Making Trade Policy Work in the Public Interest

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Abstract and Introduction

In his farewell address, George Washington argued that U.S. international trade agreements should be "the best that present circumstances and mutual opinion will permit, but temporary, and liable to be from time to time abandoned or varied, as experience and circumstances shall dictate."[1] Trade policy should, in other words, change to take account of contemporary circumstances and values. Yet since the end of the Cold War, U.S. trade policymakers have used a cut-and-paste system, with U.S. trade agreements varying only slightly from one agreement to the next.[2] As a consequence, current U.S. trade law is a poor fit for contemporary concerns about economic inequality, labor, and the environment. The United States needs a fundamentally new way to implement and enforce global trading rules that takes these concerns into account. This paper therefore proposes three reforms to the way the United States enforces trade law. First, U.S. trade laws and agreements should contain a "clawback" provision. If the United States determines that a trading partner is not complying with labor and environmental rules contained in U.S. trade agreements, the United States would be authorized to withdraw market access granted in those same trade agreements. Second, the United States should implement a "non-sustainable economy" designation. Such a designation would make it easier for the United States to impose additional duties (i.e., taxes on imports) that offset the cost advantages companies obtain by producing goods in violation of, or in countries that are in violation of, the labor and environmental obligations contained in U.S. trade agreements. Third, the United States should amend U.S. trade laws to only permit the imposition of such duties when they promote the public interest. Current U.S. enforcement practices benefit a narrow subset of U.S. companies and are prone to abuse. A public interest criterion would address these deficiencies by requiring the government to consider the effect of additional duties on labor markets, downstream industries, marginalized regions and communities, the environment, and economic growth more generally.

Enforcing Trade Agreements in the Public Interest

In recent decades, a wide range of commentators have urged that trade policy be treated as a silo. Trade policy should deal primarily, if not exclusively, with commercial considerations. Other issues, such as concerns about labor conditions or economic inequality, should be dealt with as a matter of domestic policy, even when trade policy affects those domestic issues.[3]

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[1] Washington, George. *Farewell Address* (1796).
[2] Claussen, Kathleen. "Separation of Trade Law Powers." *Yale Journal of International Law*, vol. 43, no. 2 (2018), pp. 315-54.
[3] For a discussion of this strand of argument, see Meyer, Timothy. "Saving the Political Consensus in Favor of Free Trade." *Vanderbilt Law Review*, vol. 70, no. 3 (2017), pp. 985-1026.

This framing lacks any historical or political foundation. U.S. trade law and policy has always been linked to broader contemporary concerns and values. During the early 19th century, Congress used the revenues generated by tariffs—then the primary source of the federal government's income—to invest in infrastructure programs in the young nation.[4] In the later 19th century, the Republican Party advocated for higher tariffs as a means of supporting wages for American workers.[5] Progressives in the early 20th century linked lower tariffs, and the resulting economic competition, with their domestic antitrust efforts.[6] At the end of World War II, the Allies negotiated the Havana Charter, a treaty designed to lay the foundation of international trade relations in the latter half of the 20th century.[7] In 1948, the Havana Charter already recognized the importance of fair labor standards to international trade, going so far as to mandate that each nation "take whatever action may be appropriate and feasible to eliminate [unfair labour conditions] within its territory."[8]

In subsequent years, such concerns receded in the face of the foreign policies pressures the Cold War placed on international and U.S. trade policy.[9] The end of the Cold War, however, created the political space for such concerns to reemerge. The United States began negotiating the lynchpins of post-Cold War trade era—the North American Free Trade Agreement (NAFTA) and the Marrakech Agreement creating the World Trade Organization (WTO)—during the Reagan and Bush 41 administrations. President Bush signed NAFTA in 1992 but was unable to obtain Congress's consent before leaving office. Many in the United States worried that U.S. firms would move jobs to Mexico following NAFTA to take advantage of lower production costs arising in part from poor labor and environmental practices and policies. Others viewed NAFTA as an opportunity to use access to U.S. markets as a carrot to get Mexico to improve its labor and environmental practices.

Consequently, when President Clinton took office in 1993, he decided to renegotiate NAFTA to include labor and environmental provisions. The resulting provisions—known as the NAFTA "side agreements" on Labor and the Environment[10]—were the first of their kind. In reality, though,

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[4] For a history of U.S. trade policy, see Irwin, Douglas A. *Clashing Over Commerce: A History of US Trade Policy* (2017).
[5] Huston, James L. "A Political Response to Industrialism: The Republican Embrace of Protectionist Labor Doctrines." *Journal of American History*, vol. 70, no. 1 (1983), pp. 35-57.
[6] Irwin (n 4), p. 313; Meyer, Timothy and Ganesh Sitaraman. "Trade and the Separation of Powers." *California Law Review*, vol. 107 (2019) pp. 583-672, p. 596.
[7] The Havana Charter, which would have created an International Trade Organization, ultimately could not win approval in the U.S. Congress. As a result, the temporary agreement that it was to replace, the General Agreement on Tariffs and Trade, became the primary international trade treaty until the creation of the WTO in 1995. For a more detailed history, see Johnson, Donald C. *The Wealth of Nation: A History of Trade Politics in America* (2018).
[8] Havana Charter art. 17., United Nations Conference on Trade and Employment, Final Act and Related Documents (March 24, 1948).
[9] For a more detailed discussion of how the Cold War changed the prism through which the United States viewed trade policy, see Meyer and Sitaraman (n 6) pp. 597-611.
[10] North American Agreement on Environmental Cooperation, opened for signature Sept.

they did little to address concerns that trade agreements undermine labor and environmental objectives. The side agreements fell short for two reasons. First, the side agreements only required governments to enforce their own labor and environmental laws.[11] The side agreements did not tell governments what those standards had to be. Second, these obligations could not be enforced through the ordinary dispute process that applied to the trade obligations in NAFTA.[12] The labor and environment provisions of these agreements were thus second class citizens.

Over time, the United States has addressed these inadequacies in the labor and environment provisions of its trade agreements. In 2007, the United States decided that going forward its trade agreements would require U.S. trading partners to live up to international labor and environmental standards, like those produced by the International Labour Organization or contained in multilateral environmental treaties. The United States also made labor and environmental provisions subject to ordinary dispute resolution, including the possibility of trade sanctions for violation. In the Trans Pacific Partnership, the Obama Administration went further, negotiating specific changes to the domestic laws of several other countries (Vietnam, Malaysia, and Brunei) that those countries would be required to make if they wished to be deemed in compliance with the labor and environmental provisions. Yet despite these efforts, labor and environment provisions of trade agreements are underenforced. To date, the United States has only taken a single dispute to a decision—a labor case against Guatemala—and it lost that case.[13]

This lack of enforcement stems from the second, more important choice the Clinton Administration when it renegotiated NAFTA and completed the WTO negotiations: the decision to treat unfair labor and environmental practices differently from unfair commercial practices. International trade rules make a basic distinction. If a country violates international trade rules, another country is not normally allowed to retaliate directly until an international tribunal determines that a violation has, in fact, occurred. Indeed, the United States' decision to give up the right to retaliate for violations of ordinary WTO rules without authorization from the WTO itself was critical to the success of negotiations.[14]

Laws targeting unfair trade practices, however, are exempt from this rule. Governments are allowed to enforce "fair trade" laws domestically without going first to an international body such as the WTO or NAFTA for permission. For instance, if a U.S. industry believes that a foreign

8, 1993, 32 I.L.M. 1480 [hereinafter "NAFTA Environmental Side Agreement"]; North American Agreement on Labor Cooperation, Sept. 14, 1993, 32 I.L.M. 1499 [hereinafter "NAFTA Labor Side Agreement"].

[11] NAFTA Environmental Side Agreement, art. 5 ("[E]ach Party shall effectively enforce its environmental laws and regulations through appropriate governmental action . . . ."); NAFTA Labor Side Agreement, art. 3 ("Each Party shall promote compliance with and effectively enforce its labor law . . . .").

[12] For a more detailed discussion of the NAFTA Side Agreements, see Meyer (n 3).

[13] The United States is in the early stages of a second dispute with Peru involving the environmental chapter the United States-Peru Trade Promotion Agreement, and just announced a third dispute with Korea under the United States-Korea Free Trade Agreement.

[14] Bown, Chad A. "The 2018 trade war and the end of dispute settlement as we knew it." *Vox* (June 13, 2019)

producer is selling its products in the United States for less than they would normally sell for (a practice known as "dumping") the industry can petition the government to impose an extra tariff (known as an "antidumping duty") to offset the unfair pricing.[15] Indeed, U.S. law requires the government to impose the extra duty if it determines that the products are indeed being dumped into the United States, and that such dumping is causing injury to a U.S. industry—the government has no discretion.[16] A similar law requires duties to counter subsidies foreign governments provide to foreign producers that cause harm to U.S. industries.[17]

To be sure, the WTO and free trade agreements like NAFTA have rules that govern the application of these fair trade laws. If the United States determines that another country is engaged in unfair trade practices and the other country believes the United States' determination does not comply with international rules, that other country can challenge the U.S. action. If the United States loses, it would be obligated to remove the additional duties. But fair trade laws reverse the ordinary rule in international trade. They preserve an aggrieved nation's right to act, while normal trade rules subject an aggrieved nation's right to respond to time-consuming multilateral adjudication.

This discrepancy has led to a situation in which companies harmed by trade practices that the law deems unfair, such as dumping or foreign subsidies, are entitled to remedies. But groups harmed by other kinds of unfair trade practices that the law deems unfair, such as labor and environmental standards that fall below international rules, must rely on the government's discretion. To combat this problem, the next U.S. administration should ask Congress to amend U.S. trade laws to permit the United States to respond directly and automatically to unfair labor and environmental practices, and should negotiate corresponding amendments to international rules. Specifically, the next administration should propose three changes to boost the enforcement of labor and environmental provisions of trade agreements: 1) the insertion of a "clawback" provision; 2) the creation of a "non-sustainable economy" designation; and 3) the creation of a public interest criterion for the imposition of trade remedies responding to unfair trade practices.

A. A Clawback Provision

Beginning with NAFTA, U.S. trade agreements have swapped access to markets for, among other things, improved compliance by U.S. trading partners with international labor and environmental standards. These international standards are already contained in multilateral instruments. The real value of including an obligation to comply with these standards in U.S. trade agreements is therefore to provide better incentives for U.S. trading partners to actually comply with these obligations. Better compliance with these standards can benefit the countries that impose those standards, as well as American workers who must compete with products and service providers

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[15] Jones, Vivian C. "Trade Remedies: Antidumping and Countervailing Duties." *Congressional Research Service* (Dec. 5, 2014); see also Tariff Act of 1930, 19 U.S.C. §§ 1671-1677n.
[16] The Commerce Department determines whether dumping is occurring, while the independent International Trade Commission determines whether the dumping is causing injury to a U.S. industry. Tariff Act of 1930, 19 U.S.C. §§ 1671-1677n.
[17] These duties are known as "countervailing duties." Together, antidumping and countervailing duties are often called "trade remedies." See Jones (n 15).

located in other countries. It can help ensure that U.S. workers do not pay an economic price for our collective commitment to hire labor and environmental standards.

The absence of robust enforcement of labor and environmental provisions has rendered this swap a fiction. U.S. trading partners gain access to U.S. markets, disrupt U.S. businesses, and cost U.S. workers jobs without fear of penalty if they do not comply with international labor and environmental rules to which they have agreed. A "clawback" provision applied to labor and environmental provisions would solve this problem. It would provide the United States with a mechanism to reimpose trade barriers automatically and unilaterally if a country did not bring itself into compliance with labor and environmental rules.

A clawback provision in the U.S. Code might provide, for instance, that:

> If at any time the International Trade Commission (ITC) determines, either on its own initiative or in response to a petition from an interested person, that a party to a trade agreement with the United States has not complied with the obligations contained in the Labor and Environment Chapters contained in such agreement, the ITC shall recommend the suspension of trade concessions adequate to ensure the party's future compliance. In choosing the value of suspended concessions and which concessions to suspend, the ITC shall aim to deter ongoing and future violations while minimizing the adverse impact on marginalized economic groups and regions within the United States. The ITC's recommendations shall automatically enter into force 90 days after their issuance unless one of the following occurs: 1) the ITC determines that the other party has taken significant and adequate steps to ensure its future compliance; or 2) Congress passes legislation overturning the ITC's recommendations. Once in force, the suspension of concessions shall remain in place until such time as the ITC determines that the offending party has brought itself into compliance with the obligations the ITC had determined it was violating.[18]

This provision does three things. First, it creates a mechanism in U.S. domestic law to automatically suspend concessions following an investigation by an independent agency, the ITC. Because the ITC is an independent agency, only Congress could overturn the ITC's decision to suspend concessions—an important check on the President's control over trade policy.

Second, interested domestic parties (e.g., labor unions or environmental NGOs) can trigger the investigation by filing a petition. If the ITC finds that the petition meets certain standards prescribed by law, the ITC would be required to investigate. If the ITC finds a violation, it would be required to impose penalties sufficient to deter the violation. This automaticity—which mirrors the automaticity that already exists for commercial fair trade laws (i.e., antidumping and subsidies laws)-- represents a significant step forward over the discretion that the government currently has

[18] Such a provision would be inserted in the Tariff Act of 1930, 19 U.S.C. §§ 1671-1677n. A related provision would go in future U.S. trade agreements acknowledging the United States' right to clawback trade concessions if a country does not comply with labor and environmental obligations. The United States negotiated such a provision in its consistency plans with several members of the Trans Pacific Partnership. See United States- Viet Nam Plan for Enhancement of Trade and Labour Relations art VIII.

when investigating and bringing labor and environment cases. Unfair and unlawful labor and environment practices would be treated in the same way, and with the same seriousness, as unfair commercial practices.

Third, it defines the level of suspension as that which will deter ongoing and future violations. Under current trade law, it is not clear what kind of sanctions the United States would be able to impose if it were to win a labor or environment case. Trade law generally allows the winning party to retaliate in response to a violation if the other country does not cease the violation.[19] However, the level of retaliation is generally limited to the level of harm (called "nullification or impairment") caused by the violation.[20] This remedy has two drawbacks. First, it only offsets the harm; it does not allow for remedies high enough to deter ongoing or future violations. Second, it is hard to measure the impact on the United States of, for instance, labor violations in Guatemala. Yet trade law requires a measure of that impact in order to know the amount of trade concessions that can be suspended. A clawback provision tied to the amount of retaliation necessary to deter future violations avoids these problems, while also signaling the United States' commitment to honoring labor and environmental standards.

B. Non-Sustainable Economy Designation

A complementary reform is to adapt antidumping duties to allow them to get more directly at labor and environmental violations. As noted above, antidumping duties are imposed to counter imports that are priced abnormally low. The methodology through which antidumping duties are calculated is already very flexible, leading countries like the United States and the EU to use antidumping duties to protect their producers against state-subsidized capitalism in countries like China,[21] or environmentally-inferior products such as first-generation biofuels created through slash-and-burn agricultural policies.[22] But antidumping rules were not really designed with these uses in mind. The WTO in particular has been aggressive in trying to rein in the expansive use of antidumping duties. The United States has responded to these efforts by blocking the appointment of new members of the WTO's highest tribunal, the Appellate Body. As of December 2019, the Appellate Body will no longer have enough members to hear cases, effectively curtailing the WTO's ability to operate as neutral arbiter of international trade disputes.[23]

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[19] Cimino, Isaacs, Cathleen D., Rachel F. Fefer, and Ian F. Fergusson. "World Trade Organization: Overview and Future Direction." *Congressional Research Service* (Feb. 15, 2019), at p. 11.

[20] WTO Dispute Settlement Understanding art. 22.4.

[21] Crowley, Meredith A. and Jennifer A. Hillman. "Slamming the Door on Trade Policy Discretion? The WTO Appellate Body's Ruling on Market Distortions and Production Costs in *EU-Biodiesel (Argentina)*." *World Trade Review*, vol 17, no. 2 (2018), pp. 195-213.

[22] Fischer, Carolyn and Timothy Meyer. "Baptists and Bootleggers in the Biodiesel Trade: *EU-Biodiesel (Indonesia)*." *World Trade Review* (forthcoming 2020).

[23] Bown (n 14); Cimino-Isaacs et al (n 19) p. 44.

Creating a "non-sustainable" economy designation would break this impasse and, at the same time, create a firm legal foundation for the United States to enforce labor and environmental standards. U.S. and WTO law allow nations to treat other countries as "non-market economies" (NME).[24] Under U.S. law, a NME is any foreign country that the U.S. Department of Commerce deems not to "operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise."[25] In practical terms, this designation makes it easier for the United States to respond to market distortions in exporting countries like China through the imposition of higher antidumping duties.[26]

A "non-sustainable economy" designation would do the same thing for labor and environmental violations.[27] The designation would apply, for instance, to any country that the Commerce Department deems: "to have labor or environmental practices that systematically deviate from the standards contained in the Labor and Environment Chapters of U.S. trade agreements." The focus would be on practices on the ground. Thus, while a lack of government enforcement of labor and environmental standards could be the basis for a non-sustainable economy designation, purely formal or symbolic enforcement efforts would not prevent the designation.

The creation of this designation would have four benefits. First, it would give countries with poor labor and environmental practices an incentive to do more than just go through the motions of complying with international standards.[28] A non-sustainable economy designation would result in duties on its products that would lead to higher prices, thereby reducing its market share in the

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[24] Morrison, Wayne M. "China's Status as Nonmarket Economy (NME)." *Congressional Research Service* (Jan. 10, 2019).

[25] Ibid.

[26] More technically, the dumping margin is equal to the "normal value" of a product minus its export price. Normal value is usually calculated using the price of the product within the exporting country. When the price within the exporting country is higher than the price at which it exports the price, the dumping margin is positive. In non-market economies like China, however, an individual firm's costs (and thus the prices at which it sells it goods, i.e., normal value) are often low due to extensive government support for business. An NME designation allows the Commerce Department to ignore these artificially low prices within the exporting country and instead use surrogate prices from a third country that Commerce deems undistorted. The result is a higher "normal value," leading to a higher dumping margin and higher duties. See Shaffer, Gregory. "Retooling Trade Agreements for Social Inclusion." *University of Illinois Law Review*, vol. 2019, no. 1 (2019), pp. 1-44.

[27] An alternative approach would be to institute a full-blown regime designed to counter "social dumping."

[28] Countries with labor and environmental standards that fall below international standards will have lower costs of production as a result. Therefore, in an antidumping investigation, "normal value" will be a low number that reflects the lower costs from unlawful labor and environment standards. A non-sustainable economy designation would allow the United States to substitute price and cost data from a country that has sustainable practices, instead of using price data for the non-sustainable economy. Because of the way antidumping duties are calculated, the result of increasing the prices and costs will be higher duties on products produced in non-sustainable countries.

United States. To help developing countries avoid the risks associated with this designation, the United States, along with its allies, could provide technical assistance. The law could also incorporate a waiver that the executive branch could grant developing countries.[29]

Second, it would ensure that U.S. markets are not a vehicle for supporting unsustainable practices abroad. Higher prices on products from countries using non-sustainable practices would lead to more imports from countries that engage in sustainable practices, as well as more market share for sustainable American producers. Third, it would provide protection to U.S. producers from products produced with unfair labor or environmental practices. This protection ensures that U.S. companies and workers do not pay for our nation's choice to have high labor and environmental standards. It would achieve these benefits by allowing U.S. petitioners to avoid cumbersome and often difficult product-by-product determinations regarding the sustainability of practices overseas.

Fourth, if enshrined in WTO law, the proposal would also go a long way towards resolving the impasse at the WTO. The United States and the European Union have been unwilling to give up the expansive use of antidumping duties. Indeed, since June 2018 the EU has implemented a more modest version of this proposal.[30] Legalizing their use against labor and environmental violations will therefore reduce tensions that have threatened the viability of WTO dispute settlement as a means of resolving broader disputes between nations.

C. Public Interest Criterion for Trade Remedies

Finally, U.S. law should the government to find that the imposition of additional duties is in the public interest before it can impose them on foreign products. Doing so would be an important check on the government's ability to use duties to reward its allies, a concern that the Trump administration's practices have raised.[31]

Existing U.S. fair trade laws require the government to impose duties based on criteria that protect against harm to U.S. companies. But they do not require, or indeed permit, a broader assessment of the impacts of the duties imposed. Specifically, to impose additional duties on a product, U.S. fair trade laws currently require only a showing of an 1) unfair trade practice (i.e., dumping or subsidization) that 2) causes an injury to a domestic industry. By raising the price of imports, duties allow companies to sell more products at higher prices to U.S. consumers, a category that includes both retail consumers and other U.S. businesses. In imposing this cost on consumers, however, the government does not ask whether the companies who benefit—who sell more of their products at higher prices—share the gains from this protection with other stakeholders, such as workers; invest

[29] Developing countries, as used here, would not include countries like China or South Korea.
[30] European Commission. *Europe's Trade Defence Instruments Now Stronger and More Effective* (June 7, 2018).
[31] Tankersly, Jim. "Steel Giants with Ties to Trump Officials Block Tariff Relief for Hundreds of Firms." *New York Times* (Aug. 5, 2018); Chapman, Steve. "Trump tariffs are not about national security or dumping." *Chicago Tribune* (Mar. 7, 2018).

the additional revenue from government protection in making themselves more competitive;[32] or, on the other hand, whether the duties produce offsetting harms within the United States, such as by increasing unemployment in other sectors of the economy or limiting opportunities for environmentally-friendly products.

To give one illustration, U.S. steel manufacturers have benefitted from the imposition of antidumping and countervailing duties, as well as the 25 % "national security" tariff President Trump has imposed. Yet steel workers did not share in those gains and voted to strike last year in order to extract pay raises from firms benefitting from the Trump administration's trade policies.[33] Under the public interest criterion, the fact that steel firms have not shared the benefits of trade remedies with labor interests would counsel against a finding that future duties on steel imports are in the public interest.

Similarly, while the imposition of duties can help an injured domestic industry, it can also harm other U.S. industries. For instance, additional duties imposed on steel imports protect U.S. steel manufacturers, but harm U.S. industries that purchase steel, such as the construction, manufacturing or auto industries.[34] A finding of substantial collateral damage would counsel against imposing new duties.

To correct this problem, fair trade laws should require a finding that the imposition of duties in response to unfair trade practices is in the public interest before such duties are imposed.[35] In evaluating whether duties are in the public interest, the Commerce Department should be required to consider: 1) the impact of the duties on downstream U.S. industries, 2) the effects on labor interests in both the protected industry and downstream industries, 3) the geographic impact of the

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[32] Another body of U.S. law that provides for protection, known as safeguards law, does allow the government to inquire into how a company proposes to use the protection the government gives it. 19 U.S.C. §§ 3351-58.

[33] Mosbergen, Dominique. "Trump Boasts About Steel Industry's 'New Life' As More Steelworkers Vote to Strike." *Huffington Post* (Sept. 19, 2018).

[34] Carey, Nick. "Trump tariffs force tough choices at U.S. auto suppliers." *Reuters* (Jan. 17, 2019).

[35] The European Union already has such a rule, requiring that measures such as antidumping duties be in the "community interest."

duties,[36] 4) the environmental impacts of the duties,[37] and 5) the effect on consumer prices. These factors should not be subject to quantitative cost-benefit analysis. Such an analysis will usually dictate that duties not be imposed. Rather, the purpose of the public interest criterion is to require the government to describe the costs and benefits of the proposed duties and to offer a reasoned explanation for how it considered and weighed those costs and benefits. The goal is to force the government to explain and justify its distributive choices. A failure to adequately assess the cost and benefits and offer a reasoned explanation for its choices would constitute grounds for a court to set aside the government's duties. Likewise, the failure of the companies that benefit from protection to make good on sharing the gains from protection with additional stakeholders, such as labor groups, would be grounds for the government to reconsider the imposition of duties.

A public interest criterion has several benefits. First, it more closely aligns the enforcement of U.S. trade laws with the protection of diverse constituencies and communities that depend on international trade for their economic livelihood. In other words, a public interest criterion cuts down on the amount of corporate welfare in U.S. trade law, instead ensuring that U.S. workers, industry, and the U.S. public at large benefit from the government's efforts. Second, the public interest criterion ensures that expanding enforcement of U.S. fair trade laws does not cause significant harm to the U.S. economy. As noted above, duties imposed in response to unfair trade practices typically come with a cost for U.S. consumers. Increased enforcement of U.S. fair trade laws could greatly increase those costs. A public interest criterion guards against the risk that increasing such enforcement rewards protected industries while causing harm to downstream industries, workers, and American consumers.

Conclusion

Today, we view practices that undermine our commitment to labor and environmental standards and economic equality as unfair. As George Washington reminded the Nation over two centuries ago, when contemporary opinions change, so too should our trade policies.

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[36] Trade policy has by and large ignored geographic impacts of trade policy. Recent research has demonstrated, however, that trade policy has significant geographic impacts, often causing lasting harm in to individual American communities. Autor, David, David Dorn, and Gordon H. Hanson. "The China Shock: Learning from Labor Market Adjustment to Large Changes in Trade." *IZA Discussion Papers* No. 9748 (2016). For this reason, U.S. trade policy consider geographic impacts much more directly than it currently does. For more on geographic impacts, see Hammond, Samuel. "Announcing the Struggling Regions Initiative." *Niskanen Center* (April 10, 2019). For how geographic impacts might be incorporated into trade policy, and for a longer reform agenda, Meyer, Timothy and Ganesh Sitaraman. "A Blueprint for a New American Trade Policy." *The Great Democracy Initiative* (Dec. 2018).

[37] Trade enforcement disputes have tended to target environmentally-friendly products, giving trade enforcement an anti-environmental bias that a public interest criterion could help correct. See Meyer, Timothy. "Free Trade, Fair Trade, and Selective Enforcement." *Columbia Law Review*, vol. 118, no. 2 (2018), pp. 491-566.