The Tariff Landscape Under The New Trump Administration

With the 2024 election behind us, the upcoming Trump administration is expected to place a major focus on trade policies and tariffs. While the specifics are currently unknown, previous statements made pre- and post-election make it clear that additional tariffs are coming.

Specifically, President-elect Trump will likely make economic confrontation with China a priority. This will almost certainly include significantly higher tariffs on imported Chinese goods and potentially on countries that trade with China.

Understanding the types of tariffs that may be imposed, the products and countries that could be impacted, and, importantly, mitigation strategies will assist importers in developing a strategic tariff management strategy. While there are still many unknowns, proactive preparation is prudent.

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Understanding tariffs

Tariffs (often used interchangeably with "duties"[1]) are a tax levied by the government on imported goods. Generally, tariffs vary based on the type of product, the country of origin, the value and various other factors. Products imported into the United States are classified under the Harmonized Tariff Schedule of the United States (HTS) and each HTS number corresponds to a tariff rate. However, there are a number of additional tariffs that can be imposed on products in addition to the general HTS tariff. The Trump administration may have

[1] Generally, a duty is a specific type of tax imposed on goods when they are transported across international borders, often used to protect domestic industries and regulate the volume of trade. A tariff, on the other hand, is a broader term that refers to any tax or fee imposed on imported or exported goods, which can include duties as well as other types of trade barriers.

avenues to increase tariffs both with and without congressional approval, which may prompt a global response:

Possible short-term actions

- **De minimis reform:** The de minimis threshold allows goods valued below $800 to enter the country without incurring import duties or taxes. There has been discussion about restricting this allowance, which would mean that all imported goods, regardless of value, would be subject to duties and taxes, increasing the cost to importers as well as the processing time and resource allocation required of U.S. Customs and Border Protection (CBP).
- **Section 301 tariffs:** Named after Section 301 of the Trade Act of 1974, these tariffs are used to address unfair trade practices by foreign countries. In this scenario, the president triggers an investigation by the US Trade Representative to assess a foreign trade policy and allow unilateral response to practices that adversely affect US commerce. This action was used in the previous Trump administration to impose tariffs on imports from China and the European Union (EU).
- **Section 232 tariffs:** Named after Section 232 of the Trade Expansion Act of 1962, enables the president to impose tariffs on imports if they threaten national security. The US Department of Commerce may investigate the effect of imports on national security and make recommendations to the president. Currently, Section 232 tariffs are in place on imports of steel and aluminum from certain countries.
- **Section 201 tariffs:** Under Section 201 of the Trade Act of 1974 (Global Safeguard Investigations), domestic industries seriously injured or threatened with serious injury by increased imports may petition the US International Tade Commission (USITC) for import relief. Section 201 is slightly different than antidumping or countervailing duties as it does not require the finding of an unfair trade practice. Section 201 tariffs are currently in place on solar cells and modules.
- **Section 122 Balance-of-Payments Authority:** Section 122 of the Trade Act of 1974 allows the president to impose an additional 15 percent tariff on imports for 150 days against countries with a "large and serious" balance-of-payment surplus with the US. This means that countries, such as China, could potentially be subject to this tariff.
- **Section 338 of the Tariff Act of 1930:** Section 338 of the Tariff Act of 1930, allows the president to impose additional tariffs up to 50 percent on any country that discriminates against US products. A country may be subject to these tariffs if the president finds that a foreign country has either (1) imposed "unreasonable" limits, fees, or regulations on US products that are not enforced on every country for that product; or (2) discriminates against US commerce as compared to the commerce of any country. However, this provision has not been used since 1949.

Possible longer-term actions

- **Antidumping duties (ADD):** These duties are imposed on foreign imports that are determined to have been sold in the US at less than fair value. The goal is to protect domestic industries from unfair competition and prevent market distortion caused by dumping. ADD are generally imposed after a petition is filed with the Department of Commerce (DOC) by a US domestic industry. DOC and the USITC will investigate potential market injury from foreign dumping and issue a determination.
- **Countervailing duties (CVD):** These duties are levied on imports that benefit from foreign government subsidies. By imposing CVD, the US aims to level the playing field for domestic producers who are competing against subsidized foreign goods.
- **The International Emergency Economic Powers Act (IEEPA):** The International Emergency Economic Powers Act (IEEPA): the IEEPA confers on the president broad authority to regulate commerce during a deemed "national emergency".
- **United States-Mexico-Canada (Agreement (USMCA) reform:** Renegotiation of the free trade agreement in 2026 is likely to be contentious, with potential updates to labor and environmental standards, adjustments to rules of origin for specific industries like automotive manufacturing, and modifications to digital trade and intellectual property protections. Separately from USMCA renegotiations, President-elect Trump has threatened to tie additional tariff measures to border security efforts on the part of Mexico.

Global retaliatory tariffs: Countries hit with US import tariffs have a history of responding in kind with tit-for-tat import tariffs. An aggressive approach to tariffs globally could escalate trade tensions and lead to a trade war, affecting global trade dynamics and potentially harming industries and consumers in both countries.

The imposition or increase of any of the above tariffs could substantially affect a company's cost of goods sold, profitability, and market share. Staying current on proposed tariffs, the potential impact, and the optimal strategies for managing their impact will be key as the Trump administration focuses on trade.

High-risk countries for tariff increases

While there is likely to be a general tightening on trade, it is probable that the Trump Administration will prioritize certain countries or geographic regions for tariff action.

China: Given President-Elect Trump's avowed "decoupling" focus, imports from China will likely be subject to significant tariff increases of 10 percent or more within the first few weeks of taking office. This likely will be in addition to the 25 percent tariff levy against many existing China-origin products. We anticipate an across-the-board tariff increase on all products from China with possible subsequent increases. While it is unclear which authority the new tariffs will be enacted under, importers should prepare for significant increases not requiring Congressional approval. Also, it is unclear if Chinese materials used in finished goods made outside of China will be impacted.

Mexico: Expect contentious re-negotiations of USMCA with looming threats of tariffs. President-Elect Trump is expected to likely push for more domestic content requirements that benefit U.S. manufacturers, and potentially tie additional trade action to border enforcement. An important focus will be cracking down on tariff evasion of Chinese goods through Mexico with a bolstered CBP conducting more frequent customs audits.

President-Elect Trump recently stated he expects to levy 25 percent tariffs for shipments coming from Mexico as leverage to minimize illegal drug crossings.

Canada: President-Elect Trump has announced that he will impose 25 percent tariffs on imports from Canada in response to border security. We anticipate that there may be continued tariff actions during the USMCA renegotiations.

European Union: President-elect Trump is focused on correcting trade imbalances with US trading partners and has identified the EU as having a significant trade disparity. As such, the Boeing-Airbus tariffs suspended under President Biden may be reactivated. These tariffs placed a 15 percent to 25 percent duty on agricultural products, wine and spirits, and luxury goods. These tariffs could potentially be expanded to steel and aluminum or to the auto industry.

Developing Countries: President-elect Trump has stated that a 10 percent tariff increase on all imports is possible. Countries benefitting from unfair trade practices or subsidies may be at risk for higher tariffs.

How to prepare

In an era of increased trade complexity and restriction, companies can stay ahead of the disruption and compliantly realize cost-saving opportunities to mitigate the most impactful tariff changes. Below are a few of the ways this can be accomplished:

- **Global regulatory monitoring:** Importers can expect shifting regulations, with policies untied from any clear, predictable agenda. Access to insightful trade intelligence will be critical for businesses to stay informed and allow them to proactively adjust their strategies and operations. This will help minimize unexpected costs and disruptions, ensure compliance, and maintain competitive advantage in the global market.

- **Obtaining and understanding trade data:** Companies should leverage trade data to gain a clear picture of the impact and opportunities that may arise out of this disruption. They can identify which products or materials are most vulnerable to tariff increases and evaluate the financial impact on their operations. By understanding the potential impact of tariffs on costs, companies can implement cost-saving measures to maintain profitability.

- **Contract renegotiation:** Consider renegotiating existing contracts with suppliers and including protective clauses that allow for price changes in response to tariff fluctuations. Additionally, force majeure clauses may stipulate that significant tariff changes may be grounds for renegotiation or termination. This can help to ensure flexibility if tariffs exceed certain thresholds and could allow for short-term sourcing from alternative suppliers. Also, consider modifying terms of sale to shift the responsibility of tariffs onto the supplier.

- **Trade transformation:** Using a strategic lens, companies should re-examine their existing trade compliance programs and design a future-state trade function that meets the demands of today's global markets. This requires a close look at how people, processes, and systems are enabling the organization. Defining how trade policy will impact the business, and the resources needed to meet this demand, will be crucial as the cost of importing increases.

- **Supply chain diversification:** The potential risk of trade disruptions necessitates a comprehensive assessment of existing key suppliers to ensure business continuity and uncover duty saving opportunities. Companies should increase their supply chain visibility and consider establishing alternative supply partners in less tariff-exposed countries to minimize the risk of supply chain disruption.

- **Tariff exclusion process:** Some tariff implementation procedures may include an exclusion process whereby companies can submit a request to exclude specific products from imposed tariffs, often requiring detailed justifications and supporting documentation. Companies should partner with a knowledgeable provider to assist in navigating this complex process, including establishing eligibility criteria, compiling necessary documentation, and ensuring timely and accurate submissions.

Tariff recovery and reduction strategies

First sale for export: Where there are multiple sales of goods prior to importation into the US, the First Sale for Export principle allows importers, in certain circumstances, to use the price paid in the earlier, or "first" sale as the basis for the customs value of the goods rather than the price the US importer ultimately paid for the goods. This effectively lowers the dutiable value of imported goods, and correspondingly, the duties paid by importers. Some companies elect to file reconciliation, resulting in periodic refunds from the government.

Tariff engineering: This involves modifying products or packaging to classify them under a tariff code with a lower duty rate. With careful planning, this mitigation strategy can result in substantial savings. At the same time, properly classifying goods for export control purposes can help expand new sales markets or facilitate exports to existing destinations.

Valuation: Companies should examine their customs valuation methods to ensure non-dutiable costs are properly excluded from the dutiable value. Often, non-dutiable charges are unknowingly included in the import price declared to CBP. Also, it is important to consider that many Mexican factories are only providing assembly services which often leads to preparation of annual computed value calculations and reconciliations. There may be an opportunity to closely review these calculations to ensure non-dutiable costs are excluded (e.g., royalty payments, non-manufacturing costs, etc.).

Duty drawback: Duties paid on imported goods, which are subsequently exported, may be eligible to be retrieved as a refund from CBP. There are three basic types of drawbacks: manufacturing, rejected merchandise, and unused merchandise. Drawback claims, regardless of their type, require support in the form of import, manufacturing (if applicable), and export documentation, as well as evidence of inventory controls (a method of linking imported and exported items). Companies seeking to obtain duty refunds through the drawback mechanism are required to support their claims with detailed transactional documentation and reports. The opportunity is also available in various countries globally.

Country of origin analysis: Upcoming tariff and USMCA reform could upend existing FTA domestic content calculations. Companies should evaluate their manufacturing process and adjust accordingly. This involves reviewing the entire supply chain, analyzing production processes, and ensuring compliance with rules of origin defined by trade agreements and customs regulations. Importers can potentially change country of origin by shifting significant value-added activities to more favorable locations.

Free trade agreements (FTAs): Businesses can benefit from reduced or zero tariffs by sourcing products from countries with which the US has FTAs. Customs authorities may challenge companies to support their FTA claims through required documentation, qualification logic, and support for financial calculations related to labor, materials, and other elements of production.

Foreign trade zones (FTZs): Establishing an FTZ, which is physically located in the U.S. but outside U.S. customs territory, can benefit companies through potential duty deferral and reduction. It can also help increase supply chain efficiency and reduce security risk. Setting up an FTZ is a two-step process of designation with the US Foreign Trade Zones Board, and activation with CBP. These steps require stringent processes and systems to meet customs requirements for inventory tracking and reporting.

Duty reconciliation: The imposition of tariffs can upend company's profit margins. By implementing a duty reconciliation program, companies can better anticipate and manage these changes. A duty reconciliation program enables post-importation evaluations, allowing companies to reconcile declared values with actual costs, ensuring tariff accuracy and identifying discrepancies. This process helps avoid overpayment and allows for potential refunds or adjustments, ultimately leading to cost savings and improved financial accuracy.

While trade disruption is anticipated to escalate in the coming months, companies that proactively manage these challenges can mitigate some of the most severe operational impacts. By implementing strategic planning, diversifying supply chains, leveraging technology, and exploring tariff recovery initiatives, businesses can navigate these turbulent times more effectively.