

A straight-talking and practical guide to BREXIT preparations – 1st October 2020

Overview

Further to our last bulletin on BREXIT preparations for our customers in late 2019, many things have happened. We had a change of political leader (from Theresa May to Boris Johnson), an election in December and then a new Conservative government. The “cliff-edge” of a hard-BREXIT on 31st of October 2019 was avoided when Boris Johnson lost his vote in parliament (on 19th of October) so had to write to the EU requesting an extension to 31st January 2020 and this was approved by the EU (on 28th October). After ascent to UK law, we formally left the EU at the end of January and the transition period will expire on 31st December 2020. We now have less than 100 days before we leave and negotiations for the elusive “deal” are still up in the air. But don’t use this as an excuse for sitting on your hands or hoping for the best, there are things you can and must do to get yourself ready, and we’re here to help where we can.

The Transition Period

The transition period should have given UK importers and exporters much-needed breathing space but in March, Covid-19 hit the UK hard and for many, it felt like BREXIT was pushed way down the priority list, with the government periodically telling us that negotiations were on-going, and that there would be no more extensions beyond the 31st of December – that was the date we’d leave the EU Customs Union. And we’ve all watched the news over the past 8 months, dominated naturally by Covid-19 and I think it’s fair to say that because negotiations are still on-going, the logistics industry and 130,000 UK companies who trade solely with the EU (and aren’t familiar with Customs declarations and duties) have been watching and waiting for the deal to be finalised (and they’re still waiting – and worrying).

So Now What?

Well, I think it’s fair to say, now the time is up, and regardless of what Michael Gove, David Frost, Ursula von der Leyen or Michel Barnier say or do, there are things that you, as a UK importer or exporter can and should do right now to take some control of your destiny, and put some key things in place to limit any impacts to your inbound supply chain or to your valued EU export customers – and time is short.

The key thing to remember is this, it doesn’t matter whether we get a “deal” or not, we are leaving the Customs Union in just over 90 days, and so your exports to or imports from Europe will be affected, both in terms of costs and delivery times. In 2021, your imports or exports with the EU will be treated in a very similar way to the way to shipments imported from the US or exported to China.

Practical Guidance & The 3 Steps

As with our guidance last year, if you export to or import from the EU, there are 3 main areas you need to focus upon to ensure you're ready for the new Customs environment from 1st January 2021.

As many companies aren't even using Incoterms for their EU exports or imports in the current EU logistics environment, we have simplified this guidance to assist companies who export on a so called "delivered" basis to their EU customers or on imports, pay for all freight costs from their suppliers' factory.

Of course, there are UK companies trading with the EU who don't pay the transport costs or select the freight forwarder. For their exports, their EU customer pays all freight costs from their factory and on imports, their EU supplier organises and pays for the transport to their door. In these situations, our view is that the onus for preparation should be on your buyer or seller (who contracts the transport) but you can still extract useful guidance from the below as all the elements are the same – and you should begin urgent dialogue with them if they haven't been in contact already.

These are the key areas we will address, both from the point of view of exporters and importers.

1. Are you as an exporter or importer, prepared?
2. Is your freight forwarder prepared and have they told you what they need from you?
3. Have you talked with or informed your suppliers or customers?

It's useful to think through all the steps in the logistics process from when a shipment booking is made by the exporter all the way through to delivery and to do the same for the commercial transaction (from quotation to final sale) as they're interwoven.

Here's our guidance on EXPORTS.

1. Are you as an exporter, prepared?

Incoterms 2020 will come into sharp focus in a hard-BREXIT scenario, particularly for exporters, where many have historically shipped to their EU customers on a "delivered price" basis, often neglecting to quote Incoterms on their sales quotations or export invoices. You would be surprised how few companies use, understand or are even aware of Incoterms in the Eurozone but we see it time and time again, particularly with SME type customers.

The below link takes you to the International Chamber of Commerce website and the handbook costs EUR 45.00, a good investment. It can be slightly confusing for the inexperienced but it is essential reading, covering important areas like responsibility for freight costs and the point at which “risk” passes from seller to buyer (and who must cover the costs of transport/marine insurance etc).

<https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/>

In the past, Incoterms didn’t matter so much for the forwarders or customers as EU road freight is usually fully paid by either shipper or consignee (unlike international air or ocean freight) and no Customs duty or VAT was payable in the Single Market, nor was a Customs clearance required. You just had to make a periodic declaration via Intrastat covering sales and purchases, easy.

So, your invoices will now have to include a lot more detail so that a Customs declaration can be made, both on export from the UK (as happens now with non-EU exports) and a formal import Customs entry on the EU side, whether that is in your customer’s name (Incoterms DAP/Delivered At Place), or possibly in your name (DDP / Delivered Duty Paid) although DDP could be very complicated due to the requirement to register as an economic entity in the destination country and allow Customs declarations to be made in your company’s name. We also understand that your current EORI number (Economic Operator Registration & Identification) which looks like this “GB125128736-000” won’t be valid in the EU from 1st January 2021.

2. Is your freight forwarder ready?

Many freight forwarders who specialise in EU imports/exports have existed in a non-Customs environment since the inception of the single market in 1993. That’s 27 years, and so many of their current staff won’t even recall a time when Customs declarations were required. In those times we were in the EEC (European Economic Community), and most goods of EU/UK origin would have had duty-free status provided that a “T2 or T2L form” (which proved the goods were made in the EU and deserved duty free status) was raised so Customs entries were pretty simple, but there was a Customs entry for every shipment, exactly where we will be in January. I remember this era well, because I trained for 5 years as a Customs broker and did imports and Customs declarations for 10 years. These freight forwarders are now having to upskill or employ staff to carry out these new processes, quite a challenge – and a risk for customers. You may have seen in the news that the government estimate we will need 50,000 new Customs brokers to cope with the number of new declarations.

Here at Straightforward Consultancy, we are fully immersed in the world of logistics and probably see 5-6 bulletins each day so we’re very well informed on what the market is doing. We also have relationships with many logistics providers by way of the logistics models we’re managing on behalf of our customers. But even now, with only 3 months to go, we still see that many of the bulletins/guidance issued by EU forwarders to customers are really not clear or comprehensive enough or properly “joined-up”.

True, there are some forwarders who have put in a lot more thought, time and investment to try to plan ahead and guide or support their customers, for example posting videos or hosting trade webinars (for which I give them great credit in what is an incredibly fluid environment).

But for the average customer, who has no experience of Customs, Incoterms or duties and taxes, it's just too confusing (it's logistics-speak) and they really just want a logistics "translator" to talk to them in their language and to answer these basic questions, which are: -

- a) Will my export shipments be delayed?
- b) Will it cost me more?
- c) Will it cost my customers more and do I need to raise my prices?
- d) What do I need to do to lessen the impact on my business?
- e) Are there any new procedures that I or my customer will have to follow?

Bearing all this in mind, you should urgently engage with your current forwarder so you're confident that they: -

- a) fully understand the BREXIT related changes and the impact on you and your customers
- b) have everything covered operationally
- c) have told you what they need from you (in particular, invoice layout and content)
- d) are confident that they will be able to provide you with a door to door service post 1-Jan and how that will differ from today in cost and delivery time
- e) are able to provide Customs clearance facilities at destination

3. Have you talked with your customers?

From what we've learned over the last 12 months after dialogue with companies here in the North West, this seems to be a major blind spot; that could be because of the distractions related to Covid-19 or because many were waiting for direction and clarity from the government. But for the sake of your customers, most of whom we're sure you'll be keen to retain, you must begin this conversation, or risk the possibility of them sourcing from elsewhere, most likely within the Single Market.

Your primary concerns should be:-

- a) who is going to pay the Customs clearance fees, import duties and taxes in the EU?
- b) how will shipment delivery times be affected?
- c) will the selling price of your goods need to change?
- d) might you need to send additional product to them before the end of the transition period to prevent disruption to their business?

In the future, we recommend that you specify your Incoterms to them clearly, and this process should begin way upstream in your business starting with the sales process, order confirmation and finally through to export documentation and shipment booking procedures.

If your EU customers buy from you regularly, have you explained that you may now need to sell to them on DAP (Delivered At Place) Incoterms, which will probably be the closest basis to the way you currently supply them (door to door and no duties / taxes borne by you). If so, they will be responsible for Customs clearance fees, import duties and local taxes/VAT.

This leads us onto the role of your freight forwarder, who is a key stakeholder in this process. Post 1-Jan, many will (for relative simplicity) attempt to clear the shipment and outlay the duties/VAT on behalf of your customer. If so, have they talked to you about the need for your customer to bear these costs - and has any account or payment terms been set up or agreed in advance? If not, like many UK forwarders on imports here, they may refuse to deliver the shipment until payment for duty/VAT has been made, adding extra days onto the delivery time, and irritating or failing your valued customer.

We are aware of one freight forwarder who is offering to act as a Fiscal Representative in the EU for UK exporters, nullifying the requirement for any EU VAT to be paid out on the import and billing the import duties back to you in the UK with clearance costs and a percentage-based outlay fee. This sounds interesting, but as an exporter you really need to understand these extra duty and clearance costs before you go down this road which will naturally impact your margins, and of course, require a formal set-up process (and the system is as yet untested in a 2021 environment). Another reason why you need to begin urgent dialogue with your freight forwarder about their plans.

Here is our guidance regarding IMPORTS.

1. Are you as an importer, prepared?

- a) Again, Incoterms will become key, so that both the buyer, seller and the forwarder are clear on who will take responsibility for any extra costs or Customs declarations which will now exist in the new 2021 environment. UK importers from the EU typically buy on either “Delivered” type terms, where the supplier organises transport to their door or “Ex Works” terms, where the UK importer organises the transport, chooses a freight forwarder and pays all freight costs from the supplier’s factory to delivery here in the UK. In essence, the supplier pays everything, or the UK importer pays everything.

As we’ve said above, Incoterms may not always have been quoted in the commercial transactions with your supplier in the past but now it is really important that they are, as it will avoid confusion over responsibility for freight costs, insurance, Customs clearance fees and Customs import duties etc.

- b) As with exports, your suppliers’ invoices will need to show a lot more detail so that an export Customs declaration can be made, both to facilitate export from the EU and to assist with Customs clearance upon arrival in the UK. As we’ve said above, many EU freight forwarders aren’t familiar with the Customs clearance environment (and haven’t been since 1993) so if you’re a regular importer from the EU, you need to establish some on-going operational procedures, particularly around import Customs entries and commodity codes.

This is what many intercontinental freight forwarders (dealing with the US and Asia for example) have done for many years, saving everyone time and giving their front-line Customs clearance staff this information (which they need to declare your shipments accurately, consistently and swiftly). Ahead of the changes, it would be wise to ask your supplier to review their invoice layout and content, and provide Customs commodity codes for each product and EORI/VAT numbers on their export invoices as well.

- c) In early 2019, to help importers to adjust to the new Customs environment post-BREXIT, HMRC set up a process called Transitional Simplified Procedures (TSP) and all VAT registered customers sourcing from the EU were auto-registered. Later in 2019, we were told that this easement had been abandoned, probably because many had seen that it had operational flaws (including ourselves - we wrote to Mel Stride, the Treasury Secretary, voicing our concerns about the fact it would not prevent log jams at Dover that it was intended to avoid).

So we're now in a different place, TSP has gone and HMRC are recommending the use of EIDR (Entry In Declarants Records) which sounds (and is) confusing, but this is actually the Customs Procedure which is followed by importers using CFSP (Customs Freight Simplified Procedures). The GOV.UK website talks about it meaning that importers won't need to declare their EU imports for 6 months which sounds great (and this was what TSP was designed to do, but with the benefit of a dead-simple approval process).

The problem here is that EIDR involves application for CFSP, and to be honest most CFSP importers are mid-large sized businesses operating Customs warehouses, wanting to avoid Duty/VAT payments on imports until they take those goods out of the bond and sell them to UK (and in the past, EU) customers. But they have the resources and infrastructure to cope with it. Apparently, you will be able to use EIDR without prior authorisation from Jan 1st however you could get yourself into a bit of a mess if you don't understand what you've signed up to (and I wouldn't), and you will still need to apply retrospectively.

I was on a webinar with a multi-national freight forwarder 2 weeks ago and they were lost for words as to why HMRC thought EIDR would work for most UK importers. It has a 19-page (and additional 23-page) application form, the approval process is tedious and being a CFSP trader comes with lots of compliance responsibilities (and cost). Apparently, Michael Gove has a fix on his to-do list, maybe a shorter application form but I would not recommend spinning your wheels on this. I would strongly suggest you start talking to your forwarder to get procedures in place for Customs entries at the port/airport of arrival, i.e. paying the duty and VAT upon arrival which leads me to my next point.

One really vital piece of advice for you here, 2021 sees the return of Postponed VAT Accounting. To give you some context, on a typical import from a third country such as the USA, where you'd pay import duty and VAT. With say 2.5% duty and 20% VAT, you would outlay around 90% of the total amount on the VAT element, and depending on your arrangements, you'd pay this immediately to the freight forwarder who cleared your shipment (or up to 6 weeks later if you had a duty deferment account).

Using PVA means that you don't outlay the VAT at the time of import, you just need to account for it on your next VAT return so this is a massive benefit for both EU importers (who hadn't even paid duty or VAT before) but also to those who import from 3rd countries today such as Asia or the US. At a time when cash flow is vital, this is one of the only things I have seen which can truly be regarded as a benefit to hard-pressed UK businesses who are under real pressure on their cash flow. Funnily enough, we had PVA when I did Customs declarations in the EEC (pre-1993 environment), funny how history repeats itself!

2. Is your freight forwarder ready?

As with exports, many freight forwarders who specialise in EU imports/exports have existed in a non-Customs environment since the inception of the single market in 1993. That's 27 years, and so many of their current staff won't even recall a time when Customs declarations were required. In those times we were in the EEC (European Economic Community), and most goods of EU/UK origin would have had duty-free status provided that a "T2 or T2L form" (which proved the goods were made in the EU and deserved duty free status) was raised so Customs entries in the EU were pretty simple too, but there was a Customs entry for every shipment, exactly where we will be in January. I remember this era well, because I trained for 5 years as a Customs broker and did imports and Customs declarations for 10 years. So, freight forwarders on both sides of the Channel are now having to upskill or employ staff to carry out these new processes, quite a challenge – and a risk for customers and their supply chains.

At SCL, we live and breathe logistics and have since 2010 so we reckon we're pretty well informed on what the market is doing. We also have relationships with many logistics providers by way of the international logistics models we're managing for our UK customers. But with just 3 months to go, we still see that a good deal of the bulletins/guidance issued by EU forwarders to customers is really not clear or comprehensive enough or properly "joined-up".

There are some forwarders who have put in a lot more thought, time and investment to try to plan ahead and guide or support their customers, for example posting videos or hosting trade webinars, but for the average customer, who has no experience of Customs, Incoterms or duties and taxes, it's just too confusing, it's "logistics-speak", and they really just want a logistics "translator" to talk to them in their language and to answer these basic questions, which are:-

- a) Will my import shipments be delayed?
- b) Will it cost me more?
- c) Will it cost my suppliers more and will they raise their prices?
- d) What do I need to do to lessen the impact on my business?
- e) Are there any new procedures that I or my supplier will have to follow?

Bearing all this in mind, you should urgently engage with your current forwarder so you're confident that they: -

- a) fully understand the BREXIT related changes and the impact on you and your suppliers
- b) have everything covered operationally
- c) have told you what they need from you and your suppliers (e.g. invoice layout/content)
- d) are confident that they will be able to provide you with a (door to door) service post 1-Jan and how that will differ from today in cost and delivery time
- e) are able to provide Customs clearance facilities here in the UK and can ensure their trailers flow through ports (such as Dover) unimpeded

3. Have you talked to your suppliers or have they been in contact with you?

As we've said earlier regarding exports, from what we've learned over the last 12 months after dialogue with companies here in the North West, this also seems to be a major blind spot which could be because of Covid-19 or because many were waiting for direction and clarity from the EU and UK governments. But for the sake of your business and the retention of your own customers here in the UK, you really must begin this conversation with your supplier now, or risk the possibility of a disruption to a previously reliable and predictable flow of inbound product.

Your primary concerns should be:-

- a) has your supplier made any preparations regarding BREXIT on their side?
- b) if terms are currently shipped on a "delivered" basis who is going to pay the Customs clearance fees, import duties and VAT in the UK?
- c) will the selling price of their products change as a result?
- d) should you bring in additional product from them before the end of the transition period to prevent disruption to your business and end customers?

If your EU suppliers ship to you regularly, particularly if they supply on a "delivered" basis, even if Incoterms have been quoted in the past, you should talk to them about who will bear the costs for Customs clearance fees, import duties and VAT as they may not have factored this into their selling prices.

Again, dialogue with your freight forwarder (regardless of who pays the freight costs today) is very important as they will need to know what Incoterms will be in place post 1-Jan so they can ensure that costs are assigned to the exporter and yourself as appropriate. Regardless of the Incoterms, you will become the so called "importer of record" and the Customs entry will be submitted in your company's name using your VAT/EORI number. It's therefore important that you understand that you are liable for the accuracy of the Customs declaration and the commodity codes and values declared to HMRC. For regular importers, we recommend that you set up standard clearance procedures with the forwarder here in the UK and standing approval to use your duty deferment account (if you have one). The key thing is, you need to get this in place very soon.

So, I hope you find this guidance useful, we have tried to translate the logistics jargon into as much plain English as we possibly can, hence our company strapline “logistics simplified”. This guide took several days to write and is designed to help you the vast majority of UK customers exporting or importing non-restricted goods and especially those companies who have never had to deal with “full-blown” imports and exports outside the EU - and all the complications and burdens which this can bring.

It may be that we haven’t captured everything here and some freight forwarders may disagree with our observations on the UK’s state of readiness and that’s as maybe, but please do use this straightforward guide to get the basics in place in your business, it may give you a competitive advantage!

If you now feel you actually do need expert advice to walk you through all this and maybe even someone to actually lead this process, we’d be happy to provide some help by way of our consultancy services but whatever you decide to do, you really must act now.

Kind Regards

Andy Cliff

