QUARTERLY NEWSLETTER

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LIVINGSTON
Simplify Trade

ON THE ROAD TO GLOBAL TRADE…

Your international trade GPS just declared *"Recalculating route…!"* – sound relatable? The way forward for global traders is quite uncertain. Are you charting the best course for your business, or just following the detour signs?

The Brexit referendum last June seems to have set the stage for this uncertainty. It was unexpected. Most of us thought Britain would remain in the European Union. But, as of March, the two-year exit process has begun.

On the other side of the pond, the U.S. election was another referendum, partly against multilateral trade programs. Already, the U.S. has kicked the Trans-Pacific Partnership (TPP) to the curb, and is initiating the renegotiation of the North American Free Trade Agreement (NAFTA).

Meanwhile, going in the opposite direction, the World Trade Organization (WTO) recorded a huge success towards the easing of non-tariff barriers with the ratification of the Trade Facilitation Agreement (TFA) in February. Also, it's anticipated that Canada and the European Union will soon ratify the Comprehensive Economic and Trade Agreement (CETA), eliminating tariffs on about 98% of all goods moving between the two.

Keep your eyes on the road. Stay informed. Begin planning now, so you find the opportunities available to you along the scenic route. This issue of Global Perspectives takes an in-depth look at some of these emerging trade issues.

As always, we love hearing from you! Please share your comments or requests for future topics with us by emailing **LivingstonGlobalPerspectives@Livingstonintl.com**.

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THE U.S.'s TAKE ON NAFTA

*By **Anthony M. Troia**, GTM Consulting, U.S.*

As an update to previous articles tracking the U.S. trade policy shift with respect to the North American Free Trade Agreement (NAFTA) (see: **U.S. Trade Policy Shift**, by Philip Sutter) it appears that, instead of outright repealing the agreement, the new U.S. administration is taking a much more measured approach.

To be certain, changes are coming. Recently, the nature of these changes, has become a bit clearer with respect to at least two key questions:

- What kind of changes will the U.S. go after?
- And, what kind of timeline are we looking at?

The following are the latest developments that are shaping the future of NAFTA, from a U.S. perspective.

Hints of the U.S. agenda for NAFTA changes

First, it's clear that the Administration's looking at some heavy revisions to the existing agreement, rather than outright repeal. U.S. Commerce Secretary, Wilbur Ross, tasked by President Trump to assist in the negotiations with Canada and Mexico, has made it clear that "there's a lot to fix".

Specifically, Secretary Ross has stated in a Bloomberg broadcast interview "[t]here were some things in [the original] that were missed. There were things in it that were not done correctly to begin with. And a lot of things that might have been OK back then but don't work now. So there's a lot to fix ... Several chapters need to be added because of the digital economy and other things that have developed subsequently". According to Ross, he hopes to add entire new chapters to the existing 22 chapters to reflect the "modern digital economy".

He also hinted at substantive changes to auto parts. According to a Canadian Press article, Ross has made no secret of his desire to adjust the rules of origin for tariff-free vehicles in order to bring auto-parts production closer to home. Also indicative of the substantive degree of revisions being contemplated, but not yet detailed publicly, is the fact that Ross has indicated Congress will be involved.

It remains unclear whether his intended target in such a wide sweeping rules change will be limited to Asian parts suppliers, or whether Mexican and Canadian suppliers will also be hit. Also still unclear and open for consideration is whether the final deal will involve a three country treaty or two bilateral agreements.

The U.S.'s NAFTA renegotiation timeframe

With respect to the initial concerns over the possibility of abrupt changes that could have adverse effects on supply chains, it may be somewhat encouraging to U.S. importers and manufacturers that the Administration seems to be cognizant of such an impact of substantive changes to NAFTA. Based on some stated contingencies, Ross made it clear that any "real" negotiations won't happen until the latter part of this year, with an estimate – seemingly optimistic – that such negotiations "won't take more than a year".

The recently appointed United States Trade Representative (USTR) will be the legally designated point of contact with the U.S. Congress, and will initiate the statutorily required 90-day consultative process with the legislature.

The necessity to involve Congress in the process indicates the substantive changes that will require Congressional approval for "fast-track" legislation to proceed.

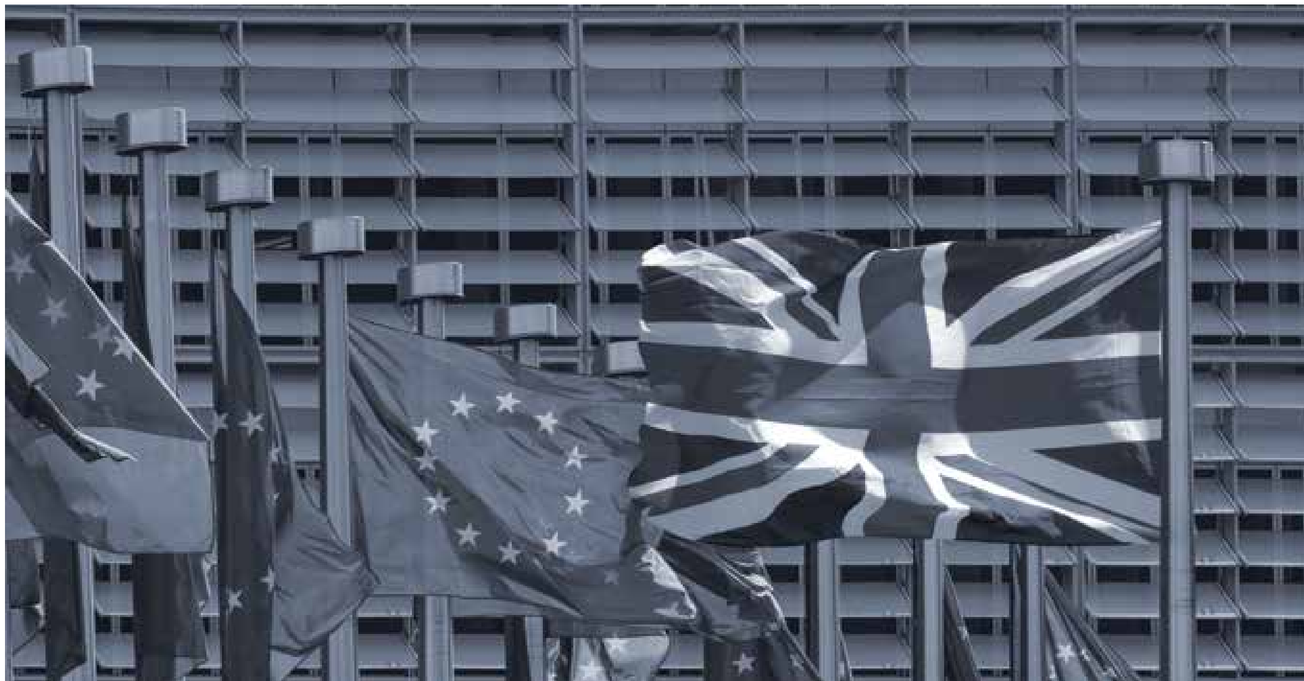
Ross also indicated that, with respect to timing, he's at least acknowledging such significant changes to the auto vehicle and parts manufacturers create a scenario where those companies "might need some time to adapt" and may be considering a phase-in period so that auto manufacturers can adjust their global supply chains accordingly. The supply chain concerns of the auto manufacturers have been a major factor as a reaction to the early rhetoric of President Trump's tough talk on trade agreements.

Left to speculation...

In conclusion, although many questions and uncertainty remain, it appears that these developments provide some insight that the U.S. administration is at least aware of the real impact that changes to NAFTA will bring. What remains to be seen, and is not being discussed yet, is the degree to which importers and manufacturers – particularly with respect to the automobile manufacturers - will be involved in the future renegotiations.

THE BREXIT SAGA CONTINUES

*By **Wojciech Lewandowski**, GTM Governance, Europe*



For the first time since it was formed, the European Union (EU) will lose one of its member states. On May 29th, Theresa May, the United Kingdom (UK) Prime Minister, triggered Article 50 of the Treaty on the Functioning of the European Union (TFEU), thereby beginning the process to withdraw the UK from the EU. In the absence of a unanimous agreement to extend negotiations, the UK will cease to be part of the EU by March 2019. The consequences of this breakup are far-reaching. International traders conducting business in the UK will have to adapt their plans for the many critical process and cost impacting developments to come.

Looking at the priorities, from both sides.

Over the next two years of negotiations, the UK will remain subject to EU laws and continue to participate in other EU affairs. During this time, the UK is prohibited from signing any trade agreements of its own.

The EU's top priority is the withdrawal settlement. If good headway is made on that front, the EU will then entertain discussion on their future relationship with the UK under Article 218 of the TFEU. What constitutes "good headway"? This hadn't been clearly defined, but the European Council did draw up definitive negotiating guidelines in response to the notification under Article 50. The withdrawal negotiations will need to be completed by October 2018. This will allow the European Parliament's consent procedure to be finalized well before the 2019 European elections. There will be a lot of pressure to negotiate effectively during the two-year time frame.

The UK is aware that the average negotiation process for a free trade agreement lasts between four to seven years. Therefore, in order to ensure that customs controls and barriers to trade are not enforced on day one of Brexit, a transitional agreement extending beyond 2019 is one of

the options on the table. But, according to a EU guideline for negotiations, this arrangement should not exceed three years, and will be limited in scope, so that the UK doesn't enjoy all of its former advantages as a EU member state in good standing.

Once consent from the European parliament is obtained by a simple majority, a withdrawal agreement will need to be accepted by a qualified majority of 72% of Council Members representing at least 65% of the total population (i.e., 20 of the remaining 27 Member States).

An agreement, after the exit.

A future comprehensive trade deal would be a "mixed agreement" requiring ratification by the national and regional parliaments of the 27 EU states (38 parliaments), plus consent by the EU Parliament. Experience with the procedure under Article 218 shows how easily the approval for the agreement could be vetoed. In 2016 for example, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) was nearly foiled by the regional parliament in Wallonia, Belgium.

Various models for a new agreement will be considered; the most favored is one that's similar to CETA. Other models discussed include "softer" alternatives, such as having the UK become a member of the European Economic Area (EEA) made up of Norway, Iceland, and Liechtenstein and the European Free Trade Area (EFTA), which consists of the EEA countries and Switzerland.

Without an agreement on trade, the UK will have to operate under World Trade Organization (WTO) rules, which are less beneficial compared to the EU single-market or the other models under review. The same result applies if an exit agreement is not reached or any one of the negotiating parties breaks the exit negotiations.

Under WTO rules, trade between the UK and EU will be subject to customs duties, import and export formalities, security procedures, and preferential origin calculations would also be impacted. This will lead to increased financial and bureaucratic costs for UK companies and EU companies doing business with the UK.

The UK also will need to ratify the outcome by its own national procedure. As this must also be completed by March 2019, the time available for negotiations could be as short as 16-18 months. At that point, the negotiations for a free trade agreement will be based on the progress in the withdrawal negotiations. The implementation of such an agreement may extend until 2020 or 2021.

The United Kingdom after the European Union.

Finally, the UK also needs to think about its own bilateral free trade agreements with other countries once it's out of the European Union. It's clear under the EU law that the UK, as a current Member State, can't conclude any trade deal with a third country. However, nothing in the TFEU prevents an exiting member state from engaging in trade negotiations as long as the deal isn't finalized. In any event, a third country may be reluctant to negotiate in an environment of uncertainty.

Despite potentially opposing objectives, both parties are expected to put forth good faith efforts to move beyond Brexit and negotiate a new relationship. Nonetheless, the transition will be difficult for the UK and the EU, and the international trade community must avoid becoming collateral damage along the way. To ensure this, close monitoring of the developments, flexible business plans, communication with suppliers and customers, trade program "what if" analyses, etc., will be necessary.

ANTIDUMPING AND COUNTERVAILING DUTIES OVERVIEW

*By **Philip Sutter**, GTM Governance, Global*

As an importer, you must ensure that proper visibility and attention is given to reduce or eliminate your company's exposure to antidumping duties (ADD) and countervailing duties (CVD). ADD/CVD duties can be substantial. Duty percentages are sometimes in the double or triple digits. However, with the proper due diligence, surprises can be avoided and appropriate business plans established.

Duty assessment

ADD/CVD are duties assessed on imports in reaction to unfair trade practices.

- ADD duties are assessed when a foreign firm sells merchandise in the U.S. market at "less than fair value" (a price lower than the price it charges for a comparable product sold in its home market).
- CVD duties are assessed when foreign governments unfairly subsidize industries that export to the U.S.

From a U.S. perspective, the U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) administer ADD/CVD proceedings. Cases may be initiated in response to a petition from the competing domestic industry or under the DOC's own authority. The DOC determines whether the imports in question are being dumped and/or unfairly subsidized, and if so, by how much. The ITC determines whether the imports are causing material injury or threat of material injury to the competing domestic industry, or whether the establishment of an industry is materially harmed by reason of imports that are being sold at less than fair value and/or subsidized.

If both agencies find dumping/subsidizing and material injury have occurred, the DOC then issues an order directing U.S. Customs and Border Protection (CBP) to levy a duty equal to the amount by which the price of the import is less than the fair value and/or offset by unfair subsidies. Importers are then required to post a cash deposit equal to the amount of the estimated antidumping and/or countervailing duties pending liquidation of entries of the merchandise.

The subject goods are defined by a written description or "scope". The scope is dispositive, not the Harmonized System (HS) classification. However, HS classifications are listed in the scope of orders and are used to begin most ADD/CVD analyses.

When issues arise…

Sometimes, issues arise because the descriptions of subject merchandise contained in the DOC's determinations must be written in general terms. When such issues arise, the DOC issues "scope rulings", generally at the importer's request, that clarify the scope of an order. Frequently, the U.S. Court of International Trade (CIT) must intercede to settle disputes. For example, the order on aluminum extrusions from China is especially complicated due to the parameters for exclusions from the order. There are sixty scope rulings issued to-date and there have been 25 CIT decisions on this specific commodity.

It is important to study the scope rulings and court cases to be well informed on the parameters that may relate to your product. However, these rulings are very product-specific, so if your product falls in a gray area, it may be prudent to request your own scope ruling.

When ADD applies

CBP is responsible for collecting all revenue due to the U.S. government, inclusive of the ADD/CVD. If an order is issued retroactively, this requires CBP to issue bills to importers, possibly years after an entry has occurred. Tracking the progress of potential orders can at least provide some time to advise management of the possible risk.

When ADD does apply, the importer is required by law to submit a certificate to CBP attesting that the exporter has not reimbursed the importer for the ADD. If the certificate is

not submitted, CBP will assess the importer two times the ADD when the entry is finalized.

ADD and CVD by the numbers

As of March 2017, there are 224 different products that encompass 586 open ADD/CVD orders. There are 59 different countries of origin involved in these orders. The top five countries of origin subject to these orders are China 26.8%, India 7.7%, Korea 6.3%, Taiwan 5.3%, and Japan 4.1%. The products impacted are typically metal industrial inputs and products, minerals, chemicals, but anything is possible.

Avoid surprises. Be prepared.

From a company compliance perspective, the place to start the analysis is with the current active orders. The CBP's Automated Commercial Environment (ACE) portal will provide you with an active case list. Any suspect products should undergo a deep-dive analysis to determine if it meets the scope definition of an open order. Obtain copies of the orders from the Federal Register and study the scope rulings and court cases.

Communication is important, upstream departments such as Purchasing should be aware of the impact or potential impact of importing parts subject to ADD/CVD. It's essential to have supply chain integrity and know who you are buying from. Some foreign exporters route goods through third party countries or show a different country of origin on shipping documents in order to evade ADD/CVD on sales to the United States. The importer is liable for duties and penalties in these instances.

Classification analysts should be trained to identify and flag potential in-scope part numbers. Engineers may be called on to help you to understand a product's scope applicability. Downstream, you should establish business rules with your broker to capture potential hits and have them referred to you for review prior to entry submission. You should also retroactively audit entry records as a further control in the event the broker did not capture the applicable ADD/CVD. ADD/CVD is perpetually a priority enforcement issue. However, a General Accounting Office (GAO) audit[1] revealed significant issues with enforcement effectiveness. The GAO estimated that about $2.3 billion in ADD/CVD owed to the U.S. government were uncollected as of mid-May 2015. President Trump's 2018 budget[2] addresses this gap through additional funding of for the International Trade Administration's ADD/CVD investigations.

On February 24, 2016, the U.S. Congress passed the Enforce and Protect Act of 2015 or EAPA. EAPA establishes formal procedures for submitting and investigating ADD/CVD allegations of evasion against U.S. importers, such as transshipment or false invoicing. CBP has responsibility for tracking and reporting allegations of evasion from initial receipt, vetting and enforcement actions, to final disposition of an investigation.

On March 31, 2017, President Trump signed an executive order that will, by June 29, 2017, subject importers of record with no record of imports or a record of failing to pay ADD/CVD to be subject to a CBP risk assessment. CBP will be empowered to require enhanced bonding and impose other legal measures[3]

ADD/CVD is an area that can be a source of concern if not a total surprise when non-compliance is discovered. The duty exposure and penalty potential are significant. The wise compliance manager should know and preach within the organization that preparation and risk analysis on this subject is well worth the investment.

1. http://www.gao.gov/products/GAO-16-542
2. https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf

U.S. MISCELLANEOUS TARIFF BILL: A BREAKDOWN

*By **Dana Pontia**, GTM Governance, Global*

The original Miscellaneous Tariff Bill (MTB) legislation was introduced in the early 1980s, with two main goals. The first, is to help U.S. manufacturers compete both at home and abroad by temporarily reducing or suspending import tariffs. The second, is to give importers a means to request other technical corrections to the Harmonized Tariff System of the United States (HTSUS). In general, MTB requests should be "non-controversial". Meaning, there should be no domestic production or opposition from domestic U.S. producers and requests should not create excess revenue losses for the United States.

Regulatory bodies tasked with upholding the MTB

Until the recent enactment of the American Manufacturing Competitiveness Act of 2016 (AMCA), the House of Representatives' Committee on Ways and Means had initial jurisdiction over the tariff schedule and corrections to trade legislation. The AMCA provides a new process for determining which product will be included in an MTB to be fully vetted through a transparent and fair process. Under the new process, the U.S. International Trade Commission (USITC) is tasked with collecting and publishing the product petitions, receiving public comments on those petitions, and coordinating with the Department of Commerce (DOC).

The DOC is tasked with providing input for the Administration and delivering a report to the House Ways and Means Committee, the Senate Finance Committee and the USITC. The report contains findings relative to the determinations of domestic production and any objections from domestic producer(s) of the product subject to the

petition. The DOC's report also includes technical changes to the product's article description, needed when products are presented for importation, and the input of the U.S. Customs Border and Protection (CBP) agency and any other relevant agencies.

Following the DOC report, the USITC is responsible for determining whether or not the product petition should go forward. The USITC submits a preliminary report to the congressional committees and provides information related to each product petition. At a minimum, the USITC report contains the following:

- Determination of whether domestic production of the product exists
- Determination of whether a domestic producer objects to the petition
- Any technical changes to the product's article description that are needed for purposes of administration
- An estimated loss in revenue if duty suspension or reduction takes effect
- A list of petitions that it does not recommend for inclusion in an MTB, if applicable

Present status of the Miscellaneous Tariff Bill

The current MTB process in well under way.

From October 14 to December 12, 2016, the USITC launched the MTB portal and opened it for the submission of petitions. From January 11 to February 24, 2017, the USITC complied petitions and collected public comments. The DOC has issued its report on the petitions and, as of April 10, 2017, the report is pending before the USITC.

The report includes CBP's comments on whether each petition includes an administrable article description and the HTSUS subheading. CBP noted that many of the article descriptions, if implemented, will require further verification and importers should be prepared to provide additional information necessary to allow CBP to determine the identity and proper tariff classification. The DOC has also included a list article descriptions from the petition that may include products subject to anti-dumping duty (ADD) or countervailing duty (CVD).

Prior MTBs have been dominated by material inputs such as chemicals or other sub-components. In review of the petitions submitted in 2016, there's a wide assortment of products. Pending petitions include a range of diverse products such as chemicals, articles of plastic and leather goods, furniture and vehicles to meat and wearing apparel. Critics have noticed an influx of finished products which seems to be contrary to the spirit of the MTB.

Non-petitioners should be encouraged to review the list of petitioned products to determine opportunities they can take advantage of, and temporarily lower their import duties.

What's next...

Between April and June 2017, the USITC will conduct their review, take in the considerations from the DOC report and deliver its own preliminary report to the congressional committees. Based on information submitted by the congressional committees, the USITC will re-review individual petitions from June through August 2017 and then issue its final report to the congressional committee. Once the MTB passes, the temporary duty suspensions or reductions will be included in an amendment of the Harmonized Tariff Schedule of the United States, chapter 99, subchapter II for a period not to exceed three years.

The process will repeat again no later than October 15, 2019. The timeline for the MTB process is approximately 300 days from beginning to end. The 2017 petitions list, as well guidelines and tools to assist you on MTB filing procedures, can be found on the USITC website[1].

1. https://mtbps.usitc.gov/external/

RESTRICTED PARTY SCREENING UPDATE

*By **George Reed**, GTM Governance, Global*

Many governments around the world have enacted financial sanctions and/or trade restrictions against persons or entities engaged in activities deemed to be detrimental to national security. Sanctions or trade restrictions may be imposed related to criminal activity, drug trade, money laundering, trade regulation violations, terrorism, weapons proliferation, UN Security Council actions, and a number of other reasons.

Typically, governments publish sanctions lists on official public websites, and subsequently issue public notifications when amendments are made to their lists. The names of restricted persons or entities are added and removed on a daily basis, affecting a number of lists. Some names are included within multiple lists, across governments. There are lists maintained by individual country governments, and there are also multinational lists issued by Interpol, the UN Security Council, or the European Union, for example. Individual governments may enact multiple lists; the United States is the most prolific when it comes to sanctions listings. The number governments imposing sanctions and the high level of activity indicate the seriousness attached to the subject of sanctions and the need for restricted party screening (RPS).

Ignoring the lists has serious consequences

Penalties for violating sanctions and conducting business with restricted parties can be rather severe. Violators may incur substantial monetary fines, loss of export privileges, as well as reputational damage. For this reason, companies that are engaged in international trade need to be aware of sanctions and trade restrictions so that they can comply with legal government requirements. This is especially true for multinational corporations, since they are most likely to be impacted by sanction regulations. Therefore, a global approach to RPS makes sense. Livingston International provides comprehensive screening software and restricted party screening services to satisfy this compliance need. We monitor for new sanctions and for changes to existing sanctions around the globe on a constant basis.

New restricted party screening list

Livingston International has added a new restricted party list to our TradeSphere RPS and TradeSphere Exporter software applications. This most recent addition to the aggregate set of government-published restricted party lists is known as the "DNT", Dutch National Terrorism list, a national screening list covering financial sanctions maintained by the Government of the Netherlands. This is a unique restricted party list that is not redundant with European Union-published sanctions. For this reason, we recommend that users of TradeSphere RPS or TradeSphere Exporter include this DNT list along with the other lists they have selected for screening purposes.

CANADA'S SINGLE WINDOW INITIATIVE

*By **John Moccia**, Regulatory Affairs, Canada*

In Canada, the plan for a Customs Single Window Initiative to facilitate the exchange of trade-related information and documents has finally progressed from concept to implementation. A changing border management environment is the main driver for the Canada Border Services Agency (CBSA) to implement the Single Window Initiative (SWI). Specifically, the exponential growth involving new products, the increase in the requirements of other government departments (OGDs), the shift to paperless environments, and the need to effectively balance security while facilitating trade.

The CBSA administers, or assists in the administration of, numerous pieces of legislation that fall under the responsibility of OGDs. The Customs Act provides the CBSA with the legislative authority to control and detain goods on behalf of other government departments and further allows CBSA to share information collected for customs purposes with its OGD partners.

Facilitating the flow of information

The basic concept of a single window focuses on data standardization and process simplification. This need for the seamless free flow of goods has existed for quite some time. The SWI reflects a commitment made by Canada and the United States under the Beyond the Border Action Plan to reduce administrative burdens. It is intended, in part, to improve control at the border by better identifying goods with import requirements, validating permits and enabling CBSA to exchange information with other government agencies in an effort to better manage risk.

The CBSA, along with nine OGDs are currently participating in the single window initiative, which provides custom brokers with a single point of entry for the electronic reporting of information for both regulated and

non-regulated goods. In turn, the CBSA will transmit the information to the appropriate department or agency responsible for those regulated goods. These departments and agencies will assess the information and provide any required border-related decisions. Livingston International is currently the only customs broker actively reporting and releasing shipments through the SWI.

Data flowing through the SWI

Customs Notice 17-09 notes the following Participating Government Departments and Agencies programs are available through the SWI:

- Global Affairs Canada (previously Foreign Affairs, Trade and Development Canada)
  - Import Controls of Agricultural, Steel, and Textiles and Clothing Products
- Health Canada
  - Importation of Consumer Products, Cosmetics, Radiation Emitting Devices and Pest Control Products
  - Importation of Human Drugs, Natural Health Products, and Medical Devices Regulated by the Food and Drugs Act
  - Importation of Controlled Substances and Precursors
- Natural Resources Canada
  - Importation of Energy-using Products
  - Kimberley Process (Import of Rough Diamonds)
  - Explosives
- Public Health Agency of Canada
  - Importation of Human and Terrestrial Animal Pathogens and Biological Toxins
- Transport Canada
  - Importation of Vehicles and Tires
- Environment and Climate Change Canada
  - Hazardous Waste and Hazardous Recyclable Material
  - Vehicle and Engine Emissions, Ozone Depleting Substances and Halocarbon Alternatives, and Wildlife Enforcement
- Canadian Food Inspection Agency
- Fisheries and Oceans Canada
  - Commercial importation of aquatic species under the Aquatic Biotechnology, Aquatic Invasive Species and Trade Tracking (Fisheries Resource Management) Programs
- Canadian Nuclear Safety Commission
  - Import Program (Nuclear Substances and Equipment)

TRADE FACILITATION AGREEMENT – HARBINGER OF CUSTOMS GLOBALIZATION?

*By **Philip Sutter**, GTM Governance, Global*

The World Trade Organization (WTO) Trade Facilitation Agreement (TFA)[1] has entered into force after more than a decade of negotiation. The two-thirds of the membership needed to ratify was achieved on February 22, 2017. This is significant because the WTO hasn't had a great track record with multilateral agreements. In fact, the TFA is the first since the WTO was established in 1995.

Will this agreement be the harbinger of further customs globalization, or will concerns about national identity deter its future?

The TFA sets into motion sweeping modernization and facilitation commitments from its membership to continue, promote, build, and adopt customs best practices. In short, its intent is to eliminate trade barriers. Importantly, the pledge to do this extends to not only the developed counties but also to developing and least-developed countries (LDCs). As international traders know, the import and export process isn't consistent from country to country and presents costly complexities and time consuming challenges. These traders and their testimonials may have a critical role in a successful TFA.

WTO Director General, Roberto Azevedo is very optimistic on the anticipated benefits of the TFA. He projects double-digit trade cost reductions for the developing world as they adopt TFA methodologies. In addition, the WTO projects the TFA will increase global exports by $1 trillion. Overall, trade will increase by 2.7% every year through 2030, and increase gross domestic product by a half of a percentage point.[2]

Makeup of the Agreement

The TFA has three sections:

- Section I describes specific trade facilitation commitments.
- Section II identifies special treatment allowed for the developing and LDC members.
- Section III lists institutional arrangements for administering the TFA.

1. https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm
2 http://www.reuters.com/article/us-wto-azevedo-idUSKBN15A2II

Section I of the TFA lays out 12 articles that comprise the member commitments to trade facilitation.

ARTICLE	SUMMARY OF COMMITMENTS
1. Publication and Availability of Information	• Publish customs procedures, rates of duties, taxes, and fees, classification and valuation rules, penalties and appeals, quotas, etc. • Establish an enquiry point and to also make the information available on the internet.
2. Opportunity to Comment, Information Before Entry Into Force and Consultation	• Allow comment and consultation on proposed regulations.
3. Advance Rulings	• Institute an advance ruling process.
4. Appeal or Review Procedures	• Permit administrative and judicial appeal of decisions.
5. Other Measures to Enhance Impartiality, Non-Discrimination and Transparency	• Use a system of issuing notifications or guidance for controls or inspections and do so preferably based on risk.
6. Disciplines on Fees and Charges Imposed on or in Connection With Importation and Exportation	• Introduce disciplines for the imposition of fees, taxes, and penalties consistent with GATT.
7. Release and Clearance of Goods	• Launch procedures for pre-arrival processing, electronic payment, risk management, post clearance audits, privileges for authorized operators, and expedited and perishable goods.
8. Border Agency Cooperation	• Ensure that its various authorities and agencies cooperate with one another.
9. Movement of Goods Under Customs Control Intended for Import	• Let imported goods transit the country to a release or clearance point.
10. Formalities Connected With Importation and Exportation and Transit	• Minimize the incidence and complexity of import, export, and transit formalities including accepting copies, using international standards, customs brokers, and maintain a single-window.
11. Freedom of Transit	• Ease regulations and formalities for goods in transit.
12. Customs Cooperation	• Cooperate with one another on promoting compliance, exchanging information, maintaining confidentiality, easing administrative burden, etc.

What's not shown in the above summary is the language that on many of the commitments is neither binding nor enforceable. Of the 12 articles and the respective sub-clauses, about one-third use softer language such as "within available resources", "whenever practicable", "are encouraged", "to the extent possible", etc. rather than "shall". So, to some extent, a successful TFA will rely on the good faith of the members to carry out its intent. The WTO will publish metrics to monitor and publicize implementation progress to give visibility and political "encouragement".

Section II of the TFA importantly lays out the special and differential treatment applicable to the developing countries and the LDCs. Based on this section and the wording contained in Section I, don't expect the TFA to be an immediate launch for these members.

Interestingly, through their ratification, the developed countries have signed off that the provisions of the TFA are in place for their own country. Is the developed world really able to say they have implemented these things? If not, these countries should be taking actions necessary to comply. It'll be interesting to watch if any disputes are lodged for non-compliance of these commitments.

Meanwhile, there's built-in leeway for the developing and LDC countries. This is a unique feature of the TFA, where a Party to the agreement pledges their participation based on their unique technical and financial capacity.

The countries designated each element of the TFA as category (A, B, or C) to denote their plan and ability to implement.

- **Category A:** Implement upon entry into force, or within one year for the LDCs.
- **Category B:** Implement after a transitional period.
- **Category C:** Implement after a transitional period and needs assistance and support for capacity building.

For a developing country, the commitment requires the identification of an implementation date within two and a half years for category C. Meanwhile an LDC has up to five and a half years to designate an implementation date for category C.

The developed countries' "donor members" will bear some of the burden to make the TFA effective for the countries requiring assistance. They pledge to provide assistance and support to developing and LDC countries so they may acquire the necessary capacity to implement the TFA. This support, given through the Trade Facilitation Agreement Facility (TFAF)[2], provides monetary grants and WTO technical assistance programs. Technical assistance includes assessments, identification of donors, case studies, training, and project preparation grants. Other organizations will be involved in assistance as well, such as the World Customs Organization (WCO), United Nations, and the World Bank.

Section III of the TFA provides for institutional arrangements such as the establishment of a committee on trade facilitation to give consultation with members, share information and best practices, and coordinate with other international organizations. It also obliges members to set up national committees to ensure domestic coordination and implementation of the TFA.

The World Customs Organization, and its involvement

The TFA is a major piece of the ultimate vision of the WTO – a complete multilateral trading system[3]. It's consistent with World Customs Organization (WCO) Revised Kyoto Convention[4]. It's the WCO Council's blueprint for modern and efficient customs procedures.

With the negotiation and ratification complete, the WCO will step in to provide assistance and coordination measures to ensure uniform application of the TFA through its Mercator Programme "Navigational Map on Trade Facilitation".[5/6]
The WCO has developed tools for the implementation of the various articles of the TFA using existing WCO procedures and best practices of the developed countries. It organizes regional workshops for customs officials, trade ministers, private sector, and international organizations.

The WCO's marquee tool for trade facilitation and modernization is the WCO Data Model[7]. The myriad data requirements of the local customs authorities and government agencies that monitor cross-border transactions is a deterrent to the TFA's goals. At the outset of the WTO, non-standard data was recognized as a major non-tariff trade barrier. The Data Model addresses this problem by enabling harmonization that will directly contribute to the achievement of the TFA commitments.

Likewise, the European Union's Customs 2020 Program within the Union Customs Code (UCC) is a major step forward to demonstrate that synchronized systems and practices are achievable across multiple countries. This implementation experience can be transferable to the modernization aspiring developing countries and LDCs.

The impact of current trade environments

However, amid the recent and somewhat sudden U.S. and UK moves away from multilateralism, the TFA could now be seen as an anomaly merely carried across the ratification finish line by the momentum it achieved since negotiations began in 2004. The emerging present state of affairs is that many world governments seem be in a struggle, not to necessarily reject the free trade concept, but to definitely question whether mega free trade agreements like the Trans-Pacific Partnership harms domestic labor and manufacturing bases or that a political construct such as the European Union siphons away sovereignty.

Will these trends negatively alter the enthusiasm for the TFA whose goal is common methods and practices? Can national interests flourish in this envisaged environment? In a recently released joint report[8], the WTO and International

3. http://www.tfafacility.org/tfaf-assistance
4. http://muntr.org/guides/tr15/WTO-MUNTR2015.pdf
5. http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx
6. http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/mercator-programme.aspx
7. http://www.wcoomd.org/~/media/wco/public/global/pdf/topics/wto-atf/mercator-programme/wco_mercator_uk.pdf?la=en

Monetary Fund acknowledge that “the role of trade in the global economy is at a critical juncture”. The report calls on countries to adopt adjustment policies to help individuals and communities harmed by the influx of foreign competition.

For the TFA to reach its potential, it may be up to the international trade community to promote and differentiate the benefits by lobbying the developed countries to follow through on their pledges and by encouraging the developing countries to install modern methods. It needs to be shown that the elimination of bureaucratic non-tariff trade barriers is the right thing to do and a positive contributor to worldwide economic growth. The TFA is about free flowing, uniform, secure, and transparent transactions that allows all nations to compete on a level playing field efficiently, effectively, and compliantly.

8. http://www.wcoomd.org/~/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/data-model/dm_technicalbrochure_en.pdf
9. https://www.wto.org/english/news_e/news17_e/wto_imf_report_07042017.pdf

CANADA SANCTIONS: REVIEWING THE REVIEW

*By **Brad Lehigh**, GTM Governance, Canada*

On April 6th, 2017, the Canadian House of Commons Standing Committee on Foreign Affairs and International Development tabled a report entitled "*A coherent and effective approach to Canada's sanctions regimes: Sergei Magnitsky and beyond*".

The report was issued as a result of a long-standing requirement to review Canada's sanctions programs. The report was initiated on June 8th, 2016 and after nearly a year of study, which included hearing from 42 witnesses and reviewing five different comprehensive sanctions reviews from industry experts, the report was issued with 13 recommendations.

In this article, we have taken five of the recommendations and provided some insight into what they could mean for Canadian exporters. The remaining recommendations can be read by accessing the **original report**.

Recommendation 1:

The Government of Canada should ensure that sanctions imposed using more than one of the United Nations Act, the Special Economic Measures Act or the Export and Import Permits Act are imposed in a complementary and coherent manner, and amended concurrently when necessary.

It can be confusing for the exporter when a country is sanctioned multiple times, or uses multiple sanctions acts as this results in exporters having to sift through multiple regulations in order to understand the prohibitions.

The Canadian government also struggles with maintaining the information on sanctions after their issuance. Zimbabwe sanctions under the Special Economic Measures Act are an example of active and restrictive legislation currently in place that hasn't been amended in nearly 10 years. Unlike its American counterpart, Canada has not amended the lists associated with this sanction, nor ensured that individuals are still relevant to the sanctions program or de-listed individuals who are now deceased.

It would be a welcome initiative if Canada were to allocate additional resources to ensure its sanctions regimes are kept current to serve their intended purpose.

Recommendation 2:

The Government of Canada should implement the decisions of the United Nations Security Council regarding its mandated sanctions regimes through the timely enactment, amendment, and repeal of regulations under the United Nations Act.

Global Affairs Canada is notoriously slow at repealing UN Act sanctions against countries that have had their sanctions program terminated by the United Nations. Cote d'Ivoire and Cote Liberia are two examples of this, both countries no longer face any UN-mandated sanctions, with Cote D'Ivoire having its sanctions removed in April of 2016 and Cote Liberia seeing its entire sanctions program repealed in May of 2016. The government of Canada just repealed the UN Act sanctions against both of these countries on April 13th, 2017 – approximately a year after the sanctions should have been repealed.

An improvement in the timing of the government updates will help exporters navigate already complex legislation.

Recommendation 4:

The Government of Canada should provide comprehensive, publically available, written guidance to the public and private sectors regarding the interpretation of sanctions regulations in order to maximize compliance.

Global Affairs Canada offers little to no support when it comes to interpreting Canada's sanctions legislation. This often results in companies taking the cautious and easier method of simply not doing business with sanctioned countries rather than attempting to understand the myriad of legislation. This results in customers located in sanctioned countries seeking goods from alternative sources, while Canadian exporters pay the price.

Increasing the budget and staff to the Economic Law Section within Global Affairs Canada, to provide Canadian exporters an avenue to seek clarity on sanctions programs, would be a welcome undertaking.

Recommendation 5:

The Government of Canada should produce and maintain a comprehensive, public and easily accessible list of all individuals and entities targeted by Canadian sanctions containing all information necessary to assist with the proper identification of those listed.

Another thorn in the side of Canadian sanctions practitioners is the lack of a consolidated list of individuals and/or entities that are currently sanctioned by Canada.

Canadian exporters are recommended to use third-party service providers to conduct restricted party screening on their behalf, as Global Affairs does not have a consolidated list of entities and individuals. Service providers, such as Livingston, have software that screens the many lists; a necessary step when making an export from Canada. To obtain the names of sanctioned individuals and entities without the help of a third-party service provider, exporters have to consult each piece of sanctions legislation and consolidate the results themselves. In addition, UN Act sanctions require exporters to consult the United Nations lists not found on any Canadian government website.

On February 5th, 2016, Global Affairs Canada amended its Special Economic Measures Act against Iran by delisting 349 entities and 44 individuals, and listing two new entities and six new individuals. The amendment made no reference to who was added or deleted, resulting in a large manual effort by many people to determine what changes were actually made.

A consolidated list showing every individual and entity sanctioned under the UN Act, Special Economic Measures Act (SEMA), and Freezing Assets against Corrupt Foreign Officials Act (FACFOA), with their respective listing and delisting dates would ease the burden associated with this issue.

Recommendation 12:

In honour of Sergei Magnitsky, the Government of Canada should amend the Special Economic Measures Act to expand the scope under which sanctions measures can be enacted, including in cases of gross human rights violations. This particular recommendation is the one getting the most attention from national media. Both the United States and Europe already have Magnitsky sanction legislation in place, while Canada was long expected to do the same, attempts to pass a Magnitsky sanctions bill have been scuttled by the federal government.

Sergei Magnitsky was a Russian lawyer who died while in custody of the Russian state after exposing large scale fraud and human rights violations by Russian officials. Although Magnitsky sanctions were initially created to punish those responsible, it has the ability to evolve into a program that can punish any human rights abusers.

Rather than creating a fifth new sanctions program, which would only add another unneeded layer of complexity, the report suggests amending the Special Economic Measures Act to allow more leeway for government officials to sanction human rights violators individually.
This recommendation should be adopted, and assuming a consolidated list of sanctioned individuals and entities were created in accordance with “Recommendation 5”; it should not be difficult to administrate.

FOCUS COUNTRY: THE REPUBLIC OF INDIA

The Republic of India (India) is Asia's second-largest country, after China. Its capital city, New Delhi, is located in the north central part of the country. India is a sovereign socialist secular democratic republic. Its constitution, which came into effect January 26, 1950, provides for a parliamentary form of government, at the center and in the states. The constitution also contains an extensive set of directive principles akin to the U.S. Bill of Rights.

The president and vice president are elected for five-year terms by an electoral college made up of the members of both parliamentary houses and the legislative assemblies of the states. Legally, all executive authority, including supreme command of the armed forces, is vested in the president, as head of state, who, in turn, appoints a council of ministers headed by a prime minister. The prime minister serves as the head of government.

While India is the home of many languages, it has 22 recognized official languages with Hindi and English being the official languages used by the Central Government. State governments use respective official languages.

Winter snowfall is normal for the northern mountains and Kashmir Valley, but for most of India, scorching spring dust storms and severe hailstorms are more common. The monsoon is the predominant feature of India's climate and helps to divide the year into four seasons:

- Rainy, the southwest monsoon, June–September;
- Moist, the retreating monsoon, October–November;
- Dry cool, the northeast monsoon, December–March;
- Hot, April–May.

Indian agriculture relies on the southwest monsoon, which brings moisture from the Indian Ocean.

Apart from holiday and festivals businesses in India usually start between 9 and 10 am and can frequently work until 6 pm or later, this can vary between companies and various businesses, especially as some might start earlier to avoid the congestion. Government offices are open between 9:30 a.m. and 5:30 p.m.

India has many holidays and celebrates many festivals. Holiday dates can change from year to year, so it is advisable to check prior to planning any business trips. Indians have a less hurried time than North Americans when it comes to doing business. It is worthwhile to do some preparation work prior to your meeting.

It is advisable to make appointments at least one month in advance and confirm them when arriving in India. While Indians appreciate you being punctual, be prepared to be patient as they may not reciprocate. Business cards are commonly used and there is usually no need to translate part of the business card if it is English, as English is spoken by many business men and officials in India.

Normal business dress for men is suit and tie, but due to the warm climate, a full-sleeved shirt with a tie is also acceptable. It's recommended selecting neutral colors. For foreign women, pant-suits or long skirts that cover the knees are more acceptable to wear.

The traditional Indian form of greeting is the namaste, which literally means, "I bow to the divine in you". Namaste is used for greeting, for taking leave, and also to seek forgiveness. To greet someone with a namaste, bring your hands together with palms touching in front of your chest in a graceful fashion. Greeting your Indian business colleagues with a namaste is considered a compliment. It sets the right tone for the rest of your meeting and shows that you've taken time to understand Indian exchanges. But offering a handshake isn't looked down upon. In fact, many Indian businesspeople offer a handshake to show that they're familiar and comfortable with greeting foreigners. However, if you're greeted with a namaste and don't reciprocate, Indian colleagues take that as the equivalent of a "cold fish" handshake!

Business in India in conducted at a much more leisurely pace than in North America. Tea and small talk are introductions to most business talk. While it is acceptable to decline the first offer of refreshment, to refuse the second or third is an insult. The sugary, milky Indian tea is known to be delicious.

STRATEGIC TRADE INITIATIVE POWER RANKINGS

Global trade this quarter remains in flux and looking for a direction. Two significant and opposing events occurred: The World Trade Organization finally achieved ratification of the Trade Facilitation Agreement, a major step for global trade, and the United Kingdom triggered the exit process to begin the process to leave the European Union. Based on an objective scoring of five factors, these are the top ten strategic initiatives for trade professionals and their business planners to be aware of. How do you see it? Which ones will impact your industry? Are you preparing?

RANK[1]	STRATEGIC TRADE INITIATIVE	STRATEGIC TRADE IMPACT
1	**Comprehensive Economic Trade Agreement (CETA)**	CETA was provisionally ratified by the EU Parliament in February 2017. Surprisingly, it now awaits ratification in the Canadian Parliament. It's stalled within the Senate International Trade Committee. Forecasters are expecting it to be in force by the third quarter of 2017.
2	**Britain Exit from the European Union (Brexit)**	Prime Minister Theresa May triggered Article 50 on March 29,2017 to begin the two-year exit process. Theresa May called for a snap general election for June 8th, she is concerned that divisions with Parliament are hampering the Brexit negotiations.
3	**WTO Trade Facilitation Agreement (TFA)**	The TFA was ratified by two-thirds of WTO members (110 of 164) on February 22,2017. Developed countries have committed to immediately implement as well as assist developing countries to launch a broad series of trade facilitation modernization measures.
4	**Repeal/Renegotiation of North American Free Trade Agreement (NAFTA)**	The U.S. Administration submitted a draft notification of NAFTA renegotiation to Congress on March 29,2017. The formal notification will be made once Robert Lighthizer is confirmed as the new U.S. Trade Representative.

5	**Regional Comprehensive Economic Partnership (RCEP)**	The 17th round of negotiations was held in Kobe City, Japan from February 27 to March 03 between the ten ASEAN countries and six of the larger Asian countries, including China. Japan is urging the other RCEP participants for a speedy end to negotiations.
6	**Automated Commercial Environment (ACE)**	The final post-entry pieces, such as reconciliation and drawback, were to launch in January 2017 but remain delayed. CBP must determine whether it will be launched all at once or through phased deployments.
7	**Union Customs Code/ Customs (UCC) 2020**	The UCC came into force in May 2016 and will be phased-in by the end of 2020. It entails a major revision to EU customs laws. It requires new IT systems (electronic and interoperable customs environment) across 17 projects as part of the Customs 2020 Work Program.
8	**Mexico Change to 10-Digit Classification**	Mexico will change from an eight-digit tariff to a ten-digit tariff to improve statistical reporting. At present, there are 12,808 unique eight-digit classifications, the change could double that amount.
9	**Trans-Pacific Partnership (TPP)**	The U.S. announced its intention to drop out of the TPP on January 23, 2017. The future of theTPP, a free trade agreement between 12 countries including the U.S., Canada, Mexico, and Japan, is now uncertain and an alternative agreement may fill the void.
10	**US Border Adjustment Tax (BAT)**	The proposed BAT is a potential major change to the U.S. corporate tax structure. Congress is working on changes (undisclosed) to the BAT proposal expected to be made sometime in 2017. There may be repercussions from China and other countries if it is adopted.

1. The rank is based on objective scoring in five categories: 1) Likelihood of being enacted, 2) Imminence of coming into force, 3) Breadth of GDP coverage, 4) Extent of industries affected, and 5) Impact to duty and trade processes.

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