

■ TODAY'S WEBINAR

# Managing the Aftermath of the U.S. Supreme Court's Historic IEEPA Tariff Decision (Part II)

Understanding the Contractual, Supply Chain, and Customs Compliance Ramifications of the IEEPA Tariff Decision

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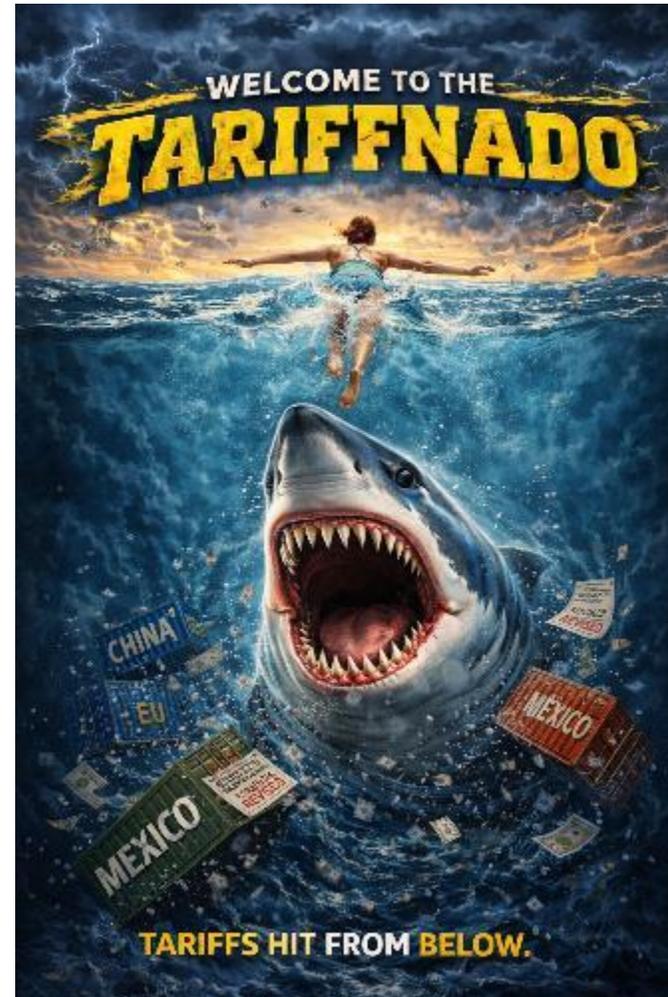
# Today's Topics

- Where Things Stand Today: Recap of the Post-IEEPA World
- Understanding the Role of Lobbying in the Post-IEEPA World
- Dealing with Tariff Jockeying in the Post-IEEPA World
- Preparing for Future Tariff Volatility in the Post-IEEPA World
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- Concluding Thoughts



# Recap of the Post-IEEPA World

- Where we are on the IEEPA Tariffs
  - Officially Revoked as of February 24<sup>th</sup>
  - New Section 122 Tariffs Are Implemented
    - Still not clear if will go to 15 percent
    - Once again subject to attack
  - Legality of IEEPA is Settled, Refunds Are Not
    - Existing Options
    - Administrative Options
    - CIT-Supervised Options
    - Guesses on Timing



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# Understanding the Role of Lobbying in the Post-IEEPA World

- While IEEPA Gave Great Tariff Authority to the President, Alternative Tariff Structures Have Set Structure and Thus Give Greater Room for Lobbying
  - The Role of Congressional Lobbying
  - The Role of Administrative Lobbying
- Participation in Section 232 and 301 Investigations
- Practical Reality: If you are affected by tariffs, someone else is advocating.
  - Policy outcomes often reflect:
    - Industry organization
    - Economic and Policy Arguments
    - Coordinated messaging
    - Timely engagement



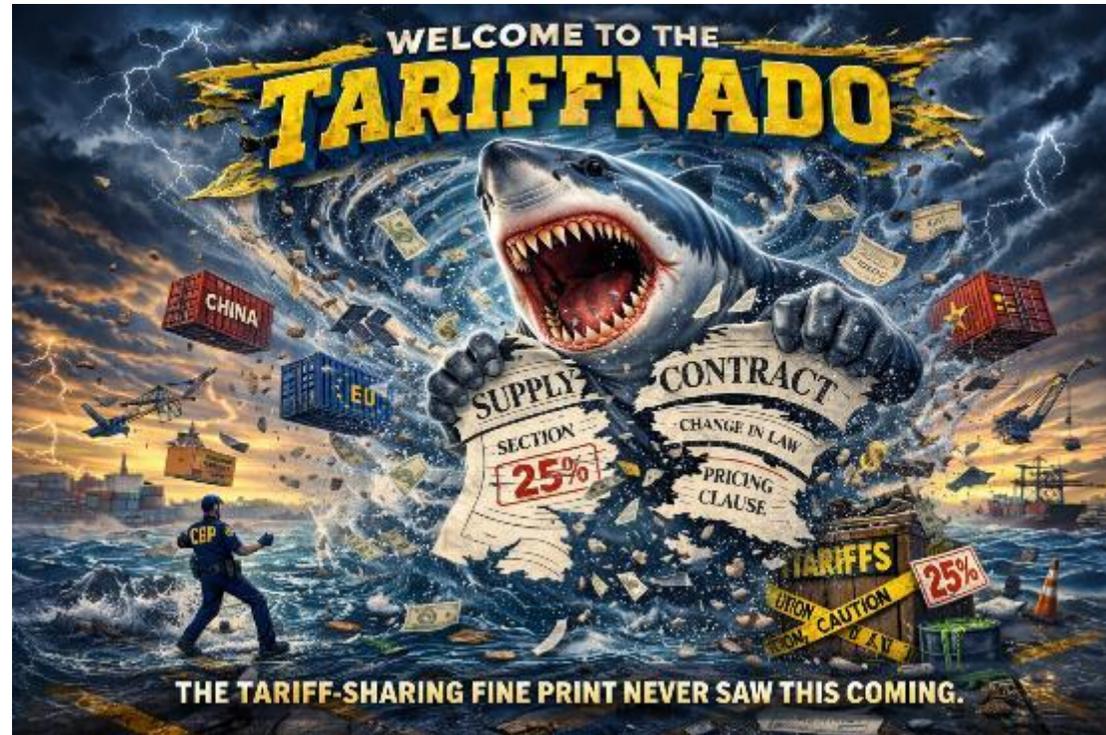
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# Dealing with Tariff Jockeying in the Post-IEEPA World

- Why Tariff Jockeying Is Inevitable
  - Many IEEPA tariffs were:
    - Passed through in pricing
    - Embedded in cost structures
    - Allocated through supply agreements
  - Few contracts contemplated:
    - Retroactive invalidation
    - Judicial refund recoveries
    - Multi-year duty unwind scenarios
- The result: Refunds create economic tension between suppliers, importers, distributors, and customers.



# Dealing with Tariff Jockeying in the Post-IEEPA World

- As the legal claimant and refund recipient, the importer of record is the first stop for IEEPA recoveries.
- But once funds begin flowing, expect:
  - Suppliers demanding reimbursement
  - Customers seeking clawbacks
  - Contract counterparties asserting “economic incidence” arguments
  - Audit requests tied to pricing adjustments
  - Class action lawsuits from consumers
- The refund may start with the importer of record but may not stay there.



# Dealing with Tariff Jockeying in the Post-IEEPA World

- Where Disputes Are Likely to Arise
  - Passed-Through Tariffs
    - Was the cost actually borne?
    - Was it separately itemized?
    - How were price increases communicated?
  - Change-in-Law Provisions
    - Does judicial invalidation trigger reallocation?
    - Pricing Adjustments
      - Fixed price vs. cost-plus vs. formula-based pricing
      - Negotiated and renegotiated agreement changes
      - Downstream demands for reimbursement



# Dealing with Tariff Jockeying in the Post-IEEPA World

- Issues for Importers of Record

- Start with the contract: Tariff allocation, change-in-law, and indemnity clauses govern, not fairness arguments.
- Establish economic incidence: Document whether tariffs were absorbed, passed through, or renegotiated.
- Control the narrative early: Legal entitlement to refunds does not equal automatic sharing.
- Prepare for common claims: Expect unjust enrichment, restitution, and “windfall” arguments.
- Align internally before responding: Legal, finance, and commercial teams must speak with one voice.
- Use leverage strategically: Refund discussions often turn as much on commercial leverage as contractual arguments.
- Look to the future: Negotiations can reset pricing, allocation, or future supply terms.

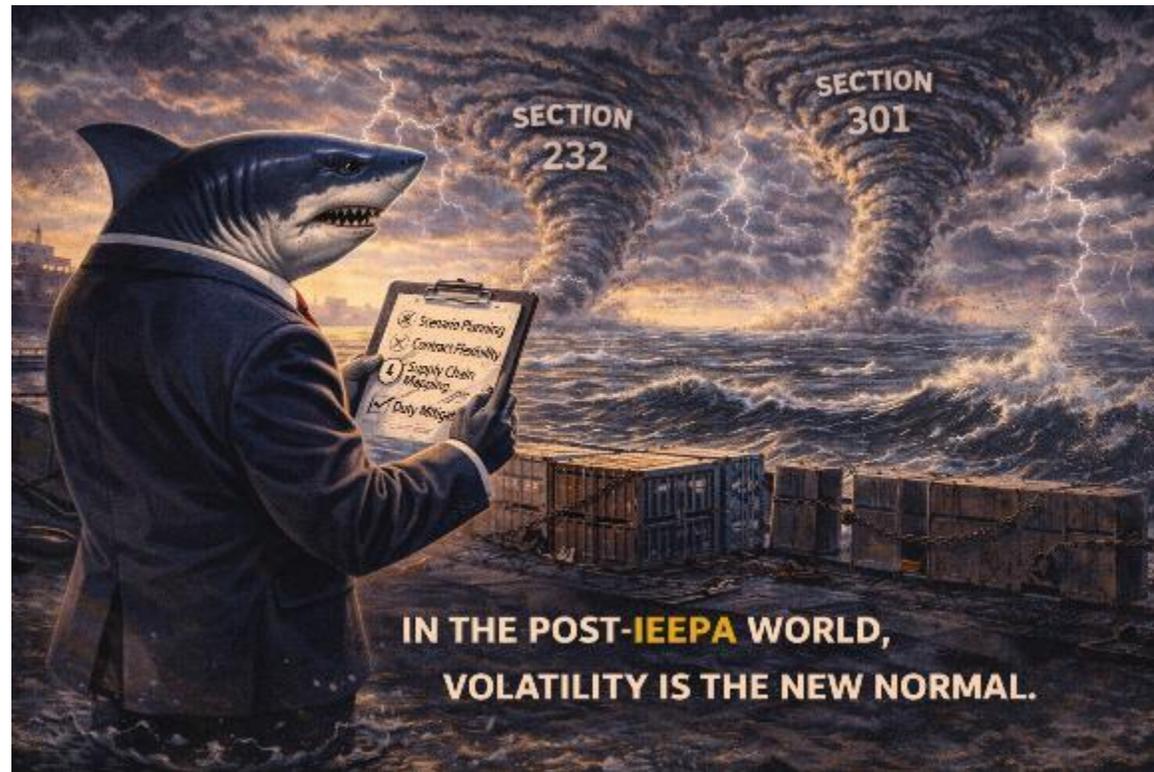


# Dealing with Tariff Jockeying in the Post-IEEPA World

- Issues for Companies that Indirectly Paid Tariffs
  - Analyze the allocation language first: Did the contract require or allow tariffs to be passed through? Was there a sharing mechanism?
  - Demonstrate economic incidence: Show that IEEPA tariffs were separately charged, itemized, or embedded in pricing.
  - Look at the history of the price increase: were there communications linking price increases to new tariffs?
  - Link refunds to pricing mechanics: If tariffs increased the price, their invalidation should reduce it. Best case is for tariff surcharges or communicated reason for price increases was tariffs; then timing arguments; then general price increases.
  - Prepare equitable arguments: Unjust enrichment and good-faith allocation theories may support negotiation leverage.
  - Use commercial leverage wisely.
  - Tie refund discussions to ongoing supply, renewals, or future pricing structures.

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# Preparing for Future Tariff Volatility and Changes in the Post-IEEPA World

- Tariff Volatility is the New Normal, Especially as We Navigate To New Section 232 and 301 Tariffs
- Section 122 is Subject to Attack so Refunds May Arise Again
- Strengthening Future Supply Chain Contracts to Address Tariffs
  - Explicitly specify which party is the importer of record
  - Explicitly allocate tariff costs
  - Mandate tariff-triggered price renegotiations
  - Include price adjustment provisions
  - Require the supplier to use commercially reasonable efforts to seek any tariff refunds and to pass those refunds through



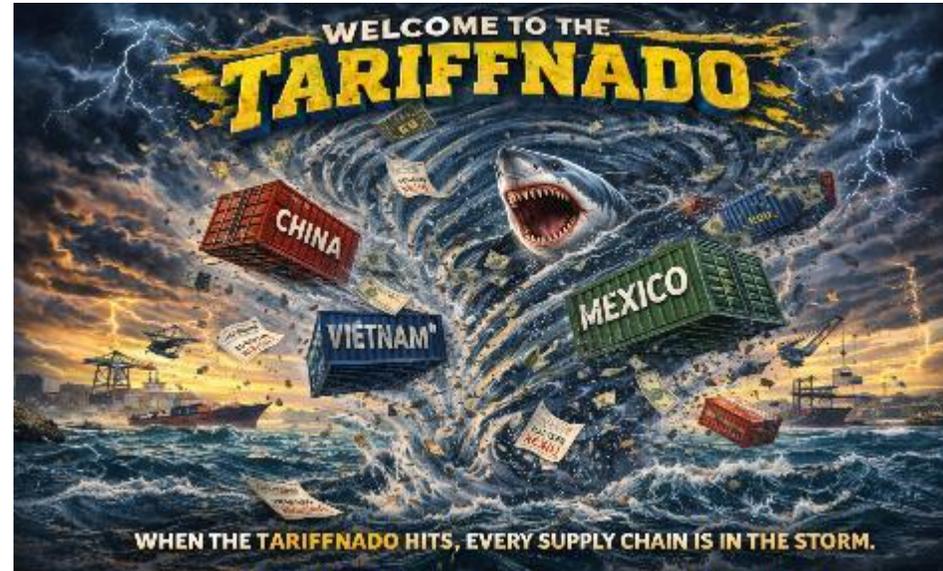
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# Dealing with Supply Chain Issues in the Post-IEEPA World

- Enhanced Supply Chain Flexibility and Secondary Suppliers Is Imperative in the New World of Post-IEEPA Tariff Volatility
- Do not lose sight of supply chain integrity risks when expanding or changing supply chains
  - Issue for both existing, and especially new, suppliers.
  - 1000x increase in detentions relating to supply chain integrity, especially UFLPA.
- Vetting of new and secondary suppliers needs to take supply chain integrity concerns into account.
- Supply chain mapping, sub-supplier identification, flow-down conditions, focus on Chinese parts and components/UFLPA – all are related issues that can't be ignored while focusing on tariffs.



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# Customs & Customs Compliance

- Data Mining in a High-Tariff World
  - CBP is getting better at finding patterns
  - Advanced ACE analytics and anomaly detection
  - Cross-entry comparison of classification and valuation trends
  - Related-party pricing flagging
  - Country-of-origin and transshipment pattern analysis
  - Cross-referencing trade data across ports and importers; CBP no longer looks at single entries — it looks at portfolios.
- Why the Risk Is Greater Now
  - Higher duty rates = larger potential revenue loss and penalties scale with lost duties
  - Focus on transshipment, valuation, and Section 232 valuation



# Customs Compliance Best Practices

- Strengthen the Foundation
  - Maintain a written Customs Compliance Manual
  - Implement a current and well-supported Classification Index
  - Conduct documented “reasonable care” analyses for key HTS codes, country of origin, and other grey areas
- Controls in High-Risk Areas
  - Accurately identify and track assists and royalties
  - Monitor related-party transfer pricing adjustments
  - Align transfer pricing studies with customs valuation positions
  - Reconcile broker filings against internal ERP data
  - Periodically audit entries post-liquidation



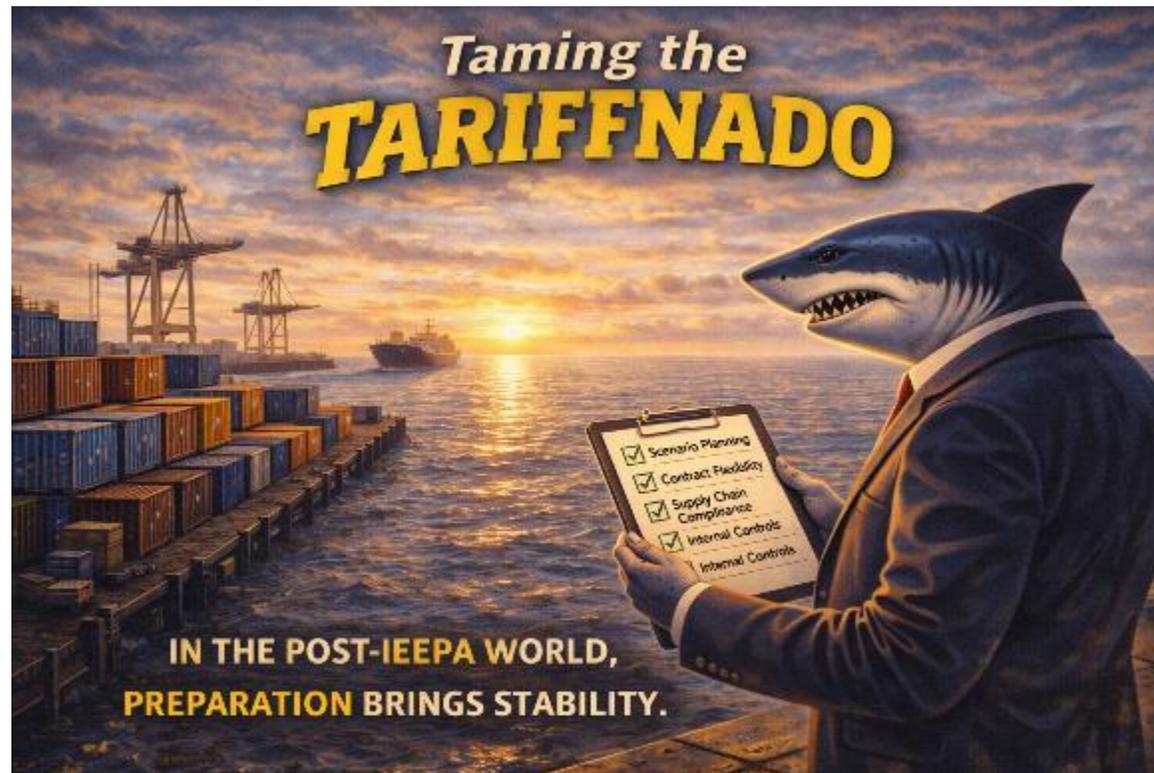
# Customs Compliance Best Practices

- Stay Ahead of the Curve
  - Monitor CSMS messages and regulatory updates
  - Track Section 232 / 301 modifications and scope changes
  - Conduct mock audits or focused internal reviews
  - Train procurement, finance, and logistics teams regularly



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## Concluding Thoughts for Coping with the Tariffnado

- Companies with a thought-out tariff strategy will have a competitive advantage in many aspects of their businesses
- We are only in the first inning of the tariff refund battle, and you need to consider how to protect your refund interests
- Consider all options for preparing for the new tariff environment – lobbying, supply chain flexibility, new contractual arrangements
- Be prepared for tariff jockeying
- In a high-tariff, high penalty, high enforcement world, Customs compliance is more important than ever

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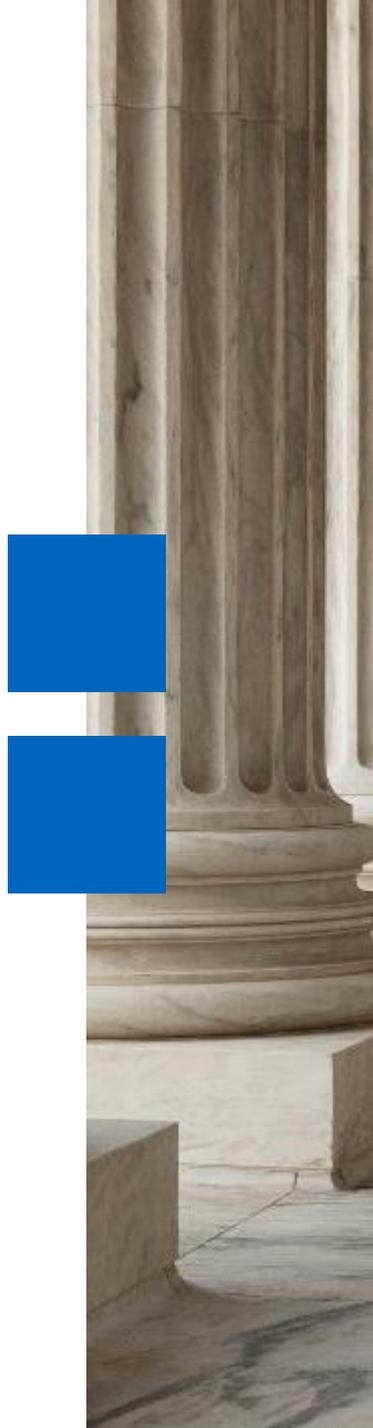
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