



SANDLER, TRAVIS & ROSENBERG, P.A.
International Trade, Customs & Export Law

TARIFFS, TRADE, TURMOIL?

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OVERVIEW

- IEEPA Refunds
- Update on Pending Trade Actions:
 - 301
 - Board of Trade
 - 232
 - 122
 - Customs Enforcement
- Congress

IEEPA Emergency Declarations

President Trump Declared Multiple Emergencies in 2025:

- February: imposed 25% tariffs fentanyl being smuggled across northern and southern borders (Canada and Mexico) and 10% on China for shipping fentanyl to the U.S.
- April: China fentanyl tariffs increased to 20%; global 10% “reciprocal tariffs” with some countries subject to higher duty levels
- July: Brazil subject to 40% tariff in addition to 10% base tariff
- August: India subject to 25% tariff for importing Russian oil

What Happened in the Supreme Court?

The Supreme Court ruled that the President does NOT have the authority to impose tariffs under the International Emergency Economic Powers Act (IEEPA)

- IEEPA gives the President of the United States authority to regulate foreign commerce in the face of a declared “unusual and extraordinary” foreign threat to the United States.
- IEEPA was enacted in 1977 to provide Presidential authority during peacetime emergencies.
- No President prior to President Trump used IEEPA to impose tariffs.

What Does the Supreme Court Decision Mean?

- The President never had the authority to impose tariffs under IEEPA.
- All the IEEPA tariffs are unlawful—not just the fentanyl and reciprocal tariffs, but also the Brazil and India tariffs.
- SCOTUS remanded the case back to the lower courts for further proceedings.
- All future challenges must be filed in the CIT.

CIT Refund Order Events in Court

- **March 4:** CIT Judge Eaton issued ruling in *Atmus Filtration* that CBP must immediately refund IEEPA Tariffs.
- **March 6:** Order suspended in response to CBP declaration that it needed time to implement a refund system. CBP given 45 days to develop a system. Required to provide weekly update.
- **March 12:** CBP progress report on its new system, called the Consolidated Administration and Processing of Entries (CAPE), with four core components.
- **March 19:** CBP progress report shows it is between 45% and 80% creating CAPE.
- **April 20:** CAPE Phase One is deployed.
- **April – Current:** Unliquidated entries, or entries within 80 days of liquidation being refunded
- **May 27:** CIT Judge ordered DOJ to show cause as to why the court should not “remove” its suspension of its first order directing CBP to liquidate or reliquidate all entries immediately.



CIT Refund Order Events in Court



- **June 2:** DOJ appeals the CIT, arguing CIT not able to address “universally”
- **Last week:** Back and forth over CAPE and Commissioner of Customs appearing; CBP says by June 29th it will be able to liquidate entries flagged for reconciliation; nothing on finally liquidated entries
- **June 9:** CIT Hearing today
- **June 10:**
- **June 11:** CIT closed conference
- **June 29:** CAPE expanded capability roll-out
- **August 3:** DOJ’s appeal brief due

What Should I Do Now?



Watch for CIT/CAFC rulings on refunds



Watch entries and liquidation dates, note protest dates



Keep an eye out for CAPE Phase One refunds; roll out of Phase II



Continue protesting within 180 days of liquidation to preserve refund rights



Strongly Consider filing a refund suit if you have finally liquidated entries

Will Congress Take Any Refund Action?

Senate

- **Tariff Refund Act of 2026 (S.3905) - Senator Wyden (D-OR), Markey (D-MA), Shaheen (D-NH) and 23 other Democrats**
 - Requires CBP to pay refunds of all IEEPA tariffs even if the importation has already been finalized and closed (“liquidated”) by CBP.
 - Sets a deadline of 180 days after enactment for CBP to process all refunds.
 - Directs CBP to prioritize small businesses when paying refunds and to coordinate with the SBA to provide key information on the refund process to small businesses.
 - Directs CBP to issue guidance on how to address duty drawback claims.
 - Expresses the Sense of Congress that importers, wholesalers, and large corporations should pass on those refunds to their customers.

Will Congress Take Any Refund Action?

House of Representatives

- **RELIEF Act (H.R. 7736) - Reps. Janelle Bynum (OR-05) and Steven Horsford (NV-04) & 48 cosponsors**
 - Require refunds within 90 days of enactment for covered tariffs collected since January 1, 2025;
 - Eliminate the need for individual applications or formal protests.
- **Illegal Tariff Refund Act (H.R.7636) – Rep. Mike Thompson (CA-04)**
 - Creates an “individual tariff refund credit” that would return money directly to American households instead of corporations
- **The American Consumer Tariff Rebate Act (H.R. 7865) – Rep. Henry Cuellar (TX-28)**
 - Would provide direct refunds to taxpayers for increased consumer costs attributable to tariffs imposed under IEEPA.



Section 301: Second Trump Administration

- **Three determinations in investigations initiated under Biden:**
 - April 2025: China shipbuilding (proposed tariffs and port fees; suspended in November 2025)
 - December 2025: China semiconductors (actionable; no immediate tariff)
 - December 2025: Nicaragua labor & human Rights (actionable; no immediate tariff)
- **Five new investigations:**
 - July 2025: Brazil's Acts, Policies, and Practices
 - October 2025: China's implementation of commitments under Phase One Agreement
 - March 2026: Structural Excess Capacity and Production in Manufacturing Sectors
 - March 2026: Forced Labor
 - May 2026: Vietnam IPR
- **Two Previous Section 301 actions requiring attention this year:**
 - May 2026: Four-year Review of Section 301 action on China related to Forced Technology Transfer
 - July 2026: Enforcement of US rights in the WTO dispute involving large civil aircrafts (suspension of tariffs on EU & UK expires)

Section 301 Completed Investigations

Investigation	Status and Outcome
China's Technology Transfer	Tariffs ranging from 7.5 to 100%
China's Semiconductor Industry	Initial tariff level of 0% on semiconductors, to increase on June 23, 2027, "to a rate to be announced not fewer than 30 days prior to that date."
China's Maritime, Logistics, and Shipbuilding Industries	100% tariffs and certain port fees were suspended for one year on November 10, 2025
Nicaragua's Labor Practices	Tariff on all imported Nicaraguan goods that are not originating under the CAFTA-DR. This tariff will be set at 0% on Jan. 1, 2026, and will increase to 10% on Jan. 1, 2027, and 15% on Jan. 1, 2028. This timeline and these rates may be modified.
Review of Brazil's Trade Practices	Proposed 25% tariff
Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor (covers 60 economies)	Proposed 10-12.5% tariffs

Pending and Potential Section 301 Investigations

Investigation	Status and Outcome
Review of China's Compliance with the Phase One Agreement	Initiated on October 24, 2025
Structural Excess Capacity & Production in Manufacturing Sectors (covers 16 economies)	Initiated on March 11, 2026
Four-Year Review of Section 301 action on China related to forced technology transfer	Initiated on May 7, 2026
Enforcement of U.S. rights in the WTO dispute involving large civil aircraft	Tariffs on EU and UK suspended until July 2026; USTR to consider whether to take action
Review of Foreign Digital Service Taxes	On Feb. 21, 2025, President directed USTR to consider renewing investigations
Review of International Seafood Trade Practices	On April 17, 2025, President directed USTR to initiate investigation
Pharmaceutical pricing practices, discrimination against U.S. technology companies and digital goods and services, ocean pollution, and practices related to the trade rice and other products.	Threatened February 20, 2026

Section 301 Open Comment Periods

Investigation	Requests to Appear	Comments	Public Hearing
Brazil proposed action	June 22	July 1	July 6
Vietnam IPR	N/A	July 2	N/A
Request for continuation in the four-year review of Section 301 action on China related to forced tech transfer	N/A	July 5	N/A
Forced labor proposed action	June 22	July 6	July 7
Structural Excess Capacity	TBD	TBD	TBD

301 Tariff Exclusion Process

- Section 301 does not specify a process through which products, companies, or imports from a particular country can be excluded from tariffs or other actions taken under Section 301.
- In 2018, in response to concerns expressed by stakeholders and some Members of Congress about how additional tariffs on U.S. imports from China could affect U.S. firms and consumers, USTR established a process through which importers could apply for a temporary tariff exclusion.
- The Brazil and Forced Labor proposed actions includes proposed exclusions, but not an exclusion process

U.S. – China Board of Trade



China Board of Trade

- USTR seeking comments on Board of Trade
 - Functionality, frequency, make up
 - Products to be removed from tariffs
- Outcome from Presidents Trump/Xi meeting
- Comments due July 10; Rebuttal comments due July 27





First Trump Administration Use of Section 232

- Initiated seven investigations:
 - **Aluminum** (Established 10% tariffs)
 - **Steel** (Established 25% tariffs)
 - **Automobile & parts** (Entered negotiations)
 - **Uranium** (Trump did not agree with Commerce's national security threat finding, but established a working group)
 - **Titanium sponge** (Entered negotiations)
 - **Transformers and transformer components** (Entered negotiations)
 - **Vanadium** (No national security threat)



Second Trump Administration's Use of Section 232

Took Action in 3 Previous Investigations	Concluded 6 investigations	Has 6 investigations pending
<ol style="list-style-type: none">1. Steel2. Aluminum3. Autos	<ol style="list-style-type: none">1. Copper2. Timber and Lumber3. Semiconductors4. Pharmaceuticals5. Medium/Heavy-Duty Trucks & Parts6. Critical Minerals	<ol style="list-style-type: none">1. Commercial Aircraft and Jet Engines2. Polysilicon3. Unmanned Aircraft Systems & Parts4. Wind Turbines5. PPEs6. Robotics and Industrial Machinery

Section 232 Current Status

Product	Rate	Exemptions
Steel, Aluminum, Copper	10-50% <i>(new)</i>	Certain aircraft and parts from the UK, EU, Japan, and South Korea; metal weight < 15%; certain motorcycle parts
Timber & Lumber	10% softwood 25% upholstered wooden products, kitchen cabinets, vanities	Goods subject to the Section 232 auto or semiconductor tariffs. 10% for the UK, and 15% for the EU, Japan, and South Korea. Listed HTS that are not a completed kitchen cabinet/vanity/part
Autos & Parts	25%	Auto parts entering the US under the USMCA. For vehicles imported under the USMCA, tariffs may apply only to the non-U.S. content of a product. 10% UK & TRQ for UK vehicles; 15% for Japan, EU, and South Korea 25+ year old vehicles
Medium & Heavy-Duty Vehicles	10% buses 25% MHDV & parts	Parts entering the US under USMCA. MHDV imports under USMCA, tariffs apply to non-US content. 25+ year old MHDVs or buses
Semiconductors	25%	Chips imported to support the buildout of the US tech supply chain and the strengthening of the domestic manufacturing capacity for derivatives of semiconductors
Critical Minerals	0% (in negotiations)	-
Pharmaceuticals	100% <i>(new)</i>	Certain companies 10% on UK; 15% for Japan, the EU, South Korea, Switzerland, and Liechtenstein

Pending Section 232 Investigations

Investigation & Initiation date	Initiated	Report Deadline (270 days after initiation)	Presidential Decision (90 days after report)	Implementation (15 days after decision)	Congress Informed (15 days after implementation)
Commercial Aircraft & Jet Engines	5/1/2025	1/26/2026	4/26/2026	5/11/2026	5/26/2026
Polysilicon	7/1/2025	3/28/2026	6/26/2026	7/11/2026	7/26/2026
Drones	7/1/2025	3/28/2026	6/26/2026	7/11/2026	7/26/2026
Wind Turbines	8/13/2025	5/10/2026	8/8/2026	8/23/2026	9/7/2026
Robotics	9/2/2025	5/30/2026	8/28/2026	9/12/2026	9/27/2026
PPEs	9/2/2025	5/30/2026	8/28/2026	9/12/2026	9/27/2026

Section 122 Tariffs



Section 122 Overview

- Section 122 of the Trade Act of 1974 authorizes the President to impose temporary import duties or quotas to whenever “fundamental international payments problems” require action to:
 - deal with large and serious United States balance-of-payments deficits,
 - prevent an imminent and significant depreciation of the dollar, or
 - to cooperate with other countries in correcting an international balance-of-payments disequilibrium
- The tariff may be up to 15% and for up to 150 days "unless such period is extended by Act of Congress."
- Doesn't require a finding by an agency
- First used in 2026

Section 122 Worldwide tariffs

- Effective February 24, 2026: 10% tariff on all countries
- Exemptions for:
 - USMCA qualifying goods of Canada and Mexico
 - Annex II products
 - Civil aircraft and parts
 - Products subject to Section 232 tariffs
 - DR-CAFTA qualifying textiles & apparel
- On May 7, 2026, the CIT ruled that tariffs under Section 122 were unlawful because not based on qualifying balance-of-payments deficit, but relief limited to three plaintiffs. Ruling currently on hold while appeals proceed through the Federal Circuit

Executive Order: Customs Enforcement

- June 3 issued
 - Broad based Enforcement actions:
 - Importer accountability
 - Importer vetting
 - Foreign importer restrictions (non-resident importers of record)
 - Disclosure obligations
 - Higher penalties
- Not effective immediately

Executive Order: Customs Enforcement

- Foreign IORs no longer to be treated the same as U.S. IORs.
 - Foreign IORs May Not File Informal Entries. The Order requires DHS/CBP to amend its regulations/policies to prohibit a foreign IOR from filing informal entries.
- Foreign IORs May File Formal Entries if Additional Requirements are Met. The Order states that Foreign IORs may file formal entries if:
 - Bonding is sufficient to demonstrate to CBP that the revenue would be fully protected and that compliance with CBP-enforced import laws, regulations and instructions would be ensured; and
 - The foreign IOR is validated in CTPAT, if eligible, or uses a CTPAT validated and licensed customs broker to file entries

Executive Order: Customs Enforcement

- **Importer of record changes.** Within 180 days, DHS/CBP is directed to revise IOR rules to require:
 - minimum domestic tangible assets or bonds,
 - higher bond coverage, and
 - expanded disclosure of ownership and beneficial ownership, business affiliations, domestic assets, and expected import volumes, and any other data CBP deems necessary.
- **IOR good standing, registry, and vetting.**
 - CBP will establish a “good standing” requirement for all IORs, tied to compliance history and payment of customs liabilities, among other factors. IORs not in good standing will be barred from importing and from any activities directly related to importing goods, including designating a customs broker to act as IOR on their behalf.

Executive Order: Customs Enforcement

- **Enforcement Priorities.** CBP shall prioritize the enforcement of forced labor, undervaluation, misclassification, and transshipment enforcement including AD/CVD duty evasion under the Enforce and Protect Act (EAPA) shall be prioritized.
- **Penalty mitigation drastically reduced.** Penalty mitigation standards will also tighten within 90 days, including a minimum penalty floor of at least 50 percent of the assessed penalty, minimum liquidated damages floor, and no mitigation for repeat offenders.
- **Other operational changes.** The order also calls for faster seizure and disposal of noncompliant goods, more transparency through annual enforcement reports and periodic review of confidentiality claims, recommendations for additional legislation within 45 days, and a one-year effectiveness report.

Executive Order: Customs Enforcement

Days from Order	Required Action
45 days	Submit recommendations for legislation to strengthen customs enforcement.
90 days	Require submission of documentation or information that the foreign exporter provided to foreign customs authorities before export to the United States.
	Revise mitigation standards to establish a minimum penalty floor of at least 50 percent, a minimum liquidated damages floor, and no mitigation for repeat offenders.
	Take actions to expedite and enhance seizure and disposal of non-compliant imports, including easing voluntary abandonment, increasing bond requirements for high-risk shipments, and authorizing third-party disposal.
	Enhance transparency through periodic review and expiration of confidentiality requests, as appropriate, and publication of annual enforcement transparency reports.
180 days	Revise importer eligibility regulations, guidance, and policies to require minimum domestic assets, bonding, or both; increased bond coverage; IOR designation for formal and informal entries; and additional IOR data disclosures.
	Require all IORs to maintain good standing with CBP.
	Update the IOR registry by removing inactive IORs, confirming compliance and disclosures for active IORs, and creating risk-based tiers.
	Establish enhanced and recurrent vetting procedures for IORs, affiliates, customs brokers, custodians of bonded merchandise, and freight forwarders.
1 year	Submit a report to the President on the effectiveness of the matters set forth in the order.

Congress

- Only 19 days in session for House before August recess
- Reconciliation bill 2.0 (ICE/CBP funding)
- Discharge petitions (only 27 last 71 years; 5 so far in Trump 2.0) another petition voting today
- Slim majority (Primaries June 16, 23, 27, 30; July 21, 28; September 1, 8, 9, 15)

Questions?



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