

Is America Back to Multilateralism? A Prospect of President Biden's China Trade Policy

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The 2020 US Presidential election is now over. After listening to the essence of Mr. Biden's inauguration speech, "America is Back!", people around the world are cautiously expecting the revival of multilateralism. This research is to tackle a fundamental question of: "Is America Back to Multilateralism?," by focusing on the US's China trade policy under the Biden presidency. This essay consists of five parts including Introduction and Conclusion. Part two will review the development of postwar multilateralism which constructed the rule-based trade governance. Part three will analyze the challenge and crisis of contemporary multilateralism under former President Trump and the possibility of its resurrection under Biden administration. The author will review the origin and evolution of the US-China trade war. Part four will look into the possibility of reconstructing multilateral world for sustainable development. Part five will conclude the essay predicting the US's China trade policy under the Biden administration.

Keywords: Multilateralism, Biden, America is Back, Unity, WTO Reform, Appellate Body, US's China Trade Policy

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*As to China and diplomacy - "I'm not going to do it the way Trump did.
We are going to focus on the 'international rules of the road'."*

US President Joe Biden (CBS on February 8, 2021).

1. Introduction

The postwar world began with serious reflection on each sovereign state's unlimited rush for maximizing its national interest, which led to the demolition of human society by the wars. The leaders of the Allies assented to go back to multilateralism after World War II. Such grand design was realized by the "Bretton Woods" institutions composed of the United Nations, the General Agreement of Trade and Tariffs (GATT; later WTO), International Monetary Fund (IMF), and International Bank for Reconstruction and Development (IBRD), which was altogether dedicated to maintain peace, stability and co-prosperity of the postwar international community. In the Cold War period, this "4-track" system was working for communication between the East and the West-two ideologically hostile blocs. When the Cold War was over, however, the rule-based system began to be destabilized again by the United States (US) who became the sole dominant hegemonic power in the global politics and economy.

The American unilateralism was more accelerated by the 9.11 attacks and the successive "War on Terror." After 9.11, every country in the world was then required to choose either American side or terrorism. Neutral area was not permitted. Such extreme unilateralism reached the peak under the Trump administration. President Trump launched the trade war against China imposing excessive tariffs on the imports from China; withdrew from Trans-Pacific Partnership Agreement and the Paris Climate Accord; prevented the key role of the WTO dispute settlement by blocking the new appointments to the Organization's Appellate Body (AB); and decoupled the security networks with its conventional allies. During this course, the American political leadership gradually weakened and its global economic influence decreased. Moreover, the US is facing another challenge from China which has been breathtakingly rising in international political and economic scene. The US is not the sole superpower anymore, but a member of G2 with China. The

Americans may be shocked with the new international setting because they had not acknowledged any challenger in the world politics since the end of the Cold War.

The 2020 US Presidential election is now over. Mr. Trump is defeated and Mr. Biden took office in January 2021. After listening to the core essence of Biden's inauguration speech, "America is Back!," people around the world are cautiously expecting the revival of multilateralism. This research is to tackle a fundamental question of: "Is Biden coming back to multilateralism?," by focusing on the US's China trade policy under the Biden presidency. This essay consists of five parts including Introduction and Conclusion. Part two will review the development of postwar multilateralism which constructed the rule-based trade governance. Part three will analyze the challenge and crisis of contemporary multilateralism under former President Trump and the possibility of its resurrection under Biden administration. The author will review the origin and evolution of the US-China trade war. Part four will look into the possibility of reconstructing multilateral world for sustainable development. Part five will conclude the essay predicting the US's China trade policy under the Biden administration.

2. Development of Postwar Multilateralism: US v. China

A. American Multilateralism

In general, multilateralism is referred to as theoretical and ideological pattern to cope with common issues by the international society. Each nation would and should have such doctrine for foreign policymaking.

Theoretically, multilateralism may be defined as: "central principle of international governance ... opposition [to] bilateral discriminatory arrangements that were believed to enhance the leverage of the powerful over the weak and to increase international conflict"¹; "the practice of coordinating national policies in groups of three or more states"²; or "an institutional form which coordinates relations among three or more states based on 'generalized' principles of conduct ... which specify appropriate conduct for a class of actions, without regard to particularistic interests of the parties or the strategic exigencies that may exist in

any occurrence.”³

Multilateralism appeared at each stage of human history for necessity. A modern style of multilateralism occurred in the nineteenth century’s Europe after the Napoleonic War. The multilateral system (The Concert of Europe) provided the forum for greater and lesser powers to resolve the international disputes peacefully. For example, the Conferences of Berlin brought the peace in the nineteenth century in Europe.⁴ Such successful experience led to create the League of Nations after World War I restoring peace and preventing another armed conflict in Europe based on multilateralism. This general international organization, however, did not obtain its primary purpose for institutional defect.⁵

After World War II, the time of multilateralism was once again reached its full height with the “Bretton Woods” institutions such as the UN, GATT, IMF and IBRD. In particular, the leaders of the former Allied Powers have set up the rule-based multilateral trading system through GATT (later embodied by WTO) whose common ground is the principle of Most-Favored-Nation (MFN) treatment. Actually, the global trade governance system (GATT and WTO) is a US-led strategy for maintaining its leadership and dominance in the postwar world. The first WTO Director-General, Mr. Renato Ruggiero maintained that: “There is no opposition between a strong defense of the American interest and an open multilateral system.”⁶ Multilateralism in global trading system has been expanding: GATT had 23 members in 1948; the WTO has 164 members as of November 2020. Mr. Ruggiero offered six reasons why a multilateral approach should be important for each nation: First, non-discriminatory trade policy is the most advantageous and efficient both in the sense of ensuring access to low-cost supplies, and of allowing producers to sell in foreign markets without a policy-imposed disadvantage relative to other suppliers. Second, in the discriminatory trade regimes, doing business across frontiers becomes more complex and time-consuming, raising costs and undermining competitiveness. Third, MFN principle ensures developing and transition economies to remain within the system. Fourth, MFN principle extricates economic interests from political dynamics through preventing politicization of trade. Fifth, clear and predictable rules for conducting international trade relations will guarantee orderly international economic relations. Finally, the WTO system provides impartial dispute settlement mechanism which is frequently unavailable or ineffectual under bilateral arrangements.⁷ He closed his remarks:

... the multilateral system has been tried and found rewarding, both in fostering American prosperity and in defending American rights under its rules. This system is now better than ever equipped to meet that basic US objective - the rule of law in international trade. It would be tragic if narrowly-focused reciprocity concerns, and the seeming attractiveness of immediate sectoral gains built on discriminatory deals, were allowed to jeopardize continuity and stability in the international trading system. This would be in the interest of no country.⁸

Unfortunately, however, the US-led multilateral trading system is not well functioning these days for the founder itself.

B. Chinese Multilateralism

China entered the multilateral trading system in December 2001 with its accession to the WTO. Since then, China has cleared up more than 7000 tariffs, quotas and other trade barriers.⁹ The WTO membership was a cornerstone for China to be a free trade country, and China's initiatives to multilateralism were proactively shaped by President Xi Jinping's leadership. In particular, the Chinese government has tried to reform global governance. It participated in existing institutions and submitted itself to the G20 2016 and BRICS summit (2017), consolidating its influence and strengthening the relationship with each member.¹⁰ In the Davos Forum 2017, President Xi addressed:

To grow its economy, China must have the courage to swim in the vast ocean of the global market. If one is always afraid of bracing the storm and exploring the new world, he will sooner or later get drowned in the ocean. Therefore, China took a brave step to embrace the global market. We have had our fair share of choking in the water and encountered whirlpools and choppy waves, but we have learned how to swim in this process. It has proved to be a right strategic choice.¹¹

The vision for this global development is based on the idea of "Shared Prosperity,"¹² which calls for "an open, inclusive, clean and beautiful world that enjoys peace, universal security and common prosperity."¹³ Through these steps, China tries to build partnerships rather than confrontation.

The core initiative of Chinese multilateralism is the Belt and Road Initiative (BRI) which has been financially supported by the Asian Infrastructure Investment

Bank (AIIB). BRI and AIIB are regional development projects crossing the Eurasian continent. Both are symbols of China's "great power diplomacy."¹⁴ The Chinese would call it "walk with two legs."¹⁵ Rober Zoellick stated: "The AIIB offers an opportunity to strengthen the very international economic system that the US created and sustained."¹⁶ However, Bin Gu does not agree that AIIB represents a hegemonic multilateralism. He maintains "China has no will to counter the existing world order through the establishment of the AIIB."¹⁷ Rather, he says that "Chinese multilateralism aims to improve global governance, tilting toward balance in favor of those underrepresented. ... [The AIIB] fulfills multilateralism in both its constitutional charter and standards. ..."¹⁸

China's multilateralism mainly focuses on bridging the gaps between neighboring countries based on its institutional settings such as the BRI. Simultaneously, however, those who are around China has serious concern if its multilateralism is transformed into hegemony and expansionism.

Chinese multilateralism has made a great contribution to broaden its market globally. It was undoubtedly successful in terms of economic growth and poverty reduction. However, China's understanding of multilateralism is not always consistent with rule-based trading system. One of the striking issues is the China's status in the WTO as a "non-market economy."¹⁹ China is making a stretched effort to obtain the market economy status through bilateral means, until recognized by the WTO. In some instances, China has forced its South East Asian (ASEAN) and other developing trading partners, who would like to have preferential access to China's large market, to include in their free trade agreements a specific article in which these countries recognize China as "a market economy."²⁰ Currently, however, neither industrialized countries, nor other emerging countries such as India have granted market economy status to China.²¹ In May 2019, while the WTO panel was examining China's appeal against the European Union (EU) for its refusal to recognize China's market economy status,²² China decided to suspend the panel's work and freeze the proceedings against the EU.²³ In addition, decisions taken by the 19th CCP Congress in October 2017 confirmed that China [is] not ready to implement the legal and institutional reforms necessary to obtain market economy status in the near future, as these reforms could jeopardize social and political stability.²⁴

3. Challenge and Crisis of Multilateralism: The US-China Trade War

Meanwhile, postwar multilateralism was seriously challenged by President Trump when he launched a trade war against China. The US-China Trade War initiated on July 6, 2018 when the US imposed tariffs on USD34 billion of Chinese goods and China imposed retaliatory tariffs on the US goods of a similar value two days later.²⁵ On July 10, 2018, the US released an initial list of the additional USD200 billion of Chinese goods that would be subject to a 10 percent tariff. Two days later, China vowed to retaliate with additional tariffs on American goods worth of USD60 billion annually.²⁶ A few months ago, on March 22, 2018, Trump asked the United States Trade Representative (USTR) to investigate the effect of applying tariffs on USD 50-60 billion worth of Chinese goods.²⁷ He relied on Section 301 of the Trade Act of 1974 for doing so, stating that the proposed tariffs were “a response to the unfair trade practices of China over the years,” including theft of the US intellectual property.²⁸ Over 1,300 categories of Chinese imports were listed for tariffs, including aircraft parts, batteries, flat-panel televisions, medical devices, satellites, and various weapons. On August 14, 2018, China filed a complaint with the WTO, stating that the US tariffs on foreign solar panels clash with the WTO ruling and have destabilized the international market for solar PV products. China stated that the resulting impact directly harmed China’s legitimate trade interests.²⁹ On September 24, 2018, the US implemented tariffs on USD200 billion worth of Chinese goods, bringing the total amount to USD250 billion. The tariffs carried an initial rate of 10 percent, and was expected to be increased to 25 percent by January 1, 2019.³⁰ China responded to the US tariffs by implementing tariffs on USD60 billion worth of the US goods.³¹ The US and China agreed to de-escalate trade tensions at the G20 Summit in Buenos Aires on December 1, 2018. According to the agreement, both countries decided to refrain from increasing tariffs or imposing new tariffs for 90 days (until March 1, 2019). In this deal, the US agreed to refrain from increasing the aforementioned tariffs (List 3) that were expected to increase from 10 to 25 percent on January 1, 2019, and would not impose previously threatened tariffs on an additional USD267 billion worth of Chinese goods.³² Also, China agreed to purchase more US products - especially agricultural and energy products - and would crack down on

the production and distribution of Fentanyl, a synthetic opioid produced primarily in China.³³ However, on May 5, 2019, President Trump stated that the US would increase tariffs on USD200 billion worth of Chinese products from 10 percent to 25 percent, effective May 10, as the US and China failed to reach a deal following the end of the first day of the eleventh round of high-level trade talks.³⁴ On June 29, 2019, both sides agreed to restart trade talks.³⁵ During the two-day meeting on October 10-11 in Washington, D.C., President Trump announced that negotiators from the US and China had reached a “Phase 1” agreement.³⁶ As part of the Phase 1 agreement, China reportedly agreed to purchase USD40-50 billion in the US agricultural products annually; strengthen intellectual property provisions; and issue new guidelines on how it manages its currency.³⁷ President Trump also announced that the US would delay tariff increase scheduled to go into effect on October 15. The delay is still applying to tariffs that were scheduled to increase to 30 percent on USD250 billion of Chinese goods.³⁸ Since October 11, 2019, the US-China Trade War has been under truce. By then, the US had applied total USD550 billion tariffs exclusively to Chinese goods. Responding to the US tariffs, China also imposed USD185 billion retaliatory tariffs exclusively to the US goods.

The trade war has negatively impacted the economies of both the US and China.³⁹ The US has got through higher prices for consumers and financial difficulties for farmers. In China, the trade war blocked the economic and industrial output growth, which had already been on a decline. Many American companies have shifted supply chains to elsewhere in Asia, bringing fears that the trade war would lead to a US-China economic ‘decoupling.’⁴⁰ In addition to economic damage, President Trump’s uncompromising stance showed the world that multilateralism, which had been ground for economic prosperity since the end of World War II, was declining. The US-China Trade War developed into political rivalry between G2 nations, including the domestic questions of Hong Kong and Taiwan. Professor Stuart Malawer has given his insightful analysis to Trump’s “America First!” as follows:

Trump’s revisionist view of the US national interests is different from other presidents since World War II. These views are moving away from active engagement and moving toward being more isolationist and nationalist. Even the term ‘America First’ has its origins in the isolationism of the US in the 1930s. The ‘America First’ policy today abandons the American architecture of the postwar world and its leadership. We will

soon know if ‘America First’ will mean ‘America Alone.’⁴¹

Like his prediction, Americans now may have a justifiable ground to be afraid for isolation from the world. 2021 will be a significant year for the US to open up once again and come back to the world.

4. Restructuring Multilateralism under International Law

A. Trump’s “America First!”

Following “America First!,” the Trump Administration abandoned multilateralism in international trade that the US had launched and enjoyed over the past several decades. Trump’s unilateral measures, adopted in almost every policy-making steps without regards to the multilateral framework of the WTO, escalated protectionism which had been already looming in the international community. Ignoring the ultimate cause of economic decline, he tried to manipulate China for his domestic political agenda.⁴²

President Trump declared trade war against China levying uncompromising tariffs to Chinese imports. This current multilateral trading system may need to be reformed, considering the Chinese position and practice, because China is now the largest developing country member as well as the second most influential shareholder of the WTO which was never predicted in 1995. Trump should have actively negotiated with China within the WTO framework. Instead, he blocked the operational functioning of the Organization by preventing the appointments of new members to its AB which guarantees the trust of multilateral trade dispute settlement mechanism.⁴³

B. Dysfunction of the WTO Dispute Settlement: US v. P.R. China

1. The US Concerns with the WTO Appellate Body

The WTO is not performing properly to certain extent these days. Since its inception in 1995, the WTO’s main function has been its dispute settlement. However, the AB was dramatically paralyzed on December 10, 2019 when two of the three remaining members finally stepped down from their positions. With

less than three minimum quorum, the AB cannot hear appeals against the findings of the panel. For the first time since 1995, the rule-based multilateral trading system came into the risk of collapsing. In fact, the real problem began to rise five years ago. In August 2016, the US decided to block the appointments of new AB members, complaining the provision of Rule 15 of the Working Procedures for Appellate Review which may authorize its outgoing members to complete the disposition of pending appeals.⁴⁴ The US has repeatedly stated in DSB meetings that the US “consider[s] that the first priority ... for the DSB [is] to discuss and decide how to deal with reports being issued by persons who are no longer members of the Appellate Body.”⁴⁵ Then, the US addressed further concerns with the WTO dispute settlement system. “The President’s 2018 Trade Policy Agenda” enumerates the US concerns with the AB approach in Table 1:

Table 1: The US Concerns with the WTO Dispute Settlement⁴⁶

US Concern	US Position
Disregard for the 90-day deadline for appeals	Article 17.5 of the DSU provides: “[i]n no case shall the proceedings exceed 90 days.” The US has expressed concern regarding the AB’s decision to ignore the mandatory 90-day deadline for deciding appeals set out in WTO rules. The AB never explained on what legal basis it could choose to breach a clear and categorical rule set by WTO Members. ⁴⁷ The US raised the concerns of transparency, inconsistency with “prompt settlement of disputes,” and uncertainty regarding the validity of the report issued after 90 days. ⁴⁸
Continued service by persons who are no longer AB members	Another concern of the US is that AB [authorizes] a person who is no longer a member of the AB to continue hearing appeals. ⁴⁹ The US claims that the AB simply does not have the authority to deem someone who is not an AB member to be a member. The AB purports to find in Rule 15 of its Working Procedures for Appellate Review (WT/AB/WP/6) the authority to “deem” as an AB member one of its own members whose term has expired. ⁵⁰ The US is resolute in its view that Members need to resolve this issue before moving on to the issue of replacing former AB members. ⁵¹

Issuing Advisory Opinions on Issues Not Necessary to Resolve a Dispute	The US's view is that the WTO reports make findings "unnecessary to resolve a dispute or on issues not presented in the dispute." The US pointed to DS 453 where "more than two-thirds of the AB's analysis – 46 pages – was in the nature of obiter dicta." ⁵² It is a violation of Articles 3.4, 3.7, 7.1, 11 and 19.1 of DSU. The US claims that the WTO panels and the AB are not to make findings that cannot "assist the DSB in making [its] recommendations." ⁵³
AB Review of facts and review of a Member's domestic law de novo	Article 17.6 of the DSU limits an appeal to "issues of law covered in the panel report and legal interpretations developed by the panel." The US criticizes that the AB has "consistently reviewed panel fact-finding under different legal standards, and has reached conclusions that are not based on panel factual findings or undisputed facts." ⁵⁴ Another concern of the US in this regard is the AB's review of the meaning of Member's domestic law that is being challenged. ⁵⁵ The US claims that the AB consistently asserts that it can review the meaning of a Member's domestic measure as a matter of law rather than acknowledging that it is a matter of fact and thus not a subject for Appellate Body review. ⁵⁶
The AB claims its reports are entitled to be treated as precedent	The US claims that the AB reports are effectively served as precedent; the panels are to follow prior AB reports without "cogent reasons." According to the US perspective, "[w]hile Appellate Body reports can provide valuable clarification of the covered agreements, AB reports are not themselves agreed text nor are they a substitute for the text that was actually negotiated and agreed." ⁵⁷

Compiled by the author.

In fact, the WTO Dispute Settlement Body has been successfully defending the American interest. The Trump administration's paradoxical blocking may only be understood as isolationism. On the one hand, it failed to innovate the WTO as a truly supranational institution with the power to sanction nations that violate its rules. Furthermore, the legal uncertainty of potential conflicts between countries escalated a risk that may lead to international trade and foreign direct investments' significant decline.⁵⁸ On the other, the current stance of the US have revealed serious problems inherently embedded in the WTO dispute settlement mechanism and its practice for the past twenty-five years. Ironically, Trump's "America First!" doctrine and following denial of the AB member appointments led the world to fundamentally reconsider the multilateral trading rules with special references to

dispute settlement.

2. China's Reform Proposal

Responding to President Trump's unilateral action, the international community began discussing the reformation of the WTO dispute settlement. Since the 2018 G20 Summit in Buenos Aires, several nations and organization such as China and the EU have delivered reform proposals of how "to accommodate the coexistence of two different and incompatible economic systems: China's state capitalism and the West's market economies."⁵⁹

On May 13, 2019, China published its proposals for the WTO reformation based on its position through a paper released in November 2018.⁶⁰ China's proposal addresses the following four necessary reforms: First, resolving the crucial and urgent issues threatening the existence of the WTO; Second, increasing WTO's relevance in global economic governance; Third, improving the operational efficiency of the WTO; and Fourth, enhancing the inclusiveness of the multilateral trading system.⁶¹ In particular, China suggested the action proposal for breaking the impasse of the appointment process of Appellate Body members as follows:⁶²

China, together with some other WTO Members, submitted joint proposals on the Appellate Body reform, urging Members to actively participate in the informal process under the auspices of the General Council and engage in substantive text-based discussions. These efforts are made to address such concerns of certain Members as the transitional rules for outgoing Appellate Body members, 90-day timeframe for appellate proceedings, the status of municipal law, findings unnecessary for dispute resolution and the issue of precedent. The proposals also emphasized the need to preserve and reinforce the independence and impartiality of the Appellate Body and to initiate the appointment process of the Appellate Body members without any further delay.⁶³

In the reform process, a critical point among several issues is a Chinese "state-owned enterprises (SOEs)."⁶⁴ Chinese SOEs, such as solar panel industry, allegedly receive a multiplicity of public subsidies that distort competition with third-countries' companies and act in accordance with Chinese government directives.⁶⁵ To ensure that companies owned by different owners operate in an environment of fair competition, however, China proposes the following:

First, during discussions on subsidy disciplines, no special or discriminatory disciplines should be instituted on SOEs in the name of WTO reform. Second, foreign investment security reviews shall be conducted in an impartial manner and follow such principles as transparency and due process. Non-discriminatory treatment shall be given to like investment by enterprises with different ownership structures.⁶⁶

China tries to defend the status quo at the WTO without any effective control of the subsidies. This explains why China supports the European and other countries' proposal to unblock the appointment of judges to the WTO AB.⁶⁷

Since China is not considered as a "market economy" by the WTO and does not systematically comply with transparency rules, China should defend the implementation of ad hoc trade rules that are considerably less stringent than other major trading countries.⁶⁸ If the international community wants to defend the current fragile multilateral trading system, preserve its fundamental principles and modernize its operating rules, the US, the EU, the rest of the OECD member countries and some emerging economies should take concerted action. Unfortunately, the Trump administration's protectionist policy made it unlikely.⁶⁹

China has not yet fully accepted international standards of the fourth technological revolution. It is significant in this respect that China and Russia have refused to sign the OECD Principles on Artificial Intelligence (AI), which aim to ensure respect for the rule of law, human rights and democratic values throughout the lifecycle of any AI system. If China consolidates its technological advantage without making a serious effort to abide by the international rule of law, multilateralism will not be revived in the foreseeable future. Time for defending and reforming multilateralism embodied by the UN and the WTO is running out.⁷⁰

3. EU Proposal

The European Council, on June 28 - 29, 2018, gave the Commission a mandate to pursue the WTO modernization, by making the WTO more relevant and adaptive to a changing world, and consequently strengthening the WTO's effectiveness. According to the mandate, the European Commission for Trade issued an EU Concept Paper on WTO Reform on September 18, 2018.⁷¹ In this proposal, the EU suggested rather pragmatic measures against the blocking of the AB member appointment by the US, which aims to improve the functioning of the AB under the current framework of dispute settlement system. With this proposal, in order to

unlock the appointments, “the EU [tried] to promote the efficiency of procedures, at creating conditions for a better interaction between the AB and the WTO Members while at the same time strengthening the independence of the Body.”⁷² The EU proposal contains the following amendments of the AB rules responding to the US concerns. Table 2 shows each element as follows.

Table 2: Comprehensive Amendment of the DSU relating to the Appellate Body⁷³

Issue	Proposals
Article 17.5 of the DSU and the issue of 90 days	The EU proposes that Article 17.5 could be amended to provide that: “In no case shall the proceedings exceed 90 days, <i>unless the parties agree otherwise.</i> ” It also proposes the following changes: (1) Increasing the number of Appellate Body members from 7 to 9; (2) Providing that the membership of the Appellate Body is a full time job; and (3) Expansion of the resources of the Appellate Body Secretariat could also be considered as an accompanying measure.
Transitional rules for outgoing AB members	The EU addresses head on the US concern that Rule 15 was not approved by WTO Members. According to DSU, e.g., outgoing Appellate Body member shall complete the disposition of a pending appeal in which a hearing has already taken place during that member’s term.
Findings unnecessary for the resolution of the dispute	Modifying Article 17.12 of the DSU, according to which the Appellate Body “shall address each of the issues raised” on appeal. For instance, it could be added “to the extent this is necessary for the resolution of the dispute.”
The meaning of municipal law as the issue of fact	The EU clarifies that “issues of law covered in the panel report and legal interpretations developed by the panel” do not include the meaning of the municipal measures. To that end, a footnote could be added to Article 17.6 of the DSU “For greater certainty [...]”
The issue of precedent	The EU tries to provide an additional “channel of communication” between the AB and WTO Members where concerns with regard to some Appellate Body approaches could be voiced.
Independence of AB members	Providing for one single but longer (6-8 years) term for AB members, the EU address its concern with respect to the independence of the AB.

Compiled by the author.

5. Biden Administration's China Trade Policy: A Prospect

President Trump blamed the WTO for failing new liberalization and launched trade war against China. If the WTO cannot facilitate new liberalization, however, international trade governance should look out for some possible areas such as fisheries subsidies, e-commerce, and environmental goods.⁷⁴ The Biden administration can lean forward in these areas. In order to do so, however, the new administration will first have to take a definitive action.⁷⁵ Second, President Biden will have difficulties in resolving the trade war against China. The new administration should find a reasonable solution on such trade issues with China regarding subsidies and overcapacity, the behavior of state-owned enterprises, national security threats related to tech products and data, and dependence on China for medical supplies.⁷⁶ In this process, short-term economic benefits will have to be balanced with longer-term security concerns. For example, Huawei question will be another concern for President Biden. In addition, Section 301 tariffs and phase 1 US-China trade deal will be a challenging issue for the Biden administration. President Biden is expected to adapt the phase 1 deal because it includes useful provisions.⁷⁷ Finally, the Biden administration should strike balance between Congress and the executive power. In particular, two statutes-Section 232 of the Trade Expansion Act of 1962 and the International Emergency Economic Powers Act-have caused trouble under the Trump administration. Biden is supposed to work together with Congress in reforming these statutes.⁷⁸ For President Biden, trade may not be his top priority for the first year; however, he should keep in mind that without resolving the US-China trade war, no domestic political and economic agenda will advance.

6. Conclusion

While Mr. Trump is still denying the result of 2020 Presidential Election, President Joe Biden took office in January 2021. Many questions and expectations are arising. Is the Biden administration coming back to multilateralism? Can the US-China Trade War finally be over under the Biden presidency? Will

Biden adopt a more amicable policy towards China? Two aspects should be considered in this regard. Firstly, almost all recent US administrations-regardless of Republican or Democrat-have viewed China as a challenger and competitor to the American hegemony in Asia and the World. Joe Biden will likely not be an exception. No sudden change may be thus predicted in the beginning of the Biden presidency. Secondly, his approach to China may yet be different from Trump's. The most urgent and prior mission for the Biden administration is to recover the domestic economy and social trust, which were demolished during the Trump administration. The unprecedented insurrection to the Capitol demonstrates how feeble and unstable today's social cohesion is in America. The most dangerous challenge that the US faces is not Islamic extremist or terrorism, but domestic schism that may shake the Union down to its core. In his inauguration speech, President Biden delivered his core message-"Unity," by stating: "Bringing America together. Uniting our people and uniting our nation."⁷⁹ Foreign policies generally tend to fail without democratic communication based on constitutional belief and vice versa. In this sense, Biden will likely try to end the trade war in any manner and rehabilitate the strategic partnership with China at least to the level of the Obama administration.

"America is Back!" were the first words that President Joe Biden delivered to both US and the international society. His message shows that the new administration will emerge out of "America First," and re-engage in multilateralism and free trade which have been regarded as the contemporary global ideology. Such a policy shift will require mutual compromise and cooperation between the US and other allies in order to realize common values such as economic growth and stability throughout the international community. Human history tells us that no country could keep its development without sharing prosperity with neighbors. In this sense, two mega-FTAs-RCEP and CPTPP-will be firm stepping stones to vitalize Asia-Pacific trade and investment in the future.⁸⁰

Another concern is Covid-19 pandemic which deepens the crisis of human society. The pandemic has shut down one-third of the global economy. In order to recover from Covid-19 crisis, the international community will need collective leadership under multilateralism.⁸¹ The World Economic Forum provides five solutions to reconstructing multilateralism against Covid-19. First, more inclusive leadership should be promoted at the global level. The G20 should create new

ideas for addressing the crisis in the global trading system, revitalizing the trust in multilateral frameworks. Second, multilevel leadership should be in alliance with civic-society, private sector, think tanks, and others. Third, a smoother process of developing and distributing Covid-19 vaccines should be ensured and developed. G20 should make coalition with international organizations and vaccine developers to face this unprecedented challenge. Fourth, looming financial crisis should be addressed in emerging and developing economies. The IMF should immediately issue a new tranche of its Special Drawing Rights and the Paris Club of sovereign creditors, coordinating closely with China, addressing debtor countries' increasingly unsustainable debt levels. Finally, the international community should prepare for the UN Biodiversity Conference and the UN Climate Conference (COP26) in 2021.⁸² It will be beneficial for the Biden administration to keep these solutions as its core policies. In this vein, it was a promising signal for President Biden to sign the executive order to return to the Paris Climate Accord.

The nineteenth century's extreme nationalism brought two world wars in the early twentieth century. More recently, unilateralism policy under the Bush and Trump administrations drove the US into War on Terror, which is yet to be over despite a great loss of human lives. Consequently, the US is almost at the point of losing its global leadership.

The UN Secretary-General António Guterres at the first Paris Peace Forum, marking World War I centenary on November 11, 2018 addressed: "Without the multilateral system and respect for international rules, we risk a return solely to power relations, reward-sanction mechanisms and a cycle of frozen conflicts. ..."⁸³ The US will maintain its global leadership only when it is implementing this clear message and coming back to multilateralism based on international law.

REFERENCES

1. M. Kahler, *Multilateralism with Small and Large Numbers*, 46 INT'L ORG. 681 (1992), available at <https://sta.uwi.edu/iir/normangirvanlibrary/sites/default/files/normangirvanlibrary/documents/Multilateralism%20with%20Small%20and%20Large%20Numbers.pdf>.
2. R. Keohane, *Multilateralism: An Agenda for Research*, 45 INT'L J. 731 (1990).
3. J. Ruggie, *Multilateralism: the anatomy of an institution*, 46 INT'L ORG. 561-98 (1992).
4. A. Adogame, *The Berlin-Congo Conference 1884: The Partition of Africa and Implications for Christian Mission Today*, 34 J. RELIGION IN AFRICA 188 (2004).
5. See generally *League of Nations*, VI MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 760-2 (R. Wolfrum ed., 2012).
6. R. Ruggiero, *Multilateralism is fundamental to US-LED strategy for Global stability and prosperity: The Multilateral Trading System: American Vision and American Leadership*, WTO News, Oct. 14, 1995, available at https://www.wto.org/english/news_e/pres95_e/pr024_e.htm.
7. *Id.*
8. *Id.*
9. Xizhou Zhou, *China's Commitment to Global Institutions*, CAIXIN GLOBAL, Sept. 16, 2019, available at <https://www.caixinglobal.com/2019-09-16/opinion-chinas-commitment-to-global-institutions-101462561.html>.
10. S. Munir, *China's Distinct Approach to Facilitate Multilateral Cooperation*, https://www.unescap.org/sites/default/files/2-7_Ahmad_presentation.pdf.
11. Speech by President Xi Jinping, Davos Forum 2017, available at <https://america.cgtn.com/2017/01/17/full-text-of-xi-jinping-keynote-at-the-world-economic-forum>.
12. Xi called for this new type of international relationship at the General Debate of the 70th Session of the UN General Assembly on 25 September 2015, available at http://gadebate.un.org/sites/default/files/gastatements/70/70_ZH_en.pdf.
13. Munir, *supra* note 10.
14. A. Ekman, *China's multilateralism: higher ambitions 2* (European Union Institute for Security Studies Report, Jan. 2016), available at https://www.iss.europa.eu/sites/default/files/EUISSFiles/Alert_2_China.pdf.
15. Bin Gu, *Chinese Multilateralism in the AIIB*, 20 J. INT'L ECON. L. 143 (2017).
16. R. Zoellick, *Shunning Beijing's Infrastructure Bank was a Mistake for the US*, FIN. TIMES, June 7, 2015.
17. Gu, *supra* note 15, at 157.
18. *Id.* at 158.
19. See generally Yong-Shik Lee, *Should China be Granted Market Economy Status? : In View of Recent Development*, 3 CHINA & WTO REV. (2017), available at <http://cwr.yiil.org/home/>

- pdf/archives/2017v3n2/cwr_v3n2_05_preview.pdf.
20. F. Martos, *Multilateralism Chinese Style* 6 (The Research and Studies Center on Europe of Foundation Robert Schuman, European Issue No. 540, Dec. 17, 2019), available at <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-540-en.pdf>.
 21. *Id.*
 22. T. Miles, *China pulls WTO suit over claim to be a market economy*, REUTERS, June 17, 2019, available at <https://www.reuters.com/article/us-usa-china-wto-eu-idUSKCN1TI10A>.
 23. Martos, *supra* note 20, at 8.
 24. S. Shirk & Lei Guang, *Xi Takes Charge: Implications of the 19th Party Congress for China's Future* 31 & 42 (A Twenty-first Century's China Center Briefing, Oct. 2017), available at https://china.ucsd.edu/_files/2017_xi-briefing-web.pdf.
 25. Jinbing Lin & Fran Wang, *Update: Sino-U.S. Trade War Begins*, CAIXIN GLOBAL, July 6, 2018, available at <https://www.caixinglobal.com/2018-07-06/quick-take-sino-us-trade-war-begins-101294848.html>; Han Wei, Fran Wang & Leng Cheng, *Update: U.S. Names Products Targeted by \$200 Billion in New Tariffs*, CAIXIN GLOBAL, July 11, 2018, available at <https://www.caixinglobal.com/2018-07-11/quick-take-us-threatens-tariffs-on-additional-200-billion-in-china-goods-101304428.html>.
 26. Han Wei, *China Vows Retaliatory Tariffs on \$60 Billion in U.S. Goods*, CAIXIN GLOBAL, Aug. 3, 2018, available at <https://www.caixinglobal.com/2018-08-03/china-vows-retaliatory-tariffs-on-60-billion-in-us-goods-101311586.html>.
 27. Han Wei, Zhang Qi, Wang Liwei & Pan Che, *Trump's Rumored Tariff Plan Sparks Fears of Sino-U.S. Trade War*, CAIXIN GLOBAL, Mar. 22, 2018, available at <https://www.caixinglobal.com/2018-03-22/trumps-rumored-tariff-plan-sparks-fears-of-sino-us-trade-war-101224494.html>.
 28. Statement from President Donald J. Trump on Additional Proposed Section 301 Remedies, The White House, Apr. 5, 2018, available at <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-additional-proposed-section-301-remedies>.
 29. S. Donnan, J. Jacobs, M. Niquette & Miao Han, *US, China each impose \$16 billion of fresh tariffs as talks resume*, BLOOMBERG, Aug. 23, 2018, available at <https://www.livemint.com/Politics/A21dtmZ8uvZfuc19XG0niO/US-China-resume-trade-talks-as-Trump-imposes-new-tariffs.html>.
 30. D. Wong & A. Koty, *The US-China Trade War: A Timeline*, CHINA BRIEFING, Aug. 25, 2020, available at <https://www.china-briefing.com/news/the-us-china-trade-war-a-timeline>.
 31. *The Facts and China's Position on China-U.S. Trade Friction*, XINHUANET, Sept. 24, 2018, available at http://www.xinhuanet.com/english/2018-09/24/c_137490176.htm.
 32. Statement from the Press Secretary Regarding the President's Working Dinner with China, The White House, Dec. 1, 2018, available at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-working-dinner-china>.
 33. State Councilor and Minister of Foreign Affairs Wang Yi briefed the Chinese and foreign

- media on the meeting between the Chinese and American heads of state [国务委员兼外交部长王毅向中外媒体介绍中美元首会晤情况], Dec. 2, 2018, available at <https://www.fmprc.gov.cn/web/wjzbzhd/t1618091.shtml>.
34. Wong & Koty, *supra* note 30.
35. *Id.*
36. J. Mason & D. Lawder, *U.S. outlines 'Phase 1' trade deal with China, suspends October tariff hike*, Oct. 11, 2019, REUTERS, available at <https://www.reuters.com/article/us-usa-trade-china/us-outlines-phase-1-trade-deal-with-china-suspends-october-tariff-hike-idUSKBN1WQ10X>.
37. *Id.*
38. Wong & Koty, *supra* note 30.
39. E. Curran, L. Leatherby & A. Tanzi, *Who's Winning the Trade War? Here's a Look at the Scoreboard*, BLOOMBERG, May 24, 2019, available at <https://www.bloomberg.com/graphics/2019-us-china-who-is-winning-the-trade-war>.
40. J. Politi, *Fears rise that US-China economic 'decoupling' is irreversible*, FIN. TIMES, Jan. 22, 2020, available at <https://www.ft.com/content/c920bce2-360e-11ea-a6d3-9a26f8c3cba4>.
41. S. Malawer, *Trump's Year-One Trade Policies: Belligerent Rhetoric-But Still Unsettled*, 4 CHINA & WTO REV. 138-9 (2018), available at http://cwr.yiil.org/home/pdf/archives/2018v4n1/cwr_v4n1_06.pdf.
42. Martos, *supra* note 20, at 7.
43. *Id.*
44. See Concept Paper: WTO Modernisation: Future EU proposals on dispute settlement, available at https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf.
45. Statements by the United States at the August 31, 2017, DSB Meeting, available at https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_Stmt_as-delivered.fin_public.pdf.
46. See generally President's 2018 Trade Policy Review, available at <https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20I.pdf>; Concept paper, *supra* note 44.
47. President's 2018 Trade Policy Review, *id.* at 24.
48. Concept paper, *supra* note 44.
49. President's 2018 Trade Policy Review, *supra* note 46, at 25.
50. *Id.* at 26.
51. *Id.*
52. Appellate Body Report, *Argentina-Measures Relating to Trade in Goods and Services*, WTO Doc. WT/DS453/AB/R (adopted 9 May 2016), available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=228158,228159&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

53. President's 2018 Trade Policy Review, *supra* note 46, at 26.
54. *See, e.g.*, Minutes of the DSB meeting of April 24, 2012, WTO Doc. WT/DSB/M/315 (June 27, 2012), ¶ 74; President's 2018 Trade Policy Review, *supra* note 46, at 27.
55. Minutes of the DSB meeting of October 26, 2016, WTO Doc. WT/DSB/M/387, ¶ 8.9 et seq. The Appellate Body uses the term "municipal law" in referring to domestic law. President's 2018 Trade Policy Review, *id.* at 27.
56. President's 2018 Trade Policy Review, *id.* at 28.
57. *Id.*
58. *Id.*
59. Hung Tran, *Two proposals for WTO reform*, FIN. TIMES, June 28, 2019, available at <https://www.ft.com/content/34d7c5d0-98c5-11e9-8cfb-30c211dcd229>.
60. China's Position Paper on WTO Reform, Nov. 27, 2018, available at <https://www.fmprc.gov.cn/ce/celt/eng/xwdt/t1616985.htm>. In this Paper, China has put forward three basic principles (1. to preserve the core values of the multilateral trading system; 2. to safeguard the development interests of developing members; and 3. to follow the practice of decision-making by consensus) and five suggestions (1. the WTO reform should uphold the primacy of the multilateral trading system; 2. the priority of the reform is to address the existential crisis/problems faced by the WTO; 3. the reform should address the imbalance of trade rules and respond to the latest developments of our time; 4. the reform should safeguard the special and differential treatment for developing members; and 5. the reform should respect members' development models).
61. WTO, China's Proposal on WTO Reform, WT.GC/W/773 (May 13, 2019), ¶ 2.1, available at <http://images.mofcom.gov.cn/sms/201905/20190514094326217.pdf>.
62. *Id.* ¶ 2.1.1.
63. *Id.* ¶ 2.1.1.4.
64. Tran, *supra* note 59.
65. Martos, *supra* note 20, at 8.
66. WT.GC/W/773, ¶ 2.37.
67. Martos, *supra* note 20, at 8.
68. *Id.*
69. *Id.*
70. Martos, *supra* note 20, at 9.
71. WITA, EU Concept Paper on WTO Reform, Sept. 18, 2018, available at <https://www.wita.org/atp-research/eu-concept-paper-on-wto-reform>.
72. Concept paper, *supra* note 44 (Future EU proposals on dispute settlement).
73. *Id.*
74. S. Lester, *Trade Policy under a Biden Administration: An Overview of the Issues and Some Practical Suggestions*, 76 FREE TRADE BULL. (Cato Institute), June 9, 2020, at 2, available at <https://www.cato.org/free-trade-bulletin/trade-policy-under-biden-administration-overview>.

issues-some-practical.

75. *Id.*

76. *Id.* at 3.

77. *Id.*

78. *Id.* 4-5.

79. Inaugural Address by President Joseph R. Biden, Jr., The White House, Jan. 20, 2021, available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/20/inaugural-address-by-president-joseph-r-biden-jr>.

80. Eric Yong Joong Lee, *Editorial*, 13 J. EAST ASIA & INT'L L. 230 (2020).

81. B. Badré & Y. Tiberghien, COVID-19: 3 myths and 5 solutions for the future of multilateralism, World Economic Forum, June 23, 2020, available at <https://www.weforum.org/agenda/2020/06/pandemic-covid19-coronavirus-multilateralism-global-leadership>.

82. *Id.*

83. See *When nations work together, hope prevails and collective solutions can be found-UN chief tells Peace Forum, marking World War centenary in Paris*, UN NEWS, Nov. 11, 2018, available at <https://news.un.org/en/story/2018/11/1025461>.