INTERNATIONAL TRADE

NEW NAFTA & CHINA TARIFFS—*STALLED, STANDBY AND STEAMING AHEAD*?
by Daniel D. Ujczo

The last week of Summer 2018 will jumble a number of trade actions—starting with today's announcement of 10% duties on $200 billion of China-sourced goods, the ongoing renovation of the North American Free Trade Agreement (NAFTA), and potential relief from the Section 232 steel and aluminum tariffs—into a goulash that will leave companies wondering what is stalled, in standby mode, or steaming ahead. To summarize all of these expected developments, Dickinson Wright will hold two free, interactive webinars on Monday, September 24, 2018:

- *Know the New NAFTA*, will commence at 2:00 PM ET and feature Sergio Gomez Lora, CEO of IQOM, and Dickinson Wright discussing aspects of the US-Mexico Agreement (USM) and potentially the US-Canada Agreement (resulting in the USMC Agreement). IQOM coordinates Mexico's private sector "next door room" during the NAFTA negotiations. https://www.dickinson-wright.com/events/know-the-new-nafta-webinar-dan-ujczo

- *Untying the Trying Time of Tariffs*—The Product Exclusion Process—will commence at 3:30 PM ET and feature Dickinson Wright regarding the updated Section 232 (steel and aluminum) and China-Section 301 product exclusion processes. https://www.dickinson-wright.com/events/untying-the-trying-times-of-tariffs-webinar-ujczo

Please register directly to the listed websites. Once registered, the webinars will be available "on-demand" post-September 24.

Several potential developments nevertheless warrant attention throughout the week:

1. **Section 301 China Tariffs** - USTR issued two announcements on Monday, September 17 relating to the Section 301 tariffs.

Steaming Ahead—USTR announced 10% tariffs on approximately $200 billion of China-sourced goods. The full list of goods subject to tariffs is available at https://ustr.gov/sites/default/files/enforcement/301Investigations/Tariff%20List_09.17.18.pdf

The 10% tariffs will commence on September 24, 2018. The tariffs will increase in 2019 to 25%. More than 5,000 products are on the final list. USTR removed approximately 300 product lines from the proposed list including consumer electronics (smart watches/Bluetooth), chemicals used in manufacturing, textiles, agriculture products, health and safety products (bike helmets, car seats, sanitary gloves), and several other areas. Unfortunately, most manufacturing equipment (e.g., tools and dies) as well as a number of goods already subject to significant anti-dumping/countervailing duties remain on the final list.

Standby - Will China retaliate as planned against $60 billion in US goods? President Trump has planned to respond with tariffs against an additional $267 billion in China-sourced goods if China retaliates. And then the ball will keep on bouncing. Companies must remain on alert.

On a more positive note, USTR announced on Monday a process for product exclusions relating to the second round of Section 301 tariffs (25%) that were finalized on August 16, 2018 (aka "List II") that will be due on or before December 18, 2018. Companies should standby to see if USTR announces a similar product exclusion process for today's tariffs (aka "List III") in the near term.

Stalled - While this may be premature, it is likely that the proposed US-China talks that were scheduled to happen in two phases by the end of September are stalled. China warned that it would not negotiate with a "gun to its head." Today's actions brandished the weapon. In any event, our perspective on the ground is that we do not see any resolution to the China tariffs prior to the November 2018 midterm elections in the US. Companies meanwhile must engage on the product exclusion processes.

2. **NAFTA to USM/USMC?** - As the US moves to "all-in" on China, the need to resolve issues in the North American "backyard" becomes paramount.

Steaming Ahead - The US and Mexico have continued their work toward finalizing the first text of the US-Mexico agreement and the parties reaffirmed their commitment to publically provide the USM text by the October 1st deadline. The parties intend to sign the USM 90 days later—i.e., prior to the December 1, 2018 transition to the new President of Mexico, Andrés Manuel López Obrador (AMLO). The US thereafter will prepare the deal for ratification by the next (2019) Congress.

Standby - The US and Canada will continue discussions regarding the "C" component of the USMC. USTR purportedly cautioned Canada that a handshake agreement must be worked out by the close of this week in order to have 7-10 days for preparing the text (prior to the October 1 deadline). Technical work between the US and Canada continues. There are reports that Canada's Minister Freeland will be in Washington, D.C. on Wednesday and Thursday of this week. Additionally, the new Premier of Ontario, Doug Ford, and his team will be in Washington, D.C. on Wednesday to receive full briefings from their federal Government of Canada counterparts.

Key issues between Canada and the US include dairy (although there are reports that a "landing zone" has been reached), Chapter 19 dispute resolution, Canada's cultural "exemption", intellectual property rights, de minimis thresholds, and government procurement/Buy America. USTR purportedly advised that it would not hold another Ministerial meeting with Canada until there was a closing phase/final deal on the table. Companies should standby to see what happens midweek. Should Minister Freeland arrive in Washington, D.C., there likely will be results.

Stalled? - There has been some speculation that Canada may attempt to extend the talks beyond the October 1 Quebec elections, which adds procedural and political uncertainty into the timing and tempo of the negotiations. Notionally, the bet is that Congress will hold open the deal for Canada's re-entry. However, any timeline past October 1 runs the risk of missing the signing of the deal prior to AMLO taking office in Mexico. Dickinson Wright previously has advised that Congress' willingness to wait for Canada is not limitless; particularly given the need to finalize the deal with Mexico for US agricultural interests. Indeed, when one considers that almost two-thirds of the Senate Finance committee has encouraged the US' positions on Chapter 19 (softwood lumber) and dairy, testing the deadlines adds increased risk that Canada may be left behind.

3. Section 232 Steel and Aluminum Tariffs

Stalled? - Additionally, the immediate consequence of any USM/USMC delay is the inability of the original NAFTA parties to reach resolution of the Section 232 steel and aluminum tariffs. It is anticipated that should the parties reach agreement by October 1, the US will lift the Section 232 tariffs on Mexico and Canada; consequently, Canada and Mexico will terminate their retaliation/countermeasures. This is a critical ask of the North American manufacturing and agricultural communities as the US enters a more protracted conflict with China. Any delay will threaten the North American economy in terms of capacity to continue existing and planned projects.

Standby - As will be further explored during the webinar, the US has made changes to the Section 232 product exclusion process that, among other issues, allows for rebuttal/sur-rebuttal to objections made by companies regarding the proposed exclusions. While the hope is that the Section 232 tariffs on North American goods will be resolved in short order, companies should standby to ensure that progress is made. https://www.gpo.gov/fdsys/pkg/FR-2018-09-11/pdf/2018-19662.pdf

Steaming Ahead - Companies importing steel and aluminum from other jurisdictions, as well as subject to retaliatory tariffs from those countries, should be aware of these new Section 232 processes. We do not anticipate the Section 232 tariffs being lifted on any jurisdiction outside of North America, including EU and Japan, before the close of October.

Dickinson Wright is available to provide assistance on all of these matters. We look forward to your participation in the webinar(s).

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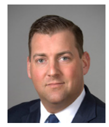

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