CLAYTON YEUTTER INSTITUTE OF INTERNATIONAL TRADE AND FINANCE

Understanding Trump's New Tariffs: Legal, Economic and Agricultural Perspectives

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Since taking office on Jan. 20, 2025 President Trump has moved swiftly to impose or threaten to impose wide-ranging new tariffs on U.S. trading partners. A 10% tariff on all imports from China—additional to tariffs that were already in place on Chinese imports—took effect on Feb. 4. Tariffs of 25% on imports from Canada and Mexico were announced then forestalled for 30 days. These tariff actions were based on an unprecedented use of an existing law. The president also signed a proclamation raising tariffs on steel and aluminum and has indicated he may take additional tariff actions. The objectives of the tariffs appear to vary with each case. The administration is signaling that it intends to make trade policy an ongoing, high-profile part of its agenda, connected to overall economic policy. Decisions will impact businesses, farmers, consumers, the economy, and the trading system. Understanding them requires legal, economic, and as diplomatic lenses – an approach that defines the Yeutter Institute. Our three faculty chairs in law, agricultural economics, and economics offer their perspectives below on the initial tariff actions of the new administration.

KEY TAKEAWAYS

- The legal basis for the new tariffs on China and the threatened tariffs on Canada and Mexico is a 1977 law called the International Emergency Economic Powers Act (IEEPA). This is the first time IEEPA has been used to impose tariffs.

- Unlike other U.S. laws presidents have used to impose tariffs, under IEEPA, tariffs can be imposed virtually immediately with no investigation required in advance. Any legal challenges are likely to face an uphill climb, as U.S. courts have traditionally given very wide latitude to Presidential actions under IEEPA.

- The agriculture sector would experience a double whammy of lost competitiveness from U.S. tariffs and loss of export markets through trading partners' retaliation. Products affected by trade retaliation would be pork, beef, corn and soybean products. For U.S. producers, finding new markets when retaliation makes their products less competitive takes time.

- Because the United States imports crude oil from Canada and Mexico and refines it including in Colorado and Wyoming, tariffs on these imports would increase the cost of all refined fossil fuel products in the U.S. Our U.S. tariffs would also impact fertilizer prices, as the U.S. imports most of our potash from Canada.

- The 10% minimum tariff on China significantly broadens the set of goods that face the trade tax, compared to the 2018 trade war in which the tariffs were much more targeted. This, combined with China's retaliation on U.S. energy goods, motor vehicles, and agricultural equipment, will have a negative economic impact on the U.S. that is larger than the 2018 trade war. The cost of the new broad-based tariffs for the U.S. economy is on the order of $30 to $100 billion.

An unprecedented use of an existing law to impose new tariffs

By Matthew Schaefer, Clayton Yeutter Chair and Professor of Law, Nebraska College of Law

On February 1, 2025, President Trump signed three executive orders imposing additional tariffs on goods from Canada, Mexico and China. **Tariffs, also referred to as customs duties, are taxes on imports. U.S. importers are responsible for paying the tariff**, although tariffs can negatively impact foreign exporters as U.S. importers look for alternative sources of supply or seek to renegotiate contracts for the purchase of goods from the foreign exporters.

The executive orders call for a 25% additional tariff on imports from Canada (although just 10% for energy resources), a 25% additional tariff on imports from Mexico, and a 10% additional tariff on imports from China beginning just past midnight on February 4th. **Canadian and Mexican goods currently receive tariff free treatment into the United States as they have since the mid-1990s under the North American Free Trade Agreement (NAFTA)** and its successor agreement the USMCA that entered into force in 2020.

The additional tariff of 10% on Chinese imports will be added to the additional 25% or 7.5% tariffs imposed on two-thirds of imports from China since 2018 under Section 301 of the Trade Act of 1974 during the first Trump Administration and maintained by the Biden Administration. **Both of those tariff rates are added on top of the Normal Trade Relations (NTR) tariff rate for goods**, although NRT tariffs tend to be quite low (3-4% on average).

The legal basis for these new threatened tariffs is the International Emergency Economic Powers Act (IEEPA), enacted in 1977. IEEPA provides presidential authority "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." In his executive orders dealing with Canada and Mexico, President Trump declared a national emergency at those borders related to concerns over fentanyl and other drug trafficking, and with respect to Mexico's border, illegal immigration. With respect to China, President Trump declared a national emergency resulting from sustained influx of synthetic opioids, including fentanyl, and the

"failure of the PRC government to arrest, seize, detain, or otherwise intercept chemical precursor suppliers, money launderers, other TCOs, criminals at large, and drugs."

IEEPA empowers the President to "regulate … any … importation … of … any property in which any foreign country or a national thereof has any interest by any person … subject to the jurisdiction of the United States**." This is the first time that IEEPA has been used for tariffs.** (However, President Nixon used the Trading With the Enemy Act (TWEA), a statute that IEEPA in part sought to limit and replace, to impose across the board tariffs in 1971 when the U.S. declared it would abandon the gold standard for the U.S. dollar). **The use of IEEPA to impose tariffs for the first time is quite significant because other statutes delegating the power to the President to impose tariffs for national security reasons or to address unfair foreign trade practices have more procedural requirements and indeed require an investigation that takes time. Under IEEPA, tariffs can be imposed virtually immediately with no investigation required in advance.**

More traditional trade remedy statutes such as Sec. 301 and Sec. 232 that were revitalized and used by the Trump Administration during President Trump's first term operate differently. Section 301, meant to address unfair and unreasonable foreign trade practices, and Section 232, that addresses imports threatening to impair U.S. national security, require lengthy investigations prior to taking tariff actions. **If the IEEPA-based tariffs are imposed, it is likely that there will be legal challenges brought in U.S. courts.**

U.S. courts have traditionally given very wide latitude to Presidential actions under IEEPA and any such challengers will face an uphill climb, even with new Supreme Court jurisprudence giving less latitude to executive branch actions based on congressional delegations of power. President Nixon's TWEA tariffs survived a court challenge in the early 1970s with the court finding the power to "regulate" included power to tariff, although critics point out IEEPA's long list of delegated powers does not include explicitly the power to "tariff" or "tax," and **no prior President used IEEPA for imposing tariffs.**

China has filed a World Trade Organization (WTO) dispute settlement case against the United States based on the IEEPA tariffs. However, ever since the WTO Appellate Body collapsed in December 2019, the United States has maintained the ability to appeal any first-level WTO panel report "into the void," thereby preventing its adoption by the WTO dispute settlement body and thus preventing the ruling from becoming binding. A USMCA challenge by Canada and Mexico if the tariffs are imposed later is likely too.

Importantly, both the WTO agreements and the USMCA contain so-called national security or "essential security" exceptions, and the USMCA exception is less qualified than the WTO exception. The USMCA's "essential security" exception appears to be completely self-judging and does not contain some of the limiting language that one finds in WTO agreements' national security exceptions. The U.S. believes even the WTO national security exception is entirely self-judging, even though WTO panels have found some small, outer bound limits. The wording of the USMCA's "essential security" exception indicates even more strongly that the exception is entirely self-judging: "Nothing in this Agreement shall be construed to … preclude a Party from applying measures that it considers necessary for … the protection of its own essential security interests."

On social media, President Trump also cited trade deficits with the three countries as a reason for imposing tariffs: "…The USA has major deficits with Canada, Mexico, and China (and almost all countries!), owes 36 Trillion Dollars, and we're not going to be the "Stupid Country" any longer. MAKE YOUR PRODUCT IN THE USA AND THERE ARE NO TARIFFS!" Most economists believe any focus on bilateral trade deficits, and certainly with Canada and Mexico, makes little sense given the economic integration between the three countries that makes North American goods globally competitive.

The leaders of both Mexico and Canada reached deals with President Trump on February 3, 2025 to suspend these tariff actions for 30 days with steps to address border issues and fentanyl. Mexico's President agreed to send 10,000 troops to the border that will be specifically dedicated to stopping the flow of fentanyl and illegal immigration. Canada also agreed to dedicate an additional 10,000 troops to the Northern border as well as help form a Canada-U.S. Joint Strike Force to combat organized crime, fentanyl and money laundering. Canadian Prime Minister Trudeau also signed a new intelligence directive on organized crime and fentanyl, backing it with $200 million.

T**he China tariffs were in fact imposed as of February 4, 2025.** China was not able to obtain any last hour reprieve from additional tariffs on its products being imported into the United States, although it is expected that President Trump will be speaking with China President Xi in the near future. **As promised, China has taken retaliatory measures against the United States.** China is imposing a 15% tariff on U.S. coal and liquefied natural gas and a 10% tariff on U.S. crude oil, agricultural machinery, and certain automobiles and trucks. **It is also imposing new export controls on two dozen metal products, including tungsten that has many industrial and defense product applications, and tellurium that is used in the production of solar cells.**

President Trump also repealed the so-called de minimis exception, that exempts shipments valued under $800 from tariffs, for all Chinese imports. **Chinese exports of low-value packages to the United States rapidly rose from roughly $5 billion in 2018 to $66 billion in 2023.** However, the President put a temporary pause on the repeal after realizing that both U.S. Customs and Border Protection and the U.S. Postal Service would need time to implement tariffs on so many small value shipments.

Prior to its last hour reprieve from the imposition of tariffs, Canada had threatened to impose 25% tariffs on $30 billion worth of U.S. imports immediately and an additional $125 billion worth of U.S. imports 30 days later. Several Canadian provinces also threatened to take U.S. alcoholic beverages off shelves of government-run liquor stores, and Ontario even threatened to terminate government contracts with certain U.S. companies, such as Elon Musk's Starlink. Mexico also threatened an unknown level of retaliation.

On February 11, President Trump signed a proclamation raising Sec. 232 national security-related tariffs on aluminum from 10% to 25% and restoring the full 25% tariff on steel even for steel imports from countries that had previously negotiated exemptions from the tariffs in exchange for limiting exports to the United States. This list of countries includes Argentina, Australia, Brazil, Canada, Japan, Mexico, South Korea, the European Union, Ukraine, and the United Kingdom. Canada and Mexico are the two largest sources of steel imports into the

United States, although the main aim of the tariffs is to counteract the overcapacity in these industries created by China's large subsidization of these industries.

The Stakes for Nebraska Agriculture and Beyond

By John Beghin, Mike Yanney Yeutter Institute Chair and Professor of Agricultural Economics, University of Nebraska-Lincoln

If implemented, all three tariff actions described in the Feb. 1 executive order on Canada, Mexico, and China would impact Nebraska's economy. Farm income would decrease as Nebraska produces large surpluses of key commodities and depends on export markets, principally, Mexico, Canada, and China. **If these countries retaliate with their own tariffs, Nebraska exports are compromised and new markets have to be found, which takes time**.

When the U.S. agricultural economy is hit with retaliatory tariffs, foreign competitors can move quickly to take advantage of their new, more competitive position in export markets. For crops with inventory, the response is instantaneous especially with competitive tenders for which U.S. crops would be disqualified by the foreign (significant) tariff. Even with tight inventory, competition is there in tenders and price effects will be more pronounced. There is also a longer-term supply response once foreign acreage gets allocated to grow these crops, like the expansion of Brazilian acreage for soybeans. That does not go away even after the retaliatory tariffs are removed.

Some countries and firms diversify their sourcing/procurement by allocating purchases to different countries to avoid "getting burned" by any specific trade partner (Japan did that). In these cases, the U.S. may preserve some of these export markets but one could expect to see them reduce purchases because the U.S. price inclusive of the tariff is higher than competitors and substitutes exist.

For U.S. producers, finding new markets when retaliation makes their products less competitive takes time. They can submit bids to tenders in countries that did not retaliate. They would need to identify transportation to these new markets (tenders are for both the commodity and its transportation). It would take time to find reliable and economical transportation to be competitive (for example Cargill often loses wheat markets to Ukrainian suppliers because they cannot find transportation that is as cheap as Ukrainians can find). In addition, establishing long-term trusted relationships when tenders are not involved can take time. For meat markets it may be more complicated because of plant and animal health and food safety requirements to fulfill in these new markets. That takes time too.

Products affected by trade retaliation would be, pork, beef, corn and soybean products. Our U.S. tariffs impact the cost of fossil-fuel based products and fertilizer prices (the U.S. imports most of our potash from Canada). **Hence, the cost of production in farming would increase and competitiveness would decrease.** According to the Nebraska Farm Bureau, in recent years 95% of Nebraska's corn exports, 90% of soybean exports, 57% of soybean meal exports, 32% of pork exports, and 23% of beef exports went to these three countries. Hence agriculture would

experience a double whammy of lost competitiveness from our own tariffs, and loss of markets through retaliation.

The United States imports crude oil from Canada and Mexico and refines it including in Colorado and Wyoming. **Tariffs on these imports would increase the cost of all refined fossil fuel products in the U.S.** There may be a small benefit to U.S. frackers who are likely to see a higher local price. However, **overall the energy sector would lose from the tariffs because of higher costs.** Refined energy products (such as gasoline) prices would increase, and consumers would react by decreasing their gasoline consumption. Retaliation would hurt U.S. exports of fossil energy products to the three countries (about $26 billion of crude petroleum, $48 billion of refined petroleum, and about $16 billion of petroleum gas (as per the Council of Foreign Relations). Hence again **a double whammy of lost competitiveness from our own tariff, and loss of markets through retaliations.**

Nebraska manufacturing would be affected as well as it imports metallic products to be transformed into agriculture-related equipment which is typically re-exported. The building industry would be affected as well with a 25% increase in the price of imported lumber and other imported material. The U.S imports about 80% of its lumber use. Transportation cost in all sectors would also be affected with cost increase with higher energy prices.

Nationally, these impacts would be generalized to most sectors, especially the car industry, which is among the most integrated in the U.S.-Mexico-Canada region. The state-level impact would depend on the sectoral composition of the state, and its dependence on the three countries for its imported inputs and destination markets for its products.

Consumers in Nebraska and beyond would be facing higher prices for food items, namely fruits and vegetables, which we import from our neighbors. Food is characterized by two-way trade as we export and import a large amount of agricultural and food products. (In fiscal year 2024, the U.S. imported over $206 billion worth of food and agricultural products and exported over $174 billion in this sector, according to the U.S. Department of Agriculture). Food sectors are highly integrated in North America under the U.S.-Mexico-Canada trade agreement (USMCA). Many products would be affected, and supply chains would scramble to find cheaper alternatives. Consumers would face higher gasoline prices, higher car prices, and more expensive building costs in real estate. **As the U.S. imports many finished consumer products from China, your regular trip to Hobby-Lobby would be more expensive!** The magnitude of the price increase would be smaller than the tariffs since value is added beyond the border once goods enter the country. The more value that is added, the less the impact of the tariff on the final price. **In terms of the immediacy of the price impact, perishable products for which substitutes are few would typically experience the price increase the fastest.** Products for which inventories are large and which are not perishable goods would see slower price changes.

Finally, there would be a loss of income for the many industries negatively affected by the trade war translating into lost consumer income. The loss of jobs would be moderate (estimates are around 100,000 to 150,000 jobs). It is moderate relative to the vast churning of the U.S. labor market (of the same scale as our monthly labor market changes).

New China Tariffs Have Greater Impact than the Whole of the 2018 Trade War

By Edward Balistreri, Duane Acklie Yeutter Institute Chair and Professor of Economics, University of Nebraska-Lincoln

On February 4, the United States started imposing additional broad based 10% tariffs against China. While not as dramatic as the proposed Canadian and Mexican tariffs (which were postponed in a last-minute reprieve), the China tariffs are likely to have a significant impact on the US economy. In fact, **the 10% additional tariff on all goods from China is likely to have a larger overall impact on U.S. welfare than the whole of the 2018 trade war.**

The 10% additional tariff covers a significant group of goods which were spared in the 2018 trade war. Furthermore, the 10% additional tariff on goods that do already have substantial tariffs has a compounding effect on economic distortions. Our quantitative models suggest that **the 10% minimum tariff on China combined with China's retaliation on U.S. energy goods, motor vehicles, and agricultural equipment will have a negative economic impact on the U.S. that is larger than the 2018 trade war.** The cost of the new broad-based tariffs for the U.S. economy is on the order of $30 to $100 billion, which is larger than our estimate that the 2018 trade war cost the U.S. between $17 and $80 billion. The large range in estimates depends on the quantitative model structure with the low estimates dependent on perfect competition and the larger estimates accommodating a more advanced model of imperfect competition.

A feature of the 2018 trade war was that U.S. tariffs on Chinese goods were targeted. Electronic equipment is the most important sector of U.S. imports from China, but the tariffs on this sector were relatively modest. In data collected for 2017, prior to the trade war, the U.S. imported roughly $200 billion of electronic equipment from China. Yet many electronic goods had low, or no, new tariffs imposed (e.g., iPhones) as the 2018 trade war developed. Overall, the average tariff rate across the electronic equipment sector increased to 8.6%. Adding an additional 10% brings the tariff rate up to 18.6%. In contrast, targeted sectors like iron and steel saw U.S. tariffs on imports of over 22%. **The indiscriminate addition of 10% tariffs on all Chinese goods significantly broadens the set of goods that face the trade tax.**

Economic models of trade indicate a compounding, or non-linear, effect of trade distortions. Consider a sector like non-ferrous metals (e.g., aluminum, copper, zinc, lead). As a part of the 2018 trade war the average U.S. tariff on these goods from China went from 8% to 18%. This represents a significant market distortion as U.S. firms pay higher prices for these inputs and increase their demand for higher cost substitutes from non-Chinese sources. The effect of adding an additional 10%, bringing the tariff rate up to 28%, is larger than the original 10% tariff increase. The compounding effect represents a tradeoff between the distortionary effect of the tariff on domestic and international prices balanced with the tariff revenue.

A small tariff has a relatively small distortionary effect on markets. The incidence of the collected tariff revenue is shared, however, among U.S. and Chinese agents. This is because Chinese export prices fall and gross-of-tariff U.S. import prices rise. Initially, the small U.S. tariff can benefit the U.S. as the transfer of tariff incidence on China (through lower export prices) outweighs its distortionary effect. This is the classic case of a beggar-thy-neighbor

tariff. As the tariff becomes large, however, the distortionary effect dominates, and U.S. welfare falls. One can deduce this by imagining the growth of the tariff rate to a large prohibitive tariff on Chinese goods. The prohibitive tariff generates (large) distortionary losses for the U.S. while offering no tariff revenue. With no tariff revenue there is no transfer of the U.S. tax incidence on the Chinese---no beggar-thy-neighbor transfer. Our empirical analysis of the actual 2018 U.S. tariffs on China indicate that these tariffs are not "small" in the sense that their distortionary effect dominates the revenue transfer. The February 4th 10% additional tariffs move us further into this range of large welfare-reducing tariffs. Furthermore, China's retaliation always works to reinforce the distortionary costs while reducing the revenue transfer to the U.S. This increases the burden of the trade war on the U.S.

The newly implemented broad-based additional tariff on Chinese goods of 10% may seem a modest escalation relative to the postponed high tariffs on Mexico and Canada and the campaign threats of massive tariffs on China. **Our analysis indicates that these new Chinese tariffs need to be taken seriously.** Their overall estimated cost for the U.S. is at least as big as the costs associated with the 2018 tariffs. Our quantitative models suggest that the costs of the new tariffs are between $30 and $100 billion for the U.S. The worry is that these tariffs are only the first salvo in a new trade war that threatens to spill beyond the U.S. and China. In a recent paper with Christine McDaniel, we find that the costs might go up by 10-fold under a retaliatory trade war consistent with Trump's campaign rhetoric of 60% minimum tariffs on China and 10% minimum tariffs on the rest of the world.

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