

Keeping Your Import/Export Business Moving Amid the COVID-19 Pandemic

March 30, 2020, 12:00 p.m. - 1:15 p.m. ET

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Today's Road Map

- The Venable International Trade and Logistics Group
- Today's Discussion:
 - Understanding Your Supply Chain Contracts and Any *Force Majeure* Impact
 - Is Your Business within “Critical Infrastructure” or an “Essential Business?”
 - Understanding the Patchwork of State and County Closures
 - The Current Status at U.S. Borders and Ports
 - Pivoting Your Cross-Border Business Practices
 - Is There Any Tariff or Other Regulatory Relief in Sight?
- Practical Tips
- Questions and Answers
- Resources for Your Consideration

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Understanding Your Supply Chain Contracts and Any *Force Majeure* Impact

What is *force majeure*, and who holds the buck in your logistics contract during the coronavirus pandemic?

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Non-Performance and *Force Majeure*

- Business continuity and supply chain resilience are key factors during this new normal
- Consider the entirety of your supply chain relationship partners:
 - Overseas manufacturer
 - Freight forwarder clearing goods from overseas
 - Vessel, air, rail, or truck transporting the goods
 - U.S. Customs broker clearing the goods at the U.S. border
 - Domestic freight support bringing the goods to your factory or for distribution to customers
- Major transportation and logistics providers struggling to meet contractual obligations in light of disruptions caused by the COVID-19 pandemic
- Some major providers have invoked force majeure already; others are expected to follow
 - *E.g.*, DHL declaration on March 19th
 - What is the impact if you claim *force majeure*, and what if someone in your supply chain claims *force majeure*?
- How will any unanticipated Detention and Demurrage affect your operations?

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Are You within “Critical Infrastructure” or Operating an “Essential Business”?

Which “critical infrastructure” and “essential businesses” continue during our new normal?

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Recent Federal Guidance on “Critical Infrastructure”

- On March 19th, the Department of Homeland Security (DHS), Cybersecurity and Infrastructure Security Agency (CISA), issued guidance to states and localities regarding “critical infrastructure workers”
 - Version 2.0 released by CISA on March 28
- “Transportation and Logistics” sector now includes 19 subcategories
 - Subcategories include: “warehouse workers” and “logistics operators”
 - Other sectors covered: Healthcare/Public Health, Law Enforcement, Energy, Food and Agriculture, Public Works, Chemicals, Defense and Military contractors, among others
- CISA Guidance is intended “to be overly inclusive reflecting the diversity of industries across the United States”
- Advisory guidance, not binding on states or localities
 - Many states have incorporated or copied the federal guidance
 - Remember to check for county and city restrictions

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State “Stay at Home” Orders and Other Restrictions

- No planned nationwide closure or curfew
 - Indication of business as usual by mid-April met with a flood of state-level closures
- Rapidly evolving situation, on a state-by-state basis, with almost half the states, plus Washington, DC, imposing statewide stay-at-home orders or closure orders for non-essential businesses(*).
- In other states, city or county level stay-at-home orders issued.
- Even for those localities that don’t incorporate CISA, transportation and logistics services generally considered essential
- Ability to request exemptions in several states

Statewide Order	Incorporates or Tracks CISA Guidance?
California	Yes
Colorado	No (covers transport/logistics supporting critical businesses)
Connecticut	Yes
Delaware	Yes
Hawaii	Yes
Idaho	Yes
Illinois	Yes
Indiana	Yes
Kansas	Yes
Louisiana	Yes
Maryland*	Yes
Massachusetts	Yes
Michigan	Yes
Minnesota	Yes
Montana	Yes
Nevada*	Yes
New Hampshire	Yes
New Jersey	No (applies primarily to retail)
New Mexico	No (but covers mailing and shipping services)
New York	Yes
North Carolina	Yes
Ohio	Yes
Oregon	No (applies primarily to retail)
Vermont	No (covers transportation infrastructure/shipping services)
Washington	Yes
Washington, D.C.	Yes
West Virginia	Yes
Wisconsin	Yes

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Our Borders and Ports

Do you understand the services that remain available at the borders and ports?

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Border Closures by CBP and Port Services

- Border Closures:
 - The northern and southern U.S. borders closed to non-essential traffic, as of March 21
 - A U.S. suspension on travel from EU countries is in effect, but (despite some confusing indications from President Trump during an initial press briefing) this currently does not include commercial trade from EU
- “Lawful cross-border trade” not intended to be affected
 - Businesses supporting trade generally considered to be essential businesses
 - *Note:* Essential Business exemptions tend to apply to employees providing specific services, not to the company as a whole (i.e., warehousing/logistics services covered, but consulting services not covered)
- Trade continues, but impacts from countries hit first by COVID-19 still creating obstacles:
 - Container imbalance
 - Consider the “wave” of operations coming back on line, while others are closing globally
 - Backlog of “non-essential” goods at ports

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Pivoting Your Cross-Border Business

How to pivot your business to continue to move goods cross-border to meet demand in the new normal

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Looking for Alternative Ways to Remain Operational

- Examine your supply chain – are there U.S. sources or partners with which you can collaborate to fulfill your supply chain needs?
- Can you pivot your business to create products or services that can be produced to assist in the provision of critical items to support combatting the pandemic?
 - e.g., distillery now manufacturing hand sanitizer
 - e.g., specialized apparel manufacturer to fabricate face masks
- Will you need to renegotiate your contract with your supplier?
 - If so, ensure that any change in value be formalized *prior* to their foreign exportation to be viable under Customs' regulations.
 - Best if formalized by means of a written arrangement
- Examine the CARES Act to determine if there is any viable support for your business.
 - Key benefits under the CARES Act for:
 - Small Business; Financial Services; Air Carriers and Workers; Debt Relief Fund, among others
 - Regulations will be forthcoming, so monitor for developments.

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Any Opportunities for Tariff or Other Regulatory Relief?

Is there relief from the burden of added tariffs on your business?

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Any Regulatory Relief Helpful?

- So far, no broad relief from China tariffs from Office of U.S. Trade Representative (USTR)
 - Thus far, Trump and USTR Lighthizer rejected calls for permanent lift of tariffs
 - Some domestic interest in retaining the tariffs
- Potential relief due to COVID-19 considered:
 - CBP announced possible relief for an extension for increases to bonds
 - CBP considered, then retracted, temporary suspensions of tariff payments, for the delay of duty, taxes and fee payments
 - Tariff relief is available for certain limited sectors to combat COVID-19 on a case-by-case basis but so far, largely limited to various medical care items
 - CSMS message continuing to “identify appropriate mechanisms to manage operational impacts of COVID-19” so, stay tuned
- USTR is extending certain product exclusions previously granted for Lists 1 and 2
 - USTR has announced certain exclusions for List 1 to be *extended* for 12 months
 - USTR is currently accepting *extension* requests for List 2 exclusions
 - No similar action (yet) for Lists 3 and 4; therefore, continue to monitor
 - Extension requests are not limited to the original Requester

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Practical Tips

Practical tips and unanticipated traps affecting your global trade business during the coronavirus outbreak

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Practical Tips

- Situation is and will remain highly fluid – keep a close watch on international, federal, state, and local developments and global attempts to restrict the spread
 - Border closings, trade restrictions, new rules, *etc.*
 - “Shelter-in-Place” announcements and
 - Curfews – what they may mean for “Critical Infrastructure” and “Essential Business Services”
- Review business agreements with service providers – determine whether you consider *force majeure* or be prepared (as much as possible) if others invoke
- Consider any changes to your supply chain (alternative suppliers, change in pricing, *etc.*) and impact from regulatory perspective
- Monitor for any duty or tariff relief or extensions from CBP, USTR, *etc.*
- Reach-out to government contacts and stakeholder associations to remain current
- Confer with counsel regarding individual developments, impact, and assessments on your business
- Remain safe – practice social distancing, follow government announcements

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Resources

- **COVID-19 Resources:**
 - **Venable COVID-19 Weekly Digest:** www.Venable.com/Covid-19
 - **CISA Guidance:** <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>
- **Upcoming Webinar:** A Virtual Fireside Chat with Nonprofit Association CEOs: How to Navigate COVID-19 Crises, April 2, 2020
 - (Visit www.Venable.com/Covid-19 for a full library of COVID-19 webinar recordings)

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Questions?



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