BLANKROME
maritime

Trump Tariffs and Trade Policy Impact on the Maritime Sector

Matt Thomas
mthomas@blankrome.com

Capital Link
New York
October 2018

Steel and Aluminum Tariffs

- Tariffs went into effect on March 23, 2018: 25-percent tariff on steel imports and a 10-percent tariff on aluminum imports.
- Temporary exemptions for the largest suppliers—Canada, Mexico, and the European Union — expired June 1, but permanent exemptions have been adopted for steel for Brazil and South Korea, and both steel and aluminum for Argentina and Australia. (All the exemptions except for Australia came with strict quota limitations.)
- Commerce established a process by which companies can request waivers from these tariffs, taking into account national security considerations and whether a product is produced in the United States of a satisfactory quality.
- In June, the Commerce Department began granting its first product exclusions. As of August 20, the Commerce Department had received more than 38,000 exclusion requests and 17,000 objections—far more than expected—however, only a fraction of these have been acted upon, thus far.
- Notable impacts: domestic shipbuilding, oil and gas production, pipelines, vehicles.

BLANKROME maritime

China Tariffs

- Under Section 301 of the Trade Act of 1974, the White House first imposed 25-percent tariffs on $34 billion worth of Chinese imports, on July 6, 2018.
- Subsequently imposed a second tranche of tariffs at 25 percent on $16 billion of goods, effective August 23.
- A third tranche of tariffs covering $200 billion in additional goods was finalized on September 17, effective as of September 24, 2018, initially in the amount of 10 percent. Starting January 1, 2019, the level of the additional tariffs will increase to 25 percent.
- The president also recently threatened further tariffs on $267 billion of other Chinese goods imported into the United States.
- To date, importers whose products are subject to Phase 1 and 3 can file exclusion requests, but outlook for Phase 3 is uncertain, leaving tittle recourse for U.S. companies suffering critical and disproportionate harm from the tariffs.

BLANKROME maritime

China Tariffs - Impacts

- Impacts across broad range of products, sectors, including machinery, apparel, vehicles, furniture, toys, chemicals, healthcare and others. Particular impact for liner, rather than bulk, cargoes.
- Over 10,000 filings from impacted companies and persons in two USTR dockets. US manufacturers and major retailers among those raising concerns.
- Last minute exclusion for port cranes, but other cargo handling equipment to excluded.
- Significant impact on offshore energy industry, both petroleum and renewables.
- China’s retailiation – agricultural commodities, chemicals, LNG
- Indirect impacts are dramatic: value of the yuan allowed to fall significantly, US oil exports to China fall dramatically.

BLANKROME
maritime

Reimposition of Iran Sanctions

- On May 8, 2018, the US president announced the US withdrawal from the Joint Comprehensive Plan of Action (JCPOA).
- Largely impacts non-U.S. businesses, as the primary effect is to re-impose “secondary” sanctions – sanctions penalizing persons and companies in other countries for their dealings with Iran’s government, officials, and key industries. The United States’ “primary” sanctions on Iran — the rules barring US persons (including US banks) from most Iran dealings — have remained in place even after the JCPOA was adopted.
- First Phase: after a 90-day wind-down period (ended August 6, 2018), when the US government will re-impose sanctions on transactions and trade in currency, gold and precious metals, graphite, raw or semi-finished metals, such as aluminum and steel, coal, certain industrial software, Iranian sovereign debt, and Iran’s automotive and aviation sector.
- Second Phase: following the 180-day wind-down period (ending November 4, 2018), the US government will re-impose sanctions on Iran’s port operators, shipping and shipbuilding sectors, petroleum-related transactions, dealings by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions, SWIFT messaging, insurance services, and energy industry.
- The major difference this time is the lack of multilateral support for the US sanctions, so we are seeing signs of continued Iran trade, firewalled off from potential US retaliation.

BLANKROME maritime

Other Key Iran Sanctions Concerns

Ongoing Dollar-Related Risks Arising From US Primary Sanctions

- The most common source of sanctions-related difficulty for non-US maritime companies is related to the use of US dollars. Because US dollar transactions generally clear through US banks (even if there is no other US persons involvement), any dollar payment linked to Iran or other sanctions target can bring the transaction within the jurisdictional scope of the primary US sanctions regulations. Those regulations make it unlawful to provide any services (including financial services), directly or indirectly to Iran; they also bar any person from causing a US person to breach US sanctions rules.
- Accordingly, a non-US person cannot send or receive any payments related to a vessel calling Iran through a US bank. This includes freight payments, port and terminal fees, bunker payments, agency fees, broker commissions, or any other payments. OFAC has even advised that it is a violation to pay time charter for a vessel in dollars, if that vessel calls in Iran occasionally during the course of a long-term charter. Similar restrictions on using US dollars should be observed if the vessel has an Iranian resident charterer or shipper, or if it carrying cargo to, from, or transshipped through Iran, or if it has any other identifiable Iran connections.
- $5.2 million recent penalties against JP Morgan Chase for processing of airline payments related to sanctions targets.

BLANKROME maritime

Other Recent Sanctions Developments

- Russia: sanctions on major industrial and commodities companies created havoc with supply chains; general licenses now allowing maintenance and wind-down of existing contracts and operations. Sanctions on arctic, shale and deepwater oil exploration and production remain in place.
- Venezuela: Continued escalation of sanctions, and uncertainty regarding requirements to use sanctioned "petro" cryptocurrency for port charges, have generated unease for shipping

BLANKROME maritime

Other Important Recent Trade Developments

- New restrictions on inbound foreign investment - CFIUS modernization. Foreign Investment Risk Review and Modernization Act of 2018 (FIRRMA) enacted in August 13, 2018, broadening the scope of CFIUS reviews, with new focus on technology transfer, indirect control, countries of special concern, sensitive real estate and infrastructure (including maritime)
- USMCA (NAFTA modernization) – No major impacts for shipping, but could be a template for the Administration's China strategy

BLANKROME maritime