

History of Globalization: Surviving the New Era of Higher Tariffs

SC/NC District Export Council Annual Meeting

12-2pm; November 15, 2018

Carolina Country Club, Spartanburg, South Carolina

Nelson Mullins[®]
Nelson Mullins Riley & Scarborough LLP



Jay Rogers Bio

- Legal Counsel, International Business & Trade
- Advise U.S. and foreign companies and individuals with respect to:
 - mergers and acquisitions
 - corporate and capital structures
 - economic development incentives offered by local, state and national governments
 - offshore financial compliance issues, including FBAR disclosures
 - dispute resolution, including cross-border arbitration, litigation and mediation
 - commercial relationships with vendors, customers and lenders
 - U.S. and foreign Customs and trade matters
 - Spanish (proficient) and Portuguese (fluent)

jay.rogers@nelsonmullins.com
Phone: (864) 373.2216

Jay Rogers Bio (continued)

- **Represented clients across a range of industries, including manufacturing, consumer finance, distribution, business services and information technology;**
- **Arranged state and county incentives for economic development announcements exceeding \$770 million in 2015-16**
- **Handled transactions (including the set-up of business entities, joint ventures and contractual trade relationships, along with associated cross-border tax planning) throughout the United States and in more than a dozen foreign jurisdictions, including Mexico, Brazil, the Dominican Republic, British Virgin Islands, Guatemala, Paraguay, Honduras and the Bahamas, among others;**
- **Represented foreign investors from Brazil, Mexico, the United Kingdom, Italy, France and Germany in setting up operations in the United States**
- **Handled a variety of U.S. customs-related matters, including resolving disputes with customs enforcement officials, formation of Customs Bonded Warehouses and the administration of Foreign Trade Zones**

Firm Overview

- **Nelson Mullins Riley & Scarborough LLP provides advice and counsel in litigation, corporate, securities, finance, banking, mergers and acquisitions, financial services, healthcare, technology, intellectual property, labor and employment, government relations, regulatory, bankruptcy and creditors' rights, immigration, international law, and other needs of clients ranging from private individuals to large businesses.**
- **With more than 65 diversified practice areas, Nelson Mullins works closely with its clients to find solutions to legal and business problems. With more than 500 attorneys and government relations professionals practicing from offices in Florida, Georgia, Massachusetts, New York, Tennessee, West Virginia, California, Colorado, the District of Columbia, and throughout the Carolinas, Nelson Mullins has strong roots in the business community and an appreciation for new directions in the business world.**

Trade in the Historical and Geopolitical Context

**The Geopolitical Dog Wags
the Trade Tail.**

Geopolitics, Technology and Trade: Some Foundational Facts

- **Geopolitics and technology create the conditions under which trade flourishes (or doesn't).**
- **Water is 7 times more efficient in transporting goods than any land based system. Water is 50 times more efficient than air transportation.**
- **United States has greatest internal riverine transportation system on the planet, by far, in the Mississippi delta. Greatest natural deep water port system in the world, by far. And water is the most efficient means of trade, by far.**
- **US had the largest economy in the world in 1871, just 80 years after the country was founded.**

More Foundational Facts

- **75% of the world's population lives within 100 kilometers of the seacoast or an inland navigable waterway.**
- **All great nation-states have commanded the waterways. They are the key drivers of trade, wealth and military power.—Admiral Mahan, late 19th Century (favorite student, Teddy Roosevelt).**
- ***The American Navy polices the world's oceans, without which global trade would collapse.***

History of Globalization in 4 Phases

- **Phase 1: Invention of the Caravel and Globalization Under the Flag of Empire, 1492 to 1914**
- **Phase 2: Collapse of the Old Order and De-globalization, 1914 to 1945**
- **Phase 3: The American World Order Under Bretton Woods, 1945 to 2016**
- **Phase 4: Collapse of Bretton Woods and the New Era of De-globalization, 2017-?**

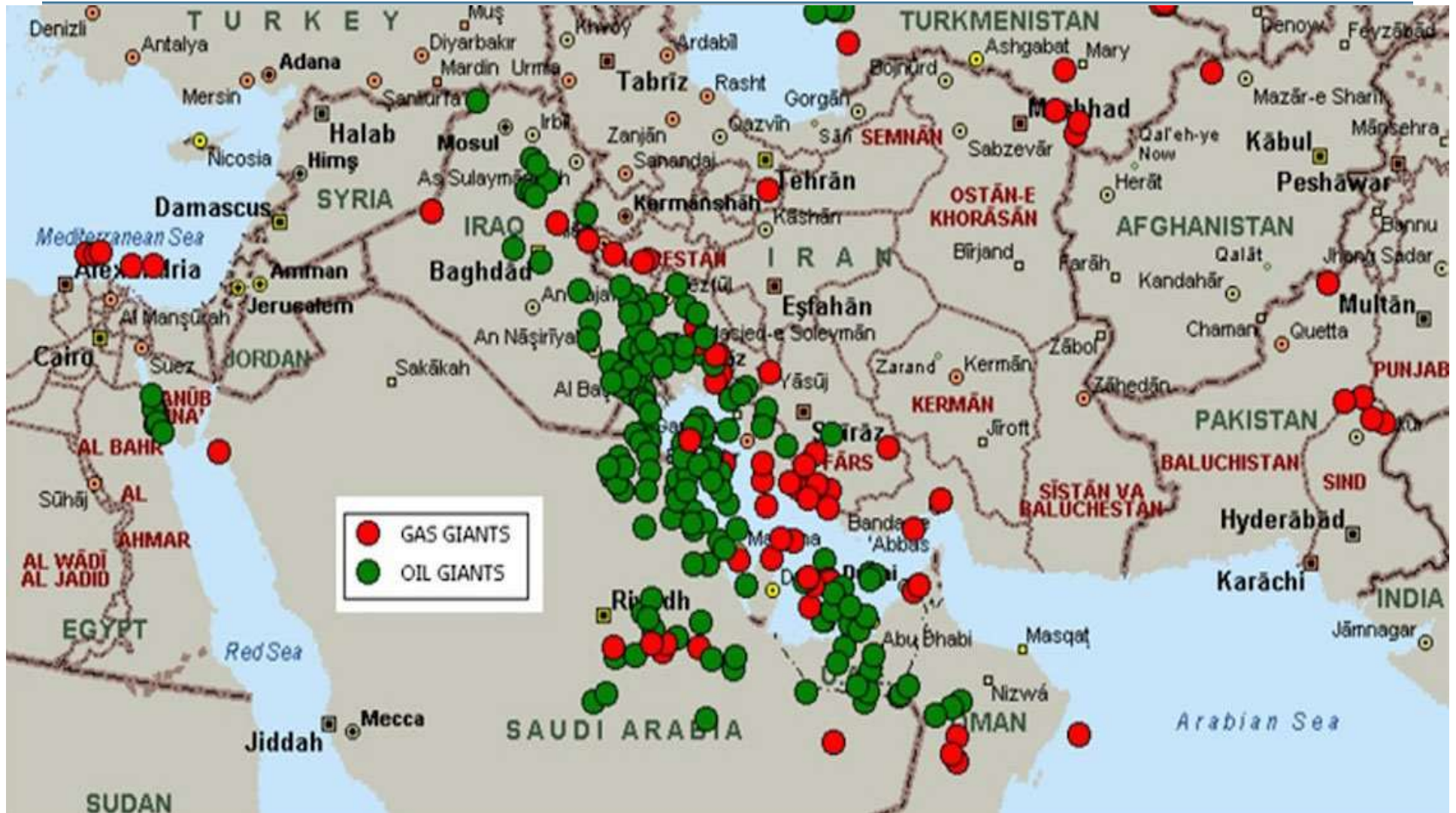
Bretton Woods: 2 Key Dates in the Arc of the American World Order

- **1945-- The American Strategic Dilemma: permanently station 1 million American troops in Western Europe or bribe up a global alliance based on free and easy access to the US market, which then represented 50% of global GDP.**
- **The trade off: not a great deal economically for the U.S., but better than the alternative.**
- **1973: The Oil Embargo and the Second Pillar of Bretton Woods**

1973 OPEC Crisis

- **OPEC made manifest a second strategic rationale for the Bretton Woods system: American dependence on imported oil.**
- **Oil has been critical to national security since Winston Churchill converted the British Royal Navy from coal to oil in the 1910's.**
- **55% of World's proven oil reserves found in Persian Gulf as recently as 2006**
<https://www.strausscenter.org/hormuz/oil-in-the-persian-gulf.html>

Persian Gulf Oil Fields



Tariffs in the Bretton Woods Era

- **The average American tariff in 1945, the era of Smoot Hawley, was 59.1%**
- **Thanks to GATT and WTO, per World Bank the average American tariff on manufactured goods in 2014 was 2.76%**
- **So, most American businesses haven't given much deep thought to managing tariffs in decades**

The End of Bretton Woods?

- **In most ways, Bretton Woods has been wildly successful, with stunning decreases in global poverty, disease, violence and hunger. So why is Bretton Woods ending?**
- **1989: Soviet Collapse**
- **2017: Energy Independence for the U.S.**
- **Is there still a cold war or energy-driven strategic rationale for bribing the rest of the world with easy access to the US market?**
- **American taxpayers spend \$180 billion a year on the only truly global navy in the World. Who benefits? China, Germany, Japan, etc. Meanwhile the U.S. a \$700 billion trade deficit.**

Does it Matter?

- **Aside from energy, only 7% of the American economy is dependent on international trade, on a par with Ethiopia, Afghanistan, Rwanda and Sudan.**
- **(Once more, for emphasis): United States has greatest internal riverine transportation system on the planet, by far, in the Mississippi delta. Greatest natural deep water port system in the world, by far. And water is the most efficient means of trade, by far.**
- **The Chinese are, on the most optimistic scenario, decades from having a blue water navy capable of keeping the world's sea lanes open.**
- **Additional Reading: The Accidental Superpower by Peter Zeihan for a sunny view of how this story ends; Robert Kagan's The Jungle Grows Back if you don't want to sleep at night.**

So, Are High Tariffs an Aberration?

- **No. High tariffs are the result of a fundamental shift in geopolitics brought by a historical reversion to isolationism, the default U.S. foreign policy from 1776 until December 7, 1941.**
- **For the first time since 1945 we have bi-partisan anti-trade rhetoric in the U.S. political establishment, although there are still some free traders in the Republican Party.**
- **Last Multi-Lateral Trade Agreement the U.S. signed was CAFTA (2004). Only bilateral deals since 2004.**
- **DOHA round of WTO negotiations stalled.**

“New Normal” of High Tariffs?

- **TPP (Trans-Pacific Partnership) currently dead, at least as far as U.S. is concerned.**
- **NAFTA attacked but survived.**
- **FTAA (Free Trade Area of the Americas) comatose.**

Survival Strategies

- **With respect to Section 301 (China) and Section 232 Tariffs (steel and aluminum, potentially autos/auto parts), businesses can apply for a product exclusion although as to 301, currently only available for “List 2” products and only until mid-December, 2018. And it’s an uphill battle, very few petitions granted.**
- **Summary of the “request for exclusion” process for 301 tariffs**
<http://www.greenvillebusinessmag.com/2018/10/04/181394/legal-strategies-for-surviving-trump-s-china-tariffs>
- **According to [CSMS Message 18-000419](#), Section 301 duties are eligible for duty drawback for exporters**

Survival Strategies (con't)

- **With respect to Section 301 China tariffs, moving some portion of production to another country to alter country of origin determination. Generally speaking, product must be “substantially transformed” in another country outside China per National Hand Tool vs. U.S., 16 CIT 308 (1992) to avoid Section 301.**
- **Tariff shifting as a form of substantial transformation under NAFTA, KORUS (Korea FTA), etc.**

Survival Strategies (con't)

- **Lower dutiable value via First Sale doctrine: is your vendor the manufacturer or an intermediary? If an intermediary must consider First Sale doctrine.**
- **Transfer Pricing: impact of Trump tax cuts on international tax planning**
- **Review vendor contracts to determine whether they may be terminated due to force majeure based upon tariff increases**

Survival Strategies (con't)

- **Consider strategic use of “binding advance rulings” from Customs regarding: tariff classification, country of origin, appraised value, eligibility for preferential treatment under a trade agreement. Customs advance rulings may be “prospective” but must involve concrete, specific facts, not just a hypothetical.**
- **Do vendor contracts make clear who is Importer of Record? The Importer of Record is primarily responsible for tariffs and customs compliance generally.**

What's Next?

**“Predictions are hard, especially about The Future.”
--Yogi Berra**

- **With the EU, Trump will bang the table and re-arrange the furniture a bit, but will ultimately work things out, as he did with Canada, Mexico, South Korea, and as he will likely do with Japan and TPP (Trans-Pacific Partnership).**
- **The tension with China is more problematic. Getting tough on China is one of the few bipartisan issues in Washington these days.**
- **Prepare to see History re-start, Francis Fukuyama notwithstanding.**
- **Globalization likely to stop permanently? Or is this merely a “pause?” Even two World Wars did not permanently halt globalization.**
- **Unless Stephen Hawking was correct...the role of technology in 1492 and today....**



Questions ?