Understanding the Impact of New U.S. Tariffs

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Tariff Updates

New tariffs implemented under IEEPA
(International Emergency Economic Powers Act)

IEEPA tariffs apply **in addition** to existing tariffs

CHINA & HONG KONG	MEXICO	CANADA
+10%	+25%	+25%
Active as of February 4th	Paused for 30 days	Paused for 30 days

ENERGY & ENERGY RESOURCES +10%

The term "energy" or "energy resources" includes crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3)

EFFECTIVE DATE: TUESDAY, FEBRUARY 4TH

The tariff applies to "goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on February 4, 2025, except that goods entered for consumption, or withdrawn from warehouse for consumption, after such time that were loaded onto a vessel at the port of loading or in transit on the final mode of transport prior to entry into the United States before 12:01 a.m. eastern time on February 1, 2025, shall not be subject to such additional duty, only if the importer certifies to CBP as specified in the Federal Register notice.

Goods exempted from new tariffs on China because they were in transit when the tariffs were announced must be entered before March 7 for China, to qualify for the exemption, per the federal register notice released the afternoon of Feb. 3, 2025.

IEEPA International Emergency Economic Powers Act

The International Emergency Economic Powers Act, passed in 1977, grants the president broad authority over economic transactions, and a wide range of abilities to deal with “**any unusual and extraordinary threat**,” stemming in whole or in part from foreign sources.

LEGAL AUTHORITY

The legal foundation for the IEEPA tariffs is the International Emergency Economic Powers Act applied in reference to the National Emergencies Act and Proclamation 10886 of Jan. 20, 2025 (**by declaring a national emergency**).

The legal rationale for the permissibility of these tariffs under the United States-Mexico-Canada Agreement (USMCA) appears to be based upon the "essential security" provisions.

Courts have historically upheld the president’s power to take emergency actions, especially when they are related to national security. But an important question is whether they will uphold the use of tariffs under IEEPA.

Historically, IEEPA has only been used to impose sanctions.

DID YOU KNOW

Presidents have used IEEPA to impose economic sanctions, including on Russia after it launched its 2022 war on Ukraine.

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CAN CONGRESS CHALLENGE THESE TARIFFS?

Congressional Action

The U.S. Constitution gave Congress the power to set and regulate tariffs, but over the last 70 years the body has repeatedly passed laws handing that power over to the president, whether by citing national security concerns or responding to surges of imports threatening domestic industries.

President Trump cited a national emergency regarding the flow of fentanyl into the country, as well as illegal migration, in ordering the new tariffs.

The National Emergencies Act of 1976 allows any one member of Congress to force a vote on a joint resolution to terminate the emergency, which, if passed, could force an end to the tariffs. This would require a 2/3 majority from Congress to say that an emergency no longer exists.

This potential joint congressional resolution would only have the effect of law if passed by both chambers of Congress, which are controlled by fellow Republicans, and if the president were to sign it into law, which would require him to reject one of his own campaign promises.

In this situation of a presidential veto, the legislative body's veto override power does not have an "expedited" process and the resolution would have to go through both chambers with two-thirds support.

Congress will have some oversight responsibilities as the order requires the Homeland Security Department in consultation with other agencies to “submit recurring and final reports to the Congress on the national emergency.”

National Emergency Declaration & Status

After submitting the initial report declaring a national emergency, the president must submit additional information every six months that the authorities are exercised.

Emergencies declared under IEEPA do not automatically sunset.

Other emergencies declared under the act have been in place for decades.

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THE EMERGENCY MAY BE TERMINATED IN ONE OF THREE WAYS:

- By the President
- By a privileged joint resolution of Congress
- If the president does not publish a notice in the *Federal Register* stating that the emergency is to continue in effect on the anniversary of its declaration

The administration has not set any benchmarks for the other countries to meet.

The order suggests is that the choice would ultimately be at the president's discretion of whether "adequate steps" have been taken to address the emergencies.

Additional Considerations

COULD THE TARIFFS BE INCREASED?

Yes. The orders are very clear that the president can respond to retaliatory actions.

Should they act, the president “may increase or expand in scope the duties imposed under this order.”

WHAT IS THE POTENTIAL FOR LITIGATION TO STOP THE TARIFFS?

Potential litigation may be filed to stop the use of IEEPA in this way based on the argument that:

1) The language empowers the President to prohibit or limit the import of goods, but does not explicitly include the power to raise tariffs, and

2) The proposed tariffs are not a 'temporary measure' specifically tailored to help meet a particular national emergency.

Such litigation, however, would likely take years.

What's the Difference?

SECTION 301

Trade Act of 1974

Provides the U.S. trade representative with wide authority to investigate trade partners for unfair trading practices and to impose tariffs to persuade them to change their practices.

SECTION 232

Trade Expansion Act of 1962

Affords the president the power to impose tariffs on specific critical products, like aluminum and steel, if the Department of Commerce determines via investigation that imports of those products undermine U.S. security.

ANTI-DUMPING, COUNTERVAILING DUTY, AND SAFEGUARD TARIFF

Allows the president to protect U.S. industries suffering from subsidized or below-cost imports or an unexpected surge of imports that hurts U.S. producers.

Unlike Section 301 or Section 232 tariffs, which require an investigation and specific findings,
IEEPA allows the president to impose trade measures immediately without a formal review process

Retaliatory Measures

CANADA

Canada's retaliation targeted U.S. origin products:

Beer, wine, bourbon, orange juice, fruits, vegetables, perfumes, clothing, footwear, vehicles (including EVs), steel, aluminum, aerospace, beef, pork, dairy, household appliances, sporting goods, and furniture.

MEXICO

Mexico's specific retaliation has not been announced; however, they have been preparing possible retaliatory tariffs on U.S. origin products that could include:

Pork, cheese, produce, steel and aluminum.

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Retaliatory Measures

CHINA

China announced retaliatory tariffs on U.S. imports that take effect February 10th.

- 15% tariff on coal and liquefied natural gas products
- 10% tariff on crude oil, agricultural machinery and large-engine cars

China announced export controls on several elements critical to the production of modern high-tech products that are essential to U.S. economic or national security that have supply chains vulnerable to disruption.

The new export controls are in addition to the controls placed in December on key elements such as gallium.

China also placed U.S. companies on an unreliable entities list:

PVH Group, which owns Calvin Klein and Tommy Hilfiger, and Illumina, which is a biotechnology company with offices in China.

The listing could bar them from engaging in China-related import or export activities and from making new investments in the country.

China is also investigating Google under suspicion of violating antitrust laws.

CHINA & HONG KONG

A 10% tariff on products of China and Hong Kong enacted under the Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China Executive Order.

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Classification & Exemptions

Merchandise subject to the 10% tariff will enter under subheading 9903.01.20.

Shipments in transit before February 1st may enter under the exemption subheading 9903.01.23, provided they are entered and imported before March 7, 2025.

A certification is required to confirm the shipment qualifies – in the form of using this subheading on the entry.

Subheadings 9903.01.21 and 9903.01.22 cover donations and informational materials exempt under IEEPA.

These measures do not apply to Chapter 98 duty-free provisions, except for subheadings 9802.00.40, 9802.00.50, 9802.00.60, and 9802.00.80, where tariffs will be assessed on the China/Hong Kong content value.

CANADA

A 25% tariff on products of Canada enacted under Imposing Duties to Address the Flow of Illicit Drugs Across our Northern Border.

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Classification & Exemptions

While the tariff is on hold, the Federal Register notices indicate that if implemented:

Goods subject to the 25% tariff enter under subheading 9903.01.10

Energy imports subject to the 10% duty enter under subheading 9903.01.13

Exemptions: Subheadings 9903.01.11 and 9903.01.12 cover donations and informational materials exempt under IEEPA

Additionally, the tariffs do not apply to certain duty-free provisions under Chapter 98, except for goods classified under subheading 9802.00.40, 9802.00.50, 9802.00.60, and 9802.00.80, which will face tariffs based on the value of the Canadian content.

Foreign Trade Zones

ELIGIBILITY OF FTZ ACTION

Merchandise subject to the IEEPA tariffs must be admitted to Foreign Trade Zones (FTZs) under "privileged foreign status", unless admitted in domestic/duty paid status.

Privileged Foreign Status means that the rate of duty and applicable tariffs is set at the time of admission to the zone, not the time of entry for consumption into U.S. Commerce.

Not eligible for tariff inversion in zone manufacturing.

Privileged Foreign status cannot be changed once elected, unless exported.

If exported in bond, no duty/tariff apply.

EXISTING FOREIGN TRADE ZONE INVENTORY

If you currently have merchandise that is subject to upcoming tariffs, monitor for implementation, and make decisions of whether to complete a zone status change in advance of go live to "lock" in the current rate of duty/tariff.

Bonded Warehousing

SHORT-TERM RELIEF

A bonded warehouse is a secure storage facility where shippers can store their imported merchandise and defer the entry into U.S. Commerce.

Could potentially be used to temporarily store merchandise if you are either looking to defer the tariff payments, or if you are wanting to "wait and see" if the tariffs will be lifted.

Merchandise can also be exported from a bonded warehouse without duty/tariff payment.

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Duty Drawback

Originally enacted in 1789 as part of the Original Tariff Act, duty drawback is the refund of 99% of the duties, taxes, fees and tariffs paid to Customs and Border Protection on merchandise imported into the United States that is subsequently exported or destroyed.

WILL DUTY DRAWBACK STILL BE AN OPTION?

Unlike Section 301 which deals with unfair trade practices, **IEEPA tariffs are ineligible for duty drawback.**

However, with more imports requiring formal entry, there will be more opportunity for drawback as general duty and Section 301 are eligible.

Section 232 Tariffs are also ineligible for duty drawback.

De Minimis & Tariff Exclusions

TARIFF EXCLUSIONS

A significant distinction from previous tariffs is the absence of an exclusion process.

Previously, importers could apply for exemptions for specific products, whereas with the IEEPA tariffs – there is no process for exclusion at this time.

ELIMINATION OF DE MINIMIS TREATMENT

Previously, shipments valued under $800 were exempt from certain tariffs, allowing importers to route goods through third countries and fulfill orders under de minimis thresholds to avoid tariffs.

This loophole is now closed, meaning all imports from Mexico, Canada, and China, will be subject to tariffs, regardless of value.

Companies should reassess their logistics strategies in moving even small amounts of goods between the U.S. and any of these three countries.

Practical Advice

MAP YOUR SUPPLY CHAIN FOR BOTH DOMESTICALLY PURCHASED MERCHANDISE & IMPORTS

- Do you know the country of origin of what you're purchasing domestically?
- Analyze how these costs may increase with the tariffs.
- Work with your suppliers to understand other sourcing options.

WORK WITH YOUR CUSTOMS BROKERS TO ENSURE ENTRIES ARE CORRECT

Especially for any that qualify for the exemption due to the timing.

ENSURE YOUR HTS CLASSIFICATIONS ARE CORRECT

GATHER AND ANALYZE YOUR IMPORT DATA AS THE IMPORTER OF RECORD

- Customs Brokers
- ACE Portal

REVIEW CUSTOMS BOND SUFFICIENCY

- Review your current continuous bond to ensure it's sufficient for anticipated changes.
- Bonds need to be a minimum of 10% of your annual duty/tax/tariff spend.

Just a Little More Practical Advice

ENSURE YOUR COUNTRY OF ORIGIN IS CORRECT

Logistics and supply chain teams should ensure that country-of-origin declarations in import documentation and entry summaries are accurate. Importers should review certificates of origin, commercial invoices, and supplier documentation to ensure that Canada, Mexico, or China are not mistakenly listed as the country of origin (resulting in unnecessary tariffs) when another country should be declared.

WATCH OUT FOR TRANSSHIPMENTS

The importer is responsible for the correct country of origin being declared to CBP.

In considering whether a product's country of origin can be **legally reclassified**, including through tariff engineering, consult with trade experts and/or legal counsel to ensure compliance with CBP regulations. Importers should also be aware that relying on third parties, including Customs Brokers, does not eliminate liability.

RECORDKEEPING

Maintain detailed records, as required. Future actions may create refund opportunities.

REVIEW INCOTERMS USED TO ENSURE YOU ARE DECLARING THE CORRECT VALUE TO CBP

For example, if you are importing under DDP terms, ensure you are declaring the correct transaction value for your product to compliantly limit your tariff exposure.

As always, keep records of how the value was determined.

WORK WITH YOUR SUPPLIERS REGARDING CONTRACTS & PRICING TERMS

EXPECT SCRUTINY FROM CBP

Avoid any schemes to non-compliantly reduce import value or manipulate the country of origin.

PARTICIPATE IN TRADE ASSOCIATIONS AND GROUPS

Understand that we have seen rapid policy shifts – keep calm and approach changes with strategy

KEEP CALM

AND

APPROACH CHANGE WITH STRATEGY

America First Trade Policy Highlights

On January 20, 2025, President Trump published a memorandum introducing the America First Trade Policy as a strategy designed to reshape U.S. trade relationships and address long-standing trade challenges.

The memo outlines a strategic review of trade agreements, tariffs, and international trade practices with a focus on boosting American economic growth, national security, and job creation.

REPORTS ARE DUE FROM VARIOUS FEDERAL AGENCIES BY APRIL 1ST OR 30TH

America First Trade Policy

INVESTIGATIONS, REVIEWS, & ACTIONS

The America First Trade Policy outlines and extensive range of investigations, reviews, and actions that will be undertaken within several federal agencies.

Section	Department of Commerce	Department of Treasury	United States Trade Representative (USTR)	Other Agencies
Addressing Unfair and Unbalanced Trade (Sec. 2)	Investigate trade deficits and recommend measures, such as tariffs or other policies. Review AD/CVD laws, assess compliance by foreign respondents, and propose modifications.	Investigate feasibility of an External Revenue Service (ERS); analyze currency manipulation policies; investigate discriminatory or extraterritorial taxes	Review unfair trade practices, oversee public consultations for USMCA, and recommend potential bilateral agreements; review and make recommendations on Government Procurement	Assess tariff revenue loss for counterfeits and contraband under de minimis (all agencies + DHS and Senior Counselor for Trade and Manufacturing)
Economic and Trade Relations with PRC (Sec. 3)	Assess intellectual property rights held by China persons and evaluate trade relations.	Review legislative proposals on permanent normal trade relations with China (with USTR)	Assess China compliance with Phase 1 agreement; evaluate costs of unfair practices; recommend tariffs or responsive actions.	N/A
Additional Economic Security Matters (Sec. 4)	Conduct review for national security (Section 232), recommend ICTS rule modifications for connected vehicles, and assess export control effectiveness (with State).	Review Executive Order 14105 (U.S. Investments in Certain National Security Technologies and Products in Countries of Concern) and outbound investment rules.	Support reviews on trade agreement impacts and national security measures.	Review exclusion and adjustment measures on steel and aluminum (Assistant to the President for Economic Policy + multiple agencies) Homeland Security (with Commerce): Address fentanyl and migration flows. OMB: Evaluate federal procurement policies and foreign government financial contributions.
Reports (Sec. 5)	Unified Report by each agency by April 1, 2025			OMB: Report on federal procurement distortions by April 30, 2025.

Thank you for attending

A copy of this presentation will be emailed to all attendees.

Questions submitted in the Q&A module will receive direct responses.

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