

TRUMP, TRADE AND VIRGINIA.

By Stuart S. Malawer*

INTRODUCTION.

The founding of the Virginia Colony in the New World by the Virginia Company reflected the British Empire's notion that enlightenment would come through trade. By the post-World War II era this notion was unequivocally adopted by U.S. policymakers.

This belief in the linkage between trade and the spread of liberal values has been the cornerstone of U.S. foreign policy for over 75 years. It was the underpinning of the architecture of the United States' international trade and investment rules-based system that has evolved since the adoption of the Bretton Woods system, the General Agreement on Tariffs and Trade and subsequently, by the World Trade Organization (WTO). It resulted in the historical growth of liberal democracy in the United States and elsewhere globally. Donald Trump was elected, in large part, by those who now felt marginalized by globalization. Globalization and the liberal economic order is now under challenge by him and his trade policy pronouncements.¹

Now what?

TRUMP AND U.S. TRADE POLICY.

The election of Donald Trump as a protectionist president proclaiming "America First" jeopardizes this post-war historical development of a firmly grounded international political system. He won the election by appealing to those harmed by globalization and his war against globalization.² He lost the nation's global cities to rural voters and the Rust Belt. Now state, national, and international economic development is at stake.

¹ Editorial. "Donald Trump's Victory Challenges the Global Liberal Order." FINANCIAL TIMES (November 10, 2016).

² Chandy and Selde, "Donald Trump and the Future of Globalization." BROOKINGS UP FRONT (November 21, 2016) at <https://www.brookings.edu/blog/up-front/2016/11/18/donald-trump-and-the-future-of->

The recent failure of Trans-Pacific Partnership (TPP) to even come up for a vote in Congress and Trump's recent vow to walk away from the TPP his first day in office³ not only weakens the economic leadership of the U.S., but also the national security and foreign policy of the U.S. in Asia and the larger global system. This weaponing of trade ignores the strategic role of global trade in U.S. diplomacy. It represents a new age of deglobalization.⁴ Most of all, it provides openings for other countries, namely China, to compete more effectively geopolitically and economically against the U.S. and to write newer rules governing global trade.⁵ It puts US firms and industries at significant risk.⁶

The TPP would have reduced some 18,000 tariffs for U.S. firms, strengthen intellectual property rights, impose restrictions on government-owned corporations, provide other advantages and protections for U.S. firms abroad.

Indeed, China's President Xi Jinping declared at the recent Asian-Pacific Economic Cooperation summit in Peru, given this new "hinge moment" in China-U.S. relationship, China is now the emerging leader in international commerce. That China will be broadening its own Asian regional trade arrangement, the Regional Comprehensive Economic Partnership, with fewer disciplines on trade than TPP, with newer members, perhaps including Singapore, Vietnam, Japan and Australia, among others.⁷

Of course, Trump also has his sights on NAFTA and the WTO. Both those organizations contain withdrawal provisions. However, under the U.S. Constitution presidents have the authority to terminate international agreements at any time whether or not this would violate U.S. international legal obligations. If this would happen global legal matters would become much worse.

VIRGINIA IN THE GLOBAL TRADING SYSTEM.

globalization/?utm_campaign=Brookings+Brief&utm_source=hs_email&utm_medium=email&utm_content=38230996 (Accessed November 26, 2016).

³ Announced on a *You Tube* video on November 22, 2016. <https://www.youtube.com/watch?v=8W84i3aeo60> (Accessed November 23, 2016).

⁴ Sharma, "When Border Closes." NEW YORK TIMES (November 13, 2016).

⁵ Donnan and Schipani, "China Manoeuvres to Fill US Free-Trade Role." FINANCIAL TIMES (November 21, 2016); Editorial Board, "A Retreat from TPP Would Empower China." NEW YORK TIMES (November 21, 2016).

⁶ Porter, "A Trade War against China Might Be a Fight Trump Couldn't Win." NEW YORK TIMES (November 23, 2016).

⁷ "China Touts its Own Trade Pact as U.S. Backed One Withers." WALL STREET JOURNAL (November 22, 2016).

Before concluding, here a few comments concerning the significance of global trade for Virginia.

First and foremost global trade is the critical core of Governor McAuliffe's focus on developing a "New Virginia Economy." His administration has conducted over 20 foreign trade missions to promote Virginia exports and foreign direct investment into the Commonwealth. Virginia has trade and related offices throughout the world. Governor McAuliffe's trade policies can be traced directly back to those of Governor Baliles up through Governors Warner, Kaine and McDonnell.

Here are some basic facts concerning global trade and economic development that the Virginia Economic Development Partnership provides on its websites.⁸

- In the last five years foreign companies have created more than 15,000 new jobs and \$4.6 billion in direct investment in the Commonwealth.
- More than 700 foreign companies have operating subsidiaries or affiliates within Virginia.
- Small and midsize companies can become major competitors through exporting, especially with the utilization of the Internet, websites, and digital ecommerce.
- 95% of consumer demand is outside of the U.S.
- Companies have increased 8-14% productivity due to export sales and competition.
- 60% of small and midsize companies do business in more than six countries.
- Workers at companies that export earn 15% more than workers at domestic-only companies.

Here are some additional facts provided by the Port of Virginia on its website.⁹

- 374,000 jobs, or 9.4% of Virginia resident workforce, work in port-related jobs.
- Over \$1.6 billion of total merchandise is received in the Port of Virginia's Foreign Trade Zone.
- The Port of Virginia's Foreign Trade Zone produces over \$430 million in exports annually.
- \$1.2 billion is invested in port-related economic development.
- The Virginia Inland Port has generated investments totaling more than \$620 million.

While there is a recent report¹⁰ by the Joint Legislative Audit and Review Commission questioning efficacy of specific foreign investment activities and state economic incentives there is overall realization that export trade activities have been outstanding and are essential to the well-being of Virginia in today's global economy. Indeed, the General Assembly authorized the establishment of the new Virginia World Trade Corporation to

⁸ <http://yesvirginia.org/>; <http://exportvirginia.org/> (Accessed November 23, 2016).

⁹ <http://www.portofvirginia.com/> (Accessed November 23, 2016).

¹⁰ Joint Legislative Audit and Review Commission, MANAGEMENT AND ACCOUNTABILITY OF THE VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP." (Draft Report) (November 2016) at <http://jlarc.virginia.gov/pdfs/reports/Rpt488.pdf>

promote exports and global trade that is to commence operation in 2017.¹¹ Thus, the General Assembly is attempting to keep Virginia in the forefront of global activities, ahead of many other states competing in the global system.

While the focus on global trade has almost always been on the role of the federal government, it is states that have the principal responsibility of providing for the well-being of its citizens. Virginia has been very aggressive in promoting trade and investment for many years as a means of economic development in all areas of the Commonwealth, from the most rural to the most urbanized.

But Virginia and other states are obviously subject to all of the crosswinds of laws, politics, and policies emanating from Washington. From trade agreements to trade sanctions and to reactions by foreign governments. It is the Congress that has exclusive authority to regulate international commerce and the federal government that has exclusive authority over states concerning trade under the Supremacy Clause (Article VI) of the U.S. Constitution. Presidents have great delegated authority and some inherent authority in trade as part of their general foreign affairs powers. Nevertheless, states have a very real and significant role in engaging in global trade.¹² This involves export and investment promotion activities as well as issues of state taxation.¹³ A recent example is Virginia concluding a sister-state understanding on cyber development with Victoria, Australia.¹⁴

Put very simply, the failure by the new administration in Washington, D.C., to protect and promote global commerce would have more than a trickle-down effect on Virginia and other states. From perhaps higher foreign tariffs to outright restrictions on new foreign investment. This is terrible for state economies still struggling from the 2008 financial crisis and consistent budgetary restrictions from Washington that impact Virginia from its defense industries to high-tech firms to agricultural exports and to almost everything else.

Keep in mind that of all developed countries the United States has one of the lowest level of engagement with global trade as evidenced by the low ratio of foreign trade to overall GDP – 28% in 2015¹⁵ and U.S. trade accounts for only 11% of global trade volumes. This should not be looked at as a problem but as an incentive to grow trade significantly.

¹¹ HB 858 “Virginia World Trade Corporation.” (2016 Session of the Virginia General Assembly). Losi, “Virginia Doubles Down on its Commitment to Trade.” VIRGINIA BUSINESS (June 2, 2016) at <http://www.virginiabusiness.com/opinion/article/virginia-doubles-down-on-its-commitment-to-international-trade>; Malawer, “Virginia Needs Aggressive Trade Authority,” RICHMOND TIMES-DISPATCH (Letter-to-the Editor) (February 8, 2016).

¹² Bradsher, “In China-U.S. Trade War, Trump Would Have Weapons.” NEW YORK TIMES (November 10, 2016).

¹³ See generally, “Globalism & States: International Trade & State Policies,” 16 VIRGINIA BAR ASSOCIATION JOURNAL 5 (No. 1, Winter 1990); Malawer, “States’ & International Transactions: Federalism & Foreign Affairs,” 37 VIRGINIA LAWYER 11 (No. 11, May 1989).

¹⁴ “MOU between VEDP and Victoria, Australia.” GOVERNOR’S PRESS RELEASE (November 21, 2016) at <https://governor.virginia.gov/newsroom/newsarticle?articleId=18349> (Accessed November 26, 2016).

¹⁵ WORLD BANK NATIONAL ACCOUNTS DATA, AND OECD NATIONAL ACCOUNTS DATA FILES. <http://data.worldbank.org/indicator/NE.TRD.GNFS.ZS> (Accessed November 23, 2016).

Now returning to Trump's trade policies.

CONCLUSION.

With respect to U.S. domestic policy over the past eight years, the United States has incomprehensibly failed to provide effective legislation and policies directly aimed at those left behind in this new era of hyper-globalization.

That was a terrible blunder, indeed. Instead of focusing on interest rates day after day the Congress and the President should have specifically targeted jobs. Those endangered by globalization, new global supply chains, technological developments in communications, robotics, digital commerce, among others. Unfortunately, we can't go back. We can't have a do-over. Trade is developing in many different ways regardless of trade policy.

But to formulate trade policies primarily to protect rural and unemployed manufacturing workers is a grave mistake. It is global cities and states connected to the global economy that are the drivers of economic development and global prosperity, such cities contribute 80% of global gross domestic product.¹⁶

Many other countries are facing this same political dynamics and policy choices including the UK, France and Turkey, among others. This is what has been called the rise of *populist nationalism*.¹⁷ The rise of such corrosive nationalism led to nothing good in the 1930s, where it was nurtured by a mercantilist zero-sum view of global trade, unemployment, persecution of numerous populations, protectionism and extreme nationalism.¹⁸

The challenge now is for the U.S. to put in place immediately a broad range of domestic policies regarding trade adjustment assistance, public and private reinvestment into infrastructure, and global tax reform to recapture the billions of offshore dollars being hoarded by U.S. multinationals.

¹⁶ "About the Global Cities Initiative of the Brookings Institution." <https://www.brookings.edu/about-the-global-cities-initiative/> (Accessed November 24, 2016). *See also*, "Cities of the West are Bulwarks against Right-Wing Nationalism, Experts Say." WASHINGTON POST (November 24, 2016).

¹⁷ Fukuyama, "US against the World? Trump's America and the New Global Order." FINANCIAL TIMES (November 12, 2016).

¹⁸ Editorial, "Donald Trump's Dangerous Delusions on Trade." FINANCIAL TIMES (November 14, 2016).

Both federal and state governments, with a broad outward-looking mindset, need to aggressively engage collectively the global system. This entails having complimentary domestic social and economic policies ensuring a competitive home front.

Blustering away at globalization, walking away from the TPP, withdrawing from NAFTA or the WTO, and from leadership in the global trading system are not good for developing viable U.S. policies for trade, geostrategic relations or promoting state economic development.

It's certainly not too late to start over.

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