

Tariffs on Trial: The Legal Issues Raised by New Tariffs on Canada, Mexico, and China

Client Alerts

March 20, 2025

By: Debbie Berman, Adam Unikowsky, Gabriel K. Gillett, Anand Viswanathan, Meghan Greenfield, Liza Starr

Shortly after taking office, President Trump announced sweeping tariffs on several trading partners, including Canada, Mexico, and China, with plans to also impose tariffs on the European Union. This client alert unpacks those developments and the legal challenges they are likely to face.

The tariffs on Canada, Mexico, and China

President Trump has announced a 25% tariff on imports from Canada and Mexico (except for a lower 10% tariff on Canadian energy and potash imports) and a 20% tariff on imports from China. He stated these tariffs are necessary to address “the grave threat to the United States posed by the influx of illegal aliens and illicit drugs.”^[1] In response, Canada, Mexico, and China have imposed or threatened to impose retaliatory tariffs on American exports. Meanwhile, President Trump has signaled that more across-the-board tariffs may be on the horizon—in particular, a 25% tariff on imports from the European Union.

In the face of pressure from trading partners, US businesses, and others, President Trump has made a series of adjustments to the tariffs in recent weeks, postponing them for certain goods while changing tariff rates for others. As a result, there is still considerable uncertainty about the ultimate reach and impact of these tariffs.

Legal authority invoked for the new tariffs

In imposing new country-specific tariffs on Canada, Mexico, and China, President Trump invoked the International Emergency Economic Powers Act (IEEPA). IEEPA gives the President broad authority to “investigate, . . . regulate, . . . prevent or prohibit” the “import[] or export[] of” goods in response to an “unusual and extraordinary threat” “to the national security, foreign policy, or economy of the United States.”^[2] As a first step, the president declares a national emergency under the National Emergencies Act (NEA).^[3] Then, the president may exercise discretionary authority under IEEPA.

Until now, presidents have typically invoked IEEPA to impose sanctions on foreign adversaries. The law has never been used to impose tariffs.^[4] While courts have historically been reluctant to

question a president's actions under IEEPA, it is likely that the Trump administration's novel decision to use IEEPA to impose tariffs will face legal challenges.

Potential legal challenges

Several legal issues may arise in any challenge to the new tariffs.

Chief among them is one long-unanswered question about the scope of IEEPA: Does that statute give the president the authority to impose tariffs at all? Unlike trade-specific statutes, IEEPA does not explicitly use the words "tariff" or "tax." It instead provides that the president may take actions to, among other things, "investigate," "regulate," "prevent," or "prohibit." On one view of that provision, the president can impose tariffs because the broad power to "regulate" encompasses the power to impose tariffs. But on another view, Congress would have explicitly named that power had it intended IEEPA to give the president such authority. In arguing the latter, litigants may invoke the major-questions doctrine—under which the Supreme Court has demanded clear congressional authorization for administrative agencies to act on issues of extraordinary economic or political significance—to challenge the president's claimed tariff authority under IEEPA.^[5]

In addition, opponents may argue that countrywide tariffs are not rationally connected to the declared national emergency on illegal immigration and illicit drug trade. As support, they may point to the inclusion and unequal treatment of goods with no apparent relation to illegal immigration or the flow of fentanyl—for example, the lower tariffs imposed on Canadian energy imports.

Even so, there are hurdles for any litigant challenging the IEEPA tariffs. To start, litigants generally cannot sue the president directly, because he is not an "agency" whose "final" actions can be reviewed under the Administrative Procedure Act (APA).^[6] Thus, any APA challenge to the issuance of the tariffs would have to be directed against an administrative agency that implements the tariffs (e.g., Customs and Border Protection). Moreover, courts have historically been reticent to constrain the president's broad authority under IEEPA. It is possible that, after the Supreme Court's decision to overturn *Chevron* deference in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts will more closely scrutinize executive actions in the trade arena. That said, we expect that many courts will continue to defer to the executive branch, whether in name or in practice, on questions related to national security and foreign affairs.

Other avenues the president could take

Even if a court were to strike down the president's use of IEEPA to impose these tariffs, the president could instead try to impose them under other statutory authorities. The president has several other tools at his disposal, such as Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974. Unlike IEEPA, however, those statutes are often expressly more limited in scope; Section 232, for instance, focuses only on those imports that "threaten to impair" US national security.^[7] In addition, those trade authorities require more onerous

procedures to implement a tariff. So, any effort to impose tariffs under those statutes will likely be more time-consuming and ultimately apply to fewer products and countries. And, even if the Trump administration were to rely on those statutes in lieu of IEEPA—as it has for steel and aluminum tariffs^[8]—its actions may still be challenged in court.

* * *

Jenner & Block’s Tariff Task Force brings together a multi-disciplinary team of litigators, former government prosecutors, and subject matter experts to help clients navigate this uncertain landscape. Recognized as a litigation powerhouse, we provide best-in-class litigation capabilities to challenge the legality of the tariffs, navigate contractual disputes related to supply chain issues, defend government investigations into alleged non-compliance, and provide guidance on compliance with varying regulatory requirements between countries. We also provide counseling and strategic advice on how to manage existing and future business relationships affected by the tariffs. Debbie Berman and Doug Litvack co-chair the Tariff Task Force.

Footnotes

[1] Exec. Order No. 14,193, 90 Fed. Reg. 9113, *Imposing Duties to Address the Flow of Illicit Drugs Across our Northern Border* (Feb. 1, 2025); Exec. Order No. 14,194, 90 Fed. Reg. 9117, *Imposing Duties to Address the Situation at our Southern Border* (Feb. 1, 2025); Exec. Order No. 14,195, 90 Fed. Reg. 9121, *Imposing Duties to Address the Synthetic Opioid Supply Chain in the People’s Republic of China* (Feb. 1, 2025).

[2] 50 U.S.C. §§ 1701-1702.

[3] *See* 50 U.S.C. § 1601 *et seq.*

[4] Christopher A. Casey & Jennifer K. Elsea, Cong. Rsch. Serv., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, at 52 (updated Jan. 30, 2024), <https://crsreports.congress.gov/product/pdf/r/r45618>.

[5] *See West Virginia v. EPA*, 597 U.S. 697, 721-24 (2022).

[6] *See Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992).

[7] *See* 19 U.S.C. § 1862.

[8] Proclamation No. 10,895, 90 Fed. Reg. 9807, *Adjusting Imports of Aluminum into the United States* (Feb. 10, 2025); Proclamation No. 10,896, 90 Fed. Reg. 9817, *Adjusting Imports of Steel into the United States* (Feb. 10, 2025).

Related Attorneys

Debbie Berman

Partner
dberman@jenner.com
+1 312 923 2764

Adam Unikowsky

Partner
aunikowsky@jenner.com
+1 202 639 6041

Gabriel K. Gillett

Partner
ggillett@jenner.com
+1 312 840 7220

Anand Viswanathan

Partner
aviswanathan@jenner.com
+1 202 639 6044

Meghan Greenfield

Partner
mgreenfield@jenner.com
+1 202 637 6393

Liza Starr

Associate
estarr@jenner.com
+1 202 661 4901

Related Capabilities

Tariff Task Force

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

