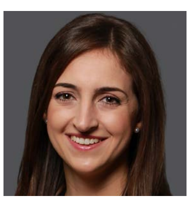
Market Trends 2020/21: U.S. Tariff Policies

A Practical Guidance® Practice Note by Anna T. Pinedo, Gonzalo Go, Nicole Cors, and Felix Zhang, Mayer Brown LLP

Anna T. Pinedo
Mayer Brown LLP

Gonzalo Go
Mayer Brown LLP



Nicole Cors
Mayer Brown LLP

This practice note discusses recent U.S. tariff policies (U.S. Tariff Policies) that potentially have wide-ranging consequences for domestic and international trade and the capital markets. In a period marked by increased globalization and international trade, the uncertainties brought about by the aggressive tariff policies of former President Trump are leaving companies and investors wary of the direct and indirect consequences of such measures. As U.S. Tariff Policies continue to evolve, and as uncertainty looms, companies must disclose the effects of these policies on their businesses. This practice note identifies disclosures related to U.S. Tariff Policies that offer detailed discussions on the actual and potential effects for the particular registrants and concludes with recommendations on how to enhance disclosures relating to the effects of U.S. Tariff Policies. The company name, its industry, and the type of filing are also provided in each sample disclosure for reference.

In January 2018, the U.S. administration imposed tariffs on solar panels produced outside of the United States, adversely affecting renewable energy companies. Shortly thereafter, the Office of the U.S. Trade Representative (USTR) announced tariffs on foreign washing machines. In March 2018, former President Trump signed an order imposing a 25% tariff on steel and a 10% tariff on aluminum imports. As a consequence of the steel and aluminum tariffs, some economists and business leaders warned of job losses, impacts on industrial competitiveness, and higher costs for businesses and consumers. For example, Coca-Cola and Pepsi reported U.S. tariffs as a factor leading to increased costs of the product for consumers. Former President Trump hiked tariffs on goods and services primarily from China, Canada, Mexico, and the European Union (EU), prompting a wave of retaliation that has the potential to negatively impact American exports of everything from pork and soybeans to Levi's jeans. Some U.S. Tariff Policies have incited, and may continue to incite, "tariff wars" between the United States and various countries throughout the world, which may negatively impact shipping and trading products within and outside of the United States. In August 2018, former President Trump authorized double tariffs on aluminum and steel against Turkey. By year-end 2018, the U.S. administration imposed tariffs that affected approximately 12% of total U.S. imports.

In April 2019, the U.S. administration imposed three rounds of tariffs on Chinese goods, totaling over $250 billion with duties ranging from 10% to 25%. The U.S. administration threatened to levy an additional $267 billion worth of Chinese goods that would cover virtually all Chinese imports. The U.S. administration delayed the March 1, 2019, deadline that would have raised tariffs from existing levels of 10% up to 25% on $200 billion worth of Chinese goods. In April 2019, former President Trump threatened to tariff all cars made in Mexico and sold in the United States at 25%. Similarly, in April 2019, former President Trump continued to threaten to enact tariffs up to 25% against EU cars and auto parts.

Although U.S. Tariff Policies may protect manufacturers in the United States, these policies may also exacerbate trade tensions with other nations and prompt retaliatory trade measures. In April 2019, China imposed retaliatory tariffs on approximately $110 billion in U.S. goods, targeting important industries, such as agriculture. In June 2018, the European Commission imposed tariffs on approximately $3.5 billion worth of U.S. goods and reported, in January 2019, that it was prepared to tariff over $23 billion worth of U.S. goods should the U.S. follow through with its threatened tariffs against EU cars and auto parts. In July 2018, Mexico and Canada imposed over $3 billion and $13 billion, respectively, in levies on U.S. exports. In April 2019, Mexico and Canada threatened not to ratify the United States-Mexico-Canada Agreement (USMCA) until Mexican and Canadian steel and aluminum tariffs were lifted. On October 18, 2019, the United States imposed 10% and 25% tariffs on $7.5 billion worth of goods from the EU. It further threatened a tariff on $2.4 billion in French products in December 2019.

On August 23, 2019, the United States announced a 15% tariff on $300 billion worth of Chinese goods, with some scheduled to begin on September 1, 2019, and others on December 15, 2019. China announced an additional 5%–10% retaliatory tariff on $75 billion worth of U.S. imports that began on September 1, 2019, and ended on December 15, 2019, with an additional tariff on U.S. cars and car parts. On September 12, 2019, the United States announced a 30% tariff on $250 billion worth of Chinese goods that would become effective from October 1, 2019, until October 15, 2019. In December 2019, the U.S. administration postponed indefinitely the 15% tariff on $160 billion worth of goods from China, with plans to decrease the tariff to 7.5% on $120 billion worth of goods as part of the "Phase One" deal between the two countries. China simultaneously canceled its scheduled tariff increase on approximately $75 billion worth of U.S. goods. These changes took effect on February 14, 2020.

In May 2019, the United States lifted steel and aluminum tariffs on Canada and Mexico. The USMCA was signed into law by former President Trump on January 29, 2020, and took effect on July 1, 2020. President Trump reinstated tariffs on Canadian aluminum in August 2020 but again lifted the tariffs in September 2020 following Canadian threats of retaliatory tariffs.

In March 2020, the USTR granted Section 301 tariff exclusions for certain medical products from China, including medical masks, examination gloves, and antiseptic wipes, in response to the novel coronavirus pandemic but did not plan to lift additional import tariffs on Chinese goods. In December 2020, the USTR extended these exclusions through March 2021. The U.S. administration signed a plan to defer U.S. tariffs on goods from countries with most-favored nation status for 90 days in response to the novel coronavirus pandemic. In April 2020, the U.S. administration announced its intention to impose tariffs on crude imports to protect the U.S. energy industry following the oil price crash, but it ultimately did not impose any tariffs.

Although some tariffs have been relaxed under President Biden, it is difficult to predict whether the new U.S. administration will mark an end to the trade wars. On March 4–5, 2021, the USTR announced a four-month suspension of Section 301 tariffs on goods imported from the EU and the United Kingdom (UK). The USTR also extended the Section 301 tariff exclusions for certain medical products from China until September 21, 2021. However, the USTR stated in an interview on March 28, 2021, that the U.S. had no immediate plans to lift additional tariffs on Chinese imports, although it may be open to further negotiations.

For a discussion of the effects of certain U.S. administration policies in other contexts, see Market Trends 2020/21: High Yield Debt Offerings — Market Outlook and Clean and Renewable Energy Industry Guide for Capital Markets.

Disclosures on U.S. Tariff Policies Contained in the Risk Factors Section

Item 105 (17 C.F.R. § 229.105) of Regulation S-K requires that a registrant provide a description of the material risks that impact a business and how these risks affect the registrant or an investment in the securities being offered by the registrant. The disclosure should be written in plain English and should not be a sweeping general statement applicable to any issuer or offering. For further information, see Top 10 Practice Tips: Risk Factors, Market Trends 2020/21: Risk Factors, and Risk Factor Drafting for a Registration Statement. Below are some examples of U.S. Tariff Policies disclosures contained in the Risk Factor section of offering documents and periodic filings:

- **"The geo-political environment between the United States and other jurisdictions, including China and the European Union, continues to cause uncertainty on tariffs and trade.**

  Starting in 2018, and throughout calendar year 2019, the United States enacted new tariffs on numerous raw materials that the Company imports from China, and likewise China also enacted retaliatory tariffs on the finished goods that the Company imports into China for distribution and sale in the China market. Such tariffs have increased the Company's input costs, and have the potential to challenge the Company's competitive position in foreign markets. The continuance of these tariffs and/or escalation of disputes in the geopolitical environment could continue to interfere with automotive supply chains and may have a continued negative impact on the Company's business, financial condition, and/or results of operations, especially since the Company primarily manufactures and ships from one location. We cannot predict what further action may be taken with respect to tariffs or trade relations between the U.S. and other governments, and any further changes in U.S. or international trade policy could have an adverse impact on our business." *Gentex Corp., Form 10-K filed February 22, 2021 (SIC 3714—Motor Vehicle Parts and Accessories).*

- **"Rising concern of international tariffs, including tariffs applied to goods traded between the United States and China, as well as potential export restrictions, could materially and adversely affect our business and results of operations.**

  [. . .] Since the beginning of 2018, there have been several rounds of U.S. tariffs on Chinese goods taking effect in 2018 and 2019, some of which prompted retaliatory Chinese tariffs on U.S. goods. Approximately $1.8 million, or 15%, of our total revenue for the year ended December 30, 2018, and approximately $1.1 million, or 11%, of our total revenue for the year ended December 29, 2019 and $56,000 or 1% for the nine months ended September 27, 2020, consisted of sales of our EOS S3 and FPGA products to both OEMs and ODMs in China. . . . Imposition of tariffs or sustained export restrictions could cause a decrease in the sales of our products to customers located in China or other customers selling to Chinese end users, which would directly impact our business and operating results. Further, changes in United States trade policy could trigger retaliatory actions by affected countries, which could impose restrictions on our ability to do business in or with affected countries or prohibit, reduce, or discourage purchases of our products by foreign customers, leading to increased costs of products that contain our components, increased costs of manufacturing our products, and higher prices of our products in foreign markets. Changes in, and responses to, United States trade policy could reduce the competitiveness of our products and cause our sales and revenues to drop, which could materially and adversely impact our business and results of operations." *QuickLogic Corporation, Form 10-Q filed November 6, 2020 (SIC 3674—Semiconductors & Related Devices).*

- **"Increases in component costs, long lead times, supply shortages, and supply changes could disrupt our supply chain and have an adverse effect on our business, financial condition, and operating results.**

  [. . .] Several of the components that go into the manufacturing of our products are sourced internationally, including from China, where the United States has imposed tariffs on specified products imported there following the U.S. Trade Representative Section 301 Investigation. Although the components that we purchase are not currently subject to the tariffs, if they were to become subject to the tariffs, these tariffs could have a negative impact on our component costs. Increases in our component costs could have a material effect on our gross margins. The loss of a significant supplier, an increase in component costs, or delays or disruptions in the delivery of components, could adversely impact our ability to generate future revenue and earnings and have an adverse effect on our business, financial condition, and operating results." *Galaxy Next Generation, Inc., Form S-1 filed January 19, 2021 (SIC 7830—Services—Motion Picture Theaters).*

- **"Tariffs that have been, and might be, imposed by the United States government or a resulting trade war could have a material adverse effect on our results of operations.**

  It is difficult to accurately estimate the impact on our business from these tariff actions or similar actions or when any additional tariffs may become effective. For fiscal 2020, approximately 49.5% of the products that we sold were manufactured in China. For fiscal 2021, approximately 32.8% of the products that we sold were manufactured in China. . . . Tariffs on additional products imported by us from China would increase our costs, could require us to increase prices to our customers and would cause us to seek price concessions from our vendors. If we are unable to increase prices to offset an increase in tariffs, this would result in our realizing lower gross margins on the products sold by us and will negatively impact our operating results. We have reduced our reliance on China by moving production to other countries, including Vietnam and Indonesia. We will continue to explore alternative production partners to further diversify our sourcing network and to reduce our reliance on any one particular country. These efforts may not enable us to offset the adverse effects of any increases in tariffs." *G-III Apparel Group, Ltd., Form 10-K filed March 26, 2021 (SIC 2300—Apparel & Other Finished Products of Fabrics & Similar Materials).*

- **"We depend on vendors and other sources of merchandise, goods and services outside the U.S. Our business could be affected by disruptions in, or other legal, regulatory, political, economic or public health issues associated with, our supply network.**

  We continue to evaluate the impact of the effective tariffs, including potential future retaliatory tariffs, as well as other recent changes in foreign trade policy and the U.S. Administration on our supply chain, costs, sales and profitability, and are actively working through strategies to mitigate such impact, including reviewing sourcing options and working with our vendors and merchants. At this time, it is unknown how long U.S. tariffs on Chinese goods will remain in effect or whether additional tariffs will be imposed. Depending upon their duration and implementation, as well as our ability to mitigate their impact, these changes in foreign trade policy and any recently enacted, proposed and future tariffs on products imported by us from China could negatively impact our business, results of operations and liquidity if they seriously disrupt the movement of products through our supply chain or increase their cost. In addition, while we may be able to shift our sourcing options, executing such a shift would be time consuming and would be difficult or impracticable for many products and may result in an increase in our manufacturing costs. The adoption and expansion of trade restrictions, retaliatory tariffs, or other governmental action related to tariffs or international trade agreements or policies has the potential to adversely impact demand for our products, our costs, our customers, our suppliers, and/or the U.S. economy, which in turn could adversely impact our results of operations and business." *Macy's, Inc., Form 10-K filed March 29, 2021 (SIC 5311—Retail—Department Stores).*

- **"Significant developments from potential changes in U.S. trade policies could have a material adverse effect on us.**

  The U.S. government implemented additional tariffs on certain goods imported from the PRC. We manufacture a substantial amount of our products in the PRC and are presently subjected to these additional tariffs and will remain so until the tariff lists are altered. These tariffs, and other governmental action relating to international trade agreements or policies, may adversely impact demand for our products, our costs, customers, suppliers and/or the U.S. economy or certain sectors thereof and, as a result, adversely impact our business. These additional tariffs may cause us to increase prices to our customers which may reduce demand, or, if we are unable to increase prices, result in lowering our margin on products sold. It remains unclear what the U.S. or foreign governments will or will not do with respect to tariffs, international trade agreements and policies on a short-term or long-term basis. We cannot predict future trade policy or the terms of any renegotiated trade agreements and their impacts on our business. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs or trade agreements or policies has the potential to adversely impact demand for our products, our costs, our customers, our suppliers, and the U.S. economy, which in turn could adversely impact our business, financial condition and results of operations." *Universal Electronics, Inc., Form 10-K filed March 5, 2021 (SIC 3651—Household Audio & Video Equipment).*

- **"Changes to trade regulation, quotas, duties or tariffs, caused by the changing US and geopolitical environments or otherwise, may increase our costs and adversely affect our business.**

  The approach of President Biden's administration to tariffs and other trade regulations is uncertain. The imposition of additional tariffs or quotas or changes to certain trade agreements, could, among other things, increase the costs of the materials used by our suppliers to produce new revenue equipment or increase the price of fuel. Such cost increases for our revenue equipment suppliers would likely be passed on to us, and to the extent fuel prices increase, we may not be able to fully recover such increases through rate increases or our fuel surcharge program, either of which could have an adverse effect on our business." *Knight-Swift Transportation Holdings Inc., Form 10-K filed February 25, 2021 (SIC 4213—Trucking (Except Local)).*

- **“We primarily use foreign suppliers for our products and raw materials, which poses risks to our business operations.**

  [. . .] The United States government imposed additional tariffs in 2018 and 2019 on a variety of imports from China, including certain categories of apparel, footwear and accessories, and has threatened increased tariffs on goods imported into the United States from China and Vietnam. China and Vietnam are significant sourcing countries of apparel, footwear and accessories for us globally and for most of our licensees. We imported approximately $30 million and $136 million of inventory into the United States from China and Vietnam, respectively, in 2020. Accordingly, any tariffs on apparel, footwear and accessories imported from China and Vietnam into the United States result in an increase in our cost of goods sold for that product. We continuously look for alternative sourcing options, but we may not be able to shift from China and Vietnam production of inventory bound for the United States. In addition, higher costs in sourcing from other countries, including because others in the industry are looking to move production for the same reason, may make the move price-prohibitive. We may not be able to pass the entire cost increase resulting from the tariffs onto consumers or could choose not to. Any increase in prices to consumers could have an adverse impact on our direct sales to consumers, as well as sales by our wholesale customers and our licensees. Any adverse impact on such sales or increase in our cost of goods sold could have a material adverse effect on our business and results of operations.” *PVH Corp., Form 10-K filed March 31, 2021 (SIC 2320—Men's & Boys' Furnishings, Work Clothing, & Allied Garments).*

- **“Changes in U.S. trade policies, including the imposition of tariffs on apparel or accessories and a potential trade war, could have a material adverse impact on our business.**

  Most of our merchandise is produced in foreign countries, primarily in China, making the price and availability of our merchandise susceptible to international trade risks and other international conditions. The imposition of tariffs, duties, border adjustment taxes or other trade restrictions by the United States could also result in the adoption of new or increased tariffs or other trade restrictions by other countries. These tariffs as well as additional tariffs or trade restrictions that are implemented by the United States or other countries, could have a significant adverse impact on the cost of our goods, the prices at which we offer them for sale and our overall financial performance. The adoption and expansion of trade restrictions and tariffs, quotas and embargoes, the occurrence of a trade war, or other governmental action related to tariffs or trade agreements or policies, has the potential to adversely impact the cost of and demand for our products, our overall costs, our customers, our suppliers and the world economy, which in turn could have a material adverse effect on our business, operational results, financial position and cash flows.” *Christopher and Banks Corporation, Form 10-Q filed December 14, 2020 (SIC 5621—Retail—Women's Clothing Stores).*

Disclosures on U.S. Tariff Policies Included in the MD&A Section

Item 303(b) (17 C.F.R. § 229.303) of Regulation S-K requires a discussion of a company's financial condition and changes in financial condition and results of operations, as well as a discussion of any known trends or factors that will likely, or are reasonably likely to, have a material impact on the company's results of operations, financial condition, and business. This includes known trends, commitments, events, or uncertainties are likely to have a material impact on the company's business. The MD&A discussion should not include merely generic or boilerplate disclosures. It should reflect how particular facts and circumstances affect the company and its business. For further information, including recent amendments, see Management's Discussion and Analysis of Financial Condition and Results of Operations, SEC Adopts Amendments to MD&A and Financial Disclosures, Management's Discussion and Analysis (MD&A) Resource Kit, and Management's Discussion and Analysis Section Drafting Checklist.

Here are some examples of U.S. Tariff Policies disclosures in the MD&A section of recent filings:

- **Overview**
  - “In 2019, the U.S. administration imposed significant changes to U.S. trade policy with respect to China. Tariffs have subjected certain Alarm.com products manufactured overseas to additional import duties of up to 25%. The amount of the import tariff and the number of products subject to tariffs have changed numerous times based on action by the U.S. administration. Approximately one-fifth to one-half of the finished goods hardware products that we sell to our service provider partners are imported from China and could be subject to increased tariffs.

While the additional import duties resulted in an increase to our cost of hardware revenue, these import duties had a modest impact on hardware revenue margins. We continue to monitor the changes in tariffs. If tariffs are increased or are expanded to apply to more of our products, such actions may increase our cost of hardware revenue and reduce our hardware revenue margins in the future." *Alarm.com Holdings, Inc., Form 10-K filed February 25, 2021 (SIC 7372—Services—Prepackaged Software).*

- "The Company's financial statements have been impacted by Section 301 tariffs on certain products imported from China in recent years. A subset of these imports for certain click vinyl and other engineered products . . . received an exemption that was made retroactive to the beginning of the Section 301 Tariffs for a period of time. The Company has deployed strategies to mitigate tariffs and improve gross margin, including alternative country sourcing, partnering with current vendors to lower costs and introduce new products, and adjusting its pricing. . . . The Company recorded a benefit of approximately $13 million of gross profit and $11 million of operating income in the fourth quarter of 2019 as a result of the retroactive exclusion of these tariffs, which did not repeat in the fourth quarter of 2020. During the fourth quarter of 2020, the August reinstatement of tariffs began to flow through the income statement as these products were sold. This impact was partially offset by the Company's mitigation strategies. The future impact of the reinstatement of tariffs is dependent on several factors including: 1) ongoing Company mitigation efforts for which the outcome is uncertain, 2) inventory turnover rates which were affected by COVID-19 in 2020, and 3) behavior of consumers and competitors as prices for products adjust based on supply/demand and as consumer preferences shift among product categories impacting both product sourcing and inventory turnover. It is still too early to predict the outcome of such measures adopted by the Company." *Lumber Liquidators Holdings, Inc., Form 10-K filed March 2, 2021 (SIC 5211—Retail Lumber & Other Building Materials).*

- "Beginning in 2018, the United States enacted a series of tariffs on certain goods manufactured in China. As a result of these tariffs, we incurred U.S. tariff and tariff-related costs of $2.8 million in 2020, $6.2 million in 2019 and $3.2 million in 2018. In order to mitigate the impact of the tariffs enacted by the United States, we undertook a broad plan to realign our global supply chain by moving substantially all of our production outside of China in addition to other supply chain improvements in the first half of 2019. As a result of the tariffs imposed on a broader list of products in September 2019, we expanded the scope of our global supply chain realignment plan, which was substantially completed in 2020." *Calix, Inc., Form 10-K filed February 22, 2021 (SIC 4899—Communications Services, NEC).*

- "Between July 2018 and May 2019, the Trump Administration imposed a series of tariffs, ranging from 5% to 25%, on numerous products imported into the United States from China, including Varian's radiotherapy systems manufactured in China and certain components used in our manufacturing and service activities. In July and August 2018, China retaliated against the U.S. tariffs by imposing its own series of tariffs, ranging from 10% to 25%, on certain products imported into China from the United States, including Varian's radiotherapy systems and certain manufacturing and service components.

  We participated in the Office of the U.S. Trade Representative (USTR) process to seek product-specific exclusions from the U.S. tariffs on Chinese imports. To date, USTR has granted tariff exclusions for four products: certain radiotherapy systems manufactured in China, as well as three key components of the radiation therapy systems that we manufacture in the United States: multi-leaf collimators, certain printed circuit board assemblies and tungsten shielding. We submitted an additional U.S. exclusion request in September 2019, in relation to a manufacturing component, which was ultimately not granted. In 2019, USTR granted a one-year extension to our exclusion for radiotherapy systems through December 28, 2020, which has now expired. Two additional component exclusion extensions, for multi-leaf collimators and certain printed circuit board assemblies, were granted through December 31, 2020 and only multi-leaf collimators has been further extended to March 31, 2021. One additional exclusion request, for tungsten shielding, was not extended and expired on September 19, 2020.

  In June and July 2019, we submitted formal requests to the Chinese government for exclusions from the Chinese retaliatory tariffs for manufacturing inputs, service parts and radiotherapy systems imported into China from the United States. In September 2019, the Chinese government granted a tariff exclusion for medical linear accelerators, including our radiotherapy systems, which was extended through September 16, 2021. We utilize a monthly exclusion program to further mitigate the tariffs on other items." *Varian Medical Systems Inc., Form 10-Q filed February 9, 2021 (SIC 3845—Electromedical & Electrotherapeutic Apparatus).*

- "Tariffs on handbags and leather outerwear imported from China were effective beginning in September 2018. These tariffs initially increased existing duties by 10% of the merchandise cost to us. The level of tariffs on these product categories was later increased to 25% beginning May 10, 2019. On August 1, 2019, the United States government announced new 10% tariffs that cover the remaining estimated $300 billion of inbound trade from China, including most of our apparel products. On August 23, 2019, the United States government announced that the new tariffs would increase from 10% to 15%. A portion of the new 15% tariffs went into effect on September 1, 2019. Some of the additional tariffs on certain categories of products were delayed until December 15, 2019, but have not yet gone into effect as the United States and China signed their Phase One Deal trade agreement in January 2020.

  It is difficult to accurately estimate the impact on our business from these tariff actions or similar actions or when additional tariffs may become effective. For fiscal 2020, approximately 50% of the products that we sold were manufactured in China. For fiscal 2021, approximately 33% of the products that we sold were manufactured in China.

  Notwithstanding the Phase One Deal, the United States government continues to negotiate with China with respect to a trade deal, which could lead to the removal, lowering or postponement of additional tariffs. If the U.S. and China are not able to resolve their differences, additional tariffs may be put in place and additional products may become subject to tariffs. Tariffs on additional products imported by us from China would increase our costs, could require us to increase prices to our customers and would cause us to seek price concessions from our vendors. If we are unable to increase prices to offset an increase in tariffs, this would result in our realizing lower gross margins on the products sold by us and will negatively impact our operating results. We have reduced our reliance on China by moving product to other countries, including Vietnam and Indonesia. We will continue to explore alternative production partners to further diversify our sourcing network and to reduce our reliance on any one particular country. These efforts may not enable us to offset the adverse effects of any increase in tariffs." *G-III Apparel Group, Ltd., Form 10-K filed March 26, 2021 (SIC 2300— Apparel & Other Finished Products of Fabrics & Similar Materials).*

- "Substantially all of the products and frac rental equipment that we import through our Chinese supply chain are subject to tariffs under Section 301 of the Trade Act of 1974 (Section 301). For the year ended December 31, 2020, we estimate that approximately 40% of the items received were sourced through our Chinese supply chain. In May 2019, the U.S. Trade Representative announced that it was increasing the level of tariffs on approximately $200 billion worth of Chinese imports pursuant to Section 301. The tariff rate on covered products that were exported on or after May 10, 2019 was raised from 10% to 25%. In 2020, we received a temporary exclusion and tariff suspension on certain covered products exported from China to the United States under Section 301 and received refunds totaling $14.2 million, inclusive of $0.5 million in interest, for tariffs paid on excluded products exported after September 24, 2018. Approximately $4.0 million of the tariff recoveries related to balances included in inventory and were recorded as a reduction to inventory and $9.7 million was recorded as credits to cost of goods sold to offset the accounts where the tariff expenses were originally recorded. The tariff exemption ended August 7, 2020; therefore, we have resumed paying tariffs at 25% on the previously excluded parts imported from China. We believe further increases in the tariff rate above 25% may adversely affect our business, but a combination of factors may mitigate some of the impact of any future increases in tariff rates on our results of operations. These include, among other things, use of product received prior to the introduction of tariffs, our negotiations with suppliers, use of alternative supply chains and favorable currency exchange movements." *Cactus, Inc., Form 10-K filed March 1, 2021 (SIC 3533—Oil and Gas Field Machinery and Equipment).*

- **Industry Factors That May Affect Future Operating Results**

  - "In addition to inflation, our input and labor costs are impacted by mandated costs such as minimum wages and trade policies, most significantly tariffs and duties on our products imported from foreign countries. The implementation of incremental U.S.

tariffs on Chinese imports in particular has had a significant impact on our cost of goods sold, product demand and sourcing strategies. Before mitigation, we estimate that incremental U.S. tariffs on Chinese imports in fiscal 2020 would have amounted to $75 million of additional annual costs, as these tariffs applied to a broad range of our products." *JOANN Inc., Form 10-K filed April 1, 2021 (SIC 5940— Retail-Miscellaneous Shopping Goods Stores).*

- "As a result of the current trade war, despite a long term commitment to increased ethanol blending in gasoline, Chinese demand may increase but management does not currently expect increased exports to China to have a material impact on the ethanol industry or our financial position during Fiscal 2021. With protective tariffs still in place and improved availability of sugar cane ethanol, Brazilian imports of U.S. ethanol are forecasted to decrease. In addition, given the current over supply in domestic ethanol inventories, the decrease in Brazilian demand caused by that country's quota system and the attractiveness of U.S. imports from Brazil to meet advanced biofuel mandates and satisfy the California carbon intensity/low carbon fuel standard requirements, we expect foreign trade to continue to exert a negative impact on ethanol prices." *Lincolnway Energy, LLC, Form 10-Q filed February 22, 2021 (SIC 2860—Industrial Organic Chemicals).*

- "Our industry is subject to volatility in costs related to certain raw materials used in the manufacturing of our products. This volatility applies primarily to costs driven by commodity prices, which can increase or decrease dramatically over a short period of time. In addition, our costs may be impacted by sanction tariffs imposed on our products due to changes in trade terms. On May 10, 2019, the U.S. increased the sanction tariffs rate from 10% to 25% on $200 billion of imports of select product categories (Tranche 3), which includes handbags and travel goods from China, and effective February 14, 2020, a 7.5% tariff on certain additional goods from China, including ready-to-wear, footwear and men's products, went into effect. If additional tariffs or trade restrictions are implemented by the U.S. or other countries, the cost of our products could increase which could adversely affect our business. In addition, commodity prices and tariffs may have an impact on our revenues, results of operations and cash flows." *Capri Holdings Ltd., Form 10-Q filed February 3, 2021 (SIC 3100—Leather & Leather Products).*

- **Results of Operations**
  - "In June 2018, the Office of the United States Trade Representative announced new proposed tariffs for certain products imported into the U.S. from China. The vast majority of our products that are imported into the U.S. from China are currently subject to tariffs that range between 7.5% and 25%. On January 22, 2020, the Office of the United States Trade Representative announced it will reduce Section 201 List 4A and additional tariffs from 15% to 7.5% and the List 4B tariffs would not go into effect. These tariffs have already affected our operating results and margins. For so long as such tariffs are in effect, we expect it will continue to affect our operating results and margins. As a result, our historical and current gross profit margins may not be indicative of our gross profit margins for future periods." *Ubiquiti Inc., Form 10-Q filed February 5, 2021 (SIC 3663—Radio & TV Broadcasting & Communications Equipment).*
  - "Cost of revenue increased $20.9 million, or 2.8%, from $733.5 million for fiscal 2019 to $754.4 million for fiscal 2020. The increase was due to an additional $31.0 million of tariffs on products imported from China to the U.S. Excluding the impact of tariffs, the cost of revenue would have declined $10.1 million compared to the prior year due to product and materials cost reduction.

    Gross margin increased 130 basis points for fiscal 2020 compared to fiscal 2019. The increase was driven by a shift in product mix into higher margin products and channels as well as product and material cost reductions associated with the consolidation of our supplier base and successful cost negotiations. This increase was partially offset by the introduction of tariffs in September 2019. Excluding the effects of tariffs, gross margin would have been 45.6% or 370 basis points greater than fiscal 2019." *Sonos, Inc., Form 10-K filed November 23, 2020 (SIC 3651—Household Audio & Video Equipment).*
  - "In August 2020, the U.S. government reinstated 10 percent tariffs on certain aluminum imports from Canada under Section 232 of the Trade Expansion Act of 1962 (Section 232). In September 2020, the U.S. government announced that it would not impose this tariff from September 2020 to December 2020 if total aluminum imports of non-alloyed, unwrought aluminum from Canada met certain conditions. In October 2020, the U.S. government fully reinstated the exemption

on aluminum imports from Canada retroactive to September 1, 2020. The Company recorded net expense of $3 related to Section 232 tariffs in 2020." *Alcoa Corporation, Form 10-K filed February 25, 2021 (SIC 3334—Primary Production of Aluminum).*

- "The Company's metal products are manufactured in China and are imported into the United States. Many of the Company's metal products have been subject to additional USTR tariffs on the importation of Chinese manufactured products in the United States. These new tariffs went into effect on September 24, 2018 at an initial 10% rate but later rose to a 25% rate. Uncertainty over the tariffs began to negatively affect the Company's business in the fourth quarter of fiscal 2018 as customers were attempting to formulate their approach to the tariffs and stalled or delayed acceptance of initial price increases. The implementation of these additional tariffs reduced the Company's margins and overall demand for metal products during all of fiscal 2019. During 2019, the Company's supplier appealed to USTR the classification of many of its metal products as subject to specific tariff classes. In September 2019, the Company was notified that certain of its products in both the fencing and pet categories would not be subject to these tariffs going forward. Unfortunately, those tariff reductions were temporary, and the additional tariff rates on the Company's imported metal products were raised back to the 25% rate in September 2020." *Jewett-Cameron Trading Company Ltd., Form 10-K filed November 12, 2020 (SIC 5211—Retail—Lumber & Other Building Materials Dealers).*

Market Outlook

U.S. Tariff Policies Disclosure Enhancements

With trade tensions continuing, and the actual and potential effects of U.S. Tariff Policies manifesting in many companies, it is important that companies consider the impact of such policies on their businesses, results of operations, and future prospects. We recommend that you, as counsel to companies are preparing their disclosures, should consider the following:

- **Ascertain if the company is or is reasonably likely to be affected by U.S. Tariff Policies.** A company should be sensitive to the possibility that the U.S. Tariff Policies may affect its business. It should consider including disclosure that it is dealing with the type of goods that have already been or will likely be levied on by virtue of the U.S. Tariff Policies.
- **Identify the effects on the business.** A company should identify the aspects of its business that are affected or are expected to be affected by U.S. Tariff Policies. It should specify whether the impact of such policies is or is expected to be beneficial or detrimental to the company's business, to particular lines of business, to particular products, and in which specific locations. Effects should be described qualitatively and, where possible, quantified. Some questions to consider include the following:
    - Does the company deal with goods or services that are or will likely be burdened by U.S. Tariff Policies (e.g., steel, aluminum, solar panels, agricultural goods)?
    - Does the company deal with goods or services that are or will likely be benefitted by U.S. Tariff Policies?
    - Does the company transact with countries or supranational entities that are or will likely be the subjects of the U.S. Tariff Policies (e.g., China, Mexico, Canada, EU)?
    - Which segment(s) of the company's businesses, assets, and people will be affected by the U.S. Tariff Policies?
    - Can the impact be assessed? If so, can the impact be quantified?
- **Provide a plan to manage risks.** If the company will be affected by the U.S. Tariff Policies, it should also disclose how it intends to mitigate or avoid the negative effects or to maintain the benefits arising from the policies. The plan should consider congressional and executive branch attitudes toward U.S. Tariff Policies and any trends pointing toward a continuance, discontinuance, intensification, or softening of the U.S. Tariff Policies.

Overall, many of the consequences of U.S. Tariff Policies are difficult to ascertain at this juncture. This has led to increased uncertainty relating to, and potential conflicts arising from, the U.S. administration's global trade policies. Companies need to stay vigilant and keep their stakeholders well informed as to the potential risks that the U.S. Tariff Policies may bring about. For further information on the disclosure obligations of public companies in general, see Duties to Disclose and Update Material Information, Public Company Responsibilities Memorandum, Public Company Responsibilities Presentation, Public Company Periodic Reporting and Disclosure Obligations, and Periodic and Current Reporting Resource Kit.

Anna T. Pinedo, Partner, Mayer Brown LLP

Anna T. Pinedo is a partner in Mayer Brown's New York office and a member of the Corporate & Securities practice. She concentrates her practice on securities and derivatives. Anna represents issuers, investment banks/financial intermediaries and investors in financing transactions, including public offerings and private placements of equity and debt securities, as well as structured notes and other hybrid and structured products.

She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.

Gonzalo Go, Associate, Mayer Brown LLP

Gonzalo D.V. Go III is an associate in Mayer Brown's Corporate & Securities practice. He advises issuers on shelf registration statements, medium term note programs and issuances exempt from registration under Rule 144A, Regulation S and Section 3(a)(2) of the Securities Act. He advises issuers, investment banks and sponsors in public and private offerings of equity and debt securities, including initial public offerings; de-SPAC and Up-C business combinations; follow-on offerings; investment grade debt offerings and securitizations. He also assists public companies with stock exchange listing applications, maintenance and transfers; securities law reporting and compliance requirements such as Forms 10-K, 10-Q and 8-K, and Section 16 filings; and general corporate governance matters, including preparation and review of resolutions, minutes, meeting agendas and relevant corporate policies and processes.

G earned his LLM from Columbia Law School, where he served as a student senator and graduated as the class speaker, a Harlan Fiske Stone scholar and a recipient of the Parker School Recognition of Achievement in International and Comparative Law. He earned his JD, with honors, from the Ateneo Law School and his BS in Accountancy, with honors, from De La Salle University.

G's prior professional experiences include being (i) a capital markets associate in another global law firm in New York, (ii) an associate general counsel of Jollibee Foods Corporation, a multinational fast-food chain headquartered in the Philippines, where he gained extensive experience in managing legal risks in various business activities such as business development and expansion, customer relations, operations, real estate, franchising, marketing, human resources, purchasing, finance, corporate communications, tax and government relations, (iii) a member of the faculty of the Ateneo Law School and (iv) a tax associate in SyCip Salazar Hernandez & Gatmaitan, a top tier law firm in the Philippines. G is also a lawyer and a certified public accountant in the Philippines.

Nicole Cors, Associate, Mayer Brown LLP

Nicole Cors is an associate in Mayer Brown's Chicago office and a member of the Corporate & Securities practice.

Felix Zhang, Associate, Mayer Brown LLP

Felix Zhang is an associate in Mayer Brown's Washington DC office and a member of the Corporate & Securities practice.

Felix received his JD from New York University School of Law, where he served as the Managing Editor of the *New York University Journal of Law and Business*, his MA from Johns Hopkins University, and his BA from Pomona College.