MANUFACTURING MATTERS

Summer 2015

DLA PIPER

INTRODUCTION

Welcome to Manufacturing Matters, DLA Piper's specialist publication providing a round-up of legal news, sector updates and commentary for clients and contacts engaged in the manufacturing sector.

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The sector has continued to show growth throughout the first half of 2015 with Purchasing Managers Index ("PMI") remaining positive for 27 consecutive months and the latest EEF update reporting a ninth successive quarter of positive output. It is however clear that things are now moving at a slower pace with the rate of expansion having diminished since the middle of last year and the level of optimism having dropped a notch.

Given the broad range of activities within the sector there are a number of factors that are contributing to this new trend. The slow-down in the oil and gas sector is having a knock on effect on its supply chain and, despite previous indications of improvement, the export sector continues to be muted with the sterling exchange rate not helping. The financial crisis in the Eurozone has also escalated over the last month with a Greek referendum, Greece defaulting on its debt and EU leaders finally reaching an agreement on a third Greek bailout.

At home we have moved on from the drama of the General Election but, whilst there was an unexpected and decisive outcome, the result has now brought the issue of EU membership in to question with the government having committed to hold a referendum before the end of 2017. The question that will be put to the British public is now known but the timeframe has yet to be determined and in the interests of business we hope that this can be progressed quickly.

I hope that you enjoy this edition.

IN THIS ISSUE

Manufacturing Matters is compiled with current issues and trends in mind. If you would like to get in touch, please contact us by emailing manufacturing@dlapiper.com.

FACTORIES OF THE FUTURE: CAR MANUFACTURING

The Factories of the Future ("**FoF**") will look very different from today. We are seeing a rapid shift from traditional factories to a new generation of manufacturers. A recent Government report *"The Future of Manufacturing: A New Era of Opportunity and Challenge for the UK"* ("**FoF Report**") highlighted that technology and innovation will play a central role in transforming manufacturing into the 'factory of the future' that will be faster, more responsive to changing global markets and closer to customers. This article focusses on the main themes shaping FoF with a particular focus on the automotive industry.

CUSTOMISATION

Customer focus and personalisation is recognised as increasingly important. Factories need to effectively address consumer demand for customised products. Automotive was identified in the Government's Evidence Paper to the FoF Report ("**Evidence Paper"**) as a sector where personalisation of the product is becoming increasingly desirable and where there is advantage in the customer seeing 'their car' being manufactured. For example, VW's Autostadt complex in Germany allows customers to specify the design of their car, watch it being made and see it come off the production line. The complex also offers car-related attractions including a museum, track-driving experiences and a children's driving school.

FLEXIBILITY

Factories of the future need to resource flexibly to meet demands and capacity constraints. Flexible and adaptable equipment with multiple configurations are able respond to a change in the market and customer demand. Fixed automation in automotive factories is being replaced by more flexible and reconfigurable automation. This is supported by robotics with increasing sensors, accuracy and speed. The Evidence Paper predicted that the 'Reconfigurable Factory' will have the ability to switch instantaneously between products being manufactured, for example, from an automotive component to an aerospace component.

TECHNOLOGY

The importance of technology and innovation in shaping the FoF is a key theme. The development of 3D vision will accelerate as a result of autonomous vehicles. Additive manufacturing, or '3D printing' could be significant; the Urbee car is the first car to use additive manufacturing to produce its body shell. Innovation in products and processes is equally important, for example, Toyota is exploiting its capability in designing and deploying robot technology in manufacturing to develop robots for the home, and its capability in storing energy to operate the home and family car as an integrated energy system.

SERVITIZATION

Manufacturers offering services alongside their products is a growing trend. Through servitization, manufacturers can obtain closer relationships with customers and identify a new and predictable income stream. Industry examples include Rolls-Royce who offers 'power-by-the-hour' contracts, reporting that 50% of its ongoing revenue now originates from services. Toyota offers personal mobility plans, while MAN offers fleet management packages for trucks.

SUSTAINABILITY

A major trend is sustainability; economically, socially and environmentally. Reuse, remanufacturing, recycling and reduction of energy and water waste are of key importance to FoF. One of the specific R&D objectives given by the FoF Public-Private Partnership called for manufacturers to develop innovative technologies and approaches to manufacture products with fewer resources and ensure a sustainable product life-cycle based on reuse and re-manufacturing methods and technologies. Role models for the green agenda include Rolls-Royce and Toyoto, the latter stressing that it is making green products (hybrid cars), using green processes in a green factory, operated by green employees who are encouraged to take their green behaviours home (training and qualifications are offered in this area).

PEOPLE

People will play a crucial role in the FoF despite the automation of manual processes. The advancement of technology will necessitate highly skilled employees with technology degrees, computer skills and specialised training. Attracting talent into factories is seen as a major challenge. To this end, factories must undergo a cultural change, becoming innovative and displaying creative environments whilst ending the current 'command and control' management culture. The FoF will have stronger relationships with universities to ensure they can tap into the latest thinking, innovation and new ideas and to source this highly skilled and IT literate workforce. Rolls-Royce is a leading example with their global network University Technology Centres and Advanced Manufacturing Research Centres.

CONCLUSION

FoF are focussed on the needs of the consumer, embracing changes in technology and innovation in products and processes and leading a green agenda for sustainable manufacturing. The factories will have strong long-term relationships with universities to ensure graduates are equipped with the necessary skills to lead these FoF and fosters an environment of creativity and collaboration.

This results in empowered and engaged employees who are led by highly qualified managers demonstrating technical capability as well as commercial competence. The Evidence Paper recognised that achieving these FoF will require a significant cultural shift, both in how manufacturers operate and how they are perceived.

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SERVITIZATION
SERVITIZING EFFECTIVELY (R.A.P.I.D)

HOW TO SERVITIZE?

If you are a manufacturer who is now looking to "servitize" your product offering, it can appear a daunting exercise. The graphic below and the rest of this note presents an approach to "RAPID Servitization" which will streamline this process.

RESEARCH

Manufacturers will initially need to consider whether they can cost-effectively provide an attractive service to their customers which may improve a product offering, provide innovative solutions and set them apart from their competitors. This research should be both reflective and forward-thinking and may incorporate elements of Big Data analytics.

ANALYSE

Understanding the market in which a manufacturer operates is essential to providing an innovative service which distinguishes a manufacturer from its competitors. Furthermore, manufacturers should also know how the kind of service they are looking to offer to their customer will benefit that customer going forward in their own market sector. The more information manufacturers can find out about the service they want to provide before the commencement of such a service, the more they will understand the product and the realities of its successes or potential challenges and the more efficiently it will integrate into their customers' business as from day-one.

PLAN AND STRUCTURE

Once the above points have been considered in depth, manufacturers will need to consider the practical implications that providing a service will have on their business in the medium to long-term in relation to cost and ongoing obligations.

Providing a service will inevitably require making long-term commitments to customers, therefore it is vital to produce a sustainable and flexible business plan that allows the manufacturer to provide/update/alter/fix the services as required and which allows the manufacturer to serve the entire geographic range across which they offer (or intend to offer) the service. It is also important to consider how easy it would be to standardise such service offerings and what impact this may have on initial pricing structures considered.

IMPLEMENT

The next step is to apply the plans made in terms of reallocation/reorganisations and to work out how commencement of the services will be effected. This could be for example by way of initial trials. There may need to be a consideration of cash flow. Where previous product models involved a capital purchase up front and new models involve a monthly/quarterly management charge, there may be a funding gap to be bridged. Due to the nature of most service arrangements, this process will necessarily be ongoing. Following successful testing, the service product will be ready for full roll-out.

DEVELOP

Manufacturers providing services will want to consistently upgrade and improve their services offering to ensure that they remain competitive and that provision of the services remains cost-effective and beneficial to their own business as well as their customers going forward. This will necessitate regular customer feedback and so this will be an important component to build into the contractual relationship between the manufacturer as supplier and their customer. A commitment to improvement will also be key component of any marketing of the services product to potential new customers. It is therefore important, having initially gone to market with a revised solution, to continually improve the same and the process above can help to do this.

CONCLUSION

When properly thought-out, servitization allows manufacturers to differentiate themselves from competitors and provide substantial benefits for their customers as well as increasing their own revenues. Inevitably, however, servitization creates much longer term relationships and involves substantial cross-over into new sectors. This involves taking new risks and these should be considered in depth and quantified before any firm commitment is made in respect of delivery.

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FOOD MANUFACTURERS – ARE YOU COMPLIANT WITH THE EU FOOD INFORMATION FOR CONSUMERS REGULATION?

After a long lead-in period, the EU Food Information for Consumers Regulation 2011 (**"Regulation"**) finally came into force on 13 December 2014. The Regulation introduced a number of significant changes for the labelling of pre-packed food, but also has an impact on manufacturers supplying food operators selling non-pre-packed foods such as hotels, restaurants, pubs, cafés and caterers. The underlying requirement of the Regulation is that food supplied to either final consumers or mass caterers needs to carry the mandatory information required by the Regulation in a uniform and consistent manner.

KEY CHANGES

The Regulation consolidates a range of existing requirements already applicable to food operators (for example, rules relating to ingredient lists and best before/use by dates). The key new changes introduced include the following:

- The Regulation will for the first time apply to all sales between businesses (the previous legislation under the Food Labelling Regulations 1996 provided an exemption for labelling requirements for some food when sold between businesses).
- 14 food allergens listed in the Regulation (including peanuts, milk and eggs) will need to be specifically highlighted and emphasised on food labels.
  - Pre-packed foods containing any of the 14 allergenic ingredients must be labelled so that the allergenic ingredients are clearly referenced. Allergens must be emphasised in the ingredients list in some way (for example using a bold type-face).
  - Businesses selling non-pre-packed foods have some discretion in how to provide allergen information. They can choose to do this on a menu, a chalkboard or as part of a conversation with staff, who must have access to all the relevant allergen information for the foods they sell. These businesses will be looking to suppliers to provide the full and accurate information they need to comply with these new requirements.
- Nutritional information in the form of a "nutritional declaration" will become a mandatory feature of food labels from 13 December 2016. In the interim, food operators who choose to provide this information voluntarily must do so in the format prescribed by the legislation, including in relation to "front of pack" indications.
- The Regulation sets down minimum font sizes for all mandatory food information.

EXEMPTIONS

The Regulation exempts certain categories of foods from some of the requirements. For example, non-pre-packed food (including food sold loose, or "pre-packed for direct" sale, covering food packed in advance of sale on the same premises from which it is sold) will be required to comply only with the allergen labelling requirements.

Alcoholic beverages with an alcoholic strength greater than 1.2% ABV are currently exempt from the main labelling requirements but there is a push from the European Parliament to extend at least some of the labelling rules to alcoholic drinks.

PRACTICAL POINTS

Responsibility for the information on labels will rest with the operator under whose name the food is marketed or the importer into the EU (so for 'own brand' products, the responsibility will rest with the brand). However, all food manufacturers, including those supplying the restaurant and catering trade, are required to provide the mandatory information to their customers, who will increasingly expect their suppliers to take all measures necessary to ensure the information is complete and accurate.

Food manufacturers must therefore assess:

- what systems and precautions do you have in place to ensure the accuracy of the information you are providing to your customers?
- how are you able to trace products throughout its journey in the supply chain in the event of future enforcement by regulators?
- have you reviewed your own suppliers to assess the risk of non-compliance, particularly in priority areas such as meat?
- what impact may a change in supplier of ingredients have on your labelling obligations? How flexible are your systems to accommodate changes?
- how are all your procedures and compliance systems documented and reviewed?

Manufacturers should also stay up to date with proposed changes on the horizon which may have a direct impact on their businesses, including proposals relating to the country of origin labelling of primary ingredients, more stringent labelling requirements for alcoholic drinks and the extension of mandatory country of origin labelling for processed meat.

In the Spring 2014 edition of Manufacturing Matters, we considered servitization generally and concluded that, whilst it remains a fundamentally challenging process, many early adopters increased their revenue and strengthened their resilience to difficult market trends. However, many fail to plan sufficiently for such a cultural shift and leave themselves exposed to under performance, inappropriate or unappealing offerings and under funding.

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AN INTERVIEW WITH MARK WEBBER –

MANAGING DIRECTOR OF TINSLEY BRIDGE GROUP

Mark Webber is Managing Director of Tinsley Bridge and has recently been named as one of the most influential individuals in UK manufacturing by The Manufacturer (TM) magazine.

Mark joined Tinsley Bridge in 1989 and became a director in 1990. From 1997 – 2001 Mark took a role as Managing Director of Chapmans Agricultural Ltd, a manufacturer of agricultural wear components, later rejoining the Tinsley Bridge Group as Managing Director in 2001, a position which he still holds today.

The Tinsley Bridge Group operates internationally across four engineering businesses: Tinsley Bridge, Tyzack Machine Knives, Tinsley Bridge Engineering and SCG Rail Solutions. The Group provides a wide range of engineering solutions to the OEM truck industry and the defence, transport, renewables, energy and mechanical handling sectors, both in the UK and internationally.

WHAT DO YOU FORESEE AS THE MAJOR CHALLENGES FACING MANUFACTURERS OVER THE NEXT THREE YEARS?

The key to the future of manufacturing is successful investment in people, product innovation and plant efficiency. The difficulty is looking forward over the next few years and judging what the global market will look like.

There are huge uncertainties such as the future of the EU, the Euro, the UK position in the EU, oil prices and what will be the resulting exchange rates. If you are a large multinational with several manufacturing sites across the world, then you can shift capacity and balance loading to minimise the effect of these issues. But for a UK based SME the options are fewer and the impact of external changes much bigger.

With scarce resources both in terms of people and finance, making the right calls of what to invest in will be the difference between success and failure!

HOW DO YOU THINK THE GOVERNMENT COULD BETTER SUPPORT UK MANUFACTURERS?

The Government has made some positive steps with the introduction of such changes as R&D tax credits and patent box. However, more companies should be incentivised to work alongside our world-class universities. From our experience, Universities are committed to working with businesses, but SMEs need further encouragement to make the most of these opportunities. At Tinsley Bridge, we work closely with both the two Sheffield Universities and Cambridge University for example, and whilst it took time to adapt to dealing with the different cultures, the rewards to our business have been tremendous and well worth the effort!

In my opinion, some of the bigger grant structures, such as Regional Growth Fund, have been too focused on job creation; which I feel is counterintuitive to the "productivity" deficit that UK businesses are currently experiencing. Government should be focussing on grant encouragement and support for investments which lead to increased productivity and not necessarily immediate job creation.

The sooner the UK's position in Europe is clarified the better for business.

WHERE DO YOU SEE THE OPPORTUNITIES IN THE MANUFACTURING SECTOR IN THE UK IN THE NEXT 12 – 18 MONTHS?

There has been a big push, recently, to get companies to export: with Europe being an obvious place to start. However, the current exchange rates mean that it is now very difficult for UK manufacturing to be competitive within the European market.

There are, however, other more attractive export markets outside of Europe where the exchange rate is more favourable and which are also experiencing higher levels of growth. Although, distant geographical locations and cultural barriers make these alternatives more difficult and costly to break into.

At Tinsley Bridge, we sell a significant amount of business in euros but have bought ourselves some time as we tend to hedge out 12 to 18 months. One piece of good news that we are seeing from Europe is a noticeable pick up in demand, which has steadily strengthened during this year.

WHICH MANUFACTURING SUB-SECTORS DO YOU FORSEE GROWTH IN?

Within the UK, the Government is committed to investing and supporting growth in major infrastructure projects. There is extensive investment planned in the UK railways for example, both in infrastructure and rolling stock. If you can establish a strong UK rail business, it can lead to export opportunities as rail expenditure is increasing across the globe. While we have yet to export much rail business, rail has moved from less than 5% to over 25% of turnover in the last 18 months.

Other higher value added sectors such as aerospace and nuclear will always offer long term growth.

AND FINALLY, HOW WOULD YOU SUM UP BRITISH MANUFACTURING IN JUST FIVE WORDS?

Good, but must invest more!

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SUPPLY CHAIN DISRUPTION – THE RISK OF KEY SUPPLIER INSOLVENCY FOR MANUFACTURERS

With the march of globalisation comes both opportunity and risk as once settled supply chains become increasingly complex. A logistics industry news website reported in March 2015 that 77% of manufacturing firms consider supply chain complexity to be the fastest growing risk to their business continuity[1]. Supply chain disruption can have a substantial and wide ranging effect on manufacturing businesses, with a report commissioned by Zurich in 2012[2] (the "**Zurich Report**") finding that 60% of organisations surveyed stated the main consequence of supply chain disruption to be loss of order and sales, followed by reputational damage and increased operating costs (43% for both). As manufacturing businesses typically rely heavily on key domestic and international suppliers to provide raw materials and components, plant and machinery and logistics, shipping and IT services (among others), the potential impact of supply chain disruption in the manufacturing sector cannot be underestimated.

There can be any number of causes for business interruption; natural disaster, adverse weather, product quality incidents and IT outages among others, however the Zurich Report cited "supplier financial failure" as the most commonly occurring risk. The insolvency or financial distress of key suppliers continues to be a significant risk for UK businesses as, perhaps counterintuitively, the risk of supplier failure does not recede as economic conditions improve. Following the previous recessions of the 1980s and 1990s, corporate insolvency figures actually increased significantly once the economy returned to growth. While the traditional 'insolvency lag' has been less evident following the UK economy's emergence from the most recent recession, businesses who have survived remain at risk of supply chain vulnerability as suppliers struggle to meet burgeoning order books, leading to a significant risk of overtrading by key suppliers. In addition, cost cutting exercises, an emphasis on lean practices, outsourcing and increasing reliance on global supply chains have delivered short term savings to businesses throughout the recession, but have resulted in structural weaknesses in many supply chains.

Following a worldwide survey of over 500 risk managers and corporate insurance experts, a report published by Allianz in January 2015 (the "**Allianz Report**") ranked business interruption and supply chain risk as the top danger currently faced by companies for the third year in a row. The same risks however barely register when the same survey is addressed to senior corporate management teams, with supply chain risk ranked second only to cyber risk in a list of risks for which businesses are least prepared[4]. The Zurich Report found that while 70% of UK manufacturers surveyed ranked their supply chain as critical to their business, only 49% had reviewed and monitored supply chain risk at Board level[5].

The integrity of the supply chain is of critical importance to businesses operating in the manufacturing sector, and underestimating the risk of business interruption caused by the insolvency of crucial suppliers can come at a substantial cost. To give an example of the quantum of loss, it is worth noting that at $1.36m the average business interruption insurance claim is 32% higher than the average direct property damage claim[6]. Manufacturing businesses may not have contingency plans in place to deal with the failure of suppliers of services such as export or IT providers, or may find that materials or key components are held in bonded warehouses or by administrators or liquidators following the financial distress or insolvency of a supplier, causing substantial delays in production and impacting on speed to market targets. Failure to deliver against contractual requirements or customer orders can potentially trigger significant damages claims that can dwarf the overall value of the relevant contract. For a manufacturing business this can mean material financial and reputational loss and can lead to additional irrecoverable cost and management time being required in order to mitigate the situation.

As a major acquirer of materials and services, a manufacturing business can exert significant commercial leverage over key suppliers, thus securing clarity on the financial integrity of the supply chain, the attitude of secured lenders and the potential trading dynamic for that supply chain member over the course of a contract. Legal contingency planning both at the outset and throughout the life of the supplier contract may include consideration of termination options, third party retention of title issues, loss mitigation and potential counterclaims.

By recognising the importance of preserving supply chain integrity throughout the life of the contract, taking a proactive and robust approach to key suppliers from the outset and reacting quickly and seeking advice as soon as supplier financial distress becomes evident, there is scope for manufacturing businesses to significantly mitigate the risk and effect of a supplier insolvency and reduce overall business and insurance costs.

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[1] *Material Handling & Logistics News – http://mhlnews.com/global-supply-chain/supply-chain-complexity-top-risk-manufacturing-firms – accessed 26/06/15*

[2] *The Weakest Link – UK Plc's Supply Chain – Zurich – http:www.zurich.co.uk/internet/home/sitecollection/documents/business/largebusinesses/zurich_supplychain_report_July2012. pdf – accessed 18/05/15*

[3] *Allianz Risk Barometer – Top Business Risks 2015 – http://www.ages.allianz.com/assets/PDFs/Reports/Allianz-Risk-Barometer-2015_EN.pdf – accessed 18/05/15*

[5] *The Weakest Link – UK Plc Supply Chain – Zurich – http://www.zurich.co.uk/internet/home/sitecollectiondocuments/business/largebusinesses/zurich_supplychainreport_july2012*

[6] *Allianz Risk Barometer – Top Business Risks 2015 – http://www.ages.allianz.com/assets/PDFs/Reports/Allianz-Risk-Barometer-2015_EN.pdf – accessed 18/05/15*

INTERNATIONAL TRADE UPDATE
TTIP – WHAT YOU NEED TO KNOW

WHAT IS TTIP?

The Transatlantic Trade and Investment Partnership (TTIP) is a trade and investment agreement currently being negotiated between the European Commission and the United States. TTIP aims to boost trade and investment between the EU and the US through the reduction of customs duties, cutting red tape through harmonised regulation and opening new opportunities in the services and government procurement sectors.

WHAT WILL TTIP CONSIST OF?

A final agreement is expected to cover three broad areas:

Market Access, including:

- Promoting trade in goods and reducing customs duties;
- Tackling barriers to Services exports;
- Opening up public procurement markets; and
- Agreeing Rules of Origin (ROOs) to determine which products will benefit from TTIP.

Regulatory Cooperation, including:

- Greater coherence between EU and US regulation;
- Streamlining technical requirements for products;
- Reducing unnecessary repetition when checking products;
- Facilitating access to information on rules applicable to products; and
- Sector based initiatives for agribusiness, chemicals, cosmetics, engineering, medical devices, pesticides, ICT, pharmaceuticals, textiles and vehicles trade.

Rules, including:

- Promoting the protection of workers' rights and the environment;
- Streamlining customs rules and controls;
- Preventing collusion and abuse of market power; and
- An effective mechanism for resolving EU-US trade disputes.

CURRENT STATUS OF TTIP NEGOTIATIONS

Negotiators are currently preparing for the tenth round of discussions, due to take place in Brussels in mid-July 2015. A final TTIP agreement is unlikely to emerge before the end of 2016.

POTENTIAL BENEFITS AND CONCERNS OF TTIP

- **Cutting the cost of exporting and importing goods.** At just under 2%, the average customs duties between the EU and US are generally low, despite 'peaks' for certain individual products. However detractors say there is no evidence that TTIP will reduce the cost of these 'peaks' and it is impossible to estimate the financial benefit of the agreement.
- **Streamlining customs rules and controls to make exporting easier.** TTIP aims to simplify the current export border checking procedures to make them more efficient. Some commentators have noted though that in order to facilitate such changes, the EU states would be forced to implement additional stringent rules from the US.
- **Facilitating competition with regards to public contracts.** Here the focus is on agreeing rules which ensure EU and US companies are not discriminated against when tendering for public contracts in each other's market and raising transparency in the tendering of public contracts. The concern is that public services, such as the NHS, could be outsourced to US companies, making privatisation inevitable and irreversible.
- **Reductions in technical barriers to trade, for example through harmonising labelling requirements or procedures for safety testing.** A key element of these discussions will be around the greater use of internal standards and the elimination or reduction of unnecessarily duplicative procedures for checking products. However, critics argue that the difference in regulation is so fundamental that harmonisation is impossible.

CONCLUSION

With the potentially significant impact of TTIP, we expect the negotiation of any final agreement to continue to be complex and protracted. Please contact us if you would like more information on how TTIP might impact upon your commercial operations.

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TRADE & SANCTIONS IN RUSSIA & IRAN

RUSSIA & IRAN – CURRENT POSITION AND FUTURE TRENDS

Many jurisdictions around the world are subject to a variety of economic and financial sanctions which limit the extent to which companies and citizens of various states can do business there. Within the European Union sanctions provisions are harmonised and then implemented individually by each member state, including the UK.

Unsurprisingly the two jurisdictions which are most tightly controlled are Russia and Iran, given their respective political positions. This does not mean that it is impossible to do business in those countries but that in order to do so close attention must be paid to the relevant rules and regulations.

IRAN

The main concern in relation to Iran is their perceived desire to pursue a Nuclear programme, ostensibly for power generation, but concerns remain in relation to military applications. Both the EU and the USA are seeking to control Iran's nuclear programme by way of sanctions.

In April 2015, under the Joint Comprehensive Plan of Action, "key parameters" for negotiations towards the termination of all nuclear-related economic and financial sanctions were agreed. However this is very much a long term measure and for the foreseeable future therefore, existing EU and US sanctions remain in place. Indications are that the EU and US approach to Iran will not soften any time soon. On July 14th a Joint Comprehensive Plan of Action was agreed on the basis that Iran's nuclear programme will be exclusively peaceful which should pave the way for sanctions relief, provided Iran abides by commitments regarding its nuclear programme which will be monitored by inspectors to ensure compliance.

A timetable for the reduction of EU and US sanctions against Iran is unlikely to commence until 2016 and any termination of sanctions is likely to phased over a number of years. However, existing sanctions do not explicitly target the agribusiness or pharmaceutical sectors and both the EU and US regimes provide scope to licence such trade (and related financing) with Iran.

Given the cautious approach taken by financial institutions and wide ranging sanctions targeting Iranian banks, firms considering trade with Iran should proceed with caution.

Many clients are already considering possible opportunities in light of a potential lifting of sanctions, including scenario planning, due diligence and pre-contractual negotiations.

Key considerations include, whether:

- Products/services are explicitly prohibited?
- The transaction involves a sanctions target?
- Will financial institutions be prepared to process payments?

RUSSIA

Russia remains under significant sanctions pressure given its actions in Ukraine and Crimea. As of March 2015, existing economic sanctions and trade restrictions are extended until September 2015.

Any reduction of sanctions measures is now specifically tied to Russia's compliance with the Minsk peace agreement; this includes requirements for a ceasefire and withdrawal of heavy weaponry. EU and US measures are closely coordinated to maintain pressure and include:

- Asset freezing measures against Russian individuals/companies;
- Restrictions on provision of loans and credit; and
- A ban on imports from Crimea and Sevastopol.

However EU sanctions provide a number of exemptions for legitimate EU/Russia trade.

Nonetheless, enhanced due diligence should be carried out on Russian counter-parties to ensure that they are not either:

- Specifically listed as an EU or US sanctions target; or
- Owned or controlled by an EU or US sanctions target.

Given current uncertainty, many clients are considering the potential impact on existing contracts should EU or US sanctions measures be widened to target particular trade/sectors, counterparties or third parties (e.g. Russian banks).

Given the wide-ranging and direct/indirect nature of sanctions prohibitions, companies need to consider the potential actions of their counterparties and manage any associated criminal, financial or reputational risk. Best practice dictates a "risk based" approach towards managing the actions of agents/customers who may divert goods or services in violation of sanctions measures.

CONCLUSIONS

Whilst both Russia and Iran are heavily sanctioned jurisdictions, and are likely to continue as such for the foreseeable future, there is still scope for EU and US businesses to trade in those areas. The key considerations are to ensure that robust and comprehensive due diligence is conducted, not only in relation to the goods and industry involved and the identity and ultimate ownership of any trading partners but also the very real practical issues as to how payment will be received.

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INTERNATIONAL TRADE UPDATE

EU – KOREA FREE TRADE AGREEMENT 3 YEARS ON

On 26 March 2015, the EU Commission released its third annual report on the implementation of the EU-Korea Free Trade Agreement ("FTA"). This report highlights an interesting trend for companies located in EU and interested in the Korean market.

The FTA is an agreement between the EU and its Member States and the Republic of Korea ("Korea") and is the first in a series of trade deals between the EU and Asian countries. The aim of the FTA is to enhance market access between the two economies and ultimately boost trade and economic growth. The FTA seeks to accomplish this by eliminating duties on nearly all trade goods, addressing non-tariff barriers to trade and by liberalising many areas of trade services including transportation, financial, legal and environmental.

Both existing and future trading parties between the two economies can benefit, not only from the greater access to new opportunities for investment and services, but also from the increased regulatory transparency and provisions in areas such as competition policy and compliance, government procurement, intellectual property rights and sustainable development.

Based on three years of implementation of the EU-Korea FTA, it is clear (according to the EU Commission) that the FTA has worked well for both sides, and in particular for the EU side. EU exports of goods to Korea increased by 35% in the third year of FTA implementation, compared to the 12-month period before the FTA took effect and in the third year of FTA implementation (2014), EU imports from Korea totalled 37.9 billion EUR.

The FTA has specifically focussed on tackling non-tariff barriers to trade in sectors such as pharmaceuticals, automotive and electronics. Using automotive as a benchmark, it is interesting to note that EU exports of motor vehicles to Korea increased by 90%, from 2 billion EUR (74.600 units) in the 12-month period preceding the FTA to 3.8 billion EUR (141.800 units) during the third year of FTA implementation, accounting for 9% of total EU exports to Korea. In the same period of time, EU imports from Korea grew by 53% from 2,6 billion EUR to 4 billion EUR or by 25% in terms of units imported, from 300.000 to 375.000 units. Almost the entire increase (53%) occurred in the first year of FTA implementation. Motor vehicles account for 11% of total EU imports from Korea. Over the same period, EU imports of passenger cars from the rest of the world decreased by 7%. This highlights a significant change and may suggest that the FTA is working towards its aim.

Among the sectors where the FTA is promoting the development of trade between EU and Korea, it can be underlined that the FTA is also applicable to EU (Member States included) and Korean public procurements. Some EU and Korean public procurements were already covered by the Agreement on Government procurement contained in annex 4 of the WTO Agreement (GPA). But the FTA is also covering works concession contracts. It means that, concerning the award procedures related to works concession, procuring entities (Member States and their procuring entities listed in the Annex 1 and 2 of the GPA 1994), shall accord unconditionally to the goods, services, and suppliers of the other Party. A treatment no less favourable than the treatment the procuring entities accord to domestic goods, services and suppliers (non-discrimination rule).

In other words, the covered public procurements and works concessions contracts in Korea should be opened to economic operators located in the EU and the same shall be applicable in the EU.

With an office in Seoul, South Korea and a dedicated trade and compliance team, DLA Piper regularly advises clients on their trading operations and investments between both Korea and the EU. For further information contact Kim Möric.

The last EU Commission report on the implementation of the FTA of March 26, 2015 is available Online.

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CLOSING THE GENDER PAY GAP

The Government has now published its initial consultation on legislation which will implement gender pay gap reporting for organisations with 250 or more employees.

The requirement to publish gender pay data has had a complicated history. Section 78 of the Equality Act 2010 introduced a power to make Regulations requiring employers to publish information relating to the pay of employees for the purpose of showing whether there is a difference in pay between male and female employees. However, s.78 was not brought into force. Towards the end of the last Parliament a late amendment to the Small Business, Enterprise and Employment Act 2015 included a provision requiring Regulations under s.78 to be made within 12 months of that Act coming into force; however, that provision was also not brought into force. In the meantime, the Coalition Government introduced a voluntary pay data reporting initiative, 'Think, Act, Report', but since its launch in 2011 only 5 companies have published pay details.

KEY CHANGES

The Government is now proposing to introduce Regulations under s.78 which will require employers in the private and voluntary sectors in Great Britain with at least 250 employees to publish information about the pay of their male and female employees. A person will be considered an employee if they are employed under a contract of employment, a contract of apprenticeship or a contract personally to do work. This encompasses employees, workers and a wider category of individuals who are self-employed, provided that their contract obliges them to perform the work personally: ie if they are not permitted to sub-contract any part of the work or employ their own staff to do it.

The Government is consulting on what form of reporting will be required. Options include an overall gender pay gap figure measured by calculating the difference in earnings between all men and all women employed by the organisation, gender pay gap figures broken down by full-time and part-time employees and gender pay gap figures broken down by grade or job type. The metrics chosen will be crucial; the overall pay gap figure in most organisations will be largely meaningless as it can be disproportionately affected by a small number of high earners. A requirement to break the data down by grade or job title is much more likely to highlight an equal pay problem and therefore expose employers to the risk of equal pay claims, but there are likely to be significant difficulties in how to define grade or job type.

The Government is also consulting on whether any additional narrative information should be required, for example explaining any pay gap and setting out what remedial action the employer plans to take.

Reporting will not be required more frequently than once every 12 months but the consultation seeks views on whether it should be required less frequently.

It is expected that the new Regulations will be made during the first half of 2016, but commencement is likely to be delayed to give businesses an opportunity to prepare for implementation, and may be on a phased basis affecting the largest organisations first. Nearly 8,000 employers will be required to report some information about pay data when the Regulations are implemented.

The consultation closes on 6 September 2015.

LIMITATIONS

It is questionable how successful the proposed legislation is likely to be in its stated aim of closing the gender pay gap. The overall UK gender pay gap stands at 19.1%, although the gap for full-time employees has narrowed to 9.4%. The causes of the gender pay gap are complex and multi-factoral. Female part-time employees are paid more than their male counterparts but as part-time work is often low-paid and a higher proportion of women than men work part-time, this continues to have a significant impact on the overall gap. Women are still concentrated in lower paid occupations such as caring whereas many of the highest paid sectors are disproportionately made up of male employees.

CONCLUSION

Employers may wish to get their houses in order before being exposed to public scrutiny. Employers who will be affected by the proposed Regulations can use the lead in period before implementation to conduct an audit of pay arrangements to identify potential problem areas and help the organisation to manage and present information meaningfully and in context.

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ABOUT DLA PIPER'S MANUFACTURING SECTOR

DLA Piper takes its expertise in and commitment to the manufacturing sector very seriously. We have built a strong reputation for supporting organisations engaged in all aspects of manufacturing: from industrial and advanced engineering, finished products and material solutions and industrial equipment through to aerospace and defence, automotive, chemicals and paints, food and beverage and shipbuilding subsectors. We are committed to understanding the markets in which our clients operate and the specific commercial challenges they face. Our team of lawyers has considerable experience of working with a broad range of blue chip manufacturing businesses, both in the UK and internationally, across a full spectrum of issues. For more information about our manufacturing capabilities, please email us on manufacturing@dlapiper.com, contact one of our specialists below or your usual DLA Piper contact.

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