

MTRA SUBMISSION
Freeports Consultation
Questions 13 and 14 – Trade Remedies

I INTRODUCTION..... 1

1.1 FREEPORTS SHOULD NOT PROVIDE RELIEF FROM TRADE REMEDIES..... 1

1.2 CONSULTATION QUESTIONS ON TRADE REMEDIES..... 2

2 COMMENTS ON CONSULTATION QUESTIONS FOR EACH SCENARIO..... 3

2.1 SCENARIO 1 – PRODUCT NOT PROCESSED IN FREEPORT AND SOLD ON UK MARKET 3

2.2 SCENARIO 2 – PRODUCT NOT PROCESSED IN FREEPORT AND EXPORTED TO OVERSEAS MARKET 3

2.3 SCENARIO 3 – PRODUCT PROCESSED INTO ANOTHER PRODUCT IN FREEPORT AND SOLD ON UK MARKET 3

2.4 SCENARIO 4 - PRODUCT PROCESSED INTO ANOTHER PRODUCT IN FREEPORT AND SOLD ON OVERSEAS MARKET 4

3 CUSTOMS ISSUES..... 4

3.1 HMRC ALERT TO CIRCUMVENTION 4

3.2 AVOID HIGH RISKS THROUGH EXPERIMENTAL TECHNOLOGY SCHEMES 4

3.3 POINT AT WHICH TRADE REMEDY IS APPLIED..... 5

I Introduction

1.1 Freeports should not provide relief from trade remedies

The basic principle behind freeports is to provide either deferral or relief from import duties. In cases where the product entering the freeport is not processed, payment of the duty is deferred until the product enters the domestic market. Where the product is processed into another product, relief can be obtained where ‘duty inversion’ exists. Duty inversion exists in cases where the duty on a finished product is lower than that on the component parts.

This submission is not considering the merits or otherwise of this type of system of tariff relief. Rather, it is considering the important question of how trade remedies are treated in the case of a freeport.

In this regard it is really important to recognise that normal import duties are very different than trade remedies.

Normal tariffs may originally have had particular purposes when their rate was set. However, over time, they become normalised and effectively a source of revenue for the state that imposes them. Various schemes exist (e.g. duty suspension, inward processing relief etc) that can provide relief to domestic producers where there is a strong economic case for that. Such schemes have economic interest type tests built into them to ensure that any relief or suspension is in the overall interests of the economy.

Such schemes already exist in the case of the EU and the UK will maintain similar provisions in its new customs rules at the end of the transition period.

Trade remedies are something completely different. Although they do provide a source of revenue in a similar way to normal import duties, this is not their primary function. Trade

remedies are specifically designed to counter a situation of unfair trade, to level the playing field so that UK industry faces only fair competition from imports. In the case of the UK, of particular significance is that all trade remedies will already have undergone an economic interest test. Thus, in principle, there is no need to reconsider whether trade remedy measures are in the UK economic interest or not in the context of a duty relief scheme because this has already been done.

If a trade remedy is no longer appropriate, either temporarily or permanently, options already exist to obtain relief from the measure. Requests for suspension or inward processing relief are one option. Further, the UK trade remedy system has the possibility for an interim review built into it where circumstances have changed that merit permanent change in the level of a measure.

Given the fact that trade remedies are different than normal tariffs, the paper's emphasis on the effectiveness of trade remedies not being undermined is very much appreciated:

...Freeports should not undermine the effectiveness of the UK's trade remedies system or any future trade remedies put in place...(page 14)

If the UK decides to have freeports, therefore, MTRA strongly argues that it should not provide any possibility whatsoever for avoiding trade remedies. The specific arguments for this are set out in section 2 below.

1.2 Consultation questions on trade remedies

The two questions on trade remedies are:

Q13: To what extent do you agree or disagree that trade remedies or countermeasures should be applied to goods exiting Freeports, whether or not they are processed in the Freeports? Please explain your answer.

Q14: To what extent do you agree or disagree that trade remedies or countermeasures should be applied to goods exiting Freeports, whether they are destined for consumption in the UK or exported to foreign markets? Please explain your answer.

This creates a matrix of 4 situations where a product subject to trade remedies is brought into a freeport.

<p>Scenario 1</p> <p>Product not processed in freeport Product sold on UK market</p>	<p>Scenario 2</p> <p>Product not processed in freeport Product exported to overseas market</p>
<p>Scenario 3</p> <p>Product processed into another product in freeport Product sold on UK market</p>	<p>Scenario 4</p> <p>Product processed into another product in freeport Product exported to overseas market</p>

Each of these scenarios will be considered in section 2.

2 Comments on consultation questions for each scenario

2.1 Scenario 1 – product not processed in freeport and sold on UK market

This is a straightforward scenario. If the product is not processed, all duties are deferred while the product remains in the freeport. However, when the unchanged product leaves the freeport, it is normal that both the MFN duty and any trade remedy would be applied.

Agree that trade remedy should be applied when the product enters the UK market

2.2 Scenario 2 – product not processed in freeport and exported to overseas market

This is also a straightforward scenario. If the product never enters the UK market, and is exported overseas in the same form, this has no impact on the UK market. Thus, there is no logic to the duty being applied.

Disagree that trade remedy should be applied

2.3 Scenario 3 – product processed into another product in freeport and sold on UK market

Take an example where product X is subject to an anti-dumping duty when imported into the UK. If product X is imported into the freeport, processed into product XY, and then sold on the UK market, the normal duty on product XY will be charged rather than the normal duty on product X. However, the question is whether the anti-dumping duty on X should still be payable?

The answer to this is a resounding yes. When XY leaves the freeport and enters the UK market, the ADD on X should be charged to avoid the situation of creating an incentive to switch production of XY from the UK market to the freeport. The idea of a freeport is not to provide an incentive for production to move from the UK market/customs zone into the freeport but, rather, to attract new production from overseas to the UK. Much of the

evidence on freeports suggests that a high proportion of jobs created in the freeport are actually relocated from the domestic market, the incentive for which will be much greater when there are anti-dumping and countervailing duties in place.

If producers of XY shift production from the UK market to the freeport in order to benefit from no trade remedy, this would mean that UK-based producers would shift their input supply from UK producers of X to the imported X. This would undermine the effectiveness of the UK measures in removing the injurious effect of the dumping and would result in recurrence of injury.

Also, when XY produced in the freeport enters the UK market, domestic producers of XY in the UK would have an unfair disadvantage in that they would be competing with 'UK-produced' XY that had not paid the relevant trade remedy.

Agree that trade remedy should be applied

2.4 Scenario 4 - product processed into another product in freeport and sold on overseas market

This is a more complex situation. In this case X is imported into the freeport, processed into XY, and then exported to an overseas market. X never actually enters the UK customs territory, though it does come on to UK soil in the freeport. Some might argue that, because product X never enters the UK market, it should not pay the duty in a way similar to scenario 2.

However, in the case where producers of XY in the UK market are using X produced by UK industry for production that will be exported, an incentive is created to switch production of XY to the freeport using imported X otherwise subject to an anti-dumping duty. This would undermine the UK ADD and cause injury to UK producers of X.

Agree that trade remedy should be applied.

3 Customs Issues

3.1 HMRC should be alert to circumvention

The arguments in favour of applying trade remedies in scenarios 1, 3 and 4 above are very strong. However, an extra issue exists in relation to the enforcement of a measure. As with any customs scheme, compliance and enforcement of customs rules has to be ensured. Great care must be taken by HMRC in implementing any system to ensure that opportunities for circumvention of critical trade remedies are not created.

3.2 Avoid high risks through experimental technology schemes

The paper talks about innovative customs technologies:

Freeports will also offer an exciting opportunity for innovative customs and transport technologies to be trialled in controlled environments (page 8).

There is a potential risk that customs fraud will be increased through adoption of experimental technology schemes.

Also the paper raises the possibilities of inland freeports:

Where a Freeport site is located inland (i.e. not directly adjacent to a port), businesses wishing to move goods from a port to a Freeport while the goods remain under duty suspense would need to get a customs guarantee, a form of insurance which covers the duty that would be owed if the goods never arrived at the inland site. (page 13)

Inland freeports could also present additional risks in terms of circumvention and fraud due to the fact that the goods include inland travel rather than going straight into the freeport when they arrive at port. Although the quote above talks of a customs guarantee, there needs to be great care taken to enforce such a system. Trade remedies can provide a significant incentive for unscrupulous traders to take risks in order to avoid legitimate measures.

If the UK did decide to create some freeports, the risk of circumventing trade remedies should be minimised through robust enforcement and avoidance of experimental technologies until fully proven.

3.3 Point at which trade remedy is applied

The paper raises the possibility that trade remedies could be applied on entry to or exit from the freeport.

*...Freeports should not undermine the effectiveness of the UK's trade remedies system or any future trade remedies put in place...This can be achieved through applying these additional tariffs to the relevant products when they **enter or exit Freeports**, whether or not they are processed in the Freeport and destined for either the UK domestic or foreign markets. (page 14)*

The concerns around customs raised above in this submission would be greatly eased if the trade remedy is applied on entry to the freeport. Only in scenario 2 above would this result in a trade remedy being applied where there is no logic to it. However, it can be noted that scenario 2 is very unlikely. There would be no benefit to holding a product subject to anti-dumping duty in a freeport only to be re-exported unprocessed at a later date.

Thus, MTRA submits that it would make sense to apply trade remedies on entry to the freeport. This would ensure that the customs issues identified above would not apply and that the effect of the measures could not be undermined.