

# The Future of Tariffs: Legal Turning Points and Refund Readiness

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# Agenda

- ❖ Where We Started
  - The legal basis for the tariffs
- ❖ Where We Are
  - Current state of tariffs
- ❖ Legal Turning Point
  - Status of the challenge to certain IEEPA-based tariffs
  - Possible outcomes
  - Refund Readiness
- ❖ What We Anticipate
  - Upcoming tariffs/investigations
  - Enforcement outlook
  - Mitigation



**Where we started**

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# Legal Overview

## *Previously Used/Well-Established*

- **Section 301 of the Trade Act of 1974 (Unfair Trade Practices)**
  - The statute authorizes the president, through the Office of the U.S. Trade Representative (USTR), to investigate and address unfair trade practices by foreign countries.
- **Section 232 of the Trade Expansion Act of 1962 (Imports Impairing National Security)**
  - The statute authorizes the president, through the Department of Commerce, to impose import restrictions, including tariffs, on imported goods that threaten U.S. national security.

## *New Use for Tariffs*

- **International Emergency Economic Powers Act (IEEPA)**
  - The statute authorizes the president to undertake a wide range of actions in response to any “unusual or extraordinary” threats to national security, foreign policy, or the economy of the United States if the president declares a national emergency concerning such threats.
  - IEEPA serves as the legal basis for most U.S. economic sanctions programs but does not explicitly grant the president authority to impose tariffs.
  - Lacks the procedural requirements found in Sections 301 and 232.



**Where we are**

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# Overview of Current Tariffs

## *Section 301*

- China tariffs
- [PAUSED] Service fees on maritime transport services provided by Chinese operators and shipowners, Chinese-built vessels, and foreign-built vehicle carriers
- [PAUSED] Ship-to-shore cranes and cargo-handling equipment (e.g., chassis)

## *Section 232 tariffs*

- Steel, aluminum, and copper
- Automobiles and auto parts
- Medium- and heavy-duty trucks and parts
- Buses
- Kitchen cabinets and vanities
- Upholstered furniture

## *IEEPA tariffs*

- Canada and Mexico
- China fentanyl
- Reciprocal tariffs
  - Higher country-specific tariffs
  - China remains at 10%
- Brazil additional tariff
- India additional tariff/Russian oil

## *Other Considerations*

- Retaliatory actions: China and Canada
- Transshipment penalty
- Anti-stacking

# Trade Deals and Other Relief

## *Trade deals*

- Finalized deals: EU, Japan, South Korea, the UK, Cambodia, Malaysia
- Framework deals: Argentina, Ecuador, El Salvador, Indonesia, Guatemala, Liechtenstein, Philippines, Pakistan, Switzerland, Thailand and Vietnam
- Temporary deals:
  - China
- More coming?
- USMCA renegotiation

## *Other Relief*

- Tariff relief based on US investment (i.e. pharma/auto)
- Exemption for certain agricultural products from reciprocal tariffs
- Certain Section 301 product exclusions extended through November 10, 2026



## **Legal Turning Point**

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# IEEPA Litigation

## *Primary Legal Arguments*

- **U.S. Government**: Congress can grant the President broad powers over foreign affairs, including regulating imports. Authority to regulate imports encompasses authority to impose tariffs
- **Plaintiffs**: Regulation of imports does not encompass tariffs but rather covers trade measures such as quotas, embargoes, bans, screening, and other non-revenue-raising tools. The invocation of IEEPA in this manner is novel and raises questions as to the scope of the President's statutory authority.

Not covered: Certain recent IEEPA tariffs, Section 232 tariffs, and earlier Section 301 China tariffs

## *Procedural Background*

- Federal Circuit ruled 7–4 that using IEEPA for broad, near-universal tariffs exceeds presidential authority, partially affirming the May trade court ruling.
- U.S. Supreme Court heard oral arguments regarding President Trump's invocation of IEEPA to impose reciprocal tariffs and fentanyl/migration-related tariffs.
- Hearing consolidates *VOS Selections* and *Learning Resources*.

## *Current Status*

- Tariffs remain in effect while the administration appeals to the Supreme Court.
- Case is being reviewed on an expedited schedule meaning it is possible that the Supreme Court will issue a decision in December/January.
- Still possible that Supreme Court stays with its regular schedule and issue a decision in May/June 2026.

# IEEPA Litigation

## *Potential Outcomes*

- Overturn lower court decisions; tariffs can remain in place
- Remand for further consideration; possible questions to be remanded to the lower courts include the scope of remedies and refunds
- Affirm lower court decisions; question of how refunds might work
- Impact on other tariffs?

## *How Refunds Might Work*

- Potentially available only to plaintiffs (application of *Trump vs. CASA*)
- Administrative refund process:
  - For unliquidated entries, submission of Post-Summary Corrections (PSCs)
  - For liquidated entries, filing of a protest under 19 U.S.C. § 1514 within 180 days of liquidation
- Failing to file a timely protest may allow CBP to invoke it as an absolute bar, preventing importers from obtaining a refund.

# Refund Readiness

## *Recommendations*

- Track liquidation dates – ask your customs broker
  - If your entries are not yet liquidated, submit timely post-summary corrections (PSCs)
- Request suspension of liquidation, as appropriate
  - Realistically, unlikely that CBP will grant suspension of liquidation – discretionary and not sufficient grounds
- File protests in a timely manner
  - Must be filed within 180 days of liquidation
- File suit in a timely manner at the CIT, if needed
  - Costco and other recent filings

# Key Deadlines to Track

## China IEEPA Fentanyl Tariffs

- Effective as of February 4, 2025
- Earliest Liquidation Date: Approximately **December 15, 2025**
- Earliest Protest Deadline: Approximately **June 13, 2026**

## Canada and Mexico IEEPA Tariffs

- Effective as of March 4, 2025
- Earliest Liquidation Date: Approximately **January 12, 2026**
- Earliest Protest Deadline : Approximately **July 11, 2026**

## Reciprocal Tariffs

- Effective as of April 5, 2025
- Earliest Liquidation Date: Approximately **February 10, 2026**
- Earliest Protest Deadline : Approximately **August 9, 2026**

\*\*\*Please note that these dates reflect typical liquidation at 314 days post-entry and corresponding protest deadlines (180 days after liquidation). However, CBP can and has, in many instances, liquidated entries in a shorter time frame. Therefore, importers should monitor and confirm actual liquidation dates and file timely protests for each liquidated entry to preserve the refund right.



## **What we anticipate**

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# Upcoming/Threatened Tariffs

## *Section 232 Investigations*

- Pharmaceuticals and ingredients
- Semiconductor, SME, and derivative products
- Critical minerals and derivative products
- Commercial aircraft and jet engines
- Polysilicon and derivatives
- Unmanned aircraft systems and parts
- Wind turbines
- Robotics and industrial machinery
- PPE, medical consumables, and medical equipment

## *Section 301 Investigations*

- Brazil
- Digital services taxes
- China
- Nicaragua
- Other cargo handling equipment (e.g., rubber tire gantry cranes, straddle carriers, terminal tractors)

## *Secondary Tariffs*

- Iranian oil
- Venezuelan oil
- Threatened secondary tariffs of 100% on Russia
- Threatened to impose a 10% tariff on any country that supports the “anti-American policies” of BRICS

# Enforcement Outlook

- U.S. Customs and Border Protection (CBP) is prioritizing enforcement of the new Trump tariffs alongside national security objectives.
  - CBP reported its operational statistics for October 2025 alone as follows:
    - Processed \$254 billion in imports.
    - Identified \$29 billion in duties owed.
    - From **January 20, 2025 – October 31, 2025**, CBP collected **\$238 billion from all tariffs, taxes and fees**.
- Notably, changes to an importer's supply chain, tariff classification, or merchandise valuation may attract heightened scrutiny from CBP.
- The increased tariffs may inadvertently lead to a rise in smuggling, transshipment, undervaluation, misclassification, and other schemes aimed at avoiding or reducing tariff liability. Therefore, industry stakeholders should remain vigilant for suspected fraudulent activities.
- Businesses involved in fraudulent activities may face civil and/or criminal penalties, including potential liability under the False Claims Act.
- On August 29, 2025, DOJ and DHS launched a cross-agency Trade Fraud Task Force to bring robust enforcement against importers and other parties seek to defraud the United States, including tariff evasion and other duties and smuggling prohibited goods into the United States.



# Strategies to Mitigate Tariff Impact

## *Customs Review/Analysis*

- Review the country of origin
  - Possible substantial transformation arguments to move away from the highest-tariff countries
- Review customs valuation
  - First sale rule
- Review to ensure merchandise is classified properly
  - Review Chapter 98 eligibility for potential exclusions or to account for U.S.-origin inputs
- USMCA eligibility

## *Contractual Provisions*

- Tariff burden shifting or sharing/use of Incoterms
- Review force majeure and material change provisions
- Government contracts

## *Other Strategies*

- Prepare engagement with administration officials and congressional representatives
- Lean on trade associations
- Prepare for potential refund process



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# Questions?

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