

CLIENT ALERTS

Trade Rules You Must Know In the Automotive Industry In 2021

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To keep abreast of important developments in the automotive industry in 2021, last week we provided the first of a series of regular updates. Last week, we focused on “Research and Development Opportunities Expand for US Vehicle and Equipment Manufacturers”. This week, we begin the first of a series of Client Alerts on various trade-related issues that we expect the automotive industry (and others) to face in 2021.

Today, Stellantis, the new global flagship created by the merger between FCA and PSA makes its first appearance on the New York Stock Exchange. Stellantis is now the 4th largest automaker in the world by revenues (3rd by sales), eclipsing its “Big Three” counterparts Ford and GM. Stellantis, meaning “to brighten with stars”, combined 14 brands (including Fiat, Jeep, Dodge, Ram, Alfa Romeo, Maserati, Peugeot, Opel, Citroen, and Vauxhall) to remind us of the increasingly global nature of the automotive industry, the interest global companies (e.g. former PSA) have in doing business in the United States, and the importance of China as the world’s largest car market.

Among the many tasks that Joe Biden will take on after his inauguration as the 46th President of the United States tomorrow is setting a direction in trade policy. President Trump blamed the trade negotiations and policies of previous administrations for the loss of millions of manufacturing jobs in the US. His sharp departures from the policies in place when he took office in 2017 have resulted in the following changes in trade policy:

1. The US and China have hundreds of billions of dollars in tariffs on each other’s goods resulting from the US imposition of tariffs in 2018 under Section 301 of the Trade Act of 1974, citing theft of Intellectual Property by China. (Because this is one of the most important issues facing the auto industry, we will discuss the topic in the coming days in much more detail).

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2. Tariffs from a long-running dispute with the European Union over illegal subsidies to Airbus and Boeing – The US has made progress on an agreement with the EU, including a first stage agreement in August where market access in both countries was increased. Moreover, last week the Trump Administration declined to place retaliatory tariffs on France and other EU nations even though USTR found their Digital Services Tax was discriminatory.
3. Steel and aluminum tariffs on many US global allies, on grounds of “national security” protection;
4. The absence of a free-trade agreement between the US and UK post-Brexit – there has been recent progress in negotiations with the UK on an FTA. Behind the scenes, negotiations have been going on for over a year, which remained confidential until recently, post-Brexit.
5. The US blocks new appointments and threatened outright withdrawal from the World Trade Organization (WTO), based on legitimate concerns of the US and other countries about the Appellate Body exceeding its intended power, although informal discussions have been ongoing to resolve the issues. A number of our allies are concerned with the overreaching of the Appellate Body and have supported US efforts to force reforms by blocking the appointment of new judges.
6. Renegotiation of NAFTA (now known as the U.S.-Mexico-Canada Agreement (USMCA)) with Canada and Mexico; and
7. Withdrawal from the Trans-Pacific Partnership (TPP).

As the US recovers from the coronavirus pandemic, President-elect Biden has repeatedly said that he would prioritize passing domestic economic stimulus through Congress before negotiating new trade deals. He may, however, find the trade situation difficult to keep on the back burner for long. While Biden is unlikely to continue to increase tariffs on allies like the EU, he probably won't go back to the trade practices of past presidents, either. Nonetheless, Biden indicates his intended rapprochement with traditional US allies, which seems likely to result in negotiations to address tariffs early in his Administration.

Biden and his nominee for US trade representative, Katherine Tai, won't immediately lift Trump's China tariffs, acknowledging the importance of preserving its leverage with Beijing for now. Tai pledged to pursue trade policies that benefit American workers, combat the threat of climate change, and increase US competitiveness just last week.

“The mantra for the Biden people has been mostly ‘No sudden moves.’ I don't think they're going to rush to fix all those things. I think they're going to take their time to review them.” See: Bloomberg Supply Lines: Biden's Trade Agenda (Eric Martin, 01/18/2021).

As the new administration takes office this week, we expect the focus on Covid-19, economic stimulus, and other political issues to overshadow trade issues for a while, at least. The increased cost of doing business in the US – from tariffs and decreased flexibility complying with the USMCA as compared to NAFTA – will remain for now. But, the major benefit appears to be a likely decrease in the modification of trade-based rules and regulations; i.e., companies may have the chance to settle into the established rules without the daily uncertainties many have faced over the last four years.

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We plan on looking more closely at what impact the new Administration may have on these specific trade issues over the next several weeks:

- Section 301 Tariffs in China and elsewhere; Exclusion Process
- USMCA
- Section 232 Tariffs, including steel, aluminum, and automotive
- US-UK bilateral trade agreement

Whatever the circumstances, your Butzel attorneys remain actively engaged in supporting clients through these and other trade-related issues. As trade news develops, count on the Butzel team to bring you the latest trade-related opportunities and risks associated with your business in the US automotive industry.

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