



BREXIT: A SHIPPING PERSPECTIVE

Now that the UK has voted to leave the EU (Brexit) there are a number of business issues which will affect many industries, including shipping. These include the following:

General market conditions

- Immediately after the UK's vote for Brexit the GBP fell to its lowest level against the US\$ in 31 years. The GBP also fell against all major trading currencies and although it then rebounded the ongoing uncertainty about the ultimate result of the Brexit negotiations continues to depress the GBP.
- This is currently impacting positively on British shipowners repatriating funds normally received in US\$ into GBP, or otherwise with GBP expenditure.
- Since the vote there have been mixed signals on consumer and business demand for goods/services, reflecting lack of clarity about the impact of Brexit on the UK. Conversely, the weakness of the GBP is benefitting many UK exporters.
- While an immediate recession as a result of the Brexit vote is now said to be unlikely, the Bank of England recently warned the risk remains of negative Brexit impact on the UK economy. As the UK is the fifth largest economy in the world there is a risk that globally there will be some reduction in demand for cargoes being shipped.
- Marine insurers, brokers, shipowners, finance houses, and trading companies are considering additional or alternative offices within the EU in light of the possible loss of UK companies' passporting rights. The

Lloyd's of London insurance market has announced that it intends to open a Brussels office and a number of insurers and banks have already declared Brexit moves.

Border controls

- It is not yet clear what type of trade deals will be available to the UK and so it is difficult to know whether the UK will have to produce its own customs regime as it will no longer be part of the Customs Union and the Community Customs Code will no longer be law.
- Assuming the UK does have to create its own customs regime, then there will be border controls for trade between the EU and UK, which may lead to the following:
 - Delays at ports/terminals within the UK.
 - Additional documentary costs for shippers, NVOCCs and importers of goods.
 - A return of the customs broking industry in respect of imports from the EU and exports to the EU.
 - The potential removal of "single duty suspension regimes" where an item from a non-EU nation can pass through member states until cleared at the final destination.
 - A possible relaxation of regulations related to the import of goods (e.g. food) into the UK for domestic use/consumption.
 - If there is a relaxation of the regulations it may assist UK based SMEs as a result of a reduction in paperwork/bureaucracy.



- Import taxes – importers to the EU where there is “on shipment” to the UK may face double import taxes (and vice-versa).

Division of risk

- Shipowners, shippers, forwarders, charterers and receivers need to be aware of who takes the risk of additional delay, port charges or import duties and include appropriate contract terms.

State Aid

- While Britain is a part of the EU it has to abide by the rules governing State Aid. This means that the UK Government is not allowed to intervene by giving subsidies, interest or tax reliefs to industries or companies that may distort competition and/or affect trade in the EU.
 - Brexit may, therefore, allow the UK Government greater flexibility to support Shipping through changes in, for example, tonnage tax and corporation tax.
 - It may also mean that the UK Government is better able to support the Offshore industry and the export of the specialist skills that the Offshore industry has.
 - Finally, it may make it easier for the Government to financially support ports and terminals to make them more efficient and to attract more business.

Ports & Terminals

- On 8 March 2016, the European Parliament voted in favour of the controversial EU Port Services Regulation (the PSR).
 - The PSR targets mainly “port services” with reference to increased market access and competition/transparency.

- The PSR is opposed by the major port owners in the UK as they argue it will hinder business and cause a growth in unnecessary bureaucracy as they, unlike European ports, are privately owned.
- It has to be formally approved by the European Parliament and then by the Council of Europe, this is expected to be completed by the end of 2016.
- Brexit may make it possible for the UK to avoid the implementation of this Regulation in relation to UK ports.

Cabotage

- UK shipping companies, or shipping companies controlled by UK nationals may lose the right to offer cabotage services throughout the EU.

Finance/insurance

- The potential loss of ‘passporting’ rights which allow authorised entities carrying out certain regulated services in an EEA state to establish themselves in another EEA state, or provide cross-border services within the EEA, could impact on the maritime insurance and ship finance sectors.
- Due to market uncertainty ship finance may dry up making it more difficult for ship owners to renew their fleets.

Ship Recycling

- The EU has “gold plated” the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, which has made recycling more complicated for EU owned vessels not registered in the EU.
- As a result, it may be possible that not being part of the EU may give the UK a competitive advantage in relation to ship scrapping, as the UK may merely incorporate the less onerous Hong Kong Convention into UK law without the EU “gold plating”.

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Security implications

- Depending on how a Brexit is manifested it may also lead to increased security risk for shipping because:
 - Reduction in sharing of information amongst police and security services could lead to increased attempts at smuggling (e.g. in containers) and terrorism.
 - If the UK no longer participates in the mandatory electronic reporting of advance data for shipments there may also be increased risk of smuggling.
 - In turn, if there is an increase in smuggling, then there is likely to be increased delay for vessels/ cargoes as they undergo rigorous checks.
- The UK is an active participant in EUNAVFOR Somalia, also known as Operation Atalanta, assisting in protecting the shipping lanes off Somalia. Although considered unlikely, it may be that the UK will disengage from this.

How can HFW help clients facing these issues?

HFW’s shipping practice is one of the largest in the world. Our lawyers are readily available to provide advice concerning the risk of Brexit on the Shipping Industry.

There are specific issues in shipping contracts which may need adapting now that there has been a vote in favour of Brexit. (For example the apportionment of liability for a delay caused by imposition of border controls.)

We have a large specialised multi-modal team assisting with rail, road and sea transportation of containerised and non-containerised cargoes. They regularly consider the regulations surrounding the import of goods into the EU and are therefore well placed to advise in respect of measures to be adopted prior to any change, to minimise business disruption.

If additional warehousing is required then HFW’s Ports and Terminal team will be able to assist in relation to the contracts for these.

We are also well known in Shipping circles for the work undertaken in relation to piracy and maritime crime and have won a number of Lloyd’s List awards for the work undertaken in this sector.

Were there to be an allegation of smuggling (whether related to terrorism or not) then HFW’s Crisis Management team can be called on to quickly react and assemble teams to deal with the multitude of issues which can arise, thoroughly investigate the facts and control media interest.

Credentials

Daniel Martin regularly advises international technology companies in relation to importation of products into the EU and UK and the taxes on them and is therefore easily able to advise on border controls and import taxes and duties.

Craig Neame, Global Head of Shipping at HFW, is also ideally placed as a result of his multimodal work to advise on the impact of Brexit on the containerised trade, terminal operations and on customs processes.

Should further infrastructure or contract revisions be required as a result of Brexit, then **Matthew Gore** specialises in transactional work with a particular emphasis on infrastructure for ports, transport and logistics sectors.

HFW’s world leading Risk & Crisis Management team are specialists in risk management and organisational resilience and are able to ensure that every company operating in this sector is prepared to meet any challenge presented by Brexit.

Should it be necessary to call on HFW’s Risk & Crisis Management team then **Toby Stephens** is the partner who should be contacted. Toby has a wealth of experience in emergency response in the shipping and offshore/energy sectors.

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