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Regulatory Update

Maybe, Probably, Now (Sort of …): New Tariffs Enter Into Force on Canada, Mexico and China … And May (or May Not) Be Here to Stay

By Tom Best, Keith Feigenbaum, Quinn Dang and Derek Turnbull

Starting in February 2025, the Trump administration announced a series of actions providing itself with the legal authority to impose significant tariffs on trade in goods from Canada, China and Mexico (followed by a series of short-lived tariff impositions and then rapid suspensions), which have had — and are likely to continue to have — ramifications across many industry sectors. The uncertain environment is already causing companies to implement policies in reaction to impending tariffs, including potential realignment of supply chains.

Timeline

- On February 1, 2025 the administration in a series of executive orders[1] announced new legal authorities pursuant to which tariffs would be levied on Canada, Mexico and China, originally slated to take effect February 4, 2025. In a novel use of executive power, the administration cited authority to do so not only under traditional trade laws (Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), and Section 301 of Title 3, United States Code), but also under sanctions and national security laws, namely the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), and the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA). Tying the tariff actions back to his earlier declarations of a national emergency with respect to the influx of drugs (and, in the case of Mexico, undocumented immigrants) from those countries, President Donald Trump framed these tariffs as a pressure tool to bring Canada, Mexico and China to the negotiating table to address the crisis.
- On February 3, 2025, the administration announced a delay until March 4 in the imposition of tariffs with respect to those countries. This was followed by a month of administration statements and conflicting reports on the progress of negotiations.
- On March 3, 2025, the administration announced that tariffs on Canada and Mexico would take effect as planned at 12:01 a.m. Eastern Standard Time on March 4, 2025, and China would face additional tariffs.
- On March 6, 2025, the administration announced a one-month delay of tariffs on some products from Canada and Mexico. The temporary exemption will lift tariffs for all goods compliant with the United States-Mexico-Canada Agreement (USMCA), a free trade agreement signed during the first Trump administration. The tariffs against China, however, were still scheduled to go into effect.

The Particulars

The executive orders impose 25% tariffs on all imports of articles that are products from Canada and Mexico — except that there is only a 10% rate imposed on imports of energy or energy resources (including crude oil) from Canada, with a warning of a possible increase if either nation attempts to retaliate — and 20% tariffs on China. These additional tariffs are on top of any other duties that apply to such imported articles. To come into effect, however, the HTSUS codes of affected goods need to be published in the Federal Register.

No duty drawback is available with respect to the additional duties imposed by the executive orders, which means there will be no refund of duties or fees collected even if the merchandise is exported or destroyed.

The executive orders also state that there is to be no "*de minimis* exception." The *de minimis* exception has an outsized impact on e-commerce and ordinarily exempts goods entering the United States with a declared value of under $800 from certain duties. This provision has been delayed, however, for each of Canada and Mexico pending the U.S. Department of Commerce's development of a system to collect tariffs on low-value imports. The U.S. Customs and Border Protection agency (CBP), the agency responsible for implementing and enforcing tariffs, has issued guidance (CSMS #63988468) that products from China and Hong Kong are no longer eligible for *de minimis* treatment and that requests for *de minimis* entry and clearance for ineligible shipments will be rejected.

CBP also released guidance which provided the following clarification (CSMS #64297449 for Canada, CSMS #63988468 for China, CSMS #64297292 for Mexico):

- With respect to Canada, China and Mexico:
  - Articles for personal use included in accompanied baggage for persons arriving in the United States are excluded from the additional tariff.
  - Excluded products include those found in 50 U.S.C. § 1702(b):
    - Articles the product of each of the respective countries that are donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing and medicine, intended to be used to relieve human suffering. (HTSUS 9903.01.21)
    - Articles the product of each of the respective counties that are informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks and news wire feeds. (HTSUS 9903.01.22)
- With respect to China:
  - Excluded products include articles the product of China and Hong Kong that: (1) 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 Standard Time on February 1, 2025; and (2) are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. Eastern Standard Time on February 4, 2025, and before 12:01 a.m. Eastern Standard Time on March 7, 2025.

Currently, the only exclusions available are those required under 50 U.S.C. § 1702(b). The new tariff orders include no provisions allowing importers to apply for product exclusions.

Why It Matters

The executive orders imposing tariffs on each of Canada, Mexico and China have all contained provisions warning of possible further increases in the event of retaliatory trade measures (including tariffs). In turn, the targets have each vowed retaliation (or already imposed reciprocal tariffs), raising the risk of a retaliatory cycle of progressively increasing tit-for-tat tariffs and the uncertainty that comes with a trade war.

In the near term, as we have seen with prior tariffs rounds, it is likely there will be some realignment of supply chains, as companies seek to avoid the highest costs imposed by these tariffs by changing suppliers or moving production to the U.S. — usually a costly and far from immediate option — or to another country (in the past, sometimes in Southeast Asia) with low labor, material and entry costs.

Moreover, although the administration has sent conflicting signals on the possibility of tariff relief (other than granting unilateral temporary pauses, as was granted February 3 and March 6, 2025), we expect such relief to be more sparing and difficult to obtain than has traditionally been the case. This is because the administration seeks to further its broader goal, illustrated by the America First Trade Policy it issued on its first day, of building the United States's manufacturing base. Regarding the tariffs on Canada, Mexico and China, a "senior administration official" in February told reporters that "[t]here will be no exemptions[.]" While the administration has stated that there would be a one-month exemption for free trade agreement-compliant automakers, that exemption was only issued after a high-profile request from the leaders of several major automobile manufacturers, and a policy discouraging of exemptions or exclusions would remain consistent with the administration's stated tariff policy in other contexts.[2]

Concluding Thoughts

The situation concerning tariffs on the U.S.'s largest trading partners remains in flux and, at least with respect to Canada and Mexico, negotiated settlements could still be in the offing. Such an outcome could see anything from a return to last month's status quo (assuming substantial concessions from Canada and Mexico on other fronts) to minor reductions, various exemptions or further temporary pauses in the levying of tariffs. Significant rapprochement with China, however, remains an unlikely and distant possibility, as this latest round of tariffs may be best characterized as merely another step in a years-long process of economic disentanglement with that nation. Paul Hastings attorneys are standing by to help you navigate this moving target of trade laws and policies.

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

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

Quinn Dang
+1-202-551-1891
quinndang@paulhastings.com

Derek J. Turnbull
+1-202-551-1883
derekturnbull@paulhastings.com

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

Talya Hutchison
+1-202-551-1930
talyahutchison@paulhastings.com

[1] These orders are, for Mexico, EO 14194 of February 1, 2025 ("Imposing Duties to Address the Situation at Our Southern Border"), as amended by EO 14198 of February 3, 2025 ("Progress on the Situation at Our Southern Border"); for Canada, EO 14193 of February 1, 2025 ("Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border"), as amended by EO 14197 of February 3, 2025 ("Progress on the Situation at our Northern Border"); for China and Hong Kong, EO 14200 of February 5, 2025 ("Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China"); and for Mexico, Canada, and China and Hong Kong, as directed by the EOs issued on March 2-3, 2025.

[2] See, for example, the February 10 and February 11 White House proclamations concerning steel and aluminum imports, critical of past tariff regimes which allegedly allowed overly broad exclusion processes and permitted importers to shift supply chains among nations subject to varying exemptions.