The EU UK Trade and Cooperation Agreement - A tariff-free deal?

by Paul McMahon

The Deal and Duties

The EU UK Trade and Cooperation Agreement (TCA) was hailed as a "zero tariff zero quota" trade agreement. However, the devil is in the detail. Goods imported into Ireland from Great Britain qualify for a zero-duty rate under the TCA, only if they can be shown to be of UK "origin". Equally, goods exported from Ireland to Great Britain, qualify for zero duties under the TCA, only where they can be shown to be of EU "origin".

"Origin" does not mean where the goods have last come from. From an Irish importer's perspective, it requires that the goods are primary products of the United Kingdom, have been manufactured or at least, have been subject to significant processing there. There are numerous product-specific rules which depend on the tariff classification of the goods concerned. They may require a particular type of processing, a change in identity (a tariff heading or sub-heading change) or that the non-UK (and vice versa, non-EU) originating content is less than a certain percentage of value or weight (often 50%, but often less).

The Agreement allows EU originating components and processing to count in deciding whether goods are of UK origin (and vice versa for EU origin). However, at a minimum, there must be some processing within the UK (or within the EU, for GB imports). Certain types of minimal processing, such as preservation operations, breaking up or assembly of packages, and simple mixing (along with other listed insufficient processes and operations) are not enough.

Under the Northern Ireland Protocol, there are no customs duties or customs processes for goods moving between Ireland and Northern Ireland in either direction. However, Northern Ireland components and goods are of UK origin, which may be relevant where they are components or included in goods exported to another country, with which the EU has a trade agreement.

Origin issues do not arise where goods merely pass through the GB "land bridge", going from continental Europe to Ireland (or in the other direction), where they have been placed under the customs transit procedure. There is no import at all, and they remain EU goods at all times.

Claiming Origin

Preferential zero origin under the TCA must be claimed. There must be a basis for the claim. The TCA has helpful provisions, potentially allowing reliance on the supplier's declaration and the importer's knowledge in the first instance. For consignments above €6,000 in value, the supplier must be registered to make the declaration. Ultimately, the declaration must be backed by objective proof of origin, usually in documentary form. It may be required upon a border check or in a later Revenue (or HMRC) audit.

It is not mandatory to claim origin. The default position is that ("third country" i.e. no trade agreement) duties will apply, if no claim is made

in the import declaration. Importers must engage in advance with the entity within the supply chain who completes the import declaration, in order to give them the required information and arrange that origin is claimed on their behalf. They may agree with the exporter, that a statement of origin will be provided.

Similarly, postponed VAT accounting must also be claimed on the import declaration. Many VAT registered traders have received invoices (principally from parcel couriers), for both duties and VAT, in cases where neither would apply if the appropriate arrangements and claims were made.

Goods Manufactured outside EU and UK

Many goods bought and sold in Western Europe are manufactured outside the European Union, in countries (in particular in East Asia) with which the European Union has no trade agreement. Customs duties may already apply (depending on the EU Tariff terms applicable) when they are imported into the European Union.

After the TCA, customs duties may apply to such goods twice, firstly when they are imported into Great Britain and again when they are imported into Ireland from GB. There is no credit for customs duties paid at an earlier stage in the supply chain.

There may be some potential for mitigation of double duties. The new UK Global Tariff has reduced many lower (so-called nuisance) tariff rates under the EU tariff to zero. In these cases, there may be one charge of duty only. In other cases, the UK distributors may be able to use certain customs processes, to eliminate the double charge of duty. Conditions apply and authorisations are required.

Supply Chains with Distributors in Great Britain

Some importers in Ireland may be hard hit by the origin rules in the Agreement. Many EU manufactured goods are supplied to both the British and Irish markets by UK based distributors. The implications for Irish supply chains may be very significant in these cases. We have seen already the "Percy Pigs" problem. They are made in Germany and purchased by Marks & Spencer's for distribution in the UK and Ireland. However, when they are re-exported to Ireland from GB, they are not of UK origin, so import duties apply.

The Revenue Commissioners have recognised the very real problems that the rules of origin are causing in Irish supply chains. In eCustoms Helpdesk Notification Ref 14/2021 published on 27 January 2021, they have highlighted some customs processes that might assist. However, the processes and reliefs mentioned are not designed primarily to circumvent the rules of origin in EU trade agreements with third countries, such as the United Kingdom. There are conditions that may be difficult to fulfil in many cases.

One possible mitigation mentioned by Revenue, is the use of warehousing in the course of transit. The EU external transit procedure is designed primarily for movements from one EU state to another, which pass through a non-member state under guarantee and customs control. It will be used primarily by goods vehicles passing to and from continental Europe through the Great Britain land bridge.

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There is scope for warehousing in the course of this procedure. The distributor would require a UK customs warehouse authorisation. The conditions under the Common Transit Convention must be maintained. For practical purposes, the Irish importer would require authorised consignee customs status, which has controls and conditions.

The Revenue Notification mentions the possibility of using Returned Goods Relief, which allows goods that have temporarily left the European Union, to re-enter duty-free, subject to conditions. The conditions may be difficult to comply with in many cases. SPS requirements are likely to apply on re-entry in most cases.

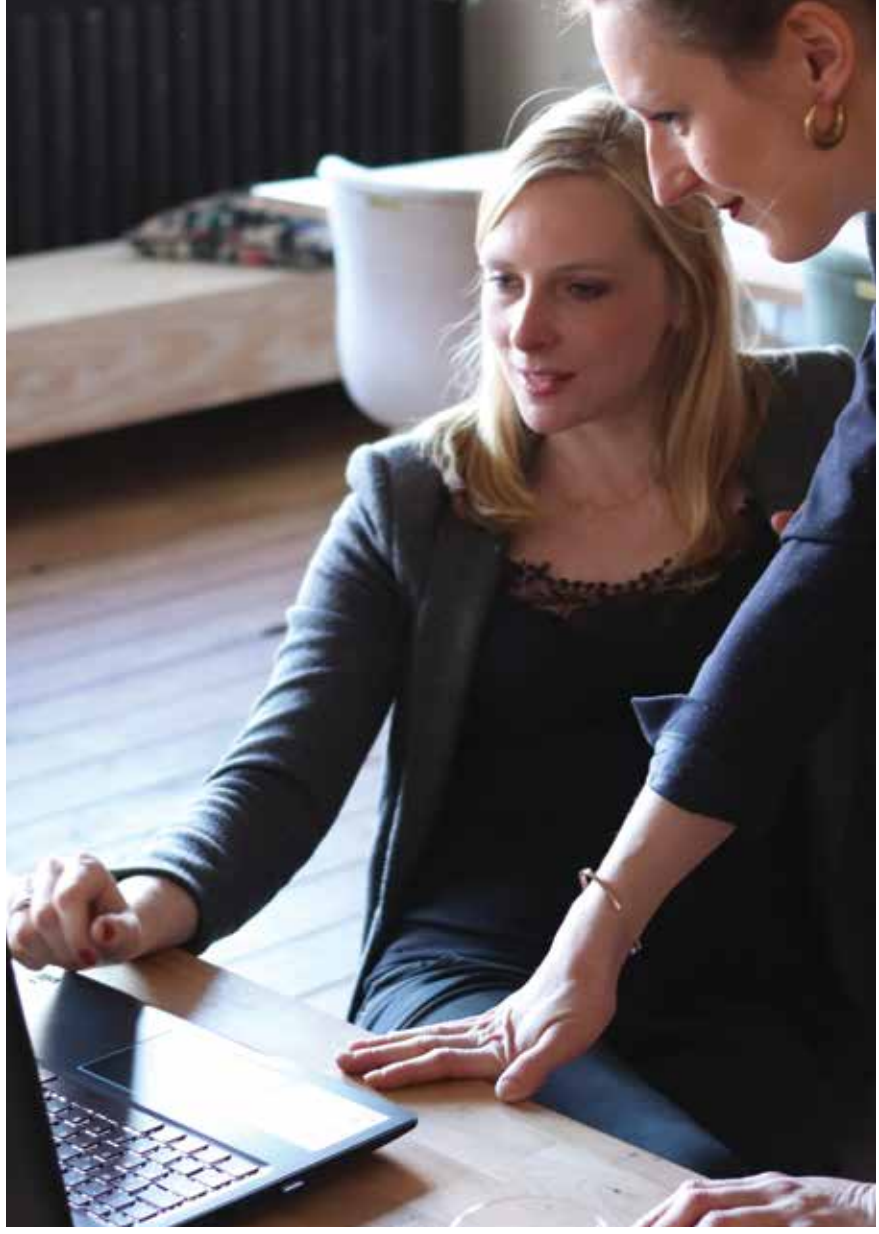
The Revenue Notification mentions the possibility of the inward processing procedure being used in some cases, while the goods are in Great Britain. This requires an HMRC authorisation and generally involves the goods being processed under customs control, without being subject to duties.

It may be difficult, impractical or impossible in many cases, to comply with the detailed conditions required to qualify for zero duty, using the above customs processes and procedures.

The goods must remain under a customs control procedure with warehousing and processing relief, while they are in Great Britain. The controllers must be authorised for these purposes and comply with guarantee and security conditions. Strict conditions apply to Returned Goods Relief, which may require extensive record keeping and the disclosure of confidential information.

Customs reliefs must be claimed. Proof of compliance with the conditions must be held. This may be more feasible in the case of larger-scale entities with a significant presence in both Britain and Ireland that move relatively large consignments.

In the case of animals and animal products, they may lose their EU status if they are unloaded and may need to meet EU sanitary and phytosanitary (SPS) import requirements on re-entry into Ireland. This may be particularly cumbersome.



The EU UK Trade and Cooperation Agreement does not remove customs duties in very many cases. Preferential origin may not be available at all. Where it is available, claiming it can be complex and uneconomic, in particular with smaller scale consignments. The changes to the rules of trade across the Irish Sea are profound. Their effect will work out, and may only become fully apparent, over time.

This is a very general overview of the position. Detailed consideration should always be given to the particular circumstances and the possibilities for relief or mitigation that might apply.

Paul McMahon

Paul McMahon is a practising solicitor, tax consultant, and a member of the InterTradeIreland Brexit panel, who has also practised in England and Wales. He has advised on and presented extensively on most aspects of Brexit. He has part written and contributed to, 'Brexit, An Irish Guide' and brexitlegal.ie a website with detailed coverage of all aspects of Brexit.