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Trade Development and Tax Implications

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Trade and Tariff Updates

The current landscape

The below measures are in force or are currently under review in alignment with the Trump Administration's "America First" trade policy. Please note that all IEEPA-based tariffs are currently still in effect. While the Court of Appeals for the Federal Circuit's (CAFC) decision on August 29, 2025, ruled the Trafficking and Reciprocal tariffs too broad in scope and therefore unconstitutional, the tariffs will remain in effect until the Supreme Court issues a ruling.

Country-Based Tariffs*

All Countries	Canada	Mexico	China	Brazil	India
Reciprocal IEEPA 10-41% Except USMCA goods (All) Except 20% US Content	**Trafficking IEEPA 35%** 10% on energy and potash *Except USMCA eligible goods*	**Trafficking IEEPA 25%** 10% on potash *Except USMCA eligible goods*	**Trafficking IEEPA 20%** **Reciprocal IEEPA 10%**** **Sec. 301 7.5-100%**	**Reciprocal IEEPA 10% +** **Political IEEPA 40%** *Except steel, aluminum, autos and auto parts, copper*	**Reciprocal IEEPA 25% +** **Russian Oil IEEPA 25%** *Does not stack on sec. 232 tariffs Goods in Annex II (EO 14257) excepted.*

Industry-Based Tariffs (Sections 232 and 301)

IN EFFECT	IN EFFECT	IN EFFECT	IN EFFECT	IN EFFECT	EFFECTIVE 10/14	EFFECTIVE 10/14*****	EFFECTIVE 10/14*****	IN EFFECT / SIGNALED****
Aluminum 50%	**Steel 50%**	**Autos*** 25%**	**Car Parts 25%**	**Copper 50%**	**Lumber 10%**	**Cabinetry 25% → 50%**	**Upholstered Furniture 25% → 30%**	**China Maritime**

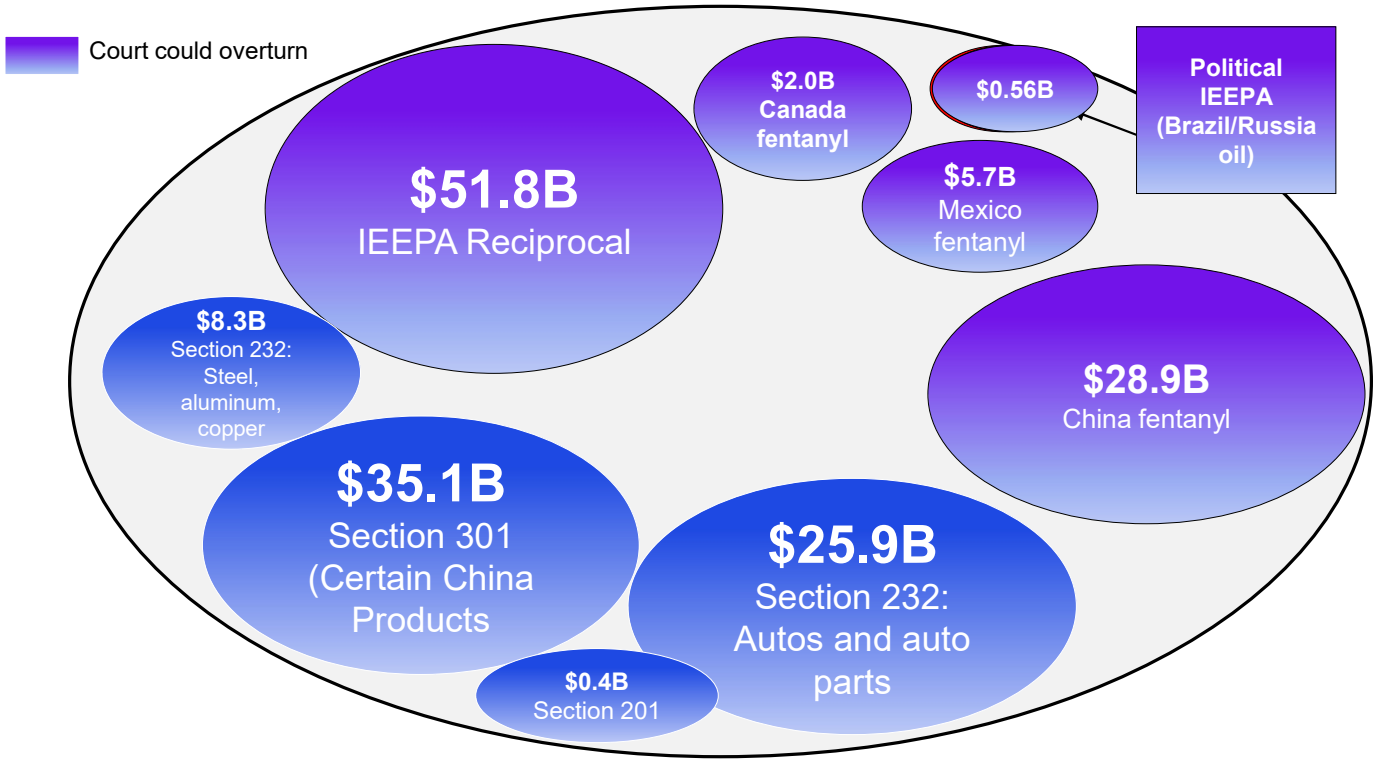
SIGNALED	SIGNALED	SIGNALED	SIGNALED	SIGNALED	SIGNALED	SIGNALED	SIGNALED
Pharmaceuticals	**Semiconductors**	**Critical Minerals**	**Trucks**	**Commercial Aircraft, Jet Engines, Parts**	**Polysilicon**	**Drones**	**Medical Equipment**

**The Trafficking, and reciprocal tariffs were ruled too broad under IEEPA by the CAFC but are still in effect until the Supreme Court issues a ruling. Oral arguments are scheduled for November.*
***China-specific reciprocal tariff rate on pause through November 10, 2025*
****Except USMCA U.S. Content*
*****Will gradually increase over the next three years*
******Specified tariff increases take effect January 1, 2026*

FY 25 Trump Tariff Revenue

The chart below illustrates total revenue collected through September 23, 2025, from tariffs implemented under the Trump Administration. Tariffs that may be overturned pending the Supreme Court case are highlighted in light blue.

$159B in Tariff Revenue Collected as of September 23, 2025



Open Section 232 Investigations

- *Pharmaceuticals*
- *Semiconductors*
- *Critical Minerals*
- *Aircrafts*
- *Polysilicon*
- *Drones*
- *Robotics*
- *Medical Equipment and PPE*

Trade Deals

The White House has announced new trade agreements with multiple countries that focus on reciprocal tariffs and increased foreign investment in the United States. The agreements are not final, and no implementation date has been provided by the White House. The White House has also not addressed how the agreement may impact existing tariff rates, including the reciprocal tariff set established August 1st.

Presidential Action

United Kingdom

- **Reciprocal tariff: 10%**
- First 100,000 UK-origin passenger vehicles/year: subject to a 10% tariff.
- Vehicles beyond 100,000/year: subject to 25% tariff

Indonesia

- **Reciprocal Tariff: 19%**
- Indonesia will eliminate tariff barriers for U.S. exports for over 99% of U.S. products exported to Indonesia.
- Indonesia will exempt U.S. companies and originating goods from local content requirements.

Cambodia

- **Reciprocal Tariff: 19%**
- The U.S. will identify various Cambodian products listed in Annex III of EO 14346 to exempt from reciprocal tariffs.
- Cambodia will eliminate tariffs on 100% of industrial and agricultural goods.

South Korea

- **Reciprocal Tariff: 15%**
- South Korea will invest $350 million in U.S. industries.
- LNG purchase agreements and shipbuilding cooperation announced.
- Additional defense and tech partnerships announced.

Japan

- **Reciprocal tariff: 15% (not inclusive of MFN rate)**
- Japanese investments in the U.S. ($550B).
- U.S. car and truck import restrictions into Japan will be lifted .
- Japan will expand import quotas and increase imports of U.S. rice by 75%.

European Union

- **Reciprocal tariff: 15% (inclusive of MFN rate)**
- EU investments in the U.S. ($600B).
- Section 232 tariffs on steel, aluminum, and copper will remain at 50%. *According to the EU, this rate will only apply after an unspecified tariff quota is exceeded.*

Malaysia

- **Reciprocal Tariff: 19%**
- Malaysia grants preferential access for U.S. industrial and agricultural products, including removing non-tariff barriers and strengthening of IP protections.
- Critical minerals cooperation announced for rare earth supply chains.

Framework Announced* (*announced via press release or fact sheet, no signed agreement yet)*

Vietnam

- **Reciprocal Tariff: 20%**
- The U.S. will identify various Vietnamese products listed in Annex III of EO 14346 to exempt from reciprocal tariffs.
- Vietnam will eliminate many non-tariff barriers to ease U.S. imports of manufactured and agricultural goods.

Thailand

- **Reciprocal Tariff: 19%**
- Certain goods may qualify for 0% tariff rate under Annex III of EO 14346.
- Thailand to eliminate tariffs on 99% of U.S. goods.
- Thailand will adopt U.S. regulatory standards for various products.

China

- United States reduces overall tariff burden on Chinese goods by decreasing fentanyl and reciprocal tariffs to 10%
- China pauses rare earth export controls for one year
- China commits to purchase 12 MMT of U.S. soybeans from 2026-2028.

The Trafficking, and reciprocal tariffs were ruled too broad in scope and unbounded in time and therefore unconstitutional. The case is now before the Supreme Court.

Supreme Court Updates

Court of Appeals Blocks IEEPA Tariffs

On August 29, 2025, the U.S. CAFC held that President Trump's "Trafficking" and "reciprocal/worldwide" tariffs **are too broad in scope and unbounded in time** and therefore unconstitutional. The case is now before the Supreme Court.

What Comes Next?

- **The reciprocal and trafficking tariffs are now invalid as a matter of law but collection will continue while the Supreme Court hears the matter.**
- **Guidance on preserving the right to refund/obtaining a refund has not been issued in the event the Supreme Court finds against the tariffs.**
- **Section 301 tariffs on Chinese imports remain in effect.**
- **Section 232 steel/aluminum tariffs and automobile tariffs remain in effect.**

Legal Arguments: Trump Tariffs

Plaintiff Arguments

Limit Presidential Authority. IEEPA was designed to restrict and control emergency powers, not grant new ones.

- **US Constitution.** The U.S. Constitution grants the power to lay and collect taxes to Congress, not the executive branch.
- **Nothing Extraordinary.** No genuine "Emergency" exists
  - An "emergency" must be a sudden, unforeseen crisis. Law requires a high standard that a longstanding trade imbalance does not meet.
- **"Major Questions" doctrine.** Requires explicit authorization from Congress for actions with vast economic significance.
- **Regulate not Tax**
  - Quotas, sanction and embargoes are available
  - Revenue to Treasury was not an objective of IEEPA
- **Dangerous Precedent**

Executive Branch Response

- **Broad Deference in Foreign Affairs:** Courts must give broad deference to the President's actions in national security and foreign policy emergencies.
- **"Regulate Importation" Includes Tariffs:** IEEPA's plain text authorizing the President to "regulate importation" inherently includes the power to impose tariffs.
- **Historical Precedent:** President Nixon's tariffs under a predecessor statute (TWEA) with identical language were upheld, setting a clear legal precedent.
- **No "Magic Words" Needed:** The law does not require the specific word "tariff"; the broad authority to "regulate" is legally sufficient on its own.
- **IEEPA is Designed for Major Crises:** IEEPA is intended to grant powerful tools to address major emergencies, making tariffs an expected and authorized response.

Supreme Court Outcomes: Presidential Use of IEEPA for Tariffs

Tariffs Upheld	• **Expansion of Executive Power:** Broad authority over trade policy; sets precedent for future administrations. • **Continued Tariffs & Revenue:** Tariffs remain ($88B to date; $1.8T projected over 10 years). • **Economic Impact:** Higher consumer prices; negative effect on GDP and jobs. • **Trade Negotiations:** Maintains strong leverage in international talks.
Tariffs Struck Down	• **Restriction of Authority:** Limits unilateral presidential tariff powers; strengthens Congressional oversight. • **Refunds & Budget Impact:** Businesses may receive >$100B in refunds; significant federal revenue loss. • **Economic Impact:** Potential price relief for consumers. • **Trade Negotiations:** Threat-based agreements at risk; administration must seek alternative authorities.
Narrow or Procedural Decision ("Punt")	• **Tariffs Continue Temporarily:** No final resolution; legal challenges return to lower courts. • **Delayed Precedent:** Prolongs uncertainty over executive vs. legislative powers.

IEEPA Tariff Protest Deadlines

Protest Deadlines

- If available, file protests for all liquidated IEEPA tariff entries within the 180-day deadline using effective tracking.
- Leave Liquidation Date Open
- File Court Cases

Strategies If Tariffs Remain

- Valuation / Country Origin / Planning
- Consider Financial Reporting, Transfer Pricing and Supply Chain impact
- Mitigate costs, diversify suppliers, and adjust pricing if tariffs are not removed to reduce financial impact.

File Refund Claims If Voided

- Promptly file refund claims for eligible entries with full documentation if tariffs are voided.

Customs Valuation vs. Transfer Pricing

Customs Valuation vs. Transfer Pricing

Customs vs.Tax

- Generally, multinationals base the value of imported merchandise for related parties on the transfer prices established for income tax purposes
- While both customs and tax rules are designed to reach arm's-length values, due to differing methodologies and standards, the transfer price set for income tax purposes may not withstand the scrutiny of customs authorities
- Customs requires an arm's length price for each transaction based on what is known as the circumstances of sale test

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CBP Arm's Length Circumstances of Sale

Example – Transfer Pricing Targets an Aggregate Profit of $30

Transaction	Cost of Goods	Transfer Price	Profit	Tariff Rate	Duties Owed
Widget A	$100	$30	-70	10%	$3.00
Widget B	$100	$100	0	5%	$5.00
Widget C	$100	$200	100	Duty-Free	$0.00
Total	**$300**	**$330**	**30**	**2.4%**	**$8.00**

TAX*: ✓

DUTY: ✗

Transaction	Cost of Goods	Transfer Price	Profit	Tariff Rate	Duties Owed
Widget A	$100	$110	10	10%	$11.00
Widget B	$100	$110	10	5%	$5.50
Widget C	$100	$110	10	Duty-Free	$0.00
Total	**$300**	**$330**	**30**	**5%**	**$16.50**

TAX*: ✓

DUTY: ✓

* If grouping is justified

CBP "Transaction value" (the preferred valuation method)

Transaction value

The transaction value consists of the price actually paid or payable for the merchandise when sold for exportation to the United States, plus statutorily enumerated additions to the extent not otherwise included in the price actually paid or payable

Total payment made by the buyer to the seller—direct or indirect.

Inclusive of all payments made as a condition of sale of the imported goods by the buyer to the seller.

Must also be evidence of a bona fide sale for exportation to the US (i.e., commercial invoices, contracts, etc.)

Additional considerations

A general presumption exists that *all payments* made, directly or indirectly, by a buyer to a seller, or to a party related to the seller, are part of the price actually paid or payable for the imported merchandise.

The presumption may be rebutted by evidence that clearly establishes that the payments are completely unrelated to the imported merchandise.

Transaction value: Additions and exclusions

Transaction value

Additions: 19 USC §1401a(b)(1); 19 CFR §152.103(b)

Certain additions to the price should also be considered, including:

Selling Commissions;

Assists;

Packing and container costs and charges;

Royalties and license fees;

Subsequent proceeds; and

Exclusions: 19 USC §1401a(b)(3); 19 CFR §152.103(i)

Certain costs should NOT be included, such as:

Transportation and insurance incident to the international shipment of the merchandise from the Country of Export to the Country of Import;

Post importation costs (i.e., assembly, construction, etc.) if identified separately;

Cost of transportation *after* import if identified separately;

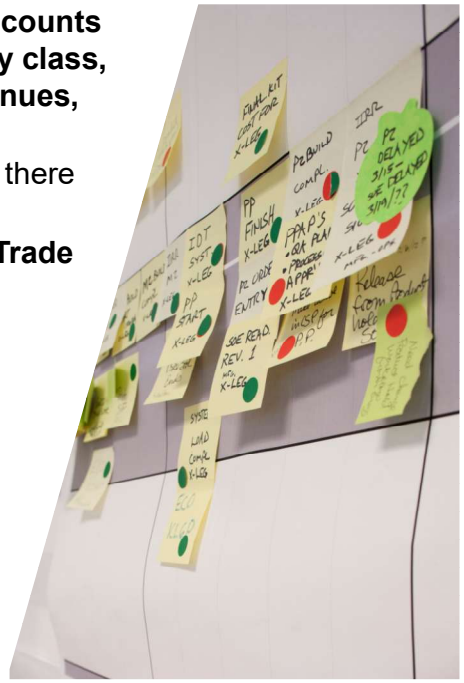
Customs duties and other Federal taxes

CBP Valuation Management Increasingly Important in Today's Tariff Environment

The "Unreported"

During a valuation audit CBP will request the chart of accounts to look for unreported additions to the price paid or payable:

- **A Chart of Accounts list of all accounts used by a company organized by class, including assets, liabilities, revenues, expenses, etc.**
- **Accounting sequence/number** – there is a standard sequence.
- **Common Accounts that Impact Trade**
  - Purchasing
  - Accounts payable when goods come into U.S.
  - Cost of Goods Sold
  - Royalty Expense
  - Intercompany adjustments
  - Tooling
  - Mold Expense
  - Commissions



Account number	Account name	Amount
181301	Buildings Beginning Balance	500,000
181501	Machinery and Equipment Beg Bal	3,836,435
193201	Intang Asset – Patent Beg Bal	5,000,000
202001	Accounts Payable-Invoiced	7,041,405
212050	Accrued VAT Paid-FR	0
221001	Intercompany Trade Payable	2,039,223
410001	Product Sales	136,961,717
520001	Vessel Freight Expense	415,733
520003	Rail Freight Expense	1,613,032
520004	Truck Freight Expense	1,170,607
520005	Fuel Surcharge Expense	117,545
530002	Storage Expense	639,281
530003	Handling Expense	35,333
540005	Import Duties/Customs Expense	20,125
540012	Commission Expense	63,362
811005	Intercompany Royalty Expense	108,256
820002	Interest Income	19,906
821016	Legal Settlements	55,857
821017	R&D Expenses	371,654

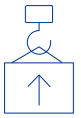
Customs Valuation Tariff Mitigation Strategies- First Sale

Valuation Management: First Sale for Export

Ex-Manufacturer Price – $12,500
Duty – $3,125

FOB/FCA Price – $15,000
Duty – $3,750

First Sale (Invoice 1)



Second Sale (Invoice 2)

First Sale Value

Includes:

- Labor
- Manufacturer Overhead
- Manufacturer Margin
- Raw Materials

- 20% markup
- 25% duty rate
- **$625 savings**

Second Sale (Traditional Customs Value)

Includes:

- First Sale Value, plus –
- Middleman Mark-up
- Foreign Inland Freight
- Intellectual Property Rights
- Administration

Merchandise Shipped from Manufacturer to United States (direct ship required)

First Sale for Export

First Sale for Export (FSFE) is a duty savings method that allows importers to reduce the duty costs upon import by declaring the customs value based on the manufacture's initial sale price, rather than the final price paid by the importer.

Requirements

1 Clearly Destined

The goods must be clearly destined for exportation to the US at the time of sale (i.e., no contingency of diversion to another country at the time of export).

2 Bona-fide Sales

Circumstances and documentation demonstrate that there is an exchange of goods for consideration between a seller and buyer (e.g., taking on risk of loss and ownership of goods).

3 Arms Length Price

Importer must substantiate that the manufacturer's prices to a related middleman are at arm's length (sales to unrelated parties are presumed to be at arm's length).

4 Full documentation & recordkeeping

The importer must make available, upon request by CBP, all documentation that supports the FSFE requirements and clearly establishes the role and purpose of each party in the transaction.

First Sale and Customs Audit Readiness

CBP's recent FSFE Ruling trends increasingly scrutinizing Bona Fide Sales and Arm's Length

First Sale Issue	Recent HQ Ruling References	Summary of Conclusions	Lessons to apply
Bona Fide Sales (Transfer of Title/Risk of Loss)	H316892 (2022) H323585 (2022) H307028 (2021)	First sale denied based on commercial documents contradicting stated Incoterms (particularly in examining insurance beneficiary)	Substance over form! Stating Incoterms on PO and invoices, while best practices, do not carry same weight of source what may be included in master agreements, freight and insurance invoicing, payments and contracts. **Thoroughly review commercial documents for contradictions.**
Arm's Length (Cost Plus Profit Analysis)	HQ H323585 (2022) HQ H343362 (2025) HQ H332358 (2025)	First sale denied based on an inability to demonstrate consistency of cost-plus profit between parties including manufacturer parent entities	See CBP's April 2007 Informed Compliance Publication addressing acceptability of TV in related party transactions. **Explore methodologies to align cost plus profit from first sale transaction up through manufacturer's OM and parent entities OM**

CBP FSFE Audits – CBP Requesting Middleman Books and Records

- Under CBP's renewed and expanded interpretation of TD 96-87, under a CBP audit environment, Auditors may request middleman books and records to ascertain the first sale transaction value, defined as the price actually paid or payable, plus statutory additions defined under 19 U.S.C. 1401a(b)(1) (i.e., packing costs, selling commissions, assists, royalty or license fees, and proceeds of any subsequent sale).
- Under these circumstances an Auditor will request the buyer (middleman's) financial statements, chart of accounts, trial balance and detailed transaction reports for review and sampling purposes

CBP Valuation Tariff Mitigation Strategies- Unbundling

Cost Unbundling

Cost unbundling includes breaking down the cost components of imported goods to identify any non-dutiable costs. By unbundling non dutiable costs such as international freight, insurance, and other services, businesses can minimize the dutiable value and reduce overall duty payments.

Potential Unbundling Considerations

1 Buying Commissions

Buying agency commissions may be excluded from the customs value of imported goods.

2 Non-dutiable pre-importation charges

Generally, non-dutiable costs must be actual and separately identifiable.

- Example: Foreign inland freight and insurance.

3 Foreign taxes (VAT, GST) and duties

- The duties and taxes must be separately identified from the price of the imported goods.
- Foreign taxes assessed on sale of goods refunded to the importer.

4 Interest Charges

Charges for interest under a financing arrangement relating to the purchase of imported goods can potentially be excluded from the declared customs value.

Unbundling Intellectual Property (IP)

Potential Unbundling Considerations

1 Nature of Payments

IP payments can include royalties for patents, trademarks, copyrights, and license fees for technology or know-how.

Payments for IP that are not directly related to the imported merchandise, or that are not a condition of its sale, may be excluded from the customs value.

2 Condition of Sale

The critical factor is whether the buyer must pay the IP related fee as a condition of purchasing the imported goods.

If the goods would not be sold to the importer without the payment of royalties or license fees, those payments must be included in the customs value.

3 Separate Invoicing and Documentation

To successfully unbundle IP payments should be clearly separated from the price of the physical goods in contracts and invoices.

Agreements should specify the nature of the IP, the basis for the payment, and confirm that they payment is not a condition of the sale for exportation

4 *Generra* Presumption

CBP will presume that any payment made to the seller is part of the *price actually paid or payable*.

Importers must demonstrate that the payment was not related to the imported goods.

5 The "Hasbro II" Test

CBP applies the "Hasbro Test" to determine whether a royalty or license fee is a condition of sale. The test considers:

- Was the imported merchandise manufactured under patent?
- Was the royalty involved in the production or sale of the imported merchandise?
- Could the importer buy the product without paying the fee?

If the answer is "no" to the first two questions and "yes" to the third, CBP will likely find that the payment is not a condition of sale.

Unbundling Software

Unbundling software separates the value of software from the physical goods in import transactions so that, when properly documented and delivered electronically, the software's value can be excluded from the dutiable customs value.

Potential Unbundling Considerations

1 Method of Delivery

Software delivered electronically (e.g., via download, email, or cloud-based transfer) is generally not considered part of the dutiable value of the imported physical goods.

If software is physically loaded onto hardware prior to importation (e.g., pre-installation on a device), its value may be included in the customs value unless specific conditions are met.

2 Separate Invoicing and Documentation

To successfully unbundle software, it is critical to invoice the software separately from the hardware or equipment.

Documentation should clearly distinguish the software from the physical goods, specifying the nature of the software, its value, and its method of delivery.

3 Nature of the Software

Only non-essential or non-operating software may be excluded. Operating system software or firmware required for the basic function of the imported goods may be considered part of the dutiable value.

Application software or other optional features that are not necessary for the hardware's basic operation are more likely to be excluded if properly documented

4 Generra and the "Hasbro Test"

Importers will still need to rebut the *Generra* presumption and show the payment was not related to the imported goods.

If a royalty or license fee payment is made from the buyer to the seller for the use of the software, the three-prong *Hasbro* test must still be satisfied to show the payment was not a condition of sale.

CBP Enhanced Trade Enforcement Posture

New Era: CBP's Expanding Trade Enforcement Environment

Noteworthy!

CBP Auditors were among the few positions in the Federal government exempt from President Trump's January 20, 2025 government wide hiring freeze!

The Big Beautiful Bill (July 4, 2025):

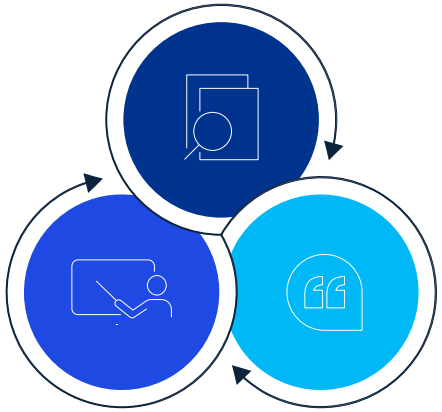
Authorized CBP to hire over 5,000 Officers over the next 4 years. CBP Auditors are included in this package. Note recurring postings for CBP Auditors nation-wide on CBP.Gov

America First Trade Policy (January 30, 2025) and E.O. 14243 (March 20, 2025):

Set the immediate framework for sweeping changes to US trade policies and CBP's enforcement posture to include the government's ability to improve detection of tariff evasion/trade fraud.

Transshipment tariffs under E.O. 14326 (July 31, 2025):

Executive order introduced new "transshipment" tariffs. Applied to articles that CBP has determined to be transshipped are subject to an additional 40% tariff.



End of De Minimis exemption August 29, 2025:

Prompting major shifts in tariff collections and posing disruptions to existing e-commerce models.

New Era: CBP's Expanding Trade Enforcement Environment (continued)

New emphasis on Trade Investigations!

The DOJ launched a **Trade Fraud Task Force on August 28, 2025**, to **coordinate civil and criminal enforcement** efforts against importers who evade tariffs and duties. Notable examples since August 2025:

On August 15, 2025, **CBP announced it uncovered over $400 million in unpaid AD/CVD duties through EAPA investigations** during the first half of the year.

On August 19, 2025, **Allied Stone Inc. agreed to pay $12.4 million to settle False Claims Act allegations involving the evasion of AD/CVD duties** on quartz imports from China.

Tariff Mitigation Strategies - Final Considerations

Mitigation Strategies – Final Considerations

Trade & Customs

Action Items:

- Modeling the applicable tariff rates while considering stacking provisions
- Assessing mitigation strategies centered around country or origin, product classification, non-dutiable costs, first sale for export, and others.
- Assessing opportunities aligned with duty refunds in case of downward TP adjustments to import value

Transfer Pricing

Actions items:

- Modeling impact of tariffs on the transfer pricing policies throughout the supply chain and identifying pressure points (e.g., LRDs not achieving target returns and requiring TP adjustments)
- Managing transfer pricing exposure due to unexpected losses – revisions of i/c agreements, “share the pain” analyses, TP adjustments, contemporaneous benchmarking
- Mitigating tariffs through TP planning

Other Factors

Action items:

- Modeling the broader impact of tariffs on a business’ cost structure and product demand, enabling proactive change in business strategy

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