

European American Chamber of Commerce

Survival Strategies for the New, High Tariff World

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History of Globalization

Four distinct phases of Globalization and Deglobalization

- Phase 1: Under the Flag of Empire, 1492 to 1914
- Phase 2: Collapse of the Old Order and Deglobalization, 1914 to 1945
- Phase 3: The American World Order Under Bretton Woods, 1945 to 2016
- Phase 4: Collapse of Bretton Woods and the New Era of Deglobalization, 2017-?

Bretton Woods: 4 Key Dates in the Arc of the American World Order

- 1945-- The American Strategic Dilemma: permanently station 1 million American troops in Western Europe or bribe up a global alliance based on free and easy access to the US market, which then represented 50% of global GDP.
- 1973: The Oil Embargo
- 1989: Soviet Collapse
- 2018: Energy Independence for the U.S.

Geopolitics and Trade: Some Foundational Facts

- Geopolitics is the dog that wags the trade tail. Geopolitics creates the conditions under which trade flourishes (or doesn't).
- Water is 7 times more efficient in transporting goods than any land based system. Water is 50 times more efficient than air transportation.
- 75% of the world's population lives with 100 kilometers of the seacoast or an inland navigable waterway.
- All great nation-states have commanded the waterways. They are the keys drivers of trade, wealth and military power.—Admiral Mahan.
- The American Navy polices the world's oceans, without which global trade would collapse.

Tariffs in the Bretton Woods Era

- The average American tariff in the 1930s, the era of Smoot Hawley, approached 60%
- The average American tariff in 2014 was 2.9%
- So, most American businesses haven't given any deep thought to managing tariffs in decades

Are High Tariffs an Aberration?

- The new era of high tariffs is not an aberration of the Trump Administration or a quirk of Trump's personality
- They are the result of a fundamental shift in geopolitics brought by a historical reversion to isolationism, the default U.S. foreign policy from 1776 until December 7, 1941.
- Read Robert Kagan's The Jungle Grows Back

Survival Strategies

- With respect to Section 301 (China) and Section 232 Tariffs (steel and aluminum, potentially autos/auto parts), businesses can apply for a product exclusion (as to 301, currently only available for “List 2” products and only until mid-December, 2018).
- Summary of the “request for exclusion” process for 301 tariffs
<http://www.greenvillebusinessmag.com/2018/10/04/181394/legal-strategies-for-surviving-trump-s-china-tariffs>
- According to CSMS Message 18-000419, Section 301 duties are eligible for duty drawback for exporters

Survival Strategies (con't)

- With respect to Section 301 China tariffs, moving some portion of production to another country to alter country of origin determination. Generally speaking, product must be “substantially transformed” in another country outside China per National Hand Tool vs. U.S., 16 CIT 308 (1992) to avoid Section 301.
- Tariff shifting as a form of substantial transformation under NAFTA, KORUS (Korea FTA), etc.

Survival Strategies (con't)

- Lower dutiable value via First Sale doctrine: is your vendor the manufacturer or an intermediary? If an intermediary must consider First Sale doctrine.
- Transfer Pricing: impact of Trump tax cuts on international tax planning
- Review vendor contracts to determine whether they may be terminated due to force majeure based upon tariff increases

Survival Strategies (con't)

- Consider strategic use of “binding advance rulings” from Customs regarding: tariff classification, country of origin, appraised value, eligibility for preferential treatment under a trade agreement. Customs advance rulings may be “prospective” but must involve concrete, specific facts, not just a hypothetical.
- Do vendor contracts make clear who is Importer of Record? The Importer of Record is primarily responsible for tariffs and customs compliance generally.

Mapping the Intermediate Term Future

- With the EU, Trump will bang the table but will ultimately work things out, as he did with Canada, Mexico, South Korea, and as he will also do with Japan and TPP (Trans-Pacific Partnership).
- The tension with China is more problematic. Getting tough on China is one of the few bipartisan issues in Washington these days.
- More generally, consider how your business may benefit from higher tariffs and move to take advantage.



Questions?