now been elected to fill this seat.[34] In August 2018, a high-ranked U.S. administration official made clear that, in addition to withdrawing, the United States was also "'going to de-fund the Human Rights Council'" by decreasing its assessed contribution to the UN budget by the amount that would ordinarily go to the Human Rights Council and the High Commissioner for Human Rights.[35] As of the end of August, the Trump administration has not addressed whether and to what extent the United States will continue to participate in the Universal Periodic Review, a process under the auspices of the Human Rights Council through which states voluntarily have their human rights practices reviewed every few years. The United States is scheduled for its third cycle of assessment during the Human Rights Council's thirty-sixth session in the spring of 2020.[36]

International Economic Law

Tariff-Based Disputes Continue to Characterize Trump Administration Trade Policies

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Over the summer of 2018, trade relations between the United States and many of its trading partners continued to be marked by tensions. The United States and China ratcheted up their use of tariffs against each other. The United States both received and initiated requests for consultation with various countries at the World Trade Organization (WTO) related to its earlier steel and aluminum tariffs and to tariffs imposed in response by other countries. President Trump has continued to pursue the possibility of further tariffs, including with respect to automobile and uranium imports. The United States also escalated trade tensions with Turkey through various measures, explicitly linking some of these measures to Turkey's detainment of an American pastor. Despite the broader theme of tensions, negotiations have proved productive between the United States and two of its major trading partners—the European Union and Mexico—paving a way for future settlements. With the European Union, the Trump administration has reached a tentative understanding and agreed not to impose new tariffs while the parties negotiate toward finalizing this understanding. As to Mexico, in late August 2018 the Trump administration announced that the two countries had reached agreement with respect to many issues underlying their ongoing North American Free Trade Agreement (NAFTA) negotiations.

In March 2018, the Trump administration determined that China was engaging in unfair trade practices and announced its intent to respond by imposing new tariffs under Section

[34] *Iceland to Take Vacated U.S. Seat on Human Rights Council*, UN News (July 13, 2018), *at* https://news.un.org/en/story/2018/07/1014672.

[35] Bolton story, *supra* note 5 (quoting Bolton as remarking that: "'We'll calculate 22 percent of the Human Rights Council and the High Commissioner's budget, and our remittances to the U.N. for this budget year will be less 22 percent of those costs—and we'll say specifically that's what we're doing'"). The United States pays 22% of the general UN budget. *Id.*

[36] UN, Human Rights Council, 3rd UPR Cycle: Contributions and Participation of "Other Stakeholders" in the UPR, *at* https://www.ohchr.org/en/hrbodies/upr/pages/ngosnhris.aspx (last updated May 22, 2017).

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301 of the Trade Act of 1974.[1] Following several months of developments, on June 15, 2018, the Trump administration released a finalized list of Chinese imports worth around $34 billion that would be subject to new tariffs of 25 percent effective July 6, as well as identifying another $16 billion worth of imports that would be subject to later tariffs.[2] China swiftly announced that it would retaliate in kind.[3] Three days later, President Trump, responding to China's proposed retaliatory tariffs, "directed the United States Trade Representative [(USTR)] to identify $200 billion worth of Chinese goods for additional tariffs at a rate of 10 percent."[4] These tariffs would go into effect "[a]fter the legal process is complete, . . . if China refuses to change its practices and also if it insists on going forward with the new tariffs that it has recently announced."[5] China responded by reasserting that "[i]f the US . . . releases the tariff list, China will have to take powerful and comprehensive solutions both in quantitative and qualitative ways."[6]

On July 6, the initial tariffs on $34 billion in goods went into effect.[7] China immediately responded with its own comparable tariffs.[8] Four days later, the USTR described China's retaliation as "without any international legal basis or justification" and released an initial list identifying the additional $200 billion worth of goods that would be subject to future tariffs.[9] The USTR stated that it would follow the same "transparent and comprehensive public notice and comment process" that had been used for the previous round of tariffs.[10] On August 1, Trump

[1] For a full discussion of previous developments in the U.S.-China trade relationship, see Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 505 (2018) (including a description of Section 301 and its relationship to international trade law).

[2] Office of the U.S. Trade Rep. Press Release, USTR Issues Tariffs on Chinese Products in Response to Unfair Trade Practices (June 15, 2018), *at* https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/june/ustr-issues-tariffs-chinese-products [https://perma.cc/6SWL-2EA8]; *see also* Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies and Practices Related to Technology, Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 28710, 28711 (2018).

[3] Galbraith, *supra* note 1, at 507.

[4] Donald J. Trump, Statement on China-United States Trade, 2018 DAILY COMP. PRES. DOC. NO. 426 (June 18, 2018).

[5] *Id.*

[6] People's Republic of China Ministry of Commerce Press Release, MOFCOM Spokesman Comments on the White House's Statement Released on June 18 (June 20, 2018), *at* http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201806/20180602759964.shtml.

[7] *See* U.S. Customs & Border Prot., Section 301 Trade Remedies to be Assessed on Certain Products from China Effective July 6, 2018 (last modified Aug. 23, 2018), *at* https://www.cbp.gov/trade/programs-administration/entry-summary/section-301-trade-remedies-be-assessed-certain-products-china-effective-july-6-2018 [https://perma.cc/D67V-7454]. At the same time that these tariffs were imposed, USTR released a process by which members of the public can "request exclusion of a particular product from the additional duties to address situations that warrant excluding a particular product within a subheading, but not the tariff subheading as a whole." Office of the U.S. Trade Rep. Press Release, USTR Releases Product Exclusion Process for Chinese Products Subject to Section 301 Tariffs (July 6, 2018), *at* https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/ustr-releases-product-exclusion [https://perma.cc/HD4G-3MGK]. In determining whether to grant an exclusion or not, "USTR may consider whether a product is available from a source outside of China, whether the additional duties would cause severe economic harm to the requestor or other U.S. interests, and whether the particular product is strategically important or related to Chinese industrial programs including 'Made in China 2025.'" *Id.*

[8] Raymond Zhong, *China Strikes Back at Trump's Tariffs, but its Consumers Worry*, N.Y. TIMES (July 6, 2018), *at* https://www.nytimes.com/2018/07/06/business/china-trump-trade-war-tariffs.html.

[9] Office of the U.S. Trade Rep. Press Release, Statement by U.S. Trade Representative Robert Lighthizer on Section 301 Action (July 10, 2018), *at* https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/statement-us-trade-representative [https://perma.cc/QJX6-L9TY].

[10] *Id.*

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directed the USTR to increase the duty level on this additional $200 billion in goods from 10 percent to 25 percent.[11] China responded by threatening to impose additional tariffs on another $60 billion worth of U.S. goods.[12] As these reciprocal threats were pending, both countries have followed through on imposing a 25 percent tariff on an additional $16 billion in imports, consistent with their earlier announcements in June.[13] In September, the United States and then China went ahead with the previously threatened tariffs on $200 billion in Chinese goods and $60 billion in U.S. goods respectively.[14] In the backdrop of these developments are the ongoing consultations between the two countries at the WTO.[15]

In addition to its use of tariffs, over the summer of 2018 the United States has taken other legislative or regulatory steps aimed explicitly or implicitly at China. In June, the White House Office of Trade & Manufacturing released a report criticizing China's policies regarding technology transfer and intellectual property,[16] which are issues that the Trump administration has flagged within its broader concerns about unfair Chinese trade practices.[17] On June 27, the Trump administration endorsed a piece of congressional litigation named the Foreign Investment Risk Review Modernization Act (FIRRMA), which "will enhance [the administration's] ability to protect the United States from new and evolving threats posed by foreign investment while also sustaining the strong, open investment environment to which [the United States] is committed and which benefits [the U.S.] economy and [] people."[18] On August 13, FIRRMA, which received bipartisan support, became law as a part of

[11] Office of the U.S. Trade Rep. Press Release, Statement by U.S. Trade Representative Robert Lighthizer on Section 301 Action (Aug. 1, 2018), *at* https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/statement-us-trade-representative [https://perma.cc/RMJ2-5BDP].

[12] Keith Bradsher & Cao Li, *China Threatens New Tariffs on $60 Billion of U.S. Goods*, N.Y. TIMES (Aug. 3, 2018), *at* https://www.nytimes.com/2018/08/03/business/china-us-trade-tariffs.html.

[13] Office of the U.S. Trade Rep. Press Release, USTR Finalizes Second Tranche of Tariffs on Chinese Products in Response to China's Unfair Trade Practices (Aug. 7, 2018), *at* https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/ustr-finalizes-second-tranche [https://perma.cc/2KSW-P6SJ] (announcing that these tariffs would take effect on August 23); People's Republic of China Ministry of Commerce Press Release, MOFCOM Spokesman Comments on China's Countermeasures on US$16 Billion Worth of Products Imported from the US (Aug. 9, 2018), *at* http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201808/20180802775504.shtml (announcing that these tariffs would "be implemented synchronously with the US side").

[14] *See* Anna Fifield, *China China Says U.S. Is "Holding a Knife to Our Neck" in Trade War,* WASH. POST (Sept. 25, 2018), at https://www.washingtonpost.com/world/china-says-the-us-isholding-a-knife-to-our-neck-in-trade-war/2018/09/25/1d0d4f58-c0a6-11e8-92f2-ac26fda68341_story.html?utm_term=.8676d85bcf24 (also noting that Trump has indicated that he will impose tariffs on an additional $267 billion of Chinese goods given retaliation by China to the tariffs on $200 billion of goods). The tariffs imposed by China range from 5% to 10%, *see id.*, while the tariffs imposed by the United States are initially set at 10% but slated to rise to 25% on January 1, 2019. *See* White House Press Release, Statement from the President (Sept. 17, 2018), at https://www.whitehouse.gov/briefings-statements/statement-from-the-president-4/ (also noting that September 24, 2018 is the start date for the tariffs).

[15] Galbraith, *supra* note 1, at 509 (describing how both countries initiated requests for consultations in the spring of 2018).

[16] White House Press Release, Office of Trade & Manufacturing Policy Report: "How China's Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World" (June 19, 2018), *at* https://www.whitehouse.gov/briefings-statements/office-trade-manufacturing-policy-report-chinas-economic-aggression-threatens-technologies-intellectual-property-united-states-world [https://perma.cc/7EQ9-XBPZ].

[17] *See* Galbraith, *supra* note 1, at 506–07, n.15.

[18] Donald J. Trump, Statement on Congressional Action on Legislation to Reduce the National Security Risks Posed by Certain Types of Foreign Investment, 2018 DAILY COMP. PRES. DOC. NO. 459 (June 27, 2018) (also

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the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019.[19] Also included in the NDAA was a provision prohibiting federal agencies from purchasing products made by Zhongxing Telecommunications (ZTE) Corporation, a Chinese company that has been the target of considerable U.S. ire due to its illicit dealings with North Korea.[20]

In addition to rising trade tensions with China, during the summer of 2018 the Trump administration continued to face international and domestic responses to its March decision to impose tariffs on steel and aluminum imports pursuant to an investigation, brought under Section 232 of the Trade Expansion Act of 1962, that found such tariffs essential to national security.[21] Internationally, these tariffs generated numerous requests for consultation in the WTO and retaliatory tariffs from a handful of major trading partners, and they also have triggered some domestic litigation regarding their legality under U.S. law.

At the WTO, many countries filed requests for consultations over the spring and summer of 2018, all alleging violations of the General Agreement on Tariffs and Trade (GATT) 1994 and the Agreement on Safeguards.[22] The United States has continued to respond to such complaints by asserting that

setting in motion, among other things, multi-agency efforts to "engage with our allies and partners to support their efforts to combat harmful technology transfer and intellectual property theft"). While FIRRMA is not explicitly about China, in practice it is very much a part of broader U.S.-China trade relations and indeed Trump referenced the ongoing Section 301 investigation in his remarks endorsing FIRRMA. *See id.* Initial reports before the FIRRMA endorsement took place described a plan by the Trump administration to impose severe restrictions on Chinese investments in U.S. technology firms, citing national security concerns. Bob Davis, *Trump Plans New Curbs on Chinese Investment, Tech Exports to China*, WALL ST. J. (June 24, 2018), *at* https://www.wsj.com/articles/trump-plans-new-curbs-on-chinese-investment-tech-exports-to-china-1529883988; Saleha Mohsin & Jenny Leonard, *U.S. Plans to Curb Chinese Tech Investments, Citing Security*, BLOOMBERG (June 24, 2018), *at* https://www.bloomberg.com/news/articles/2018-06-24/u-s-plans-curbs-on-chinese-investment-citing-security-risks. Secretary of the Treasury Steve Mnuchin denied these reports, and asserted that a forthcoming statement on the matter would "not [be] specific to China, but to all countries that are trying to steal [U.S.] technology." Steven Mnuchin (@stevenmnuchin1), TWITTER (June 25, 2018, 7:41 AM), *at* https://twitter.com/stevenmnuchin1/status/1011258207182966786 [https://perma.cc/M2SC-MC6A]. The FIRRMA endorsement followed a few days later.

[19] Jill Colvin, *President Trump Doesn't Mention John McCain as He Signs Defense Bill Named for Him*, TIME (Aug. 13, 2018), *at* http://time.com/5365956/trump-john-mccain-defense-bill.

[20] Pub. L. No. 115–232, § 889, _ Stat. _ (2018) (also applying to Huawei Technologies Companies and including various other conditions, including making temporary waivers available under certain circumstances). For more about ZTE, see Galbraith, *supra* note 1, at 509–10 (describing ZTE's violations with respect to North Korea, subsequent executive branch sanctions, and the Trump administration's decision to try to avoid sanctioning ZTE to the point of collapse); U.S. Dep't of Commerce Press Release, Commerce Department Lifts Ban After ZTE Deposits Final Tranche of $1.4 Billion Penalty (July 13, 2018), *at* https://www.commerce.gov/news/press-releases/2018/07/commerce-department-lifts-ban-after-zte-deposits-final-tranche-14 [https://perma.cc/3LTK-Y228] (announcing that ZTE had paid the final tranche of a $1.4 billion settlement and that the Department had lifted a ban on ZTE's ability to use U.S. technology exports); Jordain Carney & Rebecca Kheel, *Congress Won't Block Trump's Deal to Save Chinese Telecom Giant ZTE*, HILL (July 20, 2018), *at* http://thehill.com/blogs/ballot-box/398086-defense-bill-wont-block-trumps-zte-deal (noting that congressional efforts to take a tougher approach to ZTE in the NDAA were unsuccessful).

[21] For discussion of the original enactment of the Section 232 steel and aluminum tariffs, see Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 315, 316–18 (2018).

[22] Request for Consultations by Norway, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS552/1 (June 12, 2018); Request for Consultations by the Russian Federation, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS554/1 (June 29, 2018); Request for Consultations by Switzerland, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS556/1 (July 9, 2018). For information on earlier WTO consultations requests, and for a fuller discussion of the legal arguments advanced therein, see Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 499 (2018).

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> the tariffs imposed pursuant to Section 232 are not safeguard measures but rather tariffs on imports of steel and aluminum articles that threaten to impair the national security of the United States. The United States did not take action pursuant Section 201 of the Trade Act of 1974, which is the law under which the United States imposes safeguard measures. Therefore, there is no basis to consult pursuant to the Agreement on Safeguards with respect to tariffs imposed under Section 232.[23]

On July 16, the United States filed its own WTO requests for consultations, disputing the ability of other countries to impose retaliatory tariffs in reaction to the steel and aluminum tariffs and alleging violations of measures contained in the GATT 1994. Thus far, these disputes have targeted five WTO members—Canada, China, the European Union (EU), Mexico, and Turkey,[24] each of which had imposed retaliatory tariffs.[25] In all five requests, the United States has claimed that there has been a violation of the most-favored-nation obligation contained in

> Article I:1 of the GATT 1994, because [the tariffs] fail[] to extend to products of the United States an advantage, favor, privilege or immunity granted by [WTO Member] with respect to customs duties and charges of any kind imposed on or in connection with the importation of products originating in the territory of other Members.[26]

[23] *E.g.* Communication from the United States, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS552/9 (June 22, 2018). For a discussion of how both the U.S. assertion of a national security interest and the decision by some major trading partners to respond by imposing retaliatory tariffs under the Agreement on Safeguards (rather than going through the full WTO dispute process) fit into the broader context of the WTO system, see Joseph Weiler, *Black Lies, White Lies and Some Uncomfortable Truths in and of the International Trading System*, 29 EUR. J. INT'L L. 339 (2018).

[24] Request for Consultations by the United States, *Canada—Additional Duties on Certain Products from the United States*, WTO Doc. WT/DS557/1 (July 16, 2018) [hereinafter U.S. Request with Canada]; Request for Consultations by the United States, *China—Additional Duties on Certain Products from the United States*, WTO Doc. WT/DS558/1 (July 16, 2018); Request for Consultations by the United States, *European Union—Additional Duties on Certain Products from the United States*, WTO Doc. WT/DS559/1 (July 16, 2018); Request for Consultations by the United States, *Mexico—Additional Duties on Certain Products from the United States*, WTO Doc. WT/DS560/1 (July 16, 2018); Request for Consultations by the United States, *Turkey—Additional Duties on Certain Products from the United States*, WTO Doc. WT/DS561/1 (July 16, 2018).

[25] *See* People's Republic of China Ministry of Commerce Press Release, Spokesman of Ministry of Commerce Comments on China's Decision to Slap Tariffs on Part of Products Imported from US (Apr. 3, 2018), *at* http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201804/20180402733539.shtml (imposing tariffs on 128 categories of U.S. imports); David Alire Garcia & Miguel Gutierrez, *Aiming at Trump Strongholds, Mexico Hits Back with Trade Tariffs*, REUTERS (June 5, 2018), *at* https://www.reuters.com/article/us-usa-trade-mexico/aiming-at-trump-strongholds-mexico-hits-back-with-trade-tariffs-idUSKCN1J11EV (describing Mexican tariffs imposed on a variety of U.S. goods, including steel, pork, and bourbon); European Commission Press Release, EU Adopts Rebalancing Measures in Reaction to US Steel and Aluminum Tariffs (June 20, 2018), *at* http://trade.ec.europa.eu/doclib/press/index.cfm?id=1868 (announcing a decision to impose immediate tariffs on some €2.8 billion worth of U.S. goods, with a further €3.6 billion to follow at a later date); *Turkey to Start Implementing Retaliatory Tariffs Against United States*, REUTERS (June 21, 2018), *at* https://www.reuters.com/article/us-usa-trade-turkey/turkey-to-start-implementing-retaliatory-tariffs-against-united-states-idUSKBN1JH0DY [hereinafter Turkey Retaliatory Tariffs] (reporting on retaliatory tariffs worth some $266.5 million, covering "U.S. coal, paper, walnuts/almonds, tobacco, unprocessed rice, whisky, automobiles, cosmetics, machinery equipment and petrochemical products"); Department of Finance Canada, Countermeasures in Response to Unjustified Tariffs on Canadian Steel and Aluminum Products (July 1, 2018), *at* https://www.fin.gc.ca/access/tt-it/cacsap-cmpcaa-1-eng.asp (listing Canada's responsive tariffs). Mexico has also imposed a second round of tariffs. *See* Sabrina Rodriguez, *Mexico Imposes Retaliatory Tariffs on Dozens of U.S. Goods*, POLITICO (July 5, 2018), *at* https://www.politico.com/story/2018/07/05/mexico-imposes-retaliatory-tariffs-670424.

[26] *E.g.*, U.S. Request with Canada, *supra* note 24.

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With the exception of the request with Mexico, all requests also allege a violation of "Article II:1(a) and (b) of the GATT 1994, because [the tariffs] accord[] less favorable treatment to products originating in the United States than that provided for in [WTO Member's] schedule of concessions."[27] All U.S. requests noted that the tariffs "appear[] to nullify or impair the benefits accruing to the United States directly or indirectly under the GATT 1994."[28]

The Section 232 tariffs have also continued to generate domestic legal challenge.[29] On June 27, the American Institute for International Steel (AIIS) brought suit in the U.S. Court of International Trade challenging the legality of Section 232.[30] The core argument advanced by AIIS is that Section 232 "is unconstitutional as an improper delegation of legislative power to the President, in violation of Article I, section 1 of the Constitution and the doctrine of separation of powers and the system of checks and balances that the Constitution protects."[31] This is a challenging argument under existing precedent, as the U.S. Supreme Court has not been receptive to such non-delegation arguments since the 1930s.[32]

In addition to using Section 232 to impose tariffs on steel and aluminum, the Trump administration has also initiated several other Section 232 investigations that may eventually lead to other tariffs.[33] Following its announcement in May 2018 that it was starting a Section 232 investigation into automobiles and automobile parts,[34] the U.S. Department of Commerce held an initial hearing on this matter in July.[35] Separately, on July 18, the Commerce Department announced that it was beginning a Section 232 investigation "into whether the present quantity and circumstances of uranium ore and product imports

[27] *E.g.*, *id.*

[28] *E.g.*, *id.*

[29] For description of a challenge brought in March, see Galbraith, *supra* note 22, at 504.

[30] Complaint, Am. Inst. for Int'l Steel, Inc. v. United States (No. 18-00152) (U.S. Ct. Int'l Trade June 27, 2018).

[31] *Id.* at 1; *see also* Memorandum in Support of Plaintiffs' Motion for Summary Judgment, Am. Inst. for Int'l Steel, Inc. v. United States, 3 (No. 18-00152) (U.S. Ct. Int'l Trade July 19, 2018) (elaborating on this argument in the course of moving for summary judgment and emphasizing the absence of judicial review with respect to how the president exercises his or her discretion).

[32] *See* Margaret H. Lemos, *The Other Delegate: Judicially Administered Statutes and the Nondelegation Doctrine*, 81 S. CAL. L. REV. 405, 418 (2008) (observing that since 1935 "the Court has never since invalidated a federal statute on the ground that it delegates excessive lawmaking authority to an agency"); *see also* Keith E. Whittington & Jason Iuliano, *The Myth of the Nondelegation Doctrine*, 165 U. PA. L. REV. 379, 404 (2016) (observing that "[a] review of the Court's treatment of challenges to federal and state statutes on the grounds that they had impermissibly delegated legislative power to nonlegislative actors does not provide much basis for thinking that there was ever a seriously confining nondelegation doctrine as part of the effective constitutional order"). In its 2018 term, the Supreme Court will hear a case in which a criminal statute has been challenged as an unlawful delegation of executive power. Gundy v. United States, 138 S. Ct. 1260 (2018); *see also* Gundy v. United States, SCOTUSblog, *at* http://www.scotusblog.com/case-files/cases/gundy-v-united-states (noting that the issue at stake is "[w]hether the federal Sex Offender Registration and Notification Act's delegation of authority to the attorney general to issue regulations under 42 U.S.C. § 15913 violates the nondelegation doctrine").

[33] For a discussion of what Section 232 investigations entail, see Galbraith, *supra* note 21, at 316–18.

[34] U.S. Dep't of Commerce Press Release, U.S. Department of Commerce Initiates Section 232 Investigation into Auto Imports (May 23, 2018), *at* https://www.commerce.gov/news/press-releases/2018/05/us-department-commerce-initiates-section-232-investigation-auto-imports [https://perma.cc/A8XL-M79N].

[35] U.S. Dep't of Commerce Press Release, U.S. Department of Commerce to Host Public Hearing on the Section 232 National Security Investigation of Imports of Automobiles and Automotive Parts (July 12, 2018), *at* https://www.commerce.gov/news/press-releases/2018/07/us-department-commerce-host-public-hearing-section-232-national-security [https://perma.cc/PY8E-AKWQ].

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into the United States threaten to impair national security."[36] It remains to be seen how long these investigations will take or whether they will ultimately lead to tariffs. As a comparative data point, the Trump administration's steel and aluminum investigation ran from April 2017 to February 2018, resulting in the imposition of its first tariffs in March 2018.[37]

While Trump adjusted the steel and aluminum tariffs downward for several countries in the spring and early summer of 2018,[38] the month of August brought a notable upward adjustment with respect to Turkey. Earlier in the summer, Turkey had announced the imposition of retaliatory tariffs to the original steel and aluminum tariffs,[39] and relations between the two countries have further been complicated by Turkey's ongoing detention of an American pastor, Andrew Brunson.[40] On July 26, Trump tweeted that the United States would impose "large sanctions" on Turkey "for their long time detainment of Pastor Andrew Brunson, a great Christian, family man and wonderful human being" and called for Brunson's immediate release.[41] On August 1, the Trump administration imposed sanctions on two Turkish officials,[42] leading Turkish President Recep Tayyip Erdogan to order "his government to 'freeze the assets' in Turkey of the American counterparts of the targeted Turkish officials, describing them as 'the U.S. justice and interior ministers.'"[43] Then, on August 10, Trump issued a proclamation adjusting the Section 232 steel tariffs on Turkey from 25 percent to 50 percent.[44] This proclamation did not expressly reference Brunson, and explained the decision by saying that "Turkey is among the major exporters of steel to the United States for domestic consumption" and "[t]he Secretary [of Commerce] has advised me that this adjustment will be a significant step toward ensuring the viability of the domestic steel industry."[45] Erdogan has responded by increasing Turkey's retaliatory tariffs and urging a boycott of U.S. technology products.[46]

Despite escalating trade tensions on many fronts, over the summer of 2018 the United States reached a preliminary understanding with one major trading partner—the European Union—that there would be a "new phase in the relationship . . . of strong trade relations in

[36] U.S. Dep't of Commerce Press Release, U.S. Department of Commerce Initiates Section 232 Investigation into Uranium Imports (July 18, 2018), *at* https://www.commerce.gov/news/press-releases/2018/07/us-department-commerce-initiates-section-232-investigation-uranium [https://perma.cc/3WTK-4GBF].

[37] Galbraith, *supra* note 21, at 317–18.

[38] *See generally* Galbraith, *supra* note 21; Galbraith, *supra* note 22 (describing various country-specific carveouts).

[39] *See* Turkey Retaliatory Tariffs, *supra* note 25.

[40] For a general overview of Brunson's arrest and detainment, see Ezgi Erkoyun & Humeyra Pamuk, *U.S. Missionary Thrust to the Center of Turkey-U.S. Crisis*, Reuters (Aug. 18, 2018), *at* https://www.reuters.com/article/us-turkey-security-usa-brunson-insight/u-s-missionary-thrust-to-the-center-of-turkey-u-s-crisis-idUSKBN1L30DR.

[41] Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2018, 8:22 AM), *at* https://twitter.com/realDonaldTrump/status/1022502465147682817.

[42] U.S. Dep't of the Treasury Press Release, Treasury Sanctions Turkish Officials with Leading Roles in Unjust Detention of U.S. Pastor Andrew Brunson (Aug. 1, 2018), *at* https://home.treasury.gov/news/press-releases/sm453 [https://perma.cc/SJ37-JSHP] (describing these officials as having "leading roles in the organizations responsible for the arrest and detention of Pastor Andrew Brunson").

[43] Carlotta Gail, *Turkey's Erdogan Orders Retaliatory Sanctions Against American Officials*, N.Y. Times (Aug. 4, 2018), *at* https://www.nytimes.com/2018/08/04/world/europe/turkey-erdogan-sanctions-us.html (also noting that the U.S. officials identified are unlikely to have assets in Turkey).

[44] Donald J. Trump, Proclamation 9772—Adjusting Imports of Steel into the United States, 2018 Daily Comp. Pres. Doc. No. 531 (Aug. 10, 2018).

[45] *Id.*

[46] Colin Dwyer, *Turkey Counterpunches by Raising Tariffs on U.S. Goods*, NPR (Aug. 15, 2018), *at* https://www.npr.org/2018/08/15/638842407/turkey-escalates-fight-by-raising-tariffs-on-u-s-goods.

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which both of us will win."[47] On July 25, Trump met with President Jean-Claude Juncker of the European Commission. Following the meeting, the two held a joint press conference where they announced the understanding which they had reached. As Juncker described their meeting:

> We have identified a number of areas on which to work together. Work towards zero tariffs on industrial goods, that was my main intention: to propose to come down to zero tariffs on industrial goods.
>
> We've decided to strengthen our cooperation on energy. The EU will build more terminals to import liquefied natural gas from the U.S. This is also a message for others.
>
> We agreed to establish a dialogue on standards. As far as agriculture is concerned, the European Union can import more soybeans from the U.S., and it will be done. And we also agreed to work together on the reform of the WTO. This, of course, is on the understanding that as long as we are negotiating, unless one party would stop the negotiations, we will hold off further tariffs, and we will reassess existing tariffs on steel and aluminum.[48]

Trump explained that in order to build on this understanding, they would "set up immediately an Executive Working Group of very intelligent people on both sides."[49] He noted that "[w]hile we are working on this, we will not go against the spirit of this agreement, unless either party terminates the negotiation. So we're starting the negotiation right now, but we know very much where it's going."[50] In a speech later that day, Juncker indicated that going into the meeting he had been particularly concerned about the prospect of future automobile tariffs and characterized as "major progress" the U.S. commitment not to impose new tariffs during the course of negotiations.[51]

The final major development in U.S. trade relations in the summer of 2018 was that the "United States and Mexico have reached a preliminary agreement in principle, subject to finalization and implementation, to update the 24-year-old NAFTA with modern provisions representing a 21st century, high-standard agreement."[52] On August 27, 2018, Trump announced this agreement, remarking that "[w]e're going to call it the United States-Mexico Trade Agreement, and we'll get rid of the name NAFTA."[53] The agreement's terms have been described as including robust protections for intellectual property, various provisions aimed at dealing with the digital economy, an increase from $50 to $100 of the

[47] Donald J. Trump, Remarks to Members of the Press with President Jean-Claude Juncker of the European Commission, 2018 DAILY COMP. PRES. DOC. NO. 504 (July 25, 2018).

[48] *Id.* at 2.

[49] *Id.*

[50] *Id.*

[51] Doug Palmer, *Juncker Hails "Major Concession" from U.S. on Autos*, POLITICO (July 25, 2018), *at* https://www.politico.com/story/2018/07/25/trump-juncker-trade-concession-tariffs-1661543.

[52] U.S. Mission to Mexico Press Release, Modernizing NAFTA to Be a 21st Century Trade Agreement (Aug. 27, 2018), *at* https://mx.usembassy.gov/modernizing-nafta-to-be-a-21st-century-trade-agreement [https://perma.cc/YA2T-4JQ9].

[53] Remarks During a Teleconference Call with President Peña Nieto of Mexico To Discuss the United States-Mexico Trade Agreement and an Exchange with Reporters, 2018 DAILY COMP. PRES. DOC. NO. 548 (Aug. 27, 2018), *at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-phone-call-president-pena-nieto-mexico-united-states-mexico-trade-agreement (adding that "NAFTA . . . has a bad connotation").

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cutoff by which shipments can avoid duties and certain entry procedures, some changes with respect to investor-state dispute settlement, and increased labor and environmental protections.[54] As of late August, some major issues remain unsettled—most notably involving Canada's participation in the agreement.[55] Further details of this agreement and subsequent developments related to it will be covered in a later issue of *AJIL*.

International Human Rights and Humanitarian Law

D.C. Circuit Upholds Injunction Barring the Involuntary Transfer to an Unidentified Third Country of a U.S. Citizen Alleged to be an Enemy Combatant

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On May 7, 2018, the U.S. Court of Appeals for the D.C. Circuit blocked the transfer to an unidentified third country of a dual U.S.-Saudi national detained in Iraq as an alleged enemy combatant.[1] The decision, *Doe v. Mattis*, also upheld a district court order requiring the government to provide seventy-two hours' notice before transferring him to another country.[2] In an opinion authored by Judge Srinivasan and joined by Judge Wilkins, the court emphasized that while it was "respectful of—and with appreciation for—the considerable deference owed to the Executive's judgments in the prosecution of a war," "things are different" for alleged enemy combatants who are U.S. citizens.[3] Further proceedings in the district court could potentially address whether the U.S. military campaign against the Islamic State of Iraq and the Levant (ISIL) is lawful under U.S. domestic law.

The case stemmed from the capture of "John Doe" in September 2017 by Syrian Democratic Forces during clashes with ISIL on a Syrian battlefield.[4] After Doe was transferred to U.S. custody and detained as an enemy combatant,[5] the American Civil Liberties Union (ACLU) filed a petition for a writ of habeas corpus on his behalf in October 2017.[6] The ACLU argued that Doe had to be either criminally tried in a federal court or released, asserting that U.S. domestic law does not authorize the current military campaign against ISIL and by extension does not grant the "legal authority to detain an alleged member of ISIL."[7] The federal district court ordered the executive branch to provide the ACLU with "temporary, immediate and unmonitored access to the detainee so that it may inquire as to whether he wishes to have [it] or court-appointed

[54] United States-Mexico Trade Fact Sheet: Modernizing NAFTA to Be a 21st Century Trade Agreement, *at* http://www.sice.oas.org/tpd/nafta/Modernization/USA_MEX_Fact_Sheet_21st_Century_Agt_e.pdf (reproducing a fact sheet originally available on the USTR website but subsequently removed).

[55] *See* Ana Swanson, Katie Rogers & Alan Rappeport, *Trump Reaches Revised Trade Deal with Mexico, Threatening to Leave Out Canada*, N.Y. Times (Aug. 27, 2018), *at* https://www.nytimes.com/2018/08/27/us/politics/us-mexico-nafta-deal.html (also noting that issues relating to the steel and aluminum tariffs remain unresolved).

[1] Doe v. Mattis, 889 F.3d 745, 747–48 (D.C. Cir. 2018).

[2] *Id.*

[3] *Id.* at 749.

[4] *Id.*

[5] *Id.* (describing Doe's designation as an enemy combatant as a "preliminary determination").

[6] *Id.* at 750.

[7] *Id.*

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