

Client Alert

International Trade

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President Trump Deploys Novel Use of IEEPA Authority to Impose Sweeping Tariffs on Mexico, Canada, and China

The President has issued three executive orders that impose universal tariffs on Mexico, Canada, and China, deploying IEEPA in a sweeping manner to address the President's declaration of a national emergency regarding illegal immigration and illicit drugs.

On February 1, 2025, President Trump issued an executive order ("EO") placing *ad valorem* duties on **all imports** from Mexico, Canada, and China under the International Emergency Economic Powers Act ("IEEPA"). The EO applies 25% duties on all imported products from Mexico and Canada, and 10% on all imports from China. The one exception is, for Canada, the EO lowers the duty to 10% for "energy or energy resources," which is defined in National Energy Emergency Proclamation 14156 as "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)." This definition may be supplemented in a forthcoming Federal Register notice to be published by U.S. Customs and Border Protection ("U.S. Customs") that will provide additional details on entry procedures. Notably, the IEEPA tariffs will apply on top of existing AD/CVD, Section 301 and 232, and other customs duties.

IEEPA, which is one of 117 emergency statutes enacted by Congress in 1977 under the National Emergencies Act ("NEA"), gives the President

authority to “investigate, regulate, or prohibit” a range of economic activity to address any “unusual or extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.” 50 U.S.C § 1701. The President declared a national emergency on inauguration day based on the threat of illegal aliens and illicit drugs. See Proclamation 10866 (“Declaring a National Emergency at the Southern Border”). Saturday’s EO relied on the NEA to “expand the scope of the national emergency . . . 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” those responsible. The EO describes Canada’s actions as “an unusual and extraordinary threat.”

These IEEPA tariffs apply to all goods entered for consumption, withdrawn from a warehouse for consumption, on or after midnight on **February 4**. Goods in transit as of February 1 can avoid the tariffs with a CBP importer certification. The forthcoming Federal Register notice from U.S. Customs will specify what changes are necessary to the Harmonized Tariff Schedule, which suggests normal country of origin rules based on substantial transformation (rather than USMCA rules) will apply for preferences.

The EO contains a **retaliation clause**, stating that the President “may increase or expand in scope the duties imposed under this order to ensure the efficacy of this action” should Mexico, Canada, or China retaliate.

The EO explicitly states that importers cannot obtain duty-free treatment from the tariffs through **de minimis** exemptions (less than \$800), nor can they seek refunds through **duty drawback** provisions. Further, *the EO suggests that product exclusions will not be granted, at least for the time being*. However, Section 4 of the EO provides that “the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Commerce, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers granted to the President by IEEP as may be necessary to implement this order.” This could allow for an exclusions process, depending on the duration of the tariffs.

KEY TAKEAWAYS

The President’s executive order is a sweeping and novel use of the IEEPA authority. Although President Nixon used IEEPA’s precursor statute to apply 10% tariffs on all U.S. imports in response to a monetary crisis in 1971, no President has used IEEPA to impose tariffs in this fashion. Despite the EO’s retaliation clause, Mexico and Canada have announced substantial retaliatory tariffs and potential non-tariff barriers.¹ China is likely to follow suit and has also stated it will challenge the tariffs through a WTO dispute. This situation will continue to evolve quickly and will likely face U.S. judicial actions, and companies should seek counsel to understand the impact of future action taken and how best to maximize opportunities and minimize risks.

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¹ See <https://orders-in-council.canada.ca/attachment.php?attach=46660&lang=en>.