

| <b>HTSUS<br/>Heading</b> | <b>Article Description</b>   | <b>Additional Duty Under<br/>E.O. 14193<br/>(If Not USMCA<br/>Complaint)</b>   |
|--------------------------|--|--|
| 2510                     | Natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk.  | 25%  |
| 2710                     | Petroleum oils and oils obtained from bituminous minerals, other than crude, and preparations not elsewhere specified or included, containing by weight 70% or more of these oils, including waste oils  | 10%  |
| 2809                     | Diphosphorus pentoxide; phosphoric acid; polyphosphoric acids, whether or not chemically defined   | 25%  |
| 2901                     | Acyclic hydrocarbons   | 10%  |
| 2917                     | Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives.<br><br>Acyclic polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids and derivatives   | 25%  |
| 2921                     | Amine-function compounds<br><br>Acyclic monoamines and their derivatives; salts thereof  | 25%  |
| 3402                     | Organic surface-active agents (other than soap), surface-active, washing, and cleaning preparations, whether or not containing soap<br><br>Anionic organic surface-active agents, whether or not put up for retail sale  | 25%  |
| 3403                     | Lubricating preparations, including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations, and mold release preparations based on lubricants, as well as preparations for the oil or grease treatment of textile materials, leather, furskins, or other materials, but excluding preparations containing, as basic constituents, 70 percent or more by weight of petroleum oils or oils obtained from bituminous minerals:<br><br>Containing petroleum oils or oils obtained from bituminous minerals | 25%<br>(Possibly 10% for preparations containing 50% or more by weight of petroleum oils or of oils obtained from bituminous minerals under subheadings 3403.11.2000 and 3403.19.1000) |
| 3811                     | Anti-knock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations, and other prepared additives for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils  | 25%  |
| 3815                     | Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included   | 25%  |
| 3902                     | Polymers of propylene or of other olefins, in primary forms  | 25%  |

## Analysis

President Trump's Executive Order 14193 (E.O.) specifies that the 10% additional duty on Canadian energy resources is provided under subheading 9903.01.13 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff applies only to:

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).

Notably, there is no definitive list of HTSUS headings that qualify for the 10% versus the 25% tariff on Canadian imports. The only way to obtain definitive guidance is by requesting a binding prospective ruling from the U.S. Customs and Border Protection (CBP). The above chart represents our view of the *likely* duty rate if the particular import is not USMCA compliant.

Under the E.O., coal classified under HTSUS 2701, crude oil under heading 2709, and petroleum gases and other gaseous hydrocarbons under heading 2711 would qualify for the 10% duty. However, neither the E.O. nor the HTSUS defines "refined petroleum products." Based on a common understanding of the term, products classified under HTSUS 2710 should qualify for the 10% duty. See [Types of Refined Petroleum Products | US EPA](#). Indeed, CBP has classified refined petroleum products under heading 2710 in various rulings. See, e.g., NY K83881 (Mar. 19, 2004); NY K83318 (Feb. 23, 2004). That being said, CBP may decide to interpret the term "refined petroleum products" under HTSUS subheading 9903.01.13 more narrowly, limiting the 10% duty rate to motor and heating fuels.

Products under HTSUS heading 2901 (if not USMCA compliant) should also qualify for the 10% duty as "refined petroleum products." However, products that are further processed beyond refining or involving other compounds or mixtures probably are subject to the 25%, rather than the 10%, duty. There is a colorable argument that lubricating oils and oil and grease preparations containing 50% or more by weight of petroleum oils or of oils obtained from bituminous minerals under HTSUS subheadings 3403.11.2000 and 3403.19.1000 could qualify for the 10% duty as "refined petroleum products," but it is not clear whether CBP would accept the argument.

For imports under HTSUS heading 2710 (if not USMCA compliant), it should be fine for the importer of record to claim the 10% duty under HTSUS subheading 9903.01.13. For imports under the other headings (if not USMCA compliant), the importer's customs broker may be able to tell whether the importer can use the 9903.01.13 code. If not, the safest course of action is to either submit a ruling request to CBP ruling or to report the 25% duty and then file a protest after the entry liquidates for a refund of the 15% difference to the 10% duty rate under HTSUS subheading 9903.01.13.

If CBP determines that an importer incorrectly reported the 10% duty, then CBP can bill the importer for the additional 15%. CBP can also assess penalties if CBP determines that the duty underpayment was the result of negligence, gross negligence, or fraud. The importer's belief in good faith that there was a colorable basis to claim the 10% duty should be a defense against penalties, but CBP may attempt to aggressively enforce against importers.

Ruling requests can be submitted online to CBP. The estimated average time for an importer to complete an online ruling request is 10 hours. Generally, CBP will issue rulings within 30 calendar days of the date of receipt of the request. Some delay may occur if a laboratory report or consultation with another agency is required. Rulings that require referral to CBP Headquarters will be issued by mail within 90 days of receipt.