Client Alert

International Trade

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President Trump Imposes Reciprocal Tariffs To Address National Emergency Created By Foreign Trade And Economic Practices

The President also signed an Executive Order that will eliminate duty-free *de minimis* treatment and create a new duty collection process for low-value postal shipments from China and Hong Kong.

On April 2, 2025, President Trump signed an Executive Order, pursuant to the International Emergency Economic Powers Act of 1977 ("IEEPA"), imposing baseline 10 percent *ad valorem* duties on imports of most products from all countries, with individualized country-specific rates up to 50 percent ("Reciprocal IEEPA tariffs").

OVERVIEW OF THE RECIPROCAL IEEPA TARIFFS, INCLUDING A PARTIAL DUTY REDUCTION FOR "U.S. CONTENT"

On April 2, President Trump signed an Executive Order declaring a national emergency under IEEPA. Pursuant to that legal authority, the United States will:

- Effective April 5, 2025, impose a minimum *ad valorem* tariff of 10 percent on imports of most products from all countries other than Canada and Mexico (with an exception for goods loaded onto a vessel at the port of loading and in transit before 12:01 a.m. eastern daylight time on April 5, 2025).
- Effective April 9, 2025, impose higher individualized tariffs (ranging from 10 to 50 percent) on imports from certain countries (identified in Annex I of the Executive Order), which are intended to account for higher

- Average duty rates imposed on imports of U.S. products into those countries and/or non-tariff barriers in place in those countries. The tariffs that become effective April 9 similarly do not apply to goods loaded onto a vessel at the port of loading and in transit before 12:01 a.m. eastern daylight time on April 9, 2025.

All duties imposed pursuant to the Executive Order will apply in addition to any other duties, fees, taxes, exactions, or charges applicable to such imported articles, *except as specifically provided*. *See* Executive Order at Section 3(b) and 3(c). Importantly, the reciprocal tariffs shall apply only to the non-U.S. content of an imported good, provided at least 20 percent of the value of the good is U.S. originating. "U.S. content" is defined in the Executive Order as "the value of an article attributable to the components produced entirely, or substantially transformed in, the United States." We expect details regarding the calculation methodology and reporting requirements to be clarified in a forthcoming Federal Register notice. We anticipate aggressive enforcement of this provision at the border.

The Reciprocal IEEPA tariffs announced Wednesday will remain in effect until such time as President Trump determines that the threat posed by the trade deficit and underlying nonreciprocal treatment is "satisfied, resolved, or mitigated." The President may modify the tariffs should circumstances change. Specifically, if foreign countries impose retaliatory measures, the reciprocal tariff rates may be increased. Conversely, the President may determine to lower the tariff rate where a foreign country takes significant steps to "remedy non-reciprocal trade arrangements and align with the United States on economic and national security matters." The President may also increase the duties under the Executive Order if U.S. manufacturing capacity and output continue to worsen.

Comprehensive information regarding the tariff treatment of products covered by the action is set out in Annex III of the Executive Order.

PRODUCTS NOT CURRENTLY SUBJECT TO RECIPROCAL IEEPA TARIFFS

The Executive Order also lists certain products to which the reciprocal tariffs will not apply. These include the following:

- Articles subject to 50 U.S.C. § 1702(b) (e.g., informational materials and certain donations intended to relieve human suffering).
- Articles and derivatives of steel and aluminum subject to the Steel and Aluminum Section 232 tariffs;
- Automobiles and automotive parts subject to the Auto Section 232 tariffs.
- Products enumerated in Annex II of the Executive Order, including certain copper, pharmaceuticals, semiconductors, energy and energy products, minerals, and lumber articles (the corresponding HTS codes are provided in Note 5 of Annex III). The Fact Sheet accompanying the Executive Order indicates that the HTS codes to which the reciprocal tariffs do not apply include a combination of products not available in the United States, products currently under investigation (e.g., lumber, timber, and copper), and products against which the Administration intends to take additional action (e.g., pharmaceutical products).
- Articles from a trading partner subject to rates in Column 2 of the HTSUS (i.e., typically higher duty rates for countries not receiving Most-Favored Nation treatment, currently Belarus, Cuba, North Korea, and the Russian Federation).
- Articles that may become subject to future Section 232 tariffs.

CANADA AND MEXICO REMAIN SUBJECT TO SEPARATE FENTANYL-EMERGENCY-BASED IEEPA TARIFFS (WHICH CURRENTLY DO NOT APPLY TO USMCA-ORIGINATING GOODS)

Imports from Canada and Mexico will not be subject to the Reciprocal IEEPA tariffs while they remain subject to the existing Fentanyl IEEPA tariffs that were announced in February. With respect to imports from Canada and Mexico, the

Executive Order maintains the existing duty exemption for USMCA-qualifying goods. If, at some future time, the IEEPA fentanyl/migration orders on Canada and Mexico are terminated or suspended, USMCA-qualifying goods will continue to be exempt from the reciprocal tariffs, while Canadian and Mexican articles not qualifying as originating under USMCA will be subject to an *ad valorem* rate of duty of 12 percent. The 12 percent reciprocal duty will not apply to energy or energy resources, to potash, or to an article eligible for duty-free treatment under USMCA that is a part or component of an article substantially finished in the United States.

CHANGES TO *DE MINIMIS* AND OTHER MODIFICATIONS TO LOW-VALUE SHIPMENTS

With respect to the Reciprocal IEEPA tariffs, the Executive Order temporarily preserves the qualifying use of duty-free *de minimis* treatment under 19 U.S.C. § 1321(a)(2)(A)-(B) (the "*de minimis* exemption") until the Secretary of Commerce notifies the President that "adequate systems are in place to fully and expeditiously process and collect duty revenue."

At the same time, however, President Trump took anticipated action to remove use of the *de minimis* administrative exemption for shipments of goods from China and Hong Kong. Specifically, a separate Executive Order (*Further Amendment To Duties Addressing The Synthetic Opioid Supply Chain In The People's Republic Of China As Applied To Low-Value Imports*) ("4/3 China Fentanyl EO"), eliminates, starting on May 2, 2025 at 12:01 A.M. EDT, the *de minimis* exemption for shipments of goods from China and Hong Kong.

Pursuant to the 4/3 China Fentanyl EO, goods from China and Hong Kong that would otherwise qualify under the *de minimis* exemption are required to be entered through U.S. Customs and Border Protection's ("CBP's") Automated Commercial Environment portal by "a party qualified to make entry under another appropriate entry type" with the payment of all applicable duties.

The elimination of the *de minimis* exemption also applies to international postal packages sent to the United States through the international postal network from China or Hong Kong, but the Executive Order creates a new duty requirement for such shipments. Carriers of international postal shipments valued at less than $800 with goods from China and Hong Kong are required to collect and remit duties in the form of either (1) an *ad valorem* duty of 30 percent of the value of the postal item or (2) a specific duty of $25 per postal item, which will increase to $50 on June 1, 2025. These duties are applied "in lieu of any other duties" such as the 20 percent tariff previously imposed under IEEPA on goods from China, the applicable duty rate associated with the good's Chapters 1-97 Harmonized Tariff Schedule classification number, and additional duties imposed under Section 301 of the Trade Act of 1974. If CBP, however, requires formal entry for any international postal package, the package will not be subject to the 30 percent *ad valorem* duty rate or $25/$50 per postal item imposed under the order but instead will be subject to all applicable duties and fees.

In addition, carriers of international postal packages are required to obtain an international carrier bond for an amount that is sufficient to cover the duties that they are supposed to collect. The Executive Order also requires carriers to report the total number of postal items and, "if electing" to apply the 30 percent duty rate, the value of each postal item under a timeframe to be determined by CBP. CBP may require carriers to submit documentation and information to verify the total number and value of individual postal items.

Further, the Secretary of Commerce, in consultation with the United States Trade Representative, is required to submit a report within 90 days to assess the impact of the order and recommend further action, as necessary, including whether to extend the elimination of the *de minimis* exemption for packages from Macau "to prevent circumvention" of the order.

BACKGROUND

On January 20, 2025, President Trump issued a memorandum on his America First Trade Policy that, among other things, directed the trade agencies to investigate:

- Persistent trade deficits and the resulting impacts on economic and national security;
- Unfair trade practices by other countries and recommendations for appropriate action under various authorities, including IEEPA, Sections 301 and 337, global safeguard provisions, and trade agreement implementing laws;
- Currency manipulation and misalignment that prevents effective balance of payments adjustments or that creates unfair competitive advantages for trading partners;
- Loss of tariff revenues and the public health risks of imports under the de minimis exemption;
- Discriminatory or extraterritorial taxes imposed on U.S. citizens or companies; and
- Opportunities to expand export markets for U.S. manufacturers, farmers, rangers, and service providers.

These reviews, and a report delivered to the President detailing the findings of those reviews, informed President Trump's decision to impose the IEEPA Reciprocal tariffs in order "to address the national emergency posed by the large and persistent trade deficit that is driven by the absence of reciprocity in our trade relationships and other harmful policies like currency manipulation and exorbitant value-added taxes (VAT) perpetuated by other countries.

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