

FOREWORDS

CONTINUING AMERICAN PROSPERITY RELIES ON FREE TRADE

ORRIN G. HATCH*

During my forty-two years in the Senate, I have never been so optimistic and yet so worried for our country's economic future. The recent overhaul of the United States tax system has already started to generate incredible benefits, and recent reports have shown that many people, including business CEOs, are more optimistic now than at any time in the last fifteen years,¹ and small business owners are now more confident than ever before.² The issue with changes of this magnitude is that it is all too easy for the members of Congress and the President to be complacent and rest on their laurels. Even worse, it is easy to quickly erase the gains from one great piece of legislation by pursuing other misguided goals. As of this moment, my great fear is that the trade policies and positions adopted by President Donald Trump may do just that.

Congress passed the Reciprocal Trade Agreements Act of 1934, in the year I was born, and it has become one of the most important documents in our nation's economic history.³ That law came on the heels of the economically-damaging tariffs of 1930,⁴ and all of the ills those tariffs brought with them.⁵ As a child of the Depression, growing up in a rather poor family in Pittsburgh, my family experienced many of the negative impacts of the tariffs, such as decreased production and

* Chairman of the United States Senate Committee on Finance. © 2018, Orrin Hatch.

1. See, e.g., *CEO Economic Outlook Survey for Q1 2018*, BUSINESS ROUNDTABLE (Mar. 13, 2018), <https://www.businessroundtable.org/resources/ceo-survey/2018-Q1>.

2. Kate Rogers, *Small-Business Confidence Hits Record High in 2018 after Trump Tax-Reform Win*, CNBC (Feb. 20, 2018, 5:59 AM), https://www.cnbc.com/2018/02/20/small-business-confidence-hits-record-in-2018-after-tax-reform-win.html?__source=sharebar%7Ctwitter&par=sharebar.

3. See generally U.S. INT'L TRADE COMM'N, *U.S. Trade Policy Since 1934*, in THE ECONOMIC EFFECTS OF SIGNIFICANT U.S. IMPORT RESTRAINTS 59 (sixth ed., 2009), <https://www.usitc.gov/publications/332/pub4094.pdf> (discussing the RTAA as the beginning of "an era" for U.S. trade policy).

4. Tariff Act of 1930, Pub L. 71-361, 46 Stat. 509 (1930) (codified at 19 U.S.C. ch. 4).

5. See generally, e.g., MARIO J. CRUCINI & JAMES KAHN, *TARIFFS AND THE GREAT DEPRESSION REVISITED* (Fed. Reserve Bank of N.Y., 2003), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr172.pdf.

higher costs of goods and services,⁶ making it all that more difficult for American families to provide for themselves each day.⁷ In just four short years, the United States Congress became deeply aware that they had made a misstep, but it took nearly a decade—and a world war, I might add—to get the country back to where it had been just a few years earlier.

I share these words of caution because there is little doubt in my mind that a sloppy or misguided legislature or executive can do more harm than good when given the chance. That is why Congress and the President must continuously work to ensure that we are building on the principle of reciprocal trade liberalization that has brought so much prosperity to our country since 1934.

When President Trump first entered into office, I was encouraged by some of the comments he had made and positions he had taken on trade. After all, a foundational tenet of free trade is comparative advantage, which essentially advances the notion that trade allows countries to focus on what they do relatively more efficiently than others, and therefore makes all countries better off through free trade. Over the years, we have found that America has very clear comparative advantages as a leading innovator.⁸ The problem is that our innovations have been the target of other countries for years, and little has been done to combat these problems.

Take, for example, China. China poses a real threat to American companies, and the fact that business continues to be directed and structured by the Chinese government and the Communist Party unequivocally means that China is not a market economy.⁹ In fact, any informed person knows that investment decisions in China are made at

6. See David Z. Morris, *Did Tariffs Cause the Great Depression*, FORTUNE (Mar. 4, 2018), <http://fortune.com/2018/03/04/did-tariffs-cause-the-great-depression/>. See also Rustici on *Smoot-Hawley and the Great Depression*, ECON TALK (Jan. 4, 2010), http://www.econtalk.org/archives/_featuring/thomas_rustici/; Bill Krist, *Did the Smoot-Hawley Tariff Cause the Great Depression?*, AM. TRADE POLICY (June 16, 2014), <http://americatradepolicy.com/did-the-smoot-hawley-tariff-cause-the-great-depression/#.WvxkJ4gyUk>.

7. Some have even argued that the stock market crash of October 1929 was in great part in anticipation of the passage of the tariffs. See, e.g., Alan Reynolds, *The Smoot-Hawley Tariff and the Great Depression*, CATO INST. (May 7, 2017, 3:27 PM), <https://www.cato.org/blog/smoot-hawley-tariff-great-depression>.

8. See Ana Maria Santacreu, *The Exports of Innovative Countries*, FED. RESERVE BANK OF ST. LOUIS (Mar. 23, 2017), <https://www.stlouisfed.org/on-the-economy/2017/march/exports-innovative-countries>.

9. See Memorandum from Leah Wils-Owens, Office of Policy, Enforcement & Compliance, to Gary Taverman, Deputy Assistant Sec'y for Antidumping and Countervailing Duty Operations, *China's Status as a Non-Market Economy* (Oct. 26, 2017), <https://enforcement.trade.gov/>

HATCH FOREWORD

least as much on the basis of politics¹⁰ as they are for economic returns. In order to grow their economy, China has mismanaged many of those investments—as non-market economies always have. Take, for example, the Chinese overcapacity in steel and aluminum production that has caused so much harm to the United States and to countries around the world.¹¹ China’s actions do not end there though. In fact, many have convincingly argued that actions by the Chinese government to mandate forced technology transfers; allow for broad violations of intellectual property rights; and the creation of other tariff and non-tariff trade barriers preventing market access to American innovators could considerably damage the United States economic standing in the future.¹² No WTO member can honestly say that China’s actions exemplify the purpose and intent of our multilateral agreements.¹³

What is more, these types of trade barriers are not just specific to China. In fact, our long-time ally, the European Union, consistently targets American technology companies through state aid rulings, arbitrary and poorly defined privacy standards that conflict with the internal actions of the EU member states, and, most recently, discriminatory “digital activities” taxes.¹⁴ Our other long-time trading partners like Canada, India, Korea, and others also maintain market-closing

download/prc-nme-status/prc-nme-review-final-103017.pdf (finding that China is not a market economy).

10. See generally, e.g., Georgine K. Fogel, Business Environment in China: Economic, Political, and Cultural Factors (MBAA Int’l Conference, Mar. 26, 2010), <http://www.usi.edu/media/3654697/business-environment-china.pdf> (discussing the impact of politics on business decisions within China).

11. Richard Chriss, Letter to the Editor, *Chinese Steel Overcapacity: A World Problem*, WALL ST. J. (Oct. 25, 2017, 12:26 PM), <https://www.wsj.com/articles/chinese-steel-overcapacity-a-world-problem-1508948784>.

12. See *Why the U.S.-China ‘Trade War’ is Really About the Future of Innovation*, KNOWLEDGE@WHARTON (Apr. 9, 2018), <http://knowledge.wharton.upenn.edu/article/u-s-china-trade-war-really-future-innovation/>. See also, e.g., *Hearing on The Impact of International Technology Transfer on American Research and Development Before the Subcomm. on Investigations and Oversight of the H. Sci. Comm.*, 112th Cong. (2012) (statement of Robert D. Atkinson, President and Founder, Information Technology and Innovation Foundation), <http://www2.itif.org/2012-international-tech-transfer-testimony.pdf> (discussing forced technology transfers and theft specifically).

13. See generally, e.g., General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194; General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183; General Agreement on Trade-Related Aspects of Intellectual Property, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

14. See European Commission Press Release IP/18/2041, Digital Taxation: Commission Proposes New Measures to Ensure that All Companies Play Fair in the EU (Mar. 21, 2018), http://europa.eu/rapid/press-release_IP-18-2041_en.htm (discussing the EU’s “digital activities” tax).

measures, including price controls that undermine market-based valuations of innovative medicines and medical technology.¹⁵ Here at home we have broadly opened our borders, with lower average tariffs¹⁶ on imported goods than most other countries.

The need to directly address these challenges is why Congress passed the bipartisan Trade Promotion Authority¹⁷ (“TPA”) in 2015. That law requires that the President frequently report to Congress, achieve trade deals that meet Congressional priorities, and be transparent with the American people. If the President can achieve these goals, then the trade agreement reached is afforded streamlined consideration in Congress. TPA is critical in getting the best possible deals for America because it shows other countries that Congress and the President are working together. That is also why it is critical that our negotiators consistently refer to the specific goals enumerated in TPA.

The problem is that there are many, both within this current administration, as well as outside it, who do not share the goals and expectations set by Congress in TPA. While I can appreciate their difference of opinion on certain matters, the failure to adhere to Congressionally-mandated negotiating objectives undermines the leverage our negotiators have to seek strong trade agreements. Moreover, we should not threaten the jobs and purchasing power of all Americans by undermining existing trade agreements. Our forefathers provided Congress broad authority over tariffs and treaties for a reason,¹⁸ and I will ensure those authorities are respected and maintained.

I am optimistic about our future, but my forty-two years in the Senate have taught me to be a cautious optimist. That time has also taught me that intentionally or not, it is far too easy to fall off the narrow path of serving America’s best interests. That is why I will continue to press

15. See, e.g., Robert A. Freeman & D. Wayne Taylor, Opinion, *Be Wary of Canada’s Drug Controls and Lack of IP Protections*, THE HILL (Mar. 19, 2018, 2:00 PM), <http://thehill.com/opinion/healthcare/378686-be-wary-of-canadas-drug-price-controls-and-lack-of-ip-protections> (discussing Canada’s drug price controls). See also *Pharmaceutical Price Controls in OECD Countries, Implications for American Consumers, Pricing, Research and Development, and Innovation: Hearing Before the S. Comm. on Health, Education, Labor and Pensions*, 109th Cong. (2005) (testimony of Grant D. Aldonas, Under Secretary for International Trade), <https://www.help.senate.gov/imo/media/doc/Aldonas-SenHELP-Rx-2-17-05.pdf> (discussing the price control measures in OECD countries, many of which have continued or grown since the testimony was given in 2005).

16. Drew Desilver, *U.S. Tariffs are Among the Lowest in the World – and in the Nation’s History*, PEW RESEARCH CTR. (Mar. 22, 2018), <http://www.pewresearch.org/fact-tank/2018/03/22/u-s-tariffs-are-among-the-lowest-in-the-world-and-in-the-nations-history/>.

17. Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114-26, 129 Stat 319 (2015) (codified at 19 U.S.C. §§ 4201–10).

18. See, e.g., U.S. CONST. art. I, § 8, cl 1.

HATCH FOREWORD

Congress, our trade negotiators, and our President to stay focused on maintaining and expanding the network of American-led trade relationships that has underpinned our prosperity for nearly eighty-five years. I am confident we can achieve that goal, and I look forward to the next century of growth and innovation here in America.