



CUSTOMS AND EXCISE (CUSTOMS TARIFF AND IMPORT DUTY) (JERSEY) ORDER 2019

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Jersey

CUSTOMS AND EXCISE (CUSTOMS TARIFF AND IMPORT DUTY) (JERSEY) ORDER 2019

Made

24th October 2019

Coming into force

in accordance with Article 12

THE MINISTER FOR HOME AFFAIRS makes this Order under Articles 6, 19 and 73 of the Customs and Excise (Jersey) Law 1999¹ and Regulation 3 of the EU Legislation (Customs Union, Import and Export Control) (Jersey) Regulations 2018², and having consulted the Minister for Treasury and Resources, the Minister for External Relations and the Agent of the Impôts –

1 Interpretation

- (1) In this Order –
“Agent” means the Agent of the Impôts or any proper officer of the Impôts;
“Customs Law” means the Customs and Excise (Jersey) Law 1999³;
“Customs Union Arrangement” means the arrangement made between the Governments of Jersey and the United Kingdom in relation to a customs union, set out in Part 2 of the Schedule to the Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2019 of the United Kingdom (S.I. 2019/256);
“free circulation procedure” has the meaning given by Article 3(3);
“import duty” has the meaning given by Article 2;
“TCTA” means the Taxation (Cross-border Trade) Act 2018 of the United Kingdom.
- (2) Where a word or expression used in this Order is also a word or expression occurring in the TCTA, that word or expression has the same meaning, unless otherwise expressly indicated, for the purposes of this Order as it is given by the TCTA.
- (3) For the purposes of this Order, goods are dutiable goods if they are not domestic goods, and a reference to “domestic goods” is to goods within the meaning given to that expression by section 33(1) to (4) of the TCTA but applying as though references in those provisions to the United Kingdom were references to the British Islands.

2 Import duty

- (1) A duty to be known as “import duty” is charged in accordance with this Order by reference to the importation of dutiable goods into Jersey, except the importation –
 - (a) of goods which are exempted under Article 4; and
 - (b) of such goods as may be specified, by UK tariff regulations having effect in Jersey under Article 7 or by Regulations under Article 33A of the Customs Law (as inserted by Article 6 and the Schedule), as not being subject to such duty.
- (2) For the purposes of this Order and of the operation of the Customs Law, the definition “duty” in that Law is to be taken as including import duty, and import duty charged in accordance with this Order is to be collected and paid in accordance with that Law.

3 Obligation to declare goods for a customs procedure on importation

- (1) Dutiable goods which are presented to the Agent on importation must be declared for a customs procedure by the making of a customs declaration.
- (2) It is the customs procedure for which the goods are declared which determines when a liability to import duty is incurred.
- (3) The customs procedures for which goods may be declared are either –
 - (a) a procedure under which the goods are released for free circulation in Jersey (“free circulation procedure”); or
 - (b) a special Customs procedure.
- (4) In the case of goods declared for a free circulation procedure –
 - (a) the liability to import duty is incurred at the time when entry of the goods is made in accordance with Article 25 of the Customs Law; and
 - (b) Part 4 of the Customs Law applies in relation to the entry and those goods.
- (5) In the case of goods declared for a special Customs procedure –
 - (a) sections 4(2) to (7) (when liability to import duty is incurred) and, to the extent required for the application of section 4, section 19 (reliefs) of the TCTA apply, as though references in those provisions to HMRC were to the Agent and references to an HMRC officer were to any proper officer of the Impôts; and
 - (b) the Agent may take any such action or do any such thing as may be necessary to give effect, in Jersey, to the requirements set out in Schedule 2 to the TCTA relating to special Customs procedures.

4 Importation of goods from within customs union

- (1) Subject to the provisions of the Customs Law, no customs duty is to be charged in respect of goods imported directly into Jersey from the United Kingdom, Guernsey or the Isle of Man, where –
 - (a) the goods were wholly obtained in the United Kingdom, Jersey or the Isle of Man, as the case may be; or

- (b) all liability to customs duties in respect of the importation of the goods into the United Kingdom, Guernsey or the Isle of Man, as the case may be, has been discharged.
- (2) This Article ceases to have effect upon the coming into force of provision to the same or similar effect made by Regulations under Article 33A(4)(c) of the Customs Law.

5 Persons liable to import duty

- (1) If an entry is made under Article 25 of the Customs Law in respect of any dutiable goods, the person making the entry is the person liable to pay import duty on those goods.
- (2) Without prejudice to Articles 30 to 33 of the Customs Law, where goods are liable to forfeiture under either Article 27 or 32 of that Law –
 - (a) a liability to import duty is incurred at the time when the goods become liable to forfeiture; and
 - (b) any person who is in possession or control of the goods when they enter Jersey is the person liable to pay that duty.

6 Customs tariff: amendment of the Customs Law

The Customs Law is amended in accordance with the Schedule.

7 Customs tariff: UK regulations to have effect in Jersey

- (1) In this Article –
 - (a) the expressions “Customs Tariff”, “Competent Authority”, “correspondent”, “Jersey Courts” and “United Kingdom Courts” have the same meanings as in the Customs Union Arrangement; and
 - (b) “UK tariff regulations” means any regulations, directions, notices or other instruments, however described, that are made in the United Kingdom for the purpose of –
 - (i) establishing and maintaining in force the Customs Tariff,
 - (ii) amending the Customs Tariff, or
 - (iii) making any other provision in relation to the Customs Tariff.
- (2) The UK tariff regulations have effect in Jersey as they have effect from time to time in the United Kingdom –
 - (a) with the substitution of –
 - (i) references to the Competent Authority of Jersey for references to the Competent Authority of the United Kingdom,
 - (ii) references to enactments of Jersey for references to the correspondent law of the United Kingdom, and
 - (iii) references to the Jersey Courts for references to the United Kingdom Courts; and
 - (b) subject to such other modifications as may be necessary to give them effect in Jersey.

- (3) The Agent must publish such guidance as to the effect of paragraph (2) as appears to the Agent to be useful to persons in Jersey, including guidance as to –
 - (a) the titles and, where relevant, the statutory instrument numbers, of such UK tariff regulations as appear to the Agent to be particularly relevant to persons in Jersey; and
 - (b) the effect of the substitutions and modifications to those UK tariff regulations that appear to the Agent to be made by paragraphs (2)(a) and (2)(b).
- (4) The Agent may publish the guidance by such means and in such manner as the Agent considers appropriate, including by way of a link to a website on which UK tariff regulations are published.
- (5) The first guidance must be published as soon as practicable after the commencement of this Order.
- (6) This Article ceases to have effect on the coming into force of Regulations under Article 33A of the Customs Law, unless those Regulations expressly provide for its continuance.

8 Valuation of goods for purposes of import duty

- (1) For the purposes of import duty, the value of goods is the transaction value of the goods when sold for export to Jersey.
- (2) The “transaction value” means (subject to any provision of Regulations made under Article 33B of the Law) the total amount payable for the goods, or in connection with the importation of the goods into Jersey.

9 Place of origin of goods for purposes of import duty

- (1) For the purposes of import duty, goods are to be regarded as originating from a country or territory if they are wholly obtained in the country or territory.
- (2) If goods are obtained in 2 or more countries or territories, they are to be regarded as originating from the last country or territory in which substantial processing of the goods, that is economically justified, has taken place.
- (3) Processing of goods is to be regarded as substantial only if –
 - (a) it results in the manufacture of a new product or represents an important stage of manufacture; and
 - (b) it takes place in an undertaking equipped for the purpose.
- (4) It is for the person making entry of the goods to show that goods originate from a particular country or territory.

10 Rulings as to origin or tariff information

- (1) This Article applies where HMRC officers have, in accordance with a system established for that purpose by public notice under section 24 of the TCTA, given any ruling determining –

- (a) any issue as to the classification of goods or as to the amount of import duty to which goods are liable; or
- (b) the place of origin of the goods,
- in respect of goods imported or proposed to be imported into Jersey or into any other member of the customs union.
- (2) Where this Article applies, such a ruling as mentioned in paragraph (1) (including any decision made on review of, or appeal against, such a ruling) is binding in Jersey and enforceable by the Agent in the same way and to the same extent as if it were a decision under the Customs Law, except that Articles 68 and 69 of that Law do not apply so as to permit any review of the ruling.
- (3) In paragraph (1), the reference to the customs union is to the customs union between the United Kingdom and the Crown Dependencies, within the meaning stated in Paragraph 1 of the Customs Union Arrangement.

11 Determination of disputes

- (1) This Article applies where there is a dispute as to –
- (a) whether any, or how much, import duty is payable; or
- (b) who is liable to pay import duty.
- (2) Where this Article applies, the importer must pay the amount demanded by the Agent, but the importer may, within the period of 3 months beginning with the date of the payment –
- (a) if the dispute is in relation to the value of the goods concerned, require the matter to be referred to the arbitration of a person appointed for the purpose by the Royal Court (the “arbitrator”); or
- (b) in any other case, apply to the Royal Court for a declaration as to –
- (i) the amount of import duty, if any, properly due in respect of the goods, or
- (ii) the proper person liable to pay import duty in respect of the goods.
- (3) The Royal Court may not appoint as arbitrator a person who is a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005⁴, or who otherwise holds a paid office under the States.
- (4) The procedure on any matter referred under paragraph (2)(a) is to be determined by the arbitrator, and the decision of the arbitrator on the matter is final.
- (5) If the arbitrator decides that a lesser amount, or no amount, of import duty is properly payable in respect of the goods, the amount overpaid must be repaid by the Agent, together with such interest on the overpaid amount, from the date of the payment, as the arbitrator may determine.
- (6) An amount repaid under paragraph (5) is to be accepted by the importer in satisfaction of any claims in respect of the importation of the goods, and of all damages and expenses incidental to the dispute, other than the costs of the proceedings.

- (7) In considering a matter under this Article, the Royal Court or the arbitrator must have regard to any relevant ruling which is binding in Jersey under Article 10.

12 Citation and commencement

This Order may be cited as the Customs and Excise (Customs Tariff and Import Duty) (Jersey) Order 2019 and comes into force on the commencement of Article 2 of the European Union (Repeal and Amendment) (Jersey) Law 2018⁵.

CONNÉTABLE L. NORMAN OF ST. CLEMENT

Minister for Home Affairs

SCHEDULE

(Article 6)

AMENDMENTS TO THE CUSTOMS LAW

1 After Article 33 of the Customs Law there is inserted –

“33A Customs tariff

- (1) The States may by Regulations establish and maintain in force a system (the “customs tariff”) which –
 - (a) classifies goods according to their nature, origin or any other factor;
 - (b) specifies the rate of import duty applicable to goods falling within such classification (whether by a formula or otherwise); and
 - (c) contains rules for determining the amount of import duty applicable to those goods.
- (2) The customs tariff may further provide for the amount of import duty applicable to any goods falling within any classification to be determined by reference to either, or both of –
 - (a) the value of the goods; and
 - (b) the weight or volume of the goods or any other measure of their quantity or size.
- (3) Regulations under this Article may establish and maintain in force the customs tariff, in whole or in part, by providing that regulations or other instruments imposing or making provision in relation to a customs tariff having effect in the United Kingdom or the European Union (“external tariff regulations”) are to have effect in Jersey –
 - (a) as they have effect from time to time in the United Kingdom or the European Union (as the case may be);
 - (b) in whole or in part, and subject to such amendments and modifications as may be specified by the Regulations.
- (4) Regulations under this Article, whether or not making provision in respect of external tariff regulations, and without derogation from the generality of this Article, may make all or any such provision as described in Article 33B(2).

33B Regulations as to import duty

- (1) The States may by Regulations make further provision relating to import duty, including provision for all or any of the purposes described in paragraph (2).
- (2) Regulations made under paragraph (1) may –

- (a) make provision as to the transaction value of goods for the purposes of import duty, including provision dealing with transaction value, including provision as to –
 - (i) transactions between persons who are related to, or connected with, each other in a specified way,
 - (ii) cases where a transaction value cannot, or cannot readily, be determined, and
 - (iii) cases where goods were paid for in a currency other than sterling;
- (b) provision for the purpose of determining the place of origin of goods, including provision –
 - (i) for determining what constitutes, or does not constitute, processing that is economically justified, or an important stage of manufacture,
 - (ii) as to cases in which goods are, or are not, to be regarded as being wholly obtained in, or originating from, a country or territory, and
 - (iii) as to the evidence which is to be required, or is to be sufficient, for the purpose of showing that goods originate from a country or territory;
- (c) provide that the amount of import duty applicable to goods must or may be amended or adjusted in particular circumstances or cases, and by reference to such factors as –
 - (i) specified goods or specified descriptions of goods,
 - (ii) the country or territory from which goods originate,
 - (iii) the amount of import duty applicable to any goods which are subject to a quota,
 - (iv) the temporary lowering of the rate of import duty applicable to specified goods or descriptions of goods,
 - (v) arrangements made by Jersey, with Her Majesty's government in the United Kingdom or with the government of a country or territory outside the United Kingdom or with both (including arrangements of a type mentioned in Article 6);
- (d) without derogation from sub-paragraph (a), may make provision for an additional amount of import duty to be applicable to specified agricultural goods or a specified description of such goods, if –
 - (i) the volume of imports of such goods during a specified period exceeds a specified trigger level, or
 - (ii) the import price of such goods falls below a specified trigger price;
- (e) make provision for full or partial relief from a liability to import duty, by reference to any factor, including –
 - (i) the nature or origin of goods or anything else by reference to which goods are classified in the customs tariff,

- (ii) anything in the customs tariff by reference to which the amount of import duty applicable to goods is determined,
 - (iii) the purposes for which, the person by whom or for whose benefit, or the circumstances in which goods are imported;
- (f) make provision for matters incidental to import duty or the customs tariff and for purposes related to the implementation of the customs tariff or of external tariff regulations, including in particular such matters as approval or authorization of persons as economic operators;
- (g) provide that rulings and determinations given or made by officers of HMRC or by or on behalf of the customs authority of any specified country or territory other than the United Kingdom, and relevant to determining –
- (i) any issue as to the applicability of the customs tariff to specified goods or goods of a specified classification or description, or
 - (ii) the country or territory of origin of goods, are to have effect in Jersey;
- (h) for the purposes of valuation of goods for import duty, make provision –
- (i) treating a matter to be of a specified amount or value, or
 - (ii) for the value of goods to be a value other than the transaction value (and in this clause, “transaction value” has the meaning given by Article 6(2) of the Customs and Excise (Customs Tariff and Import Duty) (Jersey) Order 2019⁶);
- (i) where a dispute or other issue has arisen between the Government of Jersey and the government of a country or territory, make provision, if and to the extent that the Government of Jersey is authorized under international law to do so, varying the amount of import duty in the case of goods or a description or goods;
- (j) authorize the charging of fees in respect of any specified function of the Agent for the purposes of, or otherwise in connection with, import duty.

33C Requirement to have regard to international obligations

- (1) In exercising any function under provision made in relation to import duty by or under Article 6 or this Part, the Minister, the Minister for Treasury and Resources and the Agent must have regard to international obligations to which Jersey is a party and which are relevant to the exercise of the function.

- (2) Paragraph (1) does not affect the circumstances in which any obligation to have regard to international obligations would otherwise arise or have arisen.”.

2 After Article 73 of the Customs Law there is inserted –

"73A Orders etc. making provision for certain approvals and authorizations

- (1) This Article applies, without prejudice to the generality of Article 73, where Regulations or Orders under this Law make provision in relation to the granting of approvals (including authorizations) for the purposes of, or in connection with, import duty.
- (2) Where this Article applies, the Regulations or Order in question may –
- (a) require an application for approval to be made in a specified form and to contain specified information;
 - (b) require the Agent to publish the form and any other matters specified under sub-paragraph (a), in such manner as may be specified;
 - (c) specify cases in which an application for approval may not be made;
 - (d) require the Agent –
 - (i) to consider, within a specified period, whether or not an application for approval is duly made in accordance with any provision made under sub-paragraphs (a) to (c), and
 - (ii) to notify, in such manner as may be specified, the person making or purporting to make the application as to whether or not the application falls to be determined;
 - (e) confer rights of appeal;
 - (f) make provision about the circumstances in which an approval by the Agent must be treated as if it had never been granted, and otherwise about the amendment, suspension or revocation of approvals.”.

ENDNOTES

Table of Endnote References

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| 1 | <i>chapter 24.660</i> |
| 2 | <i>chapter 17.245.02</i> |
| 3 | <i>chapter 24.660</i> |
| 4 | <i>chapter 16.325</i> |
| 5 | <i>L.17/2018 (chapter 17.270)</i> |
| 6 | <i>R&O.117/2019</i> |