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## Small Steps toward the Next Phase of U.S.-China Trade Relations

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### I Introduction

The Trump administration's four years in power were tumultuous and confrontational for trade policy in general, and for U.S.-China trade relations in particular. Trump's trade policy legacy presents a challenge for the Biden administration. While the Biden trade leadership may want to focus on other policy areas, it cannot avoid making some difficult choices on China trade policy: It will either have to pick a new direction or stay the course.

Staying the course would mean keeping the Trump administration's policies mostly intact. The key aspects of these policies are the Section 301 investigation and tariffs; the Phase One agreement; and the questions about China's role in the WTO. Biden administration officials might not have followed the same approach to these issues if they had been in power in 2017, but having inherited these policies in 2021, they may be difficult to undo.

U.S. Trade Representative Katherine Tai has begun to lay out her vision for a U.S. trade policy as it relates to China. We are still in the early stages, with more words than actions so far. But Tai's words do tell us a bit about where things might go. This paper examines the general guidance and specific details Tai has offered, in an effort to understand the direction of U.S. policy in this area.

The paper begins by reviewing Tai's account of the recent history of U.S.-China trade relations. It then turns to the Trump administration's actions and the Phase One agreement, including its flawed enforcement mechanism; and finally, it examines the Biden administration's apparent decision to stick with the Phase One agreement as the framework of its policy rather than break from it in a significant way.

The paper also considers some broader themes that may inform the Biden administration's approach to trade relations with China. While

there are many criticisms that can be offered of the Biden administration's words and actions so far, the role of economic realities and domestic politics helps explain why the Biden administration has adopted the approach that it has. The small steps it has taken will eventually lead somewhere bigger, but for the time being they may be all there is.

## II Alternative Versions of the History of U.S.-China Trade Relations

In a major speech at the think tank CSIS in early October of 2021 (Tai, 2021), U.S. Trade Representative Katherine Tai said that she would “lay out the starting point of our administration’s strategic vision for realigning our trade policies towards China to defend the interests of America’s workers, businesses, farmers, and producers and strengthen our middle class.” In the process of doing so, Tai began by “reflect[ing] on how the U.S.-China trade relationship has evolved in recent decades and how we got to where we are today.”

In Tai’s version of events, “[f]rom the late 1970s to mid-1980s, China went from the world’s 11th-largest economy to the eighth largest,” with U.S. exports to China increasing “approximately fourfold, while imports grew 14 times in less than 10 years.” This economic growth, she said, “set the stage for China’s efforts to join the WTO.” This created “an important challenge,” which was “how to integrate a state-led economy into a trade institution created by those dedicated to open market-oriented principles.”

Over the next decade and a half, Tai explained, “the United States pursued a dual-track approach with Beijing.” One track involved “annual high-level dialogues between U.S. and Chinese officials over three successive presidential administrations,” while the other track “focused on dispute settlement cases at the WTO.” But both approaches, she argued, came up short, with “meaningful reforms by China remain[ing] elusive.”

In recent years, she said, “China’s leaders have doubled down on their state-centric economic model.” Facing a “reality that neither the dialogue nor the enforcement tracks were producing meaningful changes,” the Trump administration “decided to use a different paradigm – unilateral U.S. pressure – to try to change Beijing’s practices.” This led to “substantial U.S. tariffs on imports from China, and retaliation by China,” and then later to the phase-one agreement.

There is some truth to Tai’s version of history, but it also leaves out some key details, as described by Lester and Zhu (2020). China’s WTO accession was mainly negotiated during the Clinton era, but the first president to have to deal with China as a WTO member was George W. Bush.

China's economy had already been growing quickly in the pre-WTO era, and its rise continued after entry into the WTO. The continued high growth and the shift to the production of more sophisticated industrial products put Chinese companies in competition with American companies to a degree not seen before. The Bush administration faced a difficult decision on how to respond.

Trade journalist Paul Blustein (2019) describes the Bush administration's trade policy response as "sluggish," and says: "It is reasonable to wonder why a more forceful approach wasn't taken." He offers the following explanations for why more was not done about Chinese trade practices that violated the letter or spirit of WTO rules: optimism that China would continue moving toward freer markets on its own; fear of a U.S.-China trade war; U.S. companies were making money in China and wanted to avoid disruptions, and thus did not complain much; the administration needed Chinese support on its "anti-terrorism" policies; and finally, the global financial crisis weakened the ability of the Bush administration to make demands.

In terms of actions not taken, Blustein focuses on the Bush administration's rejection of domestic industry complaints under Section 421, which provides for the possibility of a product-specific "safeguard" tariff/quota on Chinese imports. But there is also the option of filing WTO complaints, which the administration was slow to pursue at first, although the complaints picked up in later years: one complaint in 2004, one in 2006, three in 2007, and two in 2008. According to U.S. trade officials from this era, there was a sense initially that China deserved a chance to settle in at the WTO before complaints were brought.<sup>1</sup> By 2005, it was clear that complaints were needed. However, U.S. companies were not pressing the U.S. Trade Representative (USTR) to bring claims, and without the evidence they could provide, the cases were unlikely to be successful. As a result, cases emerged slowly.

The Bush administration also found a diplomatic way to pursue these issues, with an approach called the Strategic Economic Dialogue and the Senior Dialogue. This led to some minor successes, but when the financial crisis hit in 2008, the administration became consumed with domestic issues and was not in a position to make demands of China.

President Obama then took office in the middle of that financial crisis, and his initial focus was on domestic policy. Eventually, he turned to trade and foreign policy, and Asia and China were a big part of that. Obama's "pivot to Asia" involved giving greater prominence to the Pacific region, with the Trans-Pacific Partnership (TPP) as a key element. The TPP had

<sup>1</sup> Authors' conversations with U.S. trade officials.

several goals, but one of them was to respond to China's rise.<sup>2</sup> While Obama and others in his administration spoke mostly of "writing the rules" of trade in the region, many commentators emphasized that the TPP would "contain" China. As law professor Daniel Chow (2016) put it: "The U.S. led the TPP negotiations and deliberately excluded China from the negotiations. This ploy by the U.S. was a calculated effort to contain China and to shift power in trade in the Asia-Pacific from China to the U.S." But as is well known, the Obama administration could not get the TPP through Congress, and President Trump formally withdrew the United States from the pact, whose other members have now gone ahead with a modified version of it.

In addition to the TPP as a way to address concerns with China, the Obama administration imposed tariffs on Chinese tires under Section 421.<sup>3</sup> It was also a frequent user of the WTO dispute settlement mechanism: during his eight years in office, his administration brought 14 complaints against China.

At the same time, the Obama administration also tried to engage with China through negotiations. It continued the bilateral negotiating approach started by the Bush administration, replacing the Strategic Economic Dialogue and Senior Dialogue with the U.S.-China Strategic and Economic Dialogue. The Obama administration also carried out a bilateral investment treaty negotiation with China, but the talks were never completed.

Thus, Tai's version of history is not so much wrong as it is incomplete. Many of the wounds U.S. politicians feel in relation to trade with China are self-inflicted. If the U.S. government had not been distracted by the War on Terror or domestic crises, it might have made more progress in its efforts with China.<sup>4</sup> And if the TPP's domestic political strategy had been

<sup>2</sup> President Obama himself explained how he saw TPP as targeting China:

"[The TPP] would give us a leg up on our economic competitors, including China. As we speak, China is negotiating a trade deal that would carve up some of the fastest-growing markets in the world at our expense, putting American jobs, business and goods at risk.... America should write the rules. America should call the shots. Other countries should play by the rules that America and our partners set, not the other way around.... The United States, not China, should write them." Obama (2016).

<sup>3</sup> Proclamation To Address Market Disruption from Imports of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China, 11 September 2009, <https://obamawhitehouse.archives.gov/the-press-office/proclamation-address-market-disruption-imports-certain-passenger-vehicle-and-light->.

<sup>4</sup> Former Bush administration State Department official Even Feigenbaum has written that, prior to 9/11, it looked as though China would be the top priority on the U.S. foreign policy

better conceived, the United States might have been able to use it as a tool to address concerns with China. Furthermore, the United States decided, for various reasons, not to use the tools that it did have, including a broader range of WTO complaints that made use of the various WTO-plus provisions in China's accession protocol, as described in Zhou et al. (2019).

### III Trump's Trade War and Phase One Agreement

Trump and his trade team accused many U.S. trading partners of unfair practices and used a variety of U.S. statutes to do it. Section 301 became the vehicle for the tariff war with China, with an investigation by the U.S. Trade Representative's Office under Section 301 providing the factual and legal basis of the U.S. actions against China.

Section 301 provides a mechanism for the U.S. government to take action against a wide range of broadly defined behavior by foreign governments, including an "act, policy, or practice" of a foreign country that "violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement," or "is unjustifiable and burdens or restricts United States commerce."<sup>5</sup> In this case, the focus of the investigation was on China's laws and policies related to intellectual property, technology transfer, and innovation. The Section 301 investigation was launched in August 2017, soon after Trump took office.

After eight months of a USTR investigation, hearings, and comments from interested parties, USTR reached the following conclusions in March of 2018: China pressures foreign companies to transfer technology to Chinese partners; certain Chinese licensing regulations discriminate against U.S. firms; China directs foreign investment in order to acquire U.S. technology and intellectual property; and China conducts and supports intrusions into U.S. companies' computer networks.<sup>6</sup> A range

agenda. After the attacks, however, much of the attention shifted to the Middle East, and the focus shifted away from China. See, e.g., Simon Lester, "The Place of China in U.S. Foreign Policy After 9/11 and China's WTO Accession," *International Economic Law and Policy Blog*, 29 August 2021, <https://ielp.worldtradelaw.net/2021/08/the-place-of-china-in-us-foreign-policy-after-911-wto-accession.html>.

<sup>5</sup> Trade Act of 1974, PL 93-618, <https://legcounsel.house.gov/Comps/93-618.pdf>.

<sup>6</sup> Findings of the Investigation into China's Acts, Policies and Practices related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974, Executive Summary, 22 March, 2018, <https://ustr.gov/sites/default/files/enforcement/301Investigations/301%20Draft%20Exec%20Summary%203.22.ustrfinal.pdf>.

of tools would be used to address these issues, including filing a WTO complaint for one issue as well as imposing tariffs on Chinese imports immediately.<sup>7</sup> According to USTR, certain issues were not covered by WTO rules, so unilateral tariff action was the only possibility.<sup>8</sup>

The resulting tariff war began in July 2018. After many months of tariff escalation, today both countries face steep tariffs on the goods they trade with each other. According to Bown (2021a), China's average tariffs applied to U.S. exports have risen from 8.0 per cent in January 2018 to 20.7 per cent by January 2021. This is more than triple the average 6.1 per cent tariff rate applied to other countries after China unilaterally cut its tariffs in recent years. On the other side, the average U.S. tariff on Chinese goods has soared from 3.1 per cent in 2017 to 19.3 per cent in 2021. As a result, 66.4 per cent of Chinese imports are subject to additional U.S. tariffs, and 58.3 per cent of U.S. goods face retaliatory tariffs from China.

This tariff war provided the background for the trade negotiations that ultimately led to the Phase One agreement, which was signed on January 15, 2020, and took effect on February 14, 2020. Under this agreement, China made a number of commitments, the most high profile of which was to substantially increase imports from the United States of agricultural products, industrial products, natural resources, and services. As of October 2021, however, China was on track to come up nearly 40% short of the US goods it promised to buy over 2020–21, according to Bown (2021b). This outcome is not surprising, as the purchase targets were set at a level that many people considered to be unrealistic, and on top of that the pandemic undermined trade flows in general.

<sup>7</sup> "... we concluded that, in fact, China does have a policy of forced technology transfer; of requiring licensing at less than economic value; of state capitalism, wherein they go in and buy technology in the United States in non-economic ways; and then, finally, of cyber theft... The result of this has been that the President has analyzed it – we have a 200-page study which we will put out – and he has concluded that we should put in place tariffs on appropriate products – we can explain later how we concluded what products they are; that we would put investment restrictions on China with respect to high technology; and that we'll file a WTO case. Because one of the actions here does involve a WTO violation." Remarks by President Trump at Signing of a Presidential Memorandum Targeting China's Economic Aggression, 22 March 2018, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-signing-presidential-memorandum-targeting-chinas-economic-aggression/>.

<sup>8</sup> "While the WTO agreements do include a dispute settlement mechanism, this mechanism is not designed to address a situation in which a WTO member has opted for a state-led trade regime that prevails over market forces and pursues policies guided by mercantilism rather than global economic cooperation." U.S. Trade Representative, 2017 USTR Report on China's WTO Compliance, January 2018, <https://ustr.gov/sites/default/files/files/Press/Reports/China%202017%20WTO%20Report.pdf>.

China also took on other obligations in the Phase One deal, including in relation to intellectual property protection, forced technology transfer, and regulatory trade barriers for various U.S. goods and services. While China has addressed many of these obligations in its recent legislative and regulatory actions, the implementation of these rules in China is still a bit uncertain. However, enforcement of these obligations will be difficult due to the flaws in the agreement's dispute resolution provisions.

#### IV The Flawed Phase One Enforcement Mechanism

The problem with enforcing the structural obligations under the Phase One agreement is that its dispute resolution section does not have the traditional neutral adjudication mechanism found in most trade agreements. Trade enforcement typically works as follows. If one government thinks another is not complying with the obligations in a trade agreement, the complaining government can raise its concerns through a request for consultations. If the consultations do not resolve the issue, the complaining government can ask for a neutral panel of experts to consider whether the other government's actions violate the terms of the agreement. That panel will issue a ruling on the legal question of whether the respondent government is in compliance.

The WTO has the most advanced version of this process, with 606 complaints since it was established in 1995, and hundreds of panel reports and appellate reports reviewing those complaints. During her CSIS speech, Tai noted that over the years, the United States "brought 27 cases against China . . . . We secured victories in every case that was decided." (Currently, the United States has blocked appointments to the WTO's Appellate Body, which has caused significant problems for the functioning of WTO dispute settlement.) Bilateral and regional trade agreements have their own version of panels, without appellate review.

The neutral adjudication provided through this kind of process helps with the enforcement of these agreements. One government's view that another is in violation is not seen as objective: It is simply the position of that government, rather than an impartial conclusion. An unbiased adjudicator, by contrast, has the credibility to determine whether a violation exists in a way that can be persuasive to all parties. This process helps bring the rule of law to international trade disputes.

In contrast, the Phase One agreement does not have the typical neutral adjudication mechanism, but rather has a mechanism under which either side can determine on its own if the other is not in

compliance, and can then – after a consultations process – take what it considers to be the appropriate action in response (most likely, this will take the form of tariffs).<sup>9</sup>

The Trump administration may have seen this as a tough enforcement mechanism because it would be a quick way for the United States to impose tariffs. The problem is, if China believes it is in compliance, but the United States does not, these unilateral tariffs are unlikely to induce China to take any action to come into compliance. That is especially true in a situation like the current one when significant tariffs are already in place. By contrast, if there were a ruling by a neutral adjudicator that China is not in compliance, China might take some action. It has done so in response to WTO rulings, and it might do so in the context of Phase One disputes as well.

<sup>9</sup> The key provision reads as follows:

1. Appeal. Where one Party (the “Complaining Party”) believes that the other Party (the “Party Complained Against”) is not acting in accordance with this Agreement, the Complaining Party may submit an appeal (“Appeal”) to the Bilateral Evaluation and Dispute Resolution Office of the Party Complained Against. ...

...

4.

...

(b) If the concerns of the Complaining Party are not resolved at a meeting between the United States Trade Representative and the designated Vice Premier of the People’s Republic of China, the Parties shall engage in expedited consultations on the response to the damages or losses incurred by the Complaining Party. If the Parties reach consensus on a response, the response shall be implemented. If the Parties do not reach consensus on a response, the Complaining Party may resort to taking action based on facts provided during the consultations, including by suspending an obligation under this Agreement or by adopting a remedial measure in a proportionate way that it considers appropriate with the purpose of preventing the escalation of the situation and maintaining the normal bilateral trade relationship. The Party Complained Against can initiate an urgent meeting between the United States Trade Representative and the designated Vice Premier of the People’s Republic of China before the effective date of the action to be taken by the Complaining Party. If the Party Complained Against considers that the action by the Complaining Party pursuant to this subparagraph was taken in good faith, the Party Complained Against may not adopt a counter-response, or otherwise challenge such action. If the Party Complained Against considers that the action of the Complaining Party was taken in bad faith, the remedy is to withdraw from this Agreement by providing written notice of withdrawal to the Complaining Party.

Economic and Trade Agreement between the Government of the United States and the Government of the People’s Republic of China, Article 7.4.

[https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic\\_And\\_Trade\\_Agreement\\_Between\\_The\\_United\\_States\\_And\\_China\\_Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf).

## V The Biden Administration's Decision to Stick with Phase One

Nevertheless, despite these flaws, the Biden administration has made clear that it sees the Phase One deal as the framework for governing the U.S.-China trade relationship. While Biden administration officials have been critical of the Trump administration's approach to China,<sup>10</sup> they are sticking with its set of rules in this area. As Tai put it, "I think that the structure, the architecture of this [Phase One] agreement, is where we have to start, ... ." But how exactly she plans to use it is a bit unclear.

In her CSIS speech, she emphasized that the Biden administration would take enforcement actions under Phase One (Tai, 2021). She said that "we will discuss with China its performance under the phase-one agreement. China made commitments that benefit certain American industries, including agriculture, that we must enforce." She did not, however, provide much in the way of details of the specific areas of enforcement, which makes it difficult to evaluate the likelihood of success here. When pressed after the speech, Tai did not seem willing to offer any clarity.

In thinking about what actions they might take, it is useful to examine the different categories of obligations in the Phase One agreement. Broadly speaking, they can be grouped into two categories: Purchase commitments for specific products, and substantive obligations related to structural issues in the Chinese economy. In response to questions, senior administration officials indicated that both kinds of obligations are on the table for enforcement: "We intend to raise all elements of Phase One with China where we think they have not lived up to their commitments. We're not going to shy away from that, we want to make sure that we're discussing kind of the full breadth of obligations there. The engagement with China will determine which ones become the focal

<sup>10</sup> Senior administration officials have stated that "our objective is not to ... double down on the previous administration's flawed strategy," and that "[t]he decision to be more deliberative and bring long term thinking into our approach was critical, and a sharp departure from the last administration." More specifically, they noted that "our objection to the previous administration's approach was that it did not build on our strengths and did not really use our leverage to good effect," including failing to "mak[e] the investments at home that we needed to be able to outcompete China" and to "align[] with our allies and partners rather than being at odds with them." The previous administration's approach was "really at times chaotic, including hurting select sectors of the American economy and really not targeted at the primary concerns that we have with China's larger structural policies." One particular point they emphasized was that "[w]e're putting an end to the previous administration's approach of fighting with our allies and weakening the alliances we've long had."

October 3 White House Briefing attended by authors.

point of discussions, ... ." Given the problems noted earlier with regard to purchase commitments, however, it is not clear how China's failure to comply could be addressed, and thus what the value of these commitments really is.

The bigger compliance concern is the structural rules, such as on forced technology transfer, for which there are detailed provisions in the agreement and genuine concerns about China's practices. If these obligations could be enforced, the Phase One agreement could provide an important means of achieving greater liberalization in the Chinese economy. As noted above, however, the problem with enforcing these kinds of rules under the agreement is that its dispute resolution section does not have the traditional neutral adjudication mechanism found in most trade agreements.

Nevertheless, the Biden administration appears to want to give the Phase One deal's dispute provisions a try. There is no history of using this sort of mechanism to enforce trade agreements, but the Biden administration seems to be indicating that they will test it out.

If this is their plan, it could be helpful if the administration were transparent about its actions. The agreement itself does not offer guarantees of transparency (which is an additional problem with the approach to dispute resolution taken here). However, the Biden administration could push for more of the details related to its complaints about Chinese trade practices to be made public. For example, if the administration files a "Request for Information" under Article 7.3, it could make that document publicly available. The situation relating to an "Appeal" made in writing under Article 7.4, paragraph 1 is more complicated. This provision states that "[t]he Appeal and any information and matters related to it are confidential and shall not be shared beyond the Bilateral Evaluation and Dispute Resolution Office, absent the agreement of the Parties." While the default approach to these appeals is confidentiality, there is the possibility of transparency if the parties agree. The United States has traditionally pushed for more transparency in trade disputes and could follow the same approach here.

Beyond pure enforcement measures, Tai indicated that the Biden administration had broader concerns about China's policies that require engagement but did not specify how she would approach them: "we continue to have serious concerns with China's state-centered and non-market trade practices that were not addressed in the Phase One deal. As we work to enforce the terms of Phase One, we will raise these broader policy concerns with Beijing. And we will use the full range of tools we

have, and develop new tools as needed, to defend American economic interests from harmful policies and practices.” She later said: “we will also directly engage with China on its industrial policies.”

This direct engagement could come in a number of forms: Another Section 301 investigation (which although confrontational could in theory lead to negotiations), which has been rumored in the area of subsidies; tri-lateral work as has been taking place with Japan and the EU; at the WTO; or new bilateral talks, whether classified as Phase Two or not. This last possibility could even be carried out through Phase One agreement mechanisms. Article 7.2 of the Phase One agreement talks about “high-level engagement” and in this context refers to “arrangements for future work between the Parties.” It is not clear whether this formal structure could or should be used here. Ideally, there would be some transparency in the discussions taking place in this context, but the agreement does not provide for that and the public may not get much of a sense of what is happening.

It is worth noting that whatever this engagement is, it will probably not be identified as “Phase Two” of the U.S.-China trade agreement, as Tai seemed opposed to using that terminology.<sup>11</sup> The name of the next stage is not particularly important though.

A few days after Tai’s speech at CSIS, she had a call with Chinese Vice Premier Liu He. Very few concrete details were released publicly, but the USTR readout of the call indicates that the two sides “reviewed implementation of the U.S.-China Economic and Trade Agreement and agreed that the two sides would consult on certain outstanding issues,” and that “Ambassador Tai emphasized U.S. concerns relating to China’s state-led, non-market policies and practices that harm American workers, farmers and businesses.” Press reports contain details of Biden administration officials briefing reporters on the call, which repeat many of the points made during the speech: “The main principle is that China needs to live up to its commitments, and we are going to engage with them to make that point,”

<sup>11</sup> Tai had the following exchange after her CSIS speech:

Q: “... It sounds like you’re not going to do phase two .... What happens after phase one as far as purchasing is concerned? ...

Tai: “So I’m going to take a little bit of a detour and just express my own personal disinclination for the term “phase-one agreement.” The actual name of the agreement is the U.S.-China Trade and Economic Agreement, I believe. But it’s kind of a mouthful, so phase one it is.

I’m not quite sure. You’ll have to ask my predecessor and the previous administration in setting this up as phase one what they were thinking about as a phase two. So, you know, there’s an expectations issue there.” (Tai, 2021)

one official said. “And it’s up to China to demonstrate whether they’re willing to do that”<sup>12</sup>; “We recognise that Beijing is increasingly explicit that it is doubling down on its authoritarian state-centric approach and is resistant to addressing our structural concerns. ... Therefore our primary focus will continue to be on building resilience and competitiveness, diversifying markets, and limiting the impact of Beijing’s harmful practices.”<sup>13</sup> The United States would base future engagement with China on “how China responds to tonight’s call,” and the call is “a test of whether or not this type of engagement will help to secure the outcomes that we’re looking for, and we’re going in with the hopes that China will respond positively.”<sup>14</sup>

## VI The Initial Reaction in China to Tai’s Statements on U.S.-China Trade Relations

The early reaction from Chinese officials, scholars, and media was both muted and mixed. The statements by Tai and other officials did not set out a clear new path for U.S. policy here, but the absence of a confrontational tone was probably a relief for people in China.

When asked about Tai’s remarks at an October 8 press conference, the spokesperson for China’s Ministry of Foreign Affairs provided only very general thoughts on these issues.<sup>15</sup> The Chinese ambassador

<sup>12</sup> Owen Churchill and Frank Tang, “US ‘tests’ to see if direct engagement with China helps address trade concerns,” *South China Morning Post*, 9 October 2021, [www.scmp.com/news/china/diplomacy/article/3151752/us-trade-representative-katherine-tai-and-chinese-vice-premier](http://www.scmp.com/news/china/diplomacy/article/3151752/us-trade-representative-katherine-tai-and-chinese-vice-premier).

<sup>13</sup> David Lawder, Michael Martina, Engen Tham, “China presses U.S. to cancel tariffs in test of bilateral engagement,” *Reuters*, 9 October 2021, [www.reuters.com/business/us-trade-chief-talks-chinese-counterpart-test-bilateral-engagement-2021-10-09/](http://www.reuters.com/business/us-trade-chief-talks-chinese-counterpart-test-bilateral-engagement-2021-10-09/).

<sup>14</sup> *Id.*

<sup>15</sup> “In principle, I’d like to stress that China-US economic and trade relations are essentially mutually-beneficial. There is no winner in a trade war. Issues in bilateral economic and trade relations should be properly dealt with in the spirit of mutual respect and equal-footed consultation. We hope the US will work together with China for the sound and steady development of the bilateral economic and trade ties. The formation and development of global industrial and supply chains is the result of both market law and choices of the business community. Artificial industrial ‘transfer’ and ‘decoupling’ runs counter to the law of the economy and objective reality. It cannot solve domestic problems and will only seriously undermine the stability and security of global industrial and supply chains. Cooperation and dialogue instead of decoupling or confrontation is the strong aspiration of various sectors in both China and the US, including the business community. The US should heed these calls and do more things conducive to the sound and steady development of China-US economic and trade ties.”

[www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/t1913254.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1913254.shtml).

to the United States offered more in-depth comments. He noted that Ambassador Tai mentioned that the United States is now seeking to “recouple” with China, which, he said, “has some positivity in it,” as “[t]he two sides can sit down and sort out the areas of ‘decoupling’ and how to get them ‘recoupled.’” More generally, he suggested that “the two countries’ trade frictions over the past few years have once again proved that China and the US both stand to gain from cooperation and lose from confrontation,” and “[t]here is no winner in a trade war or tariff war.” While “[i]t is ... normal for us to have economic competition and trade frictions ... [t]he key is how to deal with them.” What China advocates is that “we should pursue solutions acceptable to both sides through communication and consultation, based on the principles of mutual respect and mutual benefit.”<sup>16</sup>

In the media, the state-run Global Times, by contrast, published a commentary in which it noted that Tai presented “a tough attitude towards China,” and responded with the following statement<sup>17</sup>: “if the US intends to shake China’s foundations, prevent China from formulating plans to develop its technological innovation capacity, and change China’s national policies conducive to promoting competitiveness, China will never permit it. ... The China-US trade war has lasted for more than three and a half years. Instead of being weakened, China’s economy has taken a step forward in comparison with the scale of the US. The Chinese people are more confident and their stamina continues to increase. We are clearly aware that all this is the basis for the US to consider using non-trade war coercive methods to discuss issues with China.” A Xinhua opinion piece emphasized the importance of U.S.-China cooperation: “Both nations as well as the whole world will benefit from China-US cooperation, and both countries and the world will suffer from China-US confrontation. It is hoped that the United States will change its course, respect the principles of market economy and international trade rules, and meet China half-way, so as to promote the healthy and stable development of China-US economic and trade relations, and further benefit the people of the two countries and around the world.”<sup>18</sup>

<sup>16</sup> Ambassador Qin Gang on “Recoupling” of Chinese and US Economies, 9 October, 2021, [www.mfa.gov.cn/ce/ceus/eng/zmgxss/t1913353.htm](http://www.mfa.gov.cn/ce/ceus/eng/zmgxss/t1913353.htm).

<sup>17</sup> Global Times, “Time for US to seek non-trade war means to consult and solve issues with China,” 5 October 2021, [www.globaltimes.cn/page/202110/1235648.shtml](http://www.globaltimes.cn/page/202110/1235648.shtml).

<sup>18</sup> Xinhua, “Remembering the lessons from the past, the US economic and trade policy towards China is set to change course,” 5 October 2021, [www.news.cn/world/2021-10/05/c\\_1127931377.htm](http://www.news.cn/world/2021-10/05/c_1127931377.htm).

Scholarly reaction to the speech was mixed. Some Chinese scholars reacted somewhat positively to Tai's statements. "Unlike his predecessor Donald Trump's aggressiveness, the Biden administration aims to maintain negotiations while mounting trade restrictions. In a way, it accords with the stance of China, which seeks to solve disputes through dialogue," Huo Jianguo, former president of the research institute of the Ministry of Commerce, told the *Global Times*. However, it is unlikely that China-US trade relations will go back to the pre-trade war period, Huo warned. "The US should drop its confrontational mentality toward China and facilitate competitive cooperation via dialogue and negotiations," Huo added.<sup>19</sup>

Tu Xinquan, Dean of the China Institute for WTO Studies at the University of International Business and Economics, also expressed positive views on the Biden administration's statement at a CSIS event. "I think, generally speaking, my impression is, it's positive, her remarks and statements, especially if she does not support decoupling. I think it's a very great concern for China. And she used the word like durable coexistence, and recouple. These words, kind of new, but basically I think they are positive for the US-China trade relationship."<sup>20</sup>

In resolving the differences between the two nations, Tu noted that "bilateral conversations and dialogues are important" but "international rules are even more important, because the two [powerful economies] have the capability to hurt each other." Hence, "if we can have the same set of rules, we follow the same set of rules, then it would be easier to deal with conflicts between each other."

Wang Yong, Director of the Center for International Political Economy at Peking University, also praised Ambassador Tai at the same event for "recognize[ing] the value of the US-China commercial relations," and that "she's very right in trying to come back to the dialogue with the Chinese counterparts to settle the differences of interests and positions." When commenting on China's enforcement under the Phase One Agreement – in particular, the purchase commitments – Wang said that "it's very important to recognize ... all these factors, including the impact of pandemic and rising cost of cargo ... unfortunately, influence the implementations of the Phase One agreement." Wang also called for both sides to "de-politicize or de-securitize the trade," which is "very important."

<sup>19</sup> *Global Times*, "China-US trade tensions may linger," 7 October 2021, [www.globaltimes.cn/page/202110/1235729.shtml](http://www.globaltimes.cn/page/202110/1235729.shtml).

<sup>20</sup> CSIS, "Chinese Views on the Biden Administration's China Trade Policy," 5 October 2021, [www.csis.org/events/chinese-views-biden-administrations-china-trade-policy](http://www.csis.org/events/chinese-views-biden-administrations-china-trade-policy).

At the same time, some Chinese scholars were more cautious towards the view that this is a turning point in U.S.-China relations. Zhao Dingxin, professor at the Department of Sociology at the University of Chicago and Zhejiang University, stated in a recent article (Zhao, 2021) that “China, as the world’s second-largest economy that has a vast territory, huge population, military strength, and a cultural and political system that is very different from the United States and the West, will inevitably bear the brunt of the United States’ destructive spillover effects” and the key to China’s handling of China-US relations is to avoid falling into the “scapegoat trap” which means China becoming the scapegoat for U.S. domestic problems.

In general, Chinese government officials and Chinese scholars are probably waiting to see what the new Biden administration policy looks like in practice before developing strong views. Tai’s speech left a lot of questions unanswered, making it hard to know how the upcoming months and years of the U.S.-China trade relationship will unfold.

## VII Broader Themes Guiding the U.S.-China Relationship

Beyond the specific details of the Biden administration’s recent statements, there are several important themes lurking in the background that can help inform the issue of the future of U.S.-China trade relations: The calls for “decoupling” of the U.S. and Chinese economies; the role of the state in the economy, in both countries and in the Phase One agreement itself; and the internal political debates in the Democratic party on trade.

### (i) *Decoupling vs. Recoupling*

There has been a great deal of recent talk among foreign policy and trade policy commentators about “decoupling” of the U.S. and Chinese economies. The Biden administration does not appear sympathetic to the idea of decoupling, with Commerce Secretary Gina Raimondo seeming skeptical of it,<sup>21</sup> and Katherine Tai in her CSIS speech characterizing it as not “a realistic outcome.”<sup>22</sup> For Tai, the issue is, “what are the goals we’re looking

<sup>21</sup> Simon Lester, “Gina Raimondo Comments on U.S.-China Trade Competition, Cooperation, and Decoupling,” *China Trade Monitor*, 24 September 2021, [www.chinatrademonitor.com/gina-raimondo-on-u-s-china-trade-competition-and-cooperation/](http://www.chinatrademonitor.com/gina-raimondo-on-u-s-china-trade-competition-and-cooperation/).

<sup>22</sup> “I know there’s a lot of talk about decoupling. I think at the end of the day I still don’t have, necessarily, good understanding of what everybody means, if we’ve got a common definition of decoupling. I think that the concern, maybe the question is whether or not the United States and China need to stop trading with each other. I don’t think that’s a

for in a kind of re-coupling?” And “[h]ow can we have a trade relationship with China where we are occupying strong and robust positions within the supply chain and that there is a trade that’s happening as opposed to a dependency?” In a subsequent interview, she made clear that the United States and China are not, in her view, in a “Cold War.”<sup>23</sup>

For Tai, then, the issue seems to be how the United States and China can have an economic relationship that works for both sides politically and economically. The economic concerns are about the impact of trading with China on U.S. workers and companies. The political concerns are more about national security and geopolitical power. The Biden administration does not seem to have an answer to these questions at this point, but that is the goal it is trying to achieve.

### (ii) *The Role of the State in the Economy*

In her CSIS speech, Tai referred to China’s “industrial policies” and its “state-centered and non-market trade practices” as problems that needed to be addressed. However, it cannot be ignored that at this same moment, within U.S. politics and policy, there are many calls for industrial policy and a greater role for the state in the U.S. economy, and the Biden administration seems eager to move the economy in this direction. From Buy American policies to reconfiguring supply chains to calls for “economic resilience,” the Biden administration at times seems to be emulating the same Chinese policies it is criticizing, although to be fair the degree of state involvement in the economy is less.

Along the same lines, at the same time the United States is asking China to be less state-oriented in its approach to the economy, the Phase One agreement adopts a very state-centered vision itself in the form of its purchase commitments. Tai was asked specifically about the purchase commitments but did not acknowledge the contradiction here.<sup>24</sup>

realistic outcome in terms of our global economy. I think that the issue perhaps is, what are the goals we’re looking for in a kind of re-coupling? How can we have a trade relationship with China where we are occupying strong and robust positions within the supply chain and that there is a trade that’s happening as opposed to a dependency?”

<sup>23</sup> “US is not in a ‘Cold War’ with China, US trade representative tells FRANCE 24,” 6 October 2021, [www.youtube.com/watch?v=JRU459KNORY](https://www.youtube.com/watch?v=JRU459KNORY)

Tai: “we’ve had a lot of questions about whether or not we are headed towards a Cold War, whether or not we are in a cold war, and I think that ...” Q: “the answer is yes?”

Tai: “the answer is no, and that’s why we must engage ...”

<sup>24</sup> Q: “I wanted to ask about the phase one ... agreement from January – from 2020. It sounds like, from what you described, that it may not be your first choice, but given where we’ve

Part of the problem the Biden administration may be having in formulating a way forward on its China trade policy is the dilemma over what economic policy it wants for itself. In the past, the United States has pushed hard at the WTO on issues related to non-market economies.<sup>25</sup> The Biden administration has already picked up on that idea in its work with the EU on the Trade and Technology Council,<sup>26</sup> but some of its own actions could undermine its efforts in this regard if it becomes difficult to distinguish U.S. policy from Chinese policy. For example, there are calls in the United States for significant subsidies to the semiconductor industry. Efforts by the Biden administration to challenge Chinese industrial subsidies will come across as hypocritical if the United States is doing the same thing.

### (iii) *Democrats' Infighting on Trade*

Traditionally, one of the primary goals of U.S. trade policy was “market access,” that is, opening up foreign markets to allow more sales of U.S. goods and services. While the idea of imports may have been controversial, exports were seen as universally positive. However, the battle within the Democratic party on trade has called even this view into question.

come from you're comfortable enough with employing the strategy or approached of managed trade that you're not about to abandon it. So I was curious your thoughts about sort of conceptually managed trade, so governments setting targets and trying to achieve them.”

...

Tai: “I guess managed trade is one way you could describe the purchase commitments. What are my views on it? I'm a tremendously practical person. There are commitments that have been made. That means that there are commitments that we have to seek follow through on. I think that when you talk about managed trade, just to break it down, it is a different model for managing a trade relationship than the model that we've pursued before which was ... let's seek market access, and then ... let the chips fall where they may. I guess what I would say is ... channeling my inner pragmatism, this is the arrangement that we have now, it is an arrangement that has evolved out of a frustration with the previous model. And so the question that I bring to this issue that you've presented is not, ideologically, how do I feel about it, but what is actually going to present results, and what is actually going to be effective, and I think that this conversation around the purchase commitments that we're preparing to have is going to be directly informative to determining how effective this is at this point in time for the challenges that we have in this relationship.” (Tai, 2021)

<sup>25</sup> Simon Lester, “The Debate Over China and Market-Oriented at the WTO,” *China Trade Monitor*, 14 July 2021, [www.chinatrademonitor.com/the-debate-over-china-and-market-orientation-at-the-wto/](http://www.chinatrademonitor.com/the-debate-over-china-and-market-orientation-at-the-wto/).

<sup>26</sup> Simon Lester, “U.S.-EU Trade and Technology Council Statement Discusses Cooperation on Non-Market Economies,” *China Trade Monitor*, 29 September 2021, [www.chinatrademonitor.com/us-eu-trade-tech-council-cooperation-non-market-economies/](http://www.chinatrademonitor.com/us-eu-trade-tech-council-cooperation-non-market-economies/).

After her CSIS speech, Tai was asked about this issue very directly: “Is increasing market access to China one of your goals? And if so, what sectors are you targeting?” Tai’s response was vague and non-committal, and seemed to cast the past focus on market access in a negative light.<sup>27</sup> But if market access is being pushed aside, what exactly is U.S. trade policy about? Tai and others in the administration have continuously emphasized “workers,” but that does not say much. Any policy, including lower tariffs, can be marketed as something good for workers. What exactly does the Biden administration have in mind here? Without a clearer picture of the broader trade policy they are advocating, it may be difficult for them to come up with a coherent China trade policy. And it may also be that no such policy is forthcoming any time soon, as domestic policy and other foreign policy issues take precedence on the administration’s agenda.

### VIII Conclusions

With all the emphasis on bilateral trade relations, one might ask, where is the multilateral, that is, the WTO, in all of this? Tai was asked directly at the CSIS event “What role does the WTO play in all this?,” and seemed skeptical of its ability to help with U.S. claims about China.<sup>28</sup> It remains to be seen how the Biden administration relates to the WTO in general, and how China’s role there continues to progress, but for now, the WTO’s role in the U.S.-China trade conflict may be limited.

In terms of the bilateral side of things, at this point in time, it appears that the Biden administration is willing to just put the ball in China’s court and see how it reacts. This may mean that the status quo stays in place for a while. As much as that prospect aggravates many U.S. business groups

<sup>27</sup> “I think that part of the story of the U.S.-China trade relationship over these recent few decades has been about this thirst on the part of our business sector in particular for increased market access to China. In business sector I include our agriculture sector, obviously. You know, I think along the traditional lines of the way we’ve thought about trade and how benefits come from trade, it has been very focused on securing market access. I think that what we’ve seen is our traditional approach to trade has run into a lot of realities that are today causing us to open our eyes and think about, is what we’re looking for more liberalized trade and just more trade or are we looking for smarter and more resilient trade?” (Tai, 2021).

<sup>28</sup> She said, “we focused very heavily on the WTO, certainly in the first 15 years of China’s membership at the WTO, and I think that as much as we will continue to invest and commit and try to innovate in terms of being a member at the WTO and seeking to bring reform to the WTO that we also need to be agile and to be open-minded and to think outside of the box with respect to how we can be more effective in addressing the concerns that we really have been struggling to address with China on trade.” (Tai, 2021)

and trade policy experts, it does not seem to bother the Biden administration. In part, that may be due to their reluctance to adopt a new policy that will bring criticism from different sides (the progressive left and the nationalist right). They may not like the current deal, but they are not eager to negotiate a new one. There is still plenty to do on the domestic policy agenda, and they can withstand criticism from pro-trade moderates in the meantime. As a result, although the administration has taken tentative first steps on China trade issues, it may end up standing still for a while.

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