



The impact of COVID-19 and Brexit on supply chains

19 September 2020

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Introductions



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Supply chain challenges: themes

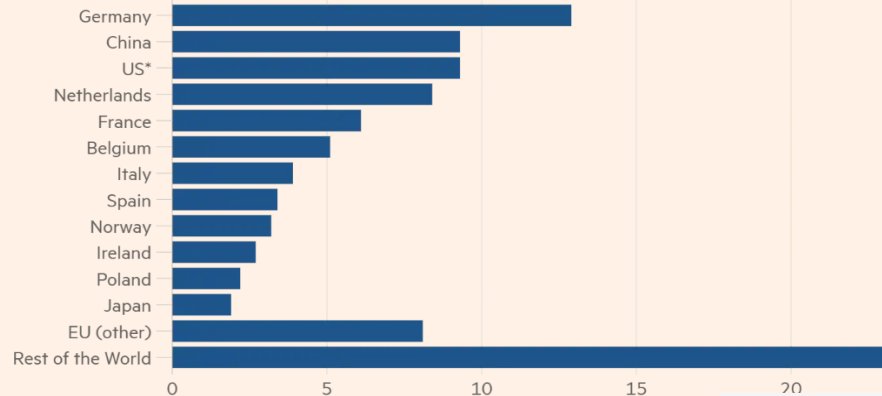
Key impacts on supply chains

- Covid-19
- Trade disputes: US & China et al...
- Brexit

Supply chain challenges: current supply chain

UK imports by country in 2019

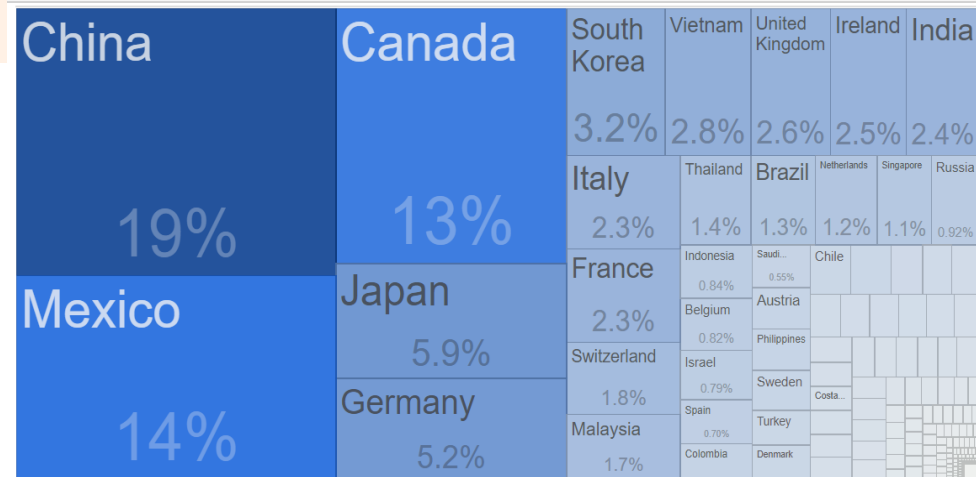
Share in value of goods (%)



*Includes Puerto Rico
Source: ONS
© FT

- Global Supply Chain
- 'Just in time'
- Reliance on China and border free Europe
- Longer terms changes to be expected

United States Imports By Country



Supply chain challenges: current issues

Issues:

- Short-term shipping challenges
- Access to stock
- Factory closures
- Border issues
- Trade barriers

Current contracts key themes:

- Does your contract(s) allow flexibility for issues caused by current events?
- Are you relying on, or allowing suppliers to rely on contractual relief?
- Have you reviewed your key contractual provisions to ensure they are fit for purpose? (Force Majeure, Termination, Waiver, Frustration)
- Consider including express clauses to cover the effect of events that are now known or ought to be known, e.g. Covid19, Brexit, Sanctions

Supply chain challenges: longer term issues

Future Contracts:

- Move away from relying on ‘just in time’ manufacturing to ‘just in case’
- ‘On-shoring’ of some manufacturing
- Less reliance on single supplier and/or single market/territory
- Changes in ways of working and dealing with stock, logistics, warehousing etc.
- Create flexibility in your supply chain
- Consider how your contracts and parties’ responsibilities fit together where you are relying on multiple suppliers
- Rebalance priorities

Contract management

Force majeure

Frustration

Waiver

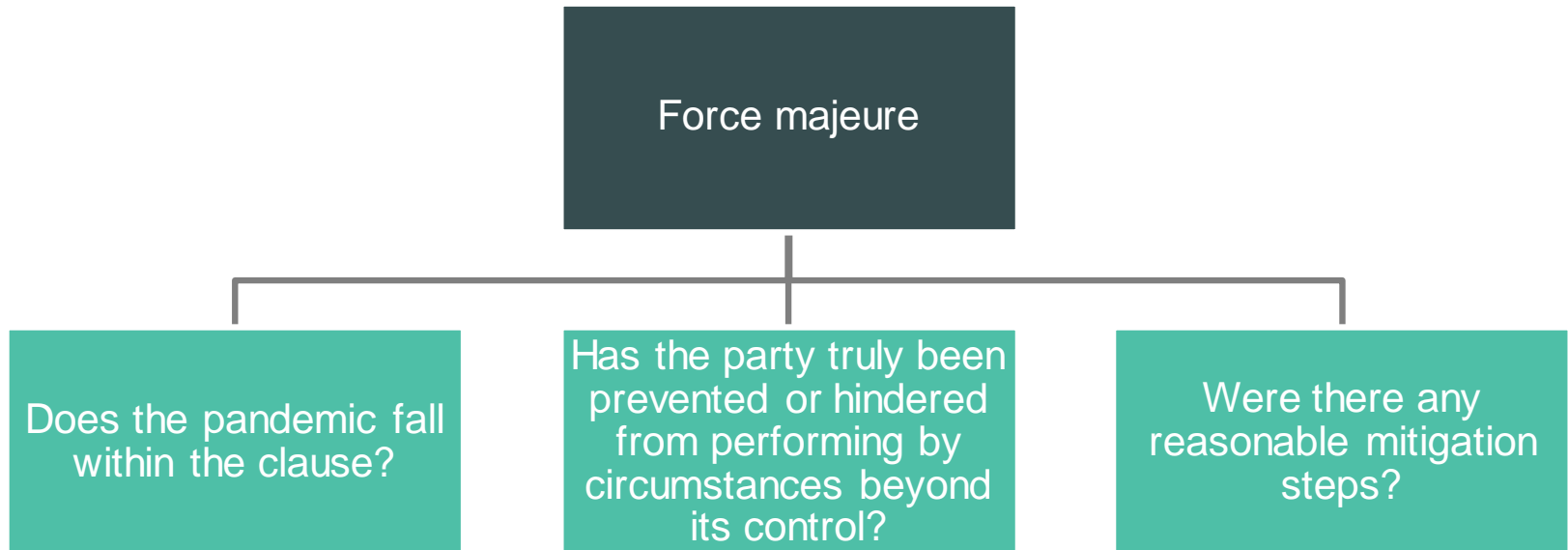
Force majeure

No specific legal doctrine

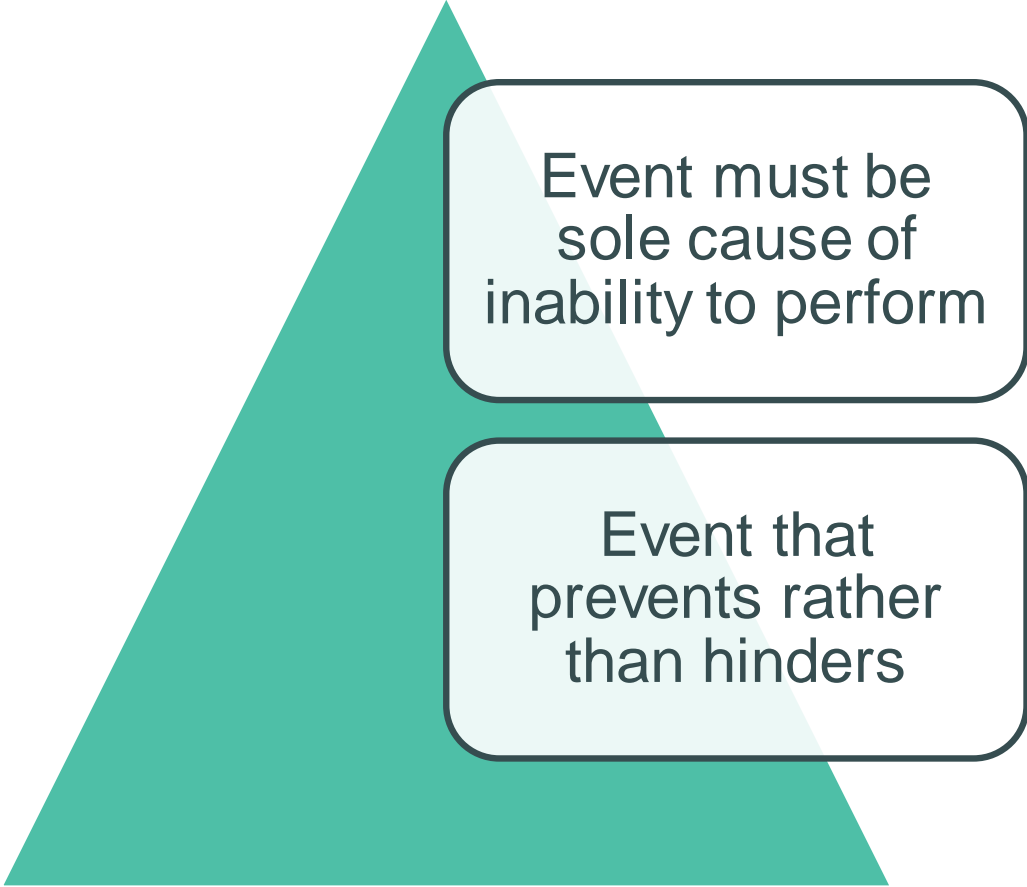
Contractual device

Notices: to be given strictly in accordance with the terms of the contract

Covid-19 force majeure



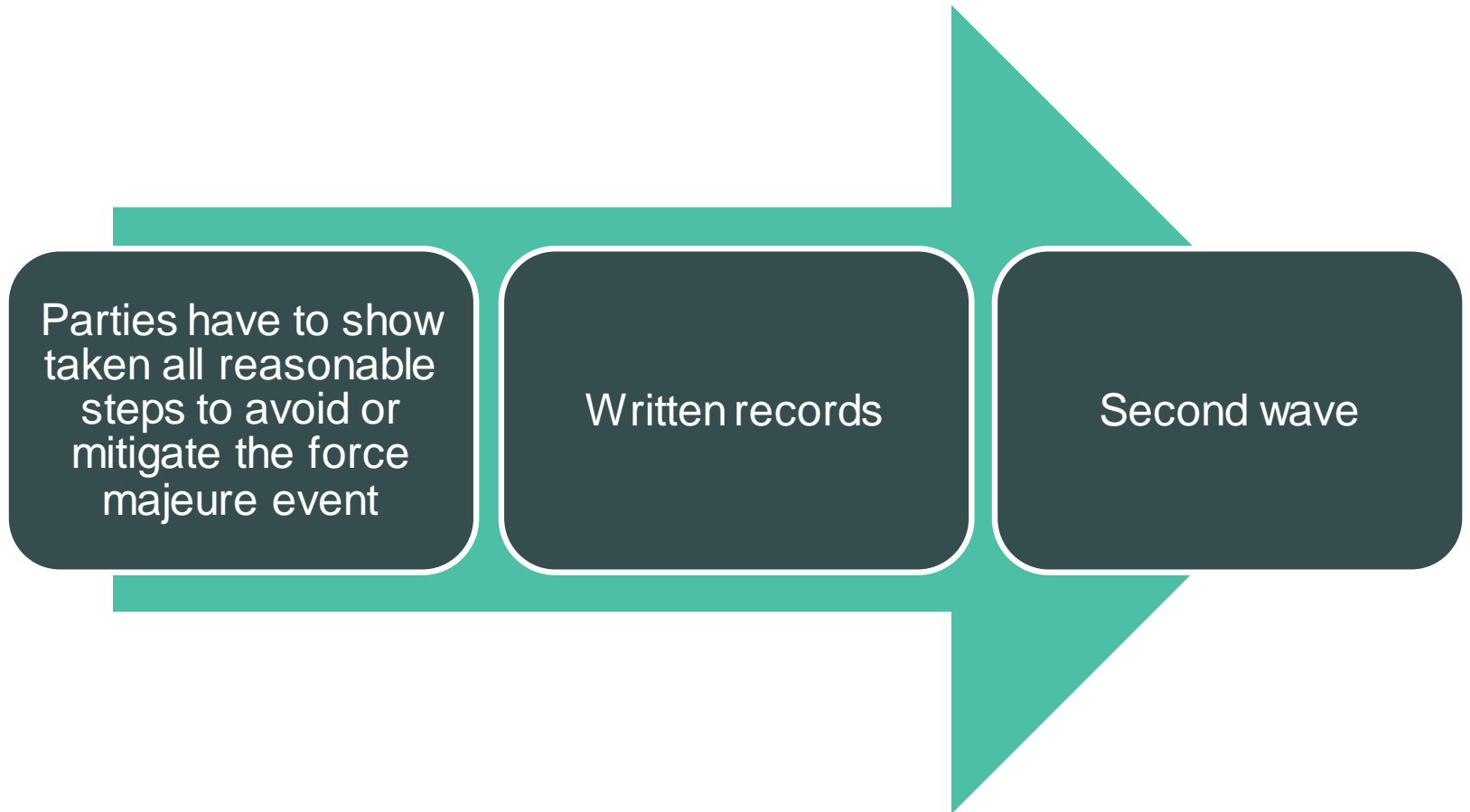
Causation



Event must be
sole cause of
inability to perform

Event that
prevents rather
than hinders

Mitigation



Frustration

A contract is discharge by operation of law, irrespective of what the parties want, where

- After the contract is made
- Unforeseen events occur which make performance
 - illegal
 - impossible or radically different from what was contemplated

Illegality unlikely to apply in context of Covid

Impossibility or radical change will be the focus

Canary Wharf v European Medicines Agency [2019]

Detailed analysis of the contract will be undertaken before frustration will be found by the court

Waiver

Existing legal relationship

A clear representation (written or oral) a party would not rely on its strict legal rights

The other party acted to its detriment relying on the representation

Inequitable to permit enforcement of the legal right

No waiver clauses: not a complete answer

- “This requirement cannot be defined with anything approaching precision...” [Chitty on Contracts]



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