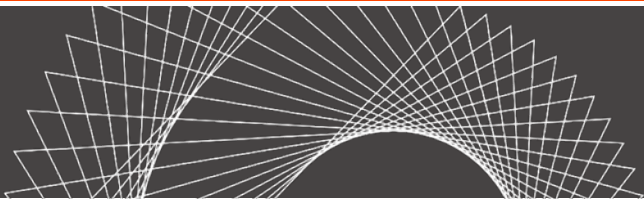


Latest Developments in U.S.-Asia Trade



Akin Gump
STRAUSS HAUER & FELD LLP

May 30, 2019

Presented by:

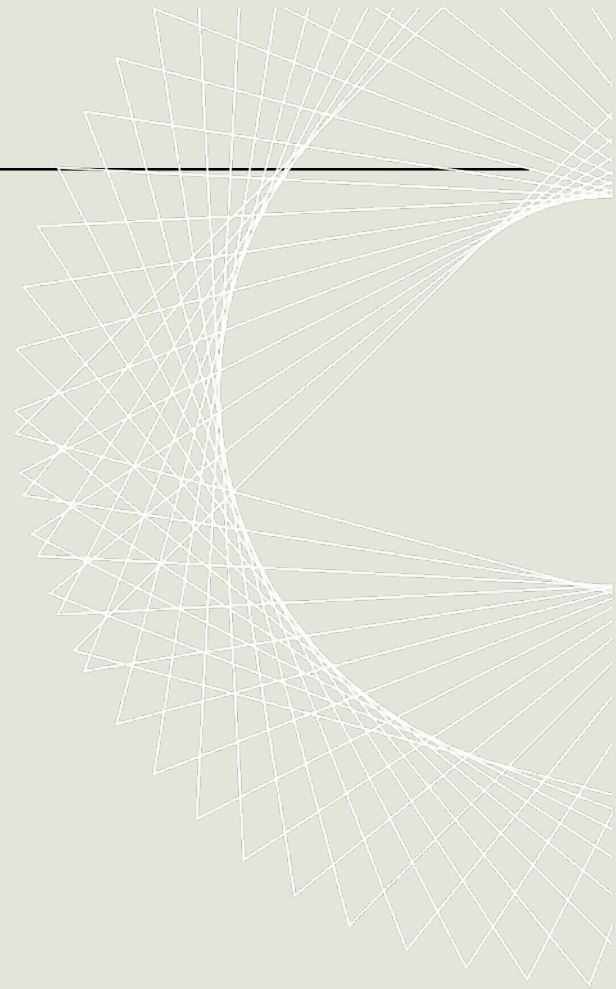
Justin McCarthy, Senior Advisor

Stephen Kho, Partner

Agenda

- 1. U.S. Trade Policy Landscape Generally**
- 2. Trade War with China**
- 3. Section 232 Investigations**
- 4. Trade Negotiations**

U.S. Trade Policy Landscape Generally



U.S. Trade Policy Landscape

President Trump's position on trade

- Focus on trade deficits and job creation
- Focus on America's manufacturing base
- Preference towards tariffs as trade enforcement tool
- Sovereignty and bilateralism over multilateralism

What does this mean?

- More U.S. protectionism
- Increased enforcement under existing legal regimes
- Trade has become highly politicized and controversial
- The U.S. Congress is considering various approaches to limit President Trump's ability to unilaterally direct trade policy

Trade War with China

Rhetoric Comes Full Circle



When a country (USA) is losing many billions of dollars on trade with virtually every country it does business with, trade wars are good, and easy to win. Example, when we are down \$100 billion with a certain country and they get cute, don't trade anymore-we win big. It's easy!

6:50 AM - Mar 2, 2018

♡ 100K 💬 51.3K people are talking about this

March 2018



China Trade Deal (and more) in advanced stages. Relationship between our two Countries is very strong. I have therefore agreed to delay U.S. tariff hikes. Let's see what happens?

12:12 PM - 25 Feb 2019

February 2019

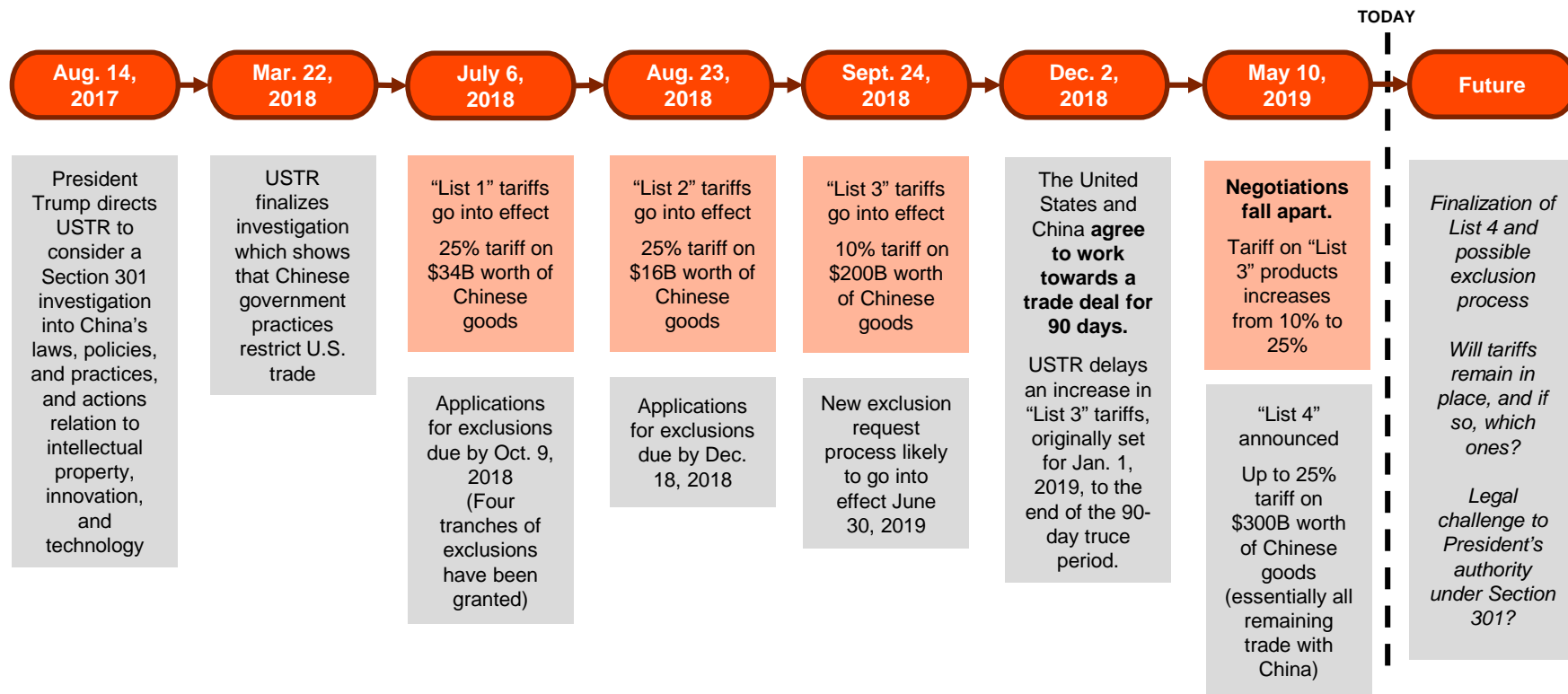


Tariffs will make our Country MUCH STRONGER, not weaker. Just sit back and watch! In the meantime, China should not renegotiate deals with the U.S. at the last minute. This is not the Obama Administration, or the Administration of Sleepy Joe, who let China get away with "murder!"

4:48 AM - 10 May 2019

May 2019

Timeline of Tariff Escalation



What happened to the trade deal?

On May 10, 2019, Chinese negotiators left Washington, DC without a deal and without plans for further discussions.

Both sides are playing the “blame game”:

- United States claims China “broke the deal” by backtracking on commitments made in prior rounds to amend provisions of Chinese law according to the agreement
- China says the United States went back on its commitments by repeatedly ratcheting demands to unrealistic levels

A meeting between Presidents Trump and Xi is possible on the sidelines of the G20 meeting in Osaka, Japan at the end of June.

What the United States Wants

Purchasing agreements

- China has committed to buy more agriculture, natural gas, semiconductors, and aircraft.

Market access

- China has pledged greater access to range of industries from banking to agriculture
- Other rumored areas of market access improvement include cloud computing and biotechnology

Foreign Investment

- China to permit 100 percent foreign ownership for U.S. companies operating in China by 2025
- Technology companies may be allowed to have their own data centers in free trade zones

IP Rights & Forced Technology Transfers

Currency Practices

State-Owned Enterprises

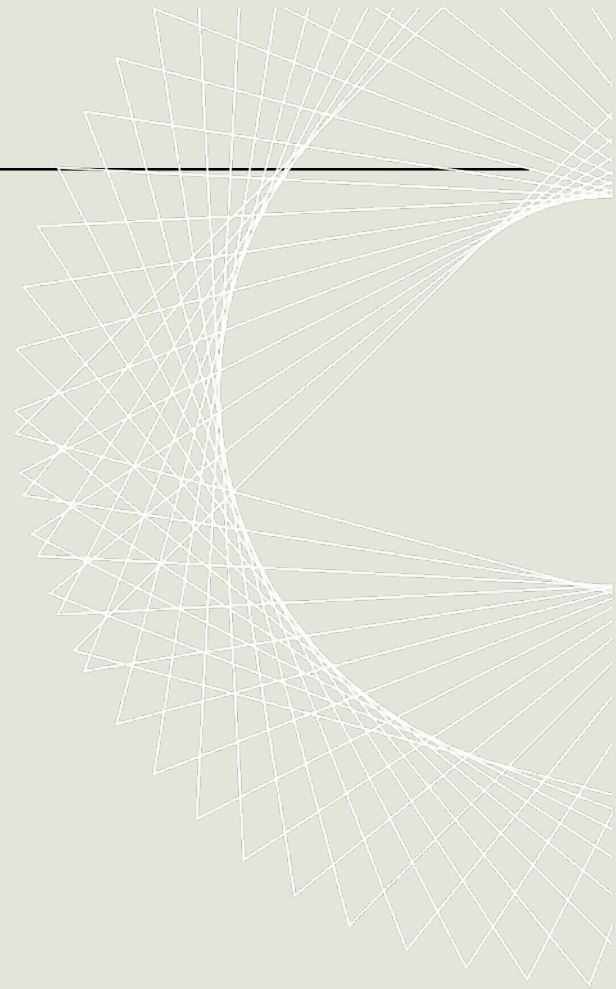
Enforcement Mechanism

- China wants removal of all U.S. Section 301 tariffs, but President Trump wants tariffs to remain “for a substantial period of time” to ensure Chinese compliance
- Snap-back mechanism being discussed
- Each country may have their own enforcement offices working in the other country's region and coordinating with each other

View from within China

- China is pushing for cooperating “within principles”
- Demands for respect and win-win solution
- IP rights protection is necessary
- Long-term sufferers of the trade war will be U.S. people
- Real reason for this is election strategies at play

Section 232 Investigations And Other Trade Measures



Steel and Aluminum 232 Tariffs

- DOC released reports on steel and aluminum to the public in February 2018
- Investigation and reports intended to target China on global excess capacity
- Presidential Proclamations of March 8, 2018 imposed additional tariffs of 25% on steel products and 10% on aluminum products
 - Proclamations invite countries with a “security relationship” to discuss alternative ways to address the threatened impairment of national security
 - Companies may apply for specific product exclusions
- *Special arrangements/agreements*
 - Canada and Mexico – recently granted exemptions
 - Brazil and South Korea: 70% product-specific quota on steel, quarterly cap
 - Argentina: 135% quota on steel
 - Australian imports exempted
 - Turkey subject to 50% (steel) and 10% (aluminum) tariffs
- Several countries have imposed retaliatory tariffs and/or challenged the United States at the WTO

Automobiles & Automotive Parts

The DOC report, presented to President Trump on February 17, 2019, is not yet public. However, President Trump confirmed its recommendation of tariffs of up to 25% on certain autos and parts.

- Decision on presidential action required by statute by May 17, 2019, but postponed under a provision to allow negotiations with Japan and the EU.
- Press reports indicate that the DOC report presents three options for the President:
 - (1) 20-25% blanket tariff on autos and auto parts
 - (2) tariffs only on automated, connected, electric and shared (ACES) vehicle technologies
 - (3) remedy package that would fall somewhere in between the first two

Initiated to target EU and Japan for lack of willingness to assist U.S. efforts to combat China? Or simply as FTA negotiation leverage?

U.S. auto industry is heavily opposed to any import restrictions. DOC has conducted extensive surveys of domestic auto producers to gauge U.S. auto production.

Other “Trade” Measures (Previously Rare)

Section 301 “unfair” trade practices

- Investigation on Chinese policies related to forced technology transfer and lack of intellectual property enforcement
- Retaliation for EU subsidies on large civil aircraft (April 12, 2019 FR notice)
- Additional investigations? Against China? Other countries?
- 301 is now being broadly considered for other enforcement efforts, including as enforcement mechanism in FTAs

Section 201 “global safeguard” investigations

- Solar cells
- Washing machines

Anti-dumping and countervailing duty (“AD/CVD”) investigations

- Self-initiation: Aluminum sheet from China, and Administration has budgeted for other investigations
- Recent proposal to make currency manipulation an actionable subsidy

IEEPA E.O. (“foreign adversaries”), Export Controls (“entity list”), and CFIUS

Trade Negotiations

U.S.-Japan FTA

Several meetings between USTR Lighthizer and Japanese Economic Revitalization Minister Toshimitsu Motegi.

- Discussion about scope, including agriculture, automobiles, and digital trade.
- Both sides reported progress and willingness to accelerate negotiations.

President Trump and Prime Minister Abe also just met and be meeting again in late June.

- Both sides need a win.
- President Trump has said a deal will be done by August, which may be too soon after Japanese elections.

The scope and timing of the agreement remains undecided.

- Trump administration pushing for narrow “quick win”, possibly focusing on agriculture (a tiered approach).
- U.S. Congress prefers traditional, comprehensive deal.
- Japan may be interested in a limited scope with a goods focus; aim to eventually include United States in TPP.

U.S.-EU FTA

In July 2018, President Trump and European Commission President Jean-Claude Juncker announced the formation of a US-EU Working Group that will seek to reduce transatlantic barriers to trade.

- In January 2019, USTR announced negotiating objectives, including cutting tariffs on agricultural products.
- In April 2019, the EU approved two areas for negotiation, opposed by France with an abstention from Belgium:
 - Cutting tariffs on industrial goods, but excluding agricultural products.
 - A conformity assessment making it easier for companies to show products meet EU or U.S. technical standards.
 - Gave themselves the right to retaliate if the U.S. imposes Section 232 auto tariffs or Section 301 tariffs.

In April 2019, EU Trade Commissioner Cecilia Malmstrom said “We are ready as soon as they are”, hoping to complete negotiations prior to the end of the Junker Commission on October 31. On May 22, 2019, Malmstrom said “Washington is not ready for trade talks with the EU.”

French President Emmanuel Macron objects to negotiations because the Trump administration withdrew from the Paris climate agreement in 2017. Belgium abstained because its French-speaking region of Wallonia felt the same.

The United States, Canada, and Mexico signed the revision to NAFTA on November 30, 2018. Before it can be ratified, the new agreement faces a number of procedural hurdles in the United States.

- On April 19, the U.S. International Trade Commission released its report on the agreement (a required step in the ratification process), finding that the agreement would have a slight, positive effect on the U.S. economy.
- The timeline for ratification is still in flux. The Trump Administration still must submit to Congress the final USMCA text, a draft statement of administrative action, and implementing legislation. It wants the USMCA to pass by summer time. USTR Lighthizer has stated however that the Administration won't submit implementing legislation until House Speaker Nancy Pelosi approves.
- Democrats have raised concerns that the agreement (1) does not go far enough on workers' rights in Mexico; (2) does not include sufficient environmental commitments; (3) does not lower drug prices; and (4) does not have mandatory enforcement mechanism for some subject matters.

USMCA Cont.

On May 30, 2019, President Trump announced that the United States would, beginning on June 10, impose a 5% tariff, increasing monthly, on all goods imported from Mexico “unless and until Mexico substantially stops the illegal inflow of aliens coming through its territory.”

- The statement invoked the International Emergency Economic Powers Act, a broad statute giving the U.S. President broad authority in certain emergency circumstances over several types transactions with foreign interests.
- The announcement garnered strong negative reactions from the U.S. business community and bipartisan opposition in Congress, where some Members have suggested they may introduce a joint resolution to overturn the emergency and block the tariffs.

U.S. and Mexican officials, led by Secretary of State Mike Pompeo and Foreign Minister Marcelo Ebrard, have been meeting in Washington throughout the week of June 3 to attempt to reach an agreement.

- Discussions include Mexican offers to develop a regional plan to deport migrants to the first country they enter after their home country and to place additional federal troops at its border with Guatemala to block migrants.
- Despite Mexican proposals, President Trump has continued to demand further action if Mexico wants out of the tariffs.

Influencing U.S. Trade Policy

Contact Members of Congress, local and state officials

Engage the U.S. Administration

- Department of Commerce
- U.S. Trade Representative
- Department of State

Engage with trade associations

Engage other governments as appropriate

Using some immediate practical solutions

- Consider your global supply chain – sourcing and labor decisions
- Moving foreign investments
- Participate in notice and comment processes, and product exclusion efforts (attend hearings)
- International dispute resolution options

Questions?

Contact Information



Stephen Kho
+1.202.887.4459
skho@akingump.com



Justin McCarthy
+1 202.887.4214
justin.mccarthy@akingump.com