

ESSAY

ANALYZING THE TRUMP ADMINISTRATION'S INTERNATIONAL TRADE STRATEGY

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I. INTRODUCTION

The Trump Administration's trade strategy is unorthodox to phrase it in the mildest terms. At no time since the modern international trading system began with the founding of the World Trading Organization ("WTO") has the US government launched such a multi-pronged assault on the global trading system.¹ The Trump Administration's approach—as I have argued elsewhere²—is, in my view, quite dangerous for the global trading system and contrary to the United States' interests. The purpose of this Essay is to provide some constructive analysis on how the Trump Administration, or another

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1. Rachel Brewster & Sergio Puig, *Introduction: Can International Trade Law Recover?*, 113 AM. J. INT'L L. UNBOUND 38, 38-39 (2019).

2. Rachel Brewster, *WTO Dispute Settlement: Can We Go Back Again?*, 113 AM. J. INT'L L. UNBOUND 61, 61-66 (2019); Rachel Brewster, *The Trump Administration and the Future of the WTO*, 44 YALE J. INT'L L. ONLINE 1 (2018).

succeeding administration, could address the United States' trade concerns with other nations more productively.

This Essay begins by acknowledging that there are real and serious concerns regarding Chinese government policies, particularly in the areas of intellectual property and support for state-owned enterprises. This work addresses how the United States could achieve gains in Chinese trade relations without creating a threat to the broader global trading system. This Essay's perspective is based on the recognition that the United States not only needs to be concerned about its trading relationships today, but relations over the next twenty to fifty years. The rules and structures of the current multilateral system—the agreements making up the WTO—are overwhelmingly in American interests. We largely created the WTO (along with the European Communities, Japan, and Canada) at the height of our relative global economic power in the 1990s.³ The United States would never get a global consensus around those same rules or procedures today. Maintaining the stability of that system, respect for that system, and compliance with that system has to be a top American economic priority.

In the next twenty to fifty years, the economic power of the United States will be very different from what it is today. China and India each have four times the population of the United States: China's 1.42 billion population and India's 1.37 billion population dwarf the United States' population of 329 million.⁴ These economies are currently large but will soon be tremendously important exporting markets and importing markets. American economic prosperity depends significantly on keeping these countries invested in and constrained by the multilateral system. Our concern with maintaining the multilateral trade system's rules and institutions means that we should not create precedents today that will come back to bite us in a decade or two.

3. For a description of the bargaining that created the WTO and the use of US economic power, see generally Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56 INT'L ORG. 339 (2002).

4. See Population Div. of the Dep't of Econ. and Soc. Affairs, *World Population Prospects: The 2017 Revision, Key Findings and Advance Tables*, U.N. Doc. ESA/P/WP/248, available at https://population.un.org/wpp/Publications/Files/WPP2017_KeyFindings.pdf [<https://perma.cc/379H-M3WM>]; see also Conrad Hackett, *Which 7 countries hold half of the world's population?*, PEW RES. CTR. (July 11, 2018), <https://www.pewresearch.org/fact-tank/2018/07/11/world-population-day/> [<https://perma.cc/X2ZT-HTB4>] (noting that after China and India, the next five most populous countries do not have a combined population equal to India or China).

This does not mean that the United States cannot address real trade issues where they exist. Concern for the future certainly does not mean that we should be fearful to act. However, the United States needs to be smart and sophisticated about the trade strategies it adopts. There is a fair amount to be gained by trade negotiations but there is also a lot that the United States can lose under the present Trump Administration strategy.

With the goal of being constructive, this Essay offers four concrete recommendations on how to improve the United States' trade strategy in the near term. They are briefly listed below and then expanded on in the rest of the Essay:

1. The United States should frame its trade discussions with China as being outside of current WTO issues. Taking the discussion out of current trade agreements provides for more negotiating freedom and preserves the integrity of the current multilateral framework.
2. The United States should end its block on the appointment or re-appointment of WTO Appellate Body members. The United States is currently threatening the continued enforcement of multilateral trade enforcement by cutting off its supply of judges.⁵ Ending this enforcement crisis would create greater support for broader US trade policies and restore confidence in the multilateral system.
3. The United States should cease making its broad national security claims used to justify the current steel and aluminum tariffs.⁶ Maintaining these claims creates a precedent for a major loophole in trade law that other countries, particularly China, could use in the near future.

5. Tom Miles, *Trump threats, demands spark 'existential crisis' at WTO*, REUTERS (Oct. 24, 2018), <https://www.reuters.com/article/us-usa-trade-wto-insight/trump-threats-demands-spark-existential-crisis-at-wto-idUSKCN1MY12F> [<https://perma.cc/N78R-RNPY>] (discussing the Trump Administration's block on appointing any new members to the WTO Appellate Body); see also Jennifer A. Hillman, *How to Make the Trade War Even Worse*, N.Y. TIMES (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/opinion/trade-war-china-wto.html> [<https://perma.cc/RDQ9-GFEV>] (discussing the detrimental effects of the Trump Administration trade policy).

6. Proclamation No. 9,704, 83 Fed. Reg. 11,619 (Mar. 8, 2018); Proclamation No. 9,705, 83 Fed. Reg. 11,625 (Mar. 8, 2018). For an analysis of the over-breath of the national security claims, see Jennifer A. Hillman, *Trump Tariffs Threaten National Security*, N.Y. TIMES (July 1, 2018), <https://www.nytimes.com/2018/06/01/opinion/trump-national-security-tariffs.html> [<https://perma.cc/BQ67-6FCR>].

4. Re-engage the Transpacific Partnership countries and their trade agreement. Since the United States withdrew from the negotiations for the Trans-Pacific Partnership trade agreement (“TPP”), the other member countries have concluded that agreement—now called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”).⁷ These countries surround China, and their support is critical to seeing Chinese trade reforms through.

Altering current American trade policy to incorporate these four elements would allow the United States to challenge Chinese trade policies while preserving the stability of the multilateral system. The rest of this Essay discusses these recommendations in greater detail.

II. FRAMING US-CHINESE TRADE NEGOTIATIONS

The United States and China are currently engaged in an extensive set of trade negotiations regarding subjects including trade sanctions and counter-sanctions.⁸ The United States currently has imposed US\$250 billion in trade sanctions against China, which has responded by imposing its own US\$110 billion in sanctions on US imports.⁹ The Trump Administration’s threat to further escalate trade sanctions by US\$260 billion was placed on hold after US and Chinese leaders agreed to a truce in escalations at the G20 Summit in Argentina in December 2018.¹⁰ Currently these disputes are characterized as involving WTO issues,¹¹ but they could viably be framed as addressing issues outside of the scope of the WTO rules.

7. Ernesto Londoño & Motoko Rich, *U.S. Allies Sign Sweeping Trade Deal in Challenge to Trump*, N.Y. TIMES (Mar. 8, 2018), <https://www.nytimes.com/2018/03/08/world/asia/us-trump-tpp-signed.html> [<https://perma.cc/RZS2-A89A>] (discussing the formation of the CPTPP out of the countries that negotiated the TPP, minus the United States).

8. See Chad Bown & Melina Kolb, *Trump’s Trade War: An Up-To-Date Guide*, PETERSON INST. FOR INT’L ECON. (Sept. 24, 2018), <https://piie.com/blogs/trade-investment-policy-watch/trump-trade-war-china-date-guide> [<https://perma.cc/JA7F-8ZEZ>].

9. For a full accounting of the phases of retaliation and counter-retaliation, see *id.*

10. Mark Lander, *U.S. and China Call Truce in Trade War*, N.Y. TIMES (Dec. 10, 2018), <https://www.nytimes.com/2018/12/01/world/trump-xi-g20-merkel.html> [<https://perma.cc/MSP6-DVW4>].

11. Ana Swanson & Eileen Sullivan, *Trump Aims New Threat at China as Mnuchin Warns of Trade War*, N.Y. TIMES (Apr. 6, 2018), <https://www.nytimes.com/2018/04/06/us/politics/trump-trade-policies.html> [<https://perma.cc/7WL9-GFKL>] (discussing how the Trump Administration describes China as cheating on trade and claiming that China is violating WTO rules).

The dispute between the United States and China involves a number of issues, but one of the main drivers of the dispute is intellectual property protection.¹² In particular, the US government alleges that the Chinese government requires US firms to share technology with Chinese firms in joint ventures as a condition of investing in China.¹³ This claimed conduct, often referred to as “forced technology transfers,” is a major complaint of US industries.¹⁴

This intellectual property claim arguably falls outside of WTO rules because it engages an exception to China’s Accession Protocol to the WTO.¹⁵ That agreement, which allowed China to become a member of the WTO in 2001, was very broad but arguably allowed China to maintain some conditions on foreign investment (including joint ventures), subject to limitations.¹⁶ Those limitations were set out in Section 7(3), which states in relevant parts that “China shall ensure that . . . the right of importation or investment by national or subnational authorities, is not conditioned on: . . . performance requirements of any kind, such as . . . the transfer of technology, export performance or the conduct of research and development in China.”¹⁷ The question becomes whether the Chinese government’s practice of urging US firms to share technology with local firms is a de facto performance requirement or simply encouragement.¹⁸

12. Lingling Wei, *U.S., China Negotiators Narrow Differences on Trade*, WALL ST. J. (Jan. 8, 2019), <https://www.wsj.com/articles/u-s-china-negotiators-narrow-differences-on-trade-11546959523> [<https://perma.cc/6WCW-BAXE>].

13. Allen Rappaport, *Intellectual Property to Take Center Stage as Trump and Xi Meet*, N.Y. TIMES (Nov. 28, 2018), <https://www.nytimes.com/2018/11/28/us/politics/intellectual-property-trump-xi.html> [<https://perma.cc/WHG6-M7TR>].

14. The major trade complaint involves these forced technology transfers but often discussions of intellectual property in China also involve concerns about the actual theft of intellectual property by Chinese state agents and the selective enforcement of intellectual property laws within China. For an excellent overview of these issues, see the Trade Talks Podcast, *Trade Talks Episode 65: What Would a Trump-China Deal Look Like?*, PETERSON INST. FOR INT’L ECON. (Dec. 9, 2018), <https://piie.com/experts/peterson-perspectives/trade-talks-episode-65-what-would-trump-china-deal-look> [<https://perma.cc/DL8E-9MA6>]; see also Rappaport, *supra* note 13.

15. Accession of the People’s Republic of China to the Marrakesh Agreement Establishing the World Trade Organization, WTO Doc. WfL/432 (Nov. 10, 2001).

16. *Id.*

17. *Id.* art. 7(3).

18. Thanks to Simon Lester for raising and discussing this issue with me. For a more detailed analysis of the issue, see Simon Lester, *Forced Technology Transfer and the WTO*, INT’L ECON. L. BLOG (Mar. 29, 2018), <https://worldtradelaw.typepad.com/ielpblog/2018/03/forced-technology-transfer-and-the-wto.html> [<https://perma.cc/7NC2-ZJSU>].

Currently, the US government is somewhat vague about whether it considers this dispute to be under WTO rules or not. In internal WTO discussions, US representatives have generally maintained that they are not claiming that China is breaching WTO rules,¹⁹ but have simply labelled China's actions as unfair and discriminatory.²⁰ More importantly, in public discussions, the Trump Administration has not made an effort to mark this dispute as falling outside of the WTO limits. Most observers probably do not know one way or the other whether the United States is claiming China is violating existing global trade rules. However, the fact that the United States has put US\$250 billion in trade sanctions on China probably leads most observers to believe that the United States considers China to be in breach of trade rules.

As a result, the Trump Administration could gain significant strategic ground by explicitly and loudly claiming that this dispute falls outside of WTO rules and that it is a distinct issue from existing WTO trade law. The first advantage would be gaining negotiating freedom by moving the dispute out of the WTO. If the United States maintains that China is breaching trade rules, then the entirety of the WTO would have a stake in a negotiated outcome. This means that the WTO membership would have to approve any new WTO agreement.²¹ As any observer of the WTO's Doha Round of trade negotiations can attest, it is very hard to achieve a consensus among WTO members;²² thus, this framing would provide more negotiating latitude.

19. *See id.* (highlighting the US Statement at the WTO's Dispute Settlement Body meeting on March 27, 2018).

20. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE REPORT, UPDATE CONCERNING CHINA'S ACTS, POLICIES, AND PRACTICES RELATED TO TECHNOLOGY TRANSFER, INTELLECTUAL PROPERTY, AND INNOVATION 22 (2018) (describing these practices as "unfair").

21. If a US-China trade agreement provided for any deviations from existing WTO rules, which is likely given the wide range of topics that the current negotiations are covering, then the parties would have to receive a waiver from the WTO membership to not be in breach of the WTO agreements. For a more detailed discussion of the procedures for receiving and monitoring waivers under WTO rules, *see generally* James Harrison, *Legal and Political Oversight of WTO Waivers*, 11 J. INT'L ECON. L. 411 (2008).

22. The WTO membership has had a notoriously difficult time achieving consensus on the current round of trade negotiations, the Doha Round, that began in 2001. *See* Raymond Zhong & Peter Kenny, *WTO Fails to Ratify Trade Agreement*, WALL ST. J. (July 31, 2014), <https://www.wsj.com/articles/u-s-pressures-india-on-wto-trade-agreement-1406820288> [<https://perma.cc/2DSS-BZHP>] (discussing the most recent breakdown in Doha Round negotiations in 2014); Frances Robinson, *WTO Shifts Meeting Goals Amid Doha Stalemate*, WALL ST. J. (Dec. 14, 2011) <https://www.wsj.com/articles/SB10001424052970203893404577098511856526158> [<https://perma.cc/RK36-XFWJ>] (discussing the stalemates that lead to another break down in negotiations in 2009).

Second, this framing would preserve the integrity of the current multilateral WTO system. One of the fundamental principles of the WTO system is the multilateral resolution of trade disputes that cover WTO issues.²³ Under the current unilateral US approach to trade relations, the United States has not waited for a multilateral resolution of trade disputes. Specifically, the Trump Administration has imposed trade sanctions on China without authorization from the WTO, which is itself a violation of WTO rules.²⁴ If this is a dispute over WTO issues, such unilateralism is very detrimental to the multilateral system: it creates a precedent where member appointing itself as judge, jury, and execution of WTO law, displacing WTO legal procedures. By framing this dispute as outside of the multilateral system, the United States can protect the stability of the WTO system while maximizing its bargaining leverage.

III. ENDING THE WTO APPELLATE BODY CRISIS

The second piece of reconstructing US trade policy would be to end the US block on appointing or re-appointing members of the WTO Appellate Body.²⁵ This practice has caused a crisis at the WTO because, if it continues, the Appellate Body will not have its minimum number of three members to hear cases as of December 2019.²⁶ One former Appellate Body member, Ricardo Ramírez-Hernández, has described the US approach as attempting to kill the Appellate Body

23. See Brewster, *The Future of the WTO*, *supra* note 2, at 4 (noting that “[t]he core of the WTO law is not just a system of trade rules but a commitment to refrain from retaliating against other WTO countries’ perceived trade law breaches until the alleged breaches have been adjudicated, and then retaliating only to the extent allowed by WTO arbitration”).

24. See Brewster, *WTO Dispute Settlement*, *supra* note 2. The European Communities have decided to request consultations with China at the WTO over the issue of technology transfer. While this is detrimental to the American framing of this issue as outside of the WTO, it is yet uncertain how far the European claim against China will proceed at the WTO. See Simon Lester, *New EU Consultations Request on (Alleged) Chinese Forced Technology Transfer*, INT’L ECON. L. BLOG (Dec. 20, 2018), <https://worldtradelaw.typepad.com/ielpblog/2018/12/new-eu-consultations-request-on-alleged-chinese-forced-technology-transfer.html> [<https://perma.cc/575V-XN5K>].

25. See Miles, *supra* note 5 (discussing the US practice of blocking the appointment of Appellate Body members and the crisis this creates for WTO adjudication).

26. For an overview of the crisis, see Manfred Elsig, Mark Pollack & Gregory Shaffer, *Trump is fighting an open war on trade. His stealth war on trade may be even more important.*, WASH. POST (Sept. 27, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/09/27/trump-is-fighting-an-open-war-on-trade-his-stealth-war-on-trade-may-be-even-more-important/?noredirect=on&utm_term=.61324096bd9b [<https://perma.cc/9KJ9-Z6R3>].

“through asphyxiation.”²⁷ This approach is very controversial with major US trade allies who view it as an attack on the stability and predictability of global trade law.²⁸ As this Essay has discussed elsewhere, this approach to the WTO Appellate Body weakens the multilateral system in a manner that undermines the United States’ long-term interests.²⁹ In addition, this fight is needlessly weakening support for the US push against Chinese trade practices by outraging trading allies who could provide useful support for US pressure.

This Essay aims to highlight that the Trump Administration’s approach is not a useful method of “reforming” the WTO Appellate Body’s jurisprudence.³⁰ At the outset, it is not clear that the Trump Administration is interested in reforms that would strengthen the WTO Appellate Body rather than simply effectively killing it. The Trump Administration has not presented the WTO Dispute Settlement Body with any conditions for removing its block of Appellate Body members’ appointments. This indicates that the United States is more interested in eliminating the ability of the WTO to rule on trade dispute entirely, rather than promoting a few key changes.³¹

Second, most of the jurisprudential changes that the United States would like to see in the interpretation of anti-dumping, countervailing duties, and safeguards law could be negotiated with other WTO members without threatening the WTO Appellate Body’s continued

27. See *Farewell Speech of Appellate Body Member Ricardo Ramírez-Hernandez*, WORLD TRADE ORG. (May 28, 2018), https://www.wto.org/english/tratop_e/dispu_e/ricardoramirez_farewellspeech_e.htm [<https://perma.cc/UG9L-WRV3>].

28. See Bruce Baschuk, *EU Blasts Trump Trade Policy for ‘Crisis’ at WTO, Risk to Growth*, BLOOMBERG (Dec. 17, 2018), <https://www.bloomberg.com/news/articles/2018-12-17/eu-blasts-trump-trade-policy-for-crisis-at-wto-risk-to-growth>; Shawn Donnan and Benedict Mander, *Trump Attack on WTO Sparks Backlash from Members*, FIN. TIMES (Dec. 10, 2018), <https://www.ft.com/content/3e05f236-dd72-11e7-a8a4-0a1e63a52f9c>.

29. See Brewster, *WTO Dispute Settlement*, *supra* note 2, at 64-65; see also Brewster, *The Trump Administration and the Future of the WTO*, *supra* note 2, at 1.

30. See John Brinkley *Trump’s WTO Ambassador Would Rather Fight Than Talk*, FORBES (Oct. 16, 2018), <https://www.forbes.com/sites/johnbrinkley/2018/10/16/trumps-wto-ambassador-would-rather-fight-than-talk/#25dc4cf975d6> [<https://perma.cc/FK3A-XMSB>] (discussing the American ambassador to the WTO Dennis Shea’s comments that the Trump Administration is showing leadership in reforming the WTO dispute settlement).

31. President Trump has also repeatedly expressed his view that the WTO dispute settlement system is biased against the United States and that the United States always loses litigation before the WTO. See John Brinkley, *Trump is Quietly Trying to Vandalize the WTO*, FORBES (Nov. 27, 2017), <https://www.forbes.com/sites/johnbrinkley/2017/11/27/trump-quietly-trying-to-vandalize-the-wto/#40d4b286263f> [<https://perma.cc/6HUW-LPBV>]. These statements do not help the perception of the global audience that the Trump Administration is dedicated to meaningful reform.

existence.³² The Appellate Body does not perform “constitutional review” in the way that US lawyers understand it, meaning that the Appellate Body does not have final say on the meaning of trade law.³³ Rather, the Appellate Body simply attempts to interpret existing WTO Agreements.³⁴ As a result, no past Appellate Body decision would have precedential value (formally or informally) over a change to the text of a negotiated agreement by the WTO membership.³⁵ Thus, the Appellate Body need not be convinced—by the threat of non-existence—to change its jurisprudence for the trajectory of trade law to change in the future. This can all be accomplished by amending the text of the relevant agreement. While WTO negotiations are never easy, small changes to the language of a few agreements is much easier than undertaking an entirely new agreement.

Third, this sets a terrible precedent going forward. Any nation can block the consensus for appointing or re-appointing an Appellate Body member,³⁶ and thus other WTO members may well follow suit, attempting to shut down the Appellate Body whenever they have disagreements with the body’s jurisprudence. The end result may be a move to a majority voting process for WTO Appellate Body members,³⁷ which would weaken the United States’ influence over the appointment of Appellate Body members in normal times.

IV. NARROWING NATIONAL SECURITY CLAIMS

Although the United States has many national security concerns, previous administrations have been very careful not to use national

32. See Hillman, *How to Make the Trade War Even Worse*, *supra* note 5 (noting that the Trump Administration’s primary complaint against the WTO Appellate Body concerns their decisions on unfair trade practices, which is the umbrella term for antidumping, countervailing duty, and safeguards rules).

33. For a fuller examination of the similarities and differences between American judicial review and Appellate Body judicial review, see Carlos Manuel Vázquez, *Judicial Review in the United States and in the WTO: Some Similarities and Differences*, 36 GEO. WASH. INT’L L. REV. 587, 595-605 (2004).

34. In doing so, it only compares the member countries actions to the agreed trade law. Carlos Vazquez refers to this as “the least controversial form” of judicial review. See *id.* at 595.

35. See *id.* at 596-98 (noting that the WTO Appellate Body does not have any power to review substantive WTO trade law for consistency with broader constitutional rules.).

36. The DSU agreement defines consensus existing “if no Member, present at the meeting of the DSB when the decision is taken, formally objects.” See Understanding on Rules and Procedures Governing the Settlement of Disputes, n. 1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

37. See Pieter Jan Kuijper, *The US Attack on the WTO Appellate Body*, 45 LEGAL ISSUES ECON. INTEGRATION (forthcoming).

security as a rationale for economic protectionism. In fact, the United States has not used its domestic statutory authorization—so-called Section 232 measures—to impose tariffs due to national security since 1986, a decade before the creation of the WTO.³⁸ The reason for this self-control is that national security presents a huge loophole for trade rules, large enough to destroy the trade regime. If nations make very broad national security claims—as the Trump Administration has done in the steel and aluminum cases—then other states can follow suit.

The Trump Administration is currently considering extending tariffs to automobile imports under the guise of national security.³⁹ The US Department of Commerce has submitted a report to President Trump that may provide the grounds for imposing duties on imported cars, including those coming from allied countries such as Germany, Japan, and South Korea.⁴⁰ President Trump will have ninety days to act on this report and authorize tariffs, if the report does find imported automobiles to be a national security threat.⁴¹ Imposing automobile tariffs would be a step in the wrong direction. Instead of narrowing our national security claims, such a trade measure would further extend the precedent for applying tariffs to industries with only tenuous national security ties but clear political ties. This would weaken the stability of the multilateral trading system and harm the long-term economic interests of the United States.

V. RE-ENGAGING THE TRANSPACIFIC PARTNERSHIP AGREEMENT

Finally, the United States should engage with the countries that have formed the CPTPP.⁴² The Trump Administration withdrew from

38. Chad P. Bown, *Trump has announced massive aluminum and steel tariffs. Here are 5 things you need to know*, WASH. POST (Mar. 1, 2018), https://www.washingtonpost.com/news/monkey-cage/wp/2018/03/01/trump-has-announced-massive-aluminum-and-steel-tariffs-here-are-5-things-you-need-to-know/?utm_term=.0cae76b79007 [https://perma.cc/DZ3K-ZA64].

39. See Richard Bravo, *Trade War Heats Up as EU Vows to Retaliate on U.S. Auto Tariffs*, BLOOMBERG (Feb. 18, 2019), <https://www.bloomberg.com/news/articles/2019-02-18/trade-war-heats-up-as-eu-vows-to-retaliate-on-u-s-auto-tariffs>.

40. Andrew Mayeda, Jenny Leonard, & Richard Bravo, *Trump will decide if auto imports are a national security threat, as EU retaliation looms*, BLOOMBERG (Feb. 18, 2019), <https://www.latimes.com/business/la-fi-trump-auto-tariffs-20190218-story.html> [https://perma.cc/RFC6-QFQS].

41. *Id.*

42. For a discussion of the differences between the CPATPP and the TPP, see Matthew P. Goodman, *From TPP to CPTPP*, CTR. FOR STRATEGIC & INT'L STUD. (Mar. 8, 2018), <https://www.csis.org/analysis/tpp-cptpp> [https://perma.cc/8G4Q-FQDL].

the TPP negotiations in 2016, but the agreement came into force without the United States' participation in 2018.⁴³ While the agreement dropped many US policy priorities when the United States left the negotiations, including intellectual property provisions and investment issues, the new agreement continues to promote liberalized trade among China's neighbors.⁴⁴

The United States needs to engage these countries and this trade agreement as a means to structure the trajectory of Pacific trade relations. While China and the United States are the largest economies in the region, the engagement of Japan, South Korea, Australia, and Mexico will be important in shoring up any US-Chinese negotiated outcome. The Obama Administration explicitly viewed the TPP as a means to constrain China's regional influence.⁴⁵ Such a multilateral approach is necessary to maintain pressure on China. Even if many trade negotiations are bilateral, gaining multilateral support among Pacific countries for the outcome is critical to their successful implementation.

VI. CONCLUSION

US trade policy can confront real concerns while maintaining the integrity of the existing multilateral system. In crafting a sophisticated and strategic trade policy, the United States must address trade disputes without threatening the stability of the trading order that the United States has carefully built over the last two decades. Framing US-Chinese trade negotiations as being outside of the WTO Agreements can accomplish both tasks by maximizing our bargaining freedom with China and minimizing the appearance of unilateralism in trade negotiations. However, to make this strategy work, the United States must return to supporting the multilateral trade system by ending the WTO Appellate Body crisis and narrowing its national security trade measures. These measures would strengthen the multilateral system.

43. Nicole L. Freiner, *Pacific Trade Norms Established as US Producers Fear Losses*, DIPLOMAT (Jan. 11, 2019), <https://thediplomat.com/2019/01/pacific-trade-norms-established-as-us-producers-fear-losses/> [<https://perma.cc/CE45-KD6G>] (discussing the entry into force of the CPTPP in December 2018).

44. See Goodman, *supra* note 42 (discussing the sidelining of American policy priorities in the final agreement).

45. Kevin Granville, *What is TPP? Behind the Trade Deal that Died*, N.Y. TIMES (Jan. 23, 2017), <https://www.nytimes.com/interactive/2016/business/tpp-explained-what-is-trans-pacific-partnership.html?mtref=undefined&gwh=8FA5AA869E406548382262A8B63C896E&gwt=pay> [<https://perma.cc/J6LF-NJYR>].

Additionally, re-engaging in regional trade negotiations in the Pacific would further reinforce these principles in the region and help influence the trajectory of the United States' evolving trade relationships there.