CLIENT ALERTS

The Return of Donald J. Trump: Trade and Tariff Implications

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President-Elect Trump made the promise to impose extensive new tariffs a mainstay of his successful campaign for President. While what exactly those tariffs might look like was not certain until recently, Mr. Trump has now made multiple announcements since the election describing his plans to execute on implementing numerous and widespread new tariffs as soon as he takes office.

These announcements have roiled businesses and many industries. Some analysts have speculated that the proposals President-Elect Trump has raised thus far would impact half of the global population. Of particular interest to our automotive, manufacturing, and import/export clients will be his threats regarding China and the USMCA partners.

Butzel is closely following all of these developments and is particularly interested in the legal requirements and procedures that may surround their implementation. We will be providing additional Client Alerts on these topics and how they may impact our clients. And clients are welcomed to reach out to any of the undersigned attorneys with further questions.

History of Tariffs Under President Trump

During his incumbency in 2018, then President Trump brought trade actions and imposed duties on many products under two main statutes that he is threatening to use now, Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962. These two laws—which will be explained below—are still the core of Trump's trade policy, particularly concerning China. He has, however, added a few new items to his announced trade intentions.

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These laws will be discussed briefly. An extensive review of Trump's tariff actions has been discussed in numerous Client Alerts prepared by the Butzel International Trade and Customs Specialty Team during his first term as referenced at the end of this article.

Trade Act of 1974

Section 301 is a broad trade remedy that allows for implementation of tariffs or quotas when the U.S. government makes a finding that a foreign country is violating or denying U.S. rights under trade agreements or is engaged in unjustifiable conduct that burdens or restricts U.S. commerce. Section 301 has been used numerous times against various countries for different trade practices. Use of Section 301 requires the United States Trade Representative (USTR) to make one of the aforementioned findings. Generally, there is a hearing held where the violations are discussed, and a report issued with the findings. This would likely make Section 301 unsuitable to impose tariffs on "day one," as has often been cited as President Trump's plan, but they could still occur in due course. Also, Section 301 tariffs must be terminated after four years unless an extension is requested and approved by the USTR. Since this is President Trump's second term, any extensions would have to be implemented under a different administration and a different Congress that may or may not have the same trade policies. During his first term, President Trump imposed Section 301 tariffs of up to 25% on a large number of products from China. The stated basis for this was that China had infringed upon the intellectual property rights of U.S. companies and/or denied market access to U.S. products. There was originally an exclusion process that allowed exemptions for products not available in the U.S. (expanded to products not available in reasonable quantities and reasonable delivery schedules and not meeting the same specifications as required). This process was quite successful in allowing imports without duties of many Chinese products needed by American manufacturers. The Butzel Trade Team applied for and received many exclusions for our clients. Originally, these exclusions could be extended. With limited exceptions, this exclusion process ended in 2020. There had been some interest in Congress in reinstating this exclusion process during the Biden Administration, but no legislation was passed.

Most recently, the USTR completed its required four-year review of the Section 301 program, after receiving input from the U.S. domestic industry that supported extension and importers who opposed it, it was decided to continue the program, with some modifications, largely an increase in tariffs on certain items. A limited exclusion process was established for certain machinery needed by domestic manufacturers to produce products domestically (89 FR 76581 September 18,2024).

In his second term, President Trump could shortcut some of the administrative process required by Section 301 by claiming to "modify" existing tariffs, if they were limited to products already covered by Section 301 tariffs. Whether or not President Trump attempts such expedited action is yet unknown. What is known is that he has proposed to use whatever tools are at his disposal to reach the ends he seeks.

Section 232 of the Trade Expansion Act of 1962

Section 232 is a law that was rarely used before the first Trump Administration. It requires a finding by the Department of Commerce that imports threaten national security. This requires hearings and findings by the Commerce Department, but President Trump has likely found a sympathetic advocate in his appointment of the new Commerce Secretary, Howard Lutnick. In the first Trump Administration, Section 232 tariffs were imposed on certain steel and aluminum products, from many countries, originally limited to "mill" products but later expanded to some downstream products. There is also an exclusion process under Section 232, which unlike Section 301, is still in effect. Notably, Butzel's Trade Team has successfully obtained exclusions for many of its clients' products from proposed tariffs under Section 232.

New Tariff Options

Section 338 of the Tariff Act of 1930

One rarely used law that could be invoked is Section 338 of the Tariff Act of 1930, which enables the President to impose new tariffs with relative alacrity. Under Section 338, tariffs of up to 50% could be imposed for an unspecified period of time. In order to impose tariffs under Section 338, there must be a finding that a foreign country has taken unreasonable or discriminatory actions that disadvantage U.S. commerce. This statue has been rarely used and never tested in court.

International Emergency Economic Powers Act

The International Emergency Economic Powers Act (IEEPA) was not used by President Trump in his first term. It requires the declaration of a "national emergency"—defined as an "unusual and extraordinary threat" to national security, foreign policy, or the economy of the U.S. The President would have to make such a declaration and would be required to consult with Congress before taking action. The tariffs could stay in place until the "national emergency" was terminated either by the President or Congress. This law has never actually been used for the type of broad tariff actions contemplated by President Trump but a predecessor law, the "Trading with the Enemies Act," was used by President Nixon to impose a 10% surcharge on all imports in response to what he declared a "balance of payment emergency." This is one law that would enable President Trump to fulfill his promise to implement tariffs immediately upon taking office.

Tariffs imposed under this law would stay in effect indefinitely until the national emergency was terminated. Termination by Congress could be a possibility if the Democrats gain seats in the mid-term elections in two years.

What to Expect

President Trump has already signaled some of his focused objectives:

Threatened Tariffs on Goods Imported from China

A proposed tariff of up to 60% on all imports, and removal of Permanent Normal Trade Relations (PNTR), formerly known as most favored nation status for China, which would impose higher tariffs on China. Incoming Secretary of State nominee Marco Rubio has been one of the sponsors of similar legislation in Congress.

Threatened Tariffs Targeting Goods from Mexico

There are many reports of threats by President Trump to increase tariffs on Mexico, reportedly between 25% and 100%. It is unlikely that President Trump will do this since it would violate the United States-Mexico-Canada Agreement (USMCA) that he himself negotiated during his last term. Nevertheless, he has recently announced publicly that he intends to do just that.

Most insiders see this as an attempt to pressure Mexico into taking action on the border; namely, stopping the transportation of undocumented immigrants passing through Mexico from Central America and elsewhere. President Trump has demanded better policing of its side of the border by Mexico. Shortly before the writing of this Client Alert, President Trump and Mexico's new President, Claudia Sheinbaum, had a phone conversation. The exact context is disputed but it was originally reported that Mexican President Sheinbaum agreed to close the border, something she later denied. This would not only impact immigration but commercial traffic of U.S. companies that have plants in Mexico. This is a result that may be consistent with President Trump's long-term agenda but would have an immediate impact on the many U.S. industries and companies—particularly automotive companies—that have their own plants in Mexico.

Universal Tariffs on all Goods

President Trump has also threatened tariffs on all products of 10% to 20%. This could violate the Free Trade Agreements the U.S. is currently a party to, such as with Israel, Peru, Chile, Columbia, Singapore, and many other countries. Partners in these agreements could retaliate with higher tariffs. Whether this occurs or not is likewise yet to be known. On December 2, Trump threatened 100% tariffs on the so-called BRIC countries: Brazil, Russia, India and China were the original BRIC countries, but this has been extended to include other countries such as South Africa, Egypt, Ethiopia, Iran and UAE. Trump is concerned that these countries may create their own currency and that this could weaken the US dollar. Trump threatened 100% tariffs for these countries if they adopted their own currency.

Sanctions

In addition to tariffs and duties, the U.S. has in the past imposed sanctions against many countries. A few that may be targeted for changes under a new Trump Administration are Russia, Iran, and Cuba. With regard to Russia, there is speculation that in keeping with President Trump's promise to end the Ukraine war, he might take steps to ease some Russian sanctions as an inducement. When it comes to Iran, President Trump and his appointee as Secretary of State, Senator Marco Rubio, are seen as being tough on Iran. They may increase enforcement of sanctions, including some that have been evaded, for example sanctions on oil, but also enforce sanctions on countries that have assisted evasion by purchasing Iranian oil. With regard to Cuba, President Trump and Senator Marco Rubio may be inclined to reinstate some of the sanctions eased during the Obama Administration.

The Butzel Trade Team will be continuing to follow President Trump's trade initiative and providing future reports as may be needed.

The Trump Administration doesn't take office for two months. Any discussions of policies—trade or otherwise—should be considered to be somewhat tentative. We have attempted to provide an overview of the stated agenda at a particular point in time and of the historical context at a certain point in time. As needed, we will provide updates as the perspective on trade continues to take shape for the incoming Administration and focused on more specific topics.

A complete listing of the prior Butzel Client Alerts on trade issues that were produced during the first Trump Administration and beyond can be accessed by clicking this link.

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