The Trump Administration’s Trade Policy and the Implications for Southeast Asia

WALTER LOHMAN

As promised, on 23 January 2016, President Donald Trump withdrew the United States from the completed negotiations on the Trans-Pacific Partnership (TPP). In the process, as he did prior to taking office, he stressed his preference for bilateral trade deals. The executive order he signed was a highly symbolic act. The President needed only to refrain from sending the agreement to Congress. His signature, however, served to underscore the finality of his decision. The message: Not only is the United States pulling out of TPP, but neither will it seek to “fix” the agreement. Similarly, his emphasis on bilateral deals is a determinative sign that the idea will not be resurrected under a new guise.

Trump is taking a new approach to trade that has no place for multilateral trade agreements. At best, America appears headed towards a period of consolidation focused on enforcement issues, renegotiation of select agreements and a limited number of new bilateral deals. This would constitute a relatively conventional approach, yet a nationalist one. At worst, the Trump administration could be headed for an unconventional, very hardline approach that tests its constitutional authorities and international treaty

WALTER LOHMAN is Director of the Asian Studies Center of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy at The Heritage Foundation, as well as an Adjunct Associate Professor in Georgetown University's Asian Studies Program. Postal address: 214 Massachusetts Ave. NW, Washington, D.C. 20002; email: walter.lohman@heritage.org.
commitments. Whichever way it goes, US trade policy going forward will have a major impact on America’s role in the Asia Pacific broadly and in Southeast Asia, in particular.

The push for free trade in America — from President Bill Clinton through Presidents George W. Bush and Barrack Obama — was made possible by big Republican majorities in Congress. Since approval of the North American Free Trade Agreement (NAFTA) in 1993, which garnered 132 out of 175 Republican votes in the House of Representatives, approval of free trade agreements (FTAs) have become only more dependent on Republican votes. In 2003, the US–Singapore FTA passed the House of Representatives with 197 Republican votes. The US–Korea Free Trade Agreement (KORUS) passed with so many Republican votes in the House that it required no Democrat votes, and in the event, only received 59. As recently as 2015, Trade Promotion Authority (TPA), which was vigorously supported by President Obama, was passed with only 28 Democrat votes.

Then suddenly in 2016, this dynamic changed. During an election year, Republicans refused to take a Democrat president’s FTA across the finish line, and their candidate for president, Donald Trump, was actively opposed to them doing so. In part, one can blame bad timing. It was terrible judgement by President Obama to propose an FTA for Congressional consideration during an election year. His determination to sell the agreement as the “most progressive” in history was another serious miscalculation, given that the votes required to pass it would hardly come from progressives.

The impasse, however, was not only a matter of politics. On Capitol Hill, opposition germinated less from a concern with the sort of unfair trade practices that garner so much election year focus than with Republican concerns over the impact on US sovereignty. Key Republicans were concerned about the power of a new international trade bureaucracy presumably required by such a wide ranging agreement. The principal voice of opposition in the Senate was very early Trump supporter, and new Attorney General, Senator Jeff Sessions. Sessions had voted for all of the Bush era FTAs and the three — US–Korea, US–Colombia and US–Panama — which were negotiated by Bush and passed during the Obama administration. Sessions was worried, however, that TPP would “enmesh our great country, and economy, in a global commission where bureaucrats from Brunei have the same vote as the United States” and “empower unelected regulators who cannot be recalled or voted out of office”.

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This context helps establish two things. One, the idea of a multilateral deal along the lines of TPP is truly dead, at least as far as the United States is concerned. And two, its death is not a reliable indication that the pro-trade nature of the Republican caucus in Congress has changed. When President Trump determines the new bilateral deals he is prepared to pursue, he will enjoy the support he needs in Congress to pass them — providing he adheres to the guidelines provided him in the TPA. Judging by Trump’s remarks since the election, an FTA between the United States and the United Kingdom appears to be his number one priority in this regard. In Asia, the most logical choice, given its economic value, would be a US–Japan FTA. For its strategic value and given Trump’s demonstrated pro-Taiwan sentiments, a US–Taiwan agreement is also possible. While Beijing might object, such an agreement would be well within the boundaries of America’s One China policy.

Other Asian partners in the TPP that do not already have FTAs with America — Malaysia, Brunei and Vietnam — are less likely to see bilateral deals, if for no other reason than a lack of bandwidth for what could be difficult negotiations, as well as unrelated political controversies. During the Bush administration, the United States and Malaysia failed to conclude an FTA after several years and multiple rounds of negotiations. Free trade talks between America and Thailand also failed during the Bush administration. Getting a US–Vietnam FTA through Congress would require a major commitment of political capital. Congress is as at least as accustomed to thinking about Vietnam in human rights terms as trade and without a major push from the administration, likely to default to such political concerns. The cost-benefit political dynamic is even more pronounced on Brunei, given its very small size.

The most salient feature of US trade policy for Southeast Asia will likely be the new administration’s focus on enforcement. During his confirmation hearing, President Trump’s Secretary of Commerce, Wilbur Ross, was quite striking in his focus on enforcement, saying that those countries that do not “play by the rules” should be “punished and severely”. He identified tariffs as the mode of punishment and expressed sympathy for government activism in the use of US anti-dumping/countervailing duty (AD/CVD) measures. China is clearly in the administration’s cross hairs; but Ross was careful to point out China is not the only problem in his view.

Stepped up US government trade activism vis-à-vis Chinese industry could have an impact on Southeast Asia in two ways. First, given the reality of global supply chains, action taken against
“unfair” Chinese practices under AD/CVD laws could have an indirect impact on Southeast Asian suppliers to targeted Chinese exporters. The Trump administration will also likely scrutinize imports from Southeast Asia for evidence that the Chinese are attempting to circumvent the AD/CVD measures. Second, America could impose safeguard measures against Chinese imports, but apply them globally in order to prevent other foreign producers from meeting domestic demand. In this case, under US law, fairness is not an issue. It need only find evidence of injury by “surging” imports. Ross indicated that steel and aluminum would be key targets for this sort of protection, but it need not stop there. The incoming trade team could scrutinize the composition of its trade deficits with countries throughout the region and seek to impose safeguards on them. Southeast Asia countries could also be targeted by AD/CVD petitions from US industry, which are certain to spike in anticipation of the Trump administration’s sympathy for increased.

Southeast Asia is no stranger to this process. ASEAN countries are already well represented among the 42 currently subject to AD/CVD orders. China, of course, is heads above all on that list, but Indonesia is 8th, Vietnam 9th and Thailand 11th. And taken as a whole, ASEAN is number 2.

If a conventional approach outlined above is the best case scenario, there is another, less likely, worst case scenario utilizing liberal self-serving interpretations of long-standing but very rarely used authorities. A new report by international trade specialists at White and Case outline the several possibilities in this regard. Section 338 of the Tariff Act of 1930, for example, permits the President to impose severe penalties on countries that have “discriminated” against American products, including up to 50 per cent tariff, and in some cases complete exclusion of imports. Section 232 of the Trade Expansion Act of 1962 can be used to retaliate against imports that pose a threat to “national security”. Although the 1930 law appears to be defunct, having last been invoked in 1949, the 1962 law was invoked as recently as 2001, and actually used to impose import barriers in the 1970s. The President has additional authorities to impose trade remedies under the 1974 Trade Act. Section 122 applies to instances where “large and serious United States balance-of payments” deficits exist, and section 301 gives him authority to take action against “unfair trade practices”, including violations of trade agreements. The former could easily be challenged in court on the merits given the complexity of the economics involved, and the latter has not been invoked since
1995, when it was subsumed by US commitment to pursue such complaints through the World Trade Organization (WTO). Finally, the President has extensive authority to impose barriers under the 1977 International Emergency Economic Powers Act (IEEPA). Such authority underpinned key elements of the twenty-year US sanctions regime against Myanmar.

All of these unconventional actions would face very serious conflict with Congress, even in Republican hands. The administration would face such serious challenge in the WTO that resort to them could signal a break with the US commitment to the organization, or even withdrawal, a notion candidate Trump flirted with during the campaign.

Either approach will have major impact on America’s economic profile in Southeast Asia.

A ramped-up conventional approach to enforcement has many pitfalls, as the AD/CVD and safeguard measures can be challenged at the WTO. As happened with President Bush’s imposition of safeguard measures for steel in 2002, they could provoke threats of retaliation from trading partners and rejection by the WTO. Given the apparent confrontational proclivities of President Trump, this could spiral into a serious tit-for-tat action with Southeast Asia, and other countries. It could seriously strain US commitment to the WTO — especially if it decides not to rely on it to resolve disputes involving unfair trade practices, but instead resorts to remedies used by the United States prior to 1995. Still, if America maintains its general commitment to the WTO, and in fact, uses its dispute resolution mechanisms to address concerns, the damage to trading relationships is containable — damaging, but limited. And if the Trump administration defies the odds and mobilizes the pro-trade caucus on the Hill to pass bilateral agreements with Southeast Asian countries — Vietnam being the most logical — it could limit some of the damage.

On the other hand, the unconventional hardline approach could provoke a real trade war that would weigh down the economies of all involved, with dire consequences for the peace, security and prosperity of the region.

Both approaches, depending on how vigorously they are pursued, will also have a major impact on the broader US strategic position in Southeast Asia. In the context of an aggressive, nationalist approach to trade, even with a concerted effort to rebuild the US military, rededication to alliances, commitment to forward military deployments and assertions against Chinese encroachments
on the rules based-order, outright hostility to free trade would diminish US influence. Unlike some other parts of the world, the Middle East, for instance, the life of the region and its politics revolve around economic opportunity, not geopolitical strife. Rivalry and conflict do not define the region; they are downside risks to a larger positive picture. If America is hostile to economic engagement, it will come to be regarded as an outsider and its military prowess more an obstacle to regional aspirations than an enabler of them. This is particularly the case given China’s expanding capacity as a full spectrum power through the One Belt, One Road initiative, the Asian Infrastructure Investment Bank and the New Development Bank, and Japan’s continuing relevance to Southeast Asian economies.

In the wake of America’s withdrawal from TPP, the important question is what replaces it as the centrepiece of US trade policy in Asia. The options do not appear bright. In light of American mismanagement of its own trade politics and resulting withdrawal from the agreement, it will be difficult to get the region signed on to a new approach. This is particularly true if, as appears to be the case, it will be focused primarily on protecting the US market. Economic engagement requires what is on balance a positive agenda. It is not clear yet that the Trump administration will have one for Southeast Asia.

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