

Now What?

Monitoring Changes in a Challenging Trade Environment

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The year 2018 has been a wild ride for those of us involved with trade and compliance and has many of us questioning, “Now what?”

“It’s like drinking from a fire hose,” exclaimed one of my clients in exasperation.

“We’re standing on shifting sands,” said another. “After making what we thought were sound business decisions, the rules changed, sometimes with little or no notice. It’s a challenging environment in which to run a business.”

As trade professionals, however, we have no choice. We need to step up to the challenge and help our companies address the changes that have been implemented and plan for those that are on the horizon.

With so many changes in the first three months of the year, how do you keep track of them all?

This article is an effort to corral the issues into a single place and to guide you to resources for learning how to administer the changes or to track those on the horizon.

Yes, much of this article addresses how importers should deal and plan. Exporters take note! If the specter of a trade war becomes a reality, you too are going to want to know how other countries are changing their import policies relative to your goods.

Our conversation is divided into three segments

1. What has happened?
2. What is happening?
3. What might happen?

1. What has happened?

201 Safeguards Solar Cell Modules and Large Washers

In January of this year the administration announced the imposition of punitive safeguard duties on the importation of solar cell modules and large household washers and their parts. The safeguards were imposed under the section 201 import injury provisions of trade law. These safeguards also include quotas. Administrative information about these safeguards is found as follows:

Solar cell modules

CBP: [Quota Bulletin QB 18-111 2018](#)

US HTS: 9903.45.21, 9903.45.22 and 9903.45.25.

See also US HTS note 18 to Chapter 99 section III

Large washers and dryers

CBP: [Quota Bulletin QB 18-112 2018](#)

US HTS: 9903.45.01 through 9903.45.06.

See also US HTS note 17 to Chapter 99 section III.

232 Safeguards – Aluminum, Iron and Steel

Effective March 23, safeguard duties of 10% were imposed on certain aluminum products and 25% on certain iron and steel products. Section 232 refers to national security provisions of trade law. There are exemptions for Argentina, Australia, Brazil, Canada, Mexico and the European Union through the end of April. Also note that free trade agreement and other special duty programs are suspended for these commodities. Administrative information is found as follows:

CBP: [CBP Entry Summary Instructions](#)

Iron and Steel

US HTS: 9903.80

See also note 16 to Chapter 99 section III.

Iron and Steel

US HTS: 9903.85

See also note 19 to Chapter 99 section III.

The version of the HTS you view may also contain exemptions for South Korea. Those will be incorporated into the changes to KORUS outlined below.

Duty Drawback Changes

In a bit of good news, duty drawback changes passed under the Trade Facilitation and Trade Enforcement Act (TFTEA) in 2016 were implemented at the end of February 2018. In addition to some administrative simplification the changes now allow for substitution at an 8-digit US HTS level. Unfortunately the regulations have not been updated to include these and other changes. At the same time drawback has been transitioned into the ACE system. A [summary of CBP TFTEA drawback policy](#) along with [information about filing drawback in ACE](#) are available at the CBP website.

For those that have not previously considered implementing a drawback program, it is an opportune time to consider doing so. The new rules may make it commercially viable for you to participate. Also, unlike antidumping and countervailing duties, drawback regulation does not exclude refunds of safeguard duties. For exporters that import materials subject to safeguards, this may be one method of minimizing the effect.

GSP Expired & Reinstated

The Generalized System of Preferences program, which expired at the end of 2017, was reauthorized on March 23 and will be reinstated effective April 22nd. As anticipated, the reinstatement will be retroactive to January 1st. CBP has indicated it will begin issuing refunds for importers that claimed GSP in the interim shortly after April 22. Importers that did not claim duty exemption under GSP may still do so using the post summary correction or protest process. CBP has offered [additional detail on the GSP reinstatement at its website](#).

2. What is happening?

At time of publication there were a number of issues in play. In addition to monitoring the news media readers are encouraged to check the links cited below to learn of developments.

Korean FTA

Just announced on March 29th is a new trade agreement in principle with S. Korea. In reality the new deal used mechanisms within the existing KORUS agreement resulting in two major revisions:

1. The Korus previous permitted importation of up to 25,000 U.S. vehicles per year. That number was increased to 50,000.
2. In exchange for avoiding the 25% safeguard duties on steel, Korea agreed to a quota based on 70% of the average of the last three years of steel imports into the U.S.

A joint press release from the two countries stated:

At the instruction of the Ministers, negotiators are finalizing the terms of the KORUS FTA negotiations, which are subject to domestic procedures in both nations before provisions can be brought into force. The revised agreement addresses issues related to investment, tariffs, trade in automobiles, and trade remedies. Additional progress was made in the areas of pharmaceuticals, customs and textiles to smoothly implement the KORUS FTA. The arrangement with respect to steel imports is expected to take effect on May 1, 2018.

On March 30th the president indicated the implementation might be delayed pending discussions with North Korea. Readers are encouraged to monitor the [U.S. Trade Representatives website](#) and the [FTA area of the CBP website](#) for updates regarding administrative details implementing changes.

NAFTA Renegotiations

Since U.S. [Trade Representative Lighthizer's news release at the conclusion of the 7th round of negotiations on March 5th](#) there has been little news regarding the status of NAFTA renegotiations. Clearly the suspension of section 232 aluminum and steel safeguard duties until the end of April creates an urgency for the Canadians and Mexicans to negotiate. It is anticipated, therefore, that there will be some movement on NAFTA renegotiations by the end of April.

Increasing numbers of AD/CVD Investigations

It is a relatively straightforward process to identify and review existing antidumping and countervailing duty orders. There are easily navigated sources at the [USITC](#), [CBP AD/CVD search engine](#) and the [U.S. ITA scope information](#) among others. Admittedly, determining if your goods fall within scope of an AD/CVD order can be a cumbersome if not byzantine process.

The number of AD/CV complaints and investigations has escalated in recent years making it difficult to keep track of goods and countries subject to investigations. Add to that, the USITC and ITA are taking advantage of expedited timelines that can lead to an investigation resulting in a preliminary AD/CVD order in a matter of six months.

How do you find out if an investigation is underway? The [USITC lists active investigations at its website](#). Perhaps less known is U.S. ITA's comprehensive [database of AD/CV activity known as ACCESS](#). ACCESS provides a view of all activities related to AD/CV investigations from USITC, U.S. ITA as well as submissions from interested parties. It may provide more information than you need but it can give some insight into the progression of and investigation.

The AD/CV investigation process allows for input from interested parties. By tracking an investigation you will be able to engage with the process. At the very least, a company should be aware of an investigation so that it could begin to make contingency plans.

Chinese Duties

[After undertaking an extensive study under part 301](#) of trade law relating to unfair trade practices, the Whitehouse has signaled its intent to impose additional duties on about \$60 billion of imported goods from China. The president has instructed Secretary Lighthizer to submit a list of products and proposed duty increases no later than Friday April 6th upon which there is to be an unspecified comment period.

Pay attention to the [USTR website](#) as well as releases from [the Whitehouse](#) and be prepared to file any comments at that time.

A full description of [actions to be taken as a result of the 301 study](#) is available at the USTR website.

9902 – Temporary Reduction in Duties

The House of Representatives approved [HR 4318 with approved the temporary suspension of duties through 2020 for about 1700 articles](#). Application for duty suspension was approved under the American Manufacturing Competitiveness Act of 2016 which allowed importers to petition the U.S. international Trade Commission for temporary relief of duties if they could demonstrate specific conditions. The bill has now been moved onto the Senate where it where it has been referred to the Senate finance committee. Importers will have a second opportunity to submit petitions for temporary duty relief again in 2019. [The so called "MTBPS" process is detailed at the USITC website.](#)

3. What might happen?

Admittedly when you are in a reactive mode and juggling priorities of trade actions that have happened and that are in the process of developing it is difficult to find time to focus on what might be on the horizon. Nevertheless, a company should be keeping an eye on the future and what additional trade actions it might bring.

AD/CVD Complaints and Protests

We discussed how to track existing AD/CVD orders and AD/CV investigations above. Prior to the investigation process, however, a complaint or protest must be filed. [These are logged at the USITC website.](#)

Additional Trade Legislation Investigations

Keeping abreast of investigations undertaken subject to trade legislation generally requires you to keep your ear to the ground and to monitor the agencies chiefly involved with trade including the [Commerce Department](#), the [U.S. Trade Representative](#) and the [Treasury Department](#). If you haven't been doing so, I recommend that you review [the Federal Register](#) on a routine basis. Had you been doing so all along you would have learned that the Secretary of Commerce initiated a 232 investigation on steel imports on April 19th, 2017 and that a federal hearing took place on May 24th.

Trade Actions in Other Countries

If you think keeping track of trade actions in the U.S. is a challenge, getting access to trade actions against U.S. products in other countries is even more so. Two resources you might find helpful include the U.S. Commerce Department's International Trade Administration and the European Union. The [ITA maintains a listing of trade remedy actions taken against U.S. products in other countries](#). While not comprehensive of all barriers to trade, it is a helpful tool. Likewise the [European Union maintains a website of trade enforcement actions it has taken](#) that may or may not include U.S. goods.