What is at Stake in the US Presidential Elections for Swiss Companies and Investors?

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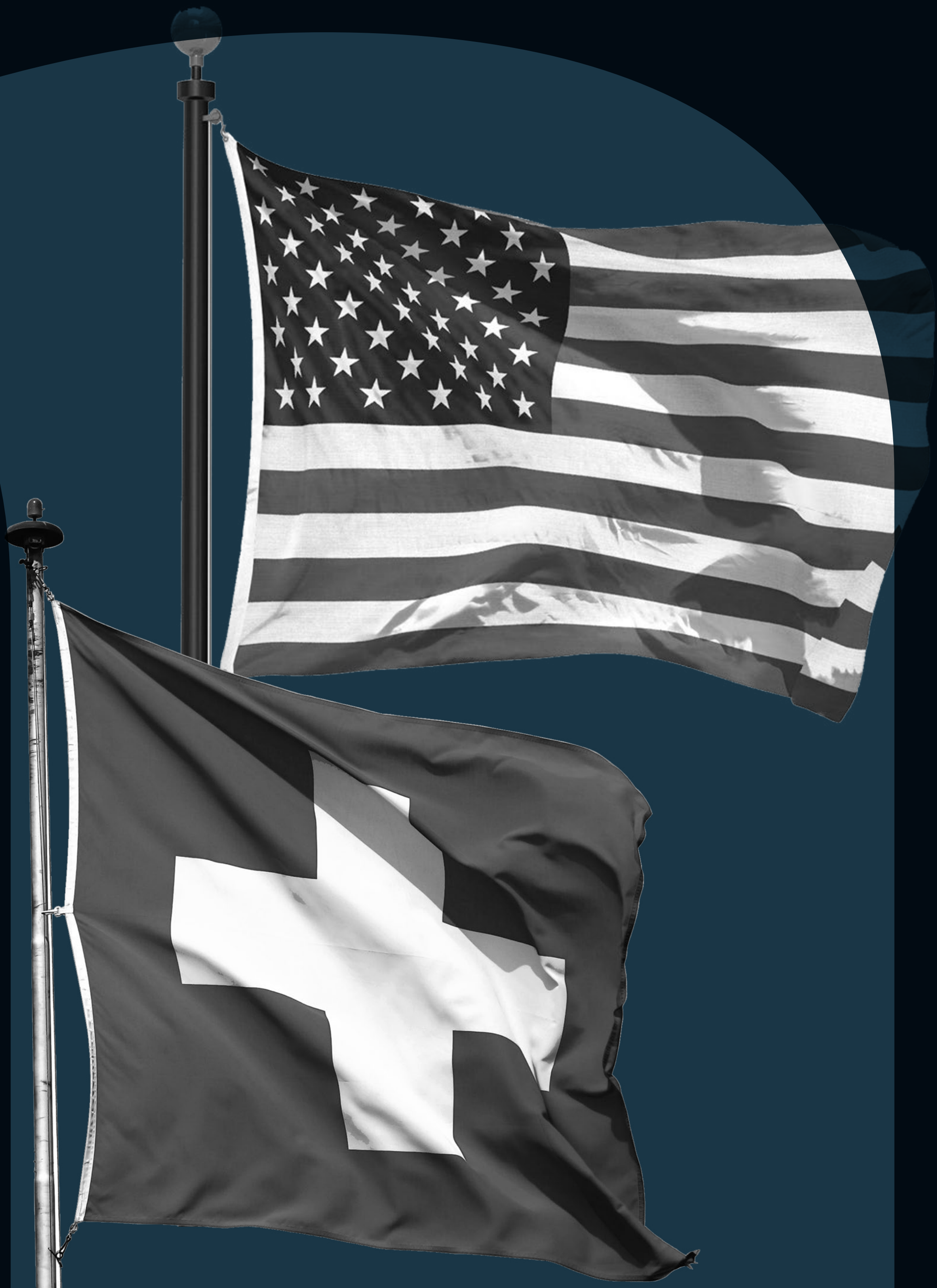

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The November U.S. Presidential electoral campaign is in full swing. Since President Joe Biden ended his reelection bid and Vice President Kamala Harris secured the Democratic Party nomination, polls now show a tight race between Harris and the Republican Party's nominee, former President Donald Trump. The whole world is watching closely—including many of us in Switzerland—because the outcome of the election could have significant repercussions.

Neither candidate has said much about Switzerland and Switzerland is unlikely to figure prominently in the campaign. Many in Switzerland are likely to prefer the continuity offered by Vice President Harris. Others may see advantages in the pro-business policies proposed by Donald Trump. In many respects, the two candidates' policies differ sharply and in ways that will have implications for Swiss companies and investors. Below we discuss the candidates' position on eight key economic issues and their potential implications for Swiss companies.

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Tariffs

The United States is Switzerland's largest trading partner, having surpassed Germany as the top destination for Swiss exports since 2019. The next administration's trade policy therefore could have a significant impact on Swiss exports.

Vice President Harris is likely to continue the current administration's trade policies. This means that U.S. tariff policy is unlikely to change. Indeed, she has strongly criticized former President Trump's proposal to increase tariffs across the board. However, continuity also means a Harris administration may keep in place the additional tariffs on imports of steel and aluminum that continue to affect Swiss exports, even after a successful World Trade Organization (WTO) challenge. **A Harris administration may put more emphasis on the linkages between trade and climate change.** For example, it could accelerate negotiations of a Global Arrangement on Sustainable Steel and Aluminum (GSSA), which would eventually replace the additional tariffs. The current administration, which has been negotiating with the European Union (EU) on the proposed GSSA, has put negotiations essentially on hold until after the election. If Vice President Harris is elected, negotiations are likely to resume in earnest. Swiss authorities and companies will want to monitor the GSSA negotiations closely and ensure a role for Switzerland in any future GSSA. The United States may look for other partners after concluding negotiations with the EU, or if negotiations with the EU fail to make sufficient progress. Similarly, Brian Deese, a former economic advisor to President Biden who is close to the Harris campaign, recently suggested the United States could consider adopting carbon tariffs. While much would depend on the methodologies adopted, carbon tariffs could favor cleaner Swiss exports relative to other exporters. Yet, the absence of an internal carbon price in the United States could raise competitiveness concerns vis-à-vis U.S. producers.

Candidate Trump has suggested that, if elected, he would impose an across-the-board tariff on imports from all countries. He has mentioned an additional tariff of 10%, but recently suggested he might favor an even higher tariff of 20%. A tariff increase of this magnitude could have a significant impact on Swiss exports, which were valued at CHF 5.6 billion in 2023. **A second Trump administration may try to use these new tariffs as leverage to obtain tariff concessions from its trading partners.** Switzerland already has reduced its industrial tariffs to zero. As a result, it could face strong pressure to lower tariffs on agricultural imports, which is politically much more sensitive.

An across-the-board tariff increase would likely bring broader disruptions to supply chains and it would affect Swiss companies' production facilities outside of Switzerland. Potential retaliatory action by trading partners, in turn, could affect export-oriented production facilities that Swiss companies have in the United States. A possible upside in this high-risk scenario is that Swiss companies with export-oriented production facilities in the United States could benefit from any tariff deals concluded by the Trump administration. But this scenario assumes that the Trump administration is successful in its strategy of raising tariffs and then extracting concessions to bring them back down.

China may face even higher tariffs across-the-board in a second Trump administration. For its part, a Harris administration would likely maintain the sectoral approach of the current administration and could expand the number of Chinese products subject to higher tariffs. Higher tariffs on Chinese imports would adversely impact Swiss firms that use China as a base to export to the United States. Regardless of who wins the election, market access to the United States for Chinese exports is likely to deteriorate. Still, higher relative tariffs could benefit exports from Switzerland that compete with imports from China.

Industrial Subsidies

The Biden administration has implemented a hugely ambitious program to support U.S. manufacturing and infrastructure through the Inflation Reduction Act (IRA), the CHIPS and Science Act (CHIPS Act) and the Infrastructure and Investment and Jobs Act (IIJA).

Many of these subsidies are directed at promoting semiconductor manufacturing and clean technologies in the United States. Foreign affiliates with U.S. facilities are eligible to receive these subsidies and, as a result, many foreign multinationals have announced new production facilities in the United States. Additionally, the infrastructure subsidies have boosted demand for construction materials and related services.

A Harris administration is likely to continue these programs and government financial support for U.S. manufacturing. Her administration is likely to continue to direct government financial support to manufacturing and infrastructure projects and may sharpen the focus on projects and technologies to mitigate climate change. Brian Deese, who, as noted earlier, is linked to the Harris campaign, recently proposed a "Clean Energy Marshall Plan" (the Plan), which would see the U.S. government, together with the private sector, fund energy transition projects in developing countries. A key component of the Plan would be that the funding would have to be used to buy goods produced in the United States, giving an additional boost to U.S. producers and exports. **If enacted, the Plan could benefit Swiss producers with production facilities in the United States.** However, producers based in Switzerland or with facilities in other jurisdictions could face additional competition in the developing countries targeted by the Plan.

Former President Trump has been a vocal critic of the Biden administration's use of industrial subsidies, particularly the green subsidies provided under the IRA. He has pledged to repeal the IRA, although he would need the backing of Congress to do so. While others in his party have endorsed his call to repeal the law, there may be some hesitation from Republicans representing constituencies that have benefitted from IRA subsidies. As discussed below, **a second Trump administration is more likely to use lower corporate taxes to promote U.S. investment.**

The outcome of the elections could have an impact on subsidies provided by other large economies. Insofar as a Trump administration would rely less on direct financial support to subsidize U.S. manufacturing, it would lessen the political pressure on other governments to subsidize their own industries. By contrast, insofar as a Harris administration maintains or increases financial support for U.S. industry, this will maintain pressure on other governments to provide more subsidies.

Sanctions

Key elements of U.S. sanctions policy, including the so-called “secondary sanctions” that impact Swiss businesses in connection with transactions otherwise completely out of U.S. jurisdiction, are likely to turn on the outcome of the election. As a general matter, the candidates do not appear to have meaningfully divergent views on the use of sanctions, but their divergent views on certain key important foreign policy questions should have a significant effect on U.S. sanctions policy depending on who wins the election.

Vice President Harris has not yet offered comments signaling an intent to meaningfully break with President Biden’s current foreign policy generally and sanctions policy specifically, and there is some cause to suspect that it will fall generally in line with the current policy of the Biden administration. To the extent that this is the case, **we would expect the current sanctions trajectory vis-à-vis Russia**—which could best be described as a long but slow march to near-complete economic isolation from the West with U.S. secondary sanctions applying to much of what is directly prohibited for U.S. persons—**to continue apace.**

While **former President Trump does not appear to have spoken directly about his intentions with respect to sanctions** in the event of a victory in November, his pledges to prioritize the brokering of an end to the war in Ukraine indicate a possibility that the current U.S. sanctions trajectory vis-à-vis Russia could be radically altered. This would occur most likely in the form of cessation of sanctions escalation as negotiations are pending, with further escalation or a potential rolling back of current sanctions depending on the outcome of the negotiations. With regards to Iran, former President Trump has been harshly critical of the Biden administration’s secondary sanctions policy vis-à-vis Iran, to which former President Trump indirectly attributes the current hostilities in Gaza: “Iran had no money. Now Iran has $250 billion. They made it all over the last two and a half years. They were broke.” While the Biden administration’s Iran sanctions policy has arguably not differed in a major way vis-à-vis the Trump administration policy, we would expect a Trump victory to usher in a return to a “maximum pressure” rhetorical strategy, in addition to a policy of increasing secondary sanctions enforcement actions for dealings in, or with respect to, Iranian oil and other energy sector products, among other types of Iran-related transactions.

Export Controls

Export controls under the Biden administration have taken an increasingly high-profile role in addressing U.S. national security and foreign policy interests. Emblematic of those efforts are the stringent restrictions imposed on Russia with respect to a vast array of items following its invasion of Ukraine and the expansive restrictions imposed on China related to advanced computing and semiconductor items intended to address Chinese military modernization initiatives.

As part of these efforts, while stating a preference to engage with allies on export controls initiatives and preferring a plurilateral approach to U.S.-only restrictions, the Biden administration has dramatically expanded the use of unilateral controls which extend beyond the reach of its shores, such as establishing controls on foreign-produced items through new Foreign Direct Product Rule restrictions. The Biden administration also recently proposed significant new U.S. Person and other export controls regarding military, intelligence and security end users to address human rights related concerns with worldwide effect. **While Vice President Harris has apparently not expressly indicated her policy position regarding the use of export controls, a continuation of those stringent policies—particularly with respect to the focus on China and Russia—is expected to continue**, at least in the near term. In particular, given Vice President Harris' stated interest in addressing human rights related issues, export controls are expected to continue to be used as an instrument to mitigate those concerns around the globe.

Given that former President Trump has also not apparently made public statements as to his position on export controls, his policy position with respect to the use of such controls remain unclear. However, informed by his policies during his first term, **former President Trump can be expected to have an equally aggressive approach, and build on the Biden administration's willingness to use export controls to forward U.S. policy initiatives, particularly with respect to regulations directed towards China**. Former President Trump is anticipated to continue his preference for bilateral country-to-country engagement as part of his foreign policy and national security efforts. Notably though, one of the hallmarks of the first Trump administration's export control policy was the unilateral nature of its export control policies, also with worldwide effect. A prominent example of this willingness to take such significant unilateral action was the Entity List addition of Huawei, along with a Foreign Direct Product Rule designation, despite the economic implications of such an action. Given former President Trump's stated reservations, however, with the way the Biden administration has intensely supported Ukraine's efforts against Russia, it is less clear whether he will continue that increasingly restrictive export controls policy or be receptive to ease those restrictions as part of his stated efforts to work to bring that conflict to a close.

Outbound Investment Restrictions

The U.S. government has generally supported an open investment environment at home and abroad. However, a push under the Trump administration to increase scrutiny on outbound investments to China in sensitive or strategic areas has been continued in the Biden administration.

The Biden administration is in the process of establishing a targeted outbound investment screening program and a final rule is expected before the presidential election, as a follow-on to recently issued proposed rules. The results of the election will likely not change the general stance of the United States vis-à-vis outbound investment in China, but may result in significantly different methods of achieving its goals.

A Harris administration would likely follow the course that the Biden administration has set with regards to outbound investment restriction. Although she has not made any public statements specifically discussing outbound investments or the proposed program, **geopolitical experts are predicting that curbing Beijing's technology ambition would be a plank of her trade and investment policy**. As with President Biden, it would be expected that a Harris administration would similarly seek multilateral cooperation on outbound investment review. A May 2023 G7 joint statement recognized the role of outbound investment authorities to address risks, complement existing authorities, and "protect our sensitive technologies from being used in ways that threaten international peace and security." Similarly, a May 2023 U.S.-EU Trade and Technology Council (TTC) statement expressed a common interest in preventing the use of a narrow set of technologies by actors that may use enhanced military and intelligence capabilities to undermine peace and security.

A second Trump administration would also likely increase scrutiny on outbound investments, along similar lines of his first administration. Given Trump's expansive view of presidential power, it is likely that he would seek to broadening outbound-investment restrictions through executive orders (EO), such as targeted EOs to potentially cover all dual-use artificial intelligence and quantum technologies. Although experts have noted that a second Trump administration would expect European cooperation in action against China, he has not made any public statements regarding multilateral cooperation in this area. However, Trump has explicitly said that a future administration would escalate tariffs—his preferred tool to regulate trade—not only on China but also on Europe. This controversial action would raise the likelihood that multilateral cooperation between the U.S. and Europe may decrease, as it did during the 2016 Trump administration.

Taxes

Former President Trump and Vice President Harris have outlined starkly different positions on their proposals for a United States corporation tax reform.

While in office, former President Trump cut corporation taxes from 35% to 21% via the Tax Cuts and Jobs Act (TCJA). In his campaign, former President Trump suggested he would seek to use revenue generated by higher tariffs to lower the corporation tax rate even further to 15%. He has also pledged to make the renewal of TCJA tax breaks for individuals that are set to expire at the end of 2025 one of his legislative priorities. Lower income taxes would continue to make the U.S. an attractive destination for foreign direct investment, including from Switzerland.

In her 2020 Presidential campaign, Vice President Harris had proposed rolling back Trump's tax cuts and raising the corporate income tax rate back to 35%. In her current campaign, she once again proposed to raise the corporate income tax rate, but has proposed increasing it to 28%. While proposing to increase the corporate tax rate, Vice President Harris proposed tax cuts aimed at workers and the middle class by increasing the child tax credit and the earned income tax credit.

Another point of likely divergence is the proposals the candidates will have for the taxation of U.S. multinationals. Former President Trump is likely to double down on the tax regime that was created under TCJA, and does not appear inclined to bring the rules of the U.S. tax system in line with the current global trend to impose a type of minimum tax that Swiss and other non-U.S. multinationals are increasingly exposed to. Vice President Harris, on the other hand, has suggested rolling back some of the regimes created under TCJA, and to focus in general on ending policies that are perceived to incentivize offshoring of manufacturing and other activities. A potential Harris administration is also more likely to follow the current Biden administration's desire to align the U.S. tax system with certain trends of current global tax reform.

Whether either candidate can enact their tax proposals will depend in large part on the composition of the U.S. Congress. Regardless of the outcome of the upcoming elections, U.S. Congress also awaits the daunting task of finding common ground for addressing a laundry list of tax breaks that either have recently expired, or will expire by the end of 2025, in combination with the need for balancing the budget. These tax breaks include many energy and climate-related provisions, such as the availability of tax credits, as well as provisions that are generally more likely to spur economic growth, such as bonus depreciation and easing of the interest expense deduction limitations. The potential for impact on the global investment climate is therefore substantial, and Swiss and other non-U.S. investors should be on the lookout for other revenue raisers that may affect the tax efficiency of their investments.

For Swiss investors, any U.S. tax rate differential should ultimately not have a direct impact on their U.S. investments, except in the context of U.S. real estate assets or investments in U.S. real estate heavy stocks (including real estate investment trusts (REITs)). However, the lack of certainty about the tax extenders package, as well as the direction of U.S. tax policy more generally, is likely to affect the value of investments – and therefore investment decisions – for the foreseeable future.

Health Care

The price of medicines has emerged as important political issue in U.S. political campaigns. A Harris administration would likely continue the Biden administration's agenda of "taking on Big Pharma and winning" through domestic regulation of prices and Medicare-negotiated deals.

As recently as mid-August, the Biden administration announced new lower negotiated prices on a number of important and popular medications. In most cases, the negotiated prices of drugs were more than half the original price. Following this success, the Harris campaign pledged to "significantly increase the pace of negotiations" and "expand [...] beyond Medicare and into commercial market."

Although the Trump campaign has not made drug prices a central focus, in his first administration he suggested that higher U.S. drug prices were cross-subsidizing lower prices abroad. In 2020, the Trump administration sought to promote transparency in pricing and matching other markets' prices, most importantly through the so-called "most favored nation price" executive order of September 2020. At the time, such policies proved difficult to implement.

The value of intellectual property (IP) is well understood by Swiss pharmaceutical and biotech companies. The pandemic raised debates around IP, particularly compulsory licensing. In international fora, the previous Trump administration maintained the long-standing U.S. position about the importance of protecting IP rights for research and development. The Biden administration shifted this U.S. position by indicating "support for waiving intellectual property protections for COVID-19 vaccines." Domestically, the IRA's provisions on biotech shook up the long standing and often criticized framework of exclusivity for innovative drug companies and brought in price controls. President Biden's EO on the Bioeconomy attempted to address some policy downsides caused by the IRA, but industry was not convinced. That said, the Biden administration supported and elevated National Institutes of Health (NIH) funding, which channels funds into medical research.

A Harris administration is likely to continue taking a tougher stance towards "big pharma," including by potentially not shying away from march-in rights. The Trump administration had a more ambiguous position towards pharma and biotech industry. It both criticized the industry and promoted its successes. A second Trump administration is likely to continue to take an approach of increased access to and competition in generics and biosimilars, which helps biosimilar pipelines, but cuts market control of branded drugs. An example of this approach is the 2018 law that allows the Federal Trade Commission (FTC) to scrutinize biosimilar deals. This law affected companies differently, depending on their product range.

China

China is Switzerland's third largest trading partner, after the United States and the European Union. This year marks the 10th anniversary of the bilateral free trade agreement (FTA) between Switzerland and China, and there appears to be interest in some quarters to launch negotiations to update the FTA.

Regardless of which candidate wins the U.S. elections, trade tensions between the United States and China are likely to continue to pose challenges for Swiss companies and investors. Navigating between both large economies will continue to become more complex.

As discussed above, Vice President Harris would likely continue many of the policies of the current administration. This includes a tightening of controls in strategic sectors accompanied by renewed efforts to persuade allies to enact similar policies. A Harris administration is likely to promote clubs that could exclude China. Former President Trump's focus likely will remain on increasing tariffs on Chinese imports. His administration may see less value in establishing clubs with close allies.

Conclusion

Both candidates will further develop their policy platform and release more details as the campaign progresses. The differences between the two are likely to become even sharper. In many areas, the candidates will need the support of Congress to enact their preferred policies. Thus, keeping a close watch on Congressional elections also will be increasingly important.

Our team of lawyers and advisors are following the election closely. They are available to provide updates and more in-depth analysis of specific issues upon request.

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