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Biden and Trade at Year One

The Reign of Polite Protectionism

By James Bacchus

EXECUTIVE SUMMARY

As a presidential candidate, Joe Biden promised a change from the go-it-alone, my-way-or-the-highway approach to trade policy of Donald Trump. Disappointingly, during the first year of his presidency, Biden has instead largely embraced the failed Trump policy of unilateralism and protectionism in trade. He and his administration have done so politely, without Trump's bluster and bombast. Yet, the results have been mostly the same: a turn toward more trade protection and managed trade, toward a proposed industrial policy that would add more restrictions on trade, and toward a destructive unilateralism that threatens to continue undermining the multilateral trading system overseen by the World Trade Organization. If Biden continues to pursue this misguided trade policy, American recovery and prosperity are at risk. There is still time—at least three years—for him to end this reign of polite protectionism by framing and pursuing a new trade policy that will benefit all Americans: a policy that will achieve more trade liberalization, stop managed trade, halt trade-restrictive industrial policy, renew trade multilateralism, and give restored and unflinching support to the international rule of law in trade.

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POLITE PROTECTIONISM

There are no tweets. There are no insults. There are no sudden shifts of policy in the middle of the night. There are no threats to pull out in a pique from international institutions. There are no macho public displays of breast-beating bullying of America's allies and other trading partners, large and small. Former president Donald Trump no longer presides over U.S. trade policy. Yet, under President Biden, the Trump administration's trade policy remains largely intact. Shorn of the sharpest edges of Trump's "America First" protectionism, the Biden administration's trade policy, a year on, seems increasingly to be merely a smoother and more polished version of the same turning away from the wider world, of the same myopic mercantilist view of how the United States should address trade domestically, and of how it should engage in trade and trade relations globally. So far, U.S trade policy in the Biden administration has been the reign of polite protectionism.

This quieter continuation of Trump's headlong retreat after three-quarters of a century of bipartisan support for multilateral trade liberalization was signaled in the first weeks of the new administration. During the Senate confirmation hearing for Katherine Tai, a highly skilled U.S. trade negotiator of long experience chosen by Biden to serve as the United States Trade Representative (USTR), she was asked by Sen. Patrick J. Toomey (R-PA), one of the few remaining congressional champions of free trade, whether two countries negotiating a trade agreement should share as their goal the elimination of tariffs and other barriers to trade. She replied, "Maybe if you'd asked me this question five or 10 years ago, I would have been inclined to say yes," but "I think that our trade policies need to be nuanced and need to take into account all the lessons that we have learned, many of them very painful, from our most recent history."[1]

Up until Trump's election in 2016 and the destructive four-year tenure of his protectionist chief trade negotiator, Robert Lighthizer, no presidential nominee for USTR from either the Democratic or Republican Party would have given any other answer to this question than yes. It is true that this affirmation might sometimes have been followed by a "but" and then some politically expedient qualification; however, it was generally agreed for decades by both Republican and Democratic administrations alike that, in economic principle, if not in every dicey domestic political circumstance, trade liberalization was a desirable goal for the United States. But no more. As a headline writer for the *New York Times* rightly put it following the Toomey-Tai exchange, "In Washington, 'Free Trade' Is No Longer Gospel."[2]

Presumably, as his appointee, Tai speaks for Biden on trade. Unlike some of Trump's cabinet members, Biden's cabinet members do not seem inclined, to date, to freelance when speaking about policy. Also, Tai has broad support on both sides of the Hill, having previously worked, often in a bipartisan way, in a key staff role for the Ways and Means Committee in the House of Representatives, and she has been—quite justly—praised by members of both political parties for her labors there. The Senate confirmed her appointment as trade representative by a vote of 98–0.[3] The sparing use of "free trade" in her vocabulary does not seem to be any hindrance to her in generating significant support for her advocacy of the White House's approach to trade from members of either party. Indeed, it may well be a political asset.

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Tai's reply to Toomey has been echoed in many of her words and actions—as well as those of others in the Biden administration who are responsible for various aspects of the international economic portfolio—in the months since. Perhaps most telling was her response in December 2021, when asked at an event hosted by the U.S. Chamber of Commerce, why Biden has not enlisted the United States in the "Ottawa Group," a subset of members of the World Trade Organization led by the European Union and Canada that is trying, amid the COVID-19 pandemic, to reduce barriers to trade in medical goods. This would do much to help combat the pandemic, yet Tai answered that the Biden administration was at odds with the Ottawa Group about how far to go in removing the barriers.[4] She added, "I think we have pursued a really unfettered liberalization policy for the past many years and decades, and it is part of what has brought us to this current reality of very, very fragile supply chains."[5]

"Unfettered liberalization"? Hardly. Although trade has been significantly liberalized through successive global rounds of trade negotiations and numerous bilateral and regional trade agreements, many U.S.-imposed tariffs and other nontariff trade barriers remain in place, including most of those that were applied unilaterally—and, thus, illegally under WTO rules—by the pro-tariff Trump administration. Furthermore, this statement overlooks an array of other obstacles that America's trading partners face in securing access to the U.S. market: ordinary tariffs in the U.S. tariff schedule; tariffs in the form of trade remedies, such as antidumping duties and countervailing duties to foreign governmental subsidies; Section 301 tariffs levied in retaliation for alleged unfair trade practices; Section 232 tariffs, levied in response to claimed threats to national security; "buy American" requirements; and more. As trade scholar Simon Lester has summed it up, "While there has been liberalization in the last few years and decades, there has been plenty of fetter as well."[6] Surely, with all her expertise and all her years of valuable experience, Tai must know that trade liberalization by the United States has been far from "unfettered."

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She must also know the vast extent of what trade liberalization has accomplished for the people of the United States since the signing of the General Agreement on Tariffs and Trade—later transformed into the WTO—in the aftermath of the Second World War. Instead of disparaging the freeing of trade, the USTR should be reminding the American people at every opportunity of how very much they have benefited—and are benefiting every day—from the freeing of trade. International trade supports nearly 39 million American jobs.[7] Overall, "the payoff to the United States from trade expansion—stemming from policy liberalization and improved transportation and communications technology—from 1950 to 2016 (was) roughly $2.1 trillion . . . US GDP per capita and GDP per household accordingly increased by $7,014 and $18,131, respectively." What is more, "disproportionate gains" probably accrued to poorer households.[8] Membership in the WTO system has boosted annual GDP by about $87 billion in the 25 years since the establishment of the WTO—*more than for any other country*.[9] Yet none of this has been highlighted by Tai, Biden, or anyone else in the administration.

I am a Democrat and a former Democratic member of Congress from Florida. I am a lifelong advocate of free trade. I am also a supporter of Biden and of much he is trying to accomplish nationally and internationally. I had hoped—I still hope—for a Biden trade policy that will free more trade and thereby help increase, broaden, and deepen American prosperity. Yet, at this point, after a year of dashed hopes for trade-freeing initiatives from the new president, those of us who believe in the benefits of free trade must set aside wishful thinking and realize that the Biden administration truly means all that it has been saying about trade.[10] With this unwelcome realization, other unhappy conclusions must proceed from it and from the administration's trade actions and inactions during its first year.

In the Biden administration, there is no commitment to free trade. There is no priority commitment to working with other countries to lower the barriers to trade through multilateral negotiations. There is no solid support for the WTO as a central and necessary multilateral institution. There is only the thinnest of support for the international rule of law in trade. There is a pronounced inclination to use trade increasingly for geopolitical and for other nontrade purposes, especially against perceived competitors such as China. And, not least, there is the continuation and intensification of the previous self-destructive tendency toward managed trade and industrial policy. All this adds up to an all-too-real and ever-so-polite protectionism, delivered in a soft voice and with a smile.

BIDEN BEFORE THE WHITE HOUSE

This trade policy is not what many of us who voted for him thought we were promised by presidential candidate Joe Biden. As a candidate, Biden criticized Trump's go-it-alone, my-way-or-the-highway approach to trade. He promised to work with American allies and other trading partners on trade issues of mutual concern. He said that the United States must "write the rules on trade" within the existing WTO-based multilateral trading system.[11] Although he promised aggressive action as president against China's alleged failures to fulfill its treaty obligations on trade, candidate Biden opposed Trump's trade war against China and described Trump's avalanche of unilateral tariffs on imports of Chinese goods as self-defeating because of their high costs for Americans. He called China the big winner in the transactional face-saving Phase One trade deal that Trump and Lighthizer concocted with China after the trade war, predictably, got out of hand. He stated also, correctly, that Trump's decision on his first day in office to withdraw from the trade-liberalizing Trans-Pacific Partnership "put China in the driver's seat."[12]

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Other aspects of the Biden campaign platform were, however, disconcerting to advocates of more trade liberalization who see international trade as an essential contributor to domestic prosperity. Biden seemed to perceive trade as separate from domestic policy despite the fact that Americans live, to a great extent, in an economically integrated world. While denouncing many of Trump's trade decisions during his campaign, Biden made it clear that he would put domestic recovery and reform first and that trade would not be an initial, or even a high priority, for his administration. He promised not to sign any new trade deals "until we've made major investments here at home, in our workers and communities."[13]

Furthermore, Biden pledged not to agree to any new trade deal that was not accompanied by such major investments and that did not include advocates for labor and the environment at the negotiating table. He stressed, too, that the United States must "write the rules of the road for the world" to ensure fair treatment for American workers and to protect the environment.[14] All this suggested a trade policy that would be secondary to other considerations, closely connected to and conditioned on domestic economic and social actions, and aimed at linking trade increasingly and innovatively to domestic labor and global environmental concerns.

Ominously missing in Biden's campaign was any full-throated advocacy of the bountiful potential advantages of opening the borders of the United States and the other countries in the world to more and freer trade. There were the usual paeans to exports. But there was no praise of imports. Omitted was any explanation of how imports provide lower-priced inputs into American manufactured goods that create and save American jobs by making those goods more competitive in domestic and world markets, or how imports lead to lower prices and to more product choices for American consumers, or how imports spur American innovation through the incentive of competition. This was disappointing, but it was not surprising. The last president of the United States to speak boldly about the overall benefits of trade was George W. Bush, when he was in Shanghai a few weeks after the terrorist attacks on September 11, 2001. He explained then, clearly and eloquently, that

> progress begins with trade. Trade is the engine of economic advancement. On every continent, in every culture, trade generates opportunity, enhances entrepreneur growth. And trade applies the power of markets to the needs of the poor. It has lifted countless lives.[15]

In this speech, the Republican Bush echoed many former presidents, including Democrats. Biden, however, both as a senator and as vice president, has a long history of ambivalence on trade. It is not surprising that, in a time of growing trade skepticism, he incorporated some elements of Trump's mercantilism in his successful presidential campaign. And as president, he has broken with the generations of past support of freer trade by Democratic presidents. Throughout his political career, Biden has never been known as someone motivated by a basic philosophical commitment to free trade or by the connection between trade and freedom.[16] He has rarely focused on trade or been in the forefront on trade, and he has often seemed ambivalent about it.

While in the Senate, Biden voted for the North American Free Trade Agreement with Canada and Mexico, the legislation implementing the Uruguay Round Trade Agreements that established the WTO, and the legislation supporting China's entry into the WTO. And, while vice president, he supported the Trans-Pacific Partnership. Along the way, however, he voted against the bilateral U.S. free trade agreements with Chile, Oman, Peru, and Singapore, and against the regional Dominican Republic–Central America Free Trade Agreement. He did this largely, he said, because in his view these agreements did too little to address legitimate labor and environmental concerns.[17] Notably, he also voted for steel import quotas and agricultural subsidies, two of the leading examples of persistent American protectionism.[18]

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Nor were these Biden campaign positions surprising, given the political climate in the country as a whole and in the organizational base of the Democratic Party in particular. Trade remains broadly popular among the American people, including a growing majority of Democrats, particularly in the urban and suburban parts of the country where Democratic voting strength has been rising in recent elections.[19] But this is not so among many of the interest groups that contribute much of the money to finance political campaigns and control many of the portals to election to political office. In the Democratic Party, for instance, organized labor has great influence and, fearful of foreign competition, it is ardently opposed to freer trade. For this reason, any defense of freer trade by a Democrat is assumed nowadays to be politically perilous. Increasingly, Republicans also espouse freer trade at their political peril as the false panacea of economic nationalism spreads ever more widely among Republican voters.

Supporting freer trade is especially risky in primaries, where the activist base of voters in both parties tends to turn out and prevail, and where many of the most influential activists in both—for varying (and for mostly mistaken) reasons—largely oppose freer trade. The Democratic and Republican bases alike blame freer trade for the loss of manufacturing and other American jobs, and much of the Democratic base adds to that a belief that freer trade, and the trade rules that come with it, harm the environment and unduly limit the discretion of the United States in protecting public health and safety. The fact that these assumptions are incorrect is politically irrelevant—and will remain so for as long as American politicians who know better remain unwilling to say so publicly.[20] In politics, the truism is accurate: perception is reality.

BIDEN IN THE WHITE HOUSE

Now that he is in the White House, Biden confronts some stark practical political realities that make it even harder for him to support trade. The long-standing historical bipartisan support for trade in the Congress no longer exists. Some Republicans still favor freer trade, but, in the aftermath of the rise of economic nationalism and the Republican Party's embrace of Trump and his policies, there are not nearly as many as before. And, amid the current polarization of the two parties, even some of those Republicans who continue to support trade may be reluctant to vote for a trade agreement if it is presented to them by Biden. Partisan pressures in this era of polarization push against giving a president from the other party a congressional success of any kind. Thus, for support on trade in the Congress, as on almost all else, Biden must depend on Democratic votes.

Democrats hold the slimmest of voting margins in the House and in the Senate (a margin they may well lose in both chambers in the forthcoming midterm elections). Although an unknown number of Republican votes remain for freer trade, and some of those Republicans may be willing to vote for trade-freeing legislation proposed by a Democratic president, a goodly majority of Democrats must vote for any proposed trade legislation for it to be enacted by the Congress. Consequently, the president must pay constant attention to the views of his fellow Democrats on the Hill on trade.

And, up on the Hill, the Democratic leadership in both the chambers is, at best, reluctant to support trade liberalization and, at worst, increasingly inclined to oppose it. On the left, self-styled "progressive" Democrats—now large in numbers in the House and led assertively by

Bernie Sanders (VT) and Elizabeth Warren (MA) in the Senate—are often anything but progressive on trade; many of them are outright protectionists. Complicating matters further, the embattled moderate and centrist Democrats—shrinking in numbers, ever mindful of their demanding base, and always fearful of being "primaried" by an anti-trade opponent on their left—are likewise reluctant to cast a divisive vote for freer trade even though many of them are, in principle, for it. A vote for freer trade is, therefore, especially difficult during an election year.

All this helps explain why Biden and Tai have not proposed a renewal by the Congress of trade promotion authority (TPA), the presidential trade negotiating authority that lapsed at the end of June 2021. Congresses have repeatedly delegated this time-limited authority to presidents since 1974. One year into his term, Biden has not even asked for it.[21] In explanation, Tai has said only that she wants to rethink the objective of trade agreements before seeking TPA.[22] One would think that anyone assuming the office of USTR would have thought this objective through before becoming USTR.

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The reluctance to move forward in trying to restore this executive authority poses a constitutional hurdle to the conclusion of any new international trade agreements—even if Biden changes course and decides he wants to pursue them sooner than he has previously said. Under Article I, Section 8, of the Constitution, the Congress has the authority to "lay and collect . . . duties" and to "regulate Commerce with foreign Nations." Under Article I, Section 8, it has the authority also to "make all Laws which shall be necessary and proper for carrying into execution" these powers. Under Article II, Section 2, of the Constitution, the president has the "Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." The Constitution, though, does not assign any specific power over international commerce and trade to the president. Thus, the Congress must specifically delegate trade negotiating authority to the president through legislation.[23]

Without this congressional delegation, the president and his trade negotiators can negotiate all they want about trade with other countries, but they cannot conclude any new trade deals, and other countries are less likely to negotiate with them if they do not have that authority. Moreover, without it, trade agreements cannot be voted up or down by the Congress without amendment, which is, practically speaking, a prerequisite for cutting new deals. It is necessary to ensure that agreements struck by U.S. trade negotiators not be amended by the Congress; another country will not give the United States its best offer in a negotiation if it thinks the Congress will amend a negotiated agreement and then demand more and deeper trade commitments. From the perspective of other countries, why make your best offer until you absolutely must do so to close a deal? Thus, without the assurance of a simple up or down vote by the Congress, the United States will never get the best bargain it could get in an international trade agreement.

Given what the president has said, presumably he will not request a renewal of TPA by the Congress unless key parts of his ambitious domestic policy agenda are enacted by the Congress and implemented by the administration. He wants improvements in American competitiveness before opening American doors wider to imports. A bipartisan version of Biden's infrastructure proposal—the Infrastructure Investment and Jobs Act—has been approved by Congress and signed into law by the president.[24] Yet, at this writing, the fate of the various parts of Biden's proposed $1.8 trillion Build Back Better bill for social spending is decidedly grim.[25] It is far from clear that all the domestic investments he has portrayed as a prerequisite to returning to negotiating international trade agreements will be made. A TPA request is not even on the horizon.

Furthermore, this Biden approach to trade betrays a lack of understanding about some of the trade-related sources of American competitiveness. Just as he did when a candidate, as president Biden is overlooking the need for imports to maintain and enhance the competitiveness of American businesses and American workers. Denied the spur of the additional innovation and competition provided by additional imports, domestic production in the United States will lose its competitive edge. Denied imported inputs into U.S. production, American products will be put at a competitive disadvantage in pricing, both domestically and internationally. In addition, if the United States refuses to keep its market open to imports and, moreover, if it refuses to open its market to imports even more, then the trading partners of the United States will, in turn, refrain from opening their markets further to more American exports.

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Meanwhile, elsewhere in the world, other countries are continuing to conclude new free trade agreements while the United States falls behind in trade liberalization.[26] Although multilateral negotiations in the WTO remain stalled, in no small part at this juncture because of the low priority given to them by the Biden administration, bilateral and regional deals are proliferating throughout the world that do not include the United States. The latest, which took effect on the first day of 2022, is the Regional Comprehensive Economic Partnership (RCEP) among 15 Asia-Pacific countries. The RCEP is the worlds' largest regional trade agreement, accounting for 30 percent of global population and global GDP. Over time, it will eliminate more than 90 percent of the tariffs among its member countries.[27] The largest of these countries is China. It is China, not the United States, that seems most poised at this point to, in Biden's phrase, "write the rules of the road for the world" on trade.

BIDEN AND TRADE AT HOME

Biden's actions domestically so far demonstrate a failure to understand the necessity of freer trade as part of a successful policy for American recovery and prosperity. His intention to achieve domestic recovery and reform before attempting to negotiate any new trade agreements is founded on the mistaken belief that increasing trade has been harmful to the American economy and workforce, and on the errant notion that the American economy and workforce can be sustained and strengthened without increasing trade. Without question, many Americans today are ill-prepared to compete in today's global economy, which features increasing international trade, or to adjust to the inevitable disruptions that free market competition entails. This has happened in manufacturing and other sectors of the economy. But this is not because of freer trade. It is because of the political failure, while liberalizing trade, to provide many Americans with the enabling tax and regulatory atmosphere and the quantity and quality of education, training, and other tools they need to take best advantage of the new opportunities provided by globalization.

To remedy this failure, Biden has proposed infrastructure investments and an array of social reforms. He has also proposed a worker-centric trade policy. In explaining what this policy means in June 2021 to the union workers of the AFL-CIO, which had much to do with Biden's election, Tai spoke about this goal. She said:

> The first step to achieving this goal is creating a more inclusive process. . . . By bringing workers from all backgrounds and experiences to the table, we will create inclusive trade policy that advances economic security and racial and gender equity. We want to lift up women, communities of color, and rural America—people that have been systematically excluded or overlooked. . . . We're putting foreign policy and trade together for the middle class.[28]

These are worthy—albeit tardy—objectives. Yet the methods the Biden administration has in mind for achieving them through trade policy are less than clear. The administration describes its worker-centric trade policy as "historic."[29] But of what, in the actual implementation of American trade policy, is this supposedly historic approach comprised?

The president and his administration have set out globally to combat forced labor and child labor related to trade.[30] This approach is long overdue. Yet, based on the totality of their trade actions during Biden's first year, it appears that, to a worrying extent, worker-centric trade is merely a new rhetorical cloak for long-familiar forms of protectionism. Although many of the new infrastructure and other domestic investments Biden has sought are surely needed in some form, they have been accompanied so far by a growing number of trade-restricting measures that demonstrate an apparent indifference to whether U.S. markets remain open to trade. Indeed, some of these measures suggest that the president, his administration, and many of his supporters in the Congress wrongly see the imposition of trade restrictions as actively enhancing the overall health of the American economy. Instead of further liberalizing trade, they seem bent—much like the Trump administration—on trying to manage trade.

Since the signing of the GATT in 1947, both Republican and Democratic administrations before Trump had proceeded from the premise that establishing the right global ground rules for trade—and upholding them—was the best way to grow American prosperity. If the rules were right, it was believed, then American businesses and workers would succeed in the world economy. The underlying bipartisan assumption was the Smithian view that more trade can be a win-win for everyone and that, within the right enabling trading system of rules-based nondiscrimination, sales of American goods and services would, because of their comparative advantages, help produce that growth. This assumption inspired the leading role taken by the United States in the transformation of the GATT and the reformation of the rules-based multilateral trading system under the international institutional auspices of the WTO in 1995.

With his view of trade as zero-sum and as purely transactional, Trump discarded this long-standing bipartisan premise in favor of seeking trade wins for certain politically favored U.S.-based companies and industries by dictating specific trade outcomes. This approach, of course, only distorted what would otherwise have been market outcomes while empowering bureaucrats to pick and choose winners and losers by manipulating tariffs, tariff exemptions, antidumping and other trade remedies, and governmental subsidies. It also enabled the individuals and the interest groups that supported Trump politically and financially to influence administration decisionmaking in ways that distorted market results even more.

During his first year, Biden has embraced—and has been building on—Trump's turn toward managed trade. Examples are many. Most telling is his support for buy American requirements, which are less-strident echoes of Trump's calls for putting America first. To begin with, in July 2021 there came new domestic-content requirements for government purchases.[31] Next, in November, were buy American mandates in the omnibus infrastructure legislation, which require that all the iron and steel in new federal infrastructure projects be sourced in the United States.[32] These nationalistic preferences, favored by Trump, are further proliferating under Biden and congressional Democrats, with potentially economically destructive consequences and national security implications in federal defense purchases.[33] Buy American provisions, as Scott Lincicome of the Cato Institute has written, "are just another form of protectionism; they've been found, for example, to act as a barrier to entering the U.S. market and to raise domestic prices in the same way that a tariff does."[34] Such provisions impose high costs on taxpayers and deny Americans who are not favored with these preferences what would otherwise be economic opportunities, resulting in an opportunity cost for these Americans and for our country as a whole, both now and in the future.[35]

> "During his first year, Biden has embraced—and has been building on—Trump's turn toward managed trade."

Many domestic industries that benefit from lower-cost and, sometimes, higher-quality imports in their inputs have opposed these requirements because they will add to production costs, be passed along to consumers as increased prices, and thus diminish the industries' competitiveness, both at home and abroad. But domestic-content requirements are popular with domestic steelmakers, labor unions, and other key constituencies in the pivotal political states of the Midwest that have long been advocates of protectionism. Thus, the requirements are widely supported by Democrats and Republicans alike. (It is also much easier for a member of Congress to vote for a buy American requirement than it is to explain the counterintuitive logic of comparative advantage to a voter at a town hall meeting in their congressional district.)

These and similar endeavors to manage trade by mandating domestic content are inspiring increasing controversy with U.S. trading partners, with some suggesting that these measures may be inconsistent with U.S. treaty obligations. As one example, Biden's Build Back Better bill would provide a subsidy in the form of a $12,500 tax credit for purchases of electric vehicles (EVs), which are intended to boost production in that emerging auto sector (but, given that the market seems to be rapidly moving to EVs anyway, may not do so).[36] Attracting concern from some auto producers, as well as from some of America's most important trading partners, is that this tax credit is reduced by $4,500 if the purchase is not a union-made EV assembled in the United States. The subsidy is reduced another $500 if the battery in the EV is not American-made. Moreover, beginning in 2027, only EVs assembled in the United States would qualify for the tax credit.[37] Canada, for one, says this buy American, buy union subsidy would amount to a 34 percent tariff on vehicles assembled in Canada, and it has promised retaliation and legal action over this discriminatory provision under the United States-Mexico-Canada Agreement (USMCA) if Biden and the Congress do not relent.[38]

Also in the auto sector, Canada and Mexico are mulling joint-trade action against the United States under the USMCA over the highly restrictive way in which the Biden administration is interpreting the rules of origin for auto parts under that regional agreement.[39] Rules of origin determine whether a product can cross a border duty-free. Tightening the origin rules to require more domestic content was one of the protectionist changes sought, and proclaimed as a success, by Trump, Lighthizer, and congressional Republicans and Democrats alike, during the North American Free Trade Agreement (NAFTA) renegotiation that resulted in the USMCA.[40] Such requirements do little to create American jobs, and they raise auto prices for consumers.[41] But now, Tai and others in the Biden administration are supporting this de facto restriction of regional trade entry and trade assembly for Canadian and Mexican auto parts in the U.S. market; allegedly, they are also applying the rules so as to be even more trade-restrictive than was agreed. It was Tai, of course, who helped craft these protectionist rules while working in concert with Lighthizer during her service to the Democrats in the Congress, who supported Trump on this issue. Unlike Trump, Biden and Tai are not hurling insults against our nearest neighbors and large trading partners, Canada and Mexico; but, in this and other ways, they are, very politely, doing their best to limit the access of Canadian and Mexican products to the American market and to draw the line against further North American economic integration.

Another instance of Biden's support for managed trade is his approach to the international supply chains that are the formative links for regional and global economic integration. Assailed on all sides by outcries over supply-chain bottlenecks, the president is under pressure from "a once-in-a-lifetime shock to supply and demand" in the wake of the prolonged COVID-19 shutdowns of the past two years and the ongoing economic consequences of successive variants of the novel coronavirus.[42] Adding to this pressure are concerns borne of the pandemic about the ready and reliable availability of medicines and other medical goods.[43] If supply-chain obstructions persist, a geographical consolidation of hitherto fine-tuned shipping networks could significantly alter international trade by moving producers closer to consumers.[44] The politically expedient choice—the one that resonates most with a public that may not all remember the basic economic lessons of Adam Smith and his successors—is to shorten, or even cut, international supply chains.

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We have learned during the pandemic that, with some essential products, we are in need of more—and geographically more varied—sources of supply. We have learned, too, that we must keep larger inventories on hand in case of an emergency such as the COVID-19 pandemic. The corporate drive for efficiency must be tempered by an awareness of the necessity for ready availability. But a concerted effort to shorten or cut supply chains would be a mistake. The idea that the United States (or any other country) can be resilient, self-sufficient, and independent of all international supply chains is a fantasy. As Lincicome has rightly observed, there is "the very real risk that supply chain nationalism would make the United States less, not more, resilient," for "nationalist policies intended to boost 'essential' industries—for steel, ships, machine tools, semiconductors, and other 'essential' goods—have a long track record of high costs, high risks, failed objectives, and unintended consequences. In case after case, the protected industries did not emerge stronger or more resilient—in fact, just the opposite."[45] Protectionism already distorts supply chains, driving up prices.[46] More protectionism will not end the supply-chain crisis.[47]

Biden's evident commitment to managed trade is an international manifestation of his concomitant commitment, and that of many of the congressional members of the Democratic Party, to the seductive siren song of industrial policy, which focuses government support on "targeted and directed efforts to plan for specific future industrial outputs and outcomes."[48] In sum, industrial policy is the substitution of a government decision for a market decision pursuant to a government plan that is intended to shape the economic future toward a predetermined direction. It is usually centered on commercial manufacturing. And it is usually accompanied by nationalistic measures that are framed to keep foreign products out of the national market and to subsidize domestic production and exports in favored sectors through a variety of tariffs, nontariff trade barriers, and governmental grants, loans, tax breaks, and other subsidies that are the antithesis of trade and market liberalization.

"The United States does not need to become more like China; the United States needs to become more like America."

Inspired to varying extents by the need to recover from the economic plunge caused by the pandemic, a desire to address climate change by transitioning away from carbon as an energy source, and an apprehension over intensifying competition with the output of China's state-directed economy, many congressional Democrats (along with the growing number of economic nationalists among congressional Republicans) have turned more and more toward governmental intervention in the American marketplace. To cite one instance, in addition to the domestic-content discrimination in proposed tax credits for purchases of electric vehicles, Biden's proposed Build Back Better plan would inflate the costs and impede the innovativeness of clean energy and clean electricity projects by burdening them with buy American requirements.[49] New subsidies abound in the Biden plan. Also, new subsidies, along with new trade restrictions, are among the shortcomings in the various versions of the America COMPETES Act, which currently awaits action by a joint conference of the House and Senate. A number of these proposed measures raise serious concerns under the rules of the WTO to which the United States has agreed in the WTO treaty.[50]

In addition to the possibility of inconsistency with U.S. international trade obligations, the problem with industrial policy is that, economically, it will not accomplish what its advocates hope to accomplish. It will undermine American competitiveness while attempting to enhance it. Targeted governmental intervention through subsidies and other means can "crowd out private investments and steer public resources into unproductive endeavors, as well as more serious problems, such as cronyism and corruption."[51] Such intervention also amounts to having the government pick winners and losers in the marketplace, which risks wasting tax dollars and sabotaging the initiative and innovation that are essential to retaining and improving the competitiveness of American production.

The appropriate response to China's state-driven industrial policy and its turn away from freer markets is not to imitate the economic shortsightedness of the Chinese government under the dictates of President Xi Jinping, which will in time come to haunt and hinder China; rather, it is to recommit to the free market foundations of liberal capitalism that have made the American economy the largest and most successful in human history. That is the path to more American competitiveness. The United States does not need to become more like China; the United States needs to become more like America.[52] Tried intermittently in the past, "industrial policy has an extensive and underwhelming history in the United States, featuring both seen and unseen high costs, failed objectives, and political manipulation."[53]

As with Trump before him, some of Biden's industrial policy proposals are simply responses to pleas for direct and indirect government handouts by politically connected companies, unions, trade associations, and other interest groups. Many of these proposals are well intended, including most that relate to addressing climate change. Yet tax credits, subsidies, and other discriminatory endeavors to sway market decisions toward preferred outcomes, however desirable, are fraught with risk. They are far from guaranteed to achieve their stated goals, and they are likely to undermine—instead of add—to the domestic and global competitiveness of American businesses and workers.[54] Tax dollars should be spent instead on significantly increasing funding for basic scientific research and development, ensuring an adequate social safety net that furthers worker mobility, and reforming and elevating every level of American education. According to the Department of Education, 54 percent of adults in the United States—about 130 million people—read and comprehend below the sixth-grade level. The low level of literacy in America alone could be costing the economy as much as $2.2 trillion a year.[55] This is not the path to improved American competitiveness, and this failure on our part cannot be blamed on China.

BIDEN AND TARIFFS

Trump proclaimed himself a "tariff man."[56] Biden would not be so brash, but he and his administration seem to share Trump's addiction to tariffs. Candidate Biden described the tariffs—the border taxes on imports—that were imposed by Trump on rivals and allies alike as "damaging," "reckless," and "disastrous."[57] His supporters can be forgiven for assuming he would remove those tariffs as soon as he was inaugurated. However, now that he is in the White House, Biden appears to be enamored of tariffs almost as much as his predecessor. So, too, it appears, is his chief trade negotiator. Tai has not only defended the Trump tariffs—and tariffs in general—she has also, to the utter bewilderment of many economists, challenged the notion that tariffs are ultimately paid by consumers. She has claimed that it is a more complicated calculation than it appears.[58] Furthermore, she has made it clear that she sees tariffs—including the Trump tariffs—as valuable negotiating leverage with China and other U.S. trading partners. She calls tariffs a "very important tool" in the administration's trade policy.[59]

Biden and Tai are ignoring the extensive harms to American businesses and workers that have been caused by these tariffs, which will continue for as long as they remain in place. Tariffs are not paid by foreign exporters; they are paid by importers. Whatever Tai may think, the costs of tariffs are passed along to domestic purchasers. They increase both the consumption and production costs of goods in the United States, and, as a result, they diminish the competitiveness of U.S. production and the economic benefits of competition, thus constraining economic growth.[60] The Trump tariffs have resulted in a peak loss of 245,000 American jobs.[61] They "currently impact over $400 billion of imports and exports and increase consumer costs by roughly $51 billion annually."[62] The cost of these tariffs has been borne almost entirely by American consumers, including both individual buyers of retail products and business buyers of intermediate goods that are inputs into U.S. production.[63]

> "Biden and Tai are ignoring the extensive harms to American businesses and workers that have been caused by border taxes on imports, which will continue for as long as they remain in place."

One economic consequence of COVID-19 in the United States is inflation. With shortages of supply unable to meet rising demands amid the supply-chain constrictions of the continuing pandemic, inflation is increasing. These constrictions will be eased when supply catches up with demand, which should, in turn, help reduce inflation. Domestic inflationary pressures also could, in certain cases, be reduced by the reduction or elimination of tariffs. This, though, does not seem to be a consideration in Biden's trade policy. In casting about for culprits to blame for inflation, the Biden administration has generally not mentioned tariffs. Treasury Secretary Janet Yellen, a former chair of the Federal Reserve who fully understands the inflationary and other harmful effects of tariffs, has ventured so far as to point out that lowering tariffs would have a "disinflationary" effect.[64] But no one else in the administration seems to be listening to her.

One of the most egregious examples of the Biden administration's affection for tariffs is the recent decision of his Commerce Department to double the average tariff on imports of Canadian softwood lumber, which will add to rapidly rising building costs in a heated U.S. housing market.[65] These tariffs may yet be cut, and, to be sure, the Canadians should cut any lumber subsidies. Also, to be fair, the problematic U.S. trade remedies system existed long before Biden took office. But cheaper imported lumber means more affordable housing for Americans. Lumber prices in the United States are already three times what they were before the pandemic began. The National Association of Home Builders reports that rising lumber prices alone have added nearly $36,000 to the price of a new home.[66] These lumber tariffs are defended by the Biden administration as leverage to encourage the Canadians to discipline their lumber subsidies. But, given lumber shortages, is this really the best time to make this point, however valid and however politely, to our friends in Canada, about the trade-distorting ways in which they contort their lumber stumpage fees? It is through this tariff-tainted perspective of polite protectionism that Biden and Tai view the wider trading world.

> "For supposed national security reasons, the United States imposed harmful trade restrictions on its own treaty allies."

But perhaps the worst example of Biden's affection for tariffs is his refusal to eliminate the tariffs that Trump imposed on imports of steel and aluminum. In part to forge a common trade strategy for confronting China, the Biden administration is working worldwide to try to repair the damage done to U.S. trade relations with numerous American allies and other trading partners by the steel and aluminum tariffs, among other issues. The metals tariffs are at the center of many of these discussions, but, under pressure from labor unions and trade-exposed domestic steel manufacturers, the president has mostly kept these tariffs in place. Where he has agreed to modify them, he has not removed them but merely transformed them, for the most part, into another form of trade protectionism.

In trade relations with the European Union, in particular, the president and his team have made notable progress. In June 2021 the United States and the EU settled their 17-year-long WTO dispute over large commercial aircraft subsidies.[67] In September 2021, in Pittsburgh, the United States and the EU convened the first meeting of their newly-formed United States–European Union Trade and Technology Council (TTC) to try to align and coordinate mutual approaches to technology standards, data governance, climate and clean technologies, semiconductor supply chains, and other common technology and technology-related concerns. As Jennifer Hillman and Seara Grundhoefer have written, the council offers the two sides a chance to put mutual grievances behind them and "turn the page on U.S.-EU economic relations by focusing on a limited but strategically important set of issues."[68]

Then, in October 2021, the Biden administration concluded a deal with the EU to ease the effects of American tariffs on imports of European steel and aluminum.[69] In 2018, Trump had levied tariffs of 25 percent on imports of steel and 10 percent on imports of aluminum. He did this under the authority of Section 232 of the Trade Expansion Act of 1962 based on the dubious notion that these imports were undermining American national security. As Chad P. Bown and Kadee Russ have pointed out, although these Section 232 tariffs "were motivated by combatting China, they were imposed on NATO and other alliance members, because the United States had largely stopped importing steel and aluminum from China, as a result of antidumping and countervailing duties imposed by earlier US administrations."[70] In other words, for supposed national security reasons, the United States imposed harmful trade restrictions on its own treaty allies. These reasons were spurious, to say the least, but they remained in place during Trump's term.[71]

Under intense pressure from Lighthizer and others in the Trump administration, several countries tacitly agreed to "voluntary export restraints" of their steel and aluminum. Under additional pressure, "voluntary" restrictions were later changed to quotas with South Korea, Brazil, and Argentina. Voluntary export restraints are illegal under the WTO treaty. Without qualification, Article 11.1(b) of the WTO Agreement on Safeguards states that "a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangement or any other similar measures on the export or the import side."[72] Indeed, much of the impetus for concluding that agreement in the Uruguay Round of multilateral trade negotiations was to discipline the rampant use—often by the United States—of voluntary export restraints, which impose invisible distortions on trade outcomes in the market and put smaller countries at the mercy of larger ones. Trump and Lighthizer (who had previously negotiated voluntary export restraints with Japan during the Reagan administration in the 1980s) blithely ignored this WTO obligation, and Biden and Tai have not mentioned it.

In response to the Trump steel and aluminum tariffs, other countries refused to buckle to U.S. pressure. The 26 member states of the European Union and 7 other WTO members chose instead to retaliate by imposing tariffs of their own. These are equally illegal under WTO rules because the retaliation has not been authorized after a finding of a treaty violation by the United States in a WTO dispute settlement. And a total of 34 WTO members initiated a total of eight legal complaints against the United States in the WTO: Canada, Mexico, Russia, Turkey, India, Switzerland, Norway, China, and the 26 member states of the European Union. Seven of these WTO cases are still pending in Geneva. The Biden administration is not looking forward to legal judgments in these pending WTO disputes.[73] The U.S. defense to these unilateral tariffs in the WTO depends on whether the United States can succeed legally in its claim of an exception based on national security.

Given the speciousness of the Trump administration's descriptions of its "national security" excuses for applying these tariffs, including on products from America's NATO and other allies, this seems unlikely. And this unlikelihood is perhaps one reason why the Biden administration continues to procrastinate on participating with other WTO members in reviving the appellate function of the WTO dispute settlement system. Like the Trump administration, the Biden administration insists that the WTO has no jurisdiction to judge a WTO member's claim of a national security excuse. But this view has already been rejected by one WTO panel chaired by distinguished former WTO Appellate Body Member Georges Abi-Saab.[74] And it begs the inevitable question: If the WTO has no jurisdiction, then why have the limited circumstances in which this excuse can be justified been spelled out in some detail in Article XXI of the GATT—and remained there without change for 75 years?[75]

The EU—hardest hit by the tariffs among all U.S. trading partners—held off for as long as it could politically, but then, under mounting domestic pressure, eventually imposed $3 billion in retaliatory tariffs on U.S. exports in other sectors of trade. Later, the EU threatened to levy an additional $4 billion in tariffs on U.S. exports. Facing the imminence of these additional tariffs, the Biden administration decided to negotiate with the Europeans and, in October 2021, concluded a deal with the EU to ease the effects of the trade restrictions that the Trump administration had imposed on imports of European steel and aluminum.[76] The deal the Biden administration concluded with the EU on the metals tariffs has been praised for freeing up transatlantic trade. To some extent, it does that. But not entirely. Although the president said that the deal "immediately removes tariffs on the European Union," in fact it substitutes new bilateral tariff-rate quotas for the tariffs. These remove the tariffs from a set amount of goods, but above that low number, the tariffs still apply.[77] Thus, the U.S.-EU deal on steel and aluminum is simply one more example of the Biden administration trying to manage trade. The fact that this continued distortion of trade has been done politely and with the no doubt reluctant acquiescence of the Europeans does not make it any less a distortion.

> "That the continued distortion of trade has been done politely and with the no doubt reluctant acquiescence of the Europeans does not make it any less a distortion."

The managed trade in steel and aluminum imports has already imposed heavy costs on American businesses and workers. Like Trump, Biden is, for political reasons, giving priority to trying to protect the jobs of metals workers in the swing states of the Midwest that often determine the outcome of national elections. But jobs in U.S. industries that *use* steel vastly outnumber jobs in industries that *make* steel.[78] Thus, "ultimately, Biden must decide whether the good of the few in American manufacturing—the 137,200 or so steel and ironworkers in the country last year—outweighs the good of the many—the 6.5 million workers, by one estimate, who need steel or aluminum for the goods they make. A number of economists warn that steel tariffs could imperil more jobs than they preserve."[79] Gary Hufbauer has estimated that Trump's steel and aluminum tariffs have already cost American consumers $900,000 per year for every steel industry job that has been saved or created.[80] The latest analysis using Statistica software shows that, in the United States, the steel and aluminum tariffs have created 26,280 jobs in the steel and aluminum sector but have caused the loss of 428,725 jobs in other sectors, for *a net job loss of 402,445 jobs*.[81]

As part of Biden's steel and aluminum deal with the EU, the EU agreed to suspend its WTO case; however, under WTO rules, it could later be revived.[82] Moreover, all the other cases brought against the United States because of the steel and aluminum tariffs by other WTO members continue, although the WTO panels seem to be prolonging their deliberations in hopes that settlements will be reached and they will thereby be rescued from having to rule on the legitimacy of the American national security defense claim. In February 2022, the United States reached a similarly structured—and similarly injurious—deal on steel trade with Japan.[83] In March 2022, the United States struck essentially the same deal with the United Kingdom.[84] American businesses are continuing to be priced out of markets and more American workers are losing their jobs because of these steel and aluminum tariffs and the tariff-rate quotas that the Biden administration has negotiated to replace some of them.

> "Under the prevailing economic and political circumstances in the United States and the rest of the world, eliminating tariffs is all the more difficult."

Under any circumstances, tariffs (like entitlements) are easier to implement than to eliminate. Under the prevailing economic and political circumstances in the United States and the rest of the world, eliminating tariffs is all the more difficult. The Section 232 tariffs on steel and aluminum illustrate this difficulty. Witness also the recent decision by Biden to extend for four years the safeguard tariffs imposed by Trump on imports of some solar energy products. Not only have these solar tariffs not produced the jobs promised by the domestic solar manufacturing industry that sought them; they have, in fact, caused the loss of 6,000 jobs, while the U.S. solar industry as a whole has "missed out on more than 62,000 jobs, $19 billion in private sector investment and more than 10 gigawatts of solar deployment."[85] In addition to these economic costs, it is hard to see how extending the solar tariffs, and thus making solar energy products more expensive, helps Biden achieve his goal of having solar energy produce nearly half of U.S. electricity by 2050.[86]

As Noah C. Gould has explained, "Trade wars create a deadly cycle of market distortion. Tariffs are followed by subsidies to help domestic industry harmed by tariffs. Tariffs persist long after they are implemented despite efforts to remove them."[87] Moreover, although tariffs are taxes, they are *invisible* taxes. For consumers, there is no separate line on a sales receipt that itemizes what tariffs add to prices. So, consumers are less likely to realize that they are paying the tariffs that Trump told them were paid by the Chinese and other foreigners.[88] To his credit, Biden has not made such specious assertions. Yet, to remove tariffs, there must first be a desire to remove them. And there is scant evidence that removing tariffs is a priority for the Biden administration.

BIDEN AND CHINA

The Biden trade focus is mainly on China, where there has been little progress toward bilateral trade understanding in his first year. The clear impression is that, in the Biden trade policy, much as in the Trump trade policy before it, all else is seen through the prism of how it relates to China and especially to the geopolitical dimensions of the U.S.-China relationship. This focus is understandable, given the rapid rise of China and the challenge it poses to the long-assumed economic primacy of the United States and the perpetuation of a liberal international order that has long been led by the United States. It is also understandable given the polarization of American politics. Any move made by Biden to lessen the trade tensions with the Chinese government will immediately be attacked by his Republican adversaries as incriminating evidence of his being soft on China and could, therefore, have harmful repercussions for Biden and for Democrats when Americans return to the ballot box in November. To be fair, at this point, if the political tables were turned, and if any such action were taken by a Republican president, the Democrats would likely do the same.

Foremost among the Trump tariffs still in place are, of course, the illegal unilateral tariffs that were imposed on, at their height, more than $400 billion of imports from China under Section 301 of the Trade Act of 1974. These tariffs are illegal under WTO rules because they are unilateral. The WTO treaty states that a WTO member cannot retaliate unilaterally against what it perceives to be a violation of a

WTO obligation by another WTO member. The aggrieved member must act multilaterally by first engaging in WTO dispute settlement. If a determination is made that a violation has occurred, then retaliation will be authorized by the total membership of the WTO if the member found to be in violation does not eliminate that violation. Acting unilaterally without first engaging in WTO dispute settlement is a violation of the agreement in and of itself.[89] In the current trade mix of uniliteral actions and unilateral retaliations, some complainants who have responded to Trump's unilateralism with their own are reluctant to make this particular claim, but several cases challenging the unilateral actions by the Trump administration are pending in the WTO.[90]

According to Moody's Investors Service, American consumers are bearing nearly 93 percent of the costs of these tariffs on Chinese goods, and American businesses that export to China have been hurt worse by China's retaliatory tariffs (equally illegal under WTO rules) than have the Chinese exporters to the United States.[91] There has been no winner in the Trump trade war with China. Both countries are losers. And all evidence suggests that the United States has been, by far, the bigger loser.[92] Meanwhile, Trump's avalanche of tariffs has had no discernable effect on his stated and worthy objective of encouraging China to depart from its own discriminatory industrial policy of subsidies, technology transfer requirements, intellectual property piracy, and other shadowy practices that are the source of most of the legitimate concerns of the United States and many of China's other trading partners. Without question, Trump's approach has failed.[93]

And yet, despite all the evidence of this failure, and despite Biden's critical assessment while a candidate of the consequences of Trump's "tariff man" excesses, the Biden administration has, thus far, made no move whatsoever to diminish Trump's China tariffs. Quite the opposite. Tai has publicly and pointedly refused to label the Trump trade policy a failure as it relates to China. "I don't think it's fair to say that I've characterized the previous administrations efforts as 'failed,'" she responded to one questioner. "What I would say is that it hasn't gotten us to where we want to go."[94] As Eric Boehm of *Reason* has observed, "Most people would call that failure."[95] Yet, in getting us to where Biden and Tai want us to go with our economic relations with China, Tai seems to have no interest in reducing, much less in eliminating, the bulk of the remaining China tariffs, despite mounting pleas from U.S. businesses desperate to get rid of them.[96] She has restored a lapsed process for seeking exemptions from some of them (through more bureaucratic industrial policy). Tai has said, however, that, in confronting China, she will build on the existing tariffs in crafting Biden's version of an American trade policy addressed at China.[97] Meanwhile, although some of Trump's tariffs have been reduced or excluded through exemptions, they still apply to about two-thirds of U.S. imports from China.[98]

> "There has been no winner in the Trump trade war with China. Both countries are losers."

Biden has inherited a mutual exercise with China in discriminatory and managed trade that is commonly known as the Phase One trade agreement between the two countries. The transactional deal is a poor substitute for the structural trade deal that Trump and Lighthizer wanted but could not get. By its terms, the Chinese agreed to import $200 billion in additional U.S. agricultural, manufacturing, energy, and services products above their purchase amounts in 2017 between the beginning of 2020 and the end of 2021—a promised increase of 55 percent.[99] From the beginning, it has been clear that, whatever China's intent, this goal was unrealistic and unachievable. The general economic slowdown caused by the COVID-19 pandemic only made achieving this goal more problematic. Trump himself has acknowledged that he conjured some of the numerical targets in the deal out of thin air.[100] By year-end 2021, China had met only about 62 percent of the Phase One goal.[101]

What China did accomplish toward the Phase One goal was done through, as noted trade economist Claude Barfield has put it, "managed trade at its most naked."[102] As another leading trade economist, Gary Hufbauer, explained it at the time of the deal, the only way for China to meet the goal was "to resort to Soviet-style managed trade—in other words, China promises to import a certain dollar or physical volumes of detailed goods and services, regardless of market prices or demand conditions. That's the way the old Soviet Union conducted trade with its satellites for 40 years."[103] This, of course, is precisely what the United States, traditionally a defender of free markets, has spent decades urging China not to do. This is the tacit adoption by the United States of a home-grown version of the Chinese industrial policy in the form of government-directed economic planning.

To try to fulfill its obligations under the Phase One deal, China has had to divert at least some trade from other trading partners to the United States. Especially given the overall pandemic economic plunge, there may not, so far, have been that much diversion.[104] However, to the extent that this has happened, imports of U.S. goods into the Chinese market have replaced imports from other countries. If this has happened in individual instances because of actions by the Chinese government, then these are violations by China of one of the most fundamental of WTO trade obligations—the most-favored-nation obligation not to discriminate between and among like traded products from other WTO members.[105] In any such violation by China of this core international trade law, the United States is, if not guilty, then clearly complicit as the beneficiary of the violation. Some other countries have threatened to challenge China on the Phase One deal in the WTO if it distorts their trade.[106]

> "Now that the deadline in the Phase One deal has passed, Biden must decide what to do about the deal and about the fact that China has failed to fulfil its obligations under it."

Now that the deadline in the Phase One deal has passed, Biden must decide what to do about the deal and about the fact that China has failed to fulfil its obligations under it. Instead of discarding the deal or trying to renegotiate it in ways that might give it a grip on reality and some semblance of compliance with WTO obligations, Biden and Tai have doubled down on it. They say they will try to enforce it.[107] Tai has called Phase One "a living agreement." But she has yet to offer much enlightenment on how she would change it. For now, she is simply saying that "we are holding them responsible" under the Phase One agreement.[108] Instead of offering a new approach to trade relations between the United States and China, Biden and Tai are mainly proceeding by digging deeper into the muddy mire of the Trump trade ditch.

Without doubt, there is still a central concern in the Biden administration for the fundamental systemic issues and the discriminatory trade practices that have long been the most salient for the United States in its critique of how China treats foreign trade: trade-distorting industrial subsidies to state-owned enterprises, widespread disregard for intellectual property rights, heavy-handed technology transfer requirements, and the like. These were supposed to be the centerpiece for a promised Phase Two trade deal between a second Trump administration and China. It is unclear, though, how Biden and Tai will be able to strike a new deal with China that will require China to stop managing trade when they are spending so much of their limited political capital on insisting that China adhere to the full letter of a deal that does exactly the opposite. The specific transactional targets in the Phase One deal only reinforce state control of the Chinese economy. The United States should instead be pushing China to turn back toward the "reform and opening up" that has been increasingly discarded by Xi and that would result in a more market-oriented Chinese economy.

The obvious first move the Biden administration should have made to intensify the pressure on China to improve its trade behavior and make some of the systemic changes its trading partners desire would have been to return the United States to the Trans-Pacific Partnership, a regional trade agreement that the Obama administration had negotiated with 11 other Pacific Rim countries. On his first day in office, Trump withdrew the United States from the partnership. Somewhat surprisingly, the 11 other countries decided to go ahead without the recalcitrant Americans and have made a success of the arrangement, which they have renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Presumably, these countries would welcome the return of the United States, while probably also requiring the United States to make some additional liberalizing commitments as the price of its return. Yet the Biden administration has made no move to rejoin the partnership.

This is not surprising. Beltway Democrats are so locked in their own unwise embrace of an abundance of false criticisms of the Trans-Pacific trade agreement that returning to it now would cause them to engage in rhetorical contortions even more twisted than those that are increasingly commonplace in the cacophony of contemporary American politics. Plus, returning to the agreement would provoke the ire of labor unions and other protectionist interests that increasingly dominate the official apparatus of the Washington wing of the Democratic Party. Such a show of political courage for the sake of the common good of the country from Biden and Tai would be most welcome, but it appears unlikely, especially in an election year.

> "A notable priority in the Biden trade policy is an added emphasis on human rights in relation to trade. Thus far, this priority has centered primarily on worker rights."

In the meantime, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership is otherwise occupied with a recent application for membership from—China. The Chinese have already seized the trade initiative in the Asia-Pacific region, which is central to hopes for future growth in U.S. trade, with the entry into force of their new Regional Comprehensive Economic Partnership with 14 other countries in the region, which is mostly a tariff-cutting exercise.[109] As my Cato colleagues have written elsewhere, the successful establishment of the RCEP has had the effect of "enhancing China's economic and geopolitical gravity in the region at the United States' expense."[110] Biden has promised to increase engagement in Asia to secure economic gains from that fastest-growing part of the global economy, repair the damage done by Trump, and counter the ever-rising Chinese influence there. Yet, on trade with Asia, the president and his administration, with their Trump-like America-first mentality, have so far done little more than utter vague musings about exploring some kind of new Indo-Pacific economic framework.[111]

To the extent the Biden administration has set out a strategy for facing China on trade, it has been that of combining with the EU, Japan, and other Chinese trading partners to challenge abusive Chinese trade practices through joint action. It is thought that, with their combined economic weight, a sizeable group of countries could do more to entice China into eliminating, or at least easing, some of the concerns they share about China's structural forms of state-directed trade discrimination. It is far from clear that this will work, but, at the same time, it has not yet been tried. Thus, instead of the unilateralism of Trump toward China, the United States would try to assemble some sort of a coalition. Biden and Tai have not been clear as to whether this hoped-for coalition would work within the WTO or without. Combined legal actions against China's alleged illegal trade actions under the WTO treaty would multiply the pressure on China to comply with an adverse ruling by the WTO by multiplying the possible legal economic sanctions on China if it did not comply. At the same time, a combined negotiating stance by China's major trading partners could move the Chinese government closer to agreeing to needed new and revised WTO rules on investment, industrial subsidies, and other key areas where WTO rules do not yet exist or are inadequate to address the commercial realities of the 21st century economy.[112]

Human Rights and Democracy

A notable priority in the Biden trade policy is an added emphasis on human rights in relation to trade. Thus far, this priority has centered primarily on worker rights. Foremost has been the focus of the Congress and the Biden administration on the forced labor and other pervasive violations by the Chinese government of the human rights of Muslim Uyghurs and members of other ethnic and religious minority groups in Xinjiang Province in northwest China. In December 2021, the president signed into law the Uyghur Forced Labor Prevention Act, which passed with overwhelming bipartisan support in the Congress.[113] This new law bans imports into the United States of products made in whole or in part in the Xinjiang region unless it can be proven that those products have not been made with forced labor.

Despite abundant evidence to the contrary,[114] the Chinese government denies that there is any forced labor in Xinjiang.[115] Also, Chinese officials say the new U.S. statute is contrary to market principles.[116] Yet those people forced into slave labor are not engaging in voluntary commerce in the market, so opposing forced labor is not inconsistent with market principles. What is more, an exception of this kind has long been permitted in both domestic and international law. All goods made with forced labor have been banned in the United States since 1930.[117] This long-standing law complies with U.S. international trade obligations, and so does the new Uyghur Forced Labor Prevention Act. Under the GATT, which is now part of the WTO treaty, an exception to what would otherwise be an obligation of nondiscriminatory treatment for traded products has, since 1947, existed for products of prison labor.[118] In addition, an exception has existed since then for trade restrictions "necessary to protect public morals."[119] Forced labor has long been illegal under international law.[120] It is clearly a violation of public morals. This U.S. action should be able to withstand a challenge by China in the WTO.

> "How far should WTO members go in linking trade to nontrade considerations?"

A broader emerging question is: How far should WTO members go in linking trade to nontrade considerations? The Biden administration must soon respond to the fact that, increasingly, China has been injecting nontrade considerations into trade decisions where there is no exception in the WTO treaty. First, the Chinese government restricted imports of wine and barley from Australia after the Australian government was so bold as to call for an independent investigation of the origin of the COVID-19 pandemic—which started in China—and to criticize repeatedly the Chinese government's actions in Xinjiang and its crackdown on democracy in Hong Kong.[121] Pending disputes between the two countries are now before WTO panels. More recently, the Chinese government has punished Lithuania for permitting the opening there of a representative office for Taiwan by blocking imports of Lithuanian goods and of goods shipped from other countries that include Lithuanian parts.[122] This has disrupted supply chains in much of Europe. The European Union has challenged these actions in the WTO.[123]

There is urgency for attention by the entire WTO membership to this growing practice of trade coercion. Inaction would embolden China to expand those practices and entice other large countries to likewise push smaller countries around. This kind of trade bullying is a far step beyond what Trump did and is precisely the opposite of what the rule of law in the rules-based multilateral trading system is supposed to be about. Likewise, any "anti-coercion" countermeasures the injured countries may choose to take against such bullying could raise some fundamental issues in international trade law and other public international law.

These kinds of nontrade considerations have not historically entered into the trade decisions of the countries that are the members of the system. The underlying understanding among WTO members has always been that the members of the multilateral trading system will trade with one another independently of whatever may be their geopolitical considerations at the time, subject to the national security and other exceptions set out in the WTO treaty. The Chinese actions toward Australia and Lithuania fly in the face of this traditional understanding.

WTO action to address this emerging issue cooperatively will happen only if there is concerted leadership by the Biden administration to help make it happen. At the same time, the president must clarify the link that he and some in his administration have suggested between trade and democracy. Biden has argued that "market democracies, not China or any other country, will write the 21st-century rules around trade and technology."[124] Yet, not all the 164 members of the WTO are democracies, and some others have only the trappings but little or none of the reality of true democracy. Being a genuine democracy is not a prerequisite for membership in the WTO any more than it is for membership in the United Nations. Are the president and others in his administration saying they prefer to make any new trade rules outside the legal framework of the WTO? Are they saying they wish to give preference in trade to products from other democracies, which would violate the WTO obligation of most-favored-nation treatment? Are they saying they wish only to trade with other democracies, which would likewise be inconsistent with WTO rules? Are they saying they intend to make needed new rules for trade only with other democracies? Or are they perhaps saying they wish to agree first on needed new trade rules with other democracies before going together as a group to the other members of the WTO to try to make those new rules fully multilateral within the WTO? Even after the president's first Summit for Democracy in December 2021—which centered on defending democracy against authoritarianism, fighting governmental corruption, and advancing respect for human rights, and did not delve much into economics—we still do not know.[125]

BIDEN AND THE WORLD TRADE ORGANIZATION

There are many puzzling aspects of the Biden trade policy as it relates to the World Trade Organization. Following the scornful retreat from the WTO by Trump, it is altogether unclear how his successor sees the role of the WTO and of the United States in the organization. WTO members failed to agree on a unified statement for the customary concluding declaration at the last ministerial conference in Buenos Aires in 2017 and, for the first time, ended up with no final declaration because the Trump administration insisted on excluding language from the declaration describing the WTO as central to the multilateral trading system.[126] Like other WTO members, the United States had previously insisted on including this statement, which professes a mutual allegiance to the multilateral trading system, in ministerial declarations. Not only did Trump not see the WTO as central to world trade; evidently, he did not see a need for the WTO at all. Does Biden see the WTO as central to world trade?

Unlike Trump, Biden has not threatened to pull the United States out of the WTO and is highly unlikely to do so. Perhaps he comprehends the grave economic and geopolitical consequences for the United States if it were to be so reckless as to do so, which range from a return to astronomical tariffs on American exports to rampant discrimination against American goods and services worldwide and to an unraveling of much of what has been achieved multilaterally toward peaceful global economic governance. And while Trump's trade ambassador, Robert Lighthizer (who had been rejected by other WTO members when nominated for the WTO Appellate Body) rarely missed a chance to denigrate the WTO and made a point of never appearing at the WTO headquarters in Geneva, Tai visited Geneva in October 2021, where she spoke briefly. She stated then that she was there for the purpose of "affirming the United States' continued commitment to the WTO."[127] She added, "The Biden-Harris administration believes that trade—and the WTO—can be a force for good that encourages a race to the top and addresses global challenges as they arise."[128] However, apart from repeating—in perfectly polite terms—the essence of some of the unfounded Beltway aspersions on the Appellate Body and the rest of the WTO dispute settlement system, and making some encouraging statements about the need to conclude some of the current and tediously prolonged WTO negotiations, she had little to say about the details of what she and Biden seek as WTO action and reform.

So far, the WTO seems anything but central to the trade policy of the Biden administration. Trade itself is not an early priority, according to the president himself. And the WTO is treated by the administration as, at best, peripheral to most of what it is doing that relates to trade. WTO obligations are rarely mentioned. WTO options are largely down at the bottom of the list of the administration's trade talking points. Might their slew of buy American and domestic-content requirements violate WTO rules? Might the Phase One trade deal with China that they inherited from Trump and are insisting on implementing do the same? Might WTO panels rule against the unilateral Trump tariffs that Biden has refused to remove? The Biden administration does not even mention these very real possibilities, much less bother to explain why, despite appearances, these and other legal transgressions are not, in their view, WTO violations. All in all, in the Biden trade policy, the WTO and its rules seem mostly an annoying afterthought.

> "Following the scornful retreat from the WTO by Trump, it is altogether unclear how his successor sees the role of the WTO and of the United States in the organization."

The tacit policy of the Trump administration was to comply with WTO rules when it was expedient and ignore them when it was not. Despite some soft and reassuring words to other WTO members, there is no evidence thus far that the policy of the Biden administration is any different. Nor does the Biden administration appear to be doing much more than going through the motions in Geneva. According to former WTO director-general Pascal Lamy of France, a firm friend of the United States, "What Katherine Tai has been doing is all talk and no walk. If you look where they have moved, so far, zero concrete moves."[129] The professional career USTR trade negotiators who endured Trump and are now directed by Biden and Tai say they are "deeply engaged" in WTO deliberations, and there is no doubt a number of them are. But negotiators in Geneva can make only so much progress without strong political backing and the presence and push of political priority. And, on trade, Biden's backing is limited and his priorities are elsewhere. Also, as is obvious to any seasoned American political observer, if the Biden administration wishes to do anything multilaterally on trade, it does not wish to do it until after the U.S. midterm elections in November.

> "All in all, in the Biden trade policy, the WTO and its rules seem mostly an annoying afterthought."

Because of the surge of the Omicron variant of COVID-19, the long-delayed 12th Ministerial Conference of the WTO (originally planned for Kazakhstan in 2019, and, most recently, for Geneva in 2021) was postponed, yet again, until June. Sadly, this is just as well. In part because of the failure of the Biden administration in its first year to seize the initiative and make revival and reinvigoration of the WTO an American priority, an earlier conference would likely have accomplished little. Current WTO negotiations—including those aimed at ending tariffs on environmental goods, establishing new disciplines on fisheries subsidies, and agreeing on core rules on digital trade—are either in impasse or are still short of the consensus necessary for agreement. Numerous new international trade issues are not even on the WTO negotiating agenda.[130] The opportunity is still there for the Biden administration to make the modernization and continued success of the WTO a priority, but positive U.S. leadership is missing. Try as they may, other WTO members are unlikely to succeed without renewed and creative U.S. leadership.

Standing in the way of a return by the United States to an affirmative and positive role as a leader in the WTO is the misguided and misleading assault, by Congressional Democrats and Republicans alike, on the procedures and substance of WTO dispute settlement. Biden and Tai are no exceptions to this errant attack (although Tai, as an experienced WTO litigator, probably knows better but finds it impolitic to acknowledge it). Primarily, this rhetorical mugging has been inflicted on the Appellate Body, the WTO tribunal of final appeal. In the rest of the world, the Appellate Body is widely respected as a fair and impartial tribunal whose jurists have been firmly committed to upholding WTO rules and the rule of law in world trade. Within the Beltway, though, it has long since become gospel that the Appellate Body has exceeded its mandate in the WTO treaty by overreaching and inventing WTO obligations that were never agreed to in the WTO treaty.[131]

This is not true. The Appellate Body—like the Supreme Court of the United States and every other judicial tribunal in the world—is not perfect. It is comprised of human beings with all their frailties. Yes, the Appellate Body has increasingly taken longer than the treaty-allotted 90 days to render its reports, and departing Appellate Body members have sometimes remained much longer than originally anticipated to complete pending appeals. And yes, a few of the reports of the Appellate Body in recent years have said more than, strictly speaking, has been needed to be said to render the necessary legal rulings. The better course for the Appellate Body is always to say less rather than more. All this is fair criticism and should be addressed.

Yet the supposed sins of the Appellate Body in recent years have been wildly exaggerated by the United States—mainly for domestic political reasons.[132] Republican and Democratic administrations alike have lost a long series of antidumping and other trade remedies cases before the Appellate Body in main because they have pushed past what the outer bounds of the WTO rules permit in applying such trade restrictions. This is of great importance in American politics because those who seek restrictions on imports in the form of these remedies are mostly located in Pennsylvania, Michigan, Wisconsin, and other swing states in the Midwest that usually determine the outcomes of national elections. Thus, these interests have inordinate influence in both political parties. American political concerns about legal limits on trade remedies—limits to which the United States agreed to in the WTO treaty—are rarely mentioned in criticisms of the Appellate Body. The largely bogus and often self-righteous rationales of both the Trump and Biden administrations for dismantling the Appellate Body by depriving it of any judges are mostly charades for their politically expedient capitulation to domestic protectionist interests.

More than two years have passed since the Trump administration completed emptying the Appellate Body of its treaty complement of seven judges by blocking a needed consensus on new appointments. This has prevented appeals from WTO panel reports—and thus precluded the WTO membership from finalizing them by adopting them. And this has returned the WTO to the pre-WTO days of the old GATT organization by effectively permitting a country that loses a dispute before a WTO panel to veto enforcement of that judgment. By all appearances, Biden and Tai, like their predecessors, prefer this resulting arrangement, which generally enables the United States to have its way against other—usually smaller—countries. If the United States wins a case before a panel and the losing party blocks the adoption of the panel report, then the United States can proceed with economic sanctions anyway, relying on its enormous economic clout to bludgeon the other country into submission. If the United States loses a case before a panel, however, it can—as it has, hypocritically, already done—appeal the panel ruling to the now-empty Appellate Body and then correctly claim that it has been denied its right of appeal in the WTO treaty and therefore the panel report cannot be adopted. And then only the largest of the U.S. trading partners—the European Union, China, or Japan, perhaps—may have the economic clout to insist that the United States comply with the panel's rulings and recommendations. This is not the international rule of law. This is might makes right.

> "The stonewalling of the selection process for new members of the WTO Appellate Body is not the rule of law. It is might makes right."

Perhaps because it prefers the current situation, thus far the Biden administration has refused to tell other WTO members the precise reforms it seeks in WTO dispute settlement as the price for agreeing to reconstituting the Appellate Body. Other WTO members—while largely disagreeing with almost all of the criticisms the United States has made of the Appellate Body—have bent over backward to try to accommodate the United States on this crucial issue, increasingly to the point of appeasement. Desperate to have the Americans fully engaged once again in the WTO, they seem to be slowly acquiescing to U.S. intransigence. Unintentionally, if these members capitulate to U.S. demands, they risk the independence and impartiality of the Appellate Body and, with it, the entirety of the integrity of the WTO dispute settlement system. This must not happen. Without a system for resolving international trade disputes that upholds those rules independently and impartially, WTO rules will cease to have practical meaning and the WTO as an institution will wither away.

Unless and until this impasse is ended with the reinforcement of the rule of law in the multilateral trading system, the WTO will not be in a position diplomatically to proceed with a broader agenda of reform that would revise and update its rules to realign this essential organization and bring it more fully into the commercial and ecological world of the 21st century.[133] And, without such reforms, the WTO will become increasingly irrelevant as world trade shifts from global governance to an array of multiplying bilateral and regional blocs and trade and trade-related confrontations in which the outcomes are shaped, not by law, but by economic and potentially other forms of international intimidation. In international trade, the rule of law will slowly succumb to the rule of power.

A choice of words often reveals an underlying belief. In her remarks in Geneva, Tai declared that trade "*can be* a force for good."[134] Can be? Why not "has been?" Or, better yet, why not "is?" In her telling phrasing, America's trade ambassador implies, however unwittingly, that trade is not—and has not been—a force for good for the United States and for the wider world. In this, she discloses what is, at bottom, the flawed foundation of the Biden trade policy: it does not assume that trade, as trade, is inherently good, subject to the kinds of exceptions that are set out in the WTO treaty. So long as this view prevails in the Biden administration, there will be no affirmative modernization of the WTO, and thus there will be no real progress in combating and lowering the barriers to trade that are imposing obstacles to the achievement of a broader, more inclusive, and more sustainable prosperity in the United States and in the rest of the world.

CONCLUSION

The current Biden trade policy is the reign of polite protectionism. Trump may return to the White House after the 2024 election, but he does not live there now. For now, there is no reckless talk that "trade wars are good, and easy to win."[135] Presumably, Biden knows better. The words about trade are now in quiet and civil terms. The deeds, however, are still often protectionist, although they may parade under other, less minatory names. Many of the Trump trade restrictions remain. Many more similar restrictions have been proposed. Can this change? After a first year of going mostly in the wrong direction on trade, can Biden and his administration turn the United States away from its self-defeating inward course on trade and turn it back toward the right course of trade liberalization and multilateralism?

> "Much of the challenge of democratic representation lies in summoning the resolve to do something other than merely raising a finger to gauge the current direction of the political wind."

Doing so will require the expression of a much clearer understanding by the president and by his administration of the vast benefits of trade for Americans and the inevitable economic and other costs for Americans of curbing it. Those in the Biden administration and on Capitol Hill who advocate restraining trade would do well to reexamine some of their premises that tilt them toward old and new kinds of trade protection. Biden's trade policy does not yet reflect it, but, even amid the mire of misinformation about trade and the morass of American political polarization, an American leader with so many achievements and such long experience must surely be aware that trade has been—and is—a force of good, and that more trade is a necessary means of making more prosperity.

Doing so will also require political courage. Trade policy can never be separated from domestic politics—and certainly not in a democracy. Increasingly, too, in the complexity of an interconnected world, it is harder and harder to separate the commercial considerations of trade policy from the broader decisions of geopolitics. Trade concerns are inextricably interwoven with other concerns. Politically, the easier course by far today is the course of trade protection. Freer trade is hard to advocate at a time when there is so much popular mistrust of expertise and of elites, including elected leaders and established institutions. Yet, the essence of political leadership is finding a way to do what is right and what is most needed even when there are difficult political constraints. In trade, as in all else, this is an everyday challenge for Biden, as it is with everyone who is privileged to serve in an elected office in the representative democracy that is the United States.

Lastly, doing so will require the president and others in his administration—along with their allies in the Congress—to educate the American people anew about how much they have benefited, and are benefiting, from trade and how much more they could benefit if they were willing to support making and maintaining a more open economy as a vital part of an open society. Much of the challenge of democratic representation lies in summoning the resolve to do something other than merely raising a finger to gauge the current direction of the political wind. Democratic governance should not be simply governance by the most recent political poll. A corollary of this challenge as it relates to trade is having the courage to tell the American people the truth about trade. It is cutting through all the misconceptions many of them have about the effects of trade to impart the reality of all that trade has done and can do for them.

Rising to this challenge has never been easy in American politics. It is not easy now. As Tai has ruefully said on trade, "It's really complicated right now."[136] But this is no excuse for not doing what our chosen leaders must do: rise above the complications to end the reign of polite protectionism by framing and pursuing a new trade policy for all Americans—a policy that will achieve additional trade liberalization, stop managed trade, halt trade-restrictive industrial policy, renew trade multilateralism, and give restored and unflinching support to the international rule of law in trade.

APPENDIX

Biden administration's major actions on trade, January 2021–March 2022

Date	Action	Updates
January 20, 2021	Biden signs Executive Order 13990: "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," revoking the permit for the Keystone XL pipeline.	–
January 25, 2021	Biden signs Executive Order 14005: "Ensuring the Future Is Made in All of America by All of America's Workers," to tighten certain buy American regulations.	Made in America office established within the Office of Management and Budget; "Made in America" website launched; proposals to amend the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement published on July 30 and August 30, 2021.
February 24, 2021	Biden signs Executive Order 14017: "America's Supply Chains," to review vulnerabilities in the supply chains of semiconductors, high-capacity batteries, critical minerals and other strategic materials, and pharmaceuticals and active pharmaceutical ingredients.	100-day supply chain assessments completed on June 8, 2021; established Supply Chain Disruptions Task Force in June 2021; one-year reports analyzing key weaknesses and devising multiyear strategies to address them published on February 24, 2022.
March 4, 2021	Reaches an agreement on a four-month suspension of tariffs related to the Airbus-Boeing dispute with the UK.	Agreement for a five-year suspension reached with the UK.
March 5, 2021	Reaches an agreement on a four-month suspension of tariffs related to the Airbus-Boeing dispute with the EU.	Agreement for a five-year suspension reached with the EU.
May 5, 2021	Announces support for TRIPS waiver for COVID-19 vaccines.	Negotiations ongoing at the WTO.
May 12, 2021	Invokes USMCA labor rapid-response mechanism for the first time due to concerns about denials of labor rights at a General Motors plant in Silao, Mexico.	Remediation agreed with Mexico.
May 25, 2021	Requests USMCA panel to challenge Canada's allocation of dairy tariff-rate quotas.	Prevailed in panel on January 4, 2022.
May 26, 2021	Submits proposal on addressing forced labor as part of WTO negotiations on fisheries subsidies.	Negotiations ongoing at the WTO.
June 2, 2021	Announces Section 301 tariffs on Austria, India, Italy, Spain, Turkey, and the UK, due to their digital services taxes, immediately suspending them to allow time for negotiations on international taxation at the OECD and the G20.	–
June 9, 2021	Invokes USMCA labor rapid-response mechanism due to concerns about denials of rights at an auto parts manufacturing facility in Matamoros, Mexico.	Remediation agreed with the auto parts company in Mexico.
June 15, 2021	Announces joint U.S.-EU cooperative framework for large civil aircraft. Suspends Section 301 related to Airbus-Boeing dispute for five years.	–
June 17, 2021	Announces joint U.S.-UK cooperative framework for large civil aircraft. Suspends Section 301 tariffs related to Airbus-Boeing dispute for five years.	–
July 19, 2021	Reaches an agreement with State Bank of Vietnam on addressing Vietnam's currency practices, settling Section 301 investigation on this matter.	–
July 20, 2021	Joins WTO negotiations on services domestic regulation.	Negotiations concluded on December 2, 2021.

Sources: White House, Office of the United States Representative, and the *Federal Register*.

Note: G20 = Group of Twenty; OECD = Organisation for Economic Co-operation and Development; TRIPS = Trade-Related Aspects of Intellectual Property Rights; USMCA = United States-Mexico-Canada Agreement; WTO = World Trade Organization.

APPENDIX (CONTINUED)

Biden administration's major actions on trade, January 2021–March 2022

Date	Action	Updates
September 27, 2021	Build Back Better Act, containing protectionist provisions such as a tax credit for union-made electric vehicles, introduced in the House of Representatives.	Passed in the House on November 19, 2021; held up in the Senate due to political disagreements.
September 28–29, 2021	Convenes inaugural U.S.-EU Trade and Technology Council meeting in Pittsburgh.	–
October 1, 2021	Reaches an agreement with Vietnam on addressing illegal timber trade, settling Section 301 investigation on this matter.	–
October 4, 2021	United States Trade Representative Katherine Tai delivers a speech outlining the Biden administration's approach to the U.S.-China trading relationship.	China has not fulfilled its purchase commitments under the Phase One deal.
October 13–25, 2021	Reaches agreements with businesses, port authorities, and labor unions to get the Port of Los Angeles/Long Beach to expand to 24/7 operations.	–
October 21, 2021	Reaches an agreement with Austria, France, Italy, Spain, and the UK to resolve Section 301 investigation on their digital services taxes in light of OECD/G20 framework announced on October 8, 2021.	–
October 31, 2021	Reaches an agreement with the EU on steel overcapacity and clean manufacturing, replacing Section 232 tariffs with tariff-rate quota system.	–
November 15, 2021	Signs Infrastructure Investment and Jobs Act into law, tightening buy America mandates for federal procurement.	–
November 22, 2021	Reaches an agreement with Turkey to resolve Section 301 investigation on its digital services taxes in light of OECD/G20 framework announced on October 8, 2021.	–
November 24, 2021	Reaches an agreement with India to resolve Section 301 investigation on its digital services taxes in light of OECD/G20 framework announced on October 8, 2021.	–
November 30, 2021	Renews trilateral partnership with Japan and the EU to address challenges posed by nonmarket policies and practices of third countries.	–
December 16, 2021	Announces temporary relaxation of trucking regulations to expand the amount of truckers on the road.	–
January 1, 2022	Terminates African Growth and Opportunity Act preferences for Ethiopia, Mali, and Guinea.	–
February 4, 2022	Biden extends Trump-era tariffs on imported solar cells and panels, with some changes.	–
February 7, 2022	Reaches an agreement with the EU on steel overcapacity and clean manufacturing, replacing Section 232 tariffs with tariff-rate quota system.	–
February 11, 2022	Releases Indo-Pacific Strategy.	–
February 24, 2022	Announces plan to leverage federal funds, along with the Infrastructure Investment and Jobs Act, American Rescue Plan, Buy American Act, and Defense Production Act to strengthen supply chains and expand the U.S. industrial base.	–

Sources: White House, Office of the United States Representative, and the *Federal Register*.

Note: G20 = Group of Twenty; OECD = Organisation for Economic Co-operation and Development; TRIPS = Trade-Related Aspects of Intellectual Property Rights; USMCA = United States-Mexico-Canada Agreement; WTO = World Trade Organization.

NOTES

1. Ana Swanson, "In Washington, 'Free Trade' Is No Longer Gospel," *New York Times*, March 17, 2021.

2. Swanson, "In Washington, 'Free Trade' Is No Longer Gospel."

3. "Confirmation Process for Katherine Tai for U.S. Trade Representative," Ballotpedia, https://ballotpedia.org/Confirmation_process_for_Katherine_Tai_for_U.S._trade_representative.

4. See James Bacchus, "Trade Is Good for Your Health: Freeing Trade in Medicines and Other Medical Goods during and Beyond the COVID-19 Emergency," Cato Institute Policy Analysis no. 918, June 30, 2021.

5. Doug Palmer, "Tai Wary of Cutting Tariffs on Health Care Goods," *Politico*, December 9, 2021.

6. Simon Lester, "Countering the 'Unfettered Liberalization' Narrative," *International Economic Law and Policy* (blog), WorldTradeLaw.net, December 9, 2021.

7. "Trade and American Jobs: The Impact of Trade on U.S. and State-Level Employment: 2019 Update," Trade Partnership Worldwide, March 2019, p. 2.

8. Gary Clyde Hufbauer and Zhiyao (Lucy) Lu, "The Payoff to America from Globalization: A Fresh Look with a Focus on Costs to Workers," Peterson Institute for International Economics, Policy Brief 17-16, May 2017, p. 1. These numbers are in 2016 dollars and reflect a household consisting of 2.64 persons.

9. Gabriel Felbermayr, Yoto V. Yotov, and Erdal Yalcin, "The World Trade Organization at 25: Assessing the Economic Value of the Rules Based Global Trading System," Bertelsmann Stiftung, November 2019, p. 33.

10. For some of these dashed hopes, see James Bacchus, "Democrats and Trade 2021: A Pro-Trade Policy for the Democratic Party," Cato Institute Policy Analysis no. 900, August 11, 2020.

11. James McBride, "After Trump: What Will Biden Do on Trade?," Council on Foreign Relations, January 13, 2021.

12. "President-Elect Biden on Foreign Policy," Council on Foreign Relations, November 7, 2020.

13. Edward Alden, "No, Biden Will Not End Trade Wars," *Foreign Policy*, October 2, 2020.

14. "President-Elect Biden on Foreign Policy."

15. "Text: George Bush's Address to the APEC Summit in Shanghai," *The Guardian*, October 20, 2001.

16. See James Bacchus, *Trade and Freedom* (London: Cameron May, 2004).

17. Sean D. Ehrlich, "Opinion—How Much Will Biden's Trade Policy Differ from Trump's?," *E-International Relations*, May 5, 2021; and McBride, "After Trump: What Will Biden Do on Trade?"

18. Daniel Griswold, "Joe Biden's So-So Record on Trade," *Cato at Liberty* (blog), Cato Institute, August 25, 2008.

19. James Bacchus, "Democrats, Free Trade Is Your Destiny," *Wall Street Journal*, December 3, 2018.

20. For my explanation of why these assumptions are incorrect, see James Bacchus, *Trade Links: New Rules for a New World* (Cambridge: Cambridge University Press, 2022), pp. 58–60, 128–132; and James Bacchus, *The Willing World: Shaping and Sharing a Sustainable Global Prosperity* (Cambridge: Cambridge University Press, 2018), pp. 83, 86–90.

21. Eric Martin, "Biden's Fast-Track Trade Authority Is Set to Expire This Week," *Bloomberg*, June 29, 2021.

22. Martin, "Biden's Fast-Track Trade Authority Is Set to Expire This Week."

23. See Caitlan Devereaux, "Presidential Authority over Trade: Imposing Tariffs and Duties," Congressional Research Service, R44707, December 9, 2016.

24. White House, "Fact Sheet: The Bipartisan Infrastructure Deal," press release, November 6, 2021.

25. Mason Bissada, "Biden and Manchin Kept Discussing Build Back Better Bill after Manchin's Public Rejection," *Forbes*, December 31, 2021.

26. Marc L. Busch, "Biden's Muddled Trade Policy," *The Hill*, December 24, 2021.

27. Yuka Hayashi, "U.S. on Sidelines as China and Other Asia-Pacific Nations Launch Trade Pact," *Wall Street Journal*, January 1, 2022.

28. Office of the United States Trade Representative, "U.S. Trade Representative Katherine Tai Outlines Biden-Harris

Administration's Historic 'Worker-Centered Trade Policy,'" press release, June 10, 2021.

29. "Tai Outlines Biden-Harris Administration's Historic 'Worker-Centered Trade Policy.'"

30. Office of the United States Trade Representative, "USTR Announces the Development of a Focused Trade Strategy to Combat Forced Labor," press release, January 25, 2022.

31. White House, "Fact Sheet: Biden-Harris Administration Issues Proposed Buy American Rules, Advancing the President's Commitment to Ensuring the Future of America Is Made in America by All of America's Workers," press release, July 28, 2021.

32. Stephen Barlas, "Domestic Iron and Steel Content Requirements Increase Sharply in Infrastructure Bill," *The Fabricator*, December 13, 2021.

33. Joe Gould, "Buy American: Biden Sees Industry Pushback as Allies Warn of Trade Consequences," *Defense News*, November 1, 2021.

34. Scott Lincicome, "Biden Rejects Open Trade at a U.S. Factory Dependent On It," *Cato at Liberty* (blog), Cato Institute, July 28, 2021.

35. Gary Clyde Hufbauer and Eujin Jung, "'Buy American' and Similar Domestic Purchase Policies Impose High Costs on Taxpayers," Peterson Institute for International Economics, August 6, 2020.

36. Chris Edwards, "No Need for Biden's Electric Vehicle Subsidies," *Cato at Liberty* (blog), Cato Institute, April 26, 2021.

37. Scott Lincicome and Ilana Blumsack, "On EV Tax Credits, What's Proponents' Real Objective?," *Cato at Liberty* (blog), Cato Institute, November 19, 2021.

38. Riley Beggin, "Canada Threatens to Impose Tariffs if EV Tax Credits Pass," *Detroit News*, December 10, 2021.

39. Stephen Wicary, "Trudeau Weighs Auto-Content Rules as Next U.S. Trade Flashpoint," *Bloomberg*, November 29, 2021.

40. See Simon Lester and Inu Manak, "The USMCA Is Moving Forward (Too) Quickly," *Cato at Liberty* (blog), Cato Institute, December 16, 2019; and Simon Lester and Inu Manak, "Evaluating the New USMCA," *Cato at Liberty* (blog), Cato Institute, December 11, 2019.

41. *Hearing on Implementation and Enforcement of the United States-Mexico-Canada Agreement: One Year After Entry into Force, Before the Committee on Finance*, 117th Cong. (2021) (testimony by Inu Manak, Research Fellow at the Cato Institute), https://www.cato.org/testimony/hearing-implementation-enforcement-united-states-mexico-canada-agreement-one-year-after.

42. Scott Lincicome, "A Reality Check on the Pandemic, Supply Chains, and Our 'April 2020 Mindset,'" *The Dispatch*, March 3, 2021.

43. See Bacchus, "Trade Is Good for Your Health."

44. Harry Dempsey, "No End in Sight," *Financial Times*, January 10, 2022.

45. Dempsey, "No End in Sight." See also Scott Lincicome, "Manufactured Crisis: 'Deindustrialization,' Free Markets, and National Security," Cato Institute Policy Analysis no. 907, January 27, 2021.

46. See, for example, Gabriella Beaumont-Smith, "More Regulation Will Not Improve Port Efficiency," *Cato at Liberty* (blog), Cato Institute, November 16, 2021.

47. Scott Lincicome, "More Protectionism Won't Fix the Supply-Chain Crisis," *Barron's*, November 8, 2021.

48. Adam Thierer, "On Defining 'Industrial Policy,'" *Technology Liberation Front* (blog), September 3, 2020.

49. Brian Picone and David E. Bond, "House 'Build Back Better Act' Sets Stage for Trade Disputes over Green Energy," White and Case, November 19, 2021.

50. Scott Lincicome, "Moving Fast and Breaking Things," *The Dispatch*, February 2, 2022.

51. Adam Thierer and Connor Haaland, "Does the United States Need a More Targeted Industrial Policy for High Tech?," Mercatus Center, George Mason University, November 17, 2021.

52. For a concurring view, see Tori K. Smith, "Joe Biden's China Trade Strategy Would Make U.S. More like China," Heritage Foundation, October 7, 2021.

53. Scott Lincicome and Huan Zhu, "Questioning Industrial Policy: Why Government Manufacturing Plans Are Ineffective and Unnecessary," Cato Institute White Paper, September 2021, p. 48.

54. See generally Daniel Ikenson, "Mercantilist Reciprocity or Free Trade: Globalization at a Crossroads," Hinrich Foundation, October 2021.

55. Michael T. Nietzel, "Low Literacy Levels among U.S. Adults Could Be Costing the Economy $2.2 Trillion a Year," *Forbes*, September 9, 2020.

56. Jacob Pramuk, "'I Am a Tariff Man': Trump Threatens to Restart Trade War if China Talks Fail," *CNBC*, December 4, 2018.

57. "Biden's Hands May Be Tied on Trump's China Tariffs, Trade Experts Say," Reuters, September 8, 2020.

58. Steven Overly, "U.S. Trade Chief: Biden Will Build from Trump-Era Tariffs to Confront China," *Politico*, September 30, 2021.

59. Noah C. Gould, "Biden Continues Trump's Harmful Trade Policy," *National Review*, October 11, 2021.

60. Andrew Chatzky and Anshu Siripurapu, "The Truth about Tariffs," Council on Foreign Relations, October 8, 2021.

61. "The US-China Economic Relationship: A Crucial Partnership at a Critical Juncture," US-China Business Council and Oxford Economics, January 2020.

62. Tom Lee and Jacqueline Varas, "The Total Cost of U.S. Tariffs," American Action Forum, November 16, 2021.

63. See, for example, Mary Amiti, Stephen J. Redding, and David Weinstein, "The Impact of the 2018 Trade War on U.S. Prices and Welfare," National Bureau of Economic Research Working Paper no. 25672, March 2019; Pablo D. Fajgelbaum et al., "The Return to Protectionism," National Bureau of Economic Research Working Paper no. 25638, October 2019; and Mary Amiti, Stephen J. Redding, and David E. Weinstein, "Who's Paying for the US Tariffs? A Longer-Term Perspective," National Bureau of Economic Research Working Paper no. 26610, January 2020.

64. David Wainer, "End Trump's Trade War? Easy Inflation Win Could Backfire on Biden," *Bloomberg*, November 18, 2021.

65. "Biden Joins the Lumber Trade Wars," *Wall Street Journal*, November 29, 2021.

66. "Skyrocketing Lumber Prices Add Nearly $36,000 to New Home Prices," National Association of Home Builders, April 28, 2021.

67. Silvia Amar and Leslie Josephs, "U.S. and EU Resolve 17-Year Boeing-Airbus Trade Dispute," CNBC, June 15, 2021; and see also Sylvia Pfeifer and Aime Williams, "UK and US Settle Long-Running Airbus-Boeing Trade Dispute," *Financial Times*, June 17, 2021.

68. Jennifer Hillman and Seara Grundhoefer, "Can the U.S.-EU Trade and Technology Council Succeed?," Council on Foreign Relations, October 29, 2021.

69. Seung Min Kim and Jeff Stein, "U.S. Announces Deal with European Union to Ease Steel and Aluminum Tariffs Enacted under Trump," *Washington Post*, October 30, 2022; and see also Scott Lincicome and Inu Manak, "Protectionism or National Security? The Use and Abuse of Section 232," Cato Institute Analysis no. 912, March 9, 2021.

70. Chad P. Bown and Katheryn (Kadee) Russ, "Biden and Europe Remove Trump's Steel and Aluminum Tariffs, but It's Not Free Trade," *Trade and Investment Policy Watch* (blog), Peterson Institute for International Economics, November 11, 2021.

71. Aaron Gregg and Christian Davenport, "Trump Says Steel Imports Are a Threat to National Security. The Defense Industry Disagrees," *Washington Post*, March 5, 2018.

72. Agreement on Safeguards art. 11(b), April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 154.

73. Marc L. Busch, "The Six Trade Disputes That Could Imperil American Exports for Years to Come," *The Hill*, February 5, 2022.

74. "Russia—Measures Concerning Traffic in Transit," Report of the Panel, World Trade Organization, WT/DS512/R, April 5, 2019.

75. General Agreement on Tariffs and Trade, art. XXI, October 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

76. Kim and Stein, "U.S. Announces Deal with European Union."

77. Bown and Russ, "Biden and Europe Remove Trump's Steel and Aluminum Tariffs."

78. Kadee Russ and Lydia Cox, "Will Steel Tariffs Put U.S. Jobs at Risk?," Econofact, February 26, 2018.

79. Steven Overly, "Why Trump's Steel Tariffs Are Now Biden's Political Headache," *Politico*, September 6, 2021.

80. Heather Long, "Trump's Steel Tariffs Cost U.S. Consumers $900,000 for Every Job Created, Experts Say," *Washington Post*, May 7, 2019.

81. "Projected Overall Number of Jobs Gained or Lost as a Result of Steel and Aluminum Tariffs and Subsequent

Retaliations in 2018, by State," Statista, 2022, https://www.statista.com/statistics/914135/predicted-job-gains-losses-steel-aluminum-import-tariffs-state/.

82. "U.S., EU Downgrade Metal Tariff Dispute at WTO," Reuters, January 21, 2022.

83. Scott Lincicome, "This (Steel) Deal Is Getting Worse All the Time," *Cato at Liberty* (blog), Cato Institute, February 8, 2022.

84. Andrea Shalal and David Lawder, "New U.S.-U.K. Trade Deal Cuts Tariffs on British Steel, American Motorcycles, Bourbon," Reuters, March 22, 2022.

85. These numbers are according to the Solar Energy Industries Association. See James Bacchus and Gabriella Beaumont-Smith, "Let the Sun Set on Solar Tariffs," *Cato at Liberty* (blog), Cato Institute, January 19, 2022.

86. Darryl Fears, "Biden Officials Trumpet How Solar Energy Can Provide Nearly Half of the Nation's Electricity by 2050," *Washington Post*, September 8, 2021; and see also James Bacchus and Gabriella Beaumont Smith, "Solar Tariffs on the Horizon," *Cato at Liberty* (blog), Cato Institute, February 8, 2022.

87. Gould, "Biden Continues Trump's Harmful Trade Policy."

88. "Who Pays Trump's Tariffs, China or U.S. Customers and Companies?," Reuters, May 21, 2019.

89. Understanding on Rules and Procedures Governing the Settlement of Disputes art. 23, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994); and "Canada—Continued Suspension of Obligations in the EC—Hormones Dispute," Report of the Appellate Body, World Trade Organization, AB/R, WT/DS321, October 16, 2008, para. 373.

90. See "United States—Tariff Measures on Certain Goods from China," Report of the Panel, World Trade Organization, WT/DS543/R, September 15, 2020, which the United States has appealed; see also "DS565: United States—Tariff Measures on Certain Goods from China II," Dispute Settlement, World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds565_e.htm; and "DS587: United States—Tariff Measures on Certain Goods from China III," Dispute Settlement, World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds587_e.htm. The last two are pending before WTO panels.

91. Eric Boehm, "China Is Paying Less than 8 Percent of Tariff Costs. Americans Are Paying the Rest," *Reason*, May 24, 2021.

92. Huang Tran, "Decoupling/Reshoring versus Dual Circulation: Competing Strategies for Security and Influence," Atlantic Council, April 2021.

93. Eric Boehm, "Tariffs on Chinese Imports Have Accomplished Approximately Nothing," *Reason*, September 23, 2021; and Samantha Vortherms and Jiakun Jack Zhang, "Political Risk and Firm Exit: Evidence from the US–China Trade War," 21st Century China Center Research Paper no. 2021-09, September 2, 2021.

94. "A Conversation with Ambassador Katherine Tai, U.S. Trade Representative," Center for Strategic and International Studies, October 4, 2021.

95. Eric Boehm, "Biden's China Trade Policy Is Littered with Contradictions," *Reason*, October 4, 2021.

96. Jacob Fromer, "Biden Administration Shrugs Off Pressure to Remove Trump-Era China Trade War Tariffs," *South China Morning Post*, August 7, 2021.

97. Overly, "Biden Will Build from Trump-Era Tariffs."

98. Ana Swanson, "Biden's China Dilemma: How to Enforce China's Trade Pact," *New York Times*, December 15, 2021.

99. "Economic and Trade Agreement Between the Government of the United States and the People's Republic of China," January 15, 2020.

100. Swanson, "Biden's China Dilemma."

101. Chad P. Bown, "US-China Phase One Tracker: China's Purchases of US Goods," Peterson Institute for International Economics, November 2021.

102. Claude Barfield, "The Biden Administration's New (Old) China Trade Policy," American Enterprise Institute, October 8, 2021.

103. Gary Clyde Hufbauer, "Managing Trade: Centerpiece of US-China Phase One Deal," *Trade and Investment Policy Watch* (blog), Peterson Institute for International Economics, January 16, 2020.

104. Hunter L. Clark, "An Update on the U.S.-China Phase One Trade Deal," *Liberty Street Economics* (blog), Federal Reserve Bank of New York, October 6, 2021.

105. General Agreement on Tariffs and Trade, art. I.

106. See, for example, "EU Warns of WTO Challenge If China-US Deal Creates 'Distortions,'" *France 24*, January 17, 2020.

107. Chad P. Bown, "Why Biden Will Try to Enforce Trump's Phase One Trade Deal with China," *Trade and Investment Policy Watch* (blog), Peterson Institute for International Economics, December 15, 2021.

108. Swanson, "Biden's China Dilemma."

109. Hayashi, "U.S. on Sidelines."

110. Scott Lincicome et al., "The Cato Trade Team's 2022 Policy Wish List," *Cato at Liberty* (blog), Cato Institute, January 10, 2022.

111. Philip Heijmans, "Biden's 'America First' Trade Policy Gives China an Opportunity," *Bloomberg*, November 9, 2021.

112. For much more on the need for new and revised WTO rules, see Bacchus, *Trade Links: New Rules for a New World*.

113. Felicia Sonmez, "Biden Signs Uyghur Forced Labor Prevention Act into Law," *Washington Post*, December 23, 2021.

114. See "Xinjiang Internment Camps," Wikipedia, February 14, 2022.

115. "China Rejects All Accusations of Abuses in Xinjiang," Associated Press, April 20, 2021.

116. "China Firmly Rejects U.S. Signing of So-Called 'Uyghur Forced Labor Prevention Act,'" *Xinhua*, December 24, 2021.

117. Tariff Act of 1930, 19 U.S.C. § 1307.

118. General Agreement on Tariffs and Trade, art. XX(e).

119. General Agreement on Tariffs and Trade, art. XX(a).

120. See, for example, "P029—Protocol of 2014 to the Forced Labour Convention, 1930," International Labour Organization, June 11, 2014, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3174672.

121. "China-Australia Relations: 'Unconscionable' Trade Sanctions on Wine Warrant WTO Intervention, Scott Morrison Says," *South China Morning Post*, June 10, 2021.

122. Elizabeth Braw, "China Takes Lithuania as an Economic Hostage," *Wall Street Journal*, January 6, 2022.

123. Finbarr Bermingham, "Back Lithuania or Face More Coercion from China, Lawmakers Tell EU Chiefs," *South China Morning Post*, January 18, 2022; and Raf Casert and Lorne Cook, "EU Launches WTO Action against China over Lithuania Dispute," Associated Press, January 27, 2022.

124. Joe Biden, "My Trip to Europe Is about America Rallying the World's Democracies," *Washington Post*, June 5, 2021.

125. "Global Perspectives on Biden's Democracy Summit," Council of Councils, December 16, 2021.

126. James Bacchus, "Was Buenos Aires the Beginning of the End or the End of the Beginning? The Future of the World Trade Organization," Cato Institute Policy Analysis no. 841, May 8, 2018.

127. Office of the United States Trade Representative, "Ambassador Katherine Tai's Remarks as Prepared for Delivery on the World Trade Organization," press release, October 2021.

128. "Ambassador Katherine Tai's Remarks."

129. Sarah Anne Aarup, "'All Talk and No Walk': America Ain't Back at the WTO," *Politico*, November 23, 2021.

130. For a lengthy list of these issues and a discussion of each, see Bacchus, *Trade Links: New Rules for a New World*.

131. Nina M. Hart and Brandon J. Murrill, "The World Trade Organization's (WTO's) Appellate Body: Key Disputes and Controversies, Congressional Research Service, R46852, July 22, 2021.

132. See James Bacchus, "Might Unmakes Right: The American Assault on the Rule of Law in World Trade," Centre for International Governance Innovation, CIGI Papers no. 173, May 2018.

133. For much more on the modernization that is needed, see Bacchus, *Trade Links: New Rules for a New World*.

134. "Ambassador Katherine Tai's Remarks."

135. "Trump Tweets: 'Trade Wars Are Good, and Easy to Win,'' Reuters, March 2, 2018.

136. Annie Lowrey, "Where Biden Agrees with Trump," *The Atlantic*, October 5, 2021.

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