

Minutes of the JCCC Duty Liability Sub-Group meeting

Date of Meeting: Wednesday 17 February 2016

Location: HMT room G16 Horse Guards Road 10:45-13:00

Attendees:

Lorenzo Rossetti (LR)
Gavin Roberts (GR)
Bob Ellison (BE1)
Barbara Scott (BS)
Michael Alexander (MA)
Walter Anzer (WA)
Keith Aldred (KA)
Emma Ormond (EO)
Corinne Nabavi (CN)
Howard Levene (HL)

Valerie Smith (VS) (*Chair*)
Lisa Cureton-Burgess (LCB) (*Minutes*)
Beth Earwicker (BE)
Robert Oxlade (RO)
Piers Davenport (PD)
Arnold Mtopia (AS)

Apologies:

Apologies were received in advance from,

Phil Challen
Mike Hodge
Robert Windsor
Arne Mielkin
John Carlin
Mark Emerson
Andy Miller
Gordon Tutt

Previous minutes – Action points

The minutes of the previous meeting of September 2015 were agreed.

Action Points:

AP no.	Action Raised	Action Taken	Owner	Status
1	Circulate up to date Trade Agreement	Unsure as to what TA was asked for.	NS	Discharged
2	To Contact Aaron Dunn regarding infringement discussions	VS contacted Aaron Dunn	VS	Discharged
3	Give overview of the EU audit processes at the next meeting	Audit process added to the agenda	RO	Discharged

UK Trade Tariff

Matt Ford and his team from BitZesty who acts on behalf of the Government Digital Service attended the meeting and invited members to give feedback on the online Trade Tariff. A short exercise was run in which members were asked for likes, dislikes and ideas so BitZesty can take this feedback forward.

VS said that Mark Grace has drafted a user guide for the online Trade Tariff which might help Matt and his team. **AP LCB** to send the guide to Matt.

Valuation

In reply to a query from **GR VS** explained to members that unfortunately there was not a Valuation representative available to attend the meeting this time. Draft UCC guidance is expected from the Commission in the next few days which will be distributed to members **AP LCB** to distribute guidance. The draft is to be discussed at a Customs Code Committee meeting on 3-4 March so any comments need to reach Valuation Policy before then. **GR** offered to collate Valuation queries for the group and send them to Valuation policy.

VS advised that Caroline Wilkins is also working on UCC guidance however she was unsure when that is going to be available. **LCB** Contact Caroline regarding date of publication of guidance.

EU-US FTA (TTIP) Transatlantic Trade and Investment Partnership

Latest round of negotiations Miami October 2015

AM gave members an update saying that the EU and the US engaged in detailed discussions on their respective customs rules and procedures, this included, amongst other things: procedures and rules concerning the clearance of imported goods; concepts of mitigation and prior disclosure; temporary admission; duty deferral (which is the US equivalent to the EU suspensive procedures). These detailed discussions were useful in bringing clarifications on the terminology and processes used by both sides and allowed for further progress.

Customs and Trade Facilitation Technical Meeting in Brussels concerning the 12th Round 16 February 2016

This concerned a re-acknowledgement of the importance of customs and trade facilitation in an evolving global trading environment and that international trade and customs instruments are the basis for import, export and transit requirements and procedures. There was also a commitment to both parties recognising that legislation should be non-discriminatory and customs procedures should be based on the use of modern methods and effective controls to combat fraud, protect consumer health and safety and promote legitimate trade. Both parties also recognise that customs procedures should be no more burdensome than necessary to achieve legitimate objectives and that they should be applied in a manner that is predictable, consistent and transparent.

Next round 22 February 2016 in Brussels, further rounds tabled for April and July.

TFA (Trade Facilitation Agreement)

(WTO) World Trade Organisation Director General (DG) Azevêdo convened a meeting of all WTO members on 10 February to discuss the future work of the organisation. It was the first meeting of the full membership since the WTO's Ministerial Conference in Nairobi at the end of 2015.

In his speech, DG Azevedo said WTO Members need to figure out how to work together despite members different perspectives for the benefit of all.

The number of Trade Facilitation Agreement ratifications continues to grow, recent additions include Norway, Lesotho, Georgia, Seychelles, Mali, Jamaica, Vietnam, Zambia and Ukraine. Two-thirds of the WTO Membership need to ratify the agreement before it can formally enter into force. As at the 1st of February 2016 68 WTO Members have now formally ratified the TFA.

DG Azevêdo also welcomed pledges made by governments and private sector entities to help developing and least-developed countries implement the TFA through the Global Alliance for Trade Facilitation. HMRC's own unique programme in partnership with the WCO (World Customs Organisation) and UNCTAD (United Nations Conference on Trade and Development) is delivering real progress in helping developing countries and least developed countries with TFA support and capacity building expertise.

Information Technology Agreement (ITA II)

PD gave an account of the negotiations on the [ITA II](#), a deal that covers \$1.3 trillion of trade in technology goods globally, which was concluded in December 2015. The conclusion of ITA II marks one of the largest tariff-cutting agreements at the World Trade Organisation in nearly 20 years.

Under ITA II, the product scope encompasses 201 products, tariffs on which will be reduced to zero commencing 1 July 2016. Broadly speaking, the products fall within three areas: medical devices (MRI scanners, lasers, x-ray equipment), precision

engineering (lenses; filters; calibrating meters), and, home entertainment (video recording apparatus; loudspeakers and video game consoles).

There are 24 trading blocks party to ITA II, from the US and China to Taiwan and Guatemala. Being party to the Agreement means that these countries award the whole of the WTO membership duty free access in the products covered by the Agreement, even if those countries are not part of the ITAII.

The ITA II is projected to boost sales of UK exporters by over £110 million annually.

MA asked how other countries could be convinced to join the ITA II? **PD** conveyed that the UK's message is that countries could strengthen their economies by joining ITAII, technology leading to productivity improvements and boosting investment.

GR enquired with regards to the tariff schedules that were circulated at the meeting? **PD** said that each trade area had their own tariff schedule, despite the product coverage being the same. The reason for this is because the length of time, over which the tariffs were reduced to zero, varied depending on the trading block. The maximum time to slash the tariffs to zero is seven years.

In order to interpret the schedules, firstly search according to the product description or tariff code (some codes will vary depending upon the country). However, not all products listed fall within the scope of ITA II. Consequently, it is then imperative to examine columns marked Att. A or B to ensure that there is a number provided in one of those columns in the row that you interested in, as this denotes that the line is included in the Agreement.

The "base rate duty" column gives an indication of the current duty of the product in the trading block in question, with the zero tariffs kicking in on the date specified in the "implementation to" column. For 85258019 in the EU tariff schedule, this means that the tariffs will be progressively eliminated from 2016 to 2021 (in this case in 5 years, which means in 6 equal cuts, reducing to 0 on 1 July 2021). Some products receive zero duty on entry into force, for example, 88039021 in the EU tariff schedule, with the 'Implementation-To' date specified as being 2016 ie. 1/7/2016.

A full complement of the tariff schedules can be accessed in PDF format through the WTO's website [G/MA/W117](#).

Classification

BE explained that there will be some (UCC) Union Customs Code changes to (BTI) Binding Tariff Information from 1st May 2016

- BTI's will be valid for 3 years and the decision will be binding on the holder as well as the customs administration. Any BTI's issued before 1st May 2016 will ALSO become binding on the holder from that date onwards. (EC Reg 2015/2446 article 252)

- Small changes to the BTI application for example the EORI number is to be included as the Customs ID are to be implemented by 1 March 2017, This date could change as IT systems changes need to happen We believe there is slippage in the Work Programme which was published in EU Reg 255/2014.
- You will need to quote the relevant BTI on any declarations (import or export) within box 44. (EU 2447/2015 Article 20, as the customs administration is required to monitor its usage (EU 952/13 Article 23(5)).
- Changes to Period of Grace: BTI extended usage control
Under the new legislation (EC 952/13 Article 34(9)) you will be required to lodge an application within 30 days of the date the BTI ceased to be valid or is revoked indicating the **quantities** for which a period of extended use is requested (as well as copies of the binding contracts etc.)
- The suspension of the taking of BTI decisions. This allows the customs administration to suspend issuing a decision when the Commission has identified incorrect or non-uniform decision (example: goods being discussed within the Customs Code Committee) – EC Reg 952/13 Article 34(10)(a), EU Reg 2447/15 Article 23(1).

The Customs Code Committee (CCC) is currently drafting new guidelines to reflect the new legislation on the EBTI system and its operation. Member States have requested that they are published and the Commission have agreed, I believe they will appear in the “C” series of the Official Journal when they have been agreed.

Also, the CCC will be changing its name to “The Custom Code Expert Group”. For example “The Customs Code Expert Group Tariff and Statistical Nomenclature Section (sub-section Agriculture/Chemistry).

Other changes

We have draft copies of the BTI application and the BTI itself to comment on. When agreed they will be issued in a regulation establishing transitional rules for certain provisions of Reg 952/13 where the relevant electronic systems are not yet operational.

BE advised the Sub group that the main amendments to the application form which will come into force under the second phase of the work programme (which is linked into the MASP project), are:-

- the applicant becomes the holder
- advising where main accounts for customs purposes are held or accessible

- type of transaction (release for free circulation/special procedures/export)
- advising if you are aware of any legal or administrative proceedings concerning tariff classification pending within EU, or a court ruling
.....

The UK are currently assessing the risk of the applicant becoming the holder in error. The UK has many applications submitted by representatives. There is a risk that they would become the holder if the Applicant box is completed incorrectly. For the correct completion of the application form the applicant must be the intended holder. We have raised concerns with the Commission but fear it will be down to educating companies on how to complete the form to avoid issuing the BTI's to the wrong person.

Here is some of the legislation covering BTI's which you might find helpful

Most of the general articles under title I of the UCC relating to customs decisions (as well as the corresponding articles in the UCC DA Reg 2015/2446 and IA Reg 2015/2447) also apply to BTI.

Legal basis of Binding Information in general is Art. 33 - 37 of UCC (Regulation (EU) No 952/2013 of 9.10.2013 – OJ L 269, 10.10.2013),

Legal basis of Binding Tariff Information is Art. 16-17 Reg 2015/2447, 20-23 Reg 2015/2447, Art. 19-20 Reg 2015/2446.

Legal basis of BTI Usage Control is Art. Art. 23(5) UCC and 33(2)(b) UCC.

Legal basis of Exchange of data relating to BTI applications and decisions is Art. 21 Reg 2015/2447.

Legal basis of Extended Use of decisions relating to binding information is Art. 22 Reg 2015/2447.

Legal bases of the transitional period are Art. 21 (7) Reg 2015/2447, Art. 55 (6) Reg 2015/2447, Art. 56(3) IA Reg 2015/2447, Annex 21-02 Reg 2015/2447, Art I-1-5 TDA

BE1 asked how HMRC deal with BTI's containing generic product codes? **BE** If you hold a BTI which covers a camera for model XX colour blue and you import model XX colour red, we would still expect you to quote the BTI which covers the blue one as the camera is exactly the same except the colour and the colour does not affect the classification.

We have accepted in the past that if the only difference in the product was the colour the BTI would cover all colours regardless of which colour was quoted in the BTI.

We can, when asked, cover multiple models numbers if the product itself is the same and the only difference in the models numbers denotes colour or geographical location. In this instance the description would cover a single product but the box which holds the confidential information would quote all the different models.

BTI's are not mandatory, but do speed up customs clearance.

RW asked if the treatment of security tags could be put on the agenda in his absence. His question was how do they get treated if they are attached to a carton? **BE** said that as the security tags are a mobile device which is attached to a pallet by hand they would need to be separately identified on a declaration. They are not covered by GIR 5 as this device would not be deemed to be normal packaging materials nor a packing container, regardless if they were clearly suitable for repetitive use. They are simply a device which allows the owner of the goods to track specific pallets via GPS to ensure they reach their destination. It does not form an integral part of the pallet nor could be construed as a packing container.

Security tags which are incorporated into a container were deemed to be accessories to the container and therefore not required to be identified separately. See attached note from the WCO. [Recommendation CSD EN](#)

I have been advised by a colleague that under the Istanbul Convention Annex B3, that a pallet is not considered to be a container, see below relevant article

KA asked what if you don't own the security tag? **BE** Has spoken with policy who have explained that the importer will still have to put in a declaration for them.

Istanbul Convention Annex B3

Article 1

(c)..... "container" shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term "container" shall not include vehicles, accessories or spare parts of vehicles, or packaging or pallets. "Demountable bodies" shall be regarded as containers;

(d) "pallet" means :

a device on the deck of which a quantity of goods can be assembled to form a unit load for the purpose of transporting it, or of handling or stacking it with the assistance of mechanical appliances. This device is made up of two decks separated by bearers, or of a single deck supported by feet; its overall height is reduced to the minimum compatible with handling by fork lift trucks or pallet trucks; it may or may not have a superstructure;

The exporter/importer will therefore need to identify if the devices will be entered into free circulation. If they are then they will need to pay any relevant customs duties applicable to the tariff heading. However, if they are not entering into free circulation then they may wish to explore the Temporary Admission regime where the duty would be suspended.

EU Audits overview

RO gave members a brief overview on the arrangements for EC audits. He said that there are usually two inspections by the EU each year undertaken by DG BUDGET. These inspections are completed under article 4 of Regulation 1026/99 . This regulation empowers the European Commission to undertake inspections of Member States to assure that Own Resources have been properly accounted for, protected and correctly paid over to the Commission. The legislation only empowers the Commission to examine systems, paperwork and accounts, which directly impact on Own Resources. The Commission do not have the authority to examine any Member States information, which does not relate to Own Resources.

The Own Resources Regulation (art 3 Reg 1150/2000) requires Member States to retain all paperwork relating to Own Resources for 4 years and to provide it to the Commission on request. This provides the legal gateway for sharing information with the auditors.

The audit itinerary is developed by the auditors on the basis of UK responses to a pre-visit questionnaire. The questionnaire sets out the main scope of the audit and focuses on the UK's control strategy for the regime, such as pre and post clearance controls, trader authorisations and compliance checks and levels of controls undertaken, specifically:

- Inspection of the UK's Own Resources A& B Accounts (A = Pre-clearance & B = Post-clearance);
- Amount of duty collected through regime (pre and post clearance);
- Number of transactions made;
- Number of physical/ documentary interventions undertaken;
- Key locations involved in the procedure;
- Number of traders operating the procedures (and which offices control these) and
- Number of assurance events undertaken.

Commission Inspections by DG BUDGET

Directorate General Budget inspectors are responsible for carrying out controls in Member States on Traditional Own Resources. The Commission's right to carry out inspections is laid down in Council Regulation No 1150/2000 (as amended by Council Regulation No 2028/2004).

European Court of Auditors (ECA)

The ECA visits are empowered by the Lisbon Treaty (Article 287) which requires the ECA to undertake detailed audits into the operation of the EU and the correct application of legislation and collection of Own Resources. As with the Commission Inspections these auditors are only authorised to inspect matters/ paperwork relating to Own Resources.

Monitoring Visits

These visits are undertaken by the Commission (DG TAXUD) in co-operation with a team of experts from the Member States. These visits are used to establish detailed operation of regimes/ procedures across the Member States and to assist in the development of best practice guidance. They aim to promote, through the adoption of this guidance greater harmonisation of procedures across all Member States

AOB

CN asked for an update on the CHIEF replacement, **VS** said that the Customs Declaration Service programme is progressing we should have more information in May about the Tariff Services work stream.

GR raised a question on OSR and CIP 3/2016 on behalf of Mark Emerson, **LCB** said that she will contact Mark for more information. **ME** has since been in contact with HMRC customs policy to discuss the issue.

Meeting closed 14:30

Next Meeting:

18 May 11am Alexander House Southend.

Reference	Action Point(s)	Owner
Valuation	Distrube Commission guidance on Valuation	LCB
Valuation	Contact Caroline re her UCC guidance	LCB
Trade Tariff	Sent Matt Ford Trade Tariff user guide	LCB