



BRITISH EXPORTERS ASSOCIATION

24th September 2020

BExA response to the National Audit Office Call for Evidence: The UK border: Preparedness for the end of the Transition Period

Overview of BExA

The British Exporters Association (BExA) is an independent national trade association representing the interests of the UK's exporters. Our membership is drawn from across the exporting community, including capital goods manufacturers and international traders (large corporates, MSBs, SMEs and Micro exporters), and their bank, credit insurance and other service providers. BExA seeks to promote the interests of its members and all UK exporters, with a particular focus on trade finance and export credit insurance.

Introduction

This response document is based on experience of and attendance as stakeholder member at HMRC Joint Consultative Committee (JCCC) meetings relating to EU Exit. Remarks on business readiness and governmental approach to and preparations for regulatory changes at borders should therefore be considered in relation to BExA engagement with HMG at that level rather than specific to a given sector.

Any other remarks will be noted should further context be necessary.

Overview

Some context may be given in relation to the NAO Report 'The UK Border: preparedness for EU exit October 2019.

There is evidence in the above report that original governmental approach to some measure was based on insufficient knowledge of working Customs processes, in particular relating to the requirement for export/import documentation and customs declarations in point.

There is evidence of an assumption that an EU/UK Free Trade Agreement would negate the requirement for customs declarations¹ and adherence to established processes for cross border activity - the salient point being that customs declarations and processes would be necessary whether or not an FTA would be in place by the end of the Transition Period.

In addition the requirement for infrastructure at border crossing points appears to have been omitted and to have taken second place to infrastructure based on traffic management rather than of the necessary phytosanitary checks for example, or the need for the provision of offices of departure/destination that are needed for NCTS movements under Transit.²

The UK government has recently introduced a period of 6 months' staged customs simplifications for imports into the UK immediately post Transition period. This is a similar measure to the Transitional Simplified Procedures defined in the October 2019 NAO report.

These Phased Simplifications were to address both businesses' being unprepared for the end of Transition, the steep increase in customs declarations to be completed and to support the movement of vehicles through the ports at import. Recent focus therefore has been on increasing resource to make customs entries.

The unpreparedness of UK Businesses could be to a degree due to the UK Government's misunderstanding the requirement for border controls and the supporting trade compliance methods in the early stages resulting in mixed messages and lack of direction or progress. This lack of clear focussed direction, whether due to miscomprehension of process or political policy, has left UK and NI businesses vulnerable and unable to plan for EU Exit, particularly relating to:

- Business and Financial planning, including the handling of VAT
- IT amendments and software development preparation
- Delivery planning
- Documentary requirements
- Border Compliance

How has the government engaged with you on plans for the border after the end of the Transition period?

In general, terms engagement has been through BExA membership of and attendance at Joint Consultative Committee (JCCC) meetings and attendance at any of the EU Exit Communications held around GB in September 2019.

¹ The UK Border: Preparedness for EU exit October 2019 Summary point 2. The Policy of the UK Government is to make a deal. Focus is therefore on making a deal rather than preparing the border for the inevitable consequence of leaving the Union, i.e. preparation for controls, checks and the essential requirement for customs declarations for UK imports and exports, but also for imports into and exports out of the EU. The Deal/No Deal misconception is evidenced throughout the document.

² There is some provision within the Transit (CTC) regulatory requirement for a trader that holds the correct authorisation to commence or complete a Transit movement at their own premises

How clear are you about the new arrangements for moving goods between Northern Ireland and Great Britain (and vice versa)?

There has been a lack of clarity or clear information for those businesses needing to plan for cross-border activity between NI and GB. This has been raised as a consistent concern through JCCC meetings in particular in relation to:

- The introduction of new IT Systems as technical solutions to trade activities between NI and GB
- Amendments to software in business use impacted by changes to the regulatory requirements and the costs and changes to internal business processes needed to adapt to comply
- Internal business and business support preparation that would be required to address new regulatory compliance or goods movement
- Amendments to official government documentation needed to accommodate the technical solutions

It has been consistently remarked upon that government representatives did not address that UK businesses had a need for clear understanding of the government position to enable their business EU Exit business preparation.

Government Approach

There has been notable disjoint between political approach published in the media to regulatory reality for those required to work and comply with the regulations.

Project Planning – Determining the operational models of UK Ports

- The Government announced the approach to port operations would be based on two models
 - Temporary Storage or
 - Pre-lodgement. Inventory ports using pre-lodgement, the solution to traffic flow critical RoRo ports
- There are over 250 UK ports and airports. These range from small jetties and airfields to large terminals such as Dover and Heathrow.
- These facilities vary in size and structure; they also handle customs requirements differently, with some having no experience at all in the use of customs measures
- All companies managing these facilities were to be contacted by HMRC initially by letter then by telephone call to commence engagement for EU Exit preparedness with the purpose of determining whether a given facility would use the pre-lodgement model or Temporary Storage.
- Confirmation that this activity had commenced was announced at a JCCC Transition meeting of August 2020.
- There had been no deadline given for returning any port/airport decision as to chosen operating model
- Feedback from some ports has given rise to the need of a combined pre-lodgement/Temporary Storage solution
 - This illustrates that project focus on the pre-lodgement or Temporary Storage was flawed as a solution in the first instance, and that contact with all ports/airports should have been initiated much earlier in the process.

New arrangements for the movement of goods across UK Borders:

General remarks on preparing border readiness

Remarks on arrangements for NI-GB are made with the NI Protocol notes later in the document.

JCCC meeting of 16th October 2019: Concern was voiced by JCCC attendees that IT solutions would drive customs methods and decisions rather than the requirements of the traders.

A preferred single window customs solution, where all customs regulatory requirements would be met at one input or towards one record, was understood to be impossible within the EU Exit timescale.

There has been a consistent measure of concern as new IT solutions were introduced as late as summer 2020 for a December exit. Of note:

- The independent border operators use over 90 different IT systems between them.
- Any new IT solutions introduced for integration into established or any evolving existing systems would require IT changes in those operational systems employed by the border operators.
- Any existing IT software employed by users such as intermediaries, fast parcel operators, hauliers, traders and agents would all need changes made, potentially substantial.
- There is risk that new software systems may have been designed without a thorough comprehensive understanding of regulatory compliance they are intended to support.

New systems relating to the movement of goods include CDS, Goods Vehicle Management System, NCTS and Smart Freight.

Provision of EU Exit preparation data

EU Exit Communications roadshows were well received.

Published Guidance

- Guidance was noted at times as lacking detail and definition
- Some guidance was defined as misleading by HMRC and removed
- Different government departments publishing information lead to mixed messages
- The BOM when published had helpful flow diagrams and clear written instructions necessary for those unfamiliar with Customs requirements.

Transitional Simplified Procedures: The importance of understanding compliance to border working practice when planning a change

HMG policy has been to issue easements as a solution to border readiness and to address freight flow. TSP was introduced early 2019 to address a no deal Exit in March 2019, and Phased Imports to address the requirement at the end of the Transition Period.

TSP, a method of delaying the requirement for a customs declaration, was initially proposed as an easement solution for cross border freight flow in 2019:

- An HMRC authorisation application would be required for the trader to use the easement, supported by the issuance of an Authorisation document to be used as compliance evidence
- Authorised traders would import using TSP and record import transaction in their own records (EIDR) making a supplementary declaration within a given time frame
- Necessary instruction on the use of EIDR was absent from the documents
- There was no Border Control database in place to enable determining authorisation validity
- JCCC therefore debated how evidence would be presented at the border – whether the trader, or the haulier on behalf of a trader, having a copy of the authorisation letter would be enough for evidence for Border Force if stopped at the border

- There was no information as to how TSP would work at airports.³

Technical notes: Compliance evidence, whether being produced at a border crossing point or supporting an audit trail, is a regulatory requirement. The JCCC stressed the importance of availability of digital information at the border, and the importance of understanding border working practice when determining a change to the procedure.

Border Force were not regular attendees at JCCC meetings and their valuable input was missed.

VAT

VAT and VAT management in cross-border trade activity has been an issue, particularly in relation to Northern Ireland where businesses may be working to two VAT rates (EU for UK imports through NI destination Ireland, and UK Global tariff for goods from the EU through NI to the UK).

To date, published data has proven confusing and regulatory matters relating to VAT do not appear to have been settled, particularly with reference to Northern Ireland.

Border Operating Model

The BOM was well received, although missing any reference to working methods for Northern Ireland. The model was released to the JCCC in June for the purposes of transparency, and to give some measure of reassurance. This was also well received.

NI Protocol

The NI Command paper was introduced at the JCCC meeting of 20th May 2020 as a 'mark in the sand' as to the UK Government intent regarding border and trade management between Northern Ireland and GB, rather than actual working practice. Notes:

- Safety and Security requirements were not adequately addressed in the document
- Some assumptions were misleading particularly in relation to areas where agreement had not yet been reached with the EU
- Some language used was vague and unhelpful e.g. Border Force implantation of 'discretion' and having a 'flexible' approach to the NI/GB border.
 - It would be difficult to determine how this would manifest in working practice or if challenged in a court of law.
- The Prime Minister has frequently stated his intention that there would be no new infrastructure at the NI border, or new checks.
 - This could be misleading, the implication being that nothing would change at the GB/NI border.
- Item 16 on the NI Command Paper: *There is still uncertainty about border arrangements the Irish government would introduce. The EU is likely to require Ireland to impose controls on goods entering from NI by land.*
 - Agreement in the Northern Ireland Protocol was that NI would be subject to UCC regulations. Effectively therefore the NI border with GB would be an EU external border and subject to UCC regulations on imports.

³ TSP would also affect imports with a quota restriction. A declaration to TSP would require the Supplementary Declaration to be made quickly to ensure that the quota was allocated in good time. This proved to be a heavy risk for meat imports subject to time-allocated, first come first served quotas, should a given business withhold a declaration to the beginning of a quota period therefore denying any other business the ability to import against that given period.

- Border strategy planning could have been baselined against those regulations earlier in the process.
- The document details the groups and committees being implemented to support the construction of trading methods, namely: The Withdrawal Agreement Joint Committee, Ireland/NI Specialised Committee, Joint Consultative Working Group, and the establishment of a Business Engagement Forum to which the NI Executive would be an invitee.
 - The Command paper was published in May 2020, and that the consultative committees were not yet established and in a position to advise on policy or strategy at that point, with 7 months to the UK leaving the Customs Union in December 2020.

Northern Ireland – How clear are you about moving goods between NI and GB

There has been a lack of definition available as to the operating models to be used by ports and the compliance requirement to support these models.

However, freight port operators and ferry companies have published helpful information as to documentary requirements at the ports, and of ensuring the necessary permissions have been given before approaching the port.

<https://www.stenalinefreight.com/brexit/>

<https://www.freightlink.co.uk/no-deal-brexit-operator-requirements>

How ready are your members to meet the government’s requirements at the border?

A measured approach to border planning and preparation has not been evidenced. Planning and implementation have been slow. This has impacted on individual business planning and there is little time for necessary business software adjustments and appropriate testing.

HMRC focus on the ports appears to have been towards the short straits, and on traffic movement.

Has Covid-19 affected readiness preparation

Largely yes. JCCC members suggested that an extension to the Transition period be considered. The Government response was to suggest the Staged Controls on imports.

Phasing of Import Controls

Staged imports:

- Implemented largely to negate inundation with import customs declarations on day one
- Supported by the grant scheme to enable more businesses to make declarations
- Directing businesses towards using an intermediary to make declarations
- Concern by the JCCC at the amendment of the regulation that removes fiscal responsibility to the intermediary should errors occur in effect removing any responsibility from the Intermediary to the trader
- Lack of business awareness on how to interpret data declared to Customs on their behalf
- Confusing information around authorisations and the requirement for CCGs. On-line forms difficult to interpret for those unfamiliar with processes

- SI introduced for October implementation of removal of CCG to support use of a DDA. This was welcome.
- VAT PVA – accounting for VAT without a C79 for goods imported to EIDR. A manual calculation required.
 - Data revised September 2020, portal announced to enable VAT calculation under those given circumstances. This was well received.
- Guidance omits that CDS registration is required to enable use of PVA

What more do you think the Government could do to support members for the end of the Transition Period?

Address issues highlighted in this response and provide clarity.

Specific aspects of readiness that are of concern

Information Technology

It has been a particular concern that new IT solutions were still being introduced into the summer of 2020 with little time to test.

New IT systems were announced after presentation of the BOM in July 2020 as being prepared, procured or adapted for the end of Transition December 2020.

Stakeholders voiced their concern at that time that additional IT systems were likely to fall very short in terms of integration and test time before the end of the year. Examples include:

- Goods Vehicle Management System: To be implemented as a method of managing road trade between NI and GB from January 2021, confirmed to be ready for NI-GB from 1st Jan 2021 and for controlled goods only for Dover. The system is anticipated to be unready for general GB port use until mid-2021.
- Trader Support System: Announced in July 2020 to support traders in NI with the making of customs declarations free of charge for all declarations (including RoW).
 - This service impacts directly on Intermediaries already working for established traders importing from RoW.
- GVMS: Procured in Spring 2020, in the process of being adapted to purpose.
 - Technical challenges to integrate with existing systems.
 - Due for implementation Jan 2021 for NI and Dover only
- Smart Freight: App to ensure that hauliers are port ready and approved to move through the ports.
 - Presented for consultation period in July 2020, consultation period to end 24th August.
 - Adaptation, integration, test and implementation period 4 months.

Note: A large proportion of hauliers working in the UK are not British, and drivers are not all English speakers. The App is dependent on smart phone technology, the necessity for a smart phone and a good signal.
- CDS: The new Customs IT system intended to replace CHIEF, CDS is now to be used to facilitate the GB/NI border.
 - Evidence of readiness: 5 NI businesses have been involved in successful CDS testing producing 1000 declarations.
 - The JCCC noted that this did not seem adequate test provision

Early confirmation of border operating models would have assisted good business preparation for goods movement planning.

Concluding Remarks

- Inter-departmental communication between government departments has appeared less than optimal, which has culminated in a fragmented government approach to border preparation.
- Government departments have been restricted by interdepartmental or ministerial protocol, and by lack of technical knowledge or appropriate technical representation at JCCC meetings.
- Staff changes within departments, or movements of 'key staff' can hinder the flow of information and of the development of a project.
 - One key member of BDG stated with 5 months of Transition period to run that the department was 'at a beginning of a journey'. This was corrected immediately by a JCCC Stakeholder that the JCCC had been on that journey since 2016 and were effectively very little further forward.
- Some early engagement on technical matters relating to border working practice appeared to have been lost.
- Border strategy planning time was lost as impetus was slackened when the EU Exit date was moved from March 2019 to October 2019.
- Focus of latter preparations has been on preparing Intermediaries for making of declarations.
- Some focus on border readiness for day one has moved from January 2021 to July 2021 due to IT systems being unready and fall-back preparations are being considered with a decision deadline of October 2020.
- The introduction of EU border controls was evidenced as a risk rather than a regulatory requirement at the EU border, unrelated to any EU/UK agreement.
 - The baseline for any argument as to possible approach of the EU MS border controls has always been that the UK would become a third country and that border control compliance would be necessary. An FTA would not negate this necessity; it would simply change the terms of the compliance requirement.
- Focus has been lost on the necessity for any GB business to make provision for Customs Declarations on import to the EU.
- In general, Government focus has been on goods movement into and out of the UK and lacked any focus on UK business needing to prepare for importing into the EU.

What Good Looks Like

The French authorities have successfully participated in the testing of the French version of GVMS and are confident of being EU Exit ready at UK facing ports.

The French Customs website gives clear information on data needed to export, with clear direction on all stages of business preparation for UK EU Exit and border requirements, including how to apply for a UK EORI to enable French imports into the UK. The website has the information in English, and is arguably what 'good looks like'.

https://www.douane.gouv.fr/sites/default/files/uploads/files/Brexit/Other_languages/customs-guidelines-preparing-for-brexit-january-2020.pdf