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Kathleen Claussen is Associate Professor at the University of Miami School of Law where she focuses on international business and dispute settlement procedure. Prior to joining the Miami Law faculty in 2017, she was Associate General Counsel at the Office of the U.S. Trade Representative in the Executive Office of the President. She has also served as Legal Counsel at the Permanent Court of Arbitration in The Hague. Kathleen received her law degree from the Yale Law School.

## *Trade & Security Exceptionalism*

U.S. trade law suffers from a type of legal schizophrenia. On the one hand, the United States has sought since the mid-twentieth century to liberalize global trade policy. The resulting multilateral trade law regime and plethora of plurilateral trade agreements have successfully broken down barriers to trade across the world and across a variety of both goods and services sectors. But alongside those moves, U.S. and international trade law have also created exceptions and authorities to depart from those primary rules in instances of national security or other under criteria that comprise a risk to U.S. economic security. Taken together, these two legal categories seem benign. But when the former is overtaken by the latter, the result is a global economic and legal crisis. This Article makes three contributions. First, I argue that the neoliberal consensus that has dominated the last fifty years of trade rule development has exceptionalized national security to its detriment. I provide a thorough descriptive account of the two categories of delegations that constitute our exceptional trade-security apparatus and show that emergencies and exceptions have grown in scope and power despite a time of relative trade peace since the 1990s. Second, I argue that these delegations have made the president a manager-agent on trade and security, leading him to rely on what I term “trade executive agreements” in recent years to go beyond the intended delegations and create binding rules with U.S. trading partners outside of congressional reach. Finally, I make a normative case for reframing trade and national security within what I call the trade rule of law. I apply alternative visions of trade and security – visions that have long dominated U.S. history, but that have been overshadowed in recent years – to reconstruct the congressional-executive relationship on trade.