



Trump's trade policy: Separating the normal from the dangerous

by Noah Gordon
10 November 2017

Some of Trump's trade actions are traditionally American. Others threaten the future of the World Trade Organisation. Europeans should look past his insults and prepare a response.

Europeans worry about Donald Trump's 'America First' trade policy. They know that one of the US president's few consistent political beliefs is that trade relations are zero-sum, and that countries with trade deficits are losers. He prefers bilateral negotiations in which the US is the dominant partner to tricky multilateral arrangements that constrain American sovereignty. Trump uses belligerent rhetoric that alienates America's main economic partners: he has called the Trans-Pacific Partnership (TPP) a "rape" of the US and said "the Germans are bad, very bad" because of their trade surplus. He told an international summit in Asia on November 10th that he would not "let the United States be taken advantage of anymore".

But a closer look at current US trade policy shows that the Trump administration's actions so far reflect a mixture of traditional, assertive American approaches and more troubling new ideas that could have serious consequences for Europe. To see which are which, US trade partners have to go beyond Trump's insults and look at what his administration does.

The Bombardier case is the sort of trade dispute that the US has often had in the past. At Boeing's request, the US government has proposed tariffs on a series of Bombardier passenger jets; the US authorities will take a final decision in February 2018. Boeing alleges that Canadian subsidies enabled Bombardier to sell the planes below cost price. The proposed tariffs are not illegal, as the World Trade Organisation (WTO) allows countries to impose [countervailing duties](#) on countries that subsidise imports that hurt domestic producers. Countervailing duties and anti-dumping duties (imposed on firms that sell goods at less than cost price to damage competitors) are commonly used worldwide. It was career civil servants who calculated the high tariff rate on Bombardier – up to 300 per cent – not White House ideologues. Bombardier is [one of 39](#) active US countervailing or anti-dumping investigations.

Though regional free trade agreements have become a key part of international trade since the WTO's Doha round of global trade talks stalled, delays in negotiating them are not unusual. The Trump administration has been happy for talks on the Transatlantic Trade and Investment Partnership (TTIP) to stall. But European opposition was at least as responsible for its failure as American. [Polls and protests in Germany](#) revealed deep public scepticism about the pact, while then French President François Hollande [in May 2016](#) decried TTIP's "undermining of the essential principles of our agriculture, our culture, of mutual access to public markets". The demise of TTIP is a symptom of a general backlash against trade agreements on both sides of the Atlantic rather than evidence of a rogue American president wrecking the world order.

The president has also withdrawn the US from the TPP, a regional trade agreement between 12 countries including Japan and Australia. Unlike TTIP, TPP had already been signed when Trump pulled the plug. But here, too, Trump was not the only factor. TPP was agreed in October 2015, but the US Congress failed to vote on ratification before Trump took office. Democratic candidate Hillary Clinton opportunistically came out against the deal during her campaign.

Trump's threat to '[rip up](#)' the North American Free Trade Agreement (NAFTA), raises more concerns. The bargaining tactic itself is not new. Barack Obama pledged to renegotiate the pact in the 2008 campaign, [saying](#) he would use "the hammer of a potential opt-out as leverage". Under Obama, the US Trade Representative's office (USTR) released documents explaining how "TPP [upgrades](#) NAFTA". Indeed, NAFTA would benefit from modernisation to cover newer areas like telecommunications.

The problem is that some of the Trump administration's demands are so unreasonable that its partners doubt it wants a deal at all. Multinational arbitration is a key issue. In July the USTR [proposed](#) that the Chapter 19 dispute settlement mechanism be eliminated. [Chapter 19](#) allows Canadians and Mexicans to challenge the fairness of US tariffs (and vice-versa) before a panel of private experts from NAFTA nations, who are selected jointly by the disputing countries. The provision was a precondition for Canada's participation in the US-Canada free trade agreement, on which NAFTA is built. The NAFTA panel has [repeatedly](#) forced the US to lower its countervailing and anti-dumping duties on Canadian softwood lumber. Trump does not like 'losing', let alone to foreign judges.

On top of this comes the American demand for a sunset clause that would cause NAFTA to expire every five years unless the parties vote to continue it. The clause would enshrine uncertainty in the deal. This is problematic because, for developing countries like Mexico, FTAs assure investors of the standard of future legislation and substantially [increase](#) foreign investment.

These and other controversial US proposals are based on, as US Trade Representative Robert Lighthizer [puts it](#), "the need to assure that huge trade deficits do not continue". Many economists are puzzled by Lighthizer's use of the balance of trade as a scorecard, and his assertion that the rules of trade are most responsible for it. The main reason for trade imbalances are differing macroeconomic and financial policies. For example, China's current-account surplus has come down since the government-controlled banking system went on a lending spree to local governments and companies, which has stimulated investment and imports. This has, in turn, reduced China's trade surplus. But the eurozone's comparatively hawkish monetary and fiscal policy since 2010 has increased the US's trade deficit with the EU. The dollar's role as the global reserve currency also makes the dollar more valuable in terms of other currencies, and thus makes American goods more expensive for foreigners.

In any case, the Trump administration's approach has put the NAFTA renegotiations on the brink: the Canadians [accuse](#) America of a 'winner-takes-all' attitude, and talks could soon collapse. Analysts are debating Trump's ability to terminate NAFTA single-handedly. Gary Clyde Hufbauer of the Peterson Institute [notes](#) that Trump could withdraw the US from NAFTA without the consent of Congress, and could reinstate tariffs on Canadian and Mexican goods at his pleasure. But it is Congress that controls the fate of the NAFTA implementing legislation, which covers the non-tariff aspects of the pact. Pro-trade Republican senators are warning Trump that he will need their support for tax cut legislation. The US Chamber of Commerce and the agriculture lobbies also want to preserve NAFTA.

Pro-traders could easily push the president into a messy compromise with Canada and Mexico, or take the president to court to challenge his ability to terminate the deal. Trump is not invulnerable to political pressure. Opposition from big retailers has already pushed the White House and Republican leaders to drop a 'border-adjustment tax' from its tax reform plan. This retreat is a boost for Europe, because Europeans exporting to the US would have paid the tax while American exporters paid nothing.

It is also possible that Trump's renunciation of previous NAFTA policy leads not to a fundamental change but to legislative and judicial limbo. That is what happened with the president's 'travel ban' on visitors from various majority-Muslim countries, which was frozen by federal judges, and Trump's decertification of the nuclear agreement with Iran, which empowers but does not force Congress to re-impose nuclear sanctions that would scupper the deal.

More alarming than Trump's attitude to regional and bilateral trade agreements is his hostility to the WTO (which he reiterated in his November 10th speech to Asian leaders). The WTO Appellate Body is the heart of the organisation and has helped resolve disputes between the EU and the US over, for example, [steel](#) and [hormone-treated beef](#). The Obama administration started the politicisation of the Appellate Body when it took the [unprecedented step](#) in 2016 of blocking a judge from another country (South Korea), [objecting](#) to his role in decisions with which the US disagreed. Trump has dramatically escalated the conflict. The WTO court is already short-staffed and facing a backlog of cases. The US has been blocking the appointment of new judges, citing procedural concerns. Trump has [complained](#) wrongly that the US loses "almost all" of its cases and has "fewer judges" than other countries.

Then in September 2017 the US representative at the WTO [shocked colleagues](#) by arguing that in certain cases rulings from the (separate) body that administers the dispute settlement process should be subject to "positive consensus", meaning that one state could block a ruling it disagrees with. [At the moment](#), a state intending to block a ruling has to convince all other members to join its opposition – but this has never occurred. Most ominously, the 2017 US trade agenda [suggests](#) that the US could ignore WTO rulings if those decisions infringe on its sovereignty. The [trade body's chief](#) says America risks "compromising the system as a whole".

Washington is also trying to circumvent WTO rules on tariffs by using the organisation's rule book against it. The Trump administration is making use of an obscure [1962 law](#) to investigate whether steel imports are a threat to national security and should thus face higher tariffs. Under the law the president can restrict imports on his own authority. The American Iron and Steel Institute found, however, that just [three per cent](#) of domestically produced steel is used for US defence.

If another country challenged Trump's action, the US could invoke the WTO national security exception ([Article XXI](#) of the 1947 General Agreement on Tariffs and Trade (GATT) Treaty, which was designed

primarily for times of war or the implementation of sanctions). This 'self-judging' exception is rarely used, and the GATT/WTO [has never made](#) a binding ruling as to whether it is appropriate. Member-states are expected to show restraint in invoking it, but there is the potential for serious misuse.

As Shawn Donnan of the *Financial Times* [writes](#), if the WTO did hear a challenge to a Trump steel tariff, it might rule against the US, setting up a perilous political fight between American steelmakers backed by Trump and an international organisation that presumes to judge what is important for America's security. Or it might find in America's favour and open the floodgates for other countries to erect trade barriers in the guise of security measures.

Europe has a lot to lose in a steel trade war. Subsidised overproduction in China is principally responsible for the glut and low price of steel. Though just [two per cent](#) of US steel imports come from China, Trump is likely to choose a broad tariff rather than country-specific quotas, because imports of Chinese steel are already subject to countervailing duties and the US steel industry [complains](#) that China stealthily ships steel through third countries. So other exporters to the US, like Germany, would suffer disproportionately from a broad US tariff. What is more, the cheap steel headed for the US would be redirected to Europe. That is why the European Commission is preparing to use '[safeguard](#)' measures to restrict steel imports from across the globe.

Such WTO-compliant defence measures must be part of the solution if Trump takes the protectionist route. But Europe's top priority should be to step up the lobbying effort. European NATO officials are [going through](#) the Pentagon to explain how America's partners are threatened by steel tariffs. Europe must also communicate to pro-trade, pro-NATO senators that national-security tariffs are not in America's national interest. American beneficiaries of cheap steel, such as automakers, will be on Europe's side. Commerce Secretary Wilbur Ross has already [announced](#) that the steel investigation will be delayed in order to avoid "unnecessarily irritating" the legislators the White House needs for its tax reform proposals. Europe also needs to convince the US administration that the WTO dispute settlement benefits everyone – and that reform efforts must be undertaken co-operatively. Petitioning interest groups in Washington may sound like a soft response, but a tit-for-tat trade war helps no one.

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