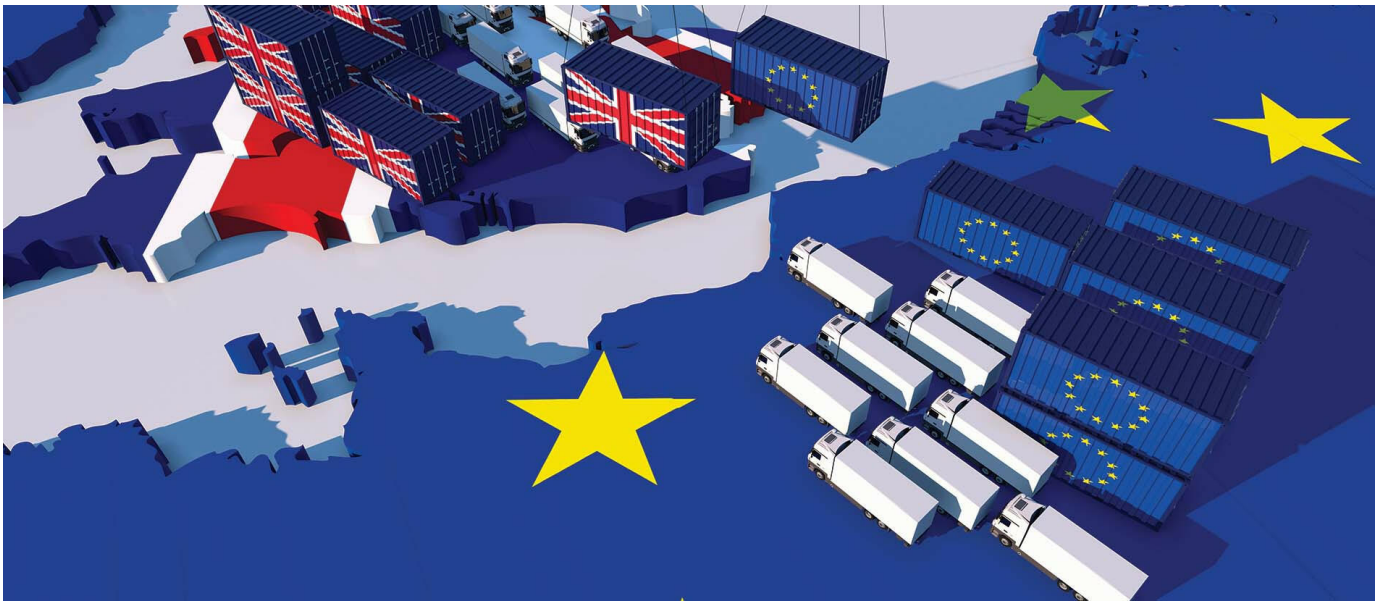
UK imports and exports: the impact of Brexit

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22 June 2023

Leaving the EU has had a significant impact on UK trade in terms of both imports and exports. Two and a half years later, we examine the key points from a trade perspective.

Key Points

What is the issue?

HMRC expects that any business engaged in imports and exports should know what they are doing and be ‘customs competent’. There may have been a disconnect between this expectation and how many businesses have approached importing and exporting post-Brexit.

What does it mean for me?

The rules on customs can be complex and the plethora of trade deals that the UK has entered into do not make matters easier.

What can I take away?

Do not leave things to chance, be proactive and understand what you're doing. HMRC works on the basis that if you import and export you should know the rules before doing so.

HMRC estimated that the number of businesses importing or exporting would rise from 250,000 prior to Brexit to 400,000 afterwards. This means that there are an estimated 150,000 businesses which traded internationally with the EU but which had little or no experience in customs formalities before 1 January 2021. A combination of factors has meant that HMRC has taken a largely 'light touch' approach in respect of undertaking customs audits since Brexit, although it has said this will change.

Maybe unsurprisingly, many businesses have been focused on ensuring that their goods moved, despite the many challenges Brexit has presented. Brexit has been seen as 'the British disease', so EU customers and suppliers have expected (and still expect) UK business to take the brunt of the pain caused by it.

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The rules on customs can be complex and the plethora of trade deals that the UK has entered into do not make matters easier. And whilst the UK has a trade deal with the EU, it is by no means without complexity, as we shall explore below.

Even where a business uses a clearance agent – whether a courier company, a transport or logistics company or a specialist freight forwarder – it is the importer or exporter's responsibility legally to ensure that their declarations are correct.

The responsibilities of importers and exporters

Working on the basis that compliance and opportunities go hand in hand, we will first examine what responsibilities importers and exporters have when moving goods into and out of the UK.

Generally, no goods will flow without customs declarations being lodged, usually in advance of shipments arriving at a port. Also, businesses must understand the customs specific information that is required to be given on a declaration, as set out below.

Commodity codes

Commodity codes are also known as harmonised system (HS) codes or tariff codes.

An importer needs to declare what goods are being imported and what commodity code applies to those goods. This is important as these codes determine the rate of duty that is payable at import. It is the importer’s responsibility that these codes are correct.

A common approach is to rely on the information provided by the supplier. However, it still falls on the UK business to ensure that the code is correct. Do not fall into the trap of blindly accepting that a supplier is correct as this has no binding effect in the UK.

Be aware that specific rules determine which code applies, including for those goods which don’t have an ‘obvious’ code. This is particularly important when an item can on face value be classified under different codes which attract different duty rates.

Some goods, such as garments, have specific codes making the classification more straightforward. However, ceramic flower pots don’t have a specific commodity code. They can be classified either as ‘ceramic ornamental articles’ or ‘miscellaneous ceramic articles’, depending on whether they are for ornamental purposes or for practical purposes. Either code could be correct, depending on use. This illustrates that classification is not straightforward, even if HMRC expects an importer to be able to classify correctly.

Assistance is available from HMRC, which provides both ‘binding’ and non-binding rulings. Consultancy firms can also provide assistance without necessarily referring to HMRC. Getting the commodity codes wrong can be costly, so take advice if you are unsure.

Declaring the correct ‘customs value’

All imports and exports must have a declared customs value. This is based on the value of the goods plus the cost of freight to get the goods to the UK, as well as any insurance paid to insure the movement of the goods. Again, this is important as it determines the amount of duty and import VAT which is due.

Whilst the value of the goods will usually be the purchase price paid to buy the goods, there are specific rules around additional charges which have to be included in this value. For example, any royalties payable or anything else paid as a condition of purchasing the goods are included in the customs value. Getting the value wrong can be costly. HMRC can and does assess for underpaid duty, VAT and penalties (which can be significant).

Furthermore, it is a common misnomer that if there is no purchase then a zero value can be declared. This is not the case. For example, where items are moved around temporarily, a value still needs to be assigned to the goods and there are worldwide recognised principles that must be considered and adopted before shipments occur.

Customs valuation can be complex, especially if the goods moving are not being purchased or sold. A business should be aware of the rules and take advice as required, either from HMRC using its new ‘Advance Valuation Service’ or via a consultant.

Claiming a preferential rate of duty

In addition to compliance, there are also measures which allow duty and VAT to be reduced or relieved. This includes claiming a preferential rate of duty; for example,

under a trade deal.

The most common trade deal is the UK/EU Trade Co-operation Agreement. The relevance of this trade deal is that any goods imported into the UK from the EU which are of ‘EU origin’ will generally attract a 0% duty rate rather than the full duty rate.

For example, if a UK importer bought men’s T-shirts from an EU supplier and they had been manufactured in the EU, then 0% duty is payable. However, T-shirts manufactured in China would bear a 12% duty rate even when they are purchased from an EU supplier.

Somewhat bizarrely, if the T-shirts originated in, say, Bangladesh – where both the UK and EU have a trade deal – but were imported via the EU, duty will usually be payable since free trade deals rely on direct shipments.

So beware, as all trade deals are based on the goods traded between the parties meeting origin rules. In the case of the UK/EU deal, the goods must be of EU origin when imported from the EU or of UK origin if exported to the EU.

What does origin mean?

Origin is important since it means that:

- a product was either wholly manufactured in the country or territory in question; or
- it has gone through ‘sufficient’ processing to render the goods as having been manufactured in that country.

The first common mistake is that just because goods are purchased from the EU, they originate there. As detailed above, finished goods imported into the UK from the EU but manufactured in China will bear the duty rate as if the goods were bought direct from China. This only changes if the EU supplier has undertaken ‘sufficient’ processing in the EU to change the origin.

Origin rules are complicated under any trade deal. Before placing purchase orders from overseas suppliers, it is worth investigating whether a trade deal exists with

that country. Also, ask whether the overseas supplier can provide a document showing that the origin is their country. This is important as a document proving origin must be presented to UK customs so the reduced duty rate can be paid.

In the case of the EU, this document is a ‘statement on origin’ declaration, which can be made on the supplier’s invoice. However, a further complication is that for such a declaration to be valid for consignments exceeding €5,400 in value, the EU supplier has to be registered with their local Customs and obtain a Registered Exporter System (REX) number.

A further consideration is that UK exporters which export to the EU can declare origin without having to be authorised. The process to state that goods are of UK origin is therefore easy; however, the same rules apply in terms of whether or not the goods are of UK origin.

Any business exporting goods – and especially to the EU – should not state that something is of UK origin unless the following issues have been considered.

Sufficient processing has been undertaken in the UK

A list of what is deemed ‘insufficient processing’ is set out in Article 43 of the UK/EU Trade Co-operation Agreement. Consider a UK business that imported combs from the United States, stamped their logo onto the combs and re-exported them to the EU, stating the combs were of UK origin. This statement is false since minor processing such as repackaging or stamping a logo are specifically listed as ‘insufficient’ to change origin.

The use of components or materials

The business must have considered the detailed rules around the use of components or materials used in manufacturing, where that material is not sourced from either the UK or the country the trade deal is with. Although trade deals do allow the use of non-UK material in the manufacturing process, there are complex rules to determine whether UK origin can still apply if, for example, Chinese components are used in the manufacturing process.

In short, the message here is:

- If you wish to claim reduced rates of duty under trade deals, ensure you establish the rules for doing so.
- Ensure you can get the correct paperwork.
- If you are asked to declare UK origin, make sure you understand what this means, as there are penalties for misdeclarations.

Planning: Avoiding double duty

Effective planning is required where a UK business imports finished goods which are going to be sold in both the UK and overseas markets. One of the less palatable elements of Brexit is the ability for UK distributors to be impacted by ‘double duty’. For example, a UK business which imports finished goods from China for distribution will pay duty in the UK. For goods sent overseas, duty will also be payable on import into the destination country since the goods won’t have UK origin.

Unless stock bound for the destination country can be sent directly there (which isn’t always possible logistically or for reasons of cost), the way round the ‘double duty’ position is to utilise a customs warehouse (commonly known as a bonded warehouse) whereby duty and VAT are not paid in the UK at all.

This could involve using a public customs warehouse. Alternatively, many UK businesses have set up their own customs warehouse. Whilst this is an added complication, the benefit is that duty is not unnecessarily paid in the UK.

Planning: Exports

Many businesses that export to EU customers are having to consider their business model. Some customers are pulling back from purchasing from the UK as they do not wish to import goods, while the UK business wants to ensure that it remains competitive.

UK businesses can supply on a delivered duty paid (DDP) basis. This is a delivery agreement whereby the seller assumes all of the responsibility, risk and costs

associated with transporting goods until the buyer receives or transfers them at the destination port. However, there a wide range of factors to consider including:

- **Understanding who does what:** Have a clear strategy and take advice. You must communicate with customers as to who does what and why.
- **Strategic shipping:** Be clear the route by which you will ship your goods and and where to customs clear. You don't want to end up having to customs clear in multiple EU countries. Working with shipping companies that specialise in post Brexit shipping is key.
- **VAT registration:** If you supply DDP, you may have to become VAT registered in the EU but easements are available.

Exporting should not be discouraged and whilst more complex post Brexit, planning is key.

Customs reliefs

As well as using a customs warehouse, a number of customs reliefs are available – all of which have conditions that must be followed. In brief, these include:

Returned goods relief

This relief allows duty and vat relief on goods which:

- are UK customs status goods;
- have been exported from the UK within the last three years; and
- are being returned in an unaltered state.

If returned goods relief is not used, duty and VAT are payable on returning UK goods.

Outward processing relief

This is a relief which allows duty and VAT relief on goods which:

- are UK status goods; and

- have been exported from the UK for processing or repair and are now being returned.

Although duty and VAT are potentially due on the processing charges, if this relief is not used then duty and VAT are payable on the value of the returning UK goods as well. It should be noted that many businesses inadvertently use outward processing by only declaring the processing charges at import. However, this is legally incorrect and lays businesses open to assessments for using outward processing without authorisation.

Inward processing relief

This is a relief of both duty and import VAT on goods imported, which are processed or repaired and then returned re-exported. Its benefit includes where a business does not own goods imported for processing as it avoids an irrecoverable VAT loss given that under the VAT rules, import VAT ***cannot*** be claimed back if the importer does not own the goods.

Both inward process relief and outward processing relief can be claimed at import but this is limited to three times per year. Also, a deposit will be taken to cover the VAT and duty payable so full authorisation is worth consideration.

Temporary admission

In addition, there are a number of scenarios (around 30) where goods can be imported temporarily with duty and VAT relief.

The advice for looking at using any customs reliefs is to do your research, take advice as appropriate and ensure that clear instructions are given to clearance agents.

Postponed VAT

In addition to customs reliefs, one Brexit ‘positive’ is the availability of postponed VAT accounting. Under this, rather than physically paying import VAT to HMRC, it can be accounted for by being declared and, where allowable, recovered on a

business’s VAT return. This is a cash flow positive step and doesn’t require prior approval to use. However, the business does need to ensure it declares the postponed VAT accounting is shown on its postponed VAT accounting statements that HMRC generates monthly.

Key messages

The main messages are not to leave things to chance, be proactive and understand what you’re doing. HMRC works on the basis that if you import and export you should know the rules before doing so.

Help is available from:

- HMRC (online): There is a wealth of literature, though this can sometimes be confusing and requires you to know exactly what you’re looking for.
- Business organisations: such as Chambers of Commerce and the Institute of Export.
- Customs consultancy firms: These firms exist to assist UK businesses not just be compliant but also maximise planning opportunities. These firms will also represent you in dealings with HMRC.
- Freight forwarders: Although they may be more focused on getting goods cleared quickly than providing planning advice.

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