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INSIDE THIS PUBLICATION:

Navigating Your Way Through Global Trade Uncertainties

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Inside this e-Book

Global business in Trump's protectionist era

Trump's election, Brexit, and failed trade agreements herald a new era of protectionism, but only strong regulations can deal with data protection and tax evasion, writes **Nick Henderson**.

More than one U.S. presidential election has been won or lost on the issue of global trade. In 1888, Republican candidate Benjamin Harrison ran on a protectionist platform against President Grover Cleveland. The GOP won on a promise of high tariffs designed to protect American industry and guarantee high wages and economic growth. Right up until the 1930s, the Republicans campaigned against the threat of free trade to American jobs.

Donald Trump might represent a departure from more modern Republican orthodoxy on international trade, but he also signals a return to the older protectionist streak that ran through the party of Abraham Lincoln for a century. Today, protectionism is back.

The world seems to be contracting from its embrace of free trade. The election of Donald Trump effectively killed the Trans-Pacific Partnership, an agreement five years in the making between 12 Pacific Rim nations that would have better enabled the free flow of data across borders and "eliminated tens of thousands of foreign tariffs added onto American-made products" according to FedEx President Michael L. Ducker.

Recently, the Comprehensive Economic and Trade Agreement between the European Union and Canada was nearly scuppered by Wallonian farmers who wanted to protect their local industry. The Transatlantic Trade and Investment Partnership was declared dead in the water just hours after the election. NAFTA now looks set to be renegotiated, and Brexit was one of the biggest rejections of free trade in history.

While this retreat may be cyclical, our modern era of global free trade deals has reached its nadir. It may be decades before we see the likes of TPP or TTIP attempted again. Nevertheless, globalization is as much a natural phenomenon now as the weather. Supply chains are international. Manufactured goods and consumer services operate far beyond borders, as does data, the lifeblood of the digital economy.

Despite the protectionist tendencies taking hold in world capitals, global regulation is increasingly knitting financial centers together. Free trade agreements aren't just nice to have, they're the celestial navigation systems that let the global economy function.

Data in particular is a hugely valuable commodity in the global economy, and one of the hardest things to regulate. Digital information doesn't sit stacked in a warehouse, it flows around the world turning the cogs of servers and start-ups. So, to properly protect it, everyone needs to play by the same set of rules.

The European Union seems ready to make sure that it sets the rules to play by when it comes to data. Earlier this year, the European Union agreed on a massive shake-up of data protection regulations that will become legally binding on every member state (including the United Kingdom) in 2018. Known as GDPR, it obliges companies to offer much stricter data protection policies, seek more consent from customers before they can be marketed to, enable people to request access to data held on them, and generally ensure companies protect their user data from interference from non-European Union entities.

Further, GDPR will apply to any firm in the world that does business in the European Union. Companies based outside the European Union must also appoint a local representative inside the bloc, and anyone who breaches GDPR will be liable to a fine of up to €20M (U.S.$21.12M), or 4 percent of annual global turnover, whichever is greater, and wherever they are based.

Today's world is becoming ever more globalized and nationalized. For business, questions about managing supply chains, how to protect and regulate data, and who gets to do it, will dominate the compliance agenda for years to come.

It's not just data transfers that are in the spotlight. In the United Kingdom, a new Criminal Finances Bill which seeks to crack down on international tax evasion schemes, will criminalize firms that facilitate offshore tax havens, no matter where they are located. In an era where profits are counted in more than one currency, moving money around the world in an effort to save on tax bills just got far riskier.

The European Union has taken on the tech giants who have been shifting money in and out of tax havens, landing Apple, Amazon, and Starbucks with multibillion-dollar euro tax bills and forcing them to change their practices. Google's CEO said recently that multinationals are crying out for a simpler tax system that takes account of the fact they operate in hundreds of countries.

Even massive NSA surveillance exposed by Edward Snowden got slapped down by European authorities. In 2015 the European Union Court of Justice threatened the $250 billion transatlantic trade in digital services, saying EU citizens' data did not have enough protection from U.S. government surveillance. Authorities scrambled to replace the long-established 'safe harbor' scheme with a stronger and more robust privacy shield to better protect personal information.

Perhaps in a perfect world, the pace of international regulations would keep up with global trade. Companies could rely on a single set of regulations that encompassed their entire supply chain. Today, however, the tariff is making a comeback, and businesses of every shape and size will have to prepare for complex compliance regimes in this new protectionist era. ■

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Free trade agreements create headaches

Free trade agreements potentially offer significant cost savings to companies, but managed ineffectively they also pose huge compliance risk. **Jaclyn Jaeger** reports.

The overall concept is simple enough: Free Trade Agreements (FTAs) open up market access between signatory countries by reducing barriers to trade. The reduction of trade barriers—such as custom duties—effectively makes it easier and more cost effective for U.S. companies to export their products and services to trading partner markets.

"The benefit to taking advantage of a free trade agreement is not only market access, but if your products qualify for reduced-duty or duty-free treatment, that will translate into lower landed costs for the company's imports into those countries," explains Richard Mojica, who focuses on international trade and customs compliance counseling at law firm Miller & Chevalier. "With this benefit comes the compliance challenges."

For many trade compliance professionals, the most complex challenge posed by FTAs is understanding and navigating the various "rules of origin," which are highly complex and technical rules that describe how exported goods shipped to a country, or a region, may qualify for duty-free or reduced-duty benefits under the applicable trade agreement.

Take the so-called "yarn forward" rule of origin as just one example. As a key component of the controversial Trans-Pacific Partnership (TPP)—a U.S.-led trade agreement involving twelve countries that's currently under negotiation—the "yarn forward" rule would require that only fabric produced from yarn made by a TPP country would qualify for the trade agreement's duty-free status.

Now consider that each FTA can include hundreds upon hundreds of similar and restrictive rules of origin. With over 400 trade agreements currently in force, FTA compliance becomes an arduous task, to say the least, for any company that manufactures potentially thousands of goods across multiple markets.

To qualify for preferential treatment under a free trade agreement, a product must satisfy a certain rule of origin. Those rules of origin are FTA-and product-specific and generally require a careful analysis of the component makeup, country of origin, and tariff classification of each component that goes into the product at issue. "If that sounds complicated, that's because it is," Mojica says. "Learning how to navigate rules of origin is the key to benefitting from free trade agreements."

Many trade executives agree that conducting a risk-reward analysis is imperative to deciding whether to claim trade preference at all. That analysis could take into consideration resources, reliability of data, risk, application of one preference over another, and consideration of alternatives, Michael Heldebrand, a member of the global trade practice at EY, said during a recent webinar on global trade management. "The bottom line is that preference trade approach should be clearly and intentionally set," he said.

Once companies have made that decision, managing the compliance hurdles that come along with FTAs becomes the next step. "Companies are actively managing preferences by assigning resources (both internal and external), leveraging centers of excellence or shared service centers, analyzing gaps in missing or potentially incorrect information or documents, evaluating what additional opportunities could be reached, and communicating with corporate stakeholders," according to EY's 2016 Global Trade Symposium report.

Leveraging synergies among people and information was a key finding in EY's report. Thirty-eight percent said they assign dedicated internal resources to undertake preferential agreement work, and 33 percent said they use third parties to assist in the processes. Outsourced activities included "doing the operations work," "soliciting suppliers," "getting [vendor] certificates," and "qualification analyses," according to EY's report.

Most all trade professionals reported having at least one full-time equivalent (FTE) assigned to global strategy and planning, including preference agreement activities. The type of strategic analyses undertaken by these personnel often include:

» Analyzing opportunities against corporate footprint—such as looking at the company's long-term strategy and where it wants to be
» Being actively involved in lobbying around FTA negotiations to ensure their interests are being considered by trade negotiators
» Working with cross-functional corporate teams on target markets to inform the business of FTA qualification requirements as part of the manufacturing/vendor/supply chain strategy for new production locations

According to the EY report, the overall consensus of executives was that these strategic activities are having a big impact on the financial results of their companies, and they expect the emphasis on this area to grow.

Under some FTAs, companies must certify with a Certificate of Origin completed by the exporter that products are eligible for preferential treatment under the rules of origin. The burden of proving the Certificate of Origin historically has been on the exporter, but the importer is required to exercise reasonable care that the certificate is valid.

Therein lurks another common compliance pitfall: vendor relationships and education. "A lot of companies don't really understand how these free trade agreements work, so often times they will sign a certificate saying their goods qualify for a free trade agreement when they really don't," says Adrienne Braumiller, founder of the Braumiller Law Group, an international trade law practice.

Under the NAFTA Certificate of Origin, for example, exporters cannot certify that a product qualifies for preferential treatment just because they purchased it from a warehouse in North America. Only if all of a product's component parts were made in NAFTA territory—the United States, Mexico, and Canada—the product can be certified. Rather, to qualify as NAFTA-eligible, the product must satisfy the applicable NAFTA rule of origin, which generally requires a tariff classification analysis, a regional value-content analysis, or both. If the product qualifies for preferential treatment under NAFTA, exporters must prepare certificates of origin. "If a company does not prepare and retain certificates of origin as required by a particular free trade agreement, it could be subject fines and penalties from customs administrations around the world," Mojica says.

According to EY's 2016 Global Trade Symposium report, many trade executives said they do not take at face value a determination made by their suppliers. Many trade executives also said they take a deeper dive into goods that suppliers originally indicated as not qualifying under particular FTAs.

For importers that rely on exporters to prepare the data needed to claim a certain trade benefit, "the best thing you can do is give yourself the ability to audit their records and do your own evaluation," Braumiller says. "You can also ask them to indemnify you in case the goods are determined not to qualify, so there are contractual things you can do to protect yourself."

Beyond vendor dependency, many trade executives use "centers of excellence"—cross-functional engagement of key stakeholders—to improve classification and reduce duplicate efforts, including requests to vendors. "A need for advanced planning and coordination with other departments is essential," Heldebrand said. Whereas trade or compliance executives traditionally relied on procurement or sourcing to provide information, there is now a push to be involved in some of those initial discussions with procurement and sourcing, he said.

Many trade executives also agree that classification skills for their companies' products require special technical skills—such as chemical engineers, mechanical engineers, or software engineers—in addition to customs and trade skills.

Having written trade compliance procedures in place can also be helpful, Braumiller says. Those procedures may describe when the company should solicit information from its suppliers, how it's done, where records are kept, and how supplier information is reviewed to ensure it is complete and accurate, she says.

For many firms, automation is increasingly replacing time-consuming manual efforts concerning trade management exercises. Companies like Amber Road offer import, export, and duty management solutions, which enable customs teams to centralize their product classification process and streamline their supplier solicitation efforts.

Amber Road's global product classification features, for example, help to properly classify products based on the relevant country of import and country of export while also documenting all decision criteria to support future audits, and the configurability of the system allows the customs department to determine the level of user access. To automate trade management for all the countries you're doing business in with one piece of software is really valuable, notes Ty Bordner, VP of solutions consulting at Amber Road.

The message overall is that trade professionals have a very valuable and strategic role to play to enable corporate growth. "Failure to appreciate that dynamic, on the other hand, can really inhibit growth," said Kristine Price Dozier, a member of EY's customs and international trade practice. "The tasks are challenging, but the contribution overall is very significant." ■

Some NAFTA Certificate of Origin FAQs

What is the NAFTA Certificate of Origin?

The NAFTA Certificate of Origin is used by the United States, Canada, and Mexico to determine if imported goods are eligible to receive reduced or eliminated duty as specified by the NAFTA. For purposes of obtaining preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the declaration is made. This document may also be completed voluntarily by the producer for use by the exporter.

Do I need to complete the NAFTA Certificate of Origin to export my product to one of the other NAFTA countries?

The NAFTA Certificate of Origin is not required for shipments to another NAFTA country unless the product qualifies for preferential tariff treatment under the NAFTA rules of origin. A certificate is not needed if the shipment does not qualify for preferential tariff treatment.

How do I determine where my good is classified?

Products are classified using national tariff schedules of the country into which they are imported. All NAFTA countries are members of the World Customs Organization (WCO) and utilize the Harmonized Commodity Description and Coding System. The system is used by more than 200 countries and economies as a basis for their Customs tariffs and for the collection of international trade statistics. The Harmonized System comprises about 5,000 commodity groups. Goods are classified under a six-digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification.

The first two digits are the chapter, the first four comprise the heading, and the first six digits comprise the subheading. For example, a grand piano is classified in subheading 9201.20 of the Harmonized System. Chapter 92 is used for Musical Instruments; heading 92.01 for pianos, and subheading 9201.20 is for grand pianos. Individual countries may establish additional classifications beyond the six-digit level. At the eight-digit level these are called tariff items.

Source: Office of the U.S. Trade Representative

White house imposes tariffs on washing machines, solar panels

In January, President Trump declared new tariffs on imported solar panels and washing machines. Critics fear the move is an opening salvo to a trade war with China. **Joe Mont** has more.

The snarky headline used in January by the Website "Now This News" exclaimed: "Trump declares war on Sun." In reality, the President targeted only a slightly less formidable foe: China.

Specifically, despite often repeated fears of a trade war, Trump executed on his "America First" doctrine by declaring new tariffs on imported solar panels and washing machines. Critics fear the move foreshadows a trade war with China and an end to multinational trade agreements.

In January, U.S. Trade Representative Robert Lighthizer announced that the President had approved recommendations "to impose safeguard tariffs on imported large residential washing machines and imported solar cells and modules".

The USTR made the recommendations based on consultations with the interagency Trade Policy Committee in response to findings by the independent, bipartisan U.S. International Trade Commission that increased foreign imports of washers and solar cells and modules "are a substantial cause of serious injury to domestic manufacturers."

In 2011, Whirlpool, a domestic manufacturer, filed a petition with the U.S. Department of Commerce (Commerce), contending that washer imports from Korea and Mexico were dumped and subsidized as part of an aggressive downward pricing strategy by the large Korean firms, LG, and Samsung.

In 2015, Whirlpool also sought relief under trade remedy laws after washer imports from China sharply increased.

"The ITC found that U.S. producers had been seriously injured by imports and made several recommendations to the President," Lighthizer said. "The President's action makes clear again that the Trump Administration will always defend American workers, farmers, ranchers, and businesses in this regard."

For imports of large residential washers, the President approved applying a safeguard tariff-rate quota for three years with the following terms:

The first 1.2 million units of imported finished washers will be assessed a year-by-year tariff that decreases from 30 to 16 percent over three years. All subsequent imports will face an assessment of between 40-50 percent.

The White House said, "injury to U.S. washing machine manufacturers stems from a sharp increase in imports that began in 2012." The ITC found that imports of large residential washers increased "steadily" from 2012 to 2016, and that domestic producers' financial performance "declined precipitously."

Also facing nee tariffs are imports of solar cells and modules. It includes a tariff of 30 percent in the first year, 25 percent in the second year, 20 percent in the third year, and 15 percent in the fourth year. Additionally, the first 2.5 gigawatts of imported solar cells will be exempt from the safeguard tariff in each of those four years.

"China dominates the global supply chain and, by its own admission, is looking to increase its capacity to account for 70 percent of total planned global capacity expansions announced in the first half of 2017," the White House says. Among the Administration's talking points:

- From 2012 to 2016, the volume of solar generation capacity installed annually in the U.S. more than tripled, spurred on by artificially low-priced solar cells and modules from China.
- China's industrial planning has included a focus on increasing Chinese capacity and production of solar cells and modules, using state incentives, subsidies, and tariffs to dominate the global supply chain.
- China issued the Renewable Energy Law in 2005 to promote renewable energy including solar, followed by capacity targets in 2007. The State Council listed renewable energy as one of seven strategic emerging industries eligible for special incentives and loans in 2010.
- China has provided subsidies and financing to its solar companies; has encouraged the development of geographic industrial clusters and components of the supply chain; and has conditioned support on increasing efficiency, R&D expenditures, and manufacturing scale.

Following state-directed initiatives, China's share of global solar cell production skyrocketed from 7 percent in 2005 to 61 percent in 2012. China now dominates global supply chain capacity, accounting for nearly 70 percent of total planned global capacity expansions announced in the first half of 2017. It produces 60 percent of the world's solar cells and 71 percent of solar modules.

U.S. manufacturers have sought relief against unfair trade practices. By 2017, the U.S. solar industry "had almost disappeared," with 25 companies closing since 2012, the White House says. Only two producers of both solar cells and modules, and eight firms that produced modules using imported cells, remained viable. In 2017, one of the two remaining U.S. producers of solar cells and modules declared bankruptcy and ceased production.

In response, U.S. business groups are banding together to protest impositions on global free trade. The U.S Chamber of Commerce, National Association of Manufacturers, and U.S. Farm Bureau launched a new trade group, Trade for America, on Jan. 25.

The Solar Energy Industries Association, the national trade association of the U.S. solar energy industry, was also critical of the decision.

The decision effectively will cause the loss of roughly 23,000 American jobs this year, it says, and it will result in the delay or cancellation of billions of dollars in solar investments.

"While tariffs in this case will not create adequate cell or module manufacturing to meet U.S. demand, or keep foreign-owned Suniva and SolarWorld afloat, they will create a crisis in a part of our economy that has been thriving, which will ultimately cost tens of thousands of hard-working, blue-collar Americans their jobs," says Abigail Ross Hopper, SEIA's President and CEO.

"It boggles my mind that this president would voluntarily choose to damage one of the fastest-growing segments of our economy," says Tony Clifford, chief development officer, Standard Solar. "This decision is misguided and denies the reality that bankrupt foreign companies will be the beneficiaries of an American taxpayer bailout."

SEIA estimates that the new tariffs "will eliminate, not add to, American manufacturing jobs." There were 38,000 jobs in solar manufacturing in the United States at the end of 2016, and all but 2,000 made something other than cells and panels.

"There's no doubt this decision will hurt U.S. manufacturing, not help it," says Bill Vietas, president of RBI Solar in Cincinnati. "The U.S. solar manufacturing sector has been growing as our industry has surged over the past five years. Government tariffs will increase the cost of solar and depress demand, which will reduce the orders we're getting and cost manufacturing workers their jobs."

"This is a bad day for the U.S.," added Costa Nicolaou, president and CEO of PanelClaw. "What's most disappointing is that the president sided with two foreign-owned companies and didn't listen to Americans from across the country and political spectrum who understood tariffs will cause great economic pain for so many families in the solar sector." ■

What U.S. companies say about U.S. trade policy

The Trump administration's swift changes in trade policy are likely to complicate global trade management compliance for many businesses, writes **Jaclyn Jaeger**.

Teetering on the brink of collapse, U.S. trade policy as companies know it today may soon trigger a seismic shift in the way global trade management compliance is conducted, while U.S. companies that rely heavily on imports could feel some strong aftershocks.

These predictions follow strong showings that trade policy features prominently on the agenda of President Donald Trump. And U.S. companies of every size and sector—importers and exporters alike—are speaking out on all sides of the debate.

Kicking off his first week in office, President Trump on Jan. 23 signed an executive order withdrawing the United States from the controversial Trans-Pacific Partnership (TPP). Instead, the administration said it intends to deal directly with individual countries on a bilateral basis in negotiating future trade deals, which could make more complex the already intricate, global web of trade compliance.

In February 2016, twelve Pacific Rim countries, representing roughly 40 percent of the global economy, became TPP signatories, including the United States and Japan. The intent of the TPP was to strengthen economic ties between these countries, slash tariffs, and promote trade to boost economic development.

Many industries were also anticipating significant cost savings as a result of the TPP. The agricultural industry, for example, could have seen the reduction or elimination of certain excessive taxes, while both the automotive and footwear-retail industries could have seen the end of certain exorbitant export tariffs, most especially pertaining to Vietnam, a TPP partner-country.

Footwear Distributors and Retailers of America (FDRA) estimated that duty reductions could have generated more than $450 million in savings for the footwear industry just in the first year of TPP implementation alone, cost savings that FDRA said would have helped foster both U.S. job creation and innovation. Retail giant Nike, for example, previously stated that, "footwear tariff relief would allow Nike to accelerate development of new advanced manufacturing methods and a domestic supply chain to support U.S.-based manufacturing."

For companies with global supply chains, such cost benefits have now been wiped clean. "Those are the costs that companies will feel immediately, that their bottom lines will not realize," says Marianne Rowden, president and CEO of the American Association of Exporters and Importers (AAEI), a trade group representing U.S. companies engaged in global trade.

And that's just the start.

Matt Priest, CEO of the FDRA, says, "If there is one word I can use to capture the concerns in the industry, it's 'uncertainty.' " Companies across every industry rely on a level of certainty to assess how a policy, including trade policy, could affect their business decisions. "Planning can't happen with uncertainty," he says.

NAFTA in limbo. In addition to the TPP, the North America Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico is also in limbo. During a White House meeting on Feb. 2, President Trump reiterated that he has "very serious concerns" about NAFTA, which he called "a catastrophe for our country." Referring to the possibility of a renegotiated deal, President Trump stated, "I don't care if it's a renovation of NAFTA, or a brand-new NAFTA."

In the first meeting on Feb. 13 with Canada's Prime Minister Justin Trudeau, President Trump said he is looking at "tweaking" portions of NAFTA concerning trade between the United States and Canada. In a press conference following that meeting, President Trump said that U.S.-Canada trade is "much less severe situation" than with Mexico.

Beyond those vague details, uncertainty about NAFTA's future has certain industries feeling particularly uneasy. More than 130 food and agricultural organizations, for example, in a joint letter to the President highlighted the importance of NAFTA to the industry.

Under NAFTA, U.S. food and agricultural exports to Mexico and Canada have more than quadrupled, from $8.9 billion in 1993 to $38.6 billion in 2015. "With a few key sector exceptions that still require attention, North America intraregional food and agricultural trade is now free of tariff and quota restrictions, helping U.S. farmers, ranchers, and food processors expand exports," the letter stated.

The automotive industry also has a highly integrated cross-border supply chain. "This arguably makes it the most trade-sensitive sector with regard to shifting policies during 2017," according to data from global trade research firm Panjiva.

Border adjustable tax. The TPP and NAFTA aren't the only trade agreements causing turmoil across industries. Also in the works is a proposed "border adjustable tax" that would slash corporate income tax from 35 percent to 20 percent. The House Republican blueprint also proposes to exclude export revenue from taxable income and impose a 20 percent tax on imports.

"The problem with the border-adjustable tax is that it will split the trade community between importers and exporters, and we haven't seen that in a long time," Rowden of the AAEI says.

Industries that rely heavily on imports argue that a border tax would outweigh the benefits of a reduced corporate income tax. In response, the Retail Industry Leaders Association (RILA)—a coalition of more than 120 companies and trade organizations—is leading an effort to push against a border-adjustable tax.

On Feb. 15, RILA and member-company CEOs met with President Trump to discuss their concerns. Among those at the meeting were JoAnn Stores CEO Jill Soltau; The Gap CEO Art Peck; Best Buy CEO Hubert Joly; AutoZone CEO William Rhodes; Target CEO Brian Cornell; Walgreens Boots Alliance CEO Stefano Pessina; Tractor Supply Co. CEO Greg Sandfort; and J.C. Penney CEO Marvin Ellison.

Industries that rely heavily on exports and those that are wholly U.S. domestic companies, however, are rallying in favor of the import tax. Earlier this month, a coalition of over 25 U.S. companies launched the American Made Coalition in support of pro-growth tax reform. Members of the coalition include Boeing, General Electric, Pfizer, and more.

Eliminating the "Made in America tax," which the coalition referred to as "an unfair tax hitting goods produced domestically while favoring foreign-made goods," will "create a more favorable business environment for American manufacturing and level the playing field so American workers can compete with foreign competitors," the coalition stated.

Even if President Trump doesn't ultimately approve that particular legislation, the Trump Administration has mentioned the possibility of slapping a 35 percent tariff on imports from Mexico. Moreover, President Trump has not been shy about using Twitter to publicly shame U.S. companies—including Carrier, Ford, and General Motors—for planning to move production facilities to Mexico. All three companies have since decided not to proceed with moving plants to Mexico.

"Most companies are trying to avoid being the subject of a presidential tweet," Rowden of the AAEI says. The industries that have the strongest incentive to maintain good relations with President Trump are those that supply goods and services to the government, she says. United Technologies, the parent company of Carrier, for example, will receive a portion of its revenue this year from through U.S. military contracts at its Pratt & Whitney and UTC Aerospace Systems units.

Keep calm and trade on. No matter what direction trade policy takes, companies must continue with their day-to-day business strategies of deciding where and with whom to work for sourcing their products. "When it comes to interacting with your partners overseas and continuing to foster those relations, you still have to stay the course," Priest of the FDRA says.

If it makes sense to partner with a supplier in Mexico, do it. If it makes sense to diversify your sourcing out of China and put more in Vietnam or Indonesia, do it. Keep in mind, however, that you may have to adjust your strategy if some of these trade policy deals come to fruition, Priest says.

Priest also encourages companies—as many have already been doing—to be a part of the process by sending letters to Capitol Hill and engaging with industry trade associations. "Companies should be vigilant about gathering intelligence and staying up to speed on what's happening," he says.

Due to the complexity of global trade policy today and the unpredictable pace at which U.S. trade policy is evolving, companies may want to consider implementing a global trade management (GTM) software solution to stay up-to-speed on the latest developments.

GTM software provider Amber Road, for example, provides companies with streamlined access to the latest import and export compliance rules, custom duties and taxes, and other trade barriers, explains Ty Bordner, vice president of solutions consulting at Amber Road. Rather than release new versions of software, the data itself is continuously updated in near real-time, Bordner says. Amber Road also helps companies properly classify products based on the relevant country of import and country of export, while also documenting all decision criteria to support future audits.

Since it appears likely the Trump Administration will favor more bilateral trade deals over multilateral trade deals in 2017, trade compliance professionals will have an increasingly challenging road ahead of them.

The most arduous task will be understanding and navigating the various "rules of origin," which are highly complex, and technical rules that describe how exported goods shipped to a country, or a region, may qualify for duty-free or reduced-duty benefits under the applicable trade agreement. Thus, the more bilateral agreements that are in place, the costlier and more complicated it will be for any company that manufactures potentially thousands of goods across multiple markets.

The key message is that companies—importers and exporters alike—cannot afford to ignore the dramatic shifts occurring within the U.S. trade policy landscape. Now is an opportune time to reassess how these changes may affect your global supply chain. ■

CEOs' words to Congress

The plan championed by House Speaker Paul Ryan (R.-Wis.) and Ways & Means Committee Chairman Kevin Brady (R.-Texas) would dramatically lower rates for businesses of all sizes, allow immediate expensing of all capital expenditures, and incorporate a more competitive "territorial" approach to taxing businesses. These changes will free up much-needed capital for companies to invest here in the U.S., help stop corporate inversions and acquisitions of U.S. companies, and protect American jobs from unfair foreign competition.

A critical element of the House blueprint is the provision that ensures goods and services produced abroad face the same tax burden as those produced in the United States. This reform is consistent with the tax policies of nearly every other country in the world, and it would effectively end the "Made in America" tax that creates an unfair advantage for foreign-based companies at the expense of U.S. jobs and economic growth.

Source: American Made Coalition

Addressing the uncertainties of cross-border trade with a digital GTM platform

By **Gary Barraco**, Director, Global Product Marketing, Amber Road

"2017 brought a new presidential administration and an almost immediate end to the highly anticipated Trans-Pacific Partnership (TPP). The rest of the year consisted of many unfulfilled protectionist threats in the U.S. and abroad such as the initiation of NAFTA renegotiation. The World Economic Forum has pointed out that supply chains are the backbone of the global economy. As companies continue to send armies of lobbyists to protect their global supply chains, there is no chance that the threats to your company will disappear." -Beth Pride, President, BPE Global

We often hear about "supply chain" uncertainties adding a layer of risk to every organization. These risks are typically defined as natural disasters, weather issues, labor disputes, or supplier reliability concerns. However, companies doing business internationally also need to address "global trade" uncertainties—shifts in political and economic trade policies leading to changes in regulatory compliance standards. Almost all of the world's major economies have made dramatic changes to their trade policies, some supporting and others reducing trade barriers.

One thing is certain: These fluctuating government policies are disruptive to global supply chains and to the businesses and consumers depending on them. Regulatory modifications require companies to be keyed into new or altered trade sanctions, export license requirements, customs documentation, tax and duty codes, and stacks of legal mumbo-jumbo. How can organizations manage these ongoing challenges?

Step One: Digitize the Entire Supply Chain

The digital supply chain is hailed as one of the greatest improvements to standard supply chain processes in centuries and associated with the Fourth Industrial Revolution. Implementing a digital model of the global supply chain is the first step to addressing global trade uncertainty. "The digitization of the supply chain significantly improves risk mitigation for 60%" of the early adopters surveyed by Forbes magazine, "including geopolitical, third-party, weather-related, or plant and manufacturing risks."[1]

The future of the supply chain is here and it is global. In today's world, any company that has plans to grow and succeed must participate in the global arena and efficiently handle the accompanying uncertainty.

The digital model makes it possible to share, process, and analyze information. This digitization creates control and ownership over the global supply chain and reduces dependency on third-party providers, point solutions, and manual methods like paper documents, spreadsheets, and emails.

Unlike traditional methods of outsourcing and/or managing multiple disparate systems, digitizing global supply chain processes on a single platform provides the ability to better align operations with corporate and financial objectives. Digital supply chains provide for reduced costs, reduced risks, and enable agility. Best-in-class companies have challenged the customary thinking of the global supply chain as a cost center, instead viewing it as a strategic competitive advantage.

1 https://www.forbes.com/forbesinsights/cognizant_supply_chain/index.html

Step Two: Integrate Relevant and Current Trade Content

Companies engaged in global trade must manage a tremendous amount of information to establish and maintain compliance with regulations. This information—also referred to as trade content—ranges from the harmonized tariff schedules (HS) for the classification of goods, to the duty rates needed to calculate landed cost, to the controls that determine what is required for a transaction to be legally completed. In order to efficiently import or export goods, shippers need fast access to data for all the countries where they trade. Unfortunately, collecting, cleansing and publishing, trade content is a complicated task; which becomes even more challenging when considering the number of countries, number of government agencies, differences in trade regimes, and the ever-changing trade position for each country in the supply chain.

Many companies lack the personnel and expertise to monitor trade compliance and manage supply chains. Amber Road provides the industry's most comprehensive database of trade content including government regulations and international business rules. Called Global Knowledge®, it powers the Global Trade Management software suite by fully supporting import, export and logistics processes with the most current data available anywhere.

> *The value of Global Knowledge® is that it is the digital embodiment of the legalese that are the trade regulations. This allows it to be seamlessly integrated with Amber Road's GTM solutions.*

The value of Global Knowledge® is that it is the digital embodiment of the legalese that are the trade regulations. This allows it to be seamlessly integrated with Amber Road's GTM solutions. Most other competing solutions don't provide this kind of digital content, which leads to manual processes for each export and import transaction. With Global Knowledge®, companies can realize productivity gains from eliminating these time-consuming tasks.

Global Uncertainty Simplified

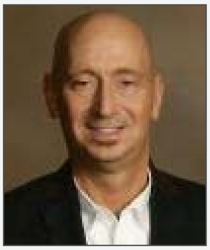
The future of the supply chain is here and it is global. In today's world, any company that has plans to grow and succeed must participate in the global arena and efficiently handle the accompanying uncertainty.

The world of global trade is fast-paced, ever-changing, and always evolving. In order to keep pace, your supply chain processes and technology need to evolve too.

The processes during sourcing, logistics, and import/export are unique to every organization, consisting of multiple layers of suppliers, vendors, and service providers; each adding additional complex steps to move products across borders.

By leveraging a digital GTM platform, your supply chain data and activities are centralized, and can be more easily adapted to regulation changes that are common in the current era. ■

GARY BARRACO, DIRECTOR, GLOBAL PRODUCT MARKETING



Gary is responsible for developing strategic product marketing direction and presenting the Amber Road brand and solutions worldwide. As the platform evangelist, Gary develops and launches customer insights, go-to-market plans, product messaging and content, and field marketing tactics which establish Amber Road's solutions as a standard in the Global Trade Management space.

Previously, Gary was VP, Industry Development for ecVision for 9 years. He also held marketing positions with tech companies where he was instrumental in implementing programs that yielded exponential growth and spearheaded alliance relationships with a range of third-party organizations. He has 20 years of active military service where his primary specialty was providing marketing support to Army National Guard recruiting and retention operations in New Jersey.

Gary received a BS from the State University of New York and is currently pursuing a Master's degree at Moravian College. He is active with many professional trade associations where he serves on various committees and planning groups. Please visit www.AmberRoad.com.

Data collection key to battling trade-based money laundering

It will take the combined efforts of various U.S. agencies and port authorities (and their counterparts in other countries) to compile and centralize the data they need to take the battle to the bad guys. **Joe Mont** has more.

When you consider the problem of money laundering, you may not think much about licorice. But in the world of trade-based money laundering that candy-worthy flavoring has been at the center of nearly $100 million in financial fraud over the years.

It isn't that licorice itself is a cornerstone of financing terrorism, but that nearly any product can be problematic. Other imports and exports that may be funding terror range from the expected (gold, jewelry) and the less considered (Freon, chicken, watermelons, and garlic).

The issue of trade-based money laundering, and how imports and exports can shield illicit financial transactions, was the subject of a hearing held on Feb. 3 by the House Financial Services Committee.

An anecdote shared at the hearing by John Cassara, a former U.S. Intelligence Officer and special agent for the Treasury Department, illustrated the problem.

"Not long after the September 11 attacks, I had a conversation with a Pakistani entrepreneur," he said. "This businessman could charitably be described as being involved in international grey markets and illicit finance. We discussed trade-based money laundering, terror finance, value transfer, fictitious invoicing, and counter-valuation. At the end of the discussion, he looked at me and said, 'Mr. John, don't you know that your adversaries are transferring money and value right under your noses? But the West doesn't see it. Your enemies are laughing at you.' it is because the subterfuges are 'hiding in plain sight.'"

Trade-based money laundering is the process of disguising the proceeds of crime and moving value through the use of trade transactions that attempt to legitimize their illicit origins. Among the techniques: over-and-under invoicing of goods and services; multiple invoicing; falsely described goods and services; short shipping (shipping fewer goods than the invoiced quantity, misrepresenting the true value of the goods in the documentation); over-shipping; and phantom shipping (where no goods are actually shipped).

"There are no official estimates on the magnitude of TBML as a whole," Cassara said, calling that data lapse "remarkable." He sees some optimism, as trade transparency could be viewed as a revenue enhancer.

"By systematically cracking down on various forms of customs fraud, hundreds of billions in dollars of lost revenue can be returned to cash-starved governments around the world," he said. "When I explain to the officials [around the world] how much revenue they can obtain by cracking down on customs fraud they become very interested. The carrot of empowering our partners to strive for trade transparency and increased revenue can be much more effective than the stick of heavy-handed measures that have proved unsuccessful."

Another suggestion is to leverage the Trans-Pacific Partnership, recently signed by the Obama Administration. Setting aside the pros and cons of the TPP, the volume of increased trade will provide additional opportunities for trade-based value transfer and money laundering, Cassara said. He suggests that, as a response, every TPP signatory country establish a Trade Transparency Unit (TTU) to share targeted trade data needed to spot anomalies that could be indicative of trade fraud or trade-based money laundering.

Strategically, "the misuse of trade is a law enforcement issue, not just a customs issue." With expanded TTUs, there could be more sharing of targeted trade data with local and federal law enforcement agencies.

Trade is not only a critical support system for numerous terror groups, but also the weakest link in the anti-money laundering infrastructure, frets Nikos Passas, professor of criminology and criminal justice at Northeastern University. "There has been no systematic review or consistent action with respect to trade, which constitutes the biggest security and crime vulnerability, a black hole undermining the entire control framework," he said. "Even if all current rules were ever to be fully and consistently enforced throughout the world, billions of dollars could still be moved illicitly without detection and sanction."

Passas' diagnosis for what ails these AML efforts is that relevant information collected by U.S. Customs, FinCEN, the Department of Commerce, port authorities, and their counterparts in other countries, is not compiled in one place for consolidated analysis at the national and international level. Other helpful data resides in banks, insurance companies, brokers, shippers, and logistics companies. "No one is getting the full picture because no one collects all of the information in one place," he says.

Also, "a good deal of compliance work has become an automated tick-the box exercise that yields millions of Suspicious Activity Reports and massive false positives," Passas said. "These in turn tend to waste the time of personnel that must deal with them, rather than centering on the highest risks, analytical work for typologies or new algorithms, the identification of offenders and closer collaboration with controllers."

Another problem: Financial institutions can only review data about their clients and have no way of accessing either government or other banks' clients and analysis, which leads to costly duplication of work and an incomplete view of the problem, Passas said.

What are other steps the government should consider? To start, ensuring that all government data is gathered and analyzed in one place that can liaise also with law enforcement agencies for swift action, Passas says. Also, bringing all available private-sector trade data and open source data together through a trusted third party, such as a university, that can develop a system to receive, securely store, and analyze them in a consolidated way.

Passas also advocates a hearty embrace of open-source data, which he says is underestimated and underutilized. "Reviewing and working only with classified and private data excludes information on the internet, in the press, public reports, and research literature from NGOs and academics," he said. "This is all particularly relevant to the analysis of illicit networks, identification of true beneficial ownership, adverse media news in local or foreign publications, terrorism finance, sanctions violations, corruption, illicit enrichment, and other issues of interest to those in charge of due diligence and investigative tasks."

Lou Bock, a former criminal investigator at the Drug Enforcement Agency and U.S Customs, also addressed the importance of Trade Transparency Units. "Unfortunately, today's TTU initiative has been largely ineffective in terms of revenue collection or in targeting major patterns of fraud or obtaining significant convictions," he said. "The TTU [model] has veered from its initial financial and customs focus, in part because of the culture of the agency in which it is administered, [the Department of Homeland Security]."

His recommendation is for the creation of a reinvigorated U.S. TTU with FinCEN oversight. "Giving FinCEN this focus immediately, and full access to the necessary trade data, is the obvious right step whatever the eventual status of the TTU initiative within the Department of Homeland Security," he said. "Let's return to our earlier vision, focus, and effectiveness, built on a rapidly increasing number of TTUs."

"There have been countries around the world that want to create TTUs," he added. "I still think that's feasible and the next frontier in international money laundering enforcement. We cannot continue the status quo. We are just treading water, and we need to get to the next level. It's certainly attainable. We just have to have the will to do it."

Efforts need to be empowered by a commitment to enforcement, Bock added. "The biggest problem I have seen with both U.S. Customs and DHS was that once you found something, you had difficulty bringing it to the people who are interested in making cases." For the authorities out in the field, "it was easier to pursue small quantities of dope or illegal aliens." That mindset, he said, must be changed. ■

Trade-based money laundering example

Toys-for-Drugs BMPE Scheme

In a Black Market Peso Exchange scheme involving a Los Angeles, Calif.-based toy wholesaler, Woody Toys, its owners received millions of dollars in cash payments generated from Colombian and Mexican narcotics trafficking.

The cash payments reportedly were placed directly into the company's bank account from multiple locations in small deposits that were consistently under $10,000 to avoid reporting requirement (i.e., structuring). The toy company used the cash deposits to purchase toys from China, which, in turn, were exported to Colombia.

Source: House Financial Services Committee

Post-Brexit, new U.K. sanctions laws needed

In the wake of Brexit, the United Kingdom is putting together its own sanctions regulations, but there is a lot of work yet to be done. **Paul Hodgson** explores.

In April last year, the U.K. parliament suddenly realised that—even with the Great Repeal Bill—if new sanctions were imposed on a country by the United Nations, parliament had no legislation to deal with introducing or complying with such sanctions. A White Paper was hurriedly put together, and in August, the Sanctions and Anti-Money Laundering Bill was introduced to the House of Commons.

On 18 October, the same bill was introduced to the House of Lords. Which is where it still is, having reached the second committee stage by mid-December. The report stage, a further chance to examine the bill and make changes, is scheduled to begin on 15 January this year.

But why doesn't Britain already have sanctions regulations? The United Kingdom currently uses European law to implement sanctions, regardless of whether they originated at the U.N. or the EU. The European Union currently imposes some 30 sanction regimes, of which about half come from the United Nations, for example, restrictions against people, institutions, and trade in Russia, North Korea, Syria, Iraq, Iran, and other countries. The new law will allow the United Kingdom, for the first time, to impose sanctions on another country by itself. Currently, the United Kingdom has limited powers to impose some financial sanctions unilaterally, such as through the Terrorist Asset Freezing etc. Act 2010 or the Anti-terrorism, Crime and Security Act 2001.

This new legislation is needed because, after Brexit, the Great Repeal Bill would only be able to maintain current sanctions. The Sanctions and AML bill aims to:

» create powers for the government to make regulations to impose sanctions
» allow financial, immigration, trade, aircraft and shipping sanctions to be imposed
» allow for regulations to create exceptions and licences to allow activities to take place that would otherwise be prohibited or restricted by sanctions
» have ministerial and judicial review processes to allow individuals and organisations to challenge sanctions imposed on them
» allow regulations to be made to update existing provisions on anti-money laundering and terrorist financing, particularly the Money Laundering Regulations 2017, to be updated after the UK's exit from the European Union

During the same period last year, the U.K. Office of Financial Sanctions Implementation (OFSI) was given new civil powers to implement fines and prosecutions. It reportedly opened 125 investigations between March 2016 and July 2017. The OFSI also revealed that there are 60 'live' investigations into organisations suspected of breaching the U.K. sanctions regime. The OFSI has come to be known as a new 'U.K.-OFAC' (referring to the U.S. Treasury's sanctions enforcement agency, the Office of Foreign Assets Control).

Organizations must now make the same kind of compliance efforts to manage the risk of OFSI enforcement, on top of existing European Union and OFAC enforcement, especially since many continue to have a financial presence in London. If a problem does arise, OFSI guidance indicates that early internal investigation and, where appropriate, voluntary disclosures to the relevant U.K. authorities may help reduce financial penalties and/or criminal enforcement.

In the midst of all this activity comes a new report from Lexis Nexis—Better Safe Than Sorry—about building an effective sanctions compliance programme. The report's gist is that, pushed by recent actions by the Office of Foreign Assets Control, enforcement agencies, which are growing in number, are moving beyond their traditional targets, financial institutions. For example, more than half of the 17 OFAC penalties levied in 2015, for example, involved non-banking organisations. The report notes that, according to the National Law Review, seven of the nine companies, did not have a compliance programme at the time of the sanctions violations.

Take the case of National Oilwell Varco cited in the report. From 2002 to 2005, senior-level finance executives at Varco approved at least four commission payments from its Dreco subsidiary to a U.K.-based entity related to the sale and export of goods from Dreco to Iran. From 2006 to 2008, two deals worth about $13 million involved actual sales to Iran. From 2007 to 2009, Dreco engaged in 45 transactions valued at about $1.7 million involving the sale of goods to Cuba. Finally, there was a single transaction with Sudan worth around $20,000 in either 2005 or 2006; OFAC was not able to establish the precise date.

The lack of a compliance programme was not an issue with Varco, however, which introduced its U.S. Export Controls & Economic Sanctions policy in 1997. The most recent revision date for this policy was 2009 which, given its prosecution in 2015, might seem a little lax. Barclays, another company prosecuted by OFAC in 2015, and in more potential trouble if it turns out that it is associated with the Zupta scandal in South Africa, does not put a date on its sanctions policy, but it feels more recent. And HSBC—already implicated in the Zupta affair—is working on a brand-new sanctions and AML policy for introduction this year.

What is the nature of the sanctions regime in the U.K.?

The most frequently applied measures are:

- arms embargoes
- bans on exporting equipment that might be used for internal repression
- export controls
- asset freezes and financial sanctions on designated individuals and corporate entities
- travel bans on named individuals
- bans on imports of raw materials or goods from the sanctions target

In general terms, it is a criminal offence to:

- deal with funds or economic resources belonging to, owned, held, or controlled by a Designated Person, if it is known, or if you have reasonable cause to suspect, that you are dealing with such funds or economic resources
- make funds available to, or for the benefit of, a Designated Person if it is known, or if you have reasonable cause to suspect, that you are making funds so available
- make economic funds available to, or for the benefit of, a Designated Person if it is known, or if you have reasonable cause to suspect, that you are making economic resources so available and, in the case of making economic resources available to a Designated Person, that the Designated Person would be likely to exchange the economic resources, or use them in exchange, for funds, goods, or services

Source: Eversheds Sanctions Guide

But sanctions are a fast-moving issue, says the report, citing new sanctions on Russian and North Korea from December, and fines can run into the billions of dollars, so without a robust, fast-moving compliance programme to address these issues, the costs for companies, not just financial but reputational, can be substantial. Lexis Nexis, however, found that more than half of companies it surveyed did not have a sanctions compliance programme in place.

The report puts together several useful checklists, including:

- know your customer & other third parties
- know your product or service
- know the receiving country
- know the end-use
- know the end-user
- know the transaction

But who are the regulators in the United Kingdom? They are, unfortunately, manifold, and it does not appear that the new Bill will shrink the number of agencies involved in overseeing the sanctions regime. The Foreign and Commonwealth Office, according to the law firm Eversheds, "has overall responsibility for the U.K.'s policy on sanctions and embargoes, including the scope and content of international sanctions regimes." HM Treasury is responsible for implementing and administering financial sanctions in the UK, work that is now carried out by OFSI. The Financial Conduct Authority is responsible for ensuring that regulated firms have adequate systems and controls to comply with requirements.

The Export Control Organisation within the BIS (the Department for Business, Innovation and Skills) "is responsible for trade sanctions, such as bans on weapon exports and for export licences." While the International Trade and Export Control Directorate of BIS and HM Revenue and Customs "advise and deal with trade policy, regimes and procedural issues governing imports to the United Kingdom."

With all of that enforcement in mind, there is a possibility of being issued exemptions under the regime. HM Treasury is responsible for granting exemptions to financial sanctions. The Export Control Organisation is in charge of issuing exemptions for exporting and trading in certain controlled goods. And finally, the Import Licensing Branch (also part of the BIS) is responsible for licensing exemptions for importing controlled products.

But, without a compliance programme in place, a firm would not even know it needed to apply for an exemption. ■

Barclays sanctions policy

The Barclays Group Sanctions Policy is designed to ensure that the Group complies with applicable sanctions laws in every jurisdiction in which it operates.

All Barclays Group companies are required to screen against United Nations, European Union, U.K. Treasury and U.S. Office of Foreign Assets Control (OFAC) sanctions lists at a minimum in all jurisdictions in which we operate, unless to do so would conflict with local legislation.

All employees receive training on the Sanctions Policy at least once a year, with more detailed and advanced training for those whose roles involve heightened sanctions risks. Failure to comply with the policy may give rise to disciplinary action, up to and including dismissal..

Source: Barclays

Compliance practices for Iran and Russia sanctions

Looming deadlines and decision points concerning Iran and Russia may portend changes in the implementation of existing sanctions, writes **Paul Hodgson**.

In a recent Compliance Week Webinar, sanctions experts with law firm Hughes Hubbard & Reed discussed strategies for how companies can draft compliance policies and manage commercial relationships to account for future developments in these and other programs.

Pertaining to Iran sanctions, the latest development occurred on Oct. 13, when President Trump announced that he was decertifying the Joint Comprehensive Plan of Action (JCPOA), the Iran nuclear deal agreed to by President Obama last year. President Trump further said he would formally terminate U.S. participation in the deal if Congress and U.S. allies were unable to address its perceived deficiencies.

The decision to decertify triggers a 60-day fast-track process in which Congress can (but is not required to) re-impose (or "snap back") sanctions on Iran. The President indicated, however, that he does not intend to seek a re-imposition of sanctions at this stage, but said he would seek to work with Congress and U.S. allies to address perceived flaws in the JCPOA.

"The critical take away from the President's statement is that the legal landscape, for now, remains unchanged with respect to Iran sanctions," said Sean Kane, counsel at Hughes Hubbard & Reed. The nuclear-related "secondary sanctions" that were suspended as part of that agreement remain suspended, and General License H remains in place, as does the primary U.S. embargo that was not part of the JCPOA, which continues to prohibit most trading in goods, technology, and services between the United States and Iran.

Nonetheless, the President's decision to decertify the JCPOA shifts the tone, creating a climate of uncertainty. "We might expect to see a more aggressive posture in the near-term to include the potential use of secondary sanctions authorities that remain in place," Kane said. A clear target would be European companies that are transacting with entities in Iran that are owned by, or affiliated with, the Islamic Revolutionary Guard Corps (IRGC), a branch of Iran's armed forces with extensive commercial and banking activities. "Those sanctions remain in the place under the deal," he said. "They have not been aggressively implemented post-JCPOA, but we could see a renewed effort to focus on that sort of activity."

The IRGC "has their tentacles in a lot of things going on in Iran," said Amanda DeBusk, a partner at Hughes Hubbard & Reed, who leads the export controls and sanctions practice. Further, the U.S. Treasury Dept. has issued a statement urging the private sector "to recognize that the IRGC permeates much of the Iranian economy, and those who transact with IRGC-controlled companies do so at great risk." U.S. companies haven't been able to transact with IRGC for quite a while, so this warning shot really focuses on non-U.S. companies doing business in Iran, DeBusk said.

From a compliance standpoint, a key message is that "the due diligence bar keeps getting higher and higher," DeBusk said. Foreign companies, and U.S.-owned or U.S.-controlled foreign entities, transacting in Iran need enhanced due diligence procedures, she said. Consider these other compliance practices:

- **Have in place a contingency plan.** "Companies operating in Iran should have exit strategies in place in the event of sanctions snap-back," DeBusk said. Include in contracts language allowing for termination if sanctions prohibit that performance.
- **Be vigilant about U.S.-dollar transactions.** "U.S. dollar transactions I find to be one of the most frequent trip-ups," DeBusk said. Continue to monitor sanctions compliance in existing operations, ensuring that no U.S. persons are involved in, or facilitating, the transaction, that no U.S.-origin goods or technology are used, and that deals are not denominated in U.S. dollars, she said.
- **Be alert for red flags.** "One of the biggest mistakes that companies can make is to ignore red flags or not have a process for dealing with those red flags," DeBusk added. Being willfully blind could result in criminal liability: "Did you know, or should you have known, that the transaction was unlawful and that it was occurring?"

In addition to Iran sanctions, sanctions imposed on Russia are also creating a significant level of un-

OFAC ENFORCEMENT ACTIONS

OFAC continues to push the bounds of its jurisdiction and establish new theories of liability, as the following case studies show.

***Epsilon Electronics v. U.S. Treasury* (May 2017):** Upheld penalty even though OFAC never proved U.S. origin goods went to Iran. The case underscores narrow applications of general inventory rule

B-Whale Corporation (February 2017): Finding of violation underscored the fact that even minimal contacts with the United States are sufficient to establish jurisdiction

ZTE (March 2017): Largest OFAC settlement (> $100m) with non-financial institution, involving re-export of U.S. origin technology to Iran. (Total penalties assessed by several agencies were $1.2 billion).

CSE Global (July 2017): First time non-U.S. exporter found liable for a violation of U.S. sanctions, by routing payments for shipments of non-U.S. goods to Iran through U.S. banks.

Source: Compliance Week

certainty and confusion for companies right now. The "Countering America's Adversaries Through Sanctions Act" (CAATSA), signed into law by President Trump Aug. 2, expanded and strengthened U.S. sanctions law, most especially targeting Russia.

Some significant provisions in CAATSA amend the U.S. "sectoral" sanctions program targeting Russia by imposing tighter restrictions (known as directives) on U.S. persons' business activities with Russian persons operating in certain specified sectors named on the Sectoral Sanctions Identification (SSI) List.

Any firm involved in Russian oil and gas projects will want to pay attention to the SSI List's Directive 4, which will soon prohibit the exports of goods, technology, or services by U.S. persons in support of "new" deepwater, Arctic offshore, or shale projects worldwide; as well as those that involve a Russian sanctioned person who holds a 33 percent or greater ownership interest in such a project. Prior to CAATSA, Directive 4 prohibited goods, technology, and services that applied only to projects in Russian territory. "An important takeaway here, with the 33 percent threshold, is that it means that sanctioned Russia oil companies will not be able to block U.S. participation in developing fields simply by acquiring a small interest," said Melissa Duffy, a partner at Hughes Hubbard & Reed.

Many provisions in the Russia sanctions law authorize for the imposition of secondary sanctions. This means that non-U.S. firms that engage in certain activities, even if such activities do not involve U.S. individuals or the United States, may still be sanctioned by the United States. "This very similarly follows the pattern of the Iran secondary sanctions," Duffy said.

One provision shortens, by about half, the prohibited debt periods of the SSI List's Directive 1 and Directive 2. Under Directive 1, U.S. persons will be prohibited from transacting in, providing financing for, or otherwise dealing in new debt of longer than 14 days' maturity (down from 30 days) applying to Russian financial institutions. Under Directive 2, U.S. persons will be prohibited from transacting in, providing financing for, or otherwise dealing in new debt of longer than 60 days (down from 90 days) for the benefit of specified entities operating in Russia's energy sector.

Consider a U.S. company that provides an invoice to a Russian firm on the SSI list, and that Russian company takes more than 14 days to pay. The U.S. firm will be deemed to be dealing in a debt instrument of longer than 14 days. In practical terms, the amendments to these directives mean that non-banks should review their current invoicing processes and revise them.

With the Russia sanctions, sectors most affected include oil and gas, metals and mining, and the railway. EU firms are under a lot of pressure and scrutiny, because Russia is a significant supplier of natural gas to the European market. Case in point: the Nord Stream project, a natural gas pipeline from Russia transporting natural gas into the European Union.

Since Russia sanctions legislation is in the implementation stage, companies should watch for the issuance of Frequently Asked Questions (FAQs) from the Office of Foreign Asset Control (OFAC) on this topic for guidance. On Oct. 31, OFAC published new FAQs related to CAATSA, for example. "These FAQs are the latest OFAC actions to implement the responsibilities assigned and delegated to it under CAATSA," OFAC stated. "They reflect close interagency consultation and coordination, as well as careful consideration of issues raised by Congress, industry, and international allies and partners," OFAC stated.

Firms doing business with Russia should also conduct due diligence to assess whether a Russian customer, supplier, or business partner is not listed on the Sectoral Sanctions Identification List. In the past, OFAC has been heavily focused on enforcement against big banks, but "what we're seeing is a shift to two new areas: exporters and non-U.S. companies," Duffy said.

With the President decertifying the JCPOA and with the implementation of the Russia sanctions, in combination with all the uncertainty in this area, don't make the mistake of waiting for a significant sanctions violation before reviewing and strengthening your sanctions compliance program. ■

Labor Department devotes $60M in fight against human trafficking

The Labor Dept. is doling out nearly $60 million in grants to promote labor law enforcement and help end exploitative labor practices in 25 U.S. trade partner countries. **Joe Mont** has more.

The Department of Labor has announced nearly $60 million in grants to NGOs and a range of organizations to promote labor law enforcement and help end exploitative labor practices in 25 trade partner countries.

The grants will support projects to combat the more abusive labor practices, including the use of child labor, forced labor, and human trafficking in global supply chains. New technical assistance will also support trade partners' compliance with the labor rules of U.S. trade agreements and preference programs.

The grants are part of a broader departmental effort to combine direct enforcement of trade-related labor commitments with targeted technical assistance to help trade partners who share the Labor Department's commitment, but lack the means, to strengthen the rule of law and fully comply with commitments made in trade agreements.

"Meeting trade agreement labor standards helps to shine a light into the shadowy acts of offenders who use the deplorable path of exploitation of their own people to try and gain an unfair advantage over U.S. competition," Secretary of Labor Alexander Acosta said in a statement. "These grants are a useful tool for the U.S. and our allies in our goal of permanently rooting out the despicable practice of labor exploitation."

The grants are intended to strengthen and expand efforts to identify, monitor, and "combat abusive labor practices abroad that put U.S. businesses and workers at an unfair disadvantage."

Specific issues the projects will address include encouraging partnerships between the coffee industry in Latin America and buyers in the U.S. to develop social compliance systems to combat exploitative labor in their supply chains; working with labor ministries and other labor stakeholders to build their capacity to identify indicators of forced labor and human trafficking; and developing a toolkit to help program implementers reduce the risk of child labor and unacceptable conditions of work in women's economic empowerment initiatives.

One project will help improve enforcement of minimum wage laws, hours of work and occupational safety, and health laws in the agricultural export sector.

> "These grants are a useful tool for the U.S. and our allies in our goal of permanently rooting out the despicable practice of labor exploitation."
>
> Alexander Acosta, Secretary of Labor

The grants are made available through the Bureau of International Labor Affairs, whose mission is to promote a fair global playing field for workers in the U.S. and around the world by enforcing trade commitments, strengthening labor standards and combating international child labor, forced labor, and human trafficking. ■


DICK'S
SPORTING GOODS

DICK's Sporting Goods' responsible sourcing

A successful sourcing program is about more than conducting audits and taking corrective action, writes **Jaclyn Jaeger**: It's about executing an enterprise-wide risk strategy.

Mandatory vendor compliance programs are becoming less unusual these days, encouraged by an increasing number of companies looking to improve both their supply chains and supply-chain transparency.

One firm that is requiring suppliers to show environmental sustainability and financial integrity, in addition to ensuring workers' safety, health, and wages, is U.S.-based omni-channel retail company DICK's Sporting Goods, which operates in more than 700 locations across the United States. In a recent Compliance Week Webinar, sponsored by global trade software provider Amber Road, Chris Bereznay, DICK's director of global ethics and compliance, shared how to go about building a responsible sourcing program for suppliers and factories with an eye toward long-term success.

A successful responsible sourcing program is not just about conducting audits and taking corrective action. "What you really need is a holistic strategy that addresses risk at various levels," Bereznay said.

A key part of a holistic strategy is to assist vendors in practicing self-governance. "In a perfect world, you'd have this cascading level of responsibility," Bereznay said, in which all of an organization's vendors would audit their own factories. It's an approach that's starting to gain momentum. "We are definitely moving forward in this direction, because we believe it's the only sustainable way to move things forward," he said.

At the factory level, you must "trust but verify," Bereznay said. Factory-level assessments are a part of managing these risks. Other ways to improve responsible sourcing at the factory level, he said, include:

» **Accepting shared audits from other reputable brands or companies:** "A lot of factories go through audit fatigue," he noted.
» **Training in capacity building:** "It's really important to help these folks understand how to solve these issues. Can you help them get to the root cause to better understand what's driving an issue?"
» **Asking your factories to take more ownership over the process:** "Every factory we meet with now, we have discussions around what they're doing to manage their own compliance matters. Do they have a code of conduct? Do they have a certified or designated compliance manager? Do they have an effective grievance system in place or worker management committee?

Building a holistic social responsible program means everyone—from senior leadership down to the business units, and vendors down to the factories—has an active role. Other key players may include production and sourcing partners; merchandising groups, if you're a retail company; supply chain logistics; and legal and internal audit, who can be great partners in vetting and validate the program, Bereznay said.

When building your program, or looking to improve it, be sure to include either the audit committee of the board of directors or an executive compliance committee, who can review the program. In other words, "gain support for your plan, in advance," Bereznay said. That will go a long way toward building momentum for the program and getting senior-level buy-in, which is another important component of an effective responsible sourcing program.

Above all, don't lose sight of why responsible sourcing is necessary and the impact it has on brand value. If the firm is struggling to manage responsible sourcing, because it's not efficient or effective, "those numbers can be astronomical," Bereznay stressed.

It's also important to partner with NGOs, so that they too become the eyes and ears of your vendors and factories. "It's really important to not be afraid of these groups; some folks shy away from engaging with the NGO community," Bereznay said. "Personally, I've found them to be extremely helpful."

By building and nurturing relationships with NGOs, these groups will reach out to you directly when they discover an issue in a factory or with a vendor that you're using. The benefit in that is that you can "get ahead of an issue before it gathers too much momentum," Bereznay said. "It's also nice to find out about those issues before they make the headlines."

Which NGO to reach out to as it relates to the program depends on the industry. In the retail industry, for example, the Fair Labor Association, whose mission is to promote adherence to international and national labor laws, has published ten "Principles of Fair Labor and Responsible Sourcing," which serves as a helpful framework. Other NGOs in the retail industry include the International Labour Organization (ILO) and the Better Work program, a partnership between ILO and the International Finance corporation to improve labor standards in global supply chains.

Bereznay also shared how to do more with less with a social responsible program. "If you really want to focus your resources where they're needed the most, where you can have the most impact … segmentation definitely has to be a part of your strategy," he said.

The idea is to focus your time and energy on your top strategic suppliers, which means identifying them first. It doesn't make sense to spend time and energy showing vendors how to self-govern, unless they're a top strategic supplier to the company—for example, a vendor that the company has invested millions in, and you know they're going to be around for a few years.

In the middle are those suppliers that may need some oversight and auditing, maybe once a year. The lowest tier of suppliers is the fillers. For this tier, it may not make sense to audit under a certain threshold, because you simply don't have enough influence over them. "I've had factories that I've gone into that have said, 'No, I'm not going to fix that. You're not a big enough part of my business,'" Bereznay said.

Leveraging technology is another way to do more with less by striking redundant processes and unnecessary administrative work. For example, technology solutions like those offered by Amber Road can push alerts to suppliers, noting when it's time to update their corrective action plans. "Make them responsible for their own compliance checks and balances," said Chery Layne, Amber Road customer success director.

Technology solutions can also alert third-party auditors when their audits are due. For example, Amber Road solution digitally integrates the information it receives from third-party auditing firms or internal auditors, and that information is then shared in real-time with all parties who have access to it.

"We wouldn't be able to manage this whole process with the team that we do without a solid technology process," Bereznay said. DICK's uses technology to generate management reporting that allows for "one version of the truth."

The system is used to schedule and assign both internal and external audits, for example. The company's factories can also log in and update the system with their responses to corrective actions, so that DICK's can track and manage all corrective action plans from beginning to completion.

Management reports then get communicated to the executive compliance committee and audit committee throughout the year, Bereznay explained. "That data also helps to feed our scorecard system, which is combined with quality, delivery, and other key components to managing production," he said.

Technology can also help trace products back to their origin, which is important given that factories with poor or illegal working conditions is a high compliance risk in the retail industry. "A lot of times, manufacturers or brands are just unaware," Bereznay said. If DICK's were to discover that one of its imported products was being produced in a factory that used forced labor, for example, "we would have to put resources toward identifying where and when that product was being produced, attempt to isolate it, and then potentially remove it from the marketplace," he said.

The need has never been greater to implement a responsible sourcing program. Industries and individual firms that move toward that goal will not only achieve greater transparency and traceability throughout supply chains, but also build stakeholder trust and brand value and long-term growth. ■

FLA's 10 Principles of Fair Labor and Responsible Sourcing

1	**WORKPLACE STANDARDS** Company affiliate establishes and commits to clear standards.
2	**RESPONSIBILITY AND HEAD OFFICE/REGIONAL TRAINING** Company affiliate identifies and trains specific staff responsible for implementing workplace standards, and provides training to all head office and regional staff.
3	**SUPPLIER TRAINING** Company affiliate obtains commitment and trains relevant supplier management on workplace standards and tracks effectiveness of supplier workforce training.
4	**FUNCTIONING GRIEVANCE MECHANISMS** Company affiliate ensures workers have access to functioning grievance mechanisms, which include multiple reporting channels of which at least one is confidential.
5	**MONITORING** Company affiliate conducts workplace standards compliance monitoring.
6	**COLLECTION AND MANAGEMENT OF COMPLIANCE INFORMATION** Company affiliate collects, manages, and analyzes workplace standards compliance information.
7	**TIMELY AND PREVENTATIVE REMEDIATION** Company affiliate works with suppliers to remediate in a timely way a nd preventative manner.
8	**RESPONSIBLE PURCHASING PRACTICES** Company affiliate aligns planning and purchasing practices with commitment to workplace standards.
9	**CONSULTATION WITH CIVIL SOCIETY** Company affiliate identifies, researches, and engages with relevant labor non-governmental organizations, trade unions, and other civil society institutions.
10	**VERIFICATION REQUIREMENTS** Company affiliate meets FLA verification and program requirements.

Source: Fair Labor Association