UK within its margin of discretion. In particular, requiring the disclosure of certain personal information to HMRC is necessary to collect, administer and enforce Customs duty, VAT and excise duties and the provision made by these clauses is proportionate to those aims.
- 484 The Bill contains numerous regulation making powers, all of which are compatible with Convention rights and can clearly be exercised in a Convention compatible way. Regulations made pursuant to these powers may engage articles 6, 8 and 14 and article 1 of protocol 1. The question of the compatibility of regulations with Convention rights will be considered when the powers are exercised.

Annex A - Territorial extent and application in the United Kingdom

485 This Bill extends, and applies in relation to, England, Wales, Scotland and Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
All clauses and schedules	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

TAXATION (CROSS-BORDER TRADE) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Taxation (Cross-border Trade) Bill as introduced in the House of Commons on 20 November 2017 (Bill 128).

Ordered by the House of Commons to be printed, 20 November 2017

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