

What Every Multinational Company Should Know About ... The Current Trump Tariff Proposals

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Although we are only two months into the new administration, we have seen a dizzying array of new tariffs that have been proposed, imposed, revoked, suspended, and sometimes reimposed. It can be difficult for importers to keep up with all the proposals. So, as an aid to the importing community, we have put together an “evergreen” tariff article, which contains three key items for importers:

- A table of the tariff proposals, including their current status^[1] and the key importer issues for each;
- A list of resources for importers looking for aids to cope with tariff and international trade uncertainty; and
- A list of the most common questions we are receiving from clients regarding the new tariffs and their implementation.

We will be regularly updating these resources to reflect new tariff proposals and modifications, which are in some cases being updated or changed daily.

Where Are We on the Various Tariff Announcements?

At this point, we count 12 tariff initiatives that are proposed or in play. They range from broad-based tariffs that cover all goods from a certain country (Canada, China, and Mexico), tariffs that cover certain types of goods (aluminum and steel), promises of future tariffs (automotives, semiconductor, pharmaceutical, copper, and lumber), and promised retaliatory tariffs (European wine and alcoholic beverages). Further, although we have seen more tariff announcements in the first two months of the second Trump administration than we saw in the entirety of the first one, the largest tariff shoe is yet to drop: It is likely that the announced “[Fair and Reciprocal](#)” tariff rollout will dwarf the tariffs imposed

to date, with the countries at the greatest risk of increased tariffs consisting of:

- Countries that impose high tariffs. Notable examples include Argentina, Bangladesh, Brazil, Egypt, India, and Pakistan.
- Countries that are viewed as heavily subsidizing their manufacturers. Depending on the particular type of products, examples include China (especially) as well as Australia, Canada, and the European Union countries.
- Countries that are viewed as manipulating their exchange rate. The Department of Commerce already has issued a finding that Vietnam grants subsidies by manipulating its exchange rate, in a countervailing determination involving tires from Vietnam. As part of its semiannual report to Congress, the Treasury Department maintains a “monitoring list” of exchange rate policies that arguably confer subsidies. The [November 2024 list](#) included China, Germany, Japan, Singapore, South Korea, Taiwan, and Vietnam.
- Countries that have put in place import barriers aimed at high-profile, high-volume products such as automobiles. While the United States maintains tariff levels of 2.5 percent for automobile imports, most of the rest of the world [starts at 10 percent or higher](#).

We will be updating this article as new policies are announced, including the reciprocal tariffs. The state of play for each tariff is as follows:

Where Are We on the Trump Tariffs? Tariff Proposal

2018 Section 301 Tariffs [83 FR 28710](#); [83 FR 40823](#); [83 FR 47974](#); [84 FR 43304](#)

2018 Aluminum/ Steel Tariffs [83 FR 11625](#); [83 FR 11619](#)

New 20% China Tariffs [90 FR 11426](#)

25% Canada and Mexico Tariffs [90 FR 9113](#); [90 FR 9117](#)

New 25% Aluminum/ Steel Tariffs [90 FR 9807](#); [90 FR 9817](#);

Reciprocal Tariffs

Broad European Tariffs

25% Auto, Semiconductor, Pharmaceutical Tariffs

New Lumber Tariffs

New Copper Tariffs

200% Retaliatory Wine Tariffs

Future of USMCA

Frequently Asked Questions

After presenting at numerous seminars and webinars, and in discussions with clients, we have noticed certain recurring questions. As an aid to the importing community, we have compiled a list of these, which include the following:

General

Do the tariffs stack?

Yes, all tariffs stack. This means an entry of steel from China would incur:

- the normal Chapter 1–97 tariff;
- the 25-percent Section 232 steel tariff;
- the original Section 301 China steel tariff (up to 25 percent); and
- the new 20-percent additional China tariff.

In addition, if the product is covered by an antidumping or countervailing duty order, then those duties also would stack.

Is the stacking compounded?

No. The tariffs add up without compounding. If both a 20-percent and a 25-percent tariff apply, then this results in a 45-percent increased tariff.

Are you seeing clients pursue a China +1 strategy to cope with the new tariffs?

Yes. Many clients have been pursuing a strategy of adding additional capacity outside of China since the imposition of the original Section 301 duties. These efforts appear to be accelerating, as there is a growing realization that high tariffs on China are the new normal. In this regard, it is important to note the original Section 301 tariffs remained in place even under the Biden administration. Further, China is likely to see the greatest amount of increased tariffs under the reciprocal tariff proposal because it hits so many categories — it heavily subsidizes its industries, it has been tagged as a currency manipulator by the Department of Treasury for years, and there are numerous countervailing duty findings by the Department of Commerce that provide a clear roadmap to identify subsidy programs.

One caution is that when companies move production out of China, they often continue to use Chinese-origin parts and components. Companies pursuing this strategy need to do a careful analysis to ensure they are “substantially transforming” the product by doing enough work and adding enough value in the third country to create a new and different article of commerce with a new name, character, or use, thus giving it a new, non-Chinese country of origin.

Will there be exceptions for goods like medical devices in the proposed tariffs?

Unclear. But the tariffs have veered toward being universal. Further, one of the purposes of the aluminum and steel tariff announcement was to wipe out the list of accumulated product-specific exceptions that had grown over the years. These factors work against an announcement of tariff-specific exceptions.

Are there any discussions relating to potential tariff relief for certain sectors (Defense, Navy, etc.)?

So far, the only somewhat industry specific reprieve has been the lifting of tariffs on USMCA compliant goods until April 2, 2025, as a result of the U.S. auto manufacturer concerns. While this is intended to apply to a lot of automotive imports, the lifting of the tariffs on USMCA compliant items is not exclusively tied to automotive imports. If discussions regarding tariff relief for other sectors have been occurring, they have not been announced.

Will the Executive Orders on tariffs be challenged in litigation?

Almost certainly, yes. But in general, the Court of International Trade and the Court of Appeals for the Federal Circuit tend to defer to the Executive in matters of international trade policy. Also, the imposition of special tariffs in the first Trump administration were generally upheld by the trade courts.

Have you heard of any plans to change Foreign Trade Zones (FTZ) laws?

In general, no. Specific tariff announcements, however, have contained provisions relating to the FTZs, such as stating any goods that go into Foreign Trade Zones need to enter in “privileged

foreign status.” This means the duty rate is fixed at the time the goods enter the zone, meaning even if the goods are further manufactured within the FTZ, the duty will be based on the original classification when they entered the FTZ.

Steel and Aluminum Tariffs

How have the Section 232 aluminum and steel tariffs changed from the original 2018 version?

- The aluminum tariffs increased from 10 to 25 percent.
- All negotiated tariff-rate quotas for the EU, Japan and the United Kingdom, as well as the quotas negotiated with Argentina, Brazil, and South Korea, are no longer applicable. The previous exemptions for Australia, Canada, Mexico, and Ukraine no longer apply.
- All product-specific exemptions that had been granted under the original aluminum and steel program are revoked.
- The “derivative articles list” is considerably expanded.

Are Chapter 72 articles still subject to 25-percent tariffs?

Yes. Certain headings in Chapter 72 that were previously subject to the original Section 232 tariffs are still covered. All exclusions that previously applied to certain Chapter 72 products are now revoked.

Are iron products covered?

Based on the description of the covered products in the Executive Orders, carbon alloy steel products, not iron, are covered by the exclusions.

How should we treat imports that fall under the “derivative articles” HTS codes but do not actually contain any aluminum or steel?

In some cases, certain HTS classifications that are on the derivative aluminum and steel HTS classifications can cover types of products that may not contain any aluminum or steel. For example, certain types of metal furniture are covered, but if these are made out of a metal other than steel then they would not be covered even though they fall within an HTS that is listed in Annex 1 of the steel proclamation. In these cases, it would be appropriate to have the foreign producer include a statement on the commercial invoice to state that the product does not contain aluminum or steel, to support why the tariffs are not due on the entry.

After the elimination of the product-specific exemptions, are there any remaining exemptions?

The only exemption remaining is for derivative articles that are manufactured from steel melted/poured in the United States or aluminum smelted/cast in the United States. For such products, the importer should request a statement on the commercial invoice stating that the product contains aluminum smelted/cast in the United States or steel that was melted/poured in the United States. In case of Customs inquiry, it would be appropriate to include copies of steel mill certificates or aluminum certificates of analysis in the 7501 Entry Summary packet.

For derivative articles, is the 25-percent tariff paid on the full value of the article?

The Executive Orders state that the 25-percent tariff is paid on the “value” of the aluminum or steel

“content” of the “derivative article.” There are, however, no instructions as to how this value should be calculated. In accordance with normal Customs requirements, the value should be calculated using a reasonable method that is supportable. This could potentially be based on a calculation from the foreign supplier. Frequent importers of derivative products should monitor CSMS announcements to see if CBP issues instructions on this issue.

Is duty drawback available for the aluminum and steel tariffs?

No, the Executive Orders state that duty drawback cannot be used.

Does Chapter 98 provide relief from the 25-percent aluminum and steel tariffs?

The Executive Orders do not list any Chapter 98 exceptions for the new tariffs. This is consistent with the original Section 232 tariffs, which also did not contain any Chapter 98 exceptions.

Will there be an exclusion process?

None has been announced or established. It is unlikely that the Trump administration would wipe out all product-specific exemptions only to build them back up again.

Could the list of “derivative articles” expand?

The Executive Orders directed the Department of Commerce to establish a process by May 11, 2025, to consider requests to add additional “derivative articles.” We anticipate that U.S. aluminum and steel manufacturers will aggressively use this process to push for additional excluded derivative products.

USMCA/Canada and Mexico Tariffs

Will the reciprocal tariffs replace the Canadian and Mexican tariffs? Or will they stack?

The reciprocal tariffs have not been announced yet. But because all of the other tariffs stack, there is a high likelihood that the reciprocal tariffs also will stack on top of the existing 25-percent tariffs rather than replace them where they overlap. Also, the 25-percent tariffs were announced as being imposed due to concerns about fentanyl and unauthorized immigration, which is an entirely separate issue from the tariff equalization that is the goal of the reciprocal tariffs.

How will tariffs effect the IMMEX/Maquiladora imports from Mexico?

Because the Maquiladora, Manufacturing, and Export Services Industry (IMMEX) Program is a figure of Mexican law, we anticipate Mexico will do all that it can to protect companies that operate using the Program. Although uncertain, as per previous experiences in imposing retaliatory measures, Mexico will most likely establish tariffs on US sumptuous goods and/or finished products, and hardly to raw materials used by IMMEX/Maquiladora companies.

Will the Canada and Mexico tariffs be lifted when the USMCA review occurs?

Unclear. We do note, however, that the United States lifted the prior aluminum and steel tariffs as part of the negotiation of the USMCA under the first Trump administration. The second Trump administration, however, is taking a much harder line on tariff and international trade issues.

Reciprocal Tariffs

What are reciprocal tariffs?

“Reciprocal tariffs” are intended to equalize tariff rates, such as when a foreign country imposes a higher tariff on the United States than the United States does for the same product category. Because the United States generally has low tariffs, this means that there are a great many HTS classifications that likely will increase, with the impact varying by country. Moreover, because the announcement of the coming reciprocal tariffs states that it will take into account *any* form of discrimination against U.S. companies or programs that favor foreign companies, then calculated reciprocal tariffs will likely be very high. For example, most countries have Value Added Taxes that rebate any VAT payments when goods are exported; the Trump administration has indicated that this would be considered a form of subsidy that should be counteracted with reciprocal tariffs. So would subsidized electricity, currency manipulation, and so forth. Adding these concepts on top of equalizing tariffs across HTS categories leads to likely major increases in tariffs.

When will they be announced?

The reciprocal tariff announcement is expected for April 2, 2025. The Trump Administration also announced that it would proceed to consider countries with major trade deficits with the United States first, so it is possible that April 2nd will be the start of a rolling set of reciprocal tariff announcements.

Force Majeure and Surcharges FAQs

The Foley Supply Chain team also has published a set of FAQs regarding contractual issues, which we are repeating here for convenience.

What are the key doctrines to excuse performance under a contract?

There are three primary defenses to performance under a contract. Importantly, these defenses do not provide a direct mechanism for obtaining price increases. Rather, these defenses (if successful) excuse the invoking party from the obligation to perform under a contract. Nevertheless, these defenses can be used as leverage during negotiations.

Force Majeure

Force majeure is a defense to performance that is created by contract. As a result, each scenario must be analyzed on a case-by-case basis, depending on the language of the applicable *force majeure* provision. Nevertheless, the basic structure generally remains the same: (a) a listed event occurs; (b) the event was not within the reasonable control of the party invoking *force majeure*; and (c) the event prevented performance.

Commercial Impracticability (Goods)

For goods, commercial impracticability is codified under UCC § 2-615 (which governs the sale of goods and has been adopted in some form by almost every state). UCC § 2-615 excuses performance when: (a) delay in delivery or non-delivery was the result of the occurrence of a contingency, of which non-occurrence was a basic assumption of the contract; and (b) the party invoking commercial impracticability provided seasonable notice. Common law (applied to non-goods, e.g., services) has a similar concept known as the doctrine of impossibility or impracticability

that has a higher bar to clear. Under the UCC and common law, the burden is quite high. Unprofitability or even serious economic loss is typically insufficient to prove impracticability, absent other factors.

Frustration of Purpose

Under common law, performance under a contract may be excused when there is a material change in circumstances that is so fundamental and essential to the contract that the parties would never have entered into the transaction if they had known such change would occur. To establish frustration of purpose, a party must prove: (a) the event or combination of events was unforeseeable at the time the contract was entered into; (b) the circumstances have created a fundamental and essential change; and (c) the parties would not have entered into the agreement under the current terms had they known the circumstance(s) would occur.

Can we rely on *force majeure* (including if the provision includes change in laws), commercial impracticability, or frustration of purpose to get out of performing under a contract?

In court, most likely not. These doctrines are meant to apply to circumstances that **prevent** performance. Also, courts typically view cost increases as **foreseeable** risks. Official comment of Section 2-615 on commercial impracticability under UCC Article 2, which governs the sale of goods in most states, says:

“Increased cost alone does not excuse performance unless the rise in cost is due to some unforeseen contingency which alters the essential nature of the performance. Neither is a rise or a collapse in the market in itself a justification, for that is exactly the type of business risk which business contracts made at fixed prices are intended to cover. But a severe shortage of raw materials or of supplies due to a contingency such as war, embargo, local crop failure, unforeseen shutdown of major sources of supply or the like, which either causes a marked increase in cost or altogether prevents the seller from securing supplies necessary to his performance, is within the contemplation of this section. (See *Ford & Sons, Ltd., v. Henry Leatham & Sons, Ltd.*, 21 Com. Cas. 55 (1915, K.B.D.).)” (emphasis added).

That said, during COVID and Trump Tariffs 1.0, we did see companies use *force majeure*/commercial impracticability doctrines as a way to bring the other party to the negotiating table to share costs.

May we increase price as a result of *force majeure*?

No, *force majeure* typically does not allow for price increases. *Force majeure* only applies in circumstances where performance is prevented by specified events. *Force majeure* is an excuse for performance, not a justification to pass along the burden of cost increases. Nevertheless, the assertion of *force majeure* can be used as leverage in negotiations.

Is a tariff a tax?

Yes, a tariff is a tax.

Is a surcharge a price increase?

Yes, a surcharge is a price increase. If you have a fixed-price contract, applying a surcharge is a breach of the agreement.

That said, during COVID and Trump Tariffs 1.0, we saw many companies do it anyway. Customers typically paid the surcharges under protest. We expected a big wave of litigation by those customers afterward, but we never saw it, suggesting either the disputes were resolved commercially or the customers just ate the surcharges and moved on.

Can I pass along the cost of the tariffs to the customer?

To determine if you can pass on the cost, the analysis needs to be conducted on a contract-by-contract basis.

If you increase the price without a contractual justification, what are customers' options?

The customer has five primary options:

1. Accept the price increase:

An unequivocal acceptance of the price increase is rare but the best outcome from the seller's perspective.

2. Accept the price increase under protest (reservation of rights):

The customer will agree to make payments under protest and with a reservation of rights. This allows the customer to seek to recover the excess amount paid at a later date. Ideally, the parties continue to conduct business and the customer never seeks recovery prior to the expiration of the statute of limitations (typically six years, depending on the governing law).

3. Reject the price increase:

The customer will reject the price increase. Note that customers may initially reject the price increase but agree to pay after further discussion. In the event a customer stands firm on rejecting the price increase, the supplier can then decide whether it wants to take more aggressive action (e.g., threaten to stop shipping) after carefully weighing the potential damages against the benefits.

4. Seek a declaratory judgment and/or injunction:

The customer can seek a declaratory judgment and/or injunction requiring the seller to ship/perform at the current price.

5. Terminate the contract:

The customer may terminate part or all of the contract, depending on contractual terms.

[1] Please note that the implementation of the various tariff programs remains in flux, and thus the status of these program should be monitored closely. The included table is current as of the date of publication of this article.

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