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主旨：有關美國媒體報導川普政府貿易救濟政策趨勢事，請查照。

說明：

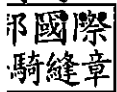
- 一、依據駐美國代表處經濟組114年2月6日經美字第1140000146號函辦理(如附件1)。
- 二、美國媒體Inside U.S. Trade本(114)年2月4日報導美國貿易救濟政策方向(如附件2)，要點如次：
 - (一)擴大使用「歸零(Zeroing)」計算方式：川普總統於本年1月20日發布美國優先貿易政策備忘錄，要求商務部(DOC)等部會審查美國貿易政策，包括反傾銷與反補貼稅法調查作法，並將歸零列為審查重點，顯示美國可能回歸在每個案件皆採用歸零計算方式，在計算傾銷差額時不考慮進口產品價格高於正常價格情形，而將導致進口產品更容易構成傾銷。
 - (二)加強打擊跨國補貼：DOC於去(113)年修正貿易救濟法規，取消原先禁止調查跨國補貼作法，並對中國透過一帶一路倡議提供之跨國補貼進行調查，前揭備忘錄亦要求DOC審查與跨國補貼、成本調整等貿易救濟調查作法，顯示川普政府將加強打擊跨國補貼情形。

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(三)擴大使用「特定市場狀況」(Particular Market Situation, PMS)認定：DOC去年修正貿易救濟法規，明定PMS認定的權限並制定相關考量標準，使DOC得因市場扭曲而拒絕當地成本和銷售價格，而採取其他較高的正常價格，將導致更多案件構成傾銷。

(四)加強貿易救濟調查實地查證程序：前揭備忘錄亦要求DOC審查貿易救濟調查和複查的實地查證程序，並評估該等作法是否足以促使涉案外國企業及政府遵守貿易法規。律師表示川普政府可能會尋求提高查證效率的方法。

正本：中華民國全國工業總會、中華民國家具商業同業公會全國聯合會、台灣鋼鐵工業同業公會、台灣鋼線鋼纜工業同業公會、台灣螺絲工業同業公會、財團法人中華民國紡織業拓展會、台灣區人造纖維製造工業同業公會、台灣區絲織工業同業公會、台灣區金屬品冶製工業同業公會、台灣鍛造協會、台灣區塑膠原料工業同業公會、台灣區塑膠製品工業同業公會、台灣橡膠暨彈性體工業同業公會、台灣太陽光電產業協會、台灣區彈簧工業同業公會、台灣染料顏料工業同業公會、台灣區家具工業同業公會、台北市寢具商業同業公會、台南市紙商業同業公會
副本：駐美國代表處經濟組、中華民國常駐世界貿易組織代表團、本署署長室、副署長室、主任秘書室、雙邊貿易二組



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主旨：有關美國媒體報導，川普政府擬擴大使用反傾銷調查之「歸零」(zeroing)計算方式，將增加構成傾銷情形事，敬請查照。

說明：

一、美國媒體Inside U. S. Trade本(114)年2月5日報導要點如下：

(一) 川普政府預料將擴大使用「歸零」計算方式，將使成立「傾銷」案件增加，亦可能使WTO重要性日趨式微：

1、川普總統於1月20日發布之「美國優先貿易政策」備忘錄，要求商務部等部會審查美國貿易政策，包括反傾銷與反補貼稅法調查作法。該備忘錄將「歸零」列為審查重點，「歸零」計算方式在計算傾銷差額時，不考慮進口產品價格高於「正常價格」情形，而將導致進口產品更容易構成「傾銷」（即進口產品價格低於正常價格）。

2、WTO爭端解決小組多認為「歸零」計算方式違反WTO反

傾銷協定：WTO反傾銷協定對於「歸零」無明確禁止，惟WTO上訴機構多認定該作法違反上述協定，導致美國多年來對於WTO之不滿。因此倘川普政府大幅增加使用「歸零」算法，將使WTO日趨式微，亦顯示川普政府對於恢復WTO功能可能興趣不大。

- 3、此間專家表示，川普政府貿易政策備忘錄提及「歸零」一詞，顯示美國貿易救濟可能回到20多年前，在每件調查案皆採用「歸零」計算方式。目前貿易調查只有在涉及針對特定市場、地區或期間的「針對性傾銷」(targeted dumping)，才採用「歸零」算法。
- 4、華府律師表示，其實許多國家皆採取「歸零」類似作法，因此若美國若恢復該作法，其他國家亦可能不會有太大反應。

(二) 川普政府將加強打擊跨國補貼(transnational subsidies)情形：

- 1、上述備忘錄也要求商務部審查與跨國補貼、成本調整等貿易救濟調查作法。
- 2、商務部在2024年修正貿易救濟法規，取消「原先禁止調查跨國補貼」做法，並對中國透過「一帶一路」倡議提供之過國補貼進行調查。

(三) 貿易救濟將擴大使用「特定市場情況」(PMS)以認定「正常價格」，而可拒絕當地成本價格，將導致更多案件構成「傾銷」：

- 1、華府律師表示，川普政府可能擴大使用「特定市場狀況」(particular market situations, PMS)認定，

PMS允許商務部因市場扭曲而拒絕當地成本和銷售價格，而採取其他較高的「正常價格」，將導致更多案件構成「傾銷」（即進口產品價格低於正常價格）。

2、商務部在2024年修正貿易救濟法規，明定有關PMS認定的權限並制定相關考量標準。此外，美國會議員亦曾提出多項貿易救濟法案，強化商務部認定PMS權限。

(四)商務部將加強貿易調查之實地查證(verifications)：

1、貿易政策備忘錄要求，商務部審查貿易補救調查和複查中的實地查證程序，並評估該等實地查證做法是否足以促使反傾銷/反補貼案件的外國企業及政府遵守貿易法規。

2、華府律師表示，商務部在疫情期間曾暫停海外實地核查(in-person verifications)後，近期已加強此工作。

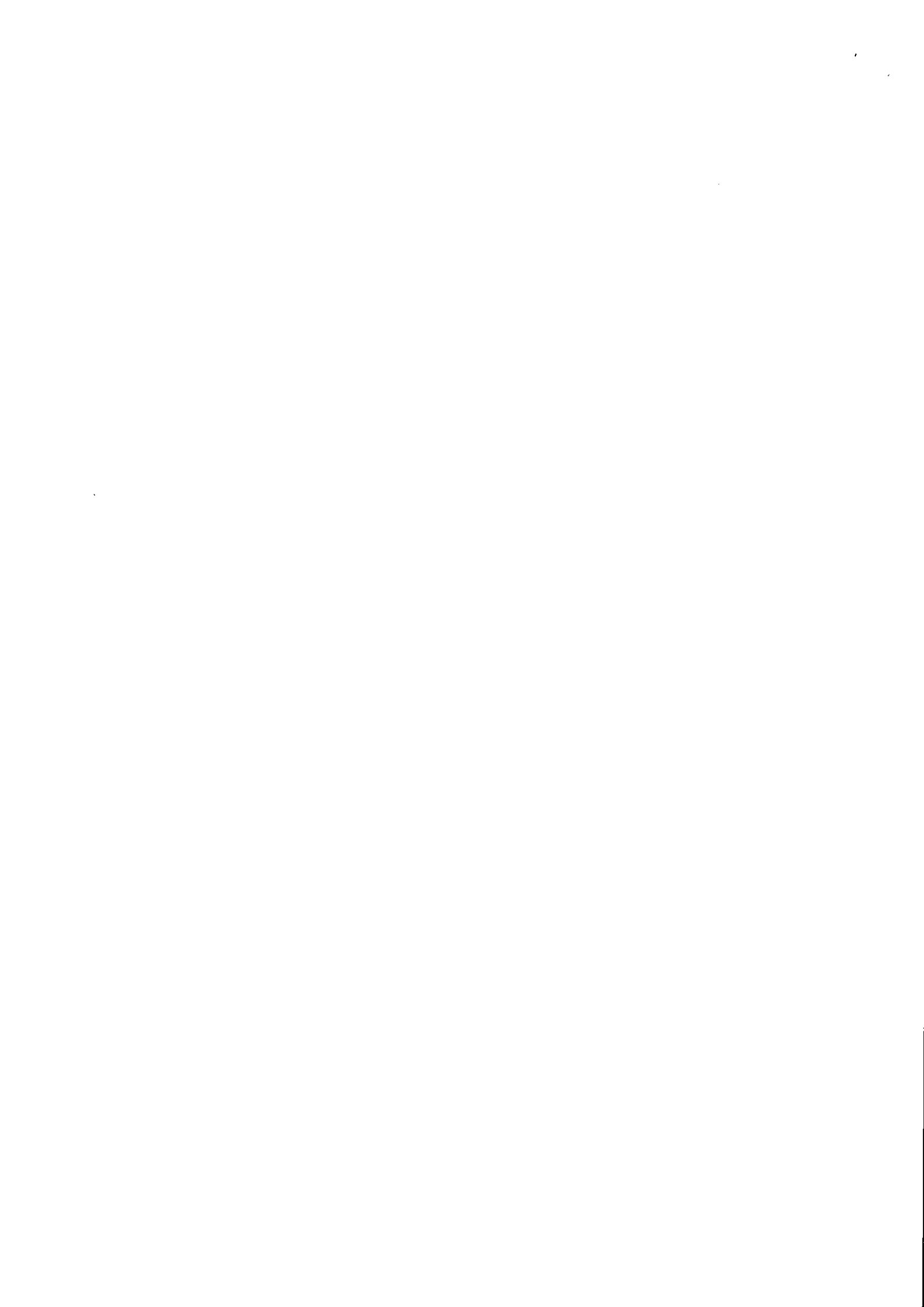
3、另，貿易救濟案件數量不斷增加，其中包括首次面臨貿易救濟調查的國家。川普政府可能會尋求提高效率的方法，同時確保公平性，尤其是商務部貿易執法人員編制在過去10年並未增加。

二、檢送該報導如附件，併請卓參。

正本：經濟部國際貿易署

副本：行政院經貿談判辦公室、經濟部江政務次長室(請經濟部代陳)、經濟部產業發展署、經濟部國際貿易署署長室、胡副署長室(均請貿易署代陳)(均含附件)

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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* (m Spiegelman@iwpnews.com) (<mailto:m Spiegelman@iwpnews.com>)

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THE TRUMP TRANSITION

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Sen. Hassan (D-NH) said it would "help small businesses navigate any exclusion process set up by the administration."

FULL COVERAGE → (</topic/the-trump-transition>)

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