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The Trade Policy of the United States under the Trump
Administration

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Abstract

The evolution of American trade policy is best understood over the long run as a function of the international distribution of power and wealth, but in the short run policy it is dominated by the exigencies of domestic politics. The decline in that country's position has long raised doubts regarding its readiness to lead, and those doubts have been greatly amplified by the Trump administration. The arc of the administration's policy thus far appears as a series of year-long phases by which almost inchoate sentiments have been progressively transformed into ever more concrete policy, culminating in the resuscitation of trade laws that were nearly forgotten but not gone. Chief among them were a "reciprocity" statute that gives the president broad powers to define and enforce U.S. rights; a global safeguards law that had been quiescent since the Bush administration used it to protect steel in 2002; and especially a national security law that the president invoked to restrict steel and aluminum imports. In 2019 the Trump administration has supplemented its trade war with new negotiations, including talks with the European Union, the United Kingdom, and Japan. While these talks do not directly engage China, the U.S. strategy is driven largely by a desire to isolate that rival. The world may well be headed towards a system where most commercially significant countries are pressed to align with one or another of these giants. No matter who occupies the White House, trade policymaking will remain perennially challenging for a system of government that is always divided by branch and frequently by party. Donald Trump was able to act in 2017-2018 with little restraint from Congress, but some of the things he aims to do now will require the acquiescence of Congress. Securing that cooperation will be more challenging as a result of the 2018 elections, in which Democrats recaptured control of the House of Representatives. Over the long term, Trumpism may well survive Trump, unless pro-trade forces manage to retake control of one of the two major parties.

Keywords

Trade, investment and international cooperation.

I. Introduction*

Even the most casual observer will readily see that the international trading system is now in great turmoil, and that much of the uncertainty emanates from the United States. This is not the product of a single presidency. The country that had taken the lead after the Second World War, and whose economy helped to usher in a lengthy period of peace and prosperity, began to devote less attention to trade issues at least a full decade before Donald Trump took office in 2017. Even when the Obama administration took up major initiatives such as the Transatlantic Trade and Investment Partnership (TTIP) and a greatly expanded Trans-Pacific Partnership (TPP), it was reluctant to treat these negotiations with much urgency or to invest significant political capital in them. Trump's election nevertheless marked an important inflection point, with the American posture rapidly turning from benevolent indifference to outright hostility. The trading partners of the United States, including erstwhile allies as well as potential adversaries, continue to puzzle over how we got to this juncture, how long we will be here, and where we may next be headed.

While only time and experience can fully answer the latter questions, we can make a good start by focusing on the first. The principal purpose of this paper is to place in context these upheavals in U.S. policy so as to assess what may come next. It argues that the evolution of American trade policy is best understood over the long run as a function of the international distribution of power and wealth, and especially the rise and fall of the country's leadership role, but that in the short run policy is dominated by the exigencies of domestic politics. That latter point is especially relevant in these times, when the specific preferences of one man and his political base overwhelm all other considerations.

These twin foci on the international and domestic levels are not contradictory, as they coincide on a few critical points. They are each set in motion by the relative decline of the United States, which is in turn the consequence of two related economic processes. The first of these is the Law of Uneven Growth, that observed tendency of leading economies to grow at a slower rate than others — and especially the countries that vie for hegemony. That almost inescapable process of asynchronous growth is complemented at the domestic level by Creative Destruction, in which once-dominant industries are gradually displaced by competitors abroad and by new industries at home. While it is theoretically possible for the United States to navigate between these two hazards, making compensatory adjustments in its own policies and (if its partners consent) the structure of the international system, such accommodations require clear vision and a deft hand.

Relative decline may be all but inescapable, but still leaves wide scope for the responses of U.S. policymakers. Had the American electorate made a more conventional choice in 2016, we would now be reviewing the continued attempts of orthodox statesmen to tweak the existing domestic and international system. The public instead opted for a man who promised to overturn that system altogether. Many outside observers hoped, and some may even have believed, that Trump's threats were mere campaign rhetoric that he would disavow once in office. The events of 2017 and especially 2018 have put those comforting thoughts to rest.

Viewed at a reasonably high level of abstraction, the arc of trade policy thus far in the Trump administration appears as a series of year-long phases by which almost inchoate sentiments have been progressively transformed into ever more concrete policy. The first such phase lasted throughout 2016, which was dominated by the first presidential campaign in nearly a century to center on blatant appeals to protectionism, nationalism, and isolationism. The key slogans "Make America Great Again" and "America First" offered a glimpse of what Trump aimed to do in office. The principal theme of 2017 was the transliteration of these messages into somewhat more precise principles of governance. That

* The project leading to this paper has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 770680.

started with an unapologetically protectionist inaugural address, and continued through successive executive orders espousing such principles as “Buy American and Hire American.” It was not until 2018, however, that this disquieting ideology gave way to truly provocative action. That year began with the granting of protectionist petitions that had been filed the previous year by producers of solar panels and washing machines, and then turned to broader confrontations over intellectual property rights, steel, aluminum, and automobiles. By year’s end, the United States had incited a full-fledged trade war in which China is the principal adversary but few countries can preserve their neutrality.

The question now is what sort of phase we will enter in 2019, which is the last year in which policymaking will not be fully embroiled in another presidential election. The answer will be determined in part by how the Trump administration conducts several negotiations that it initiated in 2018, including retaliation-based talks with China and renewed bargaining with its former TTIP and TPP partners. Both the adversaries and the allies of the United States face fundamental questions: To what extent should Brussels, London, Tokyo, and Beijing be prepared to confront Washington, and condition any deals on an end to unilateral threats, and to what extent should they seek to reduce frictions through judicious accommodations? That choice between conflict and appeasement may be shaped not just by the pugnacity of the United States, and by the strategies that its negotiating partners adopt, but also by the rising stakes of a declining economy. There are growing signs that the lengthy (if uneven) economic recovery that has been underway since 2009 may be coming to an end, although analysts differ on when that might happen and how much of the blame might be assigned to the resurgence of protectionism. The prospects for the near term are also clouded by growing concerns over security abroad and political stability at home, as well as the possibility that disruption in the one sphere might be exploited in the other.

The analysis that follows is primarily focused on how current developments in U.S. policy may affect the international trading system, with particular emphasis on four challenges. It is bracketed at both ends by “big picture” reviews of the environment in which that system operates, starting with competition between the United States and China and ending with the impact of domestic politics. The middle sections review the challenges posed by the revival of mercantilism and protectionism in U.S. policy, as well as the proliferation of discriminatory programs and agreements. Taken together, these challenges put at risk a multilateral system in which the United States and its partners had collectively sought to rid the world of trade barriers and discrimination.

II. The Challenge of Global Governance and the Rise of China

This is not the first time that the United States has faced a challenge to its leadership, nor the first time that a precipitous American response seemed to endanger the multilateral trading system. There are several respects in which the current dynamics replicate those of the 1980s, when U.S. trade policy was dominated by rivalry with Japan over industrial supremacy, but there are also some key differences. Chief among them is the conflation of international struggles. American policymakers of a generation ago faced down one rival that was militarily strong but economically weak (i.e., the Soviet Union), and another with just the opposite characteristics (i.e., Japan). By contrast, U.S. concerns over both power and wealth are today combined in competition with China. The past and present melees are nonetheless alike in the collateral damage that they inflict on third parties. Just as the prior fight with Japan cast doubt on U.S. support for the old General Agreement on Tariffs and Trade (GATT), so too has the current clash undermined the World Trade Organization (WTO). In fact, some of the most provocative measures imposed by the Trump administration have a more serious impact on neighbors and allies than they do on China.

The causes and consequences of Sino-American competition can best be understood by way of the theory of hegemonic stability, a paradigm that explains why global markets are often closed but sometimes open. It rests upon the assertion that an open world market is a public good from which every country benefits, but it is in the nature of public goods to invite free-riding. Open markets therefore tend

to be historically underprovided, with each country reserving the right to determine its own levels of protection, unless one especially influential country steps forward to provide leadership. A hegemon will do so both because open markets are in its economic interest and because it has the necessary power to convince — or even to compel — others to cooperate. This theory suggests that markets would not have been open in the nineteenth century without British hegemony, and that the leadership role passed to the United States in the Second World War. The actions of the hegemon are both self-serving and self-defeating: A leader must establish an open world market to reap the rewards of its own competitiveness, but the system that it fosters will also create opportunities for its challengers. Just as the British-sponsored trade regime aided Germany, so too has China's growth been enabled by the current system.¹ Much of the Trump administration's policies may be seen as an attempt to correct for the policies of preceding administrations that, in the view of current officeholders, actively contributed to the challenger's ascendance.

We may reasonably expect the state of relations between the United States and China to influence — and perhaps to determine — the future evolution of the global trading system. Size alone makes this obvious: These two countries jointly account for 21% of world exports, 23% of its imports, 23% of the population, and 39% of the global economy.² More to the point, they also comprise 100% of the contenders for hegemony. And while it cannot be taken for granted that China will continue to grow at the levels it has achieved in recent decades, nor that the relative position of the United States will steadily and irreversibly fall behind, the trends are undeniable. They prompt leaders in these two countries, and in all others, to anticipate a changing global environment in which Beijing's influence will rival or even surpass that of Washington.

II.A The Impact of Relative U.S. Decline on the Multilateral System

The last transfer of global leadership was deceptively easy. It was fortunate for the outgoing and incoming hegemons, and for the world, that London and Washington were on the same side in the most destructive war in history. The cousins worked closely during 1942-1947 to design the post-war global system, and devoted especially close attention to the trade component of that regime. It would be particularly ironic if it were the United States, and not China, that were to dismantle the remnants of that system — or at least require it to get on without the old leader. There is a better-than-even chance that sometime in the Trump tenure the United States will explicitly threaten to leave the WTO. Would it actually follow through with such a threat? That is a tactical matter that may be affected by any number of unforeseeable factors, but no one should doubt the Trump administration's eagerness to undo global deals. Skeptics need look no farther than the president's immediate disavowal of the TPP, followed by withdrawals from other agreements on such diverse topics as climate change and Iran nuclear weapons. There is a growing number of global bodies from which the United States has already departed, from the Human Rights Council and UNESCO to the Universal Postal Union, and it should shock no one if the WTO were to join the list of jilted institutions.

This is not to say that a withdrawal is inevitable, nor that leadership by just one country is the only option. There is a chance that the United States and China could become next Group of Two (G-2) that manages the multilateral trading system. The original G-2 of the immediate post-war era was strictly Anglo-American, but over the next few decades the European Union (and its predecessor bodies) took the British place. It long seemed that agreement between Washington and Brussels was both the necessary and sufficient condition for bringing any round of multilateral trade negotiations to a successful conclusion. Other countries frequently objected to a restricted, "green room" approach in

¹ For an elaboration on this argument see the author's *Trade and American Leadership: The Paradoxes of Power and Wealth from Alexander Hamilton to Donald Trump* (Cambridge University Press, 2019). The book is cited hereinafter as *Trade and American Leadership*.

² All shares calculated from World Bank data accessed at <https://data.worldbank.org/>.

which the major GATT decisions were made chiefly by the Quad (i.e., the G-2 plus Canada and Japan) plus a few other developed and developing countries, but the arrangement was undeniably productive. That all changed with the dawn of a new century, as became apparent at the failed WTO ministerial meetings of 1999 (which dissolved into chaos) and 2003 (where a transatlantic proposal epically failed to win over the rest of the WTO membership). Those episodes, especially the latter one, underlined the point that transatlantic concordance is no longer a sufficient basis for concluding multilateral deals. Some wonder if it will even be necessary in a new order where the post-Brexit European Union holds third place.

The decay of multilateralism may be traced in part to a diluted sense of a shared strategic purpose. WTO members are not divided by the old antagonisms of the Cold War, but neither are they united by them. The rising powers include some original GATT contracting parties that had already been influential in the old order, especially Brazil and India, as well as others that did not accede until after the WTO was established. In addition to China, the new entrants include Russia, Saudi Arabia, Taiwan, and Vietnam. Universality, diversity, and democracy come at a cost, as there is an inverse relationship between the number of decision-makers in a system and the efficiency with which it can act. No objective observer could say that the nearly all-encompassing WTO has executed its legislative function as effectively as did the smaller, more cohesive GATT club. It did produce some results in the immediate post-Uruguay Round period, such as the Information Technology Agreement and several protocols on trade in services, but the launch of the new round in 2001 marked the start of an especially fruitless run. Modest accomplishments such as the Trade Facilitation Agreement are only a pale shadow of what the WTO members might achieve if they animated the moribund Doha Round with as much ambition as its GATT-era predecessor.

II.B How the Sino-American Rivalry Affects the Multilateral System

There are strong reasons to doubt that the same torch that London handed to Washington might be passed just as easily, and with the same effect, from Washington to Beijing. Even if the United States were willing to make the hand-off, and China were prepared to exercise leadership in the multilateral system, the results might be quite different. The British and American versions of hegemony were at least rhetorically committed to the concept of a first among equals, and while they each were known to throw their weight around they typically favored persuasion over coercion. Future Chinese leaders may find inspiration in other, less inclusive and cooperative archetypes. The models in China's own past, whether one looks to the imperial period or the second half of the twentieth century, suggest a preference for hierarchical relations and a readiness to exert authority. Much depends on whether China is truly committed to a global market economy, or instead prefers a quasi-imperial system with more top-down direction. One may find plenty of contradictory evidence in a country that is at once home to the world's largest Communist system, yet may soon host the world's largest market.

In the near term, the more pressing issue is how China's WTO membership alters the U.S. perception of that institution and its willingness to make concessions on a most-favored-nation (MFN) basis. This situation is similar in one respect to how Congress approached MFN treatment early in the Cold War, when critics charged (however implausibly) that any tariff reductions made in the GATT might redound to the benefit of Moscow. That problem was easily solved in 1951, when legislators obliged the Truman administration to strip the Soviet bloc of its MFN privileges; this affected very little actual trade, and was uncomplicated by these countries' GATT status (apart from the special case of Czechoslovakia). Now that China is a WTO member, and eschews the Soviet-style autarky that it had once emulated, no such easy solutions are available. The only ways to ensure that China does not benefit from any agreements reached in the WTO are to negotiate them only on a plurilateral basis (which China opposes), or to abstain from multilateral negotiations altogether. The United States appears to have pursued that second option, albeit in a purely informal and unacknowledged manner, for the better part of a decade. Even after Trump leaves office, there may be considerable reluctance in Washington to negotiate new liberalization on a non-discriminatory and multilateral basis.

Unless the United States and China settle on some formula that permits them to move ahead together in the WTO, they may allow that institution to go slack while they each concentrate instead on free trade agreements (FTAs) or other bilateral approaches. To the extent that the United States freezes its current levels of MFN treatment, and liberalizes its tariffs and other trade barriers only on a discriminatory basis, it will treat any countries outside its FTA circle — China above all — as the least-favored nations. It is easy to imagine policymakers imposing entirely new barriers so as to widen the difference between how China and other countries are treated. One theory has it that the Trump administration aims to do precisely that with its current retaliatory measures against China, intending to keep them in place indefinitely. If so, that could prove to be a very costly strategy. The already close links between the U.S. and Chinese economies raise the price that the United States pays whenever it imposes restrictions, and the inevitable counter-sanctions merely add to the butcher's bill in this trade war.

III. The Challenge of Resurgent Mercantilism and Protectionism

The economic nationalism that underpins the Trump administration's policies is quite obvious, but should not be mistaken for mere protectionism. That narrow policy, which might most simply be defined as the imposition of border barriers to the entry of foreign goods and services so as to benefit domestic suppliers, can clearly be seen in both the rhetoric and the actions of this president. The true essence of this administration's approach to trade and foreign policy, however, is more properly characterized as mercantilism. This entails not merely a commercial objective, but a full-fledged doctrine of statecraft that is founded upon a specific view of the relationship between power and wealth.

III.A The Reversion to Mercantilism

Classical mercantilism encompassed a mixed bag of thinkers and practitioners, but its adherents nevertheless shared some fundamental assumptions about the nature of conflict and the proper aim of economic statecraft. The doctrine's essentials can be reduced to a simple syllogism that is embraced just as enthusiastically in the new Washington of Donald Trump as it was in the old Versailles of Jean-Baptiste Colbert:

- **Major Premise:** All political and economic relations are hierarchical dealings in which one either dominates or is subordinate. The state is the dominant domestic institution, and the stronger, richer states dominate weaker, poorer states.
- **Minor Premise:** Power and wealth are inextricably linked, being both interchangeable and equal in importance. Each of these desiderata is zero-sum, such that any state's gains in power and wealth necessarily come at the expense of other states.
- **Conclusion:** Trade is an essential component in the power relations between states, and to that end the state should intervene to maximize exports (especially of finished goods), minimize imports (except for raw materials), and promote a positive trade balance.

The current reversion to mercantilism can be explained by both long-term international trends (especially the Law of Uneven Growth) and by the short-term political events within the United States. Where these two trends meet is in the process of Creative Destruction, a phenomenon that has been especially disruptive for labor-intensive U.S. industries that face competitive challenges from lower-wage countries. Competition killed some of those firms, but the economy as a whole adjusted by becoming more services-intensive. The remaining manufacturers coped by outsourcing their inputs, moving operations off shore, or investing in labor-saving machinery. This worked well for employers and policymakers, but not for all workers. Whatever job-shedding strategy management might favor, every option other than bankruptcy will always be more disruptive for labor than for management. Some displaced hands can find work in more competitive industries, but many others suffer either declining wages or permanent joblessness. And while the rising trade deficit is not solely responsible for the secular decline in manufacturing, it is the cause most visible to the general public.

This economic transition was complemented by a political process through which dying industries and displaced workers were temporarily placated in the 1980s and 1990s by a resurgence of protectionism, but by the turn of the century they had lost much of their influence in Washington. One reason why Donald Trump managed to secure the nomination of the supposedly pro-trade party, and then to win in the industrial states he needed to win the presidency, was that he mobilized a reserve army of the formerly employed that other, more conventional politicians had long ago abandoned.³

One of the more notable aspects of the current administration's priorities is a sharp focus on manufactures. This is all the more remarkable when one considers that virtually all of the president's own successes have been in service sectors (especially real estate and entertainment). That has not prevented Trump and others around him from treating steel, automobiles, and other heavy industries as somehow more "real" and masculine undertakings that are worthier of attention. That may be partly explained by political calculations, with policymakers having an eye to how their actions today may affect the electoral map in 2020, but it also seems rooted in strongly nostalgic notions that find Creative Destruction easier to deny than to reverse. That sentiment takes concrete form in the revival of the trade-remedy and reciprocity laws.

III.B The Revival of Trade-Remedy and Reciprocity Laws

When the Trump administration turned in 2018 from rhetoric to action it did so primarily by resuscitating older trade laws that were largely forgotten but not gone. One such instrument is a long-dormant "reciprocity" statute (Section 301 of the Trade Act of 1974) that gives the president broad powers to define and enforce U.S. rights. Trump used this law in a complaint against Chinese intellectual property policies, with the retaliatory measures that he imposed in July being the most precisely targeted shot in a spreading trade war. He also resurrected another provision of that 1974 law (Section 201) when in January he granted global safeguards protection to producers of washing machines and solar panels. These represented the first U.S. invocations of this statute, and its counterpart in international law, since the Bush administration used it to protect steel in 2002. The Trump administration's preferred instrument for protecting the steel and aluminum industries is an even more obscure trade law that is based upon claims of national security law. The White House announced in March that it would use the president's authority under Section 232 of the Trade Expansion Act of 1962 to restrict steel and aluminum imports from nearly all sources.

These were only the most high-profile manifestations of a broader trend in which the United States has reverted to trade laws as a means of managing competition. The characteristics of these laws are summarized in Table 1, and Table 2 shows their evolving use since 1975. The United States pursued an average of 39.5 cases per year under these laws during the decade that followed enactment of the Trade Act of 1974. Curiously enough, that was precisely the same rate at which they were invoked in the first two years of the Trump administration. The more notable comparison is to the first two decades of the WTO era, when the United States was only half as prone to employ these laws as it was in either 1975-1985 or 2017-2018. The data also show important shifts in the relative emphasis that U.S. petitioners and policymakers have placed on distinct trade-remedy and reciprocity laws. As a general rule, the antidumping (AD) and countervailing duty (CVD) laws have become both the most frequently invoked and the least provocative of these statutes. By contrast, three other statutes each raise concerns over U.S. fealty to the multilateral system. The renewed U.S. reliance on safeguards and reciprocity implies that the Trump administration is prepared to flout WTO norms and rules; those concerns are even more severe in the case of Section 232, for reasons that are more fully discussed in the next section.

³ The author explores the domestic political economy of protectionism at greater length in chapter 6 of *Trade and American Leadership*.

Table 1: The Principal U.S. Trade-Remedy Laws

Listed in Order of Political Discretion

Law	Purpose and Process	How Affected by Trump
Antidumping Duties (§731, Trade Act of 1930)	If the ITA finds that imports are dumped (i.e., sold at less than fair value), and the USITC finds that they cause or threaten material injury to U.S. industries, the products are subject to duties equal to the dumping rate	In a potentially precedential action, the Department of Commerce self-initiated a case in 2017 against common alloy aluminum sheet imported from China
Countervailing Duties (§701, Tariff Act of 1930)	If the ITA finds that imports benefit from prohibited subsidies, and the USITC finds that they cause or threaten material injury to a U.S. industry, the products are subject to duties equal to the subsidy rate	The Department of Commerce complemented the self-initiated AD case against Chinese aluminum with a CVD case against the same product
Global Safeguards (§201, Trade Act of 1974)	The USITC can recommend to the president that duties, quotas, or other remedies be granted, to aid an industry that is found to suffer serious injury from increasing imports	The administration revived this dormant law when in 2018 it granted petitioners' requests for protection against imports of washing machines and solar panels
National Security Clause (§232, Trade Expansion Act of 1962)	The secretaries of Commerce and Defense can recommend that limits be imposed on imports that impair national security (e.g., by suppressing U.S. production of strategic goods)	The administration invoked this rarely employed statute to impose restrictions on steel and aluminum, and threatens to do the same for automotive imports
Unfair Trade Practices (§337, Tariff Act of 1930)	If the USITC finds that imports violate patents, trademarks, or copyrights, or are otherwise unfairly traded, it can issue cease-and-desist order and/or exclude these products from the U.S. market	[No change in policy; this is a technical statute administered entirely by the USITC]
Market Disruption by Communist Countries (§406, Trade Act of 1974)	The USITC can recommend to the president that duties, quotas, or other remedies be pursued, to aid an industry that is found to suffer serious injury from increasing imports from a nonmarket economy	[No change in policy; this law has not been invoked since 1993]
Agricultural Imports (§22, Agricultural Adjustment Act of 1933)	The USITC can recommend that the president imposed duties or quotas on imports that threaten to interfere with farm price-support programs	[No change in policy; this law has not been invoked since 1994]

ITA: International Trade Administration of the U.S. Department of Commerce.

USITC: U.S. International Trade Commission.

Table 2: Trade-Remedy and Reciprocity Cases Initiated in the United States, 1975-2018*Total Cases Initiated and Annual Averages*

	Late GATT (1975-1985)	Uruguay Round (1986-1994)	Early WTO (1995-2016)	Early Trump (2017-2018)
Antidumping	184 (16.7/year)	234 (26.0/year)	268 (12.2/year)	39 (19.5/year)
Countervailing Duty	130 (11.8/year)	109 (12.1/year)	130 (5.9/year)	33 (16.5/year)
§232 National Security	9 (0.8/year)	7 (0.8/year)	2 (0.1/year)	4 (2.0/year)
§201 Safeguards	59 (5.4/year)	4 (0.4/year)	10 (0.5/year)	2 (1.0/year)
§301 Reciprocity	52 (4.7/year)	44 (4.9/year)	20 (0.9/year)	1 (0.5/year)
Total Cases	434 (39.5/year)	398 (44.2/year)	430 (19.5/year)	79 (39.5/year)

Note: AD and CVD cases are based on products rather than partners (e.g., if petitions affecting the same product are simultaneous filed against three countries that is counted as one petition rather than three).

Sources: Compiled from U.S. International Trade Commission at https://www.usitc.gov/trade_remedy/documents/historical_case_stats.pdf, https://usitc.gov/trade_remedy/731_ad_701_cvd/investigations.htm, and https://www.usitc.gov/trade_remedy/documents/historical_case_stats.pdf; World Bank at <http://siteresources.worldbank.org/INTTRADERESESEARCH/Resources/544824-1272916036631/7031714-1273097663359/7045138-1465854420750/GAD-USA.xls> and <http://siteresources.worldbank.org/INTTRADERESESEARCH/Resources/544824-1272916036631/7031714-1273097858474/7045167-1465917411576/GCVD-USA.xls>; USTR at https://ustr.gov/archive/assets/Trade_Agreements/Monitoring_Enforcement/asset_upload_file985_6885.pdf; and U.S. Department of Commerce at <https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/86-section-232-booklet/file>.

The AD statute is the oldest and most frequently used of the trade-remedy laws. Dumping is an unfair trade practice by which imported goods are sold at less than fair value, which may be below the cost of production, the price in the exporting country, or the price in third-country markets. The CVD law shares much in common with its AD counterpart, and cases under these twin laws are often prosecuted in tandem. The most important difference is that CVD investigations are based on allegations of government subsidies rather than the pricing practices of firms. Petitioners used to resort less frequently to the CVD law than to its AD counterpart, but that changed after nonmarket economies such as China lost their legal immunity to CVD cases in 2007. The pace of AD/CVD filing picked up sharply in the first year of the Trump administration, which also saw government's first self-initiation of cases since the Reagan administration. The pace was somewhat slower in 2018 than in 2017, however, perhaps because prospective petitioners decided it might be less costly to rely upon the administration's use of other statutes (especially Section 232) than to foot the considerable costs of filing their own AD and CVD petitions. It is also possible that protectionist industries hope to see the Trump administration utilize more aggressively its authority to self-initiate AD/CVD cases.

While the AD and CVD laws are treated as quasi-judicial statutes that are theoretically not subject to policymakers' whims, decisions to invoke the safeguards law are quite explicitly a matter of policy. The global safeguards law is a mechanism that allows domestic industries to petition for relief when import competition causes injury, even if those imports are fairly traded. The safeguard law requires that the U.S. International Trade Commission (USITC) determine whether increasing imports are a substantial cause of serious injury to the domestic industry. If its injury determination is positive, the

commission will recommend a remedy (e.g., quotas or tariffs). The president then has wide discretion to accept, reject, or modify the commission's recommendations. In actual practice, these tests are significant hurdles that many petitioners fail to clear. That is the chief reason why the number of petitions filed during 1986-1994 (far below one per year) was so much lower than in the first decade since enactment of the Trade Act of 1974 (more than five per year). The action under this law dropped still further after the WTO came into effect. Although that institution's Safeguard Agreement sought merely to reform this mechanism, and not to outlaw it, an unbroken series of dispute-settlement cases invariably found that the countries employing this mechanism have violated their obligations. Ever since the Bush administration was required in 2003 to reverse the steel restrictions that it had imposed in 2002, Washington treated Section 201 as a dead letter.

That all changed when producers of washing machines and solar panels filed safeguard petitions in 2017, leading the Trump administration to impose import restrictions in 2018. Both orders are now subject to challenges in the WTO's Dispute Settlement Body, and we may reliably anticipate that these safeguard actions will be found to violate WTO obligations.⁴ This will set up a potentially hazardous confrontation. Past administrations have felt legally obliged to lift the restrictions they imposed under the safeguards law, but Trump seems far less intent on trimming his policies to meet the terms of international agreements and the rulings of dispute-settlement panels. In the event that the United States fails to remove protections that are found to contravene the rules of the Safeguard Agreement, it will reinforce the impression that U.S. policymakers no longer respect the role of the WTO.

The revival of the reciprocity law raises that same concern. American policymakers use the term "reciprocity" to mean a policy in which objectives are pursued by threatening or imposing sanctions unilaterally rather than either negotiating mutually beneficial agreements or bringing the disputes to a neutral court. Laws of this sort have been around since the first decades of independence, and have been of recurring importance throughout U.S. history, but were rarely invoked in the first generation of hegemony. The principal exception to this rule was the Chicken War that the United States fought with the European Community in the 1960s. Following a revamping of the laws in 1974, the Section 301 authority became a major element in U.S. trade policy during the Reagan administration. It used the threat of retaliation in both a tactical and a strategic fashion, and Congress encouraged this move by enacting an entire family of related laws. Several of them were included in the Omnibus Trade & Competitiveness Act of 1988, such as one that focuses on countries' intellectual property practices (known as "Special 301") and others dealing with government procurement, telecommunications trade, and foreign shipping practices. Still more reciprocity laws aim precisely at countries' practices on longshoremen services, international air transportation practices, and wine.

The reciprocity laws returned to their former obscurity after the Uruguay Round. This was the product of a grand bargain by which other countries made significant (if incomplete) concessions to the substance of Washington's demands on what were then called the "new issues," producing agreements on services, intellectual property rights, and investment. In return, the United States agreed to the creation of a stronger dispute-settlement system that differed from its GATT predecessor in several respects. The new trade court does not allow any country to block a case by abusing the rule of consensus, it covers the full range of WTO agreements with a unified system, and is backed by an Appellate Body that provides greater consistency to the interpretation of the rules. In short, this compromise gave Washington recourse to international rules on the new issues, but required that disputes be adjudicated in the WTO rather than by national fiat.

It is in this environment that the Trump administration initiated a Section 301 case against China, charging that the country's intellectual property policies harm U.S. interests. The tariffs that the United

⁴ It is worth noting that such findings might prove moot if the United States and its WTO partners do not resolve a long-running disagreement that has blocked the appointment of new members to the institution's Appellate Body. If that body is unable to replace its retiring members, it will soon lack the quorum needed to take up appeals from WTO dispute-settlement panels. This could leave any decisions that are adverse to the United States in a kind of legal limbo.

States imposed as retaliation against China, and Beijing's counter-retaliation, clearly represent a reversion to a pre-WTO pattern in U.S. trade policy.

III.C The Abuse of the GATT National Security Provision

The Section 232 cases pose an even graver danger to the trading system than the Trump administration's revival of the safeguard and reciprocity laws. Beyond the direct presidential imprimatur that these cases bear, and the presumably greater implied resistance to an unfavorable ruling in the WTO dispute-settlement system, the products involved are inherently important and the law is more politically sensitive. It has also been something of a taboo. Prior to Donald Trump, American presidents used this law quite sparingly and almost exclusively as an instrument of energy policy.⁵ One of the first acts of the Trump administration was to self-initiate a pair of Section 232 investigations in 2017 against steel and aluminum. It also received a petition that year from uranium producers, and in 2018 it self-initiated yet another case in the automotive sector.

As can be appreciated from the data in Table 3, it was absurd for the administration to base this most protectionist action on a spurious claim of national security. More than two-thirds of U.S. automotive imports, and well over half of steel and aluminum imports, come either from NATO countries or other partners that past presidents have formally designated as Major Non-NATO Allies. Uranium is the only item subject to a Section 232 investigation for which a potential adversary (Russia) is a major supplier, and also the only one for which an appeal to national security seems plausible, and yet it is the sole item in the Section 232 docket for which the administration shows little enthusiasm.

This indiscriminate use of the national security law, and the implied willingness to abuse the corresponding exceptions clause in the WTO, poses an existential threat to the multilateral trading system. WTO rules are far more deferential toward claims of national security than they are toward other types of concerns that might collide with trade. In more than 70 years of GATT and WTO history, no country invoking the national security exception of GATT Article XXI has ever been obliged to justify its claim before a dispute-settlement panel. The near-automatic acceptance of invocations is generally seen as a politically necessary norm, founded upon the recognition that countries might prefer to leave the system altogether if the actions they take in pursuit of national security were subject to review by trade lawyers.

What is most remarkable about Article XXI is not the abuse that this virtual get-out-of-jail-free card invites, but the infrequency with which countries have succumbed to the temptation. Prior to the advent of Donald Trump, there were just three occasions in which the United States either explicitly invoked Article XXI or publicly implied that it was prepared to do so; all three involved countries that had affiliated with the Soviet Union only after joining the GATT.⁶ Only a handful of other WTO members have availed themselves of the security exception. The European Union did so twice during the GATT

⁵ Past presidents used this law and its predecessor statute to impose restrictions on oil imports five times, but invoked it only twice on behalf of other industries. President Reagan resorted to Section 232 in a 1981 ferroalloys case, and again in a 1986 machine tools case.

⁶ The United States invoked Article XXI in 1949 in order to apply the newly enacted embargo on exports of strategic goods against Czechoslovakia, and did the same in 1985 when Nicaragua objected to an embargo imposed by President Reagan. The Kennedy administration was prepared to cite this article in defense of its embargo on Cuba, but that was rendered moot by Cuba's failure to lodge a formal complaint.

Table 3: Origins of U.S. Imports Subject to National Security Investigations, 2017

Shares of Total U.S. Imports; Bottom-Line Values Based on Imports for Consumption

	Automobiles	Iron & Steel	Aluminum	Uranium
NATO Allies and Related	43.2%	38.3%	45.9%	70.3%
Canada	20.8%	15.5%	40.2%	32.6%
European Union*	22.0%	18.6%	5.4%	35.9%
Norway	<0.1%	0.5%	<0.1%	1.8%
Turkey	0.4%	3.7%	0.3%	—
Major Non-NATO Allies	27.8%	19.8%	10.7%	0.7%
Argentina	<0.1%	0.7%	3.2%	—
Australia	<0.1%	1.1%	2.1%	0.7%
Japan	20.4%	4.7%	1.0%	<0.1%
Korea	7.4%	8.3%	0.6%	<0.1%
Taiwan	<0.1%	3.7%	0.2%	<0.1%
All Other MNNAs	<0.1%	1.3%	3.6%	<0.1%
Potential Adversaries	0.8%	10.5%	19.0%	25.4%
China	0.8%	2.6%	9.6%	0.6%
Russia	<0.1%	7.9%	9.4%	24.8%
Rest of World	28.2%	31.4%	24.4%	3.6%
Mexico	27.1%	7.1%	1.5%	—
All other	1.1%	24.3%	22.7%	3.6%
<i>Value of Total 2017 Imports</i>	<i>\$212.6 billion</i>	<i>\$33.7 billion</i>	<i>\$16.9 billion</i>	<i>\$2.6 billion</i>

* : Note that the European Union per se is not a NATO ally, but the overlap of NATO and European Union membership is so large as to blur the distinction.

Automobiles are defined here as NAICS category 3361; iron and steel as NAICS category 3311; aluminum as NAICS category 3313; and uranium as HTS item 2844.

Sources: Compiled from U.S. International Trade Commission DataWeb at <https://dataweb.usitc.gov/>. Major Non-NATO Allies are listed at <http://samm.dsca.mil/glossary/major-non-nato-allies>; “all other” MNNAs include Bahrain, Egypt, Israel, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, and Thailand.

period,⁷ and developing countries resorted to this article a few times.⁸ That leaves just one pre-2017 case in which a country’s invocation was unambiguously abusive. This came in 1975, when Sweden imposed restrictions on footwear. Stockholm justified this measure by claiming that the country needed a viable

⁷ The first EU invocation came in a 1982 defense of the import restrictions that it (together with Australia and Canada) imposed on Argentina during the Falklands/Malvinas war. Brussels also invoked Article XXI in 1991 to justify its withdrawal of preferential treatment from Yugoslavia; the breakup of that country made a panel moot.

⁸ On the accession of Portugal in 1961, for example, Ghana stated that its boycott of Portuguese goods was justified under Article XXI because Angola posed a constant threat to peace on the African continent. Honduras and Colombia settled a dispute in 1999 over their maritime boundaries, but Nicaragua objected and imposed a 35% tariff on all imports from Honduras and Colombia. Nicaragua then invoked Article XXI when those countries sought a panel. The parties eventually agreed to take the issue up in the International Court of Justice, and no WTO panel was formed.

industry to produce boots for its soldiers. The trade community shamed Sweden into removing the offending measures within two years, but did so without formally demanding a legal justification for its action.

This is just one of many ways in which the norms of the WTO are drifting away from those of the GATT. That may be a natural consequence of an expanding membership, with some of the newer entrants having less familiarity and commitment to the long-established traditions of this institution. That was apparent in two other sets of disputes that arose in 2017. Bahrain invoked Article XXI to justify actions that it took — together with Egypt, Saudi Arabia, and the United Arab Emirates — in a conflict with Qatar. Russia likewise invoked the article in one of a series of disputes with Ukraine. Perhaps the most notable aspect of that last case was not Moscow's decision to employ this legal loophole, but the full-throated support that it subsequently received from Washington.⁹ That declaration was in keeping with established U.S. positions, but also took on new urgency in light of the Trump administration's conflation of trade and security issues.

The graver threat comes from the readiness with which the Trump administration has trampled upon the old norm in its own Section 232 cases. We may only speculate on the depth of the administration's motives. Its decision to pursue these cases may have been only a cynical attempt to game the system by taking advantage of matching loopholes in domestic law (Section 232 being the most discretionary trade-remedy law) and the WTO (Article XXI being the most discretionary exceptions clause). It may alternatively have been intended as a deliberate incitement. Major WTO countries proved quite ready to carry out counter-retaliatory threats in mid-2018, plunging the United States into a full-fledged conflict not just with China, but also such allies as the European Union, Canada, and Japan. Smaller countries such as Argentina preferred to bargain for exemptions by agreeing to impose WTO-illegal export restrictions. The more worrisome sign, from a regime perspective, was the willingness of the Chinese to contemplate that same route and to seek a settlement in which outcomes are determined more by states than by markets. If the current Sino-American negotiations produce a deal that involves precise Chinese commitments to import certain quantities of American goods, that could set a highly unwelcome precedent. In a worst case, it could be the first manifestation of a new pattern whereby actual trade flows are determined just as much by governmental dictate as by impersonal market forces.

III.D Concentration on China and Collateral Damage on Third Parties

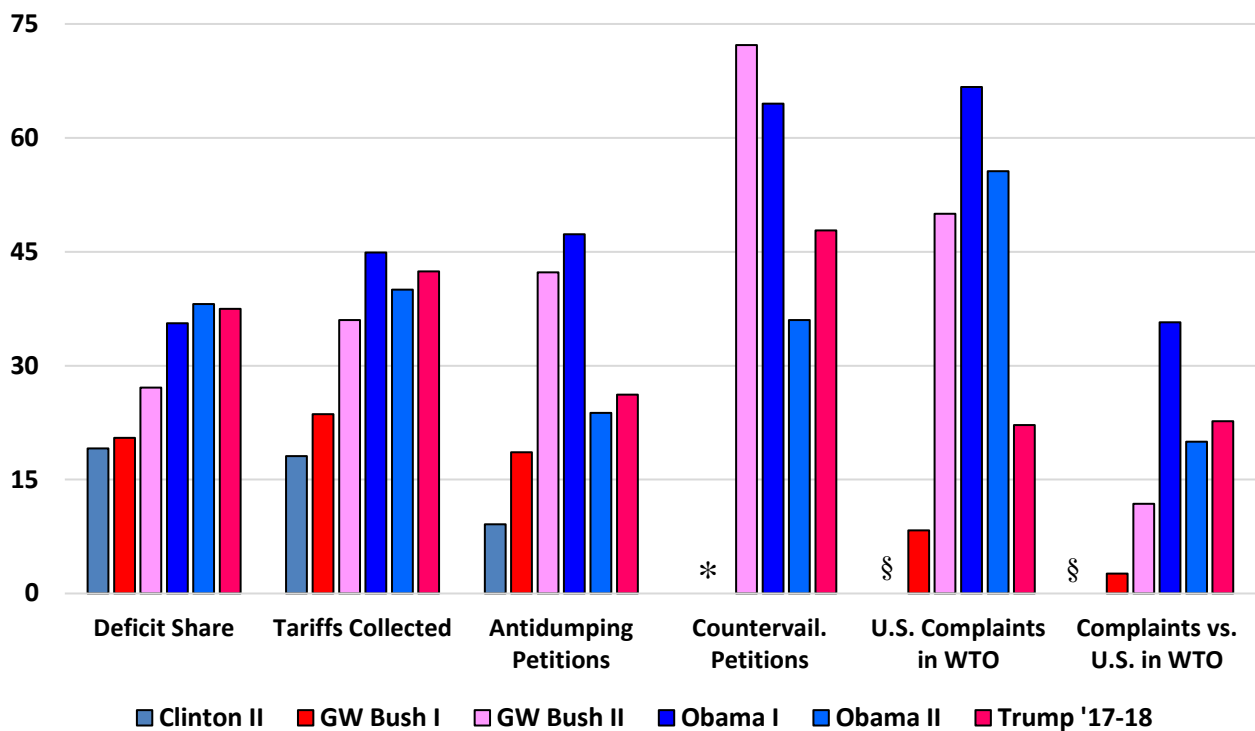
The resurrection of the old reciprocity law is yet another area where the Trump administration revisited what seemed to have been a settled matter of law and policy. The United States appeared to have discontinued its use of Section 301 in 1997, but exactly twenty years later the USTR initiated an investigation under this law into Chinese acts, policies, and practices related to technology transfer, intellectual property, and innovation. The announcement of this Section 301 case made no mention of the relevant WTO agreement or the rationale by which the U.S. Trade Representative decided not to bring the matter to the multilateral system. It instead implied that, in a throwback to pre-Uruguay Round practices, the United States would define and enforce its rights via domestic law rather than international institutions. That was the clear implication of the sequence by which the retaliatory measures announced in 2018 preceded, rather than followed, the initiation of a formal U.S. complaint in the WTO.

Predictably, retaliation against China was quickly followed by Chinese counter-retaliation against U.S. exports. While the conflict remains a live issue, early results suggest that Beijing is just as capable as Washington of engaging in trade warfare and sustaining its economic costs. The most consequential outcome of the dispute may not be which side is ultimately deemed the winner or the loser, or how much

⁹ See the November 7, 2017 statement of the United States in support of Russia as posted by the USTR at <https://ustr.gov/sites/default/files/enforcement/DS/US.3d.Pty.Sub.Re.GATT.XXI.fin.%28public%29.pdf>.

Figure 1: The Concentration of U.S. Trade Instruments on China, 1997-2018

Share of Totals in Each Presidential Term



* : CVD petitions against China were not legally possible prior to a revised interpretation of the law in 2007.

§ : Dispute-settlement complaints in either direction were not legally possible prior to China's WTO accession in 2001.

Shares of AD and CVD petitions calculated on the basis of total countries and products named in petitions. For example, if in a given year there is one AD petition filed against imports of Product X from China and one other country, plus another AD petition filed against imports of Product Y from only one other country, China accounts for 33.3% of all AD petitions.

Sources: AD and CVD petitions calculated from World Bank data at <http://data.worldbank.org/data-catalog/temporary-trade-barriers-database> and U.S. International Trade Commission data at http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/completed/index.htm. WTO complaints calculated from WTO data at http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. Tariff data calculated from USITC DataWeb data at <http://dataweb.usitc.gov/scripts/INTRO.asp>.

short-term damage they do to one another and to third parties in the interim, but the extent to which they each prove willing — and perhaps even eager — to reach a settlement that amounts to managed trade. That would not portend well for the trading system.

The Section 301 case is emblematic of a trend whereby the United States now has a two-speed approach to the conduct of trade disputes, reserving the higher gear for China. This can be appreciated from the data in Figure 1, which summarizes the shares of the main policy instruments that are directed at China. The surge in AD cases can be attributed not just to the rising share of U.S. imports originating in China, but to special rules. China is subject to the unique methodology employed for nonmarket economies (NMEs), in which price comparisons are made not against the exporting country but instead against a market-oriented “surrogate” country (typically India). This makes it much easier for petitioners to show high rates of dumping. It is thus more attractive for petitioners to bring cases against China and Vietnam than any other country. The concentration of trade-remedy laws on China was further abetted by a decision in which the country lost its earlier exemption from CVD investigations. The Department

of Commerce had previously read the law to mean that NMEs were immune from CVD investigations, based on the theory that it is impossible to isolate and assess the impact of subsidies in an economy that amounts to one big subsidy. The department reversed this doctrine in 2007, and in 2012 Congress approved legislation that reinforced this interpretation.

It is interesting to note that while the concentration of trade instruments on China increased from the second Clinton term (1997-2000) through the first Obama term (2009-2012), it then tapered off in the second Obama term. The years 2013-2016 saw a decline in the shares of AD and CVD cases that targeted China, as well as the percentage of WTO disputes brought by Washington against Beijing and *vice versa*. The preliminary data suggest that this declining trend was only partially arrested under Trump, with the shares of AD and CVD cases in 2017-2018 still being lower than what we saw in the first Obama term. Interpreting the data on disputes in the WTO is somewhat more complicated, as that depends on just how complex a game this new administration may be playing.

WTO dispute settlement is one area where the Trump administration has thus far shown little inclination to take full advantage of the opportunities to bring maximum pressure on China. This is a departure from the recent past. During the Obama administration, the United States brought six cases against China but Beijing responded with just one complaint against the United States. Those numbers were reversed in the first two years of the Trump administration, when China brought five complaints against the United States but was targeted by just two U.S. complaints. A conspiracy theorist might see in these numbers part of a larger strategy by which the Trump administration intends to argue that the WTO's dispute-settlement system presents more of a risk than an opportunity for the United States. That argument could be bolstered if the administration were simply to sit out the game. The larger trends in U.S. disputes support this contention. In the years preceding the Trump administration, the United States brought nearly as many complaints against other countries in the WTO (114) as those countries brought against the United States (129). With the United States being the respondent in 22 complaints since Trump's inauguration, but bringing just nine of its own, it now answers every two complaints with less than one.

IV. The Challenge of Discrimination

One systemic challenge that predates the election of Donald Trump concerns the rise of discriminatory trade agreements. The creation of the WTO in 1995, which culminated a half-century of progress toward a comprehensive and multilateral trade regime, came just when many of its most prominent members began negotiating discriminatory agreements in earnest. As an ideal, the trading system has long sought to achieve two seemingly complementary objectives: the reduction or elimination of trade barriers and an end to discrimination. The recent proliferation of FTAs implies that countries are willing to sacrifice non-discrimination in pursuit of liberalization. The net results have been dubious, with the political capital that countries invest in FTAs coming at the expense of efforts that might otherwise preserve and rebuild the multilateral system.¹⁰

As can be seen from the data in Table 5, most of the FTAs that the United States currently has in place are with relatively small partners. Canada, Mexico, and (to a much lesser degree) Korea are the only significant exceptions to that general rule. Discrimination is likely to grow under the Trump administration, which began to turn in late 2018 from the destruction of old policies to the negotiation of new agreements. It is perhaps not surprising that the administration chose to negotiate with the three largest economies with which the United States does not yet have FTA relations, notwithstanding its frequent expressions of disdain for the European Union. Assuming that the new talks with Brussels, London, and Tokyo are successfully completed, the magnitude of the goods trade covered by

¹⁰ For a more thorough examination of preferences in U.S. trade policy see chapters 13-15 of *Trade and American Leadership*.

Table 4: U.S. Merchandise Trade with Selected Partners, 2017

Percentages; Countries Listed in Descending Shares of Total U.S. Imports

	Average U.S. Tariff	Partner's Share of U.S. —		
		Imports	Exports	Deficit
FTA Partners		34.0	38.6	19.7
Mexico	0.1	13.4	12.1	12.3
Canada	0.1	12.8	15.1	6.3
Korea	0.2	3.0	2.9	2.5
CAFTA-DR	0.2	1.0	2.1	-0.4
Israel	0.1	1.0	0.5	1.5
Singapore	0.1	0.8	1.6	-0.6
Colombia	0.1	0.6	0.8	0.2
Chile	<0.1	0.5	0.8	-0.2
Australia	0.1	0.4	1.4	-1.2
Peru	0.1	0.3	0.5	<0.1
Jordan	0.1	0.1	0.1	<0.1
Morocco	2.1	0.1	0.1	-0.1
Bahrain	1.6	<0.1	0.1	<0.1
Oman	0.1	<0.1	0.1	-0.1
Panama	0.1	<0.1	0.4	-0.5
FTA Candidates		24.3	19.7	25.7
European Union*	1.3	16.2	12.6	17.9
Japan	1.7	5.8	4.0	7.3
United Kingdom	1.0	2.3	3.1	0.5
China	2.7	21.6	7.8	37.6
Others		20.1	33.9	17.0
India	2.3	2.1	1.3	2.8
Vietnam	7.2	2.0	0.5	3.8
Taiwan	1.6	1.8	1.5	1.9
Malaysia	0.5	1.6	0.7	2.6
Switzerland	0.7	1.5	1.1	1.9
Thailand	1.4	1.3	0.6	2.1
Brazil	0.9	1.2	2.1	-0.3

* : Data for the European Union are net of Brexit (i.e., do not include the United Kingdom).

Source: Calculated from U.S. International Trade Commission DataWeb at <https://dataweb.usitc.gov/>.

discriminatory agreements will have grown from 34% to 58% of U.S. imports, and from 39% to 58% of U.S. exports.

While some may see the initiation of FTA negotiations with these major partners as a return to more recent patterns in U.S. trade policy, that conclusion would be based on two questionable assumptions. One is that the Trump administration conceives of FTAs in the same way as its predecessors, and the

other is that it will conduct these negotiations in the standard manner. This administration instead believes that the proper aim of such agreements should be to rack up trade surpluses for the United States, and that American leverage can be enhanced by erecting new barriers even while the talks are under way. Those approaches were largely successful when renegotiating the existing FTAs with Canada, Mexico, and Korea, in part because each of these partners is unusually dependent on the United States. The aim and conduct of the negotiations may be different when dealing with larger economies, and could end up reinforcing the impression that mega-regional agreements are uniquely difficult to conclude.

IV.A The Difficulty in Concluding Mega-Regional Agreements

There is nothing new about negotiating FTA agreements within a multilateral system, but there is a key way in which the discriminatory agreements of the early twenty-first century differ from those of the late twentieth century. Most of the FTA negotiations that the United States pursued before the WTO era complemented its multilateral initiatives. The Uruguay Round was quite deliberately bookended by the negotiations over the U.S.-Canada FTA (begun in 1986 and concluded in 1988) and the North American FTA with Canada and Mexico (begun in 1991, concluded in 1992, and revised in 1993). As is discussed in a later section, with these successive negotiations offered good opportunities for the United States to set precedents on what were then called the “new issues” of services, investment, and intellectual property rights. The same may not be said for the much wider set of FTAs that the Clinton and Bush administrations launched between 2000 and 2005. Many of these were discrete, politically transactional arrangements that the United States promoted more as rewards to favored diplomatic partners than for their strictly commercial value. It was only with a return to mega-regionals, especially the launch of the TPP (2008) and TTIP (2013), that FTA negotiations were once again a key arena.

Even before the TPP and TTIP negotiations began, mega-regional had already proven to be fragile. The abortive Free Trade Area of the Americas (FTAA) and the pact planned in the Asia Pacific Economic Cooperation (APEC) forum were both launched in 1994 to establish free trade across wide geographic expanses, and both were undone by internal disputes. The APEC initiative began to crumble when countries demanded that their “sacred cows” (e.g., fish in Japan) be isolated from liberalization, and the exceptions soon grew so large as to make the rule seem unworthy of pursuit. The FTAA negotiations were plagued from the start by the perennial rivalry between the United States and Brazil, and matters only got worse with the emergence of a trade-skeptical bloc led by Cuba on the outside and by Venezuela on the inside. Each of these mega-regionals then fragmented into smaller initiatives, including numerous U.S. FTAs reached during 2003-2006, several of which coalesced in the TPP. Every TPP country had previously been engaged in negotiating the FTAA, APEC, or both, and many of them reached bilateral agreements with one another between the collapse of those talks and the launch of the TPP. It all proved moot in the end.

While some mega-regional negotiations collapse at the international level, others can fail to survive the domestic political process. Donald Trump proved that when he signed on January 23, 2018 a memorandum directing the USTR to withdraw the United States from the TPP and to negotiate bilateral agreements instead. The eleven other TPP countries eventually decided to implement this agreement without its largest signatory. The new president also let the TTIP negotiations lapse, although the draft he inherited was far from complete.

The U.S. negotiating partners in the European Union may hope that the launch of new trade negotiations will lead to a cooling down of transatlantic frictions. There has heretofore been an inverse relationship between negotiations and disputes. The United States and the European Union (or its members) brought a total of sixty-two complaints against one another during the first ten years of the WTO, collectively accounting for about one-fifth of all WTO disputes, but the numbers fell thereafter. The United States did not bring a single complaint against the European Union from 2010 through 2017, and was subject to just two EU complaints during that period. One explanation for this rapid drop was

that Washington and Brussels had come to see the drawbacks of playing tit-for-tat, with each one responding to any new filing with a retaliatory case against the other. The initial effect of that game was probably to multiply the total level of litigation, but over the longer term the associated costs and ill will may have convinced the two players that there were better ways to manage their disagreements. Their decision to launch the TTIP negotiations in 2013 implied that they preferred negotiation over litigation. It cannot be taken for granted, however, that this same dynamic will mark the Trump administration's approach to negotiations with the European Union. To the contrary, the experience with its renegotiation of NAFTA suggests that this administration will do all it can to increase its leverage during the negotiations.

IV.B The Trump Administration's Renegotiation of Existing Trade Agreements

The new administration spent the better part of 2017 and 2018 renegotiating a decades-old agreement with its Canadian and Mexican partners. These talks produced an agreement in principle at the end of September, 2018, which Donald Trump dubbed the United States Mexico Canada Agreement (USMCA), and the neighbors signed the agreement three months later. Three aspects of the revised NAFTA merit attention. One of them, as reviewed in the next section, is a pledge that the United States extracted from Canada and Mexico concerning future negotiations with China. The conduct of these talks also marked a fundamental change in how the United States engages with its FTA partners, and its actual terms mark a subtler shift in the intended purpose of trade agreements.

The NAFTA renegotiation set a new pattern in the conduct of U.S. commercial diplomacy. This is not to say that past American negotiators were hesitant to exploit obvious disparities in power and wealth, but rather that they approached these asymmetries with some tact. They would put forward tough demands, and make clear that they were prepared to walk if the other side did not bend, but the only way that they would threaten the imposition of new barriers in the midst of a negotiation was to suggest the willingness of Congress to go down that road. Not content with such coy games of good cop, bad cop, the negotiators in the Trump administration prefer not just to threaten but to impose tariffs and quotas. They did so for steel and aluminum during the North American negotiations, and warned that similar restrictions on automobiles could be imminent. The Trump administration also repeatedly threatened to abrogate NAFTA unilaterally, or to reach a separate peace with one or the other neighbor. The Canadian and Mexican negotiators responded with counter-retaliatory measures, at least for a time, but ultimately felt compelled to strike a bargain. It is uncertain just how successful similar tactics may be when the U.S. negotiators bargain with other partners that are larger and less dependent, but there is little doubt that they will once more be prepared to play hardball.

The more serious danger lies in the changing purpose of trade agreements, with the U.S. aim having shifted from the creation of opportunities to the management of outcomes. Instead of setting the terms by which countries will reduce barriers to trade and investment, then allowing the market to sort it all out, the Trump administration explicitly adopted the mercantilist goal of seeking to run up a trade surplus. It hoped to achieve that end through such means as the manipulation of the agreement's rules of origin. The more restrictive automotive rules in the USMCA, for example, represent a reversion to the market-sharing principles that motivated the U.S.-Canada Auto Pact of 1965. The Trump administration's efforts to determine outcomes can likewise be seen in the concessions it wrung from Canada on dairy products, and also in the way that it made the NAFTA renegotiation an instrument in its rivalry with China.

IV.C RTAs as Instruments of Sino-American Rivalry

With direct negotiations between Beijing and Washington being limited thus far to truce talks in the trade war, the most important role for FTAs in this relationship is indirect. Both of these countries are well-positioned to treat trade agreements as an instrument of power. That point rests on two distinguishing characteristics: Both China and the United States typically account for high shares of any

given partner's total trade, and yet each of them is less dependent on that exchange — globally and bilaterally — than are their partners. The United States is even less trade-dependent than China, with exports of goods and services being equal to just 12% of U.S. GDP in 2016; exports then accounted for 20% of Chinese GDP.¹¹ Both were still below the world average of 29%. As for their relative weight in other countries' economies, China has been overtaking the United States in much of the world. Even among the many countries for which China has moved into the top spot, however, the United States often remains the second largest partner.

The world may well be headed towards a system where most commercially significant countries feel under pressure to align themselves with one or another of these economic giants. As can be seen from the data in Table 5, some 49 countries or regional groups are actual or potential FTA partners for either or both of them. The two countries currently have FTAs in effect with very different sets of partners, but with similar collective sizes: The 20 FTA partners of the United States together account for 9.9% of global GDP, compared to 9.7% for China's 22 FTA partners. If both countries conclude and implement all of the agreements that are now being negotiated or contemplated, these totals will rise to 37.3% for the United States and 24.3% for China. Put another way, the 13 countries that are on course to be FTA partners of both the United States and China will account for 11.3% of global GDP, which is on the same order of magnitude as the 26 countries that will be in FTA relationships only with China (10.6%) but significantly smaller than the ten partners (including the European Union) that will be in FTAs only with the United States (23.6%).

The Trump administration is not the first to craft its FTA strategy with an eye to China, as this has been a mainstay of U.S. policy for over a decade. The TPP was founded upon two successive presidents' goal of strengthening ties with partners in the Pacific Basin so as to compete effectively with China, even while recognizing that most of those same partners would also cut their own deals with Beijing. There was no difference here between George W. Bush or Barack Obama, each of whom implicitly rejected the approach taken earlier by Bill Clinton. Whereas China had been a party to the ill-fated APEC negotiations launched on Clinton's watch in 1994, Beijing was quite deliberately excluded from the TPP that Bush began and Obama expanded. That did not prevent China from dealing with the other TPP countries one-by-one. By the time that those regional talks ended in 2015, the United States and its North American neighbors were the only TPP signatories that did not either have FTAs with China or were actively pursuing them.

The Trump administration does not seem content merely to compete with China for FTA partners, but actively discourages others from getting closer to Beijing. That was made evident in Article 32.10 of the revised NAFTA. This provision requires that any party (read: Canada or Mexico) must inform the others (read: the United States) at least three months before commencing negotiations for an FTA with a nonmarket country (read: China). It further provides that if any party were to enter into such an agreement, that step would "allow the other Parties to terminate this Agreement on six-month notice and replace this Agreement with an agreement as between them (bilateral agreement)." The U.S. negotiators thus obliged their Canadian and Mexican counterparts to choose sides. That principle bears a disquieting resemblance to the logic by which Vladimir Putin saw Ukraine's trade agreement with the European Union as a provocation, and insisted that this former Soviet republic renew its fealty to Moscow. That demand ultimately precipitated not just the (temporary) rejection of the 2014 EU-Ukraine agreement but also turmoil inside Ukraine and Russia's annexation of Crimea. This analogy should not be drawn too far; had Canada refused to pledge its commercial monogamy, the United States would not have responded by seizing some Canadian territory. The provision nonetheless underlines the profound changes that the Trump administration may bring to the global trading system.

¹¹ Calculated from World Bank data at <https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS>.

Table 5: Free Trade Agreements of the United States and China at Year-End 2018

Aggregate Figures Show Shares of Global GDP Held by All Countries in Each Row or Column

		China's FTA Partners			
		FTA in Effect (9.7% of GDP)	FTA under Negotiation (12.2% of GDP)	Under Study (2.4% of GDP)	No Plan or Agreement (36.5% of GDP)
U.S. FTA Partners	FTA in Effect (9.9% of GDP)	Australia Chile Costa Rica Korea Peru Singapore	Bahrain Israel Oman Panama	Canada Colombia	Dominican Republic El Salvador Guatemala Honduras Jordan Mexico Morocco Nicaragua
	FTA under Negotiation (27.5% of GDP)	—	Japan*	—	European Union United Kingdom
	No Plan or Agreement (22.7% of GDP)	Brunei* Cambodia Indonesia Laos Georgia Hong Kong Iceland Macau	Malaysia* Myanmar New Zealand* Pakistan Philippines Switzerland Thailand Vietnam*	India Kuwait Mauritius Moldova Norway	Palestine Qatar Saudi Arabia Sri Lanka Un. Arab Ems.

* : A country that would have been a U.S. FTA partner if the United States had ratified the Trans-Pacific Partnership.

Sources: GDP data are for 2017, calculated from World Bank data <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>. FTAs from USTR at <https://ustr.gov/trade-agreements/free-trade-agreements> and MOFCOM at <http://fta.mofcom.gov.cn/english/index.shtml>.

Countries that negotiate FTAs with both Beijing and Washington may find that the import profiles of these two countries carry different implications for partners. The Chinese pattern of trade more closely conforms to the mercantilist ideal of importing inputs and exporting finished goods. This can be seen from the data reported in Table 6 and Figure 2, which paint in broad strokes the composition of Chinese trade with various partners. Whereas more than two-fifths of U.S. exports to China consist of either raw materials or intermediate goods, those categories account for less than one-tenth of U.S. imports from China. Those imports are dominated instead by consumer goods. That same patterns can be seen in other countries' trade with China. Third parties generally find that inputs constitute a larger share of their exports to China than to the United States, and conversely that finished goods figure more prominently in their exports to the United States than they do to China. The disparity is especially wide for developing countries. Many of the U.S. imports of consumer goods will incorporate raw materials or intermediates that originated in Africa or Latin America, but the final transformation of those inputs into finished goods is now more likely to take place in China.

IV.D How Transatlantic Trade Agreements Affect the International System

Beyond the revision of existing FTAs, the Trump administration also aims to reach new, bilateral agreements that conform more closely to its illiberal predilections. The first clean sheets of paper with which it will start are agreements with the European Union, Japan, and the United Kingdom, the plans for which were announced in late 2018.

There are competing views on the implications that the planned pair of transatlantic FTAs may hold for the international trading system. One suggests that regional trade arrangements in general, and especially negotiations between the most influential countries, may undermine the existing system. It could be argued that when the United States and the European Union launched the TTIP negotiations in 2013 they were walking away from multilateralism and non-discrimination. An alternative view suggests that the proposed successors to the failed TTIP could instead contribute to the revitalization of the trading system by restoring lost momentum and setting precedents that may be taken up in subsequent agreements, including those that the European Union and the United States may negotiate with third parties. These initiatives offer a chance not only to deepen the commitments made on the new issues, but to pick up where TTIP left off on other ground-breaking topics (e.g., state-owned enterprises).

There is considerable history to support that latter view, with FTAs having offered a means for the largest economies to deal with the topics that some WTO members resist. The sequence here can go either of two ways. In one variant, the *demandeur* on a new issue may use smaller agreements as a policy laboratory, demonstrating to other members how the issue might be handled if it were later taken up multilaterally. In another variation, the *demandeur* that has been rebuffed in its efforts to bring up an issue at the multilateral level may repair instead to bilateral and regional negotiations. The first of these sequences is best demonstrated by the approach that the United States took in the 1980s towards what were then called the “new issues” of services, investment, and intellectual property rights. The precedents set by the agreements that the United States reached with its immediate neighbors, first with Canada (1988) and then with both Canada and Mexico (1992), provided a demonstration effect for the new issues that were simultaneously under negotiation in the Uruguay Round. The second sequence is best illustrated by the approach that the European Union has taken towards the four so-called Singapore issues of competition policy, government procurement, investment, and trade facilitation. Brussels pressed for WTO negotiations on these topics, but was forced by the strong opposition from developing countries to take all but trade facilitation off the table in the Doha Round. The EU negotiators then turned to FTA negotiations as their Plan B. Most of the agreements that the European Union and the United States have reached with developing country partners since the Uruguay Round cover not only the Singapore issues, but also other topics that never made it onto the table in Doha (e.g., labor rights and the environment).

Table 6: Composition of Trade between the United States and China, 2016

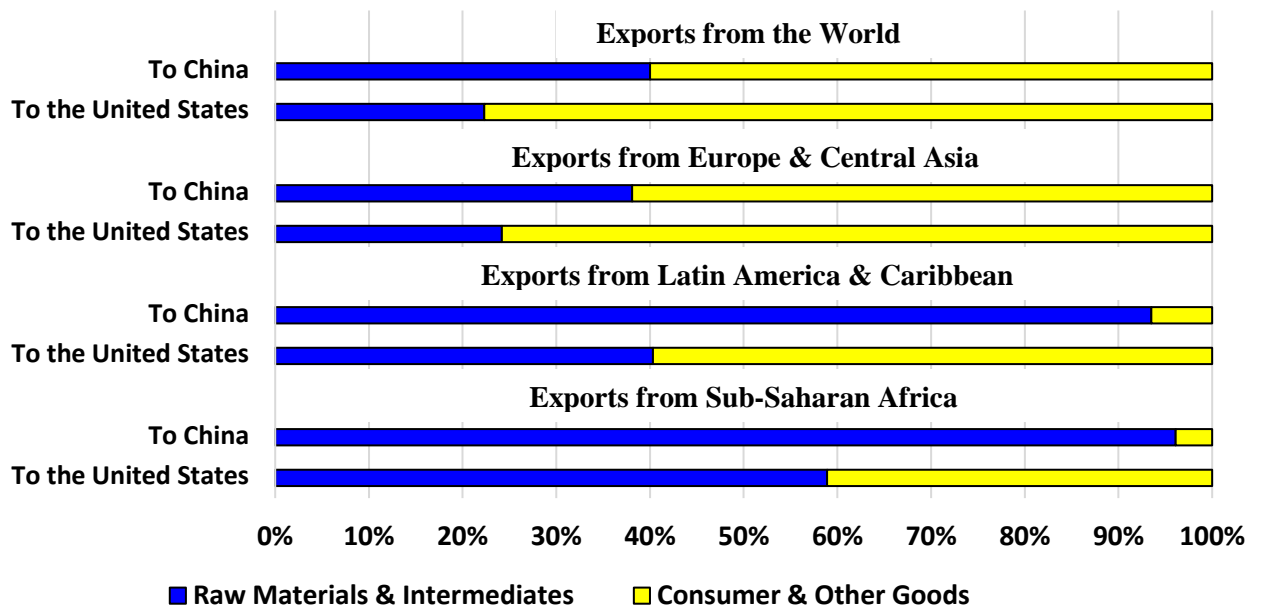
Percentage Shares of Each Country's Merchandise Exports and Imports

	Raw Materials & Intermediates	Consumer & Other Goods
Share of U.S. Exports to China	41.1%	58.9%
Share of U.S. Imports from China	7.9%	92.1%

Source: Calculated from World Integrated Trade Solution (WITS) data at <https://wits.worldbank.org/Default.aspx?lang=en>.

Figure 2: Composition of Selected Regions' Exports to Major Markets, 2016

Percentage Shares of Each Region's Total Merchandise Exports



Note that the source does not provide data specifically on the trade of the European Union.

Source: Calculated from World Integrated Trade Solution (WITS) data at <https://wits.worldbank.org/Default.aspx?lang=en>.

The facts might more strongly argue for the optimistic than the pessimistic view of FTAs, were these normal times, but that conclusion may be too sanguine in the age of Trump. This administration's priorities look as much to the past as they do to the future; for all of its emphasis on innovation and intellectual property rights, it is at least equally interested in transforming a chronic merchandise trade deficit into a surplus. The same may be said for Trump's confrontational tactics, which bear a closer resemblance to the diplomacy of the early nineteenth than the late twentieth century. Unless there is either a major change of heart in how the current U.S. government conceives and conducts trade talks, or a British and European willingness to capitulate, it is reasonable to expect that the coming talks may be lengthy and contentious. In the end, they could be just as unproductive as were the TTIP negotiations.

IV.E The Most Difficult Issues in Transatlantic Trade Negotiations

That last observation is purely speculative, and cannot be prejudged before the United States actually begins new negotiations with the European Union and the United Kingdom. A great many factors will go into determining the pace and productivity of those concurrent talks, some of which are well outside the scope of the present analysis. It is nonetheless appropriate to review the state of play in the stalled TTIP negotiations so as to gauge what may be among the more difficult topics in its bifurcated successors.

We may start with what is *not* very difficult about these negotiations. As a general rule, the United States and its European partners do not erect very high tariff barriers on goods of interest to one another. That is not surprising, considering the dominance of the transatlantic negotiators throughout the GATT period: Most of the tariff cuts made in the latter half of the twentieth century were focused on products exchanged between these largest industrial economies. The European duties remain generally higher than their American counterparts, and there are some exceptional cases on each side that are still subject to peak tariffs. That is especially true for agricultural goods, but even there the sometimes wide disparities in tariff rates are less significant than the two sides' contending positions on more arcane issues such as geographical indications, technical barriers to trade, and sanitary measures. To the extent that the TTIP market-access negotiations proved difficult, that was seen more often in services than in goods. Each side has its "sacred cows," such as audiovisual services in Europe and maritime transportation in the United States, and both have repeatedly shown that they are prepared to endanger entire negotiations — even at the multilateral level — in pursuit of their respective defensive interests in these most sensitive sectors.

Three days prior to Donald Trump's inauguration, the U.S. and EU negotiators issued the last of their joint reports on the status of the TTIP talks. In it they acknowledged several areas where they still had "significant work to do to resolve our differences in several important areas of the negotiations," which did include brief references to "the most sensitive tariff lines on both sides" and "how to expand and lock in market access in key services sectors." Most of the sticking points that they identified were instead in more complex matters of regulation, such as "how best to achieve our shared objective of providing strong investor protection while preserving the right of governments to regulate, including with respect to dispute resolution mechanisms" and "how to structure commitments on data flows that will reinforce the essential electronic commerce and digital infrastructure of our economic relationship while respecting legitimate concerns about protecting privacy." Those issues reflect differences not just in the two sides' areas of sectoral competitiveness, but more fundamental matters of governance. The same may be said for other topics on which they disagreed, such as the recognition of qualifications to facilitate licensing of experienced professionals, standards and conformity assessment procedures, and disciplines on labor and environmental protection.¹²

The TTIP talks over regulatory cooperation proved to be especially difficult. These issues were arguably the most significant topic in the negotiations, in light of the low tariffs that the two partners impose in most goods sectors. Among the objectives of the EU negotiators were reducing duplication of inspections of pharmaceutical manufacturers as well as harmonizing automotive safety regulations. The U.S. side appeared to agree in principle with many of these points, but working out the details was expected to be among the most difficult tasks. It could also be politically tricky, given the high level of scrutiny from civil society groups that have concerns over food safety, environmental protection, and related matters.

The two sides largely agreed on state-to-state dispute settlement, but were far apart on investor-state dispute settlement (ISDS). Discussions on ISDS were suspended in late 2013 in order for the EU side to review its approach, especially with respect to the appropriate mechanism. In September, 2015, the

¹² *U.S.-EU Joint Report on TTIP Progress to Date* (17 January 2017), page 3, as posted at http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155242.pdf.

European Commission presented a new proposal that centered on an Investment Court System. Bilateral negotiations on the issue resumed in early 2016, but the larger TTIP negotiations did not move much farther in the remainder of that year. It may be expected that, no matter what the two sides may agree to on this topic, it will attract some of the strongest opposition from anti-globalization activists. Many civil society groups view with great suspicion any dispute-settlement provisions in trade agreements that might have the effect of allowing corporations to challenge national regulations in a transnational judicial body.

It is uncertain just how far the Trump administration will want to treat the work done already in the TTIP negotiations as a starting point for its talks with Brussels and London. To the extent that the positions advanced during the Obama administration represent the expressed interests of the U.S. private sector, they may be reflected as well in what the new team advocates. The priorities that are assigned to each topic, however, and the maneuvers and trade-offs from the U.S. side, may nonetheless be quite different. The extent and nature of those differences will be made more apparent in the coming months, as the administration goes through the legally mandated procedures of consultation with Congress and the private sector. This will be the first time that the administration's trade policymakers are obliged to deal in depth with the legislative branch, and will need to do so in a time of divided government.

V. The Challenge of Domestic Politics

No matter who occupies the White House, trade policymaking will remain perennially challenging for a system of government that is always divided by branch and frequently by party. This is a matter of constitutional design as well as public preference, and has grown even more problematic in recent decades. Whereas government was divided in just seven of the thirty-four congresses (21%) from 1901 through 1968, the share grew to nineteen of the twenty-six congresses (73%) from 1969 through 2020.

These concerns will be more critical for Donald Trump in the coming years. He was able to act in 2017-2018 with little restraint from Congress because (1) he made full use of existing delegations of authority and (2) his party controlled both chambers. Some of the things that the administration plans to do in its second two years will require the acquiescence of Congress, including the approval of the renegotiated NAFTA and the launch of new negotiations with the European Union, the United Kingdom, and Japan. Securing those approvals will be more challenging as a result of the November, 2018 elections, in which Democrats recaptured control of the House of Representatives. The opposition party will now be in a position not only to thwart Trump's plans — should they wish to — but also to keep him and his administration occupied by a bewildering array of investigations.

V.A How a Domestic Role-Reversal Affects the Trading System

Divided government complicates all manner of policymaking, but is especially problematic for the approval of treaties. Even when the United States is the chief promoter of a new negotiation, the results may still be trashed at home. President Wilson (a Democrat) set that pattern when he signed the Treaty of Versailles in 1919, only to see the Republican-controlled Senate gut it with amendments and then disown the mutilated corpse. Harry Truman was another Democrat who did no better when in 1947 he asked Congress — once more under Republican control — to approve the Havana Charter of the International Trade Organization. The only difference was that this time the rest of the world did not try to make a rump international institution function without the United States. As troublesome as these facts may be for U.S. negotiators, they also create an opportunity. Following a “good cop, bad cop” pattern that is familiar to fans of police dramas, legislators can be made to play a usefully obstreperous role. Whenever members of Congress threaten to reject an agreement if it contains some undesirable concession, or to do the same if a key U.S. demand is not met, they hope to strengthen the executive's leverage. The fact that the coordination between legislators and negotiators is imperfect is precisely

what makes the tactic so effective. If foreign negotiators were to believe that Congress is really in the pocket of the executive, they would soon conclude that the act is nothing more than empty theatrics.

What is new about the Trump administration is that the roles have now been reversed, such that today it is Congress that more often feels compelled to be the voice of reason. The U.S. withdrawal from the TPP was unique only insofar as this time it was a president who undid a treaty, rather than letting Congress do the dirty work. Trump routinely taps into that part of the national character that is untroubled by the suggestion that it is acting in contravention of international law, sees multilateral organizations as cabals in which unscrupulous foreigners conspire to cheat Americans, and is prepared to respond not just in kind but in advance. He is not the first politician to reiterate some variation on the outdated observation that the United States has never lost a war or won a negotiation, but none of his predecessors placed so little stress on the principle of *pacta sunt servanda* (“agreements must be kept”). His administration instead seems to treat any commitments made by prior presidents as corrupt bargains or one-sided deals that it is free to violate, abrogate, or renegotiate. Of all the areas where he leaves his mark, this may have the most lasting impact on the U.S. position in the world. A future president could reverse almost any specific action that the current chief executive might take, but that would merely reinforce the message that whatever the United States promises (or threatens) today may hold only until the next change of government. A bell cannot be unrung.

V.B The Complications Brought on by New Issues

Even when presidents deal with members of their own party, they will run into trouble whenever their initiatives impinge on the constitutional prerogatives of a co-equal branch or are contrary to the economic interests of specific states and districts. Trade policymaking is made even more complicated by the introduction of new issues that are more divisive than those of past generations. Traditional fights over free trade versus protection have not disappeared altogether, but they sometimes have a lower profile than disputes over such hot-button topics as labor rights, the environment, and access to medicine. Some of these issues first arose in trade disputes that other countries took to the GATT, complaining that the United States discriminated against imports when it enacted laws to protect the environment. Other groups joined the fight after U.S. negotiators brought new issues to the table on behalf of domestic industries (e.g., patent protection for pharmaceuticals), and still others reflect the demands of social and economic activists (e.g., labor rights). Whatever the economic or legal cause, the political consequences of associating these issues with trade are enormous. New issues mean new voices, and the diversity of participants produces a clash of economic and social philosophies. This can amount to a geometric rather than an arithmetic rise in the degree of difficulty.¹³

The old struggles over narrow, commercial issues such as tariffs and quotas could typically be settled through some difference-splitting bargain or by compensating the losing side. The newest issues are notable for involving not just producers with interests but also consumers and even socially conscious spectators. Groups that are more interested in political causes than in their own economic interests are not easily placated by the usual instruments of cooption. These changes remade the tone and character of policy debates. While firms and labor unions act according to clearly identifiable economic interests in these matters, many of the new participants are ideologically inspired by political causes in which they have no financial stake. The newer entrants are interested in trade more for its political than its economic value, being less concerned by the effect of trade policy on sales and employment than on its utility to promote or retard some other end in domestic or foreign policy. These groups tend to put less faith in bargaining and compromise than do the traditional, typically more pragmatic interests. Both the tone and the outcome of a policy debate can be qualitatively different when participants are motivated by something other than narrow calculations of their own economic welfare. These new entrants are

¹³ The author examines the political economy of new issues in chapter 5 of *Trade and American Leadership*.

more likely to use the word “compromise” as a mark of opprobrium than approval, and cannot be easily bought off with exceptions or inducements.

For all of these reasons, trade politics in the 116th Congress (2019-2020) will be Byzantine. Seen from a traditional perspective, Trump’s views on trade would seem to be better aligned with congressional Democrats than with Republicans. When one looks beyond now-antiquated topics such as tariffs and quotas, however, and considers how trade relates to social issues and regulatory matters, much of that supposed similarity evaporates. The internal negotiations between the branches and the parties may prove especially difficult in the coming months, especially as each side positions itself for the presidential and congressional elections of 2020.

V.C Labor Rights as a Core Issue in the Politics of Trade

Of all the issues that have come to be associated with trade policy, none is more politically divisive than labor rights. This may be attributed to an enduring fact of American political life: For the better part of a century, labor unions have been just as closely tied to the Democratic Party as business is associated with the Republican Party. The positions of these two groups have shifted markedly on trade, and in ways that may be surprising to anyone unfamiliar with the history of U.S. policy. Prior to the 1940s, U.S. manufacturers were more committed to protection than to free trade; prior to the 1960s, just the reverse was true for most labor unions. Much of the dynamism in the partisan politics of trade can be attributed to the gradual reversal of these positions. Trade policy used to be the one issue on which the two parties were most clearly divided, with Republicans from Abraham Lincoln (in office 1861-1865) through Herbert Hoover (1929-1933) being firmly committed to protectionism, and most Democrats taking just the opposite position. The unions’ position first began to waver in the 1960s, and just the opposite happened in the Republican Party. By the mid-1980s the two groups had completely reversed their polarities.

These shifting positions have had three impacts on U.S. trade policy. The first is a sharp divide over trade adjustment assistance (TAA), a special program by which aid is extended to workers, firms, and communities that have been hurt by import competition. Whereas Democrats have strongly favored TAA ever since the Kennedy administration (1961-1963), Republicans usually oppose it. A second effect is in the partisan voting on trade agreements. From the late 1970s to the present, a majority of the Republicans in Congress could reliably be expected to approve most agreements that presidents submitted for their approval, but Democrats have been more difficult to persuade. The third difference concerns the terms on which Democrats might nonetheless be convinced to approve such agreements. As a general rule, their willingness to approve market-opening agreements has been greater whenever (1) the president concluding that agreement was a fellow Democrat, (2) the request was accompanied by an increase in TAA funding, and (3) the agreement in question included substantive provisions on labor rights.

That third point has been the most critical dividing line between the parties for years, especially for agreements in which most or all of the partners are developing countries. While there are many Democrats in Congress who will vote against almost any market-opening agreements, and some who take just the opposite view, the middle ground is held by those who insist that the United States use its leverage in trade negotiations as a means of promoting labor rights in the partner countries. The principal problem with this trade-labor link is not in the resistance that it provokes from the negotiating partners, but instead from the U.S. business community and its Republican allies. Ever since 1991, when President George H.W. Bush had to bargain hard with Congress over the initiation of the NAFTA negotiations, the domestic politics of U.S. trade policy have been repeatedly caught up in almost theological debates over this topic. Some outside observers assume that these fights are just new proxies for free trade versus protectionism, but that simplistic view of the issue does not survive a close examination

Consider the bitter fight over the FTA with Colombia, which proved to be one of the most partisan and lengthy trade fights in U.S. history. Unions and Democrats criticized Colombia’s anti-labor record,

especially the murders of union organizers and officials, and in 2006 Democrats refused even to negotiate with the George W. Bush administration over the agreement's implementing legislation. The matter was not resolved until 2011, when President Obama—a Democrat—shepherded the FTAs with Colombia, Korea, and Panama through Congress. The severity of this fight cannot be explained solely by way of sectoral interests. Colombia was only the #23 source of U.S. imports, and even less of what it provided was import-sensitive. By contrast, Korea supplied 2.5 times more imports than Colombia, and these imports were concentrated in such competitive sectors as automobiles and steel. And while Korea was the target of 17 antidumping petitions filed during 2000-2011, Colombia was subject to just one. In short, if unions and Democrats calibrated their opposition solely according to narrow calculations of protectionist interest they should have concentrated their fire on Korea. Throughout the maneuvering over these two agreements, it was widely expected in Washington that the Korean FTA would be passed as long as Seoul made a few more concessions to U.S. demands on market access for automobiles and meat, but that Democrats would prefer to kill the Colombian agreement outright. The Korean agreement ultimately won support from only a minority among Democrats in the House (31%), but that was nearly twice what the U.S.-Colombia FTA received (16%).

There are two principal questions about what role labor rights will play in the coming fights between the Trump administration and a Congress in which Democrats control one chamber. The first concerns what concessions this administration will make to Democratic sensitivities in the conduct of its negotiations. That may not be much of an issue in the immediate future, when the only FTA plans cover developed partners (i.e., the European Union, the United Kingdom, and Japan), but will become a much more important matter if and when negotiations turn to developing countries. On the one hand, Republican administrations have traditionally not wanted to make this a priority issue, and this one in particular has thus far shown almost no inclination to stress issues of human rights in international relations. On the other hand, the president's own appeal to working-class voters may pull the administration in the opposite direction.

The other question concerns whether Democrats in Congress, and their labor union allies, will want to cooperate with the administration on this one issue. Trade is the only topic on which the Democrats as a whole are more closely aligned with Trump than are the Republicans in Congress, but there are some signs of change in both parties.¹⁴ The shifts among Democrats can be seen both in the rising levels of pro-trade sentiment in that party's base and in a concurrent decline in the influence of the unions.¹⁵ As for the Republicans, there is a chance that Donald Trump's most lasting effect on domestic politics may be to return that party—or at least many of its votes and officeholders—to its protectionist roots. These are issues that may be at the forefront of U.S. trade policy over the next two years.

V.D Where Domestic Trade Politics, and International Policy, May Be Headed

The future state of the trading system may depend more on the Republican Party than on any other factor. Unless and until some major Democratic figure exerts the same influence on that party that Trump did on Republicans in 2016, but in the opposite direction, it may be safely assumed that contenders for the Democratic presidential nomination and other party honors will remain beholden to core constituencies that sometimes view globalization with deep suspicion. And while the pro-trade wing of the party might well be needed to deliver votes in specific conflicts, especially if it must

¹⁴ For a fuller review of this issue see Craig VanGrasstek, "What the 2018 (and 2020) Elections Mean for U.S. Trade Policy" (December, 2018), European Centre for International Political Economy occasional paper at <https://ecipe.org/publications/what-the-2018-and-2020-elections-mean-for-u-s-trade-policy/>.

¹⁵ The share of American workers represented by unions rose from 5% in 1933 to 22% in 1945, plateaued for a time, and then fell from 23% in 1983 to 12% in 2015. Calculated from U.S. Department of Commerce, *Historical Statistics of the United States, Colonial Times to 1970* (1975), page 178, and Bureau of Labor Statistics data at <https://data.bls.gov/pdq/SurveyOutputServlet>.

counterbalance a rising level of protectionism in the Republican caucus, we should not be surprised if it remains a minority faction for years to come.

The struggle within the Republican Party may depend in no small measure on what happens to Donald Trump, but that will not be the sole factor. Trump won the Republican nomination, and then the presidency, in part by recognizing and exploiting the economic loss, social alienation, and political disenfranchisement of those on the losing side of globalization. He could do so only because the rest of the political field overlooked this rich source of votes. No matter when or on what terms his presidency comes to an end, contenders in both parties will covet the support of that base. There is a serious risk that this could set off a race to the bottom in both parties, with candidates for Congress and the presidency competing over who may appeal to the least common denominator in the trade-skeptical quarters of the electorate.

The only certainty to emerge from the 2018 midterm election was a return to divided government. With Democrats retaking control of the House of Representatives, the opposition party is once more in a position to frustrate any administration plans that require congressional approval. It is far from certain, however, just how strongly Democrats will fight Trump on trade — or if they will fight him at all. Even if they did, he could continue to take full advantage of the broad powers that Congress has granted to presidents in this field.

VI. Concluding Observations

The trends and events reviewed above underline the peril in which the international trading system now finds itself. For good or for ill, the health of that system has depended for decades on the capacity and willingness of the United States to provide leadership. The long-term decline in that country's competitiveness, and the rise of China, has raised doubts on both points. Those doubts were only amplified by the results of the 2016 election, and by the Trump administration's actions in office. At a minimum, we have entered a period in which the United States is eager to engage in retaliation-based conflict not just with its adversaries but also its supposed allies. At the extreme, we may be moving towards a trading system in which the invisible hand of the market must compete for influence with the all-too-visible feet of government.

The outcome will depend in no small measure on the negotiations that have now begun between the United States and its partners, but these are not the only determinant of where the trading system may be headed. The freedom of movement for policymakers in Washington, Brussels, and other capitols could be circumscribed by exogenous events that interfere with even the best-laid plans. And while it is in the nature of such events to be unknown, there are at least three possibilities in the coming months that invite speculation. Trade policymaking in the near to medium term might be affected by an economic downturn, political disruptions within the United States, and the rising prospects for military conflict.

The environment in which policymakers operate may depend greatly on how the market of 2019 reacts to the trade war that began in 2018. There are some scattered and preliminary signs that this reaction could be quite bad indeed. The current U.S. economic recovery was already 91 months old on the day that Donald Trump took the oath of office, and it will become the longest in history if it continues past June, 2019.¹⁶ There are growing signs that this milestone might not be reached, and it is increasingly apparent that stock markets have grown more volatile and decidedly less exuberant. It would be costly if the world were to descend soon into a recession, a crash, or both, and yet there is a chance that such a calamity might — like the corresponding events of 1929 forward — have a sobering effect on

¹⁶ The longest expansion in U.S. history lasted precisely one decade, beginning in March, 1991 and ending in March, 2001. See National Bureau of Economic Research, "US Business Cycle Expansions and Contractions," at <https://www.nber.org/cycles.html>.

policymakers. They could show that trade wars are neither good nor easy to win,¹⁷ and drive home the lesson that irresponsible brinksmanship brings a host of consequences that are as predictable as they are unintended.

This analysis has stressed the many ways in which the Trump administration has deviated from the policies of its predecessors, and one might reasonably speculate that those policies could revert to the mean whenever the presidency next changes hands. This then begs the questions of when and on what terms that may happen. At one extreme, Donald Trump could be reelected in 2020 and remain in office through 2024; at another extreme, a full-blown constitutional crisis could soon bring his presidency to an abrupt halt through impeachment, resignation, or removal by the Cabinet. A less disruptive option would be for an increasingly isolated and frustrated Trump to announce, as Lyndon Johnson did in 1968, that he would neither seek nor accept his party's nomination for a new term. While the more extreme possibilities lay outside the scope of this analysis, it is appropriate to consider whether Trump could win reelection. The available evidence is necessarily incomplete and its implications are mixed.

Those who look forward to the end of the Trump presidency would be well-advised not to see as definitive the results of the 2018 congressional elections. While the return of the House of Representatives to Democratic control will restore a check on presidential power for the next two years, the "blue wave" of 2018 may not be a harbinger of 2020. That is the message from past "red waves" in which the electorate switched party control of the House: Although Republicans gained even more seats in 1994 and 2010 than Democrats did in 2018, Democratic presidents Clinton and Obama went on to reelection in 1996 and 2012, respectively. We should be similarly cautious regarding the predictive value of public opinion polls two years before an election. It is true that Donald Trump currently suffers from a low approval rating, with one outfit calculating his mid-term average at 42.2%, but this is actually better than Ronald Reagan did at the same point in his presidency (41.1%) and only slightly worse than the numbers for Bill Clinton (44.8%) and Barack Obama (44.5%). All three of these men went on to win second terms. By contrast, recent one-term presidents seemed to be in healthier shape than Trump at this stage; Jimmy Carter polled at 50.6% when he was halfway through his mandate, and George H.W. Bush did considerably better (61.2%).¹⁸

The prospects for impeachment, or for some other precipitous end to the Trump presidency, will depend in the first instance on what evidence is uncovered by the special counsel. Unless that probe delivers irrefutable evidence of treason or severe corruption, it is difficult to imagine the Senate following up any House vote for impeachment with the actual removal of the president. Republicans still control the Senate, where removal would require a two-thirds vote, and Democrats are well aware of the old saying that if you shoot at the king you had better not miss. That was a lesson the Republicans learned to their regret during the Clinton administration, when an incomplete impeachment attempt led to a great rarity in American politics: The Democrats actually gained seats in the 1998 congressional elections, even though the party that holds the White House almost always suffers major losses in a president's second mid-term election.

The chances are nonetheless quite high for serious disruptions in the coming months, and there is no guarantee that trade conflicts will be the only type of war in which the United States becomes engaged. To the contrary, it is quite easy to imagine scenarios in which any or all of the aforementioned sources of friction get entangled with a new or expanded military conflict. There is no shortage of flashpoints where this might happen, and if a suitable conflict does not come about naturally one can easily be arranged. International crises are practically the only events that can give strong and immediate boosts to a president's polls, as was most recently demonstrated in the events of the two Bush presidencies.

¹⁷ See the now-infamous Trump tweet of March 2, 2018, as recorded at <https://www.cnbc.com/2018/03/02/trump-trade-wars-are-good-and-easy-to-win.html>.

¹⁸ These average approval ratings are as calculated by Fivethirtyeight for each president's 701st day in office, as posted at <https://projects.fivethirtyeight.com/trump-approval-ratings/>.

The U.S. wars with Iraq both produced temporary spikes in these two men's approval ratings, and the impact of the 9/11 attacks was even larger and longer.¹⁹ Donald Trump has already shown his willingness to use American troops as election props, having dispatched troops to the southern border immediately prior to the 2018 congressional election. Even though that stunt proved ineffective, it implied that the president might be inclined to try a similar ploy on a much grander scale in the run-up to the next presidential election.

In short, the turmoil that we are now experiencing in the international trading system is not unique. There is every chance that the coming years could prove to be unusually tempestuous, and trade issues might well be key elements in a widening series of conflicts.

¹⁹ See the Gallup Poll data reported at <https://news.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx>.

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