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## **PRESIDENT TRUMP, TRADE POLICY, AND AMERICAN GRAND STRATEGY: FROM COMMON ADVANTAGE TO COLLECTIVE CARNAGE**

***David P. Fidler\****

### **ABSTRACT**

*As a candidate for president of the United States, Donald J. Trump promised to abandon longstanding U.S. approaches to trade and pursue strategies anchored in protectionism and nationalism. This article examines President Trump's trade policy ideas and proposals and highlights the extent to which he intends to disrupt traditions of U.S. policymaking on trade. The article also analyzes whether domestic and international politics might shift the Trump administration away from a radical approach back towards trade policies that approximate how the United States has managed trade for decades. If such a shift does not occur, the Trump administration's trade policy could produce political and economic damage on a global scale, and this collective damage will forever be remembered as "Made in America".*

**KEYWORDS:** *comparative advantage, economic interdependence, international trade law, grand strategy, nationalism, President Trump, protectionism, populism, trade policy, Trump administration, World Trade Organization*

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## I. INTRODUCTION

As a candidate and now as president, Donald J. Trump has made disruption of the *status quo* the hallmark of his political ambitions. Nowhere has this characteristic been more pronounced than in trade policy. The scale and nature of President Trump's attacks on U.S. trade policy are breathtaking and unprecedented in the post-World War II history of the United States. But the new president's hostility to deeply rooted policy approaches to liberalized trade and investment extends beyond the United States, as evidenced by his celebration of the United Kingdom's decision to leave the European Union (hereinafter "EU").

The Trump administration is in its early days, so the shape of its trade policy remains a work in progress.<sup>1</sup> However, despite uncertainties, the directions President Trump wants to take trade policy deserve scrutiny. Many people in the United States and around the world worry about what the new administration's trade policies will mean for U.S. economics and politics, the U.S. role in world affairs, and the stability of an international political system long anchored in the importance of liberalized trade and investment. These worries coalesce around the fear that President Trump will transform U.S. trade policy from a strategic source of common advantage among nations into a source—to borrow from the president's rhetoric—of collective economic and political carnage.

## II. PRESIDENT TRUMP'S INAUGURAL ADDRESS: TRADE POLICY AS A FORM OF POLITICAL VIOLENCE PERPETRATED BY A DISLOYAL ELITE

President Trump's animosity towards U.S. trade policy has long been a feature of his participation in U.S. politics. Trump began making a name in American politics in the 1980s in part because he criticized U.S. trade policy.<sup>2</sup> If nothing else, he has been consistent in his positions on trade, and his consistency over decades reveals conviction on this issue rather than expediency from a vote-seeking politician. The ferocity of his anti-trade

<sup>1</sup> As of this writing, the Trump administration was only beginning to turn campaign rhetoric and promises into policy. See 2017 TRADE POLICY AGENDA AND 2016 ANNUAL REPORT OF THE PRESIDENT OF THE UNITED STATES ON THE TRADE AGREEMENTS PROGRAM (Mar. 2017), <https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/AnnualReport2017.pdf> [hereinafter 2017 TRADE POLICY AGENDA]. This uncertainty and fluidity appears in many policy areas as the Trump administration confronts the challenges of governing. During the drafting of this article, President Trump was shifting positions on key foreign policy issues away from campaign promises and rhetoric to more traditional U.S. approaches. See *infra* Part IV. See also Mark Lander, *Foreign Policy Quickly Sheds Its Sharp Edge*, N.Y. TIMES, Feb. 11, 2017, at A1.

<sup>2</sup> *How Donald Trump Thinks About Trade*, ECONOMIST (Nov. 9, 2016), <http://www.economist.com/news/united-states/21709921-americas-next-president-wants-pull-out-existing-trade-deals-and-put-future-ones>.

rhetoric during the 2016 election campaign was a passionate crescendo not a pallid calculation. This passion allowed his anti-trade positions to connect with anger in communities across the United States about lost jobs, disintegrating employment prospects, and the apparent evaporation of the “American dream” of economic prosperity for hard-working citizens.<sup>3</sup>

### *A. Ending “America Carnage”*

Fittingly, President Trump’s Inaugural Address on January 20, 2017, contained the full emotional and rhetorical flowering of his anti-trade perspective. The president accused U.S. trade policy of contributing to what he called the “American carnage” produced by failed government policies.<sup>4</sup> In his Inaugural Address, he catalogued how U.S. trade policy contributed to this American carnage.

“[F]or too many of our citizens,” the president asserted, “a different reality exists. . . . [R]usted out factories [are] scattered like tombstones across the landscape of our nation.”<sup>5</sup> President Trump expressed anger that the “wealth of our middle class has been ripped from their homes and then redistributed across the world” and that:

[W]e’ve made other countries rich while the wealth, strength, and confidence of our country has disappeared over the horizon. One by one, the factories shuttered and left our shores with not even a thought about millions and millions of American workers that were left behind.<sup>6</sup>

“We must,” President Trump declared, “protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs.”<sup>7</sup>

At his inauguration, President Trump portrayed U.S. trade policy as a form of political violence against the American people. Trade policy reaps death on U.S. manufacturing. Trade policy permits U.S. companies to rip wealth from Americans to spend elsewhere in the world. Trade policy allows foreign countries to ravage the American economy, steal American companies, and destroy American livelihoods.

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<sup>3</sup> Edward Alden, *The Roots of Trump’s Trade Rage*, POLITICO (Jan. 17, 2017), <http://www.politico.com/magazine/story/2017/01/the-roots-of-trumps-trade-rage-214639>.

<sup>4</sup> Aaron Blake, *Donald Trump’s Full Inauguration Speech Transcript, Annotated*, WASH. POST (Jan. 20, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/01/20/donald-trumps-full-inauguration-speech-transcript-annotated/?utm\\_term=.3faf3e2d4af6](https://www.washingtonpost.com/news/the-fix/wp/2017/01/20/donald-trumps-full-inauguration-speech-transcript-annotated/?utm_term=.3faf3e2d4af6) [hereinafter Inaugural Address].

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

For the president, the perpetrators of this violence are the U.S. government, U.S. companies, and foreign countries acting through trade and investment agreements. The leaders of this mafia are U.S. politicians and corporate lobbyists. President Trump argued in the Inaugural Address that:

For too long, a small group in our nation's capital has reaped the rewards of government while the people have borne the cost. Washington flourished, but the people did not share in its wealth. Politicians prospered but the jobs left and the factories closed.<sup>8</sup>

The president asserts that this political and economic elite has been disloyal to the United States and its people, an inexcusable lack of patriotism that requires, going forward, "total allegiance to the United States of America,"<sup>9</sup> through which Americans will rediscover loyalty to their country and fellow citizens.

### ***B. Ending Traditional Post-election Politics on Trade***

Even people familiar with Trump's campaign rhetoric were taken aback by the arguments and language in the Inaugural Address on trade and other issues.<sup>10</sup> This reaction suggested that experts interpreted Trump's campaign proposals and style as phenomena that would fade as the task of governing a superpower was at hand. Indeed, previous U.S. election cycles experienced heated rhetoric and arguments about trade policy, which, almost without fail, dissipated as the government and political leaders, once again, supported efforts to advance liberalized trade and investment.

This pattern appeared with Republicans and Democrats in the White House. Although known as something of an economic nationalist, Ronald Reagan supported the Uruguay Round negotiations under the General Agreement on Tariffs and Trade (hereinafter "GATT") and concluded bilateral free trade agreements with Israel and Canada.<sup>11</sup> Bill Clinton expressed skepticism about the North American Free Trade Agreement (hereinafter "NAFTA") as a candidate in the 1992 presidential elections,<sup>12</sup> but, in office, he pushed it and the establishment of the World Trade Organization (hereinafter "WTO") through Congress. In 2008, Barack

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., Mark Z. Barabak, *Rav, Angry and Aggrieved, President Trump's Inaugural Speech Does Little to Heal Political Wounds*, L.A. TIMES (Jan. 20, 2017, 5:05 PM), <http://www.latimes.com/politics/la-na-pol-trump-inauguration-speech-analysis-20170120-story.html>.

<sup>11</sup> Daniel Griswold, *Reagan Embraced Free Trade and Immigration*, CATO INST. (June 24, 2004), <https://www.cato.org/publications/commentary/reagan-embraced-free-trade-immigration>.

<sup>12</sup> Gwen Ifill, *The 1992 Campaign: The Democrats, with Reservations, Clinton Endorses Free-trade Pact*, N.Y. TIMES, Oct. 5, 1992, at A16.

Obama criticized NAFTA in route to winning the White House,<sup>13</sup> but, once there, he left NAFTA alone and backed U.S. participation in the Trans-Pacific Partnership (hereinafter “TPP”) and Trans-Atlantic Trade and Investment Partnership (hereinafter “TTIP”) agreements.<sup>14</sup>

With the Inaugural Address, President Trump served notice he intends to break this long-standing pattern in U.S. politics concerning trade. In railing against “American carnage,”<sup>15</sup> the president indicted government policies beyond trade, including those he believes contribute to inner city crime. However, the Inaugural Address condemned the conventional wisdom about trade that has prevailed after other national elections as a leading cause of the grim conditions the president believes too many Americans face. President Trump’s position is neither cynical anti-globalization nor faddish populism. The outpouring of criticism about President Trump’s perspective on trade in the Inaugural Address reflected alarm that the new administration’s approach would in no way be business as usual.

### **III. PRESIDENT TRUMP’S TRADE PROPOSALS AND ACTIONS: A FRONTAL ASSAULT ON THE THEORY AND PRACTICE OF U.S. TRADE POLICY**

As a candidate, as president-elect, and now as president, Trump has been prolific in proposing actions and taking decisions that run counter to traditional U.S. policy approaches to trade. Collectively, what he has promised, suggested, and done constitutes a comprehensive attack on economic and political theories supporting liberalized trade and investment and on U.S. commitment to open markets as a critical component of American “grand strategy” in international relations. The scale of the assault is astonishing and represents a “scorched earth” strategy against how the United States has managed trade in economic and foreign policy for decades.

#### ***A. U.S. Trade Policy Since World War II***

At least since World War II, the United States has played the leading role in defending, institutionalizing, and advancing the liberalization of trade

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<sup>13</sup> Alexander Lane, *Obama's Been Critical of NAFTA*, POLITIFACT (Oct. 15, 2008, 12:00 AM), <http://www.politifact.com/truth-o-meter/statements/2008/oct/15/john-mccain/obamas-been-critical-of-nafta/>.

<sup>14</sup> William Finnegan, *Why Does Obama Want This Trade Deal So Badly?*, NEW YORKER (June 11, 2015), <http://www.newyorker.com/news/daily-comment/why-does-obama-want-the-trans-pacific-partnership-so-badly>; FACT SHEET: UNITED STATES TO NEGOTIATE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP AGREEMENT WITH THE EUROPEAN UNION, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2013/february/US-EU-TTIP> (last visited Feb. 28, 2017).

<sup>15</sup> Inaugural Address, *supra* note 4.

in goods and services and flows of foreign direct investment. This leadership arose from three primary sources. First, U.S. policymakers accepted the economic theory of comparative advantage. This theory holds that, when nations specialize in the production of goods and services based on their comparative economic advantages and engage in trade, exporting and importing countries both enjoy better economic outcomes.<sup>16</sup> The theory of comparative advantage has long been, and remains, a powerful rationale for countries to stay committed to trade, even amidst the difficult politics trade produces, especially in democracies.

Second, the U.S. government has long acted on the belief that increasing economic interdependence among countries helps produce more orderly, stable, and peaceful conditions in international relations. This positive function of economic interdependence has been central to liberal thinking about international politics since the late 18th century.<sup>17</sup> Sufficient evidence keeps alive the belief in the stabilizing effect of commercial intercourse among nations.<sup>18</sup> This combination of ideology and results has informed American fidelity to economic interdependence in the post-World War II period.

Third, the U.S. government has consistently integrated trade and investment liberalization into its strategic thinking about protecting the United States from foreign threats, advancing its interests, and augmenting American power.<sup>19</sup> As a superpower, the United States has many policy instruments through which to pursue its interests and exercise its influence. Its commitment to open markets has been a pillar of American strategy in international politics. For the United States, support for liberalized trade and investment has been not only a principled way to exercise American power but also a pragmatic means to achieve national security and economic well-being in an often turbulent world. This strategic commitment helps explain why the U.S. government over decades helped build and maintain international institutions and regimes at bilateral, regional, and multinational levels that support open markets and guard against a resurgence of protectionism.

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<sup>16</sup> RAJ BHALA, *DICTIONARY OF INTERNATIONAL TRADE LAW* 149-50 (2d ed. 2012).

<sup>17</sup> See Christopher Gelpi & Joseph M. Grieco, *Economic Interdependence, the Democratic State, and the Liberal Peace*, in *ECONOMIC INTERDEPENDENCE AND INTERNATIONAL CONFLICT* 44 (Edward D. Mansfield & Brian M. Pollins eds., 2003).

<sup>18</sup> John R. Oneal, *Empirical Support for Liberal Peace*, in *ECONOMIC INTERDEPENDENCE AND INTERNATIONAL CONFLICT*, *supra* note 17, at 189, 190 (concluding that empirical research with new data provides “unqualified support for liberal theory” on the “pacifying influence of economic interdependence”).

<sup>19</sup> Hal Brands, *Barack Obama and the Dilemmas of American Grand Strategy*, 39(4) *WASH. Q.* 101, 104 (2017) (noting that “promoting free trade” was a goal “deeply ingrained in U.S. strategic culture” that “[e]very administration . . . has pursued”).

### ***B. President Trump's Challenge to Traditional U.S. Trade Policy***

President Trump's trade proposals and actions to date reject the theory of comparative advantage, the liberal political belief in the stability economic interdependence achieves among countries, and the commitment to open markets in American grand strategy. As seen in the Inaugural Address and other statements, President Trump conceives of trade as a "zero sum" game in which the United States is losing.<sup>20</sup> His thinking on trade shows few, in any, traces of the "win-win" outcome associated with the theory of comparative advantage.<sup>21</sup> The president's perspective is mercantilist, the approach to trade Adam Smith and David Ricardo critiqued.<sup>22</sup>

Nor has President Trump demonstrated much interest in economic interdependence as a source of political stability in international relations. Indeed, he has gone out of his way to attack sources of international stability grounded in economic interdependence. Perhaps the most famous, and successful, manifestation of the belief that economic interdependence produces better conditions for peace is the EU, a project borne from Europe's experience with two world wars.<sup>23</sup> However, President Trump is no fan of the EU. He cheered Brexit,<sup>24</sup> the United Kingdom's decision to withdraw from the EU, and has asserted that other EU members would be smart to follow the British example.<sup>25</sup> The president has accused Germany of dominating the EU in ways that harm the sovereignty and economic

<sup>20</sup> 2017 TRADE POLICY AGENDA, *supra* note 1, at 1 (asserting the American people have not seen "clear benefits from international trade agreements" while other countries have engaged in unfair trade practices that harm American workers and businesses). See also Office of the Press Secretary, *Remarks by President Trump in Joint Address to Congress*, WHITE HOUSE (Feb. 28, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/28/remarks-president-trump-joint-address-congress> [hereinafter *Joint Address to Congress*] (President Trump complaining that "when we ship products out of America, many other countries make us pay very high tariffs and taxes. But when foreign companies ship their products into America, we charge them nothing, or almost nothing").

<sup>21</sup> Roger Lowenstein, *Donald Trump Is an Economic Birther Too—and That's Even Scariest*, TIME (Oct. 3, 2016), <http://time.com/4515307/donald-trump-economic-birther/> (arguing Trump ignores the theory of comparative advantage in his trade thinking).

<sup>22</sup> Binyamin Appelbaum, *Trump Is Breaking with 200 Years of Economic Orthodoxy on Trade*, N.Y. TIMES, Mar. 11, 2016, at A18 (analyzing how Trump is bringing mercantilism back).

<sup>23</sup> Scott Burchill, *Liberal Internationalism*, in THEORIES OF INTERNATIONAL RELATIONS 28, 37 (Scott Burchill & Andrew Linklater eds., 1996) (observing that the "European Union is the best example of economic integration engendering closer economic and political co-operation in a region historically bedeviled by national conflicts").

<sup>24</sup> Jenna Johnson & Jose A. DelReal, *Trump Celebrates Brexit Vote: "When the Pound Goes Down, More People Are Coming to Turnberry."*, WASH. POST (June 24, 2016), [https://www.washingtonpost.com/news/post-politics/wp/2016/06/24/in-scotland-trump-celebrates-brexit-vote/?utm\\_term=.b82409edae1](https://www.washingtonpost.com/news/post-politics/wp/2016/06/24/in-scotland-trump-celebrates-brexit-vote/?utm_term=.b82409edae1).

<sup>25</sup> William James, *Trump Says Brexit to Be "a Great Thing", Wants Quick Trade Deal with UK*, REUTERS (Jan. 15, 2017, 9:22 PM), <http://www.reuters.com/article/us-usa-trump-britain-idUSKBN14Z0Y2> (reporting Trump's prediction that other EU members would follow the UK and leave the EU).



prospects of other EU members, which is why he believes Brexit was a good move for the UK.<sup>26</sup>

Similarly, in Asia, President Trump has blasted China for abusing international trade agreements and threatened to change U.S. policy on Taiwan if China does not alter its trade policies and currency practices.<sup>27</sup> These steps challenge the U.S. approach of integrating China into global markets as part of peacefully managing the growth of Chinese economic and political power in Asia. Inserting Taiwan into the U.S.–China trade relationship created dangers for Sino-American relations and the Asian region that later forced the president to retreat on linking Taiwan with trade policy.<sup>28</sup>

In contrast to traditional U.S. grand strategy, President Trump wants to pursue “America First” through protectionist policies. In his Inaugural Address, the president declared that “[e]very decision on trade . . . will be made to benefit American workers and American families.”<sup>29</sup> Producing such benefits, according to the president, requires protectionism. In a statement that rejects the theory of comparative advantage and the tradition of integrating liberalized trade and investment in U.S. strategic thinking, President Trump argued that “[p]rotection will lead to great prosperity and strength.”<sup>30</sup> In his Joint Address to Congress on February 28, 2017, President Trump cited Abraham Lincoln’s argument that “abandonment of the protective policy by the American government . . . will produce want and ruin among our people” as support for his embrace of protectionist trade policies.<sup>31</sup>

His post-inauguration decision to terminate U.S. involvement with the TPP agreement reinforces his rejection of the traditional U.S. perspective on trade as part of geopolitical strategy.<sup>32</sup> The Obama administration promoted the TPP agreement as part of U.S. strategic commitment to Asia in light of worries about rising Chinese power.<sup>33</sup> For President Trump, protectionism defines his outlook on trade with the Asia-Pacific region. In its *2017 Trade*

<sup>26</sup> Kate Connolly, *The Trump Interviews: What He Said About Brexit, Putin, Israel, Syria . . . and Twitter*, GUARDIAN (Jan. 16, 2017, 5:39 AM), <https://www.theguardian.com/us-news/2017/jan/16/the-trump-interviews-what-he-said-about-brexit-putin-israel-syria-and-twitter>.

<sup>27</sup> John Weeks, *Trump’s China Policy: A Trade War in the Making*, NEWSWEEK (Dec. 29, 2016, 5:38 PM), <http://www.newsweek.com/economy-us-china-taiwan-trade-wars-536897>.

<sup>28</sup> See *infra* Part IV.C.

<sup>29</sup> Inaugural Address, *supra* note 4.

<sup>30</sup> *Id.*

<sup>31</sup> Joint Address to Congress, *supra* note 20.

<sup>32</sup> Office of the Press Secretary, *Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement*, WHITE HOUSE (Jan. 23, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-withdrawal-united-states-trans-pacific>.

<sup>33</sup> See, e.g., Michael B. Froman, *The Strategic Logic of Trade: New Rules of the Road for the Global Market*, FOREIGN AFF. (Nov./Dec. 2014), <https://www.foreignaffairs.com/articles/americas/strategic-logic-trade>.

*Policy Agenda*, the Trump administration declared that it rejects “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.”<sup>34</sup>

The assault on conventional U.S. trade policy is apparent in other proposals and actions President Trump has made or taken. In the past, the U.S. government has supported trade initiatives at regional and multilateral levels. Approaching trade and investment liberalization regionally and multilaterally increases the impact of the economic and political benefits such liberalization can produce. However, President Trump has decided his administration will not pursue multilateral or regional agreements, and his actions to end U.S. involvement with the TPP and TTIP agreements underscore this choice.<sup>35</sup> The president has indicated he will negotiate only bilateral agreements.<sup>36</sup> This decision is consistent with the president’s rejection of the theory of comparative advantage, efforts to foster economic interdependence across the international system, and integrating trade liberalization throughout U.S. foreign policy endeavors.

President Trump has also threatened, or expressed interest in, withdrawing the United States from international trade treaties. He has demanded a renegotiation of NAFTA and threatened to terminate U.S. participation in it if his “America First” demands are not met by Mexico and Canada.<sup>37</sup> The president has also indicated he might be willing to pull the United States out of the WTO if his administration does not believe it can produce more effective remedies against WTO members, such as China, that engage in unfair trade practices harmful to the United States.<sup>38</sup>

Another theme in President Trump’s statements about trade is the threat the United States will unilaterally increase tariffs on imports. At various points, the president has discussed or threatened to impose new tariffs on:

- Specific countries (e.g., China, Germany, and Mexico) he believes harm U.S. interests through unfair trade practices;<sup>39</sup>

<sup>34</sup> 2017 TRADE POLICY AGENDA, *supra* note 1, at 1.

<sup>35</sup> Sean O’Grady, *By Scrapping TPP and TTIP, Trump Has Boosted American Jobs in the Short Term—and Destroyed Them in the Long Term*, INDEP. (Jan. 24, 2017, 2:45 PM), <http://www.independent.co.uk/voices/donald-trump-trade-deals-tpp-ttip-american-business-workers-boost-short-term-destroy-long-term-a7543706.html>.

<sup>36</sup> 2017 TRADE POLICY AGENDA, *supra* note 1, at 1; Jordan Weissmann, *Trump Has One Big Idea to Fix America’s Trade Deals. It’s Not Very Good*, SLATE (Feb. 7, 2017, 3:10 PM), [http://www.slate.com/blogs/moneybox/2017/02/07/the\\_big\\_problem\\_with\\_trump\\_s\\_trade\\_strategy.html](http://www.slate.com/blogs/moneybox/2017/02/07/the_big_problem_with_trump_s_trade_strategy.html).

<sup>37</sup> Tessa Berenson, *Donald Trump Details Plan to Rewrite Global Trade Rules*, TIME (June 28, 2016), <http://time.com/4385989/donald-trump-trade-china-speech/>.

<sup>38</sup> William Mauldin, *Trump Threatens to Pull U.S. out of World Trade Organization*, WALL ST. J. (July 24, 2016, 6:51 PM), <http://blogs.wsj.com/washwire/2016/07/24/trump-threatens-to-pull-u-s-out-of-world-trade-organization/>.

<sup>39</sup> Andrew Soergel, *Would Donald Trump’s China Tariffs Spark a Trade War?*, U.S. NEWS & WORLD REP. (Dec. 9, 2016, 5:45 PM), <http://www.usnews.com/news/articles/2016-12-09/would-donald-trumps-china-tariffs-spark-a-trade-war>; Adam Chandler, *Could Trump Actually Impose an Import*

- All imports entering the United States;<sup>40</sup> and
- Imports to the United States made by American companies that outsourced production facilities to foreign countries.<sup>41</sup>

These threats have not come with much detail, including whether increased tariffs would only follow successful U.S. complaints under treaties, such as NAFTA or WTO agreements, as part of using these agreements to enforce international trade law.

The lack of details has produced confusion, and nowhere has confusion been more pronounced than in the president's plans for increasing tariffs on imports from Mexico. The most high-profile proposal involves imposing a 20% tariff on Mexican imports as part of President Trump's plan to have Mexico pay for the wall he has promised to build on the U.S.–Mexican border.<sup>42</sup> As with the president's linkage of Taiwan and Chinese trade practices, this proposal for a tariff on Mexican imports connects with immigration, a non-trade issue.

In the America First agenda, the two central pillars are transforming U.S. policies on immigration and trade. The president's linking of immigration and trade from Mexico fits into the America First strategy, but determining trade policy through the politics of non-trade issues is fraught with risks. Historically, the United States and other countries have used international trade law and institutions to manage non-trade issues, such as the protection of human health, when they affect flows of trade. Under this approach, states do not directly use trade policy and agreements to address immigration problems.<sup>43</sup> With its proposal for a tariff to pay for a border barrier, the Trump administration is breaking with this tradition in trade policy and diplomacy.

In the cases of China, Japan, and Germany, threats of tariff increases have come with complaints about currency manipulation by the Chinese,

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*Tariff on Mexico?*, ATLANTIC (Jan. 27, 2017), <https://www.theatlantic.com/business/archive/2017/01/trump-tariff-mexico-border-wall/514766/>; Steven Overly, *Trump: German Automakers Will Pay Tariff on Cars Built Outside U.S.*, WASH. POST (Jan. 16, 2017), [https://www.washingtonpost.com/news/innovations/wp/2017/01/16/trump-german-automakers-will-pay-tariff-on-cars-built-outside-u-s/?utm\\_term=.e733cc08d3c9](https://www.washingtonpost.com/news/innovations/wp/2017/01/16/trump-german-automakers-will-pay-tariff-on-cars-built-outside-u-s/?utm_term=.e733cc08d3c9).

<sup>40</sup> John King & Jeremy Diamond, *Trump Team Floats a 10% Tariff on Imports*, CNN (Dec. 22, 2016), <http://www.cnn.com/2016/12/21/politics/donald-trump-tariffs/>.

<sup>41</sup> *Trump Launches Twitter Blast About Outsourcing of Jobs*, POLITICO (Dec. 4, 2016, 7:57 AM), <http://www.politico.com/story/2016/12/donald-trump-twitter-tariffs-232160>.

<sup>42</sup> Jeremy Diamond, *Trump Floats 20% Tax on Mexican Imports to Pay for Wall, but Considering Other Options*, CNN (Jan. 27, 2017), <http://www.cnn.com/2017/01/26/politics/donald-trump-mexico-import-tax-border-wall/>.

<sup>43</sup> Even in the context of the movement of persons that occurs with trade in services, countries make clear that the trade rules facilitating such movement do not affect their immigration laws. *See, e.g.*, MOVEMENT OF NATURAL PERSONS, [https://www.wto.org/english/tratop\\_e/serv\\_e/movement\\_persons\\_e/movement\\_persons\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/movement_persons_e/movement_persons_e.htm) (last visited Feb. 28, 2017) (stating that provisions in the General Agreement on Trade in Services on the movement of natural persons “does not concern persons seeking access to the employment market in the host member, nor does it affect measures regarding citizenship, residence or employment on a permanent basis”).

German, and Japanese governments.<sup>44</sup> Here, the Trump administration taps into a long-standing concern in trade policy about the devaluation of currency values in order to boost exports and reduce imports. The United States has voiced concerns that the Chinese government manipulates its currency to gain trade advantages many times after China became a member of the WTO in 2001. However, the United States has not imposed tariffs on Chinese imports on the basis of its allegations of currency manipulation. Part of the reason for no trade action is the lack of grounds in international trade law for sanctioning currency manipulation.<sup>45</sup> Countries have not crafted trade remedies for this issue. The Trump administration's focus on currency manipulation suggests it might be willing to act unilaterally in trade policy—another potential rupture with how the United States has handled trade diplomacy for decades.

Another area where President Trump has promised to depart from past practice involves his threats to impose increased tariffs on imports made by U.S. companies in other countries.<sup>46</sup> The president believes that trade and investment agreements have provided U.S. corporations with incentives to outsource manufacturing to foreign nations. In his opinion, this outsourcing is responsible for shuttered factories in the United States “scattered like tombstones across the landscape of our nation.”<sup>47</sup> His anger about outsourcing, and his desire to punish imports made by U.S. companies in other countries, challenges U.S. government policies that have facilitated global flows of foreign direct investment. In supporting liberalized trade and investment, the United States has negotiated agreements, including bilateral investment treaties,<sup>48</sup> that provide protections for foreign direct investment by U.S. enterprises in other countries. The attack on outsourcing challenges the manner in which U.S. policy has encouraged U.S. companies to invest capital in other countries and integrate those foreign subsidiaries into global markets through liberalized trade.

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<sup>44</sup> *Trump's Chinese Currency Manipulation*, WALL ST. J. (Dec. 7, 2016, 6:59 PM), <https://www.wsj.com/articles/trumps-chinese-currency-manipulation-1481155139>; Geoffrey Smith, *Donald Trump's Top Trade Adviser Just Slammed Germany*, FORTUNE (Jan. 31, 2017), <http://fortune.com/2017/01/31/donald-trumps-top-trade-adviser-currency-manipulator-germany/>; Leika Kihara & Tetsushi Kajimoto, *Japan Policymakers Reject Trump Devaluation Claims*, REUTERS (Feb. 1, 2017, 5:02 AM), <http://www.reuters.com/article/us-usa-trump-japan-forex-idUSKBN15G36O>.

<sup>45</sup> Aaditya Mattoo & Arvind Subramanian, *Currency Undervaluation and Sovereign Wealth Funds: Role for the World Trade Organization* 5 (Peterson Inst. for Int'l Econ., Working Paper No. 08-2, 2008) (noting “exchange rate manipulation remains mostly unregulated in the WTO”).

<sup>46</sup> Lauren Weber, *Trump's Attacks on Outsourcing Put Companies on Guard*, WALL ST. J. (Jan. 23, 2017, 5:30 AM), <https://www.wsj.com/articles/trumps-attacks-on-outsourcing-put-companies-on-guard-1485167401>.

<sup>47</sup> Inaugural Address, *supra* note 4.

<sup>48</sup> BILATERAL INVESTMENT TREATIES, <https://ustr.gov/trade-agreements/bilateral-investment-treaties> (last visited Feb. 28, 2017).

A hallmark of the Trump administration's statements on trade policy has been its willingness to impose trade sanctions and restrictions based on unilateral determinations of harm to the United States. This unilateralist approach threatens the U.S. government's support for resolving trade and investment disputes through rule-bound dispute settlement established within treaties.<sup>49</sup> Starting with the dispute settlement provisions included in the original GATT in 1947, the United States has backed and actively participated in dispute settlement mechanisms negotiated in trade and investment agreements.<sup>50</sup> U.S. commitment has remained strong despite political controversies that emerge when the U.S. government loses cases before treaty-based dispute settlement bodies. Under the America First agenda, the Trump administration is questioning the value of this policy commitment for the United States.<sup>51</sup>

Similarly, the unilateralism of America First reveals less interest in the international law found in trade and investment treaties accepted by the United States. All the proposals from the president and his advisors concerning the unilateral imposition of increased tariffs on imports would, if implemented, violate binding obligations the United States has under international trade law.<sup>52</sup> In addition, none of the treaties violated contain an exception that allows the United States to breach its obligations in order to "Make America Great Again." The United States has long had a difficult relationship with international law, but it has been most steadfast on the value of international law in the context of trade and investment. What the Trump administration is contemplating raises questions whether it will abandon this tradition in U.S. foreign policy.

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<sup>49</sup> In the WTO, the United States has accepted the obligation that WTO members shall "not make a determination to the effect that a violation has occurred . . . except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding . . ." Understanding on Rules and Procedures Governing the Settlement of Disputes art. 23(2)(a), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

<sup>50</sup> In the WTO, the United States has been one of the most active members in the dispute settlement process, participating as a complainant in 114 cases, as respondent in 129 cases, and as a third party in 136 cases. See DISPUTE SETTLEMENT: DISPUTES BY COUNTRY/TERRITORY, [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm) (last visited Feb. 28, 2017).

<sup>51</sup> See 2017 TRADE POLICY AGENDA, *supra* note 1, at 2-4 (emphasizing the Trump administration's willingness not to follow WTO rulings that undermine the ability of the United States to address unfair trade practices). See also Damian Paletta & Ana Swanson, *Trump Suggests Ignoring World Trade Organization in Major Policy Shift*, WASH. POST (Mar. 1, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/03/01/trump-may-ignore-wto-in-major-shift-of-u-s-trade-policy/?utm\\_term=.ce0df89faea7](https://www.washingtonpost.com/news/wonk/wp/2017/03/01/trump-may-ignore-wto-in-major-shift-of-u-s-trade-policy/?utm_term=.ce0df89faea7).

<sup>52</sup> The kinds of tariff increases discussed or proposed by the Trump team would violate, for example, obligations in trade agreements concerning bound tariff rates and most-favored-nation treatment.

### *C. Ending U.S. International Leadership on Trade*

President Trump's rhetoric and proposals in the trade context have left virtually nothing from traditional U.S. trade policy and practice untouched. The president's approach threatens the international leadership in trade and investment the United States has long demonstrated. Other countries have not always embraced or appreciated this leadership, but, without it, trade and investment liberalization would not have advanced as it has. Nations today have no experience, or memory, of a world in which the United States does not play a leading, constructive role in international economic affairs. The last time the United States sharply turned inwards on trade policy happened in the 1930s, and this isolationist move contributed to economic and political catastrophes at home and abroad.<sup>53</sup> Indeed, U.S. leadership after World War II sought to prevent protectionism from again becoming a political and economic nightmare in international relations.

The America First strategy contains no basis on which the United States can provide or claim international leadership on trade and investment. In his Inaugural Address, President Trump stated that "it is the right of all nations to put their own interests first."<sup>54</sup> This observation does not qualify as a justification for what the president wants to do in the area of trade policy.<sup>55</sup> Since World War II, the United States—and many other countries—aligned their interests with trade and investment liberalization achieved through treaties, international law, and formal dispute settlement mechanisms. Indeed, for the United States, harnessing the power of the theory of comparative advantage, tapping into the political benefits of economic interdependence, and integrating open markets into U.S. foreign policy strategy was perceived as the best way to put America first.

President Trump also declared at his inauguration that he wants the American way of life to "shine as an example . . . for everyone to follow."<sup>56</sup> He has made clear in heaping blame on U.S. trade policy for contributing to economic and social carnage in the United States that the American way of life and American sovereignty require abandoning policies, practices, rules, and institutions the United States built and supported. If other countries

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<sup>53</sup> *The Battle of Smoot-Hawley*, ECONOMIST (Dec. 18, 2008), <http://www.economist.com/node/12798595>.

<sup>54</sup> Inaugural Address, *supra* note 4. See also 2017 TRADE POLICY AGENDA, *supra* note 1, at 3 (stating "the Trump administration will aggressively defend American sovereignty over matters of trade policy").

<sup>55</sup> All presidents put "America first" in their policies. The differences arise in how presidents conceive of and pursue American interests. See, e.g., Anne-Marie Slaughter, *Putting "America First" Isn't the Problem. Trump's Version of It Is.*, WASH. POST (Feb. 10, 2017), [https://www.washingtonpost.com/posteverything/wp/2017/02/10/putting-america-first-isnt-the-problem-trumps-version-of-it-is/?utm\\_term=.3fee828aca63](https://www.washingtonpost.com/posteverything/wp/2017/02/10/putting-america-first-isnt-the-problem-trumps-version-of-it-is/?utm_term=.3fee828aca63).

<sup>56</sup> Inaugural Address, *supra* note 4.

follow this example in putting their interests first, then the dangers to global economic wellbeing and political stability will rapidly metastasize.

The Trump administration's willingness to enter bilateral trade and investment agreements does not qualify as U.S. leadership. The president and his advisors have made clear that pursuing bilateral pacts will allow the United States to maximize its leverage over other countries in the negotiations. One advisor described the strategy of ending talks over TTIP to engage in bilateral talks as a "divide and rule" approach.<sup>57</sup> The bilateral preference signals the Trump administration's desire to play power politics with countries, such as Japan and the United Kingdom, that have been economic and political allies of the United States. We should hardly be surprised these allies fear the United States is abandoning its strategic leadership role and, instead, is going rogue in ways that potentially threaten their interests.

#### IV. THE *STATUS QUO* STRIKES BACK? POTENTIAL COUNTERVAILING FORCES IN U.S. AND INTERNATIONAL POLITICS

As of this writing, the Trump administration has been in office for slightly more than one month, and it has yet to implement President Trump's rhetoric and proposals on U.S. trade policy in a serious way.<sup>58</sup> The president's decision to end U.S. participation in the TPP agreement fulfilled a campaign promise, but this agreement was doomed had Hillary Clinton won the election because she voiced her opposition to it during the campaign. In terms of the strategic role of trade in U.S. foreign policy, U.S. withdrawal from the TPP agreement is damaging—but the political willingness to withdraw was bipartisan. President Trump's termination of the talks on the TTIP agreement did not rock transatlantic relations because this agreement was in trouble in Europe before Trump became president.<sup>59</sup> In addition, the TTIP agreement never had the strategic significance associated with the TPP agreement. Thus, President Trump's decisions on the TPP and TTIP agreements are not solely the product of the America First strategy.

To date, the executive orders and presidential directives issued by President Trump since he took office have not implemented specific trade policy proposals and ideas the president and his advisors have discussed.

<sup>57</sup> Ana Swanson, *Trump's Administration Has a New Target on Trade—and It's Not China or Mexico*, WASH. POST (Jan. 31, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/01/31/trumps-administration-has-a-new-target-on-trade-and-its-not-china-or-mexico/?utm\\_term=.1cc502479627](https://www.washingtonpost.com/news/wonk/wp/2017/01/31/trumps-administration-has-a-new-target-on-trade-and-its-not-china-or-mexico/?utm_term=.1cc502479627).

<sup>58</sup> To date, the most serious policy document issued by the Trump administration is the 2017 TRADE POLICY AGENDA, *supra* note 1, issued on March 1, 2017.

<sup>59</sup> Matthew Holehouse, *TTIP Has "No Chance Under Obama"*, TELEGRAPH (July 11, 2016, 5:36 PM), <http://www.telegraph.co.uk/news/2016/07/11/ttip-has-no-chance-under-obama/>.

Even with the issuance in early March of the *2017 Trade Policy Agenda*,<sup>60</sup> the exact content of the Trump administration's trade policy is still not clear. The policy's inchoate condition suggests it might develop in ways that do not reflect the rhetoric and proposals associated with Trump's campaign and brief time in office.

### *A. Campaign Promises v. Governing Intentions*

To begin, people in, and outside supporters of, the Trump administration might not be true believers in how the president thinks and talks about trade. During the campaign, Trump's attacks on trade policy on the hustings were more radical than the formal Seven Point Plan posted on his campaign's website (see box below).<sup>61</sup> The only point in this plan that promised a significant break from U.S. trade policy is the threat to withdraw from NAFTA if renegotiation of the agreement does not "get a better deal" for American workers. The third, sixth, and seventh points involve actions based on, and governed by, existing domestic and international trade law. The fifth point addresses Chinese currency manipulation, but the promise to instruct the Treasury Secretary to label China a currency manipulator does not clarify what this action means in trade terms. The plan leaves open what a Trump administration might do after the Treasury Secretary has acted. The second point of the plan focuses on negotiating trade issues rather than taking specific actions against other countries. In short, the Seven Point Plan is not a "scorched earth" approach to conventional U.S. trade policy.

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<sup>60</sup> 2017 TRADE POLICY AGENDA, *supra* note 1.

<sup>61</sup> *Donald Trump's Seven-point Plan to Reform NAFTA and Stop WTO "Cheaters"*, REALCLEAR (June 28, 2017), [http://www.realclearpolitics.com/video/2016/06/28/donald\\_trumps\\_seven-point\\_plan\\_to\\_reform\\_nafta\\_and\\_wto\\_cheaters.html](http://www.realclearpolitics.com/video/2016/06/28/donald_trumps_seven-point_plan_to_reform_nafta_and_wto_cheaters.html).



**Donald J. Trump's 7 Point Plan to Rebuild the American Economy by Fighting for Free Trade**

1. Withdraw from the Trans-Pacific Partnership, which has not yet been ratified.
2. Appoint tough and smart trade negotiators to fight on behalf of American workers.
3. Direct the Secretary of Commerce to identify every violation of trade agreements a foreign country is currently using to harm our workers, and also direct all appropriate agencies to use every tool under American and international law to end these abuses.
4. Tell NAFTA partners that we intend to immediately renegotiate the terms of that agreement to get a better deal for our workers. If they don't agree to a renegotiation, we will submit notice that the U.S. intends to withdraw from the deal. Eliminate Mexico's one-side backdoor tariff through the VAT and end sweatshops in Mexico that undercut U.S. workers.
5. Instruct the Treasury Secretary to label China a currency manipulator.
6. Instruct the U.S. Trade Representative to bring trade cases against China, both in this country and at the WTO. China's unfair subsidy behavior is prohibited by the terms of its entrance to the WTO.
7. Use every lawful presidential power to remedy trade disputes if China does not stop its illegal activities, including its theft of American trade secrets - including the application of tariffs consistent with Section 201 and 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962.

(Source: Trump-Pence Campaign, <https://www.donaldjtrump.com>)

In addition, confirmation testimony from the president's nominees for cabinet posts related to trade policy was devoid of the fire-breathing rhetoric of the campaign. The nominees talked about enforcement of existing trade rules, which is hardly a novel policy position, and they did not validate threats of higher tariffs on imports that would, if implemented, violate U.S. obligations under international trade law.<sup>62</sup> Certain controversial proposals,

<sup>62</sup> See, e.g., Alan Rappeport & Emmarie Huetteman, *Commerce Nominee Says Changing NAFTA Is Priority*, N.Y. TIMES, Jan. 19, 2017, at A15 (noting the nominee for Secretary of the Department of

such as applying a new tax on imports through a “border adjustment tax”, have opponents in the Trump administration.<sup>63</sup> As President Trump’s hand-picked trade advisers, perhaps some of these individuals are signaling they do not believe illegal, unilateral actions are tough or smart.

Similarly, reactions to the *2017 Trade Policy Agenda* noted that it lacks the radical rhetoric and proposals associated with Trump’s arguments about trade as a candidate and as president. Edward Alden argued, for example, that, if the *Agenda* guides:

[T]he administration’s coming approaches to trade policy, there may be less to fear and more to cheer than would be thought from the president’s own statements to date. There is no lambasting of NAFTA as “the worst trade deal ever negotiated,” no empty promises to restore millions of lost manufacturing jobs, no threats to slap large tariffs on imports. Instead there is a sober critique of the limitations of some of the current trade arrangements, problems that many critics . . . have long identified as serious challenges for U.S. trade policy.<sup>64</sup>

### ***B. The Republican Party, American Business Community, and Trade Policy***

The Trump administration also faces potential opposition to implementing a radical trade policy from the Republican Party. Historically, the Republican Party has staunchly supported liberalized trade and

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Commerce downplaying threats of increasing tariffs unilaterally); Antoine Gara, *Treasury Nominee Mnuchin Supports Strong Dollar, Calling China Manipulator, Raising Debt Ceiling*, FORBES (Jan. 19, 2017), <http://www.forbes.com/sites/antoinegara/2017/01/19/trumps-treasury-secretary-nominee-steven-mnuchin-takes-on-onewest-rescue-fannie-mae-taxes/#151eb77d2b03> (reporting that, on trade policy, the nominee for Secretary of the Department of the Treasury “took a softer tone, noting trade policy will be about increasing exports, not necessarily limiting imports”). As of this writing, the confirmation hearings for President Trump’s nominee for U.S. Trade Representative, Robert Lighthizer, had not happened.

<sup>63</sup> Damian Paletta, *White House Split on Import Tax Puts Congress in Limbo*, WASH. POST (Mar. 3, 2017), [https://www.washingtonpost.com/business/economy/white-house-fight-on-import-tax-puts-congress-in-limbo/2017/03/03/89ca2298-0044-11e7-8ebe-6e0dbe4f2bca\\_story.html?utm\\_term=.5b82412c7b21](https://www.washingtonpost.com/business/economy/white-house-fight-on-import-tax-puts-congress-in-limbo/2017/03/03/89ca2298-0044-11e7-8ebe-6e0dbe4f2bca_story.html?utm_term=.5b82412c7b21).

<sup>64</sup> Edward Alden, *Trump’s 2017 Trade Agenda: Signs of a Sensible Direction*, RENEWING AM. (Mar. 1, 2017), [http://blogs.cfr.org/renewing-america/2017/03/01/trumps-2017-trade-agenda-signs-of-a-sensible-direction/?cid=nlc-public-the\\_world\\_this\\_week--link14-20170303&sp\\_mid=53548417&sp\\_rid=ZGZpZGxlckBpbmRpYW5hLmVkdQS2](http://blogs.cfr.org/renewing-america/2017/03/01/trumps-2017-trade-agenda-signs-of-a-sensible-direction/?cid=nlc-public-the_world_this_week--link14-20170303&sp_mid=53548417&sp_rid=ZGZpZGxlckBpbmRpYW5hLmVkdQS2). See also Matthew P. Goodman & Daniel Remler, *A Revealing Look into Trump Trade Policymaking*, CTR. FOR STRATEGIC AND INT’L STUD. (Mar. 2, 2017), <https://www.csis.org/analysis/revealing-look-trump-trade-policymaking> (observing that the *2017 Trade Policy Agenda* “was a surprisingly conventional presentation of many longstanding tenets of U.S. trade policy”).

investment as important to U.S. economic and foreign policy.<sup>65</sup> President Obama only made progress on trade through Republican support in Congress—support the Republicans withheld from President Obama in virtually all other policy areas.<sup>66</sup> As the party in control of Congress, President Trump cannot ignore the Republican Party's views on trade. Thus, Republican control of the legislature creates potential “checks and balances” on President Trump in the trade realm, making radical moves potentially less likely.

Similarly, much of the U.S. business community is not thrilled with President Trump's views on trade policy.<sup>67</sup> The president has painted U.S. corporate support for liberalized trade and investment as anti-American, and he has used this approach in criticizing companies engaged in transnational commerce. Many sectors of the U.S. economy rely on exports and foreign direct investment, and businesses in these sectors have not yet weighed in against the dangers to their workers and profitability the America First strategy would create.<sup>68</sup> U.S. companies have allies in the Republican Party, creating an even bigger pro-trade political force the Trump administration might hesitate to provoke.

### *C. Domestic Politics and Geopolitics*

Incentives to trim the sails of the America First strategy in trade might arise from problems the Trump administration encounters with this strategy in other contexts. The executive order on immigration and refugees issued on January 27, 2017,<sup>69</sup> caused extensive controversy and push-back in the United States and around the world. The Trump administration saw this executive order as important in fulfilling campaign promises on counter-terrorism, but the furor the order caused increases the prospects that the administration might be more cautious with other major initiatives. In

<sup>65</sup> Jennifer Steinhauer, *Free Trade, Once a Political Bastion, Is Now Renounced by Both Parties*, N.Y. TIMES, July 30, 2016, at A9 (observing how Republicans have been “proponents of free trade for decades”).

<sup>66</sup> Susan Davis, *Congress Renews “Fast Track” Trade Authority*, USA TODAY (June 24, 2015, 4:32 PM), <http://www.usatoday.com/story/news/politics/2015/06/24/congress-renews-fast-track/29226629/> (reporting that “[t]he Republican-controlled Congress delivered a significant second-term victory for President Obama”).

<sup>67</sup> See, e.g., Julie Creswell, *Trump and U.S. Chamber of Commerce Pull No Punches*, N.Y. TIMES, July 12, 2016, at B1 (reporting on criticism of Trump's trade policy ideas and proposals from the U.S. Chamber of Commerce).

<sup>68</sup> See, e.g., Paletta & Swanson, *supra* note 51 (reporting on concerns by an official of the American Farm Bureau with the Trump administration's willingness to conduct trade policy outside the WTO because the stability the WTO “brings, selling into a rules-based international system, is good for agricultural exports”).

<sup>69</sup> Office of the Press Secretary, *Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States*, WHITE HOUSE (Jan. 27, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

particular, the administration has promised to vet major policy actions more thoroughly, consult with Congress more extensively, and plan implementation more carefully.<sup>70</sup> In the trade policy context, these promises offer people inside and outside the administration opportunities to influence and potentially constrain what the president does.<sup>71</sup>

In terms of domestic politics, President Trump could face pressure to back away from America First protectionism when this approach fails to produce the economic and employment growth he promised. President Trump's argument that U.S. trade policy is primarily responsible for the loss of U.S. manufacturing jobs represents an incomplete diagnosis of the decline in manufacturing employment. The main reason manufacturing jobs in the United States have declined is the use of new, labor-saving technologies, such as robots and automated machinery.<sup>72</sup> Further, the emergence of transformative information and communication technologies, especially the internet, has produced jobs in all sectors that require different and more advanced skills. Neither as candidate nor as president has Trump seriously addressed the impact of new technologies on U.S. manufacturing and economic growth.<sup>73</sup>

In his *Joint Address to Congress*, President Trump promised again "to bring back millions of jobs" lost because of failed trade policies.<sup>74</sup> However, conspicuously absent from the *2017 Trade Policy Agenda* issued shortly thereafter are any promises of millions of jobs returning to the U.S. because of the Trump administration's new approach to trade policy.<sup>75</sup> If the manufacturing jobs do not return on the scale Trump promised, then he and his political supporters will have to explain why their policies have not delivered jobs and more secure economic livelihoods for American workers.

Geopolitical developments might also create incentives for the Trump administration to implement a trade policy more in line with past U.S. practice. Chinese anger at President Trump's threat to abandon U.S. acceptance of the "One China" approach to Taiwan caused President Trump

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<sup>70</sup> Philip Rucker & Ashley Parker, "We'll Do Better": Trump's White House Tries to Gain a Sense of Order Amid Missteps, WASH. POST (Feb. 4, 2017), [https://www.washingtonpost.com/politics/we'll-do-better-trumps-white-house-tries-to-gain-a-sense-of-order-amid-missteps/2017/02/04/8351bdb0-ea53-11e6-bf6f-301b6b443624\\_story.html?utm\\_term=.66a494b26974](https://www.washingtonpost.com/politics/we'll-do-better-trumps-white-house-tries-to-gain-a-sense-of-order-amid-missteps/2017/02/04/8351bdb0-ea53-11e6-bf6f-301b6b443624_story.html?utm_term=.66a494b26974).

<sup>71</sup> See, e.g., Goodman & Remler, *supra* note 64 (analyzing changes in drafts of the *2017 Trade Policy Agenda* as evidence of efforts within the Trump administration to move trade policy towards more traditional approaches).

<sup>72</sup> Federica Cocco, *Most US Manufacturing Jobs Lost to Technology, Not Trade*, FINANCIAL TIMES (Dec. 2, 2016), <https://www.ft.com/content/dec677c0-b7e6-11e6-ba85-95d1533d9a62>.

<sup>73</sup> The *2017 Trade Policy Agenda* contains one of the first acknowledgments by the Trump administration of the "broad impact of automation" on the loss of U.S. manufacturing jobs. See *2017 TRADE POLICY AGENDA*, *supra* note 1, at 5.

<sup>74</sup> *Joint Address to Congress*, *supra* note 20.

<sup>75</sup> *2017 TRADE POLICY AGENDA*, *supra* note 1; Alden, *supra* note 64 (noting the lack of promises in the *Agenda* on restoring millions of manufacturing jobs).

to return to the traditional U.S. approach to Taiwan.<sup>76</sup> Other U.S. foreign policy problems with China over, for example, the South China Sea or with Russia over eastern Ukraine could reinforce the U.S. need for solidarity with its allies and friendly countries in Asia and Europe. Trump administration officials have started emphasizing the U.S. commitment to North Atlantic Treaty Organization (hereinafter “NATO”) and the EU in order to calm allies rattled by hostile rhetoric from the president and some of his advisors about these pillars of transatlantic relations.<sup>77</sup> Pursuing hard-line protectionism that hurts the economies of allies and friendly countries would not be prudent geopolitically. The intensifying competition for power and influence among China, Russia, and the United States might persuade President Trump that U.S. support for open markets is strategically smart in a multipolar international system agitated by revisionist powers in both Europe and Asia.

#### ***D. The Application of International Trade Law***

The Trump administration could also feel heat from politicians, companies, and voters from the functioning of international trade law in response to America First protectionism. As noted above, if the Trump administration unilaterally imposes increased tariffs on imports as the president has variously proposed, the affected countries will bring complaints against the United States in, for example, the WTO. Unless the increased tariffs correspond to rights the United States has under WTO agreements to remedy unfair trade practices (*e.g.*, to counteract dumping) or utilize other exceptions, the United States could not legally justify the tariffs. Under WTO law, it would have to remove the tariffs to bring its policies back into compliance with its WTO obligations or face WTO-authorized trade sanctions against U.S. exports. Language in the *2017 Trade Policy Agenda* suggesting the Trump administration might ignore WTO rulings against the United States would, if followed, make such sanctions more likely. Trade sanctions would hurt U.S. companies and their workers, an outcome the Trump administration could only ignore at significant political cost.

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<sup>76</sup> Mark Landler & Michael Forsythe, *After Silence from Xi, Trump Endorses the “One China” Policy*, N.Y. TIMES, Feb. 10, 2017, at A1.

<sup>77</sup> See Dan Lamothe, *Mattis Attempts to Reassure NATO Allies as the Trump Administration Deals with Fallout from Flynn’s Ouster*, WASH. POST (Feb. 15, 2017), [https://www.washingtonpost.com/news/checkpoint/wp/2017/02/15/mattis-attempts-to-reassure-nato-allies-as-the-trump-administration-deals-with-fallout-from-flynn-s-ouster/?utm\\_term=.07fe86ee1538](https://www.washingtonpost.com/news/checkpoint/wp/2017/02/15/mattis-attempts-to-reassure-nato-allies-as-the-trump-administration-deals-with-fallout-from-flynn-s-ouster/?utm_term=.07fe86ee1538) (reporting on efforts by the Secretary of Defense to reassure NATO allies of the Trump administration’s commitment to the alliance); Gardiner Harris & James Kanter, *Pence Assures Europe of American Support*, N.Y. TIMES, Feb. 21, 2017, at A15 (reporting on Vice President Pence’s expression of strong U.S. commitment to the EU).

### *E. The Costs of Reorienting the Trump Administration's Trade Policy*

Even though various domestic and international political factors might reorient the America First strategy into something that more closely resembles traditional U.S. trade policy, the costs of this reorientation for the United States and other countries might be severe. No matter who won the 2016 election, the United States appeared destined to pull out of the TPP agreement. This reversal in U.S. trade policy hurt the United States in Asia and opened opportunities for China to increase its influence.<sup>78</sup> For Asian countries, the America First strategy follows in the wake of the damage done to U.S. credibility and leadership in what American domestic politics did with the TPP agreement. How the United States regains economic influence in Asia by fighting running battles in that region over the America First strategy is not clear. This problem underscores worries that the Trump administration has no “grand strategy” for Asia or any other region, let alone ideas about how to make trade and investment work for U.S. strategic purposes in foreign policy.<sup>79</sup>

For another key region, Europe, the America First strategy comes on the heels of major disruptions for the EU created by Brexit. The last thing the EU needs in the near future is trade conflict with a U.S. government overseen by an administration enamoured with Brexit and unconcerned about the threat it and rising populism in EU democracies pose for the common market. In the past, U.S. foreign policy valued the European common market as a strategic asset in international relations. At present, the Trump administration appears not to share this strategic understanding of the EU. Nor is it clear how President Trump thinks about the EU in his overall approach to the European continent. Not only has he praised Brexit as an example for other EU members to follow but he has also disparaged NATO—another strategic pillar of U.S. foreign policy toward Europe.<sup>80</sup> Again, the Trump administration might return to traditional U.S. trade and foreign policy approaches to Europe,<sup>81</sup> but, in the meantime, damage is being done to U.S.-European relations that serves no American strategic purpose, weakens the EU, and emboldens Russia.

<sup>78</sup> Jeffrey H. Bergstrand, *Killing TPP Is Bad News for Americans, but Great for China*, CNN (Jan. 24, 2017), <http://www.cnn.com/2017/01/23/opinions/killing-tpg-great-for-china-bergstrand-opinion/>.

<sup>79</sup> Colin Kahl & Hal Brands, *Trump's Grand Strategic Train Wreck*, FOREIGN POL'Y (Jan. 31, 2017), <http://foreignpolicy.com/2017/01/31/trumps-grand-strategic-train-wreck/>.

<sup>80</sup> Michael Birnbaum, *European Leaders Shocked as Trump Slams NATO and E.U., Raising Fears of Transatlantic Split*, WASH. POST (Jan. 16, 2017), [https://www.washingtonpost.com/world/europe-leaders-shocked-as-trump-slams-nato-eu-raising-fears-of-transatlantic-split/2017/01/16/82047072-dbe6-11e6-b2cf-b67fe3285cbe\\_story.html?utm\\_term=.15c527aef4d8](https://www.washingtonpost.com/world/europe-leaders-shocked-as-trump-slams-nato-eu-raising-fears-of-transatlantic-split/2017/01/16/82047072-dbe6-11e6-b2cf-b67fe3285cbe_story.html?utm_term=.15c527aef4d8).

<sup>81</sup> See sources cited *supra* note 77.

Based on historical experience, increased protectionism by major economic powers tends to beget protectionism by other countries, and the economic and political benefits of liberalized trade and investment begin to dissipate across the international system. The proliferation of protectionist measures can damage major initiatives in other areas of policy that depend on sustained growth in trade among nations. For example, United Nations considers “trade as an engine for inclusive economic growth and poverty reduction, and an important means to achieve the Sustainable Development Goals (hereinafter “SDGs”).”<sup>82</sup> Turmoil in the trading system could undermine efforts to achieve the SDGs by adversely affecting economic growth globally but especially in low-income countries. Similarly, spreading protectionist policies will not help strategies seeking to address income inequality within and among countries.

The directions President Trump wants to take U.S. trade policy also mean the United States and its trading partners lose important opportunities to advance trade and investment liberalization. For example, the TPP and TTIP agreements were developing interesting and innovative approaches to digital trade<sup>83</sup> and investor-state dispute settlement,<sup>84</sup> and, given the scale of these agreements, these approaches could have informed updating and strengthening trade and investment law in bilateral, regional, and multilateral contexts.<sup>85</sup> The Trump administration’s decision to pursue only bilateral agreements limits the opportunities to harmonize trade and liberalization strategies in important areas of need.

The potential costs of transforming America First into policies more closely aligned with traditional U.S. strategic commitments also factor into fears the Trump administration threatens irreparable harm to the liberal international order the United States built, defended, and advanced since World War II. This order involves military, political, and economic components integrated in a web of bilateral, regional, and multilateral regimes and institutions. The America First strategy is already stressing the political, economic, and military bonds that made the liberal international order effective for decades. How resilient these bonds will be under pressure from U.S. actions is not clear. The EU could pick up the mantle of leadership

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<sup>82</sup> TRADE AND THE SUSTAINABLE DEVELOPMENT GOALS (SDGs), <http://unctad.org/en/Pages/DITC/Trade-Analysis/TAB-Trade-and-SDGs.aspx> (last visited Feb. 28, 2017).

<sup>83</sup> See, e.g., David P. Fidler, *The TPP’s Electronic Commerce Chapter: Strategic, Political, and Legal Implications*, NET POLITICS (Nov. 9, 2015), <http://blogs.cfr.org/cyber/2015/11/09/the-tpps-electronic-commerce-chapter-strategic-political-and-legal-implications/>.

<sup>84</sup> See generally EUROPEAN UNION, CONCEPT PAPER: INVESTMENT IN TTIP AND BEYOND—THE PATH FOR REFORM, [http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc\\_153408.PDF](http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF) (proposals from the EU in 2015 on investor-state dispute settlement).

<sup>85</sup> The 2017 Trade Policy Agenda complains that foreign countries have harmed “U.S. companies by blocking or unreasonably restricting the flow of digital data and services,” precisely the issue the Obama administration attempted to address in the TPP agreement. 2017 TRADE POLICY AGENDA, *supra* note 1, at 4.

on trade and investment,<sup>86</sup> but it confronts serious problems with Brexit and rising nationalism and populism within EU members. A “coalition of the willing” in Asia—such as Australia, Japan, and New Zealand—might forge ahead with the TPP agreement,<sup>87</sup> but making a modified TPP agreement a strategic counterweight to China without the United States will be difficult.

As experts consider the political and economic forces roiling international relations, many agree with Joseph Nye that “Washington’s role in helping stabilize the world and underwrite its continued progress may be even more important now than ever.”<sup>88</sup> Fulfilling that role would be hard enough for a United States willing to bear the burdens of international leadership, but, with the Trump administration, the United States must first engage in a struggle concerning what it wants its role in the world to be. As enunciated by President Trump, the America First strategy contains no vision for U.S. global leadership,<sup>89</sup> a reality that is particularly acute in the context of trade policy. This strategy shrinks what “America” means on the world stage, and the consequences of this shrinkage for the liberal international order are not reassuring.

## V. CONCLUSION

With anchor points in economic theory, the politics of economic interdependence, and grand strategy, the U.S. commitment to liberalized trade and investment has sustained the belief that open markets produced common advantages for nations. The politics of achieving common advantages are not always uplifting, but, through incremental progress and transformative leaps, economic, political, and strategic benefits are produced and shared across the international system. Trade policy has not, and cannot, ameliorate all economic and social ills countries experience. However, countries, including the United States, appeared to understand that addressing extreme poverty, income inequality, health threats, and environmental challenges required the continued production of the common political and economic advantages associated with liberalized trade and investment.

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<sup>86</sup> Uri Friedman, *European Leaders Are Now Describing Trump as a Threat*, ATLANTIC (Jan. 31, 2017), <https://www.theatlantic.com/international/archive/2017/01/tusk-europe-trump/515154/> (reporting on letter from the EU European Council President urging the EU to “respond to Trump’s trade protectionist policies by ‘intensifying’ its trade talks with other countries”).

<sup>87</sup> *Australia, New Zealand Look to China to Salvage TPP Deal After Donald Trump Withdraws U.S.*, NEWSWEEK (Jan. 24, 2017), <http://www.newsweek.com/australia-new-zealand-tpp-china-japan-donald-trump-547309>.

<sup>88</sup> Joseph S. Nye, Jr., *Will the Liberal Order Survive?: The History of an Idea*, 96(1) FOREIGN AFF. 10, 16 (2017).

<sup>89</sup> In his *Joint Address to Congress*, President Trump stated “[m]y job is not to represent the world. My job is to represent the United States of America.” *Joint Address to Congress*, *supra* note 20.



The Trump administration's threats to reject the trade policies and practices that produced these common advantages gain energy from populism, nationalism, and protectionism that have, in previous times, converged to wreak havoc within and among nations. Although the past is not always a prelude to the future, the myriad ways the America First strategy could cause economic and political damage throughout the international system are easier to grasp than how this strategy preserves and improves on what past approaches have delivered for decades. If not walked back towards proven strategies, the resulting economic and political carnage will be collective. And the collective carnage will forever be remembered as "Made in America."

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