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Government Investigations & White Collar Alert

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What businesses need to know about Trump tariffs

By Joseph Maher

Over the weekend, President Trump announced new tariffs effective February 4, 2025, that will apply to imports from Canada, Mexico, or China.

What's the impact?

- Companies that import components and goods from China, Mexico, or Canada will pay significantly higher tariffs. Tariffs on imports from other countries could also increase in the near future.
- The president's decision to use emergency authorities rather than more traditional tariff authorities will give companies less certainty in predicting near-term import costs.
- Companies can position themselves to assess tariff impacts on their supply chain costs by reviewing their current import practices and considering feasible alternatives for sourcing and manufacturing.

President Trump issued the first of three executive actions on Saturday, February 1, 2025, imposing a new, broad, 25% tariff on almost all products imported from Canada. "Energy and energy resources" products will be subject to a new 10% tariff. These tariff increases are on top of any preexisting customs duty rate charges. Although the White House has not posted similar Executive Orders relating to Mexico and China, a new White House "Fact Sheet" indicates that a 25% tariff increase will apply to all products from Mexico and a 10% tariff increase will apply to all imports from China. The tariff increase for China is smaller, but pre-existing tariff increases were already imposed during the first Trump Administration on many goods imported from China, so the new rates for many goods from China will be greater than for similar goods from Mexico and Canada.

The new executive order increasing tariffs on imports from Canada also makes an important change with respect to small, or so-called *de minimis*, shipments. Under previous rules, articles valued at or less than $800 were exempt from paying customs duties or taxes. This executive order removes the duty-free treatment of these shipments from Canada.

Canadian, Mexican, and Chinese officials have already stated that they will respond with retaliatory tariffs on United States exports or other measures. President Trump's executive order anticipates this and said, "Should Canada retaliate against the United States in response to this action through import duties on United States exports to Canada or similar measures, the President may increase or expand in scope the duties imposed under this order to ensure the efficacy of this action." Companies should expect little clarity about how this tariff escalation will play out over the near term.

When will tariffs be implemented?

According to the February 1, 2025, Executive Order applicable to Canada, the new tariff rates will take effect on Tuesday, February 4, 2025. There is an allowance for in-transit goods that will not be subject to the increased tariffs as long as they were loaded onto vessels prior to 12:01 a.m. on February 1, 2025. We expect that the same time frames will apply to goods from China, although that will be subject to the text of yet-undisclosed executive orders.

On February 3, 2025, President Trump announced via social media that after speaking with Mexican President Claudia Sheinbaum, he has agreed to put tariffs on Mexico on hold for one month while both leaders negotiate joint measures to fight fentanyl trafficking across the US border.

Trump provided little clarity about when he will impose additional tariffs, which countries he will target, or which industries will be most affected.

Further action expected under the Executive Order on Trade Policy

The president's earlier (January 20, 2025) executive order about trade policy directed the trade-related departments and senior officials to begin reviews and assessments under a wide range of trade authorities. These reviews and accompanying recommendations could — and probably will — result in additional enhanced tariffs on particular industries, imports from particular countries, or a combination of these. The president has also discussed the possibility of a "universal tariff" that would apply to all imports. The reviews and preparation of recommendations ordered by the president are due by **April 1, 2025**. The president is likely to make additional decisions on tariffs shortly after April 1.

INTERNATIONAL ECONOMIC EMERGENCY POWERS ACT ("IEEPA")

To put the new tariffs in place on Canada, Mexico, and China, President Trump invoked his authority under the International Economic Emergency Powers Act (IEEPA) to unilaterally (i.e., without congressional action) impose the tariffs. No president had previously used this authority to impose tariffs. (IEEPA is more often invoked as a part of the US sanctions regime.) The act does not specifically mention tariffs, but it allows the president to regulate the importation of "any property in which any foreign country or a national thereof has any interest" during a declared emergency. The president believes that the imposition of tariffs falls within this more general grant of authority.

As a precursor to the February 1 order on increased tariffs, Trump both relied upon and expanded his earlier declaration of a national emergency at the southern border. *See* Proclamation 10,886 (January 20, 2025), and § 1(a) of the February 1, 2025, Executive Order, "Imposing Duties to Address the Flow of Illicit Drugs Across our Northern Border." He expanded the earlier national emergency declaration to cover "the threat to the safety and security of Americans, including the public health crisis of deaths due to the use of fentanyl and other illicit drugs, and the failure of Canada to do more to arrest, seize, detain, or otherwise intercept [drug trafficking organizations], other drug and human traffickers, criminals at large, and drugs." As with the other authorities mentioned below, Trump specifically directed his subordinates to consider and make recommendations about whether to impose additional tariffs under the IEEPA authority.

Businesses not given advance notice of tariffs or public comment period

It is important to understand that the president's decision to invoke IEEPA to impose tariff changes provides far less advance notice to companies about the specific changes as compared to prior tariff increases. Use of this authority — unlike the other authorities mentioned below — also does not provide the opportunity for all interested parties to provide input during the decision-making process.

While the below authorities or actions have not been executed as of yet, the Trump Administration still has these avenues available to impact foreign trade.

SECTION 201 "SAFEGUARD MEASURES" TARIFFS

Other authorities identified in the January 20 executive order on trade policy call for a more deliberative process. For example, the Trade Act of 1974 provides a mechanism for safeguarding domestic industries after determining that they have been exposed to dramatic increases in import competition. Section 201 of the Trade Act authorizes the imposition of tariffs if it is determined that "an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." 19 U.S.C. § 2251(a). As a precursor to imposing tariffs under this authority, the US International Trade Commission investigates and holds public hearings. President Trump used this authority in his first term to impose increased tariffs associated with the solar cell industry.

SECTION 232 TARIFFS—NATIONAL SECURITY CONCERNS

Section 232 of the Trade Expansion Act allows the president to take action to protect domestic industries vital to US national security when imports threaten those industries. Trump invoked this authority during his first term to impose heightened tariffs on steel and aluminum imports. The Commerce Department usually first investigates, reviews, and provides a report to the president before tariffs are imposed. This authority allows the president to impose both tariffs and quotas on imports.

SECTION 301 TARIFFS—ADDRESSING UNFAIR TRADE PRACTICES

The president can address unfair trade practices of other countries under the authority of the Trade Act of 1974. This act provides the authority to impose tariffs after making certain findings of unfair trade practices or when necessary to enforce the rights of the United States under any trade agreement with another country. Under Section 301 of the act, these tariffs are imposed after the US Trade Representative (USTR) conducts a review, allows the public to submit comments, and consults with the foreign country involved. Trump invoked this authority during his first term to impose tariffs on a wide swath of goods imported from China.

EXTERNAL REVENUE SERVICE

The executive order instructs several departments to "investigate the feasibility of establishing" an "External Revenue Service (ERS) to collect tariffs, duties, and other foreign trade-related revenues." US Customs and Border Protection already performs this function, and it (and its historical predecessor agency) has done so for more than 200 years. Creating a new office or agency is not likely to have any material impact on companies that import goods.

Will Congress pass new tariffs?

Congress could enact legislation imposing new tariffs. Congress has the constitutional authority "to lay and collect taxes, duties, imposts[,] and excises" and to "regulate commerce with foreign nations." US CONST., ART. I. Although Congress has not passed legislation imposing specific tariffs in many decades, legislation may be required if the president and Congress want to impose a "universal tariff" (which Trump has discussed) or if Congress intends for tariffs to meaningfully enhance total federal revenue. Tariffs formed the bulk of US revenue in the early part of the country's history, but tariff revenue has not accounted for more than 2% of federal revenue at any time during the past 70 years.

President Trump's decision to act aggressively—both in the size and scope of tariff enhancements and through a less participatory process—may lead to litigation. If Congress enacted new legislation to govern the tariffs, the new tariff levels would face far less litigation risk.

This is a fast-moving, changing situation. Nixon Peabody is monitoring and analyzing developments pertaining to tariffs and other executive orders. Visit our New Administration Hub to stay informed about government actions that will have an impact on our clients' business operations.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Joseph B. Maher
202.585.8331
jmaher@nixonpeabody.com

John Sandweg
202.585.8189
jsandweg@nixonpeabody.com