

WilmerHale Webinar: The Trump Administration's Trade Policy and Its Implications for Global Companies

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- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
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Scorecard on Previous Statements on Trade

- “100-day Action Plan to Make America Great Again”
 - ✓ Withdraw from TPP
 - ✓ Renegotiate or withdraw from NAFTA
 - X Direct Secretary of Treasury to label China a currency manipulator
 - ? Direct Commerce and USTR to find violations of existing trade agreements and remedy them



Principal Administration Trade Policy Pronouncements

- Administration declares a “new approach” to U.S. trade policy
 - Expand trade in a way that is “freer and fairer for all Americans”
 - Promote job creation in the United States and greater reciprocity
 - Focus on bilateral negotiations rather than multilateral negotiations – and renegotiate and revise existing trade agreements
- Administration outlined priorities
 - Defend U.S. national sovereignty over trade policy
 - Reaction to adverse WTO rulings and perception that WTO is “making law”
 - Strictly enforce US trade laws
 - Use leverage to open foreign markets
 - Concern about countries that don’t adhere to free-market principles that underlie WTO rules, and need for greater transparency
 - Negotiate new and better trade deals
 - Trade deficits with key trading partners a primary focus
- Reality: Policy largely dominated by singular focus on manufacturing trade deficits and prior agreements



NAFTA Renegotiation

- Administration wants a “fairer deal” addressing America’s persistent trade imbalances in North America; NAFTA modernization also to be addressed
- Some changes could benefit U.S. companies
 - Digital trade, financial services
- Other changes could be negative for U.S. companies
 - Rules of origin, government procurement, IP copyright rules
- Others will be important for their effect on future negotiations
 - WTO “plus” subsidy disciplines for SOEs
- Congressional and industry concerns with current approach
 - U.S. Chamber: “Highly dangerous” proposals
 - Will Congress implement the amended deal?
- Critical for companies to get involved in the negotiations to protect their interests



Other Free Trade Agreements

- TPP Agreement terminated; broad and unfortunate implications
- T-TIP, TISA, China BIT negotiations effectively stalled
- KORUS renegotiation
 - Joint Committee discussions to “improve outcomes under the agreement for all Americans”
 - Agreement to address implementation issues – and potential amendments to the deal – in the near future
- CAFTA, Peru, Colombia, Chile, Panama
 - Digital trade, trade facilitation, rule of law
- Negotiation of new agreements?
 - Wheat industry: “time to get past plowing the same fields and start opening ground in new markets”
 - UK and Japan bilaterals still on the table?



The Drive to Strengthen “Buy America” Rules

- Executive order to promote “Buy American” policies
 - Calls for systematic review of Buy American rules, and proposals to maximize US content in federal procurements, reduce use of waivers, and reexamine exemptions granted to foreign bidders
 - Specifically mentions laws that “require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods”
 - Announces that executive branch will maximize use of US-made products through terms and conditions of federal procurements
 - Directs agencies to scrupulously monitor, enforce, and comply with Buy American rules and minimize use of waivers
 - Calls on Commerce and USTR to assess impact of WTO GPA and US FTAs on Buy American rules
 - Report and recommendations from Commerce due November 24, 2018
- NAFTA procurement negotiations a hint of what’s to come?



Use of “National Security” Statutes to Investigate Trade

- Section 232 of the Trade Expansion Act of 1962 provides for investigations to determine the effects on national security of imports
- Trump Administration has initiated investigations of imports of steel and aluminum
- After initial flurry of action, investigations have faded from public view
 - Possible delay of reports and remedies until tax reform complete
- Nature of remedies remains to be seen
 - Concerns about negative impacts on industrial users
- Potential WTO concerns
 - Availability of essential security exception?
- Risks of retaliation?



China Trade Policy

- Jury is still out on how much the Administration's posture toward China differs from that of its predecessors
 - The most aggressive campaign threats have not (yet) been fulfilled
 - Unilateral tariffs
 - Retaliation for currency manipulation
 - Penalties for outsourcing
 - Administration has initiated proceedings that could prove provocative and engender retaliation
 - Section 232 investigations of steel and aluminum
 - Section 301 investigation re: technology transfer, intellectual property and innovation
 - Effectiveness of Comprehensive Economic Dialogue unclear
 - Following a warm Trump-Xi meeting in April in Mar-a-Lago, and incremental progress resulting from the 100-Day Action Plan, expectations for the CED were high
 - U.S. negotiators reportedly walked away from the table without any joint statement, because they viewed China's proposals as inadequate



China Trade Policy: Upcoming Events

- October 18: 19th Party Congress opens
- November 3-14: President Trump travels to Japan, Korea, China, Vietnam, and Philippines. In China, expected to meet President Xi.
- November 30: Commerce determination on AD investigation of aluminum foil due. May include results of review of China's NME status.
- January 2018: Commerce Section 232 national security reports on steel and aluminum due to the President



Implications for Global Companies

- Reopened agreements (NAFTA, KORUS): What do you want?
- New agreements: What is going to help you? Do you need new rules? If so, begin pushing.
- Buy America/Government Procurement: Proposed changes will upend the current system. Whether individually or through trade associations, make your voices heard.
- Work with agencies and Congress; White House for large issues.
- For China, ensure that the Administration's strategy appropriately reflects your objectives and concerns, and be sensitive to risk of retaliation by China.
- Bottom line: Critical for companies to review their exposure, understand their interests, and get involved offensively and defensively.



Questions?

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