

CLIENT ALERTS

What You Need to Know About President Trump's New Tariffs

Client Alert

2.3.2025

In our earlier Client Alert, we provided a road map based on the information then available on possible scenarios for President Trump in terms of his threatened tariffs on trade with China, Mexico, and Canada. President Trump had threatened to impose new tariffs on those countries on day one of his new administration. On day one, however, instead of announcing the imposition of new tariffs, President Trump signed an executive order titled "America First Trade Policy," that directed various government agencies to study and report on issues, such as U.S. trade deficits relating to the need for additional tariffs.

Reports on these issues were requested by April, leading some to believe that tariffs would not be imposed until April when the results of these reports were known. Other reports indicated that negotiators from Mexico and Canada were in the U.S. urgently negotiating and were close to a potential deal that could avoid tariffs on their respective countries. Despite these predictions, on Saturday, February 1, 2025, President Trump imposed the tariffs he originally threatened for his first day in office.

In three separate executive orders, the President imposed tariffs of 25% on Mexico and Canada and 10% on China. These are in addition to existing tariffs and were set to take effect at 12:01am on February 4th. President Trump indicated that these tariffs may increase if the countries impose retaliatory tariffs against the United States. Goods that clear customs before this time will not be subject to the new rate. There was one concession to Canada, limiting the tariff on energy products to 10% to limit the disruption to oil and gasoline prices. An exception was also made for goods that were already in transit before 12:01am on February 1, 2025, and so certified by the importer.

Just this morning it was announced that as a result of a call between President Trump and Mexican President Sheinbaum, President Trump has agreed to immediately pause the

Related People

Mitchell Zajac
Shareholder

Andrew S. AbdulNour
Associate

Catherine M. Karol
Of Counsel

Related Services

International Trade and
Customs Specialty Team

CLIENT ALERTS

anticipated tariffs on Mexico for one month during which there will be further negotiations. Sheinbaum reportedly agreed to move 10,000 Mexican soldiers to the border, who are specifically designated to stop the flow of Fentanyl and illegal immigrants into the U.S. This development is unfolding as this alert is being written, and we will keep you updated on any other future developments.

Canada has already announced a retaliatory tariff of 25% on U.S. imports, also effective on February 4th. Although the exact list has not been announced, it is rumored to include Florida orange juice, Tennessee whiskey, and appliances. Mexico, prior to the pause announced this morning, was said to be working on its list of goods or industries that it will likely impose tariffs upon. If such retaliatory actions are eventually taken, the list is likely to include automotive vehicle parts due to the high level of integration between the U.S. and Mexican automobile industries. Ford, General Motors, and Stellantis all have plants in Mexico, as do many of their suppliers.

Other noted actions contained in the executive orders are eliminating the *de minimis* exemption authorized under 19 U.S.C. §1321 that allows smaller shipments by mail or courier to avoid customs inspections and tariffs that facilitate shipments of drugs such as fentanyl. President Trump has also informally indicated that he may consider such tariffs against other countries or territories, as well, specifically noting the European Union and the United Kingdom. Lastly—and quite importantly—the new tariffs at this time do not permit for any exclusions or exceptions, meaning they will apply to all American companies and individuals without providing any mechanism to obtain an exclusion as has happened in the past.

Basis for Presidential Authority

The legal underpinning for these tariffs is based on the President's power to declare a national emergency under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §1701 *et seq*, that gives broad powers to the President to declare a national emergency and take remedial action. The emergency that President Trump relies on in this case is the Mexican and Canadian governments' failure to control the import of fentanyl into the United States as well as the failure of those two governments to control illegal immigration. Additionally, with regard to Mexico particularly, the stated emergency also includes the presence of drug trafficking organizations that were declared as terrorist organizations in an earlier executive order. The tariffs relating to energy and oil were based on the National Energy Emergency, executive order 14156, signed on January 20, 2025.

Potential Grounds for Challenges to the Tariffs

Although the courts are traditionally reluctant to interfere with the President's foreign affairs activities, there is precedent for challenges to the IEEPA. The IEEPA includes provisions that imply judicial review is available. Specifically, §1702 on Presidential authority contains a proviso that states: "[i]n any judicial review of a determination made under this section" This indicates that Congress anticipated judicial review of the President's actions under the IEEPA.

CLIENT ALERTS

Additionally, the IEEPA mandates that the President must consult with Congress before exercising his authority and report to Congress regularly, which provides a framework for oversight and potential judicial review. See *United States v. Ali Amirnazmi*, 645 F.3d 564, 573 (3rd Cir. 2011), and *Humanitarian Law Project v. United States Treasury Dep't*, 578 F.3d 1133, 1140 (9th Cir. 2009). It is possible that court challenges to the President's use of this law and whether a national emergency exists could be forthcoming.

While a court can review a President's foreign affair powers, this is generally limited and subject to specific doctrines and principles. For instance, courts have recognized that certain aspects of the President's foreign affairs powers, particularly those involving the recognition of foreign governments, are non-justiciable political questions and thus not subject to judicial review. In some instances, the courts have held that the President's exercise of the recognition power is conclusive on the judicial department and cannot be reviewed by the courts. See, e.g., *El-Shifa Pharm. Indus. Co. v. United States*, 391 U.S. App. D.C. 51, 57, 607 F.3d 836, 842 (2010), (where the court reiterated that questions involving the President's recognition power present non-justiciable political questions). However, there are instances where the courts have engaged in judicial review of the President's foreign affairs actions, particularly when statutory or constitutional interpretation is involved. In *Wang v. Masaitis*, 416 F.3d 992 (9th Cir. 2005), the court noted that while the conduct of foreign relations is predominantly entrusted to the political branches, there are legal issues within foreign affairs that are suitable for judicial resolution, such as treaty construction and the standard of proof. In *Wang*, the court had to decide whether, under the Treaty Clause of the Constitution, the United States may enter a "treaty" (in this case an extradition agreement) with a non-sovereign entity, such as Hong Kong. The court concluded that such a treaty is constitutional and therefore upheld the extradition agreement.

In *Open Soc'y Justice Initiative v. Trump*, 510 F. Supp. 3d 198 (S.D.N.Y. 2021), plaintiffs challenged the lawfulness of an order issued by President Trump, in his official capacity as President, blocking property of certain persons associated with the International Criminal Court. The courts granted the plaintiffs' request for injunctive relief barring enforcement of IEEPA's civil and criminal penalties against them or designating them under the Presidents' executive order.

President Trump also cited authority for the executive orders under the National Emergencies Act, (NEA), which gives Congress the ability to review and reverse a declaration of national emergency. The NEA gives legislators authority to reject a presidential declaration of national emergency through simple legislation that would require majorities in the House and Senate. If President Trump were to veto such action, Congress would have the opportunity to override a presidential veto with a two-thirds majority vote.

What Does This Mean for Your Company?

While the tariffs are taxes imposed on the foreign company selling their goods into the United States, the effective result is generally that the additional cost will be passed on to the consumer or company purchasing the goods. This will most likely result in higher prices and have other impacts to the supply chain. Stay tuned for further Client Alerts from Butzel regarding ways this may impact specific

CLIENT ALERTS

industries.

As noted above, at this time there is no stated mechanism for companies to obtain exemptions from the tariffs, which means it will have an impact on all importing companies. Butzel will continue to monitor the situation and update our clients on any changes as they come to light. To discuss different ways to ameliorate the impact of these tariffs, contact your Butzel attorney or members of the Butzel International Trade team listed below.

Leslie Alan Glick

202.454.2839

glick@butzel.com

Mitchell Zajac

313.225.7059

zajac@butzel.com

Andrew S. AbdulNour

734.213.3251

abdulnour@butzel.com

Catherine M. Karol

313.225.5308

karol@butzel.com