Trade Policy Under a Second Trump Administration – Tariffs, Tools, and International Impact

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Navigating Policy Shifts Under a Second Trump Administration

As we look ahead to a new political state of affairs, join us for series of webinars that will offer insights into the key regulatory and policy changes expected under a second Trump presidency.

We'll explore how leadership transitions, executive actions, and congressional dynamics will shape the future of industries ranging from healthcare and financial services to energy, trade, and beyond.

Each session will feature analysis from Venable attorneys and senior policy advisors, providing actionable guidance on how businesses and organizations can navigate the evolving policy landscape. Join us for a comprehensive look at the changes coming to Washington in 2025 and beyond.

Today's Agenda

- A look at options for the Trump administration to consider on trade policy and tariff options
- Timing of actions by the new White House and options for U.S. importers and exporters
- Other trade-related issues to keep in mind
- Holistic considerations of how the new Congress may react to the Trump trade and tariff actions
- Transition time: What to watch during the next month
- Consideration of what a Trump cabinet may mean for trade policy
- Questions and Answers

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What Has President-Elect Trump Previewed So Far for “Day 1”?

- A minimum 60% tariff on all goods imported to the United States from China (the “60%+ China Tariff”)
- A 10% tariff on all goods from all countries (the “Universal Baseline Tariff”)
- An additional 10% tariff on all Chinese goods, above and beyond any other applicable tariffs, in response to the fentanyl crisis (the “10% China Fentanyl Tariff”)
- A 25% tariff on all products from Mexico and Canada, purportedly intended to stem the flow of “illegal aliens” and drugs (specifically fentanyl) into the United States (the “25% Open Borders Tariff”)

Tariffs – Overview of Tariff Vehicles

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- **Tariff Vehicles**
  - *Previously used:*
    - Sections 301, 232, and 201
    - Extensions of existing tariffs
  - *Existing Tariff Vehicles:*
    - Section 122 of the Trade Act
    - International Emergency Economic Powers Act (IEEPA)
  - *New Legislation:*
    - Tax bill
    - New trade legislation

Previously Used Tariff Vehicles

Bottom Line: Implementing "new" across-the-board tariffs would require approximately 8-11 months, but the Trump team could easily modify existing tariffs to achieve at least some of his goals on day one—increased tariffs on Chinese goods, steel and aluminum tariffs.

a. **Section 301 of the Trade Act of 1974**
   - Basis for the current four lists of "China Tariffs" on U.S. imports from China ranging from 7.5% to 25%.
   - Requires a notice and comment period, and under the previous Trump administration the statutory process took approximately 11 months for the first two lists to be implemented; however, the two subsequent lists relied on prior comments instead of requesting new comments.
   - ***Potential Immediate Modifications***: Administration could again rely on "previous comments" from 2017 to make changes to the current lists of tariffs on goods from China, including adding goods covered and raising and lowering tariff percentages – though likely to be challenged in court.

b. **Section 232 of the Trade Expansion Act of 1962**
   - Section 232 is the basis for the current steel and aluminum tariffs.
   - Requires Commerce to initiate an investigation but no notice and comment period – statutory process takes approximately 11-12 months.
   - ***Potential Immediate Modifications***: No notice and comment period required to modify existing tariffs and possible that Trump could simply modify existing tariffs by adding/removing countries and steel and aluminum articles.

c. **Section 201 of the Trade Act of 1974**
   - Section 201 is the basis for the current solar cell and module tariffs and the previous tariff-rate quota on washing machines.
   - Requires a USITC investigation and a notice and comment period – statutory process takes approximately 8 months.
   - ***Potential Immediate Modifications***: No notice and comment period required to modify existing tariffs on solar cells and modules.

Existing Tariff Vehicles

Section 122 of the Trade Act of 1974

Bottom Line: This provision grants the President authority implement temporary tariffs of up to 15% for a maximum of 150 days under specific economic conditions, such as addressing large and serious U.S. balance-of-payments deficits or preventing significant depreciation of the U.S. dollar.

- Congress has no role within the initial 150 days. After that, Congress can extend the tariff imposed under Section 122.
- The President may suspend, modify, or terminate any tariff imposed under Section 122 during the initial 150-day period or if extended by Congress.
- The law is designed to allow the President to impose tariffs quickly when the specified conditions are met. However, its temporary nature may lead the incoming administration to consider alternative statutory authorities for more prolonged measures.

The International Emergency Economic Powers Act of 1977 (IEEPA)

Bottom Line: Can be used to implement tariffs on basis of a "national emergency," *e.g.*, the migrant crisis on the border. Less likely to be used for tariffs on China etc. since more difficult argument for national emergency.

- Trump may invoke the IEEPA if two conditions are met: (1) a national emergency is declared through an executive order per the National Emergencies Act, and (2) the President consults with Congress (but does not require approval).
- Congress may terminate a national emergency through a concurrent resolution but unlikely.
- Unlike tariffs under the Trade Act, which apply based on the country of origin of a good (regardless of the country from which it is exported), tariffs under IEEPA could be tied to the country of export instead of or in addition to the country of origin.
- Additionally, it is unclear whether duty drawback will be applicable for tariffs imposed under IEEPA.

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New Legislation

Bottom Line: With Republicans in control of both houses of Congress, tariffs via legislative action are a possibility. Importantly, however, tariffs codified via legislation cannot be used as easily as a negotiating tool.

a. **Tax Bill**
   - Overall unlikely.
   - Trump would require legislative action to modify any tariffs implemented.

b. **New Tariff Authority**
   - There are two bills introduced in the current Congress that would provide new tariff authority (these would need to be reintroduced next year):

     (1) Under the Trump Reciprocal Trade Act (H.R. 764), if a foreign country imposes higher tariffs on American-made goods than the United States imposes on its goods, Trump can impose equivalent tariffs on that country's products.

     (2) While the Countering Communist China Act (H.R. 7476) does not directly grant Trump new tariff authority, it allows him to influence the legislative development of a new tariff schedule for imports from China if enacted.

Political Considerations for Proposed Trump Tariffs

- While the Trump administration has already made direct threats to impose tariffs on Chinese, Mexican, and Canadian goods on "Day One" of the Trump administration, currently it is ultimately unclear precisely what course(s) of action the Trump administration will take and when. This is hard to predict because in some instances, the Trump administration may announce a threat to raise tariffs on certain countries but use it as a negotiation tool to address perceived trade inequities or other policy disputes with any particular country.
- Increased tariff revenue may purportedly factor into congressional deliberations on tax legislation and budget reconciliation. Increased revenue from new tariffs may be presented as a source of "pay-fors" for the Trump administration and congressional Republicans' tax-cut proposals expected next year (2025).
- In order for tariffs to have a true place in the budget reconciliation, they would need to be written into the budget bills. It is highly unlikely Congress will legislate tariffs, which would make them far more permanent and therefore unworkable as political levers for negotiating with trading partners such as China, Mexico, and Canada.

Political Considerations for Trump Tariffs, cont'd.

- There will be considerable pressure on the incoming Trump administration to establish a process enabling affected domestic companies or industries to request and make a case for exemption from any such proposed tariff increase.
- If past is prologue, the first Trump administration did consider, via a process at the U.S. Trade Representative (USTR), requests for exceptions (called "tariff exclusions") from Chinese tariffs largely based on considerations of harm to American interests and lack of suitable alternatives outside of China. We would expect any such requests that materialize this time around to be supported by members of Congress representing such companies or industries (if such support is solicited).
- There may be waning political sympathy for domestic companies that still materially rely on Chinese goods in their supply chains—even in the face of political and commercial relationships with China that have been deteriorating over the course of the last eight years (at least since the first Trump administration and continued under the Biden administration).
- So far there does not appear to be wholesale political opposition by either political party to the general notion of tariff increases, especially involving China, although there will be some historically "free trade" Republicans weary of the potential inflationary impact of tariff increases (and trade wars), and some Democrats ready to pounce politically to the extent inflation does increase during the Trump administration.

Other Considerations for Tariffs

- Layering of tariffs
  - For example, the proposal for an additional tariffs on China (presumably via IEEPA) on top of existing Section 301
- Retaliatory tariffs
  - China – applied equivalent retaliatory tariffs last time; diversified Ag sources
  - Europe, Canada, Mexico – preparing for tariffs and potential countermeasures
- Exclusion processes
  - Availability in general?
  - Function under IEEPA?
  - Work in advance for carve-outs
- Preparing for Tariff Impact
  - Contractual provisions for burden shifting/sharing
  - Stockpiling inventory
  - Shifting sourcing/manufacturing

Trade (non-tariff) Issues to Remember.

- Focus has been on use of tariffs to address a host of policy and other Trump objectives.
- New administration will inherit existing legal, regulatory and policy matters that can be used on trade matters – "more tools for the toolbox."
- Forced Labor: Uyghur Forced Labor Prevention Act (UFLPA).
  - Increased US Customs enforcement during last two years of Biden White House.
  - Anticipate additional attention and use by Trump team – will continue recalibration of US importers, decoupling from China.
- Supply Chains: 2022 changes to US maritime laws protect importers/exporters over transport providers (FMC).

Trump Administration 2.0: Trade Nominations

Trump 2.0 – Nominees for Trade Positions

U.S. Trade Representative	Jamieson Greer
Commerce Secretary	Howard Lutnick
Treasury Secretary	Scott Bessent
Deputy Secretary of State	Christopher Landau
Under Secretary of State for Economy and Growth	Jacob Helberg

Trump 2.0 – Nominees for Trade Positions

“Border Czar”	National Economic Council Chair	Customs & Border Protection Commissioner	Immigration & Customs Enforcement Director	Senior Counsel for Trade & Manufacturing
Tom Homan	Kevin Hassett	Rodney Scott	Caleb Vitello	Peter Navarro

Trump 2.0 – Nominees for Trade Positions

Ambassador to Canada	Ambassador to Mexico	Ambassador to China	White House Counsel
Pete Hoekstra	Ronald D. Johnson	David Perdue	David Warrington

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- January 15, 2024: The Future of Tax Policy: What's Next for the TCJA and Beyond | 2:00 - 3:00 pm ET

- January 22, 2024: Shake Up at the NLRB: What Employers Can Expect Under Trump's Second Administration | 2:00 - 3:00 pm ET

- January 29, 2024: A Discussion of the Trump Administration's Anticipated Priorities for Higher Education | 2:00 - 3:00 pm ET

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