

Trade and Labor Compliance

Increased Enforcement Activity Spurs Need for Technology-Based Solutions

Supply chain constraints, both expected and unexpected, continue to disrupt global trade and appear to be the new normal for the foreseeable future. As the world is slowly recovering from the pandemic and constraints in both materials and labor cause unprecedented supply chain challenges, recent government actions are also creating unexpected hurdles in the “last mile” such as unforeseen cargo detentions and compliance requirements.

Taking a Closer Look at Upstream Supply Chain Risks

The U.S.¹, Australia², and Germany³ have all recently proposed or enacted regulations or legislation aimed at ensuring companies take affirmative steps to prevent and eliminate forced labor in both their direct and indirect supply chains. As supply chains have grown more complex with additional tiers, the risk of exposure to potential human rights issues has grown as well. Importers subject to withhold release orders (“WROs”) often lack complete visibility into their full supply chain and regulators might not specify where their forced labor suspicions lie. This heightened risk is also driven, in part, by geopolitical tensions and global focus on environmental, social and governance (“ESG”) initiatives. A forced labor investigation may originate internally within the organization wanting to ensure a compliant supply chain, through non-governmental organization (“NGO”) reporting, or from a regulatory inquiry.

In the U.S., if Customs and Border Protection (“CBP”) receives information that “reasonably indicates” merchandise intended for importation contains any components that are the result of forced labor, the agency may detain the suspected merchandise at the port of entry under the authority of a WRO.

While the specter of forced labor is a legitimate threat, the lack of a transparent process and ongoing trade disputes have led to concerns that WROs could be also used as political tools.

¹ For example, Chapter 23 of the United States-Mexico-Canada Agreement addresses forced labor rights and compliance in the context of the trade agreement.

² <https://www.theguardian.com/australia-news/2021/aug/23/australian-senate-poised-to-pass-bill-banning-imports-made-using-forced-labour>, last visited August 23, 2021.

³ <https://www.dw.com/en/german-bundestag-passes-new-law-on-supply-chain-ethics/a-57855174>, last visited August 23, 2021.

U.S. CUSTOMS CARGO DETENTIONS FY 2019-21

12 cargo detentions in 2019

324 cargo detentions in 2020

967 cargo detentions in 2021
(as of August 6)

\$422M total value of cargo detentions
2020–2021 (YTD)

Source: CBP Trade Statistics <https://www.cbp.gov/newsroom/stats/trade>

To combat allegations of the use of forced labor with regards to U.S. imported merchandise, the burden of proof is on the importer. Importers must provide proof of admissibility, including a certificate of origin conforming to the template set out in 19 CFR §12.43(a), within three months of the importation.

While CBP provides scant guidance or information as to why merchandise is detained or how evidence of admissibility is evaluated, practical experience suggests that merely complying with the basic requirements for a certificate of origin and attestation as described in Part 12.43 will likely be an inadequate defense against the agency's assertions.

How FTI Consulting Can Help

Our unique combination of experience in combatting global trade barriers, ensuring compliance with regulations, and implementing innovative technology driven solutions allows us to provide unique and innovative support for clients struggling to manage increased supply chain scrutiny. FTI's Export Controls, Sanctions & Trade ("ECST"), and Technology teams have assisted clients with supply chain and origin audits and inspections, cradle-to-grave supply chain tracing, and global product tracking to improve regulatory compliance as well as achieve time and cost efficiencies. Our combined technology and regulatory approach is tailored to improve the traceability of all aspects of the supply chain and to create an irrefutable, digital record of compliance.

Developing or improving trade and labor compliance procedures often requires a multifaceted and customized approach, especially when faced with an ever-changing enforcement landscape. In addition to traditional trade compliance measures such as documentation, due diligence, and reasonable care, a robust labor compliance process will also benefit from a more modern, technology-based approach.

Companies in a wide range of industries are embedding blockchain solutions in their supply chains. For example, a global food and beverage company adopted blockchain technology to track coffee from bean to cup while another company using blockchain can now trace a product's travels throughout their supply chain within 2.2 seconds, a process that previously took seven days.

The Benefits of Blockchain and Digital Solutions

For example, blockchain and digital token technology can provide immutable certification throughout the supply chain, which can be independently verified by regulators or a credible third party to trace and validate the origin of materials and labor, as well as providing real-time logistics tracing.

Blockchain solutions have been successfully implemented in similar contexts for supply chain and origin audits and inspections, supply chain tracing, and global, digital product tracking to improve regulatory compliance as well as achieve time and cost efficiencies. A combined technology- and regulatory-driven approach can be tailored to improve the traceability of all aspects of the supply chain and designed to create an irrefutable, digital record of compliance. In addition to the regulatory compliance benefits of a traceable supply chain, blockchain demonstrates a company's commitment to transparency and accountability to its business partners, customers, and other stakeholders.

Blockchain technology is often misunderstood, but by engaging blockchain experts, organizations can ensure the technology is developed as a unique solution fit for purpose, scale and cost benefits. Applications of blockchain technology can be used to demonstrate a compliant supply chain, including validation of workforce compliance, and be presented as verified evidence rebutting the underlying allegations of a WRO or in support of the admissibility of merchandise.

FTI's team of experts is ready to assist with proactive compliance, including unique technology-based solutions, as well as urgent merchandise admissibility needs. Our preemptive solutions are cost efficient and effective from a commercial perspective, and combine a cutting-edge, digital solution with the strength and reputation of a trusted third-party advisor.

For more information, please visit [FTI Technology Blockchain Advisory Services](#) or contact one of our experts listed below.

The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals.

FTI Consulting, Inc., including its subsidiaries and affiliates, is a consulting firm and is not a certified public accounting firm or a law firm.

STEVE MCNEW

Senior Managing Director
FTI Technology Blockchain Advisory Services
+1 713 353 5404
steve.mcnew@fticonsulting.com