

Indirect Tax Implications for U.S. Companies in a Post-Brexit World

Wednesday, October 7, 2020



Agenda

- Introduction
- EU to UK and UK to EU Customs Duty Impact
- VAT and Cross Border Trade
- Case Study
- Q & A

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The EU/UK Trade Corridor



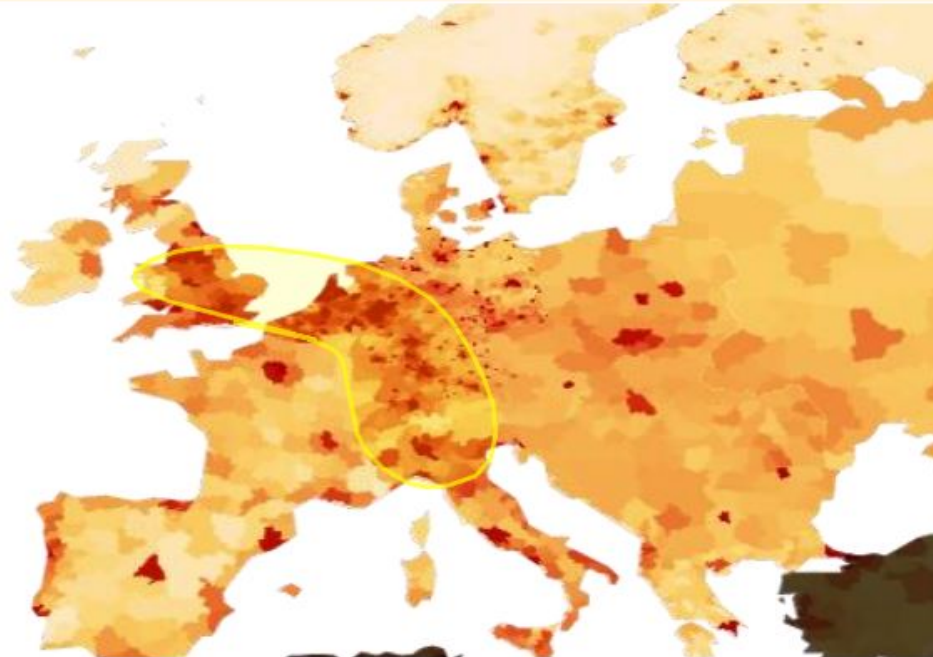
NDL/HIDC

Where is the buying power?

Main economic centers remain in Western Europe

The Economic 'Banana' is an almost continuous **urbanized region** (red is dense population) of **110 million people** stretching from Northern Italy, through Germany and the Low Countries, into England.

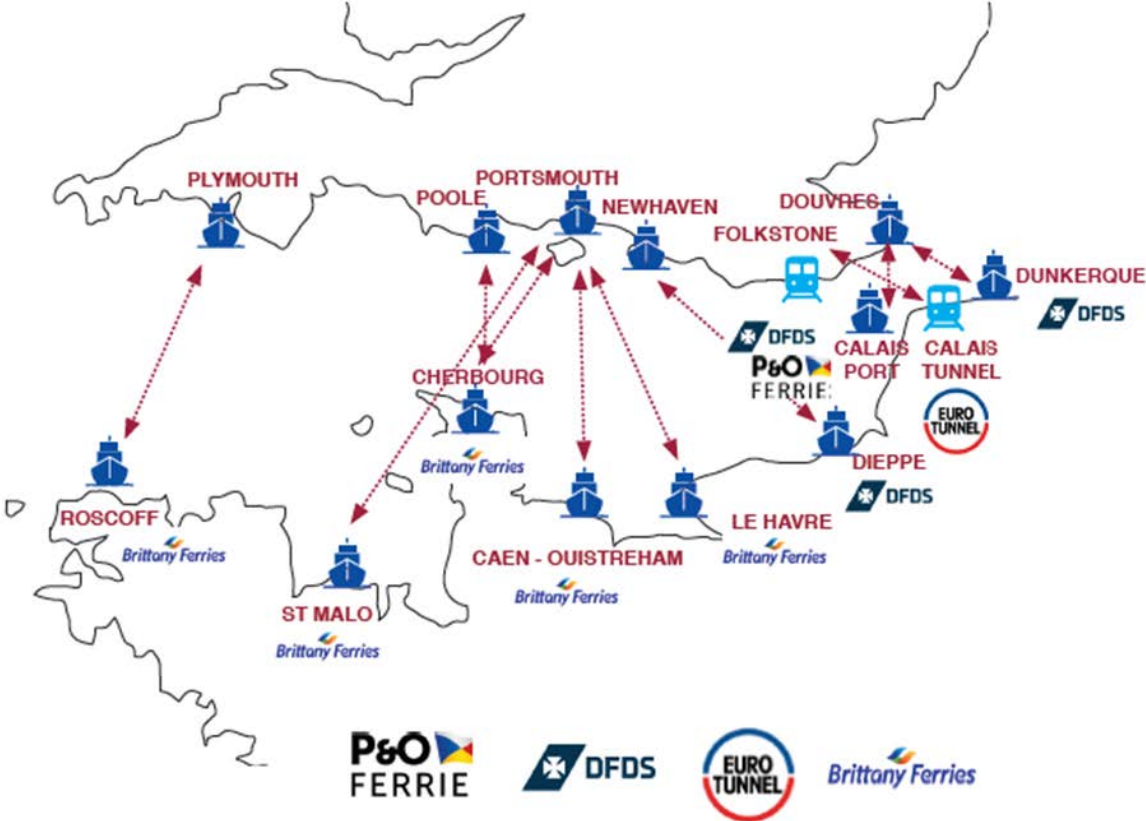
It represents **the bulk of EU buying power**



Source: Eurostat 2015



The EU/UK Trade Corridor



Lucy Sutcliffe
Director of National Customs Duty
Peterborough | UK

Brexit – UK Customs Recap

- On 31st January 2020, the UK withdrew from the European Union (EU).
- On 31st December 2020, the end of the Brexit transition period signals an end to the UK's membership of the EU's Customs Union and will result in changes to the movement of goods, capital, services and labour.
- It represents a shift in the future trading relationship between the UK and the EU and introduces new obligations and compliance requirements for British and Northern Ireland businesses and businesses trading with the UK.
- In the absence of a trade agreement between the UK and EU, the UK will leave the current trading relationship with a 'no deal' Brexit scenario.
- This will result in the re-introduction of customs formalities and associated compliance obligations for goods import and exported to and from the EU and the UK.

Customs Duty – EU to UK Movement of Goods

- **Customs Formalities** - the re-introduction of the requirement to render a customs declaration for goods imported into the UK.
- **Commodity Codes** - you will need to establish the import commodity code for goods declared to HM Revenue & Customs (HMRC), ensuring that it accurately reflects the products.
- **The UK Global Tariff (UKGT)** - the tariff levied on these importations will be based on the new UK Global Tariff.
- **Other Factors** - the customs valuation, the origin of the goods, the responsible parties to the movement and how and who will pay any UK import duties.
- **Supporting Documentation** - you may need to render and retain documents including; safety and security notifications, health certifications (IPAFFS), prenotifications for Sanitary and Phytosanitary goods, waybills etc.
- **INCOTERMS (Shipping Terms)** - you will need to establish which entity will be the 'declarant' for these movements and confirm the INCOTERMS between the relevant parties.

INCOTERMS 2020

Responsibility Matrix for Contract of Sale

INCOTERMS 2020	FREIGHT COLLECT TERMS					FREIGHT PREPAID TERMS						
	EXW	FCA	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DPU	DAP	DDP
	Ex-Works	Free Carrier (Warehouse)	Free Carrier (Port/Airport)	Free Alongside Ship	Freight on Board	Cost & Freight	Cost Insurance & Freight	Carriage Paid To	Carriage & Insurance Paid	Delivered at Place Unloaded	Delivered at Place	Delivered Duty Paid
Mode of Transport	Any Mode	Any Mode	Any Mode	Ocean Only	Ocean Only	Ocean Only	Ocean Only	Any Mode	Any Mode	Any Mode	Any Mode	Any Mode
Obligations and Charges												
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Formalities	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading at Point of Origin	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Inland Freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Port charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Forwarder Fees	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Ocean / Air Freight	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Destination Port Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Import Duties & Taxes	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Delivery Charges to Final Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller



Customs Duty – UK to EU Movement of Goods

- **GB EORI Number** - businesses will need a UK EORI number if they import goods into the UK as the 'declarant'.
- **The Recovery of UK Import VAT** - HMRC will only allow the owner of the goods at the time of importation to recover the import VAT. The correct procedure would be for the new owner of the goods to be the 'declarant' for the movement.
- **Postponed VAT Accounting (PVA)** - the UK will introduce PVA for UK VAT registered businesses. This means that you will account for import VAT on your VAT return (including the date you imported the goods).
- **Common Agricultural Policy (CAP) Regime** - the UK will leave the CAP regime which places additional duties on milk, starch, sugar and protein derived products entering the EU from countries outside of the EU.
- **The Goods Vehicle Movement Service (GVMS) / Smart Freight System (SFS)** – new IT systems and responsibilities will be introduced for goods which are carried by road, which will be relevant to hauliers and carriers of goods.

Customs Duty – EU to UK Movement of Goods

- **The Island of Ireland** – it is intended that this will operate under the principles of a dual tariff regime.
- Northern Ireland will remain part of the customs territory of the UK and will benefit from unrestricted access for Northern Irish businesses to the rest of the UK internal market.
- Northern Ireland will also be subject to the European Union's customs rules and a wide range of EU Single Market rules with regards to goods.
- **The Common Transit Convention (CTC)** – the UK will remain a member of the CTC. By using Common Transit you can move goods quicker between or through Common Transit countries.



Customs Duty – EU to UK Movement of Goods

- **Customs Formalities** – an export declaration will need to be rendered for goods exported from the UK to the EU.
- **Commodity Codes** - you will need to provide a commodity code for the goods as part of the export declaration, ensuring that it accurately reflects the products.
- **The EU Common External Tariff (CET)** - the tariff levied on these goods at importation into the EU will be based on the CET.
- **Supporting Documentation** - you will need to ensure that any supporting documentation or certificates required by the EU country of destination are obtained and available upon importation, as required by the EU fiscal authority.
- **EU EORI Number** – UK businesses which import goods into the EU as the ‘declarant’ will need an EU EORI number, even if they use a customs agents or forwarder to submit their declarations.
- **EU Alignment** – you may need to consider EU regulatory alignment and common standards including labelling requirements for UK goods entered to the EU marketplace.
- **Common Agricultural Policy (CAP)** - any UK manufactured goods containing milk, starch, sugar and protein derived products, exported to the EU may be liable for additional CAP duties over and above the prevailing customs duty rate.

Customs Duty – Key UK Updates

- The re-introduction of customs formalities for every product imported and exported to and from the EU and the UK regardless of any FTA.
- The introduction of the Border Operating Model and the associated simplified procedures.
- The introduction of the Goods Vehicle Movement Service (GVMS) / SFS.
- The introduction of the UK Global Tariff (UKGT).
- The introduction of the Northern Ireland Protocol.
- The removal of the Common Agricultural Policy (CAP) regime.

Greg Mayne
Director of VAT
Maidstone | UK

VAT and Cross Border Trade

- VAT is a transactional tax levied on the supply of goods and/or services.
- Globally approx. 170 countries have a VAT (or equivalent) system.
- VAT is an efficient form of revenue generation.

Key Questions for VAT

- Goods, services, or both?
- Where, if at all, does VAT apply?
- Who is responsible for the VAT?
- How much VAT will apply?
- Can it be recovered (or deferred, or avoided)?

VAT and Goods

- Assumed = Export from US, import into UK.
- Agreement for supply (INCOTERMS).
- Supplied in UK or moved on? (more detail to follow ...)
- Documentation and evidence.

VAT and Goods – Moved to UK Then Onwards

- Goods arrive (cleared) in UK = UK VAT and duty.
- Onward movement to other EU Member States.
- **Currently** = ‘Single Market,’ intra-EU supply.
- **Post-transition** = export from UK, import to EU (plus VAT and duty)

VAT and Goods – Moved to UK Then Onwards

- Possible solutions.
- Do not clear goods in UK.
- Redirect movement to another EU Member State.

VAT and Services

- Assumed = Supplied from US, received in UK (no UK establishment)
- B2B, or B2C?
- What is the nature of the service?
- BTE and MOSS.
- Extension of MOSS to OSS.

EU VAT ‘Points of Interest’

- 80% of the movements of goods between Continental Europe and the UK cross via one of 9 French entry/exit points every year = 5 million trucks cross the Channel.
- A new IT-based logistics and customs solution called “Smart Border” will be deployed from 1 January 2021.
- France will not require a UK business to appoint a fiscal representative to deal with imports post-transition, saving on administrative and financial costs.
- France, Belgium and Netherlands are employing and training large numbers of new staff to deal with border customs issues.
- Countries such as Ireland, France, Germany, Italy and Netherlands are promoting themselves as places to do business for US-based companies.
- Most EU Member States are implementing schemes that allow import VAT payment to be deferred or delayed.

EU VAT ‘Points of Interest’

- Businesses exporting from EU Member States may be required to be ‘established’ there or to have a fiscal representative acting for them.
- Italy has a definition of “usual exporter” where exports exceed 10% of turnover = favorable VAT treatment.
- The treatment of dividends, interest and royalty payment involving UK Holding Companies would fall outside of the existing favourable treatment within the EU
- Platform providers (Amazon, etc.) operating in UK and EU are required to apply due diligence on non-EU suppliers.

Andy Dawbarn
Partner | Head of Indirect Taxes
London | UK

Background

“The Rolling Clones Music Group” (RCM)

Manages “Proxy Music”

RCM core income streams:

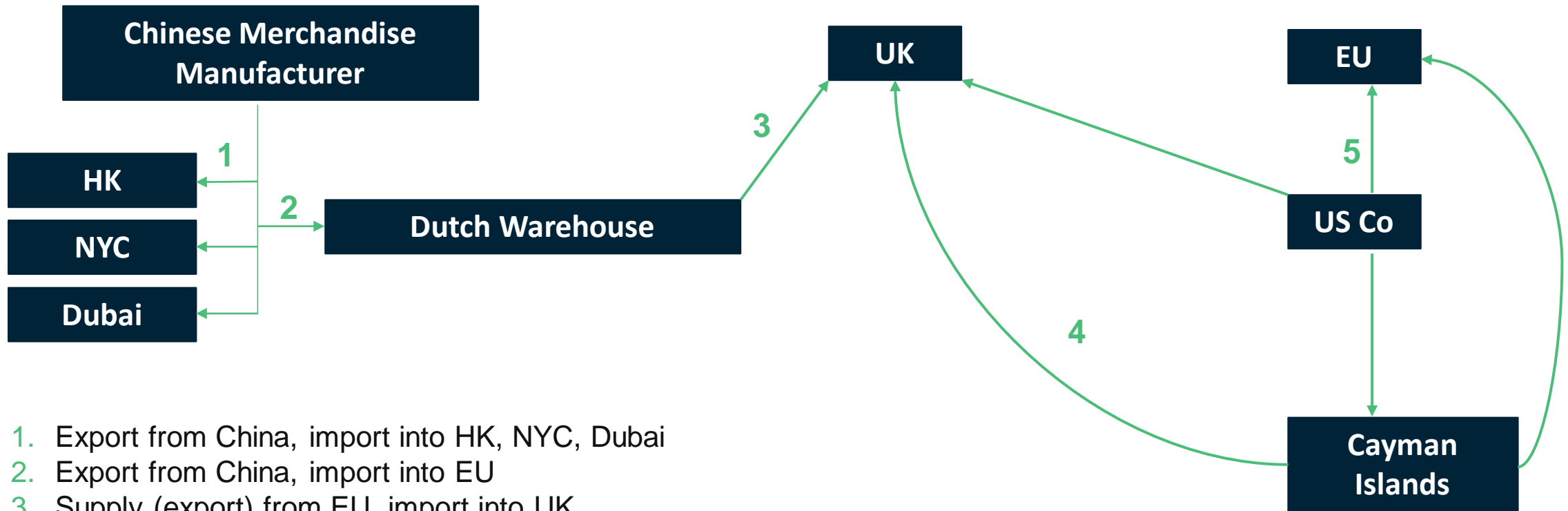
- Record sales / downloads
- Royalties
- Merchandising / Income from Touring
- Advertising / sponsorship

2020 World Tour **POSTPONED**



Background

- Virtual concerts for download globally via US Co.
- Merchandise bought from China.
 - To Netherlands for European market.
 - To Hong Kong – Far East/Aus/NZ.
 - New York – US.
 - Dubai – Africa/Middle East.
- IP rights held in the Cayman Islands.



1. Export from China, import into HK, NYC, Dubai
2. Export from China, import into EU
3. Supply (export) from EU, import into UK
4. Supply of IP to UK
5. Supply of download from US to UK and EU

Actions – what you need to consider now

- Review your end-to-end supply chains and consider any variations you may need to make to comply with the new customs and VAT formalities.

- Review your existing contracts with EU and the UK (suppliers and customers) to identify each parties responsibilities and liabilities.

- Quantify your future import duty and VAT exposure and consider and plan how you will meet any financial increase.

Actions – what you need to consider now

- Confirm how you will render any import or export declarations and the associated costs, information and supporting documentation which will be required and how any EU/UK import duties will be paid.

- Consider the impact of your existing INCOTERMS (shipping terms), any associated liability to submit customs declarations in the country of dispatch or the country of destination and any import duties.

- Consider and apply for any mandatory authorisations – GB EORI number, an EU EORI number and any VAT or other registrations required in either the EU or UK.

Actions – what you need to consider now

- Consider and apply for any beneficial authorisations – how you might pay any UK import duties via a Duty Deferment Account Application or Customs Warehouse approval.

- If you are considering the location (or re-location) of activities then the geography, logistics and administration processes should be reviewed to ensure the optimum benefit is obtained.

- Make sure that you are obtaining good professional advice on any plans you might be making and get that advice in advance of making any decisions. Some measures and actions can be hugely beneficial regardless of any potential changes that take place.

Q&A

Speakers



Lucy Sutcliffe
National Customs Duty
Director
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Lucy specialises in customs and excise duties; providing technical advice, guidance and streamlining solutions for businesses involved in the movement of goods, imported into and exported from the UK, the EU and the rest of the world.
Lucy also provides customs related advice on the impact of the UK's departure from the EU on 31st January and the changes anticipated at the end of the Brexit transition period relating to the future trading relationship with the EU and the rest of the world.



Greg Mayne
Director of VAT
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Greg is a true problem solver and he really enjoys getting stuck into complex VAT issues. This makes Greg extremely proactive and he can often identify problems before they arise, so that he can advise his clients in plain, simple English and that they can understand the decisions they need to make.



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Andy is a Partner of the firm, and leads the direction and delivery of VAT and other indirect tax advisory services



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Frank has over 30 years of experience in international corporate and VAT tax matters in Europe and US. During his career initially at one of the big four advisory firms, he has advised large multinational companies on their international structures, including IP ownership and M&A transactions. In recent years he has focused on US companies, mainly in Silicon Valley advising on efficient tax structures taking into account US legislation and EU directives and their impact on US companies active in Europe. Frank has a tax law degree from the University of Amsterdam, school of law and is based in San Jose, CA.

Disclaimer

The purpose of this presentation is to **give general information** on the subject matter presented.

It is **not intended to be a comprehensive analysis** of the subject matter that is being discussed or presented in written or verbal form. The information is believed to be correct as at 15 September 2020 .

It is **not intended to be a substitute** for formal advice from the appropriate person in the organisation to a client under the terms of a suitable signed engagement letter.



Thank You!



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