

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



On January 20, 2025, shortly after taking office, President Trump issued over 40 “executive orders” covering a wide variety of areas. The purpose of this Client Alert is briefly to describe what an executive order is and to highlight a few of the executive orders of most potential interest to our clients. We take no position on the wisdom, propriety or constitutionality of any of the executive orders discussed below.

At the conclusion of this Client Alert is the most detailed analysis of Trump administration trade and international tax policy you will find anywhere. It was prepared by Clark Fonda, who spent 15 years on Capitol Hill before joining Werther & Mills.

### **What is an executive order?**

An executive order is a presidential directive to executive departments telling them what to do. To be valid, an executive order must be rooted in either Article II of the Constitution, which delineates the powers of the Executive Branch, or within power delegated to the Executive Branch by Congress. George Washington issued the first executive order. Abraham Lincoln issued the most famous executive order, the Emancipation Proclamation. Harry Truman’s Executive Order 10340, placed all the steel mills under federal control. The Supreme Court, however, in *Youngstown Steel & Tube Co. v. Sawyer* (1952), ruled that order to be invalid because it made law rather than clarified or furthered a law or constitutional provision.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **President Trump's Inauguration Day executive orders.**

On January 20, 2025, President Trump signed 42 executive orders (and more have followed). Some were symbolic (like flying the flag at full mast on Inauguration Day), some were targeted at disfavored individuals (such as the one revoking John Bolton's security clearance); one was aimed at undoing executive orders signed by former President Biden; but most were new statements or revised statements of executive policy and priorities. This Client Alert discusses a few of the executive orders that reflect important changes in policy of potential interest to our client base.

### **Executive Order on "Emergency Price Relief for American Families"**

This order delivers a broad, open-ended mandate to all executive departments and agencies to "deliver emergency price relief" to the American people and "increase the prosperity of the American worker." Ostensibly targeting high costs of living, the order directs agency and department heads to pursue "appropriate actions" in a wide range of areas, from lowering housing costs and expanding housing supplies, to eliminating "coercive" climate policies, to eliminating regulations that raise the costs of household goods. While the order has no immediate tangible effect, businesses should be on the lookout for agency actions implementing the policy, particularly in industries closely intertwined with typical costs of living, such as construction and manufacturing. It is impossible to predict today how this order will be implemented. We note that Richard Nixon's imposition of wage and price controls in the 1970s was a disaster. The laws of economics are not easily repealed, even by an executive order.

*[Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis – The White House](#)*

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Promoting Beautiful Federal Civil Architecture**

This executive order is not only aesthetic, but it could impact government contractors working on federal buildings.

The order has a history. President Trump issued a similar executive order in December 2020, which President Biden revoked two months later, in February 2021. The executive order was not without controversy, with some architects and others arguing that it would stifle creativity and freedom of design and modernization.

The policy behind this executive order is that “Federal public buildings should be visibly identifiable as civic buildings and respect regional, traditional, and classical architectural heritage in order to uplift and beautiful public spaces and ennoble the United States and our system of self-government.” President Trump has directed the GSA to make recommendations on how to implement this policy, including potentially revising the Guiding Principles for Federal Architecture and how to incorporate community input into designs.

This executive order raises many questions, including but not limited to: What will the design-approval process entail? How will this affect pending projects on federal buildings? Will “modern” or “brutalist” federal buildings need to be revised to comply with the new standards?

The GSA’s recommendations are due on March 21, 2025. For now, federal government design-build contractors should be cognizant of the design-specifications and whether they appear to significantly alter the “aesthetics” of a federal public building. It is possible that this executive order will usher in a surge of design-build projects, especially if the new requirements apply to existing buildings and not new projects.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Dismantling DEI**

- (1) Ending Illegal Discrimination and Restoring Merit-Based Opportunity;**
- (2) Ending Radical and Wasteful Government DEI Programs and Preferencing; and**
- (3) Reforming the Federal Hiring Process and Restoring Merit to Government Service.**

President Trump issued three executive orders terminating “diversity-equity-inclusion” programs known as “DEI.” These orders are based on the premise that DEI violates the long-established prohibitions on discrimination based on race, color, religion, sex, or national origin. This prohibition dates back to Presidents Franklin Roosevelt, Truman, and Eisenhower, who all issued executive orders applying this prohibition to federal government contractors. In 1965, President Johnson implemented affirmative action in the federal government via Executive Order 11246, titled Equal Employment Opportunity. The executive order of President Johnson had the aim of preventing discrimination against minority groups in hiring and led to the development of the Federal Civil Rights Act and subsequent DEI programs that encouraged the hiring of such minority groups. President Trump’s position is that such programs violate anti-discrimination laws by considering race, color, religion, sex, and national origin, to the detriment of individual merit.

[Ending Radical And Wasteful Government DEI Programs And Preferencing – The White House](#)

[Ending Illegal Discrimination And Restoring Merit-Based Opportunity – The White House](#)

[Reforming The Federal Hiring Process And Restoring Merit To Government Service – The White House](#)

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Ending Illegal Discrimination and Restoring Merit-Based Opportunity**

This executive order's stated purpose is to "ensure" that the Federal Government enforces civil rights laws "by ending illegal preferences and discrimination." The executive order repeals several executive orders, in particular Executive Order 11246, and encourages the private sector to roll back DEI. Federal government contractors will now have to certify in their contracts that they do not have DEI programs that violate existing Federal anti-discrimination laws. The certification language has significant implications, because non-compliance, however unintentional, may violate the False Claims Act and expose a contractor to significant civil and/or criminal liability for "false certifications."

### **Ending Radical and Wasteful Government DEI Programs and Preferencing**

This executive order terminates all DEI and DEIA programs in the Federal Government, with the stated purpose of "serving every person with equal dignity and respect." The President has already placed all federal DEI workers on administrative leave, effective immediately.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Reforming the Federal Hiring Process and Restoring Merit to Government Service**

This executive order requires “a Federal Hiring Plan that brings to the Federal workforce only highly skilled Americans dedicated to the furtherance of American ideals, values, and interests.”

These three executive orders follow the recent Supreme Court decision (*Students for Fair Admissions Inc. v. President & Fellows of Harvard College*) overturning affirmative action in higher education, and federal courts that have applied that case to hold that similar federal policies are unconstitutional. Given the Supreme Court ruling, we do not expect legal challenges to the executive orders, to the extent based on President Trump’s removal of affirmative action and preferences, to be successful.

Federal government contractors face a massive shift in their hiring and contracting practices, and private contractors will have to consider whether and to what extent to follow suit. Contractors will need to understand how to comply with anti-discrimination laws without implementing DEI programs, essentially walking a fine line between non-discrimination and (now, impermissible) preferences.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **The Public Sector**

Additionally, the order calls for federal agencies and the Attorney General to create a plan for making the private sector comply with the new policies and to halt DEI programs, including targeting publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars for “civil compliance investigations.” This means the new administration is determined to make high profile examples of entities that refuse to comply with or defy this mandate.

*Please be on the lookout for a follow-up to this client alert that will provide practical advice to contractors regarding the DEI executive orders. The Trump administration is serious about its stated intent to enforce the DEI orders.*

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Restoring Freedom of Speech and Ending Federal Censorship**

We chose to report on this executive order because the firm represents several media clients. Context is important to understand the relative importance of this order, which purports to end Government pressure on social media and other companies to suppress certain speech or to “de-platform” certain disapproved speakers.

Recall that just four years ago, President Trump was banned from Twitter and faced other social media restrictions after the “events” at the Capitol on January 6, 2021. Before that, Facebook and other social media platforms started fact checking and policing posts in the wake of allegations of Russian and other international interference in our elections and President Biden proposed a much and rightly ridiculed “Disinformation Governance Board,” which was a proposal that immediately collapsed and sounded to many likely the “Ministry of Truth” in George Orwell’s 1984. More recently, however, Elon Musk bought Twitter, renamed it “X”, and invited President Trump back and Meta (formerly Facebook) has abandoned its fact checking efforts.

To the extent the Trump administration lives up to the promise in this order to prevent the Government from “exerting substantial coercive pressure . . . on social media companies” and others to suppress speech or to de-platform certain speakers, this order should merit universal acclaim. If the First Amendment means anything, it means that the Government should not be censoring or restricting the speech of private actors in the United States, or encouraging (or subtly demanding) others to do so.



# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Restoring Freedom of Speech and Ending Federal Censorship (cont)**

However, the order also requires all cabinet officials to investigate their agency's actions in this area over the past four years and report back to the President. What happens next with respect to "potential remedial actions" is not stated.

This order is hard to square with recent lawsuits by President Trump and/or his campaign against some prominent media organizations (CNN, ABC News, CBS News, Simon & Schuster and the Des Moines Register). Regardless of the merit or strength of those lawsuits, a media organization sued by a sitting president might decide to settle with or apologize to the President or his campaign to avoid possible negative administrative repercussions down the line, such as at broadcast license renewal time or otherwise dealing with federal government agencies. So, the question remains whether this executive order is meaningless virtue signaling, "partly truth and partly fiction" (with apologies to Kris Kristofferson), or something else. Only time will answer those important questions.

*Restoring Freedom Of Speech And Ending Federal Censorship – The White House*

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### The “America First” Trade Policy Memorandum

- **A. Background**

On January 20, 2025, President Trump issued a memorandum (“Trade Memo”) to guide American foreign trade policy as executed through the Departments of Treasury, Commerce, Defense, and Homeland Security, and through the Office of Management and Budget, U.S. Trade Representative, and other White House senior staff and offices.

As expected, the Trade Memo sets the tone for an active and offense-driven trade doctrine to leverage American national security interests and other international policy goals. Generally, the Trade Memo requires a multitude of government agencies to produce trade policy reports by April 1, 2025 that outline new enforcement initiatives to “put the American economy, the American worker, and [American] national security first.” The recommendations included in these April reports will guide the near-term regulatory efforts of the U.S. government.

- **B. What is trade law?**

Trade laws and policy take many forms, including: (i) tariffs imposed on foreign products, (ii) licensing requirements to sell certain products to foreign end users, (iii) government investigations into domestic and foreign investment or proposed mergers and acquisitions involving foreign entities, (iv) prohibitions on certain trade activities, and (v) penalties or other enforcement mechanisms imposed on entities that violate any of the above.

Below is a general overview of the Trade Memo and the many sectors of trade law that may evolve during the early stages of the Trump Administration.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### Tariffs

President Trump has broadly announced that tariffs will be a feature of his administration. Tariffs are taxes that the U.S. government imposes on foreign imports. Generally, the goal of tariffs is to motivate or manipulate foreign policy to deter or adjust certain activities. Congress maintains authority to set or adjust tariffs, however much of that authority has been delegated to the executive branch.

U.S. tariff authorities exist in a number of locations. Typically, the U.S. will negotiate a free trade agreement with one or more foreign governments, such as the U.S.-Mexico-Canada Agreement (“USMCA”), which was signed into law in 2020, that will outline various trade policies and restrictions, including any agreed upon tariff schedules. The USMCA includes negotiated tariff schedules, and the language of the agreement stipulates that the three countries agree to not “increase any existing customs duty, or adopt any new customs duty” beyond the agreed upon USMCA tariff schedule.

Federal statute contains multiple mechanisms, however, that allow the President to impose tariffs under certain circumstances. For example, Title III of the Trade Act of 1974 (commonly referred to as “Section 301”) grants the U.S. Trade Representative the authority to (i) withdraw or suspend trade agreements, or (ii) impose tariffs, duties, or other import restrictions to remedy an unwanted foreign trade practice. The U.S. Trade Representative may initiate a Section 301 investigation under federal statute to impose such tariffs. Section 301 also provides a mechanism for an interested person to file a petition with the agency to request action under Section 301. There are additional statutory terms and conditions that guide the U.S. Trade Representative related to any Section 301 action.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### Tariffs (cont)

Additional executive branch tariff authorities include:

- Section 232 of the Trade Expansion Act of 1962 – granting the President the authority to impose tariffs on imports that threaten national security.
- Section 5(b) of the Trading with the Enemy Act and Section 203 of the International Emergency Economic Powers Act – granting the President in wartime or other emergency to impose tariffs.
- Section 201 of the Trade Act of 1974 – granting the President authority to raise tariff rates in the event of a sudden import surge occurs that threatens U.S. industry.

There are many layers of tariff authority that President Trump can rely on to impose taxes on foreign countries. Tariffs will be utilized to effectuate security and foreign policy goals.

The Trade Memo alludes to the creation of the “External Revenue Service” to assist with the enforcement and collection of tariffs. Currently, U.S. Customs and Border Protection (“CBP”) enforces the collection of tariffs at U.S. ports of entry before any goods enter the country. The process is generally a “self-classification” or “self-enforcement” mechanism, whereby importers declare to CBP the goods entering the country and any applicable tariff amounts owed. CBP reviews the declarations and maintains the authority to perform audits. While details of the External Revenue Service are scarce, we expect any initiatives in this space to be heavy on public enforcement and an increased set of penalties for non-compliance.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Foreign Sales Licensing**

The federal government regulates what private entities can sell or transfer to foreign end users. The Trade Memo implies that President Trump seeks to increase enforcement and penalties relating to foreign licensing requirements. This will have a substantial impact on a multitude of U.S. industries.

Generally, foreign sales licensing is enforced through three primary regimes: (i) export control regulations enforced by the Commerce Department (“Export Controls”), (ii) international traffic in arms regulations enforced by the State Department (“ITAR”), and (iii) nuclear technology regulations enforced by the Energy Department (“Section 123”). The Trump Administration will enhance enforcement and penalties associated with the Export Control, ITAR, and Section 123 regimes.

Export Control enforcement will have the broadest impact on U.S. industry, and the Trade Memo indicates that President Trump intends to enhance its enforcement scope on the matter. Export Controls are governed by the Export Administration Act (“EAA”), 50 U.S.C. Chapter 56, and the associated Export Administration Regulations (“EAR”), 15 C.F.R. Parts 730-774, implemented by the Commerce Department.

Export Controls mostly regulate the foreign sale of technologies and the concept of “Dual Use” technologies. For example, most commercial technologies in the hands of Americans are not weapons or weapon accessories commonly thought of as a means to adjudicate warfare. However, some commercial technologies, including the many components located within any technology, may be used in a military context, hence the term “Dual Use” (meaning a technology or component has both commercial and military application).

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Foreign Sales Licensing (cont)**

Export Control enforcement comes through the process of obtaining a license. The EAR sets forth detailed guidance to organize and classify technologies and categories of foreign end users. For example, an American company intending to sell a covered Dual Use satellite chip component to certain foreign end users may require a license to do so. The license may come with restrictions and cover more than just the sale of the component itself, meaning sharing any “know how” relating to the covered item may be prohibited alongside selling the item to the foreign user.

In some instances, licenses will be denied if the Export Control regulations prohibit the category of technology from being transferred to a specific country, such as China. The ITAR and Section 123 regimes generally mirror this licensing process, except in different industries. For example, ITAR covers arms sales (i.e., a tank), and Section 123 covers nuclear technology transfers.

Companies that violate Export Control licensing requirements are subject to substantial penalties, including fines and commercial blacklisting. We expect the Trump Administration to expand the scope and enforcement of Export Controls by (i) modernizing the list of covered technologies, (ii) expanding the scope and density of licensing requirements, including additional disclosures and certification reporting, and (iii) increasing enforcement penalties.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **CFIUS and Government Investigations**

The Treasury Department houses an opaque government interagency known as the Committee on Foreign Investment in the United States (“CFIUS”). See 50 U.S.C. § 4656, et seq., and 31 C.F.R. Chapter VIII. CFIUS is tasked to conduct national security reviews of foreign direct investment and mergers and acquisitions involving U.S. and foreign entities. While most submissions or declarations to CFIUS are “voluntary,” the government’s authority built into the CFIUS process to unwind transactions is an insurmountable leverage position that generally compels companies to cooperate.

At the conclusion of any review, CFIUS generally has three options: (i) allow the transaction to proceed, (ii) impose mitigation agreements that include ongoing terms and conditions that must be adhered to in order for the transaction to proceed, or (iii) submit the transaction to the President for review and possible rejection. Ultimately, the President holds the authority to block or unwind a selected transaction. While CFIUS, as an agency, may be subject to administrative law and due process requirements, the Presidential authority to unwind a transaction is generally not bound to due process considerations.

CFIUS is a sister function to that of Export Controls. Export Controls cover the sale or transfer of outbound technologies or security assets, and CFIUS reviews inbound transactions whereby a foreign entity seeks to gain access to a critical technology or critical infrastructure in the U.S. simply by purchasing the entity, directly.

Over the past several years, both Democrats and Republicans have supported stronger and more aggressive CFIUS reviews. For example, Congress expanded the scope of CFIUS in 2018 by enacting the Foreign Investment Risk Review Modernization Act (“FIRRMA”). Among other things, FIRRMA expanded the investigatory reach of CFIUS and broadened the scope of covered transactions to include real estate deals in certain circumstances.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **CFIUS and Government Investigations (cont)**

Additionally, President Biden enacted several initiatives to strengthen CFIUS during his tenure, such as enhancing enforcement penalties, expanding the scope of covered transactions, and implementing a new mechanism within the Treasury Department to review outbound U.S. investments into countries of concern. Only months ago, President Biden generated headlines by rejecting a transaction late in his term that would have allowed Nippon Steel, a Japanese entity, to acquire U.S. Steel, an American entity.

The Trade Memo highlights President Biden's Executive Order that expanded Treasury Department authorities to investigate outbound U.S. investments into foreign countries. It is our opinion that the Trump Administration will use CFIUS and other Treasury Department mechanisms to expand the scope and scrutiny of both inbound and outbound foreign investment. President Trump will use CFIUS and related authorities to stall or block notable foreign transactions to enforce security concerns and leverage policy concessions. Entities engaged in such transactions will be required to balance government disclosures and public relations framing to usher transactions to approval. Werther & Mills can assist with this analysis.

Capital markets is one area to highlight where we believe regulations and policymaking will be imminent. President Trump will review U.S. market indices with the policy goal aimed at preventing institutional investments from financing foreign military capabilities, whether direct or indirect or knowingly or unknowingly. These are areas where we anticipate substantial regulatory initiatives over the next year.



# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### Expanding or Enforcing Other Trade Prohibitions

The Trade Memo covers many other trade law concepts and emphasizes expansion and enforcement. For example, the Trade Memo addresses “antidumping” laws and requests that the Commerce Department issue a report that considers “modifications to these procedures, as appropriate.” Antidumping laws are enforced by the Commerce Department and prohibit foreign entities from intentionally flooding American markets with subsidized or under valued commodities to distort and financially harm U.S. businesses. See 19 C.F.R. Part 351, et seq. We expect President Trump to emphasize and expand the enforcement scope of commercial antidumping prohibitions to apply pressure on certain foreign governments, such as China.

The Trade Memo also addresses the presence of foreign governments in U.S. government contracts. For example, President Trump directs the Office of Management and Budget to “assess any distorting impact of foreign government financial contributions or subsidies on United States Federal procurement programs...” This is a prelude to additional due diligence, disclosure, and certification requirements to be imposed on U.S. government contractors.

The Trump Administration may also leverage, and expand, other trade enforcement regimes, such as the Treasury Department’s Office of Foreign Asset Control (“OFAC”) sanctions listings and the Commerce Department’s anti-boycott regulations. For example, OFAC enforces foreign sanctions on terrorist organizations or other designated individuals and prescribes penalties on entities that continue business with sanctioned persons. See 31 C.F.R. § 501, et seq. It is possible, and likely, that the Trump Administration and Congress each work to expand enforcement of OFAC sanctions and designate new entities to be blacklisted for business.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **Expanding or Enforcing Other Trade Prohibitions (cont)**

Similarly, we anticipate that the Trump Administration will utilize lesser-known sanctions regimes, such as the Commerce Department's anti-boycott regime, to leverage foreign countries or entities. See 15 C.F.R. Parts 730-774. Anti-boycott laws are often overlooked. Generally, anti-boycott laws prohibit U.S. entities from taking certain actions relating to unsanctioned boycott activities. Most covered activities relate to boycotts of Israel, and the law is designed to prevent U.S. entities from furthering such unsanctioned boycotts. Boycott laws include self-reporting obligations that are triggered subtly, including by the mere receipt of a boycott request. We expect the Trump Administration to increase enforcement of anti-boycott laws.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



- **C. What U.S. companies and industries should be on the lookout for trade laws?**

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ("CISA") designates several critical infrastructure sectors that are generally subject to heightened review and scrutiny throughout many layers of federal law. There are currently 16 critical sectors, including the following:

- Communications
- Large Commercial Facilities
- Chemicals
- Defense Industrial Base
- Financial Services
- Energy
- First Responder and Emergency Services
- Food and Agriculture
- Healthcare
- Transportation
- Nuclear
- Information Technology
- Water and Wastewater
- Government Services
- Critical Manufacturing
- Water Dams

Any U.S. entity that conducts business in the above categories should consider conducting an internal due diligence review to ensure compliance with new and emerging trade laws. Please contact Werther & Mills to discuss setting up a plan of action to ensure compliance with any new and emerging trade laws.

# client alerts

## SECOND TRUMP ADMINISTRATION EXECUTIVE ORDERS CLIENT ALERT



### **The Global Tax Memorandum**

On January 20, 2025, President Trump issued a memorandum to the Secretary of Treasury relating to the Organization for Economic Co-operation and Development (“OECD”) Global Tax Deal.

The so-called Global Tax Deal is an international agreement organized through the OECD that President Biden joined in 2021. The Global Tax Deal was an effort to implement and enforce a mandatory 15% tax on certain multinational companies that met a threshold global revenue. The goal of the Global Tax Deal was to implement a baseline tax on large corporate entities that used multinational tax structures to reduce their overall effective tax rate.

Through his memorandum, President Trump instructed the Treasury Department to notify OECD that the U.S. has withdrawn from the Global Tax Deal, making the international agreement unenforceable in the United States. American corporations will no longer be subject to any enforcement or penalties included in the Global Tax Deal.