Trump Administration: Trade Policy Outlook

Issues to Watch

November 26, 2024

Overview

During his first term, President Donald J. Trump pursued an "America First" trade agenda, which blended protectionism and onshoring with a desire to "rebalance" the United States' relationships with global trading partners. President Trump used the trade tools at his disposal – albeit somewhat unconventionally – to achieve what he characterized as "free and fair trade" with a goal of reducing trade deficits, expanding market access, and exacting concessions from US trading partners.

While the forthcoming trade landscape includes a number of unknowns, President Trump's first term is instructive in illustrating how he may approach key issues such as tariffs, the US-China relationship, free trade agreements, the upcoming review of the United States-Mexico-Canada Agreement, the World Trade Organization, and other issues.

Issues to Watch

Personnel

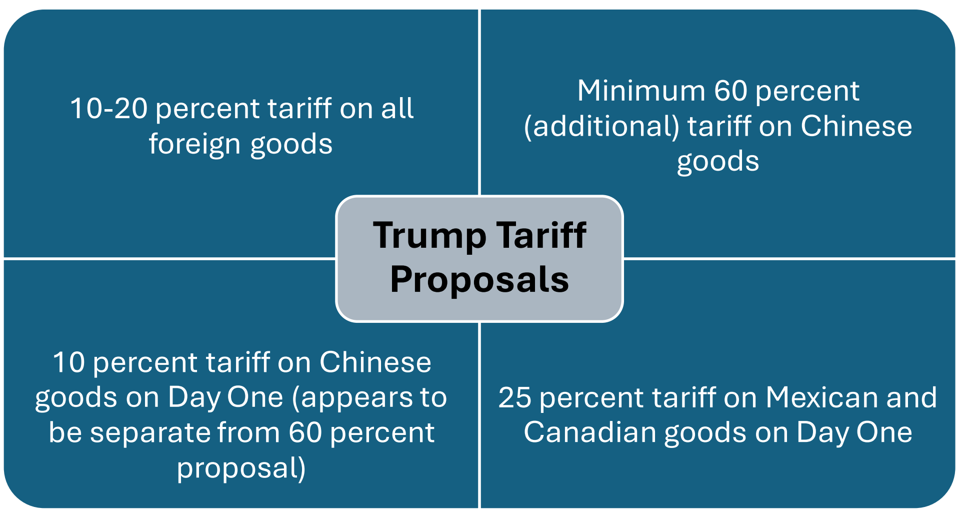
President-elect Trump's Cabinet, economic advisors, and other key personnel will play an important role in carrying out his trade agenda. During President Trump's first term, then-United States Trade Representative Robert Lighthizer played a prominent economic role in the Administration, carrying out the President's US-China tariff strategy, shepherding the United States-Mexico-Canada Agreement through Congress with overwhelming bipartisan support in both the House and Senate, and striking more targeted trade deals with Korea and Japan, among others.

Lighthizer is expected to once again play a role in the incoming Administration; some reports have suggested he may serve as White House "Trade Czar." However, the President-elect also has indicated Howard Lutnick, CEO of Cantor Fitzgerald, will play an important role in carrying out his tariff plans. In nominating Lutnick to serve as Commerce Secretary, President-elect Trump stated, "Lutnick will lead our Tariff and Trade agenda, with additional direct responsibility for the Office of the United States Trade Representative," leaving some questions regarding what role Lighthizer and, separately, USTR will play in the incoming Administration. However, the President-elect's to-be-determined pick for USTR will provide additional clarity on the role the agency will play in the incoming Administration, and an announcement appears imminent.

Tariffs

Tariffs will be a core pillar of President-elect Trump's economic platform as a means by which to reduce trade deficits, resolve trade irritants and "unfair trade," and exact concessions from trading partners. On the campaign trail, Trump pledged to impose a 10 to 20 percent across the board tariff on products from all trading partners (in addition to existing tariffs) and a 60 percent tariff on imported Chinese goods.

This week, President-elect Trump announced he would impose a 25 percent tariff on Canadian and Mexican goods and a 10 percent tariff on Chinese goods on Day One of his Administration, using tariffs to curb illegal immigration and drug trafficking. This pledge echoes a threat in 2019, in which President Trump stated he would use the International Emergency Economic Powers Act (IEEPA) to impose an escalating five percent tariff on Mexican goods to curb unlawful border crossings. However, the Administration ultimately struck an immigration enforcement deal with Mexico and never moved forward with the tariffs.



Importantly, there is some speculation the Trump Administration could utilize tariff revenue as a potential offset as part of a broader tax reform/Tax Cuts and Jobs Act extension in 2025. Republicans, particularly in the House, may desire to creatively use the upcoming expected budget reconciliation to assume tariff revenue without legislatively voting to enact tariffs, something Congress has been loath to do much of the past 80 years since steadily delegating such powers to the Executive Branch.

President-elect Trump has demonstrated his preference for a unilateral approach to trade and utilized the broad tariff authorities granted to the executive to carry out much of his trade agenda in his first term. From 2017-2021, the Trump Administration initiated 17

Section 301 investigations and six Section 232 investigations, many of which resulted in tariffs or other trade remedies.

At a Glance: Presidential Tariff Authorities

Section 301, Trade Act of 1974: May be used to enforce U.S. rights under bilateral and multilateral trade agreements, and to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. The Trump Administration used Section 301 to impose tariffs on Chinese goods and also utilized the statute to investigate and, in some instances, take action to address digital services taxes proposed or implemented by 11 countries, EU beef, the Boeing-Airbus trade dispute, Vietnam timber, Vietnam currency, and Chinese illicit fentanyl.

Section 232, Trade Expansion Act of 1962: Provides the executive with authority to impose duties on imports posing a threat to national security, though it is subject to some procedural requirements, including a national security investigation by the Department of Commerce. The Trump Administration utilized Section 232 to impose tariffs on steel and aluminum and threatened to impose tariffs on foreign auto imports under Section 232.

Section 201, Trade Act of 1974: Provides for safeguard actions to protect domestic industry from import surges. The Trump Administration utilized Section 201 to impose safeguard remedies on solar cells and modules and large residential washing machines.

International Emergency Economic Powers Act (IEEPA): Provides the executive with broad economic powers in response to any unusual and extraordinary threat to national security, foreign policy, or the economy. IEEPA authorities have never been invoked to impose tariffs; however, President Nixon utilized IEEPA's precursor statute, the Trading with the Enemy Act, to impose a 10 percent tariff on all imports in response to a monetary crisis.

A full memo on presidential tariff authorities may be viewed *here*.

President-elect Trump could utilize his broad authority under the International Emergency Economic Powers Act (IEEPA) to move quickly in imposing tariffs early in the incoming Administration – potentially as soon as January 20, as promised. Importantly, there is no precedent for utilizing IEEPA to impose tariffs, though there are several statutory requirements:

- President Trump would issue an Executive Order declaring an "unusual and extraordinary threat to national security, foreign policy, or the economy";
- IEEPA requires the President "in every possible instance" to consult with Congress before exercising IEEPA authorities and "regularly" while IEEPA authorities are being exercised;
- At the time the President would invoke IEEPA authority, the Administration must report to Congress on the circumstances necessitating the exercise of IEEPA authority and why it constitutes an extraordinary and unusual threat, what actions will be taken, and which foreign countries are covered;
- The Administration would then report to Congress every six months thereafter, though the declaration can continue in perpetuity;

- Commerce and Customs and Border Patrol (and perhaps a role for USTR) would implement the tariffs.

President-elect Trump also could opt to use Section 301 to impose his 10 to 20 percent across the board tariff, though the Administration would be required to initiate concurrent Section 301 investigations for each country covered and make a finding of unfair trade practices by each to move forward with remedies.

The extent to which the incoming Administration will rely on Section 301, Section 232, and Section 201, as President Trump did during his first term, remains to be seen. It is not yet clear whether the incoming Administration will carry out the Biden Administration's ongoing Section 301 investigation targeting the maritime, logistics, and shipbuilding sectors, though it may revisit other issues put on hold during the current Administration such as digital services taxes and the Boeing-Airbus trade dispute.

China

President Trump's first term was marked by a tenuous US-China relationship, and the President-elect campaigned on a platform which doubled down on the need to rebalance the US-China trade relationship and enhance US competitiveness. President-elect Trump and his closest advisors have called for a "strategic decoupling" from China, and will likely continue to pursue "balanced trade" through tariffs and investment restrictions.

Tariffs

Trump has threatened to impose a 60 percent minimum tariff on all Chinese goods and a 10 percent tariff on Chinese goods related to illicit fentanyl trafficking, though the process by which the incoming Administration will implement the tariffs is not yet clear. Importantly, the Biden Administration – in large part – retained the Trump Administration's Section 301 tariffs on Chinese goods (albeit with some modifications), suggesting the incoming Administration could potentially modify the tariffs in accordance with the Administrative Procedures Act, rather than initiate a new, time-consuming Section 301 investigation. However, it is plausible the incoming Administration could utilize IEEPA to impose the 10 percent tariff on Chinese goods.

It is unclear whether the Administration will move forward with an across-the-board approach as it relates to increased duties on Chinese goods, or if there will be an effort to tailor duty rates based on strategic versus non-strategic goods, existing supply chains, and medical goods. It also remains to be seen whether the incoming Administration will open a new exclusions process.

Permanent Normal Trade Relations

President Trump has pledged to repeal Permanent Normal Trade Relations (PNTR) with China, a proposal which has seemingly gained traction within the mainstream of the Republican conference and was recently included in the US-China Economic and Security Review Commission's 2024 Annual Report to Congress. Permanent Normal Trade

Relations is a legal designation providing "Most Favored Nation" (MFN) status to certain trading partners, which ultimately results in preferential treatment such as reduced tariff and nontariff barriers. US trading partners with MFN status are generally afforded lower tariff rates and other trade concessions, and the US receives the same in return. Tariff rates for products originating from MFN countries are listed in "Column 1" of the Harmonized Tariff Schedule (HTS), while (generally higher) rates for products originating from countries not covered by MFN are listed in "Column 2."

Congress granted Permanent Normal Trade Relations (PNTR) to China in 2000, which set the stage for China's accession to the World Trade Organization in 2001. Prior to China PNTR, Congress renewed China's MFN trade status on an annual basis (dating back to 1980 under the Jackson-Vanik amendment to the Trade Act of 1974). The enactment of PNTR in 2000 afforded China an indefinite MFN status (i.e., *permanent* normal trade relations), precluding the need for Congress to renew its status on an annual basis.

Importantly, repealing PNTR would require an act of Congress, and there are several approaches which may be debated in the 119th Congress:

- ***H.R. 10127*, Restoring Trade Fairness Act** and ***S. 5264*, Neither Permanent Nor Normal Trade Relations Act** – A bill introduced by House Select Committee on the CCP Chairman John Moolenaar (R-MI) and Rep. Neal Dunn (R-FL) in the House and Senators Tom Cotton (R-AR), Marco Rubio (R-FL), and Josh Hawley (R-MO) in the Senate. The bill would end PNTR for China and there would be no annual congressional vote for recertification. It would create a new tariff column for China, which would impose a minimum 35 percent ad valorem tariff for non-strategic goods and a minimum 100 percent ad valorem tariff for strategic goods (as defined by the Advanced Technology Product List and China's Made in China 2025 plan). The bill would phase in the new tariff column over five years, with 10 percent of the tariff increase implemented in year one, 25 percent of the increase implemented in year two, 50 percent of the increase implemented in year four, and 100 percent of the increase implemented in year five. The bill would also eliminate the de minimis exception for China, Russia, North Korea, and Iran.

- ***S. 125* and *H.R. 638*, China Trade Relations Act** – A bill introduced by Senators Tom Cotton (R-AR), Rick Scott (R-FL), Ted Budd (R-NC), and JD Vance (R-OH) in the Senate and Reps. Chris Smith (R-NJ), Tom Tiffany (R-WI), and Andrew Ogles (R-TN) in the House. The bill would revoke China PNTR and require the President to issue a determination with respect to its MFN status on an annual basis, subject to congressional override. The bill would also expand the list of human rights and trade abuses under the Jackson-Vanik Amendment that would render China ineligible for MFN status.

- ***S. 906* and *H.R. 4673*, Ending Normal Trade Relations with China Act of 2023** – A bill introduced by Senator Josh Hawley (R-MO) in the Senate and Rep. Jim Banks (R-IN) in the House. The bill would revoke China PNTR, move China to Column 2, and allow the President to impose duties at rates higher than those outlined in Column 2.

Forced Labor
The Uyghur Forced Labor Prevention Act (UFLPA) was signed by President Biden in December 2021 and prohibits the importation of goods produced using forced labor in the Xinjiang Uyghur Autonomous Region of China. To date, the Department of Homeland Security has added 107 companies suspected of using Uyghur forced labor to its entity list, and Members of Congress on both sides of the aisle have called on the Administration to expand the list and robustly enforce UFLPA. With the nomination of Senator Marco Rubio (R-FL), the lead sponsor of UFLPA, to serve as Secretary of State, Chinese forced labor issues likely will be an area of focus for the incoming Administration.

De Minimis
On September 13, 2024, President Biden announced his Administration would be issuing a Notice of Proposed Rulemaking (forthcoming) to modify the de minimis exception for certain goods covered by existing Section 301, Section 232, and Section 201 trade remedies and require data collection at Customs. Currently, shipments valued at less than $800 may enter the US duty and tax-free, though the Administration and Members of Congress on both sides of the aisle have raised concern regarding the increased volume of de minimis shipments with the rise of e-commerce – particularly for Chinese goods. While the Administration has not yet released its Notice of Proposed Rulemaking, it is expected before President Biden leaves office – potentially as soon as early December.

The announcement followed several legislative efforts to make changes to de minimis, including a bill reported out of the House Ways and Means Committee last April, which was passed with only Republican votes but closely mirrors the Administration's proposal. House Republicans are reportedly making a push to include the de minimis proposal as part of the National Defense Authorization Act, though it is not yet clear whether it will ultimately make the cut.

De minimis reform likely will be an issue for the 119th Congress amid other legislative proposals to restrict de minimis eligibility for products beyond those subject to existing trade remedies. Senate Finance Committee Chairman Ron Wyden (D-OR) introduced a bill in August to also eliminate the de minimis threshold for "import sensitive" products, as defined by the Generalized System of Preferences (GSP) program. Rep. Earl Blumenauer (D-OR), along with Senator Sherrod Brown (D-OH) and Senator Marco Rubio (R-FL) have introduced the bipartisan, bicameral Import Security Fairness Act, which would eliminate the de minimis threshold for countries that are both non-market economies and on USTR's Priority Watch List (i.e, China and Russia). As previously mentioned, House Select Committee on the CCP Chairman John Moolenaar (R-MI) also recently released a bill, which would revoke China's PNTR status, but also includes provisions to eliminate the de minimis exception for China, Russia, Iran, and North Korea.

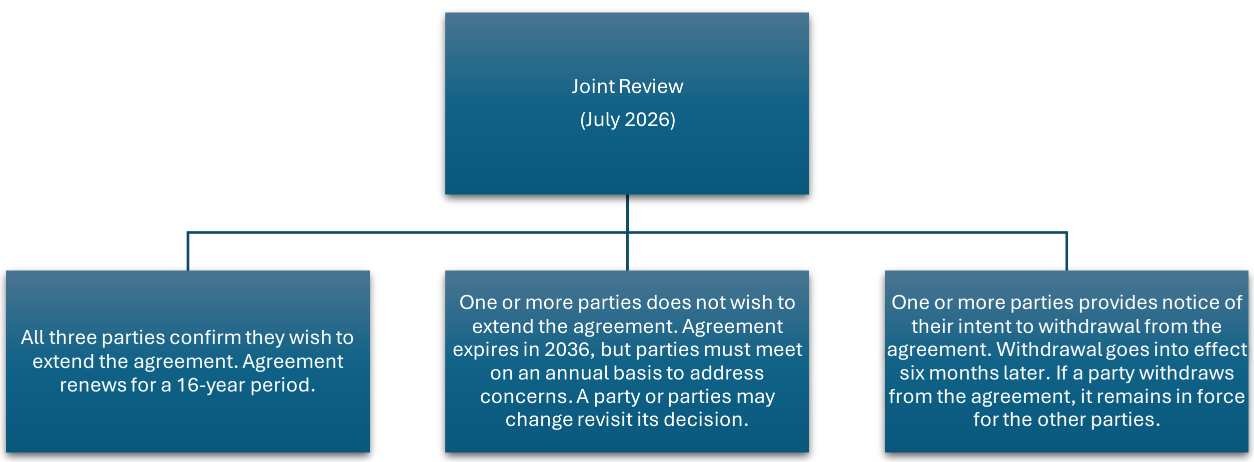
De minimis likely will be a continued area of focus in the incoming Administration and the 119th Congress given the bipartisan support for reform.

<u>USMCA Review</u>

In 2026, the Trump Administration will be tasked with reviewing the United States-Mexico-Canada Agreement (USMCA), one of President Trump's most significant legislative accomplishments during his first term. Article 34.7 of the United States-Mexico-Canada Agreement (USMCA) stipulates the agreement will terminate 16 years after its entry into force (July 1, 2036) unless each party confirms, at a joint review held by the Free Trade Commission (FTC), that it wishes to continue the agreement for a new 16-year term. The clause is intended to allow parties to the agreement to address emerging economic and political challenges.

The first joint review will take place on the sixth anniversary of the agreement, July 1, 2026, during which parties will discuss how the agreement is working and review any recommendations for improvement.

POSSIBLE OUTCOMES



President-elect Trump has indicated he will utilize the review process – and perhaps even the threat of withdrawal – to address trade irritants and exact concessions from Mexico and Canada. While Mexico and Canada have characterized the 2026 forum as a *review* of the agreement, the incoming Administration has indicated it views this process as an opportunity to *renegotiate* certain aspects of the deal. The issues before the three parties are broad and complex, though we expect the US will focus on a number of priorities, including: Canadian dairy; Canadian digital services taxes; Canadian softwood lumber; Mexican labor; Mexican judicial reform; Mexican agricultural biotechnology; Mexican energy; auto rules of origin; and Chinese transshipment; among others.

Importantly, USTR is required to publish a public notice 270 days before the review begins (i.e., early October 2025) and must invite public comment and conduct hearings. These consultations are intended to gather input from industries, labor unions, environmental groups, and the public. USTR must also report to Congress on USMCA-related issues at least 180 days before a joint agreement review (i.e., early January 2026). Additionally, USTR is required to brief the appropriate congressional committees regarding the positions expressed by member countries no later than 20 days after the joint review.

A full memo on the USMCA review may be viewed here.

Free Trade Agreements

While President-elect Trump has employed an "America First" approach to trade, his first term resulted in significant economic agreements with key trading partners, such as the United States-Mexico-Canada Agreement (USMCA), a revised Korea-US Free Trade Agreement (KORUS), a US-Japan Agreement, and a Phase One trade deal with China, among others.

The incoming Trump Administration is unlikely to pursue free trade agreements in the traditional sense, but it may utilize leverage derived from tariffs (or the threat thereof) and other trade policies to exact concessions and market access from trading partners.

The United Kingdom may be one potential exception, as President-elect Trump could revive US-UK trade discussions which kicked off in May 2020 but ultimately did not move forward during the Biden Administration. During President Trump's first term, the US and UK held four rounds of negotiations on a potential trade agreement covering: trade in goods; sanitary and phytosanitary measures (SPS); customs and trade facilitation; rules of origin; technical barriers to trade; good regulatory practices; trade in services; digital trade; investment; procedural fairness for pharmaceuticals and medical devices; state-owned enterprises; labor; environment; anti-corruption; among others. Nevertheless, there are major sticking points which could complicate the path forward for a potential US-UK trade agreement, including access to the National Health System and UK agriculture standards and practices, among others.

Of note, the Biden Administration never requested Congress reauthorize Trade Promotion Authority (TPA), which expired in July 2021. TPA provides for fast-track consideration of free trade agreements, provided certain consultation requirements are met. During his first term, President Trump generally pursued "executive agreements," which were signed without congressional approval (except for USMCA). Absent Trade Promotion Authority and given his preference for unilateral trade policy, any deals struck by the incoming Administration likely would circumvent the need for congressional approval.

World Trade Organization (WTO)

President-elect Trump has been critical of the WTO and threatened to withdraw from the body several times throughout his first term. In 2019, the US vetoed the appointment of

Appellate Body judges, effectively bringing the WTO's dispute settlement mechanism to a halt. While the Biden Administration has stated its support for the WTO, it has also continued to block attempts to initiate the Appellate Body selection process, has been critical of WTO rulings on Section 232 steel and aluminum tariffs, and withdrew from e-commerce negotiations on free cross-border data flows, preventing data localization mandates and requiring source code review.

It is unclear how the incoming Administration might approach the WTO, though President-elect Trump may revive his threats to withdraw from the organization. WTO Director-General Ngozi Okonjo-Iweala, whose appointment President Trump blocked in 2020, is running unopposed for a second term. However, there has been some concern over efforts to expedite her reappointment to the post, which supporters have argued are intended to provide time to prepare for the next Ministerial Conference and critics argue are intended to install Okonjo-Iweala for a second term before President-elect Trump takes office. While the President-elect has not made recent comments on Okonjo-Iweala's nomination, former USTR Robert Lighthizer has characterized her as "China's ally in Geneva" and any effort to expedite the process may further inflame the President-elect's rhetoric towards the WTO.

Other Economic Initiatives

President-elect Trump has indicated he will pull out of the Indo-Pacific Economic Framework for Prosperity (IPEF), an economic initiative between the US and thirteen Indo-Pacific countries focused on four pillars: connected economy; resilient economy; clean economy; and fair economy. On the campaign trail, Trump criticized the IPEF, stating, "Under the next Administration, the Biden plan for 'TPP Two' will be dead on day one."

The President-elect has not indicated how he may approach other economic initiatives initiated under the Biden Administration, such as the US-EU Trade and Technology Council (TTC), the Joint US-EU Cooperative Framework for Large Civil Aircraft, or the Americas Partnership for Economic Prosperity (APEP).

There are also several expiring or expired trade preference programs Congress may look to reauthorize next year including the Generalized System of Preferences (GSP), which expired on December 31, 2020; the Miscellaneous Tariff Bill (MTB), which expired on December 31, 2020; Trade Adjustment Assistance (TAA), which expired on July 1, 2022; and the African Growth and Opportunity Act (AGOA), which expires on September 30, 2025. Reauthorization of the aforementioned programs likely would require some Democratic support to move through regular order and it is not yet clear what the appetite will be for a bipartisan trade package in the 119th Congress.

Role for Congress

With Republican control of both the House and the Senate, Congress is certain to provide broad deference to the President-elect in carrying out his trade agenda. Nevertheless, there likely will be bills, letters, statements in hearings, and other oversight – particularly from congressional Democrats – to evaluate and curb the President's trade authorities.

Last week, 10 Democrats on the House Ways and Means Committee introduced a bill – the Prevent Tariff Abuse Act – which would prohibit the President from using IEEPA to impose duties and import quotas.

Senator Rand Paul (R-KY) also introduced legislation in September, which would subject tariffs to congressional approval.

In recent years, there have been other unsuccessful legislative efforts to limit presidential tariff and trade authorities:

- In 2019, then-Rep. Mike Gallagher (R-WI) and then-Senator Pat Toomey (R-PA) introduced the Bicameral Congressional Trade Authority Act of 2019 (H.R. 940/S.287), which would amend the Trade Expansion Act of 1962 to require congressional approval for tariffs imposed on national security grounds under Section 232. The bill was reintroduced in the Senate by Senator Toomey in 2021 (S.2934), and again in the House by Rep. Ron Kind (D-WI) (H.R.8666) in 2022. Rep. Gallagher reintroduced the bill again alongside Rep. Don Beyer (D-VA) in 2023 (H.R. 5188).

- Also in 2019, then-Senator Rob Portman (R-OH) and then-Rep. Kind introduced S. 365 and H.R. 1008, the Trade Security Act of 2019, which would limit a president's ability to impose tariffs for national security reasons by requiring the Department of Defense, rather than the Department of Commerce, to justify the national security basis for such tariffs. Senator Portman reintroduced the bill in 2021 (S. 746).

- Also in 2019, then-Rep. Stephanie Murphy (D-FL) and Senator Tim Kaine (D-VA) introduced the Reclaiming Congressional Trade Authority Act (H.R. 3477/S. 899), designed to limit the Executive Branch's ability to modify duty rates for national security reasons under the Trade Expansion Act of 1962, the Trading with the Enemy Act, and the IEEPA.

- There have also been legislative efforts to strengthen congressional oversight over tariff exclusions. Notably, in 2021, Senator Chuck Schumer (D-NY) introduced S. 1260, the United States Innovation and Competition Act of 2021. Section 73001 of the bill establishes a formal tariff exclusions process at USTR, which would require consultation with Congress; then-Rep. Eddie Bernice Johnson (D-TX) introduced the companion bill, H.R. 4521, in the House.

Conclusion

President-elect Trump will move quickly to announce and impose tariffs and implement much of his trade agenda – as soon as within the first 100 days of his Administration. While the landscape includes a number of unknowns, the President-elect will utilize his broad executive authority to make good on his tariff-related campaign pledges and will work with a Republican-controlled House and Senate to advance other concepts requiring congressional approval, such as a repeal of China PNTR. President Trump's first term provides a useful guidepost in demonstrating how the incoming Administration will approach trade policy and its implications for the business community and other stakeholders as they navigate a rapidly evolving state-of-play.