

# Intelligence MEMOS



From: Jon Johnson  
To: Canadians Concerned about US Section 232 Tariffs  
Date: August 15, 2018  
Re: **WHAT TO DO ABOUT 232? CAN CONGRESS OR THE COURTS BLOCK TRUMP (PART ONE)**

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In No. 47 of the Federalist Papers, James Madison emphasized that the preservation of liberty requires that the three great seats of power (legislative, executive and judiciary) should be separate and distinct. The US Constitution sets out checks and balances designed to ensure that these powers are not accumulated within a single branch.

President Trump is aggressively using tariffs to extract concessions from trading partners. Congress has unquestionable legislative authority over tariffs and trade but has assigned functions respecting trade to the president in certain circumstances. Section 232 of the *Trade Expansion Act of 1962* is one such assignment.

Section 232 permits the president to take whatever action he considers necessary to adjust imports if the president concurs with a finding by the Commerce Secretary that an article is being imported in quantities or under circumstances that impair national security. Imports of steel and aluminum are now subject to Section 232 tariffs. The Commerce Secretary initiated an investigation into imports of automotive goods that is well under way. An investigation has begun on uranium and the Commerce Secretary has identified aircraft, shipbuilding and semi-conductors as “core industries”.

Before President Trump was elected, Section 232 was sparingly used, the most recent investigation occurred in 2001. Only nine Section 232 investigations resulted in import restrictions and eight involved oil.

The Trump administration’s aggressive use of Section 232 to target imports from valued US trading partners has raised serious concerns in Congress and the business community. Can the system of checks and balances in the US Constitution restrain the use of Section 232?

Congress can assert authority over Section 232 through legislation and has done so in the past. In 1980, Congress amended it to empower either House to pass a disapproval resolution respecting Section 232 actions against imports of petroleum products. However, the disapproval amendment only applies to petroleum products and not to other goods.

Many senators are concerned about the president’s use of Section 232 because on July 11 the Senate overwhelmingly approved a non-binding resolution to reassert congressional authority over using tariffs for national security purposes.

However, so far efforts by the Senate to enact binding legislation respecting Section 232 have been uncoordinated and unsuccessful. Individual senators have introduced bills: requiring congressional approval for actions taken pursuant to Section 232; lifting the Section 232 tariffs on steel and aluminum on imports from Canada, Mexico and the EU; putting the Secretary of Defense rather than the Commerce secretary in charge of making national security determinations and expanding the disapproval resolution process to include any product and not just petroleum; and requiring the US International Trade Commission to conduct a study on the auto sector before any Section 232 tariffs are applied. None of these has passed.

Successful legislation requires a coordinated approach, with the Senate passing a single bill and the House of Representatives passing the same bill so that the completed bill can be sent to the president for signature.

The president can block Congress through his power to veto legislation. Congress can override a veto, but at least two thirds of each of the House and the Senate must concur. Hopes that Congress will check President Trump’s use of Section 232 through legislation face an uphill battle.

However, the other component in the US checks and balances system is the courts. And that’s tomorrow’s topic.

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