

Trade and American Leadership

THE PARADOXES OF POWER AND WEALTH FROM
ALEXANDER HAMILTON TO DONALD TRUMP

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Foreword

At a time when the esoteric topic of tariffs on trade fills headlines in newspapers, claims clicks on computer screens, and inspires emphatic messages in presidential tweets, there is need for an informed and insightful explanation of how we got to where we are in American trade policy. If we understand how we got here, we can understand better where we should go from here. Whether we Americans should turn inward toward insularity from international trade or turn outward toward more engagement with international trade is one of the most pressing of all questions in the making of American economic and foreign policy. Moreover, it is a question central to whether we see the future of the United States as a more closed or a more open society, with repercussions extending far beyond the commercial matters of trade.

In this book, Craig VanGrasstek provides the information and the insight needed to help answer this question. He is both professor and practitioner, with decades of experience in teaching about trade and in making trade work. Professor VanGrasstek is an Adjunct Lecturer in Public Policy at the John F. Kennedy School of Government at Harvard University, where he teaches courses on the political economy of trade policy. He is also a longtime participant in making and implementing trade policy, having advised such international institutions as the World Trade Organization, the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and the World Bank, and having consulted for private firms and individual countries. As reflected in his latest book, his dual roles as professor and practitioner combine to shape his thinking on trade and on trade policymaking. The author knows the most subtle of the nuances of textile tariffs – a sure sign of trade expertise.

Previously, Professor VanGrasstek authored a well-received history of the World Trade Organization.¹ In this book, he turns his attention to the history of the trade policy of the United States of America. He does so with fluency and with a flair, wearing the depth and breadth of his learning lightly while telling a tale that demonstrates how American trade policy has changed over time with changing circumstances. He shows us that our current quandary over whether we Americans want our domestic economy to be open to commercial engagement with the wider world is not new but is only the most recent iteration of a long-running dilemma. Together with a wealth of documentation, he mixes in every now and then a felicitous turn of phrase or an apt literary allusion that help communicate his message.

Professor VanGrasstek is clearly on the side of those (like me) who seek more open trade as an essential ingredient of more open societies. He asserts, at the outset, "It is not utopian to hope that states can collaborate in the establishment and maintenance of a more or less open trading system, especially when that system can meet most of the needs (if not all of the demands) of its many and diverse members. This task requires greater imagination and energy in a time when US influence is on the wane." He adds, "I find it impossible to be objective regarding the possible extinction of the trading system as we know it. For all its faults, that system has better served the interests of the United States and its partners than any conceivable alternative."

Yet his personal preference for global cooperation in lowering barriers to global trade does not affect the quality of his historical analysis of American trade policy, which is scrupulously even-handed while ranging far and wide. Indeed, there is not much the author omits in his historical *tour d'horizon* of how we Americans got to where we are as a country on trade. Every region of the world and virtually every major sector of the American economy appear in the explication in this book. From China to Russia, from Japan to the Middle East, from steel to oil to textiles to agriculture, they are all here, and they are all discussed here with considerable authority.

Any number of passages in the book are worthy of highlight.

One is his discussion of how "foreign economic policy begins and ends at home." The author fully understands that, like all politics, trade politics is local. Everyone who has ever served as a trade negotiator for the United States knows that often the most difficult negotiation is not with other countries but with domestic interests and with those members of Congress who speak for domestic interests. There is no point in securing an agreement with another

¹ Craig VanGrasstek, *The History and Future of the World Trade Organization* (Geneva: WTO Publications, 2013).

country to reduce barriers to trade if that agreement will not be accepted back home. Thus, in trade, the “contagion of conflict at home and abroad can erect new hurdles to the negotiation, approval, and implementation of trade agreements, making it ever more difficult for the trading system to function effectively.”

Another is his discussion of “sociotropism” – meaning a notion of fairness that transcends self-interest to inspire a motivation that proceeds from a concern for the welfare of others. Harking back to fundamental notions of human empathy found in Adam Smith’s theory of moral sentiments and in John Donne’s poetry, Professor VanGrasstek sees evidence of “domestic sociotropism” emerging in how the American people view trade. Instead of basing their view of trade on how trade may affect them, people who do not feel threatened by trade may nevertheless oppose freer trade “based on the concern that opening the US market to foreign competition might cause other Americans to lose their jobs.”

Still another passage deserving highlight is the lengthy chapter on trade between the United States and China. Here the author provides a valuable historical account of how trade with China moved from back stage to center stage in US trade politics. Especially worthwhile is his discussion of something every reader ought to know: the long history of Western trade discrimination and, indeed, humiliation of China leading up to China’s gradually opening to the world economy following the death of Mao Tse-Tung. Professor VanGrasstek helps us understand why – although China was a charter member of the General Agreement on Tariffs and Trade (GATT) – Mao withdrew GATT compliance port-by-port as he marched his armies across China in 1949, and his Nationalist antagonists withdrew China from the GATT after he chased them off the mainland. Any attempt to understand the Chinese hesitation about international treaties now must take into account how international treaties were long used by Western countries to oppress China.

Likewise deserving of particular attention is the author’s passage explaining clearly the various obscure US trade statutes that have been unearthed by the current president of the United States and his trade advisers to use as unilateral clubs in flaunting multilateral trade commitments – Section 232, Section 301, and more. He tells us why these laws exist. He explains to us why, until the ascendancy of Donald Trump, they were used rarely or not at all. He spells out for us the dire economic implications of using them now. Especially interesting is his narrative of the history of the development in trade law of an exception for national security and his lucid explanation of why it would be far better if countries continued for another seventy years without using this exception and without defining it.

Equally noteworthy is the brief passage on “hegemony and international law” in which Professor VanGrasstek provides us with a variety of historical antecedents for the current American ambivalence over international law. A reliance on international law, he informs us, has always been a challenge for those who have the power to impose their will without law. Hugo Grotius, the great Dutch originator of the use of law to ensure the freedom of the seas, nevertheless “defended a Dutch admiral who took a Portuguese merchantman as a prize even though the two countries were then at peace.” Similarly, although they too helped create and establish international law, “the British in hegemony did not always consult the law books before weighing their interests.” The United States as well has waxed and waned in its commitment to comply with international law, including in trade. The skeptics of international law in the Trump administration – inclined to employ international law when it suits them and to ignore it when it does not – are not without predecessors.

There is much more in the book: The trade debate between Thomas Jefferson and Alexander Hamilton; the historical antecedents of trade sanctions; the enduring relevance of sea power to trade; the domestic sources of the ebb and flow of the tariffs imposed by the United States over more than two centuries; the effects on trade policy of the gradual shift from Great Britain to the United States as the leading power on the world stage; the key role of the United States in laying the foundations for the WTO-based multilateral trading system; the back and forth on trade between the United States and the Soviet Union during the Cold War; the Arab boycott of Israel. The ins and outs of trade policy on energy; the efforts, increasingly, to reconcile trade liberalization with social goals; the proliferation of free trade agreements and the motivations underlying them; and the implications of the looming threat of a possible withdrawal by the United States under President Trump from membership in the WTO.

Throughout the book, the author emphasizes the need for “economic statecraft” – for fully informed and far-sighted thinking in making trade policy. His book, as he puts it, “mixes scholarly and practical aims.” He explains, “This book is premised on the hope that a proper understanding of history may promote a sense of retrospective empathy, remind us of the times when policymakers succeeded in promoting high ambitions, and offer practical observations on what does and does not work.” His book fulfills this hope, if only we had more such practical idealists engaged in such an enlightened “economic statecraft” on trade.

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that were least likely to provoke opposition from consumers or industrial users. As discussed in Chapters 10 and 12, the economic ties between these two countries were already too tight in the early 1990s for the United States to make good on its threats to withdraw MFN treatment, and the inexorable logic of the paradox of sanctions has further circumscribed the American options since then. China's stunning economic growth, and the rising levels of US GDP that are tied up in that relationship, put one in mind of some memorable dialogue from the film *Giant* (1956). After an upstart Texan struck oil, one of the local grandees chided the man's cattle baron antagonist. "Bick," he advised, "you shoulda shot that fella a long time ago. Now he's too rich to kill."⁷

The Revival of Dormant Trade Laws

The United States may no longer be in a position to deploy full-scale sanctions against China in political disputes, but the Trump administration has been eager to show its willingness to use narrower restrictions in its pursuit of commercial aims. Here it salvaged a statutory wreck: From Jefferson to Clinton, American presidents periodically employed the reciprocity laws to threaten retaliation against countries that violate US trade rights. The chief reciprocity law (Section 301 of the Trade Act of 1974) sank into obscurity after the Uruguay Round, but the president ordered it up from the deep when in 2017 he directed the US Trade Representative (USTR) to investigate Chinese intellectual property practices. That investigation led in 2018 to the imposition of retaliatory tariffs on a wide range of Chinese products. Predictably, this was quickly followed by Chinese counter-retaliation against US exports. While the conflict remains a live issue at press time, early results suggest that Beijing is just as capable as Washington of engaging in trade warfare and sustaining its economic costs. The most consequential outcome of the dispute may not be which side is ultimately deemed the winner or the loser, or how much short-term damage they do to one another and to third parties in the interim, but the extent to which they each succumb to the temptation to reach a settlement that amounts to managed trade. That would not portend well for the trading system.

The restoration of Section 301 is one of several steps that not only entail a resurgence of unilateralism, but also imply the possibility that US membership in the WTO may be at risk. In addition to the Chinese intellectual property case, in which the administration brought a formal complaint to the WTO's Dispute Settlement Body (DSB) only after

⁷ www.tcm.com/tcmdb/title/76242/Giant/quotes.html.

announcing its own conclusions and plans to retaliate, it resurrected two other trade laws that had fallen into disuse and are legally problematic in the WTO. One is the global safeguards statute (Section 201 of the Trade Act of 1974), and the other, more dangerous provision is the national security law (Section 232 of the Trade Expansion Act of 1962).

The safeguards law had seemed to be undone by an unbroken series of DSB cases in which the countries that impose restrictions have invariably been found to violate their obligations under the WTO Agreement on Safeguards. Ever since the Bush administration was required in 2003 to reverse the steel restrictions that it had imposed in 2002, Washington treated Section 201 as a dead letter. That all changed when producers of washing machines and solar panels filed safeguard petitions in 2017, leading the Trump administration to impose import restrictions in 2018. We may reliably anticipate that these safeguard actions will be found to violate WTO obligations, which will then set up a potentially hazardous confrontation. Past administrations have felt legally obliged to lift the restrictions they imposed under the safeguards law, but Trump seems far less intent on trimming his policies to meet the terms of international agreements and the rulings of dispute-settlement panels. His administration may put up greater resistance in a safeguards case than (for example) an antidumping matter, considering the president's personal involvement in the decision. That defensiveness may only be multiplied by the credit that Trump has claimed for protecting these two industries.

It is by that same logic that the Section 232 cases may be even more dangerous to the trading system than the safeguard measures, insofar as they began and ended in presidential decisions. At issue here are a pair of cases that President Trump initiated in 2017, when he directed the secretary of commerce to investigate the threat that steel and aluminum imports allegedly pose to national security. The inquiry was to focus on such factors as "the domestic production . . . needed for projected national defense requirements" and "the existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense."⁸ There is no indication that these same issues raised any alarm in the Pentagon. To the contrary, the Department of Defense filed a formal comment expressing concerns about "the negative impact on our key allies" that would result from unilateral protectionism.⁹ That did not prevent the Department of

⁸ See www.whitehouse.gov/the-press-office/2017/04/20/presidential-memorandum-secretary-commerce.

⁹ Department of Defense, "Response to Steel and Aluminum Policy Recommendations," posted at www.commerce.gov/sites/commerce.gov/files/department_of_defense_memo_response_to_steel_and_aluminum_policy_recommendations.pdf.

Commerce from second-guessing the military, and finding in 2018 that these imports do impair the national security. The president then followed the department's recommendation that he impose tariffs. Shortly thereafter the Trump administration doubled down on this strategy when, in defiance not just of law but common sense, it initiated a new Section 232 case against the automotive sector. That represented a huge escalation, with imports of automobiles and parts being more than six times greater than steel and aluminum imports.

The National Security Cases and a Potential WTO Withdrawal

These national security cases pose a far graver danger to the trading system than the administration's revival of the safeguard and reciprocity laws. Beyond the direct presidential imprimatur that these Section 232 cases bear, and the presumably greater implied resistance to an unfavorable ruling, the products involved are inherently important. Steel, aluminum, and the automotive sector collectively accounted for 16% of US imports in 2017. The share of imports and domestic production that may be affected is greater still when one counts the many items that incorporate these metals. And despite the Trump administration's frequently declared intention of taking on China, that country accounted for just 5% of US imports in the three affected sectors. The great majority came instead from Japan (15%), the European Union (17%), Canada (19%), and especially Mexico (28%).

What makes these national security cases especially hazardous, from a regime perspective, is the unique legal and political character of the US statute and its WTO counterpart. Unlike the actions taken under other trade laws, which are all explicitly commercial instruments that are undeniably within the WTO's jurisdiction, claims of national security occupy a realm where the multilateral system has thus far feared to tread. As discussed in Chapter 7, the United States and other countries have heretofore operated on the basis of an implicit bargain by which all countries pledged to be sparing in their invocation of the national security clause (GATT Article XXI), repaying to it only in cases of true necessity; in return, the rest of the membership would refrain from challenging any action based on this extraordinary provision. By deliberately flouting the first half of this deal, the Trump administration seems to be daring its adversaries to challenge it on the second half.

We may only speculate on the depth of the administration's motives or the extent to which it thought through the likely consequences of its actions. Its decision to pursue the metals cases under Section 232, and the implied readiness to invoke Article XXI, may have been only a cynical attempt to

game the multilateral trading system by taking advantage of the twin loopholes in domestic law (Section 232 being the most discretionary of the trade-remedy laws) and the WTO (Article XXI being the most discretionary of the exceptions clauses). It may alternatively have been intended as a deliberate incitement. Whether or not this is what the White House wanted, the decision to bypass the ordinary trade laws forced the rest of the WTO membership into choosing among four undesirable outcomes.

- The administration's original aim may have been to pressure other steel- and aluminum-producing countries into negotiating market-sharing arrangements. Similarly, the aim of the automotive 232 case may be to revive the voluntary export restraints (VERs) solution of the 1980s. These would be great retrogressions, bringing back the "gray area" measures that were the source of such anxiety prior to the Uruguay Round. The difference is that the area is gray no more, with WTO rules now quite explicitly prohibiting "voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side."¹⁰
- The United States might hope to get away with unilateral restrictions simply by invoking GATT Article XXI, slapping this rule down like a trump card. One obvious danger is that this would invite other countries to follow suit, imposing new restrictions on any other goods or services for which they might claim a connection to national security; these could range from food and high-technology items to communications and transportation services.
- In the alternative, a DSB panel and/or the Appellate Body could toss aside the tradition of deference and decide that it had the authority to pass judgment on a *prima facie* abuse of GATT Article XXI. Trump might well opt to feign indignation at the provocation he induced, and treat it as an excuse to withdraw from a body that had disrespected not just the economic interests but the national security of the United States.
- WTO members might forego the usual process and impose retaliatory restrictions without first seeking leave via a DSB ruling.

Perhaps with an eye to the dangers inherent in each of the first three options, major WTO countries proved quite ready to move on that fourth option and challenge the assertion in Trump's notorious tweet, "Trade wars are good, and easy to win."¹¹ They carried out their counter-retaliatory threats in mid-2018,

¹⁰ Article 11.1(b) of the WTO Agreement Safeguards.

¹¹ www.cnn.com/2018/03/02/trump-trade-wars-are-good-and-easy-to-win.html.

plunging the United States into a full-fledged conflict not just with China, but also Canada, the European Union, and others. Some of these partners advanced the creative argument that the US action was a safeguard, even though Washington made no such claim, and hence one for which the relevant agreement permitted a retaliatory response. Canada made no such pretense, implying that its action was based not so much on WTO law as on the *lex talionis* (i.e., an eye for an eye). Smaller countries such as Argentina and Indonesia preferred to bargain for exemptions by agreeing to impose WTO-illegal export restrictions. The more disheartening sign, from a regime perspective, was the willingness of the Chinese to contemplate that same route and to seek a settlement based more on managed than free trade.

The fact that the United States was willing to accept any of these options, singly or in some combination, fairly begged an uncomfortable question: Should countries remain nominally in the organization while they dishonor its rules and norms, or would it be more honest to abandon the WTO project altogether and go back to a self-help system? The question is not merely rhetorical. Whether the crisis is brought on by the Section 232 cases, or through some other avenue, there is a better-than-even chance that sometime in the Trump tenure the United States will explicitly threaten to leave the WTO. Whether or not it actually follows through would be a tactical matter affected by any number of unforeseeable factors, but no one should doubt the willingness of the Trump administration to make good on such a threat. Skeptics need look no farther than the president's disavowal of the TPP, followed in 2017–2018 by withdrawals from other agreements (notably the Paris Agreement on climate change and the Iran nuclear deal) and institutions (especially the Human Rights Council and the United Nations Educational, Scientific, and Cultural Organization). All of these moves signaled that this administration is prepared – perhaps even eager – to pull out of groups that it considers inimical to American interests.

can be seen not just in the original NAFTA agreement (Chapter 5), but also in such innovations as the safeguard provisions in the 1942 agreement between the United States and Mexico (Chapter 3).

The NAFTA renegotiation dragged on well past the administration's first year in office, and got caught up in the trade war that it declared in 2018. The tariffs that the Trump administration imposed on steel and aluminum in mid-2018, together with the threat of similar measures in the automotive sector, fell more heavily on Canada and Mexico than on any other partners. That may well have been the point, with the White House hoping to coerce the neighbors into accepting the new NAFTA terms that it proposed. The imposition of tariffs on selected sectors was a somewhat more targeted variation on the administration's oft-repeated threat to abrogate the agreement altogether. Both Canada and Mexico responded with retaliatory tariffs on steel, aluminum, and an array of other products.

The Trump administration viewed NAFTA renegotiation from an entirely different perspective than either its neighbors or its predecessors. Its approach represented a fundamental change in the purpose of trade agreements, with the aim having shifted from the creation of opportunities to the management of outcomes. Instead of setting the terms by which countries will reduce barriers to trade and investment, then allow the market to sort it all out, the administration explicitly adopted the mercantilist goal of seeking to run up a trade surplus. The Trump administration hoped to achieve that end through such means as the manipulation of the agreement's automotive rules of origin. It also obliged its partners to forswear the negotiation of FTAs with China (see Chapter 9).

Beyond the revision of existing FTAs, the Trump administration also aims to reach new, bilateral agreements that conform more closely to its illiberal predilections. The first clean sheets of paper with which it will start are agreements with the European Union, Japan, and the United Kingdom, the plans for which were announced in late 2018. The model that emerges from those talks might form a new template that can then be applied to deals with other partners, perhaps forming the kernel of a new – and possibly post-WTO – system of agreements.