

# US trade: same tools, used responsibly

Blog post by Senior Associate Miranda Lutz, 19 February 2021

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President Joe Biden's initial actions on trade shows that President Trump's trade legacy and his willingness to leverage national security powers to enact trade remedies is likely to prove stickier than many in the private sector would have hoped. So far, the key difference in the new administration's approach has been largely rhetorical as President Biden positions himself as a good steward of executive power. But the jury is still out on whether this rhetoric will be backed by a more stable and less defensive trade policy.

Biden's "Ensuring the Future is Made in all of America" executive order (EO) picks up on many themes in the Trump administration. Trump's Buy American, Hire American order focused on tightening visas for foreign workers and focusing government procurement efforts on domestic products. Biden doubled down on that latter effort by increasing domestic content requirements for determining whether a product was manufactured in the US. His order also established a "Made in America Office" at the Office of Management and Budget to oversee Buy American waiver requests, an additional layer of oversight that is likely going to increase Buy American compliance obligations for industry.

Perhaps even more telling, given Biden's promise to repair international relations and work with partners to combat covid-19, is that his Buy American EO did not roll back US efforts to amend its Government Procurement Agreement schedule at the World Trade Organization by removing certain essential medicines and inputs from coverage - an effort initiated by a previous Buy American executive order under Trump. While the Biden administration can still reverse the proposed modifications, the decision to not do so already and lack of action to-date reinforces that like Trump, Biden will pursue policies to onshore production capabilities.

In another instance of executive action on trade, on February 1st Biden reimposed a 10% tariff on aluminium imports from the United Arab Emirates under the umbrella of the Trump administration's Section 232 measures. The proclamation issued by the White House is useful insight into the thinking of the new administration on trade authority. Although Biden and Congressional Democrats sharply criticised the Trump administration for stretching the bounds of the president's executive power for imposing tariffs, Biden's order simply repeats the rationale set up by his predecessor.

Domestic politics are clearly important here. The Trump administration stirred up controversy when he used the national security argument underpinning all Section 232 actions. Yet Biden has not tried to find an alternative route to the same policy outcome. Clearly, he is keen to deliver for important domestic constituencies - namely the steel industry and labour unions which are critical to Democrats winning Rust Belt seats. But he also seems to be comfortable with the invocation of national security in doing so. That is quite a Trumpian move.

These dynamics can be expected to extend the lifecycle of the steel and aluminium duties longer than many in the private sector would like. The big question is whether the same logic (and politics) might apply to the same tool being used on cars from the European Union. The EU has lobbied aggressively for the lifting of the tariffs and Biden's commitments to rebuild partnerships with US allies might lean in this direction, but the administration is likely to thread this needle carefully.

One other metric will be how Biden approaches Section 301 investigations, which historically have been more commonly used by US presidents to address perceived harmful trade practices. There will be an early test of the administration's philosophy in determining whether to act in response to the US Trade Representative's findings that the imposition of digital services taxes (DST) disproportionately harm US companies. Pursuant to Section 301 authorities, the USTR must decide within 12 months of the initiation of the investigation, giving the Biden White House to June 2021 to decide whether to take retaliatory action.

So, while the business sector may have been looking to a reprieve in Washington's use of tariffs and perhaps a curtailment of these unilateral authorities, it looks increasingly likely that the ethos under the Biden administration will be to continue leveraging these powers. The Biden team will argue that the difference is that they will use them responsibly. But what qualifies as a responsible use of these tools is an open question.