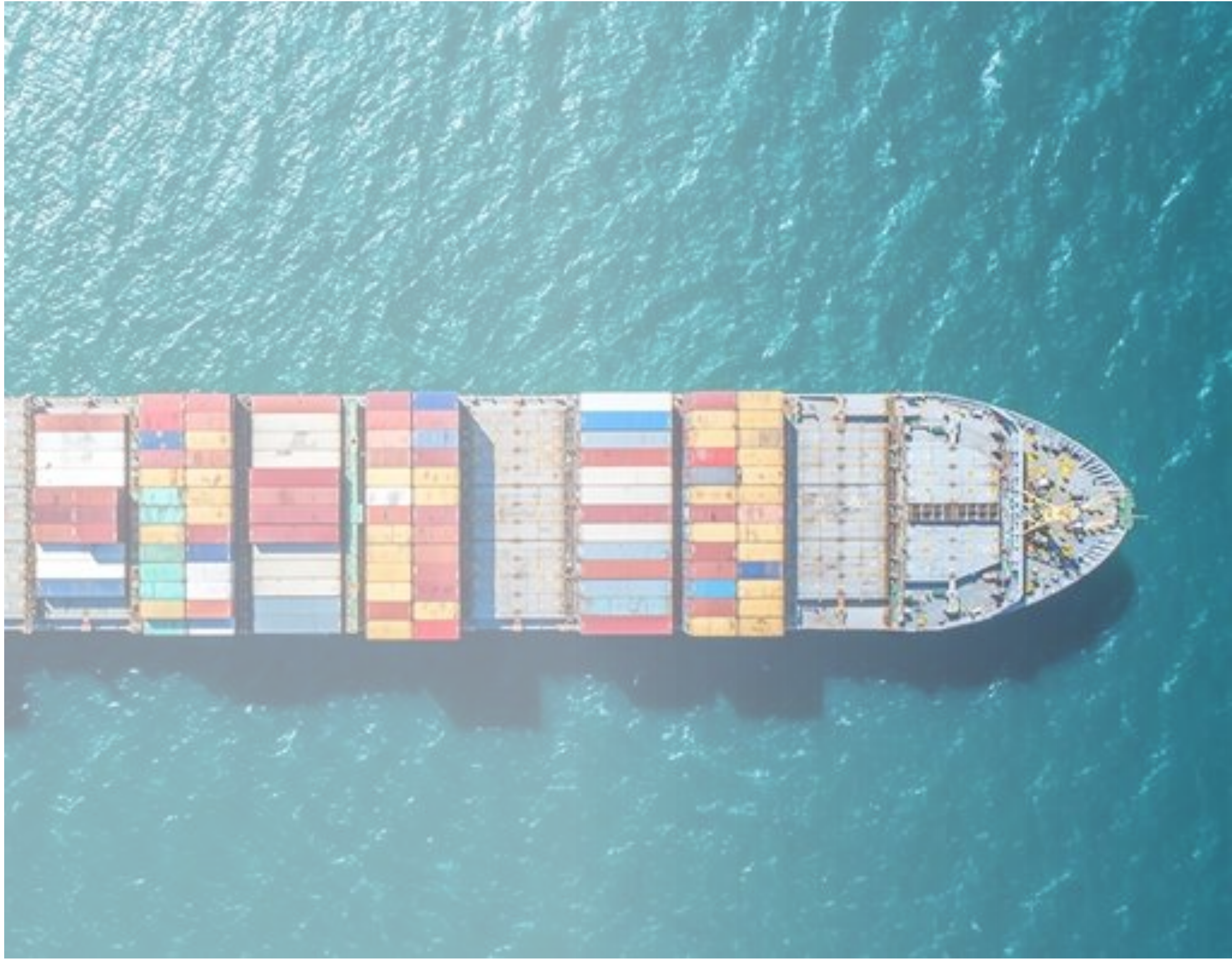
Reducing Legal Risks in a Dynamic Trade Environment:

Incoterms, Contracts, & Insurance for Supply Chains



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Overview

Agenda

- Review of Incoterms
- What do Incoterms do?
- Incoterms and tariffs
- Importance of contracts
- Importance of insurance
- Importer of Record
- Enforcement
- IEEPA Court Challenge Update
- USMCA

Scenarios

- Importer FCA & DDP
- USMCA Scenarios
- Exporter CIF

What are Incoterms?

- International Commercial Terms that define the responsibilities of buyers and sellers in global trade
- Established by the International Chamber of Commerce (ICC)
- Updated every ten years
- Most recent update is Incoterms 2020

Review of Incoterms

Any Mode of Transport

EXW Ex Works
FCA Free Carrier
CPT Carriage Paid To
CIP Carriage and Insurance Paid To
DAP Delivered At Place Unloaded
DDP Delivered Duty Paid

Sea and Inland Waterway Transport

FAS Free Alongside Ship
FOB Free On Board
CFR Cost and Freight
CIF Cost Insurance and Freight

When using Incoterms, it is important to include the "named place of delivery" after the three-letter term.

What do Incoterms do?

Obligations: who does what between a buyer and seller

(e.g. who arranges logistics or insurance, who obtains shipping documents, who obtains export or import licenses, etc.)

Risk: defines where risk transfers from seller to buyer

(Note: may not be the same as the “named place of delivery”)

Costs: who is responsible for which costs

(e.g. loading or unloading, transport, packaging, tariffs or other costs)

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What do Incoterms NOT do?

Incoterms DO NOT:

- Cov
- Address condition of the sale including contract prices and payment terms
- Address penalties for breach of contract, product quality or liability for delayed delivery
- Define legal venues or procedures for resolving disputes
- Affect tariff rates
- Specify which documents must be provided by the seller to the buyer to facilitate the customs clearance process at the buyer's country
- Cover intellectual property rights
- Address what happens in the event of force majeure

Incoterms and Tariffs

Incoterm	Export Customs Clearance	Import Customs Clearance	Who Pays Tariffs?
Any mode of transport			
EXW	Buyer	Buyer	Buyer
FCA, CPT, CIP, DAP, DPU	Seller	Buyer	Buyer
DDP	Seller	Seller	**Seller**
Sea and inland waterway transport only			
FAS, FOB, CFR, CIF	Seller	Buyer	Buyer

Source: ICC "Using Incoterms 2020 rules to manage tariff risk in international trade"

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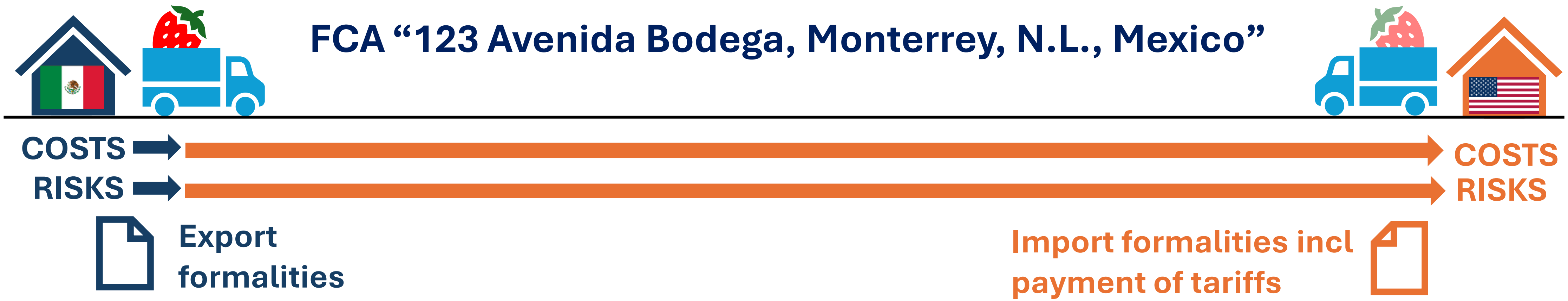
Pros and Cons: FCA “Free Carrier”



Pros:

- Flexibility in delivery points
- Buyer controls logistics
  - Shipping costs, rates, timelines
- Seller responsible for export clearance
- Reduced risk & increased convenience for seller

Cons:

- Potential for disputes over "named place" of delivery
- Buyer controls logistics
  - Difficult/burdensome to coordinate inland freight
  - Inefficiency in freight booking (seller may not have a relationship with the buyer’s freight forwarder)
- Buyer required to manage insurance
- High administrative burden of export clearance on the seller, must coordinate with buyer’s carrier

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Pros and Cons: CIP “Carriage and Insurance Paid To”

Pros:

- Seller manages logistics, documentation, and insurance up to the destination port.
- Seller secures “all-risk” insurance from point of delivery to point of destination.
- Clear cost structure with freight and insurance included.
- Seller may have better shipping rates due to established carrier relationships.

Cons:

- Risk transfers to buyer upon loading, not arrival, seller’s insurance coverage may not be sufficient.
- Buyer loses control over shipping process - carrier, route, transit times - could lead to delays.
- Buyer is dependent on seller’s logistics efficiency and ability to accurately report cargo status.
- Seller could add hidden margins for freight and insurance costs, increasing total price.

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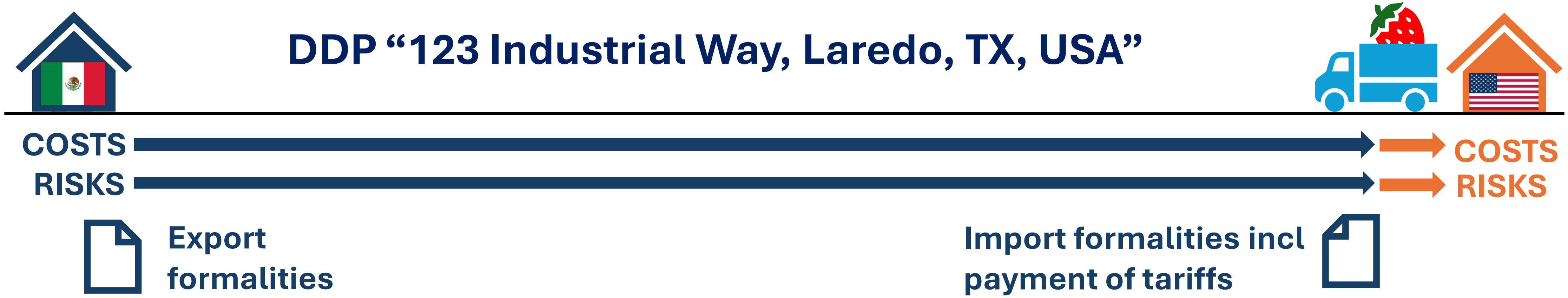
Pros and Cons: DDP “Delivered Duty Paid”

DDP “123 Industrial Way, Laredo, TX, USA”



Pros:

- Seller manages entire process to final destination
- Sellers assume all risks for transporting goods, including import duties, taxes, and potential customs delays
- Buyer not responsible for import clearance or paying tariffs
- Seller may have a competitive advantage with an all-inclusive, transparent price
- “White glove” of Incoterms

Cons:

- Seller could add hidden margins for freight, insurance AND tariff costs, increasing total price even more than CIP (or CIF)
- Slow shipping timelines – buyer’s have no control of logistics
- Customs clearance issues – seller responsible, must have IOR
- Legal risks related to improper documentation, tariff miscalculation or tax evasion

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Importance of Contracts

Contracts can contain provisions that:

- Define transfer of title or ownership
- Provide cargo description, price terms, etc.
- Define legal responsibilities and liabilities, including insurance stipulations
- Outline procedures for delays and demurrage, including who is responsible for demurrage fees
- Address what happens in the event of force majeure
- Prevent disputes or establish legal framework for resolution for any issues such as damage, loss, or late delivery of shipments
- Ensure compliance with international shipping regulations
- Outline procedures for tariff refunds
  - Keep in mind that consumers or whoever is not the IOR have no rights to refund
  - Size and type of customer may impact approach on refunds

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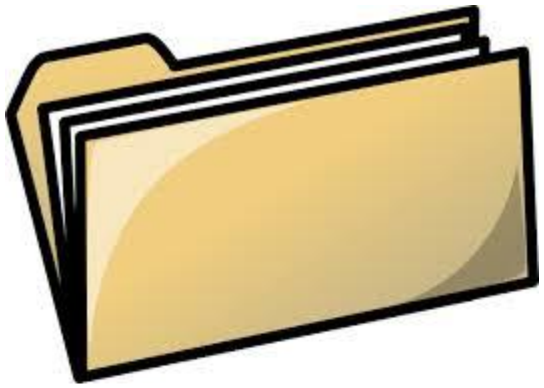
Importance of Insurance

- The only Incoterms that require insurance are CIP and CIF
  - CIP requires Institute Cargo Clauses (A), which includes "All Risks," from point of delivery to point of destination.
  - CIF requires Institute Cargo Clauses (C), which includes "Minimum Coverage," from the point of delivery (e.g. port of shipment) to the point of destination.
- Even if using CIP or CIF, insurance should be considered to cover buyer's risk of loss or damage to goods during the "other" legs of the journey (e.g. manufacturer's facility to port of export, etc.)
- Even if not using CIP or CIF, insurance should be considered in all cases
- The buyer is typically responsible for insurance with EXW & FCA
- Understand what your insurance covers and ensure it is adequate "all-risk" coverage
  - Strikes, Riots & Civil Commotion (SRCC) clauses may exclude damage due to lack of power or labor
  - Demurrage and detention fees caused by port disruptions may not be covered
  - Delays of even a few days for seasonal goods or fresh produce can equate to loss of market value, often not covered
  - Other supply chain disruptions like severe weather and political instability

Importer of Record

Who Makes Entry?

- Party Qualifying as “Importer of Record”
- Owner or Purchaser of Merchandise
- Licensed Customs Broker
- Authorized Sub-Agent



- Legal Standard: Possession/title or financial interest in goods

What Does Reasonable Care Mean?

1. Following the Customs Regulations
2. Knowing the Terms of Transactions
3. Knowing the Description, Use, Composition and Origin of Merchandise
4. Entering Merchandise Correctly
5. Providing Experts (either In-House or External or even Customs) with Material Facts and Circumstances
6. Establishing On-Going Procedures and Policies to Maintain Compliance and Detect/Report Violations
7. Monitoring broker’s work—importer responsible for broker errors on entries

ENFORCEMENT

Trade Enforcement Activities	FY 2026[1]	FY 2025[2]	FY 2024	FY 2023	FY 2022	FY 2021
Number of Audits Completed	14	348	417	435	430	442
Total Collected as a result of Importer Audits	$6.2 million	$192.77 million	$117.67 million	$114.5 million	$77.7 million	$132.2 million
Net Revenue Recovered due to Entry Summary Reviews (ESF)	$959.5 million	$32.95 billion	$667.55 million	$256.3 million	$267.3 million	$473.6 million
Total Trade Penalties Issued	234	2,218	2,204	2,592	2,121	2,394
Total Trade Liquidated Damages	9,206	46,835	22,399	19,832	18,667	19,834
Total Collected from Trade Penalties and Liquidated Damages	$1.4 million	$37.88million	$26.21 million	$33.3 million	$19.3 million	$21.7 million

IEEPA Tariffs

Country	Product	Type/Tariff Rate
	IEEPA Tariffs	
China	All	IEEPA Fentanyl/10%
Mexico	All	IEEPA Fentanyl/Border/ 25% except potash at 10%/ USMCA Exemption
Canada	All	IEEPA Fentanyl/Border/35% except potash & energy at 10%/ USMCA exemption
All *China	All	IEEPA Reciprocal/10%-41%/40% for "transshipped" goods *10% China until Nov 10, 2026 (125% paused)
India/Russia Oil	Products of India (with exemptions)	IEEPA 25% ELIMINATED: Effective February 7, 2026
Brazil	IEEPA Reciprocal - All IEEPA Brazil Actions - All with certain exemptions	IEEPA Reciprocal 10% IEEPA Brazil 40% effective August 6

IEEPA COURT CHALLENGE

IEEPA TARIFFS STRUCK DOWN

- **International Economic Emergency Powers Act**
- Enacted in 1977, IEEPA gives the President economic tools to address significant foreign threats. When acting under IEEPA, the President must identify an “unusual and extraordinary threat” to American national security, foreign policy, or the economy, originating primarily “outside the United States.” And he must “declare[] a national emergency” under the National Emergencies Act.
- He may then, “by means of instructions, licenses, or otherwise,” take the following actions to “deal with” the threat: “invesigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest.” §§1701(a), 1702(a)(1)(B).

IEEPA TARIFFS STRUCK DOWN

- In a 6-3 decision, the Supreme Court struck down President Trump’s tariffs imposed under the International Emergency Economic Powers Act (IEEPA).
- The Chief Justice’s majority opinion framed the main question as whether the statutory phrase allowing the President to “regulate importation” under IEEPA includes the authority to impose tariffs.
- Reviewing the statutory context, the Court emphasized that IEEPA has historically been used to restrict transactions—such as freezing assets or banning certain imports and exports—rather than adjusting tariff rates.

IEEPA TARIFFS STRUCK DOWN

- Article I, Section 8, of the Constitution specifies that “The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises.

- The Supreme Court noted that Congress has enacted numerous trade statutes that grant tariff-setting authority in explicit, limited circumstances, suggesting that IEEPA was never intended to serve as a broad tariff power.

- The Court also found that reading IEEPA to authorize unlimited tariffs would upset the balance of congressional control over foreign commerce.

IEEPA TARIFFS STRUCK DOWN

- The Court also rejected the government's argument that emergencies justify expanding presidential authority in this context.
- Although IEEPA gives the President flexibility when responding to extraordinary threats, the Court held that it does not override clear structural limits on tariff authority. Because nothing in the statutory text suggested that Congress **intended** to delegate such sweeping power, the Court concluded that the President's tariff proclamations exceeded his statutory authority.

IEEPA TARIFFS STRUCK DOWN

- **Accordingly, the Court held that IEEPA does not authorize the tariffs imposed by President Trump, effectively invalidating all executive orders imposing tariffs under IEEPA.**
- The Court affirmed the Federal Circuit's decision, confirming that the Court of International Trade has exclusive jurisdiction, and vacated the District Court for the District of Columbia's decision with instructions to dismiss for lack of jurisdiction.

IEEPA TARIFFS STRUCK DOWN

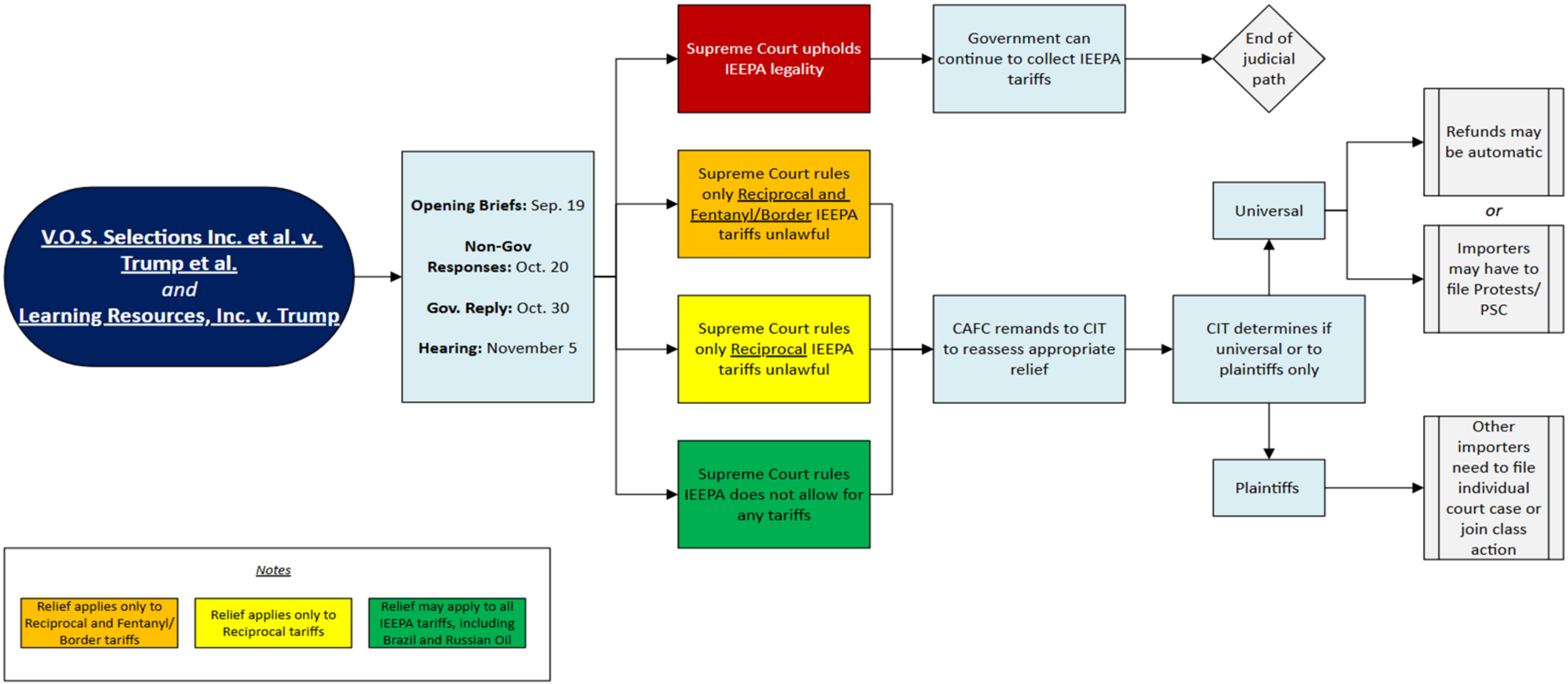
What now?

- The Court of International Trade will have to decide the appropriate remedy for the now invalidated tariffs, including whether and how refunds should be processed.
- Hardley any mention of refunds in the Supreme Court Decision:
  - Kavanaugh's dissent says:
  - One issue will be refunds. Refunds of billions of dollars would have significant consequences for the U. S. Treasury. The Court says nothing today about whether, and if so how, the Government should go about returning the billions of dollars that it has collected from importers. But that process is likely to be a "mess," as was acknowledged at oral argument.

What now?

- Can I stop declaring IEEPA tariff immediately?
  - Yes. The tariffs are unlawful per the SCOTUS decision today. CBP will have to update its system.
- When do I get my tariffs?
  - Unclear. The Government will likely resist refunding the estimated $175 Billion in IEEPA tariffs collected todate.

IEEPA Court Challenge Possible Refund Scenarios



IEEPA Refunds?

- Best course is to extend liquidation, but CBP is denying all such requests
- The second strategy is to file a protest once a file liquidates, but some think that won't help (w/in180 days after liquidation)
- The third possibility is to file an injunction against liquidation
- Finally, go to the Court of International Trade and under Section 1581(i)

IEEPA Refunds?

- File protective protests timely.
  - Monitor liquidation dates! 180 days from date of liquidation to file protests.
- Consider the filing of an action at the CIT
  - Based on remand decision, DOJ may be tasked with oversight of the refund process, requiring an action at the CIT.

Alternative “Methods”

- Expect more Section 301 and Section 232 investigations

  - Section 301 – “bad actor” tariffs
    - For example, A Section 301 investigation in 2018 determined that China’s acts, policies, and practices related to technology transfer, intellectual property, and innovation are unreasonable and discriminatory. As a result, in 2019 the U.S. imposed additional tariffs ranging from 7.5% to 25% on approximately $370 billion worth of imports from China across four lists (lists 1-4A).

  - Section 232 – National Emergency Tariffs
    - Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.
    - Steel, Aluminum, Copper, Autos, Timber, Semiconductors

Alternative “Methods”

- In 2/20/2026 press conference, President Trump stated that there will be a 10% global tariff under Section 122 of the 1974 Trade Act.

- Section 122 trade tariffs links tariff authorities with U.S. trade deficits.

- Section 122 allows the president to issue a proclamation imposing an additional tariff of up to 15 percent (or quotas) on imports from countries with which the U.S. has a “large and serious” balance of payments deficit (though the law does not define that term). Tariffs may be imposed quickly, without any related investigation or similar procedures, **but may only remain in effect for 150 days**. **However, Congress may act to extend such tariffs and the law does not appear to restrict how long such an extension may be.**

USMCA Claims Under Scrutiny

USMCA Claims Under Scrutiny

- **IEEPA Reciprocal Tariff Exemption:**
- Products of Canada, including those products of Canada entered free of duty as under the United States-Mexico-Canada Agreement, including any treatment set forth in subchapter XXIII of chapter 98 and subchapter XXII of chapter 99 of the HTSUS.
- Products of Mexico, including those products of Mexico entered free of duty as under the United States-Mexico-Canada Agreement, including any treatment set forth in subchapter XXIII of chapter 98 and subchapter XXII of chapter 99 of the HTSUS.

USMCA Claims Under Scrutiny

- **IEEPA Border Tariff Exemption:**
- Articles that are entered free of duty under the terms of general note 11 to the HTSUS, including any treatment set forth in subchapter XXIII of chapter 98 and subchapter XXII of chapter 99 of the HTS, as related to the USMCA

Basic Conditions for USMCA Claim

Goods must qualify as originating under product specific Rules of Origin

Goods must ship from a USMCA country

USMCA certification must be properly completed

Importer must possess information to support declaration at time of claim

USMCA “Originating Criteria” / Rules of Origin

- **A** Wholly obtained or produced entirely in the territory
- **B** Produced entirely in the territory using non-originating materials provided the good satisfies the product-specific rule of origin (tariff shift and/or RVC)
- **C** Produced entirely in the territory of one or more of the Parties exclusively from originating materials
- **D** Goods that fail tariff shift for specified reasons, but satisfy RVC

Rules of Origin – Information Needed

1. Classify finished product
2. Identify rule of origin (GN 11)
3. Classify component materials
4. Value and origin of components

Rules of Origin – Tariff Shift

- Materials must "shift" from one tariff to another
- The shift must be consistent with the rule
- Some rules of origin are satisfied by only a tariff shift
- Tariff shift only rules do not require any originating value content requirements (i.e. none of the materials need to be originating)

De Minimis

a good that does not undergo a change in tariff classification or satisfy a regional value content requirement set forth in subdivision (o) of GN 11 is an originating good if—

- (A) the value of all nonoriginating materials that are used in the production of the good, and do not undergo the applicable change in tariff classification set forth in subdivision (o) of GN 11—
  - (1) does not exceed 10 percent of the transaction value of the good, adjusted to exclude any costs incurred in the international shipment of the good; or
  - (2) does not exceed 10 percent of the total cost of the good;
- (B) the good meets all other applicable requirements of GN 11; and
- (C) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value content requirement for the good.

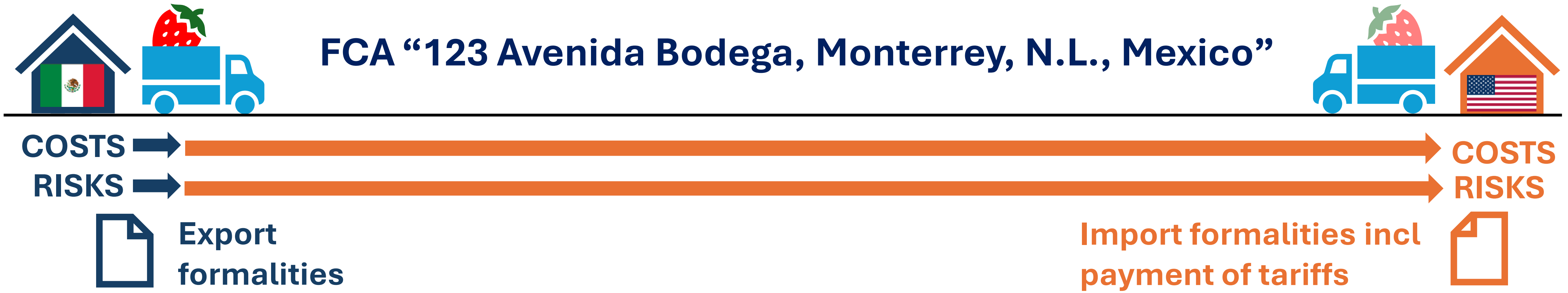
De Minimis EXCEPTIONS

Goods provided for under chapters 1 through 27.—[The De Minimis Rule] does not apply to a nonoriginating material used or consumed in the production of a good provided for in chapters 1 through 27 unless the nonoriginating material is provided for in a different subheading than the subheading of the good for which origin is being determined

SCENARIOS AND DISCUSSION

Scenario 1 – Import Using FCA Incoterms

The truck transporting frozen strawberries from Mexico is in a major accident and all goods are destroyed?

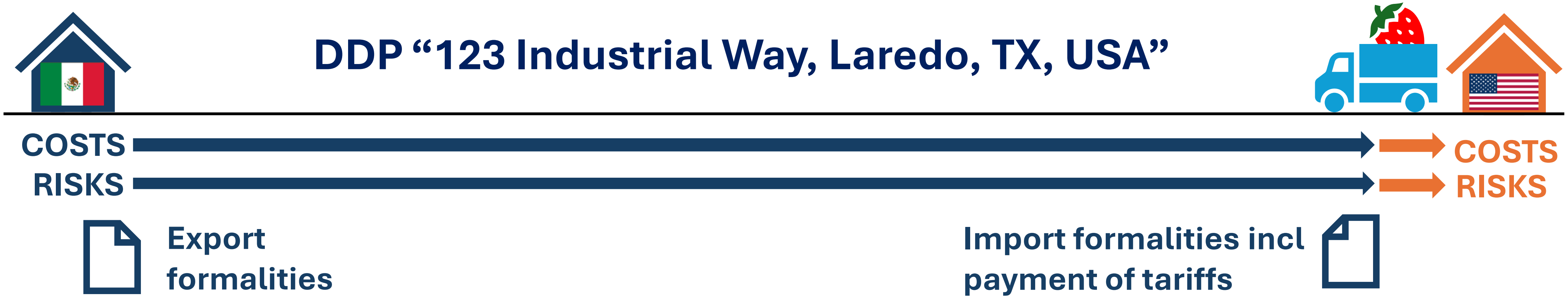


- As the buyer, what tools would you use to ensure you are fully compensated for the loss of goods?

- Other considerations?

Scenario 1 – Import Using DDP Incoterms

The truck transporting frozen strawberries from Mexico is in a major accident and all goods are destroyed?

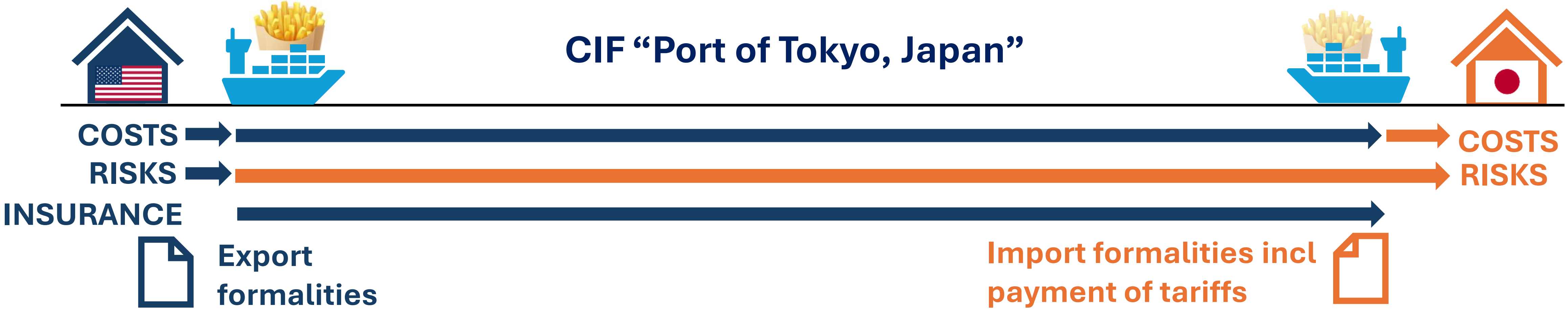


- As the buyer, what tools would you use to ensure you are fully compensated for the loss of goods?

- Other considerations?

Scenario 2 – Export Using CIF Incoterms

The ship transporting frozen French fries to Japan sinks and all goods are destroyed?



- As the seller, what tools would you use to ensure your customer is fully compensated for the loss of goods?

- Other considerations?

USMCA Scenarios

USMCA Origin Rule for goods classifiable under Ch. 08 (Edible fruit and nuts)

- Tariff Shift Rule:
- **A change to headings 0801 through 0814 from any other chapter.**

USMCA Scenarios

- Product Imported into the U.S. from Mexico: Frozen Mixed Fruit
- Frozen fruit mixture classifiable under HTSUS subheading 0811.90.80
- Mixture is a combination of frozen Mexican Mangos (originates in Mexico) and frozen non-originating strawberries.
- Frozen non-originating strawberries classifiable under HTSUS subheading 0811.10.00
- **Tariff Shift/USMCA Qualifying?**
- NO! Tariff shift requires a change to 0811 from any other CHAPTER.

USMCA Scenarios

What if the non-originating strawberries were less than 10% of the Transaction Value of the Good?

- Yes! Frozen strawberries are classifiable under a different subheading (0811.10.00) than frozen mixed fruits (0811.90.80).

What if it were frozen, sweet non-originating Cherries (classifiable under 0811.90.8040) added to the Mexican mangos instead?

- No! No tariff shift (same HTS Chapter) and no de minimis, even if under 10% of total value (same HTS Subheading)

Thank You!

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