

## Getting you ready for Brexit

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CNA Hardy is an integral part of the global supply chain. We are dedicated to providing freight forwarders and 3PL contract logistics companies with innovative, customised products and services, offering certainty and security.

The UK's exit from the EU introduces a number of legal, procedural and structural changes from 1 January 2021. The border between the UK and EU becomes an operational customs border and as such declarations will be required to be made to the relevant customs authorities and duty/import VAT may have to be paid.

We remain committed to maintaining and growing our existing portfolio of European business and the establishment of a new Luxembourg insurer and the Part VII Transfer allows us to continue to service our clients going forward whilst providing an additional level of clarity and certainty.

### **1. Key customs legislative changes**

On March 31<sup>st</sup> 2020, the UK officially left the European Union and entered into a Transitional phase with the UK continuing to operate under current EU customs legislation until 1st January 2021.

The overarching EU customs legislation is the Union Customs Code (UCC) and its implementing and delegated acts – in addition some UK legislation enacts certain parts of the UCC.

From January 2021, the UK will enact UK legislation (some of which exists now) – although the broad design of the legislation is to “replicate” what currently exists, as we go forward, the likelihood of divergence from the EU model may well increase.

Below is a non-exhaustive list of the UK legislation that is currently published and will become (to a greater or lesser extent) operational on 01/01/2021;

- UK Taxation (Cross-Border Trade) Act 2018
- The Customs (Transitional Arrangements) (EU Exit) Regulations 2020
- The Customs (Import Duty) (EU Exit) Regulations 2018
- The Customs Safety, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020

## 2. Key customs compliance risks and considerations

### Tariff Barriers

Customs duty will apply to imports from the EU (and indeed exports to the EU, albeit within the EU member States) from 01/01/2021. The rate of duty applicable depends on 2 broad areas, the Classification of the goods, their value and their origin.

The UK/EU are in the process of trying to agree a Free Trade Agreement (FTA) that will potentially have the impact of reducing to zero duty rates either side of the border for goods that meet certain “rules of origin” – as the negotiations are ongoing and any rules that might apply are not in the public domain, any current planning must be based on currently known full rates of duty.

- **Tariffs on Import** - The Department for International Trade has published the UK Global Tariff (UKGT) that will apply to all Global imports from 1 January 2021 replacing the EU’s Common External Tariff (EU CET).

Although there is a general movement down in duty rates, many products imported into the UK from 1/1/21 will be subject to reasonably high rates of duty – i.e. cars, textile clothing, footwear, certain foods etc.

**Action** – The advance publication of the UKGT provides UK business with the opportunity to plan in advance for the impact of the end of the Transition period;

- **Review the likely duty impact and/or savings based on UKGT** – NB - direct imports from the EU may be impacted by duty for the first time whereas Rest of World imports may be impacted by a duty rate change
  - **Amend Duty Deferment Account (DDA) limits accordingly** – NB potential to operate a DDA without the need for a financial guarantee post 01/01/2021 a
  - Master data may need to be reviewed to ensure commodity codes are accurate and aligned to the new UKGT.
- **Customs Value** – Current UK/EU transactions may well have developed without any need to consider customs duty implications. The “new” UK duty rates will need to be applied to the customs value declared at the new border. Where a third party/arm’s length sale is involved, that may well form the basis of the new customs value. Where intercompany transactions between the EU and the UK are used, the customs value may be driven by the transfer price – consideration will need to be given to the structure of the transfer price to ensure it meets the needs of both corporate tax and customs duty – which at times can have opposing outcomes.

**Action** – The valuation methodologies used for cross border transactions need to be reviewed to ensure;

- Compliance; and
  - Legitimate duty minimisation
- **Origin Determination** - The UK has successfully negotiated its own Free Trade Agreements (FTAs) with a number of third countries or has “rolled over” current EU FTAs into UK specific ones. Other FTAs that UK importers/exporters have access to based on our membership of the EU will effectively lapse on 01/01/2021 unless the UK is successful in renegotiating them in the intervening period. In addition, some agreements (for example the current arrangement with Turkey) may be dependent on any UK/EU FTA. It is clear that importers/exporters should quantify the potential tariff impact arising from the loss of current EU FTAs – these impacts may be direct or indeed indirect as they may impact both suppliers and customers. In addition, businesses should review their processes to ensure that, for example, where they are an EU manufacturer, they review any new rules of origin that may be introduced in respect of exports where FTA preference may be claimed.

**Continued overleaf...**

**Action** – Ensure changes to preferential trade agreements are being monitored in future - see Link. Ensure the ability to determine origin of goods is maintained in order to benefit for such preferential trade agreements.

- **Excise Duty** - The UK's Excise Movement Control System (EMCS) (which controls the duty unpaid movement of excise goods between authorised premises) will not be linked to the EUs EMCS from 1 January 2021. The UK and EUs EMCS systems will be recognised as separate and distinct systems. An import and an export declaration will be required alongside movements registered in the EMCS. Only registered consignors are permitted to move excise suspended goods and use EMCS at import.

**Action** – Ensure new excise declaration and notification processes are understood and ensure access to the UK's EMCS system is attained, when available.

### Non-Tariff Considerations

- **Legal Customs Declarations** – All movements across the UK borders will now require an import/export declaration to be submitted to HMRC in a timely fashion. Unless a direct link to CHIEF is established, a UK trader will be required to enter into a contractual arrangement with a customs agent to submit declarations to HMRC on their behalf. The UK trader will be required to supply all the necessary data elements of a customs declaration such as customs value, commodity code, country of origin, customs procedure code, consignor, consignee etc. The ability to "self-file" exists in the UK for both import and export declarations – both essentially require authorisation from HMRC and software to generate the required declarations – although many importers/exporters "self-file", the norm is to rely on customs clearance agents. The increase in declaration volumes in the UK from 1/1/21 may result in an increase in the uptake of self-filing procedures.

**Action** – Ensure a customs agent is contracted and the requirements for a customs declaration are understood prior to importing goods in the UK. Review whether "self-filing" would be a viable option NB – Government grants (from a finite pool of funds) are potentially available to assist in the purchase of self-filing software

- **UK Establishment** – In order to be able to submit customs declarations in your own name, a UK trader is required to meet customs establishment rules under The Customs (Import Duty) (EU Exit) Regulations 2018 (3) (1):
  - (a) in the case of an individual, where the individual is resident in the United Kingdom; and
  - (b) in any other case, where the person—
    - (i) has a registered office in the United Kingdom; or
    - (ii) has a permanent place in the United Kingdom from which the person carries out activities for which the person is constituted to perform."

In the case the UK entity cannot meet the establishment criteria, an establishment declarant is required to be used to act as the clearance customs agent for customs declarations and will be required to act on 'indirect representation' terms – which essentially makes yourselves and the customs agent both jointly and severally liable for the import declaration.

**Action** – Review establishment requirements to validate if they are met from January 2021 onwards.

- **Incoterms** – Incoterms define the risks and responsibilities of the buying and selling party within a physical and transnational supply chain. They also define responsibility for the generation of declarations and the payment of taxes – and can therefore have an impact on, for example the requirement or desire to register for VAT and the ability to recover Import VAT – see Link. Although Incoterms have no doubt governed UK/EU movements, their significance multiplies as the UK/EU border becomes a true customs border with import/export formalities.

**Action** - Review supplier and customer contracts to mitigate any risks that a party is unable to fulfil a defined responsibility. (e.g. additional Customs and VAT registration obligations across the EU, and irrecoverable import VAT on UK imports).

- **Regulatory Changes** - In addition to customs formalities, other regulatory controls will change as the Transition ends. The controls depend on the goods in question and the particular industry an importer/exporter is in.

The classification of goods is paramount in determining what additional controls may need to be adhered to and should indicate the governing department within the EU, the additional certification required and, in some cases, the need for an EU established business to be indicated on the product labelling. E.g. Food Business Operator (FBO) for foods product.

**Action:** Undertake an analysis of current product range to determine the regulatory requirements from January 2021 onwards.

### 3. Summary of potential mitigations in the form of customs procedures and reliefs

The introduction of border formalities and customs duty will have an impact on business with a UK/EU trade footprint. Some of these impacts can be mitigated through the use of reliefs and procedures that currently exist and some “easements” that will be introduced at or around the UK border.

- **Border Operating Model** – From 1 Jan 2021, import and export declarations will be required between the UK, EU and RoW. Full export declarations are required but import declarations can be deferred for up to six months from the date of importation for all imports of standard goods (i.e. non-controlled goods – controlled goods include alcohol, tobacco, hydrocarbon oils, certain products of animal origin etc) from the EU until 1 July 2021. Full declarations will be introduced required for controlled goods from 1 January 2021

Trade between GB, NI and the ROI will follow the process as defined in the Northern Ireland (NI) Protocol some of which is still under discussion/negotiation.

- **Postponed Import VAT Accounting (PIVA)** – Currently when a UK trader imports goods from outside of the EU, a customs declaration is made at the border and customs duties and import VAT become due. Often businesses will use a deferment account, such that the import taxes are paid by the 15th of the following month, rather than at the time of each importation. A C79 certificate is issued to the consignee listed in Box 8 of the import declaration and this serves as the evidence of entitlement to recover import VAT. Once the C79 certificate is received, the import VAT can be reclaimed via the VAT return (subject to the usual VAT recovery rules). This therefore results in a cash flow impact where the VAT will likely have been paid and there is will be a delay until it can be recovered, especially if you are on quarterly VAT returns.

The UK Government has announced plans to implement postponed import VAT accounting (PIVA) post-transition - UK VAT registered businesses will be able to simply account for import VAT on their VAT return (rather than paying and reclaiming). This will apply to imports from EU and non-EU countries. An importers EORI number will be shown on the customs declaration. VAT will be shown at the declaration level, and then a monthly statement will be generated online indicating the total import VAT postponed for the previous month and which VAT return to include it in. There will also be changes to the way the VAT return boxes are completed. Changes are expected to be implemented via UK Statutory Instrument - The Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019.

The use of PIVA is mandated where the deferred declaration process detailed above is used but is voluntary in all other circumstances – it is only available to VAT registered businesses.

- **Customs Special Procedures** – A number of customs special procedures exist in order to legitimately avoid or suspend the payment of unnecessary duties on goods that are being stored, manufactured, re-exported, used for a specific use etc. Their use may well become more important in the context of the post Transition world.

The operation of these regimes relies on the holding of an authorisation from HMRC – in all but limited cases, financial guarantees may be waived, albeit this is a new policy departure by HMRC.

Many of these processes may require specialist software to underpin their operation.

**Customs Warehouse** – a storage special procedure that allows a UK trader to import goods into an authorised warehouse with all duties and Import VAT suspended. Imported goods are able to be stored indefinitely within the UK and exported when required without the payment of UK duty or import VAT. The goods may be processed in a limited way within a customs warehouse – however complex manufacturing operations are not permitted.

**Inward Processing** – a processing special procedure that allows UK traders to import raw materials into an approved manufacturing process suspended of duty and import VAT. The finished products are then able to be exported from the UK without any duty being triggered. Alternatively, the finished product can be entered into another special procedure or entered into UK free circulation with all duties paid (either at the rate and value applicable to the finished product or imported raw materials, whichever is lower – the operation of “duty inversion” needs careful consideration).

**Outward Processing** - a processing special procedure that allows UK traders to export raw materials from the UK to undergo approved manufacturing processes outside the UK. Upon return of the manufactured product, goods may benefit from a reduced duty payment.

**Temporary Admission** – UK traders are able to import certain goods temporarily into the UK with suspended of duty for a specific time period – reasonably stringent conditions apply to the applicability of Temporary Admission.

**Transit** – a movement procedure that allows a UK trader to transit goods across a country without incurring any additional customs administration or duty/import VAT. For example, a UK trader could transit goods from the UK to Switzerland by road across the EU without incurring any requirement to pay duties/import VAT in the EU. The movement is covered by a financial guarantee and an electronic controlled movement certificate.

## 4. Summary of HMRC's new systems

New IT systems are being introduced by HMRC to manage some of the new processes that will be introduced from 01/01/2021;

- Goods Vehicle Movement Service (GVMS) – GVMS will link vehicle details to certain pre lodged import declarations in the UK in an attempt to smooth the process at the Channel ports – Hauliers will have the primary responsibility to interact with GVMS
- Check an HGV is ready to cross the border service – this is similar to GVMS but is designed to help export shipments be ready for export across the Channel – a demonstration website is available from this [LINK](#)

## 5. FAQ

### What are the essential requirements for a UK trader to import into the UK post Brexit?

- UK EORI number
- Access to a Duty Deferment Account (and financial guarantee if applicable)
- Customs Agent/Intermediary
- UK Customs Establishment status
- Defined Incoterms in commercial contracts
- Updated product master data
- EU EORI (For EU imports)
- EU Fiscal Representative (for EU imports when an EU EORI number cannot be obtained)

### Will I have to continue to submit Intrastat returns?

HMRC will continue to require that all VAT registered businesses currently required to submit monthly Intrastat arrivals declarations to carry on submitting these from 1 January 2021, to the same timelines as currently required. This includes both businesses deferring their customs declarations and businesses providing customs declarations at the time of import.

### If I have Delivered Duty Paid (DDP) arrangements with EU customers, what should I do?

In the scenario a UK trader are required to both export goods from the UK and import goods into the EU, they should ensure all compliance requirements are scoped and considered. Where a UK trader is required to be the importer in the EU, an EU EORI number is required to be used which requires EU customs establishment in line with the Union Customs Code Article 1 (31) and (32):

#### (31) "person established in the customs territory of the Union" means:

- (a) in the case of a natural person, any person who has his or her habitual residence in the customs territory of the Union;
- (b) in the case of a legal person or an association of persons, any person having its registered office, central headquarters or a permanent business establishment in the customs territory of the Union;

#### (32) "permanent business establishment" means:

a fixed place of business, where both the necessary human and technical resources are permanently present and through which a person's customs-related operations are wholly or partly carried out;"

In addition to establishment, the UK trader should ensure an EU customs agent/intermediary is contracted in order to submit customs declarations at the point of arrival to the EU frontier. All duties and Import VAT requirements will be applicable on the importer of record.

## How will my customs compliance responsibilities change as a result of the UK and EU agreeing to a free trade agreement (FTA)?

Whether the UK and EU agree to an FTA or not, UK traders will still be required to submit customs declarations for all goods that move across UK borders from January 2021. If an FTA between the EU and UK is agreed, UK and EU traders may benefit from reduced duty rates where the origin of the goods can be evidenced and meet the particular product rules within the protocols of the agreements. It should be stressed, the customs compliance requirements for UK traders will not be reduced regardless of the outcome of the UK/EU FTA negotiations.

**If you have questions relating to your policy, please contact your insurance broker.**

**If you have queries in relation to how Brexit will impact your business please consult appropriate advisors.**