

THE COMPLIANCE COLLECTIVE

What We've Learned Since *Learning Resources*: Navigating Refunds and New Tariffs Post-IEEPA

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SPEAKERS: ANDREW CARIDAS, MICHAEL HOUSE & ANN NAGELE

GUEST SPEAKER: CLAU ZIMMERMANN, ASHURST LLP

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

1. *Learning Resources* and its aftermath
2. The IEEPA refund process
3. Section 122 tariffs
4. The missing *de minimis* exception
5. Section 301 and 232
6. The view from our trading partners



Andrew Caridas
PARTNER
Perkins Coie LLP
ACaridas@perkinscoie.com



Michael House
PARTNER
Perkins Coie LLP
MHouse@perkinscoie.com



Ann Nagele
PARTNER
Perkins Coie LLP
ANagele@perkinscoie.com



Claus Zimmermann
GLOBAL HEAD OF INTERNATIONAL TRADE
Ashurst LLP
Claus.Zimmermann@ashurst.com

Learning Resources and its
aftermath

Learning Resources v. Trump

- Decision issued February 20, 2026
- What the Court held:
 - IEEPA does not authorize the president to impose tariffs
 - IEEPA “reciprocal” and “trafficking” tariffs were therefore unlawful
- What the Court *did not* hold:
 - IEEPA tariffs are no longer in effect
 - Importers that paid IEEPA tariffs are entitled to refunds

President Trump's Response

- Terminated collection of IEEPA tariffs
 - Effective February 24, 2026
 - All IEEPA tariffs, not just what *Learning Resources* considered
- Resulted in termination of the post-IEEPA tariff trade agreement adjusted rates
 - e.g. UK, EU, Japan and Korea
- Did not address refunds

U.S. Court of International Trade Litigation

- Over 2500 cases seeking refunds filed in U.S. CIT
 - Approx. 700 filed since *Learning Resources*
 - 10-20 new cases filed every day
- All IEEPA tariff refund cases subject to automatic administrative stay
 - By order of Chief Judge Barnett
 - Prior to assignment or response from the U.S. government
- Except one – *Atmus Filtration*

Atmus Filtration won/lost the lottery

- Surprising lead case
 - Filed February 27, 2026 – approx. 2000th IEEPA tariff case
 - Single judge – Senior Judge Richard K. Eaton
- Judge, rather than party, driven
 - Refund orders issued without any motion/response
 - Closed hearings
 - Denial of motions to intervene / expand case management

Atmus Filtration Refund Orders

- **March 4:** CBP must –
 - liquidate all unliquidated entries without IEEPA duties, and
 - reliquidate all liquidated entries for which liquidation is not yet final
 - without IEEPA duties
- **March 5:** amended to apply to entries “subject to the IEEPA duties imposed by the Executive Orders considered by the Supreme Court in *Learning Resources, Inc. v. Trump*”
- **March 6 & 12:** order suspended “to the extent it directs immediate compliance,” CBP directed to file a status report in one week

Atmus Filtration Ambiguity #1

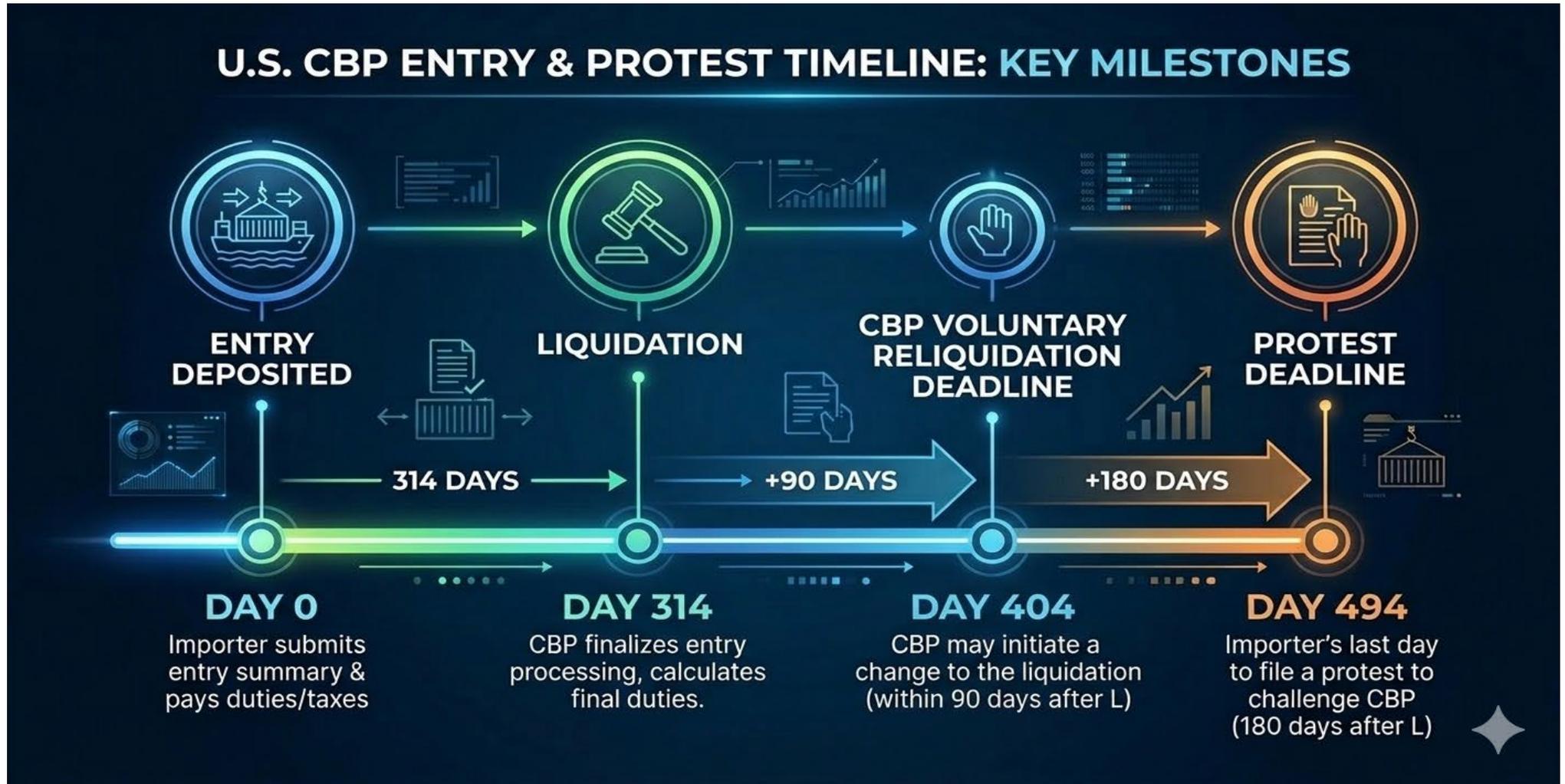
- Refund order only apply to entries “subject to the IEEPA duties imposed by the Executive Orders considered by the Supreme Court in *Learning Resources, Inc. v. Trump*”
- Appears intended to exclude the 40% IEEPA tariff on Brazil (Bolsonaro) and 25% tariff on India (Russian Oil)
- Unclear whether it also excludes any of the tariffs imposed under negotiated agreements with the UK, EU, Japan, Korea, etc.

What to Expect When You're Expecting:

The IEEPA tariff refund process

- U.S. Customs and Border Protection (CBP) – agency responsible for regulating entry of goods and payment of duties
- Importer of Record – civilian responsible for entry of goods and payment of duties
- Customs Entry – goods enter the U.S., triggers deposit (payment to CBP) of *estimated* duties
- Liquidation – final assessment of duties by CBP

CBP Entry & Liquidation Timeline



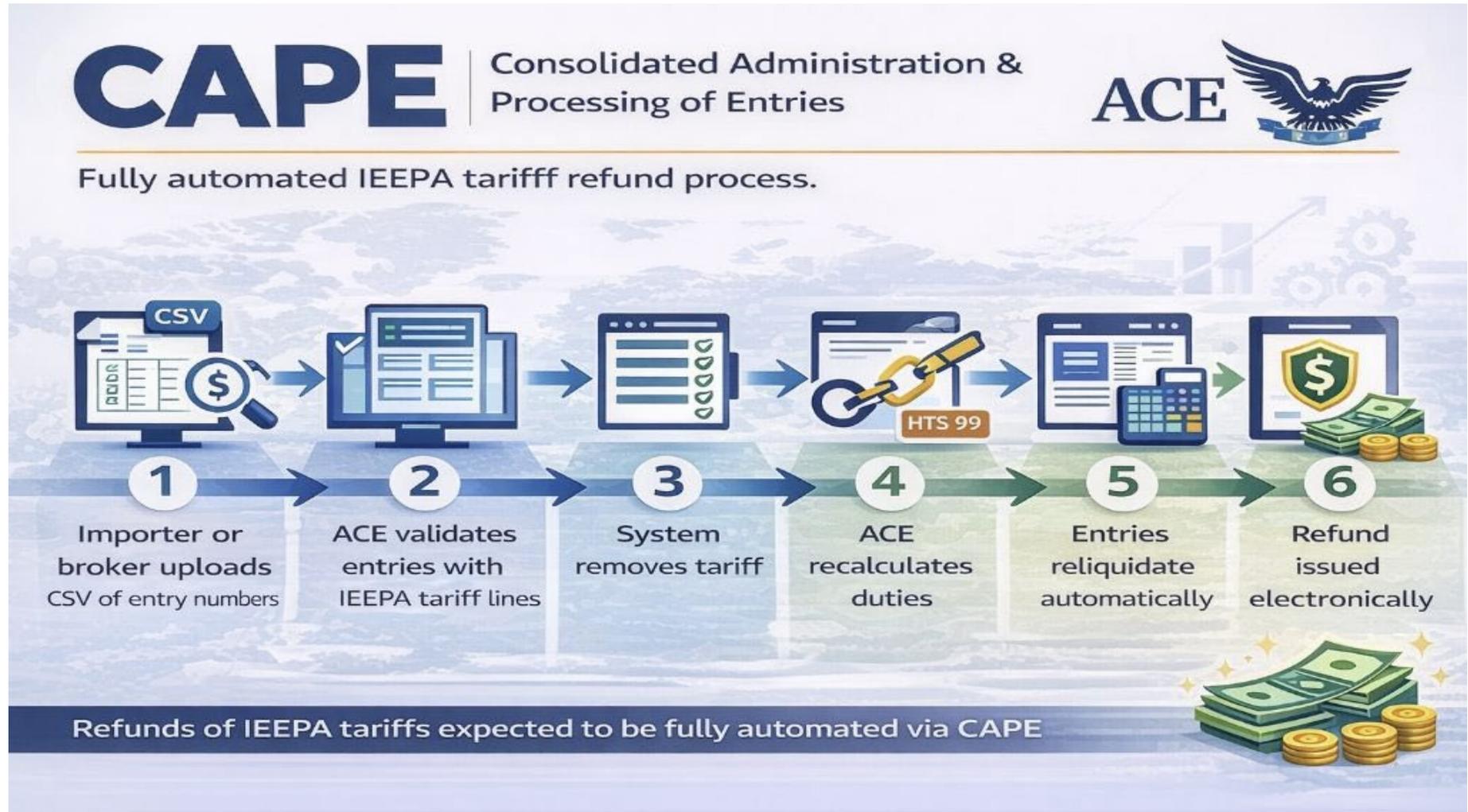
Atmus Filtration Ambiguity #2

- Refund order only apply to reliquidation of “liquidated entries for which liquidation is not final”
- Does this refer to the 180-day protest deadline?
 - usual interpretation of finality – *i.e.* when agency action can no longer be challenged
- *or ...* to CBP’s 90-day voluntary reliquidation deadline?

CBP Progress Toward Refunds

- First declaration:
 - CBP's Automated Commercial Environment (ACE) system cannot currently automatically reprocess entries for IEEPA tariff refunds
 - Manual process would take > 4M personnel hours
 - System functionality can be added within 45 days
- Second declaration:
 - CBP has begun work on four new modules within ACE
 - Programming of modules 40-80% done
- Third declaration due today

CBP's IEEPA Tariff Refund Process



What to Do Now

- Protect your right to refunds
 - Know the liquidation status of your entries
 - 314 day timeline is typical, but earlier liquidation possible
 - Protest deadline – 180 days after liquidation
 - Lawsuit deadline – *either ...*
 - 2 years from “accrual” *or*
 - 180 days after protest is denied
- Sign up for electronic duty refunds in ACE
- Consult with qualified customs counsel

Section 122

of the Trade Act of 1974 (19 U.S.C. § 2132)

Section 122 - Overview

- On February 20 in *Learning Resources* the U.S. Supreme Court found President Trump's tariffs pursuant to (IEEPA) to be unconstitutional.
- The same day, the President invoked Section 122 of the Trade Act of 1974 imposing a **10% ad valorem** duty on all goods, with certain exceptions, for a period of **150 days from February 24, 2026**.
- Issued through Proclamation No. 11012 "*Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems*"
- Under Section 122, the president may impose up to 15% tax. The President had indicated he would impose a 15% tariff, but when it was issued it was at 10%. It may still be raised to 15%
- The tariffs are set to **expire on July 24, 2026**, unless Congress votes to extend, which appears unlikely given the current political environment.
- More likely the Administration will use Section 122 as a "bridge" to continue collecting tariffs while it conducts new Section 301 investigations.

Section 122 Exceptions

- **Proclamation Exceptions - Annex I and Annex II**
 - Certain critical minerals
 - Metals used in currency and bullion
 - Energy and energy products
 - Certain natural resources and fertilizers
 - Certain agricultural products
 - Pharmaceuticals and pharmaceutical ingredients
 - Certain electronics
 - Passenger vehicles, certain light trucks and other vehicles
 - Certain aerospace products
 - Informational material, donations, accompanied baggage
 - Articles subject to Section 232
 - Duty free goods of Canada and Mexico (USMCA)
 - Textiles and apparel articles that are duty free under the Dominican Republic-Central America Free Trade Agreement

History of Section 122

Section 122 is an emergency tool designed to correct US balance-of-payment deficits.

- Provides that whenever fundamental national payments problems require special measures to restrict imports, import tariffs and quotas may be used to:
 - to deal with large and serious U.S. balance-of-payments deficits;
 - to prevent an imminent and significant depreciation of the dollar in foreign exchanges markets; or
 - to cooperate with other countries to correct an international balance of payments disequilibrium.
- Enacted while the Bretton Woods system applied following WWII
 - A fixed rate exchange system intended to stabilize global economy
 - Currencies were fixed (pegged) to U.S. dollar and the U.S. dollar that was convertible to gold at \$35/oz
 - Countries maintained large amounts of US dollars and unclear if US had sufficient gold reserves to cover it
- “Nixon Shock” 1971
 - President Nixon ended dollars to gold convertibility and imposed 10% tariffs (and price and wage controls) to manage balance of payments crisis
 - Section 122 later enacted to confirm this power as there had been no clear statutory authority

Actions Taken Against Section 122 Tariffs

- ***State of Oregon, et al. vs. Trump et al.***
 - On March 5, 2026, 24 attorneys general and governors (including the State of Washington) filed suit in the CIT against President Trump, the Department of Homeland Security, Kristi Noem in her (now former) official capacity, and CBP and Rodney Scott (Commissioner of CBP). (State of Oregon, et al. vs. Trump et al.) challenging the legality of Section 122 tariffs.
- ***Burlap and Barrel, Inc. & Basic Fun, Inc.***
 - A pair of private importers (food company and toy company, respectively), filed their own lawsuit with the CIT challenging the Section 122 tariffs. The arguments in this case largely reflect those in the *State of Oregon* case.
- **“Reclaim Trade Powers Act”**
 - On March 11, Senators Kaine and Warnock introduced a bill which would repeal Section 122 arguing that that it was passed when there was a fixed rate policy that required convertibility of U.S. dollars to gold at fixed rates that led to drain on US gold reserves and created a US dollar crisis. Following the formal change to floating rate in 1976-78 (Jamaica Accords) , Section 122 is obsolete.

Actions Taken Against Section 122 Tariffs (cont.)

- The States makes two main arguments:
 1. Section 122 is only intended to permit limited tariff authority to address “fundamental international payments problems” that need “special import measures to restrict imports” to deal with “large and serious balance-of-payments deficits” among other things.
 - President has justified use of Section 122 by stating a purported “balance-of-payments” deficit to attempt to fit within Section 122
 - Focuses only on trade deficits which is just one component of balance-of-payments calculation (others being foreign investment and financial capital flows). Mistakenly focuses on balance-of-trade not balance-of-payments.
 - When other components included the actual balance-of-payments is only 0.2% of GDP -- a “rounding error”
 - Section 122 meant for “fixed rate” exchange system, not “floating rate” that we have today. The floating rate system auto-adjusts so there is never a “large and serious balance-of-payments deficits” issue.
 2. Section 122 requires the tariffs (or quotas) to be applied consistently and in a non-discriminatory manner. These requirements are not met due to the long list of excepted items and number of carveouts of countries included in Annex I and II to the Proclamation.

Wither *De Minimis*?

Executive Order No. 14324 “*Continuing the Suspension of Duty-Free De Minimis Treatment for all Countries*” February 20, 2026

- President reaffirmed and continued the suspension of duty-free *de minimis* treatment for low-value shipments, including goods shipped through the international postal system.
- These shipments will also be subject to the temporary import duty Section 122.
- All low value imports into the U.S. are subject to the tariffs, **including packages valued under \$800.**
- Last week, the CIT granted motion to lift stay on *Axle of Dearborn Inc. v. the Department of Commerce*, a complaint from an auto parts distributor challenging the Administrations authority to suspend de minimis, which for years has allowed shipments worth \$800 or less to enter the country duty free.

The Tariffs Around the Corner:

New Section 301 and Section 232 Investigations

Section 301 Investigations – Unfair Foreign Trade Practices

- Permits U.S. to impose trade sanctions on foreign countries that violate U.S. trade agreements or engage in acts that are “unjustifiable” or “unreasonable” or “discriminatory” and burden U.S. commerce.
- Authorized remedies can include (1) tariffs or other import restrictions, (2) withdrawal or suspension of trade agreement concessions, or (3) binding agreement with the foreign government to either eliminate the conduct or compensate the United States with satisfactory trade benefits.
- Tariffs are most common remedy, and is statutorily preferred if action is taken in the form of import restrictions.
- *China Section 301 Tariffs* – imposed in 2018 under first Trump Administration; still in effect; tariffs on extensive list of specific Chinese goods of up to 25%
- Tariffs can remain in place indefinitely (until challenged foreign country action has ceased, in the view of U.S. government)

Section 301 – New Investigations Already Initiated

(1) Section 301 Investigations on “Excess Capacity” – Initiated March 11

- New investigation targets “economies that appear to exhibit structural excess capacity and production in various manufacturing sectors, which can manifest as large or persistent trade surpluses or underutilized or unused capacity.”
- Covers 16 Countries: China, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, India, and the European Union.
- Sectors purportedly “plagued by excess capacity” include aluminum, automobiles, batteries, cement, chemicals, electronics, energy goods, glass, machine tools, machinery, non-ferrous metals, paper, plastics, processed food and beverages, robotics, satellites, semiconductors, ships, solar modules, steel, and transportation equipment
- Public comments on these investigations are due by April 15; public hearings covering each investigated economy start on May 5.
- U.S. Trade Representative has promised swift completion of these investigations, perhaps within 150 days

Section 301 – New Investigations Already Initiated

(2) Section 301 Investigations on “Forced Labor” – Initiated March 12

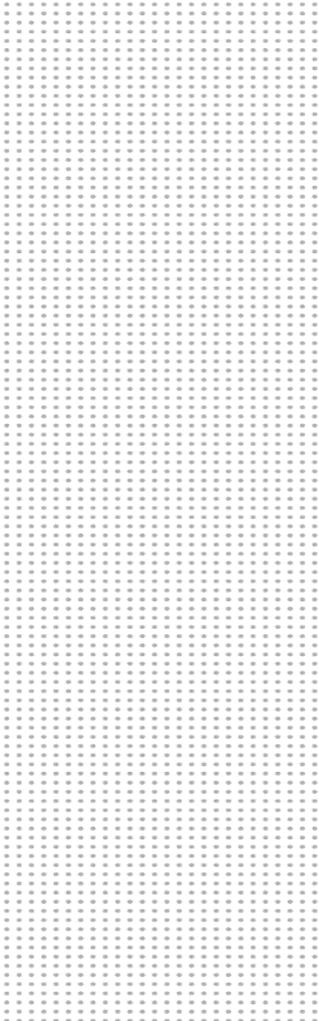
- New investigation targets countries that allow or facilitate forced labor or do not enforce bans on goods produced with forced labor
- Covers imports from 60 of the largest trading partners of the U.S., including countries such as Australia, Canada, Mexico, the member countries of the EU, the U.K., Japan, South Korea, China, and many others.
- Could result in tariffs or import bans on goods produced in the target countries if affirmative findings are made under Section 301.
- Potential for import bans similar to the existing bans on imports of certain goods from China's Xinjiang region under the U.S. Uyghur Forced Labor Prevention Act.
- As with the Section 301 investigation on “excess capacity,” USTR hopes conclude this Section 301 investigation, including remedies, within 150 days, i.e., before the Section 122 tariffs imposed by President Trump expire on July 24, 2026.
- USTR will hold hearings on these investigations on April 28, 2026. Submission of written comments, requests to appear at the hearing, along with a summary of the testimony, should be submitted by April 15, 2026.

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: More than 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%
 - Copper (announced 50%); Pharmaceuticals; Semiconductors
- 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



Administration Intent to Start New 232 Investigations

- **Large-scale Batteries:** Targeted for their role in the energy grid and electric vehicle supply chains.
- **Telecommunications Equipment:** Focus on infrastructure security and foreign dependence.
- **Electrical Grid Supplies:** Including transformers and other critical hardware.
- **Industrial Chemicals:** Broadly targeted to reduce reliance on foreign chemical manufacturing.
- **Plastics and Piping:** Specifically including items like plastic piping and cast iron fittings.
- **Automotive Batteries:** Often cited alongside broader battery and EV supply chain concerns.

 *As with previous Section 232 investigations, tariffs are most common remedy imposed after investigation.*

The view from outside the
US

The EU and UK – Reassessment and Response Capacity

European Union:

- Higher tariffs affecting ~ 7% of exports
- Section 301 probes into overcapacity and forced labor
- EU vote on EU-US deal rescheduled
- Towards new EU countermeasures?
- Retaliation risk via Section 232 for automotive tariffs
- Towards new markets via new EU FTAs

UK:

- Among the largest relative tariff increases for major trading partners
- Section 301 investigation into forced labor
- Heightened uncertainty for businesses
- Commitment to preserving a privileged trade relationship

China – Assessment and Countermeasures

China:

- Comprehensive review of Supreme Court ruling
- Highest relative tariff burden among major US trading partners
- Transition to Section 122 resulted in a 7.1 percentage point tariff reduction
- Section 301 investigations into overcapacity and forced labor
- Existing Section 301 tariffs range from 7.5% to 100%
- Potential further countermeasures to defend national interests
- Both parties to explore bilateral trade and investment cooperation mechanism

Japan, South Korea and Southeast Asia – Frustration over Lost Concessions

Japan & South Korea:

- Limited net benefit from Section 122 transition
- Risk: higher tariffs on certain exports
- Significant investment commitments
- Section 301 probes into overcapacity and forced labor
- Automotive sector retaliation risk under Section 232

Southeast Asia:

- Vietnam: tariff rate reduced from 21.6% to 18.8%
- Thailand: tariff rate reduced from 19% to 17.3%
- Indonesia, Malaysia, Cambodia, Thailand and Vietnam all subject to Section 301 probes targeting overcapacity and forced labor

India & Brazil – Emerging Markets

India:

- Strengthened bargaining position
- Large share of exports now exempt from 50% duties
- Section 122 resulted in a 5.6 percentage point tariff reduction
- Section 301 probes into overcapacity and forced labor
- Trade talks with the US currently paused

Brazil:

- Diplomatic tensions with the US following 40% tariff combined with 10% reciprocal tariff
- Largest tariff reduction among major US trading partners
- Rates fell by 13.6 percentage points under Section 122
- Subject to Section 301 forced labor investigation

Questions?

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