

Remember Basic Import Rules when Calculating Tariffs

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April 8, 2025

There is a lot of discussion regarding U.S. tariffs at this time, and it is still too soon to tell what the ultimate U.S. tariff landscape will look like. For now, however, it is important to recall that certain basic import rules and caveats still apply.

Rule 1: New tariff rates that are being adopted apply only to permanent imports into the United States. While subject to a bond and certain other requirements, temporary imports will not be subject to tariffs. Keep in mind that temporary imports involve items that will not be sold or used in the United States. Instead, the item enters the United States on a temporary basis only and typically for the purpose of undergoing repairs, alterations or some processing and then will leave the United States within the required timeframe. The rules regarding permanent and temporary imports are complex, and legal counsel should be consulted.

Rule 2: The new tariffs apply only to entry of items after the effective date of a new tariff. If the import or entry of the item at issue pre-dates the effective date of a new tariff, the new tariff will not apply to the import. Traceability and recordkeeping is critical to establish the date an item was imported into the United States. If proof of the previous import is unavailable, tariffs may apply.

Rule 3: Tariffs adopted under U.S. law apply only to imports into the United States. If an EU subsidiary of a U.S. company sells and ships an EU-manufactured item from one EU country to a customer in another EU country, U.S. tariffs will not apply. There is no import into the United States. Rather, the customs laws of the EU country into which the item is imported will apply. Under this scenario, the purchaser/importer in the EU country at issue must be familiar with that country's customs laws, including any new tariffs it may have adopted (or eliminated).

Rule 4: Country of origin is the key to which tariffs apply. When calculating tariffs for items imported into the United States, the item's country of origin determines which U.S. tariffs apply. It does not matter where the item is being shipped from. If an item's country of origin is China, and the item is being shipped from a distributor in Canada, U.S. tariffs applicable to items manufactured in China will apply to the item in question. U.S. tariffs applicable to items manufactured in Canada will not apply. For all imports, it is critical to establish in advance what the item's country of origin is under U.S. customs rules to ensure that the correct tariff is applied.

Rule 5: U.S. Tariffs do not apply to U.S.-origin items. Tariffs will not apply to U.S.-origin items or, under certain circumstances, U.S. content in foreign-made goods. For example, if a U.S.-origin item leaves the United States, for repairs or alterations, or for demonstration or marketing purposes, it will not be subject to tariffs when it returns to the United States. However, please bear in mind that reciprocal tariffs on exported U.S. content products may be imposed by other nations.

Given the enhanced scrutiny on international trade from the U.S. government, clients are advised to confirm that all statements made in documentation submitted to the U.S. government, such as in the customs entry forms, are true and accurate to the best of the submitter's knowledge. All transaction documents should expressly address the impact of tariffs. Importers must also monitor their customs brokers, and consult with legal counsel, to ensure that there are no mistakes as importers are ultimately responsible for compliance. Customs and Border Protection generally rejects an importer's defense when based on holding the customs broker responsible for a violation. Note that we expect the U.S. government

to be vigilant in reviewing customs documentation to ensure tariffs are being properly levied. Enforcement actions can result in severe fines and penalties under the U.S. customs laws and the False Claims Act, so the extra diligence in submissions will be worth the effort.

Vedder Price's International Trade & Compliance and Global Transportation Finance groups are tracking changes in the law concerning tariffs. Please do not hesitate to contact us if your business requires assistance with compliance.

If you have any questions about this article, please contact **Brent Connor** at bconnor@vedderprice.com, **David M. Hernandez** at dhernandez@vedderprice.com, **Jaime L. Rosenberg** at jrosenberg@vedderprice.com or any other Vedder Price attorney with whom you have worked.

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