

Written evidence submitted by the Tobacco Manufacturers' Association (BBP0016)

Darren Jones MP
Chair
Business, Energy & Industrial Strategy Select Committee
House of Commons
London SW1A 0AA

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Inquiry into Businesses and Brexit preparedness

Dear Chair,

On behalf of the Tobacco Manufacturers' Association (TMA), the trade association for the UK tobacco industry which represents British American Tobacco UK Ltd., Imperial Tobacco Ltd., and Gallaher Ltd. (a member of the Japan Tobacco Group of companies), I want to explain the extensive challenges that the industry has faced over the last twelve months trying to obtain any guidance or information from the Government to help the sector prepare for the end of the EU transition period on 31 December 2020.

Consistent delays in new policy and regulatory announcements have had a severely damaging effect on the sector's ability to prepare for the new operating environment. To summarise, there has been widespread delay in communicating the following industry-critical measures.

a) Treatment of tobacco products in a future UK-EU Free Trade Agreement

Back in May, I wrote to the Secretary of State for International Trade underlining the industry's concerns in relation to the critical issue of rules of origin (ROO) requirements for tobacco products, given the significant unintended consequences that could arise if overly restrictive ROOs are agreed in the future EU/UK free trade agreement (FTA).

The ministerial response stated, "The Government will continue its engagement with the industry and preparations to ensure that businesses are prepared for the new tariff regime that will come into effect from the 1st January 2021". However, there has been no further engagement between the Government and the industry, despite repeated correspondence, to understand the wholly damaging impact of overly restrictive ROOs for manufacturers, retailers and other businesses across the British supply chain.

All products sold by TMA members companies are imported into the UK, with over 95% of them from the EU, and neither the UK nor the EU are major producers of tobacco leaf. Therefore, there is no benefit for UK businesses or the UK economy to include restrictive ROOs for tobacco products under the future FTA.

If the future FTA requires a minimum originating content of unmanufactured tobacco (by weight) of more than 10%, TMA's members will be unable to comply with these ROO requirements, and therefore be unable to enjoy tariff preferences. Such restrictive ROOs would contradict UK trade policy which publicly indicates that "free and fair trade is fundamental to the prosperity of the United Kingdom"¹.

Setting ROOs that will not be possible to meet, will result in the imposition of the UK Global Tariff rates of 50% for cigarettes and 70% for roll-your-own products. This will cause a significant price shock and huge disruption to market dynamics, adding further costs and complexity to UK businesses and exacerbating the already significant price gap with illegal, non-duty-paid tobacco products, which already accounts for around 24% of the UK market, and, according to HMRC, cost the Government £1.8 billion in lost revenues in 2019. The existing excise duty system effectively regulates duties on tobacco products, generating over £9bn tax revenues annually.

¹ <https://www.gov.uk/government/publications/a-uk-trade-policy-a-guide-to-trade-legislation/preparing-for-a-uk-trade-policy-a-guide-to-trade-legislation>

High and inflexible ROOs also do not support UK-headquartered (and listed) businesses like British American Tobacco plc. or Imperial Brands plc., and will add costs for thousands of small business retailers and traders across the UK supply chain at a time when many have already been severely impacted due to Covid-19. Finally, restrictive ROOs do not align with HM Government's stated international trade policy of reducing and simplifying tariffs for goods where there is no domestic manufacturing, as is the case for tobacco products.

b) Treatment of Northern Ireland in relation to the transit of tobacco products

As part of the delicate negotiations on future trade arrangements between the UK and the EU, HMRC has been examining ways to run the UK's new tobacco track and trace system alongside the EU system required to operate in NI, as set out by the Commission on 8 May.

However, this appears to be insurmountable. It appears the Commission is reluctant to a) accept HMRC's position; b) understand the way the UK supply chain for tobacco products operates; and c) make any adaptations to its system. This means that the movement of tobacco products into Northern Ireland after 1 January 2021 may have to be suspended, given that UK-based tobacco product manufacturers, wholesalers, retailers and distribution operators would not be able to comply with EU Track & Trace requirements under the current set-up as the EU's position is preventing interoperability. This is regardless of the fact that product movements would be captured by the UK's new Track & Trace system.

Without supplies of tobacco products to Northern Ireland, legitimate businesses will lose sales and revenue and there is the very real risk that criminals will step in to pick up any shortfall of legitimate supply. The involvement of serious and organised in Northern Ireland's illegal tobacco trade is well documented in the annual reports published by the Organised Crime Task Force.

c) Future pictorial health warnings (PHWs) displayed on tobacco products sold in the UK

The TMA was very clear in its regulatory consultation response in October 2018. "The UK tobacco industry operates with a complex multi-national supply chain process, which leaves little room for flexibility. Major production changes need significant lead times, and the design and production of new packaging including imagery begins around 12 months before manufacture"².

Despite repeatedly enquiring with the Department of Health & Social Care (DHSC) since 22 January, about new guidance relating to (a) future PHWs which will be required to be displayed on tobacco products after 31 December 2020, (b) confirmation that the manufacturing deadline for products displaying EU PHWs will be 31 December 2020 and (c) whether there would be an open-ended sell through period for products manufactured before 1 January 2021 which display EU PHWs, it took until 20 August for the DHSC to provide the necessary clarification, leaving barely four months for manufacturers to make the necessary changes to their products and supply chains.

Yours sincerely,

Rupert Lewis
Director
TMA

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² TMA response to the Tobacco Products & Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2018