Intelligence MEMOS

From: Jon Johnson

To: Canadians Concerned About US Section 232 National Security Tariffs

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Re: **Recent Section 232 Initiatives – One Positive and the Other Less So**

Imports of steel and aluminum from Canada into the US were subject to tariffs of 25 percent (steel) and 10 percent (aluminum) by aggressive use by the Trump administration of Section 232 of the Trade Expansion Act of 1962. This legislation allows the US president to "adjust" (though tariffs or other restrictive measures) imports that allegedly threaten US national security.

These tariffs were withdrawn but Canada had to agree that if imports of aluminum or steel products surge meaningfully beyond historic volumes, the US can request consultations and absent a resolution, may reimpose the duties. So far, duties have not been reimposed and these products satisfying CUSMA rules of origin enter the US duty free.

Other US trading partners fared worse, with Section 232 tariffs being replaced with tariff rate quotas that impose high tariffs on imports over prescribed annual volumes.

There have been legislative attempts to reform Section 232, the most recent being the Bicameral Congressional Trade Authority Act reintroduced on August 5 by House Democrat Representatives Ron Kind (D-WI) and Don Beyer (D-VA), along with Republican Representative Mike Gallagher (R-WI). This bipartisan legislation would limit the ability of the US administration to impose Section 232 tariffs.

With the amendments, tariffs will only apply to "covered articles," which are articles "related to the development, maintenance, or protection of military equipment, energy resources, or critical infrastructure essential to national security." Currently "article" is open-ended.

And as well, the current scope of national security is virtually unlimited. With the amendments, national security will be narrowly defined as "the protection of the United States from foreign aggression" and "does not otherwise include the protection of the general welfare of the United States."

Additionally, the investigative lead would switch to the Secretary of Defence from the Secretary of Commerce.

Once departmental recommendations are made, the president may (as noted above) "adjust" imports through tariffs or other restrictive measures. Currently Congress can only "disapprove" (i.e., cause to cease to have effect) of a presidential "adjustment" of imports of petroleum and petroleum products. Under the proposed legislation, this congressional power will apply to any presidential adjustment.

If the amendments become law, the chances of Canadian exporters being subjected to damaging Section 232 tariffs will be reduced. However, despite bipartisan sponsorship, enacting the amendments could be difficult, particularly in the Senate where 60 votes are required to overcome a filibuster.

The other new Washington initiative comes from a progressive think tank and is less positive.

Section 232 can be a "sweet spot" for climate action, say the authors of a Roosevelt Institute paper focused on how the executive branch can move on a variety of fronts without needing congressional support.

"The politics and economics of the steel and aluminum industries make them ideal for a tariff ban on carbon-intensive metal imports," says the paper, published by the institute, which is an arm of the Franklin Roosevelt Presidential Library.

This approach could give way to disguised protectionism without regard to the carbon-intensity of the product. How would Section 232 as currently worded consider the highly relevant fact from a carbon pollution perspective that the electricity used in Canada to produce aluminum is generated using emission-free hydroelectric power, while aluminum produced in several US states uses coal-generated electricity?

The Roosevelt Institute proposal does not require legislation to become effective. Section 232 permits "an interested party" (which can be anyone) to request the initiation of an investigation, which would be at the discretion of the Secretary of Commerce. If an investigation proceeds and results in an affirmative recommendation, the president has the broad powers described above to "adjust" imports. Affected parties could initiate a challenge on the basis that the "adjustment" of imports for "climate action" purposes is not sanctioned by Section 232, but the history of court challenges of actions under Section 232 has not been promising.

US legislators recognize that there are problems with Section 232. If the Roosevelt Institute proposal is ever acted upon, Canada and trade partners around the world, as well as US legislators with misgivings about Section 232, should seek ensure that guardrails are in place so that this use of Section 232 is not abused.

Jon Johnson is a former advisor to the Canadian government during NAFTA negotiations and is a Senior Fellow at the C.D. Howe Institute.

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