14/10/19

Brexit Readiness – Customs & Deliveries

This document provides possible/general perspectives for members to consider in the context of a no-deal Brexit. The precise scope of such an outcome is not clear and would, in any event, still result in huge uncertainty. ***This note does NOT constitute legal advice. It is not exhaustive. Members should seek their own legal advice (based on their own circumstances) before acting.***

1. Introduction

This paper is based on the assumption that dealers will not normally import vehicles or parts directly from the EU (or, indeed, export to the EU); rather, vehicles (and parts) – to the extent that they are imported from the EU - will be imported by the national sales subsidiaries of the relevant manufacturers or parts suppliers.

These intermediaries will normally be responsible for and manage the relevant customs declaration requirements (EORI registration etc.[1]), ensuring correct type approvals[2] and accounting for VAT and duty etc. upon entry, if applicable.

If this is not the case, and the dealer imports directly from the EU, then further advice should be obtained. This does not mean, however, that dealers will not be affected adversely by the relevant changes. Practical effects (notably delivery delays, product shortages and costs etc.) will flow downstream.

If the UK leaves the EU without negotiating any form of preferential trading arrangement, then most, if not all, rights and reciprocal arrangements with the EU will cease at that point. The UK will revert to 'third country' status, outside of the Single Market. This normally means, for example, that full customs declarations will be required for goods imported and exported between the UK and the EU. These processes are likely to cause severe congestion and delay at points of entry.

So, the uncertainty around Brexit and its final form (and the resulting lack of preparedness), as well as additional (and unfamiliar) bureaucracy arising from the UK's change of status, is likely to have a major adverse effect on the timing and flows of goods entering and exiting the UK (and not just on those coming from and going to the EU given the overall impact on border resource).

It is also possible that manufacturers will divert new (higher demand) product to other (higher margin) markets resulting in product shortages and persistent delays. This is not simply due to the potential impact of Brexit on consumer confidence, the application of tariffs and the (likely) weakening of Sterling (pushing up the price of imports); it may also arise as a result of the practical effects of regulatory change. For example, improved ICE, hybrid and electric models could, going forward, be diverted to other EU markets in order to help meet EU emissions targets (with sales to the UK no longer counting towards the satisfaction of those targets). This is despite the fact that the UK is proposing to set UK-specific emissions targets which are at least as ambitious as current EU targets, with the threat of fines for those manufacturers that fail to meet them and who are unable to secure a derogation.

[1] For more information, see: https://www.gov.uk/starting-to-import/importing-from-noneu-countries
[2] For more information, see: https://www.gov.uk/guidance/vehicle-type-approval-if-theres-no-brexit-deal

That said, the UK remains one of the largest vehicle markets in Europe and has historically been one of the most robust, populated by the most sophisticated and resilient retailers, so those able to weather the storm (and even grow their footprint as others choose to exit the market) may benefit from strategic gains in the medium to long term.

2. Customs

A no-deal Brexit is likely to have an adverse impact on the availability and delivery of new vehicles and parts coming into the UK as a result, among other things, of delays at the border as imported goods pass through new customs checks (with the possibility that errors in additional and complex paperwork will cause further supply chain interruptions). Guidance published by HM Government earlier this year (Operation Yellowhammer) indicates that severe delays at the border could persist for several months.[3]

Brexit may also affect manufacturers' decisions to produce certain models in the UK, which in turn will need to be communicated through retail networks to customers. Dealers may therefore wish to review sales and aftersales processes to ensure that customer terms make provision for (and customers are aware of) potential delays or unavailability of stock, and that associated customer communication is managed carefully.

As well as being required to provide customs declarations, those actually importing (and exporting) will need to implement/undertake a variety of other steps, for example, providing entry/exit summary declarations, customs procedure codes, information on the origin of the products, unique consignment numbers, as well as relevant safety and security information. The automotive sector is no exception, although this burden will most likely fall on manufacturers and importers, rather than dealers.

That said, those undertaking these steps will need to develop and implement systems, records and training to administer the new requirements. Downstream, dealers will experience delays until these processes etc. become more familiar and appropriately resourced (including by Government). These processes will, inevitably, also result in an increased cost of doing business.

3. Importing

Practical general guidance for dealers is set out in **section 4** below. This assumes that dealers will not themselves be importing from (or exporting to) the EU. If this is not the case (and dealers are), then it is more important for dealers to consider further measures, for example the following:

- Familiarising themselves with the tariff codes (and duties) relevant to imported (and exported) items. Reviewing the UK's Tariff Schedule.
- Considering documentary & regulatory requirements and if changes are needed to internal systems to meet these requirements? Checking who is liable for paying the duties etc.
- Checking whether business systems are capable of dealing with the likely increased volume of paperwork.
- Obtaining an Economic Operator Registration and Identification (EORI) number.
- Considering an application for Authorised Economic Operator (AEO) status.[4] This will be influenced by whether the business conducts sufficient EU export and import activity to justify

[3] For more information, see: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831199/20190802_Latest_Yellowhammer_Planning_assumptions_CDL.pdf

[4] An AEO can benefit from faster/simplified customs processes, but also has to meet various stringent compliance standards (for example, those relating to solvency, strong tax compliance track record,

seeking AEO status. If not, the dealer may wish to consider using 'transitional simplified procedures' instead.[5] Dealers may wish to consider whether these procedures be outsourced.

- Reviewing the dealer's accounting systems, to check if they are set up to handle any changes in VAT treatment.

- Checking whether dealer terms and conditions need amending to reflect the UK's new status as a non-EU state? This includes whether the terms and conditions address practical issues/measures, such as delays from EU suppliers.

4. Preparation

The ability to avoid delays and interrupted supply is very difficult at the automotive retail level (given the attendant risks of overstocking now to avoid such problems); however, dealers may wish to consider the following steps:

Communication with manufacturer partners is key. What products are most likely to be affected by shortages or delays? What are manufacturers' plans to avoid bottlenecks at ports? What are they stock building?

What are manufacturers doing to store extra inventory in the UK? Is there scope for dealers to agree preferential terms by agreeing to hold more stock?

Dealers should consider their own inventory (cars & parts). Despite current reductions in domestic demand and consumer confidence concerns, will stock-building now (new & used) offer higher margin opportunities post-Brexit?

Will manufacturers agree to reduce targets (or offer extra support) to reflect supply interruptions and delays? If a customer cancels owing to Brexit delays, will this notional sale still count towards targets? How will this affect sales staff morale?

---

knowledge of customs-processes, secure transport and storage facilities, robust compliance/supply chain processes, record keeping, employee screening and training etc.)

[5] https://www.gov.uk/guidance/register-for-simplified-import-procedures-if-the-uk-leaves-the-eu-without-a-deal

Dealers should identify the provenance of different parts (if possible) and priortise the stocking of faster-moving parts/components from the EU or with significant EU content. Consider alternative UK sources (but check manufacturer standards)

Dealers may wish to push for improved stocking finance terms from manufacturer / stocking finance company to off-set risk of increased stock-build / inventory storage now

What options are there for dealers to secure lower cost storage facilities? Would any dispensation from manufacturer standards be required? Check dealer (or vehicle holding facility) agreements

Consider greater diversification into (higher margin) used vehicles to present alternatives to customers reluctant to wait for new EU-sourced vehicles (which may be delayed and more expensive owing to tariffs/Sterling devaluation)

Check customer (& dealer) cancellation terms. Keep customers informed. If delays occur between agreeing a new car deal (& part-ex. value) and delivery (& actual part-ex.) should part-ex value be contingent (e.g. on timing)? Is the consumer aware of this? Is the paperwork clear and the process transparent?

NFDA
NATIONAL FRANCHISED DEALERS ASSOCIATION

Brexit Readiness – Finance

This document provides possible/general perspectives for members to consider in the context of a no-deal Brexit. The precise scope of such an outcome is not clear and would, in any event, still result in huge uncertainty. This note does NOT constitute legal advice. It is not exhaustive. Members should seek their own legal advice (based on their own circumstances) before acting.

5. Introduction

The continued availability of easily accessible, cost-effective consumer finance underpins the health of the UK motor retail sector.

The Finance & Leasing Association (**FLA**) estimates that over 90% of UK cars are financed by its members and, in the 12 months to August 2019, the level of UK consumer finance attributable to cars was in excess of £37 billion.[6]

If consumers are unable to access a ready supply of finance (a proportion of which comes from EU institutions) in the event of a no-deal Brexit, the consequences for the UK motor retail sector are potentially severe.

At the same time, Brexit poses various other indirect risks. For example, there would be a greater risk of consumer default on finance agreements if interest rates and unemployment were to rise significantly as a result of a no-deal Brexit.

While this specific risk may be more of a direct risk for finance houses than dealers, the latter could also suffer as a result of the tightening of any lending criteria, which might force some potential customers to defer purchasing until conditions improve.

Brexit may also present less obvious risks, for example, personal contract plans (**PCP**s) normally rely on healthy residual values, so lenders now offering guaranteed future values (**GFV**s) on vehicles could be exposed in the event of a significant downturn in used car residuals. In turn, this could have knock-on impacts for retailers in terms of sales.

That said, if a no-deal Brexit does produce the adverse consequences on new sales (or new stock availability) that some anticipate, used car demand and values may remain robust.

While the precise consequences of a no-deal Brexit are difficult to predict, it may well be the case that car buyers will demand greater flexibility from their car finance agreements, and dealers – who are usually the intermediary through whom the finance is arranged – will need to be equipped to respond to customers' demands accordingly. The ability to do so may also be dependent on manufacturer cooperation.

[6] https://www.fla.org.uk/business-information/documents/consumer-finance-summary/

6. Access to finance

There is no reason to believe that Brexit should restrict access to financial markets. The UK's financial markets are – as the IMF has described them – a global public good, and we want to keep it that way.[7]

According to UK Finance, the association representing the banking and finance industry, for customers living in the UK, where the relevant finance provider is also based in the UK, a no-deal Brexit should not, in principle, impact the customer's ability to apply for a loan or credit, including motor finance.[8]

Lenders will still be able to consider credit applications from EU/EEA nationals that are legally resident in the UK after Brexit, with the success of individual applications depending on individual circumstances. Further, UK-based finance providers will not, by and large, need to alter how they deal with an application.

Earlier this year, the Financial Conduct Authority (**FCA**) opened applications for a temporary permissions regime for inward branching firms. This was to enable UK branches of EU firms to continue to operate and serve customers in the UK in the event of a 'no-deal' outcome.

Indeed, from a regulatory perspective, it is unlikely that a no-deal Brexit will involve a huge degree of change for UK motor finance on a day-to-day level.

There will be some changes to the pre-contractual information given to customers (for example, the Standard European Consumer Credit Information sheet will probably be relabelled together with some other tweaks). A no-deal Brexit will also result in the removal of the EU Online Dispute Resolution portal for consumers. Other than that, and some changes to certain consumer protection laws, there will not be significant legal change in the motor finance arena.

It follows that most change of relevance to dealer motor finance arising from a no-deal Brexit will be the knock-on commercial effects arising from wider impacts on the UK economy, as well as business and consumer confidence, which may drive more cautious lending and borrowing practices in the months that follow.

7. Preparation

The above consequences, insofar as it is possible to plan for them, may prompt dealers to consider the following steps in their dealings with finance partners, vehicle manufacturers and customers:

[7] Andrew Bailey, Chief Executive, FCA, 16 September 2019

[8] For more information, see: https://www.ukfinance.org.uk/system/files/UK%20Finance%20-%20no-deal%20Brexit%20consumer%20guide%20-%20Sep%202019.pdf

Engage with finance provider partners now. Do they envisage any changes to the availability or cost of finance, or changes to lending / customer acceptance criteria, following a no-deal Brexit? If so, what are they precisely and how will they impact the dealer's day-to-day operations?

Are finance provider partners changing documentation? Have these changes been communicated to the dealer? What are the implications of these changes and do customer-facing finance colleagues need to be aware of them?

Consider whether developing relationships with a broader portfolio of finance providers might help off-set dependence on incumbent provider(s) and risks associated with more restrictive lending practices?

Liaise with manufacturers regarding prospective third party finance providers post-Brexit to ensure customers seeking new (and used) vehicles are well-placed to access finance (through the dealer) as easily as possible.

To the extent that a no-deal Brexit and any associated effects on lending practices have the potential to produce market distortions or place greater pressure on front-line staff, ensure sales/finance colleagues review sales practices carefully to ensure continued compliance with FCA rules and guidance in all respects.

Brexit Readiness – Trade & Tariffs

This document provides possible/general perspectives for members to consider in the context of a no-deal Brexit. The precise scope of such an outcome is not clear and would, in any event, still result in huge uncertainty. ***This note does NOT constitute legal advice. It is not exhaustive. Members should seek their own legal advice (based on their own circumstances) before acting.***

8. Introduction

Tariff impacts aside, this paper is based on the assumption that dealers will not normally import vehicles or parts directly from the EU (nor, indeed, export to the EU); rather, vehicles (and parts) – to the extent that they are imported from the EU - will be imported by the UK sales subsidiaries of the relevant manufacturers or parts suppliers and then wholesaled to dealers in the UK.

These intermediaries will normally be responsible for and manage the relevant customs declaration requirements (EORI registration etc.[9]) and account for VAT and duty etc. upon entry, if applicable, albeit this is then likely to increase the downstream price of the relevant goods to the dealer.

If this is not the case, and the dealer imports directly from (or exports to) the EU, then separate guidance should be obtained.

A no-deal Brexit will have a substantial impact on the price of new vehicles coming into the UK as a result, among other matters, of the application of certain tariffs.[10]

Aside from probable increases in wholesale prices to reflect the imposition of tariffs, dealers will have to implement customer processes at the retail level (particularly in the first few months of the UK being outside the EU) to ensure that consumers etc. are aware of potential price variations (arising as a result of cars ordered before Brexit arriving in the UK from the EU after Brexit). Dealers will, in turn, need to consider issues such as order cancellation.

These changes may also necessitate a review of and changes to retail customer terms and conditions and associated consumer finance agreements.

In February 2019, Porsche announced that UK customers could have to pay up to 10% extra for Porsche vehicles delivered after the UK leaves the EU in the event of a no-deal Brexit.[11] The position of other brands (in respect of vehicles ordered pre-Brexit but delivered post-Brexit) is not clear, although some may offer to absorb the tariff for vehicles arriving in these specific circumstances.

In any event, the position of most manufacturers importing to the UK from the EU in the longer term is likely to be that they will be unable to afford the tariff burden under WTO rules without passing on at least some, if not all, of that cost to dealers and their customers.[12]

Admittedly, not all cars entering the UK come from the EU, but a substantial number do. The SMMT estimates that in 2018 almost 80% of cars imported to the UK originated from the EU

[9] For more information, see: https://www.gov.uk/starting-to-import/importing-from-noneu-countries
[10] The original Withdrawal Agreement provided for a transition period ending on 31 December 2020, during which time the UK would remain for most practical purposes an EU Member State (but without participating in EU decision-making) while it negotiated a second agreement setting out future trade arrangements with the EU. A no deal Brexit removes this transitional period.
[11] https://www.bbc.co.uk/news/business-47270616
[12] See for example: https://uk.reuters.com/article/uk-britain-eu-honda/honda-says-it-could-not-absorb-10-percent-tariff-after-brexit-idUKKBN1D923F

(notably Germany, Spain, France and the Czech Republic), compared to 6.5% from Japan (the next largest source).

9. Tariffs

At the moment, there are no tariffs between the UK and other parts of the EU.

If the UK leaves the EU without negotiating any form of preferential trading arrangement, then under World Trade Organisation (**WTO**) rules the UK and EU must apply their 'most favoured nation' (**MFN**) tariffs to trade with each other.

In the case of imports to the UK from the EU (which will be of greatest relevance to dealers), in March 2019 the UK government published a temporary Tariff Schedule that would apply for a period of 12 months in a no-deal scenario.[13]

10% on cars

Assuming the rates set out in the Tariff Schedule (as more recently updated) are adopted/remain in situ, the rate for finished passenger cars is set at 10%. This is equivalent to the rate that the EU currently applies to such vehicles coming from third countries. The rate for HGVs has recently been set at the same level.[14]

10% on HGVs

As regards parts, the Tariff Schedule has set the rate applied to most imported car parts coming into the UK at 0% (as opposed to an average tariff 4.5% currently applied to most components coming from outside the EU, which would otherwise have applied once the UK stepped outside the EU trading bloc).

0% on most incoming parts

The zero rate on most parts will help to ease some of the additional tariff costs arising in the parts supply chain. In other words, for the duration of the Tariff Schedule, for most imported parts, the UK will maintain the current zero tariff position to that which currently applies to imports from elsewhere in the EU and, we presume, extend that treatment to equivalent parts coming from other WTO countries.

However, with part-finished goods crossing the UK-EU border multiple times, the UK's temporary zero tariff position on most components may only be a partial solution (as it may not address the tariffs that will be applied when exporting sub-assemblies etc. from the UK to the EU to be incorporated into components that might then be exported back to the UK). The effect of this will probably be to increase the price of the relevant components or other finished products when finally re-imported into the UK (albeit not to the same extent as if tariffs were also applied by the UK).

Ultimately, the impact (if any) on consumer pricing, from tariffs, would be assessed and determined within the context of their franchise agreements, by individual retailers, independently of one another, and according to general market competitive forces.

NB: Tariffs can be levied in different ways under WTO rules. They can comprise a specific sum per unit or be linked to, say, weight, or calculated as a proportion of the overall value of the goods. Most tariffs are calculated as a percentage of the value (transaction value) of the relevant goods (ad valorem tariffs). This will often comprise the total payment made or to be made by the relevant importer (buyer) to or for the benefit of the exporter (seller) for the imported goods, and includes costs arising as a condition of the sale (e.g. shipping, insurance etc.).

[13] https://www.gov.uk/government/publications/temporary-rates-of-customs-duty-on-imports-after-eu-exit

[14] The rate for some commercial vehicles was originally set at as much as 22% in the Tariff Schedule; however, this has recently been reduced to try to off-set the adverse impact of a non-deal Brexit on this sector and those that rely on fleets.

The transaction value may be broadly equivalent to the wholesale price, so if the wholesale price of a car is £20,000, the likely (10%) customs duty (under a no-deal Brexit) could add a further £2,000. However, the precise rules concerning duty calculation are complex and include different valuation options, so wholesale values should only be taken as a rudimentary proxy.

10. Exports

While not of direct relevance to UK dealers, cars exported to the EU will also face 10% tariffs and, as regards parts, it is unlikely that the EU will reciprocate the UK's position by removing tariffs on them (as, political priorities aside, any such reductions would have to apply to equivalent imports from all countries under WTO MFN rules).

While it may be the case that UK manufacturing is further scaled back to address the consequences of a no-deal Brexit, it is possible that those brands manufacturing finished cars in the UK (Jaguar, Land Rover, Mini etc.) will need to find more domestic customers for their output (unless tariff and non-tariff driven production cost increases are offset by an even more substantial decline in the value of Sterling post Brexit, which may make exporting more attractive).

It is important to remember that, at least until recently, around four of every five cars produced in the UK were destined for export, of which 52.6% (based on 2018 SMMT figures) were exported to other EU markets.

It follows that while some manufacturers less exposed to UK manufacturing may be better placed to divert inventory destined for the UK elsewhere, some pressure could remain in the UK in terms of dealer targeting etc. for those brands manufacturing locally.

This pressure could be exacerbated if UK consumer confidence dips even further resulting in a contraction of the domestic market (and associated knock-on effects for commercial vehicles as other sectors, which also rely heavily on UK consumer demand, retrench).

11. Tariffs applied by non-EU countries

Tariffs applied by non-EU countries on imports from the UK (and vice versa) are unaffected, apart from those countries where the EU has an FTA or equivalent in place which the UK has not managed to replicate by the time of its exit (for example, Canada, Japan or Turkey).

For these countries, tariffs could revert to that country’s (higher) MFN rate. Tariffs on UK exports to countries with which the UK had negotiated an FTA (for example, South Korea) to come into effect on the date of full withdrawal would be set at the lower tariff level as laid out in that FTA.

12. Preparation

The following comprises a short list of operational and more strategic measures that dealers can consider to address tariff risk arising from a no-deal Brexit:

Speak to manufacturer partners to ascertain their position on new vehicle (& parts) pricing in light of tariffs (both for pre-Brexit orders and in the longer term). Will they absorb tariff costs? What comfort can they offer? Seek written confirmation. Customer-facing colleagues should be clear on correct position to ensure effective customer communication.

Review T&Cs (wholesale & retail) to check if price increases (e.g. as a result of tariffs) can be passed on to dealers and/or end-customers*. Were consumers apprised of the potential for such price increases pre-contract? Check customer cancellation rights.

Undertake stock review to establish whether pre-Brexit stock build is desirable/feasible to off-set any increase in prices (more relevant to cars than parts based on proposed tariff treatment albeit EU parts scarcity may raise different considerations).

If sourcing workshop/dealership equipment from other EU states, will this be likely to arrive after Brexit? Is the liability for UK import duties dealt with in the supply agreement? Will supplier consider price reductions to off-set duty? Are there alternative UK-based suppliers?

If importing or exporting directly from/to EU, do you have the correct registrations / approvals? Are you familiar with relevant customs declaration requirements and any changes to VAT requirements?

Consider whether it is desirable and possible to defer dealership investment until market landscape is clearer post-Brexit? Are manufacturer-proposed targets realistic in the circumstances? Is it possible to reserve agreement/build in contingencies until true impact of Brexit on consumer confidence is clearer?

**Ultimately, the impact (if any) on consumer pricing, from tariffs, would be assessed and determined within the context of their franchise agreements, by individual retailers, independently of one another, and according to general market competitive forces.*