

The Chartered Institute of Taxation

Advanced Technical

Cross Border and Environmental Taxes

May 2025

Suggested answers

Answer 1

An import entry will need to be completed on the Customs Declaration Service (CDS) including the tariff codes, origin and customs value based on the cost from the 3rd party supplier plus shipping and insurance (method 1). Customs duty is paid via a deferment account and a preferential rate will not apply assuming Chinese origin.

Import VAT can be declared via PIVA and deducted as input tax and sales to UK customers will be subject to UK VAT of 20%.

For sales to overseas customers, there will be a zero rated export of goods from the UK (proof of export should be retained, for example a bill of lading).

Where the goods are shipped from the UK to EU B2C customers, there are 2 potential VAT regimes to follow, with the place of supply being the EU customer country:

Orders of Euros 150 (exc. shipping) or less

Litopa should register for iOSS, meaning that there will be a single VAT registration with sales VAT declared at the VAT rate of the customer's country. No import VAT or customs duty is due on import. VAT returns are filed monthly.

Orders of more than Euros 150

iOSS cannot be used as the value threshold is breached. Litopa will need to VAT register in each EU customer country to import the goods and charge local VAT on the sale. Local advice should be sought.

It may want to consider customs clearing the goods into a single EU country before shipping onward to the customer. In this case it would require a VAT registration in the country of import to recover the import VAT payable. Customs duty would be payable based on the selling price to the customer. It would also be required to VAT register under the OSS system and would account for VAT at the VAT rate of the customer's country. VAT returns are filed quarterly.

Sales to non EU Customers

Local rules should be checked but it is likely a VAT registration will be required to import the goods into the country and make a domestic sale. Customs duty will likely be payable.

Customer Returns

Customs duty may already have been paid twice on the goods. If the customer returns the goods to the UK, they will need to be re-imported, and unless a customs duty relief is used, import VAT and customs duty will be payable again. The import VAT can be declared via PIVA and deducted as input tax but the customs duty would form a further cost. The following reliefs should be considered:

Customs Warehouse

The initial import from China would not be subject to customs duty or import VAT – these taxes are suspended until the goods are removed from the customs warehouse to be shipped to the customer. Where the customer is overseas, the liability is discharged. If the overseas customer returns the goods, they would go back into the customs warehouse on import to the UK and no import VAT or customs duty would be payable until the goods are removed from the warehouse again.

Key requirements to be authorised include needing to be UK established, having robust systems, having premises security, having written processes and having a good compliance record.

It can be relatively onerous and time consuming to put a customs warehouse in place and operate it and this option is only advisable if the saving outweighs the implementation and maintenance cost.

Returned Goods Relief (RGR)

This is less onerous but it would only eliminate the customs duty cost on the goods returned by the customers, not on the initial import of the stock.

The business must:

- be UK established;
- use the relevant CPC code on the import entry;
- ensure the goods were in free circulation when they were originally exported from the UK;
- have proof of export and a process to trace the returned goods to their original export;
- show the same entity as exporter on the original export and as importer on the re-import entry;
- ensure the goods re-imported have not been altered

The re-import must take place within 3 years – this condition will presumably be met as Litopa would be unlikely to accept returns beyond the time-limits in their returns policy. The relief would also be available if only a part of the exported order was returned by the customer.

Temporary Admission is unlikely to be commercially viable as a relief in the customer country as the intention is that the goods will not be returned and a guarantee may need to be lodged to operate the relief.

The provision of storage and fulfilment house services will likely be regarded as a mixed supply, with both being of equal value to Jujup, key tests emerging from the CJEU decision in *Card Protection Plan*. *Fulfilment services are subject to the general VAT rule services* and therefore no UK VAT will be charged to Jujup on this element of the monthly charge. The storage services on the other hand are land related as Jujup has its own dedicated space. UK VAT will therefore apply to this element. Litopa will need to break down the services on the invoice to allow it to apply UK VAT to the relevant part.

As Litopa is providing fulfilment services to Jujup, and overseas client, it will need to check the VAT Fulfilment House Due Diligence Scheme requirements to determine its obligations under these. These rules aim to ensure UK established businesses handling goods on behalf of overseas businesses have carried out checks to verify they are accounting for VAT where required. Otherwise Litopa could be liable for any UK VAT due. Litopa will need to register with HMRC as a fulfilment house. Litopa should ask for a copy of Jujup's UK VAT registration certificate and should verify the VAT registration number online – this check should be repeated periodically. Litopa should also keep detailed records allowing it to identify and track the goods it is importing and handling.

Marking Guide

Import of goods from China – import	0.5
Import of goods from China - PIVA	0.5
Place of Supply UK and Overseas Sales	1
iOSS registration requirements Euros 150 or less	2
Normal overseas registration requirements >Euros 150	1
For >Euros 150 sales, implications of acting as importer of record including import VAT and customs duty payable, local VAT due on sales	2
Export to UK from overseas locations	1
Customs Warehouse benefits and conditions	4
Returned Goods Relief benefits and conditions	4
Fulfilment and warehousing services to HK - POS	2
Fulfilment House due diligence scheme requirements	2
TOTAL	20

Answer 2

GB Chutney needs to establish whether the material imported and manufactured is within the scope of PPT. Plastic packaging is defined as a polymer material that may include additives and be chemically modified per Finance Act 2021, UK Public General Acts, C26 Part 2, para 49. If the single heaviest component in the packaging item is plastic, it is within scope. It needs to have the purpose of being used in the supply chain – from manufacturer to end consumer. As both types of GB Chutney's plastic packaging fit this definition, it needs to consider whether the registration threshold is breached.

The threshold is exceeded on 2 counts:

- the importation of 14 tonnes of plastic packaging, and;
- the UK manufacture of 12 tonnes of plastic packaging

10 tonnes is the total threshold for manufactured and imported items and it is monitored over a 30 day 'look forward' period and a 12 month 'look back' period.

With imports, the company will know on 1 June that it will exceed the threshold in the next 30 days due to the import of 14 tonnes by 20 June. The liability to account for the tax will be from 1 June and GB Chutney has until 30 June to notify.

The company should check whether the manufacturing creates an earlier liability. This would be on the look forward basis. As this will not commence until 1 July 2025, the imports will trigger registration beforehand. The company is liable to account for both types of packaging and any applicable PPT from 1 June 2025.

To determine the weight of product subject to the tax, their composition and any available reliefs need to be considered.

Methods to determine the weight, include product specific weighing, sampling, and bulk weighing a production run and dividing by the number of items. The latter two appear appropriate in this case as all items produced will be identical.

Reliefs are available for product containing more than 30% recycled material. Qualifying recycled materials include 'pre-consumer' waste, i.e. scrap from an unrelated manufacturing process that is reprocessed, or 'post-consumer' waste processed by, for example, re-melting household waste.

The imports will qualify as they contain 42% recycled material. The manufactured product will not qualify as only 27% of the content is recycled.

Relief also exists for packaging exported from the UK within 12 months of manufacture or import. Given the company exports 25% of its products, relief should be available for PPT paid on the manufactured materials included in these. The materials exported will therefore need to be tracked over time.

The company will need to evidence the following in its records:

- how it determined the effective date of registration and liability
- the composition of the products by ingredients and weight used to calculate the tax base.
- the exports (shipping evidence should be used)
- how the tax liability was calculated.

Quarterly returns need to be filed and any PPT paid by the end of the month following the quarter.

Marking Guide

Scope of Tax	
-composition	0.5
-purpose	0.5
Registration Requirements Imports	1
Registration Requirements Manufacturing	1
Calculation of Tax	
- additives	1
Relief for recycled components	
- imports	2
- manufactured	1
Relief for exports	1
Record keeping requirements	2
TOTAL	10

Answer 3

A UK based university is an eligible body. (VATA 1994, Sch 9, Group 6) **[0.5 mark]** and education and related services provided by it are exempt from VAT (Group 6, Sch 9, VATA 1994,) **[0.5 mark]**. The supply of research conducted for a consideration, however, does not qualify for the exemption **[0.5 mark]**. The research and trial management services provided to Affumat by PSU will be taxable supplies **[0.5 mark]** and VAT incurred on related purchases can be treated as input tax by PSU **[0.5 mark]**. The research and trial management will fall within the general rule for place of supply under VATA 1994, s.7A, i.e., where the customer belongs **[0.5 mark]** with no VAT chargeable by PSU.

Healthcare services are exempt from VAT (Group 7, Sch. 9 of VATA 1994), when provided by professionals registered with a relevant statutory body - General Medical Council for GPs **[0.5 mark]**. For GP's supplies, the services must be within the scope of the GP profession and their primary purpose needs to be the protection, maintenance, and restoration of health of the person concerned **[0.5 mark]**. For the services provided by GPs to PSU, it is necessary to determine if they are analytical testing or alternatively whether a substantial part of them is medical care for the trial participants in monitoring their reactions to the tested products. **[0.5 mark]**. The participants will attend clinics to undergo testing, and the services provided by the GPs appear to be of a testing nature and outside of the VAT exemption **[0.5 mark]**. GPs who are registered or required to register due to reaching the VAT registration threshold, will charge 20% VAT to PSU **[0.5 mark]**.

The payments made by PSU to the participants will be outside the scope of VAT as they will not be making supplies in the course of business **[0.5 mark]**.

The blood testing services will not be performed for the primary purpose of protection, maintenance or restoration of the health of the person concerned but to provide PSU with information for analysis and decision making and as such they will be subject to 20% VAT **[0.5 mark]**.

Active and placebo products

Smoking cessation products are zero-rated, when they are licenced and dispensed to an individual **[0.5 mark]**, however, active pharmaceutical ingredients such as those used in the trial do not fall within the zero rating provisions and are standard rated **[0.5 mark]**. The placebo capsules made from potato starch, although made of zero-rated basic foodstuffs, are not of a kind normally purchased and used as food and as such are standard-rated food supplements. **[1 mark]**.

PSU can act as the importer of record for customs clearance for both products, however, the import VAT due would not be recoverable for PSU without it having ownership of the goods **[0.5 mark]**. It is likely that being non-approved medicinal products, the smoking cessation products may need to be imported by Affumat as the licence holder and not another person. Affumat can obtain a UK EORI registration and be named the importer of record on the UK customs declaration **[0.5 mark]**. Without intending to make taxable supplies in the UK, Affumat would not be able to obtain a UK VAT registration and would need to request a refund of import VAT by filing an overseas refund claim with HMRC **[1 mark]**. However, if the importation VAT values are to be substantial, Affumat may consider making a supply of these products to PSU after importation and obtain a VAT registration **[0.5 mark]**. The import VAT would then be directly related to taxable supplies and recoverable by Affumat as input tax **[0.5 mark]**. PSU can recover the VAT charged to it by Affumat on the products as input and uplift the overall service fee to recoup this additional cost without having to make a separate charge to Affumat. **[0.5 mark]**

The smoking cessation product and the placebo will need to be declared for customs purposes. As the smoking cessation product will contain active substances and be used to treat ailments, it will be subject to 0% duty rate **[0.5 mark]**. The placebo, as a food supplement will be subject to customs duty **[0.5 mark]** but if it has EU origin it may benefit from the presserentail zero tariff under the UK-EU TCA **[0.5 mark]**. As both products will be imported by Affumat as their owner, with both products being unique and not similar to other goods, the customs value will need to be determined using valuation method 5 **[0.5 mark]**, taking into consideration all costs of producing, packaging and transporting them to the UK **[0.5 mark]**.

Nicotine measuring devices

The leasing of devices to Affumat is a general rule service and, with the supplier and customer belonging in Italy, they are outside the scope of UK VAT **[0.5 mark]**. However, the use of these devices in the UK will fall within the use and enjoyment provisions (Sch 4A, VATA 1994) as their effective use takes place in the UK **[0.5 mark]**. The Italian supplier will have a UK VAT registration obligation as a result or Affumat can account for UK VAT under reverse charge if it acquires a VAT registration (by virtue of making supplies of the smoking cessation products to PSU in the UK). **[1 mark]**.

The devices can be imported into the UK by the Italian supplier, Affumat or PSU but only the supplier, as owner of the devices, can recover import VAT as input **[0.5 mark]**. There are special customs valuation rules for leased goods as part of valuation method 6, i.e. - multiplying the annual leasing cost by the expected economic life of the goods. **[1 mark]** There are no import VAT and duty reliefs available as Temporary Admission cannot be used due to there being an expectation that some of the goods will not be exported at the end of the trial and the conditions attached to the medical devices would not be met. **[1 mark]**.

The device lessor will not be able to act as the Exporter of Record, even if it has a UK EORI, because it is not established in the UK **[0.5 mark]** and it will need to use an agent, PSU or Affumat to clear the goods for export on its behalf **[0.5 mark]**. The scrapping of devices will have no VAT consequences unless a consideration is received, in which case 20% UK VAT will be due on the sale **[0.5 mark]**.

Marking Guide

TOPIC	MARKS
<u>Supplies by PSU</u>	
Eligible body	0.5
VAT exemption conditions	1
Management services outside scope of exemption	0.5
Recoverability of VAT as input	0.5
PoSS to Affumat	0.5
<u>Healthcare Services</u>	
VAT exemption conditions	0.5
Services of GPs liability – exempted	0.5
Services of GPs liability – standard rated	0.5
Analytical nature of services	1
Payments to participants outside scope	0.5
Blood testing services liability	0.5
<u>Active and placebo products</u>	
Smoking cessation products liability	1
Placebo capsules liability	0.5
PSU as IOR	0.5
EORI registration by Affumat	0.5
VAT registration by Affumat	1
Supply by Affumat to PSU to obtain VAT registration	1
PSU's purchase from Affumat – additional cost	0.5
Customs duty applicable to medicinal products	0.5
Customs duty applicable to placebo products	1
Customs valuation method 5	1
<u>Nicotine measuring devices</u>	
PoSS hiring of goods	0.5
Use and enjoyment provisions override	0.5
UK VAT registration by the supplier or reverse charge by Affumat	1
Importer into the UK	0.5
Customs valuation method 6	1
No import reliefs available	1
Export from the UK at end of use	1
Scrapping of devices	0.5
TOTAL	20

Answer 4

As a product containing over 1.2% alcohol, vodka will be subject to excise duty in the UK **[0.5 mark]**, when it is imported into the UK and destined for consumption here **[0.5 mark]**. The duty point for excise on products imported is the date of entry into the UK. **[0.5 mark]** However it is possible to store excise goods in an excise warehouse with the duty becoming payable at the point they are released for consumption and removed from the warehouse **[1 mark]**.

Excise warehouse premises must be authorised by HMRC before any goods are accepted. Apla will need to apply for approval to become an excise warehouse keeper by submitting forms EX61 and EX69 **[0.5 mark]**.

A plan of the warehouse and a copy of a Health and Safety Risk Assessment for the warehouse will be required with the application **[0.5 mark]** with any additional information HMRC request. Orne Vodka will need to use form EX60 to register as the owner of goods to be stored in an excise warehouse **[0.5 mark]** and it will need to appoint a duty representative as it is established outside of the UK **[0.5 mark]**.

HMRC may require a premises financial guarantee from Apla, which can be utilised in cases of irregularities which lead to loss of excise duty **[0.5 mark]**. The guarantee amount will depend on the amount of excise duty due on an average end of month stock stored at the warehouse **[0.5 mark]**. A movement security will also be required for any loss of excise duties for goods whilst in transit **[0.5 mark]**.

Apla will need to register for access to the Excise Movement and Control System (EMCS), which is used to record and validate movements of excise goods **[0.5 mark]**. HMRC require Apla to have a suitable accounting system and adequate IT infrastructure and HMRC will require right of access to systems, data and documentation **[0.5 mark]**. Apla will be required to keep detailed records of all goods moving in and out of the warehouse including references to stock numbers and undertake physical stock checks and count. **[0.5 mark]**.

If accepted, the authorisation will be granted for 12 months and extended afterwards, if needed, **[0.5 mark]** and it will only apply to the specified warehouse.

An obligation placed on Apla as part of the authorisation by HMRC will be a requirement to undertake excise due diligence on its customers whose goods are to be stored in the excise warehouse **[2 marks total; 0.5 mark per two valid comments]**:

1. Financial health of the company: undertake credit checks and/or company background checks;
2. Identity of the business: verify the company information received against other sources (e.g. certificates of incorporation); request letters of introduction or trade references; visit the company premises.
3. Terms of contract, payment and credit agreements: review before accepting them, challenge anything unusual
4. Transport: check where the goods will be received from and who is responsible for the transport.
5. Existence or provenance of goods: check the origin and confirm the goods exist and are in good condition by inspecting them.
6. Deal: check if it looks too good to be true, such as incentives offered by the customer to take the contract, etc.

Marking Guide

TOPIC	MARKS
Excise duty for vodka in the UK	1
Duty point on import	0.5
Duty point when storing in a tax warehouse	1
Approval as warehouse keeper: application	0.5
Approval as warehouse keeper: plan of premises and Health and Safety Assessment	0.5
Registration as owner of goods kept in a tax warehouse	0.5
Duty representative for non-established owners	0.5
Premises guarantee and valuation	1
Movement guarantee requirements	0.5
EMCS access with description of use	0.5
Accounting systems and IT infrastructure requirements	0.5
Record keeping in the warehouse	0.5
Premises specific approval and time limit	0.5
Due diligence on customers [0.5 mark for two valid comments]	2
- Financial health	
- Identity of business	
- Terms of contract	
- Transport arrangements	
- Existence or provenance of goods	
- Deal arrangements	
TOTAL	10

Answer 5

Suspension and revocation

As GBlecky is based in GB and does not have any Northern Ireland activities its current authorisations will be issued under UK law. Regulation 91 Customs (Import Duty) (EU Exit) Regulations 2018 (CIDEER) sets out when an authorisation can be suspended or revoked. [1 mark]

The most relevant part is either that a condition of the authorisation is being breached, or the eligibility criteria are not met. AEO authorisations can be revoked where, in the opinion of the officer, conditions are not being complied with. [1 mark]

The HMRC officer has identified and highlighted issues which affect both the AEOC and AEOS authorisations. These have not been resolved by GBlecky's actions. Therefore, the officer is within their right to suspend or revoke either or both authorisations. [1.5 mark]

The revocation of one authorisation or decision does not automatically revoke other authorisations unless these were conditional upon the first authorisation. However, GBlecky would lose all AEO related benefits. [1 mark]

For AEOS, suspension or revocation means that safety and security simplifications will be lost and resulting in increased administration. The loss of status may make GBlecky a less attractive business partner in some third countries, particularly if its competitors are AEOs. For AEOC, suspension or revocation means that simplifications for customs clearance will not be available potentially leading to longer clearance times. [1 mark]

If HMRC revokes the AEO status (and subject to any appeal) GBlecky may not re-apply for three years. [0.5 mark]

Effect on Deferment Account Waiver

GBlecky's deferment account guarantee waiver was granted under the UCC when the reduction was dependent on holding AEOC status. However in GB since EU Exit, this does not apply, so GBlecky could apply to keep its guarantee waiver if AEOC is lost or relinquished. [1.5 marks]

Effect on Inward Processing (IP) and Customs Warehouse authorisations

As none of the issues relate to sites operating IP, it is likely that this would be able to continue without amendment. However, given that the Customs Warehouse is directly affected by these issues, there is a risk that could also be suspended or revoked. [1 mark]

Actions to take to try to prevent revocation

AEO standards must be maintained at all locations. Consequently, GBlecky should investigate the causes of the losses. It will need to review its security procedures and possibly its recruitment policy at the affected sites to identify the issues or individuals involved. [1 mark]

It will have to convince HMRC that it has identified the causes and either revised procedures to reduce the possibility of recurrence or dealt with individuals if the issue was staff theft or not following procedures.

It could:

1. Employ procedures used at its other locations that do not experience any unexplained losses or undertake audits to identify weaknesses in current systems.
2. Increase or refresh training.
3. Issue a reminder to staff about theft resulting in immediate dismissal and that appropriate action, involving the Police, will be taken where necessary.
4. Consider whether it has enough senior staff need to oversee junior staff, given they are not following procedures.

5. Consider whether it is making best use of measures such as CCTV, security staff and tagging of stock.

[2 marks]

Ultimately, if GBlecky can not address the issue within the suspension timescale it may be advisable to request to cancel its AEO authorisation. If GBlecky does this rather than wait for HMRC to revoke it, it could re-apply as soon as the issues are resolved. [0.5 mark]

Freeport

The AEO authorisation conditions and those to be a Freeport Business (FB) are quite similar so GBlecky should be able to meet these at a new Southampton site. The key point is that the FB conditions are considered only for the site operating the Freeport procedure(s) whilst AEO conditions have to be met for the whole business. [1 mark]

So if GBlecky can demonstrate that the failures to operate procedures correctly at some of its sites are not present at the FB site then these should not be a bar to obtaining authorisation. [0.5 mark]

HMRC should not re-examine records or systems it considered when granting AEO status when looking at the FB application. However, any new site-specific procedures, such as access to the site and physical site security would be considered. Similarly, any new FB records would be looked at but if existing stock control / processing records are to be used for the Freeport business with new location identifiers then it is unlikely that HMRC would need to look at these again. [1 mark]

HMRC will have to consider how GBlecky intends to operate the site and business before granting GBlecky authorisation to be a FB. They will also most likely check the operation and compliance with procedures shortly after the business starts operating. [1 mark]

FB Procedures

Anybody who meets the FB authorisation criteria can apply to become a FB operating on a Customs Site Operator (CSO) site. If not a CSO the FB applicant must make a commercial agreement to operate on a specific CSO site(s). [1 mark]

A FB is not responsible for physical security of the whole site, which remains the responsibility of the CSO, but are responsible for the security of its own premises on the CSO site. It must keep their own records and make declarations and are required and provide the necessary information on goods, movements of goods and processing of goods so that the CSO can keep accurate records. [1.5 marks]

A FB may store and processes its own goods or goods belonging to others. [0.5 mark]

Goods may be transferred between the Freeport Procedures and normal Processing and Customs Warehouses, so GBlecky could continue to use the third-party Customs Warehouse whilst putting the FB authorisation in place. [0.5 mark]

The Freeport procedures are very similar to Inward Processing (which allows goods to be imported, processed and either re-exported or released to free circulation using the commodity code of the finished article to determine the duty) and to Storage (Customs Warehousing) which allows indefinite storage of goods without payment of Customs Duty and Import VAT. [1 mark]

Marking Guide

<u>Suspension and revocation</u>	
GBlecky is GB based, so authorisation issued under UK law. Reg 91 CIDEER covers suspension and revocation.	1
Either conditions not being met or eligibility criteria no longer met. AEO can be revoked if conditions not met.	1
HMRC have identified stock issues and preference procedures not followed. GBlecky failed to resolve these so HMRC could suspend or revoke either or both AEO authorisations.	1.5
Revocation of one authorisation / status does not automatically revoke others.	1
Effect AEOS – lose S&S simplifications. May be less attractive business partner. AEOC lose Customs simplifications – possible longer clearance times.	1
If HMRC revokes AEO, GBlecky cannot re-apply for three years.	0.5
<u>Deferment Waiver</u>	
Current waiver was issued under UCC when AEOC was required. No longer a condition so could apply to keep waiver even if status lost / relinquished.	1.5
<u>IP & CW Authorisations</u>	
No issue at this site, so likely this could continue. However, CW is directly affected so could be suspended or revoked too.	1
<u>Actions to avoid suspension or revocation</u>	
AEO standards must be maintained at all locations. Should investigate causes. Should review security and recruitment policies at affected sites.	1
Have to persuade HMRC that have identified and addressed system issues or problem staff. Could <ol style="list-style-type: none"> 1. Employ procedures used at its other locations that do not experience any unexplained losses or undertake audits to identify weaknesses in current systems. 2. Increase or refresh training 3. Issue a reminder to staff about theft resulting in immediate dismissal and that appropriate action, involving the Police, will be taken where necessary 4. Consider whether it has enough senior staff need to oversee junior staff, given they are not following procedures 5. Consider whether it is making best use of measures such as CCTV, security staff and tagging of stock. (Any four relevant examples)	2
If cannot address issues in time scale it is better to request cancellation of AEO as can then re-apply at any time.	0.5
<u>Freeport options</u>	
FB authorisation conditions are similar to AEO so should be able to meet at Southampton. Key point, FB conditions are site-specific; AEO applies across whole business.	1

So, if GBlecky can demonstrate that there are no issues at Southampton, the other issues may not be a bar to getting FB.	0.5
HMRC should not re-examine records and systems considered when granting AEO but new site-specific (e.g. physical security) procedures would be audited. Stock records may be relevant depending on changes involved.	1
HMRC will check planned operation and likely re-audit once operating.	1
<u>Freeport Procedures</u>	
Anyone can apply if can meet the conditions but must make commercial arrangement with CSO.	1
FB is responsible for own site security, must keep own records, make declarations and provide enough information to allow CSO to keep site stock records.	1.5
A FB can store or process own goods or those belonging to others.	0.5
Goods can be transferred between Freeport Procedures and normal IP and CW, so can use existing CW while setting up.	0.5
Freeport Procedures are similar to IP and CW.	1
Total	20

Answer 6

Purpose of registration period and likely outcomes

The registration period gives the EU time to fully investigate the allegations of “circumvention” involving Malaysia. Registration means the Customs Authorities keep a list of who has imported goods classified within the commodity code of the goods attracting ADD and which are dispatched from Malaysia, regardless of the declared origin. [1 mark]

Circumvention commonly involves taking goods subject to ADD measures (Chinese-originating in this case), sending them to another country (Malaysia) and through a combination of relabelling, false paperwork and possibly mixing with goods which genuinely originate in somewhere other than China, making them appear as if they originate in Malaysia and so do not attract ADD. Other practices which are not economically justified and can be linked to the imposition of ADD are circumvention e.g. modifying the goods to alter the commodity code (but not the essential characteristics of the goods) to one which does not attract ADD, reorganisation of trade or assembly in a third country. [1.5 mark]

The possible outcomes at the end of the registration period are:

1. The EU finds no evidence of circumvention and does not extend the ADD measures;
2. The EU finds evidence of circumvention and extends the Chinese ADD “all other companies” rates to goods consigned from Malaysia regardless of where they originate. This extension could be prospective only (i.e. from the date of a new Regulation) but would most likely be retrospective from the start of the registration period and would be ongoing.

[1.5 marks]

Malaysian companies which co-operate with the EU may be granted a reduction (sometimes to zero) of ADD, these will be named in the Regulation. This is granted where the company demonstrates it genuinely manufactures its own product which originates in Malaysia and does not trade in (or clearly distinguishes any trade in) Chinese-originating product. [1 mark]

Once the authorities have detected circumvention they are likely to make further checks on imports of the same product and if the goods are found to be of Chinese origin ADD applies. [0.5 mark]

HMRC would notify NIByco of a Customs Debt (by C18) for all relevant goods imported during the registration period shortly after it ends if ADD is charged retrospectively. [0.5 mark]

Risks associated with the new suppliers

For the BanglaBike supplies, unless preference is being claimed, the normal non-preferential origin transformation rules apply meaning that goods obtain their origin from the country where goods underwent their last economically justified process which resulted in the manufacture of a new product or represented an important stage in manufacture. [1 mark]

More generally, unassembled goods are classified as finished items. Simple assembly is always excluded as a process which is sufficient to grant originating status under non-preferential and preferential rules origin rules. So genuine manufacturing is needed to confer origin. [1 mark]

The EU will use various measures to check for circumvention including looking at patterns of imports and exports from countries involved; the trading pattern of companies; visits to premises; examination of goods and audit of documents. [1 mark]

Commercial decisions to make:

1. NIByco could stop claiming preference on Bangladesh goods until their origin is confirmed. It could make a retrospective claim within the period of validity if Bangladesh origin is confirmed;
2. Keep claiming preference and notify HMRC of potential debt if checks confirm preference is not valid.

3. Stop importing from these companies until it has determined where goods truly originate. NIByco must consider how much ADD could be charged retrospectively;
4. Continue importing but build worst case scenario (other companies' rates) into onward pricing.
5. Advise HMRC now of concerns or await outcome of own reviews.
6. Apply for BOI(s) but these are only binding on future imports.
7. It may be more prudent to buy from suppliers who attract ADD as the position will be clear. Would current suppliers be the cheapest option if ADD were due?
8. Alternatively, if suppliers can be found in non-ADD attracting countries which are not the subject of a registration period this may provide certainty even if their price is higher than the current suppliers.

[3 marks]

HMRC can issue Customs Duty demands covering imports made in the last three years or 20 years in the case of fraud. NIByco's liability to pay that irrecoverable Customs Duty would significantly damage its business given the ADD rate. [1 mark]

NIByco should examine its contracts with these suppliers to see whether these indemnify NIByco from additional Customs Duty demands should the described facts turn out to be false. Even if they do, NIByco should consider how likely these suppliers are to honour those obligations if they are actually misdescribing the origin of goods and what chance it would have of enforcing these contracts. [2 marks]

NIByco should consider whether it has insured itself against additional demands and whether that insurance required NIByco to carry out any due diligence for it to apply. [0.5 mark]

If NIByco finds errors or has significant doubts about the origin of its products it should notify HMRC of the amounts due so the situation can be regularised. This significantly reduces the likelihood of any penalties. [1 mark]

NIByco must consider whether it thinks it is credible for the Chinese companies to be able to quickly set up manufacturing facilities in Malaysia and be able to transfer manufacturing there. The same applies to the Malaysia to Taiwan move. [0.5 mark]

If tested at Tribunal, it would be for NIByco to demonstrate that the goods do in fact originate in a non-ADD attracting country as for most matters the burden of proof lies with the appellant. [1 mark]

NIByco must consider what evidence it holds other than invoices. It must consider whether it has carried out any due diligence e.g. did it visit factories in Malaysia to see whether they could realistically produce the product and the quantity of product supplied? [1 mark]

If not and NIByco continues importing from these suppliers, it should carry out due diligence now. Any visit should consider the issue historically i.e. if the factory can produce those goods now is there evidence it could when NIByco started importing from it. Could circumvented goods have been used early on whilst manufacturing was set up? [1 mark]

Marking Guide

<u>Purpose of registration period and likely outcomes</u>	
Gives EU time to investigate allegations of circumvention. Requires Customs Authorities to record who is importing relevant goods.	1
Circumvention means taking Chinese-originating goods and sending them to Malaysia and making them appear as if they are of Malaysian origin to avoid ADD. Also includes modifying product slightly to change comm code, or altering trade with no economic justification and linked to ADD.	1.5
Possible outcomes: 1. EU decides there is no circumvention; or 2. EU imposes Chinese 'all other companies' rate on the goods consigned from Malaysia. Extension of measures could be retrospective or prospective.	1.5
Malaysian companies which co-operate could be granted exemption and named in Regulation if EU satisfy their goods are genuinely Malaysian.	1
Once authorities identify circumvention in one area checks are likely to increase. Any goods found to be of Chinese origin would attract ADD.	0.5
HMRC would notify NIByco of ADD charges by C18 if measures apply retrospectively.	0.5
<u>Risks associated with new suppliers</u>	
Normal non-preferential rules apply to goods, so obtain origin from last economically justified process which resulted in a new product or represented an important stage in manufacture.	1
Unassembled goods are always classified as finished item and simple assembly is always excluded from processes which confer origin. Therefore, need proper manufacturing to take place.	1
EU will use various measures to check for circumvention, such as pattern of trade and visits to factories.	1
Decisions to make: 1. Stop claiming Bangladesh preference until origin confirmed. Could make belated claim; 2. Keep claiming preference and notify HMRC if can't confirm goods qualify; 3. Stop importing from all these suppliers until determine where goods originate. Must consider size of potential bill; 4. Continue importing but build in worst case scenario to onward pricing; 5. Whether to advise HMRC of concerns now or await findings; 6. Apply for BOI(s) but only binding on future imports; 7. Consider buying from suppliers who do attract ADD so the position is clear. Are current suppliers the cheapest if ADD is due? 8. Can alternative suppliers in non-ADD attracting countries which are not subject to registration available even if their price is higher than current suppliers – would provide certainty of cost.	3 marks for reasoned advice
HMRC can go issue Duty demands covering imports made in the last 3 years, extended to 20 years the case of fraud. NIByco would be liable. Duty is irrecoverable and will significantly damage the business given the rates involved.	1

NIByco should examine contracts with these suppliers, do these indemnify NIByco against additional demands. Even if they do, does NIByco think the suppliers would honour these contracts and could NIByco enforce them if the companies are involved in circumvention?	2
NIByco should consider whether it has insured itself against potential demands for Customs Duty and if so, whether the insurance require it to carry out any due diligence.	0.5
If NIByco finds errors it should declare these to HMRC to reduce likelihood of penalties.	1
NIByco must consider whether it is credible for these suppliers to set up manufacturing facilities in another country so quickly.	0.5
If question of origin is tested at Tribunal the burden of proof is NIByco's, do they have good evidence to support the claim origin?	1
What evidence does NIByco hold other than invoices? Did it carry out any due diligence e.g. visit the suppliers?	1
If not and it decides to continue importing from these suppliers, it should do so now. Consider the question historically, is there evidence it could have operated from when imports started. Could have circumvented goods in early days.	1
Total	20