



MEMORANDUM OF UNDERSTANDING ON TOBACCO AND OTHER PRODUCTS

Notes for Interpretation of all Memoranda agreed between the Spain, the UK and Gibraltar on 29th November 2018

In order to properly understand the effect of the Memoranda, and the proper interpretation to put on the terms used therein, it is important to bear in mind some of the essential, underlying principles involved. These are best summarised below.

Sovereignty

*The Memoranda, or any activity or measure taken in application or as a result of them, does not imply any modification of the respective legal positions of the UK or Spain on sovereignty or jurisdiction. This is expressly spelt out in each of the Memoranda. **The Memoranda make no concessions on sovereignty, jurisdiction or control.***

Interpretation

Throughout the Protocol on Gibraltar which refers to the Memoranda, as a result of the definition in Article 3 of the Withdrawal Agreement (and unless otherwise provided for) the term "United Kingdom" includes "Gibraltar" throughout the text.

For a proper interpretation of the Memoranda they should be read in light of the Concordat between the UK and Gibraltar, also published alongside. This Concordat preserves the balance of the 2006 Gibraltar Constitution. It was approved by the Prime Minister, Theresa May, and the Chief Minister, Fabian Picardo, in Downing Street on the 15th November.

Signature

It is important to remember that the Memoranda are only signed by the United Kingdom as a result of the UK being the State responsible for Gibraltar's external relations. This is expressly spelt out in each of the Memoranda.

Commencement & Duration

It should be noted that the Memoranda only come into effect if there is a Withdrawal Agreement entered into by the UK. Additionally, the Memoranda cease to have effect in December 2020 unless we agree to extend them.

MEMORANDUM OF UNDERSTANDING ON TOBACCO AND OTHER PRODUCTS

CONSIDERING that, for the purposes of this Memorandum, the United Kingdom acts as the State responsible for Gibraltar's external relations,

NOTING that the present Memorandum, or any activity or measure taken in application or as a result thereof, do not imply any modification of the respective legal positions of the Kingdom of Spain or of the United Kingdom with regard to sovereignty and jurisdiction in relation to Gibraltar,

PRICE DIFFERENTIALS

1. All relevant Parties have decided on the need to reduce the price differential on tobacco products between Gibraltar and mainland Spain and the Balearics.

The Government of Gibraltar, being concerned about the health consequences of smoking and the existence of an illicit trade in tobacco in the area around Gibraltar, alongside the legitimate market in said commodity, has committed to ensure that, by 30th June 2020 the average retail price differential of tobacco products (cigarettes, cigars, fine cut tobacco, and other tobacco products) will be no more than 32% greater than the most recently published Spanish prices for the equivalent tobacco products in mainland Spain and the Balearics. The commitment on retail price differential will not apply to duty free sales of tobacco products to passengers in ports and airports. For cigarette products the market will be divided into four categories of product: premium cigarettes, mid-high cigarettes, mid-low cigarettes and lower-price cigarettes with a minimum price provided for each category. For fine cut tobacco, the market will be divided into two categories of product: premium and non-premium with a minimum price provided for each category.

The Gibraltarian competent authorities will set minimum retail prices for each of the categories of tobacco products, which will be published quarterly in the Gibraltar Gazette. The necessary mechanisms will be put in place to ensure effective compliance by all retailers with the minimum prices provided for in the law.

INFORMATION SHARING

2. Without prejudice to compliance with other obligations by which they may be bound, the Parties will establish monitoring mechanisms to exchange information concerning the amounts of tobacco products imported, sold or exported. This information will include details relating to each of the following:

- i. The amount of raw or unmanufactured tobacco and tobacco products that have been imported, sold or exported from or to Gibraltar.
- ii. For raw or unmanufactured tobacco: details of imports, specifying variety, origin, exporter, destination, importer, and weight in kilos.
- iii. For tobacco products, the information provided will:

- (1) Distinguish between the different types of tobacco products: cigarettes, rolling tobacco, hookah tobacco, cigars and miniature cigars.

(2) Said information will include the trend in retail prices for each tobacco product type, indicating: the weighted average price for the amount sold, minimum price and maximum price.

(3) As regards wholesale or retail, for each tobacco product type, said information will distinguish between direct retail sales and duty-free sales to leisure cruises or other forms of transport.

3. Additionally, the Parties will share specific information referring to the effectiveness of the efforts made to prevent and combat fraud and smuggling in the Area, including the legislation adopted for this purpose, the administrative and judicial measures applied, the human and material resources employed to combat fraud and smuggling, and the quantity and value of the seizures made. Said information will also extend to the effectiveness, in terms of combatting illicit trade and fraud, of applying the content and rules regarding traceability.

4. The information referred to in this subparagraph will be quarterly and will be exchanged within the first two months of the quarter following the quarter being reported.

ENFORCEMENT

5. To guarantee the effectiveness of the cooperation contained in paragraph 3, the content of the principles and mechanisms provided in the rules on mutual assistance for collection of public-law revenues that may be applicable in the European Union for this purpose, the competent authorities will cooperate in identifying persons domiciled in their respective territories that, in proceedings undertaken in relation to smuggling of products originating from Gibraltar or destined for Gibraltar, may be found directly or indirectly responsible for said acts. The competent authorities will also cooperate in the Area in investigations to determine the facts and attribution of responsibility.

6. This cooperation will be reciprocal and will include:

- a. Assistance in serving the documents indicated by the requesting authorities, issued by the requesting Administration, to all the addressees thereof.
- b. Provision, at the request of the requesting Administration, of all individual information concerning assets that is relevant to taxation, for the purpose of collecting debts owed to the State.
- c. Collection, at the request of the requesting authorities, of debts owed to the Administration, as documented in an instrument that enables enforcement and authorises collection actions.
- d. At the request of the Administration, based on the instrument stipulated in the preceding point, adoption of appropriate measures to ensure collection of the debts owed to the State.

Said appropriate measures may include any of the following:

- a. Withholding any payments that the requested Administration are due to make to the alleged debtor.
- b. Measures providing for the freezing of assets of an alleged debtor.

- c. Measures or other mechanisms prohibiting disposal, encumbrance or use of assets or exercise of rights having a monetary value.
- d. Any other measure provided for by law.

7. Should evidence emerge that as a result of any of the measures set out in this Memorandum of Understanding, tobacco is being smuggled into Gibraltar or the surrounding area from any part of Spain in significant quantities, effective action to prevent illicit activity will be taken.

8. The Working Group on Customs of the Joint Coordination Committee on police and customs cooperation will provide a forum for the discussion of all matters arising from this Memorandum of Understanding, in line with its function as a forum for monitoring and for coordination between the competent authorities of any questions related to cooperation in customs matters.

9. This Memorandum will cease to have effect on the 31st December 2020 unless the Parties decide otherwise.

Signed in duplicate in London on 28 November 2018 and Madrid on 29 November 2018, in the English and Spanish languages, both texts having equal validity.

For the United Kingdom

For the Kingdom of Spain

The Rt Hon David Lidington
Minister for the Cabinet Office
and Chancellor of the Duchy of
Lancaster

H.E. Josep Borrell Fontelles
Minister of Foreign Affairs,
European Union and Cooperation