

KIRKLAND ALERT

March 2, 2017

Trump Administration Releases National Trade Policy Agenda for 2017

On March 1, 2017, the Office of the U.S. Trade Representative (“USTR”) released its National Trade Policy Agenda for 2017 (“Trade Agenda”) describing the president’s trade policy objectives. The Trade Agenda is consistent with President Trump’s campaign promises to fundamentally alter U.S. trade policy by pivoting away from multilateral negotiations and organizations. As a result, companies with international dealings should closely follow the Trump Administration’s implementation of this significant change of course in U.S. trade policy.

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1. Key Objectives of the Trade Agenda

The Trade Agenda sets out several customary international trade goals, such as increasing economic growth and job creation, eliminating tariff and non-tariff barriers abroad, enhancing respect of intellectual property rights, and expanding exports. However, the Trump Administration has also identified new objectives — and means of achieving those objectives — that represent a notable departure from recent U.S. trade policy preferences. These include:

- Engaging in bilateral rather than multilateral trade negotiations;
- Aggressively enforcing U.S. trade laws designed to combat unfair trading practices;
- Challenging interpretations of trade agreements that are adverse to the United States;
- Updating current trade agreements to reflect changing times and conditions; and
- Enhancing national security by promoting economic strength and U.S. manufacturing.

Notably, in a departure from President Trump’s frequent emphasis on the U.S. industrial base, the Trade Agenda speaks to several sectors of the U.S. economy such as trade in goods, services and agriculture. Accordingly, the changing landscape of international trade presents all types of U.S. companies with both risks and opportunities that could affect their operations and business.

2. Trump Administration Trade Priorities

The Trade Agenda focuses on several areas where the Trump Administration sees strategic openings for U.S. trade policy: asserting U.S. national sovereignty, using

existing trade law enforcement tools, opening foreign markets and negotiating better trade deals.

a) *Defending U.S. National Sovereignty*

The Trade Agenda asserts that decisions issued by the World Trade Organization (“WTO”) have undermined U.S. national sovereignty with respect to international trade, and the Trump Administration intends to vigorously challenge adverse WTO decisions. Casting doubt on the validity of WTO decisions represents a very different approach compared to previous administrations and may result in strong responses from trading partners at the WTO and otherwise. Formal challenges to a U.S. refusal to implement adverse WTO decisions would likely take years to resolve, but companies should be aware of the possibility of retaliation from our trading partners in the interim.

b) *Strictly Enforcing U.S. Trade Laws*

The Trade Agenda also sets out concrete legal tools the Trump Administration will use to “prevent the U.S. market from being distorted by unfair trade practices.” As described below, these tools can be used by the Administration in the near term and can substantially affect cross-border business through the use of tariffs, quotas, and other, similar mechanisms:

- Section 301 of the Trade Act of 1974 authorizes the USTR to take “appropriate action in response to foreign actions that violate an international trade agreement or are unjustifiable, or unreasonable or discriminatory, and burden or restrict United States commerce.” The Trade Agenda is clear that the President intends to use the broad authority of Section 301 to impose tariffs or other measures to achieve trade goals outside of the WTO framework.
- Under the Tariff Act of 1930, the United States can impose antidumping (“AD”) and countervailing duties (“CVD”) on imports that are dumped (i.e., sold at less than fair market value) or subsidized. The Trump Administration will likely make liberal use of AD/CVD investigations to assist U.S. producers, and the U.S. Department of Commerce will begin to exercise its long-dormant authority to self-initiate AD/CVD cases.
- The Trade Agenda also asserts that the Trump Administration will rely on Section 201 of the Trade Act of 1974, which permits the imposition of “safeguards” (i.e., tariffs or quotas on imports) when the U.S. International Trade Commission finds that increasing imports are a substantial cause of serious injury to domestic industry.

Companies must closely monitor enforcement of U.S. trade laws for both opportunities and risks. Taking advantage of the Trump Administration’s commitment to enforcement can provide opportunities for U.S. firms that face import competition or are seeking export market access. However, these measures can also negatively impact businesses with global supply chains.

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c) *Opening Foreign Markets*

The Trump Administration intends to take measures to gain access to foreign markets by seeking to eliminate non-tariff barriers and ensuring reciprocal treatment for U.S. companies operating overseas. As part of this initiative, the United States will aggressively name and shame countries that do not follow free-market principles and pursue more transparency in major market actors' implementation of trade laws. While not explicitly identified, this section of the Trade Agenda clearly refers to China. Accordingly, companies with Chinese operations should stay abreast of U.S. government action with regard to China and engage with the Trump Administration where necessary to protect their economic interests.

d) *Negotiating New and Better Trade Deals*

The Trump Administration plans on reviewing and renegotiating trade agreements to ensure they benefit the United States. The Trade Agenda specifically names NAFTA, the Korea-U.S. Free Trade Agreement, and Chinese accession to the WTO as agreements that have had a negative impact on U.S. interests. While renegotiation of such agreements is a long-term project, firms with interests in these destinations should carefully monitor developments and seek out advice on the impact of trade agreements on investments and transactions.

It should be noted that USTR will release a more detailed Trade Agenda upon the confirmation of a U.S. Trade Representative, and companies should be attentive to this changing and dynamic regulatory landscape. The attorneys in the International Trade and National Security practice of Kirkland & Ellis LLP regularly advise multinational companies on international trade matters and can assist and provide legal counsel.

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If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

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