Tarrifying! A Brief U.S. History[1]

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Abstract
In this installment of The Big Picture, Christians provides a history of tariffs in the United States, explaining how both extremes of protectionism and liberalization have affected trade and the economy overall.

Introduction

Tariffs are taxes. On April 2 President Trump adopted one of the biggest peacetime taxes in U.S. history when he imposed sweeping tariffs with virtually worldwide scope[2]. To explain the action, the White House asserts that U.S. trading partners have engaged in unfair trading practices and economic policies that threaten U.S. national security and the economy.[3] According to the White House, the Trump tariffs are a "responsive" and "reciprocal" means to strengthen the international economic position of the United States and protect American workers.

Tariffs are familiar taxes, having been a central feature of U.S. policy and politics since the nation's founding. They have served as a primary source of federal revenue, a tool for economic development and protection, a lever for negotiating favorable trade terms with other countries, a means of delivering sanctions against other countries, and a divider of domestic politics. The history of tariff policy in the United States reflects an ongoing tension between competing eco-

[1] Originally, this text was published in Tax Notes International (v. 18, 2025), which authorized IBDT to publish it in RDTIA.

[2] White House Executive Order, "Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits" (Apr. 2, 2025).

[3] Among the foreign trade and economic practices cited are VATs. A White House fact sheet explains that "U.S. companies, according to internal estimates, pay over $200 billion per year in value-added taxes (VAT) to foreign governments — a 'double-whammy' on U.S. companies who pay the tax at the European border, while European companies don't pay tax to the United States on the income from their exports to the U.S." White House, "Fact Sheet: President Donald J. Trump Declares National Emergency to Increase Our Competitive Edge, Protect Our Sovereignty, and Strengthen Our National and Economic Security" (Apr. 2, 2025). Like tariffs, VATs are taxes, but unlike tariffs they are not imposed on goods coming into or out of the country, so they cannot normally be characterized as "non-tariff barriers to trade."

nomic interests, political ideologies, sites of regulatory power, and constitutional interpretations that have shaped the nation.

Tariffs embody fundamental political questions about the role of government in managing the economy, the balance of power within and between federal and state authorities, and relations with the global community.

The history of U.S. "tarrifying" — if not yet technically a word, sure to enter the lexicon — begins with an early enthusiasm by the newly formed Congress for tariffs as a primary revenue source, with encouragement from Treasury Secretary Alexander Hamilton who thought they would bolster industry, generate "opulence," and secure public order. This early enthusiasm for tariffs evolves with an increasingly contentious political climate during the antebellum period, which reflected growing sectoral divisions across the country. Next came a renewed rise of protectionism from the Civil War through the Great Depression, during which tariffs took on an added role in affairs of national security — a role that would only grow more convoluted and contentious over time. After the infamous Smoot-Hawley tariff definitively prolonged and worsened the Depression, a clear shift toward trade liberalization in the post-World War II era emerged, accompanied by an increased shift of power from Congress to the president. This multidecade period lasted up to the first Trump administration, which swung back toward more protectionist policies by maximally exploiting the executive's national security power, and, in retrospect, foreshadowed Trump's sudden move to usher in a new age of aggressive protectionism, dramatically unveiled in the form of "Liberation Day" on April 2: an extravaganza that seeks to tarrify (most of) the world.

In a broad sweep of U.S. tariff policy from Independence to Liberation Day, several themes emerge: a perpetual tension between protectionism and free trade; shifting coalitions of interests supporting each approach; an evolving relationship between tariff policy and other economic and political objectives; an unstable balance of powers between Congress and the White House; a long period of dominance of free trade-based ideas, messaging, institutions, and agreements that both shaped and carried out U.S. trade policy in the world over multiple decades; and the toppling of this dominant approach under the Trump administration. Each of the eras of U.S. tariff policy is briefly examined below.

The Revenue Era: 1789-1860

The roots of U.S. tariff policy can be traced to the colonial experience under British mercantilism, wherein Britain's so-called navigation laws and other trade restrictions ensured that the colonies served the economic interests of the colonizer.[4] The economic grievances articulated in the Declaration of Independence in-

4 Charles II, "An act for increase of shipping, and encouragement of the navigation of this nation" (1651); Charles II, "An act for the encourageing and increasing of shipping and navigation"

clude complaints about these trade restrictions and form part of the enduring romanticism surrounding the idea of "no taxation without representation."[5] The antitax sentiment of the day carried over to the Articles of Confederation, which omitted federal authority to impose tariffs, leaving each state to establish its own trade policies.[6] This approach was ineffective for both generating revenue and enabling federal industrial policy and contributed to the economic difficulties that prompted the Constitutional Convention of 1787.

The new Constitution, accordingly, explicitly granted Congress the power "to lay and collect taxes, duties, imposts, and excises" and "to regulate commerce with foreign nations."[7] Sure enough, the first substantive legislation passed by the newly formed Congress was a federal tax in the form of the Tariff Act of 1789.[8] The law was primarily designed to generate revenue to cover the substantial debts the federal government had inherited from the Revolutionary War.[9] The rates were relatively low, averaging about 8.5 percent.[10] But the act also included provisions that favored American shipping and provided protection for some domestic industries, reflecting the influence of economic nationalists, including Hamilton.

Hamilton's vision for American economic development, most fully articulated in his "Report on the Subject of Manufactures," submitted to Congress in December 1791, reads like a playbook for Trump's modern messaging on the subject. Hamilton argued the United States should actively "encourage" manufacturing to counter foreign practices that "abridge[d] the vent of the increasing surplus" of U.S. agriculture, while creating "a more extensive demand for that surplus . . . at home."[11] Acknowledging that the Northern and Southern states as well as various constituents within them were "sometimes represented as having adverse interests" on the matter, Hamilton contended that tariffs would contribute to national prosperity and public order. His report is the intellectual foundation for the pro-

(1660). John Raithby, "Charles II, 1660: An Act for the Encourageing and increasing of Shipping and Navigation," *Statutes of the Realm: Volume 5, 1625-80* (1819), British History Online (accessed Apr. 7, 2025). These laws required colonists to ship certain goods exclusively to Britain and imposed duties on imports from non-British sources. Adam Smith noted that this system subordinated the economic welfare of the colonies to that of Britain, creating resentment that contributed to revolutionary sentiment. Adam Smith, *The Wealth of Nations*, Book IV, Ch. VIII, Part III (1776).

5 Declaration of Independence (1776) ("The history of the present King of Great Britain is a history of repeated injuries and usurpations . . . [including] cutting off our Trade with all parts of the world [and] imposing Taxes on us without our Consent.").

6 Alfred E. Eckes Jr., Opening America's Market: U.S. Foreign Trade Policy Since 1776 (1995).

7 U.S. Const. Art. I, section 8.

8 An act for laying a duty on goods, wares, and merchandises imported into the United States, 1 Stat. 24, 1st Cong. (1789).

9 John M. Dobson, Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission (1976).

10 *Idem*.

11 The Gilder Lehrman Institute of American History, "Hamilton's Report on the Subject of Manufactures (1791)."

tectionist tradition in U.S. trade policy history, most recently articulated in Trump's Liberation Day. But the U.S. experience with tariffs that ensued did not quite pan out as Hamilton had planned.

The Tariff of 1816

The first activation of Hamilton's vision occurred after the War of 1812 significantly disrupted trade with Europe. U.S. dependence on imports, especially military supplies, became an obvious vulnerability. As imports from Europe dwindled, domestic manufacturing expanded to fill the gap. But with peace in 1815, U.S. manufacturers suddenly faced renewed import competition from Britain. This prompted calls for Congress to protect nascent — and strategically important — U.S. industries.[12] Congress accordingly passed the Tariff of 1816, imposing duties of approximately 20-25 percent on competitive imported goods.[13] This average rate level would later be associated with those seeking to liberalize rather than restrict trade. But at the time it was a big jump from the original rate structure, marking the rise of protectionism in U.S. tariff policy. Broad public support for the measure soon gave way as its effects inevitably diverged across the nation.[14]

The following decade revealed growing regional and sectoral divisions. Northern manufacturers sought increasingly protective tariffs while Southern farmers generally did not.[15] Some Western farmers wanted protection while others objected to the higher prices that tariffs imposed on manufactured goods.[16] Despite growing opposition, Congress passed the Tariff of 1824, increasing rates to about 35 percent. Free trade advocates hoped to alter course in the next election, but these hopes were dashed with the election of John Quincy Adams — a supporter of what he called the "American System" of protective tariffs and internal improvements.[17]

The Tariff of Abominations (1828)

The division only heightened when Congress passed the Tariff of 1828, which opponents called the "Tariff of Abominations" for its expected negative

12 Frank W. Taussig, The Tariff History of the United States (8th ed. 1931).

13 An act to regulate the duties on imports and tonnage, 3 Stat. 310, 14th Cong. (1816).

14 For example, Vice President John C. Calhoun, who would later feature prominently as a free trade, pro-slavery secessionist, argued that the "manufacturing establishments not only place us beyond the reach of foreign powers, but ... bind together more closely our widely spread republic." As cited in Douglas A. Irwin, Clashing Over Commerce: A History of US Trade Policy 83 (2017). Calhoun would soon reappear in U.S tariff history on the other side of the debate.

15 Robert Goulder and Joseph J. Thorndike, "A History of Tariffs, From Hamilton to Trump," Tax Notes (July 17, 2024).

16 Irwin, supra note 14.

17 Taussig, supra note 12.

effects on the Southern states, especially South Carolina. The law raised rates to then- unprecedented levels, with some products facing rates higher than 50 percent. The change was proposed by supporters of presidential candidate Andrew Jackson with a view to force Adams to veto the bill as too extreme, thereby alienating his protectionist voters. Instead, Adams surprised them by signing it. Instead of incurring the wrath of protectionists, Adams intensified Southern opposition.[18]

South Carolina soon mounted a constitutional-crisis-level resistance to the 1828 tariff. Vice President John C. Calhoun advanced the doctrine of nullification, arguing that states had the right to declare federal laws unconstitutional and void within their borders.

Jackson's failure to reduce tariffs as Southerners wanted after his reelection in 1832 only intensified the ire of South Carolina. South Carolina declared that it was nullifying both the 1828 and 1832 tariffs and threatened to secede if the federal government attempted to collect the tax by force.[19] President Jackson responded by supporting the Force Bill (authorizing military action against South Carolina) while also working with congressional leaders to craft a compromise to defuse the immediate crisis.[20] In 1833 Congress accordingly enacted a law to gradually reduce tariffs over a nine-year period, which aimed for rates to eventually return to approximately 1816 levels. South Carolina responded by repealing its nullification ordinance. The Compromise Tariff of 1833 is thus said to have — at least temporarily — resolved the nullification controversy. However, underlying economic tensions remained unresolved.[21]

The period from 1833 to 1860 saw further fluctuations in tariff policy, reflecting the continuing debate over protection versus revenue as the primary purpose of tariffs. Democrats enacted the Walker Tariff of 1846, returning rates to an average of about 25 percent and simplifying the tariff structure by reducing the number of rate categories[22], and later the Tariff of 1857, which moved the country closer to free trade by lowering rates back down to an average of about 20 percent. But economic downturn after a panic in 1857 reduced the political appetite for liberalization[23]. Further, as tensions intensified in the late 1850s, the tariff issue became increasingly entangled with the controversy over slavery. The Re-

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18 U.S. House of Representatives, "The Tariff of Abominations: The Effects."

19 Richard E. Ellis, The Union at Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis (1987).

20 William W. Freehling, Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836 (1965).

21 Taussig, *supra* note 11.

22 An act reducing the duty on imports and for other purposes, 9 Stat. 42, 29th Cong. (1846); An act reducing the duty on imports and for other purposes, 11 Stat. 192, 34th Cong. (1857) (named for then Secretary of the Treasury Robert Walker.

23 Irwin, supra note 14.

publican Party, formed in 1854, incorporated protectionism into its platform, appealing to Northern manufacturers. Abraham Lincoln's election in 1860 signaled a shift back toward higher tariffs, a policy direction that the revenue demands of the impending Civil War would reinforce.[24]

The Protectionist Era: 1861-1929

When the Southern states left the Union in the 1860s, their lack of representation in Congress effectively cleared the way for the Republican Party to enact its more protectionist agenda.[25] Congress passed the Morrill Tariff Act in 1861, increasing rates to an average of about 20 percent higher than those established by the Tariff of 1857.[26] The outbreak of the Civil War turned the protectionist tariff into an increasingly necessary revenue-raising tool.[27]

As the war continued, Congress repeatedly raised tariff rates to finance the Union's military efforts, pushing average rates to around 47 percent with the Tariff Acts of 1862 and 1864.

Congress also adopted the first U.S. income tax (as well as various excise taxes), with all these measures meant to be temporary, reflecting the fiscal demands of armed conflict.[28] But after the war ended, Congress abandoned only the income tax and kept the high tariffs in place. Professor Douglas Irwin has stated that the economic nationalism that characterized Hamilton's vision found its fullest expression in this period, as industrialization accelerated and the United States emerged as a major manufacturing power.[29] Trump's Liberation Day tariffs possibly displace the honor of peak Hamiltonian expression, but to what outcome remains to be seen.

The economic arguments for protection accordingly evolved during this period of change. While earlier protectionists emphasized the need to nurture nascent industries until they could compete internationally, post-Civil War advocates continuously sought tariffs to protect U.S. workers from competition with "cheap foreign labor."[30] An "American standard of living" argument resonated with many

[24] Richard F. Bensel, The Political Economy of American Industrialization, 1877-1900 (2000).
[25] Goulder and Thorndike, supra note 15.
[26] Taussig, supra note 11. An act to provide for the payment of outstanding treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes, C.H. 68, 36th Cong. (1861).
[27] Id. ("The Civil War revolutionized the financial methods of the United States. A new monetary system was created, and tax resources before undreamed of were resorted to, at first timorously, in the end with a rigor that hardly knew bounds.").
[28] Heather Cox Richardson, The Greatest Nation of the Earth: Republican Economic Policies During the Civil War (1997).
[29] Irwin, supra note 14.
[30] See, e.g., Fritz Kusch, "Capital and Labor United: Workers, Wages, and the Tariff in Late Nineteenth-Century Protectionist Agitation," 24(2) The J. of the Gilded Age and Progressive Era 157, note 51 (Apr. 8, 2025).

voters and helped maintain political support for protectionism despite its costs to consumers.[31] This rhetorical history appears to be repeating itself today.

The McKinley Tariff of 1890

The debate over tariff policy intensified in the late 1880s when Democratic President Grover Cleveland made tariff reduction a central issue of his administration. In his 1887 annual message to Congress, Cleveland argued that excessive duties create ongoing treasury surpluses while imposing unnecessary costs on consumers.[32] The government having more money than it could find ways to spend is a rare phenomenon in U.S. fiscal history. Yet when Cleveland lost to William Henry Harrison and Republicans regained control of Congress, federal policy again swung back to protectionism. The result was the McKinley Tariff of 1890, which raised average duties to approximately 50 percent, the highest peacetime levels in American history up to that point.[33] The McKinley tariff also initiated a move of control over U.S. trade policy to the executive. This was the first act to authorize the president to negotiate "reciprocity agreements," allowing the executive to reduce rates on specific products from countries that gave comparable concessions for U.S. exports without having to return to Congress for approval. The law also introduced the concept of "retaliatory" tariffs, permitting higher rates on imports from countries that "unjustly discriminated" against U.S. products.[34] This vocabulary, together with the gradual move of trade policy from Congress to the executive, has endured to the present.

The Wilson-Gorman Tariff of 1894

Public reaction to the McKinley tariff was largely negative because consumers experienced higher prices for many goods. Soon, the protectionism/liberalization pendulum swung again. In the 1890 midterm elections, Democrats regained control of the House of Representatives, and in 1892, Cleveland regained the presidency, signaling the potential for yet another major revision of U.S. trade policy.[35] The Republican- controlled Senate, however, held on to protectionism, only lowering the average tariff to about 42 percent via the Wilson-Gorman Tariff of 1894.[36]

31 Marc-William Palen, The "Conspiracy" of Free Trade: The Anglo- American Struggle Over Empire and Economic Globalisation, 1846-1896 (2016).

32 Irwin, "Higher Tariffs, Lower Revenues? Analyzing the Fiscal Aspects of 'The Great Tariff Debate of 1888,'" 58(1) J. of Econ. History 59 (1998).

33 An act to provide revenue, equalize duties, encourage the industries of the United States, and for other purposes, 26 Stat. 567, 51st Cong. (1890) (named for Rep. William McKinley of Ohio, chairman of the House Ways and Means Committee).

34 Irwin, supra note 14.

35 Taussig, supra note 12.

36 Irwin, supra note 14. President Cleveland was purportedly so disappointed with the compromise

Despite its modest effect on tariff rates, this act was notable for including a provision for a 2 percent tax on incomes above $4,000. The attempt to diversify federal revenue sources and shift some of the tax burden from consumers to the wealthy was short-lived, however. In 1895, the Supreme Court ruled the new income tax to be unconstitutional in Pollock v. Farmers' Loan & Trust Co.[37], reinforcing the federal government's dependence on tariff revenue until the adoption of the 16th Amendment.[38]

The Dingley Tariff of 1897

In 1896, Republican William McKinley won the presidency and Republican majorities reestablished control over Congress, once again pushing the nation further toward protectionism. Congress passed the Dingley Tariff of 1897, raising duties to their highest levels yet, with an average rate of approximately 52 percent.[39] This legislation would remain in effect for 12 years, the longest duration of any tariff act in U.S. history.[40] It also expanded the reciprocity provisions of the McKinley tariff, authorizing the president to negotiate agreements reducing duties by up to 20 percent in exchange for trade concessions from other countries. However, few of these agreements were implemented, as the high baseline rates made meaningful reductions difficult to achieve.[41]

The Payne-Aldrich Tariff of 1909

By the early 20th century, the political consensus supporting high tariffs began to fracture. Progressive reformers within the Republican Party, concerned about the power of industrial "trusts," increasingly questioned whether protective tariffs primarily benefited large corporations rather than workers or consumers. President Theodore Roosevelt, while not abandoning protectionism entirely, advocated for a more flexible approach to tariff policy.[42]

Roosevelt's successor, fellow Republican William Howard Taft, promised tariff revision during his 1908 campaign. The resulting Payne- Aldrich Tariff of 1909 modestly reduced some rates but increased others.[43] The overall level of

bill that he allowed it to become law without his signature, describing it as "party perfidy and party dishonor." Taussig, supra note 12.

37 Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (1895). Whether the Supreme Court made this decision rightly or wrongly continues to be the subject of debate. See, e.g., Calvin Johnson, The Righteous Anger of the Wicked States: The Meaning of the Founders' Constitution (2005).

38 Bensel, *supra* note 24.

39 An act to provide revenue for the government and encourage the industries of the United States, 30 Stat. 151, 55th Cong. (1897) (named for Rep. Nelson Dingley of Maine).

40 Irwin, *supra* note 14.

41 Edward S. Kaplan, *American Trade Policy, 1923-1995* (1996

42 Irwin, *supra* note 14.

43 An act to provide revenue, equalize duties, encourage the industries of the United States, and for

protection remained high, with the average rate falling only slightly to about 41 percent.[44] This tariff proved politically damaging for Taft and the Republican Party. Progressive Republicans from Midwestern and Western states who had hoped for more substantial reductions felt betrayed by the limited scope of reform. The legislation contributed to a growing split within the Republican Party between conservative and progressive factions, a division that would have significant consequences in the 1912 election.[45]

The Underwood Tariff of 1913

The election of Democrat Woodrow Wilson to the presidency in 1912, along with Democratic majorities in both houses of Congress, brought about another swing in U.S. tariff policy. Wilson made tariff reform a top priority, lobbying Congress to pass the Underwood Tariff of 1913 and resisting pressure from special interests seeking protection. The new tariff law significantly reduced rates across a wide range of products, lowering the average rate back down to about 27 percent.[46] It also expanded exemptions to include many raw materials and semi-manufactured goods.[47] The legislation reflected the influence of progressive economic thinking, which emphasized lifting burdens on consumers and pursuing more international trade.[48]

One feature of the Underwood tariff is significant even if the rate was not: It included a progressive income tax, made possible by the ratification of the 16th Amendment to the Constitution earlier that year. This new revenue source and the source of today's IRC would not only reduce the federal government's dependence on tariff receipts, but it did so in a progressive way by spreading the tax burden according to relative ability to pay.[49] The income tax would eventually supplant tariffs as the primary source of federal revenue, fundamentally altering the political economy of U.S. trade policy.[50]

WWI and the Fordney-McCumber Tariff of 1922

World War I disrupted international trade patterns and temporarily overshadowed internal tariff politics, with the notable exception that the war prompt-

other purposes, H.R. 1438, 61st Cong. (1909) (named for Rep. Sereno Payne and Sen. Nelson Aldrich).

44 Taussig, *supra* note 12.

45 Irwin, *supra* note 14.

46 An act to reduce tariff duties and to provide revenue for the government, and for other purposes, 114 H.R. 3321, 63rd Cong. (1913) (named for Rep. Oscar Underwood).

47 Taussig, *supra* note 12.

48 Irwin, *supra* note 14.

49 *See, e.g.*, Ajay K. Mehrotra, *Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877-1929* (2013).

50 Bensel, *supra* note 23.

ed Congress to transfer tariff power to the executive in a move that would resonate through the decades and reemerge as transformative a century later with Trump's reelection. In particular, in 1917 Congress passed the Trading with the Enemy Act, still in force and codified as chapter 53 of U.S. Code Title 50, War and National Defense.[51] This act was the first to grant the executive the unilateral authority to alter tariff rates and tie that authority to national security concerns.[52] Congress would expand the act during the 1930s to allow the president to declare a national emergency in times of peace, thus delegating broad executive powers over national and international trade matters. Of note regarding recent shifts in policy, the Trading with the Enemy Act and its later expansions ultimately gave rise to the International Emergency Economic Powers Act, which Congress passed in 1977[53] and which Trump invoked as one of the authorities for his unilateral adoption of sweeping tariffs in violation of a host of existing U.S. trade agreements in his Liberation Day return to protectionism this year.[54]

The return of peace brought renewed concerns about foreign competition, particularly from European industries seeking to rebuild their markets.[55] Republicans returned to power with the election of Warren G. Harding in 1920 and the recapture of majorities in Congress, which prompted another move back to protectionism. The Fordney-McCumber Tariff of 1922 raised rates back up to about 38.5 percent, while also introducing the principle of "scientific tariff- making," authorizing the newly created Tariff Commission to recommend rate adjustments based on differences in production costs between the United States and competing countries.[56] The law also expanded presidential authority to modify rates within specified ranges.[57]

The economic effect of the Fordney- McCumber tariff was complex. While it provided protection for U.S. industries facing renewed foreign competition, it also complicated international economic relations during a critical period of postwar reconstruction. In particular, it restricted Europe's access to the U.S. market when it had war debts to the United States, making repayment harder and contributing to the economic instability that characterized the interwar period.[58]

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51 Trading with the Enemy Act, Oct. 6, 1917, ch. 106, section 1, 40 Stat. 411.

52 Codified at U.S.C. 4301 et seq. For a discussion, see Mary L. Dudziak, War-Time: An Idea, Its History, Its Consequences (2012).

53 Codified at 50 U.S.C. sections 1701-1710.

54 White House Executive Order, "Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits" (Apr. 4, 2025).

55 Irwin, *supra* note 14.

56 An act to provide revenue, regulate commerce with foreign countries, encourage the industries of the United States, and for other purposes, H.R. 7456, 67th Cong. (1922) (named for sponsors Rep. Joseph Fordney and Sen. Porter McCumber).

57 Irwin, *supra* note 14.

58 Barry Eichengreen, Golden Fetters: The Gold Standard and the Great Depression, 1919-1939 (1992).

The Smoot-Hawley Tariff of 1930

The final major tariff legislation of this period, and perhaps the most notorious in U.S. history (at least until Liberation Day) was the Smoot-Hawley Tariff Act of 1930.[59] Passed in the early stages of the Great Depression, this legislation raised rates to their highest levels ever, with the average rate reaching approximately 59 percent.[60] The Smoot- Hawley tariff was hotly contested. In May 1930, 1,028 economists, "convinced that increased protective duties would be a mistake," signed a petition urging Congress and Republican President Herbert Hoover to reject the bill.[61] Hoover, despite expressing reservations about some provisions, ultimately signed, believing that it would protect American jobs during a period of rising unemployment.[62]

The international reaction to Smoot-Hawley was swift and negative. Canada, the United Kingdom, France, and other trading partners retaliated with higher tariffs of their own, contributing to a collapse in global trade. Between 1929 and 1933, American exports fell by some 67 percent from $5.2 billion to $1.7 billion.[63] While the tariff was not the primary cause of the Great Depression, most economists agree that it exacerbated the economic crisis by restricting trade at a time when stimulus was needed.[64]

The Smoot-Hawley tariff brought the protectionist era to a definitive end. Its negative consequences profoundly influenced American trade policy for decades, as policymakers sought to avoid repeating what came to be seen as a costly mistake. The U.S. tariff policy pendulum soon swung back toward liberalization, even as the income tax turned from a class tax into a mass tax.[65]

The Liberalization Era: 1934-2016

The disastrous consequences of the Smoot- Hawley tariff, combined with the deepening of the Great Depression and the growing potential of the income tax as a steady and fairer revenue source, created the conditions for a fundamental

59 An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes, H.R. 2667, 71st Cong. (1930) (named for sponsors Sen. Reed Smoot and Rep. Willis Hawley).

60 By comparison, the average rate of Trump's Liberation Day tariff list is approximately 23 percent, with the highest rate of 50 percent imposed on Lesotho and the territorial collectivity of Saint Pierre and Miquelon, a self-governing territory of France.

61 "The Tariff and American Economists," Congressional Record-Senate 8327-8330 (May 5, 1930) (placing the petition and signatures into the Congressional Record); reprinted and discussed in Frank W. Fetter, "The Economists' Tariff Protest of 1930," 32 Am. Econ. Rev. 355 (1942).

62 Irwin, "The Smoot-Hawley Tariff: A Quantitative Assessment," 80 Rev. of Econ. and Stat. 326-334 (1998).

63 Amir Armanious, Scrutiny of the 1929 Global Financial Crisis: Causes, Features, Consequences and Remedy Tools (2011).

64 Eichengreen, *supra* note 58.

65 Thorndike, "Timelines in Tax History: From 'Class Tax' to 'Mass Tax' During World War II," Tax Notes State (Sept. 19, 2022).

shift in U.S. trade policy. When Franklin D. Roosevelt assumed the presidency in 1933, he initially focused on domestic economic recovery rather than international trade. However, by 1934, the Roosevelt administration concluded that reviving international commerce was essential for sustained economic growth.[66]

The centerpiece of this new approach was the Reciprocal Trade Agreements Act of 1934, which altered U.S. tariff policy by authorizing the president to reduce legislated tariffs by negotiating bilateral trade agreements. This act continued the transfer of power from the legislative to the executive branch initiated in 1917 but now in the opposite direction: Instead of authorizing the president to adopt higher tariffs to protect national security interests, the idea now was that Congress would keep high tariff rates in place while authorizing the president to lower them if other countries agreed to do the same.[67] The act also incorporated an unconditional most favored nation principle to extend tariff reductions negotiated in one bilateral agreement to others.[68] This multilateralized the benefits of bilateral negotiations and prevented the development of discriminatory trading blocs.[69] Secretary of State Cordell Hull, the primary architect of the law, connected free trade to domestic prosperity but also peace, claiming that "when goods don't cross borders, soldiers will."[70]

Between 1934 and 1945, the United States thus concluded reciprocal trade agreements with 29 countries, reducing tariffs on approximately two- thirds of dutiable imports and slashing the average tariff rate on these imports from 46.7 percent to 25.4 percent. These measures reversed the decline in international trade that had followed Smoot-Hawley, but World War II would soon create new disruptions to global commerce.[71]

Post-WWII: A New International Economic Order

World War II fundamentally altered the global economic landscape. The United States emerged from the conflict as the world's dominant economic pow-

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66 Irwin, *supra* note 14.

67 Stephen Haggard, "The institutional foundations of hegemony:Explaining the Reciprocal Trade Agreements Act of 1934," 42 Int. Org. 91-119 (1988). We can see the same strategy unfolding around the same time in income tax treaties, under which Congress imposed relatively high rates by statute while the executive, under its treaty power, bilaterally negotiated agreements to reciprocally reduce them.

68 While some U.S. income tax treaties contained MFN provisions, this innovation mostly did not flow to international income tax relations. For an example of such a provision in an income tax treaty, see Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.-Mex. (signed Sept. 18, 1992); for discussion, see Allison Christians, "Tax Treaties for Investment and Aid to Sub-Saharan Africa: A Case Study," 71 Brook L. Rev. 639, at 676 (2005).

69 Judith Goldstein, Ideas, Interests, and American Trade Policy (1993).

70 Michael A. Butler, Cautious Visionary: Cordell Hull and Trade Reform, 1933-1937 5 (1998).

71 Irwin, *supra* note 14.

er, pulling ahead with advanced industrial capacity and vast financial resources. U.S. policymakers, determined to avoid the mistakes of the interwar period, fully committed to liberalization and set out to create a new international economic order based on open markets, stable currencies, and multilateral cooperation.[72]

The Bretton Woods Conference of 1944 established two key institutions to support this vision: the IMF to maintain exchange rate stability and the International Bank for Reconstruction and Development (later part of the World Bank Group) to finance postwar reconstruction and development. A provisional agreement negotiated in Geneva in 1947 became the third pillar of postwar trade governance: the General Agreement on Tariffs and Trade.[73] Initially signed by 23 countries, the GATT would evolve over the next five decades into the primary framework for multilateral trade negotiations.[74]

The first GATT negotiating round, held in Geneva in 1947, resulted in approximately 45,000 tariff concessions covering about $10 billion in trade.[75] Later rounds in Annecy, France (1949), Torquay, England (1950-1951), and Geneva again (1955-1956) produced additional tariff reductions, although on a more modest scale. The Dillon Round (1960-1962) was primarily focused on adjusting tariff schedules to accommodate the formation of the European Economic Community.[76]

The Kennedy Round (1964-1967) represented a significant advance in the scope and ambition of trade negotiations. Unlike previous rounds, which had involved item-by-item tariff bargaining, the Kennedy Round adopted a linear approach, with participants agreeing to across- the-board tariff cuts of approximately 35 percent on industrial products. The round also addressed nontariff barriers for the first time, resulting in an Anti-Dumping Code to regulate the use of antidumping duties.[77]

The Tokyo Round and a Changing Global Economy

By the early 1970s, the international economic environment was changing in ways that challenged the postwar trade system. The collapse of the Bretton

[72] Eckes Jr., *supra* note 6.

[73] General Agreement on Tariffs and Trade (Oct. 30, 1947). The GATT was based on several key principles that would shape international trade relations for decades to come, including nondiscrimination (through the MFN principle), national treatment (requiring imported goods to be treated no less favorably than domestic products), the prohibition of quantitative restrictions (quotas), and the use of tariffs as the preferred form of protection to be reduced through reciprocal negotiations. See, e.g., John H. Jackson, The World Trading System: Law and Policy of International Economic Relations (2nd ed. 1997).

[74] Irwin, *supra* note 14.

[75] WTO, "The GATT Years: From Havana to Marrakesh."

[76] Irwin, *supra* note 14.

[77] Ernest H. Preeg, Traders and Diplomats: An Analysis of the Kennedy Round of Negotiations Under the General Agreement on Tariffs and Trade (1970).

Woods monetary system in 1971-1973 eliminated the fixed exchange rates that had provided stability for international commerce. Oil price shocks in 1973 and 1979 disrupted global trade patterns and contributed to stagflation in many industrialized economies. Meanwhile, newly industrializing countries, particularly in East Asia, emerged as significant exporters of manufactured goods.[78]

Amid these circumstances, the Tokyo Round of GATT negotiations (1973-1979) achieved further tariff reductions, averaging about 33 percent on industrial products and adopted codes to govern nontariff measures, including agreements on subsidies and countervailing measures, technical barriers to trade, government procurement, customs valuation, import licensing, and antidumping.[79]

The Tokyo Round reflected the growing complexity of international trade relations and the limitations of the GATT. Countries adopted the various codes on a piecemeal basis, thus producing what John H. Jackson dubbed a "GATT à la carte" system. This approach allowed international consensus to develop in some areas while allowing others to remain fragmented.[80]

For the United States, the Tokyo Round coincided with a period of increasing economic challenges. During its negotiations, Congress passed the Trade Act of 1974, which authorized U.S. participation but also reemphasized the president's authority to respond to unfair trade practices through section 301, which became a powerful unilateral tool in following decades.[81] It also established the "fast-track" procedure for congressional approval of trade agreements, designed to implement complex multilateral deals.[82]

Managed Trade and Sectoral Protectionism

Despite the overall trend toward liberalization, the 1970s and 1980s also brought new forms of protection in response to increased import competition in specific sectors. These measures, often described as "managed trade," sought to regulate trade flows through quantitative restrictions rather than tariffs, circumventing the GATT.[83] The United States implemented this strategy through "voluntary export restraints" or "orderly marketing agreements" in which it com-

78 Irwin, *supra* note 14.

79 Gilbert R. Winham, International Trade and the Tokyo Round Negotiation (1986).

80 Jackson, *supra* note 73; Jackson, "The Evolution of the World Trading System — The Legal and Institutional Context" in The Oxford Handbook of International Trade Law (Sept. 18, 2012).

81 International tax experts will have seen a more recent use of this internal section 301 authority to challenge foreign country adoptions of digital services taxes. For a discussion, see Christians and Tarcísio Diniz Magalhães, "Taxing Data When the United States Disagrees," 3 Euro. L. Open 1 (2024).

82 Irving M. Destler, American Trade Politics (4th ed. 2005).

83 A prominent example was the Multi-Fiber Arrangement, established in 1974 to govern trade in textiles and clothing. The arrangement allowed importing countries to impose quotas on specific products from specific countries, effectively carving out an exception to GATT rules for a sector of particular importance to developing countries. Similar arrangements were negotiated for

pelled exporting countries to voluntarily limit their shipments to avoid more restrictive unilateral measures.[84] For example, in the early 1980s, the United States negotiated voluntary export restraints with Japan to restrict Japanese car exports to the United States to 1.68 million units annually.[85]

These arrangements reflected the political challenges of maintaining support for an open trading system in the face of increased competition and structural economic changes. They provided temporary relief for declining industries and the communities dependent on them, but they also imposed costs on consumers and downstream industries. Moreover, they created precedents for departures from the GATT that would complicate future trade negotiations.[86]

When Republican Ronald Reagan took office in 1981, his administration initially emphasized free market principles and criticized managed trade practices. However, facing a surge in imports and a growing trade deficit, the administration ultimately adopted selective interventions in politically sensitive sectors even while maintaining vocal commitment to free trade. In particular, on September 9, 1985, Reagan invoked the 1977 International Emergency Economic Powers Act to find "that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States," and he declared a national emergency as a result, and limited transactions with South Africa.[87] This move established a pattern of "free trade in principle, pragmatism in practice" that would characterize much of U.S. trade policy in the following decades, culminating in Trump's recent use of the same authority to impose new tariffs on a virtually worldwide basis.[88]

By the mid-1980s, the limitations of the existing trade framework were becoming increasingly apparent. The GATT had successfully reduced tariffs on industrial goods, but nontariff barriers persisted, and key issues surrounding trade in services, intellectual property protection, and agricultural subsidies were still unaddressed. Meanwhile, the global economy was becoming more integrated and complex, with multinational corporations, global supply chains, and new technologies transforming patterns of production and exchange. These developments

steel, automobiles, and other sensitive products. See, e.g., Jagdish Bhagwati, Protectionism (1988).

84 Stephen D. Cohen, "The Route to Japan's Voluntary Export Restraints on Automobiles: An Analysis of the U.S. Government's Decision-Making Process in 1981," Working Paper No. 20 (1998).

85 Destler, *supra* note 82.

86 Irwin, *supra* note 14.

87 "Executive Order 12532, Prohibiting Trade and Certain Other Transactions Involving South Africa" (Sept. 9, 1985). For discussion, see Christopher A. Casey and Jennifer K. Elsea, "The International Emergency Economic Powers Act: Origins, Evolution, and Use," CRS R45618 (Jan. 2024).

88 Destler, *supra* note 82.

would set the stage for the most ambitious round of trade negotiations yet, intended to create a more comprehensive framework for international commerce.[89]

The WTO

The Uruguay Round of GATT negotiations, launched in 1986, concluded in 1994 by establishing the WTO, which replaced the GATT as the primary forum for international trade negotiations and dispute resolution.[90] Unlike the GATT, the WTO agreements were adopted as a "single undertaking," so members had to accept all obligations rather than choosing which rules to follow.[91] This round addressed various long- standing U.S. grievances involving European and Japanese agricultural policies. The General Agreement on Trade in Services established rules for sectors in which the United States had competitive advantages, including financial services, telecommunications, and entertainment.

The Agreement on Trade-Related Aspects of Intellectual Property Rights provided stronger protection for patents, copyrights, and trademarks, addressing concerns about piracy and the unauthorized use of U.S. innovations.[92] Democratic President Bill Clinton signed the Uruguay Round Agreements Act in December 1994, implementing the WTO agreements into U.S. law. The legislation passed Congress with bipartisan support, although not without controversy, with debates that foreshadowed the more intense political conflicts over trade to come.[93]

NAFTA

Parallel to the Uruguay Round negotiations, the United States pursued regional trade initiatives, including the North American Free Trade Agreement, signed in 1992 by the United States, Canada, and Mexico and implemented in 1994. NAFTA built upon the Canada-U.S. Free Trade Agreement of 1988, extending similar provisions to Mexico while adding new rules on investment, IP, and labor and environmental cooperation.[94]

The political debate preceding NAFTA's enactment was intense and divisive. Opposition came from an unusual coalition of interests, including economic nationalists, labor unions worried about job losses, and environmentalists concerned

[89] Irwin, *supra* note 14.

[90] John Croome, Reshaping the World Trading System: A History of the Uruguay Round (1995).

[91] Jackson, *supra* note 73.

[92] Jeffrey J. Schott, The Uruguay Round: An Assessment (1994). The Uruguay round also strengthened the dispute settlement system with the Dispute Settlement Understanding following the U.S. desire for more effective enforcement of trade rules, a position later reversed when the United States itself faced adverse rulings. Robert E. Hudec, Enforcing International Trade Law: The Evolution of the Modern GATT Legal System (1993).

[93] Destler, *supra* note 82.

[94] Gary C. Hufbauer and Jeffrey J. Schott, "NAFTA Revisited: Achievements and Challenges," 85 Inst. for Int. Econ. (2006).

about regulatory standards.[95]Ross Perot, who ran for president partly on an anti-NAFTA platform, famously predicted a "giant sucking sound" as jobs moved to Mexico.[96] Despite this opposition, NAFTA was approved by Congress in November 1993, with support from a majority of Republicans and a minority of Democrats. This voting pattern — Republicans generally supporting trade liberalization, Democrats divided — also characterized most later trade votes.[97]

The economic effect of NAFTA is subject to extensive debate. Trade among the three countries increased significantly, with Mexico-U.S. trade in particular growing from $81 billion in 1993 to over $500 billion by 2016. Supply chains became more integrated across North America, notably in car manufacturing, where components might cross borders multiple times during production. But NAFTA also appears to have displaced U.S. manufacturing jobs, although its net effect on U.S. employment and wages is difficult to isolate from other factors affecting the economy, particularly including rapid technological change and China's emergence as a manufacturing power.[98]

China's accession to the WTO in 2001 after 15 years of negotiations created both an opportunity for the United States to access a vast new consumer market and a challenge from a new competitor with a distinct sociopolitical and economic system.[99] Contrary to a recent claim by Secretary of State Marco Rubio that China doesn't "consume anything"and that "all they do is export and flood and distort markets,"[100] U.S. exports to China grew substantially once China was in the WTO — from $16 billion in 2000 to $116 billion in 2016. This benefited some U.S. industries, including agriculture, aircraft, and some high-tech sectors. However, imports from China grew even more dramatically, from $100 billion to $463 billion over the same period, contributing to a bilateral trade deficit that reached $347 billion by 2016. Recent research reveals a complex story about displacement and the recovery of U.S. jobs and growth, while factors like the expanding access of U.S. consumers to affordable consumer goods further complicate the public narrative on free trade.[101] Displacement of a key demographic is a clear theme of

95 Frederick W. Mayer, Interpreting NAFTA: The Science and Art of Political Analysis (1998).

96 The American Gazette, "A Giant Sucking Sound: Ross Perot," YouTube (Presidential debate, 1992).

97 Destler, *supra* note 82.

98 Gary C. Hufbauer, Cathleen Cimino, and Tyler Moran, "NAFTA at 20: Misleading Charges and Positive Achievements," Peterson Institute for International Economics Policy Briefs 14-13 (2014).

99 Nicholas R. Lardy, Integrating China Into the Global Economy (2002).

100 Department of State, "Secretary of State Marco Rubio Remarks to Press" (Apr. 4, 2025).

101 David H. Autor, David Dorn, and Gordon H. Hanson, "The China Shock: Learning From Labor-Market Adjustment to Large Changes in Trade," 8 Annual Review of Economics 205-240 (2016); Autor et al., "Places versus People: The Ins and Outs of Labour Market Adjustment to Globalization," NBER Working Paper 33424 (Jan. 2025).

today's political climate and the Trump administration's more confrontational approach.[102]

After the NAFTA and WTO agreements, the United States pursued more bilateral and regional trade negotiations (while also pursuing presumably complementary income tax and bilateral investment agreements). The U.S. approach, sometimes described as "competitive liberalization," sought to advance domestic commercial interests through multiple channels while creating incentives for broader multilateral progress.[103]

The Trade Act of 2002, passed after a close vote in the House of Representatives, renewed the president's Trade Promotion Authority formerly known as "fast track," which lapsed in 1994. This authority facilitated Bush's negotiation of several new agreements during his administration.[104] As a result, between 2003 and 2007, the United States implemented various free trade agreements, generally following the NAFTA template and embodying a mix of economic and strategic objectives, including non-trade foreign policy considerations.[105] The Obama administration continued this approach but with significant opposition from labor unions and progressive groups; Congress primarily approved without Democratic support.[106]

President Barack Obama also sought to move forward with the Trans-Pacific Partnership, a proposed agreement among 12 Pacific Rim countries representing approximately 40 percent of global GDP, which had also begun under Bush.[107] Obama argued, "We can't let countries like China write the rules of the global economy. We should write those rules."[108] But the agreement faced significant opposition on all sides, with critics citing employment, regulatory, and sovereignty concerns. In 2016 presidential candidates Hillary Clinton and Trump both opposed the agreement as negotiated, and after Trump was elected, he formally withdrew the United States in January 2017.[109]

Depending on what happens after Liberation Day, future historians might point to this withdrawal as the beginning of the end of the liberalization era in

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102 Autor et al. (2025), supra note 101, at 70-71.

103 Jeffrey J. Schott, Free Trade Agreements: US Strategies and Priorities (2004)

104 Destler, *supra* note 82.

105 Schott, *supra* note 103.

106 Irwin, *supra* note 14.

107 Ian F. Fergusson and Brock R. Williams, "The Trans-Pacific Partnership (TPP): Key provisions White House, "Statement by the President on the Trans-Pacific Partnership," Oct. 5, 2015. and issues for Congress," CRS R44489 (2016).

108 White House, "Statement by the President on the Trans-Pacific Partnership," Oct. 5, 2015.

109 Office of the U.S. Trade Representative release, "The United States Officially Withdraws From the Trans-Pacific Partnership" (2017). The remaining 11 countries proceeded with a modified version of the agreement, renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which entered into force in December 2018. Matthew P. Goodman, "From TPP to CPTPP," Center for Strategic and International Studies (Mar. 8, 2018).

the United States. The withdrawal emerged amid the growing public malaise surrounding income inequality and economic insecurity triggered by the 2008 financial crisis. This moment in U.S. tariff history also marks a retreat from the broad bipartisan commitment to free trade that had definitively emerged in the United States after the failure of the Smoot-Hawley tariff and that the United States had worked hard to turn into a global consensus.[110] The era of liberalization, although punctuated by some instances of protectionism (notably under Reagan), generally saw unilateral presidential authority being used to reduce tariffs rather than increase them. But the instinct for protectionism, which has been ever present throughout U.S. history, arguably reemerged as the dominant force with Trump's first election, bringing about a distinct new era in U.S. tariff policy history.

The America First Era: 2016-Present

After campaigning on an explicitly nationalist economic platform in which he characterized U.S. trade agreements as "disasters" that had harmed U.S. workers and industries, Trump promised an "America First" stance that would include renegotiating, withdrawing from, or simply overriding existing free trade agreements and imposing new tariffs on imports from countries with trade surpluses with the United States.[111] "America First" thus rejected the global free trade system that the United States helped create, championed, and benefitted from for decades. Trump advocated for a more transactional and unilateral approach, saying in his first inaugural address that the United States "must protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs. Protection will lead to great prosperity and strength."[112] His trade advisers, including Peter Navarro and Robert Lighthizer, likewise advocated protecting domestic manufacturing as the key to national security and economic well-being.[113] Trump's message of protectionism produced tensions with congressional Republicans that still believed in liberalization but resonated with many working- class voters in industrial states who felt left behind by globalization.[114]

Trump's first major trade policy move was to withdraw and then initiate the renegotiation of NAFTA after having repeatedly called the pact "a disaster" and "perhaps the worst trade deal ever made."[115] In 2020 he replaced it with the Unit-

110 Irwin, *supra* note 14.
111 *Id.*
112 President Donald J. Trump, Inaugural Address (Jan. 20, 2017).
113 Peter Navarro and Greg Autry, Death by China: Confronting the Dragon — A Global Call to Action (2011).
114 Irwin, *supra* note 14.
115 White House, "Remarks by President Trump on the United States-Mexico-Canada Agreement" (Oct. 1, 2018).

ed States-Mexico-Canada Agreement, using his trade promotion authority to expedite its implementation.[116] The new agreement retained NAFTA's basic framework while revising key areas, in particular eliminating tariffs and tariff- rate quotas on most agricultural products in all three countries.[117]

Conversely, Trump took his first major tariff-increasing action in early 2018, using the executive authority granted under the Trade Expansion Act of 1962 to eliminate previously negotiated tariff reductions and impose new tariffs of 25 percent on steel and 10 percent on aluminum imports from most U.S. trading partners.[118] This use of the Trade Expansion Act of 1962 was not unprecedented — as mentioned above, it was last used by Reagan in 1986 — but it was controversial. Critics argued that it represented an abuse of executive authority and a misuse of national security justifications for what were essentially economic measures.[119] The tariffs also raised legal questions under WTO rules, which permit trade restrictions for national security reasons but had traditionally interpreted this exception narrowly.[120]

The international response was as swift and significant as it was foreseeable given past experience. Repeating the sequence of events that unfolded after Smoot-Hawley, the EU, Canada, China, and other affected countries imposed retaliatory tariffs on a range of U.S. exports, including agricultural products, motorcycles, bourbon, and other politically sensitive items.[121] Perhaps the most consequential aspect of the new tariffs was escalating conflict with China, whose trade practices had been creating concern across the political spectrum for many years.[122] In a March 2018 report, the U.S. Trade Representative concluded that China had engaged in various unfair practices regarding technology transfers and trade secrets.[123] Based on these findings, the Trump administration imposed

[116] Comprehensive Trade Promotion and Accountability Act of 2015, P.L. 114-26.

[117] The United States-Mexico-Canada Agreement (signed on Nov. 30, 2018; enacted as P.L. 116-113 on Jan. 29, 2020).

[118] White House, "Presidential Proclamation on Adjusting Imports of Steel Into the United States" (Mar. 8, 2018). Section 232 of the Trade Act of 1961, codified as 19 U.S.C. section 1862, authorizes the president to deny decreased or eliminated tariffs or other import restrictions if he "determines that such reduction or elimination would threaten to impair the national security," following an investigation by the Department of Commerce. For a discussion, see Rachel F. Fefer, "Section 232 Investigations: Overview and Issues for Congress," CRS R45249 (2019).

[119] See, e.g., Scott Lincicome and Inu Manak, "Protectionism or National Security? The Use and Abuse of Section 232," Cato Institute Policy Analysis No. 912 (Mar. 9, 2021).

[120] Chad P. Bown and Soumaya Keynes, "Why Trump Shot the Sheriffs: The End of WTO Dispute Settlement 1.0," 42 J. of Pol. Mod. 799-819 (2020).

[121] These measures targeted approximately $24 billion of U.S. exports, affecting U.S. farmers and manufacturers of targeted goods. The Trump administration responded with aid packages for affected farmers. Bown and Keynes, id.

[122] Bown, "The US-China Trade War and Phase One Agreement," 43 Journal of Pol. Mod. 805-843 (2021).

[123] U.S. Trade Representative, "Findings of the Investigation Into China's Acts, Policies, and Practic-

tariffs on Chinese imports with a series of executive orders. By the end of 2019, the United States had imposed tariffs on approximately $370 billion of Chinese imports, covering about two-thirds of such imports. The average U.S. tariff on Chinese goods increased from 3.1 percent in 2017 to 21 percent by September 2019.[124] China responded in kind with rates ranging from 5 to 25 percent. The Chinese government also imposed nontariff measures, including slowing customs clearance for U.S. goods, increasing regulatory scrutiny of U.S. companies operating in China, and encouraging consumer boycotts of U.S. products.[125] Research estimates that the trade war reduced the U.S. GDP by 0.3 to 0.7 percentage points and eliminated approximately 300,000 jobs. The stock market experienced increased volatility, with sharp declines following escalations in the conflict.[126]

Within months of his last executive order, Trump signed the "Phase One" trade agreement with China on January 15, 2020, forging a temporary truce in the conflict. Under this deal, China committed to buying more U.S. goods and ceasing various anticompetitive practices while Trump agreed to reduce some of the U.S. tariffs back down to 7.5 percent.[127] Nevertheless, most of the tariffs remained in place, and fundamental concerns about China's state-directed economic model and industrial policies remained unaddressed.[128]

As the first Trump term concluded, it left a complex legacy on trade policy. The administration had challenged conventional wisdom about the benefits of free trade and globalization, giving a voice to those who felt harmed by these forces. It had secured some concessions from trading partners and updated important agreements such as NAFTA. However, it also imposed significant costs on the U.S. economy, damaged relationships with allies, and weakened the rules-based trading system that had long served U.S. interests.[129]

Democratic President Joe Biden's stance on trade, while less confrontational than Trump's, continued much of what Trump had started with China. During his term, Biden maintained many of the tariffs imposed by the previous administration and implemented targeted increases, particularly focusing on sectors critical to U.S. economic and national security. In May 2024 the administration announced plans to raise tariffs on specific Chinese imports, including increasing electric vehicle tariffs from 25 percent to 100 percent, raising solar cell tariffs

es Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974," 89 F.R. 76581 (2018).

124 Bown, *supra* note 122.

125 *Id.*

126 Mary Amiti, Stephen J. Redding, and David E. Weinstein, "The Impact of the 2018 Tariffs on Prices and Welfare," 33 J. of Econ. Persp. 187-210 (2019).

127 U.S. Trade Representative, "Economic and Trade Agreement Between the United States of America and the People's Republic of China: Phase One" (2020).

128 Bown, *supra* note 122.

129 Irwin, "The Pandemic Adds Momentum to the Deglobalization Trend," PIIE (Apr. 23, 2020).

from 25 percent to 50 percent, and imposing new tariffs on items like lithium-ion batteries, critical minerals, steel, aluminum, and semiconductors.[130] Congress also enacted various spending policies to enhance U.S. competition in the semiconductor, biotechnology, and related sectors. The approach was aimed at reducing reliance on foreign supply chains and promoting domestic production.

When Donald Trump began his second term, however, his more confrontational style was immediately on display as he again turned to the 1962 and 1974 emergency and national security powers to override preexisting agreements and impose new tariffs on U.S. trading partners.[131] His first targets were Canada, Mexico, and China, upending the agreements he had negotiated and signed just five years earlier.[132]

Liberation Day

Then came Liberation Day. On April 2, once again invoking the executive authority of the International Emergency Economic Powers Act, Trump declared that "foreign trade and economic practices have created a national emergency" and made an executive order to impose "responsive tariffs to strengthen the international economic position of the United States and protect American workers."[133] All told, Trump's actions since starting his second term in office impose an average tariff rate of 23 percent on most of the world's imports to the United States.[134]

Once again repeating history, U.S. trade partners quickly announced plans to retaliate.[135] In response to the economic shock of tariffs and the threat of retaliation from trading partners, U.S. markets plunged, sustaining over $6 trillion in

130 White House, "Fact Sheet: President Biden Takes Action to Protect American Workers and Businesses From China's Unfair Trade Practices" (May 14, 2024).

131 See White House, "Fact Sheet: President Donald J. Trump Announces 'Fair and Reciprocal Plan' on Trade" (Feb. 13, 2025) (In announcing tariffs to counter foreign digital services taxes, stating that in his first term, Trump had "successfully ended the outdated and unfair NAFTA, replacing it with the historic USMCA to deliver one of the largest wins for American workers" yet "Just last week, President Trump leveraged tariffs to force Canada and Mexico to make long-overdue changes at our northern and southern borders, ensuring the safety and security of American citizens.").

132 Trump used the International Emergency Economic Powers Act for this purpose, imposing a broad tariff of 25 percent on Canadian and Mexican goods and 10 percent on Chinese goods as a response to the "extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl, [which] constitutes a national emergency." White House, "Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports From Canada, Mexico and China" (Feb. 1, 2025).

133 White House, "Fact Sheet: President Donald J. Trump Declares National Emergency to Increase Our Competitive Edge, Protect Our Sovereignty, and Strengthen Our National and Economic Security" (Apr. 2, 2024).

134 Yale Budget Lab, "Where We Stand: The Fiscal, Economic, and Distributional Effects of All U.S. Tariffs Enacted in 2025 Through April 2" (Apr. 2, 2025).

135 "Trump Tariffs: List of Global Responses and Countermeasures,"Reuters, Apr. 3, 2025.

losses at the time of this writing.[136] But the Trump administration has expressed no concern, predicting that its moves will benefit the United States in the long run. In a statement on April 4, Rubio declared his conviction that "markets are crashing because markets are based on the stock value of companies who today are embedded in modes of production that are bad for the United States," and "as long as they know what the rules are going to be moving forward . . . the markets will adjust."[137] Rubio also declared that "we need to get back to a time when we're a country that can make things, and to do that we have to reset the global order of trade."[138] As in the past, only time will reveal the accuracy of these predictions, but in the meantime Trump has again used his executive authority, this time to initiate a 90-day pause and an across-the-board rate reduction to 10 percent with the exception of China, whose current rate is as high as 245 percent.[139]

Conclusion

Given the rapid pace of policy change over the past several weeks, it is hard to say that we are at the conclusion of anything, but there is at least the possibility of a break in the action until July 9 of this year, when the 90-day pause is set to expire. This uneasy period is perhaps a good time for reflection upon the history of U.S. tariff policy from the founding era to the current administration, during which U.S. trade policy has always swung — sometimes violently — between protectionism and liberalization, and has often been used as a political tool as much as an economic one. This historical perspective offers several important insights about what is happening now — and what happens next — as Trump tarrifies the world.

It is clear that U.S. tariff policy has consistently been shaped by tensions between competing economic interests that are mutually incompatible and do not necessarily adhere neatly to preexisting party politics. Further, it is difficult for the public to determine whether more protectionism or more liberalization benefits a particular individual, worker, business, sector, industry, region, or the entire nation, and political actors have always made policy gambles against this backdrop. Historically, some moves in one direction or the other accompanied a strengthening U.S. economy, but it is impossible to assign causation to the specific use of tariffs. Some moves, both within the United States and around the world, point to the destructive effect of too much liberalization. Other moves, most no-

136 Wayne Cole, "Wall St Futures, Oil Dive, Markets Bay for Quick US Rate Cuts," Reuters, Apr. 6, 2025.

137 Dept. of State, "Secretary of State Marco Rubio Remarks to Press" (Apr. 4, 2025).

138 *Id.*

139 Exec. Order No. 14,266 (April 9, 2025); White House, "Fact Sheet: President Donald J. Trump Ensures National Security and Economic Resilience Through Section 232 Actions on Processed Critical Minerals and Derivative Products," April 15, 2025.

tably the Smoot-Hawley Tariff Act, seem to demonstrate just how much destruction too much protectionism can wreak in the U.S. economy.

After its formative negative experience with tariffying in the 1930s, the U.S. position gelled and for decades thereafter it projected a clearer and broadly consistent vision across party lines that freer trade was the more stable, wealth-enhancing policy for everyone. The United States consistently persuaded, prodded, and even pushed other nations and intergovernmental bodies to embrace open trade and investment policies. The rest of the world largely followed suit, even though countries with smaller or more vulnerable markets and less ability to use nontax policies to develop domestic businesses in the face of giant foreign competitors sought to protect themselves from losing control over commerce and industry to the United States. The United States was prepared to accept these efforts as relatively reasonable, a position that seems plausible given that this world order produced multiple U.S. businesses that have little or no foreign competition anywhere, most notably in tech and services. That is, it was prepared until it wasn't under Trump.

Trump's return to the protectionist tradition, articulated by Hamilton and later by figures like McKinley, appeals to those who blame today's economic insecurity on trade liberalization and globalization. Liberation Day departs from the post-World War II consensus, but it also reflects tensions and contradictions in U.S. trade policy that have always been present. Trump has also hinted that he is making a strategic move to achieve other fiscal policy goals.[140] In navigating the Liberation Day gamble, the history of U.S. tariff policy offers valuable lessons about the difficult trade-offs involved in international trade — among producers, workers, and consumers, between short-term adjustment costs and long- term efficiency gains, and between economic nationalism and international cooperation that involves issues that go well beyond trade in goods.

The history of U.S. tariff policy suggests that neither pure protectionism nor unfettered free trade has provided a sustainable basis for U.S. prosperity and security. Instead, trade policies seem to be most successful when they ensure that the benefits of globalization as a whole — including but not limited to trade in goods — are widely shared within and across nations and that those adversely affected by changing economic circumstances receive adequate support. It remains to be seen how Trump's gamble with tarrifying the world plays out.

[140] Derek Saul, "Trump Shares Claim He's Crashing Stock Market 'on Purpose' as He Lobbies for Emergency Rate Cuts," Forbes (Apr. 4, 2025).