

Pacific Overtures – Biden Trade Policy

Potential U.S. Responses as China Seeks to Join CPTPP

Remarks of

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Biden International Trade Policy as China Seeks to Joint CPTPP

Chronic underinvestment in the multilateral trading system in the WTO era by its largest members has led to a world in which much of the action in creating rules for international trade has shifted away from multilateral arrangements. The leading edge in trade negotiations has not been in Geneva but in agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). China's and Chinese Taipei's applications to join TPP elevate the potential for that agreement becoming a forum in which key trade issues are decided that affect an increasing part of global trade. The application of the United Kingdom to join CPTPP makes that agreement no longer regional but proto-global. That is one possibility. Another, quite different outcome, is that rather than strengthening CPTPP, inclusion of additional diverse parties will dilute its substance.

One important key to the future shape of the world trading system is America's trade policy. What can be discerned of it for the Biden Administration?

First, it is early days. There was a two-year pause at the beginning of the Obama Administration. All political-level appointments change with a new incoming Administration. There are roughly 4000 political positions that change with a change of the party in power in the

United States. To my surprise, about 1200 – 1400 require Senate confirmation.¹ A single Senator can hold up a nomination. As of August 9, 2021, according to tracking of higher-level posts by The Washington Post and Partnership for Public Service, 209 nominees had been confirmed by the United States Senate, and 217 tracked positions had no nominee. The nominee for Deputy U.S. Trade Representative who will be ambassador to the WTO, Maria Pagan, has not yet been confirmed.

However, there is a President and Cabinet already in place, including a U.S. Trade Representative, a Treasury Secretary, a Secretary of State, a Secretary of Commerce. There are White House and agency senior staff members. While there is no Chief US Agricultural Negotiator, and the top sub-cabinet Commerce Department positions are currently filled on an acting basis, as well as a permanent U.S. representative to the WTO, this does not mean that there is nothing that can be said about U.S. trade policy.

To help frame the discussion, it is best to look at issues through the lenses through which one can assume the Biden Administration is viewing the world. The trade policy is “progressive”. It is not driven by huge multinational companies, big business, nor huge technology companies. It is blue and green, it is against forced labor, it is pro-environment. It is left-of-center on social issues. It will place a priority on human rights. As a result, it backs the TRIPS waiver and the OECD global minimum corporate tax.

An open question is how any government assesses national commercial interests in a negotiation, in terms of exports of goods and services. Doing so requires detailed advice from business. There is no better source than those who are in the market trying to buy and sell. This is true with respect to industry as well as agriculture. This does not mean that valuable policy advice and information cannot also come from NGOs and organized labor. It is just to state that businesses have a strong role to play. The historical strength of the U.S. trade policy process is consultation with persons having expertise, with those engaged in and affected by trade.

If the Administration is further to the left on commercial issues, it is aligned with the right on geopolitical issues. On China policy, the left and right meet. This does not mean the same policy measures used in the prior Administration will be employed in the future. The measures are likely to be less blunt, more selective.

Another general point: the absolute top priority for this Administration is the domestic economy. This means that launching international initiatives takes a back seat to sponsoring domestic policy measures. A new factor is that the spike in inflation should make any import-limiting measures, not that we know of any major ones that have been planned, even less attractive as an option. There is, however, no reason why an international trade policy cannot be pursued in tandem with obtaining domestic policy objectives. Trade negotiations are seldom concluded quickly.

¹Unconfirmed: Reducing the number of Senate-confirmed positions can make government more effective., Partnership for Public Service, Centre for Presidential Transition, August 9,2021.
<https://presidentialtransition.org/publications/unconfirmed-reducing-number-senate-confirmed-positions/>.

There are four specific lenses that may be useful for predicting the course of the Biden Administration's trade policy:

⇒ **First, trade policy is to have a worker-centered focus.**

As a rule of thumb, as a political matter, it means the unions would be likely to support anything done, or at least not oppose negotiated results.

By the sole criterion of domestic politics, doing nothing – reaching no new agreements -- is acceptable. But even if that is so, it will not necessarily be a predictor of the U.S. trade policy agenda.

What would a worker-centered trade policy look like?

- It will not embrace trade liberalization as a general principle, preferring fair trade and trade agreement enforcement.
- It will favor implementation of the USMCA requirements, focusing on the enforcement of labor provisions. (It is not clear that the Administration is at all uncomfortable with the provisions for automobiles on wages and local content.)
- It will support Buy American requirements aimed at some re-shoring, but this has limits dictated by considerations of economic efficiency.
- It will aim at some supply chain security, selectively, for “essential” products, where on-shoring is impractical.
- It will not rush to trade liberalization. Mr. Biden pledged not to enter into any new Free Trade Agreement “until we have invested in Americans and equipped them to succeed in the global economy”. Milestones:
 - Infrastructure Act
 - Build Back Better Act (25% tax credit for semiconductor facilities)
 - Chips Act (\$52 billion, House action required).

Writing just after the election, in November 2020, a leading international consulting firm postulated that “Biden administration trade policy will largely be shaped by a balancing of three major objectives: to boost US manufacturing competitiveness and ease the nation’s reliance on imports for critical products; to restore global US leadership by rebuilding alliances and working through multilateral institutions; and to take strong action on US climate change, without putting domestic industries at a competitive disadvantage.” We have seen the strongest emphasis from the new Administration on the first and third of these three, when it comes to trade, working through multilateral institutions might best be considered to be a work in progress.

Caveat: There is no Trade Promotion Authority (TPA), so there is an inability to make commitments which to be implemented would require a change in US law. Not seeking renewal of this authority was a conscious Administration decision. It signals no major trade agreements are in the offing, as what foreign countries seek from the United States is often imbedded in law that cannot be changed without Congressional approval.

⇒ **Second, trade policy should counter Chinese policies that are believed to challenge the liberal international order:**

- National security is given an economic component, with interactions with China seen through the lens of US-China strategic competition
- This is not the same as the decoupling sought by the Trump Administration
 - The clearing of ports for containers from Asia is the opposite of the Trump policy
 - There is no Phase Two agreement as an announced goal, in part because it is not seen as being effective.
 - The goals deal with the strategic competition, not the overall trade balance.
- More emphasis is going to be placed on building the U.S. up rather than tearing China down (e.g., no broad increase in tariffs however, this will be combined with the selective use of export controls, with Huawei and SMIC as examples of a more targeted policy, and perhaps tariffs, e.g., for solar panels).
 - There is strong bi-partisan backing for a vigorous trade policy to support national security and fair-trade objectives. This is both a strength and a limit to potential flexibility.
- Areas of regulation will likely continue to extend to investment reviews (inflows as well as outflows, and capital regulations (transparency, listing, may be areas of increasing scrutiny and regulation).
- COP26 demonstrated that areas of cooperation with China on shared objectives is welcomed by the Biden Administration.
- Decoupling will not likely be as much a Biden Administration policy, as it will be a decision by individual businesses to re-deploy resources to reduce the prospects of future adverse conditions, particularly in the Chinese business environment.

⇒ **Third, trade policy should not interfere with re-building alliances**

Will the US come back to join CPTPP? Not yet, but that cannot be excluded in the future. Were the U.S. to move to join, it is likely that the CPTPP would have to be modified. There are a number of instances in which the sitting U.S. President has

disparaged an existing trade agreement, embracing it only after it was re-negotiated, through direct amendment or otherwise.

While data protection for biologics would probably not be an impediment, some pro-labor provisions, e.g., an anti-forced labor provision would likely be desired by the Administration.

A regional trade policy alternative could consist of one-off deals, e.g., for the digital economy, trade and health, etc.

There is also another possibility, raised by Commerce Secretary Gina Raimondo, the creation of an Indo-Pacific Economic Framework. The details of the proposed framework are not yet available. A framework is generally different from a free trade agreement, in that the latter has contractual commitments with respect to market access, such as in TPP. It remains to be seen how substantive a regional framework would be.

Fourth, there is in U.S. trade policy both a principled and pragmatic attachment to the multilateralism as embodied in the WTO.

The Biden Administration attitude would seem to be that the multilateral trading system is a good idea, but it lost its way, serving capital not labor. This point of view is shaped by progressive precepts.

Lighthizer's MC11 complaints are seen as accurate, but tactics will likely differ.

- WTO members should not achieve through litigation what they could not achieve through negotiation.
 - e.g.: look to what was negotiated: Canada and Japan seeking unsuccessfully in the Uruguay Round to prevent zeroing in antidumping case methodology.
- Enforce agreed transparency requirements
- Self-proclaimed development status is unacceptable if it means a blanket approach to special and differential treatment (remaining concerned about frozen trading relationships dating back from the 1980s)
- SOEs and overcapacity need to be dealt with.

The trilateral (U.S., EU and Japan) is one way forward for WTO reform, focused on disciplines for–

Industrial subsidies (harder in new era of competitive subsidies?)

SOEs, nonmarket direction of both trade and investment.

Forced technology transfer.

The U.S. will continue to be interested selectively in JSIs, particularly green ones (trade and sustainability)

What could a Biden trade policy for the Pacific Region look like?

- a) Find some like-minded in the “region” and conclude a series of one-off trade agreements, e.g., on COVID, on forced labor.
- b) Sign up like-minded to “high-standard” elements that help channel the future development of CPTPP (and possibly DEPA). One possibility, an economic AUKUS.
- c) If the EU became active in the area, a possible combined AUKUS-EU approach for trade.

Pledge to equal access to markets and to (critical) raw materials.

Caveat: Boris Johnson can make collaboration between the US and the UK more difficult if the UK endangers the Good Friday agreement

- d) Deploy a consultation clause as in USMCA on third party non-market economy deals.
- e) Consult with respect to mutually supportive actions where one is subject to trade retaliation (Mutual or Collective Security Pact for Trade -- CSPT).
- f) Take specific actions to foster national security – e.g., agreements on sales and purchases of [a new COCOM] sensitive articles.

Blanket hostility to China (Trump Administration) is unlikely, selective cooperation is likely.

Much is in the control of China. China’s actions can contribute to a lessening of tensions or stimulate a more combative US policy and closer coordination with traditional and new allies. Triggers for the latter could include overtly aggressive Chinese policies regarding Chinese Taipei (the “Taiwan problem” as that term is commonly used in the U.S.), human rights issues, retribution (e.g., against Australia over origins of COVID), and militarization of the South China Sea.

Will the U.S. lead at the WTO? *In not doing so, it leaves space for others to take leadership (China / EU).*

We do not know how proactive the Biden administration will be in tabling proposals and working for their adoption. The U.S. voice still counts heavily, even in an organization in which any single member can block adoption of an agenda or a new multilateral discipline. Its negative opinions can stifle initiatives taken by others. A collection of negative informal reactions from the United States can only lead to lowest common denominator or no results. While the U.S. was the guarantor of the system, and clearly this is no longer its chosen role, its words and behavior exceed even its economic importance in the world. The most effective advocate for progress can easily be the U.S. This may not always be the case. Preservation of the liberal international order requires strenuous effort. It is a question of investment, to help cause the system to evolve in a positive direction, to keep it fully relevant.

How would the US react to a TPP with China (and Taiwan) and the UK? This would increase discrimination vis-à-vis U.S. products.

The question is an important one. There exists a geopolitical rivalry. China joining TPP would not be the only chess piece on the board. It could take place in a context of Washington and Beijing each having taken other steps that the other side regarded as harmful to its interests. Each at this point should be mindful of the Thucydides trap, where a rising power and an existing power find it impossible to avoid conflict.

Historical analogies are imperfect but are useful to trigger at least a policy discussion. How did Great Britain react to Germany's growing influence in continental Europe in 1914? How did the United States react to Japanese expansion in Asia in the late 1930s? In the first, mobilization. In the second, the use of economic sanctions. The comparisons are extreme, and the circumstances are different. I am not predicting World War III. In each case, conflict might not have been inevitable if handled differently by all concerned. But clearly the situations cited created instability and risk. It must be U.S. policy to prevent any country from dominating Asia. This is a defensive, not an offensive interest. The United States does not seek to place itself in that position.

Chinese domination of trading arrangements in Asia would likely be seen in Washington as highly problematic. One option would be for the U.S. to press for a return to nondiscrimination in Geneva, for multilateralism, whether with all 164 WTO Members or fewer, through open plurilateral agreements at the WTO. U.S. unilateralism provoked the convening of the Uruguay Round. Would China-centric regionalism provoke a new WTO Round? Perhaps. Then the question would be where China saw its interests lying at that point, as perhaps the largest beneficiary of most of the WTO period of the multilateral trading system during these last twenty years.

A related question is how the EU would react to a CPTPP-UK-China. Among its possible choices: an FTA with China as a follow-on to the CAI (if acceptable to the European Parliament), applying for CPTPP membership, or redoubling its commitment to the WTO.

There may be other policy choices for the U.S. and the EU, as cited above, such as an AUKUS or EU-AUKUS arrangement.

Is the U.S. only lukewarm to the WTO?

The future is not written yet. It is what we make of it.

The United States, as with other WTO Members, not only acts, but it reacts. When the Joint Statement Initiatives (JSIs) were launched, the United States was not a listed proponent, but subsequently joined. The United States will, of necessity, join initiatives where its interests direct, whatever its level of enthusiasm might be. It would be a mistake to believe that White House and USTR statements about the Biden Administration's belief in multilateralism is just talk. For the good of the system, it is to be hoped that the U.S. does take a strong leadership role in the future.

What are the consequences of a U.S. failure to be proactive, to lead?

Ceding the initiative to others is inconsistent with being a world power. The United States will participate in shaping events, or it will be shaped by them.

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Conclusion

The Biden Administration has proceeded to defuse tensions with the EU over airbus, and with its allies more generally, with respect to steel and aluminum. Without MC12 having taken place this week, we do not know how much of a leading role the U.S. would have taken multilaterally. Clearly, selective U.S. engagement will take place, especially where a negotiation is underway, or where a foreign action (e.g., EU potential adoption of CBAM) makes taking a stance necessary. The Administration will be more open to engagement, including on the difficult issue of WTO dispute settlement reform.

Port congestion and other bottlenecks point out the interdependency of economies. In terms of rearranging global supply chains, market forces will be the principal determinant, not government fiat. A government-sponsored push toward onshoring is only likely to take place in highly selective cases, such as semiconductors.

It is still early in the Administration, but in an MC12, which may be rescheduled for the first week of March 2022, it will become clearer whether the United States will have returned to leadership at the WTO, in concert with allies for a better trading system, and in its own right.