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Preface

Welcome to the *Asia-Pacific Investigations Review 2022*, a Global Investigations Review special report.

Global Investigations Review is the online home for all those who specialise in investigating, and resolving, suspected corporate wrongdoing, telling them all they need to know about everything that matters.

Throughout the year, the GIR editorial team delivers daily news, surveys and features; organises the liveliest events ('GIR Live') – covid-19 allowing; and provides our readers with innovative tools and know-how products. In addition, assisted by external contributors, we curate a range of comprehensive regional reviews – online and in print – that go deeper into developments than the exigencies of journalism allow.

The *Asia-Pacific Investigations Review 2022*, which you are reading, is part of that series. It contains insight and thought leadership by 21 pre-eminent practitioners from the region. All contributors are vetted for their standing and knowledge before being invited to take part.

Across eight chapters and 145 pages, they capture and interpret the most substantial developments pertinent to internal and external investigations from the past 12 months, complete with footnotes and relevant statistics. Elsewhere they focus on a particular topic so you can get up to speed quickly. The result is an invaluable desktop reference work.

This edition covers Australia, China, Hong Kong, India and Singapore in detail; and has a pair of items on the consequences of the continuing US–China trade war; along with an overview on how best to deal with requests from foreign enforcers.

As always with these reviews, a close read yields many gems. For this reader, those include:

- a timeline of the incidents in the US–China trade war;

- a reminder that it is often counterterrorism and anti-money laundering efforts that wedge open a path through which all kinds of cases subsequently pass;
- learning that extradition, which is always tricky, is trickiest in the area of tax and revenue;
- learning that Interpol Red Notices may have been widely abused;
- learning that Australia's Security and Investment Commission now has a 'why not litigate' policy; and
- discovering the thought, on page 134, that China is aping the US on corporate law enforcement 'just as Germany's Kaiser . . . sought to . . . mimic British naval power at the turn of the twentieth century'.

And much, much more.

If you have any suggestions for future editions, or want to take part in this annual project, we would love to hear from you.

Please write to insight@globalinvestigationsreview.com.

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London

August 2021

Strengthening Supply Chains amid Growing Trade Restrictions

Charlie Steele, Weng Yee Ng and Drew Costello
Forensic Risk Alliance

IN SUMMARY

Economic sanctions, export controls and other trade restrictions are not new, but they have been used with much greater frequency and aggressiveness particularly over the past several years. Governments increasingly look to these tools to combat wide-ranging concerns from national security, to data protection and human rights abuses. The impact of the US-China relationship – together with other trade restrictions on certain Asia-Pacific countries – make doing business in the region riskier than ever. This article explores how recent economic policies have altered the supply chain landscape and offers practical guidance to mitigate risk.

DISCUSSION POINTS

- Impact of the US-China relationship and trade war on supply chains
- Targeted sanctions on Asia-Pacific countries
- Covid-19 complications for supply chains
- Concrete steps for better managing supply chains in this landscape

REFERENCED IN THIS ARTICLE

- US Office of Foreign Assets Control (OFAC)'s 'A Framework for OFAC Compliance Commitments'
- Recent chronology of US-China trade tensions (including Hong Kong)
- Other notable sanctions in the Asia-Pacific region: North Korea, Myanmar, India, South Korea

Introduction

Economic sanctions, export controls and other trade restrictions are not new; they have been familiar tools of foreign policy, national security, and international trade for many years. But they have been used with much greater frequency and aggressiveness in recent decades, and particularly over the past several years, which have seen a global shift towards greater emphasis on nationalism and protectionism, and increasing national security and foreign policy concerns. Governments increasingly look to these tools – especially economic sanctions – as the first choice to combat wide-ranging concerns including terrorism, development of weapons of mass destruction, cybersecurity, IP theft, data privacy, human rights abuses, environmental issues and geopolitical issues, such as with respect to Myanmar and Hong Kong.

The US–China trade war in particular was a key point of focus for the global economy throughout the Trump Administration, escalating to a feverish pace leading up to the 2020 US presidential election even as companies struggled to address the economic fallout of the covid-19 pandemic. It will likely remain so, to one degree or another, under the Biden Administration. Given the widespread consensus in the US that China presents a host of national security and foreign policy challenges, economic sanctions and export controls are sure to remain active; and the same may also be true of tariffs, ostensibly intended to rebalance bilateral trade accounts but interpreted by some in the US–China context as an effort by the US to fundamentally decouple the two economies.¹ While this multi-front economic battle persists and perhaps intensifies, what steps can companies take to prepare and protect themselves?

Developments in the US–China relationship, the first- and second-largest global economies respectively, have a far wider impact on global business growth prospects and supply chains than do economic and trade relationships between other countries. This fact, coupled with other notable trade restrictions on countries such as North Korea, Myanmar, South Korea and India, means that doing business in the Asia-Pacific region carries more risk than ever before. In this article, we explore how recent economic policies have altered the supply chain landscape, and offer practical guidance to mitigate risk and cut through the complexity.

The following examples highlight the current challenges faced by companies trading within the Asia-Pacific region.

1 www.ft.com/content/86eb2db4-f016-11e9-ad1e-4367d8281195.

China, including Hong Kong

In 1989, the European Union imposed an arms embargo on China following the crackdown on the Tiananmen Square protests. Fast-forward to the Trump Administration and we saw a steep rise in sanctions, export controls, and trade restrictions, and an enforcement initiative involving China. Given the widespread, bipartisan view in the US that China poses significant foreign policy and national security challenges, the Biden Administration will likely continue using these tools against China.

The escalation of tensions is clearly illustrated in the timeline below:

- 2017: Chinese telecoms equipment manufacturer ZTE Corporation pleaded guilty to violating US sanctions rules by selling US-made goods to Iran and North Korea. This resulted in monetary penalties totalling US\$1.19 billion, and the spectre of having its supply chains cut off. A year later, the company was found to be in breach of the sanctions settlement deal and the US slapped ZTE with a seven-year component ban, forbidding American firms from selling parts and software to the company.
- August 2018: the Foreign Investment Risk Review Modernization Act (FIRRMA) was signed into law, overhauling the Committee on Foreign Investment in the US (CFIUS) process and enhancing the government's ability to combat theft of sensitive US technology by China. New types of transactions were subject to CFIUS review and, for the first time ever, obligations for mandatory submissions to CFIUS in certain cases were imposed.
- September 2018: the US imposed sanctions on the Chinese military for buying missile systems and fighter jets from Russia.
- November 2018: the US Department of Justice (DOJ) launched the China Initiative to counter national security threats emanating from the country. The goal of the China Initiative is to identify and prosecute those engaged in economic espionage, trade secret theft, hacking and other economic crimes while protecting critical infrastructure against external threats and combating covert efforts to influence the American public.
- January 2019: the US announced criminal charges against Huawei, a well-known Chinese telecommunications manufacturer, and its CFO Meng Wanzhou (Meng), related to stealing trade secrets, obstructing a criminal investigation and evading sanctions on Iran. Meng, the daughter of the Huawei founder, was detained in Canada a month before the charges were filed.
- May 2019: President Trump signed an executive order, largely focused on Huawei, declaring a national emergency and barring US companies from using telecommunications equipment manufactured by firms that pose a threat to America's

national security. The order was quickly followed by the US Department of Commerce's Bureau of Industry and Security (BIS) adding Huawei and certain non-US affiliates to the Entity List (with additional affiliates added in August 2019). Entry on the Entity List effectively means that US companies cannot sell or transfer technology to Huawei or affiliates without a licence issued by the BIS.

- October 2019: the US added 28 Chinese public securities bureaus and companies, including security camera manufacturer Hangzhou Hikvision Digital Technology Co Ltd, to a US trade blacklist over alleged human rights abuse, predominantly the mistreatment of Uighur Muslims in the Xinjiang Province.
- February 2020: the US added charges to Huawei's criminal indictment, including additional instances of stealing trade secrets and further sanctions evasion in Iran and North Korea.
- April 2020: the US Trade Representative's (USTR) section 301 investigation report noted that China 'directs and unfairly facilitates the systematic investment in, and acquisition of, US companies and assets to generate large-scale technology transfer'.
- May 2020: BIS announced the addition of 33 Chinese companies to the Entity List, including 24 government and commercial organisations based in China, Hong Kong and the Cayman Islands targeted for 'supporting procurement of items for military end-use in China'. The remaining nine entities consist of eight commercial entities and China's Ministry of Public Security's Institute of Foreign Science for complicity 'in human rights violations and abuses committed in China's campaign of repression, mass arbitrary detention, forced labour and high-technology surveillance against Uighurs and minority groups in the Xinjiang Province'.²
- June 2020: China passed a sweeping new national security law on Hong Kong, aimed at stamping out opposition to the ruling Communist Party. Conceived in secrecy and passed without serious input from Hong Kong authorities, the law sets up a vast security apparatus in the territory and gives Beijing broad powers to crack down on a variety of political crimes, including separatism and collusion.³
- 2 July 2020: the US Congress passed the Hong Kong Autonomy Act (HKAA), imposing sanctions against individuals, entities and financial institutions in response to China's Hong Kong national security law. The HKAA sought to introduce

2 www.jdsupra.com/legalnews/bis-adds-33-chinese-entities-to-entity-72171/.

3 www.nytimes.com/2020/06/30/world/asia/hong-kong-security-law-explain.html.

visa- and property-blocking sanctions on foreign persons who have ‘materially contributed’ to China’s recent actions in Hong Kong (Material Contributors), and a variety of sanctions on foreign financial institutions who ‘knowingly’ conduct significant transactions with such persons.⁴

- 13 July 2020: in response to having four government officials sanctioned for reported human rights abuses, China sanctioned four US government officials, including Republican Senators Marco Rubio and Ted Cruz.⁵
- 14 July 2020: the US Federal Acquisition Regulation (FAR) (rules governing all US government procurements and purchases) was amended to prohibit the purchase from certain Chinese telecommunications companies, such as Huawei, ZTE and Hangzhou Hikvision. The prohibition included banning any contractors that use covered telecommunications equipment or services, even if that use is unrelated to the contractor’s federal business.⁶
- July 2020: the US closure of the Chinese Consulate office in Houston was quickly followed by China’s closure of the US Consulate office in Chengdu. Also, as a follow-on to the allegations of human rights abuses in Xinjiang, the US black-listed the Xinjiang Production and Construction Corps (XPCC), along with Sun Jinlong, the former party secretary of XPCC, and Peng Jiarui, XPCC’s deputy party secretary and commander.⁷
- 6 August 2020: citing data privacy and national security concerns, President Trump signed an executive order against TikTok and WeChat, to take effect after 45 days, banning transactions involving either app within the jurisdiction of the US.⁸ TikTok is a popular video app owned by the Chinese company Byte Dance while WeChat is a messaging, social media, and electronic payment application owned by the Chinese company Tencent Holdings Ltd.

4 www.nortonrosefulbright.com/en/knowledge/publications/f68d0ba7/us-congress-passes-hong-kong-autonomy-act.

5 www.ft.com/content/4674a6b6-cb67-44c5-9360-b2a4b9cffb8e.

6 www.federalregister.gov/documents/2020/07/14/2020-15293/federal-acquisition-regulation-prohibition-on-contracting-with-entities-using-certain.

7 <https://mobile-reuters-com.cdn.ampproject.org/c/s/mobile.reuters.com/article/amp/idUSKCN24W290>.

8 <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-wechat/>.

- 7 August 2020: following on from the HKAA, the Trump Administration imposed sanctions on Hong Kong's chief executive Carrie Lam and 10 other senior officials in Hong Kong and mainland China over their roles in cracking down on political dissent.⁹
- 11 August 2020: in the most recent of tit-for-tat moves, China announced it would sanction 11 Americans in retaliation for sanctions imposed by the US, including Senators Marco Rubio, Ted Cruz, Tom Cotton and Pat Toomey; Congressman Chris Smith; Human Rights Watch Executive Director Kenneth Roth; National Endowment for Democracy President Carl Gershman; and Michael Abramowitz, the president of Freedom House.¹⁰
- November 2020 and January 2021: President Trump signed two Executive Orders imposing sanctions on several alleged 'Chinese Communist Military Companies' (companies with alleged close ties to the Chinese government, particularly the military). The orders prohibited US persons from trading in the companies' securities. The orders suffered from several technical deficiencies, and a federal judge prohibited the government from enforcing the orders against two of the companies, but the action nonetheless served as yet another example of the Trump Administration's urge to take aggressive action against China. The Biden Administration continued this effort, with a new Executive Order issued on 3 June 2021. That order cured the technical deficiencies of the Trump orders, and took a more sophisticated, but no less earnest, approach to dealing with what the US calls China's military-industrial complex.

To recap, the dizzying pace of trade restrictions between the US and China remains extraordinarily difficult to interpret, with many underlying components left unsettled. From a US perspective, China is quickly moving from a known diversion country, trading directly with sanctioned countries like North Korea and Iran, to a country subject to various sanctions itself, a momentous shift. As the US–China relationship continues to spiral downwards, the net of global companies caught in the middle is extremely broad, with significant potential repercussions. Many companies are contemplating difficult strategic decisions around business continuity, including:

- overall investment in China;

⁹ www.nytimes.com/2020/08/07/world/asia/trump-china-hong-kong-sanctions.html.

¹⁰ www.bloomberg.com/news/articles/2020-08-10/china-to-sanction-u-s-officials-in-retaliation-over-hong-kong?utm_campaign=pol&utm_medium=bd&utm_source=applenews.

- revising revenue and growth estimates; and
- de-risking and diversifying supply chains.

When (and if) the dust settles, there will undoubtedly be additional compliance challenges around sanctions and export controls in China, but for now, strategic business planning is taking precedence.

North Korea

North Korea is subject to one of the strongest and most comprehensive sets of sanctions currently in effect against any one country, composed of United Nations Security Council sanctions, EU sanctions and unilateral sanctions imposed by a host of countries, including in particular the US. The sanctions regime is not limited to addressing North Korea's nuclear weapon and ballistic missile programmes only, but also aims to halt its human rights violations and cyberattacks.

In 2017, the UN issued further sanctions restricting trade in and out of the country, including exports of arms, refined petroleum products and aviation fuel; imports of coal and iron; and financial and economic restrictions on North Korean banks. In recent years, there have been reports that North Korea has repeatedly flouted the sanctions regimes, including the widely reported shipping of petroleum and coal through a combination of ship-to-ship transfers and direct port calls.

Introduced in July 2020, the United Kingdom's new 'Magnitsky'-style sanctions under its new global human rights regime, known as the UK Global Human Rights Sanctions Regulations 2020 (the 2020 Sanctions Regulation), also target two organisations involved in the forced labour, torture and murder that takes place in North Korea's gulags.

In April 2021, Japan extended its unilateral sanctions on North Korea by two years in an effort to place continuous pressure on the country to cease its nuclear and missile programmes, and to progress discussions of past abductions of Japanese nationals.

Myanmar

The EU first imposed sanctions on Myanmar, including an arms embargo, after Myanmar's then military junta refused to accept the results of the country's 1990 elections. Unlike North Korea, however, Myanmar has been gradually opening itself to the global economy. As a result, western countries have eased their sanctions in the hopes of incentivising further positive behaviour. All non-military sanctions were lifted in April 2013, and embargoes on arms and military equipment began to ease more recently in 2019.

However, sanctions are still used to target individuals on the grounds of human rights violations. Both the EU and US imposed targeted sanctions on a number of Burmese military or Border Guard Police commanders in 2018 for their involvement in the ethnic cleansing of Rohingya Muslims.

More recently, the UK's Myanmar (Sanctions) Regulations 2021 was introduced, replacing the Burma (Sanctions) (EU Exit) Regulations 2019, which included measures directed towards promoting compliance with international human rights laws and respect of human rights in Myanmar and the promotion of Myanmar's transition to a democratic country.

In the US, the Biden Administration announced a number of sanctions intended to place further financial pressure on Myanmar's military junta, targeting the country's commander in-chief and other military leaders as well as specific mining and gemstone companies, in response to the February 2021 *coup d'état*.

South Korea

Sanctions are not limited to those imposed by the US, UK and EU. In July 2019, the Japanese government announced 'sanctions' on trade with South Korea, leading to tensions in the countries' bilateral relationship. Japan removed South Korea from the list of 'white countries' in its Export Trade Controls Order, hence terminating preferential treatment allowing for simplified trade procedures that had been applied to South Korea since 2004. South Korea retaliated by boycotting Japanese products and through other forms of political mobilisation.¹¹

India

Other countries in the region that may not be the direct targets of sanctions have voiced concerns over the increasing risk of sanctions enforcement. For example, India signed a US\$5 billion deal with Russia in 2018 to buy five units of S-400 air defence missile systems, despite warnings from the US that proceeding with the contract may invite sanctions under the Countering America's Adversaries Through Sanctions Act (CAATSA).¹² While punitive actions have not been enforced at the time of writing, they remain a possibility.

11 <https://thediplomat.com/2019/09/what-are-japans-sanctions-on-south-korea/>.

12 www.hindustantimes.com/world-news/possibility-of-us-sanctions-on-india-remain-on-table-report/story-YUQle0dHxtczHnOLLCVxVO.html.

At the same time, India has also been creating its own form of trade restrictions for countries seen as unsympathetic to its concerns and core interests. For example, responding to political rows between India and Malaysia, New Delhi announced in late 2019 that it was moving palm oil, a key export commodity from Malaysia, to a restricted category so it could no longer be freely imported.¹³ While India's move is not deemed strictly to be 'sanctions', its palm oil imports will shift away from Malaysia to other exporting countries, such as Indonesia. Most recently, in 2020, India banned the use of TikTok domestically and mandated the use of local suppliers, instead of Huawei, to upgrade its mobile networks. In response to the latter, Huawei cut its India revenue target for 2020 by up to 50 per cent and laid off more than half of its staff in the country. These moves were part of a larger Chinese goods boycott in India as retaliation for the increased Himalayan border violence with China.

Impact on the global supply chain

We have discussed above only a few of the many instances of sanctions imposed on Asia-Pacific countries. There can be little doubt that, collectively, these various sanctions regimes have a major impact on the supply chain in the region. Asia-Pacific has long played, and continues to play, a highly significant role in the global supply chain. The region offers cheap labour and strong expertise in several important areas, such as technology, all of which was greatly bolstered by globalisation and open market movement seen in the two decades or so prior to the recent pivot towards nationalism. With this pivot, some industries are more in the cross hairs than others in terms of disruption, but that list continues to grow now, including food and beverage, fashion, banks, construction and extractive, pharmaceuticals, and healthcare and medical equipment, as well as the aviation and defence sectors.

In recent years, supply chain risks have been rising, therefore expanding the list of risk areas that businesses need to consider. These include branding, quality and safety, counterfeiting, bribery and corruption, human rights, environmental impact, third parties and sanctions. We will go into more detail on how to address some of these supply chain risks later, but this discussion would not be complete without further exploration of the Asia-Pacific region's response to US-China trade war, and most recently, covid-19.

13 www.livemint.com/news/india/malaysia-unsympathetic-to-indian-concerns-may-pay-the-price-now-11579109779282.html.

Asia-Pacific's response to US-China trade tensions

The impact of US-China trade tensions is not limited to the two countries alone. Neighbouring nations with trade relationships with the US, China, or both, are also suffering. While these neighbours may stand to gain from filling in the gap arising from restricted US-China trade flows, they would also be concerned that trading with one country would incur the other's wrath. Asia-Pacific countries like Malaysia that rely heavily on exports and are closely linked to both markets could be at risk of sanctions enforcement by one major power or the other amid rising protectionism.¹⁴

With so much uncertainty surrounding trade with both the US and China, a group of 15 Asia-Pacific countries have come together on a wider-reaching pact called the Regional Comprehensive Economic Partnership (RCEP), signed in November 2020. The initiative aims to boost commerce across the group by lowering tariffs, standardising customs rules and procedures, and widening market access. This trade deal, which has been nearly a decade in the making, sets a new free trade zone that will be bigger than both the US-Mexico-Canada Agreement and the European Union, and is expected to eliminate a range of tariffs on imports over the next 20 years.

Covid-19 complications

In January 2020, when China closed its factories and went into widespread business closures, it took many companies, both locally and internationally, by surprise, and created massive confusion and anxiety for companies without alternative supply chains.

As the pandemic spread globally and more countries went into various forms of lockdown, it crystallised the need for businesses with cross-border supply chains to adequately de-risk and diversify their risks in today's fast-changing trade landscape. However, even those who were able to act quickly then encountered other challenges, such as procuring from new suppliers with which they had not previously traded, or had not been able fully to vet and screen. Rushing into business with potentially disreputable or even restricted parties exposes companies to a whole host of liabilities, including sanction regimes, anti-bribery and corruption regulations, and corporate liability for supplier abuses such as forced labour and human rights violations.

As China and its neighbours responded to the rapidly evolving situation, there was increased pressure on suppliers of certain products, which in turn gave rise to opportunistic behaviour, particularly arbitrage. Prices shot up as a result of scarcity of supplies and soaring global demand. Antitrust concerns sprang up worldwide due

14 www.nst.com.my/news/nation/2019/10/531894/pm-warns-possible-trade-sanctions-malaysia.

to these circumstances. The US DOJ's Antitrust Division, the UK's Competitions and Market Authority, the EU and other relevant enforcement agencies remain focused on anticompetitive behaviour and will take action to investigate and prosecute wrongdoers.

Quality control with respect to healthcare products has been another major area of contention. In late March 2020, as a result of complaints from Turkey, Spain, the UK and the Netherlands, faulty medical equipment and personal protective equipment (PPE) products were returned to source suppliers in China. As a countermeasure, the Chinese government tightened rules governing the export of medical equipment in an attempt to address the concerns of those countries. Thereafter, only accredited and licensed manufacturers could export test kits, PPE such as surgical masks and protective gowns, ventilators and infrared thermometers.

Many governments spent large amounts of money to secure PPE and medical equipment to address the needs of their citizens. Inquiries have been launched in several countries into the processes and controls deficiencies that enabled price gouging and poor-quality product procurement, especially those equipping frontline medical personnel. Suppliers in Asia-Pacific may not come out of these inquiries unscathed if they are found to have sold malfunctioning products to other nations.

What can companies do?

The covid-19 pandemic plunged the global economy into a very precarious position. Today, we are in a situation where neither the US nor China, nor any of the other Asia-Pacific countries for that matter, can afford the damage a full-blown trade war would inflict.¹⁵ The pandemic has made many businesses vulnerable to external risks. Companies are asking themselves what they can do to emerge stronger and more resilient to the impact of trade wars with no end in sight as well as an enduring global pandemic.

Companies can and should refer to the US Office of Foreign Assets Control's (OFAC) A Framework for OFAC Compliance Commitments, issued in May 2019, with the aim to provide its perspective of essential components of a sanctions compliance programme. It calls out five essential elements:

- management commitment;
- risk assessment;

¹⁵ <https://edition.cnn.com/2020/05/19/economy/us-china-trade-war-resume-coronavirus-intl-hnk/index.html>.

- internal controls;
- testing and auditing; and
- training.

We attempt to expand on these components with specifics relevant to the management of the supply chain to provide practical guidance companies can follow.

Better understand the business model and conduct a robust risk assessment

Regular and routine risk assessments should be conducted. The importance of periodic reviews cannot be overstated to ensure appropriate consideration is given to a quickly changing global trade and regulatory landscape. Used effectively, robust risk assessments will allow management to make informed business decisions as well as ensure the implementation of effective compliance programmes.

In recent years, regulations have been changing at unusually high speeds. Governments have fared poorly thus far in keeping up with the pace of change and lessening uncertainty by issuing practical industry guidance on the meaning, scope and application of the voluminous new laws and regulations. Where companies struggle to keep abreast of these developments, law firms, consultancies and specialists (eg, sanctions, export control, anti-corruption) may be supplemental resources for tailored updates and in-depth analysis. There is a wealth of information readily available for companies to tap into.

Similarly, businesses with global presence should fully utilise their ‘eyes and ears’ on the ground and lines of defence to help identify key local challenges and concerns, for example local customs or trade challenges, or logistics difficulties. Local personnel can also be key to ensuring effective local internal communication channels so that information is cascaded to all relevant business functions.

Implement a robust compliance programme

Effective and robust compliance programmes must be versatile and focus on risk mitigation. Even the best of compliance programmes will be severely tested and potentially overwhelmed by the unprecedented covid-19 pandemic and global trade disruption. The compliance team should closely evaluate whether the skill and expertise exists within the organisation to be able to address the complex risks within the growing web of sanctions, export controls and embargoes in the Asia-Pacific region. If in-house skills are insufficient, outsourced and external expertise support should be secured.

The compliance function should identify, evaluate and prioritise risk areas that are important to the business in the current environment. These may include, for example, third-party due diligence, trade and customs due diligence, anti-money laundering, anti-corruption, environmental impact, human rights and antitrust. Regarding the latter, the opportunistic behaviour seen during the pandemic around price gouging and misrepresented quality could not only lead to public procurement investigations, but could also severely damage a company's reputation and brand.

Lastly, compliance programmes should not assume that the advent of the new risks explored herein has diverted focus from bribery and corruption scrutiny and investigation. On the contrary, global enforcement agencies continue to be fully staffed and engaged on a full inventory of bribery and corruption cases along with an expected surge in illicit payments for preferential and prioritised treatment during the covid-19 crisis.

Conduct thorough third-party due diligence

Third-party due diligence has always been fundamental and the rapidly shifting supply chain landscape only heightens its importance. Basic third-party due diligence is no longer sufficient as it is increasingly important for companies to look more thoroughly at relevant third parties. This includes the third parties' stakeholders and connections, key corporate officers and employees, other upstream and downstream providers, and so on. Transactions through intermediaries and agents continue to be a high-risk area across the global supply chain, as is ensuring that products are not sourced from regions plagued by forced labour or other human rights abuses.

Furthermore, with new laws introduced and frequent updates made to prohibition lists, including the US's BIS Entity List, regular reviews should be performed on third parties to ensure that sanction rules are not breached by trading with sanctioned individuals and entities. Even where the application of laws remains unclear (for example, with respect to the implementation of the Hong Kong Autonomy Act), companies may want to proactively review and screen their existing clientele and supply chain to identify those potentially designated as material contributors, even if only as a precautionary step.

These days, with a wealth of information publicly available, it is no longer acceptable nor defensible at court to claim wilful blindness or ignorance. Regulators increasingly require companies to demonstrate that they have done their utmost to obtain and review relevant information during third-party due diligence review.

Evaluate, assess and recalibrate (trading) priorities

As the supply chain landscape continues to shift in the coming months and years, companies should ensure that their supply chains and priorities are evaluated and assessed regularly in order to succeed in the new international trading environment.

Businesses should evaluate how recent events have impacted their supply chains, especially those with significant exposure to the Asia-Pacific region, and realign their priorities to ensure that their supply chains are best placed to withstand the uncertainties current and future events may bring. In some instances, further diversification may be suitable to ensure that risk exposures are mitigated.

Careful consideration should be given before partially or completely exiting a market and reconfiguring your supply chain. An exit could be disadvantageous and result in assuming more risks owing to potentially steep operational costs or even restrictions on how companies can extract their assets, inventories and cash from a foreign country.

There is no time like the present to pause, evaluate and recalibrate to ensure that supply chains emerge stronger and more resilient to future risks and pressures. Management should consider seeking subject matter experts' advice to ensure that any company decisions have factored in the relevant risks, costs and advantages.

Review contractual language

Further to the above, close review of contract termination clauses should be included in any contemplated change to the supply chain. While an increased focus has been placed on ensuring third parties are properly screened as part of the due diligence process, a fresh review of contractual language is equally important to ensure the recent changes to international laws and regulations are fully embedded in the standard supplier template and adequately protect the company going forward.

Compliance with data transfer and data privacy requirements

Outside much of the publicised US-driven concerns around IP theft, data privacy and cyber fraud stemming from China, behind-the-scenes regulations around data transfer and data privacy are also evolving, as can be seen of the invalidation of the EU-US Privacy Shield Framework by the European Union's Court of Justice in July 2020. At the time of writing, companies that rely on the Privacy Shield certification are waiting for further guidance from the enforcement agencies of the relevant countries. Companies now more than ever should heed the warning and ensure that proper safeguards and governance exists within all its third parties, including supply chain

partners where applicable. Regular reviews should be performed to ensure that the company's data transfer and data privacy policies are adhered to, and broader network penetration tests should be conducted periodically.

Audit and certification and independent reviews

Teams in the compliance function, internal controls and internal audit functions should reinvigorate audits, monitoring protocols and assurance testing to ensure controls are well designed and operating effectively to mitigate risks. Those controls should be a combination of detective and preventative in nature to safeguard the business.

Where appropriate, companies should consider the value of obtaining certifications from external bodies authorised to perform such work, for example product quality assurance certifications, provenance-related testing on materials within the supply chain, and sustainability or environmental reviews. The scrutiny faced by global retailers over allegations of human rights abuses in relation to cotton supplies sourced from Xinjiang, China, have renewed the need to audit and certify third parties in supply chains to ensure that they are ethically sourced and do not breach human rights and environmental laws.

Companies should not underestimate the importance of routine and independent sanctions compliance programme review and its automatic screening systems as these have been among the mitigating factors in the Amazon OFAC settlement in July 2020.

Awareness, communication and training

Compliance risk is dramatically shifting during this period. As such, communication throughout the organisation should be renewed and where required, enhanced awareness training on specific risk areas should be rolled out to the parts of the business most exposed. With the ever changing regulatory and sanctions landscape, now is the time to evaluate compliance training content and delivery strategy. Keep in mind that companies continue to be expected to demonstrate, through records and key performance indices, how training is rolled out and the effectiveness of the training sessions.

With lockdown still occurring in different phases globally, and many companies' workforces working remotely, one emerging best practice is to increase the frequency of communications, to ensure alignment of information and avoid misunderstanding. Senior management should also emphasise key messages through formal communication channels and reiterate the company's commitment towards compliance, integrity and ethical business decision-making.

Conclusion

Countries in the Asia-Pacific region have always had close and strong trading relationships with one another, supporting the overall supply chain regionally and globally, and contributing to a steady flow of a wide variety of goods and products to the world. Recent events have placed significant strain on supply chains in the region and have caused countries and companies alike to think hard about how to reposition themselves to pick up from the aftermath of far-reaching trade restrictions and an unexpected global pandemic.

It is near impossible to predict with confidence what the coming year will bring in terms of trade wars, sanctions, and export controls, and their impact on supply chains. However, it is certainly safe to assume that international trade flows will continue to matter. Countries will continue to battle with the effects of the pandemic, as they have been doing to date in 2021, and to re-establish and strengthen the supply chain network across the region. Companies and their legal counsel will need to be attuned to the complexity of global supply chains and compliance with the rules that govern them, to avoid breaching sanctions and other rules, and then bear the costly repercussions that could follow.



CHARLIE STEELE

Forensic Risk Alliance

Charlie Steele is a partner in FRA's Washington, DC office. Charlie is a former senior US Treasury Department and Department of Justice official with more than 30 years of government and private-sector experience in civil and criminal compliance, investigations, enforcement and litigation matters, in a variety of industries and sectors. For the past several years he has specialised primarily in economic sanctions and Bank Secrecy Act/anti-money laundering (BSA/AML) matters.

Charlie's most recent government service was as Chief Counsel for the Office of Foreign Assets Control (OFAC). In that role, he led the team of lawyers providing legal advice and support to OFAC and other Treasury Department personnel in the formulation, implementation and enforcement of economic sanctions, in furtherance of US national security and foreign policy goals. Prior to his appointment as OFAC Chief Counsel, Charlie served in a number of other senior positions in the Treasury Department: Associate Director for Enforcement in OFAC, Deputy Director of the Financial Crimes Enforcement Network (FinCEN, the US government's principal BSA/AML agency and the US Financial Intelligence Unit) and Deputy Chief Counsel in the Office of the Comptroller of the Currency (the primary US supervisor and regulator of national banks, federal savings associations and federally licensed branches of foreign banks in the United States).



WENG YEE NG

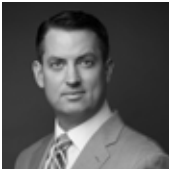
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Weng Yee Ng is a director at FRA's London office. She has more than 16 years' experience in external and internal audit and forensic accounting. Her expertise includes compliance reviews, internal investigations, litigation support (both civil and criminal), risk assessments, evaluation of compliance programmes, Foreign Corrupt Practices Act monitorships for both the DOJ and SEC, disgorgement and penalty calculations, procurement fraud matters and third-party due diligence.

Weng Yee was part of the FRA team supporting Airbus in a multi-year forensic accounting and eDiscovery review within the context of the company's multinational investigation, reporting to investigative authorities in the UK, France and US. Weng Yee's team focused on the risk assessment and evaluation of Airbus's global anti-bribery and corruption compliance programme.

She has also supported multiple compliance monitorships (including a medical devices company and a financial transaction systems manufacturer), a proactive anti-bribery and corruption review for an international bank, and several internal investigations into whistle-blower alerts for a CAC 40 automotive original equipment manufacturer.

Having worked over six years in-country in Malaysia, Weng Yee has first-hand understanding of the business nuances and financial and reporting practices in various South East Asian countries. She speaks English, Malay, Cantonese and Mandarin, and is familiar with Bahasa Indonesia and Spanish.



DREW COSTELLO

Forensic Risk Alliance

Drew Costello is a Partner at FRA based in Philadelphia, Pennsylvania. Drew specialises in the areas of forensic accounting and corporate compliance, with over 20 years of experience in both professional services and industry roles.

Drew provides investigative services for attorneys, corporate management and governmental agencies pertaining to a variety of matters, including foreign corruption and bribery in the international markets (FCPA), earnings management, anticompetitive practices, conflicts of interest, as well as other types of general fraud and misconduct schemes. Drew has significant experience of guiding companies through regulatory investigations, including those resulting in deferred prosecution agreements and the appointment of independent compliance monitors.

Drew also assists clients in their continuous efforts to establish and strengthen best-in-class compliance, ethics and anti-fraud programmes and internal controls to mitigate the evolving risks of digitalisation, regulation and globalisation. Drew has direct experience in leading companies through all stages of compliance programme maturity, from establishing a foundation of policy development and global awareness training, to procedural development of core compliance activities (anonymous reporting mechanisms, preapproval protocols, third-party due diligence, etc), to embedding a risk-based monitoring and auditing protocol.



Forensic Risk Alliance (FRA) is an international consultancy specialising in regulatory cross-border investigations, compliance and litigation. We are regularly hired to support some of the world's largest multi-jurisdictional investigations and compliance matters and are consistently recognised as a global market leader. In over 20 years of supporting clients, we have assisted major multinational companies around the world from various sectors, including Airbus, Alstom, Telia Company, Total, HP, Société Générale and Rolls-Royce. We build strong relationships with our clients, acting as partner, trusted adviser and thought leader.

Unlike traditional accounting firms, we operate purely in the forensic space. We have experience in more than 75 jurisdictions based in our 10 global locations and data centres across the US, UK, France, Sweden, Canada and Switzerland. FRA's one-firm culture allows us to offer clients in any jurisdiction the best of our international expertise. Our globally integrated team of experts includes experienced forensic accountants, financial analysts, former investment bankers, attorneys, software engineers and certified computer examiners.

Our core areas of expertise are forensic accounting, data analytics and data governance, technology solutions and forensics. We advise international companies in all areas of white-collar crime and fraud, from preventive compliance activities to enforcement responses, investigations and post-enforcement compliance improvements. To assist clients in achieving their objectives in the most sensitive and complex matters, we offer extensive multi-jurisdictional data privacy, transfer, and protection expertise. Where data cannot be moved outside of a host country, our full-service Mobile Discovery Solution offers a scalable end-to-end mobile processing and review platform.

Audrey House
16–20 Ely Place
London EC1N 6SN
United Kingdom
Tel: +44 20 7831 9110

Charlie Steele
csteele@forensicrisk.com

Weng Yee Ng
wng@forensicrisk.com

2550 M Street NW
Washington, DC 20037
United States
Tel: +1 202 627 6580

www.forensicrisk.com

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