

# Inbound into USA

## Select Business Considerations

November 2022

DFK Conference in Phuket, Thailand

Discussion led by Adnan Islam

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Select business considerations for US inbound companies

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Changing US trade environment and opportunities for US inbound companies around supply chains and operations

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Takeaways



Welcome

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MARCUM LLP (West Region & NYC)

## Adnan Islam, CPA

### Partner – Tax & Business Services

Adnan Islam is tax partner who specializes in U.S. international tax consulting, structuring, and global tax optimization with a focus on tech, services, blockchain, cryptocurrency transactions, and alternative investments. He has nearly 20 years of public accounting experience as a tax attorney and a CPA.

Adnan specializes in cross-border strategies, comprehensive inbound tax services, global information reporting, and outbound U.S. tax planning, structuring, and tax optimization. He has advised U.S. based and inbound companies within the technology, telecom, pharmaceutical/life sciences, PE/alternative investments, manufacturing and distribution, and professional services sectors.

#### Professional & Civic Affiliations

- American Institute of Certified Public Accountants (AICPA)
- Blockchain Technologies certification, MIT
- Economics of Blockchain and Digital Assets certification, Wharton
- Certified Public Accountant (licensed CPA in NY and CA)
- Certified Taxation Law Specialist (State Bar of California)
- Licensed attorney admitted to practice law in New Jersey, Washington, D.C., California, and the United States Tax Court
- ProVisors, Group Leader of NYC1 group



#### PRACTICE FOCUS

- Tax Structures, Compliance, and Planning
- International Tax Analyses
- Cross-border Reorganizations
- Guidance to Inbound Companies
- Research and Analysis of Technical International Tax Positions

#### INDUSTRY FOCUS

- Blockchain & Digital Assets; Tech
- Alternative Investments
- Consumer & industrial products; services

#### EDUCATION

- Juris Doctor, Rutgers University
- Master of Business Administration, Rutgers University
- Master of Laws, Taxation, New York University School of Law
- Master of Laws, International Tax Certificate, Georgetown University Law Center

# 2

Global structuring  
considerations for US  
inbound companies

# Global structuring opportunities US inbound companies should consider



Key global tax trends impacting US inbounds planning (e.g., BEPS)

Current US political, legislative, and regulatory environment impacting investments and structuring into the US

Common US inbounds responses to the changing global and US environment and potential structuring issues inbounds should consider

# DISCUSSION POINTS

- **BUSINESS**
- ACCOUNTING SYSTEM
- **ACCOUNTING – bookkeeping/accounting entries within system**
- BANKING
- **TAX**
- LEGAL

# INBOUND U.S. INCOME TAX DISCUSSION POINTS

- U.S. source withholding tax and no treaty: 30% on gross payment
- **“Inbound Taxation”**: choice of entity, U.S. tax return and informational annual, filing/reporting, **structuring**, **withholding tax**, debt {thin cap rules} vs. equity capitalization, **transfer pricing**, on-going operations, U.S. State income and sales tax considerations
- No mandatory “statutory” or annual audit report requirements
- Each State is different for income and sales tax
- Employee vs. Independent Contractor/Consultant
- Avoid “sandwich” structure
- Source of income and foreign tax credit rules
- U.S. taxation for incoming/anticipated U.S. residents
- External U.S. legal support highly recommended
- Accounting/bookkeeping is not “tax consulting” or tax compliance in USA



# DEADLINES, FILING OPTIONS, AND TAX RATES

- The U.S. income tax return deadline for individuals and “C” corporations is April 15<sup>th</sup> of the following calendar year and an extension to October 15<sup>th</sup> can be requested
- A tax return filed in the U.S. can be amended within three years of the filing date or two years from when the tax was paid, whichever is later
- Certain countries do not allow joint tax returns to be filed and must have separate returns filed for each spouse.
- The U.S. requires a non-resident alien to file separately but can allow both spouses to file a joint return once they both become eligible based on each individual’s U.S. legal immigration status
- The federal corporate income tax rate in the U.S. is 21% and may increase to an average ETR of 25.8% when factoring in the average state and local corporate tax rates (e.g., income and franchise taxation)

# REVIEW WORLDWIDE INSURANCE POLICY

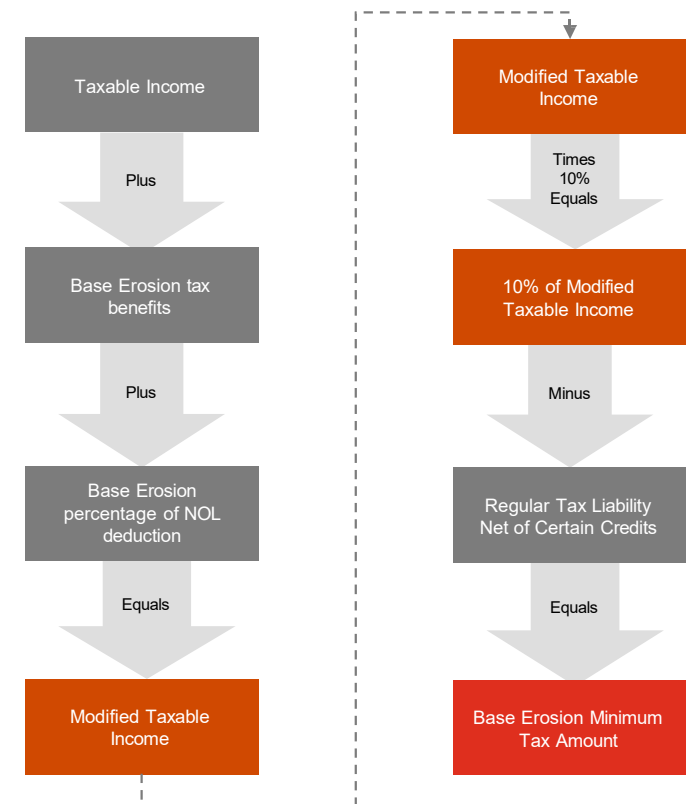
- The U.S. legal system can lead to unique liability exposure including: property taxation, State sales taxation, unclaimed property, worker's compensation, D&O, employer/employee liability, and cybersecurity/data privacy protection concerns...
- The U.S. has threshold requirements for certain insurance policies
- It is critical to evaluate gaps between the worldwide insurance policy and the federal and state requirements

# 3

Impact of Base Erosion  
and Anti-Abuse Tax  
(BEAT) and other  
regulations on  
structuring into the US

# Background

- BEAT is essentially a minimum tax calculated on a base equal to the taxpayer's income determined without the tax benefits arising from base erosion payments and base erosion percentage of any NOL allowed for the tax year.
- A base erosion payment generally is a payment to a **non-US related party** that results in a deduction, either currently or in the future (e.g., depreciation deductions resulting from a purchased asset).
- BEAT is imposed to the extent that 10% of the taxpayer's **Modified Taxable Income (MTI)** exceeds the taxpayer's regular tax liability, reduced by certain credits.
- MTI is taxable income determined without regard to any base erosion tax benefits plus the base erosion percentage of the net operating loss (NOL) deduction for the tax year.



# Background

- The BEAT rate is 5% for tax years beginning in calendar year 2018; 10% for tax years beginning in 2019 through 2025; and 12.5% for tax years beginning after December 31, 2025.
- The BEAT is effective for base erosion payments paid or accrued in tax years beginning after 2017.
- On December 21, 2018, Treasury and the IRS released the **2018 Proposed Regulations**
- On December 2, 2019, Treasury and the IRS published final regulations under Sections 59A, 383, 1502, and 6038A (the '**Final Regulations**') and also released proposed regulations (the '**Proposed Regulations**') under Sections 59A and 6031.



# Highlights of the 2019 Final Regulations

- No Section 15 rate blending
- No Global Intangible Low Taxed Income (GILTI) / subpart F / Passive Foreign Investment Company (PFIC) carveout
- No relief for 'GILTI boomerang', cost of services, 'business needs', or any broad netting relief
- Relief for non-recognition exchanges - but with very broad and strict anti-abuse rules
- Relief for acquisitions of loss property and Section 988 losses
- Rules for allocation of interest to Effectively Connected Income (ECI)
- Expand Total Loss Absorbing Capacity (TLAC) securities exception
- No recomputation for purpose of computing Modified Taxable Income (MTI)
- 'Aggregate group' rules e.g., for computing gross receipts and base erosion percentage
- Address application to partnerships, banks, registered securities dealers, insurance companies, and consolidated groups
- Effective date is for taxable years ending on or after 12/17/18, can elect to apply in entirety for the years prior to that



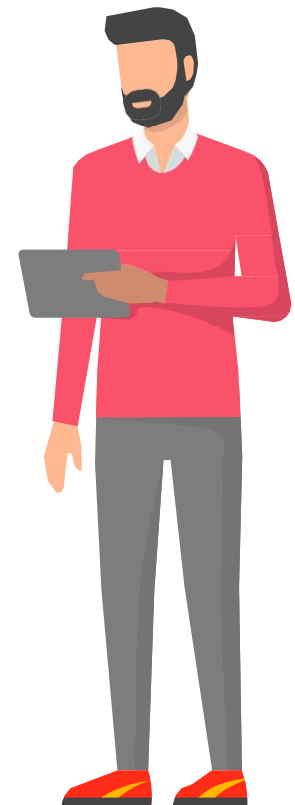
# Highlights of the 2019 Proposed Regulations

- Procedure for disclaiming deductions
- Partnership rules
- Aggregate group rules
- Effective dates: the proposed regulations generally apply to tax years beginning on or after the date that final regulations are filed with the Federal Register. Taxpayers are permitted to rely on the proposed regulations in their entirety for tax years beginning after December 31, 2017, and before the regulations are finalized



# Practical implications

- Identifying exceptions Services Cost Method (SCM), other documentation requirements
- Planning for non recognition transactions
- Determine treatment of transactions involving netting, reimbursement, agency arrangements - for example, pass through transactions
- Evaluate anti abuse rules
- Modeling scenarios to determine optimal BEAT profile - for example, foregoing deductions, including retroactive application
- Strategies to onshore intellectual property (IP) without adversely impacting BEAT - for example distributions





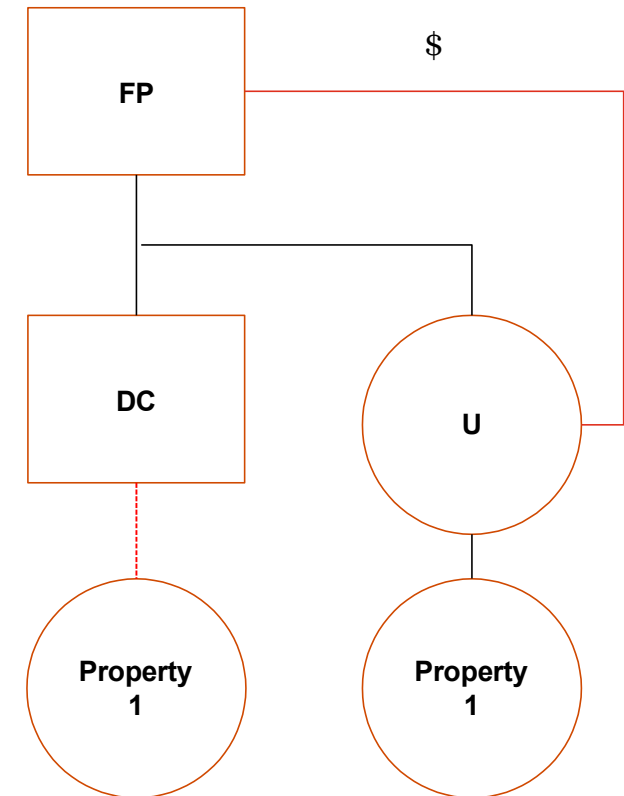
# BEAT in a restructure scenario

## Facts:

- U, which is a related party with respect to FP or DC, owns Property 1 with an adjusted basis of \$50 and a fair market value of \$100.
- On Date 1, FP purchases property, including Property 1, from U in exchange for cash, and then FP contributes Property 1 to DC in an exchange described in section 351.
- Following the exchange, DC's basis in Property 1 is \$100.

## Analysis:

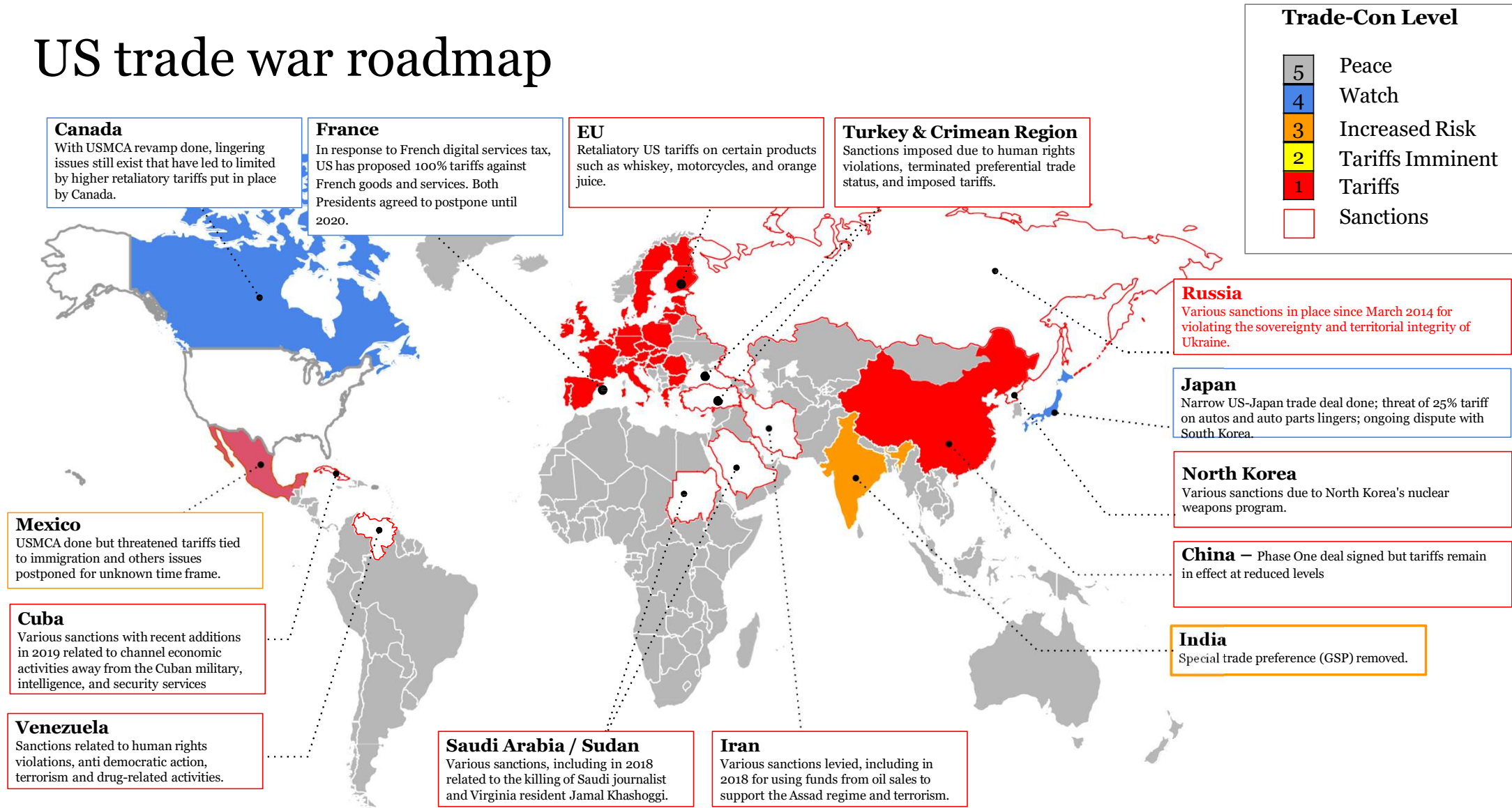
- § 1.59A-9(b)(4) applies to DC's acquisition of Property 1 because the transaction that increased the adjusted basis of Property 1 (the purchase of Property 1 from U) was between related parties, and within six months DC acquired Property 1 from FP in a specified nonrecognition transaction.
- Accordingly, the purchase of property from U is deemed to have a principal purpose of increasing the adjusted basis of Property 1, the exception in § 1.59A-3(b)(3)(viii)(A) for specified nonrecognition transactions will not apply to the contribution of Property 1 to DC, and DC's depreciation deductions with respect to Property 1 will be base erosion payments.



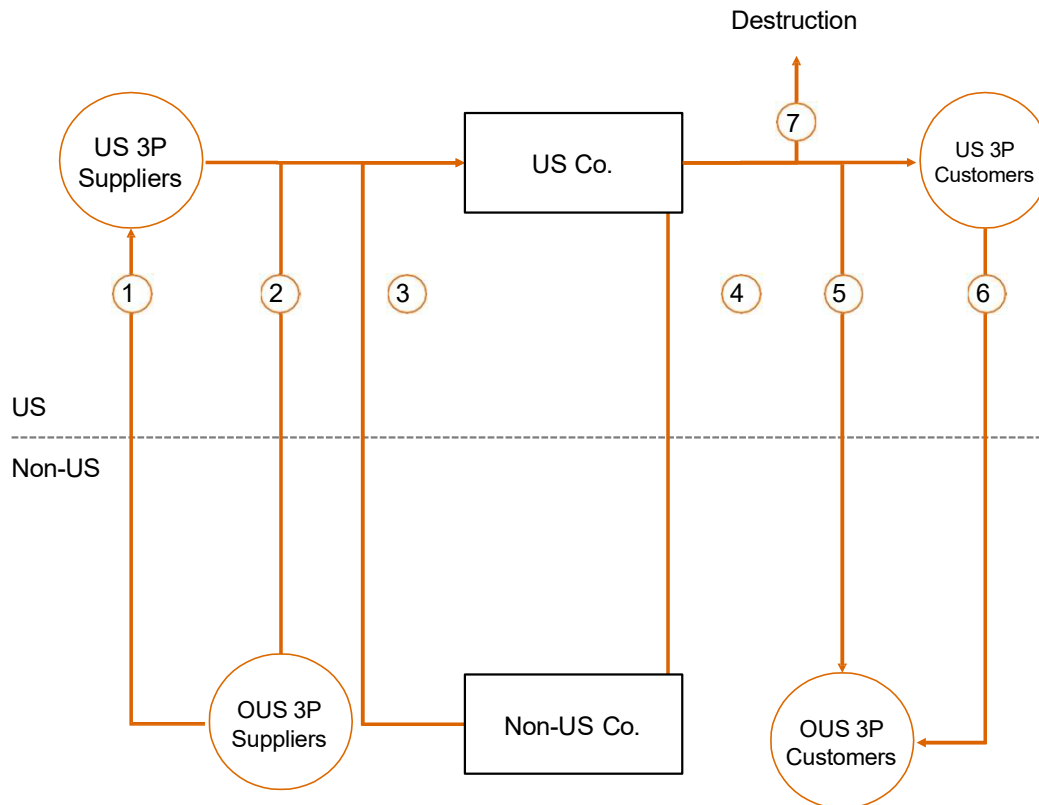
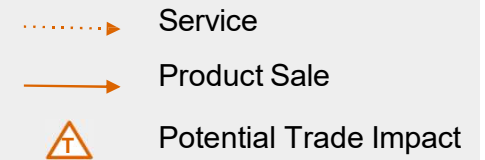
# 4

Changing US trade  
environment and opportunities  
for US inbound companies  
around supply chains and  
operations

# US trade war roadmap



# Understanding Your Trade Flows



## US Imports

1. OUS 3P -> US 3P (IOR) -> US Co.
2. OUS 3P -> US Co.
3. OUS Related Party -> US Co.

## US Exports

1. US Co. -> OUS Related Party
2. US Co. -> OUS 3P Customers
3. US Co. -> US 3P (EOR) -> OUS 3P Customers
4. US Co. Destruction of unused / expired merchandise

**For each product flow, identify the following:**

**Product type:** (e.g., raw materials, finished product)

**Price:** \$???

**Tariff amount:** \$???

# How are companies responding to tariffs?



**Duty Drawback**  
(5-year retro opp)



**Alternative  
Valuation**



**First Sale**  
(18Mo. Retro opp)/  
**Country of Origin  
Analysis**



**Tariff  
Classification/  
Exclusions/  
Foreign Trade Zones (FTZ) /  
Free Trade Agreements**

**Tariff Impact /  
Opportunity**



**Supply Chain Planning**  
("Substantial  
Transformation,"  
Manufacturing &  
Distribution Footprint)



**M&A Deal  
Planning**  
(Identify liability &  
opportunities)



**Strategic Sourcing &  
Pricing and  
Negotiations**



**Trade Policy  
Consulting &  
Customer Messaging**

**Local Country /  
Region Analysis**

# 5

Takeaways