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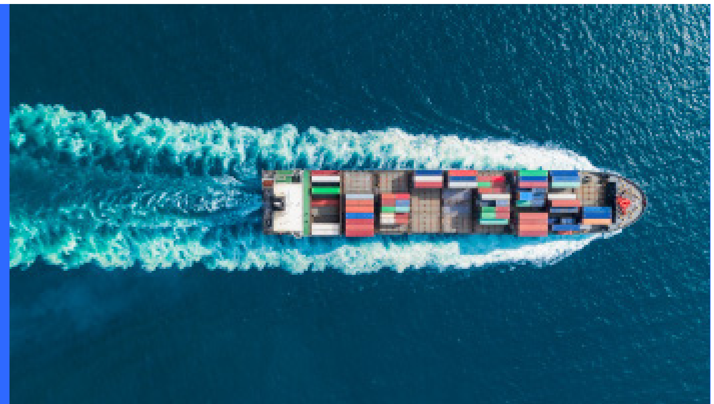

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Tariffs Are Here to Stay: Even if "Emergency" Tariffs Fall, Traditional Trade Authorities Stand Poised to Fill the Gap

The Trump Administration's newly announced tariffs targeting branded drugs, softwood lumber and derivative products, and heavy trucks are based on very different legal grounds than the "emergency" tariffs, imposed pursuant to the International Economic Emergency Powers Act (IEEPA), currently being litigated before the Supreme Court.

The latest "Section 232" actions, as with "Section 301" measures, are based on express, congressionally delegated and judicially affirmed tariff authorities and are thus fundamentally less subject to challenge than the IEEPA tariffs. Their use underscores a reality quickly coming into focus: Even if the emergency IEEPA tariffs are overturned by the Supreme Court, the Administration can achieve very significant tariff increases (although certainly not as broad and categorical) through traditional trade authorities like Section 232 and Section 301, which rest on far firmer legal ground.

The new tariffs announced in general terms in a Truth Social post on September 25, 2025 target several core industries. Specifically, the President threatened to impose 100 percent tariffs on branded or patented pharmaceutical products, 30-50 percent tariffs on certain lumber products such as kitchen cabinets and vanities and 25 percent tariffs on heavy trucks. Each of these measures was initially said to take effect on October 1, and each has been delayed. Given side agreements with various jurisdictions that import these goods into the United States, the ultimate impact of each is uncertain.

Among these measures, only the tariffs on softwood lumber and certain specified "derivatives" (including kitchen cabinets and vanities and upholstered furniture took effect in October, pursuant to an official Section 232 proclamation titled "Adjusting Imports of Timber, Lumber, and Their Derivative Products into the United States," issued on September 29, 2025. The heavy truck tariffs have been delayed to November 1, 2025—but no formal proclamation or regulatory notice has yet been issued. The pharmaceutical tariffs are likewise postponed, pending negotiations with major drug manufacturers over domestic investment commitments and potential pricing arrangements. Below, we assess the status of the tariffs on pharmaceuticals and softwood lumber in greater detail.

While most of the official proclamations remain forthcoming, the recent Section 232 actions signal a broader strategic shift amid ongoing litigation over whether the President has authority to impose tariffs under the "emergency" authorization provided in IEEPA, a statute that does not include any reference to "tariffs" or "duties" and prior to this year has never been used to impose increased tariffs or duties). Whether the President has this authority is an issue that will be heard by the Supreme Court this fall. However, even if the Supreme Court ultimately invalidates or limits the scope of IEEPA-based tariffs, the administration can pursue more focused trade objectives through traditional statutory authorities, notably Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974, which rest on far firmer constitutional ground.

Section 232—How Does It Work and What Do the Courts Say?

- Under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862), the Commerce Department may initiate an investigation—either on its own or at the President's direction—to determine whether specific imports "threaten to impair" U.S. national security. The process typically involves an announcement of the investigation, a fact-finding investigation, and a public comment period, which may be abbreviated to expedite action. Commerce concludes its review by submitting a final report to the President with findings and recommended actions. The President then has broad discretion to impose tariffs, quotas, or other import restrictions as is deemed necessary. The statute provides for a Commerce Department decision and recommendation to the President within 270 days, a Presidential decision within 90 days, and the effective implementation of the decision within 15 days. There are, however, **no statutory minimum timelines** for the process, allowing investigations to move more quickly.

- Courts have consistently upheld Section 232 tariff measures. In addition to affirming the statute's constitutionality, courts have held that it is within the President's statutory power to impose indefinite measures and to **modify tariffs** well after the initial proclamation. We note that President Trump's recent Section 232 actions may well raise issues beyond those in previous Section 232 cases.

Section 301—How Does It Work and What Do the Courts Say?

- Under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411), the U.S. Trade Representative (USTR) may investigate whether a foreign government's trade practices are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. The process typically begins with an announcement and initiation of investigation, followed by public comment and hearings, and culminates in a USTR determination and recommendation to the President. If the statutory requirements are met, the President may direct the USTR to impose tariffs, quotas, or other trade restrictions until the offending measure is eliminated or a satisfactory agreement is reached.
- Courts have also upheld Section 301 tariffs and recently affirmed Section 301 tariffs on Chinese goods. That recent case also confirmed the President's ability to **expand existing Section 301 actions** to impose escalatory tariffs.

While they lack the immediacy and breadth of a Presidential decision imposed under IEEPA, Section 232 and Section 301 tariffs are nonetheless a nimble instrument for President Trump to exert leverage in deal-making with both foreign governments and companies in affected industries, particularly given the judicially affirmed flexibility to modify such measures under both authorities.

II. DELAYED PHARMA TARIFFS

On September 25, 2025, President Trump announced that "[s]tarting October 1st, 2025, we will be imposing a 100% Tariff on any **branded or patented Pharmaceutical Product**, unless a Company IS BUILDING their Pharmaceutical Manufacturing Plant in America."

Branded, patent-protected drugs account for nearly 90 percent of U.S. prescription drug spending, and the United States remains heavily dependent on imports, particularly from the European Union. By contrast, the U.S. relies on lower-cost manufacturing in India and China for generic (non-branded) drugs, which are not the immediate target of the announced 100 percent tariffs. While the Administration has since paused implementation of the 100 percent tariffs to pursue pricing and investment negotiations with major drugmakers, the threat of Section 232 action remains active.

Section 232 Investigation. The threatened tariff stems from a Section 232 investigation on "pharmaceuticals, pharmaceutical ingredients, and derivative products" initiated in April 2025 under the Trade Expansion Act of 1962 (19 U.S.C. § 1862)—a national security authority unrelated to IEEPA-based tariffs and consequently unaffected by any IEEPA litigation. This investigation encompassed finished drugs, active pharmaceutical ingredients (APIs), chemical precursors, and related derivative products. The final scope and structure of any resulting tariffs remain uncertain, including whether they will align with the September 25, 2025 announcement. Typically, Section 232 actions are accompanied by an annex listing the specific items that will be covered; no such annex has yet been released.

Carve-Outs for Key Trading Partners. Based on this administration's established practice, companies in jurisdictions that have reached trade agreements with the Administration will get more favorable treatment under these new tariffs:

- **European Union:** Under the S.–EU Tariffs and Trade Framework Agreement, pharmaceutical imports from the EU are expected to be capped at a total tariff rate of 15 percent.
- **Japan:** Pharmaceutical imports from Japan may receive similar treatment under the S.–Japan Agreement, particularly in light of the 15 percent cap applied to Japanese products under the recently announced Section 232 softwood-lumber tariffs (see Section II, infra). However, the Agreement itself is less explicit than the agreement between the United States and European Union—it excludes generic (non-branded) pharmaceuticals from reciprocal tariffs but does not specify whether future Section 232 measures would apply to either branded or generic drugs.

Negotiated Outcomes and Ongoing Leverage. The Administration has reportedly paused its tariff rollout while negotiating agreements with leading drugmakers to reduce prices and expand domestic manufacturing.

- The White House has reached a deal with Pfizer, under which the company will invest $70 billion in U.S. manufacturing, sell drugs in the United States at "most-favored-nation" (MFN) pricing, and participate in the new TrumpRx.gov initiative—offering certain primary-care drugs at discounts averaging 50 percent (and up to 85 percent)—in exchange for a three-year tariff exemption. The MFN pricing component follows a May Executive Order directing drugmakers to deliver MFN-priced drug to U.S. patients, as discussed by Gibson Dunn lawyers here.
- Several other major manufacturers—including Moderna, Eli Lilly, AstraZeneca, GSK, Novartis, and Sanofi—are already constructing or planning new U.S. facilities, which could mitigate the effect of the tariff increase on consumers.
- Notably, the 100 percent tariff rate announced in September is not President Trump's final offer. President Trump threatened to impose tariffs of **up to 250 percent** on pharmaceutical imports during an August CNBC interview, describing the measure as part of a **phased escalation** if companies failed to relocate manufacturing to the United States. He could potentially invoke the heightened rate under the Section 232 authority and use it as leverage to pressure pharmaceutical companies to reaching favorable deals or investment commitments.

Adding further pressure to the broader healthcare sector, the Administration also announced a new Section 232 investigation in late September covering personal protective equipment (PPE), medical equipment, and medical devices. The results of that investigation could also—and we assess very likely will—result in meaningful tariff exposure to companies in those sectors.

II. SOFTWOOD LUMBER SECTION 232 TARIFFS: PROCLAMATION DIGESTED

As noted above, on September 29, 2025, President Trump issued a Proclamation titled "Adjusting Imports of Timber, Lumber, and Their Derivative Products into the United States," accompanied by a White House Fact Sheet. The Proclamation establishes that "imports of softwood timber and lumber, as set forth in Annex I to this proclamation, shall be subject to a 10 percent ad valorem duty rate," effective October 14, 2025.

The new Section 232 duty, on top of long-standing antidumping and countervailing duties on Canadian lumber imports, adds immediate cost pressure for U.S. homebuilders, construction suppliers, and furniture manufacturers that rely on imported lumber—particularly from Canada, the United States' dominant softwood lumber supplier.

Scope. The Proclamation imposes a **10 percent global tariff** on imports of softwood lumber. It also establishes:

- a 25 percent global tariff on certain upholstered furniture, rising to 30 percent on January 1, 2026; and
- a 25 percent global tariff on kitchen cabinets and vanities, rising to 50 percent on January 1, 2026.

Exemptions. Products subject to the new Section 232 duties are expressly exempt from tariffs imposed under:

- Executive Order 14257 (Apr. 2, 2025), titled "Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual U.S. Goods Trade Deficits" (imposing worldwide reciprocal tariffs);
- Executive Order 14323 (July 30, 2025), titled "Addressing Threats to the United States by the Government of Brazil"; and
- Executive Order 14329 (Aug. 6, 2025), titled "Addressing Threats to the United States by the Government of the Russian Federation."
- However, products subject to the Section 232 duties are not exempt from the additional application of **IEEPA-based fentanyl-related tariffs** on imports from China, Canada, and Mexico.
    - This is true even when the products would otherwise be "eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule," such as the **United States–Mexico–Canada Agreement**.

Stacking. Absent the exemptions noted above, "the tariffs imposed in this proclamation are in addition to any other duties, taxes, fees, exactions, and charges applicable to such imported wood products." In other words, the Section 232 tariffs apply *cumulatively* on top of existing duties, unless expressly exempted by the Proclamation.

We note that the exemptions under the Executive Orders listed above are each based on IEEPA authorities and consequently their durability in light of potential Supreme Court rulings is uncertain.

Carve-outs for existing and future trade deals. Similar to the pharma measures, trading partners party to existing or pending trade arrangements will receive meaningful reductions:

- The Section 232 tariff on covered wood imports from the United Kingdom will not exceed 10 percent, effectively capping tariff rates on derivative products that could otherwise rise to 50 percent.

- The combined Section 232 tariff and most-favored nation tariff on subject wood imports from the European Union and Japan will not exceed 15 percent.
- Other partners that negotiate with the United States to address national-security concerns related to wood imports will almost certainly secure alternative tariff arrangements.

III. CONCLUSION

The recent Section 232 developments underscore how traditional trade authorities are re-emerging as tools for advancing the Administration's trade and industrial policy objectives. Even as litigation tests the limits of IEEPA, these authorities continue to provide a nimble, highly adaptable mechanism for President Trump to exert leverage in negotiations with both foreign governments and private companies in targeted sectors. Gibson Dunn lawyers stand ready to assist clients across industries in assessing exposure and navigating changes as these measures evolve.

The following Gibson Dunn lawyers prepared this update: Hui Fang, Lindsay Wardlaw, Adam M. Smith, Don Harrison, and Samantha Sewall.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or the following leaders and members of the firm's International Trade Advisory & Enforcement practice groups:

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