

Amping Up Trade Wars: Tariffing Intangible Film, Television, and Streaming Content

Stephen I. Selznick, Brenda C. Swick, Casey Chisick, Lindsay E. Dykstra, Dakota Bundy, Raysa Marcondes
May 5, 2025

On Sunday May 4, 2025, President Trump posted on social media that foreign film production represents a US national security threat necessitating a 100% tariff on films made outside of the United States. So, what does this mean?

For decades, Canada has been a destination of choice for US television, film and streaming content production. This is due largely to a combination of a world-class and highly skilled Canadian creative and technical work force, a positive work ethic, a favourable Canadian dollar exchange rate, a relatively lower cost of living, close proximity to major US population centers, state-of-the-art Canadian post-production, animation, TV commercials, music, CGI and special effects houses, and a variety of attractive Canadian federal and provincial tax incentives that serve to offset a significant portion of the foreign producer's hard costs of production.¹ Canada's cultural industries, primarily the film, television, streaming content and audio-content sectors, are viable and important economic engines. By the third quarter of 2024, cultural industries reportedly contributed roughly \$52 billion to Canada's GDP and employed nearly 745,000 Canadians.²

The potential impact of amping up the current trade war between the US and Canada to include these intangible service sectors could be significant.

Brief Overview of the Canada-US Trade War for Context

- On February 1, 2025, President Trump issued an executive order under the *International Emergency Economic Powers Act* (IEEPA), imposing a 25% tariff on all Canadian products and a 10% tariff on Canadian oil, gas and potash imported into the United States.³
- On February 2, 2025, Canada's then Prime Minister, Justin Trudeau, announced that Canada would respond by applying a 25% retaliatory tariff on C\$30 billion worth of goods in various categories imported from the United States.⁴
- On February 3, 2025, President Trump paused the application of the tariffs on Canadian goods for 30 days.
- On March 4, 2025, the tariffs on Canadian goods took effect and Canada retaliated with 25% tariffs on an additional \$30 billion worth of US goods.
- On March 12, 2025, a 25% tariff on Canadian steel and aluminum came into effect.⁵
- On April 2, 2025, President Trump announced an additional 25% tariff on all non-US made

automobiles, and in response, Canada levied an equivalent tariff on all non-CUSMA vehicles and non-Canadian auto parts imported from the US. Canada is considering but has yet to finalize the list of goods which will be subject to fresh retaliatory tariffs.

- On May 4, 2025, President Trump announces on social media that he has directed his trade officials to commence the process of imposing a 100% tariff on foreign films.

Issues with Imposing Tariffs on Intangibles like Cultural Services

At present, there are no tariffs applied to services and *intangible* goods, such as streaming audio and audio-visual services, television programming, motion picture films or streaming content.⁶ However, it is worth exploring how the US and Canadian regimes could allow for such tariffs; especially inasmuch as US based over-the-top streaming services are collaterally challenging the Canadian Radio-television and Telecommunication Commission's (CRTC) authority to impose Canadian benefit contributions on these foreign services. These over-the-top foreign services assert that they already contribute more than a fair share to the Canadian production community by reason of their choice of Canada as a location preference for their content production.

Regarding the US tariff regime, the terms of the Presidential executive order issued on February 1, 2025, stated that the tariffs applied to "articles that are products of Canada" but "exclude those encompassed by 50 U.S.C. 1702(b)."⁷ Section 1702 of US Code 50, which is intended to only be used in response national emergencies, grants the President the power to investigate, regulate, prohibit, or seize the property of foreign nationals.⁸ Section 1702(b) also provides exemptions to this extraordinary power by expressly limiting the President's powers in respect of certain types of 'materials', such as "any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds."

The ambiguity as to whether the exemption under section 1702(b) for "information and information materials" includes fictional works in addition to more core reportage leads one to wonder whether the results and proceeds of intangible intellectual property services in general might be captured under this tariff regime."⁹ It is well understood that the limitation on Presidential power imposed by Section 1702(b) finds its genesis in the important US constitutionally protected right of free speech.

A number of challenges arise when considering imposing tariffs on intangible film, television steaming content and music, in addition to the US constitutional basis for, or prohibition against, imposing tariffs or trade barriers on information and information services. For example:

- Does foreign film production represent a credible US national security threat as a condition precedent to enabling the president to impose a tariff in the absence of Congressional authority to do so? The fact is that the US has consistently posted a US film trade surplus, and not a deficit, in every

Cassels

major market in the world.¹⁰

- What is a US film or television production? Like the automotive industry, film, television, streaming content and music are highly integrated economic sectors. Principal photography may be shot in the US, but components of post-production, such as CGI and special effects may be outsourced to several other countries. Additionally, location shooting in Paris, Toronto, or the Arctic may be a script and story narrative requirement for which a US substitute does not exist or is not story credible.
- Many US states offer tax incentive programs to entice both US and foreign producers to produce content in their jurisdictions. A US federal tariff may work at cross-purposes to those programs if the tariff imposition criteria is based upon the nationality or jurisdiction of incorporation of the upstream producing entity.
- Moreover, logistical difficulties arise in the actual application of tariffs. Foreign hard goods enter the US through well defined ports of entry. US Customs and Border Protection typically evaluates each import at the port of entry based on the respective US tariff codes applied to bills of lading, rather than the categorization of exemptions as set out in the IEEPA.¹¹ However, who assesses, and how does one assess, the US entry of the results and proceeds of an intangible service performed outside the US and delivered over the internet; or music, animation, CGI, special effects, or post production services performed by persons located outside the US but conducted on digital content residing on US based servers.

At the moment, and in contrast, Canada's retaliatory tariff regime offers less ambiguity regarding which goods are subject to tariffs. In the February 1, 2025, Canadian federal Order in Council (which came into effect on February 4, 2025), retaliatory tariffs were applied on "goods that originate in the United States" and which can be "classified under any of the tariff items set out in the schedule [to that Order]."¹² Notably, in the first round of goods subject to tariffs, only Tariff Item 9701.91.10, which covers "paintings, drawings and pastels, executed entirely by hand," could reasonably be said to be a cultural work.¹³ The list of goods which will be subject to further Canadian retaliatory tariffs, was expanded for stakeholder comment to include goods such as professional art supplies, professional camera supplies, and certain textiles.¹⁴ Moreover, goods temporarily imported into Canada for use in the production of a film are not subject to Canadian retaliatory tariffs.

As the tariff war continues, and until US tariffs on foreign film and television are actually brought into effect, the current economic turmoil may prove to be a boon for Canada's film, television and streaming content sector. Existing Canadian federal and provincial tax incentives offered to foreign producers on their Canadian based production service work, coupled with the value of the Canadian dollar down in the 70 cents range against the US dollar, may prove to be an opportunity for US-based producers to continue to produce all or a portion of their productions and content in Canada.

The Cassels [International Trade](#) and [Entertainment & Sports Group](#) have been closely following the trade war since the tariffs were first introduced. If you have any questions about the content of this article or how the US tariffs and Canada's countermeasures may impact your business, please contact a member of our

Cassels

team.

¹ [Why are so many American movies made in Canada? – New Canadian Life](#)

² [https://www150.statcan.gc.ca/n1/daily-quotidien/250114/dq250114a-eng.htm#:~:text=Nominal%20GDP%20for,2.2%25\)%20for%20culture](https://www150.statcan.gc.ca/n1/daily-quotidien/250114/dq250114a-eng.htm#:~:text=Nominal%20GDP%20for,2.2%25)%20for%20culture)

³ <https://www.whitehouse.gov/presidential-actions/2025/02/imposing-duties-to-address-the-flow-of-illicit-drugs-across-our-national-border/>

⁴ [A timeline of Trump's tariff threats and actions against Canada - National | Globalnews.ca](#)

⁵ [A timeline of Trump's tariff threats and actions against Canada - National | Globalnews.ca](#)

⁶ The USMCA (United States-Mexico-Canada Agreement) currently prohibits customs duties on digital products transmitted electronically between countries. This includes e-books, videos, music, software, and games. While the agreement prevents tariffs on these transmissions, it does allow for internal taxes provided they are not discriminatory against businesses from other USMCA countries.

⁷ <https://www.whitehouse.gov/presidential-actions/2025/02/imposing-duties-to-address-the-flow-of-illicit-drugs-across-our-national-border/>

⁸ https://www.govregs.com/uscode/expand/title50_chapter35_section1702#:~:text=the%20importation%20from,news%20wire%20feeds

⁹ https://www.govregs.com/uscode/expand/title50_chapter35_section1702#:~:text=the%20importation%20from,news%20wire%20feeds

¹⁰ https://www.motionpictures.org/wp-content/uploads/2025/01/MPA_Economic_contribution_US_infographic.pdf

¹¹ [Tariff Codes. What they are, types and their importance](#)

¹² <https://orders-in-council.canada.ca/attachment.php?attach=46660&lang=en>

¹³ <https://www.canada.ca/en/departement-finance/news/2025/02/list-of-products-from-the-united-states-subject-to-25-per-cent-tariffs-effective-february-4-2025.html>

¹⁴ [Notice of Intent to Impose Countermeasures in Response to United States Tariffs on Canadian Goods - Canada.ca](#) and [Canada's proposed counter-tariffs could paint grim picture for London art shops | CBC News](#)

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.