What if there is no Brexit deal – Part 2

Indirect Tax | Tax voice



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Tarlochan Lall highlights the issues of interest for those who continue to trade with the EU.

A government paper, issued on 23 August 2018, on the implications for businesses trading in goods between the UK and EU countries essentially outlines issues that will arise in relation to customs and excise procedures. The paper does not deal with services. This paper should be read with another published on the same day entitled ‘Classifying your goods in the UK Trade Tariff if there’s no Brexit deal” which

contains practical information concerning customs procedures with an example on how classification of goods works.

The fundamentals

It is confirmed that:

- “there would be immediate changes to the procedures that apply to businesses trading with the EU. It would mean that the free circulation of goods between the UK and EU would cease”;
- “trade with the EU will be on non-preferential, World Trade Organisation terms. This means that Most Favoured Nation (MFN) tariffs and non-preferential rules of origin would apply to consignments between the UK and EU.”

Transitioning

It is declared that:

> “the UK intends to continue offering unilateral preferences to developing countries, and to seek to transition all EU Free Trade Agreements for day 1 in order to ensure continuity for both goods imported to the UK, and for UK exports”

Transitioning the EU’s Free Trade Agreements (FTAs) will require the agreement of the other countries party to those FTAs as they currently apply to the EU as a whole and it will be necessary to establish how they will apply to the UK alone. For example, EU quotas will have to be divided between the UK and the rest of the EU. It is a tall order to secure the agreements necessary by day 1, i.e. 30 March 2019, although there are varying degrees of speculation over that. There will be further information on preferential trade under the UK’s existing trade agreements in a ‘Trade Agreement Continuity’ technical notice.

The two papers referred to above and the paper on VAT have to be read together to get confirmation that the starting point will be that VAT and customs duties will be payable at UK and EU borders unless special relieving measures are introduced. Existing ‘red tape’ will be supplemented by more red tape. Although the government intends to ease transition, the risks of fraud are acknowledged by the declared intention of “robustly ensuring compliance”.

Summary of the impact of a no deal

As a starting point, customs duty and VAT would also become due on imports from the EU at the UK borders. It will be necessary to identify any relieving provisions and their associated conditions. Although it has been announced that VAT will not have to be accounted for at the borders on EU and non-EU imports, customs and excise duties will have to be paid or secured at the borders for goods to move into the UK market. The paper on the classification of goods provides the following guidance:

- “Under World Trade Organisation (WTO) rules, the principle of most-favoured-nation (MFN) treatment means that, unless a preferential agreement is in place, the same rate of duty, on the same good, must be charged to all WTO members equally.”
- “In a ‘no deal’ scenario, trade with the EU will be on non-preferential, WTO terms. This means that MFN tariffs and non-preferential rules of origin would apply to consignments between the UK and EU.”
- “The EU’s MFN rates are set out in the Common Customs Tariff which will no longer apply. The UK intends to set its rates before the UK leaves the EU and “they may be different from the rates in the EU’s CCT.”
- “UK importers will no longer use the EU’s Tariff Information but the UK’s Trade Tariff. It is said that “the UK does not intend to immediately change the classification of goods in a “no deal” scenario.”

The EU would apply customs and excise rules to goods moving from the UK, in the same way it does for goods it receives from outside of the EU. Whether there are any relieving measures will be a matter for the EU and not something the UK can influence. “For UK exports to the EU, the EU will require payment of customs duty at the rate under the EU’s CCT.”

Import and export declarations will be required. Separate safety and security declarations would also need to be made by the carriers of the goods.

In relation to the movements of excise goods, the “Excise Movement Control System (EMCS) would no longer be used to control suspended movements between the EU and the UK”. It is said that the EMCS would continue to be used to control the movement of duty suspended excise goods to and from UK borders. A further reference “UK excise duty suspension, otherwise duty will become payable” suggests that the EMCS may be adopted as the UK excise duty suspension system.

Where goods move from the EU under EMCS and continue into the UK, it is not clear what additional action will be required to ensure that duty does not become payable when the goods cross the border into the UK and move into the UK excise duty suspension system.

Advice given on action businesses can now take

Businesses are advised to “understand what the likely changes to customs and excise procedures will be to their businesses in light of this technical notice” and “familiarise themselves with the key processes”. They are also advised to “register for the HMRC’s EU Exit update service”.

In particular they should assess the volume of their trade with the EU and any potential supply chain impacts. They will need a clear understanding of their supply chains and where they involve cross border movements in order to assess the risk points and what preparatory action will be required. This task should not be underestimated. Many business organisations have said that supply chains involve a mixture of goods and services. The failure to deal with services in any of the papers means that businesses will need to undertake sophisticated analyses to assess the overall impact and risk so they can plan accordingly.

Anticipating that many businesses will not have necessary in house expertise, they are advised to consider “whether they should engage the services of a customs broker, freight forwarder or logistics provider to help, or alternatively secure the appropriate software and authorisations”. In addition, professional advice from tax experts is likely to be necessary. This will have cost implications for business.

Impact on contracts

Businesses are advised to “ensure their contracts and International Terms and Conditions of Service (INCOTERMS) reflect that they are now an importer”. Caution is required over that advice as a business may not wish to assume the responsibilities as importer. However, businesses should certainly review their terms of international trade.

INCOTERMS essentially have 11 core rules which may be incorporated into contracts for the sale of goods allocating risk and responsibilities of importers, exporters and carriers. Well known terms include Ex Works and CIF sales under which essentially

the importer is responsible for payment of customs duties. It is not clear how often sales are on DDP terms, i.e. Delivered Duty Paid, where the seller delivers the goods ‘cleared for import’ and the seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

The paper on trade advises that businesses may wish to “renegotiate commercial terms” to reflect any changes in customs and excise procedures, and any new tariffs that may apply to UK-EU trade. That may be easier said than done and may involve additional costs and risks as the counterparty may either refuse to negotiate or seek some other advantage as part of negotiations.

Advice on importing and exporting after Brexit

The paper on trade and classification offers practical advice on importing goods such as:

- businesses will need to register for a UK Economic Operator Registration and Identification (EORI), if not already registered. They can do so online;
- consider how they will submit import declarations, including whether to engage a customs broker, freight forwarder or logistics business;
- decide the correct classification of their goods;
- there is a brief mention of valuation for customs purposes but no guidance is provided on those rules other than “The [UK] Tariff will also set out import procedures such as how the value of a good is calculated, and which forms, codes, and procedures are to be used”. In practice, issues often arise over valuation;
- pay Value Added Tax (VAT) and import duties including excise duty on excise goods unless the goods are entered into duty suspension;
- businesses may also need to apply for an import license or provide supporting documentation to import specific types of goods into the UK.

Similar advice is given for exports, including that some exports may need export licence, such as goods on the UK Strategic Export Control Lists.

How pressure may be relieved

There is a brief description of the following relieving measures businesses can use, but there is no mention of the authorised economic operator status and whether any measures will be introduced to allow businesses to secure the AEO (Authorised Economic Operator) status and ease the burdens in relation to customs procedures and duties. Measures mentioned are:

- customs warehousing: which allows customs duty or import VAT payments to be suspended until the goods leave the HMRC authorized warehouse;
- inward processing: which also essentially allows duty suspension on goods imported for work or modification in the UK until the completion of the work, when ‘any customs duty and VAT due must be paid, unless goods are re-exported or moved to another customs procedure, or released to free circulation’;
- temporary admission: which allows temporary imports and or/export of goods such as samples, professional equipment or items for auction, exhibition or demonstration without the payment of duties or VAT provided the goods are not modified or altered;

authorized use: which ‘allows a reduced or zero rate of customs duty on some goods when used for specific purposes and within a set time period’.

If relieving measures introduced for post Brexit UK-EU trade are not also available to UK trade with other WTO members, that would risk breaching the MFN principle, so the same treatment would be expected to be introduced for the latter category of trade to avoid non-discrimination.

We are informed that ‘the UK has applied to re-join to the Common Transit Convention (CTC) when it leaves the EU’.

The CTC is a parallel system to the Union transit scheme under which goods can move, with duties, taxes and other import procedures temporarily suspended where they move between two or more customs territories. For example, goods may move between two EU member states via a non-EU state; or they may move into or out of the EU, which will include the UK following Brexit. Customs clearance formalities are essentially moved to the destination point rather than at borders.

The CTC is based on a 1987 convention and was amended in 2017 to be aligned to the Union Customs Code. It applies to goods moving between the EU member states and the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), Turkey,

Macedonia and Serbia. Its rules are effectively identical to those of the Union transit scheme. The aim of the convention is stated in its recitals as being “To ensure smooth and efficient trade flows between the Union and the Contracting Parties to the Convention in a harmonised legal framework”. It is said that ‘negotiations on the UK’s membership of the CTC are ongoing’.

There is no guidance on Northern Ireland as it is said that the Irish government needs to discuss arrangements needed in the event of a new deal with the European Commission and EU member states.

Conclusion

It is clear that many businesses and their advisers will need to rapidly learn new procedures for UK-EU trade which will inevitably increase burdens and costs. The experience within the EU has been that even with the EU seeking to make cross-border trading easier, such trade is hindered by real or perceived risks. UK businesses may well suffer the loss of cross-border trade by real and new burdens such trade will involve.