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2020 US elections: four key public policy issues for cross- border businesses to consider

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The US election on 3 November 2020, will influence US policies in a variety of ways that will impact companies as well as relations with governments in other countries. The winner of the presidential contest between President Donald Trump and former Vice President Joe Biden will determine the priorities of the executive agencies as well as select the personnel who will help formulate and execute policy. Given the important role of the legislature in shaping US foreign policy and commerce, the composition of the US Congress following the November elections also will help drive US federal policy going forward.

In this publication, we examine how the November election may influence policies relating to trade, restrictions on cross-border business, the environment and the US role in multilateral institutions. For more insights on the potential impact of the US election on US domestic policy, see [Public policy spotlight: 8 key issues for 2020 elections](#).

Trade

President Trump significantly shifted US trade policy during his first term. His administration's general [approach](#) has been to seek to address areas in which it believes the US is at a disadvantage in its trade relationships, moving away from previous administrations' strategy of seeking multilateral trading agreements and promoting global trade rules. To accomplish this, the Trump administration has pursued bilateral over [multilateral trade negotiations](#) and utilized various tools available to the president to secure more favorable terms of trade. One objective in trade negotiations during Trump's first term in office has been to obtain commitments from trading partners to expand US exports and promote domestic manufacturing, with the goal of [reducing the US trade deficit](#).

The Trump administration also has tightly linked economic and national security, identifying trade imbalances in certain areas as national security threats.¹ For example, since Trump took office, the US placed tariffs and quotas on steel and aluminum imports from countries ranging from the United Kingdom,² a close US ally, to Russia, traditionally a rival. The administration also has pressed for reforms of the World Trade Organization (WTO) and blocked the operation of the WTO appellate dispute resolution body as part of its reform campaign.³

¹“Trump Mixes Economic and National Security, Plunging the U.S. Into Multiple Fights,” *The New York Times*, 8 June 2019.

²“Trump steel tariffs: How do they affect the UK?,” *BBC News*, 31 May 2018.

³“Trump Trade Official Defends China Deal and Criticizes the W.T.O.,” *The New York Times*, 17 June 2020.



Over the last few years, Trump's trade agenda has been dominated by the US-China relationship, through which the Trump administration has sought to address US government concerns about access to China's market, treatment of intellectual property (IP) and emerging US-China competition in strategic sectors. Most trade with China is now subject to higher tariffs than under previous presidents. Earlier in the year, the administration negotiated a partial de-escalation of trade tensions through the [Phase I trade agreement](#), which includes Chinese government commitments to improve its IP protections, open its financial services market, purchase US goods and reduce some tariffs on imports from the US.

On the campaign trail, Biden also has criticized China's trading practices, which he views as taking away US jobs. Both candidates have made the US-China relationship a central part of their campaigns, and scrutiny of China by Washington policymakers continues to be bipartisan. These views, coupled with a US push⁴ to secure the medical supply chain due to the COVID-19 pandemic, are encouraging companies to strengthen the resiliency of their supply chains generally by expanding them to other countries in Asia⁵ and the Americas, if not onshoring.

What to expect

In a second term, Trump likely would continue his trade agenda, deploying more tariffs and negotiating new and renegotiating existing trade deals in an effort to support domestic markets and workers. Trump's [second-term agenda](#) states that he would seek to end the US "reliance on China" by offering tax credits for companies that bring back jobs from China, ending federal contracts for companies that outsource to China and promoting a Buy America approach to rebuilding the US economy.

Similar to Trump, Biden has put forward a plan⁶ to incentivize manufacturing in the US by taxing certain offshore activities. Biden has stated that he will prioritize domestic economic stimulus⁷ over negotiating new trade deals early in his administration, but also has indicated that he would join with allies to create strong and transparent "[rules of the road](#)" that govern global trade. With regard to trade with China, Biden has said that we are "going after China in the wrong way,"⁸ and has suggested that he would seek a multilateral approach to rein in what he sees as China's unfair trade practices. While this approach to trade and China likely will change the tenor of US trade policy, a Biden administration would still face challenges⁹ in reaching agreement both with trading partners and members of his own party on a variety of issues, including the environment and labor.

⁴"Trump administration pushing to rip global supply chains from China: officials," *Reuters*, 4 May 2020.

⁵"Manufacturers Move Supply Chains Out of China," *The Wall Street Journal*, 14 July 2019.

⁶"Biden Pushes Higher Taxes on U.S. Companies' Foreign Profits in Pitch to Midwest Voters," *The Wall Street Journal*, 9 September 2020.

⁷"For Biden, untangling Trump's trade wars takes backseat to economy," *Politico*, 20 August 2020.

⁸"Biden Says He Will End Trump's Tariffs On Chinese-Made Goods, Aide Walks Back Statement," *Forbes*, 6 August 2020.

⁹"Biden's hands may be tied on Trump's China tariffs, trade experts say," *CNBC*, 8 September 2020.



Scrutiny of cross-border business

In recent months, US policies relating to cross-border technology transfers and investment have tightened as Congress and the Trump administration have raised and sought to respond to US government concerns ranging from national security¹⁰ to [human rights violations](#) and [threats to democracy](#). While in some cases the [restrictions](#) have been aimed at specific countries, companies from other jurisdictions can face consequences as well, particularly if their operations touch both the US and one of the targeted countries.

In the area of national security, during the president's first term, a number of [executive orders](#) and [legislation](#) have resulted in greater scrutiny of and restrictions on cross-border business. Impacts include [heightened screening](#) of foreign investment in companies that handle significant amounts of US data and own real estate close to sensitive sites, such as military bases. In addition, new rules have been implemented – and [more](#) are on the way – that place export controls on certain US technology. The administration is now developing rules that would identify emerging and foundational¹¹ technologies that should be controlled. New rules also are targeting specific foreign companies, with increasing use of lists¹² identifying firms for which additional approvals must be obtained to receive certain US technology exports. The Trump administration also has pushed allies¹³ to establish similar restrictions in their countries.

Both Congress and the Trump administration also have used tools such as [sanctions](#), [visa restrictions](#) and [withdrawal](#) from bilateral agreements to respond to stated concerns relating to human rights protections and promotion of democracy. Key administration officials also have [publicly chastised US companies](#) that do business in jurisdictions where these concerns have arisen. As with trade, much of the recent focus of this activity has been on US-China trade relations, and this focus is expected to continue in Washington, regardless of who sits in the Oval Office.

What to expect

The approach of the Trump administration has been to set US-centered foreign trade and policy priorities that impact cross-border business, and seek support for those policies from other countries later. This is expected to continue in a second Trump term. The administration also may continue placing pressure on companies that operate across borders to reduce ties with governments and businesses in certain foreign countries – whether through speeches critical of their activities or sanctions and other restrictions.

Like Trump, Biden has emphasized the need to address national security threats to the US arising from China, among other global actors. One difference is that human rights and labor practices are expected to play a larger role in setting cross-border policy priorities in a Biden administration. These are also key priorities for Democrats in Congress. This could mean that governments and companies from a broader range of countries could face scrutiny and potential sanctions. Biden has not spoken in detail on his approach to cross-border issues such as technology export controls, although his [platform](#) elevates the role of diplomacy and American leadership to address global issues, indicating that he would seek to coordinate more closely with allies to address [international threats](#). Nonetheless, although Biden may be inclined to utilize different tools than Trump to achieve his policy goals going forward, his administration likely would not make rapid changes to existing restrictions on cross-border business created under the Trump administration.

¹⁰ "U.S. Increasingly Uses Trade Blacklist for Foreign Policy Goals," *The Wall Street Journal*, 31 August 2020.

¹¹ "U.S. Eyes Restricting Chip Equipment and Other Exports," *U.S. News & World Report*, 26 August 2020.

¹² "With new export controls, US takes another step to clamp down on China," *South China Morning Post*, 31 July 2020.

¹³ "US national security concerns return to spotlight as new investment regulations set in," *South China Morning Post*, 14 February 2020.



Environment

A hallmark of the Trump administration has been its [deregulatory agenda](#), which the president has championed as a benefit to small business. The Trump administration has focused many of its actions in the [environmental space](#), setting the tone early by withdrawing from the Paris Agreement. It has [repealed](#) rules intended to address climate change and taken action to support the domestic oil and gas sector. For the Trump administration, reducing regulation in the environmental space has been viewed as a means to reduce costs, speed construction projects and attract investment. The administration also promotes technology and innovation¹⁴ as the best way to address climate change.

Trump also views international environmental commitments through the lens of [sovereignty](#). One of his criticisms of the Paris Agreement is that it would force the US to make changes that would harm its economy excessively while other countries are not similarly constrained. This approach has led to disagreements with leaders such as France's Emmanuel Macron, who championed the Paris Agreement, and alignment with others, including Brazil's Jair Bolsonaro, who also has taken a deregulatory approach.¹⁵

Concerns about the environment have been growing in a number of other parts of the world, as jurisdictions such as the European Union advance [plans](#) to counter climate change. [US](#) and global businesses are also focused on market-based efforts to address climate change and [promote long-term value](#) more generally, even in the absence of regulatory requirements.

¹⁴ "Pompeo downplays climate change, suggests 'people move to different places'," *CNN Politics*, 7 June 2019.

¹⁵ "Brazil's Bolsonaro hands farming interests greater sway over Amazon lands," *The Washington Post*, 2 January 2019.

What to expect

A second Trump administration is expected to continue to emphasize the role of market-based developments and innovation as the best approach to addressing environmental problems. This likely would mean [avoiding international commitments to reduce emissions](#) that could reduce economic growth. In addition, the Trump administration would not seek to use trade agreements as a tool for advancing environmental policy, although including environmental provisions may be necessary to facilitate passage through Congress. One possible impact of this approach is that the US could have less of a role in developing global environmental policies that impact multinational companies going forward.

Biden has made climate change a core tenet of his [platform](#) and has expressed that the US should be a global leader in this space. In addition, he has [indicated](#) that he would seek to tackle environmental issues in a multilateral fashion by not only rejoining the Paris Agreement, but also by leading a major diplomatic push to "raise the ambitions" of countries' climate targets. A Democratic administration and/or majority in either house of Congress likely would emphasize greater focus on environmental issues in future trade agreements – or at least in the US congressional ratification of future trade agreements – as was the case with the US-Mexico-Canada Agreement. Although there is support for addressing climate change within the business community, Biden's environmental policy priorities likely would mean additional regulation and renewed pressures on other governments to heighten environmental protections.



Multilateral institutions

President Trump's general preference for bilateral over multilateral relationships has been a factor in his administration's approach to US involvement in several global institutions. This philosophy has manifested in various ways during the Trump administration, including challenges to how some international organizations have traditionally been managed and funded,¹⁶ as well as outright withdrawal of US membership.¹⁷ Other countries have agreed that problems at these institutions should be addressed, although these US actions often have been taken unilaterally.

In addition to the administration's actions at the WTO mentioned above, the US announced its [withdrawal](#) from the World Health Organization (WHO) during Trump's first term due to concerns over China's influence and the WHO's handling of the COVID-19 pandemic. The Trump administration also skirted tradition by presenting an American for consideration as the next president of the [Inter-American Development Bank](#), a post that historically has been held by someone from Latin America – a move [reportedly](#) due in part to the administration's interest in countering the influence of China in Latin America.¹⁸ As multilateral banks play an important role in the economies of many countries, particularly due to the pandemic, the US government's role as the largest shareholder in many of these institutions gives it significant influence.

What to expect

Trump is expected to continue to advocate an America First¹⁹ approach to multinational engagement and urge other leaders to adopt similar attitudes about their own countries. Trump's [2020 platform](#) includes the goal of forcing allies to “pay their fair share,” indicating that a second-term Trump administration would continue to pursue reforms.

Biden, a strong proponent of multilateralism, has pledged to restore US influence and participation in global institutions and work with allies to bring about change. He has indicated that he will work with multilateral development banks to develop infrastructure and promote foreign investment “[by engaging with the private sector in a cost-effective and competitive manner](#).” This could signal a greater role for multilateral institutions in the foreign policy of a Biden administration.

¹⁶“Trump keeps criticizing NATO allies over spending. Here's how NATO's budget actually works,” *Business Insider*, 2 December 2019.

¹⁷“U.S. and Israel officially withdraw from UNESCO,” *PBS NewsHour*, 1 January 2019.

¹⁸“Trump's Candidate to Lead Latin America Development Bank,” *Bloomberg*, 12 September 2020.

¹⁹“U.S.-China Rift Worries World Leaders at the United Nations,” *The Wall Street Journal*, 22 September 2020.



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