



Customs and Tariffs: Legal Strategies for Compliance and Mitigation

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Agenda

- **Background on Tariff Increases and Changes**
- **Current Tariffs and Implementing Legislation**
- **Basis for Tariff Assessment (origin, classification and valuation)**
- **Duty Mitigation Opportunities**
- **Penalties and Risks**

Basis for Tariff Changes

America First Trade Policy

- **America First Trade Policy (1/20 Policy, 4/1 Report)**

<https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/>

- Unfair and unbalanced trade
- Current and future U.S. trade agreements
- Currency manipulation and misalignments
- Discriminatory tax policies (External Revenue Service)
- Trade remedy law review & changes (ADD, CVD, 301, 232)
- De minimis exemption review
- Targeting China (Fentanyl, trade, IP, America's Adversaries, PNTR)
- US export controls review
- Outbound investment restrictions

Basis for Tariff Changes

America First Trade Policy

- **Does not announce or implement new tariffs (all through individual remedy actions).**
- **Launched an investigation into unfair trade practices, concluded on April 1.**
 - Focuses on “Unfair and Unbalanced Trade”.
- **Targets countries with significant annual trade deficits in goods, potentially subjecting them to country-specific tariffs.**
 - Includes several European Union nations (e.g., Germany, Ireland, and Italy), Asian jurisdictions (e.g., Vietnam, Japan, and Taiwan), and other global trade partners.
 - A review of unfair trade practices by other countries and a consultation with respect to the United States-Mexico-Canada Agreement (USMCA) also are key components of the investigation.
- **Cites specific trade authorities the President may seek as the basis of future measures.**
- **The use of some of these authorities in the context of U.S. trade policy would be novel.**

Basis for Tariff Changes

- **The tariffs (import duties) being considered and implemented:**
 - Tariffs under specific legal authorities (IEEPA, 232, 301 with implementing EOs)
 - Tariffs specifically targeting China (IEEPA, 301)
 - Global supplemental tariffs & reciprocal tariffs
 - Use of FTAs (USMCA)

International Emergency Economic Powers Act (IEEPA)

- Not designed for tariffs like other trade remedies (focus on sanctions & export controls)
- Deals with “any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States.” 50 U.S.C. §§ 1701-1702.
 - Trade and national security measures to resolve [the] emergency [pertaining to unlawful migration and fentanyl flows]” (EOs 14193, 14194, 14195, 14200)
 - National Emergency related to trade deficits (Global + Reciprocal Tariffs) (EOs 14257, 14259)
- **China 155% – (2/4 (10%) + 3/3 (10%) + 4/9 (125% Reciprocal))**
 - In addition to Section 301 Duties
 - Except 232 on the 125% (total would be 55%)
 - No de minimis for \$800 or less (Section 321)
- **Mexico 25% (3/4, suspended) – USMCA qualifying OK, no reciprocal**
- **Canada 25% (3/7, suspended) – USMCA qualifying OK + 10% tariff on energy, no reciprocal**

International Emergency Economic Powers Act (IEEPA)

- **Global Tariff 10% (4/5 all countries except Mexico and Canada)**
- **Reciprocal Tariff (57 countries 11-50% on 4/9 suspended to 7/9 except China) (imbalances)**
 - Exception for 232, not 125% but 20% + 25% (aluminum, steel, A&S derivatives, autos and listed auto parts (5/3))
 - Annex II - copper, pharmaceuticals, semiconductors, lumber, and critical minerals, as well as energy and energy products.
 - Humanitarian items
 - Canada and Mexico USMCA qualifying
 - De minimis (except China)
 - Goods with U.S. Content
 - At least 20% US content, only on the non-US portion of the product's value.
 - Entirely produced or substantial transformed in the U.S.

Section 232

- **Section 232 of the Trade Expansion Act of 1962**
- **U.S. President – authority to adjust imports of goods or materials if those imports threaten to impair the national security**
 - **Steel and Aluminum + derivatives 25% (3/12)**
 - Steel products & derivatives and the aluminum products & derivatives (2018 tariff list)
 - Steel derivatives classified in (HTS 73) and aluminum derivatives (HTS 76)
 - Additional steel derivatives and additional aluminum derivatives (2/10)
 - 4/4 25% on beer cans
 - Only applies to the declared value of the aluminum or steel content of the derivative article
 - Agreements suspending tariffs for certain countries terminated
 - **Passenger cars, light trucks and certain parts 25% (4/3 cars + trucks) (5/3 parts)**
 - Engines and engine parts, transmissions and powertrain parts, and electrical components (HTSUS in Annex 1)
 - USMCA - U.S. content exempted
 - No drawback, special privileged status

Section 232

■ 4/29 EO Changes

- Encouraging assembly in the U.S.
- Offset to a portion of tariffs for automobile parts used in U.S.-assembled vehicles equal to 3.75% MSRP of a manufacturer's U.S. production for the next year (4/3/25 to 4/30/26), and 2.5% the year after (5/1/26 to 4/30/26).
- Duty owed when a 25% duty is applied to 15% of the value of a U.S.-assembled automobile in year 1, and to 10% in year 2.
 - Car built in U.S. that has 85% U.S./USMCA content, no tariffs for the first year
 - Car built in U.S. that is 50% U.S./USMCA content, tariffs only on 35% of imported parts
- All other automobile imports will still be subject to the 25% tariff.

■ New investigations

- Medium and heavy-duty trucks, semiconductors and semiconductor manufacturing, pharmaceuticals and pharmaceutical ingredients, critical minerals, copper, timber & lumber

Other Trade Acts

- **Section 301 of the Trade Act of 1974 (unfair trade practices)**
 - 25% (Tiers 1-3)
 - 14.5% (Tier 4)
 - New action on China's maritime, logistics, and shipbuilding sectors, including implementing fees on vessels, particularly Chinese-built vessels, and restrictions on LNG exports
- **Section 201 of the Trade Act of 1974 (safeguards)**
 - Domestic industries seriously injured or threatened with serious injury by increased imports
- **Section 337 of the Tariff Act of 1930 (intellectual property)**
 - Importation of counterfeit products and contraband drugs
- **There historically have been exclusion processes available for Sections 201, 232, and 301 tariffs (in short supply, not produced in the US in sufficient quantities)**
 - Elimination of these processes

Other Supplemental Tariffs

- **ADD/CVD Sections 731 and 701 of the Trade Act of 1930**

- Additional duties assessed on imported goods intended for sale in the U.S. at less than fair value & US industry is injured or threatened with material injury (AD) or subsidized goods resulting in material injury or a threat of material injury (CVD)
- Reviewed by ITC and Commerce, if injury found, then duties imposed
- Overlap example: Extruded aluminum



Introduction to Import Compliance

- **In the U.S., the importer of record must use “reasonable care” to:**
 - Enter, classify and determine the value of imported merchandise
 - Provide any other necessary information Customs needs to properly assess duties, collect accurate statistics
 - Determine whether the transaction meets all applicable legal requirements.
- **Key to identification is the understanding of the source of these risks and how they arise in the Customs context.**
- **Risk of significant penalties.**

Tariffs and Trade – Areas of Increased Risk

- **Import issues (civil & criminal liability)**
 - Origin
 - Classification
 - Valuation
- **Inconsistencies between trade regulations (FTAs), overlapping tariffs**
- **Lack of exemptions, exclusions, drawback, de minimis**
- **Long term or other supply chain agreements (ability to absorb costs)**
 - INCOTERMS (DDP)
- **Retaliatory tariffs (ongoing escalation)**
- **Laws implemented in novel ways**
- **State & consumer laws prohibiting passing on the tariffs without detailing**
- **Change in federal personnel & policy**

What is the Basis for Assessing Duties?

- To understand how to mitigate duties, an importer must understand how duties are assessed:
 - Classification (HTS Code category)
 - Valuation (what is the product worth?)
 - Origin (correct country of origin)

Tariff Classification

- Imports are classified under tariff system for tariff (duty) assessment & import restrictions
- Harmonized System (HS) complete product classification system
 - USHTS - various sections and chapters dealing separately with merchandise in broad product categories
- Important to determination of *ad valorem* rates of duty
- Two or more provisions may seem to cover the same merchandise
 - Specific over general (not lower duty over higher duty)
 - Legal notes and General Rules of Interpretation
 - Administrative precedents (Cross rulings database)
<https://rulings.cbp.gov/home>
 - Case law
 - U.S. Court of International Trade
 - Court of Appeals for the Federal Circuit

Tariff Classification

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		2
				1		
				General	Special	
7615 (con.)		Table, kitchen or other household articles and parts thereof, of aluminum; pot scourers and scouring or polishing pads, gloves and the like, of aluminum; sanitary ware and parts thereof, of aluminum: (con.)				
7615.10 (con.)		Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like: (con.)				
		Other: (con.)				
		Cooking and kitchen ware: (con.)				
		Not enameled or glazed and not containing nonstick interior finishes:				
7615.10.50		Cast.....		3.1% ^{7/1/}	Free (A*, AU, BH, CL, CO, D, E, IL, JO, KR, MA, OM, P, PA, PE, S, SG)	45.5%
	20	Bakeware (cookware not suitable for stove top use).....	No. kg			
	40	Other.....	No. kg			
7615.10.71		Other.....		3.1% ^{1/}	Free (A*, AU, BH, CL, CO, D, E, IL, JO, KR, MA, OM, P, PA, PE, S, SG)	45.5%

Tariff Classification

- Each HTSUS number corresponds with a rate of duty (usually 3 categories)
- General (WTO members), special (FTA rates or quotas) & non preferential (non-WTO members)
- 3 types of rates of duty
 - Ad valorem – percentage of the dutiable or customs value of the merchandise (ex: 5% duty)
 - Specific – specified amount of per unit of weight or other measure (ex: 10 cents per pound)
 - Compound (or mixed) – Combination of the specific & ad valorem (ex: 5% duty plus 10 cents per pound)
- Special additional duties (trade remedies proceedings)
 - HTSUS 9903



Customs Valuation

- **Duty determined based on percentage of value, so it is necessary to determine “value” to determine the actual duty.**
- **5 methods of determining value (in order of use):**
 - Transaction value (invoiced value buyer in U.S. paid for goods);
 - Issue in related party transactions (IRS transfer pricing assessments differ from Customs value)
 - Transaction value of identical or similar merchandise;
 - Deductive value (resale price in U.S. with certain deductions);
 - Computed value (sum of materials, fabrication, profit, general expenses, assists & packaging costs); and
 - Fall-back- Other values if other values cannot be determined.

Customs Valuation

- **Value also includes additional items:**

- Assists (tooling, engineering, other free-of-charge items)
- Certain packing costs
- Commissions (selling included v. buying)
- Royalties or license fees
- Proceeds of subsequent resale (if accrues to vendor)
- Payments made as a condition of the sale (warranty etc.)

- **Excluded Charges:**

- International freight, insurance, and other C.I.F. charges, incidental to the international shipment of the goods from the country of exportation to the place of importation in the U.S. that the buyer makes to the seller.
 - Pay attention to foreign and domestic inland freight
- The value of customs duties and MPF and HMF (changes in value impact these fees even if the product is non-dutiable).

Customs Origin

- **Country of origin can directly affect the duty rate (non-preferential and preferential).**
- **Non-Preferential Rates of Duty (apply in absence of bilateral or multilateral trade agreements):**
 - Most Favored Nation (MFN) or Permanent Normal Trade Relations (PNTR) treatment (WTO)
 - Wholly obtained or produced (grown, produced or manufactured in a country)
 - Substantial transformation – materials from more than one country
 - Product of country where products underwent last substantial transformation in name, character & use
 - Essential character
 - Pay attention to customs rulings

Customs Origin

■ Preferential Rates of Duty (Special Treatment)

- Determined by the rules of origin in the individual free trade agreements
- Generalized System of Preferences (GSP) – designated developing countries (expired Dec. 31, 2020).
- FTAs: Australia, Bahrain, Chile, Colombia, Israel, Jordan, Korea, Morocco, Oman, Panama, Peru, Singapore.
- USMCA, AGOA (Africa), ATPA (Andean), CAFTA (DR & CA), Trans-Pacific Partnership.

■ Origin Tests under FTAs

- Tariff Shift
- Regional Value Content (net cost/transaction value)

Duty Mitigation Opportunities

- First Sale
- Bonded Facilities
- Foreign Trade Zone (**privileged foreign status restrictions**)
- **Duty Drawback (manufacturing, unused returned merchandise)**
- **Exclusion requests (more frequently expired & removed)**
- Temporary Importation Under Bond (TIB)
- **321 de Minimis (valued below \$800)**
- **9802 (goods returned)**
 - covers articles that have been exported for repair, alteration, or processing, and then returned to the United States, with duties assessed only on the value of the repairs, alterations, or processing)
- IEEPA 155% on China mitigated with 232 down to 55%
- U.S. content in IEEPA (20% minimum)



Risk Areas

- Are any additional payments made above the invoiced amount to an overseas supplier? Examples are: *price adjustments, additional work expenses, design & engineering costs, split payments, warranty costs and R&D expenses?*
- Are any assists provided to the foreign supplier, free or at a reduced price? Examples are: *Materials, Components, Accessories such as labels, buttons or tags, Tools, dies or molds?*
- Are there transactions between related parties? Do they involve IRS transfer price adjustments?
- Are items manufactured in one country and completed in another?
- Are buying or selling commissions involved in the transaction?
- Sudden change to DDP (is it your IOR?)

Penalties and Prior Disclosure

- **Opportunities for fraud are increasing.**
- **Penalties assessed per entry and mount quickly:**
 - *Fraud* – 5-8 times to a total duty loss, or 50% to 80% of the dutiable value in non-revenue loss cases, but not to exceed the domestic value of the merchandise;
 - *Gross negligence* – 2.5-4 times total duty loss, or 25% to 40% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise; or
 - *Negligence* – 0.5-2 times total duty loss or 5% to 20% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise.
- **Prior disclosure:**
 - Opportunity to notify of violations and avoid additional penalties.
 - Must be before CBP instigates an investigation (CF-28 or CF-29)



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