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MEMORANDUM

March 29, 2025

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Trade War Update: U.S. Imposes Automotive Tariffs; "Secondary Tariffs" on Countries Importing Oil or Gas from Venezuela; CBP Issues FAQs on Steel and Aluminum Derivatives; April 2 Reciprocal Tariff Actions; and Anticipated Sectoral Tariffs on Pharmaceuticals and Lumber

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1. U.S. Imposes Tariffs on Automobiles and Certain Automobile Parts

On March 24, President Trump issued an Executive Order imposing 25% tariffs on automobiles and certain automobile parts produced in all countries. These tariffs are based on a Section 232 investigation conducted by the Department of Commerce in 2019, which concluded that these automotive imports pose a threat to U.S. national security.

- **Automobiles**

The new tariffs will be effective on all automobiles entered for consumption, or withdrawn from warehouse for consumption, into the United States as of 12:01 a.m. EDT on **April 3, 2025**. There is no exception for goods in transit to the United States as of that effective date/time.

While the HTSUS provisions subject to these new tariffs will be provided via a Federal Register notice (which we expect will be published shortly), the White House fact sheet on the new tariffs states that the tariffs on automobiles will apply to sedans, SUVs, crossovers, minivans, cargo vans, and light trucks.

There is a partial duty exclusion for automobiles that qualify for USMCA preferential tariff treatment: the tariffs will not apply to the automobiles' "U.S. content" (defined in the Executive

Order as "the value of the automobile attributable to parts wholly obtained, produced entirely, or substantially transformed in the United States"). While the Executive Order is not entirely clear on this point, importers will apparently certify the U.S. content for each imported model to Commerce and will receive Commerce's approval to apply the new tariffs only to the value of the non-U.S. content of the automobile. However, if CBP subsequently determines that the U.S. content was overstated and the declared value of the non-U.S. content of an automobile is therefore inaccurate, then the 25% tariffs will apply to the entire value of the automobile, retroactive to the April 3 effective date of the tariffs and prospectively to the date that the importer corrects the overstatement, as verified by CBP. In addition, CBP will be free (and likely) to assess penalties for any such noncompliance.

- **Automobile Parts**

While again the Executive Order is not entirely clear, there appears to be a limited delay in the effective date for the new tariffs on all covered automobile parts: they will not go into effect until Commerce publishes notice in the Federal Register that a process has been established to apply them only to the value of non-U.S. content of automobile parts that qualify for USMCA preferential tariff treatment.[1] The Executive Order provides an outside limit on this delay, however, as it also specifies that the tariffs on automobile parts must go into effect no later than **May 3, 2025**.

The Executive Order does not specify which automobile parts will be subject to the new tariffs; rather, the list of covered parts will be provided in a separate, not yet published, Federal Register notice. The White House fact sheet does provide some insight as to at least some parts which will likely be covered, as it states that the tariffs will apply to "key automobile parts (engines, transmissions, powertrain parts, and electrical components)." It remains to be seen whether the tariffs announced in the upcoming Federal Register notice cover other types of automobile parts as well.

As in the Section 232 tariffs recently imposed on derivative aluminum and steel products, the Order directs Commerce to set up a process within 90 days under which automobile parts not listed within the initial Federal Register notice may be added to the list of products subject to the new automotive tariffs. In addition to inclusions made by Commerce itself, domestic automobile or automobile parts producers or industry associations will be able to request that additional automobile parts be included in the tariffs; Commerce will decide whether to grant those requests.

There will be a temporary exclusion from the new tariffs for automobile parts which qualify for USMCA preferential tariff treatment to allow Commerce and CBP to establish a process to apply them only to the value of the non-U.S. content of such parts; the temporary exclusion will end, however, as of the date that Commerce publishes notice in the Federal Register that this process has been established (and in any event will end no later than May 3, 2025), and after that

[1] One industry commenter, however, has interpreted this pause on the effective date as applying only to automobile parts which qualify for USMCA preferential tariff treatment.

effective date, the tariffs will be due on the value of all non-U.S. content of such qualifying parts. The Order is silent as to whether there will be a value certification process similar to that for automobiles.

The temporary exclusion from the automobile parts tariff for USMCA-qualify parts will not apply to automobile knock-down kits or "parts compilations" (this term is not defined). While the Order is silent on this point, we believe that even after the automobile parts tariffs go into effect, USMCA-qualifying automobile knock-down kits and parts compilations will continue to be ineligible for the partial tariff exclusion for U.S. content.

- **Both automobiles and automobile parts**

There is no exclusion for automobiles or automobile parts in transit as of the effective date of the new tariffs, nor is there any provision in the Order to request any exclusions beyond the limited exclusions noted above.

As we have seen in the IEEPA and Section 232 tariffs recently imposed by President Trump, duty drawback will not be available for the automotive tariffs. Moreover, automobiles and automobile parts admitted to an FTZ on or after the effective date of the tariffs must be admitted in privileged foreign status.

The tariffs on both automobiles and automobile parts will be applied in addition to any other tariffs or duties applicable to those goods (Section 301 tariffs, IEEPA-based tariffs, etc.).

- **Retaliatory Tariffs**

While the automotive tariffs have the potential to kick off another round of retaliatory tariffs from affected countries (Canada, for example, has indicated that it may retaliate), no retaliatory tariffs have been announced to date.

2. **"Secondary Tariffs" on Countries Importing Oil or Gas from Venezuela**

On March 24, 2025, the Trump Administration issued an Executive Order "Imposing Tariffs on Countries Importing Venezuelan Oil." Notably, these new tariffs do not automatically go into effect; rather, the Order simply provides authority to the Secretary of State to impose tariffs "in his discretion" at any time on or after **April 2, 2025.**

Specifically, the Order authorizes a measure, referred to as a "Secondary Tariff," which would take the form of a 25% tariff on all goods imported into the United States from any country that imports Venezuelan oil, whether directly or indirectly through "third parties." The order takes effect at 12:01 a.m. EDT on or after April 2, 2025, and supersedes any prior directives that conflict with its provisions, while leaving intact other measures related to Venezuela. If imposed, this 25% tariff will be supplemental to (i.e. stacked on top of) any existing duties imposed under the International Emergency Economic Powers Act (IEEPA), section 232 of the Trade Expansion Act of 1962, section 301 of the Trade Act of 1974, or any other authority. Again, if

they are imposed, the secondary tariffs would automatically expire one year after the last date on which Venezuelan oil is imported by a given country, unless an earlier termination is determined by the Secretary of Commerce in coordination with other relevant officials.

The authority under which such "secondary tariffs" would be imposed is IEEPA, the same authority recently used by President Trump to impose new tariffs on China, Mexico, and Canada. Trade remedies such as tariffs may only be imposed under IEEPA if the President first declares an emergency arising from "an unusual and extraordinary threat to the national security and foreign policy of the United States." Here, the emergency declaration started via social media and was formalized in the Order, and the emergency is the threat posed by Venezuela's alleged actions and policies, , including sending criminals to the U.S., failing to control f the Tren de Aragua gang (a transnational criminal organization originating in Venezuela and designated as a Foreign Terrorist Organization and a Specially Designated Global Terrorist organization), and exhibiting hostility toward American values.

The order tasks Secretary of State, Marco Rubio, with "discretion" to determine whether the tariffs will be imposed and which country(ies) to impose them on, although he must consult with Treasury, Commerce, Homeland Security, and the USTR when making this determination. Commerce will make the factual determination of whether a country has imported Venezuelan oil. China is the most likely target of these tariffs (if they are imposed), as (other than the U.S.) it has been the largest purchaser of Venezuelan oil in recent years; other purchasers and potential targets of the tariffs, with other recipients including European nations, India, Turkey, and Brazil

3. CBP Issues FAQs on Section 232 Tariffs on Steel and Aluminum Derivatives

On March 21, 2025, U.S. Customs and Border Protection (CBP) expanded its Section 232 FAQs to include updates regarding the steel and aluminum derivative lists imposed on March 12, 2024. The new FAQs are under the "Additional Section 232 Questions" section on CBP's website and are updated frequently based on the site's last modification date of March 26, 2025. Caution: Previous FAQs covering exclusions, quotas, and similar topics remain on the same page but may not align with current implementation. Because of fast fast-evolving trade environment, importers and customs brokers are recommended to consult with counsel about the specific supply chain or import transaction. In summary, CBP clarifies the following issues the trade industry urged CBP to opine on:

- If the importer does not know the country of melt and pour of its derivative product, report the following:
    - For derivative steel, filers can report "OTH" (i.e., not identifying a country) for the country of melt and pour.
    - For derivative aluminum, the filer, in the interim, may report any country other than the United States. Importers may submit a post-summary correction to update the country of smelt or cast when they obtain information on the actual countr(ies) of smelt or cast. Note that for a long-term solution, CBP is looking into other options for reporting an unknown country of smelt or cast.
- For derivative steel and aluminum derivatives articles not classified outside of Chapter 73

(for steel) or Chapter 76 (for aluminum**),** there is no minimum amount of derivative steel or aluminum content required to be subject to Section 232. The products must contain steel or aluminum in order for duties to apply. Specifying the material of the product in the invoice and making it clear whether it does not contain one of the metals would assist CBP in processing the entry. Importers are cautioned to evaluate their classifications to ensure only products with steel and aluminum are classified under Chapter 73 (for steel) or Chapter 76 (for aluminum**),** respectively, as otherwise, there may be a misclassification if the product does not contain these metals.

- Where the product does not contain steel or aluminum content, but has an HTS classification that would be subject to Section 232 measures on derivative steel or aluminum articles if it contained steel or aluminum, CBP still requires the steel melt and pour or aluminum smelt and cast country to be reported.
    - Importers are required to report the country reported as the country of origin of the non-steel article as the steel country of melt and pour.
    - When the aluminum country of smelt and cast is required, importers should report "Y" for the secondary country of smelt, and report the country of origin of the non-aluminum article as the secondary country of smelt code, and as the country of cast.
    - The invoice should make clear that the imported product does not contain aluminum or steel.
    - Clearly identifying to a customs broker which product SKUs have aluminum and steel derivatives and are subject to the section 232 is crucial for ensuring the 25% tariff is paid for those items alone and on the correct value. Customs brokers are likely to default to applying duties based on the classification of the product, unless an importer correctly directs them otherwise.
- CBP does not require an aluminum certificate of analysis to be filed at the time of entry; however, it can be requested at any time post-entry.
- For derivative articles classified outside of Chapters 73 or 76, the 25% tariff applies solely to the value (*ad valorem*) of the aluminum or steel content within the derivative article. The value of the steel/aluminum content should be determined in accordance with the principles of the Customs Valuation.
    - It is recommended that producers calculate the total value of the steel or aluminum content within the "derivative article." This process may require tracing back further into the supply chain to substantiate the calculation. Alternatively, where suppliers provide only a bill of materials, the value may be derived from the allocation for the subcomponent containing steel or aluminum. The valuation must be supported by reasonable Customs Valuation methods.
- When importing goods in sets for retail sale, the following guidance applies:
    - If the product imparting the essential character to the set (i.e., the HTSUS subheading under which the entire set is classified) is subject to Section 232 duties, the entire set will incur the additional 25% duty. Conversely, if the HTSUS provision classifying the set is not subject to Sec. 232 duties, no additional duty will be assessed, even if components within the set fall within the lists of the additional duties.

4. April 2nd – "Tariff Liberation Day" – Anticipated Reciprocal Tariff Actions

President Trump has repeatedly declared that next Wednesday, April 2, dubbed "Tariff Liberation Day," is a "BIG" date for tariffs. Under the American First Trade Policy, reports required to be produced by the Commerce and Treasury departments, which would support tariff actions, are to be completed by April 1st. It is anticipated that many of the reports, which require policy analysis and practical recommendations to address unfair trade practices against the US, will recommend the imposition of tariffs. The highlight of these recommended tariffs is likely the announcement of reciprocal tariffs, tariff rates set on a country-by-country basis to equalize tariffs and other trade barriers imposed by those countries on US products. Interestingly, a White House official said President Trump may not factor into non-tariff barriers, indirect levies like value-added taxes, which make U.S. goods even more expensive abroad, into his reciprocal tariffs.

President Trump also said he will "probably be more lenient than reciprocal, because if I were reciprocal, that would be very tough for people," adding there will be "some exceptions." A White House official provided an example, explaining that if the administration assesses Japan's trade barriers as equivalent to a 60% tariff on its exports, it may still opt for a lower reciprocal tariff rate. The official noted that this leniency is driven more by strategic negotiations and the "art of the deal" rather than a shift in focus away from tariffs or specific non-tariff barriers. Notably, President Trump has been clear that he will not provide too many exceptions. China, the European Union, India, and Brazil have been singled out as potential targets during previous announcements; while Trump's statements in recent weeks have suggested that the reciprocal tariffs would be limited to only those nations with the largest trade deficits with the U.S., he said this week that the reciprocal tariffs will be imposed on all nations. We note, of course, that the form and targets of any such reciprocal tariffs are subject to change at any time up until their actual implementation.

April 2 also marks the potential expiration of exemptions for USMCA-compliant goods from President Trump's IEEPA-based 25% tariffs on Canadian and Mexican origin goods. President Trump stated that these exemptions would only be in place until April 2 when he announced them earlier this month; however, the Executive Orders implementing them contain no time limitation.

5. Anticipated Sectoral Tariffs on Semiconductors, Lumber, and Pharmaceuticals.

President Trump announced plans to move forward with sector-specific tariffs on lumber and semiconductors. Trump said that tariffs on lumber would be among the tariff announcements on April 2, while tariffs on semiconductors would be announced at a later date, though he did not provide further details. Earlier this week, he reiterated his intention to impose tariffs on pharmaceutical products, stating that these measures would be implemented in the "very near future."

6. Summary of Tariff Actions

We have compiled a summary below of certain significant tariff-related actions, both currently in effect and proposed. There may be limited exclusions available for certain tariff actions. Please contact us for more information.

Country of Origin	Tariff Rate	Authority	Effective Date	Scope
China	7.5%, 25%, 50% or 100%	Section 301	2018 onward	A large percentage of classifications
China and Hong Kong	20%	IEEPA	February 4, 2025 (10%), March 4, 2025 (increased to 20%)	Universal
Canada	25% / 10%	IEEPA	March 4, 2025	Universal (25%)/ Energy Products (10%), USMCA-compliant products excluded for now
Mexico	25%	IEEPA	March 4, 2025	Universal, USMCA-compliant products excluded for now
All Countries	25%	Section 232	March 12, 2025	Steel and aluminum products and derivative articles
All countries	25%	Section 232	April 3, 2025, for Automobiles No later than May 3, 2025, for certain automobile parts	Automobiles and certain automobile parts; value of "US content" may be excluded for USMCA-qualifying automobiles and automobile parts (individual parts only)
All Countries importing oil from Venezuela directly or indirectly	25%	IEEPA	May be imposed on or after April 2, 2025, but none are imposed at present	Universal
All Countries	Reciprocal Tariffs	TBD	TBD (April 2 is mentioned either as the effective date for these tariffs or as the date tariffs will be announced.)	No limitation on scope
All countries	TBD	Section 232	TBD (April 2 is mentioned either as the effective date for these tariffs or as the date tariffs will be announced; currently under investigation with findings to be issued by Nov. 26, 2025)	Timber, lumber, and derivative products
All countries	TBD	TBD	Supposed effective date after April 2	Semiconductors
All countries	TBD	TBD	TBD	Pharmaceutical Products

All countries	TBD	TBD	TBD	Unnamed "agricultural products"
All countries	TBD	Section 232	TBD (currently under investigation with findings to be issued by Nov. 22, 2025)	Copper and derivative products

The previous memoranda sent discussing presidential actions regarding these fast-moving trade developments are:

- American First Trade Policy, Jan. 20, 2025
- U.S. Imposes Tariffs on Mexico, Canada, and China, Feb. 2, 2025
- Update: U.S. Imposes Tariffs on Mexico, Canada, and China, Feb. 3, 2025 (Canadian/Mexican tariffs suspended; Effective date of 10% tariff on products of China and Hong Kong)
- Update on Trade War, Feb. 5, 2025(China's Response to New U.S. Tariffs, Impacted Industries, Potential Forthcoming U.S. Trade Activity, and Tariff Mitigation for Machinery and Parts of Machinery for Agricultural and Horticultural Use)
- Update on Trade War: U.S. Imposes Tariffs on Steel and Aluminum, Response from Targeted Countries, and China Imposes Retaliatory Tariffs, Feb. 12, 2025
- Update on Trade War: U.S. Releases Lists of Additional Derivative Articles of Steel and Aluminum Which Will be Subject to Section 232 Tariffs, and Issues a Presidential Memorandum on Reciprocal Trade and Tariffs, Feb. 17, 2025
- Update on Trade War: U.S. to Move Forward with 25% Tariffs on Mexico and Canada Products and Double Tariff on Chinese-Origin Products to 20%; Section 232 Investigation on Copper Imports; USTR Requests Comments, Feb. 28, 2028.
- Trade War Update, U.S. Tariffs on Canadian and Mexican Origin Goods; Increase in U.S. Tariffs on China; New Section 232 Tariffs on Derivative Articles of Steel and Aluminum Go into Effect; Tariff Investigations on Timber, Mar. 4, 2025.
- Trade War Update: New Section 232 Tariffs on Derivative Articles of Steel and Aluminum Go into Effect Today – March 12, 2025.

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We will continue to monitor this situation closely and will report all significant developments. In the interim, please do not hesitate to reach out to us with questions or requests for additional information at Jessica Rifkin (jrifkin@ofwlaw.com) or Denise Calle (dcalle@ofwlaw.com).