OVERVIEW OF AD/CVD LAWS AND OTHER TARIFF MEASURES

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John Herrmann
Partner, International Trade

Josh Morey
Partner, International Trade

Topics for Discussion

1. Overview of Antidumping / Countervailing Duty Laws
2. Specific Applications in Foodservice Packaging
3. The Current Tariff Landscape

Overview of AD/CVD Laws

- **Purpose:** To provide domestic industries with a **legal remedy against unfairly traded imports** that injure or threaten to injure an industry
- **Benefits:**
  - Restores a level playing field in the U.S. market
  - Foreign producers that are unable to compete fairly may retreat from the U.S. market, leading to reductions in import volumes
  - Without unfair import pricing, U.S. producers are often able to price at more reasonable levels to covers costs and restore profitability
  - The "retroactive" system introduces significant risk to U.S. importers of covered products

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Filing Petitions

WHO

Domestic manufacturers or unions producing products that compete with the imports may file trade cases

WHO

Petitioner(s) must represent ≥ 25% of domestic production, and 50% of domestic production expressing a position must support the case

WHAT

Formal petition providing information on the market and the condition of the industry, plus evidence of dumping and/or subsidization

WHERE

Petitions are filed simultaneously with the U.S. Department of Commerce and U.S. International Trade Commission (ITC)

Antidumping Case: Elements of Proof

MARKET ECONOMY CASES

- Selling in the United States at:
  - below the home market price, or
  - if no viable home market exists, below a comparable third country price or constructed value (CV)

  AND

  - U.S. domestic industry is materially injured or threatened with material injury
- Duties are assessed by the Department of Commerce to offset the margin of dumping

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Antidumping Case: Elements of Proof

NON-MARKET ECONOMY ("NME") CASES

- China, Vietnam, Russia and certain other countries are considered "non-market" economies
- Commerce Department will not rely on home market prices and costs based on absence of market forces in NME countries

- NME Methodology:
  - Commerce values a NME company's factors of production (e.g., raw material inputs, labor, etc.) on the basis of comparable values in a market economy (surrogate country) at a comparable level of economic development as the NME country
  - The surrogate country must be a significant producer of the subject merchandise

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Countervailing Duty Cases: Elements of Proof

- Selling in the U.S. with the <u>benefit of government subsidies</u>
  - Financial contribution provided by the government (e.g., grants, preferential loans, tax incentives, provision of inputs at less than adequate remuneration)
  - That is “specific” to a limited number of enterprises, and
  - That bestows a benefit on the recipient company

AND

- U.S. industry is materially injured or threatened with material injury
- Duties assessed by Commerce to “countervail” (offset) the benefit of the government subsidies

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Material Injury / Threat of Material Injury

- Petitioners must show they are being materially injured, or threatened with material injury, by reason of the dumped/subsidized imports
  - Subject imports are not required to be the only (or even predominant) source of injury
- Material injury is defined as harm which is not inconsequential, immaterial, or unimportant
- Injury analysis focuses on the specific product line under investigation, taking into account the conditions of competition and the business cycle
  - U.S. International Trade Commission (ITC) determines injury
  - Successful trade cases require affirmative determinations of either dumping/subsidization **AND** injury

Injury Factors to Consider

- Injury to the domestic industry as a whole, not just to one or more individual producers
- The injury analysis focuses on production and sales of the subject product, not the operations of the company(ies) as a whole
- ITC database for the injury analysis will be most recent three full calendar years, plus the most recent quarterly data in the current year and prior year
- Imports from each subject country must not be "negligible," generally defined as comprising less than 3% of total imports in the most recent 12-month period
- In evaluating injury due to imports from multiple target countries, the ITC relies on a "cumulated" analysis

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Elements of Material Injury

VOLUME + PRICE + IMPACT

Volume

- **What the ITC looks for:** significant volumes of dumped imports. ITC examines the significance of the import volumes and whether those import volumes are increasing on an absolute basis or as a share of the U.S. market
- Increasing import market share at U.S. industry expense is key
- Volume can be based on either official import statistics or questionnaire data from U.S. importers

Price

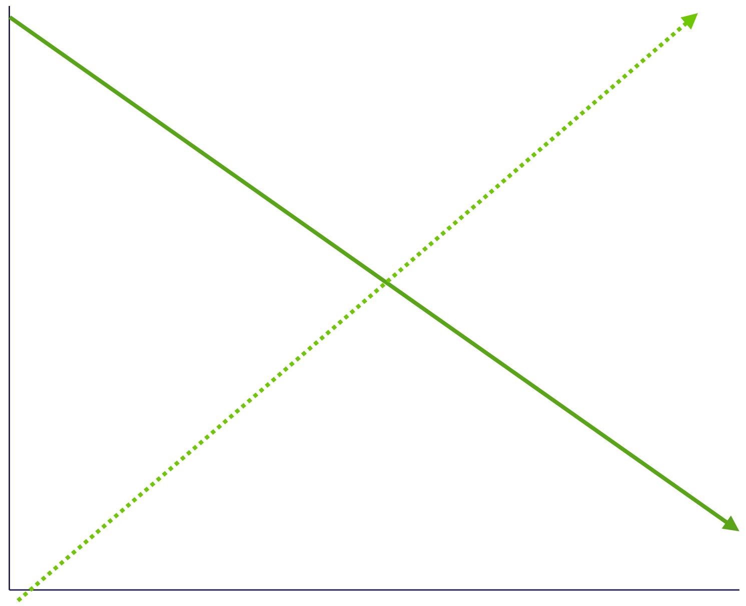
- Underselling by subject imports as compared to prices of the U.S.-produced product
- U.S. price depression (falling prices) or price suppression (inability to increase prices sufficiently to cover costs) caused by imports
- Competition between subject imports and U.S. product leading to lost sales to subject imports or lost revenue (companies are forced to reduce prices to compete with subject import prices)

Impact

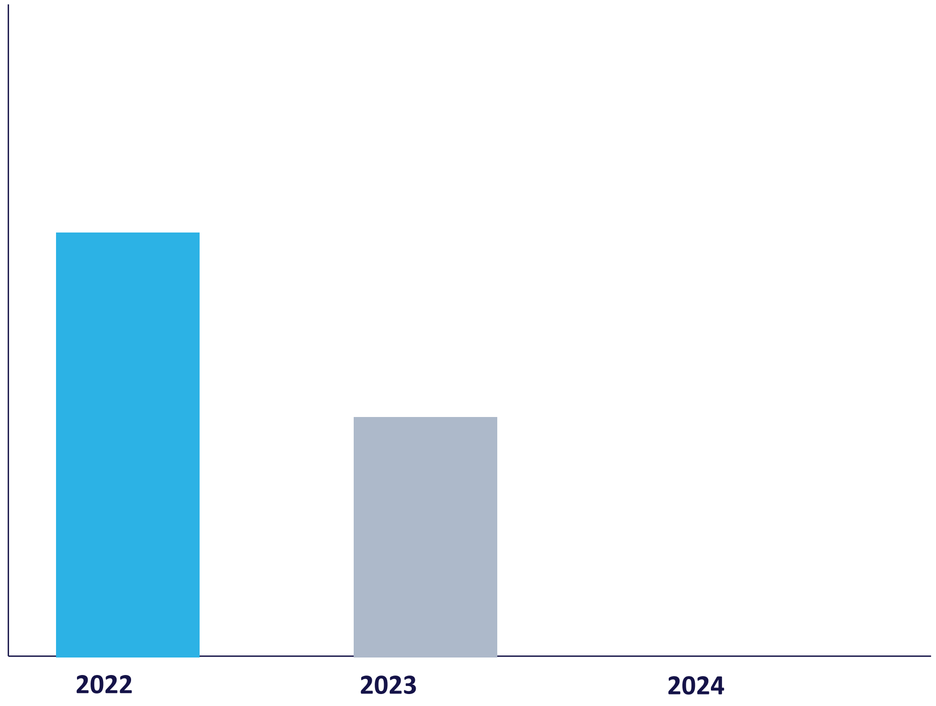
- U.S. producer **loss of market share** to subject imports
- Declining U.S. production, shipments, capacity utilization, plant closures, layoffs, and/or **poor and declining profitability** (operating or net)
- Domestic industry's injury must be due, at least in part, to the volumes of low-priced imports
- Subject imports need not be the only cause of injury, but when factors such as declining demand, domestic competition, other non-subject imports, or cost volatility are present, causal nexus to imports is more difficult to demonstrate

ITC Injury Analysis Factors (Example)

MARKET SHARE



OPERATING PROFITS



Threat of Material Injury

- If an industry is not suffering present injury, it may also prevail in a case by showing a threat of imminent injury due to subject imports
- Factors indicating threat of injury include:
  - Recent surging import volumes
  - Growing capacity and unused capacity in the foreign country
  - Export orientation of foreign producers towards the U.S. market
  - Imposition of trade remedies in third countries against the same product (that might lead to a shift in subject imports to the U.S. market)
- Even if an industry is not presently in an injured condition, it generally must be in a vulnerable condition, with declining trade and financial variables, for the Commission to find a threat of injury

Timing of Key Milestones in Unfair Trade Cases

- **DAY 0** — Filing of Petitions
- **DAY 20/21** — DOC Initiates Investigations /ITC Staff Hearing
- **DAY 45** — ITC Preliminary Injury Vote
- **DAY 85-150** — DOC Preliminary Countervailing Determination (Duty Deposit Requirement)
- **DAY 160-210** — DOC Preliminary Antidumping Determination (Duty Deposit Requirement)
- **DAY 235-345** — DOC Final Determinations
- **DAY 280-390** — ITC Final Injury Determination
- **WITHIN DAYS OF FINAL DETERMINATION** — Publication of Unfair Trade Orders

ORDERS REMAIN IN EFFECT FOR FIVE YEARS

Sunset and Administrative Reviews

- Orders remain in effect for five years
  - After five years, the ITC and Commerce conduct a “sunset review” to determine if the orders should be continued
- Orders are continued for an additional five years, if injury and dumping are found likely to continue or recur
  - Orders may be continued indefinitely if affirmative findings are issued
- Interested parties have the option of requesting Commerce to conduct an annual administrative review of any foreign producer or exporter subject to an order for the purpose of updating that respondent’s margin of dumping/subsidy and for assessing current margins

Effect of Unfair Trade Orders

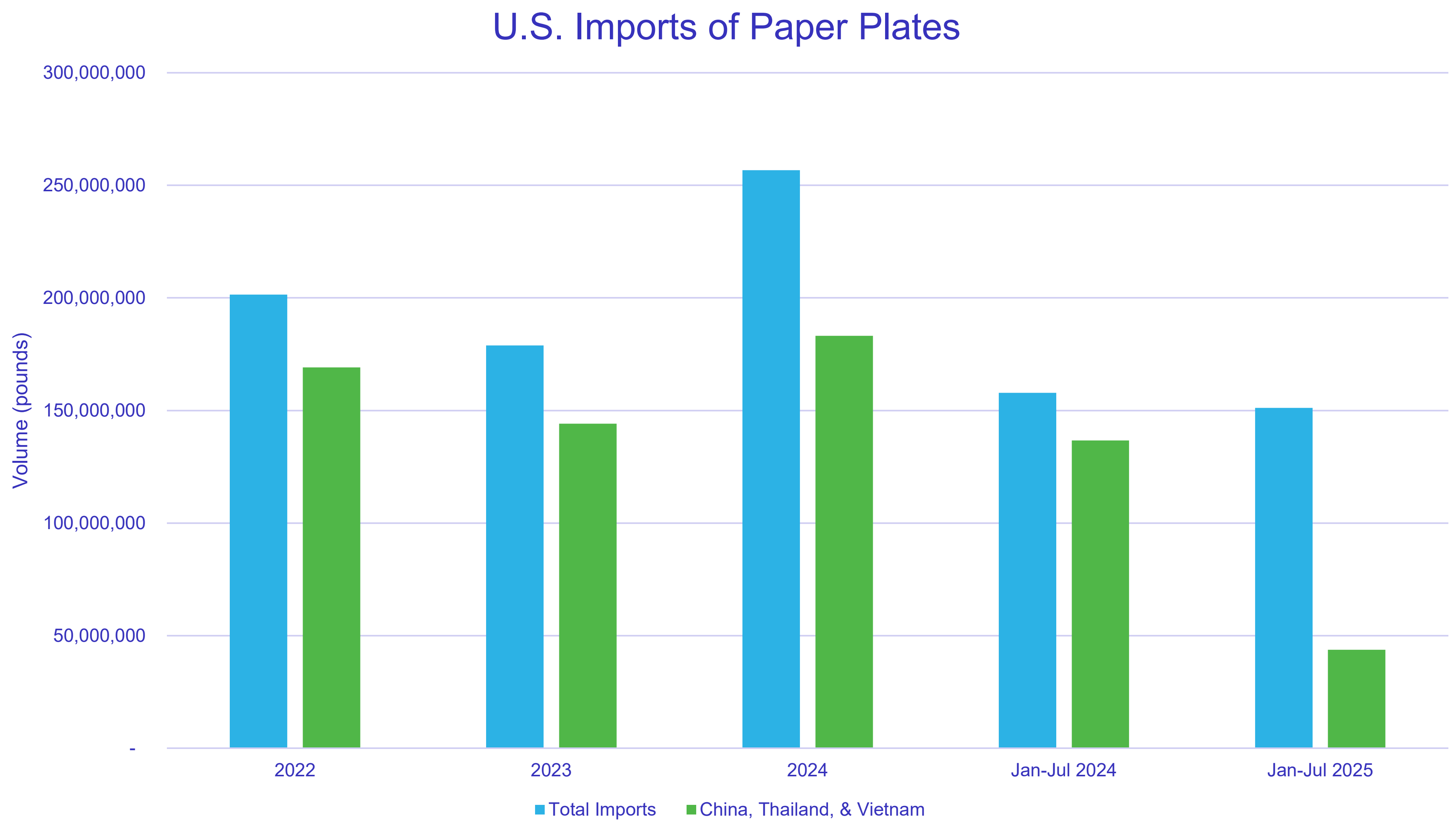
- Importers are required to post a cash deposit or bond on all entries of the subject merchandise equal to the weighted average dumping margin, after the DOC publishes an affirmative preliminary determination
- When an AD/CVD order is issued, importers must post a cash deposit on all future entries. The bonding option is eliminated.
- After review, any AD/CVD duties owed will be collected by U.S. Customs and Border Protection
- Even a small dumping margin can have a very beneficial impact because of the annual reviews

"You and the team should feel good knowing, that for the first time in many years, we have begun to discuss investments and expansion in the business. This case will have a tremendously positive impact on the jobs and community."

Applications of AD/CVD Laws to Foodservice Products

Certain Paper Plates from China, Thailand, and Vietnam

- AD Investigations (China, Thailand, and Vietnam) + CVD Investigations (China & Vietnam)
  - Initiated: February 26, 2024
  - Prelim. CVD: July 1, 2024
  - Prelim. AD: September 5, 2024
  - AD/CVD Orders: March 20, 2025
  - China Combined AD/CVD Rates: 270% - 810%
  - Thailand AD Rates: 5% - 73.17%
  - Vietnam Combined AD/CVD Rates: 30% - 385%
- Circumvention Inquiry - completed/assembled in Cambodia and Malaysia: Aug. 22, 2025



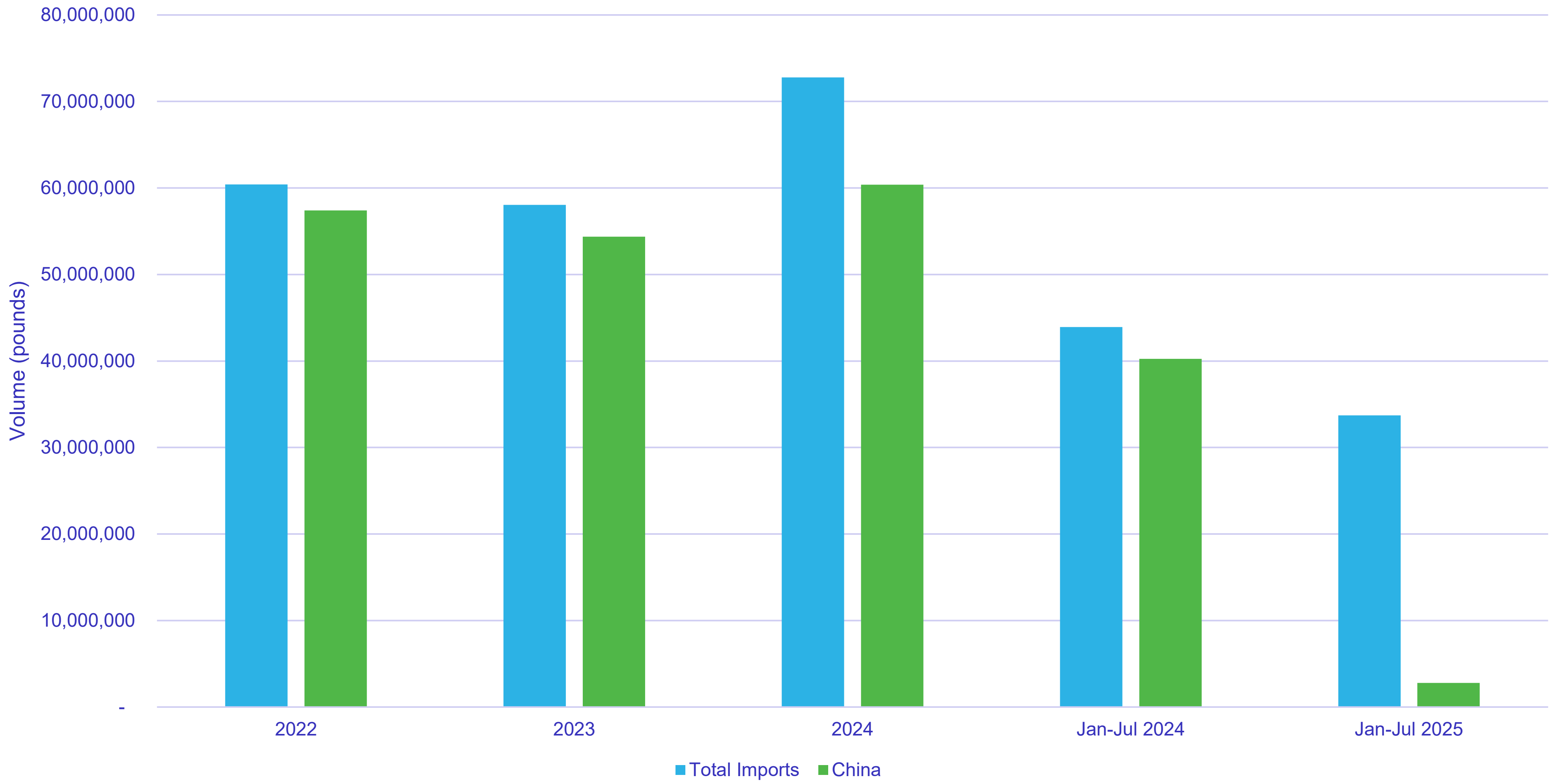
Consisting of HTSUS Code: 4823.69.0040

Source: U.S. Department of Commerce and USITC

Disposable Aluminum Containers from China

- AD/CVD Investigations
  - Initiated: June 12, 2024
  - Prelim. CVD: October 28, 2024
  - Prelim. AD: December 30, 2024
  - AD/CVD Orders: May 8, 2025
  - China Combined AD/CVD Rates: 510% - 600%
- Circumvention Inquiry - completed/assembled in Thailand and Vietnam: July 11, 2025

U.S. Imports of Aluminum Containers

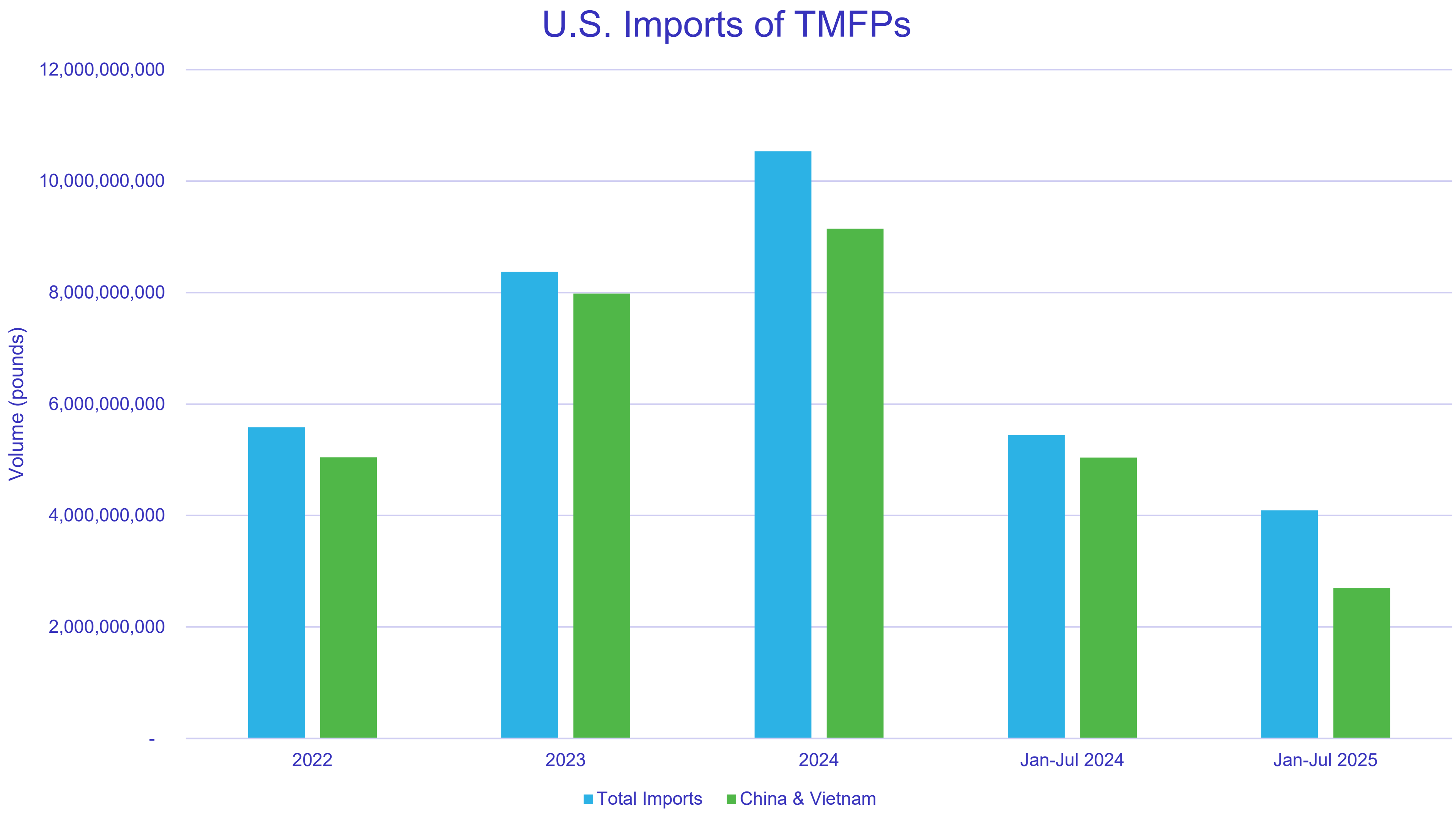


Consisting of HTSUS Code: 7615.10.7125

Source: U.S. Department of Commerce and USITC

Thermoformed Molded Fiber Products from China and Vietnam

- AD/CVD Investigations (China and Vietnam)
  - Initiated: November 4, 2024
  - Prelim. CVD: March 14, 2025
  - Prelim. AD: May 12, 2025
  - AD/CVD Orders: ???
  - China Combined Final AD/CVD Rates: 56% - 533%*
  - Vietnam Combined Prelim. AD/CVD Rates: 6% - 415%*
  - *Rates subject to change via ministerial errors



Consisting of HTSUS Codes: 4823.70.0020 & 4823.70.0040

Source: U.S. Department of Commerce and USITC

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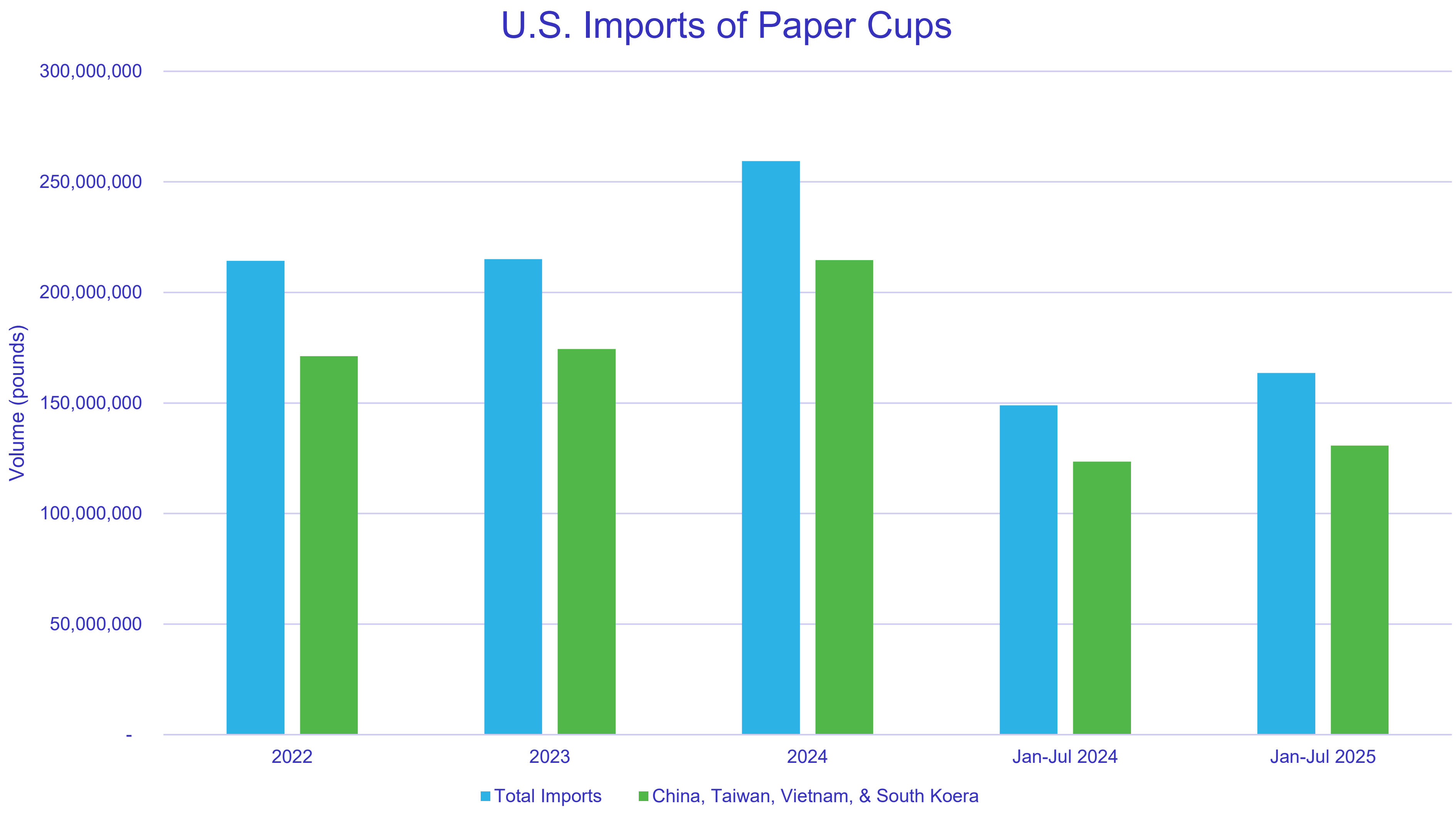
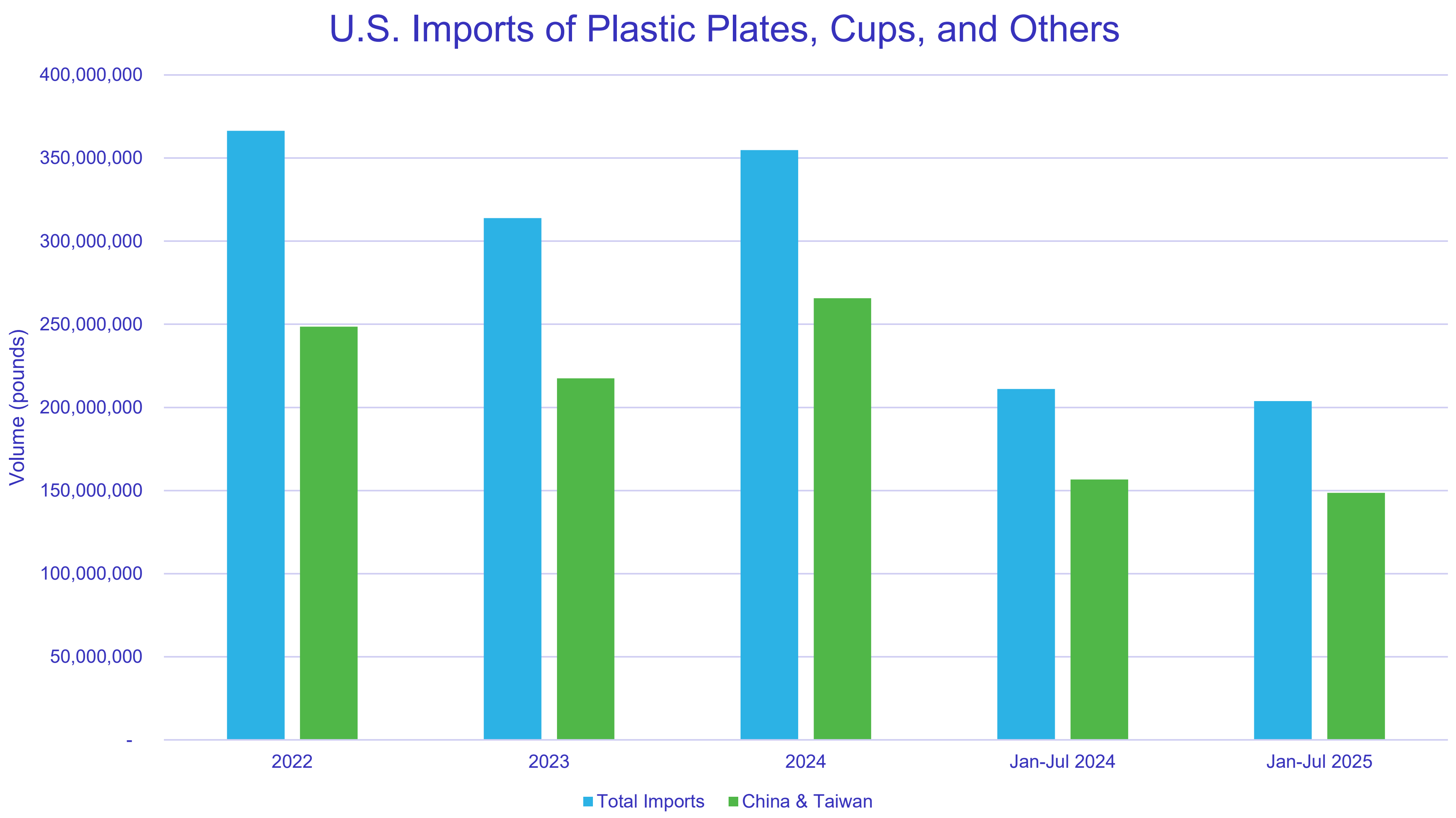
Trade Data on Other Foodservice Products



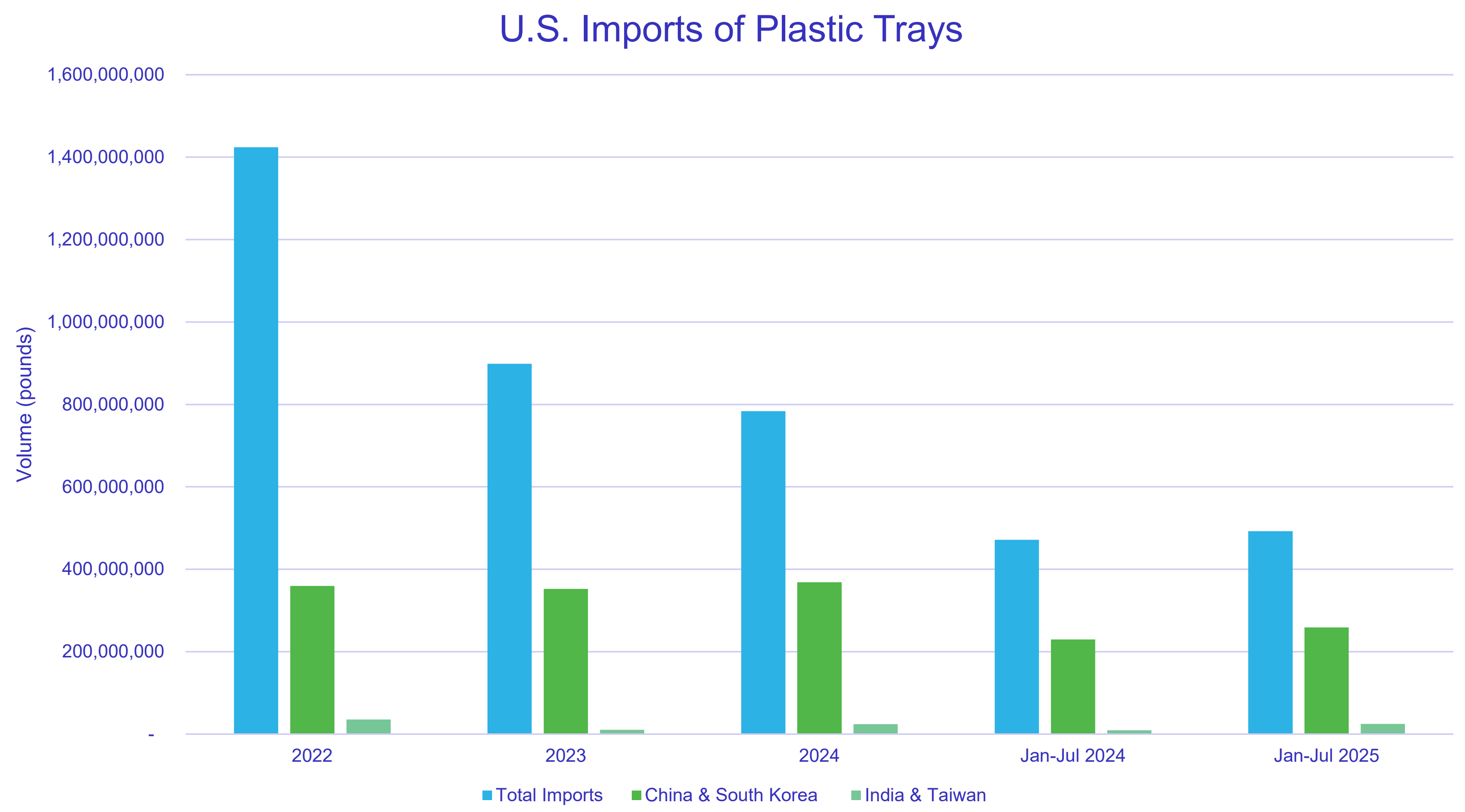
Consisting of HTSUS Code: 4823.69.0020

Source: U.S. Department of Commerce and USITC



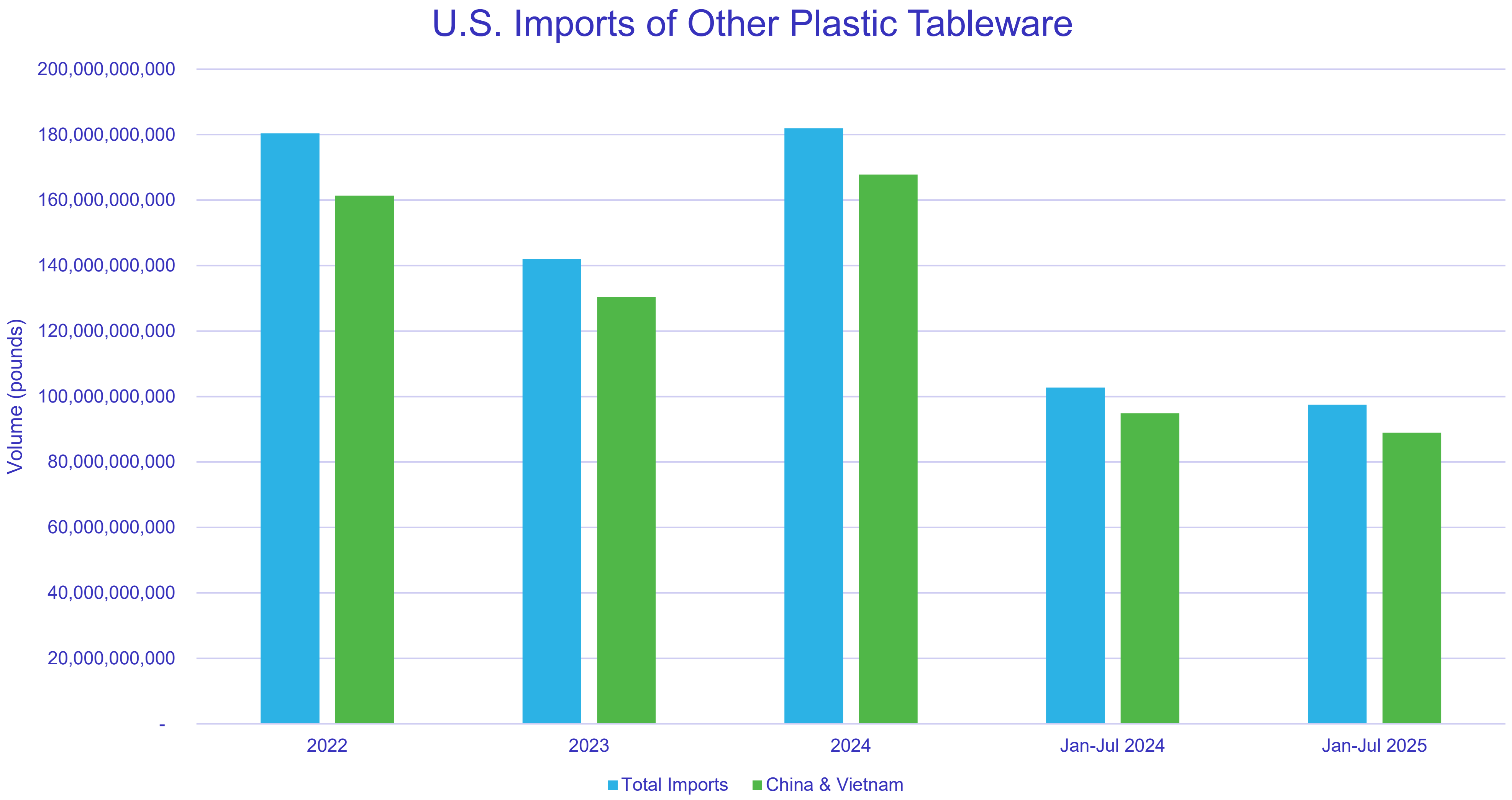
Consisting of HTSUS Code: 3924.10.2000

Source: U.S. Department of Commerce and USITC



Consisting of HTSUS Code: 3924.10.3000

Source: U.S. Department of Commerce and USITC



Consisting of HTSUS Code: 3924.10.4000

Source: U.S. Department of Commerce and USITC

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THE CURRENT TARIFF LANDSCAPE

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Trump Is Using Previously Little Used Authorities to Rewrite Tariffs

Which products are impacted? How do these tariffs "stack"?

Global IEEPA Reciprocal Tariffs

- 10% baseline
- Higher rates on many countries
- Subject of negotiations

Sector-Specific Section 232 Tariffs

- 50% on Steel
- 50% on Aluminum
- 50% on Copper
- 25% on Autos and Parts

Country-Specific Section 301 Tariffs

- 25% on most goods of China
- 7.5% - 100% on select products of China

Country-Specific IEEPA Fentanyl Tariffs

- 20% on China & Hong Kong
- 35% on Canada (increased August 1)
- 25% on Mexico

Country-Specific IEEPA Crude Oil Tariffs

- 25% on India
- In addition to 25% from IEEPA Reciprocal Tariffs

Country-Specific IEEPA Corruption Tariffs

- 40% on Brazil
- In addition to 10% from IEEPA Reciprocal Tariffs

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Country-Specific “Reciprocal” Tariff Rates

Country	Proposed Rate (April 2)	Deal Announced?	Effective Rate (August 7)	Notes
EU	20%	✓	⬇ 15%	
China	34%	?	〓 10%	* Rate will increase to 34% November 12
India	26%	✗	⬇ 25%	* In addition to 25% “crude oil” tariff
Japan	24%	✓	⬇ 15%	
UK	10%	✓	〓 10%	
Brazil	10%	✗	〓 10%	* In addition to 40% “corruption” tariff
Korea	25%	✓	⬇ 15%	
Turkey	10%	✗	⬆ 15%	
Indonesia	32%	✓	⬇ 19%	
Switzerland	31%	✗	⬆ 39%	
Thailand	36%	✓	⬇ 19%	
Vietnam	46%	✓	⬇ 20%	
Malaysia	24%	✓	⬇ 19%	

Sector-Specific Section 232 Tariffs Currently In Place

STEEL

Current Rate **50%**
UK at **25%**

Applies to **mill products** in Chapter 72, as well as steel content in a wide range of **derivative products** in Chapter 73, **machinery/ equipment** in Chapter 84, etc.

Commerce has established a process for **including additional derivatives**.

The White House intends to negotiate a **tariff-rate quota (TRQ)** with the UK. The EU is also seeking a TRQ.

ALUMINUM

Current Rate **50%**
UK at **25%**
Russia at **200%**

Applies to **primary aluminum** and **mill products** in Chapter 76, as well as aluminum content in a wide range of **derivative products**.

Commerce has established a process for **including additional derivatives**.

The White House intends to negotiate a **tariff-rate quota** with the UK. The EU is also seeking a TRQ.

COPPER

Current Rate **50%**

Applies to **copper content** in **semifinished products** in Chapter 74, plus a few **derivative products**.

The tariffs do not currently apply to **primary copper**, but the White House plans to revisit the issue in 2026.

Commerce has established a process for **including additional derivatives**.

AUTOS + AUTO PARTS

Current Rate **25%**
UK autos < 100K at **7.5%**
UK auto parts at **10%**
USMCA auto parts at **0%**
EU auto parts at **greater of MFN or 15%**
Japan auto parts at **greater of MFN or 15%**

Applies to **passenger vehicles** and **light trucks**, as well as a wide range of **auto parts**.

USMCA / U.S. content exception; MSRP offset.

Commerce has established a process for **including additional auto parts**.

De minimis Loophole Closed for China

- "*De minimis*" provision allowed goods up to $800 to be shipped to the U.S. duty-free
  - More than **80% of total U.S. e-commerce shipments** in 2022 were *de minimis* imports, the vast majority of which came from China.*
  - Four million *de minimis* shipments/day enter the U.S. (60% from China)
  - CBP processed **1.36 billion packages** under the *de minimis* exemption in FY24.
- As of May 2, parcels worth less than $800 will be subject to a **54% tariff or a flat fee of $100**, rising to $200 in June - *on top of the tariffs already placed on Chinese imports*.
- ***BUT*** – the *de minimis* fix for China was contained in one of the Proclamations invalidated by Court of International Trade and is also subject to independent litigation
- ***BUT BUT*** – Congress passed provision eliminating *de minimis* by July 1, 2027, in Megabill
  - Plus, new misuse penalties up to $10,000 per violation, effective August 3, 2025
  - CBO estimated $23.5 billion in revenue over 10 years

* CRS Report: China's E-Commerce Exports and U.S. *De Minimis* Policies

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LEGAL CHALLENGES AND OTHER TARIFF AUTHORITIES

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Legal Challenges

- The tariffs implemented under International Emergency Economic Powers Act ("IEEPA") are subject to numerous lawsuits, the most advanced of which is now pending before the U.S. Supreme Court. Argument is scheduled for November 5th.
- As of today, the Court of International Trade, U.S. Court of Appeals for the Federal Circuit, and the District Court for D.C. have found that IEEPA does not authorize the President to impose tariffs
- One case, Axle of Dearborn v. United States, is specifically about the suspension of the *de minimis* provision
- Another appeal, Chapter1 LLC v. United States, sought to certify a class of all importers who have paid tariffs, but was subsequently dismissed

Ongoing IEEPA Litigation:

- *V.O.S. Selections v. U.S.* (US Supreme Court)
- *State of Oregon v. U.S.* (US Supreme Court)
- *Learning Resources v. Trump* (US Supreme Court)
- *State of California v. Trump* (9th Cir.)
- *Emily Ley Paper Inc. v. Trump* (CIT)
- *Webber v. U.S. Department of Homeland Security* (9th Cir.)
- *Axle of Dearborn v. U.S.* (CIT)

Key Takeaways from the IEEPA Decision

- Federal Circuit issued a split decision finding the tariff actions are invalid as contrary to law. Of the 11 participating appellate court judges:
  - Three found that President Trump could not use tariffs under IEEPA **in the manner and for the purposes** he did, although those judges did not directly address the question of whether President may have some limited authority to use tariffs in other circumstances;
  - Four found that the President has no authority to **ever** issue tariffs under IEEPA; and
  - Four found the President **may not have exceeded** his constitutional or statutory authority under IEEPA to issue tariffs and that the question required further judicial review to resolve

Key Takeaways from the IEEPA Decision

- Issues/considerations
  - Congress has the power to levy and adjust tariffs, unless it grants a particular authority to the president
  - The authority granted to the president by IEEPA to “regulate importation” does not “in and of itself imply the authority to impose tariffs”
  - A key question for the Supreme Court will be the scope of relief, if any action is found to be unlawful
    - The Federal Circuit sent back the lower court’s “universal” injunctive relief (which is stayed pending Supreme Court review)
    - Decision on universal injunctive relief is based on the birthright citizenship case earlier this year that called into question the constitutional authority for a district court to grant a nationwide injunction, but did not outright prohibit it (and also did not present clear rules for when such a remedy would be allowed)
- Based on the judicial reasoning seen so far, there would be room for the Supreme Court to overturn both sets of IEEPA tariffs, uphold both sets, or overturn one but not the other on an “as applied” basis

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Section 232 and Section 301 Tariffs Have Survived Litigation

The CIT upheld the President's ability to impose and change the rate of tariffs on products that have been found to pose a national security threat under Section 232 in ***American Institute for International Steel v. United States.*** However, new and rapid changes, especially for steel and aluminum products when investigations finished several years ago, may be ripe for additional legal challenges. Auto 232 also raises contemporaneity issues.

The CIT and Federal Circuit have also upheld the President's ability to impose and increase tariffs on imports when USTR has made a finding that a country engages in unfair trade practices that burden or restrict U.S. commerce in ***In Re Section 301 Cases.*** The courts also concluded that USTR must explain how it calculated the impact of unfair trade practices and the subsequent tariff rates, pursuant to the Administrative Procedures Act.

Possible Authorities Beyond IEEPA

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It is highly likely that President Trump will not be deterred from his broader agenda should IEEPA be ruled to be unavailable. Other authorities that could be used to impose tariffs include:

Section 122 of the Trade Act of 1974

Authorizes the President to impose tariffs of no more than 15% for 150 days "to deal with large and serious . . . balance-of-payments deficits."

The effective period may be extended by an Act of Congress.

Section 338 of the Tariff Act of 1930

Allows the President to "specify and declare new or additional duties" of no more than 50% against nations that discriminate against U.S. commerce.

Very few restrictions. Tariffs are imposed after 30 days and can last for an indefinite period.

More Section 232 Investigations

The White House has initiated ten new Section 232 National Security investigations this year.

Thus far reserved for products/sectors that are critical to the economy or the defense industrial base.

More Section 301 Investigations

The Administration has already initiated a broad Section 301 investigation into Brazil's policies in relation to digital trade, electronic payments, intellectual property, and market access.

Contact Us

John Herrmann

Chair, International Trade

jhermann@kelleydrye.com
Washington, DC
(202) 342-8488

Josh Morey

Partner, International Trade

jmorey@kelleydrye.com
Washington, DC
(202) 342-8867

Kelley Drye