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Trade, Labor and EU Law Perspectives

Biden's Win Signals Trade Optimism – Despite Headwinds

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President-elect Biden's victory has been met with relief by many in the international trade community. Despite expected obstacles he faces, Biden is expected to conduct U.S. international trade policy in a different way, including the use of multilateral approaches rather than "going it alone," diplomacy instead of taunts and insults, collaboration not flying "solo," and working on common global goals, not just "America First." Most of all, international trade observers look forward to a return of the rule of law, not the daily government by tweet that has too often surprised or even blindsided international business.

International business is accustomed to turbulence and uncertainty, but many welcome what is expected to be a more measured, deliberate, and policy-driven approach under Biden. How quickly the United States and the world emerge from the COVID-19 crisis will influence the speed and effectiveness of much of the Biden agenda. In the meantime, despite COVID, there is a very healthy agenda.

Transition

The delay in the transition from the Trump Administration to the Biden Administration occasioned by the claims of election irregularities will have less of an impact in trade than it will in some other areas. During the transition period, it is clear that the Trump Administration, while on the way out the door, is planning to take actions that bind, constrain, or at best simply delay the Biden Administration, with actions that would need to be undone as part of a Biden agenda, such as new sanctions on Iran, expected new export controls on China, possible import action on auto parts, among others. Nonetheless, the Biden Transition Team is taking shape and based on early indications, they appear to be leaning on competent, experienced talent (including many Obama Administration alumni) to implement their Trade agenda.

First 100 Days

Apart from the marquee announcements (such as rejoining the Paris Accords, which is likely to also find its way into any Biden trade agreements), we can expect the Biden Administration, in line with the theme of "building back" to begin to recreate a collaborative relationship, particularly with European allies. Rebuilding will be a key effort as the Biden Administration tries to reestablish relationships of mutual respect not just with Europe, but with Canada and Mexico. What will Biden do with the tariffs on steel and aluminum? How will he address the important issues of the trade imbalance with China, the currency issues in Vietnam, and the ongoing threats from Russia? We will have to wait to see on some, but in some cases, we are getting a glimpse of

what might happen.

China

China is perhaps the primary trade-related issue on which we may not expect much substantive change right away but will see a change in process. While President-elect Biden has also maintained a tough on China stance, the differences between his likely approach and that of the Trump Administration on China remain substantial.

The Trump Administration's brinksmanship has not produced what Trump promised, in fact some worry that it has strengthened China. We can therefore expect the Biden Administration to maintain focus on the issues that exist — imbalance, technology competition, trade-secret protection, fair trade, and others — but to address them using the tools of international trade, not bullying or star chamber-like duty hammers (such as section 301), which harm U.S. importers and consumers as much as they do China.

Trade Agreements

The recent announcement of the Regional Comprehensive Economic Partnership (RCEP) in Asia has echoes of the work the Obama-Biden Administration undertook with Trans-Pacific Partnership (TPP) and provides stark evidence to underpin the worry that by withdrawing from TPP the United States is now being left behind in the region. Although it is unlikely that the Biden Administration will embrace the RCEP, it is expected to be more open to trade agreements that operate multilaterally, not unilaterally.

World Trade Organization

In the topsy-turvy world of 2020, where Republicans are no longer the party of “free trade” and in many ways have adopted trade policies that look like the Democrats of the 1980s, the parties may be closer on some goals, but are miles apart on process. A Biden Administration will look to multilateral institutions, such as the WTO, as tools for finding common ground and for addressing disputes through process, not tit-for-tat tariff battles.

Given the damage done to the WTO by the Trump Administration, repairs will not be quick or easy, but will provide a signal that there is a different way to do things, based on the rule of law, not unilateralism. Deglobalization, which has been a prime Trump objective, will slow and the beneficial, wealth generating, poverty reducing benefit of international trade can operate again. Expect the Biden Administration to continue to manage the negative consequences of trade but to see liberalization as a good thing.

Export controls

In this Administration, export controls as policy tools have been elevated to their highest level since the fall of the Soviet Union. Export controls have served as the thin edge of the wedge to drive U.S. policy separating the civil from the military in China; many other tools have followed, but the comprehensive ‘clamp down’ reducing the sharing of U.S. technology with China – from Huawei, to the military end use/user rule expansion, targeting PRC companies with Entity List bans – the Export Administration Regulations have rarely been so central in U.S. economic and security policy.

Although we expect the elevated role of export controls to remain under a Biden Administration, we do expect changes: (1) greater appreciation for the self-inflicted harm certain of these measures have caused to part of the U.S. economy and that of our allies; and (2) a more transparent and process-driven system. Many see the current export control policy process as a “black box” with little rule-based support, and very little guidance for industry affected by the measures.

Sanctions

President-elect Biden faces an arguably over-leveraged U.S. sanctions policy, with the Trump Administration having resorted to unilateral sanctions as their solution to every foreign policy challenge. Biden is, however, expected to maintain many of these approaches, including potential expansion in some areas, most prominently the use sanctions on those engaged in human rights violations, via the Global Magnitsky Sanctions, including the targeting of those involved in fostering or supporting forced labor practices, or undermining democracy.

Cuba will be an important issue, including whether to roll back some of the restrictions that Trump created to slow President Obama’s path to normalization. The United States remains uniquely isolated in the world community when it comes to Cuba.

President-elect Biden will also confront the question of whether to maintain a maximum-pressure policy on everywhere from Iran, to Cuba, to North Korea, or whether he uses the change in administration as an opportunity to step back and engage diplomatically before resorting to economic coercion. Nowhere will this question be more pressing than with Iran, and whether and how Biden can return to the JCPOA that his former boss Obama established, will be one of the first-year tests of President-elect Biden’s foreign policy approach and potential re-engagement with European allies.

Even though the “what will Biden do” question cannot be answered with precision, the “how will Biden do it” question can be answered. Facing likely opposition in the Senate will slow and even divert some of his objectives, but a return to respect for the rule of law and the tools of international trade will in fact go a long way toward building back America’s standing in the global economy and the important institutions of international trade.

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