



Navigating the Trade Disputes

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Welcome and Program Introduction



Jim Porter
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World Trade Center Utah leads Utah's international business development and elevates Utah's global status to promote prosperity and build economic resilience.

- **Empower** Utah businesses to expand international sales to increase revenue and create jobs.
- **Attract** foreign investment and facilitate international partnerships to fuel innovation and business development.
- **Mobilize** Team Utah's international engagement to elevate Utah's global status.

World Trade Center Utah (WTC Utah) is a 501 (c)-6 non-profit organization that was founded in 2006 and became an official member of the World Trade Centers Association on April 21, 2007. As the statewide voice of international business, WTC Utah facilitates economic growth through increased exports and international awareness for Utah's companies.

Introduction of Presenters



Troy M. Keller
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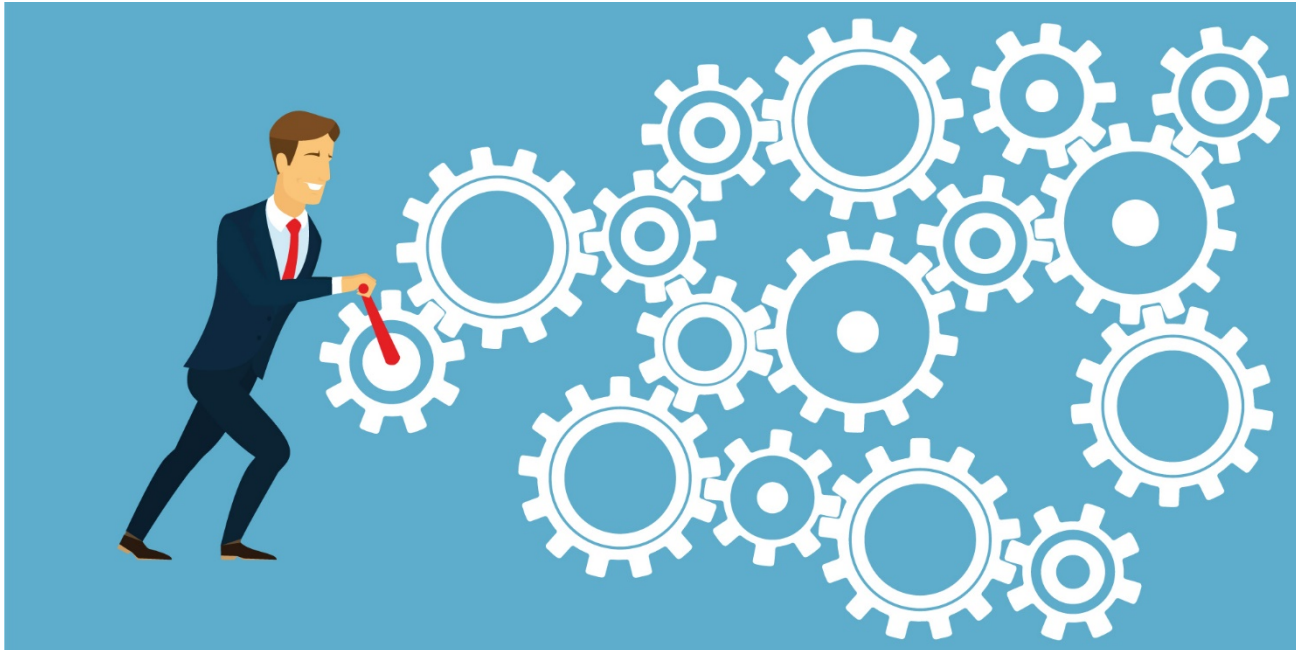


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Topic One

**What has happened over the last
18 months?**

New Era in Trade Policy



- **Roughly \$600 billion total new tariffs by Trump Administration (proposed and levied)**
- **The use of tariffs as a foreign policy lever is having unintended (and intended) consequences**
- **Congressional republicans have largely fallen in line with the President, but many exceptions**

Mexico Tariffs – Proposed and then Revoked

- President Trump announced Friday evening (6/7/19) that tariffs on Mexican imports would not go into effect
- White House announces escalating tariffs on all items from Mexico
 - 5% starting June 10
 - Up to 25% by October
 - Applies to goods of Mexican origin or those transited to the U.S. from Mexico

Potential Impacts:

- U.S. imported \$346.5 billion from Mexico in 2018
- Utah: \$3.6 billion from Mexico in 2018 → upwards of \$1 billion in tariffs annually
- Concerns for what this means for USMCA



European Union/U.S. Aircraft Dispute



- As part of a 15-year dispute over subsidies provided to Airbus and Boeing, the U.S. is seeking tariffs on \$11 billion in annual imports, with tariffs as high as 100%
- The tariffs aren't limited to the aerospace industry and impact all kinds of products
- List of items subject to proposed tariffs is available here: https://ustr.gov/sites/default/files/enforcement/301Investigations/Preliminary_Product_List.pdf

Process: Comment process is over, but advocacy continues. USTR will come up with a final list, but it will be subject to a WTO process that is likely to reduce permissible retaliation. It may be the end of the summer before there is clarity.

China Tariffs

US-China Dynamics

Trump administration seeking to improve *fairness* of trade with China.

Initial misunderstandings on each side have led to a degree of retrenchment.

This is not unusual. These processes take time, and this one appears to be long-term.

- **List 1 - 25% duties imposed on \$34 billion worth of imports from China**
- **List 2 - 25% duties imposed on \$16 billion worth of imports from China**
- **List 3 – 10% and now 25% duties imposed on \$200 billion worth of imports from China**
- **List 4 (not yet in effect) – Proposed 25% duties on \$300 billion worth of imports from China**
- **Exceptions**
 - **Certain medical devices, pharmaceutical products, rare earth materials**
 - **Product specific exclusions granted by the United States Trade Representative (USTR)**

India GSP Removal



- In March, the Trump Administration announced a process for removal of preferential treatment on thousands of imports from India
- The removal became effective last week
- India is considering retaliatory tariffs

Prime Minister Modi's triumphant re-election last month puts India in a strong political position domestically.

Product Specific National Security Tariffs

- **Aluminum: 10% tariffs on aluminum mill products**
- **Steel: 25% tariffs on steel mill products**
- **Automobiles and Automotive Parts: Threat of tariffs if USTR negotiations with the EU, Japan and other countries do not result in market access for U.S. exports**
- **Investigations in progress on uranium and titanium sponge**
- **Tariffs apply to all countries unless special arrangements exclude them**
 - **Canada and Mexico are now exempt from tariffs on imports of steel and aluminum**
 - **Certain countries have negotiated quantitative restraints**
- **Product exclusions may be granted by Bureau of Industry and Security (BIS)**

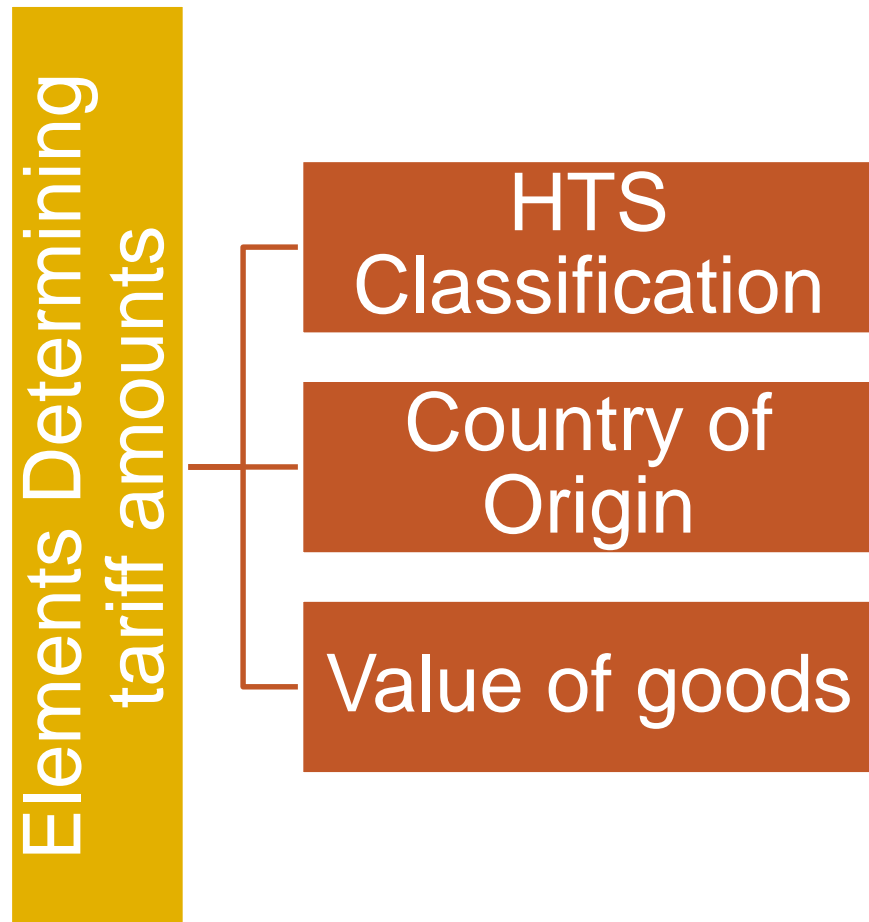
Retaliation Against the United States

- Canada (\$12.7 billion) (recently removed)
- China (\$63 billion)
- EU (\$14 billion)
- India (\$1.4 billion)
- Turkey (\$1.8 billion)
- Mexico (\$3.6 billion) (recently removed)
- Russia (\$3.2 billion)
- Japan (\$1.7 billion)
- Items covered by retaliation against U.S. items are available at the following link:
https://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_005571.pdf (not updated since 2018)
- *Source:* Notifications of Retaliating Country to the WTO

Topic Two

Assessing the Impact on Supply Chains

Customs Basics



US Customs (CBP) generally accepts an importer's declared data, but sometimes directs the importer to change the elements, and/or may (months after importation) demand payment of duties and penalize importers for negligent or purposely wrongful declarations

Importers can challenge CBP decisions with which they disagree

Ways Tariffs Impact Your Business

1.

Increased costs
of direct inputs

2.

Indirect supply
chain impacts

3.

Effects of
retaliatory tariffs

4.

Macro-economic
effects

Topic Three

Strategies to Cope with Duties

New York CLE Code

We have some NY lawyers participating today. In accordance with NY CLE Rules, the New York Verification Code for this program is _____.

What Options do Companies Have?

Strategies range from technical fixes to big picture advocacy

- Reexamine your HTS Codes!
- Renegotiate supply contracts (to share risks)
- Rethink your investments and inventories
- Persuade USTR/BIS to exclude your products
- Persuade your representatives to persuade USTR/BIS to exclude your products
- Trade law as a sword

Exclusion Processes

Cost/Benefit Analysis

The applications require a meaningful amount of data and technical expertise for preparation

Relief determined on a case-by-case decision: *Tell a Strong Story*

A naked application without support from your representatives is unlikely to go anywhere

Summary of Exclusion Results

- Steel: 77% approved
- Aluminum: 86% approved
 - But if the U.S. industry objects, that objection results in disapproval more than 90% of the time according to *Bloomberg*.
 - Sources: Quantgov.org (updated March 18, 2019)
- China-Specific Tariffs: 24% approved (as of May 31, 2019)
- USTR process closed for Lists 1 & 2; no dates announced for Lists 3 & 4

Strategies Related to HTS and Origin

- **See whether HTS needs to or can be changed**
 - **Audit current classifications**
 - **Consider whether favorable changes are supported by CBP rulings**
- **Supply Chain Adjustments**
 - **Source from a different location – Changing the country of origin of imports to avoid country-specific tariffs**
 - **Change your import by adjusting upstream/downstream sourcing**
 - **Example: Steel duties apply to mill products, not processed products → consider importing processed products**
 - **Example: Consumer products might be imported semi-finished to avoid duties and finished in the U.S.**

Mitigate Risk Through Contracts

- Suppliers may be willing to agree to share payment of duties
- This may be especially appropriate where there is a risk of duties, e.g., companies can agree that if duties are owed, the parties will permit adjustments to pricing
- Example:
 - Supplier agrees, if tariffs apply, to reduce accounts receivable by up to 5% of the tariffed merchandise
 - Offsets risk of tariffs to purchaser
- Do not do this where antidumping or countervailing duties apply (special rules allow doubling of duties if paid by the foreign producer)
- Reconsider location of new capital investments

Appeal to Administrative and Judicial Authorities

- **CBP Rulings:** Importers can ask CBP to rule on an import's HTS classification or country of origin
- **Protests:** Importers can ask CBP to reconsider HTS or origin determinations and following that, can ask the U.S. Court of Int'l Trade to reverse CBP
- **Appeal to U.S. Federal Courts**
 - Importers with enough at stake can consider asking federal courts to rule on whether particular tariffs are legal
 - **Steel/Aluminum:** Supreme Court considering whether to hear appeal by importers that the tariffs are unconstitutional (*Am. Inst. for Int'l Steel, Inc. v. United States*)
 - Importers of Mexican products are considering a claim that new tariffs are inconsistent with tariffs approved by Congress under NAFTA

Offensive Use of Tariffs

- **If you compete with imports, consider taking action**
 - U.S. industry comments can be decisive as to whether tariffs are imposed on imports, or whether a particular exclusion should be given
 - A U.S. industry can initiate antidumping or countervailing proceedings
- **Cheating: Are your competitors playing by the rules?**
 - CBP takes seriously well-supported allegations that competitors are cheating by avoiding tariffs
 - Importers can file claims with CBP of duty evasion and/or initiate whistleblower claims in courts that a competitor deprived the U.S. government of duties owed



Advocacy

- **Most of these strategies are more effective when coupled with a government relations effort**
- **Tips:**
 - **Stakeholder mapping**
 - **Make use of the resources you have in place (e.g., trade associations, management and board level relationships)**
 - **Even if you don't think your issues line up with the politics of your representative, much good can come from at least engaging and have the conversation**
- **Building effective two-way relationships is the key**

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“It's better to make a friend before you need a friend.”



Thank you for joining us today. Please contact us if you have any questions.

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