Securing the Future

9 Ways to Help Your Business
Adapt to New U.S. Policies

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Foreword

Since Donald Trump was sworn in as the 47th President of the United States on January 20, uncertainty and instability have prevailed. The new administration's protectionist trade policies will impact the Canadian economy. Yet, the United States remains our largest trading partner, with 79% of Canadian exports destined for this market. Businesses operating in Québec must therefore prepare for the new realities that are emerging.

By always staying abreast of recent developments, the Fasken team understands the impacts of the Trump administration's decisions. We are ready to advise you on minimizing risks, maintaining solid business relationships, seizing opportunities and preparing you for potential commercial or cross-border disputes.

The Fasken team has prepared a guide entitled ***Securing the Future: 9 Ways to Help Your Business Adapt to New U.S. Policies*** to help you adapt your business practices and better understand the legal implications of the political situation on your business. This guide sets out the key questions the business community has about new U.S. policies, and addresses them by describing their impact on businesses and highlighting the opportunities they offer as well as recommending ways to make informed decisions.

We hope you find this guide helpful!

Raymond Chrétien and Éric Bédard

This guide does not constitute legal advice or a legal opinion. It is intended to provide you with some general guidelines, which should be followed by specific advice tailored to your own situation.

We Heard You: 9 Key Questions, 9 Answers

01. How can businesses adapt to new U.S. trade policies and potential tariffs?

02. How can businesses adapt their commercial contracts to new U.S. policies?

03. How can businesses strengthen corporate governance in response to new business realities?

04. How can businesses build labour and employment relations in a changing business environment?

05. How can businesses prepare for changes in immigration policy?

06. How can businesses navigate the uncertainty created by new environmental and energy policies to remain competitive?

07. How can businesses adapt to U.S. administration's new approach to regulating technology?

08. How can businesses remain competitive amid the tech-related initiatives introduced by the Trump administration?

09. How can businesses prepare for potential commercial disputes and develop cross-border dispute resolution strategies?

Don't forget to read the section *Tariffs: Your Questions, Our Answers*

01.
How can businesses adapt to new U.S. trade policies and potential tariffs?

The 2024 U.S. elections have significantly affected international trade relations. Under the Biden administration, the U.S. endorsed trade partnerships and multilateral agreements such as CUSMA. Conversely, Donald Trump's victory has marked a return to a more aggressive, protectionist trade policy.

To reduce the trade deficit and repatriate manufacturing jobs, the U.S. president has threatened higher tariffs on imports. He has also ordered federal agencies to review U.S. trade relations with all of its trading partners and criticized Canadian banking regulation.

He also expressed his intention to renegotiate the CUSMA ahead of its scheduled review and to reduce taxes on capital gains to stimulate investments and economic growth.

Key Impacts

- President Trump's approach will have a direct impact on certain businesses operating in Québec. These businesses will have to prepare for changes in trade agreements, possible tariff-related cost increases and additional challenges in accessing the U.S. market.
- The findings that President Trump directed federal agencies to submit on April 1, 2025, following their review of U.S. trade policy with all trading partners, could lead to various repercussions, such as sanctions or other tariffs.
- Capital gains tax cuts in the U.S. could spur capital flight from Canada to the U.S., particularly if Canada adopts less investor-friendly tax policies.

Opportunities

- Challenges posed by U.S. protectionist policies could encourage greater collaboration among provinces and territories, creating a more integrated and resilient domestic market.
- The reviews could open channels of dialogue and negotiation with U.S. authorities so as to resolve trade disputes, negotiate more favourable terms and strengthen relations with U.S. partners.
- The Trump administration's policies could also lead to discussions and negotiations with other international partners for new bilateral or multilateral trade agreements, which would help businesses break into new markets and reduce trade barriers.
- Canada is the only country that has trade agreements with all G7 countries. Business opportunities could potentially be realized if these agreements are complete and properly understood.

Practical Tips

- **Risk analysis:** Trade negotiations with your U.S. partners could be complex in the current environment. Conducting a risk analysis to identify your company's vulnerabilities and anticipate the impact of aggressive trade policies is essential.

- **Assess potential impacts of tariffs:** It is crucial to assess the impact of tariffs on your costs and profit margins. Identify the most tariff-vulnerable products and consider strategies to reduce costs, such as supplier diversification or supply chain optimization.

- **Risk mitigation strategies:** Consider proactive strategies to reduce the impact of tariffs, such as negotiating with suppliers to obtain lower prices or more favourable payment terms, and optimizing customs procedures to minimize additional delays and costs.

- **U.S. subsidiary:** For groups that own or are considering the acquisition of a U.S. subsidiary, it should be noted that having a subsidiary may help minimize the impact of new tariffs. A plan should be established to transfer and concentrate, as much as possible, all production destined for the U.S. market to this U.S. subsidiary.

- **Contingency planning:** More generally, be flexible and adapt your strategies to political and economic developments. Prepare contingency plans for disruptions, covering different resiliency and risk management scenarios. Be sure to incorporate dispute resolution mechanisms.

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TARIFFS: YOUR QUESTIONS, OUR ANSWERS

If the announced tariffs are implemented, how will the new U.S. trade policies affect cross-border trade?

Customs controls will be stricter, which will lead to additional customs clearance delays. You will also have to comply with new administrative and documentary requirements to prove the origin of goods and compliance with new tariff policies.

How will changing tariffs affect production costs and sale prices?

Businesses operating in Québec and exporting to the United States will face administrative costs in connection with managing customs formalities. These additional costs may increase the total cost of producing the goods. To offset the additional costs, businesses may be forced to raise the prices of products sold in the U.S.

Who will bear the costs of the new tariff policies?

Costs related to the new tariff policies will primarily be borne by U.S. importing companies. When importing Canadian products, U.S. importing companies will have to pay the tariffs. These additional costs will then be passed on to U.S. consumers in the form of higher prices.

How will the new tariff policies affect our cash flow, given the payment terms we have negotiated with our customers?

The new tariff policies could have a significant impact on your cash flow. Additional tariff-related costs could reduce your profit margins and increase your working capital requirements. If the payment terms with your customers do not allow you to quickly offset these costs, you could experience cash flow pressures. It is therefore essential to review your terms of payment and negotiate more favourable conditions to mitigate the impact of any tariffs.

02.
How can businesses adapt their commercial contracts to the new U.S. policies ?

Historically, businesses operating in Québec have enjoyed a stable and predictable commercial relationship with the United States. However, since President Trump has taken office, this stability has been undermined by his style of governance and protectionist policies that create a climate of uncertainty. In order to protect themselves from potential trade disruptions and ensure revenue predictability, businesses must draft and negotiate strong contracts.

Key Impacts

- Businesses with contracts that are not adapted to this situation may face unexpected cost increases, supply chain disruptions and trade disputes.

Opportunities

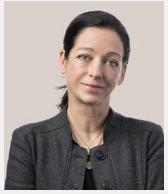
- Given the current situation, a thorough review of existing contracts is in order, along with planning negotiating strategies for future contracts. A proactive approach to drafting contracts will help minimize financial risks and preserve strong commercial relationships despite the prevailing uncertainty. Now is a good time to consider supply chain diversification.

Practical Tips

- **Risk analysis:** Assess the risks of your existing commercial contracts based on criteria such as the geographic concentration of your suppliers, fluctuations in your workforce, and the parties' responsibilities regarding import formalities and the payment of various import tariffs and taxes. A thorough review of existing contracts is recommended to determine whether certain provisions could significantly affect your business practices, such as the impact of tariffs on your pricing and revenue and your ability to preserve your business relationships.

- **Strengthen commercial contracts:** Pay particular attention to clauses regarding the transfer of risks between the parties, the payment of taxes and other duties (including tariffs), the sharing of risks due to price fluctuations, and any other protective clauses, such as force majeure and termination clauses. To mitigate financial risks due to tariff fluctuations, contracts can provide for regular price reviews or outline how the impact will be shared.

Questions ?



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03.
How can businesses strengthen corporate governance in response to new business realities?

During a crisis, the role of corporate executives and boards of directors is crucial. The imposing of tariffs by the Trump administration and the uncertainty caused by the ongoing threat of additional measures against Canadian imports create significant risks to be addressed. It is essential to respond rigorously with robust governance procedures and practices aligned with the company's risk profile.

Key Impacts

- The prevailing uncertainty means that management teams will have to be particularly vigilant and ready to adapt quickly, and report all risks to the board of directors, which will play a decisive strategic role. To remain competitive, businesses must evaluate their governance practices to determine if they are sufficient or if adjustments are required.

Opportunities

- The current situation offers businesses the opportunity to test their resilience and agility to adapt to the rapidly changing economic environment in which they operate, which will allow them to identify and seize opportunities as they arise.

Practical Tips

- **Strengthen governance:** Depending on the particular circumstances and the company's risk profile, governance practices implemented in the ordinary course of business may prove insufficient.

  In particular, it may become necessary to hold more frequent meetings and to consider setting up a special (or ad hoc) committee to closely monitor developments and identify related risks and opportunities. Such responsibilities could also be assigned to an existing committee, such as a Risk Management Committee.

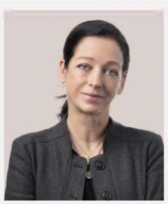
  Ensure that this committee has the necessary resources and powers to assess risks and propose mitigation strategies. To ensure that the committee can properly fulfill its mandate, it will also require relevant and up-to-date information. It will be important to identify the control measures and individuals responsible for ensuring the timely delivery of relevant information. Regular meetings with management could be beneficial.

- **Key decisions:** Key decisions will have to be made by the board, and in doing so, it will be essential to consider the interests of stakeholders, even in a crisis situation, so that directors can properly fulfill their duty to act in the best interests of the business. For example, when developing a contingency plan to address tariffs, it will be important to identify all stakeholders that are reasonably likely to be affected by the plan (shareholders, employees, customers, suppliers, creditors, government, etc.), to consider their possible reasonable expectations regarding the plan, and to ensure that the plan is still reasonable. It is also crucial that directors exercise due diligence, such as by consulting with experts where necessary, and ensuring that every important decision is well documented.

- **Integrate risk into management strategies:** Integrate the risks stemming from new trade policies into your market management and diversification strategies. This includes considering risks in all strategic planning, budgeting and decision-making processes.

- **Contingency planning:** Develop contingency plans to address potential disruptions caused by new trade policies. These plans should include supply chain resilience and financial risk management strategies.

Questions ?



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04.
How can businesses build labour and employment relations in a changing business environment?

Certain decisions by the new U.S. administration could pose significant challenges to labour and employment relations for businesses operating in Québec, particularly those involving higher tariffs and increased trade restrictions. These measures will increase the cost of products imported by the United States from Canada, leading to higher prices for U.S. consumers and a possible decrease in demand for Québec products. As a result, businesses may need to reduce operating costs, diversify their customer base or even consider relocating the production of goods and services to remain competitive. These challenges may also require significant workforce-related adjustments.

Key Impacts

- Businesses operating in Québec and exporting their products to the United States could experience a decrease in profit margins and a loss in market share. Reduced sales could result in increased pressure on labour costs and staff occupancy rates and require businesses to review their human resource strategies to maintain profitability.

Opportunities

- Businesses can take advantage of this period of change to strengthen relationships with employees and unions. Open and transparent communication can help to maintain trust and mobilize stakeholders around common goals.

Practical Tips

- **Human resources planning:** Assess the impact of the new U.S. policies on your workforce and develop contingency plans to address labour issues. This includes identifying critical positions that may be affected and implementing strategies that reflect these new realities.

- **Layoffs:** Consider temporary layoffs or terminations as needed. Prepare the necessary documentation for individual and group terminations, if applicable, and review your contractual and legal obligations to minimize the risk of potential disputes and the often high costs involved.

- **Temporary or fixed-term labour:** Consider hiring temporary workers or hiring employees through fixed-term contracts for greater flexibility. Ensure that the terms of your employment contracts reflect the current context and adequately protect your business.

- **Subcontracting:** Explore the possibility of delegating certain tasks to external providers to reduce fixed costs and better manage fluctuations in demand. Ensure that contracts clearly set out the responsibilities of each party. If your business is unionized, determine if the collective agreement allows the subcontracting of certain activities.

- **Union negotiations:** If your business is unionized and you need to adjust wages, hours or other working conditions, discuss the possibility of reopening the collective agreement with the union. This could help you maintain operations during this period of fluctuations while ensuring sound labour relations.

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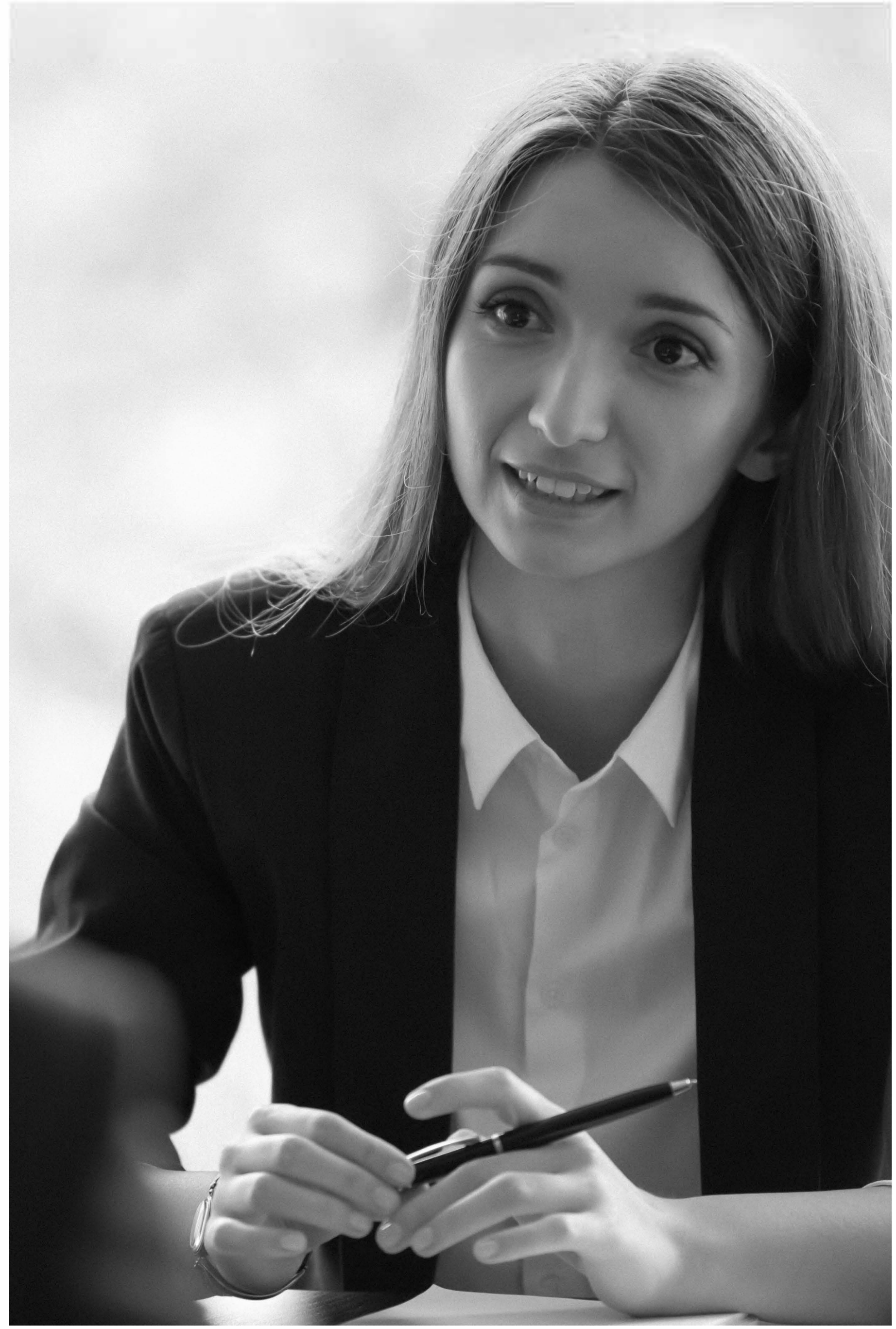

05.
How can businesses prepare for changes in immigration policy?

Since returning to the presidency, Donald Trump has reiterated his strong positions on immigration, which largely mirror those of his first term. His policy seeks primarily to strengthen border security and reduce the number of immigrants entering the United States.

One of the first actions of the new administration was to sign an order to end birth citizenship for certain children born in the United States to parents who are not permanent residents or American citizens. However, this action is being disputed and could face a significant legal challenge as it is contrary to the interpretation of the 14th Amendment to the American Constitution.

Some of the other measures announced include intensifying deportation operations, reducing protection programs and lowering caps on the numbers of refugees admitted to the U.S.

Trump has also put in place harsher restrictions on asylum seekers and has promised to build more physical barriers along the U.S. southern border. These actions are part of a commitment to strengthen both border security and national sovereignty.

Key Impacts

- The Trump administration's planned reduction in immigration targets, combined with the Canadian government's major changes to immigration programs in 2024, is likely to affect the North American labour market. This could lead to higher labour costs for Canadian businesses and the need to adopt new workforce planning strategies.
- The declared national emergency at the southern border of the United States could also affect the ability of U.S. border officers to process work visa applications at the Canada-U.S. border, affecting the mobility of Canadian professionals to the United States.
- Trump's stricter immigration policies could lead to an influx of asylum seekers in Québec and elsewhere in Canada. To respond to this influx, immigration services at the border will need to be ready to adapt.

Opportunities

- Businesses can take advantage of this period of change to strengthen relationships with employees and unions.
- Some Canadian businesses could benefit from an increased number of asylum seekers entering Canada. However, employers must be aware of the uncertain status associated with the asylum process, particularly for claimants who have been in the United States prior to their arrival in Canada.

Practical Tips

- **Human resources planning:** Assess the impact of new immigration policies on your workforce and develop contingency plans to quickly adapt to sudden changes to those policies. This includes reviewing the recruitment strategy for foreign workers and identifying key positions that are likely to be affected.

- **Training and awareness:** Train your HR business partners on new immigration regulations and their implications. Regular training will help minimize the risks of non-compliance for your organization and optimize human resource management.

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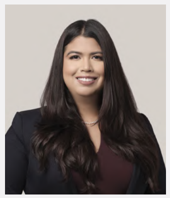

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06.
How can businesses navigate the uncertainty created by new environmental and energy policies to remain competitive?

As for environmental and energy matters, President Trump has declared a national emergency to increase the production of oil and other fossil fuels. He has taken steps to reduce regulations and encourage the exploitation of natural resources, particularly in Alaska. He also announced the end of federal incentives for electric vehicles and an end to the emissions targets set by the Environmental Protection Agency (EPA). In addition, President Trump ordered the U.S. to immediately withdraw from the Paris Climate Agreement.

Key Impacts

- These policies may create uncertainty for businesses in the renewable energy and green technology sectors, which could face difficulties entering the U.S. market.
- U.S. businesses could benefit from reduced environmental compliance costs, giving them a competitive advantage over businesses operating in Québec that must comply with stricter standards.

Opportunities

- Businesses can take advantage of reduced environmental compliance costs in the U.S. to optimize their own operations. This can include adopting more efficient energy management practices and reducing operational costs while maintaining high environmental standards.

Practical Tips

- **Comply with environmental standards:** Although the United States is adopting less stringent policies, many other markets, particularly in Europe and Asia, continue to tighten their environmental standards. Maintain high environmental standards to remain competitive and meet consumer and regulatory expectations. Adopting best practices in environmental compliance helps minimize legal risks and potential penalties, even in a context of deregulation.
- **Collaborate with stakeholders:** Work closely with stakeholders, including customers, suppliers, First Nations and legislators to anticipate and respond to changes in environmental policies. This may include participating in sectoral initiatives, communicating proactively about environmental efforts, and seeking financial support for green projects.

- **Proactive legal monitoring:** Adopt tools to better anticipate and respond to changes in environmental policy. This can include legal advice on new regulations, compliance strategies, and action plans for green projects.

- **Force majeure clauses:** Include force majeure clauses in your contracts to cover risks related to environmental incidents and policy changes. These clauses can protect your business from unexpected disruptions.

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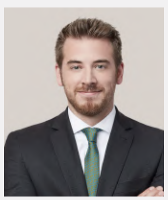

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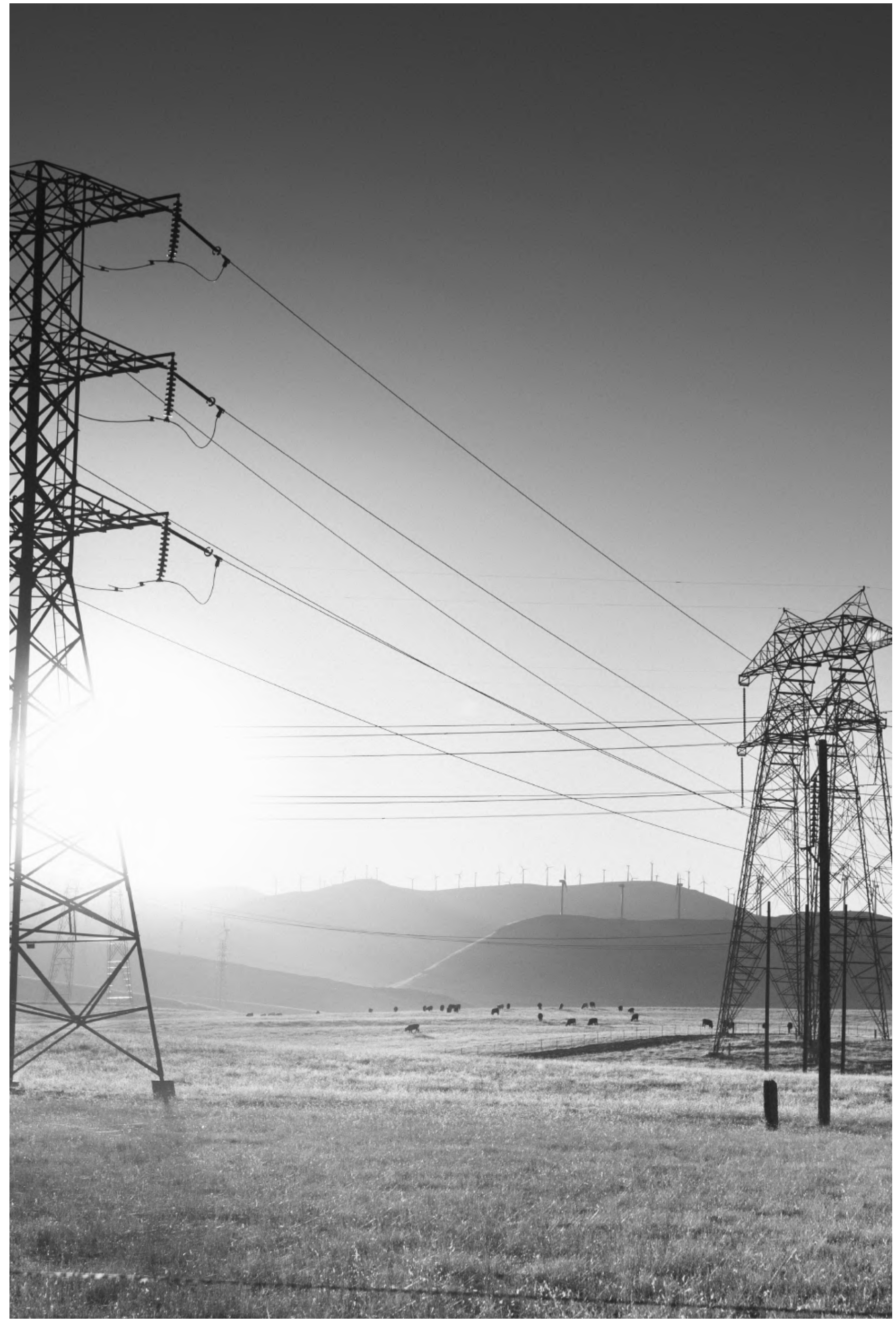

07.

How can businesses adapt to the U.S. administration's new approaches to regulating technology?

The Trump administration has expressed its intention to reduce privacy and cybersecurity regulations, preferring to encourage voluntary improvements from the private sector rather than imposing strict requirements. This approach aims to ease the constraints for technology companies and organizations providing essential services. In addition, the Trump administration is considering more aggressive actions against foreign cyber adversaries.

Key Impacts

- Privacy deregulation can reduce compliance costs for U.S. businesses, giving them a competitive advantage over businesses operating in Québec, which have to comply with stricter standards.
- Differences in regulatory approaches between Canada and the U.S. can complicate trade and partnership relationships by creating disparities in the relevant standards. Businesses will have to navigate a fragmented regulatory landscape, which could lead to inefficiencies and additional costs.

Practical Tips

- **Regulatory compliance:** While the new approaches encourage voluntary improvements, it is important to stay abreast of industry-specific regulatory requirements. Ensure your compliance with all applicable laws and regulations.
- **Supplier evaluation:** Conduct cybersecurity assessments of your suppliers before signing contracts. Ensure that your suppliers meet high security standards and have robust cybersecurity policies in place.
- **Contractual clauses:** Include indemnification and remediation clauses in supplier contracts to protect against data breaches or non-compliance by suppliers.

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How can businesses remain competitive amid the tech-related initiatives introduced by the Trump administration?

President Trump revoked President Biden's executive order imposing safeguards to promote the responsible development of AI tools. He favours a policy based on innovation, aimed at minimizing government intervention to drive the U.S.'s technological advantage. Trump also stressed the importance of maintaining U.S. AI leadership in the face of global competition, particularly from China. A Chinese start-up, which has developed high-performance AI chatbots at a fraction of the cost of American initiatives, has demonstrated that China will not let itself be so easily left behind in this area.

President Trump has also appointed crypto-friendly individuals to key positions and expressed his desire to adopt policies encouraging deregulation in this sector. In contrast to the previous administration, which expressly aimed to better contain large technology companies, the new U.S. administration has clearly moved closer to them. Moreover, the new administration plans to encourage investment in the technology sector, as evidenced by the President's personal support for a major project to develop large-scale data centres to support the exponential growth of the AI sector in the United States.

Key Impacts

- The deregulation planned by the Trump administration could accelerate the development and commercialization of new technologies in the United States, putting additional pressure on businesses operating in Québec to innovate quickly and remain competitive.
- A major project with up to $500 billion in investments to fund specialized AI data centres could divert some of the capital that could have been directed to Canada to develop data centres and infrastructure.
- The creation of a more favourable regulatory environment for emerging technology industries could encourage certain businesses operating in Québec to consider moving their operations or establishing subsidiaries in the United States to benefit from these advantageous conditions. In addition, the United States is generally considered not to offer the same level of protection for personal information, forcing Canadian businesses wishing to use these technological infrastructures to implement additional protection measures.

Opportunities

- Businesses specializing in AI, cloud computing and cybersecurity could benefit from cross-border partnerships and collaborations by leveraging advanced technology resources and extensive distribution networks offered by U.S. tech giants.
- Technology businesses operating in Québec can learn from innovative foreign initiatives. For example, a Chinese start-up has shown that it is possible to create powerful AI chatbots with a limited budget and less technologically advanced semiconductors, proving that there is still room for local innovation.

Practical Tips

- **Intellectual property:** Be sure to protect your technological innovations through patents, trademarks, copyrights and trade secrets. Protecting intellectual property is crucial to maintaining a competitive edge and avoiding legal disputes.

- **Technological and legal monitoring:** Put in place technological and legal monitoring to stay abreast of not only regulatory developments but also relevant technological advances. Doing so will enable you to anticipate changes and adapt your strategies accordingly.

- **Consult with experts:** Work closely with regulatory and technology experts to stay current on best practices and legal requirements. This may include regular consultations with specialized lawyers and cybersecurity professionals.

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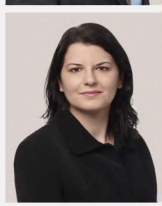

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09.
How can businesses prepare for potential commercial disputes and develop cross-border dispute resolution strategies?

The U.S. administration's current policies may destabilize private business relationships between U.S. and Canadian business people. New protectionist measures and increased restrictions on cross-border investment will make closing transactions more difficult and create uncertainty for businesses, potentially triggering more contractual disputes. Commercial litigation is therefore likely to increase, calling for greater vigilance and strategic adaptation by businesses to navigate this new regulatory environment.

Key Impacts

- Trade disputes are likely to become more frequent under the Trump administration as his protectionist policy creates a more adversarial business environment. As a result, it is likely that trade tensions between Canadian and U.S. businesses will intensify, leading to increased legal disputes.

Opportunities

- The effective resolution of disputes can strengthen commercial relations and improve trust between commercial partners. This can lead to stronger partnerships and long-term growth opportunities.

Practical Tips

- **Risk analysis:** Identify and assess the risk of commercial disputes. This includes reviewing contracts and trade agreements to ensure they are clear and complete. A proactive analysis prevents conflicts before they occur.
- **Conflict resolution and jurisdiction clauses:** Include specific dispute resolution clauses in your business contracts, such as mediation, arbitration and jurisdiction clauses, to clearly define dispute resolution mechanisms. Also ensure that your contracts specify which court will have jurisdiction in the event of a dispute. This will reduce uncertainty and clarify the parties' expectations.
- **Remain vigilant:** In the event of a dispute with a co-contractor, be proactive and anticipate any attempt at "forum shopping," where the co-contractor may rush to have a matter heard by a court in a jurisdiction that is the most favourable to its interests.
- **Consult with experts:** Consult with lawyers practising primarily in the areas of commercial law and cross-border dispute resolution. Their in-depth knowledge can help you navigate legal complexities and develop effective strategies.

- **Stay informed:** Ensure your legal and business teams are regularly informed of regulatory developments and trends in cross-border dispute resolution.

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Conclusion

The future of Canada-U.S. trade relations remains in flux, but this reality can be a source of innovation and resilience. The key to success lies in staying agile and informed and being ready to adapt to the new realities of international trade.

Businesses that anticipate change, diversify their markets and invest in advanced technologies will be better positioned to thrive despite the turbulence.

We hope the recommendations set out in this guide will help you face challenges with confidence and capitalize on opportunities. Together, we can secure the future of your businesses and contribute to a prosperous future for Québec.

Wishing you continued success!

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A true business partner, Fasken can help you navigate a complex and ever-changing environment by providing tailored strategies and solutions.

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