THE IMPLICATIONS OF CHANGES TO CUSTOMS REGULATIONS FOR SUPPLY CONTRACTS WITH CHINA AND THE US

I. INTRODUCTION

International supply chains continue to face considerable economic and regulatory pressure. New tariffs, trade tensions, export controls and sanctions between the EU, China, the US and other economic blocs are having an increasingly direct impact on existing supply contracts. Companies are not only faced with rising costs and delays, but also with the question of how flexibly existing contracts can respond to short-term legal and economic changes.

Cross-border supply chains involving key trading and manufacturing hubs such as China and Turkey are particularly affected. Whilst many companies have focused heavily on efficiency and global sourcing in recent years, issues such as risk allocation, contract adjustments, compliance and security of supply are now coming increasingly into focus.

Against this backdrop, contractual safeguards such as price and hardship clauses, force majeure provisions, change-in-law clauses and the careful selection of Incoterms are becoming increasingly important. At the same time, there are sometimes significant differences across different jurisdictions in how changes to customs legislation, sanctions and cases of economic hardship are handled.

In this article, our experts from various countries within the Schindhelm Alliance examine current developments and practical issues relating to customs law, supply contracts and international trade relations. The aim is to provide companies with a concise overview of key risks, regional specificities and possible courses of action in international contract management.

II. WHAT ARE "CHANGES TO CUSTOMS REGULATIONS"?

By '**changes to customs regulations**', we mean any measures that could make the movement of goods more expensive, restrict it or cause delays. These include, in particular:

- new or increased **import duties** and **additional punitive or anti-dumping duties**,
- trade policy measures such as retaliatory tariffs between the EU, the US and China,
- **Export controls** (licensing requirements for certain high-tech or dual-use goods),
- **Sanctions measures** (sanctions lists, embargoes, sectoral bans).

These guidelines are subject to change at short notice. Each individual transaction therefore requires a thorough review.

III. TYPICAL RISKS ASSOCIATED WITH ONGOING SUPPLY CONTRACTS

Changes to customs regulations often affect existing contracts right in the middle of their implementation:

- **Additional costs**: Whenever tariffs are increased or new duties introduced, the

question immediately arises as to who will pay. In the absence of specific provisions, it is usually the importer who bears the import duties in practice. Whether this applies to your company depends on the contract and the Incoterms (e.g. EXW, FOB, CIF, DAP or DDP).

– **Ability to deliver**: New licensing requirements, stricter controls or embargoes can delay deliveries to China or the US, or even make them impossible.

– **Margin erosion**: Fixed prices combined with sharply rising tariffs can quickly lead to situations where transactions can only be carried out with minimal or negative margins.

– **Contractual penalties and liability risks**: If delivery deadlines are missed and customs-related delays are not covered by the contract, this may result in contractual penalties, claims for damages or termination of the contract.

IV. KEY CONTRACTUAL CLAUSES IN SUPPLY CONTRACTS WITH CHINA AND THE USA

Price, customs and hardship clauses

– **Customs and tax provisions** should clearly stipulate who is liable for import duties, anti-dumping duties, punitive duties and import VAT, including any future increases.

– **Price adjustment clauses** may provide for the price to be adjusted in the event of significant increases in customs duties or the introduction of new levies, for example on the basis of publicly available customs rates or cost parameters.

– **Hardship clauses** ("Hardship"): They come into play in the event of significant economic changes and allow for renegotiation, including the amendment or termination of the contract. Customs duty increases can be explicitly cited as a possible hardship case.

Force majeure and "Change in Law" clauses

– **Force majeure clauses** protect against liability when unforeseeable events prevent performance of a contract. Export bans, embargoes or the refusal of licences may be listed here.

– **"Change in Law" clauses** set out how to deal with changes in the law, such as new tariffs or sanctions: from price adjustments and renegotiation to special termination rights.

Important: Many standard clauses do not automatically cover increases in customs duties. A tailored wording enhances legal certainty.

Incoterms as a control instrument for customs risks

The choice of **Incoterms 2020** determines who is responsible for customs clearance, customs duties and transport costs:

– **EXW (ex works)**: The buyer collects the goods and bears the transport costs and import duties. This is often impractical for exports from the EU, as the seller has little control over proof of export and export control.

– **FOB/ CIF (Sea transport)**: The seller delivers the goods on board (FOB) or also covers freight and insurance (CIF); import duties in China/the USA are payable by the buyer.

– DAP (Delivered at Place): The seller bears the transport costs to the destination; the buyer clears customs and pays

import duties.

– **DDP (Delivered Duty Paid)**: The seller also covers import duties and taxes in the country of destination; in other words, they bear the full customs risk in China or the USA.

Conclusion: Anyone promising DDP delivery to China or the US should be fully aware of the customs, tax and compliance risks involved and ensure these are covered by the contract.

Compliance and sanctions clauses

Supply contracts relating to China and the US should include **compliance provisions**:

– Obligation to comply with applicable **sanctions, foreign trade and export control regulations** (EU/respective national law and, where applicable, the US/China),

– Assurances made by the contracting party regarding the lawful use and onward supply of the goods,

– Rights to **suspension or termination** of the collaboration if transactions are prohibited by sanctions or export controls.

V. PRACTICAL GUIDANCE ON REVIEWING AND AMENDING CONTRACTS

Companies should regularly carry out a quick review of their key supply contracts with China and the US:

– Check **price clauses**: Are customs duties, taxes and other charges specifically included? Are there any rules regarding the level of additional costs at which a price adjustment is permitted?

– Review of **Incoterms**: Do EXW/FOB/CIF/DAP/DDP suit your risk appetite? Should DDP clauses be amended or avoided in relation to the US and China?

– Focus on **Force Majeure/Hardship and Change in Law clauses**: Do they provide adequate cover against customs and sanctions-related risks, or are they too narrowly defined?

- Review of the **compliance clauses**: Are export controls, sanctions and the partner's assurances clearly regulated?

Renegotiation is advisable, for example, if new punitive tariffs significantly alter the cost calculations, if contracts stipulate long terms and fixed prices, or if key safeguard clauses are entirely absent. New contracts should include flexible pricing and adjustment clauses, appropriate Incoterms and up-to-date compliance provisions from the outset.

VI. CHOICE OF LAW AND JURISDICTION – JUST KEEP IT BROADLY IN MIND

International supply contracts often specify which law applies (e.g. German law, US law or Chinese law) and which court or arbitration tribunal has jurisdiction. These decisions influence:

– how strictly courts view **customs risks as a normal business risk**,

– how easily contracts can be adjusted due to "hardship" or "change in law",

– how well **force majeure clauses** apply and are enforceable in the event of a dispute.

For companies with operations in China and the USA, a neutral court or arbitration venue (e.g. in Europe) and a deliberately chosen legal system can be an important

component of risk management. The specific details should always be worked out in consultation with legal advisers.

CHINA

I. HOW DO CHINESE BUSINESS PARTNERS TYPICALLY RESPOND TO LAST-MINUTE CHANGES IN CUSTOMS REGULATIONS OR SANCTIONS?

When there are sudden changes to customs duties or sanctions, Chinese business partners first assess the impact on their profit margins and their ability to deliver. This is often followed by discussions with customers regarding price adjustments, extended delivery times, the sharing of additional customs costs, or changes to the agreed Incoterms. It is not unusual for prices or payment terms to be renegotiated, particularly in the case of long-term contracts with fixed prices.

Furthermore, Chinese business partners often respond by making adjustments to their supply chains, production or procurement structures, or by tapping into alternative markets. In most cases, Chinese companies initially attempt to manage the impact through commercial negotiations, rather than terminating contracts immediately or taking legal action.

For European companies, this means that in the event of significant changes in the trading environment, early communication with Chinese contractual partners is particularly important. It is also advisable to include provisions in the contract regarding price adjustments, the allocation of customs risks and renegotiation mechanisms, in order to minimise the likelihood of disputes arising later on.

II. WHAT SPECIAL CONSIDERATIONS APPLY IN CHINA TO "FORCE MAJEURE", "HARDSHIP" OR "CHANGE IN LAW" CLAUSES?

Chinese law recognises the principle of "force majeure". Force majeure requires that an event be unforeseeable, unavoidable and insurmountable. However, customs or sanctions measures usually only lead to higher costs of performance and do not result in an objective impossibility of performing the contract. Furthermore, given the rise in trade disputes, some of these risks can be regarded as foreseeable. Consequently, under Chinese law, they are rarely classified as force majeure.

However, in the event of significant changes to customs duties, sanctions or other regulatory changes, a 'hardship' clause may become relevant. Of particular importance are the economic implications, the foreseeability at the time the contract was concluded, and the date on which it comes into force. The greater the impact and the less predictable the situation, the more likely it is that renegotiation, contract amendments or termination of the contract will be considered.

Chinese law does not recognise a separate legal concept of 'change in law'. Risks arising from changes in legislation, sanctions, tariffs or other regulatory measures should therefore be addressed in contracts wherever possible, for example through price adjustment, cost-sharing or renegotiation clauses.

III. WHAT IMPACT DO CHINESE EXPORT CONTROLS AND COMPLIANCE REGULATIONS CURRENTLY HAVE ON EUROPEAN COMPANIES?

Chinese export control and compliance regulations have become significantly more

important in recent years. For European companies, the impact is particularly evident in stricter requirements for export licences, end-use and end-user checks, and increased compliance requirements throughout the supply chain.

When trading in dual-use goods (i.e. goods with both civilian and military applications), certain technologies and critical raw materials such as rare earths or graphite, Chinese exporters are often required to carry out additional checks and, where necessary, apply for export licences. European companies are therefore increasingly being asked to provide end-use declarations, details of the end user or other compliance documentation.

This may result in longer approval and delivery times, as well as increased administrative work. Export control compliance and supply chain due diligence are therefore becoming increasingly important for European companies.

IV. WHICH INCOTERMS ARE CURRENTLY PREFERRED IN INTERNATIONAL TRADE IN CHINA, AND WHAT RISKS DO CHINESE COMPANIES PERCEIVE IN DDP DELIVERIES?

FOB remains one of the most commonly used Incoterms in Chinese export practice. In addition, FCA, CIF and CFR are also widely used. Under these terms of delivery, the buyer is generally responsible for import clearance as well as import duties and taxes in the country of destination.

Chinese exporters, however, often view DDP shipments with some reluctance, as the seller is required to handle customs clearance, duties and other import obligations in the destination country. Many Chinese suppliers also have only limited knowledge of local customs, tax and compliance requirements abroad.

The main risks include, in particular, uncertainty regarding import duties, taxes and regulatory requirements, as well as potential changes to trade and customs policy. Consequently, many Chinese companies prefer to share risks through contractual arrangements, such as price adjustment, cost-sharing or renegotiation clauses, rather than assuming full DDP obligations.

TURKEY

I. WHAT IMPACT WILL NEW EU TARIFFS, TRADE RESTRICTIONS OR SANCTIONS HAVE ON SUPPLY RELATIONSHIPS WITH TURKEY?

Turkey is not a member of the EU, but is part of a customs union with the EU for industrial goods. As a result, Turkish customs duties and many trade policy rules in this area are closely aligned with the EU system. It is important for businesses that: EU tariffs, anti-dumping measures and sanctions do not automatically apply in Turkey. Turkey may impose its own additional, safeguard or anti-dumping duties that differ from EU measures.
This gives rise to two levels of risk in supply chain relationships involving Turkey. Firstly, companies must check whether the goods fall within the customs union and what supporting documents are required. In particular, A.TR certificates and, where origin is relevant, proofs of origin may be accepted. If the correct documents are missing, you may lose out on customs benefits or face additional charges. Secondly, there are compliance risks. Turkey does not necessarily adopt EU sanctions. At the same time, EU or US rules may continue to be relevant for European companies if goods are forwarded via Turkish partners. Supply chains involving Turkey should therefore be reviewed not only in terms of customs

regulations, but also in terms of sanctions and export control legislation.

II. WHICH CONTRACTUAL ADJUSTMENTS ARE TURKISH COMPANIES CURRENTLY RECOMMENDING FOR LONG-TERM SUPPLY CONTRACTS?

In long-term supply contracts with Turkish partners, customs, tax and currency risks should be explicitly addressed. Price adjustment clauses are particularly important. You should specify whether, and from what threshold, new or increased customs duties, additional charges, anti-dumping duties or exchange rate fluctuations will result in an adjustment to the contract price. The burden of proof should also be clearly defined.

When it comes to Incoterms, caution is advised with DDP. Anyone who agrees to DDP terms usually assumes responsibility for import duties in the country of destination and, consequently, the risk of subsequent changes in customs duties. DAP or other terms may be more appropriate if the buyer is better placed to manage import and customs clearance locally.

Change-in-law, hardship and compliance clauses are also recommended. They should allow for renegotiation, price adjustments, suspension or termination if new tariffs, sanctions, export controls or licensing requirements significantly affect delivery. In the case of cross-border contracts, the choice of law and any arbitration clause should also be carefully considered.

III. ARE THERE ANY SPECIFIC PROVISIONS IN TURKISH LAW REGARDING HARDSHIP OR FORCE MAJEURE CLAUSES?

Under Turkish law, a distinction must be made between hardship and force majeure. For hardship, there is a statutory adjustment mechanism. However, it only applies under strict conditions: The change must have occurred after the contract was concluded, must have been exceptional, and must not have been foreseeable by the party concerned. Furthermore, the performance must be so significantly out of balance that it would be contrary to good faith to insist on the contract remaining unchanged. In practice, simple cost increases, currency risks or routine changes in customs regulations are often regarded as business risks.

Force majeure also sets high requirements. The decisive factor is whether an external, unforeseeable and unavoidable event prevents performance. This may include an embargo, an export ban or the removal of a mandatory licence. Simply increasing the cost of delivery is usually not enough. Contracts should therefore explicitly stipulate whether tariff increases, sanctions, export bans, licence suspensions or supply chain disruptions are to be regarded as hardship or force majeure events. Without a clear clause, legal protection remains limited.

IV. WHAT ROLE DO SANCTIONS, RE-EXPORT ISSUES AND COMPLIANCE REQUIREMENTS CURRENTLY PLAY IN BUSINESS WITH TURKEY?

Turkey continues to play a key role in international trade as a centre for production, procurement and transit. It is precisely for this reason that Western export control authorities are paying closer attention to the risks of re-export and circumvention. For European companies, this means: Even if Turkey does not adopt certain EU sanctions, a company's own responsibility may still remain. This applies in particular to dual-use goods, spare parts, electronics, machinery, software and technical services. Before each delivery, it should be checked who the end customer is, how the goods will be used, and whether they could be on-supplied to sanctioned markets.

Supply contracts should therefore include clear assurances from the Turkish partner. This includes details of the end-use, a ban on unauthorised re-exports, obligations to provide information in the event of changes to the supply chain, and the right to suspend or terminate the agreement where sanctions or export control regulations are concerned.

An ongoing review is also important. Sanctions lists, goods lists and licensing requirements change at short notice. A one-off check when the contract is signed is often not enough when doing business in Turkey.

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