PAUL HASTINGS

February 2025

Follow us on LinkedIn

Regulatory Update

# President Trump's Executive Orders Imposing Tariffs on Imported Goods May Provoke Legal Challenges

By Joseph Opich, Keith Feigenbaum and Nicole Wong

As has been widely reported, President Donald J. Trump issued executive orders on February 1, 2025, imposing tariffs on certain products imported from China, Canada and Mexico to the United States. On February 3, 2025, President Trump announced a suspension of the 25% tariff orders with respect to imported goods from Canada and Mexico based on negotiations and concessions reached with those governments. The executive order imposing the 10% tariff on all imports from China remains. The effective date of the tariff on Chinese goods took effect on February 4, 2025. On the same date, China announced its own new tariffs on certain goods from the United States.

**Cited Legal Authority**

The legal foundation for the tariffs is the International Emergency Economic Powers Act (IEEPA), applied in reference to the National Emergencies Act and Proclamation 10886 of January 20, 2025 (Declaring a National Emergency at the Southern Border). 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.

IEEPA permits the President to regulate a variety of economic transactions during a declared national emergency. Although IEEPA grants the President authority to regulate both imports and exports, no prior U.S. president has used it to impose tariffs. 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, but one that is expected to face legal challenges.

**Focus on Flow of Illegal Drugs and Immigration**

The tariffs on the three trading partners were each imposed under a separate executive order. Each executive order cites an existing national emergency declared by President Trump regarding "the influx of illegal aliens and illicit drugs [including fentanyl] into the United States," on January 20, 2025. This order addressed drug cartels as sanctioned entities pursuant to IEEPA and as Foreign Terrorist Organizations under the Immigration and Nationality Act.

The recent executive orders declare that such national emergency also includes “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 lack of an appropriate response to this situation from Canada, Mexico and China. Each of the orders states that the applicable tariffs would be enforced “beginning 12:01 a.m. ET on February 4, 2025 . . . supplementing any preexisting tariffs, duties or fees.”

Also, the orders direct the Secretary of Homeland Security to implement the tariffs by including them in the Harmonized Tariff Schedule of the United States (HTSUS), which is maintained by CBP and is used by U.S. importers to determine 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.

**China**

China’s Finance Ministry said earlier this week it will impose additional tariffs of 15% on coal and liquefied natural gas imports from the United States effective February 10, 2025. China also announced it will impose 10% higher duties on American crude oil, farm equipment and certain cars and trucks, as well as enacting export controls on certain products related to critical minerals. China also announced non-tariff actions in response to the U.S. tariffs, including a reported antitrust investigation into Google and controls on the export of certain rare minerals to the United States.

**Canada and Mexico**

Canada and Mexico threatened to respond with their own tariffs.

However, on February 3, 2025, after a conversation with President Trump, Canadian Prime Minister Justin Trudeau indicated that the imposition of reciprocal tariffs would be suspended for 30 days while a cooperation plan to counteract the flow of fentanyl is undertaken. Similarly, on February 3, President Trump and Mexican President Claudia Sheinbaum announced that the proposed 25% tariffs on Mexico would be suspended for one month until March 1, based on an agreement by both countries to stem the underlying drug, immigration and gun trafficking issues.

**Elimination of Exception for *De Minimis* Value Entries**

Notably, the executive orders prohibit the duty-free *de minimis* treatment for goods subject to the IEEPA Duties. *De minimis* treatment provides admission of articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed $800.

On February 7, 2025, President Trump issued an amendment to the executive order imposing tariffs on goods imported from China. This amendment delays tariffs on lower-valued goods that meet the duty-free *de minimis* treatment.

**Potential 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.

Companies reliant on imports should explore measures to mitigate the impact of the tariffs, such as restructuring their supply chain networks, changing or diversifying their sources of supply or by revisiting contract terms to manage pricing risks.

Affected companies should also explore legislative remedies or advocate for executive relief, such as carve-outs or exclusion processes, and coordinate with trade associations to amplify these concerns.

Paul Hastings lawyers can advise on technical matters related to the tariffs and the implications for supply chain operations around the world.

✧ ✧ ✧

*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

**Chicago**

Amit Mehta
+1-312-499-6019
amitmehta@paulhastings.com

**New York**

Joseph P. Opich
+1-212-318-6596
josephopich@paulhastings.com

Jennifer St. John Yount
+1-212-318-6008
jenniferyount@paulhastings.com

**Washington, D.C.**

Tom Best
+1-202-551-1821
tombest@paulhastings.com

Keith Feigenbaum
+1-202-551-1929
keithfeigenbaum@paulhastings.com