

# Welcome!

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# Practical Advice Regarding Tariffs: Session 2

*Illinois Manufacturers Association*

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May 2, 2025



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# Firm Overview

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# Our Team



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- Robert Karr is an experienced corporate attorney valued for his collaborative and practical approach to problem-solving, which has made him a trusted adviser for clients on their important and high-priority projects.
- Bob is a strategic thinker, action-oriented, professional, and diplomatic.
- He has extensive knowledge and experience working with Japanese clients to build and expand their businesses across the U.S.



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- Luis Arandia navigates complex international trade law and regulations, safeguarding client interests across import compliance, export controls, economic sanctions, and trade remedies.
- Luis helps importers and exporters navigate regulatory challenges with precision, implementing a solution-oriented approach that frequently minimizes risks and maximizes opportunities across diverse industries.
- He advocates for clients before the federal agencies that enforce U.S. international trade regulations to ensure compliance and competitiveness across global markets.





# Welcome

This is a public, non-confidential forum so please do not provide any confidential information.

Questions asked will be answered in the hypothetical.

Information provided should not be construed as legal analysis, advice, or opinion on any specific facts or circumstances.

This seminar, discussion, and question and answer session is not intended to specifically address or answer any specific legal issues. Please direct specific legal issues to your attorney for further consideration.

# Today's Topics

- Understanding Current and Proposed Tariff Actions
- Contract Review and Updates
- Tariff Mitigation Strategies
- Tariff-Saving Possibilities



# Understanding Current and Proposed Tariff Actions



# International Emergency Economic Powers Act (IEEPA) of 1977

- IEEPA permits the President to act immediately to address this “unusual and extraordinary” threat
- Authorizes the President to “regulate” the importation of any “any property in which any foreign country or national ... has any interest” in response to an “unusual and extraordinary threat, which has its source ... outside the United States, to the national security, foreign policy, or economy of the United States.”
- There is no waiting period for IEEPA tariffs, but a national emergency must be declared first.
- Since enacted in 1977, no President has previously used IEEPA to impose tariffs.

# IEEPA- Fentanyl (China/Mexico/Canada) & Venezuela Secondary Tariffs\* (as of 5/2/2025, 11am EST)

Countries	Duty Rate	Effective Date	Affected Commodities
Mexico	25%	3/4/2025	All commodities (potash 10%), except USMCA-qualifying goods for now
Canada	25%	3/4/2025	All commodities (energy, energy resources, and potash 10%) except USMCA qualifying goods for now
China (including Hong Kong)	20% (increased from 10%)	3/4/2025	All commodities
Countries that import Venezuelan oil*	25%	TBD	All commodities

- \*As of May 1, 2025, the U.S. Department of State has not issued a determination on which countries import Venezuelan oil, but news reports suggest the Chinese government buys the largest amount of Venezuelan crude oil, followed by India and Spain, among others...

# IEEPA Tariffs- Reciprocal\* (as of 5/2/2025, 11am EST)

Countries	Duty Rate	Effective Date	Affected Commodities
All Countries* (except Canada/Mexico)	10%	4/5/2025	All commodities* (except those noted below)
China	125% (increased from 34% and 84%)	4/10/2025	All commodities* (except those noted below)
85 Countries With Country-Specific Rates* (suspended on 4/9/2025)	10%	4/10/2025	All commodities* (except those noted below)

## ■ Goods Not Subject to Reciprocal Tariffs:

- Steel and aluminum articles subject to Section 232 tariffs
- Autos and auto parts subject to Section 232 tariffs
- Copper, pharmaceuticals, semiconductors, and lumber articles (Annex II)
- Energy, energy products, bullion, and certain critical minerals that are not available in the United States (Annex II)
- All articles that may become subject to future Section 232 tariffs

## ■ Canada and Mexico:

- Goods from Canada and Mexico are not subject to reciprocal tariffs but continue to be subject to 25 percent tariffs under the existing IEEPA actions.
- Goods that qualify as originating under the U.S.-Mexico-Canada Agreement (USMCA) continue to be exempt from the 25 percent tariff.
- The Executive Order states that the 25 percent tariff rate for Canada and Mexico could decrease to 12 percent at a future date.

# Section 232 of Trade Expansion Act of 1962

- Section 232 authorizes the President to impose tariffs or quotas if imports of an article threaten U.S. national security.
- Bureau of Industry and Security (BIS) conducts investigation. If BIS finds imports impair national security, then BIS sends findings and recommendations to the President.
- A new Section 232 action requires that BIS submit a report to the President with recommendations within 270 days after the initiation of an investigation.
- The statute requires the President to be in receipt of a report by BIS before implementing Section 232 tariffs or quotas. The statute does not impose any other procedural requirements or stipulate a minimum “waiting period.”

# Section 232 Actions- Sectoral\* (as of 5/2/2025, 11am EST)

Countries	Duty Rate	Effective Date	Affected Commodities
All countries	25%	3/12/2025	Steel articles and new “derivative” articles
All countries	25%	3/12/2025	Aluminum articles and new “derivative” articles
All countries	25%	4/3/2025	Certain passenger vehicles (sedans, sport utility vehicles, crossover utility vehicles, minivans, and cargo vans) and light trucks*
All countries	25%	5/3/2025	Automobile parts (e.g., engines and engine parts, transmission and powertrain parts, and electrical components, parts of passenger vehicles

- For steel and aluminum actions, BIS is establishing process to expand derivatives list during two-week submission windows starting on May 1, 2025.
- At a future date, USMCA-qualifying autos will be permitted to subtract the value of the U.S. content of the autos from the full value of the vehicle for purposes of applying the 25 percent tariff.
- New import adjustment (offset) for Section 232 duties on automobile parts accounting for 15% of the value of an automobile assembled in the United States for one year and equivalent to 10% of that value for an additional year.

# Section 232 Actions- Sectoral\* (as of 5/2/2025, 11am EST)

- **New** Section 232 investigations that may result in new commodity-specific tariff actions for all countries of origin.

Countries	Duty Rate	Effective Date	Affected Commodities
TBD	TBD	TBD	Copper in all forms including derivative products
TBD	TBD	TBD	Timber and lumber
TBD	TBD	TBD	Semiconductors and semiconductor manufacturing equipment and derivatives
TBD	TBD	TBD	Pharmaceuticals and pharmaceutical ingredients
TBD	TBD	TBD	Medium-duty trucks, heavy-duty trucks, and medium- and heavy-duty truck parts, and their derivative products
TBD	TBD	TBD	Processed critical minerals and derivative products

- Semiconductor substrates and bare wafers, legacy chips, leading-edge chips, microelectronics, and SME components. Derivative products include downstream products that contain semiconductors, such as those that make up the electronics supply chain.



# E.O. 14289 (Apr. 29, 2025)- Tariff Stacking

1. If Section 232 Autos action applies to an article, then IEEPA-Fentanyl-Canada/Mexico, Section 232 Steel and Aluminum do not apply.
2. If IEEPA-Fentanyl-Canada/Mexico applies to an article, then Section 232 Steel and Aluminum do not apply.
3. If Section 232 Aluminum applies to an article, then Section 232 Steel tariffs still apply, provided the article otherwise satisfies all conditions necessary for application of those additional tariffs.
4. If Section 232 Steel applies to an article, then Section 232 Aluminum tariffs still apply, provided the article otherwise satisfies all conditions necessary for application of those additional tariffs.
5. If Section 232 Autos applies to an article and there are other applicable tariff actions (e.g. NOT IEEPA-Fentanyl-Canada/Mexico & Section 232 Steel and Aluminum) then those other tariff actions are cumulative or stack onto the Section 232 Autos.
  - NOTE: IEEPA Reciprocal action does not qualify as an applicable tariff action for cumulative stacking because the IEEPA Reciprocal order excludes articles subject to Section 232 Autos.
6. **Refund Opportunity**: The E.O. applies retroactively to all entries of merchandise subject to any applicable tariff actions outlined above and made on or after March 4, 2025. CBP will change the HTSUS by May 16. As of May 2, no CBP guidance yet.

# Potential Legal Issues



- **Section 232- Steel and Aluminum**
  - Classification: Is imported merchandise subject to the expanded steel/aluminum derivatives list?
  - Valuation of the derivative content: How much documentation or what type of evidence does the importer have to provide to CBP proving that the steel/aluminum content is less than the entire entered value?
- **IEEPA-Fentanyl (Canada/Mexico)**
  - USMCA Exemption: Does the imported merchandise qualify as USMCA-originating and what is the underlying rules of origin analysis?
- **IEEPA-Reciprocal**
  - Exceptions: Does the imported merchandise meet one of the exceptions (e.g., Annex II list or subject to Section 232 actions)?
  - U.S. Content: How much documentation to prove that an imported article has at least 20%

# Tariff Implementation



- President Trump's Truth Social Account: <https://truthsocial.com/@realDonaldTrump>
- White House Website: <https://www.whitehouse.gov/presidential-actions/>
- Federal Register website: <https://www.federalregister.gov/>
- CBP Operational Instructions: <https://www.cbp.gov/trade/automated/cargo-systems-messaging-service>
- CBP Trade Remedies Webpage: <https://www.cbp.gov/trade/programs-administration/trade-remedies>

# Other Tariff Actions



- Section 301 Investigation of China's Targeting of the Maritime and Shipbuilding Sectors: Fees after October 14, 2025
  - Fees on vessels with Chinese operators or owners (based on net vessel tonnage)
    - Fees will begin at \$50 per net ton of the arriving vessel and will move up to \$140/net ton over the course of three years
  - Fees on Chinese-built ships (based on net tonnage)
    - Fees will begin at \$18 per net ton of the arriving vessel and will move up to \$33/net ton over the course of three years.
- Digital Services Taxes Memo potentially targeting Canada, France, Austria, Italy, Spain, Turkey, and the United Kingdom
  - Potential future action!

# Contract Review & Updates

# Identify Impacted Contracts, Relevant Terms, and Potential Actions



- **Inventory Agreements.** Identify the company's purchase and sale agreements that may be impacted by the changes. Review the potentially impacted contracts to understand how the company's rights and obligations under the contract are affected by the new measures.
- **Review Relevant Contract Terms.** Identify relevant clauses that the company can potentially use to mitigate increased costs or other issues it may face.
- **Defenses for Non-Performance.** Research if there are legal defenses available that can excuse the company from performance of a contract.
- **Renegotiate Agreements.** Consider if there are other measures the company can take, for example, if affected contracts can be renegotiated.



# Relevant Contractual Clauses

Relevant clauses that a company can potentially use to avoid or mitigate losses after the imposition of import tariffs or other actions include:

- 1. Tariff-specific provisions.** Commercial contracts may have specific clauses related to tariffs that can provide relief. For example, the contract may have a provision that allows the parties to renegotiate, adjust prices, or even terminate the contract, if material new tariffs or other import fees or charges are imposed.
- 2. Pricing clauses.** Fixed priced contracts may permit the seller to unilaterally adjust the price periodically or allow for renegotiation or adjustments based on material changes in costs (such as raw material costs). Prices set by an index-based formula (which may include cost-related indexes) may be adjusted either automatically at regular intervals or when triggered by events.



# Relevant Contractual Clauses



3. **Termination clauses.** Review termination clauses to determine if they can end unfavorable contracts. Some contracts have clauses that allow a party to terminate for specified causes without liability that may be relevant, such as termination for material cost changes or substantial adverse economic circumstances. Some contracts contain a termination for convenience clause that allows a party to terminate the contract on specified notice (sometimes, only if liquidated damages are paid).
4. **Renewal provisions.** Review the contract's renewal provisions, for example, whether the contract automatically renews if the parties do not give notice of termination. Consider if notices of non-renewal are needed to avoid renewal of unprofitable contracts.

## Relevant Contractual Clauses



5. **Changes in laws clauses.** A contract may contain a provision allowing the parties to renegotiate or terminate the contract if changes in applicable laws or regulations make continued performance illegal or no longer commercially viable. This may allow a party to terminate the contract if changes in tariffs make the transaction unreasonably expensive or retaliatory measures (such as new export controls) make performance illegal.
6. **Conditions precedent.** The contract may incorporate language that makes a party's obligations contingent on the existence or occurrence of a condition precedent, a fact or event without which the contractual performance obligation does not apply. For example, it may include a condition that there has been no material change in applicable law between the date of the agreement's execution and the time for performance.

# Force Majeure or Commercial Impracticability?

**Force Majeure** – The affected party may need to establish that an event beyond its control prevented or hindered performance under the contract or applicable law. Events that merely make performance unprofitable or financially difficult typically do not qualify (absent extreme circumstances), depending on the clause's wording and applicable law.



- New tariffs that merely increase costs therefore may not excuse performance unless the clause specifically lists economic hardship or similar circumstances as qualifying events.
- In contrast, if retaliatory measures, such as new export controls or sanctions, are imposed that cause performance to be objectively impossible, a force majeure clause is more likely to provide relief.

# Force Majeure or Commercial Impracticability?

**Impracticability** - The UCC (Section 2-615) excuses performance by a seller of goods where it can demonstrate that performance may be so difficult and expensive that it becomes impracticable, though technically possible.

An increase in the cost of performing is not itself sufficient to justify non-performance. To be eligible for this excuse, the unforeseen contingency must:

- materially change the inherent nature of a party's obligations;
- make performance substantially more difficult, complex, or challenging; and
- result in the excessive and unreasonable increase in performance costs.



# Force Majeure or Commercial Impracticability?

**Alternative supply sources.** If alternative supply sources or expedited delivery options are available to the company:

- a court may find that the company's performance was not truly made impracticable by the crisis, even if those options are significantly more expensive;
- under the laws of most US states, the company needs to use those alternatives to deliver on its contractual obligations, which can be costly;
- the company should weigh the economic impact of obtaining cover against the expense of defending a breach of contract claim; and
- the company should consider whether the cost of obtaining cover is unreasonable enough to succeed on an impracticability defense.





# Alternative Resolutions

If suppliers and customers along the supply chain and across jurisdictions are having trouble performing their contractual obligations, the company should consider alternative resolutions:

- to ensure an enterprise-wide, consistent approach, implement a global strategy for communicating with these suppliers and customers, even if the contracts are usually handled locally;
- keep open communications to understand how they are affected, including suppliers' details of production issues and inventory levels and customers' descriptions of liquidity and consumer demand;
- where appropriate, consider negotiating written amendments to the contracts to reflect a commercially sensible resolution; and
- consider how the company intends to enforce the contracts if any force majeure claims are not valid.



# Document Your Steps

Be mindful that this may become a dispute to resolve in arbitration or litigation. Follow standard procedures for managing a potential dispute, including:

- preserving all relevant records;
- framing your response to protect your legal position (being careful not to inadvertently make statements or promises that may later form the basis for the other party to claim that the company agreed to waive any contractual rights); and
- if the parties reach a verbal commercial resolution, sending a written communication to the other party memorializing the discussions and seeking to amend the contract in writing.



# Mitigating Strategies for New Contracts

1. Consider adding clauses to address the potential imposition of new tariffs in future contracts, such as:
  - ☐ duty-specific provisions, for example, that provide for price adjustments or renegotiation and termination rights if tariffs or other import fees are imposed or that expressly allocate the costs of new tariffs between the parties;
  - ☐ price adjustment clauses, such as those providing for price increases due to material changes in costs; and
  - ☐ clauses providing for flexible termination rights, especially in long-term, fixed price contracts.
2. Draft broad force majeure clauses. For example, include excused performance based on economic hardship, material changes in costs, tariffs, or other import charges, or similar circumstances.






# Mitigating Strategies for New Contracts

3. Draft choice of law and choice of forum clauses that provide for company-favorable laws and dispute resolution procedures.
4. Pay close attention to any Incoterms® rules used in the contract (or changes to these terms proposed by business partners) to avoid unanticipated costs, since the individual Incoterms® rules allocate responsibility between the parties regarding several key matters, including import clearance responsibilities.
5. Specify the importer of record (particularly, if Incoterms® rules that allocate this responsibility are not used). The importer of record is generally responsible for compliance with import laws and payment of customs duties in the US.



# Incoterms



Incoterms® 2020 Rules Responsibility Quick Reference Guide											
 											
	Freight Collect Terms						Freight Prepaid Terms				
Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm®	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
 Create your Sales & Shipping Documents at <a href="http://www.incodocs.com">www.incodocs.com</a>											
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# Tariff Mitigation Strategies & Tariff-Saving Possibilities



# 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.
- Customs valuation is one of the most complex areas of customs law. There is a 646-page Customs "Valuation Encyclopedia". Proceed with caution when considering a change in dutiable value.

## Risk Areas

- Impermissible Deductions to "Transaction Value" – costs paid by importer and not reflected in the price paid to foreign supplier, e.g., 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

- Does your product contain more than 20% U.S.-origin material, and do you want to deduct the U.S.-origin value? Do you import a derivative steel/aluminum product and want to deduct the non-steel/aluminum value?
- 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.
  - For example, the IEEPA-Fentanyl actions against Mexico and Canada have an exemption for goods that qualify under the USMCA rules or origin.

# Exemptions from IEEPA Reciprocal Tariffs

## Chapter 98 of the HTSUS

- Duties do not apply to goods properly claimed under Chapter 98, except for goods entered under 9802.00.40, 9802.00.50, 9802.00.60 and 9802.00.80 (certain articles exported and returned, advanced or improved abroad)
- Here are a few examples:
  - Certain articles for the blind or other physically or mentally handicapped persons (Nairobi protocol)
  - Certain prototypes used for development, testing, evaluation or QC
  - Importations of Religious, Educational, Scientific and Other Institutions
  - Temporary Importations under Bond (TIB)

# Other Tariff 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.
- Under the tariff actions, FTZs allow duty deferral but FTZs do NOT eliminate the duties & new tariffs once the goods are entered into commerce.

## Lobbying

- Lobbying before U.S. Congress and the administrative agencies can provide different types of potential solutions with respect to tariff actions.



# Thank You!

Please send any follow-up questions to:

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