

A SEA CHANGE

Biden Administration: Key Issues and Implications for U.S. Manufacturers

SUMMARY

In just a short period of time, the Biden Administration has been active in policy pronouncements, executive orders and legislative ambitions that will have an enormous impact on the manufacturing sector.

In this piece, we highlight key trends on the horizon affecting U.S. manufacturers, including domestic supply chains, climate change and U.S.-China relations.



01

Continued Focus on Securing Domestic Supply Chains

The Biden Administration has identified strengthening domestic supply chains for important goods as a key pillar of its domestic and international economic policy, and has taken several steps to review or enact policies focused on this objective. Notable programs currently underway include:

- 100-day reviews of supply chains for semiconductor manufacturing, high-capacity and electric vehicle batteries, strategic and critical minerals, pharmaceuticals and other essential goods.
- One-year reviews of supply chains in various sectors, including the defense industrial base, public health, information and communications technology, energy, transportation and agriculture.
- A review of “Buy America” policies that are designed to give preference to U.S.-produced goods in the context of government contracts, with the goal of increasing U.S. content in government procurement.
- Agencies conducting the reviews noted above – including the Departments of Defense, Commerce, Energy, Interior, Health and Human Services, Agriculture and others – are tasked to prepare reports on their findings. The reports are also expected to deliver policy options, which may translate into legislation or executive action designed to benefit U.S. manufacturing.

These initiatives provide a valuable opportunity for businesses to engage U.S. government stakeholders on the issues of U.S. domestic purchasing preferences, financing, investment and R&D incentives and other policy measures to support U.S. companies' manufacturing supply chains. Early engagement with the Administration in providing information and commenting on potential tools to help manufacturing can position companies for bottom line growth – and protection from unintended consequences – as the Administration embarks on industrial policy programs. It will be important for companies to connect with national security, foreign policy and economic and trade policy officials in the White House, the U.S. Departments of Defense, State, Commerce, Treasury and other agencies.

02

Extensive Attention to Climate Change

Based on campaign promises, presidential appointments and policy pronouncement, we expect the Biden Administration to enact sweeping policies that impact manufacturing. This is a central issue for the Administration and manufacturers must be prepared for significant impacts to their business models due to climate change regulations. We anticipate the actions will include executive orders, regulations and legislation to reduce emissions through direct regulation, tax or other incentives and potentially market-based mechanisms. These policies and actions will likely include:

- An effort by the Administration, together with Congressional allies, to develop and implement a regulatory and legislative strategy to address climate change.
- Development of policies for pricing carbon, taking into account the Paris Agreement, carbon neutrality principles and real-world experience with existing schemes.
- Border measures to preserve a level playing field for U.S. manufacturers. This could include a carbon border adjustment tax or complementary measures such as “low carbon” standards and labels or required disclosures.
- Coordination with the European Union, California and other jurisdictions with experience in climate change regulation to understand lessons learned and “best practices.”
- Potential trade enforcement actions on goods imported from countries that fail to adopt and implement climate change regulatory regimes.
- Influence of climate-related political appointees such as John Kerry and Gina McCarthy, who have dedicated portfolios for climate issues.

Companies must anticipate and prepare for this new focus on climate change regulation in every aspect of the economy.

Manufacturers can mitigate the effects of potentially burdensome regulations through early engagement with the Administration and Congress to develop and advocate for policy designs and legal tools that help them maintain a level playing field with competitors. We expect the Administration will have new enforcement priorities regarding climate change, which will likely bring added scrutiny from the U.S. Environmental Protection Administration and potentially the U.S. Securities and Exchange Commission. As with potential regulatory developments, early and candid engagement with officials in these agencies and within the White House can help hedge against aggressive enforcement efforts.

03

Managing Challenges in U.S.-China Relations

The Biden Administration has been clear that managing the U.S.-China relationship is the main focus of its foreign policy efforts, and trade and economic policy will likely be approached from that broader perspective. We expect many Trump Administration policies to continue, but with some differences in implementation in some instances.

We anticipate the Biden Administration to pursue the following policies with respect to China:

- An effort to arrive at joint actions or policies with other countries on a multilateral approach to China. This would extend to areas of competition, such as manufacturing and technology, as well as areas of cooperation, such as climate change and arms control.
- Maintaining Section 301 tariffs on China, although the Biden Administration has announced an intent to review the tariffs, and there is some speculation that a new exclusion process for tariffs may be opened.
- Continued focus on export and import controls, particularly with regards to emerging and foundational technologies, information and communications technology, energy and transportation products, products of forced labor and digital services and software.
- Aggressive scrutiny of inbound investment through the Committee on Foreign Investment in the United States. In addition, actions related to outbound investment in Chinese companies that have ties to the Chinese Communist Party or People's Liberation Army, such as requirements for publicly-listed Chinese companies to enhance transparency and a push for U.S. investors to divest from certain Chinese companies.
- Addressing national security and human rights issues through economic sanctions on individuals and entities.

- Continued emphasis on traditional as well as novel trade remedies to address unfairly traded manufactured goods imported from China and responses to the new subsidies regimes targeting the creation and expansion of capacity for next generation products, such as semiconductors, batteries, communication, renewable energy and other critical high technology goods.
- Working on trade issues through the mechanisms in the China Phase One Agreement reached between the U.S. and China in January 2020.
- Expanded requirements for U.S. government contractors to eliminate reliance on Chinese sources for manufacturing and technology as a condition of doing business with the government.
- Continued use of aggressive prosecutorial and sanctions tools to address instances involving the misappropriation of intellectual property or other information from manufacturers.

- Restrictions on the use of Chinese goods and services from U.S. information technology, communications and energy infrastructure.

Manufacturers must carefully assess and manage transactions involving China, as the U.S. government will increasingly scrutinize individual sales of goods and services as well as major investments and mergers and acquisitions. Businesses can successfully navigate the challenges in the U.S.-China relationships and can even find opportunities to increase and obtain benefits for conducting manufacturing operations outside of China. However, to do this, companies must first assess their legal, business and reputational risk exposure regarding these issues, which requires a comprehensive understanding of U.S. and Chinese foreign, security and economic policy positions. Businesses should then approach the government with concrete proposals for legal and policy tools to manage U.S.-China relations in a way that achieves U.S. policy objectives while providing opportunities for continued growth and profitability.

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