

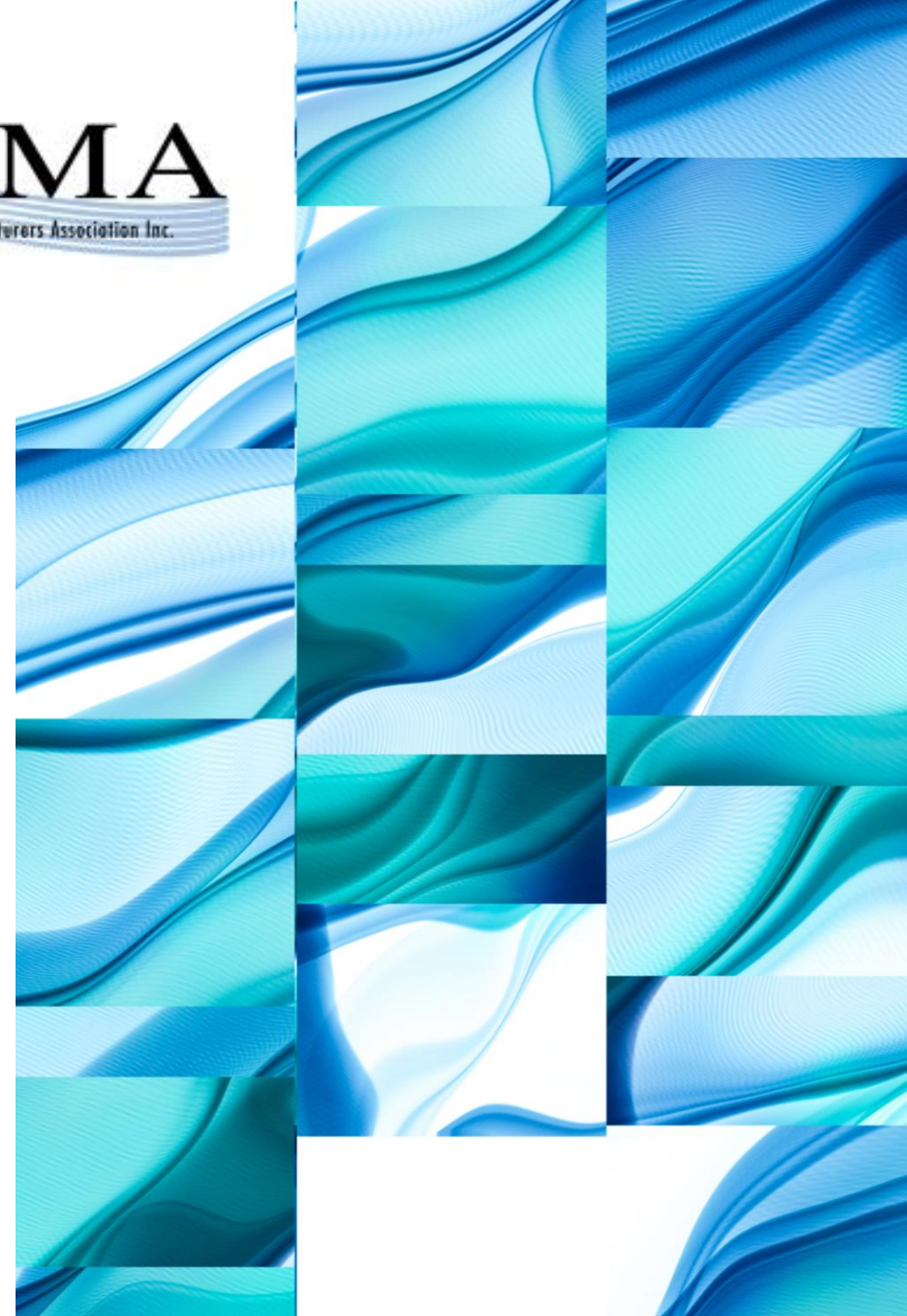
**Barnes &  
Thornburg**



# Tariffs Trade Update

*Washington Forum &  
Emerging Leader's Meeting*

Luis Arandia, Jr.  
April 11, 2025



# 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

- Overview of Current and Proposed Tariff Actions
- Supply Chain Mapping and Care
- Risk Assessment
- Tariff Mitigation & Management Strategies



# 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.

# IEEPA

- 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

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 April 10, 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...

# USMCA Rules of Origin Tests

- **(1) Wholly Obtained or Produced:** A good is originating if it is wholly obtained or produced entirely in the territory of one or more of the Parties
  - Mined or naturally occurring extracted substance
  - farmed, cultivated, harvested, picked, or gathered
- **(2) Wholly Originating:** Produced in the USMCA region using only materials made the U.S., Canada, or Mexico;
- **(3) Tariff Shift and/or Regional Value Content (RVC) Rule:** Produced in the USMCA region with non-USMCA country components while meeting additional product-specific rules of origin requirements found in General Note 11(o) that are commonly referred to as USMCA “tariff shift” rules, some of which have a regional value content requirement.

# IEEPA Tariffs- Reciprocal

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

- 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

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
TBD	TBD	TBD	Copper in all forms including derivative products
TBD	TBD	TBD	Timber and lumber

- \*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.

# Section 232- Steel & Aluminum Derivatives

- **Review the Annexes to Proclamations (Federal Register) and CBP guidance for extensive derivative product list (by HTSUS code)!**
  - CBP Steel Message: [https://content.govdelivery.com/bulletins/gd/USDHSCBP-3d66da7?wgt\\_ref=USDHSCBP\\_WIDGET\\_2](https://content.govdelivery.com/bulletins/gd/USDHSCBP-3d66da7?wgt_ref=USDHSCBP_WIDGET_2)
  - CBP Aluminum Message: [https://content.govdelivery.com/bulletins/gd/USDHSCBP-3da5025?wgt\\_ref=USDHSCBP\\_WIDGET\\_2](https://content.govdelivery.com/bulletins/gd/USDHSCBP-3da5025?wgt_ref=USDHSCBP_WIDGET_2)
- **Steel:**
  - For any derivative steel item not classified within Chapter 73, the additional 25% duty applies only to the steel content of that derivative article.
- **Aluminum:**
  - For any derivative aluminum article not classified in Chapter 76, the additional 25% duty shall apply only to the aluminum content of the derivative article.

# Section 232- Steel & Aluminum Derivatives

- **CBP Section 232 Steel and Aluminum FAQ:**
  - Question: How to determine the value of aluminum or steel content for derivative products outside CH. 76 or 73?
  - Answer: The value of the steel/aluminum content should be determined in accordance with the principles of the Customs Valuation Agreement, as implemented in 19 U.S.C. 1401a. Thus, the value of the steel/aluminum content is the total price paid or payable for that content, which is the total payment (direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the country of importation) made/to be made for the steel/aluminum content by the buyer to, or for the benefit of, the seller of the steel/aluminum content. Normally, this would be based on the invoice paid by the buyer of the steel/aluminum content to, or for the benefit of the seller of the steel/aluminum content.
- Under CBP guidance, for new steel/aluminum derivatives not classified in Chapters 73/76, the 25 percent duty is to be reported based upon the value of the steel/aluminum content. If the value of the steel/aluminum content is unknown, duty must be reported based on the entire entered value.

# 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.

# Potential Customs 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%

# Hypothetical Examples



- Industrial Wastewater Pretreatment Systems (8421.21.0000, HTSUS)
  - Country of Origin China: 20% IEEPA Fentanyl + 125% IEEPA Reciprocal + 25% Section 301 + Duty Free (MFN) = **170% Duty Rate**
  - Country of Origin Germany: 10% IEEPA Reciprocal + Duty Free (MFN) = **10% Duty Rate**
- Aluminum Valve Bodies (8481.90.9060, HTSUS)
  - Country of Origin China: 20% IEEPA Fentanyl + 25% Section 232 Duty on Aluminum Content of Valve Body + 25% Section 301 + Duty Free (MFN) = **70% Duty Rate**
  - Country of Origin Germany: 25% Section 232 Duty on Aluminum Content of Valve Body + Duty Free (MFN) = **25% Duty on Aluminum Content**

# 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 Potential Tariff Actions



- Section 301 Investigation of China's Targeting of the Maritime and Shipbuilding Sectors, Proposed Actions:
  - *Service Fee on Chinese Maritime Transport Operators*: U.S. port service fees on Chinese vessel operators of up to \$1 million per entrance or up to \$1,000 per ton of the vessel's capacity.
  - *Service Fee on Maritime Transport Operators with Fleets Comprised of Chinese-Built Vessels*: U.S. port services fees on maritime transport operators: (i) with fleets comprised of Chinese-built vessels, and (ii) with prospective orders for Chinese vessels. These fees would range from \$500,000 to \$1.5 million
- Digital Services Taxes Memo potentially targeting Canada, France, Austria, Italy, Spain, Turkey, and the United Kingdom
- Tariffs on key sectors: pharmaceuticals and semiconductors

# 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!

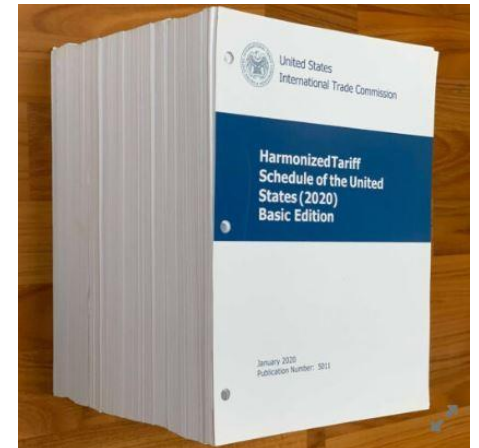
# Why is Import Compliance Important?

- 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 & Management Strategies

# 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.
  - For example, the IEEPA-Fentanyl actions against Mexico and Canada have an exemption for goods that qualify under the USMCA rules or origin.

# 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.

**Barnes &  
Thornburg**

**WWEMA**  
Water & Wastewater Equipment Manufacturers Association Inc.

# Thank You WWEMA!

Please send any follow-up questions to:

**Luis Arandia, Jr.**

[Luis.Arandia@btlaw.com](mailto:Luis.Arandia@btlaw.com)



# ACKNOWLEDGMENT & DISCLAIMER

**These materials were prepared by the attorneys at the law firm of Barnes & Thornburg LLP. These materials present general information about state law and federal law, and they only serve as a beginning point for further investigation and study of the law relating to these topics. Although these materials present and discuss labor and employment law issues, they are not intended to provide legal advice. Legal advice may be given and relied upon only on the basis of specific facts presented by a client to an attorney. Barnes & Thornburg LLP and the authors of these materials hereby disclaim any liability which may result from reliance on the information contained in these materials.**