SCHINDHELM

CUSTOMS CONSEQUENCES OF THE BREXIT DEAL

After the UK's withdrawal from the EU, there has been a customs border between the EU and the UK since 01.01.2021. As a result, customs clearance must be carried out. Exporters and importers must complete customs formalities and comply with customs law, because intra-community deliveries with the UK have now become exports and imports. In some cases, this means considerable additional expenditure and higher costs, especially for companies that were previously only active within the EU single market. For the first time they will have to deal with the specifics of customs clearance and apply for an EORI registration (Economic Operators' Registration and Identification) at customs.

I. WHAT RELIEFS HAVE BEEN CREATED?

The EU is the largest trading partner of the UK with a share of approx. 50%. To facilitate the movement of goods with the UK, the Trade and Cooperation Agreement between the EU and the UK, which had for a long time not been believed to be possible, entered into force provisionally on 01.01.2021. This includes, among other things, a free trade and preference agreement. In principle, the use of preferences means that customs discounts or exemptions from customs duties can be claimed.

II. PREFERENCES / CUSTOMS CLEARANCES ONLY FOR GOODS ORIGINATING IN THE EU AND THE UK

Contrary to many expectations, deliveries of goods in direct trade with the UK are not generally duty-free. For example, if goods from China are forwarded to the UK via Germany, duties can now accrue not only for imports to Germany, but also for imports to the UK.

In the trade of goods with the UK, exemptions from customs duty can only be considered for goods originating in the EU and the UK. Proof of preference must be provided for the use of these customs preferences. These are certificates of origin in accordance with the Trade and Cooperation Agreement. In addition to the general import and export formalities, the economic operators must deal with the issue of preferences and the rules of origin and provide proof of origin for the import and export formalities established anyway. The agreement contains a comprehensive preferential agreement on this, which is more generous in comparison to the other EU agreements. For example, while in other agreements a proportion of the primary materials of the preferential product without a certificate of origin of 30% is considered to be prejudicial to origin, this value clause is generally 50% according to the EU-UK agreement.

III. PROOF OF PREFERENCE

As with all recent free trade agreements, the declaration of preference is now considered to be proof of the origin on a commercial paper (Annex ORIG-4 of the EU-UK Agreement). In addition, the what is referred to as full accumulation is possible, but there is now an extra supplier declaration without preferential origin status (Annex ORIG-3 of the EU-UK Agreement).

IV. EXCHANGE OF GOODS EU TO UK

For exports to the UK up to a value of EUR 6,000, the declaration of origin can be made by any exporter; for goods of a higher value, only registered exporters (REX) may submit a declaration of origin. Supplier declarations for primary materials or pre-trade goods are usually required for the determination of the preferential origin by the exporter. New and existing supplier declarations of the EU origin are now to be adapted for preference traffic with the "UK/GB". Since it will be difficult for suppliers to submit all relevant declarations to the exporters in good time because the agreement has only been published recently, these can also be submitted retrospectively. Specifically, according to Implementing Regulation (EU) 2020/2254 of the Commission, it is permissible to use declarations on the origin of exports to the UK by 31.12.2021 based on supplier declarations if the supplier declarations are in the possession of the exporter by 01.01.2022. The supplier must subsequently submit the supplier declaration.

V. EXCHANGE OF GOODS UK TO EU

The problem with the importing of goods from the UK is that the UK has not yet incorporated the "supplier declaration system" into UK law. It can be assumed that declarations of origin required for preferential treatment in the EU are not delivered in a timely manner by the UK exporters and that customs duties must first be paid in the EU. Reimbursement applications can be made in this regard within three years.

VI. CONCLUSION

In principle, for imports and exports from the EU to the UK, customs clearance must be carried out with the participation of the Customs EU and Customs UK. All prohibitions and restrictions under customs law apply.

Foreign trade law must also be complied with (export control in accordance with the AWG (Außenwirtschaftsgesetz [Foreign Trade Act]), dual-use goods, export permits). In order to apply for as few formal export permits as possible for sensitive goods, there is still a "general permit" for the UK. The import turnover tax is to be paid for imports and remains unaffected by the agreement.

In the area of customs duties, relief was created by the fact that no customs duties and no charges with the same effect are to be paid for goods originating in the EU or the UK. In this respect, an initial or renewed examination of the preferential right, an adjustment of supplier declarations and, if necessary, further contractual adjustments will be necessary in the companies concerned.

The experts at Schindhelm Allianz are always available to answer any questions you may have about Brexit.

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