Navigating Customs and Trade Issues

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What’s Covered Here

- Section 232 Duties on Steel & Aluminum
- Section 301 Duties on Products of China
- Antidumping and Countervailing Duty
- Forced Labor actions
- Export restrictions and Sanctions on Russia
Section 232 Duties

Section 232 of the Trade Expansion Act of 1962 authorizes the President to impose duties on foreign products to protect national security.

On March 8, 2018, the President imposed a 25% duty on imported steel and a 10% duty on imported aluminum under the authority of Section 232.

The duties affect primary forms of these metals and are on top of the regular duties and fees.

The 232 duties are based on the **country of origin** of the metals.
Section 232 Aluminum Duties

- 10% additional duty for subject aluminum products (based on HTS classification)
- Argentina, Australia, Brazil, Canada, Mexico and South Korea and EU are exempt
  - Of these Argentina, Brazil, Korea and EU are subject to quotas
- Importers can request General Approved Exclusions (GAE) from the special tariffs from the Department of Commerce
  - 11 aluminum 232 duty exclusions (based on the HTS number) have been granted to date
Section 232 Steel Duties

- The 232 duty on the designated steel products is 25% - based on the HTS and country of origin.

- Applies to the subject steel products from all countries except Argentina, Australia, Brazil, Canada, Mexico and South Korea.
  - Argentina, Brazil and South Korea are subject to quota.

- There is a quota on steel originating in the EU and Japan.

- The General Approved Exclusions also apply to Steel.
  - To date 82 GAEs apply to steel.
On Jan. 29, 2020, President Trump extended the Section 232 duties to steel and aluminum derivatives

- Includes wire, cable, fasteners and bands

The action was challenged in the US Court of International Trade, which held it was not legal because the President did not enact the duties within the required 105 days from the Department of Commerce report

The case is now under appeal
Section 301 Duties

These are special duties imposed on products of China – designated by the HTS classification – under the authority of Section 301 of the Trade Act of 1974

• Start date was July 2018

The duties are in addition to the regular duties and fees and other special duties, such as antidumping.
Four Tranches of Section 301 Duties

Section 301 duties were enacted in 4 stages – each impacting specific HTS classifications

1. Tranche 1, effective July 9, 2018, affected 818 HTS classifications with a 25% additional duty
2. Tranche 2, effective Aug. 23, 2018, affected 284 HTS classifications with a 25% additional duty
3. Tranche 3, effective June 15, 2019, affected 603 HTS classification with a 10% additional duty
4. Tranche 4A, effective Sept. 1, 2019 originally carried a 15% additional duty but was reduced to 7.5% on Feb. 14, 2020
Section 301 Litigation

Tranches 3 and 4 have been challenged in the US Court of International Trade.

The legal challenge is that Tranches 3 and 4 were not enacted within the timeline and authority of the Trade Act of 1974 and the Administrative Procedure Act.

Currently affects over 7000 importers and $billions of duty.

The Court granted a preliminary injunction to suspend liquidation of the affected entries.
In the test case, a three-judge CIT panel ruled that while the USTR has the authority to adjust the tariffs in response to Chinese retaliation, it did not do enough to justify its decision to the public.

• USTR violated the Administrative Procedure Act by failing to sufficiently respond to thousands of comments urging a different course of action.

• On remand until late June

Whichever party loses in the USCIT will likely appeal.

May wind up in the Supreme Court.
Section 301 Exclusions

- Importers were granted 549 exclusions to the Section 301 duties
- The exclusions expired on Dec. 31, 2020 or in the Spring of 2021
- In a notice in the Federal Register of Oct. 8, 2021 the US Trade Representative asked for comments on whether these 549 exclusions should be extended
  - Some but not all were extended
- 81 exclusions pertaining to COVID-19 have been extended to May 31, 2022
The United States Innovation and Competition Act passed in the Senate in June of 2021 would renew and extend the expired exclusions

• It would also provide opportunity to obtain refunds of duty from expiration of the exclusions to passage of the bill
• Also includes potential to restart and reform the exclusion process

The competing bill in the House (America COMPETES Act) does not have any section 301 provisions.

The bills will be scheduled to be reconciled by cross-chamber committee around summer 2022.
Dumping and Countervailing Duties

➡️ What are Antidumping & Countervailing duties?
➡️ Foreign unfair trade practices –
➡️ Dumping is sales at less than fair value that causes injury to a competing US industry
➡️ Countervailing duty is assessed where the foreign country gives a bounty or grant for export and it causes injury to a competing US industry
➡️ If found the duties are imposed on top of the regular duties and fees and range from less than 1% to several hundred %
CBP Reference for ADD/CVD Determination

- New type of inquiry (like scope rulings or circumvention determinations)
- CBP can now act on its own initiative or reports from others to refer merchandise to Commerce to confirm whether it is in the scope of ADD/CVD
- 20 days to determine whether to initiate inquiry
- Final determination within 120 days, or, if extended, within 150 days
- Commerce can suspend liquidation during the covered merchandise inquiry
Forced Labor Actions

What is considered forced labor?

CBP defines forced labor as all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer work or service voluntarily. Indentured labor is defined as work or service performed pursuant to a contract, the enforcement of which can be accomplished by process or penalties. This includes forced or indentured child labor.
Forced Labor Actions

CBP implements Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) through issuance of Withhold Release Orders (WRO) and findings to prevent merchandise produced in whole or in part in a foreign country using forced labor from being imported into the United States.

CBP is responsible for preventing the entry of products made with forced labor into the U.S. market by investigating and acting upon allegations of forced labor in supply chains.
A WRO is issued by CBP based on evidence or suspicion that the imported goods were made with forced labor.

Importers can receive goods if they can prove the goods were not made with forced labor:
- They have 3 months to produce a certificate of origin and convincing evidence that the goods were not made with forced labor.

If importer cannot produce certificate and evidence the shipment is seized.
WROs to Date

Active Withhold Release Orders & Findings
This map provides an overview of all active WROs and Findings around the world. CBP is currently enforcing 54 active WROs and 9 Findings across the globe.

LEGEND
- Withhold Release Order (WRO)
- Finding

CBP issues a Withhold Release Order (WRO) when the agency has reasonable evidence of the use of forced labor in the manufacturing or production of a good or goods entering the U.S. supply chain. A WRO allows CBP to detain the products in question at all U.S. ports of entry until/unless importers can prove the absence of forced labor in their product’s supply chain.

CBP issues a finding when the agency has conclusive evidence of the use of forced labor in the manufacturing or production of a good or goods entering the U.S. supply chain. A finding allows CBP to seize the product(s) in question at all U.S. ports of entry.
Uyghur Forced Labor Prevention Act

Signed into law by the President on Dec. 23, 2021

Under the Act CBP is to presume that any goods originating in the Xinjiang region of China are made with forced labor and are inadmissible

No WRO or specific showing of forced labor are required

Importers may be excluded if they:

• Comply with the due diligence and regulations promulgated under the Act and:

• Provides clear and convincing evidence that the goods were not produced with forced labor

The Act is now being implemented
Office of Foreign Assets (OFAC) administers and enforces economic sanctions programs primarily against countries and groups of individuals

- U.S. persons must comply, including all U.S. citizens and permanent resident aliens regardless of where they are located,
- all persons and entities within the United States,
- all U.S. incorporated entities and their foreign branches.
- In the cases of certain programs, foreign subsidiaries owned or controlled by U.S. companies also must comply.
Russia

- Bureau of Industry and Security (BIS) placed stringent export controls on Russia as of 2-24-22
- Builds on restrictions put in place on Russia since its occupation of Crimea in 2014
  - Some remain, others were expanded
    - Requires a license on a range of items (categories 3-9 of the CCL) when destined for Russia
    - Similar restrictions on Belarus
    - Policy of denial, should restrict ability to acquire items it can’t produce
- Significantly restricts the use of EAR license exceptions
- Prohibits exports, reexports and in-country transfers of luxury goods
Russia

Numerous actions have been imposed by the US

- 5200 new sanctions since 2-21-22 (more than Iran)!
- 1000s of entities are prohibited including Putin’s inner circle
- Financial transactions and investments are limited
- Many banks are blocked
- Luxury exports are banned

What this means to Companies:

- Challenged by the deluge of sanctions
- Reactive vs carful planning
- Investigate sanctions risk for suppliers, vendors or customers
Are You Scared Yet?
More Potential Issues

- CBP is under pressure from the Administration and Congress to enforce special duties and illegal trade.
- Expect an increase in Antidumping cases and enforcement.
- Enforcement of forced labor and imports from Xinjiang will increase.
- Based on the Ukraine situation, expect restrictions and prohibitions on imports and exports from/to Russia.
So – What Have We Learned?

- The Government has many tools in its toolbox to counter what is believed to be unfair or illegal trade or to counter national security concerns.
- There are a few exclusions that can be used but many have expired and may not returned.
- Pending court cases and legislation may provide some relief but may take months or years to become reality – if ever.
- Companies engaged in trade must stay on top of the laws and regulations to avoid trouble.
- The sanctions on Russia continue to unfold.
Your Questions Please

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