INTERNATIONAL TRADE

TRADE, TARIFFS, AND TROUBLE (PART III)
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We are entering the "Summer of Disruption" to global trade based on five (5) recent US actions and other countries' responses:

1. China The US announced on Friday the imposition of 25% tariffs on approximately $33.8 billion of China-sourced goods pursuant to Section 301 (effective July 6); China immediately announced retaliatory tariffs (effective July 6); the US launched investigations into nearly 300 other tariff classifications from China (totaling an additional $14.6 billion); and President Trump threatened, another set of US tariff threats on up to $200 billion of China sourced goods should China actually retaliate.

2. Steel and Aluminum Tariffs Retaliatory tariffs were imposed or announced on US goods by Mexico (June 6), the EU (July), and Canada (July 1) relating to Section 232 steel and aluminum tariffs, with no resolution in sight.

3. NAFTA The NAFTA was on life-support over the past week with credible rumors from the White House that senior leadership was considering withdrawing from the agreement as late as Friday, due to conflicts between President Trump and Canada's Prime Minister Trudeau. While it appears those threats have passed for the present time, there will not be any movement on the NAFTA before the Mexican Presidential elections (July 1) and potentially mid-July.

4. Congress Efforts this week by certain members of the US Senate to reign in the Trump Administration's tariffs failed to receive support, and it is likely that the Trump Administration will receive an extension of Trade Promotion Authority until 2021. Consequently, the Trump Administration has clear legislative and political runways to pursue its trade agenda.

5. Auto Tariffs The US Administration is pressing forward with up to 25% tariffs on automobile imports. While initially believed that these tariffs were unlikely to be imposed before the US midterms, new intelligence indicates that the tariffs will be prepared for the President to announce by October 2018..

As a result, when companies return from their Canada Day and Fourth of July parades and picnics, the global trade environment will experience the US imposing nearly $200 billion in tariffs on ferrous metals and China-sourced goods, and US exports subject to nearly $75 billion in retaliatory tariffs ($34 billion from China/$40 billion for Canada, EU, and Mexico). The overarching question is whether the US will be moving toward its objective of achieving "rebalanced" trade, or whether the global economy will be rapidly moving toward recession. Companies cannot wait for the answer. Contingency planning is a must.

Dickinson Wright provides the following detailed analysis to assist in your planning:

1. **Section 301 Tariffs on Imports from China** The Office of the United States Trade Representative (USTR) released on June 15, 2018 a list of products imported from China that will be subject to additional tariffs as part of the US response to China's purported unfair trade practices. The action came following after a Section 301 investigation in which USTR found that China's acts, policies and practices related to technology transfer, intellectual property, and innovation were unreasonable and discriminatory, and burdened U.S. commerce.

   The list of products https://ustr.gov/sites/default/files/2018-0018%20notice%206-15-2018_.pdf covers 1,102 separate US tariff lines valued at approximately $50 billion in 2018 trade values. This list of products consists of two sets of US tariff lines. The first set contains 818 lines of the original 1,333 lines that were included on the proposed list published on April 6. These lines cover approximately $34 billion worth of imports from China. USTR has determined to impose an additional duty of 25 percent on these 818 product lines after having sought and received views from the public. US Customs and Border Protection will begin to collect the additional duties on July 6, 2018.

   The second set contains 284 new tariff lines. These 284 lines, which cover approximately $16 billion worth of imports from China, will undergo further review in a public notice and comment process with written submissions due July 23, 2018 and a public hearing will be held on July 24, 2018. Parties desiring to appear at the hearing must submit a request and proposed testimony on or before June 29, 2018. After completion of this process, USTR will issue a final determination on the products from this list that would be subject to the additional duties.

   USTR also has advised that it will be establishing procedures for product exclusions. Dickinson Wright will circulate notices regarding that process as they become available.

   Unsurprisingly, China immediately announced that it would target $50 billion of US goods in two phases. http://gss.mof.gov.cn/zhengwuxinxi/gongzuodongtai/201806/t20180616_2930323.html The first phase on $34 billion of goods is slated to take effect on July 6 and targets soy, cars, sorghum, fish, pork, and cotton. Additional duties on $16 billion worth of US goods, including chemicals, medical equipment and energy products, will be finalized later.

   President Trump has threatened additional tariffs against nearly $200 billion of China-sourced goods if Beijing retaliates. No talks between the US and China are planned before the July 6 deadline. Also factoring into the US-China trade talks is that the US Treasury Department has until July 30 to decide new rules and restrictions on China-sourced investments into the US.

- **What Should We Do?** Do not wait for July 6. The procedural, policy, and political factors all indicate that the first phase of US tariffs and China's retaliation will occur. All companies should review (and review again) the list of products to determine potential exposure to the US Section 301 tariffs and China's retaliation. In the event companies are subject to tariffs as of July 6, 2018, please contact Dickinson Wright and we can assist in preparing a product exclusion request once that process if fully established. In the event that your company may be impacted by one of the 284 product lines, it is imperative to participate in the written submissions and hearings. Notably, USTR removed 515 product lines from the original target list based on submissions received from companies. Dickinson Wright will monitor all developments and assist upon request.

2. **Section 232 Steel and Aluminum Tariffs**—The US has imposed 25% tariff ad valorem on steel and 10% ad valorem on aluminum imports into the United States from all countries previously subject to the tariff as well as the European Union, Canada, and Mexico.

(Steel) https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-4/
(Aluminum) https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states-4/

Korea, Australia, Argentina, and Brazil received long-term exemptions from the tariffs in varying degrees based on commitments to quotas or other measures (if you are importing steel and, or, aluminum from these countries, please review US-CBP guidance on the issue or request assistance from Dickinson Wright).

The EU, Canada, and Mexico announced retaliatory measures. These retaliation lists include items tied to the steel and aluminum industry as well as products from key congressional districts and other political pressure points.

Mexico imposed retaliatory measures on June 6 ranging from 10%-25% on nearly $3 billion worth of US goods. (See attached report from Dickinson Wright's Mexico-based ally IQOM.) These included steel, aluminum, bourbon, pork bellies, blueberries, apple, grapes and some cheese. However, Mexico did not impose retaliatory tariffs on US grains (nearly $4 billion) but is exploring whether or not to do so if the US imposes more tariffs.

The EU approved its 10 page list of retaliation targets zeroing in on $3.3 billion worth of goods on June 14, 2018 and implementation is expected in July (if not before). http://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156648.pdf.

Canada released its list of countermeasures against US imports www.fin.gc.ca/activty/consult/cacsap-cmpcaa-eng.asp and the public comment period is now closed. These measures will be implemented on July 1, 2018.

Examples of products included on these lists are as follows:

- many forms of steel & aluminum
- yogurt
- coffee
- whiskies
- beer kegs
- maple syrup
- orange juice
- strawberry jam
- prepared meals containing beef or spent fowl
- pizza
- plywood
- toilet paper
- inflatable boats
- motorboats
- mattresses
- washing machines
- dishwasher detergents
- soy sauce
- ketchup
- herbicides/fungicides/insecticides in packages weighing 1.3 kg or less
- playing cards
- ball-point pens
- felt-tipped markers
- motorcycles
- lamps
- pork
- apples
- grapes
- cranberries
- cheese

- **What Should We Do?** As a threshold matter, US companies that rely on steel and aluminum products from these countries (particularly, the EU, Canada, and Mexico) should seek specific product exclusions with DOC from the tariffs. Dickinson Wright has prepared and filed many product exclusion requests and has provided the following webinar to introduce companies on the process. http://www.dickinson-wright.com/events/a-time-for-tariffs-steel-and-alum-webinar-3-28 The first round of decisions from the DOC regarding product exclusions should be published in the coming days, which likely will provide guidance for the next set of filings. The time is now.

We anticipate that the retaliatory measures will be fully implemented against the US. It is imperative that companies monitor the retaliation lists to ensure that their goods will not be impacted by retaliatory tariffs. Dickinson Wright has produced a webinar to explain the retaliation process and strategies. http://www.dickinsonwright.com/events/canada-to-impose-tariffs-webinar In the event that retaliatory measures impact a company, Dickinson Wright can assist with working with the foreign government to potentially minimize the consequences.

3. **NAFTA**—The NAFTA has been on life support since the start of June. Beginning with Twitter spats between President Trump and Prime Minister Trudeau; to brief optimism at the G7 that was abruptly darkened by post-summit news conferences, social media, and Sunday new shows; to speeches and meetings in Washington this week to cool the temperature; to strong and credible rumors that the White House was seriously considering withdrawing from NAFTA over the Fathers' Day weekend—the past week to 10 days has been a roller coaster for North American trade. The prevailing view at the moment is that the NAFTA will be on hold until after the July 1 Mexican elections. A Ministerial meeting between the three countries likely will be held in mid-July where there may be an opportunity to close the NAFTA auto rules of origin chapter and address the steel and aluminum tariffs. However, it is important to note that while the parties may reach a deal in the Summer of 2018, the procedural and political calendars are closed for ratification by the end of the year. It will be up to the next US Congress to ratify any deal. And with Canada having a federal election in 2019 and the public rallying around Prime Minister Trudeau's "get tough on Trump" stance, it will be interesting to see if Canada can make any concessions.

   What Should We Do? While there may be noise around the NAFTA over the coming weeks, there is little expectation of any meaningful activity happening until after the July 1, 2018 election in Mexico. There may be an attempt right after those elections to agree on framework for the automotive rules of origin that will include a steel and aluminum threshold in exchange for lifting the tariffs, and the parties then will agree to continue negotiating on other topics throughout the Fall. At this time, it appears unlikely that NAFTA will be completed and ratified in 2018. And while a US withdrawal may also be unlikely, recent events demonstrate that the tone and tenor of the negotiations can rapidly change. The process will be very bumpy over the coming months. Even if the status quo remains for 2018, there may be a great deal of noise and saber-rattling in the meantime.

4. **Trade Promotion Authority 2015 Extension**—All of this activity is occurring against the backdrop of the President's Trade Promotion Authority (TPA aka "fast track") expiring on June 30, 2018. While TPA has no role in Section 232 tariffs, it is the primary authority through which the President is negotiating the NAFTA and potentially will deal with UK, Japan and others. Pursuant to the statute, the President requested an extension of TPA until 2021. While Congress is not required to affirmatively approve the extension, Congress may file a "disapproval resolution" of the request. A report on the extension was filed by the International Trade Commission https://www.usitc.gov/publications/332/pub4792.pdf and the private sector USTR Advisory Committee on Trade Policy and Negotiations (see attached ACTPN Report) supporting extending TPA until 2021. We anticipate that TPA will be extended. On the Section 232 front, US Senator Bob Corker (R-TN) and US Senator Pat Toomey (R-PA) each tried to pass legislation this week limiting the President's ability to impose Section 232 tariffs—to no avail. It appears that Congress will not take on POTUS in 2018 regarding trade; however, Dickinson Wright sources have advised that NAFTA withdrawal and Section 232 auto tariffs would be red-lines for Congress. Nevertheless, companies should not rely on Congress to stop the Trump trade agenda.

5. **Section 232 Investigation into Auto Imports**—As previously indicated, the US Department of Commerce (DOC) published a notice in the May 30, 2018 Federal Register regarding its proposed national security investigation into the imports of automobiles including cars, vans, SUVs, light trucks and automotive parts. https://www.gpo.gov/fdsys/pkg/FR-2018-05-30/pdf/2018-11708.pdf The Notice seeks input from companies in the following areas:

   - The quantity and nature of imports of automobiles, including cars, SUVs, vans and light trucks, and automotive parts and other circumstances related to the importation of automobiles and automotive parts;
   - Domestic production needed for projected national defense requirements;
   - Domestic production and productive capacity needed for automobiles and automotive parts to meet projected national defense requirements;
   - The existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce automobiles and automotive parts;
   - The growth requirements of the automobiles and automotive parts industry to meet national defense requirements and/or requirements to assure such growth, particularly with respect to investment and research and development;
   - The impact of foreign competition on the economic welfare of the US automobiles and automotive parts industry;
   - The displacement of any domestic automobiles and automotive parts causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects;
   - Relevant factors that are causing or will cause a weakening of our national economy;
   - The extent to which innovation in new automotive technologies is necessary to meet projected national defense requirements; and
   - Whether and, if so, how the analysis of the above factors changes when US production by majority US-owned firms is considered separately from US production by majority foreign-owned firms.

Any interested party may file a written submission on or before June 22, 2018. Rebuttals may be filed on or before July 6, 2018. Procedures are in place to ensure confidentiality of proprietary/sensitive information. A public hearing will be held on July 19 and 20, 2018. Parties may request to appear at the hearing by June 22, 2018.

The Secretary of Commerce has a total of 270 days to conduct an investigation and present the DOC's findings and recommendations to the President. If the Secretary finds that an import threatens to impair US national security, the President shall determine whether he agrees with those findings within 90 days. If so, he must determine what, if any, action to implement to "adjust" the imports of the article in question so that they will not threaten to impair national security. **Current information suggests that the tariffs may be issued in Fall 2018, likely in October.**

- **What Should We Do?** Companies with interest in the outcome of this investigation should consider their strategy as early as possible. The written submissions and public hearing provide those companies that are facing unfair trade practices from foreign competition with a forum in which to present their views (i.e., "play offense"). Additionally, those companies that rely significantly on foreign operations and suppliers need to assert the importance of these factors to US decision-makers (i.e., "play defense"). Again, Dickinson Wright emphasizes that the Trump Administration relies heavily on individual company "stories" as opposed to broad pronouncements and policies from trade associations. It is imperative that individual companies get engaged on this issue. Dickinson Wright is available to assist and frequently appears on behalf of clients in these types of proceedings.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of international trade law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.

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