



# Trump's Potential Win in the U.S. Presidential Election: Implications for Korean EV/Battery Companies' Business in the United States

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## 1. Introduction

A rematch between Biden and Trump in the US presidential election is set for November 2024. Depending on which candidate wins, U.S. policies could change significantly, prompting the need for Korean companies to reassess their strategies for successful business in the United States.

Korean companies should be prepared for both Biden's re-election and the possibility of Trump's return. If Biden is re-elected, their current business strategies may not require substantial changes. A Trump victory, however, is likely to bring about substantial shifts in U.S. investment and trade policies, and a deeper look at how such shifts may affect fundamental assumptions underlying existing business strategies may be needed.

Trump currently leads in most key swing states. If he returns to the office, the new Trump administration is likely to target the benefits for clean energy industries under the Inflation Reduction Act (IRA). In terms of trade policy, his administration is expected to implement tougher measures designed to protect U.S. interests, particularly by increasing greater trade restrictions on China.

This newsletter will broadly analyze how the U.S. policy trends might change if Trump is re-elected, the subsequent impact of such changes on Korean electric vehicle and battery related companies, and strategic approaches that can be considered by these companies to prepare for such changes.

## 2. Expected Policy Changes in the United States

### (1) Elimination/Reduction of Clean Energy Policies and Tax Benefits

From Biden's first year in office, his administration has implemented an industrial policy aimed to reshore and restore manufacturing capacity in the United States. As a part of such policy, Biden administration has granted various subsidies for certain key industries with the hope of encouraging investment and competitiveness in these sectors. Representative examples include semiconductor industry support measures under the CHIPS Act and support measures for the clean energy industries (especially electric vehicle/battery industry) under the IRA.

Although Trump shares the Biden administration's goal of revitalizing the manufacturing industry in the United States, he has been overtly critical of clean energy policies, such as subsidies for electric vehicles and regulations on internal combustion engines. Trump has declared that he will repeal electric vehicle support measures and various environmental regulations related to automobiles on his first day in office. Considering the actions taken by the previous Trump administration, it is very likely that the second Trump administration will take actions to make this announcement a reality.

During the first Trump administration, 321 administrative actions were implemented, with 115 aimed at deregulating existing regulations. Approximately 100 of these focused on easing environmental regulations. A representative example was an attempt to roll back the Clean Power Plan (CPP) policy introduced by the Obama administration to encourage the use of alternative energy and reduce carbon emissions in the power sector. To repeal the CPP, Trump signed an executive order for the EPA to review the CPP. In its place, the EPA under Trump's administration pushed the Affordable Clean Energy Rule (ACE), which aimed to ease carbon emission reduction requirements for power plants. Some of the Trump administration's deregulation attempts were ultimately overturned by federal courts. However, the legal challenges consumed significant time and resources, and the Trump administration's efforts to reverse these policies caused substantial setbacks to the clean energy initiatives of the Obama administration.

Given the Trump administration's previous efforts to roll back clean energy regulations, it is likely that various clean energy policies within the IRA, a key initiative of the Biden administration, would also face significant opposition during Trump's second term. In particular, policy changes are most certain to take place in the field of electric vehicle batteries, in which Korean companies have invested heavily. Trump has publicly criticized electric vehicles and asserted that the tax benefits for clean energy electric vehicles, like the 30D Credit, will bring an end to the American car industry. Thus, if re-elected, it is likely that he would try to neutralize the 30D Credit provision through various means.

## **(2) America First Protectionist Trade Policy**

During the first Trump administration, Trump signed several executive orders, citing the importance of reducing bilateral trade deficits with countries that had a trade surplus with the United States as a priority. He also ordered an investigation into China's unfair trade practices and imposed a special 10% tariff on all Chinese imports (later increasing these tariffs further on certain items), citing issues like intellectual property infringement and forced technology transfer. Trump also went further by issuing executive orders banning the use of communications equipment made by China's Huawei and Zhongxing Telecommunication Equipment, and re-negotiating the North American Free Trade Agreement (NAFTA). These measures reflected a strong commitment to trade policies based on the "America First" principle.

Given that Trump released "Agenda 47," which contains his presidential election promises that are largely an extension of the policies from his first administration, it is likely that his second administration will promote broadly the same policies and principles as his first term. Trump has criticized Biden's trade policy as being pro-China and stated that he would protect U.S. manufacturing industries by revising tax and trade policies and imposing additional taxes on foreign

companies. As a part of this plan, he outlined a four-year plan to impose up to 10% of universal baseline tariff on foreign products, revoke China's Most-Favored-Nation status, and ban imports of essential goods like electronics, steel, and medicine from China.

Under the Trump administration, the Biden administration's Uyghur Forced Labor Prevention Act (UFLPA) could also be potentially used to restrain the importation of Chinese goods into the United States. The UFLPA prohibits importation of all products manufactured in the Uyghur region or China, or by companies listed on the U.S. government's Entity List. Initially the UFLPA focused primarily on regulation of goods like cotton, textiles, tomatoes, and polysilicon. However, its application has expanded to include lithium-ion batteries, aluminum, tires, and other automobile parts. It is also noteworthy that the scope of the UFLPA includes not only final products but also certain raw materials and intermediate products. Therefore, depending on how aggressively the Trump administration pursues the UFLPA's application, it may significantly impact not only Chinese products but also the export of electric vehicle and battery products manufactured by Korean companies that use many parts and raw materials from China.

### **(3) Stricter Regulations on Foreign Investment**

President Biden has been tightening regulations on foreign investments, exemplified by his signing of executive orders to enhance the rules of Committee on Foreign Investment in the United States (CFIUS) to strengthen the review process. Additionally, the U.S. Treasury has released guidelines for enforcing CFIUS review-related regulations and penalties for violations. This policy stance is likely to be further reinforced during the Trump's second term in line with his national priority and America First trade policies. Moreover, to ensure America's supply chain security, it is highly likely that more stringent CFIUS screening will be conducted on investments in the United States by companies with direct or indirect ties to China. As a result, uncertainty over whether these companies will pass the investment screening in the United States will intensify, increasing their continuous and long-term investment risks. Since Korean electric vehicle/battery companies have close ties to China, their investments in the United States could face a more stringent review process and may be negatively impacted.

## **3. Key Levers for Policy Change**

To achieve its goal of neutralizing environmental policies promoted by the Biden administration and instituting America First trade policies, the second Trump administration is likely to actively utilize various means, in addition to seeking enactment of legislation in Congress. Notably, as during the first term, there is a high possibility that executive orders will be used as a major tool.

### **(1) Presidential Executive Order**

The U.S. Constitution grants the president the power to issue executive orders, which direct federal executive agencies. These orders can be used to withdraw existing rules or benefits, reexamine/cancel existing rules, or suspend further action on rules that have not yet become final or effective, thereby rendering existing regulations practically ineffective. In other words, although an executive order cannot change the content of the law itself, the president can nonetheless use executive orders to exercise broad powers to efficiently restrict implementation of various policies without help of

Congress.

The Executive Order No. 13771 (EO13771), issued during the first Trump administration, required that for every new regulation to be issued, at least two or more existing regulations must be abolished. Additionally, federal agencies were mandated to comply with a cap limiting the increase in costs related to regulatory actions. EO13771 was particularly used to scale back environmental regulations from the Obama era. President Biden repealed EO13771 on January 20, 2021, but if Trump returns to office, he may seek to implement a similar executive order as part of his strategy to dismantle Biden administration's environmental regulatory framework, including those related to electric vehicles and their batteries.

The International Emergency Powers Act (IEEPA), which confers broad power on the president to regulate economic activities in case of a national emergency engendered by a threat to national security, may also serve as yet another tool for the Trump administration in pushing for its America First manufacturing and trade policies. Under the IEEPA, the U.S. president can impose various restrictions on trade and financial transactions without Congressional approval if a national emergency is declared due to a threat to the national security of the United States. This means that the president has the authority to independently impose various restrictions for national security purposes without needing to obtain the consent of Congress, even if no individual law provides the basis for such actions. While the IEEPA requires the president to consult with Congress on all possible matters and report on the status of implementation of the measures (50 U.S. Code § 1703), it does not explicitly grant Congress the power to prevent such restrictive measures. The provisions related to consultation with Congress are non-compulsory, allowing the president to proceed with the sanctions based on the IEEPA authority.

## **(2) Congressional Review Act ("CRA")**

The first Trump administration used the CRA to abolish a total of 16 regulations adopted by the Obama administration. The CRA grants Congress with the authority to disapprove rules submitted to Congress by government agencies (within 60 days of the congressional session following the rule's adoption), and it prohibits the agency from adopting "another rule that is substantially identical" to the disapproved rule. If Trump returns to power with a Republican majority in the U.S. Congress, it is highly likely that he will use the CRA to attempt to abolish existing regulations that fall within its scope. Notably, such repeals have long lasting effect, as rules, once they are repealed, are highly unlikely to be reintroduced even by subsequent administrations.

The new automobile exhaust gas regulations and power plant air pollution regulations were expected to be submitted to the U.S. Congress by March and April of this year, respectively. However, due to procedural delays, including internal government reviews, they are now likely to be submitted after May of this year. If Trump returns to power with Republican majority in Congress, his administration may attempt to use the CRA to neutralize these regulations.

## **(3) Selective Repeal**

Instead of repealing an entire law, the U.S. Congress can selectively repeal key provisions, rendering the law non-functional or ineffective. For example, Congress significantly weakened the effectiveness of the Affordable Care Act by repealing penalties for individuals who did not comply with the insurance mandate. Similarly, repealing the 30D Credit provision, which offers tax breaks for clean energy vehicles, could eliminate a crucial incentive needed to implement

clean energy policies through IRA's support of electric vehicles. The second Trump administration may, therefore, try to use selective repeal as a major strategy to weaken the IRA.

#### **(4) Judicial Process: Use of Litigation Abeyances**

Up on motion from the executive branch, U.S. courts has the power to stay certain legal proceedings. The first Trump administration actively used litigation abeyance as a means of buying time to ease regulations. For instance, when a group of young people filed a lawsuit with the U.S. Supreme Court demanding government action by the U.S. government to address climate change, the administration sought to halt lawsuit by applying to the court. The second Trump administration may similarly pursue litigation in courts to challenge the implementation of clean energy policies of the Biden administration, including those that favor electric vehicles.

#### **(5) Federal Agency Appointment Rights**

During his first term, Trump appointed individuals who favored deregulation to positions in federal regulatory agencies. In addition, the implementation of policies introduced by the previous administration was hindered by deliberately delaying the candidate nomination and appointment process, leaving top positions vacant, or providing only limited resources needed to implement the policies. Given that Trum's first administration actively used federal agency appointments to influence environmental regulatory policies, it is likely that his second administration will employ the same strategies to oppose Biden's policies that are favorable to electric vehicle industry.

## **4. Impact on Korean Businesses and Potential Strategies Going Forward**

As discussed above, once the second Trump administration begins, Korean companies investing in or exporting to the U.S. are expected to face more uncertainty. In particular, since Trump has announced plans to abolish the IRA (specifically, subsidies related to electric vehicles and batteries), the second Trump administration is expected to make various attempts to achieve this goal. Such actions could potentially reduce operational predictability for Korean companies and increase business uncertainty.

In assessing possible ways in which a second Trump administration may attempt to roll back Biden's policies on electric vehicles and batteries, there are at least two trends that favor a subtler approach rather than an outright repeal of the IRA. The first trend is that the transition to electric vehicles is already a global movement, and American automakers likely view the switch to an electric vehicle-based production system as a necessity. The second trend is the significant investments made by foreign automobile and battery companies in several U.S. states, particularly in the Republican-friendly Southern states, where these investments are gaining substantial support due to job creation expectations.

Given these trends, a second Trump administration may decide to take a more nuanced approach rather than overtly pursuing extreme anti-EV policies, such as the total elimination of subsidies for electric vehicles and batteries under the IRA. Instead, it might add new requirements for various EV subsidies that only U.S. companies could realistically satisfy, thereby effectively putting foreign companies at a disadvantage.

At the same time, considering that China is seen as the primary beneficiary in the transition to the electric vehicle industry, that China dominates the entire supply chain and market of the electric vehicle industry, and the expanding national security issues surrounding this dominance, along with the recent decline in popularity of electric vehicles due to safety concerns and other factors, it is also possible that a second Trump administration might attempt a complete nullification of the IRA.

From an investment perspective, Korean companies, particularly those involved in IRA tax deductible investments and subsidy payments, should prepare for the potential revocation, amendment, or reinterpretation of existing IRA regulations by a second Trump administration in ways that favor American companies. In particular, electric vehicle and battery-related companies need to explore ways to align their business interests with the U.S. companies, leveraging the Trump administration's focus on prioritizing domestic businesses and job creation in the United States. In other words, it would be prudent for these Korean companies to develop business models that can benefit from preferential policies directed towards U.S. companies as much as possible.

As for exports to the United States, Korean companies should pay close attention to the trend of strengthening enforcement of the UFLPA. In particular, it is important to identify the origin of raw materials and intermediate goods used in production, particularly when trading with countries where Chinese products are frequently exported to circumvent import-export control regulations. As the UFLPA's monitoring is expected to intensify in the solar and electric vehicle sectors, where China plays a key role in the global supply chain) companies in these industries must specifically ensure compliance to avoid UFLPA-related violations and conduct thorough due diligence on trade counterparties and products.

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