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# International Trade Law and Policy in the New American Administration: What's Changed, What's Not, and What To Expect?

**CLE Seminar for In-House Counsel Webinar Series**
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This presentation focuses on ***change***, ***continuity***, and ***future*** of International Trade Law at the ***three levels*** at which this field operates:

(1) Multilateral (GATT-WTO)

(2) Free trade agreement (FTA), and

(3) National (especially U.S., China, India, and EU).

At each level, the presentation considers ***three questions***:

(1) What has changed from the Trump to Biden Administrations?

(2) What has not changed from the Trump to Biden Administrations?

(3) What can we expect during the Biden Administration?

***Our thesis is:***

Across the two Administrations, there is more continuity than change with respect to substantive International Trade Law, but more change with respect to style in terms of International Trade diplomacy.

We conclude with the expectation the Biden Administration will focus on domestic legislative initiatives to rebuild America for an era of great power competition with China.

That said, we also conclude with the observation that International Trade Law under both the Trump and Biden Administrations is more about bolstering supply chain robustness, resilience, security, and even human rights, than it is about implementing classical and neo-classical free trade theory.



***Caveat***:

There are so many topics at each of the three levels that it is not possible to do justice to each of them in one hour. Each is worthy of a full-day session.

Thus, this presentation necessarily emphasizes certain topics at the expense of others.

Please feel free to ask us for more details about any topic.

## LEVEL ONE: MULTILATERAL

General Agreement on Tariffs and Trade (GATT) – World Trade Organization (WTO) System



**Six Topics (Raj):**

(1) WTO Appellate Body

(2) Director-General Dr. Ngozi Okonjo-Iweala

(3) U.S.-U.K.-EU Boeing-Airbus Dispute

(4) Plurilateral Agreements (Fishing Subsidies, Environmental Goods)

(5) Developing countries and Generalized System of Preferences (GSP)

(6) COVID-19 *TRIPs Agreement* Temporary Waiver

## Multilateral Level Topic (1): WTO Appellate Body

It's still dead, thanks to U.S. blockage of new candidates

Stated Reasons:
(1) Exceeding authority (judicial activism)
(2) Precedent (*de facto stare decisis*)
(3) Opining on issues not essential for case resolution (*obiter dicta*)

Real Reason:
Exportation of peculiar American philosophy of judicial interpretation (relentless textualism, unique to U.S. Supreme Court, but not apex courts in other countries). Jurisprudence matters!



## Multilateral Level Topic (2): Director-General Dr. Ngozi Okonjo-Iweala

Trump Administration was alone (and rudely so) in opposition to Dr. Okonjo-Iweala (and instead backed South Korean Trade Minister).

Biden Administration immediately joined consensus of other WTO Members in favor of Dr. Okonjo-Iweala. She is:

First woman D-G.
First African D-G.
A Harvard grad (BA) and and MIT grad (Ph.D. in Economics).
Former World Bank Economist (25 years) and Managing Director (2007-2011).
Former Nigerian Minister of Finance (2003-2006, 2011-2015; named in 2005 by Euromoney as "Global Finance Minister of the Year").
Involved in GAVI (the Vaccine Alliance) and efforts to provide access toCOVID-19 vaccines in developing and least developed countries.

## Multilateral Level Topic (3): U.S.-EU Boeing-Airbus Dispute

Is peace in the 17-year-old "Air Wars" at hand?

Yes!

In October 2019, following WTO dispute settlement that began with a request for consultations on 6 October 2004, a WTO arbitrator authorized the U.S. to impose $7.5 billion per annum worth of retaliatory tariffs on EU products, because of the EU's failure to bring its offending Airbus subsidy measures into conformity with WTO rules.

Though $7.5 billion equaled the amount of three-days' worth of EU-U.S. trade, it was the largest ever condoned by the WTO.



## Multilateral Level Topic (3): U.S.-EU Boeing-Airbus Dispute

The $7.5 billion figure reflected what the WTO ruled to be adverse effects," specifically, "serious prejudice" suffered by the U.S. in the form of lost sales, lost market share, and disruption in deliveries of Boeing aircraft, under Article 5(c) of the WTO *Agreement on Subsidies and Countervailing Measures* (*SCM Agreement*), as well as GATT violations, caused by EU-subsidized loans.

Moreover, the WTO decision allowed for cross-sectoral retaliation by the U.S. action against EU services (except for financial services providers).

Effective February 2020, the United States Trade Representative (USTR) commenced carousel retaliation on a six-month review cycle.

## Multilateral Level Topic (3):
## U.S.-EU Boeing-Airbus Dispute

For example: 25% duties remained on items such as certain machinery tools, cheese, single-malt Scotch, Spanish olives, and French wines, the USTR raised from 10% to 15% the duty on aircraft, thus covering Airbus wide-body large civil aircraft (LCA) not assembled in America. USTR rotated the list in September 2020.

On 30 September 2020, the EU and U.S. were informed by a WTO Arbitral Panel that the EU would be authorized to impose tariffs on $4 billion worth of American merchandise.

The EU warned it would retaliate against the U.S., unless America withdrew its penalties on European merchandise and settled both cases.



## Multilateral Level Topic (3):
## U.S.-EU Boeing-Airbus Dispute

Cleverly, the European Commission targeted goods relevant to the economic fortunes of battleground states crucial to the 2020 re-election bid of President Donald J. Trump: aircraft, casino tables, diggers, fitness machines, frozen fish, planes, suitcases, tractors, wines and spirits, and an array of agricultural products (such as blueberries grown in Florida, along with cherries and dried onions).

Yes, it’s true, our foreign trade partners know the American electoral map, county-by-county, and study the Electoral College!

## Multilateral Level Topic (3): U.S.-EU Boeing-Airbus Dispute

Effective 10 November 2020, the EU imposed retaliatory tariffs of of 15% on U.S. aircraft (including certain Boeing aircraft models, but not aircraft parts) and 25% on a range of U.S. agricultural goods (*e.g.*, albumins, cereal, cheddar cheese, chocolate, coffee, condiments, essential oils, fish, fruit, fruit juice, ketchup, mate extracts, molasses, nuts, orange juice, prepared sauces, preserves, seafood, soups, spirits, sweet potatoes, tea, unmanufactured tobacco, vanilla, vegetable fats, vermouth, and wheat) and industrial products (*e.g.*, arcade and billiard games, bicycle and motorcycle parts, casino and fitness equipment, peptones, suitcases, sweet potatoes, tractors, trunks, video game consoles, and vinyl chloride polymers), with a total value of $4 billion.



## Multilateral Level Topic (3): U.S.-EU Boeing-Airbus Dispute

On 30 December 2020, the Trump Administration announced modifications to the tariffs it previously imposed on EU merchandise – carousel retaliation.

With effect on 12 January 2021 – days before the inauguration of Joseph R. Biden (1942, President, 2021-) as President – the outgoing Administration added aircraft fuselages and fuselage sections, certain French and German cognac, grape brandies, and non-sparkling wines, horizontal and vertical stabilizers, and wings and wing assemblies.

The U.S. made plain its strike was in response to the EU duties of 15%-25%, which the U.S. argued were disproportionate. The U.S. alleged the EU wrongly relied on a benchmark reference period adversely impacted by the COVID-19 pandemic (thus imposing tariffs on "substantially more products" than would have been the case if the EU had used a "normal period"), and wrongly excluded shipments involving the U.K.

## Multilateral Level Topic (3):
## U.S.-EU Boeing-Airbus Dispute

On 4 March 2021, the Biden Administration ***suspended*** for four months all retaliatory tariffs against ***U.K.*** – but not EU – products. The Administration did so not only:

(1) To focus on a solution to what had become the longest running (17 years, starting in 2004) and most expensive (nearly $12 billion in retaliatory tariffs, consisting of $7.5 billion imposed by the U.S. since October 2019, and $5 billion by the EU since November 2020) disputes in WTO history,

but also

(2) To focus on the challenge posed both to Airbus and Boeing by LCA competition from China. Indeed, in their joint statement, the U.S. and U.K. said they wished to concentrate on "addressing the challenges posed by new entrants to the civil aviation market from non-market economies, such as China."



## Multilateral Level Topic (3):
## U.S.-EU Boeing-Airbus Dispute

The next day, the ***U.S. and EU*** announced a four-month ***suspension*** of their reciprocal retaliatory tariffs.

The truce likely will be extended for an additional six months.

Why the truce?

Focus on Digital Sales Tax (DST) cases resolution, but even more importantly, pivot to China (both discussed below).

## Multilateral Level Topic (4): Plurilateral Agreements (Fishing Subsidies, Environmental Goods)

No substantive movement in negotiations toward a deal among a subset of the 164 WTO Member on either topic.

That paralysis is despite, respectively, depletion of global fishing stocks (by approximately 85%), and the climate crisis.



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## Multilateral Level Topic (5): Developing countries and Generalized System of Preferences

The Trump Administration rejected self-selection of "developing country" status for purposes of special and differential treatment. There are approximately 150 S&D T provisions in the GATT-WTO treaties.

That Administration also cancelled India's status as a "beneficiary developing country" (BDC) under the U.S. GSP program.

The Biden Administration wants to win back "hearts and minds" across the developing world, and wean the countries that have signed up for China's Belt and Road Initiative off of the BRI.

Expect the Biden Administration to be more tolerant of how "developing country" status is determined, and work toward closer trade ties with India.



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**Multilateral Level Topic (6):**
**COVID-19 *TRIPs Agreement* Temporary Waiver**

Amidst the COVID-19 pandemic, in October 2020, India and South Africa put forth a WTO proposal to waive temporarily patent protections for coronavirus vaccines.

They called for a suspension of the implementation, application, and enforcement of the WTO *Agreement on Trade Related Aspects pf Intellectual Property Right*s (*TRIPs Agreement*) provisions regarding copyright and related rights (Part II, Section 1), industrial designs (Section 4), patents (Section 5), and the protection of undisclosed information (Section 7).



**Multilateral Level Topic (6):**
**COVID-19 *TRIPs Agreement* Temporary Waiver**

The purpose of the Indo-South African proposal was to bolster domestic manufacturing of coronavirus-related medical products, including diagnostics, therapeutics, and vaccines, so as to alleviate supply chain pressures amidst the pandemic.

Notwithstanding "vaccine nationalism," backed by major multinational corporations (MNCs) and their pharmaceutical industry associations, the U.S., as well as the EU, Switzerland, and U.K., vigorously opposed the proposal.

## Multilateral Level Topic (6):
## COVID-19 *TRIPs Agreement* Temporary Waiver

Opponents argued the Indo-South African proposal was excessively broad (covering not only patent rights, but also copyrights, industrial designs, and trade secrets), and its duration seemed indefinite (it would last until "widespread vaccination is in place globally, and the majority of the world's population has developed immunity."

Opponents intoned the real barrier to vaccine supply was ***not*** IP protection but the difficulty of rapidly scaling up ***manufacturing capacity***.

So, after 10 WTO meetings across seven months, and despite support for the proposal by over 60 WTO Members, the WTO did not adopt it.


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## Multilateral Level Topic (6):
## COVID-19 *TRIPs Agreement* Temporary Waiver

Yet, by May 2021, the number of supporters for a temporary *TRIPs Agreement* waiver grew to 100 of the 164 WTO Members.

So, dramatically, the Biden Administration reversed course, and embraced a temporary waiver from *TRIPs Agreement* patent protection obligations.

The Administration knew America faced the worst public relations disaster in multilateral trade negotiations since the Doha Round (2001-2018), when the U.S. vociferously (and, ultimately, unsuccessfully) opposed amending Article 31 of the *TRIPs Agreement* to facilitate compulsory licensing.

Internal deliberations within the Administration weighed in favor of the ***political optics*** of a policy change.


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## Multilateral Level Topic (6):
## COVID-19 *TRIPs Agreement* Temporary Waiver

The official USTR statement said (emphasis added):

"This is a global health crisis, and ***the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures***. ***The Administration believes strongly in intellectual property protections, but in service of ending this pandemic, supports the waiver of those protections for COVID-19 vaccines***. We will actively participate in ***text-based negotiations*** at the … WTO needed to make that happen. Those negotiations ***will take time*** given the consensus-based nature of the institution and the complexity of the issues involved.

The Administration's aim is to get as many safe and effective vaccines to as many people as fast as possible. ***As our vaccine supply for the American people is secured***, the Administration will continue to ramp up its efforts – working with the private sector and all possible partners – to expand vaccine manufacturing and distribution. It will also work to increase the raw materials needed to produce those vaccines."

The essential purpose of the waiver would be to allow "***production of vaccines to be ramped up and provide more affordable doses for less wealthy countries***."



## Multilateral Level Topic (6):
## COVID-19 *TRIPs Agreement* Temporary Waiver

America's U-turn caused the EU (including France, but not Germany ) and U.K. to re-think their opposition to a waiver.

WTO Director General Dr. Ngozi Okonjo-Iweala (1954, Director General, 2021-) called the pandemic the "***moral*** and economic issue of our time," and urged Members "to take this opportunity and see what is the WTO capable of." (Emphasis added.) Indeed, "[s]upporters of the proposal cast it as a moral imperative that would allow for increased vaccine production and help get shots to countries where supplies are urgently needed." And, as the pandemic had led "to some of the world's more monumental and lucrative scientific discoveries, defenders of IP rights … warm[ed] to some exceptions on *ethical* grounds, even though the drug companies argue it'll do more harm than good."

But, those companies and their representatives, had four important rebuttal points. Their reasoning was ***consequentialist***.

## Multilateral Level Topic (6):
## COVID-19 *TRIPs Agreement* Temporary Waiver

***First***, opponents of any suspension of *TRIPs Agreement* patent protection argued intellectual property rights (IPRs) are not constraining developing and least developing countries from obtaining vaccines.

Rather, their own lack of manufacturing capacity, coupled with poor infrastructure and inept (if not corrupt) governance were the culprits. A dearth of active pharmaceutical ingredients (APIs) is a problem, too.

So, the mere sharing of proprietary know-how would not address these structural deficiencies, many of which were due to decades of mismanagement.



## Multilateral Level Topic (6):
## COVID-19 *TRIPs Agreement* Temporary Waiver

***Second***, even a temporary waiver of *TRIPs Agreement* patent protections might set a bad precedent – namely, stifle innovation – for future pharmaceutical research and development (R&D). Obviously, proprietary materials cannot be retracted once they are made public.

So, why incur billions in fixed and variable costs to develop a medicine to fight the next pandemic, if the WTO may authorize a denial of patent rights to the inventor, and companies in other WTO Members can make copycat drugs?

The inventor then might risk being unable to recoup those costs, much less profit from its ingenuity and hard work. The effort to do good via a suspension may backfire, because it limits, even eliminates, financial rewards from cutting-edge drug developers.

**Multilateral Level Topic (6):**
**COVID-19 *TRIPs Agreement* Temporary Waiver**

Indeed, the *TRIPs Agreement* waiver not only would immunize WTO Members from lawsuits under the *Dispute Settlement Understanding* (*DSU*) claiming patent infringement, but also – unlike compulsory licensing – relieves them of paying any compensation to intellectual property right (IPR) holders.

And, depending on the precise wording of the text of the waiver, WTO Members may have sufficient discretion that would make the invocation of the waiver uneven across the Members, thereby adding to uncertainties for IPR holders.



**Multilateral Level Topic (6):**
**COVID-19 *TRIPs Agreement* Temporary Waiver**

Therefore, might there be an alternative that would not stifle innovation, but also scale up manufacturing, such as the execution of licensing agreements between pharmaceutical companies and poor countries to share vaccine technology?

Even the WTO D-G, Dr. Okonjo-Iweala, suggests this “third way” to increase production while providing transparency as to contracting and pricing.

**Multilateral Level Topic (6):**
**COVID-19 *TRIPs Agreement* Temporary Waiver**

***Third***, a waiver of patent rules is distinct from technology transfer, without which a diminution in the quality of medicines could result.

Nothing in the change in America's position entails tech transfer.

Thus, "pharmaceutical companies have called the decision by the U.S. to back the sharing of secret recipes for vaccinations short-sighted, claiming it is understanding the production process that is the real challenge, particularly when it comes to the new breed of mRNA vaccines – such as Pfizer and Moderna – as well as the availability of raw materials."
(*COVID: U.S. Backs Waiver on Vaccine Patents to Boost Supply*, BBC NEWS, 6 May 2021, www.bbc.com/news/world-us-canada-57004302.)



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**Multilateral Level Topic (6):**
**COVID-19 *TRIPs Agreement* Temporary Waiver**

***Fourth***, transfer of COVID-19 vaccine technology may occur to unfriendly regimes.

China and Russia, for instance, might obtain the know-how to make not only COVID-19 vaccines, but also an array of other medicines. That is, the U.S. needed to "guard against allowing foreign companies to use COVID-19 vaccine makers' technology to compete in areas outside of COVID-19," yet "[o]nce a competitor has the technology, restrictions on use are difficult to enforce…."
(Michael Erman & Blake Brittain, *Analysis: U.S. Move to Loosen Vaccine Patents Will Draw Drug Companies to Bargain – Lawyers*, REUTERS, 7 May 2021, www.reuters.com/business/healthcare-pharmaceuticals/us-move-loosen-vaccine-patents-will-draw-drug-companies-bargain-lawyers-2021-05-07/.)



**Multilateral Level Topic (6):**
**COVID-19 *TRIPs Agreement* Temporary Waiver**

Armed with such knowledge, America's great power competitors might undermine the worldwide comparative advantage the U.S. pharmaceutical industry holds.

## Multilateral Level Topic (6):
## COVID-19 *TRIPs Agreement* Temporary Waiver

Query whether, per the title of Shakespeare's 1598-1599 play, the controversy over a *TRIPs Agreement* waiver is "***much ado about nothing***"?

To be sure, there is nothing comedic about a pandemic, but are the arguments for and against the waiver overwrought?

The actual commercial effect of a waiver may be a realignment of the bargaining table, levelling it as between multinational corporate patent holders and poor countries.

A waiver weakens the bargaining power of companies, and imparts leverage to developing and least developed countries. Those countries can threaten to invoke the wavier, or perhaps engage in compulsory licensing, if the companies refuse to offer vaccines at an affordable price.

(O.K. maybe that's not "nothing," but maybe that's about it.)



## LEVEL TWO:
## FTA

*United States Mexico Canada Agreement* (*USMCA*)

*Comprehensive and Progressive Agreement for Trans Pacific Partnership* (*CPTPP*)

*Regional Comprehensive Economic Partnership* (*RCEP*)

Other Indo-Pacific FTAs?

Trade Promotion Authority (TPA) Renewal?

**Five Topics (Cody):**

(1) *United States Mexico Canada Agreement* (*USMCA*) implementation

(2) *Comprehensive and Progressive Agreement for Trans Pacific Partnership* (*CPTPP*) status and future

(3) *Regional Comprehensive Economic Partnership* (*RCEP*) status and future

(4) Other Indo-Pacific FTAs?

(5) Trade Promotion Authority (TPA) Renewal?

Prospective 6th Topic: Brexit Deal – save for another time!



**FTA Level Topic (1):**
***USMCA* implementation**

USMCA entered into force on 1 July 2020.

Since then, there have been two significant implementation controversies.

***First, dairy market access, including first USMCA state-to-state case.***

## FTA Level Topic (1):
## *USMCA* implementation

In particular, query how efficacious increased dairy market access under *USMCA* proved to be for U.S. producer-exporters?

In November 2019, America's largest milk producer, Dean Foods, declared bankruptcy under Chapter 11 of the U.S. *Bankruptcy Code*.

Two months later, Borden Dairy Co., which employed 3,200 workers and was founded in 1857, filed for protection under Chapter 11, citing competitive pressures – notably, the boom in dairy alternatives such as nut, rice, and soy milk, and retailers investing in their own low-cost dairy items – and tumbling profits that rendered its debt load unsustainable.



## FTA Level Topic (1):
## *USMCA* implementation

In other words, dietary trends were the key cause of woe across America's dairy land.

But, Canadian trade barriers exacerbated those woes – and, Canadian consumers were making the same consumption shifts away from fluid dairy milk as were Americans, suggesting *USMCA* was rather a sideshow to the fact that milk producers on both sides of the border were chasing a declining market.

## FTA Level Topic (1): *USMCA* implementation

Nevertheless, "U.S. officials … pushed for stricter Canadian enforcement of the terms of dairy trade outlined in the U.S.-Mexico-Canada Agreement, … [complaining] [o]nly a small portion of U.S. cheese, dry milk and other dairy products crosses the border to Canadian markets," and "many American dairies and processors … insisted that primarily their lower-value ingredients like powders are imported by Canada, while higher-value finished products like fine cheeses are largely barred." Further, "[t]he U.S. and other large dairy producers around the globe have also criticized Canada's below-market-priced exports as unfair competition."
(Joe Deaux, *How Biden's Win Affects Commodities Hit by Trade Wars, Tariffs*, BLOOMBERG, 8 November 2020, www.bloomberg.com/news/articles/2020-11-08/how-biden-s-win-affects-commodities-hit-by-trade-wars-tariffs?sref=7sxw9SxI.)



## FTA Level Topic (1): *USMCA* implementation

Unsatisfied with Canada's response, in December 2020, the U.S. brought the first action under *USMCA*, challenging Canada's long-standing Supply Management System (SMS).

The U.S. alleged Canada unfairly limited the access of American dairy producers to sell their products in Canada, because of the way Canada distributes its tariff-rate quotas, *i.e.*, the quantities of certain dairy products like cheese, ice cream, milk, powders, and yogurt and even ice cream that can be imported at a lower duty level than out-of-quota shipments..

In triggering consultations under the *USMCA* enforcement mechanism, the U.S. said Canada has allocated "a large share" of its TRQs "to processors rather than producers, effectively denying U.S. farmers their fair share of the supply-managed Canadian market."
(*U.S. Challenging Canada's Dairy Quotas in Test of New Trade Deal*, CBC, 9 December 2020, www.cbc.ca/news/canada/us-canada-dairy-trade-tariffs-1.5834866.)

## FTA Level Topic (1): *USMCA* implementation

***Second, labor rights, including triggering of Rapid Response Mechanism (RRM).***

To implement its *USMCA* obligations, in 2019 Mexico reformed its labor laws. Two new measures were particularly significant.

***First***, Mexico established the Federal Conciliation and Labor Registration Center ("FCLRC") to register unions and collective bargaining agreements, and ensure transparency with respect to the processes of union registration and representation. In turn, that transparency helps avoid the pre-*USMCA* practice of "non-active" (or "protection") CBAs, because the FCLRC can verify whether workers actually support a particular agreement. Moreover, the FCLRC also can monitor the fairness and timelines of union elections.



## FTA Level Topic (1): *USMCA* implementation

***Second***, the 2019 reforms created independent labor courts in Mexico to replace the controversial Conciliation and Administrative Boards. The FCLRC works with the courts to facilitate conciliation of disputes.

The courts reflected Mexico's guarantee during *USMCA* negotiations to offer a specific plan "to support the reform on both a federal and local level," that is, to implement the labor reform legislation it had passed by designing specialized courts to adjudicate labor disputes.

## FTA Level Topic (1):
## *USMCA* implementation

Regarding the **RRM**:

Mexico agreed that for all goods and services sectors, there is a new, labor-specific dispute resolution system using Panels – the RRM. This device was one of the most important differences between *NAFTA* 1.0 and 2.0.

Succinctly put, the RRM is designed to investigate and resolve allegations that a Mexican "covered facility" from which merchandise in a "priority sector" is exported to the U.S. or Canada allegedly operates in a way inconsistent with *USMCA* labor obligations, namely, engages in a "denial of rights."

The RRM mechanism is ***not*** reciprocal, *i.e.*, Mexico cannot launch a Panel investigation of alleged violations in the U.S. or Canada.



## FTA Level Topic (1):
## *USMCA* implementation

Technically, a "***covered facility***" is one in a "priority sector" that produces a good or supplies a service that is traded among the *USMCA* Parties, or competes in the territory of another Party against a good or service of that other Party. (Note, then, under the first clause of this definition implies there need not be a domestic producer of a like, directly competitive, or substitutable product in the U.S. or Canada.)

A "***denial of rights***" means failure to uphold the right of freedom of association and collective bargaining under the laws of Mexico that conform with *USMCA*. (Consequently, not all labor rights breaches are actionable – the focus is on the rights to organize and bargain.)

## FTA Level Topic (1): *USMCA* implementation

“***Priority sectors***” are specifically enumerated to be ones that manufacture goods (*e.g.*, aerospace products and components, aluminum, auto and auto parts, cement, cosmetics, forgings, glass, industrial baked goods, plastics, pottery, and steel), supply services, or are involved mining. (Per Annex 31-A13-A15, this enumeration is not exhaustive, and subject to revision by the *USMCA* Parties.)

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## FTA Level Topic (1): *USMCA* implementation

Any person (*e.g.*, a union, workers association, or company) in the U.S. or Canada can trigger commencement of the RRM by their designated entity. In the U.S., that entity is the Interagency Labor Committee for Monitoring and Enforcement, the Co-Chairs of which are the USTR and Secretary of Labor. In Canada, it is the Canadian *CUSMA* (*Canada-United States-Mexico Agreement*) Secretariat.

***The petitioner must allege it has suffered an injury caused by a “denial of rights” at a “covered facility” in a “priority sector” of Mexico.***

The initial evidentiary burden to file a claim is ***low***, as (per Article 31-A.2), the petitioner needs only a “***good faith basis belief***” that workers in the covered facility are being denied their rights, namely, an abridgement of the freedom to organize or engage in collective bargaining.

Once the petition is filed, the designated entity of the Party in which the petitioner is located becomes the “***complainant***.” The pertinent Mexican government agency where the covered facility is located becomes the “***respondent***.”

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**FTA Level Topic (1):**
***USMCA* implementation**

Once a petition is filed, the complainant asks Mexico's FCLRC to investigate the claims in the petition. If it declines to proceed, then the complainant (*i.e.*, in the U.S., the Interagency Committee, and in Canada, the Secretariat) may call for an RRM Panel to be formed to conduct the investigate and adjudicate the claims. The Panel (per Article 31-A.6) is comprised of three individuals chosen (by lot) from a roster of independent labor experts previously identified by the *USMCA* Parties.

One Panelist is from the complainant Party, the second from the respondent Party, and the third from the remaining Party. Thus, all three Parties are represented on the Panel, though the Panelists are not representing their national interests.



**FTA Level Topic (1):**
***USMCA* implementation**

So, a Panel ineluctably includes a foreigner – a citizen of a Party that neither launches the claim nor is that in which the alleged violation occurs). None of the three Parties may object to the formation of a labor enforcement panel (as they could under *NAFTA* 1.0).

Such Panels are to be formed three months after the initial claim, and only in instances of repeated complaints.

The claims can target specific companies and workplaces; in other words, ***the RRM is not state-to-state, but rather state-to-facility***.

**FTA Level Topic (1):**
***USMCA* implementation**

In any case in which an RRM Panel is established, the Panel must consider whether the underlying petition states an actionable claim. Assuming it does, then it will investigate whether the targeted covered facility had violated a labor right or failed to rectify its non-compliant practices. Interestingly, the extent to which the facility cooperates with the investigation is a factor the Panel may take into account in making this decision.

So, if the facility refuses to comply, then the Panel can proceed to render a verdict on its own. During this verification stage, the complainant can contest findings of, and reports issued by, the Panel, and also ask to join the Panel in its investigation of the covered facility.



**FTA Level Topic (1):**
***USMCA* implementation**

Suppose an RRM Panel finds a violation of the obligations concerning freedom of association or collective bargaining occurred, and the violating covered facility – the targeted factory – fails to comply with the Panel ruling to correct its behavior.

Then, the Panel may order a penalty against goods and/or services exported from this facility, the very one at which the workers were denied their rights.

The Panel also may recommend to the facility what steps it needs to take to correct the harm.

**FTA Level Topic (1):**
***USMCA* implementation**

How long does this adversarial process last?

The RRM procedural timelines sum to approximately ***115 days*** (from petition to final result.

That's why it's called "Rapid"!



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**FTA Level Topic (1):**
***USMCA* implementation**

Also, significantly, in RRM Panel proceedings, the normal evidentiary burden of proof is ***reversed***.

That is, "failure to comply with an obligation in the [Labor] Chapter [of USMCA] is now ***presumed*** to be 'in a manner affecting trade or investment between the Parties,' unless the defending party can demonstrate otherwise." The Party in which the alleged violations occurred thus must prove that those violations did not affect bilateral trade or FDI with the complainant country.

Similarly, the three Parties removed language from *NAFTA* 1.0 that made it difficult to enforce rules against forced labor.



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## FTA Level Topic (1):
## *USMCA* implementation

If a Panel finds a violation of the obligations concerning freedom of association or collective bargaining occurred, and the violating facility (*e.g.*, factory) fails to comply with the Panel ruling, then the Panel may order a ***penalty against goods and/or services exported from the facility in which the breach occurred***.

In other words, ***the enforcement mechanism is not state-to-state, but rather state-to-facility***.



## FTA Level Topic (1):
## *USMCA* implementation

The complainant has a choice of one of three remedies (per Article 31-A.10):

(1) Suspension of preferential tariff treatment for merchandise from the covered facility,
(2) Imposition of punitive tariffs on merchandise imported from the covered facility, or
(3) Establishment of a quota on merchandise imported from the covered facility, or else blockage of their entry entirely (if the facility or related facilities have had at least two prior denial of rights determinations).

Presumably, these remedies would be adjusted accordingly with respect to cross-border services trade.

## FTA Level Topic (1): *USMCA* implementation

Remarkably, a complainant ***need not wait for Panel approval before barring importation of merchandise from the facility*** of the respondent it alleges is violating *USMCA* labor rules. That is because of language in Article 31-A.4(3) of the *Protocol of Amendment:*

"Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility [*i.e.*, as defined in Article 31-B.15, as 'a facility in the territory of a Party,' specifically, Mexico or Canada, which 'produces a good or supplies a service' that is (1) traded between the Parties, or (2) 'competes in the territory of a Party with a good or a service of the other Party,' and (3) 'is a facility in a Priority Sector'…."

In effect, the RRM remedy is potentially a ***pre-***judgment one!

55 DENTONS

## FTA Level Topic (1): *USMCA* implementation

Yes, that means …

While the RRM is being used, the U.S. may suspend liquidation of entries of merchandise imported from the Mexican "covered facility" that is the subject of the proceedings.

If, pursuant to the RRM, a "denial of rights" is found to have occurred at that facility, then the U.S. may suspend *USMCA* preferential treatment of goods manufactured at that facility, impose penalties (which *USMCA* does not specify) on the facility. And (as intimated with respect to the aforementioned third remedy), if that facility was the subject of two previous "denial of rights" determinations, the U.S. can deny entry of merchandise from that facility after a third determination.

The remedies remain in effect until mutual agreement of the complainant and respondent, or a Panel finding that the respondent has rectified the violation.

56 DENTONS

## FTA Level Topic (1): *USMCA* implementation

The first RRM case brought on 10 May 2021.

That filing is consistent with the Biden Administration "worker-friendly" trade policy.

Note continuity (again) – the RRM was negotiated by Trump Administration in support of (American) workers.

The first case was filed by the AFL-CIO (as well as the Service Employees International Union, Public Citizen's Global Trade Watch, and an independent union in Mexico, SNITIS, which, had tried to organize workers), alleging labor violations at auto parts factories in Mexico.



## FTA Level Topic (1): *USMCA* implementation

Specifically:

"The complaint focuses on the Tridonex auto parts factories in the city of Matamoros, just across the border from Brownsville, Texas. The A.F.L.-C.I.O. said workers there have been harassed and fired over their efforts to organize with an independent union, … in place of a company-controlled union. Susana Prieto Terrazas, a Mexican labor lawyer and SNITIS leader, was arrested and jailed last year [2020] in an episode that received significant attention. [Allegedly, the Tamaulipas State government acted on behalf of the company by blocking the demand of workers for an election, and arresting Ms. Prieto, and upon her release from jail, exiling her to Chihuahua, the State government of which brough dubious criminal charges against her.]

…

Tridonex is a subsidiary of Philadelphia-based Cardone Industries, which is controlled by Toronto-based Brookfield Asset Management, the A.F.L.-C.I.O. said. In 2016, Cardone announced plans to move its brakes division to Mexico and lay off more than 1,300 workers in Philadelphia, according to news reports and public records."

## FTA Level Topic (1): *USMCA* implementation

(quotation continued)

“The complaint includes several accusations of labor violations, including that workers have not been able to elect their union leaders or ratify their collective bargaining agreement, and that more than 600 workers were fired by their employer in acts of retaliation. It also accuses the state of Tamaulipas of denying the right of workers to choose the union that represents them.”

Thomas Kaplan, *Complaint Accuses Mexican Factories of Labor Abuses, Testing New Trade Pact*, THE NEW YORK TIMES, 10 May 2021, www.nytimes.com/2021/05/10/business/economy/mexico-trade-deal-labor-complaint.html.



## FTA Level Topic (2): *CPTPP* status and future

*CPTPP* entered into force in January 2018, among the *TPP* 11 (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam).

The *TPP* 11 suspended (but did not expunge) approximately 20 provisions, mainly concerning IPRs on which U.S. had insisted.

## FTA Level Topic (2): *CPTPP* status and future

Will the Biden Administration push for U.S. to rejoin *CPTPP*?

Commercial logic:

Big markets – *CPTPP* covers approximately 14 percent of world GDP.
Competitive disadvantage for U.S. exporters in *TPP* 11 with which U.S. has no FTA (Malaysia, New Zealand, Vietnam).

Geopolitical logic:

Strategic competition with China.



## FTA Level Topic (3): *RCEP* status and future

*RCEP:*

(1) Is China's answer to *CPTPP*!

(2) Covers 30 percent of world GDP, trade, and population.

(3) Was sealed 15 November 2020.

(4) Enters into force when ratified by at least 6 *ASEAN* and 3 non-*ASEAN* Parties.

(5) Is far less ambitious (i.e., broad or deep in terms of topic coverage) than *CPTPP*.

15 Parties:
The 10 Members of the *Association of South East Asian Nations* (*ASEAN*) (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam), plus China, Korea, and Japan, plus Australia and New Zealand

Note overlap with *CPTPP* Parties:
Australia, Brunei, Malaysia, Singapore, and Vietnam are hedging their bets on Sino-American rivalry.
But, India withdrew from *RCEP* in November 2020, and has not engaged with *CPTPP*.

## FTA Level Topic (3):
## *RCEP* status and future

15 RCEP Parties:

The 10 Members of the *Association of South East Asian Nations* (*ASEAN*) (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam), plus China, Korea, and Japan, plus Australia and New Zealand

Note overlap with *CPTPP* Parties:

Australia, Brunei, Malaysia, Singapore, and Vietnam are ***hedging their bets*** on Sino-American rivalry.

But, India withdrew from *RCEP* in November 2020, and has not engaged with *CPTPP*.



## FTA Level Topic (4):
## Other Indo-Pacific FTAs?

Yes!

For example:

EU-India FTA trade negotiations are resuming, after being suspended in 2013 over disagreements concerning:

(1) Tariff rules for car parts – EU wanted more market access than India was willing to give, and

(2) Free-movement rights for professionals – India wanted more market access than EU was willing to give, and did not want to open up to EU lawyers).

## FTA Level Topic (4):
## Other Indo-Pacific FTAs?

How about a U.S.-Taiwan FTA?

See Raj Bhala, *Why A Peaceful Indo-Pacific Needs A U.S.-Taiwan Trade Deal*, Bloomberg Quint (Mumbai), 8 May 2021, www.bloombergquint.com/opinion/why-a-peaceful-indo-pacific-needs-a-us-taiwan-trade-deal

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## FTA Level Topic (5):
## TPA Renewal?

Please remember:
Pursuant to the Foreign Commerce Clause of the U.S. Constitution (Article I, Section 8, Clause 3), Congress – ***not*** the President – has the power to regulate foreign trade. From time to time, Congress delegates ”fast track” or “TPA” to the President.

Current TPA runs out on ***1 July 2021***.

Will the Biden Administration seek renewal?

***Probably not*** until its other legislative items – COVID-19, infrastructure, voting rights – are resolved.

## LEVEL THREE: NATIONAL

U.S., China, Iran, India, and others.



**Six Topics (Raj and Cody):**

(1) Sino-American Trade War and Section 301 (Raj)

(2) Steel and Aluminum Wars and Section 232 (Cody)

(3) Iran, *Joint Comprehensive Plan of Action* (*JCPOA*), and Sanctions (Raj)

(4) Burmese Military Coup and Sanctions (Cody)

(5) Digital Services Taxes, Multiple Targets, and Section 301 (Raj)

(6) Currency Manipulation, Vietnam, and Section 301 (Cody)

## National Level Topic (1):
## Sino-American Trade War and Section 301 (Raj)

This Trade War started in March 2018.

U.S. Section 301 tariffs ranging from 7.5%-25% remain on $370 billion worth of Chinese-origin imported merchandise, under Waves One, Two, and Three (List A). Most product exclusions have expired.

U.S. is reviewing January 2020 Phase One Trade Agreement, whereby China agreed to address trade imbalance through purchases of approximately $200 billion of additional merchandise (measured against 2017 baselines).

China has met only about 60% of these commitments (partly due to COVID-19 slowdown).



## National Level Topic (1):
## Sino-American Trade War and Section 301 (Raj)

Do ***not*** expect a Phase Two Agreement, even though one is needed, for two reasons:

***First***:
Underlying issues that caused the Trade War – Chinese IPR misappropriation, cybertheft, Made in China 2025 industrial policy, subsidization of state-owned enterprises, and currency manipulation – have not been resolved, and it is not clear the Chinese Communist Party (CCP) is willing to resolve them.

## National Level Topic (1):
## Sino-American Trade War and Section 301 (Raj)

***Second***:
Sino-American relations much worse owing to (*inter alia*) Chinese behavior in:

(1) Xinjiang with respect to Uyghurs (declared "genocide" by U.S., Canada, and Netherlands).

See Raj Bhala, *China's Uyghurs, Human Rights, and America's Trade Sanctions*
19 JOURNAL OF THE NATIONAL HUMAN RIGHTS COMMISSION, INDIA, 101 (2020)

Freely downloadable from SSRN:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3770047

(2) July 2020 Hong Kong *National Security Law*, which applies ***extraterritorially***, for crimes of secession (Article 20), sedition (Article 22), terrorism (Articles 24, 26), and collusion with foreign forces (Article 29), all broadly defined, punishable by up to life imprisonment.

Yes, ***extraterritorially regardless of citizenship***!

71 大成 DENTONS

## National Level Topic (2):
## Steel and Aluminum Wars and Section 232 (Cody)

This Trade War started in March 2018.

Section 232 10% tariffs on aluminum, and 25% on steel, remain on imports from many foreign sources, including EU.

Will they be removed?

The Biden Administration seeks to restore manufacturing competitiveness in these sectors (again, continuity with the previous Administration), but also seeks to repair trade relations with EU (again, in pivot to China).

Additionally, authority of President to impose Section 232 tariffs has generally been upheld.

72 大成 DENTONS

**National Level Topic (3):**
**Iran, *JCPOA*, and Sanctions (Raj)**

"Will they or won't they" (come to a deal)?

Biden Administration prefers one, whereas Trump Administration pulled out of *JCPOA* in May 2018. The other Parties – China, Russia, France, U.K., Germany, EU, and Iran – never withdrew.

Israel always has opposed any deal.

Saudi Arabia (perhaps seeking some leverage with the U.S. after the Khashoggi murder) appears to be warming to a deal.

Iran's summer 2021 elections are a complicating factor.



**National Level Topic (3):**
**Iran, *JCPOA*, and Sanctions (Raj)**

Indirect negotiations in April-May 2021 in Vienna, with EU as intermediary, with a view to agreeing on:

(1) Which of the roughly 500 sanctions the Trump Administration imposed on Iran outside of the *JCPOA* should be removed?

tied to, contemporaneous with, and in exchange for

(2) Which of Iran's technical, reversible breaches of the *JCPOA* since May 2020 (*e.g.*, Uranium enrichment purity up from 3.67% to 63%, stockpile over 300 kg., installation of centrifuges more sophisticated than IR-1, and international inspector access)?

## National Level Topic (4):
## Burmese Military Coup and Sanctions (Cody)

1 February 2021 *coup d'état* triggered world-wide condemnation and U.S. "smart" sanctions. Yet, however "smart" the sanctions are, query the extent of their potential efficacy?

"The two major conglomerates founded by the Defense Ministry, Myanmar Economic Holdings Public Company Ltd. (MEHL) and Myanmar Economic Corp. (MEC), have cemented the military's role at the center of the economy. They offer a wide variety of civil society's essential goods and services; they also employ thousands of civilian and military personnel, control industries including real estate, alcohol, tobacco and natural resources, and pay dividends to hundreds of thousands of soldiers."

"As a result, traditional measures of business success are sometimes irrelevant, and international sanctions designed to put pressure on the junta after the February coup are likely to have minimal effect…."

(K. Oahn Ha, Khine Lin Kyaw & Jin Wu, *Myanmar's Generals Run a Nearly Sanction-Proof Business Empire*, BLOOMBERG, 10 May 2021, www.bloomberg.com/graphics/2021-myanmar-military-business/?sref=7sxw9Sxl.)



## National Level Topic (4):
## Burmese Military Coup and Sanctions (Cody)

In other words, whether the sanctions will compel a change in the target's behavior is questionable.

Of course, utilitarian outcomes are not the only justification for sanctions: there also is the deontological rationale that the sanctioning country (U.S.) finds transactions with the target (Burma) intrinsically morally unacceptable.

That may be critical in the appraisal of the Biden Administration, which has promised to infuse U.S. foreign policy with human rights considerations to a greater extent than its predecessor.

## National Level Topic (5): Digital Services Taxes, Multiple Targets, and Section 301 (Raj)

In July 2019, the Trump Administration self-initiated a Section 301 investigation of against France with respect to its DST, the first DST in the world. The USTR concluded France's DST:

"discriminates against U.S. companies, is inconsistent with prevailing principles of international tax policy, and is unusually burdensome for affected U.S. companies. Specifically, USTR's investigation found that the French DST discriminates against U.S. digital companies, such as Google, Apple, Facebook, and Amazon [the "GAFA" companies]. In addition, the French DST is inconsistent with prevailing tax principles on account of its retroactivity, its application to revenue rather than income, its extraterritorial application, and its purpose of penalizing particular U.S. technology companies."



## National Level Topic (5): Digital Services Taxes, Multiple Targets, and Section 301 (Raj)

In January 2021, the Trump Administration reached similar conclusions against DSTs in India, Italy, and Turkey.

In all such Section 301 cases, the Trump Administration left it to the Biden Administration to impose a remedy.

No remedy has been imposed, as the U.S. pursues talks with over 100 countries in the Organization for Economic Cooperation and Development (OECD).

The Biden Administration has dropped the insistence of its predecessor for a "safe harbor," whereby a DST would be voluntary, and seeks a global minimum corporate tax rate of 21%.

## National Level Topic (6):
## Currency Manipulation, Vietnam and China, and Section 301 (Cody)

In January 2020, the U.S. Treasury Department put Vietnam on its Monitoring List, laying the foundation for …

In October 2020, the USTR launched a Section 301 investigation against Vietnam for alleged currency manipulation, and the Department of Commerce (DOC) imposed preliminary affirmative countervailing duties (CVDs) on Vietnamese tires citing currency undervaluation as the type of subsidy.



## National Level Topic (6):
## Currency Manipulation, Vietnam and China, and Section 301 (Cody)

Under the 2015 *Trade Facilitation and Trade Enforcement Act*, the Treasury Department must study the foreign exchange (FX) policies of any major American trading partner that meets all three of the following three criteria, and ask whether that country has:

(1) Large Absolute Bilateral Trade Surplus: A bilateral trade surplus with the U.S. that is "significant," namely, over $20 billion in a 12-month period?

(2) Large Percentage Current Account Surplus: A current account surplus that is "material," namely, over 3% of its (that is, the foreign country's) GDP in a 12-month period? This surplus is global, that is, with all trading partners, including the U.S.).

(3) Aggressive Intervention: Persistently engages in one-sided intervention in FX markets, specifically, devaluing its currency by purchasing foreign assets equal or exceeding 2% of its GDP in at least 6 months during a 12-month period?

## National Level Topic (6):
## Currency Manipulation, Vietnam and China, and Section 301 (Cody)

In April 2019, the Treasury Department began investigating any country with at least $40 billion worth of goods trade with the U.S., and it expanded the second criterion, setting the threshold at a current account surplus with the U.S. at 2% of GDP. These changes signaled the Department would scrutinize more countries than before.

However, in April 2021, the Biden Administration considered reversing these changes, so as to cut down on the number of countries it was obliged to review – thought like its predecessor, it is concerned about currency manipulation.

The Biden Administration has not dubbed China a currency manipulator (yet), though China remains on the Monitoring List.



## CONCLUDING THOUGHT (Cody):

Is International Trade Law under both the Trump and Biden Administrations more about supply chain robustness, resilience, and security than about free trade?

Evidence suggest yes!

There is a paradigm shift from (1) classical and neo-classical free trade to (2) national security- and human rights-oriented managed trade.

**5 PIECES OF SUPPORTING EVIDENCE FOR THIS CONCLUSION (Raj):**

(1) Invocation of 1950 *Defense Production Act* by both Administrations to secure COVID-19-related items.

(2) Export bans by both Administrations on APIs for COVID-19 vaccine.

(3) February 2021 Biden *Executive Order* instructing the Federal government to evaluate the extent to which the U.S. relied on foreign countries for goods and services, with respect to both government procurement and commercial supply chains, in sectors he considered essential. These sectors included critical minerals (*e.g.*, rare earths used in autos and weapons), electric vehicle (EV) batteries, pharmaceuticals (including APIs), and semiconductors. The Order also called for separate, annual reviews for six further sectors: biological preparedness, defense, energy, food production, IT, public health, and transportation.



**5 PIECES OF SUPPORTING EVIDENCE FOR THIS CONCLUSION (Raj):**

(4) Several Withhold Release Orders (WROs) by U.S. Customs and Border Protection to bar entry of Xinjiang-origin merchandise made with forced labor (*e.g.*, tomatoes, cotton).

## 5 PIECES OF SUPPORTING EVIDENCE FOR THIS CONCLUSION (Raj):

(5) Two new bipartisan bills concerning trade that would amend various aspects of U.S. trade law and, in some respects, tighten the link between that law, on the one hand, and America's national security and/or its promotion of human rights, on the other hand:

*Strategic Competition Act of 2021*.
The purpose of the 281-page bill was clear, stated in the header: "To address issues involving the People's Republic of China."
See 117th Congress, 1st Session (8 April 2021), www.foreign.senate.gov/imo/media/doc/DAV21598%20-%20Strategic%20Competition%20Act%20of%202021.pdf.

*Eliminating Global Market Distortions to Protect American Jobs Act of 2021.*
This 41-page bill is designed to strengthen U.S. antidumping (AD) and CVD laws against "country hopping" to circumvent AD duties and CVDs.
See 116th Congress, 2d Session, www.brown.senate.gov/imo/media/doc/eliminating_global_market_distortions_to_protect_americans_jobs_act_section-by-section.pdf.



## QUESTIONS, …

## AND HOPEFULLY SOME ANSWERS (Cody)

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Born in Toronto and raised partly in Edmonton, Raj now keeps busy with three fun jobs.

First, Raj is the inaugural Leo. S. Brenneisen Distinguished Professor (2017-present) at the University of Kansas School of Law, before which he held the Rice Distinguished Professorship (2003-2017). Both are university-level chairs, the highest accolade for scholarship and research in Kansas. He served as KU's Associate Dean for International and Comparative Law (2011-2017).

Second, Raj is Senior Advisor to Dentons U.S. LLP, the world's largest law firm, focusing on international and comparative legal matters.

Third, Bloomberg Quint (Mumbai) publishes Raj's "On Point" column, which is distributed to approximately 2.9 million readers worldwide, plus an additional 400,000 financial market professionals through Bloomberg's trading terminals. (www.bloombergquint.com/author/92714/raj-bhala)

Raj is a member of the Council on Foreign Relations, and the Speaker Program of the U.S. Department of State. And, in June 2020, *Ingram's Business Magazine* designated him as one of "50 Kansans You Should Know." (https://ingrams.com/article/50-kansas-you-should-know-the-class-of-2020/)

A Harvard Law School (J.D., *cum laude*, 1989) graduate, Raj completed Master's degrees at LSE, in Economics (1985), and Oxford (Trinity College), in Management (1986), as a Marshall Scholar. His undergraduate degree (in Economics, *Summa Cum Laude*, *Phi Beta Kappa*, 1984) is from Duke, where he was an Angier B. Duke Scholar.

Raj is author of one of the world's leading textbooks in international trade law, *International Trade Law: A Comprehensive Textbook* (5th edition, 2019) and the first treatise on GATT in nearly 50 years, *Modern GATT Law* (2nd edition, 2013). He is the first non-Muslim American scholar to write a textbook on Islamic Law, *Understanding Islamic Law (Sharīʿa)* (2nd edition, 2016). His newest book is on the Trans Pacific Partnership, *TPP Objectively* (2nd edition, 2019). His current book project is *Principles of Law, Literature, and Rhetoric*.

He is an avid distance runner and has completed four of the "World's Major Marathons" (Boston twice, New York twice, Chicago, and Berlin), but now acquiesces to slower times. He loves, but is a poor student of, Shakespeare and French.

Please see https://en.wikipedia.org/wiki/Raj_Bhala

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Cody is a member of Dentons' Federal Regulatory and Compliance practice. His regulatory practice focuses on helping US and non-US clients navigate challenges arising in international commerce at the crossroads of economics, policy, and the law.

Cody also maintains a diversified litigation practice, working on complex commercial disputes in both state and federal courts.

**Recognition**

- *Ingram's* 2020: Recognized as part of the publication's "20 in Their Twenties" ranking.
- *Customs and International Trade Bar Association Andrew P. Vance Memorial Writing Competition*: First Place
- *Williams Institute Moot Court Competition*, University of California, Los Angeles: Quarter-finalist
- Associate Cody Wood received the "Class of 1949 Leadership Award" by University of Kansas School of Law

**Insights**

- Bhala, Raj; Gantz, David A.; Keating, Shannon; Witmer, Eric; Wood, Cody, "WTO Case Review 2018," *37 Arizona Journal of International and Comparative Law 49 (2020)*, March 13, 2020
- "**Sanctions Year-in-Review**," Dentons client alert, January 17, 2020
- Bhala, Raj; Wood, Cody, "Two Dimensional Hard-Soft Law Theory and the Advancement of Women's and LGBTQ + Rights Through Free Trade Agreements," *47 Georgia Journal of International and Comparative Law. 299*, May 22, 2019
- "**USTR officially increases tariffs to 25% from 10% on $200B of Chinese imports**," Dentons client alert, May 10, 2019

**Activities and Affiliations**

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