



News & Types: Client Advisories

Top Three U.S. Developments in Commercial, Competition and Trade Law

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Practices: Commercial, Competition & Trade

Supplier Issues: Suppliers of materials and goods into the United States may be getting some relief in 2022 from container shortages and rising freight costs. The Federal Maritime Commission (FMC) already began its rolling audit of ocean carriers' freight practices last July. Separately, Congress appears willing to pass the Ocean Shipping Reform Act, which will, among other things, require carriers and terminals to be reasonable in the late charges they assess on containers ("detention and demurrage") and will require carriers to reasonably accept U.S. exporters' shipments – rather than simply rush empty containers back to factories in China as appeared to be the case in 2021. These changes will hopefully make shipping a bit cheaper and faster. In the meantime, suppliers should be careful with their contracts to ensure they have cushions on delivery times and shipping expenses that may increase after pricing has been agreed with customers.

U.S. Technology Controls: The year 2022 looks set to be similar to the past several years in terms of U.S. export controls over disclosure of technology and sales of technological goods to certain countries. Many companies within the U.S., as well as companies outside of the U.S. who deal with goods utilizing U.S. technology, have already encountered difficulties in supplying high-tech goods to various Chinese buyers (including Huawei and SMIC). Those difficulties look set to continue. Indeed, U.S. export regulators have continued to be aggressive in seeking out violations of U.S. export controls, by individuals and companies inside and outside the U.S. The Biden Administration is clearly continuing to follow the Trump Administration and Congress in taking a hard line on sales of high-tech goods to a large number of Chinese firms. Suppliers of even the smallest components to these firms should be very wary of violating U.S. export control laws for the foreseeable future.

U.S. Chemical Restrictions: Inside the U.S. market, the Environmental Protection Agency ("EPA") has been moving forward with chemical bans that affect more and more manufacturers. The EPA attempted last year to ban phenol, isopropylated phosphate (3:1) (or "PIP (3:1)"), among five "persistent, bioaccumulative and toxic" ("PBT") substances. However, the use of PIP (3:1) in so many industries prompted many firms to object. The hope within the industry is that the full ban will not take effect until replacement chemicals can be found, however, for now, the ban on PIP (3:1) could still take effect this spring. Separately, the EPA is still scrutinizing several "high priority substances" that are also very widely used in manufacturing, such as Di(2-

ethylhexyl)phthalate (“DEHP”) and may propose bans on these substances starting in the near future. Manufacturers and distributors should be reviewing their products to determine if they are using targeted substances, and monitor the EPA’s regulatory releases closely to avoid being surprised by any future restrictions on these materials.

The year 2022 promises many opportunities for businesses. However, while taking advantage of these opportunities, businesses should be mindful of the expanding regulatory landscape within the U.S. Please contact your relationship attorney or an attorney in the Commercial, Competition & Law practice group for more information on any of these topics.