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MEMORANDUM

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BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Executive Order on America First Trade Policy

Yesterday, President Trump took his first tariff and trade related action of his second term with the issuance of an Executive Order on America First Trade Policy. The Order does not impose any new tariffs or other measures; rather, it directs members of his administration to conduct studies of numerous potential tariff actions, with most reports due by April 1 (and with any resulting tariffs presumably imposed sometime thereafter). Importers and others should not assume that this more measured action means that Trump is unlikely to impose new tariffs within the near-term future (and see more on that topic below); rather, at least one news report states that Trump remains highly interested in new tariff actions, and that the delay is meant to bolster the legal basis for new tariffs and make them more difficult to overturn.

The Executive Order aims to establish trade policy that promotes investment and productivity, enhances the Nation's industrial and technological advantages, defends economic and national security, and "benefits American workers, manufacturers, farmers, ranchers, entrepreneurs, and businesses." During a press conference held at the Oval Office while President Trump signed this and other executive orders, however, the President indicated to the press that tariffs on Mexican and Canadian goods could be imposed as early as February 1st and with tariffs potentially to be imposed on other nations as well. This memorandum outlines key provisions of the Executive Order and statements made by President Trump regarding tariffs in his first day in office.

The following are the key provisions contained in the Order:

- **Potential Universal Tariffs to Remedy the U.S. Trade Imbalance**

The Secretary of Commerce (Commerce), the Secretary of the Treasury, and the U.S. Trade Representative (USTR) are directed to investigate the causes of and risks resulting from the U.S. annual trade deficit in goods and recommend "appropriate measures, such as a **global supplemental tariff**," to remedy them.

- **Potential Tariffs on Canada, Mexico, and/or China in Response to Immigration and Drug Concerns**

The Order directs Commerce and the Department of Homeland Security to assess the flows of illegal immigrants and fentanyl from Canada, Mexico, China, and any other jurisdictions and recommend appropriate "trade and national security measures" to resolve the "emergency" caused by these issues.

- **Potential Increased/New Tariffs on China**

The USTR is to assess whether China has complied with the Phase One agreement reached in connection with the investigation on China's unfair trade practices under Section 301 of the Trade Act of 1974 conducted in the first Trump Administration, and recommend "appropriate actions" in response to the findings up to and including imposing tariffs. China has purchased only approximately 60% of the U.S. exports mandated by the agreement.

The USTR is to consider whether additional tariffs should be imposed in connection with the Section 301 investigation itself – particularly with respect to **"industrial supply chains and circumvention through third countries."** This suggests that the U.S. may narrow the circumstances under which Chinese-origin inputs may avoid Section 301 tariffs by further processing those goods in third countries prior to exportation to the U.S.

The USTR is to investigate "other acts, policies, and practices" by China that may be unreasonable or discriminatory and that burden or restrict U.S. commerce and make recommendations regarding appropriate responses, including commencing a new Section 301 investigation (or potentially expanding the Section 301 investigation already in place).

Commerce and the USTR are to assess legislative proposals stripping China of its permanent normal trade relations status and make recommendations regarding any changes to them. If the proposals are adopted, all goods from China would be subject to a sharply increased base rate of duty. This change would be in addition to any trade remedies such as Section 301 or Section 232 duties imposed on top of the new base rate.

Commerce is to assess the status of US intellectual property rights granted to Chinese persons and make recommendations "to ensure reciprocal and balanced treatment of intellectual property rights with the [People's Republic of China]."

- **Potential Tariffs to Remedy Unfair Trade Practices by Any Country**

The USTR is to review and identify "any" unfair trade practices by any other country and recommend appropriate actions to remedy them under various provisions of U.S. law providing for increased duties and other measures

- **Potential Actions to Counter Currency Manipulation**

Treasury is tasked with reviewing and assessing the policies and practices of major U.S. trading partners concerning the rate of exchange between their currencies and the U.S. dollar and recommending "appropriate measures" to counter currency manipulation or misalignment that prevents effective balance of payments adjustments or that provides trading partners with an unfair competitive advantage in international trade. Additionally, any countries that the Secretary believes should be designated as currency manipulators must be identified.

- **Free Trade Agreement Review**

The USTR must review U.S. and sectoral trade agreements and recommend any revisions to ensure that the agreements are truly reciprocal and mutually advantageous.

- **USMCA Review**

The USTR is to commence public consultations in preparation for the July 2026 review of the USMCA, and (in consultation with relevant agencies) make recommendations regarding the United States's participation in the agreement, focusing in particular on its impact on "American workers, farmers, ranchers, service providers, and other businesses." However, negotiations for new agreements on market access will likely prove difficult if Congress does not pass a law granting President Trump with Trade Promotion Authority (TPA). TPA would allow the President to negotiate new trade agreements and present them to Congress for an up or down vote without amendment. This authority has been historically difficult to pass into law, and this closely divided Congress may not likely provide TPA to President Trump.

- **Identification of Target Countries for Export Agreements and other Export Actions**

The USTR must identify countries with which the U.S. can negotiate export trade deals to obtain market access for American workers, farmers, ranchers, service providers, and other businesses and make recommendations regarding such potential agreements.

The Secretaries of State and Commerce, along with other relevant agencies, will review the U.S. export control system, and advise on changes considering strategic adversaries and national security. Their focus includes maintaining, obtaining, and enhancing technological superiority, closing loopholes in export controls, and improving enforcement policies to ensure foreign compliance.

- **Antidumping and Countervailing Duties**

Commerce is ordered to review policies and regulations for applying antidumping and countervailing duty (AD/CVD) laws, including aspects such as transnational subsidies, cost adjustments, affiliations, and "zeroing." Additionally, the Secretary will review the verification procedures to determine if they ensure compliance by foreign respondents and governments in AD/CVD cases. Modifications to these procedures will be considered, if necessary.

- **Potential Changes to *De minimis* exemption**

The Secretaries of the Treasury, Commerce, and Homeland Security, along with the Senior Counselor for Trade and Manufacturing and the USTR, are tasked with evaluating the impact of the $800 duty-free *de minimis* exemption. They will focus on the loss of tariff revenue and the risks of importing counterfeit products and contraband drugs like fentanyl. They will then recommend changes to safeguard U.S. revenue and public health by preventing unlawful importations.

- **Section 232 Tariffs on Steel and Aluminum and Other Measures to Protect US Industries**

The Secretary of Commerce, with input from the Secretary of Defense and other relevant agencies, will review the U.S. industrial and manufacturing base to decide if import investigations are needed to protect national security.

Separately, the Assistant to the President for Economic Policy, along with the Secretary of Commerce, the USTR, and the Senior Counselor for Trade and Manufacturing, will evaluate the effectiveness of the Section 232 tariffs on steel and aluminum imports put into place by Presidents Trump and Biden. They will make recommendations based on their findings.

- **External Revenue Service (ERS)**

The Secretary of the Treasury, with input from the Secretaries of Commerce and Homeland Security, will explore the feasibility of creating an External Revenue Service (ERS). This ERS would be responsible for collecting tariffs, duties, and other trade-related revenues (functions which are currently performed by U.S. Customs and Border Protection). They will also recommend the best methods for designing, building, and implementing this service.

PRESIDENT TRUMP STATEMENTS

Separately, President Trump made a number of statements last night regarding trade and tariff measures which in some instances are inconsistent with or more sweeping than the more measured steps outlined in the Executive Order.

- *Trump Says He Aims to Impose 25% Tariffs on Mexico and Canada on February 1st*

Notwithstanding the directive in the Executive Order to study these issues and report back by

April 1, Trump said Monday night that he aims to place 25% tariffs on imports from Mexico and Canada on February 1 based on these countries' alleged failure to control the flow of illegal migrants and fentanyl across their borders. These are the same grounds that Trump used to support his attempt to impose 5% tariffs on Mexico in 2019; Trump abandoned this attempt, however, after Mexico pledged to increase its efforts to combat these problems. It remains to be seen whether President Trump similarly draws back from yesterday's statements if Canada and/or Mexico make pledges of increased cooperation now (or offer other concessions).

If President Trump proceeds to impose these new tariffs, he will most likely declare an emergency under the National Emergencies Act, which would allow him to impose the new tariffs under the International Emergency Economic Powers Act ("IEEPA"). Although he declared an emergency at the Southern U.S. border yesterday based on the movement of illegal immigrants and drugs, the Executive Order accompanying this declaration was limited to border control measures and did not include tariff.

- ***BRICS***

President Trump stated that he would impose a 100 percent tariff on products of the BRICS nations (Brazil, Russia, India, China, South Africa, Egypt, Ethiopia, Indonesia, Iran, and the UAE) if they reduce their reliance on the U.S. dollar Again, this statement was not tied to any "official" order.

- Trump Ties Possible Tariffs on China to TikTok Deal

President Trump suggested during the signing of the Executive Order delaying the TikTok shutdown that he would impose tariffs on China if it opposes the sale of TikTok.

- Trump Leaves Possibility of Universal 10% Tariff Alive

Trump stated that he "may" impose a 10% universal tariff (a tariff on all products from all countries) but indicated that he was not yet ready to do so.

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We understand that new tariffs and other trade measures may pose challenges for your business, and we are here to support you through this period of uncertainty. Please do not hesitate to reach out if you have any questions or require further assistance. If you have any questions, please do not hesitate to contact Jessica Rikin (jrifkin@ofwlaw.com) or Denise Calle (dcalle@ofwlaw.com).