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Trump's Trade Policies – A Broad Perspective

Three books were recently published that help in the broad assessment of where President Trump's policies fit into U.S. political and international history. The fit is not good.

By **Stuart S. Malawer** | July 05, 2018



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Taking a step back in order to assess Trump's tariff and trade policies from a broad historical and political perspective is a worthwhile and, I would suggest, necessary undertaking.

Fortunately, three books were published recently that help in this broad assessment. These were written by an economist, a historian, and a foreign policy expert. While not addressing Trump's policies directly, these writings provide a broad context of where his policies fit into U.S. political and international history. This fit is not good.

These books are particularly important for the many lawyers serving in the trade offices throughout the federal government. They are especially informative to those from private practice who view trade primarily through the lens of industries impacted by imports. It is lawyers in the U.S. that populate almost all trade policy positions, starting with the Office of the United States Trade Representative (USTR). Trade policy includes a great deal more than just narrow private and domestic interests. They increasingly include critical issues of foreign policy and national security.

Clashing Economic Interests

In *Clashing Over Commerce—A History of US Trade Policy* (2017), economist Douglas Irwin makes the following three observations: One, the three main purposes of U.S. trade policy historically have been the three Rs: revenue, restrictions, and reciprocity. The U.S. first collected tariffs historically for the purpose of increasing national revenue. It then restricted imports with tariffs to help domestic industries, and then moved on to reciprocity as the basis of the modern trading system, as embodied in the General Agreement on Tariffs and Trade and the World Trade Organization. Two, tariff policy always has been the result of clashing economic interests, for example, between manufacturers and consumers. Three, changes in trade and tariff policies have resulted from two great historical events, the American Civil War and the Great Depression. Irwin leaves an open question about whether President Trump's election will be the third great catalyst.

In *The Soul of America* (2018), presidential historian Jon Meacham traces the various difficult aspects of U.S. history from slavery, the Civil War, Reconstruction, “Jim Crow” laws, the Red Scare and revival of the Ku Klux Klan of the 1920s, the internment of Japanese-Americans during World War Two, McCarthyism of the 1950s, and the “massive resistance” throughout the 1960s. His thesis is simple: Bad things have happened in U.S. history, and combating them is a constant. Retroactive forces are always present. However, the U.S. has generally moved forward and is a progressive example in the global community.

Jon Meacham is not optimistic about whether President Trump can rise to the occasion of confronting the challenges facing the U.S. this decade but leaves the question open. He concludes his study by stating that understanding the past can be orienting.

In *A World in Disarray* (2017), foreign policy expert Richard Haass examines the domestic and international forces at work today and concludes there are long-standing, deep divisions in the U.S. and globally. These have been caused in part by globalization and rapid technological developments.

A New Era of Slow Growth

These divisions and inequalities have been exacerbated by slow economic growth in the U.S. and abroad since the Great Recession of 2008. Governments have simply not formulated effective domestic policies to address the economic and social consequences of this new era. Populism and nationalism have only increased. Haass argues that a new World Order 2.0 needs to be developed that takes into account a broad range of new forces and challenges. He also argues that frequent reversals of American foreign policy are simply not helpful.

These authors noted to varying degrees the long history of delegation of congressional trade authority to the president and the growth of executive authority in foreign affairs. These developments simply cannot be understated. They need to be emphasized again. As trade and national security have grown in importance as domestic issues, President Trump has greatly relied on both the broad delegation of trade authority and the past expansion of presidential authority in foreign affairs. His ever-growing reliance on national security as a rationale for trade actions is unprecedented.

The president's reliance on Section 232 of the Trade Expansion Act and its authorization for trade actions on the basis of national security (aluminum and steel) has already been attacked in the WTO and the federal courts. Complainants in the WTO including the EU, China, India, Canada and Mexico and most recently, Russia, rely on Article XXI and argue that U.S. actions do not qualify as a valid national security action under global trade law. They contend that those actions are just a subterfuge for protectionist measures. New domestic litigation filed in the United States Court of International Trade in New York contends that the broad congressional delegation of trade authority to the president is unconstitutional. It contends that Congress has delegated away its legislative function by not establishing sufficient criteria for executive action.

The president's request to broaden the coverage of the Committee on Foreign Investment in the United States (CFIUS) is being considered by Congress. His frequent calls for action under other U.S. legislation authorizing presidential actions on the basis of national emergency (for example, the International Emergency Economic Powers Act as a basis for restricting foreign direct investment into the U.S.) and export controls for regulating outward investment and technology transactions are unsettling.

The president's calls to rely upon unilateral retaliation concerning China's intellectual property policies (Section 301 of the Tariff Act of 1974), as well as his recent request for new auto tariffs on national security grounds (Section 232, again) only add more fuel to the fire over Trump's tariff threats professing reliance on national security regardless of reality. Trump's reliance on national security for imposing tariffs, in fact, in dangers real U.S. national security interests.

Today it is only the federal courts that can meaningfully review presidential actions. Congress has proven to be ineffective in providing oversight. But even the last resort of judicial review is not a given. Witness the recent Supreme Court case upholding President Trump's immigration ban focused primarily on Muslims. The majority of the court refused to look beyond the broad statutory language and the Trump administration's reliance on national security, despite the president's many derogatory statements concerning Muslims.

Let's recall some of President Trump's actions relating to treaties and multilateral arrangements. He withdrew from the Trans-Pacific Partnership Agreement, the Paris Climate Accord, the Iran nuclear deal, and the United Nations Human Rights Council, he is renegotiating NAFTA, and he is battering the WTO almost daily, especially its dispute resolution system, even though the U.S. continues to win cases at the WTO. The president appears to be on the verge of quitting the WTO by seemingly proposing legislation to accomplish this. He threatens our allies such as South Korea, Canada, and the E.U. almost daily over tariff issues. His tariff threats and bullying have brought the international trading system to the verge of a trade war.

So what can be said about President Trump's mercantilist and protectionist trade and tariff policies so far when placed in this broader political ecosystem of US and international history?

My conclusion is simple. Trump's policies focusing on trade deficits and bilateral trade and the movement away from the post-war international system have been historical aberrations since 1945. But it is important to be careful. They are rooted in the clash of competing domestic interests going back to the founding of the US and may very well take hold for the remainder of his term.

Destructive forces are always lurking below the surface. Just because things have been somewhat stable for the last 75 years does not mean they will remain so. It will take very hard and serious work by the US and foreign leaders to help ensure a future in which we have not failed in our historical challenges.

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