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Post-Election: U.S. Tariff Risk

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U.S. Tariff Risk

- The risk of additional tariffs being imposed on articles imported into the United States is real and immediate as of late January 2025
- Our view is informed by what President Trump did during his first term and what he said on the campaign trail he would do, if elected
 - We take former President Trump seriously (but not necessarily literally)
- On the campaign trail, President Trump talked (a lot) about imposing additional tariffs
 - Additional tariffs on all imports, regardless of country – 10% or 20%
 - Additional tariffs on products of China – 60%
 - Additional tariffs on EVs made in Mexico by Chinese-owned companies – 100%
 - Additional tariffs on products of U.S. companies who move production abroad – 100% or 200%

U.S. Tariff Risk

- While Article 1 of the U.S. Constitution gives Congress the power to determine and assess tariffs, Congress has delegated that power to the president under many different statutes
- Most statutes require that there be some finding or determination before the president can modify/impose tariffs
 - In his first term, President Trump imposed additional tariffs on various articles using “traditional” trade statutes
 - Because of the process required under these statutes, duties were imposed a year (or more) after potential was first announced
 - E.g., Section 301 China – investigation initiated in April 2017; additional duties imposed in July 2018
 - E.g., Section 232 Aluminum & Steel – investigation initiated in April 2017; additional duties imposed in March 2018

U.S. Tariff Risk

- We do not expect President Trump to use these same statutes (at least not for non-China tariffs)
- Our base case has President Trump imposing an additional 10-15% tariff on all imports shortly after taking office January 20, 2025
 - Will likely use Section 338 of the Tariff Act of 1930 or Section 203 of the International Emergency Economic Powers Act
 - Neither provision requires much process (i.e., no investigation required); only a presidential finding/declaration
- Will impact all articles from all countries
 - Expect that trade agreement partners (e.g., Canada, Mexico, Korea, etc.) will also be subject to this tariff
 - President Trump invoked IEEPA when he threatened Mexico with escalating additional duties over immigration in 2019

U.S. Tariff Risk

- Our base case has President Trump then turning to China and imposing meaningful additional tariffs
 - Likely imposes an additional tariff on all China-origin articles
 - In addition to existing tariffs (i.e., cumulative; not instead of)
 - Could instead increase the tariff applicable to articles currently subject to Section 301 tariffs (less likely); would mean some articles not covered
- Expect President Trump to re-issue his threat to impose escalating additional tariffs on articles from Mexico over immigration concerns
 - In 2019, threatened to impose an additional 5% duty that increased by 5% each month until the illegal migration crisis was alleviated (duties ultimately not imposed)

U.S. Tariff Risk

- Our base case is that President Trump acts quickly (i.e., in ~January), uses statutes that do not require much/any process, and additional tariffs become effective in early February 2025
 - Starts with imposing an additional 10-15% tariff on all imports from all countries
 - China is next; then Mexico
- We expect other countries to retaliate by imposing tariffs on U.S. products and/or services
- Open question whether US will adopt a product-based exclusion process, like was done with additional tariffs imposed during first term
 - Do not think this is likely, at least initially; may come later

U.S. Tariff Risk

- There is not likely to be much of a check on President Trump's trade actions
- Possible checks could be:
 - Congress -- not likely to act as a meaningful check on President Trump
 - Other countries -- will retaliate against products/services of the U.S., but that will take time (and in the short term may lead to the US increasing the additional tariffs)
 - WTO -- challenges are likely, but will not influence this administration
 - US litigation – challenges are likely, but will take years (e.g., 2020 challenge to Section 301 China tariffs still pending in US courts)
 - 2026 mid-term elections?

U.S. Tariff Risk

- Limited options to avoid/minimize across-the-board additional tariffs
 - Pull shipments forward as much as possible; tariffs will be effective on a going forward basis (i.e., will not be retroactive)
 - Contract provisions that address risk of additional tariffs (i.e., “Trump Majeure” clauses)
 - Consider customs valuation planning opportunities (e.g., use of the “first sale” value for customs purposes)
 - Use of foreign trade zones to increase tariff efficiency
- For targeted tariffs, continue supply chain diversification efforts
 - Some countries present lower tariff risk than others
 - Country of origin analyses matter with targeted tariffs
- Pursue product exclusions, if such a process becomes available again

U.S. Tariff Risk

- Our international trade & customs practice is helping many clients navigate what will likely be a turbulent period
- If you have any questions about these issues, please contact any of the Sidley Austin attorneys with whom you work, or

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