

1. Implementing a new customs border between the UK and the EU

The UK has left the EU's Single Market and Customs Union on 31 January 2020. Once the Transition Periods ends (currently set for 31 December 2020), a full customs border will be reinstated between the UK and the EU. This will be the EU's external border. As a result, tariffs, as well as various formalities and procedures currently applied to goods coming from third countries, will become applicable to goods coming from the UK. The UK will also apply new tariffs and formalities on goods arriving from the EU. If the two parties agree on a deal, tariffs on the majority of, if not all, products are likely to be reduced to zero. However, border formalities and requirements will still be needed. They result from having a customs border and will not be removed by a trade deal.

There will be several different types of border formalities and related checks, similar to what happens today when non-EU goods enter the country. A pre-notification, known as the Entry Summary Declaration, needs to be submitted before the goods arrive in the UK. This is done by the carrier or the shipper. When the Entry Summary Declaration is submitted, a Movement Reference Number (MRN) is issued. The Border Force anti-smuggling and safety checks ensure that dangerous, prohibited or counterfeited goods are not smuggled into the country. Such checks are performed on a small percentage of imported goods – determined as a mix of random checks and risk-based criteria checks.

The MRN is entered via a customs declaration into the Customs Handling of Import & Export Freight system (CHIEF) – the UK customs authority's (HMRC) online computer system. As with anti-smuggling checks, only a small percentage of goods will be subject to physical customs checks. Physical checks can also vary. In some cases, only documents are checked together with visual checks of the vehicle/ container. In other cases, a full inspection of goods is required. This depends on several factors, predominantly risk assessment.

Animal and food products need to comply with sanitary and phytosanitary (SPS) requirements. Appropriate documents need to be provided and full health and safety checks are carried out. While DEFRA has the overall responsibility for food safety and imports of animal and food products, local County Councils carry out SPS border checks on goods imported from outside the EU¹.

Border procedures are likely to be symmetrical between the UK and the EU, i.e. the same procedures are likely to apply to goods entering the EU as the UK. However, the UK Government might introduce additional simplifications. The UK will no longer be bound by the Union Customs Code, the EU's customs legislation, and will be able to introduce new simplifications. For example, previously the UK Government has announced additional

¹ For more please see: <https://blogs.lse.ac.uk/brexit/2019/02/06/long-read-there-is-no-such-thing-as-completely-frictionless-trade-across-a-border/>

temporary simplifications for UK importers in the form of the Transitional Simplified Procedures. These procedures have raised some concerns within the industry and have been withdrawn before they were tested. There is currently no information regarding any new proposed simplifications for customs procedures.

Slightly different procedures will apply on the border in the Irish Sea. Based on the Command Paper published by the UK Government in May 2020, full customs procedures will apply to goods entering Northern Ireland from Great Britain. However, the UK's position is that no procedures should apply when goods enter Great Britain from Northern Ireland.

It is important to point out that while it is clear what procedures will apply on this new customs border (pre-notification, customs declarations), the detailed border operating model has still not been published.

2. Key challenges

The biggest change that the industry and the Government need to prepare for, will be in terms of volume. Third country processes will be extended to goods flowing between the UK and the EU. Current supplies and dispatches (movements of goods within the EU) will become imports and exports. Each will require customs paperwork and formalities. The number of customs declarations will rise substantially. The National Audit Office estimates indicated that there will be an additional 200 million customs declarations a year². This requires additional capacity along the entire process chain.

a) Customs authorities

For customs authorities, the key issues will be:

- Hiring additional customs and Border Force officers;
- Ensuring IT systems are ready;
- Updating guidance.

Similar to the shortages of experienced customs agents in the private sector, HMRC has also been looking to hire and train new customs officials. However, in recent years HMRC saw an outflow of experienced officers due to budgetary cuts. HMRC job postings in recent years suggest that a number of graduates have been hired, with prior customs knowledge not being listed as one of the requirements. Since training of new staff is done in-house there is little visibility in terms of the numbers and scope of the training. There will likely be a need to also hire additional Border Force officers. While declarations will be submitted electronically and only a percentage of goods will undergo physical checks (estimates suggest that it is currently below 5%) overall numbers will increase.

The IT system will need to be able to cope with the increased number of declarations. Initially, the new customs system Customs Declaration Service ("CDS") was supposed to replace CHIEF, the current system. This modernisation was planned before Brexit to meet the requirements of the Union customs legislation. However, due to ongoing delays with the implementation

² Source: <https://www.nao.org.uk/report/the-customs-declaration-service-a-progress-update/>

of CDS, CHIEF has been upgraded to be able to handle a higher number of declarations. It has now been confirmed that both systems will run in parallel, with CHIEF still being available into 2021.

All HMRC public guidance will need to be updated: new tariffs, references to legal documents and institutions as well as overall guidance will need to be changed.

b) Port and airport authorities

It is important to note that not all locations will require the same type of preparations and infrastructure. For example, different types of preparations will be required for standard ports versus ro-ro ports. The key difference here is timescales. In ro-ro ports, the time for assessing pre-notifications as well as processing the entries is much shorter. While in all cases the main change will be increased volume, ports, ro-ro ports and airports will each have a different process in place for dealing with incoming goods. For each of these, increasing capacity would mean slightly different actions.

In terms of delays and bottlenecks, ro-ro ports are particularly susceptible to such issues. Adding an extra couple of minutes of border processing time might result in bottlenecks and lines forming (knock-on effect). A review of existing infrastructure in combination with tests of traffic flow will be crucial. Not all ports have sufficient space for expansion. The key point here will be to ensure a smooth flow of traffic and be able to physically separate trucks that require additional checks to prevent delays. Tests and pilots, similar to the ones conducted by the French authorities in preparation for a no-deal Brexit would be helpful to ensure correct procedures are in place and test various scenarios.

c) Customs brokers

Few companies actually submit customs declarations directly. While this is possible provided a company has access to a specialised IT system, most companies use a customs broker. A customs broker submits the declaration on companies' behalf. As a premium service, customs brokers can take on partial legal liability for the imports. However, this arrangement is not popular in the UK.

The first point here is staff shortages. The Government has confirmed the industry estimate of additional 50,000 customs agents required to handle the additional customs declarations. There have been growing concerns about the industry's ability to hire a sufficient amount of people leading to shortages of customs brokers³. Anecdotal evidence suggests firms have been struggling to find the right candidates to hire across the customs brokerage industry. Given the lack of candidates with prior knowledge of customs procedures and industry, companies need to train new hires. However, there are significant issues around the ability to train people in the available amount of time. The UK does not have an established and institutionalised customs training programme similar to the one available in other countries. Various types of training are available and the UK Government has set up a new Customs

³ Such concerns have also been expressed by British International Freight Associations, BIFA.

Academy in 2019 in partnership with the Institute of Export and International Trade and KGH Customs. The number of people who have completed the course is still low and there is also an obvious limit to what you can teach in a few months⁴.

Customs brokers in principle do not advise clients on what information to submit to customs authorities. This is either done by an in-house specialist or an independent customs adviser. Customs brokers receive instructions from clients on how to declare the goods. However, in practice, many companies overly rely on their customs broker to help with classification and other customs queries. Given the increase in the number of customs declarations combined with the fact that many companies will be submitting customs declarations for the first time, customs brokers will play a crucial role. They will often be the first point of contact for all customs queries.

In terms of readiness for the new customs border, as mentioned above, the border operating model still has not been published. Given the levels of complexities involved (IT system, various scenarios, implications for other areas of tax such as VAT), customs brokers are awaiting full details. Knowing that pre-notifications and customs declarations will be required is not sufficient to understand how the border will operate in practice.

d) Businesses

As a result of the new customs border between the UK and the EU, companies will need to submit customs declarations for all movements between the two territories (potentially with the exception of movements from NI to GB). For an estimated number of 145,000⁵ companies, this will be the first time completing customs procedures.

The amount of time required to collect and maintain customs data is often understated. Companies must familiarise themselves with customs principles, their legal liability and responsibilities as well as for recordkeeping obligations. Since all products coming from the EU will now be subject to customs procedures, and vice versa, companies will be required to provide customs data for their imports and exports. Some of this data is currently gathered and used for Intrastat reports however, the importer will now be legally liable for the correctness of this information. This will be less of an issue for big and small companies that currently import and export than for first time importers and exporters. It is worth remembering that while an EU exporter might provide a commodity code for their product, it is UK importer's responsibility to verify it and ensure it is correct.

If the UK and the EU agree on a trade deal, there will be an additional question of determining the origin of goods. Depending on the product, this is a relatively complex area of customs and one that can require periodic verification. It is still unclear what product-specific rules of origin would apply under the UK-EU trade agreement. Until this is decided, UK companies will

⁴ BIFA is one of the organisations that provides customs training. Their recent survey and comments on difficulties in increasing capacity within the industry are highly relevant. For example:

<https://www.bifa.org/news/articles/2020/apr/freight-association-believes-extension-of-brexit-transition-period-still-seems-likely>

⁵ Source: National Audit Office <https://www.nao.org.uk/report/the-customs-declaration-service-a-progress-update/>

not be able to check whether their goods would be eligible for preferential tariffs under the UK-EU deal or not. The UK draft trade deal text published in May 2020 proposed an ambitious origin cumulation provisions – ones that go well beyond what we've seen in other trade deals. However, until the final provisions are agreed, UK companies are uncertain whether they will still be able to use inputs from third countries and count them as originating. Finally, it is uncertain which origin certification method will be used and as a result, what documents will companies need produce to claim lower tariffs.

There will also need to be procedures for generating proof of compliance with testing and certification requirement as well as a range of additional paperwork and new requirements depending on the industry. As in the case of customs brokers, many companies are availing further detail on how the border procedures will function.

3. Actions to maximise the chances of the new arrangements working successfully

In terms of actions that need to be taken by different actors to maximise the chances of the new arrangements working successfully:

- 1) The Government needs to provide clarity regarding customs procedures and border operating model. While publishing of UK tariffs well in advance of the December deadline was very welcomed, further details are needed. Any new simplifications or changes to the current procedures, if planned, should be announced in advance and after in-depth consultations with the industry (both users as well as the customs brokers).
- 2) The Government should support ports, airports and logistics providers in preparations and trial runs to ensure the smooth flow of goods despite the increased volume of customs formalities.
- 3) The Government should review the current support and funding available for customs training.
- 4) Companies need to understand their responsibilities and liability for goods they intend to import into the UK as well as their role in customs procedures.

4. The difference in border procedures depending on whether the deal is reached or not

There will be no significant difference in terms of border procedures depending on whether a deal is reached or not. The same customs formalities will be required and the UK Government has, so far, rejected the idea of signing an agreement with the EU to remove the requirement for security and safety pre-notifications. Where the difference lies, is the degree of customs cooperation between the two sides.

The UK draft trade deal text published in May 2020 includes a comprehensive chapter on customs cooperation and trade facilitation. Cooperation under this chapter would go beyond standard trade agreement provisions and would support deeper cooperation. The text also

envisages the establishment of a Customs Committee and sharing import and export data together with a pilot programme for joint customs offices. In principle, trade agreements are not necessary to facilitate trade across borders. However, they encourage closer cooperation on customs matters and set up committees which can serve as a forum for addressing customs facilitation issues (although they are often limited to origin related issues). It is therefore likely that while a lack of a trade deal between the UK and the EU would not prevent customs cooperation in theory, in practice it is likely to have that effect, at least initially. This is also due to the lack of political goodwill that is to be expected if trade negotiations fail.

5. The impact of covid-19 on Brexit readiness

The Coronavirus pandemic has had and continues to have a profound impact on many businesses. It is difficult to estimate where UK companies were with their Brexit preparations before the pandemic started. Even the most prepared companies would have been waiting for information on tariffs, border procedures etc. Anecdotal evidence would suggest that a large percentage of companies were waiting until the decisions were finalised, expecting to make final decisions in 2020. Therefore it is likely that many companies waited to finalise (or sometimes even start) their Brexit preparations. With the covid-19 disruption, companies are unlikely to have sufficient capacity to focus on Brexit readiness.

6. Conducting checks away from the border

Under the current customs legislation, there are options for conducting checks away from the border under certain circumstances. To ensure that option is not abused and businesses are compliant such option comes with additional requirements.

After the end of the Transition Period, the UK will be able to introduce new provisions for conducting checks away from the border or lowering the conditions companies have to fulfil to be able to take advantage of such simplifications. At the moment, given the risk of non-compliance, such an option is only available to companies who have fulfilled several requirements and have a good track-record of customs compliance. Moving checks away from the border needs to be implemented with caution to ensure proper controls are in place.

May 2020

Annex 1

List of questions

- What do you expect customs and import/export clearance arrangements to look like after the Transition Period? What procedures, administration and controls do you expect to change? What impact will changes have on current border customs systems and how prepared is the sector to make these changes?
- What must the Government, ports and businesses do between now and the end of the Transition Period if the new arrangements are to work successfully? What lessons can be learned from current practices trading beyond the EEA?
- What infrastructure will be required to facilitate the new customs and clearance arrangements? How soon can this be put in place? How should such changes be funded?
- What impact has the Coronavirus pandemic had on wider preparedness for new customs border arrangements and what support could be offered to help the sector adapt?
- Do all checks have to take place at the border? What impact will changes have on current border customs systems and how prepared is the sector to make these changes?
- Will the arrangements be different if the Transition Period concludes without a deal between the UK and the EU? What would be the main challenges of this outcome? How prepared is the sector to deal with this?
- The Government anticipates that an additional 50,000 customs officers will be required to oversee the post-Transition arrangements. How many of these additional officers have been recruited, trained and deployed? How many do you expect will be in place by the end of 2020?
- To what extent has the Government sought your views on the customs border arrangements it is pursuing? Have your views been suitably represented? How does the Government update your sector on the outcomes of negotiating rounds?