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Government Investigations & White-Collar Alert

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Interim status of Trump tariffs

By Joseph Maher

The Trump Administration has not imposed any new tariffs on imports but has put in place instructions that will very likely lead to increased tariffs in the near term.



What's the impact?

- Companies that import components and goods from China, Mexico, or Canada could see near-term increases. Tariffs on imports from other countries could also increase.
- As President Trump considers using emergency authorities rather than more traditional tariff authorities, companies will have less certainty in predicting near-term import costs.
- Companies can position themselves to assess tariff impacts on their supply chain costs by reviewing their current import practices and considering feasible alternatives for sourcing and manufacturing.

The second Trump Administration has not yet imposed any new tariffs on imports. On January 26, 2025, however, President Trump announced on social media that he would take "immediate" steps to impose an "emergency" 25% tariff on all goods imported from Colombia. He made this announcement in response to a decision by the Colombian president to deny landing rights to a

US military flight scheduled to return Colombian citizens as part of an immigration removal operation. President Trump did not identify what authority he would invoke to impose this tariff on Colombia. Additionally, later in the evening on January 26, 2025, media reports indicated that President Trump pulled back on his decision to impose tariffs on Colombia. Reportedly, he made this change after Colombia agreed to his immigration-related demands, but President Trump also indicated that the tariff plans for Colombia would be “held in reserve” in case he changes course again.

When will tariffs be implemented?

Aside from the situation in Colombia, President Trump has put in place instructions that will very likely lead to increased tariffs in the near term. He issued an executive order that laid the groundwork for increasing tariffs under multiple legal authorities. Although it has historically taken months to implement tariffs under many of these authorities, the president has indicated that tariffs might be imposed on imports from Mexico, Canada, and China as soon as **February 1**. However, he has provided little clarity as to when he will impose additional tariffs, which countries he will target, or which industries will be most impacted.

The Executive Order on Trade Policy

The president’s executive order on trade policy, issued on his first day in office, directs the trade-related departments and senior officials to begin reviews and assessments under a wide range of trade authorities. These reviews and accompanying recommendations could—and likely will—result in enhanced tariffs on particular industries, imports from particular countries, or a combination of these. The president has also discussed the possibility of a “universal tariff” that would apply to all imports. But media reporting suggests that final decisions on specific tariff policies have not been made. The reviews and preparation of recommendations ordered by the president are due by **April 1, 2025**. The president will likely make his most significant decisions on tariffs shortly after April 1.

INTERNATIONAL ECONOMIC EMERGENCY POWERS ACT (“IEEPA”)

President Trump could, however, invoke emergency authority and attempt to impose tariffs sooner. In the past, President Trump has suggested that he may invoke his authority under the International Economic Emergency Powers Act (IEEPA) to unilaterally (i.e., without congressional action) impose tariffs. Although no president has ever used this authority to impose tariffs, President Trump threatened Mexico with imposing tariffs by way of this act during his first term in office. (IEEPA is more often invoked as a part of the US sanctions regime.) The act does not specifically mention tariffs, but it allows the president to regulate the importation of “any property in which any foreign country or a national thereof has any interest” during a declared emergency. The president believes that the imposition of tariffs falls within this more general

grant of authority. See “Statement from the President Regarding Emergency Measures to Address the Border Crisis” (May 30, 2019) (stating that the president is invoking his authority under IEEPA to impose tariffs, but later cancelled that action before implementation by issuing a statement via social media on June 7, 2019). As with the other authorities mentioned below, President Trump specifically directed his subordinates to consider and make recommendations on whether to impose tariffs under this authority.

SECTION 201 “SAFEGUARD MEASURES” TARIFFS

Other authorities identified in the executive order call for a more deliberative process. For example, the Trade Act of 1974 provides a mechanism for safeguarding domestic industries after determining that they have been exposed to dramatic increases in import competition. Section 201 of the Trade Act authorizes the imposition of tariffs if it is determined that “an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.” 19 U.S.C. § 2251(a). As a precursor to imposing tariffs under this authority, the US International Trade Commission investigates and holds public hearings. President Trump used this authority in his first term to impose increased tariffs associated with the solar cell industry.

SECTION 232 TARIFFS—NATIONAL SECURITY CONCERNS

Section 232 of the Trade Expansion Act allows the president to take action to protect domestic industries vital to US national security when imports threaten those industries. President Trump invoked this authority during his first term and imposed heightened tariffs on steel and aluminum imports. The Commerce Department first investigates, reviews, and provides a report to the president before tariffs are imposed. This authority allows the president to impose both tariffs and quotas on imports.

SECTION 301 TARIFFS—ADDRESSING UNFAIR TRADE PRACTICES

President Trump can address unfair trade practices of other countries under the authority of the Trade Act of 1974. This act gives him authority to impose tariffs after making certain findings of unfair trade practices or when necessary to enforce the rights of the United States under any trade agreement with another country. Under Section 301 of the act, these tariffs are imposed after the US Trade Representative (USTR) conducts a review, allows the public to submit comments, and consults with the foreign country involved. President Trump invoked this authority during his first term and imposed tariffs on a wide swath of goods imported from China.

EXTERNAL REVENUE SERVICE

The executive order instructs several departments to “investigate the feasibility of establishing” an “External Revenue Service (ERS) to collect tariffs, duties, and other foreign trade-related revenues.” US Customs and Border Protection already performs this function, and it (and its historical predecessor agency) has done so for more than 200 years. Creating a new office or agency would not likely have any material impact on companies that import goods.

Will Congress pass new tariffs?

Congress could enact legislation imposing new tariffs. Congress has the constitutional authority “to lay and collect taxes, duties, imposts and excises” and to “regulate commerce with foreign nations.” US CONST., ART. I. Although Congress has not passed legislation imposing specific tariffs in many decades, legislation may be required if the president and Congress want to impose a “universal tariff” (which President Trump has discussed) or if Congress intends for tariffs to meaningfully enhance total federal revenue. Tariffs formed the bulk of US revenue in the early part of the country’s history, but tariff revenue has not accounted for more than 2% of federal revenue at any time during the past 70 years.

If President Trump acts aggressively—either in the degree of tariff enhancements or through hasty decision-making regarding tariffs—he will likely face litigation. The level of litigation risk he faces will depend on the specific authorities he invokes, and the facts associated with the decision-making. Acting under new legislation, however, would likely reduce litigation concerns.

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