Deloitte: Brexit - back in focus

Brexit is back, so be prepared

As the Brexit transition period comes to an end, Irish businesses trading with British firms and organisations will need to familiarise themselves with new tariffs, form-filling and regulations, writes **Siobhan Maguire**

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Brexit has not gone away you know, and while the world is reeling from the Covid-19 pandemic, an outline of Britain's exit deal is expected later this month. In a special report, Deloitte's Vincent McCullagh, partner in Indirect Tax, and Donna Hemphill, senior manager in Global Trade Advisory, guide us through the impending customs changes and what Irish businesses need to know.

Against the backdrop of a global pandemic, many of us yearn for the days where Brexit was '*the*' systemic shock for businesses in Ireland. Perspective duly gained, the UK's no extension, no mandatory alignment stance means Brexit is, or should be, firmly back on the agenda.

Although it is less than six months until the end of the transition period, the negotiations to agree what the customs landscape will look like from January 1, 2021 are progressing slowly.

While the UK hopes to have the outline of a deal by the end of this month, Michel Barnier, the European Commission's head of task force for relations with Britain, has suggested a draft deal might be likely by October.

"That is when we will have to be ready to put a draft deal to the European Parliament and to the European Council if we are to have it ratified by the end of the year," he said.

However it will be difficult to reach agreement on a comprehensive trade deal by October. This means that each side will need to prioritise.

The EU is keen to maintain fishing access and quotas and for the UK to adhere to a level playing field, while the UK believes that Brussels is trying to bind Britain to EU law. EU Alignment versus UK sovereignty remain old fissures on old conflicts.

Politics aside, the reality for many Irish businesses is a lack of clarity on what exactly they need to do to prepare for the end of the transition period. How do we keep the goods flowing between Ireland and the UK? Britain is the key market for many Irish businesses. It is where we source our materials and where we find a large, sophisticated and open market for much of what we produce. Real or psychological barriers to these business flows will have a negative effect on our economy.

Whether we end up with it the newly christened "Australian Model" – in other words, a no deal – a basic free trade agreement or that ambitious and courageous free trade framework that Europe desires, there is still lots that Irish businesses can do to cushion the impact of potential increased duties and customs formalities.

Phased Introduction of Border Controls

The British government announced on 12 June that to give British businesses time to adjust to the new customs landscape, there would be a phased introduction of border controls on imports of goods from the EU into Britain. From January 1, 2021, businesses importing goods into the UK will have up to six months to submit customs declarations and pay import tariffs.

For Irish businesses exporting to the UK, this provides some relief for their British customers. There is as yet no similar relief planned for goods entering Ireland from the UK.

Britain has also introduced its UK Global Tariff to be applied on goods imported from the EU and third countries from January 1, 2021. This will replace the current common external tariff (EU tariff) and duty rates have either been "liberalised" (reduced to zero), "simplified" (rounded down or banded) or reduced beyond the simplification measure. The EU tariff will apply to all goods imported from the UK until such time as a free trade agreement is in place.

In addition, Britain has published a draft negotiating document called the Comprehensive Free Trade Agreement (CFTA).

In these documents, Britain has quite a few requests, with the EU having rejected most proposals so far. Requests include:

- Mutual recognition of conformity assessments: this could continue to allow UK bodies to test whether products meet EU standards, thereby streamlining the process. The EU has so far resisted any such recognition. If this is not agreed, Irish businesses will need to appoint both UK-approved bodies to test goods sold in the UK and EU-approved bodies to test products sold in the EU.
- Recognising each other's sanitary and phytosanitary standards (SPS): the EU has so far strongly resisted this. If this is not agreed, business will need to ensure products destined for both markets conform to both sets of standards and will face additional border checks. This is particularly important for the Irish agri-food sector.
- Mutual recognition of authorised economic operators (AEO): though the EU has rejected such proposals thus far, it could be a possible area for agreement, smoothing the transport of goods between the EU and Britain.

Trading outside the single market

Movements of goods between Ireland and the UK will become imports/exports at the end of the transition period. One of the most noticeable impacts for businesses will be the additional burden associated with making customs declarations.

Many businesses in Ireland have never had to deal with the formalities of trading outside the single market. But there are training courses and support and now is the time to familiarise yourself with the forms necessary to facilitate trade.

The key document for all goods movements to and from third countries is the customs declaration, commonly referred to as the SAD (single administrative document). This official customs document must be presented to the customs administration in the country of import or export.

To submit a customs declaration, a business must either: (1) appoint a customs broker to complete and submit the customs declaration on your behalf; or (2) purchase software and complete the declaration in-house.

Businesses should complete an analysis based on the number of declarations and the cost per declaration to determine whether they should bring the management of the customs function into the business or whether they are better served outsourcing customs declarations to a customs broker.

Outsourcing represents an additional cost to the business. However, insourcing has its own costs, it is important to consider the additional resource, training requirements and risk of bringing the customs function in-house.

Regardless of who is physically making the customs declaration, the responsibility for the completion and accuracy of customs declarations falls on the 'importer of record'. Incoterms (international commercial terms used for cross-border movements of goods) establish the obligations of the seller and buyer including which party is responsible for the import formalities.

Businesses should consider the contracts currently held with British suppliers and customers to determine which party will take responsibility for the import and export declaration.

It is our experience that British customers may not always be prepared to make the import declaration into the UK. Irish businesses should consider whether they may be required to act as importers in Britain and whether a UK VAT registration may be required. Nasty surprises might also be found in what were previously innocuous contractual terms.

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Large customers with the whip hand could try to push the supplier into absorbing the duty cost. However, this can be ruinous for margins, especially in the agri-food sector where margins are tight and seemingly under constant pressure. If you have not already done so, now is the time to be reviewing those contracts.

Custom reliefs and authorisations

Irish business often import goods that are not intended for final sale in Ireland. For example, goods imported for processing or repair before being sold overseas. Businesses may also store goods for a time before they are sold to customers in Ireland or elsewhere.

In these circumstances, Irish businesses could benefit from using special procedures to mitigate both the cost of customs duty and its impact on businesses' working capital.

Some of the reliefs available to Irish businesses include:

Inward processing: if your business imports goods into the EU for processing or repair, inward processing can be used to suspend the payment of duty and VAT on import.

Once the goods have been processed or repaired, they can either be (1) exported back outside the EU, in which case, no duty is payable in Ireland or (2) released into free circulation in Ireland, at which point customs duty, import VAT and excise duty will typically be payable. If the final product attracts a lower duty rate than the raw materials, the customs duty rate of the final product can be applied thus reducing the duty payment

Customs warehousing: if goods are intended to be imported in bulk and stored for some time before use, they can be stored in a customs warehouse with suspension of customs duty and VAT until the goods are released for home consumption. Goods cannot be altered within a customs warehouse apart from general maintenance work.

AEO or 'trusted trader': while this is not a customs relief, obtaining an AEO authorisation may provide some benefit for traders with significant volumes of EU/UK trade. Businesses with an approved AEO status benefit from a reduced level of checks on imported goods and reductions in financial guarantees for special customs procedures. To become an AEO, businesses must have good processes and controls in place in relation to customs activities.

Simplified declaration for imports: subject to qualifying this simplified declaration for imports allows an approved trader to import goods into Ireland with minimal administration at the border. A simplified customs declaration with a reduced data set is submitted on arrival of the goods to clear them for delivery. A more detailed customs declaration is then required to be submitted covering either each individual simplified declaration or a consolidation of the simplified declarations made during the month.

Obtaining a customs authorisation requires that the business makes an application to Revenue and holds a comprehensive guarantee for the potential suspended duty. The approval process can take up to six months and businesses should consider now whether they would benefit from making an application.

Northern Ireland protocol

Early in the negotiations, both Britain and the EU acknowledged the unique dynamic on this island. It was recognised that a specific solution was required to protect the all-island economy and ensure the uninterrupted cross border flows of goods.

A solution was found in the Protocol on Northern Ireland and Ireland ('the protocol') which allows the North remain in the UK customs territory, but at the same time stay aligned to a set of EU customs rules.

This solution allows goods originating in the North or Republic of Ireland to move freely on the island of Ireland without any customs checks, controls or payment of tariffs. For goods arriving in the North from Britain for onward movement to Ireland or the EU single market, EU customs tariffs will be payable on all non-EU originating goods.

On May 20, 2020, the British government published a 'command paper', which outlines its approach to the protocol in which it is seeking a light touch implementation of the protocol and proposing "limited additional processes on goods arriving in Northern Ireland" from Britain. This is unlikely to satisfy the EU interpretation of the deal and the legal commitments made by the two sides in the Brexit deal.

Clearly, there is some way to go before both sides agree on the administrative requirements for the movement of goods between the North and Britain. A stalemate that has implications for businesses on both sides of the border.

Taking the right steps

Although there remains a lack of clarity on what exactly the customs requirements will be, there are still important steps that businesses can undertake as part of their Brexit preparations:

- Ensure that the business can obtain all the information required to make customs declarations including data on product classification, value and origin.
- Review contact terms and incoterms to determine which party in the supply chain is going to act as importer and exporter of record in both Ireland and in Britain.
- Decide whether the customs declarations will be outsourced or completed in-house
- Quantify the amount of customs duty payable on imported goods and determine whether the business could avail of any customs simplifications
- Review VAT and excise compliance obligations including whether the business will be required to obtain a VAT registration in the UK.
- Ensure compliance with sanitary and phytosanitary regulations for animal and plant products where relevant including health certificate and veterinary checks at a border control post.

Brexit is a challenge, but with the right preparation, and by taking the right steps it is a challenge that Irish businesses will meet.