Trade-Based Money Laundering - An Impediment to Trade Facilitation
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INTERNATIONAL trade is a multi-billion dollar industry, involving participants from diverse fields like industry, trade, banking, financial institutions, brokers, importers, exporters, transporters, and innumerable individuals. Funds keep criss-crossing in a series of globe-circling transactions every second. It is simply impossible to monitor each and every transaction to ascertain the bonafidesof every participant and the legitimacy of the circulating funds. The massive volume of funds that are transacted in international commerce has grown dramatically since globalization. The proliferating number of Free Trade Zones and Special Economic Zones all over the world adds to the complexity of the problem. Such a nebulous set up is ideally suited for arranging the commingling of legitimate and illicit funds. Multiple trade transactions through different overseas markets can be manipulated to transmit illicit funds to different global destinations. The popular and evergreen methodology is to misrepresent the price, quantity, and quality of imports and exports. Over invoicing, under-invoicing, totally phantom transactions, are normally employed to convey the false reality of legitimacy. Trade based money laundering (TBML) involves the transfer of "value" via commodities and traded goods. In addition to customs fraud, trade based value transfer is often times used to provide "Counter valuation" or a way of balancing the books in many global underground financial systems. Every Country in the world has a Customs service that keeps tract of what comes in and what goes out, but TBML is a special form of trade abuse that cannot be easily detected, involving either importing goods at undervalued prices and obtaining cash by re-selling them domestically for their actual value, or by exporting goods at overvalued prices and receiving inflated payments from overseas Co-conspirators. Traders understand that neither international bankers nor Customs officers can be fully conversant with the pricing structure of each and every transaction made in international commerce. The sheer volume of merchandise entering the country also constitutes a major challenge. Several thousands of Cargo Containers by sea and air enter and exit in different parts of the country. Physical inspection of every Cargo is practically impossible.

The Commonly used three methods of laundering money and integrating it into the formal economy are -

(a) By manipulating the financial set up

(b) Physical movement of money by using cash couriers

(c) By manipulating the physical movement of goods through the trade system.

The invoice-manipulation is done in a very simplistic manner.

(a) <u>To move money out:</u> Import goods at overvalued prices or export goods at undervalued prices.

(b) <u>To move money in:</u> Import goods at undervalued prices or export goods at overvalued prices.

Recognizing the growing threat of Trade Based Money Laundering (TBML) the United Stated of America established the world's first Trade Transparency Unit (TTU) under the Immigration Customs Enforcement, Dept of Homeland Security.

In India, as part of trade facilitation measures, several innovative steps have been initiated.

In a Vision Document published by the C.B.E.C. in 1998, trade facilitation was given the same thrust as realizing revenue and combating duty evasion. A veritable cornucopia of measures have been placed before the discerning modern trader. For instance, Customs infrastructure has been improved vastly with considerable improvements in containerization of general cargo, berthing capacity, etc. at major ports, implementation of a Risk Management System (RMS), the AEO and ACP programmes; documentation has been greatly reduced through the introduction of the EDI system, this has led to burgeoning of the use of Information Technology; to allow expeditious clearance of import-export goods, the government has initiated a twin-shift working system; further, all documents and instructions are available on the website of the Directorate-General of Foreign Trade (DGFT); also, numerous Free Trade Agreements with her neighbors which results in lower tariffs for both parties and new transit means such as gas pipelines from Iran to India or the one from Turkmenistan to India have been created. Additional benefits under promotional schemes, Foreign Trade Policy benefits without Bank Realization Certificates, a whole gamut of Export Promotion Schemes, recognition as Towns of Export Excellence, and so on are other trade facilitation measures instituted by the Govt. of India.

Several forms of misuse of these measures are resorted to. It is quite logical that where there is use, there can be misuse, especially when there is even the slightest scope. In certain transactions, numerous regulations and procedures need to be observed. First, mis-declaration is resorted to in description, country of origin, end-use, etc., with the intent to avoid payment of Customs duties including CVD, Anti Dumping duty, etc. and also to circumvent non-tariff barriers. Second, undervaluation is primarily effected by way of presenting forged or false documents to the Customs authorities, showing and supporting suppressed values. Another modus is by way of non-inclusion of allied cost components in the assessable value by making partially correct declarations at the time of filing bills of entry. Third, Customs authorities, as a trade facilitation measure, generally rely on the declarations made by the importers. Therefore such cases are susceptible to mis-declaration whether in declaration of the eligibility criteria, description of goods or end-use or post import conditions. There are also cases of misuse of both trade agreements with other nations as well as that of Importer-Exporter Code. The growing misuse of anti-dumping measures (ADMs) is another case in point. In essence there seems to be an attempt to usurp the global governance aims of these measures and turn them into measures not even aimed at increasing the welfare of individual countries or country groupings. Though ADMs are meant to merely permit relief to be granted to specific domestic industries being injured by foreign products being "dumped" on domestic markets, they are instead being used to wreak havoc on the domestic industries of nations.

The repercussions of money laundering can be disastrous, particularly for smaller economies. Markets and even such small economies can be corrupted and destabilized. In the beginning, good and bad money intermingles, and the country or region appears to prosper, but in the end, Gresham's law operates. Lasting damage can clearly be done when the infrastructure that has been built up to guarantee the integrity of the markets is lost. Even in countries that have not reached this point, the available evidence suggests that the impact of money laundering is large enough that it must be taken into account by macroeconomic policy makers. Potential macroeconomic consequences of money laundering include, but are not limited to: inexplicable changes in money demand, greater prudential risks to bank soundness, contamination effects on legal financial transactions, and greater volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers. Money laundering undermines liberalization in the following ways: First, countries that are suffering the outflow of funds or are concerned about the outflow of funds because of pervasive economic crime often try to impose capital controls to fence in funds and prevent them from leaving the jurisdiction. Second, countries concerned about the use of the financial system for money laundering purposes may take measures to control financial dealings with jurisdictions that do not have adequate money laundering control policies. Third, countries that are viewed as weak in their control of money laundering would attract lesser investments whether direct or indirect. Fourth, trade-based money laundering impacts legitimate trades by necessitating authorities to be more vigilant in clearing goods at the customs.

In conclusion, it may be logical to observe that trade facilitation is much like a razor-sharp sword. It may slice easily through dwell times of cargo or thick bundles of excess paperwork, but simultaneously it can be hanging above the heads of law enforcers like a Damocles' sword, because a facility like this has numerous security caveats due to its sheer scale and, thus, can be manipulated by the intelligent individual with a criminal bent of mind. As money laundering methods become complex and sophisticated, it is necessary that agencies, authorities, investigators and prosecutors alike should equip themselves with the evolving knowledge of money laundering typologies. Over and above issuing instructions to abide by PMLA (Prevention of Money Laundering Act, 2002), the regulators must equip themselves with the market-based forensic knowledge of such activities. Investigations have shown that one of the most effective ways to identify instances and patterns of trade-based money laundering is through trade data for anomalies that would only be apparent by examining both sides of a trade transaction. The Indian revenue intelligence organizations such as the Directorate of Revenue Intelligence (DRI) and the Enforcement Directorate (ED) to name just two, have an instrumental role in checking trade-based money laundering in our nation and the law enforcement agencies must equally have their sixth, seventh and eighth senses working to counter this formidable and insidious threat.