Akin

International Trade

Outlook for the 119th Congress & the Trump Administration

Key Takeaways

- Expect the President to consider bold policies, like across-the-board-tariffs, but for details to be fluid and evolve over time.
  - President Trump has promised to impose a "ring-around-the-collar" tariff of 10 percent or 20 percent on every country in the world. The President has not clearly articulated how this policy would be implemented, and numerous key issues need to be decided, including what legal authority to rely upon, whether to exempt certain countries (e.g., Free Trade Agreement (FTA) partners or trade surplus countries), whether to exempt certain goods (e.g., manufacturing inputs) and whether to allow countries to negotiate their way out of the tariffs.
  - If the President decides to enact such a policy unilaterally, the most likely mechanisms are the International Emergency Economic Powers Act (IEEPA) or the Section 122 balance-of-payments authority. Both have legal limitations. Past court decisions have suggested that the IEEPA tariff authority cannot be used on all countries and all products since that would assume the role of Congress in levying tariffs while the Section 122 authority is limited to temporary measures of 150 days.
  - One way that the administration could try to get around these legal limitations for the existing authorities is to seek new tariff authority in the context of a congressional tax package. This would have the additional benefit of using tariff revenue to offset tax cuts.
- President Trump will use tariffs on a range of products and countries, with a focus on China, the EU, Mexico and Vietnam.
  - While considering the prospect of across-the-board tariffs, we also expect the President to use tariffs on a more targeted basis on a range of countries and products.
  - President Trump will continue to focus on China, a trademark of his first term. During the campaign, he has threatened tariffs of up to 60 percent on China, while at the same time praising the Phase One deal and complaining that it was disrupted by COVID and the Biden administration's unwillingness to enforce it. We expect President Trump to increase tariffs on China early in his second term in a targeted manner and to consider working with Congress to codify higher tariffs on China. On the other hand, we also anticipate President Trump to consider negotiating a new deal with China.
  - President Trump has long believed the EU trade surplus with the U.S. is indicative of how the EU is "taking advantage" of the U.S. We expect he will pursue trade fights with the EU on issues such as digital service taxes, autos and agriculture, to name a few. For example, he could call for a renewed Section 232 investigation on auto imports, an endeavor the first Trump administration began but did not complete.

  - President Trump has also focused on Mexico, for a variety of reasons—because of immigration, because he believes Chinese companies are transshipping goods through Mexico to avoid tariffs under Section 232 and Section 301 and because of the U.S. trade deficit with Mexico. We expect the United States-Mexico-Canada Agreement (USMCA) review to be quite contentious, and for President Trump to also consider targeted measures on EVs produced in Mexico.
  - We expect President Trump to be focused on Vietnam based on the growing trade deficit, at least some of which President Trump's team suspects may be the result of Chinese transshipment. President Trump will also likely reinstitute a Section 301 investigation into Vietnam's currency practices.

- The threat of tariffs for a range of objectives will be a key feature of the Trump administration.
  - As noted above, President Trump is expected to raise tariffs to address a range of trade-related problems, including increasing investment in the U.S., combatting unfair trade practices and rebalancing global tariff rates. At the same time, President Trump is also likely to threaten tariffs as a means to resolve all manner of problems, trade and otherwise, repeatedly saying that the word "tariff" is "the most beautiful word in the dictionary."
  - Most recently, on November 4, 2024, he said he would "on day one or sooner," tell the President of Mexico that he would impose 25 percent tariffs on Mexican imports if Mexico does not better control migrants coming to the U.S.
  - That is a good example of how President Trump uses tariffs and the threat of tariffs to create leverage for other policy goals. Expect a lot of that in the next administration to address unfair practices, rebalance trade and create leverage for dealmaking purposes.

- Expect a push for reciprocal tariffs.
  - The previous Trump administration floated a proposal to give the president the authority to impose the same tariffs on imports from trading partners that those trading partners impose on U.S. exports called the Reciprocal Trade Act.
  - The idea is to give leverage to the U.S. to argue for our trading partners to lower their tariffs or face higher U.S. tariffs. We expect that proposal to resurface and gain steam in the next administration.

- The Tariff Man is also a dealmaker.
  - Although President Trump will frequently use tariffs—and the threat of tariffs—to achieve a range of trade and non-trade goals, he will also seek deals with numerous countries.
  - This could include traditional FTA negotiations with countries like the U.K. and Kenya that were started in the first term but discontinued by the Biden administration.
  - This could include novel sectoral agreements that seek to work with allies and partners to diversify key supply chains (e.g., semiconductors, critical minerals, medical supplies) away from China.
  - The Trump administration is also expected to pursue nontraditional mini-deals similar to those negotiated with China and Japan in the first term. India is also a wild card.
  - The threat of a baseline tariff could be used to negotiate mini-deals as well.
  - Finally, the Trump administration will attempt to renegotiate key parts of the USMCA as part of the agreement's novel review mechanism.

- Here's what to expect the first 100 days.
  - Invoking or threatening to invoke Section 122 or IEEPA to implement a baseline tariff against all imports.
  - Restarting Section 301 investigations on digital services taxes on 10 countries.
  - Increasing tariffs on China under Section 301.
  - Starting new 232 or 301 investigations into hot-button issues like autos/electrical vehicles.

Additional Insights

- The Republican-controlled Senate majority will likely follow the President's lead on trade.
- President Trump's focus on trade could yield a significant trade package for the first time in many years.
- Export controls and investment restrictions will continue to be expanded under a second Trump administration.

Contributors: Steve Kho, Sally Laing, Brian Pomper, Joe Fawkner, Josh Teitelbaum, Phylicia Wu