What to Expect From a Trump Administration Trade Policy

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President-elect Donald Trump is promising major changes to US trade policy that, if implemented, will significantly impact US and foreign companies that compete in the global market, and that could particularly impact those that rely on cross-border supply chains. Potentially impacted companies would be well-advised to evaluate the risks and opportunities these changes pose for their bottom lines and to determine what steps, if any, they should take to protect their interests.

Although the full details of the president-elect's plans are not yet clear, some overarching themes are apparent from trade policy speeches during the campaign and a post-election transition team memo that has been reported in the press. Some of the most important proposals include:

- *Withdrawing the United States from the Trans-Pacific Partnership (TPP) Agreement:* The TPP Agreement is a proposed free trade agreement between the United States and 11 countries in the Asia-Pacific region, which Congress has not yet ratified. The president-elect has called the agreement a “death blow” for American manufacturing that cannot be fixed, and he has pledged to withdraw the United States from the agreement within his first 100 days.
- *Renegotiating the North American Free Trade Agreement (NAFTA):* The Trump administration reportedly will ask Canada and Mexico to renegotiate NAFTA to get a better deal for US workers. If they refuse, the United States will trigger a provision that allows a party to withdraw from the agreement for any reason with six months' notice.
- *Identifying China as a currency manipulator:* The president-elect has pledged that he will direct the Secretary of the Treasury to find that China is manipulating the value of its currency to gain an unfair advantage in international trade. By law, the designation would trigger an obligation for Treasury to initiate negotiations with China to eliminate the unfair advantage. It is also possible that the US Department of Commerce will revisit whether to treat undervalued currencies as countervailable subsidies under US trade remedy laws—a step that could lead to the imposition of additional duties on imports of products from the countries in question.
- *Bringing new trade cases against China:* The Obama administration has filed 14 World Trade Organization cases against China. The president-elect has promised to instruct the Office of the US Trade Representative to increase the number of cases even further, both at

the WTO and in the United States. And it is possible that the Trump administration will self-initiate trade cases under the antidumping and countervailing duty laws, Section 201 "safeguard" rules and Section 301 of the Trade Act of 1974—a power that the United States has used sparingly in the past.

- *Identifying and remedying trade agreement violations:* The president-elect has promised to review existing US trade agreements to identify violations by US trading partners that harm US workers, and end them through negotiation, WTO litigation or action under US law.
- *Introducing reciprocity requirements for foreign investment:* There are indications that a Trump administration will rethink the US approach to reviewing foreign acquisitions of US companies, including by putting a greater emphasis on reciprocity. Transactions involving state-owned enterprises (SOEs) and state capital are likely to receive particular scrutiny.
- *Revising the targets and application of US economic sanctions:* The president-elect has criticized recent trends and developments in US sanctions policies, including a pledge to demand changes in the application and enforcement of sanctions relief under the Iran nuclear deal and a reexamination of current sanctions against Russia.

If the Trump administration moves forward with these initiatives, it would mark a significant departure from the approach to US trade policy that the Obama administration has taken—and indeed, from the approaches of previous Republican and Democratic administrations. However, the real-world impact remains to be seen. It is not yet evident, for example, what particular changes the United States would seek in NAFTA, although the agreement's rules of origin (which determine which products receive duty-free access to the US market, an issue of particular importance to the auto industry) are one logical target. It is also unclear how the Trump administration would react if some of its proposals, either in the trade arena or the domestic policy space, were found to run afoul of WTO rules. Proposed changes to US economic sanctions could result in unilateral US actions with significant collateral effects, including placing US companies at a competitive disadvantage (*e.g.*, in Iran) or undermining the harmonized, multilateral approach to sanctions that has been a key factor in their successful implementation vis-a-vis Iran and Russia in recent years. And it is important to remember that US trade policy does not exist in a vacuum: to give just one example, China is already signaling that it will respond to any US withdrawal from TPP by accelerating its own efforts to negotiate regional trade agreements, which could exclude the United States. The Trump administration would need to determine whether and how to react to such an event if it were to occur.

However, this lack of certainty should not prevent companies from acting proactively to examine their own business operations, determine the extent to which they depend on trade agreement provisions that may be subject to change and quantify the potential impact. This is especially important now, when the incoming administration is still formulating its policies and setting priorities for action.

In the short term, the Trump administration is likely to take a pause in the negotiation of new trade agreements (although there have been comments about exploratory discussions with a post-Brexit United Kingdom), including by freezing negotiations that are currently underway. Companies that have been looking forward to obtaining new protections for their businesses—such as the cross-border data flow provisions in the TPP Agreement—will need to look for other vehicles. The Trump administration is also likely to give WTO litigation and other enforcement actions an even greater role in US trade policy than they have at present. It is reasonable to expect that the Trump administration will continue to use the “non-market economy” methodology in China antidumping cases for the foreseeable future—a policy choice that would likely lead to China launching its own WTO cases against the United States, and potential retaliation. And it is also reasonable to expect that if a Trump administration takes steps to impose unilateral tariffs on Chinese products, China would respond by retaliating against US exports to China and/or further discriminating against US companies operating in the country.

Finally, one should not forget that Article I of the US Constitution grants Congress the power to regulate foreign commerce. Although Congress has ceded substantial authority to the president in this regard, it remains to be seen how a Republican-controlled Congress will react if a Trump trade policy conflicts significantly with traditional Republican views on trade.

Please contact us if you have any questions about the potential risks and opportunities that the Trump administration's new approach to trade may create for your company.

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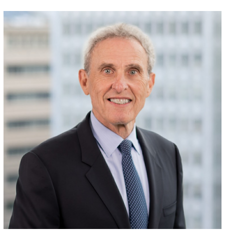

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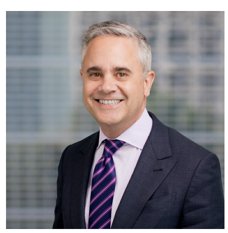

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