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FEATURED Q&A

Will Trump Mean Less Regulation for the Region's Banks?



In his first weeks in office, U.S. President Donald Trump has made moves to begin rolling back Obama-era regulations enacted in the wake of the 2008 financial crisis. // File Photo: White House.

Q During his campaign, now-U.S. President Donald Trump repeatedly said he wanted to reduce regulations on businesses, including those on banks. In 2012, he specifically mentioned the Foreign Corrupt Practices Act, calling it a "horrible law" and saying that its enforcement has been "absolutely crazy." What does Trump's presidency mean for the FCPA and for banks and companies that do business in Latin America and the Caribbean? Is enforcement of the FCPA likely to become less of a priority under Trump than it was under his predecessor, Barack Obama? What will Trump's presidency mean for the de-risking practices that banks have conducted through terminating relationships with some clients, over fears of U.S. fines and other enforcement consequences?

A Gene Smith, president and CEO of Smith Brandon International: "Corruption and bribery are bad for business: they add a line-item expense, though they might be concealed in the cost of the goods sold. Bribes are not subject to any quality control or judicial recourse; they can lead to continued requests for more bribes; projects without cost controls; and projects serving only government officials and the contractor, not actual local need. The United States is closely linked to countries in the Americas, with trade between it and its trade partners in this hemisphere in 2014 reaching nearly \$2 trillion, including both exports and imports. Our largest export markets in the Americas, predictably, have been Canada, Mexico, Brazil, Colombia and Chile. Our major sources of imports, with one major surprise, have been Canada, Mexico, Brazil, Venezuela and Colombia. Our NAFTA partners,

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Representatives of TPP Countries Meet in Chile

Representatives of countries that signed on to the failed Trans-Pacific Partnership trade deal began meeting in Chile to discuss a new pact.

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Wal-Mart de México to Boost Capital Expenditures

The retailer said it would increase capital expenditures by a fifth this year as it plans to build and remodel stores as well as improve logistics and online services.

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OAS Chief Calls for Venezuela Elections or Suspension

Organization of American States Secretary-General Luis Almagro said Venezuela should allow elections or be suspended from the regional body.

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Almagro // File Photo: Organization of American States.

POLITICAL NEWS

OAS Chief Calls for Venezuela Elections or Suspension

Venezuela should hold general elections “as soon as possible” or be suspended from the Organization of American States, the regional body’s secretary-general said Tuesday, Reuters reported. “Venezuela is violating all the articles in the Democratic charter,” said Luis Almagro, adding that elections “are the only real solution that exists.” The South American country’s elections board last October halted the opposition’s push for a referendum to recall President Nicolás Maduro, whose government is facing a severe economic crisis, including skyrocketing inflation and shortages of food and other basic goods. Almagro, who has been OAS secretary-general since 2015, said elections are necessary to help the country recover from this crisis. Venezuela’s Foreign Ministry blasted Almagro’s statement. “Almagro heads the hemisphere’s fascist right-wing group that harasses, assaults and viciously attacks Venezuela, without any scruples or ethics,” the Foreign Ministry said. Maduro has frequently dismissed the secretary-general as working in the interests of the United States. In order for Venezuela to be suspended from the OAS, a two-thirds vote in the organization’s 34-country General Assembly would be required.

Brazil Prosecutor Seeks to Widen Graft Investigation

Brazilian Prosecutor General Rodrigo Janot on Tuesday asked the country’s Supreme Court to open 83 new investigations of top politicians in a widening corruption probe, Reuters reported. The individuals targeted reportedly include five government ministers and powerful legislators. In a letter explaining his actions, Janot said the development should remind Brazilians “of the sad reality of a democracy under attack

by the corruption and the abuse of political and economical powers.” President Michel Temer has not been directly implicated in the corruption probe involving overpriced contracts at state-run oil company Petrobras and the kickbacks they generated for politicians. Janot on Tuesday also requested that the Supreme



Lula // File Photo: Lula Institute.

Court send 211 additional requests for investigations based on testimony by dozens of executives at engineering firm Odebrecht, which has been implicated in a multi-country bribery probe. Perhaps the most well-known politician accused of corruption, former President Luis Inácio Lula da Silva, appeared in court Tuesday and denied trying to block an investigation in the Petrobras scandal.

BUSINESS NEWS

Walmex to Boost Capital Expenditures

Wal-Mart de México on Tuesday said it plans to increase its capital expenditures by one-fifth this year, increasing investment in building new stores and remodeling old ones, as well as improving the company’s logistics and online services, The Wall Street Journal reported.

Walmex plans to invest 17 billion Mexican pesos, or about \$863 million, this year, which is 19 percent more than the company’s capital expenditures last year, said Chief Financial Officer Pedro Farah. Approximately 38 percent of that total will be invested in store remodeling and maintenance, and 31 percent will be invested in building new stores, which the company says it expects will contribute to between 2 and 2.2 percentage points in sales

NEWS BRIEFS

Representatives of TPP Countries Meet in Chile to Begin Forging New Pact

Representatives from the countries that signed on to the failed Trans-Pacific Partnership, or TPP, trade deal on Tuesday began meeting in Chile to discuss the possibility of creating a new regional trade deal, the Associated Press reported. Senior officials from the 12 remaining countries of the TPP, in addition to representatives from China, Colombia and South Korea, met in Viña Del Mar for the first time since U.S. President Donald Trump withdrew the United States from negotiations. The White House has said that Trump plans to seek out individual trade deals with the nations of the failed trade pact.

Colombia’s Santos Apologizes for Receiving Donation From Odebrecht

Colombian President Juan Manuel Santos on Tuesday apologized to Colombians for having received an illegal campaign donation in 2010 from Brazilian construction conglomerate Odebrecht, which is at the center of a massive corruption scandal that spans many countries throughout the Americas, the Associated Press reported. Santos’ former campaign manager, Roberto Prieto, previously acknowledged that Odebrecht had paid \$400,000 to a vendor to print two million campaign posters during the campaign, though Prieto said Santos had no knowledge of the payment.

Invenergy Acquires Uruguay Solar Park

U.S. energy company Invenergy has acquired the 64 megawatt La Jacinta solar park in Uruguay from developer Fotowatio Renewable Ventures, ReNews reported Tuesday. The photovoltaic plant is located in Salto province and is one of Latin America’s largest solar power plants.

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Canada and Mexico, are our strongest trade partners. Trade in the Americas serves us well. The more corruption-free that trade is, the more efficient and the more profitable it can be. Compliance programs intended to fight corruption, as mandated under the Foreign Corrupt Practices Act (FCPA), are not cheap. They affect boards of directors, human resources, and corporate counsel; training alone is a major expense. FCPA enforcement is a highly regulated area, and the new administration has expressed its strong desire to reduce regulations. However, the Trump administration ran on a platform of an improved business environment. At its heart, that points to more business and better business. Reduced FCPA enforcement is not a good business decision."

A **Louis V. Martinez, of counsel, and Roland M. Potts, associate attorney, at Diaz, Reus & Targ LLP:** "To date, many commentators have reached the conclusion that the Trump administration will take a more lax approach to the enforcement of the Foreign Corrupt Practices Act (FCPA). In turn, many have opined that this will allow banks to maintain relationships that would otherwise be purged through de-risking practices. At first glance, there is support for these opinions. After all, President Trump's first days in office were filled with a multitude of executive orders aimed at fulfilling several of his campaign promises. As part of his initial salvo, President Trump met with many business executives and has stated that his office intends to reduce regulation of businesses by as much as 75 percent. To support him in that goal, he nominated Jeff Sessions for attorney general and Jay Clayton as chairman of the U.S. Securities and Exchange Commission, both of whom appear in favor of reducing FCPA enforcement. We would caution companies and individuals that assume as fait accompli that President Trump's desire to reduce regulation will result in actual less enforcement of

the FCPA. Those who make that assumption may suffer severe consequences if they are wrong. While it seems President Trump is determined to bring his new form of politics to the fore, he will still have to go through Congress to pass legislation that would have any lasting effect on the FCPA. Indeed, absent a change in law, any executive order

“It is too early to tell whether President Trump will use the FCPA as a way to even the playing field for American businesses.”

— Louis V. Martinez & Roland M. Potts

limiting prosecution of FCPA claims can be just as easily washed away with a new administration. Additionally, with many FCPA investigations taking three to five years to investigate and settle, those entities currently under investigation are unlikely to see an immediate reprieve. Finally, at this stage, it is too early to tell whether President Trump will use the FCPA as a way to even the playing field for American businesses. Without a change in the law itself, banks and companies that do business in Latin America and in the Caribbean must take a very conservative approach when considering changes to their current policies."

A **Kai Schmitz, leader of FinTech Investment for Latin America at the IFC Global FinTech Investment Group:** "The FCPA, like much of the financial services regulation put in place after 2008, is a case of the old adage, 'The road to hell is paved with good intentions.' The story of these regulations' creation a few years ago and their scrapping now is also a sad example of the dysfunction of a polarized political system. While everyone agrees that there was a lack of eth-

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growth. The retailer said it is planning to spend 13 percent on logistics, 10 percent on developing its e-commerce sector and the remaining 8 percent on infrastructure for perishable goods. The announcement is part of Walmex's 10-year plan to double its annual sales between 2014 and 2024. Last year, its sales grew by 12 percent to approximately \$27 billion.

Colombian Gov't to Liquidate Electricaribe

Colombian authorities on Tuesday said they are liquidating electricity company Electricaribe, despite objections from the provider's parent company, Spain's Gas Natural SDG, in an escalation of tensions between the Colombian government and one of Europe's biggest utility providers, The Wall Street Journal reported. Colombia took over Electricaribe four months ago because, according to Colombian Superintendent of Services José Miguel Mendoza, the company's distribution network, which provides electricity to Colombia's Caribbean coast, was responsible for frequent blackouts, and in his view is unfit to provide adequate services to its 2.5 million customers in the region. He said Electricaribe could not afford the necessary upgrades that would be required in order to provide adequate service. "The company is not in a condition to provide energy with the quality and continuity needed," Mendoza said. "We will have an absolutely public selection process in which we will choose the best option for the coast." The company will continue to provide electricity to Colombia's Caribbean coast while the superintendent's office begins auctioning off the company's assets in order to pay off liabilities amounting to approximately \$830 million. Gas Natural, which owns an 85 percent stake in Electricaribe, said in a statement that the liquidation of the company is "contrary to the conversation" the company had had with Colombia over the past few months. Gas Natural said it would seek recourse through the arm of the World Bank that rules on state-investor disputes.

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ics and accountability that led to excessive risk-taking in financial services, lawmakers on both sides refused to work together to address these challenges, so that regulation was created by one side and pushed through Congress. As a result, we have Dodd-Frank, the Consumer Financial Protection Bureau, the FCPA and other regulations that try to address existing problems with more rules, more government oversight and more bureaucracy. Some of it is surely justified and maybe necessary, but it only represents one way to address the underlying issues, favored by one side of the political spectrum. The other side has no ownership of the solution, no interest in making it work and benefits only if it fails. Repealing regulations and replacing them with another solution that again pleases only one side of the argument will lead to the same results—hell reached on a different path. For financial institutions, the past years have been horrible: all attention and efforts were focused on de-risking and compliance rather than on rebuilding a better business. Maybe banks have become better, but customers certainly do not have better choices: consolidation in the United States and in the region has accelerated, and the customer experience has certainly worsened. The sector needs to be able to go back to running its business better, taking risks that are consummate with their business and focusing on providing good solutions to clients while making money. Repealing one set of unbalanced regulations and replacing it with another one-sided set (or none at all) every four or eight years is arguably worse than stability based on poorly crafted rules. It also makes the United States a bad place to do business.”

A **Bernard V. Higgins, São Paulo-based business consultant and coach:** “If we take Donald Trump’s campaign promises at his word, I believe we will see significant deregulation with the weakening of Dodd-Frank and Volcker rules and possibly a more flexible interpretation of the Foreign Corrupt

Practices Act. To what extent, remains to be seen. Some deregulation, however, would probably be welcomed, since excessive regulation is costly and inhibits even reasonable risk-taking, and thus growth and profits.

“The reaction to the 2008 crisis probably generated a bit of overregulation and in turn a reluctance to deal with some players in emerging markets.”

— Bernard V. Higgins

The reaction to the 2008 crisis probably generated a bit of overregulation and in turn a reluctance to deal with some players in emerging markets. Along with deregulation, there is a real possibility that a reduction in de-risking practices brought about in some of these markets will enable more access to financial markets. We will likely see a less stringent interpretation of the FCPA, especially in relation to the application of the law regarding violations committed by foreign firms prior to their acquisition by U.S. companies, as well as responsibility for violations committed by third parties engaged by them. This will probably increase the appetite of players engaging in mergers and acquisitions to participate more actively in high Corruption Perception Index markets. Short term, on the positive side, there will probably be an increase in financing activity with a greater appetite for risk in these markets. However, the message sent with regard to corruption, especially these days when there is a concentrated effort to fight endemic corruption in countries like Brazil (law 12.846/13 issued August 2013), is questionable.”

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Erik Brand

Publisher
ebrand@thedialogue.org

Gene Kuleta

Editor
gkuleta@thedialogue.org

Nicole Wasson

Reporter, Assistant Editor
nwasson@thedialogue.org



Michael Shifter, President

Genaro Arriagada, Nonresident Senior Fellow

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