

Neena Shenai

What led you to focus on international trade law and compliance?

Trade is a fascinating mix of law, policy, economics, politics, and national security issues. My interest in trade began when I had the opportunity to study with the late Professor Raymond Hopkins in Swarthmore College's Political Science Department. I took his international politics course where I was responsible for writing a discussion paper on the World Trade Organization. I have been in the international trade space in one form or another since then! I feel fortunate over the course of my career to have had experience on the full range of trade issues – import, export, policy – in all three branches of the US government and as in-house and outside counsel.

If you were so empowered, what legislation would you repeal/create?

The International Emergency Economic Powers Act ("IEEPA") is a prime candidate for a repeal and replace. Given my work on Capitol Hill and at the Department of Commerce, I am a staunch believer in the constitutional and institutional prerogatives of each branch of government. At its heart, Congress passed IEEPA in 1977 to more thoroughly circumscribe the situations under which the President could invoke a broad set of "emergency powers." Even as it narrowed prior Executive Branch practice, IEEPA provides the President almost unfettered emergency authorities in the international economic space.

It's hard to imagine today's Congress approving such a broad grant of authority to the President with such a high bar for overturning executive action (a joint resolution of Congress). IEEPA today forms the basis for most non-Congressionally authorized sanctions and export controls issued by the President, but there is reportedly also a potential for it to be used to justify other trade-related measures like raising tariffs. Congress never intended to

provide such carte blanche to the President in its area of, in some cases, enumerated authorities. Congress should re-evaluate what in fact constitutes a "national emergency" and circumscribe these delegations more carefully, and provide more direction to the President on when these authorities can be used.

What should in-house compliance professionals do more of and less of?

I held a global trade legal and compliance in-house role for over eight-and-a-half years at a global company. In-house legal and compliance professionals in this space are tasked with helping companies navigate often high-risk, high-stakes activities globally. It's imperative that these professionals find more effective ways to educate and socialize clients to these risks but also "talk less and listen more" to better understand their client's business goals and risk tolerance. Trade legal and compliance professionals can then better calibrate their advice and guidance and help their clients manage risk.

What "secret" was – or do you wish had been – shared with you?

An important role of trade legal and compliance professionals – whether outside counsel or in house – is to be strategic business partners. In order to do this, it's critical that they make the effort to ensure their clients (or clients of clients, in the case of outside counsel) feel heard and be integrated and invested in decisions and outcomes. This does not mean it's necessary to say "yes" all the time. Quite the contrary. Advice and compliance frameworks need to be tailored, bespoke and identify situations that are a "no," "yes," and "yes, but" in a defensible, credible, risk-based manner.

What do you consider the biggest challenge facing trade compliance going forward?

International trade compliance is increasingly dynamic, multijurisdictional and multifaceted and reflects the broadening aperture of what is considered national security. Countries



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are using import, export, sanctions, government procurement, and other measures as levers to achieve national security and foreign policy goals and objectives. Private sector actors and, in turn, their trade legal and compliance professionals need to have the ability to better anticipate the future and build durable compliance programs to withstand the environment. They will need to ensure that clients are "pricing in" risk akin to more conventional high-risk regulatory areas (e.g., FCPA, health/safety) which have topline business effects. ■

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