

# Customs Challenges

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## Barriers to Productivity and Exports for Business

There are a variety of challenges in the Customs sphere. This is a guide to the main issues, and their potential solutions.



## The joined up use of Free Trade Agreements

The UK and EU have almost identical trade agreements with the same countries. However, the rules of these agreements state that goods must be shipped directly from origin or remain under customs control if passing through or held in an intermediate country.

Customs control is prohibitive as it usually requires the use of duty procedures such as Inward Processing or Customs Warehousing. It also requires ongoing co-operation of the original exporter.

For example, both the UK and the EU have almost identical free trade agreements with Japan. A UK business that wishes to sell Japanese goods on both UK and EU markets must decide whether:

1. Import all goods into the UK and export part of them to the EU. In this way, the goods benefit from nil duty rates on importation to the UK but are subject to full duty in the EU.
2. Import all goods into the EU and export part of them to the UK. In this way, the goods benefit from nil duty rates on importation to the EU but are subject to full duty in the UK.
3. Import goods separately into the UK and the EU, so no duty is payable in either territory. This presents logistical and business challenges and can be an expensive solution.

The result is UK businesses choosing option 3 and setting up operations in the EU and direct shipping goods from origin to the EU and the UK separately.

### Potential Solutions

Seeking cumulation (cross-application) between Free Trade Agreements.

Extend the Free Trade Agreements to allow the consignor in one territory to replace the original certificate of origin with replacement certificates for goods held under customs control before being sent to the other territory of the agreement.

There is an easier win with General System of Preference (GSP), as this is not a bi-lateral trade agreement. The UK (and EU) have unilaterally granted access to their markets on favourable terms to less developed countries.

As a precedent, the EU and the UK agreements with Switzerland allow importers to issue replacement certificates of origin for GSP goods held under customs control before being re-exported to Switzerland.



## Restrictive Rules on Inward Processing (an export relief)

Inward Processing relieves customs duty on imported goods used to produce goods for export. It therefore reduces the cost of exports and makes them more competitive.

The relief can be applied retrospectively going back 12 months in exceptional circumstances, whereas other planning can often go back three years.

### Potential Solutions

Remove the 12 month limit and the exceptional circumstances test to open up the relief and promote manufacturing in the UK and exports.

The EU has the same rules, but these changes would give our exporters a competitive advantage.

The US allows its companies to go back 5 years to reclaim duty on goods subsequently re-exported.

## Loss of pre-Brexit UK classification regulations

Pre-Brexit, all UK classifications regulations were held on the EU BTI database. Since Brexit, the EU has deleted all UK rulings. Under current UK guidance, HMRC will honour these rulings until they expire. However, they are no longer in public domain.

### Potential Solutions

Publication of pre-Brexit UK classification rulings that are still valid.

## Using Technology to Streamline Regulatory Compliance

The UK is amongst the leaders in providing importers and exporters with customs data (known as MSS reports).

This data is critical in streamlining checks to ensure compliance and capturing missed claims under Free Trade Agreements.

Barbourne Brook has invested considerable time and money into developing analytics software to help our clients comply and be productive. Other businesses are following suit.

HMRC promised to make this data free for businesses as part of their changes in systems from CHIEF to CDS.

### Potential Solutions

HMRC fulfilling its promises and making as much data available as possible rather than restricting some data sets.

## Complex Regulatory Landscape

Customs regulation was under directly applicable EU law pre-Brexit, with four key pieces of Regulation. The EU regulations greatly mirrored wider international conventions that both the EU and UK are signatories to (WTO, WCO, Kyoto Convention, HS Convention etc.), so there is limited scope for differences.

Post Brexit, the regulation in this area has spiralled, with over 40 pieces of legislation and additional Notices with legal effect. This is causing problems for HMRC and for businesses to understand, apply and comply with the law.

It may have made more sense to grandfather the EU regulation across but there may have been reasons we are not aware of.

### Potential Solutions

Consolidation Act as soon as possible.

Until then, a consolidation tool that takes businesses from the old EU rule to the UK rule.

Put all UK rules in a searchable database.

When making changes, show what the rule was before and after, rather than simply re-writing the provisions.

## HMRC Inconsistencies

HMRC has had to increase its staff numbers and lost many experienced officers over the last few years. This results in poor processing of applications for authorisations, reclaims and audits. This manifests itself with:

1. Inconsistent approaches: each officer asking for different levels of supporting evidence
2. Poor understanding of the rules and asking businesses to meet unnecessary conditions
3. Difficulties engaging with the officers to discuss issues as there are no direct contact details
4. Requirement to send paper submissions which leads to documents getting lost within HMRC or attachments being dropped
5. Inconsistent approach regarding electronic communication (only some officers or departments will allow it).

All this adds unnecessarily to the cost of doing business.

### Potential Solutions

Policy guidance notes for HMRC staff that are also published to the trade so businesses know what is needed and can keep HMRC to account.

Contact details of an officer when a case, application or claim is assigned. It is then easy for both parties to ensure all information is received and speed up any follow up.

Consistent acceptance of electronic submissions and correspondence via email.

**Find out more about how  
Barbourne Brook can  
support your business**

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