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STATUTORY INSTRUMENTS

2019 No. 474

EXITING THE EUROPEAN UNION

EXCISE

CHANNEL TUNNEL

The Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019

Made - - - - - *6th March 2019*

Laid before the House of Commons *7th March 2019*

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs make these Regulations, except regulations 10 to 17, in exercise of the powers conferred by—

- (a) section 11(1)(d) and (e) and (2) of the Channel Tunnel Act 1987(a);
- (b) section 45(1), (2)(a), (b), (d) and (j), 48(11) and 52(2) of the Taxation (Cross-border Trade) Act 2018(b).

The Treasury consider it appropriate, in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the European Union to make regulations 1, and 10 to 17 of these Regulations and make them in exercise of the powers conferred by section 51(1)(c) of the Taxation (Cross-border Trade) Act 2018(c).

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- (a) 1987 c. 53. Section 11(1) provides that an order under that section may be made by the appropriate Minister. Section 13(1) provides that the appropriate Minister means, in relation to any matter, the Minister or Ministers in charge of any Government department or departments concerned with that matter. Section 13(2) provides that, where the Commissioners of Customs and Excise are concerned with any matter, section 13(1) shall apply as though the reference to a Minister or Ministers in charge of a Government department or departments concerned included a reference to the Commissioners of Customs and Excise. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
 - (b) 2018 c. 22. Section 49 of the Act 2018 defines "HMRC Commissioners" as the Commissioners for Her Majesty's Revenue and Customs for the purposes of sections 45 and 48.
 - (c) Section 51(1) of the Taxation (Cross-border Trade) Act 2018 provides that regulations may be made by the "appropriate Minister". Section 51(4) of that Act provides that the "appropriate Minister" includes the Treasury.

The Commissioners for Her Majesty's Revenue and Customs and the Treasury consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the European Union, that the following Regulations come into force on such day as the Treasury may by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 appoint.

PART 1

Introductory provision

Citation and commencement

1. These Regulations may be cited as the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 and come into force on such day as the Treasury may by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 appoint.

PART 2

The Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998

Revocations

2. The Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998(a) and the Excise Duty Point (External and Internal Community Transit Procedure) (Amendment) Regulations 1998(b) are revoked.

Transitional and saving provision

3.—(1) The Principal Regulations continue to apply in relation to excise goods that are subject to the external Community transit procedure or the internal Community transit procedure on exit day, where the EUCL continues to apply on and after that day in respect of those goods in accordance with Part 15 of the Customs (Import Duty) (EU Exit) Regulations 2018(c).

(2) When the EUCL ceases to apply—

- (a) the Excise Goods (Holding, Movement and Duty Point) Regulations 2010(d) shall apply in respect of the goods,
- (b) but the provisions of Part 4 of the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019(e) shall not apply.

(3) In this regulation—

- (a) “EUCL” has the meaning given by regulation 2 of the Customs (Import Duty) (EU Exit) Regulations 2018;
- (b) “excise goods” means goods subject to any excise duty, as that term is defined by section 49 of the Taxation (Cross-border Trade) Act 2018;
- (c) “external Community transit procedure” has the meaning given in regulation 2(d) of the Principal Regulations;

(a) S.I. 1998/202, amended by S.I. 1998/3110, 2010/593.

(b) S.I. 1998/3110.

(c) S.I. 2018/1248, amended by S.I. 2019/326.

(d) S.I. 2010/593; amended by S.I. 2011/2225, 2012/2786, 2013/3210, 2015/368, 2019/13, and by Part 4 of this instrument, and modified by S.I. 2010/594.

(e) S.I. 2019/13.

- (d) “internal Community transit procedure” has the meaning given in regulation 2(f) of the Principal Regulations;
- (e) “the Principal Regulations” means the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998.

PART 3

The Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010

Amendments to the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010

4.—(1) The Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010(a) is amended as follows.

(2) After article 2, insert—

“2A. The modifications made by paragraphs 1(a) and (ab), 4B and 4C of the Schedule continue to apply to any movement starting in a control zone(b) until the end of that movement.

Liability to excise duty in a control zone

2B.—(1) Where an excise duty point occurs in a control zone, liability to excise duty is to be calculated in the same manner, and is subject to the same reliefs (on the same conditions) as if the excise duty point had occurred in the United Kingdom.

(2) So far as is necessary to give effect to paragraph (1), any reference in an enactment relating to excise duty to the “United Kingdom” is to be regarded as including a reference to a control zone.

(3) For the purposes of this article—

- (a) “excise duty” has the meaning given in section 49 of the Taxation (Cross-border Trade) Act 2018; and
- (b) “excise duty point” has the meaning given in section 1(1) of the Finance (No. 2) Act 1992(c).”.

(3) In paragraph 1 of the Schedule—

(a) after paragraph (a), insert—

“(aa) in paragraph (b) of the definition of “customs suspensive procedure or arrangement”(d), regard the words “United Kingdom” as being followed by “or a control zone”; and

(ab) after the meaning given for “transporter”, regard there as being—

““the tunnel” has the meaning provided in article 2(1) of the Channel Tunnel (Customs and Excise) Order 1990(e).””; and

(b) omit paragraphs (b) and (c).

(4) For paragraph 4 of the Schedule, substitute—

“4. In regulation 6 of those Regulations—

(a) S.I. 2010/594. That Order provides for the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (“the 2010 Regulations”) to apply in a control zone with the modifications set out in the Schedule to that Order. The 2010 Regulations are amended in the manner set out in footnote (d) on page 2 of these Regulations.

(b) “Control zone” is defined in article 5 of the Order.

(c) 1992 c. 48.

(d) This definition is substituted by regulation 6(2)(a) of these Regulations.

(e) S.I. 1990/2167. There are amending instruments, but none is relevant.

- (a) regard the words “United Kingdom” in each of paragraphs (1), (2)(a) and (2)(b) as being followed by “or a control zone”; and
- (b) in paragraph 2(a), regard the words “excise goods” as being followed by “intended to be brought into the United Kingdom through the tunnel”.

4A. In regulation 7(1)(g) of those Regulations, regard the words “United Kingdom” as being followed by “or a control zone”.

4B. In regulation 37(1) of those Regulations, regard the words “wholly within the United Kingdom” as being followed by “or under a movement referred to in regulation 56(1B)”.

4C. In regulation 56 of those Regulations—

- (a) in paragraph (1)(a), regard the words “United Kingdom” as being followed by “or a control zone”; and
- (b) after paragraph (1A)(a), regard there as being inserted—
 “(1B) Where the movement starts in a control zone, the condition in paragraph (1)(c) shall be regarded as satisfied where the goods proceed directly from the control zone through the tunnel to the United Kingdom and, once they have entered the United Kingdom, do not at any time leave the United Kingdom during the remaining course of the movement.”.

(5) Omit paragraphs 5 to 10 of the Schedule.

(6) In the modification made by paragraph 11 of the Schedule, omit sub-paragraph (4).

Transitional provisions relating to the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010

5.—(1) The amendments in regulation 4 do not have effect in relation to goods in the course of a movement on exit day.

(2) For the purposes of paragraph (1), the term “in the course of a movement on exit day” has the meaning provided by regulation 44(2) of the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019.

PART 4

The Excise Goods (Holding, Movement and Duty Point) Regulations 2010

CHAPTER 1

Amendment of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010

Amendment of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010

6.—(1) The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 are amended as follows(**b**).

(2) In regulation 3(1)—

- (a) for the definition of “customs suspensive procedure or arrangement” substitute—

““customs suspensive procedure or arrangement” means—

- (a) any one of the special Customs procedures provided for in Part 1 of the TCTA 2018(**c**) (other than an authorised use procedure(**d**)); and

(a) Regulation 56(1A) is inserted by regulation 7 of these Regulations.
 (b) The amendments made by this regulation replace amendments made by S.I. 2019/13 to the same provisions.
 (c) “TCTA 2018” is defined as the Taxation (Cross-border Trade) Act 2018 in regulation 3(1) of S.I. 2010/593, as amended by S.I. 2019/13.
 (d) “Authorised use procedure” is defined in paragraph 13 of Schedule 2 to the Taxation (Cross-border) Trade Act 2018.

- (b) the situation between the goods being presented to the Commissioners upon their entry into the United Kingdom in accordance with paragraph 1(1) of Schedule 1 to the TCTA 2018 and the earlier of—
 - (i) the end of the period of 90 days beginning with the day on which the goods are so presented, and
 - (ii) a Customs declaration under Schedule 1 to that Act being accepted in respect of the goods;”; and
- (b) for the definition of “place of importation” substitute—

““place of importation” means the place where excise goods are when a declaration for the free-circulation procedure^(a) or an authorised use procedure in respect of those goods is accepted in accordance with Schedule 1 to the TCTA 2018;”.
- (3) In regulation 3(3), for sub-paragraph (a) substitute—

“(a) starts when—

 - (i) the goods leave a tax warehouse (where the consignor is an authorised warehousekeeper); or
 - (ii) a declaration for the free-circulation procedure or an authorised use procedure is accepted in accordance with Schedule 1 to the TCTA 2018 (where the consignor is a registered consignor), and”.
- (4) In regulation 19(1), for “(2) to (5)”, substitute “(3) and (4)”.

Application of Part 8 to certain energy products

7. After regulation 56(1), insert—
- “(1A) This Part also applies to the movement of the energy products mentioned in Article 20(1) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity—
- (a) from a place of importation to a tax warehouse; and
 - (b) from a tax warehouse to a place from where the goods will leave the territory of the United Kingdom,
- where the conditions in paragraph (1)(c) and (d) are met.”.

Consequential provisions

8. Regulations 7(2)(e) and (n) and (4)(a) of the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 are revoked.

Transitional and saving provision

9. Part 4 of the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 applies to the amendments made by regulations 6 and 7 as if they had been made by those Regulations.

CHAPTER 2

Excise goods arriving at RoRo locations

Modification of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010

10. The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 apply to excise goods^(b)—

(a) “Free-circulation procedure” is defined in section 3(3)(a) of the Taxation (Cross-border) Trade Act 2018.
 (b) “Excise goods” are defined by regulation 3(1) of S.I. 2010/593, amended by S.I. 2019/13.

- (a) to which regulation 131 (chargeable goods carried by RoRo vehicles destined for RoRo listed locations: making of declarations) of the Customs (Import Duty) (EU Exit) Regulations 2018(a) applies;
- (b) in respect of which a declaration for the free-circulation procedure or an authorised use procedure has been made in accordance with that regulation (and not amended or withdrawn unless in accordance with that regulation); and
- (c) in respect of which the notification referred to in paragraph 11(1) of Schedule 1 to the Taxation (Cross-border Trade) Act 2018 is being treated as having been made under regulation 4(3B) of the Customs (Import Duty) (EU Exit) Regulations 2018,

with the modifications set out in this chapter.

Interpretation

11. In regulation 3(1)—

- (a) after the definition of “fallback report of receipt”, regard as inserted—
 - ““import duty regulations” means the Customs (Import Duty) (EU Exit) Regulations 2018;”; and
- (b) after the definition of “report of receipt” regard as inserted—
 - ““RoRo location” means any of—
 - (a) the RoRo listed locations referred to in regulation 130(1) of the import duty regulations(b); and
 - (b) a control zone to which article 5(2)(a) of the Channel Tunnel (Customs and Excise) Order 1990(c) refers.”.

Contravention of conditions or requirements-duty point and persons liable to pay

12.—(1) Regard regulation 19(3) as modified as follows.

- (2) After sub-paragraph (a) regard as inserted—
 - “(aa) a failure to comply with regulation 57(11) (completion of draft electronic administrative document for movements of excise goods under duty suspension arrangement from RoRo locations);”.
- (3) Regard the full stop at the end of sub-paragraph (b) as substituted by a semi-colon.
- (4) After sub-paragraph (b) regard as inserted—
 - “(bb) a failure to comply with regulation 60AA(2) (procedure for movement of excise goods under duty suspension arrangements from RoRo locations when computerised system unavailable).”.

Time of payment of the duty

13. In regulation 20—

- (a) in paragraph (1) before sub-paragraph (a) regard as inserted—
 - “(aa) paragraphs (3) and (4);”; and
- (b) after paragraph (2) regard as inserted—

(a) S.I. 2018/1248, amended by S.I. 2019/326.

(b) Regulation 130(1) of S.I. 2018/1248 defines a “RoRo listed location” as a location in the United Kingdom listed in a notice published by HMRC. The notice is available in draft at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777006/Draft_Notices_to_be_Made_Under_The_Customs_Import_Duty__EU_Exit_Regulations_2018.pdf and, if and when finalised, will be available at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> and may be inspected free of charge at HM Revenue and Customs, 100 Parliament Street, London SW1A 2BQ.

(c) S.I. 1990/2167; relevant amending instruments are S.I. 1993/1813 and S.I. 1994/1405.

“(3) Paragraph (4) applies where—

- (a) excise goods are released for consumption at a RoRo location pursuant to regulation 6(1)(d); and
- (b) there is no duty deferment arrangement in place in respect of the goods.

(4) The time when the duty must be paid is the earlier of—

- (a) the latest time by which the notification required under regulation 4(3C) of the import duty regulations must be given in accordance with regulation 4(3D)(c) of those regulations; or
- (b) the time when that notification is in fact given.”.

Movements of excise goods from a RoRo location under duty suspension arrangements

14.—(1) In regulation 57—

- (a) in paragraph (1), after “electronic administrative document”, regard as inserted “, but see paragraph (10) for an exception for the beginning of a movement from a RoRo location”;
- (b) in paragraph (2) for “Before” regard as substituted “Except as provided for in paragraph (10) and (11), before”;
- (c) in paragraph (7)—
 - (i) in sub-paragraph (a) regard “or” as omitted;
 - (ii) at the end of sub-paragraph (b) regard the full stop as substituted by “; or”; and
 - (iii) after sub-paragraph (b) regard as inserted—

“(c) if paragraph (10) applies, a printed version of the customs declaration which includes the details of the guarantee referred to in that paragraph.”; and

(d) after paragraph (9) regard as inserted—

“(10) Where—

- (a) the excise goods are dispatched from a RoRo location; and
- (b) details of the guarantee required in accordance with regulation 39 have been provided to the Commissioners in the declaration for the free-circulation procedure or authorised use procedure made in accordance with regulation 131 of the import duty regulations,

the consignor may dispatch the goods before completing a draft electronic administrative document.

(11) Where paragraph (10) applies, the consignor must complete the draft electronic administrative document and send it to the Commissioners as soon as practicable and no later than the latest time for making the notification referred to in regulation 4(3C) of the import duty regulations.”.

(2) In regulation 60, after paragraph (1), regard as inserted—

“(1A) This regulation does not apply where regulation 60AA applies.”.

(3) After regulation 60 regard as inserted—

“Procedure for movement of excise goods under duty suspension arrangements from RoRo locations when computerised system unavailable

60AA.—(1) This regulation applies where—

- (a) goods are dispatched before completion of the draft electronic administrative document in accordance with regulation 57(10); and
- (b) the computerised system is unavailable at the time the consignor is required to complete the draft electronic administrative document in accordance with regulation 57(11).

(2) Excise goods may only be moved from the place of importation under duty suspension arrangements if they are accompanied by a printed version of the customs declaration which includes the details of the guarantee required in accordance with regulation 39.

(3) At any time before the consignor completes the draft electronic administrative document in accordance with paragraph (2) the Commissioners may require the consignor to—

- (a) provide a copy of the printed version of the customs declaration;
- (b) verify the data contained in that document; and
- (c) provide information on the reasons for the unavailability of the computerised system (if the consignor is responsible for that unavailability).

(4) As soon as the computerised system is restored the consignor must complete a draft electronic administrative document that complies with the requirements set out in regulation 57(9) and send it to the Commissioners.

(5) The Commissioners must, in accordance with regulation 57(3), carry out a verification of the data in the draft electronic administrative document.

(6) If the data are valid, regulation 57(5) to (8) shall apply and the electronic administrative document shall replace the printed version of the customs declaration.

(7) If the data are invalid, the movement shall be treated as taking place under cover of the printed version of the customs declaration.

(8) The consignor must keep a copy of the printed version of the customs declaration.”.

Relevant regulations

15. In Schedule 1, regard the following regulations as inserted in the appropriate place—

- (a) 57(11) (completion of draft electronic administrative document for movements of excise goods under duty suspension arrangement from RoRo locations); and
- (b) 60AA(2) and (4) (procedure for movement of excise goods under duty suspension arrangements from RoRo locations when computerised system unavailable).

Transitional provision

16.—(1) This chapter has no effect in relation to goods in the course of a movement on exit day.

(2) For the purposes of paragraph (1), the term “in the course of a movement on exit day” has the meaning provided by regulation 44(2) of the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019.

PART 5

Miscellaneous modifications and amendments relating to excise duties

Modification of the Tobacco Products Regulations 2001

17.—(1) The Tobacco Products Regulations 2001(a) apply with the modification set out in paragraph (2) where paragraph (3) applies.

(2) In regulation 18(1)(b), regard as inserted after the words “becoming payable” the words “, in such form and manner and on such conditions”(b).

(a) S.I. 2001/1712, amended by S.I. 2010/593, 2019/13. There are other amending instruments, but none is relevant.

(b) The requirements to be made under this modification are not yet finalised or available. Subject to this regulation being commenced, when finalised, they will be made in writing and available at <https://www.gov.uk/government/collections/custo>

(3) This paragraph applies where an election is made on or before 30th June 2019 under regulation 17 of the Tobacco Products Regulations 2001 (deferred payment - payment day) in respect of tobacco products falling within regulation 17(2)(a).

Amendment of the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019

18. In regulation 5(2) of the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019(a) (transitional and savings provision: The Excise Goods (Drawback) Regulations 1995), for the words “in each case”, to the end, substitute “after those words were inserted the words “or, in specified circumstances and on specified conditions, the specified documents””.

6th March 2019 *Ruth Stanier*
Angela MacDonald
Two of the Commissioners for Her Majesty’s Revenue and Customs

6th March 2019 *Craig Whittaker*
Paul Maynard
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments and modifications to secondary legislation relating to excise duties and are made to ensure the effective operation of the law applying to excise duties on the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”).

Part 1 deals with the commencement of these Regulations, which will come into force on a day to be appointed by the Treasury by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 (c. 22).

Part 2 revokes the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998 (S.I. 1998/202) and the Excise Duty Point (External and Internal Community Transit Procedure) (Amendment) Regulations 1998 (S.I. 1998/3110). The former Regulations (which are amended by the latter) establish an excise duty point on, and address the liability of persons for, irregularities in customs movements under the external and internal Community transit procedures. Those specific procedures will no longer apply on the UK’s exit from the EU. The duty point and liability for breaches of customs transit procedures after exit will be addressed by the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593), as amended on EU exit by the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/13) and by Part 4 of these Regulations. Transitional provision is made for applicable transit movements in progress on exit day.

Part 3 amends the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010, which provides for the modified application of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 in the control zone for the Channel Tunnel (at Coquelles, the “control zone”). This Part updates those modifications to reflect changes to those Regulations on EU Exit. It also ensures that excise duty will be calculated in the same manner, and is subject to the same reliefs (on the same conditions), in the control zone as it would be at any other place of entry to the UK under any excise duty enactment. Transitional and saving provisions are made for movements in progress on exit day.

Part 4, chapter 1, further amends the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, as previously amended for EU exit by S.I. 2019/13. Changes to the definitions

ms-vat-and-excise-regulations-leaving-the-eu-with-no-deal and may be inspected free of charge at HM Revenue & Customs, Excise & Environmental Taxes Policy, 3rd Floor West, Ralli Quays, 3 Stanley Street, Salford, M60 9LA.
(a) S.I. 2019/14.

of “place of importation”, “customs suspensive procedure or arrangement” and to the start of a movement of excise goods under a duty suspension arrangement are made in consequences of changes to customs legislation introduced under the Taxation (Cross-border) Trade Act 2018 and a minor omission in S.I 2019/13 is corrected. The chapter also provides that the transitional and savings provisions made in Part 4 of S.I. 2019/13 apply to the amendments made in this chapter.

Part 4, chapter 2, makes modifications to the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 in respect of excise goods imported into the United Kingdom on RoRo vehicles arriving at RoRo listed locations, or the control zone, to reflect changes made to customs procedures. A RoRo vehicle is a freight vehicle or trailer that is boarded onto a vessel or train. RoRo listed locations are locations where RoRo vehicles arrive in the UK and are listed in a notice published by HMRC in accordance with the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248).

Part 5 makes certain miscellaneous modifications and amendments to secondary legislation relating to excise duty. In particular, it makes a minor modification to the Tobacco Products Regulation 2001 (S.I. 2001/1712) for a 3 month period in the event that the UK leaves the EU without a deal on 29th March 2019. It also corrects a minor drafting error in the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/14).

This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published and available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

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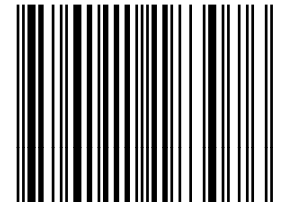
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