



# Strategic Planning to Help Mitigate Tariff Impacts

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# Speaker Biographies



**Michael Cornett**

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Michael Cornett is a managing director in Forvis Mazars Washington National Tax Office (WNTO). Mike has more than 40 years of experience in federal taxation, including 37 years in international taxation. During this time, Mike has worked with several major law firms, the National Offices of two international accounting firms, and was a Special Counsel to the Associate Chief Counsel (International), where he advised on a variety of topics.

Mike has been a speaker on various tax issues and has spoken for organizations such as TEI, IFA, ABA, AICPA, and St. Louis International Tax Group. He has published several articles for national tax journals.

Mike is a member of the American Institute of CPAs and American Bar Association. is a graduate of University of Notre Dame, Indiana, with a B.S. degree in accounting; a graduate of The University of North Carolina at Chapel Hill, with a J.D. degree; and a graduate of Georgetown Law, Washington, D.C., with an LL.M. degree.



**Steven F. Hill**

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Steven Hill is a partner in the K&L Gates International Trade Group. He has more than 25 years of experience in a broad array of international trade regulation compliance and enforcement matters, particularly export controls, including the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR), sanctions laws enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), customs and other importation laws including tariffs imposed under Sections 232 and 301, anti-boycott laws, and anti-corruption laws such as the Foreign Corrupt Practices Act (FCPA). Steven regularly advises multinational businesses in every context in which compliance with international trade laws may arise. Steven also assists clients in conducting internal risk assessments and development and implementation of compliance programs and has conducted targeted training on international trade laws for clients located in a number of countries. As part of his experience, Steven regularly assists clients in conducting international trade-related diligence on mergers and acquisitions, joint venture partners, and other business partners and intermediaries.



**Jeffrey Orenstein**

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Jeffrey Orenstein is a partner in the Washington D.C.-based International Trade Group of K&L Gates. His practice focuses on international trade and transportation. He is a trusted advisor in the areas of U.S. customs regulations, foreign trade agreements, economic sanctions, export controls, national security reviews, and transportation regulations.

Jeffrey provides strategic counsel that is tailored to the specific needs of his clients and the unique challenges of their industry. Going beyond compliance, he seeks creative ways to turn regulatory requirements to his clients' advantage. Ranging from multinational corporations to startups, the clients Jeffrey advises operate in such sectors as shipping and maritime, energy, manufacturing, technology, financial services, fine arts, consumer products, defense, aerospace, and life sciences.

# Speaker Biographies (Cont'd)

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Jon is a principal at Forvis Mazars and leads the U.S. transfer pricing (TP) practice. He spent 16 years at a Big Four firm in London, New York, and Charlotte. Jon's TP experience has covered a range of compliance, advisory, controversy, and other matters for clients in all industries with varying global footprints. As the lead advisor for many large multinational clients, Jon has extensive experience with TP audits, controversy enquiries, APAs, restructuring, operational engagements, and much more.

Jon has passed all three levels of the CFA® qualification and has completed the Enrolled Agent program. He has represented many clients before the IRS. Jon is a graduate of The London School of Economics and Political Science (LSE) with a B.Sc. degree in economics and economic history.

# Agenda

1. Overview of Tariffs
  - Tariff Fundamentals
2. Tariffs Currently in Effect
  - Tariffs for Chinese-Origin Goods
  - Tariffs for Canada & Mexico
  - Tariffs for All Other Countries
  - Country-Specific Reciprocal Tariff Rates
3. Tariff Cost Assessment
  - Country of Origin & Classification
  - Valuation – “Transaction Value” Method
  - Valuation – First Sale Rule
  - Valuation - Services
4. Transfer Pricing
  - What Is Transfer Pricing?
  - Transfer Pricing & Customs
  - Transfer Pricing Compliance
5. Tariff Mitigation
  - Mitigation of Tariff Costs
  - CPAs & Lawyers Working Together





# Overview of Tariffs



# Tariff Fundamentals

## What is a tariff?

- A tariff is a tax imposed by a government on imported goods (usually based on the landed cost of the goods determined based on arms-length pricing or other acceptable methodology).
- Traditionally, tariffs are intended to regulate trade, protect domestic industries, and generate revenue.
- Tariffs also can be used as a political tool to influence international trade policies and negotiations and have been increasingly used in the U.S. for national security purposes, e.g., fentanyl and immigration.

## What are key elements to determine a tariff?

- Classification
- Country of Origin
- Valuation

***Each of these elements presents significant risk for customs compliance, but also opportunity to minimize or even avoid duty liability (especially origin and valuation determinations with respect to reciprocal and other recent tariff enactments).***

# Tariff Fundamentals

## Types of Tariff Duties

- General Rate of Duty (“MFN”) Duties
- Section 301 Tariffs
- Section 232 Tariffs
- IEEPA Emergency-Based Tariffs
  - Reciprocal Tariffs
  - Border Security-Related Tariffs
  - Fentanyl-Related Tariffs
  - “Secondary Tariffs”
- Remedial Duties
  - Antidumping Duties
  - Countervailing Duties

# Tariff Fundamentals

## “Secondary” Tariffs

- New trade policy introduced in second Trump administration resembling “secondary” sanctions.
- Unlike “primary” tariffs that directly target a specific country, secondary tariffs will penalize a third country or entities that trade with a targeted nation.
- **Venezuelan Oil:** Executive Order 14245 (March 24, 2025) threatening secondary tariffs of 25% on all goods imported into the U.S. from any country that imports Venezuelan oil, whether directly from Venezuela or indirectly through third parties, on or after April 2, 2025.
- **Russian & Iranian Oil:** President Trump also threatening secondary tariffs on countries buying Russian oil (unless Russia agrees to a peace treaty with Ukraine) and on countries trading with Iran.
  - **India:** Due to its significant trade in Russian oil, Indian-origin goods are now subject to a new 25% tariff that is in addition to the 25% reciprocal tariff. This tariff does not apply to goods: (1) subject to Section 232 tariffs; or (2) products listed in Annex II of the April 2 executive order.



# Tariffs Currently in Effect



# Tariffs for Chinese-Origin Goods

COUNTRY	TARIFF TYPE	GOODS	DUTY RATES	EXCEPTIONS
China	General Rate of Duty (GRD)	All Goods	See % in HTSUS	None, Although GRD for Many HTSUS Codes Is 0%
	Fentanyl Tariff	All Goods	20%	Donations; Info Materials; Certain FTZ Entries Under Ch. 98
	Sec. 301 Tariff	Goods With HTS Codes on Lists 1-4a	25% (Lists 1-3) 7.5% (List 4a)	Limited Product Exclusions Extended Until 8/31/25
	Reciprocal Tariff	All (Except Annex II)	10%  (On Non-U.S. Content Only If U.S. Content Is >20%)	Goods Listed in Annex II (as Amended); Goods Subject to Sec. 232 Tariffs
	Sec. 232 Tariff	Steel, Aluminum, Automobiles, Auto Parts, and Listed Derivatives Goods	50% (Steel, Alum, Derivatives) 25% (Auto, Auto Parts)	Limited Product Exclusions Still in Effect

# Tariffs for Canada & Mexico

COUNTRY	TARIFF TYPE	GOODS	DUTY RATES	EXCEPTIONS
Canada	USMCA Qualifying Goods	All Goods	0%	N/A
	Non-USMCA Qualifying Goods	All Goods	GRD + 35% GRD + 10% (Listed Energy, Potash, Minerals) GRD + 50% (Autos)	Products Subject to Sec. 232 Duties
	Sec. 232 Tariff (Listed Steel, Alum, Autos, Listed Derivatives)	Steel, Aluminum, Listed Derivative Products, Autos, Auto Parts, and Copper	50% (Steel, Alum, Derivatives) 25% (Auto, Auto Parts) 50%/15% (Copper)	A Few Product Exclusions in Effect; Auto Offsets; Derivatives Cast/Smelt in U.S.
Mexico	USMCA Qualifying Goods	All Goods	0%	N/A
	Non-USMCA Qualifying Goods	All Goods	GRD + 30% 10% (Potash) GRD + 50% (Autos)	Products Subject to Sec. 232 Duties
	Sec. 232 Tariff (Listed Steel, Alum, Autos, Listed Derivatives)	Steel, Aluminum, Listed Derivative Products, Autos, Auto Parts, and Copper	50% (Steel, Alum, Derivatives) 25% (Auto, Auto Parts) 50%/15% (Copper)	A Few Product Exclusions in Effect; Auto Offsets; Derivatives Cast/Smelt in U.S.



# Tariffs for All Other Countries

COUNTRY	TARIFF TYPE	GOODS	KEY DATES	EXCEPTIONS
All Other Countries	General Rate of Duty (GRD) (All)	All Goods	See % in HTSUS	None, Although GRD for Many HTSUS Codes Is 0%
	Sec. 232 Tariff (Listed Steel, Alum, Autos, Listed Derivatives)	Steel, Aluminum, Listed Derivative Goods, Autos, Auto Parts, and Copper	50% (Steel, Alum, Derivatives) 25% (Automobiles, Auto Parts) 50%/15% (Copper)	Certain Product Exclusions Are in Effect
	Reciprocal Tariff (All)	All Goods	Country-Specific Rates (Next Slide)  10% If No Country-Specific Rate  Applies to Non-U.S. Content Only, <u>Provided</u> U.S. Content Is >20%	Goods Listed in Annex II (as Amended)  Goods Subject to Sec. 232 Tariffs

# Country-Specific Reciprocal Tariff Rates

Country-Specific Reciprocal Rates			
Afghanistan	15%	Madagascar	15%
Algeria	30%	Malawi	18%
Angola	15%	Malaysia	19%
Bangladesh	20%	Mauritius	15%
Bosnia & Herz.	30%	Moldova	15%
Botswana	15%	Mozambique	15%
Brazil	10% + 40%	Myanmar (Burma)	40%
Brunei	25%	Namibia	15%
Cambodia	19%	Nauru	15%
Cameroon	15%	New Zealand	18%
Chad	15%	Nicaragua	15%
Côte d'Ivoire	15%	Nigeria	15%
Dem. Rep. Congo	15%	North Macedonia	15%
Ecuador	15%	Norway	15%
Equatorial Guinea	15%	Pakistan	19%
European Union	15%	Philippines	19%
Falkland Islands	10%	Serbia	35%
Fiji	15%	South Africa	30%
Guyana	15%	South Korea	15%
India	25% + 25%	Sri Lanka	20%
Indonesia	19%	Switzerland	39%
Iraq	35%	Syria	41%
Israel	15%	Taiwan	20%
Japan	15%	Thailand	19%
Jordan	15%	Tunisia	25%
Kazakhstan	25%	United Kingdom	10% (most goods)
Laos	40%	Vanuatu	15%
Lesotho	15%	Venezuela	15%
Libya	30%	Vietnam	20%
Liechtenstein	15%	Zambia	15%
		Zimbabwe	15%

# Tariff Cost Assessment





# Tariff Cost Assessment

To assess tariff costs, one must do the following:

- Confirm country of origin
- Confirm HTSUS classification
- Identify applicable tariffs
- Identify exceptions, if any
- Determine which tariffs “stack” together
- Calculate total duty rate
- Ensure value declared is lowest permitted

# Country of Origin & Classification

- **Country of Origin (“COO”)**: Confirm COO under correct standard.
  - If material and labor come from multiple countries, COO may require close analysis.
  - The “substantial transformation” standard is used for most purposes, but sometimes “rules of origin” under foreign trade agreements apply, *e.g.*, USMCA.
  - Don’t confuse COO with country of export or transshipment.
  - Don’t rely on supplier’s COO representation without addressing potential “red flags.”
  - A CBP ruling may be necessary if COO is unclear.
- **Classification**: Confirm correct HTSUS classification of imported merchandise.
  - HTSUS = 10-digit subheading (“code”) in Harmonized Tariff Schedule of the United States.
  - May need to correlate to foreign versions of the HTS.
  - HTSUS code determines Sec. 232 tariffs, Sec. 301 tariffs, and exceptions to reciprocal tariffs.
  - A CBP ruling may be necessary if COO is unclear.

# Valuation – “Transaction Value” Method

Ensure accurate customs valuation, which impacts duty amounts.

- **“Transaction value”** is the preferred method of valuation. It is the price actually paid/payable when goods are sold for export to the U.S. the Transaction value must include:
  - A. The packing costs incurred by the buyer.
  - B. Any selling commission incurred by the buyer.
  - C. Value, apportioned as appropriate, of any assist (an assist is something of value the buyer gives to the seller to produce the item).
  - D. Any royalty or license fee the buyer is required to pay, directly or indirectly, as a condition of sale.
  - E. Proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues, directly or indirectly, to the seller.

Items A through E are added only if: (1) not already included in the price; and (2) based on information accurately establishing the amount.

Note: “Transaction value” does not include: international freight, insurance, and other CIF charges that the buyer makes to the seller.



# Valuation – First Sale Rule

- Normally, price declared is the price paid by the U.S. importer.
- However, in multitier transactions, the “first sale rule” allows importers to declare an upstream sale price, such as the price paid by a middleman to a foreign manufacturer of an item.
- This “first sale” price paid by a middleman is typically lower, thus lowering the dutiable amount.

CBP applies a three-part test to determine if a sale transaction qualifies for the first sale rule:

1. The first sale must clearly be a sale for export to the United States.
  - Documentation or circumstances must show the goods were ordered for export to the U.S. and destined to the U.S. when shipped (not subject to diversion to another market).
2. The foreign manufacturer and the middleman must be dealing in an arm’s length transaction.
  - If this first sale is a related party transaction, CBP may scrutinize the transaction to ensure the price is not artificially low or unduly influenced by the relationship.
3. First sale price is not affected by other non-market influences.

# Valuation – Services

Sometimes the price paid to foreign suppliers includes the cost of services, such as engineering, R&D, design, installation, warranties, licensing, etc. Can these costs be separated from the transaction value declared to CBP, thereby lowering the declared value and duties owed? Sometimes.

- **Post-importation services** (installation, construction, assembly, maintenance, and technical assistance) generally can be excluded.
  - They should be separately invoiced and agreed to in a separate contract or purchase order.
- **Pre-importation services:**
  - Services like R&D, engineering, and design may be part of the transaction value if they relate directly to developing and producing the imported goods. But CBP is more likely to permit such costs to be separate from the transaction value if they relate generally to a larger project, *e.g.*, an industrial facility housing imported items or new technology developed for broader applications than just the imported goods.
  - Inspection, testing, and packing services that related to imported goods are generally considered part of the transaction value.
- **Invoicing:** Any services that are invoiced with imported merchandise or are otherwise payable on a per item or per shipment basis, likely will be considered part of the transaction value, even when such services could have been excluded if treated separately.

# Transfer Pricing



# What Is Transfer Pricing?

Transfer pricing refers to the prices paid for goods, services, financing, or rights transferred between related entities. It is a tax concept but can be applied in other contexts.



All else equal, taxpayers are incentivized to shift profits to jurisdictions with lower tax rates through intercompany transfer pricing.



Countries have established laws/regulations to prevent the artificial shifting of profits. Countries have coordinated globally (OECD) to establish uniform rules and guidance.



Taxpayers with global operations do not want to pay taxes on the same income in two countries (double taxation). Arm's length transfer pricing helps avoid this outcome.



Many countries have signed tax treaties to provide a mechanism to help avoid “double taxation.” Taxpayers are required to document the “arm’s length” nature of transactions.



# What Is Transfer Pricing?

## How is the appropriate price determined?

- Pricing of transactions between related parties should reflect the pricing in comparable transactions between unrelated parties dealing with one another at arm's length.
- In 26 CFR § 1.482-1(b) **Arm's length standard** – (1) *In general*:

In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer. A controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances (arm's length result).
- Similarly, Article 9 of the *OECD Model Tax Convention*, and Chapter 1 of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* also set out the **arm's length principle** as the standard for pricing transactions between related parties. These form the basis for most transfer pricing rules worldwide.
- U.S. transfer pricing regulations and the OECD Guidelines provide specified and unspecified methods that must be considered, selected, and applied by taxpayers to determine arm's length transfer pricing.

# Transfer Pricing & Customs Methods

## ▪ Customs Methods:

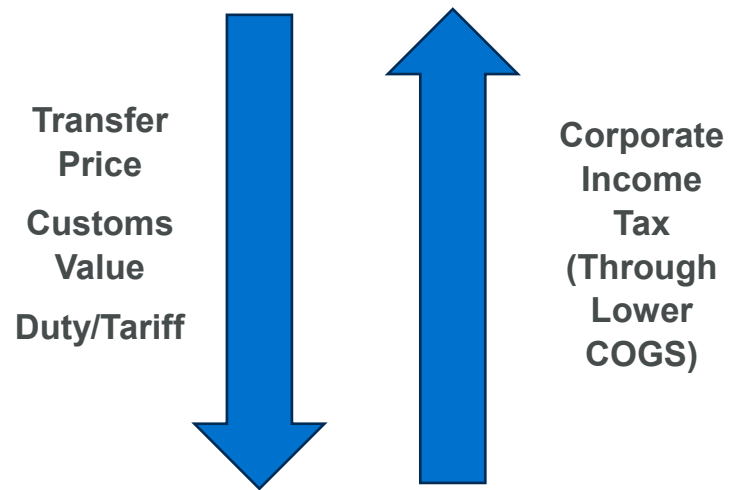
- Transaction value of imported goods
- Transaction value of identical goods
- Transaction value of similar goods
- Computed value (sum of production costs, materials, fabrication, packing costs, profit, and general expenses)
- Deductive value method
- Transaction value, as defined by the U.S. Customs and Border Protection (CBP), is “the price actually paid or payable” for the good when sold for export. Thus, once the transaction value is determined, the tariff is imposed as a percentage on the good’s transaction value, which is then incorporated into the good’s cost of goods sold.
- Most import transactions globally are valued under the transaction value method (90%+).
- But to use this method, customs rules require the formula for valuing goods to be fixed at the time of importation. When the value changes due to post-importation adjustments, customs authorities may question whether the goods qualify for the transaction value method.

## ▪ U.S. Transfer Pricing Methods:

- Comparable uncontrolled price;
- Cost-plus method;
- Resale price method;
- Comparable profits method (CPM); and
- Profit split method.
- Companies apply a transfer pricing method based on the facts and circumstances of their intercompany transaction(s). Ultimately, the best method needs to be applied and the rejection reasons for the other methods need to be clearly stated.
- In the context of tariff uncertainty, companies should evaluate whether the current method remains the best transfer pricing method.
- Unlike the U.S. Customs and Border Patrol, the IRS does not have a hierarchy of methods and expects the best method to be chosen based on the facts, circumstances, and available information related to the intercompany transaction(s).

# Transfer Pricing & Customs (Cont'd)

## Interplay



- IRC § 1059A states that customs valuations need to align with the income tax value, *i.e.*, the transfer price, and there is clear interplay between the two standards.
- Despite their differences, they both aim to ensure that related parties are interacting in a way which is deemed consistent with how unrelated parties would act in the open market. This is referred to as the *arm's length principle*.
- This concept is codified in IRC §1059A that states transfer pricing values and customs values should align. IRC § 1059A states:
  - In general, if any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of § 482), the amount of any costs-
    - Which are taken into account in computing the basis or inventory cost of such property by the purchase, and
    - Which are also taken into account in computing the customs value of such property,
  - Shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.
- Pursuant to IRC § 1059A, tax authorities may be more likely to question the arm's length nature of an MNE's related party transaction(s) if there is evidence that may indicate the goods were priced differently for customs purposes.

# Transfer Pricing Compliance

## Demonstrating Compliance

### Documentation

- Establish pricing for intercompany transactions consistent with the arm's length standard.
- Memorialize transfer prices in intercompany agreements executed between related entities.
- Prepare annual documentation of arm's length transfer pricing, consistent with the company's established transfer pricing policies, practices, and intercompany agreements.
- In the U.S., companies are best protected from transfer pricing penalties under 26 CFR §1.6662-6 by relying on the advice of a professional tax advisor as laid out in 26 CFR §1.6664-4.
- This reliance is best demonstrated by professionally prepared documentation that satisfies the documentation requirements of 26 CFR §1.6662-6(d)(2)(iii)(B).

### Ancillary Benefits

- Reveal financial, operational, and tax inefficiencies.
- Reflect where value is added in the supply chain and identify opportunities for improvement.
- Improve management incentives and allocations across a worldwide group.
- Optimize cash management and treasury functions.
- Identify other financial and tax risks and anticipate potential questions from a tax authority.



# Tariff Mitigation



# Mitigation of Tariff Costs

- **Tariff Engineering:**

- Import components or subassemblies that have HTSUS codes with lower rates, then assemble/finish in USA.
- Substantially transform in country with lower rate to change COO.

- **Shifting/Sharing Tariff Costs:**

- Renegotiate with suppliers
- Change of law provisions in supply contracts
- Share burden by lowering prices temporarily
- DDP compliance risks
- Transfer pricing

- **Timing Customs Entries:**

- Stockpile or delay shipments based on anticipated duty changes
- Use Customs Bonded Warehouse or Foreign Trade Zone (FTZ) to delay duty payment
- Temporary Imports (duty drawback, TIB program)

- **Classification**

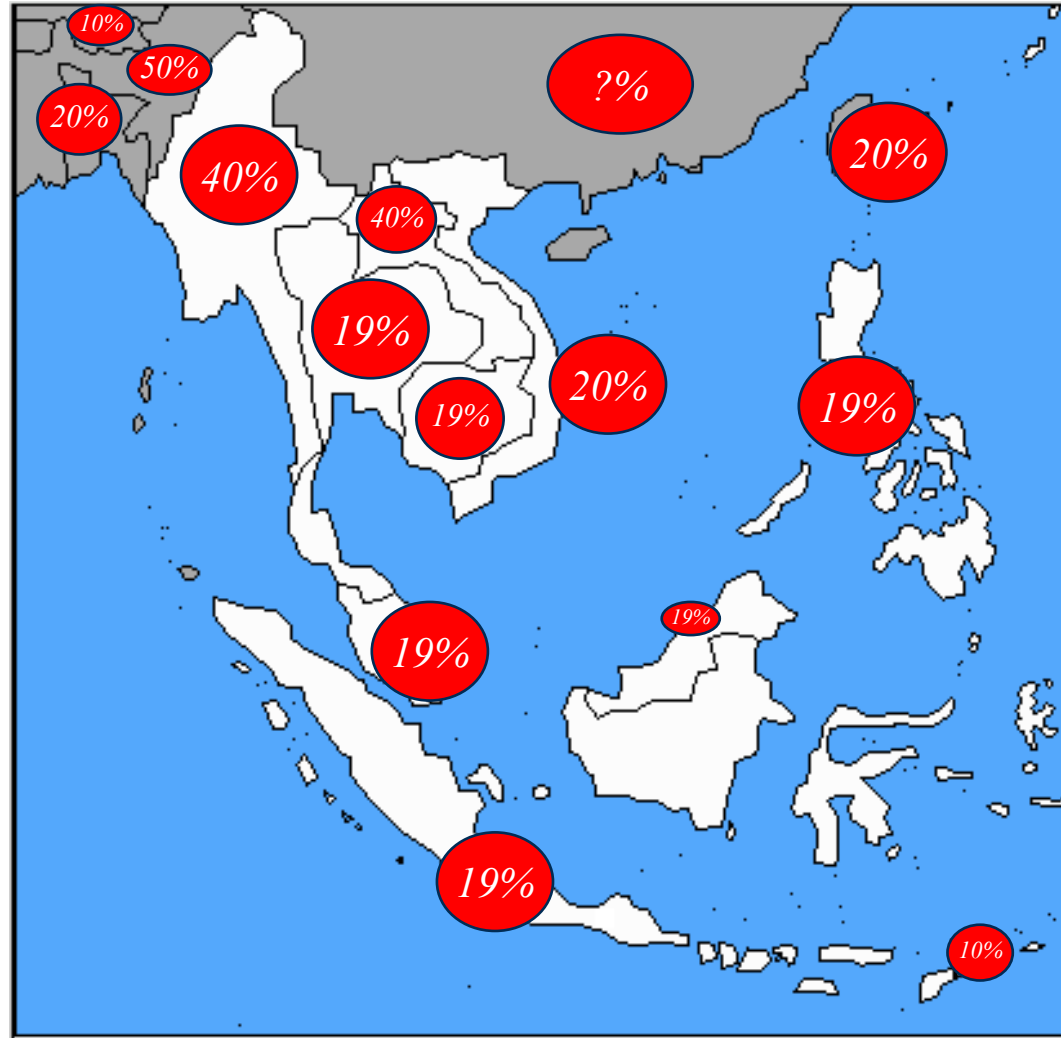
- Goods classification
- Unbundling goods' component inputs

- **Country of Origin**

- Supply chain strategies
- Supply diversification

# Mitigation of Tariff Costs (Cont'd)

- Relocate Production
- Change Suppliers



# Mitigation of Tariff Costs (Cont'd)

Transfer pricing allows for unique opportunities to alter the tariff burden.

- Changing the transfer price, but staying within the arm's length range
  - The flexibility of the arm's length range allows companies to move within the range, including moving the transfer price to the upper or lower quartile.
  - Allows companies to potentially change the customs valuation.
- Evaluation of transfer pricing methodology
  - Ensuring that the method chosen is the best method.
  - Re-evaluating the availability of internal or external comparable data may allow a change in the method.
  - Changing the business model/supply chain/contractual terms to allow for the selection of an alternative method/benchmarking approach.
- Unbundling of product input costs
  - Tariff rates can vary depending on the HTSUS classification.
  - Unbundle product's input components and then review the transfer pricing related to the components vs. the finished goods.
- Bifurcation of goods and services for the customs valuation
  - Services and royalties are not subject to tariffs.
  - A product's customs valuation may contain service fees or royalties.
  - Identifying and removing these added costs can change the customs valuation.



# CPAs & Lawyers Working Together

Law firms and transfer pricing specialists work together to find appropriate tariff mitigation opportunities.

- Important for companies seeking to mitigate tariffs to seek representation from legal and transfer pricing professionals.
- Service team performs fact-finding calls/meetings to identify functions, assets, and risk related to the intercompany transaction(s).
- Based on that information, legal team provides opportunities related to customs valuation methods, HTSUS classification, country of origin, etc.
- Transfer pricing team provides advice related to unbundling or bifurcation of costs to change the customs valuation and/or transfer pricing method selection/application.

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