

# Has the US Become a National Security and Protectionist Trading State?

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*Geopolitical risk is now among the most important factors in the formulation of multinational corporate strategy and the US trade policy. The US has aggressively enacted national-security-based trade sanctions, which recently include export controls on semiconductor chips and restrictions on outbound and inbound investment. The US has also adopted major legislation providing historical subsidies and tax breaks. Congress and the courts have upheld the president's use of national security as a basis of trade actions and generally supported his protectionist policies. Trade should not be restricted or weaponized. Global and national rules need to be strengthened and, perhaps, a bit updated, but protectionism in the name of national security is a losing argument. The growing movement by the US to rely more on national security and protectionism in formulating trade policy is a very worrisome development. No one in Washington is proposing a return to pre-Trump policies. The real question is how far US trade policy will continue to change in the near future. Geopolitics will give us the answer.*

## Keywords

Protectionism, 2022 Inflation Reduction Act, Chips Act of 2022, WTO Security Exception, US and WTO Litigation, US-China Trade, US Trade Policy, State Law and Alien Ownership, Subsidies, Biden and Trump 2024

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# 1. Introduction

Geopolitical risk is now among the most important factors in the formulation of multinational corporate strategy and the US trade policy.<sup>1</sup> This is most clearly seen in the US-China trade relations. The US has aggressively enacted national-security-based trade sanctions, which recently include export controls on semiconductor chips and restrictions on outbound and inbound investment. The US Department of Commerce and the US Department of the Treasury have implemented these actions. This implementation involves a vast increase in the US Department of Commerce's role in the field of international trade.

The US has adopted major legislation providing historical subsidies and tax breaks, for example, in promoting semiconductor chip manufacturing and supporting advanced battery technology development and production.<sup>2</sup> Congress and the courts have (somewhat unexpectedly) upheld the president's use of national security as a basis of trade actions<sup>3</sup> and generally supported his protectionist policies.

A recent article in *FOREIGN AFFAIRS* suggests that the US has become a "security state." It concludes that Jake Sullivan, the US National Security Adviser, has a central belief "that decades of free-market zealotry has weakened the country's national security [and that] ... a simplistic faith in the magic of markets had hollowed out US industry ... and riddled global supply chains with critical security vulnerabilities."<sup>4</sup> To me, Jake Sullivan's views have clearly become the predominant concept governing the US trade policy today – among almost all factions in the US government – and aggressively espoused by the USTR Representative Katherine Tai.<sup>5</sup> Needless to say, various corporate associations do not fully buy this worldview.<sup>6</sup> However, even this

<sup>1</sup> See *A New Corporate Approach to Geopolitical Risk*, ATLANTIC (2023), <https://www.theatlantic.com/sponsored/kpmg-2023/a-new-corporate-approach-to-geopolitical-risk/3838>.

<sup>2</sup> A. Chou, *US Moves to Choke China's Role in Electric Vehicle Supply Chain*, FIN. TIMES (Dec. 1, 2023), <https://www.ft.com/content/7d80627e-c6a6-4216-b4c8-275f089fc447>.

<sup>3</sup> J. Kruzel, *U.S. Supreme Court Turns Away Challenge to Steel Imports*, REUTERS (Oct. 30, 2023), <https://www.reuters.com/legal/us-supreme-court-turns-away-challenge-steel-import-tariffs-2023-10-30>.

<sup>4</sup> H. Farrell & A. Newman, *The New Economic Security State*, FOREIGN AFF. (Oct. 19, 2023), <https://www.foreignaffairs.com/united-states/economic-security-state-farrell-newman>.

<sup>5</sup> K. Tai, *Remarks by Ambassador Katherine Tai to Discuss Updates on Biden-Harris Administration's Worker-Centered Trade Agenda* at the Center for American Progress, Office of the USTR (Oct. 10, 2023), <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/october/remarks-ambassador-katherine-tai-discuss-updates-biden-harris-administrations-worker-centered-trade>.

<sup>6</sup> G. Bade, *Corporate America Fights Uphill Battle Against Ant-China Push*, POLITICO (Sept. 1, 2021), <https://www.politico.com/news/2021/09/01/business-us-china-trade-508239>.

is changing.

It is interesting to note that individual states have come aboard this anti-free trade and anti-China bandwagon. For example, Arkansas recently ordered a Chinese company subsidiary to divest itself of agricultural land.<sup>7</sup> Virginia also blocked the granting of state economic incentives to a US firm from building a huge battery factory because it was considering using Chinese technology and personnel<sup>8</sup> and a new state law imposing restrictions of foreign ownership of farmland.<sup>9</sup> Most recently, Chinese bitcoin mines in the US raised national-security suspicions of state and federal officials.<sup>10</sup>

A recent analysis of state laws restricting Chinese ownership of land concluded: “And although the Supreme Court weakened racial covenants in real estate and the alien land laws in 1948, one wonders how the current spate of alien land laws would fare before the current court.”<sup>11</sup> My guess is that the Supreme Court might very well uphold these new laws.

Since the end of World War II, the Republican Party has stood for free trade, participation in international institutions, and alliances. President Trump brought this to an end.<sup>12</sup> It is not an exaggeration to state that the Republican Party has turned inward,<sup>13</sup> somewhat mirroring the Democratic Party’s focus on rebuilding local industries with an emphasis on promoting workers’ welfare.

One needs to remember the Republican Party of the 1930’s was both protectionist and isolationist. It was Herbert Hoover who signed the Smoot-Hawley tariff in 1930. It was Nixon that imposed import surcharges in the 1970’s. So, this current turning inward by the Republican party, after following Reagan’s free trade policies, can be viewed as going back to the future.

<sup>7</sup> A. Demillo, *Arkansa Orders Chinese Company’s Subsidiary to Divest Itself of Agricultural Land*, ASSOCIATE PRESS (Oct. 17, 2023), <https://apnews.com/article/china-huckabee-sanders-arkansas-farmland-467a0089a4a2f31de80ad0cbf36c634b>.

<sup>8</sup> S. Vogelsong, *Youngkin Halts Ford Battery Plant in Virginia Over Concerns About China*, VA. MERCURY (Jan. 12, 2023), <https://www.virginiamercury.com/2023/01/12/youngkin-halted-ford-battery-plant-plans-in-virginia-over-concerns-about-china>.

<sup>9</sup> K. Hardy, *This Land is Our Land: States Crack Down on Foreign-Owned Farm Fields*, VA. MERCURY (Dec. 5, 2023), <https://www.virginiamercury.com/2023/12/05/this-land-is-our-land-states-crack-down-on-foreign-owned-farm-fields>.

<sup>10</sup> G. Dance & M. Forsythe, *Across the U.S. Chinese Bitcoin Mines Draw National Security Scrutiny*, N.Y. TIMES (Oct. 13, 2023), <https://www.nytimes.com/2023/10/13/us/bitcoin-mines-china-united-states.html>.

<sup>11</sup> M. Ngai, *Ron DeSantis ‘Barred Chinese from Buying Land in the State of Florida., How Did we Get Here?*, N.Y. TIMES (Dec. 16, 2023), <https://www.nytimes.com/2023/12/11/opinion/chinese-people-property-sale.html?referringSource=articleShare>.

<sup>12</sup> S. Malawer, *Trump, Litigation and Threats: From Queens to the World Stage*, 6 CHINA & WTO REV. 209 (2020), [http://cwr.yjil.org/home/pdf/archives/2020v6n1/cwr\\_v6n1\\_08.pdf](http://cwr.yjil.org/home/pdf/archives/2020v6n1/cwr_v6n1_08.pdf).

<sup>13</sup> K. Shake, *The Case for Conservative Internationalism*. FOREIGN AFF. (Jan./Feb. 2024). <https://www.foreignaffairs.com/united-states/case-conservative-internationalism>.

This focus on national security in the US domestic politics and trade policy is now mirrored by arguments over national security and trade in the WTO. Only recently has the WTO considered claims of national security as an excuse to evade basic trade obligations.<sup>14</sup> Separate cases involving the Russian Federation and Ukraine<sup>15</sup> and the US and its China trade sanctions<sup>16</sup> highlight this situation. Dispute over the national security issue will most likely preclude resolving the general disagreement over the dispute settlement system and the WTO as a whole. The Petersen Institute for International Economics recently published a study on the WTO security exception.<sup>17</sup> It concluded that this provision needs to be critically addressed before the US recommits to the WTO:

A major obstacle to the United States accepting any resolution of this impasse - thus permitting dispute settlement to once again be binding on all WTO members - is settling the issue of whether claims of national security to legitimize trade measures are reviewable. This is a red line for the US, which argues this claim is non-reviewable. In the emerging area of great power competition, the US is unlikely to accept a return to fully effective WTO dispute settlement absent a compromise that finds determinations of national security non-justiciable.<sup>18</sup>

## 2. Some Recent Specifics

In December 2023, the House Select Committee on the Chinese Communist Party released a report<sup>19</sup> recommending a broad range of statutory enactments refashioning the US-China trade relations. First and foremost, it called for increased tariffs and withdrawal of most-favored-nation treatment for China. As Ana Swanson and Alan

<sup>14</sup> A. Wolfe, *When Sovereigns Clash and International Rules Fail Dealing with National Security at the WTO*, PIIE (Nov. 28, 2023), <https://www.piie.com/commentary/speeches-papers/when-sovereigns-clash-and-international-rules-fail-dealing-national>.

<sup>15</sup> Panel Report, *Russia-Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512/R (adopted Apr. 19, 2019), [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds512\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm).

<sup>16</sup> Panel Report, *United States-Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS544/R (adopted Jan. 26, 2023), [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds544\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm).

<sup>17</sup> W. Maruyama & A. Wolfe, *Saving the WTO from the National Security Exception* (PIIE Working Paper No. 23-2, 2023), <https://www.piie.com/sites/default/files/2023-05/wp23-2.pdf>.

<sup>18</sup> *Id.* at 22.

<sup>19</sup> Select Committee on the Strategic Competition Between the U.S. and the CCP, *Reset, Prevent, Build*, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf>.

Rappeport succinctly observe in a recent article in *NEW YORK TIMES*, “[T]he most prevalent argument a decade ago was that economic interdependence between the United States and China would be a force for peace .... But that theory has increasingly given way to fears that ties to China could be weaponized ....”<sup>20</sup>

Recent legislation enacted under the Biden administration has authorized significant subsidies and tax breaks for the US firms, influencing international trade and particularly impacting electric vehicles and semiconductor chips. In December 2023, the US Treasury Department released proposed rules concerning subsidies authorized by the 2022 Inflation Reduction Act<sup>21</sup> that could amount to more than USD 100 billion over the next decade. These subsidies are intended to encourage clean energy investments, particularly those for production of solar panels and components for electric vehicles, including batteries.<sup>22</sup> This follows the rules the US Department of the Treasury published in August 2023 concerning tax credits for consumers’ purchases of new electric vehicles.<sup>23</sup> Those rules essentially blocked such credits if US autos utilize Chinese parts.

The Chips Act of 2022<sup>24</sup> was enacted to reassert the US leadership in semiconductor technology.<sup>25</sup> The Act appropriated USD 39 billion to a new fund to bolster chip manufacturing and fabrication. The fund also provides USD 11 billion for research and general funds to bolster semiconductor capabilities to support national defense and workforce development. Significant actions have been taken in its first year of operation in providing grants supporting national security in excess of USD 166 billion.<sup>26</sup>

Even though the US importers have continued to attack Section 232 national

<sup>20</sup> A. Swanson & A. Rappeport, *Lawmakers Call for Raising Tariffs and Severing Ties to China, Starting with Tariff Rates*, *N. Y. TIMES* (Dec. 12, 2023), <https://www.nytimes.com/2023/12/12/business/economy/us-china.html>.

<sup>21</sup> Pub L 117-169, 136 Stat. 1818 (2022), <https://www.govinfo.gov/content/pkg/PLAW-117publ169/html/PLAW-117publ169.htm>.

<sup>22</sup> A. Rappeport, *US Tax Credits to Spur Clean Energy Face Scrutiny over Chinese Investments*, *N. Y. TIMES* (Dec. 14, 2023), <https://www.nytimes.com/2023/12/14/business/clean-energy-tax-credits-chinese-investment.html>.

<sup>23</sup> US Dept. of the Treasury, *Treasury Releases Initial Information on Electric Vehicle Tax Credit Under Newly Enacted Inflation Reduction Act*, *DEPT. OF THE TREASURY NEWS* (Apr. 16, 2023), <https://home.treasury.gov/news/press-releases/jy0923>.

<sup>24</sup> Pub.L. 117-167, 136Stat. 1366(2022),<https://www.govinfo.gov/content/pkg/PLAW-117publ167/html/PLAW-117publ167.htm>.

<sup>25</sup> Congressional Research Service, *Semiconductors and the CHIPS Act: The Global Context*, CRS Rep. No. 47558 (Sept. 28, 2023), <https://crsreports.congress.gov/product/pdf/R/R47558>.

<sup>26</sup> The White House, *FACT SHEET: One Year after the CHIPS and Science Act* (Aug. 9, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/09/fact-sheet-one-year-after-the-chips-and-science-act-biden-harris-administration-marks-historic-progress-in-bringing-semiconductor-supply-chains-home-supporting-innovation-and-protecting-national-s>.

security tariffs first imposed by President Trump, federal courts have continued to uphold the legality of these tariffs on Chinese products. In October 2023, for example, the US Supreme Court refused to hear arguments concerning the legality of Section 232 national security tariffs.<sup>27</sup> The Supreme Court denied hearing a challenge to the decision of the Federal Circuit Court of Appeals upholding the tariffs, which had reversed the Court of International Trade, that initially found the Section 232 steel tariffs invalid.<sup>28</sup>

The Trump administration and now the Biden administration have implemented extensive export controls on China concerning cutting-edge US technology and semiconductors,<sup>29</sup> in addition to rules concerning inward and outward investment.<sup>30</sup> An extensive assessment of export controls appeared recently in *WALL STREET JOURNAL*. The authors argue that such controls amount to weaponizing US trade law provisions contending that restricting interdependence with China is now a matter of national security. They conclude:

The Trump administration transformed export controls in fits and starts with drive-by tweets .... The story of export controls, from Obama through Trump and Biden, is one of discovering new possibilities on the fly. It is time for the US to move past improvisation to strategy.<sup>31</sup>

What stands out about Trump's trade policies during his term in office and his current campaign for a second term is his anachronistic espousal of tariffs as a panacea to combat restrictive Chinese trade practices. The US press is full of extensive and often distraught discussions of this.

In a lead editorial this September, *WALL STREET JOURNAL* states: "After other countries

<sup>27</sup> *PrimeSource Building Products v. United States* (Case 23-69) (Order Oct. 23, 2023), [https://www.supremecourt.gov/orders/courtorders/103023zor\\_mkhn.pdf](https://www.supremecourt.gov/orders/courtorders/103023zor_mkhn.pdf).

<sup>28</sup> *See US Supreme Court Turns Away Challenge to Steel Import Tariffs*, *REUTERS* (Oct. 30, 2023), <https://www.reuters.com/legal/us-supreme-court-turns-away-challenge-steel-import-tariffs-2023-10-30>.

<sup>29</sup> Congressional Research Service, *U.S. Export Controls and China*, *CRS IN FOCUS* (Mar. 24, 2022), <https://crsreports.congress.gov/product/pdf/IF/IF11627>.

<sup>30</sup> US Dept. of the Treasury, *Outbound Investment Program*, <https://home.treasury.gov/policy-issues/international/outbound-investment-program>. The Biden administration is planning to keep many of Trump's China tariffs in place in 2024, as part of the run up to the 2024 presidential election. *See* H. Nicholas, *Scoop: Biden Preparing to Keep Many of Trump's China Tariffs*, *AXIOS* (Jan. 9, 2024), <https://www.axios.com/2024/01/05/biden-keep-many-trump-china-tariffs>.

<sup>31</sup> H. Farrell & A. Newman, *How the U.S. Stumbled into Using Chips as a Weapon Against China*, *WALL ST. J.* (Sept. 9, 2023), <https://www.wsj.com/politics/policy/how-the-u-s-stumbled-into-using-chips-as-a-weapon-against-china-ec37e32>. The authors also conclude: "Now the U.S. has weaponized interdependence ... with allies and adversaries alike wriggling on the hocks."

retaliated, Mr. Trump bailed out farmers with tens of billions from taxpayers ... Mr. Trump's great mistake is his belief that trade is a zero-sum exercise. But countries and companies trade because they see a mutual advantage."<sup>32</sup> Also in *WALL STREET JOURNAL*, an editor wrote: "You're going to hear a lot about tariffs this election cycle ... Now Mr. Trump has proposed 10% tariffs on *all* imports ... But the Chips+ Act giving billions to Intel for fabs in Columbus, Ohio, is a waste ... We have the world's strongest economy. Tariffs are a sign of weakness."<sup>33</sup> One hopeful sign is that even some Republicans are debating Trump's insular policies.<sup>34</sup>

### 3. Concluding Observations

Here are several observations concerning trade relations today. One, the Trump administration and now the Biden administration continue to block the appointments of Appellate Body members in the WTO's dispute resolution system. This seems strange given the general success of the US in that system and as the primary architect of that court-like system. Two, the Biden administration has not been supportive in addressing new digital trade rules concerning developments in e-commerce today.<sup>35</sup> Three, the US federal courts have generally upheld all tariff actions based on national security by the Trump and Biden administrations.<sup>36</sup> "Donald Trump upended U.S. trade policy during his first term, launching a tariff war with China .... Trump has been stocking an arsenal of protectionist measures for a potential second term ...."<sup>37</sup>

<sup>32</sup> Lead Editorial, *Trump's Real Trade Record*, *WALL ST. J.* (Sept. 6, 2023), <https://www.wsj.com/articles/donald-trump-trade-deficit-tariffs-china-d434bf0f>.

<sup>33</sup> A. Kessler, *Tariffs are for Losers*, *WALL ST. J.* (Oct. 10, 2023), <https://www.wsj.com/articles/tariffs-are-for-losers-global-economy-protectionism-trade-jake-sullivan-hawley-585c4175>.

<sup>34</sup> F. Schwartz, *Republicans Reckon with Reagan's Global Vision in Insular Era of Trump*, *FIN. TIMES* (Dec. 5, 2023), <https://www-ft-com.ezproxy.depaul.edu/content/fd37fe22-3124-49e4-9070-93c381e77f3f>.

<sup>35</sup> Y. Hayashi, *US Shift on Global Tech Rules Jeopardizes Effort to Confront China*, *WALL ST. J.* (Nov. 13, 2023), <https://www.wsj.com/politics/policy/u-s-shift-on-global-tech-rules-jeopardizes-effort-to-counter-china-f8ab5398>.

<sup>36</sup> J. Kruzel, *U.S. Supreme Court Turns Away Challenge to Steel Imports*, *REUTERS* (Oct. 30, 2023), <https://www.reuters.com/legal/us-supreme-court-turns-away-challenge-steel-import-tariffs-2023-10-30>.

<sup>37</sup> Y. Hayashi, *Trump is Primed for a Trade War in a Second Term, Calling for 'Eye-for-Eye Tariffs'*, *WALL ST. J.* (Dec. 26, 2023), <https://www.wsj.com/politics/elections/trump-is-primed-for-a-trade-war-in-a-second-term-calling-for-eye-for-eye-tariffs-aff5bec5>. See also Charlie Savage, Jonathan Swan & Maggie Haberman, *A New Tax on Imports and a Split From China: Trump's 2025 Trade Agenda*, *N.Y. TIMES* (Dec. 26, 2023), [https://www.nytimes.com/2023/12/26/us/politics/trump-2025-trade-china.html#:~:text=Mr.%20Trump%20has%20said%20he,like%20electronics%2C%20steel%20and%20pharmaceuticals.\(FormerPresidentDonaldJ.Trumpisplanninganaggressiveexpansionofhisfirst-termeffortstoupentheAmericas'tradepoliciesifhereturnstopowerin2025...andIgnitingaGlobalTradeWar.\)](https://www.nytimes.com/2023/12/26/us/politics/trump-2025-trade-china.html#:~:text=Mr.%20Trump%20has%20said%20he,like%20electronics%2C%20steel%20and%20pharmaceuticals.(FormerPresidentDonaldJ.Trumpisplanninganaggressiveexpansionofhisfirst-termeffortstoupentheAmericas'tradepoliciesifhereturnstopowerin2025...andIgnitingaGlobalTradeWar.))



Four, Trump was a loser in trade war,<sup>38</sup> but he promises more of the same if reelected. A trade war does not have to happen. An insightful lead editorial in *WASHINGTON POST* recently concluded: “Without an agreed-upon system to constrain these policies, the opportunities for conflict seem endless. Whether inside the WTO or not, the prospect of a hot future should compel cooler heads to design new, effective guardrails on trade to prevent conflict ...”<sup>39</sup>

In general, rethinking subsidies and tax incentives could cool trade tensions.<sup>40</sup> Of course, some may be permitted under the WTO rules and justified for job creation, but justifying them on the grounds of national security is much more controversial, and the legal justifications are unclear. One thing is clear to me. The US engagement in global markets has proven very beneficial to itself.<sup>41</sup> Yes, displaced workers need more support. Previously in 2023, I observed:

The dispute over the justiciability of national security as a defense in the WTO, as well as the larger issue of restrictions on China trade, has pitted the national security establishment in the US against the trade establishment to a considerable extent. The trade debate has become politicized, toxic, and anti-China.<sup>42</sup>

With the advent of newer geopolitical events such as the Israel-Hamas war, the American public and politicians are becoming ever more disenchanted with foreign affairs and much less tolerant of actions seemingly hurting the US. They seem to be turning to greater acceptance of national security as being the primary foreign policy goal, not multilateral institutions nor free trade. This parallels the rise in importance of national security in the formulation of domestic economic policy. For example, the Biden administration’s opposition to the recently announced proposed merger of Nippon Steel with US Steel because of national security concerns.<sup>43</sup>

<sup>38</sup> P. Gramm & D. Boudreaux, *Trump’s Trade War was a Loser*, N.Y. TIMES (Sept. 11, 2023), <https://www.wsj.com/articles/trumps-trade-war-was-a-loser-employment-manufacturing-international-economy-tariffs-unemployment-9d8a7c7c>. The authors conclude: “Trade wars, like all wars, empower government as plowshares are beaten into swords. The first casualty of a trade war is economic freedom; the second is prosperity.”

<sup>39</sup> Lead Editorial, *A Trade War Doesn’t Have to Happen*, WASH. POST (Nov. 24, 2024), <https://www.washingtonpost.com/opinions/2023/11/24/climate-change-china-trade-energy/>.

<sup>40</sup> J. HILLMAN & I. MANAK, *RETHINKING INTERNATIONAL RULES ON SUBSIDIES* (Council on Foreign Relations, 2023).

<sup>41</sup> G. Holbauer & M. Haugen, *America’s Payoff from Engaging in World Markets Since 1950 was Almost \$2.6 Trillion in 2022* (PIIE Policy Briefs No. 23-17, 2023), <https://www.piie.com/publications/policy-briefs/americas-payoff-engaging-world-markets-1950-was-almost-26-trillion-2022>.

<sup>42</sup> S. Malawer, *US-China Trade Relations: Tectonic Changes and Political Risk in the Global System – National Security, Industrial Policy, and Protectionism*, 9 CHINA & WTO REV. 370 (2023), [http://cwr.yiil.org/home/pdf/archives/2023v9n2/cwr\\_v9n2\\_08.pdf](http://cwr.yiil.org/home/pdf/archives/2023v9n2/cwr_v9n2_08.pdf).

<sup>43</sup> T. Parti & K. Ferek, *White House Says \$14.1 Billion U.S. Steel Sale Deserves ‘Serious Scrutiny’*, WALL ST. J. (Dec.



But it seems to me there is a danger in drifting away from free trade and globalization and to greater restrictions on trade with China. A recent lead editorial of NEW YORK TIMES concludes:

The steadily rising trade between the United States and China from 1979 to the present has disrupted the lives of many Americans and caused real harm to some. That said, in the sweep of history those four decades were an era of remarkable peace between, and prosperity, for the two countries.<sup>44</sup>

Trade should not be restricted or weaponized. Global and national rules need to be strengthened and, perhaps, a bit updated, but protectionism in the name of an ever-expanding notion of national security is a losing argument. The growing movement by the US to rely more on national security and protectionism in formulating trade policy is a very worrisome development.<sup>45</sup>

So what is the future of US trade policy? To me, the trade policies of former President Trump seemed as an aberration, initially. But this is not the situation now. The Biden administration has kept most of Trump's tariffs and policies in place and expanded some. The US courts have not limited the powers of the president to rely upon national security as a basis of trade policies, which have resulted in more restrictions and protectionist measures. This change in the US trade policies is a result of geopolitical changes in the post-Cold War era. It is now forcing changes in multinational corporate strategies as firms reassess issues of political risk, for example, as to the location of production and supply-chains as well as promoting necessary industries for national security and domestic employment. This change in the global landscape is also impacting the policies of other countries. Needless to say, the US-China trade relations is at the core of this development. The forthcoming presidential election in the US, and the likely rematch between Trump and Biden, will only further highlight this historical change of global eras in the post-1945 world. From the post-war era that focused on multilateralism and free trade to this new era that now emphasizes power politics and concerns over national security and protectionism. This new emphasis now drives domestic and international economic

21, 2023), <https://www.wsj.com/business/deals/white-house-says-14-1-billion-u-s-steel-sale-deserves-serious-scrutiny-8c709ae2>.

<sup>44</sup> Editorial Board, *The U.S. is Pulling Back from China: How Far is Too Far?*, N. Y. TIMES (Sept. 24, 2023), <https://www.nytimes.com/2023/09/23/opinion/us-china-trade.html>. The editorial also observes the following as to globalization: "Many American, even once-ardent proponents of globalization, have soured on trade with China. But there is a growing danger that as the United States tries to address its difficulties with China, it will pull back too far..."

<sup>45</sup> S. Malawer, *The US Relations with China: Worrisome Developments in the US Law*, 9 CHINA & WTO REV. 147 (2023), [http://cwr.yiil.org/home/pdf/archives/2023v9n1/cwr\\_v9n1\\_07.pdf](http://cwr.yiil.org/home/pdf/archives/2023v9n1/cwr_v9n1_07.pdf).

policies. Reminding me somewhat of the disastrous national policies of the 1930s.

Clearly, no one in Washington is proposing a return to pre-Trump policies. The real question is how far the US trade policy will continue to change in the near future. Geopolitics will give us the answer. Countries, industries and people are now debating the ramifications of this historical change in international eras. To me, this change can well be considered as a correction of an over-optimistic global view of trade and multilateralism of the last few decades. Debates over the US trade policy during the forthcoming presidential election will be most illuminating and consequential to the global system.

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