



Gemini Shippers Group Update on Trump Trade Policy

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Ronald A. Oleynik
Holland & Knight
(202) 457-7183
ron.oleynik@hklaw.com

Holland & Knight

Trump Trade Policy

“The Trump Administration believes in **free and fair trade**, and we are looking forward to developing deeper trading relationships with international partners who share that belief. **But**, going forward, we will tend to focus on **bilateral negotiations**, we will hold our trading partners to higher standards of **fairness**, and we will not hesitate to use all possible legal measures in response to trading partners that continue to engage in **unfair** activities.”

- *2017 Trade Policy Agenda*, Office of the USTR
- » Trump has been critical of multilateral trade agreements, and is expected to measure the success of trade policy in terms of jobs, wages, and trade balances
- » Prolific use of Executive Orders

Trump Executive Orders Affecting Trade

To date, Trump has signed the following executive orders:

- » January 23, 2017 – Presidential Memorandum Regarding Withdrawal of the United States Trans-Pacific Partnership agreement
- » January 24, 2017 – Memorandum for the Secretary of Commerce re Construction of American Pipelines (private purchases)
- » March 31, 2017 – Presidential Executive Order Regarding the Omnibus Report on Significant Trade Deficits
- » March 31, 2017 – Presidential Executive Order on Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws
- » April 18, 2017 – Presidential Executive Order on Buy American and Hire American
- » April 20, 2017 – Presidential Memorandum for the Secretary of Commerce (Section 232 Case on Steel)
- » April 26, 2017 – Presidential statement on intention not to withdraw from NAFTA
- » April 26, 2017 – Section 232 (national security) Case initiated by the Department of Commerce on Aluminum
- » May 18, 2017 – USTR informed Congress of President's intent to renegotiate NAFTA



Multilateral Trade Agreements

- » Trump has been critical of multilateral trade agreements, and is expected to measure the success of trade policy in terms of jobs, wages, and trade balances

- » TPP
 - Trump formally withdrew from the Trans-Pacific Partnership in January.

- » TTIP
 - Trump has stated that TTIP is dead.
 - Negotiations were floundering on government procurement and geographic indicators (France was openly hostile).

Multilateral Trade Agreements

» WTO

- The Doha Round is unlikely to be on Trump's wish list.
- Trump has recently stated that the U.S. may not honor WTO rulings, but he has also complained that other countries are not following the rules and that the U.S. will aggressively pursue WTO rule violators.

» NAFTA

- May 18, 2017 – USTR informed Congress of President's intent to renegotiate NAFTA
- NAFTA issue tied to trade and immigration.
- Trump has called for a Border Adjustment Tax and a 20 percent import tax to pay for the wall.
- But Secretary Ross stated that the border adjustment tax is “aimed principally at raising revenue, not affecting trade.”

- » Difficult to separate Trump's attacks on Mexico policy between trade and immigration.
- » He appears to call for two separate taxes, however they may be alternatives to address one or both issues:
 - Border Adjustment Tax – fundamental restructuring of the tax system in order to discourage imports and encourage exports:
 - More like a VAT tax on consumption.
 - No deduction from taxable income for imported parts, components, raw materials.
 - Would likely cause a rise in the value of the dollar.
 - 20% tax on imports from Mexico.
 - To be used to pay for the Wall.
 - Likely to bring WTO challenges.
 - Either one would be a fundamental reversal of the NAFTA policy of encouraging U.S. companies to undertake operations in Mexico to provide jobs and economic stability to the U.S. southern border.

China and Import Restrictions

- » China is central to U.S. popular concerns with the status quo on international trade. Rightly or wrongly, trade with China is commonly blamed for loss of U.S. jobs and wage stagnation.
- » But following President Xi's visit to Mar-a-Lago, we seem to have a new best friend. Not sure how long that will last.
- » Possible actions against China:
 - Direct Treasury Secretary to label China a currency manipulator.
 - However, the facts, and the president have seemed to back away from this one.
 - Direct the U.S. Trade Representative to bring more aggressive trade cases against China, both in the United States and at the WTO.
 - Application of tariffs consistent with Section 201 and 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962
 - More robust use of AD/CVD investigations

Trade Policy Officials

- » Trump advisors may significantly influence U.S. policy on trade and China.
 - Secretary of Commerce, **Wilbur Ross**, so far appears to be a calming, rational influence.
 - National Trade Council, **Peter Navarro**, is a critic of China and strong proponent of reducing trade deficits.
 - USTR **Robert Lighthizer** is a trade insider who has made his career bringing trade remedy cases on behalf of U.S. industries.
 - Lighthizer has been consistently tough on China.
 - However, for the short term, Lighthizer has a USTR professional staff, which is genetically free trade oriented, and more inclined to free trade and negotiations.

» Iran

- Trump has been critical of the nuclear deal (“JCPOA”).
- However, JCPOA was a multiparty deal, and the other countries show no interest in re-negotiation.
- European and Asian allies are already ramping up trade with Iran.
- Trump could merely direct OFAC to move much more cautiously in approving commercial aviation licenses.

» Russia

- Although Trump's campaign rhetoric was focused on the possibility of removing the sanctions; Russian hacking, the allegations of close contact between Trump campaign advisors, and the missile launches on Syria leave little possibility for a 'restart' with Russia or for a removal of the Russia Sanctions any time soon.
- Even if the Russia influence issues were cleared and Sanctions were removed, the last two U.S. presidents achieved disappointing results from diplomatic overtures with Russia.

Sanctions

» Cuba

- Cuba has remained off the radar since the inauguration.
- Trump advisors appear to span the spectrum from “anti-Castro cold-warriors” to “let’s open up Cuba fast.” Unclear which of those advisors will have the President’s ear.
- The Press has reported that Trump himself was exploring the possibility of opening a hotel in Cuba; but he has also stated that he can get “a better deal” than Obama did on negotiations with Cuba, including on human rights protections for Cuban citizens.
- Although the Washington and New York press tends to be in opposition on most issues, *The Washington Post* continues to be highly critical of the Cuban government’s lack of movement in human rights policy since the opening of U.S.-Cuba economic activity in January 2015, and therefore seems to be in line with Trump’s statements about a better deal.

Reading the Tea Leaves

- » Except from withdrawing from TPP and announcing intent to renegotiate NAFTA, not much at the substantive detail level
- » Various reports ordered on the use of domestic preference laws and the effect of FTAs
- » Renewed Focus on Enforcement
 - Executive order on Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws
 - Civil/Criminal False Claims Act (Treble Damages and Per Claim Penalties)
- » Obsession with steel and aluminum
 - Buy American pipelines (private purchases)
 - Buy American / Hire American – with special focus on dumped steel, iron, and manufactured goods
 - Section 232 national security cases initiated with respect to steel and aluminum

The Bottom Line

- » Trump has blamed foreigners (bad trade deals and illegal immigrants) for the loss of jobs and wage stagnation.
- » Whether he continues to do so remains to be seen.
- » He is now looking for a 'victory' to prove himself right.
- » But he has admitted on a number of occasions that these issues are much more complicated than he expected.
- » Expect more enforcement actions, as this is easier than making policy.



Ronald A. Oleynik is a partner practicing in Holland & Knight's Washington, D.C., office in the area of international trade regulation. His experience includes a broad range of industrial security, customs, export and international trade matters.

In the area of industrial security, Mr. Oleynik has been involved in a significant percentage of all foreign investment review proceedings before the Committee on Foreign Investment in the United States (CFIUS), and is one of the leading practitioners in the area of foreign direct investment in the U.S. defense industry under the U.S. regulations regarding Foreign Ownership, Control and Influence (FOCI).

Mr. Oleynik has considerable experience in the area of anti-bribery laws. He counsels clients regarding compliance and enforcement issues related to the U.S. Foreign Corrupt Practices Act. In this regard, he has helped a broad range of companies establish effective programs to address the risks inherent in operating in certain parts of the world and counsels those companies on the wide range of FCPA issues that arise on a daily basis.

He represents a wide array of clients in trade litigation before the U.S. Department of Commerce and International Trade Commission regarding Antidumping and Countervailing Duty investigations and reviews, Section 232 national security investigations and Section 332 investigations.

Read more: <https://www.hklaw.com/Ronald-Oleynik/>

Ronald A. Oleynik
Partner

Washington, D.C.
T 202.457.7183
ron.oleynik@hklaw.com

Practice

- Aviation
- International Trade
- Cuba Action Team
- China Practice
- International and Cross Border Transactions

Education

- The George Washington University Law School, J.D.
- University of Connecticut, B.A., Political Science
- The George Washington University, M.A., International Affairs

Bar Admission

- District of Columbia