

## Summary of issues with UK-REACH and import of chemicals v1.1 26<sup>th</sup> October 2022

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### Background:

Chemical imports and re-exports into the UK have taken place for many years while we were part of the EU.

Bonded warehouses, Customs warehouses and Inward Processing Relief (IPR) have meant that duties and customs fees have been avoided, and all of these facilities meant that the chemicals were technically not brought into the EU, and that they were therefore exempt from EU laws.

This meant that companies could import, process (repack, dilute, formulate) and re-export chemicals without them coming into scope of EU-REACH.

It was not possible to react chemicals under this regime, as the new chemicals which were created and exported were not the same as those imported – in that scenario, EU-REACH was applicable in the UK, and still is in Northern Ireland and the EU itself.

This situation appears to have been changed at the time of Brexit, and not many people seem to have noticed.

### Specific problem:

EU-REACH, article 3, definitions, item 10 states:

import: means the physical introduction into the customs territory of the Community

Originally, UK-REACH article 3, definitions, item 10 stated (SI 2019/1577):

10. import: means the physical introduction into United Kingdom customs territory of the Community.

(Note that “Community” was used to describe the United Kingdom Community in SI 2019/1577 as well as the European Community under EU-REACH)

However, this was altered by SI 2020/1577 (which brought in the Northern Ireland Protocol), so that it now reads:

10. import: means the physical introduction into Great Britain.

The removal of the phrase “customs territory” has very serious consequences for UK chemical importers and re-exporters.

Technically, it means that every single chemical imported into the UK physically comes under REACH.

The HSE have informed us via email that they interpret this law as meaning REACH applies **when the container is opened**, that is if you want to repack or dilute or formulate the product, **it comes into UK-REACH scope**, even if it is in a Customs Warehouse or otherwise subject to Inward Processing Relief.

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A lot of business that is carried out in the UK, based on the previous legal regime, has suddenly been brought into REACH scope, meaning that REACH registration is required, which is very expensive (see worked example below).

It also means that there is no longer a "level playing field" between UK-REACH and EU-REACH.

### **Why this probably happened:**

Personally, I suspect that the omission of the words "customs territory" is a drafting error made by a civil servant under the immense time pressure of the last-minute negotiations for the Northern Ireland Protocol. Quite possibly, they were unable to get hold of someone in HMRC to discuss the definition of "customs territory", or maybe it's just another typographical error.

It is difficult to believe that this was done intentionally, because it:

- Means that the "level playing field" we should have had on Brexit Day does not exist
- Breaks Customs precedents – there should be no alteration to Customs law without prior discussion with the industry(ies) affected
- May even be in breach of an international trade treaty

### **What we think should happen to correct this:**

We think that the text in Article 3.10 of UK REACH should be amended to read:

10. import: means the physical introduction into Great Britain customs territory.

### **Worked example**

One SME we have spoken to estimates they have 40 chemicals which they import, process and then re-export which are now potentially under UK-REACH.

Assuming registration data costs at 1-10 tonne limit of £65,000, this gives an estimated data cost of £2.6 million GBP. This excludes the other costs involved, such as Substance Identity Profile tests (around £2k per substance), and administrative fees to the HSE.

They estimate that costs would increase by around £20 per kilo, meaning this business model is no longer economically viable.

### **Other information**

Mark Rowbotham, ex HMRC/ Customs and Excise, has written an article on this issue from the Customs perspective, see <https://www.ghsclassificationcourses.com/newsflash-reach-and-inward-processing-relief-in-gb/>

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