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Sydney H. Mintzer, Tamer A. Soliman, Timothy J. Keeler, and Warren S. Payne (Mayer Brown) identify several trends related to the Biden Administration's trade policies and their impact on global supply chains.

Mayer Brown

Legal Update

Key Trends in International Trade from the Biden Administration Impacting Global Supply Chains

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Elections matter, and the Biden Administration is quickly putting its stamp on US trade policies in ways that will have a significant impact on global supply chains. We identify several trends below.

CBP Forced Labor Enforcement

• The Biden Administration is expected to step-up the US Customs & Border Protection ("CBP") use of authority to issue withhold release orders ("WROs") that block the importation into the United States of good produced with forced labor unless an importer provides "sufficient evidence" that the goods were not made with forced labor. While China receives most of the attention, regulators are focused on activity in Malawi, Malaysia, and other countries with known forced-labor risks.
• Bipartisan legislation pending in Congress would broaden the WRO by establishing a "rebuttable presumption" that **any** goods from Xinjiang are produced with forced labor and are banned from entering the United States.

US Customs Scrutiny Of Affiliated Party Transactions

• CBP is becoming increasingly aggressive in reviewing affiliated-party prices that are declared on imported merchandise into the United States. Recent CBP Rulings have rejected declared values (used for duty calculation) both because the agency questions the arms-length nature of the transactions, but also because CBP concluded that no *bona fide* sale occurred between a foreign exporter and its affiliated US importer/reseller, determining that the only *bona fide* transaction occurred between the foreign exporter and the downstream unaffiliated US customer. Such determinations can result in a significant increase in customs duties paid. We expect CBP to continue to heavily scrutinize affiliated-party transactions in the coming months.

Biden Administration Supply Chain Review

• On February 24th, President Biden signed Executive Order (EO) 14017 focused on reviewing the systemic risks in the supply chains of multiple high-priority industries from agriculture to pharmaceuticals. The EO calls for 100-day reviews of the supply chains for semiconductors, rare earths, pharmaceuticals, and large capacity batteries and year-long reviews of six priority industrial bases, including health, information and communications technology, energy sector, and transportation. Federal agencies will issue recommendations on immediate steps the administration can take to address supply chain vulnerabilities, such as measures to stimulate domestic production or direct support for stockpiling product.

Biden Administration's China Trade Agenda

• The Biden's Administration's stated top priority is to establish a "worker-centric" trade agenda that advances the interests of all Americans and promotes broad, equitable economic growth. The Administration plans to continue enforcing China's obligations under the Phase One agreement reached with the previous Administration and called tariffs "a legitimate tool in the trade toolbox."
• However, the Administration also has committed to review the Section 301 tariffs to ensure they appropriately target China's practices and to assess their impact on US workers and consumers. There is cautious optimism within the importing

community that the Office of the US Trade Representative will re-open the process for obtaining temporary exclusions from China 301 tariffs on some products. Implementation and enforcement will also be an early top priority, particularly using the new authority to initiate disputes based on violations of the labor obligations.

New Sanctions Against Foreign Parties

• Executive Orders 13959 and 13974, issued in late 2020 and early 2021, respectively, restrict the ability of entities listed as Chinese Communist military companies by the US Department of Defense (CCMCs) to access US capital markets. Under those orders, US individual and institutional investors are prohibited from buying, holding, or selling publicly traded securities issued by CCMCs, beyond designated time periods. These restrictions also apply to subsidiaries of CCMCs after they are listed by the US Department of Treasury's Office of Foreign Assets Control (OFAC). OFAC is expected to identify subsidiaries of CCMCs that are owned 50% or more, or controlled by, one or more CCMCs, impacting a significant number of Chinese entities. Additionally, from May 27, 2021, the restrictions would also apply to entities whose name exactly or closely matches the name of a CCMC.
• On March 2, 2021, the Biden Administration issued a number of measures in response to the Russian government's poisoning and subsequent imprisonment of opposition figure Alexi Navalny, in coordination with similar measures by UK and EU authorities. These measures included sanctions by OFAC against seven Russian individuals for serving as Russian officials or acting for or on behalf of, directly or indirectly, the Federal Security Service (FSB). The US Commerce Department's Bureau of Industry and Security (BIS) added 14 entities located in Russia, Germany, and Switzerland to the Entity List for support to Russia's weapons of mass destruction programs and chemical weapons activities. BIS is also expected to issue additional measures under the Export Administration Regulations (EAR) in light of the US State Department's determination that the Russian government used chemical or biological weapons against its own nationals in violation of international law, but a timeline for an announcement has not been determined. Finally, the Biden Administration has also suggested that it will pursue additional measures against Russia in response to the SolarWinds cyberattack, which affected approximately nine US government agencies and about 100 private companies. The measures may include issuance of additional sanctions.
• On February 11, 2011, in response to the recent military coup in Burma, OFAC issued sanctions against ten current and former Burmese officials directly and indirectly involved with the coup, and three Burmese entities connected to the military. On March 4, 2021, BIS issued new export controls relating to Burma on sensitive items subject to US export control restrictions. BIS also announced the addition of four Burmese entities to the Entity List – two Burmese military and security services entities responsible for the coup and two commercial entities that are owned and operated by one of those entities. Both the Treasury and Commerce Departments have expressed a willingness to pursue additional measures as warranted by Burmese military action.

CFIUS's Increasing Prominence on US FDI

• Following the regulatory implementation of the Foreign Investment Risk Review Modernization Act (FIRRMA) last year, CFIUS' jurisdiction has expanded to include new types of investments by foreign persons in the US. As a result, CFIUS plays an increasingly prominent role in transactions. We expect that trend to continue as investors continue to work through the changes brought on by FIRRMA. Additionally, observers are closely monitoring how the Biden Administration will approach CFIUS reviews, especially vis-à-vis Chinese investors. We also anticipate that US businesses dealing in personal data and critical infrastructure will be of particular interest to CFIUS, especially following high-profile data breaches earlier this year.

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