

Minutes of the JCCC Duty Liability

Sub-Group meeting

Date of Meeting: 6 October 2020

Teams

13:30-15:00

Attendees

TRADE

Howard Levene (HL)
Paul Wrighting (PW)
Barbara Scott (BS)
Michael Alexander (MA)
Walter Anzer (WA)
Gavin Roberts (GR)
Steve Bartlett (SB)
Ronnie Bennet RB)
Corinne Nabavi (CN)
Pawel Jarza (PJ)
Andy Miller (AM)
Lorenzo Rossetti (LR)
Ian Worth (IW)

HMRC

Hazel Batter (HB) (*chair*)
Kate Wood (KW) (*secretariat*)
Dave Knight (DK)
Beth Earwicker (MM)
Lisa Carter (LC)
Philla Evans (PE)

Apologies: Lyn Norton, Liam Smyth, Keith Aldred, Bob Ellison, Mark Emerson

Minutes of Last Meeting

The minutes of the previous meeting of August 2020 were agreed.

Update on Previous Action Points

Summary of Action Points

AP	Subject	Action Point(s)	Owner	Status
1	Preference & Declarations	Is box 37 for Preference still to be used or will it be driven by the tariff code?	HB	Discharged
2	Controlled Goods	To provide the latest information on controlled goods post 31/12/20	HB	Discharged
3	Legislation	Send link to the UK exit legislation, including the SI's	HB	Discharged

MAIN AGENDA

CLASSIFICATION

Tariff Regulations

MA asked when the tariff regulation referenced in Section 8 of the Taxation Cross Border Act (TCTA) will be published

PE reminded the group that the UK Global Tariff (UKGT) was published, up to 8 digits, by the Department for International Trade (DIT) in May 2020 and noted that this showed that Commodity descriptions had remained as they were in the EU tariff. Exception and preferential rates have not yet been published yet but the structure of codes determining those rates will remain unchanged.

MA pointed out that there are nuances between TARIC and the UKGT

PE advised that this would be due to the fact that the 2019 EU codes and descriptions had been used for the UKGT. These anomalies will be rectified when the final tariff is legislated for. However, PE asked that if the members or their clients identify any other instances of inconsistency, to please raise those with HMRC and we will look at those anomalies.

MA expressed concern on not having sight of the full 10 digits of commodity codes until the end of December.

PA assured the DL-JCCC members that HMRC are keen to see clarity on the complete codes as soon as possible. We are discussing timescales for this with DIT and will update this group as soon as we are able.

ACTION POINT 1 – PE/HB to update the DL-JCCC with further information on the publication of the full 10-digit commodity codes

LR noted that the document is useful to download as a excel sheet, but he observed that the UKGT download contains several 10-digit codes and asked if this was significant? Will all the information be populated as a single source?

PE advised that this may happen when there is a duty difference at 9th or 10th digit. HMRC have raised this with DIT and observed that most MFN rates are set at 8 digits. PE also advised that whilst the Online Tariff Tool currently contains the complete EU tariff, it will contain the complete UK tariff from the end of the Transition Period.

DK confirmed the full version will be published in due course.

Advanced Tariff Rulings (ATaR) and Classification Advice

PE advised that EU and UK case law would cease to have legal effect following the end of the Transition Period, as the EU tariff, on which it was based, was a different legal instrument than the UK tariff. However, HMRC are not looking to deviate the commodity descriptions or suddenly deviate on classifications. For each ruling we will continue to scrutinise how goods are classified within the context of those decisions that prove informative, up to and including those of other WCO contraction parties. Within this it was expected that previous EU rulings would likely be very persuasive in domestic legal proceedings, but not legally binding themselves.

GR gave an example of where a high court ruling made prior to the end of transition could subsequently be overruled by the Nomenclature Committee. He asked if we would we fall back to the UK ruling?

PE advised that solicitors have confirmed that UK case law made prior to the end of transition doesn't have any effect going forward for tariff rulings. We cannot therefore revert to UK rulings made prior to the end of the Transition Period.

BS referred to an earlier point on how the UK will continue to have regard to EU rulings, and asked whether this would historical cases only?

PE confirmed rulings are all thoroughly investigated, as ultimately, we should be seeking uniformity of classification at the level of the Harmonised System. However, the UK won't be bound by EU rulings after 1st January 2021.

PE confirmed our email classification service remains available to provide advice, including advice moving into post transition.

GR asked about how rulings would be published after the end of transition and whether UK issued BTIs will be on a website to view? Will EU rulings prior to 31/12/20 be available to view post transition? And where the new application process for applying for BTIs is?

BE confirmed the next round of testing of the UK's new ATaR system will commence shortly and that we would be publishing ATaRs as they are issued. We anticipate the application process to be broadly like the current one. With regard to the transitioned rulings, **BE** advised that she would confirm the position around publishing these in addition to those newly issued post Transition. **BE** also confirmed that, whilst the EU would continue to publish the redacted BTI rulings, this would not include those issued to GB rulings after 31/12/20.

PE added that we are working on a communication package that gives further information on ATaRs and BTI transition. This needs to align with wider end of transition messages but we will share details around ATaR with this group as soon as we are able to do so.

ACTION POINT 2 – PE/HB to update the DL-JCCC with further information on the on the new ATaR system.

ACTION POINT 2 UPDATE:

Binding Tariff rulings (BTIs) will be rolled over in to an ATaR, unless traders advise that they do not want this in any particular case. However, the classification would not continue to have effect in the EU. BTIs applied for now will therefore continue into the new year, in their new capacity as ATaRs.

The latest guidance on the changes to tariff rulings, including how to apply has now been published here: <https://www.gov.uk/guidance/changes-to-legal-rulings-for-the-classification-of-goods-from-1-january-2021>. This guidance will be updated as new information becomes available

BS gave a scenario where, if the UK have issued an ATaR and the Commission issues a Regulation which disputes it, would HMRC revisit the ATaR that was issued?

BE responded that potentially we may ask for a bilateral with the EU to discuss but reminded members that as a sovereign state and independent member of the WCO, we can flag it there for discussion, if appropriate to do so.

LR asked if ATaRs would have effect in NI

PE said that further information would be issued on this shortly.

IW asked if a trader wanted to apply for a BTI, who do they apply to?

PE confirmed that this would also be clarified in the communications being prepared.

POST MEETING UPDATE:

The latest guidance on the changes to tariff rulings, including information on rulings in NI and how to apply has now been published here: <https://www.gov.uk/guidance/changes-to-legal-rulings-for-the-classification-of-goods-from-1-january-2021>. This guidance will be updated as new information becomes available

PJ asked for the legal basis on rolling over BTI rulings. Is a Statutory Instrument (SI) involved?

PE confirmed that a Public Notice will be published as this is enough to give legal effect, given the powers provided with the Taxation Cross-Border Trade Act. An SI is not, therefore, required in this instance.

PJ asked whether a 10-digit customs declaration for imports and 8 for export will apply post 31/12/20?

PE confirmed yes

TARIFF

General Update

DK updated that he has been liaising with CDS builders, DiT and DEFRA to ensure UKGT tariff information is present and CHIEF is updated for a seamless transition on 1st January 2021. **DK** has been working on the new quota allocation module, which will manage quota claims, to ensure it is fully functional and capable of dealing with complex safeguard quotas.

GR asked if the ongoing work with CDS and NI processes are on track, and whether all quotas are now allocated?

DK confirmed that work regards to CDS, is on track. HMRC continue to work on quotas with DiT. As soon as that work is completed, it will be published.

LR asked whether CDS GB will be in use in NI, and if the GB version will include UKGT and EU tariff?

DK confirmed it is being worked on and there will be contingencies in place to deal with issues.

AOB

MA said that he had seen the ATaR interface application system at the initial test and was impressed with it and was wondering when the next testing session will happen?

GR expressed an interest in testing if any further volunteers were required

MA asked if the group would be contacted post-go live for further user testing

ACTION POINT 3 – **BE** to feedback further interest on being involved in user testing of ATaR to the project group and clarify whether post-go live testing would be conducted.

ACTION POINT 3 UPDATE:

BE has contacted the testing team and confirmed that they may contact **MA** and other members again regarding further testing post go live. **GRs** details have been passed to the user recruitment panel. **GR** has also since been invited, along with **BS** and **MA** to take part in user research on ATaRs by the project team.

PJ requested an update to and, if possible, an early sight of any re-drafts that relate to freight elements of Notice 252 (valuation). **PJ** offered his help with this.

HB thanked **PJ** for the offer and noted it is always useful to have trade views/input.

ACTION POINT 4 – HB to share PJs comment and offer with the drafters.**ACTION POINT 4 UPDATE:**

HB has since asked the team re-drafting Notice 252 to consider further. They will contact **PJ** to seek his views as appropriate/practicable.

HB asked if the format of covering all 4 subjects in one meeting would be preferable going forward. Majority agreed they would so we will revert to one meeting

Meeting closed 15:45

Next Meeting: 25/11/20

Summary of Action Points

AP	Subject	Action Point(s)	Owner	Status
1	Classification	Update the DL-JCCC with further information on the publication of the full 10-digit commodity codes	PE/HB	Open
2	Classification	Update the DL-JCCC with further information on the publication of rulings on the new ATaR system	PE/HB	Discharged
3	Classification	Feedback further interest on being involved in user testing of ATaR to the project group and clarify whether post-go live testing would be conducted.	BE	Discharged

4	Valuation (raised under AOB)	Share PJs comment on updating references to freight elements in Notice 252 with the review team	HB	Discharged