



# Hot Topics in Trade Compliance Risk Management:

## Inbound Tariff and Risk Management

Massachusetts Export Center – Export Expo

December 13, 2019



# Notices

**The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.**

**The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.**

# With you today



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# Agenda



**Current State of Trade**

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**Current State of Tariffs**

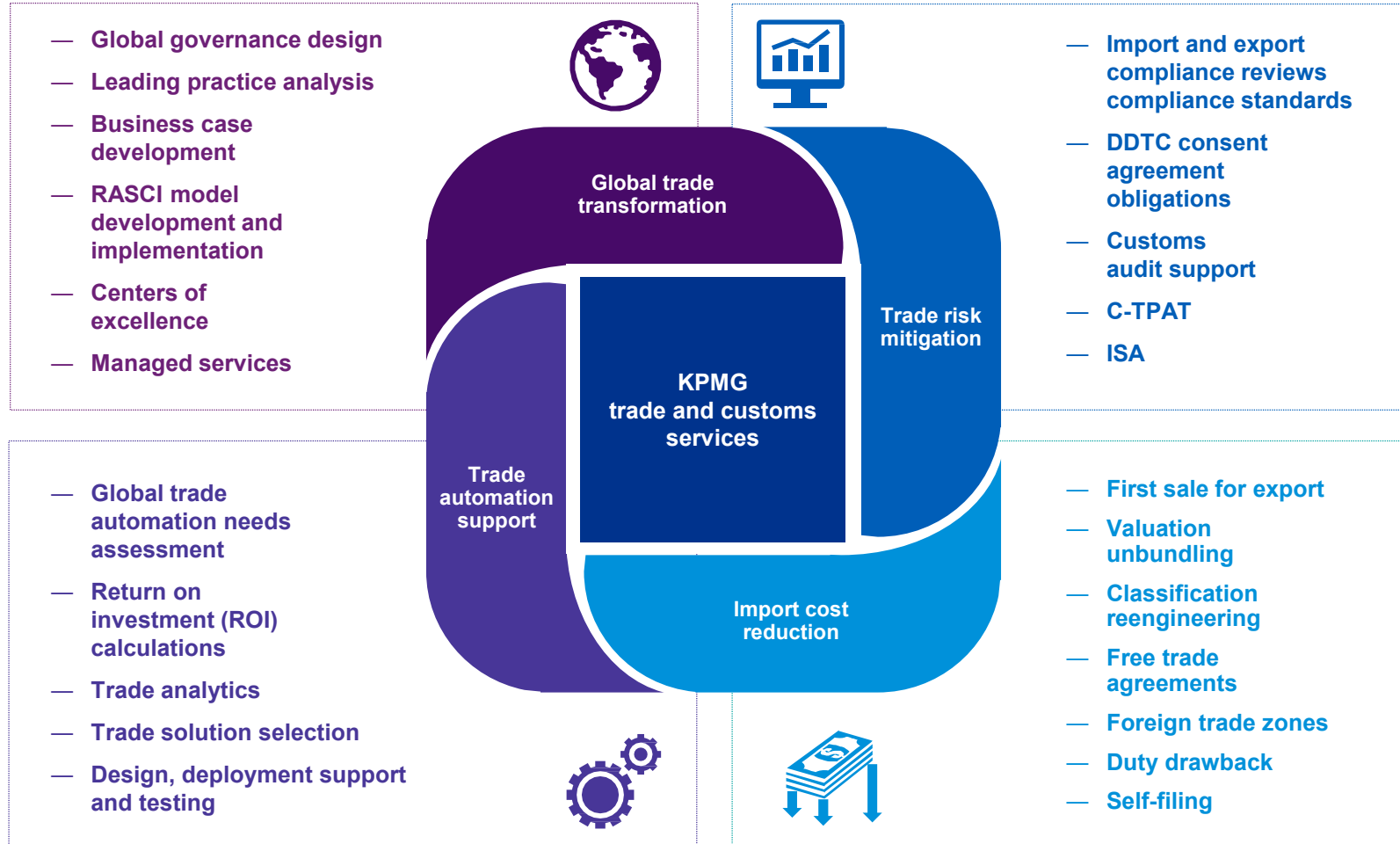
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**Navigating Tariffs and Risk in Your Business**

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# Our Services





# Current State of Trade

# Current State of Trade

## ➤ U.S.

- Protectionist approach to trade
- Preference for Bilateral trade relations
- Technology emerging as national security concern-5G

## ➤ U.S./China

- Additional 15% tariffs on “List 4a” effective September 1<sup>st</sup>, 2019 and “List 4b” effective December 15<sup>th</sup>, 2019
- Tariffs have bipartisan support on Capitol Hill
- Phase 1 ‘Agreement’ close to completion-includes IP protection, purchase commitments, dispute mechanism. ‘Agreement’ at high level, challenge in agreeing on details
- Trade tensions expected to remain elevated

## ➤ U.S./EU

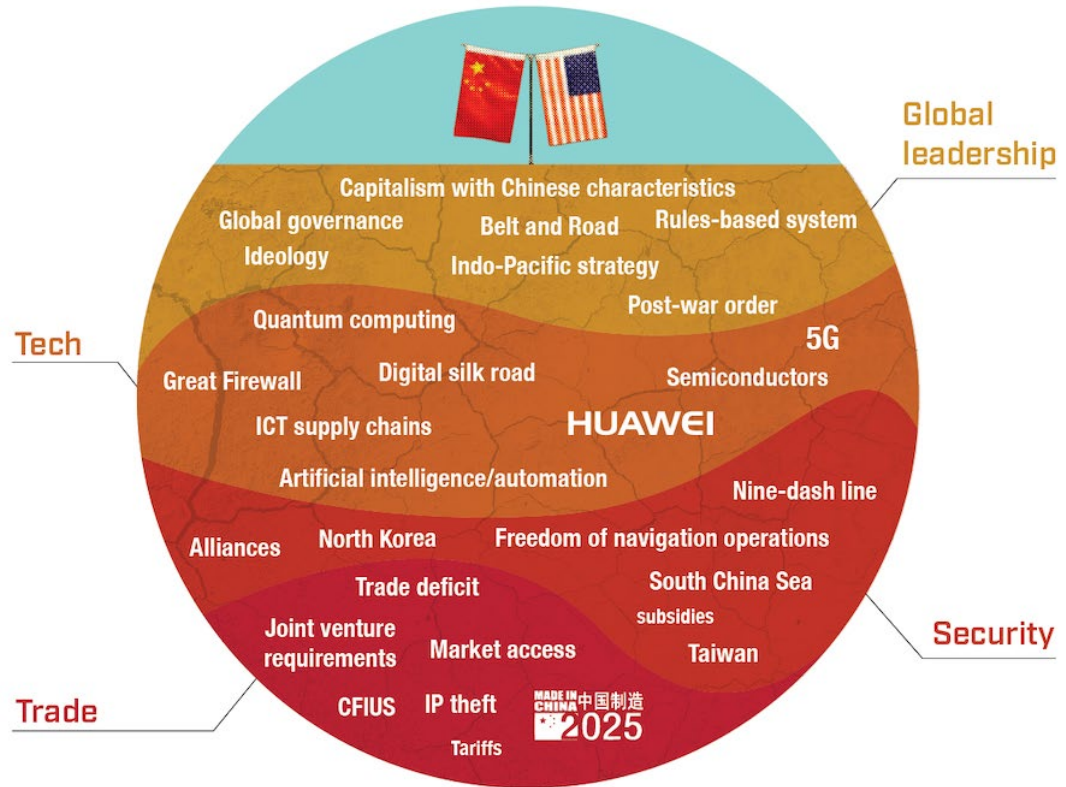
- Trade tensions high
- U.S. won WTO case against EU for Airbus subsidies
- EU countering with own WTO case against the U.S./Boeing
- WTO Dispute Mechanism in deadlock

## ➤ U.S. CBP

- Under TFTEA, CBP scrutiny on imports has increased. Concept of Enforced Compliance
- Focus on tariff avoidance and mitigation strategies, including Classification, COO, FSFE, and other mitigation strategies
- Utilizing data analytics to target transactions
- CBP using all enforcement tools in playbook

# Broader U.S. – China

## The many layers of US-China tensions



**TOP RISK**  
2019



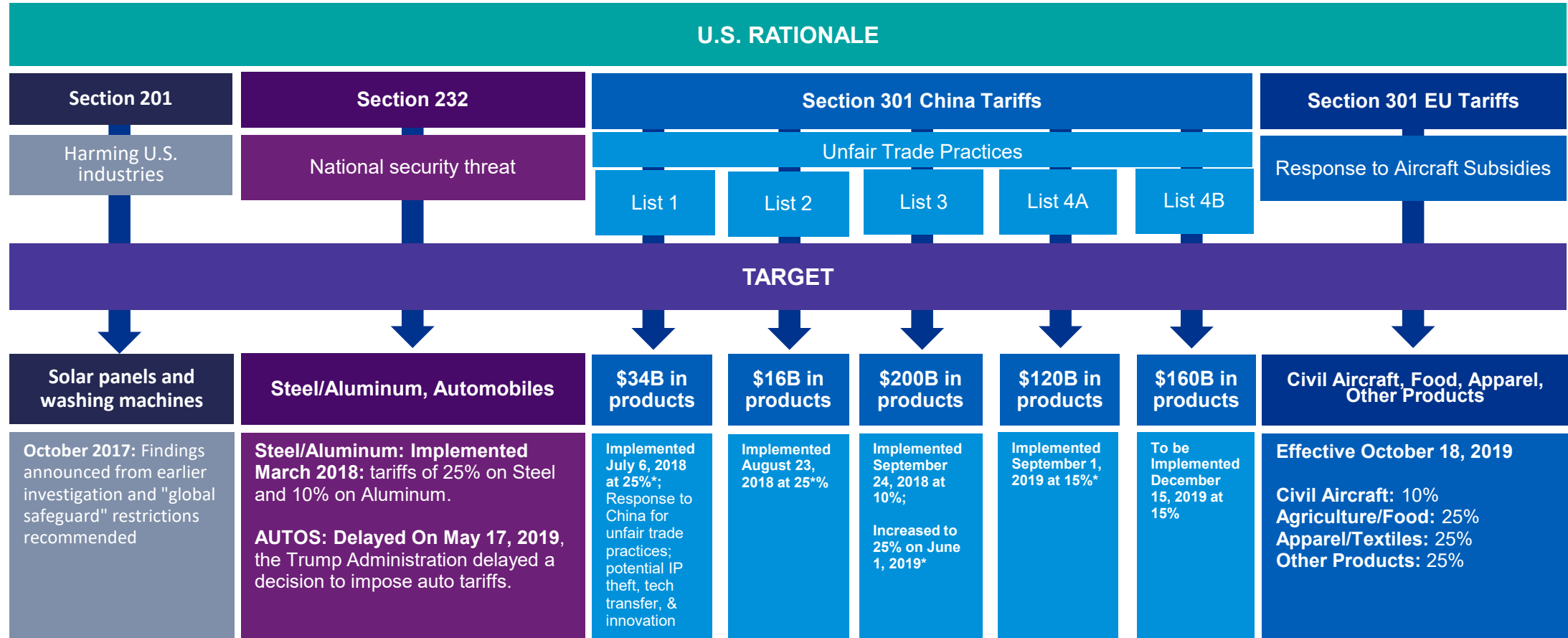
Source: Eurasia Group





# Current State of Tariffs

# Current state of tariffs

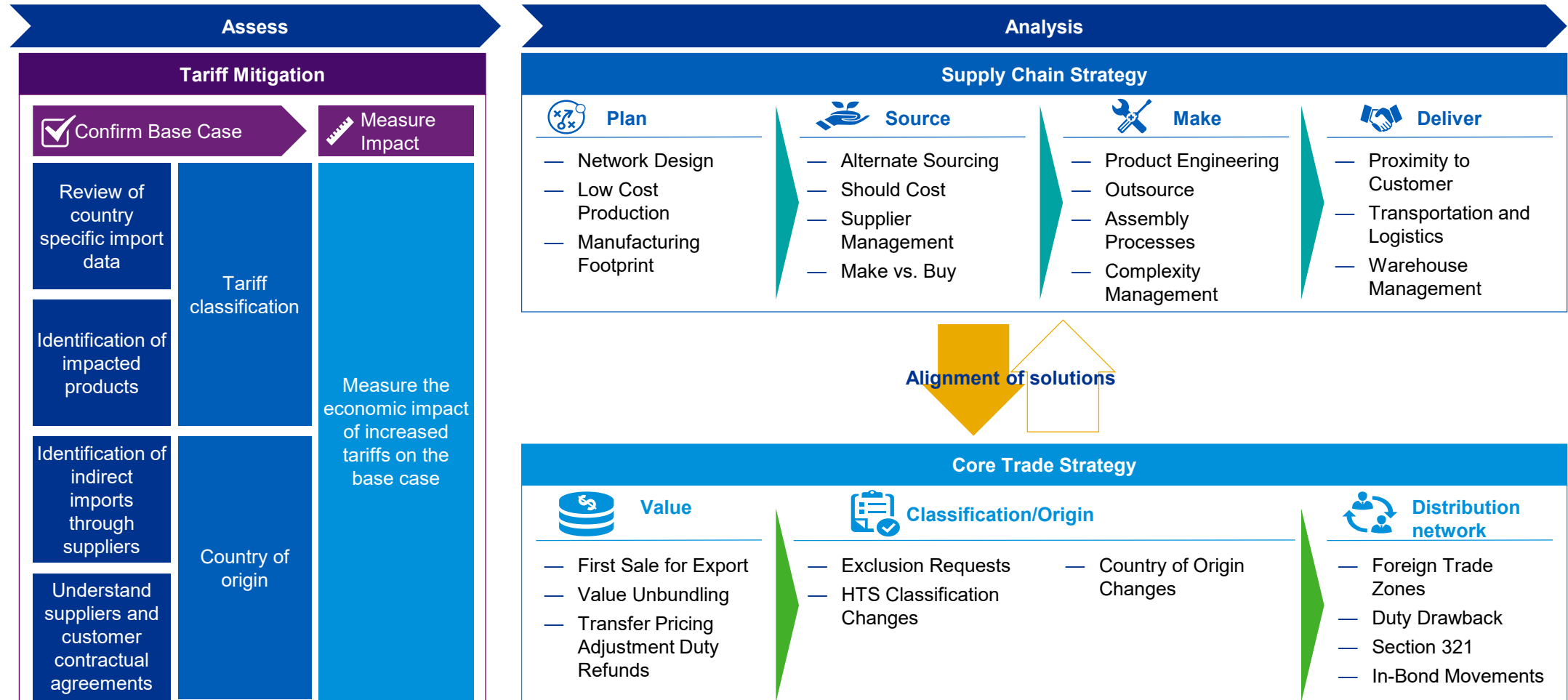


1) See Federal Register Vol. 83, No. 119, pg. 28710. 2) See Federal Register Vol. 83, No. 119, pg. 28710. 3) See Federal Register Vol. 83, No. 137, pg. 33608. 4) See April 27, 2017 White House memorandum to Commerce Dept., titled "Aluminum Imports and Threats to National Security." 5) See Presidential Proclamations 9704 and 9705 on March 8, 2018. 6) See Presidential Proclamations from March through May 2018. 7) See May 23, 2018 White House memorandum to Commerce Dept. regarding Section 232 investigation related to automobiles.



# Navigating Tariffs and Risk in Your Business

# Core Trade Mitigation Strategies



# Core Trade Mitigation Strategies

## Product Exclusions:

- List 4 exclusion process TBD
- Excluded for 1 year
- Not specific to applicant, but HTS/Product Description

## Tariff Classification:

- Tariff validation vs tariff engineering
- Opportunity small for China, but available for other COO

## Country of Origin:

- Substantial transformation
- COO of raw materials

## First Sale for Export:

- Available for all product lines
- Opportunity for all dutiable goods

## Duty Drawback:

- TFTEA benefits-8-digit substitution, simplified timeline, and document requirements
- 99% duty recovery on exports

# Core Trade Challenges and Risk Mitigation

## Product Exclusions:

- Low % granted in favor

## Tariff Classification:

- Risk of incorrect classification
- Primary and secondary review, rationale, and advance ruling

## Country of Origin:

- CBP focused on minor assembly, transshipment
- Validate upstream origin determination
- Precedent limited
- Advance ruling recommended

## First Sale for Export:

- Focus of CBP enforcement
- Should include full diligence to prospectively evaluate, and periodic testing
- Reconciliation available for diligence

## Duty Drawback:

- Data intensive process requires significant diligence on front end
- Application delays in CBP
- Subject to validation by CBP

# Section 301 Exclusions

## — Exclusion Statistics\*

- List 1
  - 10,800 exclusions submitted,
  - 2,900 granted (~27% success rate so far)
  - 6,500 denied and 1,400 still in evaluation stage
- List 2
  - 3,000 exclusions submitted
  - 300 granted (10% success rate so far)
  - ~1,500 denied, and 1,200 still in evaluation stage
- List 3
  - 13,000 submitted as of Sept 8th (deadline was Sept. 30th)
  - The vast majority are in public comment or evaluation stage
  - 10 granted; 46 denied

\*Office of the United States Trade Representative (USTR).

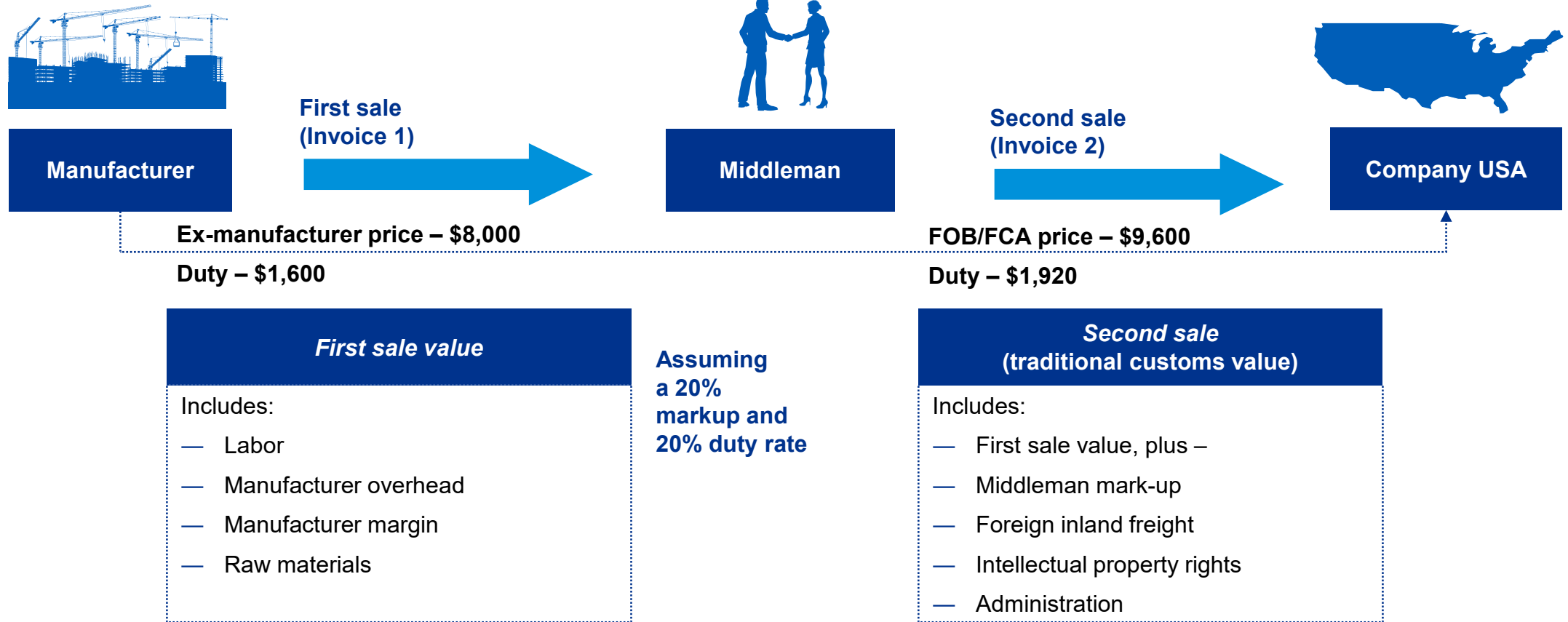


# Country of origin verification

- The general rule that CBP likely will apply is whether the good was substantially transformed in country, e.g. China.
- Companies should consider the following:
  - **Analyze** supply chain flows for major sub-assemblies, components, or other technologies from China incorporated into imported goods.
  - **Sample** US import data to identify products from China and/or potentially containing Chinese inputs.
  - **Test** the origin determination by applying the “name, character or use” test (e.g. “substantial transformation” test).
  - **Review** costed bills of material, sourcing information, and manufacturing instructions where available, and/or coordinate with vendors to validate accuracy and completeness of upstream origin determination process(es).
  - **Assess** impact or potential opportunities.



# First Sale for Export



**Merchandise shipped directly from manufacturer to company in the United States**

# Duty drawback

Duty drawback allows for a refund of 99% percent of duties for merchandise imported to the U.S. and subsequently exported, provided the goods qualify as any of the following:

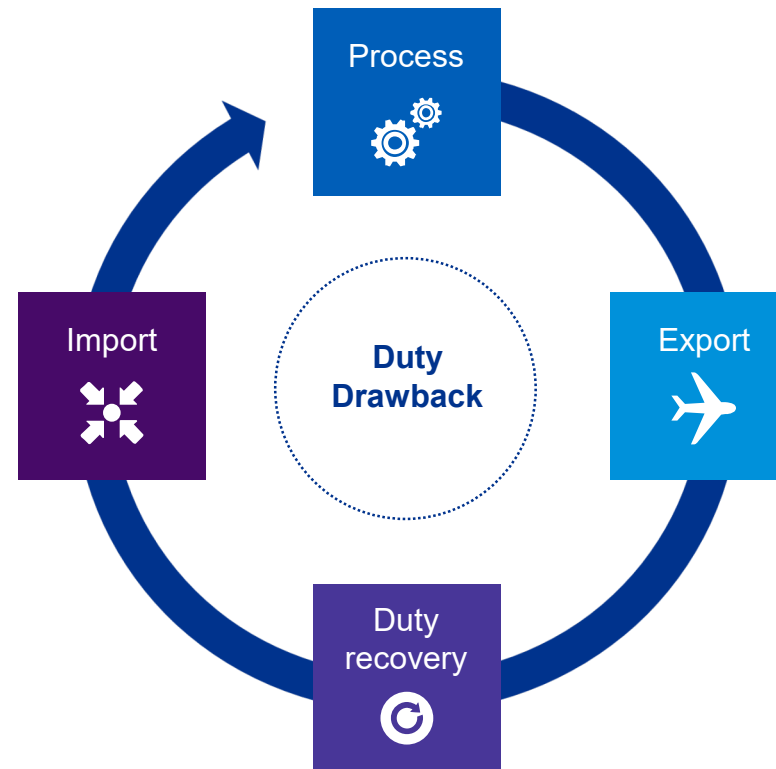
- Direct ID or substitution manufacturing drawback
- Direct ID or substitution unused merchandise drawback
- Rejected merchandise drawback

**In most cases, the exporter may claim drawback...**

- Within 3 years after the date of export; and within 5 years after the date of import

**Exporters can request expedited refunds...**

- Accelerated payment applications allow for accurate and compliant drawback submissions to be refunded within three weeks of electronic filing



**Types of drawback:**

## **MANUFACTURING**

- This applies when imported goods are used to manufacture an item in the U.S. that is subsequently exported
- A manufacturing ruling must be acquired from customs which displays an intent to claim drawback per the ruling requirements
- While there are several general rulings that may apply, there are instances where a specific manufacturing ruling is required

## **UNUSED**

- Referred to as “same condition” drawback, this applies when goods are imported into the U.S. and exported without material changes
- Unlike manufacturing drawback, no rulings are required prior to submission. However, the exporter must provide an application (or waiver) of its intent to export

# KPMG Tariff Mitigation Roadmap

## Roadmap

KPMG has developed a range of services to help clients mitigate the impact of trade disruption and rising tariffs...

### Impact Analysis and Tariff Confirmation

Confirmation that classification and origin has been correctly determined is a key first step in assessing Section 301 impact.

#### Assess Impact

- Analyze your company's trade data to assess tariff impact and anticipate future risks

#### Classification and Origin Review

- Confirm HTS classification and country of origin for your affected products. You may be surprised! Special emphasis for previously duty-free products

### Special Programs to Enhance Efficiency

A variety of special trade programs are available to help importers enhance efficiencies, reduce costs, and mitigate harmful impact of protective tariffs.

#### Foreign Trade Zone (FTZ)

- An FTZ warehouse or factory allows for practical cash flow and general trade saving benefits

#### Duty Drawback

- Allows for a refund of 99% of duties, including Section 301 duties, for goods imported into the U.S. and subsequently exported or used in manufacture

#### Temporary Imports (TIBs)

- TIBs allow for importation free of duty when an item will not enter U.S. commerce and will be exported or destroyed within one year

#### Chapter 98 Special Programs

- Variety of special trade programs allowing for reduced duty treatment for specific circumstances and industries

### Tariff Engineering and Country of Origin

By evaluating the manufacturing process throughout the supply chain, importers may potentially be able to avoid Section 301 duties altogether.

#### Tariff Engineering

- Minor adjustments to a products design may potentially cause a change in tariff classification away from Section 301 classifications

#### Changing Product Origin

- Careful evaluation of product manufacturing processes may enable importers to shift origin from China

#### Exclusion Requests

- Request a product-based exclusion from the tariffs moving forward and possibly recover refunds for duties previously paid

### Reduce your dutiable value

#### First Sale for Export

- If qualifying for this methodology, lower your dutiable value by claiming the manufacturer's price at entry and removing the middle-man's markup

#### Cost Unbundling

- Certain costs may be removed from the dutiable value of imported goods, reducing the overall tariff burden

### Driving Organizational Response

Your company's success in adapting to a rapidly changing world will depend on your ability to drive response efforts effectively

- Develop holistic tariff mitigation plan
- Think ahead and anticipate ripple effects throughout organization
- Build secondary effects into mitigation message
- Develop effective pitch to drive interest
- Identify and approach key stakeholders at all levels

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related



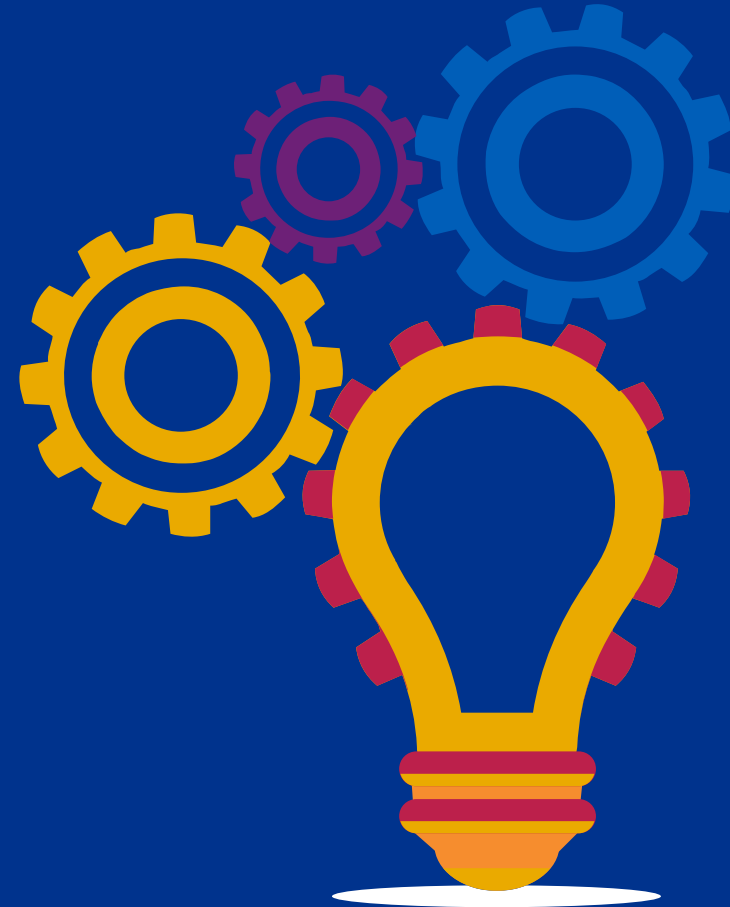
KPMG deploys a cross-functional framework and methodology to guide our clients, short-term and long-term, through assessing, managing and mitigating the impact of the new tariffs on their Financial Value Chain. Leveraging this framework and supporting tools, enables KPMG to assist its clients in defining its specific mitigation plan in a thoughtful, methodical, and holistic manner.

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# KPMG benchmarking results

Companies implementing  
**strategic  
tariff  
mitigation**  
strategies average  
**savings of  
59%** on  
**tariffs** into the U.S.



# Increased scrutiny from U.S. Customs and Border Protection (CBP)

## U.S. customs scrutiny

### Detecting unlawful circumvention is a top priority for CBP

- The Wall Street Journal and other news outlets have reported an increase in unlawful activities to circumvent the 301 tariffs, including:
  - (1) “**Transshipment**” of products through third countries
  - (2) Conducting **minor processing** of goods in a third country
  - (3) Shipping components into the United States for minor assembly in so-called “**screwdriver**” operations
- U.S. Customs and Border Protection is **aware of these practices** and is leveraging **advanced data analytics** to target importers it believes may be avoiding 301 tariffs, legitimately or otherwise
- Customs enforcement mechanisms include using CF28 requests for information, investigations, audits, and even sending overseas jump teams to validate importer claims





Thank you



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