



From the Trump to Biden Administration: Protectionism and Trade Enforcement Actions

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Executive Summary

- President Biden has elected to keep in place all of the various tariffs and import restrictions that were imposed by former President Trump.
- President Biden's recently completed 100-day supply chain review orders additional trade enforcement actions and restrictions with the goal of securing U.S. supply chains.
- To the Biden Administration, securing U.S. supply chains entails industrial policy, i.e., subsidizing U.S. manufacturing and industry.
- The additional trade enforcement actions the Biden Administration plans to impose in the name of securing supply chains will be in practice no different from the protectionist trade policy pursued by former President Trump.

Introduction

The Biden Administration is currently reviewing the Trump Administration's trade policy. In the meantime, President Biden has chosen to keep in place the various tariffs and import restrictions that were initially imposed by former President Trump. Members of the Biden Administration have even explicitly deemed the tariffs as "effective" and "necessary."^[1] President Biden also ordered a [100-day supply chain review](#) that was completed in June 2021. The review's findings suggest the Biden Administration's intent to pursue [industrial policy](#), which in terms of trade policy means the federal government will look to shield U.S. manufacturing and industry from imports and foreign competition. These factors suggest the Biden Administration will pursue the same protectionist trade policy espoused by former President Trump. Below is a review of the various trade enforcement actions, primarily tariffs, that were imposed under former President Trump and have continued and may be expanded under President Biden.

Protectionism, Supply Chain Policy, and Industrial Policy

Former President Trump made protectionism a high priority. He imposed tariffs, the main type of trade enforcement action, on nearly [\\$350 billion worth of imports](#) coming from strategic rivals and allies of the United States. The primary goal of the protectionist policy was to boost U.S. manufacturing and industry and to close the U.S. trade deficit. President Trump's tariffs and overall protectionist policy were largely unpopular and ineffective, however. They only made a small number of U.S. industries more competitive, while increasing costs for the majority of U.S. industries and consumers and damaging relations between the United States and its strategic allies. The trade deficit in 2021 is also larger than ever before, meaning the tariffs did little to lower the United States' reliance on imports.

To the disappointment of many, President Biden has so far elected to keep in place all of former President Trump's tariffs. The Biden Administration is also looking to pursue industrial policy. President Biden's 100-day supply chain review recommends federal subsidies, financing programs, tax incentives, and more to bring back to the United States the production and manufacturing of certain goods—ostensibly to secure supply chains. The review explicitly recommends [CHIPS for America](#), a \$50 billion bill currently being debated in Congress to subsidize U.S. manufacturing of semiconductors. To assist with this domestic industrial policy, the supply chain review recommends a new “[trade strike force](#)” to oversee trade enforcement actions against “unfair foreign trade practices that have eroded critical supply chains.” The review also recommends the Department of Commerce (DOC) investigate new import restrictions on neodymium magnets. This recommendation means imposing tariffs and other import restrictions to shield U.S. manufacturing and industry from foreign competition. This is in practice very similar to the protectionism pursued by the Trump Administration.

Section 301

[Section 301 of the Trade Act of 1974](#) gives the president the broad authority to enforce U.S. rights in trade agreements and to retaliate against unfair foreign trade practices that harm U.S. firms. The latter can be widely interpreted as any practice that “burdens or restricts” U.S. commerce or is “unreasonable” or “discriminatory.” [2] The United States Trade Representative (USTR) is responsible for undertaking Section 301 procedures by conducting investigations and implementing any import restrictions under the statute. Since the creation of the World Trade Organization (WTO) in 1995, Section 301 largely fell out of use because the WTO has a dispute settlement procedure for trade agreement violations and unfair trade practices.

Former President Trump departed from the norm by skipping the WTO and used Section 301 to levy tariffs on \$350 billion worth of imports from China.[3] [4] The USTR under former President Trump deemed that Chinese firms engage in unfair trade practices such as intellectual property (IP) theft and forced technology transfers that harm U.S. firms. The Trump Administration argued that current WTO dispute settlement procedures were not sufficient to rein in China's unfair trade practices and therefore used the statute to unilaterally impose tariffs.[5] These so-called “China Tariffs” have since been inherited by President Biden, who views the tariffs as a form of leverage to negotiate trade deals and limit unfair trade practices. Thus, these Section 301 “China Tariffs” are likely to stay in place for the foreseeable future. The Biden Administration is currently contemplating a new Section 301 investigation into China's industrial subsidies. Industrial subsidies are the other major unfair trade practice committed by China in addition to IP theft and forced technology transfers. The investigation will most likely take a year to be completed.[6]

Section 232

[Section 232 of the Trade Expansion Act of 1962](#) allows the president to impose import restrictions if the DOC finds that certain imports threaten U.S. national security. Any department, agency, or “interested party” can initiate Section 232 investigations into imports. Section 232 is one of the president's most powerful trade enforcement tools because it is written so broadly. Any economic threat can be construed as detrimental for U.S. national security. Unlike Section 301, Section 232 does not have to identify specific trade violations or practices. If its investigations can show imports harm national security, the president is free to impose tariffs under the statute.

Former President Trump used this broad interpretation of Section 232 to impose tariffs on \$15 billion worth of steel and aluminum imports.[7] His administration argued that these industries are essential to national security. Unlike the Section 301 tariffs that apply to just one country (“China Tariffs”), Section 232 tariffs apply to steel and aluminum imports from strategic allies including the European Union (EU). Because of the broad language

of Section 232, the Biden Administration can claim that anything that harms U.S. supply chains is detrimental to U.S. national security. The Biden Administration is therefore likely to pursue protectionism through Section 232 to support the president's supply chain policy going forward. The president's 100-day supply chain review even explicitly recommends new Section 232 investigations into neodymium magnet imports with the aim of increasing magnet production in the United States.

Section 201

[Section 201 of the Trade Act of 1974](#) enables the president to impose tariffs and other import restrictions when the U.S. International Trade Commission finds imports cause serious injury to U.S. manufacturers. While Section 232 focuses on national security, Section 201 focuses on how to “return U.S. industries to health.”^[8]

Former President Trump used Section 201 to impose a 20 percent tariff on [solar panel imports](#). His administration argued that a surge of solar imports from China and other Asian nations have seriously harmed solar panel producers in the United States. The Biden Administration supports these tariffs; it asked the U.S. Court of International Trade to dismiss a lawsuit challenging the legality of the tariffs and even stated that former President Trump “acted lawfully and fully within his authority” to impose them.^[9] As President Biden has prioritized clean energy, with a particular focus on solar and the use of U.S.-made goods, it seems likely he will extend the tariffs (currently slated to end in February 2022) with the aim of increasing U.S. manufacturing of solar panels. This is using protectionism to achieve a clean energy agenda.

Antidumping and Countervailing Duties

Under the Tariff Act of 1930, antidumping (AD) and countervailing (CV) laws enable the DOC to impose duties and other import restrictions if it “finds that imported merchandise was sold in the United States at an unfairly low or subsidized price.”^[10] A foreign company engages in “dumping” when it exports products to the United States and charges prices that are well below market value. U.S. industry can file petitions for the DOC to investigate dumping claims. AD tariffs are designed to offset the value of dumping by raising the effective price of dumped imports to match market value. Similarly, CV tariffs offset the value of cheaper subsidized products so that their effective price in the United States matches market value.

There was a significant increase in AD/CV proceedings under the Trump Administration.^[11] It ordered the DOC to use AD and CV laws to scrutinize more trade circumvention. Circumvention is when a foreign exporter moves the final step of production to another country to avoid tariffs that would otherwise apply if the exporter had shipped directly from within its country. The Biden Administration likely sees this as a threat to its supply chain policy because circumvention can lead to imports not being subject to tariffs. For this reason, AD/CV proceedings could also increase under the Biden Administration.

Import Quotas

Import quotas are trade restrictions that limit the number of imports brought into the United States. Like tariffs, import quotas are designed to protect domestic industry and manufacturing by preventing or discouraging the importation of cheaper foreign goods. Import quotas can be established through congressional legislation and executive orders. Quotas are more restrictive than tariffs, because tariffs allow importers to buy as much as they want as long as they pay the tariffs. Once capacity is reached under a quota, however, no more can be imported no matter the price.

Tariff-rate quotas (TRQs) are a combination of the tariffs and quotas. TRQs allow imports at a lower tariff rate within a quota. Once that quota is reached, imports will be subjected to a higher tariff rate. Unlike a simple quota system, TRQs do not restrict the quantity of imports at a specific level as importers are free to import once the initial quota is reached, they just must pay the higher tariff rate.

The Biden Administration has signaled it may be willing to remove the current Section 232 steel tariffs on the EU and replace them with a TRQ. This would apply only for the EU and steel, however. Steel and aluminum imports from other countries would be subject to the same tariffs as imposed under former President Trump.

Conclusion

Nearly every administration has promoted trade enforcement as part of its platform to support American industry and workers. President Biden is promoting trade enforcement in the name of securing supply chains—and ultimately pursuing industrial policy. Through industrial policy, the Biden Administration will pursue trade enforcement to shield U.S. industry and manufacturing from foreign competition. In practice, these actions under the Biden Administration will be very similar to the protectionist trade policy pursued by former President Trump.

[1] <https://www.bloomberg.com/news/articles/2021-07-28/u-s-commerce-chief-sees-some-tariffs-as-very-effective>

[2] <https://sgp.fas.org/crs/misc/R46604.pdf>

[3] <https://www.americanactionforum.org/research/the-total-cost-of-tariffs/>

[4] Ibid

[5] <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>

[6] <https://www.politico.com/newsletters/weekly-trade>

[7] Ibid

[8] Ibid

[9] <https://www.greentechmedia.com/articles/read/biden-administration-backs-trump-on-solar-tariff-suit>

[10] <https://www.cbp.gov/trade/priority-issues/adcvd/antidumping-and-countervailing-duties-adcvd-frequently-asked-questions>

[11] <https://www.mayerbrown.com/-/media/files/news/2018/04/trade-probes-surge-during-trumps-first-year-in-off/files/surgeintradeinvestigations/fileattachment/surgeintradeinvestigations.pdf>

