2. Impact of COVID-19 on the U.S. Legislative Agenda

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Every year, a series of disasters hits the United States. Hurricanes drive up the East Coast, tornadoes rip through the Midwest, and wildfires turn large swaths of Western lands into charcoaled moonscapes. Whenever one of these disasters hits, a well-oiled machinery is set into motion at all levels of government to deal with the emergency and its fallout. Time-tested federal, state and local measures offer support to those affected by the calamity. It is true that in a particularly severe disaster, such as hurricanes Katrina or Sandy or the 2018 Camp Fire in Northern California, things can get a bit rocky. But there is a system in place and, by and large, it works pretty well.

That was not the case when COVID-19 arrived in the U.S. The country was not prepared to deal with a pandemic. Strategic reserves established under Presidents Clinton and Bush Jr. were designed to cope with military or terrorist events. Other programs had fallen victim to budget cuts. There was simply nothing in place to cope with a crisis of this magnitude.

Although the federal government declared a national health emergency in late January, the risk of a possible pandemic was downplayed. After all, we were in the middle of the greatest economic expansion, and a tiny virus of the family that brings us the common cold, could surely not be a real threat to the good times. When the first signs appeared that this virus could cause an illness that is more than just a “severe flu”, the lack of available testing masked the magnitude of the problem. Finally, when the pandemic broke out, a bureaucratic quagmire and finger pointing delayed the effective allocation of resources. As a result, precious time was lost to prepare the country for the pandemic, and to deal with its effects once it had arrived.

As devastating as the economic consequences of these missteps were, the impact of long-term policy decisions on the economy and society was even more severe. Beyond the lack of a strategy to deal with a pandemic, the country felt the consequences of fiscal and social policy choices that had been made since the 1980’s. Neither the states nor the federal government provide U.S. citizens with a European-style social safety net, and chronic underfunding quickly overwhelmed unemployment and social welfare institutions. Because of the notorious shortcomings of the U.S. healthcare system, socially disadvantaged segments of the population experienced a disproportionately higher mortality rate.

To deal with these issues, governments at all levels were forced to improvise. The federal government responded to the crisis by quickly disbursing helicopter money to companies and individuals in the hope this would mitigate the economic impact of the crisis. While it is too early to tell what effect these measures had, it is not too early to judge the chaotic way in which some of these funds were disbursed. The CARES Act passed by Congress made $660 billion in Paycheck Protection Program (PPP) loans available to small businesses. Funds were to be dispensed quickly. This caused the initial allocation of funds to be depleted before many companies in need could get access to them. The need for speed also dictated that funds were disbursed while the rules were still being written. This led to chaos and confusion. For example, these loans should have been available to qualifying U.S. businesses irrespective of foreign or domestic ownership. However, while some subsidiaries of Swiss companies were able to obtain a PPP loan, many were denied a loan because of their foreign ownership.

While government meanders through the crisis, the question is: What will the impact of the COVID-19 crisis be on the legislative agenda in the U.S. once the dust has settled? Answering this question would be challenging in any year, but the fact that we are in a presidential election year makes any attempt to find a reliable answer an exercise in futility. Much will depend on the outcome of the presidential and congressional elections in November. So, rather than trying to predict an unpredictable future, let us explore different scenarios that Swiss companies can use for their planning, depending on which party controls the White House and/or one or both Chambers of Congress. Thereby, we have assumed that Republicans would prioritize stimulating the economy through a relaxed fiscal policy, while Democrats would seek to supplement short-term stimulation of the economy with profound changes in social and healthcare policy. These priorities would, in any event, face a harsh fiscal reality.

Fiscal Policy

In the immediate aftermath of the crisis it is not inconceivable that there may be limited tax relief for some period of time. In fact, short-term measures implemented at the beginning of the crisis already delayed certain tax payments. Any Republican desire to further reduce federal taxes on businesses or individuals will likely remain pipe dreams in light of the fiscal and economic reality created by COVID-19 and the generous stimulus packages already passed. Even if the election resulted in the most receptive scenario for such measures (Republican control of the White House and both Chambers of Congress), it would be difficult to find enough support in the Senate in favor of increasing the country’s debt burden. In the opposite scenario, the same would be true for the wealth tax proposed by some Democratic candidates during the primaries. However, chances that a Democratic president could push a tax increase for top corporate and individual earners through a split or Democrat-controlled Congress should not be underestimated.

Economic Policy

Under President Trump, we saw a significant relaxation of many regulations that affect business (with the notable exception of immigration and certain trade and investment regulations). Should the current political set-up in Washington continue in 2021, it is unlikely that we would see a change in this approach. Conversely, a Democratic president would likely seek to reverse much of this relaxation. Notably, under a Democratic president we would probably see a push to make the energy sector less dependent on fossil fuels. Because Congress would likely not be receptive to a fundamental change in the nation’s energy policy, any such initiative could well be exhausted in limited regulatory measures. Nevertheless, they could create opportunities for Swiss companies in the alternative energy sector. Before these companies make significant investments in the U.S. market, they should, however, contemplate that a "Green New Deal" may not survive the next administration.

One area where COVID-19 may accelerate a trend towards greater regulation is online commerce and technology. When the dust has settled, one can expect the online and tech giants, to be among the winners from the crisis. Their success will almost certainly increase demands to regulate this mushrooming sector. This could include applying the all but forgotten federal antitrust laws to the biggest among them. Any such development could provide opportunities for Swiss suppliers to this industry, including software developers, that have been successful in the more tightly regulated European markets. While large online service providers operate globally and have been exposed to European antitrust laws and privacy regulation, there is a significant segment of the market that is only beginning to have to deal with online regulation.

Trade

The risks of the U.S. economy's reliance on global supply chains that came under pressure during the COVID-19 crisis will lead to changes in how U.S. companies assess the safety of their supply chains. This change in the perception of globalized trade, which had started before the crisis, and historically high unemployment rates will influence U.S. trade policy. In the immediate future, a reversal of the restrictive trend in trade policy should not be expected, irrespective of who will control the White House in 2021. Rather, there could be a temporary tightening of trade policy under the guise of protecting U.S. workers and securing domestic supplies. In the long run, Washington will probably see the benefits of trade as a two-way street. But, unfortunately, COVID-19 may have buried any U.S. interest in a free trade agreement with Switzerland for good. If the U.S. were to sign a free trade agreement in the foreseeable future, it would likely be with the United Kingdom.

Immigration

The future of immigration post-COVID-19 looks dire irrespective of the political constellation that will emerge in November. Double-digit unemployment rates will provide headwind for those in both parties who are opposed to any kind of immigration, legal or illegal. Business interests in Congress will probably be able to prevent or mitigate legislative measures to curtail employment-based immigration. But as the Trump administration has demonstrated, there is plenty of room to restrict immigration through administrative measures.

This is not only bad news for Swiss and other foreign and domestic companies that require talent from abroad to operate and expand their U.S. operations. It also does not bode well for U.S. universities and colleges that have come to depend on foreign students (mainly from Asia) to finance their academic and research programs. The long-term economic damage from a restrictive immigration policy cannot be overstated. We therefore hope that the current restrictive environment (and any further restrictions) will be temporary.

Healthcare

COVID-19 laid bare the issues that plague the U.S. healthcare system and its supply chains. Access to affordable healthcare remains the privilege of select groups of Americans. U.S. per capita spending on healthcare is the highest in the world and exceeds Switzerland's by 25%. President Obama's signature Affordable Care Act did not reverse this trend, and its gradual dismantling under President Trump has not really helped either. The country urgently needs to rethink its approach to healthcare if it does not want healthcare to become a luxury the middle class can no longer afford.

One would have hoped that the COVID-19 pandemic could serve as a catalyst for the necessary reform of the healthcare system. Unfortunately, Republicans so far have been offering no clear vision for a future healthcare system, let alone concrete plans. Democrats do not lack ideas, but many of their proposed reform plans are unrealistic. While it is almost certain that a Democratic president would promote healthcare reform, it is unlikely that a coalition could be built to truly reform the U.S. healthcare system. Too many constituents would have to make sacrifices, and European-style cost controls would face broad opposition. It is therefore more likely that a president of either party will propose limited measures to control skyrocketing healthcare costs and find Congress to be more receptive to selective measures rather than a true reform. In any event, Swiss pharmaceutical and medical technology companies should be prepared for changes.

Another challenge that Swiss pharmaceutical and medical technology companies will face will be the reassessment of the current supply chains of their U.S. customers. The dependency of U.S. healthcare players on foreign suppliers had been a concern before COVID-19 disrupted some of these supply chains. Whether forced by law, which could happen under the leadership of either party, or by facts, U.S. healthcare institutions and manufacturers will increasingly diversify their supply chains and give preference to domestic, or at least North American sources. This may force even small to medium-sized Swiss pharmaceutical and medical technology suppliers to invest in U.S. manufacturing or assembly plants if they want to continue to be successful in the world's largest healthcare market.

Conclusion

To summarize, the COVID-19 crisis may not fundamentally change the direction of the legislative priorities in the U.S., but reinforce some trends, and accelerate others. Free trade and investments in infrastructure may well become the most prominent victims of the crisis. Readers will have noticed the absence of a discussion of potential changes to the federal laws dealing with health and other emergencies which were put to the test in the COVID-19 crisis. Changes to these laws are indeed possible, and they may provide challenges and opportunities for Swiss businesses with interests in the U.S. However, if the current crisis has proved anything, no matter how well intended these laws and any future modifications may be, their effectiveness depends entirely on those charged with their implementation.

About the author:

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