USC-CBIZ Risk Management Symposium

International Trade Headlines: Current Events Impacting Your Business

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Trump’s Trade Agenda

- Section 232
  - Steel and Aluminum
  - Automobiles and Automotive Parts
  - Retaliatory Actions to Sec. 232
- Section 301
  - China Retaliation to Sec. 301
- NAFTA Renegotiations
Section 232: National Security Actions

What are they?

- Last used in 2002 by President George W. Bush on steel imports.
- The Department of Commerce issues a report to the President with investigation findings on whether certain imports threaten to impair America’s national security.
- Once Commerce issues the report, the President has wide latitude to take actions to curb imports.
Section 232: National Security Actions

What Factors Are Considered?

- Domestic production needed for projected national defense requirements
- Capacity of domestic industries to meet such requirements
- Availability of the human resources, products, raw materials, and other supplies and services essential to the national defense
- The requirements of growth of such industries and such supplies and services
- The impact of foreign competition on the economic welfare of individual domestic industries;
- Any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports
Section 232: National Security Actions

Who is Impacted?

- Everyone that manufactures, exports and/or imports into the U.S. any of the “covered” products cited in the investigation reports.
- Importer of Record is liable for payment of all duties.
- There is no explicit restriction on reimbursement of safeguard duties.
  - Unlike AD/CVD duties, the added cost of the duties may be reimbursed by the supplier.
  - Suppliers may want to enter into negotiations regarding the coverage of the tariff costs.
Section 232: Steel and Aluminum

Background

- On March 8, President Trump issued Presidential Proclamations imposing a **25% ad valorem tariff** on certain steel articles and a **10% ad valorem tariff** on certain aluminum articles.
  - The tariffs are imposed in addition to existing tariffs.
  - It is possible to have Section 232, Section 301, and an AD or CVD duty on the same product.
- Tariffs on imports of certain steel and aluminum products came into effect March 2018.
  - Certain countries were granted temporary exclusions, including Canada and Mexico.
  - On June 1, 2018, those exemptions expired and have not been renewed.
  - Currently, only Australia has been granted a country wide exemption.
- On August 10, President Trump increased the tariffs on imports of steel from Turkey to 50%.
Section 232: Steel and Aluminum

Quotas

- Argentina, Brazil, and South Korea have agreed to quota regimes for steel and Argentina has agreed to an absolute quota for aluminum.
  - The steel quotas are separated into 54 subcategories.
  - As of June 1, 2018, Argentina has already reached its absolute quota for 40 of the 54 subcategories, while 18 subcategories have been filled for Brazil, and 9 have been filled for South Korea.
- Quarterly thresholds apply and imports “in excess of 500,000 kg and 30 percent of the total aggregate quantity provided for a calendar year . . . shall not be allowed.”
- The Department of Commerce will now consider exclusions for specific products from quota countries if it is being used in a construction project in the United States and was contracted for purchase prior to the decision to impose quotas.
Section 232: Steel and Aluminum

Timeline

Feb 2018: DOC Findings
- Aluminum and steel imports weaken US economy and threaten national security.
- Proposed various options, including 24% global tariff on steel; 7.7% aluminum.

March 1, 2018: Trump’s Decision
- Global Tariffs
  - 25% on Steel
  - 10% on Aluminum
  - Cumulative
- August 13 – Turkey subject to 50% Steel and 20% Aluminum Duty

March 8, 2018: Proclamation Signed
- Modified Ch. 99 to include new tariff provisions.

March 23, 2018: Duties Effective
- Country exclusions:
  - Canada
  - Mexico
  - EU
  - Australia
  - Argentina
  - Brazil
  - South Korea (steel only)

May 31, 2018: Country Exclusions Expire
- Except for Argentina, Australia, Brazil, which continues to be excluded.
- South Korea continues to be excluded for Steel, not Aluminum
Section 232: Steel and Aluminum

Product Exclusion Process

- Commerce has issued procedures for requesting exclusions for specific products.
  - No deadline for submitting product exclusion requests.
  - Applications can be submitted for products from any non-exempt country; applications will not be considered for products from countries that have agreed to absolute quotas.

- Objections must be filed within 30 days of posting. Commerce intends to decide on requests within 90 days of filing. Rebuttal and surrebuttal comments can also be filed.

- Exclusions will be approved on a product specific basis, limited to the company that requested it and likely limited to volume requested and valid only for a year.

- Relief will be retroactive to the date the exclusion is posted for public comment online, not the date of filing.
Section 232: Steel and Aluminum Exclusions

As of July 9, 2018:

Steel Requests
- 25,744
  - 1,694 Granted/
    1,050 Denied

Aluminum Requests
- 2,660
  - 112 Granted/
    110 Denied

Common trends for granted requests are no U.S. production, generally small quantities, and no objections filed on the requests.
On May 23, 2018, the Department of Commerce initiated a Section 232 investigation into imports of automobiles, including SUVs, vans and light trucks, and automotive parts. DOC has not defined what constitutes an “auto part” or released a list of covered HTS subheading. The investigation is not limited to specific countries. Within 270 days (Feb. 17, 2019) the DOC must submit a report the President with its findings and recommendation. The President has 90 days after receiving the DOC report to determine whether he concurs with findings and must take action to adjust imports 15 days after taking action. Secretary Ross has stated that the investigation might “wrap up” early, but it is unlikely if the report will be issued before mid-term elections.
Section 232: Autos and Auto Parts

Notice and Comment Process

- Commerce has solicited comments on the investigation.
- Written comments were submitted to Commerce on June 29, and rebuttal comments on July 6.
  - Many OEMs, including Honda, Aston Martin, BMW, GM, Hitachi, Hyundai, Mazda, Nissan, Subaru, Toyota, Kia, and Volvo, submitted comments in opposition to the tariffs.
  - Comments in opposition were also received from the Association of Global Automakers, Auto Alliance, Motor & Equipment Manufacturers Association, the National Association of Manufacturers, and the American Automotive Policy Council, which includes Fiat Chrysler, GM, and Ford.
- Commerce held a public hearing on July 19-20 in Washington, D.C.
- It is not certain if 232 tariffs on automotive goods will authorize an exclusion process.
The announcement of US 232 tariffs has sparked strong reactions from US trade partners.

Retaliatory tariffs focus on aluminum and steel and agricultural, food, and other products that are made in states that are home to key members of the Republican Party.

Canada, EU, Mexico, China, Russia, Japan, Turkey, India and Norway have also initiated challenges to the tariffs at the WTO as an additional step to challenging the action.

The dispute settlement process takes approximately 2 years.

U.S. Tariffs will continue to be imposed during this time.

Most of these countries have initiated the imposition of retaliatory duties.
Section 232: Retaliatory Actions

Canada
July 1
$12.8 Billion

Mexico
June 5
$3 Billion

EU
June 22
$3.2 Billion

China
April 2
$3 Billion

India
Nov. 2
$240 Million

Turkey
August 14
$266 Million

Russia
August 5
$87.6 million

Japan
No Date
Up to $1.9 Billion
Section 301: Actions in Response to Trade Barriers

What are they?

- Section 301 of the Trade Act of 1974 provides the United States with the authority to enforce trade agreements and respond to restrictive foreign trade barriers or unreasonable or discriminatory practices that burden or restrict U.S. commerce.
- Section 301 cases can be self-initiated by the USTR or by an industry petition.
- If USTR determines that the foreign trade policies in question do have the above effects, the USTR may take action to “obtain the elimination of that act, policy, or practice.”
- Authorized retaliatory actions under Section 301 include the imposition of duties or import restrictions.
USTR initiated an investigation under Section 301 into the acts, policies, and practices of China related to technology transfer, intellectual property, and innovation in August 2017.

In March 2018, USTR released a report detailing harmful and restrictive Chinese policies resulting in harm to the U.S. economy of at least $50 billion per year.

Over 50 specific practices were been found to exist.

President Trump directed the USTR to publish a list of products to be subject a 25% tariff.
Section 301: China Intellectual Property

Three Lists Issued (so far)

- As a result of its findings, the USTR has published three lists of products to be subject to a tariff pursuant to Section 301.
  - **List 1**: 818 product lines valued at $34 billion subject to a 25% tariff effective at July 6, 2018.
  - **List 2**: 284 product lines valued at $16 billion subject to a 25% tariff effective on August 23, 2018.
  - **List 3**: 5,745 full or partial product lines valued at $200 billion be subject to a 10% to 25% tariff effective on September 24, 2018.
- Many steel and aluminum products subject to the Section 232 tariffs are also on the lists.
- If China retaliates, the U.S. will impose additional tariffs on an additional $267 billion of Chinese imports. Such action would result in almost all imports from China being subject to Section 301 duties.
Section 301 - Product Exclusion Process

- The USTR has released a process for product exclusions for List 1 and List 2. A process for List 3 product exclusions will also be released “shortly.”

- For List 1 product exclusions:
  - Requests must be filed by October 9, 2018.
  - Parties must submit separate requests for each 10-digit HTSUS subheading covering products for which exclusions are being sought.
  - The USTR will evaluate each request on a case-by-case basis and periodically announce decisions on pending requests.
  - Granted exclusions for products will apply retroactively to July 6, 2018, the date of the imposition of the additional duties.
  - Exclusions will be valid for one year.
  - Exclusions are based on products, not importers.
Section 301 - Product Exclusion Process

For List 2 product exclusions:

- Requests must be filed by December 18, 2018.
- Parties must submit separate requests for each 10-digit HTSUS subheading covering products for which exclusions are being sought.
- The USTR will evaluate each request on a case-by-case basis and periodically announce decisions on pending requests.
- For imports sold as final products, requesters must provide the percentage of their total gross sales in 2017 that sales of the Chinese-origin product accounted for.
- For imports used in the production of final products, requesters must provide the percentage of the total cost of producing the final product(s) the Chinese-origin input accounts for and the percentage of their total gross sales in 2017 that sales of the final product(s) accounted for.
- Granted exclusions for products will apply retroactively to August 23, 2018, the date of the imposition of the additional duties.
- Exclusions will be valid for one year.
- Exclusions are based on products, not importers.
Section 301 - Response from China

- China has initiated a WTO case against the Section 301 actions.
- The first list hit $34 billion of U.S. products across 545 product categories, became subject to 25% tariffs beginning **July 6, 2018**.
- The second list targets $50 billion of U.S. goods across 106 product categories, which took effect on **August 23, 2018** in response to List 2.
- The third list targets $60 billion of US goods across 5,207 product categories, which took effect on **September 24, 2018** in response to List 3.
And the NAFTA…

Where are we?

- United States and Mexico reached a preliminary deal at the end of August.
- The automotive rules of origin have been front and center of those negotiations
  - 75% of automobiles value must be from North America to qualify for zero tariffs
  - More local steel, aluminum and auto parts
  - 40% to 45% of the car must be made by workers earning at least $16/hr
- But, the most contentious proposal is the U.S. “sunset clause” – press reports indicate that the United States has softened its position on the sunset clause. It is unclear whether the U.S. has agreed to a longer sunset clause or scrap it altogether.
- Impact of Section 232 tariffs on steel and aluminum products from Canada and Mexico.
NAFTA Re-Negotiations

How to plan for uncertainty...risk mitigation

- US withdrawal:
  - 6 months notice required
  - Role of Congress
  - Fallback to US-Canada Free Trade agreement
  - Bilateral agreements between US-Canada and US-Mexico

- Rule changes will largely affect automotive products, but other industries may see changes.
- NAFTA qualification review – predicting what the changes will be and apply to major products.
Questions?

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