



House of Commons
European Scrutiny Committee

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Session 2021–22**

Documents considered by the Committee on 8 December 2021

Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

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Contents

Documents to be reported to the House as legally and/or politically important

1	DIT	Enhancing trade in the Euro-Mediterranean region: changes to preferential rules of origin	3
2	DIT	EU trade preferences for developing countries	8
3	HMT	Northern Ireland Protocol: draft EU Energy Taxation Directive (update)	15

		Annex	23
--	--	--------------	-----------

		Formal Minutes	24
--	--	-----------------------	-----------

		Standing Order and membership	25
--	--	--------------------------------------	-----------

1 Enhancing trade in the Euro-Mediterranean region: changes to preferential rules of origin¹

This EU document is legally and politically important because:

- it concerns an international agreement—the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (‘the PEM Convention’)—in which the UK participated when a member of the European Union;
- rules of origin determine whether goods qualify for preferential market access under free trade agreements;
- following the conclusion of the EU/UK Trade and Cooperation Agreement, the Government has decided that it will not seek to participate in the PEM Convention in its own right but the Convention continues to apply in Northern Ireland under the Northern Ireland Protocol; and
- it remains unclear how the application of different rules of origin in Northern Ireland and in the rest of the UK to goods imported from countries participating in the PEM Convention affects the terms on which these goods can access the NI and GB markets.

Action

- Write to the Minister of State (Rt Hon. Lord Frost CMG) at the Cabinet Office requesting further information on the implications of applying the PEM Convention in one part of the UK customs territory only.
- Draw to the attention of the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

1.1 The [Regional Convention on pan-Euro-Mediterranean preferential rules of origin](#) (the ‘PEM Convention’) establishes a single set of rules of origin and a system of cumulation which the parties to the Convention—the EU on behalf of its 27 Member States and a further 25 countries in the Euro-Mediterranean region—are expected to apply as part of their free trade agreements with one another.² Rules of origin establish the ‘economic nationality’ of a product. They are used to determine how much local content is needed for a product to qualify for preferential market access and potentially a lower tariff under

1 Proposal for a Council Decision on the position to be taken by the EU in the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of the Convention; Council document 13169/19 + ADD 1, COM(19) 482; Legal base: Articles 207(3) and (4) and 218(9) TFEU, QMV; Department: International Trade; Devolved Administrations — Consulted; ESC number 40897.

2 The non-EU participating countries are Iceland, Liechtenstein, Norway, Switzerland, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey, Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Montenegro, Serbia, Kosovo, the Faroe Islands, Moldova, Georgia and Ukraine.

a trade agreement. Cumulation makes it easier to qualify by allowing goods which include components from different countries operating within a regional supply chain to qualify for preferential access.

1.2 An important feature of the PEM Convention is that it provides for ‘diagonal cumulation’. This means that inputs to a product from several countries participating in the Convention may be treated as originating in just one of them and be eligible for preferential market access if the countries concerned have concluded free trade agreements which all apply the same rules of origin. In 2019 the European Commission [proposed changes](#) to the PEM Convention which were intended to modify and simplify these rules of origin. As not all the parties to the PEM Convention supported the proposed changes, they were not agreed. Instead, the European Commission decided that it would seek to agree updated rules of origin with parties to the PEM Convention on a bilateral basis.³

1.3 When we last considered the PEM Convention in May 2020, negotiations between the EU and the UK on an agreement to govern their future relationship were underway but the outcome was far from certain. It was clear, however, that the UK would cease to be bound by the PEM Convention once the post-exit transition period ended on 31 December 2020. If the UK wished to continue to participate in the Convention, it would need to join in its own right. The Government told us that that any decision to become a party to the PEM Convention would be made “in the light of ongoing discussions on the future relationship with the EU as well as future bilateral relationships with other Contracting Parties and third countries that are not Contracting Parties to the PEM Convention”.⁴ We [wrote](#) asking the Government to report back to us once it had reached a decision on UK participation in the PEM Convention and to set out the reasons informing its decision.⁵ As the PEM Convention would in any event continue to apply in Northern Ireland under the [Protocol on Ireland/Northern Ireland](#) (which forms an integral part of the EU/UK Withdrawal Agreement),⁶ we also asked the Government to include in its response an explanation of the legal and practical implications of applying the Convention in one part of the UK customs territory (Northern Ireland) but not the rest.

1.4 In December 2020, the EU and the UK concluded negotiations on a new [Trade and Cooperation Agreement](#) which provides for tariff- and quota-free market access for goods traded between the EU and Great Britain (different arrangements apply in Northern Ireland). To benefit from this preferential market access, goods traded between the two must comply with the rules of origin set out in the EU/UK agreement. These bespoke rules are not the same as those which governed the EU and the UK’s trade with other parties to the PEM Convention when the UK was a member of the EU.

3 See our Fourth Report HC 229–ii (2019–21), [chapter 9](#) (23 April 2020) and our Ninth Report HC 229–vi (2019–21), [chapter 3](#) (21 May 2020).

4 See paragraph 28 of the Government’s [Explanatory Memorandum of 31 October 2019](#) and the subsequent [letter dated 7 January 2020 from the then](#) Minister for Trade Policy (Rt Hon. Conor Burns MP).

5 [Letter dated 21 May 2020](#) from the Chair of the European Scrutiny Committee to the then Minister of State at the Department for International Trade (Rt Hon. Greg Hands MP). Article 5 of the PEM Convention provides: “A third party may become a Contracting Party to this Convention, provided that the candidate country or territory has a free trade agreement in force, providing for preferential rules of origin, with at least one of the Contracting Parties. A third party shall submit a written request for accession to the depositary.”

6 See Article 5(4) of the Protocol and Annex 2, point 4, final indent, which provides that “Obligations stemming from the international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, insofar as they relate to trade in goods between the Union and third countries” will apply “to and in the United Kingdom in respect of Northern Ireland”.

1.5 The EU/UK Trade and Cooperation Agreement allows for ‘full cumulation’ between the EU and the UK, meaning that materials originating in, or processing activities carried out in, one of the parties counts towards origin in the other, making it easier for goods to obtain preferential access to each other’s markets. Unlike the PEM Convention, the Agreement does *not* provide for diagonal cumulation, so components originating or processed in a third (non-EU country) would not count towards the origin of a UK or EU product, even if that country has a free trade agreement with both the EU and the UK.

The Government’s position on the PEM Convention

1.6 In his [letter of 3 November 2021](#) the Minister for International Trade (Ranil Jayawardena MP) informs us that “the Government has not sought to accede to the PEM Convention at this time”. The rules of origin contained in the EU/UK Trade and Cooperation Agreement “are tailored to our bilateral trade” and “reflect not only the UK-EU trading relationship, but technological developments and the truly global nature of the value chains that our manufacturers are a part of too”.

1.7 Northern Ireland, however, continues to remain bound by the obligations contained in the PEM Convention when trading in goods with non-EU third countries participating in the Convention. To understand the practical implications, the Minister refers us to a [Decision of the EU/UK Withdrawal Agreement Joint Committee](#) agreed in December 2020. This Decision determines whether EU customs duties (as set out in the EU’s Common Customs Tariff) or UK customs duties (as set out in the UK Global Tariff), including any preferential tariffs, apply to goods entering Northern Ireland from elsewhere in the UK or from a non-EU country.

1.8 The effect of the Joint Committee Decision, according to the Minister, is that the rules of origin in the PEM Convention “could” apply in Northern Ireland “where this relates to imports of goods under preferences into Northern Ireland from those EU international agreement partners that are parties to the Convention”. We understand this to mean that unlike for the rest of the UK, the rules of origin in the PEM Convention—including the provision for diagonal cumulation—may apply to goods imported into Northern Ireland from non-EU third countries if those countries are also parties to the Convention and have a free trade agreement with the EU. In other words, there may be a wider network of third countries within the Pan-Euro-Mediterranean region whose goods may benefit from preferential access to the Northern Ireland market than would be the case if their goods were to enter the GB market or to enter Northern Ireland via GB.

1.9 How significant this is likely to be in practice is difficult to judge. Much will depend on the terms of the UK’s own bilateral free trade agreements and the provisions they contain on tariffs, rules of origin and cumulation. To add to the complexity and uncertainty, the difference in the EU and UK customs duties payable on the same goods depending on whether they are imported into Northern Ireland or into Great Britain is an important factor in determining which (if any) preferential tariff should apply. Undertaking this comparative exercise is likely to involve an additional administrative burden for Northern Ireland importers and their suppliers.

1.10 The Minister notes that the [UK Trader Scheme](#) is open to businesses moving goods from Great Britain into Northern Ireland irrespective of their origin. The purpose of the scheme is to ensure that traders in Northern Ireland do not have to pay EU customs duties

on these goods if they stay in Northern Ireland (which remains part of the UK’s customs territory) and are not considered to be at risk of entering the EU Single Market. Goods originating outside the UK will in any event already have paid any applicable UK customs duty on entering the GB market.

1.11 Finally, the Minister says that the [Command Paper on the Northern Ireland Protocol](#) published in July 2021 set out the “significant changes” the Government is seeking to the Protocol, adding “the Government is now in intensive discussions with the EU, with the aim of delivering a balanced settlement which is durable in the long-term.”

Analysis

1.12 The Minister confirms that the Government “has not sought to accede to the PEM Convention at this time”, leaving open the possibility that this decision might be subject to review in the future. He says he has sought to explain “how HM Government arrived at the decision in respect of the PEM Convention, and the implications for trade with Northern Ireland” but his response provides no information to help us understand whether and to what extent the application of the rules of origin in the PEM Convention to goods imported into Northern Ireland from countries which are parties to the Convention, but not to the same goods imported into Great Britain, has resulted in disparities in treatment and differences in the customs duties that apply. Nor does he explain whether these differences have practical implications—positive or negative—for businesses and consumers in Northern Ireland, particularly given the possibility that goods imported into Northern Ireland at a preferential EU tariff could enjoy unfettered access to the GB market under the UK’s Internal Market Act 2020.

1.13 The Minister invites us to address any further questions to Lord Frost in his capacity as the Minister responsible for overseeing the implementation of the Northern Ireland Protocol and for coordinating cross-Government positions on trade issues.

Action

1.14 Write to Lord Frost asking him to inform the Committee if the Government decides to review its decision not to participate in the PEM Convention.

1.15 Request further information on the practical implications of applying the rules of origin in the PEM Convention (including diagonal cumulation) to goods imported directly into Northern Ireland but not to the same goods imported into the rest of the UK, explaining:

- what sources of information the Government uses to measure and compare the costs and benefits for businesses and consumers in Northern Ireland and in Great Britain; and
- whether there is any evidence to suggest that traders importing goods into Northern Ireland which are covered by the PEM Convention rules are using the provisions on unfettered access in the UK’s Internal Market Act 2020 to gain preferential access to the GB market.

Letter to the Minister of State (Rt Hon. Lord Frost CMG), Cabinet Office

At our meeting on 8 December, we considered a [letter dated 3 November 2021](#) from the Minister for International Trade (Ranil Jayawardena MP) concerning the [Regional Convention on pan-Euro-Mediterranean preferential rules of origin](#) (the ‘PEM Convention’). When we last considered the UK’s position on the PEM Convention in May 2020, negotiations between the EU and the UK on an agreement to govern their future relationship were already underway. Although the outcome was far from certain, it was clear that the UK would need to accede to the Convention in its own right if it wished to continue to participate after the post-exit transition period ended on 31 December 2020.

The Minister has confirmed, following the conclusion of the EU/UK Trade and Cooperation Agreement, that the Government has not sought to accede to the PEM Convention while adding the caveat “at this time”. We ask you to inform us if the Government decides at a later stage to review its decision not to participate.

Notwithstanding the Government’s decision, we note that the PEM Convention will continue to apply in one part of the UK customs territory (Northern Ireland) by virtue of the Protocol on Ireland/Northern Ireland. The Minister for International Trade suggested that we address any questions we have as to the practical implications for Northern Ireland traders and their suppliers to you in your capacity as the Minister responsible for overseeing the implementation of the Northern Ireland Protocol and for coordinating cross-Government positions on trade issues.

Given your understanding of the operation of the Northern Ireland Protocol and its impact on trade across the UK, it would assist us if you could explain the sources of information the Government uses to measure and compare the costs and benefits for businesses and consumers in Northern Ireland which result from applying the PEM Convention rules and similarly for businesses and consumers in Great Britain where these rules do not apply.

We would also welcome your insight into the interaction between the application of PEM Convention rules to goods imported into Northern Ireland from outside the EU and the provisions on unfettered access in the UK’s Internal Market Act 2020. Is there any evidence to suggest that traders importing goods into Northern Ireland which are covered by the PEM Convention rules are gaining preferential access to the GB market?

Finally, we note that the Government is seeking to negotiate “significant changes” to the Northern Ireland Protocol. Do you anticipate that the changes you are seeking would have any bearing on the Government’s decision not to participate in the PEM Convention or on the way that PEM Convention rules apply in Northern Ireland?

We look forward to receiving your response no later than January 2022.

2 EU trade preferences for developing countries⁷

The proposed EU Regulation is legally and politically important because:

- the changes it proposes to the EU’s scheme of tariff preferences for developing countries will apply to Northern Ireland under the Protocol on Ireland/Northern Ireland;
- the UK’s post-Brexit scheme of tariff preferences for developing countries is based on the EU’s current scheme;
- the Government intends to introduce a new ‘Developing Countries Scheme’ in 2022; and
- differences in the schemes applied in the EU and in the UK could mean that access to trade preferences would differ depending on whether goods are brought into Northern Ireland or into the UK mainland.

Action

- Write to the Minister for Trade Policy (Rt Hon. Penny Mordaunt MP) requesting further information.
- Draw to the attention of the International Trade Committee, the International Development Committee and the Northern Ireland Affairs Committee.

Overview

2.1 World Trade Organization rules allow member countries to offer more favourable terms of trade for products originating in developing countries without requiring these countries to open up their markets to the same extent.⁸ The aim is to support their economic development and integration into the global economy. The EU has its own system of unilateral, non-reciprocal tariff preferences—the Generalised Scheme of Preferences (‘EU GSP’)—which enables developing countries to export most of their products to the EU tariff-free or at a reduced tariff.⁹ It operates on three levels, each offering a different degree of access to the EU market.¹⁰

7 [Proposal for a Regulation on applying a generalised scheme of tariff preferences and repealing Regulation \(EU\) No 978/2012](#); Council document 12184/21 + [Annexes 1–8](#), COM(21) 579; Legal base Article 207 TFEU, ordinary legislative procedure, QMV; Department: International Trade; Devolved Administrations “sighted” on the Government’s Explanatory Memorandum; ESC number 41939.

8 See the [Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries](#) adopted under the General Agreement on Tariffs and Trade (GATT) in 1979.

9 See the European Commission’s [GSP Hub webpage](#).

10 For further information on the current EU GSP scheme, see our Third Report HC 229–i (2019–21), [chapter 7](#) (26 March 2020).

Type of GSP arrangement	Eligibility	Benefits	Number of current beneficiaries
Standard GSP	Low and lower-middle income countries ¹¹ which do not benefit from another arrangement (such as a free trade agreement) granting them more favourable preferential access to the EU market	Tariff-free access to the EU market for ‘non-sensitive’ products and tariff reductions for ‘sensitive’ products, together accounting for around two thirds of product lines	14 countries
GSP+ special incentive arrangement	Low and lower-middle income countries considered to be vulnerable (because of a lack of diversification) and committed to sustainable development and good governance (through the ratification and effective implementation of ‘core’ UN and ILO conventions on human and labour rights, and international conventions on climate, the environment, and good governance)	Tariff-free access to the EU market for around two thirds of product lines	8 countries
Everything but Arms (EBA) arrangement	Least developed countries (LDCs) as defined by the UN	Duty- and quota-free access to the EU market for all products except arms and ammunition	48 countries

2.2 The EU’s [current GSP regime](#) for all but the least developed countries will expire at the end of 2023.¹² The European Commission has [proposed a successor regime](#) to take its place with effect from 1 January 2024 which is intended to “fine-tune” the way the existing EU scheme works rather than pursue far-reaching reform. The three-tiered structure would remain the same as now but with some adjustments designed to make the scheme more effective and more responsive to evolving standards on the environment and on good governance. The changes proposed would:

- amend the economic eligibility criteria for GSP+ to ensure a smoother transition from the ‘Everything but Arms’ arrangement to GSP+;
- adjust the thresholds at which a product can lose tariff preferences under the standard GSP arrangement so that they are better targeted towards poorer developing countries;
- strengthen GSP conditionality by: (i) expanding the list of ‘core’ international conventions concerning human and labour rights, climate, the environment and good governance that underpin the EU’s GSP scheme; (ii) requiring beneficiaries of GSP+ arrangements to submit a ‘plan of action’ setting out how they intend

¹¹ Based on a World Bank classification.

¹² See [Regulation \(EU\) 978/2012](#) applying a scheme of generalised tariff preferences.

to implement these conventions; (iii) introducing a swifter procedure for withdrawing preferences in the event of exceptionally grave violations which call for a rapid response, and (iv) enabling the European Commission to consider the socio-economic effect that a temporary withdrawal of preferences may have in the beneficiary country before it acts;

- improve transparency in the monitoring and implementation of GSP+ commitments by enhancing the opportunities for civil society involvement and encouraging the use of the European Commission’s new complaints mechanism (‘the Single Entry Point’) to report possible breaches; and
- adjust the mechanism for applying safeguards to ensure that it only targets increased imports from GSP beneficiary countries that could harm EU industry.¹³

2.3 The European Commission’s proposal would, for the first time, permit tariff preferences to be withdrawn if a GSP beneficiary country is in breach of its obligation to readmit its own nationals. It also includes a procedure allowing the Commission to review and amend a decision to withdraw tariff preferences if there are “exceptional circumstances, such as a global health or sanitary emergency, natural disaster or other unforeseen events”. Finally, the proposal would require the Commission to agree to more generous rules on [cumulation](#)—the rules determining whether a product has sufficient local content to qualify for preferential treatment—if certain conditions are met.

Relevance for the UK

2.4 Since 1 January 2021, the UK has applied its own [UK Generalised Scheme of Preferences](#) (‘UK GSP’) for developing countries which replicates the EU’s current regime and, for the time being, offers the same preferential market access terms.¹⁴ The Government told us in March that it was committed to improving the UK’s GSP arrangements and expected to announce further details “in the upcoming months”, including the procedures for monitoring the effective implementation of the international conventions underpinning the UK’s scheme.¹⁵

2.5 While the UK is free to diverge from the EU’s GSP regime and establish its own trading arrangements with developing countries, this is not the case for Northern Ireland. The EU’s current GSP Regulation is one of the trade instruments that continues to apply in Northern Ireland under the Protocol on Ireland/Northern Ireland (an integral part of the EU/UK Withdrawal Agreement). Unilateral changes by the EU or the UK to their GSP schemes could mean that access to trade preferences would differ depending on whether goods covered by the schemes are brought into Northern Ireland or into the UK mainland.

13 See the [European Commission’s fact sheet](#), Towards a stronger EU generalised scheme of preferences for a useful summary of the proposed changes.

14 See the [Trade Preference Scheme \(EU Exit\) Regulations 2020](#).

15 [Letter dated 18 March 2021](#) from the then Minister of State (Rt Hon. Greg Hands MP) at the Department for International Trade.

The Government’s position on proposed changes to the EU’s GSP scheme

2.6 As changes to the EU’s GSP regime will apply in Northern Ireland, the Government has deposited the European Commission’s proposal for scrutiny.¹⁶ In her [Explanatory Memorandum dated 18 November 2021](#) the Minister for Trade Policy (Rt Hon. Penny Mordaunt MP) confirms that the UK’s current GSP arrangements are based on the EU scheme but says the Government is “in the process of redesigning its preference scheme” and expects to launch a new ‘Developing Countries Trading Scheme’ in 2022 which will “look to further improve preferential access for developing countries”.¹⁷ The Government’s consultation closed in September.

2.7 The Government is also “seeking to find a new balance in operating the [Northern Ireland] Protocol to place it on a more sustainable footing”, in line with the proposals set out in the Government’s [July 2021 Command Paper on the Protocol](#).¹⁸ Given these developments, the Minister says she is unable to assess the future impact of the changes proposed to the EU’s GSP arrangements. Nonetheless, as the European Commission has not proposed direct changes to the EU’s tariffs or rules of origin for developing countries, she anticipates that the proposal would have “very limited impact” on the current operation of the Northern Ireland Protocol.

Preferential tariffs under the Northern Ireland Protocol

2.8 Under the current Protocol arrangements, the EU’s preferential tariffs apply to goods entering Northern Ireland that are “at risk” of onward movement to the EU Single Market, based on the criteria set out in a [Decision agreed by the EU/UK Withdrawal Agreement Joint Committee in December 2020](#). The UK’s preferential tariffs apply to goods deemed “not at risk” of entering the EU market. The Minister refers us to [earlier correspondence with the Committee](#) in which the Government explained how the “at risk” criteria affect imports of goods from GSP countries. In summary:

- The vast majority (99%) of imports from GSP countries enter the UK via a GB port and will pay the UK’s preferential tariff. If (following customs clearance in GB) the goods subsequently move from GB to Northern Ireland, no additional tariffs will be payable if the goods have been brought in by an authorised trader (under the UK Trader Scheme) or if any EU tariff applicable to those goods is zero. In both cases the goods can be declared “not at risk” provided also that they are not subject to commercial processing in Northern Ireland.
- Almost all goods entering Northern Ireland directly from GSP countries which qualify for the UK’s “least developed” or “enhanced” frameworks (equivalent to the EU’s Everything But Arms and GSP+ arrangements) will be treated as “not at risk” goods. This is because the EU and the UK both apply a zero tariff. Even under the UK’s ‘general’ framework (where reduced tariffs apply), the Minister estimates that at least 90% of the UK’s tariffs are within three percentage points

16 Under Article 13(3) of the Northern Ireland Protocol, new EU acts which amend or replace an EU act referred to in the Protocol automatically apply in Northern Ireland.

17 See the Government’s [Statement of Direction](#) published in July 2021: Designing a new UK trade preferences scheme to take effect in 2022.

18 Command Paper 502 published in July 2021: Northern Ireland Protocol: the way forward.

of the EU’s tariffs, meaning that the goods would still be treated as “not at risk” if the trader bringing the goods into Northern Ireland is authorised under the UK Trader Scheme. As is the case for goods moving from GB to Northern Ireland, the trader must also establish that the goods are not subject to commercial processing in Northern Ireland.

- For goods to be eligible for preferential tariffs (and to determine the applicable tariffs under the EU and UK GSP schemes), traders will need to consider whether their goods comply with EU and UK Rules of Origin—the documentation needed to prove origin for the EU’s GSP and the UK’s GSP is different.
- The Government would seek to mitigate any adverse effects for traders moving GSP goods into Northern Ireland under the EU’s GSP rules through tariff waivers or the reimbursement of tariffs paid on goods which can subsequently be shown to have remained in Northern Ireland—both forms of mitigation are foreseen in the Protocol on Ireland/Northern Ireland.¹⁹

Analysis

2.9 The EU’s current GSP regime provides the baseline for the UK’s post-Brexit system of preferential tariffs for developing countries. The Government expects its new Developing Countries Trading Scheme to take effect in 2022, sooner than the changes proposed to the current EU GSP regime which would apply from January 2024. The Minister does not indicate whether the improvements to the UK’s new scheme would be more far-reaching than the ‘fine-tuning’ envisaged by the European Commission to the EU scheme.

2.10 The sequencing of the changes to the EU and UK schemes means that traders importing goods originating in GSP countries directly into Northern Ireland or via Great Britain will need to be aware of both sets of rule changes to ensure that the correct tariff is applied. Significant differences between the EU and UK GSP regimes—for example in the products they cover, the applicable tariff rates, and the rules of origin which determine whether a product is eligible for preferential treatment—may create a risk of trade diversion to secure the most favourable market access terms. Ongoing discussions between the EU and the UK on the operation of the Northern Ireland Protocol create a further layer of uncertainty.

Action

2.11 We have written to the Minister of State (Rt Hon. Penny Mordaunt MP) requesting further information on:

- the areas in which she expects the UK’s new Developing Countries Trading Scheme to differ from (i) the EU’s current GSP scheme and (ii) the EU’s future scheme (from 2024);

19 See [our letter of 25 November 2020](#) to the Minister for International Trade (Ranil Jayawardena MP) and the [letter dated 18 March 2021](#) from the then Minister of State (Rt Hon. Greg Hands MP) at the Department for International Trade.

- how differences between the EU and UK schemes may affect access to trade preferences for goods originating in GSP countries which are imported into Northern Ireland; and
- the implications that any changes to the operation of the Northern Ireland Protocol—whether agreed with the EU or implemented unilaterally by the UK—would have for these same goods.

***Letter to the Minister for Trade Policy (Rt Hon. Penny Mordaunt MP),
Department for International Trade***

Thank you for your [Explanatory Memorandum of 18 November 2021](#) on [proposed changes](#) to the EU’s Generalised Scheme of Preferences which enables developing countries to export most of their products to the EU tariff-free or at a reduced tariff. The proposal is within the scope of the Protocol on Ireland/Northern Ireland so any changes agreed will apply in Northern Ireland but not in the rest of the United Kingdom.

We would welcome further information on the planned improvements to the UK’s tariff preference scheme for developing countries, how they may affect goods originating in GSP countries which are imported into Northern Ireland, and the implications that any changes to the operation of the Northern Ireland Protocol—whether agreed with the EU or implemented unilaterally by the UK—would have for these goods.

You explain that the UK’s current Generalised Scheme of Preferences is based on the EU scheme as it applied before the UK’s exit from the EU. The latest EU proposals seek to ‘fine-tune’ rather than overhaul the EU scheme.

The Government plans to launch a new Developing Countries Trading Scheme in 2022 which will “look to further improve preferential access for developing countries”. While we appreciate that you have not yet published details of the new UK scheme, we would welcome some indication of the areas in which you expect it to differ from and improve on the EU’s current scheme and on the revised EU scheme which will take effect in 2024. We are particularly interested in any changes to:

- product coverage, tariff rates, rules of origin and cumulation;
- the list of international conventions underpinning the UK scheme and the systems for monitoring their effective implementation; and
- the criteria and procedures for suspending or withdrawing tariff preferences.

We note that the European Commission proposes “more active use of conditionality” and has included inadequate cooperation on readmission as a new ground for withdrawing tariff preferences.²⁰ Do you support this development, and do you expect to include a similar ground in the new UK scheme?

Businesses importing goods originating in GSP countries directly into Northern Ireland or via Great Britain will need to be aware of two sets of rule changes to ensure that the correct tariff is applied—the changes to the UK scheme which will take effect in 2022 and the changes to the EU scheme which will take effect in 2024. Significant differences between

20 Article 19(1)(c) of the proposed Regulation.

the EU and UK GSP regimes—for example in the products they cover, the applicable tariff rates, and the rules of origin which determine whether a product is eligible for preferential treatment—may increase the burdens for business and potentially create a risk of trade diversion to secure the most favourable market access terms. What assessment has the Government made of the implications for Northern Ireland businesses in formulating its new Developing Countries Trading Scheme? Do you anticipate that the changes proposed by the Government in its July 2021 [Command Paper](#) on the Northern Ireland Protocol would affect this assessment?

3 Northern Ireland Protocol: draft EU Energy Taxation Directive (update)²¹

This EU document is legally and politically important because:

- it would make significant changes to both the structure and level of taxation of fuel and other energy products sold in the EU, and these new structures and rates for energy taxation could potentially also apply in Northern Ireland under the Northern Ireland Protocol in the Withdrawal Agreement; and
- the Financial Secretary to the Treasury (Rt Hon. Lucy Frazer QC MP) has replied to questions we put to her in September, indicating that the proposal could indeed result in some changes to fuel duty rates in Northern Ireland, but emphasising the Government is seeking to negotiate changes to the Protocol that would give the UK more flexibility to set duty rates in Northern Ireland outside the confines of EU law.

Action

- Draw the Minister's letter on the potential implications of the Energy Taxation Directive under the Protocol to the attention of the Northern Ireland Affairs Committee.

Overview

3.1 Under the EU's 2003 [Energy Taxation Directive](#) (ETD), all EU Member States must apply minimum rates of fuel duty to sales of energy products such as electricity, petrol and diesel. It is part of the EU's rulebook on 'excise duties', which also separately require specific taxes on alcohol and tobacco products. However, the ETD is now widely considered outdated: in many instances its minimum duty rates have been eroded by inflation over the past two decades to the point of being meaningless, and have therefore lost much of their practical purpose. In addition, the Directive is not considered coherent with the EU's climate change ambitions, because it does not explicitly set higher levels of taxation for more polluting fuels.

3.2 In July 2021, as part of the 'Fit for 55' package of policy measures to reduce greenhouse gas emissions in the EU, the European Commission published a [proposal to amend the Energy Taxation Directive](#). Notably, this would change the structures for fuel duty in the EU, so that broadly speaking fossil fuels would be taxed more heavily than renewable biofuels and electricity. The new minimum rates would also be subject to an automatic annual uplift, to take into account inflation and maintain their real value over time.²²

21 Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast); Council and COM number: 10872/21 + ADDs 1–7, COM(21) 563; Legal base: Articles 113 and 192(2) TFEU, special legislative procedure, unanimity; Department: HM Treasury; Devolved Administrations: Northern Ireland Executive consulted; ESC number: 41888.

22 An earlier proposal by the European Commission in 2011 for a similar automatic 'uplift' was resisted by the EU's Member States, then including the UK.

In addition to these proposed structural changes to the energy tax base, many of the mandatory and optional derogations from excise duty for energy products under the current Directive would be removed, in particular for aviation fuel.²³

3.3 The legislation is in draft only: the proposal is still being considered by the 27 Member States. As a unanimity requirement applies to EU tax policy measures, each Member State has a veto over any changes within the EU’s Council of Ministers.²⁴ The timetable for its adoption and entry into force is unknown at this point, and is likely also linked to concurrent developments in the broader package of ‘Fit for 55’ measures.

3.4 Although the UK left the EU in January 2020, the proposal to amend the Energy Taxation Directive remains relevant to its interests, in particular because EU excise rules—including on fuel duty—continue to apply in Northern Ireland under the terms of the ‘[Protocol on Ireland/Northern Ireland](#)’ in the UK’s Withdrawal Agreement from the EU. There may also be a similar arrangement with Gibraltar, on the application of EU excise rules in that territory, under a draft new UK-EU treaty relating to that territory, which is currently being negotiated.²⁵ We set out the reasons for this in more detail in our [Report of 22 September 2021](#). At that point, we also [put a number of questions](#) to the then-Exchequer Secretary to the Treasury (Helen Whatel MP) to seek clarifications of the potential impact of the draft ETD for the UK. We received a [reply](#) from her successor (Rt Hon. Lucy Frazer QC MP) on 4 November 2021; we have placed her answers in the context of our original conclusions below.

Possible implications of the revised EU Energy Taxation Directive for the UK

3.5 As we noted in our [Report of 22 September 2021](#), EU rules on excise—including the minimum rates for fuel duty—remain in force in Northern Ireland under the terms of the [Northern Ireland Protocol](#) in the UK’s Withdrawal Agreement. Although the Government is seeking a renegotiation of that Protocol to reduce the extent to which Northern Ireland

23 European Commission [Impact Assessment SWD\(2021\) 641](#), p. 9.

24 Each EU Member State effectively has a veto over any changes to the Energy Taxation Directive, because—as an EU tax measure—it requires unanimity in the EU’s Council of Ministers. Therefore, the substance of the legislation is likely to change, potentially significantly, to achieve the necessary consensus. Indeed, a [previous proposal to amend the ETD](#)—back in 2011—never became law because the Member States could not agree on it. A similar fate could still befall this latest attempt.

25 More indirectly, any changes to the EU’s energy mix that flow from the ‘Fit for 55’ package, including a new approach to the taxation of fuel, may impact on the EU’s ability to meet its climate change objectives (relevant for the UK since global reductions are a Government priority), as well as affecting the profitability of UK exports of oil, gas and renewable energy in the longer term. One of the primary objectives of the EU’s climate change and energy policy, including the ETD, is to reduce use of — and demand for — fossil fuels such as oil and gas (which accounted for [more than half](#) of its energy use in 2019). To the extent the EU is successful in changing its energy mix, that could impact on UK exports of fossil fuels to the bloc. Conversely, demand for renewable and other more environmentally-friendly sources of fuel and electricity may rise, potentially offering increased export opportunities for these sources of energy produced in the UK.

must stay aligned with EU legislation,²⁶ including in the field of excise (which we consider further below). However, under the text of the Protocol as it currently applies, not only does the current Energy Taxation Directive still apply in Northern Ireland; any amendments to it, such as those proposed by the European Commission in July 2021, would automatically apply there in due course²⁷ (as and when they have been approved by the EU’s Council of Ministers and take effect).

3.6 The result is that the Commission proposal could therefore potentially trigger significant changes to the way fuel and electricity are taxed in Northern Ireland, as well as risking divergence from the way such taxes operate in England, Wales and Scotland.²⁸ In our Report of 22 September, we concluded changes to EU fuel duty rules could, broadly speaking, have the following implications for Northern Ireland and the UK more generally:

- there could be an increase in tax on different kinds of fuel and electricity used by businesses and consumers in Northern Ireland, if the existing UK rates are—or fall below—the minimum thresholds specified by the new Directive (which, unlike the UK’s current excise duties on energy, may be automatically adjusted for inflation annually).²⁹ Such increases are in fact already a practical reality under the current Directive (albeit less so because most of the existing minimum duty rates, set in 2003 and never adjusted for inflation, are well below those applied in the UK): in January 2021, the Government [increased duty on aviation gasoline](#) because the requirement under the ETD to maintain a particular minimum rate for that type of fuel still applies in Northern Ireland under the Protocol (and extended the increase to the whole of the UK to ensure “consistency across the United Kingdom, to avoid burdens on business and reduce compliance risks for HMRC”);³⁰
- the UK as an EU Member State also availed itself of a number of exemptions to [offer duty relief](#) on certain uses of fuel, whose permissibility under EU law as

26 With respect to changes to the application under the Protocol of EU excise rules, including the Energy Taxation Directive, the Government noted that “issues may multiply as UK and EU VAT and excise rules evolve”. It is therefore seeking a “more flexible settlement” that would give the UK “greater freedom to set [...] excise rates and structures in Northern Ireland” (presumably beyond what is or may in the future be permitted under EU law), not least to avoid the risk of “significant divergence within the UK internal market”. The Government has not made public any detailed proposals for this new “flexible settlement” on excise, and as such it is not possible to evaluate how the new EU Energy Taxation Directive might impact on Northern Ireland in this scenario. In any event, it is not clear at this stage if the EU will agree to any amendments to the Protocol, nor what the Government intends to do if it does not.

27 This is because Article 13(3) of the Protocol provides that “where this Protocol makes reference to a [EU] act, that reference shall be read as referring to that Union act as amended or replaced”.

28 Similarly, the EU has proposed that Gibraltar should have to apply EU excise rules—including the ETD—as part of a new, post-Brexit trading arrangement with the EU, which the Government is currently in the [process of negotiating](#) with Brussels. We may return to this issue as and when there is more clarity about the substance of any EU-UK Agreement on Gibraltar.

29 We concluded that it was unclear whether the minimum rates in the draft new ETD would necessitate any increase in energy taxes in Northern Ireland. By way of example, the current ETD sets a minimum fuel duty rate of approximately €0.36 (£0.31) per litre of unleaded petrol, but in the UK—Northern Ireland included—it is [levied](#) at £0.58 per litre. Under the Commission proposal, this would eventually have to be charged at a minimum of €10.75 (£9.23) per Gigajoule, or €0.44 (£0.38) per litre. This is still below the current UK fuel duty rate, but the difference might disappear over time if the UK maintains its fuel duty freeze while the EU minimum rate is adjusted for inflation each year.

30 The need to increase the duty rate on aviation gasoline was triggered by fluctuations in the euro-sterling exchange rate: the minimum duty rates in the EU Energy Taxation Directive are expressed in euros, so a change necessitated an adjustment of the rate as expressed in sterling.

it still applies in Northern Ireland may now be subject to change. These existing reliefs may need to be reviewed—or even removed—in Northern Ireland in the context of the Protocol, if the new Directive is approved;³¹

- Northern Irish businesses could be placed at a competitive disadvantage within the UK’s internal market if their energy taxes had to be increased or altered because of EU law, but there are no equivalent rate rises or tax changes in the rest of the UK. They could then face higher energy input costs than their counterparts in England, Scotland and Wales;³² and
- the new Directive, to the extent that it triggers or alters any divergence in energy tax rates between Ireland, Northern Ireland and Great Britain, could also have an impact on cross-border consumption patterns for portable fuels between these three jurisdictions, as well as affecting the profitability—for better or worse—of fuel smuggling (which has, historically, [been prevalent across the land border](#) on the island of Ireland).

3.7 Separately, the EU’s Energy Taxation Directive—and any future changes thereto—could also become relevant for the British Overseas Territory of Gibraltar. As set out in more detail in our Report of [22 September 2021](#), negotiations are currently on-going between the Government and the European Commission on new post-Brexit arrangements between Gibraltar and the EU. These are centred on the movement of goods and people across the territory’s land border with EU Member State Spain, with the aim of removing all physical infrastructure relating to customs and immigration at that frontier.³³ As part of those talks, the EU has proposed that Gibraltar should begin to apply EU excise rules, including the Energy Taxation Directive. While we previously expressed concern about the potential implications of Gibraltar having to apply EU fuel duty legislation for its profitable provision of bunkering fuel for the shipping industry in the Mediterranean, when Gibraltar’s Chief Minister (Fabian Picardo) [gave evidence](#) to us on 24 November 2021 he did not express any concerns in that respect.³⁴

The Government’s position on the draft EU Energy Taxation Directive

3.8 Despite the potential implications of the proposed new EU approach to fuel duty for the UK as described above, an [Explanatory Memorandum](#) on the matter submitted by the

31 Even where certain exemptions are not used currently, the new Directive might remove the UK’s discretion to apply them in respect of Northern Ireland in the future.

32 The reverse situation, where rates in Great Britain are higher than those in Northern Ireland, may theoretically be possible but it would not be a consequence of the application of the Energy Taxation Directive in Northern Ireland as such, since EU law only specifies minimum rates and therefore equal rates across the UK would be possible as long as they exceed those thresholds. Divergence of excise rates has not occurred to date because duty rates on energy products are not within devolved competence, but set for the UK as a whole by Ministers, for example under the Hydrocarbon Oil Duties Act 1979.

33 Prior to the UK’s withdrawal from the EU, Gibraltar was also part of the European Union (but with certain exemptions from its laws, in particular relating to the Customs Union and the Single Market for goods).

34 In particular, the Chief Minister noted that all bunkering fuel sold to vessels in the Strait of Gibraltar—whether in Gibraltar, Spain or Morocco—is currently free of duty. However, we would note that the proposed ETD would remove the current mandatory exemption from fuel duty for the maritime sector currently used by Spain, replacing it with a reduced minimum rate (to limit incentives for refuelling by such businesses outside the EU). For maritime journeys between the EU and non-EU jurisdictions, given the possibility for businesses to refuel outside the EU, Member States could still exempt fuel purchases from duty or apply the same rate that would apply if the journey took place within the EU. In addition, the European Commission has proposed that Gibraltar would have to align its duty rates including on fuel—with those set by Spain.

then-Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) in August 2021 made no substantive assessment of the possible ramifications of the proposal for energy taxation in the UK (and for Northern Ireland in particular). While the Memorandum acknowledged that the current Energy Tax Directive “applies to and in Northern Ireland by virtue of [...] the Northern Ireland Protocol”, it went on to say that the Government would “continue to monitor the EU proposals as they develop, to determine whether some or all parts of the revised ETD also fall within scope of the agreement”. We therefore [wrote to the Minister](#) on 22 September 2021 to seek more information about the Directive’s possible ramifications for the UK and Gibraltar, and [received a reply](#) from her successor as Financial Secretary, Rt Hon. Lucy Frazer QC MP, on 4 November 2021.

3.9 First, with respect to the possibility that the new Energy Taxation Directive may apply under the Protocol, the Minister’s reply again acknowledges that EU rules on fuel duty *currently* continue to apply in Northern Ireland. However, “with regard to the applicability of the draft EU ETD”, she notes that “its interaction with the Northern Ireland Protocol poses complex questions which the Government is exploring further to determine whether some or all parts of the revised ETD will fall in scope of the agreement”, and that “the answer will ultimately depend on the final shape of the reforms” (as decided by the EU’s Council of Ministers, without formal UK input).

3.10 The Minister then goes on to refer to the on-going discussions between the Government and the EU to change the operation of the Northern Ireland Protocol, and in particular the former’s proposals—as set out in a [Command Paper of July 2021](#) on “the way forward” to address concerns that the Protocol, by requiring Northern Ireland’s alignment with EU rules, is in some ways detaching it from the rest of the UK. In that document, the Government proposed “a more flexible” (but undefined) settlement “with greater freedom” for the UK “to set VAT and excise rates and structures in Northern Ireland”, to address “problems in some areas” that “may multiply as UK and EU VAT and excise rules evolve”. The Command Paper itself does not cite any specific issues to date in relation to the application of EU excise rules under the Protocol. Given the open border with Ireland (meaning there are no customs controls to verify excise duties on fuel are paid when it crosses from Northern Ireland into the EU), the Government said the move away from alignment with the ETD would be “underpinned by clear safeguards where changes would introduce significant distortions on the island of Ireland; and enhanced consultative mechanisms”.

3.11 We had already acknowledged the Government’s efforts to renegotiate the Protocol in our [original letter of 22 September 2021](#), and specifically asked “to what extent the ETD, either in its current or any future amended form, would continue to apply in Northern Ireland under the Government’s envisaged ‘flexible settlement’ with respect to excise duties under the Protocol”. The Minister’s letter does not provide a substantive response to that question. While confirming the Government “shared with the European Commission a new legal text of an amended Protocol”, this text has not been published or shared with Parliament, and the Minister does not divulge what it contains in relation to excise duties. Intriguingly, the Minister also notes that, following the Command Paper, “the EU has since published proposals in response and the Government is studying them constructively and positively”. This might be taken to imply that the EU’s proposals to address concerns over the operation of the Protocol also cover matters of VAT and excise. However, the only relevant documents [made public](#) by the European Commission, in October 2021, refer

to excise duties [only to say](#) that, if there are changes to the operation of customs controls for goods entering the North from the rest of the UK, the implementation of excise rules in Northern Ireland taken into account (and noting in particular that “goods could not be consumed in Northern Ireland free of VAT and excise duties”). Whether the EU has therefore made any specific proposals that would alter *how* EU excise rules, including the Energy Taxation Directive, are applied in Northern Ireland is not clear.

3.12 In any event, the Minister notes that “application of the ETD will be kept under review depending on the outcomes of [the] deliberations” on the Protocol between the UK and the EU. With respect to the potential impact of the EU proposals on fuel duty *should* they apply in Northern Ireland under the Protocol, we asked the Minister to “set out what assessment the Government has made of the potential impact of the new rate structure, and minimum rates, for taxation of fuel and electricity for Northern Ireland compared to the UK’s current approach to energy taxation as it applies there”. In particular, we asked whether the proposal could potentially necessitate any tax increases for fuel and electricity in Northern Ireland, either immediately upon taking effect or in the longer term (since the EU minimum fuel duty rates would be automatically adjusted annually to inflation, a concept which the UK strenuously opposed as a Member State).

3.13 In [her reply](#), the Minister notes that the Government is still reviewing the proposals for possible implications for Northern Ireland “in the event that some or all parts of the revised ETD fall in scope of the Northern Ireland Protocol” (see above). However, she clarifies that an initial assessment had indicates that “most of the UK’s tax rates for energy products and electricity currently exceed the minimum rates that have been proposed in the draft ETD, so if there were to be any implementation, it would likely have limited impact in the short-to-medium term on the taxation of these products” in Northern Ireland. There are, however, “some energy products which are currently taxed in the UK at a rate that is closer to or below the minimum rates which are proposed in the draft ETD, such as aviation gasoline”.³⁵ Similarly, the Minister refers to the elements of the EU proposal that would require duty to be charged on kerosene used as fuel in the aviation industry and heavy oil used in the maritime industry for intra-EU voyages (for which exemptions currently apply), implying that this could necessitate changes in Northern Ireland. However, given the fact that negotiations on the new Directive in Brussels are at an early stage, the Minister rightly notes that it is not yet possible for the Government “to commit to a final view on the basis of the draft proposals”, and undertakes to update us “in due course once it has progressed [its] assessment”.

3.14 The Minister’s reply does not provide any further substantive information with respect to the potential application of the EU Energy Taxation Directive in Gibraltar under any future UK-EU agreement on that territory’s trading arrangements with the European Union, although—as noted earlier—we have already heard from the Chief Minister of Gibraltar himself on this topic.

35 Indeed, as noted elsewhere in this chapter, the UK fuel duty rate for aviation gasoline was [increased UK-wide](#) in January 2021 from £0.3770 to £0.3820 to comply with the minimum rate in the current Energy Taxation Directive (even though this applies only in Northern Ireland). The Government noted that “after careful consideration, and on balance” it had decided that “there are merits in consistency across the United Kingdom, to avoid burdens on business and reduce compliance risks for HMRC; the measure will therefore increase the excise duty payable on [aviation gasoline] across the UK”.

Conclusions

3.15 We thank the Minister for her helpful update on the potential implications of the EU’s draft new Energy Taxation Directive. We accept that the ramifications of the proposal for Northern Ireland and the wider UK internal market will depend heavily on the outcome of the legislative process in Brussels, likely to last well into 2022 if not beyond, and of the separate talks between the UK Government and the EU on the operation of the Protocol. We are grateful for the Minister’s commitment to keep us updated on relevant developments in both respects. At this stage however, it remains a possibility that for some types of energy products, the proposal could affect statutory minimum fuel duty rates in Northern Ireland. It is worth noting in that respect that, when a duty increase on aviation gasoline was required in Northern Ireland because of the continued application of the ETD there under the Protocol, the Government introduced it on a UK-wide basis (even though the rate could technically have been kept lower in England, Scotland and Wales). We will also continue to monitor the negotiations between the Government and the European Commission on a new UK-EU Agreement on Gibraltar, including in relation to issues of excise and taxation.

3.16 We consider it regrettable that Ministers have refused to publish the detailed legal texts for amendments to the Northern Ireland Protocol that have been shared with the European Commission, including in the area of excise duties. In their absence, it is impossible to determine what, if any, effect the EU’s Energy Taxation Directive—including the amendments now under consideration in Brussels—would have in Northern Ireland and the wider UK internal market under the changes to the Protocol being pushed by the Government (and, indeed, to determine whether any potential negotiated result with the EU in due course reflects the UK’s initial proposals). We ask the Minister to write to us as soon as she is able to share more information about the practical results of the talks on the Protocol with the EU or, in the absence thereof, about the Government’s proposed next steps to address the issues identified in its Command Paper (including, among other things, in relation to excise duties).

3.17 We also note that the European Commission is preparing further amendments to excise duty rules in relation to alcohol and tobacco products, which may raise similar issues in the context of the Northern Ireland Protocol (and, possibly, any UK-EU agreement on Gibraltar).³⁶ We will consider any such proposals, and their potential implications for the UK, further in due course when they are available for public scrutiny and taking into account the state of play in the Government’s negotiations with the EU in respect of both Northern Ireland and Gibraltar.

3.18 A copy of the letter we have sent to the Minister outlining our position is annexed to this chapter. In anticipation of further updates from the Government, we draw the Minister’s reply on the potential impact of the draft EU Energy Taxation Directive to the attention of the Northern Ireland Affairs Committee (given its potential implications under the Northern Ireland Protocol).

36 The European Commission is preparing proposals on [taxation of tobacco products](#); on [taxation of alcohol products](#); and on [cross-border purchases of alcohol and tobacco](#) by private individuals and businesses, for example over the internet. consider such proposals further in due course where appropriate.

Letter from the Chair to the Financial Secretary to the Treasury (Rt Hon. Lucy Frazer QC MP)

Thank you for your helpful update on the potential implications of the EU’s draft new Energy Taxation Directive (ETD) for the UK, and under the Northern Ireland Protocol in particular.³⁷

We accept that the ramifications of the draft ETD for Northern Ireland and the wider UK internal market will depend heavily on the outcome of the legislative process in Brussels, and on the separate talks between the UK Government and the EU on the operation of the Protocol. We are therefore grateful for your commitment to keep us updated on relevant developments in both respects. We have concluded, however, that it cannot be ruled out at this stage that the EU proposal could affect statutory minimum fuel duty rates in Northern Ireland, and note that when a duty increase for aviation gasoline was required in Northern Ireland because of the Protocol, the Government chose to extend this increase to the whole of the UK to avoid divergence within our domestic market.

Similarly, we will also continue to monitor the negotiations between the Government and the European Commission on a new UK-EU Agreement on Gibraltar, including in relation to issues of excise and taxation, and may revert to you on the implications of the draft ETD.

We also note that the European Commission is preparing further amendments to excise duty rules in relation to alcohol and tobacco products, which may raise similar issues in the context of the Northern Ireland Protocol (and, possibly, any UK-EU agreement on Gibraltar). We will engage with the Government on any such proposals, and their potential implications for the UK, in due course when they are available for public scrutiny, and of course taking into account the state of play in the Government’s negotiations with the EU in respect of both Northern Ireland and Gibraltar.

In light of this, we would be grateful if you could write to us before the Christmas recess confirming the Government’s expectations with respect to the timetable for the establishment of the list of eligible arbitrators under Article 752 of the TCA; the reasons for the delays in doing so to date; and what the process is for ‘formally proposing’ eligible individuals by the EU and UK respectively, so that a tribunal could be established if necessary before any list is established by the Partnership Council.

³⁷ Proposal for a council directive restructuring the Union framework for the taxation of energy products and electricity (recast); Council and COM number: 10872/21 + ADDs 1–7, COM(21) 563; ESC number: 41888.

Annex

Documents drawn to the attention of select committees:

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

International Trade Committee: Enhancing trade in the Euro-Mediterranean region: changes to preferential rules of origin [Proposed Council Decision][SNC]; EU trade preferences for developing countries [Proposed Regulation][SNC]

International Development Committee: EU trade preferences for developing countries [Proposed Regulation][SNC]

Northern Ireland Affairs Committee: Enhancing trade in the Euro-Mediterranean region: changes to preferential rules of origin [Proposed Council Decision][SNC]; EU trade preferences for developing countries [Proposed Regulation][SNC]; Northern Ireland Protocol: draft EU Energy Taxation Directive (update) [Proposed Council Directive][SNC]

Formal Minutes

Wednesday 8 December 2021

Members present:

Sir William Cash, in the Chair

Jon Cruddas

Margaret Ferrier

Mr David Jones

Craig Mackinlay

Anne Marie Morris

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 3 agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

Adjourned till Wednesday 15 December 2021 at 1.45 pm.

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Dame Margaret Hodge MP](#) (*Labour, Barking*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Greg Smith MP](#) (*Conservative, Buckingham*)