



Carol Lynch

Partner, Customs & International Trade, BDO

Ben Twomey (*not pictured*)

Customs Specialist, Customs & International Trade, BDO

Brexit: Where Do We Stand Now?



Introduction

The position on Brexit from a customs and trade perspective is now two-fold:

- The transition period ends on 31 December 2020.
- Talks are still in progress between the UK and the EU on a free trade agreement (FTA), with significant areas of dispute still in play.

In terms of the impact on Irish businesses with UK trade, firstly, as the transition period will end on 31 December 2020, from 1 January 2021 all Irish importers and exporters will be required to lodge customs declarations with Revenue to

account for their imports and exports. This has been confirmed by the EU, and there will be no derogation or simplification allowed regarding this requirement.

Secondly, customs duties will be payable on import unless there is a successful conclusion to the FTA discussions. At this point it is clear that any FTA will be a “bare-bones” agreement. What we do not know, however, is whether any final agreement will cover all products or be restricted to certain categories. In the event of the FTA talks being successful, importers and exporters will still have to provide proof of origin to qualify for the duty reductions.

Many Irish companies are now having to try to understand customs taxes and trade legislation for the first time, given the confirmed requirement to lodge customs declarations on purchases from and sales to the UK. The purpose of this article is to look at the essential points to consider.

What Is Customs?

The first thing to remember is that customs duties and customs declarations are required each time an international border is crossed. Therefore, for sales to the UK, for example, you will need to lodge an export declaration from Ireland and an import declaration to the UK. These are the same requirements that currently exist for all international trade between Ireland and any non-EU country. In this regard, we outline below some of the key requirements for companies operating in this environment.

Customs Compliance

EORI

After the transition period, an Irish (EU) trader importing from or exporting to the UK will need a customs registration, known as an economic operators' registration and identification (EORI) number. The EORI is a unique customs registration that enables you to interact with customs in each Member State.

It is important to remember that from January 2021 a UK EORI will no longer be considered an EU EORI. If you are continuing to operate with a presence in both the EU and the UK, you will need both an EU EORI and a UK EORI. These registrations are relatively easy to obtain, but a significant number of companies have yet to request theirs. As this is the first step to importing and exporting, it is essential that this is done now.

Customs declarations

When importing and exporting, a customs declaration will need to be lodged with the relevant Revenue authorities before arrival or departure, and you will provide your EORI number on this declaration. Goods cannot leave the port without being allowed to depart by customs. This is called clearing customs and is

done by way of lodging a customs declaration for approval by the customs authorities. A customs declaration contains 54 boxes, all of which will need to be completed accurately. In simple terms, these boxes represent the "what, when, where and value" of your shipment.

Owing to the operational nature of customs, it can be easy to forget that it is a **tax** and is subject to compliance rules in the same way as any other tax. The declarations are submitted to the relevant Revenue authorities and are subject to post-clearance audits. Therefore, customs processes, procedures and requirements are, firstly and foremostly, the responsibility of the tax department in your company. As a result, any disclosure procedures, for example, should also be included in your overall tax disclosure policy.

In completing a customs declaration, you have essentially three options:

- do it in-house,
- use a freight forwarder or
- use an independent broker.

If you choose to complete your declarations in-house, you will need to ensure that you have customs software capable of transmitting information to Revenue. If you will be acting as an "importer of record" in the UK, you will also need to have a system that can link with HMRC and the Customs Handling of Import and Export Freight (CHIEF)/ Customs Decisions System (CDS).

If you decide to go with a freight forwarder or an independent broker, they will usually have a presence in both Ireland and the UK and will be able to accommodate declarations either side of the border. It is important to remember that brokers will act as your agent and will only complete declarations **based on the information you provide**. Ultimately, however, all responsibility for the accuracy of the information reverts to the importer/exporter of record and not to the agent. Therefore clear instructions and information should be provided to the agent, including a part master list, commercial value and Incoterms. These are all explained below.

Duty rates and classification

One of the most important pieces of information that needs to be provided on the import and export declaration is the tariff code, or customs classification. The tariff code for imports is a 10-digit number that equates to a description of the item. The tariff code will also determine the duty rate and associated controls and licence requirements.

To understand what tariff code relates to your product, you must undertake a classification project. It is critical to classify your products under the right tariff code to ensure that the correct duty is paid. If you overpay, you will be disadvantaged financially, and if you underpay, you are likely to have to pay an additional amount later. In addition to potential repayments, you would also be liable for compliance fines if the tariff codes are found to be incorrect in a customs audit.

Determining tariff classification is often one of the biggest projects that a company must take on. It is important to ensure that all products have been accounted for – not only for the purpose of import duty and import declarations but also for export declarations – as this is critical security information for customs. **We therefore recommend creating what we call a “part master classification list”.** This summarises your products by part number and tariff classification based on the research work you have carried out. It means that you will not have to classify a product on every import or export but will have a file on your ERP system in advance.

Whether you decide to proceed with a customs clearance agent or complete declarations in-house, a part master list is extremely beneficial to the declarant and will speed up the customs declaration process. It will also be seen favourably by customs authorities in an audit scenario.

To determine your classifications, there are two websites to check:

- For importing to/exporting from Ireland, the tariff codes (and duty rates, if applicable) are set out in the EU TARIC database: [https://](https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en)

ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en.

- For importing to/exporting from the UK, the tariff codes (and duty rates, if applicable) are set out in the UK Global Tariff schedule: <https://www.gov.uk/check-tariffs-1-january-2021>.

In relation to the UK, the new UK tariff schedule that will apply if a free trade agreement with the EU is not concluded was introduced in May of this year. This schedule sets out the “most favoured nation” (MFN) or WTO duty rates that will be levied on goods entering the UK from “third countries” (including EU Member States) and will come into effect on 1 January 2021. The schedule replaces last year’s provisional tariff schedule, where almost all imports were set at a 0% duty rate. It introduces some significant simplifications to how tariffs are applied, including a lower duty regime in comparison to the EU Common External Tariff schedule, pounds sterling (£) replacing euro (€), and tariffs lower than 2%, i.e. “nuisance tariffs”, abolished.

Incoterms

Incoterms allow for an understanding of when and where the transfer of responsibilities takes place in any global trade. These are broken down into eleven rules, outlined by the International Chamber of Commerce. Incoterms will need to be referenced when completing an import customs declaration, whether through an agent or in-house, and are important in ensuring that you pay the correct amount of customs duty. Currently, a large number of Ireland-UK contracts are based on a “delivered” status, meaning that the Irish supplier is responsible for delivery of their product to their customer’s door. Since the establishment of the EU Single Market in 1993, customs duties have not been applicable, and from a UK customer’s point of view, they would simply place an order, pay the cost and wait for their product.

It is now evident, however, that there is a difference of opinion between buyers and sellers on the meaning of “delivered” and whether this covers not just transport costs but also customs declarations costs and the accompanying duties and import VAT.

It is essential, therefore, in your preparation for 1 January 2021 to establish a mutual understanding of your terms of contract and terms of delivery. This will determine who is responsible for what along the product's journey.

Origin

Along with the duty rate, you will also need to determine the origin of goods. This will be critical in the context of any potential EU-UK free trade agreement. It is currently a huge benefit for companies trading with, for example, Canada and South Korea, where accurate determination of origin can yield significant duty reductions.

To obtain preferential originating status, two main criteria are defined in preferential arrangements:

- Wholly obtained products – where only one country is involved in the manufacture of both materials and products.
- Sufficiently worked or processed products – from a country incorporating materials that have not been wholly obtained there, provided that the materials used in the manufacture of these products have undergone sufficient working or processing. The “sufficient working or processing” needed to obtain preferential origin for the final product is determined by the “list rules”, which each preferential arrangement contains.

Products that have been “produced exclusively from originating materials” will always be considered as originating products, by being wholly obtained, being sufficiently worked or processed, or having used originating materials from a partner country through “cumulation”.

Valuation

You will need to ensure that the correct value is given to customs authorities for the goods. There are six methods of valuation that apply, in hierarchical order. If method 1 (transaction value) cannot be used, then you should use the next method, and so on:

- (1) The transaction value method. This is used in 99% of trade and relates to the invoice value. If the sale is between related parties, then you need to be able to confirm that the relationship has not influenced the price.
- (2) The transaction value of identical goods.
- (3) The transaction value of similar goods.
- (4) The deductive method.
- (5) The computed method.
- (6) The residual valuation provisions.

You may also need to obtain a valuation authorisation from Revenue to confirm the valuation of the goods.

Paying customs duties

If there is no free trade agreement between the EU and the UK, then customs duties will be payable both on import to Ireland and on import to the UK. There are generally three options for paying any duties due when importing:

- Authorise your freight/clearance agents to pay the import duty and import VAT on your behalf and to invoice this back to you.
- Lodge money to your Revenue (TAN) account.
- Pay the duty directly to customs with a **deferred payment authorisation** to enable one **monthly** payment rather than individual payments each time your goods cross the border.

If you proceed with a deferred payment authorisation, this will require providing a comprehensive guarantee (which is obtained from your bank). We would recommend allowing three months to obtain this guarantee and authorisation.

Penalties

As well as customs duty exposure, customs compliance should be high on your list of priorities for 1 January 2021. As with any other form of tax, non-compliance can result in penalties and fines. These infringements are covered in s40 of the Customs Act 2015 and include:

- failure to make a declaration (penalty of €2,000);
- make a late declaration (penalty of €250 for each month or part thereof for which a declaration is outstanding, subject to a maximum of €2,000);
- make an incorrect or incomplete declaration (penalty of €100);
- not being in possession of documentation necessary to support an electronic declaration (penalty of €100);
- failure to comply with Article 135, Article 233(1), (2) or (3), or Article 242 of the Union Customs Code (penalty of €500); and
- failure to comply with any other provision of the Customs Acts (penalty of €250).

UK Temporary Simplifications: UK Border Operating Model

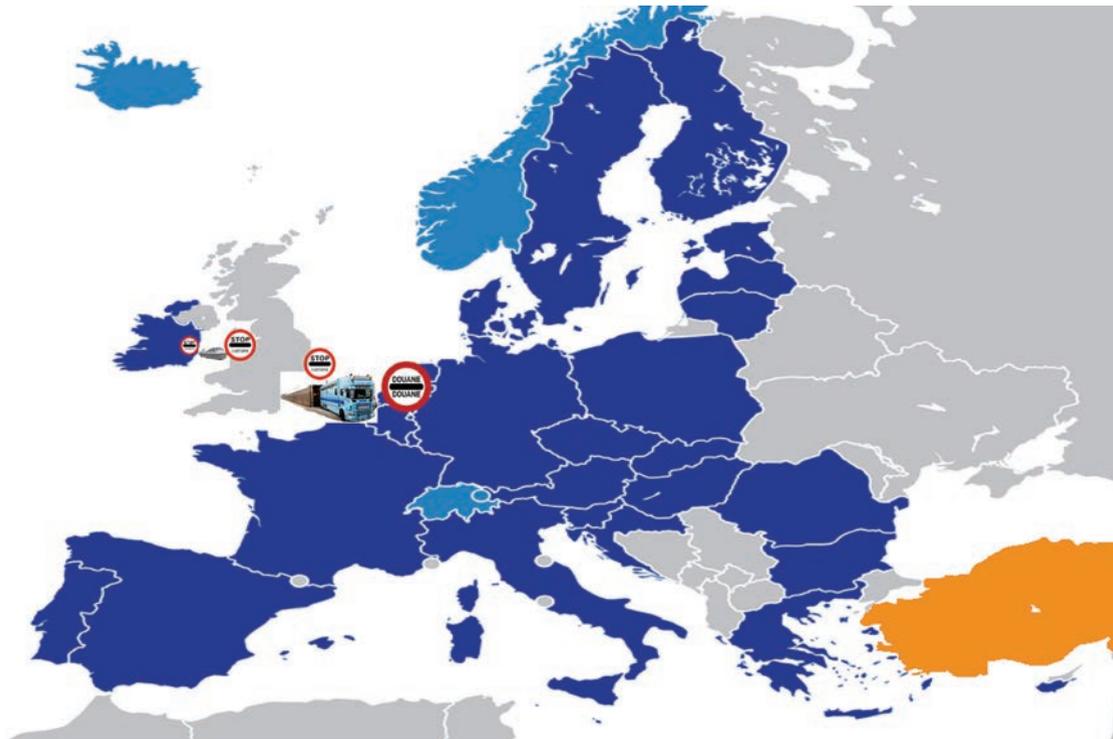
On 13 July 2020, the UK Government published its new Border Operating Model. This

206-page document outlines the operational procedures that will be implemented in the UK from 1 January 2021. There will be a “soft landing” for some companies, as the UK Government will stagger the beginning of some customs procedures. The timelines are outlined briefly below.

January 2021

Traders importing standard goods, covering everything from clothes to electronics, will need to prepare for basic customs requirements, such as keeping sufficient records of imported goods. They will also need to consider how they account for and pay VAT on imported goods. Traders will then have up to six months to complete customs declarations, if they qualify for simplified declaration procedures. Although tariffs will be payable where due on relevant goods, payments can be deferred until the customs declaration has been made. UK safety and security declarations for imports will not be required for the first six months.

Fig. 1 Future goods movement



Controlled products are excluded from the above, so you should confirm whether your goods are standard or controlled. In addition, all traders importing live animals and high-risk plants and plant products will be required to have pre-notification and health documentation from the outset. Imports of high-risk animal by-products will also need pre-notification.

Documentary checks will be carried out remotely, and physical checks of high-risk goods will take place at the destination or other authorised premises.

April 2021

All products of animal origin – for example, meat, honey, milk and egg products – and all regulated plants and plant products will require pre-notification and the relevant health documentation. Any physical checks will continue to be conducted at the point of destination until July 2021.

July 2021

Traders moving any goods will have to make full customs declarations at the point of importation and pay relevant tariffs. Full safety and security declarations will be required, and for commodities subject to sanitary and phytosanitary (SPS) controls, these will have to be presented to Border Control Posts, and there will be an increase in physical checks and the taking of samples. SPS checks for animals, plants and their products will take place at GB Border Control Posts and not at the destination. The Goods Vehicle Movement Service will be in place for all imports, exports and transit movements at border locations that have chosen to introduce it.

The UK government has placed two possible models before port operators for administering the movement of goods across borders:

- A temporary storage model where goods are stored at frontiers for up to 90 days before being declared to customs.
- A pre-lodgement model, where goods arriving at ports will have already made a customs declaration. Under this model,

trucks that arrive without clearance would be prevented from reaching ports. The GVMS supports this model for both imports and exports and to facilitate Transit movements.

The Goods Vehicle Movement Service (GVMS) will:

- Link declaration references together. This means the person moving goods only needs to present one reference at the frontier to prove that their goods have pre-lodged declarations.
- Link the movement of goods to declarations, meaning they can be automatically arrived and departed in HMRC systems in near-real-time.
- Notify users via your software whether their inbound goods have been successfully cleared in HMRC systems by the time they arrive in the UK.

Establishment

Supplementary declarations are allowed initially in January 2021, but it is important to note that to complete this declaration at a later time, the trader, or an intermediary acting on their behalf, will need to be authorised for simplified declaration procedures and have a duty deferment account. To be authorised for simplified procedures in the UK, you must be **established** in the EU/UK.

Conclusion

In summary, there are many changes ahead for Irish importers and exporters. It is extremely important at this stage to ensure that you have developed your knowledge of customs, that your staff are trained, and that you have the relevant authorisations and procedures in place.

We would always recommend drafting a Standard Operating Procedure (SOP), to cover all aspects of customs. This will ensure compliance and support the ongoing management of customs – a critical issue in the post-Brexit world. This manual should also sit within your tax procedures and rules for interacting with Revenue. We would also recommend that the manual provide for

completing internal audits on a weekly/monthly basis to ensure the accuracy of the information being provided

Update as of 10th September 2020:

Since this article has been published, the UK government have introduced an Internal Market Bill which would outline the operational rules for trade between England, Scotland, Wales and Northern Ireland from the beginning of January 2021. Details within the bill would seek to undermine the Withdrawal Agreement and

the Northern Ireland Protocol and in doing so will knowingly break international law. The repercussions of this are ongoing and will need to be monitored daily as part of your business preparations.

In addition the Irish Government have published their Brexit Readiness Action Plan to support companies in preparing for the End of the Transition Period. Communications and Webinars will be taking place from Revenue and a full on-line Customs Information session will take place on 5th and 6th October.

- Step 1** Ensure you have a **Customs Registration Number - EORI**
- Step 2** How do you intend to pay customs duties on arrival?
Establish whether you need to obtain a **Deferred Payment Account** and, if so, put in place a guarantee with your bank to cover the duties that are going to be suspended.
- Step 3** Ensure your **tariff classifications** are 100% correct and, from this, confirm the duty rates that may be payable.
- Step 4** How are you lodging declarations with Revenue and HMRC? Do you need in-house training and software?
- Step 5** Talk to your suppliers and customers to confirm who is acting as **Importer and/or Exporter of Record** for your purchases and sale.
- Step 6** If you trade in **Agricultural goods and Plant based products** then additional **Veterinary checks and certs** will be required along with additional time frames for notifying customs authorities of imports.
- Step 7** Review your **VAT position** in Ireland and the UK.
- Step 8** Seek advice if you **import from or export to or from Northern Ireland** as special rules will apply.
- Step 9** Look to obtain **Authorised Economic Operator** status (AEO/Trusted Trader)
- Step 10** Avail of **Grants and Training**.