



Transition Memo on Trade Policy: Biden Trade Policy Must Promote, Not Undermine Build Back Better Goals

Submitted by:
Public Citizen's Global Trade Watch and
United Brotherhood of Carpenters and Joiners of America

November 25, 2020

Contacts:

Lori Wallach, Director, Public Citizen's
Global Trade Watch, llwallach@citizen.org

Kyle Makarios, Political and Legislative Director,
United Brotherhood of Carpenters and Joiners of
America, Kyle.Makarios@carpenters.org

Introduction

The Biden administration will inherit a U.S. trade policy and political landscape that has been transformed since the end of the Obama presidency by both the Trump trade strategy and COVID-19. The COVID-19 crisis and the inability of the world's richest country to make or obtain essential goods in the face of a crisis has awakened new sectors of the American public to fundamental problems with the current trade regime and the hyperglobalization it has implemented. And the incoming administration will have more trade policy tools and considerable leverage at its disposal thanks to U.S. Trade Representative (USTR) Robert Lighthizer's many unprecedented actions, which also debunked the conventional wisdom that tactics, such as deployment of major tariffs, would trigger autarky, massive economic contraction, or other cataclysm. The considerable leverage that the Biden administration will inherit, created by Lighthizer's China and World Trade Organization (WTO) tactics, must not be squandered but rather harnessed to realign U.S. trade policy so that it promotes the interests of working people, our health and safety, and the environment

However, Trump also failed to implement other critical changes that were necessary to actually significantly alter the outcomes of U.S. trade policy. Thus, working-class Americans remain angry about the significant trade-related job loss that continues to devastate communities nationwide. And many young activists concerned about climate, social and economic justice, and health joined with the labor movement in fighting the Trans-Pacific Partnership (TPP) and are well informed about how corporate-rigged trade agreements undermine their goals. In the face of a demand to reshape U.S. trade policy, President-elect Biden's commitment to not engage in negotiations for new trade agreements before succeeding with key domestic initiatives is very helpful. The incoming administration should use this space to develop new approaches that prioritize the creation and maintenance of good jobs, protect consumer health and safety, promote small businesses and competition by breaking up monopolies, and promote the environmental and energy policies needed to counter climate catastrophe.

Such reforms are also essential if U.S. trade policy is to promote, not undermine the goals and policies set forth in the Biden Build Back Better plan.

China: The public discussion of “global supply chains” that the COVID-19 crisis spurred is accelerating a shift that was already underway around the world about the myriad vulnerabilities created by reliance on China as the world’s factory. Governments, residents and businesses in many countries are questioning the current trade and global economic regime, especially in the context of the role that China plays in it. USTR Lighthizer’s tactical escalations regarding longstanding U.S. problems with China’s international economic policies and practices have created significant leverage for the next administration. The Section 301 tariffs now in place not only serve as a rough countervail against Chinese subsidies. They could become the foundation for an alliance of democracies taking similar action to make the prospect of not altering various practices even more painful than doing so to China’s interconnected political, commercial and military leaders. And, if U.S. allies are unwilling to enact similar penalties against unfair Chinese trade practices, the tariffs would continue as a U.S. safeguard against subsidized imports and provide bargaining leverage for U.S. bilateral demands of China. However, such demands must prioritize the needs of workers and businesses operating here by targeting subsidies, currency misalignments and labor rights. This contrasts with the Trump administration’s “Phase 1” China deal with its investor and intellectual property protections that incentivize more offshoring of production and its Wall Street market access that help finance the domination of industries of the future by Chinese firms.

WTO: USTR Lighthizer’s tactical escalations at the WTO, most notably declining to allow new tribunalists to be appointed to the Appellate Body, have also created significant leverage to support U.S. reform demands from the new administration. Abruptly reversing Lighthizer’s approach would not be strategic or sensible. Rather, the Biden administration should employ the leverage he created behind a U.S. initiative to push a much-needed WTO transformation. As a first step, the administration should undertake an inclusive domestic process to develop an agenda of deep reforms that are proportionate to the WTO’s existential crisis. The procedural concerns about the dispute settlement regime are only a part of the problem. The substantive rules that the WTO enforces reflect a doctrinaire 1990s faith in the wonders of neoliberalism. These terms not only directly conflict with many core initiatives in the Build Back Better plan, but also undermine existing non-trade policies needed to counter our most pressing challenges. Consider that WTO terms have triggered a circular firing squad over climate-change efforts. The European Union and Japan challenged Canadian renewable energy incentives. The United States hit India’s solar-power program, then India attacked U.S. states’ renewable energy programs. Then China filed a case in 2018 against additional U.S. renewable energy measures. Meanwhile, the United States is now blocking a waiver of WTO patent rules for COVID-19-related goods sought by a bloc of countries seeking to maximize the production of and thus global access to affordable vaccines and treatments. U.S. reform demands must focus on new goals for the WTO, and thus the institution’s appropriate scope, rules and procedures and not become distracted with academic notions about the benefits of “multilateralism” and a “rules-based” system.

Reforming Trade Policy to Promote, Not Undermine Domestic Policy Goals: The conflicts between existing U.S. trade agreements and policies and many priority goals and policies from the Build Back Better plan and beyond that President-elect Biden has promoted spotlight why trade reform is overdue. Clearly, the administration should press forward with the many proposals and initiatives included in the Build Back Better plan that could simultaneously revive the pandemic-wracked economy and create jobs by making needed investments in our nation’s infrastructure, enhanced manufacturing capacity and more. But, that such commonsense proposals conflict in many ways with the expansive non-trade dictates in today’s “trade” agreements must be addressed, if only to harness trade policy as a

tool to promote the goals of such domestic policies. (And certainly, it is worthwhile to remove the conflicts to shut down the use of such conflicts by opponents of important innovations to chill progress.) This includes WTO and FTA terms that conflict with domestic goals with respect to expansion of Buy American policy and the favoring of domestic firms and goods in major infrastructure investment initiatives, certain climate-related energy policies and standards, policies for expanding affordable health care and medicines, consumer protections and anti-monopoly actions against Big Tech predations and more.

Moving away from decades of a corporate-led trade policy is also politically important. For the Biden agenda to succeed, congressional Democrats and base groups must be united *for* core Biden non-trade policy goals, and work *with* the administration to maximize the prospect of enacting them. That means avoiding trade nominations or policies that would redirect attention and resources into fighting *against* the administration.

More broadly, Democrats can't rely on the next right-wing populist who exploits real anger over real damage from our past trade policies and pacts being entirely undisciplined and incompetent. The damage caused by the corporate-led hyperglobalization that has been implemented over the past decades by "trade" agreements such as the North American Free Trade Agreement (NAFTA) and NAFTA-style free trade agreements, the WTO, and the "China shock" when Congress approved Permanent Normal Trade Relations (PNTR) and China entered the WTO, has been well documented — from mass job outsourcing, 60,000 American production facilities closed and towns and regions economically gutted, to unreliable supply chains, downward pressure on wages and weakened consumer and environmental protections.

As a candidate in 2016, Trump conflated progressives' critique of corporate globalization and the real damage of job outsourcing with a xenophobic and racist appeal to target *white* working-class voters. While decades of such corporate-rigged trade policies have harmed many American workers of all races and ethnicities, as Public Citizen's forthcoming report, *Trade Discrimination: The Disproportionate, Underreported Damage to U.S. Black and Latino Workers From U.S. Trade Policies*, shows, Black and Latino workers have assumed a disproportionately large share of the harm inflicted by these deals. U.S. government data — despite shortcomings as to the recognition of the complexities of race and ethnicity — show that these two groups were overrepresented in the industries and concentrated in the regions that were hit hardest by the past decades of offshoring and surging imports that eliminated 4.5 million middle-class-supporting manufacturing jobs and numerous service sector jobs, from unionized call centers and other back office operations to computer programmers, accountants and engineers.

As Donald Trump failed to deliver on his promises to stop job offshoring or to create a "manufacturing boom" by "bringing back" or creating millions of new manufacturing jobs, in 2020 a surge in union voters and voters who earn \$50,000 or less in key swing states ousted Trump, initial exit poll analyses show. Whether these working-class voters of diverse races and ethnicities will stick with the Democratic Party depends on whether their lives and livelihoods measurably improve over the next four years. And that relies on the Biden administration enacting economic policies designed to do just that, which means breaking from the trade policy supported by Republican and Democratic presidents alike over the past few decades that has incentivized job outsourcing and put downward pressure on wages. Even if President-elect Biden had not committed to a moratorium on new trade deals while he focusses on domestic priorities, such a cooling off period would be essential politically. Having made the commitment, it would be especially politically damaging if the Biden administration just proceeded on with the Trump-launched negotiations for free trade agreements with the United Kingdom and Kenya,

the Big Tech-demanded plurilateral “digital trade” talks in Geneva or long-stymied WTO deals limiting government rights to regulate foreign investor and the service sector.

Rather, the Biden administration must now seize the opportunity to show working-class voters that Democrats recognize the real damage of past pacts and policies. And, that unlike Trump, who made appealing promises but largely failed to deliver, President Biden will fix the real problems with new approaches to trade that prioritize the wellbeing of working people of all races and ethnicities and of the planet. Indeed, among many Democratic members of Congress and base groups, there is a common understanding of what sorts of policies that would require. And that consensus has moved beyond the large core of progressive and/or union-oriented representatives and senators who were united against the TPP and the massive U.S. movement of movements that campaigned against the TPP for years.

One unexpected benefit of the renegotiation of NAFTA is that internal congressional Democratic discussions about and engagement in that process fostered an unusual degree of unity among congressional Democrats across caucuses on trade. That occurred in no small part because the internal discussion with congressional Democrats and base groups (unions, environmental and consumer groups, faith and family farm groups, etc.) started with a focus on goals. And, on that there was broad agreement. Expanding trade should not be considered a goal unto its own, but rather must be understood as one tool among many to build towards common goals:

- creating and supporting well-paying jobs;
- improving economic equality and inclusiveness;
- promoting healthy communities and a livable planet;
- improving access to safe and affordable goods, food, medicines and services with strong consumer and environmental protections;
- strengthening national security by building more resilient supply chains for medicines, medical equipment and personal protective equipment (PPE), but also essential goods needed for communications and energy infrastructures, by both building U.S. production capacity and diversifying import sources; and
- promoting global poverty reduction and rebuilding the U.S. image in the world by raising standards to improve working conditions, environmental protection and health worldwide.

From that basis, congressional Democrats and base groups were united in the first months of renegotiations and remained united to force the Trump administration to renegotiate the renegotiated NAFTA. The final U.S.-Mexico Canada Agreement (USMCA) won wide Democratic support, even if it was far from being a “good” trade deal, because it significantly improved on the original NAFTA and established a new floor: Even the corporate-infested Trump administration was forced to acknowledge that to be widely supported, trade agreements cannot have extreme Pharma protections that lock in high medicine prices, investor-state dispute settlement (ISDS) or terms that obligate countries to export portions of their natural resources — and agreements must have stronger labor standards and enforcement that imposes pain on the companies violating workers’ rights, wage standards (even if the USMCA version is flawed), tight rules of origin, and stronger environmental requirements.

The incoming administration must build from that floor, starting with a comprehensive and inclusive review of changes needed to our existing trade agreements, trade preference programs, and other trade policies to ensure they are compatible with Democratic policy goals.

Immediate

1. **Nominate a U.S. Trade Representative who is suited to the mission of transforming U.S. trade policy towards a pro-worker, pro-small-business, pro-health and pro-environment focus.** In addition to the ethics/revolving door and diversity considerations applicable to all top nominees, such a candidate will require very specific skills and experience:
 - A vision rooted in a pro-labor, pro-environment perspective for how to transform U.S. trade policy that reflects deep knowledge of both the technical details of existing agreements, policies and alternatives as well as knowledge of political sensitivities, history and landmines of both Congress and key private sector groups to implement the vision. And to navigate the tricky trade terrain, the candidate must already have trusting relationships with the key players in Congress representing the various perspectives and interests on trade as well as with labor and business, environmental and consumer groups, and other major private sector players. USTR in 2021 is not a role for someone not already steeped in both trade world policy and politics.
 - China trade knowledge and experience will be key given foreseeable priorities, but also critical will be operational knowledge of the revised NAFTA and its implementing bill, given that its successful enforcement is necessary to avoid fracturing the USMCA Democratic voting bloc. As well, technical knowledge of WTO dispute settlement, procedures and problems with existing WTO substantive rules will be critical given the opportunity for change that the WTO's current existential crisis provides. Finally, the candidate needs to understand past pacts' non-tariff terms as well as schedules of tariff and non-tariff commitments to lead the needed process of updating agreements to support, not undermine, Build Back Better and other Biden policy goals.
 - The candidate cannot trigger an inter-Democratic-Party fight that will destroy the unity needed for other policy battles. And, given the role trade played in 2016 and the fact that *some* Obama-Obama-Trump voters lost to Trump's trade appeals came back in 2020, BUT many did not, the candidate cannot represent the corporate interests that have promoted the old model, if only to avoid the optics that lets a lurking Trump and "his" voters say Democrats are ignoring workers' trade concerns and going back to the pre-Trump "establishment" trade agenda.
2. **Launch the Buy American trade pact plan described in the Build Back Better plan.** The relevant text reads: "[Update the trade rules for Buy American](#): Biden will work with allies to modernize international trade rules and associated domestic regulations regarding government procurement to make sure that the U.S. and allies can use their own taxpayer dollars to spur investment in their own countries." Implementing this initiative will require exercising a president's unilateral authority under 19 U.S.C. §2511 to alter the list of countries that now obtain waivers from Buy American and other domestic procurement preferences because of their trade pact status. It is urgent this is done before any Biden administration COVID-19 emergency stimulus money moves, or a significant share of such funds will end up offshored, as happened with the 2009 stimulus during the Obama administration. And notice must be given to WTO Agreement on Government Procurement (GPA) and FTA partners that the United States will renegotiate procurement terms in trade pacts to facilitate the Build Back Better agenda or, failing successful renegotiations, will withdraw from those terms. (A signatory can exit the WTO GPA without penalty.) The changes to the trade-pact procurement terms must restore the U.S. ability to use domestic preferences for purchase of goods, safeguard prevailing wage and other conditions on contracts from challenge as trade-pact violations, and establish a requirement that service sector work, such as outsourced government call centers, be conducted by workers in the United States.

3. **Issue an executive order to remedy consumer safety and tax-dodging abuses of *de minimis* import provisions by Big Tech online sales platforms.** This executive order must address three issues that have become serious problems as online retail volumes have exploded such that today, more than one million express air shipments arrive from China alone daily. First, the EO must direct Customs to not accord *de minimis* treatment to items on the Consumer Product Safety Commission’s list of high-risk products used by its port co-located inspectors, and instead require imports of such items to be made through formal entry with the documentation necessary to trigger inspection. This will ensure that dangerous and counterfeit imported children’s products, PPE and more do not skirt U.S. import inspection. Second, it must prohibit *de minimis* treatment for bulk imports arranged through online sales platforms and require formal entry so companies cannot abuse *de minimis* rules to dodge applicable tariffs. Finally, the order must require Customs to collect certain duties on all imports, regardless of whether they would qualify for the *de minimis* exception if such goods are subject to Section 301 duties, duties on import-sensitive items, or duties that would normally be subject to *ad valorem* duties of 5% or higher.
4. **Announce that the new USTR will consult with Congress, stakeholders and allied countries to develop a comprehensive U.S. approach to the future of the WTO and will not support Appellate Body appointments during this process.** It is critical not to squander the leverage the U.S. now enjoys, but rather to use it to demand both procedural reforms and changes to substantive rules of the agreements enforced by the WTO. As well, prior to altering the U.S. position with respect to the WTO Director General, the administration should conduct an investigation of Ngozi Okonjo-Iweala’s record with respect to Chinese investments and business activities in Nigeria from the time that she served as Finance Minister, and her China-related work at the World Bank, to ascertain whether her approach is compatible with U.S. policy goals regarding China trade matters.
5. **Announce a moratorium on the negotiation of any new trade agreements, including the U.K and Kenya FTAs and WTO “digital trade” and investment deals, until a comprehensive, inclusive review and policy reformulation process has been undertaken to develop a new trade agreement model, and major domestic investments have been made in domestic infrastructure, education, training, and manufacturing.**
6. **Direct U.S. Customs and Border Protection to use its authority under 19 U.S.C. §1307 to issue a regional withhold release order on all cotton goods imported from the Xinjiang region of China, where Uyghur and other Turkic language speaking minorities are being held in “re-education” camps and subjected to forced labor.** This would flip the burden of proof so that importers who now routinely source PPE, apparel, and more from the region must explicitly prove that goods were not produced using forced labor. Such a move would stop many forced labor imports, push retailers to change their sourcing, and create economic pressure on China.
7. **Announce that existing tariffs on Chinese goods will be maintained while the new administration develops its demands with respect to Chinese subsidies, misalignment of currency values/bidding up the value of the U.S. dollar with excessive reserves, and labor and human rights abuses, and until the underlying conduct satisfies the demands.**
8. **Issue a demarche to countries participating in the United Nations Commission on International Trade Law (UNCITRAL) Working Group on ISDS Reform (WG III) stating that the U.S. opposes any outcome that includes reference to the EU’s Multilateral Investment Court**

(MIC) and urges the agenda of WG III to focus on mechanisms that can be used by all countries for all International Investment Agreements to either exit them or modify the substantive investor protections to only allow compensation for direct expropriation and post-establishment discrimination and require exhaustion of domestic remedies and other procedural reforms in line with the general terms applying to Mexico in the revised USMCA.

9. **Issue a demarche to all nations that now qualify for African Growth and Opportunity Act (AGOA) preferences or that could qualify, clarifying that contrary to Pres. Trump's threat, AGOA is not about to be terminated nor is Congress expected to object to its further extension after 2025.**
10. **Issue an Executive Order reaffirming that U.S. policy remains consist with the "Doggett Amendment" that prohibits U.S. trade officials from promoting tobacco sales, reducing tobacco tariffs or seeking to undermine the regulation of tobacco products.**

First 100 Days

1. **Conduct an inclusive, comprehensive, transparent process to review existing agreements for consistency with the Build Back Better plan so as to prepare for renegotiations to adjust U.S. trade agreements to promote, not undermine, Democrats' policy goals, and to build from the Democratic unity USMCA positions** with respect to stronger labor and environmental standards and enforcement; stronger rules of origin; eliminating ISDS, which President-elect Biden committed would not appear in any trade deals he makes; reducing pharmaceutical monopoly protections and more.
2. **Launch a review of USMCA implementation that culminates with an action plan** to ensure labor and environmental technical assistance funding is being properly directed and assess sufficiency of funding; verify that labor attaché consulate staffing and other enforcement and monitoring systems are operational; review labor chapter enforcement schedules, and work with Mexico to adjust (currently the Mexican states with the most labor conflicts and those representing 50% of both manufacturing and exports are not slated to be in compliance until 2022), and review environmental funding and status of water clean-up and other projects.
3. **Establish a position at the National Security Council focused on U.S. supply chain resilience for essential medical and communications and energy infrastructure goods, whose mission is to both promote creation of more domestic production capacity for such goods and diversification of import sources, and who will lead a new high-level interagency group that includes the many agencies whose work is implicated, including the Justice Department's anti-trust division.** Crises elevate inconvenient truths that can be ignored in good times: Our current trade and investment regime means many critical goods are now mainly produced in one or two countries, and an outsized share in China. And it's difficult to quickly increase production elsewhere. Long, thin globalized supply chains mean firms that seek to ramp up production cannot find inputs, parts and components. The result: When workers in one country fall ill or governments foreseeably prioritize their own people's needs before exporting goods, a worldwide shortage of essential goods quickly develops. For some critical goods, the U.S. government does not even know the degree of overreliance on limited suppliers, a problem that must be addressed quickly. For instance, a large portion of the world's active pharmaceutical ingredients needed to make almost all medicines are being produced in just two countries, China and India. The Biden administration must quickly do the analysis to determine the extent of our overreliance on these

two sources. Apparently, the U.S. government remains unclear about this question because the data are considered proprietary information of the pharmaceutical firms. Accurate information is needed to understand the urgency of developing U.S. production capacity for essential medical, communications, infrastructure and national defense/security supplies as well as diversifying our imports sourcing, both of which can help remedy current overreliance on Chinese imports. Among policies the interagency process must develop are criteria for key sectors in which long term production contracts must be authorized quickly under the Defense Production Act to acquire minimally three firms in each sector receiving five-year contracts to produce essential goods so as to establish sufficient demand to develop U.S. production and thus ensure a domestic supply to supplement imported supplies.

4. **Implement the Build Back Better Buy American and other domestic preference program reforms.** In addition to fixing the ways in which trade pacts undermine Buy American, this will require action by Executive Order, by regulation and perhaps with respect to certain elements by Congress. The administration on its own can limit waivers to Buy American requirements, make the process more transparent so that tenders and proposed waivers are publicly posted so they can be challenged and tighten domestic content rules so that at least 75% of the value of any good qualifying for preference is American made. The administration also needs to clarify the rules so that prefabricated building walls and other structural pieces made outside the United States cannot be used for domestic construction contracts. And the administration can crack down on companies that label products as Made in America even if they're coming from China or elsewhere by having the Federal Trade Commission issue stiff cash penalties for such conduct and disbaring such firms from bidding for federal contracts. In addition, the principle of Buy American must be extended to cover service sector contracts, so that the work is conducted in the United States. This would include requiring U.S. workers to staff outsourced government call centers, work on government contracts for Information Technology projects, conduct outsourced economic research and data analysis, and more. As well, the Berry and Kissel Amendments, which require that military uniforms and certain other goods be American made, must be expanded to also cover all government purchases of PPE. The Build Back Better plan of extending Buy American to other forms of government assistance, such as tax-payer-funded research grants having "make it in America" is a good idea, but such policies should include claw-back provisions. And another such all-government approach would be to give notice that going forward, companies that offshore jobs would be disbarred from bidding on U.S. federal contracts, a proposal contained in several anti-offshoring bills introduced in Congress. As well the Buy America Act and similar terms in specific infrastructure revolving funds, which minimally require all of the steel, iron, and manufactured products used in certain projects are melted, mined, and manufactured in the U.S. must have their rules of origin tightened and enforcement enhanced. And, certainly the Biden administration must not agree to any expansion of the Agreement on Government Procurement to Russia, China, or any other country not currently a member. Instead, the administration should launch a review process to reassess the current benefits of participating in the GPA at all. This must include an assessment as to whether U.S. firms sell roughly the same value in goods to foreign governments as foreign firms sell to the U.S. government given the Government Accountability Office found that U.S. market access commitments in the GPA are larger than those of the next five largest signatories combined (the entire EU, Japan, Canada, Korea and Norway). It must also include an assessment of the value of foreign government service sector contracts won by U.S. firms and U.S. contracts won by foreign firms and where the work is done on such contracts, as trading away U.S. preferences to allow U.S. firms to bid on foreign government service sector contracts does not mean any of the work under the contract will be done domestically.

5. **Launch a review process with stakeholder participation and public hearings to formulate a new U.S. position on “digital trade” that protects consumers and is compatible with President-elect Biden’s commitments to protect consumers from Big Tech platform abuses.** The USMCA and an ad hoc deal with Korea included “digital trade” rules that would forbid the U.S. government from employing the most effective policy tools used by other nations to protect consumer privacy, would provide new protections for platform’s source code that could undermine innovation and efforts to uncover discriminatory and other malign elements of algorithms and would lock in the broad liability waiver now provided in the Communications Decency Act Section 230, which is opposed by many congressional Democrats and Republicans alike. Rules in the WTO’s General Agreement on Trade in Services and various FTAs forbid governments from regulating services based on their size, or how many services one entity provides – thwarting needed anti-trust regulations of monopolistic Big Tech firms. While President-elect Biden’s campaign commitment to a moratorium on new trade negotiations and agreements would end current U.S. participation in pushing such rules into UK and Kenya trade pacts and the plurilateral “digital trade” agreement now being negotiated parallel to the WTO, notifying the other countries in the Geneva-based process that the U.S. is reviewing its position will be critical to empower other nations to reconsider the process before the Big Tech platforms succeed in locking in “digital trade” disciplines that would tie governments hands with respect to needed regulation in these sectors. The “digital trade” push in various trade negotiation venues is a prime example of powerful multinational corporations trying to hijack trade agreements to impose non-trade policy constraints on governments or extract privileges that could not be attained in domestic, democratic legislative bodies or administrative agencies. Sadly, the United States has pushed this agenda during both the Obama and Trump administrations. It is urgent that the Biden administration make clear that it does not support locking in new policies via closed-door trade negotiations on an issue that is heavily contested in domestic policy bodies worldwide and is also subject to rapidly changing technological realities.
6. **Implement new USTR transparency standards.** With the goal of greatly improved transparency and broad stakeholder participation, establish new rules and practices, including: for developing initial U.S. proposals for negotiations, invite initial public input for proposals and publish draft U.S. proposals online for review and comment; condition U.S. participation in negotiations on agreement by all involved countries that all consolidated negotiating texts and textual proposals will be made public online after each negotiating round; and provide further opportunities for receiving and responding to public comments on the draft texts prior to the next negotiating round.
7. **Coordinate with Congress to update trade preference programs, including the Generalized System of Preferences (GSP) and an early reauthorization of the African Growth and Opportunity Act (AGOA).** First, these programs should be reviewed to consider if there is a way to design into them incentives or special benefits that could promote more geographic diversification in the production of PPE and other essential goods. Second, these programs are very outdated with respect to the criteria for qualifying countries. The terms need to be modified to strengthen labor and human rights standards, add robust environmental and women’s rights standards and eliminate existing language on IP protections relating to medicines, among other changes to bring the programs’ criteria in line with modern Democratic trade policies and development best practices.
8. **Work with the Treasury Department to require all foreign private-sector, sovereign-wealth-fund-controlled or state-owned enterprises seeking to list on U.S. capital markets to meet all transparency standards to which U.S. domestic firms are subject.**

9. **Direct the Department of Commerce to declare that China is not a market economy and that the existing applicable statutory framework clearly supports such a view and will not be revisited in the next four years.** The Department should be directed to ensure that individual sectors or entities cannot be designated as market-oriented; only a future re-designation of China's economy as a whole would allow for any change in treatment.
10. **Don't continue with business as usual with respect to publishing a "National Trade Estimates" report in March 2021 that includes lists of other countries' environmental, food safety, health and other public interest protections identified as "illegal trade barriers" that must be eliminated.** This annual report that includes a list of other countries' policies U.S. commercial interests seek to have eliminated has epitomized the anti-labor, anti-consumer, anti-environment perspective of Republican and Democratic administrations alike.

Medium- and Long-Term Goals

1. **Initiate a process with stakeholder participation to review the safety of imported food, medicine and products for children with the goal of developing new domestic procedures to ensure imports meet the same safety and inspection standards as domestically produced goods.** U.S. interpretation of "equivalence determination" and other obligations in trade pacts have allowed large volumes of food and other goods that do not meet U.S. safety standards to enter U.S. commerce. Indeed, in developing countries meat processing plants differentiate between the higher safety standards required to be authorized to export to Japan and the EU relative to the U.S. standard, yet all three are ostensibly meeting the same WTO rules that also are the basis for many FTAs. The U.S. review process must develop stronger domestic consumer safeguards similar to those employed by Japan and the EU such that facilities that are not certified by the USDA, FDA or CPSC as meeting U.S. safety and inspection standards are not allowed to export to the United States. Moreover, the USMCA included three chapters that further undermine consumer safety: a Sanitary and Phytosanitary Chapter with regulatory limits that go beyond those in the WTO, a so-called Good Regulatory Practices Chapter and a Sector Specific Annex Chapter with regulatory limits for various sectors. Such chapters should not be included in future agreements.
2. **Restructure the trade advisory system to include more representatives of labor, consumer, health, human rights and other public interest stakeholders on each of three trade advisory committee tiers to better balance representation.** The administration already has the statutory authority to diversify appointments to some of these committees and should work with Congress to make necessary amendments to the Trade Act of 1974 provisions to expand on existing authorities.
3. **Create a comprehensive U.S. China strategy and a summit of democracies process to coordinate with allies on China policy.** To the extent that the United States can escalate pressure and create economic losses for China's tightly linked political and commercial elite to a degree that makes inaction more costly than the downsides of changing China's current trade practices, it will require coordination with European nations, Japan, and other prospective allies. This international strategy coordination must be part of a comprehensive U.S. strategy with respect to China, which employs the full range of defensive policy tools to limit the damage caused to U.S. workers and domestic firms from Chinese practices and that also focusses on investment in U.S. innovation and production capacity in targeted industries of the future. While certainly trade tools and policies will be part of such an approach, to be successful it must be considerably broader than trade.

4. **Launch a policy formulation process with stakeholder participation to develop a U.S. WTO reform agenda.** The expansive scope of the agreements and rules enforced by the WTO and the vast agenda of non-trade “neoliberal” policies to which they require signatory countries to conform their domestic laws reflect a bygone era. The WTO’s limits on financial regulation are contrary to many countries’ post-global-financial-crisis sensibilities. The anti-anti-trust rules that forbid service regulation premised on the size of a commercial entity or the variety of services it provides conflict with many countries efforts to enhance market competition by reducing the monopoly power of Big Tech and other overly concentrated sectors. WTO terms have triggered a circular firing squad over climate-change efforts. WTO patent rules thwart the necessary mass production of COVID-19-related medicines, medical equipment and treatments. And even the officially touted purpose of the WTO – grand economic gains for developing and developed nations alike – have largely failed to materialize even as the volume of trade expanded. As if this were not sufficiently problematic, the WTO’s Appellate Body regularly overreached to make new “law” that extended beyond the commitments that member nations had agreed, a point protested by the Bush II and Obama administrations that culminated in the Trump administration shutting down the Appellate Body by refusing to appoint new judges. And, the WTO negotiating function is only barely more operational, with member countries repeatedly derailing most efforts to expand its rules and remit. In the face of this existential crisis, have the WTO Secretariat or WTO member countries undertaken the major reforms to replace the old regime? No, instead WTO priorities include negotiations to set *new* limits on regulations regarding e-commerce and data privacy at a time when most people are clamoring for some check on the industry, to further limit signatory governments’ policy space with respect to the regulation of sensitive services such as energy, education, health care and more and to add new rules related to investment policy just as nations worldwide are rolling back such terms in their ISDS-enforced agreements. The new administration must develop a major WTO reform agenda, and should be guided by reference to the terms of the original global trade body, the 1948 International Trade Organization (ITO), when doing so. With a focus on full employment and fair competition coming out of the horrors of World War II, the ITO included labor standards, anti-monopoly provisions and currency-cheating rules to ensure the benefits of trade accrued to more people. But the Senate blocked American participation in the organization, effectively killing it. That very different vision for a rules-based global trading system remains attainable, but will require U.S. leadership to achieve. A modern version would include the labor/job creation, currency/fair trade and anti-monopoly/functioning markets goals of the ITO, but additionally prioritize climate and environmental concerns with policy space for countries to invest in building their own renewable energy capacity and funding the retrofit of infrastructure. Indeed, extracting the WTO from non-trade policy space is necessary to restore the legitimacy for global trade rules. Notably, a key feature of the ITO was that it set rules *about trade* that were designed to promote goals such as full employment and well-functioning markets and reserved ample policy space for countries with respect to non-trade matters.
5. **Develop a government-wide plan to counter the misalignment of currency values and related trade distortions caused by nations that hold massive U.S. dollar reserves beyond balance of payments needs or intervene in currency markets or other actions taken to lower the value of their currency or raise the dollar’s value.** This effort must employ *all* of the tools available to the U.S. government to take swift and certain action to counter currency-related actions that distort trade.
6. **Work with Treasury to develop new regulations that require transparency and disclosure of all foreign private sector, government, state-owned enterprise or sovereign wealth fund**

investments in and contributions to venture capital and other mixed funds making investments in U.S. entities or property.

7. **Strengthen foreign investor reviews** to limit investment by private sector, government, state-owned enterprise or sovereign wealth funds associated with countries not in alignment with U.S. foreign policy goals in sectors relating to national security and in the following sectors – next-generation information technology, high-end numerical control machinery and robotics, aerospace and aviation equipment, maritime engineering equipment and high tech maritime vessel manufacturing, advanced rail equipment, energy-saving and new energy vehicles, electrical equipment, agricultural machinery and equipment, new materials, and biopharmaceuticals and high-performance medical devices. Expand the definition of national security considerations utilized by the Committee on Foreign Investment in the United States (CFIUS) to include economic considerations and an evaluation like that used in Canada of the net economic benefit of subject transactions in terms of U.S. production and job creation. Covered transactions which do not provide a net economic benefit to the U.S. or that undermine national security (broadly defined), should be rejected.
8. **Ensure that global digital corporations pay their fair share of taxes by supporting the Organization for Economic Cooperation and Development’s multilateral approach to developing a new set of rules.**
9. **Update the International Trade Commission’s (ITC) trade data and economic modeling of projected and actual trade agreement outcomes.** Improvements to Census department data collection and ITC data reporting are needed to remove re-exported goods from both export and import reporting. (For instance, Canada requires data on the original country of production for re-exported imports.) This is needed to obtain accurate bilateral trade data. And, the models that the ITC employs to evaluate trade agreements must be improved to account for factors now dismissed, such as pacts’ prospective impacts on employment, and the default assumption that all non-tariff measures are “barriers,” the removal of which is a positive factor, must be eliminated, among other reforms.
10. **Launch a policy formulation process with stakeholder participation to develop a new U.S. trade agreement model that is designed to prioritize** the interests of working families and other non-commercial stakeholders on an equal basis with those of business interests, and promote strong consumer safety and environmental protection. One useful model to consider is [The Modern Agreement of Amity and Commerce](#), developed by Beth Baltzan. For a new model to deliver the desired outcomes, it also will be critical that prospective partners must meet minimum standards for democratic rule and the protection of human rights and their people must have adequate capacity to prosper from the trade deal — including respect for core international labor rights and fundamental environmental protections in practice. Critical elements of future trade deals must:
 - A. **Leverage U.S. market access to establish a “floor of decency” set by binding terms that must be in all trade agreements that every signatory and the firms that seek a pact’s benefits must meet as a condition for gaining the market access or other benefits.** Focusing on factors that affect price of a good or service can help address the race-to-bottom problems of a global market without anything akin to “federal law” setting a mandatory base standard for wage, environmental and consumer protections and more.

- **Require domestic laws to guarantee, enforce rights in listed set of core International Labor Organization (ILO) Conventions.** To ensure workers benefit and firms in countries where workers are paid a living wage can compete, all trade agreements must require that signatory countries provide in their domestic laws the core ILO rights to which countries have agreed with goods that fail to meet these standards denied access under the trade pact. Provide affirmative protections for workers in different countries to engage in joint collective bargaining with multinational employers.
- **To help counter race-to-the-bottom wage competition and ensure that workers benefit from expanded trade, establish floor wage standards** that reflect the cost in the signatory country where a worker resides to cover food, water, housing, education, transportation, health care, clothing and other essential needs, such as savings for retirement and emergencies and that only goods produced by workers earning such wages can gain access to signatory countries. Agreements also could build from the USMCA Labor Value Content rules, but designed for more impact such that a significant portion of a good's value must be produced by workers earning a minimum wage that is 50% of the median U.S. wage for production workers in manufacturing.
- **Condition trade benefits on countries' compliance with Multilateral Environmental Agreements.** Signatory countries must adopt or maintain and implement policies to fulfill the requirements of priority Multilateral Environmental Agreements, i.e., those that have been ratified by the United States or that over 90 percent of the countries in the world, including the Paris Agreement under the UN Framework Convention on Climate Change.
- **Set a floor of required pollution abatement, conservation and consumer health and safety protection.** Signatory countries must adopt, maintain, and implement policies to limit the level of priority air, water, and land pollutants to the lowest maximum level found in any other country that is party to the trade agreement and elevate food and product safety, inspection and labelling to the higher level of the participating parties.
- **Real National Treatment: Require that all imported goods and services must meet domestic standards.** By requiring that products can only enter the United States if they meet U.S. health and safety, environmental, inspection, packaging, and labeling standards, consumers and the environment are safeguarded, and U.S. producers who must meet such standards are no longer put at a disadvantage for doing the right thing. (This is the flip side of the 'set a minimum standard based on the better standards' idea above, and creates incentives to do so in that failure to meet the standards means no access to the world's most lucrative market.)
- **Discipline against currency value misalignment and other forms of trade cheating.** Trade agreements must establish mechanisms to discipline currency misalignments that create distortions and unfair trade advantages, including a mechanism to examine the trade consequences of significant currency movements and maintenance of excessive dollar reserves, for the application of countervailing duties and/or purchases of the undervalued currency if the currency of a signatory country is deliberately misaligned. To avoid distortions and the use of tax rebates to achieve unfair trade advantages, trade agreements shall provide for border tax equity for U.S. producers and exporters in the assessment and rebate of indirect taxes (such as consumption and sales taxes), including by prohibiting the

imposition of such taxes on U.S. exports when imported to another country or prohibiting the rebate of taxes on other countries exports headed to the United States.

- **Ensure workers and firms in signatory countries benefit from compliance with the rules using strong rules of origin.** Trade agreement rules of origin must be set at an appropriately high level so that the benefits of the agreement accrue to the signatory countries that follow required labor, wage, environmental and other standards. And pacts should include terms that allow a country to exit if their trade partners enter into a preferential agreement with any non-market economy, like China.
 - **Include exceptions for national security and to prioritize labor, human rights, environmental and other treaty commitments.** To ensure that signatory countries retain the ability to prioritize certain goals, trade agreements shall respect the primacy of other policy needs. Trade is a tool, not a goal. All pacts must include an essential security carve-out that permits a signatory country to apply measures that the country considers necessary for the maintenance or restoration of international peace or security, or the protection of its own essential security interests, including with respect to infrastructure, services, manufacturing, and other sectors. All trade agreements must include a carve-out that explicitly gives priority to the implementation of bilateral or multilateral agreements relating to public health, human and labor rights, the environment, or other public interest goals in the event of any inconsistency between the trade agreement and such bilateral or multilateral agreement. All trade agreements must include a carve-out providing that provisions of law that are facially nondiscriminatory and relate to domestic health, consumer safety, the environment, labor rights, worker health and safety, economic equity, consumer access, the provision of goods or services, or investment, shall not be subject to the disciplines of the agreement.
 - **Subject trade pacts and policies to democratic oversight – review and sunset.** To ensure trade agreements deliver the promised benefits on an ongoing basis, each agreement shall provide for a review every five years and include a requirement that before the end of a five-year period following the effective date of an agreement, each signatory country must reaffirm its consent for the agreement to continue.
- B. **Eliminate elements of the past model that undermine pro-worker, pro-consumer and pro-environment policies and goals.** This would involve eliminating offshoring incentives, special protections for various commercial interests, constraints on environmental, health, privacy and other policies. The unifying principle of these reforms is that Congress and other countries' legislatures set domestic standards, with National Treatment as the trade pact rule that respects such domestic policy decisions.
- **Consumer protection, environmental and other standards that treat domestic and foreign goods the same and labels that indicate where goods are made are not trade barriers.** Signatory countries must be free to impose non-discriminatory standards designed to protect public health and safety, animal welfare, and the environment with the standard for challenges being a burden on the challenger to prove a policy does not further such objectives. To ensure consumers have the information needed to make informed choices, trade agreements must explicitly affirm the right for each signatory country to provide information labels, such as Country of Origin Labels for all products.

- **No more incentives to offshore production or extra-judicial tribunals that empower investors to attack domestic environmental and health policies by eliminating special privileges and powers for foreign investors.** Foreign investors operating in the United States must not be afforded greater substantive or procedural rights than those afforded to domestic investors by the Constitution. That means foreign investors and investments must comply with public interest laws and regulations of host countries and, as candidate Biden committed, there must be no ISDS or similar private-right-of-action mechanisms. And, pacts must preserve countries' pre-establishment investor screening and approval processes, especially in light of our recommendations to strength such U.S. rules.
- **Eliminate restraints on government oversight of Big Tech platforms.** The “digital trade” rules that have been included in some recent U.S. trade pacts and that the U.S. government is promoting at plurilateral talks in Geneva thwart governments from enforcing rules to protect consumer privacy, product liability, anti-discrimination requirements and other policies against digital platforms and help the platforms evade fair taxation of digital revenues.
- **Remove limits on regulation of the service sector to promote consumer access, competition, affordability, and security.** Preserve the right of U.S. federal, state, and local governments to promote and safeguard workers' and consumers' rights, to maintain essential public services, to establish new public services and to regulate, for the benefit of the public, services provided to individual consumers including by regulating on the basis of size and competition policy, financial stability and more including to enforce prudential restrictions on speculative capital to reduce global financial instability and trade volatility.
- **Remove limits on the use of government procurement policies to promote domestic policy priorities.** To ensure that U.S. tax dollars can be recycled into creating innovation, investment, resilient supply chains and jobs in the United States and can be used to incentivize environmental, fair wage, economic justice, and other domestic policy goals, trade agreements must not include government procurement provisions.
- **Trade agreements should not require governments to provide classic rent-seeking monopoly licenses in any sector.** Whatever one thinks is the right balance of intellectual property protection and competition to promote affordable prices and access, such provisions – like the expansive patents, exclusivities and data protections Big Pharma has gotten inserted into trade pacts – do not belong in a trade agreement. Nor do rules that limit the procedures or rates for government reimbursement levels in public health programs.