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CLIENT ALERT

Sweeping Tariffs Targeting Forced Labor Practices and New Tariffs on Canadian Goods Seek to Expand the President's Tariff Authority . . . Again

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Four days apart—on July 20 and July 24—President Trump proclaimed two new sweeping sets of tariffs ostensibly in response to Canadian discrimination against U.S. goods (the "**Trade Discrimination Tariffs**") and failures to address forced labor in more than 80 countries (the "**Forced Labor Tariffs**"). Both sets of new tariffs seek to expand Presidential tariff authority in different ways: the Trade Discrimination Tariffs rely on an old and untested authority, and the Forced Labor Tariffs deploy accepted tariff authority in a novel way.

Importers and other stakeholders should immediately consider the potential impact of each measure. The Forced Labor Tariffs took effect just after midnight on Friday, July 24, and the Trade Discrimination Tariffs are set to go into effect within 30 days. However, parties should continue to watch this space closely. Both sets of new tariffs will almost certainly be challenged in court, though courts have demonstrated a willingness to keep tariffs in place during the Administration's appeals, as occurred with the International Emergency Economic Powers Act ("**IEEPA**") tariffs imposed in 2025.

Section 301 Tariffs Targeting Forced Labor Practices

On July 24, 2026, President Trump issued a Presidential Memorandum directing the U.S. Trade Representative ("**USTR**") to impose new tariffs on goods of more than 80 countries based on USTR's determination that those economies failed to impose and effectively enforce prohibitions on the importation of goods produced with forced labor.[1] The tariffs were imposed pursuant to Section 301 of the Trade Act of 1974[2] following an investigation initiated on March 12, 2026. On June 2, 2026, the USTR published a report detailing the findings of its investigation.[3] The President's July 24 Memorandum determined that the investigated acts, policies, and practices are unreasonable and burden or restrict U.S. commerce.[4] The Forced Labor Tariffs take effect just as the temporary Section 122 balance-of-payments tariffs expire and appear designed to preserve much of the prior tariff baseline on a more durable statutory footing.

The Forced Labor Tariffs are similar in scope and rate to those previously imposed by Section 122; the practical effect is that tariffs on many imports will remain the same as under the expiring Section 122 regime. USTR has imposed a 10 percent or 12.5 percent tariff on products of the investigated economies, subject to product exemptions on critical minerals and other key imports that were also previously exempt from the Section 122 tariffs.[5] The 10 percent rate applies to economies that impose a forced-labor import prohibition, have committed to impose and enforce such a prohibition through an Agreement on Reciprocal Trade, or maintain a partial regime that prevents importation of certain forced-labor goods. The 12.5 percent rate applies to all other investigated economies whose failure to impose forced-labor import prohibitions USTR found actionable.

There are, however, several important differences from the Section 122 tariffs. First, the Forced Labor Tariffs apply only to identified economies, rather than imports from all countries, though the identified economies collectively cover nearly all significant U.S. imports. Second, some economies are now subject to a 12.5 percent rate, creating a higher tariff burden than the prior 10 percent Section 122 tariff for affected goods. Third, for certain economies that had negotiated trade deals with the Administration (European Union, Taiwan, Japan, Korea, and Switzerland), the tariffs are applied on a net basis so they do not exceed the negotiated tariff level. And fourth, the Memorandum

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1 The White House, *Presidential Memorandum on Actions by the United States in the Investigations Under Section 301 of the Trade Act of 1974 of the Acts, Policies, and Practices of 60 Economies Related to the Failure of Each Economy to Impose and Enforce Certain Forced Labor Prohibition*s, White House (July 24, 2026), https://www.whitehouse.gov/presidential-actions/2026/07/actions-by-the-united-states-in-the-investigations-under-section-301-of-the-trade-act-of-1974-of-the-acts-policies-and-practices-of-60-economies-related-to-the-failure-of-each-economy-to-impose-and (last visited July 24, 2026) ("Forced Labor Memorandum, July 24, 2026"). Although the action is framed by USTR as covering "60 economies," the European Union is treated as a single economy. The practical country coverage is more than 80 countries.

2 *See* 19 U.S.C. § 2411.

3 Office of the U.S. Trade Representative, *Report in Section 301 Investigations: Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor 8* (June 2, 2026), https://ustr.gov/sites/default/files/files/Press/Releases/2026/USTR%20Report%20Sec%20301%20FL%20301%206-2-26%20FINAL%20for%20upload.pdf ("Section 301 Investigations Report").

4 *See* Forced Labor Memorandum, July 24, 2026.

5 Office of the U.S. Trade Representative, *Fact Sheet: USTR Section 301 Action in Response to the Failure of 60 Economies to Ban Imports Produced with Forced Labor*, USTR (July 2026), https://ustr.gov/about/policy-offices/press-office/fact-sheets/2026/july/fact-sheet-ustr-section-301-action-response-failure-60-economies-ban-imports-produced-forced-labor (last visited July 24, 2026).

contemplates tariff-rate quotas for textiles imported from key exporters (Bangladesh, Cambodia, Indonesia, and Malaysia), which will permit duty-free imports up to the quota level.

Process and Potential Challenges

Unlike the IEEPA tariffs and Section 122 balance-of-payments tariffs, Section 301 establishes a lengthy investigation and notice and comment period before responsive action.[6] USTR initiated the forced-labor investigations on March 12, 2026, requested consultations with the investigated governments, issued a report and proposed action on June 2, 2026, received public comments, and held five days of public hearings before finalizing the tariffs.[7]

The same day they were issued, the Forced Labor Tariffs were challenged in the Court of International Trade ("**CIT**") in two actions filed by small businesses affected by the tariffs.[8] Section 301 has never been used in such a broad way: investigations historically have targeted particular economies, sectors, or trade practices, while this action uses a common forced-labor rationale to impose baseline tariffs across nearly all U.S. imports.[9] Challengers have framed the Forced Labor Tariffs as an attempt to recreate the invalidated global tariff regime under a different statutory label.

Section 338 Tariffs Targeting Canadian Goods

Just four days prior to promulgating the Forced Labor Tariffs, on July 20, 2026, President Trump issued three Proclamations imposing 50 percent tariffs on a broad range of Canadian imports, framing the action as a response to discriminatory Canadian treatment of American goods under a novel legal theory.[10] The tariffs rely on Section 338 of the Tariff Act of 1930 which allows the President to levy tariffs on countries that discriminate against U.S. commerce in their trade policies.[11]

The Trade Discrimination Tariffs, which encompass Canadian goods from molasses to whalebone, natural honey to plastic tableware, will not take effect until August 19, 2026, 30 days after the Proclamations were issued.[12]

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6 19 U.S.C. § 2411.

7 Office of the U.S. Trade Representative, ***Section 301: Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor***, USTR, https://ustr.gov/trade-topics/enforcement/section-301-investigations/section-301-failure-impose-and-effectively-enforce-prohibition-importation-goods-produced-forced (last visited July 24, 2026). *See also* Section 301 Investigations Report. USTR also states that it held consultations with more than 45 governments and received testimony from more than 100 witnesses at the July hearings on proposed responsive action. Office of the U.S. Trade Representative, ***USTR Takes Action in Forced Labor Section 301 Investigations***, USTR (July 23, 2026), https://ustr.gov/about/policy-offices/press-office/press-releases/2026/july/ustr-takes-action-forced-labor-section-301-investigations.

8 ***Burlap and Barrel Inc. v. Greer***, 1:26-cv-03345 (CIT July 24, 2026); ***Learning Resources Inc. v. United States***, 1:26-cv-03346 (CIT July 24, 2026).

9 Office of the U.S. Trade Representative, ***Section 301 Investigations***, USTR, https://ustr.gov/issue-areas/enforcement/section-301-investigations (last visited July 24, 2026).

10 The White House, ***Fact Sheet: President Donald J. Trump Imposes Additional Tariffs on Canada***, White House (July 20, 2026), https://www.whitehouse.gov/fact-sheets/2026/07/fact-sheet-president-donald-j-trump-imposes-additional-tariffs-on-canada/ (last visited July 21, 2026).

11 19 U.S.C. § 1338.

12 The White House, ***Imposing Additional Duties To Offset Canadian Discrimination Against the Commerce of the United States With Respect to Alcoholic Beverag***es, White House (July 20, 2026), https://www.whitehouse.gov/presidential-actions/2026/07/imposing-additional-duties-

Though the Trade Discrimination Tariffs apply to over 500 different categories of goods, they will not apply to energy, potash, fish, or critical minerals, nor will they apply to goods that already fall under tariffs imposed pursuant to Section 232 of the Trade Expansion Act of 1962, such as steel. However, unlike the IEEPA tariffs struck down by the Supreme Court earlier this year, the Proclamations *do not* contain exemptions for goods compliant with the U.S.-Mexico-Canada Agreement ("**USMCA**"). Moreover, the Trade Discrimination Tariffs will "stack" with the Forced Labor Tariffs, meaning Canadian goods will be subject to tariffs under both authorities. This means that the effects of the Proclamations will be sharply felt should they take effect as planned, without the cushion of USMCA compliance.

Significance of the 30-Day Lead Time

Previous tariffs imposed by the Trump Administration, including, notably, the Forced Labor Tariffs, have taken effect promptly after their announcement. Unlike tariffs imposed by other authorities, Section 338 does not require any lead time before the tariffs take effect, meaning that the 30-day implementation period is an affirmative choice on the part of the Administration.[13] This delay takes place against the backdrop of USMCA negotiations. The United States and Mexico have conducted three rounds of bilateral talks since President Trump announced that he was declining to extend the USMCA on July 1, whereas no talks have taken place between the United States and Canada.[14] Following the announcement of new tariffs targeting Canada, Prime Minister Carney and President Trump agreed to "intensify" trade negotiations.[15]

Stakeholders should prepare immediately for imposition of the Trade Discrimination Tariffs. The 30-day period gives importers time to assess exposure under the announced tariffs, especially those who relied on USMCA exclusions under the IEEPA regime. While it is entirely possible that the 30-day period is a signal that these tariffs are a negotiation strategy, their potential sweep makes it imperative that U.S. businesses with Canadian supply chains treat them as policy.

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to-offset-canadian-discrimination-against-the-commerce-of-the-united-states-with-respect-to-alcoholic-beverages/ (last visited July 21, 2026) ("Alcohol Proclamation"); The White House, *Imposing Additional Duties To Offset Canadian Discrimination Against the Commerce of the United States With Respect to Motor Vehicle*s, White House (July 20, 2026), https://www.whitehouse.gov/presidential-actions/2026/07/imposing-additional-duties-to-offset-canadian-discrimination-against-the-commerce-of-the-united-states-with-respect-to-motor-vehicles/ (last visited July 21, 2026) ("Autos Proclamation"); The White House, *Imposing Additional Duties To Offset Canadian Discrimination Against the Commerce of the United States With Respect to Dair*y, White House (July 20, 2026), https://www.whitehouse.gov/presidential-actions/2026/07/imposing-additional-duties-to-offset-canadian-discrimination-against-the-commerce-of-the-united-states-with-respect-to-dairy/ (last visited July 21, 2026) ("Dairy Proclamation").

[13] *Contrast* 19 U.S.C. § 1862 *with* 19 U.S.C. § 1338.

[14] *Separate US talks with Canada, Mexico test North America's trilateral trade pact*, REUTERS (July 22, 2026), https://www.reuters.com/world/americas/separate-us-talks-with-canada-mexico-test-north-americas-trilateral-trade-pact-2026-07-22/. The decision not to extend the USMCA leaves the trade deal in force through 2036, but requires annual reviews. Declining to extend provides additional avenues, and potential leverage, for the U.S. to negotiate additional concessions from its North American partners.

[15] *Carney says he will intensify trade talks with Trump*, REUTERS (July 21, 2026), https://www.reuters.com/world/americas/carney-says-he-will-intensify-trade-talks-with-trump-most-premiers-pledge-keep-2026-07-21/.

Legal Authority Stemming from Smoot-Hawley

The Proclamations derive their legal authority from Section 338 of the Tariff Act of 1930, also known as the Smoot-Hawley Tariff Act,[16] which confers the ability to levy retaliatory tariffs up to 50 percent on countries that uniquely discriminate against U.S. commerce. The standard, set out in 19 U.S.C. § 1338(a), authorizes the imposition of tariffs if the President finds that a foreign country:

1. Imposes unreasonable charges, regulations, or other limitations on U.S.-origin goods that are not equally enforced on third-country goods; or

2. Discriminates against U.S. commerce through fees, charges, prohibitions, or other restrictions, placing U.S.-origin goods at a disadvantage compared to third-country goods.[17]

The Proclamations identify three instances of alleged Canadian discrimination against U.S.-origin goods, relating to motor vehicles, cheese, and alcoholic beverages.[18] While threatened or discussed during earlier periods, a Presidential Administration has never relied on Section 338 to impose tariffs.[19] Given this limited history, it is possible that the Court of International Trade (the "**CIT**," the likely venue for challenges) could determine that the President exceeded his authority through this imposition using similar reasoning as it applied to the similarly previously unused Section 122 tariffs.[20]

What This Means Going Forward

As noted above, importers should immediately review supply chains and identify contingencies under the assumption that a broad spectrum of Canadian goods will be subject to a 50% tariff in the next 30 days. In addition, stakeholders should prepare for a relatively drawn-out challenge period for both the Section 301 and Section 338 tariff impositions. During IEEPA litigation, courts left tariffs in place during the pendency of a challenge because parties would be able to seek refunds in the future.[21] Importers should expect a similar posture here. And, in the Section 122 litigation, while the CIT found the Administration's rationale wanting, the court declined to issue a broad injunction, applying its holding only to the litigants and leaving other importers to file their own cases.[22] Accordingly, companies should maintain records of all tariff payments to preserve the possibility of securing refunds if tariffs are struck down, or demonstrating standing should litigation become necessary.

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16 ". . . the Hawley-Smoot Tariff Act? Which, anyone? . . . Raised or lowered? . . . raised tariffs, in an effort to collect more revenue for the federal government." FERRIS BUELLER'S DAY OFF (Paramount Pictures 1986).

17 19 U.S.C. § 1338.

18 *See* Alcohol Proclamation, Autos Proclamation, and Dairy Proclamation.

19 Council on Foreign Relations, *How Trump's Tariffs Could Survive the Supreme Court Rul*ing, CFR (2026), https://www.cfr.org/articles/how-trumps-tariffs-could-survive-the-supreme-court-ruling (last visited July 22, 2026).

20 *Burlap and Barrel, Inc., et al. v. United States*, Ct. Int'l Trade (Slip Op. 26-47, May 7, 2026); *available at* https://www.cit.uscourts.gov/sites/cit/files/26-47.pdf. The CIT determined that the necessary statutory basis for the Section 122 tariffs—a "balance of payments deficit"—had not been met based on the methodology used by the Trump Administration. A skeptical court could use similar reasoning with respect to the "unreasonable charges, regulations, or other limitations" or "discriminat[ion]" alleged here.

21 *AGS Co. Auto. Sols. v. United States Customs*, 813 F. Supp. 3d 1298 (2025).

22 *Burlap and Barrel, Inc.*, *supra* n.20.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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