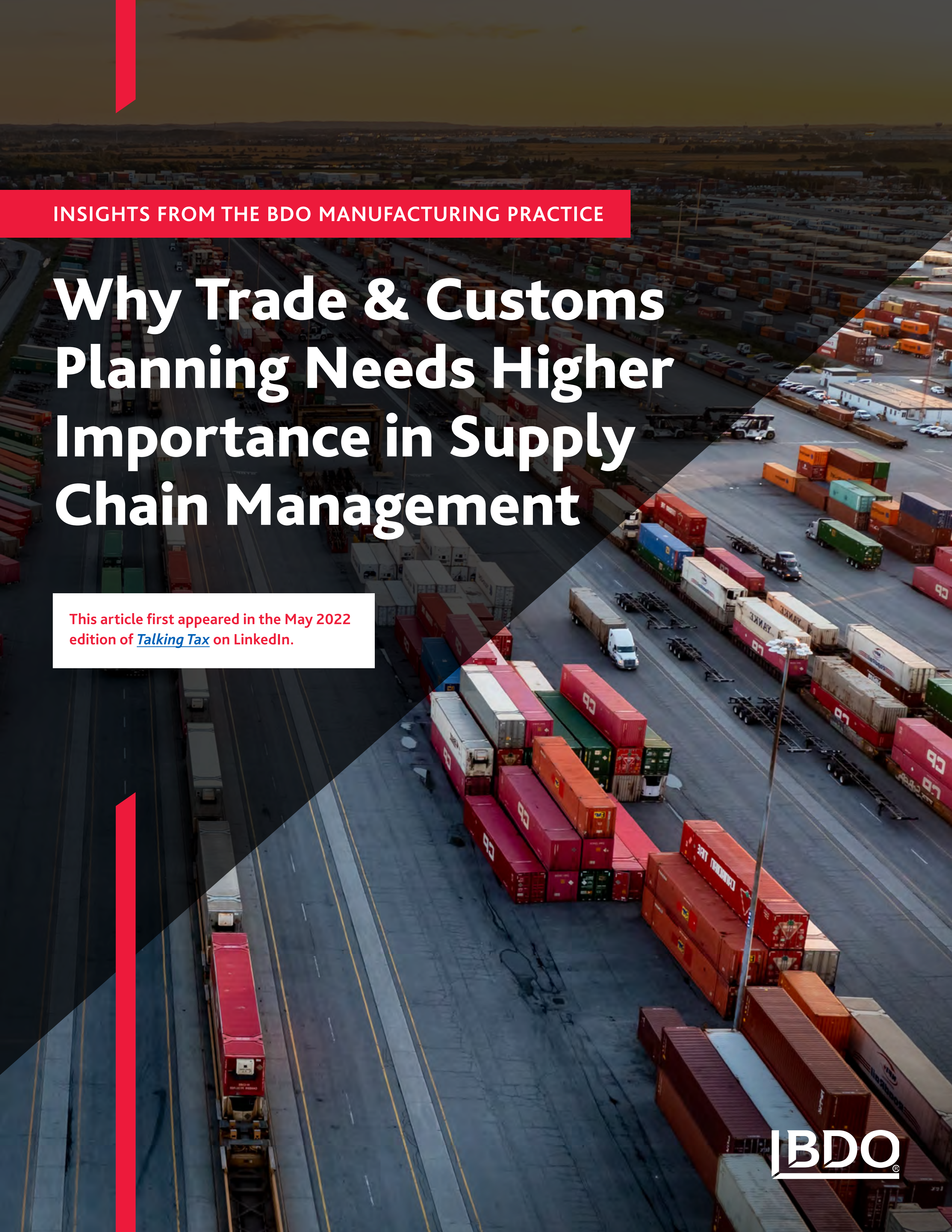
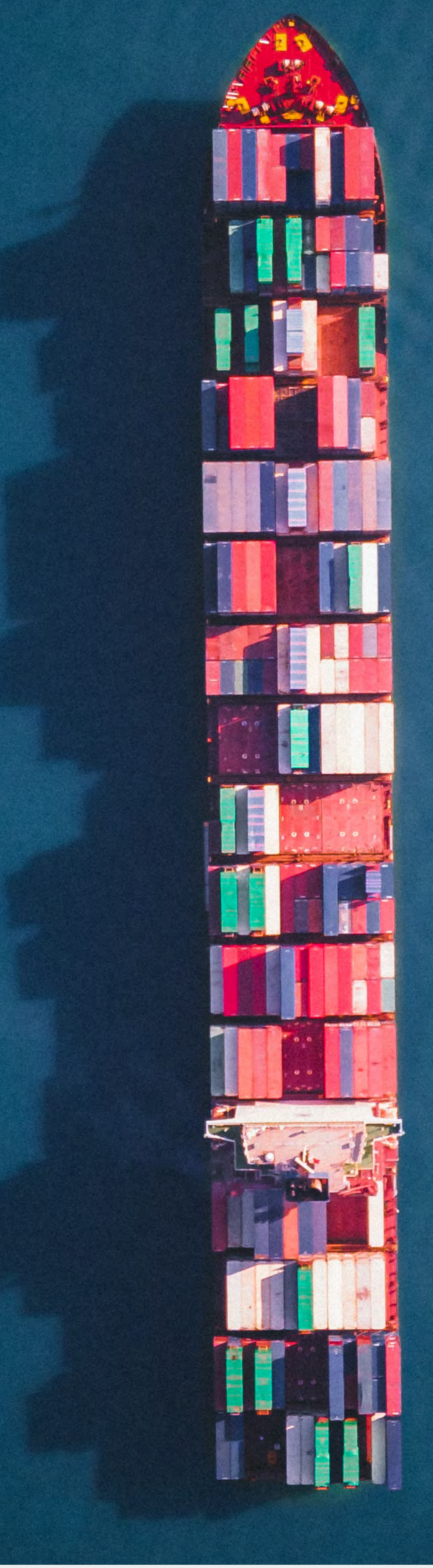


INSIGHTS FROM THE BDO MANUFACTURING PRACTICE

Why Trade & Customs Planning Needs Higher Importance in Supply Chain Management

This article first appeared in the May 2022 edition of *Talking Tax* on LinkedIn.



Many companies make the costly mistake of not prioritizing trade and customs planning in supply chain management.

According to the **2022 BDO Tax Outlook Survey**, 45% of tax executives say they are not included in supply chain decision making. Additionally, tax executives say import and customs duties will make the largest portion of their total tax liability in 2022, tied with employment taxes. Ignoring this critical area of tax when making major supply chain changes can potentially lead to higher costs and regulatory issues.

THE CONSEQUENCES OF MISUNDERSTANDING TARIFFS

Too often, companies view tariffs as a sunk cost. They may not be aware of the options available to mitigate their tariff liability, or they may not understand how tariff rules can impact supply chain decisions. Consequently, these businesses may make changes to their networks that have unanticipated adverse tariff-related implications.

Many businesses that source heavily from China have considered diversifying their supplier base. Some companies have tried to move parts of their production parts out of China to avoid tariffs or take advantage of new U.S. government incentives to build domestic manufacturing capacity. However, if they do not meet the "substantial transformation" standard necessary to change the country of origin from China to a different location, their goods remain subject to Section 301 tariffs.

Additionally, adjustments to U.S. trade policy are changing how companies need to approach customs compliance. This shift began most notably with the "labor value content" calculations imposed on automotive original equipment manufacturers (OEMs) in the United States-Mexico-Canada Agreement (USMCA) mandating hourly wage requirements and fair labor practices for all member nations.

This shift toward social responsibility concerns in free trade agreements will only increase as it mirrors the rise in Environmental, Social, and Governance (ESG) policies in corporate boardrooms. Rules such as the labor value content provisions in the USMCA require customs compliance personnel, supply chain professionals and/or tax leaders to work together closely to stay at the forefront of trade policy changes as ESG continues to evolve.

THE UYGHUR FORCED LABOR PREVENTION ACT (UFLPA)

The UFLPA is a significant recent change to U.S. trade policy and reflects the shifting nature of customs compliance. Signed into law in December 2021 by President Biden and put into effect in June 2022, the UFLPA bans the importation of products produced in the Xinjiang region of China that were made using forced labor. To avoid the ban, any company importing products from Xinjiang **must meet a burden of proof** set by the Commissioner of U.S. Customs and Border Protection that their goods were not made using forced labor. Frequent conversations should also take place with all vendors no matter where the finished good is produced to ensure that the necessary requirements are being met.

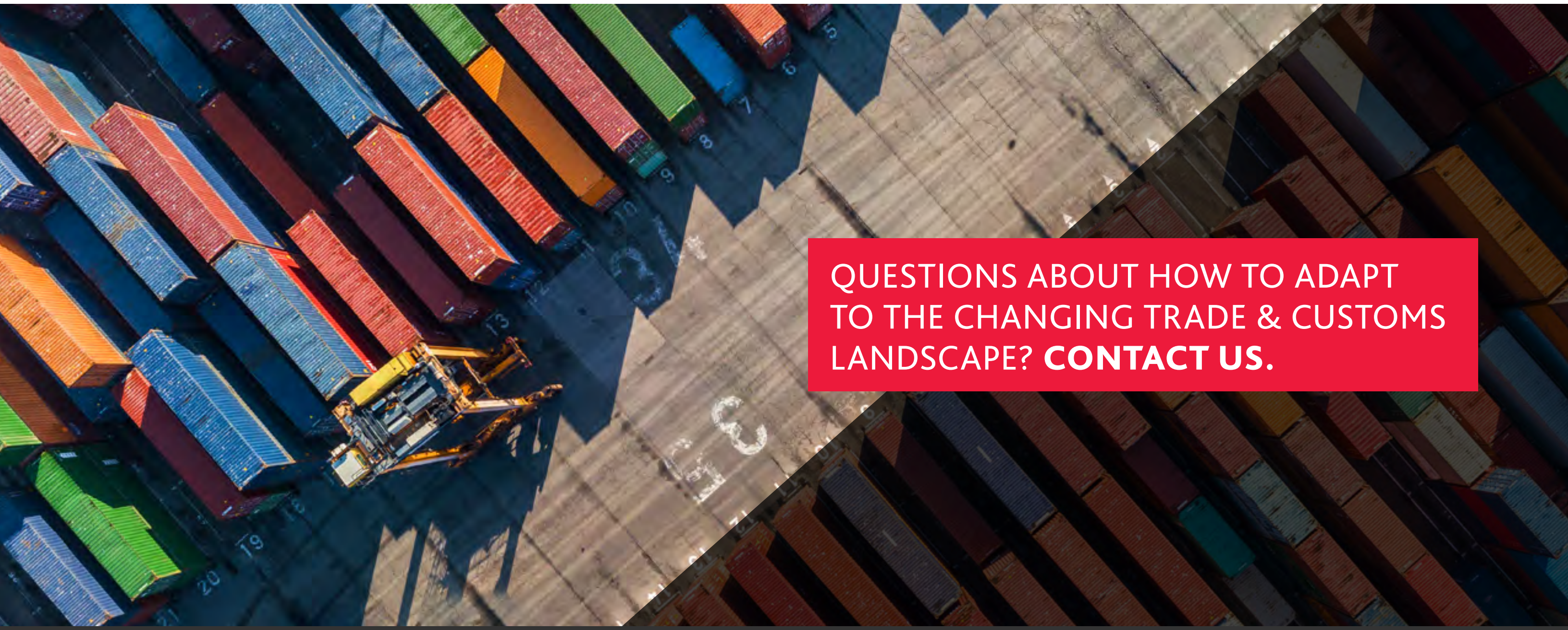
THE NATURE OF CUSTOMS AND SUPPLY CHAIN PLANNING IS CHANGING

We are likely to see additional treaties or legislation like the USMCA and UFLPA that include stipulations for importers related to labor or sustainability. For instance, the European Commission issued a proposal in September 2022 that would ban importation of products made using forced labor similar to the UFLPA. Such measures will require close cooperation between supply chain professionals and customs professionals and/or tax leaders to collect adequate evidence from suppliers that demonstrates compliance – at a product-level basis. This can be an enormous undertaking for companies with hundreds if not thousands of part numbers. They'll also need to cooperate on strategies to adjust sourcing if new rules related to labor or environmental impact are implemented that necessitate a network adjustment.

The federal government will also continue to take action to protect supply chains critical to the economy and national security, including semiconductors, rare earth metals and medical devices.

For example, in February 2022, the U.S. Department of the Interior updated the list of critical minerals it deems necessary to the economic and national security of the U.S. These minerals could be targeted for federal policy action that encourages or mandates onshoring of those supply chains to the U.S., like the incentives provided in the CHIPS for America Act targeting semiconductor manufacturers. It's possible that these kinds of incentives could be made available to other sectors or coupled with punitive action for companies that fail to move production to the U.S.

These types of policies are representative of the increasingly blurred lines between customs, supply chain and national security that have widespread implications for businesses across industries. The shifting landscape necessitates leaders of those functions within companies working closely together to support ongoing success.



QUESTIONS ABOUT HOW TO ADAPT TO THE CHANGING TRADE & CUSTOMS LANDSCAPE? **CONTACT US.**

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