

Biden's Trade Policies-Recalibrated, More Focused, and A Bit Concerning

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The Biden administration has moved to refocus the US trade policy on China, acting to promote competition but not thoughtless confrontation. Some actions were strong right out of the gate; that should not have been so surprising, but it still was. If anything, the recently concluded G-7 meeting in Cornwall and the subsequent US-EU summit in Brussels indicate that the Biden administration intends to take a stronger and a more multilateral and diplomatic approach to confront China. This approach was further supported by the US allies at the recent NATO meeting in Brussels. The administration is stressing cooperation with allies and competition with China. Biden's recent diplomacy demonstrates his overriding preoccupation with China. Moving away from Trump's dysfunctional and disastrous unilateral measures of confrontation with all can only help stabilize the US-China relations and rebuild the WTO, hopefully.

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1. Introduction

The Biden administration's early policies toward China, global trade, and the WTO have proven to be attuned to the newer developments of the times. In practice, however, these policies are a bit concerning.

There has been no wholesale de-Trumpification of the US trade policy. The administration has not immediately rejected many of Trump's chaotic trade policies. It has recalibrated some of them and extended others. It has clearly put China at the center of its policies, raising the importance of human rights. However, it is disappointing that the administration is keeping some of the most grievous policies (Section 232 steel tariffs)¹ and not addressing others, most notably the WTO's dispute resolution system, which represents the core of an international rules-based trading system. In fact, both the Trump administration and the new Biden administration have been oblivious to the filing of new matters.

Biden's policies toward China keep many of Trump's signature policies in place, including the Phase One Trade Deal.² President Biden has also kept Section 232 (steel tariffs) and Section 301 (tariffs on Chinese goods). Indeed, while imposing new sanctions because of human rights violations concerning the Uighurs,³ which reflects core American values, he extended restrictive investment measures on Chinese firms.⁴ His administration is now exploring a new application of Section 232 tariffs on China related to the import of rare earth elements⁵ and new sanctions over China's actions (its new National Security Law) concerning human rights in Hong Kong.⁶ President Biden is now also grappling with the US sixty-year-old sanctions on Cuba in light of recent historical demonstrations in Cuba for greater human rights and freedom.⁷

Similarly, as Biden's policies toward global trade have focused on the impact of the pandemic on global supply chains, he also focused on Chinese firms listed on the New York Stock Exchange, and potentially new protectionist measures. For example, Biden has ordered new "Buy American" provisions⁸ and is supporting greater industrial subsidies under proposed congressional legislation.⁹ Biden's policies have also included maintaining tariffs against the EU steel products and engaging in disputes with European nations over digital taxation. However, the administration has held off on actions on digital taxation¹⁰ and somewhat settled the seventeen-year Boeing-Airbus WTO saga at the recent Brussels US-EU

Summit.¹¹ President Biden has waived opposition to the Russia-Germany natural-gas pipeline (Nord Stream 2).¹² President Biden also wants greater cooperation with the EU over global antitrust issues especially relating to technology firms.¹³ His administration's support for new legislation authorizing vast new industrial policies is a significant move away from past objections to government funding of private-sector activities. Biden's support of a carbon border tax raises significant protectionist concerns. Martin Wolf, in a recent commentary in *The Financial Times*, states:

Protectionism is back, above all, in the U.S. [...] But though the tone is different under Joe Biden, the reality is not, alas. On the contrary protection has become one of the few issues on which there is bipartisan consensus.¹⁴

Biden's policies toward the WTO have essentially been uninspiring. He has not reversed Trump's destructive policies relating to the WTO's dispute resolution system including its Appellate Body. The Biden administration has continued to follow the later Trump policy of not filing actions in the dispute resolution system against China or any other country. This is contrary to Biden's often-stated goal of following and enforcing global trade rules and supporting the global system. Dispute resolution is at the core of the peaceful settlement of trade disputes that could otherwise spin out of control.

Biden's often-stated focus on a "worker's and middle-class trade policy" is not comforting, especially given the traditionally strong anti-trade bias among many in the Democratic Party and its formerly strong opposition to NAFTA and the Trans-Pacific Partnership. President Biden's failure to promote new "fast track authority" (Trade Promotion Authority) is also not comforting.¹⁵ Hopefully, President Biden's trade policies will not lead to repackaging of Trump's discredited "America First" strategy, which had its foundation in American 1930s' protectionism. Let us look at some of the above issues relating to China in more detail.

2. Biden's Policies toward China

In early June 2021, the Biden administration announced the findings of its

supply-chain study and detailed various actions.¹⁶ As part of his supply-chain focus, the president announced that the Department of Commerce would initiate an investigation into neodymium magnets.¹⁷ This investigation is to take place under Section 232 of the Trade Expansion Act of 1962,¹⁸ which is precisely the legislation that the Trump administration relied upon in imposing its steel sanctions on China and other countries, including the US allies. This reliance elicited congressional outcries over the misuse of “national security” as a basis for trade sanctions.¹⁹ Trump’s reliance on national security as a basis for restrictions on Chinese imports is now the basis of a complaint by China and many other countries in the WTO under Article XIX, and the Biden administration has been urged to settle this case.²⁰ The outlook for a favorable ruling for China has increased because the WTO denied the national security defense in a recent case.²¹

President Biden also announced that his administration would establish a trade strike force to propose unilateral and multilateral enforcement actions against unfair trade practices. The administration intends to strengthen international trade rules, including trade-enforcement mechanisms. It tries to develop a comprehensive strategy concerning China and to counter unfair foreign competition, including foreign subsidies and related trade practices.

The Biden administration’s push for reorienting global corporate tax rules is a forward-looking, “game-changing opportunity.”²² Nevertheless, it is not clear if China will support this proposal. The historic proposal now adopted by the G-7, G-20 and the OECD aims to force the biggest companies to pay more taxes in the countries in which they conduct business. It would also adopt a global 15 percent minimum corporate tax rate. This seems to represent a revival of multilateral cooperation and US global leadership. Global tax evasion and avoidance by multinational companies is a huge problem. China’s firms are complicit in some of these issues.

The Biden administration, with bipartisan support, is on the verge of enacting the infrastructure bill aimed at China.²³ It provides massive funding for various critical industries. This would be the most expansive industrial policy legislation in American history. The bipartisan agreement is jarring in today’s hyper-partisanship. Some of the legislation’s funding is set to attract foreign semiconductor manufacturers to establish plants in the US. This is somewhat similar to China’s approach of providing state subsidies to industrial companies.

China has recently enacted a new law to counter foreign sanctions.²⁴ This anti-sanction legislation is clearly aimed at the US and, to a lesser extent, the EU for the extraterritorial application of their trade sanctions. This escalates China's legal battles with the US and the EU. This law followed promptly China's blocking statutes enacted earlier in 2021. To observers, the purpose of this expanded regulatory regime seems to be to deter new US sanctions rather than to penalize American or European firms.²⁵

The Biden administration issued an executive order in early June to address the Trump-era restrictions on the US securities purchases by Chinese firms related to the Chinese military.²⁶ In particular, the order relates to the use of Chinese surveillance outside of China to facilitate serious human right abuses. Amazingly, the Biden administration relied on a national security provision (Section 1701) in the International Emergency Economic Powers Act (IEEPA) - the same provision the Trump administration relied upon in imposing tariffs on China for violating intellectual property rights.

The Biden administration's new policy is another example of adopting Trump's tough approach toward China. Nevertheless, the policy expands and improves one of Trump's signature policies. For example, it moves responsibility for the program from the Defense Department to the Treasury Department because the Treasury has more experience in formulating and implementing sanctions successfully, especially against legal attacks.²⁷

It should be noted that while announcing the policy related to investment in Chinese firms, the Biden administration issued a national security study concerning global corruption.²⁸ The Biden administration views global corruption by foreign leaders and their cronies as a national security issue. This reinforces the Biden administration's focus on repositioning the US foreign policy toward an emphasis on supporting traditional American recognition of international human rights and away from Trump's refusal to do so.

At approximately the same time, the Biden administration revoked the ban on TikTok and WeChat.²⁹ However, the new order creates the potential for a greater crackdown on Chinese-owned apps. The Biden administration is taking the same track as did the Trump administration. In some ways, however, it is actually tougher, laying the groundwork for even more restrictions but observing the legal rules. The administration is again relying on a national security rationale (under

the IEEPA) to protect data in view of the rapid developments in information and communications technologies and, especially, the connected software applications. Again, the administration cites the need to promote accountability for serious human rights abuses.

At the recently concluded G-7 meeting in Cornwall, President Biden demonstrated renewed and active US participation in multilateral diplomacy. He placed great emphasis on China,³⁰ human rights, and global trade, among other areas. Following are several excerpts from the final communiqué issued on June 13, 2021:

Our agenda for global action is built on our commitment to international cooperation, multilateralism and an open, resilient, rules-based world order.

We stand united in our commitment to free and fair trade as foundational principles and objectives of the rules-based multilateral system. We agree on the need for the world's leading democratic nations to unite behind a shared vision to ensure the multilateral trading system is reformed, with a modernised rulebook and a reformed World Trade Organization (WTO) at its centre, to be free and fair for all, more sustainable, resilient and responsive to the needs of global citizens.

We will strengthen coordination on and support for the implementation and development of global norms and standards to ensure that the use and evolution of new technologies reflects our shared democratic values and commitment to open and competitive markets, strong safeguards including for human rights and fundamental freedoms.

We recognise the particular responsibility of the largest countries and economies in upholding the rules-based international system and international law.³¹

What a difference a few years make. President Trump refused to agree to the G-7 Final Communiqué in 2018, while President Biden was proactive in formulating the 2021 Communiqué.³² However, at the news conference on the last day of the G-7 meeting, President Biden's response to a question about lifting the Section 232 steel tariffs was somewhat concerning as to steel and sanctions generally. The following is the question and President Biden's abrupt response:

Q: At the same time, you've kept in play some Trump-era steel and aluminum sanctions. And I wanted to ask you: When you're having these conversations with European allies who are very concerned about these sanctions, how do you justify that? And what are your

plans for-

A (THE PRESIDENT): *A hundred and twenty days. Give me a break. Need time.*³³

3. Conclusion

So, what can be said of President Biden's trade policies thus far, especially regarding China? Has there been a wholesale de-Trumpification? Or have we seen a slow-moving recalibration? Is the administration keeping some policies, reverting to earlier concerns, and toughening the basis of some policies for possible future actions?

In short, the Biden administration has moved methodically to refocus the US trade policy on China, acting to promote competition but not thoughtless confrontation. Biden's recent diplomacy demonstrates his overriding preoccupation with China. His refocusing on human rights is certainly in the interest of the global community and reflects the best American values. Some actions were strong right out of the gate, which should not have been that surprising, but they still were.

What is worrisome is whether Biden's views toward China adopt the emerging "Washington Consensus," a view that rejects the older belief that China's integration into the WTO would encourage market reform and promote democratic values and international peace. The emerging view is that China is aggressive and represents a threat to global peace that may lead to a new Cold War.

Bernie Sanders recently observed: "It is distressing and dangerous, therefore, that a fast-growing consensus is emerging in Washington that views the U.S.-Chinese relationship as a zero-sum economic and military struggle."³⁴ Edward Luce, writing in *THE FINANCIAL TIMES*, concludes: "Biden's game of geopolitical chess is fraught with obstacles. Chief among these is Europe's reluctance to view China with the same existential concern as America does."³⁵ Needless to say, China rejects the new Washington Consensus.³⁶

A recent editorial in *THE FINANCIAL TIMES* states "America should be aware that the decoupling between the US and China is not solely within the gift of the US. Washington may be keen to protect its own tech sector - but so is Beijing."³⁷

Regrettably, the Biden administration has not focused on rectifying the

Trump administration's despicable actions of denigrating the WTO's dispute resolution system, especially the Appellate Body. Only five new actions were started by member states in 2020 - the lowest level in a year since the inception of the WTO in 1995.³⁸ It is in the interest of the US to reactivate that system and to use it. Biden's recent embrace of a pharmaceutical rights waiver, within the WTO structure, for greater global use of COVID-19 vaccines³⁹ is encouraging and perhaps indicates a more positive attitude toward reviving the WTO as an institution. In addition, the administration's earlier reversal of Trump's refusal to support a new WTO director-general⁴⁰ is indeed encouraging. However, much more needs to be done to resurrect the dispute resolution system, the negotiation and rule-making functions of the WTO.

Prior American presidents have filed numerous cases against China within the WTO system.⁴¹ The US has won most of these, and China has complied with all decisions against it, indicating the effectiveness of the WTO litigation system and, especially, litigation by the US against China. The Biden administration should reverse Trump's failure to file cases against China (2019-20) and continue to file when the facts support such litigation.

The US should return to the American belief in legal rules and their adjudication in concrete situations. President Biden has seemingly indicated that is his goal. The US was once the great promoter of that system as the cornerstone of the postwar global system. The Americans created a rules-based system that mirrored their domestic system's reliance on law and adjudication. It is in the American DNA. This should be done again. Judicial decisions preclude disputes from spinning out of control.

If anything, the recently concluded G-7 summit indicates that the Biden administration intends to take a more productive multilateral and diplomatic approach with allies and to confront China coherently. This approach was further supported by the US allies at the recent NATO meeting in Brussels.⁴² The Biden administration is stressing competition and cooperation with its allies. Moving away from Trump's dysfunctional and disastrous unilateral measures can only help in stabilizing US trade relations, US-China relations and rebuild the WTO, hopefully.

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