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WEEKLY NEWS AND COMPLIANCE STRATEGIES ON A GLOBAL LEVEL

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SCCE

Managing Editor
Margaret Martyr
margaret.martyr@corporatecompliance.org

Reporter
Sascha Matuszak
sascha.matuszak@corporatecompliance.org

Proofreader
Patricia Mees
patricia.mees@corporatecompliance.org

Design & Layout
Pete Swanson
pete.swanson@corporatecompliance.org

Shipping industry races to comply with new sulfur cap rule set for 2020

The United Nation's International Maritime Organization (IMO) is meeting Oct. 22-27 in London to discuss the sulfur cap rule (*RSCC 3-Aug.-2018, p. 2*) that will go into effect January 2020. The rule limits the amount of sulfur to 0.5 percent m/m (mass by mass), down from 3.5 percent m/m — a reduction of more than 80 percent. The IMO's Marine Environment Protection Committee (http://bit.ly/2qaZyCy) will also discuss requests from several countries, including the United States, to slow the rollout of the rules — allowing for a grace period of one to three years — in order to allow shipping companies to absorb the costs of the changeover, while also giving refineries and the entire industry time to understand the impact of the rules on operations. Deliberations on the rule began more than a decade ago, however, and the ruling was adopted in 2016. "There's been enough time to prepare," South Korean IMO Secretary General Kitack Lim told the *Wall Street Journal* (https://on.wsj.com/2JiDH4Q) in October. "I understand shipping is going through a difficult period, but as far I am concerned, the implementation date cannot change."

The U.S. White House has expressed concerns that the sulfur cap will cause a spike in fuel prices that will affect consumers across a wide variety of industries. Although there are no clear numbers, some analyses put the total cost for the shipping industry at as much as USD 100 billion, and shipping companies themselves are preparing for costs ranging in the

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US-China trade war several months in: The view from America

The U.S.-China trade war that began earlier this year ramped up in September when the U.S. slapped an additional 10 percent tariff on Chinese imports worth USD 200 billion. There have been a few winners in this war, but according to most reports and analyses, there have been far more losers. Dozens of industries in the United States are burdened with higher prices due to either tariffs on needed Chinese imports or tariffs imposed by China on their goods, pricing them out of the world's largest market.

Small and medium-sized factories, farmers, retail and e-commerce are just a few of the many sectors hit by the tariffs. The Office of the United States Trade Representative (USTR) has received thousands of letters calling for exemptions from certain tariffs, but it has awarded very few of them. A National Retail Federation letter sent to USTR Robert Lighthizer just before the last round of tariffs were implemented in September bluntly expressed their disapproval (*RSCC 12-Oct.-2018, p. 1*):

"We support holding our trading partners accountable and using targeted trade remedies against intellectual property theft and other proven trade violations," the letter states. "However, further taxing legitimately traded consumer and commercial products is not the solution. Imposing additional tariffs on U.S. imports of these products from

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China would disproportionately hurt U.S. consumers, U.S. workers, and U.S. companies. These tariffs are paid by U.S. companies and ultimately U.S. consumers. These tariffs are not paid by Chinese exporters."

In a more recent letter, dated Oct. 15, 169 members of the U.S. Congress called for a process that allows U.S. companies to request exclusions from certain tariffs: "An exclusion process is vital to ensuring that U.S. companies can seek relief in the event that there are no alternative suppliers or if other special circumstances exist that could harm their ability to compete in the global marketplace. The process should be fact based, with criteria specified in the Federal Register for companies to meet to qualify for an exclusion."

The current process for filing for an exemption requires a letter to the USTR outlining the case for exemption, which is vetted by a team of international trade lawyers and USTR staffers. The process has been criticized for being opaque and prone to favoritism. A *Wall Street Journal* report (https://on.wsj.com/2z9n5HZ) found that, although 50 percent of the steel industry's requests for exemptions were granted, most industries were granted less than 10 percent of their requests. The National Retail Federation and the National Restaurant Association were granted less than 5 percent of their requested exemptions, while the National Association of Home Builders was granted only two of its nearly 500 requested exemptions.

Farmers take a hit

Perhaps the most affected of all are American farmers, who have enjoyed a boom in exports to China starting a little over a decade ago. Chinese imports of soybeans, pork and other agricultural goods rose steadily as demand from a growing, urbanized middle class outstripped domestic production. The tariffs have stopped that flow in its tracks, however, leading the Trump administration to offer to buy American farm products worth USD 1.2 billion to make up for the loss of the China market. The big payout has helped to keep some farmers afloat for now, but the loss of the world's biggest market presents long-term challenges for a sector of the U.S. economy that has struggled for decades. A case in point is pork: Chinese tariffs on American pork products have led to a significant supply chain shift, as Chinese importers seek to meet demand by sourcing from European producers.

The tariffs in this case hurt American producers, present opportunities for European producers and others, while presenting Chinese buyers with little more than a supply chain challenge. The challenge is actually an opportunity to remold the global value chain by breaking bonds formed between U.S. and Chinese companies in favor of other networks. U.S. factories, for example, are seeking new suppliers in other Asian countries, especially Southeast Asia, for everything from steel to clothing. Taken in this light, the concerns of the two letters written to the USTR are valid: Tariffs used as tools for altering a country's behavior often have a wide array of unintended side effects, and they may not actually place a significant burden on the intended target.

So far, the U.S.-China trade war has done more to give supply chain managers a headache than change the way China does business with American companies.

E-commerce company JD.com reveals future plans for delivery logistics and management systems

JD.com, Inc. unveiled several logistics and supply chain initiatives at the 2018 Global Smart Supply Chain Summit on Oct. 18. One of those initiatives, the Urban Smart Logistics Institute (USLI), will be a hub for multiple innovations in supply chain management, such as top-level designs for urban logistics systems, as well as big data and cloud-computing platforms. The USLI's members and partners include Nankai University, the Institute of Comprehensive Transportation of National Development and Reform Commission, Beijing Jiaotong University, Beijing Wuzi

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University, Shanghai Maritime University, Sinotrans & CSC Holdings Co. Ltd. and Shanghai Municipal Engineering Design Institute (Group) Co., Ltd.

"Freight vehicles have an outsized contribution to urban traffic emissions, and can take up as much as a third of road capacity," JD.com stated in a press release (*http://bit.ly/2PqQR5j*). "With urbanization in China causing intense changes to the environment, creating pollution and causing other disruption to people's lives, the primary goal of the institute is to design the framework for logistics in urban spaces to be more efficient and environmentally friendly."

The company announced two major projects associated with the USLI: shifting its delivery service into a parcel service and researching the possibility of underground logistics systems.

Retail as a service

JD.com is one of China's biggest e-commerce companies, competing directly with Alibaba Group Holding Limited for a share of the world's largest market. The company has grown in leaps and bounds in the last decade, and has built out an in-house logistics network that it claims can reach 99 percent of the population in China. At the Global Smart Supply Chain Summit, JD.com unveiled its plan to allow customers to ship directly to each other using its delivery services. The new parcel delivery service will compete with local delivery services ZTO Express Inc., SF Express (Group) Co., Ltd., as well as foreign carriers such as United Parcel Service and DHL International GmbH.

"The new delivery service includes a range of competitively priced options, including same-day delivery between different cities; same-day intracity delivery; standard next-day or two-day delivery and next-day delivery between cities," stated JD.com (*http://bit.ly/2O95BBk*). "All packages are dispatched using JD's network of delivery staff and make full use of JD's logistics advantages."

The move is part of what the company calls "retail as a service, or RaaS," in which businesses, shippers and other players can access JD.com's "Global Smart Supply Chain" for their own uses. Consumers will be able to use the service via JD.com's standard e-commerce interface through the app, the website and WeChat, China's most popular messaging service, which is owned by JD.com's partner Tencent Holdings Ltd. "This marks the next step in leveraging the nationwide logistics network that JD has built over the past decade," said JD.com CEO Zhenhui Wang.

Tunnels for freight

A study cited by JD.com in their press release regarding the USLI outlines the impact that freight vehicles have on the livability of growing cities. The study, "City Logistics" (*http://bit.ly/2PrkyTM*), was published in 2008, but the ideas are still salient. The author describes the twin trends of increased urbanization and the growing need for shipping and logistics systems that can handle the flow of packages and commodities that are the lifeblood of major metropolitan areas. The study presents ideas and strategies for coordinating and consolidating urban logistics systems to make them "more efficient and environmentally friendly." The City Logistics study, along with another study, "Guidelines: Developing and Implementing a Sustainable Urban Logistics Plan" (*http://bit.ly/2yCRKya*), strongly recommend logistics systems that reduce the related energy consumption, "last-mile" costs, and environmental impacts of urban freight.

This goal dovetails with JD.com's strategy to build smart warehouse management systems, expand the company's green initiatives and form a new energy union with 20 industry partners. One of the first options JD.com will look at is underground logistics systems and making use of existing pipe corridors and subterranean tracks. Elon Musk's Boring Company has a similar idea and is in the first stages of determining the feasibility of an underground logistics system in Los Angeles, California.

"The most effective smart cities are the ones that make best use of all available space and resources," said Director of the Chinese Academy of Engineering Chen Xiangsheng at the Institute's launch event during the 2018 Global Smart Supply Chain Summit in Beijing. "The use of underground space to build three-dimensional smart logistics system is an industry game-changer. It will alleviate traffic problems, environmental problems, and save urban space."

Exxon Mobil sued for misleading investors regarding their climate change-related risk mitigation efforts

New York Attorney General Barbara Underwood announced a lawsuit (*https://on.ny.gov/2zc9L5R*) against Exxon Mobil Corporation on Oct. 24, alleging that the company misled investors regarding the threat of climate change to its business operations. According to the complaint, Exxon repeatedly and falsely told investors that the company was factoring in the cost of regulations against emissions and other effects of climate change. The aim was to mislead investors, including thousands of employees and retirees in the New York State Common Retirement Fund and the New York State Teachers' Retirement System. According to a press release (*https://on.ny.gov/2yCWYKo*), members of these two organizations hold Exxon shares valued at USD 1.5 billion.

"Investors put their money and their trust in Exxon — which assured them of the long-term value of their shares, as the company claimed to be factoring the risk of increasing climate change regulation into its business decisions. Yet as our investigation found, Exxon often did no such thing," Attorney General Underwood said. "Instead, Exxon built a facade to deceive investors into believing that the company was managing the risks of climate change regulation to its business when, in fact, it was intentionally and systematically underestimating or ignoring them, contrary to its public representations."

The lawsuit comes after a three-year investigation into whether Exxon misled investors. A similar investigation by the U.S. Securities and Exchange Commission ended earlier this year without any enforcement actions. Other lawsuits filed by municipalities seeking damages for corporate negligence regarding climate change effects have been thrown out, most recently in June (https://on.wsj.com/2AyEqfn) when lawsuits were brought by the cities of San Francisco and Oakland, alleging that the world's largest oil companies should pay to protect cities from the impacts of climate change. U.S. District Judge William Alsup wrote in his decision that, although climate change is a real threat, "the problem deserves a solution on a more vast scale than can be supplied by a district judge or jury in a public nuisance case." The ruling deferred responsibility to the political branches of the government, specifically the U.S. Environmental Protection Agency and its regulatory power through the Clean Water Act (1972).

The ruling threatens several other pending suits across the country seeking damages from companies to pay for the impact of climate change.

Assessing the risk of climate change

Judge Alsup wrote that the court "fully accepts the vast scientific consensus" that climate change is and will continue to have serious effects, including rising sea levels, higher temperatures, swift changes in ecosystems and the exacerbation of an already serious global water scarcity problem.

It is, therefore, not surprising that one of the major challenges facing supply chain managers going forward is the threat of unpredictable weather patterns due to global climate changes. In February 2018, the Committee of Sponsoring Organizations of the Treadway Commission and the World Business Council for Sustainable Development released a preliminary draft of a report (http://bit.ly/2KZ2ePU) on environmental, social and governance risks (*RSCC 20-July-2018, p. 2*). The authors cover a wide variety of different risk factors regarding climate change and write:

"Climate change presents multiple risks including physical, regulatory, reputational, competitive, social and legal risks. Climate change considerations for business include greenhouse gas mitigation and complications, adaptation of operations, services, products and business models to the impacts of climate change and responding to adverse weather conditions."

The U.S. Securities and Exchange Commission issued guidance in 2010 (http://bit.ly/2C2VR95) on disclosure requirements related to climate change matters (*RSCC 12-Oct.-2018, p. 3*). The guidance identifies four main categories of climate-related risks to supply chains that companies should disclose:

- Legislation and regulation.
- International accords.
- Indirect consequences of regulation or business trends.
- Physical impacts.

The climate change risks to supply chains also include debilitating heat in regions that currently play large roles in global value chains (e.g., Southeast Asia, Mexico, the Indian subcontinent, the Middle East and China); rising sea levels and extreme storms that can threaten seaports and the shipping industry; and the costs associated with regulation and international accords. The recent International Maritime Organization's reduction of the marine fuel sulfur cap (*RSCC 3-Aug.-2018, p. 2*) is an example of how international accords related to climate change can force companies to incur costs; i.e., in this case, refitting existing fleets and installing "scrubbers" to reduce sulfur will cost the industry many billions of U.S. dollars.

The case brought against Exxon may be founded on the same grounds mentioned in Judge Alsup's ruling, but proponents of civil litigation against corporations to mitigate the effects of climate change hope the case will be as groundbreaking as the Tobacco Master Settlement Agreement of 1998 (http://bit.ly/2AASzJj).

New sulfur cap rule

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tens of billions of U.S. dollars (*http://bit.ly/2CHDIDv*). One of the industries preparing for a major financial disruption is the airline industry. Increased demand for high-quality fuels due to the Jan. 1, 2020 deadline will inflate prices for airline fuel, as well, rippling through the economy and ultimately causing ticket prices to rise. The rule does reduce emissions and will help refiners who can produce high-quality fuel, but for consumers and downstream industries, there will be a price hike to handle.

White House officials conceded, however, that the implementation date corresponds with the U.S. presidential election. A spike in fuel prices — due to the global sulfur cap rule and sanctions against Iran — could have political ramifications for the incumbent.

The IMO argues that the U.S., Canada and several other countries have sulfur limits even lower than 0.5 in their own territorial waters, and have long known of the coming implementation date. The IMO and its rule making authority are set by a congressionally ratified treaty; in order for U.S. officials to propose any changes, they must file a formal objection, which is something that would likely be unsuccessful this late in the process.

Investment and guidance

The ability for the shipping industry to comply with the new standard rests on the availability and price of higher quality marine fuel. Two separate studies, one by Ensys Energy & Systems, Inc. (*http://bit.ly/2AmnKdk*) and the other by CE Delft (*http://bit.ly/2NLqEdh*), paint very different pictures of fuel availability at the implementation deadline for sulfur reduction. Ensys foresees dramatic price increases and constrained demand, whereas CE Delft predicts enough fuel to meet demand and affordable prices and innovative solutions.

Major oil companies and refiners have long been aware of the coming sulfur cap rule and have spent billions of U.S. dollars retooling their operations to be able to meet the new demand. Low-sulfur fuels are higher quality and, therefore, more expensive. The rule is a boon for companies that have the capacity to supply the oil. The American Fuel and Petrochemical Manufacturers (*http://bit.ly/2OSelku*), a trade group that includes most of the nation's refiners, supports the new rule and claims refiners are ready and able to supply IMO-compliant fuels.

At the meeting in London, the Marine Environment Protection Committee will also be issuing draft guidance to support ships during implementation of the sulfur cap guidelines. The guidance (*http://bit.ly/2Smb8rh*) was drafted in July and includes sections on:

- Risk assessment and mitigation plan (impact of new fuels).
- Fuel oil system modifications and tank cleaning (if needed).
- Fuel oil capacity and segregation capability.
- Procurement of compliant fuel.
- Fuel oil changeover plan.
- Documentation and reporting.

The guidance is meant to push forward the process of retooling and finding suppliers for high-quality maritime fuel. Shipping companies need to be compliant within two years, and although the U.S. backs a grace period, it is currently unlikely that the IMO will grant one. The guidance issued during the meeting supplements an earlier guidance (*http://bit.ly/2qkNwqx*) issued in September.

NEWS BRIEFS

◆ **StarKist pleads guilty to price-fixing.** In an update on the investigation into price-fixing in the tuna industry (*RSCC 15-June-2018, p. 3*), StarKist Co. has pleaded guilty to a felony price fixing charge. The company faces a maximum fine of USD 100 million.

StarKist, Bumble Bee Foods, LLC, and Chicken of the Sea face multiple lawsuits and indictments after a whistleblower revealed a long-running price-fixing scheme. Class action suits brought by a number of companies, including Walmart Inc. and Wegmans Food Markets, Inc., name more than 50 conspirators, including parent companies Dongwon Industries Co. and Thai Union Group PCL, as well as several high-level executives.

Bumble Bee Foods pleaded guilty last year to the same charge and paid a fine of USD 25 million. The low fine was due to fears that a much higher fine could put the company out of business. Two former executives of Bumble Bee and one executive from StarKist have also each pleaded guilty to price-fixing charges. Former Bumble Bee CEO Christopher Lischewski has pleaded not guilty to a price-fixing charge.

Whistleblower: http://bit.ly/2xzoFFU

Lawsuits: http://bit.ly/2kAjsEd

Indictments: http://bit.ly/2J0mTyz

AP: http://bit.ly/2OVGAi1

◆ **US calls for review of global postal system rates.** The United States has threatened to pull out of the Universal Postal Union due to rate discounts applied to "second and third tier" countries, specifically China. The rate discounts can make it cheaper for Chinese vendors to ship goods to the U.S., rather than ship from one U.S. location to another. The U.S. started the yearlong process for withdrawal on Oct. 16, and the union commissioned a report the following week to study the rate system and determine the fairness of the discounts. A decision regarding rates could be made as early as April 2019.

The Wall Street Journal: https://on.wsj.com/2qj9XfC

◆ **UK court rejects class-action claim against Google for privacy breaches.** In a case that extends back to 2012, a U.K. court dismissed a representative action brought against Google LLC for secretly collating personal data using the so-called "Safari Workaround." Specifically, Google used a bit of JavaScript code to bypass Safari's default blocker of third-party cookies (set by domains other than those being visited) in order to allow sites within its DoubleClick ad network to track users. This was despite Google giving assurances that this would not happen to users running Safari with its default privacy settings. A campaign group, "Google You Owe Us," launched the representative action in 2015.

The court dismissed the case on two grounds:

1. The facts alleged in the case did not support the claim that the applicant or any of those whom he represented suffered "damage" as defined by the U.K.'s Data Protection Act 1998.
2. Members of the class did not have the "same interest," as defined under U.K. legal procedural rules, and it was impossible to reliably identify members of the represented class.

Although most agree that Google's actions were wrongful, the dismissal came on procedural grounds.

The case: http://bit.ly/2P0L1lr

Google You Owe Us: http://bit.ly/2Q25qJz

Analysis: http://bit.ly/2Q4glTh

Analysis: http://bit.ly/2CLbTVs

◆ **Port of Rotterdam set to launch blockchain pilot.** The Port of Rotterdam Authority, in partnership with Samsung Group and ABN AMRO Bank N.V., will seek greater efficiency through the digitization of logistics and operations via blockchain technology. "The ultimate goal is for a complete, paperless integration of physical, administrative and financial streams within international distribution chains," the partners said in a statement. "What is particularly special about the project is that, for the first time in the rather short history of this technology, we can have different blockchains operating together," added Sanghun Lee, President of Samsung SDS Europe/CIS. "This takes place via an overarching 'notary' that connects entirely separate blockchains in Korea and the Netherlands."

Press release: http://bit.ly/2AxWl66

◆ **FATF issues new recommendations regarding virtual currencies.** The Financial Action Task Force (FATF) issued recommendations for financial service providers and governments on combatting money laundering and terrorist financing through the use of virtual currencies. The recommendations supplement guidance issued in 2015 on virtual currencies and called for more regulation and registration of virtual currency providers. The FATF issued a statement on Oct. 19 outlining the recommendations:

"Virtual assets and related financial services have the potential to spur financial innovation and efficiency and improve financial inclusion, but they also create new opportunities for criminals and terrorists to launder their proceeds or finance their illicit activities. The FATF has therefore been actively monitoring risks in this area, and issued guidance on a risk-based approach to virtual currencies in 2015. There is an urgent need for all countries to take coordinated action to prevent the use of virtual assets for crime and terrorism."

Press release: http://bit.ly/2ObkDX3

2015 Guidance: http://bit.ly/2zbQzFg