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Trade Alert: Planning for Tariffs in 2025

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November 15, 2024

To analyze the impact of the 2024 election results on trade policy, we turn to guidance from prior trade policy changes during the first Trump Administration, as well as President-elect Trump's campaign trail announcements advocating increased protectionism and tariffs. With the backing of the Republican-controlled Congress, the new administration will likely reshape U.S. trade policies, increasing tariffs and softening domestic manufacturing regulations. These changes in trade policy would not only impact U.S. importers and exporters, but also the U.S. economy at large.

This Alert examines:

- The current legal framework of U.S. tariffs and trade rules and regulations available to reshape tariffs;
- President Trump's prior actions on tariffs, trade and domestic manufacturing policies, as guidance for the second Trump Administration;
- Analysis of campaign promises of President-elect Trump; and
- Practical suggestions for addressing and mitigating the impact of the proposed and existing tariffs on importers and trade partners.

The Traditional Tariff Framework Aligned and Ready to Support the New Administration's Policy

The U.S. legal framework regulating the imposition of tariffs rests, in significant part, on three pieces of legislation: the **Tariff Act of 1930**, commonly known as the Smoot-Hawley Tariff Act, the **Trade Expansion Act of 1962** and the **Trade Act of 1974.**

The Tariff Act of 1930 forms the basis of imposing tariffs in accordance with the respective product classification under the Harmonized Tariff Schedule of the United States (HTSUS) classification system. It also forms the basis for anti-dumping and countervailing duties actions. The Trade Expansion Act of 1962 was designed to give the President tariff cutting authority, but also provided tools, e.g. Section 232, for the President to increase tariffs after an

investigation concludes that specific imports adversely impact the "national security" of the United States of America. The Tariff Act of 1974 authorizes "Fast Track" authority for certain trade agreements and authorizes the imposition of increased duties under Section 201 (requires a finding of increased imports causing substantial serious injury) and Section 301 (requires a finding of "unfair trade practices" that "adverse effect on U.S. trade"). The public comment provisions in Sections 232 and 301 allow stakeholders to provide feedback on proposed tariffs, which can extend the timeline for their implementation by months as agencies review and potentially adjust the measures based on this input.

From 1934 to 1974, Congress progressively expanded presidential authority, allowing the President to negotiate and set tariff rates with other nations within established limits and enact these rates by proclamation, gradually enhancing executive power over trade policy. Under the **International Emergency Economic Powers Act ("IEEPA")** of 1977, Congress codified the President's national emergency powers, including the imposition of tariffs if a significant threat to U.S. security arises.

Section 301, 232 and 201 Actions during the First Trump Administration

- **Chinese Products:** President-elect Trump used Section 301 extensively against China, imposing significant tariffs on Chinese goods in response to "Chinese unfair trade practices" (e.g. intellectual property theft) that "adversely affected U.S. trade." The Trump Administration implemented tariffs on over $500 billion in Chinese goods, with rates reaching 25%. In 2019, the Trump Administration announced plans to impose a 15% tariff on approximately $300 billion worth of additional Chinese goods, but after reaching a "Phase One" trade deal with China agreed to postpone these tariffs indefinitely. The tariffs targeted a wide range of products, from technology to medical goods. China responded with counter-tariffs on U.S. products worth over $106 billion. The Biden Administration upheld these tariffs, adding higher rates on select imports like semiconductors, batteries, and steel and aluminum, which are projected to add $3.6 billion in tariffs based on 2023 import levels.

- **Steel and Aluminum Tariffs: Section 232** empowers the President to impose tariffs for national security reasons, often justified when imports, such as steel and aluminum, threaten the viability of U.S. industries essential for defense. Then-President Trump used Section 232 to enact tariffs on steel and aluminum from key trading partners, sparking significant diplomatic tensions. In March 2018, the Trump Administration imposed a 25% tariff on imported steel and 10% on aluminum, valued at $29.4 billion and $17.6 billion, respectively. However, following negotiations, exemptions and quotas were granted for some countries. The Biden Administration transitioned to tariff-rate quotas (TRQs) for imports from the EU, Japan, and the UK, allowing tariff-free imports up to specific thresholds, above which tariffs apply.

- **Solar Panels and Washing Machines: Section 201** allows the U.S. to impose safeguard tariffs on imports deemed to cause or threaten serious injury to domestic industries. During President-elect Trump's first term, the U.S. enacted Section 201 tariffs on solar panels and washing machines, marking a significant shift in trade policy.

Importantly, during President-elect Trump's first term, the White House routinely leveraged tariffs as bargaining tools in advancing broader policy goals, at times never actually implementing the proposed increases. For example, in 2019, President Trump threatened to impose tariffs on Mexico to address immigration concerns, which led to an agreement for Mexico to increase enforcement at its border.

Tariffs and Trade Policy Forecast

President-elect Trump promised to further reduce the corporate tax rate for companies that manufacture goods in the

United States and to implement a broad tariff structure for U.S. importers. It is too early for precise predictions, but here are some general themes:

- **Blanket Tariffs on most Imports**. The idea of imposing additional tariffs on all imports has been suggested by President-elect Trump for some time. Such proposals must be taken seriously and should be viewed as a real possibility.

- **China and Transshipment**. While statements have varied over time, the President-elect has proposed increased tariffs ranging from 60% to 100%, and more. Increased enforcement of direct and transshipped Chinese products is likely, as well as De-Minimis exemption for e-commerce shipments (the so-called “dropship exemption”).

- **Mexico and Canada**. On the campaign trail, President-elect Trump advocated imposing significant tariffs on goods from Mexico at levels of up to 100%. The current rhetoric suggests that the Mexican tariffs are tied in part to the negotiation aimed at stopping the flow of immigration from Mexico into the United States. The tariff levels proposed for Canada are much lower (about 10% to 20%) and these, too, could be viewed as a bargaining chip in the upcoming USMCA 2026 renewal negotiations.

Timeline

President-elect Trump has the power to enact large parts of his trade agenda on his first day in office under his emergency powers codified in the **International Emergency Economic Powers Act (“IEEPA”)**. An “unusual and extraordinary threat” to national security, foreign policy or the U.S. economy would be sufficient under the IEEPA.

President-elect Trump could also implement the 232, 301 and 201 provisions in trade laws that he used in his first administration to place duties on imports from China, as well as on steel and aluminum from trade partners, ranging from the European Union to Mexico and Canada. The 232 and 301 public comments provisions can delay the timelines of the new duties going into effect, but President-elect Trump could try to work around that by linking the new tariffs to Commerce Department and U.S. Trade Representative investigations from his first term, though he could also start new probes.

Another vehicle of expediting imposition of the tariffs could be Congress passing already proposed legislation repealing China’s Permanent Normal Trade Relations status (“PNTR”) with the U.S., as was done with Russia after it invaded Ukraine. Repealing the status would reset tariffs on Chinese goods to higher levels, potentially raising tariffs on certain Chinese imports to 100%.

Practical Considerations

To prepare for and help manage the impact of any new tariffs, importers should take the following actions now:

Contract Review: The review should focus, in particular, on provisions that would be implicated in the event of tariff increases, such as pricing (firm or variable), allocation of responsibility for payment of tariffs (Incoterms and contractual language), delivery obligations (just in time), breach and remedy and escape provisions, such as a force majeure clause (which are narrowly interpreted).

Price Adjustment Clauses: Negotiating price escalation clauses could offset the financial impact of new tariffs. These clauses can be beneficial in long-term contracts where costs are unpredictable. While clauses may include division of tariff responsibilities, companies must ensure legitimate valuation declaration and payment to U.S. Customs & Border Protection (“CBP”).

Supply Chain: Conduct a risk assessment of the current supply chain and review alternative options for sourcing from lower-risk countries not subject to Section 232 and Section 301 duties and U.S. manufacturing opportunities. For example, China is a high-risk sourcing country.

Customs Bonded Warehouses, Foreign Trade Zones and Duty Deferral: Importers should explore the use of Customs Bonded Warehouses, Temporary Import provisions, Foreign Trade Zone and duty deferral programs (such as duty drawback) to delay tariff payments and improve cash flow management.

HSTUS Classification Review: Prioritize HTSUS classification review to ensure classifications are accurate. Exclusion processes likely will be classification specific and different tariff increases may differentiate between classifications.

Country of Origin Analysis and Review: Evaluate rules of origin to ensure all components and parts meet the correct country of origin. There may be opportunities to resource through your supply chain and manufacturing operations to mitigate certain tariffs.

This publication is for general information only and does not create an attorney-client relationship. The Trade Group at DCG is ready to work with companies to review their current supply chain and propose and help them evaluate ways to mitigate the effect of any tariffs on their businesses. All legal matters are unique and each strategy will depend on the specific contract terms and business conditions. Please consult your DCG trade professionals for advice that is tailored to your particular circumstances.

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