Data to support Clause 19 SI(s)

Issues

Working Assumptions

1. Some reliefs will be implemented by use of a goods code. Where this is the case, they will be implemented by legislation under clause 19 of the Taxation (Cross-border Trade) Bill. A reduced or zero rate of import duty will be considered a “relief” rather than a “suspension” when it has no specific end date.
2. The data table for clause 19 will follow the model for clause 8. Therefore, for convenience, it will be developed a spreadsheet with one line for each relevant goods code. This table will correspond to the input needed for the Tariff Application Programme.
3. The data table will be converted into another electronic format in order for it to become the published document to which the clause 19 regulation will refer. This will be the same document used for clause 8. Therefore, each measure line should include a field that identifies the SI that will give it force.

Coverage by TARIC measure

1. Clause 19 will cover the special provisions for certain categories of ships, boats and other vessels and for drilling or production platforms set out in Section II-A of Part One of Annex 1 to Regulation 2658/87 as amended (most recently by [Reg 1925/17](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1925&from=EN)). In TARIC these have measure type “Suspension - goods for certain categories of ships, boats and other vessels and for drilling or production platforms” (2,390 measure lines as of January 2018).
2. Clause 19 should cover the indefinite elimination of import duty for certain goods imported with airworthiness certificates currently allowed by [Reg 1147/02](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1525789815019&uri=CELEX:32002R1147). In TARIC these have measure type “Airworthiness tariff suspension” (some 947 measure lines as of January 2018).

1. Clause 19 will also cover the measures associated with [Regulation 3050/95](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1525028546168&uri=CELEX:01995R3050-20020701) affecting certain products intended for the construction, maintenance and repair of aircraft. In TARIC, these have measure type “Autonomous suspension under end-use”[[1]](#footnote-1) (there are some 312 measure lines as of January 2018 of this type). They can be identified as those measures of type “autonomous suspension under end-use” for which the legal reference is Regulation 3050/95.
2. Clause 19 will also cover the special provisions for civil aircraft and goods for use in civil aircraft set out in Section II-B of Part One of Annex 1 to Regulation 2658/87 as amended (most recently by Reg 1925/17). In TARIC these lines have measure type “non-preferential duty under end-use”. They can be identified by the description field in the TARIC nomenclature file associated with the Code suffixed by “80”. The relevant measures are those with measure type “non-preferential duty under end-use” where this field contains “for use in civil aircraft” or “for use on civil aircraft” (310 measures as of January 2018).
3. Clause 19 will cover the relief provided by [Regulation 150/03](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1511866711584&uri=CELEX:32003R0150) for certain weapons and military equipment. The relief applies to certain goods codes but do not appear to relate to any element of TARIC.
4. Clause 19 could cover measures where the applied most favoured nation rate is lower than the bound most favoured nation rate in the EU’s WTO tariff schedule (which the UK’s WTO schedule will reproduce). No simple way to identify such measures in TARIC has been identified. However, where footnotes to [Regulation 1925/17](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1925&from=EN) refer to “autonomous rate of duty”, “autonomous suspension” or otherwise to an autonomous decision to vary import duty applicable, these cases are believed to correspond to a difference between the bound and the applied rate, with the applied rate given in the footnote. Since there are a limited number of such cases, it is possible to construct a list without excess effort (100 such measures have been identified excluding those associated with the entry price system).
5. Clause 19 should cover all most favoured nation rates under an end-use condition, recorded on TARIC as measure type “Non preferential duty under end-use”. Some will be covered by the relief for civil aircraft and others by the bound rate relief (see above). The remainder can be located in TARIC as being those measures with measure type “Non preferential duty under end-use” other than the ones already covered by the civil aircraft relief (there are some 168 such measure lines), and other than those covered by the bound rate relief described above (leaving 135 such measure lines).

Other points

1. There is a case for aligning “measure types” in TAP with the legal base in UK legislation. All the measures discussed might therefore be given the type “relief”, optionally subdivided further. Whether or not this is done, the terminology “suspension” used in some of the measure types covered here is inaccurate as regards UK legislation and should be replaced by “relief”.
2. Civil aircraft: where the standard rate is zero, TARIC does not necessarily list the relief as well – for example 9032810000. This makes no difference in practice as long as the standard rate remains zero. Therefore this is not a priority issue. However, for consistency it would be preferable to create additional TARIC measures for the relief.
3. In EU legislation, the goods codes to which the civil aircraft relief may apply are not specified. Therefore, we rely on TARIC to have identified all the goods codes to which it could apply. We are assuming that it does. On this basis, the proposal for UK legislation to specify the goods codes will be consistent with the intent to leave the effect of legislation unchanged in substance. Should a legitimate challenge to the assumption arise, it would be necessary to pass further secondary legislation.
4. The relief for certain categories of vessel/platform and the airworthiness relief are sometimes specified at at Chapter level (for vessels, Chapters 46, 57, 58 and 60; for airworthiness Chapters 55, 58, 65, 72, 75, 79 and 80). The intention to retain the approach of headings being the key element for classification would require these Tariff Document to split down these Chapters into headings for the purposes of these reliefs. Question: would this pose any problem in TAP?
5. The relief for certain categories of vessel/platform and the airworthiness relief apply to Codes that also have a third country duty. The Tariff Document will need to be clear as to why a single description of goods has more than one duty expression. In TARIC, where this happens the measure lines will have a different measure type/code. There are a number of ways that this could be presented in the Tariff Document. It could be done through a field indicating the legal base (if most reliefs are covered by a single SI, this field might need to refer not only to the SI but to sections or paragraphs within it). It could be done through fields indicating those lines where either type of relief applied (in each case the relief is always a full relief). It could be done by a field indicating the condition that must be fulfilled if the third country duty otherwise specified is not to apply.
6. For these two reliefs, the breakdown of Codes may not always be to the same level of detail as for the clause 8 SI. Again there are presentational options for dealing with this, for example by breaking down the Codes or by the additional columns proposed above.
7. There seem to be cases where the “nomenclature” description does not tally exactly with the legal text – e.g. text is “intended to be fitted in heavier-than-air aircraft imported duty-free or built within the European Union” but nomenclature says “Intended to be fitted in aircraft imported duty free or built within the Community” (e.g. 840910). A working assumption is that the nomenclature is a reliable reflection of the law in all material regards. Providing that this assumption is accurate, no further action is needed.
8. TARIC does not appear to make any reference to the relief for certain weapons and military equipment. This relief is relevant only to goods imported by or on behalf of the Ministry of Defence. It applies only where the Ministry of Defence has issued a certificate to accompany a request for entry into free circulation. Therefore it is relevant to a limited number of parties only. However, if the TAP has the ambition to include as much information as possible about the import duty applicable in any set of circumstances, it would include measures covering this relief.
9. Those authorised use reliefs that do not come under the relief for civil aircraft will normally have the use specified in the last subdivision of the goods description, indicated by the word “for” (all but 19 cases). Otherwise, the use is specified in the penultimate subdivision of the goods description. These measures will be associated in TARIC with a condition of code B (presentation of a certificate/licence/document), normally a UN/EDIFACT certificate (N990).
10. Consideration needs to be given to how new reliefs would be created, in particular where they apply to some goods within an existing Code but not all of them. An option would be to create a new subdivision of the Code in question, introduce TAP measures for each subdivision and remove the measure relating to the undivided Code. Another option would be to introduce a new TAP line under the same Code, but with at least one field (other than the duty expression) that distinguishes the two measures. This field could be measure type, or legal base, or condition.

Issues where bound rate is above applied rate

1. In cases where the UK’s bound rate will be above its applied rate, an issue arises as to whether the bound rate, from which the rate cited in the footnote to Reg 1925/17 varies, should be included in the Tariff Document. This information is not strictly necessary.
2. It would, however, be consistent with the approach of not using the power in clause 8 where another power is available to treat reductions from the bound rate as reliefs. That would mean specifying the bound rate under clause 8 and the applied rate under clause 19. Were it to be included, it might be in a separate section, given that it is of no relevance to the rate of duty applicable except in a future contingency that would require new UK (secondary) legislation.
3. To reflect this the TAP might hold additional measures representing the bound rate from which the relief is granted. These measures would be of type “Third Country Duty” and the reliefs might most appropriately be given the type “relief” or, if this type is subdivided, “relief from bound rate”.
4. For sheath contraceptives of polyurethane (Code 3926909760), there is no clause 8 line currently encompassing this Code. However, providing that measures from clauses 8, 12 and 19 are combined as planned in the Tariff Document, a complete goods classification will be created. In the absence of the relief, such goods would fall under Code 3926909790 with a tariff rate of 6.5%.
5. For monitors other than cathode ray monitors capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471 (Code 852852), TARIC simply records a zero rate. However, goods of this Code not solely or principally used in an automatic data-processing system of heading 8471 are subject to a bound rate of 14%. We might consider whether to introduce additional measures into TARIC to achieve consistency with other reliefs in this category (the measures would be third country duty measures applied rates of zero applying to Codes 8528521000 and 14% for Codes 8528529100 and 8528529900, with measures of type “relief from bound rate” of 0% for Codes 8528529100 and 8528529900, all replacing the measure for Code 8528520000).
6. For articles of Code 9619 (sanitary towels (pads) and tampons, napkins and napkin liners for babies, and similar articles, of any material), in the case of 9619 00 30, 9619 00 71, 9619 00 75 and 9619 00 79 we should need additional measures and Codes to reflect the relief. In the case of 9619 00 40 and 9619 00 50 we should need additional measures reflecting existing Codes that are not otherwise used for tariff purposes (a distinction between knitted/crocheted and other appears to be used for import control).
7. There is also an interaction with the entry price system that needs consideration if a consistent approach is to be taken.

1. Measures for codes 7307221010 and 7307921010 are listed on TARIC as “autonomous tariff suspension” but should probably be listed as “autonomous suspension under end-use”. [↑](#footnote-ref-1)