

# talking points

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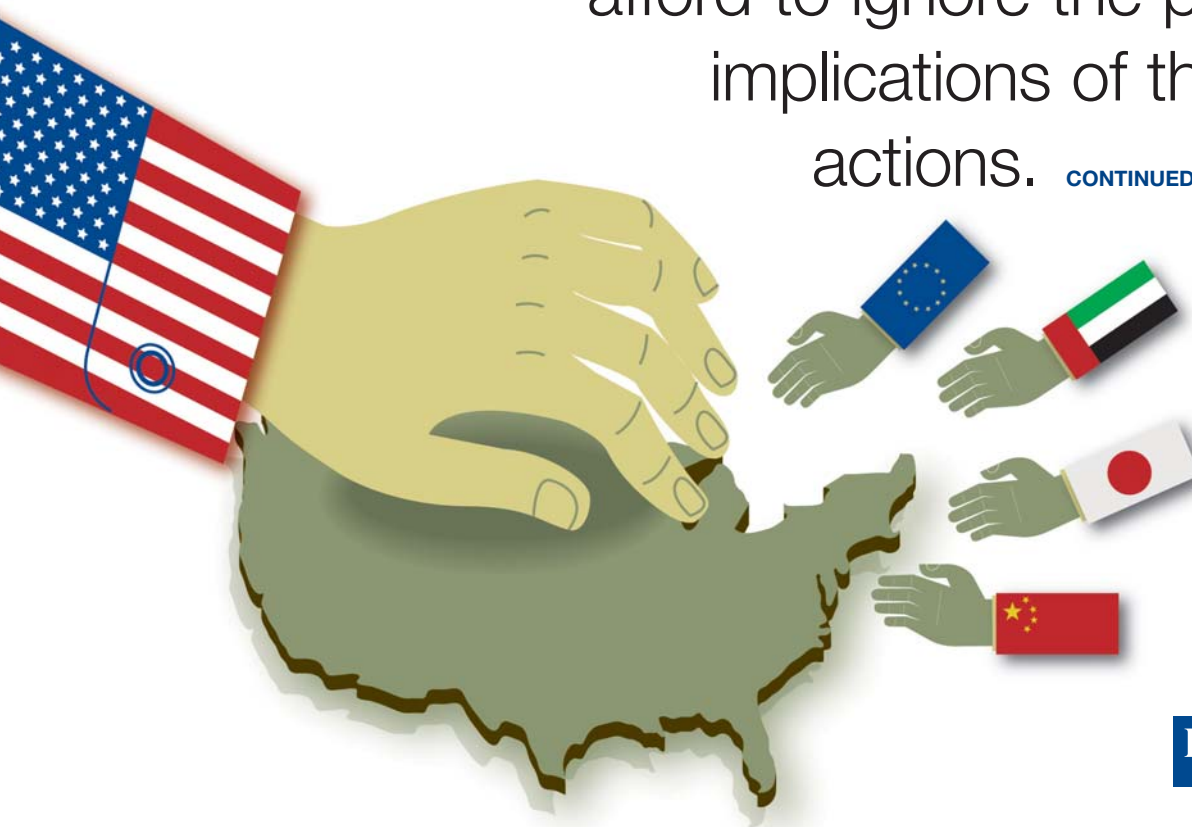
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## Political and regulatory capitals are the new arbiters of success:

With a soft economy and an impending election, companies doing business in the U.S. cannot afford to ignore the political implications of their actions. [CONTINUED ON PAGE 2 >>](#)



# Political and regulatory capitals are the new arbiters of success.

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In the first six years of the Bush administration, the Republican-controlled Congress held few hearings on pending antitrust matters. But with Democrats on Capitol Hill in charge and complaining that the Bush administration has been too lax on antitrust, virtually every merger has been subjected to Congressional scrutiny. The CEOs of Sirius and XM Radio, the two satellite radio companies that announced their plan to merge in the spring of 2007, appeared before four Congressional committees.

In the end, Sirius and XM received all the necessary government approvals. Sirius and XM's long process of defending their combination to multiple government regulators and Congress is instructive for companies considering a major transaction – especially given widespread expectations that Democrats will increase their sway in Congress this fall.

Competition policy is only one of many arenas in which corporations, and their leaders, can become the targets of Congressional scrutiny. Today's headlines form a litany of the many

industries that have wound up in the sights of a Congressional committee: mortgage bankers and brokers accused of enticing underqualified buyers to purchase unaffordable homes, sinking the American housing market; executive compensation consultants accused of violating corporate governance guidelines; and oil companies facing new taxes on their "excess" profits.

Federal and local political interest in a transaction or business practice tends to be driven by concerns about how it will affect regular people. Will jobs be lost? Will prices

go up? Is someone being treated unfairly? Is our safety being put at risk? Now more than ever, Americans and the elected officials who represent them are focused on job stability and household budgets. If a transaction or business activity could have an impact on these key concerns, political leaders feel obligated to speak out and, in some cases, take action.

Clearly, for companies doing business in the U.S., Washington matters – especially when Democrats are in charge. Republicans have not shied away from using Congressional power to criticize or embarrass companies or to change the rules under which they operate – including, most recently, the financial services sector. But as a party, Democrats favor more government regulation and oversight than Republicans, and Democrats are more likely to scrutinize business behavior.

## The Election Outlook

The 2008 national U.S. election will take place at a time when voter dissatisfaction is at the highest level recorded since 1992. Roughly seven out of 10 Americans believe the country is on the wrong track<sup>1</sup>. Support for President Bush has been mired in the low 30's for nearly two years<sup>2</sup>. And support for Congress recently set an all-time record low, dipping to an unheard of 14 percent<sup>3</sup>. When Americans are asked what issues they care about, the state of the U.S. economy, and in particular the price of gasoline, easily outdistance the Iraq war and terrorism<sup>4</sup>. Most commentators believe that the problems in the U.S. economy favor the Democrats. Polls seem to bear this out, with the Democratic Party enjoying a double-digit lead in party preference<sup>5</sup>. While the conventional wisdom



1 Real Clear Politics "Direction of Country Poll"  
2 Real Clear Politics "President Bush Job Approval Poll"  
3 Gallup "Congressional Job Approval Hits Record Low 14%" July 16, 2008  
4 CBS News Poll July 31-Aug. 5, 2008  
5 NBC News/Wall Street Journal Survey – Study #6084 July 18-21, 2008

## In Washington, scrutiny, criticism and legislation targeting corporate behavior will be the norm rather than the exception.

sees a close race for the White House between Democrat Barack Obama and Republican John McCain, virtually all independent analysts see the Democrats increasing their majorities, perhaps substantially, in both houses of Congress.

For business, the prospect of a more entrenched Democrat majority in Congress and possibly the White House may make Pennsylvania Avenue an even more important thoroughfare than Wall Street. A look at some of the key international business issues before the next Congress underscores why.

### Antitrust

One of the first things that Democrats in the House of Representatives did upon assuming power in January 2007 was to establish the House Judiciary Committee's Antitrust Task Force, chaired by Rep. John Conyers (D-MI). This newly-formed task force ushered in a series of hearings to examine corporate tie-ups. In the first eight months of 2008, Congressional hearings were held to examine the XM-Sirius merger, the proposed Delta-Northwest Airlines merger, and even a commercial deal between Google and Yahoo. While Congress has no formal role in the antitrust approval process, it can apply public and private pressure to regulators and dramatically slow down approval. While Sen. McCain has been relatively quiet about his approach to competition policy, Sen. Obama has signaled that his administration would more closely scrutinize mergers and acquisitions. "We're going to have an antitrust division in the Justice Department that actually believes in antitrust law," Sen. Obama said on the campaign trail in May. "We haven't had that for the last seven, eight years."<sup>6</sup>

### Trade / Foreign Ownership / International Finance

The Democratic presidential primaries highlighted just how skeptical the party has become on trade issues. Sen. Obama, for instance, has said he would re-open NAFTA for negotiation and would be slow to consider new free trade agreements. Republicans have traditionally been the party of free trade, and Sen. McCain is an ardent supporter of free trade agreements. But that era, even in the Republican Party, may be ending. Polls show that rank-and-file Republicans are now more likely than not to be skeptical of trade agreements.

The weak U.S. economy, job losses and the devalued dollar have, as NBC News opined, put a giant "for sale" sign at America's borders<sup>7</sup>. Foreign investment is skyrocketing, bringing with it needed cash and job creation. According to the Organization for International Investment, U.S. subsidiaries of foreign-based companies employ 5.1 million Americans and support an annual payroll of \$325 billion<sup>8</sup>. However, American anxiety about foreign ownership of local assets remains. National security considerations have long been a vital factor in the success or failure of major transactions and have undermined several high-profile attempts by foreign companies to purchase U.S. assets.

The Bush administration responded to growing public unease over foreign investment and accusations that it mishandled the Dubai Ports case by dramatically increasing the number of reviews by the Committee on Foreign Investment in the United States (CFIUS), which assesses national security implications of inbound transactions. Congress subsequently passed

legislation last year to reform CFIUS. The new law not only codified the process, but also gave Congress greater oversight and heightened scrutiny of acquisitions by foreign governments. In an era of economic uncertainty, the political hurdles for foreign companies seeking to acquire U.S. assets are even higher.

Although symbolic assets often draw political attention, these days the origin of the buyer matters more than ever. Congress has held hearings into the activities of overseas sovereign wealth funds (SWFs) and has questioned whether they receive unfair tax breaks. Many politicians fear that SWF investments will be used by foreign governments (mostly in the Middle East, China and Russia) to pursue a political agenda. So far, Congress has deferred to multilateral bodies that are working on a code of conduct to which the funds would have to adhere in order to invest. But it would not be out of the question for the U.S. to take unilateral action if a SWF buys or invests heavily in a high-profile or politically sensitive company.

### Conclusion

In this new world in Washington, scrutiny, criticism and legislation targeting corporate behavior will be the norm rather than the exception. Companies doing business in the U.S. will need to consider the political implications of their decisions in addition to the financial implications. Firms will do well to develop and carry out effective communications strategies in Washington before they find themselves in the next Congressional hot seat - and media headlines.

<sup>6</sup> The Wall Street Journal, May 30, 2008

<sup>7</sup> NBC Nightly News with Brian Williams, June 17, 2008 "America for Sale"

<sup>8</sup> Organization for International Investment - Facts about Insourcing

# Brunswick viewpoint

The current political mood in the United States poses challenges for foreign entities wishing to invest in the U.S., and even for domestic companies looking to make large acquisitions. The expansion of global international investment in recent years, particularly by state-owned enterprises and sovereign wealth funds, has raised concerns about economic and national security threats, either real or perceived. As a result, foreign transactions in the U.S. are now subject to more scrutiny than ever.

U.S.-based companies planning to expand domestically also face an increasingly skeptical Congress, regulatory audience and public. Company executives from the airline, communications and financial sectors have been called to Capitol Hill to explain the rationale for deals and answer pointed questions about winners and losers from their proposed transactions.

Given the heightened interest in domestic transactions and the politicization of foreign investment, Washington will matter as much to the success of many deals as Wall Street. Companies and investors must plan to manage political and public perception needs just as they routinely plan for commercial, financial and legal requirements. Political due diligence can no longer be an afterthought.

A clear public affairs strategy is essential.

Every major domestic and international transaction should include a political risk assessment and, if necessary, a detailed plan that includes political and community outreach and media strategies that reflect national, state and local considerations. This assessment and planning should happen well before deals are announced, and ideally, before negotiations are complete.

Key considerations include:

## Perform political due diligence and gather intelligence:

- What structural and government approvals are required to close a deal, and are they more or less important than political considerations?
- Do the larger political context and rhetoric surrounding the transaction pose completion risk (e.g. elections, current or past related controversies, ongoing legislative debates)?

## Know your constituents:

- Who will care about the transaction and why?
- Who will be for or against the transaction?
- Which academics, industry observers, commentators and other third parties can be enlisted to help?

## Plan for multiple scenarios:

- What happens if the deal sets off alarms?
- What is the crisis strategy?
- What is the likelihood of success?
- What are the best lobbying resources? What will it cost?

## What it will take to win:

- Arguments supported by data.
- Advocates armed with information.
- Succinct messages.
- Supporting documents (fact sheets and background materials).
- Campaign-style effort with room for flexibility in tactics.

## The DOs and DON'Ts of DEALS

- ✓ DO develop a public affairs and communications strategy when you are considering a deal.
- ✓ DO identify risks before others do it for you.
- ✓ DO prepare for a political firestorm, even while executing a strategy to prevent one.
- ✗ DON'T wait until a problem emerges to plan to manage it.
- ✗ DON'T presume that a sound financial case is enough.
- ✗ DON'T assume that staying quiet will keep your deal out of the news.

# Global snapshot



Overseas, the 2008 U.S. presidential election is tinged with concerns about faltering U.S. markets and protectionist rumblings from the world's biggest economy. But even as America's key trading partners worry about potential barriers to investment, they are constructing a few safeguards of their own. China and Germany offer telling snapshots of the mood abroad as the U.S. prepares to elect a new president.

## On the Defensive in Beijing

This year the quadrennial temptation to blame China for America's economic woes has increased as property foreclosures and unemployment rates rise.

But protectionist rhetoric on both sides could harden in the coming months. China struck a more aggressive tone at the latest round of high-level China-U.S. economic talks and is in no hurry to make any concessions until a new U.S. administration takes office. It scorns U.S. economic policy prescriptions at a time when the subprime crisis has exposed the shortcomings of U.S. market regulation.

The U.S., for its part, complains about lack of access to China's financial services market and the way China protects "national champions" in industries from banking to telecom. Antitrust lawyers are waiting to see how China's new anti-monopoly law, effective August 1, 2008, will play out. Intended as an antitrust law with "Chinese characteristics," it conforms to international norms on the surface, but reflects national policy goals that include the protection of national champions and even the narrowing of China's income disparity.

It remains to be seen how China will define market dominance in an era when national economic security has become a common rallying cry.

The boundaries between national security and protectionism blur in the West as well. China is dismayed that its largest banks still cannot get U.S. branch licenses and resents what it views as a capricious and politically-driven investment approval process under CFIUS.

Any temptation by the new U.S. administration and Congress to engage in the electorally popular sport of "China bashing" will face the new reality of a China whose confidence is growing along with its economic clout, as illustrated by the Chinese entities that have become major investors in storied U.S. financial institutions.

## Apprehensive in Germany

Germany's solidly pro-Obama mood is clouded by concerns that America's economic problems could spill over to Europe, damaging free trade.

Germany is in better financial shape than it has been at any time since 1996, despite the global credit crisis and rising oil and gas prices, but a growing chorus is raising the specter of a severe economic downturn in the second half of 2008 or early 2009. And when times are hard, Germany tends toward protectionism.

In 2007, a fierce political debate raged over how to rein in the private equity firms and hedge funds that a leading politician famously branded as "locusts." The latest economic bogeyman is the sovereign wealth fund, as Germany's parliament is poised to vote on a new law designed to limit SWF engagement.

The law, which was approved by the German Cabinet in August, would prevent direct or indirect foreign investments of more than 25 percent if they are deemed to threaten national security or public order. Presumably, critical industries such as utilities or telecommunication companies would fall under such a law, but the precise meaning of "national security" will likely remain the subject of lively discussion.

Despite the German attraction to Obama's foreign policy stance, especially in Iraq, his "fair trade" rhetoric doesn't bode well. And the more the U.S. economy suffers, the louder U.S. voices opposing globalization and international free trade are likely to become. From Berlin's vantage point, it appears that the next U.S. administration will have to devote a great deal of energy to managing the process of economic adjustment.

## Q&A

For an expert take on the risks and realities facing corporations doing business in the U.S., Brunswick conducted separate interviews with **John Snow**, Chairman of Cerberus Capital Management, L.P. and former U.S. Secretary of the Treasury (2003-2006), and **Leon Panetta**, Director of The Leon & Sylvia Panetta Institute for Public Policy and former U.S. Representative (1976-1994) and White House Chief of Staff (1994-1997).

**Brunswick Group:**  
**Why do you think the American public sometimes seems so hostile to foreign investment?**

**Snow:** Americans are leery of foreign influence, and that can be played to political advantage. We saw it manifested in the worst sense in the Dubai Ports episode, although that kind of response occurs elsewhere as well. But we are also a nation of immigrants and our economy is tied to the world. I've never met a local government official who didn't roll out the welcome mat for foreign investment. They want the auto plants, the headquarters and distribution facilities in their communities because they know they create jobs, and the kind of jobs that pay higher than average. The challenge is to come up with ways to address the public's fear of change with good facts on the benefits in ways that people can identify with. Most of us don't fully appreciate the overseas investment that is already here, and in most every community in America.

**Panetta:** When the economy is down and people are feeling that we're struggling, there's a reaction and you see those that are benefiting from some of the problems in our economy – when they come to make investments there's a natural bias against what they're doing. It happened with the Japanese [in the 1980s] and it's happening now particularly with countries in the Middle East that are investing in this country.

**BG:**  
**Since the Democrats took control of Congress, there seems to be more scrutiny of corporate behavior. Do you think this represents a trend likely to**

**continue if the Democrats further solidify their control of Congress?**

**Snow:** People on all sides have an interest in maintaining the integrity of our market system. After the Enron mess and other corporate scandals a few years ago, we needed reforms to restore faith in our markets – and we did it, in a bipartisan way. Today, the subprime problem has exposed another series of excesses that were overdue for a correction. We need to make sure our response results in better regulation, not just more regulation for its own sake. We need to maintain market discipline, not create more situations where the taxpayer ends up holding the bag.

**Panetta:** If the economy continues to struggle, and if there are growing concerns about whether or not we are able to regain a foothold here in terms of restoring the health of our economy, there is going to be an increased focus on corporate behavior. I think it's just natural for these committees and the committee chairmen to look at those issues. It's part of a larger picture of people reacting to a down economy and looking for somebody to blame.

**BG:**  
**Is there legislation that would affect business that you think might pass Congress under Democratic control?**

**Snow:** Major provisions of the tax code, including the lower rates on capital gains and dividends, as well as lower marginal rates on individuals, are set to expire in 2010. Some have called for those lower tax rates to expire, which is equivalent to a tax increase. Higher taxes, particularly on capital formation and



**Left: John Snow**

Chairman of Cerberus Capital Management, L.P.

**Right: Leon Panetta**

Director of The Leon & Sylvia Panetta Institute for Public Policy

small business, would be a real concern in this economic climate. Health care remains a concern, with the potential for some very large unfunded mandates.

**Panetta:** The interesting thing about Congress is that we largely govern by crisis. Probably the best example of the period we're going through is to reflect on what happened during the Enron crisis and those companies and corporations that got in trouble and what followed was Sarbanes-Oxley. It's very hard to tell where Congress will go in the future. The one thing you can bet on is that they will go wherever the crisis is and see if there isn't an easy way to resolve it. This isn't to say that it is right and isn't to say that it is necessarily the best public policy, but I think that is the political reality that we're dealing with.

**BG:**  
**How do you think a McCain presidency would differ from an Obama presidency?**

**Snow:** I'm very concerned about some of the talk on trade policy. We can't afford to close ourselves off to the rest of the world – 95% of our potential customers are outside the U.S. Rising protectionist sentiment is one of the greatest concerns. If not carefully checked, the wrong moves could make the current downturn longer, deeper and more harmful than it otherwise would be.

**Panetta:** To some extent you're dealing with two mavericks that don't necessarily represent the mainstream of their party. With a likely Democratic majority in the Congress, neither will have an easy time. While a corporation might feel more comfortable with a Republican in the White House, the fact is

that both will face a tough time in implementing their agenda, whatever it is.

**BG:**  
**With Congressional oversight on the rise, how do you think that companies, foreign or domestic, have handled the public and political attention so far?**

**Snow:** There have been some lessons learned. There's a better realization that the political realities in a host country have to be well considered in advance and planned for. Companies that have been successful in recent years have proactively made the case for the investment to relevant public officials, political figures and in some cases the general public, in addition to Wall Street.

**Panetta:** I think that it's largely been reactive instead of being ahead of the curve. I'd say before you take a lot of cash on hand and decide to do whatever you'd like to do – you better ask the question: what are the implications of what you're doing? Sovereign wealth companies in particular have to be very careful about what they decide to do because there's been a lot of reaction to the fact that a lot of their money has been coming from Americans paying high prices at the pump – and if they take steps that draw a lot of attention they could be in trouble real fast.

**BG:**  
**What advice would you give a corporate executive who is going to have to engage in Washington?**

**Snow:** Level with people. It's always the best policy. Be transparent. Tell people what you're doing and why it's consistent with the

national interest. And pay attention to what's on the minds of policymakers, those closest to the citizenry.

**Panetta:** The most important advice is you better talk to someone who knows what is going on – which means you better talk to somebody who has a feel for the pulse of what's going on in this country both politically and economically and can provide that kind of guidance.

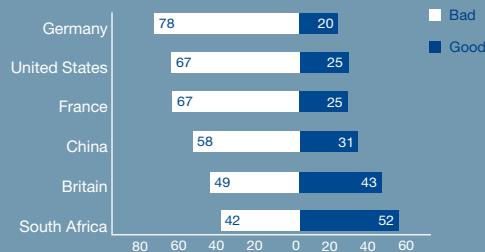
# By the numbers

A changing political environment and a dissatisfied public, wariness of foreign investment, and more frequent CFIUS reviews mean that both foreign and domestic companies doing business in the U.S. will face higher hurdles to achieve their business goals.

**Chart 1: Views Toward Foreigners Buying Domestic Companies**

Public opinion worldwide is skeptical of the value of foreigners buying domestically owned companies.

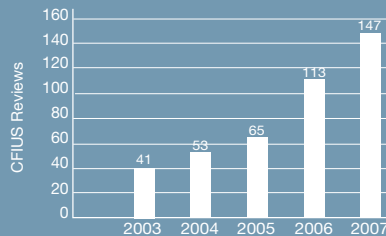
Source: The Pew Global Attitudes Project, June 12, 2008



**Chart 2: CFIUS Reviews are Increasing**

Government reviews of foreign investment in the U.S. are on the rise.

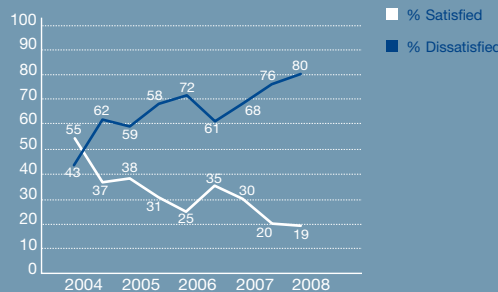
Source: U.S. Department of Treasury



**Chart 3: Measure of U.S. Satisfaction with State of the Country**

Overall satisfaction has dropped significantly since January 2007.

Source: Gallup Poll - U.S. Satisfaction Dips to 19%, March 2008



## About Brunswick Group

Brunswick Group is a leading corporate relations and communications consultancy with offices in major financial and regulatory centers around the globe. The firm is a 21-year-old partnership with professionals who have a wide array of backgrounds, including politics, journalism, law, investment banking and accounting. We provide strategic advice to companies and other organizations, helping them address communications challenges that may affect their valuation, reputation or ability to achieve business objectives.

Brunswick offices operate at the crossroads of finance and politics, where policies and regulations have a direct impact on our clients. We offer a global network to address the most complex and critical public affairs needs, especially those surrounding corporate transactions. In addition to public affairs and M&A, Brunswick specializes in media and investor relations programs, corporate reputation management and crisis communications.

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