

A general customs solution after Brexit for EU – UK trade and the Irish land border.

Introduction.

Customs issues are at the heart of the Brexit discussion:

- to facilitate trade between the EU and the UK with minimum costs and interference, and;
- to implement a customs land border on the Island of Ireland without infrastructure.

Whilst incomplete, this paper describes a general solution to both issues, which can be made operational within the present legal framework, using existing customs infrastructure and IT systems and within the Transition period.

The Union Customs Code and its operability by member states.

The EU's Union Customs Code (UCC) provides the legal framework for customs. The UK will use the UCC as a basis for its future customs legislation after Brexit. The UCC has direct applicability to EU citizens and businesses. The UCC offers a regulatory framework, supported by IT systems, which is operational in all member states. Each member state is free to shape its customs organisation as it finds suitable to its specific situation if it complies with the UCC. The UCC also offers a range of simplifications which member states are free to apply if they wish to do so.

A customs union versus a Free Trade Agreement

A customs union is formed by several individual countries, or member states. They do not levy duties on trade within the customs union territory. All member states levy the same duties on goods coming from countries outside the customs union. There are no customs formalities within a customs union.

Under a Free Trade Agreement (FTA), two countries or customs territories agree not to levy any duties on trade on goods originated from each other's territories. Customs formalities are needed under an FTA to determine the origin of the goods and to regulate other laws, such as VAT and product compliance.

Registered Export (REX) System

Now a new worldwide system is being introduced for exporters to state the origin of goods for customs purposes. Under the REX system, an exporter can register on a global database in which he can state what goods he regularly exports. He then can simply declare on the invoice the origin of the traded goods. The REX system will replace the present system of Certificates of Origin. The REX system can also be used for EU-UK trade. The UK already has most companies registered for REX within the EU.

Actors in customs

The following actors play a role in customs:

- Importers and exporters: they sell and buy the traded goods. They provide the basic data (on the invoice) needed to make a customs declaration. They are ultimately responsible to customs authorities to fulfil all obligations.
- Logistic service providers (LSP): they transport the goods over the border and play a role in bundling goods and communicating with brokers.

- Customs brokers: they are the intermediary between exporters, importers and LSP's on one side and customs authorities on the other side. They make the actual (digital) customs declarations and streamline all formalities and procedures.
- Customs authorities: they enforce the applicable laws when goods are exported and imported. They process the digital declarations, perform administrative and physical checks, collect taxes and implement non-tariff legislation on trade.

Regulations for goods traded across a border

A vast number of laws are applicable at the border, including:

- Duties: these vary depending on type and the origin of goods. Duties are levied as a percentage of the value of the goods.
- VAT: exports are exempt from VAT, but imports are subject to VAT.
- Excise duties and other taxes.
- Security: some (strategic) goods may not be exported, while other (dangerous) goods should not be imported.
- Regulatory alignment: All imported goods must comply with regulations such as health, veterinary, phytosanitary and other laws.

Declarations needed for a border crossing

- To exit a customs territory, an export declaration is needed to check that goods are eligible (on security grounds) to be exported, but also to prove that the transaction is exempt from the charging of VAT.
- To import into a customs territory, an import declaration is needed to determine the payment of duties, VAT and other taxes, as well as to check that the imported goods comply with all other laws.
- Goods can be transported across the EU border with countries like Switzerland and Norway to an interior destination with a Transit declaration. If the goods do not arrive at the point of destination and the applicable obligations are not fulfilled, then the titular of the Transit declaration is held liable for all consequences.

All customs communications are automated

The UCC requires that all customs formalities are automated. For this purpose, each member state has developed its own customs IT systems. The UK is replacing its present customs declaration system, called CHIEF, by a new system called CDS (Customs Declaration System), which will be operational from March 2019. Customs declaration systems are complex, since they must apply many regulations on a real-time and online basis. They communicate with several national and EU customs IT systems. The data these customs declaration systems require for communication are very structured. These data are provided by commercial software applications, which are mostly used and operated by large exporters, importers and customs brokers. There are many such commercial customs software applications available on the market.

Customs software applications process the information which can be found on an invoice such as the kind of goods, their origin, weight, value and so on. This information is coded into datasets that can be processed by the customs authorities' IT systems, such as CDS. The processing of one declaration may involve 10 to 20 messages back and forth between the commercial software module and the customs software, communicating stages and findings in a customs declaration process.

In addition to export, import and Transit declaration systems, there are IT systems for veterinary goods (Traces), for excise goods (EMCS), customs payment accounts, bank guarantees, customs authorisations and permissions etc. To manage the flow of goods, there are also (air)port community systems operational which fully integrate customs procedures in the supply chain.

Risk assessment

Since all declarations are filed digitally, customs can base its risk analysis on these (big) data. The combination of different data elements in a declaration can lead to a specific risk assessment. A high-risk good, frequently imported by a trusted trader, does not have to lead to a high-risk assessment. A low-risk good imported from an unusual country by an unknown trader can lead to a high-risk profile. In addition, customs will perform random checks to see if the assessment based on big data is correct. Some goods, such as veterinary goods, may have a 100% profile on administrative checks, because of the high priority that is given to health aspects.

Kind of inspections

When a customs declaration is filed, the outcome of the digital risk assessment will be one of three options:

1. There is a **low risk** assessment, which implies that no further information is needed. The goods will be released for trade and transport immediately. In general, this is the outcome for more than 90% of all goods.
2. There is a **medium risk** assessment, which implies that customs want to obtain additional administrative information, to be assessed by a customs officer. The declarant, who filed the digital declaration, will have to provide more information, such as the original invoice and origin and transportation documents. If this information is trustworthy, the goods will be released from further customs inspections. If this information is inadequate, a physical inspection of the goods can be ordered. (See 3. below)
3. There is a **high-risk** profile, so the goods are directly ordered to be physically inspected. This can be done by a scan of the container or truck or by an inspection of the goods when they are unloaded at the border or at the premises of a LSP or on the premises of the importer.

In addition to administrative and physical checks at the time of export or import, customs can also perform retrospective administrative checks based on companies' administrations over a certain period. These checks have proven to be effective. Most data about transactions and goods are well documented within companies' administrations. Under the present UCC, retrospective administrative checks can be performed up to 3 years after the date of importation.

Border clearance versus inland clearance

Export and import declarations can be filed when the goods are available at a border or at the points of loading or unloading at the premises of a LSP or at the premises of the exporter or importer.

• **Clearance at a border.**

- **Export:** The goods are transported to a border without prior planning of customs formalities. At the border, a customs broker must make a digital export declaration based on the documents provided by the transporter, such as the invoice, transport and origin documentation. The declaration is digitally filed by the broker and a further customs inspection can take place depending on the risk assessment of the customs IT system.
- **Import:** After the export declaration is filed, a similar import procedure is needed. Another risk assessment will be done by the IT system of the importing customs territory. Checks can take place at the border.

- **Inland clearance.**
 - **Export:** The goods are declared while they are available for customs inspection at the premises of the exporter or LSP. Many export declarations are filed by an exporter personally, since most export shipments are repetitive and thus relatively simple and predictable. Data for the declaration can be easily downloaded from existing administrative systems. If a customs broker makes such an export declaration, he can easily copy a previous declaration or use a simplified format for the declaration, which already contains all standard data. The declaration can be filed before the goods are loaded, so logistic processes are not disrupted.
 - **Transit:** The export declaration is followed up by a Transit declaration, which ensures that the goods can be transported to the importing customs territory without any formalities at the border. Since a bank guarantee must be provided to cover possible liabilities by the titular of the Transit declaration, such a declaration is usually made by a customs broker. Because of his liability, he will take care that all customs obligations are met. Export and Transit declarations are often combined.
 - **Import:** As soon as the goods are available at the premises of the LSP or the importer, an import declaration is filed. This is often done by a customs broker, since he has all necessary permissions from customs to do so; he has IT infrastructure, a payment account for duties and taxes, and all the knowledge required to streamline a compliant declaration process. If an inspection must take place, the goods must stay available for inspection by a customs officer for a mobile inspection, until they are made available for free circulation.

General implementation at the EU-UK border

It will be necessary for the UK to participate in the Transit Convention after Brexit. The UK has already applied to do so. The UK will also have to implement simplifications which are now available within the UCC to make inland clearance easily accessible. This accessibility can be realised by offering service opportunities to customs brokers and companies that want to make their own declarations. Member states of the EU with intensive UK trade, such as the Republic of Ireland, France, Germany, Belgium and the Netherlands, may also want to make inland clearance easily accessible, thus facilitating trade and preventing congestion at harbours and borders.

In addition, it is quite logical that a German importer wants to do his customs declarations in his home country and not at one of the Channel or North Sea ports.

Implementation on border between Northern Ireland and the Republic of Ireland

Traders will have a natural incentive to comply with the customs obligations, because the VAT rate on exports is 0%. This rate can only be applied when an export declaration is filed. Each declaration is registered by customs. Thus, VAT authorities can easily check if the information on the monthly VAT declaration of an exporter is correct by simply comparing it with the available customs data. So, if no export declaration is filed, then the VAT authorities will not allow the use of the 0% rate.

Every export declaration must be followed up by a Transit declaration, which in turn must be followed up by an import declaration. In this way, the complete flow of goods and connected administrative obligations can be followed on both sides of the border, without the need for any physical infrastructure

Veterinary goods

Veterinary goods form a special category for customs, since they are inspected more intensely and frequently than other goods. EU regulations say that these goods should be inspected at border inspection posts (BIPs) which should be located 'in the immediate vicinity of the point of entry'. However, when specific geographical factors require it, these BIPs can be located away from the border. This is, for example, presently the case in Rotterdam, where there are BIPs located up to 40km inland. The Northern Ireland/Republic of Ireland border can also be considered a specific geographical situation, since it has more than 300 border crossings which are being used at a relatively low frequency for trade in veterinary goods. Inspections can take place at the premises of the exporter and importer, or of the LSP, where the animals and goods are loaded and unloaded.

Mutual recognition of inspections and co-operation can further help to manage the cross-border trade of these goods.

The EU Traces system is designed to track and trace the trade of agricultural products within the EU and with associated third countries. Traces is now fully operational in the UK and the UK could apply to be an associated third country for Traces after Brexit.

Statistics show that the numbers and value of trade and shipments of veterinary, sanitary and phytosanitary goods between the Republic of Ireland and Northern Ireland is not very large and thus manageable.

Taking into consideration that the island of Ireland is already a bio-security zone for the purpose of disease prevention and public health, this can be incorporated in the risk assessment of the customs declarations and thus inform the intensity with which administrative and physical checks are implemented. There is no other sector in trade which is so heavily regulated and monitored as the agricultural sector. The data from these sources can be further used to manage the trade in these goods.

Comparison with Norway and Switzerland

The EU has comparable operational borders with third countries such as Norway and Switzerland. These borders offer hybrid facilities. Customs clearance can be done at the border or using inland clearance. At the EU-Swiss border in Basel and elsewhere, there are lanes for border clearance and lanes for trucks carrying goods under the Transit system. It depends on the circumstances and preferences of the actors in trade which method they prefer and apply.

For trade on the Northern Ireland/Republic of Ireland border, inland clearance would de facto become obligatory as there will be no infrastructure at the border. Since there is no customs service industry now available in Northern Ireland or at the border, there is an opportunity for brokers to develop that market.

Transit barcode scanning.

The Transit system was introduced about 2 decades ago and works satisfactory. A special aspect of the system is that there is an obligation to scan the barcode of the print of the digital Transit declaration at the border. Based on this scan, it can be determined what customs territory can hold the titular responsible and liable for the obligations under Transit. Consider, for example, a shipment from an inland location in Germany across the border in Basel to an inland location in Switzerland. If the barcode has not been scanned at the border in Basel, then the German customs authorities may hold the titular responsible. If a scan has been made, then the Swiss may hold the titular liable, since there is a registration that the goods have arrived in Swiss customs territory. The barcode scan is an old-fashioned administrative obligation that can easily be replaced by an app that follows the truck

that carries the goods across the border. If such an app is developed for the Northern Ireland/Republic of Ireland border, it could also be used at other EU external borders such as Basel.

Examples of implementation of inland clearance after Brexit.

1. Repetitive trade of car parts

A German company supplies car parts daily to a car manufacturer in the UK. The goods are transported by a truck crossing the Channel between Calais and Dover. This kind of trade is documented in detail in the IT systems of the seller and the buyer. The exporter would use commercial customs declaration software to download the data from his IT system and generate a fully automatic export declaration. Since the risk profile of these transactions is very low, there would be no need for any administrative or physical checks by customs.

The exporter could order the haulage company to take care that a Transit declaration is made available for the transport to the UK. The haulage company would probably ask a broker to make this Transit declaration. The alternative would be that he himself would apply for a customs permission to make the Transit declaration himself. The goods can be transported to the car manufacturer in the UK.

Since the car manufacturer receives goods from all over the world for assembly, he will have his own customs department taking care of the import declaration. A datafile, made available by the supplier, is used to download into his customs declaration system. He makes use of the simplification in the UK customs system to report the imported goods on a monthly basis.

Since the UK introduced postponed accounting for VAT when Brexit took place, the importer does not need to pay VAT upon imports to HMRC. The VAT is registered administratively through the import declaration and can be cleared on the monthly VAT declaration.

2. Export of veterinary goods from the UK to the EU

A UK exporter of exclusive beef exports to Austria. The goods are inspected by a UK veterinarian before export. Being an eligible trader, the exporter registers the sale to the likewise eligible Austrian importer in the EU Traces system. An export declaration is made by a specialised customs broker in the UK when the goods are loaded. In the export declaration the code that refers to the veterinary inspection is filed, so the UK customs computer registers that all obligations are met. The broker also makes the Transit declaration which is needed for the shipment to Austria. In Austria, the truck reports to an authorised inspection point, where the local veterinarian inspects the papers. Since mutual recognition of veterinary inspections is agreed upon between the UK and the EU, he sees no need for a physical inspection and the goods are released.

3. Small trader on the border between Northern Ireland and the Republic of Ireland

A wholesaler of specialised tools for the construction industry, located in Belfast, sells once a month to customers in the Republic of Ireland. He uses a logistic service provider (LSP) to deliver the goods to his customers in the Republic of Ireland. The LSP collects shipments from different exporters and has a daily service from Belfast to Dublin. From there, the goods are distributed to the diverse customers. He has arranged with a customs broker to take care of all customs formalities. The LSP collects the shipments in his warehouse and gives orders to the broker to make the export declarations for each individual shipment on behalf of the exporters. The risk assessment on the goods is so low that almost all declarations are released for export immediately. The broker makes one collective Transit declaration for the daily transport to the Republic of Ireland. The broker co-

operates with a colleague in Dublin who prepares the import declaration, so that the goods can be declared immediately when they arrive at the premises of the distribution centre in Dublin. Occasionally Irish customs want to have more information about the imported goods. Physical inspections took place twice last year.

The brokers invoice their service to the LSP. The LSP adds the customs clearance costs to his transportation bill. Since the LSP has multiple declarations each day, he can receive a very competitive price from the customs broker. All obligations which the importer and exporter have concerning VAT are fulfilled through the customs declaration.

Hans Maessen
30th November 2018