Tips For Cos. Confronting Pandemic Impact On Global Trade

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The coronavirus pandemic has affected international trade in a number of ways, from supply chain disruptions, calls to reduce tariffs on U.S. imports, pressure to relax economic sanctions to stem the spread of the virus and increased scrutiny of foreign investments.

To best position themselves during this time, companies need to focus on adapting supply chain vulnerabilities, examining and leveraging tariff modifications, scrutinizing export controls and sanctions, and maintaining awareness of the jurisdiction of the Committee on Foreign Investments in the United States.

Address supply chain vulnerabilities.

Between labor shortages, border restrictions and government bans on exports in efforts to secure domestic supplies, the coronavirus is reshaping global trade, with important implications for companies, including on their supply chain.

Companies should creatively consider alternative production and assembly sites, as well as suppliers (reviewing and renegotiating supplier contracts, if necessary) to be sufficiently agile to adapt to these tumultuous times.

Assess applicability of tariffs.

In the context of tariffs, the U.S. Trade Representative has excluded critical items relating to the pandemic from the China Section 301 tariffs. While excluding tariffs necessary to fight the pandemic provides some benefits, the USTR could consider removing duties on items that would help buoy the economy and help the American people, such as products to maintain their homes, farms, animals and pets.

A group of U.S. senators recently urged President Donald Trump to use his authority over trade policy, including tariffs and sanctions to reduce some of the economic stress on the U.S. caused by the virus. The request specifically pointed to Section 301 tariff relief on health, safety, and medical devices and products, and the temporary deferral of duty collection.

The senators also petitioned for broader exclusions to ensure that industries affected by the pandemic can seek and obtain exclusions, even if previously denied, concluding with a request that the president consider a moratorium on new tariffs and tariff increases.

U.S. Customs and Border Protection recently rescinded a notice that it would provide temporary delays on for customs duties on a case by case basis. Subsequently, however, the government began considering suspending the collection of import tariffs for three months.

The removal, exclusion, exemption or deferral of import duties could significantly affect U.S. companies’ revenues. For some companies, this will keep them afloat, avoiding layoffs and closings. For other companies, the cash flow will boost profit and improve quarterly earnings reports which will in turn help Wall Street when earnings are released. These earnings in the retail sector could limit the downward spiral in the market.

The duties are significant and are paid directly by U.S. importers and U.S. consumers. The positive news will echo through the supply chain, particularly where the importer has no U.S. alternative supply.

Consider sanctions and export controls.

The pandemic is also affecting the export landscape, and companies should be aware of developments affecting trade sanctions, particularly if they are considering alternative supply chain options. As the virus spreads, the U.S. and other countries have been asked to relax economic sanctions to allow for the provision of medical and humanitarian support to sanctioned countries, including Iran and North Korea.

For now, however, sanctions against Iran and North Korea severely restrict U.S. companies' activities involving those and other embargoed countries. Companies need to monitor any changes in the U.S. sanctions regime and be mindful of the restrictions so as to avoid potential severe financial and criminal penalties for any violations.

Importantly though, not all transactions and services involving sanctioned countries are prohibited. For instance, the U.S. Department of the Treasury's Office of Foreign Assets Control has issued a general license that authorizes the export to Iran of certain medicines and medical devices. OFAC has also issued a general license authorizing emergency medical services to North Korea.

Specific licenses may be available upon approval from OFAC. Each license, however, includes restrictions on the items authorized, so each situation needs to be considered carefully.

Moreover, although there have been calls to relax sanctions for humanitarian purposes to support these countries' efforts to slow the spread of the virus and treat infected people, OFAC has not taken any actions to relax existing export restrictions or licenses. Indeed there appears to be consideration for extending export controls on biotechnology items.

Keep CFIUS jurisdiction in mind.

Some companies may be in a position to make valuable investments during the market shifts caused by the pandemic. While doing so, it is important to maintain awareness of potential CFIUS jurisdiction.

Recent regulations, in effect since February, expand CFIUS jurisdiction beyond its previous remit to oversee transactions that led to foreign control of a U.S. company.

CFIUS' broader jurisdiction now includes direct or indirect noncontrolling investments in U.S. companies producing or developing critical technology, owning or operating critical infrastructure, or maintaining or collecting sensitive personal data of U.S. citizens. CFIUS assessments of transactions during the pandemic could focus on health care technology, biotechnology, or data related to those fields.

The rapidly shifting trade regime requires that companies relying on international supply chains and depending on imports or exports of products and services, or seeking to make new acquisitions or investments, keep abreast of the latest developments and work closely with trade counsel to lessen the impact of the coronavirus pandemic on these activities, while ensuring compliance with all applicable trade laws and regulations.

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