

POLICY BRIEF

**RECOMMENDATIONS
FOR THE NEW
ADMINISTRATION**

International Trade Issues: Challenges and Opportunities for the Biden Administration

David A. Gantz, J.D., J.S.M., Will Clayton Fellow in Trade and International Economics, Center for United States and Mexico

This brief is part of a series of policy recommendations for the administration of President Joe Biden. Focusing on a range of important issues facing the country, the briefs are intended to provide decision-makers with relevant and effective ideas for addressing domestic and foreign policy priorities. View the entire series at www.bakerinstitute.org/recommendations-2021.

INTRODUCTION

We recognize that the Biden administration's highest priorities will be domestic matters, such as dealing effectively with the coronavirus pandemic and repairing the economic devastation caused for businesses and workers by the pandemic. Still, there are certain trade issues that in the interest of American workers and businesses (including those who have been hit hard by both the recession and the China tariffs) cannot be safely ignored even in the first few months of the administration; a full "time out" on trade would be risky since our adversaries such as China are energetically seeking to dominate the field, currently without any pushback by the United States. Others, although important, are not as critical for the short-term health of the nation. This policy brief divides the trade issues into immediate challenges and those that may be addressed later on.

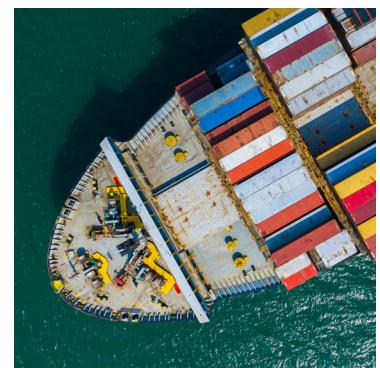
In all instances, changing the tone of U.S. trade diplomacy may be almost as important as the substantive results. Effective trade policies require the support not only of members of Congress but also the public. Finally, when considering trade policy as well as other administration endeavors, we

believe it is important for the United States to encourage our allies and adversaries alike to understand that the United States once again is committed to the multilateral system and to the rule of law.

IMMEDIATE CHALLENGES

China

Along with climate change, competition with China is in our view America's existential challenge now and for the next three or four decades. Given our ongoing trade war with China and friction with regard to Chinese policies relating to Hong Kong, the Uighurs, and the South China Sea, among others, the Biden administration should immediately abandon the "America Alone" policies of the Trump administration and work in concert with our allies (particularly the EU, UK, Canada, Japan, South Korea, and Australia) to address China's rampant IP theft and forced technology transfer, overproduction of steel, aluminum, and other commodities, and unlawful subsidies. The Trump administration's focus on tariffs, tariffs, and more tariffs and on the trade deficit has been ineffective in forcing China to change its policies. President Xi Jinping and the



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Communist party may have become further emboldened by the Trump administration's continued incompetence in addressing the pandemic, and by the chaotic response to the November election culminating in an insurrection January 6 designed to overturn the lawful election of President Biden.

The importance of keeping pressure on China is strongly supported by Democrats in Congress and elsewhere as well as Republicans. Under such circumstances, it would be unacceptable politically for the Biden administration to rescind the \$370 billion in penalty import duties on goods from China unless Xi is willing to offer major concessions in return, which is highly unlikely. In addition, the decoupling process favored by the Trump administration—particularly in sensitive areas such as high-tech/national security products, medicines, and PPE—should continue, but it must be managed carefully to avoid major long-term harm to the U.S. economy, and should take advantage of Mexico to the extent practical as a locus for labor intensive production or coproduction where manufacturing is shifted away from China (see below).

In our view, the Trump administration's China policy has been entirely reactive; we believe that if the United States is to compete effectively against China in the medium- and longer-term, proactive policies must also be implemented. These policies include improved support for public education at all levels, repairing essential infrastructure, and increasing publicly funded R&D, all of which had been neglected for at least several decades before Trump became president.

USMCA

The United States–Mexico–Canada Agreement, which garnered overwhelming support from congressional Democrats as well as Republicans, will prove most beneficial to American workers and businesses if the Biden administration undertakes reasoned but firm efforts to assure compliance by Mexico, with investment and labor provisions (the latter vital to Democrats in Congress) in particular. The United States for its part should

support the Commission on Environmental Cooperation and the improved state-to-state dispute settlement mechanism. It is recommended as well that the Biden administration resist domestic pressures to further restrict imports of Mexican produce, including tomatoes, blueberries, avocados, strawberries and green peppers, since retaliation by Mexico will surely follow. While the Biden administration may find it difficult to establish cordial relations with the López Obrador regime in Mexico, given that president's strong support of Trump, relations that are at least correct will be helpful in encouraging Mexico to avoid further anti-business populism. While it is probable that some production that leaves China will come to the United States, it will be important for many enterprises that must meet international competition to use co-production techniques whereby labor-intensive parts of the production process are accomplished nearby in Mexico. An effective USMCA thus becomes a key element in furthering U.S.–China policies. However, the unfavorable investment climate created in Mexico by an anti-capitalist administration may thwart such objectives.

European Union–United States Trade Relations

Because of historically large transatlantic trade values, but also because of the need for joint actions to protect both from China, we urge that the Biden administration work to resolve outstanding trade disputes as promptly as is possible consistent with U.S. interests and to pursue broader cooperation as the EU Commission has recently suggested. The settlement of the long-running Airbus/Boeing disputes and termination of penalty tariffs on both sides, and issues relating to digital goods taxation and technology and regulatory assessments should be the top priorities, as well as efforts (with other allies) to develop common elements of a China trade policy. While efforts to reopen the Transatlantic Trade and Investment Partnership negotiations pursued under the Obama administration would not in our view be a wise use of resources, understandings

going beyond the reduction of lobster tariffs should be feasible, with most not requiring congressional approval. It will not be easy, as the EU decision to conclude an investment agreement with China at the end of 2020 despite the public disapproval of the incoming Biden administration demonstrates, as do ongoing concerns among many EU countries as to whether the United States can again become a reliable partner in the medium- and long-term.

World Trade Organization

Toning down the U.S. rhetoric and supporting the consensus Nigerian director general candidate Ngozi Okonjo-Iweala are initial conciliatory steps for the Biden administration. Support for her to fill out the remainder of director general Roberto Azevedo's term has minimal political or economic cost. It would also be wise for the new administration to encourage the South Korean government to withdraw its DG candidate to (which they should have done a long time ago). Greater U.S. support of Geneva-based plurilateral negotiations in such areas as green technology, goods, and fisheries subsidies might bear fruit and would be a low-cost means of showing good faith.

Broader reform, including of the Appellate Body, is a worthy long-term goal but in our view is not likely to result in meaningful progress in the foreseeable future. In terms of international politics, it is worthwhile to participate in good faith in the activities of the WTO and remain a member, even where discussions in Geneva are not likely to result in resolution of outstanding issues. With the WTO's consensus requirement, reforms in such areas as self-designation of developing country status and more effective treatment of government subsidies (including but not limited to coming up with a reasonable approach to "public body" issues, regulation of state-owned enterprises, and others relating to centrally planned economies) seem highly unlikely to be achieved. Even if Appellate Body procedural issues—such as members sitting on cases past the expiration of their terms, meeting the 90-day requirement

for appeals, and avoiding review of national laws—could be resolved, this would not justify a return to normal Appellate Body proceedings. Issues relating to precedent and to adding obligations that were not negotiated by the United States in the Uruguay Round should also be agreed upon. (We note that many of these same problems with the Appellate Body were identified by the Obama and Bush administrations.) Not only China but India, Russia, and Brazil will almost certainly decline to join any consensus in the areas mentioned above. Moreover, China appears to believe (with considerable justification) that many WTO members will follow its lead in opposition to U.S.-sponsored reforms.

The Biden administration could also indicate continued support for the WTO by pledging not to take new trade actions that are clearly in violation of WTO legal rules, such as bogus use of the "national security" exception (GATT, Article XXI) to justify protectionist actions such as penalty tariffs on steel and aluminum, and unilateral use of Section 301. Even though they are questionable under WTO rules (because of arguably erroneous Appellate Body decisions years ago), safeguards applied under GATT Article XIX and U.S. Section 201 are preferable to the use of Section 232 because they can be targeted, and because they do not threaten significant undermining of WTO authority when other members abuse Article XXI.

Steel and Aluminum Tariffs

The spurious 25% Section 232 steel tariffs and 10% aluminum tariffs should be rescinded across the board, or at minimum reconsidered despite opposition from labor unions that have supported Biden; those tariffs do not directly affect China because Chinese steel is restricted by U.S. antidumping and countervailing duties, but application of those tariffs to many other countries have poisoned relations with allies (EU, South Korea, Brazil and Turkey among others). They also make manufacturing of goods in the U.S. more expensive than in many other venues and represent in our view a serious misuse by the Trump administration of that statute. Resurrecting

past discussions of the worldwide glut of steel and aluminum (largely as a result of China's subsidies) would be a useful initial step. If full lifting is not deemed politically acceptable, substituting Section 201 protection—even though it is difficult to do without violating WTO rules—should be considered.

OTHER TRADE PRIORITIES

Comprehensive and Progressive Transpacific Partnership

We recommend development of a plan for the U.S. rejoining the CPTPP/TPP (with some renegotiating of key provisions), but not for immediate execution. The U.S. has lost any significant leadership role in creating modern rule-based international trade agreements by having excluded itself from the CPTPP and being excluded from the recently concluded China-led Regional Economic Partnership Agreement. Opposition to rejoining the Trans-Pacific Partnership among Democrats in the House remains strong, although major changes in the CPTPP labor and environmental provisions and certain other upgrades from the USMCA might be sellable. The CPTPP today is an even more important tool to counter China's growing economic and political influence in the Pacific basin than it was when the original TPP was concluded more than five years ago.

UK-U.S. Free Trade Agreement

Continuing negotiation of an FTA with the UK is a worthwhile objective but concluding it before current Trade Promotion Authority (TPA) expires on June 30 (effectively March 31 because of procedural requirements) is not likely to be doable. Many difficult issues exist, including preservation of the Irish Good Friday agreement, digital trade taxation, and improving U.S. access to the UK agricultural market. Overall, the economic benefits for the U.S. will be limited, even though the EU and the UK managed to conclude a modest free trade agreement by the end of December 2020. That agreement eliminated tariffs and quotas on most

originating trade but largely excluded the services sector that makes up 80% of the UK economy and ultimately resulting in a flood of costly new paperwork for exporters and importers.

U.S.–Vietnam Negotiations

The Trump administration, upset by the growing U.S. trade deficit with Vietnam (partially brought about by high tariffs on Chinese exports to the U.S. and pressures on American firms to move production in China elsewhere), has sought to punish Vietnam on the grounds that it is improperly manipulating its currency. The argument is specious; the Treasury Department, which normally deals with currency manipulation issues rather than the U.S. Trade Representative, had not found Vietnam to be a manipulator. If the Biden administration is concerned about the trade deficit, a focus on improving Vietnam's market access for U.S. goods and services would be a far better option. (Of course, if the U.S. had not withdrawn from the TPP in January 2017, the deficit would probably be lower.)

Trade Promotion Authority

The TPA expires after six years on June 30, 2021. Because a trade agreement must be sent to Congress three months before it can be signed, any pending agreements—such as a UK–U.S. FTA—would have to be completed by March 31. It is probably more important to seek TPA renewal on the basis of a well-planned effort than to seek it immediately. At minimum, the new U.S. Trade Representative and the secretaries of the Treasury and Commerce Departments should be in place before such an effort is pursued and extensive consultation initiated with relevant congressional committees and major stakeholders.

Kenya Free Trade Agreement

It is worth considering whether it would make sense to replace the FTA negotiations with Kenya with broader negotiations with the full 54-member African Continental FTA. Such negotiations would be far more difficult, but if successful even for only

some of the AfCFTA parties would produce far greater economic benefits for Africa and for the United States as well. They would be popular with many in Congress who feel that the United States neglects trade and economic development in Africa as well as those who are concerned about China's increasing economic and political influence in the continent. If the Biden administration continues past U.S. policies, it will want to support African regional integration rather than contribute to further fragmentation, as could be the case if the U.S. seeks individual FTAs with individual African nations.

AUTHOR

David A. Gantz, J.D., J.S.M., is the Will Clayton Fellow in Trade and International Economics at the [Center for the United States](#) and Mexico. His work focuses on international trade and economics. He is also the Samuel M. Fegley Professor Emeritus at the University of Arizona's James E. Rogers College of Law and Director Emeritus of the international trade and business law program. Gantz has written extensively on World Trade Organization and NAFTA/USMCA trade law and dispute resolution issues, as well as a range of other international trade matters.

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