

Japanese Companies Need to Pay Attention: Regulatory Changes Are Coming From Biden

The president has already signaled a tightening of antitrust policy among other changes.

BY DAWN YAMANE HEWETT

For his first visit from a foreign leader, President Joe Biden is welcoming Japan's prime minister to the White House this week. The trip by Yoshihide Suga will send a clear signal that the alliance between the U.S. and Japan remains paramount. Japan, the meeting will say, still holds the key to U.S. policy in the Asia-Pacific world.

Japanese companies need to pay attention; things are going to change. President Biden chaired the Judiciary Committee and the Foreign Relations Committee while in the Senate, and those are two areas on which he is likely to focus. Businesses concerned about regulation can expect four main areas of activity: Enforcement of white-collar crime statutes, antitrust policy, trade, and the U.S.-China relationship.

In the white-collar realm, the Foreign Corrupt Practices Act deserves special focus. Adopted in 1977 in response to bribery scandals (including one involving Japan), the FCPA prohibits companies from offering, paying, promising or authorizing bribes to foreign officials in order to get business. As expected, there were fewer FCPA investigations initiated under the Trump administration. The Biden presidency is likely to bring even more investigations and prosecution—particularly in the healthcare, aerospace, and financial service sectors. Biden has also pledged to strengthen whistleblower laws to further protect employees who report misconduct.

Biden has already signaled a tightening of antitrust policy. Tim Wu, a noted advocate of aggressive enforcement, joined the administration to work on technology and competition policy at the National Economic Council. And progressive antitrust scholar Lina Khan has been tapped for the Federal Trade Commission. Bill Baer, an FTC transition team member, has said that “under-enforcement” has “led to growing concentration in many markets—think agriculture, telecom, wireless, travel, pharma and beer.” Finally, there is an emerging consensus on both sides of the aisle that antitrust laws have not kept pace with consolidation in technology or the growth of high market-share companies.

Trade policy will likely see a sharp change in direction. Biden has made clear he sees trade as a “critical pillar” of his administration's foreign policy and has pledged to “repair [U.S.'s] alliances and engage with the world once again.” These statements signal a return to multilateralism and a turn away from Trump's knee-jerk protectionism.

Biden will display greater respect for allies based on shared values and interests. Where Trump



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(Courtesy photo)

blocked new appointments and threatened withdrawal from the World Trade Organization, the Biden administration will look to reengage with and seek to reform the WTO, making trade a “force for good,” according to Biden’s choice for U.S. trade representative, Katherine Tai.

On the other hand, the new administration will continue to prioritize U.S. jobs and industries. And Biden is likely to push for greater market access and make tough demands on trade partners to revive a U.S. economy hit by the coronavirus pandemic.

In October 2019, Japan and the U.S. reached a Phase I trade deal and the Trump administration agreed to continue the negotiations in a Phase II talk. Under the Phase I agreement, the U.S. won a reduction in tariffs on American farm products such as beef and pork, while Japan escaped higher duties on Japanese cars that the Trump administration had threatened to impose. Japan will face pressures in areas such as autos and agriculture—if the negotiations resume. The Biden administration has not yet signaled whether it would move forward with further trade talks with Japan.

China policy will also change, reflecting a firm but more multilateral approach. Biden served as vice president under President Barack Obama, who pushed for the then 12-member Trans-



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Pacific Partnership as a way to counter China’s influence. Re-joining the now-named Comprehensive and Progressive Agreement for Trans-Pacific Partnership, or CPTPP, would signal that the U.S. is ready to regain its leadership role. However, with congressional support for the CPTPP appearing unlikely, the Biden administration has not made re-joining a priority. In the meantime, Trump’s tariffs against China are not likely to come down any time soon.

The Committee on Foreign Investment in the United States (CFIUS) reviews certain transactions involving foreign investment in the United States with an eye toward assessing their impact on national security. CFIUS has, of course, played a critical role in scrutinizing and blocking investment from China. Japan failed to obtain a spot on the whitelist under the Trump administration, which

offers more leeway for trade partners whose interests are aligned with those of the United States. According to analysts, the “white list” of countries—which are exempted from the more restrictive requirements—could be further expanded. Top expansion candidates—if it occurs—include Japan.

The tension between the U.S. and China will continue to put Japan in a difficult position, as the latter country balances between its most important strategic partner and its biggest trade partner. Japanese companies should keep a close eye on how the new administration navigates these crosscurrents.

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