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Navigating U.S. Trade Restrictions on China

ESG & Supply Chain

- Sustainability
- Worker rights
- Forced labor
- Consumer demand
- Supply chain mapping
- Risk analysis

What's a Company to Do?

- Supply chain visibility and transparency
- Raw materials
- Factories
- Confidential information



What's a Company to Do?

- Litigation risk
- Reputational risk
- Best practices
 - Supplier agreements
 - Vendor codes of conduct



Forced Labor

19 USC §1307

“All goods... mined, produced, or manufactured wholly or in part in any foreign country by... forced labor... shall not be entitled to entry...and the importation thereof is hereby prohibited....”



Forced Labor

- Uyghur Forced Labor Prevention Act
- June 21, 2022
- Withhold Release Orders and detentions
- Congressional pressure
- CBP enforcement



Best Practices



Production
Agreements



Vendor code of
conduct



Buying Agent
Agreements



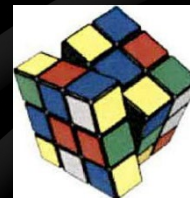
Supporting
Documentation

Certificates of origin
Trace supply chain
from point of origin to
downstream products

Global Economy Impacts on Supply Chain

Supply Chain Challenges

- US-China
- Managing supply chains with increased tariffs
- Duty mitigation strategies
- Legal work arounds vs. fraudulent ones
- Which party responsible for duties?



Supply Chain Triage

- Increased CBP enforcement
- Classification
- Country of origin
- Valuation



Sourcing Strategies

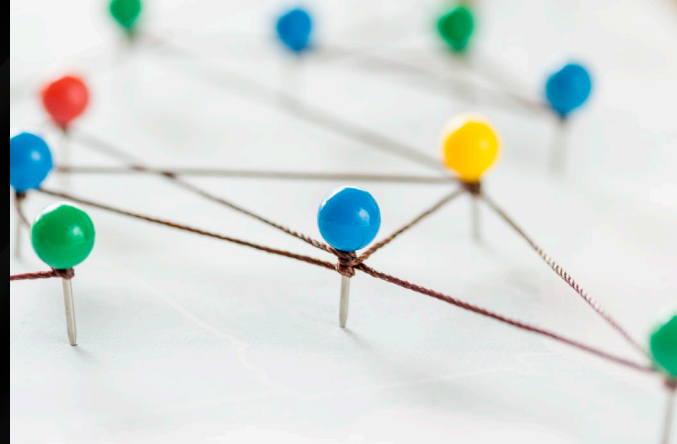
- Shifting Country of Origin -
 - Anywhere other than China
 - Capacity in other countries
 - Quality
 - Types of goods
 - Labor issues (Bangladesh, Cambodia)
 - Move closer to U.S.



Export Controls Considerations for Supply Chains

2019 NDAA: China Sourcing Restrictions

- Restrictions on products/systems from Chinese telecom companies
 - Huawei
 - ZTE
 - Dahua
 - Hangzhou Hikvision
 - Hytera



2019 NDAA: China Sourcing Restrictions

- Prohibitions on sales of products to U.S. government
- Limitations on U.S. companies' use of covered Chinese equipment
 - Telecom infrastructure
 - Security cameras
- USG contracting ineligibility

Entity List Designations

- U.S. Department of Commerce list
- Restrictions on exports *to* China
- Unexpected considerations for companies importing from China
 - Returning unsold inventory
 - Product servicing

Foreign Direct Product Rule

- Extending the reach of U.S. export controls jurisdiction
- Impacts foreign commodities made using U.S. tools and technologies
- Limitations on exports to China of products of U.S.-origin tools/technology
- Semiconductor industry particularly targeted

Evolving U.S. Sanctions Programs

Targeted U.S. Sanctions

- Expansion of targeted sanctions against Chinese individuals/entities
- Use of existing legal authorities to target Chinese parties
 - Xinjiang-related activities (Global Magnitsky)
 - Measures against Chinese companies doing business with Russia
- Investment-related restrictions

Compliance Best Practices

- Party screening
- UBO diligence
- Supply chain mapping
- Written agreements
- Monitoring regulatory developments
- Written compliance programs

Antidumping and Countervailing Duties (AD/CVD)

AD/CVD Orders Currently in Effect

665 total orders in place covering products from 59 countries (491 AD orders and 174 CVD orders)

Top Ten Countries by Active Orders			
<i>Country</i>	<i>AD</i>	<i>CVD</i>	<i>Total</i>
China	144	84	228
India	35	30	65
South Korea	35	9	44
Taiwan	28	1	29
Turkey	16	13	29
Vietnam	17	6	23
Japan	21	0	21
Indonesia	15	5	20
Thailand	15	1	16
Italy	12	4	16
Mexico	13	1	14

Antidumping

- “Dumping” exists whenever imported merchandise is sold for less-than-fair value
 - U.S. price is lower than the price charged in the home market
- China is considered a non-market economy, so the home market price (or “normal value”) is calculated

Calculation of “Normal Value” for NME

- The Department of Commerce uses a “factors of production” methodology
- The quantity of inputs is calculated and the multiplied by “surrogate” values taken from a comparable market economy
- Amounts for Overhead, SG&A and Profit are then added

Example Calculation

	<u>Normal Value Price</u>	<u>US Price</u>
Gross Unit Price	\$100	\$110
Less Discounts	-\$2	-\$5
Less Movement Expenses	-\$5	-\$10
Less Packing	-\$3	-\$6
Other Adjustments	<u>-0</u>	<u>-\$4</u>
Comparison Prices	\$90	\$85

The dumping margin in the example above = $(\$90 - \$85) / \$85 = 5.88\%$

Countervailing Duties

- Countervailable duties exist when:
 - A company receives a financial contribution from a foreign government
 - The contribution provided a “benefit” to the company
 - The contribution was provided to a limited group, i.e., not available to all persons or companies
- Amount of benefit is calculated using a benchmark

Proposed Amendments to AD/CVD Regulations

- Proposed amendments published on May 9, 2023 (88 Fed. Reg. 29850)
- Would make potentially significant changes to the calculation of AD and CVD margins for China
- Deadline for comments is July 10, 2023
- Likely final rule change would occur late this year or next year

Critical Proposed Rule Changes Affecting China

- Evidence of “weak, ineffective, or nonexistent property, intellectual property, human rights, labor, and environmental protections and the impact that the lack of such protections has on the prices and costs of products in selecting surrogate values and benchmarks.”
 - Intended to capture economic “externalities”
- Elimination of regulation restricting transnational subsidies from being countervailed

AD/CVD “De-risking”

- If importing, do not act as the importer of record for products covered by AD/CVD orders
- If exporting, work closely with outside counsel to control potential AD/CVD margins
- Supply-chain redundancy
- Complete due-diligence when sourcing from new suppliers to ensure they are not illegally transshipping China-origin product