



Greg Husian, Kate Wegrzyn & John Turlais

Managing Import and Tariff Risks During a Trade War

Foley Resources to Help Importers and Multinational Clients



WHY ARE WE HERE?

- President Trump — in just five weeks — has completely upended international trade
 - Has threatened, imposed, revoked, and implemented new tariff proposals at a dizzying pace
 - Has indicated that more tariff announcements will be coming soon
 - Has instructed nearly a dozen federal agencies to provide him with a comprehensive plan to utterly make over how the United States trades with the world, including through the imposition of sharply increased tariffs
- Net effect
 - Huge uncertainty for frequent importers (i.e., manufacturers — in particular — as well as companies with distribution and retail operations)
 - Companies focusing on risk planning and managing the trade uncertainty

DUTIES & TARIFFS – THE BASICS

- Tariffs are taxes on imported or exported goods
 - Typically imposed as a percentage of the value of a good
 - Specific amount determined based on the classification of the good in the Harmonized Tariff Schedule (HTS), the country of origin of the product, and its value
- Importer of record (IOR) responsible under U.S. customs regulations
- Tariffs are generally cumulative, meaning that Trump tariffs “stack”
 - Example: Steel product from China
 - General duty (5%)
 - Section 301 duty (25%)
 - New China duty (10%)
 - Section 232 duty (25%)
 - AD/CVD duty (115%)

WHERE ARE WE ON THE TRUMP TARIFFS?

- Vague campaign promises moving to concrete proposals
 - Universal tariffs of 10%-20%
 - China up to 60%
- Concrete proposals
 - **20%** on China – **10 + 10%** -- on top of prior Section 301 tariffs, **starting March 4th**
 - 25% on Canada and Mexico – **NO LONGER** suspended for 30 days, **starting March 4th**
 - Section 232 universal aluminum and steel tariffs, **starting March 12th**
 - “Reciprocal tariffs” – **will take effect April 2nd**
- And threats of more
 - Promised *additional* 25% tariffs on autos, pharmaceuticals, and computer chips
 - Promised *additional* 25% tariff on Europe for “cars and all other things”
 - Promised *additional* tariffs on lumber from Canada
 - Launched tariff investigation into copper
 - America First Trade Memorandum promises universal review, particularly relating to China

WHY ARE RECIPROCAL TARIFFS A BIG DEAL?

- Idea considered in first Trump administration but rejected as too unwieldy and too direct a challenge to the WTO and GATT System
- Proposal goes far beyond matching tariff rates (HTS classification matching), as it includes
 - Refund of VAT to exporters
 - Subsidies to home-market companies
 - Currency manipulation
 - Non-tariff barriers
- Gives immense discretion to Executive to raise tariffs basically as sees fit

WHICH PROPOSALS ARE LIKELY TO STICK?

- China tariffs: Yes → Potential to increase: Likely
- Steel and aluminum: Yes → Potential to increase: Derivative Products
- Canada tariffs: Maybe → Potential to increase: Threatened
- Mexico tariffs: Maybe → Potential to increase: Threatened
- Reciprocal tariffs: Yes → Country-by-country negotiation
- Automotive tariffs: Maybe → Likely negotiated with Europe, Japan, and Korea
- Tariffs on whole world: Unlikely → Likely replaced by reciprocal tariffs proposal (but can't be ruled out!)

WHAT ARE THE RISKS TO U.S. IMPORTERS AND THEIR SUPPLY CHAINS?

- Increasing import costs and international trade certainty
 - Long-standing assumptions regarding tariff rates are contrary to long-term supply arrangements, which assume tariff stability
 - Rapid succession of executive orders and tariff announcements likely not ending
 - Basic parity between WTO signatories going by the wayside
 - USMCA threat to upend North American supply chains has not even begun
- Impact on U.S. importers
 - Companies without risk-management strategies will be at a disadvantage to competitors who figure out the new competitive landscape quickly
 - Companies without increased supply chain flexibility to cope with rapid and varying tariffs will be at a competitive disadvantage

WHAT CAN U.S. IMPORTERS Do Now?

- We have put together a Six-Step Plan to allow companies to risk-plan and prepare
 - While exact tariff structure is unknown and evolving, tariff increases *will* occur
 - Uncertainty incompatible with entire structure of industries that have long product cycles and long-term supply chain requirements, such as automotive
 - Early risk planning can help deal with these issues by identifying risk, increasing supply chain flexibility, increasing ability to impose sell-side tariff surcharges, and other tariff-management strategies
- Review Foley White Paper on “Managing Import and Tariff Risks During a Trade War”
 - See Resource box below

WHAT ARE THE SIX STEPS OF OUR PROGRAM?

- ***Step 1: Risk Identification*** — Understanding Your Company's Importing Patterns and How They Impact Your Company's Importing Risk Profile
 - Gather full information on historic and planned import patterns to understand the full scope of potential supply chain disruptions and higher tariffs on importing costs
 - Pull ACE data on full imports and identify full range of imported products



WHAT ARE THE SIX STEPS OF OUR PROGRAM?

- **Step 2: Risk Planning** — Understanding How to Add Flexibility to Your Supply Chain to Address Your Company's Import-Related Risk
 - Setting up alternative and secondary suppliers
 - Dealing with qualification issues and concerns



WHAT ARE THE SIX STEPS OF OUR PROGRAM?

- ***Step 3: Contractual Risk Management*** — Identifying Ways to Increase Your Company's Contractual Ability to Adapt to Unexpected Changes in the Importing Environment
 - Gather all buy- and sell-side contracts to determine where tariff vulnerabilities exist
 - Force majeure and commercial impracticability are not meaningful protections
 - Look for ways to gain tariff-related flexibility to share risk for tariffs
 - New contracts & contracts up for renewals
 - Use commercial expansions as carrot for contract revisions

WHAT ARE THE SIX STEPS OF OUR PROGRAM?

- ***Step 4: Risk Minimization*** — Ensuring Your Company's Customs Compliance Is in Order
 - In a high-tariff environment, underpayments mount much more quickly, as do penalties
 - Automation through ACE leads to increasing CBP mining of import data
 - Consider conducting an internal Customs audit on a judgmental sample

WHAT ARE THE SIX STEPS OF OUR PROGRAM?

- ***Step 4: Risk Minimization*** — Ensuring Your Company's Customs Compliance Is in Order (cont.)
 - Review Customs compliance to ensure your company is not underpaying Customs tariffs
 - Imports from high-risk countries (e.g., Chinese parts and components, Mexico, Canada)
 - Country of origin
 - USMCA/FTA compliance
 - Antidumping/Countervailing Duty Order Review
 - Classification
 - Assists
 - Valuation
 - Post-entry checks

WHAT ARE THE SIX STEPS OF OUR PROGRAM?

- ***Step 5: Opportunity Identification*** — Ensuring Your Company Is Maximizing Tariff Savings
 - Tariff savings become more valuable in a high-tariff environment
 - Duty Drawback, FTZs, use of Customs Bonded Warehouses
 - Review Executive Orders for any limitations
 - Risk model strategies if USMCA preferences disappear



WHAT ARE THE SIX STEPS OF OUR PROGRAM?

- ***Step 6: Minimizing Supply Chain Integrity Risks*** — Understanding Your Supply Chain and Mitigating Supply Chain Integrity Risk, Right Down to the Last Sub-Supplier
 - Issue both for existing and especially new suppliers
 - 1000x increase in detentions relating to supply chain integrity, especially UFLPA
 - Vetting of new and secondary suppliers needs to take supply chain integrity concerns into account
 - Supply chain mapping, sub-supplier identification, flow-down conditions, focus on Chinese parts and components/UFLPA — all are related issues that can't be ignored while focusing on tariffs

KEY TAKEAWAYS

- New tariffs are coming, and increases are likely to be substantial
- Uncertainty will last for several years, at least through 2026 review of USMCA
- Companies should be risk-planning, including identifying likely tariffs on key products, identifying supply chain vulnerabilities, and diversifying supplier networks
- Companies should be reviewing both buy- and sell-side contracts to determine how to incorporate tariff-related flexibility
- In a high-tariff environment, where CBP has unprecedented visibility into import information, customs compliance is key
- Frequent importers should likely be performing a customs audit and supply chain integrity review

WHAT FOLEY RESOURCES ARE AVAILABLE?

Written Resources

- ***Six-Step Tariff Risk Management Plan:*** “Managing Import and Tariff Risks During a Trade War”
- ***Article Series:*** Biweekly articles on “What Every Multinational Should Know About” providing practical tips on pressing international trade topics, including tariff proposals. ([Sign up!](#))
- ***Dual Foley White Papers***
 - [“Managing Import and Tariff Risks During a Trade War”](#)
 - “Managing Supply Chain Integrity Risks”
- ***Presidential Transition Hub:*** [“100 Days and Beyond: Presidential Transition Hub,”](#) providing practical advice on dealing with all aspects of the rapid-fire announcements from the new administration

WHAT FOLEY RESOURCES ARE AVAILABLE?

Service Offerings

- ***Customs Audit and Supply Chain Integrity Review:*** A fixed-fee assessment (Foley and Copper Hill) of the state of your customs compliance and whether there are unaddressed risks that your company needs to address to avoid unwanted CBP scrutiny of your imports
- ***Contract Reviews for Tariff Concerns:*** Foley's Supply Chain Team can leverage AI to assist with a review your key supply agreements for key provisions related to which party bears the costs of tariffs, including delivery terms and pricing terms

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