Tariffs, Trade and Emerging Risks

Highlights

With the incoming Trump administration's announcement of planned tariffs and trade control measures, businesses and investors should examine their organizations and supply chains to successfully navigate expected challenges and opportunities. We anticipate the following developments:

Continuity of Geopolitical Competition

The incoming Trump administration is likely to maintain or increase the U.S. policy of geopolitical competition with China, based on past performance, platform and initial Cabinet appointments at the U.S. Department of State, Department of Defense, National Security Advisor and CIA Director.[1]

Additional Tariffs

The U.S. Trade Representative (USTR)'s recent and widely reported findings of unfair trade practices with China[2] provides the incoming administrations with authority to impose up to 100 percent tariffs on some economic sectors and specific goods imported from China.[3] President-elect Trump has personally stated intent to immediately impose new tariffs on China, Mexico, and Canada.[4] The reality is that tariffs probably will be subject to negotiation and the overall tariff rate will be constrained by economic considerations. But the incoming administration almost certainly will use the authority of Section 301 of the Tariff Act of 1974 (Section 301) to significantly increase tariffs, spurring probable retaliatory tariffs and other measures from China and other affected parties.[5]

Additional Authorities

Antidumping, import and technology controls, export controls, inbound/outbound investment controls, supply chain controls and information security controls are other areas where the Trump administration may exert authority to promote national and industrial security objectives.[6]

Transactional Orientation

The previous Trump administration demonstrated willingness to engage in transactional resolutions to achieve economic and national security objectives. Along these lines, media reports indicate that the incoming administration is open to negotiations rather than an outright ban of certain Chinese-owned or controlled companies.[7]

1 Michael Martina, "Rubio pick signals a Trump China policy that could go beyond tariffs," Reuters, November 14, 2024, https://www.reuters.com/world/us/rubio-pick-signals-trump-china-policy-that-could-go-beyond-tariffs-2024-11-14/.

2 Office of the United States Trade Representative, "USTR Finalizes Action on China Tariffs Following Statutory Four-Year Review," Press Release, September 13, 2024, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/september/ustr-finalizes-action-china-tariffs-following-statutory-four-year-review.

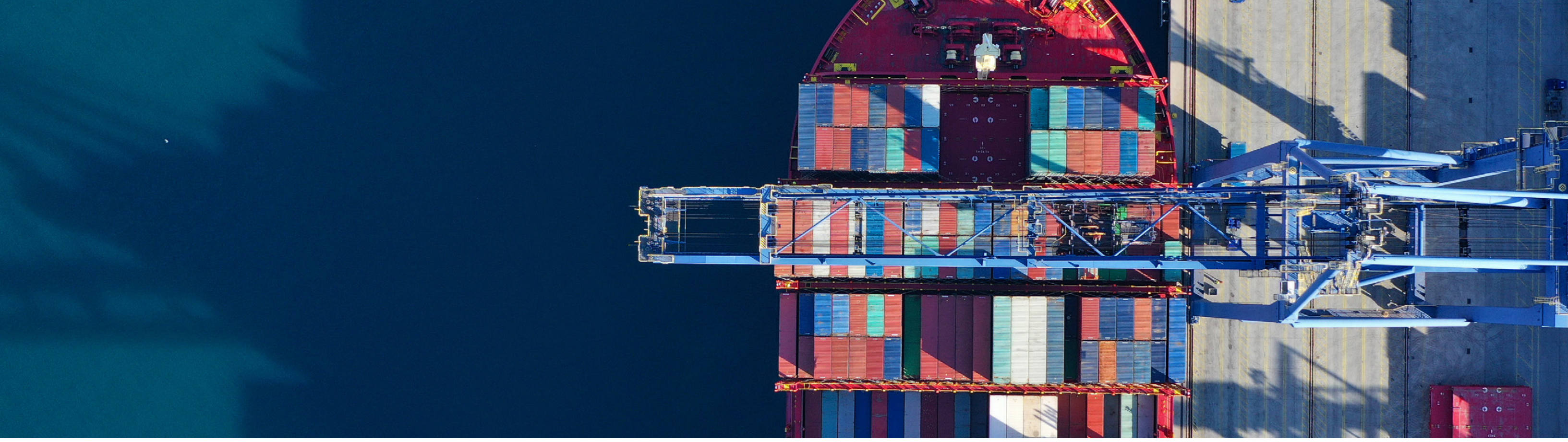
3 Ryan Ermey, "Trump's tariff plan: Why he's pushing for them, and how they might end up raising prices," CNBC, November 7, 2024, revised November 8, 2024, https://www.cnbc.com/2024/11/07/trumps-tariff-plan-how-tariffs-work-why-they-might-increase-prices.html.

4 Lalee Ibssa, Kelsey Walsh, and Soo Rin Kim, "Trump says he'll slap tariffs on Canada, China and Mexico on Day 1", ABC News, November 25, 2024, https://abcnews.go.com/Politics/trump-hell-slap-tariffs-canada-china-mexico-day/story?id=116218301.

5 April Rubin, "Mexico promises retaliation if Trump makes good on tariff threats", Axios, November 26, 2024, https://www.axios.com/2024/11/26/tariffs-retaliation-trump-mexico-canada-china.

6 Holly Fechner, Matthew Shapanka, and Samuel Klein, "Tech Policy in a Second Trump Administration: AI Promotion and Further Decoupling from China", Inside Global Tech, November 19, 2024, https://www.insideglobaltech.com/2024/11/19/tech-policy-in-a-second-trump-administration-ai-promotion-and-further-decoupling-from-china/.

7 Wendy Lee and Andrea Chang, "Trump wanted to ban TikTok. Will his return to office help save it?", Los Angeles Times, November 22, 2024, https://www.latimes.com/entertainment-arts/business/story/2024-11-22/donald-trump-bytedance-tiktok-biden.



Impact – How Should You Prepare?

Imminent U.S. tariff hikes are likely to increase the urgency around U.S. businesses' organization and supply chain diversification and adaptation efforts. Specifically, we expect China tariffs, currently linked with Section 301 to increase substantially. New tariffs may be either sector-based or blanket tariffs related to imports from certain countries.

Businesses and investors should consider deploying adaptive strategies before and after new tariffs, as below:

Planning for new tariffs and trade measures:	
Research and Collect Data	Businesses and investors should take the following measures to better understand probable market impacts: ■ **Market Research** to assess competitive advantages in distribution, marketing and production, as well as product differentiation, to determine how competitors will respond to import cost increases and assess whether long-run supply chain adjustments are feasible. ■ **Product and Customer Research** to evaluate consumers' reactions to price effects and the price elasticity of demand for specific products. Leveraging those findings, business should assess how much of the increased import costs can be shifted to consumers versus how much will need to be absorbed by the business. ■ **Enterprise, Supply Chain and Customs Research** to analyze the impact of anticipated developments on current enterprise architecture, operations and supply chain network. Businesses should assess possible adaptive courses of action and, if advisable, develop initial and contingency plans.
Review Contracts	■ **Tariff-Adjusted Contracts.** Businesses should review supplier, vendor and distributor contracts that may lock in pricing before new tariffs are announced. If feasible, businesses may make force majeure clauses and pricing terms responsive to new tariff risks.
Financial Planning and Pricing	■ **Pricing Strategies.** Businesses can plan for and price-in the immediate impact of anticipated tariffs.
Geopolitical Risk Mitigation	■ **Emerging Risks.** Businesses should plan for expected U.S. tariffs, sanctions, export, investment, data and supply chain controls and other countries' reciprocal controls.

Adapting to new tariffs and trade measures after introduction:

Section 301 Mitigation Strategies: Classifications, Product Exceptions, Customs Bonded Warehouses, FTZs, Duty Drawbacks and More	Businesses and investors may implement context-specific Section 301 duty mitigation strategies including: ■ **Confirm Classifications.** Businesses may want to evaluate the HTS classifications of their imports. If they discover that they have been using an incorrect HTSUS subheading and the correct subheading is not on any of the Section 301 lists, then Section 301 duties may be avoided. ■ **Product Exception Requests.** On a company and product-specific basis, businesses may apply for exclusion of certain Chinese-origin products from additional duties through the USTR. However, the USTR has denied most Section 301 renewals in recent years. ■ **Customs Bonded Warehouses.** For businesses importing items with pending exclusion requests or primarily for exports, customs bonded warehouses may provide relief. Imported goods may be stored or manipulated, or undergo further manufacturing in such warehouses without payment of duties for up to five years. However, if exclusion requests are denied and businesses withdraw these items for consumption into the U.S., then businesses must pay duties. ■ **Free Trade Zone (FTZ).** Businesses using the U.S. primarily as a global distribution hub may wish to locate in FTZs. Section 301 products imported from China and subsequently exported from a FTZ do not incur Section 301 duties. However, such duties must be paid if these goods are transferred from the FTZ into the customs territory of the U.S. ■ **First Sale Rule.** Multitier procurement structures may present businesses with opportunities to reduce the customs value of imported Chinese goods. For instance, mitigation opportunities may arise where a Chinese manufacturer sells goods to an intermediary in a third country, and the intermediary then sells those goods to a U.S. business. In such instances, the manufacturer’s price of sale to the intermediary rather than the higher price of resale to the U.S. importer may be the bona fide transaction value for U.S. customs’ purposes. ■ **Duty Drawbacks.** Drawback refers to the refund of certain duties, taxes and fees collected upon the importation of goods and refunded when the merchandise is exported from the U.S. or destroyed. While the additional duties imposed under Section 301 are eligible for drawback, drawback is recognized as the most complex mitigation strategy. Nonetheless, a duty drawback plan may be a key mitigation strategy for businesses importing goods into the U.S. primarily for export and global distribution.
Organization and Supply Chain Adaptation and Country of Origin Changes	■ **Diversification and Reshoring/Nearshoring.** Businesses and investors can leverage data and current research to plan and respond to new tariffs through: 1) organization and supply chain optimization, and country of origin analysis; 2) modeling changes for lower duty jurisdictions based on the local substantial transformation rules for Chinese-origin components and materials; and 3) evaluating the viability of moving operations and supply chain relationships to avoid tariff and policy costs and maximize policy opportunities.
Long-Term Strategic Planning and Change Management	■ **Budgeting.** Businesses should integrate the effect of new tariffs and trade measures into budgets and overall financial planning. ■ **Investments and Change.** Business and investment strategy should account for a persistent reality of U.S. trade, investment and industrial policy intervention, particularly with regard to China.

Key Takeaways

The incoming administration is likely to maintain a policy of geopolitical competition with China and, if anything, increase the use of tariffs and additional export, import, technology, supply chain, sensitive data and investment controls in order to promote national security and industrial policy objectives. These controls may be implemented with a transactional orientation, based on negotiation developments, economic considerations and emergent opportunities.

Businesses and investors should initiate research, assessment, planning and preparation to adapt operations, organizations, supply chains and strategic planning to avoid tariffs and other trade authority risks and to optimize market and policy opportunities.

How A&M Can Help

We offer industry-leading services to successfully navigate tariff and trade authority risks. Specifically, we can help organizations with:

HTS Classification

Review and ensure proper HTS classifications on all products to eliminate unnecessary tariffs and duties.

Product Exception Requests

Prepare product exception requests for the U.S. Trade Representative.

Market and Product Research

Conduct market and product research to assist in pricing and development of tariff response programs.

Duty Deferral Strategies, Bonded Warehouses and FTZs

Assess viability of utilizing customs-bonded warehouses, FTZs, duty deferral or mitigation measures and enable the implementation such strategies.

Economic Modeling

Calculate projected costs associated with increased tariffs and lost profits due to potential price increases.

Trade Controls and Sanctions

Evaluate trade controls and sanctions' risks and prepare mitigation strategies.

Organization and Supply Chain Adaptation

Examine enterprise and supply chains to identify potential risks and opportunities, and enable strategic adaptation.

Contract Evaluation

Evaluate vulnerabilities, incorporate trade risks' pricing and integrate robust trade compliance into third-party contracts.

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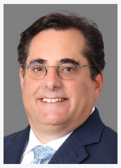

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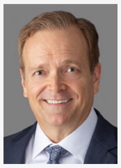

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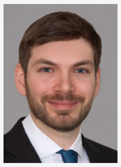

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