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Trade, Labor and EU Law Perspectives

Waiting for Brexit – it's a play in a thousand parts

Andrew Hudson (Rigby Cooke Lawyers) · Tuesday, December 3rd, 2019



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On occasion, life has a habit of appearing to imitate art.

Both Beckett's 'Waiting for Godot' and Kafka's 'The Castle' are now widely being considered as contemporary literary representations of the UK's tortured Brexit process.

Both works are underpinned by the themes of frustration and absurdity, with the protagonists seemingly waiting endlessly for an outcome which has been promised and sought for a long time, but the outcome always seems to move further out of reach.

Such is the case with Brexit, whose outcome now awaits the outcome of the UK's election and subsequent passage (or not) of legislation enabling the deal struck by the UK government for an exit on 31 January 2020 (or another extension).

The costs are adding up and governments are raising the issues at the World Trade Organisation (WTO)

While much will depend on the outcome of the UK election, the financial and business fallout from the failure to date to implement Brexit has already started.

According to a BBC World Service report of 15 November 2019, 15 countries (including the US, India, New Zealand and Australia) already have set out Brexit concerns at a WTO meeting in Geneva, seeking compensation from the EU and the UK for Brexit disruption. Australia's position was that beef and lamb exporters had been significantly disadvantaged through the various Brexit delays, largely around uncertainty on tariff rate quotas. At the moment, the current quotas are for the whole of the EU (including the UK), but there is no certainty of the post-Brexit quotas for the to-be-two regions. Sales to Europe are more profitable but may be reduced in favour of less-profitable sales in the UK. Compensation to be provided could be in the form of reductions in tariffs for other goods.

The report suggested that Australian exporters had ceased exports ahead of earlier Brexit deadlines causing a loss of business, which would happen again before the 31 January deadline unless certainty was provided.

So in the current circumstances, what should Australian businesses expect?

What are the likely effects on Australian importers and exporters?

In the absence of any certainty over the timing or nature of Brexit, the question remains whether we can predict the future effects of Brexit on Australia. As the manner of Brexit remains uncertain, then the exact consequences are uncertain. However, I can make the following observations:

- The terms of the exit will dictate what procedures will need to be followed. A 'no deal' Brexit on 31 January 2020 will lead to different outcomes to a scenario with an amended withdrawal agreement and a transition period during which current arrangements are likely to apply.
- Many Australian companies either use the UK as a base to enter the EU or use the EU to enter the UK market. Either way, the current convenient arrangements for movement of goods, services and employees between the EU and the UK could be cancelled or varied. Australian companies that have established a company or operations in the UK may be entitled to the benefits of certain streamlined procedures made available by the UK government.
- The delays and uncertainties of Brexit have a major impact on our ability to negotiate a free trade agreement with the UK or to conclude discussions on proposed new visa arrangements. However, a scoping study is well advanced and those affected should engage with the study through the Department of Foreign Affairs and Trade (**DFAT**).
- Our current trade negotiations with the EU may well be affected by the uncertainty of just which countries will be in the EU. However, all signs are that negotiations are advancing at speed at the moment.
- There will be legal issues in having to manage border controls between the UK and the EU where there have not been border controls for many years. Australian companies will need to separately document entry to and departure from the UK and the EU, which has not happened before. There will potentially be different standards in both markets for all manner of goods and services, although new Mutual Recognition Agreements will assist. There will probably be different quarantine obligations and different obligations to pay Customs duties, VAT and other clearance

fees.

- The UK has now created its own ‘trade remedies’ regime so there could be dumping and countervailing duties imposed on Australian goods exported to the UK that are seen to cause material injury to UK industries.

All of this also creates multiple new compliance obligations keeping in mind that political assurances rarely translate into legal protections. Resources and planning are vital.

Resources and planning

The best advice I can provide at the moment is to prepare for Brexit but remain informed from reliable sources.

- Do a proper assessment of your business and what parts will be affected by changes to the movements of goods, services and investment.
- Communicate with customers, suppliers and service providers in the supply chain as to their plans to co-ordinate plans and minimise disruption.
- Check contracts to see if they allow for changes to prices, delivery dates and charges. Will they allow for flexibility? Could Brexit be a ‘force majeure’ allowing termination of the contracts? Early and open discussions would assist and variations to agreements could be required.
- Include ‘contingency arrangements’ in deals now being negotiated.
- Government and its agencies have provided significant resources. [DFAT](#) and [Austrade](#) are providing assistance as are the UK government’s Department of International Trade and the Department for Exiting the UK, the EU’s Preparedness Notices and even the NZ government through a dedicated web presence ([here](#)).
- The Financial Times is a good source of reliable information and worth the financial investment to receive its daily electronic updates.
- Stay tuned to commentary in the DCN and other trade journals.
- Secure legal and commercial advice here and overseas.

If you have any questions or would like advice, please contact [us](#).

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