

A Brief Primer on Tariffs Under the Trump Administration

February 3, 2025

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On February 1, 2025, President Trump **imposed** “a 25% additional tariff on imports from Canada and Mexico and a 10% additional tariff on imports from China. Energy resources from Canada will have a lower 10% tariff.” This situation is constantly evolving, and it remains unclear whether these rates will change, how long the tariffs will last, and if new tariffs will be issued. Irrespective of whether these tariffs stand or remain unchanged, tariffs, and the threat of tariffs, will continue as a key component of the Trump administration's policy objectives throughout this presidency. Impacted companies should actively monitor the implementation and evolution of tariffs under President Trump, while taking proactive measures such as engaging with the administration and in Congressional lobbying efforts, participating in the regulatory process, and pursuing relevant tariff exemptions or exclusions.

This article –

- Provides a concise explanation of what tariffs are, their historical significance, and their primary functions in trade and economic policy.
- Examines the President's statutory authority to impose tariffs under key legislative frameworks, including the International Emergency Economic Powers Act, Section 301 of the Trade Act of 1974, and Section 232 of the Trade Expansion Act of 1962.
- Analyzes how Presidents Trump and Biden utilized these statutory authorities to implement tariffs, with specific examples of their policies and actions.
- Outlines actionable strategies for businesses to mitigate the impact of tariffs, such as pursuing exemptions, engaging in public consultations, and lobbying the government.

I. What is a Tariff?

Tariffs are taxes levied on imported goods. Services are not subject to tariffs, though they may still be impacted by trade agreements or other geopolitical arrangements. Historically, tariffs were a significant source of revenue for the U.S. federal government, but their role diminished after World War II as other forms of taxation became more prominent. Tariffs are paid directly to the federal government by the importers of the affected goods—typically the companies that purchase and bring these goods into the United States.

The purported primary purpose of tariffs is often to protect domestic industries by increasing the cost of foreign goods. This price increase makes foreign products less competitive in U.S. markets and can discourage foreign manufacturers from producing goods for export to the United States. However, tariffs can also serve broader strategic purposes, including as tools of geopolitical negotiation or economic impact in international relations as well as sources of government revenue.

II. Who can Implement Tariffs?

In the United States, the President wields significant authority to impose tariffs, a power constitutionally vested in Congress but delegated to the President through various legislative acts. This delegated authority allows the President to implement tariffs under specific statutory frameworks. Each tariff must be established in accordance with a particular statutory authority, which dictates the procedures for implementation, governance, and scope of the tariff. As such, the President's authority to impose tariffs is not inherent but derived, requiring at least some level of adherence to the statutory parameters set.

III. What are the Primary Legislative Authorities for Tariffs?

Tariffs in the United States are primarily implemented under Section 301 of the Trade Act of 1974 or Section 232 of the Trade Expansion Act of 1962. These statutes are well-defined and have been widely utilized by various Presidents, including President Trump and President Biden, to impose tariffs. However, President Trump invoked the International Emergency Economic Powers Act ("IEEPA") as the legal foundation for imposing the referenced tariffs against Canada, Mexico, and China. While legal experts generally concur that the IEEPA provides authority for such measures, it is believed that this statute has not previously been applied in this specific context (though its predecessor, the Trading with the Enemy Act of 1917, was used to impose tariffs).

a. The International Emergency Economic Powers Act

The IEEPA (50 U.S.C. §§ 1701-1707) authorizes the President to "deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." Broadly, the IEEPA empowers the President, pursuant to a national emergency declared for this specific purpose, to "investigate, regulate, or prohibit," "foreign exchange transactions, transfers of credit, transfers of securities, payments, and [take...] specified actions relating to property in which a foreign country or person has interest—freezing assets, blocking property and interests in property, prohibiting U.S. persons from entering into transactions related to frozen assets and blocked property, and in some instances denying entry into the United States."

i. The IEEPA under President Trump

As stated, President Trump imposed the blanket tariffs against Canada, Mexico, and China pursuant to the IEEPA and related emergency declarations. Of note, President Trump threatened to use the IEEPA in his previous administration to implement a 5% tariff on all imports from Mexico until "the illegal migration crisis is alleviated through effective actions taken by Mexico." President Trump scheduled implementation of the tariffs for June 10, 2019, but on June 7, 2019, President Trump announced that that "the Tariffs scheduled to be implemented by the U.S. against Mexico, are hereby indefinitely suspended."

b. Section 301 of the Trade Act of 1974

Title III (Sections 301-310, 19 U.S.C. §§2411-2420), of the Trade Act of 1974 (19 U.S.C. §§ 2111-2462) titled “Relief from Unfair Trade Practices,” is commonly referred to as “Section 301.” This provision is one of the most frequently utilized by Presidents to impose tariffs. Section 301 provides the United States Trade Representative (“USTR”) with the authority to enforce trade agreements, resolve trade disputes, and open foreign markets to U.S. goods and services. Tariffs may be imposed by the President once the USTR determines that an “act, policy, or practice of a foreign country” is unjustifiable or unreasonable and burdens, restricts, or otherwise harms United States commerce.

Section 301 tariffs are implemented following investigations initiated by the USTR or at the request of interested persons (which includes domestic firms and workers, representatives of consumer interests, United States product exporters, and any industrial user of any goods or services that may be affected). An investigation can take 12-18 months to complete, however it can be expedited under certain circumstances. During the investigation process, the USTR is required to consult with the foreign government in question to address the trade practices at issue. If the investigation finds unfair trade practices or related harm, the USTR, at the direction of the President, may enforce tariffs. When a Section 301 tariff is proposed by the USTR, it will publish and invite public comment from anyone affected by the tariff. Affected parties can also request exclusions or waivers for specific products. Unless renewed, Section 301 tariffs terminate after four years.

i. Section 301 Under President Trump and President Biden

In 2017, the USTR initiated an investigation into alleged unfair trade practices by China. Following a public comment period, the Trump administration imposed a series of tariffs in 2018 and 2019, targeting over \$350 billion worth of Chinese imports. The USTR established an exclusion process allowing stakeholders to request exemptions for specific products covered by the tariffs. In 2022, under the Biden administration, the USTR began a statutorily mandated four-year review of the tariffs first issued in 2018. The review determined that the tariffs remained justified, resulting in the imposition of expanded Section 301 tariffs, including increased rates on batteries, semiconductors, natural graphite, other critical minerals, electric vehicles, solar cells, and steel and aluminum products. Notably, these products, tariff rates, and their effective dates remain subject to modification by the Trump administration.

c. Section 232 of the Trade Expansion Act of 1962

Section 232 (19 U.S.C. 1862) of the Trade Expansion Act of 1962 (19 U.S.C. ch. 7) authorizes the implementation of tariffs where an “article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.” As with Section 301 tariffs, Section 232 tariffs result from investigations. Investigations are initiated “upon request of the head of any department or agency, upon application of an interested party, or upon [motion of the Secretary of Commerce, who then] shall immediately initiate an appropriate investigation to determine the effects on the national security of imports of the article which is the subject of such request.”

The Department of Commerce (“Commerce”) has 270 days from the initiation of the investigation to complete a report for the President, assessing whether the importation of the targeted product poses a threat to U.S. national security and offering recommendations based on its findings. If Commerce issues a negative determination, it notifies the President, and no further action is necessary. However, if Commerce

makes an affirmative determination, the President has 90 days from receipt of the report to either agree or disagree and take action deemed appropriate. The President may choose to impose tariffs, quotas, or other remedies to counteract the adverse effects.

i. **Section 232 Under President Trump and President Biden**

In 2018, President Trump issued global tariffs as a result of a Section 232 investigation. The tariffs applied to the imports of steel and aluminum at rates of 25% and 10%. Certain countries were exempt from the tariffs. President Trump launched several other Section 232 investigations under his first administration, but did not implement tariffs of similar magnitude. In 2023, President Biden issued a proclamation relating to EU tariffs on steel and aluminum, and on July 10, 2024, President Biden issued a proclamation limiting tariff exclusions under Section 232 for certain steel and aluminum imports from Mexico.

IV. What You Can Do

As noted, tariffs are primarily at the discretion of the President but must follow certain statutory requirements. Depending on the tariff and its implementation, entities can take actions to address or mitigate the impact of tariffs affecting them.

- **Tariff exemptions or exclusions** – The government will often allow effected parties to seek exemptions or exclusions to a particular tariff. This was demonstrated in Section 301 tariffs against China during the COVID pandemic and more recently in the four-year review policy set by President Biden and impacting various energy industry products. Affected parties can typically pursue exemptions and waivers by collaborating with the relevant federal agency, submitting detailed comments during public consultations, and engaging directly with the administration.
- **Lobbying the federal government** – An impacted company may lobby Congress, federal agencies, and the administration concerning the effects of tariffs. As stated, the government will often seek public input and comments relating to the implementation of tariffs and their potential impact on companies and the country. Even in instances where tariffs are set pursuant to an emergency declaration, tariffs may be impacted by support, or opposition, by Congress and effected industry sectors. Congress can also repeal or effect tariffs through legislation.
- **Prepare for tariffs to be an ongoing and constantly evolving issue** – Tariffs are likely to continually arise and constantly change under the Trump administration. Companies can prepare by potentially diversifying their supply chains to reduce reliance on imports, closely monitoring trade policies to adapt quickly to changes, aligning their actions with the stated priorities of the Trump administration, and taking a greater role in the development and implementation of federal government policy and legislation.

As demonstrated, tariffs, and the threat of tariffs, will remain a key tool in President Trump's administration, as they were under both his previous term and, to a lesser extent, the Biden administration. Tariffs serve as a critical instrument for addressing national security concerns, combating unfair trade practices, and mitigating economic threats, with the President wielding broad authority to implement them. While the imposition of 25% additional tariffs on Canada and Mexico and 10% additional tariffs on China represents a considerable government action, it remains unclear how much is strategic posturing versus a long-term U.S. policy shift. That said, even in his prior administration President Trump showcased a readiness to implement tariffs decisively. President Trump has also recently emphasized his belief that tariffs can serve as a major source of federal

revenue, positioning tariffs to play a broader role in the administration's economic agenda, including the forthcoming reconciliation bill.

If you have any questions concerning tariffs, or the impacts of the new administration and Congress, including executive orders, significant proposed legislation, and regulation development, please don't hesitate to contact Kilpatrick to discuss concerns, effects, and potential next steps.

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