Growing Global Chemical Trade Brings New Risks for U.S. Firms

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Over the next few years, the U.S. chemical industry is poised for remarkable growth that will give it an expanding role in global trade. International markets offer significant opportunities to U.S. chemical manufacturers and distributors of all sizes, but considerable risks accompany the move into foreign countries.

For many U.S. chemical companies, burgeoning global trade promises to open up significant opportunities in the years ahead. Further, U.S. chemical exports are poised for robust growth through the end of this decade as new plants built to take advantage of abundant supplies of shale gas come into production. By 2019, the United States is expected to run a $77 billion trade surplus in chemicals as total U.S. chemistry sales exceed $1 trillion, the American Chemistry Council estimates.[1] Companies taking part in the international growth opportunities include major chemical manufacturers expanding overseas, smaller and niche U.S. firms moving into global trade for the first time, and non-chemical companies acquiring chemical assets with foreign operations.

As established chemical companies and industry newcomers alike seek international growth, they face significant risk management challenges when it comes to issues such as products liability, evolving environmental regulations and the widely varying national laws governing insurance. For example, U.S. companies may be able to rely on U.S.-based policies in some countries, but others require insurance and claims services to be provided by locally licensed companies outside of the U.S. The failure to comply with these laws can lead to fines and other consequences. As companies expand abroad, they should make sure that their risk management strategies and their insurance programs adequately address the wide variety of risks that accompany their global operation.

Exposures and Risk Management

Driving the expected surge in U.S. chemical exports is a wave of new domestic and foreign investment drawn by the low-cost supplies of natural gas liquids and lower electricity costs that have turned the United States into one of the most attractive areas for chemical projects.[2] More than $135 billion in new U.S. chemical production projects have been announced in recent years, with capital spending up an estimated 12 percent in 2014 to $33 billion.[3]

As the U.S. chemical industry enjoys strong growth at home and seeks new opportunities abroad, companies need to be aware of how international operations can complicate their risk management and risk transfer programs. Here are some of the main exposures that manufacturers and distributors face as they participate in the growing global trade in chemicals and some measures that may help address those risks.

Products Liability

For chemical manufacturers and distributors, products liability remains one of the leading risks. It's even more challenging when a product is just one link in a supply chain that stretches around the globe. A faulty chemical used as a component in a finished or intermediary product can damage a customer's product or the end use; for instance, a faulty polymer manufactured in the United States that contaminates a wood treatment produced in China. The liability for such cross contamination may flow back to both the manufacturer and the distributor. To mitigate these risks, companies should institute highly rigorous quality control and quality assurance procedures and strictly enforce those protocols. Stringent and thoughtful inspection and testing are critical. Should faulty products be discovered during testing, companies need proactive recall capabilities to limit any damages. That includes the ability to track individual batches of products around the globe to ensure that they can be recalled if necessary.

Emerging Environmental Regulations

While U.S. chemical companies are familiar with the environmental laws at home, the situation in foreign markets is far more fluid. The European Union, for instance, has enshrined a strict polluter-pays approach in its Environmental Liability Directive, which covers damage to the environment and to biodiversity. While the directive sets a common standard, European member states may take varying and stricter approaches. In Asia, China has enacted more stringent laws regarding pollution that include fines based on the length of time pollution occurs rather than the previous one-time penalties.[4] Other nations with a growing middle class are also placing a greater focus on the environment. Besides dealing with differing environmental laws from country to country, it's important to understand how regulations are enforced in practice and how any future regulatory changes might affect the company's operations.

Companies acquiring chemical assets in foreign countries should investigate any potential legacy issues that may be associated with a given property. The past uses of a site may have led to contamination, exposing an unwary purchaser to significant remediation costs and potentially expensive liabilities. A lack of records may make it difficult to ascertain those previous activities, which makes on-site inspections a valuable measure. The physical setting is a major factor, for example, if spills or releases might impact major waterways or ground

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water. On site, companies should evaluate storage and secondary containment structures to assess whether incidents may result in pollutants spreading beyond the property's footprint. Emission control measures such as filters and scrubbers should meet current and potentially new standards. Because of the environmental exposures associated with chemicals and the potential for reputational damage from negative publicity, companies should adopt a good neighbor approach that seeks to ensure the integrity of all the environmental protection systems.

On premises, companies should minimize any exposures to workers and limit access in sensitive areas to people who have been properly trained. The instructions and protocols for safety and handling should be clear, and managers should make sure that they are followed. To lessen the potential for third-party claims, products being shipped should include the appropriate warning labels as well as the correct instructions for safety and handling.

Transportation and Disposal

Both established companies and new entrants should be aware of the risks and regulatory scrutiny involved in shipping potentially polluting products around the world. Chemicals should be properly manifested and labeled and shipped in the appropriate trucks or totes. Particular attention should be paid to the regulations surrounding totes and the types of materials that may be used in totes for specific chemical products.

Disposal presents another crucial issue, particularly for foreign operations. The liability for pollution issues surrounding disposal - including sludge from waste water cleaning processes - may extend to the manufacturer and the distributor as well as the waste facility itself. The operators of disposal facilities should be properly licensed; adhere to the appropriate standards and use sufficiently rigorous testing protocols.

Emerging chemicals

Because the chemical industry is a font of innovation, companies have to be careful about how they handle new and emerging chemicals. For instance, the gasoline additive MTBE (methyl tertiary butyl ether) was widely used in the 1990s until concerns about ground water contamination emerged and led to settlements reaching into the hundreds of millions of dollars.[5] Today, the U.S. government is looking at the safety of chemicals commonly used in hand sanitizers, and there is a good deal of litigation involving the dry-cleaning solvent PCE, or perchloroethylene. Chemical manufacturers have to be aware of risks that may arise with emerging chemicals - and the potential media and public scrutiny that may accompany the production and use of chemicals later deemed harmful.

Filling Insurance Coverage Gaps

When it comes to insurance, foreign operations may entail significant complexities. Before companies become involved in exports, they should make sure that their insurance covers all of their global exposures. Standard policies may have limited territory provisions that restrict coverage to the United States and its possessions and exclude Canada and Puerto Rico, for instance. As a result, companies should obtain affirmative coverage for all of the areas in which they operate and be certain their policies include a worldwide provision.


140 ml
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120
100
80

Independent of buying strategy, the current insurance marketplace provides chemical companies and their insurance partners with a wide variety of choices regarding compliant and efficient insurance programs.

Another potential issue often overlooked is standard policies that specifically exclude pollution, which is a crucial consideration in an industry where the product itself may be considered a pollutant. Companies should obtain affirmative coverage for environmental impairment liability and products pollution liability. Because pollution incidents require specialized responses, companies may want coverage that includes assistance with response, cleanup and remediation so that they have ready access to vetted, specialized vendors that can perform the appropriate services in a cost-effective manner. A timely and effective response can help to mitigate potential liabilities stemming from an incident.

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For clients seeking a streamlined approach, insurance policies that combine both general liability and environmental liability insurance on one policy form strive to dovetail both coverages and represent an option that addresses a host of complex risks while potentially achieving cost efficiencies for clients. Multinational companies may consider certain global insurers that offer broad solutions on an international basis that spans borders, lines of business and service areas seamlessly.

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Global growth brings new opportunities

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To deal with the exposures that international growth brings, companies need to identify the risks that their foreign operations will entail and develop a robust risk management strategy to address them. They should make sure that their insurance programs provide all the appropriate coverages, comply with local laws and offer the claims capabilities they need in foreign markets. A preemptive approach that includes working with an insurer that understands the chemical industry and has a strong global presence can help to potentially mitigate the exposures and let companies focus on making the most of their new opportunities.

About the Author

Ernie Salas is a Vice President with Chubb North America Commercial Insurance where he serves as North American Segment Manager for Specialty Casualty & Construction. Since joining the company in 2004, he has also served in leadership roles with Westchester Casualty, Foreign Casualty and Environmental Risk. An insurance executive with 22 years of experience, Mr. Salas started his career at AIG where he held management and underwriting positions within its Global Energy, WorldSource and Environmental business units. He gained his agency experience with Willis, Inc.

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Endnotes

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