COVID-19 Impacts on Trade, Export Controls, and Supply Chain

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Updates from March 11 to March 25, 2020

Key Takeaways:

Supply chain disruption has begun on some fronts that are not directly related to the healthcare and medical fields, and is anticipated to continue as the effects of COVID-19 are felt in more countries, and more border closures and non-essential business closures occur. The U.S. and other governments are seeking to alleviate these impacts when possible, despite many competing priorities.

Members of the trade community should expect potential delays in interactions with the federal government due to a reduced workforce. In addition, many agencies are now encouraging online submissions and are suspending requirements for the submission of hard copy documents.

Initial reports show a decline in international trade resulting first from the closure of factories in China, and then prolonged from social distancing policies which result in an overall drop in economic activity and consumer demand.

Updates from Customs and Border Protection

New FDA Instructions for Import of Items Related to Fighting the Global Pandemic

On March 23, 2020, U.S. Customs and Border Protection (CBP) announced that the Food and Drug Administration (FDA) has released new instructions related to the submission of entry information for personal protective equipment and certain other devices. These instructions are intended to facilitate the import of products related to fighting the COVID-19 pandemic.

Diagnostic tests identified as QKP, OTG, QKO, or QJR and masks and respirators identified as NZK are currently authorized for emergency use pursuant to an Emergency Use Authorization (EUA). Please note that while the CBP alert uses the code "QPK," the correct FDA code is "QKP." These products must be submitted for FDA review, however reduced information will be required for review in order to expedite processing. The following products that are regulated by the FDA but are not designated under an EUA also have modified entry information requirements: non-invasive remote monitoring devices used to support patient monitoring and ventilators, ventilator accessories, and other respiratory devices.

Personal protective equipment is regulated by the FDA if it is intended to treat or prevent disease or illness. Importers should note that information regarding the import of personal protective equipment not regulated by the FDA (such as general purpose or industrial use masks, respirators, and gloves) should be transmitted to CBP, not the FDA. For more information, see the FDA Supplemental Guidance. The FDA has also established a special email, COVID19FDAIMPORTINQUIRIES@fda.hhs.gov, for industry questions or concerns.

Payment Extensions Due to COVID-19

On March 20, 2020, CBP announced that due to the severity of COVID-19 they will "approve on a case by case basis additional days for payment of estimated duties, taxes and fees due to this emergency." While no further details are given at this time, CBP states that they are working on a future message with further information.

Delays in National Commodity Specialist Division Rulings

While the National Commodity Specialist Division is still accepting hard copy requests for binding rulings, CBP released a statement on March 20, 2020, explaining that "due to the evolving situation regarding the declared national emergency on the novel Corona Virus

(COVID-19)" hard copy binding ruling requests and requests that include a physical sample may be delayed. The agency encourages those submitting requests to instead use the online submission portal eRulings at https://erulings.cbp.gov/s/. If possible, submitters should include detailed photographs or short videos of the product in lieu of samples. For more information, see the updated requirements list.

Import Community to Expect Delays for Hard Copy Notices

In a statement released on March 18, 2020, CBP affirmed that FDA activities including FDA Prior Notice review, FDA entry processing, FDA sampling/examination of high risk shipments, FSVP inspections, filer assessments, and compliance activities are all operational and not currently experiencing delays. However, CBP states that "the import community should expect delays in the receipt of hard copy notices." Instead, all members of the import community who engage with the FDA are strongly encouraged to use the online Import Trade Auxiliary Communication System (ITACS). For information how to create an account and what services are offered on ITACS, see the announcement here.

EU Implements Export Ban on Medical Protective Equipment; Guidance for Member States

In response to the global pandemic and the surge of COVID-19 cases in Europe, on March 15, 2020, the European Commission (the Commission) released a new regulation that prohibits the export of certain identified medical protective equipment to end-users outside of the EU, unless the exporter obtains a license from an EU Member State. The protective equipment covered by the ban includes face masks, gloves, protective garments, eye protection, and face shields. This regulation will be in effect for six weeks, beginning on March 15, although the Commission may choose to extend the restriction.

On March 16, 2020, the Commission published guidelines for Member States' border management measures related to the pandemic. The guidelines are intended to protect health while still ensuring the flow of essential goods and services. The Commission states that no additional certifications are required for items legally circulating within the EU market, and that Member States should not restrict the export of medical items to other EU states. For more information, see the press release here.

USTR Publishes COVID-19 Response; Invites Public to Identify Critical Products for Section 301 Modification

On March 20, 2020, the Office of the U.S. Trade Representative (USTR) published a response to the ongoing pandemic related to Section 301 tariffs on China. The USTR is no longer imposing tariffs on certain "critical products" used in the response to COVID-19 such as ventilators, oxygen masks, and nubilators. Prior to the outbreak, the USTR and the Department of Health and Human Services exempted critical medicines and other medical products from the Section 301 outbreak, and Section 301 has not resulted in a decrease in the availability of medical supplies since implementation. However, in order to ensure that all critical products related to fighting the pandemic are excluded from Section 301, the USTR invites the public to comment if they believe that further modifications to Section 301 may be needed. Note that this comment process does not replace the current Section 301 tariff exclusion request process. For more information, see the USTR statement here.

Directorate of Defense Trade Controls Establishes New E-Mail Submission Process

On March 19, 2020 the Directorate of Defense Trade Controls (DDTC) announced that is establishing a new procedure for email submissions to DTCC-CaseStatus@state.gov. This applies to the submission of disclosures and related information such as exhibits, extension requests, and responses to DTCC inquires. Although hard copy applications are still being processed, DDTC advises that there may be longer than normal processing times and encourages the use of email submissions instead. In addition, while all preexisting electronic application systems are currently operational as normal, DDTC advises that there may be an increase in processing times due to a reduction of staffing. For more information, see the Update on Status of Operations.

United States International Trade Commission Temporarily Waives Hard Copy Filing Requirements

In response to COVID-19, the United States International Trade Commission (USITC) as of March 19, 2020, has temporarily waived or amended requirements for the filing of paper copies, CD-ROMs, and other physical media in Section 337 investigations. Instead, parties will now be able to file online through an Electronic Document Information System (EDIS) available at https://edis.usitc.gov. For more information, see the Federal Register publication.

Congressional Research Service Releases Economic Report on COVID-19

In their report last updated on March 18, 2020, the Congressional Research Service described the global economic impact of COVID-19, stating that there is an expected reduction of economic activity across sectors, but especially in the ports and shipping industry.

Impact on Trade

The report states that unlike during prior financial downturns, China now has a much larger global economic role, and increased globalization means that decreases in international trade due to COVID-19 has a greater economic impact. Trade is impacted in three main areas: (1) directly through supply chains as reduced economic activity is spread from intermediate goods producers to finished goods producers; (2) a drop in economic activity, which reduces demand for goods in general; and (3) through reduced trade with exporters that supply producers, which then reduces their imports and negatively affects trade and economic activity of exporters.

Supply Chain Impact

While initially the impacts of the pandemic were expected to be limited to short-term supply issues as China quarantined workers and shut factories, the prolonged drop in economic activity has created larger supply issues both inside and outside of China. Inside the U.S., social distancing is resulting in reduced consumer activity in the services sector of the economy, which comprises two thirds of the U.S. economic output. Simultaneously, increased demand for medical equipment and related products (such as face masks) has resulted in some countries imposing export restrictions on those items.

As stated in the report, we will not be able to fully determine the impact of COVID-19 on the economy, and particularly on international trade, while we still have unanswered questions regarding how long the pandemic will last and how much economic activity will be lost as result. For those in the trade community, this is a sobering reminder that the full impact of the pandemic is still unknown.

Export-Import Bank of the U.S. Announces Relief Measures

On March 12, 2020, the Export-Import Bank of the United States (EXIM) announced relief measures for U.S. exporters and financial institutions experiencing hardship due the COVID-19 pandemic. These measures include waivers, extensions, and increased flexibility for the Working Capital Guarantee Program, the Multi-Buyer and Single-Buyer Short-Term Insurance Program, and the Medium-Term Single-Buyer Insurance Policies Issued to Exporters. EXIM is an independent federal agency that provides export credit to support sales of U.S. goods and services to international buyers. For more information, see the Fact Sheet here.

Institute for Supply Management on COVID-19 Impact

A survey by the Institute for Supply Management (ISM) published on March 11, 2020 reported that 75 percent of responding companies experienced capacity disruptions in their supply chain as a result of COVID-19. The survey of 628 U.S. companies was conducted from February 22 to March 5, 2020. Of the companies surveyed, 62 percent of respondents are experiencing delays in receiving orders from China, 46 percent reported delays loading goods at Chinese reports, and 53 percent are having difficulty receiving supply chain information from China. Over 44 percent of respondents do not have a plan in place to address supply chain disruptions from China, which may compound the economic impact of the pandemic. ISM also reports that manufacturers in China are operating at 50 percent capacity with 56 percent of normal staff. As travel and work restrictions have exponentially tightened since early March, we can expect that these disruptions will continue to continue to increase.

Foley Hoag has formed a firm-wide, multi-disciplinary task force dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our Resource Page or contact your Foley Hoag attorney.

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