TRUMP'S TRADE POLICY: DISCERNING BETWEEN RHETORIC AND REALITY

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ABSTRACT

Trump's overall trade agenda is one of disruption. He is unpredictable, but less so on trade. Trump has been consistently advancing "Make America Great Again" by calling for trade that puts the United States (hereinafter "U.S.") interests first. He views multilateral trade agreements as instruments that weaken American leverage. His rhetoric has matched substantive policy changes (e.g., renegotiation of North American Free Trade Agreement (hereinafter "NAFTA"), withdrawal from Trans-Pacific Partnership (hereinafter "TPP"). This will continue. Trump has deal making capabilities and will probably seek to sign bilateral free trade agreements with willing partners who can commit to terms quickly. However, this will not be easy. Although he has spoken tough on China, he has thus far stopped—albeit just—in acting tough. Trump is currently adopting a "wait and see" approach. Hence, it is important, especially when analysing Trump's behaviour with China, to discern between rhetoric and reality. Overall, early signs indicate that Trump could consolidate Americans' hardening attitudes against free trade. Trade policy will become more transactional and framed as a win-lose, mutually exclusive battle in which the U.S. always has to win.

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I. THE CAMPAIGN PROMISES OF CANDIDATE TRUMP

The election of U.S. President Donald Trump in November 2016 was one of the most significant political surprises or shocks, depending on who one asks, in recent times. When the dust settled on his victory, it was unlikely he could fulfil all his campaign promises. While Trump promised a lot of things to a lot of people, one consistent element of his agenda was a pledge to "Make America Great Again". [1]

This simple slogan enabled Trump to bundle together a variety of policies related to trade and economics. The specifics varied over time, but the core elements included a promise to return and expand American manufacturing jobs, a pledge to withdraw the U.S. from the TPP trade agreement, and renegotiate or transform what he termed other dysfunctional trade deals like the NAFTA with Canada and Mexico, and a commitment to crack down hard on countries pursuing unfair trade practices.

If these policies were followed with sufficient resolve and strength, Trump promised his supporters that the U.S. would once again rise up and dominate trade and manufacturing. The specifics of the plans to accomplish this were not clearly articulated, although Trump's chief economic advisors, Wilbur Ross and Peter Navarro, published a white paper that gave some details.[2] A crackdown on trade cheaters, combined with a set of polices to reduce taxes and improve infrastructure, would make it more desirable for firms to invest in the U.S. and hire American workers once more rather than continue to outsource jobs.

One point is particularly salient in understanding Trump's general approach to trade during the campaign and once in office. Ross and Navarro argued that the U.S. was already engaged in a trade war that it was losing.[3] Hence, the situation justified extreme measures. Any collateral damage that might be caused by remediation actions were equally warranted.

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[1] Mark Whitehouse, *"Great Again" Is Trump's Magic Twitter Mantra*, BLOOMBERG (Aug. 21, 2017, 7:59 PM), https://www.bloomberg.com/view/articles/2017-08-21/-make-america-great-again-is-trump-s-magic-twitter-mantra.

[2] Peter Navarro & Wilbur Ross, *Scoring the Trump Economic Plan: Trade, Regulatory, & Energy Policy Impacts* (2016), https://assets.donaldjtrump.com/Trump_Economic_Plan.pdf.

[3] John Brinkley, *Commerce Secretary Ross Thinks U.S. Is in a Trade War*, FORBES (Mar. 13, 2017, 11:28 AM), https://www.forbes.com/sites/johnbrinkley/2017/03/13/commerce-secretary-ross-thinks-u-s-is-in-a-trade-war/#2abcb4f9303e.

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II. ONCE IN OFFICE

Trump won office against a crowded field of 17 Republican candidates with a message on trade quite contrary to typical party doctrine. Traditionally, the Republican Party has supported free trade while the Democratic Party has held strong reservations about the damage trade can do to workers and the environment. This split can be seen in various trade votes held in Congress. Democratic President Barack Obama received Trade Promotion Authority (TPA) in 2015 by a vote of 60-37 in the Senate, with only 10 Democrats voting in his favour. The House voted 218-206 on the same bill and 190 of the votes in favour were Republican.[4]

Past trade agreements show similar splits. The U.S.–Korea free trade agreement (KORUS) made it through the Senate on the strength of 45 Republican votes (plus 33 Democrats) in 2011 and through the House with 219 Republicans and only 59 Democrats in favour (130 were opposed). This pattern has been replicated in other trade-related votes.[5]

The campaign and victory of Trump, however, upended the traditional politics around trade. There are two aspects to his success. First, while Donald Trump has held a kaleidoscope of changing positions on many issues, his personal opposition to allowing the U.S. to open its market to others while failing to get reciprocal access dates back decades and has never wavered. In the 1980s he railed against the Japanese who were assumed to be taking advantage of America. In the 1990s, it was the NAFTA. In the Presidential campaign, it was China's turn.[6]

Second, Trump harnessed a deep wellspring of discontent within parts of the Republican electorate that had been untapped by other politicians. Many of these voters had been promised a rising tide of prosperity, but had not personally benefitted. Somehow a billionaire candidate convinced millions that he understood, shared their plight, and would actually do something to fix the situation. Trade policy moved from being a peripheral issue to being quite central to the election.

The remainder of this article examines just how this transformation of the domestic landscape took place and what Trump is likely to do on trade during his administration. This article is split into three main parts. The first section will provide a short summary of American trade policy, the

[4] *How Congress Voted on Trade*, GOVTRACK.US (June 23, 2015), https://govtrackinsider.com/how-congress-voted-on-trade-afb8b4438823.

[5] HOUSE VOTE 783—PASSES U.S.–KOREAN TRADE AGREEMENT, https://projects.propublica.org/represent/votes/112/house/1/783 (last visited Aug. 25, 2017).

[6] *How Donald Trump Thinks About Trade*, ECONOMIST (Nov. 9, 2016), https://www.economist.com/news/united-states/21709921-americas-next-president-wants-pull-out-existing-trade-deals-and-put-future-ones; *The Collapse of the Trans-Pacific Partnership*, ECONOMIST (Nov. 23, 2016), https://www.economist.com/blogs/economist-explains/2016/11/economist-explains-14.

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various factors that led to Trump's election in November and a brief overview of the various personalities in his early trade team. The second section elaborates on two broad principles that have been repeatedly espoused by Trump: his aversion to plurilateral, multi-party trade agreements and his "America First" stance. Finally, the third section considers future directions that Trump's trade policy could take.

III. THE FOUNDATIONS OF TRUMP'S EARLY POLICIES

A. Traditional U.S. Trade Policy

The searing experience of the Great Depression, during which the U.S. raised barriers to trade in the form of dramatic tariff increases to keep out foreign products and other nations followed suit, deepening and prolonging the suffering, led to a bipartisan consensus on the wisdom of keeping markets open. The 1934 Reciprocal Trade Agreements Act was a landmark event in defining U.S. trade policies. Since then, average tariffs for the United States have been reduced from almost 19% in 1934 to just 1.3% in 2007.

After World War II, the U.S. also led the creation of a system to keep markets globally. The General Agreement on Tariffs and Trade (hereinafter "GATT"), created in 1948, liberalised trade by enforcing a system where countries made reciprocal trade concessions based on multilateral negotiations.[7]

Since the end of World War II, the U.S. also relied on exporting products and services to Asia and Europe. This was one of the key reasons for the U.S. to actively finance the redevelopment of Japan after World War II and implement the Marshall Plan in Europe. The U.S. realised after World War II that debilitated economies in Asia and Europe would not have a critical mass of consumers who would buy American products. Therefore, the Americans, perhaps barring a short period in the 1980s when there were concerns about Japan usurping their global hegemony, have been firm advocates of free trade, multilateralism and globalisation to create opportunities for their companies to expand overseas.

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[7] *U.S. Trade Policy Since 1934*, *in* THE ECONOMIC EFFECTS OF SIGNIFICANT U.S. IMPORT RESTRAINTS 59, 76-77 (William Deese et al. eds., 2009), https://www.usitc.gov/publications/332/us_trade_policy_since1934_ir6_pub4094.pdf.

B. The Changing Economic Circumstances of Trump's Voter Base

Considering that the U.S. has always been a firm advocate for free trade and globalisation, Trump's election might seem like an inexplicable aberration. This is far from the truth. While his election was not predicted by many pollsters, there were deep-rooted structural issues—socio-economic and political—that united his voter base.

To understand the root causes of Trump's rise, it is necessary to understand how the U.S. economy has transformed over the past thirty years. The American economy has always had a strong manufacturing base that has supported the rise of living standards since World War II. From electronics to automobiles, American workers, especially blue-collar labor, benefited from exports. However, since the 1980s, a confluence of various factors including but not limited to the rise of China's manufacturing sector, offshoring, automation, slower productivity gains, and the financialisation of the economy have led to the progressive decline of workers in the industrial base in the U.S.

It is, however, important to note that the U.S. continue to maintain a robust manufacturing base. What it does not have is a large manufacturing work force. Increasingly, factories are being automated. Many of the workers who have been laid off are concentrated in states like Iowa, Ohio, Michigan, Wisconsin and Pennsylvania. Thus, workers living in the "Rust Belt" have become vulnerable to the forces of globalisation and free trade. While the benefits of globalisation are diffused and accrued in the long-run, the economic pains experienced by the vulnerable classes are immediate and localised.[8]

Meanwhile, the disparities between blue-collar and white-collar employees have increased in the past three decades. For instance, in the past four decades, the income of those in the top 1%, based on pre-tax income, has increased by 10-18%.[9] Meanwhile, the wages of those in the lower socio-economic classes have either stagnated or plummeted.

Therefore, the prevailing socio-economic and political climate prior to Trump's election was one that was deeply antithetical to the free-trade agenda. So, when Trump promised to withdraw U.S. from the TPP and take strong action against China, he tapped into the deep vein of resentment that was brewing in parts of American society. He was able to articulate the frustrations of many, redirect them towards the Establishment and

[8] Richard C Longworth, *Disaffected Rust Belt Voters Embraced Trump. They Had No Other Hope*, GUARDIAN (Nov. 21, 2016), https://www.theguardian.com/commentisfree/2016/nov/21/disaffected-rust-belt-voters-embraced-donald-trump-midwestern-obama.

[9] Martin Wolf, *Bring Our Elites Closer to the People*, FIN. TIMES (Feb. 2, 2016), https://www.ft.com/content/94176826-c8fc-11e5-be0b-b7ece4e953a0?mhq5j=e4.

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successfully make free trade the scapegoat for all the woes encountered by American workers. Furthermore, by creating an "U.S. vs. Them" narrative (i.e., U.S. against its trade partners), Trump managed to add credence to his "Make America Great Again" narrative.[10]

Thus, Trump, since his election victory last November, has sought to fulfil the expectations of his core voter base even if it comes at the expense of long-term American interests. He achieved quick "wins" by withdrawing from the TPP on his first day in office and starting the NAFTA renegotiation process. Furthermore, he has appointed trade advisers—Peter Navarro (Director of the White House National Trade Council), Robert Lighthizer (U.S. Trade Representative), and Wilbur Ross (Commerce Secretary)—who have broadly expressed support for the President's trade agenda.

C. Trade Advisory Team

Before proceeding to discuss some of the policy decisions that Trump has made over his opening ten months on the job, it is crucial to consider the personalities and political views articulated by his closest trade advisers. These are the individuals who are designing and implementing the President's trade objectives. As with most of the President's overall agenda, Congress has played an extremely limited role. Instead, trade changes have been made through the use of Executive Orders (EOs) and bureaucratic decisions. This has increased the influence of the White House in the areas where Trump has taken specific actions.

First, Peter Navarro, Director of the White House National Trade Council, did his PhD in Economics at Harvard University. Navarro has not been just agnostic about the benefits of free trade. He is an iconoclast who has fiercely derided the TPP, criticised China for the manufacturing decline in the U.S. and has repeatedly called for stiff import tariffs to forcefully reduce trade deficits.[11] Mainstream economists have dismissed his views while the *Economist* labelled them as "oddball".[12] In his publication, *The Coming China Wars: Where They Will be Fought and How They Can Be Won*, Navarro used bellicose language to describe China's trade policies as a conquest of global export markets. He was highly critical of the U.S. acceding to China's entry to the World Trade Organisation (hereinafter "WTO") and cites the latter's unfair trade practices—*lax* environmental

[10] Whitehouse, *supra* note 1.

[11] PETER NAVARRO, THE COMING CHINA WARS: WHERE THEY WILL BE FOUGHT AND HOW THEY CAN BE WON 204-05 (2008).

[12] *Cooking up an Economic Policy*, ECONOMIST (May 13, 2017), https://www.economist.com/news/briefing/21721937-donald-trumps-economic-strategy-unimaginative-and-incoherent-cooking-up-economic-policy.

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standards, export subsidies to state owned enterprises, sub-standard labour standards—as the main factor that "vapourised literally millions of manufacturing jobs" in the U.S.[13]

Wilbur Ross worked with Navarro during the campaign and was subsequently named U.S. Commerce Secretary. Traditionally, Commerce does not drive trade policy, but rather implements decisions negotiated by U.S. Trade Representative. However, under Trump, Ross and Commerce have assumed an outsized roles. Ross was a Democrat who served under former U.S. President Bill Clinton on the U.S.–Russia Investment Fund board. He has stated that the government's priority is to ensure that trading partners play fair by complying with the existing rules. One of his first big policy plans was to work on steel and aluminium dumping by using an old trade rule, Section 232, to declare both industries critical to U.S. national security and dramatically raise import tariffs. While the implementation of 232 extended past the originally announced "deadline" of June 2017, the rollout of the policy shows that Ross favors Trump's perspective on protecting U.S. manufacturing jobs. Although Ross was an initial supporter of the TPP in 2015, he subsequently backtracked and withdrew his support.[14]

Part of the reason that Ross assumed early prominence on trade was the difficulty faced in getting Robert Lighthizer confirmed as the U.S. Trade Representative. Lighthizer was the Deputy Trade Representative when the Reagan administration retaliated against unreasonable and unjustifiable trade practices by foreign counterparts.[15] He was a partner at Skadden, Arps, Slate, Meagher and Flop LLP (Skadden) and practised international trade law, mostly litigating against steel dumping, for more than three decades when Trump called him to serve in his administration.

These three advisors carry outsized weight in the Trump White House in part because the rest of the bureaucracy has been seriously understaffed at the outset of the President's administration. Nearly all the key political appointments in most agencies remain unfilled, even as Congress headed into the August 2017 recess period, include important posts in U.S. Trade Representative, Commerce, State, and Treasury.[16]

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[13] NAVARRO, *supra* note 11, ch. XV.

[14] Andrew Kaczynski, *Trump Commerce Pick Signed Pro-TPP Letter, Said Jobs Wouldn't Come Back from China*, CNN (Dec. 2, 2016, 11:23 AM), http://money.cnn.com/2016/12/02/news/economy/kfile-wilbur-ross-tpp/index.html.

[15] Keith Bradsher, *Trump Administration Is Said to Open Broad Inquiry into China's Trade Practices*, N.Y. TIMES (Aug. 1, 2017), https://www.nytimes.com/2017/08/01/business/trump-china-trade-intellectual-property-section-301.html.

[16] *Tracking How Many Positions Trump Has Filled So Far*, WASH. POST (Aug. 4, 2017), https://www.washingtonpost.com/graphics/2017/politics/slow-pace-of-trump-confirmations/?utm_term=.91e8c2b5ca28.

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D. Who Knew Trade Was So Hard?

Clearly, Trump's anti-free trade agenda was not just campaign rhetoric. He understands that his core voter base in the "Rust Belt" has trusted him to produce manufacturing jobs, raise living standards and extricate the U.S. from plurilateral agreements that do not primarily serve American interests. Hence, it follows that Trump would follow through with his promise to withdraw the U.S. from TPP negotiated by the Obama administration on his first full day in office in January 2017, and relook at NAFTA in August.

Nevertheless, to conclude that Trump's policies will inevitably lead the U.S. to adopt a pre-World War II isolationist position is too simplistic. Rather, in some trade policy domains, we are witnessing Trump softening his rhetoric and pragmatically adjusting to the geo-economic realities he confronts.

For example, Trump did not label China as a currency manipulator despite saying that he would do so during the campaign trail. Instead, Trump and his team have supported the use of different trade instruments, such as Sections 232 and 301, to investigate unfair Chinese trade practices. Nevertheless, there is no certainty that these investigations will lead to stiff import tariffs. Labelling China as a currency manipulator might have symbolic resonance with blue-collar workers in Ohio but it does little to resolve some of the deep-seated issues regarding trade deficits and intellectual property violations. Policies such as raising import tariffs might prove to be counter-productive if China decides to retaliate using protectionist measures of its own.[17] While the ethos will be consistently protectionist, the application could be erratic, inconsistent and transactional.[18]

IV. BROAD TRADE PRINCIPLES

A. Aversion to Multilateralism, Preference for Bilateral Deals

One of the key tenets of Trump's trade policy is his aversion to multilateral trade agreements and preference for bilateral deals. There could be two reasons for this. First, Trump seems to believe that the U.S. will have greater leverage over partners, with more bargaining power and influence to open foreign markets in bilateral agreements. Trump perceives

[17] Annie Lowrey, *The Limits of "Made in America" Economics: Trump's Widely Anticipated Steel Tariffs Are Likely to End up Hurting the Heartland*, ATLANTIC (July 20, 2017), https://www.theatlantic.com/business/archive/2017/07/made-in-america/534339/.

[18] Shyam Saran, *Read Between US Lines*, INDIAN EXPRESS (June 29, 2017), http://indianexpress.com/article/opinion/columns/read-between-the-us-lines-modis-us-visit-and-its-strategic-implications-4726752/.

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that all the negotiating parties in a multilateral agreement resolve a deadlock by agreeing to the unreasonable demands imposed by one intransigent party on the table. While compromising at the table might help resolve a seemingly intractable negotiating point, Trump probably feels that this does not make economic sense for the vast majority of Americans.[19]

Second, he might also believe, as the self-styled deal maker, that his strongman tactics can more easily bulldoze through certain U.S. demands in bilateral negotiations. His own experience in real estate is built on a series of one-off deals, rather than the types of "repeated games" that come through international negotiations. In settings where partners only meet once, aggressive stances and tactics may indeed prove successful.

When Trump dismissed the "horrible" TPP trade agreement, he promised that he would do better. In particular, he said that he could negotiate improved outcomes for American workers by creating bilateral deals instead with key partners. His administration started making overtures to Japan about embarking on a bilateral trade agreement as soon as February 2017. The visit of Japanese Prime Minister Shinzo Abe to Washington D.C. in mid-February was used as an occasion to put the idea on the table.[20] It was politely, but firmly, rebuffed in favour of an ongoing economic dialogue. In the meantime, the Japanese began moving ahead with plans to bring the TPP into force with the remaining members.

Across the rest of the first months in office, no other country (bar the United Kingdom, fresh off the Brexit results) appeared eager to engage in bilateral negotiations with the U.S. administration. This included all other TPP parties, such as Vietnam.

B. Trade Deficits

A second notable element of Trump's trade policy agenda is his fixation on the size of the U.S. manufacturing surplus or deficit in goods. His team is under strong pressure to reduce U.S. trade deficits or bring them to zero by whatever means are necessary, including the use of retaliatory actions such as import tariffs, trade remedy cases or legal responses like Section 232 or 301.

As the U.S. Trade Representative website now notes, in 2000, the U.S. had around $320 billion of trade deficit in manufactured goods. By 2016, this amount had more than doubled. The trade deficit in goods and services with China had quadrupled to $334 billion from 2000-2015.

[19] Geoffrey Gertz, *What Will Trump's Embrace of Bilateralism Mean for America's Trade Partners?*, BROOKINGS (Feb. 8, 2017), https://www.brookings.edu/blog/future-development/2017/02/08/what-will-trumps-embrace-of-bilateralism-mean-for-americas-trade-partners/.

[20] Shawn Donnen, *US Plans for Fresh Push on Bilateral Trade Deal with Japan*, FIN. TIMES (Feb. 3, 2017), https://www.ft.com/content/052cf600-e95b-11e6-893c-082c54a7f539.

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Simultaneously, from 2000-2017, 5 million manufacturing jobs were lost. Since China joined the WTO, U.S. industrial production expanded by less than nine percent. Therefore, the U.S. due to its falling manufacturing exports is losing competitive advantage to its trading partners and is experiencing trade deficits.[21]

C. Retaliatory Actions: Sections 232 and 301

The obsessive focus on reducing trade deficits is another reflection of Trump's "Make America Great Again" ethos. To get deficits down, Trump's team is prepared to use whatever tools it deems necessary to address the situation. This includes pulling out laws that have been in the books for decades, but that have gone unused.

One such example is Section 232. The law was last amended in 1962 and was intended to address Cold War issues of national security. It allows the U.S. President to declare that certain sectors are vital to defense and impose sanctions, such as steep tariff hikes, to protect such important industries. During the campaign, Trump made a promise to assist domestic steelmakers by raising tariffs against foreign steel imports. The primary target was Chinese steel, which was assumed to be dumped on the U.S. market at below-market prices. U.S. Commerce Secretary Ross launched the Section 232 investigation to help determine whether Chinese steel imports have caused "substantial unemployment . . . decrease in government revenue . . . displacement of any domestic products by excessive imports."[22]

The issue quickly ran into difficulties, not least because Chinese steel only accounted for less than two percent of total imports to the U.S. The top steel suppliers to the U.S. included major allies like Canada, Germany, Japan, Mexico and South Korea. Raising tariffs on these countries would not only needlessly antagonize friends, but would also raise costs of production on the very industries Trump claimed to be supporting, including autos.[23]

Despite repeated promises to roll out the answer to the Section 232 investigation by the end of June, as Congress returned from the August

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[21] *The President's 2017 Trade Policy Agenda*, OFF. U.S. TRADE REP. (2017), https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter%20I%20-%20The%20Pesident%27s%20Trade%20Policy%20Agenda.pdf.

[22] Office of Public Affairs, *Frequently Asked Questions: Section 232 Investigations: The Effect of Steel Imports on the National Security*, U.S. DEP'T COM. (Apr. 21, 2017, 9:41 PM), https://www.commerce.gov/news/fact-sheets/2017/04/frequently-asked-questions-section-232-investigations-effect-steel-imports.

[23] Daniel Griswold, *Steeled for Politics: The Trump Administration's Steel Protections Won't Help U.S. Industry or Security*, U.S. NEWS & WORLD REP. (June 26, 2017, 11:45 AM), https://www.usnews.com/opinion/economic-intelligence/articles/2017-06-26/donald-trumps-steel-protections-weaken-us-industry-and-security.

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recess, the White House and Commerce Department remained mum on the results. On July 25, Trump told the *Wall Street Journal* that the decision on restricting steel imports would be decided only after other top-priority issues such as healthcare, taxes and infrastructure are sorted out.[24]

In addition to Section 232, U.S. Trade Representative also launched a Section 301 case in August 2017 to inquire into China's trade practices. The United States had originally argued that it needed Section 301 due to two main weaknesses of the international trading system. First, the GATT basically contained rules on trade in goods but there were no stipulations containing services, government procurement, intellectual property rights or investment. Even then, mainly non-agricultural goods were covered in the GATT provisions. More worryingly, the redresses against violations of existing rules were not well enforced. GATT members who were found guilty of flouting rules would not be punished.

Therefore, Section 301 from 1974 empowered the President or U.S. Trade Representative to decide if a foreign country had an "unjustifiable or unreasonable tariff" that substantially affects the competitiveness of U.S. products.[25] In 1984, Section 301 was expanded further and authorised the U.S. Trade Representative to self-initiate cases even when there were no private petitions from industry groups requesting redress. This was amended further in the 1988 Omnibus Trade and Competitiveness Act. Congress mandated the U.S. Trade Representative to retaliate against perceived unfair trade practices when compensations could not be negotiated.[26]

When Section 301 was being used extensively in the 1980s and early 1990s, it was deeply unpopular with trading partners. When the GATT system was reformed in 1995 to broaden the types of commitments and the dispute settlement system was also adjusted to make pledges binding, the United States stopped using 301.

Bringing 301 back in 2017 is likely to be problematic, particularly against China. The U.S. is investigating a broad range of unfair practices, all related to intellectual property rights infringement, including issues inside China and potential IP theft taking place inside the U.S. by Chinese companies. Some of the complaints may ultimately fit under WTO commitments while others may address complaints that do not.

In the meantime, the Trump team argues that the international system is fraying and does not work to protect the interests of the U.S. It unfairly

[24] Jacob M. Schlesinger & Peter Nicholas, *Trump Says Administration Is Taking Time on Steel Tariffs*, WALL STREET J. (July 25, 2017, 5:44 PM), https://www.wsj.com/articles/trump-says-administrati on-is-taking-time-on-steel-tariffs-1501019061.

[25] *Summary of Statutory Provisions Related to Import Relief*, U.S. INT'L TRADE COMM'N 37 (2014), https://www.usitc.gov/oig/documents/pub4468_2014.pdf.

[26] OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, https://www.congress.gov/bill/100th-congress/house-bill/4848 (last visited Aug. 30, 2017).

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penalizes American companies that play by the rules and allows China to flout legal laws. Chinese firms can freely enter the U.S. but American companies do not have similar rights in the Chinese market. This imbalance must be addressed and 301 is an appropriate tool to use for focusing attention on this problem.

Note that both 232 and 301 are trade tools that can be used the President without much interference from Congress. In trade, the President has considerable latitude and power to act unilaterally.[27]

V. TRUMP'S DISRUPTIVE TRADE POLICY

So where will a Trump trade agenda head in the future? Towards further disruption.

First, there is a general consensus that unpredictability will be the norm during Trump's presidency. Many have averred that companies, businesses and counterparts should expect the unexpected when dealing with Trump. However, this is only partially true. Trump has been consistently advancing the "Make America Great Again" narrative by calling for bilateral trade agreements that puts U.S. interests first. He has not modified his stance about how he views multilateral trade agreements as instruments that weaken American leverage on the negotiating table. On this count, his rhetoric has also matched substantive policy changes (e.g., renegotiation of NAFTA, withdrawal from TPP). This is a feature that will most likely continue during the rest of his tenure. Trump has cited his experience in the business world as evidence of his deal making capabilities. Therefore, he will probably seek to sign bilateral free trade agreements with willing partners who can commit to terms quickly. This will be a low hanging fruit that should garner some useful political capital.[28]

However, this will not be easy. Many strategic partners do not see significant benefits from signing bilateral deals with the U.S. with this Administration. Therefore, they might delay the process or negotiate for terms in their favour. Such intransigence from trading partners could be long and frustrating.

Second, regarding the U.S.–China relationship, there seems to be some dissonance between Trump's rhetoric and actions. Although he has spoken tough on China, he has thus far stopped—in albeit just—of acting tough. For instance, during the campaign trail he said that he would label China a currency manipulator. This has not been done. Similarly, although he said

[27] Gary Clyde Hufbauer, *Could a President Trump Shackle Imports?*, PETERSON INST. FOR INT'L. ECON. (2016), https://piie.com/system/files/documents/piieb16-6.pdf.

[28] Peter K. Yu, *Opinion: Trump's Trade Policy Is More Predictable and Less Isolationist than Critics Think*, MARKETWATCH (Feb. 3, 2017, 8:20 AM), http://www.marketwatch.com/story/trumps-trade-policy-is-more-predictable-and-less-isolationist-than-critics-think-2017-02-02.

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he would impose tariffs under Section 232, Trump is currently adopting a "wait and see" approach. He has linked (and then unlinked and then linked again) trade with China to cooperation over North Korea's nuclear weapon's program. Hence, it is important, especially when analysing Trump's behaviour with China, to discern between rhetoric and reality.[29]

Third, it is still early days to form a comprehensive and conclusive opinion about how the specifics of Trump's trade policy will play out. Nevertheless, early signs clearly indicate that Trump could potentially consolidate Americans' hardening attitudes towards free trade. Trade policy will become more transactional and framed as a win-lose, mutually exclusive battle in which the U.S. always has to win.[30]

To conclude, this paper has demonstrated that this binary, mutually exclusive vision of Trump has manifested itself through the withdrawal of the U.S. from TPP, renegotiation of NAFTA, obsessive focus on reducing trade deficits and efforts to counter China using Sections 232 and 301. It remains to be seen how much of his fledgling steps can be translated into real, tangible and far-reaching policy changes in the next few years.

[29] Iwan Morgan, *Trump's First 100 Days: Rhetoric and Reality*, PROSPECT (Apr. 17, 2017), https://www.prospectmagazine.co.uk/world/trumps-first-100-days-rhetoric-and-reality.
[30] Saran, *supra* note 18.

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