

**Supplementary Submission to the Northern Ireland Affairs Committee on Unfettered Access:
Northern Ireland and customs arrangements after Brexit**

This paper addresses the practical ways in which customs controls may be effectively exercised in relation to East-West and West-East trade, as discussed during the Northern Ireland Affairs Committee evidence session held on 30 April 2020.

Basing its arguments on contemporary customs practice, it concludes that genuine intra-UK trade between Great Britain and Northern Ireland should not be subject to customs controls.

Context

The intention of the new Ireland/Northern Ireland Protocol (the Protocol) is to provide a means by which the European Commission can ensure compliance with EU law and the United Kingdom can ensure compliance with UK law when goods enter or leave the customs territory of the EU via Northern Ireland.

European Commission concerns

The EC wishes to ensure compliance with EU law in relation to:

1. Any goods brought into Northern Ireland from Great Britain or a third country that are subsequently moved into one of the 27 EU member states; and
2. Any goods brought into Northern Ireland from one of the 27 EU member states that are subsequently moved to Great Britain or a third country.

In such circumstances, relevant EU import¹ or export² formalities must be completed.

United Kingdom concerns

The UK wishes to ensure compliance with UK law in relation to:

1. Any goods from one of the 27 EU member states that have been brought into Great Britain via Northern Ireland; and
2. Any goods leaving Great Britain that will be moved into one of the 27 EU member states via Northern Ireland.

In such circumstances, relevant UK import or export formalities must be completed.

Import control for third country trade

Goods that are brought into Northern Ireland from a third country will be required to complete import formalities:

- if the place of destination is within the UK, then UK import formalities will apply
- if the place of destination is one of the 27 EU member states, then EU import formalities will apply.

¹ This includes lodgement of an entry summary declaration prior to arrival, presenting the goods to customs upon their arrival and placing the goods under a customs procedure, for example release for home use (following duty payment), transit, storage, specific use or processing

² This involves making a pre-departure declaration, which may be a customs declaration, a re-export declaration, or an exit summary declaration

Importers or their brokers will therefore need to declare goods to HMRC for either UK clearance or EU clearance. However, in order to achieve the objectives of the Protocol, where goods are declared for UK clearance, it will be necessary for HMRC to determine whether:

- the goods are likely to be subject to commercial processing in Northern Ireland; and
- there a risk that the goods may subsequently be moved into one of the 27 EU member states.

Where it is determined that the goods are destined for one of the 27 EU member states, the importer or their broker will be required to declare the goods for EU clearance.

Export control for third country trade

Goods that are exported from Northern Ireland to a third country will be required to complete export formalities:

- if the goods are being exported from within the UK, then UK export formalities will apply; and
- if the goods are being exported via Northern Ireland from one of the 27 EU member states, then EU export formalities will apply.

Exporters or their brokers will therefore need to declare goods to HMRC for either UK clearance or EU clearance. However, in order to achieve the objectives of the Protocol, where goods are declared for UK export clearance, it will be necessary for HMRC to determine whether the goods were previously moved from one of the 27 EU member states. Where this is the case, the exporter or their broker will be required to declare the goods for EU export clearance.

Customs control for West-East trade

The EC and UK both wish to ensure compliance with their respective laws in relation to any goods brought into Northern Ireland from one of the 27 EU member states that are subsequently moved to Great Britain. For such goods, EU export formalities and UK import formalities will apply.

For all other goods, no customs formalities should apply, as trade in such goods represents an intra-UK transaction.

The customs challenge is to determine whether any purported intra-UK transactions have been brought into Northern Ireland from one of the 27 EU member states, in which case HMRC will require the completion of EU export formalities in Northern Ireland, and the completion of UK import formalities in Great Britain.

This risk can be effectively managed by requiring an electronic declaration to be lodged with HMRC for all West-East trade transactions, containing minimal information about:

- Who is sending and receiving the goods
- What the goods are and their value
- Where the goods are going and mode of transport
- Whether the goods have been moved from one of the 27 EU member states.

If the response to the last question is 'yes', HMRC will treat the transaction as an export from the EU to the UK. If, however, the response to the last question is 'no', the goods should not be subject to customs controls unless HMRC has a specific risk-based reason to question the veracity of the declaration.

Many companies engaged in legitimate intra-UK will generally have established trading patterns that can be used by HMRC to support a low-risk assessment of their activities. Furthermore, Authorised Economic Operators (also known as trusted traders) may be allowed to trade without a requirement to submit such 'intra-UK' declarations.

Customs control for East-West trade

The EC and UK both wish to ensure compliance with their respective laws in relation to any goods brought into Northern Ireland from Great Britain that are subsequently moved into one of the 27 EU member states. For such goods, UK export formalities and EU import formalities will apply.

For all other goods, no customs formalities should apply, as trade in such goods represents an intra-UK transaction.

In this situation, the customs challenge is to determine whether any purported intra-UK transactions will subsequently be moved to one of the 27 EU member states, in which case HMRC will require the completion of UK export formalities in Great Britain and the completion of EU import formalities in Northern Ireland.

This risk can be effectively managed by requiring an electronic declaration to be lodged with HMRC for all East-West trade transactions, containing minimal information about:

- Who is sending and receiving the goods
- What the goods are and their value
- Where the goods are going and mode of transport
- Whether the goods will be subject to commercial processing in Northern Ireland
- Whether the goods will be moved to one of the 27 EU member states.

If the response to one of the last two questions is 'yes', HMRC will treat the transaction as an export from the UK to the EU. If, however, the response to the last two questions is 'no', the goods should not be subject to customs controls unless HMRC has a specific risk-based reason to question the veracity of the declaration.

Many companies engaged in legitimate intra-UK will generally have established trading patterns that can be used by HMRC to support a low-risk assessment of their activities. Furthermore, Authorised Economic Operators (also known as trusted traders) may be allowed to trade without a requirement to submit such 'intra-UK' declarations.

Conclusion

Following the transition period, genuine intra-UK trade between Great Britain and Northern Ireland should not be subject to customs controls. However, all trade between Great Britain and the European Union will be subject to normal customs controls.

The challenge for Customs is to determine the legitimacy of purported intra-UK trade. This may be achieved by requiring electronic submission to HMRC of basic information about the transaction. Unless HMRC has a specific risk-based reason to question the veracity of the information submitted, no further customs involvement should occur.

Companies engaged in regular legitimate intra-UK are likely to be regarded as low-risk, and Authorised Economic Operators (also known as trusted traders) may be allowed to trade without a requirement to submit such 'intra-UK' declarations.

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