

Coronavirus Trade Update

Seven things to know for every company trying to help,
and the new landscape for trade compliance

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Speakers



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Coronavirus, Sanctions and Export Controls

Seven Things to Know for Every Company Trying to Help



1. Exports of the Novel Coronavirus

- The novel **coronavirus** was declared a “**severe acute respiratory syndrome coronavirus 2**” (SARS-CoV-2)
- SARS-CoV-2 is **distinct** from the controlled SARS-related coronavirus, which requires a license and is **classified as “EAR99”** (and thus usually doesn’t require a license)

2. Deemed Exports Within Research Institutions

- The release of controlled information or technology to **any foreign national in the US** is a “**deemed export**” to that person’s home country
- Research **institutions** working with US-origin technical information should **check whether** their activities **require a BIS license**

3. Humanitarian Aid to Sanctioned Countries

- Some of the **countries hit most severely** by the novel coronavirus are those for which the United States maintains the **most restrictive of sanctions programs**, such as Iran
- After the coronavirus outbreak, **OFAC** issued GL 8, **authorizing certain transactions with the Central Bank of Iran** for exports of **agricultural commodities, food, medicine, and medical devices to Iran**
- **Keep monitoring** for additional guidance from OFAC with respect to humanitarian trade

4. COVID-19-Related Apps

- Developers are **creating apps** that serve diverse needs arising from the pandemic, such as those **tracing the pandemic's global path** or helping in the **diagnosis of the virus**
- The provision of such apps is subject to certain **limits under US sanctions** and **export control regulations** that companies should be aware of

5. Maintaining **Connectivity** of Compliance Teams

- Significant **shift in workplace arrangements** with many working remotely
- Paramount for companies to **maintain the connectivity of their compliance teams** to ensure compliance policies and procedures are implemented

6. The **Risk of Diversion** in Times of Crisis

- Due to heightened demand for certain goods, the coronavirus may pose challenges for companies in ensuring **goods are not diverted to prohibited end uses/users**
- Companies should **thoroughly vet transactions** for such potential diversions

7. **Employees Abroad** Unable to Return Home

- Resulting from **bans or limits on cross-border travel**
- Corporations and their employees should ensure they **don't engage in activities violating US sanctions and/or export controls**
- **Review remote working platforms** under **ITAR** and **EAR's** data security provisions

Coronavirus, Inbound Trade, and Global Commerce



Imports from China subject to Section 301

- The USTR is allowing interested parties to seek relief from 301 tariffs for “products subject to the tariff actions and relevant to the medical response to the coronavirus.

Speeding up the Efficiency of Customs Entry

- The Food and Drug Administration has taken multiple steps to increase the speed of clearance for medical equipment and supplies key to fighting the coronavirus
- U.S. Customs and Border Protection continues to update its guidance to speed up clearance

Continuing to see **Mixed Signals** on Trade

- There were several reports about potential tariff relief from the administration, and even action by Customs
- USMCA implementation remains uncertain amid disruption to government and supply chains
- Potential changes to government procurement policies for medical equipment and pharmaceuticals

Some Programs **Continue as Normal**

- Despite calls to change course, the U.S. has moved forward on many of its “America First” trade programs, and continues to pursue that principle in its trade policy

The New “Healthy Trade” Paradigm

In International Trade Law and Policy, there is a new “Healthy Trade” Paradigm replacing the “Free Trade” and “Managed Trade” Paradigms

- COVID-19 has changed **forever** the way governments – the U.S. government, and governments across the world – are looking at international trade relations.
- They are **less** interested in the comparative advantage gains from free trade, or the negotiated benefits from managed trade.
- They are realizing that **international trade policy is public health policy, with national security implications.**
- Therefore, they are **emphasizing** sanitary and phytosanitary (SPS) measures, socioeconomic subsidies, export restraints, and certain modes of services trade, all with a view to **protecting their domestic supply chains.**
- Lessons from Ancient and Medieval plagues, Spanish influenza in 1918, and 21st century bouts with SARS, MERS, and avian and swine flus, include vigilance that trade **not** be a disease-spreading vector. COVID-19 spreads a **harsher** lesson. No, the virus has not (yet) caused an amendment to any World Trade Organization treaty, nor any free trade agreement. Its infection is **de facto** (in fact), rather than *de jure* (at law), that is, its forced not consensus-based textual changes, but rather **unilateral, domestic-level, attitudinal, legal, and policy shifts.**

1. **SPS Measures:**

Governments will make increased use of the GATT Article XX(b) exception, and Articles 5:1-5:7 of the WTO SPS Agreement.

Examples: Border control measures worldwide.

2. **“Dark Amber” Subsidies:**

Governments will make increased use of enterprise- and industry-specific support, which is a type of “Dark Amber” subsidy (that lapsed on 31 December 1999) under Article 6:1(c) of the WTO Agreement on Subsidies and Countervailing Measures, to bolster the flagging fortunes of businesses.

Examples: Airlines in the U.S., EU, Australia, New Zealand, Taiwan.

3. **Export Restraints:**

Though GATT Article XI:1 forbids quantitative restrictions on exports, governments are making increased use of the Article XI:2 exception for a QR that is “temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential.”

Examples: India on active pharmaceutical ingredients; Indonesia on surgeons’ masks; Kazakhstan on wheat flour (one of the world’s biggest shippers), carrots, potatoes, and sugar; Vietnam on rice; U.S. invocation of 1950 Defense Production Act.

4. **Services Trade:**

Governments are focusing more on Mode I services trade, and less on Modes II, III, and IV.

Examples: Online education and telemedicine (Mode I), versus stay-at-home orders (Mode III) and travel bans (Modes II, IV) worldwide.

Questions?

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