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Coronavirus (COVID-19) Update: Trade, Supply Chains and Defense

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As world leaders and healthcare professionals respond to the COVID-19 pandemic, businesses around the world have been forced to adapt to new restrictions, unpredictable supply chains and a limited workforce. For medical and pharmaceutical products, demand is high and the efficient movement of inputs is critical. For many other industries, dwindling consumer demand is already cutting deep. This report examines trade, supply chains and defense issues facing businesses in these extraordinary times.

Trade and Supply Chains

CBP retracts duty deferral policy, but broad relief reportedly under consideration. On March 20, US Customs and Border Protection (CBP) announced it would consider requests for duty deferral – delaying payment of tariffs, fees and other related payments – on a case-by-case basis. On March 26, CBP retracted its duty deferral policy, indicating it would no longer be accepting requests for deferral, while confirming CBP would continue to "allow additional days for narrow circumstances, including a physical inability to file entry or payments, due to technology outages or port closures." The Trump Administration is reportedly considering an across-the-board 90-day duty deferral – but this action would delay, not suspend, duty payment until an unknown date in the future. Lawmakers – in both chambers and parties – have voiced support for broad duty deferral to increase liquidity for businesses in the short-term, but it remains to be seen whether they would seek to suspend duty payments as part of a future fourth round of coronavirus legislation, a policy strongly opposed by the President and senior officials.

European Commission wants restrictions loosened on cargo... Signaling it has no intention of stalling the movement of goods, the Commission issued recommended guidelines to facilitate air cargo during the outbreak. The guidelines highlight that certain member states and third countries have not specifically exempted cargo flights from national restrictions being placed on aviation. The guidelines are intended to assist member states in maintaining and facilitating air cargo operations, including, but not limited to, the transport by air of essential goods (food, medical supplies, etc.) with time-sensitive deliveries. The measures should be put in place by national governments on a temporary basis, until the crisis is over. The measures should apply to EU and third-country nationals. While this guidance focuses on essential supplies, the Commission sees the continued movement of goods – whether essential or not – as a priority. Recommended measures include:

- The granting, without delay, of all necessary authorizations and permits, including temporary traffic rights for additional air cargo operations, even when conducted with passenger aircraft
- Allowing fast-tracked, ad hoc exemptions where there are unforeseen situations, including emergency operations
- Encouraging airlines to reserve capacity for the supply of essential goods and to apply reasonable shipping rates for such supplies

…**and border management that does not threaten the Single Market**. Making clear it views maintenance of the Single Market for goods as a key priority, the Commission also issued guidelines on border management measures to protect health in the European region and ensure the availability of goods and essential services. The Commission states that any "control measures should not undermine the continuity of economic activity and should preserve the operation of supply chains." These guidelines also state that any measures affecting the flow of goods in this way must be science-based measures supported by both World Health Organization and EU recommendations. The COVID-19 outbreak continues to advance across Europe, and officials are struggling to balance the EU's open borders and economy with policies necessary to stem the spread of the virus. Businesses must make sure they are examining their operations and supply chains to anticipate issues and ensure a swift return to operations as soon as possible, as appropriate.

Chinese officials announce new entry, passenger flight restrictions. Effective at midnight China Standard Time on Saturday, March 28, China suspended the entry of foreign nationals who hold a valid ordinary visa or residence permit. The Chinese Ministry of Foreign Affairs announced the ban extends to all foreign nationals *except* holders of diplomatic, service, courtesy and ordinary C visas (crew members of international transportation, including aircraft, trains, ships and trucks). Entry with all other ordinary visas is suspended. However, foreign nationals may enter China with an ordinary visa issued after March 26 for "necessary" economic, trade, scientific or technological activities or emergency humanitarian needs. The government did not announce an end date to this action, but noted the suspension is a "temporary measure." China has also severely limited airline traffic to and from the country. Effective March 29, China is limiting all Chinese airlines to just one weekly flight on a single route to any one foreign country. The same directive permits foreign airlines to operate one weekly flight on a single route into China, though planes may not exceed 75% capacity. These and other restrictions continue to increase pressure on businesses that rely on passenger-cargo service for their supply chains or who are engaged in business operations or investments in China that require travel.

European Commission issues updated guidance on foreign direct investment screening, citing concerns derived from COVID-19. For more information, see our blog post on *The Trade Practitioner*.

Is Europe providing economic support? Yes, at both the EU and member state levels. Our colleagues in Europe are compiling a guide of these measures. Stay tuned to see how they may affect your business.

Defense

Companies seeking stimulus funds must strictly audit practices to ensure compliance with loan criteria. Title VI of H.R. 748, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), defines assistance to distressed sectors of the US economy. It provides US$500 billion to the Exchange Stabilization Fund to provide a range of loans, loan guarantees and other investments, but it also sets out restrictions on certain businesses, including limits on executive/officer compensation, and an obligation not to offshore/outsource jobs for the term of the loan *plus* two years. Companies seeking stimulus funding must be prepared to carefully audit business practices and ensure compliance over the term of the loan and beyond.

President Trump directs first US company to manufacture ventilators under the Defense Production Act (DPA). On March 27, President Trump took to Twitter to express frustration with General Motors' (GM) negotiations with the US government to retrofit its Ohio automotive facility to produce ventilators. He signed a Presidential Memorandum later that day, directing the Secretary of Health and Human Services (HHS) to use "any and all authority available under the [DPA] to require General Motors Company to accept, perform, and prioritize contracts or orders for the number of ventilators that the Secretary determines to be appropriate." In a separate statement, President Trump noted the "fight against the virus is too urgent to allow the give-and-take of the contracting process to continue to run its normal course." This marks the first US company directly ordered to produce needed medical equipment for US COVID-19 patient care during the declared national emergency, and comes after what the President suggests was a complicated negotiation process. Peter Navarro, Assistant to the President for Trade and Manufacturing Policy, has also been named czar for defense production. Companies should take note that President Trump and Administration officials have now made clear they are willing to compel companies to produce needed materials as appropriate.

Senate/House Armed Services Committees moving forward with Fiscal Year 2021 (FY2021) National Defense Authorization Act (NDAA). Leaders of the House Armed Services Committee (HASC) introduced a shell bill to serve as the legislative vehicle for the FY2021 NDAA. The preliminary request includes the Pentagon's annual legislative proposal, but no provisions proposed by Congress. Last week, HASC postponed all scheduled hearings, but it has not similarly postponed the late April goal for the full Committee's NDAA mark-up. Senate Armed Services Committee (SASC) Chairman Jim Inhofe (R-Oklahoma) said on March 25 that SASC will begin "paper" hearings, with the first held on March 26, on the posture of the Department of the Army. The paper hearing process will collect testimony from military officials, post testimony online and rely on teleconferencing to gather additional input. SASC will also collect questions from all committee members and these will be transmitted to the Department of Defense at the date and time of the scheduled hearing. SASC intends to post member questions and witnesses' responses within one week of posting opening statements to the committee's website. Like HASC, Chairman Inhofe has not delayed the Committee's mark-up goal of May.

With the Senate set to recess until April 20 and the House schedule uncertain, the NDAA schedule is likely to slip. According to HASC staff, when the NDAA mark-up process continues, the House version (and perhaps the Senate) is likely to be limited in size and scope. In years past, the SASC subcommittee NDAA mark-up and full committee mark-up processes have been closed to the public. However, companies can engage HASC and SASC members to raise issues of concern.

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