

THE RULES-BASED INTERNATIONAL TRADING SYSTEM URGENTLY NEEDS ATTENTION

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This year, the *Georgetown Journal of International Law*'s edition devoted to international trade law could not have come at a more consequential time. With the failure of the World Trade Organization's ("WTO") eleventh ministerial meeting in Buenos Aires,¹ the decision made by U.S. President Donald J. Trump's Administration to withdraw from the Trans-Pacific Partnership² ("TPP") and to impose tariffs in the name of national security,³ as well as with the continued backlash against globalization, the future of the North American Free Trade Agreement ("NAFTA") in doubt,⁴ and the rise of China all too clear, the need to think deeply and broadly about the rules-based world trading system and where it is headed is urgent. The *Georgetown Journal of International Law* has historically played a key role in framing just such a debate—and this edition is no exception.

Many of the actions taken by the Trump Administration raise significant domestic and international law questions—often centered on whether the President has the authority to do what he has done, particularly given that the U.S. Constitution gives the power to regulate

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1. Luc Cohen & David Lawder, *WTO meeting ends in discord, ministers urge smaller-scale trade talks*, REUTERS (Dec. 13, 2017), <https://www.reuters.com/article/us-trade-wto/wto-meeting-ends-in-discord-ministers-urge-smaller-scale-trade-talks-idUSKBN1E71IJ>.

2. Adam Taylor, *A timeline of Trump's complicated relationship with the TPP*, WASHINGTON POST (Apr. 13, 2018), <https://www.washingtonpost.com/news/worldviews/wp/2018/04/13/a-timeline-of-trumps-complicated-relationship-with-the-tpp/>.

3. Press Release, The White House, President Donald J. Trump Approves Section 232 Tariff Modifications (May 31, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-section-232-tariff-modifications-2/>.

4. Donald Trump (@realDonaldTrump), TWITTER (Aug. 27, 2017, 6:51AM), <https://twitter.com/realdonaldtrump/status/901804388649500672?lang=en>.

foreign commerce to the Congress, not to the President.⁵ A number of President Trump’s latest moves on trade have drawn on rarely used laws, leading many trade scholars to, as Joshua Kurland phrases it, “dust off” their statute books. The renewed use of global safeguards set forth in Mr. Kurland’s article is one of a number of the resurrected tools being utilized by the Trump Administration, and it is certainly worth refreshed consideration regarding the utility of such tools and whether they can be utilized without breaking the United States’ commitment under the rules of the WTO. The focus of the Trump Administration has shifted in more recent months to Section 301 of the Trade Act of 1974, with the potential imposition of tariffs and investment restrictions on China following an investigation into China’s forced technology transfer policies, restrictions on foreign investment, and theft of intellectual property.⁶ Responding to China has been a vexing problem that is touched on in the discussion of China’s status—or not—as a market economy, set forth in the article by Jeffrey Telep and Richard Lutz. This is in large part explained by the many of issues surrounding the nature of China’s economy, which strike at the core of the debate regarding whether China has lived up to the commitments it made when it joined the WTO, and whether the rest of the world has reciprocated. Underlying this analysis is the question of whether the WTO disciplines are up to the task of providing an open, transparent and fair trading system in the face of China’s “socialist market economy.”

Backlash to globalization has also been a feature of the trade landscape this year. Nowhere has the debate been more heated than on the impact that trade and trade agreements have on labor and labor rights. The very first case to test the connection between trade agreements and labor rights was decided last year in a dispute arising under the Central American Free Trade Agreement (“CAFTA”) between Guatemala and United States.⁷ Phillip Paiement’s article elucidates the highs and lows

5. Johnathan Masters, *U.S. Foreign Policy Powers: Congress and the President*, COUNCIL ON FOREIGN REL. (Mar. 2, 2017), <https://www.cfr.org/backgrounder/us-foreign-policy-powers-congress-and-president>.

6. OFF. OF THE U.S. TRADE REP., SECTION 301 REPORT INTO CHINA’S ACTS, POLICIES, AND PRACTICES RELATED TO TECHNOLOGY TRANSFER, INTELLECTUAL PROPERTY, AND INNOVATION (Mar. 22, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/march/section-301-report-chinas-acts>.

7. Final Panel Report, *In re Guatemala – Issues Relating to the Obligations Under Article 16.2.1 (a) of the CAFTA-DR*, CAFTA-DR Arb. Panel (June 14, 2017), [https://www.trade.gov/industry/tas/Guatemala%20%20-%20Obligations%20Under%20Article%2016-2-1\(a\)%20of%20the%20CAFTA-DR%20%20June%202014%202017.pdf](https://www.trade.gov/industry/tas/Guatemala%20%20-%20Obligations%20Under%20Article%2016-2-1(a)%20of%20the%20CAFTA-DR%20%20June%202014%202017.pdf).

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of this long-running case and provides some important insights into the ability of trade agreements to carry a broader agenda on their backs.

At the opposite end of the spectrum of the backlash is the opportunity presented by potential newly-opened markets. Kevin Fandl's article on U.S. investments in Cuba and the trade-offs being made to both open the door to such investments while appreciating the long and troubled history of trade restrictions in the country highlights the possibilities and the perils that may await those seeking to take advantage of that barely-opened door.

At the heart of a number of prior *Journal* editions has been the field of trade remedies—often viewed as the bread and butter of international trade law. This year is no different, as Ragan Updegraff's article delves into the increasingly controversial issue of when and to what extent the U.S. Department of Commerce may determine that questionnaire submissions are not adequate, and that it may exercise its authority to use “adverse facts available” in lieu of questionnaire data. Given the major impact that the use of such “facts available” has on the size of the dumping margins, striking a fair balance between using them when necessary without being unfair to cooperating respondents is critical.

This year is also a particularly fitting time for the publication of the first note to win the John D. Greenwald Writing Prize. The Competition, named after John D. Greenwald, commemorates his life by inviting top submissions on current issues relevant to international trade law, the jurisprudence of the WTO or regional trade organizations, jurisprudence concerning U.S. trade organizations, or an issue relating to the political economy or efficacy of U.S. or international trade regimes. The Winning Note this year, written by Joshua Blume, engages in a compelling application of services commitments in the WTO's General Agreement on Trade in Services (“GATS”) to the cutting-edge services in and around privacy, data localization, and cybersecurity. Blume's note is an appropriate recipient of the Greenwald Prize, as the Prize's namesake was a fabulous writer who encouraged everyone around him to think deeply, critically, and honestly about international trade law and policy. John's passion for both was deeply rooted in public service and private practice. He had been a key negotiator of the early agreements of the General Agreement on Tariffs and Trade (“GATT”) on trade remedies in the Tokyo Round, an architect of every piece of major trade remedy legislation of the 1970s, and later, was the first Department of

Commerce administrator of those laws.⁸ John wrote extensively about trade law and policy, the GATT, and the WTO dispute settlement system during his thirty-five years of distinguished practice. John's bold and innovative mind, his turns of phrase, and his generosity of spirit, while missed by those who knew him, have been carried forward in the granting of this Prize to bold thinkers and excellent writers. And in this year when out-of-the-box thinking is more in demand than ever, it is particularly apt to have awarded this prize to a note focused on the very forward-looking connection between trade rules, privacy, and cybersecurity.

8. Barry Meier, *Joseph Greenwald, 82, Delegate To International Trade Groups*, N.Y. TIMES (Nov. 4, 2000), <https://www.nytimes.com/2000/11/04/nyregion/joseph-greenwald-82-delegate-to-international-trade-groups.html>.