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5 KEY TAKEAWAYS

The U.S. Investment in Clean Energy and the Potential for Supply Chain Snags

On March 9, 2023, Kilpatrick Townsend Partner and Global Lead for International Disputes, Thomas G. Allen, spoke at the Inter Pacific Bar Association's Annual conference in Dubai, UAE on the potential for supply chain disputes related to U.S. clean energy investments. Here are 5 key takeaways from Mr. Allen's remarks.

1

The United States, through various legislative initiatives including the Inflation Reduction Act, has committed billions in grants and tax credits to promote clean energy production, electrical grid efficiency, and decarbonization. According to the International Renewable Energy Agency, Global investment in energy transition technologies, reached $1.3 trillion in 2022, with solar capturing 43% of that investment. The Inflation Reduction Act alone is expected to attract $114 billion in new clean energy investments by 2031.

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As reported by ClimatePower.US, clean energy companies have announced 101,036 new jobs in 31 states between August 16, 2022 to January 31, 2023. As of January 1, 2023, nearly 100 new clean energy projects have commenced, totaling $89.5 billion in new investments. This includes 40 new battery manufacturing sites, 22 companies with plans for new or expanded electric vehicle manufacturing facilities and 24 companies sharing plans to expand wind and solar operations in the United States.

3

The massive new investment in clean energy and decarbonization technology comes at a time when the global supply chain is still recovering from a variety of stresses that began with the onset of the global pandemic in 2020. In addition to the pandemic, the Russian invasion of Ukraine, inflationary pressures, and protectionist trade policies specifically impacting certain solar panel products caused delays and economic harm to a variety of energy projects. For example, one major battery storage project in the United States, totaling 2.1 GWh, was delayed with force majeure notices issued, due to an inability to timely source key materials for the project.

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In addition to protectionist trade policies in some sectors, many of the tax credits and grants earmarked for clean energy production in the United States may also have requirements that the projects be built with American labor, largely using American

grants earmarked for clean energy production in the United States may also have requirements that the projects be built with American labor, largely using American products. As a policy choice, the United States is seeking to shore up its clean energy supply chain by tying government incentives, in part, to onshoring the sourcing and production of necessary products and materials.

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The major question is whether the U.S. (and global) aspirations for new clean energy production are in sync with the current ability of the global energy industry to meet exponentially increased demand. Whether an already rickety supply chain can diversify and vertically integrate in a way that is compatible with demand is an open question. Parties to major energy projects should carefully investigate the health of their supply chains, emerging challenges, and explore contractual mechanisms to protect themselves from price fluctuations, and the potential for delays.

For more information, please contact Thomas G. Allen: tgallen@kilpatricktownsend.com

www.kilpatricktownsend.com