

Who has the Authority to Impose Tariffs and how does this Affect International Trade?

An Undergraduate Briefing Paper

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May 2019

Introduction

In early 2018 President Trump imposed tariffs on steel and aluminum imports under Section 232 of the Trade Expansion Act of 1962. This law states that the president can raise tariffs on imports that pose a threat to national security. Section 232 allows the President to implement these tariffs without the approval of Congress, following an investigation by the Department of Commerce. The Commerce Department has noted that threats to national security may include “fostering U.S. dependence on unreliable or unsafe imports” or “fundamentally threatening the ability of U.S. domestic industries to satisfy national security needs.”¹ However, there are many members of Congress on both sides of the aisle who would like to rein in the President’s ability to unilaterally impose tariffs.

Background

While the U.S. Constitution grants to Congress the power to levy tariffs on goods, Congress has delegated some of that power to the Executive Branch over time. The U.S. Constitution states in Article I, Section 8 that “The Congress shall have the Power to lay and collect Taxes, Duties, Imposts and Excises.” Congress passed general tariff legislation until the early 1930s. However, in a move to grant more flexibility to the President to revitalize global trade in the midst of the Great Depression, Congress gave the Executive Branch the power to negotiate tariff reductions within levels pre-approved by Congress through the Reciprocal Trade Agreement Act of 1934. President Franklin D. Roosevelt became the first President to have the authority to levy tariffs and negotiate bilateral trade agreements without the approval of Congress.²

The Executive Branch has continued to exercise a level of authority over tariffs over the past few decades. In 1962 President Kennedy signed into law the Trade Expansion Act, which allows the President to adjust tariffs based on threats to national security under section 232.³ This is the authority under which President Trump imposed tariffs on steel and aluminum, which have a vast impact on some of the United States’ biggest trading partners and many U.S. industries. Since the beginning of the year, there have been bipartisan efforts in Congress to try to regain some of the power that was delegated to the Executive branch to regulate trade.

Analysis

Two senators have introduced legislation to limit tariffs under Section 232. Senator Pat Toomey (R-PA), and Senator Rob Portman (R-OH) proposed competing bills this year. Senator Toomey’s

bill requires congressional approval for all tariffs imposed under Section 232, while Senator Portman's bill adds more steps to the process of the President enacting Section 232 tariffs.⁴

Senate Finance Committee Chairman Chuck Grassley (R-IA) has been one of the strongest proponents of reclaiming Congress's power to impose tariffs. After reviewing Senator Toomey's and Senator Portman's proposals, he has suggested that any tariff imposed under Section 232 should require the approval of Congress to continue the tariff after a certain period of time.⁵ Senator Grassley's proposal also requires the executive branch to report on how 232 tariffs are protecting against national security threats. However, the President is likely to veto any legislation limiting his power, so Congress would need a two-thirds majority to approve of this legislation.

Members of the U.S. House of Representatives have also been working on trade legislation concerning the authority to impose tariffs. On January 23, 2019 Rep. Warren Davidson (R-OH-8) introduced H.R. 723, The Global Trade Accountability Act, "to provide for congressional review of the imposition of duties and other trade measures by the executive branch, and for other purposes."⁶ This would transfer some authority back to Congress in the realm of international trade.

On the other hand, Rep. Sean Duffy (R-WI-7) introduced H.R.764, the U.S. Reciprocal Trade Act, "to authorize the President to take certain actions relating to reciprocal trade, and for other purposes."⁷ The President would be granted greater autonomy to more swiftly make decisions on trade policy in response to actions taken by other countries in relation to trade with the United States. This contrasts with Rep. Davidson's proposal and actually gives the President more power to levy tariffs and negotiate trade. This is essentially the opposite of the other proposals, and it has 27 cosponsors. President Trump spoke in favor of this during his 2019 State of the Union address, and many other Republicans in the House support this.⁸

Outlook

While the President has been granted the authority to impose tariffs in many situations in the past few decades, Congress seems to be increasingly interested in restoring its authority over these matters. The restoration of these powers to the legislative branch is expected to be a battle with President Trump and needs to garner strong bipartisan support in order to override a potential veto. President Trump has exercised his authority as President to impose tariffs thus far, but this power may soon be limited if legislation can be passed. If Congress is able to rein in this power, then the United States could see a decrease in tariffs and a lower threat of trade wars in the near future because the President would have less authority to unilaterally impose tariffs. On the other hand, giving more authority to Congress slows the process of both reducing existing tariffs and imposing new tariffs. Either way, with issues such as the southern border taking up so much of Congress's time, it is unlikely that these proposals on trade will be discussed and voted on any time soon.

Title	Effects on trade authority	Support	Obstacles
Bicameral Congressional Trade Authority Act of 2019 (S. 287)	-Severely limits President's ability to impose tariffs based on Sec. 232. -Delegates much of the power back to Congress, requires Congressional approval	-Sponsor: Sen. Toomey (R-PA) -13 Cosponsors (7 R, 5 D) - Related Bill H.R. 940 (21 Cosponsors)	-Chairman Grassley prefers compromise
Trade Security Act of 2019 (S. 365)	- Requires Secretary of Defense to initiate investigations into 232 claims -Allows Congressional disapproval in some cases	-Sponsor: Sen. Portman (R-OH) -9 Cosponsors (6 R, 3 D) -Related Bill H.R. 1008 (9 Cosponsors)	-Chairman Grassley prefers compromise
Chairman Grassley's Proposal	-Limit length of tariffs imposed by Executive Branch -Increased reporting and justification on using Sec. 232	- Chairman Grassley - Bipartisan support in Senate	- Need veto proof majority -Not a priority issue
Global Trade Accountability Act (H.R. 723)	-Unilateral tariffs required to be approved by Congress	-Sponsor: Rep. Davidson (R-OH) -11 Cosponsors (R's)	-Not a priority issue
U.S. Reciprocal Trade Act (H.R. 765)	-President can unilaterally impose tariffs and negotiate trade	-Sponsor: Rep. Duffy (R-WI) -27 Cosponsors (R's) -President Trump supports	-Disagreement in Republican Party over trade authority -Not a priority issue

About the Author

Emily Loftis is a sophomore from Kansas City, Missouri, majoring in economics with minors in math, political science, and national security studies.

Endnotes

¹ The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security, an Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as amended, U.S. Department of Commerce, Bureau of Export Administration, 2001, p. 7.

² The Reciprocal Trade Agreement Act of 1934. (n.d.). Retrieved April 1, 2019, from <https://history.house.gov/Historical-Highlights/1901-1950/The-Reciprocal-Trade-Agreement-Act-of-1934/>

³ Kenton, W. (2019, March 12). Section 232 of the Trade Expansion Act. Retrieved March 28, 2019, from <https://www.investopedia.com/terms/s/section-232-trade-expansion-act.asp>

⁴ Higgins, S. (2019, April 03). White House will fight congressional effort to rein in tariff powers. Retrieved April 5, 2019, from <https://www.washingtonexaminer.com/policy/economy/white-house-will-fight-congressional-effort-to-rein-in-tariff-powers>

⁵ Ibid.

⁶ “H.R. 723 - Global Trade Accountability Act of 2019” <https://www.congress.gov/bill/116th-congress/house-bill/723/all-actions?q=%7B%22search%22%3A%5B%22davidson%22%5D%7D> accessed 6 April 2019

⁷ “H.R. 764 - To authorize the President to take certain actions relating to reciprocal trade, and for other purposes,” <https://www.congress.gov/bill/116th-congress/house-bill/764/all-actions?q=%7B%22search%22%3A%5B%22duffy%22%5D%7D&s=1&r=8> accessed 6 April 2019

⁸ Laing, Keith, The Detroit News, “ Trump requests approval of NAFTA replacement, retaliatory tariff power” 5 February 2019, <https://www.detroitnews.com/story/news/politics/2019/02/05/state-of-union-michigan-trump-trade-tariffs/2781537002/> accessed 6 April 2019