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BRIEFING

US rebuilds tariff regime using established tools

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Last week, the US administration imposed a raft of new tariffs on 59 countries and the European Union, citing their failure to impose or effectively enforce a prohibition on the import of goods produced with forced labour. The tariffs, which range from 10% to 12.5%, became effective on 24 July. They were imposed just as the US administration's global 10% tariffs, imposed under Section 122 of the Trade Act 1974, expired.

Key takeaways

1. Following knockbacks – most notably a US Supreme Court decision striking down tariffs in February – the US administration has turned to a sturdier legal basis – Section 301 of the Trade Act 1974 – to impose globe-spanning tariffs.

2. The tariffs range from 10% to 12.5% on many goods from 60 economies determined to have either failed to prohibit the import of goods made with forced labour or failed to enforce such a prohibition, findings which a legal challenge – launched just after the tariffs were imposed – asserts are "pretext[ual]".

3. Though anticipated, this new wave of tariffs subjects businesses to new compliance requirements and the complexity of understanding the new tariff structure. The US Trade Representative has indicated that more new tariffs under the same legal authority may be on the way.

What is the basis for the new tariffs?

The United States imposed the new tariffs under Section 301 of the Trade Act 1974, which gives the US Trade Representative (USTR) the authority to respond to acts, policies or practices of foreign governments that it determines, after a statutorily required investigation, are "unjustifiable", "unreasonable" or "discriminatory", and which "burden or restrict" US commerce.

The forced labour tariffs reflect the US administration's latest use of Section 301, which was also the basis for separate 25% duties imposed earlier this month on certain goods from Brazil.

The Trump administration has made greater use of Section 301 since the Supreme Court's invalidation of the IEEPA tariffs. An investigation into structural excess capacity and production in manufacturing sectors across 16 economies (including China and the European Union) is expected to conclude shortly and could lead to additional tariffs. Vietnam and Germany are also subject to Section 301 investigations into intellectual property protections and underpayment for innovative pharmaceutical products, respectively.

Section 301 forms only a part of the United States' tariff toolkit. Earlier this month, the Trump administration turned to a long-dormant statutory provision, Section 338 of the Tariff Act 1930, to impose additional 50% tariffs on Canada for discriminatory treatment of US motor vehicle, alcohol and dairy exports. The administration has also continued to implement import-specific tariffs for national security reasons under Section 232 of the Trade Act 1962, including on steel, aluminium, copper, and cars.

The latest Section 301 tariffs underscore the administration's intention to use tariffs to influence global trade across industries. Indeed, President Trump announced plans last week to impose 100% tariffs on generic pharmaceuticals beginning in 2028 and rising to 200% in 2029. The administration has also signalled new tariffs on the European Union in response to significant antitrust fines on US tech companies.

Will President Trump's latest tariffs stand up to challenge?

Given its historical use and clear textual authorisation of tariffs, Section 301 is less susceptible to legal challenge than other statutory authorities that this Trump administration has used to impose tariffs (for example, IEEPA).

Even so, on the day the Section 301 tariffs came into effect, two small businesses brought a legal challenge in the US Court of International Trade (CIT). The complaint, filed 24 July, alleges that USTR's forced labour justification for the tariffs "is simply a pretext" to "preserve substantially the same broad tariff regime . . . [that existed] under IEEPA and Section 122." The challengers also assert that Section 301 does not authorise the tariffs on 60 economies based on generalised rather than economy-specific findings and requires findings that reasonably tie the assessed tariff rate to the asserted trade violation. The challengers add that the action is "arbitrary and capricious."

This challenge differs from the earlier challenges to the IEEPA and Section 122 tariffs in two notable respects. First, the complaint raises questions that do not relate to the administration's authority to impose tariffs under Section 301, but rather whether it has misused that authority. Second, unlike previous challenges, this complaint seeks certification of a class of all importers that pay the relevant Section 301 duties. If the plaintiffs succeed, the certification could extend relief even to those importers that do not individually file suit or opt in to the class, avoiding issues regarding the viability of universal injunctions or the permitted scope of CIT decisions. While the challenge is being heard, it is likely that the tariffs will remain in place.

Which countries are affected by the new Section 301 tariffs?

These tariffs apply to many of the United States' main trading partners. There are different rates for the 60 economies depending on whether they have imposed or enforced a forced labour import prohibition and whether they have reached a bilateral trade agreement with the United States.

USTR determined that 54 of the 60 economies investigated had failed to impose and effectively enforce a prohibition on the import of goods produced with forced labour, while six (Canada, Ecuador, the European Union, Indonesia, Mexico and Pakistan) had failed to enforce a prohibition.

- 17 countries will see a 10% tariff on top of normal most-favoured nation tariffs, which vary by product. These are: Argentina, Bangladesh, Cambodia, Canada, Ecuador, El Salvador, Guatemala, Honduras, India, Indonesia, Jordan, Malaysia, Mexico, Pakistan, Sri Lanka, Trinidad and Tobago and the United Kingdom.
- Most products of the European Union and Taiwan will be subject to a 10% tariff, net of the MFN rate.
- Most products of Japan, Korea and Switzerland will be subject to a 12.5% tariff, net of the MFN rate.
- Products of all other investigated economies will be subject to a 12.5% tariff. These are: Algeria, Angola, Australia, Bahamas, Bahrain, Brazil, Chile, China, Colombia, Costa Rica, the Dominican Republic, Egypt, Guyana, Hong Kong SAR, Iraq, Israel, Kazakhstan, Kuwait, Libya, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Oman, Peru, the Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, Thailand, Türkiye, the United Arab Emirates, Uruguay, Venezuela and Vietnam.

Which goods are exempted?

A notice published alongside the announcement of the tariffs last week detailed several categories of exempted goods generally and by country. These include:

- All articles and parts of articles subject to Section 232 tariffs, which are levied on specific products, such as steel, aluminium, and autos, to protect US national security.
- Raw materials that, if subject to the Section 301 tariffs, could become unavailable domestically.
- Products that could cause economy-wide disruptions if subject to the Section 301 tariffs.
- Products that cannot be grown or produced in sufficient quantities in the United States or obtained from other sources.

- Products for which the tariffs may not be effective in obtaining the prohibition, or the effective enforcement of a prohibition, on the import of goods produced with forced labour.
- Certain products from Argentina, Bangladesh, Cambodia, Ecuador, El Salvador, the European Union, Guatemala, Indonesia, Jordan, Malaysia, Switzerland, Taiwan and the United Kingdom will also be excluded to "encourage these economies to fulfill commitments regarding forced labour import prohibitions or to encourage these economies to enact and effectively enforce a forced labour import prohibition."

Among the exempted products are energy products, pharmaceuticals, civil aircraft and parts, critical minerals and gold, tropical fruits, coffee, cocoa, smartphones, laptops and tablets, as well as cork from Portugal, roses from Switzerland and precious stones from the European Union and Switzerland among others. USTR will also establish tariff rate quotas for apparel products from Bangladesh, Cambodia, Indonesia and Malaysia, allowing preferential access based on the economy's import of US cotton.

Practical takeaways

With the Section 122 tariffs expiring, the forced labour tariffs now in effect, and future tariffs looming, businesses should take steps to:

- Understand the impact of expiry of the Section 122 tariffs and the introduction of the Section 301 tariffs on their business, including what imports are impacted, tariff rates by jurisdiction, and whether exemptions apply;
- Ensure that internal teams understand the new tariff structures and that compliance systems are updated to reflect the changes and any new US Customs and Border Protection (CBP) guidance around implementation;
- Review business sourcing and supply chains considering the tariff changes and new Section 301 tariffs, as well as any other applicable duties;
- Evaluate contracts with supply chain partners to understand contractual exposure around tariff burden and any increased costs resulting from the tariff changes; and
- Monitor the litigation challenging the Section 301 tariffs and understand related opportunities for tariff refund or mitigation.

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