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Election 2020 Snapshot:
Helping our aerospace and
defense clients make sense
of the U.S. election results

Election 2020 Snapshot: Helping our aerospace and defense (A&D) clients make sense of the U.S. election

The election of Joe Biden as the 46th President of the United States likely will result in significant shifts in U.S. aerospace and defense industry priorities, revocation of certain Trump administration policies applicable to government contractors, strengthened “Buy American” requirements, and increased use of defense and National Aeronautics and Space Administration (NASA) budgetary authority to combat climate change.

Government spending priorities and resulting opportunities and challenges

Under the Biden administration, U.S. defense budgets are expected to face increased pressure, with the expectation that Biden’s initial **defense budgets will be no greater than flat** compared to the current proposed defense budget. It is worth noting that Michèle Flournoy, a former undersecretary of defense for policy in the Obama administration and one of the leading candidates for secretary of defense, has publicly **criticized** the Obama-era budget sequestration cuts in defense spending. If Flournoy becomes the defense secretary, she is unlikely to support major defense cuts, reflecting the consensus among defense establishment figures across both parties.

While Republican representation in the Senate is expected to counter calls from progressive House Democrats for significant decreases in defense spending, the flat demand is likely to

stimulate further merger and acquisition (M&A) activity in the defense industry as companies look to grow revenue and increase competitiveness non-organically. M&A activity, however, may face increased scrutiny under a Biden administration, pushed by progressive Democrats who are seeking more aggressive enforcement of antitrust laws.

Additionally, based on historical experience, we expect there to be increased bid protest and claim litigation activity between contractors and their government customers as contractors in low-growth defense environments tend to be less willing to forego revenue without a strong justification. And, while spending on certain legacy and nuclear programs is likely to face increased scrutiny, Biden’s past statements suggest **strong support for unmanned**

aerial systems and increasing cyber warfare, artificial intelligence (AI), and hypersonic missile capabilities. Moreover, defense spending will continue to focus on competition with “near-peer” countries China and Russia.

Small businesses are in a good position to benefit from some of Biden’s pronouncements that signal support for aerospace and defense contractors. For example, Biden has signaled an intention to leverage a **“scaled-up” version of the Small Business Innovation Research (SBIR) program** to fund small businesses and to commercialize cutting-edge technology. This bodes well for those companies that qualify for the SBIR program and whose technology is of interest to the government (e.g., AI, cyber, robotics, advanced manufacturing, communication technologies, batteries, and biotech, to name a few).

The aerospace and defense industry will also face opportunities and challenges as Biden pivots the government to focus more on combating **climate change**. As perhaps the largest consumer of fossil fuels and producer of carbon emissions, the Biden DoD is expected to accelerate its research and use of green technologies, while **subjecting its contractors to green requirements**. For example, the department is likely to hasten its shift to more efficient consumption of energy sources at its bases (including use of efficient microgrids); increase its focus on compact nuclear fusion; and require the purchase of, and its contractors to use, environmentally friendly technologies.

Although Biden has been relatively silent regarding space policy, his administration is expected to continue President Trump’s ambitious agenda of pushing human exploration of space. Based on the Democratic Party platform, a Biden administration is also likely to leverage space, and in particular NASA’s budget, for scientific research, including to **study climate change using space-based technologies**.

Finally, the aviation industry is looking for stronger prospects of reimplementation of pandemic-related support under Biden, to the extent it does not occur earlier. At this time, the prospects for an economic stimulus package being passed during the “lame duck” session of Congress are uncertain. Additionally, Biden’s statements regarding **increased infrastructure spending extends to the nation’s airports**, which will be welcomed by both airlines and aircraft original equipment manufacturers (OEMs).



Regulatory changes

President-elect Biden is likely to continue the Trump administration's strengthening of regulations focused on contractor **cybersecurity** and **supply chain security**, which include support of the new rules requiring cybersecurity assessments and restrictions on the use of certain Chinese telecommunication and video surveillance technology. Biden has also signaled, however, a **strengthened commitment to "Buy American"** procurement and supply chain requirements. Although the Trump administration issued several policy announcements aimed at strengthening "Buy American" policies, Biden has been critical of those announcements as ineffective.

In his "Made in All of America" policy paper, Biden stated a commitment to "[l]everage federal buying power and the full range of government authorities, including the Defense Production Act, BARDA, and federal procurement, to make sure that we make critical products in America." Biden's pronouncement, if implemented, will provide a significant competitive advantage to two audiences: 1) those companies in the federal government market that offer U.S.-made products, and 2) potentially countries with reciprocal trade agreements covering government procurement – if the enhanced requirements extend beyond strictly U.S.-made end products.

Biden reportedly is eager to repeal several labor-related requirements that Trump imposed on government contractors. For example, Biden is expected to rescind the Trump Executive Order on Combating Race and Sex Stereotyping, which prohibits federal contractors from conducting certain diversity training. Also, Biden is expected to reinstate Obama-era procurement policies that had been revoked by Trump, including former

Executive Order 13495 Nondisplacement of Qualified Workers Under Service Contracts (EO 13495). EO 13495 required contractors to offer a right of first refusal of employment to certain service employees who worked on predecessor contracts.

Biden may also reinstate the Obama executive order that banned federal contractors from discriminating against employees on the basis of sexual orientation or identity. Also, in a **pre-election pronouncement**, Biden stated that he would "require that companies receiving procurement contracts are using taxpayer dollars to support good American jobs, including a commitment to pay at least [US]\$15 per hour, provide paid leave, maintain fair overtime and scheduling practices, and guarantee a choice to join a union and bargain collectively."

For trade and its impact on commercial aerospace, one major development to watch is the outcome of the longstanding World Trade Organization (WTO) dispute between the United States and the European Union over aircraft subsidies, which may or may not be settled before Biden takes office. While the United States has had punitive duties in effect on US\$7.5 billion of EU aircraft, aircraft parts, cheeses, whiskies, alcoholic beverages, woollens, and hand tools since October 2019, a WTO arbitrator just authorized the European Union to impose sanctions on US\$4 billion of U.S. products, which they began imposing last week. This includes a levy of 15 percent on aircraft.

While some member states reportedly supported suspending the duties to encourage settlement talks, the European Union reportedly has decided to go ahead with the duties instead, while making it clear it is prepared to remove them if the case can be settled. This risks a further escalation of the dispute, since United States

Trade Representative Robert Lighthizer has threatened to respond in kind by "carouseling" the European products subject to duties and raising the duties as high as 100 percent. Such an escalation could further complicate U.S.-EU trade in aerospace and other products that are subject to penalty duties. While the sensible thing would be to settle the WTO dispute, a settlement poses technical challenges and has eluded the parties during 15 years of litigation. If that dispute can be settled, a Biden administration may have an opportunity to work with the European Union to craft new global rules on aircraft subsidies, or tackle China's growing aerospace industry.

On Biden's trade policy more generally, it remains to be seen who Biden will nominate as his trade representative, or for other key administration posts responsible for trade and investment policies. Biden has, however, said that he will not pursue trade agreements during his first year in office. Significantly, fast track Trade Promotion Authority expires on June 30, 2021, which could preclude any new major trade deals unless Congress renews the authority.

Elsewhere on international trade, Biden is expected to continue to put pressure on China. For example, Biden is likely to continue to expand export control restrictions to counter Chinese efforts to acquire strategic technology from the United States. He also is likely to maintain or expand sanctions in response to Beijing's actions in Hong Kong and its detention of religious and ethnic minority groups in Xinjiang. Relatedly, Biden is likely to defer action on the Section 301 tariffs imposed on Chinese goods with respect to intellectual property/forced technology transfers, as well as restrictions on certain Chinese-made telecommunications and video technology items and services. The continued deterioration of U.S.-China trade, economic and security relations, and the expansions of U.S. export controls pose challenges for the

U.S. commercial aerospace sector, since China is one of the world's biggest markets for U.S. aircraft. At the same time, it may benefit the defense aerospace sector if it leads to more sales to Taiwan and U.S. allies in the Asia-Pacific region.

At the same time, absent any more meaningful concessions by China or other action-forcing events, the Biden administration will likely leave the Section 301 tariffs and China Phase One trade agreement in place for the foreseeable future. There is bipartisan support for a tougher U.S. policy toward China, so any effort to unwind the Section 301 tariffs faces serious challenges, at least in the short term.

Where Biden's policies on China may differ from the Trump administration's are with respect to climate, where the Biden team has said a Biden administration would seek to find common ground, although it remains to be seen if this is possible. Biden also has said that he will work closely with allies to confront China on trade, national security, and human rights issues.

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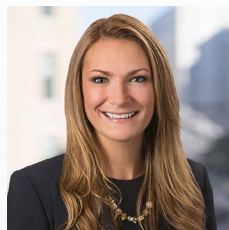
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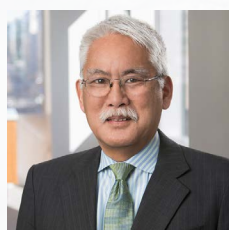
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