Shifts in US Trade Policy in Certain Areas but Continuity in Others

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The shape of the Biden administration's international trade policy has begun to emerge, with few changes expected in some areas (*e.g.*, China) but potential resolutions and new disputes in others (*e.g.*, Europe).

Ambassador Katherine Tai, who will play a leading role in trade policy, was sworn in as the new U.S. Trade Representative (USTR) on March 18, 2021. She brings a wealth of trade knowledge and experience to the job, having served as chief counsel for China enforcement at the office of the USTR and chief trade counsel for the Democrats in the House. Ambassador Tai has stressed that the administration's trade policy will take into account and further labor and environmental objectives.

Here is where Biden administration policy stands in major areas:

China tariffs likely to remain in place. In a recent interview, Ambassador Tai signaled that the new administration would not unilaterally remove the tariffs imposed on $370 billion worth of Chinese imports. Doing so would relinquish negotiating leverage, she indicated, and could scramble supply chains. Expect mounting industry pressure to relaunch the product exclusion process for these tariffs, which previously allowed companies to seek exemptions.

Digital services taxes retaliation — locked and loaded. Ambassador Tai also has indicated the government is unwilling to give up leverage in the ongoing feud between the U.S. and other major trading partners over digital services taxes (DSTs). USTR issued reports in January 2021 concluding that DSTs imposed by six countries discriminated against U.S. companies (India, Italy and Turkey; Austria, Spain and the United Kingdom). Building on these findings, USTR put a number on the amount of retaliation that the United States could impose on imports from these countries: up to 25% tariffs on nearly $900 million worth of goods.

Light at the end of the Boeing-Airbus tunnel? In early March 2021, the U.S. and the EU agreed to a four-month suspension of all tariffs imposed in the long-running disputes before the World Trade Organization over subsidies to Airbus and Boeing, and committed to working toward a permanent resolution. Although a settlement has proven elusive in the past, the Biden administration's emphasis on improving relations with European allies may offer an opening.

Settling the battery dispute. In mid-February 2021, the U.S. International Trade Commission (ITC) ruled that SK Innovation (SKI) misappropriated electric vehicle battery trade secrets from another Korean company, LG Chem. The ITC order would have blocked certain SKI battery imports for 10 years, undermining the new administration's support of electric vehicles to combat climate change. Ambassador Tai and other administration officials defused the situation by brokering a settlement that allows SKI to continue to import its batteries but required it to pay $1.8 billion and a running royalty to LG.

Emphasis on USMCA enforcement. The administration has emphasized that it will prioritize enforcement of trade agreements such as the U.S.-Mexico-Canada Agreement (USMCA), particularly with respect to labor and environmental issues. Expect to see cases brought under the USMCA Rapid Response Mechanism, which allows the U.S. to suspend preferential tariff treatment or block entry of goods from plants in Mexico that violate certain labor rights. Ambassador Tai faces a major challenge in determining whether to pursue the USMCA case launched against Canada in December 2020 over access to the Canadian dairy market. The case is strongly supported by the U.S. Dairy Export Council but opposed by certain labor and farm groups.