

# International Impacts: Tariffs, Trade & Economic Uncertainty

Canadian Board of Marine Underwriters  
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Presented By

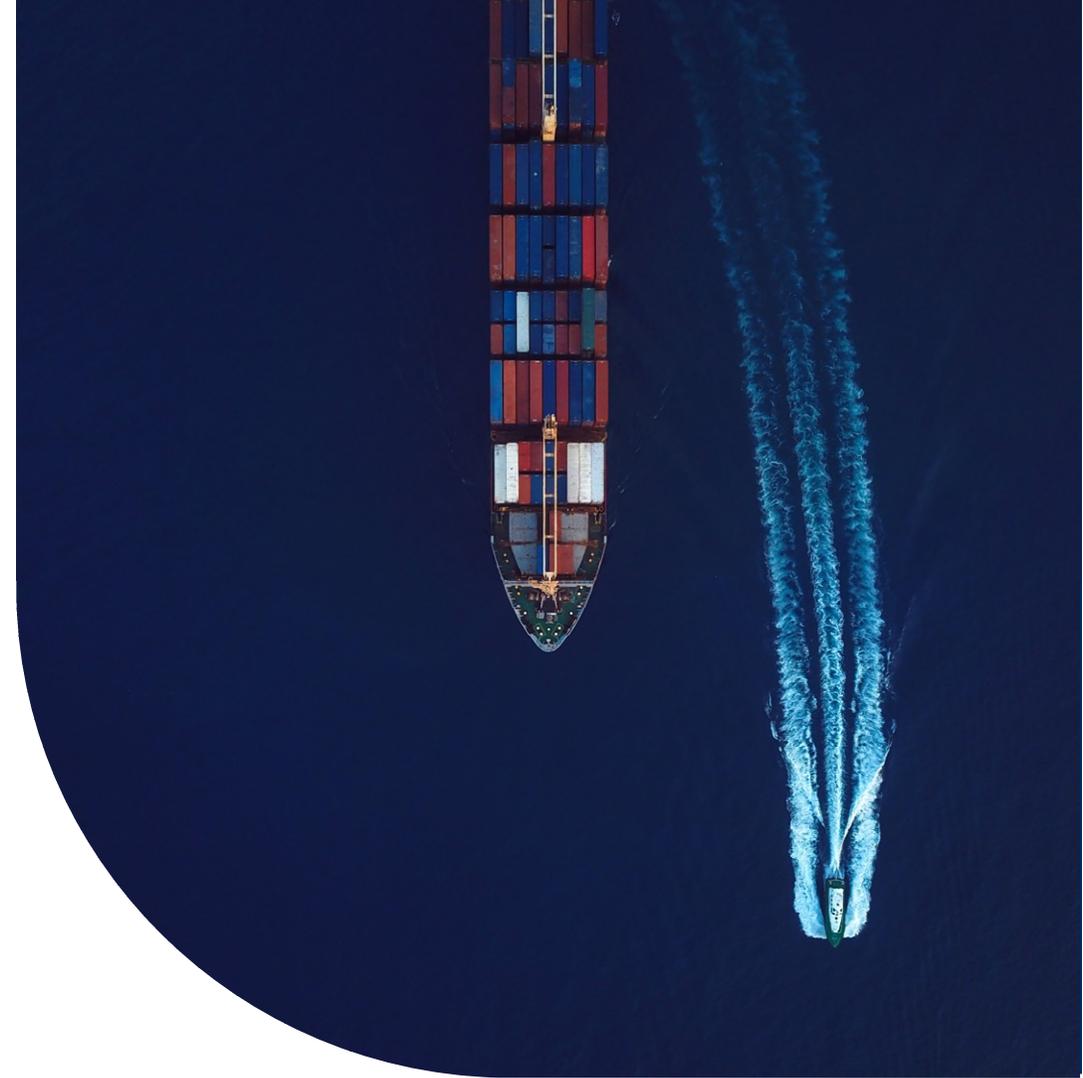
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U.S. Trade Representative Actions on Chinese Tonnage



Impacts of Tariffs on Contractual Obligations



U.S. EPA Vessel Incidental Discharge

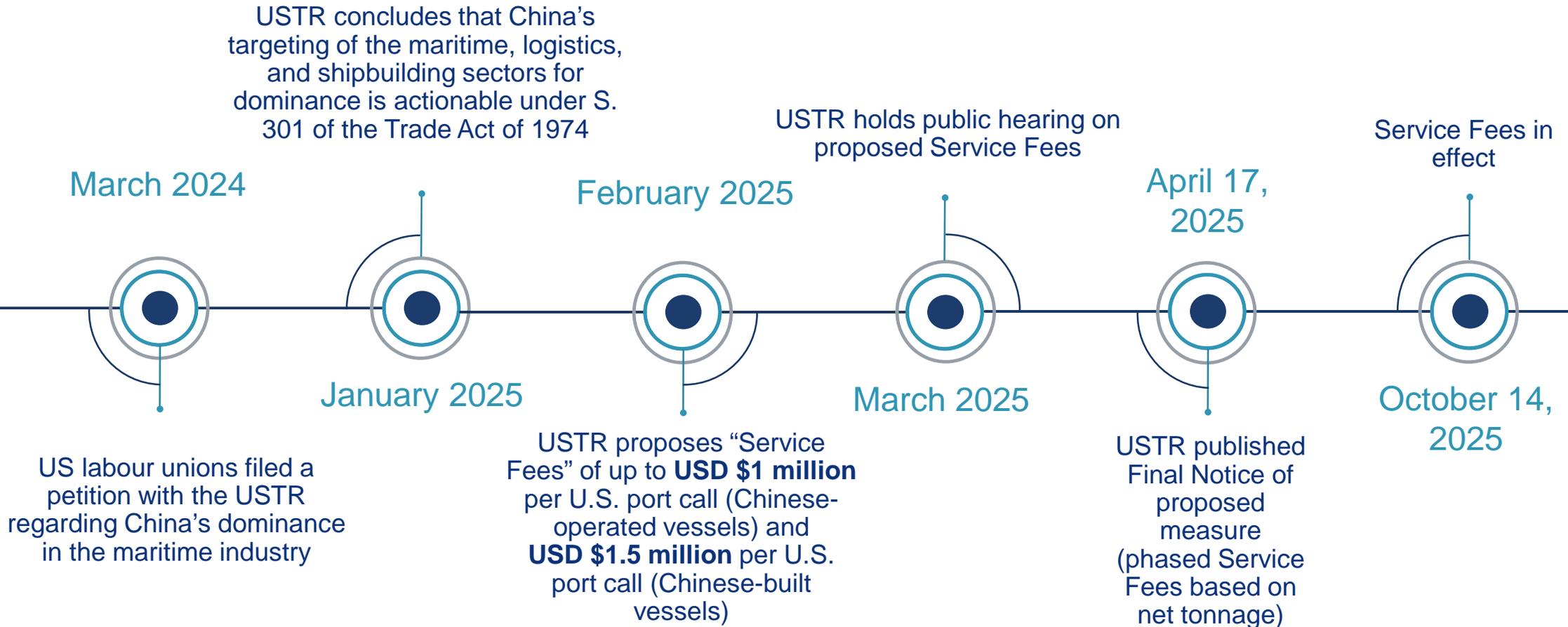


Ballast Water Regulations

# USTR: Actions on Chinese Tonnage



# U.S. Trade Representative Actions on Chinese Tonnage



# U.S. Trade Representative Actions on Chinese Tonnage

## USTR Final Notice of Proposed Measures

- Phased introduction of “Service Fees” on:
  - Chinese vessel operators
  - Chinese vessel owners
  - Operators of Chinese-built vessels
- Fees on foreign-built car carrier vessels
- LNG Tanker restrictions (2028)
- Potential tariffs on ship-to-shore cranes

# U.S. Trade Representative Actions on Chinese Tonnage

## What You Need to Know

- Three main categories of fees starting **October 14, 2025**:
  - 1. Chinese vessel operators and vessel owners.**
    - USD \$50 per net ton increasing to USD \$140 per net ton by April 2028.
  - 2. Vessel operators of Chinese-built vessels.**
    - Higher of:
      - USD \$18 per net ton increasing to USD \$33 per net ton by April 2028; or
      - USD \$120 per container discharged increasing to USD \$250 per container discharged by April 2028.
  - 3. Vessel operators of foreign-built vehicle carriers.**
    - Set fee of USD \$150 per Car Equivalent Unit (CEU) capacity of the entering non-U.S. built vessel.

### **Exceptions and Caps:**

- Fees are not cumulative
- Up to five times per year, per vessel (categories 1 and 2)
- If multiple U.S. stops are made before a foreign destination, the fee will only be assessed once
- LNG tankers, bulk liquid carriers, and Lakers exempt (category 2)

# US Trade Representative Actions on Chinese Tonnage

## There's more...

On April 9, 2025, President Trump issued an Executive Order to restore America's maritime dominance.

“It is the policy of the United States to revitalize and rebuild domestic maritime industries and workforce to promote national security and economic prosperity.”

The Executive Order requires the Assistant to the President for National Security Affairs in coordination with other departments (including the USTR) to develop a Maritime Action Plan within 210 days.

Strongly suggests that more measures can be expected.

# Impacts from USTR Actions

## Legal Implications & Questions

- Determining if the fees apply.
  - Requires careful consideration and review of the Final Notice.
- Contractual allocation of risk.
  - Who pays?
  - Ability to re-route vessel to avoid fees?
  - Vessel substitution?
- What happens if the risk is not contractually allocated?
  - Force Majeure
  - Frustration



# Impact of Tariffs on Contractual Obligations

## Initial considerations

**In a contract for the supply of goods tariffs may have a significant impact.**

- One of the parties to a contract will be responsible for the cost of the tariffs.
- Who this party is depends on the wording and interpretation of the contract.
  - Are there express terms that provide guidance?
  - If no, then any ambiguity depends on the objective intention of the parties at the time they entered the contract (at least in Canada).
- The governing law will play a key role.
  - In Canada, unless expressly provided for in the contract, it is challenging to be released from contractual obligations resulting from unforeseen economic hardship.

# Contractual Obligations

## Clauses to Look For

- Liberty and Deviation
- Delay
- Taxes and Duties
- Change of Law
- Incoterms

# Liberty and Deviation

## BIMCO Liberty and Deviation Clause for Contracts of Carriage 2010

(a) The Vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress, to deviate for the purposes of saving life or property, and for any other reasonable purpose, which term shall include but not be limited to calling at any port or place for bunkers; taking on board spares, stores or supplies; repairs to the vessel necessary for the safe continuation of the voyage; crew changes; landing of stowaways; medical emergencies and ballast water exchange.

(b) If the Charterers requests any deviation for the Charterers' purposes and the Owners consent, such consent to be at the absolute discretion of the Owners, the Charterers shall indemnify the Owners against any and all claims whatsoever brought by the owners of the cargo and/or the holders of Bills of Lading against the Owners by reason of such deviation.

(c) Prior to giving any such consent the Owners may, at their option, require to be satisfied amongst other things that the Charterers has sufficient and appropriate P&I Club cover and/or if necessary, other additional insurance cover, in respect of such a requested deviation,

(d) This Clause shall be incorporated into any sub-charter and any bill of lading issued pursuant hereto.

# Change of Law

## What is it and how could it help?

- Change of law clauses can be critical in long-term contracts to plan for potential uncertainties and manage risk.
  - Friction between regulatory changes and fixed contractual terms.
- Outline process the parties must follow if there is a change of law which impacts the parties' ability to perform the contract.
- Whether a change of law clause is triggered by new or increasing tariffs depends on wording of the clause.

## Example 1

### Change of Law

To the extent that any a change of law occurs during the Term and either party can demonstrate to the other that the change of law directly results in a material change respecting the performance of the obligations under the Contract, or the economic viability of same, the party claiming the change of law shall give notice to the other party and shall provide documentation to support its claim. The parties shall negotiate in good faith to determine if any amendments should be made to the Contract to reflect the impact of the change in law on the performance of the Contract.

## Example 2

### Change of Law

In the event of changes in laws, regulations, government requirements or mandatory industry standards during the contract term that has a material impact on the costs incurred by the Service Provider in performing the Services, the parties shall meet as soon as reasonably practical to engage in good faith discussions regarding the possible adjustment of Charges in accordance with any actual cost increases incurred by the Service Provider. If the parties are unable to agree, either party may refer the matter for dispute resolution in accordance with Clause X hereunder.

## Does your contract have them?

- Internationally agreed upon rules of sale established by the International Chamber of Commerce.
  - Outline delivery terms and the responsibilities (and risks) of the seller and the buyer.
- If used in a contract, can determine who is responsible for the cost of tariffs.
  - *Cost, Insurance and Freight (CIF) – the **buyer** pays all import duties, taxes, and costs.*
  - *Free Carrier (FCA) – the **buyer** pays all import duties, taxes, and costs.*
  - *Delivered Duty Paid (DDP) – the **seller** is responsible for all duties, taxes and costs.*
- USTR Fees on Chinese Tonnage (?)

# Force Majeure

## What is it and how could it help?

- *Force majeure* is a contractual provision intended to excuse non-performance or delay when certain uncontrollable events occur.
- Determining whether the *force majeure* clause can be relied on generally depends on the language of the contract and if the event has been expressly included (e.g., natural disasters, wars, strikes).
- Tariffs are unlikely to fall within a traditionally drafted *force majeure* clause.
  - Risk of increased costs are generally allocated elsewhere in a contract (e.g., Incoterms)

***Porter may well have acted in a commercially reasonable way by suspending its operations. However, Porter has not shown that, for this reason, it was “restricted” in fulfilling its payment obligation.***

***The authorities are clear that the fact that a contractual obligation has become more expensive to perform, even dramatically more expensive, is not a ground to relieve the party of its obligation on the ground of force majeure.***

***- Porter Airlines Inc. v. Nieuport Aviation Infrastructure Partners GP, 2022 ONSC 5922 at para. 452***

***The force majeure clause in the Univar/Domtar contract refers to “any contingency beyond the reasonable control of Supplier” which interferes with its “supply”. None of the examples are connected to economic or market conditions. I do not accept Univar’s submission such a contingency constituted an event of force majeure because it affected its ability to supply the product at the contract price.***

***- Domtar Inc. v. Univar Canada Ltd., 2011 BCSC 1776 at para. 86***

## When is a contract frustrated?

- Occurs where there is an unforeseen event which makes performance **impossible** or **radically different** than what the parties intended.
- In Canada, the threshold to satisfy the test for frustration is **very high**. Generally, the contract must be impossible to perform.
  - ***A more onerous obligation than the parties anticipated will not frustrate a contract unless it undermines the very foundation of the agreement.***
    - *New City / Safety Mortgage Fund Inc. v Pacific Point Holdings Ltd.*, 2020 BCSC 1792 at para. 53
- Whether tariffs will be sufficient to invoke frustration will depend on the facts and wording of the contract.

## Steps you can take:

1. Carefully review contracts to see if they already allocate responsibility for a change in tariffs (e.g., Incoterms or other express provisions) and/or USTR fees, or provide a potential way out (*force majeure* or change of law) if needed.
2. Proactively discuss the impact of tariffs and USTR fees with counterparties and consider potential renegotiation of terms where possible.
3. Expressly allocate risk of new tariffs, USTR fees or similar charges in any new contracts (or a procedure for doing so).
  - Specific, but flexible enough to address the rapidly changing circumstances.



*Vessel Incidental  
Discharge Act (U.S.)  
&  
Ballast Water Regulations  
(Canada)*

# U.S. Vessel Incidental Discharge Act

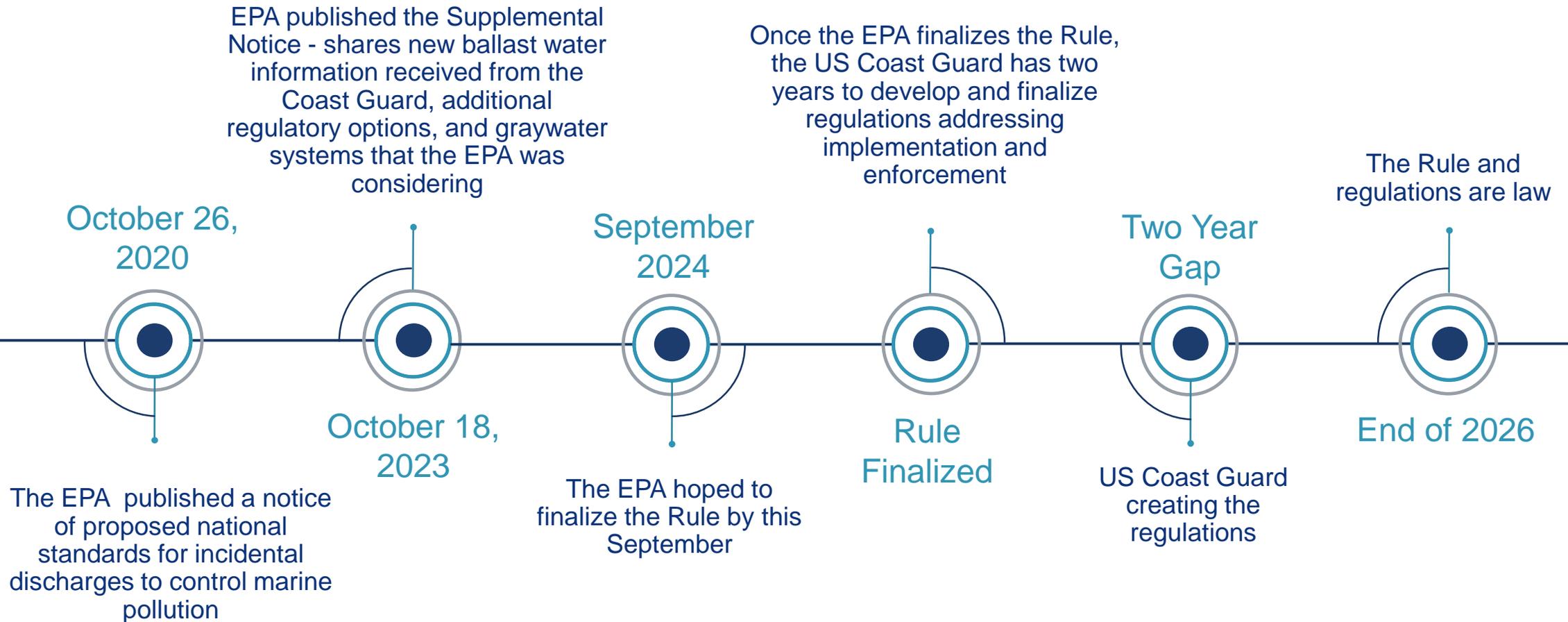
## New U.S. Law

### U.S. Vessel Incidental Discharge Act (“VIDA”)

- The U.S. Environmental Protection Agency (“EPA”) is planning to establish new national standards (the “Rule”) aimed at reducing the environmental impact of discharges, such as ballast water, that are incidental to the normal operation of commercial vessels
- Right now, U.S. marine law is a patchwork of federal, state, and local requirements for the commercial vessel community
- VIDA intends to streamline that patchwork into what the EPA is calling “the proposed rule” which will regulate discharges incidental to the normal operation of a vessel

# U.S. Vessel Incidental Discharge Act

## A Timeline



# U.S. Vessel Incidental Discharge Act

## What You Need to Know

- The Rule sets discharge standards that apply to different types of vessel equipment and systems and general discharge standards that apply more broadly to all types of incidental discharges
- States may also be able to impose different discharge requirements, including no-discharge zones
- The proposed discharge standards will be at least as stringent as the 2013 Vessel General Permit, with limited exceptions
- VIDA applies to:
  - Commercial vessels greater than 79 feet in length;
  - Other non-recreational, non-Armed Forces vessels, such as research and emergency rescue vessels; and
  - Ballast water only from small vessels (vessels less than 79 feet in length) and fishing vessels of all sizes

## How Will the Rule Affect Lakers?

- In the initial proposal, lakers were **completely exempted** from the VGP's numeric standard but required to implement certain best management practices
- In response to comments received, the Supplemental Notice proposes that **all lakers be subject to an equipment standard** rather than a numeric discharge standard
- The U.S. Laker Carriers' Association supported the initial exemption and disagreed with the following:
  - imposing an equipment standard for “New Lakers” as Best Available Technology Economically Achievable because it argues that no statutory requirement or regulatory precedent exist for such action;
  - incorporating binational consistency as a relevant factor considered by the EPA; and
  - incorporating specific vessel uptake practices in ballast water management plans.

## Looking Ahead

### What does this mean for Canadian flagged vessels?

- Canadian flagged vessels operating in US waters will be required to abide by the Rule
- The EPA has not decided if lakers will be exempt, but many commenters to EPA notices are against any such exemption
- It is unclear how the Rule will affect Canadian-flagged vessels
- A factor considered by the EPA is the value of moving toward bi-national consistency with the Canadian regulatory program, particularly Canada's Ballast Water Regulations
- This means Canadian flagged vessels that meet the standards in the Ballast Water Regulations may not need to make any changes to comply with the Rule

## Ballast Water Regulations, SOR/2021-120 (“BWR”)

- BWR establishes standards for ballast water treatment systems that apply to all vessels, foreign and domestic, operating in all Canadian waters, including the Great Lakes
- BWR aims to reduce the spread of aquatic invasive species within Canada, as well as their transfer from Canada to other countries, and to help protect global biodiversity
- Canadian vessels (that do not voyage internationally other than to U.S. Great Lakes ports) need to meet the new standards depending on when they were built:
  - all newly built vessels will have to meet standards **at launch**;
  - existing Great Lakes and Canadian domestic vessels built before 2009 will be required to meet standards **by 2030**; and
  - all other existing vessels built in or after 2009 will be required to meet standards by **September 8, 2024**.
- Otherwise, vessels were required to comply by **September 8, 2024**

# Ballast Water Regulations

## Concerns Raised by the U.S. Lake Carriers Association

- The LCA estimates the rule could result in a billion-dollar loss of business for American carriers over the next two decades.
- “Transport Canada is forcing U.S.-flagged vessels operators engaged in foreign trade to Canada to walk away from that market” – LCA
- Jim Weakley, the president of the LCA, said he believes the regulation aims to give Canadian industries a monopoly on trade in the Great Lakes between the two countries.
- “Any American export that's loaded on a U.S. flagship has to meet the Canadian requirements, even if we're not discharging ballast water in Canada,” Weakley said.

## U.S. Federal Maritime Commission Investigation

- The U.S. Federal Maritime Commission has launched investigations examining concerns raised against BWR
- The investigations focused on whether the conditions created by the BWR adversely affect American carriers operating in Canadian waters in a manner that does not exist for Canadian carriers operating in American waters
- The U.S. Federal Maritime Commission closed one of its investigations into the BWR: the Investigation into Conditions Affecting United States Carriers in Connection with Canadian Ballast Water Regulations in the United States/Canada Great Lakes Trade
  - There were six vessels in question which have been exempted from the government of Canada or do not need to be in compliance this year. Therefore, no immediate action was necessary.
- The second investigation: the Investigation of Regulations Affecting Shipping in foreign Trade, is still open. Through this investigation, the U.S. Federal Maritime Commission will continue to monitor all U.S. Great Lakes vessels, including the six exempted or waived.



Questions?



# Thank You

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