

CURRENT TRADE POLICIES AND THE US ECONOMY

Statement by
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The Trump Administration has clearly abused Congressional intent and arguably some of its legislative authorities in implementing current trade policies. Congress should act urgently to rein in the excesses of the Executive Branch.

There is no evidence that imports of steel and aluminum from some of our closest allies—Canada, Europe, Japan, Korea, Mexico and Turkey—have damaged or threatened to damage the national security of the United States. Hence there is no justification for invoking Section 232 of the Trade Expansion Act of 1962. (The steel tariffs are also extremely costly in economic terms: they have saved perhaps 12,000 steel producing jobs at an average cost of \$900,000 each.)

There would be even less justification for invoking that provision to impose import restrictions on motor vehicles and auto parts, as suggested by the Secretary of Commerce in May, on the grounds that research and development by “American automotive companies” (presumably only Ford, General Motors and Tesla) is essential for US national security and that such R&D investment would be encouraged by restricting competition in the US auto market.

An even more egregious stretch is the President’s threat, clearly still in place, to apply tariffs against all imports from Mexico unless that country takes far-reaching steps to restrict immigration into the United States across its border. The legal justification would be premised on a declaration of national emergency under Section 203 of the International Emergency Economic Powers Act of 1977 (IEEPA), a highly dubious proposition in this case. In any event, tariffs have never been used to pursue such a non-trade objective and IEEPA has never been used to impose tariffs.

President Trump has also deployed tariffs in three cases that are at least arguably justifiable in domestic legal terms: “safeguard” duties on washing machines and solar panels, and retaliatory barriers against China’s violation of US intellectual property rights. The international legality of these cases, however, is being challenged in the World Trade Organization and they have already produced retaliation against US exports (China, which has also reduced its tariffs against all countries other than the United States) and possible further retaliation pending the WTO outcomes (Japan, Korea and India).

This pattern of protectionism represents an unprecedented and massive reversal of US trade policy. If fully implemented, all of the mooted tariffs (or their equivalents via quotas or negotiated managed trade agreements) would essentially apply a tax of 25 per cent to over \$1 trillion of US imports. This would amount to a tax increase of more than \$250 billion on the American public, which ultimately pays most if not all of the cost of the tariffs, without Congressional approval. It would more than offset the tax cuts of a year ago.

The foreign countries which are adversely affected by the US tariffs will retaliate, if they have not already done so, to a similar extent against US exports. This would roughly double the hit of the President's trade policy to the US economy.

In addition, President Trump has threatened to withdraw the United States from NAFTA, including as a tactic to force Congressional approval for his renegotiated United States/Mexico/Canada Agreement (which, incidentally, has hurt rather than helped US competitiveness). This would disastrously disrupt supply chains in the automotive, textile/apparel and many other sectors with very substantial further costs to our economy. The United States has never withdrawn from a free trade agreement and it is unclear whether the President has legal authority to do so without Congressional approval. (President Trump also made a major mistake in withdrawing the United States from the TransPacific Partnership (TPP), whose other members have proceeded with the agreement without the United States and from which exclusion we are now losing an estimated \$130 billion per year.)

The uncertainty surrounding all these actions and threats dampens confidence in the economic outlook, as we are already seeing, and will deter investment. These three economic effects, taken together, could take a full percentage point or more off US growth and even tilt the country into recession. The uncertainty also has a profound impact around the world on the credibility of the United States as a potential negotiating partner and as a faithful proponent of the rule of law.

Lawyers will endlessly debate the legality of the President's actions under current domestic and international law. The courts tend to defer to the Executive on matters of national security and foreign policy. The Administration will argue that it needs to retain full flexibility to use tariffs as a negotiating tool. There is widespread agreement, which I share, that many of China's restrictive trade and industrial policies must be reformed. Congress has been correct over the years to delegate authority to the President to negotiate the details of trade agreements with other countries, within guidelines determined by the Congress itself.

But the Administration is clearly violating Congressional intent and arguably at least some of the laws that it is invoking. Congress should now clarify and assert its Constitutional responsibility to determine US trade policy. This is important both to rein in abuses of delegated powers to the President and to preserve needed Presidential negotiating authority for this and future US presidents.

Congress should require the President to seek its approval, or at least consult with it, regarding any proposed new tariffs on the basis of an analysis of the potential gains of the initiative, and its costs, in both economic and foreign policy terms. Congress should more sharply define "national security" for purposes of Section 232 and IEEPA to prevent abuse of

those statutes. It should specify that, just as the Congress must approve any new trade agreement, it must approve the abrogation of any trade agreement that it had previously adopted. The upcoming USMCA legislation might provide an opportunity to make such changes in US trade law.

The checks and balances in the US governance system has traditionally have relied on statesmanlike Administration to counter the protectionist tendencies that often emerge from the Congress. We now need a far-sighted Congress to counter the proclivities of a protectionist President. I am delighted that the Subcommittee is holding this hearing and hope you will move promptly to protect the national interests of the United States from the heavy price they are now paying for the trade policies of the current Administration.