Trump's First 100 Days: Tariffs

Analysis of New Administration
12.09.2024

We expect the Trump administration to take swift and immediate action on tariffs in his first 100 days. Trump has proposed a "universal baseline tariff" of 10% or 20% on the importation of goods from all foreign countries.

AT A GLANCE

- In order to impose dramatic tariff increases without Congressional approval, the Trump administration has proposed taking executive action pursuant to the International Emergency Economic Powers Act, which will in turn limit legal challenges.
- Importers should closely review their trade data in the Automated Commercial Environment (ACE) portal as well as the harmonized tariff classifications of their products to anticipate the potential impact of sudden tariff increases and pivot as necessary.

President-elect Trump has also made public statements about a plan to impose an additional 10% tariff, above any additional tariffs on imports from China, as well as tariffs of 25% on goods from Mexico and Canada. It is unknown at this time which goods will be the subject of tariffs, exactly when and how they will be imposed, and whether an exclusion process will be available for importers to petition for exemptions from the tariffs. What is certain is that the imposition of broad-based tariffs will lead to retaliatory measures on U.S. exports by trading partners.

We expect the incoming administration to continue using novel tools to impose additional tariffs. In order to impose dramatic tariff increases without Congressional approval, the Trump administration has proposed taking executive action pursuant to the International Emergency Economic Powers Act (IEEPA). Legal challenges to the president's imposition of tariffs could be unsuccessful based on the results of court rulings upholding the Trump administration's Section 232 tariffs on steel or aluminum and Section 301 tariffs on goods from China.

The new administration's focus on China and tariffs may not significantly alter the current priority trade issues, such as the prohibition on goods made with forced labor and anti-dumping and countervailing duty evasion, for the agency that enforces U.S. import laws, U.S. Customs and Border Protection. Both of these areas are focused heavily on imports from China.

The new administration may move quickly to decrease the *de minimis* exemption from customs duties for low-value goods. Current U.S. import regulations provide for an exemption from duties for goods with a value of less than $800 (including Section 301 duties on China-origin goods). Members of the first Trump administration have argued that this $800 threshold is much higher than the limits imposed by major trading partners, such as the EU, China, Canada and Mexico, and should be lowered to even the playing field. The United States-Mexico-Canada Agreement (USMCA) is scheduled for review in 2026, and a new Trump administration could seek updates to the USMCA relating to stronger forced labor provisions and restrictions on investments by China.

If they have not done so already, importers should closely review their trade data in the Automated Commercial Environment (ACE) portal as well as the harmonized tariff classifications of their products to anticipate the potential impact of sudden tariff increases and pivot as necessary. Importers may want to identify potential duty savings opportunities in the form of delayed payment of duties through the use of foreign trade zones and the availability of refunds for duties paid on goods that are imported and subsequently exported through duty drawback. Companies should also review their existing contracts to confirm their understanding of how their purchase or supply arrangements are structured and which party bears responsibility for unanticipated costs associated with increased tariffs. In the meantime, companies should continue to monitor developments in this area, especially the announcement of any exclusions process that could provide exemptions from the tariffs.

This article is part of a broader analysis examining the anticipated challenges and opportunities created by an administration change. Attorneys from several different practice areas contributed to this series of article across multiple legal areas.

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