

STUDY

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Consequences of US trade policy on EU-US trade relations and the global trading system



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ABSTRACT

The Trump Administration's trade policy is driven by the belief that previous Administrations have let other countries take advantage of the United States for foreign policy reasons, as demonstrated by America's more open trade regime and its trade deficits. It is determined to end this perceived imbalance by demanding reciprocity instead, and is willing to use tough tactics to achieve this through strict enforcement of its procurement and trade defense law; expansive tax provisions; bringing the WTO dispute settlement to a halt; withdrawing from and forcing others to renegotiate existing bilateral and multilateral agreements; adopting a novel "national security" argument to justify breaking WTO tariff commitments for steel, aluminum and possibly autos; and enacting punitive tariffs on billions of dollars of imports from China, possibly threatening a trade war. The scenarios for U.S.-EU trade relations as well as the global trading system are anything but rosy. The EU can stand up to the Administration's "bullying," or it can take advantage of America's need for a "re-balancing" to build its own stature by taking simple steps to improve EU-U.S. trade, forging a way forward in the WTO, and providing necessary leadership to address the dangers China's economic system poses to the global trading order.

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Executive summary

Since taking office in January, 2017, President Trump and his Administration have adopted an exceptionally assertive trade policy geared toward achieving a “free, fair and reciprocal” (with an emphasis on that last word) trading system. This reflects the long-held personal view of the President, as well as of many of the millions who voted for him, that the rest of the world has taken a free ride on the relative openness of the U.S. economy. The approach was laid out clearly in the Administration’s first Trade Policy Agenda, which stressed that the Administration “reject(s) the notion that the United States should, *for putative geopolitical advantage*,¹ turn a blind eye to unfair trade practices that disadvantage American workers, farmers, ranchers, and businesses in global markets.” Or as U.S. Trade Representative, Robert Lighthizer, later elaborated, “We must use all instruments we have to make it expensive to engage in non-economic behavior ... We must demand reciprocity at home and in international markets.”

Although this new U.S. “America First” assertiveness has been disruptive, including to America’s allies, the White House sees little reason to change, as it still resonates with many of the President’s voters and has had the intended effect of shaking up the status quo.

The Administration’s policies – which began on the President’s first full day in office, when he withdrew the United States from the Trans-Pacific Partnership (TPP) Agreement -- are evidenced in both key domestic measures, especially on procurement and tax, that have significant trade effects, as well as in traditional areas of trade policy – trade defense measures, the WTO, bilateral trade negotiations, using “national security” to protect key industries, and in particular addressing what the President and his team consider the most difficult challenge, China. Specifically, as detailed in Part Two below, the Administration has:

- Significantly restricted the use of exceptions to “Buy American, Hire American” in U.S. government procurement contracts;
- Supported provisions in the December 2017 tax reform that arguably disadvantage imports as well as foreign investors in the United States;
- Intensified the use of traditional trade defense (anti-dumping and countervailing duty) instruments, issuing 122 affirmative decisions against dumped and subsidized imports in its first 20 months (a 221 percent increase over the previous Administration), including a self-initiated case against imports of Chinese aluminum sheets;
- Approved two “safe-guard” actions against imports of washing machines and solar cells;
- Blocked the appointment of new members to the WTO’s Appellate Body to pressure the organization to compel that body to restrict its work to the interpretation of WTO law (as written, rather than as inferred) and to do so in a timely fashion;
- Launched the re-negotiation of NAFTA, reaching agreement in principle with Mexico at the end of August 2018 that, inter alia, significantly tightened the rules of origin on autos (to 75 percent, including mandating that 40-45 percent be made with labor costing \$16 per hour) and extended the protection of biologics to 10 years; this bilateral agreement also significantly increased the pressure on Canada to conclude quickly (the negotiations over such tough issues as dairy and dispute resolution are continuing); the text will be sent to congress by the end of September;
- Amended the U.S.-Korea agreement, including in particular to provide greater access for U.S. auto exports into the Korean market;
- Effectively ended negotiations toward an “comprehensive and ambitious” Transatlantic Trade and Investment Partnership with the European Union in favor of smaller and more immediate wins;
- Began preparations for a free trade agreement with the United Kingdom, the negotiations for which will begin after the United Kingdom withdraws from the European Union in March 2019;

¹ Emphasis added.

- Began to lay the groundwork for further negotiations in Asia (especially Japan, Vietnam and the Philippines) as well as Latin America (especially Colombia);
- Imposed tariffs of 25 percent on virtually all imports of steel, and of 10 percent on imports of aluminum using the novel (for the United States) argument of a “national security” need to ensure the profitability and viability of these two industries (Australia, Brazil, Korea and Mexico have agreed to a tough voluntary export restraint regime in lieu of the tariffs), while launching an investigation on autos; and
- Hit China with massive tariffs covering \$50 billion of imports in response to an investigation into China’s practices on forced technology transfer, while threatening to increase this by another \$200 billion, and possibly a further \$267 billion, should China not withdraw its retaliation for the initial punishment.

These actions, many feel, could spin out of control, creating scenarios that see a serious disruption of the transatlantic economic relationship and indeed possibly a global trade war. EU Commission President Juncker’s July 25, 2018 meeting with President Trump in Washington established a cease-fire, but did not significantly raise the probabilities of achieving the EU’s ideal outcome of essentially returning to the world of January 2017, albeit likely with TTIP-minus. A less-desirable, but manageable, scenario of the ECU accepting steel and aluminum VRAs, the Administration refraining from imposing new duties on auto imports and some small improvements in bilateral trade is possible (one-third probability), but today the most likely outcome includes the Administration announcing punitive tariffs on imports of autos and auto parts for national security purposes. The cost to the EU of avoiding having these tariffs applied to it are high; the disruption that would stem from responding to their application would be politically and economically huge. At the same time, the scenarios on the global level are also tough, in the WTO (where the Appellate Body could soon cease to function) and, most significantly, with respect to China, where the prospects of a U.S.-China trade war are very high.

These outcomes, however, are not foreordained; the European Union in particular has the capability to make a difference and set things on a more constructive direction, at the transatlantic, WTO and China levels. Rather than feeling it is being forced by U.S. moves to negotiate under pressure, the EU could focus on the motive underlying the Administration’s trade policy – it’s perceived need for a “re-balancing” in the global economy, away from a world where the U.S. sees itself as being “taken advantage of.” Such a re-balancing implies that others should accept a greater responsibility, and with it, authority. This is a role the EU can and should relish.

Bilaterally, this could consist of pressing for real progress on a “tariff only” free trade agreement with the United States, including covering tariffs and quotas on most agricultural products but importantly leaving the food safety issues (which are the real barriers to trade, on both sides of the Atlantic) to be handled separately. In part this helps get around the arguably false (and potentially dangerous) linkage between agricultural market access and government procurement. Regulatory issues could be fully separated from the trade negotiations, and focused on improving regulatory agency efficiency and thus effectiveness, which addresses a key concern of those in Europe who opposed TTIP. And mechanisms to get better recognition of standards in Europe and the United States could be developed that would settle a long-running (and unnecessary) EU-U.S. argument, while also providing significant movement on the important automotive front in a way that might forestall the Administration’s application of national security to the auto sector.

In the WTO, the United States has outlined legitimate legal concerns; the EU can – and indeed is – help encourage others to address these.

And finally, the EU can and should build on the existing EU-U.S.-Japan efforts to strengthen WTO disciplines on China’s more distortive practices by helping develop and lead a large coalition of countries in filing a big, bold and comprehensive complaint against China in the WTO, one that covers both specific Chinese violations of its WTO commitments, but also addresses the “nullification and impairment” of benefits that

arise because of China's non-market economy. Just filing such a case, with a wide range of developing as well as developed countries, would have a major political impact in Beijing – an impact that might be more important than the litigation. Washington alone today would not be able to develop such a coalition; the EU, working with Japan and others, could. And while the combination of that significant political rebuke and the Trump Administration's tough approach might not work, it's worth a try.

1 Introduction

The Trump Administration's assertive approach to trade policy has unsettled the global economy, as well as traditional trading relations, including with allies such as the European Union. Trade is one of the few areas in which President Trump has held a consistent and long-established position, reaching back to the 1980s and thus long before he entered the political scene.

The most important feature of President Trump's view is his persistent focus on trade imbalances. President Trump has repeatedly and continuously interpreted the U.S. trade deficit – both the overall, as well as individual bilateral ones – as direct U.S. losses, claiming for example that the United States had “lost \$800 billion a year on trade.”² In the President's view, the United States is already “losing” in its current trade relationship, so that even an aggressive and unconventional shaking of the status quo is an acceptable risk. In this vein, he famously stated that when “a country (like the United States) is losing many billions of dollars on trade with virtually every country it does business with, trade wars are good, and easy to win.”³

The President's strong views on trade helped him win office in the Electoral College, including in rural and formerly industrialized states like Wisconsin and Ohio, and he clearly believes that his message that the United States should no longer allow others to take advantage of it has strong political resonance. So far, he has seen little reason to change that view.

By itself, the fact that trade played an important role in the presidential election is not necessarily an indication of a broader shift in American views on trade. Many candidates for President, including Barack Obama, have often criticized trade deals such as NAFTA during political campaigns. However, the fact that the 2016 campaign saw the four leading candidates in both parties take a critical view may signal an increased resonance of the topic. During the campaign, polling indicated split views on the issue with 45 percent of voters saying free trade agreements had been a good thing for the U.S. and 47 percent taking the opposite view. Remarkably, the same polling showed that Republican voters increasingly took a more negative stance towards trade and free trade agreements, while Democrats, historically the more trade-skeptical party, were overall more in favor.⁴

The midterm elections in November 2018 will deliver further insights on the evolving views on trade in the United States, although most observers now believe it will be more a referendum on the President himself rather than his Administration's trade policies. Given the strategic composition of retaliatory tariffs against some of the Administration's actions by China, the European Union and others, whose duties mostly target politically important battleground or Republican-held states (for example Midwestern states, focused on agricultural exports), trading partners clearly hope that the possible political repercussions of the ensuing economic pain will help curtail some of the Administration's more assertive policies.

So far, the actual economic impact has not been sufficiently strong to ascertain whether these measures will have any political impact. However, current polling indicates that – as on all other issues – trade-related questions are increasingly judged in partisan categories. A July 2018 poll by the Pew Research Center found that while a plurality of 49 percent said that increased tariffs would be bad for the country and only 40 percent of overall respondents thought they would be good, among Republicans that number was higher at 73 percent.⁵ Similarly, another poll in the important battleground state of Wisconsin found that while overall 55 percent of respondents said increased tariffs would hurt the U.S. economy, a plurality of 44

² Jim Tankersley: [Trump Hates the Trade Deficit. Most Economists Don't](#), New York Times, March 5, 2018

³ Thomas Franck: [Trump doubles down: 'Trade wars are good, and easy to win'](#), CNBC, March 2, 2018

⁴ Carol Doherty, Jocelyn Kiley, and Bridget Johnson: [Clinton, Trump Supporters Have Starkly Different Views of a Changing Nation](#), Pew Research Center, August 18, 2016

⁵ John Laloggia: [As new tariffs take hold, more see negative than positive impact for the U.S.](#), Pew Research Center, July 19, 2018

percent of Republicans said they would be good for the economy (79 percent of Democrats thought they would be bad).⁶

But while these politics play out, it is important to understand the actual nature of the substance of the Administration's trade policy, beyond the rhetoric and the tweets.

- The **second part** of this report describes these policies in detail, focusing on policy steps actually taken, as reflected in presidential documents and formal actions taken by the Administration. It starts by reviewing some of the major domestic policies with trade consequences, including in particular on government procurement and taxes, before turning to more traditional trade policy instruments, including trade defense, the WTO, various trade agreements and negotiations (including TPP, NAFTA, Korea, the EU, the United Kingdom and others); this section also looks in detail at the Administration's novel use of Section 232 "national security" measures, and the critical aspect of its approach to China.
- The **third part** presents a number of possible near-term scenarios for how these measures are likely to play out over the next six months, that is, until the eve of the European Parliament elections in May 2019, both at the EU and the global levels.
- The **fourth part** then offers some concluding observations on what the European Union might do to try to place the transatlantic trade relationship on a more constructive footing, especially in light of President Juncker's July 25, 2018 meeting with President Trump, focusing on the bilateral trade relationship, the WTO, and critically China.

In the end, the report suggests that, stripped of the noise, President Trump and his Administration seek a "re-balancing" of America's role in the global economy. They believe, and many Americans who voted for the President appear to agree, that the United States has been too open in the past, and allowed others to "take advantage" of it, to its own detriment. The many international treaties and organizations the country is part of have cemented in those "unfair" conditions, and tough measures are needed if there's to be any chance of a change.

Such an approach, while generating tumult, also opens up opportunities for the European Union. Whether the Administration recognizes this or not, a rebalancing of responsibility away from the United States means that others will gain in responsibility, and stature. That may not be what the Administration has in mind. But it is an inevitable result. The European Union can take advantage of this, but will need to have a clear vision of the outcomes it wants, and discipline and determination in executing a strategy to reach that goal, if it is to do so.

⁶ Marquette University Law School: [New Marquette Law School poll finds roughly one in three Wisconsin voters still undecided one month before primaries](#), July 18, 2018

2 U.S. trade policy under the Trump Administration

2.1 The Trump Administration's "America First" approach to trade policy

Donald Trump was inaugurated as the 45th President of the United States on Friday, January 20, 2017. On Monday, January 23, his first full working day in office, the President signed a Presidential Memorandum⁷ instructing the Office of the U.S. Trade Representative to withdraw the United States' signature from Trans-Pacific Partnership (TPP).

That withdrawing the United States from TPP was President Trump's first executive action on trade shows the significance of that agreement to him, but it was both consistent with his rhetoric as a candidate and set the stage for a string of subsequent actions that demonstrate a consistent trade policy - the Administration promised to put America First, and would no longer allow others to "take advantage of" the United States. Or, as articulated in the President's 2017 Trade Policy Agenda:

"Every action we take with respect to trade will be designed to increase our economic growth, promote job creation in the United States, promote reciprocity with our trading partners, strengthen our manufacturing base and our ability to defend ourselves, and expand our agricultural and services industry exports. As a general matter, we believe that these goals can be best accomplished by focusing on bilateral negotiations rather than multilateral negotiations – and by renegotiating and revising trade agreements when our goals are not being met. Finally, we reject the notion that the United States should, for putative geopolitical advantage, turn a blind eye to unfair trade practices that disadvantage American workers, farmers, ranchers, and businesses in global markets.... (t)he Trump Administration has identified four major priorities: (1) defend U.S. national sovereignty over trade policy; (2) strictly enforce U.S. trade laws; (3) use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services, and provide adequate and effective protection and enforcement of U.S. intellectual property rights; and (4) negotiate new and better trade deals with countries in key markets around the world."⁸

Consistent with that policy orientation, in its first months in office, the administration issued a number of Executive Orders and Presidential Memoranda laying out an assertive "America First" trade strategy. Specifically, it:

- announced an intent to re-negotiate NAFTA (February 2, 2017);
- ordered a report on significant trade deficits (March 31);
- strengthened enforcement of anti-dumping and countervailing-duty measures (March 31);
- issued "Buy American, Hire American" (April 18);
- launched national security investigations into imports of steel and aluminum (April 20 and April 27 respectively);
- initiated a study on trade agreement violations and abuses (April 29);
- called for a review of and possible modifications to the U.S.-Korea Free Trade Agreement (July 21); and
- began a Section 301 investigation into China's IPR theft (August 14).⁹

⁷ The White House: [Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement](#), January 23, 2017.

⁸ Office of the U.S. Trade Representative: [The President's 2017 Trade Policy Agenda](#), page 1.

⁹ Hyperlinks to the texts of these Presidential actions, as well as subsequent official orders implementing decisions arising from them, are available in Annex I.

Robert Lighthizer, sworn in as U.S. Trade Representative on May 15, 2017,¹⁰ expressed the same philosophy during remarks at the Center for Strategic and International Studies (CSIS) in Washington on September 18 of that year.¹¹ He emphasized that he and the President believe in free trade, but that other governments do not practice it. In a response, he said,

“We must use all instruments we have to make it expensive to engage in non-economic behavior, and to convince our trading partners to treat our workers, farmers, and ranchers fairly. We must demand reciprocity at home and in international markets.”

He argued further that trade deficits matter. While he acknowledged that many factors cause them, persistent deficits, he said, indicate a problem with the rules of trade. His third major point was on China, which has by far the largest bilateral trade surplus¹² with the United States:

“I believe that there is one challenge on the current scene that is substantially more difficult than those faced in the past, and that is China. The sheer scale of their coordinated efforts to develop their economy, to subsidize, to create national champions, to force technology transfer, and to distort markets in China and throughout the world is a threat to the world trading system that is unprecedented. Unfortunately, the World Trade Organization is not equipped to deal with this problem. The WTO and its predecessor, the General Agreement on Tariffs and Trade, were not designed to successfully manage mercantilism on this scale. We must find other ways to defend our companies, workers, farmers, and indeed our economic system. We must find new ways to ensure that a market-based economy prevails.”

And fourth, in looking at U.S. trade agreements, Lighthizer opined,

“It is reasonable to ask after a period of time whether what we received and what we paid were roughly equivalent. One measure of that is change in trade deficits.”

Critically, in later comment he added,

“...We prefer bilateral trade agreements to plurilateral and multilateral trade agreements. The working assumption is that if you have an \$18 trillion economy, you can do better negotiating individually.... Not only can you negotiate better agreements, but you can enforce them more easily....”

The following section of this part of the report looks at many of these policy pronouncements in depth, starting with domestic policies with major trade implications (including both “Buy American and Hire American” and the tax reform), the Administration’s approach to the WTO, and its approach to and status of other major trade agreements.

¹⁰ During his confirmation hearings, Mr. Lighthizer – who covered trade policy on the Senate Finance Committee from 1978 to 1983, and was Deputy US Trade Representative from 1983-1985 -- supported the President’s “America First” approach, but his responses to virtually all questions were in line with “traditional” American trade policy, including on agriculture, geographic indications, Airbus subsidies, intellectual property, etc. He even noted that the Trans-Pacific Partnership (TPP) agreement negotiated by his predecessor, Michael Froman, provided an excellent basis for renegotiating NAFTA. He did indicate a need for a “paradigm shift” on policy toward China, and hinted that he “had some ideas” on ways to make U.S. trade policy, especially on China, more robust, although he explicitly refused to talk about those in public. See Senate Finance Committee, [Nomination of Robert E. Lighthizer, Hearing S. Hrg. 115-164](#), March 14, 2017, especially pages 17, 26-27.

¹¹ Center for Strategic and International Studies 2017: [U.S. Trade Policy Priorities: Robert Lighthizer, U.S. Trade Representative](#), transcript of remarks, September 18, 2017.

¹² The U.S. (goods) trade deficit with China in 2017 was \$375 billion; the next three largest were with Japan (\$69bn), Germany (\$65bn) and Mexico (\$63bn).

2.2 Domestic policies with major trade implications

2.2.1 Buy American, hire American

One of President Trump's earliest Executive Orders was on "Buy American and Hire American."¹³ This order does not change existing US government procurement (or visa) law but seeks to significantly strengthen the enforcement of it in ways that affect trade.

Specifically, the Executive Order (EO 13788) affirms the Administration's policy "to maximize ... (for) Federal procurements the use of goods, products and materials made in the United States." Accordingly, the Executive Order instructs all agencies to "scrupulously monitor, enforce and comply with Buy American Laws" and to "minimize the use of waivers" that allow the use of foreign products when U.S. products are either not available or relatively expensive.

Elaborating on this basic policy, Section 3 of the Order instructs heads of departments to prepare a detailed report on each departments' use of waivers, including the impact such waivers might have on American jobs, and to propose policies to ensure the departments maximize their use of products made in the United States, including "components of manufactured products; and materials such as steel, iron, aluminum and cement." They are to report these findings and recommendations to the Secretary of Commerce and the Office of Management and Budget (OMB), which will produce annual reports to the President (normally on November 15). The guidance¹⁴ which Commerce Secretary Ross and OMB Director Mulvaney provided agencies for this report interestingly solicits particular information about when exceptions were used in order to remain compliant with U.S. trade agreements, including the WTO Government Procurement Agreement (GPA).

EO 13788 Section 4 then instructs agency heads to be "judicious" in the issuance of waivers, and in particular requires agency heads, prior to issuing a waiver, to "take appropriate account" of whether the cost advantage of the foreign-supplied goods might derive from the use of dumped or subsidized steel, iron or manufactured goods in the supplying foreign country (that is, including the use of subsidized products such as steel from third countries such as China).

The first report pursuant to this Executive Order was due to the White House by November 24, 2017. As of September 2018, it had not been published, but a White House official was quoted in December 2017 as indicating the reports were for internal Administration use.¹⁵

2.2.2 Tax reform

A cornerstone of President Trump's "Make America Great Again" agenda was to pass a sweeping tax reform that would lower the tax burden on companies, the self-employed and individuals. Any such reform, of course, would have major macro-economic implications for U.S. trade, primarily by stimulating imports through increased consumer demand and expanding the fiscal deficit.

But many outside the United States were also deeply concerned that a Republican-led tax reform under a Trump Administration would have much more drastic implications for U.S. trade policy. The Speaker of the House, Paul Ryan, and the Chairman of the House Ways and Means Committee, Kevin Brady, had in Summer 2017 published an outline of a tax reform that would have radically transformed the U.S. tax system. Specifically, the June 24, 2017 "A Better Way" Blueprint¹⁶ would have instituted a "Destination-Based Cash Flow Tax" (DBCFT), which would include border adjustments that forgive taxation on revenues generated

¹³ President Trump: [Executive Order on Buy American and Hire American](#), EO 13788, White House, April 18, 2017.

¹⁴ Wilbur Ross and Mick Mulvaney: [Memorandum for Heads of Departments and Executive Agencies, Assessment and Enforcement of Domestic Preferences in Accordance with Buy American Laws, M-17-27](#), White House, June 30, 2017.

¹⁵ Analytical Note: [Presidential Trade Directives Have Yet to Produce Tangible Results](#), Inside US Trade, January 4, 2018 (paywall).

¹⁶ House Republican Policy Committee : [A Better Way: Our Vision for a Confident America -- Tax](#), June 24, 2017

by exports and remove the cost of imports from operating expenses in calculating the corporate profit subject to tax. The Republicans argued that the “destination-based cash flow” approach was justified as it mimics the effects of a value-added tax (an indirect tax targeted on domestic consumption used by some 160 countries) by focusing corporate taxation just on domestic sales. Unlike a territorial system, which taxes domestic profits, the destination-based border adjustment focused on where sales are generated; this essentially neuters base-erosion/profit shifting tactics whether through transfer prices (the system ignores efforts to understate costs of exports or overstate the value of imports to reduce the tax base), foreign borrowing (no interest deduction) or IP (royalties paid for goods sold overseas are ignored).¹⁷

One of the main concerns about the DBCFT was its WTO compatibility, not least as the U.S. had lost cases at the World Trade Organization (WTO) before for tax schemes meant to help shield exporters (specifically the Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) schemes, both of which shielded foreign revenues of large exporters from taxation). The Republicans argued that the economic effects of the destination-based cash flow approach were close to those of a VAT, which is imposed on imports and rebated for exports; the only “real” difference is that indirect taxes that have trade effects are forgiven under the WTO subsidies rules, while direct corporate taxes are not. And indeed, some argue that a DBCFT that taxes cash flow, allows expensing of capital investment and disallows net interest can be made into a “subtraction method VAT” that would likely meet WTO rules. The key problem with the Republican Blueprint, however, was that it allowed for the deduction of labor costs, which arguably created a significant bias in favor of domestic products over imported ones.

In the end, it was this bias against imports that brought down the Republican plan. Key Senators, including the Chairman of the Senate Finance Committee, were concerned about its WTO compatibility; perhaps more important, large importers such as Walmart vigorously opposed it.

The Tax Cuts and Jobs Act that was finally signed into law on December 20, 2017 has notable international economic consequences, not least in significantly reducing the corporate tax rate (from 35% to 21%), expanding the U.S. fiscal deficit (and thus possibly the trade deficit) and attracting back to the United States potentially hundreds of billions of dollars of overseas earnings that had not been repatriated (tax on global income applied only on repatriation; this “deferred” tax liability has now been given a “holiday” and will be taxed only at 8.5%).¹⁸ Further, the law moves toward a “territorial” system in that profits earned by US subsidiaries abroad will not be taxed.¹⁹

But more directly in terms of trade policy, while the law does not include the “border adjustment tax,” it does include at least three provisions which are questionable from a trade policy perspective: the “Global Intangible Low Tax Income” (GILTI) and “Foreign Derived Intangible Income” (FDII) together create a minimum tax on worldwide income from intellectual property, while the “Base Erosion and Anti-Abuse Tax” (BEAT) discourages US-based firms from having “excess” payments to foreign affiliates (again, often for intellectual property, but here also including repayment on intra-firm loans).²⁰

Specifically, GILTI presumes that any earnings by foreign-affiliated companies that exceed 10 percent of the subsidiary’s “Qualified Business Asset Investment” income is due to (unjustified) intellectual property royalties payments. As this foreign-earned income would otherwise not be subject to tax under the new U.S. system, the new law creates GILTI as a new category of foreign income, and then subjects it to an

¹⁷ Kyle Pomerleau and Stephen Entin: [The House GOP’s Destination-Based Cash Flow Tax, Explained](#), Tax Foundation, June 30, 2016.

¹⁸ Thomas Brathhold: [Letter to House Ways and Means Committee](#), August 31, 2016, estimates that US firms hold \$2.6 trillion in deferred taxes abroad.

¹⁹ Technically, the “participation exemption” provides that profits that are repatriated as dividends can be fully expensed against taxable income, thereby eliminating the potential tax liability.

²⁰ For an excellent description of these provisions, see Pomerleau, Kyle 2018 :[A Hybrid Approach: The Treatment of Foreign Profits Under the Tax Cuts and Jobs Act](#), Tax Foundation, May 3, 2018.

effective rate of 10.5 - 13.12 percent. While this might be seen as a way to address base-erosion and profit-shifting from the point of view of the United States, to some non-American firms that have subsidiaries in the United States, it could also create an additional tax liability (the damage of which would be offset by the new lower corporate tax rate).

The Foreign Derived Intangible Income (FDII) provision is arguably more difficult from a trade policy perspective. Here, income generated by export sales (and thus “foreign derived”) that exceeds a 10% return on “Qualified Business Asset Investments” is presumed to come from the intellectual property value of the export and is subject to a lower effective tax rate as over one-third (37.5 percent) of this income can be deducted from US earnings. The European Commission has already indicated that this could be considered a WTO inconsistent subsidy.²¹

In the Base-Erosion Anti-Abuse Tax (BEAT), large multinational companies that have revenues in excess of \$500 million will need to pay a 10% minimum tax on a “modified” taxable income, which is calculated by taking the ordinary taxable income and adding back “base erosion” expenses to affiliated foreign companies that had been deducted, including payments for services, interest, rents and royalties. Again, the Commission has indicated BEAT could give rise to discriminatory charges between foreign and US-domestically supplied goods and services in violation of the WTO. Similarly, a number of EU finance ministers also questioned this provision, in particular in its consistency with US double taxation agreements.²²

2.3 Trade defense

In a way, the tax reform as passed reflects more the view of Congress than the Administration, although the Administration supported these provisions and Treasury Secretary Mnuchin has defended them against the concerns of his European counterparts.

More directly in terms of trade policy, the Trump Administration places a top priority first on enforcing existing trade law, and in particular through anti-dumping (AD) and countervailing duty (CVD) measures - with the novel twist of also self-initiating cases. In addition to a notable increase in the use of these “traditional” trade defense instruments, the Administration has also already enacted two “safeguard” actions under Section 201 of U.S. trade law, which it has duly notified to the WTO (in contrast to the Section 232 “national security” cases, discussed below). As the President put it in his first State of the Union address:

“I believe strongly in free trade, but it also has to be fair trade. It’s been a long time since we had fair trade. The first Republican President, Abraham Lincoln, warned that the ‘abandonment of the protective policy by the American government... will produce want and ruin among our people.’ Lincoln was right — and it’s time we heeded his advice and his words. I am not going to let America and its great companies and workers be taken advantage of any longer. They (foreign interests) have taken advantage of our country. No longer.”²³

²¹ Pierre Moscovici: [Response to Parliamentary Questions, Answer Given on Behalf of the Commission](#), European Commission, March 22, 2018.

²² Nils Zimmerman: [US Tax Reform Breaks Global Rules, EU Says](#), Deutsche Welle, December 19, 2017.

²³ President Donald Trump: [Remarks by the President in Joint Address to Congress](#), White House, February 28, 2017.

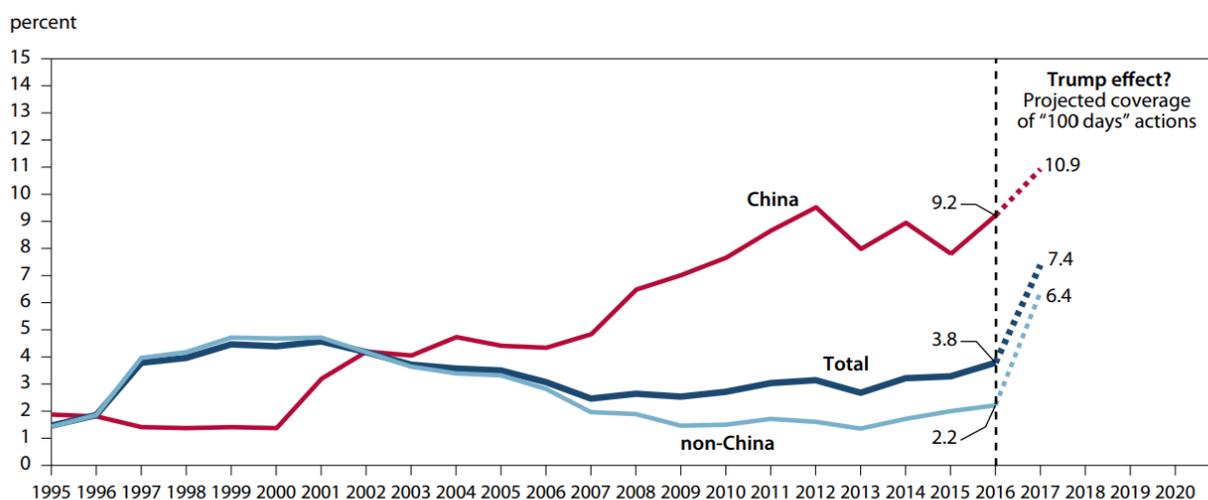
2.3.1 AD/CVD

In one of his first foreign economic policy acts, President Trump issued an Executive Order on March 31st, 2017 to “establish enhanced collection and enforcement of antidumping and countervailing duties (AD/CVD) and violations of trade and customs laws.”²⁴

The Executive Order instructs USTR, the Commerce Department, Customs and Border Protection (CBP), Homeland Security, and the Justice and Treasury Departments to aggressively investigate unlawful evasion of AD/CVD duty orders. CBP’s authority to protect rights holders from intellectual property rights infringements was also enhanced, as was sharing of information regarding merchandise imports that violate trade laws. Acting Commissioner Kevin K. McAleenan said that the executive order gives CBP “important and powerful new tools to further level the playing field for critical U.S. industries.”²⁵ The warning against violations of U.S. trade and customs laws was also emphasized in the Administration’s first Trade Policy Strategy.²⁶

Not surprisingly, since the beginning of the Administration through the end of August 2018, the Department of Commerce has made affirmative decisions of dumping and/or subsidization in 122 AD/CVD investigations, a 221 percent increase over a similar period in the previous Administration.²⁷ According to an earlier study, the share of U.S. imports from China subject to AD/CVD orders had increased from 9.2 to 10.9 percent, with an increase from 2.2 to 6.4 percent for non-China countries.²⁸

Figure 1: Share of US imports covered by barriers imposed under trade laws, including projection for Trump’s first “100 days”



Trade laws = antidumping, countervailing duties, global safeguards, and national security
 Note: 2017 projections based on policies described in table 2.

Calculation done by the author of the original paper

²⁴ President Donald Trump: [Presidential Executive Order on Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Law \(EO: 13785\)](#), The White House, March 31, 2017.

²⁵ U.S. Customs and Border Protection: [CBP to Implement Executive Order: Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws](#), March 31, 2017

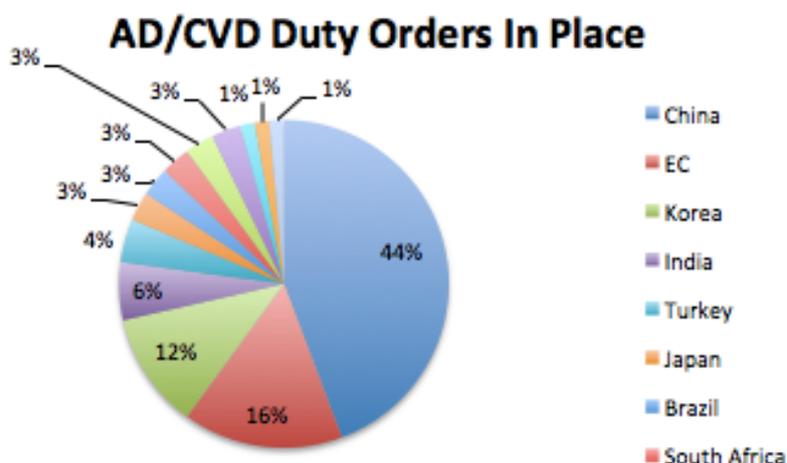
²⁶ Office of the United States Trade Representative: [The President’s 2018 Trade Policy Agenda](#)

²⁷ US Department of Commerce: [U.S. Department of Commerce Issues Affirmative Preliminary Antidumping Duty Determination on Rubber Bands from China and Thailand](#), August 30, 2018

²⁸ Chad Bown: [Steel, Aluminum, Lumber, Solar: Trump’s Stealth Trade Protection](#), Peterson Institute for International Economics, Report 17-21, p. 9.

While the affirmative decisions by Commerce are a good indication of the Administration’s intent, a better measure of their impact on trade is through data provided by the U.S. International Trade Administration (USITC), which must make a finding of injury before a Department of Commerce determination can go into effect. According to USITC data, the United States put 70 orders in place during the first year and a half of the Trump Administration, among which China accounted for 44 percent. EU member states were covered by 16 percent of those orders. Iron and steel mill products (ISM) were by far the most heavily covered products, perhaps anticipating the Administration’s later decision to adopt a Section 232 “national security” decision on steel and aluminum imports. (See Figures 2 and 3 below.)

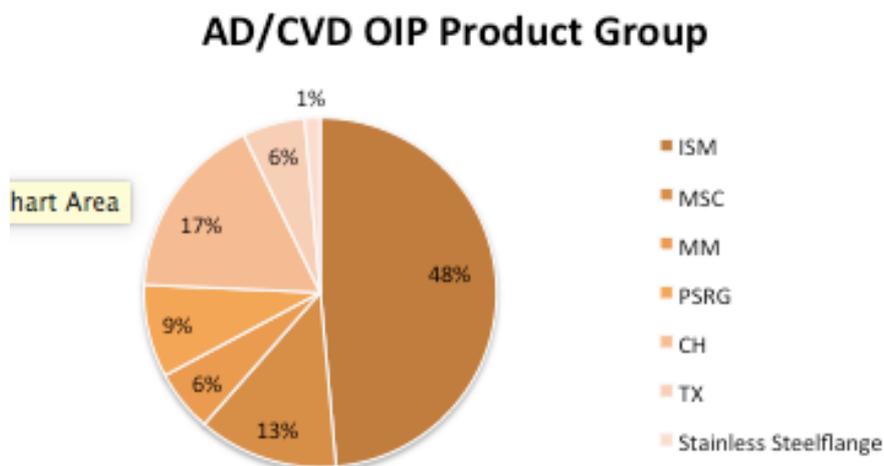
Figure 2: AD/CVD Duty Orders in Place



Author’s Calculations

Data source from AD/CVD OIP USITR

Figure 3: AD/CVD OIP Product Group



Author’s Calculations

Data source from AD/CVD OIP USITR

In one recent worrying development for the European Union, the Department of Commerce in June also announced an affirmative determination in the antidumping and countervailing duty investigations

against ripe olives imported from Spain.²⁹ Presumably, the 14.75 percent countervailing duties against the subsidies were related to the EU's Common Agricultural Policy, although this is not explicitly stated. The U.S. International Trade Commission agreed on July 25 with the Department of Commerce that the dumping and subsidies were materially injuring the U.S. industry;³⁰ on August 1, Commerce issued its final ruling assessing dumping rates of 16.88-25.5 percent, and subsidy rates of 7.52-27.02 percent. The precedent has not yet been used for other agricultural products.

Most AD/CVD cases start with a petition from the domestic industry that seeks relief from unfair trade practices. Not content with this, on November 28, 2017, the Department of Commerce (DOC) announced that it would initiate an AD/CVD investigation into imports of common aluminum sheet from China. Secretary Wilbur Ross stated, "We are self-initiating the first trade case in over a quarter century, showing once again that we stand in constant vigilance in support of free, fair, and reciprocal trade."³¹ The act received enthusiastic support from the aluminum association.³²

This was an unusual move. There have been only 19 self-initiated investigations since 1980, and these accounted for less than 1 percent of all investigations launched during those years.³³ But Ross's stand signaled an aggressive move on trade law enforcement, an approach which can be expected to be continued for the duration of the Administration.

2.3.2 Section 201 "safeguards"

On January 23, 2018 President Trump signed proclamations to approve safeguard tariffs on imported residential washing machines (for three years) and solar cells and modules (for four years) under Section 201 of the Trade Act of 1974.³⁴ This presidential action followed an investigation conducted by the U.S. International Trade Commission (USITC) which found that U.S. companies in both sectors were injured by imports, thus allowing the President to impose trade barriers. As opposed to other defensive remedies, such as anti-dumping or countervailing duties measures, Section 201 cases do not revolve around unfair trade practices of foreign governments or companies. Instead they investigate the impact of import surges in fairly traded goods.³⁵

The Trump Administration's willingness to use Section 201 signaled once more an inclination to pursue a more aggressive approach than recent U.S. administrations. Historically the provision has not been widely used, as Presidents often "feared consumers would be hit or that there would be retaliation."³⁶ From 1975 to 2001, 73 Section 201 investigations were conducted by the USITC, of which 32 found no injury and 26 resulted in the President granting relief in the forms of tariffs, adjustment assistance, quotas or other measures.³⁷

²⁹ U.S. Department of Commerce, [U.S. Department of Commerce Finds Dumping and Subsidization of Ripe Olives from Spain](#), June 12, 2018; see also the associated [Fact Sheet](#).

³⁰ International Trade Commission: [Ripe Olives From Spain; Determinations](#), Federal Register, July 31, 2018

³¹ Jennifer McCadney: [In Rare Move, Trump's Commerce Secretary Self-Initiates Chinese Aluminum Trade Remedy Cases](#), Trade and Manufacturing Monitor, November 30, 2017

³² The Aluminum Association: [The Aluminum Association Applauds Commerce Department's Self-Initiation of Unfair Trade Cases On Imports Of Common Alloy Sheet From China](#), November 28, 2017

³³ Chad Bown, 2018: [op. cit.](#), footnote 23

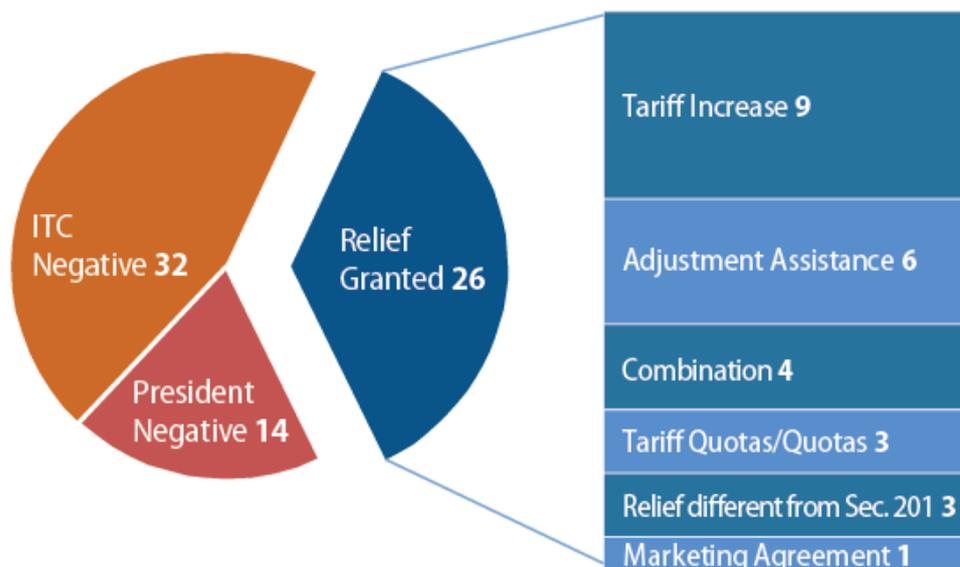
³⁴ [Trade Act of 1974, 93-618, 93th Cong.](#)

³⁵ Vivian Jones: [Section 201 Safeguards on Solar Products and Washing Machines, Congressional Research Service](#), February 7, 2018

³⁶ Chad Bown: [Solar and Washing Machine Safeguards in Context: The History of Section 201 Use](#), October 31, 2017

³⁷ Vivian Jones: [Trade Remedies: Section 201 of the Trade Act of 1974, Congressional Research Service](#), January 26, 2018

Figure 4: Outcomes of Section 201 Investigations



Source: Congressional Research Service³⁸

Safeguard measures, such as actions taken under Section 201, are generally consistent with WTO commitments, as long as they conform to applicable WTO agreements. Other WTO members can challenge the actions, if they believe them not to be in line with WTO rules and several countries have voiced strong concern over the latest Section 201 actions. The last time the U.S. government imposed safeguard measures (on steel products) in line with Section 201 was in 2002; that measure was successfully challenged at the WTO and subsequently lifted.³⁹ On May 14, 2018, South Korea officially filed complaints with the WTO regarding both of the Trump Administration’s safeguard measures, claiming they violate WTO rules.

2.4 WTO

Already during the presidential campaign of 2016, then-candidate Trump expressed a negative view of the World Trade Organization and threatened to pull the United States out of the organization.⁴⁰ This skepticism was in line with a general contempt Trump has expressed for many multilateral organizations. Since becoming President, Trump has continued his verbal attacks on the WTO, which he accuses of treating the United States unfairly,⁴¹ not least as many countries can elect to be treated as “developing countries, and thereby avoid many of the WTO’s obligations. According to news reports, President Trump has repeatedly told his advisers that he wants to withdraw the United States from the WTO.⁴² In later statements, the President denied wanting to remove the U.S. and legally such a move would require an act of Congress. However, subsequent reports indicated that Trump ordered the drafting of legislation (the “United States Fair and Reciprocal Tariff Act”) that would allow him to abandon key aspects of the WTO system, such as the “most favored nation” principle, although passage of such legislation would seem unlikely.

³⁸ Ibid, p. 2

³⁹ Caitlan Deveraux Lewis: [Shining a Light on the Solar Trade: Investigation Leads to Tariffs on Solar Energy-Related Imports \(Part I\)](#), p. 1, Congressional Research Service, January 26, 2018

⁴⁰ Geoff Dyer: [Donald Trump threatens to pull US out of WTO](#), Financial Times, July 24, 2016

⁴¹ See for example: Julie Hirschfeld and Mark Landler, [Trump Pitches ‘America First’ Trade Policy at Asia-Pacific Gathering](#), New York Times, November 10, 2017

⁴² Jonathan Swan: [Trump’s private threat to upend global trade](#), Axios, June 29, 2018

Yet, there are ways short of withdrawal or legislative action in which President Trump can significantly weaken the WTO. The main target of the Trump Administration's ire in this regard has been the organization's dispute settlement mechanism and the Appellate Body. Even though the U.S. has won most of its disputes at the WTO, President Trump has claimed the opposite and stated that "We lose the cases, we don't have the judges."⁴³

To be sure, U.S. concerns over the direction of the Appellate Body did not start with President Trump and some trade experts have called many of the causes of U.S. discontent "legitimate in nature."⁴⁴ In line with this view, the U.S. government already started blocking specific appointments of members to the Appellate Body under President Obama.⁴⁵ The Trump Administration, however, has continued and expanded the criticism of the Appellate Body. In its "2018 Trade Policy Agenda and 2017 Annual Report," USTR identified the Appellate Body "adding to or diminishing rights and obligations under the WTO agreement" as "the most significant area of concern."⁴⁶ The report lists a number of examples of concerns with the approach of the Appellate Body, ranging from procedural matters, such as a "disregard for the 90-day deadline for appeals"⁴⁷ or the "continued service by persons who are no longer Appellate Body members," to disagreements with Appellate Body interpretations that the report claims to, for example, "significantly restrict the ability of WTO members to counteract trade-distorting subsidies provided through state-owned enterprises" or to "undermine the ability of Members to use safeguard measures."⁴⁸ The United States has spelled out these and other concerns in detail to the Dispute Settlement Body, most recently in its discussion about the Appellate Body's tendency to review *de novo* questions of fact in violation of the explicit limitations in Article 17.6 of the Dispute Settlement Understanding, including in particular with respect to the meaning and application of a member state's domestic law (as opposed to focusing exclusively on a dispute panel's interpretation of the application of WTO obligations to the facts established by the panel).⁴⁹

As a result of these concerns, the Trump Administration has continued to block new appointments to the WTO's Appellate Body since taking office, stressing that until the substance of its concerns is addressed, it sees no purpose in addressing issues related to the functioning of the process. As the terms of current judges expire and several of its seven seats remain vacant, the court is approaching a state of dysfunction. At current trends, only three judges, the minimum number to hear any case, will remain on the court by September 2018, meaning that any recusal would lead to a breakdown of the system.⁵⁰ By the end of 2019, the court would consist of one member.

In conjunction with the unilateral actions on tariffs taken by the Trump Administration, the threat to disrupt the Appellate Body has the potential to pose a crisis to the WTO system. It remains to be seen whether reforms of the existing system can be agreed between WTO members that would satisfy U.S. concerns, or whether domestic pressure in the United States to limit harm to the existing trade system will eventually change the Administration's approach. Given the uncertainty over the future of the WTO dispute settlement system, many countries, including the European Union, are reportedly discussing a potential "Plan B" to maintain a mechanism to settle trade disputes.⁵¹

⁴³ White House 2018: [Remarks by President Trump at 2018 White House Business Session with Governors](#), February 26, 2018

⁴⁴ Tetyana Payosova, Gary Clyde Hufbauer, and Jeffery J. Schott: [The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures](#), PIIE, March 2018, p. 1

⁴⁵ Victoria Guida: [U.S. stands alone against WTO Appellate Body member](#), Politico, May 24, 2016

⁴⁶ Office of the United States Trade Representative: [2018 Trade Policy Agenda](#), op. cit, p. 22

⁴⁷ For a detailed expression of the U.S. concern on the 90-day issue, see U.S. Mission to the WTO, [Statements by the United States to the Meeting of the Dispute Settlement Body](#), U.S. Mission Geneva, June 22, 2018, pages 9-21.

⁴⁸ Office of the United States Trade Representative: [2018 Trade Policy Agenda](#), op. cit, p. 23f.; see also [Ambassador Dennis Shea's Statement at the WTO General Council](#), U.S. Mission Geneva, May 8, 2018

⁴⁹ U.S. Mission to the WTO, [Statements by the United States at the Meeting of the Dispute Settlement Body, August 27, 2018](#), pages 10-31; see also Item 14 on Appellate Body Appointments, page 36

⁵⁰ Tom Miles: [Trump's bonfire of the treaties sweeps towards the WTO](#), Reuters, May 18, 2018

⁵¹ Jakob Hanke: [Europe fears Trump is out to kill the World Trade Organization](#), Politico Europe, May 16, 2018

2.5 Trade negotiations

On January 23, his first full day in office, President Trump withdrew the U.S. signature from the Trans-Pacific Partnership (TPP) agreement, a free trade agreement signed on February 4, 2016 with 11 other countries on the Pacific Rim, ranging up from Chile, Peru, Mexico and Canada in the Americas, and down through Japan, Vietnam, Malaysia, Singapore, Brunei, Australia and New Zealand in Austral-Asia.

This is discussed further below, but the thinking behind this move is clearly reflected in an Executive Order⁵² signed by the President on April 29, 2017, which opens with the Policy Statement:

“Every trade agreement and investment agreement entered into by the United States, and all trade relations and trade preference programs of the United States, should enhance our economic growth, contribute favorably to our balance of trade, and strengthen the American manufacturing base. Many United States free trade agreements, investment agreements, and trade relations have failed, in whole or in part, to meet these criteria. The result has been large and persistent trade deficits, a lack of reciprocal treatment of American goods and investment, the offshoring of factories and jobs, the loss of American intellectual property and reduced technological innovation, downward pressure on wage and income growth, and an impaired tax base. It is the policy of the United States to negotiate new trade agreements, investment agreements, and trade relations that benefit American workers and domestic manufacturers, farmers, and ranchers; (to) protect our intellectual property; and (to) encourage domestic research and development. It is also the policy of the United States to renegotiate or terminate any existing trade agreement, investment agreement, or trade relation that, on net, harms the United States economy, United States businesses, United States intellectual property rights and innovation rate, or the American people.”

The Executive Order in Section 2 instructs the U.S. Trade Representative (USTR) and the Department of Commerce to undertake a thorough “performance review” of all existing bilateral, plurilateral or multilateral trade agreements to which the United States is a party, as well as of all countries that are members of the WTO with which the United States runs significant trade deficits. The report to the President following this review is to cite all violations or “unfair treatment” by the other parties, as well as instances where the agreements did not create the jobs that had been protected. The Executive Order goes on to empower USTR and the Secretary of Commerce to undertake “every appropriate and lawful action” to address any violations or abuses of trade law, or unfair treatment.

The report, which was due to the White House in late October 2017, was apparently completed but has not been published, although presumably its findings are reflected in subsequent actions and statements by the Administration, including the decision to re-negotiate the North America Free Trade Agreement (NAFTA) and the U.S.-Korea Free Trade Agreement (KORUS) as well as the Section 301 actions against China, all discussed in more detail below.

In its efforts to (re-)negotiate U.S. free trade agreements, the Trump Administration was building on the Trade Promotion Authority which Congress had granted the Obama administration in 2015 in order to finalize the TPP and possibly the Transatlantic Trade and Investment Partnership (TTIP) negotiations. Under this authority, the Administration could put any negotiated agreement to Congress for an up-or-down vote without amendment. The original TPA legislation expired on June 30, 2018 but had been structured in such a way as to automatically renew if neither chamber of Congress passed a resolution of disapproval to block it. The Republican-controlled Congress, despite having expressed strong concerns about the Administration’s trade policy approach, did not take any action, so that TPA was automatically extended until 2021.

⁵² President Donald Trump: [Presidential Executive Order Addressing Trade Agreement Violations and Abuse, EO: 13796](#), EO: 13796, White House, April 29, 2017.

2.5.1 Trans-Pacific Partnership agreement (TPP)

The Trans-Pacific Partnership (TPP) was arguably one of the most ambitious trade agreements the United States had ever negotiated. Together with its transatlantic counterpart, TTIP, it promised to reshape the global economy and set economic rules for the Asia-Pacific. It was meant to be the economic pillar of the American “pivot to Asia” and as such was as much a geopolitical as an economic undertaking, seeking to answer the rise of China.⁵³

The Trans-Pacific Partnership became a major issue in the 2016 U.S. presidential campaign. As the negotiations had been finalized under President Obama (who remained popular among Democrats until the end of his presidency) and had been supported by Congressional Republicans, it was not expected to turn into a major divisive matter. In fact, the TPP was arguably a more controversial topic in the primaries of both major political parties than in the general election campaign. The strong opposition to TPP by Donald Trump on the Republican side and Bernie Sanders on the Democratic side forced other candidates like Hilary Clinton, who as Secretary of State had supported TPP,⁵⁴ to react and change their position. In the end, both candidates for president officially ran in opposition to the TPP, although doubts continued about the firmness of Clinton’s position.⁵⁵

The election of Donald Trump worried the 11 other signatories of the TPP, though some remained hopeful that the incoming president might change his position. Yet even Japanese Prime Minister Abe, who visited then President-elect Trump in New York in December 2016 and who considered TPP a critical component of his broader plan to reform Japan’s economy, was unable to convince the incoming President. And, as noted, President Trump withdrew the United States from the agreement on his first full day in office.

Since then, the U.S. government has tried to convince TPP-signatories with which it does not have FTAs (notably Japan, Malaysia and Vietnam) to engage in bilateral trade negotiations, an effort that has thus far failed (although the re-negotiations with Canada and Mexico for a “new” NAFTA, essentially a modification of the parties’ TPP commitments, is on-going).

Of the TPP-countries, Japan is of special importance to the U.S., given its economic weight and U.S. interests there. The Trump Administration has repeatedly expressed its desire to negotiate a bilateral trade deal with the country. While the Japanese side has rejected these efforts thus far, Prime Minister Abe agreed to a new U.S.-Japan Economic Dialogue led by Vice President Pence and Deputy Prime Minister Tara Aso. The Dialogue, which has met twice, has thus far not resulted in major changes, although it resolved smaller outstanding trade issues.⁵⁶ In April 2018, President Trump and Prime Minister Abe announced yet another new trade dialogue, though it remained unclear whether these talks would eventually lead to formal trade negotiations. The Japanese side acknowledged the U.S. interest in a bilateral deal, but again emphasized that its priority would remain the TPP.⁵⁷ This remained Japan’s position as well in the early August, 2018, discussions between USTR Lighthizer and Japanese Economy Minister Toshimitsu Motegi,⁵⁸ but circumstances could change when Abe and Trump meet again on the margins of the UN General Assembly in September.

⁵³ For an analysis of the geo-political significance of the TPP, see: Daniel Twining, Hans Kundnani, Peter Sparding: [Trans-Pacific Partnership: geopolitical implications for EU-US relations](#), European Parliament, June 24, 2016

⁵⁴ Doug Palmer: [Clinton raved about Trans-Pacific Partnership before she rejected it.](#), October 8, 2016

⁵⁵ Annie Karni: [Clinton friend McAuliffe says Clinton will flip on TPP, then walks it back](#), July 26, 2016

⁵⁶ Jennifer Epstein and Isabel Reynolds: [U.S.-Japan Announce Trade Talks, Don’t Agree on What to Discuss](#), Bloomberg, April 18, 2018

⁵⁷ Ibid.

⁵⁸ In Trade, [Lighthizer and Motegi Extend Talks](#), Inside US Trade (paywall), August 10, 2018.

Since withdrawing from TPP, President Trump and his advisers have sent a series of mixed signals, sometimes indicating an interest in rejoining the agreement, before reversing course. In January 2018, President Trump said in an interview that he would reconsider the TPP, if the United States got a “substantially better deal.”⁵⁹ Similarly, President Trump told a group of lawmakers and governors during a meeting in April 2018 that his administration was looking into rejoining the TPP, later walking back the statement to indicate that the United States would only join if the trade deal were “substantially better.”⁶⁰ Despite the apparent doubts about leaving the TPP, it seems unlikely that the U.S. could rejoin the agreement under President Trump, given the importance his rejection of the deal played in his presidential campaign. Furthermore, the back-and-forth of the Trump administration is unlikely to reassure other signatories of the TPP of the firmness of any future U.S. commitments.

The remaining 11 TPP-countries in the meantime have moved on and in March 2018 agreed to a new broad trade deal called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The majority of the new trade agreement is identical to TPP, though a number of provisions that were of importance to the U.S. in the original agreement have been altered or suspended, given the U.S. departure.⁶¹

2.5.2 North American Free Trade Agreement (NAFTA)

The North American Free Trade Agreement (NAFTA) has long been a point of political tension in the United States. Even decades after the agreement went into force on January 1, 1994, trade policy experts continued to fight over its effect.⁶² The agreement also became a frequent target for political candidates. As a candidate in 2007, Barack Obama was often critical of and promised to renegotiate the agreement. Although most of his trade-related ire was focused on TPP, candidate Donald Trump also frequently railed against NAFTA during the 2016 presidential campaign, going as far as describing it as the “single worst trade deal ever approved in this country.”⁶³ But while Obama did not re-open NAFTA negotiations with Canada and Mexico (though he did re-negotiate NAFTA as part of the TPP-process), President Trump’s Administration quickly moved ahead, first notifying Congress of its intent to renegotiate in May and then launching formal talks with Mexico and Canada in August 2017.

Ahead of the negotiations, the Office of the U.S. Trade Representative laid out a range of negotiation objectives in July 2017,⁶⁴ which were further updated in November of the same year.⁶⁵ The main goal of the U.S. side and the first to be listed in the official document was to “improve the U.S. trade balance and reduce the trade deficit with the NAFTA countries.”⁶⁶ Other main objectives focus on the motor vehicle industry, where the U.S. sought changes to NAFTA’s rules of origin provisions by increasing the regional value content requirement from 62.5 to 85 percent and by inserting a specific U.S. content requirement of 50 percent. Another major aim for U.S. negotiators was the expansion of market opportunities for U.S. agricultural goods. This includes a desire to open the Canadian dairy sector for U.S. exports, which is currently protected by a governmental supply management system, a long-time point of contention for U.S. dairy producers. A major defensive goal of U.S. negotiators was the exclusion of the sub-federal level

⁵⁹ Jakob Pramuk: [Trump: I would reconsider a massive Pacific trade deal if it were ‘substantially better’](#), CNBC, January 25, 2018

⁶⁰ Ana Swanson: [Trump Proposes Rejoining Trans-Pacific Partnership](#), New York Times, April 12, 2018

⁶¹ Matthew Goodman: [From TPP to CPTPP, CSIS](#), March 8, 2018

⁶² See for example AFL-CIO: [NAFTA at 20](#), March 2014, and Gary Hufbauer, Cathleen Cimino, Tyler Moran: [NAFTA at 20. Misleading Charges and Positive Achievements](#), Peterson Institute of International Economics, May 2018

⁶³ Maggie Severns: [Trump pins NAFTA, ‘worst trade deal ever,’ on Clinton](#), September 26, 2016

⁶⁴ Office of the U.S. Trade Representative, [Summary of the Objectives for the NAFTA Renegotiation](#), July 17, 2017.

⁶⁵ Ibid

⁶⁶ Ibid, p. 3.

(state and local governments) from any commitments being negotiated regarding government procurement.

Another area of focus is the dispute settlement mechanisms in NAFTA. These include provisions laid out in Chapters 11 (disputes over foreign investments, or ISDS), 19 (disputes over anti-dumping/countervailing duty decisions), and 20 (government disputes over compliance with NAFTA commitments) of the original agreement.⁶⁷ USTR's objectives state that the U.S. side seeks to eliminate Chapter 19 altogether, and at the beginning of the negotiations, USTR Lighthizer signaled his desire for the U.S. to have the ability to opt out of ISDS mechanisms in NAFTA, drawing criticism from U.S. business groups who are in favor of such provisions.⁶⁸ A final major objective for the United States is a "sunset clause," which would terminate the agreement after five years unless all parties agree to extend it.

Despite the basis TPP provided, the NAFTA negotiations have been tough. After the seven rounds of formal talks and a trilateral Ministerial meeting in May, Mr. Lighthizer said the parties were "nowhere near" an agreement; indeed, he told Congressional Democrats that there had been "backsliding" on the issues.⁶⁹ At the time, some observers thought agreement on the auto rules of origin would unlock agreement in the other areas of dispute in the talks, in particular the dairy issues with Canada and the sunset clause.⁷⁰ In addition, questions over government procurement, where Canada has sought to expand its access to the U.S. sub-federal level, have remained controversial. The U.S. side has reportedly floated a proposal to limit the access to U.S. government procurement contracts in proportion to the size of their respective procurement markets. Given the immense size difference between the countries' procurement markets, this would in effect significantly curtail Canadian and Mexican access to U.S. procurement offers. More generally, the U.S. threat of imposing Section 232 tariffs on imports of Canadian and Mexican steel and aluminum (and later autos), clearly had the opposite of the desired effect in Ottawa.

Negotiations were essentially suspended due to the Mexican elections on July 1, 2018 and President Trump indicated that he would not sign a NAFTA-deal before the U.S. midterm elections in November 2018. Later he also floated (again) the idea of separate bilateral deals with Mexico and Canada.⁷¹

And this in fact appears to be what has happened. The outcome of the Mexican elections, which saw the opposition candidate, Andrés Manuel López Obrador, elected in a landslide,⁷² provided significant impetus to this "divide and conquer" approach. The new Mexican President, often referred to as AMLO, reportedly supports NAFTA,⁷³ but would prefer it to be concluded before he assumes office on December 1. Because the requirement for 90 days of Congressional review before the United States can sign an agreement implies the agreement must be submitted to Congress by early September, the United States and Mexico engaged in intense negotiations during August in an effort to wrap up the bilateral parts of the negotiation before that date, leaving Canada to the side. When President Trump declared in a highly-publicized August 27 phone call with outgoing Mexican President Enrique Peña Nieto that the two had reached agreement and that he would withdraw the United States from NAFTA, the Canadian Trade Minister reportedly cut short a trip to Europe to resume talks with the two other parties. When the three parties were not able to

⁶⁷ Simon Lester: [Knowing Your NAFTA Dispute Chapters. 11 vs. 19 vs. 20](#), July 26, 2017

⁶⁸ Adam Behsudi and Dour Palmer: [Investor dispute provision in NAFTA still at impasse ahead of Washington meeting](#), February 21, 2018

⁶⁹ Brett Fortnam: [NAFTA Ministers Leave Town Without a Deal, Will be On-Call](#), and Jack Caporal: [Lighthizer: NAFTA Countries "Nowhere Close" to a Deal](#), both Inside US Trade (paywall), May 17, 2018.

⁷⁰ Josh Wingrove and Gregg Quinn : [Trudeau Says Pence Insisted on Nafta Sunset for a Trump Meeting](#), Bloomberg, May 31, 2018

⁷¹ Roberta Rampton, Lisa Lambert : [Trump says U.S. may pursue separate trade deal with Mexico](#), Reuters, July 18, 2018

⁷² Azam Ahmed and Paulina Villegas : [López Obrador, an Atypical Leftist, Wins Mexico Presidency in Landslide](#), New York Times, July 1, 2018.

⁷³ No by-line, [In Letter to Trump, Mexico's President-elect Calls for Resumption of Trilateral NAFTA Talks](#), Inside US Trade (paywall), July 26, 2018.

reach a single agreement, USTR Lighthizer notified the U.S. Congress of the deal with Mexico on August 31, starting the 90-day clock, although the text of the agreement does not have to be submitted for 30-days, giving time for a legal scrub and further negotiations with Canada.

As of mid-September, 2018, the U.S.-Mexico agreement had not been published, but three Fact Sheets⁷⁴ issued by USTR reflect the U.S. side's views of the most notable accomplishments:

- Strengthening of enforcement provisions for intellectual property rights
- New protections for innovators, including procedural safeguards for recognition of new geographical indicators (GIs), including strong and comprehensive standards for protection against issuance of GIs that would prevent United States producers from using common names
- 10 years of data protection for biologic drugs
- A new digital chapter, which among other items prohibits customs duties from being applied to digital products distributed electronically and also limits the civil liability of internet platforms for third-party content
- New rules of origin procedures, which require that 75 percent of auto content be made in the United States and Mexico as well as a new labor value content rule, which requires that 40-45 percent of auto content be made by workers earning at least \$16 USD per hour
- A series of updates to agricultural provisions, including enhanced rules for science-based Sanitary and Phytosanitary Measures.

It will not prove easy for Canada to agree to all these changes, especially those that go beyond the provisions of TPP, including in biologics. The auto rule of origin may also present complications, although not the part related to wage rates (which, in an exclusively U.S.-Mexico deal, would essentially be a U.S. origin requirement).

Some members of Congress have questioned whether a U.S.-Mexico bilateral agreement can benefit from Trade Promotion Authority's expedited process, given that TPA does not envision such a bilateral deal, and that the agreement may not meet numerous TPA requirements. Whether this legal issue in the end will need to be addressed (it would be less relevant if Canada is ultimately included), and if so, how, remains to be seen.

2.5.3 U.S.-Korea free trade agreement (KORUS)

As with other trading partners, the Trump Administration signaled unhappiness regarding the trade deficit the U.S. has been running with South Korea. In its 2017 Trade Policy Strategy, the Administration noted that the U.S. deficit with Korea had doubled in the five years since the U.S.-South Korea Free Trade Agreement (KORUS) had gone into effect. President Trump described KORUS as a "horrible deal" and suggested that the U.S. may well "terminate" it if it's not renegotiated.⁷⁵ USTR Lighthizer was softer in his July 12 letter to his Korean counterpart, asking for a "Special Session" of the Joint Committee under the agreement to consider possible "amendments and modifications" to it.⁷⁶ The first mid-August session, conducted by video-conference, was reportedly tense, with the U.S. purportedly making nearly 50 specific demands, including that Korea immediately eliminate all remaining tariffs on agricultural products ahead of the agreed KORUS schedule. The Korean side rejected the U.S. concerns about bilateral trade and

⁷⁴ United States-Mexico Trade Fact Sheets, [Rebalancing Trade to Support Manufacturing; Modernizing NAFTA Into a 21st Century Trade Agreement; Strengthening North American Trade in Agriculture](#); Office of the U.S. Trade Representative, August 31, 2018

⁷⁵ Philip Rucker: [Trump: 'We May Terminate' U.S.-South Korea Trade Agreement](#), Washington Post, April 28, 2017.

⁷⁶ Office of the U.S. Trade Representative, [Letter from USTR Robert Lighthizer to Korean Foreign Trade Minister Joo Hyung Hwan](#), July 12, 2017.

recommended a joint study first.⁷⁷ A second special session of the Joint Committee was held on October 22, 2017.

These discussions over potential changes to the KORUS agreement took place against the backdrop of increasing tensions on the Korean peninsula and ongoing North Korean missile tests, so that broader political and security considerations played into policy makers' considerations. At the end of 2017, the South Korean government agreed to work with the Administration to amend the five-year-old trade deal. In March 2018, both sides approved an "agreement in principle" for a modified deal.⁷⁸ Despite some important changes, preliminary assessments by trade experts concluded that the "new KORUS deal does not offer a radical remake of U.S. trade policy" and that the core of the old agreement remained the same.⁷⁹ Under the new terms Korea would be permanently exempted from the Section 232 tariffs on steel, which (as discussed below) the Trump Administration has levied on other producers. In return, the Korean side agreed to quotas on its steel exports to the U.S. In addition, the new agreement included changes to automobile quotas, with each American automaker now being allowed to ship 50,000 vehicles to South Korea that meet U.S. safety (rather than Korean) standards, thereby addressing a concern of U.S. car producers.

2.5.4 Transatlantic Trade and Investment Partnership (TTIP)

Negotiating an "ambitious and comprehensive" U.S.-EU trade agreement was a major priority of the Obama Administration, heralded in his first State of the Union address after his re-election in 2012. While welcomed as well by the EU and EU member state governments, the negotiations toward the "Transatlantic Trade and Investment Partnership" (TTIP) were not concluded by the time Mr. Obama left office for a variety of reasons: the Administration's focus on concluding TPP first, mis-steps in the early stages over the initial tariff offers, concerns from civil society that investor-state dispute settlement (ISDS) and regulatory cooperation could undermine European regulatory protections, and significant differences in the negotiations over such issues as agriculture and government procurement being among the most prominent.

The TTIP negotiations have been dormant since President Trump took office. Unlike its Pacific counterpart, TTIP had not been a major issue in the presidential election campaign and the Trump Administration did not terminate negotiations upon entering office. Yet given the political difficulties negotiations had already encountered in Europe and the election of Donald Trump, TTIP as such has indeed been "in the freezer," as EU Trade Commissioner Cecilia Malmstrom predicted in November 2016,⁸⁰ despite comments by members of the Administration and in particular Commerce Secretary Wilbur Ross that President Trump was willing to reopen negotiations with the European Union.⁸¹

Instead, the U.S.-EU trade relationship headed in the opposite direction, in particular after the Administration imposed punitive duties on imports of steel and aluminum for ostensible "national security" purposes, and threatened to use the same justification to disrupt significantly larger transatlantic trade in autos and auto parts, as discussed in detail below.

⁷⁷ See, e.g., Jenny Leonard: [Sources: U.S., in KORUS Special Session, Asked for Immediate Elimination of Korean Agricultural Tariffs](#), Inside US Trade, September 3, 2017 (paywall).

⁷⁸ The phrasing here is significant: USTR Lighthizer has argued before the House and Senate committees of jurisdiction that amendment (perhaps by an exchange of letters) would not require Congressional approval.

⁷⁹ Simon Lester and Inu Manak: [Trump's first trade deal is more bark than bite](#), The Hill, March 30, 2018

⁸⁰ Phillip Blenkinsop: [U.S. trade talks in deep freeze after Trump win, says EU](#), Reuters, November 11, 2016

⁸¹ Richard Bravo and Julia Chatterley: [Trump is Willing to Reopen TTIP Amid EU-U.S. Trade Dispute, Ross Says](#), Bloomberg, March 29, 2018

In part to head off such a deterioration in the relationship, EU Commission President Juncker, Trade Commissioner Malmström, Secretary General Selmayr and others visited Washington in July 25. The visit “succeeded” in that the two sides agreed to establish an “Executive Working Group” to work toward (an agreement on) “zero tariffs, zero non-tariff barriers and zero subsidies on non-auto-industrial goods;” efforts to reduce barriers and increase trade in services, chemicals, pharmaceuticals, medical products, and soybeans; enhanced strategic cooperation on energy, including U.S. liquified natural gas exports to Europe; a “dialogue” on standards to ease trade and reduce bureaucratic barriers; and to work together to reform the WTO and address unfair trade practices. Signaling a cease-fire, the joint statement concludes, “While we are working on this, we will not go against the spirit of this agreement, unless either party terminates the negotiations.”⁸²

Disagreements on the exact meaning of this statement arose almost immediately after its announcement, in particular about whether agricultural trade is covered. Also striking was the U.S. insistence on excluding autos from the scope of the talks, pending the Section 232 investigation discussed below. U.S. and EU officials have been in informal discussions since, and the first meeting of the Executive Working Group on September 10, 2018, provided a “first occasion” to exchange views, with USTR noting that the Ministers will meet again in September and officials will work further in October with an eye to Ministers meeting in November to “finalize outcomes in a number of areas ... (s)pecifically, we hope for an early harvest in the area of technical barriers to trade.” This could point to an agreement related to procedures for recognizing that certain standards, including in the area of automobiles, meet the regulatory requirements of both parties.⁸³ The Administration has signaled its intent to begin consultations with Congress about considering a possible agreement with the European Union under Trade Promotion Authority.

The Administration accordingly appears interested in “quick wins,” including potentially before the early November 2018 mid-term elections, although something as significant as an agreement to eliminate tariffs on industrial products -- as both sides have suggested in various press comments -- is unlikely to be achieved in that period, and the threatened Section 232 tariffs on autos may still come out. It is also likely that the Administration will put long-running U.S.-EU trade disputes -- on subsidies to Airbus, approvals of new genetically-modified varieties, and quotas for hormone-free beef -- into the mix, making the discussions more difficult.

2.5.5 U.S.-United Kingdom trade relations

While the United States and the United Kingdom are not in formal trade negotiations, pending the withdrawal of the United Kingdom from the European Union, they established a bilateral Trade and Investment Working Group early in 2017, with a view to concluding a trade agreement as soon as possible after the “Brexit” date of March 29, 2019. Some observers in Washington and London have observed that an agreement should be “easy” to reach, although the U.S. objection to the EU/UK proposal to divide the EU’s agricultural tariff-rate quotas “proportionally” between them suggests that may not be the case. The Administration, which has repeatedly emphasized the need for a “science-based” approach to food safety decisions, is also likely to press hard for better access for U.S. commodities into the UK market. In any event, the Administration can be expected to take umbrage should the eventual EU-UK Withdrawal Agreement somehow preclude the United Kingdom from entering into formal negotiations with the United States (even though Washington recognizes that signature would await the end of a EU-UK transition agreement, if any).

⁸² Press Release: [Joint EU-U.S. Statement Following President Juncker’s Visit to the White House](#), European Commission, June 25, 2018; see also White House Fact Sheet: [President Donald J. Trump Launches a New Reciprocal Trade Relationship with the European Union](#), White House, July 27, 2018.

⁸³ Authors’ discussions with U.S. officials.

2.5.6 Other trade negotiations

Indo-Pacific region

The frequent use of the phrase “open and free Indo-Pacific” by President Trump and his top officials highlights the strategic importance of this region, including the fast-growing India, which is the largest democratic country in terms of population. “Indo-Pacific” also suggests a strategic pivot countering China’s “Belt and Road Initiative,”⁸⁴ which aims to replicate or even expand the “Silk Road” by connecting Asia, Europe and Africa through Central Asia and Northern Sea.⁸⁵ Though President Trump declared the intention to withdraw from Trans-Pacific Partnership (TPP) on his first day in the office, the U.S. keeps close eyes on Indo-Pacific, evidenced by his 12-day trip to Asia in November 2017 and successive two-plus-two meetings with Australia and India in July 2018. On returning from the trip to Asia, President Trump claimed that the U.S. “will never again turn a blind eye to trading abuses, to cheating” and promised commitment to “a free and open Indo-Pacific.”⁸⁶ After the meeting in July 2018, Australian Foreign Minister Julie Bishop reaffirmed both parties’ commitment “to the rule of law and the international rules-based order”⁸⁷.

ASEAN countries are particularly of interest since exports to the region contributes 500,000 jobs in the U.S.⁸⁸ The U.S. had successive meeting with Vietnam, the Philippines and Indonesia in May 2018, during which the American side expressed concerns over the trade deficit with Vietnam as well as about IPR, labor and environmental issues with Indonesia and explored the potential for an FTA with the Philippines.⁸⁹ Among the South-East Asian countries, Vietnam tops the list of (re-)negotiation priorities due to of the U.S. trade deficit of \$32 billion. While the deficit is the major concern for the U.S., Vietnam seeks to obtain “Market Economy” status in order to avoid higher tariffs as part of anti-dumping or countervailing measures.⁹⁰ However, negotiations are still some time away, not least due to sensitivities for some Congressmen about Vietnamese catfish imports.

Taiwan is another country in talks with the U.S. over a potential FTA. In September 2017, a Taiwanese delegation visited the U.S. and agreed to the purchase of \$3 billion of American agricultural products such as soybeans. The deal was intended to address U.S. concerns over trade deficits and to pave the way for a potential bilateral FTA. However, there are still disputes over safeguard measures as Taiwan requested WTO consultation similar to South Korea.⁹¹ The sensitivities such a negotiation would raise with China are understood, but as President Trump’s call with Taiwan’s President, Tsai Ing-wen, before he assumed office and courtesies the Administration provided her during her transit through the United States in the summer of 2018 indicate, Beijing’s concerns may not be dispositive.

Latin America

While the renegotiation of NAFTA remains the top priority, the Administration intends to focus on trade relations with Latin America afterwards, as Ambassador Lighthizer announced following a Latin America

⁸⁴ Alyssa Ayres: [U.S. economic strategy for Indo-Pacific doesn't stack up to China's](#), AXIOS, July 30, 2018.

⁸⁵ The State Council of The People’s Republic of China: [Full text: Action plan on the Belt and Road Initiative](#), May 30, 2015

⁸⁶ White House: [Remarks by President Trump on His Trip to Asia](#), November 15, 2017

⁸⁷ U.S. Department of State: [Press Availability With Secretary of Defense James Mattis, Australian Foreign Minister Julie Bishop, and Australian Defense Minister Marise Payne](#), July 24, 2018

⁸⁸ Office of the U.S. Trade Representative: [Association of Southeast Asian Nations \(ASEAN\)](#)

⁸⁹ Office of the U.S. Trade Representative: [Deputy USTR Gerrish Discusses Trade Issues with Deputy Prime Minister Hue. Senior Vietnamese Officials](#), May 23, 2018; [Deputy USTR Gerrish Discusses Next Steps on Trade with Philippine Economic Ministers](#), May 23, 2018; [United States and Indonesia Meet Under Trade and Investment Framework Agreement](#), May 16, 2018

⁹⁰ Harish Mehta: [What ails US-Vietnam trade relationship](#), The Business Times, March 29, 2018

⁹¹ Inside US Trade: [Taiwan requests WTO consultations with the U.S. over solar cell safeguard measures](#), January 31, 2018 (paywall)

summit in Florida in Oct 2017.⁹² Lighthizer stated that the U.S. would strive for “fair” and “modernized” deal with Latin American countries, focusing in particular on demanding less corruption and more “certainty.”⁹³

Particularly, the renewal of the existing trade deal with Colombia is one of the priorities for the Administration⁹⁴ following Colombia’s accession to the OECD. In return for supporting the country’s accession, the U.S. side considered a number of obligations regarding trade in an “agreement of conditionality” signed before the accession was granted⁹⁵. On August 2, representatives of the United States and Colombia held the second meeting of the United States – Colombia Free Trade Commission where they agreed to “ensure effective implementation of, and compliance with, the trade in goods and services, customs, intellectual property rights, labor, and environment obligations”.⁹⁶

Furthermore, the U.S. has expressed concerns over illegally-harvested timber from Peru by blocking its import.⁹⁷ Ambassador Lighthizer explained that the action reflected a “strong commitment to enforcing our trade agreements and ensuring that trade is fair to the American people.”⁹⁸ The Administration has furthermore sought to expand trade with other Latin American countries. The U.S. signed agreements with Guatemala in April 2017,⁹⁹ and with Argentina in April 2018,¹⁰⁰ primarily focused on expanding opportunities for U.S. agricultural exporters. The deal with Argentina opens up the country’s market to American ranchers for the first time since 1992,¹⁰¹ while the one with Guatemala is set to eliminate tariffs to boost the U.S. exports of poultry products. Given the Chinese counter-tariffs on agricultural imports, securing alternative export markets for American agriculture products has become even more significant.¹⁰²

2.6 Section 232 “national security”

In something of a novel twist for the United States, the Administration has been wielding “national security” – and specifically the need to erect barriers to imports to protect critical industries – as a means to implement its assertive trade policy. The Administration believes this approach has the advantage of not being justiciable before the WTO, where the U.S. government has long argued that every member has the *exclusive* right to decide whether and when to apply the general national security exception to any (and/or all) of its WTO obligations, that is, that the exception is “self-judging.” Further, unlike a normal “safeguard” action, there is no need to determine that a surge in imports has caused material harm to a domestic industry, nor a need for the restrictive measures be limited in time. A disadvantage is that any measure designed to permanently ensure a domestic industry, needed for national security, remains healthy logically has to be applied to all foreign sources of supply, even from allies; otherwise, the argument falls away. The danger, of course, is that this approach arguably allows any WTO party to use “national security” to avoid all its WTO commitments. The Administration weighed these costs and benefits, and acted.

⁹² Inside US Trade: [Lighthizer says a slew of Latin American free trade deals must be 'modernized' after NAFTA](#), October 3, 2017 (paywall)

⁹³ *ibid*

⁹⁴ Inside US Trade: [Foreign affairs minister: Colombia will focus on improving existing FTAs](#), September 7, 2018 (paywall)

⁹⁵ Inside US Trade: [U.S., Colombia meet to review implementation of trade deal](#), August 3, 2018 (paywall)

⁹⁶ Office of the U.S. Trade Representative: [The United States and Colombia Meet to Review Implementation of the United States - Colombia Trade Promotion Agreement](#), August 3, 2018

⁹⁷ Office of the U.S. Trade Representative: [USTR Announces Unprecedented Action to Block Illegal Timber Imports from Peru](#), October 19, 2017

⁹⁸ Office of the U.S. Trade Representative: [The United States and Colombia Meet to Review Implementation of the United States - Colombia Trade Promotion Agreement](#), August 3, 2018

⁹⁹ Office of the U.S. Trade Representative: [USTR Announces New Access for U.S. Poultry Exports to Guatemala](#), April 3, 2017

¹⁰⁰ Office of the U.S. Trade Representative: [USDA and USTR Finalize Access for U.S. Pork Exports to Argentina](#), April 13, 2018

¹⁰¹ U.S. Department of Agriculture: [USDA and USTR Finalize Access for U.S. Pork Exports to Argentina](#), April 13, 2018

¹⁰² Bob Bryan: [China just slammed massive tariffs on \\$34 billion worth of US goods — here's what will get hit](#), Markets Insider, June 6, 2018

2.6.1 Steel and aluminum

In April 2017, President Trump instructed Commerce Secretary Ross to launch investigations under Section 232 of the Trade Expansion Act of 1962 into the potential threat imports of steel and aluminum posed to U.S. national security.¹⁰³ This decision to look to Section 232 and the national security argument, taken so early in the Administration's tenure, was likely planned before Mr. Trump assumed office and could well stem from the steel industry's unhappy experience with the essential failure of its previous attempt at getting relief from import competition through the use of the Section 201 "safeguards" approach under President George W. Bush in 2001-03; a successful WTO challenge forced the discontinuation of the safeguards after one year.

The Commerce Department released the result of the investigations in February 2018, concluding that "the quantities and circumstance of steel and aluminum imports 'threaten to impair the national security,' as defined by Section 232."¹⁰⁴ The report laid out three options for the President as remedies for both the steel and aluminum sectors, which individually or together are meant to bring the industries to a "sustainable" level of 80 percent capacity utilization by restricting imports of the products, either through just tariffs on all imports (24 percent for steel, 7.7 percent for aluminum), higher tariffs on some countries plus quotas for other suppliers, or countries' agreement to limit exports to the United States.¹⁰⁵

On March 8, President Trump announced the United States would impose 25 percent duties on imports of five types of steel¹⁰⁶ and 10 percent duties on imports of aluminum¹⁰⁷ for "national security" reasons pursuant to Section 232, covering approximately \$46 billion of imports.

The main concern underlying the reports' findings and the President's action is massive over-capacity in the global industry. As such, the main target of these measures is meant to be China, which is the source of the vast majority of over-capacity in both products, and especially steel, where China's excess capacity of some 300 million metric tons is more than double existing U.S. capacity.¹⁰⁸ The country itself has a negligible presence in the U.S. market, as nearly 94 percent of the steel products the United States had previously imported from China are covered by AD/CVD measures,¹⁰⁹ thus limiting them to some 2.4 percent of U.S. imports and less than one percent of U.S. consumption in 2016. (Indeed, more than 60 percent of U.S. steel imports were covered by existing AD/CVD orders before the recent tariffs.¹¹⁰) Notwithstanding its relatively small exposure to the U.S. tariffs, China on April 2, 2018, announced retaliatory tariffs on U.S. products, including agricultural products, worth \$2.4 billion and thus similar in size to the Chinese exports covered by the new American duties.¹¹¹

¹⁰³ President Donald J. Trump, [Presidential Memorandum for the Secretary of Commerce](#), April 27, 2017

¹⁰⁴ Commerce Department 2018: [Secretary Ross Releases Steel and Aluminum 232 Report in Coordination with White House](#), February 16, 2018

¹⁰⁵ U.S. Department of Commerce, [Secretary Ross Releases Steel and Aluminum 232 Reports in Coordination with White House](#), Press Release, February 16, 2018. Specifically, the options for steel include, in addition to a global tariff, a tariff of "at least" 53 percent on all steel imports from 12 countries -- Brazil, China, Costa Rica, Egypt, India, Malaysia, Korea, Russia, South Africa, Thailand, Turkey and Vietnam -- with a quota on steel products from other countries equal to their 2017 exports, or a quota from all countries equal to 63 percent of their 2017 export levels; for aluminum, these second options were a tariff of 23.6 percent on imports from China, Hong Kong, Russia, Venezuela and Vietnam, with a 100 percent quota from all other suppliers, or a quota equal to 86.7 percent of 2017 shipments for all suppliers.

¹⁰⁶ White House 2018: [Presidential Proclamation on Adjusting Imports of Steel into the United States](#), March 8, 2018

¹⁰⁷ White House 2018: [Presidential Proclamation on Adjusting Imports of Aluminum into the United States](#), March 8, 2018

¹⁰⁸ Bureau of Industry and Security, [The Effect of Imports of Steel on the National Security](#), U.S. Department of Commerce, January 11, 2018, page 52.

¹⁰⁹ Chad Bown: [Trump's Steel and Aluminum Tariffs Are Counterproductive. Here are 5 More Things You Need to Know](#), PIEE, March 7, 2018

¹¹⁰ Ibid.

¹¹¹ Zhiyao Lu and Jeffery Schott: [How is China Retaliating for US National Security Tariffs on Steel and Aluminum?](#), Peterson Institute of International Economics, April 9, 2018

But while the reports underscore that the long-term viability of these two critical industries is undermined by the impact China's over-capacity has on global markets, the logic behind a national security case implies that the restrictions should be levied on all foreign suppliers. This logic seemed undermined when the Administration initially exempted imports from a series of trading partners, including Canada, Mexico, and the European Union, from the order until May 1, 2018 (later extended by 30 days), pending further negotiations, as this made it appear that the threat of punitive tariffs was more to create leverage for broader negotiations with the partners.

And indeed, this seems to be the case. South Korea subsequently received a permanent exemption from the steel tariffs as part of the renegotiated KORUS trade deal (discussed above), although it remained subject to an absolute quota of 2.68 million metric tons (70 percent of Korea's average annual shipments between 2015 and 2017), draconianly sub-divided into 54 product categories, each with their own-sub-quota that would be allocated on a quarterly basis.¹¹² Australia and Brazil have also negotiated quantitative limits on their exports. The 232 tariffs were wrapped into the NAFTA negotiations with Canada and Mexico, with Mexico in its recent agreement reportedly agreeing to quotas (albeit it reportedly insists on more flexible terms).¹¹³ And the Administration reportedly tried hard to get the European Union to offer various concessions (beyond just quantitative restrictions, including on auto tariffs) that would offset the "harm" of allowing continued EU access to the U.S. market in these products.

The Administration has not responded well to the refusal of Canada and the European Union in particular to negotiate under these terms, with the "gun" of 232 tariffs pointed at them. As allies, those parties are astonished that they should be hit with a trade barrier for national security purposes. They, and others, have filed a WTO dispute settlement case arguing instead that the U.S. action is instead a "safeguard action" against imports, which in itself is unjustified and illegitimately instituted (without proper notice). They accordingly argue that they are permitted under WTO rules to take measures to "rebalance" the trade that the U.S. action has affected. And indeed, after the exemptions expired at the end of May and U.S. steel and aluminum tariffs went into effect for these important U.S. trading partners, the European Union initiated previously threatened "rebalancing" tariffs on June 22, 2018 covering \$3.2 billion worth of U.S. exports, while in July, Canada also imposed tariffs on about \$12.8 billion worth of U.S. products.

On June 26, 2018, USTR Lighthizer issued a stinging statement against in particular the EU, arguing that:

"... the European Union has concocted a groundless legal theory to justify immediate tariffs on U.S. exports....

"Article XXI of the General Agreement on Tariffs and Trade gives broad authority to WTO Members to take action necessary to protect essential security interests."¹¹⁴ For decades, the United States has

¹¹² Isabelle Hoagland: [U.S. outlines "Absolute Quota" details for South Korean Steel Imports, Inside U.S. Trade](#), May 2, 2018. (paywall)

¹¹³ The Administration has since inserted some flexibility into quota arrangements to at least allow exclusions to apply as well in the case of supplies provided under exclusions; see Isabelle Hoagland, [U.S. Amends Section 232 Exclusion Process for Countries with Quota Deals](#), Inside U.S. Trade, August 29, 2018 (paywall)

¹¹⁴ This is leading to a major dispute among allies about the use of WTO Article XXI, which allows a Party to undertake actions for national security purposes; this could have far more far-reaching implications than the immediate trade dispute. Specifically, Article XXI states:

"Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

consistently held the position that actions taken pursuant to Article XXI are not justiciable by any panel of the WTO. In other words, each sovereign country must have the power to decide, for itself, what actions are essential to its security. Any other reading of the Article would represent an unacceptable constraint on the freedom and independence of all WTO Members.

“While the United States has acted responsibly here, the European Union and its followers have not. Rather than work with the United States, they have retaliated with tariffs designed to punish U.S. companies and workers. In an effort to give cover to this blatant disregard for WTO rules, they claim to be acting in reliance on a narrow exception that applies only in response to a safeguard measure. That exception does not apply here, however, because the United States has not taken a safeguard measure. The President’s actions here were taken under a U.S. national security statute – not under the separate U.S. statute for safeguard measures. In fact, there is no credible basis for the EU’s legal theory.

“When the EU and others falsely assert the U.S. steel and aluminum duties are safeguard measures, and impose retaliatory duties under this pretense, they do great damage to the multilateral trading system. Indeed, they show that they are willing to distort WTO rules to mean whatever they want, whenever they want.

“Faced with these unjustified tariffs, the United States will take all necessary actions under both U.S. law and international rules to protect its interests.”¹¹⁵

President Trump has threatened to impose additional duties on the European Union and others in response to their actions. And USTR on July 16, 2018 launched five separate disputes at the WTO against China, the European Union, Canada, Mexico, and Turkey, alleging that retaliatory duties taken by these countries “are completely without justification under international rules.”¹¹⁶

2.6.2 Autos

Similar to the process on steel and aluminum, at the order of President Trump, the U.S. Commerce Department on May 23, 2018 initiated an investigation under Section 232 to “determine the effects on the national security of imports of automobiles, including cars, SUVs, vans and light trucks, and automotive parts.”¹¹⁷ According to news reports, President Trump is considering increasing tariffs to 25 percent on these products. The report is expected in September 2018. As autos and auto parts seem even farther away from national security considerations than steel and aluminum, many observers again believe the Administration is using this threat to build leverage, in particular over the EU and Japan.

A study by the Peterson Institute for International Economics suggests that such a move would cause production in the automobile industry to fall by 1.5 percent and 195,000 American workers to lose their

The United States has consistently argued that the phrasing “which it considers necessary” to mean that Article XXI is fully self-judging, and that as such, any measure taken pursuant to Article XXI cannot be questioned under the WTO. The EU and others, however, have just as consistently argued that the paragraph is bounded by the three specific limitations – that is, that the measures must relate to fissionable materials, traffic in arms, or be taken in time of war or other emergency in international relations. The ambiguity in this clause was never tested under the WTO’s predecessor, the General Agreement on Tariffs and Trade (GATT), in part because doing so was considered useless since under the GATT any country could block a ruling. Under the WTO, however, no single country can block a dispute settlement judgement, and the issue is being considered in a current dispute between Russia and Ukraine. The United States and European Union have weighed in on opposite sides of the dispute, with the United States supporting the “self-judging” approach.

¹¹⁵ Robert Lighthizer: [Statement on Retaliatory Duties, Office of the United States Trade Representative](#), June 28, 2018

¹¹⁶ Office of the U.S. Trade Representative: [United States Challenges Five WTO Members Imposing Illegal Tariffs Against U.S. Products](#), July 16, 2018

¹¹⁷ Federal Register 2018: [Notice of Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Automobiles etc.](#), May 23, 2018.

jobs over a one-to-three year period.¹¹⁸ If countries covered by such tariffs were to retaliate in kind, the study predicts the effects would be even more dramatic, with production falling by 4 percent and more than 600,000 jobs lost. Nearly all of the potential tariffs would be levied against U.S. allies, such as countries in the European Union, Japan, South Korea, Canada and Mexico. At a Commerce Department hearing for its Section 232 investigation, EU Ambassador to the United States, David O'Sullivan, called the notion that imports of autos and auto parts from America's closest allies could threaten its national security "absurd."¹¹⁹

While the report is not yet published, many observers in Washington¹²⁰ appear certain that the Department of Commerce will find that auto imports threaten the U.S. national security. If so, the President -- who reportedly is incensed that German autos in particular face only a 2.5 percent tariff in the United States -- will again choose between various options as to how he should address this. He could delay that decision, or, as he did in the case of steel and aluminum, offer temporary exemptions to partners such as the European Union, Japan and Korea, pending further discussions. The experience with the steel and aluminum case suggests that quotas might be imposed even if these countries negotiate permanent exemptions from the duties.

2.7 China

2.7.1 General

The U.S.-China economic relationship has long been fraught with tension and President Trump is not the first or only U.S. policy maker who has taken a critical approach towards Beijing with regard to trade and economic issues. The issue of alleged Chinese currency manipulation during the 2000s, for example, has long been a point of contention for U.S. policy makers. Other U.S. concerns include:

"China's alleged widespread cyber economic espionage against U.S. firms; relatively ineffective record of enforcing intellectual property rights (IPR); discriminatory innovation policies; mixed record on implementing its World Trade Organization (WTO) obligations; extensive use of industrial policies (such as subsidies and trade and investment barriers) to promote and protect industries favored by the government; and interventionist policies to influence the value of its currency."¹²¹

Although these U.S. concerns are long-standing, the Trump Administration has significantly escalated the criticism and actions taken against China. As with many other trading partners, President Trump has been especially focused on the bilateral trade deficit the United States is running with China. In 2017, this deficit amounted to around \$336 billion (although President Trump has claimed it to be as high as \$500 billion). In April 2017, Presidents Trump and Xi agreed to a 100-day plan for trade talks with the goal of decreasing the U.S. deficit and launched a "U.S.-China Comprehensive Dialogue" (CED). Although further talks yielded some initial results, such as an opening of the Chinese market to U.S. beef, progress remained slow over the first year of the Trump Administration. During further bilateral negotiations in the Spring of 2018, the Trump Administration demanded that China cut its bilateral surplus by \$200 billion within two years, but while Chinese officials reportedly offered some concessions to address U.S. concerns, they rejected any target in dollar amounts.¹²²

The Administration's list of demands -- presented after Washington swept China into the 232 on steel and aluminum and had launched the separate Section 301 trade retaliation against China's theft of intellectual

¹¹⁸ Sherman Robinson, Karen Thierfelder, Jeffrey Schott, Eujin Jung, Zhiyao Lu, Melina Kolb: [Trump's Proposed Auto Tariffs Would Throw US Automakers and Workers Under the Bus](#), PIEE, May 31, 2018

¹¹⁹ EU External Action Service: [Testimony of the EU Ambassador to the U.S. David O'Sullivan at the Public Hearing on Section 232 National Security Investigation of Imports of Autos and Auto Parts](#), July 19, 2018

¹²⁰ Authors' discussions with numerous involved lawyers and think tank observers during September 3-7 visit to Washington.

¹²¹ Wayne Morrison: [China-U.S. Trade Issues](#), Congressional Research Service, July 6, 2018

¹²² Bob Davis and Lingling Wei: [China Rejects U.S. Target for Narrowing Trade Gap](#), Wall Street Journal, May 19, 2018

property (discussed in detail below) – represents an opening “maximalist” ante, but nonetheless highlights the breadth of the Administration’s concerns. In the “draft framework” on “Balancing the Trade Relationship between the United States of America and the People’s Republic of China,” presented “solely to help facilitate candid and constructive exchanges between the two sides,” the United States demanded China:

- commit to working with importers to purchase \$100 billion of U.S. goods by May 31, 2019, and another \$100 billion by May 31 of 2020, so that the 2020 deficit is \$200 billion lower; the specific metric for fulfilling these targets were additional purchases of at least 75 percent of the commitment target for 2019 and 50 percent for 2020;
- immediately stop providing “market-distorting subsidies” that could lead to over-capacity in the industries targeted by China’s “made in China 2025” strategic plan;
- eliminate specified policies related to technology transfer;
- take immediate and verifiable steps to cease all commercially-related cyber-espionage;
- eliminate by January 1, 2019 specific measures in China’s technology transfer and foreign investment laws associated with forced technology transfer, against which the U.S. has filed a WTO dispute;
- withdraw China’s complaints against the United States in the WTO filed in response to the aforementioned case;
- not take any retaliatory action against the United States as a result of the Section 301, including through TBT and SPS measures;
- issue an improved negative list of sectors where foreign investors will not be given national treatment (meaning that in all other sectors, national treatment is required);
- reduce its tariffs in “non-critical” sectors to the levels of the United States;
- withdraw all non-tariff barriers the United States would specify;
- improve market access for U.S. service suppliers and agricultural exporters “in specified ways;”
- withdraw its WTO complaints against the United States and the European Union with respect to its non-market economy status; and
- meet quarterly to assess progress toward meeting these commitments, and in the meantime not “oppose, challenge or take any form of action” against the United States for imposition of tariffs if these commitments are not met.¹²³

The Chinese government not surprisingly refused to meet these demands. The May 19 Joint Statement following the May 17-18 consultations in Washington talks about “consensus” on “meaningful steps” to reduce the trade deficit; “meaningful” increases in US agriculture and energy exports to China; the need to create “favorable conditions” for trade in manufactured goods and services; the importance of IPR (and a Chinese commitment to amend its Patent Law); and encouraging investment and to “strive to create” a fair, level playing field for competition.

Unsatisfied, the Administration ratcheted up the heat considerably, with the White House Office of Trade and Manufacturing Technology, run by Peter Navarro, issuing a 20-page report on China’s “Economic Aggression.”¹²⁴ While the substance of the report generally follows the even more detailed Section 301 report (below), the use of the term “aggression” places the dispute more explicitly in the national security

¹²³ U.S. Government, [Balancing the Trade Relationship between the United States and the People’s Republic of China](#), May 2018.

¹²⁴ Office of Trade and Manufacturing Policy, [How China’s Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World](#), The White House, June, 2018; see also the 13 pages of detailed and expansive Endotes.

(Section 232) context, in part as the report focuses on China's efforts to "capture the emerging high-technology industries that will drive future economic growth and many advancements in the defense industries." Interestingly, the report states that "The designation of China as a 'strategic competitor' engaged in 'economic aggression' was formalized in United States government policy with the December 2017 release of the White House National Security Strategy," although in fact China is not explicitly labeled in that document as an "economic aggressor."¹²⁵

The first formal follow-up meeting to the discussions in May took place at the sub-ministerial level (Treasury Under Secretary for International Affairs David Malpass and Vice Commerce Minister Wang Shouwen) in Washington August 22-23; as President Trump predicted,¹²⁶ not much came from it.

2.7.2 Section 301

In August 2017, President Trump instructed the USTR to launch an investigation under Section 301 of the Trade Act of 1974 to "determine whether acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce."¹²⁷ Section 301 is one of the "principal statutory means by which the U.S. government enforces U.S. rights under trade agreements and addresses 'unfair' foreign barriers to U.S. exports."¹²⁸ It allows the U.S. to conduct investigations into issues in areas not covered by WTO law without following the formal WTO dispute settlement procedures. Rarely utilized, the number of cases investigated under Section 301 reached its peak during the Reagan Administration. Specifically, Japan became a target due to its trade surplus with the United States. Following the establishment of the WTO's dispute settlement procedure in 1995, there have been fewer uses of Section 301.

Following delivery of the results of the Section 301 investigation,¹²⁹ President Trump signed a Presidential Memorandum on Actions by the United States on March 22, 2018.¹³⁰ The Memorandum listed four findings regarding IPR-related policies that would justify actions under Section 301. It stated that China:

- 1) Uses foreign ownership restrictions, equity limitations, and other investment restrictions to force technology transfer from American companies;
- 2) Imposes substantial restrictions on investments and activities, including through discriminatory licensing terms on technology to transfer technology to Chinese firms;
- 3) Directs and facilitates systemic investment in, and acquisition of U.S. assets to generate large-scale technology transfer;
- 4) Conducts and supports cyber intrusions into, and theft from, computer networks of U.S. companies to gain access to business information, intellectual property, and trade secrets.

The U.S. government estimated the losses to American companies due to Chinese forced technology transfer practices to amount to \$50 billion a year.¹³¹ In response, President Trump directed his Administration to take actions both through the WTO and under national law. The measures included

¹²⁵ Ibid, footnote 4, page 22; the word "China" is used 33 times in the [National Security Strategy](#) document, while "economic aggression" is used twice, but only in a general fashion (see, e.g., page 1: "... the United States will no longer tolerate economic aggression or unfair trading practices," and page 17) and never directly with China.

¹²⁶ Reuters Staff, [Key Quotes Coming From Reuters Interview with Trump](#), Reuters, August 20, 2018.

¹²⁷ Office of the U.S. Trade Representative: [USTR Announces Initiation of Section 301 Investigation of China](#), August 2017

¹²⁸ Wayne Morrison: [Enforcing U.S. Trade Laws: Section 301 and China](#), Congressional Research Service, July 11, 2018

¹²⁹ Office of the U.S. Trade Representative, [Findings of the Investigation Into China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation Under Section 301 of the Trade Act of 1974](#), March 22, 2018

¹³⁰ White House: [Presidential Memorandum on the Actions by the United States Related to the Section 301 Investigation](#), March 22, 2018

¹³¹ Wayne Morrison: [China-U.S. Trade Issues](#), op. cit, p. 59.

additional tariffs of 25 percent on certain Chinese imports to compensate for the \$50 billion in estimated annual U.S. losses, investment restrictions in key technology sectors, and a new WTO dispute settlement case.¹³² A list of proposed products from China worth approximately \$50 billion in trade, mostly in sectors “related to China’s high technology industrial policies”¹³³ was announced on April 3, 2018.

The next day, the Chinese government announced that it would retaliate with a tariff of 25 percent on a list of U.S. products, including soybeans and aircrafts, if the U.S. Section 301 tariffs were implemented. At the same time, Beijing initiated a dispute settlement case at the WTO. President Trump responded to the Chinese threat with a counter-threat to impose punitive tariffs on an additional \$100 billion worth of Chinese products.

During the aforementioned negotiations in May 2018, the U.S. side called for the reduction of the Chinese trade surplus by \$200 billion over two years and demanded Beijing address the four concerns regarding IPR-policies identified by the U.S. government. Although Treasury Secretary Mnuchin announced that a framework agreement had been reached on May 21, in the end the White House announced its intention to move ahead with the \$50 billion Section 301-tariffs.¹³⁴ The first stage of these tariffs, covering \$34 billion worth of Chinese products, went into effect on July 6, 2018.

In response to Chinese pronouncements of counter-measures, President Trump instructed USTR to establish a list of an additional \$200 billion worth of Chinese products that would be hit with a 10 percent tariff, doubling his previously threatened level of \$100 billion, in case the Chinese retaliated against the Section 301 tariffs. A list of covered products was released on July 10, 2018.¹³⁵ Public hearings at the end of August showed a majority of participants expressing concerns about the approach, which would greatly affect supply chains and production in virtually every industry, as well as numerous consumer goods; indeed, major business groups have complained and a number have threatened legal action against what they believe is a measure not authorized under U.S. law.¹³⁶ Undeterred, the President in early September told reporters on Air Force One that he is willing to place punitive tariffs on an additional \$267 billion of imports from China if Beijing is unwilling to do more than merely purchase a few large ticket items.¹³⁷

2.7.3 CFIUS reform

As another step against China’s “theft” of American technology, the Administration is supporting efforts to significantly strengthen rules governing foreign direct investment in the United States.

This is not new. Over the past years, worries about Chinese investments in the United States have grown among U.S. policy makers and lawmakers, given the stated goals of the Chinese government for science and technology development and dramatic increases in Chinese foreign direct investment in the United States. According to some studies, Chinese FDI in the United States tripled between 2015 and 2016.¹³⁸ Furthermore, in the critical technological areas most affected, the line demarcating products designed and used for commercial versus military purposes is blurring. As a result of rapidly increasing FDI, “reviews of Chinese investments by the Committee on Foreign Investment in the United States (CFIUS) are growing in

¹³² Segal, Stephanie, Alan Reinsch, William: Section 301, [Tariffs, and Chinese Trade and Investment](#), CSIS, March 23, 2018

¹³³ Wayne Morrison: [China-U.S. Trade Issues](#), op. cit, p. 59.

¹³⁴ Wayne Morrison: [China-U.S. Trade Issues](#), op. cit, p. 60.

¹³⁵ Ana Swanson, Jim Tankersley: [U.S. Threatens Tariffs on \\$200 Billion of Chinese Goods, From Tilapia to Handbags](#), New York Times, July 10, 2018

¹³⁶ Anshu Sirapurapu, [Business Groups Warn New China tariffs Could Face Legal Challenges](#), Inside US Trade (paywall), Septemebr 7, 2018

¹³⁷ Steve Holland: [Trump has Tariffs Ready for Further \\$267 billion worth of Chinese Imports](#), Reuters, September 7, 2018

¹³⁸ Cassie Gao and Thilo Hanemann: [Record Deal Making in 2016 Pushes Cumulative Chinese FDI in the US above \\$100 billion](#), Rhodium Group, December 30, 2016

number and complexity.”¹³⁹ The existing CFIUS process already allows the president to “block or suspend proposed or pending ‘mergers, acquisitions, or takeovers’ of ‘persons engaged in interstate commerce in the United States’ that threaten to impair the national security”.¹⁴⁰ However, it has been widely deemed to be in need of reform, as the current process could no longer deal sufficiently with emerging challenges. In its annual report to Congress, the U.S.-China Economic and Security Review Commission identified three trends that impact the ability of CFIUS to properly review Chinese FDI to the United States:

“First, Chinese FDI is targeting industries deemed strategic by the Chinese government, including information and communications technology, agriculture, and biotechnology. These investments lead to the transfer of valuable U.S. assets, intellectual property, and technology to China, presenting potential risks to critical U.S. economic and national security interests. In many of these sectors, U.S. firms also lack reciprocal treatment in China and are forced to disclose valuable technologies and source code to gain access to the Chinese market.

Second, some private Chinese companies operating in strategic sectors are private only in name, with the Chinese government using an array of measures, including financial support and other incentives, as well as coercion, to influence private business decisions and achieve state goals. This complicates the job of regulators and puts U.S. companies in these sectors at a distinct disadvantage, with their Chinese counterparts making business decisions based on political interests and with the financial backing of the state.

Third, some Chinese companies are attempting to invest in sensitive U.S. industries without obeying normal U.S. regulatory procedures. Their methods may include facilitating investments through shell companies based outside of China and conducting cyber espionage campaigns to financially weaken and then acquire U.S. firms. These methods not only injure U.S. businesses, but also hinder CFIUS’s ability to review investments for potential threats to U.S. national security.”¹⁴¹

Many of these practices had been identified in a detailed study conducted during the Obama Administration by the former CEO of Symantec, Michael Brown.¹⁴²

In response, policy makers have long called for reforms to the CFIUS-process and a reform bill, the Foreign Investment Risk Review Modernization Act (FIRRMA) was introduced in Congress by Senator John Cornyn in November 2017. With the support of the Administration, the bill was essentially agreed by both houses of Congress in July,¹⁴³ and signed into law on August 13, 2018 as part of the larger National Defense Authorization Act.

FIRRMA seeks to strike a balance between responding to the new challenges, while not stymieing foreign investments in the U.S. The law expands CFIUS’s jurisdiction, by including a broader range of transactions, such as “non-passive, minority-position investments in critical technology or infrastructure; joint ventures involving technology transfers to a foreign entity; and real estate investments near military

¹³⁹ U.S.-China Economic and Security Review Commission : [Report to Congress of the U.S.-China Economic and Security Review Commission](#), November 2017, p. 2,

¹⁴⁰ James K Jackson and Cathleen D. Cimino-Isaacs: [Foreign Investment Risk Review Modernization Act](#) (FIRRMA), Congressional Research Service, July 3, 2018

¹⁴¹ U.S.-China Economic and Security Review Commission, [op. cit](#) (fn 138), p. 3

¹⁴² Michael Brown and Pavneet Singh: [China’s Technology Transfer Strategy: How Chinese Investments in Emerging Technology Enable A Strategic Competitor to Access the Crown Jewels of U.S. Innovation](#), January 2018, p.3

¹⁴³ Reuters: [US lawmakers reach pact to strengthen oversight of foreign investment](#), Reuters, July 19, 2018

or other national security facilities.”¹⁴⁴ It also allows CFIUS to discriminate among investments from countries of special concern, which may have the strategic goal to acquire technologies to affect U.S. technological leadership and tasks CFIUS to consider whether a transaction endangers sensitive personal data of U.S. citizens.¹⁴⁵ It further doubles the number of national security factors under CFIUS’ risk reviews and give “CFIUS additional tools to mitigate national security risks and monitor and enforce compliance with risk-mitigation protocols.”¹⁴⁶ The staff dedicated to the CFIUS process is enlarged and new Senate-confirmed positions are created at the Treasury Department to oversee CFIUS operations. In addition, there are several procedural amendments to the CFIUS process, “including extending the timeline, addition to the options available for companies to notify CFIUS of transactions, and expanding CFIUS’s authority to mandate reviews or take unilateral action”.¹⁴⁷ The Administration has 18 months to adopt the necessary implementing regulations before the law comes fully into force; in the meantime, the CFIUS committee can undertake “pilot programs” to test ways to strengthen enforcement.¹⁴⁸

2.7.4 Trilateral efforts to “level the playing field”

Although the Trump Administration’s focus has been on pushing back unilaterally on China, USTR Lighthizer has also been willing to work with his Japanese and EU counterparts to see whether the international rulebook can be strengthened to address the measures China has adopted to promote its national resurgence: a mercantilist focus on export-driven growth; government and Party ownership, control and direction of both state-owned enterprises and private firms; floods of low-cost lending directed toward both traditional manufacturing and high-tech industry; explicit and extensive industrial policies to make China *the* global leader in key strategic sectors; legal, administrative and other tools to compel foreigners to transfer (or otherwise acquire) the technologies it needs for this; and the increasingly blurred lines between these economic and China’s broader geo-political and geo-strategic aims.

The United States, the EU and Japan had each taken steps to address some of these issues, by strengthening and more strictly enforcing anti-dumping/countervailing duty laws and foreign investment laws; by pursuing WTO disputes (including soon on forced technology transfer); and, in the U.S. case, taking other measures such as the Section 301 investigation on technology transfer.

But sensing a common purpose, they also began to collaborate on ways to promote a “Level Playing Field” with a [Joint Statement](#) at the December 2017 WTO Ministerial in Buenos Aires, which they further [refined](#) following discussions in Brussels on March 10, 2018 (two days after President Trump announced his decision to levy tariffs on steel and aluminum), noting their intent to work together to:

- Define the basis for the development of stronger rules on industrial subsidies, and collaborate on maintaining existing disciplines, to tackle the issues of market distortion or overcapacity;
- Enforce existing rules by working jointly on current and new disputes in the WTO;
- Work in the WTO regular bodies towards improving the effectiveness and efficiency of the WTO monitoring function, including strengthening of notification requirements;
- Engage with the appropriate authorities within government with a view to cooperating on investment screening, both by an exchange of information on our respective frameworks and by the consideration of possible means of coordination going forward;

¹⁴⁴ Robert D. Williams: [CFIUS Reform and U.S. Government Concerns over Chinese Investment: A Primer](#), Lawfare Blog, November 13, 2017

¹⁴⁵ Stephanie Zable: [The Foreign Investment Risk Review Modernization Act of 2018](#), Lawfare, August 2, 2018, at:

¹⁴⁶ Robert D. Williams, 2017, [op. cit.](#)

¹⁴⁷ Stephanie Zable, 2018, [op. cit.](#)

¹⁴⁸ Reuters : [US lawmakers reach pact to strengthen oversight of foreign investment](#), July 19, 2018

- Engage with the appropriate authorities within government with a view to further the work of the International Working Group on Export Credits towards a new set of guidelines;
- intensify information-sharing on trade-distortive practices;
- coordinate closely in international fora, such as the G7, G20 and the OECD and on sectoral initiatives such as the Global Steel Forum and Governments/Authorities Meeting on Semiconductors.

And indeed, on almost the very day that the Section 232 tariffs became effective on imports from the EU, on the margins of the OECD Trade Ministers' meeting, the three went a step further and agreed a detailed "Joint Scoping Paper"¹⁴⁹ to define the basis for the development of stronger rules on industrial subsidies, an effort which is clearly targeted toward China's non-market practices. The aim is to have appropriate concepts elaborated by the next WTO Ministerial, and to try to launch negotiations on them shortly thereafter. This trilateral effort was also recognized and encouraged in the Joint Statement issued following the meeting between Presidents Trump and Juncker in late July, mentioned above. And, as discussed in the Conclusion to this report, it presents a possible way to place EU-U.S. trade relations back on a more constructive footing.

¹⁴⁹ Office of the U.S. Trade Representative: [Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan and the European Union](#), May 31, 2018

3 Assessment of the changing U.S. policy and its effects on EU-US trade relations and the global trading system

As the detailed narrative above demonstrates, the Trump Administration has adopted a tough – some might even say “bullying” – approach to achieving its objective of bringing more reciprocity into the trading system. It has withdrawn from agreements (TPP); threatened to terminate them (NAFTA, KORUS); sought to divide countries so that it can wield its larger size and power against smaller counterparts (TPP and NAFTA again); used the highly debatable grounds of national security to effectively break its tariff bindings in the WTO and then argued it cannot be held to account for this; rejected long-time allies’ pleas for better treatment (the EU, Japan, Canada, Mexico, Australia and many others); openly taken advantage of weaknesses it perceives in others (arguably including the EU and Brexit); elicited retaliation from others and responded aggressively against it; and launched a multi-billion dollar trade war against China, the world’s biggest exporter, arguably the world’s biggest economy, and aspiring global power. It has done so seemingly heedless of the impact on its own economy, averring that the strength of the United States economy (and vulnerabilities in the other party) will let it win in the end. A tough negotiating stance indeed.

By all accounts, the disruptive approach the Trump Administration has taken during its first year and a half has had a measurable impact on the global economy. While the IMF World Economic Outlook Update released in July¹⁵⁰ did not change its forecasts for overall aggregate growth, it stressed that the composition had changed (with projections for Europe and Japan notably down) and that the downside risks had increased considerably. In an accompanying blog, the IMF Chief Economist notes that the United States -- buoyed somewhat by the expansionary tax reform -- is particularly susceptible to retaliation against the trade measures it is adopting, and that if those trade tensions continue, its modeling suggests that 2020 GDP could be 0.5 percent -- or some \$430 billion -- less than now expected.¹⁵¹ More recently, IMF Director General Lagarde has also expressed concern that continued trade tensions -- including through the impact of President Trump’s recent decision to double the 232 tariffs on Turkey because it refuses to release an American pastor -- could seriously disrupt developing country finances.

3.1 The EU-US trade relationship

Given the economic consequences of the trade uncertainties as well as the somewhat ambiguous political backdrop in the United States, there are any number of ways in which the current U.S.-EU trade dispute could play out over the next half year; in virtually all of them, however, the bilateral trading relationship – and indeed the global trading order – will have worsened.

Of course, the outcomes depend not only on Washington’s actions, but those of the European Union. As noted above, the EU has responded to the U.S. imposition of tariffs on EU exports of steel and aluminum in three ways – filing a dispute settlement case in the WTO, applying “rebalancing” tariffs under Article XVIII of the WTO’s General Agreement on Tariffs and Trade, and readying safeguard actions against a possible surge in steel and aluminum imports that have been deflected from the U.S. market. EU Trade Commissioner Cecilia Malmström, in a major July 19, 2018 speech on “Transatlantic Trade in Turbulent Times”¹⁵², made clear, with obvious regret, that the EU believes it “had no choice but to respond” to the U.S. actions; to do otherwise would be to “walk away from” the rules-based order the United States and Europe had established after the Second World War.

¹⁵⁰ International Monetary Fund: [World Economic Outlook Update: Less Even Expansion, Rising Trade Tensions](#), July 16, 2018.

¹⁵¹ Maurice Obstfeld: [The Global Expansion: Still Strong, Less Even, More Fragile, Under Threat](#), July 18, 2018

¹⁵² Cecilia Malmström: [Transatlantic Trade in Turbulent Times](#), European Commission, July 19, 2018

But the EU's deepest concern is for the threatened use of Section 232 to levy high tariffs on imports of cars and car parts – where the EU's exports to the United States are €50 billion, versus €6.4 billion of steel and aluminum trade, where there is no global over capacity, and where EU companies have invested heavily in the United States, and indeed export considerable amounts from there. As Commissioner Malmström put it: "... tariffs on cars are neither wanted nor warranted. At best, they are a solution in search of a problem. At worst, they are an illegal move to gain leverage in trade negotiations." While the Trade Commissioner did not say what the EU would do should the United States impose such tariffs, the EU clearly wants to de-escalate tensions, as demonstrated when the Commissioner and Commission President Juncker visited Washington for discussions with President Trump and his team on July 25.

Just prior to that visit, President Trump attacked the EU once again, this time in response to a €4 billion fine imposed on Google for violations of EU anti-trust law. This arguably added additional fuel to the fire, and affected the outcome of the July 25 talks, which, as noted in Section 2.5.4, resulted in something of a cease-fire and a possible opening for more, but left the 232 steel and aluminum tariffs in place.

The most constructive outcome

The Executive Working Group process initiated with President Juncker's visit, which formally began with USTR Lighthizer's visit to Brussels on September 11, presents the best prospect for ideally both terminating the measures the two sides have taken because of the 232 case that actively worsen trade across the Atlantic as well as taking some positive steps forward.

The best possible scenario, from the EU's point of view, would be for the United States to unilaterally terminate the steel and aluminum tariffs, for all related WTO cases to be withdrawn, for the U.S. to stand down on the Section 232 auto investigation, for the United States to agree to apply any new auto rules of origin in NAFTA in a way that would not adversely affect imports of European companies from Mexico or Canada, and for the U.S. to end its unilateral Section 301 tariffs against China, while strengthening its efforts to tackle Chinese practices in the WTO, including through the negotiation of new rules. Further, beyond this return of transatlantic trade almost to the status quo as of January 2018 (that is, before the Trump Administration began executing on many of the steps it signaled in its first year), the EU and United States would use the Executive Working Group process to adopt measures that enhance trade relations, ranging from the full elimination of tariffs, to some progress on regulatory and standards issues.

As things now stand, this most ideal outcome has little chance of happening (perhaps 5 percent probability), as it would mean the President and his Administration would essentially have to concede virtually all their negotiating objectives. In addition, the Administration has made clear even with partners with which it has concluded revised trade agreements (Korea and Mexico, possibly Canada) that in part to sustain the 232 approach to steel and aluminum, it will retain some restraints on trade in those products, although in the less draconian form of quotas rather than tariffs.

A partial return to the transatlantic status quo ante

A second scenario would have the United States and Europe resolve the steel and aluminum dispute through EU agreement to "voluntary restraints" (quotas) on exports to the United States, as Australia, Brazil, Korea and Mexico have done. This would terminate the WTO cases that have arisen from the current 232 dispute.¹⁵³ Despite considerable misgivings about the wisdom of this approach, the EU has reportedly indicated it might be willing to enter into such restraints, if the allowed export volumes were closely based on 2017 trade levels (and presumably flexibly implemented). Ideally, this would be done in conjunction with a decision by the United States not to follow through on the threatened auto tariffs, if only because

¹⁵³ Such an approach is inconsistent with WTO rules as written following the world's experience with VRAs under President Reagan. However, the WTO system is intentionally not self-enforcing; disputes only arise when a Party brings one. In this case, the assumption is that no party – except perhaps China -- would do so.

the Department of Commerce investigation found no (imminent) national security threat, although the agreement to tighten NAFTA rules of origin will still affect European companies exporting to the United States from the NAFTA countries, although not as much as the Administration originally sought. This scenario too would allow for some progress under the Executive Working Group on bilateral matters, as well as continued collaboration in the WTO on objectionable Chinese trading practices, although the U.S.-China dispute would continue.

This scenario is more likely, with perhaps a one-in-three probability, as it would allow the Administration to claim a victory, and could well lead to other countries also agreeing to the voluntary restraint agreement approach. It would also usefully avoid adjudication of the “self-judging” aspect of Article XXI, where the United States would lose whether the WTO decided in its favor (in which case, any country can raise trade barriers on the basis of national security) or against it (where the United States, as a global power, arguably needs more leeway in using national security for certain international economic policy instruments, such as sanctions). EU-U.S. trade, however, would suffer both directly, through reduced potential trade in steel and aluminum, and indirectly through the collateral impact through NAFTA as well as through the continued U.S. trade war with China.

One factor against such an outcome is the President’s oft-stated intent to raise tariffs on autos and auto parts. While the national security justification for such a move is highly debatable (and has been roundly criticized by the auto industry, all other industry associations, a wide and bipartisan range of Senators and Congressmen and America’s allies in the Americas, Europe, Japan and Korea, all of which would be the worst hit), the likelihood of a positive finding that auto imports present a threat to the national security is very high.¹⁵⁴ The President is likely to agree and announce the imposition of higher tariffs, although possibly suspending the application pending further discussions with partners. The Administration likely believes it can still avoid legal disputes through its “self-judging” rationale, and that the volumes of trade will make it difficult for affected parties to respond in kind. The approach brings two advantages – negotiating leverage, and a possibly permanent increase in the U.S. tariff on autos (effectively, a breaking of the 2.5 percent WTO bound rate).

Continuing downhill, fast or faster

A worse scenario, which currently seems the most likely, is that the Administration feels it needs to follow-through on the President’s threats in at least the short-term. This would see the continuation of the U.S. 232 tariffs on imports of steel and aluminum as well as of the “rebalancing” tariffs of the EU and other countries, the announcement (at least) of Section 232 tariffs on cars and auto parts, and the continued escalation of the U.S. trade dispute with China.

Whether the EU could get its own industry exempted from such draconian provisions would depend on what it would be willing to “give” the Administration – which would probably include acceptance of a quota on auto exports to the United States; helping encourage others, including Canada and Mexico, to agree to the new terms (despite the collateral impact on EU subsidiaries in the NAFTA region); withdrawal of the EU’s WTO case against the use of Section 232 (and at least implicit acceptance of the U.S. interpretation of Article XXI on national security); and some form of reduction in EU tariffs and standards barriers applied on U.S. auto and parts exports to Europe agreed in the context of the Executive Working Group. This is not impossible; the Administration has underscored that addressing a long-standing complaint on standards, which could help U.S. auto exports to Europe as well as those of many other products, is a high near-term priority.¹⁵⁵

¹⁵⁴ Authors’ consultations in Washington, September 3-7, 2018.

¹⁵⁵ Authors’ discussions with USTR, Commerce, State and NSC officials, September 3-7, 2018. The standards issue is related to the EU’s refusal to accept that other international standards can also meet EU regulatory requirements.

But even were the EU to be exempted from the direct application of the 232 auto measures, this scenario has a significant impact on EU trade directly with the United States, with America's NAFTA partners (which would certainly be inconsistent with the spirit of its newly concluded trade agreements with them), as well as more generally, as the likely impact of this escalation of America's trade disputes with the rest of the world reverberates through the global economy.

And then there is the possibility that the EU is not exempted, and that €50 billion of auto and auto parts trade is swept into the Administration's trade battles. In this instance, the assumption is that the Administration is not just seeking to create negotiating leverage to get some of the results indicated above, but seriously means to raise significant barriers to trade in autos and auto parts, and bring auto manufacturing "back" to the United States. The EU would need to determine whether it should pursue a second WTO case against the Trump Administration's use of national security, and whether it would again seek rebalancing tariffs, this time for a huge amount of imports from the United States that would certainly have deeper ripple effects on the European, American and indeed global economy.

If it does, this could very well also exacerbate a number of highly sensitive existing trade tensions where the United States has won favorable WTO rulings, including on the way in which the EU's approach to approving genetically modified plant variants essentially bans most U.S. commodity imports and the Boeing-Airbus dispute in particular. Numerous other issues, trade and non-trade, could also be swept into this vortex, including such things as the long-standing debate about geographic indications, and even data privacy adequacy rulings.

3.2 Global trading system and the WTO

In addition to the downside risks the Trump Administration's trade measures already present to the global economy, the outlook for the global trading system and the WTO as well as with China presents sources of considerable danger.

The threat posed by President Trump's actions to the WTO comes from several directions. First, the ongoing blockade of new judges threatens to upend the central role of the WTO's Appellate Body. This "crown jewel" of the WTO system is indispensable for the proper functioning of the global trade order as it is a critical part of the mechanism to enforce WTO rules. Secondly, the national security justification of the U.S. side for its imposition of steel and aluminum tariffs (and investigation into auto tariffs) could set the WTO system up for failure.¹⁵⁶ Either the WTO dispute settlement mechanism finds that U.S. arguments are unjustified, thereby provoking the Administration's ire, or it defers to the U.S. position in asserting its national security interest and in so doing allows other countries to do the same. The options to resolve these dilemmas are very limited as any "solution that would alienate the United States, or encourage it to leave the organization, [...], would only deepen the WTO crisis, and encourage major trading nations to ignore or circumvent WTO obligations."¹⁵⁷ Given this, the only viable option seems to be for the protagonists to "negotiate their way out"¹⁵⁸ or withdraw their disputes, leaving the current ambiguity. Such negotiations would likely have to address U.S. procedural concerns for the functioning of the Appellate Body. As noted in Section 2.4 above, the United States is engaging in this debate, although its strict constructionist legal approach gives pause to many.

But the Trump Administration's trade policies could also have far broader consequences for world trade, and the world trading system.

In terms of world trade, even if the European Union and the United States can avoid escalation of the dispute between them, it is highly likely the dispute with China will worsen. The Trump Administration's

¹⁵⁶ Dan Ikenson: [Trump's National Security Protectionism Will Open Pandora's Box](#), CATO, March 1, 2018

¹⁵⁷ Tetyana Payosova et. al, [op. cit.](#), p. 11

¹⁵⁸ Marc L. Bush : [What Trump's Trade War Could Mean for the WTO and Global Trade](#), Harvard Business Review, June 7, 2018

demands on China are virtually impossible for Beijing to accept, and the Communist Party leadership is unlikely to back down from countering every tariff imposed by Washington. If, as President Trump indicated on July 19 and again in September, he is willing to impose punitive duties on all imports from China, Beijing will respond in kind, not only on all U.S. exports, but also on U.S. investments in China. A true trade war cannot be discounted, not least as the Administration has made clear it considers China to be engaged in “economic aggression.” The impact of such a war on the global economy would be enormous.

There are some signs that at least parts of the Administration actually want to disengage the United States economy from China trade, and is indeed willing to end all MFN “concessions” to China. If it does, of course, this would undermine a cornerstone of the WTO’s rules-based system for trade. The only way this could be avoided would be for China to agree to the development -- and application -- of new disciplines in the WTO that would significantly change many of the aspects of its current economic model. This is highly unlikely -- but, as discussed below, may be possible.

4 Conclusions: embracing a “re-balancing”

The Trump Administration’s trade policy, as described in Section 2, presents significant challenges for the EU-U.S. trade relationship, as well as the world trade system, as intimated in Section 3.

As noted above, the European Union can, and perhaps should, respond to a likely Administration decision to impose 232 tariffs on imports of autos and auto parts by filing a WTO case against that action, and, more consequentially, by taking “re-balancing” measures once again pursuant to the WTO safeguards process, as it did with steel and aluminum. Given the negative impact this would have on the European economy (after all, imports, especially of components, are economically beneficial), it could choose to do so on a smaller volume of trade than that affected by the U.S. measures, but the step will need to be large enough to be meaningful. And this -- as noted in the scenarios above -- could easily head the transatlantic partners into a dispute neither of them wants (with Washington hoping Brussels and the member states will blink first).

But the outcome is not fore-ordained. The European Union has the capacity to influence the future direction of the Administration’s trade policy, although doing so will require both a clear vision of what that future should be, and patience and perseverance in executing the strategy and tactics to get there.

Doing so necessitates in the first instance understanding the origin of the Administration’s trade policy. Here, the slogans of the Administration -- “America First” and “Make America Great Again” -- need to be read in conjunction. These slogans resonate, not just with a disaffected portion of the American voting public that feels “left behind” by the disruptions globalization and trade bring, but also with many “establishment” business Americans, who believe the “rest of the world” -- including in particular China -- has been “taking advantage of” America’s generosity in the post-war era. President Trump and his Administration have given voice to what many feel is a reasonable need to correct an imbalance after 70 years, albeit with both a rhetoric and arguably excessively tough measures that may obscure the more moderate underlying message.

A possible key to turning the debate with the Administration, then, might start with accepting this need for a “rebalancing” as a basis, as its corollary is an increased role -- and responsibility -- for the European Union ... as well as Japan and others, including China. Done properly, this would shift the debate away from acting only in response to threats emanating from Washington, and could very well address a number of issues that are separate EU priorities, again including on China.

Three areas in particular stand out as fields for such a more positive, and constructive, engagement -- bilateral trade relations, the WTO and China -- each addressed below.

Finding a way to get the Administration to back off from its use of the 232 national security argument could be critical to this endeavor, on all three levels. This may be difficult, but perhaps not impossible. The

Administration likely chose to go down the national security route in the belief that this was the only way to offer relief to the “signature” steel industry, given its belief that national security is self-judging and non-contestable under the WTO. It also undoubtedly believed that a heavy-handed approach was necessary to create leverage to radically change decades of ingrained behavior in trade negotiations, where others “took advantage” of the United States.

If so, the *real* issue then is the relief, not the grounds for it, and a time-limited Section 201 safeguards approach might be an acceptable alternative to Washington if affected parties can be convinced not to contest it -- not least as this would put aside the question of justiciability of national security. The EU would need to quietly explore this, and, in light of the “re-balancing” notion described above, perhaps promise to work toward this end with other WTO parties, knowing that withdrawal of the measures would not come until a critical mass, at least, had accepted the alternative (and thus that the leverage had served its purpose).

EU-U.S. trade: not TTIP, but an enhancement

Implicit in the above is that the steel and aluminum 232 tariffs, and possibly at least an affirmative decision on cars (even if not implemented toward the EU, given the Juncker-Trump July 25 “cease-fire”), could still overshadow any EU-U.S. efforts in the Expert Working Group context, giving the sense that the EU is still depicted as “negotiating under a gun.” This added political difficulty is unfortunate, but can be addressed in part by arguing for the benefits *to the EU* of a re-balancing approach, never mind the possible economic benefits of any possible improvements in the transatlantic relationship.

As the EU and U.S. seek ways to enhance their bilateral relationship, they have rightly put TTIP to the side, even while the ambitious agenda TTIP offered could have made a welcome step-change in the transatlantic relationship. Doing so provides the two sides useful political space. TTIP was politically controversial in Europe in large part because both investor-state dispute settlement (ISDS) and the regulatory cooperation parts were perceived and portrayed as “lowering” EU citizens’ regulatory protections. The Trump Administration made clear in the NAFTA negotiations that it is not wedded to ISDS, and the Trump-Juncker July 25 statement implies at the very least a more attenuated regulatory agenda. Furthermore, the Administration appears interested in quick wins, both for its own political purposes and in awareness of the EU’s political calendar.

That said, the two sides can both build on and learn from the four years of TTIP negotiations, especially for those “quick wins” in tariffs, customs facilitation, standards and regulatory cooperation. But doing so may require both sides to jettison traditional approaches to trade negotiations, and in particular the use of “cross-sectoral” trade-offs. While cross-sectoral trade-offs may be appropriate in many contexts, they are arguably less relevant in the EU-U.S. case where two equally large, developed and similarly structured economies are already deeply integrated through their investment relationship.

Trade in Goods: The EU and United States both understood even as they started the TTIP negotiations that they would eliminate border measures -- tariffs and quotas -- between them to at least as close to the highest levels they had achieved in their FTAs with others. Indeed, by the end of the talks in 2016, they had reportedly decided to go to zero on 97 percent of all tariff lines, with a few remaining key sensitive agricultural areas.

In that sense, quick agreement on such a “tariff only” FTA should be possible and could have significant economic benefits.¹⁵⁹ While the two sides disagree about whether agricultural should be included in such an effort, their actual difference is over food safety regulations (sanitary- and phyto-sanitary, or SPS, matters) that preclude much agricultural trade, especially in terms of U.S. exports of commodities where

¹⁵⁹ Fredrik Erixon and Matthias Bauer: [A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods](#), European Center of International Political Economy, October 2010

American farmers use GMOs that have not been approved for import and use in the European Union. The same is true of the use of anti-microbial treatments used in the United States to cleanse chicken, pork and beef after slaughter. As Washington is well-aware, zeroing out the border measures does not change effective market access for those commodities, nor change the EU's GMO traceability and labeling laws. As such, Europe's farmers (and their politicians) need not worry that eliminating tariffs as such will lead to an onslaught of American GMO imports or floods of "chlorinated" chicken. (During TTIP, the EU often implied that such real barriers to agro-food trade would only be addressed if the United States offered more on government procurement, an arguably politically ill-advised trade-off if ever there was one.) But those are regulatory issues, and are better handled in that regulatory context, as discussed below. If these are taken off the table, and if both sides recognize that for some sensitive products tariff rate quotas will be needed (in sugar, for the United States), a transatlantic zero agreement, TAZA, could be achievable as a stand-alone, and WTO compatible,¹⁶⁰ agreement.

A closely-related aspect to any trade in goods agreement is provisions related to customs facilitation. These too were in good shape toward the end of the TTIP negotiations, but one area in which they could be improved is related to small shipments made largely by consumers and very small enterprises -- these could be substantially improved if the "*de minimus*" level at which import formalities are needed is raised, especially in the EU, considerably. (It is now \$800 in the United States and less than €50 in the EU.)

Regulatory Cooperation: Many have argued that "unnecessary" regulatory differences between the European Union and the United States are the "real" barriers to transatlantic trade in food, goods and services. At the same time, including negotiations of these regulatory differences -- even if "unnecessary" in that the levels of protection are equivalent -- caused real concerns among many citizens, especially in Europe, as they feared regulatory protections would be "traded" for market access, something no politician on *either* side of the Atlantic would accept.

Regulatory issues, however, do not need to be addressed in a trade agreement, and indeed traditionally have not been. NAFTA, for instance, does not get into deep regulation; these issues are addressed separately in two bilateral "Regulatory Cooperation Councils" between the United States and Mexico respectively. Similarly, the United States and the European Union have reached numerous individual regulatory cooperation agreements without having a trade agreement, including in such fractious areas as large civil aircraft and organic foods. This separation between trade and regulation reflects the political reality that regulators' duty is to protect their citizens from unsafe products and services, and that in a democracy, they are held accountable for this by the politicians who oversee them.)

While Washington may balk at not including food safety issues in particular in the "tariff only" trade agreement suggested above, it does recognize that addressing such issues requires considerably more time for the regulators to ascertain the equivalence of their regulatory standards, and the effectiveness of the enforcement of them. And right now, the Administration is focused on wins. So hiving off regulatory issues -- including in agriculture -- makes more sense in today's Washington than tying everything down with the most contentious issues.

But there is another important angle to this: while the common narrative is about European standards presenting barriers to U.S. exports of food and other products to the United States, in fact the European Union has numerous offensive regulatory interests, areas in which the EU believes that its protections are as good as (or better) than those of the United States, so sees no justification for the U.S. refusal to allow those products (and services) to be imported. This includes, for instance, beef and beef products, long ago banned by the United States during the "Mad Cow disease" scare, and where, while the United States has moved to generally accept EU beef, it still is going through the slow process of individually certifying

¹⁶⁰ Bernd Lange: [The Juncker-Trump Trade Initiative - A Preliminary Assessment](#), August 29, 2018, point 9.

individual member state controls. These same “unnecessary” barriers to Europe’s agri-food exporters hinders other European exports as well, and arguably applies -- both ways -- in such areas as cars.

The TTIP negotiations, while perhaps ill-advisedly including regulatory cooperation, did motivate numerous extensive regulatory exchanges, allowing for successes last year in mutual recognition agreements in pharmaceutical good manufacturing practices as well as covered insurance. In the current instance, the two parties can build upon these regulator-to-regulator exchanges, but relieve them of being tied to trade negotiations. Properly done, where the regulators believe additional cooperation with their transatlantic counterpart can help them be more effective and efficient in doing their job of protecting their citizens, progress can be made.

It needs to be stressed that this approach is absolutely essential to facilitating the \$400 billion or so trade in services between the United States and the European Union. The economies on both sides of the Atlantic are largely service economies, which account for about three-quarters of their economic output and more than 80 percent of their employment. Services trade is booming as digital technologies enable distance sales. The barriers to the provision of many such services (especially the profession and business-related services), however, are almost exclusively regulatory. Again, the relevant regulators need to assess -- as they have done very recently in insurance and derivatives trading -- whether the other side’s rules, and enforcement of those rules, is sufficiently high to allow freer trade between them.

Any progress on the regulatory front will come more slowly than anything related to tariffs and other border measures. To give both sides some sense of commitment, a detailed work program -- which the European Union had long sought from the United States, going back to the creation of the High-Level Regulatory Cooperation Forum in 2005 -- along the lines of the U.S.-Canada Regulatory Cooperation Council, could be a useful approach. Such a process could also include the sensitive food safety issues, where again, both sides have both offensive and defensive interests, but where a commitment to bringing strict food safety concerns to the table would help ensure progress. Even the sensitive issue of GMOs could be handled in this manner: the EU permits many GM products for import and use (the concern for the U.S. farmer rather than the seed developer); the issue is not the EU scientific approval process *per se* but the difference in varieties approved on the two sides. Again, a reasonable work program, that does not question the EU need for scientific evaluation, could move things in a constructive direction. Both the High-Level Regulatory Cooperation Forum, and the Transatlantic Economic Council, established during the German presidency in April 2007, could help facilitate this process, as long as the non-regulatory officials accept the limits of their remit over the regulators.

It is, of course, possible that the Trump Administration’s “de-regulation” agenda could create areas where the two sides do not believe their rules provide the same level of protection. If so, both need to accept that -- but as a regulatory matter, rather than a trade barrier.

Standards: A sub-set of the regulatory cooperation agenda relates to government-mandated technical regulations, that is, standards incorporated by reference into law and recognized as meeting either the EU or the U.S. regulatory requirements. This has long been a bone of contention between the two sides, so much so that it has almost become a theological rather than practical issue. If the U.S. and EU can both recognize the other side’s determination of the air-worthiness of something as sensitive as a wide-bodied airplane, even though the precise standards they each demand of the airplane manufacturers are different (as they do), then presumably this approach can be applied in other areas that are less highly-regulated. Indeed, virtually any “mutual recognition agreement” essentially overrides such technical regulations, for the very reason that the regulators recognize the standards of the other side meet all their safety requirements, even if they are different.

This practice of accepting numerous sets of standards as conforming to its regulatory needs is baked in to the U.S. standards process. In the EU, the process is different. As part of its need to ensure that member

states do not use differing standards to create unacceptable barriers to the Single Market, the EU strives for a single set of “European Norms,” (EN) which then provide a presumption of conformity.

That’s understandable in the EU context. But where the EU has already developed such European Norms, it cannot hurt the EU to then recognize that other standards actually may meet its regulatory requirements as well. The Single Market objective will have been achieved; the issue instead is with respect to goods supplied from outside the EU. The EU process allows for individual products not made specifically to the EN to qualify as equivalent; there’s little reason this cannot be done for a set of standards, rather than just individual products. In exchange, the EU can reasonably ask similar treatment from the United States, which normally has not incorporated European Norms by reference, as they almost always come later in time. (the United States does, however, frequently recognize the previous EU member state standards that have been overcome by the EN.)

This more flexible approach, focused on safety rather than on the origin of the standard (after the Single Market need is addressed), could have numerous applications, but perhaps none as immediately important as in the auto sector. Smaller auto producers in both the EU (Fiat, SEAT, Peugeot, Renault) and the United States (including GM), rightly complain that their cars are as safe as those on the other side of the Atlantic, but that the cost of confirming that is prohibitive. While a full-blown mutual recognition agreement on auto safety may not be achievable in the near term, a safety-equivalence approach to standards on individual auto types would go a long way to removing complaints on both sides that their cars are effectively blocked from export to the other party.

If properly done, progress in these three areas of tariffs, regulation and standards -- and subsets of them -- is possible and could establish a constructive working relationship between the two sides without raising many of the political “red flags” that were associated with TTIP. A willingness for both sides to engage seriously could create an entirely different political context in the current, still troubled, transatlantic relationship.

Some in Europe may argue that the EU would be losing “leverage” with one of its long-sought goals of opening the U.S. government procurement market. That assumes, however, that there was leverage in the first place, including on agriculture and food safety; this is dubious. Further and more important, as in the case of food safety, it assumes the EU has the only offensive ask. Many U.S. firms question the de facto openness of the EU procurement regime. As noted above, procurement is likely better addressed as an issue of equal importance to both sides, rather than as a (false) cross-sectoral trade-off.

[The WTO: encouraging responsibility, and new disciplines](#)

The U.S. refusal to permit the appointment of new members to the Appellate Body is on the verge of creating a crisis in the WTO. This is especially so as one of the three remaining AB members is Chinese, who will need to be recused from any case regarding China, meaning there will be no quorum to review panel decisions concerning this country.

The European Union has already stepped into the breach to try to find a way to address the most legitimate of the American procedural concerns; this is an important step. Differences on substance -- in particular with respect to previous AB rulings regarding such issues as “zeroing” in anti-dumping and countervailing duty cases -- will be more difficult to address, as they may well require re-litigating practices, or re-writing language.

But the EU’s constructive approach, and its diplomatic endeavors to encourage other WTO members to recognize the seriousness of some of the U.S. complaints (and many are recognized as valid), can help make a difference, both in Geneva *and* in Washington.

A further matter is to work with key emerging economies, to get them to recognize that hiding behind the “developing” label has become counter-productive. As EU companies are similarly interested in seeing this

extension of the real obligations in the WTO, this could be one area where the United States playing the “bad cop” could be in both the EU’s interest as well as the WTO’s.

Of course, one of the biggest offenders of this is China, which is now the world’s largest economy (by purchasing power parity), boasts highly sophisticated cities and leads in many cutting-edge technologies, although its average per capita income remains relatively low and its rural areas, while far better off than when it joined the WTO in 2001, remain relatively poor. But China, as this description implies, is a special case.

China: a “big, bold” case

The Chinese government thirty years ago embarked on an ambitious program to make China, once again, a global leader. It succeeded tremendously, bringing hundreds of millions of people out of abject poverty. This truly spectacular economic growth is the envy of many, and was built on access to global demand, underscoring the benefits of trade to humanity writ large. But it has also come at a cost -- environmental, significant financial, capacity and other imbalances in the economy (see the discussion of steel above), and envy (and even fear) from other countries, developed as well as developing.

Beijing now wants -- as literally every government does -- to ensure China is respected as a global player, and power. There is nothing *per se* wrong with that aspiration. But it cannot come at the expense of others, which would be the case were China to try to export itself out of the over-capacity problems distortions in its economy cause. Indeed, the failure of the WTO Doha negotiations to achieve meaningful liberalization likely had more to do with other developing countries’ fear of the Chinese export juggernaut than differences between Washington and Brussels.

In this sense, it is increasingly in China’s interest to understand that the complaints being voiced so loudly from Washington reflect more generalized concerns about the possible impacts of the Chinese economic “model” than just the rantings of the Trump Administration.

The budding cooperation between the EU, Japan and the United States on trying to devising stronger disciplines that could address some of the more distortive practices in the Chinese economy is an important first step toward building collaboration on an issue that is arguably far more important to the Administration than concerns about German auto exports, or even its current account surplus.

That cooperation also sets the foundation for possibly a next step -- a “big, bold, comprehensive” case in the WTO against China. As developed recently by a former member of the Appellate Body, Jennifer Hillman,¹⁶¹ such an approach implies combining in a single pleading both substantive complaints against specific violations by China of its WTO commitments (she discusses 11 in detail, including on subsidies, technology transfer, export restraints and the like), as well as a more general “nullification and impairment” case “focused on the myriad ways China’s economy fails to meet the Marrakesh Declaration (statement) that the WTO was designed as a world trading system ‘based on open, market-oriented policies’.”¹⁶²

While many lawyers may want to quibble with or amplify Hillman’s specific legal points, her main message is also an important diplomatic one: such a case should be brought by a wide range of countries, including of course the United States, the EU and Japan, but more importantly other developing countries that fear that Chinese juggernaut. Only such a broad coalition of countries can “impress upon China and the WTO how significant the concerns really are.” She notes that bringing a collective case is difficult, and requires a lot of coordination, but that many of the countries involved are already cooperating on many of the issues of concern in the G-20, the OECD and the Global Steel Forum. Further, a coalition avoids retribution. And

¹⁶¹ Jennifer Hillman: [Testimony Before the U.S-China Economic and Review Security Commission](#), U.S. Government Printing Office, June 8, 2018

¹⁶² *Ibid*, p. 10

in recent years, the United States, the EU, Japan and others have developed a significant body of evidence including with respect to many of the more systemic non-violation “nullification and impairment” issues.

Finally and most importantly, a broad coalition with a wide series of well-developed complaints creates much greater political pressure on China’s leaders to consider whether some of their approaches to their economy in fact will help them achieve their goal of China becoming a global power. And this is true just with the filing of the case; it does not necessarily require winning it, although the work in developing it will further help build possibly new WTO disciplines that should apply. Indeed, China’s leaders are already expressing concern of such a coalition beginning to develop.

The EU has a special role to play here. Its detailed reports on China’s non-market economy and compliance with its WTO obligations provides important substantive and legal contributions, to be sure. But more importantly, Washington under the Trump Administration may not have the diplomatic capital needed to create such a broad coalition, which is indispensable to the success of this approach. And where the Administration, if it’s wise, should recognize that it needs the European Union, more than it needs to “punish” it.

Adopting such a collaborative “re-balancing” approach with Washington on bilateral trade, the WTO and China will not be easy for the EU, especially in the face of the blandishments from President Trump and Washington, and as the EU enters a challenging period with Brexit and the upcoming political transition.

But the alternative -- a growing rift with its most important economic partner and a possible global trade war -- is a much more difficult prospect.

It’s worth a try.

Annex I: Presidential actions on trade

[Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement](#)

January 23, 2017

[Presidential Executive Order on Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws \(EO 13785\)](#)

March 31, 2017

[Presidential Executive Order Regarding the Omnibus Report on Significant Trade Deficits \(EO 13786\)](#)

March 31, 2017

[Presidential Executive Order on Buy American and Hire American \(EO 13788\)](#)

April 18, 2017

[Presidential Memorandum for the Secretary of Commerce](#)

(Steel Imports and Threats to National Security)

20 April 2017

[Presidential Memorandum for the Secretary of Commerce](#)

(Aluminum imports)

27 April 2017

[Presidential Executive Order Addressing Trade Agreement Violations and Abuses \(EO 13796\)](#)

29 April 2017

[Presidential Executive Order on Establishment of Office of Trade and Manufacturing Policy \(EO 13796\)](#)

29 April 2017

[USTR Letter to Congress announcing Intent to Re-negotiate the North American Free Trade Agreement](#)

18 May 2017

[Remarks by President Trump at Made in America Roundtable](#)

19 July 2017

[Presidential Executive Order on Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States \(EO 13806\)](#)

21 July 2017

[USTR Letter to Korea Calling for a Special Session of the Joint Committee under the Korea-US Free Trade Agreement to Review and Consider Modifications to the Agreement](#)

21 July 2017

[Sec. Ross: "Free-Trade is a Two-Way Street"](#)

01 August 2017

[Presidential Memorandum for the United States Trade Representative](#)

(Instructions to launch 301 investigation re China/IPR theft)

14 August 2017

[Remarks by the Vice President on Advancing Prosperity and Economic Growth in the Western Hemisphere](#)

16 August 2017

[President Donald J. Trump Announces United States Strikes Deal to Export Pork to Argentina](#)

17 August 2017

[Order Regarding the Proposed Acquisition of Lattice Semiconductor Corporation by China Venture Capital Fund Corporation Limited](#)

13 September 2017

[Presidential Proclamation to Take Certain Actions under the African Growth and Opportunity Act and for Other Purposes \(P 9687\)](#)

22 December 2017

[President Donald J. Trump Is Promoting Free, Fair, and Reciprocal Trade](#)

30 January 2018

[Growing the American Economy: The Economic Report of the President](#)

21 February 2018

[President Donald J. Trump's Policy Agenda and Annual Report for Free, Fair, and Reciprocal Trade](#)

28 February 2018

[Remarks by President Trump in Listening Session with Representatives from the Steel and Aluminum Industry](#)

01 March 2018

[Presidential Proclamation on Adjusting Imports of Aluminum into the United States \(P 9704\)](#)

08 March 2018

[Presidential Proclamation on Adjusting Imports of Steel into the United States \(P 9705\)](#)

08 March 2018

[What You Need To Know: Section 232 Investigations and Tariffs](#)

08 March 2018

[President Donald J. Trump is Addressing Unfair Trade Practices That Threaten to Harm Our National Security](#)

08 March 2018

[President Donald J. Trump will Protect American National Security from the Effects of Unfair Trade Practices](#)

08 March 2018

[Commerce Secretary Wilbur Ross: "Why We Imposed the Metal Tariffs"](#)

09 March 2018

[Presidential Proclamation Adjusting Imports of Aluminum into the United States \(P 9710\)](#)

22 March 2018

[Presidential Proclamation Adjusting Imports of Steel into the United States \(P 9711\)](#)

22 March 2018

[President Trump Approves Section 232 Tariff Modifications](#)

22 March 2018

[Remarks by President Trump at Signing of a Presidential Memorandum Targeting China's Economic Aggression](#)

22 March 2018

[Statement from President Donald J. Trump on Additional Proposed Section 301 Remedies](#)

05 April 2018

[What You Need To Know About President Donald J. Trump's Actions Responding To China's Unfair Trade Practices](#)

06 April 2018

[Peter Navarro: "Donald Trump Is Standing Up For American Interests"](#)

09 April 2018

[Presidential Proclamation Adjusting Imports of Aluminum into the United States \(P 9739\)](#)

30 April 2018

[Presidential Proclamation Adjusting Imports of Steel into the United States \(P 9740\)](#)

30 April 2018

[President Donald J. Trump Approves Section 232 Tariff Modifications](#)

30 April 2018

[Remarks by President Trump at a Roundtable with Automaker CEOs](#)

11 May 2018

[Trump Administration Officials to Host Trade Delegation from China](#)

16 May 2018

[President Donald J. Trump Proclaims May 20 through May 26, 2018, as World Trade Week](#)

18 May 2018

[Joint Statement of the United States and China Regarding Trade Consultations](#)

19 May 2018

[President Donald J. Trump is Confronting China's Unfair Trade Policies](#)

29 May 2018

[Statement on Steps to Protect Domestic Technology and Intellectual Property from China's Discriminatory and Burdensome Trade Practices](#)

29 May 2018

[Presidential Proclamation Adjusting Imports of Aluminum into the United States \(P 9758\)](#)

31 May 2018

[Presidential Proclamation Adjusting Imports of Steel into the United States \(P 9759\)](#)

31 May 2018

[President Donald J. Trump Approves Section 232 Tariff Modifications](#)

31 May 2018

[President Donald J. Trump's 500 Days of Strengthening the American Economy](#)

04 June 2018

[Readout of Discussions between Administration Officials and a Delegation from China Regarding the Trade Relationship between the United States and China](#)

04 June 2018

[Statement by the President Regarding Trade with China](#)

15 June 2018

[Statement from the President Regarding Trade with China](#)

18 June 2018

[Office of Trade & Manufacturing Policy Report: "How China's Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World"](#)

19 June 2018

[Remarks by President Trump at Protecting American Workers Roundtable](#)

21 June 2018

[Remarks by President Trump at Foxconn Facility](#)

28 June 2018

[President Donald J. Trump Proclaims July 17, 2018, as Made in America Day and this week, July 15 through July 21, 2018, as Made in America Week](#)

13 July 2018

[President Donald J. Trump is Protecting America's Farmers Against Unfair and Retaliatory Trade Practices](#)
25 July 2018

[President Donald J. Trump Launches a New Reciprocal Trade Relationship with the European Union](#)
27 July 2018

[Remarks by President Trump on the Economy](#)
27 July 2018

[President Donald J. Trump's Administration is Advancing a Free and Open Indo-Pacific](#)
30 July 2018

[Remarks by President Trump Before Dinner with Business Leaders](#)
08 August 2018

[Presidential Proclamation Adjusting Imports of Steel Into the United States](#)
10 August 2018

[Presidential Proclamation Adjusting Imports of Aluminum into the United States](#)
29 August 2018

[Presidential Proclamation on Labor Day, 2018](#)
31 August 2018

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