

## Writing a global pandemic playbook – a three part series

Trade in the time of COVID-19: Rising protectionism, broken supply chains and decoupling

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**Carolyn Amadon**

*Compliance Counsel, Samuel, Son & Co. - Chicago*

**Mark Herlach**

*Partner, Eversheds Sutherland - Washington DC*

**James Lindop**

*Partner, Eversheds Sutherland – London*

**Monika Zejden-Erdmann**

*Principal Associate, Eversheds Sutherland - London*

# Agenda

- Bilateralism: Costs and Complications
- The Pandemic and Protectionism
  - The Price of Economic Nationalism
  - Implications for Global Supply Chains
- Foreign Investment Restrictions on the Rise
- China-US Trade Dispute
- Practical Implications: The In-house Perspective

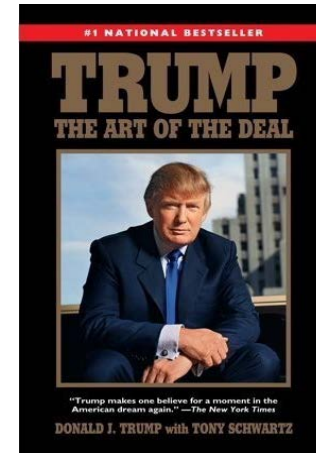
# The Bilateral Approach to Trade

# Trump Administration Assault on Multilateralism

- Unilateral action (steel, aluminum, autos, China)
- Complaints about treatment of US in international organizations
- Preference for one-on-one negotiations
  - Japan-US FTA
  - UK-US FTA negotiations
- Attacks on World Trade Organization
- Challenges for business on the rise
- Certainty and predictability compromised

# "The Art of the Deal" – Bilateral & Transactional

- Multilateral arrangements devalued (NATO, JCPOA, Paris Climate Accord, WTO, WHO)
- Threatened termination of NAFTA and KORUS
- WTO under siege
- Preference for new bilateral FTAs



# Multilateralism and the European Union

- The pandemic and isolationism
  - COVID-19 adds momentum to the deglobalization trend
  - National security and public health: new rationales for protectionism
- EU perspective
  - EU as the champion of multilateralism
  - Brexit: world's greatest multilateral project at risk?
  - Alliances are uncertain and international cooperation is absent
  - No-deal still most likely
  - Bilateral FTAs the way forward (UK-US FTA negotiations)

# The Pandemic and Protectionism

# Protectionism on the Rise

- Global trend evident before the pandemic
- COVID-19 has exacerbated protectionism
- Key challenges facing companies
  - Steel and aluminum tariffs
  - China tariffs
  - Restrictions on supply by “foreign adversaries”
- Impact on operations and cost
- US perspective turns inward



# Protectionism on the Rise in the EU

- EU prepares to be more assertive on trade
- Trade wars with the US?
- Global clean energy race
- COVID-19 and State aid

# Global Supply Chains Under Attack

## — Supply chain issues -- the EU example

- Sourcing raw materials and components: reduced production, port closures, customs delays
- On-time delivery to customers: staffing issues, border closures, green lanes
- PPE shortage and export restrictions, quality and regulatory issues

## — Supply chain -- challenges from an in-house perspective

- Preserving access to key inputs
- Identifying and qualifying alternative suppliers
- Costs and uncertainties

# Foreign Investment Reviews After COVID-19

# FDI Situation Before COVID-19 & Key Changes

## — European Union

- EU's approach towards foreign investment has radically changed
- European Commission issued guidelines in response to COVID-19
- Member States urged to make full use of their foreign investment regimes to protect against opportunistic takeovers
- Reminder that Member States can make use of "golden shares"

## — Germany

- Historically very liberal foreign investment rules with limited practical relevance outside the defense industry
- Proposed legislation will:
  - broaden the scope to include, among other things, robotics, biotech, medical devices, certain pharmaceuticals
  - make prior notification in these sectors compulsory and require approval before deal can be closed
  - lower the substantive test for intervention from "effective threat to public security and order" to "prospective impairment"
  - make violations subject to criminal prosecution

## — France

- Prior authorization required in a broad range of sectors
- 25% threshold for non-EU investors in strategic companies temporarily lowered to 10%

# FDI Situation Before COVID-19 & Key Changes

## Asia



- Historically high bars to foreign investments
- Focus on opening up markets to drive economic expansion
- Further relaxation of rules expected to counteract economic downturn from COVID-19
- China:
  - New Foreign Investment Law (Jan 2020)
  - Intention to shorten the negative list
- Exception: tightened controls in Japan
  - Expanding the list of regulated sectors, covering IT-related industries (and potentially medical device companies)
  - Amendments to Forex Act (May 2020), lowering the shareholding thresholds for foreign investments subject to approvals from 10% to 1% and introducing exemptions

# China and the US – A Growing Crisis

# How Did We Get Here?



## Timeline of Events

- **August 14, 2017:** Trump instructed the US Trade Representative (“USTR”) to investigate whether China’s Intellectual Property and Technology Transfer policies and practices harmed the US under Section 301 of the Trade Act
- **March 22, 2018:** USTR found that China engaged in policies and practices related to intellectual property and technology transfers that harmed the US
- **July 19, 2018:** The US imposes the first round of Section 301 tariffs on \$34 billion of Chinese goods as a result of USTR’s finding
- **July 2018 – December 2019:** The US and China impose further rounds of tariffs and retaliatory tariffs
- **January 15, 2020:** US and China sign the Phase 1 Trade Deal, declaring a partial truce in the ongoing tariff war

# An “Amazing Deal”?

- President Trump claims the Phase 1 Trade Deal “is an amazing deal for all”
  - US reduced additional import duties on over \$100 billion of Chinese products and suspended the US tariffs that were supposed to go into effect on December 15, 2020 that would have covered \$160 billion of additional Chinese products
  - China suspended its December 15, 2020, retaliatory tariffs and agreed to increase purchases of US products over the following 2 years by \$200 billion
  - Commitments regarding intellectual property protection, macroeconomic policies, currency exchange rates, technology transfer, and dispute resolution, all aimed at addressing the underlying concerns that triggered the tariff war
- But key features of the deal and external factors indicate the deal does not resolve the fundamental issues
- Tariffs remain on over \$300 billion worth of US and Chinese products



# What Happens Next?

- Uncertainty over China's ability to meet Phase 1 commitments
- Impact of COVID-19
  - Negotiations stalled
  - Recriminations over the source of COVID-19
  - Economies in crisis
- Increased Huawei restrictions add to tension
- Other anti-China moves by the Trump Administration
- Decoupling – the likely impact?
- The US Presidential election

# Practical Tips for In-House Counsel

- In-house lawyers on the front line
- Trade issues affect the bottom line
- Geopolitical factors increase uncertainty
- International trade strategy is essential
- Trade issues in the C-suite
  - Identifying risks
  - Planning for uncertainty
  - Developing mitigation strategies
  - Confronting the unknowable



**Carolyn Amadon**

Compliance Counsel  
Samuel, Son & Co.  
[carolyn.amadon@samuel.com](mailto:carolyn.amadon@samuel.com)  
+1 630 783 8900 ext. 13936

**Mark Herlach**

Partner  
Eversheds Sutherland – Washington DC  
[markherlach@eversheds-sutherland.com](mailto:markherlach@eversheds-sutherland.com)  
+1 202 383 0172

**James Lindop**

Partner  
Eversheds Sutherland - London  
[jameslindop@eversheds-sutherland.com](mailto:jameslindop@eversheds-sutherland.com)  
+44 20 7919 4718

**Monika Zejden-Erdmann**

Principal Associate  
Eversheds Sutherland – London  
[monikazejden-erdmann@eversheds-sutherland.com](mailto:monikazejden-erdmann@eversheds-sutherland.com)  
+44 20 7919 4910