

WilmerHale Webinar: What to Expect from a Trump Trade Policy

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Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
- Questions will be answered as time permits
- Offering 1.0 CLE credit in California and New York*
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Overview: What's at Stake

- Primacy of trade agenda in Administration
- Potential break from post-Cold War bipartisan trade consensus
- Offensive opportunities and/or defensive risks for companies:
 - FTAs – both existing and new initiatives
 - Enforcement of existing trade rules
 - China
 - Unilateral imposition of tariffs
 - Border adjustment
 - H-1B visas
 - Potential retaliation by trading partners
 - Other
- Key for companies: assess potential effect on bottom line, and start acting now to protect your interests



General Policy Orientation

- The team: appointments to date
- “100-day Action Plan to Make America Great Again”:
 - Withdraw from TPP
 - Renegotiate or withdraw from NAFTA
 - Direct Secretary of Treasury to label China a currency manipulator
 - Direct Commerce and USTR to find violations of existing trade agreements and remedy them
 - Sanctions policy
- Outstanding question: roles of USTR, Commerce, National Trade Council (new), National Economic Council, special representative for international negotiations (new)



Politics of Trade/Bully Pulpit

- “Saving” American jobs and greater trade enforcement have strong bipartisan support and respond to working class fears about globalization
- President-elect has used “name and shame” and threat of tariffs to discourage offshoring of U.S. manufacturing jobs or expansion abroad
 - Carrier, Ford, GM, Toyota
 - Instantaneous effect on market cap (e.g., Toyota lost \$1.2 bn in market cap within five minutes of a tweet)
- Can this policy continue post-inauguration?



Free Trade Agreements

- New approach to free trade agreement negotiations
 - Pledge to withdraw from TPP within first 100 days
 - Pledge to renegotiate or withdraw from NAFTA
 - Likely pause on other ongoing initiatives (e.g., TTIP, TISA, EGA); ultimate fate unclear
- Apparent preference for bilateral over multilateral agreements
 - Possibility of negotiations with the UK, Japan



Free Trade Agreements: Renegotiation of NAFTA, As Example

- Potential revisions and updates could be numerous
- Some changes could benefit U.S. companies
 - Digital trade, intellectual property, anti-corruption/rule of law
- Other changes could be negative for U.S. companies
 - Rules of origin, ISDS, provisions targeting “outsourced” production
- Other changes could be important for their effect on future negotiations
 - State-owned enterprises (SOEs), currency manipulation
- Critical for companies to review their exposure, understand their interests, and get involved offensively and defensively



China

- Overall policy environment
 - Intensified bilateral tensions, *and* business environment skews negatively for U.S. and foreign companies
 - Greater reciprocity will be sought
- Potential rifle-shot and other measures in new administration, including:
 - Currency
 - Designation as currency manipulator
 - Countervailing duties
 - WTO litigation/enforcement
 - Greater willingness to file “marginal” cases?

[Continued on next slide]



China (cont.)

- Self-initiation of cases
 - WTO disputes
 - Anti-dumping and countervailing duty laws; anti-circumvention cases
 - Section 201 “safeguard” rules
 - Section 301 of the Trade Act of 1974 (potential unilateral action)
- Strengthening of U.S. laws (e.g., Section 337 for products benefiting from stolen IP)
- Use of Executive Orders
- CFIUS reform/expansion
- Unilateral imposition of tariffs



Tax Reform

- “Destination-based cash flow with border adjustment” is a key component of the Republican “Better Way” tax reform proposal
- Details of the border adjustment mechanism unclear, but potential WTO issues
- Nonetheless, Speaker Ryan has insisted that the tax reform proposal will move forward (at least in the House)
 - Would raise over \$1 trillion – money that is needed to “buy down” corporate tax rate
 - Supports Trump/GOP policy to incentivize domestic manufacturing and job creation



Questions?

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