TRADE & INTERNATIONAL RELATIONS

UNTANGLING RHETORIC FROM SUBSTANTIVE CHANGES

Trade relations and foreign policy in general are likely to be a major focus—of both rhetoric and substance—under President Trump. In its first months, the new administration has escalated tensions with Iran, withdrawn from the Trans-Pacific Partnership, begun the process of renegotiating the North American Free Trade Agreement, increased focus on North Korea, and generally applied an "America First" lens to every aspect of global relations.

Untangling the rhetoric from the substantive changes will be one of the major challenges for companies. During the run-up to the November election, the Trump campaign staked out a number of positions that would have overturned long-standing policy, but its substantive actions in the first few months in office have been more understated. Companies that can accurately predict how the administration will implement its stated objectives will have a competitive advantage.

"No one is questioning America First, *per se*, or that we should be looking to prioritize support of American businesses," says Jini Koh, counsel in Crowell & Moring's International Trade Group. "But by the same token, the economy is so globally interconnected now that most companies appreciate the full impact of internationalization, even if the average American consumer may not. We have not seen proposed changes this fundamental from a new administration in years. The effects can be stunning."

RETHINKING TRADE AGREEMENTS

Trump's first act in this regard was to abandon TPP, a deal among 12 countries on either side of the Pacific Ocean that represent about 40 percent of the world's economic output. The president alleged that the TPP would have reduced U.S. sovereignty and played favorites among American industries. But Koh says TPP represented "a much larger strategic policy play, a geopolitical play, to ensure that China does not take over all of Asia." Trump has said his administration will seek to even the playing field on trade with China on a bilateral basis.

The biggest trade uncertainty looming now is how Trump is ratcheting up pressure on Mexico and on U.S. companies that manufacture there. From his continued insistence that the nation will build a wall between the United States and Mexico, to his threat of new tariffs, to congressional Republicans' talk of a "border tax" that would essentially accomplish the same thing, to saber-rattling for changes in NAFTA, Trump has bet so much political capital on upending this particular relationship that Koh expects some major changes.

"NAFTA could be a better deal for the U.S.," she says. "It was one of the first major free-trade agreements that the U.S. signed, and the rules are tricky and hard, so there is definitely room to streamline the rules. But the United States cannot dictate terms as it could in the '90s, since Canada and Mexico are closer to parity with the U.S. now than they were then. This is primarily the result of years of investment that American companies have made south of the border, through setting up manufacturing operations in Mexico and importing the products for distribution in the U.S. If there are increased duties, do we expect American companies to simply absorb them? Very unlikely—they'll be passed down to consumers." Companies should be making sure they understand their own supply chains and be ready to advocate for their interests at the table when the opportunity, suddenly and probably abruptly, arises.

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GETTING TOUGHER WITH SANCTIONS

During the campaign, Trump also threatened a dramatic series of changes to U.S. economic sanctions, but his actions in office have been more understated on three of the highest-profile U.S. sanctions programs. With respect to Iran, Candidate Trump made political hay in highlighting what an “awful deal” President Obama had struck with Iran in the Joint Comprehensive Plan of Action, threatening to withdraw from the agreement on his first day in office.

However, several months into the new administration, “all signs are that Trump is not going to pull the U.S. out of that agreement, but instead will ramp up enforcement of sanctions against Iran for conduct not covered by the agreement, such as new designations related to Iran’s missile program and with respect to its support for terrorism,” says Carlton Greene, a partner at Crowell & Moring, a member of the firm’s International Trade and White Collar & Regulatory Enforcement groups, and former chief counsel at the Financial Crimes Enforcement Network. Additionally, “he’s more likely than a Clinton administration would have been to broadly construe the agreement and really hold Iran to account for it.”

On Cuba, the approach Trump will take is murkier, Greene says. “The opening to Cuba has led a lot of U.S. companies to start looking at Cuba as a market, so now he’s getting significant lobbying by industries such as aviation and hospitality,” Greene explains, that may limit the actions Trump might take to unwind the Obama administration’s relaxations of the Cuba sanctions, which he opposed during the last few months of the campaign.

“Another factor is how long Raul Castro will stay in office,” Greene adds. “It’s possible they could do some kind of face-saving deal for both sides that would allow the Trump administration to realize minor, additional concessions from Cuba about elections or opening the market to U.S. business interests and cultural exchanges. On the Cuba side, the countervailing gain would be that the existing relaxation of sanctions is kept in place and ways are found to strengthen it at the margins.” President Castro has stated publicly that he will not run again in 2018, notes Greene, “potentially providing a mutually convenient legal predicate for further relaxation of sanctions that are contingent on a change in regime in Cuba.”

Russia, obviously, is the trickiest of the “big three” sanction priorities. While Trump has publicly criticized U.S. sanctions on Russia, the likelihood of any immediate relaxation has declined precipitously since the beginning of the administration in the face of hostile reactions from some members of Congress to any relaxation and in light of pending investigations relating to Russian interference in the U.S. election. Adding to this is the fact that the European Union recently reaffirmed its sanctions with respect to Russia. Greene says that in this political environment, U.S. economic sanctions against Russia “will largely stay in place” for the time being.

THE FUTURE OF ANTI-MONEY LAUNDERING

Anti-Money Laundering and Suspicious Activity Report requirements are areas where President Trump’s ideology and campaign promises could play out in unpredictable ways. While a number of banks and financial institutions have petitioned the government to streamline SAR reporting obligations to focus on higher-risk activity, SAR reporting “is going to continue just the way it is now because it’s tremendously useful to law enforcement, and they will press very hard to keep it functioning as it has,” says Crowell & Moring’s Carlton Greene.

As for AML more generally, Trump has positioned himself as a pro-business president and has promised to roll back financial regulations across the government. On the other hand, he has positioned himself as a “tough on terrorism” leader, Greene notes. “Those things create a dynamic tension when you talk about AML,” he says. Greene does not, therefore, expect substantial AML regulatory change during the first year of the administration, while the administration deliberates ways to ease the regulatory burden on banks and other financial institutions without being seen to weaken the ability to “follow the money” for terrorist actors by FinCEN, an agency that has substantial support in Congress and with law enforcement.