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## Global Trade Policy Blog

### Client Advisory: The US Trade Agenda in the Biden Administration

By Eric Emerson, Jeffrey Weiss, Amy Lentz, Claire Schachter, Zachary Simmons & Luke Tillman on November 10, 2020

With the results of the US presidential election now clear, many in Washington and around the world are beginning to contemplate what international trade policy might look like after President Elect Joseph R. Biden, Jr. takes office in January 2021. Predicting that policy is difficult, since international trade issues did not take center stage during the presidential campaign. However, statements the President Elect made during the campaign, prevailing sentiments in Congress, and Biden's reputation as a believer in multilateral institutions developed during his nearly five decades in public office, offer some clues as to the broad outlines of his international trade policy. Overall, we expect that the Biden Administration will signal more predictability and a more rules-based multilateral orientation for US international trade policy than its predecessor. At the same time, it will be difficult to unwind some Trump Administration trade policies that enjoy political support, and in certain areas, we are likely to see significant policy continuity in the short- to medium-term.

**Free Trade Agreements.** One of the few specific statements on trade policy that then-candidate Biden made during the campaign is that he does not intend to pursue free trade agreements (FTAs) until significant domestic investments have been made in the areas of healthcare, infrastructure, and education, among others. Currently the United States is actively negotiating FTAs with the United Kingdom and Kenya, so it is unclear whether the Biden Administration will seek to continue these negotiations or place them on hold. But Biden's statement does suggest that his Administration would not seek to have the United States undertake new FTAs, or to attempt to join the Comprehensive and Progressive Trans-Pacific Partnership, formerly the Trans-Pacific Partnership (TPP), which was largely negotiated while Biden served as Vice President, at least absent some significant changes.

**Trade Promotion Authority.** Early in his term, President Elect Biden will need to confront the issue of a renewal of trade promotion authority (TPA), which is currently set to expire on July 1, 2021. TPA, also known as “fast track” authority, restricts Congress’s ability to amend covered trade agreements by requiring an up-or-down vote, assuming that the President follows a prescribed set of formalities during the negotiation process. It is during this periodic TPA renewal process that Congress gets a say in setting priorities for US international trade policy, and any effort to renew TPA will generate a robust debate over the future of US international trade policy. Through that debate, Congressional Democrats will press for greater recognition of social and environmental issues in the context of FTA negotiations, with an emphasis on achieving climate change goals and obtaining stronger worker protections, such as those contained in the USMCA. Should the Senate ultimately remain under Republican control, however, the path to TPA renewal could be difficult due to differences of view on these issues. As part of TPA renewal, Congress may also seek to limit Presidential authority to negotiate trade deals outside the TPA framework, such as President Trump did with Brazil, China and Japan.

**Trade Impacts of Domestic Investment/Reshoring.** On the issue of domestic investment, the Biden Administration seems likely to prioritize the reshoring of US manufacturing, Buy American programs, and policies to strengthen US supply chains in areas that are critical to US competitiveness. Such steps may include strategic investments aimed at retooling and revitalizing US production facilities, revisions to government procurement rules to incentivize purchases of American-made products, materials, and services in the context of major expenditures (e.g., a Biden clean energy and infrastructure plan), and initiatives to strengthen or create secure supply chains in areas that are important to US health and national security such as pharmaceuticals, PPE, semiconductors, and critical minerals. But these actions also could give rise to trade risks. What the United States views as “investments” in its manufacturing facilities could be viewed by trading partners as subsidies, and an emphasis on purchases of US-origin goods could run afoul of US WTO non-discrimination obligations. But given the importance of these policy positions to the Biden campaign, the Administration is likely to pursue these goals regardless of potential trade risks and seek to work with trusted international partners on common approaches where it makes sense to do so.

**The US-China Relationship.** One area where the Biden Administration will be forced to take more immediate action is with respect to China. Over the past two and a half years, the Trump Administration unleashed a variety of new measures aimed at reshaping trade

between the United States and China, most notably, the imposition of tariffs on nearly \$370 billion in Chinese imports as a result of a Section 301 investigation into China's intellectual property and investment practices. While President Elect Biden has not yet signaled what he intends to do with these tariffs, it is unlikely that the Biden Administration will simply remove them outright without seeking some kind of concession (trade-related or otherwise) from China in return. Rather, it is more likely that the tariffs will remain in place for some time, unless and until progress is made toward resolving US concerns regarding the trade-distorting effects of Chinese industrial policies and other practices that impact US-China trade and investment flows.

President Elect Biden will also inherit a number of other China policy challenges with trade and supply chain implications, including US concerns about state-supported competitors in the high-tech sector and imports produced with forced labor in Xinjiang. On these and other related areas, the Biden Administration will likely face bipartisan pressure from Congress to take decisive action. President Elect Biden could also decide to expand ongoing efforts to secure the US telecom supply chain, protect bulk power systems, and ensure access to critical minerals – all of which appear to be aimed primarily at China – and extend this approach to other areas. Lawmakers have already advanced bills covering such topics, including the widely supported America LEADS Act, and these are likely to be high on the legislative agenda for both houses of Congress in 2021.

**Bilateral Trade Relationships**. While the substance of the Biden Administration's stance toward China may not change significantly, its strategy is expected to differ. Whereas the Trump Administration adopted a series of unilateral actions against China, President Elect Biden will likely adopt a multilateral approach to addressing trade issues. This is in part a reflection of the President Elect's more globalist approach, developed from his leadership of the Senate Foreign Relations Committee and his foreign affairs portfolio in the Obama Administration. This means that any further US negotiation with China on a "Phase Two" agreement addressing more systemic issues of concern to the United States will likely be shelved in favor of a multilateral approach.

But in order to develop this coalition, the Biden Administration will need to address the numerous other bilateral trade disputes that the Trump Administration generated over the past four years. These include: the imposition of national security tariffs on imports of steel and aluminum products from nearly all foreign sources; the long-standing dispute with the EU over subsidies in the commercial aircraft sector; and disputes with nearly half a dozen countries over the imposition of digital services taxes on certain internet-based companies.

Many of these disputes were seen as stretching the limits of statutory authority on which they were based, and for this reason, it seems unlikely that the Biden Administration would take similarly aggressive actions. But political support for the US position in many of these disputes is strong, and will limit Biden's ability to change course. For example, with regard to the Section 232 tariffs on steel and aluminum imports, President Biden would face significant resistance from Congress if he were simply to remove these tariffs without obtaining something in return (e.g. a commitment to fight Chinese overcapacity in steel) and/or putting something in place to protect the domestic steel and aluminum industries. Nevertheless, we expect to see a reduction in the number of new disputes and a de-escalation of existing disputes so that the United States can develop an effective coalition to address China and other major trade issues.

**WTO Reform.** The Biden Administration will also need to consider multilateral action with respect to the World Trade Organization (WTO). At least in the near term, it is unlikely that the Biden Administration will adopt a significantly different approach from that of the Trump Administration. The Trump Administration has been critical of the organization and has successfully prevented the WTO's Appellate Body (AB) from functioning by refusing to agree to the appointment of new AB members – a policy that began in the Obama Administration. At the same time, the United States has continued to participate in dispute settlement at the WTO. It has also continued to engage in negotiations with other Members on certain reform issues, including reforms to WTO rules addressing subsidies and the conduct of state-centered economies and state-owned enterprises more generally, a major topic of concern among the Membership. Given the President Elect's institutionalist inclinations, a Biden Administration is likely to engage more constructively with WTO Members to achieve some sort of reform to get the AB – or something like it – back on its feet.

But an immediate resolution of the AB impasse is unlikely. The differences between the United States and many other WTO Members on what needs to be done to reform the WTO dispute settlement system and WTO rules more generally are substantial and long-standing. Furthermore, reconstituting the AB without commitments from other Members to cooperate with US policies toward China could present domestic political vulnerabilities to the Biden Administration, and is therefore unlikely. Instead, we expect that the Biden Administration will seek to maximize whatever leverage the Trump Administration's hardline policy over the AB has given the United States to progress the US trade agenda, including advancing rules addressing state-owned enterprises and other conduct of state-centered economies. But

progress within the consensus-based WTO is slow at the best of times, and this may lead President Biden to pursue reform in other fora.

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