

# Tariffs as a Driver of Financial Distress and Value

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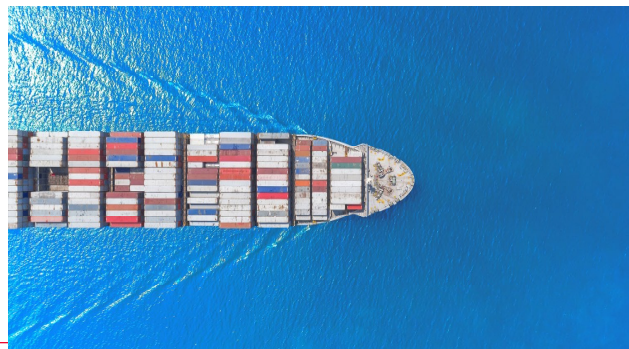
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## OVERVIEW OF TARIFFS



- A tariff is a tax on imported goods
- Tariffs are paid by the U.S. business or individual receiving the imported goods
- Impact of tariffs
  - Risks increased prices for consumers and businesses
  - Causes uncertainty and disrupts supply chains
  - Causes big problems for small businesses that don't have pricing power to pass tariffs on to their customers, or the financial resources to withstand them
  - Risks spurring retaliation against exported American products, harming U.S. companies and workers
  - Risks harm to economic growth



# LEGISLATION SUPPORTING TRUMP TARIFFS AND OTHER TARIFF AUTHORITY

- International Emergency Economic Powers Act (IEEPA) grants the President expanded authority to regulate interstate commerce in the event of an emergency
- Section 232 of Trade Expansion Act of 1962 allows the President to raise tariffs on certain goods for national security reasons
- Section 122 of Trade Act of 1974 authorizes the President to impose quotas and tariffs of up to 15% for up to 150 days against countries with “large and serious” balance of payments surpluses with U.S.
- Section 201 of 1974 Trade Act permits the President to impose tariffs and quotas on imports of products subject to “surge”
- Section 301 of 1974 Trade Act seeks to counteract unfair trade practices by foreign countries or firms



# TRUMP ADMINISTRATION TARIFFS IMPOSED IN 2025 AND 2026

- Relied on IEEPA to impose two types of tariffs
  - Reciprocal tariffs on nearly all countries’ imports and targeted duties on imports from Brazil, India, and Russia
  - Trafficking (Fentanyl and Migration) tariffs
    - 25% duty on Canadian/Mexican imports
    - 10% duty on Chinese imports
- Also relied on Section 232
  - 50% duties on imported steel, aluminum, and copper
  - 25% duties on derivative products containing significant steel, aluminum or copper content: e.g., auto parts, home appliances, motorcycles, and trailers
- Commerce Department initiated several investigations under Section 232 on whether specific imported goods threaten national security (semiconductors, robotics, wind turbines, industrial machinery, pharmaceuticals, polysilicon, medical equipment, critical minerals, commercial aircraft) that could lead to imposition of tariffs
- All subject to special rates and exemptions and negotiated trade deals



# TRUMP ADMINISTRATION TARIFFS IMPOSED 2025 AND 2026

- Chinese Imports
  - Average 50% tariff as of early 2026
- China Imposed Retaliatory Tariffs
  - 34% tariff on top of existing duties on U.S. imports
  - Additional retaliatory tariffs on certain U.S. imports
  - Export controls on key rare earth materials



# U.S. SUPREME COURT WEIGHS IN ON IEEPA TARIFFS

- Cases: *Learning Resources, Inc. v. Trump* and *Trump v. V.O.S. Selections*
- Salient issue: **Does IEEPA give the President authority to impose tariffs without explicit Congressional approval?**
- Decided: February 20, 2026
- Holding: IEEPA does not authorize the President to impose tariffs
- Vote: 6-3 decision
- Affirmed Circuit Court opinion, vacated Court of International Trade judgment, and remanded to Court of International Trade
- Majority opinion by Chief Justice Roberts joined in full by Justice Gorsuch and Barrett and in part by Justices Sotomayor, Kagan, and Jackson
- Dissent by Justices Thomas, Kavanaugh, and Alito



# SCOTUS MAJORITY OPINION: CONSTITUTIONAL FOUNDATION

- Article I, Section 8: Congress holds power to impose tariffs
- Tariffs are a form of taxation, reserved for Congress
- Trump Administration exceeded presidential authority under IEEPA by imposing sweeping unilateral tariffs of unlimited amount and duration



# SCOTUS MAJORITY OPINION: MAJOR QUESTIONS DOCTRINE

- Relied upon by Justices Roberts, Gorsuch, Barrett
- Not relied upon by Justices Sotomayor, Kagan, and Jackson
- Tariffs are a major economic power requiring explicit Congressional authorization
- IEEPA does not mention tariffs or duties
  - IEEPA lacks clear delegation of tariff authority to the President
- No historical precedent for IEEPA tariffs



# | SCOTUS MAJORITY OPINION

- Rejected Administration's argument that two words in IEEPA, 'Regulate' and 'Impartial' separated by 16 other words grant the President the independent right to unilaterally impose tariffs on imports from any country of any product at any rate for any amount of time
- *"Until now, no President has read IEEPA to confer such power"*
- Including tariffs would render parts of IEEPA unconstitutional
- Justices Kagan, Sotomayor, Jackson joined another part of the majority opinion holding the tariffs were not supported by IEEPA's text
  - Justice Jackson: Legislative history confirms IEEPA doesn't authorize tariffs

# | SCOTUS DISSENTING OPINIONS

- Justice Kavanaugh (joined by Justices Thomas and Alito)
  - IEEPA allows tariffs
  - Argued for deference to presidential authority in foreign affairs
- Warned of economic and legal uncertainty
- Justice Thomas filed separate dissent



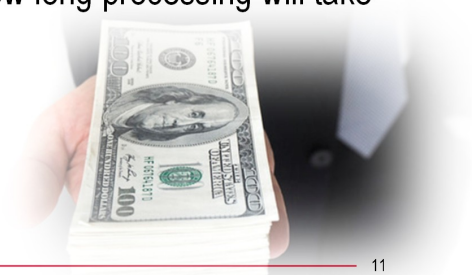
# | FOLLOW-UP: TARIFF ACTIONS

- IEEPA tariffs terminated by executive order following Supreme Court ruling
- 10% global tariff under Section 122 (Trade Act of 1974)-broadly applicable
  - Section 122 allows up to 15% tariffs for 150 days
  - 10% tariff expires on July 24, 2026 unless another provision is invoked
  - Prompted legal challenges
- “De minimis” tariff extension unaffected
- Trump Administration’s use of Sections 232 and 301 to replace lost tariff revenue
  - As a result of prior investigations under Section 232:
    - As of April 6, 2026, tariffs imposed on steel, aluminum, and copper overhauled to apply to full customs value of imported goods
    - New tariffs to be imposed on patented pharmaceuticals, pharmaceutical ingredients, and derivative products
  - Following SCOTUS ruling, U.S. Trade Representative initiated Section 301 investigations
    - One investigation targeted 16 U.S. trading partners, focusing on industrial excess capacity
    - Another investigation targeted 60 U.S. trading partners, collectively representing more than 99% of U.S. imports in 2024, focusing on imported goods produced with forced labor
    - These investigations may lead to country-specific tariffs across a vast range of economies and manufacturing sectors

# | REFUND AND TRADE DEAL IMPACTS

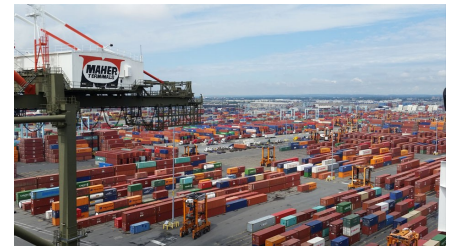
- Over \$166 billion in IEEPA tariffs collected
- Recent U.S. Supreme Court decision cleared the way for companies to seek refunds
  - Over 3,000 lawsuits to collect refunds plus interest currently pending
- Court of International Trade ordered U.S. government to facilitate the refund process for tariffs invalidated by SCOTUS
  - Subject to federal government’s filing of an appeal
- U.S. Customs and Border Protection announced launch of first phase of system to enable refunds through online portal
  - Not all tariff refund claims are immediately eligible
  - Scale of program has left many experts wondering how long processing will take
  - Process likely will be messy and slow
- Largest businesses stand to reap the biggest refunds
- Sales of tariff refund claims

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# IMPACT OF TARIFFS ON INFLATION

- After the recent U.S. Supreme Court decision, tariffs are roughly 10% on average and are at their highest rates since 1943
  - Approximately four-fold increase in US tariff rates
  - Has raised renewed inflation concerns
- When additional tariffs were first imposed in 2025, there was not a surge in prices
  - Many companies absorbed them
  - Imported inventory surge before 2025 tariffs took effect dampened the early impact of tariffs for others
- From late 2025 continuing into 2026, more companies have been passing their tariff costs onto their customers
  - Pre-tariff inventories ran low
  - Price increases likely, particularly in light of Iran war
- Accompanying heightened inflation risk from U.S.-Iran war



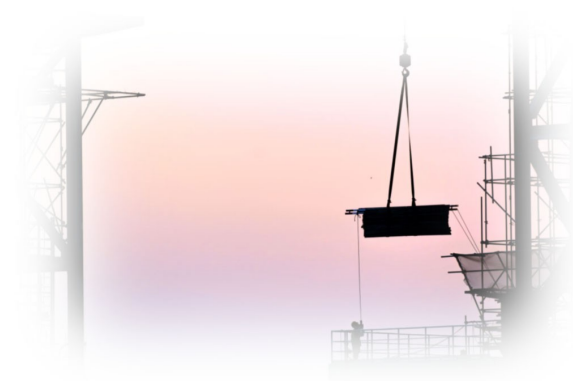
# UNIQUE CHALLENGES OF TARIFFS FOR FINANCIALLY DISTRESSED CUSTOMERS

- Thin margins and limited pricing power
- Reduced ability to absorb or pass on increased costs
- Liquidity constraints and working capital pressures
- Difficulty negotiating contracts and supply chains
- Adverse impact on loan covenants and access to credit
- Adverse impact of slowing economy resulting from tariffs
  - Per OECD, tariffs expected to hit slowing U.S. economy hard in 2026
  - U.S.-Iran war will likely make matters worse
- Increased insolvency and bankruptcy risk



# INDUSTRIES ADVERSELY AFFECTED BY TARIFFS

- Retail
  - Tariffs on consumer goods such as apparel, electronics, appliances, furniture, musical instruments
- Manufacturing
  - U.S. factory activity has contracted faster than expected as businesses continue to face a hit from higher tariffs according to survey of manufacturing firms
  - Heavy reliance on global supply chains and imported goods
  - Sectors most affected:
    - Steel
    - Aluminum
    - Automotive
    - Machinery
    - Electronics
    - Textile



# INDUSTRIES ADVERSELY AFFECTED BY TARIFFS (CONT'D)

- Construction and Real Estate (Including U.S. Housing Industry)
  - Tariffs on steel, aluminum, lumber, and other materials
  - Increased project costs and delayed completion
  - Geopolitical tensions, elevated interest rates, broad economic uncertainty, together with tariffs are all weighing on consumers
- Home Furnishings Industry
  - Tariff uncertainty, elevated interest rates, and sluggish housing market
- Healthcare and Pharmaceuticals
  - Tariffs on medical devices, patented drugs, equipment, and pharmaceutical ingredients
- Agriculture
  - Retaliatory tariffs from China and other trading partners
  - Risk of loss of export markets and price volatility
  - Further exacerbated by huge price increases resulting from Iran war
  - Increased farm bankruptcies and rural economic stress
- Domestic whiskey and bourbon industry

# INDUSTRIES ADVERSELY AFFECTED BY TARIFFS (CONT'D)

- Energy
  - Complicated by huge price increases resulting from Iran war
  - Tariffs on steel for pipelines and drilling equipment
  - Adverse impact on capital projects and service providers
- Trucking and Freight
  - Complicated by huge price increases resulting from Iran war
  - Struggling with excess capacity, low freight rates, thin margins, and reliance on short-term sales-tied financing
  - Tariffs derailing business plans
  - Trucking and freight bankruptcies spiking

# U.S SMALL BUSINESSES AT HEIGHTENED BANKRUPTCY RISK DUE TO TARIFFS

- Small companies have fewer resources to weather unexpected costs
- Small companies lack bargaining power of large companies to pressure suppliers to lower prices or absorb some or all of the tariffs, or to pass increased costs along to customers
- Small companies lack access to capital markets and lines of credit available to bigger firms
- Small companies cannot afford long-term contracts that can keep costs down and are required to buy on the more expensive spot market
- Restaurants and small retailers have been hit hard by tariffs
- Small businesses further hurt by elimination of “de minimis” tariff exemption which allowed goods worth less than \$800 to enter the U.S. duty free



# EXAMPLES OF BANKRUPTCY FILINGS CITING TARIFFS AS CONTRIBUTING FACTOR

Company	Industry	Court
At Home Group	Retail	Delaware
Marelli Holdings Group	Manufacturing	Delaware
IG Design Group Americas	Manufacturing	SD Texas
Del Monte Foods Inc.	Manufacturing	New Jersey
Wolfspeed	Manufacturing	SD Texas
Mosaic Industries LLC	Construction	Delaware
TPI Composites Inc.	Manufacturing (renewable energy)	SD Texas

# EXAMPLES OF BANKRUPTCY FILINGS CITING TARIFFS AS CONTRIBUTING FACTOR

Company	Industry	Court
Klöckner	Manufacturing	SD Texas
Hansen-Mueller	Agriculture	Nebraska
American Signature/ Valley City Furniture	Retail	Delaware
Claire's Stores	Retail	Delaware
Fat Brands	Retail	SD Texas
STG Logistics	Manufacturing	New Jersey
Saks	Retail	SD Texas
Eddie Bauer	Retail	New Jersey
QVC	Retail	SD Texas
Multi-Color	Packaging and Label Printing	New Jersey

# CONTRACT PROVISIONS MITIGATING TARIFF RISK

- Sellers and buyers should address risks of tariff-driven price fluctuations in their contracts
  - Provision addressing tariff risk allocates tariff risk between seller and buyer and reduces the risk of potential disputes
  - If contract fails to address tariff risk and related price or cost increases:
    - Seller may be forced to absorb the tariff, not include it in their price
    - Buyer may be forced to absorb the tariff, not shift the cost back to their supplier
    - Risk of counterparty conflict



# CONTRACT PROVISIONS MITIGATING TARIFF RISK (CONT'D)

- **Seller favorable provision**

*Seller shall be permitted to add the total amount of import duties, tariffs, custom fees, import taxes and all other related fees and charges to the purchase price invoiced to Buyer. Buyer agrees to pay Seller the full invoiced amount, including all import-related charges.*

- **Buyer favorable provision**

*Seller shall be responsible for Delivered Duty Paid, including all costs associated with the importation of the Products, including, but not limited to, customs duties, tariffs, import taxes, and any related fees or charges imposed by the importing country's authorities. The Purchase Price shall not include any governmental taxes, tariffs, duties or similar charges of any kind that may be applicable to the purchase or transportation of the Products. Seller shall pay all such taxes, tariffs, duties and charges levied (including, without limitation, sales, withholding, value-added and similar taxes) and customs duties paid or payable, however designated, levied, or based, in a timely manner. Buyer shall provide prompt notice to Seller of any assessment for which Seller may be liable hereunder and shall also provide to Seller the opportunity to defend or settle such assessment.*

- Absent specific contract language allocating tariff-related risks:
  - Risk of counterparty conflict
  - Parties seeking relief from such risk have had mixed success in the courts

# CONTRACT PROVISIONS AS PROTECTION FROM TARIFF RISK

- Force Majeure provision
  - Designed to excuse non-performance or delayed performance of contractual obligations for extraordinary, uncontrollable events that negatively impact a party's ability to perform
  - Allocates risk of occurrence of events outside parties' control that impact performance
  - Most clauses contain a list of events that constitute a force majeure event excusing performance
    - Labor strikes
    - Natural disasters
    - Wars
    - Embargoes
    - Catchall (other similar events outside of the parties' control)
  - Likely a source of dispute if invoked by a party where changes in tariffs and trade policy are not a specified force majeure event.



# TARIFFS AS FORCE MAJEURE EVENT

- Applicability of force majeure clause to tariffs depends on specific contract language
  - Clause usually narrowly construed and only excuses non-performance if the event alleged to have prevented performance is specifically identified
  - Clause should specifically identify tariffs, taxes, governmental action or increased prices or costs or similar language
- If tariffs are within the scope of a force majeure clause, the question then becomes whether the tariff affected a party's performance as required by the contract
  - Harsher standard of impossibility vs. easier standard of difficulty or unprofitability



# | TARIFFS AS DRIVER OF VALUE

- Tariffs are almost never the only cause of financial distress, *but they make a convenient scapegoat.*
- Once a company impacted by tariffs enters bankruptcy, it can use the bankruptcy process to fix its underlying financial and operational woes while also leveraging tariffs to drive value for the company.



# | TARIFFS AS DRIVER OF VALUE

- Tariffs drive value for companies by:
  - Increasing the relative value of manufacturing assets, intellectual property, and established networks by making offshore sourcing more costly
  - Attracting new buyers of assets, and driving up the value of, assets through competitive bidding across strategic purchasers seeking to obtain or expand U.S.-based production
    - This includes foreign producers that historically exported materials and goods into the United States from nations that are now subject to heavy tariffs, and domestic businesses that historically imported goods from those countries
  - This might result in an increase of the pool of funds available for distribution to creditors.

# THANK YOU

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