

Insuring Instability: Is There Coverage for the Cost of the Trade War'

October 4, 2018 Micah Skidmore

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A new round of U.S. tariffs on \$200 billion in Chinese imports became effective on September 24, 2018.¹ The 10 percent tax on Chinese consumer products is only the latest escalation in an ever-widening trade war between the United States and its global trading partners. While it appears that, subject to Congressional approval, trade disputes between the U.S., Mexico and Canada may have been resolved over the weekend, economists and policymakers continue to debate the impact of the wider trade war on the domestic and global economy. In the near term, some imported products (including inputs for a range of items not directly subject to any tariff) will cost more. Some domestic manufacturers of products that are subject to foreign retaliatory tariffs may have less demand in export markets. In short, the more expensive it is to trade between affected nations, the less international trade is likely to happen. And if trade is reduced, some companies will lose money.

What are multi-national firms to do? Historically, companies engaged in business overseas have looked to political risk insurance and trade credit insurance to mitigate the losses caused by instability, including government expropriation or violence and defaulting creditors.

Political Risk Insurance. While policy terms can vary substantially, some political risk insurance policies insure against loss caused by “selective discrimination,” “deprivation,” “consequential financial loss” and “trading risks.” Depending on how such terms are defined in a given form, political risk policies insuring against such events may extend coverage for loss caused by changes in foreign law or regulation resulting in import/export restrictions, embargoes or sanctions. In connection with recent tariffs levied against a host of foreign and domestic products, there may be many corporate concerns, which have sustained substantial losses in revenue and even consequential loss of inventory intended for sale in foreign markets. By the same token, there may be many political risk policies with terms broad enough to embrace these losses.

Trade Credit Insurance. Like political risk insurance, trade credit insurance is written under manuscripted policies without uniform terms. But many such policies are expressly written to protect against the losses from protracted default or insolvency by foreign trading partners. In some cases, the events giving rise to coverage for a defaulting creditor overlap with political risk insurance. If some economists’ predictions of global financial disruption from the present “trade war” are accurate, there may be occasions in which trading parties default on prior obligations as a result of the newly-enacted tariffs. In other cases, the economic burden of tariffs, for some trading partners, may increase the risk of insolvency. Either way, trade credit insurance could provide a means of mitigating potential losses relating to this new era of protectionist trade policy.

In this uncertain environment, corporations engaged in and affected by international trade will want to give appropriate consideration to political risk insurance or trade credit insurance coverage. For those already invested in these policies, in-house counsel and risk managers should carefully review policy terms to determine what coverage may be available for existing losses. For those still weighing this coverage, companies should compare alternative policy wordings and be aware of significant exclusions and conditions. Many policies will exclude coverage for non-compliance with

laws and regulations or risks covered under other insurance, including terrorism insurance, fidelity bonds or commercial property insurance. Some forms will also include stringent notice and reporting conditions as well as self-insured obligations.

While some see the existing tariff regime as a temporary negotiating tactic, it remains unclear how long trade barriers will remain or what impact tariffs will have on businesses now or in the future. In this environment of uncertainty, political risk insurance or trade credit insurance may provide some relief. If you have any questions about insurance coverage for losses resulting from the trade war or about political risk or trade credit insurance in general, please contact one of Haynes Boone's Insurance Coverage Practice Group partners listed below.

¹ [US-China Trade Row: What Has Happened So Far?](#), BBC NEWS (September 18, 2018).