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White House Memorandum Highlights Administration's Early Steps on U.S. Trade Policy

Ongoing Agency Reviews Could Trigger New Tariffs and Other Measures Affecting Companies' Supply Chains

SUMMARY

On January 20, 2025, President Donald J. Trump issued a Memorandum to the heads of several executive agencies (the "Memorandum") initiating a broad-scale review of U.S. trade policy. The Memorandum orders the Secretary of Commerce, the Secretary of the Treasury, the United States Trade Representative, and other officials to (i) comprehensively review the reasons for the U.S. trade deficit, and (ii) conduct systematic reviews and submit reports recommending potential revisions to existing trade measures—including tariffs, the United States-Mexico-Canada Agreement, antidumping and countervailing duty laws, trade regulations towards China, intellectual property protections, and export controls. The Memorandum and other recent developments highlight the Trump Administration's fast-moving and aggressive approach to U.S. trade policy. They also signal the likely expansion of trade measures that could substantially affect companies' operations and global supply chains.

BACKGROUND AND RECENT EVENTS

President Trump repeatedly declared during the 2024 presidential campaign that from the first day of his new administration, he would act to reorient U.S. trade policy to better advance the United States' economic interests. Accordingly, he issued the Memorandum, entitled "America First Trade Policy," within a few hours of his inauguration. It commissions a series of reviews and reports from U.S. agencies that must be returned to the President on a short timetable—generally, by April 1, 2025.

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In announcing the Memorandum, the White House stated that it was “establishing a robust and reinvigorated trade policy that promotes investment and productivity.” Its express purpose is to advance an “America First Trade Policy” that “benefits American workers, manufacturers, farmers, ranchers, entrepreneurs, and businesses.”

Since issuing the Memorandum, the President and his administration have continued to make statements signaling their intent to implement both targeted and broad-reaching new tariffs on goods imported to the United States.¹ For example, on January 26, 2025, the Colombian government denied entry of two U.S. military planes carrying undocumented Colombian migrants who had been deported from the United States, and President Trump immediately responded by announcing retaliatory measures on social media—including emergency 25% tariffs on Colombian goods entering the United States, economic sanctions, and a travel ban on Colombian Government officials.² That same day, the White House announced that it had reached an agreement with the Colombian government, but specified that “tariffs and sanctions will be held in reserve, and not signed, unless Colombia fails to honor this agreement.”³

AUTHORITIES

The President’s Memorandum implicates various statutory and regulatory authorities that could both empower and restrict the administration’s future policy steps in this area.

U.S. Statutory Authority

Congress has delegated authority to the President to make and enforce U.S. trade policy, which he does through the Commerce Department, the Office of the United States Trade Representative (USTR), the Treasury Department, and other executive agencies.

Title 19 of the U.S. Code principally concerns trade with foreign countries. In ordering broad-scale agency reviews of existing trade laws, the Memorandum cites various sections of Title 19 that are central to U.S. trade policy, including:

1. the **Tariff Act of 1930**, which delegates to the President broad authority to impose tariffs on imports to the United States that harm American industry or are connected to unfair trade practices (such as flooding U.S. markets with underpriced goods, known as “dumping”); empowers the Department of Commerce to impose antidumping and other countervailing duties (*i.e.*, import taxes intended to counteract subsidies of goods by foreign governments) after conducting an investigation and making necessary findings; authorizes the U.S. International Trade Commission (USITC) to implement temporary duties and other tariffs based on a determination of harm or threat to a U.S. industry; and authorizes the Treasury Department and the Commerce Department to regulate counterfeit imports;
2. the **Trade Expansion Act of 1962**, which authorizes the Department of Commerce and the Department of Defense to review trade policy for potential violations of U.S. national security;
3. the **Trade Act of 1974**, which provides various forms of relief to American manufacturers and other producers from harms caused by international trade; authorizes the USTR to undertake reviews of, and implement retaliatory activity in response to, unfair trade practices by foreign countries; and authorizes the Department of Commerce to regulate activity that undermines or abuses the intellectual property of U.S. firms;

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4. the [Trade Facilitation and Trade Enforcement Act of 2015](#), which authorizes the Treasury Department to regulate currency manipulation that harms American producers; and
5. provisions implementing the [United States-Mexico-Canada Agreement \(USMCA\)](#), a broad free trade agreement reached in 2018 that harmonizes trade within North America and replaced the North American Free Trade Agreement (“NAFTA”), which had long been viewed by President Trump as unfair to the United States.

International Trade Agreements

The United States is also a party to hundreds of trade agreements with partner countries and with multilateral groups around the world, including “comprehensive free trade agreements” that are in force with 20 countries.⁴ This includes broad, multilateral agreements like the General Agreement on Tariffs and Trade (GATT) that form the backbone of the international World Trade Organization structure. The Memorandum makes clear that USTR will be required to review all existing U.S. trade agreements.

The International Emergency Economic Powers Act

The International Emergency Economic Powers Act of 1977 (IEEPA) grants the President extensive powers to regulate a variety of economic transactions during a declared national emergency. It has typically been invoked in connection with the issuance of U.S. economic sanctions, such as those against Iran, Russia, North Korea, and Venezuela. To use this authority, the President must first declare a national emergency under the National Emergencies Act (“NEA”), finding there is an “unusual and extraordinary threat” to the national security, foreign policy, or economy of the United States.

Although IEEPA grants the President authority to regulate both imports and exports, no prior U.S. president has used it to impose tariffs. President Richard Nixon imposed a 10% tariff on all imports to the United States under IEEPA’s predecessor statute, the Trading with the Enemy Act of 1917. During the first Trump Administration in 2019, the United States raised the prospect of using IEEPA to raise tariffs on Mexican imports in response to concerns about border security, but declined to do so after the Mexican government implemented certain migration measures. In addition, when the current Trump Administration announced this past week that trade measures against Colombia would be “held in reserve,” the White House expressly referred to them as “*IEEPA* tariffs and sanctions.” (emphasis added). Unlike other trade statutes, IEEPA does not require formal investigations and findings by the Commerce Department, USITC, or USTR before measures can be imposed, arguably making it a more nimble tool for enacting trade measures.

AREAS UNDER REVIEW

The Memorandum requires Executive Branch agencies to provide comprehensive recommendations to potentially revise, modify, or abrogate current regulations and trade agreements, and to remedy unfair trade practices. The Memorandum's three substantive sections direct the following key actions, among others:

Section 2: Addressing Unfair and Unbalanced Trade

- Section 2 directs the Secretary of Commerce, the Secretary of the Treasury, and the USTR, individually and/or in consultation with each other, to:
 - review the existing application of antidumping and countervailing duty laws;
 - investigate the potential establishment of an External Revenue Service (ERS) to collect tariffs, duties, and other foreign trade-related revenues;
 - assess or make recommendations concerning foreign nations' practices relating to currency exchange rates, currency manipulation, and discriminatory or extraterritorial taxes;
 - assess the USMCA, including its impact on American workers, farmers, ranchers, and service providers, and make recommendations regarding continued participation in the agreement; and
 - make recommendations to ensure that all trade agreements are being implemented in a manner that favors domestic workers and manufacturers, not foreign nations.

Section 3: Economic and Trade Relations with the People's Republic of China

- Section 3 directs the Secretary of Commerce and/or the USTR to:
 - analyze a report issued by the prior administration concerning tariff modifications with respect to the People's Republic of China (PRC) and recommend appropriate further actions;
 - investigate acts, policies, and practices by the PRC that may be unreasonable or discriminatory and propose appropriate responses;
 - consider and make recommendations concerning legislative proposals regarding Permanent Normal Trade Relations with the PRC; and
 - assess the status of United States intellectual property rights conferred upon PRC persons and make recommendations to ensure reciprocal and balanced treatment of such rights by the PRC.

Section 4: Additional Economic Security Measures

- Section 4 directs the above cabinet secretaries and other administration officials, individually and/or in consultation with each other, to:
 - conduct an economic and security review of the United States' industrial and manufacturing base to assess whether it is necessary to initiate investigations to adjust imports that threaten national security;
 - review and make recommendations concerning the effectiveness of certain import adjustment measures on steel and aluminum;
 - review the United States export control system and advise on modifications in light of national security and global considerations, including potential loopholes;
 - review whether Executive Order 14105 of August 9, 2023 (Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern) should be modified or rescinded and replaced, and whether the final rule implementing the order includes sufficient controls to address national security threats; and

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- assess unlawful migration and fentanyl flows from Canada, Mexico, the PRC, and any other relevant jurisdictions and recommend appropriate measures to resolve that “emergency.”

OBSERVATIONS AND IMPLICATIONS

As the new administration makes trade issues a centerpiece of its economic and foreign policy agendas, many companies—including financial institutions—will likely need to adapt to new requirements that could affect their operations, costs, financial activities, and global supply chains.

First, firms that import substantial products to the United States—or provide related banking or financial services—should prepare for the administration’s potential overhaul of U.S. trade policy, which may lead to significant new regulatory requirements. The potential form and scale of any resulting compliance obligations might become clearer when the earliest reports commissioned by the Memorandum are issued in or before early April 2025. These reports could ultimately trigger the increased use of tariffs generally, and countervailing duties specifically, to prevent what the administration considers to be unfair trade practices. The potentially sweeping and varied nature of these changes, as reflected in the Memorandum, could make them difficult to track and implement.

Second, firms that rely on intermediate suppliers based overseas would be well advised to look carefully at their existing supply chains and related risks. This is particularly true for firms that rely on intermediate suppliers in China, Canada, or Mexico, as these countries are most likely to be affected in the short term by significant new tariffs. In addition, increasing costs driven by new tariffs could make foreign products or components manufactured by these suppliers uncompetitive or unavailable in the American market.

Third, legal developments in this area could occur far more rapidly and unpredictably than they have in the past. Prior administrations typically have allowed domestic firms substantial time to adapt to potential changes in tariffs and trade policy—in part because, as noted above, formal agency investigations and findings are often prerequisites under relevant trade statutes. However, in light of (i) the short deadlines for the Memorandum’s reviews and (ii) the Trump Administration’s apparent willingness to invoke IEEPA’s emergency authorities as a basis for imposing tariffs, companies might have little if any advance warning or opportunity to comment on the potential impacts of future trade measures. In addition, President Trump’s repeated public assertions—in 2019, and again this past week—that IEEPA empowers him to issue import tariffs could, if acted upon, engender legal challenges before the U.S. Court of International Trade and other bodies. Significantly, the Trump Administration’s recent public statements also reflect their willingness to use the mere prospect of tariffs as leverage in negotiations on various political issues (such as immigration), rather than solely as an instrument of U.S. trade policy.

Finally, these developments come against the backdrop of other laws and recent events that have underscored the importance of companies’ supply chains and related compliance and due diligence obligations. For example, the European Union recently passed the Corporate Sustainability Due Diligence Directive (CSDDD), which, when implemented by member states, will require multinational companies to

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implement extensive due diligence on their supply chains and counterparties for human rights, climate, and other Environmental and Social Governance (ESG) issues. Those requirements could add to, or even conflict with, existing requirements under U.S. and other countries' laws concerning climate, human rights, trade, and import and export controls. In addition, recent violent attacks by Iran-backed Houthi militants on shipping vessels in the Red Sea, combined with drought conditions in the vicinity of the Panama Canal, have caused substantial disruptions to critical global shipping routes. Mitigating risks to companies' global supply chains will therefore require careful management not just of the business dimensions of international trade transactions but also of the regulatory and political dimensions.

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ENDNOTES

- 1 <https://www.washingtonpost.com/technology/2025/01/28/trump-tariffs-chips-semiconductors-taiwan/>
- 2 <https://www.reuters.com/world/americas/colombias-petro-will-not-allow-us-planes-return-migrants-2025-01-26/>;
<https://www.washingtonpost.com/business/2025/01/06/trump-tariff-economy-trade/>
- 3 <https://thehill.com/homenews/administration/5108055-white-house-says-us-colombia-agreement-in-place-after-back-and-forth-over-tariffs-immigration/>
- 4 <https://ustr.gov/trade-agreements/free-trade-agreements>

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