BREXIT & CROSS-BORDER TRADE CHALLENGES: THE VIEW FROM THE ROAD / RUNWAY / PORT ...

11 January 2019

As the legal and regulatory challenges of a "no deal" Brexit start to crystallise, the in-house legal specialist is doubtless busy answering questions about their exposure to risk of non-compliance across multiple areas. For many businesses, particularly in the manufacturing and retail sectors, in-house legal teams are being asked to extend their remit to trade compliance. This includes customs reporting obligations and how that may look in practice for goods arriving from the European Union post 29 March 2019. Customs is often mistakenly treated as a "black hole" or outsourced function to be handled by a nominated freight agent. This in itself creates a risk for the importer or exporter i.e. the owner of the goods.

With this in mind we spoke to Phil Evans who leads the customs compliance function for DSV, an international transport and freight carrier, to understand what the landscape looks like from his perspective and how, in his view, businesses can prepare for Brexit. DSV offers a customs brokerage service as part of their wider freight offering.

**What is the role of the customs broker in the supply chain?**

The customs broker represents the importer / exporter and declares their consignment to HM Revenue & Customs ("HMRC"). In most cases this is conducted under a direct representation
arrangement whereby the broker acts in the name of and on behalf of the importer / exporter. The importer / exporter is responsible for the accuracy of the declaration filed to HMRC. In some cases where the importer / exporter wants to use a Customs Simplification which is held by the broker they can use an indirect representation agreement which means that the broker is jointly and severally liable for the declaration. However the broker is likely to stipulate that the arrangement is conducted under terms and conditions which, ultimately, pushes the risk back to the importer / exporter.

What do you think will be, in the context of cross border trade compliance, the biggest challenge for businesses in event of a no deal Brexit?

An existing international trader will have at least a general understanding dealing with a freight forwarder and the associated customs activity. So for our clients in this position the translation into EU trade is in that respect straightforward. However so many traders currently only trade intra-EU so therefore have no concept of the customs requirements such as tariff classification, valuation and controls on certain types of goods. The knowledge isn't there.

The UK has signed the Common Transit Convention "CTC" which will allow the movement of goods from an EU to UK hub under a transit arrangement i.e. no requirement to present a declaration at the physical border. On the face of it this assists the movement of goods for a groupage trailer service which is typically used for business moving significant volumes of own stock (e.g. an auto- manufacturer).

However the CTC will not facilitate trade in this way for goods moved by independent hauliers. Hauliers pick up freight, often from multiple locations and multiple customers, and move it across the border. Not only will it not be possible to delay filing a customs declaration until the goods reach their end destination they will need to communicate with the broker nominated by the customer that the goods have reached the UK border and a customs declaration needs to be filed. The situation may become even more complex where the nominated broker does not have the requisite "badge" (authorisation) to file a customs declaration for goods arriving at the particular port. As an example of how difficult to find a suitable customs broker may become, there are currently few if any customs brokers present in some of the smaller "Roll on / Roll off" (RoRo) Ports focused on intra-EU trade, remote entry filing can be done but there may need to be on the ground presence for certain categories of goods and liaison with intervening authorities.

Many businesses have talked about a "Plan B" for selecting a port of entry in the event Dover
becomes overcrowded but this may not be possible in reality if there is no suitable customs broker available.

What would be the requirement at the port in the event the current deal proposed by the Prime Minister would go through?

Once the UK leaves the customs union there will be a requirement to file a customs declaration for intra-EU trade following a transition period.

May’s Brexit deal would give the brokerage industry around 18 months to set up the necessary infrastructure at the ports but my hope is that the reporting requirements for cross border trade would be more akin to the current Intrastat reporting requirements.

In terms of preparing for Brexit, is it also your experience that the businesses that have gone through the process of applying for Authorised Economic Operator (AEO) are in a better position?

My experience of dealing with AEO accredited importers /exporters is that they have a handle on responsibility to provide the right information about classifying goods and the relevant customs procedures to enter them to. Currently there are not many AEO traders in the UK. AEO applications have high rejection rate and you cannot rely on agents to ensure compliance with AEO rules. 680 companies are on the current accreditation list for the UK.

Finally, what type of technology / IT / systems are businesses adopting, if any, to facilitate cross border trade?

Blockchain is a viable option. DSV is looking Blockchain technology as a way of securing information and preserving data integrity. Similarly we are looking at which process robotics can automate to replace user-process.

In an ideal world you would use data sharing platforms to automate data sharing between customs authorities. For example data used to file an export declaration in the United States would form the basis of the corresponding import declaration in the UK. Inconsistencies in the
approaches of customs administrations globally and the compliance landscape could make this difficult. However perhaps the use of the "trusted trader" status as a marker of a compliant trader could make such a scheme more viable in the future.

NOT LEGAL ADVICE. Information made available on this website in any form is for information purposes only. It is not, and should not be taken as, legal advice. You should not rely on, or take or fail to take any action based upon this information. Never disregard professional legal advice or delay in seeking legal advice because of something you have read on this website. Gowling WLG professionals will be pleased to discuss resolutions to specific legal concerns you may have.

Related: Automotive, Aviation, Aerospace & Defence, Construction & Engineering, Energy, Financial Institutions & Services, Food & Beverage, Government Contracting & Public Sector, Health & Care, Infrastructure, Life Sciences, Natural Resources, Nuclear, Real Estate, Retail, Leisure & Hotels, Tech, How will Brexit affect your business?, ThinkHouse

---

**Authors**

**Ursula Johnston**  
Director - London  
- Email: ursula.johnston@gowlingwlg.com  
- Phone: +44 (0)20 7759 6601

**Bernardine Adkins**  
Partner - Head of EU, Trade and Competition, London  
- Email: bernardine.adkins@gowlingwlg.com  
- Phone: +44 (0)37 0733 0649

**Sean Giles**  
Associate - London  
- Email: sean.giles@gowlingwlg.com  
- Phone:
Gowling WLG is an international law firm comprising the members of Gowling WLG International Limited, an English Company Limited by Guarantee, and their respective affiliates. Each member and affiliate is an autonomous and independent entity. Gowling WLG International Limited promotes, facilitates and co-ordinates the activities of its members but does not itself provide services to clients. Our structure is explained in more detail on our Legal Information page.

© 2020 Gowling WLG International Limited. All rights reserved.