

The New Wave of Protectionism

What effect are tariffs having on dealmaking activity?



The U.S. government has triggered a series of reciprocal trade actions with countries around the world. The tariffs may disrupt an otherwise positive environment for M&A.

Economic conditions have been largely favorable for dealmaking in 2018. U.S. companies received a boost to their earnings thanks to the decline in the corporate tax rate from 35% to 21%. Interest rates remain historically low. And deal financing has been widely available to acquirers.

But storm clouds have gradually moved over the landscape, in the form of tariffs. The U.S. has targeted the European Union, Canada and China with policies aimed at counteracting what the president sees as unfair trade practices. The targeted countries have

responded with tariffs of their own on U.S. goods—and more import duties are being planned. Ripple effects are being felt throughout the world economy.

In the realm of deal activity, however, it remains unclear what the impact has been exactly. Through the first nine months of 2018, global M&A value climbed 22% compared to the same period last year to reach US\$2.7 trillion. The increase suggests confidence among buyers. At the same time, cross-border deal value grew 10%, while domestic deal value went up 27%—implying that acquirers may be looking more inward.

So, what effect is protectionism having on sentiment among dealmakers? Are the measures actually bolstering domestic M&A? And how is private equity responding to the new conditions? We spoke with six experts to find out how deal practitioners are responding to the changes in global trade.

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Looking for silver linings

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Mergermarket ● **One of the intended effects of the recent wave of U.S. tariffs has been to boost domestic industry. Do you think the U.S. measures could indeed benefit certain domestic players and thereby increase domestic deal activity?**

Drew Bernstein, Co-Managing Partner, Marcum BP ● If higher tariffs become a long-term feature of the economy, rather than a transient factor or bargaining chip, it will cause all kinds of recalibrations. Some companies will benefit. Others will be decimated. The impact really depends on whether the tariffs are combined with restrictions on capital inflows or not. If the flow of capital remains more or less unfettered, domestic dealmaking could increase as companies re-wire their supply chains, as well as move their manufacturing and distribution behind tariff walls.

Theoretically, the tariffs could keep both M&A and restructuring folks busy for a while. However, there's going to be significant costs to the consumer, who is usually the loser in any trade war. The aggregate impact and spillover risks are very hard to calculate; I don't know how anyone could do that. Part of the problem is how long it's been since we've had a period of rising tariffs. We haven't seen this in a long time, and so the institutional memories on both the right and left have been wiped clean. What we have is a big experiment with an explosive chemistry set.

Jack Bell, Managing Director, Pantek Partners ● I don't know if the two go hand-in-hand exactly, but I do think tariffs will boost traditional heavy manufacturing industries such as steel. Those industries benefit because there's a lot of lower-cost, commodity-heavy manufacturing with steel that comes into the country from places such as Asia, which would be dealing with tariffs that obviously weren't there before.

For industries outside of heavy manufacturing including consumer, technology, healthcare, medical, and biotech, I don't think there will be as much of an effect. At least there hasn't been to date, in that there haven't been tariffs levied on those types of industries or services.

Ama A. Adams, Partner, Ropes & Gray ● I think it is still too early to tell how the current trade dispute between China and the U.S. will ultimately play out. However, anecdotal evidence currently suggests that for every U.S. company benefitting from the tariff war, there are many more companies facing significant tariff-related costs, which are cutting into profits and forcing them to raise prices or lay off employees. The list of U.S. companies reporting the negative effects of the trade war continues to grow. As such, if the

tit-for-tat between the two countries continues to escalate, it is likely we will see a broader impact on industries across the U.S. economy.

Mergermarket ● **Private equity firms are known for acting opportunistically. To your knowledge, how are they reacting to the protectionist measures and the overall climate?**

Daniel Wang, Managing Director, Harris Williams ● We have PE clients that are thinking about Asian buyers, particularly Chinese ones, and their question in this protectionist climate is, "If I were to sell my business today, how much interest would there be from China?" Everybody's aware that the Chinese can pay high valuations. However, PE firms also know there won't be real Chinese interest in businesses with any relationship to high technology, the military and defense industries, or aviation and aerospace because the Committee on Foreign Investment in the United States (CFIUS) will block such deals.

But private equity is not looking to hold back on selling assets because of what's going on. There are extremely high levels of interest from buyers in Europe, the U.S., the rest of Asia, and Australia. We're still seeing a lot of assets brought to market, as opposed to a halt or a decrease in activity.

Jack Bell, Managing Director, Pantek Partners ● We tend to advise on deals that are very global or cross-border in nature, with clients looking for global opportunities as part of their investment thesis. If they're investing in U.S. companies, that is generally because they're looking to enable them as global platforms for the businesses they're executing. As such, I don't see a lot of PE activity going in the other direction.

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Daniel Wang, Harris Williams

But some of the PE firms we deal with are, in light of the tariffs, spending time reviewing their investments internally, looking at the deals they've already done. One might be a steel company they invested in three or four years ago, which is all of a sudden subject to tariffs, and possibly isn't as much of a global play as when they made the initial investment. Basically, there's a lot of internal portfolio reviewing going on in reaction to the tariff activity and protectionism.

Euan Rellie, ● I think PE firms will hunt for bargains. They always do. PE firms are opportunistic, and dealmakers will be looking for any tiny niches that benefit. But sentiment and confidence are more important than anything else, and I think both are suffering at the moment because of the tariffs.

However, just to be fair, on the flip side confidence has benefited from the tax cuts that disproportionately helped corporates. We're also seeing attempts to try and mollify the pain from tariffs by selectively giving aid to, for example, farmers, and giving some sort of carve-out to certain manufacturers that require steel. But in simple economic terms, these distort the market unnecessarily, and that's a bad thing.

From a PE perspective, the silver lining is that U.S. sponsors will probably be able to buy assets more cheaply over the next few years, because the market will be declining. I haven't seen sponsors get more aggressive, however. Overall, we've seen them act a bit more cautiously at the margins so far. I don't want to exaggerate the change of activity, but I think people are beginning to wonder when the next

recession will be. I can't imagine that we have three years of uninterrupted growth from here without a downturn. I think prices will come down, and activity will become subdued.

John E. Lash, ● Whether they are considered opportunistic or resilient, PE firms have historically demonstrated the ability to successfully navigate major economic shifts and evolutions in global trade policy. As such, they are likely to view potential investments with the same fundamental metrics that drive deal valuation. But they may consider an increase in execution risk when evaluating high-value targets in specific critical infrastructure industries that fall under regulatory scrutiny or national security regulations.





Cross-border impact

The experts



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Mergermarket ● **What are the best avenues of cooperation or transactional activity with China at the moment, given the protectionist measures being put in place?**

Euan Rellie, ● Firms remain generally undeterred, though any tit-for-tat or reciprocal actions by the U.S. and Chinese governments make it potentially more difficult for U.S. companies and PE firms to operate in China. At the same time, we've actually seen U.S. sponsors very aggressively raising multi-billion dollar funds with a particular interest in China. Also, we recently advised Carlyle and other investors on the sale of a baby-products retailer in China, Leyou, to Warburg Pincus. So there is a lot of smart money trying to find avenues of investment that make sense.

Over the last few years, Shanghai has developed a free-trade zone, which allows manufacturers based out of there to manufacture more or less tariff-free—at least free in terms of Chinese tariffs. Importers are also allowed to import into the free-trade zone without paying duties. In addition, we're seeing increased interest in Hong Kong as a kind of staging post, and people are trying to see whether they can trade through there or Singapore as an alternative to China.

At BDA, we're also benefiting from a very successful practice in Vietnam, which is somewhat under-

banked at the moment. Most of our competitors haven't figured out the opportunity in that country, which is a pretty interesting foil to China, as is Taiwan. We are also seeing Japanese corporates, trading companies, and very select PE firms trying to do deals in the U.S., to fill the gap left by reduced Chinese activity.

Ironically, I think Canada and Mexico may selectively benefit from the trade war, because Chinese investors feel more welcome in Mexico, Canada, and the EU, frankly, than the U.S. today. China has a big domestic market and is starting to look inwards. The Chinese government is having some success stimulating consumer activity within itself, even though the mood there is still a bit subdued.

Daniel Wang, Managing Director, Harris Williams ● Our advice pertaining to best avenues for deal activity depends on the sector. If a client is selling a business in traditional consumer products, food and beverage, sporting equipment, etc., CFIUS should have no issue. The buyer universe would still consist of European companies, Asian companies including Chinese ones, and U.S. companies.

But now let's say they're selling a business that's in industrial automation, and either has customers in the military or manufactures aerospace and defense equipment. They may not even sell directly to the military, but to a supplier or sector that touches defense or aerospace. Then our pitch would be focus on European and U.S. buyers as well as Korean and Japanese ones, but not Chinese.

Now, we've been discussing issues from the U.S. side, but it's worth

remembering that Chinese firms trying to buy companies outside of China must go through layers upon layers of approval on their end as well. In China, the government can block a deal for whatever reason they come up with.

Jack Bell, Managing Director, Pantek Partners ● Overall, there is still a lot of deal activity happening between China and the United States, and it will continue. Dealmakers are still interested in China, but they want to proceed cautiously. Firms will need to pick their industries, deal types and structures carefully, and be ready to roll with the punches.

CFIUS is very opaque. It basically says that any deal being done between a U.S. company and a Chinese one is subject to review. Similar to what Daniel said, our advice to clients is to avoid any landmines, such as deals involving American technology companies that sell into defense applications. That's a no-brainer. Trying to sell such a company to a Chinese buyer, which has been done before over the past few years, would definitely be a no-go under CFIUS. It's just asking for a headache, so we advise our clients to avoid those types of situations.

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Jack Bell, Pantek Partners

The flip side of that coin is when an American company has technology used in social media applications or by software companies. In those cases, we would recommend being very aggressive, trying to do as many deals as possible and to access every market that the law allows, in order to grow the business and become a global company. That includes the market in China, which has a highly restrictive regulatory environment. A host of companies such as Facebook, Twitter, YouTube, etc., are all blocked in China. However, there are exceptions—for example, LinkedIn is an American media company that operates in China, and is very successful there.

John E. Lash, ◆ A few points on this: First, embracing free and open trade has proven historically to yield positive economic impact, and the U.S. vis-à-vis CFIUS has a

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responsibility to balance national security implications of cross-border transactions with an open investment policy. With technology acquisitions as a key driver in M&A deal activity, the innovative capabilities and uses of that technology also create inherent risk to a country's national security, public health and safety, and economic interests.

Secondly, transactional activity can be conducted with China if appropriate measures are taken to address the national security risks that arise from trade and investment. With data considered the most valuable resource in the global economy, and the technological advances in sunrise industries, a key execution risk to foreign direct investment is whether that transaction would expose personally identifiable information of a U.S. person, including genetic information,



protected health information, geographic movements, or other sensitive data. Addressing the national security risk of a proposed transaction with significant U.S. data should be a critical consideration for dealmakers. We must be able to recognize the threat, vulnerability, and consequence of potential data exploitation.

Thirdly, organizations must recognize the potential national security implications of a proposed transaction at the onset of a deal—performing a risk-based assessment and evaluating the consequence of any exploitation of a national security vulnerability. As the threat landscape has evolved through technological innovation, the advent of the data economy, and the weaponization of information, companies should make national security compliance an essential component of cross-border investment strategy.

With regards to best avenues forward, there is essentially one of collaboration and the other of conflict. Collaboration would provide an avenue to seek common ground on national security, economic policy, and foreign policy considerations.

"As the threat landscape has evolved ... companies should make national security compliance an essential component of cross-border investment strategy."

John E. Lash, BDO

Mergermarket ● **What effect, if any, do you think the current wave of protectionist measures is having on overall cross-border deal activity?**

Ama A. Adams, Partner, Ropes & Gray ● The increasing regulatory review of foreign investment in the U.S.; the Trump administration's efforts to enhance U.S. export control restrictions on emerging technologies; and the expanding trade war between the U.S. and key trading partners around the world have definitely had an impact on cross-border transactions. Since these events are evolving at or around the same time, rather than in isolation, investors must now assess an expanding range of complex issues in conjunction with pure commercial and valuation ones.

Investors are also facing difficulties in securing CFIUS approval for transactions involving certain sensitive U.S. businesses, the impacts of outbound restrictions on certain supply chains, and tariff-related costs on the value of a potential target. Together, these events are leading investors to pass up certain opportunities or take a more cautious approach, as they have no choice but to deal with legal requirements that are more extensive and formulated to address U.S. national security concerns.

Jack Bell, Managing Director, Pantek Partners ● In terms of what we've been seeing from an M&A, capital-raising, or joint venture perspective with targets specifically in Asia, the tariffs are definitely slowing down the buy side. We represent American companies on the sell side that are typically going into Asia either to raise capital or form joint ventures with Asian partners, and are looking to enter the local markets. But over the past two or three

months, there's been an increased level of hesitance or deliberation, especially with regards to China.

The big cloud has been the updated CFIUS language, which has been getting a lot of play all over Asia, but in China in particular. We're still seeing deals get done when there's a strong rationale for U.S. and Chinese companies to work together, but there is an additional layer of diligence and care being taken.

Daniel Wang, Managing Director, Harris Williams ● We've also seen push-back from Chinese companies in terms of trying to do business in the U.S. Our current administration's view on protectionism—i.e., increasing CFIUS oversight on foreign buyer activity—is having somewhat of a ripple effect.

A related trend is that a lot more Chinese capital is being funneled to Europe, whereas about a year ago there was a split between Europe and the U.S. For example, one of the largest sporting equipment businesses in China, ANTA Sports, recently put in a US\$5.3 billion-dollar bid for a Finland-based ski business called Amer Sports. It is one of the biggest Chinese cross-border deals I've seen in sporting equipment.

Interestingly, the sentiment in other parts of Asia has not changed all that much. South Korea and Japan are trying to interpret whether what's going on between China and the U.S. will trickle over to them, but they don't have negative sentiments about the tariffs, as they aren't really targeted at them. However, they have asked us whether CFIUS could change to become even stricter.

Drew Bernstein, Co-Managing Partner, Marcum BP ● I agree that Chinese inbound investment into U.S. companies and assets is dropping. An increasing proportion of Chinese outbound investment is getting diverted to Europe, Central Asia, Southeast Asia, and other places in order to support China's "One Belt, One Road" initiative. China wants to establish Europe as a counterweight to the global trading and investment on which its export economy depends. This would also remove an aggressive cashed-up bidder for U.S. assets, which may depress values at the high end. As far as global deal activity is concerned overall, I think companies are just waiting for a bit more clarity before making big, multi-year capital commitments.

Euan Rellie, Senior Managing Director, BDA Partners ● Speaking for private equity, the tariffs and the threat of increasing them tit-for-tat have combined for a chilling effect. As a cross-border advisor, there are specific problems for us, since Asian investors have been very beneficial—both PE sources and corporates from Asia have effectively been propping up prices in the market. Remember that we're not only talking about new PE investment, but the 3,000 or so mid-market PE firms in the U.S. They typically have 10 or 15 portfolio companies each, and keep those assets for an average of five years. The average firm might be trying to sell three companies every year, and after the very robust market of the last three or four years, I'm certainly seeing a bit more caution on the prices that people will pay in the marketplace.

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