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# NAVIGATING RECENT U.S. TARIFFS

*March 31, 2025*

# Presidential Authority to Impose Tariffs

- Constitutional Basis: Article I, Section 8 gives Congress the power to impose tariffs and regulate commerce, but Congress can delegate some of this authority to the President through legislation.
- Key Statutes Granting Presidential Tariff Power:
  - Trade Act of 1974 (Section 301 – China tariffs, and Section 201 – solar panel, electric vehicles, and washing machine tariffs)
  - Section 232 of the Trade Expansion Act of 1962 (steel and aluminum tariffs)
- International Emergency Economic Powers Act (IEEPA, 1977) – Canada and Mexico tariffs
- Practical Limits:
  - Congressional Oversight.
  - Judicial Review.
  - WTO Rules.
  - Political and Economic Blowback.

# What Has Been Announced To-Date? (1)

**On February 1, 2025,** President Trump announced significant tariffs under IEEPA.

These included:

- A 25% additional tariff on all imports from Canada, with energy resources (oil, gas, potash) at a 10% tariff.
- A 25% additional tariff on all imports from Mexico.
- A 10% additional tariff on all imports from China (on top of the 25% or 7.5% Section 301 tariffs)
- These were set to be effective from February 4, 2025, aiming to address national security risks associated with immigration and illicit opioids.

# *What Has Been Announced To-Date? (2)*

**On February 3, 2025,** following diplomatic engagements, Trump announced a one-month pause on the 25% tariffs for Canada and Mexico, effective immediately, to facilitate negotiations.

- The 10% tariffs on China proceed as scheduled on February 4, 2025.

**On February 10, 2025,** Trump announced the restoration of Section 232 tariffs, focusing on steel and aluminum, under the Trade Expansion Act of 1962, for national security reasons.

These tariffs were set at:

- 25% on steel imports.
- 25% on aluminum imports, previously at 10%.

The tariffs Include new "derivatives" list covering primarily HTS codes under Chapter 73 (steel) and Chapter 76 (aluminum), but also codes from other chapters, for which the tariff only applies to the steel or aluminum value of the finished article.

This now requires an expansive review of classification codes and steel or aluminum content value

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# What Has Been Announced To-Date? (3)

**On February 13, 2025,** Trump announces the "Fair and Reciprocal Plan" on trade, designed to address trade imbalances and promote fairness in global trade for the United States.

- The plan is scheduled to begin implementation on April 2, 2025.
- Ideally, the plan will develop specific tariffs based on specific commodities and specific countries of origin, but initial launch will likely be a comprehensive tariff on select countries (the "dirty 15," a list that likely includes China, the EU, Mexico, Vietnam, Taiwan, Japan, South Korea, Canada, India, Thailand, Switzerland, Malaysia, Indonesia, Cambodia, and South Africa).
- To be clear, we anticipate at least a 10 to 20% tariff on EU goods, including goods from Italy.

**On February 27, 2025,** Trump affirmed the resumption of the 25% tariffs on Canada and Mexico, effective March 4, 2025, following the pause's expiration.

- Simultaneously, he announced an additional 10% tariff on Chinese goods, effective March 4, 2025, increasing the total tariff on China to 20%.

**On March 4, 2025,** the 25% tariffs on Canada and Mexico take effect.

# What Has Been Announced To-Date? (4)

**On March 6, 2025,** in response to industry and diplomatic pressures, Trump signed executive orders pausing tariffs on goods from Canada and Mexico that comply with the USMCA agreement (i.e., if the goods qualify as originating in Canada or Mexico based on the rules of origin contained within USMCA), effective until April 2, 2025.

**On March 12, 2025**, the EU announced that it was imposing retaliatory tariffs on United States goods, because of the steel and aluminum tariffs.

# What Has Been Announced To-Date? (5)

**On March 24, 2025,** President Donald Trump announced a 25% tariff on goods imported from any country that purchases Venezuelan oil or gas, effective April 2, 2025. This "secondary tariff" aims to pressure nations like China, India, and Spain—major buyers of Venezuelan crude—while targeting Venezuela's economy and the Maduro regime.

**On March 26, 2025,** President Donald Trump announced a 25% tariff on all imported automobiles and certain auto parts, effective April 3, 2025, for vehicles, and no later than May 3, 2025, for parts. The tariffs target passenger vehicles (cars, SUVs, minivans, cargo vans, light trucks) and key components like engines, transmissions, powertrain parts, and electrical components, with potential expansion to other parts. The policy partially exempts USMCA-compliant vehicles and parts, though non-U.S. content may still face duties pending further clarification

# What are tariffs and how are they calculated?

Tariffs are taxes/duties imposed by a country on the value of imported products.

The "importer of record" (as established by the terms of the agreement between the buyer and seller of the products) is responsible for paying tariffs at the time of importation/entry.

Tariffs can be (and are usually) "*ad valorem*," meaning a percentage of the value of the imported product, or "specific," meaning a fixed amount based on a unit of measure of the imported product.

General tariff formula: **Value x Tariff Rate = Tariff**

where "Tariff Rate" is a function of (1) Classification and/or (2)Country of Origin.

# Strategies For Dealing With Tariffs (1)

The tariff formula also helps to illustrate the four areas of opportunity for tariff mitigation:

Pre-importation:

1. Value
   a) First sale
   b) Transfer pricing
   c) Bona fide buying agent fees
   d) Unbundling
2. Classification
   a) Identifying reasonable alternatives
   b) Tariff engineering
3. Country of Origin
   a) Substantial transformation
   b) Free Trade Agreements

Post-importation:

1. Duty relief (Duty Drawback, Foreign Trade Zones and Bonded Warehouses, Transportation In Bond, etc.)

# Strategies For Dealing With Tariffs (2)

1. Reduce ***value*** against which tariffs apply

- First Sale
  - If the import transaction includes a middle entity, so long as the three criteria are met (i.e., two bona fide sales, first sale at arm's length, goods clearly destined for the United States), importer can declare to U.S. Customs and Border Protection (CBP) the price paid by the middle entity to the factory/supplier.
- Transfer Pricing
  - Can provide flexibility for reducing the declared value and for adjusting the cost of goods sold portion of the intercompany payment.
  - CBP has detailed requirements associated with related party pricing.
  - Importers encouraged to consider transfer pricing programs and adjustments from both a tax and customs perspective.
- Bona Fide Buying Agent Fees
  - Fees paid to a bona fide buying agent working on behalf of the importer can be deducted from the price paid if part of the transaction value
- Unbundling of Non-Production Costs from Transaction Value
  - For example: Exclusivity/exclusive distribution rights fee.

# Strategies For Dealing With Tariffs (3)

2. ***FTZs/Bonded*** Warehouses

   - Can provide duty and tariff deferral/cash flow management benefits, even if cannot be used to avoid tariffs.
   - FTZs are a good option for importers who intend to use their U.S. operations as regional distribution centers, and potential tax/fee savings
   - FTZs even permit manufacturing within the zone, which can result in significant duty-relief

3. Chapter **98** of the Harmonized Tariff Schedule includes various duty and tariff exemption opportunities

   - U.S. Goods Returned (both unadvanced and advanced in value) permits the importer to deduct the U.S. value content from the value against which tariffs apply
   - Agricultural Use Provisions permit the importer to avoid tariffs on the full value if criteria are met (not excluded, actually used for horticultural/agricultural end-use, certification requirements met)
   - Prototype Duty Exemption permits the importer to avoid tariffs on the full value if criteria are met (imported in limited commercial quantities, exclusively for use in R&D/clinical trials)
   - TIB (if goods will not remain in the United States or be sold there, can enter under bond and avoid duties and tariffs on entire value – requires a bond)

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# *Strategies For Dealing With Tariffs* (4)

4. Country of ***Origin*** Determination

   - Tariffs are origin specific
   - Primary rule of origin for tariff avoidance is "substantial transformation," where the country of origin of a product with components from various countries is the last country in which the components where substantially transformed. This presents a couple opportunities for origin-shifting and tariff avoidance:
     - Can transform, e.g., a Chinese sub-assembly, in a third country prior to importation in the United States, resulting in a third country origin finished product; or
     - Can perform final assembly/finishing operations in, e.g., China, for a product that incorporates a non-Chinese essential character component, resulting in a non-Chinese finished product.

5. Classification review and tariff ***engineering***

   - Primarily, at this point, for avoiding 232 derivatives lists, but can either identify alternative reasonable classifications, without changing the product, or can engineer the product differently in order to classify it differently.

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