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**INTERNATIONAL  
TRADE UNDER  
THE TRUMP  
ADMINISTRATION –  
WHAT TO EXPECT**



**– THOUGHT LEADERSHIP**

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## INTERNATIONAL TRADE UNDER THE TRUMP ADMINISTRATION – WHAT TO EXPECT

From his first day in office, President Trump has issued a non-stop stream of executive orders, many of which affect international trade. In this extract from a recent Clifford Chance [webinar](#), we look at the Trump administration's America First Trade Policy and its early-days impact on tariffs, sanctions, export controls, CFIUS and US outbound investment. We also explore the expected impact on businesses, supply chains and enforcement risks.

Joshua Berman, a Clifford Chance Partner based in Washington, DC says: "We are getting hundreds of questions and inquiries from clients about the new administration's trade, export control, enforcement and tariff policies and the impact they are likely to have on their businesses. This is not re-run of eight years ago, when tariffs were being used to protect US producers, to reduce bilateral and global trade deficits, and to address unfair trade and economic practices. Now tariffs are being used to pursue non-economic objectives."

### Tariffs – five takeaways from the Trump administration's recent tariff actions

1. "Tariffs will be central to the Trump administration's strategy for achieving its international economic and foreign policy goals," says Janet Whittaker, a Clifford Chance Senior Counsel who is based in Washington, DC For example, tariffs and tariff threats were used against Canada, Mexico and China to create pressure on these countries to take action to stem the flow of fentanyl into the United States. And, in the short trade dispute with Colombia, President Trump threatened to impose steep tariffs on Colombia as a mechanism to achieve immigration priorities.

"I think one of the interesting things is that although the intention to impose tariffs was telegraphed clearly during the presidential campaign, many people have been taken aback both by the

speed at which the measures were introduced and also their use for non-economic goals," says Whittaker.

2. During the first Trump administration, by contrast with the sweeping tariffs recently imposed and threatened, tariffs largely focused on specific products such as steel and aluminium. This time around, blanket tariffs encompass almost all products, and President Trump's trade advisors are, so far, not tempering his actions. "There is a desire to move hard and fast," says Whittaker.

3. Expansion of the legal basis for tariffs: For the first time, the International Emergency Economic Powers Act (IEEPA) has been used to impose tariffs. This is a broad piece of legislation that allows the President to deal with any external unusual or extraordinary threat to national security, foreign policy or the economy of the United States. In his first day in office, Trump declared a national emergency in relation to "The extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl<sup>1</sup>" and extended the national emergency to include actions by countries that had either contributed to, or failed to stem, the flow of fentanyl.

IEEPA allows the administration to act rapidly in circumstances where it decides it needs to act. There is debate around whether there will be legal challenges to the use of IEEPA, and whether it can be used to impose tariffs in this way.

1. [Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China – The White House](#)

"But the reality is that in the case of national security emergencies, there may be substantial judicial deference to what the President considers a national emergency, and it can take years for cases to work their way through the courts," says Whittaker.

4. Free trade agreement partners and allies will not be free from tariffs. Canada and Mexico are the US's top trading partners and supply and production chains are tightly integrated between the three countries because of the legacy of NAFTA and USMCA, which will be significantly impacted should broad tariffs eventually come into effect against Canada and Mexico. President Trump has also threatened blanket tariffs against allies such as the EU.

5. President Trump has adopted a transactional approach to tariffs. During his first administration, Trump resolved part of the trade dispute with China through an agreement to purchase US goods and other market access commitments. This time, with respect to Canada and Mexico, almost as soon as tariffs were announced negotiations started and agreements reached to suspend the tariffs.

"These developments produce a lot of uncertainty around trade, supply chains, and production chains. And, importantly, in relation to decisions around where and when to make investments," says Whittaker.

## How will countries react to these tariffs?

"The retaliation question is a really important one, because the impact of responsive measures can have as great an impact on businesses as the initial tariff measures do, so it's essential to think about those," says Whittaker.

How countries respond is yet to be seen and is likely to depend on the particular country and the impact of the US tariff measures. As evidenced by the recent Canada, China, and Mexico tariffs, countries may be willing to negotiate as well as retaliate.

"Uncertainty is the word of the moment," Whittaker says. There are significant uncertainties around the targets of US tariffs, the scope and timing of those tariffs, the availability of formal exemption processes, whether tariffs measures will be challenged and what the outcome of those challenges may be, as well as how other countries will respond. She adds that there are important steps that businesses should take now in terms of planning and mitigation, including keeping abreast of policy developments around trade and tariffs, assessing current exposure to known tariff risks, and thinking about what may be coming down the pipeline.

## National security and enforcement

US policy is being made not just through executive orders and memorandums, but also on social media. President Trump announced on TruthSocial on January 26 that "IEEPA banking and financial sanctions to be fully imposed" against Colombia and that: "these measures are just the beginning."

Megan Gordon, Office Managing Partner for Clifford Chance in Washington, D.C. says, "President Trump is looking at how he could use financial and economic sanctions in addition to other immigration and tariff tools in order to gain leverage." The imposition of "full" economic sanctions under Office of Foreign Assets Control (OFAC) may have put Colombia on a par with Iran or Syria which are comprehensively sanctioned countries, and while the threat was not followed through, it signalled that President Trump is willing to consider the use of sanctions to achieve his aims.

President Trump also signed the America First Trade Policy memorandum on his first day in office. It includes a section which focuses on reducing US dependence on other countries as a critical component of national security. He also said that he would not disband the Outbound Investment Security Program which was introduced by President Biden to "prohibit or require notification of certain types of outbound investments by

United States persons into certain entities located in or subject to the jurisdiction of a country of concern." President Trump may expand it.

Joshua Berman says: "My prediction is that we are going to see enforcement on steroids around these issues. My advice is, if you think you might have an issue, consider a privileged internal review to sort it out early and if you do hear through one of your subsidiaries, from headquarters, from a US government regulator, or the Department of Commerce, Justice or Treasury, make sure you get counsel and take it seriously because they are going to come down hard."

### **Export controls and sanctions – will we see more of these?**

While tariffs appear to be the new favorite tool in President Trump's arsenal – or at least the current tool – it is expected that he will also use sanctions to further his agenda. Under the first Trump administration many sanctions were aimed at China, ranging from targeting individuals to targeting Chinese apps.

"Clearly, President Trump feels comfortable using sanctions as a tool," says Renee Latour, a Clifford Chance Partner based in Washington, DC. "And they will be imposed and amended or even lifted over the next four years. That's simply just the way sanctions work. They live in real time. It's wholly reasonable to think President Trump picks up right where he left off with respect to sanctions and China, but beyond that is where the crystal ball gets cloudy." She adds that the early weeks of the administration have been a flurry of activity, and that it is clear to the outside observer that President Trump feels confident in his power to take very bold and very decisive action or at least make bold and decisive announcements. "So, businesses should take proactive measures to identify their main areas of risk. Don't sit and wait, whether they're geographic or industry

based. Identify contingency plans if these activities are disrupted. Do you have backup vendors, alternate supply chains, etc.? Or at least some idea of where you may turn?"

Businesses should also take stock of their contracts and update sanctions-related language and provisions. "US agencies are not only coordinating and actively information sharing. They're using much more sophisticated tools to track non-compliance. We expect enforcement levels to rise again under the Trump administration," she says.

Existing export controls are likely to remain in place and further measures will be forthcoming. The America First Trade Policy directs State and Commerce, which are the two agencies charged with administering the US export controls regime, to review the existing system and advise on how they can modify it in light of developments involving, again, strategic adversaries or geopolitical rivals.

"What does that mean in practical terms? The existing restrictions on AI and semiconductors are not likely to be amended. They will stay in place. Beyond that, I would say that we can expect various changes on the export control regime over the next four years that are designed to further the protectionist mentality of this current administration," Latour says.

### **The role of CFIUS**

During the first Trump administration, CFIUS (the Committee on Foreign Investment in the United States) was very active, mandatory filings increased significantly, and President Trump blocked more transactions than any previous President. "Agencies such as Commerce and State began to align much more closely with the security agencies – and that continued under the Biden administration. This time around we may see CFIUS's jurisdiction expand to include greenfield investment and the number of Committee members increase. It may become more political in nature,

given Vice President Vance's willingness to actively intervene in the process during his time in the Senate," says Latour. She adds: "And it will continue to be arduous, but that doesn't necessarily mean that will be a bar to accomplishing transactions. It is what it is – a national security entity."

Another tool available to the administration is Reverse CFIUS – a rule that imposes restrictions on US outbound investment in Chinese companies active in developing certain national security technologies including semiconductors, AI and quantum computing. It applies not

just to Chinese-owned companies, but also to companies that have ownership rights into certain Chinese companies and are not necessarily located in China.

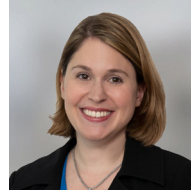
"Companies may suddenly be seeing a bunch of representations and warranties starting to circulate through the through the transactional sector saying, 'You will not use any of my money to invest in prohibited or notifiable transactions under the outbound investment regulation'. This is a brand-new regime and could be expanded pretty readily," says Megan Gordon.



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