Tariffs, Trade, and Supply Chains: What In-house Counsel Need to Know

Commercial and Contracts

Employment and Labor

Banner artwork by Travel mania / *Shutterstock.com*

The new — and rapidly evolving — tariffs announced by the US administration could have a significant impact on businesses reliant on cross-border trade. Here's what in-house counsel should know to keep their supply chain resilient in the months and years to come.

Remind me, what's a tariff?

A **tariff** is a tax or duty imposed by a government on imported goods, typically used to protect domestic industries, generate revenue, or influence foreign trade policies. Tariffs increase the cost of imported goods, making them less competitive compared to domestic products. While tariffs can encourage domestic production, they may also lead to higher consumer prices, supply chain challenges, and trade retaliation from affected countries.

Though the US Congress holds the constitutional authority over tariffs, the laws delegate much of the enforcement power to the executive branch, allowing the president to act unilaterally in certain situations — for example, under statutes like the **Trade Expansion Act of 1962 (Section 232)** for national security concerns, the **Trade Act of 1974 (Section 301)** to address unfair trade practices, and the **International Emergency Economic Powers Act (IEEPA)** for national emergencies related to national security, foreign policy, or the economy.

US President Donald Trump has signaled willingness to do so, such as when he announced tariffs on Canada, Mexico, and China, or when he proposed escalating tariffs on Colombia in response to the country turning back US deportation flights.

ACC Members: Access the **Navigating the New US Administration** Resource Collection

What’s the latest?

On April 9, President Trump said he would pause for 90 days the reciprocal tariffs on most countries, excluding China after the country announced its own retaliatory tariffs on US goods. China is faced with a 125-percent reciprocal tariff, effective April 10, in addition to the 20-percent tariff already in effect. On April 13, the administration granted some exclusions for smartphones and other electronics.

On April 2, President Trump had announced a new 10-percent baseline tariff on all goods, including low-cost products that were formerly granted a “de minimus” exemption, set to take effect April 5. The president also announced new reciprocal tariffs targeting various countries, set to take effect April 9.

On March 26, President Trump had announced new 25-percent tariffs on car imports, set to take effect on April 3, as well as 25-percent tariffs on automobile parts slated for May 3.

On March 4, the Trump administration’s latest tariffs went into effect: 25-percent tariffs on imports from Mexico and Canada, with a carveout for Canadian energy resources, and an increase to a 20-percent tariff on imports from China. On March 6, the president announced a one-month reprieve from the 25 percent tariffs on goods covered by the US-Mexico-Canada (USMCA) trade agreement, which expired April 2.

On Feb. 10, President Trump had announced 25-percent tariffs on steel and aluminum imports, canceling exemptions for Canada, Mexico, and other trade partners.

```
!function(){"use strict";window.addEventListener("message",(function(a){if(void
0!==a.data["datawrapper-height"]){var e=document.querySelectorAll("iframe");for(var t in
a.data["datawrapper-height"])for(var r,i=0;r=e[i];i++)if(r.contentWindow===a.source){var
d=a.data["datawrapper-height"][t]+"px";r.style.height=d}}}))}();
```

ACC Members: Download the comprehensive guide to **Managing Import and Tariff Risks During a Trade War**

What steps should in-house counsel consider?

While there is plenty of uncertainty around tariffs and possible trade wars, in-house legal departments can take proactive steps to mitigate risks and protect their businesses’ supply chain. Consider asking:

- **What percentage of our raw materials, components, or finished goods are sourced from the affected countries?**

- Understanding your company's dependency on these countries is critical for assessing the immediate financial impact of tariffs.
- If a significant portion of materials or components comes from these regions, tariffs could drastically increase costs and disrupt production schedules.
- Monitor how tariffs evolve. Consider the informative trackers listed in the ACC Resource Collection on Navigating the New US Administration.

- **Can we diversify our supply chain to mitigate tariff exposure, and what would be the cost and timeline of doing so?**
  - If a substantial part of the supply chain is impacted, businesses may need to consider identifying alternative suppliers in non-tariffed countries.
  - However, switching suppliers can be costly and time-consuming, requiring thorough evaluation of quality, logistics, and contractual obligations.
  - Learn more about Supply Chain Disruption in Europe, UK and US: How Businesses Can Mitigate Risk.

- **Can we pass on tariff-related costs to customers without significantly affecting demand?**
  - If higher costs are passed down the supply chain, it could lead to reduced consumer demand, particularly in price-sensitive markets.
  - Understanding price elasticity and customer expectations is crucial for pricing strategies and market competitiveness — and a crucial way in-house counsel can help guide the business.
  - In-house counsel can also drive the conversation about how to frame communications and message any actions taken (e.g., raising prices). Protecting the business's brand should be top of mind.
  - Tariffs play a role in the geopolitical risk landscape for the business. Consider how your business's resource allocation and overall strategy to mitigate geopolitical risk. Read the ACC Brief Guide on Navigating Geopolitical Risk.

- **What are the potential long-term strategic implications of these tariffs, and how should we adjust our business strategy?**
  - Beyond immediate cost and supply chain concerns, the company must assess the long-term impact on its global competitiveness, investment strategies, and operational footprint.
  - This could involve reshoring production, investing in automation, or altering expansion plans.
  - If US trading partners retaliate, causing increased costs to export, will the organization need to find new customers in other areas of the world?

- **Are there mechanisms in existing agreements allowing price adjustments (e.g., in light of how certain price indexes evolve), or allowing the parties to invoke force majeure due to economic conditions such as cost increases or tariffs?**

  - Consider whether force majeure terms may be invoked (whether circumstances qualify as force majeure is usually dependent on the specific wording of the clause and the applicable law). Learn more on force majeure with the insight linked in the new ACC Resource Collection on Navigating the New US Administration.
  - Consider whether the contract allows certain price adjustments at certain times or under certain conditions.
  - Consider what clauses you negotiate in new contracts (or at the time of renewal of existing contracts) to address the risks related to cost and supply chain pressures.

For more resources and insights selected by the ACC team for global in-house lawyers, check out the new Resource Collection: **Navigating the New US Administration.**

Join ACC for access to more insights for global in-house lawyers

This article was developed with the assistance of Generative AI.

Staff

ACC