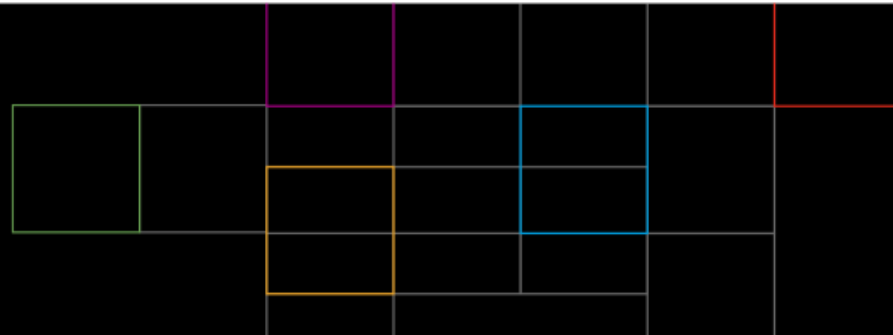


Section 301 Tariff Solutions

August 1, 2018



Today's Presenters



Tom Jarvis

Chair, U.S. International
Trade Commission Practice

Washington, D.C.

tjarvis@winston.com



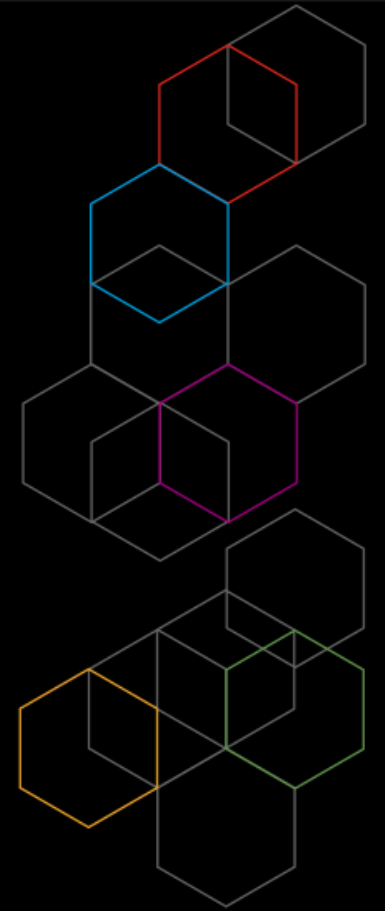
Francesca Guerrero

Of Counsel

International Trade
Compliance

Washington, D.C.

fguerrero@winston.com



**WINSTON
& STRAWN**
LLP

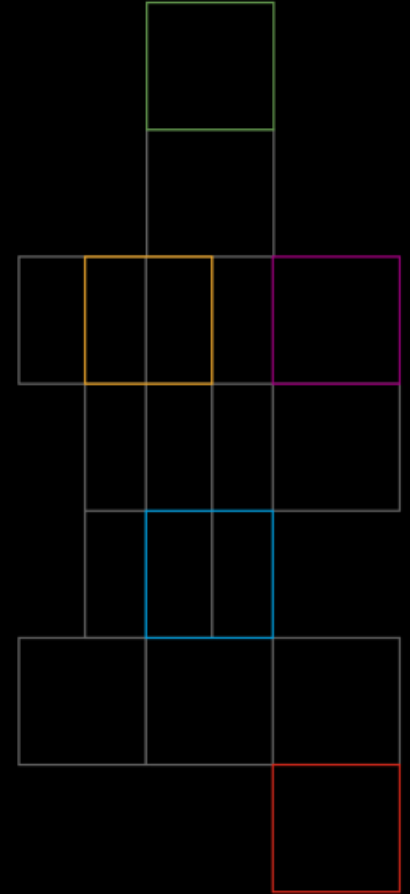
© 2018 Winston & Strawn LLP

Background

Section 301 Investigation

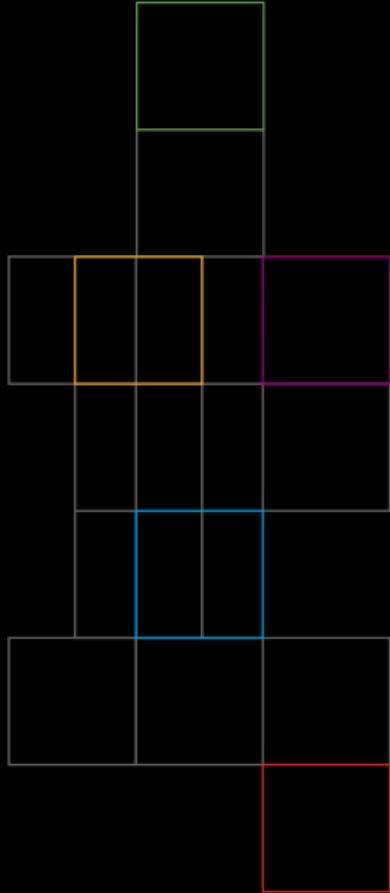
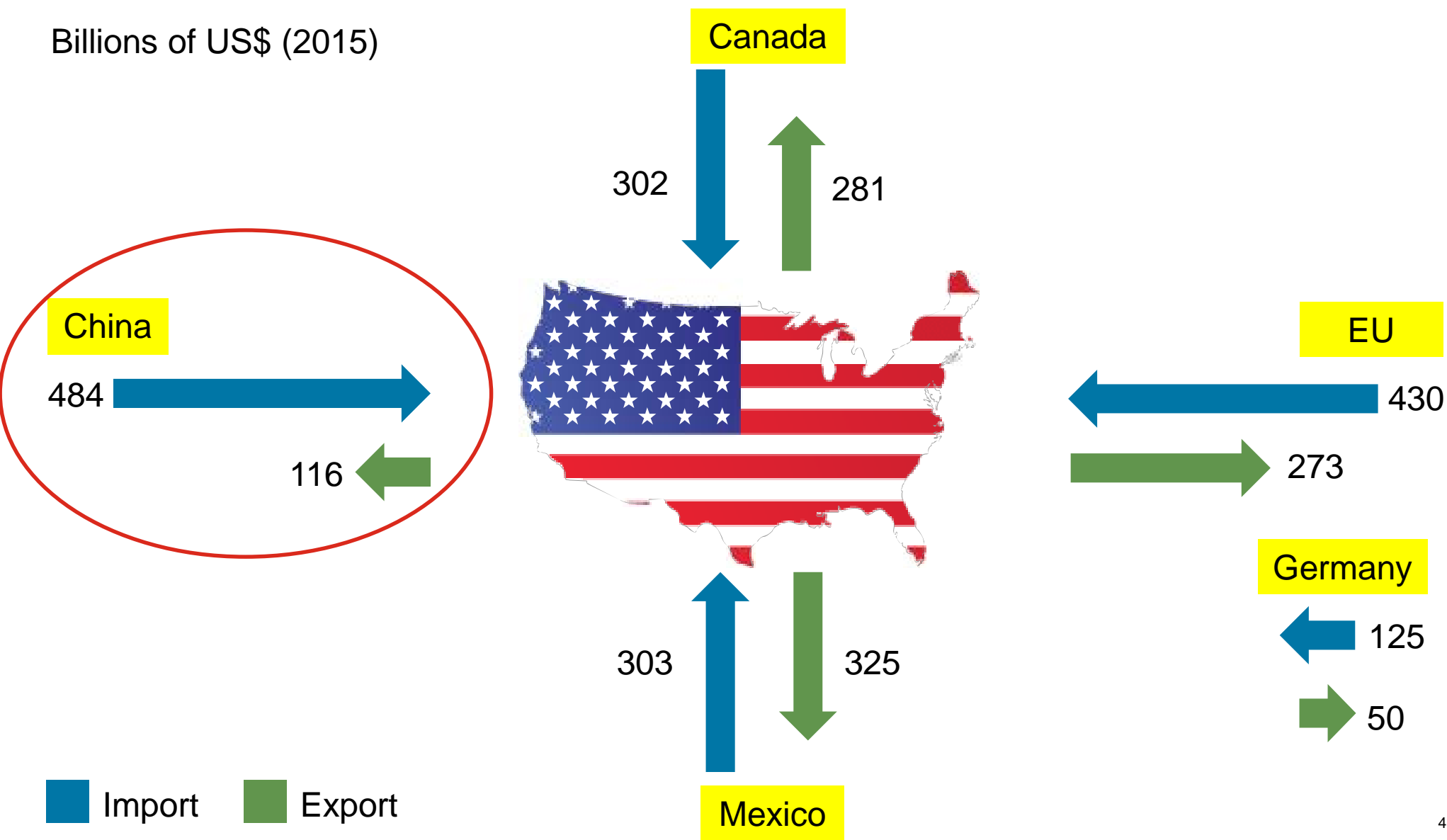
- Initiated at the request of the President on August 18, 2017
- Report issued by USTR on March 22, 2018
 - Found that China's acts, policies, and practices related to technology transfer, IP, and innovation burden or restrict U.S. commerce.
- President directed various measures in response
 - WTO case
 - Investment restrictions
 - Additional Duties

Currently no end date to the additional duties



Global Market Imbalances

Billions of US\$ (2015)



Three Tariff Lists

First 25% List

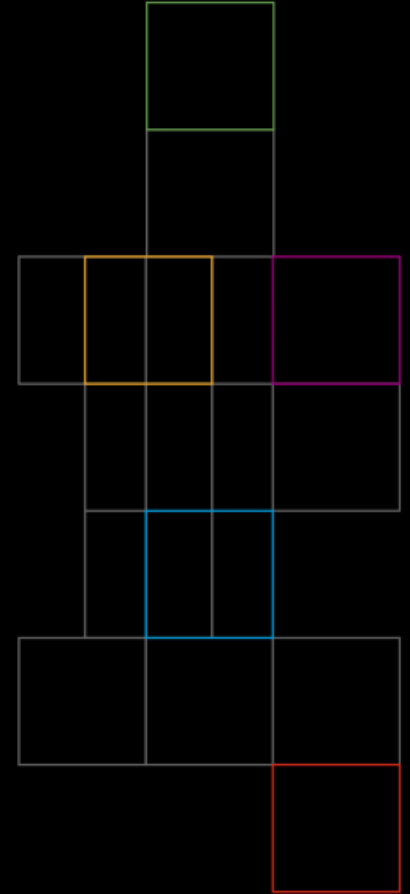
- Original list published in April covered more than 1,300 tariff lines
- Targeted “Made in China 2025” products
- After public comment the list was whittled down to 818 tariff lines
- Effective July 6, 2018

Second 25% List (potential)

- Original list published in June covered more than 280 tariff lines
- Public comment period which closed July 23

Third 10% List (potential)

- Triggered by Chinese retaliatory tariffs and more broad
- Original list published in July covered more than 6,000 tariff lines
- Public comment period closes Aug. 17



Solutions to Section 301 Tariffs

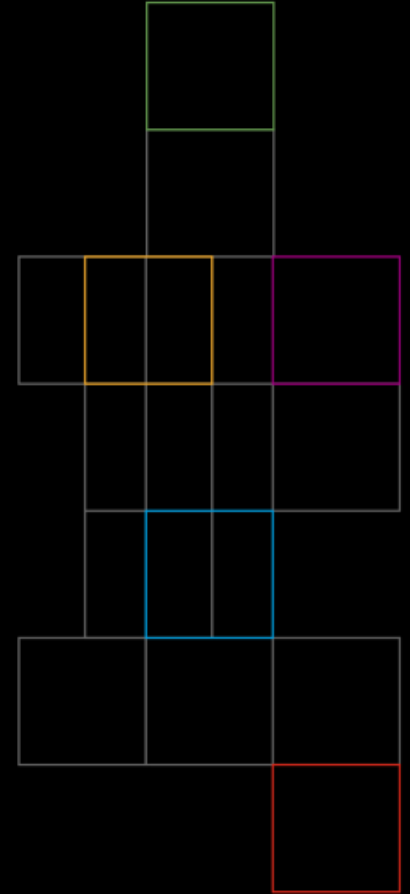
Review Classification of Products

Oppose Inclusion of HTSUS Classifications in Tariff Lists

Seek Exclusion of Specific Products from Additional Duties

Alternative Supply Chains

End – To – End Solutions



Proper Classification of Products

Review Primary HTSUS Classification

- Is it correct?
- Expert HTSUS classification review



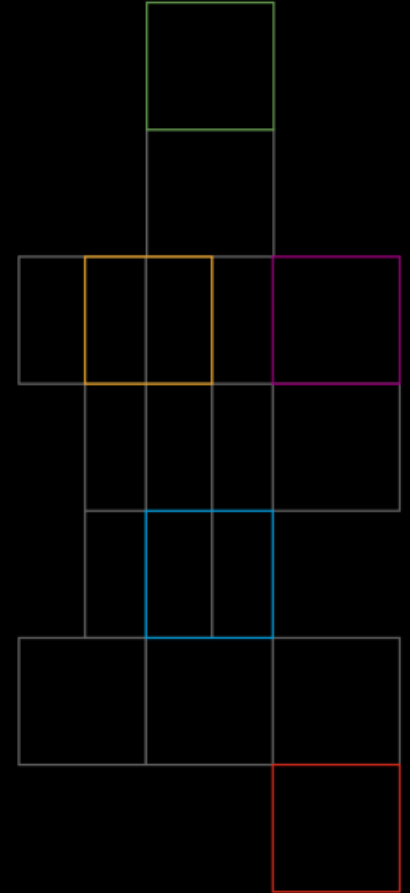
Investigate Special HTSUS Classifications

- Review for reduced or zero tariff classifications
- Nairobi exemptions for handicap products



Legal Opinion re Appropriate HTSUS Classifications or Customs Ruling

- Possible Part 117 rulings & appeals



Q/A re Tariff Classifications?

Oppose Inclusion of HTSUS Classification



Only the 10% list is still open for public comment

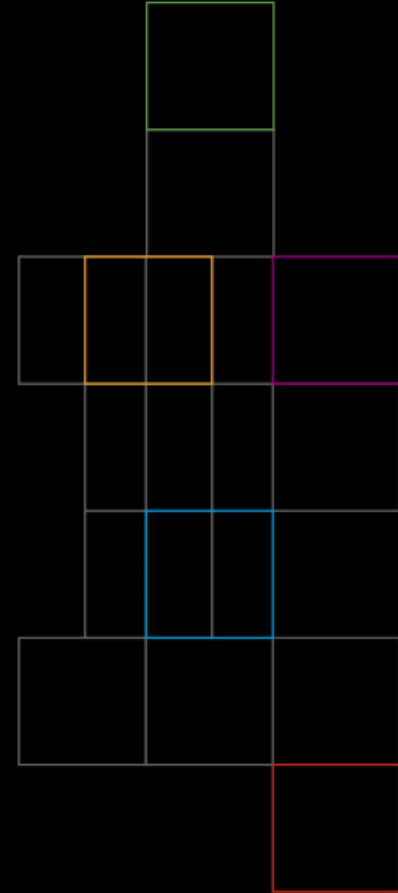
- Comment deadline is Aug. 17, 2018

Issues/Factors

- Harm to U.S. businesses
- Harm to U.S. consumers
- Can the product be obtained from another country?
- Relationship of HTSUS Classification to Section 301 Issues

Business Confidential Information can be redacted

There is a period for response to public comment



WINSTON
& STRAWN
LLP

Seek Exclusion of Specific Products

Standing to Submit Requests

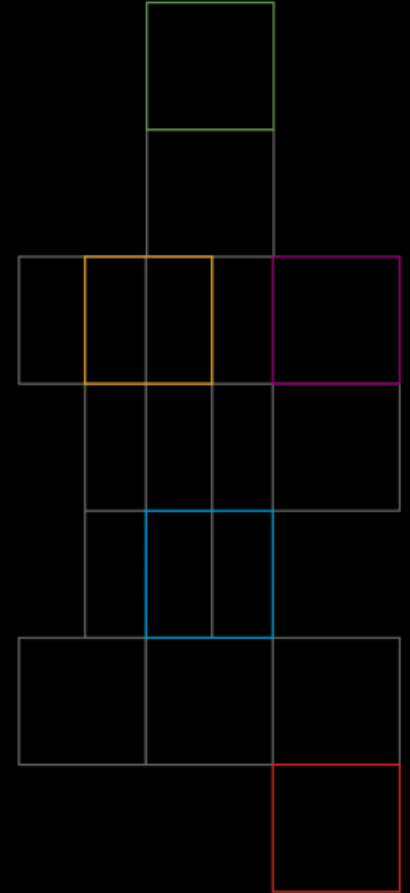
- Notice says US stakeholders, but foreign companies may submit

Requests for items currently subject to tariffs due by Oct. 9

- Other timelines not yet released

Issues/Factors

- Whether the particular product is available only from China
- Severe economic harm to the requestor or other U.S. interests
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs



Seek Exclusion of Specific Products

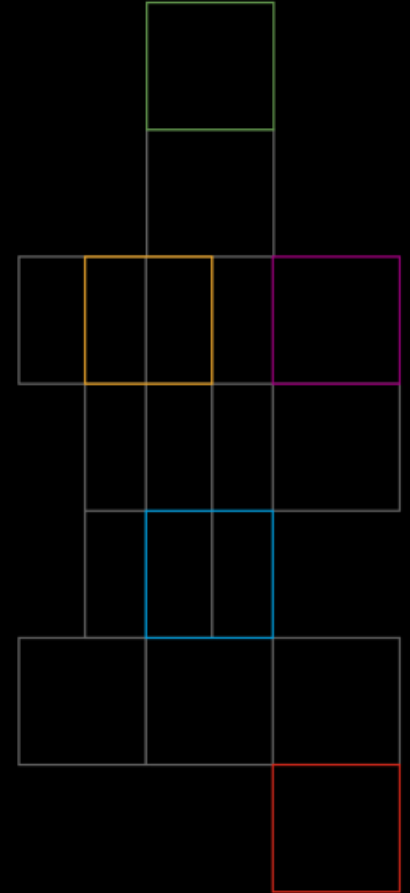
Exclusion will apply to the product, regardless of importer

Opportunity for Others to Respond

- The public will have 14 days to file responses
- After the close of the 14 day response period, interested persons will have an additional 7 days to reply

Retroactive Application & Refunds

- Exclusions will be effective for one year from date of publication of exclusion
- Retroactive to date tariffs applied (July 6 in case of current items)



Q/A re Tariff Comment or Product Exemption Process?

Changes to Supply Chain

Manufacture by Chinese Affiliates Outside China

- Does your current manufacturer have facilities outside of China?
- Products manufactured in Hong Kong and Taiwan are not considered Chinese origin

Manufacture by Others Outside China

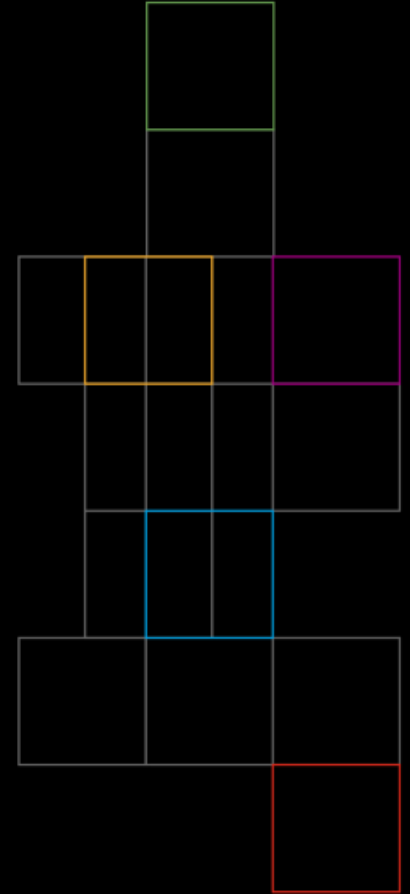
- Is it cheaper to switch manufacturers?

Import Parts and Assemble in the United States

- Requires determining the parts are not themselves subject to additional tariffs

Changes to Supply Chain require careful scrutiny to ensure that the country of origin is not still China

- Substantial transformation critical test



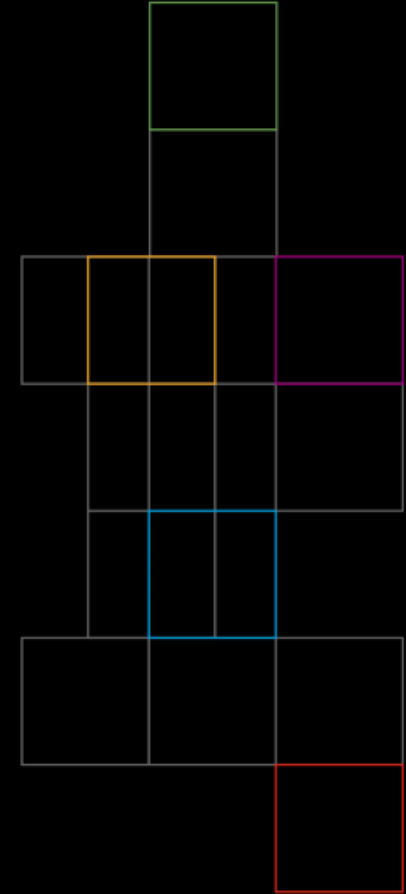
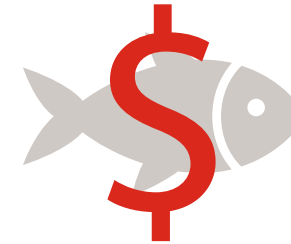
Retaliatory Chinese Tariffs

Imposed in response to the July 6th tariff increase

Asymmetrical – Only about 10% of the impact of the Section 301 tariffs

Includes tariffs on more than 500 items, including:

- Soybeans
- Electric Vehicles
- Seafood
- Pork



Possible Negotiated Solutions

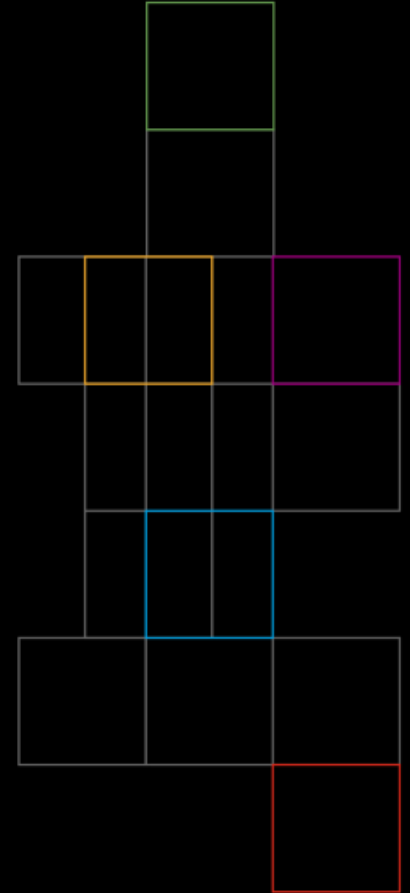


China Objectives

- Support Chinese enterprises
- Access to USA markets—largest & most profitable

USA Objectives

- Incentivize China to end non-tariff international trade policies
 - Foreign companies required to have Chinese partner to operate in China
 - Mandatory technology transfers
- Incentivize China to suppress IP theft
 - Rampant IP infringement
 - Cybersecurity
- More equitable balance of trade



End-to-End Solutions

International Trade

- Exclusions of HTSUS classifications & exclusion of specific products
- Supply chain
- Chinese tariffs

Corporate

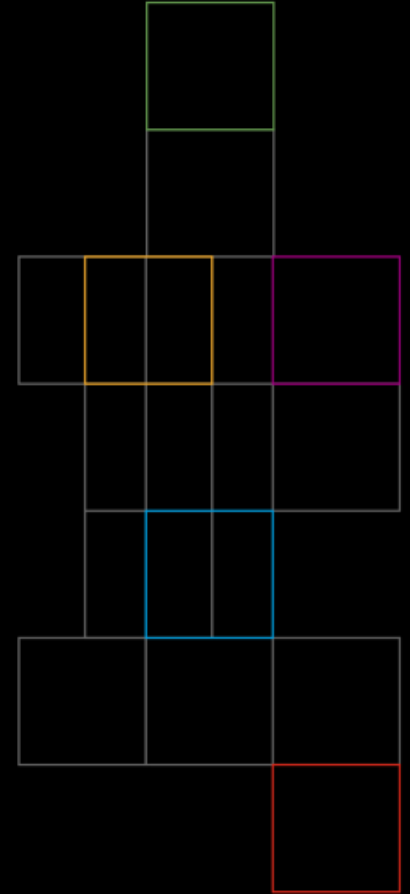
- Reorganization / restructuring if low cost supply model compromised
- Relocate inventories outside USA to defer duties
- Divest Chinese operations

Finance

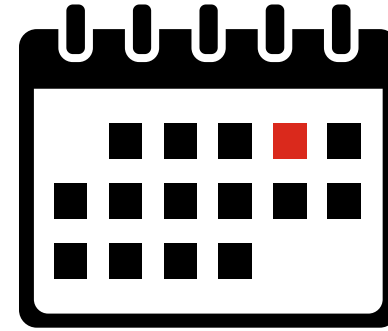
- Bridge financing for short term tariff costs if trade dispute resolved

Tax

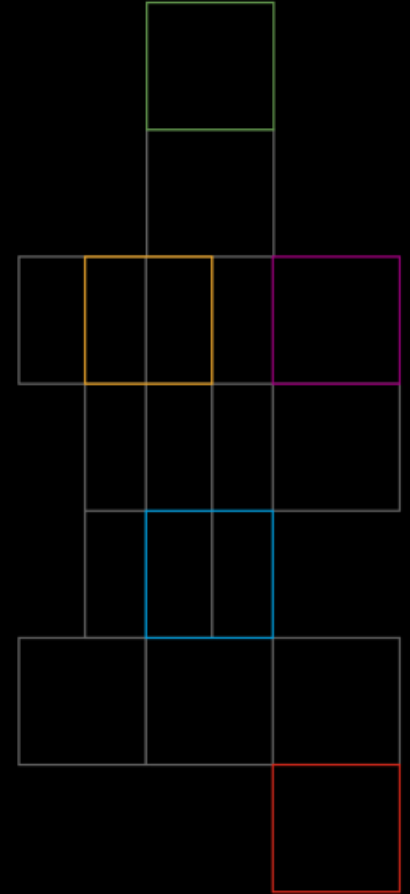
- Deductibility of tariff payments
- Import Chinese components for assembly in USA
- Shift importation activity to companies in need of tax deduction



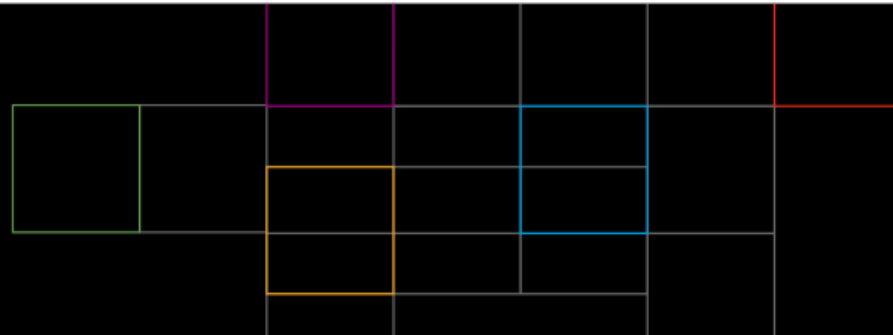
Action Items



- Aug. 17, 2018: Deadline re comments on the third tariff list
- Oct. 9, 2018: Deadline re product exclusion requests on first list
- Deadlines TBD for exclusion request on second and third tariff lists
- Brief management re Section 301 tariff exposure & solutions
- Financial planning for possible long term tariff costs
- Tax planning



Questions?



Contacts

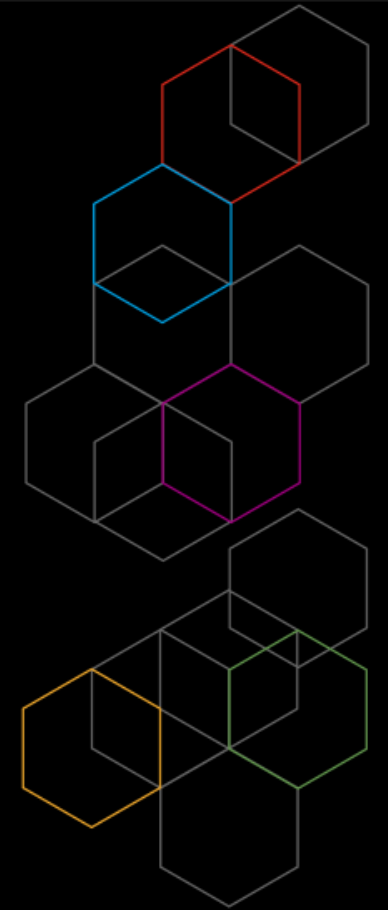
Thomas L. Jarvis

Chair, ITC Practice
Winston & Strawn LLP
1700 K Street, NW
Washington, D.C. 2006
Direct Dial:+1.202.282.5324
Email: TJarvis@Winston.com



Francesca M.S. Guerrero

Of Counsel
International Trade Compliance
Winston & Strawn LLP
1700 K Street, NW
Washington, D.C. 2006
Direct Dial:+1.202.282.5337
Email: Fguerrero@Winston.com



**WINSTON
& STRAWN**
LLP

© 2018 Winston & Strawn LLP