

The Hurdles in Keeping Up with the

# E-REVO LUTION

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# Prospects for TRANSPORTATION and TRADE REGULATION under the TRUMP ADMINISTRATION





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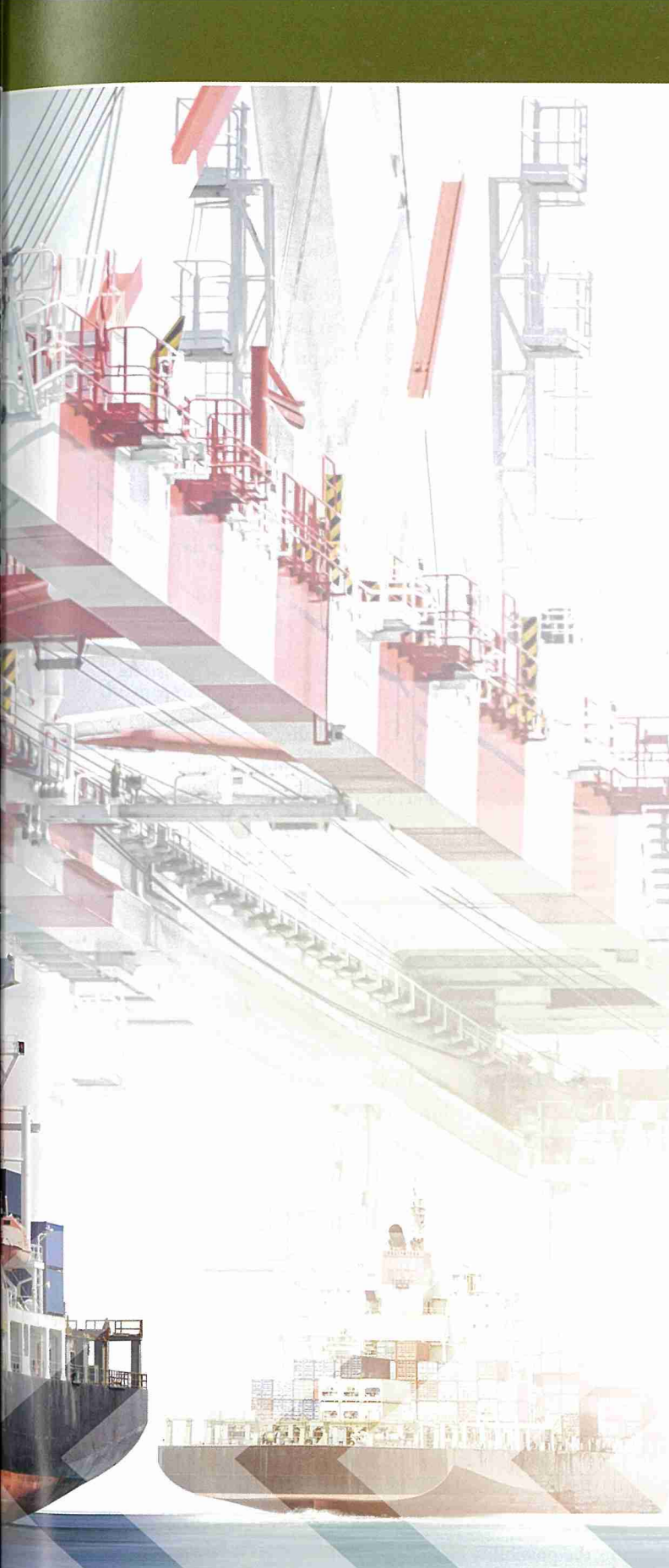
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**T**ransportation providers have experienced mixed productivity results in recent memory as a consequence of a changing and uncertain commercial environment. Now, yet another force stands to impact this already turbulent world: President Donald J. Trump.

If you are reading this, then the world has still not ended following Inauguration Day on January 20, and you remain eager for what opportunities the future may provide. This may be a good time, therefore, for a sober reflection on what may be forthcoming from the new administration that might affect the future of your business.

## Great victories for the transportation industry and the country as a whole may of course be down the road, but as of yet they remain pie-in-the-sky.

In particular, our livelihoods are dependent on a heavily-regulated industry. A few tangible signs exist to foreshadow how the Trump Administration may proceed in managing the promulgation and enforcement of those regulations. Thankfully, the signs are generally promising.

In general, at the end of January, the President signed an Executive Order requiring the repeal of two regulations for every new regulation and stating that the incremental cost of any new regulation must be zero. However, tangible regulatory reform has yet to materialize, due in part to the sixty day moratorium on new regulatory activity in order to provide new administrative appointees the opportunity to settle into their positions.

Two key exceptions to the lack of regulatory activity both occurred in March. First, the Federal Motor Carrier Safety Administration published a withdrawal of the notice of proposed rule making regarding Safety Fitness Determinations for motor carriers. Second, a few days later, the Pipeline and Hazardous Materials Safety Administration published its final rule amending the Hazardous Materials Regulations to harmonize with international standards, including the International Civil Aviation Organization's Technical Instruction for the Safe Transportation of Dangerous Goods by Air. Each of these developments are generally considered positive for the transportation industry.

President Trump's agency appointments are also positive for the transportation industry.

A new administrator for the Transportation Security Administration ("TSA") may have been appointed by the time of this article's printing. If not, then the other chiefs appointed at agencies with jurisdiction over transportation providers offer cause for calm.

The appointment of Elaine Chao as Transportation Secretary is heralded by industry proponents as a safe and rational choice that will likely produce sensible regulatory reform.

President Trump also appointed Michael Khouri as Chairman of the Federal Maritime Commission. Khouri is a long-time industry veteran who is often outspoken about the need for private industry to determine its own future without government intervention.

The President's appointment to the Supreme Court, Justice Neil Gorsuch, even raised transportation issues during his confirmation hearings. Justice Gorsuch's pro-trucking dissent in *TransAm Trucking v. Administrative Review Board* was used by both Republicans and Democrats as a polarizing example of Judge Gorsuch's narrow application of the written law.

The practical options open to the Executive Branch for institution of regulatory reform are, however, tempered by the need to ensure the safety and security of citizens.

President Trump's twice-frustrated Executive Orders instituting a "travel ban" from certain Muslim-majority countries demonstrate his stated interest in homeland security, despite the political implications or likelihood of success. In reality, the vast majority of transportation regulations are designed to protect public safety and security. Therefore, the likelihood of a roll-back on core safety protections in any mode of transportation is probably nonexistent absent a demonstration that there is no benefit to public safety. And yes, as of this writing, Change 6 to the TSA's Indirect Air Carrier Standard Security Plan ("IACSSP") remains forthcoming.

International trade stands as one more important policy area of the Trump Administration.

The President foreclosed any United States involvement in the Trans-Pacific Partnership ("TPP") during his first week in office. However, the real effect of stepping away from the TPP is practically immaterial because Congress failed to bring the bill to a vote during the Obama Administration.

More significantly, in March, President Trump signed Executive Orders calling for the review of trade policy and circulated a draft letter to Congress in advance of initiating renegotiations of the North American Free Trade Act ("NAFTA"). Many commentators have recognized the pragmatic tone of these actions, compared to campaign bravado, and the apparent willingness of Canada and Mexico to indeed renegotiate the trade agreement.

The greatest uneasiness with the saber-rattling over NAFTA remains the possibility of a so-called "border tax adjustment" on certain imports of foreign made goods. Some, especially in the area of heavy manufacturing, are quietly voicing the



observation that, even with the imposition of a 20 percent tax on north-bound freight, the trade balance between the United States and Mexico remains favorable to Mexico. Relative wages and proximity to the U.S. market lowers Mexican costs of production, despite the theoretical imposition of increased taxation. The net effect is that someone somewhere will pay more or profit less, jobs will not magically appear north of the border, and traffic flows will not immediately shutter. However, the long term effect of protectionist measures could indeed serve as a disincentive to the sprawl of North American supply chains.

Great victories for the transportation industry and the country as a whole may of course be down the road, but as of yet they remain pie-in-the-sky. The claimed trillion dollar infrastructure modernization, which could include everything from roads and bridges to air traffic control systems, requires agreement on the means of funding. Public-Private-Partnerships ("P3s") are on the table as one means of financing, but it is anyone's guess whether and to what extent, such devices and others will be utilized, and to what effect.

Despite the apparent uncertainty, all signs thus far point to the need for continued aggressiveness, ingenuity, and good old-fashioned hard work.

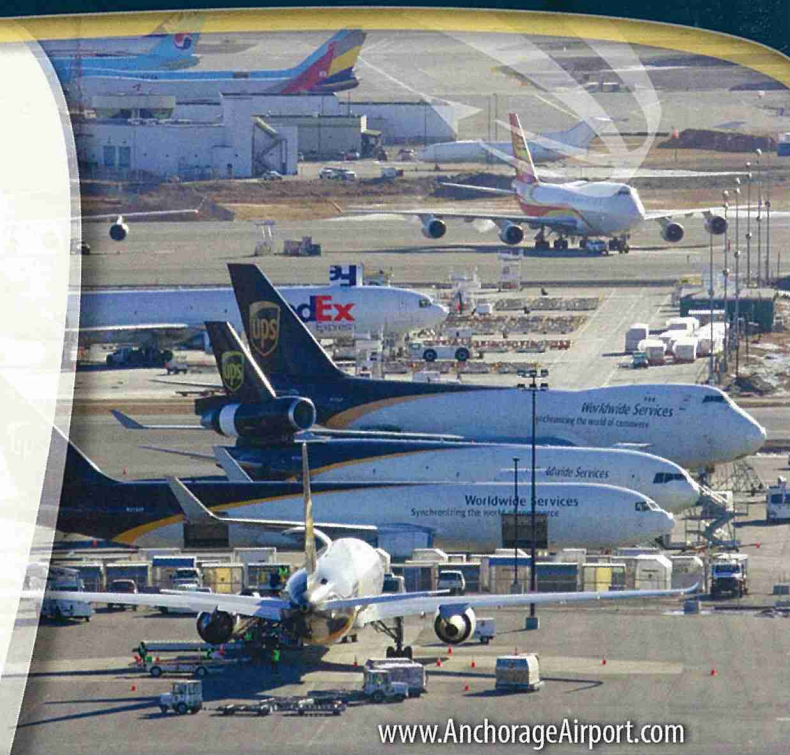
Perhaps the greatest force of change for the foreseeable future is not President Trump, but the changing dynamics of global transportation and logistics. Freight is growing smaller, lighter, less dense, and more valuable right before our eyes. Distribution networks are both fragmenting and requiring real-time exact-location visibility to product flows. Delivery times are growing as narrow and unforgiving as the infinitesimally small time-to-market demands in consumer goods production and retail. And, of course, there is the concurrent rise of e-commerce in the hands of every consumer, automation in our warehouses and on our roads, and the new "gig" economy – a labor market characterized by the prevalence of short-term contracts or freelance work as opposed to permanent jobs, work constantly subjected to last-minute scheduling. ✈

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