

## The Trade Agenda for the Trump Administration

by Bart S. Fisher\*

The issue of international trade was a major factor accounting for the victory of Donald J. Trump in the 2016 presidential election. Trump prevailed in the Rust Belt states he had to have to win the election, winning in the old industrial states of the upper Midwest: Pennsylvania, Ohio, Michigan, and Wisconsin. Wisconsin had not gone Republican since 1984; Pennsylvania and Michigan since 1988; Ohio since 2004.

The exit polls confirmed this analysis. 46% of Trump voters cited the economy as the top issue, and a far larger share of Trump votes---57%--said they think that trade takes away jobs.

The people have spoken. The question now is what can President Trump do to improve the U.S. trade picture under current law?

The short answer is that all of the tools required to decrease the U.S. trade deficit and increase U.S. jobs currently exist. **All president-elect Trump will have to do is to vigorously enforce the laws that are already on the books.**

### **Unfair Trade Practices**

The place to start is **the vigorous enforcement** of the unfair trade practice laws of the United States, including the antidumping laws, the countervailing duty laws, and the laws protecting U.S. manufacturers from the theft of their intellectual property, including patents, copyrights and trademarks.

## **The Antidumping Law of the United States.**

Dumping occurs when there are sales in the United States at less than the home market price, known as “fair value.” There are two new challenges to the U.S. antidumping laws that need to be addressed, and they both come from China. The first challenge is that of circumvention of the U.S. antidumping laws, and it relates to steel cases launched by the U.S. Government on November 8, 2016, against steel allegedly being dumped by Vietnam. Vietnam has emerged as the biggest new source of steel in the U.S. market this year, with imports from Vietnam increasing to 556,000 metric tons during the first nine months of 2016, from 36,000 tons in the first nine months of last year, a surge that has depressed U.S. steel prices, and kept pressure on the profit margins of the U.S. steelmakers. The catch here is that much of this steel is exported into Vietnam from China, which has built up networks of companies in Vietnam that are in effect their subsidiaries. Thus, corrosion-resistant steel being exported from Vietnam into the United States is Chinese steel coated in Vietnam with zinc. The legal issue is whether the zinc added in Vietnam is enough to permit U.S. importers to successfully assert that a “substantial transformation” of the product has occurred when the steel is coated. It is noteworthy that the Chinese antidumping law circumvention occurred after the United States had imposed antidumping duties as high as 266% on Chinese steel, a move that, at least for a short while, allowed the U.S. steel makers to charge more for their products. The circumvention by the Chinese of the U.S. antidumping laws must be stopped. That is the first challenge that will confront the Trump Administration. In other words, for Trump to make America great again, he will have to make the antidumping laws of the United States great again.

The second issue related to the antidumping laws is the classification of China as a non-market economy. China has argued, citing its WTO 2001 accession protocol, that it is a market-oriented economy. If it is so classified, it will be virtually impossible to assess antidumping duties against China because its home market prices are so low. The classification of China as a nonmarket economy permits the U.S. Commerce Department to resort to the economy of a third country at a comparable stage of economic development to calculate the home market “fair value” price, and the country usually chosen for that analysis is India. This exercise is generally referred to as calculating the “constructed value” of the home market price. The reality is that China is still a non-market economy, and the U.S. Government must hold firm to that position, even if the European Union, for political reasons, chooses to classify China as a market-oriented economy. China has complained bitterly that its continued classification as a nonmarket economy is unfair. The reality, however, is that China’s foreign exchange regime is still controlled by its State Administration of Foreign Exchange (SAFE) and its many state-owned enterprises, the so-called dinosaurs, still dominate the economy. The United States must hold the line on this issue, which will permit the United States to control low-priced imports from China.

### **The Countervailing Duty Laws of the United States**

The countervailing duty law of the United States permits the United States to assess duties equal to foreign subsidies, bounties, or grants for foreign goods entering the U.S. market. This statute needs to be more vigorously enforced. For example, there is an action now pending against Chinese subsidies for its aluminum exports to the United States. China’s aluminum exporters now benefit from government reductions on their energy bills

and tens of millions of dollars in cash infusions. Subsidies such as these have propelled the surge in China's aluminum production in recent years, which has increased from 24% of global production in 2016 to 55% of global production in 2015. China has also been circumventing prior countervailing and antidumping duties amounting to 374.15% by importing products such as aluminum pallets from China, which is just aluminum being reshaped in order to avoid the punitive U.S. duties. China started to use these new methods to sell aluminum in the United States after the tariffs were imposed, indicating that they were designed to avoid trade barriers.

The most pressing subsidy-related issue is that of **alleged Chinese currency manipulation**. In the 1990s and early 2000s China held down the value of its currency, called the yuan or renminbi, to the detriment of U.S. producers, who could not compete with the lower-priced Chinese goods, and U.S. exporters, who found that their goods could not compete with China's low prices abroad. The argument at that point was that China was granting an unfair subsidy for its exporters, and that that Chinese goods should be penalized under the countervailing duty laws of the United States. However, the time for that argument may have come and gone. While the yuan was 8.2 RMB to the dollar in 2002, it has now been pegged at about 6.92 RMB to the dollar. It has thus *appreciated* vis a vis the dollar, rather than depreciated. However, this picture could change tomorrow, and the United States must not take that risk. The reality is that China has cleverly played this issue, and that we desperately need new rules of the road here, either in the WTO or IMF to stop currency manipulation. **China is a currency manipulator, and should be so designated.**

## Intellectual Property

A major tool in the tool kit to improve the U.S. trade posture is Section 337 of the Tariff Act of 1930, which permits the United States to issue exclusion orders against imports that compete unfairly, and covers patents, copyrights, trademarks, and potential antitrust violations. The majority of Section 337 actions are against China, and the majority of those cases involve patent-based violations. **Section 337 enforcement** needs to be expanded to include antitrust and other unfair trade practice violations. It is the “catch all” statute designed to limit imports that are competing unfairly in the U.S. market.

## Fairly Priced Imports

A consensus exists that imports that are unfairly competing the U.S. market need to be limited. The controversy exists with regard to goods that are fairly priced that are still entering the U.S. market in numbers large enough to seriously injure U.S. industries.

President-elect Trump has called for a tariff of 45% to be imposed on China’s imports to level the playing field. **There are four statutes that would now permit Trump to carry out the threat of higher U.S. tariffs.** The first statute is **Section 232** of the Trade Expansion Act of 1962., which is designed to limit imports that **may impair national security.**<sup>1</sup> Under this statute the President can declare that for national security reasons he can limit imports coming into the United States. The problem with the use of this statute is that with current U.S. unemployment levels at 5%, which most economists would term

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<sup>1</sup> Section 232(b) provides that if the secretary of the treasury finds that an “article is being imported into the United States in such quantities or under such circumstances as to threaten the national security,” the president is authorized to “take such action, and for such time, as he deems necessary to adjust the imports of (the) article, and its derivations so that imports (of the article) will not threaten to impair the national security.”

nearly full employment, it is difficult to make the “national security” case under Section 232.

The most likely candidate for the unilateral imposition of **duties is Section 301** of the Trade Act of 1974. Under this statute the President can impose duties or quantitative restraints against countries whose governments impose barriers to U.S. exports that are unreasonable, discriminatory, or unjustifiable. The term “unjustifiable” is defined as unlawful or violating existing trade agreements. Section 301 permits the Office of the United States Trade Representative to self-initiate trade actions against foreign countries it deems to have acted unfairly against U.S. exports.

There is also a statute that allows the president to limit imports if they are **seriously injuring a U.S. industry**,<sup>2</sup> and a statute allowing the president to limit imports from nonmarket economies that cause market disruption in the United States market.<sup>3</sup>

The overall point to be made here is that **a granular analysis** of the existing statutes that regulate unfair foreign trade practices and fairly traded foreign goods needs to be undertaken, with the emphasis being given to unfair foreign trade practices in general, and antidumping enforcement in particular.

## **Trade Agreements**

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<sup>2</sup> Under **Section 201** of the Trade Act of 1974, relief from fairly priced imports can be granted on the grounds that imports are causing serious injury to a U.S. industry. The central issue in Section 201 cases is usually causation, i.e., whether the increased imports are a substantial cause of serious injury to the U.S. industry; for this purpose, “substantial cause” means a cause that is important and not less than any other cause.

<sup>3</sup> **Section 406** of the Trade Act of 1974 specifically addresses the issue of market disruption created by nonmarket economies.

Trump asserted that U.S. trade agreements, including NAFTA, have been a “disaster” that have cost U.S. workers millions of jobs.

## **NAFTA**

Despite the assertion by President-elect Trump that NAFTA has been a “disaster” that has injured the U.S. economy, the consensus view among economists is that the net overall effect of NAFTA on the U.S. economy appears to have **been relatively modest**, primarily because trade with Canada and Mexico accounts for a small percentage of the U.S. GDP, less than 5%. Trade with Mexico amounts to 1.4% of the GDP. On an overall basis, the Congressional Budget Office has estimated that NAFTA probably increased U.S. GDP, but by a very small amount, probably no more than a few billion dollars, or a few hundredths of a percent. The International Trade Commission has confirmed this estimate, stating that NAFTA has had small, but positive, effect on the *overall* U.S. economy.

There have, however, been some worker and firm adjustment costs as the three countries adjusted to more open trade and investment among their economies.

**Given that the U.S.-Canada Free Trade Agreement was negotiated and signed in 1987, and was therefore already in place in 1993, most of the market opening measures in NAFTA results in the removal of U.S. tariffs and quotas applied to imports from Mexico, and Mexican trade barriers applied to imports from the United States and Canada.**

The central point is that **NAFTA has worked as intended**. It has had both an economic and a political dimension. While the United States could legally withdraw from NAFTA six months after Mr. Trump notifies Mexico and Canada of his intention to do so, it

would be unwise to do so. It is in the interest of the United States to prop up the economy of Mexico, in order to relieve the pressure from illegal immigration into the United States, and withdrawal from NAFTA would raise the price of U.S. automobiles by increasing the costs in the established global supply chains. Cars sold in the United States have many foreign parts, with components sourced on the basis of quality and price. Placing tariffs now on automobiles and automobile parts from Canada and Mexico would in fact increase the cost of cars in the United States, and, ultimately, save very few jobs in the United States. About \$118 billion in cars and auto parts moved tariff-free between the United States and Mexico last year. If a tariff were imposed, it would take years for companies to rebuild their global supply chains. In the meantime, U.S. consumers would pay significantly higher prices for their daily purchases.

Trump politicized the so-called “disastrous” effect of NAFTA for his political advantage in the Rust Belt states. NAFTA should be left alone. The only change that could be justified, in fact, would be to expand the agreement to encompass a free market in electricity between the United States and Canada.

Among the biggest openings involves imports of clean electricity from Canada, where hydropower provides the bulk of the nation’s power supply, with plenty to spare.

Electricity harnessed from dams and reservoirs in Quebec, Manitoba, Ontario and British Columbia accounted for 63% of Canada’s electricity supply in 2015, with nuclear energy following at 13%, and wind energy way behind but growing at 2%.

All told, 83% of Canada’s electric generation is emission free, compared to 32% for power supply in the United States, and 25% for those in Mexico. If six projects now

underway are completed, Canada will be able to increase its electricity exports to the United States by 50%. The development of a free trade area in clean energy between the United States, Canada, and Mexico is very much in the interest of the three countries. The correct policy prescription for NAFTA is to expand it, and not limit or terminate the agreement.

### **Trans-Pacific Partnership**

While President-elect Trump was incorrect in his criticisms about NAFTA, he was correct in asserting that the TPP is fatally flawed and should not have been approved in its present form. For starters, the TPP allows for self-certification of exporters. Thus, Vietnam, for example, could export products to the United States with 90% of the product being produced outside of a TPP country. These weak rules of origin would give China no incentive to join the TPP to benefit from the agreement.

Note the comments made earlier about the circumvention of the U.S. antidumping laws currently taking place in the cases of steel and aluminum from China. The TPP, as currently drafted, would actually *expand* the circumvention possibilities for China, in effect just giving China duty-free treatment with no corresponding concessions on its side.

Another flaw in the TPP is that it does not proscribe currency manipulation, an issue also discussed earlier.

The TPP will not be taken up in the current lame duck session of Congress. It needs to be totally revisited, and improved, not discarded. It needs tough rules of origin, and coverage of currency manipulation.

In a perfect world we would prefer global trade agreements but the stalled Doha Round of multilateral negotiations has required a regional pact.

The United States needs to pivot to Asia. But it should insist on an improved TPP before completing that pivot. One thing is clear. It can not abandon the field in Asia to China. It must compete with a better trade arrangement, or risk becoming a second-class power in the Pacific, which is not in the U.S .national interest

### **Summary**

The inherent contradiction in Trump's platform is that the pro-growth agenda of lower tax rates and less regulation runs into his anti-trade instincts, which are distinctly anti-growth and redistributionist. The fragile economies of Europe, China, and Japan could lurch into a global financial crisis at any minute. Achieving trade reform without sparking a global trade war should be the objective of the next Trump Administration.

- Bart S. Fisher is an attorney in Washington, D.C. and co-author of “International Trade and Investment: Regulating International Business”