It’s now time to act

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Sally Jones and Andy Bradford consider the practicalities of implementing the UK-EU Trade and Cooperation Agreement

Key Points

What is the issue?

On 24 December, negotiations to conclude the UK-EU Trade and Cooperation Agreement (TCA) ended. The TCA will govern the UK and EU’s economic and trading relationship now that the Brexit transition period has come to an end.

What does it mean for me?

Businesses need to meet many of the new requirements imposed as a result of the UK leaving the EU's single market and customs union right now –including new customs documentation and procedures, VAT registrations and immigration changes.

What can I take away?

Timing may be an ongoing challenge for many traders. Businesses will need to rapidly develop origin management programmes to avoid unnecessary short-term duty costs.

On 24 December, negotiations to conclude the UK-EU Trade and Cooperation Agreement (TCA) ended. The TCA will govern the UK and EU's economic and trading relationship now that the Brexit transition period has come to an end.
The TCA (or the avoidance of a no deal outcome) does not remove the need for businesses to make changes to their operations – far from it – but it does bring some certainty on many of the new trading rules that will apply after the end of the transition period, most notably tariffs.

However, Brexit is not done. The first task for both the UK and the EU is to implement the TCA across the broad range of issues and trade covered. The TCA is also not envisioned to be a static position; instead, it sets the stage for future rounds of negotiations and discussions between the UK and EU on a host of issues.

There is no phase-in or grace period. Businesses need to meet many of the new requirements imposed as a result of the UK leaving the EU's single market and customs union right now – including new customs documentation and procedures, VAT registrations and immigration changes.

The TCA is also not envisioned to be a static position; instead, it sets the stage for future rounds of negotiations and discussions between the UK and EU on a host of issues. It includes a comprehensive governance structure with more than 20 new committees, councils and working groups in which the UK and EU will discuss their differences.

The outstanding issues fall into two categories: those issues where negotiators ran out of time to address them fully; and those issues where future cooperation would be desirable.

For trade, in the short term, businesses have been focused on two major issues:

- moving goods across the EU/UK border with all the necessary customs and duty documentation in place; and
- ensuring that any new or additional VAT compliance requirements are adhered to.

This article looks at the most common issues in these areas.

New customs obligations

As the UK emerged from the transition period on 1 January, new rules came into force regarding customs duties for goods moving across the UK/EU border. Stockpiling and the impact of the Covid-19 pandemic means that the current level of trade across the UK border is lower than normal, but even so we are already seeing an impact in the additional border formalities required, much of which relates to the 'origin' of the goods that are being transported. So, what does the UK-EU TCA mean for customs duties and origin?

Trade in goods

The CTA does not require a duty tariff or quota for goods movements between the EU and UK, subject to meeting the relevant rules of origin. Very broadly, only goods which originate in the EU or UK will be free of duties, as with other EU and UK Free Trade Agreements (FTAs). Indeed, the TCA has some progressive measures that should facilitate tariff free trade eventually; the limited time available to prepare means some face temporary duty costs.

The agreement contains a number of areas where the EU and UK will seek to cooperate in the future to reduce friction at the border but there is no change to the immediate customs clearance procedures businesses are facing.

Rules of origin

To qualify for the TCA there are general origin rules and also product specific origin rules based on a products tariff classification.

Whilst varied across the tariff, for most classifications there are two options for meeting the product specific origin rules:

- a difference in the tariff classification of the finished product and its non-originating materials at the heading or sub-heading level; or
- a maximum percentage value of non-originating materials (MaxNOM) in the finished product, most commonly 50%.

Accurate tariff classification will be critical for businesses to determine the product specific rule of origin or in assessing qualification with the MaxNOM rule of origin.

Origin procedures

The origin procedures under the TCA are more facilitative than other comparable EU FTAs. Significantly, the agreement does not require the expense and effort of exporter registrations or obtaining certificates of origin. A claim by the importer for FTA preference showing UK or EU origin may be based on the importer's knowledge of where the goods originate or on a statement of where the goods are originating by the exporter.

The origin statement by the exporter is flexible in its application, allowing invoice wording or a separate document. Based on HMRC guidance, where the flow is from the EU to UK and above €6,000 it will be necessary provide the exporter's Registered Exporter (REX) number on the statement (and REX requires advanced registration). The flow from the UK to EU more simply needs the exporter's Economic Operator Registration and Identification (EORI) number, which all UK VAT registered businesses trading with the EU have already been issued with.

In both instances, there are specific evidential requirements to be followed, particularly where non-originating materials are used. Helpfully, there is an easement granted in both the EU and UK that the supplier origin statements do not need to be in place until 31 December 2021. Nevertheless, this documentation could be a material undertaking for many businesses, whether a supplier or exporter.

Timing

Timing may be an ongoing challenge for many traders. The facilitative nature of the origin procedures does allow for immediate use where the origin of the goods is known, and if the claim is not made at the time of import, the importer has up to

three years from the date of import to make an evidenced claim for a refund. Nevertheless, businesses will need to rapidly develop origin management programmes to avoid unnecessary short-term duty costs.

Value added tax

The UK is free to adapt its own VAT rules going forward with the exception of Northern Ireland, which will operate a ‘dual’/’mixed’ VAT regime and, for the time being, follows EU VAT rules for goods and UK VAT rules for services. The quid pro quo is that this means that many UK businesses trading across the UK/EU border lost access to a number of the EU’s VAT easements. There are now more VAT reporting and compliance requirements for businesses trading in the UK and the EU.

The TCA only mentions VAT some 40 times – and all in respects of cross-border tax fraud rather than in any way recognising and mitigating any of the new VAT obligations.

Some of the key VAT considerations businesses will need to understand are:

- Is a new VAT registration required in respect of goods owned and sold in the UK or the EU?
- If a new VAT registration is required in the EU, is a fiscal representative required?
- Are appropriate EORI numbers held allowing the movement of goods into and out of the UK and EU?
- If there is trade with or through Northern Ireland, do suppliers and customers have the necessary XI prefix information in order to move the goods VAT free?
- Where import VAT is due as goods move across the UK/EU border, is this being treated under the Postponed VAT Accounting regime and is it eligible for recovery in the hands of the importer of record? The latter point is already causing complications and potential cashflow issues for toll manufacturers and for goods imported for repair or processing.
- Is there an impact on the place of supply of services being provided or received across the UK/EU border as use and enjoyment rules kick in for trade with non-EU recipients (for services received from some EU member states and for some UK services supplied to EU based recipients)?

- Are systems and invoices being updated to take account of the VAT consequences of the UK not being part of the EU?
- Is the data flowing correctly through to the VAT return and Intrastat declarations?

These VAT matters are perhaps worthy of an article all of their own. Suffice to say that the dust may be settling on the political aspects of negotiating the deal but it is still swirling for the customs and VAT obligations that businesses face.