



more trump tariffs?

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Client Alert

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On February 1, 2025, President Trump announced new tariffs on **Mexico, Canada** and **China** (these are links to the actual text of each Executive Order). While a **White House Fact Sheet** was published that morning, along with a post on social media, it took until February 3, 2025 for all of the Executive Orders ("Order" or "Orders") to be posted. Nonetheless, these tariffs have been long threatened and are expected to be met in at least Mexico and Canada with retaliatory tariffs. The same may occur with China, but the government there is more guarded.

On Monday, President Trump stated the tariff on Mexico is stayed for a "month" (is that 30 days or March 1st?). Later in the day, the tariff on Canada was similarly stayed for at least 30 days. Prior to the stay, on Sunday, February 2, the Canadians issued their list of **Retaliatory Tariffs - Canada**, which has since also been put on hold. (Worthy of note is the *Order* re Canada mentions many of the illicit drugs come by way of British Columbia, Canada's westernmost province.) So far, the Chinese have not shared any intended response. Despite this activity, the *Orders* involving all three (3) countries state that any tariffs raised in retaliation may cause the U.S. to raise its tariffs accordingly. There is no list of products provided by the U.S. as the tariffs apply to all goods which are "products of" these countries. The Canadian retaliation list imposes 25% tariffs on goods eligible to be labeled Made in USA which match the list of classifications published. At the same time, there is some language in the retaliatory tariffs clause of each *Order* which states the President "may expand in scope the duties imposed." This text could mean many different things, but in the absence of a list of products, this language is most reasonably read to mean the percentage imposed. Let's see what really happens because "tit for tat" is expected to do nothing more than undermine the economy in all the affected countries, including the U.S.

We should also be clear about other key points. The U.S. importer will pay these tariffs, not the suppliers in the countries exporting these products and even President Trump now admits that, saying the cost to the American public is worth it! Whether these additional costs get passed along dollar for dollar to consumers is not yet evident, but likely. Second, the *Orders* build on various

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existing Executive Orders issued on January 20, 2025, e.g. Securing Our Borders, America First Trade Policy, Protecting the American People Against Invasion, and the like. In each case, IEEPA or the International Emergency Economic Powers Act, see 50 U.S.C. 1701 et seq.), along with the National Emergencies Act (50 U.S.C. 1601 et seq.) are the stated legal grounds for action.

Mexico and Canada

The *Orders* involving Mexico and Canada (yes, each country has its own) refer to the flooding of illegal aliens and illicit drugs into the U.S. for their justification.

These new tariffs (now stayed) were set to become effective at **12:01 a.m. Eastern time on February 4, 2025** and will apply to "goods entered for consumption, or withdrawn from warehouse for consumption." There is an exception for any goods loaded onto a vessel or en route on the delivering carrier to the U.S. prior to 12:01 a.m. on February 4, 2025. Interestingly, the promised Federal Register notices will include the **form of certification** the importer will be required to make at time of entry when claiming the exception.

The **additional duty** rate is **25%**, which is in addition to any existing duties, exactions, fees, and other charges and applies to all goods that are the "product" of Mexico or Canada. When it comes to Canada, the one categorical exception to the 25% rate has to do with energy. The **Declaring a National Energy Emergency** Executive Order is cited as the basis for defining the energy and energy resources which are subject to a 10% additional duty, along with any specifics in the cited Federal Register notice to be published. The definition of energy and energy resources appears in this Executive Order 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)." Nothing was changed in the published Federal Register notice.

When it comes to foreign trade zones, "privileged foreign status" is required and the relevant rate of duty is determined by when the goods are entered into the FTZ, unless domestic status is a valid claim. Drawback is not permitted. 321 or di minimis clearance is also not permitted. Also excluded are any articles described in 50 U.S.C. 1702(b), see **50 U.S.C. 1702**. Upon consultation by the Dept. of Homeland Security Secretary with the named government officials, if sufficient actions have been taken, these tariffs will be removed. However, upon the recommendation of the same officials, additional action may be taken. Recurring reports to Congress are authorized.

China

The *Order* related to the tariff imposed on China reads very similar to the Canada and Mexico *Orders*., so we discuss only China specific topics. For example, the grounds for action are said to be the role of the Chinese government to "sustain[] and expand[]" the importation into the U.S. of synthetic opioids (fentanyl is specifically mentioned) and its support of transnational criminal organizations. The **10% additional duties** apply to all goods that are the "product" of China **effective at the same 12:01 a.m. on February 4, 2025**.



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The same loaded or en route exception applies and is subject to the same certification requirement. However, the cut off date is **March 7, 2025 at 12:01 a.m.** Similar to the situation with Canada and Mexico, drawback and 321 are not permitted. The FTZ limitation of privileged foreign status and the duty rate is set when the goods are admitted also apply to China, again unless domestic status is a valid claim.

Federal Register Notices

Later today, Federal Register notices were available for **Canada** and **China**. There is nothing substantively different in these pre-publication versions than was in either *Order*. The one point of interest is the *Orders* seemed to call for a specific certification by all importers who claim any of the exclusions. However, CBP's HQ staff in charge of implementation has made clear no additional certification form is required. The process will be to make the claim in your entry and do so by exercising reasonable care.

Additionally, the reference to China includes Hong Kong (which simply continues current policy) and these notices will be officially published on **February 5, 2025**, even while taking effect on **February 4, 2025**.

Section 321/ Di Minimis Shipments

Perhaps the most interesting update was released by CBP late in the day by way of **CSMS 63992482**. Even while the tariff is not being imposed on either Canada or Mexico for a period of time, revocation of di minimis still applies and to China, too! CBP has also made clear it is up to the filer/importer to get it right. In particular, CBP states: "As we transition to execution of the Executive Order[s], it is extremely important that the trade maintain awareness of the shipments they are responsible for and are aware of the messaging that they are receiving from CBP." (emphasis in original)

Please note: for anyone who saw the information released on LinkedIn over the weekend, this publication contains updated information complete through 5:00 p.m. PST on February 3, 2025.

Stay tuned for more developments!