



Trade Wars

Global protectionism as a threat
to cross-border transactions

Virtual Round Table Series
Member Collaboration 2019



Trade Wars

Global protectionism as a threat to cross-border transactions

Protectionism is nothing new. Governments and companies have been engaging in it for time immemorial in order to support their own interests. What is new, is the global scale of its most recent manifestation.

The rise of protectionism across the western world, caused by an erosion of living standards, has sparked a trade war which threatens to seriously damage the global economy. The main players in this war are the world's only two genuine superpowers – China and the United States (US). Once upon a time, this would have been an easy war for the US to win, when China sold and the US bought. As China has risen, this dynamic has changed and now China is also an important market for US goods and services; which creates a thorny problem for President Trump.

While the US and China are the major players, other countries have also been deeply affected. Germany's export-oriented economy is struggling, while France has pledged to implement a digital tax on foreign digital giants selling services to French consumers. In the United Kingdom, the government, along with other European partners, have levied anti-dumping tariffs on Chinese steel, in an effort to prop up the failing domestic steel industries. Finland was on the receiving end of increasingly

frosty relations between Russia and the European Union (EU), following the annexation of Crimea and EU sanctions against Russia, have put countries like Finland on the receiving end, when Russia rolled out a sweeping embargo on food imports.

The main weapon of economic protectionism is the tariff, which is usually applied to imports that might threaten domestic producers. They can also be used aggressively to cause harm to an exporting country.

In US legislator language, for example, Section 301 tariffs apply to Chinese goods, while Section 232 tariffs apply to aluminium and steel. US tariffs on some Chinese products, have risen as high as 25 per cent, prompting retaliatory tariffs from China and a desperate scramble from those affected to find ways to avoid the extra charges.

In these challenging times, companies require the help of experts in international trade law to find ways to mitigate these problems. Reclassifying products is a complex process, but it can be worthwhile if it reduces import costs. Swapping the country of origin to avoid targeted tariffs is another strategy, but that does require the sourcing of new suppliers in other countries and an upheaval of the supply chain – not a decision to be taken lightly. Certain

Chinese exporters have resorted to 'maquiladora' tactics, assembling goods in countries such as Mexico for onward shipment across the US border.

The filing of exclusion requests has suddenly become big businesses for international trade lawyers, as clients who were previously tariff free suddenly find themselves hit with levies.

In many cases, there is considerable doubt around whether hastily implemented tariffs and taxes are actually legal. France's digital tax, for example, may be in contravention of European Union (EU) law because it is too similar to other forms of tax already controlled by the EU.

It is clear that the global trade war is creating significant headaches for a large number of businesses, both large and small. If they are to continue trading profitably in this environment, they will need to the help of trade experts to help them mitigate any damage. The following feature is a discussion between six international trade law experts based in the European Union, US and China about the current landscape of protectionism.



The View from IR

Rachel Finch

CHANNEL SALES MANAGER

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.



ENGLAND

Katherine Evans

Senior Partner, Mirkwood
Evans Vincent

☎ 44 20 7194 8400
✉ katherine@mirkwoodevansvincent.com

After graduating from the University of Cambridge, Katherine initially pursued a career in marketing and business development, before re-training to become a lawyer in her mid-twenties. After completing articles with Eversheds, she joined specialist shipping and international trade practice, Mills & Co. where she remained until joining the international law group of the US telecommunications giant, AT&T in 1997.

Katherine held a number of positions within the AT&T international legal group, including as lead lawyer for AT&T's international outsourcing business, before leaving to form Legal Hobbit at the end of 2006, the predecessor practice to Mirkwood Evans Vincent.



FINLAND

Lauri Railas

Founder, Railas Attorneys Ltd.

☎ 358 20 7348 654
✉ lauri@railas.fi

Dr Lauri Railas, has a multi-dimensional experience from both private and public sectors including international organizations. He is the founder of Railas Attorneys which offers legal advice in international business law across areas such as contract law, international trade and transport, insurance and civil liability, IT, privacy, EU law, competition, public procurement, litigation and arbitration.

Dr Railas holds a title of Docent at the University of Helsinki and has taught in several universities in Finland and abroad. He is a regular contributor of conferences organised by international organisations in a number of countries and holds training sessions especially in international trade law in local chambers of commerce and companies.



NETHERLANDS

Nico Ooijevaar

Lead Partner, McMAN
Ooijevaar

☎ 31 20 800 4860
✉ nooyevaar@mcmanco.com

Nico Ooijevaar has practiced customs and international trade law since 1980. First as a lawyer for Dutch customs based at Amsterdam Airport, then in private practice at KPMG's Dutch tax law firm, where he founded KPMG's Global Trade and Customs Practice.

Since 2006 he is lead partner and principal lawyer of McMan & Co, a niche firm of specialised trade and customs lawyers and advisors, in its Dutch office at Amsterdam Airport, less than 300 meters from his first office in 1980 at Dutch customs.

His practice includes all phases of trade and customs law, including EU indirect taxes levied at import or export, like excises duties and Value Added Tax. His work ranges from counselling and import planning, to representation of clients before government agencies in the Netherlands and other EU member states, including the European Commission, as well as international organisations like the World Customs Organization and the World Trade Organization.



U.S - NEW YORK

Robert Silverman

Partner, Grunfeld, Desiderio,
Lebowitz, Silverman & Klestadt
LLP

☎ 212 557 4000
✉ rsilverman@gdlsk.com

Robert B. Silverman is one of the firm's founding members and heads the firm's litigation group.

He routinely assists clients across a wide variety of industries in structuring import transactions to minimise customs duties, ensure regulatory compliance and eliminate penalty exposure. He represents companies during audits involving classification, valuation and eligibility under Free Trade Agreements such as NAFTA, CAFTA, AGOA, GSP, etc. He also counsels clients in connection with customs investigations, seizures, exclusions, penalty and liquidated damages assessments.

Robert is also regarded as one of the foremost footwear classification experts in the United States and has been involved in all major footwear controversies affecting imports for over 30 years.

Prior to entering into private practice, he served as a trial attorney in the Customs Section of the Civil Division of the US Department of Justice where he represented US Customs in proceedings before the Court of International Trade, Federal District Courts, and the Court of Appeals for the Federal Circuit.



CHINA

Peter C. Pang

Managing Partner, IPO Pang
Xingpu

☎ 86 213 3821 918
✉ ppang@ipopang.com

Peter Pang is the founder emeritus and former Managing Principal of IPO Pang Xingpu, a premier international law firm well-known for its ability to obtain difficult, hard to get licenses, permits, approvals and government support for entry by a foreign enterprise into highly regulated Chinese industries. These include pharmaceuticals, gaming, telecommunications, television, information technology and retailing, weaponry.

Peter actively represents foreign companies interested in doing business in China, splits his time between China and the US, and zealously protects his foreign clients' intellectual property rights, including trade secrets, in China where IPR protection is still evolving to reach international standards.

He is a noted expert on doing business in the People's Republic of China, an expert on the legal and economic effect of China's entry into the World Trade Organization (WTO), and a well-respected attorney and businessman having represented, founded, operated and sold a number of businesses ranging from internet and gaming companies to manufacturing and distribution companies located in the PRC.



U.S - TEXAS

Adrienne Braumiller

Partner, Braumiller Law Group,
PLLC

☎ 1 214 348 9306
✉ adrienne@braumillerLaw.com

Adrienne Braumiller is the founder of Braumiller Law Group PLLC and an innovative force in the international trade law arena. With more than 25 years of experience, she is widely recognised as a leading authority in customs, import, export, foreign-trade zones, free trade agreements and ITAR compliance.

Adrienne has been involved in every aspect of import and export compliance, from developing compliance programs to conducting audits and assessments, representing clients who are under investigation, preparing and submitting voluntary disclosures. She also prepares and files classification requests and licenses, analysing whether specific transactions should be pursued, providing tailored training on specific import/export topics, addressing penalty assessments, and serving as an expert witness in a number of trade cases.

In May of 2018, Adrienne was once again selected by Chambers and Partners as a Leader in her Field related to International Trade and Customs for both the USA and Global. This is the fourth year in a row Adrienne has been selected by Chambers (The Chambers Guides have been ranking the best law firms and lawyers since 1990, and now cover 185 jurisdictions throughout the world).

What advice can you provide to clients, within current regulations, to minimise the impact of punitive tariffs and protectionist measures on businesses in your jurisdiction?

U.S, New York - Bob Silverman (RS)

Regarding imports into the United States, the process is always the same. We've seen tremendous amounts of tariffs imposed on imports from China, but we have also seen tariffs imposed on steel, aluminium and washing machines from all parts of the world.

The US President is using tariffs to reinforce his foreign trade policy, so we need to determine the scope of the sanctions, and then identify the products that are covered by the sanctions. We find out how the sanctioned product is classified in the harmonised tariff schedule, and what country of origin is covered.

The first thing we always do is to see if our client's product can be classified under B instead of A, in order to avoid the tariffs. We can look for customs rulings on it, or we can just figure out that the classification is wrong and then work with the client to change the classification. Sometimes our client can change their product to get to a different classification that puts them outside the sanctioned tariff provision.

In terms of country of origin, we see that some people are trans-shipping, which is against the law. Instead of saying made in China, they say the goods are made in Vietnam and then they ship it from there. Other people have shifted their total manufacturing operations to Vietnam or other countries. Other groups look to split the operation between China and Vietnam. It depends on the shifts the clients have to make to be outside the sanctions.

The last thing is value. If you're now being hit with a 25 per cent duty that you never had before, then all of a sudden you care about your customs value because duty is now 25 per cent of dutiable value.

We work with clients to either reduce the dutiable value by unbundling a price, or we use the First Sale Rule. This rule allows you to have your goods valued at a factory price, as opposed to a higher trading company price. That is what we've been doing pretty heavily since Mr Trump came into office.

Netherlands - Nico Ooijevaar (NO) These customs facilities are not new, we always had them, but low duty rates were not really an incentive for importers to actually benefit from those facilities.

Now the trade wars have raised duty rates to levels not seen for decades, the use of customs facilities have become much more urgent. Importers and exporters now have to use them in order to mitigate the effect of the higher duty rates.

Although for the moment higher duty rates are not such a largescale problem in the European Union (EU) as it is in the US, things may change rapidly.

Already we have retaliatory rates, which were introduced because of the US duty increases. We see that companies have an increased interest in (re)classification of products, the application of the country of origin and the customs value of the products.

Facilities like an EU binding origin ruling (BOI) may help to prevent disputes at import, particularly when more countries are involved in the production of the imported good.

The EU has tightened its customs valuation rules not long ago and importers have seen their customs values increased. As duty is levied on the customs value, increases in duty percentage will have an even bigger effect. We have found solutions for our clients for the higher customs value but

they will require more effort of importers to apply them. Higher duty rates are certainly a trigger for more effort.

U.S, Texas - Adrienne Braumiller (AB) I totally agree with starting out with the classification and looking at whether it's accurate. This tends to be an area where a lot of mistakes have occurred, and certainly helps us to figure out next steps.

Beyond that, we've been very successful in navigating the exclusion process under both section 232 for aluminium and steel, as well as the Chinese tariff section 301. We have filed hundreds of exclusion requests and been very successful at helping companies get their products excluded. When that happens on the 301 side, the refund is back to the date of the implementation of the tariff and then it's good for a period of one year. That's been extremely beneficial to our clients.

Additionally, once an exclusion has been granted for a specific tariff line and product description combination, other parties can also take advantage of that exclusion. We're also helping our clients navigate and identify those opportunities where they didn't actually spend the money to file the exclusion request, but can still take advantage of it.

China - Peter Pang (PP) Of the three strategies outlined to counteract the effects of Trade War, we are seeing shifting of sourcing most commonly employed.

There are several factors that are involved here. Firstly, over the last few years, manufacturing costs in China have gone up and a lot of people are looking at moving some of their manufacturing to lower cost countries. This is driven by both economics as well as lower the risk of 'putting all your eggs in one basket.'



Robert Silverman pictured at the 2018 IR Annual Conference in London

We are still seeing US companies that wish to access the Chinese market and thus have elected to shift their manufacturing to China, as well as Chinese manufacturers themselves, really rethinking their entire production and sourcing strategy. They need to see whether it makes sense to shift some of this to other countries.

In the last six months, by our measure, we have seen 30 to 35 of our client companies re-examine their own production in China and make strategic decisions to move their facilities to Vietnam, Cambodia, Thailand, India or Bangladesh. Some went through the exercise, then decided that China is the place to be and is irreplaceable for their kind of manufacturing. They have elected to make further investments to bolster their strength. Overall, we think the strategic exercise of re-examining China in view of what could be a prolonged trade war with the US is the correct strategy, but, ultimately, we suspect only a small percentage will totally leave China. It's too important of

a market, the products made in China are too good and the 'learning curve' required to beat China is too steep. A lot of the decision to move or not move will depend on the sector that they're in and the enterprise's long-term strategic planning.

Nobody likes the trade war. China is hurting as the poor are getting poorer and factory workers are laid off. We've seen a tremendous rise in crime in certain areas. Even the factory owners are hurting, as they are forced to drive last year's Ferrari – poor guys. But overall, recession fears are driving everyone to run for cover. The right strategy is 'balance', because 'knee-jerk' reaction to the US policy is not economically sustainable, nor justifiable, as it may only be temporary.

U.S, Texas - AB I also understood that China had an exclusion process for US companies that were importing into China, but I haven't heard too many people taking advantage of that or whether it's been very successful.

So I didn't know if you knew anything about that Peter?

China - PP When we represent the foreign side, we have engaged with this. A lot of it is very complicated, simply because everybody is playing with policy and changing policy. Those decisions are made at a level that, by the time it gets down to the customs level, have already changed. So it's massive confusion at this point, but we have managed to get some of them through.

U.S, New York - RS We had some clients who were exporting US goods to China and they tried to get out of the sanctions that China imposed on US goods by shifting operations to Canada. I found that the country of origin rules in China for imports are different than the United States rules for a country of origin.

It's not just substantial transformation, but it is much more complicated in China. So it is not easy to skirt through that bureaucracy.

U.S, Texas - AB I've also noticed some Chinese companies actually moving to Mexico and manufacturing in maquiladora operations.

There are a lot of ruling in the US though, that say, regardless of manufacturing in Mexico, substantial transformation hasn't been accomplished. It is therefore still a product of China when it comes into the US.

There are all kinds of crazy things happening and the important thing is for people to take a step back and really do the analysis on country of origin - both into China and into the US. This will help to ensure their investment ends up being a good one.

China - PP Aside from the legal analysis of proper classification and whether there's substantial transformation, there's really a very practical business issue. Can you just pick up your manufacturing and go elsewhere? The business reality is no.

Many of our clients find that it makes sense, legally, to effect substantial transformation in certain countries. This achieves a proper country of origin designation, in order to avoid tariffs, but finding the right suppliers and assemblers elsewhere is next to impossible. Matching supplies and component suppliers with final assemblers in a designated location, also often results in long delays and supply chain nightmares.

China has the stranglehold on many parts and components needed in the supply chain. You just can't pick things up and move them to another country and expect that country's workforce to be able to complete their learning curve overnight.

U.S, New York - RS It's clearly a multi-year process to be able to shift out of China and there's no capacity to be able to do it in Vietnam, Cambodia or India at this point.

U.S, Texas - AB On exclusion requests, it is a valid argument to say that we could source from another country, but they don't have the capacity and that, in effect, leaves us without an option.

England - Katherine Evans (KE) In the UK, we have participated in the European anti-dumping tariffs on steel from China. The government has also imposed criminal

sanctions on any company whose imports of Chinese steel are over and above the amount we've agreed that they can import.

That does lead to some interesting issues about origin, where, for instance, UK companies are suddenly being approached by companies from other Asian countries offering to sell steel said to originate from (for instance) Vietnam. This is something we haven't seen previously, and so we have advised our clients to look carefully at the exporter in each case and ensure that it is a steel manufacturer and that it has documentation to demonstrate that its steel was produced in Vietnam (or anywhere other than China).

One iceberg ahead, is that the UK government is still focusing on promoting the UK post-Brexit as a bastion of the free market economy, seeking to agree tariff free trade with the European Union and with the rest of the world. The more likely outcome is that larger economies will turn around and say to the UK that it can have its free or 'frictionless' trade deal, but only if it agrees to lower standards which previously restricted free trade with the UK when it was part of the EU.

The public stance about lowering tariffs would also appear to be rather different from the government's stated position. There is a significant minority (and it may even be a majority) of the general population, which seems to be in favour of a British version of Trump style protectionism, which means protecting domestic jobs and domestic manufacturing at the expense of tariff free trade.

Finland - Lauri Railas (LR) Finland is an EU member state and part of the customs union. You can lock tariffs by obtaining binding tariff information, but each member state must grant binding tariff information separately, despite the European Commission coordinating them. There is always a possibility that the member states may go in different directions in any situation.

Where the reclassification of products is concerned, I would say as legal counsel that there is a risk that the customs authorities use their power to reject the classification afterwards. They may claim the original tariff retroactively and use a discretionary sanction. This can be fought by asking for binding tariff information. I currently have a case where I invoked the concept of legit-

imate expectations against the Finnish Customs, which applied article 78 of the Customs Code, when they tried to reclassify products retroactively.

When it comes to shifting the sourcing, customs rules say that the country of assembly is decisive in determining the origin of the product. Punitive tariffs come and go, and it is very difficult to transfer the production on the basis of them, because politics may change.

Obviously, paperwork must be accurate and must be represented or evidenced by documents where necessary. The possibility of the customs authorities interfering afterwards is always a danger.

U.S, New York - RS In the US, you have the opportunity to get a ruling from customs and I know in the past we've gotten rulings from UK Customs about classification and that ruling is good for anywhere in the EU.

So I was wondering if that's something that you use with your clients in Europe?

Finland - LR I have a case where the Finnish Customs have not followed the classification done in Sweden, although this would be the natural approach. As a result, I cannot invoke the Swedish classification made prior to the customs decision, as BTIs are binding on the holder only.

Netherlands - NO In that case a binding tariff information (BTI) issued by Swedish customs may have helped. According to EU customs law, all binding tariff information (BTIs) issued by the various customs organisations in the EU are valid throughout the EU. That's the rule.

Unfortunately, new insights may lead to customs changing their minds about the classification. Also, Court rulings or EU legislation may affect the classification of certain products. Holders of a BTI have at least the guarantee that they are not affected by a change in classification for a prescribed period.

U.S, New York - RS Adrienne talked about filing for exclusions on Chinese products, but you can only file up to a certain date. The time limit for filing for an exclusion from list three China 301 duties runs out on September 30, so if people want to file for exclusion they need to get this done soon.

SESSION TWO - CHANGING CLIENT PROFILES

Are you seeing a different client profile since protectionism became an issue in global trade? Any examples?

U.S, Texas - AB I would say that many more small or medium-sized companies, have definitely come to us for legal services with regards to exclusion requests. They need to look at every single potential way to navigate these additional tariffs.

While generally we have larger companies seeking customs and trade-related assistance, we have definitely seen an uptick in the small to medium-sized companies because of the economic harm that these tariffs have waged to their bottom line.

China - PP Our clients are often Chinese firms that are trying to be compliant and trying to figure out a way to avoid raising prices relative to the buyers, because they know buyers have choices.

We have many more legal inquiries from buyers these days, that are purchasing from Chinese suppliers. They are trying to figure out how they can cope with the impending tariffs and how they can minimize the impact by working with Chinese partners on some form of cost sharing.

A lot of the buyers with products going into the United States can't pass on the increases. The Chinese sellers are therefore looking at other markets, because the cost for US buyers to buy from China may be prohibitively high, resulting in lower orders. Africa is becoming a huge boom market for a lot of our clients as there is goodwill and good appetite for Chinese made products.

Chinese suppliers want to work with buyers from the US as it is still a robust opportunity. If there's a way to work with US buyers in keeping the price down, then Chinese sellers will work with them, but, if not, they'll go in another direction. The factories keep churning products and they must go somewhere.

U.S, Texas - AB We've had a lot of US companies seeking some kind of guidance related to the retaliatory tariffs in China.

These companies are actually seeking to manufacture their goods outside the US, so they don't get hit with retaliatory tariffs in China, which is really interesting because I'm sure that wasn't the intention when these tariffs were put in place.

From the section 301 standpoint, I don't think our Administration thought it would be US companies actually leaving the US to avoid retaliation in China.

U.S, New York - RS High duty rates in the United States have been traditionally imposed on apparel, footwear and handbags. Importers of those products cost them to take these high duties into account and they pass right through to the retailer and on to the consumer.

Now we have a big group of importers who were enjoying duty-free status, or low duty rates at five per cent or less. These tariffs are quite a surprise for them, and it's created a whole new class of customers for us because they didn't care before how their products were classified, because their products were duty free under A and free under B. Now their duty rates could be 25 per cent under tariff provision A and free under B, so that's a whole new class of clients for us.

When these tariffs hit, the importers go back to their Chinese producers and ask them to absorb some of the increased duty cost. The Chinese producers may accept a little bit of it, but most of it falls on the importer because they can't push it out the back end since the consumer won't pay for it.

So it's the businesses that were previously duty-free importers that are now new clients for us.

Netherlands - NO We have seen an increase of mainly smaller companies that suffer from these Duty rates, particularly on the import of products which have been

targeted by the EU for retaliation tariffs, but not on the scale as is happening in the United States.

U.S, New York - RS I think we're going to see some additional duties on goods from France if they oppose this additional digital tax. If the US adds tariffs on French goods, they will do the same to us. We will be doing more business together.

Netherlands - NO We have a problem with our Dutch cheeses as well, apparently.

U.S, Texas - AB There's actually two different things happening there – separate tariff threats occurring at the same time. One is on the EU dealing with those subsidies and the other has to do with the digital tax.

England - KE The UK is also bringing in a digital tax, but I suspect that its more as a negotiating tactic in a trade deal with the US. They will bring it in and then it'll be something that they're prepared to ditch in order to get the trade deal that they want.

U.S, New York - RS These anti-dumping duty cases are all 'bet your company' type cases. By that, I mean if the U.S. government imposes anti-dumping duties, the duty itself is often more than the value of the merchandise.

The Department of Commerce and the United States International Trade Commission are much tougher on dumping cases today than they have been before and the margins (additional duties) are through the roof.

We're working with more clients on dumping cases and a lot of them involve goods from China. People are really getting hurt.

England - KE That's really become a major issue for British manufacturing, because we had a steel industry and it was already struggling. The dumping of steel from China was the death knell for two of the largest companies British Steel and Tata.



Katherine Evans pictured at the 2018 IR Annual Conference in London

If we don't have our own steel industry, then we're going to be constantly at the mercy of other countries importing steel. Manufacturers are already complaining about the quality of some of the steel that's being imported.

If the aim of dumping Chinese steel was to destroy the European steel industry, it has certainly succeeded in the UK and there are going to be bigger issues ahead.

U.S, Texas - AB I know that there are so many products with anti-dumping and countervailing duties attached to them, but most of it is really targeted on China.

Some of these products can be hit with anti-dumping and countervailing duties, but also with Section 301 or Section 232 tariffs. It can get to be really astronomical and people in those instances are really in a bad position. They have to figure out what they can possibly do to avoid that.

Netherlands - NO Importers need to bear in mind that they are always the ones footing the bill in anti-dumping cases, because it's not the exporter that pays it but the importer. As anti-dumping investigations usually take a long time, the EU immediately imposes a provisional duty claim on the affected products which becomes due after the anti-dumping duty has been set

by law. The importers will then be faced with a retroactive claim of the provisional duty that may stretch back for three years.

Suspected evasions of anti-dumping duty are investigated by an EU agency (OLAF) in the countries of export and their reports are used by the customs organisations in the EU member states to collect any additional duty. Importers who have imported goods into various member states may therefore be faced with legal disputes in all of these states if they want to challenge the conclusions of the OLAF report.

England - KE We've managed to avoid this in the UK by having robust risk management profiles. The UK government loves risk management profiles.

If you think that you're importing steel and it might be at risk, you have to prepare your due diligence document and your risk management. If you go through that and it passes the red-face test, then the UK Government or the Department of Trade in the UK will protect companies from any criminal prosecution or fines.

Netherlands - NO Even if you have done everything to minimize your risks, you may still be forced to pay the anti-dumping duty if you are the importer of the goods. The mere fact of being the importer triggers the

debt, not any liability for the actual dumping of the goods. The UK may waive the duty and the fine for the importer, but the EU will collect the money from the UK anyhow, as duties are part of the EU's own resources. The UK tax payer then foots the bill, at least until Brexit.

England - KE Of course the UK has no leverage with the European Union anymore.

Finland - LR I don't really see any changes in client profiles due to protectionism as such, except the Russian counter sanctions after the annexation of the Crimean Peninsula, when Russia prohibited the import of fresh foodstuffs from the European Union.

This created a lot of problems for my clients and I have been involved with the impact of this on contract law. These measures have an impact on sales agreement and also various ancillary agreements and transport contracts.

As regards anti-dumping, I had a case where the import of steel products from China and the classification of the steel was relevant. There were minor differences between two classes of product, and one of the classes produced 57 per cent tax and the other zero.

SESSION THREE - E-COMMERCE

Has the advent of e-commerce and multi-national retailers such as Amazon/Google affected the types of cross-border deals you do? Any examples of how you can help e-commerce clients deal with protectionism in your jurisdiction?

China - PP Google is partially blocked in China. Amazon has made efforts to be present in China, as a competitor to Alibaba, Taobao and TMall, but it doesn't have the backend nor product selection to be able to compete with the best of the best online retailers in China. Offering unique products at low prices with overnight delivery is still the game that wins buyers.

China has been mentioned many times in this conversation and it seems like this trade war is very much focused on China. As a businessperson from China, I would just say 'we didn't start it.'

As to where this is all going to end up, it all depends on who blinks first. The latest news is that the US/Trump blinked first, and in this latest round, the US decided the additional 10 per cent tariff would be placed on hold on certain products until 2019. That's not a win, but a temporary reprieve on an otherwise destructive and non-productive series of tariff dates.

China, on the other hand, is taking the long-term view that we are going to focus efforts on continuing to grow investment into third world countries. This involves focusing investments on mineral resources, green energy-related initiatives, artificial intelligence and related technologies, medical advancements and robotics equipment.

From our standpoint, e-commerce is going to break the international border wall very quickly. I'm already seeing that a lot of Chinese can now purchase on Amazon, as well as other e-commerce platforms. And then, of course, we see a lot of foreign parties are buying from Chinese websites. One of our clients has translated a popular Chinese website into the English language

and enabled foreigners to purchase products directly from Chinese e-commerce retailers.

If there is any redeeming value in the whole trade war, it is that it has really given some of our Chinese clients a completely new perspective on e-commerce. New perspectives mean new strategies. New strategies mean new opportunities. New opportunities mean new commerce.

Netherlands - NO The French have introduced this digital tax, but the EU treaties prohibit new taxes that do exactly the same as harmonised taxes in the EU.

One of these taxes is the turnover tax, the value added tax (VAT) which taxes the added value of goods and services. Simply introducing a new turnover tax such as the digital tax by France may violate this prohibition.

The affected companies will no doubt employ every argument to fight the imposition of these taxes and the legality of the tax under EU law will be one of them.

An EU introduced tax would solve this obstacle but member states have not reached consensus and the introduction of these taxes by individual member states themselves will create lots of turmoil, not only through American retaliation but also internally in the EU.

Finland - LR In Finland, we have just had a new government established after the elections and there is nothing like this in their manifestos.

Each member state is free to adopt new taxes, however in areas where taxes already exist, like VAT, the member states are bound by them because this falls into the EU competence.

When companies enter the European Union through one of the member states, they can sell goods and services to other member states free of duty, and this is guaranteed by the EU treaty. If there are impediments to this, it may obviously cause problems and these taxes may be examined by the European Commission, and finally by the European Court of Justice.

England - KE The UK has a carve-out in terms of its tax policy, so obviously while we can't do anything in the EU that would circumvent the VAT rules, each country can set its own VAT rate.

Different countries do have different VAT rates and my understanding is that they can legislate on tax matters that affect their own country. So there's nothing to stop the UK, even if it remained in the EU, from imposing a digital tax.

I do a lot of inward investment work, particularly with young American technology companies. They've always seen the UK as a friendly place to come and set up in Europe, since they like to establish themselves in big cities in the US and then head to London. I'm seeing that work tail off and I've seen at least three clients now who were going to set up in London, but have now paused to see what happens.

The digital tax is definitely putting people off, and there's also a little bit of concern about Brexit and tariffs into the EU. There is no longer the belief that if they set up in London they've got a European base.

It's having an effect on my business for sure.

U.S, Texas - AB On this last point, I would just talk about two different programmes that I'm not sure exist in the EU or China.



Adrienne Braumiller pictured at the IR 'On the Road' Conference 2019 in Chicago

We have a Section 321 Manifest Release program, which is perfect for e-commerce people if they are sending shipments into the United States at less than USD800 per person. Under that program, goods can come in basically duty free under an express entry process.

The other thing we have in the US, which doesn't exist in all jurisdictions, is a non-resident importer of record program. Under that program foreign manufacturers or trading companies can be the importers of record in the US, even though they don't have a physical presence in the US. As advisors, we have to work with the tax people to make sure that they don't get hit with US taxes.

Netherlands - NO There is something similar in the EU as well, but that's for duty only and a much lower amount. We also levy VAT at import of goods. VAT does not exist in the US.

Normally, VAT paid at import is refundable for business importers. It is even possible to get an exemption of import VAT if the goods are shipped from the member state of import to the member state of ultimate sale to the consumer provided that the VAT is paid in the last member state. Unfortunately, fraudulent sellers in those member states do not pay the VAT to the state and this particular fraud runs in the billions of euros. The importers who benefitted from the VAT exemption are now targeted for the loss of taxes as the condition for the exemption is not fulfilled. This has also a negative impact on the development of legitimate e-commerce activities.

U.S, Texas - AB Regarding the e-commerce impact in the US. The way that export and foreign trade regulations are written on clearance means that Amazon is not considered the exporter of record.

They have all of these goods that are imported into their warehouses and then, when they ship them out as an export from the US, technically the foreign importer's customs broker ends up being considered the exporter. This is because Amazon lobbied very hard that it would not be the US exporter of record.

They're basically shielding themselves from additional liability because a lot of things can go astray in those types of e-commerce scenarios. This is because you've got a non-resident or foreign importer that doesn't really understand the US export requirements.

Contacts

UK HEAD OFFICE

IR Global
The Piggery
Woodhouse Farm
Catherine de Barnes Lane
Catherine de Barnes B92 0DJ
Telephone: +44 (0)1675 443396

www.irglobal.com
info@irglobal.com

KEY CONTACTS

Rachel Finch
Channel Sales Manager
rachel@irglobal.com

Nick Yates
Editor
nick@irglobal.com

CONTRIBUTORS

Katherine Evans (KE)
Mirkwood Evans Vincent – England
irglobal.com/advisor/katherine-evans

Lauri Railas (LR)
Railas Attorneys Ltd. – Finland
irglobal.com/advisor/lauri-railas

Nico Ooijevaar (NO)
McMAN Ooijevaar – Netherlands
irglobal.com/advisor/nico-ooyevaar

Robert Silverman (RS)
Grinfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP – U.S - New York
irglobal.com/advisor/robert-silverman

Peter C. Pang (PP)
IPO Pang Xingpu – China
irglobal.com/advisor/peter-c-pang

Adrienne Braumiller (AB)
Braumiller Law Group, PLLC – U.S - Texas
irglobal.com/advisor/adrienne-braumiller

