Updates
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The Rapidly Escalating Global Trade War: A Snapshot of New Trade Barriers

Driven by a newly aggressive "America First" trade policy under the Trump administration, global trade barriers are increasing rapidly, with proposals for new tariffs and non-tariff barriers issued by U.S. and foreign governments on a near-daily basis. This update provides a current snapshot of major trade restrictions proposed and implemented across the globe since President Trump took office, along with the current outlook for possible de-escalation of tensions. Practical advice is also offered for companies attempting to assess and minimize supply chain risks as a result of these new restrictions.

"National Security" Tariffs on U.S. Imports of Steel, Aluminum, Automobiles, Auto Parts, Uranium From Global Sources

President Trump has now taken significant action to restrict certain imports into the United States under a variety of legal authorities. Under section 232 of the Trade Expansion Act of 1962, President Trump imposed national-security related tariffs on imports of *steel* (25%) and *aluminum* (10%) from all sources. In some cases, quotas or voluntary restraints were imposed on imports from certain countries. Tariffs on steel and aluminum from most countries went into effect in March 2018. The president initially suspended tariffs on Canada, Mexico and the EU, but he reversed course earlier this summer and imposed the same tariffs on steel and aluminum from these U.S. allies. The U.S. action on steel and aluminum prompted retaliatory tariffs by China, the EU, Canada and others on a wide range of U.S. exports, as discussed below.

In addition, the Trump administration is currently investigating whether to impose national-security related tariffs (proposed at 25%) on imports of *automobiles* and *auto parts*, and whether to impose tariffs or quotas on imports of *uranium*, from all global sources. A decision relating to the automotive tariffs is not due by statute until early 2019, although administration officials have targeted a decision for fall 2018. The uranium investigation follows a similar schedule.

Companies using imported steel or aluminum in business activities in the United States can ask for "short-supply" exclusions from the tariffs already imposed. The Trump administration's announced process will grant specific product exclusions only if the requester can show that an article is not produced in the United States in a "sufficient and reasonably available" amount, is not produced in the United States in a "satisfactory quality," or for a "specific national security consideration." These terms are not defined. To date, thousands of exclusion requests have been made, but few decisions have been issued by the U.S. Department of Commerce. The new and largely untested nature of the exclusion process means that the scope of terms like "sufficient and reasonably available" or "satisfactory quality" has yet to be clarified.

Section 301 Tariffs on Imports From China

Last month President Trump relied on a separate statutory authority, section 301 of the Trade Act of 1974, to impose tariffs of 25% on 818 specific products from China, encompassing a wide range of *industrial machinery*, *electronic devices*, *motor vehicles* and *aircraft* worth $34 billion in annual imports. These went into effect on July 6, 2018. See the announcement of the U.S. Trade Representative (USTR) at 83 Fed. Reg. 28710. The administration justified the China tariffs based on its findings in a six-month section 301 investigation by USTR into alleged unfair trade practices by China in the treatment of U.S. intellectual property and high technology investments.

USTR at the same time implemented a product exclusion process similar to the Commerce Department section 232 exclusion procedures. Requests for exclusions of specific products from the July 6 list of 25% tariffs are due

October 9, 2018.

President Trump, again asserting his section 301 authority, has also proposed tariffs of 25% on a separate list of 284 products from China, encompassing a wide range of *chemicals, structural steel, engines, industrial machines* and *motor vehicle components* amounting to $16 billion in annual imports. This proposal is undergoing review by USTR in a public comment and hearing process (see 83 Fed. Reg. 28710), which is due to conclude shortly. After completion of this process, USTR will issue a final determination on the products from this list that will be subject to the additional duties. USTR's decision is expected by September 2018. USTR has stated it will also implement a product exclusion process applicable to this second list, including procedures for submitting exclusion requests and an opportunity for interested persons to submit oppositions to a request.

The administration's section 301 tariff actions on China prompted swift retaliation by China, which issued its own lists of U.S. products that will be now subject to additional 25% tariffs, not coincidentally totaling $34 billion and $16 billion in annual trade, respectively, as discussed below.

In reaction to China's retaliation, the Trump administration on July 17, 2018, announced that it is now proposing additional tariffs of 10% on hundreds of additional Chinese products, encompassing a wide range of *agricultural products, minerals and ores, fertilizers, leather goods, paper products, fibers and fabrics, mechanical and electronic devices, machinery, motors, furniture* and other products valued at $200 billion in annual imports. See 83 FR 33608. USTR stated that it was doing so because "{t}he Government of China has chosen to respond to the initial U.S. action in the investigation by imposing retaliatory tariffs on U.S. goods, instead of addressing U.S. concerns with the unfair practices found in the investigation." 83 Fed. Reg. at 33608.

USTR is conducting a review of this proposal and accepting written comments from the public, which are due by August 17, 2018. Public hearings are scheduled in Washington, D.C. on August 20-23, 2018. Comments and hearing participation have the potential to change USTR's decision on the final list of products targeted for tariffs. Indeed, comments by affected U.S. parties in the previous USTR round resulted in significant changes to the final July 6 list of products subject to 25% tariffs.

In recent days, President Trump has publicly threatened to extend the protective tariffs to cover all imports from China, which account for some $505 billion in annual trade. As of this date, however, neither USTR nor the White House have issued any formal proposals.

World-Wide Retaliation: Tariffs on U.S. Exports Globally

As expected, major U.S. trading partners have responded in kind with their own trade restrictions on imports of U.S. goods, with a particular emphasis on additional tariffs. To date, Canada, China, the EU, Mexico, Turkey and several other major U.S. trading partners have imposed (or proposed) tariffs on goods from the United States as a result of the U.S. tariffs on global imports of steel and aluminum. Foreign governments have formally notified the World Trade Organization of their implementation of retaliatory tariffs on a wide variety of U.S. exports (the following links provide detailed product lists by tariff code): Canada ($12.6 billion in annual U.S. exports), China ($2.75 billion), the EU ($7.1 billion), Mexico ($3.0 billion), Turkey ($1.8 billion), and India ($241 million). Japan ($1.91 billion) and Russia ($3.1 billion) also have announced their intent to retaliate against the United States, although those countries have yet to release lists of specific goods proposed for retaliation.

For its part, China has in addition issued a series of tariff retaliation product lists that have countered each new U.S. section 301 tariff list in kind, with an initial announcement on April 4, 2018, and revised final lists issued on June 16, 2018. These lists identify in total some $50 billion in U.S. exports to China that are now or will be subject to additional tariffs of 25%, 15% or 10%, depending on the list. (The links above provide details and the specific lists, by tariff heading, of U.S. products affected, in Chinese.) The wide range of U.S. products include agricultural and food products, including *soybeans*, *sorghum*, *beef*, *pork* and other *meats*, as well as *oil*, *plastics*, *chemicals*, *medical equipment*, *liquified propane* and *vehicles*. Not all of the tariffs on U.S. goods announced by China have yet been formally notified to the WTO.

China has yet to issue a specific list of goods for retaliatory tariffs in response to the most recent U.S. proposal for additional tariffs on $200 billion of Chinese products, but the China Ministry of Commerce announced on July 11, 2018, that it formally protested the U.S. proposal and considered it "totally unacceptable." The ministry said it would take "necessary countermeasures" and called on the international community to "work together to uphold the rules of free trade and the multilateral trading system and jointly oppose trade bullying."

The Outlook: Ongoing Bilateral Negotiations, Legal Challenges and Possible Congressional Action

In the current political climate, the business community has no reasonable way of estimating the likelihood that the myriad trade disputes will be resolved soon. President Trump, as well as U.S. trading partners, have the authority to withdraw the tariffs promptly if they desire, should bilateral negotiations yield fruit. This week, following meetings in Washington, the EU and the Trump administration announced that the U.S. and EU will refrain from imposing additional tariffs on each other and launch a trade dialogue with the intent of bringing non-auto industrial tariffs to zero. Leaders from each side said as long as negotiations are ongoing, neither side will impose new tariffs. The existing section 232 tariffs on steel and aluminum and the EU's subsequent retaliatory tariffs remain in place, however, and will be resolved only with a successful conclusion of the new U.S.-EU dialogue. As of this writing, negotiations between the United States and other major trading partners, including China, appear stalled.

The U.S. Congress could enact laws limiting or reversing certain Trump administration trade-related actions. Ambassador Robert E. Lighthizer, the USTR, is expected to face tough questions from skeptical members of Congress in upcoming hearings, and Congress is considering a bipartisan bill (S.3013) to require congressional approval for the imposition of section 232 tariffs. The U.S. Senate has already passed, overwhelmingly, a non-binding motion to give Congress a greater role in the 232 process, and some senior Republican members of the Senate have derided the president's reliance on tariffs as "misguided and reckless."

Separately, U.S. steel importers have filed a legal challenge to the section 232 tariffs in the U.S. Court of International Trade (*American Institute for International Steel, Inc., et. al v. United States*, Court No. 18-00152). The case questions the fundamental constitutionality of section 232, claiming that it constitutes an improper delegation of legislative authority to the president. The court's initial ruling in the case is expected by this fall.

Meanwhile, most major U.S. trading partners have filed formal challenges to the U.S. section 232 steel and aluminum tariffs at the WTO, claiming that the tariffs have characteristics of safeguard measures and hence Article XIX of GATT 1994 and the WTO Agreement on Safeguards are applicable, and that the United States failed to comply with these disciplines before imposing the remedies. Some countries have also highlighted the extent to which U.S. tariffs been applied selectively, covering imports from most countries while exempting others, suggesting a violation of Article 1 of GATT 1994 (the "Most Favored Nation" principle).

Nevertheless, possible Congressional action, and the ultimate success of challenges in the U.S. courts and the WTO, remain uncertain and will not happen anytime soon, if ever. It seems likely, therefore, that unless focused bilateral negotiations resume and begin to make progress (as now appears to be happening with the EU), increasing trade tensions and protective trade barriers will continue unabated. The business community is well advised to plan for multiple scenarios concerning the outcome of the still escalating trade war.

Coping With Supply Chain Disruption

The wide range of products now subject to protective or retaliatory tariffs by the United States and most of its major trading partners threatens major disruptions to global supply chains and increased costs for importers and exporters alike. To avoid hefty tariff bills from global customs authorities and interruptions in supply, we suggest the following actions:

- **Confirm Your Harmonized Tariff Schedule Classifications:** The tariffs discussed above have been implemented with reference to specific Harmonized Tariff Schedule (HTS) classification codes rather than a narrative descriptive scope, such as are used in trade remedy proceedings. Imposition of tariffs, therefore, rests entirely on whether importers correctly declare the HTS classifications of their imported products and whether such products fall within the HTS classification codes on the lists. Reviewing HTS classifications, including whether those classifications are supported by customs rulings for similar merchandise, is a critical first step for assessing the impact of the trade actions on companies' supply chains.
- **Participate in USTR Public Comment and Hearing Proceedings:** The latest U.S. list of $200 billion in Chinese imports targeted for additional tariffs, issued in mid-July, has not yet been finalized. As noted above, USTR is accepting written public comments and conducting a public hearing on whether changes should be made to the specific products included on this list. U.S. importers, producers and other parties reliant on a stable supply of specific targeted products have the opportunity to persuade USTR to take those items off the list. Parties should be prepared to show that the harm to U.S. industries (and their workers) that rely on these particular products is substantial, and that tariffs on these products would provide little or no leverage to the U.S. government in its negotiations with China.
- **Review Country of Origin Determinations:** The section 301 tariffs, unlike the steel and aluminum tariffs, apply only to goods originating from the People's Republic of China. (Goods of Hong Kong or Taiwan origin are not included.) Importers need to be careful, however, when importing goods from third countries where such goods consist of, or are processed from, Chinese components, because under applicable U.S. country of origin rules U.S. authorities could determine that the goods remain of Chinese origin.
- **Request Product Exclusions Where Possible:** USTR and the Commerce Department have established procedures for U.S. parties to request specific product exclusions. The request must show that an article is not produced in the United States in a "sufficient and reasonably available" amount, is not produced in the United States in a "satisfactory quality," or for a "specific national security consideration." Requests for specific exclusions from the aluminum and steel tariffs have no deadline, while requests for exclusions of specific products from the July list of 25% tariffs on Chinese products are due October 9, 2018. Additional product exclusion procedures and deadlines are expected to follow as additional tariffs on Chinese imports are implemented.
- **Ensure That Your Imports Were Correctly Declared:** The new tariffs will force government customs authorities to confront HTS and country-of-origin determinations that previously have not been considered in detail because until now those determinations may have had no tariff impact. Now, huge sums of duties may be at stake concerning the correct HTS classification and country of origin of specific imports. Importers should not be caught unprepared when major issues arise, and they should be prepared to defend the HTS and origin determinations they declared upon entry of the merchandise.
- **Expect Penalties for Importers Who Submit Incorrect Declarations:** When importers declare an incorrect or questionable HTS or country of origin of merchandise, without an adequate legal basis for their position, they may face considerable fines from customs authorities. In the United States, U.S. Customs and Border Protection (CBP) can penalize importers up to twice the applicable duties for negligent misdeclarations. An importer could, therefore, face massive customs liability for taking unwarranted or overly aggressive positions with respect to the proper HTS or country of origin. We expect that CBP will prioritize enforcement of the tariffs and trade restrictions discussed above.

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