wiley

ALERT

New 10% Tariffs on Chinese Goods Take Effect; Canada and Mexico Tariffs Postponed 30 Days by Trump Administration

NOTICES PROVIDE IMPORTANT DETAILS ON APPLICATION OF NEW TARIFFS

February 4, 2025

An update on the March 4 implementation of the Trump Administration's tariffs on Canada, Mexico, and China can be found here. Visit our Trump Administration Resource Center for the latest updates on trade policy under the new administration.

As discussed in our previous alert, President Trump signed three Executive Orders imposing additional duties on goods from Canada, Mexico, and China, pursuant to the International Emergency Economic Powers Act (IEEPA). According to a White House fact sheet, the measures were intended to address "the extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl."

However, during the morning of February 3, 2025, Mexico and the United States reached an agreement to delay implementation of the tariffs on Mexico for a month, resulting in a new Executive Order implementing the pause by changing the effective date of the tariffs from February 4 to March 4. In the meantime, Canada announced two-phase retaliatory measures against the United States, inclusive of the first-phase product list, while U.S. Customs and Border Protection (CBP) issued pre-publication *Federal Register* notices detailing the additional duties imposed on products from Canada and China. Late in the afternoon of February 3, the United States and Canada reached an agreement to delay both the United States' tariffs on Canada and the Canadian tariffs on the United States from February 4 to March 4, resulting in a new Executive Order implementing the U.S.-side pause also by amending the original Executive Order's

Authors

Timothy C. Brightbill
Partner
202.719.3138
tbrightbill@wiley.law

Maureen E. Thorson
Partner
202.719.7272
mthorson@wiley.law

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Greta M. Peisch
Partner
202.719.3378
gpeisch@wiley.law

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law

Practice Areas

Customs Law and Compliance
International Trade
National Security
Tariffs & Trade Policy
Trade Policy and Trade Negotiations

effective date.

As of February 4, only tariffs on China have gone into effect. In response, China has announced retaliatory measures, including tariffs of up to 15% on U.S. energy imports and other products, and the addition of five critical minerals to its export controls list. While tariffs on Canada and Mexico have not yet been imposed, they may be imposed at any time.

The following are key takeaways regarding the tariffs applied to China and the potential tariffs on Canada and Mexico based on the Executive Orders and *Federal Register* notices issued for Canada and China.

China Tariffs

- <u>Duty rate</u>: 10% additional tariff, to be applied to all goods and on top of any pre-existing duties.
- <u>Effective Date</u>: The duties became effective for all goods from China entered or withdrawn for consumption on or after 12:01 a.m. on Tuesday, February 4, 2025, unless the goods were loaded onto a vessel or their final mode of transport prior to entry into the United States before 12:01 Eastern time on February 1, 2025 and enter the United States by March 7.
- <u>Country of Origin</u>: No special rule of origin was designated in the *Federal Register* notice, indicating that the traditional "substantial transformation test" will apply to determine whether products are Chinese for purposes of the duties. However, products that are determined to be from Hong Kong under this test will be treated as Chinese.
- <u>Exemptions</u>: Unlike the Section 301 duties, which only apply to a subset of Chinese products, the new 10% duties apply presumptively to Chinese goods classified under all provisions of the Harmonized Tariff Schedule of the United States, with the following limited exemptions:
  - Most goods eligible for classification within Chapter 98 of the schedule, which contains duty-free provisions for goods meeting a variety of criteria, such as goods for the use of the handicapped and goods with agricultural/horticultural use, can be entered free of the additional duties. There will be duties applicable to a portion of the value of goods eligible for classification in Chapter 98 provisions corresponding to goods repaired abroad or assembled abroad using U.S. components.
  - Duties also do not apply to "postal, telegraphic, telephonic, or other personal communication[s], which do[] not involve a transfer of anything of value."
  - Certain donations of articles used to relieve human suffering, information materials, and "products for personal use included in accompanying baggage of persons arriving in the United States."
- <u>De Minimis</u>: The goods subject to the additional tariffs are ineligible for duty-free entry under the de minimis entry program, which generally permits goods valued at or under $800 from entering the United States duty-free, so long as no single consignee receives goods exceeding this value in a single day.
- <u>Drawback</u>: Drawback (i.e., the refund of duties on goods that are imported and subsequently re-exported) for the additional duties <u>will not</u> be available.

- Foreign Trade Zones: As was the case with the Section 301 duties on China, to the extent that any Chinese products subject to the additional duties are brought into U.S. foreign trade zones, they must be entered in "privileged foreign status," meaning that they will be subject to the 10% duties upon exit from the zone for U.S. consumption.
- Mail Entries: In a surprising development, the notice states that formal entry must be filed for all mail shipments from China, and no mail shipments will be cleared or released by the U.S. Customs and Border Protection (CBP) unless and until formal entry is filed.
- Exclusion Process: No process is contemplated by which importers may petition for product-specific exclusions from the additional duties.

Potential Tariffs on Canada and Mexico

While Mexico and the United States reached an agreement to pause tariffs before a draft *Federal Register* notice regarding Mexico could be released, the draft notice for Canada provides insight into how any forthcoming tariffs on both countries would be administered. Of note, the draft notice regarding Canada is substantively the same as that for China with respect to exemptions, *de minimis*, drawback, foreign trade zone entries, mail entries, and the lack of a product-specific exclusion process. However, there are certain important differences with respect to duty rates and country of origin.

- Duty rates: The Canada order and notice would impose a 25% duty on all goods other than "energy" products, which would be subject to a 10% duty.
  - Energy products are defined to include crude oil, natural gas, lease condensation, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, and certain critical materials as defined by the Secretary of the Interior pursuant to 30 U.S.C. § 1606(a)(3).
  - No similar distinction between the duty rates for energy products and other goods appears to be contemplated by the February 1 Executive Order regarding Mexico.
- Country of origin: Goods would be treated as product of Canada, and thus subject to the additional duties, if they are Canadian under either the substantial transformation test or qualify to be marked as goods of Canada under the marking rules of 19 CFR Part 102.
  - Should tariffs be imposed on Canada, the alternative phrasing of the applicable origin tests will potentially expose goods imported from Canada to both the additional duties on Canadian products and the additional duties on Chinese (or Mexican) products, where those goods are deemed product of China (or Mexico) under the substantial transformation test but are required to be marked as Canadian under the Part 102 rules.
  - While no draft *Federal Register* notice was released regarding Mexico, presumably it would impose a similar origin regime with the potential for multi-country duty liability for goods imported from Mexico.

For any questions or further information on these new duties, please contact any of the attorneys listed on this notice.

To stay informed on all of the Executive Orders and announcements from the Trump Administration, please visit our dedicated resource center below.

Wiley's Trump Administration Resource Center