

THE COMPLIANCE COLLECTIVE

Tariff Strategies: Adapting to a Dynamic Trade Environment

JULY 17, 2025

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The Compliance Collective



This webinar is a part of our monthly webinar series, “The Compliance Collective.”

The webinar series is hosted by a team of cross-disciplinary Perkins Coie lawyers who provide a monthly overview and discussion forum on a critical hot topic in ethics and compliance. Each topic provides a look at emerging issues and offers creative solutions to potential compliance problems.

The webinar is hosted every third Thursday at the same time each month: 10:00 a.m. PT/12:00 p.m. CT/1:00 p.m. ET.

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Agenda

- The State of Play: Scope and Impact of Multiple Overlapping Tariff Regimes
- Looking Ahead: Negotiated Agreements; Possible Further Extensions; Additional Sectoral Tariffs; Quasi-Permanent “Reciprocal” Tariffs
- Strategies for Navigating the Rapidly Changing Tariff Landscape



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The State of Play: Multiple and Overlapping Tariff Regimes

Increasing Tariff Complexity

Pre-2017:

- MFN Tariffs
- AD/CVD Tariffs
- Free Trade Agreement Duty Preferences

Post-2017:

- MFN Tariffs
- AD/CVD Tariffs
- Free Trade Agreement Duty Preferences
- Section 301 China Tariffs (2018)
- Section 232 Steel and Aluminum Tariffs (2018)
- Section 232 Steel and Aluminum Derivative Product Tariffs (2020)
- IEEPA “Fentanyl” Tariffs (China, Canada, Mexico) (2025)
- Section 232 Autos and Auto Parts Tariffs (2025)
- IEEPA “Reciprocal” Tariffs (2025)
- Section 232 Copper Tariffs (2025)
- Potential 232 Tariffs: Lumber; Semiconductors; Pharmaceuticals; Trucks; Critical Minerals; Commercial Aircraft; Polysilicon; Unmanned Aircraft Systems

Average Tariff Rate on All U.S. Imports



“IEEPA” Tariffs – The International Emergency Economic Powers Act

- Enacted 1977: Provides the President broad authority to regulate a variety of economic transactions following a declaration of “national emergency”
- Act includes limits on presidential emergency powers: reporting requirements to increase transparency and track costs; Congress can terminate a national emergency by adopting a joint resolution (but it has never done so)
- Prior to 2025, Presidents had declared 67 national emergencies invoking IEEPA, 37 of which were ongoing
- February 1, 2025: First time IEEPA invoked to impose import tariffs (rather than other sanctions) to address a declared “national emergency”: the “threat to the safety and security of Americans, including the public health crisis of deaths due to the use of fentanyl and other illicit drugs” (Executive Order 14195)
- April 2, 2025: IEEPA again invoked to impose “Liberation Day” tariffs on imports from all countries (Executive Order 15247); extended until July 7, 2025; further extended until August 1, 2025

Adjusted Reciprocal Tariffs with August 1 Effective Date

- During week of July 7, 2025, and after, President Trump issued letters to over 23 countries notifying them of country-specific tariff rates that will go into effect on August 1, 2025:

Country	Tariff Rate (Aug 1)	April 2 Rate	Key Exports to US/Notes
Myanmar	40%	44%	Clothing, seafood, leather goods
Laos	40%	48%	Shoes, furniture, electronics
Cambodia	36%	49%	Textiles, shoes, bicycles
Thailand	36%	36%	Computer parts, rubber, gems
Bangladesh	35%	37%	Clothing
Serbia	35%	37%	IT services, car tires
Indonesia*	32%	32%	Palm oil, cocoa butter, semiconductors
Bosnia & Herzegovina	30%	35%	Ammunition, weapons
South Africa	30%	30%	Platinum, diamonds, vehicles
Japan	25%	24%	Cars, electronics
Kazakhstan	25%	27%	Oil, uranium, silver
Malaysia	25%	24%	Electronics, electrical goods
South Korea	25%	25%	Cars, machinery, electronics
Tunisia	25%	28%	Clothing, fruits, animal fats
Philippines	20%	N/A	New addition
Brunei	25%	N/A	New addition
Moldova	25%	N/A	New addition
Algeria	30%	N/A	New addition
Libya	30%	N/A	New addition
Iraq	30%	N/A	New addition
Sri Lanka	30%	N/A	New addition
Brazil	50%	N/A	Previously not included; major escalation
Canada	35%	N/A	Escalation of 25% IEEPA Fentanyl Tariffs
EU and Mexico	30%		EU April 2 rate was 20%; Mexico now at 25%

* Reached agreement with U.S. on July 15 for 19% tariffs

Court Challenges to IEEPA Tariffs

- Two U.S. federal courts have held that the President's imposition of tariffs under IEEPA exceed his authority under that statute and are unlawful
- ***V.O.S. Selections, Inc. v. United States (Court of International Trade, May 28, 2025):***
 - While IEEPA allows certain presidential discretion during national emergencies, it does not grant unlimited authority to impose tariffs for any reason or length of time. The history of IEEPA shows that Congress intended to restrict, rather than expand, Presidential authority from earlier legislation. As a result, the tariffs issued under E.O. 14257 are outside the authority of the President and are not authorized under IEEPA. Further, regarding the "fentanyl" tariffs, IEEPA requires that it only be exercised to "deal with an unusual and extraordinary threat" having its source substantially outside the United States.
- ***Learning Resources, Inc. v. Trump (D.C. District Court, May 29, 2025):***
 - The District Court also held that the IEEPA tariffs are unlawful, but on different grounds. The District Court ruled that IEEPA does not authorize the President to impose any tariffs, since the sweeping authority sought by the President would be an unconstitutional delegation of legislative power and "render IEEPA unconstitutional."
- Both decisions have been stayed pending the U.S. government's appeal to the Federal Circuit and D.C. Circuit appeals courts, respectively. Decisions are expected in the coming months.
- The cases could ultimately reach the U.S. Supreme Court.

The “Sectoral” Tariffs – Section 232

- Section 232 allows the President to impose import restrictions based on an investigation and affirmative determination by the Department of Commerce that certain imports “threaten to impair U.S. national security”
- Prior to 2018, Section 232 used rarely by the president and most often did not result in any action by the president; first Trump administration began aggressive use of Section 232 to impose tariffs based on “national security threat” posed by various major industrial products
- Between 1981 and 2017: 14 Section 232 investigations (most with no tariff action)
- Since 2018: 18 Section 232 investigations, of which 9 were newly initiated since March 2025
- Major sectoral tariffs:
 - Steel and Aluminum, and Derivative Products: 25%, later increased to 50%
 - Automobiles and Auto Parts: 25%
 - To come: Copper (announced 50%); Pharmaceuticals; Semiconductors; Foreign-Produced Films
- Exemptions and exclusions: scope of each Section 232 tariff has limits and exemptions/exclusions; e.g., certain autos with USMCA content, steel & aluminum exclusions

Section 232 Investigations Since 2018

Products	Year	Tariff	Notes
Steel and Derivative Products	2018	50%	Originally 25%; exclusions of certain products; UK is still 25%
Aluminum and Derivative Products	2018	50%	Originally 10%; exclusions for certain products; UK is still 25%
Automobiles and Automobile Parts	2019	25%	Certain exemptions for USMCA qualified goods
Uranium	2019		No tariff; established Nuclear Fuel Working Group instead
Titanium Sponge	2019		No tariff; working group established to explore other measures
Stacked Cores for Transformers	2020		No conclusion; steel stacked cores subject to 50% steel tariff
Vanadium	2021		Determined not to threaten to impair national security
Permanent Magnets	2022		No tariff; initiatives to strengthen domestic supply chain
Copper	2025	50%*	*Announced; not yet formally issued
Timber and Lumber	2025	unknown	Pending (Canada – U.S. negotiations on lumber expected)
Semiconductors, Mfg Equip., and Derivatives	2025	unknown	Pending
Pharmaceuticals and Their Ingredients	2025	Up to 200%*	Pending (*ramp-up period of one year, then 200% per Trump)
Trucks and Derivative Products	2025	unknown	Pending
Critical Minerals and Derivative Products	2025	unknown	Pending
Commercial Aircraft and Jet Engines	2025	unknown	Pending
Polysilicon and Derivatives	2025	unknown	Pending
Unmanned Aircraft Systems and Parts	2025	unknown	Pending



What Lies Ahead?

Progress toward negotiated agreements:

- Countries that have already negotiated agreements:
 - U.K. – “reciprocal” duties will generally remain at 10%, limited Section 232 duties (in conjunction with quotas)
 - Vietnam – 20% “reciprocal” duty (40% duty on “transshipped” goods)
 - Indonesia – 19% “reciprocal” duty
- Prospects for key trading partners:
 - Canada – negotiations are continuing, reciprocal duty likely, but may only apply to non-USMCA goods
 - Mexico – no clear progress on negotiations, reciprocal duty likely, but may only apply to non-USMCA goods
 - EU – active negotiations w/ EU likely willing to accept 10% reciprocal duty in the short term
 - China – reciprocal tariff due to return to 34% on August 12, but negotiations “in a very good place” per Bessent

Sectoral tariffs:

- The second Trump administration has dramatically expanded its use of Section 232, with many new and promised investigations
- Section 232 tariffs do not stack with “reciprocal” tariffs, and therefore supplant such tariffs for significant sectors of the U.S. economy
- Section 232 tariffs may eclipse reciprocal tariffs in magnitude:
 - E.g. 50% tariff for steel, aluminum and copper
- Increasingly important if IEEPA tariffs are struck down by the courts:
 - Federal Circuit already affirmed very broad Section 232 tariff power in the first Trump administration

Future administrations:

- Hard to predict whether future administrations would repeal or modify tariffs
 - Tariffs can be “sticky” due to reliance by domestic industry and reshoring/nearshoring
 - Lack of political will
- Lessons from the Biden administration:
 - None of the Trump 1.0 tariffs were repealed by Biden
 - Targeted increases on Section 301 duty rates for specific Chinese products, including:
 - Graphite, critical minerals, magnets, ship-to-shore cranes increased from 0% to 25%
 - Steel and aluminum products, EV batteries, and battery parts increased from 7.5% to 25%
 - Semiconductors and solar cells increased from 25% to 50%
 - EVs increased from 25% to 100%
 - New Section 301 investigation on Chinese shipbuilding and maritime logistics
- However, Trump 2.0 tariffs have been notably less popular than the Trump 1.0 tariffs

Strategies for Navigating the Rapidly Changing Tariff Landscape

Selection of Incoterms / importer of record:

- FOB (free on board) / FCA (free carrier) – buyer is responsible for international shipping and customs clearance
- DDP (delivered, duty paid) – seller is responsible for international shipping and customs clearance

Contractual price provisions:

- Generic force majeure – may or may not cover changes in tariffs ... less likely to cover tariff changes in new contracts
- Specific tariff change provisions – provide certainty and enforceability, allow sharing of risk

Accurate HTS classification is a key obligation for all importers, and a potent source of tariff mitigation, but was long overlooked by many importers

Key tariff exceptions:

- HTS Chapter 98
- Reciprocal tariff annex

Tariff non-stacking rules:

1. 232 Auto/Auto Parts;
2. 232 Aluminum/Steel;
3. IEEPA Canada & Mexico;
4. Reciprocal tariffs

Tariff stacking:

- IEEPA China
- Section 301 China

Customs value can be a potent tariff mitigation strategy in certain circumstances, but importers must be wary

Determining customs value:

1. Transaction value – price actually paid or payable
2. Transaction value of identical or similar merchandise
3. Deductive value – U.S. sales price less certain deductions (commissions, freight, duties, domestic processing)
4. Computed value – costs (including G&A) + profit
5. Other reasonable method

First sale doctrine:

- First arm's length sale of the good for export to the United States
- Potential issues related to obtaining sufficient information from intermediaries

Split-invoicing is not a legitimate method

Country of Origin (COO) and production decisions

Reshoring & Nearshoring:

- Shifting production or final assembly to the United States or favored countries may reduce duty costs
- Using U.S.-origin parts may lower overall duty burden
- Domestic production may qualify for streamlined regulatory compliance

Partial Assembly Strategies:

- Import components at lower duty rates and lower customs valuation
- Complete final assembly domestically to reduce overall customs duty exposure

Cost-Benefit Analysis:

- Balance higher domestic (or nearshoring) production costs against potential customs duty savings

Taking advantage of Free Trade Agreements (FTAs)

What are Free Trade Agreements (FTAs)?

- Bilateral or multilateral agreements that reduce or eliminate tariffs between member countries

Key Benefits:

- Lower duty rates and reduced trade barriers
- Streamlined customs processes and improved market access

How to Leverage FTAs:

- Determine which FTAs apply to your products and target markets (e.g., USMCA, EU, ASEAN)
- Ensure products meet the origin criteria to qualify for preferential treatment
- Secure certificates of origin and other required documentation
- Stay updated on regulatory changes and FTA modifications to maintain eligibility

What is Duty Drawback?

- Refund of duties, taxes, and fees paid on imported goods that are later exported or used in manufacturing exported products
- Can result in the refund of up to 99% of duties paid (certain limitations apply, including for reexports to Canada or Mexico)

Eligibility & Types:

- Direct Drawback: refund of duties on goods reexported for consumption in the same form
- Manufacturing Drawback: refund of duties when imported components are used in producing exported finished products
- Unused Merchandise Drawback: refund of duties on imported goods that are returned or destroyed without use

Process & Documentation:

- Detailed records proving reexport or destruction
- Claims with customs authorities and adherence to specific timelines and procedural requirements

Questions?

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