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What to expect on tariffs and related risks

BY ADAM M. SMITH, SCOTT TOUSSAINT AND LINDSAY BERNSEN WARDLAW

Following Donald Trump's return to the White House, the US appears poised to continue a trend that has been in place under every administration since that of George W. Bush – using an ever-greater number of coercive trade tools to further core national security interests.

However, what is different in the new administration is that the mix of tools and targets has already appeared to radically shift. Under President Trump, Washington appears set to favour aggressive threats and uses of tariffs (potentially over other tools in the international trade arsenal such as sanctions and export controls).

And, as we have already seen, the administration may wield

trade restrictive measures against strategic competitors such as China and core partners such as Canada, Mexico and the European Union. With other jurisdictions in Europe, Asia and the Americas likely to deploy similar tools, either in retaliation against US measures or in pursuit of their own strategic interests, multinational enterprises should expect the unexpected and prepare for almost certain policy turbulence ahead.

To help management teams make sense of this fast-shifting international trade landscape, this article describes the US policy objectives that tariffs are designed to advance, explains the legal authorities on which President Trump might rely to impose

increased tariffs, and assesses the characteristics of companies that may be best able to withstand (and perhaps even thrive) in this new environment.

Following years of relative inaction regarding tariffs under President Biden, threatened or actual increased tariffs and trade wars have already emerged as a key part of the Trump administration's approach to engaging on international economic and geopolitical issues.

In its early months in office, the Trump administration levied new tariffs on Canada, Mexico and China, significantly expanded tariffs on goods from certain sectors deemed vital to national security such as steel and aluminium, threatened

to impose 'reciprocal' tariffs on all countries based on their own tariff and non-tariff barriers to the importation of US goods, and, in the case of Venezuela, threatened 'secondary' tariffs on any country that continues to purchase Venezuelan crude.

Unlike his recent predecessors, President Trump views trade as a zero-sum game. The administration focuses on the persistent US trade deficit as an indication of American weakness and foreign powers' strength. By pressing leading companies to manufacture their products in the US or else face steep tariffs and other consequences, the Trump administration has so far signalled limited desire to seek a middle ground on trade issues.

Moreover, President Trump has indicated that he is prepared to withhold access to the vast US domestic market to promote a wide range of policy objectives far removed from trade. In addition to reducing persistent US trade deficits and reshoring manufacturing, the administration has shown a willingness to threaten countries with trade-related consequences if they do not invest in border security, increase defence spending, crack down on immigration, curtail shipments of opioids or perhaps cede territory.

In light of President Trump's conviction that tariffs are a potent source of negotiating leverage and untapped revenue, the US appears likely to continue rapidly changing its tariff rates – in some cases, on a near-daily basis – to extract

concessions from key trading partners and advance the White House's various policy goals.

The aggressive, immediate and flexible character of the vast majority of tariffs imposed by the Trump administration is due to the president's unprecedented use of a particular policy instrument under a novel legal theory. As a matter of first principles, the US Constitution provides that Congress has general responsibility with respect to tariffs on imports, as the framers committed to the legislative branch the power to lay and collect taxes, duties, imposts and excises, as well as the power to regulate commerce with foreign nations.

Although Congress, since 1930, has delegated substantial authority to the president that could support executive action to increase tariffs, most such authorities – on which prior administrations have traditionally relied – are limited in scope and contain extensive procedural safeguards, such as requiring lengthy investigations prior to the imposition of tariffs.

For example, section 232 of the Trade Expansion Act of 1962 authorises the president to impose tariffs on imports of articles determined by a US Department of Commerce investigation to undermine national security. This tool was used in the first Trump administration to impose 25 percent increased tariffs on imports of certain steel products and 10 percent increased tariffs on certain aluminium products.

Sections 122 and 301 of the Trade Act of 1974, respectively, authorise the president to impose tariffs in response to balance-of-payments deficits (but only temporarily and only for an increase of up to 15 percent), or in response to acts, policies or practices of a foreign government that either violate trade agreements or are unjustifiable, unreasonable or discriminatory and burden or restrict US commerce (but only following an investigation and determination by the Office of the US Trade Representative). Section 301 was also used in the first Trump administration.

In a sharp departure from historical practice, President Trump, in early February 2025, invoked the International Emergency Economic Powers Act (IEEPA) – the 1977 statute that underlies nearly all US sanctions programmes and which broadly authorises the president to take action during a period of national emergency declared by the president – to announce increased tariffs on goods from Canada, Mexico and China.

While President Nixon, in 1971, invoked a predecessor statute, the Trading With the Enemy Act, to briefly impose 10 percent tariffs on many goods imported into the US, President Trump's use of IEEPA to levy increased tariffs is unprecedented.

Although there are good arguments that the imposition of tariffs under IEEPA exceeds the president's authority – the statute nowhere mentions tariffs, has

never been used in such a manner in the half century since it was enacted, and the tariffs' sprawling economic impact seemingly raises a 'major question' requiring a clear statement from Congress – it is clear why IEEPA-based tariffs (rather than tariffs promulgated under any more traditional authority) represent an attractive tool for the White House.

IEEPA allows the president to impose (and lift) trade restrictions with immediate effect, for nearly indefinite duration, and with very few procedural roadblocks. President Trump's use of IEEPA, which requires none of the investigative or deliberative steps required by other tariff authorities, is why (and how) the White House has been able to – seemingly hour by hour – impose, suspend, raise and lower tariffs on several of the US' largest trading partners.

Despite considerable economic uncertainty caused by such on again off again trade restrictions, the fact that early in the administration the White House quickly secured at least temporary concessions from Ottawa and Mexico City seems likely to invite further threats of IEEPA-based tariffs going forward.

As fast-evolving US tariffs, plus retaliatory measures from key US trading partners, will almost certainly persist throughout at least the near term, we have seen businesses employ a number of strategies to minimise tariff-related disruptions to their supply chains.

Companies well-positioned to weather this uncertainty are those

that have been able to not just understand from where their goods are imported or to where they are exported, but also (as relevant) to assess supply chains and products' bills of materials. To the extent possible, some businesses have begun developing redundant sources of supply for their most expensive (and thus most vulnerable to tariffs) components.

Certain companies have tried to 'futureproof' their strategies by geographically diversifying sourcing, allowing quick 'just in time' decisions as to where goods should be sourced in order to take advantage of the lowest available tariffs. Although challenging for the many manufacturers that have increasingly relied upon complex international supply chains, some businesses have begun to consider how to minimise the number of cross-border manufacturing steps that they build into their production and testing processes.

Now is also a good time for businesses to refresh their understanding of how US customs and border protection values goods for duty calculation purposes, and to consider whether the use of foreign-trade zones, bonded warehouses, bonded transportation or existing preferential trade agreements could result in duty minimisation.

Almost all companies with international exposure would do well to carefully review existing contractual arrangements in order to, among other things, assess whether force majeure clauses

can be triggered in the event of government action or inaction, and analyse the terms of trade to determine who is responsible for tariff payments.

Businesses can also closely review the various rules and processes of government agencies that are in charge of assessing duties. This can be a highly complicated process, involving assessments of practices at ports of entry, rules and regulations, and analysis of whether exemptions might exist.

Despite the complexities (and potential cost) of such an exercise, many companies have found the return on investment substantial, as they identified ways to legitimately leverage foreign-trade zones, tariff exemptions and free trade agreements.

Adam M. Smith is a partner, Scott Toussaint is a senior associate and Lindsay Bernsen Wardlaw is an associate at Gibson, Dunn & Crutcher LLP. Mr Smith can be contacted on +1 (202) 887 3547 or by email: asmith@gibsondunn.com. Mr Toussaint can be contacted on +1 (202) 887 3588 or by email: stoussaint@gibsondunn.com. Ms Wardlaw can be contacted on +1 (202) 777 9475 or by email: lwardlaw@gibsondunn.com.

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