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Trade with the EU 2022: a cheat sheet

Post-Brexit trade with the EU is still in a state of flux as UK regulations continue to develop.

Spoiler alert

- **Last minute halt to new import controls for agrifoods from the EU** affecting animals, animal products, and plants and plant products.
- **Revised UK import controls regime** to be published in autumn 2022.
- **Northern Ireland Protocol (NIP)** and movement of goods to and from the island of Ireland continue to be live issues. Keep checking the position here.
- **Different entry point, different procedures:** be aware that customs processes may now vary depending on which border location goods come in through. Different processes apply to ports using the Goods Vehicle Movement Service (GVMS).
- **Plans for freeports** (zones grouped round air, rail or seaports, offering access to significant tax breaks and simplified customs arrangements) continue to evolve across the UK.

Key dates, big changes

1 January 2022 brought in full customs controls for imports from the EU to GB, with customs declarations and payment of relevant tariffs made at time of import. But:

- **Northern Ireland (NI)** is different. Broadly speaking, during discussions on the NIP, customs declarations can still be delayed for up to 175 days (with entry made in declarant's records at time of import) for non-controlled goods moved from the island of Ireland to GB, including movements from NI to GB via the Republic of Ireland.

Pre-notification of SPS goods: there is now a requirement to give advance notice ('pre-notification') of consignments coming into GB from the EU: but not from the island of Ireland, pending discussions on the NIP. Pre-notification is carried out digitally, usually via IPAFFS, the government's import of products, animals, food and feed system.

New timetable: in the latest news, no further import controls on EU goods will be introduced in 2022. This affects controls due to be phased in from July to November 2022.

Controls introduced in January 2021, on the highest risk imports of animals, animal products, plants and plant products, however, remain in place. So, too, do customs controls already introduced.

Changes now suspended:

- requirement for sanitary and phytosanitary (SPS) checks on EU imports currently at destination to be moved to Border Control Posts (BCPs)
- requirement for safety and security declarations, sometimes called entry summary declarations, for EU imports
- requirement for further health certification and SPS checks for EU imports
- requirement for SPS goods to be presented at a BCP
- prohibitions and restrictions on import of chilled meats from the EU.

This also covers changes scheduled to take place later in the year for imports from the EU, such as dairy and other products of animal origin.

Autumn 2022 instead sees publication of a new strategy, the Target Operating Model, setting out a new regime of border import controls. It 'will target the end of 2023 as the revised introduction date for our controls regime', with a new approach applying equally to goods from the EU and goods from the rest of the world. The aim is to create a seamless new 'digital' border, where technologies and real-time data cut queues and smooth trade. It sits alongside the government's 2025 Border Strategy, which includes the UK Single Trade Window, a new digital platform to facilitate the movement of goods globally.

What's different about Northern Ireland?

The Northern Ireland Protocol sets out special arrangements for NI as part of the Brexit deal, aiming to avoid a hard border between NI and the Republic of Ireland. These are designed to facilitate unfettered access for NI goods to GB, and include NI goods in any free trade agreements between the UK and third countries.

The outworking of this is complex, however, and if it impacts you, we should be delighted to advise further. As a starting point, there are the following sources of support:

- The Trader Support Service: a free government service, providing training and free software allowing businesses to complete customs and safety and security declarations for movements between GB and NI.
- The UK Trader Scheme (UKTS): authorisation with UKTS allows goods moved to NI, which are for sale or consumption in NI, to be declared 'not at risk' of moving to the EU, meaning EU duty should not be payable.
- The Movement Assistance Scheme: running until the end of 2023, this allows traders to move particular agrifood goods from GB to NI without paying for some inspections and certificates. This covers, for example, live animals and animal products, plants and plant products and organic products.

Temporary storage and pre-lodgement: what's the difference?

Customs processes for imports from the EU will vary, depending on location of entry. This will impact when customs declarations are required. Broadly, locations will use either the temporary storage model, or the pre-lodgement model. Procedure differs for each.

With the temporary storage model, goods can be stored on arrival for up to 90 days before being declared to customs. The pre-lodgement model is designed to facilitate faster customs clearance. Customs declarations are submitted before departure from the EU, using GVMS. They are then processed while the goods are en route.

GVMS: what is it?

GVMS is HMRC's new IT platform, supporting the pre-lodgement model. Not all border locations use GVMS: gov.uk lists those that do.

GVMS has niche requirements and using a route involving GVMS puts significant responsibilities on hauliers. Not least of these is the need to register for the service initially. For each crossing/conveyance, hauliers provide the carrier with a goods movement reference (GMR) from GVMS. It's a unique reference, valid only for a single crossing, linking individual customs, transit and safety and security declaration numbers for that vehicle or container.

Island of Ireland is different: movements from NI to GB; or GB to NI; and from the Republic of Ireland to GB, come under distinct rules. We can advise further here.

Incoterms: what they are and why they matter

Incoterms (International Commercial Terms) are published by the International Chamber of Commerce. They apportion responsibility between buyer and seller, setting out who's legally responsible for what. They cover everything from who's responsible for carriage and insurance, or export/import declarations, to who pays import duty and VAT.

Some of the most common Incoterms are DDP (Delivered Duty Paid) and EXW (Ex Works). With DDP, the seller carries most responsibilities, and with EXW, the buyer. With DDP, for example, it falls to the seller to clear goods through customs in the buyer's country and to pay duties and taxes.

Clearly, whether your business is acting as importer or as exporter, agreeing terms with your EU counterpart is key, so you know exactly who's responsible for tariffs, duties and processes at the border. Using the appropriate Incoterms means you won't commit your business to unforeseen costs or overstretch procedural capabilities.

EU VAT change could impact you, even after Brexit

Significant change to EU VAT took effect from 1 July 2021. You may have seen this referred to as the EU VAT e-commerce package. The change has implications for businesses selling goods online to consumers in the EU and electronic interfaces, like online platforms, facilitating such sales.

Headline issues include:

- end of low value consignment relief
- out with the VAT MOSS scheme: in with new simplifications, OSS and IOSS
- big change to distance selling thresholds
- unique position for businesses trading under the Northern Ireland Protocol.

The end of low value consignment relief means there's no longer an exemption from import VAT for commercial goods valued at up to EUR22 arriving in the EU. Import VAT is due instead and collected on import. Using OSS and IOSS is meant to help here.

From MOSS to OSS and IOSS. MOSS, which covered specific digital services, has been extended and rebranded. There are now three special schemes, all provided on an opt-in basis, allowing taxable persons to declare and pay VAT due in member states in which they are not established. This is done online, via a chosen member state.

The three schemes are:

- non-Union OSS, covering all business to consumer supplies of services to customers in the EU by businesses not established in the EU (like GB)
- Union OSS scheme, used for business to consumer supplies of services and intra-EU distance sales of goods and some supplies facilitated by electronic interfaces
- IOSS, covering distance sales of goods imported from third countries (like GB) to EU customers, in consignments not exceeding EUR150. Sales VAT is charged to the customer, rather than import VAT, meaning the customer has certainty about the cost of the transaction. In some cases, the online platform bears the liability to report and pay the VAT due.

The prime advantage of the OSS schemes is that businesses can register for VAT electronically in just one member state, rather than having to register in multiple member states. This can also have the advantage of being able to use just one language, even for EU-wide sales. Many GB businesses have opted to use an English-speaking member state, such as the Republic of Ireland, for this reason. The country of registration is called the member state of identification.

It is important to be aware, however, that businesses using non-Union OSS have to appoint an EU-established intermediary: a fiscal representative who acts as agent for the business. This can be a significant cost, as representatives are jointly and severally liable for VAT liabilities.

There is now a single, EU-wide distance selling threshold of EUR10,000. If sales are more than this, there is a liability to VAT in the member state where buyers are located. This is another area where the use of OSS is likely to be beneficial.

Northern Ireland is in a unique position. Separate rules apply under the Northern Ireland Protocol, with EU VAT rules still applying to trade in goods – but not services. The new EU VAT e-commerce package, therefore, only applies to goods and HMRC has introduced OSS and IOSS schemes in line with the Protocol.

Working with you

Trade with the EU now involves compliance with many new sets of rules. In this Briefing, we have only been able to flag up some of the issues involved. We should be delighted to discuss any of these with you further.