# The Transshipment Conundrum
# Part 1

This is a two-part series exploring the importance of transshipment in the new global trade order under President Trump's Executive Orders and how manufacturers should navigate this tricky and unclear issue.

## Part 1: The Transshipment Shock

Even if your product never touched China, it could now face a 40% U.S. tariff, simply because it looks like it did. This isn't a change in WTO law. It's a political enforcement overlay that flips the burden of proof onto importers and exporters.

In this deep dive, we unpack how suspicion is becoming the new standard at U.S. borders, and what you can do about it.

## The 40% Transshipment Shock: Why Compliance Is No Longer Enough

## Introduction:
## A New Era of Trade Enforcement

In August 2025, the United States triggered a major disruption in the global trading system. Under a new Executive Order, U.S. Customs and Border Protection (CBP) was authorised to impose a sweeping 40% tariff on goods ***suspected*** of being transshipped through third countries to avoid existing duties.

This policy shift, while framed as a crackdown on tariff circumvention by Chinese exporters, has sent shockwaves through Asia and beyond. The implications are vast: products that are legally of non-Chinese origin, but share characteristics with Chinese goods, may still be penalised. The burden of proof lies entirely with the importer, and it is a heavy one.

This article explores what the new 40% transshipment tariff really means, who it affects, why it matters, and what strategic options remain for exporters and importers navigating this volatile landscape.

## What the 40% Tariff Actually Is

The policy emerged from a July 2025 Executive Order under the Reciprocal Tariff Act and Section 301 of the Trade Act of 1974. It empowers CBP to impose a flat 40% additional tariff on goods determined to have been transshipped to evade existing duties. Crucially:

- It does not require definitive evidence of wrongdoing
- There is no automatic appeal or remission process
- Once flagged, the tariff applies unless the importer can prove otherwise
- Although the official narrative focuses on Chinese-origin goods, the tariff is country-neutral in language, and could eventually impact goods from any nation with U.S. trade penalties.

## Legal Origin vs. Policy Perception

Under WTO rules and most FTAs, a good's country of origin is determined by where it was wholly obtained or substantially transformed — not the last country it transited through.

However, CBP is now enforcing origin based on perceived intent. If a shipment passes through Vietnam, Malaysia, or Thailand, and resembles a Chinese product in appearance, specifications, or brand identity, it may be flagged as suspect.

This "looks-like-China" enforcement framework disregards the legal principle of substantial transformation. Instead, it leans on circumstantial factors: trade flow patterns, visual similarity, or links to Chinese suppliers. In doing so, it introduces political discretion into what was once a technical customs process.

## Scope & Legal Basis: More Than Just a China Problem

While China's rerouting through Southeast Asia is the policy's immediate target, the legal authority behind this tariff could apply to:

- Anti-dumping and countervailing duty targets (e.g., Brazilian or Indian metals)
- Sanctioned countries (e.g., Russia)
- Strategic sectors under safeguard measures (e.g., solar, semiconductors)
- Neither the Reciprocal Tariff Act nor Section 301 requires proof of WTO violations before tariffs are applied. Instead, they allow the U.S. President to act unilaterally against perceived unfair trade practices. That means any nation with significant trade exposure to U.S. duties could be next.

## Case Study: The Vietnamese Solar Panel

A Vietnamese manufacturer exports solar panels made entirely from local components to the U.S. The design, however, is identical to a popular Chinese model, because global specifications tend to be standardised.

Despite meeting origin requirements under the U.S.-Vietnam FTA, the shipment is flagged by CBP:

- The panel's specs match those of a Chinese brand already under penalty
- The importer has past ties to Chinese suppliers
- Even with a full origin file (certificates, BOMs, payroll, utilities, etc.), CBP applies the 40% duty. The importer can challenge this in court, but the shipment is delayed. The panels miss their deployment window. The commercial damage is done.

This is not theoretical. This is the new normal.

However, the importer may win a case like this eventually, but the cost of doing that may be substantial.

## Stay tuned for Part 2

We welcome you to reach out to discuss further on how we can help you, whether you are importers and/or exporters.

## Key Contact

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