

Trump's China Trade Policies: Threats and Constraints

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United States litigation against China in the WTO will be ground zero for the new Trump administration's aggressive trade policy. Five important facts must be highlighted to better understand the likely actions of the Trump administration. First, heightened judicial advocacy within the WTO will be consistent with both the Bush and Obama administrations' aggressive use of the WTO's dispute settlement system. Second, international judicial activism is squarely within the context of unfolding historical changes in international relations. Third, China hawks in the Trump administration will be competing with a number of countervailing forces in the White House, throughout the administration, and in the federal courts. Fourth, the US Congress has the exclusive authority to regulate global trade. However, much of this exclusive authority has been delegated to the president. Fifth, Trump considers trade as a zero-sum transaction, with a focus on the bottom line, to the exclusion of all else.

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1. Introduction

The Chinese and US litigation in the WTO will almost immediately be ground zero for the new Trump administration's aggressive global trade policy.¹ This is clearly evidenced by the appointment of his new trade team.² The appointed

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team members include a harsh China trade critic and a leading protectionist trade lawyer. A recent editorial in *THE WALL STREET JOURNAL* stated: “The President-elect has assembled the most antitrade team of presidential policy advisers since the 1920s.”³

Peter Navarro, a little-known business professor, has been a most vociferous critic of China’s trade practices. He will be serving in the White House as the director of the new National Trade Council. He recently declared the WTO rules as biased and grossly unfair.⁴ Robert Lighthizer has been a leading lawyer in bringing domestic trade actions against steel imports for years and has also been a bitter critic of China. He will be the new US Trade Representative. Both seem to be the alter ego of US President Trump, who appears to be itching for a trade war⁵ and disdains multilateral treaties.⁶

Trump has clearly elevated trade to a top priority in the new White House, reflecting the critical role of trade in the presidential election, during which millions of those who felt marginalized by globalization and resented it, particularly in the Rust Belt, supported him.⁷ This resentment is central to the wave of populist nationalism raging against the globalization that is sweeping a number of countries.⁸

Decision-making concerning trade in the White House will involve much more than trade, however. It will also fall within the broader context of other international and domestic political, economic, investment, and security concerns. Yet, trade transactions and their impact within the US are of central concern for Trump. This has been the case ever since Trump’s opposition to Japan’s economic takeover of trophy US real estate in the 1980s. A political commentator recently noted: “Trump has a long-standing, consistent view on US trade with the rest of the world: They are winning and we are losing.”⁹

The primacy purpose of this research is to analyze the grounds for the new Trump administration’s aggressive China trade policy. In this paper, five important facts will be addressed.

2. Five Important Facts

Five important and often-overlooked facts must be highlighted to better understand