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# Understanding the US Trade Wars

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## I. A Looming Global Trade War?

After being on course for a relatively stable performance, the first since the great recession of 2008, the global economy finds itself in choppy waters once again, this time on account of the likelihood of a [trade war](#)<sup>1</sup> between the two largest economies. Candidate Trump had promised his supporters that, when elected, he would impose a [45% tariff on all imports](#)<sup>2</sup> from China, and target Mexico, a partner in the North American Free Trade Agreement. Although presidential hopefuls have generally made trade protectionism an integral plank of their campaigns, candidate Trump's position was a departure from past trends on three counts. The first was that trade protectionism, a preferred plank of the Democrats, was being voiced by a Republican hopeful; the second was that past promises of protecting domestic industries seldom spoke of using tariffs as the instruments; and the third and the most important, was promising to target specific partners. But, despite the instant approval that he received from his base, few would have thought that President Trump would go down the risky path of targeting imports from United States' major trading partners.

## II. The Trump Trade Strategy

President Trump's strategy of targeting imports, which was first announced on 1 March 2018, has two clear strands; the first is the target China strategy, which he did by initiating a tariff-war; and the second is to target several other partners using a variety of measures. In the post-WWII era, no other country has unleashed such variety of trade policy instruments in such a short period of time period to undermine the interests of its partner countries, as the Trump administration has done.

Prior to embarking on the path of unilateral trade protectionism, the US President had suggested that he would push for the imposition of a "reciprocal tax" against countries using tariffs on American products. Although he did not clarify how this "[reciprocal tax](#)"<sup>3</sup> would be designed or implemented, the proposal was bound to draw parallels with the infamous [Smoot-Hawley Tariff Act of 1930](#)<sup>4</sup> (named after its sponsors, Senator Reed Smoot and Representative Walter Hawley). The objectives of the Smoot-Hawley Tariff Act were almost identical to those laid out by President Trump, namely, to shield domestic industries from import competition by using tariffs on a large number of products. In the wake of the Smoot-Hawley Tariff, trade partners of the US imposed retaliatory tariffs. Many analysts argue that the resulting trade war was responsible for deepening the economic crisis arising from the stock market crash of 1929, and for causing the Great Depression of the 1930s.

There are at least three critical dimensions arising from the actions taken by the Trump administration. The first is that the actions on [steel and aluminium imports](#)<sup>5</sup> are part of a pattern of trade protectionism. The second concerns the response of several major trading nations who have already retaliated or are threatening to retaliate against US imports, thus raising the grim prospects of a trade war reminiscent of the 1930s. The third is that the unilateral action taken by the US poses a serious challenge to the framework of global trade rules governed by the World Trade Organization (WTO).

President Trump fired the first salvo by targeting imports of steel and aluminium to help revive American fortunes in these two sectors. He implemented the extraordinary decision to impose import tariffs of [25% and 10%](#)<sup>6</sup> on steel and aluminium by invoking the provisions of Section 232 of the [Trade Expansion Act of 1962](#).<sup>7</sup> This provision allows the Administration to take measures to protect domestic industries for “national defense” and “national security.”

President Trump’s action was backed by an investigation conducted by the Bureau of Industry and Security of the US Department of Commerce. This investigation made a strong case for the imposition of import tariffs on the two metals for national security, based on the understanding that “national security can be interpreted more broadly to include the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements that are critical to the minimum operations of the economy and government.” This interpretation lends itself easily to bringing substantially more products under the dragnet of import tariffs. Equally egregious is President Trump’s insistence that the tariff increases on steel and aluminium are for an “unlimited period.”

### **III. Deeper Ramifications of the Trump Strategy**

While the discussions on President Trump’s actions around steel and aluminium were riveting, few realised that the problems caused by US trade protectionism ran much deeper for two reasons. The first was that there was excessive use of anti-dumping measures on steel, and the second was that there are two other products—washing machines and solar cells and modules—whose imports have been restricted by the President in recent months.

Until mid-April 2018, the United States had issued 208 antidumping and countervailing duty orders only on iron and steel products, half of which was against four countries, namely China, Korea, India and Japan. As a result of such extensive use of anti-dumping actions, the major exporters face considerable uncertainties in the world’s largest market for steel.

At the beginning of the year, President Trump authorised restrictions on the imports of washing machines and solar cells and modules using the provisions of [Section 201 of the Trade Act of 1974](#),<sup>8</sup> the first time in 16 years. Section 201, which is the analog of the “Safeguard Measures” under the WTO, allows, as a temporary measure, the raising of import duties or imposition of nontariff barriers on goods entering the US that injure or threaten to injure domestic industries producing similar goods. In the case of washing machines, import quotas have been established for three years, wherein, in the first year, 20% tariffs would be imposed on imports of up to [1.2 million washing machines](#)<sup>9</sup> and 50% tariffs would be imposed on imports beyond the above threshold. The safeguard measures in case of solar cells and modules would last for four years, with 30% tariffs being imposed in the first year.

### **IV. Retaliation and Reprieve**

The Trump administration’s announcement of tariff hikes on steel and aluminium brought a strong response from its major trade partners, in particular the European Union (EU) and Canada, who threatened to [retaliate](#)<sup>10</sup> by targeting American icons like Harley-Davidson,

Kentucky bourbon and Levi's blue jeans. The EU Trade Commissioner, Cecilia Malmstrom, announced concrete plans to retaliate against the proposed American tariffs on its exports by announcing imposition of higher import duties on bourbon, peanut butter, cranberries, orange juice, steel, and industrial products. The total value of American exports against which the EU threatened to increase tariffs was [EUR 6.4 billion, of which EUR 2.8 billion](#)<sup>11</sup> worth of products would face tariffs of 25% immediately, while the remaining products would be targeted after three years.

The response of the US President to these threats of retaliation by close allies was to provide them temporary reprieve a day before the penal tariffs came into effect on 23 March 2018. Seven partners, namely, Canada and Mexico, members of the European Union, Australia, Brazil, South Korea and Argentina, were [exempted from the tariff](#)<sup>12</sup> hikes under Section 332 until 1 May 2018, pending discussions with these countries to reach a satisfactory long-term solution that would address what the United States Administration saw as impairment to its national security interests.

## **V. Chinese Intellectual Property Violations**

While giving an important exemption—albeit temporary—to US allies, President Trump sanctioned tariff hikes on USD 60 billion worth of imports from China, endorsing the findings of the United States Trade Representative (USTR) that Chinese firms were [violating intellectual property](#)<sup>13</sup> of American companies. These targeted actions against Chinese imports became the centrepiece of the Trump administration's tariff war with its largest trade partner. The tariffs on products, followed by the swift response by China, made it clear that this sequence of events would not only sow seeds of uncertainty in the global economy at a critical juncture, but more importantly, would trigger the unsavoury prospects of a trade war reminiscent of the 1930s.

The justification provided by USTR for these actions was the investigation conducted under [Section 301 of the United States' Trade Act of 1974](#)<sup>14</sup> of the “laws, policies, practices, or actions of the Government of China that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development.”

The results of the investigation, according to the USTR, showed four areas of transgression by China. First, the Chinese government used a number of measures, including joint venture requirements and foreign equity limitations to regulate or intervene in the operations of American companies in China, and by so doing, forced transfer of technologies and intellectual property to Chinese companies. Secondly, the policies and practices adopted by the Chinese government did not allow US companies to set market-based terms for licensing technologies to Chinese companies. Thirdly, the Chinese government unfairly facilitated investments in and/or acquisition of American companies and their assets by Chinese companies to obtain cutting-edge technologies and intellectual property rights. Finally, China conducted or supported “unauthorized intrusions” into American “commercial computer networks or cyber-enabled theft of intellectual property,” enabling the acquiring of competitive advantages by Chinese companies or commercial sectors.

## VI. The US-China Tariff War

Ten days after being targeted by the US, China's Customs Tariff Commission of the State Council decided to retaliate by imposing tariffs on [128 dutiable products](#)<sup>15</sup> across seven categories. These products accounted for USD 3 billion of US exports to China in 2017 and were aimed at offsetting the losses suffered in the aftermath of the US invoking [Section 232](#)<sup>16</sup> of its Trade Act of 1974. On the first set of products, covering 120 dutiable products (including fresh fruits, dried fruits and nuts, wines, modified ethanol, American ginseng, and seamless steel pipes), the Chinese authorities proposed to impose [import tariffs of 15%](#).<sup>17</sup> The value of these products exported by US to China was USD 977 million in 2017. The second set of products, covering eight dutiable products (which included pork and its products, recycled aluminium and other products), the proposed import tariffs were 25%. The value of US exports of these eight products to China was [USD 1.992 billion in 2017](#).<sup>18</sup>

One feature of the import curbs announced by US and China was that the Chinese threat of retaliation was disproportionately low: the US had threatened to impose high tariffs on over 10% of its imports from China, while just over 2% of US exports were targeted by China. However, China also targeted a number of products originating in the politically sensitive agrarian heartland of the United States, which implies that that real cost of the proposed Chinese action for the latter could be much larger than the dollar value.

Predictably, the United States reacted immediately. The USTR announced imposition of 25% tariffs on approximately [USD 50 billion worth of Chinese imports](#).<sup>19</sup> The total value of imports facing the proposed tariff increases would, in view of the USTR, compensate the economic loss suffered by the US by China's implementation of its forced technology transfer policies. The figure of economic loss was revealed in the Section 301 investigation that the USTR had conducted since August 2017.

The proposed list of products for retaliatory action covered nearly [1300 tariff lines](#).<sup>20</sup> The USTR unveiled the plan to subject these products through a public review, including a hearing, until the end of May last year. The final list of products were to be determined after this process of public review. In other words, US kept the pot boiling through the several weeks that followed.

The USTR also expressed the intention to take action in response to the policies of the Chinese government, including forcing American companies to transfer their technologies and intellectual property to Chinese enterprises. These policies, argued the USTR, would enable China to gain ascendancy in the global market in advanced technologies, especially through the implementation of its industrial plans, as outlined in ["Made in China 2025."](#)<sup>21</sup> The USTR revealed that the products proposed for tariff hikes were identified as those that would benefit from China's industrial plans and undermine the interests of the United States. Sectors included for the proposed tariffs were aerospace, information and communication technology, robotics, and machinery.

## VII. Undermining the WTO and the Global Multilateral Trading System

American unilateralism for protecting domestic industries has an important parallel harking back to the beginning of the 1930s. As mentioned earlier, the US administration under President Herbert Hoover had imposed import tariffs unilaterally, which it could do easily since global trade rules were non-existent. The Trump administration is treading the same path of unilateralism, and it is doing so by completely disregarding the rules of the WTO. This disregard for WTO rules is not new for the Trump administration. Over the past year, the administration has undermined the multilateral trading system through a systematic process of non-engagement. By initiating this latest move of tariff wars, the Trump administration is challenging the very existence of the post-war multilateral trading system, which, despite its limitations, has made efforts to bring order to global trade by binding sovereign States through an extensive set of rules.

Besides the unilateralism in the imposition of tariffs, the Trump administration has also challenged the WTO rule-book by first determining unilaterally that China was infringing intellectual property rights owned by US companies, and then imposing trade sanctions by raising tariffs on imports of high technology products. These actions by the administration are in violation of WTO rules that prevent any member of the organisation from taking unilateral measures against another member without following the procedures laid down by the Dispute Settlement Body (DSB). In this instance, however, the USTR has also violated the commitment it made before the Dispute Settlement Panel that adjudicated the dispute brought by EU members in 1998 against Sections 301-310 of the United States Trade Act of 1974 (henceforth, [US-Section 301 Trade Act](#)).<sup>22</sup> This case was also significant for 16 other members who had joined as third parties. The main contention of the complainant and the third parties was that the US had maintained the aforementioned provisions on its statute book, which gave powers of unilateral action against other countries to the USTR, even after the WTO was established.

The proceedings of this dispute settlement are germane to the present discussion. The Panel was called upon to rule on Section 304 of the Trade Act of 1974, which gave the USTR the powers to make determinations of whether “the rights to which the US is entitled under any trade agreement are being denied.” The Panel observed that the language of Section 304 was “prima facie inconsistent with Article 23.2(a)” of the Dispute Settlement Understanding (DSU) of the WTO, which states that members of the organisation “shall not make a determination to the effect that a violation has occurred that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding.” Further, WTO members were instructed to “make any ... determination [of violation] consistent with the findings contained in the panel or Appellate Body report adopted by the DSB ...” In other words, a member could not take action against the perceived violation by any other member before referring the case to the DSB and getting a decision from the panel or the Appellate Body.

Despite such strict guidelines written into the DSU, the Panel in the US-Section 301 Trade Act concluded that the US had not violated its WTO commitments by allowing Section 304 of



Trade Act of 1974 to remain on its statute book. The Panel arrived at this conclusion on the basis of several statements made by the US in the course of the hearing.

First, the US brought to the notice of the Panel that the Statement of Administrative Action (SAA) submitted by the Administration to the Congress for implementing the Uruguay Round Agreements states that the USTR is required under Section 304 to base a determination of whether agreement rights have been denied on the results of WTO dispute settlement proceedings. Further, the Panel observed that the US had explicitly, officially, repeatedly and unconditionally confirmed the commitment expressed in the SAA, namely that the USTR would "... base any section 301 determination that there has been a violation or denial of US rights under the relevant agreement on the panel or Appellate Body findings adopted by the DSB." This implies that, in case a dispute settlement panel was unable to complete its proceedings within the time frames provided for in the DSU, the USTR would not be able to make a determination that US agreement rights have been denied.

Secondly, the US argued before the Panel that the USTR had never made a Section 304 determination that the rights of the US pertaining to the GATT or any WTO agreement rights have been denied, which was not based on the results of GATT and WTO dispute settlement proceedings.

The US is in clear violation of its commitments made to the Panel in the US-Section 301 Trade Act. The conclusion made by the Panel in this regard is particularly relevant: "Should the undertakings articulated in the SAA and confirmed and amplified by the US to this Panel be repudiated or in any other way removed by the US Administration or another branch of the US Government, this finding of conformity [of Section 304 with the WTO rules] would no longer be warranted."

The challenge thrown by the Trump administration to the multilateral trading system is not limited to the issue considered here. In recent months, the administration's affront to the WTO has dipped to a new low through its non-cooperation over the appointment of the Appellate Body members of the organisation. The Appellate Body performs a critical role in the WTO's dispute settlement process, since it reviews the decisions of dispute settlement panels when it is approached to do so. The decision of the Appellate Body is final and binding on the members, as WTO rules do not allow review of its decisions. The Appellate Body has seven members, but by the beginning of October, it had only three members. Over the past year, the US has repeatedly vetoed the appointment of new members on the Body and is thereby threatening its functioning. This implies that trade partners of the US who would like to challenge the decision of President Trump to turn protectionist in violation of WTO rules, could experience an exceptional situation where the WTO would not be able to redress their complaints because of a broken Appellate Body. The inability of the WTO to act as an effective arbiter in trade disputes could really be catastrophic for the global trading system.

## Notes

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