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POTENTIAL 2025 TARIFF CHANGES AND SUGGESTED ACTIONS (November 12, 2024)

Much has been said and written on tariffs during the campaign and since the re-election of President Donald J. Trump. We anticipate there will be some chaos as changes are made that impact long-established trade practices and rates. However, unlike 2017, it is expected there will be a detailed plan for swift implementation that will focus on tariff and trade restrictions. It is expected that the Trump Administration will exert greater influence over all federal government agencies, avoiding or minimizing the agency disagreements that occurred in 2017-2018.

It is unknown whether similar HTS Chapter 99 Trade Remedies will be implemented or there will be significant increases in regular tariffs or both. Based upon a range of statements made, we can expect tariff increases to be announced by President Trump quickly, perhaps even on his first day in office, January 20, 2025. They may range from 10%-20% across-the-board tariffs on all imports, to 60%-100% tariffs on China products, and 25%-100% tariffs on Mexico products. Expect immediate requests for negotiations by affected countries and retaliatory tariff increases on U.S. exports by other countries.

Unlike 2017, it appears that a major emphasis for the increased tariffs will be to raise government revenue to offset tax reductions. In President Trump's 2023 America First Trade Policy, he proposed to impose "universal baseline tariffs" on "FOREIGN producers" while reducing U.S. taxes. The nonpartisan Tax Foundation recently provided detailed modeling analysis of President Trump's tax policy and tariff proposal.

Clients are urged to immediately contact their U.S. Senators, Congressmen, and potential Trump Administration officials to explain the significant impact of tariffs on your business and to seek exemptions or limit the scope of increases. For clients using FTZs, a special effort is necessary to ensure that FTZ use is encouraged.

As in 2017, there are many existing federal laws that can be utilized:

- **Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862)**

  Under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862), an interested party or the Secretary of Commerce may initiate an investigation to determine the effects on national security of imported articles. Alternatively, the President may direct the negotiation of a trade agreement limiting imports that impair national security.

- **Under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411)**

  Under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411), the U.S. Trade Representative (USTR) may take appropriate action to obtain the elimination of a foreign country's unreasonable or discriminatory act, policy, or practice that burdens or restricts U.S. commerce. These appropriate actions include the imposition of additional duties or other import restrictions. The President has broad authority to modify existing China Section 301 actions, including raising duty rates and unsuspending the previously announced additional duties on products on the China 301 List 4B.

- **Section 201 of the Trade Act of 1974 (19 U.S.C. § 2251)**

  Under Section 201 of the Trade Act of 1974 (19 U.S.C. § 2251) the U.S. International Trade Commission (ITC) may make a determination that an article is being imported in the U.S. in such increased quantities that it may cause harm to a domestic industry producing a like article.

- **Section 122 of the Trade Act of 1974 (19 U.S.C. § 2132)**

  Section 122 of the Trade Act of 1974 (19 U.S.C. § 2132) permits the President to impose additional duties up to 15% for a period not to exceed 150 days to remedy large and serious U.S. balance of payment deficits.

- **Section 125 of the Trade Act of 1974 (19 U.S.C. § 2135)**

  Under Section 125 of the Trade Act of 1974 (19 U.S.C. § 2135) the President may impose additional duties in response to the modification or withdrawal of a benefit to the U.S. provided under an existing trade agreement.

- **Section 338 of the Tariff Act of 1930 (19 U.S.C. § 1338)**

  Under Section 338 of the Tariff Act of 1930 (19 U.S.C. § 1338) the President may declare new or additional duties upon imported foreign articles whenever such country imposes, directly or indirectly, on U.S. goods any unreasonable charge, exaction, regulation, or limitation not equally enforced upon the like articles of every foreign country or discriminates in fact against U.S. commerce, directly or indirectly, in such a manner as to place U.S. commerce at a disadvantage compared with the commerce of any foreign country.

- **International Emergency Economic Powers Act of 1977 (50 U.S.C. § 1702)**

  Under the International Emergency Economic Powers Act (IEEPA) and 50 U.S.C § 1702, the President may regulate the importation or exportation of any property subject to U.S. jurisdiction. While the IEEPA does not explicitly provide for the imposition of duties, President Trump invoked the IEEPA in May 2019 to impose import duties on Mexican products before reversing that decision in June 2019.

- **Section 404 of the Trade Act of 1974 (19 U.S.C. § 2434)**

  Under Section 404 of the Trade Act of 1974 (19 U.S.C. § 2434), the President may "at any time suspend or withdraw" any extension of nondiscriminatory treatment to any country, which makes all products of such country subject to increased Column 2 duty rates.

Besides the aforementioned statutory authority, there are additional considerations:

- **Potential Statutory Changes Before December 31, 2024**

  Congress will return to Washington this week. There are a number of bills in the current Congressional session such as S.5110 and S.1537, that if enacted could change the tariff landscape and facilitate Presidential actions after January 20.

- **Potential Large Tax Reduction Bill with Tariff Increases to Offset Expense**

There are reports that House Ways & Means Committee Chair Jason Smith (R-MO) is preparing legislation that combines a significant tax reduction with a tariff increase.

- **Project 2025 - Mandate for Leadership Heritage Foundation**

  Project 2025 may provide a blueprint for the Trump 2025 federal agency plans. We encourage all clients to read Peter Navarro's The Case for Fair Trade section. Note that the Department of Homeland Security section contains no substantive comments about CBP trade management, nor does the Commerce Department section mention Foreign Trade Zones.

- **Foreign Trade Zones**

  The U.S. Foreign-Trade Zone program offers a unique opportunity to be identified as a "safe-haven" for U.S. firms to encourage U.S. investment and employment exactly as envisioned by Congress in 1934 during the Great Depression when it became law. FTZs support the new Trump Administration "reshoring initiative."

  In 2018, the Trump Administration subjected on-hand non-duty paid FTZ inventory to increased duty payments at the time of entry and did not recognize privileged foreign (PF) status as legally securing the rate of duty at the time of PF status designation. Depending upon the position adopted this time around by the Trump Administration, clients should consider filing Customs entry on all on-hand non-duty paid FTZ inventory before increased tariffs become effective.

  In discussions with Congressional and Trump Administration officials, an effort should be made to advocate for the following treatment for FTZs:

  > Non-duty paid privileged foreign status merchandise admitted into and held in a U.S. foreign-trade zone prior to the effective date of any increased or new tariffs, should not be subject to said increased or new tariffs. Privileged foreign status designation secures the classification and rate of duty (including any duties resulting from Chapter 99 Trade Remedies) as of the date the privileged foreign status designation was elected. All merchandise produced and substantially transformed in a foreign-trade zone authorized by the Foreign-Trade Zones Board should be considered a U.S. product not subject to any new or additional tariffs.

- **Foreign Country Retaliation/Historical Perspective**

  U.S. tariff actions by President Trump which may immediately impact current import supply chains, when implemented, will cause other countries to institute retaliatory actions independently and/or under World Trade Organization (WTO) agreements that will increase tariffs on U.S. exports. There is a significant potential of a global trade war impacting all countries. Historically, the Smoot Hawley Tariff Act of 1930 was the last U.S. effort to dramatically increase U.S. tariffs and restrict imports. Historians credit it with a profound impact globally, both financially and politically.

We have developed detailed information on these subjects which clients may request. We are actively engaged with client Congressional discussions to advocate on tariff considerations and FTZ management actions. Contact or call Brian Murphy, Sean Murray, David Ostheimer, or Marshall Miller to discuss issues/concerns and provide assistance.

IMPORTS EXPORTS FOREIGN-TRADE ZONES

Miller & Company P.C. | 4929 Main Street | Kansas City, MO 64112 US