



New Era for Trade Enforcement and Navigating the Path to Managing Punitive Tariffs

FDRA 2018 Design Summit

October 22, 2018



Agenda

1	Trade Enforcement and Survey Highlights	
2	CBP Organizational Response	
3	CBP Enforcement Trends	
4	Enforcement Activity	
5	Companies Current Practice	
6	The Path to Managing Punitive Tariffs	

Why are we talking about enforcement?

- Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015
- Shift in CBP's Approach
- Trump Administration's Trade Policies

"For years, very often our primary audit tool was to do a full-blown audit....CBP has now moved toward a more risk-based approach."

**Brenda Smith, Executive
Assistant Commissioner,
International Trade at CBP**

Our recent audit has resulted in "extensive requests for information from CBP, with extensive follow-up on those requests."

*Respondent to KPMG Survey
(2018)*



KPMG 2018 Enforcement Survey

Demographics



144
Respondents

1/3rd

Reported their company
imported \$1 billion+ of
goods annually into
the United States

Industry Representation



- 15% - Apparel / Footwear
- 14% - Automotive
- 13% - General Retail Goods
- 10% - Pharma / Biotech / Chemical
- 9% - Industrial Manufacturing

CEE Representation



- 14% - Apparel / Footwear / Textiles
- 13% - Automotive / Aerospace
- 8% - Pharma / Health / Chemicals
- 7% - Machinery
- 6% - Electronics

82%

Most estimated
their company's total
annual U.S. duty
liability is less than
\$100 million

39%

Reported they were not in
a CEE

KPMG's 2018 Enforcement Survey Results



Key Findings.....

Of those audited 1/3rd reported that they were **randomly selected**

Over 50% of CBP audits lasted **1 – 3 years**

60% of those audited used a 3rd party to **manage and/or prepare** for the audit

Among those audited 1/3rd underwent a **focused assessment**

Where violations were found during the audit, 63% indicated **negligence** was the basis for the penalty

On average companies paid **\$1.8m in additional duties** due to the audit



Importer readiness?

Over **75%** of respondents indicated that they were *somewhat confident*, but aware of **potential risks** of a CBP Audit

KPMG's 2018 Enforcement Survey Highlights



Key Findings

Areas of focus by CBP:
**Value, Free Trade Agreement
Eligibility, AD/CVD, HTS
Classification**

47% cited valuation,
including assists and related party
transactions, as the most
significant compliance risk

On average companies paid
\$1.8m in additional duties
due to the audit

*"Results of product analysis
performed by CBP altered the
classification of our products."*

*Respondent to KPMG
Survey (2018)*

*"CBP wanted us to provide
that we were actually
manufacturing in MX, and not
just using our MX facility as a
transshipment point in order to
claim NAFTA."*

*Respondent to KPMG
Survey (2018)*





CBP Organizational Response

CBP approach to enforcement



Source: www.cbp.gov

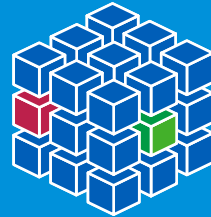
CBP Approach to Enforcement (continued)

CBP Created a Trade Enforcement Task Force to focus its efforts on issues related to Forced Labor, AD/CVD laws, and the interdiction of illicitly imported goods.

Trade enforcement task force



Focused on issues related to enforcement of AD/CVD laws, interdiction of imported products using forced labor



Strengthens CBP's ability to detect high-risk activity, target illicit trade networks, and work with industry to disrupt evasion of U.S. trade laws



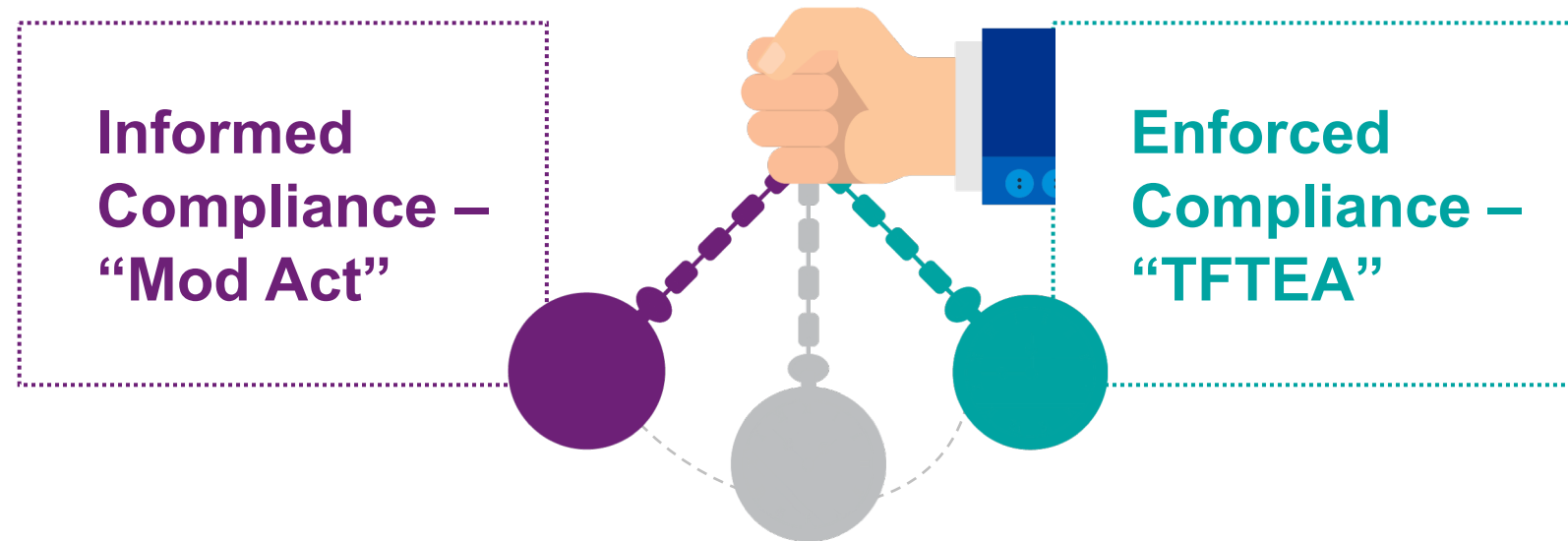
Harnesses the agency's collective trade enforcement expertise as a focal point for coordination with other government agency partners including Department of Commerce and ICE



CBP Enforcement Trends

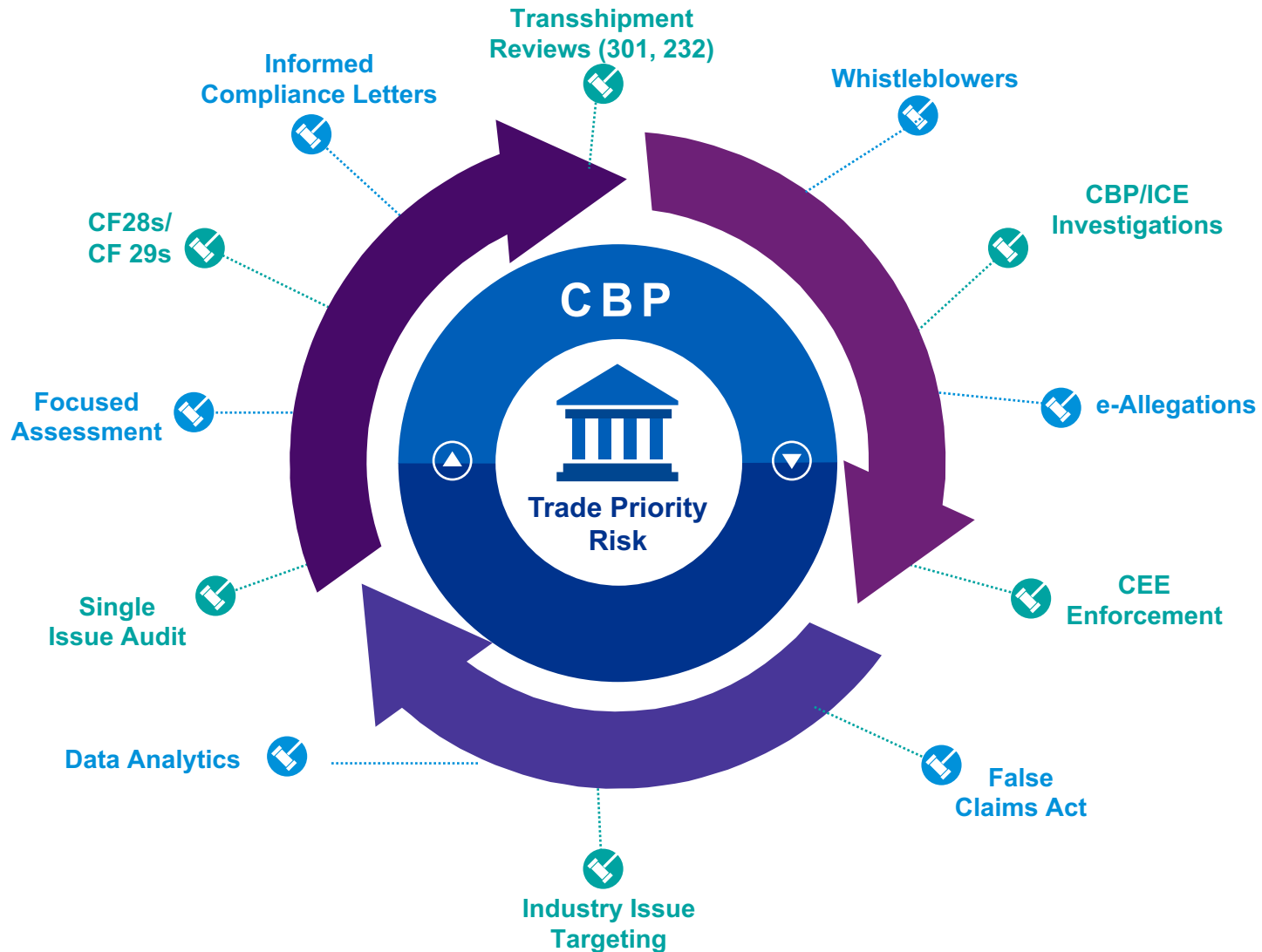
THE CBP Enforcement Swing

Due to the TFTEA, **CBP enforcement** is now **Enforced compliance**.




Coordinated enforcement by CEEs and Regulatory Audit to aggressively pursue penalties for non-compliance.

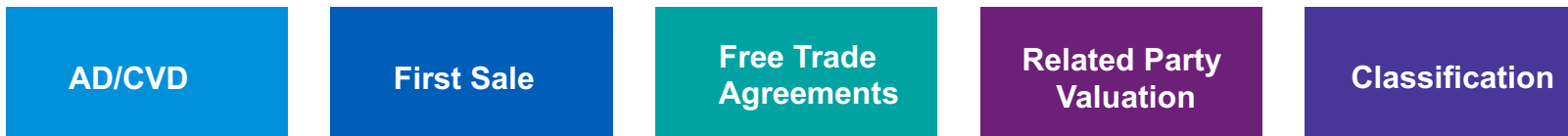
Common Enforcement Tools



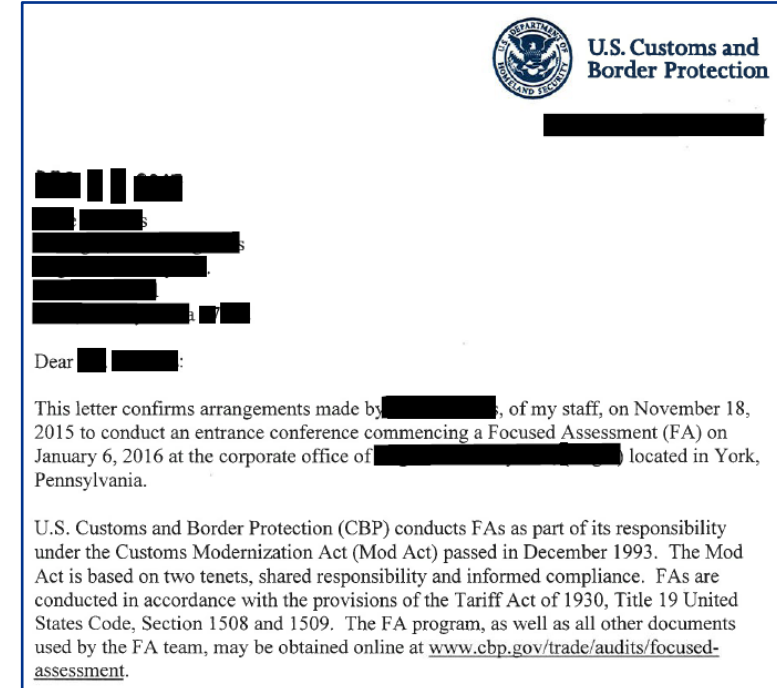
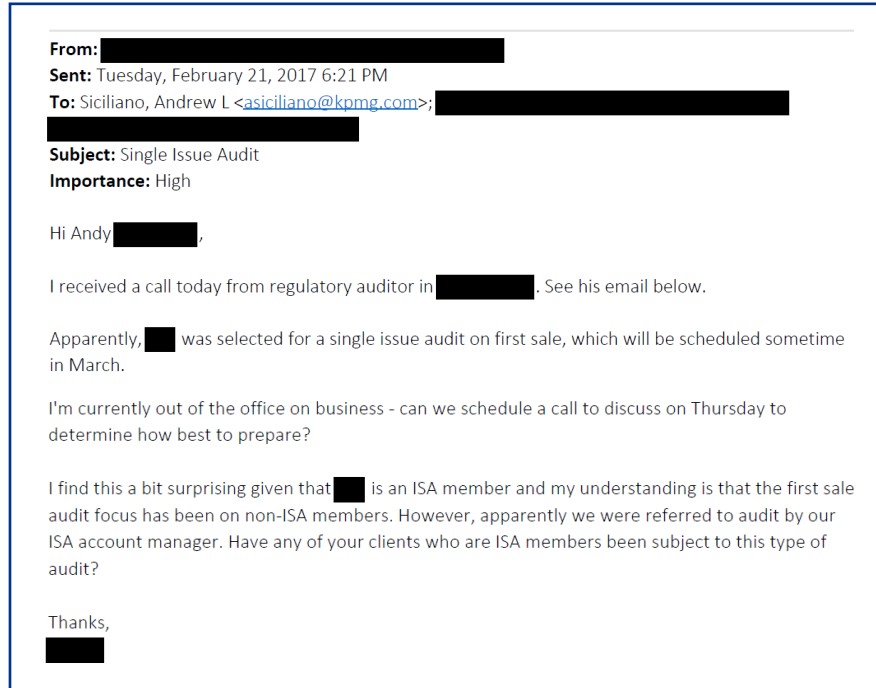
Increased use of CBP Form 28 essentially desk audits

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection REQUEST FOR INFORMATION 19 CFR 151.11		OMB No. 1551-0023 Exp. 09-30-2019	
		1. Date of Request 04/03/2018	
		2. Date of Entry and Importation 03/06/2018	
3. Manufacturer/Seller/Shipper [REDACTED]	4. Carrier [REDACTED]	5. Entry No. [REDACTED]	
5a. Invoice Description of Merchandise Coffee		5b. Invoice No.	6. HTSUS Item No. 0901110025
7. Country of Origin/Exportation HN HN		8. CBP Broker and Reference or File No. [REDACTED]	
9. TO: [REDACTED]		10. FROM: [REDACTED]	
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.			11a. Port 5301
		11b. Date Information Furnished	
General Information and Instructions			

Recent enforcement areas:



Regulatory Audits



Recent types of audits:

Focused assessment

Single issue audit
(quick response audit)

Survey of importers

CBP Investigations

Dear Sir or Madame:

This letter is to advise you that pursuant to 19 CFR 162.74(i)(1)(i), [REDACTED] and all related firms, is **under investigation** by U.S. Customs and Border Protection for possible misclassification and circumvention of duties for [REDACTED] on importations from [REDACTED] to present.

For questions regarding this investigation please contact [REDACTED]



Preparing for Increased Enforcement Activity

The next level of trade compliance

The TFTEA reinforces the need for even the most robust trade compliance program to continue to evolve and adapt even further than what we have seen historically even from leading companies.



Post-TFTEA program elements to consider



Enhance **processes & controls** w/focus on CBP's Priority Trade Risks



Increase **collaboration** among internal compliance functions



Leverage **data analytics tools** to perform risk assessments



Activity participate with **industry** counterparts and associations



Develop or enhance internal and **broker guidelines**



Use **voluntary disclosures** as a tool in addressing compliance issues

KPMG's 2018 Enforcement Survey Highlights



Key Findings

Of the respondents only
35% were ISA Members

60% of those audited used a 3rd party to **manage and/or prepare** for the audit

Where penalties applied in an audit, **63% indicated negligence** as the basis for such penalties

There was a **lack of confidence and awareness of risks** of an audit in 75% of the respondents

The "CBP process can be cumbersome, but if you have your paperwork, process and controls in place, it is pretty straightforward."

Respondent to KPMG Survey (2018)

One respondent offered that it's important that the "customs compliance manual is up-to-date and the procedures reflect the actual processes occurring within the organization."

Respondent to KPMG Survey (2018)





Companies Current Practice

KPMG's 2018 KPI / metric survey demographics



Majority reported their trade compliance function had
<15 Employees

47%

Reported that their trade compliance function reports up through Supply Chain



Duty Savings Initiatives

- 93% - Free Trade Agreements
- 57% - Tariff Engineering
- 50% - Foreign Trade Zones
- 50% - Drawback
- 36% - Protests
- 29% - First Sale for Export



Trade Compliance Budgets

- 60% - Trade compliance budgets in excess of \$1m
- 86% - Trade automation budgets less than \$500k

42%

Have more than 25K Bill of Ladings/yr for their US shipments

53%

File less than 5,000 entries/yr

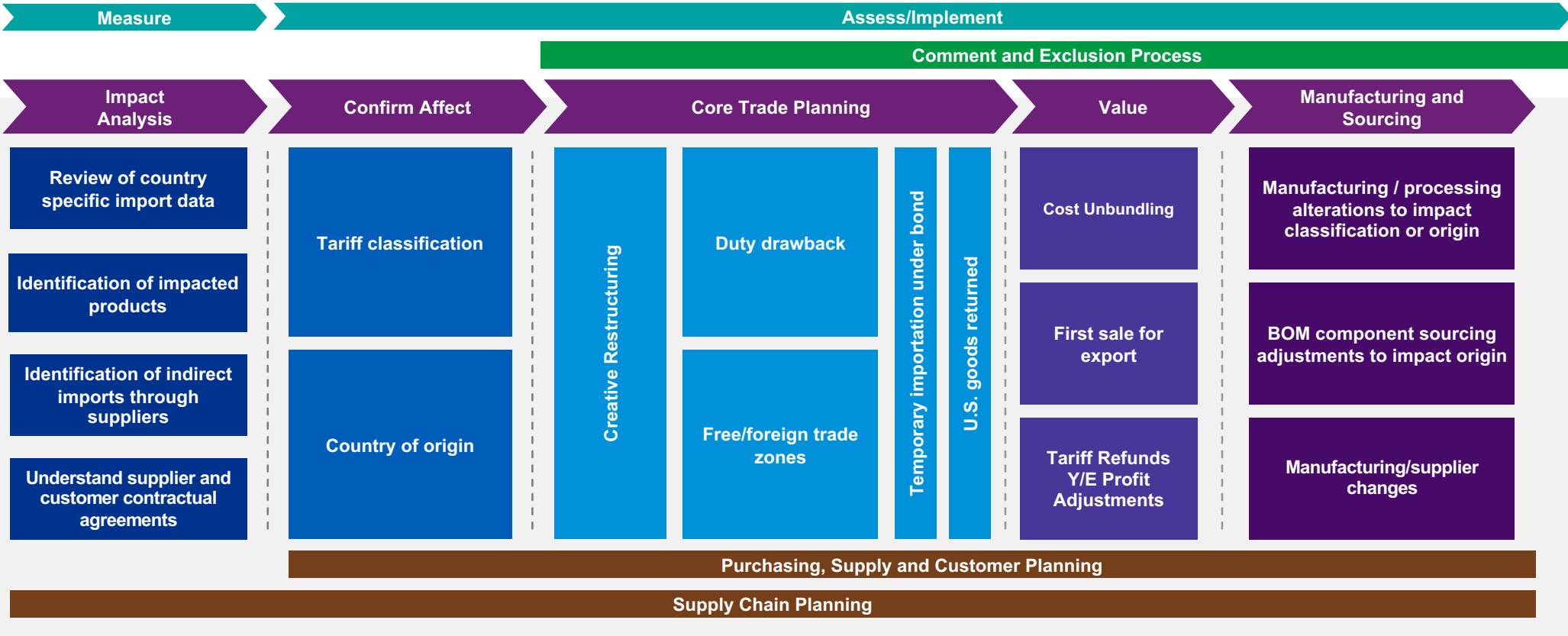


The Path to Managing Punitive Tariffs in an Enhanced Enforcement Environment

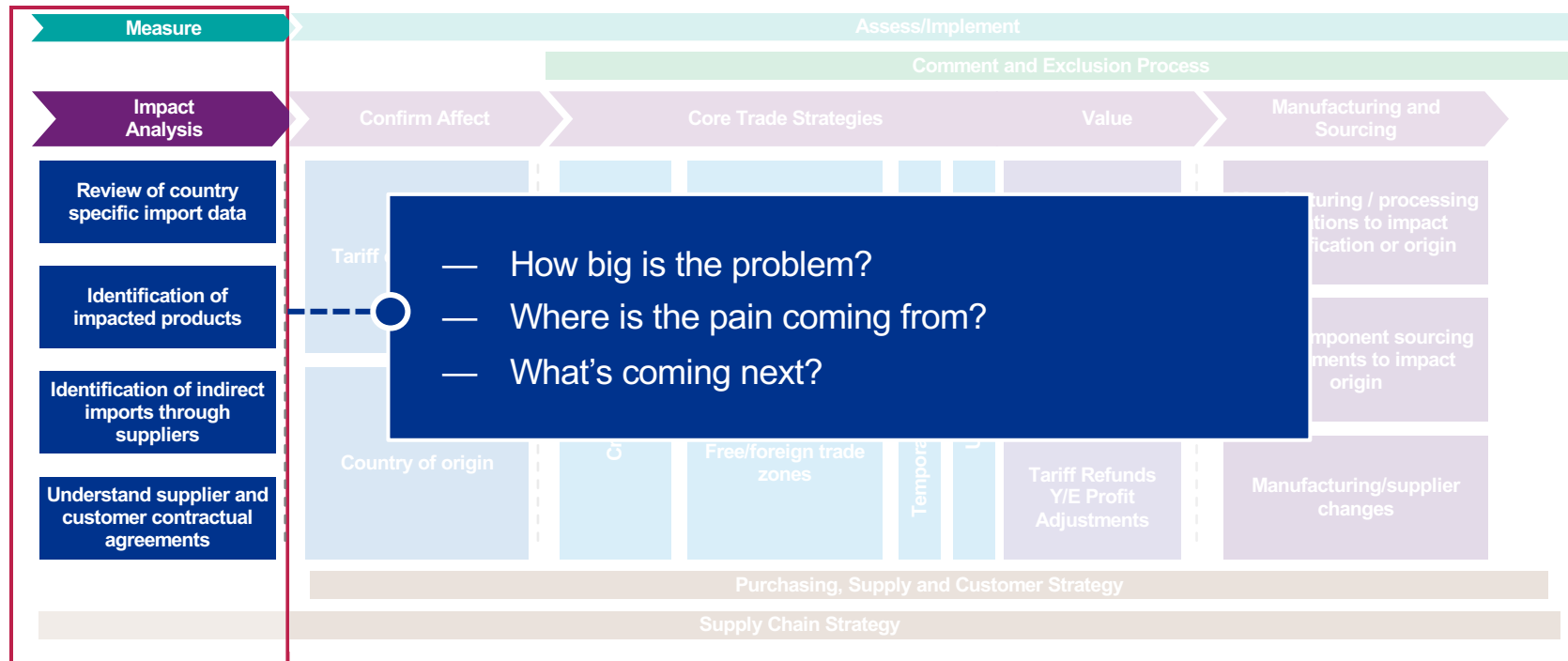
The Path to Managing Punitive Tariffs

Tariff mitigation framework

KPMG deploys a cross-functional framework and methodology to guide our clients, short-term and long-term, through assessing, managing and mitigating the impact of the new tariffs on their Financial Value Chain. Leveraging this framework, and supporting tools, enables KPMG to assist its clients in defining its specific mitigation plan in a thoughtful, methodical, and holistic manner.



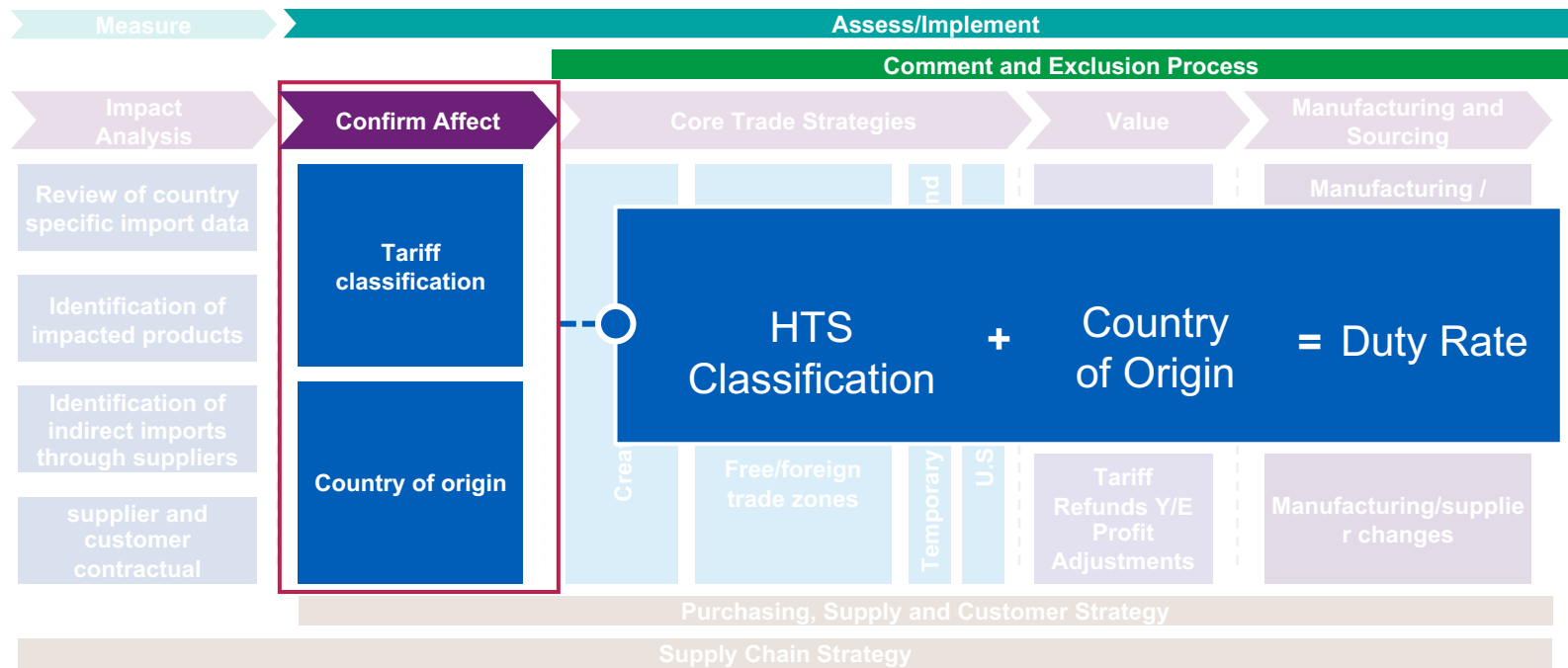
Tariff mitigation - KPMG's cross-functional framework



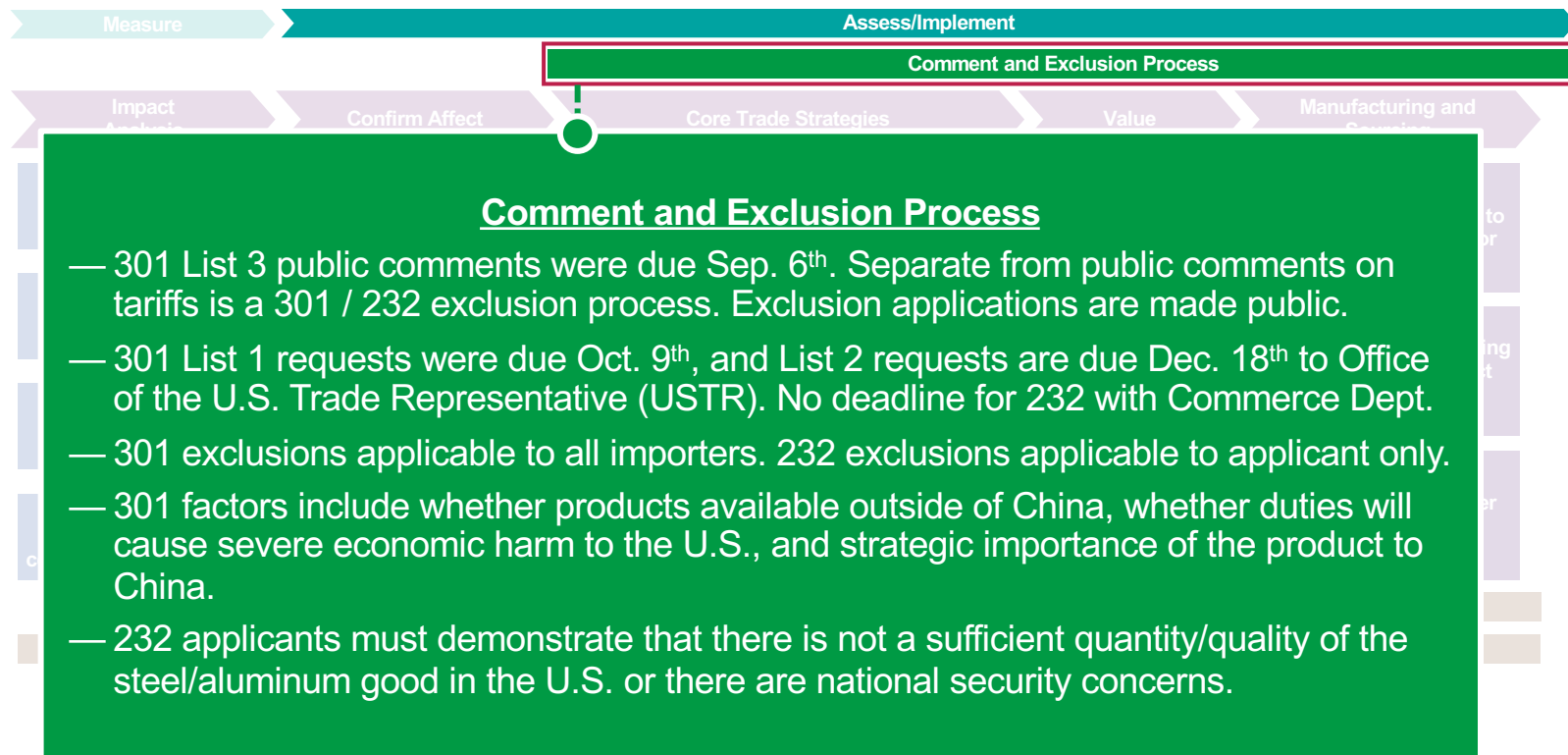
Tariff mitigation - KPMG's cross-functional framework



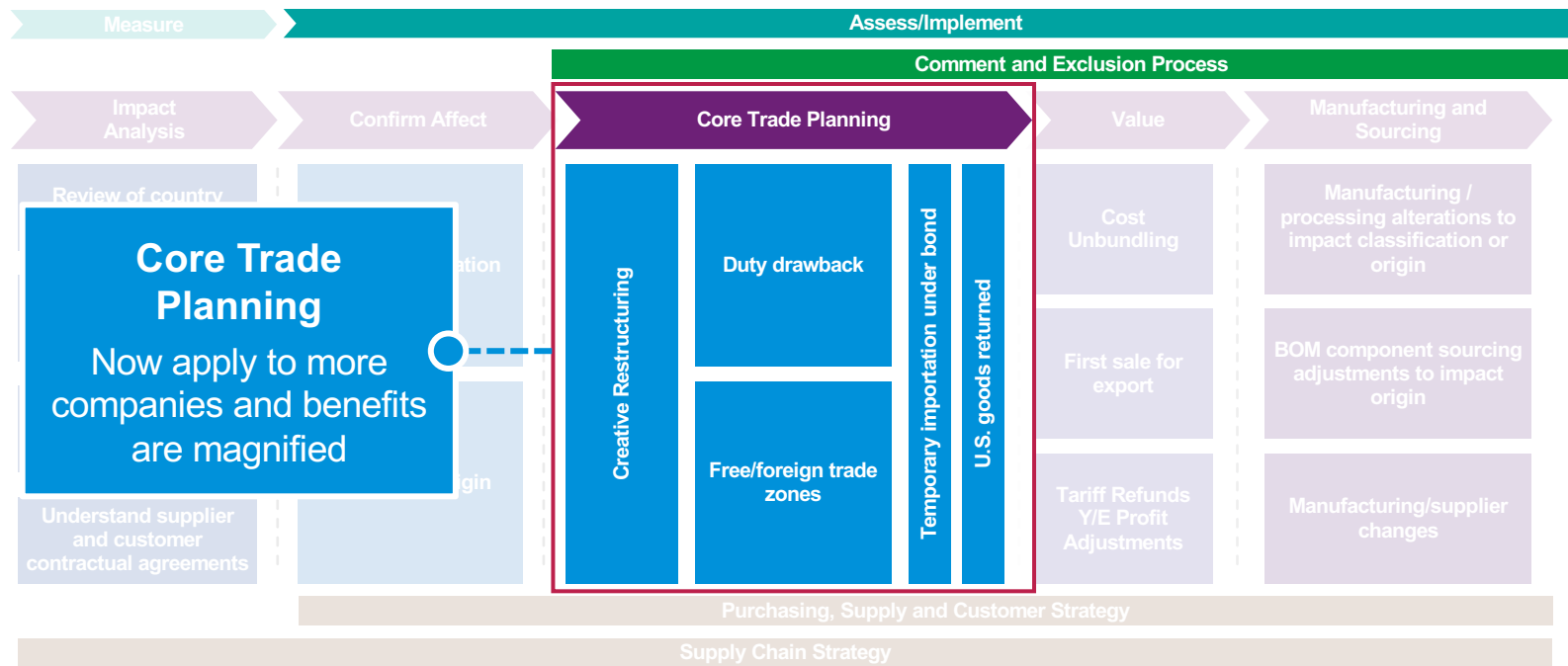
Tariff mitigation - KPMG's cross-functional framework



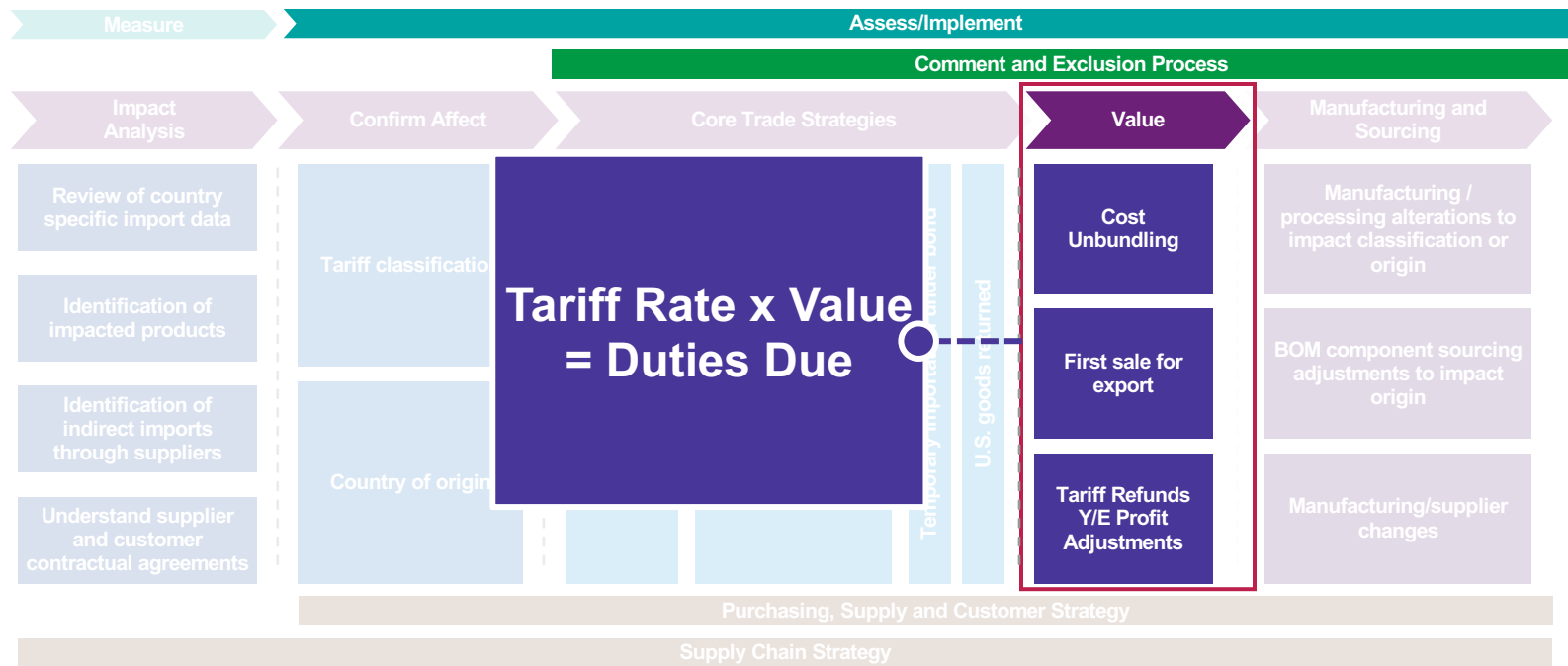
Tariff mitigation - KPMG's cross-functional framework



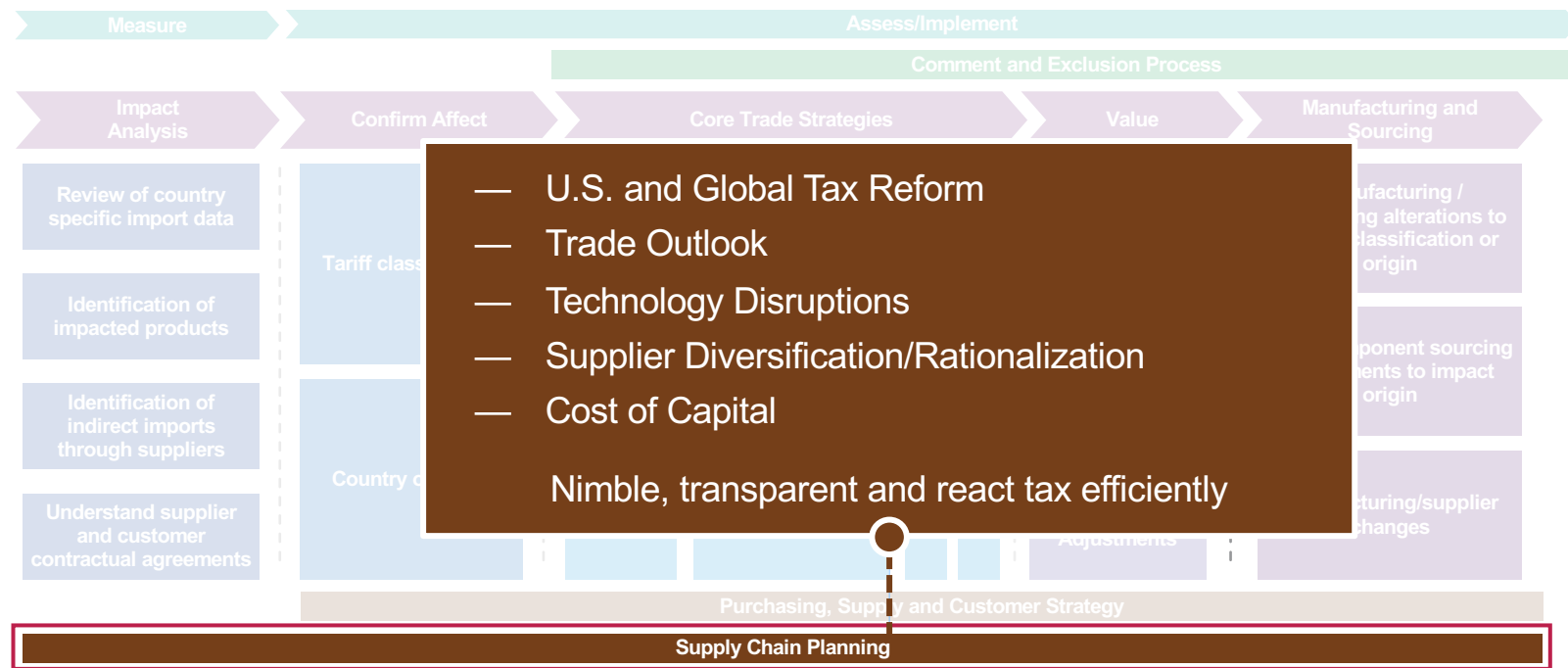
Tariff mitigation - KPMG's cross-functional framework



Tariff mitigation - KPMG's cross-functional framework



Tariff mitigation - KPMG's cross-functional framework





kpmg.com/socialmedia

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