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TAXATION (CROSS-BORDER TRADE) BILL

I am grateful to the House of Lords Select Committee on the Constitution ("The Committee") for its report of 23 February on the Taxation (Cross-border Trade) Bill ("The Bill"). The points raised in the Committee's report were also raised during the Bill's passage through the Commons, which was completed on 16 July.

As the report identifies, the Bill enables the government to establish a standalone customs regime, as well making necessary provision in relation to VAT and excise. The powers and procedures in the Bill have been drafted in a way that is consistent with other tax legislation, and recognises the need for the UK to be able to give effect to a smooth exit from the European Union.

The Committee's report addresses two key points regarding the use of delegated powers contained in the Bill. This response sets out government's approach in each case.

The made affirmative procedure

The Committee's report states that the use of the made affirmative procedure is inappropriate in anything but what it defines as "urgent cases" and the draft

affirmative procedure should be used instead. In tax legislation, however, it is usual practice to use the made affirmative procedure where policy must be give immediate effect, as is often the case.

In this Bill, the made affirmative procedure will allow the government to give immediate effect to legislation where there would otherwise be a gap in UK statute. For example, the customs tariff may need to be amended swiftly (using the powers under clause 8) to reflect a change in international trade. However, such legislation would cease to apply after a short period of time in the event that it does not obtain the express approval of the House of Commons within 28 days. Recognising the unique interest in the power provided for by clause 31(4), which allows the UK to give effect to a customs union arrangement with another territory or territories, the draft affirmative procedure will apply in this case. An Order in Council made under that power must be laid in draft and approved by the House of Commons before it can be presented to Her Majesty in Council. Again, this is consistent with a longstanding approach to such legislation, including that used to give effect to the provisions in double taxation treaties that the UK enters into.

The use of public notices

The Committee's report echoes the view of the Delegated Powers and Regulatory Reform Committee that the making of law by public notice is a "radical concept". The government does not accept this assessment. It is usual practice for public notices to be used in relation to the administration of tax regimes. Such notices make provision that is purely technical or administrative in nature, may be subject to regular updating or need to be changed quickly, or may be based on external sources. Examples in the Bill of where powers to make public notices are appropriately conferred include in relation to the form and content of a customs declaration, and the currency exchange rates that will apply for the calculation of import duties due.

The Bill also provides for trade remedy measures to be imposed by public notice. These measures will be determined by an independent and impartial body,

following a rigorous and extensive investigation process. This process is informed by strict World Trade Organization (WTO) rules. The use of public notices here recognises the imperative to act quickly to give UK industries much-needed relief when they are suffering injury, and is consistent with the approach taken by other WTO members.

I thank the Committee again for their report and hope that this response has been helpful.

A handwritten signature in blue ink, appearing to be the name 'John'.A handwritten signature in blue ink, appearing to be the name 'Mel'.

RT HON MEL STRIDE MP