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BIDENOMICS VERSUS MAGANOMICS ON TRADE LAW: PICK YOUR POISON

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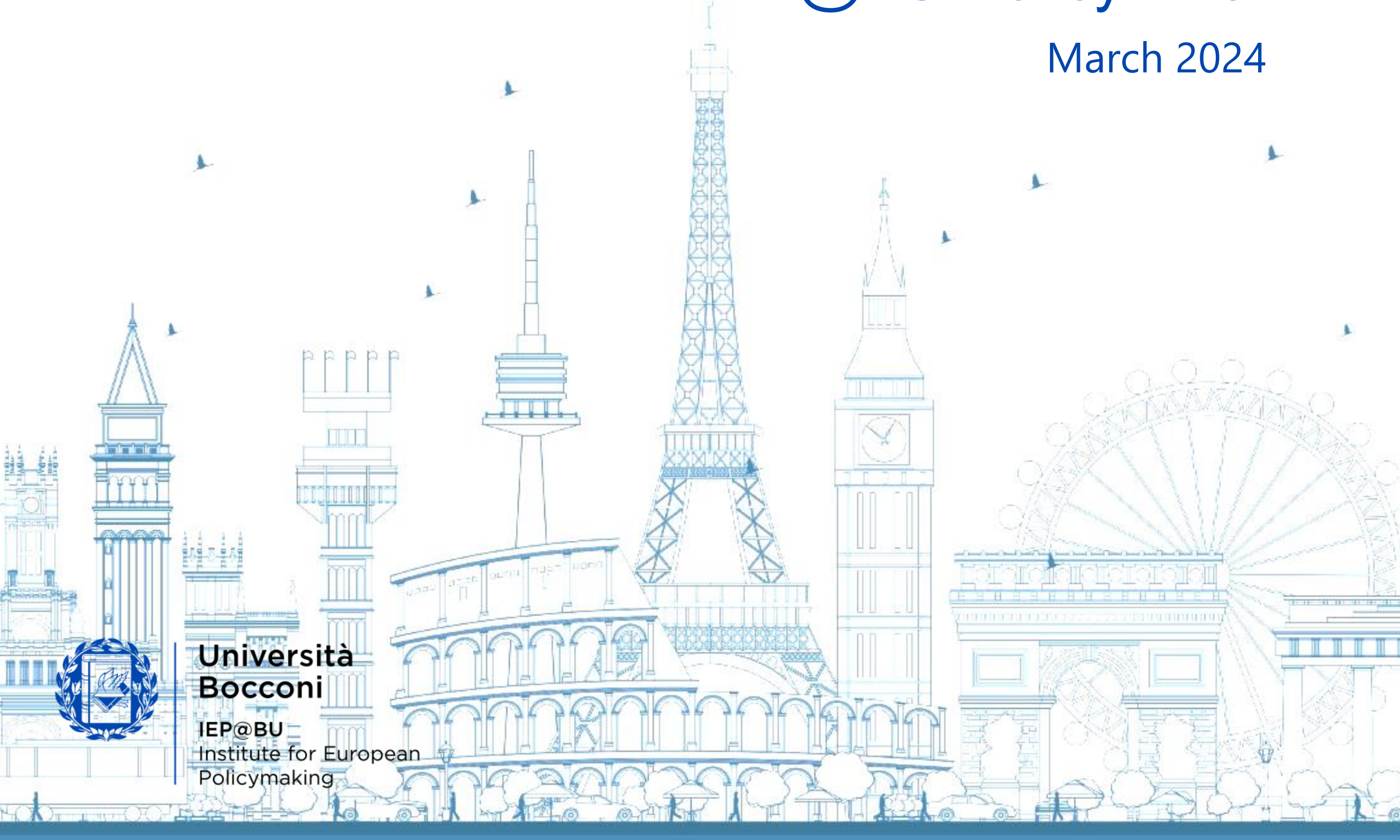

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Abstract

This essay examines the international trade policies of the two presumed candidates for president in 2024, Joseph Biden and Donald Trump. I first analyze the trade law revolution effected by the Trump presidency, 2017-2021. During these years the Trump administration adopted a protectionist policy rooted in nationalism and populism. As a direct result of Trump administration trade policy there occurred: (1) a significant retreat from globalization; (2) paralysis of the World Trade Organization; (3) a revival of U.S. unilateralism in trade policy; and (4) the U.S.-China trade war.

When Joseph Biden became president in 2021, he did not reverse the Trump trade policies. Rather declaring his favor of a “worker-oriented” trade policy, the Biden administration defended Trump’s tariff policies while continuing his hostility to new free trade agreements and the multilateral trading system. Biden’s distinctive addition to Trump’s trade policy is a protectionist industrial policy featuring subsidies and a “buy American” mandate.

Nevertheless, Trump and Biden propose very different international trade policies for 2025 and beyond. Trump intends to adopt across the board protectionist tariffs on all imports; Trump proposes punitive tariffs on imports from China that will effectively “decouple” China-U.S. trade. Biden’s trade policy will be rooted in industrial policy and “buy American” protectionism.

Prominent critics of both Trump and Biden propose a “third way” set of international trade policies that avoid protectionism. This “third way” would feature new free trade agreements with Asian-Pacific, European, and Western Hemisphere nations, rehabilitation of the WTO, revival of multilateralism and U.S. leadership, and a more constructive relationship with China.

Introduction

This essay considers alternative scenarios for international trade policy for 2025 and beyond through the lens of the spectacular series of events that upended international trade beginning in 2017. These events are the direct results of Trump administration decisions, 2017-2021. During those years the Trump administration, with its emphasis upon nationalism and populism, effected a revolution in international trade policy that in many respects repudiated international trade policy as it existed from 1948 to 2016. Whereas for decades prior American administrations emphasized trade liberalization through international agreements, the role of multilateral institutions such as the World Trade Organization (WTO), and adherence to international law rules concerning trade, the Trump administration stood these policies on their heads, emphasizing protection of U.S. domestic markets, primacy of U.S. domestic trade laws over international law, and the irrelevance of international institutions such as the WTO. Trump administration trade policies had four major impacts: (1) a significant retreat from globalization; (2) paralysis of the World Trade Organization; (3) a revival of U.S. unilateralism in trade; and (4) a tariff and trade war between the U.S. and China.

Looking toward the future, given that 2024 is an important election year, I will discuss the announced trade policy intentions of the two presumed candidates for president --- Democrat Joseph Biden and Republican Donald Trump. I will sketch briefly what each candidate intends to do concerning trade and the likely results for the American and global economies.
I conclude that while both Trump and Biden advocate a certain degree of trade protectionism, Donald Trump intends to implement a radical protectionist vision concerning trade. Biden, on the other hand, will adopt a milder version of protectionism that emphasizes national security and enhancement of U.S. manufacturing autonomy. In addition, Donald Trump intends to pursue a hard U.S.- China economic decoupling. Joseph Biden, on the other hand, intends to pursue a milder approach to China, involving "derisking," supply chain diversification, and "friend-shoring" of international trade and investment.

To his credit, Biden and his team have stabilized U.S.-China relations. Biden's November 2023 summit with Chinese President Xi Jinping, along with diplomacy of Treasury Secretary Janet Yellen and Commerce Secretary Gina Raimondo succeeded in restoring a degree of order to the U.S.-China relationship that was so chaotic during the Trump administration. China and the United States represent about 40 percent of the world economy; stability of this relationship is an essential component of global prosperity. The Biden administration has managed the U.S.-China relationship, essaying to prevent disagreements from spiraling into conflicts.

Trump's International Trade Revolution

In 2016, Donald Trump, running for president, looked for a winning economic issue to invigorate his campaign. At this time the United States was recovering from the financial crisis and the Great Recession of 2007-09. Although unemployment stood at under 5 percent, economic growth was anemic. In 2016, real GDP grew only at a rate of 1.6 percent. The issue Trump hit upon was international trade. He would make trade a scapegoat for the poor performance of the American economy.

On June 28, 2016, in Monessen, Pennsylvania, Trump denounced international trade and globalization, stating, "This wave of globalization has wiped out the middle class. … Today we import nearly $800 billion more in goods than we export. … Massive trade deficits subtract directly from our [GDP]…. Trade reform creates jobs. …. It's time to reclaim our economic independence." If we do this, Trump promised, "[a] new era of prosperity will finally begin."[1] Trump's rhetoric was so extreme in this speech that mainline commentators did not take him seriously. What Trump was proposing was trade protectionism, a reversal of trade liberalization policies the nation and the Republican party had espoused since the end of World War II.

In his inaugural address Trump declared: "We must protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs. Protection will lead to great prosperity and strength."[2]

Upon taking office, Trump, true to his words, espoused a trade policy featuring populism and nationalism. Populism rejects the views of experts and other "elites" in favor of the opinion of the man (or woman) in the street. Nationalism assumes that trade is a zero-sum game that America must "win" and the other side must "lose."

Trump's term as president was marked by these protectionist values. As president, Trump took the following actions:

- He repudiated the Trans-Pacific Partnership Trade Agreement (TPP), a multilateral agreement with eleven Asian-Pacific nations that was intended as the centerpiece of U.S. strategy to pivot to Asia and to establish trade rules that China must respect.
- Citing national security, he established tariffs and quotas on a wide range of imports, including some from America's closest allies.
- He instituted an all-out trade war against China featuring tariffs and investment curbs.
- He broadened attack on the World Trade Organization, the global agency that sponsors trade negotiations, promotes the rule of law in trade matters, and administers a dispute settlement system.
- He concluded the United States-Mexico-Canada Trade Agreement to replace the North American Free Trade Agreement (NAFTA). As conservative columnist George Will has pointed out, the United States-Mexica-Canada Agreement is "the first U.S. trade agreement in history designed to decrease trade."[3]

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[1] See full transcript, Donald Trump's Jobs Plan Speech, Politico (June 28, 2016), https://www.politico.com/story/2016/06/full-transcript-trump-jobs-plan-speech-224891.

[2] President Donald J. Trump, Inaugural Address (January 20, 2017), available at https:/www.whitehouse.gov/briefings-statements/the inaugural address.

[3] George F. Will, The Senate's Descent into Irrelevance, Washington Post, February 16, 2020, A25.

A centerpiece of President Trump's actions regarding trade was his complete disregard of the legal norms of international trade law. Relying on his authority as president under U.S. domestic statutes, Trump made no apologies for his disrespect of international law. Neither Trump nor the U.S. Trade Representative, Robert Lighthizer, hesitated to override settled international trade law rules originally put forward at the 1948 General Agreement on Tariffs and Trade. American disregard of clear trade law rules was confirmed in dispute settlement reports at the World Trade Organization.[4]

The policies and actions of the Trump administration signaled a new departure in the law of international trade. In this section I summarize the dimensions of the Trump administration's legacy with respect to international trade.

A. Retreat from Globalization

Globalization is commonly defined as universal openness to trade, investment, information, and technology.[5] The high point of globalization was the decade of the 1990s after the end of the Cold War. Globalization was fostered by NAFTA and the successful conclusion of the Uruguay Round of trade negotiations at the WTO. The International Monetary Fund and World Bank promoted the "Washington Consensus," an economic model that emphasized market forces, fiscal policy discipline, and openness to trade and inward investment.[6]

The first critics of globalization were developing countries that sought help from the IMF and World Bank under the Washington Consensus. Fiscal austerity and high interest rates caused unacceptable hardships.[7] With the advent of the Global Financial Crisis and the Great Recession of 2007-09, advanced countries joined the chorus of critics of globalization. Openness to international trade and investment became controversial. Joseph Stiglitz has pointed out that "large segments of the population in advanced countries have not been doing well. In the United States the bottom 90 percent has endured income stagnation for a third of a century."[8]

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[4] Panel Report, United States – Tariff Measures on Certain Goods from China, WT/DS543/R, Final Report Circulated September 15, 2020 [Panel concluded that tariffs imposed on Chinese imports into U.S. were inconsistent with GATT Articles 1:1, II:1(a), and II:1(b)]. Panel Report, United States --- Certain Measures on Steel and Aluminum Products, WT/DS544,552,556,564/R, Notices of Appeal January 26, 2023 [additional duties on metals were inconsistent with GATT Articles I:1, II:1(a), and II:1(b)]. Panel Report, United States – Safeguard Measure on Imports of Large Residential Washers, WT/DS546/R, Adoption April 28, 2023 [safeguard measure held inconsistent with GATT Article XIX and Safeguard Agreement].

[5] Jurgen Habermas, The Divided West 175 (Ciaran Cronin, ed. and trans. 2006).

[6] John Williamson, The Strange History of the Washington Consensus, 27 J. Post-Keynesian Econ. 195, 206 (2004).

[7] Joseph E. Stiglitz, Globalization and Its Discontents (2002).

[8] Interview August 5 2016 available at https://www.projectsyndicate.org. See Joseph E. Stiglitz, Globalization and Its Discontents Revisited: Anti-Globalization in the Era of Trump (2017).

In 2016, Donald Trump denounced globalization, saying "globalization has wiped out the [American] middle class." He added that "massive trade deficits subtract directly from our GDP."[9] Although neither statement is true, Trump's speech struck a chord with the American people. Events during the Trump presidency and afterwards - such as enmity and rivalry with Russia and China and the COVID 19 pandemic - enhanced the retreat from globalization. Suddenly national security became an overriding value.

In the United States, in the third decade of the twenty-first century a significant retreat from globalization is a bipartisan endeavor, favored by both Republicans and Democrats. No significant new trade agreements are being proposed. Both Trump and Biden signed important executive orders mandating "buy American" to the maximum extent possible.[10] Both men favor national security tariffs and other national security oversight for trade and investment. In February 2021 President Biden issued Executive Order 14017,[11] which mandates a broad review of supply chains for industries and products vital to the United States security and economy. Pursuant to these mandates both the private and public sectors of the U.S. economy have been reconsidering and rebuilding supply chains to locate important sources of supply either to the United States or to a reliable and friendly partner nation. "Derisking" supply chains is an ongoing process. The "derisk" may either involve domestic production or "friend-shoring."

B. Paralysis of the World Trade Organization

Upon taking office in 2017, President Trump seriously considered withdrawing the United States from membership in the WTO. He ultimately concluded, however, that this was unnecessary since the WTO was effectively paralyzed and moribund. As of 2024, that is still the case with no end in sight.

The WTO has two primary functions: (1) it provides a forum for global trade negotiations; and (2) it administers the WTO dispute settlement system created by the Dispute Settlement Understanding. (DSU).[12] Both these functions remain disabled.

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[9] Jobs Plan Speech, note 1, supra.
[10] President Trump signed Executive Order No. 13,788 Buy American Hire American on April 18, 2017. President Biden signed Executive Order No. 14,005, Ensuring the Future of Made in America, on January 25, 2021.
[11] 86 Fed. Reg. 11849 (Feb. 24, 2021).
[12] Marrakesh Agreement Establishing the World Trade Organization (1994), Art. III.

First, the WTO, almost thirty years in being, has a poor record as a forum for multilateral trade negotiations. No significant package of trade agreements has been approved under the auspices of the WTO. In 2001, at the Fourth Ministerial Conference in Doha, Qatar, a comprehensive trade negotiation was approved with great fanfare. Known as the Doha Development Agenda (DDA), this negotiation comprised twenty-one trade topics, from agriculture to trade facilitation. After fourteen years of fruitless negotiation, the DDA was quietly terminated at the Tenth WTO Ministerial Conference in Oslo in 2016. The lesson drawn from this experience is that the era of negotiation of comprehensive trade liberalization agreements is over. The WTO will never again conclude huge packages of trade agreements as happened in the twentieth century. The most that can be expected is WTO approval of relatively minor trade adjustment pacts.

Second, the WTO dispute settlement system no longer functions as designed. Beginning with the Obama administration the United States blocked appointments to the WTO Appellate Body to protest certain decisions by that body. The Trump administration continued blocking such appointments, but with the idea of crippling the WTO dispute settlement mechanism. The tactic worked, and in December 2019, the WTO Appellate Body ceased to function.[13] Thus, WTO dispute settlement can begin with the decision of a WTO panel; but an appeal of the panel's decision will prevent the Dispute Settlement Body (DSB) from adopting the panel's decision.[14] Since the Appellate Body can no longer act, there can never be a binding decision in the matter. Thus, the United States is currently immune to any adverse dispute settlement opinion at the WTO.

The USTR case for dissatisfaction with Appellate Body decisions is detailed in the Report on the Appellate Body of the World Trade Organization (2020). This Report points out that fully one-quarter of all disputes at the WTO have challenged U.S. laws or measures. Some 90 percent of these cases have found that a U.S. law or measure was inconsistent with WTO obligations. Three major criticisms are leveled at the Appellate Body in the Report. First, the Appellate Body ignores or violates numerous procedural rules and deadlines in dispute settlement; second, the Appellate Body engages in "making law," stating interpretations of the GATT and other WTO agreements that are not clearly set out in the text. The Appellate Body's actions in this regard are inconsistent with Article IX.2 of the

[13] Some 42 WTO members, including the European Union, have agreed to form an alternate appeal system featuring a multiparty interim appeal arrangement, but not the United States.

[14] Understanding on Rules and Procedures Governing the Settlement of Disputes, Art. 16.4.

Marrakesh Agreement, which states that only the WTO Ministerial Conference and the WTO General Council may adopt interpretations of WTO agreements.

The Biden administration has continued the U.S. boycott of appointments to the Appellate Body. With bipartisan support, this difference between the U.S. and other WTO members is not expected to be resolved anytime soon. The United States seems to have lost confidence in the WTO as both a forum for negotiations and dispute settlement.

The extreme weakness of the WTO was on display in March 2024, at the Thirteenth WTO Ministerial Conference in Abu Dhabi, United Arab Emirates. At this meeting not only were all the major questions left unaddressed, the 166-member body exhibited division and stalemate even on relatively minor issues. The meeting had to be extended by a day even to come to agreement on a closing decree that resolved nothing of importance.

Despite its imperfections, the rehabilitation of the WTO is key to maintaining a rules-based international trading system. Successive American administrations worked painstakingly for over fifty years to establish the WTO; yet it seems all this hard work is slipping away. Trump, if he is elected president, seems ready formally to withdraw the U.S. from WTO membership. Biden seems content to allow the WTO to continue its slide into irrelevance. Both these policies are mistaken.

C. New Primacy of U.S. Domestic Laws of International Trade

In 1994, when obtaining Congressional approval of Uruguay Round WTO trade agreements, the Clinton administration filed a Statement of Administrative Action that declared and promised to employ U.S. domestic laws, in particular trade remedy laws, only consistently with WTO obligations.[15] The U.S. thus renounced unilateralism and accepted the primacy of WTO agreements and international trade laws.

The Trump administration reversed this policy. Trump declared his readiness to use U.S. domestic laws and trade remedy laws without regard to international legal norms. He and his USTR simply did not worry or express any opinion on whether their unilateral invocation of U.S. domestic law was consistent with international trade law.

[15] See Report of the WTO Panel, United States – Sections 301-310 of the Trade Act of 1974, WT/DS152/R, adopted January 27, 2000.

President Trump’s unilateral actions concerning trade involved imposing tariffs on imported products. In promulgating these tariffs, Trump relied upon three domestic trade remedy laws which delegated him this power:

- Section 232 of the Trade Expansion Act of 1962[16][17]
- Section 301 of the Trade Act of 1974
- Section 201 of the Trade Act of 1974[18]

1. National Security Tariffs

Section 232 of the Trade Expansion Act of 1962 gives the president broad authority to adopt tariffs or other restrictions on imports that threaten or endanger national security. The president must act after a report by the Secretary of Commerce. President Trump opened eight investigations pursuant to section 232, but he imposed extra tariffs only on imports of steel and aluminum. Beginning on March 23, 2018, steel importers had to pay 25 percent while importers of aluminum were assessed 10 percent.

The ’resident’s action under section 232 was upheld on judicial review. In American Institute for *International Steel v. United States*,[19] the court rejected a challenge to the tariffs as an impermissible delegation of statutory authority. In *USP Holdings, Inc. v. United States*,[20] the Federal Circuit found no violation of the statute or procedural norms. Judicial review of a president’s action under section 232 is limited to considering whether the president clearly misconstrued his authority or has violated a clear statutory norm.[21] Rather than challenge the president’s action, importers may wish to apply for an exclusion.[22]

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[16] 19 U.S.C. sec. 1862.
[17] 19 U.S.C. sec. 2411-2420.
[18] 19 U.S.C. sec. 2251.
[19] American Institute for International Steel v. United States, 376 F.Supp.3d 1335 (CIT 2019), affirmed, 806 Fed App’x 982 (Fed. Cir. 2020).
[20] USP Holdings, Inc. v. United States, 36 F.4th 1359 (Fed. Cir. 2022).
[21] Primesource Building Products, Inc. v. United States, 59 F.4th 1255 (Fed. Cir. 2023); Transpacific Steel, LLC v. United States, 4 F.4th 1306 (Fed Cir. 2021).
[22] See Thyssen Krupp Materials NA, Inc. v. United States, 498 F.Supp.3d 1372 (CIT 2021); NLMK Pennsylvania LLC v. United States, 617 F.Supp.3d 1316 (CIT 2023).

2. Section 301

President Trump invoked section 301 to impose extra tariffs on imports from China. Section 301 of the Trade Act of 1974 may be invoked by the president to retaliate in cases of unjustifiable or unreasonable foreign conduct as well as discriminatory conduct or denial of trade benefits under a trade agreement. The section 301 tariffs were challenged on judicial review by over 6000 importers. The Court of International Trade found that the USTR failed to abide by the Administrative Procedure Act when it selected the products subject to the duties. However, after remand to correct the record, the USTR's actions as well as the section 301 duties were upheld.[23]

3. Safeguard Tariffs: Section 201

In 2018 President Trump invoked safeguard relief to protect domestic industries in two cases, large residential washers[24] and solar cells and modules.[25] Both actions failed their intended purpose. The washer safeguard triggered higher prices and a collapse of domestic sales.[26] The solar safeguard triggered turmoil in the domestic solar panel installation industry.[27] In *Maple Leaf Fish Co. v. United States*,[28] the court stated that the scope of judicial review of safeguard actions is whether there was "a clear misconstruction of the governing statute, a significant procedural violation, or action outside of delegated authority." Since the president is imbued with foreign relations power, there is no judicial review for abuse of discretion.

D. U.S.- China Trade War

When Donald Trump was elected president in 2016, China was the largest trading partner of the United States. The U.S. trade-in-goods deficit with China was $346.8 billion, but few thought that important. The U.S. had run an overall trade deficit every year since 1971 and had deficits with virtually all major countries. American dissatisfaction with Chinese trade practices were first galvanized in 2017 with the publication by the USTR of a *Report to Congress on China's WTO Compliance.* This Report made the following accusations against China:

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[23] In re section 301 Cases, 628 F.Supp.3d 1235 (CIT 2023) and 570 F.Supp.3d 1306 (CIT 2023).
[24] Large Residential Washers, 82 Fed Reg.58026 (Dec. 2017).
[25] Crystalline Silicon Photovoltaic Cells, 86 Fed. Reg. 44403 (Nov. 2017).
[26] Jim Tankersley, How Tariffs Stain the Washing Machine Market, NY Times, Jan. 25, 2019.
[27] Evan Halper, White House takes Measures to Boost the Solar Industry, Wash. Post, June 7, 2022.
[28] 762 F. 2d 86, 89 (Fed. Cir. 1985)). See also Motions Systems Coral v. Bush, 437 F.3d 1356 (Fed. Cir. 2006); Corus Group PLC v. Int'l Trade Commission, 352 F.3d 1354 (Fed.Cir. 2003).

- Chinese industrial policy discriminates against foreign entities in order to align economic development with a central government plan.
- China is dominated by state-owned enterprises that benefit from subsidies and do not operate according to market principles.
- Excess industrial capacity in China is relieved by promoting exports.
- Foreign investment in China is strictly regulated according to a government plan; many key economic areas are reserved to domestic companies.
- China employs forced technology transfer and uses many unfair methods to gain access to technology.

At the heart of the conflicts with China are the different political and economic systems in each country. China is an autocracy that embraces one-man rule and flouts democratic values. The state eschews free market principles and operates the economy according to a central plan. These economic and political differences create an interface problem between China and the United States.[29]

In 2018, Donald Trump began an all-out trade war against China, saying "we can't continue to allow China to rape our country. It's the greatest threat in the history of the world."[30] Trump accordingly progressively imposed tariffs on Chinese imports. China responded with a tit-for-tat series of tariffs and restrictions against U.S. exports and companies. Average U.S. tariffs on Chinese goods went from 3.1 percent in 2017 to 21.2 percent in 2022. Average Chinese tariffs on U.S. goods went from 8 percent in 2017 to 21.8 percent in 2022. The economic impact of this trade war was surprisingly slight. Overall trade between China and the United States has decreased, and China is now the third largest U.S. trading partner behind Mexico and Canada. But the trade-in-goods deficit with China persisted at $383 billion in 2022 and $258 billion in 2023.

On January 15, 2020, China and the U.S. signed a "Phase One" Trade Agreement[31] pausing their dispute and the tariff war. Under this agreement China pledged to end its predatory practices and to buy more U.S. goods. China has not fulfilled these promises. On October 1, 2021, Katherine Tai, President Biden's USTR, specifically called out China for non-compliance with the Phase One Trade Agreement.[32] The Biden administration emphasizes a new approach, favoring working with allies to

[29] See Ming Du, Unpacking the Black Box of China's State Capitalism, 65 Stan. L. Rev. 697 (2013).
[30] Nick Gass, Politico (May2, 2016).
[31] For the text of this agreement see www.ustr.gov.
[32] Annika K. Constantino, Biden Top Trade Advisor will say China is not complying with phase I deal reached under Trump (CNBC Oct. 1, 2021).

rein in China.[33] Thus, the U.S. has little to show for the bitter trade war waged against China since 2018

Is the Past Prologue?

On January 20, 2025, someone will take the oath of office to serve as President for the next four years. A rematch seems to loom between Joseph Biden and Donald Trump. More than the names of the candidates will be on the ballot. Voters will choose the future role of the United States in the world. Voters will also choose the economy they will live with for the next four years and beyond. In terms of the subject matter of this symposium, we can pose the following key questions: (1) What will be U.S. economic policy toward China in the new administration? Will there be an attempted decoupling? (2) What will be the attitude toward tariffs and protectionism? (3) What will be the attitude toward new trade agreements? (4) Will the new president respect international law and institutions?

What will be the impact of international trade policies on the broader economy? The Federal Reserve seems to have engineered a "soft landing" for the U.S. economy. GDP rose 2.5 percent in 2023, and the unemployment rate is a low 3.7. percent. In 2023 inflation moderated to 3.4 percent. Which man, Trump or Biden, is more likely to maintain a good economy?

In this part I will address these and similar questions in the context of comparing the likely international economic policies of the Trump and Biden administrations. I will also describe a "third way" different from both.

A. Donald Trump's "Maganomics"

Donald Trump on the campaign trail today still preaches the populist idea that tariffs benefit domestic industries and produce jobs and produce billions in revenue for the federal government.[34] Trump has

[33] See Fact Sheet, the Biden-Harris administration's new approach to the U.S.-China Trade Relationship, www.uwtr.gov.
[34] Jeff Stein, Trump plans to ratchet up trade fights with China, Washington Post, February 4, 2024, G1. Campaigning in New Hampshire, Trump said, "I took on communist China like no administration in history, bringing in hundreds of billions of dollars pouring right into our treasury when no other president had gotten even literally ten cents out of China."

never been deterred by the opinions of economists who say that tariffs are taxes on American consumers and producers. Trump, the self-described "tariff man," plans to double down on tariffs if he wins a second term as president.

First, he intends to impose a new "universal baseline tariff" of 10 percent on all imports into the United States.[35]

Second, he is considering two possible options with regard to new tariffs on China. One option is to revoke China's "most favored nation" status for trade with the United States.[36] This would immediately result in huge tariffs on all Chinese products. If this option is problematic --- it is against the rules of the WTO --- Trump intends to simply impose across the board tariffs of 60 percent on all Chinese products.[37] The magnitude of these proposed tariffs on Chinese products appears to mean that Trump will seriously aim to decouple the U.S. and Chinese economies.

These proposals, if implemented, would spark a global trade war, not only with China but with virtually all U.S. trading partners. They would also cause inflation and unemployment.[38] A report commissioned by the U.S.-China Business Council predicts more than 700,000 job losses and a cost of over $1.6 trillion to the U.S. economy.[39]

Third, Trump intends to propose a new round of tax cuts for small business and the middle- class worker. He proposes to cut the corporate tax rate from 21 percent to 15 percent.[40]

Critics point out that this tax cut, like Trump's first term Tax Cut and Jobs Act, is unfunded. Republicans are fond of such unfunded tax cuts that add to the national debt, which now stands at over $34 trillion.[41] During his term as president, Trump added $8 trillion to the U.S. budget deficit. In 2023, U.S. interest payments on the national debt totaled $659 billion.[42] The U.S. debt is growing faster than the economy. Many believe this rise in the debt is unsustainable.[43]

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[35] Jeff Stein, Trump vows huge new tariffs if elected, Washington Post, August 23, 2023, A1.
[36] Stein, supra note 34.
[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Jeff Stein, Behind closed doors, Trump eyes a new round of corporate tax cuts, Washington Post, January 13, 2024, A4.
[41] Jeff Stein, In a first, U.S. debt rises above $34 trillion, Washington Post, January 4, 2024, A1.
[42] Jeff Stein, U.S. payments on debt spiked to $659 billion, Washington Post, October 21, 2023, A19.
[43] Ibid.

Summing up Trump's economics it can only be said that they are totally wrongheaded and borderline lunacy.

B. Joseph Biden's "Bidenomics"

The Biden administration's trade policy prioritizes labor and the American worker over consumerism. Biden's 2021 Report to Congress[44] states that American workers should be at the forefront of trade policy. Trade must be conducted to benefit regular American communities and workers. Trade policy must recognize that people are not just consumers, they are workers and wage-earners. Trade policy must protect American jobs not just low prices for consumers.

A threshold decision for the Biden administration was whether to repeal the Trump tariffs. At the time inflation was high. Numerous commentators advised Biden to rescind the Trump tariffs, arguing this action would lower U.S. inflation by 1 to 2 percent.[45] Biden rejected this advice; he chose to defend the Trump tariffs in court litigation. Biden's defense was successful. Biden did, however, allow importers to seek exclusions on grounds such as lack of domestic supply.

The Biden administration also vigorously defended the section 301 tariffs on China and ultimately prevailed in court. The Biden administration has not sought to lift these tariffs either unilaterally or in conjunction with an agreement with China.

The central element of Bidenomics, one that is new and untried, is an industrial policy that shapes the international economic order to achieve economic goals that benefit particular industries and communities. Four new laws are essential to this process: (1) American Rescue Plan Act ($1.9 trillion); (2) Infrastructure and Jobs Act ($1.2 trillion); (3) Inflation Reduction Act ($369 billion); and the (4) Chips and Science Act ($52 billion). Industrial policy is any governmental effort to boost priority industries or to create structural economic change. The United States formerly looked down on industrial policy and criticized states that adopted it. No more --- if you cannot beat the competition, you join it.

Biden's industrial policy involves three elements. First, massive subsidies are available doled out by bureaucrats or made directly to consumers in the form of tax credits. Second, the subsidy must be

[44] 2021 Trade Agenda and 2020 Annual Report to Congress, available at www.ustr.gov.

[45] Stan Anderson and William N. Walker, Biden's failure to reverse Trump's tariffs has real consequences, Washington Post, May 26, 2021, A19.

spent in America under Executive Order 14005, the Buy American mandate. Third, Executive Order 14017 comes into play mandate special attention to the supply chain to ensure there will be no disruptions or delays. “Make it in America is no longer just a slogan,” said President Biden, “it is a reality in my administration.”[46]

The Chips and Science Act addresses a long-term decline in U.S. semiconductor chip manufacturing. Of the world’s five largest chip manufacturers, only one, GlobalFoundries, is based in the United States. In February 2024, the U.S. Department of Commerce announced a $1.5 billion grant to GlobalFoundries to build a computer chip manufacturing plant in New York state.[47] Additional grants include $35 million to BAE Systems, a defense contractor, and $162 million to Microchip Technology, a Colorado company.[48] The Biden administration argues that subsidies are the only way to create a viable computer chip manufacturing industry in the United States. This may be the case, but the subsidies potentially contravene the prohibitions contained in the WTO Subsidies and Countervailing Measures Agreement, and the “buy American” program may violate the WTO Government Procurement Agreement.

In past administrations negotiating free trade agreements that open foreign markets to American exporters was a high priority. The Biden administration, however, is an exception to this rule. Early in his administration President Biden stated, “I am not going to enter any new trade agreement until we have made major investments here at home and in our workers.”[49] Biden has not sought to enter into any free trade agreements and apparently does not intend to do so if he wins a second term as president. He has not sought to revive unfinished negotiations with the European Union or the United Kingdom. He has not expressed interest in joining the Progressive and Comprehensive Trans-Pacific Partnership free trade agreement, which is in force for eleven nations.

As a substitute initiative the Biden administration formed what is called the Indo-Pacific Economic Framework for Prosperity. This is a “framework” not a free trade agreement. It is a voluntary document that does not contain any legal obligations but simply pledges cooperation. As Catherine

[46] Catherine Rampell, The Myth of a Manufacturing Comeback, Washington Post, September 20 2022, A19.
[47] Drew Harwell, U.S. to give $1.5 million to help build computer chip plant, heating up global race, Washington Post, February 20, 2024, A14.
[48] Ibid.
[49] TV Interview with Thomas L. Friedman of the New York Times, December 2, 2020.

Rampell describes it, "the only thing that can be reliably counted on is a growing aversion to anything branded as free trade."[50]

The words "free trade agreement" have become toxic on Capitol Hill and in the Biden administration.

The Biden administration eschews the inflammatory rhetoric of the Trump administration but has not sought to repair the damage to the multilateral trading system or to solve the thorny problems left over from Donald Trump.

The Biden administration's trade policy, like Trump's, is a huge break from decades of past trade policy. Biden rejects free trade negotiation to open foreign markets in favor of handing out lavish subsidies to favored industries. Critics decry the free spending and the emphasis on government creation of a manufacturing boom that will never materialize. They point out that manufacturing employment has been in steady decline for decades as automation makes it possible to produce more goods with ever fewer workers. Manufacturing accounts for just 8.3 percent of total employment, down from 8.6 percent when Biden took office.[51]

C. A Third Way

Two prominent critics of Bidenomics, not to mention Trumpian Maganomics, are former Secretary of the Treasury Lawrence Summers and former USTR Robert Zoellick. These men constitute a "third way" in trade policy, different from Biden and more attuned to traditional trade policy of past decades. Summers has said, "I am profoundly concerned by the doctrine of manufacturing-centered nationalism that is increasingly put forth as a general principle to guide policy." Summers decries much of the Biden administration's industrial policy and the protectionism behind Biden's emphasis on "buy American."[52]

Summers believes that excessive reliance on "buy American" exacerbates economic problems by driving up prices and fueling labor shortages.[53] Summers argues that it sounds smart to use tariffs or buy American to protect the 60,000 workers in the U.S. steel industry. But when you raise the price of steel, the 6 million workers who use steel as an input all suffer as do consumers of steel. He reminds us that the workers who produce steel are only 1 percent of the workers who need and use

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[50] Catherine Rampell, Biden trade framework misses key points about, well, trade, Washington Post, May 25, 2022, A21.
[51] David J. Lynch, Biden paves a new way on trade, Washington Post, August 27, 2023, A1.
[52] Ibid.
[53] Tyler Pager and Jeff Stein, Biden privately calls critics of his economic agenda, Washington Post, June 4, 2021, A7.

steel as an input in the goods they make.[54] Saving a few jobs for workers who make steel may not be the answer to economic malaise.

At a talk in 2023 at the Peterson Institute for International Economics, Summers made the following interesting points: (1) trade with China benefits the United States, which achieves job growth and consumer advantages; (2) government economic intervention aimed at bringing about a renaissance in U.S. manufacturing jobs is unrealistic and potentially counterproductive; and (3) the U.S. government should not try to maximize job creation over maximizing availability of low-cost goods to consumers.[55]

Robert Zoellick[56] makes four cogent criticisms of Bidenomics. First, team Biden ignores all fiscal discipline, embracing modern monetary theory that consigns fiscal constraints to the past. On the contrary, the U.S. budget deficit is worrisome and will have to be addressed. Second, “Biden’s team pursues trade and antitrust policies while questioning the importance of prices, costs, and efficiencies. Increased prices for consumers matter little to the administration compared with such goals as blocking foreign competition, doing away with fossil fuels, and experimenting with new regulations.”[57] Third, team Biden distrusts the private sector of the economy, putting too much faith in statist solutions. Fourth, Biden now eschews American leadership in international trade. Instead, “Katherine Tai, Biden’s USTR, embraces Trumpian isolationism. She denies the power of deals to open markets and to accomplish other administrative objectives.

In short, Zoellick says, “Biden theorists imagine a national economy that Washington designs without foreign involvement.” There seems to be no memory that the post-war trade agreements signed between the 1940s to the 1990s produced unprecedented economic growth both for the United States and its trading partners.

Summers ’and Zoellick’s criticisms point toward a third way of handling the important subject of trade and investment policy. Why not return to multilateralism, which has stood the United States and its allies in such good stead for so many decades? This is not to advocate the multilateralism of the past. Why not adopt a multilateral approach suitable to deal with the problems of today. This multilateralism has three elements.

[54] Fareed Zakaria, The Biden doctrine makes me nervous, Washington Post, May 7, 2023, A17.
[55] PIEE Insider September 20, 2023, available at insider@piee.com.
[56] Robert B. Zoellick, Team Biden Wants an Economic Revolution, Washington Post, August 17, 2023, A17.
[57] Ibid.

First, the United States should return to negotiating free trade agreements that open foreign markets to U.S. exporters. The U.S. traditionally was the largest exporting country. China became the world's largest exporter only in 2009. The United States should again achieve this title; the way forward is the negotiation of free trade agreements.

Three free trade agreements should be high on the agenda of the next administration:

(1) The United States should join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP); this free trade agreement was negotiated by the United States and is in force for eleven friendly Asian-Pacific countries. President Trump withdrew his support for this agreement in 2017, part of his mistaken "Maganomics" protectionism. This was a grievous error. The provisions of the CPTPP were created in Washington and are in the American interest.

(2) The United States should restart and complete negotiation of the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union and the UK. This negotiation was scuttled by Trump. It can easily be revived.

(3) The United States should come to a free trade agreement with eleven (or more) Western Hemisphere nations. The Biden administration has launched talks with these nations but only to discuss what is called an "American Partnership for Economic Prosperity." This is a toothless political agreement to be "nice," but would not open any foreign markets or carry economic obligations.[58] Nothing less than a full free trade agreement should be the administration's goal.

(4) The United States should reengage with African nations through the African Continental Free Trade Agreement.

The purpose of entering into free trade agreements is not only to open foreign markets, but also to compete with China, which is very active all over the world promoting its Belt and Road initiative and other goals. By entering into these free trade agreements, the United States can help craft a global

[58] David j. Lynch and Karen Deyoung, US to launch talks on partnership with 11 Western Hemisphere nations, Washington Post, January 28, 2023, A17.

standard of conduct in trade and investment that China must observe. Without new trade agreements China is free to pursue its "divide and conquer" strategy to negate American influence around the world. New trade agreements would also confirm and reanimate America's relations with its allies, who are anxious to create a counterweight to China.

As a second element of a "third way" in trade, the United States should reengage with the WTO and again play a leadership role in that organization. Since 2017 a leadership vacuum has existed at the WTO.[59] Now is an excellent time to reassert American leadership. There is still a need for clear multilateral rules in trade. American leadership of the WTO could help shape the rules to our liking. It is not enough to merely criticize the rules and the role of the Appellate Body. The U.S. should also actively promote new rules more to our liking.

Third, the United States should establish a wide-ranging dialogue with high-level Chinese counterparts to provide transparency and to justify American actions in the ongoing economic competition with China. While decoupling is not and should not be the American goal, strategic decoupling may be warranted. The United States is taking numerous actions regarding China unilaterally. But that is not enough; there should be a bilateral forum to discuss American and Chinese actions in real time as they are happening. Establishing such a forum could help each side to understand this strategic decoupling process and to make corrections where warranted. The Trump administration abandoned economic dialogue with China shortly after taking office in 2017 in favor of a one-sided, "lay down the law," monologue with its Chinese counterparts. This was a mistake. Larry Summers has described how bilateral talks with China have been fruitful to change Chinese behavior with respect to currency valuation and other matters.[60]

Conclusions

In November 2024, voters will choose between Trump and Biden to be president of the United States. This essay has compared the different international trade policies of each man. While Trump's policy views are sheer lunacy, embracing full-throated protectionism, Biden's trade policy views are troubling. Biden also leans toward protectionism to some degree.

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[59] Alan William Wolff, What's Happening to the International Trading System? (American Chamber of Commerce in Japan, July 5, 2023).

[60] Lawrence H. Summers, Opinion, Four Reasons Chinese Officials aren't buying Trump's Trade Threats, Washington Post, April 9, 2018, A16.

It is surprising that Biden on trade resembles his Republican predecessor more than the presidents of both parties who preceded him in the White House. Biden errs in turning his back on past trade liberalization pursued by successive presidents before Trump.

The next administration should adopt a "third way" set of policies on international trade, emphasizing (1) negotiation of wide-ranging new free trade agreements; (2) reengagement with the WTO; and (3) robust bilateral forums to discuss trade matters with China.