

Trump Executive Orders

On March 31, President Trump signed two Executive Orders that will potentially have a significant impact on U.S. international trade: A new study on trade deficits may serve as a catalyst for bilateral negotiations with targeted countries, while an effort to enhance collection of duties owed by importers on products affected by trade remedies promises renewed attention to a long-standing enforcement priority.

Omnibus Report on Significant Trade Deficits

Claiming that “the United States has not obtained the full scope of benefits anticipated under a number of international trade agreements or from participating in the [WTO],” the Executive Order (EO) requires a **report on U.S. trade deficits** within **90 days**. The report will list the countries with which the U.S. had a significant trade deficit in goods last year, assess the major causes of the trade deficits and their effects on U.S. production and employment, and identify imports and trade practices that may be creating the deficit or impairing the national security of the U.S.

The EO allows public hearings and comments to collect information on trade deficit issues. Speaking on March 31, Commerce Secretary Wilbur Ross prioritized trade deficits in certain sectors, and the EO itself notes the study will consider imports related to national security. This may lay the groundwork for the Administration to self-initiate actions under Section 301 or 232 of the Trade Act of 1974 against specific foreign countries in sectors including steel, autos, and other manufactured goods.

Enhanced Collection and Enforcement of Antidumping and Countervailing Duties

Stating that \$2.3 billion in antidumping and countervailing duties owed to the U.S. remained uncollected as of May 2015, often from importers that lack assets in the U.S., President Trump issued an EO that is likely to add another cost to importing merchandise subject to a trade remedy. Within **90 days**, the Secretary of Homeland Security, in consultation with Treasury, Commerce, and the USTR, is to develop a **plan that would require certain importers to provide security for antidumping and countervailing duty liability** through bonds or other legal or appropriate enforcement measures, complementing the Enforce and Protect Act of 2015.

It is unclear what “other legal measures” and “other appropriate enforcement measures” mean. In addition to cash deposits, this EO paves the way for U.S. Customs and Border Protection (CBP) to require additional security, such as larger bonds, be posted by those importers that are not seen as financially viable to pay future increases in dumping or countervailing duties. This new requirement will mostly affect imports with low deposit rates, where the cash deposit is determined to be low, but remains subject to subsequent

retroactive increase as a result of a review. The measures are expected to increase the cost of importing merchandise subject to a trade remedies proceeding, particularly for certain small business importers.

WTO law authorizes requiring security for the risk of nonpayment of duties, but it should be reasonable and supported by sufficient evidence that the importer presents a risk of default. Although the EO states that CBP will perform a risk assessment “to provide security for antidumping or countervailing duty liability,” depending on the way these “other legal measures” or “other appropriate enforcement measures” are implemented, the EO may risk violating WTO obligations.

The EO also directs Homeland Security, through CBP, to develop and implement a strategy and plan for combating violations of U.S. trade and customs laws for goods, as well as identifying other appropriate enforcement measures in order to protect intellectual property rights holders from the importation of counterfeit goods. The EO also foretells more prosecutions for offenses related to violations of trade laws by training Department of Justice prosecutors in the area.



What to Watch For

- How will the EOs be implemented?
- What will be the risk assessment process CBP will undertake to determine if bonds or other legal measures are appropriate, and how will required bond amounts be calculated?
- Opportunities for importers to testify at hearings, submit public comments, and otherwise engage to ensure both sides are heard and considered.
- Expect an increase in trade remedies and duty evasion inquiries, audits, and investigations by CBP.
- Will these U.S. actions result in WTO disputes or international pressure?

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*The Night Note has a long tradition in Washington, where for years it has been a channel used by cabinet secretaries to alert the White House of critical issues and vital news that should be among the President's priority concerns. We've adapted it here to communicate timely issues that concern the trade and investment community stemming from new policy actions and decisions taken by the Trump Administration.