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Tariffs Reshaping Mergers and Acquisitions Strategies – Practical Steps for Buyers and Sellers

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Although some were anticipating that the U.S. Supreme Court’s February 20, 2026 invalidation of IEEPA tariffs might help bring certainty to the M&A markets, President Trump’s implementation of Section 122 tariffs (currently enjoined by the U.S. Court of International Trade May 7, 2026 decision, which is being appealed to the Federal Circuit), the announcement of Section 232 and 301 investigations/tariffs, and uncertainty concerning the precise refund process/timing for IEEPA tariffs has only led to further questions.

These tariff developments and continued trade policy uncertainty are increasingly affecting how M&A transactions are evaluated and negotiated. Buyers are taking a closer look at supply chain exposure, input costs, and the potential for new or expanded duties, while sellers are being asked to address tariff-related risks earlier in the process. These issues influence diligence priorities, purchase price discussions, and key provisions in transaction agreements, particularly where tariff changes could affect performance between signing and closing.

HOW TARIFFS ARE IMPACTING CURRENT M&A TRANSACTIONS

- **Increased focus on tariff exposure in valuation.** Buyers are more closely evaluating how existing or potential tariffs may affect margins, pricing, and long-term projections, particularly where targets rely on cross-border supply chains or goods subject to existing or potential duties.
- **Increased lender scrutiny.** Financing sources are increasingly evaluating tariff exposure in underwriting analyses, including impacts on EBITDA stability, inventory costs, customer concentration and covenant compliance.
- **Expanded due diligence.** Diligence requests are increasingly focused on sourcing, country-of-origin determinations, customs classifications, and the target’s ability to shift suppliers or pass through increased costs. Parties need to carefully review contracts to clarify how the tariff changes and potential tariff refunds affect the costs allocations among the target, suppliers and customers.
- **More complex negotiations.** Parties are allocating risk through earnouts, deferred consideration, working capital adjustments, and targeted indemnities tied to tariff exposure.

- **Operational contingencies built into deals.** Buyers are evaluating whether manufacturing can be relocated, suppliers diversified, or pricing passed through post-closing.
- **Increased focus on signing-to-closing risk.** Potential tariff changes during interim periods are prompting more detailed interim operating covenants and closing conditions.

KEY LEGAL CONSIDERATIONS IN TARIFF-AFFECTED DEALS

Concepts commonly addressed in commercial agreements — including tariff allocation, change-in-law adjustments, and refund entitlement — are increasingly being addressed directly in acquisition agreements. Parties are negotiating whether post-signing tariff changes shift risk under Material Adverse Effect (MAE) provisions, whether targets may respond to new tariffs under interim covenants, and how tariff refunds or retroactive duty changes are allocated post-closing. While acquisition agreements typically do not include force majeure protections, these provisions are becoming the primary tools for allocating tariff-driven risk.

In this current environment, parties are focusing on several key provisions, including:

- **Material Adverse Effect (MAE) clauses.** Buyers are increasingly focused on whether tariff increases fall within general “changes in law” carveouts or are specifically addressed. Parties are negotiating whether tariff changes should be excluded from MAE definitions, subject to disproportionate impact qualifiers, or expressly allocated to buyer or seller risk.
- **Interim operating covenants.** Tariff volatility is leading to more flexibility for targets to respond to supply chain disruption during the interim period, including sourcing changes, price adjustments, inventory builds, and customer renegotiations — while buyers seek consent rights over material responses.
- **Force majeure considerations.** Unlike many commercial contracts, acquisition agreements do not always include force majeure provisions, and even where they are included, they may not address tariff-related developments. As a result, tariff-driven cost increases or operational disruption typically are addressed through MAE language, interim operating covenants, and closing conditions.
- **Changes in law provisions.** Parties are scrutinizing how new tariffs are treated under “changes in law” concepts, including whether compliance costs must be borne in the ordinary course or may justify covenant deviations.
- **Purchase price and closing condition mechanics.** Earnouts, contingent value rights, and working capital adjustments are being used to bridge uncertainty where tariff exposure, or contingencies concerning potential tariff refunds, may materially impact short-term performance.
- **Representations and indemnities.** Buyers are requesting more specific representations regarding customs compliance, tariff classifications, country-of-origin determinations, and the absence of pending trade investigations.

TRANSACTION PLANNING CONSIDERATIONS

With continued tariff uncertainty, parties may wish to evaluate how tariff exposure is addressed throughout the transaction process, with a focus on the following:

- Evaluating tariff exposure and supply chain concentration early in the deal process
- Considering whether MAE definitions appropriately address tariff-related changes
- Reviewing interim operating covenants for flexibility to respond to new tariffs
- Assessing whether pricing mechanisms should address tariff-driven volatility
- Considering representations addressing customs compliance and tariff classification
- Evaluating allocation of, and responsibility to seek, tariff refunds or retroactive duty changes
- Aligning integration planning with potential sourcing or manufacturing changes

As trade policy continues to evolve, tariff exposure is increasingly relevant to how transactions are priced, negotiated, and documented. Addressing these issues early in the process may help reduce execution risk and avoid delays during the signing-to-closing period. We will continue to monitor developments and provide updates as additional guidance becomes available.

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In case of any queries regarding any of the topics addressed herein, please do not hesitate to contact the following attorneys of the two respective firms.

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