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## Focus on Customs & Trade

# Navigating PPE Transactions During a Global Pandemic

By Peter Quinter, Miami, and Tucker Thoni, Orlando

The COVID-19 pandemic has changed the way many businesses and individuals conduct their day-to-day affairs. It is difficult to imagine an industry that has not been forced to adapt its standard practices and procedures to accommodate COVID-19 concerns. This article discusses the current (and crazy) state of the global personal protective equipment (PPE) market during the COVID-19 pandemic.



## PPE Market During COVID-19 Pandemic

One industry that has been particularly affected by the COVID-19 pandemic is the global market for PPE and other medical products. Indeed, since the outbreak of COVID-19, the demand for PPE and other medical products has been insatiable, and has far exceeded supply and global production capacity. The World Health Organization (WHO) has estimated that the global fight against COVID-19 requires 89 million masks, 30 million

gowns, 1.59 million goggles, and 76 million gloves, *per month*.

In addition to increased use of PPE by hospitals and other historic PPE users, there are many industries that have been forced to become users of PPE, such as retail, hospitality, government, restaurant, education, office workers, etc. The PPE and other medical items that appear to be in the highest demand include face

masks, respirators, nitrile examination gloves, and COVID-19 test kits; however, there is significant demand for many other items including face shields, booties, gowns, sanitizing wipes, ventilators, thermometers, hand sanitizer, among others.

The great disparity between need and availability has created a market that allows counterfeit, poor quality, and out-of-date products to enter the supply chain. During this public health emergency, the

U.S. Food and Drug Administration (FDA) has attempted to resolve this challenge by issuing emergency use authorization (EUA) for unapproved medical products such as face shields and respiratory protective devices such as respirators and some surgical masks. All imported merchandise is subject to examination by both the FDA and U.S. Customs and Border Protection (CBP).

Further straining global production is the current trade war between China and the United States, which has

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bled over into the PPE market with competing trade policies between the two countries with respect to medical products, including PPE, that were not well coordinated and often contradictory.

There have also been supply chain disruptions and breakdowns for many health care and other historic users of PPE. This coupled with many new end-users of PPE emerging into the market has caused the price of PPE items to skyrocket as demand dwarfs supply. Thus, in the current PPE seller's market, there is the potential for substantial profits<sup>1</sup> for those with the ability to procure a legitimate supply of PPE.

While a strong entrepreneurial spirit is a positive value firmly rooted in American culture and history, windfall profits and other "get rich quick" opportunities should be approached with an abundance of caution. A lesson from George Cason's classic *The Richest Man in Babylon* provides sage advice for those contemplating PPE transactions during 2020: "invest thy treasure with greatest caution that it be not lost. Usurious rates of return are deceitful sirens that sing but to lure the unwary upon the rocks of loss and remorse."

The demand has driven many new businesses into the PPE space, whether it be as a manufacturer, distributor, or end-user. While many of these new operators are bona fide businesses acting in good faith and trying to enter a new, expanding market for entrepreneurial or humanitarian purposes, there is unfortunately many more bad actors, fraudsters, and con artists, looking to prey on unwary, novice operators blinded by their eagerness for and expectation of windfall profits. Indeed, the amount of fraud and deception pervading the PPE market in 2020 is shocking and disturbing.

The authors of this article have substantial experience and expertise representing clients operating in various aspects of the PPE market during 2020, and this article provides anecdotal insights and suggestions on how to navigate these murky, pirate-filled waters without losing thy treasure.

### Dynamics of PPE Transactions During COVID-19

PPE transactions during the COVID-19 pandemic are far from normal. The deal flow is unreasonably fast. Frenetic grossly understates the pace. Often parties without transactional history together (or in the PPE space) are negotiating transactions in the millions, if not billions, of dollars to be closed in a matter of days. Despite the closing success rates for these transactions being remarkably low,<sup>2</sup> deal fatigue does not appear to be relevant (at least from a client perspective), and the potential for substantial profits appears to keep clients constantly negotiating new transactions notwithstanding the prior misses.

The number of scammers operating in the current PPE market results in a great deal of skepticism and mistrust among transactional parties. Most conference calls start off with a series of vetting and verifying questions from each side prior to discussing the subject deal. It is important to verify that you are really speaking with who purports to be on the other line. Identity theft is rampant in this space, and sometimes people are not who they present themselves to be. The good news is that most parties understand the skepticism. Feelings (usually) do not get hurt when you ask someone to prove they are who they say they are, which is a terribly awkward way to begin a negotiation.

The current PPE market has been inundated with transactional brokers, which creates a host of issues. Some of these brokers are honest about their intermediary roles and are savvy operators that are effective at brokering a deal, while others are novice, unprofessional, and attempt to layer enough smoke and mirrors to deceive the counterparty into believing that the broker is the title-holding seller or cash-holding buyer. In these authors' experience, the latter significantly outnumbers the former.

### The Compounding Effect

Many of these brokers are attempting to negotiate a dozen or more transactions simultaneously, and as

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discussed above, oftentimes these negotiations are with another broker. This has a compounding effect that creates the illusion of significantly more inventory and buyers than reasonably exist.

For example, assume that a business has 10 million boxes of nitrile gloves for sale and tells a single broker about the supply. The broker tells ten prospective buyers about the available goods; however, seven of the prospective buyers are in fact brokers masquerading as an end buyer. Those seven brokers each tell ten more prospective buyers, a substantial percentage of which are also brokers. It does not take a degree in mathematics to see where this is going. A few degrees removed, and thousands of transactions are being negotiated based on a single supply of goods.

Maybe somewhere down the line a broker decides to split up the lot and sell 3 million boxes to one prospective buyer, and 7 million boxes to another prospective buyer. If either prospective buyer is a broker, then the compounding effect repeats, and now there is a 10-million-box lot and a 7-million-box lot, both of which are being zealously marketed by an army of brokers. It is plausible, if not likely, that many of the brokers marketing the 7-million-box lot are simultaneously marketing the 10-million-box lot, blissfully unaware of what has occurred.

Maybe an enterprising broker decides to combine the lots and market a 17-million-box lot, and the cycle repeats itself. Now consider how many brokers might be splitting or combining lots, and how many phantom lots could be spawned from a single 10-million-box lot. This could occur with little to no “proof of life” (POL) with respect to the initial 10-million-box lot that was the genesis of the whole mess.

The compounding effect is equally problematic from the perspective of exaggerating the number of bona fide buyers looking for product. For example, assume that a business is looking to purchase 10 million boxes of nitrile gloves and provides a single broker a purchase order for such goods. The broker tells ten prospective sellers about the need for such goods; however, seven of

the prospective sellers are in fact brokers as well. Those seven brokers each tell ten more prospective sellers, a substantial percentage of which are also brokers, and so on and so forth.

Maybe somewhere down the line a broker can't find a 10-million-box lot for sale, so it decides to split the order up and purchase 3 million boxes from one prospective seller and 7 million boxes from another prospective seller and issues purchase orders for each. If either prospective seller is actually a broker, then the compounding effect repeats, and now there are apparently buyers looking for a 10-million-box lot and a 7-million-box lot. It is plausible, if not likely, that many of the brokers sourcing the 7-million-box lot are simultaneously sourcing the 10-million-box lot, also blissfully unaware that both are ultimately for the same end-of-line buyer, which has only ordered 10 million boxes.

In addition to creating a mirage of significant inventory and large swaths of bona fide buyers, the brokers can create significant deal-flow issues. It is not uncommon for there to be five or more brokers working a single transaction. This can result in negotiation by the “telephone game,” and as anyone who has had the pleasure of playing that game knows, the message you start with is often drastically different than the message at the end of the chain.

Another issue with negotiating through brokers is that they are not principals; brokers often tend to be primarily concerned with the transaction closing, and less concerned with the fine deal points expected by the seller and the buyer. This results in brokers agreeing to deal points that are drastically different than what the buyer and the seller require in order to transact. These communication issues will delay, if not kill, a transaction.

It has been our experience that PPE transactions are much more likely to close if the parties sign an irrevocable master fee agreement and a non-circumvention, non-disclosure, non-solicitation agreement; get the brokers out of the way; and let the buyer and the seller negotiate directly. Unfortunately,

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many brokers are hesitant to do this, and like to keep an active role in the transaction, often to the detriment of all parties, including the broker.

In the current PPE market, the transactions start in a traditional sense. Buyers submit purchase orders or letters of intent, and the parties begin negotiating transactional terms (albeit there might be many brokers in between the end-user and the seller). From that point, these transactions very often run into a stalemate regarding whether the buyer will provide proof of funds (POF) prior to the seller providing proof of life (POL) of the product. This is driven largely because of the number of transaction brokers or flippers that are trying to use someone else's money or to sell someone else's goods. The authors are of the opinion that for an overwhelming number of PPE transactions being negotiated in 2020, neither party to the negotiation has the cash or the goods in its possession, and so, neither is able to promptly provide the POL or POF.

### Proof of Life

No, we are not talking about a hostage situation, but in the shady, seedy world of PPE transactions in 2020, the existence of the goods is always at issue. In fact, it is the authors' sincere advice that anyone entering the PPE market in 2020 should presume that goods being offered for sale do not exist until sufficient, verifiable POL is provided with respect to the goods.

POL comes in a variety of forms, some of which are more reliable than others. The following is a non-exclusive list of the types of POL provided by sellers to get prospective buyers comfortable that the goods exist, so that the buyers will pay the bounty necessary for the seller to release the hostage.

(a) It is common for a video of the goods to be offered as POL. In such a video, the seller shows a warehouse full of product, opens a box and shows the contents, and provides a paper or recites some code or name to verify the video was prepared contemporaneously for the particular buyer. These videos are highly unreliable, easily editable, and are subject to a

great deal of fraud. Even when genuine, there is no reasonable way to authenticate millions of units of a particular item of PPE by way of a five-to-ten-minute video. While receiving a POL video can be helpful, it is not advisable to rely on such videos as the sole or principal source for verifying existence of PPE offered for sale.

- (b) Letters of attestation are commonly offered by legal counsel to a seller. In such a letter, the attorney will attest to his or her knowledge regarding the existence of PPE and its availability for sale by the attorney's client. For a transaction in a normal market, a letter of attestation is reliable, because if the representations in the letter are untrue or deceptive, the attorney could be subject to civil action from the misled party and to professional discipline from its state bar. As discussed above, the PPE market in 2020 is not normal, and frankly we have been disturbed, disheartened, and ashamed at what attorneys will attest to in writing on their firm's letterhead. While receiving a letter of attestation from the seller's attorney regarding the existence and availability of the goods is helpful (especially when such letters are from established, reputable firms), based on our experience we regrettably must advise clients not to rely on such letters as their sole or principal source for verifying existence of PPE offered for sale. It is prudent to request the documentation upon which the attorney was able to make such an attestation.
- (c) SGS inspection reports are a good source for validating the existence of goods. The Société Générale de Surveillance (SGS) is a Swiss company that provides inspection services in a variety of industries including PPE. It is the gold standard with respect to inspections of PPE and is widely used to determine if the goods conform to the standard, quality, manufacturer's specification, and quantity advertised. SGS inspection reports are generally performed in the country of origin prior to the goods leaving the factory, and sometimes when the goods arrive in the country of destination. An SGS

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quality and quantity inspection report (not to be confused with other SGS reports, such as an SGS test report) provides reliable information regarding the existence, quantity, and quality of goods; however, buyers should still vet the legitimacy of the SGS inspection report and the prospective seller's title or access to such goods before moving forward with a transaction.

- (d) Logistical documents, such as bills of lading, air waybills, certificates of origin, and packing slips, are also a good source for validating the existence and location of goods. A bill of lading is a document provided as a form of receipt by a carrier to the person consigning the goods for transit. An air waybill is similar to a bill of lading but is provided by an air carrier as a form of receipt of goods to the person consigning the goods for transit. Most PPE is sourced from Asia, in particular China, Malaysia, Vietnam, and Thailand, so the logistical documents provide verifiable and reliable information regarding the existence and location of goods; however, buyers should still vet the legitimacy of the logistical documents and the prospective seller's title or access to such goods before moving forward with a transaction.

Keep in mind that an SGS inspection report or logistical documents are not feasible for goods that are not yet produced, and other means of certifying the supplier's access to the goods must be explored for a PPE transaction involving production. Documents confirming an association with a manufacturer or an authorized distributor are helpful. In addition, the authors have found a useful tactic is to request SGS inspection reports and logistical documents from prior deals to confirm that the supplier has transacted successfully on prior transactions with the manufacturer or other third-party supplier.

If the supplier raises privacy concerns, allow the supplier to redact the parties' names from the SGS inspection report, and remind the supplier that bills of lading and air waybills are publically available documents for which a party has no legitimate privacy expectation. Indeed,

there are several companies, e.g., [www.importgenius.com](http://www.importgenius.com), that obtain all bills of lading from every port of the country and aggregate the data for commercial use by the public.

### Proof of Funds

The seller wants to know that the prospective buyer is bona fide and capable of performing financially on the transaction. Due to the number of scammers, fraudsters, and con artists in the current PPE market, buyers are understandably concerned and apprehensive about sharing financial data and bank documents with prospective sellers.

POF comes in a variety of forms, some of which are more reliable than others. The following is a non-exclusive list of the various types of POF provided by buyers to get prospective sellers comfortable that the buyers are ready and able to perform financially on a given transaction:

- (a) Letters of attestation are commonly offered by the counsel of a buyer. In such a letter, the attorney will attest to his or her knowledge regarding the client's access to funds necessary to perform on the subject transaction. As discussed above, letters of attestation from an attorney are generally reliable documents; however, in the current PPE market it is the unfortunate reality that placing much trust in letters of attestation is not prudent and could result

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in losing thy treasure. All of the concerns regarding letters of attestation in the POL context are restated here with equal emphasis with respect to attestation letters regarding POF.

It is important to read the letter of attestation and see what exactly the attorney is representing with respect to his or her client's ability to perform financially on the subject agreement. Common representations made in such attestation letters include that: (i) the attorney has personal knowledge that his or her client has possession of liquid funds necessary to perform under the transaction; (ii) the attorney has the necessary funds on deposit in its escrow or IOLTA account; (iii) the client has "access" to such funds; and (iv) the attorney received an attestation letter from another attorney wherein the other attorney attested to the availability of the funds.

- (b) Bank comfort letters are documents issued by a bank or other financial institution on behalf of its client to assure a supplier of goods of the financial ability of the client. Bank comfort letters are reliable documents, but, as discussed below, sellers should still vet the legitimacy of these bank documents and the prospective buyer's access to the funds described in the letter. In the current PPE

market, many brokers are using "someone else's money," so assuring that the prospective buyer or broker has ownership or authorization to use the funds described in the bank comfort letter is very important.

Some banks have grown wary of issuing bank comfort letters in the current PPE market as they get widely circulated and misused. These more cautious banks have been issuing specific, one-time-use transaction codes so that a prospective seller can call the bank, provide the transaction code, and confirm the availability of the funds. This is generally reliable, so long as you confirm that the person you are talking to is actually affiliated with the bank, see *infra* section of Trust No One and Independently Verify Everything.

- (c) Bank-to-bank confirmation, in the form of an MT199 or MT799, is a useful tool to verify funds while mitigating a buyer's concerns that its financial documents will be shopped or misused. The MT799 is a free format SWIFT message in which a banking institution confirms that funds are in place to cover a potential trade. The function of the MT799 is simply to assure the seller that the buyer does have the necessary funds to complete the trade.
- (d) Escrow deposits, if the buyer is willing to fund an



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escrow account with a reputable law firm, bank, or financial institution, are generally considered strong POF; however, manufacturers and distributors in China, Vietnam, Malaysia, and Thailand are typically not comfortable with escrow deposits as POF. For transactions occurring in the United States, escrow deposits should be reliable. Be sure to read your escrow agreement carefully to understand the distribution and other terms and request an escrow attestation letter from the escrow agent swearing and affirming under penalties of perjury to possession of the escrowed funds.

- (e) Letters of credit are strong POF, so long as the issuer is a credit-worthy bank or financial institution. For buyers with the capability of posting a letter of credit, this is a preferred method of these authors, as it is more readily acceptable abroad. The recipient is generally able to monetize the letter of credit to fund the order. Letters of credit come in a variety of forms, but MT700s (and corresponding MT720s) and MT760s appear to be the most commonly used instruments.

For buyers without existing credit facilities or strong banking relationships, it will be tough to get a letter of credit issued from a top-tier bank in a reasonable amount of time. The banks are understandably cautious because of the amount of fraud and the number of new, amateur operators in the PPE market, so even with substantial funds on deposit with the bank, it has been these authors' experience that top-tier banks want three-to-six weeks of due diligence time to issue a letter of credit. If the buyer and the seller are new operators and have not done business together in the past, this timeframe can increase. For most of the brokered transactions being negotiated in the current PPE market, three-to-six weeks to provide POF is way too slow and simply will not work.

### Trust No One and Independently Verify Everything

The number of scammers, fraudsters, and con artists that are in the current PPE space looking to defraud

and scam unwary parties is unsettling. Considering that many of those unwary parties are chasing get-rich-quick transactions promising usurious rates of return with little to no capital risk on the part of the broker, it is somewhat predictable. Indeed, the unwary parties are often intoxicated by an expectation of significant (if not unreasonable) profits and are therefore more easily susceptible to untoward persuasion. The expectation of such profits often blinds parties from realizing that "it's too good to be true." Operators in the current PPE market need to be extremely cautious to not be too eager and to approach transactions with a healthy dose of skepticism. With all due respect to "The Gipper" (or President Ronald Reagan), in the current PPE market, the guiding principle should be "trust no one and independently verify everything."

Some of the fraud is very obvious, such as "wire me 10% as a deposit and I will send you an address to a warehouse with 1 billion N95 respirators"; however, there are more discreet con artists that can produce rather inspired fraudulent documents and schemes. As it often goes, the truly talented con artists are incredibly bright and talented individuals who would be wildly successful if they used their talents for legitimate means, e.g., Frank Abagnale, a security consultant known for his earlier career as a con man, check forger, and imposter when he was between the ages of fifteen and twenty-one. If something does not seem right or is too good to be true, listen to your intuition. Do not let your eagerness for profit allow you to be coaxed onto the rocks of despair and lost treasure.

It is difficult to overstate how important independent verification is with respect to any POL or POF materials you may receive. If you can verify the document in multiple ways, do so. Redundancies are useful and protect your treasure.

In the authors' experience only about one in ten bank documents being circulated are bona fide. In many instances the document is a complete forgery that the bank did not issue, and even when the document is actually from the bank, the party providing the bank document often is not the account holder and has



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dubious access to such funds. In order to vet bank documents, the authors take the following approach (which has been known to irk some brokers and bankers):

- (a) Do a visual inspection of the document and look for obvious signs of alteration or doctoring. Pay particular attention to different font styles and font sizes throughout a document.
- (b) Confirm that the bank signatory is associated with the bank. Check the bank's website, other internet sources, and finally call the bank and ask to be connected to the purported signatory or for other confirmation that the signatory is associated with the bank. If the banker is able to sign an official bank document confirming that there are millions or billions of dollars in a given account, then someone at the bank's headquarters should be able to confirm the banker's association with the bank.
- (c) Confirm that the phone numbers provided on the bank letter are associated with the banking institution. This can be done on the bank's website, general internet searches, and with a call to the bank's headquarters.
- (d) Once the number is confirmed, call the banker and confirm the validity of the letter and the availability of the funds. Request that the banker send you an email from its official bank email address confirming that the person you spoke with is who he or she purports to be.
- (e) Once received, confirm that the email address is affiliated with the bank. This can usually be found under the "contact us" tab on a bank's website, with many displaying their "info@" email address thereon. A call to the bank's headquarters is also useful in confirming that a given email address is associated with a banking institution.

There is also significant forgery and deception in the provision of POL documents. In the authors' experience, only approximately one in twenty SGS inspection reports is authentic and associated with the lot of goods to be sold. Due diligence on SGS inspection reports is pretty

straightforward. Start with a physical inspection of the SGS inspection report to look for obvious signs of alteration or doctoring, but all you really need to do is email the document to the SGS headquarters in Geneva for verification, [certificates@sgs.com](mailto:certificates@sgs.com). Bills of lading and air waybills can be similarly confirmed with the carrier and sometimes online.

In response to all of this fraud, it is important to practice good internet security and hygiene. To mitigate the ability for unauthorized use and doctoring of documents, use specific watermarks, password protection, secure file transfer, and encryption when preparing and transmitting purchase orders, bank information, letters of attestation, etc. Even with those prophylactic safety measures, it should be expected that your documents will be reused and misused.

### Get Educated on the PPE Market

As discussed above, the size of the transactions being purportedly negotiated in the current PPE market is staggering and at times runs into the absurd and unfeasible. It is common for the quantities being discussed to be in the hundreds of millions, if not billions, of units. Every so often some broker will purport to have access to a trillion masks or boxes of gloves.

The casual nature in which brokers will refer to these lots, generally as a "10B lot" or a "3T lot," is alarming and speaks to the naivety of many operators in this space. Those numbers are difficult, if not impossible, to justify from a price, supply, or logistical standpoint. Understanding the supply in the market and the logistical undertaking necessary to move such supply is important to not falling down the rabbit hole into a fraudulent transaction.

While it is unclear how much, there is no doubt that the COVID-19 pandemic has led to increased production of PPE, with existing manufacturers ramping up production and many new manufacturing operations popping up in China, Southeast Asia, and even the United States. The increased production is a commonly used justification in response to questions about the validity of an incredible

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quantity of a given lot of goods. This justification is a logical fallacy. Production is up because demand is insatiable. The demand significantly outpaces the supply, which seriously undermines brokers' claims to large inventories of ready stock being available for immediate sale. In the authors' discussions and representation of manufacturers of PPE, they indicate that post-COVID-19 supply is significantly less than pre-COVID-19 supply.

Study up on the logistics because the devil is always in the details. A useful heuristic the authors have used to ferret out bad actors purporting to be able to supply large quantities of PPE is to pepper them with logistical questions. If someone tells you they are going to load 5 million boxes of nitrile gloves on a single air cargo flight, you will know they are, at best, a novice because only about 150,000 to 300,000 boxes of nitrile gloves can fit on a cargo plane, and at worst, a fraudster out to steal your treasure. It is the authors' observation that parties with experience sourcing goods have a

basic understanding of what is feasible from a logistical standpoint.

It is also important to have perspective on the logistical undertaking necessary to move millions or billions of units of anything (even something small like an N95 respirator or a box of gloves). The following link provides a visual depiction of what millions and billions of 3M 1860 N95 respirators amount to from a size standpoint: <https://globalresourcebroker.com/visualization-of-3m-1860-otg/><sup>3</sup>. Similarly, a box of 100-count nitrile gloves is approximately 0.5 cubic feet, so if a broker is offering 1 billion boxes of medical grade nitrile gloves in stock in the United States and ready for sale, consider that this quantity amounts to 500 million cubic feet, which amounts to dozens of skyscrapers of pallets. For perspective, the empire state building is approximately 37 million cubic feet.<sup>4</sup>

Market data is also important to ferreting out the feasibility of an advertised lot of goods. Keeping with

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the example of 1 billion boxes of nitrile gloves, which (unfortunately) is not an uncommonly marketed supply, consider the following: the top producer of gloves in the world is appropriately named Top Glove, which produced approximately 738 million boxes of gloves (or 73.8 billion gloves) in calendar year 2019.<sup>5</sup> When brokers offer for sale 1 billion boxes of gloves, they are saying they can procure for you at one time in one transaction more boxes of gloves than you would receive in a year if you instead purchased Top Glove. This is, of course, fantasy.

The PPE product that is most commonly marketed in a fraudulent manner is without question 3M Model 1860 N95 respirators. The quantities being offered for sale far exceed the number of 3M Model 1860 N95 respirators manufactured in the past couple of decades. The CEO of 3M is all over the news indicating that 3M produced approximately 550 million 3M Model 1860 N95 respirators worldwide in calendar year 2019, and it hopes to ramp up production to be on pace to produce 2 billion in 2021 (approximately 180 million per month), and that for calendar year 2020 production should comfortably exceed 1 billion worldwide.<sup>6</sup>

If someone has offered you 1 billion 3M Model 1860 N95 respirators for sale, it is almost certainly a fraudulent offer. It strains all credulity that someone could sell you nearly all of 3M's global production in one transaction. Tales of private lots and strategic stockpiles are also fantasy, as 3M Model 1860 N95 respirators only last for five years. If it seems too good to be true, it likely is. 3M has a fraud prevention department that was spun up in response to the widespread fraud being perpetrated with respect to 3M products during the COVID-19 pandemic. Here is a link to an informational flyer produced by 3M to help inform the public of certain signs of fraud: <https://multimedia.3m.com/mws/media/18602210/covid-n95-selling-facts.pdf>.

As an aside, you should be careful when attempting to transact with respect to 3M products as the company restricts resale and markup of its products and has been aggressively pursuing price gouging, trademark infringement, and other causes of action against bad, and at times just unsuspecting, actors.<sup>7</sup>

As a final cautionary note on the importance of understanding the current PPE market, if you are going to try to get closer to the source of the product and engage directly with manufacturers and distributors in China, Vietnam, Thailand, and/or Malaysia, it is imperative that you have someone on your team with experience doing business in these countries, and it is strongly advised that you have boots on the ground in these countries to help facilitate the process and to protect against bad actors. Many unwary purchasers have received empty cartons or old, nonconforming, or damaged inventory only to be left holding the tainted goods and evaluating the prospects of collecting from an unfamiliar counterparty abroad.

### Where is the scam?

The obvious scams such as the one discussed above regarding the need for a 10% deposit to get access to a warehouse with a billion 3M Model 1860 N95 respirators or requests for sensitive personal information, such as passport, SSN, personal bank account details, personal address, etc., are easy to identify and avoid, although it is likely that some all-too-trusting parties have been duped and lost their treasure to such schemes.

For the con artist marketing fraudulent goods, the motivation is obvious—to steal an unwary individual's money. Unfortunately, it is not always so obvious what the fraud is or what the motivation is for the person perpetrating such fraud. Consider the con artist forging bank comfort letters to be used in PPE transactions: Even if the unsuspecting seller does not ferret out the fraud, what does the con artist stand to gain? What is their end game? There are not clear answers, but the authors have some ideas of possible motivations:

- (a) identify theft;
- (b) to procure legitimate SGS inspection reports and logistical documents from a seller so that the con artist can perpetrate fraud by producing the legitimate POL documents received from you to another prospective buyer in hopes that the prospective buyer might send a deposit or the entire purchase price to the con artist;
- (c) to determine the location of the goods to commit

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some brazen, movie-like heist of the goods. Given the logistical undertaking, this is the least realistic purpose; and

- (d) delusions of grandeur wherein certain brokers making up a seedy underbelly of the internet like to “negotiate” million- or billion-dollar transactions because it makes them feel important even though such individuals do not appear to have any business experience and have no reasonable chance of closing one of these transactions.

The most unnerving part for the authors is knowing that some fraud or tomfoolery is afoot but not being able to pinpoint the motivations or purposes furnishing the bad acts. A known issue can be frightening but is easily dealt with because you can identify the problem and face it head on. An unknown issue is not frightening because we are comfortable in our own blissful ignorance of the potential calamity. You cannot be scared by something you do not even realize exists. But a known unknown issue is by far the most frightening of all and is the type of thing that will wake you up in the middle of the night. To know an issue is present but not be able to fully identify or understand the issue is terrifying.

While the authors cannot pinpoint the motivations of con artists using fake bank documents, we believe there is truth in a quote made by the late NBC executive Don Ohlmeyer when pondering an unexplainable situation: “the answer to all your questions is money.”



**Peter Quinter** is a shareholder at GrayRobinson PA at the firm’s Miami office. His practice focuses on U.S. customs and international trade law, including the enforcement of IP rights by U.S. Customs and Border Protection. You may contact Mr. Quinter at [peter.quinter@gray-robinson.com](mailto:peter.quinter@gray-robinson.com).



**Tucker Thoni** is a senior associate at GrayRobinson PA at the firm’s Orlando office. Mr. Thoni can be reached at [tucker.thoni@gray-robinson.com](mailto:tucker.thoni@gray-robinson.com).

### Endnotes

1 While a healthy profit margin is generally considered a positive, it should be noted that sales of PPE are highly regulated

by state and federal agencies and price gouging carries civil and criminal penalties. Indeed, about two-thirds of states have some restriction on price gouging applicable to PPE transactions: [https://www.fmi.org/docs/default-source/gr-state/price-gouging-state-law-chart.pdf?sfvrsn=9058b75c\\_2](https://www.fmi.org/docs/default-source/gr-state/price-gouging-state-law-chart.pdf?sfvrsn=9058b75c_2); and states are currently pursuing new and stricter price-gouging laws and regulations in response to the rampant price gouging currently ongoing in the PPE market: <https://www.nbcnews.com/politics/politics-news/states-push-price-gouging-measures-coronavirus-fuels-consumer-fears-n1163846>

2 In the authors’ experience and in discussions with other practitioners in this space, it appears that only approximately 5% to 10% of PPE transactions will close.

3 The authors have not independently verified this visual depiction.

4 [https://www.esbnyc.com/sites/default/files/esb\\_fact\\_sheet\\_4\\_9\\_14\\_4.pdf#:~:text=%E2%80%A2%20The%20building%20weighs%20365%2C000%20tons%20and%20its, and%20730%20tons%20of%20aluminum%20and%20stainless%20steel](https://www.esbnyc.com/sites/default/files/esb_fact_sheet_4_9_14_4.pdf#:~:text=%E2%80%A2%20The%20building%20weighs%20365%2C000%20tons%20and%20its, and%20730%20tons%20of%20aluminum%20and%20stainless%20steel)

5 <https://www.fm-magazine.com/news/2020/mar/top-glove-malaysia-coronavirus-demand-23152.html>; <https://www.thomasnet.com/articles/top-suppliers/nitrile-gloves-manufacturers-and-suppliers/#:~:text=Hartalega%20Holdings%20is%20the%20world’s,for%20a%20variety%20of%20applications>

6 <https://www.bloomberg.com/news/features/2020-03-25/3m-doubled-production-of-n95-face-masks-to-fight-coronavirus>; <https://www.startribune.com/3m-says-it-s-on-track-with-n95-production-goals/571710872/?refresh=true>; <https://www.adweek.com/retail/3m-has-doubled-global-production-of-its-n95-respirators/>

7 [https://www.massdevice.com/3m-files-5-more-price-gouging-lawsuits/?utm\\_source=TrendMD&utm\\_medium=cpc&utm\\_campaign=Mass\\_Device\\_TrendMD\\_0](https://www.massdevice.com/3m-files-5-more-price-gouging-lawsuits/?utm_source=TrendMD&utm_medium=cpc&utm_campaign=Mass_Device_TrendMD_0); [https://www.massdevice.com/3m-sues-nj-company-claims-it-tried-to-sell-n95-masks-at-six-times-usual-price/?utm\\_source=TrendMD&utm\\_medium=cpc&utm\\_campaign=Mass\\_Device\\_TrendMD\\_0](https://www.massdevice.com/3m-sues-nj-company-claims-it-tried-to-sell-n95-masks-at-six-times-usual-price/?utm_source=TrendMD&utm_medium=cpc&utm_campaign=Mass_Device_TrendMD_0); <https://www.startribune.com/with-two-new-lawsuits-3m-has-filed-14-claiming-n95-fraud/571108192/?refresh=true>; <https://www.drugwatch.com/news/2020/05/12/crack-down-on-covid-19-price-gouging/>; <https://www.knobbe.com/blog/mask-and-gloves-supplier-accused-price-gouging-while-masquerading-authorized-distributor-3m>

