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# Transportation Complexity in the Era of Supply Chain Sustainability

NOVEMBER 14, 2022

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The growing prevalence of supply chain sustainability and related environmental, social, and governance (ESG) principles signals a shift requiring attention. Despite some vocal holdouts across the supply chain, the speed of ESG adoption and the resulting changes and influence across industries have accelerated in the face of pandemic and war. The transportation and logistics vertical is no exception. Because transportations and logistics providers are the backbone of global trade, ESG principles necessarily increase the industry's operating complexity as well as increasing the value it contributes. This article explores certain key ESG dynamics—electric vehicles, autonomous vehicles, global sourcing initiatives, and trade controls—and their place in the industry.

**Electric Vehicles**

Electric vehicles are over a century old. What is new, apart from renewed interest in sustainability of the supply chain, is the battery technology and other advancements. The drive to exit use of internal combustion engines is simple in its logic, although the assumption of "cleaner" operations remains questionable. The traditional coal power grid generates the power to charge those batteries, which themselves are produced from lithium mining and suffer from environmental and practical questions involving effective disposal and recycling. The net effect is that this very well may be an advancement, but it is an imperfect solution.

The legal issues related to electric vehicles that we are seeing as a practice are in some manner industry wide, such as hazardous materials regulation compliance for the handling of batteries and fluids, but many issues are highly localized in their nature. For example, those transportation providers that have already adopted the technology frequently opine of difficulty in certain states when ordered by authorities to limit use of the power grid, thereby limiting the viability of the technology. Another emerging issue is the push from state authorities or internal initiatives to track adoption and the purported quantified benefit in terms of carbon footprint, whether for the operator or those the operator services. The complexity of doing so accurately and remaining truthful in those representations will, in our estimation, only grow in importance. This will have immediate and longer-term consequence and, on the immediate side, may even impact financial performance due to the use of monetary reward and penalty under state programs.

**Automated Vehicles**

Parallel with the development of electric vehicles is the development of autonomous vehicles, which are attractive for a different kind of sustainability. Autonomy purports benefits of maximum efficiency for equipment output, the potential for longer run times, reduced occurrence of human error, and presumably the ability to save lives. In the same way electric vehicles aim to curb reliance on a finite resource, so too do autonomous vehicles. The vehicles not only have the potential to reduce life-altering and life-taking human mistakes but could also alleviate driver shortages, such as the one faced by the U.S. motor carriage industry, by expanding the pool of resources so there are more options for carriage than the finite and stagnant industry of human drivers.

The legal issues we are seeing related to autonomous vehicles result from the need for concrete clarity around legal obligations and risk. Despite the U.S. DOT's many years of work on the issue, and the input delivered from industry over that period, the present state of law and regulation does not address he technology. As a result, providers together with their brokers and enterprise shippers are left to determine how to negotiate traditional transportation agreements, including the application of safety regulations that developed around the use of human drivers. The playbook for this space, its best practices, and liabilities is being written in real time by those of us with hands in the process. This presents unique challenges as well as exciting opportunities to operate at the forefront of an industry that is likely here to stay.

**Global Sourcing Practices**

In addition to thinking about the environmental and human impact of transportation, lawmakers, businesses, and consumers are paying more attention to the operations that go into sourcing and delivering inputs and finished goods essential to our domestic supply. Consumers and businesses are driven by internal aspirations and by governmental impetus to pay closer attention to the origins of supply than ever before. Businesses increasingly contract with suppliers and manufacturers to ensure that forced and child labor are not part of sourcing or production. This has the triple benefit of ensuring ethical operations, alleviating consumer concern, and protecting businesses in the U.S. from certain federal investigations and penalties. For example, the current Administration, acting through Customs and Border Protection, has increased its use of withhold release orders to prohibit the import of goods believed to be produced by forced labor (particularly from the Xinjiang Uyghur Autonomous Region of China).

The legal issues we encounter due to this trend focus on the need for clear strategies in procurement, contracting for supply, and documenting chain of custody throughout the supply chain. For example, an emerging compliance burden is the need for businesses to map out supply chains through to the earliest input, investigate the possibility of forced labor, and receive certificates of origin from manufacturers. Even after making such efforts, it is always possible that, without continuous monitoring and oversight, local suppliers or manufacturers could misrepresent their practices or change them after review. The result is a sourcing scenario where an entire toolbox of resources is necessary to tailor an appropriate compliance program for each enterprise's supply chain. That may involve stronger diligence at the outset, thoughtfully developed corporate policies, boots-on-the-ground confirmation of representation, and visibility into cargo movements and documentation, as well as new certifications from suppliers. In sum this is a tall and pragmatic task where, yet again, many of the rules and standards are being written as we speak.

**Trade Controls and Economic Sanctions Compliance**

Traditional compliance activities, such as anti-corruption, anti-bribery, import and export controls, and economic sanctions, have a place in sustainability discussions and have been increasingly active in recent years. From the United States' Section 301 duties on imports from China, to its swift and wide-ranging sanctions on Russia, the need for businesses to remain vigilant in conducting diligence on global suppliers and customers has only grown. Particularly since the invasion of Ukraine, the traditional high-risk areas of traffic have only expanded and now include individuals and regions that were previously far lower risk. The stress of new controls and prohibitions on an already overwhelmed supply chain only highlighted further the critical nature of developing sustainable practices. For example, the unavailability of ocean liner service in the region, the disruption in intercontinental rail service, and the new demand for fossil fuels from other regions of the world have been swift and challenging. The result is a perfect collision between transportation operations, natural supply restraints, and artificial supply and service restraints due to government initiatives in the interest of domestic production, national security, and global peace.

The legal issues we have handled associated with these concerns span every aspect of the supply chain. Global forwarders found themselves in an environment with low visibility into whether they could lawfully arrange for movements abroad, and in fact "rescue" stranded containers, on an hour-by-hour basis. Global enterprise shippers were immediately thrust into a world where the lawfulness of transactions already in process, prospective business, and legacy operations in-country were now in question. Those transactions elsewhere that were indeed lawful, such as imports from China, face increased scrutiny, such as the continued application of high duties and anti-dumping or countervailing duty bills with jaw-dropping figures sometimes 300x the value of goods. The path forward remains keeping pace with change and a calm view to exposure, industry practice, and the best way to position enterprise sourcing and delivery for the future. Launching new and updated compliance programs is often part of that exercise, together with risk assessments on current practice and, as needed, engagement with those federal agencies having jurisdiction.

**Staying One Step Ahead of Evolving Goals and Objectives**

The trendline of sustainability and other social-type initiatives suggests that these efforts are here to stay, regardless of what they are called or the motivations underlying them. Whether change is internally driven or from external influence, due to humanitarian concerns, social impact, or the ultimate speed and cost of service, new ideas and solutions abound, though all players in this game must admit the degree of challenge and the imperfection of any solution. Ultimately the speed of change and the human inspiration to innovate is a constant. The transportation and logistics industry, and its commercial users, will in our view continue to adapt on the front lines of the battle over these complex new issues. The industry remains well suited to conquer nuance and complexity through stronger and more compelling value propositions. After all, without the transportation and logistics sector at large, there is no global supply chain to sustain.

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