

Brexit Ready Supply Chains

The North East of England Chamber of Commerce

In conjunction with Square One Law



North East England
Chamber of Commerce

SQUAREONELAW

Brexit Ready Supply Chains

Campaign outline

In January 2018 the Chamber along with commercial law firm, Square One Law commenced a series of private consultations with manufacturing businesses from the North East which are operating within global supply chains. The aim of the research was to assess how “Brexit” ready businesses were, particularly those businesses which imported or exported goods, understand what form these preparations were taking and assess whether there were any areas had been inadvertently overlooked and could therefore be an area of risk.

At the outset it was anticipated that, in line with most commissioned research, that there would be a sliding scale of readiness which in turn would lead to recommendations of which areas of preparation required refinement.

During the process meetings, a closed roundtable session and a half day conference were held and acted as a consultation mechanism with over 150 business leaders operating within the North East.

Findings

However, the feedback was much more stark and, to an extent, quite shocking. Businesses fed back that preparation for Brexit was polarised and effectively took the form of two options: no preparation whatsoever; or preparation to relocate to mainland Europe.

Current situation

This is now leading to pressures on supply chains where feedback indicated that Original Equipment Manufacturers (OEMs) and first tier suppliers are expecting the supply chain to carry up to 25% more stock to ensure that just-in-time assembly models can be maintained. This in turn will lead to cash flow pressures and logistics and storage problems.

The picture is therefore still one of uncertainty. We have re-evaluated the aim of the research with the emphasis now completely on persuading businesses to prepare contingency plans, as well as lobbying

government to understand the scale of the task if current uncertainty levels continue.

At the minute the only “fact” we are certain about is that the UK will leave the European Union on 29 March 2019. This may take several forms:

- We may leave the Single Market (a soft Brexit);
- There may be a transition period (a soft Brexit);
- We may leave the Customs Union (a medium Brexit); and
- We could default to a WTO trade position (a hard Brexit).

In the event of any of these scenarios (with the exception of a transition period) Brexit will mean many of our members will be faced for the first time with hard borders in Europe. This would result in more administration, border controls, new import/export rules and the possibility of needing visas to travel. At present the technology to allow for frictionless trade over a hard border does not exist and will not exist by 2020.

Who will Brexit affect?

We are certain that the following groups will be affected, whichever Brexit outcome we achieve:

- Most North East businesses
- Service sector
- All exporters
- All importers
- Employers of EU nationals
- UK workers in or travelling to the EU.

From the consultation conversations undertaken Neil Warwick, Head of EU & competition law at Square One Law has been advising all North East businesses to implement their own Brexit plan, which should include the following:

- Comprehensively assess your trading terms
- A review of your supply chain
- Registration of your business as an Authorised Economic Operator if you export
- Review all employees travelling to and from the EU.

A new language?

If you import goods or export goods, trading will become more complex, not just through the new jargon that will be used frequently. If you are not familiar with the following terms or have not addressed their specific relevance to your business, you will need to familiarise yourself with them and include them in your Brexit contingency plan:

- Classification Codes
- Tariffs
- Rules of Origin
- Authorised Economic Operator
- Freight Forwarder

To help North East businesses understand the practical implications Brexit will have on their operations from 29 March 2019, we have developed a Brexit business flowchart (available at: <https://www.neechamber.co.uk/updates/brexit-ready>) which demonstrates the complexity of exporting a single good with one classification code to the EU in the event there is no Customs Union arrangements.

This report summarises some of the key findings in the four areas of concern highlighted by business:

- Access to Markets
- Access to Labour
- Regulatory Issues
- Access to Finance

Members Say:

Mike Matthews MBE, Managing Director Nifco commented: “Businesses hopeful of trade agreements have, in the past, been accused of clutching at straws, but my answer to this, as I have said before is, through our preparations, we are using those straws to build a good and solid raft”.

Access to Markets

Customs

If the Government withdraws the UK from Customs Union, it will result in increased economic and time barriers, as more red tape, checks and duties will be required at the EU-UK border to approve the movement of goods into market, and businesses will lose the benefit of no duties or checks at every border.

Government has outlined two new customs models to facilitate an ease of access, however the technology and strategy does not yet exist to effectively implement these systems, so the onus will lie on the business to find a solution that works for them.

Changes to VAT and custom duties could add further economic and administrative trade barriers. Manufacturers should remember barriers will affect both sides of the Channel, and ensure any suppliers from the EU are prepared for Brexit changes.

Rule of Origin

Exporters will have to adhere to "Rules of Origin" (where a certain percentage of domestic resource must be used for the product to be classed as a "UK Product"). Currently the Customs Union means trade with the EU is exempt from these rules, and allows EU components to count as home sourced for a good to "originate" from the UK.

Leaving the Customs Union will now change this post-Brexit. Unless otherwise negotiated, certain products will fall below the "rule of origin" trading threshold, resulting in the export and import of goods becoming subject to further complex and costly custom processes and almost certainly requiring a customs declaration for each export.

Tariffs

Depending on the outcome of the final deal with the EU, it is possible that tariffs may be applied to the import and export of goods. Tariffs are specific to each good or component and have to be individually assessed. If the UK defaulted to WTO trading terms and accepted "standard" tariffs the ranges are quite extensive – for example tariffs on automotive manufacturing can range from 4% to 22%. Agricultural tariffs range from 3.8% to 87%. This would have the immediate effect of making importing and exporting

goods more expensive.

However, the real burden will be the time and complexity required to calculate and "identify" each component in, for example, a complex machine made up of components from the EU. For example, a complex mobile machine may have over 1000 components with tariffs ranging from 2.4% to 14% each of which must be identified and then the tariff calculated on each movement of each component, and then ultimately paid.

Recommendations:

Start a Brexit action group

- Form at least two contingency plans.
- Highlight and prioritise key weaknesses.

Review your cost base

- Identify the Tariffs which could apply to your product, and how they impact suppliers.
- Analyse and prepare for VAT changes and prepare to hold more inventory as insurance.
- Start researching and training for Authorised Economic Operator status.

Members Say:

Square One Law: "In June 2017 we signed a strategic alliance with a niche EU practice in Brussels to ensure our clients will still have access to the EU institutions. This year we are assessing whether our lawyers who appear before EU institutions need to register with an overseas Bar to ensure they still have rights of audience in the EU."

Access to Labour

Migration

Government maintains that the free movement of EU labour will end in March 2019, but both sides are working to guarantee the rights of citizens currently residing in a county which was not where they were born. The Prime Minister has announced her intention to allow residing nationals to gain "Settled Status" and carry on working in the UK.

With a 5% increase in EEA born migrants working in the UK (2-7%), from 2004-2017 according to PwC, and an already ageing population in the North East, restrictions on the future access to labour and skills threaten to reduce future labour availability.

Many businesses depend on fluid labour movement to address crises or to support specific plants in their peak seasons. Visas would give the Government more direct control on migration, but would be time consuming and complicate temporary labour movement, although foreplanning automated models may be introduced to accelerate this.

Skills

Tighter migration restrictions would increase competition for skilled labour, so businesses would have to raise wages and incentives to increase job attraction for ideal candidates. This threatens to open a skills gap, as 47% of EU workers occupy mid-skilled jobs.

There are around 100,000 EU students currently in UK universities. Restrictive migration rules would reduce the number of EU students coming to the UK, effectively draining national talent pools and weakening regional graduate retention.

Recommendations:

Review your skill needs

- Audit your workforce and the skills your business will need in the next 5-10 years
- Is there an opportunity to develop the skills of your current workforce?
- Map the movement and travel needs your supply chain relies on.

Secure your workforce

- Think and help beyond wages- address worker's real wants.
- Support and assist the needs of migrant workers- help with Settled Status applications.
- Analyse the scope for taking on or expanding the use of the apprenticeship levy.

Identify educational institutions that you can support and raise your profile with, this may make you more notable to graduates.

Members Say

Major sporting club: "Given the vast majority of our "business" occurs in the UK and the majority of our staff are from the UK, we assumed that we would not feel much impact whatever the outcome of Brexit. However, when it was pointed out that if EU case law is not incorporated properly we may not have the "Bosman" transfer system and may need visas and work permits for our players from the EU, we realised this could have a huge impact on our operations. If this level of uncertainty can affect us, it can affect every business."

Regulatory Issues

Regulations

The Government currently intends to convert existing EU law into UK law to mirror the existing “acquis communautaire” or case law and regulations of the EU, in order to facilitate a trade deal. However, regulations may diverge over time, meaning products might fail to meet the required standards, or be subject to a dual system which could restrict trading. This will most likely result in time and administrative barriers, particularly affecting “just in time” models, or those reliant on products being fresh or optimally stored.

Jurisdiction

A strong “red line” from Government has been that the UK must not be subject to the jurisdiction of the European Court of Justice. Whilst this aspiration is unlikely to be possible for any business continuing to operate in the EU post Brexit, it means that the UK could lose the benefit of treaties such as Hague, Lugano and Brussels I and II, which in practical terms means cross border disputes and enforcement will become much more difficult, costly and time consuming.

Memberships

Government has committed to remain members of aviation, chemical and medical agencies, and recognise EU patents and certificates in the UK, but this has not been matched by the EU. Government must pursue and communicate changes to other sectors that are vulnerable to regulatory changes, to give business the time to prepare.

Data & Intellectual Property

The UK and EU agree on the need for matching data laws, as to avoid a data and financial crisis. The EU’s General Data Protection Regulation (GDPR) comes into effect in May 2018, establishing new obligations, and penalties, for companies and data controllers. The Government has announced its Brexit plan to introduce a UK Data Protection Bill to mirror GDPR. goods more expensive.

Recommendations:

- Carry out an audit of any goods or services which

are subject to an EU mark.

- Check to see if loss of membership would affect the sector in which you operate.
- Assess major supply agreements (upstream and downstream) to assess whether you need to change the jurisdiction or governing law clauses.
- Create and implement policies and a plan in relation to GDPR.

Members Say:

Petrochemical manufacturer: “Whilst we have convergence in law we are fine. However, if the UK were, in time, to diverge from major legislation like REACH for example we would be faced with a choice. Either adhere to two systems and all of the expense associated with that or move our manufacturing to mainland Europe.”

Access to Finance

Replacing European Structural Investment Funding

The North East has traditionally benefitted from ESIF monies through programmes such as the JEREMIE funds which have created direct investment of over £300 million, leveraging an additional estimated £1 billion of private sector investment. Replacement monies will need to be found or recommitted.

ESIF monies have always been delegated to each region directly. The Future Prosperity Fund could operate on a “bidding in” model, which would directly disadvantage the North East.

Banking

The UK business community, particularly small and medium sized businesses, are over-reliant on only one bank with an estimated 65% of SMEs only having one bank. This model is not replicated in EU business as it is seen as creating a single point of failure in a business.

With the possibility that Brexit could disrupt or alter the integrated EU banking system, businesses should consider opening a bank in an EU member state to ensure payment can be facilitated more easily for exports. In reverse, the end of Free Movement of Capital will make it harder for EU banks to invest in the UK, making investment more restrictive and less competitive.

Recommendations:

Use your assessment to analyse, particularly in the short term, financial security:

- Ensure you have a financial contingency plan- make your economic model resilient and responsive.
- Pay off any viable outstanding debt- this could put you in a healthier position post-Brexit.
- Assess currency risk and vulnerability to fluctuation.
- Contact and update your bank.

Review any development and expansion plans for the next five years.

- Restricted EU funding may disrupt or halt this.
- Be innovative in expansion to maximise future opportunities.

Look for other sources of investment

- Don’t be over reliant on banks, strike new relationships with private investors.
- Identify potential alternative funding models.

Members Say

Retail Business: “The question is; how do we grow out of Brexit? We’ve been looking to repay financial terms early and develop our internet presence through investment. If we don’t do anything, Brexit will send us in reverse, we have to see the opportunity beyond the risk”.

Summary

The key finding of the research and consultations is that North East businesses have not begun planning for Brexit. The single reason given is that the lack of certainty is preventing businesses being able to even begin planning. This is unacceptable and risks the lucrative export market that has developed in the North East over the past 30 years.

Businesses only really need two strands to a Brexit contingency plan:

- One plan for soft or frictionless borders, in which case not much changes and businesses should be mapping out what future opportunities this could bring;
- A second plan for hard borders where the emphasis will be on the so-called “non-tariff barriers” where businesses must plan to deal with classification codes, Rules of Origin and, possibly, tariffs.

The final flow chart which is set out on the website at <https://www.neechamber.co.uk/updates/brexit-ready> and on the final page of this report demonstrates the complexity of exporting one good with one single classification code, assuming the good was completely manufactured in the UK. The flow chart is not designed to confuse or frighten businesses, even though it does look complicated; the flow chart is designed to show that by breaking down your processes step by step, it is possible to piece together a logical simple Brexit-ready assessment and then create a plan as to how to deal with this.

If you need any further information or assistance on these issues, please get in touch with the relevant contact:

**Legal Advice: Neil Warwick- 07876899983
 Customs & AEO: Jacqui Tulip- 08432247939
 Brexit Policy: Jonathan Walker- 01913746474**

This is a live project- As negotiations develop, so will this guide. You can track progress at nee chamber.co.uk/BrexitReady, and also on social media: @NEEChamber & @SquareOneLaw. An updated guide is scheduled to be released later this year.

Brexit Business Flowchart

What do you have to do to get #BrexitReady before 29 March 2019?

