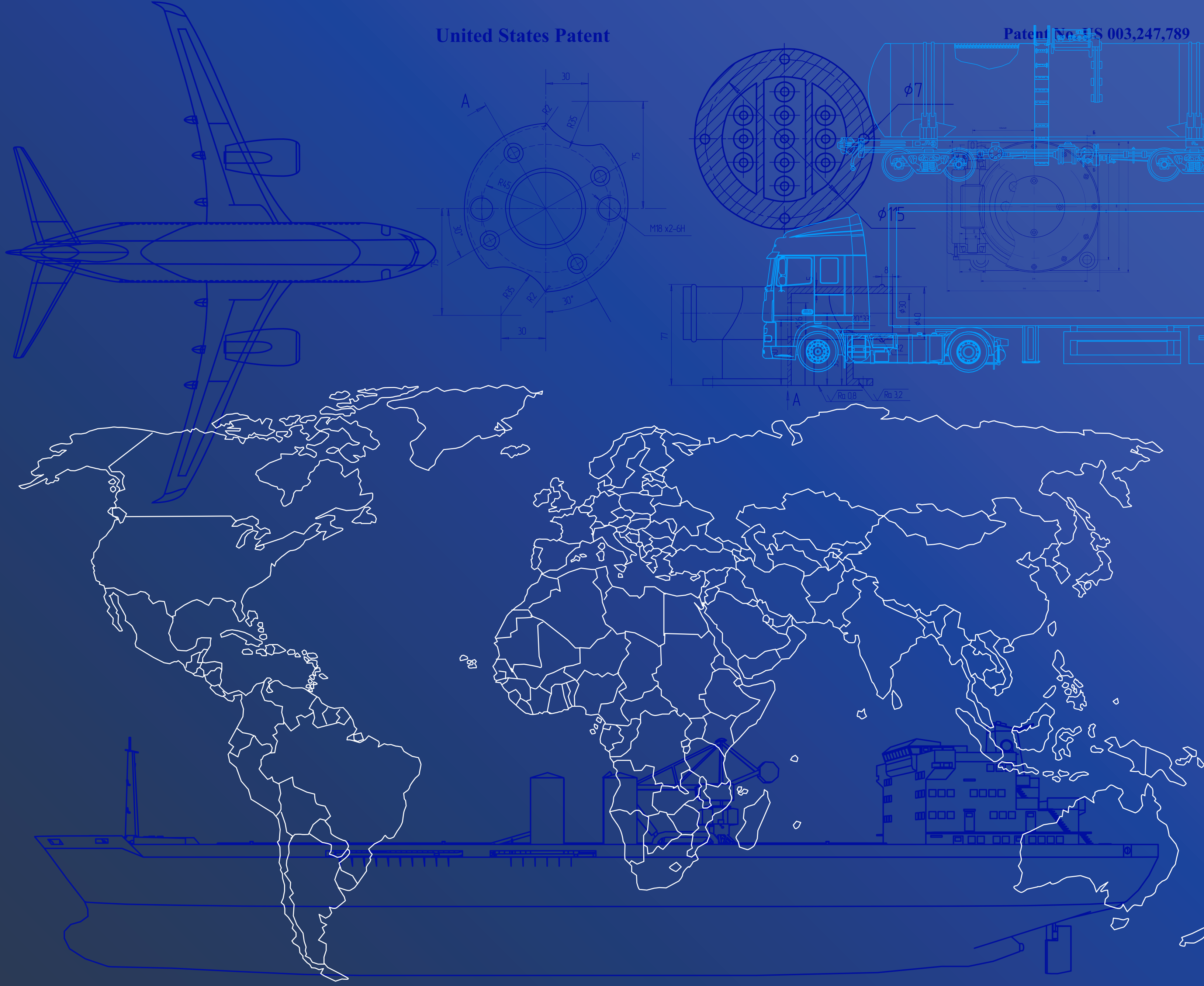
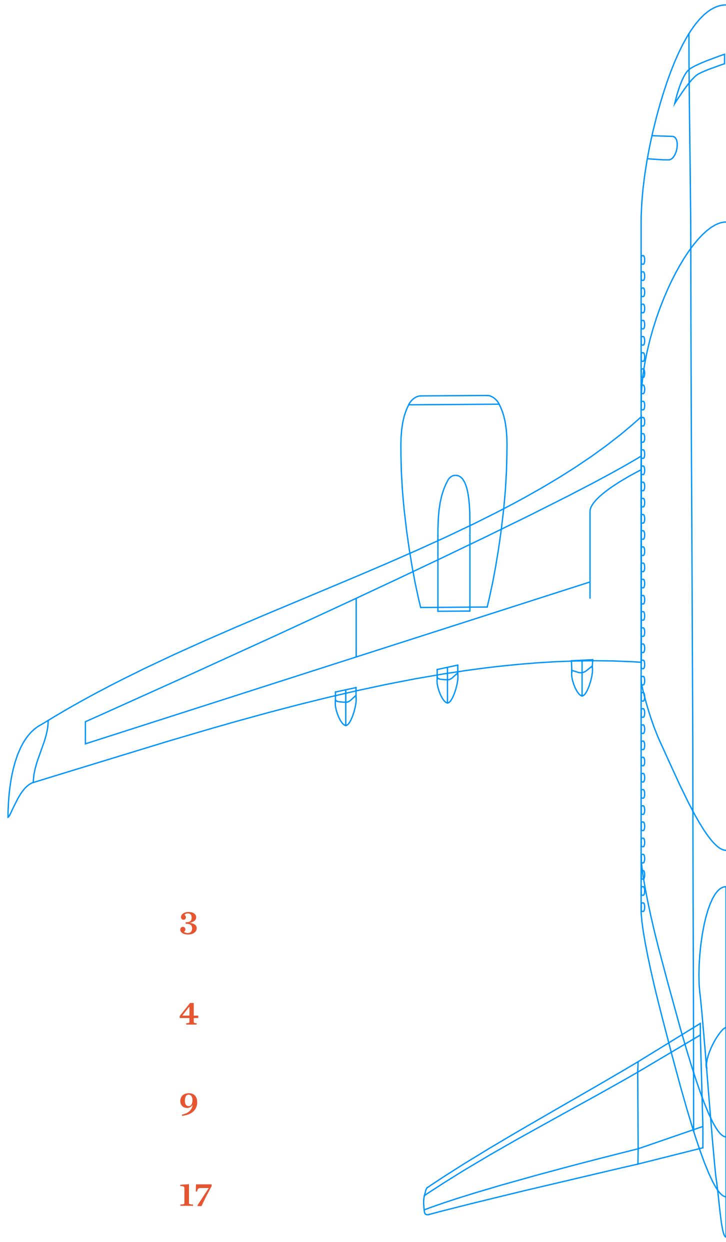


International Trade Law

2024 Year in Review & Outlook for 2025

HUSCH BLACKWELL



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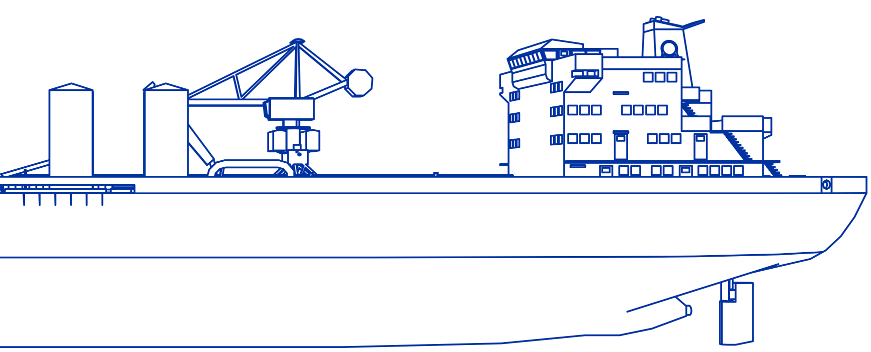


Introduction

While much of the world has been preoccupied with election politics in 2024 and how it impacts global trade, the real story is unfolding on a much longer arc and will shape policies well into the future.

At the end of 2025, we will have reached the end of the first quarter of the 21st century, as hard as it is to imagine. At such a waypoint in time, it is worth reflecting on the changes we have seen since the turn of the century, if only to illustrate the vast distance between then and now.

While deglobalization is an overwrought term, the nature of our globalized system of commerce has changed dramatically. Twenty-five years ago, trade liberalization was taking something of a victory lap, as China and Russia were deep in negotiations that would lead to their eventual membership in the World Trade Organization and international trade topped 50% of world GDP for the first time ever. Since then, however, the pace of globalization has slowed greatly, owing to the confluence of several factors, including successive financial and sovereign debt crises, emergent geopolitical rivalries, rapid technological change, and the lingering perception of some that globalization is to blame for domestic economic insecurity.

Each of these factors has deep roots and casts a long shadow, and as much as the first Trump administration gave expression to some of these sentiments, his second administration will have to wrestle with the large, historical forces that now threaten to diminish the prosperity and security that the globalization of supply chains has provided. This will be no easy task.

This year's report—our team's sixth annual report—discusses recent developments in international trade policy, regulation, and enforcement and how those areas might evolve in the coming year, including tariffs and trade remedies, export controls and sanctions, intellectual property infringement, and supply chain-related issues. Our hope is that the developments and trends presented here will assist you in taking a proactive approach as enforcement activity increases amid the continuing reconfiguration of global trade.

Cortney O. Morgan

Cortney Morgan

Leader of Husch Blackwell's International Trade & Supply Chain practice

Tariffs & Trade Remedies

Tariffs and trade remedy actions will continue to be a hot topic in 2025, as the incoming second Trump administration has announced its intention to impose additional tariffs on all imports into the United States.

While the focus of U.S. trade policy has been China, several trading partners—including Canada and Mexico—will be the focus of attention for the foreseeable future. With the Republican Party taking control of both houses of Congress, it is likely that we will see an unprecedented increase in both tariffs and import restrictions in 2025. There is a panoply of tariff provisions which could be called into use. Some target national security, others focus on economic issues and security, and while some require an unfair act, other provisions do not require any underlying violation.

Tariffs can benefit national economies when instituted strategically and in moderation. There is a need to impose equalizing duties when trade competitors use price undercutting to gain market share, which is addressed by antidumping duties. Similarly, when governments subsidize companies to promote or increase exports to flood another market, duties are imposed to negate the effects of unfair competition. However, the use of tariffs to force behavioral change can potentially cause harm to the U.S. domestic economy. Significantly, in most instances tariffs and duties are paid by U.S. importers, and U.S. companies need to source raw materials, semi-finished goods, or other inputs from abroad.

Since the 1930s, U.S. trade policy has focused on lowering tariffs and strengthening a rules-based system of global trade. We believe that the goal of instituting blanket tariffs as proposed by the new administration is to curtail the U.S. trade deficit—which continues to trend higher—and support U.S. manufacturing operations and employment. Notably, the efficacy of blanket tariffs is mixed, and their past use has yielded a body of evidence filled with unintended consequences.

U.S. TRADE DEFICIT SINCE OCTOBER 2022

Good and services, seasonally adjusted

Source: *U.S. Bureau of Economic Analysis, "U.S. International Trade in Goods and Services," November 5, 2024*

U.S. Tariffs Provisions Currently in Use

Section 301 of the Trade Act of 1974

Section 301 of the Trade Act of 1974 allows the president to respond to foreign trade practices disadvantaging the United States. These practices include violating Free Trade Agreements (FTAs); unjustifiable or unreasonable discrimination against U.S. goods; and anything that unnecessarily burdens or restricts U.S. commerce. The president has the power to respond to such practices by imposing tariffs, revoking an FTA, or reaching an agreement with the offending country to stop the unfair conduct. Section 301 was a vehicle used by the first Trump administration to impose tariffs of up to 25% on imports from China after finding that China's trade practices related to technology transfer, intellectual property, and innovation unfairly discriminated against the U.S. and burdened or restricted U.S. commerce. During his term, President Biden maintained (and in certain instances increased) those tariffs, which are still in use today.

Section 232 of the Trade Expansion Act of 1962

Section 232 authorizes the president to impose tariffs, sanctions, and other economic penalties on countries or items posing unusual and extraordinary threats to U.S. national security. Currently, the U.S. imposes Section 232 tariffs on certain steel and aluminum imports as well as derivative products from all countries with exceptions for Canada, Mexico, and Australia. The U.S. also maintains quota arrangements with Argentina, Brazil, South Korea, the European Union, Japan, and the United Kingdom as an alternative to Section 232 tariffs. Previous legal challenges to tariffs imposed under Section 232 have failed as the courts are typically deferential to the executive when it comes to national security issues.

Section 201 of the Trade Act of 1974

Section 201 tariffs, often referred to as safeguard actions, protect U.S. industries from having to unfairly compete with foreign products. For the president to act under Section 201, the International Trade Commission (ITC) must first find that an article is being imported into the United States in such increased quantities that it is a substantial cause of serious injury to a domestic producer of like products. Upon such a finding by the ITC, the president can take any feasible action within his powers to facilitate positive adjustments to the affected industry, facilitating the U.S. domestic industry's ability to compete with imports after the termination of the safeguard measures.

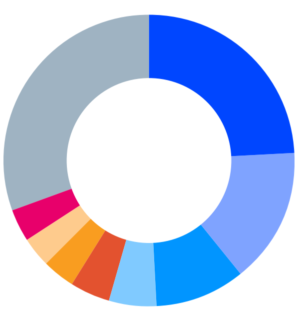
Section 701 and 731 of the Tariff Act of 1930

Antidumping and countervailing duties (AD/CVD) continue to be an integral part of any U.S. trade policy. Economic dumping occurs when foreign exporters sell goods at prices in the U.S. at less than the price charged in their home market. These "dumped" imports cause—or threaten to cause—material injury to the U.S. domestic industry. Countervailing duties include the assessment of additional duties when foreign governments provide assistance and subsidies to manufacturers that export goods to the U.S. enabling the foreign manufacturer to sell the goods at lower prices and injure U.S. domestic manufacturers.

The pace and intensity of AD/CVD enforcement with new investigations, rigorous enforcement in the form of circumvention investigations, and ongoing Customs Enforce and Protect Act (EAPA), cases all increased in 2024 and are likely to continue in 2025 in order to address concerns about the continued reliance on imports in the U.S. economy. In 2024, the Department of Commerce administered approximately 722 AD/CVD orders, imposed over 45 new AD/CVD orders, and is currently conducting over 130 new investigations that it hopes to conclude in 2025.

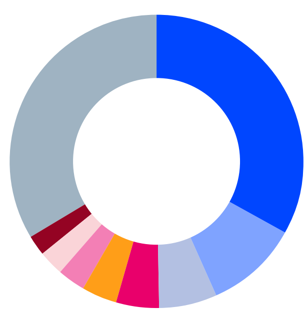
AD/CVD PROCEEDINGS

INVESTIGATIONS BY COUNTRY



CHINA	27	TURKEY	4
INDIA	17	CAMBODIA	4
VIETNAM	11	TAIWAN	4
THAILAND	6	OTHER	34
MALAYSIA	5	TOTAL	112

TITLE ORDERS/SUSPENSION AGREEMENTS BY COUNTRY



CHINA	237	JAPAN	22
INDIA	73	INDONESIA	20
SOUTH KOREA	46	RUSSIA	4
TAIWAN	33	OTHER	238
TURKEY	30	TOTAL	716

Source: *U.S. Department of Commerce, International Trade Administration, "AD/CVD Proceedings."*

Column 1 of the Harmonized Tariff Schedule of the U.S. (HTSUS)

Column 1 of the HTSUS is reserved for countries with Permanent Normal Trade Relations (PNTR), also referred to as Most Favored Nation (MFN) status. PNTR countries are given a specialized duty rate, usually much less than the rate applied to a non-PNTR nation. The new administration could use Column 1 and PNTR status as leverage to restrict imports from certain nations, although not unilaterally. In that regard, Congress has the power to set Column 1 duty rates and give or revoke PNTR status through legislation, as we saw with Russia in 2022. This is a tool that will likely be proposed to increase tariffs on goods from China.

Tariff Provisions Not Being Utilized, But Which Could Be Deployed

The following statutory provisions enabling the president to impose tariffs on imported goods are currently on the books, although they have not been used for decades (if at all).

Section 203 of the International Economic Emergency Powers Act (IEEPA)

IEEPA requires an unusual or extraordinary threat to national security, foreign policy, or the U.S. economy. The president may then declare a national emergency with respect to that threat. When those conditions are met, IEEPA authorizes the president to regulate the importation of any property in which any country or foreign national thereof has an interest. There is speculation that the Trump administration could use IEEPA to authorize its tariff plans on the basis that trade deficits threaten national security. Significantly, IEEPA is the successor to the Trading with the Enemy Act (TWEA), which President Richard Nixon used to impose a 10 percent tariff due to a large balance of payments deficit. To date, no president has invoked IEEPA in an executive order relating to tariffs, and doing so would require substantiating "an unusual and extraordinary threat" with respect to which a national emergency has been declared.

Section 122 of the Trade Act of 1974

When fundamental international payment problems require special import measures, Section 122 authorizes the president to impose an additional 15% tariff for 150 days. These payment problems include addressing large and serious U.S. balance-of-payments deficits; preventing the imminent and significant depreciation of the dollar in foreign currency markets; or cooperating with other countries in correcting an international imbalance of payments. President Trump could potentially use Section 122 to impose some of the proposed tariffs, but the scope of this provision is narrower than that of other tariff measures, and any tariffs imposed under Section 122 would be limited to 150 days unless extended by Congress.

PROPOSED CHINA-RELATED LEGISLATION

Introduced in November 2024, just after the U.S. presidential election, the Restoring Trade Fairness Act would strip China of its PNTR status, create a new HTSUS column specific to China, and impose a 100% tariff on any items deemed to be "critical to national security." The bill includes a laundry list of items that would be deemed to be critical to national security, separated by HTSUS headings. In that regard, the list includes but is not limited to televisions, cameras, semiconductors, solar cells and modules, and certain drugs and vaccines.

The bill would also eliminate the de minimis exception for low-value shipments (commonly referred to as Section 321), no longer allowing shipments from China valued at less than $800 to be admitted into the U.S. duty free.

Countries with a PNTR designation are subject to the preferential duty rates in Column 1 of the HTSUS as explained above. China was granted PNTR status in 2001 based on its WTO membership. The bill asserts that the U.S. has authority to revoke China's PNTR status, despite its WTO membership status, because there is no mechanism at the WTO to remove a member government that has failed to comply with the standards endorsed by other WTO members.

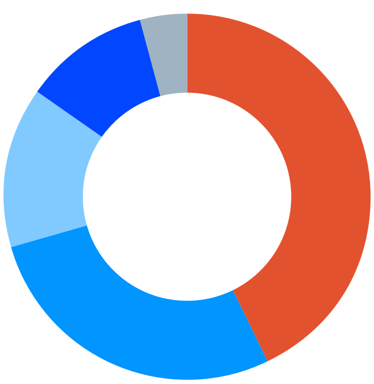
Section 338 of the Tariff Act of 1930

This section allows for the imposition of tariffs of up to 50% on products from any country that discriminates against U.S. commerce. Section 338 authority is triggered when the president finds that a foreign country has either (1) imposed any "unreasonable charge, exaction, regulation, or limitation" on U.S. products that is "not equally enforced upon the like articles of every foreign country"; or (2) that the foreign country "discriminates in fact against the commerce of the United States ... in respect to customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition" so as to place the commerce of the United States at a disadvantage compared to the commerce of any foreign country. This statutory provision has not been used in over 70 years.

Forced Labor and Uyghur Forced Labor Prevention Act (UFLPA)

Starting in 2022, U.S. Customs and Border Protection (CBP) has vigorously enforced the rebuttable presumption that goods made in whole or in part in the Xinjiang Uyghur Autonomous Region (XUAR) in China are made with forced labor. The Biden administration's Forced Labor Enforcement Task Force (FLETF) has increased enforcement efforts against imports from Chinese entities linked to forced labor in the XUAR. Twenty-nine companies were added to the UFLPA Entity List on November 22, 2024, bringing the total number of companies to over 100. This recent announcement marks the largest expansion of companies on the list of banned entities. The UFLPA presumptively bars goods being imported into the U.S. from companies on the UFLPA Entity List as part of a broader strategy to counter unfair Chinese trade practices. The law, which President Biden signed in 2021, targets imports from Xinjiang, a region known for producing cotton, tomatoes, and solar-panel components, amid accusations of human rights abuses against Uyghurs and other minorities. The UFLPA has prompted businesses to scrutinize their supply chains to avoid having shipments detained or blocked, with CBP reporting almost $4 billion in shipments temporarily blocked since the law's implementation in June 2022. Forced labor and UFLPA will continue to be an important tool in any U.S. trade policy moving forward.

UFLPA ENFORCEMENT: VALUE OF BLOCKED SHIPMENTS BY COUNTRY OF ORIGIN*



**From June 2022 to November 1, 2024.*

Source: U.S. Customs and Border Protection

In a significant decision regarding enforcement of the UFLPA, the U.S. Court of International Trade (CIT) denied Ninestar Corporation and its affiliates' request for a preliminary injunction to block their addition to the UFLPA Entity List. This ruling is a notable development in the ongoing legal challenges faced by companies included on the UFLPA list, which identifies entities the U.S. government suspects of being involved in forced labor related to Uyghurs in China. The court's decision to deny the preliminary injunction was based on its finding that Ninestar failed to demonstrate irreparable harm and that the balance of equities favored the government. The court pointed out that the financial and reputational damages claimed by Ninestar as a result of the listing were foreseeable and likely anticipated by Congress when the UFLPA was enacted. Therefore, the court concluded that injunctive relief was unnecessary, as the consequences of the listing were not unexpected or extraordinary. This case, set for trial on January 8, 2025, is expected to play a critical role in shaping the future implementation and enforcement of the UFLPA.

Post-*Chevron*, Is Post-*Maple Leaf* Coming?

The June 2024 U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo* marked a profound shift in administrative law by eliminating judicial deference to agency interpretations of ambiguous statutes. Previously, under the framework established by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* courts typically deferred to an agency's interpretation of an ambiguous statute, a practice known as *Chevron* deference; however, under *Loper Bright*, courts must now conduct a *de novo* review of statutory construction, meaning they must independently determine the best interpretation of a statute without relying on agency interpretations, even when the statute is ambiguous.

In a similar vein to *Chevron* deference, in matters concerning presidential actions, the U.S. Court of Appeals for the Federal Circuit's 1985 decision in *Maple Leaf Fish Co. v. United States* set a precedent by limiting judicial intervention in presidential actions. The *Maple Leaf* doctrine holds that presidential actions may only be overturned if there is a "clear misconstruction of the governing statute, a significant procedural violation, or action beyond the delegated authority."

The Federal Circuit faced its first post-*Chevron* challenge when solar industry groups recently sought a rehearing of Presidential Proclamation 10101, which modified safeguard duties on solar panels. The original opinion, issued by the CIT, had relied on the Federal Circuit's *Maple Leaf* precedent, which generally upheld deference to presidential actions. The petitioners, however, argued that, in light of *Loper Bright, Maple Leaf* has also been overturned, thus requiring the court to apply the new *de novo* review standard to the case.

In its supplemental opinion, the Federal Circuit applied the *de novo* standard of review advocated by the petitioners. The issue was whether Section 204 of the Trade Act of 1974, which grants the president the authority to grant a "reduction, modification, or termination" of an existing safeguard, also authorizes the president to "modify" the safeguard in a way that makes it more trade restrictive. Despite applying the new standard, the court ultimately reached the same conclusion as before, finding that the case did not present a reason to reconsider the *Maple Leaf* standard.

The reason these cases will be of import in 2025 is that in the event of the imposition of new tariffs or trade remedy actions, the question of whether there is statutory authority to enact such revisions or modifications will become a key consideration.

Monitoring and Engagement Will Be Essential for All Affected Stakeholders

Increased tariffs and trade remedy actions that are linked to macro-level policy priorities have and will continue to create significant uncertainty as it relates to potential collateral consequences for import-reliant industries. U.S. exporters also may be caught in the crossfire as trading partners enact retaliatory measures on strategic U.S. sectors. The first six months of the new administration will establish the tone of the incoming administration's trade agenda. The most important step is to monitor developments carefully, taking seriously the statements by President-elect Trump to move quickly with aggressive action on tariffs and potentially other import restrictions. Supply chain flexibility and early and frequent engagement with leaders in the administration and in Congress will be essential steps for parties affected by the second Trump administration's trade actions.

Export Controls & Sanctions

As geopolitical rivalries intensify, the U.S. government has sought to maintain tighter controls on exports to—as well as outbound investment in—certain countries, adding significant risk and complexity to corporate compliance efforts.

Throughout 2024, the Biden administration used a "whole-of-government" approach to control the export of strategic goods to and investment in countries whose strategic objectives depart from U.S. foreign policy goals, while attempting to preserve relationships with key allies. These efforts included rulemakings and guidance from multiple government agencies and across multiple cabinet-level departments.

During its tenure, but particularly during 2024, the Biden administration frequently introduced new export-related restrictions as proposed rules in an effort to solicit feedback from potentially affected parties before implementing final versions. The comment periods for many of these proposed rules have expired, and it appears unlikely that the administration will move to enact final versions before President Biden's term ends. We expect that these pending proposals will eventually become enacted rules in some form during the Trump presidency, but the Trump administration could adopt versions which are much more restrictive than those currently proposed by the outgoing Biden administration (particularly concerning rules related to technology-related transactions with China).

2024 SELECTED MAJOR EXPORT CONTROLS-RELATED REGULATORY RULEMAKINGS AND GUIDANCE

	1Q	2Q	3Q	4Q
DEPT. OF TREASURY		• OFAC adopted new 10-year statute of limitations (SOL) for IEEPA/TWEA violations • OFAC amended Cuban Asset Control Regs • OFAC amended Iranian Transactions and Sanctions Regs	• OFAC IFR extended SOL for recordkeeping to 10 years • OFAC Determination on IT/ software exports to Russia	• Final rule on outbound investment in China, Hong Kong and Macau • OFAC added Gazprombank entities to SDN List • OFAC issued Compliance Com-munique to maritime shipping industry
DEPT. OF STATE			• Issued ITAR Australia-UK IFR • Proposed rule to amend definition of "defense services" under ITAR	
DEPT. OF COMMERCE	• Proposed U.S. Infrastructure as a Service rulemaking • Office of Anti-boycott Com-pliance debuted Requestor List	• BIS issued Kaspersky Lab final ICTS determination • BIS issued License Ex-ception MED for Russia & Belarus • BIS imposed new software export controls for Russia and Belarus • BIS expanded EAR99 items on Supp. No. 4	• BIS proposed ICTS rulemak-ing for connected vehicles • BIS proposed rulemaking for new military end user controls	• BIS issued new Best Practices EAR compliance guidance to financial institutions • BIS IFR established new export controls for semiconductor-related items • BIS published Compliance Note for higher education institutions

Disruptive Technology Strike Force (DTSF)

The U.S. government's comprehensive approach to export controls is perhaps best illustrated by the establishment of the DTSF, a multiagency effort aimed at preventing critical technological assets from being acquired or used by U.S. adversaries. Launched in February 2023, DTSF's reach is vast, pulling together the investigative and enforcement capabilities of both the Department of Justice and the Department of Commerce. As of November 2024, DTSF is responsible for publicly charging 25 cases involving alleged sanctions and export control violations, smuggling conspiracies, and other offenses; issuing denial orders against 29 entities; and facilitating the addition of numerous entities to Commerce's Entity List and Treasury's Specially Designated Nationals and Blocked Persons (SDN) List.

DTSF employs what the Bureau of Industry and Security (BIS) has termed "an all-tools approach" that includes criminal prosecutions, civil penalties, and entity listings. In particular, the Task Force targets "violations involving advanced technologies that can be used in new or novel ways to enhance nation state adversaries' military capabilities or support mass surveillance programs that enable human rights abuses." While the aim appears narrow, the potential range of technologies that fall into its ambit are expansive. This scope, when joined to a national security rationale, provides DTSF with a powerful remit, and our expectation is that the Task Force's enforcement actions will ramp up over time, notwithstanding the change in administrations.

Military End User and Defense-Related Goods and Services

As touched on above, national security in the export controls context is an overriding concern across multiple government agencies and has broad bipartisan support. Accordingly, many of the export controls and trade sanctions measures implemented in 2024 directly dealt with military and defense goods and services and military end-users.

Revised Definition of "Defense Services" and ITAR Exemptions

On July 29, 2024, the Department of State issued a proposed rule to amend the definition of "defense services" under the International Traffic in Arms Regulations (ITAR) § 120.32. Under the new proposed definition, "defense services" will include:

assistance, including training or consulting, to foreign persons in the development (including, e.g., design), production (including, e.g., engineering and manufacture), assembly, testing, repair, maintenance, modification, disabling, degradation, destruction, operation, processing, use, or demilitarization of a defense article.

Under the proposed rule, the definition would now contain two new references to "disabling" and "degradation." According to the Department of State, these two references were added to make clear that "the act of harming a military capability through disabling or degradation of defense articles via any method remains controlled."

The comment period for this proposed rule expired on September 27, 2024. The Department of State is in the process of reviewing comments received and has not yet enacted this proposed rule.

Relatedly, on August 20, 2024, the Department of State published an Interim Final Rule amending the ITAR to include an exemption at Section 126.7 for Authorized Users in Australia and the United Kingdom. The exemption went into effect on September 1, 2024. The exemption contains key provisions including those pertaining to authorized locations, authorized users, and a limitation on what technology and United States Munitions List (USML) categories qualify for the exemption. For the authorized locations, the transfers must be to or within the physical territories of Australia, the United Kingdom, or the United States. The exemption does not apply universally; instead, there are several requirements for an end user to be considered an "Authorized User" and therefore eligible for the exemption. Pursuant to ITAR § 126.7(b)(2) both the transferor and the recipient must be:

- Registered with the Directorate of Defense Trade Controls (DDTC) and eligible under ITAR § 120.16;
- A U.S. person, U.S. government department, or agency; or
- United Kingdom or Australian Authorized Users identified in the Defense Export Control and Compliance System (DECCS).

Additionally, non-U.S. person brokers, as such term is defined by the ITAR, must be registered, eligible, and identified on the Authorized User List in DECCS. Companies seeking to rely on the ITAR § 126.7 exemption should carefully review whether their activities will involve dual- or third-country national personnel at "Authorized Users" in Australia or the United Kingdom because DDTC has advised that the exemption does not automatically authorize such dual- and third-country nationals to receive exports of technical data and defense services associated with exports that are authorized under ITAR § 126.7. DDTC has advised that in some instances it will be possible for companies to rely on the ITAR § 126.18 exemption in order to provide technical data and defense services to such dual- or third-country nationals, but in other instances those activities will require separate licensing.

The rule also restricts what defense articles, services, and technical data are eligible for the ITAR § 127.6 exception. Supplement No. 2 to ITAR Part 126 provides a list, the Excluded Technology List, of the defense articles, services, and technical data that are ineligible for the ITAR § 126.7 exemption.

NEW USML CATEGORIES

The same proposed rule from the Department of State which implemented the change in the "defense services" definition also included language which proposed adding new USML categories for military and intelligence assistance where the assistance does not necessarily involve a defense article. These two proposed category additions are Category IX(s)(2), which describes furnishing intelligence assistance, and Category IX(s)(3), which describes military and paramilitary assistance. These new categories feature a "catch and release" method of control whereby the regulations would "catch" a broad range of categories and then specific carve-outs would "release" activities from control.

New Military End-User Controls

BIS issued two new proposed rules to expand the controls over the activities of U.S. persons as well as expand the scope of goods, software, and technology for which a license is required before export, re-export, or transfer to certain end users. The rules also proposed a list-based control for facial recognition systems and related software and technology.

If implemented as proposed, these rules will make the following changes:

- Narrowing the Export Administration Regulations (EAR) definition of "military end user" and "military end use" to respectively focus on national armed services and activities involving the operation, production, or development of defense items (the current definitions consider any person engaged in "military end use" activities to also be a "military end user," which can impose restrictions on activities conducted by defense contracting firms which do not involve defense items)
- Expanding items requiring a license for "military end users" and "military end uses" to all items subject to the EAR, which will include EAR99 items (previously, these rules only applied to specific ECCN classifications for "military end users" and "military end uses" in certain countries)
- Creating "military-support end user," "foreign-security end user," and "intelligence end user"
- Imposing controls on U.S. persons' activities in certain circumstances when those activities are in "in support" of "military end users," "military-support end users," "military production activities," "intelligence end users," or "foreign-security end users."

SUMMARY OF NEW PROPOSED MILITARY END-USER CONTROLS

	COUNTRY SCOPE	ITEM SCOPE	LICENSE APPLICATION REVIEW POLICY
MILITARY END USER OR END USE (MEU)	Country Group D:5 Countries & Macau	All items “subject to the EAR”	**Presumption of Denial:** Burma, China, Cuba, Iran, Macau, Nicaragua, North Korea, Syria, and Venezuela **Policy of Denial:** Russia and Belarus **Case-by-Case Basis:** Afghanistan, Cambodia, Central African Republic, Democratic Republic of Congo, Cyprus, Eritrea, Haiti, Iraq, Lebanon, Libya, Somalia, South Sudan, Sudan, and Zimbabwe
MILITARY SUPPORT (MSEU)	Country Group D:5 Countries & Macau	All items “subject to the EAR” and specified in any ECCN on the Commerce Control List (CCL)	**Presumption of Denial:** Burma, China, Cuba, Iran, Macau, Nicaragua, North Korea, Syria, and Venezuela **Policy of Denial:** Russia and Belarus **Case-by-Case Basis:** Afghanistan, Cambodia, Central African Republic, Democratic Republic of Congo, Cyprus, Eritrea, Haiti, Iraq, Lebanon, Libya, Somalia, South Sudan, Sudan, and Zimbabwe
INTELLIGENCE (IEU)	Country Group D & E Countries that do not also appear in Country Groups A:5 and A:6	All items “subject to EAR”	**Presumption of Denial:** Burma, China, Cuba, Iran, Macau, North Korea, Syria, and Venezuela **Policy of Denial:** Russia and Belarus **Case-by-Case Basis:** Afghanistan, Armenia, Azerbaijan, Bahrain, Belarus, Burma, Cambodia, Central African Republic, People’s Republic of China, Democratic Republic of Congo, Cuba, Egypt, Eritrea, Georgia, Haiti, Iran, Iraq, Jordan, Kazakhstan, North Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Moldova, Mongolia, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, South Sudan, Sudan, Syria, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, Venezuela, Vietnam, Yemen, and Zimbabwe
FOREIGN SECURITY (FSEU)	Country Groups D:5 & E	All items “subject to the EAR” and specified in any ECCN on the CCL	All initial applications first reviewed on a case-by-case basis. Applications determined to “pose an unacceptable risk of enabling human rights violations or abuses” will be reviewed under a presumption of denial.

Information and Communications Technology and Software (ICTS)

At the beginning of the year, Elizabeth Cannon was named Director for the Office of Information and Communications Technology and Software (OICTS), a division of the BIS, and over the course of the year, OICTS and allied agencies were involved in a great deal of activity implementing ICTS rules and regulations.

U.S. Infrastructure as a Service Proposed Rule

In January 2024, BIS issued a proposed rule requiring U.S. Infrastructure as Service (IaaS) and providers of those products to develop and maintain a Customer Identification Program (CIP) which establishes a procedure for verifying foreign users and maintaining data and procedures for foreign resellers of IaaS products. The rule will require U.S. IaaS providers to certify compliance with the CIP requirements on an annual basis once the rule is implemented in its final form. Failure to comply would result in civil penalties up to the greater of $250,000 per violation or twice the amount of the transaction value. Proposed penalties can also include criminal penalties of up to $1,000,000 per violation or up to 20 years imprisonment.

Prohibitions Concerning Kaspersky Lab, Inc.

In June 2024, BIS issued a Final Determination prohibiting the sale of certain cybersecurity products, antivirus software, and related services to U.S. persons by Kaspersky Lab, Inc., the U.S. subsidiary of Russian cybersecurity provider AO Kaspersky Lab. The Final Determination's prohibitions took effect on September 29, 2024, and also made an exception for certain Kaspersky products that are purely informational and educational in nature. This Final Determination represents the first such action by BIS under Executive Order 13873 and the ICTS implementing regulations issued on June 19, 2021. As a result of the Final Determination, Kaspersky announced it would be closing its U.S. operations.

Rulemaking for Connected Vehicles

In September, BIS proposed rules which would prohibit the sale or import of Vehicle Connectivity System (VCS) hardware or software, if there is a sufficient nexus to China or Russia. This rule would also prohibit the import of "connected vehicles" under certain circumstances. The proposed rule would prohibit "knowingly importing" VCS hardware and connected vehicles, as defined in the proposed rule, if the hardware is "designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of the PRC or Russia." Similarly, the proposed rule also prohibits manufacturers in China and Russia from "knowingly selling connected vehicles that incorporate VCS hardware or covered software." Certain transactions may be eligible for the general authorizations outlined in the proposed rule. If the transaction is prohibited and a general authorization does not apply, then BIS may provide specific authorizations permitting such transaction. Both general and specific authorizations contain a 10-year recordkeeping requirement. The comment period for this proposed rule expired on October 28, 2024, and BIS is now reviewing and considering comments received.

Additional Notable 2024 Export Controls and Trade Sanctions Developments

Russian Harmful Foreign Activities Regulations

In addition to the new BIS ICTS rules, the Office of Foreign Assets Control (OFAC) issued a new Determination under EO 14071, which went into effect on September 12, 2024, prohibiting U.S. persons from providing or facilitating the exportation, reexportation, sale, or supply—directly or indirectly—of the following services to any person located in Russia: (1) information technology (IT) consultancy and design services; and (2) IT support services and cloud-based services for enterprise management software and design and manufacturing software. This Determination provides exceptions which would allow U.S. persons to provide or facilitate the provision of these services to a recipient located in Russia if done in connection with the winddown or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person, or if the services are provided for software which would be licensed or authorized for export to Russia under the EAR.

On November 21, 2024, OFAC announced that it was adding Gazprombank Joint Stock Company, Russia's largest unsanctioned bank, and six of Gazprombank's foreign subsidiaries to the SDN List pursuant to EO 14024. Treasury stated that Gazprombank is a conduit for Russia to purchase military materials for the ongoing invasion of Ukraine, to pay soldiers, to issue combat bonuses, and even to pay the families of Russian soldiers who were killed in action. OFAC also added a number of other individuals and entities to the SDN List.

In conjunction with the announcement of the SDN List additions, OFAC issued several General Licenses to authorize winddown and divestment transactions with these new SDNs, transactions involving official business with the Russian government, and transactions with Japan and the Sakhalin-2 pipeline.

Expanded Statute of Limitation for OFAC Sanctions Violations

As discussed in greater detail in the accompanying sidebar, Congress passed legislation during 2024 in order to expand the statute of limitations for IEEPA and TWEA OFAC sanctions violations from five to 10 years. This will drastically increase OFAC's leverage in investigating and enforcing sanctions violations.

Cuban Asset Control Regulations (CACR) Amendments

On May 29, 2024, OFAC amended the CACR, 31 CFR 515, aiming to promote internet freedom and private entrepreneurship in Cuba, as well as loosen restrictions on internet accessibility and certain business activities. The new rules will permit individuals who are Cuban nationals and "independent private sector entrepreneurs" to open, maintain, and use U.S. bank accounts for certain transactions. This authorization is limited to private cooperatives, small businesses, and sole proprietorships in Cuba of up to 100 employees. This authorization does not and is not intended to apply to Cuban government officials or Cuban Communist Party members.

OFAC also amended the CACR to provide additional examples of authorized internet-based services. The amendment clarifies that certain services may be exported to Cuba to support internet communications. This would include authorizations for services to "to install, repair, or replace certain items, including by removing the requirement that referenced items fall within specific export control classification parameters." Additionally, the new rule reverses OFAC's previous action by reauthorizing U.S. banks to process "U-Turn" transactions, provided that neither party is subject to U.S. jurisdiction. U.S. banks are now permitted to unblock and remit U-Turn funds previously blocked. OFAC also issued six new Cuba-related FAQs and amended eight to reflect the amendments and provide additional clarification on the same.

Iranian Transactions Sanctions Regulations (ITSR) Amendments

On May 16, 2024, OFAC announced amendments to the ITSR to incorporate General License D-2 into the regulations and publishing an associated List of Services, Software, and Hardware Incident to Communications. The most notable change from the amendments is that effective June 17, 2024, OFAC will further amend the 31 CFR § 560.540 List of Services, Software, and Hardware Incident to Communications to exclude laptops, tablets, and personal computing devices with an "Adjusted Peak Performance" exceeding 1 Weighted TeraFLOP (WT).

Additional Export Controls for Russia and Belarus

On June 12, 2024, BIS announced new rules imposing additional export controls on Russia and Belarus. On September 16, 2024, BIS formally amended the EAR to prohibit the export, reexport, or transfers of certain software to Russia or Belarus when the

EXPANDED STATUTE OF LIMITATION FOR SANCTIONS VIOLATIONS

On April 24, 2024, President Biden signed into law the 21st Century Peace through Strength Act, Pub. L. No. 118-50, div. D. Part of the act included a provision extending the statute of limitations for civil and criminal violations of the IEEPA and the TWEA from five years to 10 years. The new statute of limitations took effect on the date of the president's signature.

OFAC then published a Guidance Document, stating that OFAC may now initiate a civil enforcement action brought under IEEPA or TWEA within 10 years of the latest date of the violation, if such date was after April 24, 2019. On September 13, 2024, OFAC also issued an interim final rule extending the statute of limitations for recordkeeping requirements to ten years. The rule will take effect on March 12, 2025.

EAR99 COVERED SOFTWARE TYPES

ENTERPRISE RESOURCE PLANNING (ERP)	CUSTOMER RELATIONSHIP MANAGEMENT (CRM)	BUSINESS INTELLIGENCE (BI)	SUPPLY CHAIN MANAGEMENT (SCM)
ENTERPRISE DATA WAREHOUSE (EDW)	COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS)	PROJECT MANAGEMENT	PRODUCT LIFECYCLE MANAGEMENT (PLM)
BUILDING INFORMATION MODELLING (BIM)	COMPUTER-AIDED DESIGN (CAD)	COMPUTER-AIDED MANUFACTURING (CAM)	ENGINEERING-TO-ORDER (ETO)

Source: *Bureau of Industry and Security, "Frequently Asked Questions: EAR99 Software Controls," September 16, 2024*

software is EAR99 and "subject to the EAR."

The new rules will also prohibit exports of software updates for the above-described types of software. In addition to other exceptions provided for in § 746.8, the new rules provide an additional exception which states that the rules do not apply when the software is "destined to entities engaged exclusively in the agriculture or medical industries." However, BIS did not define what it means for an entity to be engaged exclusively in the agricultural or medical industry.

Effective June 12, 2024, BIS also added over 500 new items to Supplement No. 4. Previously, the Supplement No. 4 export controls provided an exception for fasteners which were previously defined as "e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin, washer, spacer, insulator, grommet, bushing, spring, wire, or solder." However, the new additions to Supplement No. 4 feature a wide variety of nails, screws, nuts, washers, etc. which are now listed by HTS code and material type. BIS has clarified that if a "fastener" is listed on Supplement No. 4 by HTS code then the Supplement No. 4 restrictions will prevail and the item is not eligible for the previously available fastener restriction.

New Rules on Semiconductors

On December 2, 2024, BIS issued an interim final rule which imposes new export controls on 24 types of semiconductor manufacturing equipment, certain software tools, and high-bandwidth memory (HBM). The interim final rule also expands the EAR's foreign-produced direct product rules to capture a wider range of foreign-manufactured semiconductor manufacturing equipment and transactions involving certain restricted end users. Portions of this interim final rule took effect immediately on December 2, 2024, and other portions are subject to a delayed compliance date of December 31, 2024.

Medical Devices and Supplies License Exception

On April 29, 2024, BIS announced a new license exception, License Exception Medical Devices (LE MED) in § 740.23 of the EAR. The exception authorizes—except where the end user is a proscribed person—the export, reexport, or transfer (in-country) of EAR99 "medical devices," as such term is defined by the EAR, to or within Russia, Belarus, Crimea, and the covered regions of Ukraine. The exception also permits the export, reexport, or transfer (in-country) of "parts," "components," "accessories," and "attachments" exclusively for use in or with EAR99 "medical devices" subject to additional conditions. Additionally, exporters may not rely on LE MED where there is "knowledge" that the item is destined to a "production" "facility" or where there is "knowledge" that the product will be used to develop or produce medical devices or other items. § 740.23 requires those utilizing LE MED to maintain a verification system for their system of distribution outlined in subsection (c) and to comply with the recordkeeping requirements outlined in subsection (d).

Final Rulemaking on Outbound Investment Controls

In 2023, the Department of Treasury issued a notice detailing a proposed rule which would control certain investments made by U.S. persons in China, Hong Kong, and Macau. On October 28, 2024, Treasury's Office of Investment Security published a final rule implementing Executive Order (EO) 14105. The final rule formalizes the proposed regulatory framework previewed and will control certain outbound investments by U.S. persons into China, Hong Kong, and Macau.

The final rule, which goes into effect on January 2, 2025, establishes two paths for certain investments: (1) a notification requirement; or (2) an outright prohibition on the investment. Importantly, this new rule does not apply to all investments into China, Hong Kong, and Macau but instead is focused on specific industries enumerated in EO 14105, which includes semiconductors and microelectronics, quantum information technologies, and artificial intelligence (AI).

In addition to being limited by industry, the rules also only target certain "covered" transactions, including indirect transactions. "Covered" transactions include things such as acquisition of an equity interest or contingent equity interest, provision of debt financing, and certain greenfield investments.

This rule applies to U.S. persons and also requires U.S. persons to "take all reasonable steps to prohibit and prevent its controlled foreign entity from undertaking a transaction which would be prohibited transaction if undertaken by a U.S. person." The rule implements a notification requirement if the same transaction, if performed by a U.S. person, would require a notification to Treasury.

Industry-Specific Guidance Documents

U.S. government agencies published several notable industry-specific guidance documents throughout 2024 to assist compliance teams and other industry leaders in their efforts to comply with evolving trade regulations. In particular, BIS issued guidance to academic institutions by way of a Compliance Note detailing the types of export violations most commonly disclosed by universities, common missteps leading to the violations, and remedial steps universities have taken to ensure future compliance. BIS also recently published a list of Export Compliance Resources for Academic Institutions, which includes vetting resources universities can use to conduct due diligence on potential partners in addition to more detailed examples of recent enforcement actions targeting academia. BIS also targeted financial institutions with new guidance on best practices for complying with the EAR and preventing inadvertent violations of General Prohibition 10.

OFAC also provided industry-specific guidance to the maritime shipping industry, issuing a Compliance Communique to aid "maritime sector stakeholders" in identifying common signs of illicit sanctions evasion. Parties that may be affected by the communique include commodities

OAC REQUESTOR LIST

The Office of Antiboycott Compliance (OAC) debuted the Requestor List in early 2024 to assist U.S. citizens and companies in complying with the antiboycott regulations in the EAR. The list is periodically updated by OAC and reflects entities which have been reported by a U.S. person as making an improper boycott-related request.
If an entity is on the Requestor List, it does not mean that U.S. persons are prohibited from doing business with the entity. Instead, OAC encourages U.S. persons to exercise increased diligence when reviewing transaction documents with entities on the Requestor List to identify potential improper requests.

Transportation & Supply Chain

As new demurrage and detention rules were implemented in the U.S.—partially spurred by COVID-era supply chain dislocations—new threats and events emerged in 2024 to disrupt trade and raise transportation-related costs and risks.

New Demurrage and Detention Invoicing Rules

The Federal Maritime Commission's (FMC) Final Rule on Demurrage and Detention Invoicing came into effect on May 28, 2024, addressing longstanding issues related to port congestion and insufficient information on invoices. This rule mandates certain minimum information on demurrage and detention (D&D) invoices and outlines procedures for disputing charges. A key aspect of the rule is that if the required information is missing from a D&D invoice, the billed party is not obligated to pay the charge. The rule specifies who can be billed for D&D charges, the timeframe for issuing invoices, and the process for disputing them.

Specifically, invoices must be sent to the person who contracted for ocean transportation or storage of cargo, or the consignee, but not both. Ocean carriers are required to issue invoices within 30 days of incurring demurrage or detention, while Non-Vessel Operating Common Carriers (NVOCCs) have the same timeframe from receiving the ocean carrier's invoice. Billing parties cannot correct defective invoices after issuance, but they can reissue a compliant invoice. Billed parties have 30 days from invoice issuance to request mitigation, refund, or waiver, and billing parties must resolve these requests within 30 days.

Section 541.6, concerning invoice content requirements, is now also in effect. This section outlines necessary identifying, timing, rate, and dispute information that must be included on invoices. It also requires certifications ensuring charges align with FMC rules and that the billing party did not contribute to the charges. The new rule necessitates updates to rules tariffs, bill of lading terms, or negotiated rate arrangement (NRA) rate quotations to ensure compliance.

HUSCH BLACKWELL TRANSPORTATION AND SUPPLY CHAIN TEAM ADDITIONS IN 2024

Husch Blackwell expanded its Transportation and Supply Chain presence by adding six experienced transportation, supply chain, and logistics attorneys in 2024. Led by partner Julie Maurer, the firm's Transportation team lead, the new arrivals included attorneys Aaron Schepler, Loren Ungar, Andy Kleiner, James Duncan, and Joseph Baratta. Collectively, they bring over 100 years of experience in handling corporate, regulatory, and litigation matters across the transportation sector, including experience in cargo and complex commercial litigation. Their addition aligns with the firm's strategic focus on deep industry knowledge, including in the areas of **autonomous vehicles, ocean law, rail, supply chain and logistics, trucking, warehousing and ports, and intermediaries.**

Black Swans & Geopolitical Turmoil

The D&D reforms described above took shape just as supply chain challenges began to mount in 2024 after a period of relative quiet during the previous year. Continuing attacks on international shipping in the Red Sea by Houthi rebels based in Yemen forced ocean carriers to divert ships around the Cape of Good Hope in South Africa. In addition to adding significant transportation-related cost, the associated dislocations also made supply chains more vulnerable to the impact of rare, one-off events.

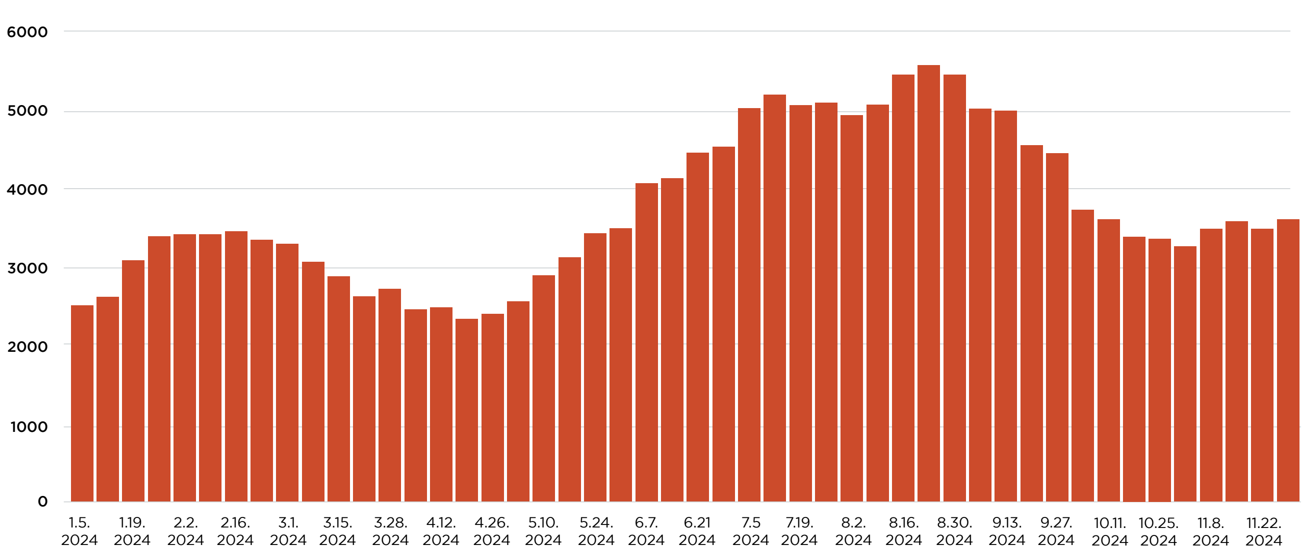
One such event—the labor dispute between the International Longshoremen's Association (ILA) and carriers and U.S. port operators—hit a major inflection point in the fall of 2024. Approximately 45,000 ILA dock workers on the East and Gulf Coasts initiated a strike after negotiations with the United States Maritime Alliance (USMX) failed and the current labor contract ended on September 30, 2024. This action marked the union's most significant strike since 1977, halting operations at 14 major ports that handle nearly 50% of U.S. imports and exports. Although the strike lasted only three days, it threatened to disrupt supply chains and cause shortages. Many shippers preemptively moved goods ahead of the strike in an effort to mitigate delays. The strike also prompted businesses to seek alternative shipping routes, increasing volumes and prices at West Coast ports.

The political climate and the timing of the strike added to the complexity. The strike began mere weeks ahead of a U.S. presidential election, and many stakeholders called on the Biden administration to intervene, which it refused to do. Ultimately, as part of an agreement to extend the existing master contract, the parties settled issues related to wages, as the USMX agreed to a substantial 62% wage increase over the contract's duration, with an immediate raise of just over 10% and subsequent annual increases; however, some issues were unresolved, including the automation of ports. The contract extension ends January 15, 2025, and if a new agreement cannot be reached by then, it is possible that we will see another coastwide strike in 2025.

The strike underscores how rare, one-off events can exacerbate existing vulnerabilities in supply chains, particularly when negative economic consequences overlap with electoral politics, labor discord, and inauspicious timing (like the approach of the holiday season). Even then, sophisticated observers could see the potential for the ILA strike—the expiration date of the master contract was widely known—and make plans accordingly.

Some events, however, like the partial collapse of the Francis Scott Key Bridge in Maryland in March 2024, are truly unforeseeable and can impact supply chains over both the short

FREIGHTOS BALTIC INDEX (FBX): GLOBAL CONTAINER FREIGHT INDEX
Index in U.S. Dollars



Source: *Freightos.*

and long term. For instance, aside from having immediate implications for the operations of the Port of Baltimore, the Key Bridge incident prompted policymakers to propose legislation in August 2024—the Justice for Victims of Foreign Vessel Accidents Act—that aims to amend the Limitation of Liability Act of 1851 (LLA) to increase liability for foreign-flagged vessels involved in maritime accidents in the U.S.

The Key Bridge accident led to a significant insurance loss, yet the owner and manager of the vessel that collided with the bridge jointly filed a petition to limit liability to $43.6 million, premised on the LLA's purported cap on liability. The proposed legislation seeks to raise the liability cap for foreign vessels to 10 times the value of the vessel and its pending freight, while keeping the current standards for American-flagged vessels unchanged. A recent case in Texas highlighted the challenges of the existing liability limitations, as a foreign vessel's liability was capped at $18.9 million despite significant damages. The proposed bill sparked interest in the maritime industry, although it faces uncertain prospects in the current and incoming Congress.

Applying *Loper Bright* to Transportation

As noted earlier in our section on trade policy, the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* is expected to significantly impact federal regulators, including those in the maritime and transportation sectors. While the full implications will unfold over time, we anticipate that government agencies will face increased legal challenges due to their reliance on statutory interpretations. Judges now have increased authority to challenge major agency rulemakings, creating new vulnerabilities for regulations affecting transportation and likely impacting rules from agencies like the Federal Motor Carrier Safety Administration (FMCSA), FMC, National Highway Traffic Safety Administration (NHTSA), Environmental Protection Agency (EPA), and Federal Highway Administration (FHWA), including EPA emissions regulations and compliance scores. The transition to zero-emission vehicles in California under the Clean Air Act and EPA's waiver authority is particularly at risk, as courts may no longer defer to the EPA's interpretation of its powers. The major questions doctrine, reinforced by the Supreme Court's 2022 decision in *West*

FMC SEEKS TO ENHANCE INTERMODAL TRADE EFFICIENCY

The FMC contracted with the Transportation Research Board (TRB) to conduct a study on intermodal chassis pools, and the resulting report highlighted the critical role of chassis in facilitating the efficient movement of containerized cargo within the intermodal transportation system, which is vital for both domestic and international trade.

One of the major issues identified in the report is the contractual agreements for sourcing chassis, often referred to as "box rules." These agreements can lead to operational inefficiencies and increased costs for motor carriers, who may face restrictions in sourcing chassis from preferred providers. The report noted that these agreements are a common feature of carrier haulage arrangements, where the ocean carrier coordinates the entire transportation service, including chassis provisioning. The report also highlighted concerns about the quality and condition of chassis, particularly those controlled by non-motor carriers. Despite regulations intended to ensure systematic maintenance and repair, motor carriers continue to report difficulties in finding roadworthy chassis, leading to delays and additional costs. The report analyzed the FMCSA's roadside inspection data, explaining that there are persistent differences in the inspection performance of chassis controlled by motor carriers versus those controlled by non-motor carriers, with the latter group exhibiting higher rates of out-of-service violations.

Recommended improvements to the chassis provisioning system included the promotion of data sharing on intermodal container traffic, enhancements to the monitoring of chassis quality and roadworthiness, reassessments of safety oversight processes, and better collaboration among stakeholders.

Virginia v. EPA further limits agency authority by requiring explicit congressional approval for actions of significant economic or political impact, posing challenges for agencies aiming to implement substantial industry changes.

Autonomous Vehicles

In 2025, the trucking industry is expected to undergo significant changes, primarily driven by advancements in autonomous technology and a push towards sustainability. Semi-autonomous features like adaptive cruise control, lane departure alerts, and emergency braking systems are becoming more common, although fully autonomous trucks might still be limited. As President-elect Trump prepares to take office in January 2025, there is speculation about potential regulatory changes that could lead to quicker implementation of self-driving cars and robotaxis. The Trump administration is expected to expand regulations for self-driving cars; however, safety concerns, along with a stalled bill in Congress regarding self-driving car deployment, present challenges that the administration will need to navigate to achieve these goals.

FMCSA Revamps Registration System to Curb Fraud

The FMCSA continued its work to combat fraud in the trucking/freight brokering industries in 2024 through a comprehensive overhaul of its registration system. This initiative introduced several key components aimed at enhancing security and reducing fraudulent activities such as cargo and identity theft, which can compromise carrier safety and financial stability.

KEY FEATURES OF THE NEW FMCSA REGISTRATION SYSTEM

FMCSA revamp aims to curb fraud and improve safety

NEW REGISTRATION ARCHITECTURE

The FMCSA is rolling out a new system with advanced security features designed to prevent fraud. This includes measures to safeguard against cargo theft and the fraudulent creation of FMCSA-regulated entities.

END OF MC TRANSFERS

The FMCSA plans to cease the transfer of MC numbers, except in cases of corporate mergers. This measure is designed to reduce crimes related to the unauthorized sale or theft of these numbers.

ID VERIFICATION

A critical part of the new system is the integration of an ID-verification process. This process is powered by Idemia, a company that also provides services to the TSA, to ensure that applicants' identities are verified accurately.

MODERNIZATION RESOURCES HUB

To support these changes, the FMCSA created a hub that provides information on system updates. This hub also serves as a resource to counter phishing attempts targeting industry professionals.

FRAUD PREVENTION TEAM

The FMCSA established a dedicated team of five individuals focused on combating registration fraud. This team is tasked with securing sensitive information and implementing additional verification steps for any changes made to FMCSA records.

FUTURE ENHANCEMENTS

The initial phase of the new system targets new registrants, with plans to incorporate business verification and auditing processes by 2025. Additionally, a new safety registry is in development, and future updates will involve formal rule proposals and industry feedback.

LOGIN.GOV REQUIREMENT

To access the registration system, applicants must use a Login.gov account. This requirement is intended to ensure that the registration process is completed directly by the applicant, minimizing the risk of third-party interference.

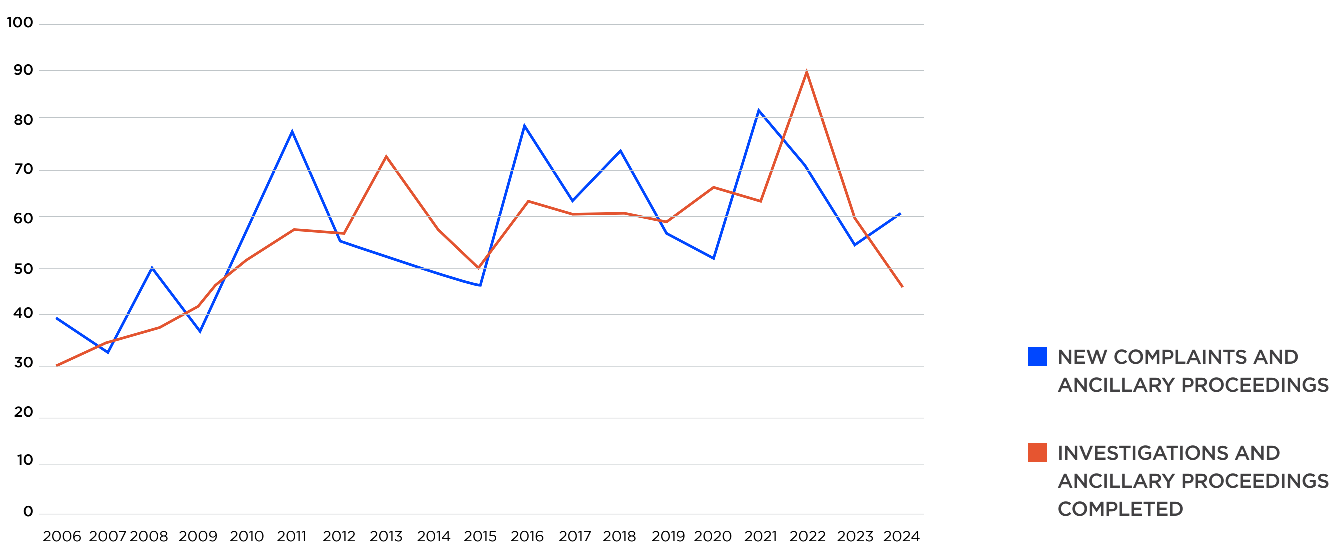
Section 337: IP Infringement and International Trade

Adjudication of Section 337 cases and ancillary proceedings has decreased since 2023; however, it is possible that case filings will increase under the second Trump administration's anticipated "America First" economic agenda.

This past year remained steady and somewhat calm for Section 337 litigation, with 50 new complaints filed and 48 investigations instituted during the fiscal year of the U.S. International Trade Commission (ITC). The total number of new cases continued a trend from 2023, with less complaints filed than in both 2021 and 2022. In 2024, the ITC concluded 46 Section 337 cases and ancillary proceedings, which is the lowest number since 2009. Given the policy priorities of the incoming second Trump administration, however, U.S. companies may feel emboldened to seek redress against competitive imports using Section 337 litigation.

In 2024, the ITC continued the trend of sparingly employing its ability to delegate authority to the presiding Administrative Law Judge (ALJ) to investigate public-interest issues. Where the ITC finds a violation of Section 337, it must exclude the unlawfully traded products from the U.S. market unless it finds that such exclusion would adversely impact "the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, [or] United States consumers." In addition to its mandatory review of public interest at the conclusion of an investigation, the ITC may direct the presiding ALJ to

SECTION 337: NEW COMPLAINTS & COMPLETED INVESTIGATIONS, 2006-2024*



Source: *U.S. International Trade Commission*

**Updated October 17, 2024.*

take evidence and make findings on public-interest issues. The Commission delegated public interest to the ALJ in very few new cases—only 10 in 2024, as of this writing.

A major administrative development is that the ITC is finally back to a full roster of six ALJs. The ITC welcomed Judge Doris Johnson Hines, who was appointed on February 27, 2023. Prior to her appointment, Judge Johnson Hines litigated intellectual property cases before the ITC, district courts, and the Federal Circuit. Early in her career, she was a patent examiner at the U.S. Patent and Trademark Office and served as a law clerk to a Federal Circuit judge. Commentators praised the appointment of Judge Johnson Hines for bringing the ITC back to its full roster of judges and for her personal wealth of experience as an ITC practitioner and intellectual property litigator.

Diversification of Caseload

The ITC has broad statutory authority to administer Section 337 cases covering a virtually unlimited range of allegedly "unfair acts" related to imported products. Nevertheless, the Section 337 docket has remained patent-focused, with 87% of active cases in 2024 solely alleging patent infringement. However, the diversification trend of recent years did continue to expand in 2024, with complainants raising a variety of non-patent issues including claims of trade secret misappropriation, copyright infringement, and violation of the Lanham Act (e.g., false advertising or false designation of origin). Notably, the ITC had seven active investigations as of this writing that involve a combination of copyright infringement, trade secret misappropriation, unfair competition, false advertising and/or other unfair acts—a significant percentage increase over 2023. Thus, it appears companies and litigators continue to recognize that Section 337 is valuable far beyond the patent context. As for the types of industries involved in Section 337 cases, proceedings launched in 2024 have involved products such as ignition control systems, portable battery jump starters, rechargeable batteries, exercise equipment, synthetic braiding hair, eye cosmetics and packaging, oil vaporizing devices, electric skateboards, fiber-optic connectors, furniture products, and more. These trends show that a wide variety of companies—not just patent-heavy technology companies—have discovered the relevance of Section 337 and appreciate its value as a trade-enforcement tool.

SECTION 337 LITIGATION: THE BASICS

Section 337 (19 U.S.C. § 1337) is administered by the ITC. This trade statute makes it unlawful to import or sell in the United States any article that: (a) infringes a valid and enforceable U.S. intellectual property right; or (b) is otherwise connected to unfair methods of competition. A successful complainant is typically awarded an exclusion order blocking the importation of the offending goods and a cease-and-desist order prohibiting the respondents from distributing or selling such articles in U.S. inventory. These powerful remedies, along with numerous procedural advantages of litigating at the ITC, have made Section 337 an effective tool for companies seeking to challenge foreign competition. The ITC's decisions in Section 337 cases are subject to review by the U.S. Court of Appeals for the Federal Circuit.

Analysis of Domestic Industry Continues to Evolve

Because it is a trade statute, Section 337 requires that the complainant (or its licensee) has (a) made significant or substantial investments in the United States related to articles that practice the asserted intellectual property, or (b) constitute an industry in the United States that has been substantially injured or threatened with such injury by the targeted imports. Contrary to what many district court patent practitioners at times seem to believe, the issue of domestic industry is very much hotly contested in almost all Section 337 cases. Indeed, satisfying this requirement has become increasingly difficult in recent years, with many complainants succeeding on the technical issues but not obtaining any ITC remedy due to a failure to establish the requisite domestic industry. The Federal Circuit has generally upheld the ITC's increasingly rigorous analysis of this issue. For example, in May 2024, the Federal Circuit in *Zircon Corp. v. ITC* held that Section 337 requires that the proffered domestic-industry investments "relate to articles that are all protected by a particular patent, not a group of articles variously protected by different patents."

Based on that reasoning, it affirmed the Commission's finding of no violation by the respondents because the complainant had aggregated its U.S. expenditures over all 50+ domestic-industry products without regard to which patent each product practiced. Two more notable decisions on domestic industry are anticipated from the Federal Circuit in 2025: in *Lashify, Inc. v ITC* (where the Commission found no domestic industry), and in *Wuhan Healthgen Biotechnology Corp. v. ITC* (where the Commission did find a domestic industry).

The Demise of *Chevron* Deference and its Potential Impacts for the ITC

The Federal Circuit has turned down an opportunity to overturn its most well-known decision applying *Chevron* deference to the ITC. In *Suprema, Inc. v. ITC (*2015), the Federal Circuit allowed the ITC to use a broad interpretation of "articles that infringe" to include post-importation direct infringement. Suprema was viewed as extending the ITC's jurisdiction and has led to the filing of Section 337 complaints where the alleged infringement occurs a step or two after importation (when, for example, the physical article that did not infringe at the time of importation is used by a consumer with U.S.-loaded software that facilitates the infringement).

In its landmark 2024 ruling in the *Loper Bright* case, the U.S. Supreme Court held that federal agencies are not entitled to so-called *Chevron* deference. Soon thereafter, Google argued in an *en banc* rehearing petition before the Federal Circuit that "Section 337, properly read without deference to the Commission, does not restrict importation of articles like Google's here that do not infringe at importation." The Federal Circuit denied Google's rehearing petition, thus suggesting the Court is not eager for a re-litigation of Section 337 cases where *Chevron* deference may have been applied. Nevertheless, although the Federal Circuit may not presently seem inclined to rescind or reverse decisions applying *Chevron* deference to the ITC, practitioners will undoubtedly find ways to argue, based on *Loper Bright*, that the ITC should not be afforded deference in its interpretation of Section 337.

What to Expect in 2025

During the campaign and immediately after the election, President-elect Trump indicated that he intends to use trade policy to reduce or eliminate bilateral trade deficits and shore up domestic manufacturing across a broad range of sectors. Here is what our team is anticipating given these policy priorities.

It is very likely that a second Trump administration will result in a return to the leverage-based “America First” trade policies of the first Trump administration and is likely to view access to the U.S. market and U.S. trade policy as tools to gain leverage in international negotiations on other policy priorities, including immigration and drug trafficking. Early signs point to the second Trump Administration leveraging tariffs as the tool of choice to further its trade policy goals, as was the case in the first Trump administration, including the announcement on November 26, 2024, that the new administration intends to impose broad tariffs on imports from Canada, Mexico, and China on “Day One.”

The first 100 days will likely be active with announcements relating to near- and medium-term efforts in the trade space that will focus on using existing broad executive power and the policy tools outlined throughout this report; however, it is also likely that the president will lean on the Republican congressional majority to seek additional trade enforcement tools and codification of certain measures that the next presidential administration cannot easily reverse.

Executive Branch Trade Actions

As discussed earlier, the president will have an array of tools available to unilaterally impose broad tariffs and other trade restrictions swiftly on national security grounds or on the premise that a trading partner’s practices are unfair or discriminatory. The administration will also have trade remedy investigatory tools at its disposal. Consistent with its broader emphasis on efficiency in government, the Trump transition team has indicated that it is looking for the least burdensome means available for imposing tariffs and other trade measures.

Section 301 and Section 232

While the first Trump Administration relied on Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974 to impose sweeping trade restrictions, both require underlying investigations to be completed by either the U.S. Department of Commerce (Section 232) or the Office of the U.S. Trade Representative (Section 301) before imposition of duties. The president-elect’s intent to impose additional tariffs on imports from China, Canada, and Mexico on “Day One” may indicate that the administration is considering alternative means such as IEEPA or Section 338 of the Tariff Act of 1930 that do not require such an investigation before imposing tariffs or other import restrictions.

The incoming administration has the authority to institute significant modifications to the existing Section 301 tariffs on imports from China, and the Section 232 measures on imports of steel and aluminum products may be on the table in the short- to medium-term. Recent court decisions upholding the president’s broad authority to modify existing Section 301 actions to impose additional tariffs will enable it to leverage the existing Section 301 action to impose additional tariffs after a brief notice and comment period. The politically influential U.S. steel and aluminum industries likely will push for more downstream product coverage beyond the narrow list of downstream products currently covered under the Section 232 measures.

Other Trade Actions

Beyond these possible near- and medium-term actions, the Trump administration may consider imposing progressively more restrictive measures, up to and including outright import bans or prohibitively high tariffs, absent concessions from

China and potentially other trading partners. For example, the Trump campaign proposed a four-year plan to "phase out all Chinese imports of essential goods," which include "everything from electronics to steel to pharmaceuticals." At this point, it is unclear whether this controversial proposal will be implemented, or whether it is at this point only a threat aimed at China as a negotiating tactic. However, the existing statutory authority may provide the president with the ability to implement this plan based on national security concerns, and we cannot rule out that the president may move forward with this proposal as negotiations unfold.

Likewise, we expect significant additional trade frictions between the United States, Mexico, and Canada during the second Trump administration. The November 26, 2024, announcement of a potential for 25% tariffs against imports from Mexico and Canada appear to be intended to bring Mexico and Canada to the table with concessions to renegotiate the United States-Mexico-Canada Agreement (USMCA) in advance of 2026. While President-elect Trump has indicated that he will not undermine his first administration's work on USCMA, he intends to press Mexico and Canada for more favorable terms, especially for the U.S. auto industry. President-elect Trump also said he will fight for protections against Chinese attempts to leverage USMCA through Chinese foreign direct investment in Mexico.

Antidumping and Countervailing Duties

Consistent with the first Trump administration, President-elect Trump has indicated that he will also continue to support aggressive use of AD/CVD proceedings, including cases that are self-initiated for priority industries. The Trump team's move to announce tariff-friendly Howard Lutnik as the presumptive nominee for Commerce Secretary portends an emphasis on increased AD/CVD enforcement. Enforcement would include not only assisting U.S. domestic industry members with petition counseling for the filing of new petitions for relief, but there is the likelihood of increased circumvention proceedings that expand and modify the scope of existing AD/CVD orders to address third-country processing and other duty-evasion strategies employed by foreign exporters. Examples of recent new investigations include corrosion resistant steel from Brazil, Canada, Mexico, Vietnam, Australia, the Netherlands, South Africa, Taiwan, Turkey, and the United Arab Emirates, as well as solar cells from Cambodia, Malaysia, Thailand, and Vietnam.

In addition, it is possible that the second Trump administration will have the opportunity to significantly impact future import injury investigations at the ITC through the appointment of new Commissioners with protectionist inclinations. To this end, absent last minute Senate confirmations for any last-minute Biden administration nominees, we note that two of the six seats on the Commission are vacant and the remaining four sitting Commissioners will be serving under expired terms by the time the President-elect is inaugurated.

Cooperation with Republican Congress

The president's authority to act on trade policy initiatives without congressional action is broad but not unbounded. Increasingly, Republicans in Congress have signaled support for additional measures on trade that likely will be supported by the incoming administration. For example, President-elect Trump likely will support legislative initiatives such as the Restoring Trade Fairness Act (see page six), aimed at narrowing the de minimis exception and revoking China's PNTR status. We also note that former U.S. Trade Representative and current Trump trade policy adviser Robert Lighthizer and his team have also discussed other potential legislative actions with key House Ways and Means stakeholders to have Congress codify tariff increases, making it more difficult for a subsequent administration to reverse tariffs imposed by the Trump administration after the president-elect leaves office at the end of his second term. President-elect Trump's selection of Jamieson Greer as the presumptive USTR nominee may indicate continued momentum for these efforts.

Regarding AD/CVD enforcement, we expect bipartisan support for an attempt to resurrect the Level the Playing Field Act 2.0. Among other things, this proposed legislation would create an expedited process for domestic producers to bring successive cases on products covered by existing AD/CVD orders.

Tariff Impacts

Any increases to tariffs and trade remedy duties will have a significant impact on the U.S. economy. The misconception that tariffs are paid by the foreign exporter or foreign government will be in the forefront of discussions related to U.S. trade policy. Tariffs and duties are all paid by U.S. importers, U.S. companies, and ultimately by the U.S. consumer. Several companies have already raised the alarm that additional duties and tariffs will result in pass-through increases in prices to the U.S. consumer. Major retailers and several national grocery store chains have announced the intention to increase retail prices. An increase in retail prices will in turn result in inflation at all levels of the supply chain. An August 2024 estimate from the Petersen Institute of International Economics found that the proposed tariffs could cost the average American household upwards of $2,600 a year.

Export Controls and Trade Sanctions

Consistent with the Biden administration, a second Trump administration is likely to continue strengthening and enhancing technology export controls in the areas of AI and semiconductors. The first Trump administration issued broad restrictions on exports to Huawei Technologies Co., Ltd. and its more than 60 affiliated companies in an effort to prevent U.S. technology from being sent to China. The Biden administration expanded those controls, issuing its most recent round of export controls in December 2024 intended to further restrict China's capability to produce advanced-node semiconductors for use in next-generation advanced weapons systems, AI, and advanced computing with significant military applications. The departing Biden administration will also leave behind several proposed but not yet enacted rules intended to further restrict sensitive technology exports to China. At a minimum, the regulated public should expect the second Trump administration to enact final rules which are at least as restrictive as those proposed by his predecessor, but President Trump will enjoy flexibility to enact even more severe restrictions if he decides to do so.

Regarding sanctions, while the Biden administration as referenced above has imposed significant and restrictive sanctions on Russia and Belarus since the invasion of Ukraine in 2022, there is potential that a second Trump administration may roll back some of these measures; however, if past is prologue, the president-elect is likely to continue to press the U.S. embargo on Iran as well as roll back the easing of restrictions on Cuba made by the Biden administration.

Section 337 Litigation During the Second Trump Administration

Some commentators have argued the ITC's authority to conduct patent-based cases under Section 337 is redundant and inefficient because of the overlapping jurisdiction of federal district courts. In July 2024, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet held a hearing to address concerns about purported misuse of the ITC, which focused largely on public interest considerations and the domestic-industry requirement. That was the fourth such hearing over the past 10 years, and federal legislation has once again been introduced to try to amend Section 337 to make it a less attractive venue for patent owners. Relatedly, it is possible the new "DOGE" advisory commission on government efficiency will scrutinize some functions of the ITC, which could impact the ITC's adjudication of patent-based Section 337 cases.

On the other hand, the overall sentiment at the July 2024 congressional hearing was that the ITC plays a vital role in protecting U.S. intellectual property and in helping U.S. manufacturers combat unfairly traded imports. And commentators have emphasized the important distinctions between the ITC and federal district courts, and the need to preserve the unique remedies and expedient adjudication afforded by the former. Further, as the Trump administration seeks to implement an "America First" economic agenda—including as to trade and intellectual property issues—U.S. companies may be emboldened to file more Section 337 complaints. It will be interesting to see whether the new federal policy environment leads to increased usage of Section 337. The statute can certainly be a powerful tool to protect U.S. business interests by curbing the importation of infringing goods.

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