



# Practical Advice Regarding Tariffs: What Should You Be Doing Now?

*Illinois Manufacturers' Association Webinar*

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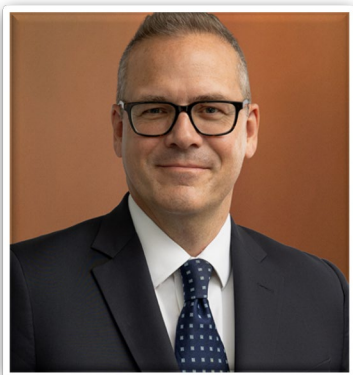
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# Welcome!

## Join the Conversation!

Use the Question Tab on the Control Panel  
(Usually on the Right, Under the **Red Arrow**)

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**Questions asked will be answered in the hypothetical.**

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# Today's Topics

- Overview of Current and Proposed Tariff Actions
- Supply Chain Mapping and Care
- Risk Assessment
- Import Compliance
- Tariff Mitigation Strategies
- Tariff-Saving Possibilities
- Contract Review and Updates

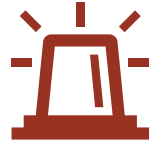


# OVERVIEW OF CURRENT AND PROPOSED TARIFF ACTIONS

# Legal Authorities for Tariffs

- The U.S. Constitution grants Congress the power to regulate commerce with foreign nations (Article I, Section 8). However, over time, Congress has delegated significant authority to the Executive Branch.
- **Trade Expansion Act of 1962:** Section 232 allows the President (via Department of Commerce) to impose tariffs based on national security concerns. Recent examples include steel and aluminum tariffs from 2018.
- **Trade Act of 1974:** Section 301 allows the President (via U.S. Trade Representative) to impose tariffs in response to unfair trade practices. Recent examples include China tariffs from 2018.
- **International Emergency Economic Powers Act (IEEPA) of 1977:** Grants the President broad authority to regulate commerce after declaring a national emergency originating outside the United States.

# Current IEEPA Tariffs- China



- Executive Order 14195 (Feb. 1)- Imposing Duties To Address the Synthetic Opioid Supply Chain in the People's Republic of China
- **10% ad valorem tariff on all imported commodities of China and Hong Kong effective Feb. 4, 2025**
  - In addition to “any other duties, fees, exactions, or charges applicable to such imported articles”
  - Certain goods in transit by Feb. 1 and entered by March 7, 2025, are exempt from duties
- No drawback will be available for these IEEPA duties.
- No product exclusion process provided for in the Executive Order.
- “*De Minimis*” treatment extended until “adequate systems are in place”



# Paused IEEPA Tariffs- Canada



- Executive Order 14193 (Feb. 1)- Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border
- **25% ad valorem tariff on all imported commodities of Canada except energy or energy resources**
  - 10% ad valorem tariff on crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals
- No drawback will be available for these IEEPA duties and no “*de minimis*” treatment available.
- No product exclusion process provided for in the Executive Order.
- **Paused until March 4, 2025, at 12:01 a.m. eastern time. (EO 14197)**

# Paused IEEPA Tariffs- Mexico



- Executive Order 14194 (Feb. 1)- Imposing Duties To Address the Situation at Our Southern Border
- **25% ad valorem tariff on all imported commodities of Mexico**
- No drawback will be available for these IEEPA duties and no “*de minimis*” treatment available.
- No product exclusion process provided for in the Executive Order.
- **Paused until March 4, 2025, at 12:01 a.m. eastern time. (EO 14198)**

# Section 232- Steel & Aluminum Tariffs



- Proclamations 10895 & 10896 (Feb. 10) amend the existing Section 232 tariffs on steel and aluminum articles.
  - Section 232 authorizes the President to impose tariffs or quotas if imports of an article threaten U.S. national security.
- 25% duties on covered steel, aluminum, and derivative products.
- Effective March 12, 2025, for all countries of origin
  - Existing country exemptions or quota agreements will terminate including Argentina, Australia, Brazil, Canada, Japan, Mexico, South Korea, the European Union, Ukraine, and the United Kingdom

# Section 232- Steel & Aluminum Tariffs



- No product exclusion process
  - Commerce is no longer processing Section 232 Exclusion Requests effective 11:59 PM Eastern Time on February 10, 2025.
  - Exclusions that have already been granted will remain effective until their expiration date or until their excluded volume is exhausted, whichever occurs first.
  - All general approved exclusions shall be ineffective as of March 12, 2025

# Section 232- Steel & Aluminum Tariffs



- **Review the Annexes to Proclamations for extensive derivative product list (by HTSUS code)!**
  - Within 90 days, Commerce Department is required to establish a process to add products to the derivatives tariffs. Requests may be made by a producer or industry association. Commerce will make a decision within 60 days.
- Steel:
  - For the steel items listed on the Annex that are not classified within Chapter 73, the additional duty applies only to the steel content of that derivative article.
- Aluminum:
  - For any derivative aluminum article not classified in Chapter 76, the additional ad valorem duty shall apply only to the aluminum content of the derivative article.
  - The Section 232 duties for derivative aluminum articles that are not in Chapter 76 shall be effective upon public notification by the Secretary of Commerce, that adequate systems are in place to fully, efficiently, and expediently process and collect tariff revenue for covered articles.

# Section 232- Steel & Aluminum Tariffs



- The Presidential Proclamations directs U.S. CBP to prioritize reviews of the classification of imported steel and aluminum articles and derivative articles.
- If CBP discovers misclassification resulting in non-payment of the Section 232 duties, then CBP shall assess monetary penalties in the maximum amount permitted by law and shall not consider any evidence of mitigating factors in its determination.
- This provision is a new innovation in the tariff actions and will likely lead to increased CBP enforcement.

# Reciprocal Tariffs Plan & Memo

- To reduce the U.S.'s large and persistent annual trade deficit in goods and to address other unfair and unbalanced aspects of U.S. trade with foreign trading partners.
- Reciprocal tariffs will not be imposed immediately.
- Commerce and USTR will be charged with investigating not only unbalanced tariff treatment by other countries, but also other nontariff barriers such as digital trade barriers, government procurement, lack of intellectual property protection, and export subsidies, among others.

# Other Potential Tariff Actions



- Global 10% – 20% tariff on all imported commodities
- Tariffs on Europe
- Tariffs on key sectors: copper, pharmaceuticals, and semiconductors
- 100% tariffs on the BRICS group of nations (Brazil, Russia, India, China, South Africa) if they move away from the U.S. dollar
- Increasing Section 301 tariffs on Chinese-origin goods to at least 60 percent
- Press Congress to Revoke Permanent Normal Trade Relations (PNTR) status for China. This would reset the normal tariffs on China even higher, to as much as a 100% on some products.



# SUPPLY CHAIN MAPPING AND CARE

# What should your company be doing?

Supply Chain Mapping

Leveraging All Data Sources To Understand Company Sourcing

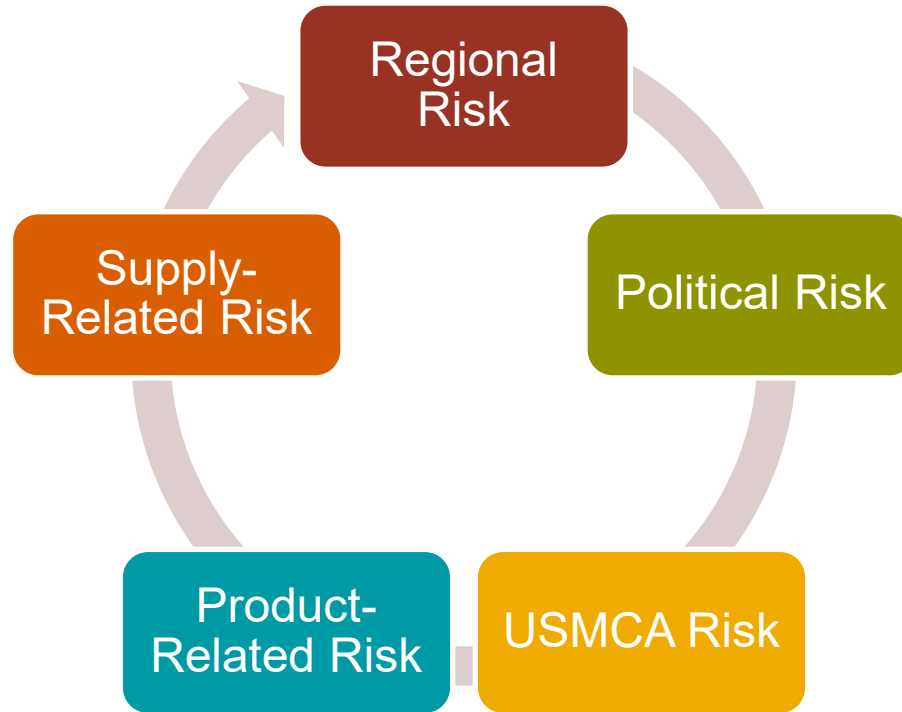
Identify Hidden Sources of Risk

# RISK ASSESSMENT & IMPORT COMPLIANCE

# Risk Assessment

- Companies need to know where risks lie to enable strategic mitigation measures to navigating tariff challenges and other risks.
- Utilize data to conduct a full comprehensive risk assessment and create risk matrices for products, regions, and suppliers to quantify and prioritize exposures.
- And repeat!

# Risk Assessment



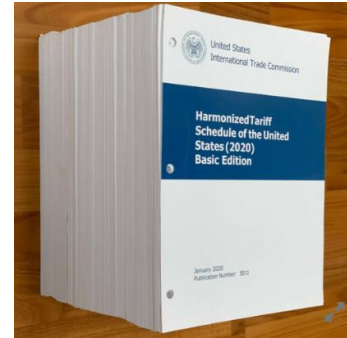
# Why is Import Compliance Important?

- In a high-tariff environment, there is greater risk for missteps. A comprehensive import compliance review will identify issues and opportunities.
- Document internal controls and procedures?
- Risk assessment for tariff classification, valuation, origin?
- Post-entry audit process?
- Total reliance on customs broker?
- Monitoring ever changing regulations?

# TARIFF MITIGATION STRATEGIES & TARIFF-SAVING POSSIBILITIES

# Tariff Classification

- Every item that is imported into the United States must be assigned a 10-digit tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) a.k.a. “HTS Code” or “Tariff code”.
- HTS Codes directly impact the general duty rate. Example:
  - Bracket for motor vehicle seat (8302.42.3065) – **3.9% duty rate**
  - Arm rest for motor vehicle seat (9401.90.1080) – **duty free**
- HTS codes impact special high tariffs. Example:
  - China Section 301 duties. Depending on the HTS code, there could be additional 25% or 7.5% tariffs or no additional tariffs.





# Tariff Classification

- Under the U.S. customs laws and regulations, it is the importer's legal responsibility to declare the correct tariff classification.
  - Importers cannot choose whichever HTS code they want (e.g., choosing the HTS code with lowest duty rate).
- Using the wrong tariff classification may result in incorrect overpayments or underpayments for imported goods classified under the wrong tariff codes
- **Potential strategy for tariff mitigation:** if you believe your imported item is using the wrong HTS code at a higher duty rate, importers can seek a binding ruling on prospective imports or file protests on past imports.

# Customs Valuation

- All merchandise imported into the U.S. must be appraised and the proper value must be declared for CBP to assess tariffs owed.
  - CBP's preferred method of appraisal is "transaction value" which is the price actually paid or payable for merchandise when sold for exportation to the U.S.

## Risk Areas

- Additions to "Transaction Value" – costs paid by importer and not reflected in the price paid to foreign supplier: packing costs (boxes, labels, etc.), selling commissions incurred by buyer, royalties, license fees for trademarks, brands, "assists"
- Related party transactions. Where the import involves related parties (e.g., subsidiary importing from overseas parent), CBP will likely scrutinize whether the transaction value is acceptable

# Customs Valuation

- **Potential strategies for tariff mitigation**

- Assess whether any expenses are eligible to be deducted from the transaction value (e.g., costs associated with transport of goods after importation).
- First sale rule. For certain multi-tiered transactions, importers may be able to able to mitigate the impact of tariffs by declaring the value of the “first sale” which would be lower than the subsequent sale involving the US importer. Example:

Factory A (China) → Parent company (Germany) → Subsidiary (USA)

# Country of Origin Planning



- Companies may establish favorable countries of origin for products by examining whether production in a third country effected a “substantial transformation” of input materials — subject to tariffs — into a new article with a different name, character or use, etc.
- Countries with more favorable origins include countries where such articles are not subject to trade remedies or other enhanced special duties, and countries that have a free trade agreement with the U.S., which provides for reduced duties or duty-free entry (e.g., Korea-U.S., NAFTA, etc.).

# Other Tariff Mitigation Strategies

- **Foreign-Trade Zones (FTZs)**

- Secure areas located in or near U.S. Customs and Border Protection (CBP) ports of entry, but legally considered to be outside the Customs territory for the purpose of tariff laws and CBP entry procedure.
- FTZ beneficiaries can lower their tariff bills in situations where the tariff imposed by the U.S. on their inputs is higher than the tariff imposed by the U.S. on the finished products of their foreign competitors.

- **Tariff Engineering**

- Modifying the design or condition of an imported product to reduce duty expenses associated with that product.
- Merchandise is classifiable in its condition as imported and an importer has the right to fashion merchandise to obtain the lowest rate of duty and the most favorable treatment,

# CONTRACT REVIEW & UPDATES

# What About Contracts?

- Carefully structure contracts to allocate tariff responsibility, incorporate price adjustment mechanisms, and require renegotiations when new tariffs are imposed.
- Renegotiate supply agreements with built-in flexibility for tariff increases.



# Key Contractual Provisions?

- Pricing Provisions
- Price Indexing Clauses
- Incoterms
  - Ex Works, Delivered Duty Paid, Free on Board
- Tariff-Related Provisions





# Force Majeure or Commercial Impracticability?

- These are defenses to performance. If a valid event occurs that makes performance impossible or impracticable, a party is not in breach for failing to perform
- Difficult to invoke and courts generally view these risks as foreseeable.



# Thank you, IMA!

## Any Questions?

Please send any follow-up questions to:

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