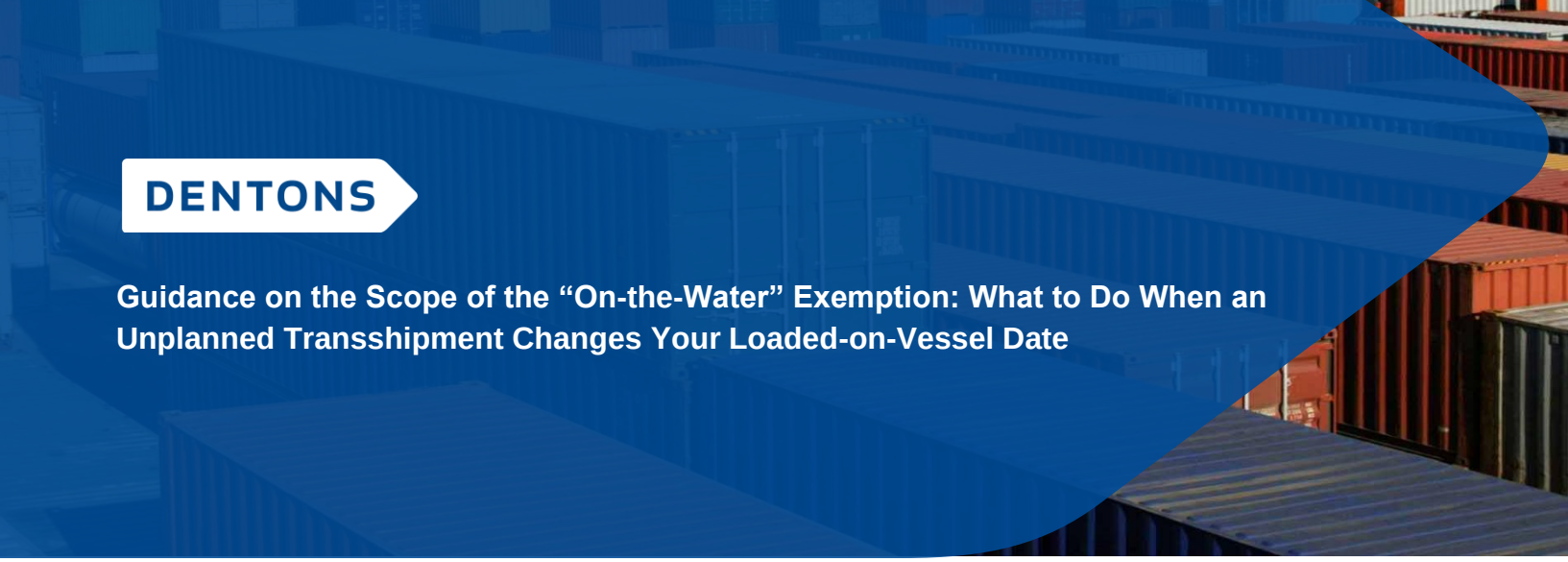

Guidance on the Scope of the "On-the-Water" Exemption: What to Do When an Unplanned Transshipment Changes Your Loaded-on-Vessel Date

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Alert: Guidance on the Scope of the "On-the-Water" Exemption: What to Do When an Unplanned Transshipment Changes Your Loaded-on-Vessel Date

During April 5–10, 2025, a series of Executive Orders and U.S. Customs and Border Protection ("**CBP**") Cargo Systems Messaging Service ("**CSMS**") notices rapidly raised tariffs on Chinese goods from 34% to 125% and introduced narrow, confusing grace periods for shipments already in transit known as the "on-the-water" exception. Some tariff increases provide for an "on-the-water" exception, others do not.[1] If granted, they follow the same general pattern. Missing these exception windows by even hours could cost importers millions and may be completely outside of their control. Using the April 5–10, 2025 China increases as an example, this Alert provides some general insights concerning the "on the water" exception.

When an importer books a shipping route, a common assumption is that this is a firm agreement where changes must be approved by the importer. In practice, that is not always the case and importers may learn, even after the fact, that their goods were unexpectedly transshipped *en route* to the United States. For example, some importers of Chinese-origin goods subject to the April 5–10, 2025 Executive Orders and CSMS notices have struggled to determine whether their entries should be assessed the general 10 percent "reciprocal" duty under subheading 9903.01.25, the China-specific rate that climbed from 34 percent to 84 percent and finally to 125 percent in fewer than forty-eight hours, or some combination thereof under the tariff stacking rules (Linked Here). CBP has clarified the issue through direct rulings and Updated Guidance CSMS #65201773. The Updated Guidance confirms that—even after the 125% tariff took effect at 12:01 a.m. EDT on April 9, 2025—the key factor for the "on-the-water" exception is the loaded-on-vessel date at departure from the last foreign port. Below is a brief review of the statutory framework, critical time stamps, and CBP's current enforcement posture, along with practical recommendations for importers who often learn only after sailing that their goods were transshipped.

Background and Statutory Framework.

Executive Order 14257, issued April 2, 2025, established a two-tier tariff scheme: a general 10 percent "reciprocal" duty (HTSUS 9903.01.25) effective April 5, and a schedule of country-specific rates—34 percent for China under

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[1] For example, in February of 2025, limited exceptions were applied to the early wave of tariff increases including 10% cumulative tariff on China-origin goods, where goods loaded before the effective date (before 12:01 a.m. Eastern time) on February 4, 2025, qualified for exemption if importers submitted proper certification. July 31, 2025, modification of the reciprocal tariff rates for certain countries also contains an "on-the-water" exception for goods already on the water prior to August 7 and entering the U.S. by October 5, 2025.

HTSUS 9903.01.63—effective April 9. Implementing instructions arrived in CSMS #64680374 on April 8, which also introduced HTSUS 9903.01.28. Subheading 9903.01.28 grants relief to goods *of any origin* that (i) were loaded and physically in transit before the stroke of midnight beginning April 5, and (ii) are entered by May 27. Because that subheading applies only when lading precedes April 5, Chinese goods loaded after that moment are excluded from 9903.01.28.

Executive Order 14257 (April 2, 2025) created a two-tier tariff system: a 10% "reciprocal" duty (HTSUS 9903.01.25) effective April 5, and country-specific surcharges, including a 34% duty on Chinese goods (HTSUS 9903.01.63) effective April 9.

CSMS #64680374 (April 8) provided implementing instructions and introduced HTSUS 9903.01.28, which exempts goods of any origin if:

1. they were loaded and in transit before midnight EDT of April 5, 2025, and
2. they are entered into the United States by May 27, 2025.

This exemption does not apply to Chinese goods loaded after April 5.

The crucial second paragraph of CSMS #64680374—denoted "NOTE"—created a second safe harbor: Chinese goods loaded between April 5 (12:01 a.m. EDT) and April 9 (12:01 a.m. EDT) qualify for the 10% reciprocal duty (9903.01.25)—instead of higher China-specific rates—if entered by May 27, 2025.

Late on April 8 and again on April 9, the White House raised the China-specific rate from 34 percent to 84 percent and then to 125 percent, effective *12:01 a.m. EDT April 9*. CSMS #64701128, issued April 10, memorialized the 125 percent rate, suspended all other country-specific surcharges, and importantly stated that "the exemptions outlined in CSMS #64680374 were not modified." Thus, notwithstanding the 125 percent rate, the "NOTE" continued to protect qualifying in-transit cargo from China.

Transshipment Complications and CBP's Current Interpretation.

The following is a real live example of complications caused by re-loading: when a vessel originally loaded during the protected April 5-8 window off-loads the cargo at an intermediate foreign port, and the containers are re-laden—sometimes without the importer's knowledge or consent—onto a different vessel that departs after 12:01 a.m. EDT April 9, CBP takes the position, confirmed in the field correspondence, that the relevant "loaded-on-vessel" date is the date and time the goods are placed aboard the *final* vessel for the United States. Accordingly, if transshipment causes the ultimate departure from the last foreign port to occur at or after 12:01 a.m. on April 9, the shipment falls outside the four-day "NOTE" window and is, at first blush, exposed to the full 125 percent duty under 9903.01.63.

Recognizing the commercial harshness of this result, CBP has adopted a second carve-out through CSMS #65201773, which provides that Chinese-origin goods *loaded on or after 12:01 a.m. EDT April 9 and before 12:01 a.m. EDT April 10*—in effect, a one-day grace period—are again eligible for the 10 percent rate, provided they enter the United States by June 16, 2025. In the agency's words, such cargo is "subject to the 10 percent additional rate *in lieu* of the country-specific rate" and must be reported under 9903.01.25. CBP has further confirmed in individual rulings that the entry summary may be corrected through a Post-Summary Correction ("**PSC**") or voluntary tender if the importer can furnish documentary proof of the actual lading date and the itinerary of the final conveyance.

Establishing the Correct Loaded-on-Vessel Date and Time.

Documentation anomalies proliferate when cargo is transshipped. Bills of lading often display the original lading event, while the manifest and carrier booking files record the later reload. CBP has signaled that it will rely primarily on the carrier's Automated Manifest System ("**AMS**") departure message, the terminal gate-out records at the last foreign port, and contemporaneous stow plans to determine the operative date. Importers should therefore collect:

- the original and any switch bills of lading;
- vessel cargo reports and terminal gate receipts from the transshipment port; and
- carrier "load lists" or equipment interchange receipts ("EIRs") reflecting the date and time the container crossed the "last foreign port" dock.

Where uncertainty persists, a sworn statement from the non-vessel-operating common carrier ("NVOCC") or ocean carrier explaining the mechanics of the reload has proven persuasive in recent CF-28 (Request for Information) responses.

Please keep in mind the time difference between ports of departure across the globe and the EDT time zone specified in the regulations. For example, mid-day April 10 in Shanghai, China, may still be April 9 EDT.

Importers Facing Uncertainty with "On-the-Water" Exception Should Consider the Following:

1. Corrective filings:

- If entry already liquidated at 125%: File a protest within 180 days (19 U.S.C. § 1514) with vessel-loading evidence.
- If liquidation still pending: Submit a Post Summary Correction (PSC) substituting HTSUS 9903.01.25 for 9903.01.63, recalculate duty, and explain the facts in the PSC narrative.
- If CBP issues a CF-29 at 125%: Respond promptly with the evidentiary package—field offices have amended CF-29s when documentation is strong.

2. Managing risk:

- Tariff swings of 34% → 84% → 125% in under 48 hours mean errors can trigger prior disclosure exposure under 19 C.F.R. § 162.74.
- If an exemption was wrongly claimed, consider whether a prior disclosure is needed.
- If CBP overapplies 125% where evidence supports 10%, preserve rights through PSCs, protests, or CIT litigation.

For further guidance on "on-the-water" exemption eligibility, duty assessment and tariff stacking, or to discuss strategies for mitigating the impact of the new tariffs, please contact your Dentons Cohen & Grigsby International Trade Team.

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Because these changes are ongoing, Dentons Cohen & Grigsby will continue to monitor these developments and provide additional updates. We provide our clients access to resources in Canada, Mexico, China, and globally to help navigate these rapidly changing trade measures.

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