



**The following does not constitute legal advice. Please seek advice from counsel.**

The Premium Cigar Association (PCA) understands the uncertainty regarding the potential impacts that increased tariffs might have on its members. PCA shares the concerns of its members and provides this bulletin as a resource to assist members in understanding the current situation with tariff increases.

Please note that this remains a rapidly evolving situation; as such, the following information is current only as of June 16, 2025. The information presented herein may be inaccurate after the date of publication and should not be relied upon without seeking advice from counsel.

### **Initial Imposition of “Reciprocal Tariffs”**

- On April 2, 2025, the White House issued Executive Order (EO) 14257 titled [“Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits.”](#)
- EO 14257 established a so-called “reciprocal tariff,” specifically an additional ad valorem duty (a duty based on the value of the goods) on all articles imported by all trading partners. It established a baseline ad valorem duty of 10% on all imported goods with an additional ad valorem duty on imported goods from select trading partners identified in [Annex I](#) to the EO.
- Note that these duties apply *in addition* to any other duties already imposed on the goods. The current duty for cigars appears at Harmonized Tariff Schedule of the United States (HTSUS) heading 2402, with “Cigars, cheroots, and cigarillos, containing tobacco; Each valued over 23¢ or over; Other” subject to a tax of 57¢/kg + 1.4%. HTSUS 2402.10.8080.
- As authority to enact tariffs, the EO cites the President’s powers under the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.) (IEEPA) and declares a “national emergency” arising from the trade deficit between the United States and its trading partners.
- Of interest to PCA members, under the above EO, only the additional baseline 10% ad valorem duty applies to goods imported from the Dominican Republic and Honduras, while an additional 18% duty (inclusive of the 10% baseline duty) applies to goods imported from Nicaragua. See [Annex I](#); HTSUS Code 9903.01.49.



- While the EO exempted certain goods from these “reciprocal tariffs,” see [Annex II](#), the EO does not exempt any tobacco products from these additional duties. The EO also provided for certain modifications to the HTSUS. See [Annex III](#).
- Subsequently, on April 10, 2025, the White House issued [Executive Order 14266](#), which keeps in place the additional baseline 10% duty applicable to imported goods from all trading partners but suspends the country-specific ad valorem duties imposed by the earlier EO through 12:01 AM EDT on July 9, 2025. Until such time, goods imported from countries (with specific exceptions) subject to a higher additional ad valorem duty, such as those from Nicaragua, would remain subject to only the 10% additional duty.

### **Legal Challenges to the EOs**

- Parties have challenged these EOs in court. In response, and as of this writing, two lower courts have moved to block the implementation of the reciprocal tariffs. However, in each case, a later-issued stay prevents the lower court’s decision from taking effect pending an appeal by the U.S. government. For now, the EOs and resultant tariffs remain in place.
- On May 28, 2025, the U.S. Court of International Trade (CIT), a federal court with jurisdiction over issues pertaining to international trade and customs laws, issued a decision holding that the IEEPA does not confer on the President the power to impose unlimited tariffs on goods from every country in the world. [V.O.S. Selections, Inc. v. United States](#), No. 25-00066, 2025 WL 1514124, at \*1 (Ct. Int’l Trade May 28, 2025). In its ruling, the CIT declared the above-mentioned EOs invalid and permanently enjoined their implementation. [Id.](#) at \*21.
- On May 29, 2025, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), an appellate court sitting above the CIT, granted a temporary stay of the CIT’s ruling pending appeal. In effect, this stay left the EOs and ad valorem duties in place for now. [V.O.S. Selections, Inc. v. Trump](#), No. 2025-1812, 2025 WL 1527040, at \*1 (Fed. Cir. May 29, 2025). On June 10, 2025, the Federal Circuit issued a stay of the CIT decision pending appeal. [V.O.S. Selections, Inc. v. Trump](#), No. 2025-1812, 2025 WL



1649290 (Fed. Cir. June 10, 2025). At present, the Federal Circuit has scheduled oral arguments for July 21, 2025, and the court will issue a decision at some point after these arguments.

- On May 29, 2025, in a separate litigation, the U.S. District Court for the District of Columbia found the subject EOs unlawful and held that the IEEPA does not authorize the President to impose these tariffs. Learning Res., Inc. v. Trump, No. CV 25-1248 (RC), 2025 WL 1525376, at \*15 (D.D.C. May 29, 2025). The court issued a preliminary injunction that would prohibit collection of tariffs pursuant to the EOs at issue but stayed the injunction for 14 days to permit the U.S. government to appeal the decision. Subsequently, on June 3, 2025, in consideration of the stay by the Federal Circuit, the court issued a stay of its preliminary injunction pending appeal to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).
- As of June 16, 2025, the D.C. Circuit will consider whether to wait for a decision by the Federal Circuit in V.O.S. Selections or to adopt a contemporaneous appeal schedule; in either case, a decision before July 21, 2025, appears highly unlikely. Learning Res., Inc. v. Trump, No. CV 25-5202 (D.C. Cir. Jun. 11, 2025) (ordering parties to file motions to govern future proceedings).
- The outcome of these legal proceedings remains uncertain, and these challenges present a rapidly evolving situation that requires constant surveillance. As of this writing, the “reciprocal tariffs” remain in effect, and it appears likely that they will remain in effect during the pendency of any appeal, which could take months or longer.

### **Impact on Excise Tax Calculations**

- As PCA members may know, U.S. Customs & Border Protection (CBP) assesses duties (such as the “reciprocal tariffs” described above) *in addition* to any excise taxes imposed by federal or state governments. In particular, the federal excise tax (FET) on imported cigars applies only upon the subject cigars’ removal from CBP custody.



- PCA members may have concerns that the increased tariffs on “large cigars” could result in *increased* excise taxes as the prices of cigars increase to account for such tariffs. The U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) has not issued guidance on this specific issue. As such, PCA offers the following information to its members with the caveat that this situation remains highly fluid and subject to clarification from authorities, including CBP and TTB.
- The FET imposed on imported “large cigars” (defined as cigars weighing more than three pounds per thousand) is 52.75% of the “sale price” of the cigars but cannot exceed 40.26 cents per cigar. 26 U.S.C. § 5701(a)(2). The FET is imposed in addition to any import duties (except where import duties are imposed in lieu of excise tax). 26 U.S.C. § 5701(g).
- The “sale price” of imported “large cigars” for the purposes of the FET is calculated pursuant to 26 U.S.C. § 5702(l) and 27 C.F.R. § 41.39. Under these provisions, the “sale price” is the price for which the “large cigars” are sold by the importer in an arm’s length transaction to an unrelated party, typically a domestic wholesaler or distributor. The “sale price” is not the price the importer paid the foreign manufacturer to purchase the products. See [TTB Industry Circular 2011-03](#) (Apr. 26, 2011). In addition, goods or services exchanged for products may be considered as part of the “sale price.” TTB has stated that “any charge made incident to placing the cigars in condition ready for use is included in the sale price,” including “any charge which is required by a manufacturer or importer to be paid as a condition of its sale of cigars” (excluding the FET, retail sales taxes imposed by a state or locality, or any actual expenses incurred for transportation, delivery, insurance, or other expenses in connection with the delivery of cigars to a purchaser). [TTB Circular 91-03](#) (Mar. 19, 1991). We note that cigars sold by an importer at retail, sold on consignment, or sold other than through an arm’s length transaction at less than the fair market price are subject to separate rules for the calculation of “sales price.” 26 U.S.C. § 5702(l); 27 CFR §§ 40.22(b), 41.39.
- Accordingly, while CBP duties are not expressly included or excluded from the calculation of the “sale price” of an imported “large cigar,” such duties likely qualify



as part of the “sale price” to the extent an importer passes the cost of such duties on to a purchaser, such as via an increase in the price of the “large cigars” or by way of a separate fee as a condition of the sale.

- Members should understand that, based on the current FET rates, “large cigars” with a “sale price” of more than \$763.222 per 1,000 will trigger the cap on the FET, and thus an FET of 40.26 cents per cigar applies. Accordingly, increasing the price of “large cigars” to account for the increased CBP duties could result in corresponding increases to the FET only up to a point, after which the cap will apply.

### **Impact of Tariffs on State Excise Taxes**

- PCA reminds members that “reciprocal tariffs” may also have impacts in calculating the excise taxes levied by states. Below we have provided two possible impacts of the “reciprocal tariffs” on the taxation of “large cigars” under state-specific tax regimes. As noted above, the foregoing information does not constitute legal advice; PCA recommends that members seek advice from their own counsel.

#### *California*

- As of July 1, 2025, California will impose an uncapped tax of 54.27% of the “wholesale cost” of tobacco products (an increase from the prior rate of 52.92%). See [California Department of Tax and Fee Administration, Tax Rates – Special Taxes and Fees](#). This tax applies to “large cigars,” [Cal. Code Regs. tit. 18, § 4076\(a\)\(6\)](#), and “wholesale cost” for these purposes means “the cost of tobacco products to the distributor prior to any discounts or trade allowances.” Cal. Rev. & Tax. Code § 30017.
- California considers CBP duties as within the taxable “wholesale cost” of the cigar; as such, any increased tariffs will result in a proportionally higher, uncapped taxable amount for imported cigars.
- Per California regulations, where the manufacturer or importer also qualifies as the distributor, the “wholesale cost of tobacco includes all manufacturing costs, the cost of raw materials (including waste materials not incorporated into finished



tobacco products) prior to any discounts or trade allowances, the cost of labor, and any federal excise and U.S. Customs taxes paid.” Cal. Code Regs. tit. 18, § 4076(b)(2). Note that the phrase “prior to any discounts or trade allowances” solely modifies the sub-clause pertaining to raw materials and does not exclude the cost of labor, FET, or CBP duties from the “wholesale cost.” See [California Department of Tax and Fee Administration, Tax Guide for Cigarettes and Tobacco Products, Industry Topics, “Wholesale Cost of Tobacco Products — If a Manufacturer or Importer is also the Distributor”](#).

- The regulation confirms this interpretation by providing the following example of calculating the “wholesale cost” of tobacco products:

*Distributor E, with a tobacco products importers license, acquires tobacco products or finished tobacco products from a supplier outside the United States. E's tobacco product costs include, in addition to all other production or acquisition costs, the costs of all U.S. Customs fees and federal excise taxes paid or incurred by E with respect to such tobacco products.*

Cal. Code Regs. tit. 18, § 4076(e)(4)(emphasis added).

#### *New York*

- Under current New York law, cigars qualify as taxable “tobacco products.” N.Y. Tax Law § 470(2). “Tobacco products,” except for snuff and little cigars, are subject to a tax rate of 75% of the “wholesale price.” N.Y. Tax Law § 471-b(1)(a). For these purposes, “wholesale price” means the “price for which a manufacturer or other person sells tobacco products to a distributor, including the federal excise taxes paid by the manufacturer or other person, before the allowance of any discount, trade allowance, rebate or other reduction.” N.Y. Tax Law § 470(6).
- New York includes “federal excise taxes” paid in calculation of the “wholesale price.” Thus, an increase in the FET paid to TTB due to tariffs (discussed above) could result in an increase in excise tax paid in New York.



- However, New York does not consider customs, duties, or other similar charges necessary to effectuate delivery as included in the “wholesale price” to the extent such charges appear separately on the invoice. N.Y. Comp. Codes R. & Regs. tit. 20, § 89.2(b)(1).