

Preventing Chaos at the Brexit Border: The Immediate and Critical Need for Building Customs and Trade Expertise Across Traders in Ireland and the UK

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Introduction

Since the emergence of Covid-19 earlier this year and the resulting global pandemic, Brexit which once dominated the news headlines, swiftly took a back seat. The fear of Brexit was quickly replaced with the fear of Covid-19's health effects. The UK government recently reminded the nation of Brexit with the launch of its advertising campaign in July called "The UK's new start: let's get going".^[1] On the TV advert, a "Check, Change, Go" strapline directs people and businesses to a checker tool on the Government's website which outlines the next steps they need to take before the end of the transition period. Though Brexit has been a legal reality since the 31st of January 2020, people and business have largely been insulated from the consequences because of the existence of the 11 month long transition period taking us to the end of the year which continues to bind the UK to the customs union, single market and EU rules.

Despite the UK and Irish Government's efforts, businesses whom import and export (traders) are alarmingly unprepared to service the transition from frictionless trade within the European Union, to the new trading arrangements that will prevail when the current transition period ends this December 31st at 11pm. A recent survey revealed that less than a quarter of British business leaders feel they are ready for the end of the transition period.^[2] Similarly, despite the best intentions of the Irish Government, businesses south of the border similarly feel unprepared.^[3]

There are significant gaps in customs knowledge and trade expertise among traders because these skills have been declining in the economy for nearly three decades. It is an urgent priority for every trader across Ireland and the UK to get Brexit ready. This will involve traders ramping up their efforts to access customs intermediaries, get staff trained and build internal competence to cope with the new trading reality, specifically on what information and documentation to submit to customs.

In this opinion piece we focus on some of the challenges traders face and the current skills gap to service them as the end of the transition period closes in.

The renewed need for Customs and Trade knowledge and expertise

The completion of the European Single Market in 1992 meant that the majority of checks and controls on goods moving between member countries were phased out. Traders in the single market benefited from the freedom to trade goods across member states without any internal borders or regulatory barriers. Although the future trading relationship between the EU and UK is currently undecided, remaining in the Single Market has been categorically ruled out, and so the UK is destined to lose its previous right to frictionless trade within the EU.

What was previously considered in the legal framework as the movement of goods within the EU, are soon to be considered imports and exports. Traders in the UK and Ireland must now familiarise themselves with customs and borders procedures, and many will be doing this for the first time. Whether or not the UK and EU agree on a Free Trade Arrangement (FTA), or leave on other terms of trade as dictated by the World Trade Organisation, there will still be a need to fill out paperwork

because companies will have to communicate precise information on their goods to customs authorities ^[4].

In many ways the customs declaration is a tax return. It imposes many conditions and obligations on importers. Customs and excise duties, like any other taxes (VAT, Corporation Tax etc.), have their own specific compliance and reporting requirements, authorisations, documentation, methods to calculate payments and ways of making payments themselves. If you consider each declaration as a transactional tax return an importer makes to the customs authorities, its easier to begin to understand the compliance and responsibility each declaration confers on importers.

The transactional information required to facilitate an import will be made on the EU's [SAD/ UK's C88 format](#) and these documents are comprehensive in their requirements. It requires information from multiple sources, knowledge and expertise to submit the form correctly and for it to be compliant with the rules. For example, these forms require a classification code based on the product's description, a valuation assigned, a place of origin for the goods declared and the tariff calculated. (Essentially, a tariff is the tax imposed on a category of imported goods, and the customs authority collects the payment at the item's port of entry, unless authorisation for other facility to defer or suspend payment exists.).

Classification, Valuation and Origin are considered duty drivers in that they are critical to determining the amount of customs duty/import VAT payable. For classification there are a complex set of rules that must be followed in order to accurately assign a classification. This is critical as duty rates, quotas, prohibitions and restrictions are driven from it. The value to be declared at import (customs valuation) again has a set of rules that assigns an appropriate valuation for customs. Further rules set out what this value can include and exclude in terms of various cost elements (for example assists, tooling, taxes, transport, insurance, commissions, royalties etc.) and the conditions and documentation to support this. Country of origin has two components, non-preferential origin and preferential origin. Rules and documentation requirements apply to how the economic nationality of the goods is assigned, particularly relevant where the supply chain and bill of materials of a product involves multiple countries. These rules vary for both types of origin and indeed it is possible to have a different country of origin for non-preferential and preferential origin. Non preferential origin often applies to trade embargoes, commercial policy measures, restrictions and quotas. Preferential origin applies often to import tariff benefits from beneficiary countries (e.g. countries the EU has concluded free trade agreements with, generalised system of preferences countries). Other rules and documentation requirements exist that are too extensive to outline here.

The renewed rules and requirements are a significant challenge for UK traders trading with the EU and for Irish traders trading with the UK. The Irish SME sector is particularly exposed in terms of reliance on the UK market given its lack of experience with imports/exports and more limited resources than its multinational equivalents.^[5]

In July, the UK government announced its intention to phase in the operation of its border controls over a 6-month period of time that offers UK traders in particular some flexibility to get used to the new trading reality.^[6] There will however be a requirement to collect and retain the information necessary to make a customs declaration from the 1st of January 2021, even if that declaration and corresponding taxes can be made belatedly. On the Irish/EU side, no such flexibility is being offered and at present there is no reason to assume anything other than full import/export requirements for trade from/to the UK at the end of the transition period.

Though the Northern Ireland (NI) protocol and Withdrawal Agreement to remove the introduction of a hard border on the Island of Ireland in such a way that would avoid the scenario of the kind of physical infrastructure and checks that existed on the Island of Ireland before the single market, it should also be considered that this may not be a fait accompli, bearing in mind much of the detail to implement the withdrawal agreement and protocol is yet to be agreed by the Joint Committee on the Protocol (Joint Committee) in the Republic of Ireland (ROI) /NI.

If the elements of the Protocol and Withdrawal Agreement move to ensure as frictionless trade as possible on the Island of Ireland, the picture is a little more convoluted at present with regard to east – west trade between NI, ROI and Great Britain (GB). The UK government released its guidance document on the 7th of August setting out its vision of how goods will move under the Northern Ireland protocol. This set out four broad scenarios under which goods could move post transition period.^[7] From this we can see the Joint Committee faces significant challenges in avoiding paperwork, checks and controls on the majority of scenarios. Whatever is agreed here is broadly, its very likely to increase complexity and requirements for traders.

As a response to some of the challenges to the Northern Ireland protocol poses to NI traders, the UK government has launched the Trader Support Service (TSS) in order to support them. This aims to provide NI traders with a service to support them to deal with import and other declarations from GB and the rest of the world. Though this goes some way to alleviating the potential burdens, there will still be a responsibility on NI traders to provide the correct information in order that accurate declarations and paperwork can be filed corresponding to the requirements of trade with ROI, UK, . Time and expertise will be required to provide this information. Issues of liability have yet to be clarified and we await further detail anxiously.

Traders can and usually do hire a customs clearance intermediary who will complete the import and export declarations to customs and act on their behalf. However, customs intermediaries have many clients, most of whom seek fast turnarounds, and these time-constraints mean that the intermediary cannot spend long periods of time on every customs declaration. Often an intermediary will operate for a trader under a customs concept called ‘direct representation’ which nearly entirely places liability on the importer for the accuracy and veracity of the information they provide for clearance. Complications can arise when the importer assumes that the clearance intermediary is conducting detailed compliance checks of the information they provide to customs. It is usually the case that the importer is liable should incorrect information be detected by customs authorities.^[8] Delays in clearance, fines, penalties and other sanctions await those traders who transgress customs rules.

To further complicate this issue, there are stark warnings about shortages of customs clearance intermediaries after Brexit. The UK’s National Audit Office has estimated that an additional 200 million customs declarations will be submitted next year, and that the UK government is falling far short of its target to train an estimated 50,000 new customs intermediaries.^[9] With this in mind many traders are considering making customs declarations themselves. HMRC provides funding for traders to upskill and create the necessary infrastructure to make their own customs declarations. This can be quite a good option for some traders but requires them to have adequate customs training and resource to be able to support all aspects of the administration and compliance of customs declarations.

It is critical that traders consider the options and requirements of using a customs intermediary versus setting up to submit their own declarations. The appointment of a customs intermediary is not

sufficient to alleviate the problems traders face in terms of providing the correct information to customs authorities. The use of self-declarations imposes significant extra time and resource requirements than exist today. Traders should perform a cost benefit analysis to inform the decision-making process.

While it is true that if the UK and EU successfully implement an FTA come January that the majority of tariffs could be removed, it is unlikely that all tariffs will be removed. In fact, customs compliance could be further complicated by an FTA. FTA's have strict and complex rules for the qualification of the product (rules of origin) being traded, the processing of customs declarations and the certification to support this.

Companies wishing to import and export goods within the FTA are required to make calculations to determine if their product qualifies for tariff exemptions under the rules specified in the FTA. There are calculations to be made around originating content versus non originating content which can pose significant challenges to companies with variable product bills of materials for example. After that, paperwork must be filed to certify that it qualifies for preferential treatment under the terms of the FTA. Additionally, the proposed Northern Ireland protocol which outlines differences in how trade between the EU and the island of Ireland, relative to GB, will take place, adds another layer of customs procedures for companies to tackle.^[10]

The brutal reality is that as it stands, traders in the UK and Ireland are not ready for the new regime in January, whatever form it takes.^[11] Unfortunately the experts of the pre-1992 customs clearance era have largely retired. In today's world, other taxes such as VAT and corporation tax have specially trained professionals working across sectors of the economy who administer and advise on the implementation and compliance of these taxes. The creation of a new generation of customs professionals will play a vital role in creating a secure business environment next year, by supporting firms as well as other stakeholders in understanding the new global trade framework and incoming customs legislation.

Summary

Governments and businesses are significantly under-resourced and unskilled to deal with a new trading regime. There needs to be proactive push to prepare across government and business that within a matter of months there is going to be swift movement from a trading environment between the UK and EU that is free of controls to one that is controlled and subject to customs rules and administrations. It is vital that companies prioritise staff training and take swift action to build internal competence to be able to survive and thrive post-Brexit. Businesses have difficult choices to make in the coming months, and it may be necessary to seek expert advice to make these decisions.

Because, ready or not, on January the first 2021 a new trading reality comes...

Disclaimer

The views expressed in this paper are those of the authors and not necessarily those of the Centre for Cross Border Studies.

Notes

[1] On the 13th July 2020 the UK government launched a public awareness campaign to encourage preparations in the UK for the end of the transition period. For more information, see the official press release at <https://bit.ly/30j4Y16>

[2] This statistic is taken from a survey from the Institute of Directors. Discussion of the survey is available at <https://bit.ly/3fnB7cn>

[3] Last December, only 1 in 10 businesses in the Republic of Ireland classified themselves as Brexit ready. Discussion of the survey from InterTradeIreland is available at <https://bit.ly/3gpm0k2>. In August of 2019, KPMG found that only 17% of Irish SMEs had undertaken a comprehensive Brexit study, see <https://bit.ly/2Pjr0dP>

[4] The UK Government has previously urged business to hire customs agents, see <https://bit.ly/3k0TcQV>

[5] The big impact of Brexit on Ireland's small businesses, see <https://bit.ly/2Epy7jd>

[6] The border with the European Union, see <https://bit.ly/32kHatN>

[7] Brexit Update – UK Government Guidance on moving goods under the Northern Ireland protocol, see <https://bit.ly/3lcW8ur>

[8] The UK Government's official guidance on getting help with customs, details the need for companies to keep detailed records and submit accurate information to customs agents. For more information see <https://bit.ly/39MRqy0>

[9] For more discussion on The National Audit Office's assessment see <https://bit.ly/3fsIjUI>

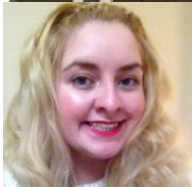
[10] The withdrawal Agreement, Protocol on Ireland/Northern Ireland Article 5(1), available here <https://bit.ly/3fmrzOT>

[11] For a more detailed description on how the UK borders are not ready from a business perspective see <https://bit.ly/3filbWT>

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