2021

U.S. International Trade and National Security in the Trump Era: Mercantilism, Liberalism, or Economic Nationalism?

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This study will explore the Trump administration's views of national security as expressed through its international trade policy and ask whether the U.S. is now a mercantilist, a liberal, or an economically nationalist nation. This study will define mercantilism, liberalism and economic nationalism turning for assistance to the writings of Alexander Hamilton, Adam Smith, and Friedrich List.

The study will then explore how those concepts may have been revealed in America's international trade policy as the U.S. navigated the economic and national security events of the 20th century, and on to 2016 as President-elect Trump prepared to take office. Next will come a discussion of the defense and trade views of President Trump himself, as well as those of his key economic advisors. The study will then describe how the Trump administration applied its views about national security in four areas of international trade policy -- the control of imports, the regulation of foreign direct investment, the control of exports, and the implementation of emergency economic powers.

The study ends with the conclusion that America's 20th century history in security and trade revealed it to be mercantilist, liberal and economically nationalist in its approach. It concludes that though Trump altered the balance somewhat between mercantilist and liberal elements in his policies, both elements remained present throughout Trump's term. Further, the study finds that the U.S. had long expressed its international trade policy in economically nationalist terms, but President Trump's language was more strident than his recent predecessors. As of this writing, most of the Trump administration's international trade and security policies remain in place. It seems likely that President Biden's policies will continue to reflect a balance between mercantilism, liberalism and economic nationalism that has characterized the U.S. approach to security and trade since World War II.

Document Type

Masters Thesis

Degree Name

M.A.

Department

Economics

First Advisor

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Second Advisor

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Third Advisor

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Keywords

Economic nationalism, Mercantilism, National security, Trade liberalism, Trump

U.S. International Trade and National Security in the Trump Era: Mercantilism, Liberalism, or Economic Nationalism?

A Thesis

Presented to

the Faculty of the College of Arts, Humanities and Social Sciences

University of Denver

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

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by

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November 2021

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INTRODUCTION

This study will explore the Trump administration's views of national security as expressed through its international trade policy and ask: Is the U.S. now a mercantilist, a liberal, or an economically nationalist nation?

Such a question might infer an often-presented dichotomy between mercantilism and liberalism which suggests that the two approaches are mutually exclusive. Such a question might also infer that economic nationalism is necessarily harmful to the interests of other nations. This study will explore those inferences by supplying a definitional context in its first chapter that is derived primarily, though not exclusively, from the views of three key thinkers often identified with these ideas -- Alexander Hamilton for mercantilism; Adam Smith for liberalism; and Friedrich List for economic nationalism. This exploration will reveal that these three writers had very nuanced positions that have often been mischaracterized. Nevertheless, the broad outlines of mercantilism, liberalism and economic nationalism will emerge.

With general definitions in hand, to understand the Trump administration's positions it is necessary to further investigate how ideas of mercantilism, liberalism, and economic nationalism played out in 20th century U.S. economic history. The second chapter will briefly summarize key economic and national security events during this era.

The analysis will reveal the emergence of liberal free trade as a tactic in an otherwise mercantilist contest against Communism. The analysis will also point out that economic nationalism was an element of U.S. policy because American leaders identified the wellbeing of the U.S. economy with world security. What was good for the U.S. was good for the world, it was thought.

The end of the Cold War seemed to increase the influence of liberal free trade, which helped successfully vanquish Communism and rebuild Western economies out of the ashes of war, particularly among U.S. policy makers. However, it was not to be a tactic of mercantilism any longer, but rather a tool to help spread democracy and freedom. This led to the Uruguay Round of international trade agreements and the creation of the World Trade Organization (WTO), further institutionalizing liberal free trade ideas into law and practice both in the U.S. and around the globe.

However, the increasingly liberalized global economy contributed to the displacement of manufacturing workers, the growth of multinational corporations, and uneven income distribution within the U.S. and among nations. A perceived stagnation for many workers seemed to contribute to grievance-driven populism and sometimes authoritarianism.

Out of this environment in the U.S. came the successful candidacy of Donald J. Trump for U.S. President. The third chapter of this study will look at President Trump's views on international trade and national security. This chapter will review three Trump books which revealed Trump's irritation with free-riding allies, his embrace of mercantilist views including the importance of international trade balances in the measure of a nation's economic health and power, and his opinion that China's rise came at America's expense. The tone of these books seemed sharply economically nationalistic and dismissive of free trade liberalism.

The third chapter will also explore the attitudes of two other key economic policy aides, Peter Navarro and Robert Lighthizer, and identify contending groups of advisors who argued over economic policy. Although the Trump administration settled on the phrase, "economic security is national security," this study will show that these contending groups had very different views about what that meant when it came to making policy decisions.

The stage now having been set, the remainder of this study will analyze how the Trump administration's views on national security in international trade manifested into specific U.S. trade policies on imports, foreign direct investment, exports, and emergency economic powers. For instance, the fourth chapter looks at "Section 232," a law that allows a President to impose quotas or tariffs to prevent imports that "threaten to impair the national security." The study will show that the Trump administration's use of this authority to impose tariffs on steel imports began a trade war with America's allies, who promptly applied retaliatory tariffs and then brought trade complaints to the World Trade Organization (WTO). At the WTO, the Trump administration claimed that Article XXI of the General Agreement on Tariffs and Trade (GATT) allowed its actions. But this study will show that Article XXI does not go as far as Section 232, setting up the possibility that the Trump administration's Section 232 tariffs will be held to violate GATT. The study will share evidence that the President's tariffs ultimately harmed U.S.

employment and injected a level of uncertainty into the U.S. and world economy that eroded economic growth.

The fifth chapter takes up an examination of U.S. controls over foreign direct investment by the Committee on Foreign Investment in the United States (CFIUS). The analysis is placed here because the legal standard used to review foreign investments is largely similar to Section 232, allowing the President to block foreign investments that "threaten to impair the national security." The study will show that rather than broadly applying this standard, as was done with Section 232 to impose tariffs on steel imports, one of the competing groups in the White House seemed to limit the extent of CFIUS's operation.

The sixth chapter studies export controls. Preventing a nation's goods from helping enemies was a classic mercantilist tool that the U.S. had made full use of during the Cold War. This study will show that the U.S. legal and bureaucratic structures built to defeat the Soviet bloc remained largely unchanged despite the end of the Cold War and despite the fact that the U.S. no longer enjoyed the manufacturing and technological dominance that it had when these structures were built. The Cold War experience had also demonstrated the need for international support on export controls to prevent the targets of the controls from simply obtaining the desired goods elsewhere. Unfortunately, as the chapter on imports demonstrates, the Trump administration's initiation of a trade war alienated the very allies needed to make export controls effective. On top of that, President Trump's vacillations on export controls injected yet more uncertainty into a U.S. and world economy already anxious about the direction of Trump's trade policies.

The seventh chapter takes up the broad economic authorities a U.S. President has available to address national emergencies – what the author calls the "Full Monty," because they empower a President to entirely sever economic relations with another country. This chapter will reiterate that President Trump's threats and vacillations alienated allies and compounded uncertainties still further. The chapter will note that though President Trump could have used his emergency authorities to halt all U.S. investment in Chinese companies, he showed some surprising restraint.

This study will conclude with an argument that the supposed dichotomy between mercantilism and liberalism does not exist at least in U.S. international trade policy in the 20th century. Instead, this policy has usually been a balance of mercantilism and liberalism. The balances might shift from administration to administration but both elements remained present. Further, most U.S. international trade policy has been expressed in a rubric of economic nationalism directed at promoting the U.S. economy while helping most other nations (at least the non-Communist ones). The author will go on to argue that the Trump administration elevated the tone of economic nationalism and increased an emphasis on the use of mercantilist tools, particularly in trade policy toward China. However, the deep interconnections of the U.S. economy with global trade likely compelled President Trump to retain liberal free trade elements in U.S. trade policy despite his anti-globalist rhetoric. Thus, this study concludes that at the close of the Trump administration the United States remained a country that embraced liberalism, mercantilism, *and* economic nationalism.

I. DEFINING TERMS

A. Mercantilism

Mercantilism is often presented as an anachronistic economic doctrine utilized before the world was enlightened by "modern" economic theory. Sometimes advocates of "mercantilist" policies are viewed as Luddites ignorant of the universal benefits of free trade.[1] However, a closer analysis shows these views to be incorrect on several levels.

Decades of examination and volumes of written works have been devoted to understanding and explaining mercantilism. This study will briefly summarize efforts to define mercantilism, describe its key elements, and identify those aspects of mercantilism that continue to have relevance in today's economic debates.

What is Mercantilism?

In a two-volume study, Eli Heckscher defined mercantilism as a "phase in the history of economic policy" and identified the era's "ends," or goals of state policy, and the "means" applied to reach the goals.[2] The goals were power and wealth for the state,

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[1] Friedrich List wrote, "Boasting of their imaginary superiority in science and knowledge, these disciples of Smith and Say are treating every defender of common sense like an empiric whose mental power and literary acquirements are not strong enough to conceive of the sublime doctrine of their masters." Friedrich List, *Outlines of American Political Economy* (Philadelphia: Parker, 1827), 5.

[2] Eli F. Heckscher, *Mercantilism*, trans. Mendel Shapiro, 2 vols. (London: George Allen & Unwin, 1935), 19-26.

he argued, and the means were protectionism and a positive balance of trade. Heckscher thought that the mercantilist "phase" began in the Middle Ages and continued until the advent of *laisses-faire* economics.[3]

Lars Magnusson described mercantilism more broadly in his book, *The Political Economy of Mercantilism*.[4] He thought of it as a "discourse" or "literature" about ideas, politics, and economics trying to understand the relation between "power and plenty" for the state.[5] Magnusson argued that this literature built a common vocabulary and developed shared concepts about commerce, such as prices responding to supply and demand, which remain in use today.[6]

There seems agreement among analysts that "mercantilism" did not establish itself as a coherent "doctrine" or "theory."[7] Policy applications varied through time and by location, with countries experimenting, adapting, and reacting to the various economic circumstances that faced them. The variety of applications defied any ability to identify an "orthodox" form of mercantilism.

Yet why some nations became rich, and others stayed poor was the recurring question mercantilist writers were trying to address.[8] These writers were trying to

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3 Heckscher, *Mercantilism*, 20.

4 Lars Magnusson, *The Political Economy of Mercantilism* (London: Routledge, 2015).

5 Magnusson, *The Political Economy of Mercantilism*, x, 49, 219.

6 Magnusson, *The Political Economy of Mercantilism*, 223.

7 Magnusson, *The Political Economy of Mercantilism*, 1.

8 Magnusson, *The Political Economy of Mercantilism*, 9.

understand, explain, and sometimes influence the explosion of commerce starting in medieval times. They grappled with its impact on social organizations that had been largely locally focused based on clans, tribes, or villages, and devoted primarily to agriculture. These writers grasped that commerce could create or destroy wealth.[9] They also recognized that wealth allowed communities to defend themselves, and those that did not defend themselves were vulnerable to both poverty and predation.

Though the "phase" Heckscher describes begins in the Middle Ages, it should be noted that the term "mercantilism" itself was first used by the Physiocrats in 1763, according to Magnusson.[10] Ironically, Magnusson points out that it was Adam Smith's *Wealth of Nations* that first described mercantilism as a "system" (Smith also referred to it as the "commercial system").[11] Smith may have given the mercantilist system more coherence than it deserved to serve as a strawman against which to more clearly contrast his theories about freer liberal trade.

Features of Mercantilism

Heckscher's study had five parts which can be described as interrelated features of mercantilism.[12] His first part was a discussion of mercantilism as a set of economic policies with a goal of unifying the state. The second part regarded economic measures

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[9] Magnusson, *The Political Economy of Mercantilism*, 220.

[10] Magnusson, *The Political Economy of Mercantilism*, 3.

[11] Magnusson, *The Political Economy of Mercantilism*, 3, 217.

[12] Heckscher, *Mercantilism*, 21-28.

intended to increase the power of the state. The third and fourth parts could be described a "means" to reach the two goals, which were policies meant to maximize the accumulation of money and policies intended to protect domestic economic interests. Heckscher's final part described how mercantilism expressed a particular "conception of society." The following paragraphs will briefly explore each of the five parts in turn.

Heckscher's first stated "end" to mercantilist economic policies was to leverage expanding commerce to help form nation-states out of medieval social structures.[13] Over centuries, these policies brought under state control, fitfully and inconsistently, trade measures first enacted at the village and town level. These were policies that sought to keep out foreigners, protect local currencies, and prevent foreign goods from displacing local wares. As German scholar Gustav Schmoller stated, these policies formed the broader community into an economic organization, unifying the efforts of millions in commerce and finance, to help consolidate the state.[14] By consolidating the policies under the state, leaders could exercise control over larger resources of population, commerce, industry, and finance to better provide for defense externally, and to better promote prosperity internally, it was thought. It should be noted that in this system the interest of the individual was subordinated to the state,[15] just as it had been previously subordinated to the interests of the clan, village, or town.

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[13] Heckscher, *Mercantilism*, 21-22.

[14] Gustav Schmoller, *The Mercantile System and Its Historical Significance* (New York: Macmillan, 1897), 49.

[15] Magnusson, *The Political Economy of Mercantilism*, 28.

Heckscher's second "end" for mercantilist policy was state power.[16] In an era of high uncertainty and near constant war, power was typically measured militarily in a literal win or lose, zero-sum comparison with rival powers.[17] Heckscher cites British economic historian William Cunningham who noted that the state regulated all commercial and industrial activity to enhance the power of the state.[18] Only power could protect the state, and its commercial interests, from the predations of thieves, pirates, or other nations. Internally, state power was necessary to consolidate and resolve the conflicting aims of competing local interests of towns, guilds, merchants, and financiers. Clearly power was necessary to unify a state, and unification was necessary to enhance power. Again, individual welfare was not a factor in this calculation.

Having described the "ends" of mercantilist policy, Heckscher went on to describe "means."[19] The first was money. In this era, money was linked to precious metals for which there was a fixed supply in the world. The readiest way for a nation to increase its share of the world-wide supply of precious metals was to export a higher value of goods than were imported, thus achieving a favorable balance of trade.

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[16] Heckscher, *Mercantilism*, 24.

[17] Military historian Edward Mead Earle noted that war was inherent in this system and was, in fact, virtuously continuous from 1650 to 1815; England prevailed. Edward Mead Earle, "Adam Smith, Alexander Hamilton, Friedrich List: The Economic Foundations of Military Power," *Makers of Modern Strategy from Machiavelli to the Nuclear Age*, ed. Peter Paret (Princeton: Princeton University Press, 1986), 219. This book, including the cited essay, was originally published in 1943 as *Makers of Modern Strategy: Military Thought from Machiavelli to Hitler*, ed. Edward Mead Earle (Princeton: Princeton University Press, 1944).

[18] Heckscher, *Mercantilism*, 28. Heckscher does not give an exact cite, but see William Cunningham, *The Growth of English Industry and Commerce in Modern Times* (London: C.J. Clay and Sons, 1882), 256.

[19] Heckscher, *Mercantilism*, 25-26.

Adam Smith's blistering critique in the *Wealth of Nations* accused mercantilists of confusing money with a nation's true wealth, which he believed included domestic production and consumption.[20] Scholars point out that this was incorrect.[21] Certainly, some early mercantilists were fixated on money, so much so as to be labelled "bullionists." However, many later mercantilist writers recognized that a nation's wealth included production and not just money.

Mercantilist writers also demonstrated more sophistication than just wanting to achieve a favorable balance of trade by exporting more than importing.[22] They noted the link between prosperity and ready access to money; they observed that scarce money meant less employment. Consequently, while not a perfect measure, the availability of currency served as a rough economic barometer as to whether a nation's trade policy was successful in a world with a fixed money supply.[23]

Mercantilist writers also focused on more than the sheer volume of exports and imports. They recognized the importance of manufacturing to add value to exports compared to the lesser value of exported raw materials.[24] Consequently, these writers sought to promote domestic manufacturing by putting tariffs on the import of foreign

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[20] Smith's claim will be discussed in more detail in pages that follow.

[21] Jacob Viner, *Studies in the Theory of International Trade*, (1937; repr., New York: Augustus M. Kelley, 1965), 19-21. Magnusson, *The Political Economy of Mercantilism*, 217-218.

[22] Magnusson, *The Political Economy of Mercantilism*, 218-219.

[23] Magnusson, *The Political Economy of Mercantilism*, 218.

[24] Magnusson, *The Political Economy of Mercantilism*, 218.

manufactured goods. They also exploited colonies and sought favorable trade terms from other nations to secure cheaper raw materials for their manufacturers.

Nor did some mercantilists exclude export of services or the flow in an out of capital in their measures.[25] The term "balance of trade" was sometimes loosely used in mercantilist literature when writers were really referring to a current account balance which captured all inflows and outflows of money.

Early mercantilist writers also described the importance of building a state reserve in precious metals for emergencies, such as paying for war.[26] However, the leading mercantilist nation, England developed a highly refined system of public debt funded by effective tax collection that paid for most of its wars after about 1720.[27] The effectiveness of this system of public credit contributed to England's military victories over rivals Holland, Portugal, Spain, and France. Robust international trade made this system successful because it was the wealthy merchants and their financiers who could purchase state debt.

Merchants were critical to national defense in another way. They built the first world-wide trading networks which developed local contacts and provided critical intelligence that typically surpassed anything a newly formed state could generate via its

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[25] Viner, *Studies in the Theory of International Trade*, 13-14.

[26] Viner, *Studies in the Theory of International Trade*, 22-24.

[27] Larry Neal, *A Concise History of International Finance: From Babylon to Bernanke* (Cambridge: Cambridge University Press, 2015), 100-109.

ambassadors.[28] Further, this was an era when world trade required ships -- and ships required money. Conti points out that ships were the most expensive assets of that time, their costs far surpassing any existing industrial facilities.[29] Ships also needed sailors. Both were readily employed for war as well as commerce. Such was their importance to England's defense and prosperity that even Adam Smith supported England's Navigation Acts which gave English shipping sole access to British ports from 1651 to 1849 in an effort to debilitate the maritime resources of any rival nation and strengthen her own.[30]

The fourth part of Heckscher's description of mercantilism was protection.[31] This was the trade policy most frequently identified with mercantilism and for many often-connoted tariffs. However, as a later chapter discussing 20th century trade negotiations makes clear, tariffs were not the only means of trade protection. Other measures included licensing requirements, voluntary restraints, health inspections, quality controls, currency exchange controls and many more. Additionally, mercantilists by no means sought tariffs on *all* goods.[32] They often advocated for duty-free imports of raw materials but put tariffs on foreign manufactured goods to encourage their citizens to purchase, and

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[28] Thomas Victor Conti, "Mercantilism: A Materialist Approach," *Scandinavian Economic History Review* 66, no. 2 (2018): 186-200, 190, 193.

[29] Conti, "Mercantilism: A Materialist Approach," 195.

[30] Neal, *A Concise History of International Finance,* 69-70, 191. Smith's defense of the Navigation Acts will be discussed in following pages.

[31] Heckscher, *Mercantilism*, 25-26.

[32] Following pages will describe how Alexander Hamilton, described as an American mercantilist, advocated for duty-free import of raw materials and protective duties on certain, but not all, foreign manufactured goods.

domestic producers to export, their nation's own manufactured goods. This was because manufactured exports generated more value than the export of raw materials and thus contributed to a more favorable balance of trade. To mercantilists, which goods were protected was as often as important as how they were protected.

Some American commentators can be vitriolic denunciators of "protectionism."[33] Many need to be reminded that America was highly protectionist and mercantilist for most of the period from 1816 to the end of World War II.[34] Indeed, economic historian Eckes noted that most successfully industrialized nations had a phase of intense protectionism in the course of their economic development – the U.S. certainly did.[35] Indeed, many modern economic development theorists view protectionism as an important component to consider in a nation's development strategy.[36]

One thing that protectionism did not mean to mercantilists was "autarky." Mercantilists accepted that international trade, not isolation, was essential to developing a nation's wealth.

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[33] As noted in a footnote above, List was responding in 1827 to Dr. Cooper who described support for protectionism as dependent on eleven "ignorances." Thomas Cooper, *Lectures on Elements of Political Economy* (Columbia, South Carolina: Doyle E. Sweeney, 1826), 196.

[34] See for example Paul Bairock, *Economics & World History: Myths and Paradoxes* (Chicago: University of Chicago Press, 1993), 32-38, 52-53.

[35] Alfred E. Eckes, "U.S. Economic History," in William A. Lovett, Alfred E. Eckes Jr., and Richard L. Brinkman, *U.S. Trade Policy: History, Theory and the WTO* (Armonk, New York: M.E. Sharpe, 2004), 45.

[36] Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (London: Anthem Press, 2005), 66-68.

The last aspect of Heckscher's study of mercantilism reflected on the question of whether mercantilism offered a particular "concept of society."[37] He concluded that it did. As interpreted by Magnusson, Heckscher thought mercantilist society saw itself as secular and material.[38] It gave priority to the interests of the state in developing its power and wealth, with interests of the individual or broader mankind subordinated to those of the state.[39] It eschewed any belief in a natural harmony or equilibrium providing a guiding "invisible hand" as posited by Adam Smith.[40] Rather, mercantilists believed that only positive state action would provide victory in an anarchic world of zero-sum economic contests with other states.

Although Heckscher sought to describe a long-ago epoch, clearly some features of mercantilism continue into the present day. Certainly, the central economic question as to why some nations were rich and others were poor still puzzles modern economists as much as it did the early mercantilists. Further, Magnusson noted how 20th century totalitarian states looked as though they were mercantilist.[41] He also noted how modern economic development policies like "import substitution" or "strategic trade policy" had mercantilist overtones.[42]

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[37] Heckscher, *Mercantilism*, 28.

[38] Magnusson, *The Political Economy of Mercantilism*, 28.

[39] Magnusson, *The Political Economy of Mercantilism*, 28.

[40] Magnusson, *The Political Economy of Mercantilism*, 28.

[41] Magnusson, *The Political Economy of Mercantilism*, 31.

[42] Magnusson, *The Political Economy of Mercantilism*, 222-223.

Conti pointed out that centuries ago leaders turned to mercantilist policies to address uncertainty and conflict. He observed that more recent leaders also turned to mercantilist policies in the aftermath of economic crises or as their nation's veered toward war, such as in the 1930s.[43] This was a reminder that despite the globalization of trade, the state remained responsible for national security and the welfare of citizens and mercantilism was a proven, if imperfect, approach to carrying out those responsibilities. Therefore, regardless of any negative connotations, mercantilist policies remain among those a nation might reasonably employ to promote its economic and national security even today.

In summary, as Earle relates it, a doctrine of "mercantilism" guided early nation-states as they sought to establish both political control over their communities and to ensure their independence from other states.[44] Under this doctrine, the power of the state was an end to itself, with the national economy directed toward, and individual citizens subordinated to, the preparation of the state for war.[45]

For mercantilists, the accumulation of gold was critical to finance war.[46] International trade provided a source of gold so long as a nation had a surplus in the balance of trade with another nation – thus nations wanted to sell everything and buy

[43] Conti, "Mercantilism: A Materialist Approach," 187, 197.

[44] Earle, "Adam Smith, Alexander Hamilton," 218.

[45] Earle, "Adam Smith, Alexander Hamilton," 217, 219.

[46] Albert O. Hirschman, *National Power and the Structure of Foreign Trade* (1945; repr., Los Angeles: University of California Press, 1980), 4-5.

nothing. Because of the finite quantity of gold available, for one nation to gain gold, another had to lose it. Under mercantilism, wealth in gold equaled power, and the power of the state was always measured relative to other states. To increase one state's power was always at the expense of others – in other words a "zero-sum" contest. Consequently, Earle concluded that a nation's policy under this system was typically protectionist, autarkic, expansionist, and militaristic.[47]

Earle noted that war was inherent in the mercantilist system and was, in fact, virtually continuous from 1650 to 1815.[48] England prevailed in this contest crushing the competing powers Spain, Holland, and France, despite the loss of the American colonies.[49]

Some view Alexander Hamilton as a statesman who adopted mercantilism to America's circumstances.[50] Like European mercantilists, Hamilton was concerned about binding the American colonies into a single independent nation.[51] He was also keenly aware of the economic and political challenges to achieving this independence. However, the new United States had ample advantages and opportunities as well.

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[47] Earle, "Adam Smith, Alexander Hamilton," 218-19.

[48] Earle, "Adam Smith, Alexander Hamilton," 219.

[49] Earle, "Adam Smith, Alexander Hamilton," 219. Earle describes totalitarianism as a modern form of mercantilism. Ibid. For a discussion of how the Axis powers focused their economic policies toward developing national power before the outbreak of World War II, see chapter 1 in Alan S. Milward, *War, Economy and Society*, (Los Angeles: University of California Press, 1979), 1-17.

[50] Earle, "Adam Smith, Alexander Hamilton," 231-32.

[51] Earle, "Adam Smith, Alexander Hamilton," 232.

For instance, Hamilton saw advantage in America's relative geographic isolation, abundant land, vast natural resources, and growing population. Further, Hamilton grasped the enormous economic potential for the former American colonies[52] which had been shackled by England's Navigation Acts and which were now free to trade openly in the global economy. But, to capitalize on this potential, America had to first address its immediate dependence on foreign goods. In his *Report on Manufactures,* Hamilton asserted that increasing domestic manufacturing and aggregating America's regional economic diversities would be essential to creating the self-sufficiency needed to eliminate dependence on foreign suppliers.[53]

Hamilton was particularly concerned about America's vulnerability to European powers, especially England, with their mature economies and global military reach.[54] To add political independence to economic independence, Hamilton urged President Washington to embrace a strategy of neutrality, as vividly displayed in his debates with then-Secretary of State Thomas Jefferson regarding the global war emerging out of the French Revolution.[55]

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[52] Alexander Hamilton, "Number 11: The Utility of the Union in Respect to Commercial Relations and a Navy," in Alexander Hamilton, James Madison and John Jay, *The Federalist*, (Norwalk, Connecticut: The Easton Press, 1979), 70.

[53] Henry Cabot Lodge, ed., *The Works of Alexander Hamilton,* (New York: The Knickerbocker Press, 1904), IV:70-198. Regarding strength in the regional economic diversity see 138-140. For a diverse economy including both manufacturing and agriculture being stronger than agriculture alone see IV:84-85, 95, 133-134. For a diverse economy being essential to avoiding foreign dependence see IV:70, 102, 131-135. Earle, "Adam Smith, Alexander Hamilton," 235.

[54] Earle, "Adam Smith, Alexander Hamilton," 233-234.

[55] See the several essays Hamilton published defending neutrality under the pseudonym, "Pacificus." Lodge, *The Works of Alexander Hamilton,* III:432-489. Ron Chernow, *Alexander Hamilton,* (New York: Penguin Books, 2004), 435. The April 19, 1793, cabinet debate on neutrality was brilliantly dramatized in

Hamilton knew this strategy required that the U.S. place a priority on developing domestic defense industries.[56] He understood that creating sufficient military strength (and corresponding political power) would give America the best chance to preserve its neutrality and keep it from being drawn into the seemingly endless European disputes. Hamilton noted that "security is not possible without power…for a nation, despicable by its weakness forfeits even the privilege of being neutral."[57] "Only if we are strong can we choose peace or war as our interest guided by justice shall dictate."[58]

To that end, Hamilton argued for what became known as "infant industry protection," a broad range of steps that would encourage U.S. manufacturing that included tariffs, subsidies, government procurement, and even direct government control

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Lin-Manual Miranda's musical, *Hamilton*, where Hamilton replies to Jefferson's plea to support America's first ally, France, in its war with England

> You must be out of your GODDAMNED mind
> If you think
> The President is gonna bring the nation to the brink
> Of meddling in the middle of a military mess
> A game of chess
> Where France is queen and king-less
> We've signed a treaty with a king
> Who's head is now in a basket
> Would you like to take it out and ask it?
> "Oh should we honor our treaty King Louis head?"
> Uh do whatever you want, I'm super dead!

Lin-Manual, Miranda, *et al*., "Cabinet Battle #2," *Hamilton: An American Musical,* (album) (New York: Atlantic Recording Corporation, 2015), Act II.

[56] Lodge, *The Works of Alexander Hamilton,* IV:70, 134-135, 167-168. Earle, "Adam Smith, Alexander Hamilton," 232.

[57] Alexander Hamilton, "Number 11: The Utility of the Union in Respect to Commercial Relations and a Navy," in Alexander Hamilton, James Madison and John Jay, *The Federalist* (Norwalk, Connecticut: The Easton Press, 1979), 66.

[58] This was the phrase Hamilton suggested to President Washington for his use in his Farewell Address. Victor H. Paltsits, ed., *Washington's Farewell Address* (New York: New York Public Library, 1935), 196.

of critical defense industries like firearms and munitions production.[59] Hamilton asserted that these protections were essential to developing key American industries in the face of mature European competitors who benefited from mercantilist protections in their own countries.[60]

Hamilton's overall impact on the American economy is most profound when viewed from a macroeconomic level where three achievements particularly stand out. First, as Secretary of the Treasury, Hamilton was able to secure the assumption by the United States government of the various colonies' debts accumulated during the war for independence.[61] Second, he was able to establish a national bank.[62] Third, Hamilton built an efficient system to collect the revenue needed to pay the debt.

These steps enabled Hamilton to consolidate, market, and pay for public debt at the national level. Hamilton noted that the U.S. must "cherish credit as a means of strength and security,"[63] because he understood that sound national credit was essential to funding military operations in the future crises he was certain the U.S would face.[64]

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[59] Lodge, *The Works of Alexander Hamilton*, IV:143-198. Earle, "Adam Smith, Alexander Hamilton," 234.

[60] Lodge, *The Works of Alexander Hamilton,* IV:96-97, 101-102, 105-107.

[61] Earle, "Adam Smith, Alexander Hamilton," 232.

[62] See Hamilton's report to President Washington advocating for the National Bank, which Washington ultimately supported over the objections of Jefferson and Attorney General Edmund Randolph. Lodge, *The Works of Alexander Hamilton,* III:445-493.

[63]Paltsits, *Washington's Farewell Address,* 193. Earle, "Adam Smith, Alexander Hamilton," 237.

[64] Hamilton suggested President Washington state in his Farewell Address that America should "cherish public credit as a means of strength and security." Paltsits, *Washington's Farewell Address,* 193. Earle, "Adam Smith, Alexander Hamilton," 237. *See also* Larry Neal, *A Concise History of International Finance: From Babylon to Bernanke* (Cambridge: Cambridge University Press, 2015). A key theme in Neal's treatment is that issuance of debt was, and remains, the primary funding instrument for war.

Hamilton's remarkable achievements secured these essential macroeconomic economic foundations for the United States.

Hamilton's trade proposals certainly have a mercantilist ring. However, claiming that Hamilton was entirely a mercantilist would miss important nuances in his views. For instance, Hamilton had read Adam Smith's *Wealth of Nations* and fully comprehended the benefits of "equitable" international trade.[65] But, Hamilton pointed out that this was not the way international trade actually functioned at the time.[66] Nor did he agree that expanding international commerce would lead to peace.[67] Rather, Hamilton thought, trade could lead to tension and conflict.[68]

Claiming Hamilton as a mercantilist might also miss that the policies he advocated were intended to unify and strengthen the United States, but not necessarily to the detriment of any other country. Nowhere does Hamilton seem to apply the mercantilist notion that a nation can gain strength only by diminishing another. His goal was merely U.S. political and economic independence.

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[65] Historian and U.S. Senator Henry Cabot Lodge reported in his editorial note to Hamilton's *Report on Manufactures* that Hamilton had read Smith's *Wealth of Nations* and prepared an extensive commentary in 1783, a writing that had been lost. Lodge, *The Works of Alexander Hamilton,* IV:198-199. Hamilton opened his *Report on Manufactures* with a restatement of the benefits of free trade. Ibid., IV:70-73. Adam Smith will be discussed more fully below.

[66] Lodge, *The Works of Alexander Hamilton,* IV:96-97, 101-102. Hamilton wrote, "the manufacturing nations abridge the natural advantages of their situation, through an unwillingness to permit agricultural countries to enjoy the advantages of theirs, and sacrifice the interest of a mutual benefit intercourse to the vain project *of selling everything and buying nothing* (emphasis added)." Ibid., IV:96. Earle, "Adam Smith, Alexander Hamilton," 232.

[67] Hamilton summarily rejected as utopian fantasy the notion that commerce leads to peace in Number 6 of *The Federalist.* Alexander Hamilton, "Number 6: Concerning Dangers from Dissensions between the States," in *The Federalist*, 27-33. Earle, "Adam Smith, Alexander Hamilton," 240.

[68] Hamilton, "Number 6," *The Federalist*, 27-33. Earle, "Adam Smith, Alexander Hamilton," 240.

Similarly, claiming Hamilton was solely a protectionist would overlook the many proposals Hamilton offered beyond protective tariffs to advance America's industrial development. For instance, Hamilton suggested the *elimination* of import duties for raw materials and other manufacturing inputs important to several growing U.S. industries.[69] Hamilton also suggested offering subsidies; offering awards ("premiums") for significant manufacturing achievements; paying for the immigration of skilled foreign workers; granting generous patents not only for inventors but also for "introducers"[70] of new techniques; and the creation of a government board to promote innovation.[71] Hamilton also noted the importance to economic growth of a sound infrastructure that facilitated the transportation of and payment for goods.[72]

Unlike mercantilists for whom both the economy and the individual were completely subsumed in the pursuit of national power, Hamilton recognized the need to balance individual liberties with national security.[73] Hamilton, like Smith, supported a standing professional army and strong navy but recognized the danger to liberty such

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[69] Lodge, *The Works of Alexander Hamilton,* IV:153-156, 170, 172, 176, 183, 184, 185, 189, 190, 192.

[70] Some critics would say by rewarding "introducers" with patents in addition to the actual inventors or authors, Hamilton encouraged outright industrial espionage and intellectual property piracy. See Doron Ben-Atar, "Hamilton's Alternative: Technology Piracy and the Report on Manufactures," *The William and Mary Quarterly* 52, no. 3 (July 1995): 389-414, 406.

[71] Lodge, *The Works of Alexander Hamilton,* IV:143-198.

[72] Lodge, *The Works of Alexander Hamilton,* IV:156-157.

[73] Hamilton wrote that nations in continual danger faced the risk of empowering "institutions which have the power to destroy their civil and political rights." Alexander Hamilton, "Number 8: The Consequences of Hostilities between the States," in *The Federalist*, 42-43. Earle, 239.

institutions represented.[74] Like Smith, he thought appropriate safeguards could nevertheless preserve individual liberties.[75]

Hamilton saw that America's political power and economy were indissolubly interwoven – just as expressed in the preamble to the new constitution, which sought to form a more perfect union, provide for the common defense, promote the general welfare and secure liberty.[76] Earle summarized Hamilton's contributions as having "built the structure of American economic policy."[77] "As one who combines economics with politics and statecraft…Hamilton ranks with the great statesmen of modern times," Earle wrote.[78] By often invoking Hamilton's name, President Trump and his advisors sought to lend credibility to the administration's views on trade deficits, tariffs, and protectionism.

As it turned out, Hamilton's position in support of high protective tariffs to encourage key manufacturing was initially rejected by Madison and Jefferson[79] -- America's first tariffs were set at only 5% for most goods and were intended to raise

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[74] Alexander Hamilton, "Number 25: The Same Subject Continued [The Powers Necessary to the Common Defense Further Considered]," in *The Federalist,* 157-162. Earle, "Adam Smith, Alexander Hamilton," 231, 239.

[75] Alexander Hamilton, "Number 24: The Powers Necessary to the Common Defense Further Considered," in *The Federalist,* 152.

[76] Earle, "Adam Smith, Alexander Hamilton," 238.

[77] Earle, "Adam Smith, Alexander Hamilton," 242.

[78] Earle, "Adam Smith, Alexander Hamilton," 242.

[79] Frank W. Taussig, *The Tariff History of the United States: A Series of Essays* (New York: Knickerbocker Press, 1899), 14.

revenue, not be protective barriers.[80] It is perhaps one of American history's more interesting economic ironies that both Madison and Jefferson later adopted more sharply mercantilist policies when they each served as President. Jefferson established a full embargo on British goods and Madison temporarily doubled tariffs during the War of 1812, then sought permanent higher duties in the Tariff Act of 1816.[81] America's tariffs remained relatively high until after World War II. In the interim, America could fairly be described as largely mercantilist with policies focused on isolation and internal development.

As the 20th century began, America's mercantilist policies created tensions in light of increasing U.S. industrial development and with the emergence of the U.S. as a net international creditor following World War I.[82] These tensions magnified through the Great Depression and into the outbreak of the Second World War. For the U.S., rebuilding the post-war world based on the perceived mercantilist-driven failures after World War I created an opportunity to apply the "liberal" free trade doctrine of which Hamilton's Scottish contemporary, Adam Smith, was thought to be the founder.

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[80] Because of the crucial need for revenue for the new federal government, one of the first bills introduced in the new U.S. Congress was the Tariff Act of 1789. It set a five percent *ad valorem* duty on most imported goods. John M. Dobson, *Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission* (Washington, D.C.: U.S. International Trade Commission, 1976), 6.

[81] Dobson, *Two Centuries of Tariffs,* 8-9.

[82] Historian and U.S. Senator Henry Cabot Lodge gave his perspective on the American debate between free trade and protectionism in an 1885 essay that accompanied Hamilton's *Report on Manufactures*, "The business sense of the American people is unsurpassed: they have protectionism because they think it pays, and when they are convinced that free-trade will pay better they will have it instead, and not before." Lodge, *The Works of Alexander Hamilton,* IV:202.

B. Liberalism

First published in 1776, Adam Smith's *Wealth of Nations* attacked most of the prevailing notions of mercantilism of his time.[83] Smith rejected the mercantilist view of the zero-sum nature of international trade which led nations to impose mercantilist policies intending to "beggar" or "impoverish" their neighbors; he argued that there was always mutual gain from such exchanges, though it was not always equal gain.[84] This was because of the benefit in focusing economic effort on what one could produce most efficiently, then using the surplus to buy what a trading partner produced more cheaply.[85] Liberal theorists postulated that the result would be the more efficient distribution of resources globally which would raise potential output, and presumably welfare, for all participants.[86] Smith, and the liberal free trade theorists who followed him, thought protectionist policies blocked these efficiencies and inhibited economic growth.[87]

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[83] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Carmel, Indiana: Liberty Fund, 1976), 2 vols. Smith devoted eight chapters, about one fourth of this monumental work to demolishing most of the mercantilist policies trade practices in his time. Ibid., book IV, chapters i-viii, 429-662 (hereafter denoted by book, chapter and page, for example, IV.iii.494).

[84]Smith, *Wealth of Nations,* IV.iii.489, 493-498. Hirschman asserted that Smith broke the mercantilist causal link between national welfare and national power by observing that both trading nations could benefit from trade, thereby each improving their welfare. Hirschman, *National Power,* 6. Thus, under Smith's theory gaining wealth was no longer at the direct expense of another state's wealth – trade was no longer a "zero-sum" contest. In contrast, national power remained a measurement taken relative to other states and therefore remained a "zero-sum" calculation. Tensions between economic growth in an economy largely based in liberal free trade policies and a mercantilist zero-sum calculation of national security played out through the Trump Administration and remain evident today.

[85] Smith, IV.ii.456-458.

[86] For a relatively recent representative discussion of the presumed benefits of free trade see Robert E. Baldwin, "An Economic Evaluation of the Uruguay Round Agreements," *World Economy* 18, Supplement (1995): 153-172, 153.

[87] Smith argued that the free exercise of individual interest was the best way to ameliorate famine and poverty, as well as to grow wealth. Smith, *Wealth of Nations,* IV.v.538-541. For a modern articulation see Baldwin, "Uruguay Round Agreements," 154.

The mercantilist doctrine held that a favorable balance of trade generated the accumulation of gold that was necessary to pay for war,[88] making the balance of trade the essential measure of national wealth and power.[89] Smith argued that this doctrine subordinated the domestic economy to international trade, even though it was the domestic economy that generated the greatest employment and revenue for a nation.[90] Wealth, he said, was not reflected in money but rather in what money could buy.[91] It was the nation's annual product of domestic industry and revenue from land, labor and "consumable stock" that enabled it to pay for war.[92] Thus, it was the "annual produce of the land and labor of the country," and not the balance of trade, that was the essential measure of national wealth and power.[93]

Smith also attacked the mercantilist policy of granting monopolies which he thought benefitted merchants at the expense of the public.[94] Smith called monopoly laws "oppressive," "absurd," and "extorted from the legislature;" "like the laws of Draco," he wrote, "these laws may be said to be written in blood."[95] Smith thought that the English

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[88] Smith, *Wealth of Nations,* IV.i.431, 441-443.

[89] Smith, *Wealth of Nations,* IV.i.431-432.

[90] Smith, *Wealth of Nations,* IV.i.435.

[91] Smith, *Wealth of Nations,* IV.i.438.

[92] Smith, *Wealth of Nations,* IV.i.440-441. Smith noted further that armies in the field and fleets at sea needed goods, not gold. Ibid., IV.i.440. Smith further noted that England paid for its most recent war with France by borrowing money, not out of accumulated gold. Ibid., IV.i.441-442.

[93] Smith, *Wealth of Nations,* IV.iii.496-498.

[94] Smith, *Wealth of Nations,* IV.ii.456, IV.iii.493, and IV.vii.612-613.

[95] Smith, *Wealth of Nations,* IV.viii.648.

monopolies that controlled trade into and out of the American colonies were particularly oppressive, violating the colonists' "most sacred rights" and serving as "impertinent badges of slavery."[96]

When it came to national defense, however, Smith granted exception from his otherwise anti-mercantilist position, acknowledging the stark reality that rich nations had the advantage in war over poor and barbarous ones.[97] Most notably, Smith supported Britain's Navigation Acts, a centerpiece of mercantilism protecting England's merchant marine, noting "defense was more important than opulence."[98] Smith also thought protective duties and subsidies were entirely appropriate to support defense industries.[99]

Further, Smith supported a professional standing army, noting that the demands of modern warfare required expertise and discipline that only a specialized, professional force could create.[100] Smith accepted this as a necessary national expense and rejected the prevailing political doctrine in England at the time that standing armies represented an unacceptable risk to liberties.[101] As alluded to earlier, Smith's position regarding international trade and defense was quite akin to Hamilton's.

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[96] Smith, *Wealth of Nations,* IV.vii.582 and IV.vii.596-597.

[97] Smith, *Wealth of Nations,* V.i.708.

[98] Smith, *Wealth of Nations,* IV.ii.464-465.

[99] Smith, *Wealth of Nations,* IV.ii.464-467, IV.v.522-523.

[100] Smith, *Wealth of Nations,* V.i.697-700. Earle, "Adam Smith, Alexander Hamilton," 226-27.

[101] Smith, *Wealth of Nations,* V.i.697-700, 706. Earle, "Adam Smith, Alexander Hamilton," 226-27.

Writing in 1945, scholar Albert O. Hirschman built on Smith's theory of free trade, and further contrasted it from mercantilist doctrine. Hirschman noted that in liberal theory the pursuit of national power was only a secondary objective of international trade, whereas mercantilist doctrine gave it preeminence.[102] The liberal notion of free trade, it was thought, would lead to peace by increasing commercial and political contacts between nations, and would thus create interest groups in the respective trading partners who would mutually benefit from trade but who would also mutually lose if trade were interrupted by war.[103] This interdependence, it was thought, would deter war. Moreover, trade would replace conquest as a means for acquiring needed materials.[104]

The liberal theorists also argued that free trade would make a country richer and therefore better able to afford the cost of national defense.[105] They further asserted that free trade would allow nations with limited resources or adverse climates to escape those constraints.[106] Free trade could also encourage a broadening of sources of supply so that

[102] Hirschman, *National Power,* 3. Schlesinger notes that there never has been universal free trade; there have always been protections for defense, infant industries, politically influential producer groups, or other vested interests. Schlesinger, *Political Economy of National Security,* 131.

[103] Hirschman, *National Power,* 7, 10. Scholars note that there is little empirical evidence to support this contention. Jean-Marc F. Blanchard, Edward D. Mansfield and Norrin M. Ripsman, "The Political Economy of National Security: Economic Statecraft, Interdependence, and International Conflict," *Security Studies* 9, nos. 1-2 (1999): 2, 8.

[104] Hirschman, *National Power,* 14.

[105] Hirschman, *National Power,* 7. Smith had noted that manufacturing countries were better able to afford "long wars" regardless of their balance of trade or accumulated stocks of gold. Smith, *Wealth of Nations,* IV.i.444.

[106] Ireland's potato famine was an example. Hirschman, *National Power,* 7.

a country would not be dependent on any single foreign source for critical needs.[107] Of course, international commerce depended on safe, reliable transportation – which often meant secure sea lines of communication, which implied policing of the world's oceans by one's own navy or that of a strong, benign maritime power.

Critics might point out that, in practice, free trade did not necessarily mean fair trade.[108] Smith had noted that benefits to trade, while mutual, were not necessarily equal.[109] Uneven bargaining power could be reflected in imbalanced trade agreements generating an asymmetric distribution of burdens against, or benefits in favor of, some countries versus others.[110] Consequently, mercantilist influences and the promotion of special interests could still find their way into free trade.[111] A related question might also be asked: does economic nationalism also find its way into free trade? The next section will explore that question.

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[107] Hirschman, *National Power,* 8.

[108] Hirschman, *National Power,* 10-11.

[109] Smith, *Wealth of Nations,* IV.iii.489.

[110] The adverse impacts of entrenched trade asymmetries to the U.S. will be discussed further below. Smith noted the mercantilist policy of seeking one-sided trade agreements granting exclusive favor to one nation over others, which he said were "necessarily disadvantageous" to the granting nation. Smith, *Wealth of Nations,* IV.vi.545. For a discussion of the use of "mercantilist rules" in modern trade agreements and an argument that there were unequal burdens generated in the of Uruguay Round of negotiations to update the General Agreement on Tariffs and Trade (GATT) see J. Michael Finger and Julio Nogues, "The Unbalanced Uruguay Round Outcome: The New Areas in Future WTO Negotiations," *The World Economy* 25, no. 3 (2002): 321-340, 333.

[111] Hirschman, *National Power,* 12. Finger, "Unbalanced Uruguay Round," 333-336.

C. Economic Nationalism

Economic nationalism can be defined as "economic policy toward the outside world which seeks to advance the interests of a particular nation-state, even at the expense of other states or the world as a whole."[112] Though it is often identified with protectionism, it can perhaps be better understood as a description of the justification for, or the motive behind, an economic policy. Eric Helleiner noted that economically nationalistic policies could vary broadly from totalitarianism to protectionism to socialism to liberal free trade.[113] He also observed that such policies could have a strongly cultural aspect, as with Great Britain's decision to exit from the European Union.[114]

One sociologist identified four types of economic nationalism: populist, liberal, militarist, and developmental based on the specific political or economic motives behind particular policies.[115] The "populist" type uses economic nationalism to win votes, and hopefully, elections.[116] The "liberal" version embraces free trade to advance national

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[112] Martin C. Spechler, "Economics and Nationalism," *Encyclopedia of Nationalism: Fundamental Themes*, ed., Alexander J. Motyl, (Academic Press, 2001).

[113] Eric Helleiner, "The Diversity of Economic Nationalism," *New Political Economy* 26, no. 2 (2021): 229-238.

[114] Helleiner, "The Diversity of Economic Nationalism," 229.

[115] Matthew J. Baltz, "'Americanism not globalism will be our credo?': An Analysis of the Economic Nationalism(s) of Trump's Administration and an Agenda for Further Research," *Nations and Nationalism* 27 (2021): 797-815, 799.

[116] Baltz, "'Americanism not globalism will be our credo?'" 805.

interests though not necessarily global interests.[117] The "militarist" type of economic nationalism focuses on preparing a nation for conflict by developing the resources necessary to increase military capabilities.[118] The "developmentalist" version of economic nationalism seeks to increase a nation's means of production but not necessarily its military power.[119] To foreshadow the discussion in coming chapters, this scholar concluded that the Trump administration's policies reflected economic nationalism with populist, militarist and developmental influences.[120]

Before turning to the Trump administration in more detail, it is appropriate to discuss the writer most associated with economic nationalism, 19th century German economist Friedrich List.

Born in Wurttemberg in 1789, educated at the University of Tubingen, List came to the United States in 1825 fleeing persecution for his efforts to bring political and economic reforms to the German states in Central Europe.[121] He arrived at a German ex-patriot community in Reading, Pennsylvania and became involved with the Pennsylvania Society for the Promotion of Manufactures and the Mechanic Arts. In 1827, List wrote a series of letters to Charles Ingersoll, the Vice-President of the society which were

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[117] Baltz, "'Americanism not globalism will be our credo?'" 804-805.

[118] Baltz, "'Americanism not globalism will be our credo?'" 803.

[119] Baltz, "'Americanism not globalism will be our credo?'" 804-805.

[120] Baltz, "'Americanism not globalism will be our credo?'" 806-811.

[121] Earle, "Adam Smith, Alexander Hamilton," 243.

published in pamphlet form as the *Outlines of American Political Economy.*[122] According to Edward Mead Earle, *Outlines* included all the key ideas List later developed in more detail for his *National System of Political Economy*.[123]

In his *Outlines*, List contrasted his approach with views he assigned to Adam Smith and J.B. Say, though not infrequently misstating Smith's position in the process. The "Smithian" free trade position, List asserted, was that it was ignorant not to buy a good that another nation could make more cheaply.[124] List rejected this position and presented the detailed case for why it was not ignorant at all, but rather a common sensical policy to forgo purchase of the cheaper foreign good now in favor of investing in future domestic productive capacity.

List began *Outlines* by describing three levels of political economy: individual, national, and "cosmopolitical."[125] Smith's theory, List argued, dealt only with the individual and with the cosmopolitical, ignoring the critical intermediary role of the nation.[126] List went on to describe the "individual economy" as focusing on procuring the necessities of life for oneself and one's family, which was necessarily geographically

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[122] Friedrich List, *Outlines of American Political Economy* (Philadelphia: Parker, 1827).

[123] Earle, "Adam Smith, Alexander Hamilton," 245. Friedrich List, *The National System of Political Economy*, trans., Sampson S. Lloyd, (London: Longmans, Green and Co., 1885).

[124] List, *Outlines*, 6. The author will use the term "Smithian" to differentiate thoughts List or others ascribed to Smith from those Smith actually held.

[125] List, *Outlines*, 7. By "cosmopolitical," List meant global, applying to all "mankind." Ibid.

[126] List, *Outlines*, 7. List apparently overlooked Smith's comments about the importance of defense and Smith's support of England's Navigation Acts.

limited to the local community, and primarily focused on the present not the future.[127] At the other end of the spectrum, the "cosmopolitical economy" had to do with providing for the needs of all mankind, List argued.[128] Both the individual and cosmopolitical economies sought wealth, List thought, but neither sought power which he described as a characteristic of the "national economy."[129]

List described the "national economy" as arising out of the nation which was necessarily the "medium" between individual and all mankind.[130] It was a separate society which possessed common government, laws, and history, and that addressed both peace and war, the present and posterity. It provided a common defense protecting the rights of individuals and their property both within the country and outside it.[131] As to internal security, List asserted that it was only national power that could provide a common currency, standard weights and measures, protection of commerce from predation, safe titles to property, patents, copyrights, and large infrastructure projects. A nation that did not exercise these authorities was destined for "ruin" and was committing "suicide," List argued.[132]

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[127] List, *Outlines*, 9, 27.

[128] List, *Outlines*, 9.

[129] List, *Outlines*, 10.

[130] List, *Outlines*, 9, 27.

[131] List, *Outlines*, 27-28.

[132] List, *Outlines*, 28.

However, a nation also had the authority to regulate the interests of individuals "in order to create the greatest common welfare in the interior and the greatest quantity of security as regards other nations."[133] For instance, the government could restrict trade to avoid depression and loss of political power.[134] But List warned that a government should seek balance and not try to regulate everything.

List wrote that the object of the national economy was not just the wealth of the individual and the cosmopolitical economies, which he averred was the focus of the "Smithians," but national power and wealth. List argued that wealth and power were interrelated in that "national wealth is increased and secured by national power, just as national power is increased and secured by national wealth."[135] Further, List argued that economic policies in support of this object were necessarily political too because an individual could become wealthy but could lose it all without the protection of the state from foreign enemies or domestic instability.[136]

List went on to describe how a nation's power and wealth depended on "a harmonious state of agriculture, commerce and manufactures" within the country.[137] List argued that the government has the authority to ensure this harmony by, if necessary, restricting individual industry. Further, List asserted, the government had an obligation

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[133] List, *Outlines*, 9-10.

[134] List, *Outlines*, 18.

[135] List, *Outlines*, 10.

[136] List wrote that the "national economy" could not be separated from "national politics." List, *Outlines*, 18.

[137] List, *Outlines*, 10.

to increase the wealth and power of the nation by, for instance, protecting commerce with a navy, protecting maritime industries with navigation acts, developing transport infrastructure, implementing patent laws, and protecting manufacturing with tariffs. List argued that these steps should not be applied thoughtlessly, however, but rather based whether they would be "efficacious" given country's particular conditions.[138] He also recognized that these policies might help some individuals and hurt others, but he viewed individual welfare as secondary to the interests of the nation.[139]

A country's economic potential, List thought, was based on both its natural resources, what he called "capital of nature," and its "capital of mind."[140] This latter category List described as the intellectual and social conditions that created an environment for the productivity of capital.[141] It was the goal of the national economy to improve the social and intellectual conditions of the nation and thereby to increase wealth (and thereby increase power) because of the increased productivity. Improving this "capital of mind" justified, List believed, sacrificing present goods to invest in learning new skills or developing future productive power.[142] Here, List expressly rejected the Smithian notion that it was always better to buy the cheaper foreign good than to try to make something oneself.

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[138] List, *Outlines*, 10-11, 24-27.

[139] List, *Outlines*, 28, 30-31.

[140] List, *Outlines*, 19-21.

[141] List, *Outlines*, 19.

[142] List, *Outlines*, 22.

Like Hamilton, List thought that developing manufacturing was critical to increasing national power and wealth. A national economy based entirely on agriculture would always be limited in potential, he argued.[143] He noted that manufacturing required a level of freedom, security, and education to be successful, i.e., the requisite "capital of mind." But he recognized that it was not appropriate for the government to promote all industry, rather it should be selective, he thought, and it should proceed in steps.

Despite the association many make between List and protectionism, List actually pointed out that free trade might work better for some countries than protective tariffs.[144] But List did think that tariff protection was usually an essential facet to developing manufacturing. New manufacturing ventures toke time to organize, incurred high initial costs, had uncertain access to capital and credit, and faced crushing competition from established foreign manufactures who had their own domestic protections.[145] If applied in a "steady" fashion, protective tariffs would provide the space needed for a new industry to organize, benefit from a temporary monopoly within the domestic market, and build the economies of scale that would then allow it to expand into international markets.[146] List described this as building a "fortress" within which a nation could build its productive power.[147]

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[143] List, *Outlines*, 25.

[144] List, *Outlines*, 11.

[145] List, *Outlines*, 31-32.

[146] List, *Outlines*, 33-34.

[147] List, *Outlines*, 37.

List thought this fortress was necessary because foreign nations, particularly Britain, sought to dominate all competitors in the global economy. List described how free trade allowed British manufacturers to crush nascent German efforts.[148] Like Hamilton, List believed that economic and political power were linked and therefore increasing the nation's productive powers was essential to developing the self-sufficiency necessary to protect a nation's independence.

List pointed out that procuring cheaper foreign goods now rather than developing a nation's productive capacity was a satisfactory policy in peacetime, but would be catastrophic in war when that trade could be cut off.[149] Reminding American readers of the economic challenges they faced before and after the War of 1812, List argued that it was better to forgo the immediate benefit of buying a cheaper foreign good in favor of developing the industries that would be needed in wartime.[150] He put it even more starkly in his *National System of Political Economy*, "And who would be consoled for the loss of an arm by knowing that he had nevertheless bought his shirts forty per cent. cheaper?"[151]

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[148] List, *Outlines*, 13-14.

[149] Foreshadowing the later discussion on export control, List noted that in war an Englishmen will not sell guns and power to a Pennsylvanian and thereby provide the means to get shot. List criticized Smithians for not addressing their theory to times of war (List, *Outlines*, 9), though Smith himself was quite concerned with national defense.

[150] List, *Outlines*, 37.

[151] Friedrich List, *The National System of Political Economy*, Sampson S. Lloyd, trans. (London: Longmans, Green, and Co., 1885), 147.

It can be pointed out here that List described war as a "duel between nations."[152] But he went further to say that trade restrictions, such as those England used to protect its domestic manufacturers, were "nothing but a war between powers of industry of different nations." This further indicates how intertwined economic security and national security were in List's thinking.

In taking this position, List was applying a realism and rejecting the utopianism he saw in the Smithian approach. He thought the Smithian view of a cosmopolitical economy assumed an eternal global peace and "union of humanity" that simply did not exist.[153] Instead, List thought history revealed that human development came out of conflict, which is how states emerged from cities, and how the United States formed out of the American colonies' overthrow of English rule.[154] In this reality, List thought it wrong to sacrifice the independence of a nation by pursuing free trade based on an argument that it would better serve mankind.[155] List was also rejecting the Smithian inference that free trade was "universally" beneficial because it was best for the cosmopolitical economy. Just as the developmental measures he set out, including protective tariffs, did not work for every nation in every circumstance, free trade work would not work for every nation.[156] List was also rebuffing the Smithian notion that "all

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[152] List, *Outlines*, 7.

[153] List, *Outlines*, 7, 30.

[154] List, *Outlines*, 29.

[155] List, *Outlines*, 18, 30.

[156] List, *Outlines*, 27-28.

would flow in its natural current" if left alone.[157] On the contrary, the nation was needed to provide stability and security in an anarchic world.

The point of List's *Outlines* was to defend the "American System" of higher protective tariffs against the criticisms of Smith's followers, such as Dr. Thomas Cooper.[158] List noted that it was America's goal to attain power and wealth without injury to other nations.[159] List's construction here embraces a central point of mercantilism, the pursuit of wealth and power, but rejects the mercantilist notion that gaining wealth and power was always at the expense of another nation. This makes clear that economic nationalism is not perfectly synonymous with mercantilism.

List noted that America's purpose in pursuing wealth and power was to promote the common welfare of its citizens, not to benefit all mankind.[160] He thought it foolish to embrace free trade which would, he thought, sacrifice America's independence. This was particularly so given the idea of free trade was emanating from Britain, which at the same time sought to expand its trade globally, secure its commercial supremacy, and consolidate its power[161] under the pretense of serving all humanity. On the contrary, List argued, America's independence was reliant on the development of independent industry and productive power. That was the point of the "American System."

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[157] List, *Outlines*, 7.

[158] List, *Outlines*, 6.

[159] List, *Outlines*, 17.

[160] List, *Outlines*, 18.

[161] List, *Outlines*, 14, 16, 20.

This summary of List's views makes clear his connection with Hamilton. Both List and Hamilton were intent on the economic unification of their respective nations, Germany and America, and they both saw that national economic integration was an essential aspect of political unification. Both List and Hamilton saw that developing manufactures was essential to developing the wealth and power needed to be economically and politically independent. Thus, both can be described as economic nationalists. However, it is not fair to call either entirely mercantilist because neither intended their policies to gain economic and political strength at the expense of other nations. Though both are identified with protectionism, this label is not fair either as they both saw protective tariffs as but one of many possible tools for economic development, and then to be used only when conditions warranted.

Having set the stage with definitions of mercantilism, liberalism and economic nationalism, the next chapter will explore what role these concepts may have played in 20th century U.S. economic history.

II. 20TH CENTURY U.S. ECONOMIC HISTORY

From President Madison's administration through the end of the 19th century America's economic policy focused on internal development and its foreign policy focused on preserving neutrality. Protectionist measures, like those advocated by Hamilton and List, dominated U.S. international trade policy. It was not until Woodrow Wilson's election as President in 1912 that glimmers of liberal free trade emerged. In a single bill the following year, Congress passed a reduction in tariffs and replaced tariffs with a national income tax as the principal source of federal revenue.[162] Unfortunately, the economic disruptions that accompanied the outbreak of World War I dimmed this brief flicker of trade liberalism in the U.S.[163]

But Wilson continued to advocate for his ideals. Wilson's hope to rebuild post-war economies based on liberal free trade was expressed in the third of his "Fourteen Points," a speech articulating the U.S. objectives for the war:

> The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.[164]

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[162] Dobson, *Two Centuries of Tariffs,* 27-28.

[163] Dobson, *Two Centuries of Tariffs,* 27-28.

[164] Woodrow Wilson, "Fourteen Points," (speech), January 8, 1918. https://millercenter.org/the-presidency/presidential-speeches/january-8-1918-wilsons-fourteen-points.

But Wilson was unsuccessful. In the one and only joint conference on economic issues in 1916 (not including the U.S.), the participating allies expressed the conviction that the conflict with Germany and Austria-Hungary would continue "in the economic plane" even if a military victory was secured.[165] This attitude prevailed at the Paris peace conference as evidenced by the punitive economic terms imposed on the losing nations.[166] While Wilson was able to secure a "most favored nation" provision in the peace treaty, victorious nations remained free to exercise any other trade measures, including tariffs, as they wished.[167]

Further, the U.S. rejection of the League of Nations evidenced America's return to isolationism as a national strategy. The U.S. Congress also rejected liberal efforts to reduce U.S. tariffs post war.[168] The Great Depression then drove the U.S. and other countries toward even higher tariffs to promote self-sufficiency and economic recovery.[169]

The 1932 election of President Franklin Roosevelt initiated a period of economic experimentation through unprecedented government intervention in America's domestic

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[165] Hirschman, *National Power,* 60. Importantly, the allies did not continue economic cooperation after the war. Ibid., 67.

[166] See generally John Maynard Keynes, *The Economic Consequences of the Peace* (New York: Harcourt, Brace & Howe, 1920).

[167] Hirschman, *National Power,* 66.

[168] Hirschman, *National Power,* 67.

[169] Hirschman, *National Power,* 61-62.

economy.[170] One of the earliest steps away from purely mercantilist trade policies was the 1934 Reciprocal Trade Agreements Act. For the first time in the nation's history, Congress delegated its constitutional authority to set tariffs to the President.[171] The idea was that, on an item-by-item and country-by-country basis, the President could negotiate tariff reductions from a foreign trading partner and promise in return a reduction in U.S. tariffs. This led to over 30 new bilateral trade agreements with mutually lowered tariffs between 1934 and 1944.[172]

World War II led to direct government control of virtually all aspects of the U.S. economy as it mobilized national resources for war -- a clearly mercantilist approach necessitated by the existential threat posed by the Axis powers. However, in 1941, even as the U.S. began to apply mercantilist principles to mobilize its economy for war, President Roosevelt, like Wilson before him, expressed a liberal vision for a global post-war economy in his annual speech to Congress.[173] That speech included the "Four Freedoms." Freedoms one, two and four were freedom of speech, freedom of worship,

[170] See John W. Malsberger and James N. Marshall, eds., *The American Economic History Reader: Documents and Readings* (New York: Taylor & Francis, 2009), 308-313.

[171] Schlesinger, *Political Economy of National Security,* 193-94. Douglas A. Irwin, *Clashing Over Commerce: A History of U.S. Trade Policy* (Chicago: University of Chicago Press, 2017), 413-454.

[172] Irwin, *Clashing Over Commerce*, 440. At least two of these bilateral agreements, those with Argentina and Mexico, included "essential security" provisions that allowed the signers to deviate from the commitments in the agreements in situations essential to security. Mona Pinchis-Paulsen, "Trade Multilateralism and U.S. National Security: The Making of GATT Security Exceptions," *Michigan Journal of international Law* 41, no. 1, 109-193, 127-129. These provisions appear to have inspired what became Article XXI in GATT. Ibid.

[173] Franklin D, Roosevelt, "Four Freedoms Speech," (speech) January 6, 1941. https://www.fdrlibrary.org/documents/356632/390886/readingcopy.pdf/42234a77-8127-4015-95af-bcf831db311d. Further background can be found in "FDR and the Four Freedoms Speech," (web page), National Archives, May 26, 2021, https://www.fdrlibrary.org/four-freedoms.

and freedom from violence. The third freedom focused on economics, where Roosevelt stated

> "The third is freedom from want – which translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world."[174]

While this vision framed U.S. post-war efforts, the perceived failures of the 1919 peace process also shaped those efforts, such as the inadequacy of international institutions to ensure global security and stability. Another was the perception that the aggressive mercantilist economic policies by some countries had sparked international conflict. These twin perceptions led to the proposed creation of the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (later called the World Bank), and the International Trade Organization (ITO).   Further, the rules of international trade would be set in a General Agreement on Tariffs and Trade (GATT) which would work to lower tariffs world-wide. Wilson's Fourteen Points had foreshadowed GATT's aspiration to reduce global trade barriers.

But the goal of completely free trade remained constrained by domestic and international factors. Domestically, certain industries were considered too critical from a political, economic or security perspective to include in tariff reductions – defense and agriculture, for instance. Further, nations soon divided themselves between Communist and non-Communist blocs which sought to limit trade with each other. Since a return to

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[174] Roosevelt, "Four Freedoms Speech."

total war would have meant a nuclear exchange, the international antagonism found expression in "limited wars" and, ultimately, the "Cold War."

Thus, in the 1950's the U.S. settled into a national strategy of "containment" of the Communist bloc politically, militarily, and economically. In essence, the political and economic relationship between East and West became a classic mercantilist "zero-sum" contest. For the U.S., this ideological conflict resulted in a hybrid trade policy applying "liberal," generally free trade, among non-Communist trading partners, and "mercantilist" policies to deny Communist countries access to trade and financial resources. These mercantilist policies included blocking exports and prohibiting financial exchanges with the Communist bloc. The U.S. built an extensive bureaucracy to enforce those prohibitions.

As in any mercantilist contest, economic power was key. A classified 1953 report from President Eisenhower's National Security Council noted that the resources needed to sustain military forces for the foreseeable future required the "maintenance of a sound, strong, and growing economy capable of providing through the operation of free institutions, the strength to provide [that military force] over the long pull."[175] It goes further to state that "not only the world position of the United States, but the security of the whole free world, is dependent on the avoiding of recession and on the long-term expansion of the U.S. economy. *Threats to its stability or growth, therefore, constitute a*

[175] National Security Council, "A Report to the National Security Council by the Executive Secretary on Basic National Security Policy," NSC 162/2, October 30, 1953, 6. http://orchestratingpower/lib/National Strategies/National Security Strategies/NSS official/NSS-1953,10,30-Ike NSC-162-2.pdf.

danger to the security of the United States and to the coalition which it leads."[176] In case any of its readers missed the point, NSC 162/2 stated again later, "*A strong, healthy and expanding U.S. economy is essential to the security and stability of the free world*."[177]

This long-term struggle against Communism also had significant effects in the domestic U.S. economy because it demanded unprecedented peacetime levels of defense spending. The idea of nuclear war, Cold War, or limited war demanded significant standing forces – there being no time for a mobilization from a peacetime economy, as the U.S. had been able to do in the two world wars.[178] But it was thought the U.S. could afford this increased peacetime defense spending since it had the only undamaged economy, as well as global superiority in manufacturing and technology.

The 1950s witnessed the outbreak of war on the Korean peninsula, the launch of Sputnik, and the Cuban missile crisis, all of which focused American attention on the Soviet threat. As an economic weapon of the new Cold War, this led the U.S. to seek to promote economic development of both allies and former foes from the Second World War. After expiration of the Marshall Plan, which was viewed as a short-term emergency response, the mantra in U.S. foreign policy for the longer term became "trade not aid," under the thinking that outright aid would be much less politically popular and engender

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[176] NSC 162/2, 14 (emphasis added).

[177] NSC 162/2, 23 (emphasis added).

[178] Schlesinger, *Political Economy of National Security,* 63-67.

greater Congressional and public scrutiny.[179] This manifested itself as an opening of U.S. markets to Europe and Japan without demanding full reciprocity.

Lovett, Eckes and Brinkman note this as the beginning of an institutionalized trade asymmetry that would ultimately put tremendous economic pressures on the United States.[180] The 1947 GATT, and six rounds of trade negotiations under it in the 1950s and 1960s, set these asymmetries in place with the U.S. essentially unilaterally lowering its tariffs while trade partners either resisted or delayed liberalizing their markets.[181] Further, the 1947 GATT included qualifications to complete trade liberalization in that it permitted countries to invoke protective measures to restrict damaging imports, to address current account imbalances, to counter dumping and subsidies, and to protect security.[182] The negotiation of voluntary export restraints between parties also became an accepted practice.[183]

The economic mobilization for World War II and the post-war recovery in the 1950s and 1960s had left the United States as one of the higher wage-paying nations of the times.[184] Consequently, labor intensive U.S. industries employing relatively low-

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[179] Irwin, *Clashing Over Commerce,* 496-497.

[180] William A. Lovett, Alfred E. Eckes Jr., and Richard L. Brinkman, *U.S. Trade Policy: History, Theory and the WTO* (Armonk, New York: M.E. Sharpe, 2004), ix.

[181] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 60-61.

[182] General Agreement on Tariffs and Trade (1947), Articles VI (anti-dumping and countervailing duty relief), XII (balance of payment relief), XIX ("safeguard" relief), and XXI (security relief).

[183] Irwin, *Clashing Over Commerce,* 561.

[184] Irwin, *Clashing Over Commerce,* 492-94, 536, 560-561.

skilled workers, such as in textiles and apparel, were the first to feel pressure as foreign competitors recovered in Europe and Japan. Additionally, a surge of oil imports into the U.S. also led to the creation of a quota system to regulate oil imports in the late 1950s which continued until 1973 – key foreign exporters of oil reacted by forming the Organization of the Petroleum Exporting Countries (OPEC) in 1960.[185] OPEC's economic power would be directed against the U.S. in the 1970s.

Also, in the 1960s, U.S. trade policy granted duty-free re-importation of goods that U.S. companies sent overseas for final assembly.[186] Consequently, U.S. companies increased their overseas operations hoping to lower their costs by moving the most labor-intensive parts of their production to lower wage countries, such as Mexico. Many developing countries actively sought to attract these U.S. companies.

The 1960s also saw the reemergence of European and Japanese competition out of the ashes of war – in this regard, U.S. post-war policy had been tremendously successful. To that was added a transportation revolution through the use of containerized shipping which dramatically improved efficiency.[187] These factors, coupled with the lowering of U.S. tariffs, greatly increased imports into the U.S. such that by 1971, the U.S. had its first trade deficit since 1935.[188]

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[185] Irwin, *Clashing Over Commerce,* 517.

[186] Irwin, *Clashing Over Commerce,* 541.

[187] Irwin, *Clashing Over Commerce,* 534-535.

[188] Irwin describes this as a return to normal balances in international trade that had been interrupted by World War II. Continued U.S. trade dominance and surpluses were unsustainable, he wrote. Irwin, *Clashing Over Commerce,* 534.

The 1960s closed with the ramping up defense costs by escalating the war in Vietnam and with new domestic spending commitments from President Johnson's "Great Society" programs. These and other factors contributed to a major recession running from 1968 to 1971.[189]

Another significant pressure on the U.S. economy came from significant overvaluation of the dollar. This derived from the Bretton Woods fixed exchange rate system where other countries fixed their currencies to the dollar, which was itself fixed to gold. European countries and Japan resisted lowering the value of their currencies to protect their growing exports to the U.S., refusing U.S. requests to let their currencies appreciate against the dollar. This led to a substantial growth of foreign holdings of dollars, some $50 billion, against U.S. gold reserves totaling just $10 billion.

Fearing foreign countries would rush to exchange their dollars for gold, on August 15, 1971, President Nixon declared a suspension of the dollar's convertibility to gold.[190] At the same time, he used his emergency economic authorities under the Trading With the Enemy Act, to be discussed in a later chapter, to impose a ten percent surcharge on all imports. Finally, he used recently passed economic stabilization legislation to impose wage and price controls. Collectively, this became known as the "Nixon Shock."

Nixon's bold action was enormously popular -- for a time.[191] The import tariff and convertibility measures got the attention of trading partners who eventually let their

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[189] Irwin, *Clashing Over Commerce,* 542-48. This paragraph draws from these pages.

[190] Irwin, *Clashing Over Commerce,* 545.

[191] Irwin, *Clashing Over Commerce,* 545.

currencies appreciate. Nixon ended the import surcharge in December 1971. The wage and price controls stayed in place through the 1972 presidential campaign, perhaps contributing to Nixon's landslide victory.

Also, in 1972, President Nixon made his famous trip to China, opening diplomatic relations for the first time since 1948 when the Communists prevailed in the Chinese Civil War. This was part of a U.S. strategic initiative to put increased pressure on the Soviet Union.

The temporary suspension of gold convertibility became permanent in 1973 bringing an end to the Bretton Woods fixed exchange rates system. With it ended global limits on capital flows, setting the stage for countries to run large and persistent current account deficits.[192] The United States became one of those countries.

Having safely won the election, President Nixon lifted the wage and price controls in January 1973. However, William N. Walker, a member of the Nixon administration, argued in a recent op-ed that these controls were a spectacular failure because they led to pent up demand for goods and pressure for wage increases that unleashed significant inflationary pressures when the controls were lifted.[193] Consequently, he asserted, the control program ushered in the era of stagflation that dominated the rest of the decade. President Nixon tried to impose a second price freeze

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[192] Irwin, *Clashing Over Commerce,* 547.

[193] William N. Walker, "Nixon Taught Us How Not to Fight Inflation," *Wall Street Journal*, August 14, 2021, https://www.wsj.com/articles/nixon-fight-inflation-price-controls-stagflation-gas-shortages-biden-democrats-reconciliation-bill-federal-reserve-11628885071.

in June 1973 which proved deeply unpopular. Events in the Middle East soon added more economic pressures.

In October 1973, war broke out between Israel and Arab nations prompting OPEC to impose an oil embargo against the U.S. for supporting Israel. [194] This triggered a recession that had significant impact on the U.S. auto industry as U.S. demand for Japanese cars with higher fuel efficiency led to an increase in Japanese imports. The foreign market share in U.S. car sales doubled between 1975 and 1980, deeply worrying America's "Big Three" producers. Japan's export of cars and other goods led to trade surpluses with the U.S. and contributed to Japan overtaking Great Britain in 1978 as the largest holder of U.S. Treasury notes and bonds.[195] Foreign holders of dollars preferred the purchase of U.S. assets to the purchase of U.S. exports, contributing further to record U.S. trade deficits.

Pressure in the U.S. from textile and apparel producers led President Nixon to seek a voluntary export restraint with Japan.[196] When Japan refused, Nixon threatened to use the Trading With the Enemy Act to set quotas. That led Japan to agree to limits, though its textile and apparel producers were already moving to lower wage countries in Asia. European countries soon faced similar import pressure and negotiations led to a 1974 multilateral agreement called the "Multifiber Arrangement" that controlled trade in textiles until 1994.

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[194] Irwin, *Clashing Over Commerce,* 549, 574-577. This paragraph draws from these pages.

[195] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 76.

[196] Irwin, *Clashing Over Commerce,* 547-548. This paragraph draws from these pages.

In 1978, Chinese President Deng Xiaoping decided to open China's state-run economy to limited private enterprise and foreign investment.[197] In 1980, President Carter granted China "most favored nation" trade status entitling China access to U.S. markets at much lower tariff rates. However, Congress required this status to be renewed annually.

Foreign policy crises in the late 1970s included the Soviet invasion of Afghanistan and the revolution in Iran that included the taking of U.S. hostages. The Iranian revolution contributed to a second oil crisis in 1979, which along with Federal Reserve Chairman Paul Volker's efforts to break the 1970's "stagflation" with tighter monetary policy, helped trigger a severe U.S. recession that began in 1979 and ran until 1983.[198] Contributing to difficulties was an appreciation of the dollar from 1980 to 1985, as again trading partners were taking active measures to prop up the value of their currencies to protect their export industries.[199]

When President Reagan took office in 1981, his administration applied an expansionary fiscal policy that included lowering taxes while increasing defense spending.[200] At the same time, he faced protectionist pressure from several industries, including autos, steel, and semiconductors. These pressures focused on Japan which had maintained significant barriers to U.S. exports and actively promoted its producers in key

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[197] Irwin, *Clashing Over Commerce,* 563-564. This paragraph draws from these pages.

[198] Irwin, *Clashing Over Commerce,* 565-566.

[199] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 76-77.

[200] Irwin, *Clashing Over Commerce,* 565-566.

industries.[201] Other Asian countries, like South Korean, Taiwan, Singapore and Thailand followed the Japanese example. President Reagan extended import relief through voluntary export restrictions in several but not all industries.

The 1980s saw the transition of the U.S. economy from one based in manufacturing to one based in services, much as previous generations had transitioned from agriculture to manufacturing.[202] Manufacturing had dropped as a percentage of U.S. Gross Domestic Product. The U.S. saw increases in overall manufacturing output, but not increases in employment as companies invested more in technology and capital to increase their productivity. By the end of the 1970s manufacturing had ceased to be a net creator of jobs in the U.S. Through the 1980s, structural changes in employment continued with drops in employment in primary metals manufacturing, textiles, and apparel while employment increased in transportation and electronics. Irwin pointed out that this transition was typical when incomes and standards of living increase, has they had in the 1950s and 1960s, and increasingly well-off consumers demanded more services.[203]

By the time President George H.W. Bush took office in 1989, U.S. economic conditions had greatly improved.[204] An economic recovery from the recession began in

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[201] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 77.

[202] Irwin, *Clashing Over Commerce,* 569-572.

[203] Irwin, *Clashing Over Commerce,* 571-572.

[204] Irwin, *Clashing Over Commerce,* 605, 614-615, 622, 626, 644, 651. This paragraph draws on these pages.

1983. U.S. pressure on trading partners prompted the depreciation of the U.S. dollar against other currencies in 1985.

A U.S. frustration with the 1947 GATT system in the 1980s led to an increased use of unilateral measures, like voluntary agreements, as well as a shift in U.S. focus to developing bilateral or regional trade arrangements.[205] The first bilateral agreement was with Israel in 1985. A 1988 agreement with Canada followed. Hoping to spark its own economic development, in 1990 Mexico approached the U.S. in hopes of an agreement. The U.S., Canada and Mexico signed the North America Free Trade Agreement (NAFTA) in 1992, shortly before the November presidential election that brought Bill Clinton to the White House.

The U.S. sought a new round of GATT negotiations in 1982 but encountered little enthusiasm at first. But foreign interest in further multilateral trade negotiations increased with the dramatic dismantling of the Berlin Wall in 1989 and the subsequent the fall of the Soviet Union. The Soviet collapse had undermined the credibility among some poorer nations for state-led, socialist-style economic development, leading them to seek more international trade. Additionally, following the U.S.-led victory in Iraq, some smaller nations sought a new multilateral trade arrangement to both constrain U.S. hegemony and to reduce U.S. use of unilateral trade measures. Negotiations on the "Uruguay Round," as these new trade discussions were called, continued into the 1992 U.S. election year.

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[205] Irwin, *Clashing Over Commerce,* 613-619.

When President Clinton took office in 1993, he found a completed NAFTA on his desk to present to Congress. Irwin described the fight for Congressional approval of NAFTA as "one of the most contentious and divisive trade-policy debates in U.S. history."[206] Labor unions led the opposition joined by human rights, environmental, and consumer groups. President Clinton pushed for the agreement arguing that America needed the jobs and needed to compete in the global market.[207] He also stated, "But far more is at stake, for this new fabric of commerce will also shape global prosperity or lack of it, and with it, the prospects of people around the work for democracy, freedom, and peace."[208] Clinton was clearly echoing the liberal free trade ideals of Wilson and Roosevelt.

Business interests supported NAFTA.[209] President Clinton arranged for side deals on environmental standards and labor issues with the Mexican government to persuade more Democrats to vote for the deal. That effort helped split the environmental opposition. However, only a full court press gathered enough support to win a very close vote in the U.S. House of Representatives on November 17, 1993. Republicans voted mostly for it, Democrats mostly against. The U.S. Senate passed NAFTA a few days later.

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[206] Irwin, *Clashing Over Commerce,* 627.

[207] Irwin, *Clashing Over Commerce,* 632.

[208] Irwin, *Clashing Over Commerce,* 632.

[209] Irwin, *Clashing Over Commerce,* 627-642.

Irwin referenced studies indicating that NAFTA significantly impacted North American trade by allowing companies to further integrate their supply chains across the continent.[210] At the same time, NAFTA's effects on prices and welfare were "modest" and the underlying issues in either the U.S. or Mexican economies were neither improved nor worsened. However, the rancor that had developed as each side amped up the rhetoric to try to win the close vote left bitter feelings among Democrats lasting for the next 25 years, Irwin noted.[211]

Just a month after the NAFTA vote, 117 countries' delegates signed the Uruguay Round's sweeping multilateral agreements significantly altering the international trade environment. The Uruguay Round had a been a reaction to criticisms of the 1947 GATT agreement that included its failure to effectively address non-tariff barriers, its lack of effective dispute resolution, and its lack of effective enforcement. Further, the original GATT did not extend to services, intellectual property, or investment rules. Negotiations to address these issues had been started under the Reagan administration, concluded under the G.H.W. Bush administration, and submitted for Congressional approval under the Clinton administration. Among other issues, the U.S. hoped to address agricultural subsidies but conceded that point, once again, in the face of European objections (particularly from France).[212]

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[210] Irwin, *Clashing Over Commerce,* 643-644.

[211] Irwin, *Clashing Over Commerce,* 644-645.

[212] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 83-84.

The U.S. also conceded that it would “stand still” in its use of unilateral trade restrictions.[213] Apparently multinational corporations wanted the “stand still” commitment to ensure their continued access to open U.S. markets while they relocated plants to lower wage countries. Lovett calls this a significant “blunder” because it surrendered leverage to secure greater opening of foreign markets, leaving entrenched the asymmetries that had plagued the U.S. in past agreements.[214]

The final Uruguay Round agreements left developed country tariffs low, but significantly lower than developing countries who only modestly reduced their much higher tariffs.[215] Also, they abolished the “Multifiber Arrangement” (MFA), prohibited voluntary export restraints, and made U.S. unilateral safeguards harder to use.[216] Of significant importance to the U.S. were new agreements on services, intellectual property protection, and investment measures, though these measures were often aspirational, voluntary, or required lots of time to implement.[217]

One of the most significant aspects of the Uruguay Round was to elevate the secretariat of the 1947 GATT to a full-fledged international organization under the United Nations umbrella called the World Trade Organization (WTO).[218] Unlike the

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[213] William A. Lovett, “Introduction,” in William A. Lovett, Alfred E. Eckes Jr., and Richard L. Brinkman, *U.S. Trade Policy: History, Theory and the WTO* (Armonk, New York: M.E. Sharpe, 2004), 9.

[214] Lovett, “Introduction,” *U.S. Trade Policy,* 9.

[215] Irwin, *Clashing Over Commerce,* 652.

[216] Irwin, *Clashing Over Commerce,* 644-645, 653. Lovett, “Introduction,” *U.S. Trade Policy,* 10.

[217] Irwin, *Clashing Over Commerce,* 644-647.

[218] Irwin, *Clashing Over Commerce,* 649, 651.

other international financial organizations (IMF and World Bank), which used a "weighted" voting system that favored the large developed countries because they supplied the bulk of the funding, the new WTO would be a one country--one vote system.[219] This gave substantial leverage to developing countries, and to the European Union countries who each got a vote but tended to vote as a block.[220]

Another new element was a strengthened dispute resolution system. In the past, GATT panels had been used to help mediate resolutions between parties. Now WTO panel decisions would be "enforceable" in that the losing country's non-compliance allowed the winning country to seek WTO permission to apply retaliatory measures.[221] Panel decisions could be appealed before a new "Appellate Body," and then before the entire WTO membership which could only overturn lower decisions by unanimous vote.[222]

Critics of the new dispute resolution mechanisms pointed out how legalistic they were, and how unsuited they were to resolving contentious political differences behind trade disputes that could only be settled by negotiation between the parties.[223] Eckes also noted that WTO panels and appellate bodies were increasingly being asked to interpret ambiguous terms in the agreements, where the ambiguity masked the fact that negotiators

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[219] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 85.

[220] Lovett, "Introduction," *U.S. Trade Policy,* 10.

[221] Irwin, *Clashing Over Commerce,* 648.

[222] Lovett, "Introduction," *U.S. Trade Policy,* 10-11.

[223] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 85.

had not been able to achieve consensus on a more specific meaning.[224] Consequently, a panel's or appellate body's legal interpretation might not have, in fact, been a position to which the member state had actually agreed.

Once President Clinton submitted the Uruguay Round agreements to Congress, debate was minimal.[225] They were supported by business and the opposition was muted in comparison to the NAFTA debate. They passed in the U.S. House in November 1994, with two-thirds of both Democrats and Republicans voting for it. They easily passed the Senate the next month.

The Uruguay Round's impacts are disputed. Asymmetries disfavoring the U.S. remained entrenched, Lovett argued, contributing to the continued expansion of the U.S. trade and current account deficits.[226] Commitments to lowering agricultural protections and subsidies were only modest, but even those seemed not to come to fruition.[227] And the dispute resolution system was accused of creating a new body of law not agreed to by the member countries.[228] The dispute resolution system remained ill-equipped to handle sensitive politically driven trade issues.[229]

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[224] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 85.

[225] Irwin, *Clashing Over Commerce,* 652.

[226] William A. Lovett, "Rebalancing U.S. Trade," in William A. Lovett, Alfred E. Eckes Jr., and Richard L. Brinkman, *U.S. Trade Policy: History, Theory and the WTO* (Armonk, New York: M.E. Sharpe, 2004), 141-142.

[227] Irwin, *Clashing Over Commerce,* 653-654.

[228] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 86.

[229] Irwin, *Clashing Over Commerce,* 655.

President Clinton benefitted from a strong U.S economy through his term. Protectionist pressures of the 1980s had receded with economic recovery, dollar devaluation, and Japan's relative stagnation.[230] Liberal ambitions for free trade had produced NAFTA and the Uruguay Round. Hoping to "advance the cause of freedom and democracy around the world," President Clinton sought to build on these successes by initiating another set of multilateral negotiations.[231] In 1999, these efforts were blocked in Seattle by diverse anti-globalist interests and critics of the Uruguay Round.[232] Further, the Democratic party remained bitterly split on trade after the NAFTA debate, contributing to the erosion of domestic support for additional multilateral trade efforts.

Increased partisanship became another feature of the 1990s, especially noticeable after the Republicans won back the U.S. House of Representatives in the 1994 midterm elections.[233] It became particularly evident in discussions for further fast-track trade negotiating authority in 1997-1998. Though the Republicans backed it, President Clinton could not gather enough Democratic support and asked Republican Speaker Gingrich to cancel the scheduled vote on the measure. Gingrich went ahead with the vote, knowing it would not pass, reportedly intending to embarrass the Democrats before the 1998 midterm elections.

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[230] Irwin, *Clashing Over Commerce,* 655-656.

[231] Irwin, *Clashing Over Commerce,* 656-657.

[232] Irwin, *Clashing Over Commerce,* 661-662.

[233] Irwin notes that partisanship was the historical norm in the U.S. and the relative bipartisanship of the 1940s to 1980s was more the aberration. Irwin, *Clashing Over Commerce,* 657-658.

Toward the end of his term in 1999, President Clinton agreed to support China's efforts to join the WTO.[234] Congress approved "Permanent Normal Trade Relations" status for China in 2000. Some opposition came from human rights advocates and from security hawks. However, it was overcome by business interests enamored with China's huge, largely untapped market and its low wage workers. One business leader called it the "economic equivalent of tearing down the Berlin Wall."[235] U.S. businesses had already been present in China, importing labor-intensive goods under U.S. labels back to America. Though an unsurprising surge in Chinese imports to the U.S. followed, there was not the call for protectionist countermeasures that faced Japan in the 1980s. The Clinton administration hoped that engagement in China would foster the development of liberal ideals there, such as respect for the rule of law, protection of human rights, and increased political freedom.[236] China had not yet revealed its global and political ambitions.

The 21st century began with a close presidential election ultimately decided by the U.S. Supreme Court in favor of Republican George W. Bush. The terrorist attacks on September 11, 2001, brought more attention to perceived domestic vulnerability, particularly to what came to be called "critical infrastructure," including the information, food, energy, and transportation systems that Americans had perhaps taken for granted.

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234 Irwin, *Clashing Over Commerce,* 663-666.

235 Eckes, "U.S. Economic History," *U.S. Trade Policy*, 86.

236 Irwin, *Clashing Over Commerce,* 664.

War followed in Afghanistan, soon to be joined by war in Iraq in 2003. Few expected these to be long wars ultimately expending thousands of lives and trillions of dollars.

The surge in Chinese imports continued into the 2000s and China's close currency control prompted concerns that China was manipulating the renminbi to keep its value low to protect its exports and its dramatic economic growth.[237] China was also thought to be delaying the implementation of its WTO obligations and directly or indirectly supporting the piracy of U.S. intellectual property.[238] Other Asian countries were thought to be following China's example. The Bush administration did little publicly to counter the allegations, though by 2005 China began to allow the renminbi to appreciate against the dollar.[239]

The Bush administration became frustrated with the new Doha round of multilateral negotiations and sought smaller bilateral and regional arrangements instead, agreeing to some 15 pacts with countries like South Korea, Australia, and Chile.[240] This included an effort to establish a Central America Free Trade Area that included Caribbean countries. Several passed Congress but with no Democratic support.

President Bush's term closed out with the 2007 to 2009 global financial crisis sparked by the collapse of the U.S. sub-prime mortgage industry. This produced the greatest U.S. and global recession to that point since the Great Depression with world

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[237] Irwin, *Clashing Over Commerce,* 666-670.

[238] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 88.

[239] Irwin, *Clashing Over Commerce,* 670.

[240] Irwin, *Clashing Over Commerce,* 676-681.

trade dropping 12 percent.[241] However, unlike many past recessions, such as in the 1980s, there was not a strong demand in the U.S. for a protectionist reaction, partly due to the drop in U.S. imports by 22 percent in the second quarter of 2009 from the same quarter the year before. Governments also had available more robust economic policy tools with which to respond. For instance, central banks led by the U.S. Federal Reserve actively intervened to inject liquidity when necessary to prevent complete market collapse. Also present were WTO rules limiting protectionist measures. Finally, the globalization of foreign investments and supply chains diminished the desire for multinational businesses to seek protection in any single country.

President Obama came to the White House in 2009 as a former Illinois Democratic senator carrying a hesitation about international trade that had now become dominant among Democrats from the Northern U.S.[242] In fact, he had campaigned against NAFTA. When the Republicans took the U.S. House and Senate in the 2010 midterm elections, they passed the remaining bilateral and regional agreements completed by President Bush.

Obama's own international trade agenda waited until his second term. In 2013, the Obama administration began negotiations on a trans-Atlantic trade pact and, as part of a strategic "pivot" to Asia, a "Trans-Pacific Partnership" agreement (TPP) which was concluded in 2015.[243] The TPP generated significant criticism in the 2016 presidential

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[241] Irwin, *Clashing Over Commerce,* 682-683.

[242] Irwin, *Clashing Over Commerce,* 681-682.

[243] Irwin, *Clashing Over Commerce,* 684-686.

election both from the Republican Donald Trump and from Democrats like Senator Bernie Sanders. Even the Democratic Presidential nominee Hilary Clinton ultimately abandoned support for it.

It is appropriate to summarize the movements in international trade that had taken place in America up to 2016 as President-elect Donald Trump prepared to take office. First, liberalizing world trade had been the ideal stated by Wilson and Roosevelt and was the guiding principle of U.S. trade policy since the end of World War II. It was seen as a tool toward building a global prosperity that would promote world peace and stability. It was also a rejection of the punitive approach victors took after World War I. By all accounts, this must be viewed as profoundly successful as post-war global incomes and standards of living grew to unprecedented levels, notwithstanding the obstacles presented by the Soviet bloc.

This success, however, sowed the seeds of challenges the United States faced in 2016. The urge to help non-Communist countries after World War II had built "asymmetries" into trade agreements where the U.S. had unilaterally opened its markets without demanding full reciprocity from other nations. The U.S. had sacrificed its own economic interests for the foreign policy and national security imperatives of the time. Lovett argued that this "trade not aid" mentality contributed to a stagnation of real wages since 1973 and to the loss of between 10 and 12 million U.S. jobs.[244] It also led to the ascension, some might say domination, of multinational corporations and international

[244] Lovett, "Introduction," *U.S. Trade Policy,* 12.

banks who increasingly captured government international trade policy through their world-wide presence and intense local lobbying.[245]

As has been described, trade asymmetries coupled with the end of the Bretton Woods fixed currency system set the stage for record U.S. trade and current account deficits. This had been compounded by increasing U.S. budget deficits financed by foreign investors. Further, a lack of supervision over capital flows led to increasingly destabilizing financial speculation. That, and globalized supply chains, increased economic vulnerability to war, terrorism, and pandemics.[246] The U.S. had so far evaded, to a degree, the consequences of this profligacy because the dollar remained the world's reserve currency. But Lovett argued that dramatic changes in U.S. trade and fiscal policy would be necessary to prevent a future economic catastrophe.

Additionally, some could argue that the perception of U.S. stagnation and loss of manufacturing contributed to a growth of populism fed by grievances against globalization. This trend also manifested overseas, sometimes accompanied by an increase in authoritarianism.

On the other hand, Irwin argued that increased foreign competition was the expected result of U.S.-led post-war reconstruction, as was a return to a more historically typical multipolar trade and political balance.[247] It was the U.S. domination in the 1950s and 1960s that was an aberration, he thought. Irwin further argued that structural changes

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[245] Lovett, "Introduction," *U.S. Trade Policy,* 7.

[246] Eckes, "U.S. Economic History," *U.S. Trade Policy*, 91-92.

[247] Irwin, *Clashing Over Commerce,* 534.

were inevitable as developed economies transitioned away from manufacturing to services, just as prior generations moved from agriculture to manufacturing.[248]

The embrace of the liberal ideal was not universal in the U.S., however. Congress also sometimes voiced objections to the perceived lack of reciprocity, the concession of economic interests in favor of foreign policy interests, and the "unfair trade" practices of other countries. The U.S. Congress also gave voice to public demands for protection by inserting measures into U.S. law, such as Sections 201, 232, and 301. Moreover, Presidents sometimes provided protections to industries like car-making, textiles, apparel, and electronics. Thus, U.S. trade policy demonstrated an economically nationalist attention to its own wellbeing by demanding liberalism be balanced with some protectionism.

Additionally, U.S. policy had a clear mercantilist element devoted to containing and ultimately defeating first communism then a host of other perceived global ills like terrorism or the proliferation of nuclear, chemical, and biological weapons. This study will explore these mercantilist elements in more detail in later chapters. However, the mercantilist, zero-sum equation was generally not applied in America's relations to non-Communist countries.

Thus, since the end of World War II, as part of its national strategy of containment, the U.S. had sponsored the free trade system to block the expansion of communism while pursuing increased mutual economic growth in the non-Communist world. The U.S. had also borne the cost of providing the global security and stability

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[248] Irwin, *Clashing Over Commerce,* 271-272.

necessary to contain the Communist bloc and to allow free trade to flourish. While the U.S. hoped allies would help foot the bill, global security was a "collective good" that the U.S. national strategy of containment obligated America to provide.[249] This resulted in classic "free rider" tensions as other Western states had incentives to contribute as little as they could get away with because they knew the U.S. would always be there. This became a long-standing a source of strain between the U.S. and its allies. As will be seen below, it was an issue that particularly irked President Trump.

As President-elect Trump prepared to take office in 2016, the economy remained divided between a (mostly) liberal free trade system that had led to unprecedented globalization of much of the U.S. economy and a mercantilist system that remained focused on security.[250] Successive presidential administrations since the end of World War II strove to balance the tension between the liberal and mercantilist divisions in U.S. international trade policy -- the incoming Trump administration would be no different.

From an institutional perspective, on the "liberal" side of the equation, U.S. leadership had helped establish the World Trade Organization (WTO). This entity filled the role originally envisioned for the International Trade Organization (ITO), the third of the triad of international institutions proposed after World War II to stabilize post-war commerce and to help prevent trade from becoming a future cause of war. The U.S. rejected the ITO at the time because the U.S. Congress feared giving up too much

[249] Kapstein, *Political Economy of National Security,* 171.

[250] Hirschman notes that this hybrid policy was common. Hirschman, *National Power,* 9.

sovereignty over trade.[251] The U.S. did join the 1947 General Agreement on Tariffs and Trade, an arrangement seeking to broadly lower tariffs on goods. Many GATT provisions found their way into U.S. law, essentially institutionalizing liberal free trade into the American legal system.

Once the Uruguay Round agreements took effect in 1995, the WTO became a formal international institution under the umbrella of the United Nations, elevating the global status of liberal ideals for free trade. However, the WTO was not without its critics, including some in the Trump administration, as will be explored more below.

The U.S. institution established to lead the negotiation of international trade issues, including at the WTO, was the U.S. Trade Representative (USTR), an independent cabinet-level official answering directly to the President. Congress had transferred trade negotiations away from the State Department in 1962 because of a perception that they were too ready to concede American commercial trade interests in favor of other U.S. foreign policy objectives.[252] Additionally, the USTR investigated complaints about unfair trade practices and the failure of other countries to abide by their trade commitments under GATT or other agreements, known as "Section 201" and "Section 301" investigations.[253]

[251] See Michael Trebilock, Robert Howse, and Antonia Eliason, *The Regulation of International Trade* (New York: Routledge, 2013), 24.

[252] Irwin, *Clashing over Commerce,* 526.

[253] "Section 201" refers to Section 201 of the Trade Act of 1974, codified at 19 U.S.C. § 2252. "Section 301" refers to Section 301 of the Trade Act of 1974, codified at 19 U.S.C. § 2411.

President Trump appointed veteran international trade lawyer, Robert Lighthizer, to serve as USTR. As will be discussed in the next chapter, Lighthizer would be a key player in Trump's attempt to recalibrate the liberal versus mercantilist balance in U.S. international trade policy. Lighthizer was also particularly critical of the WTO which he thought exercised an inappropriate global sovereignty.[254]

There were other agencies of the U.S. government which also focused on international trade. One of the most important was the U.S. Department of Commerce. Commerce was responsible for controlling exports, applying processes widely described as costly, overly-complicated, highly bureaucratized and dilatory, and whose mercantilist focus since World War II had been denying goods and technology to the Communist bloc.[255] By 2016, its objectives, while still mercantilist at their core, had shifted to preventing the flow of money, goods, and technology to terrorists and an ad hoc list of "bad actors," as well as to preventing the proliferation of weapons of mass destruction.

The Commerce Department also had an important role in import control. It was responsible for making recommendations to the President for the imposition of protective or retaliatory tariffs in a variety of circumstances. For instance, the department

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[254] Lighthizer thought the WTO's Appellate Body had begun to develop a "common law" of international trade to which WTO member states had not agreed. Robert E. Lighthizer, "How to Set World Trade Straight," *Wall Street Journal*, August 20, 2020, https/www.wsj.com/articles/how-to-set-world-straight-115979966341.

[255] Kapstein, *Political Economy of National Security,* 207. Craig K. Elwell, "Export Controls: Analysis of Economic Costs," February 10, 2000, CRS Report for Congress, RL30430, Congressional Research Service. National Research Council, *Beyond Fortress America: National Security Controls on Science and Technology in a Globalized World* (Washington, D.C.: National Academies Press, 2009), 1-5. J. David Richardson and Ash Sundaram, "Sizing Up US Export Disincentives for a New Generation of National-Security Export Controls," (policy brief) May 2013, Peterson Institute for International Economics, No. PB13-13, 3-6.

adjudicated dumping complaints. More important for this study, however, was the department's responsibility for investigating whether the import of certain goods was so excessive that it "threatened to impair the national security of the United States," known as "Section 232" investigations.[256] President Trump would select long-time friend and billionaire businessman Wilbur Ross to serve as his Secretary of Commerce.

Another executive agency with extensive international trade responsibilities was the U.S. Department of the Treasury. The Treasury Department managed the Committee on Foreign Investment in the United States (CFIUS), which was responsible for investigating foreign direct investments that might adversely impact national security. The department also administered regulations under the Trading with the Enemy Act (TWEA) and International Emergency Economic Powers Act (IEEPA) which can prohibit Americans from having financial or trade relationships with those countries or individuals named by the President. President Trump would appoint Steven Mnuchin, a former Goldman Sachs executive and movie producer, to serve as his Secretary of the Treasury.

Somewhat in the background as far as international trade was concerned, but nevertheless a central element in the expression of national power, was the U.S. Department of Defense. In 2016, the department continued the legacy of the U.S. investment in large standing military forces whose world-wide presence promoted global peace and security, though no longer focused on the Communist bloc. From an economic

[256] "Section 232" refers to Section 232 of the Trade Expansion Act of 1962, codified at 19 U.S.C. § 1862.

point of view, the defense budget continued to consume a large portion of federal expenditures, having no small macroeconomic impact, though defense spending was increasingly dwarfed by "non-discretionary" social spending. Retired U.S. Marine Corps General James Mattis would serve as President Trump's first Secretary of Defense.

This study will explore the roles that the U.S. Trade Representative and Secretaries of Commerce, Treasury and Defense had in the shaping of international trade policy as President Trump took office. The next chapter will discuss these men, and others, who shaped and implemented international trade policy in the Trump administration.

III. THE TRUMP ADMINISTRATION – KEY ECONOMIC PLAYERS

This chapter will turn in more detail to the key economic policy players in the Trump administration. Of course, the discussion must start with President Trump himself. Three of President Trump's books highlight his views on foreign policy, economics, and international trade.

President Trump wrote *The America We Deserve* in 2000 when his ruminations about running for President first became more serious.[257] In it, Trump opined that China will be America's "biggest long-term challenge."[258] Trump thought that U.S. politicians and businessmen were conceding too much to China to get access to its large potential market, even at the cost of U.S. national security interests. He also noted China's lack of respect for human and political rights, stating that "China's current government has contempt for our way of life."[259] Trump opined that China did not aspire to a strategic partnership with the U.S., but rather intended to dominate Asia.[260] Trump also pointed out that China was then investing $80 billion a year in its military, spending more

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[257] Donald J. Trump with Dave Shiflett, *The America We Deserve* (Los Angeles: Renaissance Books, 2000).

[258] Trump, *The America We Deserve*, 117-123.

[259] Trump, *The America We Deserve*, 119.

[260] Trump, *The America We Deserve*, 122-123.

and arming faster than others.[261] Trump observed that the U.S. had sold China satellite and missile technology which might "come back to haunt us."[262] Trump also asserted that China had been stealing U.S. technology, supplying nuclear technology to Iran and Iraq, threatening South Korea and Taiwan, and compromising U.S campaign law.[263]

As policy if he were President, Trump stated "under no circumstances will we keep our markets open to countries that steal from us."[264] Trump noted that trade with China was also "unfair" because China sold four times the products to the U.S. than the U.S. was allowed to sell in Chinese markets.[265] Further, he asserted China was flooding U.S. markets with cheap goods produced by forced labor.[266]

Later in the 2000 book, Trump hinted at a mercantilist leaning in his discussions about how to deal with Russia. "We need to tell Russia…that if they want our dime [financial aid] they had better do our dance, at least in matters regarding our national security…We have leverage, and we are crazy not to use it to better advantage."[267]

Trump also suggested pulling out of the North Atlantic Treaty Organization (NATO), saying there was no longer a need for it, and it was a waste of money.[268] He

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[261] Trump, *The America We Deserve*, 121.

[262] Trump, *The America We Deserve*, 120.

[263] Trump, *The America We Deserve*, 120-121.

[264] Trump, *The America We Deserve*, 123.

[265] Trump, *The America We Deserve*, 120.

[266] Trump, *The America We Deserve*, 120.

[267] Trump, *The America We Deserve*, 134.

[268] Trump, *The America We Deserve*, 142-143.

further pointed out that "our allies don't seem to appreciate our presence anyway" observing that "we pay for the defense of France yet they vote against us at the United Nations…"

The clearest evidence of Trump's mercantilist inclinations was in a brief section in *The America We Deserve* on international trade. He began, "You only have to look at our trade deficit to see that we are being taken to the cleaners by our trading partners."[269] Trump continued, "business, especially trade, is like war."[270] He claimed further that "America has been ripped off by virtually every country we do business with."[271] To fix this, Trump said, he would appoint himself as his own trade representative and renegotiate these trade agreements.[272] In a gentle acknowledgement to liberal free trade ideals, however, he said was not advocating for protectionism but rather for reciprocal trade.[273]

A decade later, President Trump's mercantilist inclinations and concerns about China were on full display in his 2011 book, *Time to Get Tough.*[274] Trump's most revealing statement, "money is a weapon"[275] arose as he highlighted the danger of China

[269] Trump, *The America We Deserve*, 145.

[270] Trump, *The America We Deserve*, 146.

[271] Trump, *The America We Deserve*, 145.

[272] Of course, all this played to the Trump brand advertising Trump as a master negotiator and deal maker.

[273] Trump, *The America We Deserve*, 145.

[274] Donald J. Trump, *Time to Get Tough: Make America Great Again!* (Washington, D.C.: Regnery Publishing, 2011). To be balanced, it should be noted that in a single sentence in 190 pages of text Trump alludes to being in favor of the ideal of free trade by noting "free trade requires having fair rules that apply to everyone." Ibid., 40.

[275] Trump, *Time to Get Tough*, 93.

holding America hostage by owning so much U.S. debt. He quoted a Hillary Clinton comment, "How do you deal toughly with your banker?"[276]

Trump was further exorcised by China's currency manipulation, destruction of U.S. manufacturing jobs, and theft of intellectual property.[277] He cited Peter Navarro, who will be discussed further below, to argue that the U.S. trade deficit, most of that with China, caused the loss of one million American jobs per year.[278]

President Obama was the target of repeated Trump criticisms, but as for failing to confront China on trade Trump asserted, "Obama claims we can't do what's in our interests because it might spark a 'trade war' – as if we're not in one now."[279] Trump blamed Obama's weak negotiating skills for worsening America's trade deficit with China.[280] To fix this, Trump declared in *Time to Get Tough* that if President he would impose a 25 percent tariff on all Chinese goods as a sanction for China's currency manipulation.[281] Additionally, Trump pronounced that he would charge a 20 percent "tax" to be paid by *all* countries exporting goods to the U.S., commenting "if they want a piece of the American market, they're going to pay for it."[282]

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[276] Trump, *Time to Get Tough,* 93.

[277] Trump, *Time to Get Tough,* 2, 29-31, 33-34, 44, 46-47, 153-154. Trump devoted an entire chapter to China, called "Tax China to Save American Jobs." Ibid., 29-48.

[278] Trump, *Time to Get Tough,* 42.

[279] Trump, *Time to Get Tough,* 33.

[280] Trump, *Time to Get Tough,* 37.

[281] Trump, *Time to Get Tough,* 41.

[282] Trump, *Time to Get Tough,* 64. Trump also repeated his comment from *The America We Deserve* that China needed the U.S. market. Ibid., 41.

Foreshadowing the Trump administration's actions to be discussed more fully below, Trump made particular note of the damage currency manipulation had done to America's steel industry.[283] He pointed out that the steel industry regarded the artificially low value of the renminbi as "the single-largest subsidy" to Chinese manufacturers.[284]

Trump repeated his comment from *The America We Deserve* that China is an "enemy."[285] He mentioned frequently how much China was spending on military expansion and observed that the increasing sophistication of their weapons had been often accelerated by the Chinese theft of American military technology.[286] Trump also pointed out the increasing threat that China's growing cyber capabilities represented.[287]

Trump's declared remedy for all these ills was better negotiation, an unsubtle hint that voters should pick him as the next President.[288] He pointed out that negotiations are to gain maximum advantage, implicitly a zero-sum calculation.[289] Trump appreciated how much the Chinese had gotten away with stating, "If we could get away with it against them, I would strongly encourage us to do so."[290]

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283 Trump, *Time to Get Tough,* 34-35.

284 Trump, *Time to Get Tough,* 34.

285 Trump, *Time to Get Tough,* 29, 48.

286 Trump, *Time to Get Tough,* 32, 43, 45-46, 85, 154.

287 Trump, *Time to Get Tough,* 42, 43-44, 46-47, 154.

288 Trump, *Time to Get Tough,* 2, 82, 153, 155. Interestingly, Trump went on to claim that the Chinese respected him. Ibid., 48. In later chapters, this study will discuss instances that suggest Trump's assessment may have been incorrect.

289 Trump, *Time to Get Tough,* 13.

290 Trump, *Time to Get Tough,* 47.

The ire expressed in Trump's earlier book about "free-riders" appeared again repeatedly in *Time to Get Tough*. Trump lamented that President Obama missed an opportunity to negotiate a better trade agreement with South Korea by not leveraging the ongoing U.S. defense of the Korean peninsula.[291] In a chapter called, "Take the Oil," Trump noted that though the U.S. had repeatedly provided protection for countries in the Middle East, America still faced high oil prices from OPEC.[292] He noted that the U.S. had liberated Iraq and helped remove Libya's Qadhafi but yet had missed opportunities to demand their oil in return.[293] "Either you pay us to defend you," he said, "or we take the oil."[294]

In his 2015 book, *Great Again: How to Fix Our Crippled America*, President Trump continued the same themes about China, unfair trade, and the mercantilist exercise of economic power.[295] In describing what his foreign policy would be as President, Trump said, "We have to demonstrate our willingness to use our economic strength to reward those countries that work with us and punish those countries that don't."[296] Later he continued, "We need to use the economic strength of American markets and the

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[291] Trump, *Time to Get Tough,* 4.

[292] Trump, *Time to Get Tough,* 2, 9-27, 41.

[293] Trump, *Time to Get Tough,* 11, 102-103. Trump lamented that China got Libya's oil though the U.S. provided protection. Ibid., 104.

[294] Trump, *Time to Get Tough,* 154.

[295] Donald J. Trump, *Great Again: How to Fix Our Crippled America* (New York: Threshold Editions, 2015).

[296] Trump, *Great Again*, 32.

American consumer to assist our friends and remind our enemies of the benefits of cooperation."[297]

Trump lamented that America had been losing the trade "battle" with China and that China held more of America's debt than any other country.[298] However, Trump asserted that these facts also made China dependent on the U.S. as well.[299] He again referred to China as America's "enemy," because "they have destroyed entire industries…cost us tens of thousands of jobs, spied on our businesses, stolen our technology, and have manipulated and devalued their currency."[300] The way to fix it was to hire better negotiators, he averred.[301]

Trump continued to vent against America's allies for being free riders. America should transform its military, but allies should pay the cost, he said.[302] "We need to put some of the bill for this transformation on the Saudi Arabians, the South Koreans, the Germans, the Japanese, and the British. We're protecting them after all, and they should share in the costs."[303]

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[297] Trump, *Great Again*, 48.

[298] Trump, *Great Again*, 42.

[299] Trump, *Great Again*, 42-43, 44-45.

[300] Trump, *Great Again*, 43.

[301] Trump, *Great Again*, 45.

[302] Trump, *Great Again*, 47, 121.

[303] Trump, *Great Again*, 47.

Trump also continued the claim that the U.S. had lost out in trade deals and needed better negotiators who could "bring jobs back from places like China, Japan, and Mexico."[304] Again, Trump's cure was better negotiators – implicitly him.

To summarize from his three books, President Trump appeared to measure international trade as a mercantilist contest, with the score card for winning or losing being the balance of trade. Trump consistently lamented over the U.S. trade deficit as evidence of America's general economic decline, the erosion of the U.S. manufacturing base, and the destruction of American jobs. Another consistent theme was concern about China. Trump's particular ire seemed to be based on the mercantilist zero-sum conclusion that China's economic and military rise necessarily came at America's expense. These mercantilist attitudes would be repeated in Trump's 2016 presidential campaign.

Out of the long 2016 presidential contest, one Trump appearance especially stands out. On June 28, 2016 in Monessen, Pennsylvania, Trump gave a speech that focused on confronting China on trade which was written by economist Peter Navarro and Stephen Miller.[305] In it, Trump blamed President Clinton, and by inference Hillary Clinton, for supporting China's admission to the World Trade Organization (WTO). Bill Clinton's decision about China and the North America Free Trade Agreement (NAFTA), Trump

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[304] Trump, *Great Again*, 87-88, 163.

[305] Josh Rogin, *Chaos Under Heaven: Trump, Xi and the Battle for the 21st Century* (New York: Houghton Mifflin Harcourt, 2021), 6-7.

said, were the causes of America's loss of "nearly one-third of its manufacturing jobs since 1977," which he called "the greatest jobs theft in history."

Trump blamed Secretary of State Hilary Clinton for standing by while China engaged in currency manipulation, stole intellectual property, and unfairly added to the U.S. trade deficit.[306] Trump also attacked Hillary Clinton for a "job-killing deal" with South Korea that he said doubled the trade deficit with that country and cost 100,000 American jobs. Called "KORUS," as will be discussed below, this agreement became the subject of significant controversy once Trump took office.

Trump also attacked globalization generally. He blamed the elites and politicians for their pursuit of globalization at the cost of moving U.S. jobs, wealth, and factories overseas. Trump described U.S. power as being based in manufacturing saying, "America became the world's dominant economy by becoming the world's dominant producer." Yet the U.S. let its focus shift from promoting American economic development to developing other nations. In the process, the U.S. had allowed other nations to "subsidize their goods, devalue their currencies, violate their agreements…" As an example foreshadowing Trump administration actions to be discussed in a later chapter, Trump identified the dumping of "subsidized foreign steel" as a particular threat to American factories. Trump also noted that the U.S. trade deficit was $800 billion. This was evidence, he said, that through globalization America had now become dependent on foreign countries.

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[306] Donald J. Trump, "Declaring America's Economic Independence," (speech) (June 29, 2016), in "Full Transcript: Donald Trump's Job Plans Speech," *Politico*, http://www.politico.com/story/2016/06/full-transcript-trump-jobs-plan-speech-224891.

To bolster his position in support of American industry, Trump referenced the founding fathers and their promotion of manufacturing, specifically Washington and Hamilton. Trump also noted that President Lincoln had supported trade protection.

As an insight into his approach to economic analysis, Trump talked about how trade deficits "directly subtract from Gross Domestic Product (GDP)." He blamed the drop in U.S. GDP since 2002 on the opening of U.S. markets to Chinese imports.[307] He claimed that for every single percentage point loss in U.S. GDP, there was the failure to generate one million jobs. As a result, Trump asserted, there was a "job creation deficit." Renegotiating trade agreements and confronting China would restore U.S. jobs, he claimed.

Echoing themes from his books, Trump said his trade policy would include seven steps. First, he would withdraw from the Trans-Pacific Partnership. Second, he would hire the best trade negotiators. Third, he would identify trade agreement violations and use "every tool" to end them. Fourth, he would renegotiate NAFTA for better terms, and if better terms were not forthcoming, he would withdraw from it. Fifth, he would declare China a currency manipulator. Sixth, he would confront China by bringing trade violation cases in the U.S. and in the WTO. Seventh, if necessary, he would turn to trade

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[307] Nowhere in Trump's comments here or elsewhere is there a reference to services produced in the U.S. which is an element in Gross Domestic Product. See Bureau of Economic Analysis, "Gross Domestic Product," (web page) June 30, 2021, https://www.bea.gov/resources/learning-center/what-to-know-gdp. The U.S. typically enjoys a surplus in U.S. services provided overseas over foreign services provided in the U.S, though the U.S. suffers a deficit in overall balance of goods and services. See Bureau of Economic Analysis, "U.S. International Trade in Goods and Services -- April 2021," June 8, 2021, 15, https://www.bea.gov/sites/default/files/2021-06/trad0421.pdf.

sanctions. It is the seventh step, particularly import sanctions under Section 232 which are based on threats to national security, which is the focus of this study. It should be noted that Trump did not advocate for withdrawing from the WTO in this speech.

The transition from candidate to executive took place on January 20, 2017. The language in President Trump's inaugural address expressed the direct link in his mind between international trade and national security.[308] Trump noted that "For many decades, we've enriched foreign industry at the expense of American industry, subsidizing the armies of other countries, while allowing for the very sad depletion of our military." Later in the speech he said, "We must protect our borders from the ravages of other countries making our products, stealing our companies and destroying our jobs. Protection will lead to great prosperity and strength."

As has been noted, President Trump was not the first American President to link U.S. prosperity with U.S. power – economic security with national security. As with preceding Presidents, Trump would rely on others in his administration to turn this rhetoric into policy. For President Trump, two very influential economic contributors were Dr. Peter Navarro and Robert Lighthizer.

Peter Navarro was a Harvard-trained economist and professor at the University of California, Irvine.[309] Navarro served as chief economic advisor to the Trump campaign.

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[308] Donald J. Trump, "Inaugural Address," (January 20, 2017), in "Full Text: 2017 Donald Trump Inauguration Speech Transcript," *Politico*, http://www.politico.com/story/2017/01/ full-text-donald-trump-inauguration-speech-transcript-233907.

[309] Peter Navarro, "Economic Security as National Security," (speech)(November 13, 2018), in "Economic Security as National Security: A Discussion with Dr. Peter Navarro," Center for Strategic and International Studies. http://www.csis.org/analysis/econonic-security-as-national-security-discussion-dr-peter-navarro. Hereafter, "Navarro, CSIS speech."

He came to Trump's attention for a book he wrote in 2011 called *Death by China*.[310] In fact, Trump provided a marketing blurb when the book was made into a movie.[311]

Navarro's argument in *Death by China* was succinctly captured in an op-ed he wrote for the *Los Angeles Times*, "How China Unfairly Bests the U.S," which President Trump cited several times in his book, *Time to Get Tough.*[312] Navarro argued that America's persistent trade deficit was the "primary structural problem underpinning our slow growth and high unemployment." He asserted that the trade deficit cost the U.S. "close to one percent of GDP growth a year at a loss of almost one million jobs annually." Seventy percent of the trade deficit, Navarro said, was with China and was due to China's unfair trade practices: export subsidies, piracy of intellectual property, counterfeiting, currency manipulation, and forced technology transfers. These practices, Navarro claimed, were all in violation of World Trade Organization rules and U.S. law. China's practices belied free trade's promise of mutual benefit, he argued. Instead, "a mercantilist China uses unfair trade practices to wage war on our manufacturing base." Unsurprisingly, many of these arguments made it into Trump's 2016 campaign messages.

In a 2018 speech, Navarro expanded on President Trump's economic policy as being "four points to the compass—tax cuts, deregulation, unleashing the energy sector,

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310 Rogin, *Chaos Under Heaven,* 18. Peter Navarro and Gene Autry, *Death by China* (Upper Saddle River, New Jersey: Pearson Education, Inc., 2011).

311 Rogin, *Chaos Under Heaven,* 18.

312 Peter Navarro, "How China Unfairly Bests the U.S.," *Los Angeles Times*, June 21, 2011, https://www.latimes.com/opinion/la-xpm-2011-jun-21-la-oe-navarro-trade-china-20110621-story.html.

and fixing our trade deals."[313] After the inauguration, Navarro was named as a director of a new "National Trade Council."[314] The job eventually morphed into "Director, White House Office of Trade and Manufacturing Policy," another newly-created post.[315] Whatever the title, Navarro said his mission in the administration was "to create good-paying jobs in the manufacturing sector for Americans who work with their hands."[316]

Navarro argued that he and President Trump supported "free, fair and reciprocal trade."[317] Navarro further described this as "five zeros" – zero tariffs, zero non-tariff barriers, zero subsidies, zero currency manipulation, and zero advantage from value-added tax versus income tax treatment. Navarro noted that he had taught macroeconomics and understood the Ricardian principle of comparative advantage that created the potential for mutual gains in international trade. But, he said, "That's not the world we live in."

The real world of globalization, Navarro continued, had weakened national security by weakening the manufacturing and defense industrial base.[318] Specifically, Navarro pointed to a detailed interagency report identifying almost 300 "gaps and vulnerabilities" in the supply chain for critical defense goods where there was a foreign

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[313] Navarro, CSIS speech.

[314] Rogin, *Chaos Under Heaven,* 32.

[315] Rogin, *Chaos Under Heaven,* 7.

[316] Navarro, CSIS speech.

[317] Navarro, CSIS speech.

[318] Navarro, CSIS speech.

supplier, even an adversary such as China, that provided a critical component.[319] Navarro believed that in some cases strategic rivals, particularly China, targeted vulnerable sectors, such as those involving rare earth metals.

Despite the personnel turnover that seemed particularly rampant in the Trump administration, Navarro served in the White House for the entirety of President Trump's term. Navarro shared that achievement with another key economic advisor, Robert Lighthizer.

As noted above, President Trump appointed Robert Lighthizer to be his trade representative. Lighthizer was a lawyer who had served on Senator Robert Dole's staff, as Deputy U.S. Trade Representative in the Reagan administration, and as a trade litigator. In 1996, Lighthizer served as treasurer for Senator Dole's unsuccessful presidential campaign.

Lighthizer was a frequent contributor to the opinion pages of several newspapers. Many of these pieces involved international trade. For instance, in 1998 Lighthizer wrote an op-ed opposing admission of China to the WTO disputing Clinton administration claims that doing so would encourage China to better respect human rights and to demonstrate more responsible international behavior.[320] Lighthizer argued that it was

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[319] "Assessing and Strengthening the Manufacturing and Defense Industrial Base Resiliency of the United States," (report) U.S. Department of Defense, September 2018. https://media.defense.gov/2018/Oct/05/2002048904/-1/-1/1/ASSESSING-AND-STRENGTHENING-THE-MANUFACTURING-AND%20DEFENSE-INDUSTRIAL-BASE-AND-SUPPLY-CHAIN-RESILIENCY.PDF.

[320] Robert E. Lighthizer, "The Democracy Gap," *New York Times*, July 1, 1998, https://www.nytimes.com/1998/07/01/opinion/the-democracy-gap.html.

foolish to think that increasing trade would reduce tensions between the U.S. and China. "Trade alone cannot defuse the flames of international rivalry," he said. To the contrary, he wrote, prosperity can contribute to conflict.

In another piece written in 1999, Lighthizer pointed out flaws in the arguments for free trade.[321] Lighthizer noted the apparent contradiction that arose when liberal free trade advocates pushed for the reduction or elimination of labor and environmental standards in international trade agreements yet would never tolerate the weakening of those same standards in their home countries. Lighthizer pointed out that the U.S. had implemented such standards because it was understood that free markets did not adequately protect those interests. "As a nation," he wrote, "we have decided that we value free markets, but only to a point." Lighthizer argued that a global free market will not raise standards world-wide by itself noting that "It cannot be assumed that businesses and countries will get richer and do the right thing." Similarly, he said, it is wrong to believe that "free trade solves all, or any, social ills."

Amid the 2008 presidential campaign, Lighthizer discussed the place of protectionism in Republican politics.[322] Lighthizer identified Alexander Hamilton as one "who could be considered the founder of American conservatism." Lighthizer observed that the Republican party had strongly supported protectionism beginning with President Lincoln and continuing for nearly 100 years. Lighthizer said that President Eisenhower

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[321] Robert E. Lighthizer, "Conceding Free Trade's Flaws," *New York Times*, December 3, 1999, https://www.nytimes.com/1999/12/03/opinion/conceding-free-trades-flaws.html.

[322] Robert E. Lighthizer, "The Venerable History of Protectionism," *New York Times*, March 6, 2008, https://www.nytimes.com/2008/03/06/opinion/06iht-edlighthizer.1.10774536.html.

was the first Republican free-trader and questioned whether Eisenhower could really be called "conservative." Lighthizer further noted that President Reagan, whom he called "the personification of modern conservatism," often broke from "free-trade dogma" by advocating voluntary restraints to limit imports of automobiles and steel, as well as import relief for other companies and industrial sectors. In contrast, Lighthizer pointed out that free traders seemed to allow no room for nuance or flexibility, even though free trade "helps China become a superpower" or created foreign dependence for food or military equipment. Lighthizer argued in favor of pragmatism, lowering trade barriers where appropriate but applying protection when necessary. He asserted that Hamilton and Reagan "always understood that trade policy was merely a tool for building a strong and independent country."

Early in the 2012 presidential race, Lighthizer wrote an op-ed defending then-candidate Trump's position on trade.[323] Apparently, some Republicans had claimed Trump was a "liberal" for being willing to confront China and for being protectionist. Lighthizer countered by pointing out that for most of the Republican Party's history it had supported protective trade policies to help build domestic industries. He once again referred to Alexander Hamilton as a founding American conservative. Lighthizer also observed that Lincoln was a political descendent of Henry Clay who had advocated the "American System" of high protective tariffs. Lighthizer next cited President Nixon, and again Reagan, as Presidents willing to limit trade and protect U.S. industries.

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[323] Robert E. Lighthizer, "Donald Trump is No Liberal on Trade," *Washington Times*, May 9, 2011, http://www.washingtontimes.com/news/2011/may/09/donald-trump-is-no -liberal-on-trade/.

Lighthizer's conclusion was that free trade was more an "aberration" than a "hallmark of true American conservatism."

Lighthizer further noted that confronting China was hardly a "liberal" position and that confrontation was particularly appropriate given China was an adversary manipulating currency, using subsidies, stealing intellectual property, and practicing other unfair trade practices to run up a (then) $270 billion trade surplus, taking U.S. jobs in the process. Lighthizer further noted that Chinese practices hardly achieved the efficiency sought by free trade and open markets. Rather, he said, China's trade practices had created huge market distortions that needed correction.

Once confirmed as U.S. Trade Representative in May 2017, Lighthizer set to work carrying out Trump's campaign agenda.[324] Lighthizer led the renegotiation of NAFTA which produced a new trade pact, the United States-Mexico-Canada Agreement (USMCA). He also negotiated a new free trade agreement with Korea to replace KORUS.

In addition to trade negotiations, Lighthizer oversaw unfair trade investigations regarding the import of Chinese solar panels under Section 201 and China's alleged theft and forced transfer of intellectual property under Section 301. Both investigations resulted in the imposition of U.S. tariffs on Chinese imports. This started a "trade war" where China retaliated, the U.S. countered, and a tit-for-tat continued until the execution

[324] U.S. Trade Representative, "The President's Trade Agenda and Annual Report," (fact sheet), 2018, on file with the author. See also Robert E. Lighthizer, "How to Make Trade Work for Workers: Charting a Path between Protectionism and Globalism," *Foreign Affairs*, July/August 2020, https://www.foreignaffairs.com/print/node/1126058.

of a "Phase One Agreement" on January 15, 2020.[325] That agreement left most tariffs in place on both sides, but China committed to addressing intellectual property theft and to buying more American goods.[326]

Later in 2020, Lighthizer defended President Trump's conduct of trade policy in two pieces in *Foreign Affairs.* In the first, Lighthizer described the administration's approach to trade as navigating between policies pursued for purely geopolitical purposes and those that sought to maximize economic efficiency and overall output.[327] The Trump policy sought, Lighthizer asserted, a middle course supporting the U.S. economy by providing a path to middle class prosperity via stable, well-paying manufacturing jobs. The policy did not embrace either protectionism or autarky, he argued. Rather, the goal was "a balanced, worker-focused trade policy that achieves a broad, bipartisan consensus and better outcomes for Americans."

Lighthizer made two additional points. First, he defended a worker-centric trade policy by observing that economic efficiency in trade theory did not take into consideration the full adverse impacts to workers who lost their jobs -- not only did the workers lose income, but they also lost "the personal dignity of a job," he wrote. [328] This

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[325] "United States-China Phase One Trade Agreement," (web page), U.S. Trade Representative, July 2, 2021, https://ustr.gov/phase-one.

[326] "ECONOMIC AND TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA," January 15, 2020, U.S. Trade Representative, https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf.

[327] Lighthizer, "How to Make Trade Work for Workers."

[328] Lighthizer, "How to Make Trade Work for Workers."

could not be offset, he argued, by cheaper consumer goods or a welfare check. Lighthizer noted workers displaced by free trade were typically unable find other jobs, even in the service and technology sectors. That was especially true, he said, for former manufacturing workers without college degrees. America's consumer spending, he argued, was employing foreign workers instead of Americans.

Lighthizer's second point was about trade deficits. Lighthizer challenged the analogy sometimes made about an individual purchasing a product creating a "trade deficit" with that vendor but that such a deficit was not a problem since the individual's income came from another source.[329] Lighthizer contended there was in fact a problem if there was a trade deficit "with everyone." If persistent, he argued, such a deficit could only be funded by selling one's assets. This was America's situation, Lighthizer contended, because the U.S. had been for too long selling its assets to fund its persistent trade deficit.

Lighthizer concluded his first *Foreign Affairs* piece by asserting that "The United States must avoid the stale, reductionist paradigm of free trade versus protectionism, which oversimplifies complex issues and stifles creative policymaking."[330] Lighthizer asserted that "most Americans want the same thing: balanced outcomes that keep trade flows strong while ensuring that working people have access to steady, well-paying jobs." "Neither old-school protectionism nor unbridled globalism will achieve that," he

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[329] Lighthizer, "How to Make Trade Work for Workers."

[330] Lighthizer, "How to Make Trade Work for Workers."

said. The appropriate policy, Lighthizer declared, was one that "prizes the dignity of work."

In his second piece in *Foreign Affairs*, Lighthizer responded to specific critics of U.S. trade policy toward China by asserting that "absent reform, China's economic model poses an existential threat to the economic security of the United States."[331] Lighthizer argued that this reality left the Trump administration no choice but to use the best economic tools it had to address this threat. This included, he noted, tariffs under Sections 301 and 232.

Navarro and Lighthizer were not the only economic players in the Trump administration. However, they number among the very few who served all four years. For instance, the Chair of the National Economic Council had three occupants during Trump's term, Gary Cohn, Larry Kudlow, and Tyler Goodspeed. Gary Cohn was a former president of Goldman Sachs and, along with Steve Mnuchin, the Secretary of the Treasury, and Cohn's successor Larry Kudlow, belonged to what one reporter called a "Wall Street Clique."[332] Unlike Navarro and Lighthizer, this group was against confronting China and supported the free-trade status quo.

Journalist Bob Woodward reported that it was Cohn who confronted Trump about his attacks on trade deals during the transition and that it was Cohn who had argued for "free, fair and open trade" because America's was a trade-based economy.[333] As will be

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[331] Robert E. Lighthizer, "Trump's Trade Policy is Making America Stronger: A Response to Critics," *Foreign Affairs*, July 20, 2020, https://www.foreignaffairs.com/pring/node/1126209.

[332] Rogin, *Chaos Under Heaven,* xxv.

[333] Bob Woodward, *Fear: Trump in the White House* (New York: Simon & Schuster, 2018), 56.

seen below, a similar aspirational phrase would find its way into the Trump administration's statement about trade policy in its *2017 National Security Strategy*, to be discussed further below.

Journalist Josh Rogin reported that the "Wall Street Clique" was supplemented by frequent unofficial and out-of-channel communications by billionaire friends of the President, who would sometimes call the White House or mingle with the President at Mar-a-Lago.[334] These included Hank Greenberg, Hank Paulson, Stephen Schwartzman, Steve Wynn and John Thornton, most of whom had substantial financial interests in China.[335] That these interactions impacted policy was confirmed in a revealing statement Peter Navarro gave to the Center for Strategic and International Studies:

> And DOD clearly views China as an identified threat to America's defense industrial base. Nothing could be clearer than that in this report [cited above]. But this is a very different view. This is a very different view that DOD and other elements of this government have than the Wall Street and the – Wall Street bankers and the globalist elites. Let's think about this now. Consider the shuttle diplomacy that's now going on by a self-appointed group of Wall Street bankers and hedge fund managers between the U.S. and China. As part of a Chinese government influence operation, these globalist billionaires are putting a full-court press on the White House in advance of the G-20 in Argentina. The mission of these unregistered foreign agents – that's what they are; they're unregistered foreign agents – is to pressure this President into some kind of deal.[336]

Woodward also reported one remarkable example of the Wall Street Clique operating to constrain President Trump, when in early September 2017, Gary Cohn

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[334] Rogin, *Chaos Under Heaven,* xxv, 17, 19, 20, 21.

[335] Rogin, *Chaos Under Heaven,* 47, 60, 65.

[336] Navarro, CSIS speech. Rogin, 65.

pulled from President Trump's desk a letter that would have withdrawn the United States from the Korea-US free trade agreement, called KORUS.[337] Trump had threatened do to this for months despite arguments that the agreement was "one of the foundations of an economic relationship, a military alliance, and most important, top secret intelligence operations and capabilities." Trump was enraged that Koreans were not doing more to pay for their own defense and about the $18 billion U.S.-South Korea trade deficit. In addition to Cohn, Secretary of State Rex Tillerson, Secretary of Defense James Mattis, Chairman of the Joint Chiefs of Staff Marine General Joseph Dunford, and National Security Advisor Army Lieutenant General H.R. McMaster all argued that this was the best national security investment that could be made to protect against the nation's most direct threat, North Korea.[338] Ultimately, South Korea did agree to a new trade pact.

It is appropriate to shift the narrative to another occasional member of the Wall Street Clique whom Rogin observed to be a "wild card" moving between the Wall Streeters and Navarro's anti-China camp.[339] That was Wilbur Ross – whom Trump appointed Secretary of Commerce. Ross was a billionaire private equity investor, and a

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[337] Woodward, *Fear*, xvii-xxii. For the internal debates about Korea related in this paragraph see ibid., 105-07, 224, 233, 264-65, 304-05.

[338] "To protect the country," Cohn took the letter concluding Trump was acting erratically. Cohn counted on Trump to forget about it, which he did. Woodward reports that Cohn regularly worked with staff secretary, Rob Porter, to slow or derail what they believed were Trump's most dangerous and impulsive orders. Woodward quotes Cohn, "It's not what we did for the country. It's what we saved him from doing." Woodward, *Fear*, xvii-xxii.

[339] Rogin, *Chaos Under Heaven,* xxvi. Another "wild card," but key influencer without a particular portfolio, was Trump's son-in-law, Jared Kushner. Ibid., xxv. Rogin reports Kushner was an access point for Trump's billionaire friends who wished to influence policy. Ibid, 19. Someone reported as a hardliner and neocon was Vice President Mike Pence. Ibid., 34. However, he kept a low profile and avoided any controversy with Trump.

long-time Trump acquaintance. However, despite being a long-time friend, Rogin reported that in April 2017 Ross lost influence with Trump because of Trump disliked the way Ross had negotiated with the Chinese.[340] Thereafter, Mnuchin and Lighthizer took over the Chinese trade talks.

It is important to introduce here President Trump's early national security team, a group often described as the "Axis of Adults."[341] Secretary of State Rex Tillerson had been chief executive of Exxon-Mobile. Secretary of Defense James Mattis was a retired Marine Corps general. Another retired Marine Corps General, John Kelly, served as Secretary of Homeland Security and then as White House Chief of Staff. President Trump's second National Security Advisor (after Army Lieutenant General Michael Flynn's quick departure) was Army Lieutenant General H.S. McMaster.   These men were thought to be highly experienced professionals who would provide "guardrails" to a chief magistrate with no prior government experience. It turns out that these men did not last long in the Trump administration.

In May 2017, McMaster and Cohn teamed up to report on President Trump's first overseas trip in an op-ed in the *Wall Street Journal* headlined, "America First Doesn't Mean America Alone."[342] They reveal some clues as to the Trump administration's early international trade positions, mostly confirming Trump's statements during the campaign.

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[340] Apparently, Trump did not like the terms of the deal and Ross's failure to consult him prior to announcing its completion. Rogin, *Chaos Under Heaven,* 56-57.

[341] Rogin, *Chaos Under Heaven,* xxv.

[342] H.R. McMaster and Gary D. Cohn, "America First Doesn't Mean America Alone," *Wall Street Journal*, May 30, 2017, https://www.wsj.com/articles/america-first-doesnt-mean-america-alone-1496187426.

First, President Trump reiterated his concerns to other heads of state about trade deficits and the importance of reciprocity in trade. Next, the President and other leaders in the Group of Seven wealthy nations shared a communique indicating their willingness to "stand firm 'against all unfair trade practices.'" Finally, President Trump repeated his demands that allies pay more for mutual defense.

McMaster and Cohn summed up the Trump administration's views on the world in ringing mercantilist and economically nationalistic tones: they said the Trump administration's outlook was "clear-eyed," recognizing "that the world is not a 'global community' but an arena where nations, nongovernmental actors and businesses engage and compete for advantage." The administration was resolutely committed, they said, "to use the diplomatic, economic and military resources of the U.S. to enhance American security, promote American prosperity, and extend American influence around the world."

One of the first formal statements of the Trump administration on economic policy was the *2017 National Security Strategy* issued in December 2017.[343] By law, the executive branch is called upon to issue annually a "National Security Strategy" (NSS) that describes the worldwide goals, interests, and objectives of the U.S. that are vital to national security.[344] The NSS is then to identify both short-term and long-term uses of the "political, economic, military and other elements of national power" to promote U.S.

[343] *National Security Strategy*, December 2017, The White House, 17-23. Hereafter "NSS." https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf.

[344] 50 U.S.C. §3043(a), (b).

goals, interests, and objectives. Incoming presidential administrations often use the NSS as their first formal opportunity to distinguish their approach to national security from that of the outgoing administration.

The Trump administration's *2017 National Security Strategy* described economic welfare as the second of four pillars to national security, a pillar entitled "Promote American Prosperity."[345] At the head of the section stood a quote from President Trump, "economic security is national security."[346]

The NSS never explicitly defined "economic security" or "national security." Nor are those terms defined anywhere in U.S. law. Clues to what the Trump administration meant by these terms could be deduced from the NSS's introduction:

> As we took our political, economic, and military advantages for granted, other actors steadily implemented their long-term plans to challenge America and to advance agendas opposed to the United States, our allies, and our partners. We stood by while countries exploited the international institutions we helped to build. They subsidized their industries, forced technology transfers, and distorted markets. These and other actions challenged America's economic security.
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> At home, excessive regulations and high taxes stifled growth and weakened free enterprise—history's greatest antidote to poverty. Each time government encroached on the productive activities of private commerce, it threatened not only our prosperity but also the spirit of creation and innovation that has been key to our national greatness.[347]

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[345] The other three pillars were "Protect the American People, the Homeland, and the American Way of Life (Pillar I);" "Preserve Peace Through Strength (Pillar III);" and "Advance American Influence (Pillar IV). NSS, v-vi.

[346] NSS, 17-23.

[347] NSS, 2.

The Trump administration committed itself to reversing these trends through its clearly economically nationalistic "America First" policy.[348]

As noted above, the NSS pillar "Promoting American Prosperity" began with the Trump quote that "economic security is national security."[349] The articulation of this pillar started with the argument that the American economy was in a general decline because of a long list of domestic economic ills: low economic growth, stagnant wages, increased taxes, increased health care costs, education costs, slowing productivity growth, government regulation, and poor infrastructure (physical and informational). The NSS also argued that the U.S. economy had suffered due to fair trading practices. Among the unfair trading practices the NSS listed was, ominously, "economic aggression," which the NSS did not expressly define but seemed to be linked to comments elsewhere in the NSS about currency manipulation, intellectual property theft, and pervasive non-tariff trade barriers.

To address these ills, the NSS first enumerated the general economic steps that the Trump administration intended to take to rejuvenate the domestic economy: tax reform; improvement to infrastructure; reduction of the federal deficit; and promotion of apprenticeship and workforce development.[350] Turning to international trade, the NSS stated that the Trump administration intended to promote "fair, free and reciprocal economic arrangements," meaning that administration would attack persistent trade

[348] NSS, 3-4.

[349] NSS, 17-23.

[350] NSS, 18-19.

imbalances, break down trade barriers, and expand U.S. export opportunities.[351] Further, the Trump administration intended to oppose "closed mercantilist trading blocks" and bring aggressive enforcement actions for violations of international trade rules. Additionally, the administration expressed its intent to renegotiate old trade agreements and enter new *bilateral*, not multilateral, trade agreements that ensured fair and reciprocal treatment and enforced high standards for intellectual property, digital trade, agriculture, labor, and the environment.

The NSS next turned to protecting America's lead in technologies "critical to economic growth and security."[352] The NSS identified the theft of intellectual property as a key threat, particularly to America's "National Security Innovation Base" which it defined as "the American network of knowledge, capabilities, and people…that turns ideas into innovations, transforms discoveries into successful commercial products and companies, and protects and enhances the American way of life."

To protect intellectual property, the administration committed to aggressive domestic and international action, including counterintelligence operations and criminal prosecutions. The administration further committed to strengthening the Committee on Foreign Investment in the United States (CFIUS), an entity that reviews foreign acquisitions of U.S. enterprises for national security risks. CFIUS will be discussed in a later chapter.

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[351] NSS, 19-20.

[352] NSS, 21-22.

A section of the NSS entitled "Tools of Economic Diplomacy" revealed tensions between the liberal free trade practices that dominated the global economy and the enduring mercantilist calculus of national security.[353] There, the NSS pointed out that America had a central role in expanding "a community of free market economies" who were "defending against threats from state-led economies."[354] The NSS declared that the U.S. would strengthen its economic ties to its allies, but apply its economic power to diminish its adversaries – continuing to blend liberal and mercantilist policies just as every administration had done since World War II.

Elsewhere, the NSS stated that the contest for power was "a central continuity to history" and declared China and Russia to be the key challengers to the U.S. in that contest.[355] The following chapters will explore how well the Trump administration navigated this balance between liberalism and mercantilism as it addressed the great power contest, particularly with China. The study will show that at times the Trump administration was confused in its approach.

Some of the confusion was the result of competing understandings of "economic security is national security" between factions within the Trump administration. The "Axis of Adults" held a traditional view that a strong U.S. economy served as the foundation for a robust foreign policy and ability to fund a strong military.

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[353] NSS, 34-35.

[354] NSS, 34.

[355] NSS, 25.

This traditional view had evolved out of the recognition that the U.S. was the only economy undamaged by World War II, and therefore it had to anchor the rebuilding of the Western economies to confront and contain the expanding Soviet bloc, which was viewed as an existential threat to the United States and other Western nations. The traditional view necessarily embraced free trade among non-Communist countries because it was thought essential to help confront the Soviet bloc economically.

The national security professionals in the Trump administration – Tillerson, Mattis, Kelly and McMaster – advocated for the traditional view and its support of free trade and global economic stability.[356] The "Axis of Adults" were apparently not yet ready to replace the Soviet Union with China as the focus of a more mercantilist U.S. trade policy, despite Trump's campaign rhetoric and the allusions to such a confrontation in the NSS. Rogin reported that they did see China as a security threat but did not believe that the use of mercantilist economic tools based on national security was yet justified.[357] Additionally, the Wall Street Clique, led by Treasury Secretary Mnuchin and Gary Cohn, raised fears that a confrontation with China would adversely impact financial markets and the U.S. economy. Thus, the "Axis of Adults" and the "Wall Street Clique" in the Trump administration did not see "economic security is national security" as a basis for confronting China on trade.

The anti-China group in the Trump administration had a very different view. Rogin reported that Peter Navarro, Steve Bannon, and Stephen Miller thought that

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[356] Rogin, *Chaos Under Heaven,* 75.

[357] Rogin, *Chaos Under Heaven,* 75.

"economic security" meant keeping industries critical to national security *in* the United States.[358] In particular, they advocated weening the American economy from dependence on Chinese goods. They observed that China's own economic plan, "Made in China 2025" sought a similar self-sufficiency. In fact, Navarro wanted to go further and argued for complete "decoupling" of the U.S. and Chinese economies.[359]

One mercantilist tool available to the Trump administration to protect domestic industries from national security threats was the imposition of import tariffs under Section 232. This will be discussed in detail in the next chapter. For now, it suffices to say that in February 2018, claiming a threat to national security, President Trump used Section 232 to impose tariffs for virtually all steel and aluminum imports into the United States.

Interestingly, only about 6 percent of these imports came from China. The bulk came from Canada, Australia, and the EU. Therefore, the heaviest impact of the tariffs fell upon America's closest partners in not only trade but security. The allies retaliated by threatening tariffs of their own on U.S. exports. Consequently, the Trump administration started a trade war, but not one that was directed against China or Russia, America's key challengers as proclaimed in the NSS, but rather against the very allies the U.S. would need in any great power confrontation. Trump never seemed to grasp how undermining allies might weaken the U.S. against its greater foes.

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[358] Rogin, *Chaos Under Heaven,* 75.

[359] Rogin, *Chaos Under Heaven,* 85.

The national security professionals in the Trump administration constantly repeated to the President that economic and security issues were intertwined for allies and that, therefore, peremptory economic actions like imposing tariffs or withdrawing from trade agreements which harmed their economic interests also harmed their national security. This strained allied relationships with the U.S. which could ultimately undermine U.S. security interests that were dependent on strong relationships. Trump, Navarro and Lighthizer did not seem to accept that just as the U.S. claimed that "economic security is national security," so too did other nations.

But the trade war started against allies soon escalated to include China, the main U.S. challenger, when in March 2018 when the Trump administration announced the results of Lighthizer's Section 301 investigation.[360] That investigation claimed to find substantial Chinese theft of American intellectual property and determined to levy punitive tariffs on $50 billion in Chinese goods.[361] As stated above, this sparked several back-and-forth rounds of additional tariffs. Thus, after starting trade tensions with allies under Section 232, a trade war began under Section 301 against America's biggest source of imported goods and biggest foreign holder of public debt – China. Rogin reported this as a victory of Navarro's and Lighthizer's anti-Chinese group over Mnuchin's and

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[360] Rogin, *Chaos Under Heaven,* 135.

[361] U.S. Trade Representative, "Findings of the Investigation into China's Acts, Policies, and Practices Related to the Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974," March 22, 2018.

Cohn's Wall Street Clique.[362] It also represented a repudiation of the Axis of Adults and the traditional view of economic and national security they advocated.

As noted above, it was the imposition of Section 232 tariffs that was the first shot fired in President Trump's trade war. Because of Section 232's explicit reference to national security, the next chapter will explore the Trump administration's use of that law in more depth.

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[362] Rogin, *Chaos Under Heaven,* 136.

IV. NATIONAL SECURITY AND IMPORTS

A. Background

Among several weapons taken up in the trade war, the Trump administration invoked "Section 232" authorities which empowered a President to take whatever trade action was thought necessary against imports that presented a "threat to impair the national security." The first part of this chapter will explore this Section 232 authority and how President Trump used it. The second part will share some early estimates of the economic impacts of Trump administration tariffs, including those imposed under Section 232. Because several U.S. trading partners brought trade complaints to the World Trade Organization about the Trump administration's use of Section 232, the third part of this chapter will explore the meaning of "essential security interests" in Article XXI of the General Agreement on Tariffs and Trade. The chapter's final part will compare and comment on both Section 232 and Article XXI.

"Section 232" is a title given to specific authority delegated to the President to "adjust" imports that "threaten to impair the national security."[363] A detailed review of the statute can be found in Appendix A.

[363] It is so named because it comes Section 232 of the 1962 Trade Expansion Act. It is codified at 19 U.S.C. § 1862 (2021).

To begin, Section 232 does not define "national security." The fact that the term is left undefined gives a President latitude in assigning it the definition he or she thinks appropriate at the time. A President may take a different interpretation than earlier executives. Further, Section 232 authorities may be invoked when imports occur "in the quantities" or "under such circumstances" sufficient to threaten to impair national security. The statute does not set a threshold "quantity" of imports necessary to invoke the statute. Nor does it specify the particular "circumstances" necessary for its invocation. The statute tasks the Secretary of Commerce with doing an investigation but does not require "findings." Nor is the Secretary required to find that national security has *actually* been impaired – only that there is a *threat* of such impairment.

More information on how past presidential administrations have used Section 232 appears in Appendix A. The most notable of the prior Section 232 investigations for purposes of this study is the 2001 investigation of steel imports undertaken during President George W. Bush's administration. It is worthy of discussion because the Bush administration expanded the narrower definition of "national security" used by all previous administrations to include "the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements, that are critical to the minimum operations of the economy and government" – what was termed "critical industries."[364]

[364] U.S. Department of Commerce, "The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security," October 2001, 5 (hereafter 2001 Steel Report).

The G.W. Bush administration's broader definition blurs distinctions between broad economic welfare and national security much as NSC 162/2 did. However, this broader definition had never been used before in Section 232 cases. Now firms seeking protection from imports under Section 232 simply needed to make a colorable argument that they were in a "critical industry" to gain trade protection. Consequently, the Bush administration's expansion of the notion of "national security" in 2001 set the stage for the Trump administration to unleash Section 232 with an even broader practical effect.

One reason prior presidential administrations had avoided use of a broader definition of national security in Section 232 cases may have been a concern about its impact on foreign trade agreements, like GATT, which included provisions discussing "security." The concern would be that if the U.S. blurred "national security" and "economic welfare" to impose import controls, it would trigger an avalanche of trade complaints from trading partners of GATT violations, not to mention retaliatory measures. In turn, other nations might feel similarly compelled to exercise GATT's "security" exemption to justify their own protections against competing imports. As a result, GATT's carefully negotiated framework could be undermined, ultimately damaging global trade.

These apprehensions were well founded. The Trump administration's use of Section 232 generated exactly these tensions, not just with the America's nascent global rival China, but with steadfast trade and security allies like Canada and the EU.

Whatever the concerns about using a broader definition, in enacting Section 232, Congress was clearly concerned about U.S. employment and general economic welfare.

This is clear from language in the statute about the need to "recognize the close relation of the economic welfare of the nation to our national security" and the admonition that the executive be attentive to the possibility that the "weakening of our internal economy may impair national security."[365]

The Trump administration initiated eight Section 232 investigations.[366] In the first two investigations regarding steel and aluminum, the Secretary of Commerce expressly used the expanded definition embraced by the Bush administration's 2001 Steel Report. This is unsurprising given the Trump administration's *2017 National Security Strategy* stating that "economic security is national security."[367]

Because of time and space limitations, this study will focus only on the investigation into steel imports which was the first of the eight Trump administration Section 232 investigations. This investigation began in April 2017 (three months after President Trump's inauguration in January 2017). Commerce held public hearings and gathered public comments in May 2017. The report was announced in February 2018 and President Trump imposed a global 25% tariff on steel imports on March 8, 2018.[368]

As its standard for making a decision, the 2018 Steel Report embraced the broader definition of national security discussed in the 2001 Steel Report and specifically

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[365] 19 U.S.C. § 1862(d).

[366] Congressional Research Service, "Section 232 Investigations: Oversight and Issues for Congress," August 24, 2020, Report R45249, Appendix B.

[367] NSS, 17-23.

[368] Rogin, *Chaos Under Heaven,* 135. Proclamation 9705, "Adjusting Imports of Steel Into the United States,", 83 Fed. Reg. 11625-11630 (March 8, 2018).

included analysis on the impacts of steel imports on 16 critical industries.[369] The report reiterated the close link between national security and broader economic welfare in both the statute and in how the Trump administration was going to interpret it. Further, the report pointed out that under Section 232 there need be no *actual impairment* of national security, just the *threat*. Finally, the report reiterated that it was in the Secretary's discretion to describe *the quantities* or *under such circumstances* as the imports are made that renders such imports to be a *threat* to impair the national security.

For "circumstances," the report focused on three areas.[370] First, the report indicated that it would consider the impact of foreign competition on the welfare of a particular domestic industry – steel production, in this case. Second, the report stated it would analyze the "serious effects" resulting from the "displacement of domestic products by excessive imports." Finally, the report stated that it would consider "massive global excess capacity" in steel production, even though that criterion does not appear in Section 232. The findings of the report are spelled out in more detail in Appendix B.

The report concluded that the overall impact of these pressures on the U.S. steel industry would cause a "serious weakening of our internal economy" which would "place the United States in a position where it was *unable to be certain* it could meet demands for national defense and critical industries in a national emergency (emphasis added)."[371]

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[369] U.S. Department of Commerce, "The Effect of Imports on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, As Amended," (January 11, 2018), 13-14. (Hereafter 2018 Steel Report).

[370] 2018 Steel Report, 15-16.

[371] 2018 Steel Report, 43-44.

The report concluded that this would put the U.S. at risk of being dependent on foreign sources to meet these needs which "*may impair* national security (emphasis added)."[372]

As noted, the final criterion considered in the report was "global excess steel capacity." The report noted that there was a 700 million metric ton excess of global capacity over demand.[373] China's overcapacity was 300 million metric tons, more than the entire U.S. steel production capacity.[374] Despite this, the report noted that many countries were still planning to add to their capacity.[375] The report found that this put a persistent downward pressure on global prices which would continue to damage U.S. steel producers.

Based on these findings, the report concluded that steel imports threatened to impair the national security and recommended that the President impose a trade action. Specifically, the report recommended quotas or tariffs to reduce imports sufficient to enable U.S. steel producers to use 80 percent of their capacity.[376] The authors utilized the "Global Trade Analysis Project (GTAP) Model" to indicate that, based on 2017 trade levels, it would take a 63 percent global quota or 24 percent global tariff to reduce imports by the 13.3 million metric tons needed to allow U.S. producers to reach

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[372] 2018 Steel Report, 45.

[373] 2018 Steel Report, 51.

[374] 2018 Steel Report, 52.

[375] 2018 Steel Report, 53.

[376] 2018 Steel Report, 58.

utilization of 80 percent of their production capacity.[377] Alternatively, the report recommended tariffs on a select subset of countries and fixing all other countries at their 2017 import levels.[378]

Appendix B contains a detailed analysis of the 2018 Steel Report and concludes that it lacks key elements which one might have expected in a more objective economic analysis. If not an objective economic inquiry, what was the objective of the 2018 Steel Report? By including provisions to delay implementation of trade action while the executive negotiates with the offending trade partner, the statute clearly envisioned that Section 232 investigations would be used as a bargaining chip in trade negotiations.[379] The Trump administration made exactly this use of the 2018 Steel Report.[380] After imposing the Section 232 tariffs, the U.S. struck new trade agreements with Canada and Mexico (the USMCA replaced NAFTA). It also revised the bilateral trade relationship with South Korea (a replacement for KORUS). Additionally, the administration struck "phase one" agreements with China and Japan. Of course, this begged the larger question -- at what cost?

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[377] 2018 Steel Report, 59. The report notes that the GTAP Model is a "static multiregional, multisector, computable general equilibrium model" produced by Purdue University. 2018 Steel Report, 8, fn9. It assumes perfect competition, constant returns to scale, and market clearing.

[378] 2018 Steel Report, 60.

[379] 19 U.S.C. § 1862(c).

[380] The various negotiations are discussed in Congressional Research Service, "Section 232 Investigations: Overview and Issues for Congress," 8-12.

B. The Economic Impacts of Punitive Tariffs

This part of the chapter will sample some of the economic assessments of the impact of the Trump administration's trade tariffs on the U.S. economy. Time and space limitations did not permit a complete literature review. Instead, the author selected representative reports sponsored by non-partisan entities, such as the Congressional Budget Office (CBO) and the Board of Governors of the Federal Reserve System (FRB). The selected reports study the impacts of the Trump administration's punitive tariffs as a whole and do not differentiate between the various tariff authorities, Sections 201, 301 and 232.

It should first be noted that in terms of raw data, overall imports dropped 1.6 percent from 2018 to 2019, and another 6.4 percent from 2019 to 2020.[381] The overall trade deficit dropped 2 percent from $872 billion in 2018 to $854 billion in 2019, but then rose again by 5.9 percent to $905 billion in 2020.[382] The following reports will help interpret those data.

The first report is from the Congressional Budget Office (CBO). In its *Budget Outlook for 2020-2030,* prepared in January of 2020, the CBO estimated that the then-present tariff barriers would lower the U.S. gross domestic product by 0.5 percent in 2020 and raise consumer prices by 0.5 percent.[383] The CBO estimated that the cost per

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[381] Office of Technical Evaluation, "Total U.S. Trade in the World," 2020, U.S. Department of Commerce, 1.

[382] Office of Technical Evaluation, "Total U.S. Trade in the World," 2020, U.S. Department of Commerce.

[383] Congressional Budget Office, *The Budget and Economic Outlook: 2020 to 2030* (Washington, D.C.: Congressional Budget Office, January 2020), 33.

household of the tariffs was $1237.[384] The CBO also observed that tariffs applied in 2018 had reduced business investment in 2019 because of the uncertainty created by shifting trade policies.[385] The CBO was concerned that the ongoing uncertainty would continue to cause delays or cancellations in business investment in the U.S.[386] Notably, the CBO assessments did not account for additional tariffs imposed during 2020.[387]

Next are two reports sponsored by the FRB.[388] The first empirically linked Trump administrations punitive import tariffs to reductions in the rate of growth for American exports because of the increased reliance of U.S. businesses on global supply chains.[389] This "tariff spillover" arose, the report opined, because the import products

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https://www.cbo.gov/system/files/2020-01/56020-CBO-Outlook.pdf. The CBO's most recent update of this product from September 2020 did not alter these assessments. *See* Congressional Budget Office, *Update to the Budget and Economic Outlook: 2020 to 2030* (Washington, D.C.: Congressional Budget Office, September 2020).

[384] CBO, *Outlook*, 33.

[385] CBO, *Outlook*, 29. There is interesting literature on measuring the effects of uncertainty in the U.S. and world economy for which time and space do not permit further discussion. See Dario Caldara, Matteo Iacoviello, Patrick Molligo, Andrea Prestipino, and Andrea Raffo, "The Economic Effects of Trade Policy Uncertainty," *International Finance Discussion Papers*, No. 1256 (Washington, D.C.: Board of Governors of the Federal Reserve System, September 2019); Scott Baker, Nicholas Bloom, and Steven Davis, "Measuring Economic Policy Uncertainty," *The Quarterly Journal of Economics* 131, no. 4 (November 2016): 1593-1636.

[386] CBO, *Outlook*, 33.

[387] *See* CBO, *Update to the Budget and Economic Outlook: 2020 to 2030,* 27, fn5.

[388] As each report notes, the conclusions reached are those of the authors and do not represent the opinions of the Board of Governors of the Federal Reserve System.

[389] Kyle Handley, Fariha Kamal, and Ryan Monarch, "Rising Import Tariffs, Falling Export Growth: When Modern Supply Chains Meet Old-Style Protectionism," *International Finance Discussion Papers*, No. 1270 (Washington, D.C.: Board of Governors of the Federal Reserve System, 2020), 1. The study was the first time that confidential firm-level transactional data had been linked to other public data so that it was possible to identify firms and products exposed to tariffs who were also exporters, and then measure the impacts. Ibid., 4-5. Presumably, a similar method could be used to tease out the impacts of each specific tariff good and authority.

subject to tariffs were disproportionately "intermediate goods" that American manufacturers used to make other products for export.[390] The authors estimated that at it broadest some 84 percent of exports were made by a firm that imported at least one good that was subject to tariffs.[391] The study found that the tariffs dampened growth of U.S. exports by 2 percent.[392] This amounted to a 2 percent *ad valorem* tax on each good *exported* from the U.S. That does not count the reduction of U.S. exports caused by the *retaliatory* tariffs imposed on U.S. goods by trading partners. The report estimated that a further loss of $165 billion may have occurred because some manufacturers shifted their supply chains to avoid the U.S. tariffs. None of this captures the adverse economic impact of uncertainty, the report noted, which might compel businesses to defer or cancel their future investments.

The report identified those firms that imported products subject to the tariffs.[393] It estimated that this amounted to 33 percent of all importers and that those importers employed 32 percent of all non-farm, private workers in the U.S. economy. The authors also identified those exporters likely to be subject to retaliatory tariffs and concluded that they made up 19 percent of all exporters and employed 23 percent of private, non-farm workers. They noted that these exporters and importers tended to be larger entities[394]

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[390] Notably, the Section 232 tariffs on steel were entirely applied to intermediate goods. 2018 Steel Report, 21-22.

[391] Handley, 10. The authors also estimated a "narrow" end of the range as 33 percent and a middle of 43 percent.

[392] Handley, "Rising Import Tariffs," 2.

[393] Handley, "Rising Import Tariffs," 3.

[394] Handley, "Rising Import Tariffs," 8.

who typically paid higher wages than firms not participating in international trade.[395] Consequently, it appeared to the report's authors that the punitive tariffs adversely impacted a substantial portion of the U.S. economy, including some of its biggest and highest-paying employers.

One of the report's main observations was that simple mercantilist ideas about balance of trade were no longer applicable to a world economy dependent on globally interconnected supply chains.[396] One could no longer hope to balance the international trade ledger by simply applying tariffs to lower imports. Because of interconnectedness, tariffs adversely impacted one's own exporters both directly and because of retaliation. In the modern global economy, policies that lowered imports in turn lowered exports, leaving unaltered any existing trade imbalances. Thus, it appears that the reality of globalized trade demolished the traditional mercantilist rationale for controlling imports.

Another report assessed the impact of tariffs on U.S. manufacturing employment and output from their imposition in 2018 to August 2019.[397] This report found that while tariffs reduced imports and increased employment among certain manufacturers, this increase was more than offset by losses in employment of U.S. downstream manufacturers who used the tariff-affected imports as intermediate goods, and whose

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395 Handley, "Rising Import Tariffs," 3.

396 Handley, "Rising Import Tariffs," 4-5.

397 Aaron Flaaen and Justin Pierce, "Disentangling the Effects of 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector," Finance and Economics Discussion Series 2019-086 (Washington, D.C.: Board of Governors of the Federal Reserve System, 2019).

prices were now increased by the amount of the tariff.[398] In addition, the report found that there were greater offsetting employment losses in U.S. manufacturers for export where those exports were subject to retaliation for the U.S. tariffs.[399] The report found no statistically significant increases in U.S. manufacturing output. Thus, at least in the short-term, the tariffs appeared to have caused measurable losses in U.S. employment with no measurable increases to U.S. manufacturing output.

If one directly tied the broader economic welfare of the United States to national security, as the Trump administration did, then these reports seem to indicate that the administration's punitive tariffs may have *actually impaired* the national security of the United States by weakening the U.S. economy, at least in the short term. Importantly, the above reports weighed the condition of the U.S. economy before the onset of the COVID-19 pandemic. Was the American economy in a weaker condition because of the trade war as the COVID-19 pandemic hit? The evidence suggested so.

Turning to the global economy, in their *World Economic Outlook* for 2019 the International Monetary Fund (IMF) assessed the impacts of trade tensions.[400] The IMF noted that the increased uncertainty in confidence caused lower global economic growth.[401] The IMF assessed that 2019 global economic activity would be 0.8% below

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[398] Flaaen, "Disentangling the Effects of 2018-2019 Tariffs," 3, 15, 17-20.

[399] Flaaen, "Disentangling the Effects of 2018-2019 Tariffs," 3, 17-20.

[400] International Monetary Fund, *World Economic Outlook: Global Manufacturing Downturn, Rising Trade Barriers* (Washington, D.C.: International Monetary Fund, October 2019) (hereafter *WEO 2019*).

[401] *WEO 2019*, xvii.

baseline because of international trade tensions.[402] The report did acknowledge that these effects might diminish over time as economic resources were reallocated to minimize them.[403] However, the IMF indicated that impacts in the mid-term could continue to exact a toll on productivity growth, disrupt supply chains, and cause a "*buildup in financial vulnerabilities* [that] *could amplify the next downturn* (emphasis added)."[404] This last observation served to be prescient with the onset of the COVID-19 pandemic which dominated the IMF's *World Economic Outlook* for 2020.[405]

C. "Security" in the Global Agreement on Tariffs and Trade

This part of the chapter shifts attention to the Global Agreement on Tariffs and Trade of 1947 (GATT). In reaction to the imposition of Section 232 tariffs, nine of America's trading partners initiated complaints through the World Trade Organization's dispute resolution system claiming that the unilateral U.S. tariffs violated America's free trade obligations under GATT.[406] As of this writing, seven of the nine cases remain pending before a single WTO dispute resolution panel.[407]

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[402] *WEO 2019,* 33.

[403] *WEO 2019*, 32.

[404] *WEO 2019*, xvii.

[405] International Monetary Fund, *World Economic Outlook: A Long and Difficult Ascent* (Washington, D.C.: International Monetary Fund, October 2020)(hereafter *WEO 2020*).

[406] Complaining parties were China, India, European Union, Canada, Mexico, Norway, Russia, Switzerland and Turkey. The list of cases can be found on "Dispute Settlement: The Disputes," (web page), July 5, 2021, World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm.

[407] Canada and Mexico withdrew their cases after completion of the United States, Mexico, Canada trade agreement.

The U.S. position before the panel was that its actions were permissible under Article XXI of GATT which allows member states to take "any action which it considers necessary for the protection of its essential security interests … taken in time of war or other emergency in international relations."[408] The U.S. further claimed that decisions under Article XXI were solely the province of the member state and not subject to review under GATT.

In a nutshell, the U.S. argued that the Article XXI language, "which it considers necessary" meant that a member state had complete discretion to decide if measures were necessary to its essential security and that, therefore, such decisions were outside the jurisdiction of the WTO dispute resolution system. The U.S. argued that security decisions were inherently political and left up to member states to address as they thought appropriate. The U.S. noted that there was no definition of "essential security interests" in GATT. The U.S. also asserted that there were no other qualifications or limitations in the language of Article XXI, or elsewhere in GATT, regarding the application of this provision.

Until recently, Article XXI had not been the subject of WTO litigation. However, in April 2019 a separate WTO dispute panel issued a report that will likely serve as a powerful precedent foretelling the outcome of the Section 232 cases before the WTO.[409]

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[408] *See* "First Written Submissions of the United States of America, United States – Certain Measures on Steel and Aluminum Products (DS556)," June 12, 2019, U.S. Trade Representative, https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1.%28DS556%29.fin.%28public%29.pdf.

[409] World Trade Organization, "Russia—Measures Concerning Traffic in Transit: Report of the Panel," (5 April 2019) WT/DS512/R, (hereafter WTO Russia Panel Decision), https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/512R.pdf&Open=True. The

The case involved a complaint brought by Ukraine regarding trade restrictions imposed by Russia during the tensions between the two states. Russia made the same claim that the U.S. has made in its cases, namely that a member state's decisions under Article XXI were not subject to review.[410] The panel flatly rejected this argument. A fuller analysis of the panel's decision is in Appendix C.

What are the implications of this panel's decision on the pending Section 232 cases? First, the panel's rejection of the U.S. position that these matters are outside the jurisdiction of the WTO dispute resolution system was based on a detailed reading of Article XXI. The panel's decision also made extensive reference to the negotiating history behind Article XXI from 1946 to 1948 noting that the provision was originally proposed by the U.S. delegation helping craft post-war trade arrangements. The panel noted that the U.S. negotiators crafted the language narrowly to prevent a state from unilaterally invoking "security" as a pretext for protectionist measures that that could undermine the entire multilateral arrangement. The present panel hearing the Section 232 cases will be unlikely to reject this reasoning.

Second, will the present panel find that there was a "crisis in international relations" as required by the language of Article XXI(b)(iii)? Or will it conclude that the

report was accepted by the Dispute Settlement Body and became a binding decision on April 29, 2019. World Trade Organization, "Russia—Measures Concerning Traffic in Transit: Panel Report – Action of the Dispute Settlement Body," (29 April 2019) WT/DS512/7, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/512-7.pdf&Open=True.

[410] Ironically, despite opposing Russia's aggression regarding Ukraine, the U.S. entered the case as a third-party supporting Russia's position on Article XXI because the U.S. sought to apply the same jurisdictional argument in its Section 232 cases. *See* Annex D-10, to the WTO Russia Panel Decision.

Trump administration's actions were taken during a political or economic dispute which had no objective impact on "military or defense interests or law and public order interests?" Here the 2018 Steel Report's finding that the U.S. needed only 3 percent of domestic steel production to satisfy defense requirements will likely undermine the U.S. position on Article XXI. Recall that instead, the 2018 Steel Report relied on the broader importance of a healthy steel industry to the U.S. economy considering the global excess production capacity. The 2018 Steel Report's findings made it appear that the U.S. was addressing a broader commercial interest, not an "essential security interest." This appears to be exactly the pretextual use of Article XXI that the U.S. delegation was concerned about in 1946-48. This is a conclusion the panel hearing the Section 232 cases will likely share.

Even if there were a "crisis in international relations" as construed under Article XXI(b)(iii), would the Trump administration's basis for Section 232 tariffs articulate an "essential security interest," meaning a "quintessential governmental interest" like protecting domestic borders or populations from a foreign enemy or protecting law and order? There is no articulation of such an existential threat to the United States in the 2018 Steel Report. The argument made there was one of general economic welfare. Again, the Section 232 panel seems likely to find against the U.S. on this ground.

D. Conclusions on Section 232

Despite seeming to be similar terms, the discussion above makes clear that "national security" in Section 232 and "essential security interests" in Article XXI have different meanings based on their divergent histories. The older of the two provisions, Article XXI of GATT, was drafted by U.S. negotiators intent on avoiding the perceived failures in the global trading system that were thought to have contributed to the outbreak of World War II.

Broadly speaking, these U.S. negotiators were internationalists who had also helped construct the United Nations, World Bank, and International Monetary Fund to build a multilateral framework for peace and security out of the ruins of war. When contemplating "security," these drafters had in mind the direct existential threats faced by the U.S. and other nations during that great crisis. By adopting Article XXI, GATT built in flexibility for member states to depart from their obligations so that they could protect themselves in the face of those very immediate and direct threats. However, Article XXI was not intended to allow countries to escape their obligations under the pretext of security interests and thus undermine the carefully negotiated multilateral arrangements in GATT.

In contrast, Section 232 was the product of the U.S. Congress, a body unsurprisingly protective of domestic interests, and which had by 1950 effectively rejected membership in the International Trade Organization.[411] Section 232 was originally part of a 1955 law, born after the Korean War and other crises, and recognized that the U.S. was engaged in a longer-term political, economic, and military contest against communism. Congress went to lengths to indicate in Section 232 that the general

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[411] The Truman Administration gauged that political support had collapsed for the ITO and withdrew it from consideration, seeking renewal of the Reciprocal Trade Agreements Act instead. Irwin, *Clashing over Commerce,* 503-506.

economic welfare of the U.S. was no small part of the internal calculations about "national security." As might be expected, Congress showed little deference in Section 232 to multilateral trade obligations that had been the focus of U.S. negotiators crafting GATT.

Despite Section 232's having been on the books since 1955, prior to President G.W. Bush no presidential administration had ever applied its broadest possible definition of national security to include general economic welfare. When prior Presidents felt compelled to apply protective measures, they turned to other authorities. For example, President Nixon turned to the Trading With the Enemy Act and not Section 232 to impose a ten percent "supplemental duty" on all imports.[412] President Reagan applied voluntary restraints to limit automobile and steel imports from Japan. President G.W. Bush was the first to depart from nearly five decades of self-restraint.

This chapter examined Section 232 and its use to control imports which "threatened to impair the national security." The Trump administration used a broad definition of "national security" to justify tariffs on steel and aluminum imports under this statute. As of this writing, the bulk of these tariffs remain in place. Interestingly, Congress used similar language about "threats to impair the national security" in their construction of the law governing the Committee on Foreign Investment in the United States (CFIUS) which reviews foreign direct investment. The next chapter will explore

[412] "The International Emergency Economic Powers Act: Origins, Evolution, and Use," July 14, 2020, Congressional Research Service, R45618, 6.

whether the Trump administration has used its authority to regulate foreign direct investment as broadly as it used its authority to control imports.

V. CONTROL OF FOREIGN DIRECT INVESTMENT

A. Background

The previous chapter analyzed how the Trump administration applied its conception of "economic security is national security" protect the U.S. steel industry through import tariffs. This chapter will explore the administration's approach foreign investments in the U.S. that might trigger national security concerns. The entity that reviews those transactions is the Committee on Foreign Investment in the United States (CFIUS).

CFIUS consists of nine cabinet-level officials, chaired by the Secretary of the Treasury, who are charged with reviewing on a case-by-case basis certain foreign investments in the U.S. to assess their impact on national security.[413] CFIUS can then recommend to the President that an investment be blocked or altered. CFIUS was originally created by President Ford via an executive order out of concerns that members of the Organization of Petroleum Exporting Countries were using petrodollars to buy U.S. strategic assets, namely ports.[414] Congress eventually passed legislation authorizing CFIUS.

Prior to the arrival of Trump administration, certain legislators began expressing concerns about increasingly active Chinese investments across the U.S. economy,

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413 "The Committee on Foreign Investment in the United States (CFIUS)," February 26, 2020, Congressional Research Service, RL33388, 1. Hereafter "CRS CFIUS Report."

414 CRS CFIUS Report, 4. See also Thomas P. Feddo, "Keynote Remarks by Assistant Secretary Feddo at the American Conference Institute's Sixth National Conference on CFIUS," (speech), July 15, 2020, U.S. Department of the Treasury, https://home.treasury.gov/news/pressreleases/sm1067.

including in areas considered cutting edge and potentially impactful on national security.[415] In March 2017, the *New York Times* published leaked information about a Pentagon report indicating that China was participating in between 10 percent and 16 percent of all Silicon Valley venture deals, all with little or no national security review.[416] This fed critics who thought CFIUS was without sufficient staff or guiding rules to respond. The Trump administration had identified a desire to strengthen CFIUS in the *National Security Strategy*[417] and supported these Congressional reform efforts. In 2018, Congress passed the "Foreign Investment Risk Review Modernization Act" (FIRRMA) substantially enhancing the Committee's mandate.[418]

From a macroeconomic perspective, CFIUS represented a compromise between a desire to foster an environment in the U.S. that was welcoming of foreign investment while still preventing foreign access to, or control of, critical U.S. assets.[419] This was a classic balancing of liberal free trade desires against a mercantilist intention to keep U.S. technologies impacting national security out of the hands of rivals. According to an

[415] Rogin, 131-134.

[416] Paul Mozur and Jane Perlez, "China Bets on Sensitive U.S. Start-Ups, Worrying the Pentagon," *New York Times*, March 22, 2017, https://www.nytimes.com/2017/03/22/technology/china-defense-start-ups.html. The article cites a report ultimately published by the U.S. Defense Department in January 2018. Michael Brown and Pavneet Singh, "China's Technology Transfer Strategy: How Chinese Investments in Emerging Technology Enable A Strategic Competitor to Access the Crown Jewels of U.S. Innovation," (report) Defense Innovation Unit Experimental, January 2018, 2-3; Rogin, *Chaos Under Heaven,* 226.

[417] NSS, 22.

[418] Foreign Investment Risk Review Modernization Act of 2018, Pub. L. No. 115-232, 132 Stat. 2174. Codified at 50 U.S.C. § 4565 (2021).

[419] Feddo, "Keynote Remarks."

Organization of Economic Cooperation and Development report, in 2020 the U.S. remained one of the world's largest recipients of foreign investment.[420]

Traditional economic theory posited that the huge U.S. trade deficits took billions of dollars out of the country, while foreign investment provided an essential return flow.[421] As stated by Theodore Moran of the Brookings Institution, it is generally thought that foreign multinational corporations

> pay higher wages, offer greater benefits, exhibit higher productivity, provide more value-added to U.S. domestic inputs, import via superior access to external supply chains, export more goods and services, and engage in greater research and development than purely U.S. domestic firms.[422]

Also important from a liberal international trade perspective, the U.S. wanted to maintain a welcoming environment for foreign investment to support its arguments that U.S. investors should be welcomed in foreign countries. The U.S. remains one of the world's largest foreign investors.[423]

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420 The U.S. was the leading recipient of FDI in 2019 and was second behind China in 2020. Organization for Economic Cooperation and Development, "FDI in Figures," April 2021, 3, https://www.oecd.org/investment/FDI-in-Figures-April-2021.pdf.

421 See generally Dennis R. Appleyard and Alfred J. Field, Jr., *International Economics* (New York: McGraw-Hill, 2017), 459-465. The substantial foreign purchases of the growing U.S. public debt represented another important reverse flow of dollars from overseas.

422 Theodore H. Moran, "Proposed Changes to Foreign Investment Committee are Damaging to the US," (blog) November 22, 2017, Brookings Institution, https://www.brookings.edu/blog/future-development/2017/11/22/proposed-changes-to-foreign-investment-committee-are-damaging-to-the-us/. However, a report by scholars associated with the Federal Reserve Board indicated that the gains from foreign investment are not unequivocal. Silvio Contessi and Ariel Weinberger, "Foreign Direct Investment, Productivity, and Country Growth: An Overview," *Federal Reserve Bank of St. Louis Review* 91, no. 2 (March/April 2009): 61-78.

423 The U.S. was third behind Japan and China in 2019 and was second behind Luxembourg in 2020. Organization for Economic Cooperation and Development, "FDI in Figures," April 2021, 4, https://www.oecd.org/investment/FDI-in-Figures-April-2021.pdf. Because there exists no international multilateral agreement controlling foreign direct investment, countries set a variety of standards on their governance of such investments. Contessi, "Foreign Direct Investment," 64.

From a microeconomic point of view, CFIUS review represented a potential direct governmental invention in a particular firm's growth plans and, to some, a governmental meddling in America's very lucrative international finance industry. Rogin reported that President Trump's Treasury Secretary Mnuchin, leader of the Wall Street clique on the White House staff, involved himself in the Congressional negotiations on updates to the CFIUS statute so that he could minimize impacts on the U.S. financial industry.[424] Rogin also reported that these efforts were part of the competition for influence within the administration between Mnuchin who controlled CFIUS, Ross whose Commerce Department took action under Section 232, and Lighthizer who directed sanctions under Sections 201 and 301.[425] As will been seen in pages to follow, Mnuchin's influence over the CFIUS process led to a much more restrained use of national security to control of foreign direct investment than occurred with imports under Section 232.

[424] Rogin, *Chaos Under Heaven,* 131-134, 137.

[425] Rogin, *Chaos Under Heaven,* 134-135.

B. The CFIUS Statute

Turning to key aspects of the CFIUS statute, just as with Section 232, "national security" is not defined though it expressly includes "homeland security," a term which is also undefined.[426] Also, like Section 232, CFIUS is authorized to review and block a transaction when "the transaction *threatens to impair the national security of the United States*" because of the foreign control or influence over the domestic entity.[427] Note that this language precisely tracks the language in Section 232.[428]

To make the "threat" determination, the President is to weigh a non-exclusive list of multiple factors similar to those in Section 232.[429] However, the new CFUIS statute expanded the factors beyond Section 232 by adding a reference to specific targets of attention including those countries who pose "a potential regional military threat to the interests of the United States," in addition to those who may support terrorism or the proliferation of weapons of mass destruction.[430] Another new factor for the President to consider was what the impact a transaction may have "on the United States international technical leadership in areas affecting United States national security."[431] Finally, the President's attention is newly directed to the need to protect the "criticals" – "critical

[426] 50 U.S.C. § 4565(a)(1) (2021).

[427] 50 U.S.C. § 4565(b)(2)(B)(i)(I), (d)(1) (2021) (emphasis added).

[428] Both statutes use the phrase "threaten to impair the national security." Compare 50 U.S.C. § 4565(b)(2)(B)(i)(I), (d)(1) (2021) with 19 U.S.C. § 1862(a) (2021).

[429] Compare 50 U.S.C. § 4565(f) (2021) with 19 U.S.C. § 1862(d) (2021).

[430] 50 U.S.C. § 4565(f)(4) (2021).

[431] 50 U.S.C. § 4565(f)(5) (2021).

infrastructure," "critical technologies," as well as "critical resources and materials."[432] This last element included "sources of energy."[433]

The previous CFUIS statute had required that the President "find" that other available laws were inadequate to protect national security, and that there existed "credible evidence" that the foreign interest threatened to impair national security – FIRRMA continued that requirement.[434] This was a somewhat higher burden on the President than under Section 232 which required no "evidence" or "findings" of any kind.

FIRRMA also expanded the kinds of transactions CFIUS had authority to review. Added were real estate transactions that were near government or military installations; nonpassive investments in critical industries or critical technologies; transactions changing a foreign investor's rights to control a U.S. business; transactions in which a foreign government had a substantial direct or indirect interest; transactions trying to evade CFIUS regulations; and transactions that could result in the compromise of personally identifying information of U.S. citizens.[435]

It should be noted that there is but a single U.S. court case on CFIUS. The court held that parties to transactions to have a procedural due process right to notice, access to the unclassified evidence used to evaluate the transaction, and the opportunity to rebut

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[432] 50 U.S.C. § 4565(f)(6), (7), and (10) (2021). The statute defines "critical infrastructure" at 50 U.S.C. §4565(a)(5) (2021) and "critical technologies" at 50 U.S.C. § 4565(a)(6) (2021).

[433] 50 U.S.C. § 4565(f)(10) (2021).

[434] 50 U.S.C. § 4565(d)(4) (2021).

[435] 50 U.S.C. § 4565(a)(4) (2021).

that evidence.[436] The courts could not, however, second guess the President's determinations about national security.

C. CFIUS's Impact

In their 2019 report to Congress, the Committee reported that it had reviewed 1,574 transactions since 2010.[437] The number of transactions CFIUS reviewed increased from 172 in 2016 to 237 in 2017 and stayed above 200 through 2018 and 2019. Out of all these cases, there was presidential action on just five, only two of those arose during the Trump administration.[438] From 2010 to 2019, parties withdrew 240 transactions from consideration.[439] In 2019, the committee required steps mitigating national security concerns in 28 of 231 transactions reviewed (noting that 30 transactions that were withdrawn in 2019).[440]

The 2019 CFIUS Report to Congress also indicated that in the three-year period, 2017-2019, it reviewed 697 transactions from 48 countries.[441] The highest percentage of

[436] Ralls Corporation v. CFIUS, 758 F.3d 296 (D.C. Cir. 2014).

[437] Committee on Foreign Investment in the United States, "Annual Report to Congress," Calendar Year 2019, https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2019.pdf. Hereafter "CFUIS Report to Congress 2019."

[438] CRS CFIUS Report, 21.

[439] Conceivable reasons for withdrawal could be adverse effects of delay or the anticipated costs of potential mitigation requirements.

[440] CFUIS Report to Congress 2019, 25.

[441] CFUIS Report to Congress 2019, 21-22.

transactions reviewed involved Chinese investors (140 transactions, or 20 percent). Notably, that number dropped significantly from 60 in 2017 to 25 in 2019.

A study by Chinese authors, and funded by Chinese foundations, concluded that the number of Chinese mergers and acquisitions of U.S. entities had declined because of unfair CFIUS discrimination against Chinese companies, and that this would deter future Chinese investment.[442] The *Financial Times,* citing a consultancy, reported that Chinese venture capital investments in the United States had dropped by nearly half in 2019 from 2018, to $2.5 billion.[443] Another report applying economic modeling implied that there might be a cost to new innovation in the U.S. if foreign venture capital funding for U.S. start-ups was deterred by an inhospitable investment environment.[444] However, the report noted there had been little economic analysis of this issue.[445]

The essential question was whether a strengthened CFIUS would be effective in keeping the "crown jewels" of American technology out of rivals' hands, particularly China's. In December 2020, the *Financial Times* reported that Chinese state-backed

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[442] Sichong Chen, Wenxue Li, and Qi Wang, "Are Chinese Acquirers Discriminated Against in Cross-border Mergers and Acquisitions? An Analysis Based on Covered Transactions Filed with CFIUS," *China & World Economy* 28, no.2 (2020): 55.

[443] Mercedes Ruehl, James Kynge and Kiran Stacey, "Chinese State-Backed Funds Invest in US Tech Despite Washington Curbs," *Financial Times*, December 2, 2020, https://www.ft.com/content/745abeca-561d-484d-acd9-ad1caedf9e9e.

[444] Ufuk Akcigit, Sina T. Ates, Josh Lerner, Richard R. Townsend, and Yulia Zhestkova, "Fencing Off Silicon Valley: Cross Border Venture Capital and Technology Spillovers," September 2020, National Bureau of Economic Research, Working Paper 27828, http://www.nber.org/papers/w27828.

[445] Akcigit, "Fencing Off Silicon Valley," 29.

funds had recently invested in three companies in the U.S. semiconductor industry at least feeding a perception that CFIUS remained ineffective.[446]

One challenge to effectiveness may be the Committee's long reliance on self-reporting. In that sense, it has been a passive monitor. Parties to a transaction covered by the statute are required to submit information to the Committee to initiate a review.[447] Failure to comply risks only the issuance of a "civil penalty."[448] To address these concerns, a CFIUS official recently reported that the CFIUS staff had been expanded to include an enforcement and monitoring group responsible for surveying investments across the economy and following up on tips received from the public.[449] However, given the sheer volume of foreign investments in the U.S., \$194.7 billion in 2019,[450] one can be skeptical whether CFIUS really has the resources to systematically monitor these transactions.[451] As a result, CFUIS reviews will likely remain on a reactive, case-by-case basis, and therefore neither be strategic nor systematic.

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446 Ruehl, "Chinese State-Backed Funds Invest in US Tech despite Washington Curbs," *Financial Times*.

447 50 U.S.C. § 4565(b)(1)(C) (2021); 31 C.F.R. §800.401 (2021).

448 50 U.S.C. § 4565(h)(2) (2021).

449 Feddo, "Keynote Remarks."

450 Bureau of Economic Analysis, "New Foreign Direct Investment in the United States, 2019," July 1, 2020, U.S. Department of Commerce, 1.

451 Having spent nearly a decade in another economic enforcement agency at the U.S. Treasury Department and given the sheer volume of foreign investments in the U.S., the author is skeptical of this section's effectiveness. The Treasury budget and staffing levels bear out this skepticism. Treasury budgeting documents indicate that the Fiscal Year 21 Budget request to support CFIUS was \$44 million and included 120 full-time staff. Committee on Foreign Investment in the United States, "Program Summary by Budget Activity," June 29, 2021, https://home.treasury.gov/system/files/266/10.-CFIUS-FY-2021-BIB.pdf. This reflected a requested additional 39 staff members over fiscal year 2020.

It can be admitted that a strengthened CFIUS probably reduced the ease with which malicious actors plucked what they wanted from the U.S. market. If so, such actors would have been forced to find less convenient means to secure the technology or resources they sought. However, research uncovered no evidence to prove or disprove this point.

It should also be said that if CFIUS was intended to be a mercantilist tool, particularly in a great power contest with China, it is half-hearted and toothless. For instance, FIRMMA did not criminalize CFIUS violations. All that is at risk for a noncomplying foreign investor is a potential civil penalty. Also, as noted above, CFIUS appears to lack a pro-active strategy, or the necessary resources, to aggressively search out those who might be violating the requirements. Instead, the CFIUS process appears only to add to the transaction costs of foreign financiers who are already law-abiding. The added cost, delay, and uncertainty may thus deter even benign investment.

A true mercantilist tool aimed at China would have barred all Chinese investment in U.S. companies. Neither the Trump administration nor the Congress appeared ready to go that far when FIRRMA was enacted in 2018. So, in contrast to President Trump's ready use of tariffs and willingness to trigger a trade war in goods, the Trump administration took no similarly broad action of the battlefield of foreign direct investment. Mnuchin and the liberal free trade interests represented by the Wall Street Clique appeared to have prevailed.

The next chapter will explore yet another trade battlefield -- export control. In addition to continuing conflict within the administration, this was an area that particularly suffered because of President Trump's disdain of allies.

VI. NATIONAL SECURITY AND EXPORTS

A. Background

Gary Cohn, President Trump's first National Economic Council Chair, frequently argued against the more protectionist inclinations of his colleagues and the President, saying that America's economy was based on trade.[452] Woodward and Rogin report heated, insult-laden arguments between Cohn, Peter Navarro, and others, on that subject, sometimes in front of President Trump, sometimes in a weekly, informal gathering to talk about trade policy moderated by Rob Porter, President Trump's staff secretary.[453] As has been seen, disagreements and competition between Mnuchin, Ross and Lighthizer had played out in the impositions of tariffs and in CFIUS reforms. Control over exports was yet another battlefield.

The U.S. does not have a single government authority for export control. Export licensing jurisdiction is divided among four departments: Commerce, State, Energy and Treasury. A fifth, the Department of Defense, plays a major influence but does not issue

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[452] Woodward, *Fear*, 56, 135.

[453] Woodward, *Fear,* 135. Rogin, *Chaos Under Heaven,* 32, 73-7484-85

licenses.[454] Coherent policy and efficient operation in export licensing has depended on cooperation among the several competing agencies which, exporting industries lament, has rarely been the case. Instead, as one Trump administration official described it in a speech in 2020, "U.S. export policy is extraordinarily difficult to study, inasmuch as policymaking and implementation involves a convoluted labyrinth of statutes, regulations, authorities, and stakeholders."[455]

Before a more detailed discussion of how the U.S. administers its export licensing, it is appropriate to briefly describe some of the history behind the process. Contemporary control of exports began in 1940 with attempts to limit shipments of materials to the Japanese Empire.[456] The controls continued into peacetime as the Cold War took shape and they evolved to balance the promotion of trade against protecting technology important to national security. The Cold War objective was to exclude the Soviet Union and the Communist bloc from access to Western goods and technology – a very mercantilist approach directed against a particular target, the Soviet Union and its satellites.[457] The U.S. encouraged other Western nations to follow a similar strategy and

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[454] Each of the five departments mentioned has investigative authority, however only the U.S. Customs and Border Protection (Department of Homeland Security) and the Federal Bureau of Investigation conduct any criminal investigations. The Department of Justice reviews and prosecutes any criminal cases. "The U.S. Export Control System and the Export Control Reform Initiative," Congressional Research Service, Report R41916, January 28, 2020, 7-8.

[455] Christopher A. Ford, "Export Controls and National Security Strategy in the 21st Century," , U.S. Department of State, *Arms Control and International Security Papers* 1, no. 16 (August 19, 2020): 1. If Dr. Ford finds this area challenging as a graduate of Harvard (BA), Oxford (DPhil) and Yale (JD), then the average American citizen or member of Congress may find it impenetrable.

[456] Crystal D. Pryor, "Beyond Economics and Security: Strategic Export Control Practices in Advanced Countries," PhD diss., University of Washington, 2017, ProQuest (10139437), 75.

[457] Ford, "Export Controls and National Security Strategy in the 21st Century," 4. Dr. Ford cites President Reagan's National Security Decision Directive-75 which expressly sought to prevent the transfer of

in doing so established a multilateral group called the "Coordinating Committee for Multilateral Export Controls" (COCOM).

COCOM did not survive the end of the Cold War and by 1996 had been replaced by other loose multilateral arrangements that were similarly based on consensus, not legal obligation.[458] Unlike COCOM, these new arrangements were not directed against any particular bloc but rather intended to address "countries of concern," non-state entities like terrorists, or the proliferation of particular systems like missiles or nuclear, chemical, and biological weapons.

Interestingly, China had been included in the Communist bloc and locked out of trade with the West ever since the Communist victory in 1948 in China's civil war. However, the opening of diplomatic U.S. relations in 1972 in hopes of using China as a counterpoise to the Soviet Union, and the granting of "most favored nation" status in 1980, led to a loosening of U.S. export controls to China through the rest of that decade. Controls tightened again in 1989 in reaction to the Tiananmen Square massacre. However, the granting of "Permanent Normal Trade Relations" status by the U.S. in 2000, and the China's admission to the WTO in 2001, led to a deep entangling of the U.S. and Chinese economies in the ensuing years. By 2016, China sent more goods to

technology and equipment that would "make a substantial contribution directly or indirectly to Soviet military power." "U.S. Relations with the USSR," White House, National Security Decision Directive-75, January 17, 1983, 2, https://fas.org/irp/offdocs/nsdd/nsdd-75.pdf. This and other economic guidance in the directive are clear statements of mercantilist policy.

[458] Ford, "Export Controls and National Security Strategy in the 21st Century," 4.

the U.S than any other nation, totaling $463 billion.[459] That same year, the U.S. exported some $116 billion in goods to China, the third ranking destination behind Canada and Mexico.[460]

Consequently, as President-elect Trump prepared to take office, the U.S. stood in a very different place in terms of great power competition with China than it did in 1950 when President Truman faced the Soviet Union.[461] In 2016, as now, America's main strategic rival was also a key U.S. export market and the main source of U.S. imports. For export control, this reality created very different challenges for trying to preserve national security – a simple fencing off of rival economies, as was accomplished with the Soviet bloc during the Cold War, would seem virtually impossible now.[462]

B. Reforming Export Control

A 2009 National Research Council report highlighted the dramatic changes to the global economy that had taken place since the end of the Cold War, and described how those changes impacted a U.S. export control system built for the great power

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[459] Bureau of Economic Analysis, "U.S. International Trade in Goods and Services: Annual Update," (news release) June 6, 2018, Exhibit 13, 27.

[460] Bureau of Economic Analysis, "U.S. International Trade in Goods and Services: Annual Update," (news release) June 6, 2018, Exhibit 13, 27-28.

[461] Hugo Meijer, *Trading with the Enemy: The Making of US Export Control Policy toward the People's Republic of China* (Oxford: Oxford University Press, 2016), 6.

[462] Meijer notes the assertions in international relations literature studying whether economic interdependence will lead to peace or serve as a source of conflict. Meijer, *Trading with the Enemy,* 23 and fn 59. Rather than opining here, Meijer focuses on the challenge of balancing national security interests when rival economies are intertwined.

competition with the Soviet Union and its satellites.[463] It noted that the Cold War export control focus on maintaining the overwhelming U.S. dominance in technological quality to offset the Soviet bloc's quantitative advantage gave rise to a "Fortress America" perspective that no longer served America's national security interests. In fact, the report found that export controls "undermine our national security and our national economic well-being."[464]

The report noted that, unlike in the post-Cold War era, security threats were no longer focused on a single bloc, but were diffused and included non-state actors.[465] The diffusion of threats contributed to a loss of consensus among nations about what kinds of goods and technology should be controlled, eroding the Cold War-era multilateral export structure.

The report also highlighted that critical defense technologies now originated in the commercial sector rather than in the military. Additionally, instead of the U.S. being in a place of technological dominance, as during the Cold War, the U.S. had now lost that dominance to a variety of competitors in a range of industries, and important defense innovations were now taking place overseas. To compete economically and defensively, the U.S. was now increasingly reliant upon other global producers of technology.

In the face of these realities, the report found that the existing export control system forced the U.S. to turn inward instead of actively engaging abroad. It observed

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[463] National Research Council, *Beyond "Fortress America:" National Security Controls on Science and Technology in a Globalized World* (Washington, D.C.: National Academies Press, 2009), 1-12.
[464] *Beyond "Fortress America,"* 1.

[465] *Beyond "Fortress America,"* 1-2.

that "our export controls retard both the United States and its allies from sharing access to military technology, and handicap American business from competing globally."[466] Thus, the report concluded that controls imposed "in the name of national security" actually weakened national security and economic prosperity, which "is an essential element of national security." The result was a weaker America, defensively and economically, the report declared.

Among the flaws in the existing system, the authors noted, was that it was "list-based." Such lists simply could not keep up with the sprinting pace of innovation.[467] Instead, the report recommended that export controls be "principle-based," and that these principles needed to focus on only those areas of technology where the U.S. had dominance and where keeping them from adversaries was critical to America's security. Others have described this narrower focus as "building a higher fence around fewer items."[468] Further, these controlled areas needed to "sunset," prompting a continuous review to ensure they were still relevant.[469]

Another systemic flaw that the report highlighted was the dispersion of regulatory responsibility through multiple agencies. The report recommended a single entity serve as the "coordinating center" for all export requests.[470] It also recommended a neutral

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[466] *Beyond "Fortress America,"* 2.

[467] *Beyond "Fortress America,"* 4.

[468] Meijer, *Trading with the Enemy,* 8.

[469] *Beyond "Fortress America,"* 7.

[470] *Beyond "Fortress America,"* 7.

appeals panel be housed in the National Security Council (NSC) to adjudicate disputes between agencies about setting export policy, granting or denying export requests, and enforcing "sunset" reviews. The authors expressly rejected the notion of an interagency panel performing this role because historically such panels had proved ineffective. To ensure expeditious resolution, the report urged that such disputes be elevated above the agency level to the White House (note that the NSC reports to the President, not to any agency head).

The report strongly urged these changes to promote a new "run faster" approach.[471] Meijer noted that during the Cold War, policymakers had set export controls balancing national security interests and economic interests, pitting what he called "control hawks" wanting to maintain a military edge versus "pro-traders" focusing on job creation, export profits and economic growth.[472] The new "Run Faster" coalition advocated for the "streamlining" of U.S. export controls, recognizing that there was diminished ability to prevent the diffusion of technology in the modern global economy. This was especially true given the increasing commercialization of defense goods and technology; the ineffectiveness of unilateral controls; and the resulting weakening of the commercial industrial base without exports (an industrial base upon with the Defense Department increasingly relied). For this new "run faster" coalition, instead of a simple trade-off between national security and economic interests, the focus would be a more

[471] *Beyond "Fortress America,"* 7.

[472] Meijer, *Trading with the Enemy,* 18.

nuanced maintenance of "American military preeminence vis-à-vis potential competitors in a post-Cold War strategic, technological, and economic environment."[473]

In 2009, the Obama administration took up the challenge of trying to reform the export control process along the lines suggested in *Beyond Fortress America*.[474] It proposed setting up a single export licensing agency; unifying control lists (then divided between a "Commerce Control List" (CCL) and "U.S. Munitions List" (USML));[475] establishing a single enforcement agency; and moving all export matters to a single integrated information system that would also include a single list of all "denied" or "sanctioned" parties to whom exports were prohibited. Under this initiative, export controls would focus on a "small core set of key items that can pose a serious national security or intelligence threat." Those controls would be coordinated with international allies to increase their effectiveness. Control lists would clearly indicate what was controlled and would be updated regularly. Licensing would be timely. Enforcement would be enhanced.

Unfortunately, President Obama's executive branch initiative was never passed into law. Not being law, President Trump never formerly adopted Obama's reforms

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[473] Meijer, *Trading with the Enemy,* 18.

[474] "The U.S. Export Control System and the Export Control Reform Initiative," Congressional Research Service, R41916, January 28, 2020, 9.

[475] These lists will be discussed more fully below.

when he came into office in 2017. However, individual agency leaders in the Trump administration were reported to have continued some aspects of the Obama initiative.[476]

In 2018, Congress passed the Export Control Reform Act (ECRA) at the same time it passed FIRRMA. In it, Congress adopted some, though not all, of the reforms suggested in *Beyond Fortress America* or undertaken in President Obama's initiative. As an initial matter, Congress had to address the fact that it had allowed the Export Administration Act of 1979 to expire in 2001 without enacting anything to replace it. The Commerce Department's immense and complicated "Export Administration Regulations (EAR),"[477] were based on the lapsed law. But rather than let the administration of exports collapse into anarchy, successive Presidents had extended the operation of the EAR by declaring a national emergency under the International Emergency Economic Powers Act (IEEPA). Despite this "national emergency," Congress did not act for 17 years.

The ECRA echoed the *Beyond Fortress America* report in expressing the need for U.S. industries to retain their international competitiveness by requiring there to be an assessment of the availability of foreign items that would render U.S. controls ineffective.[478] It also required that the procedure establishing any licensing regime address whether it would have a "significant negative impact" on the defense industrial

[476] U.S. Government Accountability Office, "High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas," GAO-19-157SP, March 2019, 190.

[477] 15 C.F.R> Parts 730-774 (2021).

[478] Pub. L. 115-232, Section 1754(a)(6), 50 U.S.C. § 4813(a)(6).

base.[479] A significantly negative impact could result from a prohibition on exports reducing the availability of a U.S. produced item that the Defense Department would potentially purchase in the future; or reducing U.S. production for export based on U.S.-funded research and development; or reducing U.S. employment for continued production for export of items that the Defense Department might buy in the future.[480]

Like *Beyond Fortress America*, the ECRA encouraged the executive to focus national security controls "on those core technologies" whose use might "pose a serious national security threat."[481] The ECRA did not define "national security." Identifying "specific threats to the national security" was also left up to the President.[482]

The ECRA, like *Beyond Fortress America,* called for controls to be administered in a timely, efficient, transparent, and flexible manner.[483] It similarly encouraged the pursuit of support among international allies for export controls whenever possible, disfavoring unilateral measures.[484] In fact, the ECRA suggested that a controlling agency consider dropping any unilateral measures if those measures had not found multilateral support within three years.[485] The ECRA also repeated the calls in *Beyond Fortress*

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[479] Pub. L. 115-232, Section 1756(d)(1), 50 U.S.C. § 4815(d)(1).

[480] Pub .L. 115-232, Section 1754(d)(3), 50 U.S.C. § 4813(d)(3).

[481] Pub. L. 115-232, Section 1752(3), 50 U.S.C. § 4811(3).

[482] Pub. L. 115-232, Section 1755(b)(1)(A), 50 U.S.C. § 4814(b)(1)(A).

[483] Pub. L. 115-232, Section 1752(7), (8), 50 U.S.C. § 4811(7), (8).

[484] Pub. L. 115-232, Section 1752(5), (6), 50 U.S.C. § 4811(5), (6).

[485] Pub. L. 115-232, Section 1758(c), 50 U.S.C. § 4817(c).

America and President Obama's initiative for more interagency cooperation and for increased monitoring and enforcement.[486]

Congress added a new feature in the ECRA when it required the President to identify "emerging and foundational technologies" that "are essential to the national security of the United States" and to take steps to control their export.[487] The act left defining "emerging and foundational technologies" up to the President. Unfortunately, nearly three years after ECRA's passage, neither the Trump administration nor the Biden administration have described a method for defining "emerging or foundational technologies," much less provided any definitive list of such technologies.[488]

This list would also impact review of foreign direct investments because Commerce Department export controls over such technologies triggered the requirement for CFIUS to review transactions involving those same technologies. One analyst pointed out that the delay in creating this list meant that CFIUS had not reviewed some $17 billion of foreign venture capital investment into U.S. start-ups in artificial intelligence, for example, with the main location of these foreign investors being China.[489]

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486 Pub. L. 115-232, Section 1752(9)(10), Section 1755(a), 50 U.S.C. § 4811(9), (10), § 4814(a).

487 Pub. L. 115-232, Section 1758(a), 50 U.S.C. § 4817(a).

488 Emma Rafaelof, "Unfinished Business: Export Control and Foreign Investment Reforms," (issue brief), June 1, 2021, U.S.-China Economic and Security Review Commission.

489 Rafaelof, "Unfinished Business," 6. Rebecca Kagan, Rebecca Gelles, and Zachary Arnold, "From China to San Francisco: The Location of Investors in Top U.S. AI Startups," (CSET Data Brief), Center for Security and Emerging Technology, Georgetown University, February 2021, 3-6.

Critics also pointed out that Commerce's delay in producing the list contributed to uncertainty for U.S. producers who were waiting to see whether their technologies would be included, with uncertainty potentially scaring off both their domestic and foreign investors.[490] This may be one more factor contributing the generally uncertain trade and investment environment which led to the decline of FDI into the U.S. since 2018, including a 37.7 percent drop in 2019.[491]

As of 2019, the U.S. Government Accountability Office (GAO) continued to list export control and its protection of national security technology as a "high-risk area," meaning it was "in need of transformation to address economy, efficiency, or effectiveness challenges."[492] The GAO report indicated that while the Trump administration did not formally take up President Obama's initiative, agency officials continued to implement aspects of it, like consolidating the lists of controlled items. However, the report noted that the ongoing lack of interagency cooperation and coordination remained a major impediment to reform.

Despite the lack of formal Trump administration support, the Congressional Research Service reported that by 2020 some progress had been made.[493] The Obama administration had decided to first focus on producing a single control list though a

490 Rafaelof, "Unfinished Business," 6.

491 Bureau of Economic Analysis, "New Foreign Direct Investment in the United States, 2019," (news release) July 1, 2020, 1.

492 U.S. Government Accountability Office, "High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas," GAO-19-157SP, March 2019, GAO Highlights page, 190.

493 "The U.S. Export Control System and the Export Control Reform Initiative," Congressional Research Service, R41916, January 28, 2020, 13.

merger of the USML and CCL, from which it was thought other reforms would follow.[494] As of 2020, 15 of 20 categories of goods had been shifted from the USML to the CCL. The Obama administration had also set up an "Export Enforcement Coordination Center" to deconflict enforcement actions between the multiple agencies with enforcement authority.[495] By 2020, Commerce, State and Defense had begun to use a single information technology system and it was thought that other licensing entities in Treasury and Energy would soon join.[496] The efforts to create a single export licensing agency, however, went nowhere.

So, despite Congress's attention in 2018, the government's overall structure for export control remains today much the same as it had during the Cold War. As noted earlier, Commerce shares export licensing responsibility with the State Department, Energy Department[497] and Treasury Department.[498] The continued division of licensing jurisdiction between agencies continues stakeholder competition and barriers to

494 "The U.S. Export Control System and the Export Control Reform Initiative," Congressional Research Service, R41916, January 28, 2020, 13.

495 "The U.S. Export Control System and the Export Control Reform Initiative," Congressional Research Service, R41916, January 28, 2020, 20.

496 "The U.S. Export Control System and the Export Control Reform Initiative," Congressional Research Service, R41916, January 28, 2020, 21.

497 The Department of Energy has jurisdiction over any exports having to do with nuclear materials. Nuclear technology exports amounted to $1 billion in 2020. Office of Technical Evaluation, "Statistical Analysis of U.S. Trade with the World," U.S. Department of Commerce, 2020, 4.

498 The Department of Treasury regulates any exports to countries subject to sanctions under the Trading with the Enemy Act (TWEA) (Cuba), or International Emergency Economic Powers Act (IEEPA) (Iran, Syria, Sudan and many others). TWEA and IEEPA will be discussed in more detail in a following chapter.

coordination among government departments, as well as adding cost, delay, and uncertainty for U.S. exporters.

A brief historical digression is in order here to explain the State Department's role in export licensing. In 1976, Congress passed the Arms Export Control Act (AECA) regulating defense items. The ECRA left this unchanged. The authority to license under the AECA fell to the State Department, which promulgated the International Traffic in Arms Regulations (ITAR).[499] The ITAR created a U.S. Munitions List (USML) which enumerated the items subject to its controls. The USML complimented the "Commerce Control List" (CCL) which enumerated the goods subject to export controls under the EAR.[500]

The shift of attention to arms sales in the 1970s, one scholar wrote, was in response to the end of the Vietnam War and the end of the large defense budgets that came with it.[501] The defense industry increasingly looked to foreign sales to make up the difference.[502] As defense budgets shrank, the Department of Defense became increasingly aggressive advocates of foreign arms sales to help them hold down the costs of their own weapons procurements.[503] Additionally, the end of the Cold War eliminated

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[499] 22 C.F.R. Parts 120-130 (2021).

[500] Recall that President Obama thought these lists should be merged and placed under a single export licensing authority.

[501] Paul A.C. Koistinen, *State of War: The Political Economy of American Warfare, 1945-2011* (Lawrence, Kansas: University of Kansas Press, 2012), 106-109.

[502] Between 1980 and 1990, over $700 billion was spent in global arms sales. Koistinen, *State of War,* 181.

[503] Koistinen, *State of War,* 108.

ideological and strategic constraints to such sales and led to a literal explosion of arms sales around the world.[504] By 2020, U.S. arms sales amounted to $175 billion,[505] representing 0.3 percent of all U.S. exports.[506] The U.S. is the world's largest arms exporter.[507]

With the U.S. deindustrialization that began in the 1970s, defense industries were among the few remaining manufacturing sectors that still promised stable, well-paying blue-collar jobs. During the Cold War, U.S. weapons sales were predominantly focused on supporting national security.[508] Thereafter, however, defense spending, including arms sales, increasingly focused on providing economic stimulus to otherwise shrinking manufacturing communities.[509] Consequently, these industries often found sympathetic listeners in the executive branch and in Congress as they sought speedier export licensing of arms, fearing that if the U.S. did not make the sales Americans would lose jobs to other global competitors.[510]

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[504] Koistinen, *State of War,* 184-185, 188.

[505] "U.S. Arms Transfers Increased by 2.8 % in FY 2020 to $175.08 Billion," (fact sheet), U.S. Department of State, January 20, 2021, https://www.state.gov/u-s-arms-transfers-increased-by-2-8-%-in-fy-2020-to-175-08-billion/.

[506] Office of Technical Evaluation, "Statistical Analysis of U.S. Trade with the World," U.S. Department of Commerce, 2020, 2.

[507] Aaron Mehta, "US Increases Dominance of Global Arms Exports," *Defense News*, March 15, 2021, https://www.defensenews.com/global/2021/03/15/us-increases-dominance-of-global-arms-exports/.

[508] Koistinen, *State of War,* 183.

[509] Koistinen, *State of War,* 183.

[510] Koistinen, *State of War,* 186-187.

The division of export licensing jurisdiction between the State Department and the Commerce Department had been based on the idea that Commerce would handle "dual-use" goods which have both civilian and military uses, while State would handle "defense items" under the AECA. Over time, however, the line between what is a civilian good and what is a defense good has been blurred to the point of being almost indiscernible.[511] Additionally, the U.S. armed forces were turning more frequently to commercial goods to apply to military uses because of declining defense budgets, the rocketing costs of weapon systems, and the higher rate of innovation in commercial industry.[512]

The blurring between defense and private industry has been further compounded by China's development strategy, "Made in China 2025," a strategy intended to create competitive advantages for China in strategic industries.[513] This effort included procuring technology from the U.S. and other foreign sources by licit or illicit means. Further, China's doctrine of "military-civilian fusion" had sought to leverage gains by private Chinese entities to increase China's military capabilities, essentially breaking down all distinctions between China's civilian and military sectors.[514] As a result, the concern was that *all* U.S. exports to China were ultimately going to a military use.

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[511] Exporters sometimes have reported found they need to submit licensing requests to both Commerce and State, increasing cost, delay and creating the potential that one agency might grant a license and another deny it.

[512] Meijer, *Trading with the Enemy,* 5, 22. Koistinen, *State of War,*184.

[513] "U.S. Export Control Reforms and China: Issues for Congress," August 21, 2020, Congressional Research Service, 1.

[514] According to Dr. Christopher A. Ford, a Trump Administration official, China sought increased military capability to build its "comprehensive national power" – all for the purpose of becoming a globally

Implicit in the concerns expressed by many was that the erosion of the distinction between military and civilian uses in the modern economic environment had rendered "dual-use" foundation for export control nearly meaningless, especially where China was concerned.[515] One scholar concluded that any export control system built on this foundation would be ineffective and that efforts to limit the dissemination of sensitive technology would be nearly impossible.[516] Yet, this remains the basis for the ongoing division of U.S. export licensing jurisdiction between Commerce and State.

Ironically, the U.S. had its own initiative to promote a military and civilian fusion of defense technologies in the 1990s. Economic historian Koistinen described how then-Secretary of Defense William J. Perry and Under Secretary John M. Deutch endeavored to broaden civilian and military cooperation throughout the West, instructing U.S. armed services to modify their procurement policies along that line. Koistinen noted that they felt that the "future health of the [U.S. defense] industry depended on breaking down the domestic barriers between commercial and military output."[517] Perry and Deutch noted further that private commercial industry was more innovative and they felt that linking the military more directly into that innovation would make defense items better at less cost.[518]

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dominant nation. Christopher A. Ford, "U.S. National Security Export Controls and Huawei: The Strategic Context in Three Framings," U.S. Department of State, Arms Control and International Security Papers, vol. 1, no. 8, May 22, 2020, 4.

515 Ford, "U.S. National Security Export Controls and Huawei," 6.

516 Meijer's exact word for such an effort was "hopeless." Meijer, *Trading with the Enemy,* 17.

517 Koistinen, *State of War,* 184.

518 Koistinen, *State of War,* 184.

To protect national security, Commerce had long banned exports to certain countries via the "countries of concern" list, as well as to specific entities included in the "Banned Entity List." As will be discussed more fully in the following pages, the Trump administration did increase scrutiny on certain end-users. Specifically, the administration expanded the "Banned Entity List" to include Chinese telecommunications giant, Huawei, and other Chinese companies.[519]

While this might sound dramatic, the actual impact of these steps on overall U.S. exports to China was minimal, at least in dollar terms. In 2020 only about 12 percent of the $1.4 trillion dollars in U.S. exports was subject to any kind of Commerce licensing review under the EAR.[520] That year Commerce received 39,410 license applications and denied just 421 -- a denial rate of a little over 1 percent.[521] In 2020, U.S. exports to China amounted to $124.6 billion (8.9 percent of all U.S. exports) with only $22 billion of that being subject to a Commerce license review, or 18.1 percent of overall exports to China.[522] That year Commerce approved 3451 of 4236 export license applications for China (a 9 percent denial rate); Commerce returned 977 applications without action.[523]

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[519] Ford, "U.S. National Security Export Controls and Huawei," 6-7. The license review begins with a "presumption of denial." Ibid.

[520] Office of Technical Evaluation, "Statistical Analysis of U.S. Trade with the World," U.S. Department of Commerce, 2020, 7. Only 2.5% were subject to State Department licensing review under the ITAR. Ibid.

[521] Office of Technical Evaluation, "Statistical Analysis of U.S. Trade with the World," U.S. Department of Commerce, 2020, 12.

[522] Office of Technical Evaluation, "U.S. Trade with China," U.S. Department of Commerce, 2020, 1, 6. https://www.bis.doc.gov/index.php/country-papers/2735-2020-statistical-analysis-of-u-s-trade-with-china/file.

[523] Office of Technical Evaluation, "U.S. Trade with China," U.S. Department of Commerce, 2020, 12.

C. ZTE and Huawei

Just as uncertainty pervaded the Trump administration's policy on imports, so too did it permeate export policy. Among the issues was Trump's penchant for using Twitter to make announcements that might conflict with other administration statements, or even reverse them. For example, in April 16, 2018, Secretary Ross announced that the Commerce Department was placing Chinese telecommunications giant ZTE on the "banned entities list."[524] The action came after ZTE had violated terms of a settlement agreement with the U.S. for breaking U.S. sanctions on Iran and North Korea, paying over $1 billion in fines.[525] In a Tweet on May 13, 2018, President Trump reversed Ross, [526] purportedly in response to a telephone request from President Xi.[527] The issue divided Trump advisors. Rogin reported that Mnuchin supported the decision to let ZTE off the hook, while then-National Security Advisor John Bolton, Lighthizer and Navarro opposed.[528]

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[524] "Secretary Ross Announces Activation of ZTE Denial Order in Response to Repeated False Statements to the U.S. Government," (news release), U.S. Department of Commerce, April 16, 2018, https://web.archive.org/web/20210207082230/https:/www.commerce.gov/news/press-releases/2018/04/secretary-ross-announces-activation-zte-denial-order-response-repeated.

[525] See also, Aruna Viswanatha, Eva Dou, and Kate O'Keefe, "ZTE to Pay $892 Million to U.S., Plead Guilty in Iran Sanctions Probe," *Wall Street Journal,* March 7, 2017, https://www.wsj.com/articles/zte-to-pay-892-million-to-u-s-plead-guilty-in-iran-sanctions-probe-1488902019.

[526] Tweet cited in Chad P. Bown, "Export Controls: America's Other National Security Threat," *Duke Journal of Comparative & International Law* 30 (2020): 283-308, 290 fn19.

[527] Rogin, *Chaos Under Heaven,* 146.

[528] Rogin, *Chaos Under Heaven,* 146.

The U.S. sanctions on Iran and North Korea were based on national security grounds, yet Rogin reported that Trump traded away penalties on ZTE to gain President Xi's favor in the ongoing trade negotiations with China.[529] Trump had linked broader commercial trade issues with national security matters. President Trump's attitude was consistent with a mercantilist approach blending trade and national security into a single equation for national power in a zero-sum competition with a rival. China certainly appeared to use that same calculus -- Rogin reported that China asked for a full pardon for ZTE as part of the trade negotiations.[530]

The challenge was how to fit allies into such a mercantilist approach. President Trump, and others in the Trump administration, perhaps failed to understand that, as scholar Chad Bown put it, "if everything is about national security, nothing is about national security."[531] Bown observed that to be effective, export controls depended on multilateral support. If multilateral partners believed that an actor was taking a trade action for purely domestic economic reasons, as the U.S. appeared to do in imposing Section 232 import tariffs, and not to truly address a threat to security, then these allies

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[529] Rogin, *Chaos Under Heaven,* 147.

[530] Rogin, *Chaos Under Heaven,* 147-48. In June 2018, the Commerce Department announced a "settlement" with ZTE with an additional $1.4 billion fine, required ZTE management changes, a 10-year probationary period, and heightened compliance monitoring. "Secretary Ross Announces $1.4 Billion ZTE Settlement; ZTE Board, Management Changes and Strictest BIS Compliance Requirements Ever," (press release) U.S. Department of Commerce, June 7, 2018, https://www.commerce.gov/news/press-releases/2018/06/secretary-ross-announces-14-billion-zte-settlement-zte-board-management. ZTE was removed from the banned entities list on July 13, 2018. "Commerce Department Lifts Ban After ZTE Deposits Final Tranche of $1.4 Billion Penalty," (press release), U.S. Commerce Department (July 13, 2018, https://www.commerce.gov/news/press-releases/2018/07/commerce-department-lifts-ban-after-zte-deposits-final-tranche-14.

[531] Bown, "Export Controls: America's Other National Security Threat," 286.

would not cooperate by also prohibiting their exports. That was especially the case if they produced competing products and they were being asked to sacrifice export sales. The allies' failure to cooperate would then undercut the effectiveness of any unilateral export controls.

The Trump administration's vacillations about export control continued with Huawei, another Chinese telecommunications giant. Huawei's issues began with a U.S. Justice Department criminal indictment for violations of U.S. sanctions on Iran.[532] That indictment led to the arrest on December 1, 2018, of Meng Wanzhou, Huawei's Chief Financial Officer, by Canadian officials at the request of the U.S. The arrest came the day before President Trump met President Xi in Buenos Aires, Argentina as part of a Group of Twenty wealthy nations (G20) summit. President Trump was not told of the arrest in advance and the news broke as he was sitting down for dinner with President Xi. Journalist Rogin reports that President Trump was angry claiming that "we had arrested 'the Ivanka Trump of China.'"[533]

The unprecedented arrest of a senior Chinese executive had obvious diplomatic and political implications. National Security Advisor John Bolton had been informed of the impending arrest yet had not told President Trump -- a particularly odd choice given Trump and Xi were about to meet face-to-face for just the second time.

Afterward, Trump administration officials diverged on how the situation should be managed. The Justice Department saw Huawei as a criminal organization. Bolton

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532 Rogin, *Chaos Under Heaven,* 160-164.
533 Rogin, *Chaos Under Heaven,* 160-161.

saw it as a Chinese intelligence apparatus. Interestingly, Rogin reported that Mnuchin's chief of staff, with Mnuchin's tacit approval, began quiet conversations with the Chinese about dropping the case in exchange for Huawei accepting some other kind of non-criminal punishment.[534]

At the time, President Trump implied Huawei's criminal case might be used as a bargaining chip in the ongoing trade negotiations with the Chinese. Again, this was unsurprising given his mercantilist power equation. On the same page, President Xi also linked Huawei's criminal case to trade negotiations. Further, Xi used China's own criminal justice system to exert leverage against the Canadians by imprisoning two Canadian journalists.

The trade talks with China having stalled for several months, President Trump further escalated the tension on May 15, 2019 by signing an executive order under IEEPA which prohibited any U.S. person from purchasing information and telecommunication technology "designed, developed, manufactured, or supplied" by companies "beholden to foreign adversary governments."[535] This was a measure aimed directly at Huawei claiming it was a threat to U.S. national security.[536]

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[534] Rogin, *Chaos Under Heaven,* 162.

[535] Exec. Order No. 13,873, 84 Fed. Reg. 22689-22692 (May 17, 2019), https://www.federalregister.gov/documents/2019/05/17/2019-10538/securing-the-information-and-communications-technology-and-services-supply-chain.

[536] On the same day, the Commerce Department placed Huawei and affiliated companies on its banned entities list claiming a national security justification. "Department of Commerce Announces the Addition of Huawei Technologies Co. Ltd. to the Entity List," (press release) U.S. Department of Commerce, May 15, 2019, https://web.archive.org/web/20200305133531/https:/www.commerce.gov/news/press-releases/2019/05/department-commerce-announces-addition-huawei-technologies-co-ltd.

Shortly after this order was issued, President Trump told reporters in the Oval Office

> "Huawei is something that's very dangerous. You look at what they've done from a security standpoint, from a military standpoint, it's very dangerous…so it's possible that Huawei even would be included in some kind of a trade deal. If we made a deal, I could imagine Huawei being possibly included in some form of, or in some part of a trade deal."[537]

Rogin pointed out that these actions against Huawei and other Chinese telecommunications companies had significant ramifications that rippled through U.S. and foreign companies operating around the world, yet the Trump administration had consulted no one.[538] Further compounding the uncertainty was the fact that no one could be sure that at any given moment President Trump would not change his mind, as President Xi had convinced Trump to do with ZTE. Confusion continued June 29, 2019, when after dinner with President Xi the night before, Trump was reported to have told a press conference, "US companies can sell their equipment to Huawei…equipment where there is no great national security problem."[539]

On January 15, 2020, the U.S. and China signed a "Phase One" trade deal.[540] The agreement did not reference Huawei. This small step toward resolving trade tensions

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[537] Jeanne Whalen and David J. Lynch, "Trump calls Huawei 'dangerous' but says dispute could be resolved in trade deal," *Washington Post*, May 23, 2019, https://www.washingtonpost.com/business/economy/trump-calls-huawei-dangerous-but-says-dispute-could-be-resolved-in-trade-deal/2019/05/23/ed75c4a0-7da6-11e9-8ede-f4abf521ef17_story.html.

[538] Rogin, *Chaos Under Heaven,* 163.

[539] Rogin, *Chaos Under Heaven,* 163-64. Further confusion reigned at the same time over confronting the Chinese over their treatment of the Uyghurs, where Trump seemed to signal his approval of "re-education" camps. Ibid. A fair treatment of this important issue is beyond the scope of this study.

[540] "ECONOMIC AND TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA," U.S.

created a brief hope that overall relations with China might improve. That hope soon evaporated in the heat of the COVID outbreak.

Huawei's saga continued when, in February 2020, the Justice Department issued a superseding indictment charging Huawei with additional violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), a statute aimed at organized crime, for "decades-long efforts" to steal intellectual property from U.S. companies.[541] On May 15, 2020, the Commerce Department dramatically upped the ante yet further by amending the "Foreign Direct Product Rule" to prevent the sale of U.S. semiconductor manufacturing equipment or software to foreign producers who supplied Huawei, again for national security reasons.[542]

Anticipating these potential Trump administration steps, the Semiconductor Industry Association, representing U.S. manufacturers, had commissioned a study that estimated the potential impacts of export restraints against China on its members.[543] The

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Trade Representative, January 15, 2020, https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf.

[541] "Chinese Telecommunications Conglomerate Huawei and Subsidiaries Charged in Racketeering Conspiracy and Conspiracy to Steal Trade Secrets," (press release) U.S. Department of Justice, February 13, 2020, https://www.justice.gov/opa/pr/chinese-telecommunications-conglomerate-huawei-and-subsidiaries-charged-racketeering.

[542] "Commerce Addresses Huawei's Efforts to Undermine Entity List, Restricts Products Designed and Produced with U.S. Technologies," (press release) U.S. Department of Commerce, May 15, 2020, https://www.commerce.gov/news/press-releases/2020/05/commerce-addresses-huaweis-efforts-undermine-entity-list-restricts.

[543] John Neuffer, "Report Shows Risks of Excessive Restrictions on Trade with China," (blog) Semiconductor Industry Association, March 9, 2020, https://www.semiconductors.org/report-shows-risks-of-excessive-restrictions-on-trade-with-china/. Antonio Varas and Raj Varadarajan, "How Restrictions to Trade with China Could End US Leadership in Semiconductors," (report) Boston Consulting Group, March 2020, https://image-src.bcg.com/Images/BCG-How-Restricting-Trade-with-China-Could-End-US-Semiconductor-Mar-2020_tcm9-240526.pdf.

various scenarios anticipated the loss in export sales for its members to be tens of billions of dollars. The restrictions would lead to U.S. job losses, the report said, and manufacturers would not see full returns on the $40 billion they had invested in research and development in 2018. Moreover, the report noted that the lost export revenues were how these companies funded further research and development, the loss of which could cause long-term damage to U.S. innovation and competitiveness.

This rule also put foreign semiconductor manufacturers in a bind.[544] If they wanted U.S. equipment, they would have to give up sales to Huawei. If they wanted to keep the Huawei sales, they would have to find another source for manufacturing equipment. Therefore, to be effective, this new rule depended on whether foreign substitutes were available, and on whether other countries join the U.S. ban on supplying Huawei. If not extended multilaterally, Huawei would still get its goods and the U.S. businesses would suffer all the economic loss with no apparent benefits to U.S. national security.

The Trump administration believed they could bank on the dominance the U.S. had in semiconductor manufacturing equipment and software, and that these steps would protect that technological edge.[545] The administration seemed to have high hopes for multilateral support for the measure. As of this writing, allied support for these export

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[544] Bown, "Export Controls: America's Other National Security Threat," 291-292. See also Chad Bown, "How Trump's Export Curbs on Semiconductors and Equipment Hurt the US Technology Sector," (paper) Peterson Institute for International Economics, September 28, 2020.

[545] Ford, "U.S. National Security Export Controls and Huawei," 7.

restrictions seems unclear as foreign capitals wait for the Biden administration to set its policies.

D. WTO—GATT Implications

If China wished, it could bring a WTO case challenging the Trump administration's export bans on Huawei and other companies. Article XI:1 prohibits use of export licensing as a form of quantitative restriction on trade with a member state. As with the Section 232 cases, the U.S. could argue that the Article XXI "essential security" exemption applied. As was evident in an earlier chapter, it is likely that any WTO dispute resolution panel would construe this exception very narrowly and disqualify measures taken in response to domestic economic pressures not related war or international emergencies.

As in Section 232, the ECRA relies on the President to define "threats to national security." The credibility of that assessment matters. To allies, it seemed a stretch to declare that U.S. national security was really at risk as a basis for the Section 232 tariffs. Ironically, there may be a legitimate national security case to be made for measures against Huawei based on the criminal indictment (which is an unproved charge) and other intelligence. Unfortunately, President Trump's ramblings about including Huawei's issues in trade negotiations demolished any credibility he might have had that his actions were truly based on national security.

Bown suggested that there were few WTO cases involving national security because nations hesitated to invoke national security as a basis for trade restrictions and trade partners were hesitant to bring WTO cases where national security would be invoked as a defense.[546] Bown believed that the hesitation arose because member states foresaw the untenable, lose-lose dilemma this caused for the WTO. If the WTO struck down a national security measure, the stricken state might feel that its sovereign duty to defend itself had been infringed. On the other hand, if the WTO upheld the measure, other member states would feel encouraged to use the same justification to impose trade restrictions, unraveling the shared commitment to liberalizing trade that is the foundation of the WTO.

Bown also suggested that the WTO's lack of experience in these specific issues has left it ill-prepared. However, as noted in the chapter on import control, a pending WTO panel has several cases regarding U.S. tariffs on steel and aluminum through which it will get an opportunity deepen its experience.

E. Concluding Thoughts on Export Control

The U.S. export control system appears to be a mercantilist legacy left over from the Cold War that is poorly adapted for a globalized technological environment where most innovation occurs in the commercial sector. The U.S. system remains slow and encumbered by the same lack of interagency cooperation and coordination that was reported in *Beyond Fortress America*. Further, in the modern global economic environment, international cooperation is even more vital to make any controls effective.

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[546] Bown, "Export Controls: America's Other National Security Threat," 304-305.

While the Trump administration was successful in raising attention to the danger that China poses to the U.S. and other democracies, Trump had damaged his credibility with the very allies upon whom the effectiveness of export controls depends. President Biden appears to be continuing this attention on China and devoting substantial efforts toward working with allies toward building an international consensus on how best to face this ascending rival. This corrects for a fundamental dissonance and strategic error in the Trump administration's approach.

The conflicts within the Trump administration evident in imports, foreign investment, and exports continued into the last area of international trade policy that this study will take up – the exercise of emergency economic powers. This will be the focus of the next chapter.

VII. THE ECONOMIC "FULL MONTY" – TWEA AND IEEPA

A. Background

The "Full Monty"[547] in U.S. international trade law would be the Trading with the Enemy Act (TWEA)[548] and International Emergency Economic Powers Act (IEEPA).[549] When these statutes are applied to their fullest, they can completely sever economic relations between the U.S. and a target country – a mercantilist "Full Monty."

TWEA dates from 1917 and the massive economic mobilization for World War I.[550] President Wilson took a different approach from past Presidents who had reacted to national crises by applying ad hoc emergency measures hoping for later congressional ratification (or fearing impeachment). Instead, to prepare America to join the conflict, President Wilson sought congressional approval in advance for the government's intervention in economic affairs. TWEA was one of 22 laws passed for that purpose. It authorized a President to control international trade, investment, migration, and communications between the United States and an "enemy" in time of war.

When President Roosevelt took office, he immediately used TWEA to proclaim a banking holiday to stem the cascade of bank failures threatening to bring a complete

[547] The "Full Monty" is a British phrase meaning "the complete or whole thing." It is of uncertain origin, though the author's favorite tradition refers to British Field Marshall Bernard Montgomery's preference for his soldiers to consume a full English breakfast every day. "The Full Monty," (web page) The Phrase Finder, June 28, 2021, https://www.phrases.org.uk/meanings/full-monty.html.

[548] 50 U.S.C. § 4301 *et seq* (2021).

[549] 50 U.S.C. § 1701 *et seq* (2021).

[550] This section is drawn from "The International Emergency Economic Powers Act: Origins, Evolution, and Use," (report) Congressional Research Service, R45618, July 14, 2020, 2-8.

collapse of America's financial system. To justify his unprecedented peacetime use of TWEA, a wartime measure, he declared that the Great Depression was as intractable as any conflict. Days later Congress ratified this action, and then amended TWEA to allow its use during time of war or "any other period of national emergency declared by the President."[551] President Roosevelt then used this authority to exercise control over virtually all aspects of domestic and international banking,[552] and together with other authorities, to involve the federal government in virtually all aspects of the domestic economy.

During World War II, Congress expanded TWEA to allow the government not just to regulate enemy property, but also to take title to it.[553] At the same time, Congress expanded the scope of enemy property to include any economic transaction in which a foreign country or foreign national had "any interest."[554] These authorities remained in place as the Cold War developed, and through the wars in Korea and Vietnam.

Later Presidents also made extensive peacetime use of TWEA. These included President Kennedy's efforts to control the hording of gold, President Johnson's desire to limit U.S. investments overseas to strengthen the U.S. balance of payments position in 1968, and President Nixon's 1971 declaration of the end of dollar convertibility to gold,

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[551] Emergency Banking Relief Act," Pub. L. 73-1, Title I, Sections 1, 2, March 9, 1933, https://fraser.stlouisfed.org/title/emergency-banking-relief-act-1098.

[552] Exec. Order No. 6560, January 15, 1934 cited in "The International Emergency Economic Powers Act: Origins, Evolution, and Use," (report) Congressional Research Service, R45618, July 14, 2020, 5.

[553] Pub. L. 77-354, December 19, 1941, see 50 U.S.C. § 4305, Amendments.

[554] Pub. L. 77-354, December 19, 1941, see 50 U.S.C. § 4305, Amendments.

as well as the imposition of an additional ten percent tariff on all dutiable goods imported to the U.S.[555]

Watergate and the revelation of other executive excesses prompted congressional efforts in the late 1970s to curb presidential authority in general and TWEA in particular. To this end, Congress enacted IEEPA to correct the perceived flaws in TWEA by requiring the President to consult with Congress, if possible, before invoking the act and to notify Congress once IEEPA was invoked. Additionally, Congress was to review presidential actions biennially; the President was to review and extend any declared emergencies annually; and Congress could terminate the President's action through an appropriate resolution.

When IEEPA passed, TWEA was amended back to permit its use only in wartime. IEEPA's use was to be limited to "national emergencies" other than war that were the result of any "unusual or extraordinary threat to the national security, foreign policy, or economy of the United States" originating outside the U.S. Notably, IEEPA did not define "national emergency" or "unusual or extraordinary threat." In practice, Presidents have interpreted these terms, and IEEPA's authorities, very broadly.

Notably, no President has yet used IEEPA to impose import tariffs, as President Nixon did with TWEA, though such an action appears legally feasible. Nor has any President yet acted which was primarily domestic in effect. However, in a globally interconnected economy it would seem likely that one could find a foreign financial

[555] "The International Emergency Economic Powers Act: Origins, Evolution, and Use," 6.

interest in virtually any significant transaction in the U.S. economy. Therefore, using IEEPA to regulate transactions with significant domestic impact also seems legally feasible.[556]

Though IEEPA was intended to reign in the executive's practice of using national emergencies to exercise powers without congressional review and oversight, Presidents have frequently embraced the use of IEEPA. As of July 2020, Presidents have invoked IEEPA 59 times.[557] Of these, 33 IEEPA national emergencies remain in place. President Carter's IEEPA proclamation in response to the Iran Hostage Crisis in 1979 is the oldest still in effect.

In retrospect, frequent use of IEEPA is unsurprising. Turning to IEEPA is appealing because a President can take dramatic unilateral action, without the need for evidence or findings, and in a manner virtually unassailable by the courts.[558] On the other hand, the effectiveness of these measures has been uneven and sometimes counterproductive.[559]

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[556] "The International Emergency Economic Powers Act: Origins, Evolution, and Use," 27.

[557] "The International Emergency Economic Powers Act: Origins, Evolution, and Use," 16-18. The author participated in the drafting of IEEPA executive orders during his time with Treasury's Office of Foreign Assets Control. The author was the lead drafter of Executive Order Number 12,334, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," 66 Fed. Reg. 49079-49083 (September 23, 2001).

[558] In *Dames & Moore v. Regan*, the U.S. Supreme Court confirmed the breadth of the President's power when acting under both a delegation of Congressional authority and in the exercise of the President's own constitutional authority in foreign affairs and national security. 453 U.S. 654, 678-79 (1981).

[559] See Jeffrey J. Schott, "Raising a Caution Flag on US Financial Sanctions against China," (policy brief) Peterson Institute for International Economics, January 2021.

From the author's count, it appears that President Trump has invoked IEEPA 15 times. Of course, that does not count President Trump's *threats* to use IEEPA.

B. IEEPA – Trump and Mexico

As noted, no President has yet attempted to use IEEPA to impose a tariff. However, on May 19, 2019, President Trump threatened to do just that to compel Mexico to take more action to address illegal migrants crossing into the U.S.[560] President Trump announced via Twitter his intention to put a five percent tariff on everything imported from Mexico beginning June 10, 2019. In a statement following the Tweet, President Trump declared that the tariffs would be imposed under IEEPA and would increase by five percent each month for three months and then stay at 25 percent until Mexico "took some action." Just days before the tariffs were to take effect, on June 7, 2019, President Trump reversed course via Twitter indicating that tariffs would be "indefinitely suspended" after Mexico committed to taking additional steps to increase border enforcement.[561]

The *New York Times* reported that President Trump's decision to announce tariffs came amidst significant internal division where he sided at first with Navarro, Stephen Miller (one of the authors of his Monessen, Pennsylvania speech and now a senior

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[560] Annie Karni, Ana Swanson and Michael D. Shear, "Trump Says U.S. Will Hit Mexico With 5% Tariffs on All Goods," *New York Times*, May 30, 2019, https://www.nytimes.com/2019/05/30/us/politics/trump-mexico-tariffs.html.

[561] Rebecca Ballhaus, Josh Zumbrun, and Robbie Whelan, "U.S., Mexico Reach Deal to Avoid Tariffs," *Wall Street Journal,* June 8, 2019, https://www.wsj.com/articles/trump-says-u-s-has-reached-deal-with-mexico-11559954306?page=7.

foreign policy advisor), and White House Counsel Pat Cippolone.[562] Trump expressed frustration with others who "slow-rolled" his decision. Kushner, Mnuchin, and Lighthizer warned that such an action might imperil the pending congressional ratification of the recently signed U.S.-Mexico-Canada trade agreement (USMCA). Mnuchin successfully argued to delay the implementation of tariffs for a few days to buy time to talk to the Mexican government. According to the report, President Trump had not consulted anyone in Congress before the announcement. Congressional members and business groups warned of the more than $17 billion in higher costs that would be passed on to American consumers for the $347 billion in goods passing over the border annually and of the disruption of highly integrated supply chains between the U.S. and Mexico.[563]

The back and forth over a matter of days revealed President Trump's continued unpredictability. Why the President wanted to start a trade war with Mexico, the number two supplier of imports, at the same time the U.S. was in a trade war with its number one supplier, China, seemed hard to fathom. However, from a mercantilist perspective, it made sense to use economic power to extract concessions, here with regards to immigration -- a core issue for the Republican base. On the other hand, there were few indications that President Trump truly understood the full impact of his actions on the U.S., including the massive disruption to U.S. businesses and consumers, the escalation

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[562] Ana Swanson, Maggie Haberman and Alan Rappeport, "Trump Is Said to Have Overruled Kushner and Other Aides in Threatening Mexico With Tariffs," *New York Times*, June 1, 2019, https://www.nytimes.com/2019/06/01/us/politics/trump-mexico-tariffs.html.

[563] Michael D. Shear, Ana Swanson and Azam Ahmed, "Trump Calls Off Plan to Impose Tariffs on Mexico," *New York Times*, June 7, 2019, https://www.nytimes.com/2019/06/07/us/politics/trump-tariffs-mexico.html.

of uncertainty freezing U.S. investment, and the further evaporation of U.S. credibility with its closest allies.

C. IEEPA – Trump and China

Of President Trump's 15 executive orders invoking IEEPA, ten involved China directly or indirectly. They began with telecommunications issues similar to those with Huawei discussed above and, in May 2019, resulted in an IEEPA executive order banning transactions relating to "information and communications technologies or services" provided by "foreign adversaries."[564] China was not named in the order but was clearly the target as clarified by a Commerce Department "interim final rule" issued on January 19, 2021.[565] This interim final rule explained that the executive order meant to address the vulnerabilities of these technologies to foreign attack; the potential harvesting, diversion, theft or corruption of U.S. intellectual property; and risk of the compromise of sensitive personal data via foreign hardware, software, or applications.[566]

Interestingly, the executive order gave the task of reviewing any covered transactions to the Commerce Department, essentially setting up a process that overlapped with the CFIUS review run by Mnuchin at Treasury. One could speculate

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[564] Exec. Order No. 13,873, 84 Fed. Reg. 22689-22692 (May 15, 2019). President Trump issued a similarly structured IEEPA executive order regarding "bulk power systems" sourced from "foreign adversaries" in May 2020 with the Department of Energy tasked with administering the details. Exec. Order No. 13,920, 85 Fed. Reg. 26595-26599 (May 1, 2020).

[565] U.S. Department of Commerce, "Securing the Information and Communications Technology and Services Supply Chain," 86 Fed. Reg. 4909-4928, 4911 (January 19, 2021).

[566] "Securing the Information and Communications Technology and Services Supply Chain," 86 Fed. Reg. 4909-10.

that President Trump had lost faith in Mnuchin where China was concerned. Or one could speculate that President Trump liked to see his advisors compete for his attention.[567]

Rogin reported that in the summer of 2019 Mnuchin had sidetracked similar concerns about vulnerabilities and risks directed at Google, claiming to have investigated and eliminated any concerns about foreign infiltration in just eight days.[568] Chinese companies TikTok and WeChat were not so fortunate. In successive IEEPA executive orders issued on August 6, 2020, President Trump ordered the prohibition of any economic transactions by American individuals or businesses with ByteDance, TikTok's parent, and with Tencent Holdings, WeChat's parent.[569] The effective dates of the orders were delayed for 45 days, but once in effect they had the potential to directly impact millions of American users of these applications.

Rogin reported that the TikTok order was based on evidence that it was censoring messages critical of the Chinese Communist Party, and that it was diverting U.S. user data through China.[570] President Trump indicated that ByteDance would have to sell TikTok or shut it down. Rogin reported that though it was the national security group and anti-China elements in the administration that were pushing the prohibitions,

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[567] See Rogin, *Chaos Under Heaven,* 53.

[568] Rogin, *Chaos Under Heaven,* 226-27.

[569] Exec. Order No. 13,942, 85 Fed. Reg. 48637-48639 (August 6, 2020); Exec. Order No. 13,943, 85 Fed. Reg. 48641-48643 (August 6, 2020).

[570] Rogin, *Chaos Under Heaven,* 228-29.

Mnuchin took over negotiations and suggested spinning TikTok off to Oracle or Microsoft which would have netted substantial fees for the Wall Street operatives brokering the deal. In an odd turn, President Trump also demanded $5 billion in "key money," a kind of kickback not uncommon in the real estate business, to be paid to the U.S. Treasury for Trump's having brokered the arrangement.[571] The Chinese government forbid the deal.[572] TikTok was also able block the effects of the executive order in U.S. courts.[573] President Biden ultimately revoked both the TikTok and WeChat executive orders.[574]

In a late victory for the anti-China elements in the administration, however, on November 12, 2020, President Trump gave a clear expression of his national security concerns in an IEEPA executive order prohibiting Americans from investing in Chinese companies associated with China's military-industrial complex.[575] In the preamble of that order, he noted that China "is increasingly exploiting United States capital to resource and enable the development and modernization of military, intelligence, and

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[571] Rob Berger, "Extortion as National Policy? President Trump Demands 'Key Money' From A TikTok Sale to Microsoft Or He'll Ban TikTok In The U.S.," *Forbes*, August 4, 2020, https://www.forbes.com/sites/robertberger/2020/08/04/extortion-as-national-policy-president-trump-demands-key-money-from-a-tiktok-sale-to-microsoft-or-hell-ban-tiktok-in-the-us/?sh=3284e45230ce.

[572] Rogin, *Chaos Under Heaven,* 228-29.

[573] Georgia Wells, "TikTok Download Ban Is Blocked by Second Judge," *Wall Street Journal,* December 8, 2020, https://www.wsj.com/articles/tiktok-download-ban-is-blocked-by-second-judge-11607390564?page=1.

[574] Though President Biden ultimately revoked both the TikTok and WeChat executive orders, he left the broader executive order regarding the security of information and communications supply chains in place. Exec. Order No. 14,034, 86 Fed. Reg. 31423-31426 (June 9, 2021).

[575] Exec. Order No. 13,959, 85 Fed. Reg. 73185-73188 (November 12, 2020).

other security apparatuses." President Trump further stated that China was developing its military strength through its strategy of "Military-Civil Fusion" "by compelling civilian Chinese companies to support its military and intelligence activities." He then observed that these same civilian companies were simultaneously raising capital by selling securities to U.S. investors. He therefore concluded that U.S. investors were funding China's military expansion, at least indirectly.

Though this preamble would seem to justify completely prohibiting U.S. investment in *any* Chinese entity, the Trump administration limited the prohibition to just those entities designated a "Communist Chinese military company" by the U.S. Department of Defense.[576] Clearly, this order did not go as far as desired by advocates, like Peter Navarro, for complete economic decoupling. However, the significant implications for both the U.S. and Chinese economies of a complete denial of U.S. capital to Chinese companies seem obvious.

Having said that, Chinese companies have typically lacked the transparency necessary to be listed directly on U.S. exchanges, as set out in rules issued by the Public Company Accounting Oversight Board (PCAOB), because China's own laws prohibit them from doing so.[577] However, Rogin reported that by using work-arounds such as "reverse mergers," Chinese companies have nevertheless gained access to U.S. capital

[576] Exec. Order No. 13,959, Section 4.(a).

[577] Rogin, *Chaos Under Heaven,* 231-232. A ready example of the competing legal requirements involves Didi, a Chinese ride-hailing company listed on a U.S. stock exchange. The Chinese government appears to be punishing it for sharing information required by U.S. regulators. "Didi caught as China and US battle over data," *Financial Times*, July 6, 2021, https://www.ft.com/content/00403ae5-7565-413e-907d-ad46549375ba.

markets.[578] Yet, it has not been possible for U.S. investors to perform due diligence on these companies before parting with their capital, the result of which, Rogin contended, was massive fraud as documented in a 2018 film called "The China Hustle."[579]

In response to increasing U.S. scrutiny, Rogin reported that Chinese companies switched strategies by turning to Wall Street index providers and pressuring them to include Chinese companies on U.S. indexes, including the world's largest index, "MSCI."[580] Once on such an index, large institutional investors typically add the newly listed companies to their portfolios. These institutional investors include some of America's largest pension funds, such as the federal government's "Thrift Savings Plan," into which federal employees and military members invest. Rogin pointed out the irony that Chinese companies listed on U.S. indexes could be the very ones the U.S. government was sanctioning through exports bans or import tariffs.[581] Nevertheless, these companies were receiving from U.S. investments. Rogin reported that in 2019 MSCI quadrupled the number of mainland Chinese companies on its index, sending approximately $80 billion in U.S. capital to China amid a trade war.[582]

In final twist to this executive order, President Trump directed that the Defense Department "designate" "Communist Chinese military companies."[583] This was unusual

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[578] Rogin, *Chaos Under Heaven,* 231-232.

[579] Rogin, *Chaos Under Heaven,* 231-232.

[580] Rogin, *Chaos Under Heaven,* 230-242.

[581] Rogin, *Chaos Under Heaven,* 233-234.

[582] Rogin, *Chaos Under Heaven,* 234.

[583] Exec. Order 13959, Section 4.(a).

given that the IEEPA "designations" process was one for which the Treasury Department had an extensive history and a well-established procedure that had survived frequent judicial scrutiny.[584] It might have been another sign of a loss of trust in Mnuchin as well as a desire to put a thorough Trump loyalist, the newly-named Acting Secretary of Defense Christopher Miller, in charge of the process.

D. TWEA/IEEPA Conclusions

Of all the mercantilist tools in a President's arsenal, TWEA and IEEPA are the most powerful. With them, a President can sever all economic relations between the U.S. and any other country. However, both are also versatile and do not require going as far as complete economic disconnection. A President can carefully tailor measures to meet specific foreign policy and economic objectives. For instance, the Trump administration narrowly tailored the IEEPA prohibition on U.S. investors to just "Communist Chinese military companies" though IEEPA's authority and the expressed rationale for the national emergency could well have extended the prohibition of *all* U.S investments in China. Beyond symbolism, however, Trump's actions will likely have little effect on Chinese behavior. Having said that, together with other actions, President Trump has

[584] The author participated in this work during his years with Treasury's Office of Foreign Assets Control, 1999-2007. One of the Chinese companies the Defense Department designated secured a preliminary injunction in a U.S. court, in part due the Defense Department inexperience in the process. U.S.-China Economic and Security Review Commission, "Economics and Trade Bulletin," June 21, 2021, 4, https://www.uscc.gov/sites/default/files/2021-06/June_2021_Trade_Bulletin.pdf.
President Biden agreed with, and continued Trump's executive order, though it was redrafted to correct legal flaws and to give the designation process back to Treasury. See Exec. Order No. 14,032, 86 Fed. Reg. 30145-30149 (June 3, 2021).

successfully brought national and international attention to the potential threat China poses, and he clearly redirected the course of the U.S.-Chinese relationship -- no small achievement.

Whatever the achievements, President Trump's use, or not, of IEEPA revealed the same internal divisions and dysfunctions that had challenged the effectiveness of the administration's policies for imports, exports, and foreign investments. Further, the Trump administration's decisions on IEEPA had the same unpredictability as in other international trade policy areas and injected yet more uncertainty into an already anxious domestic and global economic environment. Dysfunction and uncertainty had become the hallmarks of President Trump's international trade policy.

CONCLUSION

This study asked whether the U.S. was a mercantilist, liberal or economically nationalist country. It questioned whether there was truly a dichotomy between mercantilism and liberalism that made them mutually exclusive approaches. It also questioned whether economic nationalism was necessarily damaging to other countries. The study went on to explore how these ideas might have been reflected in Trump administration views on national security as implemented in its international trade policy.

Before examining President Trump's policies, the study defined terms and set the historical stage. The first chapter discussed mercantilism, liberalism, and economic nationalism using, in part, the views of Alexander Hamilton, Adam Smith, and Friedrich List. The second chapter's brief historical discussion concluded with the notion that in the 20th century the U.S. had practiced both mercantilism and liberal free trade to various degrees, all under a rhetoric of economic nationalism that sometimes identified the freedom of the world as dependent on U.S. economic success. Each presidential administration in that era used mercantilist tools as they thought necessary to strike the balance between mercantilism and free trade appropriate to the circumstances.

The mercantilist tools used included import controls, control of foreign direct investment, export controls and emergency economic powers. The U.S. legal and organizational structures for each were fully developed through the Cold War era, with the goal then being to ensure the economic separation between the “free” West and the “Communist” East. They were also intended to assure, in a pure mercantilist sense, that the economic power of the West protected its ideological survival while at the same time diminishing the Soviet bloc.

While using mercantilist tools against Communism, the U.S. began to liberalize its markets by lowering tariffs with non-Communist countries. The U.S. participated in international agreements and joined international institutions promoting liberal free trade ideals, however imperfectly. The U.S. economy became increasingly globalized in the process.

The U.S. was also increasingly reliant on the global economy for defense technology. While still leading in key areas, the complete U.S. dominance enjoyed during the “golden age” of the 1950s and 1960s was gone. As the world economy globalized from the 1970s on, national security increasingly required the U.S. to be more connected to allies in trade and technology, not less.

Into these challenges stepped Donald J. Trump, a President using a sharply economically nationalist and anti-liberal rhetoric, embracing mercantilist notions of national power, and relying on trade deficits as the paramount metric of that power. Trump campaigned on a populism that was fed by grievances about manufacturing job losses due to unfair global trade.[585] Trump used the term “economic security is national

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[585] Trump’s populism was ironic given the President’s purported wealth, the wealth of key cabinet members, and the influence of Trump’s wealthy friends on his decisions.

security" to justify a more mercantilist approach to international trade by claiming U.S. decline was based on "unfair" trade practices.

During his administration, Trump readily turned to Cold War-era mercantilist tools. It is too soon to definitively judge whether these mercantilist tools were effective in protecting U.S. economic interests, but some early economic indications seem to raise doubts. Part of the reason it is hard to gauge the effectiveness of these tools is that they were inconsistently implemented by an administration that was inadequately staffed and particularly discordant. On top of that, the President vacillated with his views depending on who last talked to him, whether that be White House staff or his wealthy friends with substantial commercial interests at stake. President Trump was also subject to manipulation, particularly by China's President Xi, who would ask for and receive "personal favors" that undermined Trump's own policies.

In addition to inconsistent application, the long-standing mercantilist policy tools for import control, foreign direct investment control, export control, and emergency economic powers were ineffective because the U.S. economy was so firmly embedded in the global economy. For instance, high tariffs placed on imports had little significant impact on the U.S. trade deficit because they adversely affected U.S. exports as well. In fact, trade deficits grew during Trump's term. Therefore, if one embraces the mercantilist argument that trade balances were the essential measure of national power, as President Trump did, then these measures seem to have failed.

It is important to note that though some feared the end of the global free trading system under a Trump presidency, Trump never went so far as to withdraw the U.S. from the WTO or abandon trade agreements altogether, despite threatening to.[586] Aides talked him out of it. They argued that the U.S. economy was simply too intertwined with the global economy to end the U.S. participation in liberal free trade agreements without doing substantial harm to the U.S. economy, and ultimately U.S. national security. Instead of abandoning KORUS or NAFTA, the Trump administration replaced them with new agreements.

Though the Cold War is three decades past, and America's unrivaled technological and industrial supremacy has faded, U.S. mercantilist laws and structures have not fundamentally changed. One must ask whether these tools are fit for the challenges the U.S. faces in the coming years, particularly against a rival People's Republic of China which is in an ascending trajectory, possesses substantial economic means, and exhibits, some think, an existentially threatening ideology.

Yet, the U.S. export control system has not adapted. It remains antiquated, cumbersome, and bureaucratic. Interagency tangles continue to fetter it. Controls are both too broad and too narrow. They are too broad because they control items widely available in the global market at needless cost to U.S. businesses. They are also too narrow because new technology, particularly in the internationalized commercial world, quickly diffuses across borders before it ever makes it onto a U.S. control list.

President Trump appeared to pay little attention to the needs for export control reform so amply illustrated in *Beyond Fortress America*. Instead, he appeared to use the export control system as economic leverage in the purest mercantilist sense to try to

[586] Woodward, *Fear*, 264.

secure a more advantageous trade agreement with China. Though the Trump administration proclaimed success in securing the Phase One Agreement, commentators are less sanguine.[587]

Despite reforms, the U.S. controls on foreign direct investment implemented through CFIUS to protect U.S. technology seemed to have been captured by Wall Street interests. Mnuchin appears to have limited the full effects of CFIUS reform to protect the prerogatives of his former Wall Street colleagues. Thus, a single interest group appeared to limit the exercise of this important economic tool, imposing a constraint on national security policymaking.

Outgoing U.S. investment represents both a U.S. economic power and a significant constraint on national security decision making. As a source of power, the U.S. remains the world's preeminent source of capital. As a vulnerability, due to the globally integrated financial system, as many as 100 million Americans have passively invested in Chinese companies through China's strategy of pressuring the major indexes to include Chinese companies.[588] Consequently, American pensioners are indirectly funding China's military expansion and geopolitical aggressiveness at the same time that other elements of the U.S. government are trying to constrain those efforts. This U.S. investment in Chinese companies coupled with the sheer volume of U.S. sovereign debt held in China, renders the U.S. substantially vulnerable to Chinese economic pressure

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[587] Rogin, *Chaos Under Heaven,* 300-303. A full analysis of the "Phase One Agreement" is beyond the scope of this study. From one perspective China secured few meaningful concessions since tariffs remained in place and gave few benefits to the U.S. in the purchase of American goods.

[588] Rogin, *Chaos Under Heaven,* 233-235.

should China ever choose to exercise it.[589] This is a classic mercantilist dependence that Alexander Hamilton sought so desperately to avoid.

As has been demonstrated, the President has authority through IEEPA to exercise complete control over all economic relations between the U.S. and other countries. But, President Trump's exercise of IEEPA was limited to symbolic attacks on TikTok, WeChat, and on Chinese companies linked to the Chinese military. This restraint seems appropriate given the known and unknown consequences of broader action. Yet the vulnerability of the U.S. financial system to Chinese influence is a vital concern going forward.

The Cold War's mercantilist tools to control import, export, and finance have allowed Presidents to act quickly in response to emergencies. When using these authorities, Presidents need consult no ally, despite the obvious international ramifications.[590] In fact, the extent to which the U.S. is integrated into the global economy now demands international cooperation for any of these tools to be effective. In the globalized economic environment in which the U.S. finds itself, the need for allied cooperation represents both a political and economic constraint on national security decision making.

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[589] Certainly, China would suffer from the loss of access to U.S. capital as well as a collapse on the value of the U.S. dollar should China choose to precipitously liquidate its holdings of U.S. debt. Assessing these comparative risks is beyond the scope of this study.

[590] Nor prior to exercising these powers need a President consult any member of Congress, representative of industry, or leader of a union, despite the huge potential domestic political and economic impacts such steps may have. Securing domestic political support prior to taking dramatic trade steps also seems something that Trump was uninterested in doing, at least in several instances discussed in this study.

In the area of international cooperation, the Trump administration failed dramatically. President Trump seemed uninterested in working with allies and this resulting lack of united international effort undermined effectiveness of U.S. national security policies regarding international trade. President Trump's lack of allied engagement represented a fundamental strategic flaw in his approach. Thankfully, President Biden appears to understand this reality and his administration appears to be positively and constructively engaging America's allies to address the damage done by the previous administration. President Biden's efforts at reconciliation were on full display during his first overseas trip to summits of the Group of Seven wealthy democracies, NATO, and European Union, in sharp contrast to President Trump's first overseas visit described in the second chapter.[591]

References to China appear throughout this study. It is beyond this study's scope to evaluate and report definitively on China's ideology and intentions. However, to understand the Trump administration's decision making, it is appropriate to accept as an assumption, as President Trump and many of his advisors did, that China is a strategic competitor with aims at regional hegemony. China appears to be building its military and economic power to exert that hegemony. It appears to reject ideals of democracy and political freedom, as evidenced by its anti-democratic actions in Hong Kong and its systematic repression of Uyghurs and Tibetans. In fact, it appears that China views these values as an existential threat. China also appears to exercise a pure mercantilist

[591] See James Marson, Andrew Restuccia, and Vivian Salama, "Putin Meeting to Test Biden's Bid to Rally Western Allies," *Wall Street Journal,* June 15, 2021, https://www.wsj.com/articles/putin-meeting-to-test-bidens-bid-to-rally-western-allies-11623771627?page=1.

equation of national power, subsuming all other elements (economic, political, and military) to the preservation of the Chinese Communist Party and its control over the nation.

As the Chinese Communist Party celebrates its 100th anniversary and its 72nd year in power, it is not without its challenges.[592] Party membership represents just eight percent of the Chinese population. While the state presence in the Chinese economy is pervasive, there is a substantial element that is privately owned. There is a growing middle class with increasing demands to maintain a steadily improving standard of living, which seems dependent in part on China's private economy. China is dependent on imports for energy, food, and other natural resources. Its economic growth is dependent on a steady flow of foreign technology and capital.

China also has a succession issue. President Xi has concentrated his power, eliminated his term limits, and declined to name a successor. As in any authoritarian regime, succession presents a moment of enormous domestic and international danger. Past successions in China have often brought substantial upheaval. For the West, there is no guarantee that whoever follows President Xi will not find it valuable to heighten nationalistic rhetoric and take even more aggressive steps against China's immediate neighbors, especially Taiwan, and against the West as a way to consolidate power. Xi's

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[592] See "A Hundred Years of Evolution," *The Economist Special Report: The Chinese Communist Party*, June 26, 2021. See also Sun Yu and Tom Mitchell, "The Communist party at 100: is Xi Jinping's China on the right track?" *Financial Times*, June 28, 2021, https://www.ft.com/content/faf2226b-be95-4c52-a10b-653f3137b90d.

passing will represent a point of extraordinary risk to China's neighbors, to the U.S., and, ultimately, to the rest of the world.

The U.S. will need to shape its national security policy regarding China based on these realities. In a globally integrated economy, a full Cold War-style economic separation between China and the West now seems quite implausible. A U.S. move toward isolation and autarky seems similarly implausible and ultimately self-defeating. Unlike the beginning of the Cold War, the U.S. no longer enjoys technological and manufacturing dominance. Therefore, it will need allied engagement to ensure the continuing technological innovation that is essential to both prosperity and national security.

So, in the author's opinion, the oft-described dichotomy between mercantilism and liberalism that purportedly makes them mutually exclusive approaches simply does not exist. Both elements have coexisted in U.S. international trade policy since the end of World War II. The Trump administration continued to balance mercantilist elements and liberal free trade elements in his international trade policy just as prior administrations had done. Like most prior administrations, the Trump administration employed mercantilist tools as it thought appropriate. It challenged, but did not abandon, liberal free trade institutions like the WTO. Nor did it abandon bilateral or regional trade arrangements without replacing them with new ones.

It seems like the U.S. has consistently used an economically nationalist rhetoric to describe its international trade policy. However, for most of the 20th century, this rhetoric identified the success of the U.S. economy with the defense of the free world against

Communism during the Cold War, and with the promotion of global democracy and freedom since then. The past U.S. approach seems to belie the notion that economic nationalism necessarily demands the harm of another nation's interest. As Helleiner noted, one can be an economic nationalist and still promote liberal free trade which is premised on mutual gain.

President Trump differed from his predecessors by embracing populist rhetoric with more sharply economically nationalist tones. With his strident attacks on globalism, Trump abandoned any notion that he sought U.S. economic advancement to benefit all mankind. Further, Trump's anti-globalism seemed to extend to a deep disdain of traditional U.S. allies in trade and security, also a dramatic departure from his predecessors.

It must be recalled however, that though President Trump's tone was more strident, virtually all U.S. Presidents since the Second World War had justified their policies to the American voter in terms of economic nationalism. And just like Presidents since the war, Trump employed both mercantilist and liberal elements in his international trade policy. Therefore, it is the author's opinion that United States ended President Trump's term as a mercantilist, liberal, *and* economically nationalist country, just as it had been since World War II.

This characterization is unlikely to change under President Biden. His first challenge will be to repair the damage President Trump did to America's allies. As a second step, President Biden will need to modernize U.S. Cold-War era organizations and policies regarding imports, exports, and finance. Traditional mercantilist tools may still have their place in international crises. But their use will be complicated by the fact that the global economy, and the U.S. place in it, is dominated by liberal free trade institutions and practices. Finally, President Biden should set a new U.S. national security goal to eliminate dependence on a single potentially hostile rival as its main source of consumer goods, a main market for its exports, a primary destination for its capital, or a key source of foreign investment.

These will be enormous challenges. As international relations historian Francis Gavin wrote recently,

> The United States is at an inflection point, both in how its economy operates and in the global security landscape it faces. How it handles the balance between the two – generating wealth while also creating security – will have consequences for years to come.[593]

[593] Francis J. Gavin, "Economics and National Security," (commentary) *War on the Rocks: Texas National Security Review*, June 29, 2021, https://warontherocks.com/2021/06/economics-and-u-s-national-security/.

Bibliography

U.S. Law

U.S. Constitution

U.S. Const., art. I, § 7.

U.S. Const., art. II, § 2.

U.S. Statutes

19 U.S.C. § 1862 (Section 232 of the Trade Expansion Act of 1962).

19 U.S.C. § 2252 (Section 201 of the Trade Act of 1974).

19 U.S.C. § 2411 (Section 301 of the Trade Act of 1974).

45 U.S.C. § 4565. "Committee on Foreign Investment in the United States."

50 U.S.C. § 3043(a), (b). "Annual National Security Strategy Report."

50 U.S.C. § 1701 *et seq*. "International Emergency Economic Powers Act."

50 U.S.C. § 4301 *et seq*. "Trading with the Enemy Act."

50 U.S.C. § 4801 *et seq*. "Export Controls."

50 U.S.C. § 4917. "Requirements to identify and control the export of emerging and foundational technologies."

Emergency Banking Relief Act, Pub. L. 73-1, Title I, Sections 1, 2, March 9, 1933, https://fraser.stlouisfed.org/title/emergency-banking-relief-act-1098.

Export Control Reform Act of 2018, Pub. L. No. 115-232, 132 Stat. 2208 (2018).

Foreign Investment and National Security Act of 2007. Pub. L. 110-49, 121 Stat. 246 (2007).

Foreign Investment Risk Review Modernization Act of 2018, Pub. L. No. 115-232, 132 Stat. 2174 (2018).

John S. McCain National Defense Authorization Act for Fiscal Year 2019. Public Law 115-232, 132 Stat. 1635 (2018).

Presidential Proclamations

Exec. Order No. 12,334, 66 Fed. Reg. 49079-49083 (September 23, 2001).

Exec. Order No. 13,873, 84 Fed. Reg. 22689-22692 (May 17, 2019).

Exec. Order No. 13,920, 85 Fed. Reg. 26595-26599 (May 1, 2020).

Exec. Order No. 13,942, 85 Fed. Reg. 48637-48639 (August 6, 2020).

Exec. Order No. 13,943, 85 Fed. Reg. 48641-48643 (August 6, 2020).

Exec. Order No. 13,959, 85 Fed. Reg. 73185-73189 (November 17, 2020).

Exec. Order No. 14,032, 86 Fed. Reg. 30145-30149 (June 3, 2021).

Exec. Order No. 14,034, 86 Fed. Reg. 31423-31426 (June 9, 2021).

Proclamation No. 9705, 83 Fed. Reg. 11625-11630 (March 8, 2018).

U.S. Regulations

15 C.F.R. Part 705. “Effect of Imported Articles on the National Security.”

15 C.F.R. Parts 730-774. “Export Administration Regulations.”

22 C.F.R. Parts 120-130. "International Traffic in Arms Regulation."

31 CFR Part 515. "Cuban Assets Control Regulations."

31 C.F.R. Part 800. "Provisions Pertaining to Certain Investments in the United States by Foreign Persons."

U.S. Case Law

Dames & Moore v. Regan, 453 U.S. 654 (1981).

Federal Energy Administration v. Algonquin SNG, Inc., 426 U.S. 584 (1976).

Ralls v. CFIUS*,* 758 F.3d 296 (D.C. Cir. 2014).

United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1936).

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635-36 (1952).

U.S. Executive Branch Documents

Committee on Foreign Investment in the United States. "Annual Report to Congress," Calendar Year 2019. https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2019.pdf.

___. "Program Summary by Budget Activity," June 29, 2021. https://home.treasury.gov/system/files/266/10.-CFIUS-FY-2021-BIB.pdf.

U.S. Department of Commerce. "Commerce Addresses Huawei's Efforts to Undermine Entity List, Restricts Products Designed and Produced with U.S. Technologies." Press Release, May 15, 2020. https://www.commerce.gov/news/press-releases/2020/05/commerce-addresses-huaweis-efforts-undermine-entity-list-restricts.

___. "Commerce Department Lifts Ban After ZTE Deposits Final Tranche of $1.4 Billion Penalty." Press Release, July 13, 2018. https://www.commerce.gov/news/press-releases/2018/07/commerce-department-lifts-ban-after-zte-deposits-final-tranche-14.

___. "Department of Commerce Announces the Addition of Huawei Technologies Co. Ltd. to the Entity List." Press Release, May 15, 2019. https://web.archive.org/web/20200305133531/https:/www.commerce.gov/news/press-releases/2019/05/department-commerce-announces-addition-huawei-technologies-co-ltd.

___. "Secretary Ross Announces $1.4 Billion ZTE Settlement; ZTE Board, Management Changes and Strictest BIS Compliance Requirements Ever." Press Release, June 7, 2018. https://www.commerce.gov/news/press-releases/2018/06/secretary-ross-announces-14-billion-zte-settlement-zte-board-management.

___. "Secretary Ross Announces Activation of ZTE Denial Order in Response to Repeated False Statements to the U.S. Government." Press Release, April 16, 2018. https://web.archive.org/web/20210207082230/https:/www.commerce.gov/news/press-releases/2018/04/secretary-ross-announces-activation-zte-denial-order-response-repeated.

___. "Securing the Information and Communications Technology and Services Supply Chain," 86 Fed. Reg. 4909-4928 (January 19, 2021).

___. "The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security," October 2001.

___. "The Effect of Imports on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, As Amended," January 11, 2018).

U.S. Department of Defense. "Assessing and Strengthening the Manufacturing and Defense Industrial Base Resiliency of the United States." Report, September 2018. https://media.defense.gov/2018/Oct/05/2002048904/-1/-1/1/ASSESSING-AND-STRENGTHENING-THE-MANUFACTURING-AND%20DEFENSE-INDUSTRIAL-BASE-AND-SUPPLY-CHAIN-RESILIENCY.PDF.

___. "Memorandum for the Secretary of Commerce," (Undated).

U.S. Department of Justice. "Chinese Telecommunications Conglomerate Huawei and Subsidiaries Charged in Racketeering Conspiracy and Conspiracy to Steal Trade Secrets." Press Release, February 13, 2020. https://www.justice.gov/opa/pr/chinese-telecommunications-conglomerate-huawei-and-subsidiaries-charged-racketeering.

U.S. Department of State. "U.S. Arms Transfers Increased by 2.8 % in FY 2020 to $175.08 Billion." Fact sheet, January 20, 2021. https://www.state.gov/u-s-arms-transfers-increased-by-2-8-%-in-fy-2020-to-175-08-billion/.

U.S. Department of the Treasury. "Fact Sheet: CFIUS Final Regulations Revising Declaration Requirement for Certain Critical Technology Transactions," September 11, 2020.

U.S. Trade Representative. "ECONOMIC AND TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA," January 15, 2020. https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf.

___. "Findings of the Investigation into China's Acts, Policies, and Practices Related to the Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974," March 22, 2018.

___. "First Written Submissions of the United States of America, United States – Certain Measures on Steel and Aluminum Products (DS556)," June 12, 2019.

___. "The President's Trade Agenda and Annual Report." Fact Sheet, 2018.

___. "United States-China Phase One Trade Agreement." Web Page, July 2, 2021. https://ustr.gov/phase-one.

White House. "A Report to the National Security Council by the Executive Secretary on Basic National Security Policy," NSC 162/2, October 30, 1953. http://orchestratingpower/lib/National Strategies/National Security Strategies/NSS official/NSS-1953,10,30-Ike NSC-162-2.pdf.

___. *Interim National Security Strategic Guidance*, March 2021.

___. *National Security Strategy*, December 2017.

___. *National Strategy for Critical and Emerging Technologies,* October 2020.

___. "U.S. Relations with the USSR." National Security Decision Directive-75, January 17, 1983. https://fas.org/irp/offdocs/nsdd/nsdd-75.pdf.

International Legal Documents

Global Agreement on Tariffs and Trade, October 30, 1947, 55 U.N.T.S. 814.

World Trade Organization. "Russia—Measures Concerning Traffic in Transit: Report of the Panel," 5 April 2019, WT/DS512/R.

___. "Russia—Measures Concerning Traffic in Transit: Panel Report – Action of the Dispute Settlement Body," 29 April 2019, WT/DS512/7.

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 18232.

Other Sources

Alexandroff, Alan S. and Rajeev Sharma. "The National Security Provision—GATT Article XXI." In *The World Trade Organization: Legal, Economic and Political Analysis*, vol. I, edited by Patrick F.J. Macrory, Arthur E. Appleton, and Michael G. Plummer, 1571-79. New York: Springer, 2005.

Akcigit, Ufuk, *et al*. "Fencing Off Silicon Valley: Cross-Border Venture Capital and Technology Spillovers." *NBER Working Paper Series*, Working Paper 27828, September 2020.

Appleyard, Dennis R. and Alfred J. Field, Jr. *International Economics.* New York: McGraw-Hill, 2017.

Bairoch, Paul. *Economics and World History: Myths and Paradoxes*. Chicago: Chicago University Press, 1993.

Baker, Scott; Nicholas Bloom, and Steven Davis. "Measuring Economic Policy Uncertainty." *The Quarterly Journal of Economics* 131, no. 4 (November 2016): 1593-1636.

Baldwin, Robert E. "An Economic Evaluation of the Uruguay Round Agreement." *World Economy* 18, Supplement (2019): 153-172.

Ballhaus, Rebecca, Josh Zumbrun, and Robbie Whelan. "U.S., Mexico Reach Deal to Avoid Tariffs." *Wall Street Journal,* June 8, 2019. https://www.wsj.com/articles/trump-says-u-s-has-reached-deal-with-mexico-11559954306?page=7.

Baltz, Matthew J. "'Americanism not globalism will be our credo?': An Analysis of the Economic Nationalism(s) of Trump's Administration and an Agenda for Further Research." *Nations and Nationalism* 27 (2021): 797-815.

Ben-Atar, Doron. "Hamilton's Alternative: Technology Piracy and the Report on Manufactures." *The William and Mary Quarterly* 52, no. 3 (July 1995): 389-414.

Berger, Rob. "Extortion as National Policy? President Trump Demands 'Key Money' From A TikTok Sale to Microsoft Or He'll Ban TikTok In The U.S." *Forbes*, August 4, 2020. https://www.forbes.com/sites/robertberger/2020/08/04/extortion-as-national-policy-president-trump-demands-key-money-from-a-tiktok-sale-to-microsoft-or-hell-ban-tiktok-in-the-us/?sh=3284e45230ce.

Blanchard, Marc F., Edward D. Mansfield and Norrin M. Ripsman. "The Political Economy of National Security: Economic Statecraft, Interdependence, and International Conflict." *Security Studies* 9, nos. 1-2 (1999): 1-14.

Boldrin, Michele and David K. Levine. "The Case Against Patents." The Federal Reserve Bank of St. Louis Working Paper 2012-035, September 2012.

Bown, Chad P. "Export Controls: America's Other National Security Threat." *Duke Journal of Comparative & International* Law 30 (2020): 283-308.

___. "How Trump's Export Curbs on Semiconductors and Equipment Hurt the US Technology Sector." Peterson Institute for International Economics, September 28, 2020.

Brown, Michael and Pavneet Singh. "China's Technology Transfer Strategy: How Chinese Investments in Emerging Technology Enable A Strategic Competitor to Access the Crown Jewels of U.S. Innovation." Defense Innovation Unit Experimental, January 2018.

Bureau of Economic Analysis. "Gross Domestic Product." Web Page. June 30, 2021. https://www.bea.gov/resources/learning-center/what-to-know-gdp.

___. "New Foreign Direct Investment in the United States, 2019," July 1, 2020.

___. “U.S. International Trade in Goods and Services: Annual Update,” June 6, 2018.

___. “U.S. International Trade in Goods and Services -- April 2021,” June 8, 2021. https://www.bea.gov/sites/default/files/2021-06/trad0421.pdf.

Caldara, Daria, *et al*. “The Economic Effects of Trade Policy Uncertainty.” *International Finance Discussion Papers*, No. 1256, Board of Governors of the Federal Reserve System, September 2019.

Chamber of Commerce of the United States. Letter to White House. June 8, 2018.

Chang, Ho-Joon. *Economics: The User's Guide*. New York: Bloomsbury, 2014.

___. *Kicking Away the Ladder: Development Strategy in Historical Perspective.* London: Anthem Press, 2005.

Chen, Sichong and Wenxui Li, Qui Wang. “Are Chinese Acquirers Discriminated Against in Cross-border Mergers and Acquisitions? An Analysis Based on Covered Transactions Filed with CFIUS.” *China & World Economy* 28, no. 2, (2020): 37-58.

Chernow, Ron. *Alexander Hamilton.* New York: Penguin Books, 2004.

Congressional Budget Office. *The Budget and Economic Outlook: 2020 to 2030.* Washington, D.C.: Congressional Budget Office, January 2020.

___. *Update to the Budget and Economic Outlook: 2020 to 2030.* Washington, D.C.: Congressional Budget Office, September 2020.

Congressional Research Service. “CFIUS: New Foreign Investment Review Regulations,” May 28, 2020.

___. “Export Controls: Key Challenges,” January 14, 2021.

___. “Patent Law: A Handbook for Congress.” Report R46525, September 16, 2020.

___. “Section 232 Investigations: Oversight and Issues for Congress.” Report R45249, August 24, 2020.

___. "The Committee on Foreign Investment on the United State (CFIUS)." Report RL33388, February 26, 2020.

___. "The International Emergency Economic Powers Act: Origins, Evolution, and Use." R45618, July 14, 2020.

___. "The Role of Trade Secrets in Innovation Policy." CRS Report R41391, January 15, 2014.

___. "The U.S. Export Control System and the Export Control Reform Initiative." Report R41916, January 28, 2020.

___. "U.S. Export Control Reforms and China: Issues for Congress," August 21, 2020.

Contessi, Silvio and Ariel Weinberger. "Foreign Direct Investment, Productivity, and Country Growth: An Overview," *Federal Reserve Bank of St. Louis Review* 91, no. 2 (March/April 2009): 61-78.

Conti, Thomas Victor. "Mercantilism: A Materialist Approach," *Scandinavian Economic History Review* 66, no. 2 (2018): 186-200.

Cooper, Thomas. *Lectures on Elements of Political Economy.* Columbia, South Carolina: Doyle E. Sweeny, 1826.

Cunningham, William. *The Growth of English Industry and Commerce in Modern Times.* London: C.J. Clay and Sons, 1882.

Dobson, John M. *Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission.* Washington, D.C.: U.S. International Trade Commission, 1976.

Earle, Edward Mead. "Adam Smith, Alexander Hamilton, Friedrich List: The Economic Foundations of Military Power." In *Makers of Modern Strategy: Military Thought from Machiavelli to Hitler*, edited by Edward Mead Earle, 117-154. Princeton: Princeton University Press, 1944.

___. "Adam Smith, Alexander Hamilton, Friedrich List: The Economic Foundations of Military Power." In *Makers of Modern Strategy from Machiavelli to the Nuclear Age,* edited by Peter Paret, 217-261. Princeton: Princeton University Press, 1986.

Eckes, Alfred E. "U.S. Economic History." In William A. Lovett, Alfred E. Eckes Jr., and Richard L. Brinkman, *U.S. Trade Policy: History, Theory and the WTO.* Armonk, New York: M.E. Sharpe, 2004.

Elwell, Craig K. "Export Controls: Analysis of Economic Costs." Congressional Research Service Report RL30430, February 10, 2000.

Emmert, Frank. *World Trade Organization: Documents.* Chicago: Council on International Law and Politics, 2016.

Feddo, Thomas P. "Keynote Remarks by Assistant Secretary Feddo at the American Conference Institute's Sixth National Conference on CFIUS," July 15, 2020. https://home.treasury.gov/news/pressreleases/sm1067.

Financial Times. "Didi caught as China and US battle over data." *Financial Times*, July 6, 2021. https://www.ft.com/content/00403ae5-7565-413e-907d-ad46549375ba.

Finger, J. Michael and Julio Nogues. "The Unbalanced Uruguay Round Outcome: The New Areas in Future WTO Negotiations." *The World Economy* 25, no. 3 (2002): 321-340.

Flaaen, Aaron and Justin Pierce. "Disentangling the Effects of 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector." Finance and Economics Discussion Series 2019-086. Board of Governors of the Federal Reserve System, 2019.

Ford, Christopher A. "Export Controls and National Security Strategy in the 21st Century." U.S. Department of State. *Arms Control and International Security Papers* 1, no. 16 (August 19, 2020): 1-8.

___. "U.S. National Security Export Controls and Huawei: The Strategic Context in Three Framings," *The Arms Control and International Security Papers* 1, no. 8 (May 22, 2020): 1-8.

Ganesh, Janan. "The US Will Prefer a China Contest to the Forever Wars." *Financial Times*, June 29, 2021. https://www.ft.com/content/796c8af6-c4e3-418a-bf46-41d3fad5590e.

Gavin, Francis J. "Economics and National Security." *War on the Rocks: Texas National Security Review*, June 29, 2021. https://warontherocks.com/2021/06/economics-and-u-s-national-security/.

Glick, Reuven and Alan M. Taylor. "Collateral Damage: Trade Disruption and the Economic Impact of War." *The Review of Economics and Statistics* 92, no. 1 (February 2010): 102-27.

Greenwalt, William. "Leveraging the National Technology Industrial Base to Address Great Power Competition: The Imperative to Integrate Industrial Capabilities of Close Allies." Atlantic Council (April 2019).

Gulley, Andrew L. and Nedal T. Hassar, Sean Xun. "China, the United States, and Competition for Resources that Enable Emerging Technologies." *Proceedings of the National Academy of Sciences (PNAS)* 115, no. 16 (April 17, 2018): 4111-4115.

Hamilton, Alexander, James Madison and John Jay. *The Federalist*, (Norwalk, Connecticut: Easton Press, 1979).

Handley, Kyle; Fariha Kamal, and Ryan Monarch. "Rising Import Tariffs, Falling Export Growth: When Modern Supply Chains Meet Old-Style Protectionism." *International Finance Discussion Papers*, No. 1270, Board of Governors of the Federal Reserve System, 2020.

Heckscher, Eli F. *Mercantilism*. Translated by Mendel Shapiro. 2 vols. London: George Allen & Unwin, 1935.

Helleiner, Eric. "The Diversity of Economic Nationalism." *New Political Economy* 26, no. 2 (2021): 229-238.

Hillman, Jonathan E. *The Emperor's New Road: China and the Project of the Century.* New Haven, Connecticut: Yale University Press, 2020.

Hirschman, Albert O. *National Power and the Structure of Foreign Trade.* 1945. Reprint, Los Angeles: University of California Press, 1980.

___. *The Passions and the Interests: Political Arguments for Capitalism Before Its Triumph.* Princeton: Princeton University Press, 1977.

___. *The Strategy of Economic Development.* New Haven: Yale University Press, 1958.

International Monetary Fund. *World Economic Outlook: Global Manufacturing Downturn, Rising Trade Barriers*. Washington, D.C.: International Monetary Fund, October 2019.

___. *World Economic Outlook: A Long and Difficult Ascent*. Washington, D.C.: International Monetary Fund, October 2020.

Irwin, Douglas A. *Clashing Over Commerce: A History of U.S. Trade Policy.* Chicago: University of Chicago Press, 2017.

Lighthizer, Robert E. "Conceding Free Trade's Flaws." *New York Times*, December 3, 1999. https://www.nytimes.com/1999/12/03/opinion/conceding-free-trades-flaws.html.

___. "Donald Trump is No Liberal on Trade." *Washington Times*, May 9, 2011. http://www.washingtontimes.com/news/2011/may/09/donald-trump-is-no -liberal-on-trade/.

___. "How to Make Trade Work for Workers: Charting a Path between Protectionism and Globalism." *Foreign Affairs*, July/August 2020. https://www.foreignaffairs.com/print/node/1126058.

___. "How to Set World Trade Straight." *Wall Street Journal*, August 20, 2020. https/www.wsj.com/articles/how-to-set-world-straight-115979966341.

___. "The Democracy Gap." *New York Times*, July 1, 1998. https://www.nytimes.com/1998/07/01/opinion/the-democracy-gap.html.

___. "The Venerable History of Protectionism." *New York Times*, March 6, 2008. https://www.nytimes.com/2008/03/06/opinion/06iht-edlighthizer.1.10774536.html.

___. "Trump's Trade Policy is Making America Stronger: A Response to Critics." *Foreign Affairs*, July 20, 2020. https://www.foreignaffairs.com/pring/node/1126209.

Kagan, Rebecca, Rebecca Gelles and Zachary Arnold. "From China to San Francisco: The Location of Investors in Top U.S. AI Startups." CSET Data Brief. Center for Security and Emerging Technology, Georgetown University, February 2021.

Kapstein, Ethan B. *The Political Economy of National Security: A Global Perspective.* Columbia, South Carolina: University of South Carolina Press, 1992.

Karni, Annie, Ana Swanson and Michael D. Shear. “Trump Says U.S. Will Hit Mexico With 5% Tariffs on All Goods.” *New York Times*, May 30, 2019. https://www.nytimes.com/2019/05/30/us/politics/trump-mexico-tariffs.html.

Keynes, John Maynard. *The Economic Consequences of the Peace*. New York: Harcourt, Brace & Howe, 1920.

Koistinen, Paul A.C. *State of War: The Political Economy of American Warfare, 1945-2011*. Lawrence, Kansas: University of Kansas Press, 2012.

List, Friedrich. *Outlines of American Political Economy.* Philadelphia: Parker, 1827.

List, Friedrich. *The National System of Political Economy*. Translated by Sampson S. Lloyd. London: Longmans, Green and Co., 1885.

Lodge, Henry Cabot, ed. *The Works of Alexander Hamilton.* New York: The Knickerbocker Press, 1904.

Lovett, William A. “Introduction.” In William A. Lovett, Alfred E. Eckes Jr., and Richard L. Brinkman, *U.S. Trade Policy: History, Theory and the WTO.* Armonk, New York: M.E. Sharpe, 2004.

___. “Rebalancing U.S. Trade.” In William A. Lovett, Alfred E. Eckes Jr., and Richard L. Brinkman, *U.S. Trade Policy: History, Theory and the WTO.* Armonk, New York: M.E. Sharpe, 2004).

Lovett, William A., Alfred E. Eckes Jr., and Richard L. Brinkman. *U.S. Trade Policy: History, Theory and the WTO.* Armonk, New York: M.E. Sharpe, 2004.

Magnusson, Lars. *The Political Economy of Mercantilism.* London: Routledge, 2015.

Malsberger, John W. and James N. Marshall, eds. *The American Economic History Reader: Documents and Readings.* New York: Taylor & Francis, 2009.

Marson, James Andrew Restuccia, and Vivian Salama. “Putin Meeting to Test Biden’s Bid to Rally Western Allies.” *Wall Street Journal,* June 15, 2021. https://www.wsj.com/articles/putin-meeting-to-test-bidens-bid-to-rally-western-allies-11623771627?page=1.

McCord, Brendan and Zoe A. Y. Weinberg. "How the NSC Can Better Tackle Emerging Technology Threats." Brookings Institute, February 1, 2021.

McMaster, H.R. and Gary D. Cohn. "America First Doesn't Mean America Alone." *Wall Street Journal*, May 30, 2017. https://www.wsj.com/articles/america-first-doesnt-mean-america-alone-1496187426.

Miranda, Lin-Manual, *et al*. *Hamilton: An American Musical.* Album. New York: Atlantic Recording Corporation, 2015.

Mehta, Aaron. "US Increases Dominance of Global Arms Exports." *Defense News,* March 15, 2021. https://www.defensenews.com/global/2021/03/15/us-increases-dominance-of-global-arms-exports/.

Meijer, Hugo. *Trading with the Enemy: The Making of US Export Control Policy toward the People's Republic of China*. Oxford: Oxford University Press, 2016.

Milward, Alan. *War, Economy and Society: 1939-45*. Los Angeles: University of California Press, 1979.

Mitter, Rana. *China's Good War: How World War II is Shaping a New Nationalism*. Cambridge, Massachusetts: Harvard University Press, 2020.

Moran, Theodore H. "Proposed Changes to Foreign Investment Committee are Damaging to the US." Blog. Brookings Institution, November 22, 2017. https://www.brookings.edu/blog/future-development/2017/11/22/proposed-changes-to-foreign-investment-committee-are-damaging-to-the-us/.

Mozur, Paul and Jane Perlez. "China Bets on Sensitive U.S. Start-Ups, Worrying the Pentagon." *New York Times*, March 22, 2017. https://www.nytimes.com/2017/03/22/technology/china-defense-start-ups.html.

Nanto, Dick K. "Economics and National Security: Issues and Implications for U.S. Policy." Congressional Research Service Report R41589, January 4, 2011.

National Archives. "FDR and the Four Freedoms Speech." Web Page, May 26, 2021. https://www.fdrlibrary.org/four-freedoms.

National Research Council. *Beyond Fortress America: National Security Controls on Science and Technology in a Globalized World.* Washington, D.C.: The National Academies Press, 2009.

___. *Export Control Challenges Associated with Securing the Homeland*. Washington, D.C.: The National Academies Press, 2012.

Navarro, Peter. "Economic Security as National Security." Speech to Center for Strategic and International Studies. In "Economic Security as National Security: A Discussion with Dr. Peter Navarro," Center for Strategic and International Studies, November 13, 2018. http://www.csis.org/analysis/econonic-security-as-national-security-discussion-dr-peter-navarro.

___. "How China Unfairly Bests the U.S." *Los Angeles Times*, June 21, 2011. https://www.latimes.com/opinion/la-xpm-2011-jun-21-la-oe-navarro-trade-china-20110621-story.html.

Navarro, Peter, and Gene Autry. *Death by China*. Upper Saddle River, New Jersey: Pearson Education, Inc., 2011.

Neal, Larry. *A Concise History of International Finance: From Babylon to Bernanke.* Cambridge: Cambridge University Press, 2015.

Neuffer, John. "Report Shows Risks of Excessive Restrictions on Trade with China." Blog. Semiconductor Industry Association, March 9, 2020. https://www.semiconductors.org/report-shows-risks-of-excessive-restrictions-on-trade-with-china/.

Office of Technical Evaluation. "Statistical Analysis of U.S. Trade with the World." U.S. Department of Commerce, 2020.

___. "Total U.S. Trade in the World." U.S. Department of Commerce, 2020.

___. "U.S. Trade with China." U.S. Department of Commerce, 2020.

Organization for Economic Cooperation and Development. "FDI in Figures." April 2021. https://www.oecd.org/investment/FDI-in-Figures-April-2021.pdf.

Paltsits, Victor H. *Washington's Farewell Address.* New York: New York Public Library, 1935.

Park, June and Troy Stangarone. "Trump's America First Policy in Global and Historical Perspectives: Implications for US-East Asian Trade." *Asian Perspective* 43, no. 1 (2019): 1-34.

Pinchis-Paulsen, Mona. "Trade Multilateralism and U.S. National Security: The Making of GATT Security Exceptions." *Michigan Journal of international Law* 41, No. 1 (2020): 109-193.

Pryor, Crystal D. "Beyond Economics and Security: Strategic Export Control Practices in Advanced Countries." PhD diss., University of Washington, 2017. ProQuest (10139437).

Rafaelof, Emma. "Unfinished Business: Export Control and Foreign Investment Reforms." Issue brief. U.S.-China Economic and Security Review Commission, June 1, 2021.

Richardson, J. David and Asha Sundaram. "Sizing Up US Export Disincentives for New Generation of National Security Export Controls." Peterson Institute for International Economics. Number PB13-13, May 2013.

Rogin, Josh. *Chaos Under Heaven: Trump, Xi and the Battle for the 21st Century*. New York: Houghton Mifflin Harcourt, 2021.

Roosevelt, Franklin D. "Four Freedoms Speech," Speech to U.S. Congress, January 6, 1941. https://www.fdrlibrary.org/documents/356632/390886/readingcopy.pdf/42234a77-8127-4015-95af-bcf831db311d.

Ruehl, Mercedes, James Kynge and Kiran Stacey, "Chinese State-Backed Funds Invest in US Tech Despite Washington Curbs." *Financial Times*, December 2, 2020. https://www.ft.com/content/745abeca-561d-484d-acd9-ad1caedf9e9e.

Schlesinger, Arthur R. *The Political Economy of National Security.* New York: Praeger, 1960.

Schmoller, Gustav. *The Mercantile System and Its Historical Significance.* New York: Macmillan, 1897.

Schott, Jeffrey J. "Raising a Caution Flag on US Financial Sanctions against China." Policy brief. Peterson Institute for International Economics, January 2021.

Scott, Robert E. "We can reshore manufacturing jobs, but Trump hasn't done it." EPI Policy Center (August 20, 2020).

Seyoum, Belay. "National Security Export Control Regimes: Determinants and Effects on International Business." *Thunderbird International Business Review* 59, no. 6 (November/December 2017): 694-708.

Schott, Jeffrey J. "Raising a Caution Flag on US Financial Sanctions on China." Peterson Institute for International Economics Policy Brief 21-1, January 2021.

Schuman, Michael. *Superpower Interrupted: The Chinese History of the World*. New York: Public Affairs, 2020.

Shear, Michael D., Ana Swanson and Azam Ahmed. "Trump Calls Off Plan to Impose Tariffs on Mexico." *New York Times*, June 7, 2019. https://www.nytimes.com/2019/06/07/us/politics/trump-tariffs-mexico.html.

Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Carmel, Indiana: Liberty Fund, 1976.

Spechler, Martin C. "Economics and Nationalism." *Encyclopedia of Nationalism: Fundamental Theme*. Edited by Alexander J. Motyl. Academic Press, 2001.

Swanson, Ana, Maggie Haberman and Alan Rappeport. "Trump Is Said to Have Overruled Kushner and Other Aides in Threatening Mexico With Tariffs." *New York Times*, June 1, 2019. https://www.nytimes.com/2019/06/01/us/politics/trump-mexico-tariffs.html.

Taussig, Frank W. *Protection to Young Industries as Applied to the United States: A Study in Economic History*. Cambridge, Massachusetts: Moses King, 1883.

___. *The Tariff History of the United States: A Series of Essays*. New York: Knickerbocker Press, 1899.

The Economist. "A Hundred Years of Evolution." *The Economist Special Report: The Chinese Communist Party*, June 26, 2021.

The Phrase Finder. "The Full Monty." Web Page, June 28, 2021. https://www.phrases.org.uk/meanings/full-monty.html.

Thomas, John R. "Innovation and Intellectual Property Issues in Homeland Security." Congressional Research Service Report RL32051, January 17, 2008.

Trebilock, Michael, Robert Howse, and Antonia Eliason. *The Regulation of International Trade*. New York: Routledge, 2013.

Trump, Donald J. "Declaring America's Economic Independence." Campaign speech given in Monessen, Pennsylvania. In "Full Transcript: Donald Trump's Job Plans Speech," *Politico*, June 29, 2016. http://www.politico.com/story/2016/06/full-transcript-trump-jobs-plan-speech-224891.

___. *Great Again: How to Fix Our Crippled America*. New York: Threshold Editions, 2015.

___. "Inaugural Address." In "Full Text: 2017 Donald Trump Inauguration Speech Transcript." *Politico*, January 20, 2017. http://www.politico.com/story/2017/01/full-text-donald-trump-inauguration-speech-transcript-233907.

___. *Time to Get Tough: Make America Great Again!* Washington, D.C.: Regnery Publishing, 2011.

Trump Donald J., with Dave Shiflett, *The America We Deserve*. Los Angeles: Renaissance Books, 2000.

U.S.-China Economic and Security Review Commission. "Economics and Trade Bulletin." June 21, 2021. https://www.uscc.gov/sites/default/files/2021-06/June_2021_Trade_Bulletin.pdf.

U.S. Department of Defense. "James R. Schlesinger." Web Page, May 27, 2021. https://history.defense.gov/Multimedia/Biographies/Article-View/Article/571289/james-r-schlesinger/.

U.S. Government Accountability Office. "DoD Critical Technologies: Plans for Communicating, Assessing, and Overseeing Protection Efforts Should Be Completed." GAO-21-158, January 2021.

___. "High Risk Series: Substantial Efforts Needed to Achieve Greater Progress in High Risk Areas." GAO-19-157SP, March 2019.

Vandevelde, Kenneth J. *The First Bilateral Investment Treaties: U.S. Postwar Friendship, Commerce and Navigation Treaties.* Oxford: Oxford University Press, 2017.

Varas, Antonio and Raj Varadarajan. "How Restrictions to Trade with China Could End US Leadership in Semiconductors." Report. Boston Consulting Group, March 2020. https://image-src.bcg.com/Images/BCG-How-Restricting-Trade-with-China-Could-End-US-Semiconductor-Mar-2020_tcm9-240526.pdf.

Viner, Jacob. *Studies in the Theory of International Trade*. 1937. Reprint, New York: Augustus M. Kelley, 1965.

Viswanatha, Aruna, Eva Dou, and Kate O'Keefe. "ZTE to Pay $892 Million to U.S., Plead Guilty in Iran Sanctions Probe." *Wall Street Journal,* March 7, 2017. https://www.wsj.com/articles/zte-to-pay-892-million-to-u-s-plead-guilty-in-iran-sanctions-probe-1488902019.

Walker, William N. "Nixon Taught Us How Not to Fight Inflation." *Wall Street Journal*, August 14, 2021. https://www.wsj.com/articles/nixon-fight-inflation-price-controls-stagflation-gas-shortages-biden-democrats-reconciliation-bill-federal-reserve-11628885071.

Wells, Georgia. "TikTok Download Ban Is Blocked by Second Judge." *Wall Street Journal,* December 8, 2020. https://www.wsj.com/articles/tiktok-download-ban-is-blocked-by-second-judge-11607390564?page=1.

Whalen, Jeanne and David J. Lynch. "Trump calls Huawei 'dangerous' but says dispute could be resolved in trade deal." *Washington Post*, May 23, 2019. https://www.washingtonpost.com/business/economy/trump-calls-huawei-dangerous-but-says-dispute-could-be-resolved-in-trade-deal/2019/05/23/ed75c4a0-7da6-11e9-8ede-f4abf521ef17_story.html.

Wilson, Robert R. *United States Commercial Treaties and International Law*. New Orleans: Hauser Press, 1960.

Wilson, Woodrow. "Fourteen Points." Speech, January 8, 1918. https://millercenter.org/the-presidency/presidential-speeches/january-8-1918-wilsons-fourteen-points.

Woodward, Bob. *Fear: Trump in the White House*. New York: Simon & Schuster, 2018.

___. *Rage*. New York: Simon & Schuster, 2020.

World Trade Organization. "Dispute Settlement: The Disputes." Web Page, July 5, 2021. https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm.

Yu, Sun and Tom Mitchell. "The Communist party at 100: is Xi Jinping's China on the right track?" *Financial Times*, June 28, 2021. https://www.ft.com/content/faf2226b-be95-4c52-a10b-653f3137b90d.

Appendices

Appendix A – Section 232 in Detail.

This appendix will examine in detail Section 232 of the Trade Expansion Act of 1962.[594] To begin any discussion of U.S. law, one must acknowledge that all federal legal authority originates from the U.S. Constitution. The U.S. Constitution empowers Congress "to regulate Commerce with foreign Nations" and "to lay and collect Taxes, Duties, Imposts and Excises." U.S. Const. art. I, § 7. As is common in areas of foreign affairs, Congress may delegate its authority to the executive and has done so in Section 232.

The U.S. Constitution also gives the President direct foreign affairs authorities. Specifically, he or she has the authority "to make Treaties" and "appoint Ambassadors." U.S. Const. art. II, § 2. The U.S. Supreme Court noted, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936). Under U.S. law, the President is acting at the pinnacle of virtually unreviewable discretion when

[594] 19 U.S.C. § 1862 (2021).

making decisions pursuant both to his given constitutional authority and pursuant to a delegation of Congressional authorities.[595]

Section 232 has six subsections.[596] The first, subsection (a), authorized the President *to decline to reduce or eliminate duties or other import restrictions* pursuant to other trade agreements on any article if the President "determines that such reduction or elimination would threaten to impair the national security."[597]

The second, subsection (b), authorizes the Secretary of Commerce to initiate investigations to determine the effects on national security of the import of specific articles.[598] This subsection requires the Secretary of the Commerce to consult with the Secretary of Defense and other government agencies, as well as to seek information from other interested parties through public hearing and public comment. Subsection (b) sets out a specific deadline of 270 days to complete the investigation after which the Secretary of Commerce is to present his conclusions as to "the effect of the importation of such article *in the quantities* or *under such circumstances* upon the national security (emphasis added)."[599] Thus, the investigation is expected to gather facts about the volume of and

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[595] See Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-36 (1952).

[596] Apparently in the original legislation, there were two subsections both labeled "(d)". 19 U.S.C. § 1862(d), footnote 1.

[597] 19 U.S.C. § 1862(a) (2021).

[598] 19 U.S.C. § 1862(b) (2021).

[599] 19 U.S.C. § 1862(b) (2021).

terms of trade for a particular article, evaluate the impacts on national security, and report the facts and conclusions to the President.

Subsection (c) further requires that, given findings of impact on national security, the Secretary of Commerce make recommendations as to whether or not the President should take action.[600] If the Secretary of Commerce finds that there is an imported article that threatens to impair the national security, subsection (c) empowers the President to concur or not with the Secretary of Commerce's finding, and if concurring, to determine the "nature and duration" of the trade action that, in the President's judgment, will "adjust imports of the article and its derivatives" such that they will no longer threaten to impair the national security.

Subsection (c) anticipates that the President might seek to negotiate an agreement to limit imports and gives the President 180 days to accomplish this. If not done or it was done but was not effective, the subsection authorizes the President to take other actions as necessary, or to take no further action.

The fourth subsection, (d), provides criteria for the Secretary and the President to consider in making their determinations "in the light of the requirements of national security and without excluding other relevant factors." The subsection begins with a list that appears directly linked to national security.[601]

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[600]Ibid. The subsection states that any unclassified portions of the report "shall be published" in the Federal Register. This part of the law also authorizes the Secretary of the Commerce to implement regulations necessary to carry out the statute. 19 U U.S.C. § 1862(a). These regulations are found in Title 15, Code of Federal Regulations, Part 705 (cited as 15 C.F.R Part 705).

[601] The "national security" list includes domestic production needed for projected national defense requirements; the capacity of domestic industries to meet such requirements; existing and anticipated availabilities of the human resources, raw materials, and other supplies and services essential to the national

The next part of subsection (d) takes a more expanded view than traditional notions of national security. The executive branch is directed in making its determinations, to "further recognize the close relation of the economic welfare of the nation to our national security." In determining whether the "weakening of our internal economy may impair national security," the executive branch is directed to take into consideration a long list of general economic factors, "without excluding other factors."[602]

The President's decisions need no Congressional approval to have the effect of law. However, the sixth subsection establishes a Congressional disapproval process regarding only the importation of petroleum or petroleum products. If Congress disapproves of a presidential action, that disapproval would terminate the legal effect of the President's action. To disapprove of a presidential action for all imports other than petroleum or petroleum products, Congress would have to pass superseding legislation which would be subject to a President's possible veto.

Justice Thurgood Marshall provided a detailed discussion of the drafting of Section 232 in his opinion upholding the constitutionality of that section in *Federal*

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defense; the requirements of growth of such industries and such supplies and services including investment, exploration, and development to assure such growth; and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements.

[602] The broader criteria are the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in government revenues, loss of skills or investment, or other serious effects by the displacement of any domestic products by excessive imports. The fifth subsection, also labeled (d), directs the Secretary of Commerce to report to Congress the disposition of every request received to take action under Section 232. The Department of Commerce has issued regulations to implement Section 232. They are found at 15 C.F.R. Part 705 and largely restate the language of the statute.

Energy Administration v. Algonquin SNG, Inc.[603] Congress enacted the first version of the statute in 1955, re-enacting it as Section 232 of the Trade Expansion Act of 1962.[604] Thus, this section is a product of the Cold War rivalry with the Soviet Union. The Trump administration's revival of its use seems to echo the anxiety of rivalry – but this time between America and China.

Prior to the Trump administration, there had been 26 Section 232 investigations, the last undertaken in 2001.[605] Of those, there was a finding of *no threat* to impair the national security in 16 – a 17th was ended before a finding. In the other nine, there was a finding of a threat to impair the national security. In six of those nine cases, the President took action to adjust imports through import bans or quotas, or sought voluntary import quotas, or imposed import fees or duties. In three of the nine cases with positive findings, the President took no action.

As stated above, the Trump administration has initiated eight Section 232 investigations.[606] In five of those, the Secretary of Commerce found that the imports concerned "threatened to impair national security." Of those, President Trump agreed with the Secretary Ross's determination and imposed tariffs in the two investigations regarding steel and aluminum, respectively. Reports of these two investigations have

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[603] 426 U.S. 548 (1976).

[604] 426 U.S. at 550.

[605] Congressional Research Service, "Section 232 Investigations: Overview and Issues for Congress," CRS Report R45249, August 24, 2020, Table B-1, 58-60.

[606] CRS Report, "Section 232 Investigations: Oversight and Issues for Congress," Report R45249,August 24, 2020, Appendix B.

been released – the Trump administration did not release the other three reports. In a third investigation regarding automobiles, the President concurred but directed the United States Trade Representative to negotiate with trading partners to address the threat to impair national security. In a fourth investigation regarding uranium ore and products, the President disagreed with the Secretary's determination of a threat to the impairment of national security. In a fifth regarding titanium sponge, the President concurred but elected not to act against imports. The last three investigations are ongoing and regard electric transformers and certain grain-oriented electrical steel parts, mobile cranes, and vanadium.

Appendix B – The 2018 Steel Report.

This appendix will review in detail the January 2018 report of the Commerce Department's Section 232 investigation into steel imports.[607]

The 2018 Steel Report concluded that the U.S. steel industry was essential to national security, even though only three percent of domestic steel production was required for direct national security requirements.[608] The implication of this low amount was, the report concluded, that domestic producers could not rely on defense sales alone to be viable businesses – they needed sufficient commercial and industrial sales to be profitable. The report goes on to indicate that critical industries also had a high need for steel if the $4.5 trillion of hoped for infrastructure investments were made through 2025.[609] The authors estimated that some 54 million metric tons annually would be required for critical industries.[610]

The report next determined that the economic welfare of U.S. steel producers had been eroded by imports of lower-priced steel from countries with directly or indirectly subsidized steel production.[611] Even non-subsidized foreign competitors felt pressured

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[607] U.S. Commerce Department, "The Effect of Imports on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, As Amended," (January 11, 2018), 13-14. (Hereafter 2018 Steel Report).

[608] 2018 Steel Report, 23.

[609] 2018 Steel Report, 24, citing a report from the American Society of Civil Engineers. Ibid., 27. No infrastructure measure was passed during the Trump administration.

[610] 2018 Steel Report, 27.

[611]2018 Steel Report, 25. The report blames higher U.S. prices on "higher taxes, healthcare, environmental standards, and other regulatory expenses." Ibid., 31-32. The report does not discuss factor or technology allocations (like wage or productivity differentials).

by subsidized competitors to export to the U.S., the report stated.[612] As evidence for inappropriate state subsidies, the report pointed to 164 cases where anti-dumping or countervailing duties (ADCV) had been imposed (with 20 more under investigation).[613] The excessive imports, the report concluded, had driven U.S. steel producers out of business, forcing plant closures and layoffs.[614] Survivors were overleveraged and the loss of revenue due to unfair imports, low prices, and declining demand had forced them to defer or eliminate investments in modernization and research and development.[615] The report indicated that the U.S. steel industry had net negative income between the years of 2009-2016.[616]

An analysis of the 2018 Steel Report reveals evidence that it appears to be, perhaps unsurprisingly, more political advocacy than objective economic inquiry. The 2018 Steel Report utilized an expanded view of "national security" that embraced broader economic welfare and not just elements directly impacting defense. This expanded view seems consistent with the language and history of Section 232 discussed above. As referenced earlier, Congress noted the close link between overall economic welfare and the security of the nation in Section 232. However, Congress probably did not expect an exact identity between the two in the way that President Trump expressed it in his

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[612] 2018 Steel Report, 32.

[613] 2018 Steel Report, 25, 28-29. The authors relay that the expense, cost, and delay in remedies for ADCV duties made them ineffective in the steel industry with its volume and diversity of products. They note that small producers often cannot afford to seek this relief.

[614] 2018 Steel Report, 33-36. The report added that U.S. steel producers were burdened with high debt.

[615] 2018 Steel Report, 38-40.

[616] 2018 Steel Report, 37.

statement in the *2017 National Security Strategy* that "economic security is national security." If it had, Congress could have said so in the statute. Nor may this exact identity comport with Justice Thurgood Marshall's dicta in *Federal Energy Administration v. Algonquin SNG, Inc.,* where he stated that "national security" must be interpreted more narrowly than "the national interest."[617] But, the statute gives wide latitude to the sitting President to interpret "national security" as the executive thinks best. Additionally, with its present conservative majority, the U.S. Supreme Court may well reconsider Justice Marshall's dicta.

Having said that, one might have expected a more balanced economic inquiry in a Section 232 investigation even if it embraced an inquiry into the broader impacts of imports on the U.S. economy. The most compelling evidence that the report is not an objective economic analysis is what the report *leaves out* of its discussion.

For instance, the 2018 Steel Report does not examine evidence of the importance to the broader U.S. economy of the cost of imports on downstream producers, including those that turn the imports into higher value products for export. The modern U.S. economy closely intertwines imports and exports in a way that appears to go unacknowledged in the report. Nor does the report discuss the implications of promoting U.S. steel production that further consumes the very limited U.S. stocks of iron ore. Nor does the report assess the likely impact of entirely predictable retaliatory measures taken by trading partners on key U.S. exports, particularly agricultural products. The report

[617] 426 U.S. at 569. Ultimately, the Secretary of Commerce determined that there was no probative evidence that imports of iron ore or semi-finished steel threatened to impair the national security, even under the broader definition. 2018 Steel Report, 1.

does not compare the direct and indirect costs of imposing tariffs on the broader U.S. economy with the economic benefit sought by those tariffs. If the adverse impacts are greater than the benefits, then has not the administration's action itself "threatened to impair the national security?" Finally, the report makes no effort to assess the potential cost of the tariffs to the American consumer.

Nor does the 2018 Steel Report discuss the foreign policy impacts of unilateral trade action. Although the report focuses on China's subsidized excess capacity in steel production, the actual impact on the tariffs fell upon Canada, Mexico and other close trading and security allies. Looking just at the global steel industry, was this a necessary distraction to the otherwise broad consensus emerging among developed nations to address the global overcapacity in steel production? Had the U.S. harmed those efforts as it weakened its own economy? Did the tensions distract from other efforts to address global issues like the pandemic, Chinese aggressiveness in the South China Sea, Russian aggression in Ukraine, or climate change? Then-U.S. Secretary of Defense James Mattis pointed out these concerns in his letter to the U.S. Secretary of Commerce when he stated, "DoD continues to be concerned about the negative impact on our key allies regarding the recommended options within these reports."[618] The report nowhere analyzes these concerns though it does recognize that the President could exempt certain countries from the trade actions.

[618] U.S. Department of Defense, "Memorandum for the Secretary of Commerce," July 10, 2021, https://www.commerce.gov/sites/default/files/department_of_defense_memo_response_to_steel_and_aluminum_policy_recommendations.pdf.

Also missing from the report is an analysis of possible alternatives to trade action. If the source of the problem was China's overcapacity, what steps other than tariffs might be taken to address that concern? For instance, the U.S. had previously supported an effort by the Organization for Economic Cooperation and Development to establish a global forum on excess steel capacity in hopes of generating pressure on those nations subsidizing and expanding steel production capacity to reconsider their policies.[619] The possible benefits of international action were not compared to the potential harm inflicted on close trading allies by unilateral U.S. tariffs.

The 2018 Steel Report did not consider steps to strengthen existing remedies to perceived unfair state support of steel production, such as anti-dumping or countervailing duties (ADCV). Though the issues of global overcapacity, and the resulting incentives to cheat, were well known, and the challenges of cost and timeliness in bringing ADCV cases were well documented, the report does not consider changes to improve the effectiveness the available ADCV remedies. Such steps could have included establishing a governmental entity to monitor steel imports and empowered to bring actions on its own rather than requiring those private parties claiming harm to bear the cost of initiating, investigating and prosecuting claims. Minimally, the administration could have considered providing more resources for the quicker adjudication of pending claims under the existing system. Again, the costs of these more direct governmental efforts were not weighed against the costs of unilateral U.S. quotas or tariffs.

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[619] See the discussion in Congressional Research Service, "Section 232 Investigations: Overview and Issues for Congress," Report R45249, August 24, 2020, 34-36.

Finally, the 2018 Steel Report did not discuss other ways to strengthen the U.S. steel industry. This would have required a deeper analysis of steel production in the U.S. Instead, the report settled on the typical Republican complaints about "higher taxes, healthcare, environmental standards and burdensome regulations," coupled with unfair trade, as causes for the decline of the industry. These outside forces were blamed for declining investment modernization or research and development. Nowhere was discussed why U.S. steel companies were so overleveraged or found such difficulty in obtaining financing. Also missing was any effort to understand the broader shift in the U.S. economy from manufacturing to services as it impacted the domestic steel industry. Further, the authors neglected to address the risk that trade measures would protect inefficient or poorly run companies by enabling those companies to avoid the improvements they needed to compete, or if unable to, from shifting those resources to industries that were more competitive.[620]

A more thoughtful analysis would have identified how other forms of governmental intervention might have more directly benefited the steel industry. As trade divergence theorists would point out, direct subsidies are less economically distorting than tariffs. In short, the 2018 Steel Report does not compare the costs of other possible government steps to support to the U.S. steel industry against the potential adverse impacts of Section 232 tariffs on the U.S. economy.

[620] Robert E. Scott of the Economic Policy Institute observed that the decline in American manufacturing has taken place over decades. He noted influences of "decades of trade, currency and tax policies that incentivized off-shoring" in "We can reshore manufacturing jobs, but Trump hasn't done it," EPI Policy Center, August 20, 2020, 1.

Appendix C – GATT Article XXI and the WTO Panel Report on Russia.

This appendix will provide a detailed review of the 2019 WTO panel decision reviewing a complaint from Ukraine against trade measures imposed by Russia. [621]

The panel first reminded readers that the interpretation of any treaty provision begins by giving ordinary meaning to its terms in light of its context, and in view of the object and purpose of the treaty.[622]

Article XXI of GATT reads in full

Security Exceptions

Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international

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[621] World Trade Organization, "Russia—Measures Concerning Traffic in Transit: Report of the Panel," 5 April 2019, WT/DS512/R, (hereafter WTO Russia Panel Decision), https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/512R.pdf&Open=True. The report was accepted by the Dispute Settlement Body and became a binding decision on April 29, 2019. World Trade Organization, "Russia—Measures Concerning Traffic in Transit: Panel Report – Action of the Dispute Settlement Body," 29 April 2019, WT/DS512/7, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/512-7.pdf&Open=True.

[622] WTO Russia Panel Decision, 39, citing Article 31(1) of the Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 18232.

relations; or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations.

The specific subparagraph under which the U.S. claimed it could disregard its general obligations under GATT was (b)(iii) of Article XXI.

The panel examined the construction of Article XXI and concluded that the three subparagraphs under (b), identified as (i), (ii), and (iii) were "limitative qualifying clauses."[623] That meant that a member state could apply the GATT exception in paragraph (b), the "taking any action which it considers necessary for the protection of its essential security interests," *only* when the circumstances in (i), (ii) or (iii) applied. Consequently, the application of paragraph (b) was limited to actions (i) relating to fissionable material; or (ii) relating to traffic in arms, etc., or (iii) "taken in time of war or other emergency in international relations."[624]

Russia had claimed the application of subparagraph (b)(iii), asserting that its actions were "taken in time of war or other emergency in international relations." The panel took note that subparagraph (b)(iii) necessarily implied a temporal limitation, that the action took place *during* war or other emergency in international relations.[625] The panel concluded that the condition of war or emergency in international relations was one of "objective fact," amenable to an "objective determination."[626]

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[623] WTO Russia Panel Decision, 40.

[624] WTO Russia Panel Decision, 40-41.

[625] WTO Russia Panel Decision, 41.

[626] WTO Russia Panel Decision, 41.

After noting common definitions of "war" and "international relations," the panel then construed what was meant by "crisis in international relations" by looking at the construction of Article XXI(b). The panel observed that all the items covered by (i), fissionable material, and (ii), traffic in arms, all related to "defense and military interests, as well as maintenance of law and public order interests."[627] When added to (iii) which specifically began with "war," then added "crisis in international relations," the panel concluded that such "crisis in international relations" necessarily related to the very same type of interests: military, defense, or law and order.[628]

Further, the panel observed that including "war" and "crisis in international relations" in the same clause meant to distinguish such circumstances from typical political and trade differences between states. The panel stated, "Indeed, it is normal to expect that Members will, from time to time, encounter political or economic conflicts with other Members or states."[629] The panel concluded, therefore, that such conflicts *cannot be* a "crisis in international relations" in the meaning of subparagraph (b)(iii), "unless they give rise to defense and military interests, or maintenance of law and public order interests."[630]

The panel reminded readers that the purpose of GATT was "to promote the security and predictability of the reciprocal and mutually advantageous arrangement and

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[627] WTO Russia Panel Decision, 41

[628] WTO Russia Panel Decision, 41

[629] WTO Russia Panel Decision, 42.

[630] WTO Russia Panel Decision, 42.

the substantial reduction of tariffs and other barriers to trade." At the same time, member states had the leeway to depart from their obligations in specific instances "in order to achieve particular non-trade legitimate objectives." It would be "entirely contrary to the security and predictability of the multilateral trading system…to interpret Article XXI as an outright potestative condition, subjecting the existence of a Member's GATT and WTO obligations to the mere expression of unilateral will of that Member."[631]

To drive home its conclusion, the panel examined the negotiating history of Article XXI. It turns out that the language in the article originated from proposals coming from the U.S. delegation during parallel negotiations between 1946 and 1948 for an International Trade Organization (ITO) Charter (the ITO was intended as an organization to complement the World Bank and International Monetary Fund in the goal of stabilizing the international economy after World War II) and a general agreement on tariffs.[632] The exact terms of Article XXI reflected a concern from the U.S. delegation that too broad an exception would lead to abuse by a nation taking unilateral action using a "simple pretext" that would allow a "legal escape from compliance" and thereby destroy the efficacy of the entire system.[633] In answer to questions from another nation's delegate, a U.S. delegate stated,

> As to the second provision, "or other emergency in international relations," we had in mind particularly the situation that existed in the last war, before our own participation in the last war, which was not until the end of 1941. War had been going on for two years in Europe and, as the time of our own participation

[631] WTO Russia Panel Decision, 42.

[632] WTO Russia Panel Decision, 43-46.

[633] WTO Russia Panel Decision, 46.

> approached, we were required, for our own protection, to take many measures which would have been prohibited by the [International Trade Organization] Charter. Our exports and imports were under rigid control. They were under rigid control because of the war then going on.[634]

The U.S. delegation went on to express that the language they proposed (which ultimately became Article XXI) allowed for legitimate security concerns but did not allow states to apply measures that where really for a "commercial purpose" but were taken "under the guise of security."[635] As a final observation here, the panel noted how important it was that this discussion of "security" occurred immediately following the conclusion of World War II.[636]

Thus, the panel concluded that the U.S. position during the drafting of what ultimately became Article XXI totally contradicted the position taken by Russia (and supported by the U.S.) that its actions under Article XXI were not subject to review under GATT.[637] Specifically, the panel concluded that it had the jurisdiction to determine (1) whether the circumstances in (b)(iii) were present, i.e. that there existed a "war" or "crisis in international relations" and (2) whether the trade measures in dispute were "taken during" those circumstances.[638] After reviewing the evidence, the panel found both that

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[634] WTO Russia Panel Decision, 48.

[635] WTO Russia Panel Decision, 48.

[636] WTO Russia Panel Decision, 50.

[637] WTO Russia Panel Decision, 50.

[638] WTO Russia Panel Decision, 50-51.

the circumstance of a crisis in international relations existed (the conflict in Ukraine) and that the trade measures Russia took were taken during that crisis.[639]

The panel next took up the issue as to whether a member state's determination (1) that there was an "essential security interest" at issue and (2) that the selection of actions taken to protect that interest was left entirely to the member state's discretion. The panel noted that "essential security interests" must be something more than just "security interests" and were generally understood to relate to "quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally."[640] Having said that, the panel observed that such determinations were generally left for a state to define as long as the state acted "in good faith." An example of bad faith would be to "simply relabel trade interests" as "essential security interests" to escape obligations under GATT. Therefore, a member state was expected to "articulate the essential security interests said to arise from the emergency in international relations sufficiently enough to demonstrate their veracity."[641]

Moreover, the trade measures taken to protect the "essential security interests" must "meet a minimum requirement of plausibility in relation to the proffered essential security interests, i.e., that they are not implausible as measures protective of those interests."[642]

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[639] WTO Russia Panel Decision, 55.

[640] WTO Russia Panel Decision, 56.

[641] WTO Russia Panel Decision, 57.

[642] WTO Russia Panel Decision, 57.

The panel found that Russia's claim of essential security interests arising from the conflict in Ukraine seemed sufficient and not intended to circumvent its obligations under GATT.[643] It further found that the measures at issue were not so remote from or unrelated to the described emergency such "that it is implausible that Russia implemented the measures for the protection of its essential security interests arising out of the emergency."[644]

Consequently, the panel found that Russia had acted consistently with Article XXI and that its trade actions did not violate its obligations under GATT. The panel therefore rejected Ukraine's compliant.

[643] WTO Russia Panel Decision, 57.

[644] WTO Russia Panel Decision, 58.