Overview
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CLYDE&CO

Importing goods into the UK – customs duty and import VAT

How to get it right and how to challenge HMRC when they get it wrong

The UK's exit from the European Union (EU) will pose a significant challenge to businesses importing goods. If the UK leaves the existing EU customs union then very different arrangements may replace those in place today.

However, any new UK customs system is likely to be based upon the existing EU Customs Code. The team at Clyde & Co are available to advise on the up-to-date position.

Below is an overview of the key points to be aware of when navigating the present system.

If you plan to import goods into the UK from outside the EU or move them to the UK from another EU country you will need to consider a wide range of issues concerning UK customs duty and import VAT. These include, determining -

- The country of origin
- The correct customs duty commodity code for your goods
- When to pay customs duty, where applicable
- When to pay import VAT, where applicable
- When to register for UK VAT and how to meet your UK VAT filing requirements
- When and how to declare the goods you import (electronically using the CHIEF or CDS systems, or using a paper Single Administrative Document form C88)
- Whether the goods are banned from being imported into the UK or require an import licence
- Whether any additional duties such as Anti-Dumping Duty or Countervailing Duty may apply

The majority of businesses that import goods into the UK will use freight forwarding agents to handle the import of goods and carry out the necessary import procedures on their behalf, including making import declarations to HMRC and paying any applicable customs duty and import VAT. To minimise your import costs it will be important to ensure that you and your agent classify your goods correctly or challenge HMRC quickly when they get it wrong.

You normally have to pay duty on goods imported from non-EU countries when they are first brought into the EU, unless you are authorised for deferment by HMRC or operate a customs warehouse. Goods will not be released by HMRC until all duty and import VAT has been paid.

The amount of duty depends on how the goods are classified under the UK Trade Tariff and whether any reliefs are available in respect of how the goods will be used or in relation to their country of origin (which require sufficient documentary evidence).

In the case of some products, and some countries of origin, the European Commission has imposed Anti-Dumping Duty and Countervailing Duty intended to discourage countries from subsidising goods or dumping goods into the EU market below their normal commercial value. Such tariffs can be very substantial so it is very important to consider such duties at an early stage.

One of the most critical aspects of importing goods into the UK from non-EU countries is the correct classification of your goods for customs duty purposes, in accordance with the UK Trade Tariff. The UK Trade Tariff lists customs classification codes (based on the EU's Combined Nomenclature). These codes determine the applicable rate of customs duty and import VAT (if any), and any specific customs rules and paperwork required. Consequently, it is critical to ensure that you apply the correct commodity code to any goods you import into the UK.

As the commodity code determines the applicable rates of duty and import VAT (if any), "commodity code classification" is an area where disputes with HMRC commonly arise. The grounds of appeal against HMRC decisions in relation to classification, customs duty and import duty assessments can vary from case to case. Appeals can be based on technical grounds in relation to the application of the tariff codes or on public law grounds where HMRC have acted unreasonably in their treatment of a taxpayer or where the incorrect customs treatment is as a result of an error on the part of HMRC. Such public

law grounds are similar to judicial review cases, for example in relation to a breach of legitimate expectation, abuse of power or irrationality /illegality/procedural unfairness.

As part of our customs duties practice, we provide advice and assistance in relation to each of the following key areas:

- Applications to HMRC for Binding Tariff Information ("BTI") rulings in order to obtain certainty in relation to how specific goods will be classified. A BTI ruling is valid for three years and applies in all EU Member States
- Appeals in relation to unfavourable BTI ruling decisions, both to HMRC and the UK Tax Tribunals and higher courts
- Challenges in relation to HMRC's classification of goods, for example where HMRC have issued a non-binding "notification of customs tariff classification"
- Appeals in respect of formal assessments for under-declared customs duty and import VAT (C18 Post Clearance Demand Note), both to HMRC for internal review and to the UK Tax Tribunals and higher courts
- Disputes in relation to claims for repayment or remission of import duties (typically rejection of claims made on repayment claim form C285)
- Customs seizures and forfeiture proceedings

Examples of recent UK customs duty work carried out by members of our team include:

- Acting for an importer presented with a demand for around £3m in respect of unpaid Anti-Dumping Duty on photovoltaic cells (solar panels). We were able to successfully negotiate with HMRC and put together the right paperwork so that the demand was cancelled and nothing had to be paid
- Advice on the proper approach to take to the import of a new lifestyle DNA testing product, including the correct duty categorisation, reliefs available and import VAT issues in relation to products partly involving digital downloads
- Restoration proceedings in relation to goods seized by HMRC as a result of an innocent misdeclaration. Advising on the challenge, dispute resolution, and appeal procedures where HMRC has exercised its seizure and forfeiture powers
- Acting for a manufacturer in respect of a dispute with HMRC regarding the correct classification for customs duty purposes of electronic music players imported into the UK. The dispute concerned the application of the 'principal function' test and whether the product should be correctly classified as a video player (subject to a higher duty rate) or a music player, as the product had both music and video playback functionality
- Advising a manufacturer of products for the construction industry in respect of a dispute with HMRC concerning the correct classification for customs duty purposes and whether the product was subject to Anti-Dumping Duty" on the basis of its country of origin. The matter also concerned an appeal against HMRC's decision to revoke a BTI ruling and an appeal against HMRC's refusal to remit the duty in question
- Assisting a manufacturer to resist an assessment from HMRC for under-declared customs duty and import VAT in respect of safety components imported into the UK for use in the motor industry and the application of "end-use" relief, including successfully challenging HMRC's assessment on judicial review grounds
- Providing advice in respect of BTI rulings, including enforceability and revocation by HMRC
- Assisting manufacturers of electronic and industrial goods in relation to the correct customs classifications with regard to the 'principal function' test and determination of the 'essential character' of the products, as well as the relevance of BTI rulings issued to third parties in other EU Member States in respect of similar products

Further information

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