

Making Sense of Trump's Day One and Two Pronouncements on Trade and Tariffs

The first two days of the new Trump administration were marked by pronouncements that portend short-run uncertainty about the tariff environment.

- Although President Trump's past statements had led many people to expect he would issue an Inauguration Day Executive Order imposing tariffs, he instead issued a memorandum directing federal agencies to undertake a variety of trade-related investigations and reviews, with most results due by April 1, 2025.¹
- However, in public comments only hours after his inauguration, President Trump threatened to impose 25% tariffs on goods from Mexico and Canada starting February 1, 2025. The next day, his first full day in office, Trump added a threat to impose a 10% tariff on Chinese goods that would also start on February 1, 2025.

The Memorandum

Trump's memorandum directs a variety of reviews and investigations of trade-related issues that could lead to the imposition of tariffs or other trade restrictions.

Trade Deficits and Universal Tariffs

The memorandum directs an investigation into causes and national security implications of goods trade deficits and directs officials to "recommend appropriate measures, such as a global supplemental tariff or other policies, to remedy such deficits." This direction leaves open the possibility of universal tariffs, which Trump discussed during his campaign. Further, by directing an investigation into the linkage between trade deficits and national security, the memorandum may be attempting to lay the groundwork for Trump to impose universal tariffs by means of executive action invoking the International Emergency Economic Powers Act (IEEPA), instead of by seeking legislation.

Unfair Foreign Trade Practices

The memorandum directs reviews to identify unfair foreign trade practices and directs agencies to recommend remedies under a variety of different authorities, including section 301 of the Trade Act of 1974, sections 337 and 338 of the Tariff Act of 1930, and the IEEPA.

Migration and Fentanyl

The memorandum directs the Secretaries of Commerce and Homeland Security to "assess the unlawful migration and fentanyl flows from Canada, Mexico, [China], and any other relevant jurisdictions and recommend appropriate trade and national security measures to resolve that emergency." By identifying unlawful migration and fentanyl flows as an "emergency" and soliciting a recommendation for responsive "trade ... measures," the memorandum may be attempting to lay the groundwork for tariff actions against Canada, Mexico, and China under the IEEPA.

China-Related Reviews

The memorandum directs several China-related reviews that could lead to imposition of additional tariffs on goods from China and other countries, including reviews of: whether any "tariffs or other measures [are] needed" due to any non-compliance by China with the U.S.-China Phase One Agreement; whether tariff actions are needed to address circumvention of section 301 duties on Chinese goods; and whether China should continue to receive the benefit of Permanent Normal Trade Relations, which allow Chinese goods to receive most-favored-nation base tariffs. The



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memorandum further directs the U.S. Trade Representative to “investigate other acts, policies, and practices by [China] that may be unreasonable or discriminatory and that may burden or restrict United States commerce.” This direction, tracking language from section 301 of the Trade Act, suggests that the Office of the U.S. Trade Representative may conduct an additional China-related section 301 investigation that may lead to the imposition of further section 301 tariffs.

National Security Tariffs

The memorandum also directs reviews that could expand coverage of national security-related tariffs, including a review of whether the Commerce Department should initiate new investigations that could lead to the imposition of national security-based tariffs on products not now subject to them, and a review of exclusions that have been granted from existing national security-based tariffs on steel and aluminum.

Taxes and Currency

The memorandum requires the Secretary of the Treasury to review whether foreign countries subject U.S. companies to “discriminatory or extraterritorial taxes” as well as to review the exchange rate practices of U.S. trading partners and to “recommend appropriate measures to counter currency manipulation or misalignment that prevents effective balance of payments adjustments or that provides trading partners an unfair competitive advantage.”

Intellectual Property Rights

The memorandum directs the Secretary of Commerce to “assess the status of United States intellectual property rights such as patents, copyrights, and trademarks conferred upon [Chinese] persons” and to “make recommendations to ensure reciprocal and balanced treatment of intellectual property rights with [China]” — a directive which suggests the possibility of limiting U.S. intellectual property protections for Chinese entities in response to concerns about treatment of U.S. intellectual property in China.

USMCA

The memorandum directs the U.S. Trade Representative to “make recommendations regarding the United States’ participation” in the United States-Mexico-Canada Agreement (USMCA) and to initiate the public consultation process required in connection with the upcoming trilateral review of the USMCA. The memorandum also directs the U.S. Trade Representative to submit to Congress a report required as a prelude to a review of the USMCA. The USMCA’s first trilateral review is not scheduled until July 1, 2026, and, accordingly, the public consultation process and submission of the report to Congress would not have been expected until some time from now. The direction to the U.S. Trade Representative to take these steps now indicates that the Trump administration may be setting up an early review of the USMCA — likely with the aim of securing changes.

Other U.S. Trade Agreements

The memorandum directs the U.S. Trade Representative to recommend revisions to existing U.S. trade agreements and directs a review of the impact of trade agreements on the volume of federal procurement covered by Buy American and Hire American preferences. While these directions open the door to unwinding some trade agreement provisions, the memorandum also directs the U.S. Trade Representative to identify countries with which the United States could negotiate “bilateral or sector-specific” agreements. This suggests that selective trade liberalization through new agreements is not out of the question in the coming years.

The Threat of Tariffs on Canadian, Mexican, and Chinese Goods

Despite holding off on the immediate imposition of tariffs, on Inauguration Day President Trump renewed the prospect of major tariff action in the very-near term by threatening to impose 25% tariffs on Mexican and Canadian goods starting on February 1, 2025. Trump cited drug trafficking and migration as motivations for the potential action. These tariff threats mirrored a November 2024 social media post by Trump in which he suggested he would sign documents on Inauguration Day to impose 25% tariffs on Mexican and Canadian goods for the same reasons. On the first full day of his administration, Trump, again citing drug trafficking, also threatened to impose a 10%

tariff on Chinese goods beginning on February 1, 2025. This threat mirrored a separate November 2024 social media post in which Trump threatened 10% tariffs on Chinese goods. Trump's asserted rationales for the tariffs on Mexican, Canadian, and Chinese goods, and the implicit suggestion that he would impose tariffs without any administrative process, indicate that if Trump imposes tariffs on February 1, he is likely to invoke the IEEPA as a legal authority for the action. As noted above, Trump's memorandum suggests the possibility that he will designate migration and fentanyl as an "emergency" for IEEPA purposes and will attempt to ground tariffs on Canadian, Mexican, and Chinese goods on that designation. While Trump threatened to use the IEEPA to impose tariffs on Mexico during his first administration, the IEEPA has not previously been used as a legal basis for tariffs, raising the prospect that an IEEPA-based tariff action could face legal challenges.

Takeaways

Uncertainty Around Tariffs — The Likely New Normal

Trump's day one and two pronouncements suggest that businesses will likely face significant uncertainty about the tariff environment for some time to come. The numerous reviews directed in Trump's memorandum point to the likelihood of new tariffs in the future. However, the memorandum leaves open myriad possibilities with respect to targeted countries, goods, levels, timing, and legal bases. Moreover, President Trump's apparent willingness to try resting some tariff actions on the IEEPA — instead of on alternative statutes that would require advance administrative processes — raises the prospect that he could impose tariffs with little or no notice at any point in the future. Trump's threats to impose tariffs on Mexican, Canadian, and Chinese goods on February 1 underscore the uncertainty of the new environment, making clear that passage of Inauguration Day without new tariffs does not remove the prospect of drastic tariff action in the short run. Given the predictability of unpredictability, businesses may wish to take steps now — including when structuring contracts, designing supply chains, and making decisions about inventory — to plan for alternative and potentially rapidly changing tariff scenarios.

Trade Agreements — Two Sides to the Picture

Trump's trade policy memorandum offers reason to believe that trade agreements and trade negotiation will remain a key part of the trade-policy landscape. The memorandum opens the door to new "bilateral or sector-specific" trade agreements and points to an early review of the USMCA, with likely demands for renegotiation of some provisions. These negotiations may offer some U.S. companies opportunities to secure some amount of enhanced foreign market access. However, Trump's threat to impose significant tariffs on Canada and Mexico, free trade agreement (FTA) partners who are also the top two U.S. trading partners, signals that an FTA no longer offers a bankable guarantee that goods from the partner country will be able to enter the United States duty-free over even the medium run. The memorandum's mention of a "global supplemental tariff" and its hint that this could be an "appropriate" response to a "national security implication[]" of trade deficits further calls into question the stability of duty-free access from FTA-partner countries.

Tariff-Related Administrative Processes — Likely Activity Ahead

Trump's memorandum makes clear that the new administration continues to consider a range of legal mechanisms that could lead to the imposition of tariffs. While an attempt to impose tariffs under the IEEPA, without advance administrative process, appears to be very much on the table, the memorandum directs exploration of numerous other mechanisms involving administrative processes — such as investigations of unreasonable trade practices under section 301 of the Trade Act and investigations into the national security effects of imports under section 232 of the Trade Expansion Act. Regardless of whether IEEPA-based tariffs materialize, activity under these other mechanisms appears, based on the memorandum, to be likely. Indeed, private parties can prompt activity under some of these mechanisms by petition. Businesses have incentives to pay attention to opportunities and risks that could be presented by tariff-related administrative proceedings as well as to opportunities to have their views considered.

¹ Results of one review, entailing an Office of Management and Budget assessment of the impact of foreign subsidies on federal procurement and development of a proposal to combat resulting distortion, are due on April 30, 2025.