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MLS Election Update: Impact on Trade

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Although – barring an incredible, unforeseen reversal in the courts – we now know the outcome of the presidential election, we will have to wait until January to learn whether Republicans or Democrats control the Senate majority when the two runoff races are settled in Georgia. (It is unlikely Democrats will win both though seats but when has our politics been more unpredictable?) If the GOP does maintain the Senate majority, President-elect Biden's legislative agenda could face an uphill battle on Capitol Hill. That would potentially steer him toward focusing the early phase of his administration on the relatively noncontroversial (emphasis on relatively) area of foreign relations initially, where he has enormous experience as the former vice president and chairman of the Senate Foreign Relations Committee.

One area of specific focus will likely be international trade. While Congress nominally has great authority over international trade matters, practically the presidency is afforded significant leeway to act unilaterally, as demonstrated by President Trump who, among many other trade actions, has used his executive authority to impose tariffs on virtually all goods imported from China as a means of forcing the government in Beijing to address concerns by both Republicans and Democrats on Capitol Hill about the Chinese government's trade and economic policies and in an attempt to re-shore the US manufacturing base.

With regard to the Section 301 China tariffs, President-Elect Biden has not indicated if he intends to revoke the tariffs, although he has called Trump's use of tariffs "self-defeating". At the end of the day, it is significantly easier to impose tariffs than it is to revoke them – plus, many congressional Democrats quietly agreed with President Trump on this. We would expect more multilateral efforts to deal with economic and national security challenges presented by China, a lowering of the rhetoric and more bilateral engagement. But many factors, including unilateral Chinese actions, such as toward Taiwan, could derail any move away from crisis relations.

As noted, a change in President-Elect Biden's approach will be an effort to align the U.S. with global allies in a multilateral effort. This would be a change from the approach taken by President Trump who, on his first day in office, withdrew the U.S. from the Trans-Pacific Partnership (TPP) trade agreement. Without the U.S., the TPP could not achieve ratification, but the remaining signatories negotiated a new trade agreement – the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. The original TPP was negotiated by the Obama-Biden administration so there is speculation that President-elect Biden will seek to have the U.S. join the trade bloc. However, there is some Democratic opposition to the trade agreement, which could complicate that path if the new president chooses to pursue it. As a presidential candidate, Biden stated that he would renegotiate the TPP, but of course, that is dependent on the willingness of other nations to agree to a renegotiation.

Putting pressure on Biden would be China's negotiation of a rival trade bloc known as the Regional Comprehensive Economic Partnership (RCEP). This agreement, expected to be signed this month, would include one-third of the global population and GDP making it the world's largest trade agreement.

Another area we are watching is the Committee on Foreign Investment in the U.S. (CFIUS), which reviews the national security risks of investments and acquisitions by foreign investors in the United States. CFIUS is chaired by the Treasury Secretary, and includes representatives from the Departments of Justice, Homeland Security, Commerce, Defense, State, and Energy, as well as the Office of the U.S. Trade Representative and the Office of Science & Technology Policy. Under President Trump, CFIUS has taken a hard line on Chinese investments in the U.S., particularly with regard to investment in U.S. businesses that gather or possess sensitive personal information about U.S. citizens. The Trump Administration's focus on China has resulted in a significant decrease (but by no means a cessation) in Chinese investments over the past four years. However, we do not anticipate a dramatic shift in approach from the incoming Biden administration, which will face the same challenges as the outgoing administration with regard to China. As with tariffs and other trade matters, any changes will more likely be a matter of style and tone. It is important to note that there is a legal prohibition on CFIUS revealing the M&A deals under review.

As President-elect Biden begins to fill out his administration – there are approximately 4,000 political appointee positions in the federal government – we are hearing a number of names mentioned as in the mix for Secretary of Commerce and U.S. Trade Representative. Potential appointees have experience from Capitol Hill, the Obama and Clinton administrations, and the private sector. There will be a strong emphasis on diversity and there is a good chance we will have a Cabinet for the first time in history in which white males are not in the majority

On Capitol Hill, Sen. Charles Grassley (R-IA) is term limited as the top Republican on the Senate Finance Committee, which has jurisdiction over trade matters. The most likely replacement is Sen. Mike Crapo (R-ID), who has a history of working cooperatively with his Democratic colleagues. Sen. Ron Wyden (D-OR) will continue to lead committee Democrats. We will not know until after the two January run-off elections in Georgia which of the two will serve as chairman and which as ranking member – as well as any new members of the Committee. Leadership of the House Ways & Means Committee will remain the same with Rep. Richard Neal (D-MA) chairing the committee and Rep. Kevin Brady (R-TX) serving as ranking member.

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