

July 2021



COVID-19 & BREXIT - WHAT'S AHEAD FOR THE SUPPLY CHAIN?

Sing Li, Solicitor, Company Commercial

Manufacturing in the UK has been put to the test in recent years; investor confidence shaken in the wake of the 2016 referendum with ongoing teething problems even after a trade deal has been negotiated. Manufacturers find themselves having to contend with a real change in the status quo when dealing with the EU which, as a bloc, is the UK's largest trading partner, accounting for circa 46% of UK goods exports and circa 53% of goods imports.

While manufacturing accounts for only around 10% of the UK economy and around 9% of private sector employment, it provides close to half of UK exports and around 60% of private sector investment and employment in research and development. Problems from manufacturers in the supply chain will therefore have implications across the board.

For example, intermediate goods which historically criss-crossed the borders of EU countries multiple times before assembly will find that, even with the trade deal, Brexit will create extra work and costs for the manufacturer, whether in terms of customs delays affecting just-in-time systems, customs declarations, complying with rules of origin requirements, EU customers switching to other suppliers, regulatory differences and more.

How these are dealt with will be critical for many manufacturers, especially smaller firms, many of which are ill-prepared to deal with such additional obligations. While larger manufacturers may have the capacity to do so, they can also choose to relocate, stockpile or change its supply chain, while small to medium sized enterprises will have their work cut out trying to conform to the new requirements in order to survive.

Such concerns are clearly reflected in the decision making of some of the larger manufacturers in the automotive industry, with job cuts at Jaguar Land Rover, Honda selling its Swindon factory and Ford closing its Bridgend plant. Perhaps even more tellingly was Nissan's reversal of its decision to build its cars in Sunderland and Tesla expressly citing Brexit as the reason why it did not invest in the UK.

The ongoing pandemic certainly did not improve matters as the industry ground to a halt as a result of government guidelines and shutdowns and the need for manufacturers to protect its skilled workers, many of whom cannot work remotely even if consumer demand had not collapsed as a result of the restrictions. While the UK manufacturing market did pick up towards the end of last year due to reopening following lockdowns along with a conscious stockpiling effort due to Brexit, this related mainly to manufacturers supplying other firms and investment goods rather than consumer goods which remained weak amid rising unemployment.

My advice to manufacturers in light of these challenges would be to conduct a review of its contractual arrangements against the backdrop of the new trade deal and the ongoing government guidelines and restrictions. Key areas to seek legal advice would be:

- Reviewing the lease arrangements for any factories or plants with the view to negotiating either a concession in rent, a rent holiday or to ultimately end the lease if it cannot be maintained. Many landlords in the current backdrop would rather keep an existing tenant than leave a property vacant given the current market and the backlog of court proceedings.
- Reviewing the terms and conditions and your arrangements with customers and suppliers to see where you stand and whether there could be room to negotiate. Since Brexit, there has been the use of "Brexit" clauses in contracts which inject some flexibility into contractual arrangements but this may not always be a good thing. Similarly, it is not clear whether Force Majeure clauses which do not expressly refer to Brexit or the pandemic would be effective or beneficial.
- Reviewing the staff position to see whether redundancies are required or whether staff can be redeployed or can be kept with the assistance of government aid.
- Reviewing your registered intellectual property rights and your data protection policies given Brexit implications.

For further information on Company Commercial Law, please contact Sing Li, Solicitor on sing.li@machins.co.uk