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International Trade 2025

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Introduction
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INTRODUCTION

Contributed by: Andrew Shoyer, Sven De Knop, Jen Fernandez and Todd Friedbacher, **Sidley Austin LLP**

Sidley Austin LLP is a one-stop shop for global issues and disputes. Sidley's international trade practice covers offices in Brussels, Geneva and Washington, DC. With over 60 practitioners, the group advises on customs, export controls and sanctions, investment screening/CFIUS, negotiations, trade defence, and WTO disputes. Members of Sidley's international trade practice have served in numerous US government and international organisation roles involving the regulation of imports and exports. The firm's clients benefit from its experienced trade law-

yers, PhD trade economists, specialised senior trade advisers and a specialised trade accountant. Sidley also advises on trade policy issues before Geneva-based international organisations such as the WHO and the WIPO. It has an unmatched track record litigating in customs, regulatory and trade defence cases before the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, the Court of Justice of the European Union and the General Court of the European Union.

Contributing Editor



Andrew Shoyer focuses on the implementation and enforcement of international trade and investment agreements. He also advises on compliance with OFAC

economic sanctions and BIS export controls. Andy spent seven years at USTR, serving most recently as legal adviser in the US Mission to the WTO in Geneva. He was the principal negotiator for the USA of the rules implementing the WTO Dispute Settlement Understanding, and has briefed and argued numerous WTO cases before dispute settlement panels and the WTO Appellate Body.

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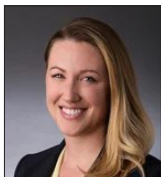


Sven De Knop leads Sidley Austin's global arbitration, trade and advocacy group in the EU, and focuses on international trade law and EU law and regulations. He assists clients in

international investigations and enforcement actions, including in the areas of trade defence (including anti-subsidy investigations), economic sanctions and export controls, and customs. Sven also supports clients in understanding how the relevant legal framework applies to their business and in the design and implementation of compliance programmes, and with internal investigations and compliance audits. A significant part of his practice concerns transactional support, where he assists in identifying and mitigating investment, foreign subsidy and trade controls risks.

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Jen Fernandez is a member of Sidley Austin's global arbitration, trade and advocacy group. She focuses her practice on international trade compliance, specifically export controls and

economic sanctions, and US foreign investment reviews before the Committee on Foreign Investment in the United States (CFIUS). She advises clients on export controls and sanctions risk assessments and national security risks, including in connection with investments, offerings and acquisitions. Jen also conducts internal investigations, handles voluntary self-disclosures, and designs and implements trade controls compliance programmes.



Todd Friedbacher co-founded Sidley Austin's Geneva office in 2002, and is managing partner of the office and a member of the firm's executive committee.

By leveraging the powerful market access and enforcement tools provided by the WTO treaty and the hundreds of other bilateral and regional trade agreements in place worldwide, he has helped clients address critical trade and regulatory barriers impacting their ability to move, sell and protect goods, services and intellectual property across borders. A recognised leader in international trade and WTO law, Todd has represented clients in more than 60 WTO disputes, involving over 100 distinct WTO dispute settlement proceedings, in his 25 years of practice.

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Continuing Trade Tensions Create Increasing Challenges

The legal landscape for cross-border trade and investment has been dominated by the war in and around Ukraine, and efforts by the United States and the EU to restrict China's access to sophisticated supercomputing and semiconductor technology. The EU, for its part, is aggressively pursuing unilateral regulation to level what it perceives as an imbalanced playing field caused by differences in the extent of national regulation in areas such as climate action, labour and human rights, and subsidies – in the eyes of its trading partners, at the expense of international cooperation. These trends are likely to continue through 2025.

Business leaders charged with developing strategies for the future will need to adapt to the following:

- increased sanctions, export controls and tariffs;
- more regionalised and complex supply chains, impacted by increasingly stringent due diligence and reporting requirements related to responsible sourcing (including in relation to, eg, forced labour, greenhouse gas emissions, critical raw materials, etc);
- increased trade remedy protections (including copycat and tit-for-tat measures); and
- enhanced scrutiny on (foreign) investments and trade, likely subject to complex foreign investment screenings and foreign subsidies investigations.

However, while risks abound, so do opportunities.

Although the spike in US tariffs beginning in 2017 emanated, in large part, from trade tensions with China, they led to tariff duels with the

likes of Turkey, India and the EU. The result was an increase in prices for goods such as aluminium, steel and washing machines.

The response to Russia's further invasion of Ukraine in February 2022 has combined asset freezes, import and export restrictions extending to key services sectors (most notably banking) and new investment and services bans. In taking action aimed at Russia, the EU, UK and US have moved aggressively and in relative concert.

In contrast, the US has imposed unilaterally significant export controls on China, covering supercomputing technology and semiconductor manufacturing, with initially the Netherlands and Japan, and then others, following suit.

There has also been a stronger focus in trade restrictions on human rights and sustainable sourcing, adding an additional layer of complexity to compliance. The EU's so-called carbon border adjustment mechanism started applying, which aims to impose reporting obligations and a carbon charge on imports of certain products for emissions released during their production. The EU's Deforestation Regulation (EUDR) prohibits placement of core commodities such as palm oil, soy, coffee, cocoa, wood, cattle and rubber on the EU market, unless producers and importers can establish that products made with those commodities were not grown, harvested or raised on land the EU defines as deforested. The due diligence, traceability and related requirements of the EUDR were recently extended to end-2025, giving companies a little more time to consider how best to comply. Similarly, the EU Corporate Sustainability Due Diligence Directive (CS3D) and the Corporate Sustainability Reporting Directive entered into force. The Forced Labor Regulation is expected to be adopted soon.

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China issued new export control regulations in October 2024. To date, China has made limited use of its “Unreliable Entity List”, adopted to counter the US Entity List.

The importance of technology has also brought tech companies – even early-stage start-ups – into the fray.

Here are five things that business leaders and their international trade counsel must consider in navigating the regulatory challenges ahead.

Understand your supply chain – and look for patterns

There are hundreds of international trade agreements that serve as a bulwark against protectionist forces. Multinational leaders have to analyse that web of agreements and take advantage of reliable supply chain relationships. Understanding supply chains is also key to managing trade risks.

Leverage government allies

Executives and board members at large corporations should activate their network of natural government partners to ensure that a diversified supply chain does not fall apart in other parts of the world.

Sourcing decisions are not just about efficiency – politics is a key factor

In the past, supply chains were often designed around efficiency. Going forward, these decisions should factor in the politics of trade and supply chain regulation, and the risk of implicating subsidy-related investigations.

Diligence and rationalising third-party reliance

Third parties can pose risks, especially if business leaders are not aware of, for example, the

source of foreign manufacturers’ materials or the markets that channel partners are serving. From an enforcement perspective, authorities expect operators to take responsibility and exert more control over their supply chain.

Think about exports in co-ordination with imports

Companies need to think holistically about international trade compliance, which means considering imports and exports in tandem, and not just in terms of goods flows but also in terms of services and investment flows. For instance, the US has put a number of restrictions on technology transfers to certain Chinese companies. Thus, even if tariffs may not pose a danger, a global company will need to consider relationships with manufacturers with respect to these technology transfers.

The recent slide towards economic nationalism is not historically unique. Trade agreements limit the discriminatory action that governments can take at moments they are most inclined to do so.

Governments are generally permitted to give below-market funding to domestic players in a given industry, as long as they stay within certain bounds. If subsidies go on to cause aggravated economic harm to foreign competitors in global markets, it can be cause for litigation and, in the EU under the Foreign Subsidies Regulation, impact the ability to engage in M&A transactions or participate in public tenders.

Foreign Investment: Impediments Here to Stay

Since 2020, there has been a sustained movement towards a more US-type approach to investment screening by governments around the world. The Committee on Foreign Investment in the United States (CFIUS) and other invest-

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ment screening authorities (including in the EU, the UK and elsewhere) have greatly expanded their reach and authority.

Now 25 of the 27 EU member states have comprehensive investment screening regimes in place or are in the process of adopting one.

Other jurisdictions around the world similarly adopted new or more stringent investment screening legislation. For example, in January 2022, the UK started to apply a comprehensive investment screening regime, which has already led to a significant number of transactions being subject to screening. In 2023, Switzerland started the process of adopting FDI screening regimes.

The scope of investments covered has been significantly expanded. This means that investors need to take a more strategic approach. Business leaders and their counsel need to consider at least the following factors:

- the nature of the buyer and/or the vulnerability of the asset;
- the investor's appetite for risk;
- the implications on deal timing and uncertainty; and
- the disclosures and potentially onerous procedures involved as part of the deal process.

In the EU, the EU Investment Screening Regulation (No 2019/452) has fully applied since October 2020. Notably the Regulation significantly contributed to the harmonisation of more expansive screening legislation across the EU. As a result, significantly more transactions undergo investment screening in the EU. Investors should be ready to assess investment risks relating to investment screening upfront and adopt risk

mitigation strategies to address potential issues concerning the impact of a planned investment.

In particular, investors should take care when entering into negotiations and arrangements with targets, especially regarding information-sharing in the context of due diligence and the implications of investment screening on the transaction timeline. It is important to take investment screening into account when structuring transactions and when drafting transactional documents, including by considering the appropriateness of:

- a sign and close mechanism;
- ensuring that all parties co-operate to ensure that regulatory approval is obtained; and
- allocations of rights and obligations pending approval.

In addition, whereas investment screening regimes, so far, have focused on inward investments, there has been a recent focus on outward investments and possible national security aspects of transferring certain technologies and know-how abroad. Rules on outward investments have already been proposed in the US, and the EU is expected to follow shortly.

On 12 July 2023, the EU's Foreign Subsidies Regulation (FSR) started applying. This Regulation aims to address the potentially distortive effects on the EU market of subsidies from non-EU countries. The EU has started actively enforcing the FSR. It has imposed conditions in M&A transactions, caused companies to pull out of tenders, and has launched large-scale investigations including by conducting unannounced on-site inspections (dawn raids). Companies active in the EU should take pre-emptive steps to assess, mitigate and manage the regulatory risks arising from the regulation.

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