Volume 1, Number 20 • November 9, 2018

REPORT ON SUPPLY CHAIN COMPLIANCE

WEEKLY NEWS AND COMPLIANCE STRATEGIES ON A GLOBAL LEVEL

Contents

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

Global recycling supply chains in upheaval after China bans contaminated scrap

Chinese recycling companies are buying up paper mills in the U.S. and processing millions of tons of scrap that was once bound for the Chinese market for processing. A ban on contaminated scrap, including paper pulp, drastically reduced the supply in China, driving companies to burn through stockpiles, idle processing machines, and seek creative solutions.

Now, according to a *Wall Street Journal* report (https://on.wsj.com/2Ol7Ste), Chinese companies are processing the scrap in the U.S., removing the contaminants to reach the threshold required by the Chinese government, and exporting the cleaned pulp to China to feed the paper industry.

The U.S. scrap industry went into a slump in the summer after the ban was instituted, and the move by Chinese paper companies and entrepreneurs to secure supply has been a boost to the flagging industry (http://bit.ly/2JzXBbA).

The scrap ban

China's Ministry of Ecology and Environment instituted a formal ban (http://bit.ly/2OjiOaE) of 32 different scrap categories in April 2018. The first part of the ban, which includes

continued on page 4

Hezbollah is targeted in newest US regulation to further sanction Iran

United States President Donald Trump signed the Hizballah International Financing Prevention Amendments Act of 2018 (http://bit.ly/2PA18fr) on Oct. 25, targeting Hezbollah, a paramilitary organization based primarily in Lebanon. Hezbollah has been designated as a terrorist organization by the U.S. Department of State, and the White House described it as a "radical Islamist terrorist organization and close partner and proxy of the Iranian regime" in a press release (http://bit.ly/2ylnguH).

"The legislation that President Trump signed into law today will further isolate Hizballah from the international financial system and reduce its funding," the White House stated. "These sanctions will target foreign persons and government agencies that knowingly assist or support Hizballah, and Hizballah-affiliated networks that engage in drug trafficking or other transnational crime."

The U.S. Treasury Department's Office of Foreign Asset Control (OFAC) implemented similar sanctions against the Basij Resistance Force, a paramilitary force under Iran's Islamic Revolutionary Guard Corps on Oct. 11, pursuant to Executive Order 13224 (*RSCC, 26-Oct.-2018 p. 1*).

continued on page 2

Published by the Society of Corporate Compliance and Ethics, Minneapolis, MN • +1 952.933.4977 • corporatecompliance.org

The sanctions also target persons, entities and organizations that provide any support or funding to these two paramilitary organizations, and they are part of a broad attempt to isolate Iran and its allies and proxies from the international financial system. A new round of sanctions is set to go into effect Nov. 5, primarily targeting Iran's energy sector.

Swift, Europe, and a lack of clarity

European governments opposed the U.S. withdrawal from the Joint Comprehensive Plan of Action (JCPOA), the multilateral agreement that suspends most sanctions on Iran in exchange for a marked curtailing and monitoring of Iran's nuclear program. The withdrawal coincided with the reinstatement of sanctions against Iran, outlined in guidance (https://bit.ly/2loeBUm) issued by OFAC. According to the guidance, Aug. 6 and Nov. 4, 2018 are the deadlines for companies and persons to disengage with Iran to avoid exposure to sanctions or enforcement actions under U.S. law (*RSCC, 1-June-2018 p. 1*). European governments also opposed the reinstatement of sanctions and urged European companies to continue doing business with Iran, to mixed success.

With the Nov. 4 deadline looming, companies in the U.S. and EU have disengaged from Iran, despite assurances from European leaders that they would be shielded from U.S. sanctions. Europe also mentioned a secure payment method that would allow companies to continue doing business with Iran without having to use the U.S.-dominated financial system, but that method has so far not materialized.

Most international money transfers use the Belgium-based financial messaging service Swift, including transactions involving Iranian banks. The U.S. has said that it will force Swift to disconnect Iranian banks, but on Oct. 25, *The Wall Street Journal* reported (https://on.wsj.com/2PIUvYF) that top officials were considering allowing Swift to continue offering services. There has so far been no conclusive decision regarding what to do with Swift.

Other issues that are up in the air include humanitarian aid, the sale of medicine and food, and work being done to make Iran's nuclear facilities less dangerous.

"Still waiting for U.S. replies on all these issues," a senior European diplomat told *The Wall Street Journal*. "Zero clarity."

Case in point

An Iranian port being developed in the southern city of Chabahar is a case-in-point for how complex achieving geopolitical goals through sanctions can be. Roads leading from the port to Afghanistan give that country access to the Arabian Sea to trade with Africa, India, and the wider world. Trade routes out of Afghanistan are dangerous and blocked, or they are subject to geopolitical maneuvering, such as the border with Pakistan.

The U.S. wants India to help rebuild Afghanistan and to play a larger role in Central Asia, but the Iranian port is possibly the most effective way to get India involved. The port gives Iran greater access to south and central Asia, however, and officials from Iran, Afghanistan and India have been discussing how best to keep the port alive if the U.S. chooses to restrict its activities. The sanctions regime does provide the White House with the ability to provide exemptions for certain projects and companies, but there has been no clear word on the Chabahar port yet.

For the U.S., the choice is between countering Russian and Chinese influence in Central Asia by helping provide India with greater access, or giving the Iranian government a lifeline that could make the entire sanctions strategy a moot point.

Report on Supply Chain Compliance (RSCC) (ISSN: pending) is published 45 times a year by the Society of Corporate Compliance and Ethics, 6500 Barrie Road, Suite 250, Minneapolis, MN 55435, USA. +1 952.933.4977, www.corporatecompliance.org.

New guidance released for shipping companies in anticipation of the 2020 global sulfur cap rule

In September 2018, the International Chamber of Shipping released a provisional guidance for shipping companies, "Compliance with the 2020 'Global Sulphur Cap'" (http://bit.ly/2qkNwqx). The guidance was made available at the Oct. 22 series of meetings in London, organized by the United Nation's International Maritime Organization (IMO) that featured discussions on the sulfur cap rule and other issues related to the work of the IMO's Marine Environment Protection Committee (*RSCC, 2-Nov.-2018 p. 1*).

The new global sulfur cap rule came after decades of study and several additions made to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) (http://bit.ly/2v9MiQD), which went into force in 2005. Annex VI calls for IMO member states to create regulations to reduce polluting airborne emissions from ships, including sulfur oxides, nitrogen oxides, ozone-depleting substances and volatile organic compounds (*RSCC, 3-Aug.-2018 p. 2*).

The new rule presents significant challenges to the shipping industry, and the authors of the guidance outline the fact that the complexity of compliance demands accurate and actionable guidance: "Apart from the significant additional cost of compliant fuel, implementation will be far more complex than for the previous introduction of ECAs. This is because of the sheer magnitude of the switchover and the much larger quantities and different types of fuel involved, as well as continuing uncertainties about the availability of compliant fuels in every port worldwide immediately after 1 January 2020."

Although several member states, including the United States and Greece, called for a longer transition period after the January 2020 implementation date, the guidance states that there will be no additional transition period. Shipping companies need to fully prepare now and create implementation plans that are fully transparent and maintain outlines of the plan to place onboard each ship.

"If a ship has a suitably developed Implementation Plan, and corresponding records are maintained on board which demonstrate how the Plan has been followed, then the ship's crew should be in a better position to demonstrate to Port State Control (PSC) officers that they have acted in good faith and done everything that could be reasonably expected to achieve full compliance," the guidance states. "This need to demonstrate good faith could be particularly important in the event that safe compliant fuels are unexpectedly unavailable in some ports during the initial weeks of implementation."

The guidance also states that the full implementation details are not yet complete, such as a standard template for fuel oil non-availability reporting and directions for maintaining safety standards for ships that are forced by regional regulations to carry multiple types of compliant fuels. The guidance will be updated in due course.

Ship-specific implementation plans

Aside from adhering to regulations and choosing the proper fuel, the most important part of the compliance process is creating an effective implementation plan. The guidance provides a template and goes through the most important aspects of an effective plan. Port authorities checking for compliance will take into account effective implementation plans.

The first step to creating an effective implementation plan is a careful assessment of risks and mitigation. The guidance provides a few examples of the types of action plans shipping companies should consider:

» Procedures to segregate different types of fuels from different sources.

» Procedures for compatibility testing and segregating fuels from different sources until compatibility can be confirmed.

» Plans to address any mechanical constraints with respect to handling specific fuels, including ensuring that minimum/maximum characteristics of fuel oil as identified in fuel standards such as ISO 8217 can be safely handled on board the ship.

» Procedures to verify machinery performance using fuel oil with characteristics with which the ship has no prior experience.

Some next steps include assessing and documenting any changes to a ship's structure to accommodate new fuel storage, pumping and piping systems, and ensuring that fuel transfer, filtration and delivery systems are able to handle different types of compliant fuels.

The next big steps are the procurement of compliant fuel oil and the creation of a fuel oil changeover plan. Major fuel oil suppliers are only going to meet demand, so the guidance highly recommends planning ahead and ordering compliant fuel by the middle of 2019. Waiting until the last minute could bring about significant operational and supply issues. A fuel oil changeover plan ensures that only compliant fuel is burned after Jan. 1, 2020. The guidance presents a long list of actions that a fuel changeover plan should include, and it also requires all ships to offload or consume any remaining non-compliant fuel.

Documenting and reporting

Shipping companies should be able to provide documents to port authorities on demand, including:

- The ship's implementation plan together with appropriate records demonstrating how the plan has been followed.
- A ship-specific fuel oil changeover plan … that demonstrates how the ship calculated the time required for complete changeover and which provides evidence of compliance. The ship's log books should also contain the details of the changeover procedure.
- Records showing ship-specific familiarization and training of crew with the fuel oil changeover plan, relevant procedures and related ship's systems.
- Copies of any fuel oil non-availability reports sent to the ship's flag state and all the supporting documents (to be retained on board for inspection for at least 12 months). It should be noted that a fuel oil non-availability report is required to be sent to the ship's flag state and the next arrival port.

China bans contaminated scrap

continued from p. 1

16 categories, will be in effect by the end of 2018; the ban on the remaining 16 categories goes into effect by the end of 2019.

According to an English translation (http://bit.ly/2EYVgIT) of the Ministry's announcement, the first set of 16 banned categories includes "among others, metal scraps, scrap vessels, compressed piece of scrap automobile, smelt slag, and industrial waste and scrap of plastics." The second round includes "waste and scrap of stainless steel, titanium wastes and scraps, and wood waste and scrap."

The ban has had a dramatic effect on the global recycling industry. China was by far the largest importer of scrap, and the ban has forced recyclers across the world — from Europe to Australia to the U.S. — to find alternative markets for some 700,000 metric tons of scrap. Additionally, the Ministry implemented a 0.5 percent contamination standard on scrap that is still being accepted. Most scrap, including metal, plastic and paper, has some form of contamination, usually food. The new standard has severely crimped exports of scrap to China, and has forced suppliers to either start using costly inspection processes, or seek alternative markets.

There are two major motives for China's hardened stance regarding scrap imports. The first being environmental policy and the strain of accepting the world's scrap, much of it contaminated and in need of costly processing. The other factor is China's own domestic scrap industry. China currently produces 190 million metric tons of waste, but World Bank Group estimates put that number at 510 million metric tons by the year 2025 — far above the U.S., which is estimated to produce 256 million tons of waste by 2025.

The shift also came amid trade tensions with the U.S., which some say was a motivating factor for limiting the amount of scrap that American companies could export to China and forcing China's domestic industry to pick up the slack.

Supply chain rumbles

The ban has essentially forced global scrap companies to re-create a disrupted supply chain. Ports across the American west coast reported up to a 30 percent drop in waste exports to China (http://bit.ly/2JzXBbA). Germany used to export as much as 70 percent of its plastic waste to China; Australia exported as much as 1.25 million metric tons; and Japan exported between 500,000 and 1 million metric tons per year. All of that waste is now displaced by the ban, affecting jobs, supply chains, pricing and downstream industries that require the waste for finished products.

A study (http://bit.ly/2yNR6hb) published in June in the journal *Science Advances* estimated that up to 111 million tons of plastic waste — or about half of what China had absorbed in the past 30 years — could be displaced globally by 2030 as a result of its import ban.

China has also been affected. China is dependent on imports of recovered paper; recovered material makes up 67 percent of the fiber used to make pulp, paper, tissue and packaging. Some 41 percent of that recovered fiber has to come from imports. According to a presentation (http://bit.ly/2znAc8R) given by Tedd Powers, senior strategy consultant at Fisher International, Inc., Chinese producers imported roughly 28.5 million metric tons of recovered fiber in 2016 and about 12 million tons of that material was "bleached recovered paper," which he described as mixed paper, newsprint or sorted office papers. Powers said, "To replace that 12 million tons of bleached fiber would require 20 percent of all of the world's global production of bleached market pulp — staggering."

Court documents related to 1MDB corruption scandal released to the public

A three-count criminal indictment and a guilty plea were unsealed Nov. 1 in connection with the 1Malaysia Development Berhad (1MDB) money laundering and corruption scandal. Former Prime Minister of Malaysia Najib Razak and dozens of officials and companies have been investigated and charged with embezzling billions of U.S. dollars from the fund.

According to a U.S. Department of Justice press release, the three-count indictment (http://bit.ly/2SFY4xl) charges Low Taek Jho, also known as "Jho Low," and Ng Chong Hwa, also known as "Roger Ng," with conspiring to launder billions of dollars embezzled from 1MDB and conspiring to violate the FCPA by paying bribes to various Malaysian and Abu Dhabi officials. Ng was arrested in Malaysia, but Low remains at large.

Tim Leissner, former chairman of Goldman Sachs Group Inc.'s Southeast Asian operations, pleaded guilty (http://bit.ly/2zn8hWy) to "conspiring to launder money and conspiring to violate the FCPA by both paying bribes to various Malaysian and Abu Dhabi officials and circumventing the internal accounting controls" of Goldman Sachs. Leissner has also been ordered to forfeit USD 43.7 million.

The scheme

According to court documents and the DOJ press release, Leissner, Ng and Low bribed officials in Malaysia and Abu Dhabi in order to obtain business for Goldman Sachs, including bond deals for lucrative development projects in Malaysia. They then misappropriated and diverted funds for the deals, provided by the 1MDB fund, into bank accounts controlled by Low and his associates. They planned to launder those funds through the U.S. financial system by purchasing luxury jewelry, art and high-end real estate, and by funding major Hollywood films. The DOJ estimates that more than USD 2.7 billion was misappropriated from the fund to pay for bribes and to pay fees to Goldman Sachs.

The conspirators and their associates ran the scheme through three separate projects. In exchange for selecting Goldman Sachs as the sole book runner and arranger for these projects, officials in Malaysia and Abu Dhabi received hundreds of millions of U.S. dollars in kickbacks. Recorded conversations depict how Low promised officials "big present" for helping to close the deals (http://bit.ly/2zoC3Kz).

Court documents do not name the officials, but it is likely that former Prime Minister Razak, his wife and other officials within the Malaysian government will face additional charges following the arrest of Ng and Leissner's guilty plea.

Tip of the iceberg

Former Prime Minister Najib Razak was defeated in an election earlier this year by his one-time mentor (https://bbc.in/2Jtz37m), Mahathir bin Mohamad, who vowed to get to the bottom of the massive corruption scandal surrounding 1MDB, the investment fund created by Najib in 2009. Malaysian police raided Razak's house, uncovering millions of U.S. dollars in luxury items and cash, and eventually charged him formally with money laundering and corruption on Aug. 8. Arrest warrants were also issued for Nik Faisal Ariff Kamil, a director of SRC International, Inc., a former unit of 1MDB and 1MDB's former CEO, Shahrol Halmi. Malaysian, Singaporean, Swiss and American authorities have been cooperating since March on the investigation. Singapore barred Leissner from working in financial industries, and Swiss authorities aided the DOJ with information that led to his indictment and eventual guilty plea. Swiss authorities helped spur the investigation by calling for cooperation from Malaysia in an investigation into corruption and money laundering involving 1MDB (https://bit.ly/2sXJqFy). Further cooperation is expected, as well as more charges, as the investigation carries on.

The DOJ is seeking the recovery of approximately USD 540 million in assets, but it alleges that more than USD 4.5 billion was misappropriated from 1MDB from 2009 to 2015. The DOJ filed complaints in 2016 and 2017 (https://bit.ly/2t3oq3h), alleging massive misappropriation of funds, and they provided a list of assets purchased with the money, including a yacht that went up for sale last week, several real estate properties and dozens of jewelry pieces allegedly given to Razak's wife. When the initial complaints were filed, the DOJ issued a press release regarding the scandal, stating, "1MDB was ostensibly created to pursue investment and development projects for the economic benefit of Malaysia and its people, primarily relying on the issuance of various debt securities to fund these projects. However, over the course of an approximately five-year period, between approximately 2009 and at least 2014, multiple individuals, including public officials and their associates, conspired to fraudulently divert billions of dollars [USD] from 1MDB through various means, including by defrauding foreign banks and by sending foreign wire communications in furtherance of the scheme, and thereafter, to launder the proceeds of that criminal conduct, including in and through U.S. financial institutions."

NEWS BRIEFS

◆ **ABB Group to build state-of-the-art robotics factory in China.** On Oct. 27, Swiss robotics and digital technology company ABB announced an investment worth USD 150 million in Shanghai, China to build "the world's most advanced, automated and flexible robotics factory — a cutting-edge center where robots make robots." The factory will merge a host of different technologies together into one center to create a sophisticated and environmentally sustainable "factory of the future."

"China's commitment to transform its manufacturing is a torchlight for the rest of the world," said ABB CEO Ulrich Spiesshofer. "Its strategic embrace of the latest technologies for artificial intelligence, advanced robotics and cloud-based computing present a playbook for every country that wishes to have a globally competitive manufacturing base. Shanghai has become a vital center for advanced technology leadership — for ABB and the world. We look forward to working with Shanghai Mayor Ying Yong, other community leaders and our customers as we launch this major expansion of ABB's substantial presence in China, building on our journey to become China's leading Robotics manufacturer that started in Shanghai over two decades ago."

ABB press release: *http://bit.ly/2D0r7q2*

◆ **Salmonella and Listeria concern causes widespread recalls.** Dozens of major U.S. food producers recalled ready-to-eat meat and poultry products after Canadian supplier McCain Foods Ltd. disclosed that its vegetables may have been contaminated by possible salmonella and Listeria monocytogenes. The recalls involve an estimated 4 million pounds of food; there haven't yet been any confirmed sicknesses or death.

Several major grocery outlets were affected, and the recall raises concerns about food safety and transparency within the supply chain. Trader Joe's, Whole Foods Market Inc., Walmart Inc., Hy-Vee and California-based Ruiz Food, Inc. were all affected.

FoodSafety.gov: *http://bit.ly/2OlSMU0*

WSJ: *https://on.wsj.com/2D0bHSF*

◆ **Chevron reaches settlement with US Department of Justice and the state of Mississippi.** Chevron Corporation agreed to settle a claim by the U.S. government and the state of Mississippi that it violated the Clean Air Act (1970) when it accidentally released hazardous chemicals into the environment. Under the agreement, which is still pending court approval, Chevron will pay approximately USD 150 million to replace pipes, improve inspections and training, and make other safety improvements to all of its domestic refineries.

"The Clean Air Act's hazardous chemical risk management program is intended to protect local communities and American workers," said Acting Assistant Attorney General Jeffrey H. Wood for the U.S. Department of Justice Environment and Natural Resources Division. "Today's action, taken jointly with our enforcement partners at EPA and the State of Mississippi, strengthens emergency prevention and response systems at Chevron's U.S. refineries, which will help to protect their workers and the communities in which they live from dangerous chemical accidents."

DOJ press release: *http://bit.ly/2SGLA8I*

◆ **Former bank executive sentenced to prison for role in Venezuela money laundering scheme.** Matthias Krull, former managing director and vice chairman of Julius Bär Group AG, was sentenced to ten years in prison on Oct. 9 after pleading guilty for his role in a billion-dollar international scheme to launder funds embezzled from Venezuelan state-owned oil company Petróleos de Venezuela, S.A. (PDVSA). The scheme began in 2014 and involved a network of Venezuelan elite and U.S.-based money managers, brokerage firms, banks and real estate investment firms. The systematic looting of PDVSA, Venezuela's sole source of foreign currency, coincided with an economic meltdown and a series of damaging sanctions imposed on the country by the U.S. government.

The U.S. Department of Justice has announced 16 guilty pleas in connection with the investigation into PDVSA's bribery and money laundering activities.

DOJ press release: *http://bit.ly/2CXlozW*

◆ **Four largest agribusinesses turn to blockchain and AI to optimize supply chain processes.** Archer Daniels Midland Company; Bunge Limited; Cargill, Incorporated and Louis Dreyfus Company B.V. issued a joint statement on Oct. 25, outlining their plans to address time-intensive processes in the supply chain by digitizing and standardizing global agricultural shipping transactions. The companies said they would turn to several emerging technologies, including blockchain and artificial intelligence.

"We're pleased to join the effort to foster modernization and standardization of data and documents in the global agribusiness value chain. By working together to design and implement a digital transformation, we will bring hundreds of years of collective knowledge and experience to simplify processes and reduce errors for the benefit of the entire industry," said Juan Luciano, Archer Daniels Midland's chairman and CEO.

Press release: *http://bit.ly/2qqWUlX*

Lloyd's List: *http://bit.ly/2zlW30r*

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