

Intelligence MEMOS



From: Jon Johnson
To: The US Congress and the European Commission
Date: January 17, 2019
Re: **THE UNITED STATES RECIPROCAL TRADE ACT**

Last May, US Commerce Secretary Wilbur Ross challenged the WTO most-favoured-nation (MFN) principle as preventing the US from engaging in “reciprocal trade.” In its simplest terms, “reciprocal trade” means that if you impose a 10 percent tariff on my products, I will impose a 10 percent tariff on yours.

Wisconsin Republican Representative Sean Duffy said yesterday he will introduce a White-House inspired new *United States Reciprocal Trade Act* (“USRTA”) that would allow the president to impose tariffs on any product if the president determines that either tariff or non-tariff barriers on that product are higher than those of the US. Congress would be notified but would have no power respecting any tariff decision made by the president.

The EU charges a 10 percent tariff on cars from the US, while the US only charges a 2.5 percent tariff on cars from the EU. With “reciprocal trade,” either the EU would agree to reduce its tariff on US cars to 2.5 percent, or the US would unilaterally increase its tariff on EU cars to match the EU 10 percent tariff.

The adoption by the US (the world’s most powerful economy) of the USRTA could fatally undermine the WTO most-favoured-nation principle that requires that an advantage (e.g., a lower tariff) by a WTO member country to products of another country must be allowed to like products of all WTO members. If the USRTA leads to good faith negotiations that result in US trading partners lowering tariffs to US levels, the overall result could be beneficial as, applying the MFN principle, the lower tariffs would apply to products of all WTO members. However, the US tariff schedule could become a mishmash of special arrangements imposed arbitrarily on each trading partner, with each arrangement having its own rules of origin imposed unilaterally by the president.

The “reciprocal trade” approach becomes particularly difficult with non-tariff barriers (NTBs). What is the tariff equivalent of the alleged NTB? Or is the alleged NTB a barrier to trade or a reflection of legitimate policy that happens to differ from US policy? Does the president make these decisions unilaterally with no opportunity for review?

The whole area of NTBs is open to abuse through arbitrary action with potentially chaotic results.

The Trump administration has aggressively used Section 232 of the *Trade Expansion Act of 1962* to achieve trade objectives. The Section 232 tariffs are widely viewed as an assault on the WTO trading system, but at least the US is purporting to justify them based on national security, a recognized WTO exception. The USRTA, if adopted, would not fit under any recognized WTO exception and could be seen as a direct assault on the WTO.

When introduced, the USRTA will probably have little chance of being enacted. Many members of Congress feel that it has already given away too much power to the president on trade, such as through allowing a much wider ambit for the use of Section 232 than Congress likely ever contemplated. Increasing presidential powers over trade requires that Congress enact legislation. Enacting legislation is an exclusive prerogative of Congress and Congress cannot be forced to enact the USRTA. The Democrats now control the House making it even more difficult for the Trump administration to get the USRTA enacted, if only because Democrats may resist supporting a new Trump trade initiative simply because it comes from Trump.

However, the fact that the Trump administration is even considering enacting a law based on its concept of “reciprocal trade” (i.e., I will do to you what you do to me) should cause each US trading partner to critically examine its own trade policy. Does the EU really need to impose a 10 percent tariff on cars from other WTO members while the US only charges a tariff of 2.5 percent?

At the same time, Canada and others should start thinking about how to protect the multilateral trading system against potential domino effects of such a new protectionist doctrine.

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