

# President Trump Imposes Additional Tariffs on China, Delays Tariffs on Canada and Mexico

February 6, 2025

On February 1, President Trump [issued](#) executive orders imposing sweeping tariffs on products of Canadian, Mexican, and Chinese origin pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701, et seq. (IEEPA), after expanding previously-declared national emergencies to respond to the “extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl.”

## I. Overview and Current Status of Additional Tariffs

Effective February 4, all products of Chinese origin are subject to an additional 10% tariff. Although all products of Mexican and Canadian origin were originally set to be subject to an additional 25% tariff – with the exception of “energy resources”<sup>1</sup> of Canadian origin, which would have been subject to an additional 10% tariff – on February 3, President Trump reached agreements with Canadian Prime Minister Justin Trudeau and Mexican President Claudia Sheinbaum to delay the imposition of tariffs on Canadian- and Mexican-origin products by one month as the United States continues negotiations relating to border security.

Canada has promised to retaliate with tariffs of its own should U.S. tariffs on Canadian-origin products go into effect. On February 1, Canada [announced](#) a 25% tariff on certain imports from the United States, including orange juice, peanut butter, and whiskey, effective February 4, with additional tariffs to be rolled out later in February; like the U.S.-origin products have likewise been delayed by one month.

<sup>1</sup> “Energy resources,” as defined in section 8 of Executive Order 14156, include “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).”



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However, should both countries impose tariffs in a month, Canada's retaliation sets the stage for possible escalation, as President Trump's February 1 [executive order](#) warned that retaliation by Canada could lead to increased tariffs on Canadian-origin products.

## II. Implementation of the Additional Tariffs

On February 3, following the announcement of a delay in the effective date of the tariffs on Mexican-origin products, but prior to the delay negotiated with Canada, U.S. Customs and Border Protection ("CBP") released for public inspection two Federal Register notices to implement the tariffs on Canadian- and Chinese-origin products. The Federal Register notice relating to implementation of the tariffs on Chinese-origin products is available [here](#). Although the Federal Register notice relating to Canadian-origin products has since been withdrawn given the negotiated one-month delay, the two notices as initially published did not have any significant deviations from one another, and provide key insights regarding the manner in which the tariffs will be implemented.

As an initial matter, unlike prior implementation of the Section 301 and Section 232 duties (discussed [here](#)), which included processes whereby importers could request product-specific exclusions from the applicable duties, neither of the notices referenced any potential exclusions from the tariffs or any forthcoming possibility to request product-specific exclusions. CBP also clarified that the duties will apply in addition to all existing duties. In the initial notice published with respect to Canadian-origin products, CBP indicated that the tariffs would have applied to Canadian-origin products notwithstanding application of the U.S.-Mexico-Canada Agreement ("USMCA"). All items that originated in Canada under the USMCA rules of origin, or that were

considered to be substantially transformed in Canada, would have been subject to the additional tariffs. It is possible, however, that ongoing negotiations could result in changes to this approach if the tariffs are implemented in the future. Absent any such changes, even for products that qualify for duty-free treatment under the USMCA, such products will be subject to additional 25% tariffs if they are ultimately implemented next month, and exempt only from the general rate of duty imposed based on the tariff classification of the imported products. Chinese-origin products already subject to Section 301 duties are now also subject to the additional 10% tariff on Chinese-origin items, which means that many Chinese-origin products are now subject to up to 35% additional tariffs on top of general rates of duty.

Although, as noted above, no formal exclusion process or product-specific exclusions were introduced, CBP provided certain exemptions for specific circumstances. The key exemptions, which will, for now, apply to imports of Chinese-origin products, include:

1. Products for personal use in accompanied baggage of persons arriving to the United States.
2. Goods for which entry is properly claimed under a provision of chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS), such as U.S. goods returned (i.e., exported from the United States, and then reimported into the United States), subject to certain exceptions.<sup>2</sup>
3. Donations by persons subject to the jurisdiction of the United States of articles, such as food, clothing, and medicine, intended for use in relieving human suffering.
4. Items loaded onto a vessel or in transit before 12:01 am EST on February 1, 2025, and entered for consumption into the United States after 12:01

<sup>2</sup> However, for goods "returned to the United States after having been exported to be advanced in value or improved in condition by any process or manufacture or other means," including items exported for repair, alteration, or further processing/manufacturing, as set out in HTSUS subheading 9802.00.40, 9802.00.50, 9802.00.60, and 9802.00.80, the

Federal Register notice states that "the additional duties apply to the value of repairs, alterations, or processing performed..., as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article assembled abroad...less the cost or value of such products of the United States, as described."

am EST on February 4, 2025 but before 12:01 am EST on March 7, 2025 (for Chinese-origin products). For Canadian-origin products, the arrival date was limited to entries prior to February 7, 2025; if tariffs are implemented on Canada next month, the entries would likely have a similarly shorter, three-day window for arrival.

5. Informational materials, such “publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.”

Further, because the Executive Orders directed that CBP exclude articles subject to the additional 10% tariff from the de minimis exemption (which allows certain imports under a specified value to enter duty-free and without proceeding through formal entry procedures), CBP determined that “it is necessary to require formal entry for all mail shipments...[w]ithout regard to their value....” Accordingly, for all mail shipments from China, CBP will now require formal entry procedures and no goods contained in mail shipments will be released or cleared by CBP until a formal entry is filed.

### **III. Potential Mitigation of Additional Tariffs – Country of Origin**

Given that the new tariffs – both implemented and delayed – are being imposed on a country-specific basis, importers should consider taking steps to ensure that the country of origin of imported products is correct. Although goods imported from Canada and Mexico may be afforded duty free treatment under the USMCA principally by meeting required tariff shifts, the “substantial transformation” test is the general test used to determine the country of origin of an item for purposes of other special tariff-related programs. Although now withdrawn, CBP initially indicated in the Canada-related Federal Register notice that all items that originated in Canada under the USMCA rules of origin would be subject to the additional 25% tariff, as would all items that were considered to have been substantially transformed in Canada. The substantial transformation test, which generally provides that a good is a product of the country in

which the good last undergoes a “substantial transformation,” meaning that the article loses its identity and is transformed as a result of processing operations into a product having a new name, character, and use, is complex, particularly where a product is composed of inputs from several countries, or where a product undergoes processing in a country other than the country in which it was originally made, grown, or extracted. Importers may be able to argue that countries other than Canada, Mexico, or China are the correct countries of origins for imported products currently treated as products of those three countries.

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Cleary’s international trade team is continuing to track developments on the Trump administration’s tariff policy, and is available to provide guidance on navigating the impact of the new tariffs on China, and possible future tariffs on Canada and Mexico.

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