US's New Wave of Tariffs

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The US's new wave of tariffs came into force yesterday, including 104% levies against certain Chinese goods. We address the potential legal consequences, assuming tariffs remain in place and no compromises are reached:

1. Depending on the relevant cargo and its intended use, goods arriving in the US may now be subject to significant tariffs. We anticipate that some goods already in transit to the US may, in the short term, be held on vessels as offshore storage or even diverted to other markets.
2. Container ships, which transport the majority of consumer goods, are unlikely to be used as floating storage or diverted due to the number of shippers and receivers

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involved. For the goods already on board these container ships the new wave of tariffs is likely to cause considerable disruption.

3. We expect that large quantities of goods (particularly Chinese manufactured goods) could be held by US customs for extended periods or even abandoned, if commercially no longer viable. In the longer term, goods may well begin to accumulate in load ports globally as parties assess whether it is commercially viable to ship goods to the US.
4. Critical to understanding the consequences is ascertaining which party is responsible for paying the tariffs. This will depend on the terms of the relevant sale contract. Most international trade is conducted using INCOTERMS. Under INCOTERMS the Buyer is typically responsible for paying the import tariffs (aside from DPP where the Seller is responsible).
5. Irrespective of the contractual allocation of the responsibility for import tariffs, with tariffs at current levels, it is plausible that many parties will default on their obligations.
6. For goods not yet shipped, some sales contracts will be renegotiated or terminated and some related vessel charters cancelled. The current level of the tariffs raises questions about whether it commercially better to defend a claim for a breach of contract, rather than to perform at a loss.
7. In charterparty chains, this may result in charterers being left without a cargo to ship, or without a receiver to discharge the cargo to, resulting in significant exposure. Some charterers will inevitably default on their obligations or simply disappear, leaving disponent owners exposed and/or potentially leaving shipowners with cargo on board which they do not have title to and which they will have no economic interest in importing. In such circumstances, the arbitral tribunal's power of sale under the Arbitration Act 1996 may well be of significant interest.
8. Existing commercial bargains and relationships will be strained. Defaulting parties will likely seek to invoke concepts such as frustration or force majeure/material adverse change provisions by way of a defence to incoming damages claims. Potential claimants will need to consider whether the claim against the defaulting party would be economic to pursue and whether enforcement is viable.
9. Some US buyers will be importing and then reselling the goods. For those with existing sales contracts in place then they will find themselves in an unenviable position

of being contractually obliged to deliver at a fixed price but being required to pay over double to import the goods. This could quickly lead to serious cash-flow constraints, and, potentially, insolvencies.

Existing supply and transportation contracts should be carefully checked to assess whether the new tariff regime will trigger any express contractual provisions and how best to manage the legal and commercial consequences of the new tariffs.

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