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Welcome



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- The UK left the EU on 31 January 2020
- Transition Period (TP) until 31 December 2020 – during which all EU law still applies
- Transition period will not be extended
- Negotiations on ‘future relationship’ continue
- “No-deal” still possible at the end of the TP
- For ease/brevity – we will use the term Brexit to mean the end of the TP



- REACH – Registration, Evaluation, Authorisation and Restriction of Chemicals (EU Regulation 1907/2006)
- **Registration** - EU manufacturers and importers – substances over 1 tonne p.a.
- Non-EU manufacturers can appoint an “only representative” (OR) in the EU to take on importer registration duties (OR does not need to import itself)
- Downstream users benefit from the registrations higher up the supply chain
- **Evaluation** – review by European Chemicals Agency (ECHA) of submitted dossiers
- **Authorisation** – substances of very high concern (SVHC) – after review – banned unless specifically authorised for limited uses
- **Restriction** – prohibitions on specific uses of certain substances
- Registration is main issue for Brexit, but Authorisation also affected

- REACH is an EU Regulation - ‘Directly Applicable’ in the UK – no implementing legislation...except relating to enforcement
- Largely managed and administered at EU level by ECHA
- UK has now confirmed it will not seek “associate membership” of ECHA
- In a no-deal scenario, REACH registrations and authorisations of UK companies become invalid
- A new UK-REACH system will almost certainly be implemented
- Potential for widespread supply chain disruption
- Duplication of costs and effort for dual registration (UK and EU)
- Data access/acquisition issues



- REACH works on a whole-supply chain basis - people at the top have registrations and authorisations that benefit those lower down - throughout the EU
- Chemical sector tends to be at the top of the supply chain
- REACH registrations or authorisations of UK companies become invalid on Brexit – potential for serious ramifications and interruptions to the many billions of pounds' of trade in chemicals into UK and between UK and EU
- Regulatory impacts both as regards:
 - Maintaining EU REACH compliance
 - Securing UK REACH compliance
- Our case studies will expand on this



- EU Withdrawal Act – EU Regulations are “Direct EU legislation” - as in force immediately before exit day, they become part of UK law
- Delegated legislation (UK Regulations) then deal with “deficiencies” - these are the “Henry VIII Powers”
- Health and Safety Executive as regulator
- ‘Grandfathering’ of UK business’ existing registrations and authorisations – subject to initial validation and later full submissions
- New IT platform/database
- Data ownership and access rights are a big issue – can’t necessarily be used in UK REACH
- Possibility of an agreement with ECHA about data – but timing/scope unclear
- UK Importers of EU chemicals – notification and later full registrations
- Dual registration regime (UK and EU)



Case Study 1 – US Company exporting to EU, using UK OR



- EU REACH issues to consider:
 - Transfer EU REACH OR registration to an EU legal entity – need to amend contracts and update registration and pay an ECHA fee – to cover ongoing supplies into EU
 - Act before 31 December 2020 – ECHA ‘window’ – to take effect on 1 January 2021
- UK REACH issues to consider:
 - UK OR to register under UK REACH – to cover ongoing supplies into UK
 - Notifying basic information within 120 days, and full data within 2 years – who owns the data associated with the current REACH registration – can it be used? Will there be additional costs?
 - Taking advantage of grandfathering provisions/transitional period even if not certain of ongoing need for OR in UK.

Case Study 2 – US Company exporting to UK customer, no OR



- (UK importer would have an existing REACH registration)
- EU REACH issues to consider:
 - Does the UK importer onward-supply into the EU? If so:
 - UK importer cannot transfer its REACH registration to an EU entity without an associated transfer of business
 - UK importer cannot appoint an OR in the EU (unless it also formulates)
 - New EU REACH registrations may be required by EU customers
 - US company could appoint an EU OR and register
- UK REACH issues to consider:
 - UK importer should be able to make a 'grandfathered' UK REACH registration
 - Notifying basic information within 180 days, and full data within 2 years – who owns the data associated with the current REACH registration – can it be used? Will there be additional costs?

Case study 3 – UK company purchasing from EU subsidiary of US Company



- (Applies whether or not the US company uses an EU OR)
- UK REACH issues to consider:
 - UK company becomes a new importer with a registration obligation under UK REACH (with grandfathered rights)
 - Will that UK company have access to the necessary data and/or does the manufacturer wish to disclose the data?
 - Will the US Company instead appoint a UK OR to cover this? (new OR would also benefit from transitional arrangements)

Closing remarks

- Each company's position and actions required will be dictated by substance-specific supply chains
- Need to audit/analyse supply chains that include UK activity to identify issues and steps to be taken
- EU REACH transfers (away from UK entities) must be actioned before 31 December 2020 – not just regulatory but also contractual changes
- UK REACH registrations – transitional 2 year period and initial 120/180 day period – but need to secure access to data in order to complete full registration - which can take time (and if unsuccessful, repeat testing would be required with even longer lead times)
- Don't ignore it/leave it until the last minute!



Questions?



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