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Christoph Scherrer and Elizabeth Abernathy*

Trump's Trade Policy Agenda

President Donald Trump espouses “America First” positions which are commonly interpreted as protectionist. However, a closer reading of Donald Trump’s business interests, of his administration’s published trade agenda and of US trade negotiation history calls into question whether “America First” means protectionism. Trump will use large trade deficits to pressure trading partners to further open up their markets. Companies that are successful in exporting to the US market from those countries will be alarmed by protectionist announcements and will therefore most likely pressure their governments to give in to the demands of the Trump administration.

US President Donald Trump has been portrayed as a protectionist. His immediate cancellation of the Trans-Pacific Partnership (TPP) upon assuming the presidency, as well as his support for the border adjustment tax proposed by the Republican leadership in Congress, seem to confirm this portrayal of his foreign economic policy leanings. However, a different conclusion emerges from a closer reading of Trump’s business interests, of his administration’s published trade agenda and of US trade negotiation history. Trump will use large trade deficits to pressure trading partners to open their markets. Companies that are successful in exporting to the US market will be alarmed by Trump’s protectionist announcements and will therefore most likely pressure their governments to give in to the demands of the Trump administration.

In other words, the Trump administration will further the liberalisation of cross-border economic activities. From the perspective of development economics, one could call it first-mover protectionism, because it is about protecting the interests of the most advanced US corporations, which operate on the basis of intellectual property rights and access to large-scale data.

We start with a brief sketch of the president’s trade policy powers, followed by a few remarks on Trump’s business model. In the main part, we introduce the contending forces within Trump’s cabinet and an outline of the administration’s trade agenda, both in general and concerning the North American Free Trade Agreement (NAFTA)

in particular. Since Congress is responsible for trade legislation, we present the trade positions taken by the chairpersons of the relevant committees in Congress. We conclude with a reminder of President Ronald Reagan’s response to the trade deficits of the 1980s.

The president's trade policy powers

According to the US Constitution, Congress has authority over matters of international trade. To facilitate the conclusion of trade agreements with other countries, Congress delegates this authority from time to time to the executive branch, allowing the president to conduct negotiations supervised by Congress. After the negotiations are concluded, the final agreement can only be voted up or down in Congress as a total package. The latest legislative delegation occurred with the Trade Promotion Authority from 2015, which is valid until 1 July 2018 and can be extended by the president’s request until 1 July 2021, as long as neither the House of Representatives nor the Senate passes an opposing resolution.¹ The law granting this authority states in detail what is to be negotiated, with the top priority being to establish “open, equitable, and reciprocal market access” in other countries.²

In addition, Congress has delegated the assessment of whether and to what extent domestic producers are injured by foreign trade to an independent, bipartisan agency: the US International Trade Commission (USITC). The determination of discriminatory price-setting by foreign suppliers (“dumping”) or state-supported subsidising has been assigned to the Department of Commerce. Several paths for obtaining an exception from liberal import regu-

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1 Public Law 114-26, Bipartisan Congressional Trade Priorities and Accountability Act of 2015, 2015, Sec. 103(c).

2 Ibid., Sec. 102(a)(1).

lations have been made available to companies and workers who believe they have been injured by import competition. For one, they can request protective measures under “fair” trading conditions by invoking the “escape clause”. In this case, they must present evidence to the USITC that an increase in imports is a substantial cause of an existing or impending serious injury. The six USITC commissioners are always composed of three Democrats and three Republicans. If the USITC makes an affirmative determination, the president must introduce protective measures within a certain time period, for which he may choose from a wide range of designated measures and may end them after two years.

In addition, those affected by imports can inform the Commission, on the basis of the Antidumping Code or the Countervailing Duty Law, that the foreign producers are offering their goods in the US market for a lower price than in their own domestic market (“less than fair value”) or have received state subsidies. As part of these proceedings, they must also demonstrate to the USITC that “material injury” has occurred or that the threat of such injury exists. If there is a determination of “unfair” competition, countervailing duties must be levied or “voluntary” self-imposed restrictions must be negotiated with the exporters.³

Trump's business interests

Donald Trump is not engaged in businesses that face import competition. His real estate business in the United States is quite dependent on the flow of foreign finance. He has made ample use of foreign banks to finance his projects.⁴ His business abroad is mostly based on fees for branding, i.e. fees for using his name for different kinds of projects. His lawyers are attempting to secure trademark protection for his name in as many countries around the world as possible.⁵ Therefore, one can assume that the free flow of capital and the protection of brand names are important for him as a businessman.

Trump's cabinet: Economic internationalists in the lead

At first it appeared as though the “America First” faction of the Trump administration was gaining the upper hand. However, the economic internationalist faction has since prevented a strong departure from the traditional liberal

foreign economic policy of US presidents. Trump's erratic behaviour, however, makes predictions about the future US economic course difficult.

The economic nationalist camp included Trump's Chief Strategist Steve Bannon and Deputy Assistant to the President for Trade and Manufacturing Policy Peter Navarro. The former had to leave the White House, while the latter's unit was moved to report to the internationalist-oriented Gary Cohn, the head of the National Economic Council.⁶ Important actors now include Secretary of Commerce Wilbur Ross and United States Trade Representative (USTR) Robert Lighthizer. During the presidential campaign, Ross co-authored the “Trump Economic Plan”, which calls for confronting China about its trade practices and reviewing US membership in the World Trade Organization (WTO) and other trade deals. Despite his co-authorship of this economically nationalist manifesto, Ross promoted the offshoring of production steps as part of his long career as a successful investor.⁷ He currently supports the more aggressive enforcement of US trade laws, for example, through the initiation of investigations into whether aluminium and steel imports present a danger to national security.⁸ In light of his prior business career, however, it is unlikely that he will support protectionist legislation.

Lastly, there is Lighthizer, the recently confirmed trade representative, who is the only member of this camp who possesses prior experience in government. During the Reagan presidency, he held a position in the office of the USTR and acquired a reputation for aggressive trade measures against Japan.⁹ Later, he warned in particular about China.¹⁰ As the USTR, he will play a prominent role in new trade negotiations.

Standing in opposition to this camp are the advisors and cabinet members who support an economic internationalist position. Among them are Cohn; Trump's son-in-law, Jared Kushner, who holds an official advising position in the White House; and the Secretary of the Treasury, Steven Mnuchin. As Kushner is currently under pressure due

3 I.M. Destler: American Trade Politics, Washington D.C. 2015, Institute for International Economics.

4 T. Fitton: How Trump Can Avoid the Ethical Tar Pit, New York Times, 13 December 2016.

5 L. Wee: In China, Trump Wins a Trove of New Trademarks, New York Times, 6 March 2017.

6 S. Mufson, J. Partlow, A. Freeman: Trump Twitter bombs and a negotiating standoff: How NAFTA talks could fail, Washington Post, 6 October 2017.

7 P.R. La Monica: Trump taps ‘King of Bankruptcy’ as Commerce Secretary, CNNMoney, 30 November 2016.

8 D. Trump: Presidential Memorandum for the Secretary of Commerce, Subject: Aluminum Imports and Threats to National Security, 27 April 2017.

9 A. Capri: How Trump's Trade Advisers Are Planning to Shake Up China, Forbes, 19 January 2017.

10 R.E. Lighthizer: Grand Old Protectionists, New York Times, 6 March 2008.

the Russia scandal,¹¹ future trade measures are more likely to be influenced by Cohn and Mnuchin. Cohn entered the administration after a long career at the investment bank Goldman Sachs. Before he became a government official, he strongly supported the TPP. In May 2017, Cohn and National Security Advisor H.R. McMaster wrote an op-ed which presented Trump's "America First" agenda as recognition of a situation of international competition that can only be withstood if the US makes use of its leverage.¹²

Treasury Secretary Mnuchin heads a department that has traditionally advocated free trade. His background is in the world of finance, and he had expressed no protectionist trade stances before entering government.¹³

The general trade agenda

The president's trade policy agenda as outlined in a document by the USTR Office emphasises "breaking down unfair trade barriers in other markets".¹⁴ The agenda is about promoting "reciprocity with our trading partners" and this shall be done using "all possible sources of leverage" to "open foreign markets", specifically by means of bilateral – and not multilateral – negotiations.¹⁵ In such negotiations, the country with the larger purchasing power has an advantage, because companies from the other country are more dependent on the larger market for their profitability than vice versa. The US, with the biggest market and the biggest trade deficit, is clearly in a strong position relative to all other nations, except possibly EU member states as a collective whole.

The trade agenda also mentions the specific tool that should be used in bilateral negotiations: Section 301 of the Trade Act of 1974, also called Super 301. Super 301 "authorizes the USTR to take appropriate action in response to foreign actions that (...) are unjustifiable, or unreasonable or discriminatory, and burden or restrict United States commerce".¹⁶ Who has the right to determine what is unjustifiable? Under this law, it is the president. However, the US became a member of the WTO in 1995, and the WTO includes a dispute settlement process. While the US president might consider another country's trade measure unjustifiable and respond with, for example, a retali-

atory tariff under Super 301, the sanctioned country has the right to challenge the retaliatory measure in the WTO dispute settlement process. Thus, it will be the WTO dispute settlement board that will ultimately decide whether the country's trade practices are justifiable or not. In other words, Super 301 lost its bite when the United States joined the WTO.

For this reason, the 2017 trade agenda takes pains to point out that "WTO reports are not binding or self-executing".¹⁷ It goes on to emphasise that

[t]he Uruguay Round Agreements Act states that, if a WTO dispute settlement report "is adverse to the United States, [the USTR shall] consult with the appropriate congressional committees concerning whether to implement the report's recommendation and, if so, the manner of such implementation and the period of time needed for such implementation".¹⁸

This prerogative is being reclaimed to make Section 301 effective again.

The 2017 trade agenda names some of the so-called trade barriers which the administration wants to address. Securing the intellectual property of US corporations is first on the list of specific negotiation objectives.¹⁹ Next on the list are restrictions on the flow of digital data and services, foreign government subsidies, unfair competitive behaviour by state-owned enterprises and currency manipulation.²⁰ While not explicitly mentioned, China is the obvious target here.

In listing the key objectives of the new trade agenda, "ensuring that US workers ... have a fair opportunity" comes first. Among the concrete items, one also finds a bullet point for "enforcing labor provisions in existing agreements". These provisions refer in the main to enabling rights such as freedom of association and collective bargaining. It does not seem likely that the enforcement of these labour rights clauses will be a priority against the background of the anti-union behaviour of Trump's businesses. The TPP envisioned rather effective labour rights clauses, but these had been the target of Republicans in Congress.²¹ It seems more likely that Trump will take a page from the book of Russian President Vladimir Putin and try to gain workers' support by rescuing individual

11 M. Rosenberg, M. Mazzetti, M. Haberman: Investigation Turns to Kushner's Motives in Meeting With a Putin Ally, New York Times, 29 May 2017.

12 H.R. McMaster, G.D. Cohn: America First Doesn't Mean America Alone, Wall Street Journal, 30 May 2017.

13 A. Rappeport: Labor Choice Drops Out After Republicans Balk, New York Times, 15 February 2017.

14 Office of the United States Trade Representative: The President's 2017 Trade Policy Agenda.

15 Ibid., pp. 2, 4.

16 Ibid., p. 3.

17 Ibid.

18 Ibid.

19 Ibid., pp. 2, 4.

20 Ibid., p. 4.

21 Inside U.S. Trade: USTR Tables TPP Labor Proposal That Goes Beyond May 10 Template, 6 January 2012.

plants from closure, as he has already done as president-elect.²²

Strict application of trade laws

Since a president cannot easily impose trade barriers without a legal basis, the Trump administration is focusing on the strict application of trade laws. Trump ordered the Commerce Department to determine if steel imports threaten to impair national security,²³ and trading partners were told about the stricter application of anti-dumping and countervailing duty rules.²⁴ Politically well-connected (domestic) industries will particularly benefit from this policy. Large foreign industrial powers, such as Germany, will have to expect more of these investigations than in the past.

Renegotiating NAFTA

Given the strong presence of German industry in Mexico, thanks in part to a readily available market outlet in the United States, the future of the North American Free Trade Agreement is of special interest for Germany. Trump promised as part of his campaign to renegotiate or withdraw from the agreement. After some infighting in the White House, renegotiation became the policy.²⁵

The agricultural sector, which has benefited enormously under NAFTA, will likely be influential during the renegotiation period as it attempts to maintain the status quo.²⁶ In a letter to the president on 25 May 2017, a number of CEOs of major American corporations called for an avoidance of protectionist trade barriers.²⁷ The prospect of including a digital trade chapter and increasing protection of intellectual property rights, however, has been well received by business interests.²⁸ Indeed, Commerce Secretary Ross has stated that NAFTA renegotiation will follow

the pattern of concessions already agreed to as part of the TPP that Trump withdrew from.

The USTR's Summary of Objectives for the NAFTA Renegotiation also explicitly states the goal of eliminating Chapter 19, which established a dispute settlement mechanism seen as unfavourable to the US, as it hinders the US's ability to pursue anti-dumping and anti-subsidy cases against Canada and Mexico.²⁹

The USTR also wants to delete the NAFTA "global safeguard" rule, which allows NAFTA partners to access another partner's markets without tariffs, even if that partner had invoked a safeguard clause against third countries.³⁰ The USTR argues that this unnecessarily limits the US's ability to initiate anti-dumping and countervailing duty measures against Canada and Mexico.

Rules of origin are another area which could be a strong point of contention in the upcoming negotiations. The negotiating objectives include the goal of altering rules of origin to "incentivize the sourcing of goods and materials from the United States and North America".³¹ For example, the proposal for autos and auto parts calls for a 50% US domestic content requirement. Currently, combined US and Canadian content reaches only 24% of the value of vehicles exported from Mexico to the United States.³² Representatives of the auto industries in all three countries have asserted their opposition to changes to NAFTA automotive rules of origin.³³

Furthermore, the USTR is aiming for more protections for workers. It picked up the old demand of the trade unions to integrate the North American Agreement on Labor Cooperation into the main NAFTA agreement. This would allow trade unions to make use of the NAFTA dispute settlement process in case of labour rights violations.³⁴ As for the other labour provisions, Richard Trumpka, president of the AFL-CIO, the largest federation of unions in the US, has condemned the negotiating objectives as "vague" and "unambitious".³⁵

22 E. Barry: Putin plays sheriffs for cowboy capitalists, *New York Times*, 4 June 2009; M. Hartmann: Trump Takes Credit for Keeping Ford Factory in U.S. – But It Was Never Moving, *New York Magazine*, 18 November 2016.

23 I. Hoagland: Industry trade council warns against using 'sweeping' Section 232 trade restrictions, *Inside U.S. Trade*, 1 June 2017.

24 Office of the United States Trade Representative: United States Statement on Trade for the OECD Ministerial Council Meeting, Press Release, June 2017.

25 J. Leonard: Trump orders the establishment of an Office of Trade and Manufacturing Policy, to be run by Navarro, *Inside U.S. Trade*, 29 April 2017.

26 A. Soergel: Robert Lighthizer Confirmed as U.S. Trade Representative, *U.S. News & World Report*, 11 May 2017, available at <https://www.usnews.com/news/articles/2017-05-11/robert-lighthizer-confirmed-as-donald-trumps-us-trade-representative>.

27 D. Abney et al.: Letter to the president regarding NAFTA modernization, 25 May 2017.

28 B. Fortnam: Industry, labor groups begin to lay out priorities for NAFTA renegotiation, *Inside U.S. Trade*, 19 May 2017.

29 Office of the United States Trade Representative: Summary of Objectives for the NAFTA Renegotiation, 17 July 2017.

30 C.P. Brown: Trump's Renegotiation Could Take the 'Free' Out of NAFTA's Trade, *PIIE*, 19 July 2017, available at <https://piie.com/blogs/trade-investment-policy-watch/trumps-renegotiation-could-take-free-out-naftas-trade>.

31 Office of the United States Trade Representative: Summary of Objectives ..., op. cit.

32 S. Mufson et al., op. cit.

33 J. Caporal: USDA to propose rule allowing imports of chicken raised, processed in China, *Inside U.S. Trade*, 14 June 2017.

34 Office of the United States Trade Representative: Summary of Objectives ..., op. cit., p. 12.

35 *Inside U.S. Trade*: Neal announces a new Democratic Ways & Means chief trade counsel, 31 July 2017.

The renegotiation agenda contains not only defensive but also offensive goals in line with demands espoused in other trade negotiations. Among them are:

- “Expand competitive market opportunities for United States financial service suppliers”³⁶
- “Ensure that the NAFTA countries refrain from imposing measures (...) that restrict cross-border data flows or that require the use or installation of local computing facilities”³⁷
- “Secure commitments not to impose custom duties on digital products”³⁸
- “Establish rules to prevent governments from mandating the disclosure of computer source code”³⁹
- “Promote adequate and effective protection of intellectual property rights”⁴⁰
- “Provide adequate opportunities for stakeholder comment on measures before they are adopted and finalized”⁴¹

Congressional leadership supports business agenda

In the US Congress, the central committees for trade-related issues are the Senate Finance and the House Ways and Means committees. The chairman of the Finance Committee, Orrin Hatch, endorsed the law assigning responsibility for trade negotiations to the president in 2015 (an important prerequisite for the Obama-propelled TPP). Nonetheless, he endorsed the confirmation of Robert Lighthizer as USTR and has called for new trade negotiations. Hatch has expressed support for the strengthening of intellectual property rights, as well as for more aggressive enforcement of trade laws.⁴² The top Democrat on the Senate Finance Committee, Ron Wyden, also supports the renegotiation of NAFTA. In contrast to Hatch,

however, he has called for strengthening labour and environmental protections.⁴³

The chairman of the House Ways and Means Committee, Kevin Brady, has advocated free trade and supported Obama’s TPP. But in regards to the NAFTA renegotiations initiated by Trump, he also sees an opportunity to strengthen American export industries.⁴⁴ In particular, he and other Republican members of the committee criticise the national security-based steel and aluminium investigations (Section 232). Such punitive duties would raise costs for downstream industries, hurt countries that trade fairly and encourage retaliatory protectionism.⁴⁵ The highest-ranking Democrat on the House committee, Richard Neal, is also a promoter of free trade, including the Transatlantic Trade and Investment Partnership (TTIP). According to Lighthizer, TTIP negotiations will be further pursued by the US following German elections in September.⁴⁶

The most protectionist measure discussed in the House of Representatives, the Border Adjustment Tax (BAT), has been dropped by agreement between the Trump administration and the Republican leadership in Congress.⁴⁷ A large business coalition, the Americans for Affordable Products, had mobilised against the BAT.

The historical precedent

Using the trade deficit to pry open foreign markets has a historical precedent. Against the backdrop of a meteoric rise in trade deficits during the Reagan years, “strategic trade policy” became popular among some economists. It would force other nations to open their markets by threatening to close the US market. In addition to companies from the high technology sector, suppliers of sophisticated services and owners of copyrights joined the group of open market strategists. Together with various think tanks, they popularised the notion that services could be rendered transnationally, that national regulations of the respective sectors prevented this, and that, consequently, these

36 Office of the United States Trade Representative: Summary of Objectives ..., op. cit., p. 8.

37 Ibid.

38 Ibid.

39 Ibid., p. 9.

40 Ibid.

41 Ibid., p. 10.

42 Committee on Finance: Hatch Statement at Finance Confirmation Hearing for USTR, United States Senate, News release, 14 March 2017.

43 R. Wyden: Wyden Statement at Finance Committee Hearing on the President Trump’s Trade Policy Agenda: As Prepared for Delivery, News release, 2017; Committee on Finance: Hatch, Wyden, Brady and Neal Urge President Trump to Address U.S.-India Trade Barriers During Prime Minister Modi’s Visit, United States Senate, News release, 24 June 2017.

44 A. Smith: Top Republican’s advice to Trump on trade: ‘Keep what works for America’, Business Insider Deutschland, 12 December 2016, available at <http://www.businessinsider.de/kevin-brady-trump-trade-2016-12>.

45 U.S. Trade Policy Agenda, Testimony of Robert E. Lighthizer, Hearing before the Ways and Means Committee, House of Representatives, 115th Congress, 2017.

46 Ibid.

47 D. Dupont: GOP lawmakers, Trump administration unite on tax reform, ‘set aside’ BAT, Inside U.S. Trade, 27 July 2017.

barriers had to be dismantled through tough negotiations. The nationalist rhetoric camouflages neoliberal objectives which would provoke resistance if they were stated openly.

Paradoxically, the trade deficit gave the US bargaining power. Foreign countries were much more dependent on access to the US market than the US economy was on access to foreign markets. Thus, Washington could forcefully oppose the national self-interests of transnational corporations from other countries. The threat of imposing sanctions – occasionally enforced – compelled not only Japan but also Western Europe to lower non-tariff trade barriers and to deregulate their economies. At that time, US demands were welcomed in both regions by many economists, the top leadership of business groups and parts of the ministerial bureaucracies.⁴⁸

Lighthizer as well as Navarro and Ross demanded publicly that the US leverage its purchasing power to force better deals in trade agreements by using higher tariffs as a negotiating tactic.⁴⁹ In October 2017, this strategy was put into practice by imposing a 219% tariff on the Canadian firm Bombardier's jetliners.⁵⁰

Conclusion

As witnessed by their strong support for the Trans-Pacific Partnership,⁵¹ US corporations favour free trade. But their trade liberalisation agenda lacks public support. They might nevertheless succeed in having their agenda implemented with the help of Trump's ploy of sharply criticising existing trade agreements while confronting trading partners with demands for further liberalisation.

The Trump administration is still in its infancy and under great self-inflicted pressure. An assessment of Trump's trade agenda is, therefore, fraught with uncertainties. Nevertheless, there is good reason to believe that his "America First" strategy includes the threat of protectionism but aims to gain access to other countries' markets for the US's technologically advanced companies. The trade deficit may well function as a battering ram against the national self-interests of corporations in other countries.

48 C. Scherrer: *Globalisierung wider Willen? Die Durchsetzung liberaler Außenwirtschaftspolitik in den USA*, Berlin 1999, Ed. Sigma, pp. 235-239.

49 R.E. Lighthizer: *Stifling the Economy, One Argument at a Time*, New York Times, 21 March 2010; and P. Navarro, W. Ross: *Scoring the Trump Economic Plan: Trade, Regulatory, & Energy Policy Impacts*, 2016, p. 4.

50 S. Mufson et al., op. cit.

51 Office of the United States Trade Representative: *TPP Endorsements*, January 2016, available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/january/Diverse-Coalition-American-Businesses-Farmers-Manufacturers-Call-for-TPP-Passage>.