Insights: Alerts

The Tariff Wars: Practical Steps to Reduce Supply Chain Risk

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Yesterday, Kilpatrick released a Primer on Tariffs Under the Trump Administration. The Primer gives readers a background overview of what tariffs are, their legal underpinnings, how they were utilized in the prior Trump administration, and how they function as a tool of policy and trade. This Legal Alert will delve a bit more into the practical near-term implications of what the Trump Administration's tariffs mean for your organization.

Key Takeaways:

- If you import goods from Canada, Mexico, or China, there are steps you need to take now to avoid potential compliance fines and get ahead of the almost certain supply chain risks.
- While tariffs will likely cause a lot of frustration for your organization, there may be actions you can take to mitigate the detrimental economic impact.

Over the weekend, President Trump imposed tariffs on Canada, Mexico, and China. After last-minute negotiations, tariffs imposed on Canada and Mexico have been delayed until next month – however, the White House has already indicated that that these tariffs will likely be reissued after the month delay. Additionally, as of this morning, a 10% blanket tariff against China is now in effect. In response, China has already levied a 15% tax on certain types of coal and liquefied natural gas and a 10% tariff on crude oil, agricultural machinery, large-displacement cars, and pickup trucks. These Chinese issued tariffs are to take effect on February 10 and are largely seen as the first step in a broader range of retaliatory tariffs.

Even a 1 or 2% increase in direct import costs have drastically affected the profitability of a business. Now, some businesses face an unprecedented 10% to 25% blanket increase in costs. So, what should your business do?

Counterintuitively, the answer may be not to make any big moves – yet. Historically, businesses that import a great deal from the tariff-stricken countries may have a knee-jerk reaction to immediately re-sourcing major parts of their supply chain. However, this may not be (and likely is not) the end of the imposition of tariffs. The Trump Administration has already hinted that it would begin levying tariffs generally against the EU. In this climate of uncertainty, here are the steps we recommend:

1. First, determine if your supply chain directly or indirectly imports goods from Canada, Mexico, or China. Your review should evaluate whether the goods simply pass through the country or are substantially transformed in one of those countries. Performing this review will allow you to estimate the cost impact of the tariffs.
2. Review your contracts. Some contracts allow for termination based on convenience, economic impracticability, or Government action. If your contract includes any of these type clauses, you may be able to negotiate with your suppliers for more favorable terms.
3. Even if your contracts with suppliers in countries affected by these new tariffs do not include favorable termination or renegotiation clauses, it never hurts to try and propose new terms. Your suppliers may be more amenable to this depending on how many of their customers are located in the U.S.
4. If you decide to keep your supply chains routed through Canada, Mexico, or China, keep an eye out for changes to the Harmonized Tariff Schedule ("HTS") code. If the tariffs remain, you will likely need to change the HTS code for goods entering or exiting the United States from these countries.
5. If you do end up looking to re-route your supply chain from suppliers in Canada, China, or Mexico, consider that the safest option may be a domestic supplier. This new administration has signaled its intent to use tariffs much more pervasively than previous administrations, and in ways that previous administrations did not. There is a real possibility that a business spends significant time and effort rerouting a supply chain through countries not subject to a tariff, only to have those countries slapped with a tariff later in the administration. A domestic supplier is likely the safest supply route with an administration that seems keen on the frequent use of tariffs.
6. There may also be economic opportunities in these tariffs hidden among the challenges. Do you have domestic suppliers that outsource many of their products to Mexico, Canada, or China? If this is the case, they may be willing to negotiate lower prices now that it has become more expensive to export to these countries. This may potentially offset costs associated with the increased tariffs.
7. If you find that there are errors or omissions with your import paperwork or determinations, consider submitting a prior disclosure to U.S. Customs and Border Protection to mitigate penalties.
8. Tariffs are implemented under the authority delegated to the President through various legislative acts. Accordingly, even when tariffs are imposed in accordance with a declared emergency, it is essential to engage with relevant federal officials, agencies, and Congressional representatives to stay informed about, and potentially impact, the development and implementation of such measures.
9. The federal government frequently seeks public input and provides opportunities for waivers or exemptions in connection with proposed tariffs. Entities that may be affected by tariffs should proactively consider submitting input during public consultation periods and, where applicable, request waivers or exemptions to mitigate potential impacts.

This remains a developing area of law, and we will keep you informed of changes. If you need assistance in assessing the impact of tariffs on your operations, please reach out to any of the authors or your regular Kilpatrick contact.

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