



Navigating Tariffs in 2019

Anna Ashton
USCBC
Washington, DC

Troy M. Keller
Dorsey & Whitney LLP
Salt Lake & DC Offices

Dave Townsend
Dorsey & Whitney LLP
Minneapolis & DC Offices

The US-China Business Council (USCBC) is a private, nonpartisan, nonprofit organization of approximately 200 American companies that do business with China. Through its offices in Washington, DC, Beijing, and Shanghai, USCBC is uniquely positioned to serve its members' interests in the US and China. USCBC's mission is to expand the US-China commercial relationship to the benefit of its membership and, more broadly, the US economy.



Anna Ashton

Director, Business Advisory
Services, US-China Business
Council, Washington, DC

Introduction of Presenters



Troy M. Keller
Dorsey & Whitney LLP
Salt Lake & DC Offices



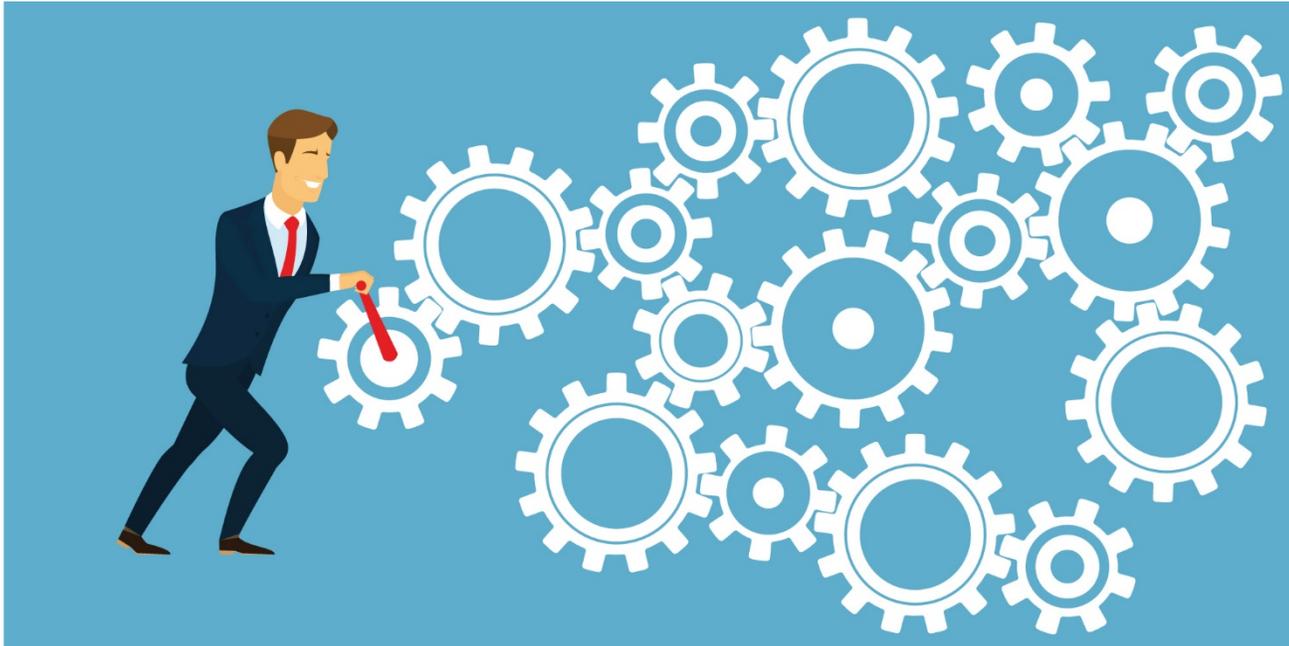
Dave Townsend
Dorsey & Whitney LLP
Minneapolis & DC Offices

Topic One



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

New Era in Trade Policy



- **More than \$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**
- **With U.S.-China negotiations stalled, tariffs on trade between the countries may become the new normal**

China Tariffs

US-China Dynamics

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

Initial misunderstandings on each side have led to cycles of retaliation and counter-retaliation

Dispute looking more likely to be longstanding, although this could change abruptly.

- **Lists 1-3 – 25% duties imposed on \$250 billion worth of imports from China**
- **Lists 4A and 4B (begins Sept. 1 and Dec. 15, respectively) – 10% duties on about \$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”)
- **U.S. Customs (“CBP”) has assessed \$24.4 billion on imports from China since the China-specific tariffs began**

National Security Restrictions on Commerce (Huawei)

- Bureau of Industry and Security (“BIS”) adds Huawei and its 68 affiliates to Entity List
- U.S. and non-U.S. persons cannot provide items to Huawei that are subject to the U.S. Export Administration Regulations (“EAR”) without getting a BIS license
- BIS initially had a policy of denial for export licenses but now is considering them on a case-by-case basis
 - U.S. companies have sought 50 such BIS licenses
 - No decisions yet made according to *Reuters*
- Reported \$11 billion in sales from the United States to Huawei annually



Product Specific National Security (Section 232) 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 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 BIS**

Other Notable Trade Developments

- As part of a 15-year dispute over subsidies provided to Airbus, the U.S. is seeking tariffs on \$11 billion in annual EU imports, with tariffs as high as 100%
- EU has proposed potential tariffs on \$11 billion in annual imports of U.S. goods for Boeing subsidies
- USTR revokes tariff preferences for India and Turkey under the Generalized System of Preferences, raising tariffs on roughly \$8 billion in annual U.S. imports
- Brexit appears more likely under the new British Prime Minister Boris Johnson
- White House announced and then withdrew a proposal to impose tariffs on all goods from Mexico
- NAFTA 2.0 being considered by U.S. Congress



Retaliation Against the United States

- Canada (\$12.7 billion) (recently removed)
- China (\$63 billion + currency measures)
- 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



New York CLE Code

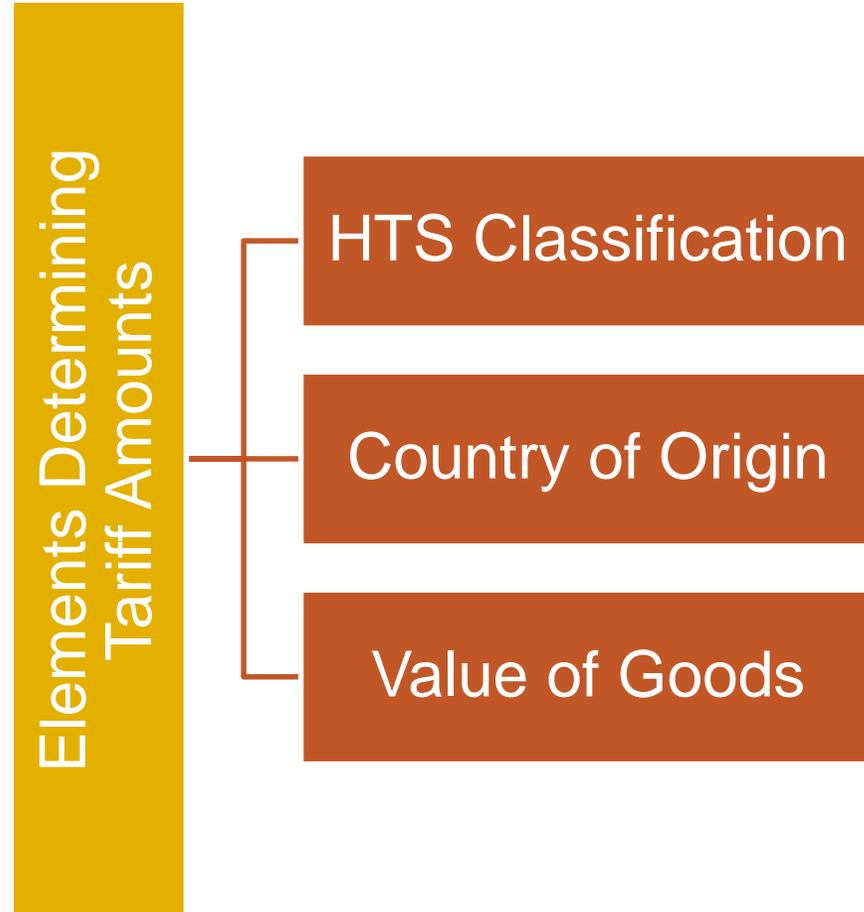
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Topic Two

Strategies for Dealing with the Tariffs



Customs Basics

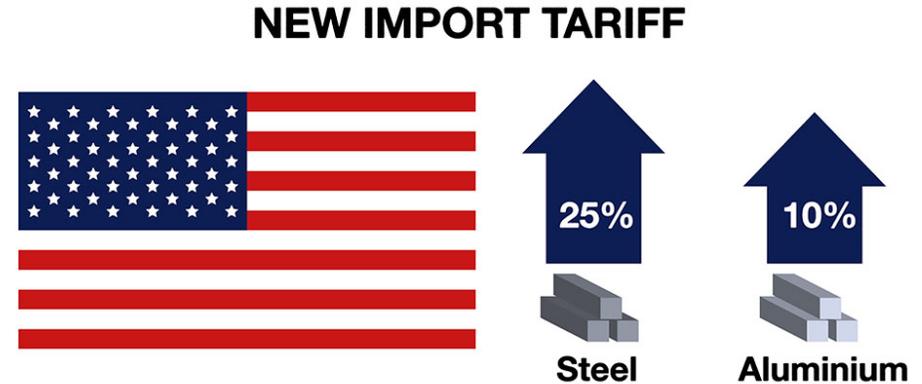


To know the duties applicable to any import, the Harmonized Tariff Schedule (HTS) classification, country of origin and value must be known

All three of these may provide ways to reduce a company's tariff liability

Example of Supply Chain Adjustment

- U.S. Company (“USCo”) purchases Indian-origin aluminum fabricated by its Indian subsidiary (“IndianSub”) to make Parts in the United States. The Parts must be finished in the United States. The Parts are then sent to China to make an electronics manufacturing Machine, which are sold in China.
- Issues
 - Aluminum from IndianSub to USCo are subject to 10% Section 232 tariffs
 - Parts to China were subject to Chinese tariffs of 25% on goods originating from the United States
 - Profitability of Machine sales in China declined



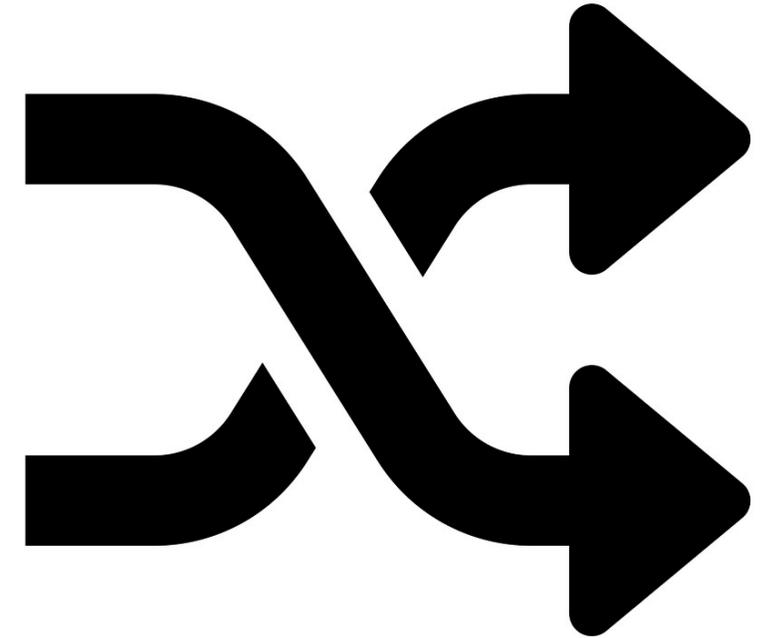
Example of Supply Chain Adjustment (Continued)

- **Core Customs Principles**

- Whether Section 232 tariffs on U.S. imports of fabricated aluminum apply is determined by the HTS classification of aluminum from IndianSub
- Tariffs on Parts from USCo to China apply because the Parts originated from the United States

- **Solutions**

- IndianSub manufactures Part Blanks to be finished into Parts in the United States → Section 232 tariffs do not apply to Part Blanks, i.e., the tariffs generally only cover raw or semi-raw aluminum
- Parts sent from USCo to China remained of Indian origin because “finishing” operations of Part Blanks in the United States do not substantially transform the Part Blanks → Chinese tariffs do not apply to Indian-origin goods



These Strategies Aren't Risk Free



- **Retroactive Duties (CBP can reject entries up to 300 days after import, creating large duty bills for past entries)**
- **Think strategically:**
 - Are exclusion requests pending for your product (including those submitted by other companies)?
 - Are there other reasons to maintain current classification, origin or value?
- **CBP Audits and Penalties**
 - Enhanced CBP enforcement
 - Use of data analysis to review importers that changed declarations after imposition of duties
- **Non-China antidumping (AD) and countervailing (CV) duty cases**
 - China cases have dipped but third country cases continue
 - A surge in imports from a third country supplier can help spur new AD/CV duty cases

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*

Summary of Exclusion Results

- ❑ China-Specific Tariffs: 26% approved (as of August 2, 2019)
- ❑ USTR process closed for Lists 1 & 2; deadline for List 3 exclusion is Sept. 30
- ❑ Exclusions processes to be announced for Lists 4A and 4B
- ❑ Steel and Aluminum:
 - Majority of exclusion requests approved
 - But if the U.S. industry objects, that objection results in disapproval more than 90% of the time according to Bloomberg

Mitigate Risk Through Contracts

- **Foreign suppliers may be willing to agree to share payment of duties or to reconsider obligations if market access conditions change.**

Example 1

- Contract Provision: Supplier agrees, if tariffs apply, to reduce accounts receivable by up to 5% of the tariffed merchandise
- Offsets risk of tariffs to importer
- Do not do this where antidumping or countervailing duties apply (special rules allow doubling of duties if paid by the foreign producer)

Example 2

- Contract Provision: New tariffs or restrictions are events that require renegotiation of the agreement
- Can cover many political events
- If entire agreement is premised on low duties (and many are!), this will be helpful to the importer

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 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.**
- **Trade policy is being made constantly. You may not be able to dictate policy, but you can have an influence, especially at the product level.**
- **Start with your representatives, but reach out to USTR, Dept of Commerce, your home state governor—anyone who will listen.**
- **Have the right talking points and know what makes sense to ask for.**
- **Earlier is better, but it's never too late.**





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

**Troy M. Keller
Dorsey & Whitney LLP
Salt Lake & DC Offices
keller.troy@dorsey.com
(801) 933-4073**

**Dave Townsend
Dorsey & Whitney LLP
Minneapolis Office
townsend.dave@dorsey.com
(612) 492-6192**