

September 2019

Re: No-deal Brexit Transport and Customs Contingency Solution for Day One Road and Air Shipments

The undersigned cross-sectoral coalition of EU industry bodies would like to highlight to you the urgent need for EU contingency measures to address Day One road and air shipments under a no-deal Brexit.

Under current EU legislation, road and air shipments leaving before Brexit and arriving on or after 1 November 2019 will not have the required import or export documentation to enter or leave the EU nor will these goods be covered by the transit procedure. An EU contingency solution to address this issue is essential to ease trade flows, avoid potentially chaotic border delays in a no-deal Brexit and align with UK contingency measures.

The issue

In current supply chain solutions, thousands of shipments carried via road and air will be picked up prior to 1 November 2019 but will not be presented at the external borders of the UK and the EU for import/export/transit until after Brexit day. Since these shipments will lack the required documentation for import/export/transit, significant disruption can be expected unless an EU contingency plan is implemented to facilitate the movement of these shipments across the border.

After Brexit, goods reaching the EU external border will require full customs documentation and processing as per any movement to and/or from a third country. However, operators will not be able to initiate formal customs procedures when the goods are picked up prior to the Brexit date, since EU customs IT systems will still consider the UK an EU Member State and these goods will still have the EU status. This will result in a catch-22 situation in which operators are not able to lodge the necessary declarations at pick up, but will be required to present such documentation on arrival at the border.

Exporting from the EU to the UK

When exporting from the EU, there are currently no contingency measures in place for goods that are picked up prior to the withdrawal date and arrive to the border after the UK's withdrawal. On arrival at the EU border, these goods will necessitate the presentation of export documentation and formalities; documentation that they will not possess and which will have to be completed at the border point. UK Brexit contingency measures, meanwhile, state that goods picked up/accepted for carriage prior to the withdrawal date in the EU will not require an import declaration on arrival to the UK.

Exporting from the UK to the EU

When exporting via road from the UK the same issue occurs when the goods reach the EU border. Under UK Brexit guidance, goods will maintain their Union status if they are picked up/accepted for carriage prior to the withdrawal date, meaning that they will not require an export declaration to leave the UK. On arrival at the EU, however, an import declaration will be required – a formality that cannot be initiated at the time of pick up.

Transit

Even though the United Kingdom became the CTC Contracting Party and may still use the NCTS system, the EU guidelines for the no deal scenario do not specify how we should treat goods which are picked up prior to the withdrawal date and arrive to the EU/UK border at the moment of Brexit or shortly after this date. When these transports started these were Community goods and there was no legal basis to place them under export or transit. Without transitional measures for such movements we can expect the border to be completely blocked.

It is important to note that a small facilitation for air movements exists within the EU Brexit Guidance note on customs procedures of 11 March 2019, when exporting from the UK to the EU under a no-deal scenario. Under the guidance, goods carried under a single transport document (outlined in Article 119(2)(a) UCC DA) leaving a UK airport before the withdrawal date, yet arriving at a EU27 airport after the withdrawal date, may maintain their Union Status.

However, there are a number of key considerations to bear in mind:

- This exception only applies to goods that are being carried on an aircraft that has left prior to the withdrawal date, but lands afterwards; it does not take into consideration goods that have been picked up prior to the withdrawal date but loaded onto an aircraft departing after Brexit. In this case the goods will require an import declaration on arrival in the EU.
- Meanwhile, under UK Brexit preparation guidance, goods will maintain their Union status as from when they are picked up/accepted for carriage. This means that goods will not require an export declaration to leave the UK, but will require an import declaration on arrival to the EU.

Without sensible contingency measures, movements between the EU and UK will be significantly affected or even blocked for days or even weeks due to the absence of import, export or transit documentation.

Solution

European manufacturers, traders, carriers and retailers rely on the seamless flow of goods and ‘just-in-time’ supply chains across the EU-UK border. To ensure continuity in trade across the border under a no-deal Brexit, **we propose that the movements of goods started before the withdrawal date and arriving after continue to be treated as intra-EU movements, regardless of the mode of transport used.**

It should also be noted that Member States may have to suspend declarations for a certain period of time in order to be able to IT-technically deal with the switchover of the UK from a Member State to a Contracting Party of the Common Transit Convention. During this period, which could start several hours prior to and continue after the Brexit deadline, it will not be possible to do any customs declarations.

An evidence of such movements can be an air waybill (AWB), sea waybill, bill of lading (B/L), road consignment note (CMR), rail consignment note (CIM) or carrier's certificate, that confirms acceptance and receipt of goods for carriage before the withdrawal date.

Allowing for the abovementioned procedure will help to avoid blockage of these shipments at the border in the absence of the correct documentation, relieve local customs and port authorities from a significant administrative and operational burden and ensure business continuity for thousands of economic operators in the EU.

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