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MEMORANDUM

May 7, 2025

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Stacking Tariffs, De Minimis Changes, Auto Tariff Adjustments, Section 232 Inclusion Process, CBP's IEEPA FAQ Update, CBP Summit, and Potential 100% Tariff on Films

Recent U.S. trade policy shifts have introduced significant tariff changes affecting multiple industries. New policies include the elimination of the de minimis exemption for Chinese imports, automobile rebate tariffs, and the implementation a 25% duty on certain auto parts. The government also clarified in-transit exclusions, launched a new process for adding items to the list of goods subject to Section 232 tariffs on derivatives, and is considering additional trade measures, such as a potential 100% tariff on non-U.S. films. Meanwhile, industry groups, including the U.S. Chamber of Commerce, are advocating for tariff relief for small businesses. As these developments continue to unfold, businesses should closely monitor their impact and adjust their strategies accordingly.

1. Executive Order on Stacking Tariffs for Certain Imported Articles

On April 29, 2025, President Trump issued an Executive Order regarding the cumulative application (stacking) of tariffs on certain imported articles. The Order clarifies that certain (but not all) tariffs imposed under various statutory authorities, including those related to national security, trade enforcement, and economic policy, ***should not be applied cumulatively ("stacked") when they target the same article, as excessive duty rates could exceed the intended policy objectives***.

The Order applies only to tariffs on automobiles[1], auto parts[2], aluminum[3], steel[4], and IEEPA trade measures related to illicit drug flows[5] and immigration[6] (i.e., the 25% IEEPA/fentanyl tariffs on Canada and Mexico, but not the 20% IEEPA/fentanyl tariffs on China).

The Executive Order establishes a framework for determining which tariff measures apply when multiple tariffs are in effect, ensuring a more balanced approach to trade enforcement. The specifics are as follows:

1) Goods subject to 25% Section 232 tariffs on automobiles and automobile parts are not subject to IEEPA fentanyl tariffs imposed on Canadian- and Mexican-origin goods, nor are they subject to Section 232 tariffs on steel, aluminum, and derivative products of steel and aluminum.
2) Goods subject to 25% IEEPA fentanyl tariffs on Canadian- and Mexican-origin goods are not subject to 25% Section 232 tariffs on steel, aluminum, and derivative products of steel and aluminum.
3) Goods which are subject to both the 25% Section 232 tariffs on aluminum and derivative articles of aluminum and the Section 232 tariffs on steel and derivative articles of steel will remain subject to both tariffs.
4) All other tariff actions are cumulative (i.e., are stacked), unless the specific action provides an exemption (e.g., reciprocal tariff actions are inapplicable to goods subject to Section 232 actions).
5) Base tariffs provided for by the HTSUS, IEEPA fentanyl tariffs on Chinese goods (10%/20%), Section 301, and AD/CVD are cumulative.

Opportunity for Refunds

This Order applies retroactively to all eligible entries made on or after March 4, 2025, which means that importers can obtain refunds of duties paid. U.S. Customs and Border Protection, in

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[1] Proclamation 10908 of March 26, 2025 (Adjusting Imports of Automobiles and Automobile Parts Into the United States).

[2] Proclamation 10908 of March 26, 2025 (Adjusting Imports of Automobiles and Automobile Parts Into the United States).

[3] Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), as amended by Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), and Proclamation 10895 of February 10, 2025 Adjusting Imports of Aluminum Into the United States).

[4] Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), as amended by Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), and Proclamation 10896 of February 10, 2025 (Adjusting Imports of Steel Into the United States).

[5] Executive Order 14193 of February 1, 2025 (Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border), as amended by Executive Order 14197 of February 3, 2025 (Progress on the Situation at Our Northern Border), Executive Order 14226 of March 2, 2025 (Amendment to Duties To Address the Flow of Illicit Drugs Across Our Northern Border), and Executive Order 14231 of March 6, 2025 (Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border).

[6] Executive Order 14194 of February 1, 2025 (Imposing Duties To Address the Situation at Our Southern Border), as amended by Executive Order 14198 of February 3, 2025 (Progress on the Situation at Our Southern Border), Executive Order 14227 of March 2, 2025 (Amendment to Duties To Address the Situation at Our Southern Border), and Executive Order 14232 of March 6, 2025 (Amendment to Duties to Address the Flow of Illicit Drugs Across Our Southern Border).

coordination with other agencies, is tasked with implementing the policy, updating enforcement mechanisms, and processing refunds for overpaid duties on entries made on or after March 4, 2025. We are currently assisting importers with refund requests.

2. Amendments to Tariffs on Imports of Automobiles and Automobile Parts: Tariff Rebate Program.

On April 29, 2025, President Trump issued a Proclamation modifying the 25% Section 232 tariff treatment imposed on imported automobile parts by providing a partial offset of the duties if they are used to assemble automobiles domestically. Only automobiles that undergo final assembly in the United States are eligible to be included under this system of duty calculation.

Under this system, manufacturers of automobiles assembled in the United States may apply for an import adjustment offset, calculated as a percentage of the aggregate MSRP of the vehicles, to reduce their tariff liability on imported parts. The offset is available in two phases—3.75% for vehicles assembled between April 3, 2025, and April 30, 2026, and 2.5% for those assembled between May 1, 2026, and April 30, 2027—with the relief capped at the total applicable tariff liability.

Manufacturers must submit detailed documentation to certify domestic assembly projections, tariff cost breakdowns, and eligible importer information, after which U.S. Customs and Border Protection will administer the approved offsets. The Order also empowers the Secretary, in consultation with relevant agencies, to issue necessary guidance, monitor imports for national security impacts, and enforce compliance through penalties for any excessive claims.

3. BIS Publishes Process for Requesting Inclusion of Section 232 Derivatives

We previously reported that President Trump's Executive Order strengthening and imposing new Section 232 tariffs on steel, aluminum, and derivative articles of steel and aluminum directed the Department of Commerce to establish procedures under which domestic producers and/or trade associations could petition the Department to add new goods to the list of derivative articles subject to the Section 232 tariffs. Commerce's Bureau of Industry and Security (BIS) has now issued an interim final rule on May 2, 2025, implementing this requirement. BIS will establish a submissions window to receive aluminum and steel derivative inclusion requests from industry during two-week submission windows opening three times annually at the beginning of each May, September, and January, with the first such window to open on May 1, 2025. Applicants must provide detailed documentation, including a precise definition of the derivative article, its HTSUS classification, and supporting data on domestic production and industry impact, along with an explanation of how the product meets the criteria for inclusion; the criteria include:

- Clear identification of the applicant (*i.e.*, individual, company, or trade association);
- A precise definition of the derivative article;
- The eight or ten-digit HTSUS classification requested to be included in the scope of the ad valorem tariffs;
- An explanation of why the article is a steel or aluminum derivative article, including, to the extent practicable, information on the total value of the article's steel and/or

aluminum content as a share of the derivative article's total value;
- Pertinent information on the domestic industry affected;
- Statistics on imports and domestic production;
- A description of how and to what extent imports of the derivative article threaten to impair the national security or otherwise undermine the objectives set forth in the 2018 Steel and Aluminum Section 232 investigation reports or related Inclusions Proclamations;

The process features a 14-day public comment period followed by a 60-day review and decision period. The rule is effective April 30, 2025, and is designed to broaden the scope of Section 232 coverage in order to safeguard U.S. national security and economic interests.

4. Implementation of Executive Order 14256 – Changes to De Minimis Exemption and Duty Rates

On April 28, 2025, the U.S. Department of Homeland Security (DHS) issued a Federal Register notice announcing changes to the Harmonized Tariff Schedule of the United States (HTSUS), eliminating the Section 321 *de minimis* exemption for goods from China. Previously, this exemption had permitted shipments valued at under $800 to be entered into the U.S. informally and duty-free. This change aligns with Executive Order 14256, issued on April 2, 2025, which formalized the removal of *de minimis* treatment for products from China and Hong Kong and established new duty rates for such imports.

Effective May 2, 2025, at 12:01 a.m. ET, products from China or Hong Kong when entered for consumption or withdrawn from warehouse for consumption may no longer enter the US duty-free under de minimis procedures.

Instead, for postal items containing goods that would previously have been eligible for duty-free de minimis entry that are sent through the international postal network from the China or Hong Kong will be subject to either: (1) an *ad valorem* duty of 120% of the value of the postal item containing the goods; or (2) a flat duty of $100 per postal item, which will increase to $200 as of 12:01 a.m. EDT on June 1, 2025. Alternatively, goods that arrive via alternative channels (i.e. not via international post) will be subject to all applicable tariffs under standard entry procedures, including but not limited to the 125% IEEPA country-specific reciprocal tariffs and the 20% IEEPA fentanyl tariffs.

Order 14256 also imposes new restrictions on products from China admitted into FTZ. Beginning February 4, 2025, such products must be classified as “privileged foreign status,” ensuring they are subject to the standard duty rates in effect at the time of admittance into the FTZ. Additionally, the Order eliminates the $250 informal entry limit for goods classified under Chapter 99, which was an exception to the typical $2,500 informal entry threshold. This change is intended to support CBP’s enforcement of de minimis ineligibility for Chinese goods.

The elimination of the Section 321 exemption and the implementation of Order 14256 significantly alter the regulatory landscape for shipments from China and Hong Kong, introducing substantial duty rates and procedural changes. Importers should assess these developments carefully to ensure

compliance and to mitigate potential impacts on their supply chains.

5. CBP IEEPA FAQ Update – Clarifies in-transit exclusions

CBP provided clarification on the applicability of the exceptions from the reciprocal tariffs under IEEPA for in-transit goods:

1) These provisions apply only to shipments by vessel and are dependent on specific shipping and entry dates. Any multimodal or non-vessel shipments such as air, truck, rail, or transloaded shipments are not eligible for the in transit exception .
2) Goods loaded onto a vessel before April 5, 2025, and entered for consumption on or after April 5, 2025, and before May 27, 2025, are excepted from reciprocal tariffs under HTSUS 9903.01.28.
3) Goods loaded onto a vessel between April 5–8, 2025, and entered for consumption before May 27, 2025, are subject to a 10% duty rate under HTSUS 9903.01.25 unless another exception applies.
4) Goods loaded on April 9, 2025, and entered before May 27, 2025, are subject to a 10% duty rate under HTSUS 9903.01.25 and apply only to goods from China, including Hong Kong and Macau, unless another exception applies.

Importers that used the exclusion incorrectly for non-vessel shipments (for example, by claiming eligibility for in-transit exceptions for multimodal shipments) must file a post summary correction promptly.

6. 25% Tariff On Certain Imported Automobile Parts Took Effect on May 3, 2025.

The 25% tariff on certain imported automobile parts took effect at 12:01 a.m. EDT on May 3, 2025, as specified in Annex I of Presidential Proclamation 10908, issued under Section 232 of the Trade Expansion Act of 1962. The tariff applies to specific automobile parts listed in Annex I, including components such as engines, transmissions, powertrain parts, and electrical systems used in passenger vehicles and light trucks.

Auto parts that qualify for preferential treatment under the United States-Mexico-Canada Agreement (USMCA) are temporarily exempt from the 25% tariff. These parts will remain exempt until the Secretary of Commerce, in consultation with CBP, establishes a process to apply the tariff exclusively to the value of the non-U.S. content of such parts and publishes notice in the Federal Register.

Importers should review the Harmonized Tariff Schedule (HTS) codes listed in Annex I to determine if their products are subject to the new tariff. Importers of auto parts from Canada and Mexico should ensure proper USMCA certification to qualify for the temporary exemption. Accurate documentation of the origin and content of imported auto parts is essential to determine tariff applicability and to benefit from any exemptions or preferential treatments.

7. Trump Weighs 100% Tariff on Foreign-Made Films

President Trump has announced plans to impose a 100% tariff on movies produced outside the United States, citing concerns that foreign incentives are drawing filmmakers away from Hollywood and posing a national security threat.

8. CBP's Trade Facilitation and Cargo Security Summit

Our team is at the Trade Facilitation and Cargo Security Summit, on May 6-8, 2025, organized by U.S. Customs and Border Protection (CBP) to discuss key issues in international trade and security. If you are attending, please let us know when to meet you. Here is a list of workshops and panel discussions; should you have a question related to a topic, please let us know so we can attempt to get a response directly from CBP:

- Forced Labor and Threats to Global Trade
- Secure Borders, Strong Trade
- Protecting American Consumers
- The Road to Made in the USA
- Growth and Investment in the U.S.
- CBP Leadership Townhall
- Bonded Facilities
- Business Resumption Planning
- CBP Trade Operations
- CTPAT Basics
- Enforcing Regulations for Biological Material Importations
- Supply Chain Security Best Practices and Warning
- CBP International Operations
- CTPAT Cost Benefit Analysis to Calculate Return on Investment (ROI)
- Trade Violations Reporting
- Electronic Export Manifest
- Import Partner Government Agencies (PGAs)
- CBP & USDA Operations
- Enforce and Protect Act
- Forced Labor
- Revenue Protection
- Automated Commercial Environment (ACE) Collections/eBonds
- Broker Awareness
- De Minimis – Newest Developments
- Policy and Regulatory Update
- Export PGAs
- Navigating the Future of Trade: CBP's Innovation Roadmap for Trade Efficiency
- Revenue Protection
- Supply Chain Security Best Practices and Warning Signs
- Trade Enforcement
- Air Cargo Security

9. US Chamber of Commerce Requests Tariff Exclusion for Small Businesses.

The U.S. Chamber of Commerce is urging the Trump administration to implement targeted tariff exclusions to support U.S. businesses, particularly small enterprises, facing hardship due to current trade policies. The Chamber proposes adding automatic exclusions for small business importers to provide immediate relief from increased costs and disrupted supply chains caused by tariffs, helping stabilize small businesses facing existential threats due to unexpected expenses. Additionally, the Chamber is calling for immediate action to protect businesses and workers from

the unintended consequences of tariffs, positioning these proposed exclusion mechanisms as practical solutions to support economic resilience without undermining long-term trade policy goals. We are assisting clients in navigating whether to engage with the Chamber to support its position.

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

1. American First Trade Policy, Jan. 20, 2025
2. U.S. Imposes Tariffs on Mexico, Canada, and China, Feb. 2, 2025
3. 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)
4. 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)
5. Update on Trade War: U.S. Imposes Tariffs on Steel and Aluminum, Response from Targeted Countries, and China Imposes Retaliatory Tariffs, Feb. 12, 2025
6. 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
7. 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.
8. 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.
9. Trade War Update: New Section 232 Tariffs on Derivative Articles of Steel and Aluminum Go into Effect Today – March 12, 2025.
10. 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, March 29, 2025.
11. Reciprocal Tariffs and other tariff actions taken on Tariff Liberation Day, April 3, 2025.
12. Section 232 on Pharmaceuticals, Semiconductors, Critical Minerals, Electronic goods, FAQ; April 17, 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).