Making the Special Relationship Great Again? Legal Insights on the New U.S.-UK Trade Agreement

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Historical U.S.-UK Trade Barriers

- **Key Products**
  - Top UK Imports to U.S. in 2024: Cars, pharmaceutical products, power generators, scientific instruments, and aircraft parts
  - Top U.S. Imports to UK In 2024: Crude oil, power generators, refined oil, pharmaceutical products, and aircraft parts

- **Pre-2025 Developments**
  - First Trump Administration: Section 301 Digital Services Tax (DST) finding, prompting the addition of a 25% import duty on certain UK goods
  - Biden Administration: Revocation of DST Section 301 tariff; 2023 “Atlantic Declaration” on critical minerals, data protection
  - Long-standing trade issues include meat and poultry standards, value-added tax (VAT), and pharmaceutical pricing

Tariffs in the Second Trump Administration

- ***Tariffs Worldwide***
  - Current U.S. average effective tariff rate is **20.7%,** highest since 1910
    - 10% baseline tariff on all countries announced on "Liberation Day," + reciprocal tariffs via the International Emergency Economic Powers Act (IEEPA), border and fentanyl tariffs
      - "Reciprocal" duties paused until June 9 (except China)
    - Separate sectoral Section 232 tariffs for steel, aluminum, autos, etc.
    - Section 301 tariff investigations ongoing
    - China tariffs remain high – up to 145%
    - Tariffs are <u>additive</u>, except for Section 232 duties

  - ***Litigation Against IEEPA Tariffs***
    - At least 7 lawsuits filed by U.S. businesses and states are making their way through federal courts
    - As of May 28, the U.S. Court of International Trade ruled to "permanently enjoin" multiple tariff orders: reciprocal tariffs, and tariffs against Canada, China, and Mexico. The Trump administration is appealing.

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U.S.-UK Trade Relations in the Second Trump Administration Prior to the Deal

- Announced "Liberation Day" tariff rate for the UK was 10% (and not an individualized, higher rate)

- UK remained subject to 25% tariffs on steel and aluminum (which the UK had formerly been exempted from since 2018) prior to the deal

- In 2025, the UK sought to create more stable trade relations with the U.S. while also negotiating new trade agreements with the European Union and India

- The Economic Prosperity Deal (EPD) between the U.S. and UK is the first bilateral trade agreement between the U.S. and a foreign country signed in the second Trump administration and since the institution of "Liberation Day" tariffs
  - In addition to its independent significance, it sets the tone for the Trump administration's strategy and structure for trade negotiations with other trading partners

The U.S.-UK Economic Prosperity Deal: Structure

- On May 8, the White House published “General Terms,” which comprise the EPD framework and a Fact Sheet about the deal

- The EPD framework is a promise on how bilateral trade policy will be shaped – it is not a legally binding trade treaty nor an executive agreement (which would still bind countries under international law)

- It remains to be seen whether the EPD will be codified in U.S. or UK law

- The EPD addresses three core objectives:
  - Encourage and enhance mutually beneficial trade between the U.S. and the UK and create high-paying jobs
  - Remove trade and investment barriers
  - Strengthen the “special relationship” between the U.S. and the UK

The U.S.-UK Economic Prosperity Deal: Key Details

"Establishing a new paradigm for our special trade relationship."

- The EPD covers six key areas:
  - tariffs
  - non-tariff barriers
  - increasing digital trade
  - economic security
  - commercial opportunities (*i.e.*, integrating the two economies)
  - other matters (*e.g.*, intellectual property rights, addressing forced labor in supply chains)

- Affected commodities and sectors include meat and poultry, autos, steel, aluminum, and aerospace

- UK made no commitments on the Digital Services Tax (DST)

EPD Commodities

- UK 20% in-quota tariff on U.S. beef removed, with promise from both countries to “improve market access for agricultural products”
  - A preferential duty-free quota of 13,000 metric tons of U.S. beef created

- UK instituted a duty-free quota of 1.4 billion liters of U.S. ethanol

- Exemptions for UK aerospace parts tariffs and U.S. preferential access to UK aerospace components

- A 100,000 Tariff Rate Quota (TRQ) means virtually all UK-imported cars converted to only 10% baseline “reciprocal” tariff (and not Section 232 tariffs). Similar TRQ for UK auto parts.

- Section 232 Tariffs for steel and aluminum converted to a quota for the UK via an “alternative arrangement,” resulting in an overall reduction in tariff burden

UK-U.S. Ongoing Negotiations

- UK pharmaceutical exports subject to ongoing Section 232 investigation
- UK food standards mean likely only hormone-free U.S. beef qualifies for duty-free quota
- No numeric quota for steel and aluminum – while currently exempted from 25% sectoral tariffs, unclear what "alternative arrangement" will be
- No consensus on Digital Services Tax
- Global Reciprocal Tariffs

Impact of EPD on Supply Chains

1. **How do I deal with a changing supply chain?**
   - Tariffs can cause customs and supply chain delays when shipments are held for duty assessments, compliance checks, and document reviews. Unpredictable tariff policies exacerbate delays and uncertainty for importers.
   - The elimination of de minimis (duty-free, simplified Customs clearance) treatment for low-value goods from China and Hong Kong may create longer clearance times, shipment backlogs, and added administrative burdens. As sudden rounds of tariff hikes are imposed with little notice, businesses must continuously and repeatedly examine their supply chain.

2. **What about my supplier and fulfillment contracts?**
   - Organizations should evaluate their supplier and fulfillment contracts to determine who bears the burden of taxes, shipping, returns, and documentation, including provisions like price adjustment clauses, force majeure provisions, clear representations and warranties, termination rights, forum selection clauses, and indemnification.

Impact of EPD on Supply Chains (cont.)

3. What happens when my products won't ship on time?

- Consumers increasingly expect two-day and overnight shipping. Companies should review shipping policies and advertising to account for disruptions. The FTC's Mail, Internet, or Telephone Order Merchandise Rule requires companies to have a reasonable basis for advertised shipping claims.
- If the product won't ship within the advertised time, companies must provide notices and, in some instances, seek the customer's consent to the delayed shipment. California law has similar requirements. Be careful when charging customers extra for expedited shipping.

4. How do I manage returns, refunds, and money-back guarantees?

- Businesses that restock or resell returned products should account for logistics and timing when advertising return deadlines. If customers must pay return shipping to take advantage of a money-back guarantee, clearly and conspicuously disclose that requirement

EPD Deep Dive: Advertising Sector

1. **How can I comply with pricing and transparency laws when my costs increase?**
   - When incorporating tariffs into pricing, companies should monitor states' tariffs announcements and state price gouging laws. (COVID-19 price increases resulted in aggressive enforcement.)
   - Comply with "drip pricing" laws requiring the upfront advertised price to reflect all fees (including tariffs and surcharges).
   - Brace for class actions under California's "Honest Pricing Law," and challenges to "junk" fees.

2. **How do I label my products' country of origin when production changes?**
   - All imported products must be clearly marked with their country of origin. If this country changes, the packaging must be updated. Country-of-origin markings, especially China-sourced shipments, could become an enforcement focus for CBP.

EPD Deep Dive: Advertising Sector (cont.)

3. **How do I promote my products as "Made in USA"?**
    - Claims like "Made in USA" used to attract consumers who want to "buy American" are closely scrutinized. The Federal Trade Commission (FTC) regulates U.S.-origin claims through its "Made in USA" rule, which prescribes specific standards for these claims.
    - California law also restricts these claims and imposes specific percentage thresholds to substantiate these claims.

4. **How do the tariffs affect my subscription offers?**
    - When tariffs disrupt and delay the usual cadence of subscription deliveries, is that a "material change" requiring notice to consumers? Some plaintiffs could argue that material change notices are required for price increases and shipping delays and use this hook to challenge a company's entire autorenewal program.

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Class Action Plaintiffs May Take Advantage of Trade and Advertising Uncertainties

“Junk Fees” and “Drip Pricing” Class Actions

- *Bond v. TA3 Inc. and Route App, Inc.*, 25-cv-04719 (Super. Cal. 2025)
- *Thayer v. Teleflora LLC,* 3:25-cv-941 (E.D. Cal. 2025)

“Made in USA” Class Actions

- *Kauffman v. Nordic Ware Inc.*, 0:25-cv-01379 (D. Minn. 2025)
- *Banks v. R.C. Bigelow*, Inc., 2:20-cv-06208 (C.D. Cal. 2020)
- *Allen v. Mielle Organics LLC*, 8:25-cv-00342 (C.D. Cal. 2025)

Practical Implications: What Can You Do Now?

- Don’t Despair
- Speak to your customer base
- Due diligence questions include:
  - Which party in my supply chain is liable for tariffs?
  - How would we respond if new or announced tariffs became effective on X date?
  - What contractual provisions are we governed by with respect to tariffs?
  - What exemptions might our products be covered under?
- Seek counsel for more complex questions, including:
  - Country-of-origin issues
  - Substantial transformation
  - Valuation and transfer pricing
  - Marketing and branding
  - USMCA and country-specific provisions

Questions and Resources

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