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Trump's Trade Agenda: The First 100 Days

By **Alex Lawson**

Law360, New York (April 27, 2017, 2:59 PM EDT) -- Trade policy has been the subject of nearly unprecedented scrutiny with the election of President Donald Trump, who has spent his first 100 days upending decades of conventional political wisdom through muscular enforcement efforts and an overhaul of the U.S. negotiating agenda.

Trump’s rise was fueled in large part by the thousands of Rust Belt voters who felt that the so-called bipartisan consensus on trade had left them behind, an oversight the former real estate tycoon vowed to correct by cracking down on U.S. partners’ allegedly unfair trade practices and striking trade deals that kept workers at the center.

It takes a lot longer than 100 days to construct a comprehensive plan for U.S. trade, a lesson that Trump’s team has learned on the fly, but the White House has nevertheless planted seeds that could drastically reshape the global economic landscape if and when they take root.

“The first 100 days have been incredibly action-packed with activities that either dismay or delight you depending on how you feel about free trade or protectionism,” Kelley Drye & Warren LLP partner Paul Rosenthal said.

Here, Law360 lays out the biggest international trade developments since Trump took office and offers a glimpse of what is yet to come.

A New Era for US Trade Agreements

Trump didn’t wait long to make good on one of his core trade vows from the campaign trail by withdrawing the U.S. from the 12-nation Trans-Pacific Partnership, undoing years of meticulous negotiation among some of the world’s leading trade powers in one fell swoop.

While the Obama administration had hoped that the TPP could serve as a template for progressive, forward-looking trade agreements in the crucial Asia-Pacific region, Trump claimed it would only ravage U.S. employment ranks like the many deals before it, despite considerable economic evidence to the contrary.

Trump killed the agreement on the vine before it got to a ratification vote in Congress.

As the White House put the TPP in the rearview and trade talks with the European Union into a deep freeze, numerous officials came forward with a preference for simple, modestly structured bilateral accords with the most willing partners.

Potential suitors for a standalone U.S. trade deal include the United Kingdom, Japan and even China, though each of those presents its own set of unique political and policy challenges. For now, the administration appears to be focusing on bringing a trade relic of administrations past into the 21st century.

“These are changes that seem to be in sync with how the administration wants to approach trade,” Miller & Chevalier Chtd. trade adviser Welles Orr told Law360. “The big unknown is what Congress is going to do and say about this. ... At the end of the day, I think Congress is really going to put the administration’s feet to the fire on what is reasonable and what is not.”

New NAFTA — Same as the Old NAFTA?

If he wasn’t bashing the TPP during a trade campaign speech, Trump was most likely excoriating the trilateral North American Free Trade Agreement as a “disaster” for the U.S. economy and vowing to overhaul the deal or tear it to pieces.

The White House has begun taking the incremental steps necessary to reopen the NAFTA talks, but thus far, the effort appears to be far less sweeping than Trump’s campaign rhetoric would suggest. In fact, most observers have viewed the administration’s draft notification to lawmakers as a fairly modest NAFTA tweak that actually hews closely to the TPP model.

“Relative to the rhetoric around NAFTA, most people saw it as a fairly reasonable approach, and it reflected the fact that this is going to Congress, and Congress shares power with the executive,” Covington & Burling LLP partner John Veroneau told Law360.

There is work yet to be done on this front as the administration is still putting the finishing touches on its notification. In the meantime, it has not been shy about taking a hard line with both Mexico and Canada in the run-up to the new talks.

Trump’s plan for a wall along the U.S. border has already led to fraught relations with the U.S. neighbor to the south, and the recent escalation of disputes surrounding dairy and lumber trade have begun to do the same for the U.S.-Canada relationship.

The White House was reportedly mulling an executive order this week that would have moved the U.S. toward withdrawal, but Trump eventually vowed a sincere renegotiation effort in calls to his Canadian and Mexican counterparts.

"I think the administration has concluded that withdrawal would really be unsettling to many U.S. industries that employ millions of workers," Rosenthal said. "After 26 years, there has been a pattern of trade established that would be quite disturbing to a lot of entities. I think the administration has figured out that the disruptive part of these threats to manufacturing and agriculture really requires a more cautious approach."

Trump in the China Shop

Perhaps the area in which the Trump administration has shown the most restraint in the first 100 days compared to the campaign trail bombast is with its China policy. Gone are the vows for sweeping tariffs on Chinese goods, replaced instead with a plan to construct a framework for new trade talks with the Asian trading power.

Even when taking actions that will certainly have an outsized effect on Beijing, like the launching of a new steel probe, Trump has been careful to point out that he is not looking to punish China specifically.

Trump's most glaring about-face has been in the area of China's currency policy. For months, he pledged to take the unprecedented, aggressive step of formally labeling China a currency manipulator despite substantial evidence that Beijing has not suppressed the value of its renminbi in quite some time.

The president has essentially abandoned that plan entirely, though he does not appear to have done so for economic reasons. Instead, Trump suggested that holding off on the currency manipulator label could encourage China to aid the U.S. in its quest to stifle the rise of North Korea's nuclear and missile testing programs.

"They're going to try to thread the needle here [between liberalization and enforcement]," Orr said.

Steeling for Big Enforcement Moves

Enforcement has always been at the heart of Trump's trade platform, and that effort commenced in earnest last week as he brushed off a Cold War-era trade law that could lead to the imposition of hefty tariffs on steel if the administration decides that those imports are posing a threat to national security.

The law, Section 232 of the Trade Expansion Act, is essentially a magic bullet for Trump, allowing him to impose any remedy he sees fit with little fear of significant legal reprisal. After the statute laid dormant for 16 years, the White House used it twice in the span of a week, following its steel directive with another probe focused on aluminum.

Trump has also inked a pair of executive orders linked to enforcement efforts. The first calls for a review of bilateral U.S. trade deficits and is meant to inform the administration's next steps, which could mean more punitive tariffs against prominent U.S. trading partners.

In his second major trade order, Trump directed U.S. Customs and Border Protection to improve bonding requirements at the nation's ports of entry in an effort to address the problem of unpaid anti-dumping and countervailing duties. That order also called for CBP to place an emphasis on intellectual property by prioritizing the stoppage of counterfeit and pirated goods.

Staffing Up

Trump has also spent the first 100 days attempting to get his trade team in place, and his nominations paint a clear picture of what the administration's future plans are.

Billionaire investor Wilbur Ross has taken the reins of the U.S. Department of Commerce and has thus far been the most front-facing member of the administration's trade efforts, particularly on enforcement. Trump also tapped former professor and fierce China critic Peter Navarro to head up the newly created White House National Trade Council.

The bulk of Trump’s nominees and appointees have deep ties to the steel industry, beginning with former Skadden Arps Slate Meagher & Flom LLP partner Robert Lighthizer, Trump’s U.S. trade representative nominee who was approved by the Senate Finance Committee earlier this week.

Currently, the USTR office is being led on an interim basis by former King & Spalding LLP trade attorney Stephen K. Vaughn, who used to work with Lighthizer at Skadden. Trump has also tapped King & Spalding partner Gilbert B. Kaplan to serve as the undersecretary of Commerce for international trade, underscoring the close-knit makeup of the petitioners’ bar.

--Editing by Christine Chun and Kelly Duncan.
