February 3, 2025

President Trump Invokes Emergency Powers to Impose Tariffs on Goods from Canada, Mexico, and China

Executive Orders Bring Uncertainty to Companies' Global Supply Chains and Could Trigger Legal Challenges

SUMMARY

On February 1, 2025, President Donald J. Trump issued a trio of executive orders imposing tariffs on goods imported to the United States from Canada, Mexico, and China. The orders announce (i) a 25% tariff on Mexican and Canadian imports, with the exception of Canadian energy products, which are subject to a lesser 10% tariff, and (ii) a 10% tariff on all imports from China. The measures take effect almost immediately, on February 4, 2025. Their enactment already has triggered plans for retaliatory trade measures by the affected countries. In taking these steps, the U.S. President primarily invoked the International Emergency Economic Powers Act of 1977 (IEEPA)—a statute that historically has been used by U.S. presidents to impose economic sanctions, as opposed to tariffs. President Trump's reliance on IEEPA, rather than on more traditional trade and customs laws, creates a degree of uncertainty about the course of his administration's trade policies and raises the prospect of potential legal challenges.

BACKGROUND

In his prior statements and actions, President Trump has made clear that he views tariffs as an effective tool for generating revenue, reducing U.S. trade deficits, and providing leverage to negotiate with foreign nations. This stance was partially reflected in the policies of his first administration, which imposed increased tariffs on steel, aluminum, washing machines, solar panels, and various products manufactured in China. Following his 2024 election victory, Trump signaled his administration's intent to issue further tariffs, both targeted and broad-based. On Inauguration Day, he issued a Memorandum to the heads of various executive agencies, directing systematic reviews of existing tariffs and other trade measures, with the goal of reducing the U.S. trade deficit. With those reviews still pending, Trump issued the three Executive Orders (the "Orders"), announcing the new Administration's first imposition of promised tariffs.

AUTHORITY

The Orders rely primarily on the authority granted to the President by the International Emergency Economic Powers Act of 1977. IEEPA permits the President to regulate a variety of economic transactions during a declared national emergency. Past presidents have invoked IEEPA to impose U.S. economic sanctions, such as those against Iran, Russia, North Korea, and Venezuela. To use this authority, the President must first declare a national emergency under the National Emergencies Act (NEA), finding there is an "unusual and extraordinary threat" to the national security, foreign policy, or economy of the United States.

Although IEEPA grants the President authority to regulate both imports and exports, no prior U.S. president has used it to impose tariffs. President Richard Nixon imposed a 10% tariff on all imports to the United States under IEEPA's predecessor statute, the Trading with the Enemy Act of 1917. During the first Trump Administration in 2019, the United States raised the prospect of using IEEPA to impose new tariffs on Mexican imports in response to concerns about border security, but declined to do so after the Mexican government implemented certain migration measures.

Unlike other trade statutes not predicated on the existence of a national emergency—such as the Tariff Act of 1930, the Trade Act of 1974, or the Economic Expansion Act of 1964—IEEPA does not require formal investigations and findings by the Commerce Department, the United States International Trade Commission (USITC), or the United States Trade Representative (USTR) before measures can be imposed. IEEPA is therefore arguably a nimbler tool for enacting economic measures against foreign nations.

THE EXECUTIVE ORDERS

The President signed the three Orders over a weekend—one for each of the affected countries. Each Order extends an existing national emergency regarding "the influx of illegal aliens and illicit drugs [including fentanyl] into the United States," which the President first declared on January 20, 2025 in an Executive Order concerning the designation of drug cartels and other organizations as sanctioned entities pursuant to IEEPA, and as Foreign Terrorist Organizations pursuant to the Immigration and Nationality Act.

The Orders expand the scope of that emergency to include "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 purported failures of Canada, Mexico, and China to take sufficient action to prevent these harms. The Orders state that these failures constitute an "unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States." They note, among other things, that all three governments have failed to adequately "arrest, seize, detain, or otherwise intercept" drug trafficking organizations (DTOs) and the trafficking of illicit drugs; that the Canadian government specifically has failed to address a growing problem of fentanyl production within its borders; that the Mexican government is in an "illicit alliance" with DTOs; and that the Chinese government "provides support and safe haven" to organizations that run the illicit drug trade.

Each of the Orders states that the applicable tariffs will be enforced "beginning 12:01 a.m. ET on February 4, 2025 . . . supplementing any preexisting tariffs, duties, or fees." Goods loaded or in transit before 12:01 a.m. ET on February 1, 2025, however, may be exempt, provided that importers submit a required certification to U.S. Customs and Border Protection (CBP).

The Orders further direct the Secretary of Homeland Security to implement the tariffs by adding them to the Harmonized Tariff Schedule of the United States (HTSUS)—a document drafted and maintained by CBP that is the principal resource importers use to determine applicable customs duties and related classifications of goods.

The Orders also declare the President's authority to expand or escalate the tariffs in response to retaliatory trade actions by each country, or to lift the duties if a country takes demonstrable steps to curb illegal migration and drug trafficking into the United States.

RESPONSES BY MEXICO, CANADA, AND CHINA

All three affected nations responded publicly to the President's Orders within less than twenty-four hours. Canadian Prime Minister Justin Trudeau announced a two-phased 25% tariff on approximately $155 billion CAD ($106 billion USD) of U.S. goods. The first phase, effective February 4, 2025, will impose tariffs on $30 billion worth of goods, including orange juice, peanut butter, wine, beer, appliances, apparel, and cosmetics, with a full list forthcoming. A potential second phase would target an additional $125 billion in imports from the United States—including vehicles, steel, aluminum, aerospace products, and agricultural goods—following a twenty-one day public consultation period. The Canadian government is also considering further actions, including non-tariff measures.

Similarly, Mexican President Claudia Sheinbaum ordered retaliatory tariffs in response to the Orders. In a statement on social media, she stated, "I have instructed my economy minister to implement the Plan B we've been working on, which includes tariff and non-tariff measures in defense of Mexico's interests," though she did not specify the targeted products. Economy Minister Marcelo Ebrard added that Trump's tariffs were a "flagrant violation" of the U.S.-Mexico-Canada Agreement—known in its earlier form as the North American Free Trade Agreement (NAFTA), which the prior Trump administration viewed unfavorably and re-negotiated in 2018.

Meanwhile, China's Commerce Ministry released a statement declaring that "China is strongly dissatisfied and firmly opposes this." The statement further noted that China would file a complaint with the World Trade Organization and take "corresponding countermeasures to resolutely safeguard our own rights and interests."

OBSERVATIONS AND IMPLICATIONS

The issuance of these Orders signals a substantial shift in U.S. trade policy that could have wide-reaching implications for companies' supply chains, business operations, and related legal risks.

First, these Orders confirm the administration's willingness to take quick and decisive steps to reorient U.S. trade measures. For several decades, prior U.S. administrations have trended away from imposing steep tariffs or other measures deemed "protectionist" by some policymakers; instead, they have gravitated towards more "free market" approaches, including the gradual reduction or elimination of tariffs through regulatory changes or negotiated bilateral and multilateral agreements. Consistent with this trend, tariffs imposed by recent administrations have mostly targeted specific goods or industries, and until now, they have been issued under laws that require detailed agency investigations prior to implementation. In the past, companies importing goods to the United States therefore have received significant advance notice of potential policy changes. These Orders signal, however, that in the new administration, implementation of trade measures is more likely to occur quickly and without substantial public warning.

Second, the new tariffs could significantly affect the U.S. and broader global economy, thereby changing the business, legal, and regulatory landscape. Economists have estimated that the tariffs will affect nearly half of all U.S. imports, or about $1.3 trillion annually. Some have speculated that the tariffs could trigger a range of negative consequences for the U.S. economy, including potentially: (i) a reduction of overall imports to the United States by as much as 15%; (ii) decreased profits for the U.S. automotive, energy, and food sectors; and (iii) further inflation through increased prices of gas, food, and other consumer items. Should these changes materialize, they could have further implications for U.S. monetary policy (including interest rates), the strength of the U.S. dollar, capital investment, and the enactment of foreign laws targeting American companies. While acknowledging that the tariffs could cause some economic "pain," President Trump and his administration have expressed optimism that they will be "worth the price"—asserting, for example, that they will increase the U.S. government's collection of revenue from foreign sources and thereby potentially alleviate domestic U.S. tax burdens.[1] In addition, it is possible that as multinational companies look to mitigate their tariff exposure, they will engage in cross-border merger transactions for the purpose of acquiring suppliers or production facilities located in countries not subject to U.S. tariffs.

Third, the President's unprecedented imposition of tariffs through IEEPA's emergency national security authorities—historically used to levy U.S. economic sanctions—could cause companies or foreign governments to bring challenges in U.S. courts or other adjudicative bodies. The outcomes of such challenges are difficult to predict. On the one hand, U.S. courts traditionally give extensive deference to the President on national security matters, especially those involving perceived threats to domestic security arising from abroad. On the other hand, the U.S. Constitution provides Congress, not the Executive Branch, the sole authority to regulate trade. U.S. courts therefore generally require an express delegation of trade authority by Congress to the President before they will recognize the legality of executive lawmaking in this area. Although Congress has clearly delegated regulation of certain trade matters (including tariffs) to the President through the other trade statutes referenced above, it arguably has not done so in the context of IEEPA. Courts' willingness to recognize the President's authority to implement tariffs under IEEPA might therefore depend in part on the degree to which they view such actions as emergency national security measures akin to economic sanctions, or as exercises of more routine customs authorities falling squarely within Congress's trade authority, which should be conducted through the tariff statutes and process referenced above.

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ENDNOTES

1 https://apnews.com/article/trump-tariffs-canada-mexico-china-trade-surplus-3010e6368545e2976feb5ac6b41e528e.

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