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February 6, 2025

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Lawyers: Trump trade memo suggests expanded use of 'zeroing'

By Margaret Spiegelman (/authors/Margaret-Spiegelman) / February 4, 2025 at 10:08 AM

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President Trump's day-one call for the Commerce Department to review U.S. trade remedy practices suggest the administration is planning to expand its use of "zeroing," a methodology for calculating dumping margins that has long been a source of disputes between the U.S. and other World Trade Organization members, trade lawyers tell *Inside U.S. Trade*.

Trump on Jan. 20 issued a **memorandum (/node/182156)** calling on yet-to-be-confirmed agency heads to review various aspects of U.S. trade policy, including the Commerce Department's application of antidumping and countervailing duty laws. The directive lists zeroing, the practice of disregarding negative dumping margins when constructing an average dumping rate, among other areas of focus for that review.

Countries were unable to reach an agreement on zeroing in negotiations that led to the WTO Anti-Dumping Agreement, which does not speak directly to the practice. Since then, adverse rulings at the WTO on zeroing have contributed to U.S. frustrations -- across Republican and Democratic administrations -- with the organization's Appellate Body.

Zeroing "has been an issue for the United States for decades now," Wiley Rein partner Tim Brightbill said, adding that the reference in the memo "suggests that the Trump administration will look to resolve this issue and allow the Commerce Department to potentially use zeroing in more situations than is currently allowed."

While Washington does not use zeroing as widely as it did before the creation of the WTO, trade lawyers said, it continues to use it when it finds dumping to be targeted at specific companies or regions or over specific periods of time. **The U.S. has argued (<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/april/united-states-prevails-%E2%80%9Czeroing%E2%80%9D>)** that Article 2.4.2 of the Anti-Dumping Agreement allows for the use of zeroing to ensure dumping margins reflect the particulars of so-called "targeted" dumping.

Another lawyer contended that the potential change to U.S. practice could be significant.

By “dropping a single word into his memo,” the lawyer said, the administration is signaling “that we could be going back to the days of two decades ago, basically, when the United States zeroed in every single case.”

The lawyer said it was difficult to estimate how frequently Commerce uses zeroing, saying it depends on the case and can vary within cases from one respondent to another. Generally, though, the use of zeroing leads to larger dumping margins and can lead to findings of dumping that otherwise might not be found, the lawyer said.

The U.S. is an outlier among WTO members in its use of a retrospective antidumping system, which assess final duties after an administrative review of sales over the previous year. Countries with prospective systems calculate margins during initial investigations and assess duties against those margins -- a process that some defenders of the U.S. system say effectively allows countries to zero out imports that are not being dumped.

Zeroing is “the same sort of thing that our trading partners do,” Cassidy Levy Kent partner Thomas Beline said, contending that other countries might just “shrug their shoulders” if the U.S. were to revert to past zeroing practice.

More significant, he said, is what that could mean for WTO reform.

“This is an elbow-in-the-paint-type thing,” he said, contending “it would be a strong signal that WTO reform might be on the very, very distant back burner.”

“What I would be reading into this,” he added, “is a strong signal that we're not turning back the clock on what the WTO used to be. We're turning the clock forward, and we're going to go back to our view of the international trade agreements.”

Other potential changes

Trump’s memo also calls on the Commerce secretary to review practices related to transnational subsidies, cost adjustments and affiliations.

Commerce last year **removed a regulation that prohibited (/node/179645)** it from investigating transnational subsidies and has since launched such probes into alleged subsidies provided by China via its Belt and Road Initiative. **Other regulatory updates (/node/181051)** in recent years include changes that Commerce officials have said were needed to address new trends in unfair trade practices.

With respect to transnational subsidies, Brightbill said the department under the Biden administration took “extremely important steps” that provide a foundation for incoming officials to “ramp up their actions to address unfair transnational subsidies by the Government of China.”

One area in which the administration might look to strengthen Commerce's toolkit, he said, involves particular market situations. PMS determinations allow Commerce to reject cost and sales prices because of distortions in the market, generally leading to higher dumping margins.

The first Trump administration "was able to make good use" of PMS provisions, Brightbill said, citing significant dumping margins in cases involving Korean steel, among others. But U.S. courts have since limited Commerce's ability to use them and the Trump administration likely will look to "reinvigorate" the use of PMS provisions through legislation as well as practice, he said.

Commerce last year introduced regulations crafted to **clarify its authority (/node/179509)** to make PMS determinations, including by setting out criteria for what it considers when making those decisions. A **proposal to tighten trade remedy laws (/node/177072)** re-introduced in 2023 by then-Sen. Sherrod Brown (D-OH) and Sen. Todd Young (R-IN) also included provisions crafted to clarify Commerce's PMS authorities, among other changes.

Trump's nominee for U.S. Trade Representative, Jamieson Greer, has called bills like the one pushed by Brown and Young "a step in the right direction" toward needed updates to U.S. trade remedy laws.

"Where courts or agencies have failed to protect domestic industries, Congress should improve the existing legal regime to deter repeat offenders, crack down on duty evasion, and account for market distortions that give foreign producers an edge over U.S. producers," Greer wrote in **testimony last year (https://www.uscc.gov/sites/default/files/2024-05/Jamieson_Greer_Testimony.pdf)** to the U.S.-China Economic and Security Review Commission.

Trump also wants the Commerce secretary to review department procedures for conducting verifications in trade remedy investigations and reviews and "assess whether these procedures sufficiently induce compliance by foreign respondents and governments involved in AD/CVD proceedings," as stated in the memo.

Commerce has been **ramping up its in-person verifications (/node/181855)** in foreign countries after they were paused during the pandemic. It also has been contending with a growing caseload that includes countries with industries facing trade remedy investigations for the first time, Beline said.

He believes the Trump administration likely will look for ways to increase efficiencies while ensuring a fair system.

"I think that there's probably a lot of anxiety as to how this can continue going forward," he said about the caseload, noting that Commerce's staffing levels for enforcement have stayed relatively even over the past 10 years.

Ensuring verifications are "rigorous" is among a host of recommendations for trade remedy enforcement outlined by a former Trump Commerce official in **Project 2025 (https://static.project2025.org/2025_MandateForLeadership_CHAPTER-21.pdf)**, which Trump

repeatedly disavowed despite its authors' ties to his first administration and his campaign.

The former official also recommended conducting a "regulatory capture audit" and putting "guardrails in place to address improper exercise of bureaucratic prerogative" in trade remedy enforcement, among other efforts. -- *Margaret Spiegelman* (mspiegelman@iwpnews.com) (<mailto:mspiegelman@iwpnews.com>)

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