DENTONS

Managing supply chain disruption

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Key takeaways:

- **85% of organisations** have experienced some form of supply chain disruption in the recent past, according to Dentons' straw poll.
- **Supply chain disruption can have many causes** which can occur simultaneously.
- **Tariffs/sanctions and transport issues** were the most common causes of disruption cited among those polled by Dentons, each affecting more than 50% of those surveyed.
- **Raw material scarcity and natural disasters** were other common causes, each affecting around a quarter of respondents, while political instability caused problems for around 15%.
- **Insolvency** was also a significant source of supply chain problems where organisations feel they need legal guidance.
- **Country of origin rules** will likely be a key focus of tariff consideration, particularly for products destined for import into the US. However, valuation models may offer more flexibility to reduce tariff liabilities.
- **Reshoring, nearshoring and simplification** of long, complicated supply chains is being considered by many organisations worried about supply chain disruption, subject to practicalities.
- **The US is becoming a more complex export market** for some UK exporters, despite the recent trade deal, due to its import tariffs, regulatory unpredictability and the high potential costs of risk-taking.
- **Hardship clauses,** which allow for a party to review or terminate an agreement when unforeseen events significantly (such as the introduction of very high tariffs) alter the contractual balance, are becoming increasingly common.

Discussion summary

Potential disruption risks should be considered at the outset when entering contracts for trade arrangements. When supply chain issues arise, urgent action may be needed to minimise the legal and reputational damage.

Due to the complexity of modern supply chains, the range of possible ramifications from such disruptions can be considerable and will vary depending on the circumstances.

Below, we consider some of the key causes of disruption and how businesses can manage the issues.

Sources of disruption – regulatory consideration

a. Tariffs/Country of origin

Tariffs are typically imposed by the customs authority of the importing country. The tariff applicable may depend on the country from which the goods "originated" and, in the absence of any express contractual wording, the tariff costs are normally borne by the importer.

The US is probably the most notable source of tariff-related supply chain disruption in 2025, having imposed steep tariffs on imports from most countries, with China singled out for particularly high charges.

For organisations across the world, especially those with Chinese manufacturing operations in their supply chains, US tariffs have become a major issue.

Tariffs are levied on the declared value of the product being imported i.e. the price the importer pays to the supplier (rather than the retail price).

The origin of goods is determined according to the rules of the importing country and the terms of any trade agreement between the importing country and any potentially relevant third country.

Where there is no relevant trade agreement, for the US, importers would need to refer to the World Trade Organization's non-preferential rules of origin to determine how their goods will be classified (see US guidance on rules of origin).

A rule of thumb for products containing materials from more than one country is that the product's country of origin will be the country where it was last "substantially transformed", rather than the last country through which the product passed before being exported to its final destination.

Another determining factor will be whether and to what extent the value of a product has increased as a result of the processing it has undergone in a particular country, with the typical threshold for substantial transformation sitting at around 30% of the product's value.

Therefore, if the product was substantially assembled in China, it will be classified as being of Chinese origin even if it underwent other less substantial transformations in different countries before being exported as a finished product.

Ways to avoid high tariffs that may apply to imports of Chinese origin into the US could include changing the country of origin. However, this generally requires a major shift in manufacturing operations to a different country, as minor processing in other countries will usually not be sufficient to override a designation based on where a product was substantially assembled.

However, some local tax benefits may be available for any processing in other countries – for example, in the UK, "inward processing relief" is an exemption from Customs Duty and import VAT for UK importers who bring goods into the UK for processing or repair before exporting them outside the UK.

While it may be difficult or impractical to change a product's country of origin, there may be opportunities to reduce the product's valuation in ways that reduce tariff exposure – provided that the valuation approach is consistent with the rules of the importing country.

b. Sanctions

Sanctions are another major area of concern for organisations with global supply chains who may face severe penalties if their activities contravene sanctions against countries, organisations or individuals.

To ensure compliance with UK (and other) sanctions laws, UK companies need to have adequate due diligence procedures in place.

This will typically include checking the names of their suppliers and any end-purchasers against published sanctions lists to ensure they are not dealing with any entity subject to sanctions, directly or indirectly.

Importing products from, or exporting products to, a sanctioned country can also be subject to restriction.

As well as well-known sanctioned countries like Russia and Iran, there are other sanctions in place (including some against Chinese companies), sometimes in unexpected fields and sometimes with extra-territorial reach.

Organisations with international supply chains should also make certain they have contractual protection, particularly where manufacturers obtain components from other suppliers who may be subject to sanctions.

c. Export controls

Certain goods are subject to export controls, depending on the country from which they are being exported and their intended destination and use.

There are military "end-use" controls ("catch-all" provisions) on exporting any goods for use by some entities – mainly military/paramilitary forces in embargoed destinations.

Like many jurisdictions, the UK has also published a "dual-use" list, which covers many goods which have both civilian application and potential military applications. Where these are controlled, organisations may require a licence to export them.

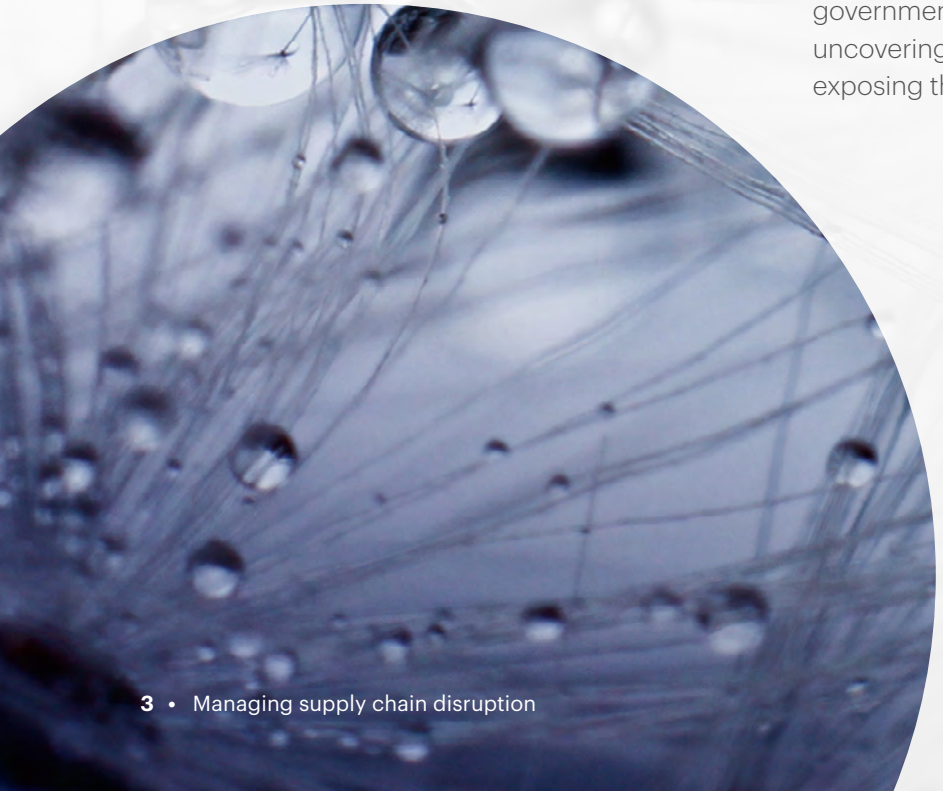
Military end-use controls do not generally apply to the export of consumer goods generally available to the public. However, regulatory authorities will take into account what an exporter knew or should have known from due diligence investigations about the intended end-use of products at the point of export.

To avoid inadvertently falling foul of export restrictions, organisations need to know the classification of the product being traded and be clear about its intended use.

d. Forced labour controls

Organisations need to be able to prove that suppliers of their products comply with legislation designed to prevent the use of forced labour, such as the UK's Modern Slavery rules and the US's Uyghur Forced Labor Prevention Act.

As well as national authorities, certain non-governmental organisations are also focused on uncovering forced and child labour practices and exposing these to media and regulators.



Commercial – renegotiation

Disruption can often lead to conflicts between different parties in the supply chain.

In these circumstances, contractual mechanisms can be helpful in resolving the disagreement without proceeding to litigation or arbitration. These include:

a. Escalation clauses

Escalation clauses might give either party the right to discuss price adjustments in the event of future rises in tariffs.

From an exporter's perspective, this would ideally impose minimal obligations on either side, other than perhaps to discuss a price adjustment "in good faith", while an importer may look to include a right to terminate the agreement if a satisfactory price adjustment cannot be agreed.

Obligations to negotiate are generally unenforceable under English law unless there is a sufficient level of certainty as to the parameters of the negotiation which a court could use to fill in any gaps (e.g. a specified formula/process for calculating a price adjustment).

b. Tariff-specific adjustment mechanisms

Specific contractual mechanisms or formulas to adjust the price of goods in response to tariff changes can help simplify renegotiations.

While this will naturally increase an exporter's costs, it could be offset by requiring increased purchase/marketing commitments from importers.

c. Reduced minimum purchase commitments

Reducing the minimum purchase commitment will likely reduce a supplier's revenue but may be a necessary sacrifice for a supplier to maintain relationships with customers where disruption makes meeting initial purchase commitments impossible or unviable.

Setting achievable targets may be preferable to having unenforceable and unworkable commitments, avoiding potential contract disputes and relationship deterioration.

d. Alternative sourcing and production relocation

Where disruptions to supply chains, such as tariffs, look set to remain the status quo for the foreseeable future, supply chain participants may wish to consider supply diversification and/or relocation of production to trade-friendly jurisdictions.

A phased approach to diversification or relocation may be preferable to an immediate shift if it allows both suppliers and customers to test market acceptance of higher prices or different specifications of goods while gradually transitioning supply chains.

Different parts of the supply chain may also want to cooperate on moving into product lines or market segments less affected by disruption.

Parties can also use renegotiation opportunities prompted by supply chain issues to enhance their commercial position, such as by discussing new performance obligations, supply chain transparency, exclusivity terms, reciprocal concessions, enhanced termination rights, improved brand and channel protection, and data sharing and collaboration.

Disputes

Where disputes cannot be resolved through negotiation, organisations need to prepare for dispute resolution procedures.

Before commencing formal proceedings, it is essential to investigate the merits and possible damages (quantum) that may be recouped; identify the other party's pressure points based on the facts; and strategise how to approach the dispute accordingly.

Organisations facing potential disputes may need to consider the following:

a. Triage

Organisations will need to assemble contractual documents to consider their legal and commercial position, including the value of the relationship and desired outcomes of a dispute.

They will also need to identify and speak to key relevant individuals involved in the trading arrangement to understand the facts and identify commercial drivers, potential risks and the impact of the dispute on business continuity.

b. Battle of the forms

A battle of the forms occurs where both parties in a commercial relationship attempt to impose the primacy of their contractual terms and conditions.

The usual rule is that the battle of the forms is won by the party who fired "the last shot" (i.e. the last party to put forward terms and conditions that were not explicitly rejected by the recipient at the time the contract was performed).

Parties can attempt to win this battle via various means, such as by incorporating a clear prevailing clause into the contract, stating, for example, that terms and conditions shall apply exclusively to the entire business relationship between the parties unless different conditions are expressly confirmed and agreed in writing.

Commercial teams can also choose to expressly reject the other party's standard terms and conditions at the outset of a relationship and instead draft bespoke T&Cs.

Clauses within standard terms that are incorporated by reference and impose burdensome obligations should be made obvious. If they are hidden away in dense T&Cs, they may be rendered unenforceable.

c. Damages

When calculating damages, a party should consider direct losses that arise naturally and directly from a breach of contract (such as loss of profit), and indirect losses that do not arise naturally from the breach itself, but result from special circumstances (for example, if the breach causes the other party to breach its obligations to other partners, resulting in financial penalties or damages claims).

As a matter of law, indirect losses are only claimable if they were within the reasonable contemplation of both parties at the time of contracting.

d. Sale of Goods Act

Under UK law, if an organisation can resell goods to an available market, then its measure of loss will be the difference between the contract price with the original buyer and the market price the supplier could realistically obtain for the same goods on the open market.

e. Wilful failure

In some contracts, the limitation of liability provisions will not apply if one party has wilfully (which usually means intentionally or recklessly) failed to perform the contract.

f. Force majeure

A standard force majeure provision typically states that, if there is a force majeure event which prevents, hinders or delays performance, then neither party is liable for failure to perform obligations and, provided the contractual notice provisions have been followed, either party may terminate the contract.

For factors such as tariffs, parties may argue whether or not the imposition of tariffs constitutes force majeure. Generally, an event that makes the contract less profitable will not be considered to have prevented, hindered or delayed performance.

Where one party declares force majeure, the other party (or parties) should issue an immediate holding response, noting they are reviewing the assertion that a force majeure event has occurred and, in the meantime, will treat the contract as continuing in its original terms and reserve all rights.