MILLS & REEVE

briefing

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Five steps to assessing the impact of Brexit on your supply chain

The continued uncertainty as to the form of any “deal” between the UK and the EU or indeed whether the UK and the EU will reach a “deal” has meant that many businesses have postponed taking steps to assess the potential supply chain impact of Brexit.

However, for those businesses that have been postponing a Brexit supply chain impact assessment, it’s crucial that they now focus on the potential risks and determine appropriate mitigation strategies.

It should be borne in mind that, in the absence of a ‘deal’, the impact of Brexit will be felt as early as March 2019. If a “deal” is reached, the impact will be postponed to the end of the “implementation period”, which is currently scheduled to end on 31 December 2020.

For many businesses, the focus of any “Brexit impact assessment” may be on UK-EU trade. However, domestic supply arrangements should not be overlooked, for example, if a domestic supplier is dependent on EU content. Equally, given that the UK currently trades with a number of non-EU countries based in trade agreements negotiated by the EU, trade with suppliers and customers based outside of the EU may also be impacted by Brexit.

The first step in assessing the supply chain risk exposure of a business will be to ensure that you have a comprehensive understanding of your supply chain. This starts with mapping the locations of both suppliers and customers and, from that, identifying the risks and prioritising those high and medium risk supplier and customer relationships.

The checklist below is intended as a prompt as to some of the key considerations that businesses should now be paying attention to:

1 What’s your supply chain risk exposure?

1.1 Map where your suppliers and customers are located.

1.2 For suppliers, consider how “business critical” those suppliers are? What mitigation strategies can be deployed to reduce the risk of supply chain disruption. For example, will it be straightforward to source from alternate suppliers based in more “favourable” jurisdictions if needed?

2 What is the duration of your contractual commitments?

2.1 How many of your customer and supplier contracts will continue beyond 29 March 2019?

2.2 How many of your customer and supplier contracts will continue beyond the end of the implementation period (assuming a "deal" is reached, the Implementation Period is currently due to end on 31 December 2020)?

2.3 How many contracts (which fall within the categories above) include "break" provisions which will allow you to terminate in advance of 29 March 2019 or 31 December 2020? If you have break clauses, depending on your risk assessment and alternative sourcing strategies, consideration should be given to whether it may be necessary or appropriate to invoke those break provisions.

3 What's the potential cost impact?

3.1 On what assumptions is your customer pricing based (supplier cost build up, delivery costs etc)?

3.2 Are prices with your suppliers and customers fixed? Are there price review mechanisms you will be able to invoke?

3.3 Are the prices agreed with suppliers and customers based on particular delivery terms (for example, a specific Incoterm)?

3.4 The sale of goods between the UK and the EU will become imports and exports for VAT purposes. It may be that the benefit of the current VAT simplification measures that exist around the EU will be lost. Consider the administration and cashflow impact of this potential change.

3.5 What is the position on delivery costs and any duties and tariffs? What will be the impact if duties and/or tariffs apply to your exports and imports? If the UK defaults to WTO rules, visit tariffdata.wto.org (a WTO tariff database) for information on the WTO tariffs.

3.6 What are the buy and sell currencies used by your business? Is there a mismatch which means exchange rate fluctuations will add further cost?

3.7 Do you have other mechanisms in place to mitigate the impact of currency fluctuations such as hedging arrangements?

4 What is the potential service level impact?

4.1 What "on time" delivery commitments have you given to customers?

4.2 What could be the impact of delays at ports/ other administration which may cause delivery delay? For example, if there are delays in the delivery of raw materials or component parts, will this impact on production runs? Can customers impose service credits or treat a delivery delay as a breach of contract? Do you need to build in longer lead times to reduce the risks that may arise from potential delays?

5 Is the regulatory compliance regime likely to change?

5.1 What regulatory standards do your products currently comply with?

5.2 What would be the impact on your business if there were a divergence of regulatory standards (for example, standards in the UK differ from the EU)?

5.3 How might export and import controls change in the post-Brexit world and might these changes affect your business?

5.4 What might be the impact of the rules of origin post-Brexit on your products?

5.5 Are there any change in law provisions in your contracts with suppliers and customers which may allow a renegotiation of the price and other relevant contract terms?

5.6 Have you given any general contractual commitments that the products you supply with comply with all 'applicable laws'? If this type of commitment has been given, consider whether you can achieve this level of compliance if regulatory standards change post-Brexit.

Mills & Reeve is working with a wide range of businesses to support the risk analysis of the potential Brexit impact on supply chain contracts and to help identify appropriate risk mitigation strategies. If you would like to discuss how we can support you, please contact Jayne Hussey.

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