



Redefining Connections for Foreign-Parented Companies: Trends in Inbound Tax

Transforming tax.
Redefining connections.

2025 US Cross-Border Tax Summit



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01

Deregulatory Agenda

Presidential Actions Calling for Deregulation

Regulatory Freeze Pending Review

Memorandum January 20, 2025

- Instructs all executive departments and agencies to:
 - Immediately halt proposing or issuing any rules until reviewed;
 - Withdraw rules sent to the Office of the Federal Registrar (“OFR”);
 - Postpone the effective date of any rule issued but not yet effective by 60 days.

Unleashing Prosperity Through Deregulation

Executive Order 14192 January 31, 2025

- Requires that for each regulation issued, at least 10 regulations must be eliminated
- Sets a regulatory cap for FY2025
- Agencies to ensure that the total incremental cost of all new regulations finalized in 2025 shall be significantly less than zero
- Reinstates the memorandum of agreement requiring the Office of Information and Regulatory Affairs (“OIRA”) review of tax regulations

Ensuring Lawful Governance and Implementing DOGE’s Deregulatory Initiative

- Orders agencies to review all regulations and identify within 60 days regulations that:
 - Are unconstitutional;
 - Are based on unlawful delegations of legislative power;
 - Are based on anything other than the best reading of the underlying statutory authority;
 - Implicate matters of social, political, or economic significance not authorized by clear statutory authority;
 - Impose significant costs to private parties not outweighed by public benefit;
 - Are harmful to national interest; and
 - Impose undue burdens on small business.

Directing the Repeal of Unlawful Regulations

- Agencies are required to promptly repeal any regulation or part of a regulation that exceeds statutory authority or is otherwise unlawful
 - Priority given to regulations conflicting with specific U.S. Supreme Court decisions, including Loper Bright.
- Each repeal must include a brief justification for the “good cause” exception.

Treasury Actions on Deregulation

Repeal of non-tax regulations with direct-to-final regulation

- Removal of non-tax regulations with a “direct final rule” in accordance with the EOs
- Rule is effective on the date that is 60 days after publication in the Federal Register, unless a significant adverse comment is received within 30 days
- If so, Treasury will publish a timely withdrawal of the direct final rule (or portion of the rule)

Repeal of IRB guidance (Notice 2025-22)

- Repeals guidance that is obsoleting “extraneous and unnecessary” guidance
- No opportunity to comment
- Withdraws listing notice for basket option
- Withdraws Revenue Ruling 91-32

Priority Guidance plan

- Inviting the public to submit recommendations for items to be included on the 2025-2026 Priority Guidance Plan
- Indicates that Treasury and the IRS will consider recommended guidance relating to regulations potentially described in EO 14219 (e.g., unconstitutional or inconsistent with the best reading of the statute)

Potential Future IRS and Treasury Actions

- Pulling regulations inspired by Loper Bright?
- What would the administration's approach be to defending regulations in court?
- What about taxpayer favorable regulations (e.g., the GILTI high tax exception regs)?
- Provisions to Watch
 - Section 385 regulations
 - Stock buyback tax proposed regulations (particularly the funding rule)
 - DCL/DPL regulations
 - CAMT proposed regulations
 - FTC “income tax” regulations
 - Section 245A anti-abuse regulations (section 1.245A-5)
- Provisions to Influence?
 - Section 1.367(b)-3 (re: inbounding)
 - Interest expense allocation to GILTI

02

Retaliatory Measures

Section 899: Enforcement of Remedies Against Unfair Foreign Taxes

Provides a means for the U.S. to retaliate against applicable persons of discriminatory foreign countries that impose unfair foreign taxes on U.S. persons or certain foreign subsidiaries of U.S. persons.

Per se unfair foreign taxes

- UTPRs
- DSTs
- DPTs

Extraterritorial Taxes

- Taxes *imposed by* a foreign country on a corporation or its trade or business based on the income or profits of any person connected to the corporation through a direct or indirect chain of ownership
- Treasury has authority to expand or make exceptions to extraterritorial or discriminatory taxes

Discriminatory taxes

- Taxes imposed on (1) income that would not be considered sourced or effectively connected to a trade or business in the taxing foreign country under the Code, or (2) a base other than net income
- Taxes that apply “exclusively or predominantly” to nonresident corporations or partnerships, determined by reference to the Code and treating the foreign country as the United States
- A tax not treated as an income tax or otherwise treated by the foreign jurisdiction as outside the scope of tax treaties

Section 899: Who is impacted?

Section 899 would apply to applicable persons:

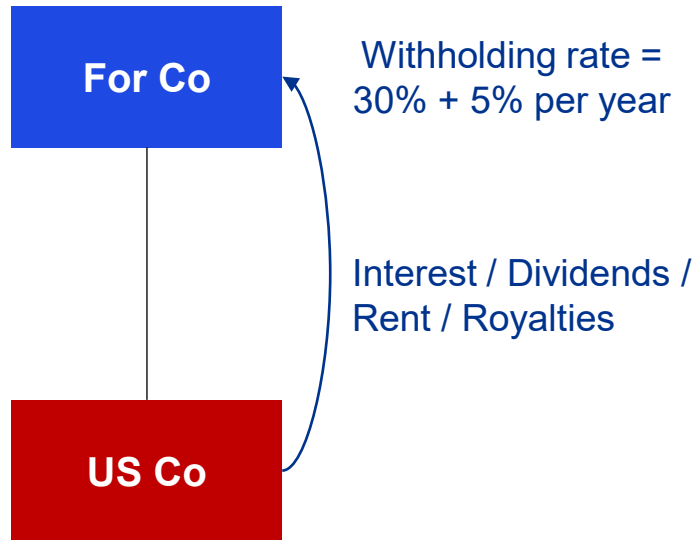
- ▶ A government of a discriminatory foreign country (turns off 892 benefits in addition to rate increases)
- ▶ An individual (other than a U.S. citizen or resident) that is a resident of a discriminatory foreign country
- ▶ A foreign corporation that is resident of a discriminatory foreign country, other than a United States-owned foreign corporation within the meaning of section 904(h)(6)
- ▶ A private foundation created or organized in a discriminatory foreign country
- ▶ A foreign corporation that is more than 50% owned within the meaning of section 958(a) by an applicable person
- ▶ A trust that is majority owned by one or more applicable persons
- ▶ A foreign partnership, branch, or any other entity identified by the Secretary with respect to a discriminatory foreign country

Section 899: Increased Rates of Tax

- Increases specified rates of tax under the following sections by 5% annually (capped at 20% over the statutory rate):
 - Section 871(a) – tax on FDAP of nonresident individuals
 - Section 871(b) – graduated rates for individual ECI, but limited to FIRPTA gains
 - Section 881 – tax on non-ECI FDAP of corporations
 - Section 882 – ECI of corporations
 - Section 884(a) – branch profits tax
 - Section 1441(a) – withholding on individual FDAP
 - Section 1442(a) – withholding on FDAP of corporations
 - Section 1445 – withholding on disposition of U.S. real property interests
 - Section 4948 – foreign private foundation tax

Section 899: Increased Rates of Tax

FDAP income of non-US corporations

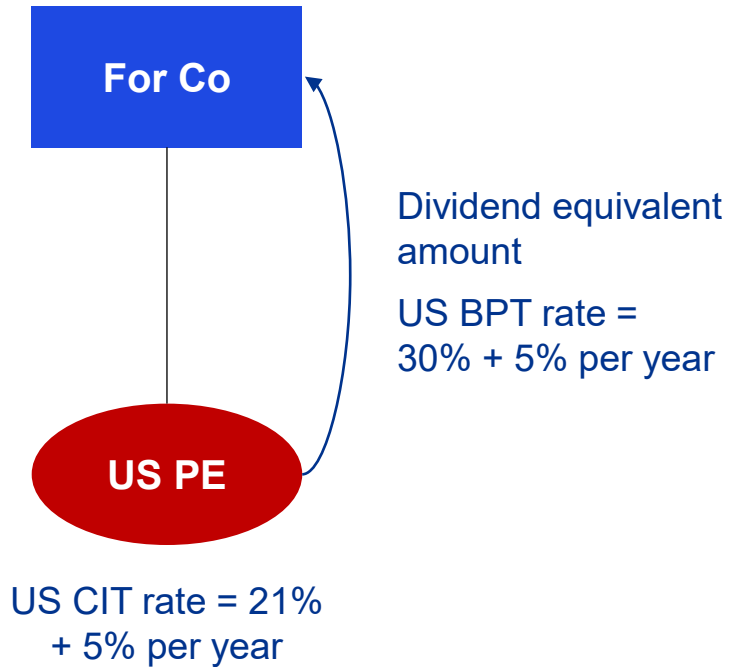


Considerations for businesses

- Section 899 would likely override existing treaties based on the later in time rule.
- Treaty rates on FDAP income may return to (or even surpass) statutory rate (30%) with incremental increases of 5% for each year Section 899 is in effect.
- This would significantly impact the tax rate on FDAP income (e.g., interest, dividends, rent, royalties etc.)

Section 899: Increased Rates of Tax

US ECI



Considerations for businesses

- Tax rate on BPT may return to (or surpass) statutory rate (30%) with incremental increases of 5% for each year Section 899 is in effect.
- US PEs placed at competitive disadvantage vis-à-vis US corporations which would not be subject to increased tax rates under Section 899.

Section 899: Super BEAT

Super BEAT is applicable to certain corporations that are more than 50% owned, by vote or value (within the meaning of section 958(a)), by one or more “applicable person” and would modify BEAT by:

Removing the \$500 million gross receipts test and the 3 percent (2 percent for banks and registered securities dealers) base erosion percentage threshold

Increase the BEAT rate to 12.5 percent and reduce regular tax liability by all credits allowed under chapter 1 of the Code

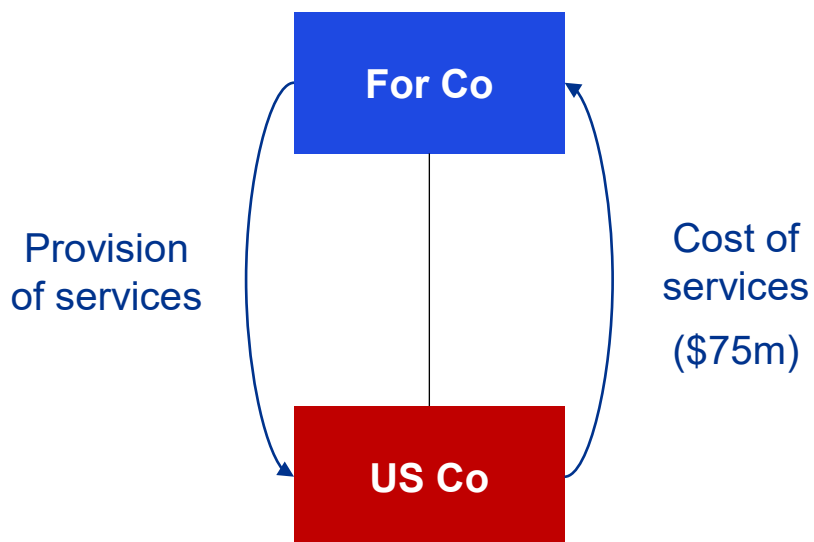
Eliminate the exception for FDAP payments subject to tax under section 871 or section 881

Eliminate the services cost method (SCM) exception

Treat as BEPs and BETBs any amounts paid to a foreign related party that are capitalized, other than purchase price of depreciable or amortizable property or inventory

Section 899: Super BEAT

Application to US distributor of services



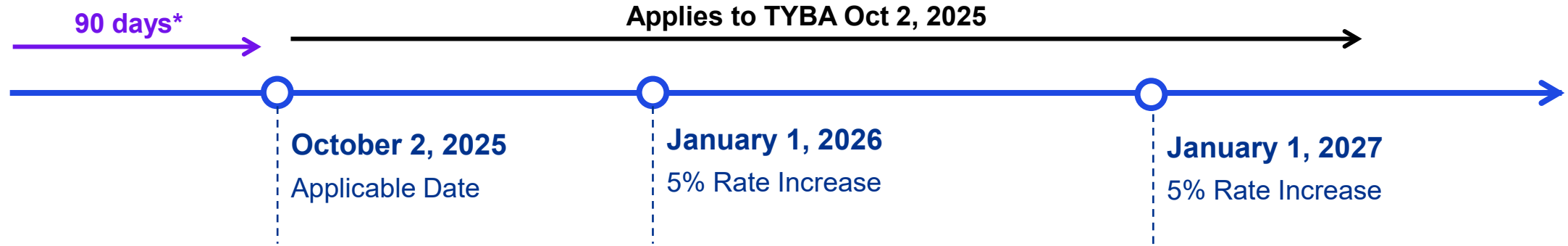
Explanation

- Under current law, SCM exception applies to \$75m cost of services for BEAT purposes, 899 would remove this exception.
- Under proposed section 899, \$75m of US Co's expenses would be treated as a base erosion tax benefit for BEAT purposes, exposing it to significant additional tax.

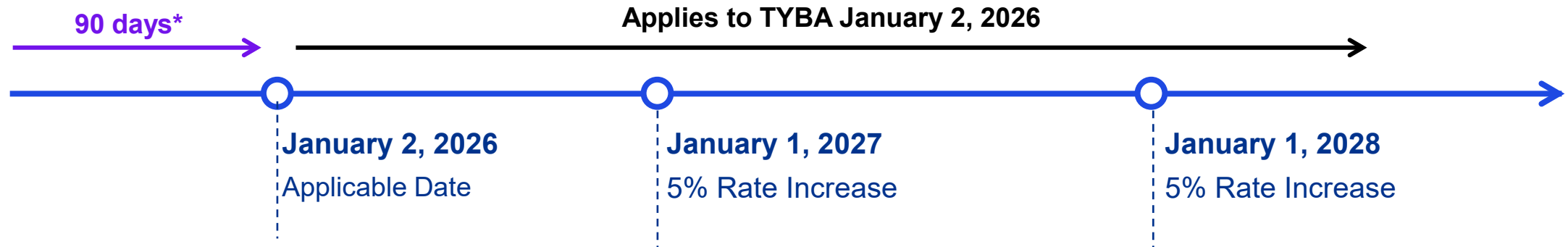
	\$
Gross receipts	100
Cost of services (SCM)	(75)
Other operating expenses	(20)
Taxable Income	5
Modified taxable income	80
Super BEAT (12.5%)	10
Regular tax liability	1.05
Super BEAT payable	8.95

Section 899: Timeline

Enactment July 4, 2025



Enactment October 4, 2025



03

The Tax Cliff

TCJA provisions undergoing change

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Individual Rate Reduction										
Modification of Individual AMT										
Increased Standard Deduction										
Increased Child Tax Credit										
SALT Deduction Limited to \$10k										
Excess Business Loss Limitation*										
Increased Estate Tax Exemption										
§199A Pass-Through Deduction										
Corporate Rate Reduction										
Corporate AMT Repeal**										
Immediate Expensing of CapEx										
§163(j) Business Interest Limitation										
GILTI @ 50% deduction										
FDII @ 37.5% deduction										
BEAT										
NOL Limitation										
§174 R&E Capitalization										

■ Temporary
 ■ Permanent
 ■ Phasing out

* Excess Business Loss Limitation extended to 2028

** New Corporate AMT effective beginning 2023

Sunsetting TCJA Provisions – Potential Extension

	January 2018	March 2020	January 2021	January 2022	January 2023	January 2026	January 2030
Section 163(j)	30% of EBITDA.	50% of EBITDA for tax years 2019 and 2020.	30% of EBITDA.	30% of EBIT.	30% of EBIT.	<i>Proposed</i> 30% of EBITDA	30% of EBIT.
Section 174	100% R&E expense deduction.	100% R&E expense deduction.	100% R&E expense deduction.	Amortize R&E over a 5- or 15-year period (domestic vs foreign).	Amortize R&E over a 5- or 15-year period (domestic vs foreign).	<i>Proposed</i> 100% R&E expense deduction Amortize foreign R&E over 15 years	Amortize R&E over a 5- or 15-year period (domestic vs foreign).
Bonus Depreciation	100% bonus depreciation allowed.	100% bonus depreciation allowed.	100% bonus depreciation allowed.	100% bonus depreciation allowed.	2023: 80% bonus 2024: 60% bonus 2025: 40% bonus 2026: 20% bonus	<i>Proposed</i> 100% bonus depreciation allowed	<i>Proposed</i> No bonus depreciation

04

Planning Strategies

Deduction Deferral Strategies

- Interest: Capitalization to property (e.g., inventory, self-produced property, intangibles)

BEAT	163(j)	FDII	GILTI	CAMT	FTC	Methods	P2
<p>Reduce BETBs if capitalize to inventory or property not acquired from FRP</p> <p>Reduce BE% and BEMTA</p> <p>Reduce BEAT deduction waiver</p> <p>BUT consider: 163(j) carryforwards</p> <p>Non-inventory acquired from FRP</p> <p>Potential disclosure on F8991</p>	<p>Not subject to 163(j) limitation</p> <p>Free up 163(j) carryforwards</p> <p>BUT consider: The proposals in the new tax bill</p>	<p>Potentially increase taxable income limitation</p> <p>Positive or negative impact on FDII, depending on the category of income produced from the property</p>	<p>Potentially decrease deductible interest that could be allocable to 951A</p> <p>Consider effect of direct expense allocation to particular asset</p>	<p>Potentially increase regular tax as compared with CAMT</p> <p>Capitalization to section 168 property may produce double benefit (until proposed regulations are finalized)</p>	<p>Potentially increase foreign source income</p>	<p>Election v. method change</p> <p>If method change, automatic v. advance consent</p>	<p>Generally no effect on GloBE income, subject to accounting treatment</p> <p>BUT consider: Effect on covered taxes and GloBE ETR</p>

Some Taxpayers Like Capitalization

Benefits of capitalization

1. Increased FDII deductions due to fewer R&E deductions reducing FDDEI.
2. Increased taxable income under BEAT
3. Potentially allows taxpayers to treat R&E expenditures paid to related foreign parties as not BEAT payments
4. Avoids CAMT and reliance on CAMT credits in the future
5. Current section 280C(c) benefit (however, section 280C is likely to be amended)
6. R&D CFCs: GILTI basket limitation and amortization deductions pushed to higher ETR periods

Planning Into R&E Capitalization or Expense

- The contract R&D issue is not going away
- Treasury and the IRS will likely continue with the contract R&D guidance project, regardless of Congressional action on section 174
 - Impacts many areas other than section 174
- Notice 2023-63 sets up two-part test to determine whether a service provider has section 174 expenditures
- Under the Notice, a taxpayer does not have a section 174 expenditure if the taxpayer:
 1. Does not bear financial risk, and
 2. Does not have right to use or exploit the resulting IP in its trade or business (including if the research provider is required to obtain approval from another party to use or exploit the IP)
- Are taxpayers planning into or around this test?

05

Tariffs

The Current Landscape (cont'd)

Country Based Tariffs

Stacking rules effective May 16, 2025, retroactive to March 4, 2025 (refunds available), except (*) was only prospectively effective since April 5, 2025.

All Countries



Reciprocal IEEPA 10%

Except MX/CA & USMCA goods;
(All) foreign content if $\geq 20\%$ US content;
Country specific rates paused;
Annex II products excluded

Does Not Stack on:

- Section 232 (steel & alum.) (*)
- Section 232 (auto & parts) (*)

Canada



Border IEEPA 25% 10% on energy & potash *Except USMCA goods*

Not subject to:

- Section 232 (steel & alum.)

Mexico



Border IEEPA 25% 10% on potash *Except USMCA goods*

Not subject to:

- Section 232 (steel & alum.)

China



Fentanyl IEEPA 20% Reciprocal IEEPA 10%* Sec. 301 25%

De minimis benefit withdrawn

*Reciprocal: Annex II products excluded;
only foreign content if $\geq 20\%$ US content;
country specific 90-day pause

*Does Not Stack on:

- Section 232 (steel & alum.) (*)
- Section 232 (auto & parts) (*)

The Current Landscape

Industry Based Tariffs

Stacking rules effective May 16, 2025, retroactive to March 4, 2025 (refunds available), except (*) was only prospectively effective since April 5, 2025.

IN EFFECT



**Sec. 232
Aluminium
25%**

IN EFFECT



**Sec. 232
Steel
25%**

IN EFFECT



**Sec. 232
Autos
(passenger & light trucks)
25%
Except USMCA US Content**

IN EFFECT



**Sec. 232
Auto Parts
25%*
Except USMCA US Content
*Import adjustment offset
available**

AUTHORIZED: April 2nd, 2025



**IEEPA
Venezuela Oil
25%**

*All imports from a country that imports
VE oil directly or indirectly*

Not subject to:

- Reciprocal IEEPA (*)

Not subject to:

- Reciprocal IEEPA (*)

Not subject to:

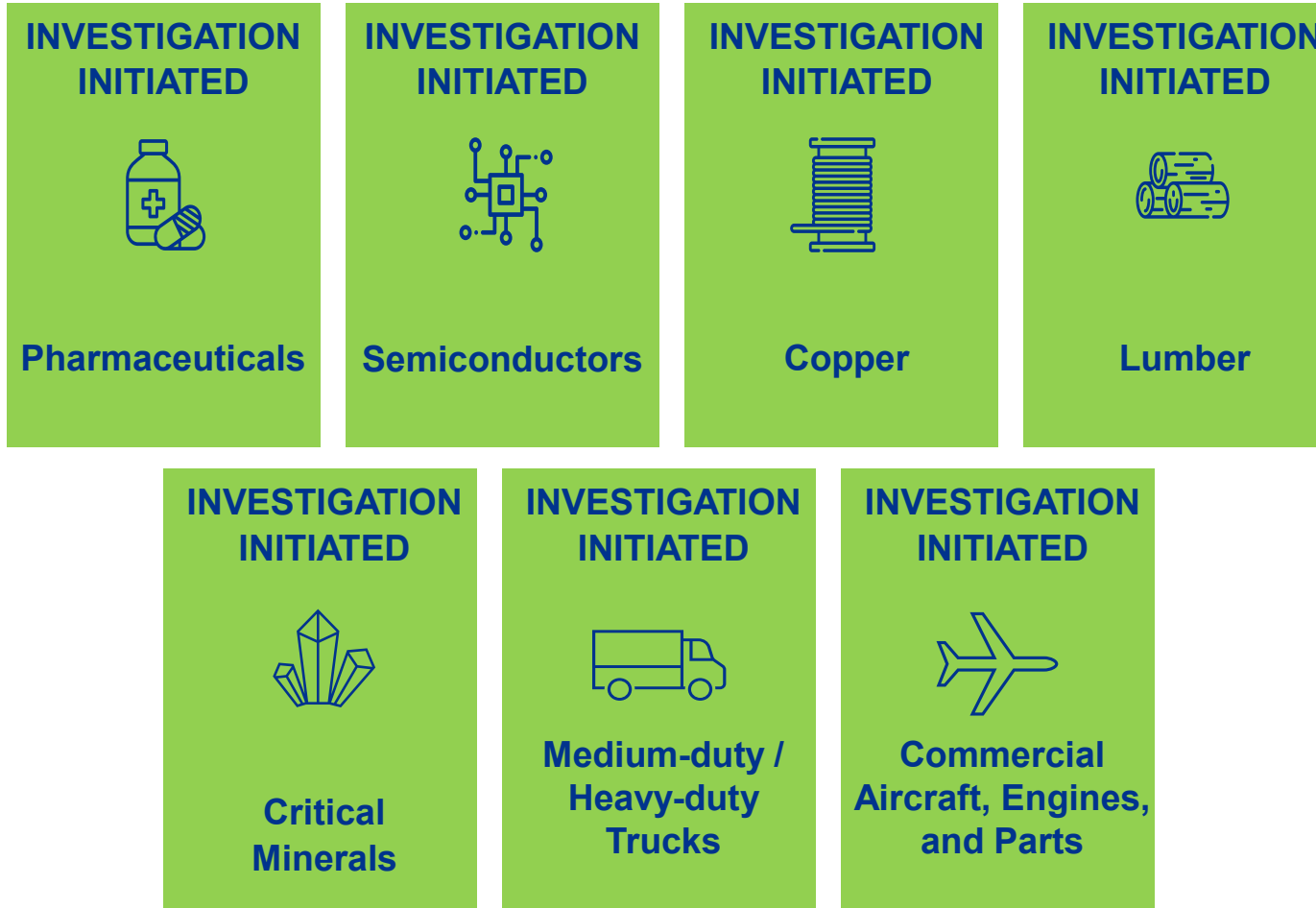
- Border IEEPA (CA & MX)
- Section 232 (steel & alum.)
- Reciprocal IEEPA (*)

Not subject to:

- Border IEEPA (CA & MX)
- Section 232 (steel & alum.)
- Reciprocal IEEPA (*)

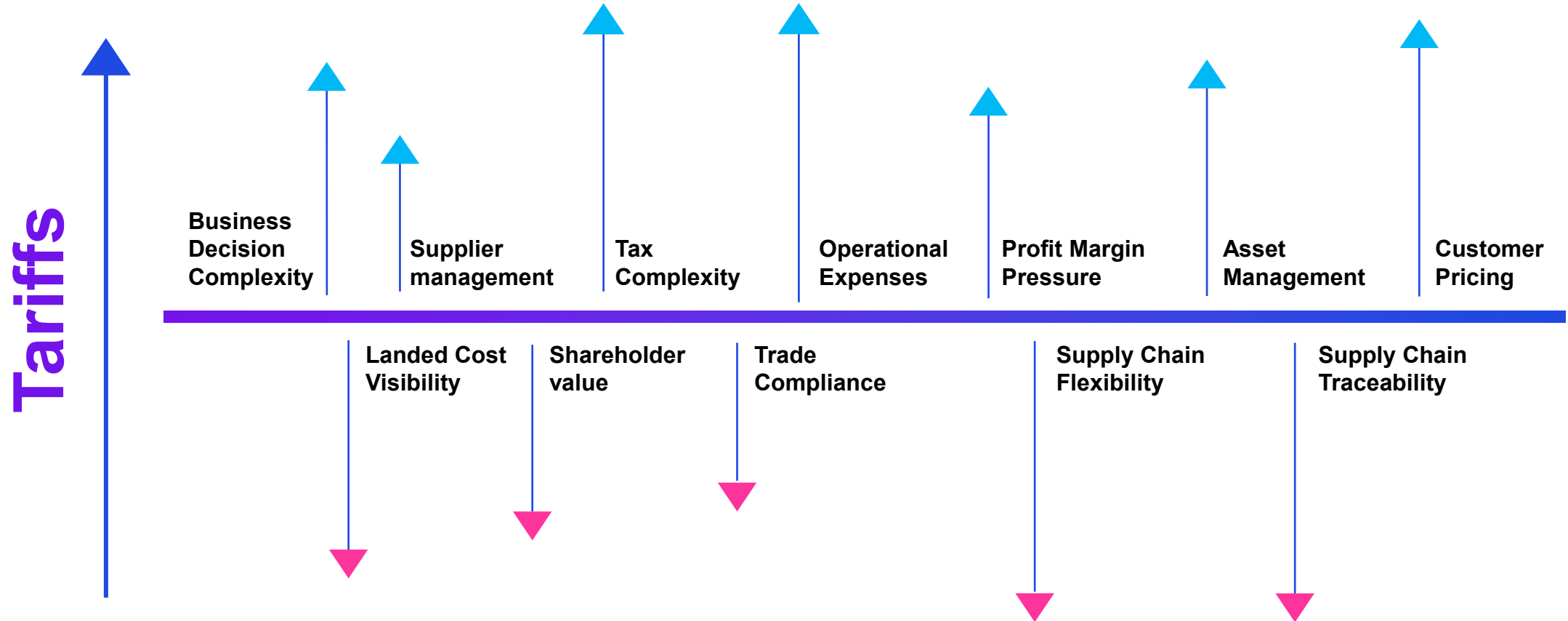
The Current Landscape

Industry Based Tariffs (Section 232)



Business impacts of Tariffs

As tariff rates increase, businesses face higher costs and supply chain disruptions resulting in a variety of business impacts.



Optimizing for Tariff uncertainty

Managing disruption from tariffs requires a multifaceted strategy. By leveraging short and long term duty mitigation strategies, companies can optimize tariff liabilities and promote supply chain resiliency while enhancing their competitive edge in the global market.

First Sale for Export

Reduce duty costs by declaring customs value based on manufacturer's initial sales price rather than final price paid by the importer

Strategic Tariff Classification

Ensure precise and strategic classification to avoid overpayment and capitalize on favorable tariff treatments

Foreign Trade Zones

Defer duty payment until foreign merchandise leaves the FTZ for US Consumption

Valuation: Post Importation Refunds

Obtain duty refunds from retroactive downward transfer price adjustments which results in a reduced customs value

Country of Origin Planning

Plan and manage the country of origin for goods strategically to benefit from preferential trade agreements and reduced duty rates

Duty Drawback

Claim 99% refund of duties, fees and taxes paid on goods imported into the U.S. that are ultimately exported or destroyed (certain Tariffs are excluded)

Cost Unbundling

Removing or "unbundling" elements from the declared customs price to facilitate a reduction in customs duties

Other Strategies

Bonded warehouses, Temporary Importation Bonds, Chapter 98

04 Q&A



Thank you!

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