ALSTON & BIRD

Night Note: The 1st 100 Days

*Trade in the First 100 Days of the Trump Administration**

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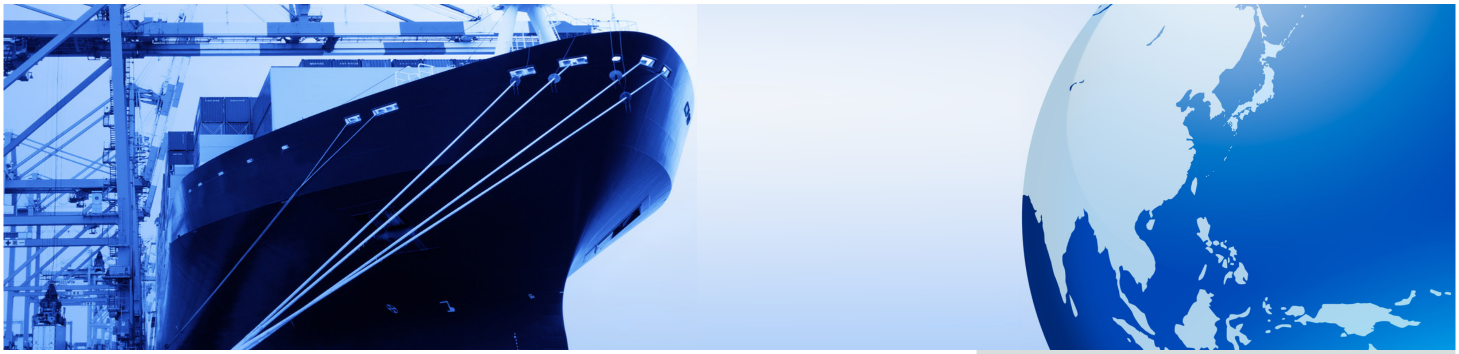

How Were the First 100 Days for Trade?

As the Trump presidency's first 100 days came to an end on April 29, some initial promises on trade were carried out (such as withdrawing from the TPP), and others were not (such as labeling China as a currency manipulator). Overall, the U.S. position on trade is becoming more protectionist.

Reviving Infrequently Used Trade Actions

Two types of trade actions, which if successful could give the President broad authority to impose import restrictions, are presently underway.

The Trump Administration unveiled new investigations of **steel and aluminum imports under Section 232** of the Trade Expansion Act, a rarely used instrument that allows the U.S. to impose import restrictions if it finds that imports of the investigated foreign goods pose a threat to national security. The Department of Commerce, after consultation with the Department of Defense and other U.S. agencies and acceptance of public comments, will submit findings and recommendations to the President, who will then decide whether to take action to limit imports.

Another rarely used legal instrument, **Section 201** of the Trade Act, was resurrected on April 26, through a "global safeguard" petition from a U.S. producer against imports of **certain solar cells**. If the International Trade Commission (ITC) finds serious injury to the U.S. domestic industry, it makes recommendations to the President, who then decides what action to take.

Executive Orders

On March 31, 2017, President Trump signed an Executive Order (EO) requiring a report on **U.S. trade deficits**. The EO requests that Commerce, in consultation with USTR and the heads of other government agencies, submit a report on U.S. trade deficits to the President within 90 days. A public hearing is scheduled on May 18, 2017, in which Commerce and USTR will seek public comments for the report. We expect the current Administration's trade policy initiatives and negotiations with trading partners to continue to be animated by the goal of reducing trade deficits.

What to Watch For

President Trump's first 100 days reflect in part many of his campaign promises to stop trade that is not helping the U.S.

- Over the next six months, expect reports that will be the basis for renegotiation of trade agreements and imposition of trade restrictions.
- It is unclear if the Administration is setting out extreme positions and then will negotiate compromises.
- Expect opportunities for revisiting existing, and creating new, bilateral (and maybe even multilateral) trade deals.
- What is emerging is a shift from trade liberalization under the WTO and FTAs to managed trade.
- It is highly likely that more trade restrictions and fewer imports are in the future.
- Companies should closely monitor the Executive Branch's actions, consider their goals and desires, and actively engage the Administration and Congress to ensure that their trade concerns are considered as policies continue to unfold.

*The Night Note has a long tradition in Washington, where for years it has been a channel used by cabinet secretaries to alert the White House of critical issues and vital news that should be among the President's priority concerns. We've adapted it here to communicate timely issues that concern the trade and investment community stemming from new policy actions and decisions taken by the Trump Administration.

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Another EO requires a plan to ensure proper collection of antidumping and countervailing duties. U.S. Customs and Border Protection (CBP) could play an important role here through Enforcement and Protection Act (EAPA) investigations.

On his 100th day in office, President Trump signed two more EOs concerning trade. One EO **establishes the Office of Trade and Manufacturing Policy** (OTMP), to be run by Peter Navarro. Among its responsibilities is to be a liaison between the White House and Commerce. The OTMP's mission is to defend American workers and manufacturers and to decrease trade deficits.

Another EO was issued on April 29, 2017, directing Commerce and USTR to review and provide a report within the next 180 days (**October 26, 2017**) on whether existing trade or investment agreements, trade relations, or trade preference programs enhance U.S. economic growth, contributes favorably to the U.S. balance of trade, and strengthens the American manufacturing base. The U.S. has said it will renegotiate or terminate those trade or investment relationships that harm the U.S. economy, businesses, IP rights and innovation rate, or American people. Also, Commerce, USTR, and other agencies are to "take every appropriate and lawful action to address violations … or abuses of trade law, or instances of unfair treatment."

Changes in Trade Remedy Proceedings

Commerce recently broke new ground with its use of **Section 504** of the Trade Preferences Extension Act. In an administrative review of two Korean oil country tubular goods producers, Commerce deviated from its common practice in calculating dumping margins in market economy cases by disregarding a respondent's actual cost of production and using surrogate value instead, due to a "particular market situation."

The Border Adjustable Tax

The notion of a "border tax" was raised by President Trump and congressional Republicans to generate revenues to offset corporate and personal federal tax cuts. The border tax would have the effect of increasing the tax burden of companies that rely on imports. Recently, however, the idea seems to have been shelved. In the White House's new tax plan, the border tax issue was not mentioned.

Renegotiation of NAFTA and the U.S.-Korea Free Trade Agreement (KORUS)

Following many threats to pull out, President Trump stated that the U.S. **will not terminate NAFTA** "for now," suggesting that future negotiations with the NAFTA countries will determine whether U.S. withdrawal is necessary. While the new trade policy agenda identified the need to reduce NAFTA's trade deficits, lawmakers have cautioned that withdrawing could have negative consequences for the U.S. economy and the integrated North American supply chain. In a similar fashion, President Trump recently threatened to terminate the KORUS unless the U.S. could negotiate a better deal.

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